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and the date on which the assumption will be effective.

(b) *Effective date of assumption.* The date of any partial or complete assumption of the disability determination function from a State agency may not be earlier than 180 days after our finding of substantial failure, and not before compliance with the requirements of § 404.1692.

§ 404.1691 Assumption when State no longer wishes to perform the disability determination function.

(a) *Notice to the Commissioner.* If a State no longer wishes to perform the disability determination function, it will notify us in writing. The notice must be from an official authorized to act for the State for this purpose. The State will provide an opinion from the State's Attorney General verifying the authority of the official who gave the notice.

(b) *Effective date of assumption.* The State agency will continue to perform whatever activities of the disability determination function it is performing at the time the notice referred to in paragraph (a) of this section is given for not less than 180 days or, if later, until we have complied with the requirements of § 404.1692. For example, if the State is not making disability determinations (because we previously assumed responsibility for making them) but is performing other activities related to the disability determination function at the time it gives notice, the State will continue to do these activities until the requirements of this paragraph are met. Thereafter, we will assume complete responsibility for performing the disability determination function.

[46 FR 29204, May 29, 1981, as amended at 62 FR 38452, July 18, 1997]

§ 404.1692 Protection of State employees.

(a) *Hiring preference.* We will develop and initiate procedures to implement a plan to partially or completely assume the disability determination function from the State agency under § 404.1690 or § 404.1691, as appropriate. Except for the State agency's administrator, deputy administrator, or assistant administrator (or his equivalent), we will

give employees of the State agency who are capable of performing duties in the disability determination function preference over any other persons in filling positions with us for which they are qualified. We may also give a preference in hiring to the State agency's administrator, deputy administrator, or assistant administrator (or his equivalent). We will establish a system for determining the hiring priority among the affected State agency employees in those instances where we are not hiring all of them.

(b) *Determination by Secretary of Labor.* We will not assume responsibility for performing the disability determination function from a State until the Secretary of Labor determines that the State has made fair and equitable arrangements under applicable Federal, State and local law to protect the interests of employees who will be displaced from their employment because of the assumption and who we will not hire.

§ 404.1693 Limitation on State expenditures after notice.

The State agency may not, after it receives the notice referred to in § 404.1690, or gives the notice referred to in § 404.1691, make any new commitments to spend funds allocated to it for performing the disability determination function without the approval of the appropriate SSA regional commissioner. The State will make every effort to close out as soon as possible all existing commitments that relate to performing the disability determination function.

§ 404.1694 Final accounting by the State.

The State will submit its final claims to us as soon as possible, but in no event later than 1 year from the effective date of our assumption of the disability determination function unless we grant an extension of time. When the final claim(s) is submitted, a final accounting will be made by the State of any funds paid to the State under § 404.1626 which have not been spent or committed prior to the effective date of our assumption of the disability determination function. Disputes concerning final accounting issues which

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cannot be resolved between the State and us will be resolved in proceedings before the Departmental Appeals Board as described in 45 CFR part 16.

[46 FR 29204, May 29, 1981, as amended at 62 FR 38452, July 18, 1997]

Subpart R—Representation of Parties

AUTHORITY: Secs. 205(a), 206, 702(a)(5), and 1127 of the Social Security Act (42 U.S.C. 405(a), 406, 902(a)(5), and 1320a-6); sec. 303, Pub. L. 108-203, 118 Stat. 493.

SOURCE: 45 FR 52090, Aug. 5, 1980, unless otherwise noted.

§ 404.1700 Introduction.

You may appoint someone to represent you in any of your dealings with us. This subpart explains, among other things—

- (a) Who may be your representative and what his or her qualifications must be;
- (b) How you appoint a representative;
- (c) The payment of fees to a representative;
- (d) Our rules that representatives must follow; and
- (e) What happens to a representative who breaks the rules.

§ 404.1703 Definitions.

As used in this subpart—

Past-due benefits means the total amount of benefits under title II of the Act that has accumulated to all beneficiaries because of a favorable administrative or judicial determination or decision, up to but not including the month the determination or decision is made. For purposes of calculating fees for representation, we determine past-due benefits before any applicable reduction under section 1127 of the Act (for receipt of benefits for the same period under title XVI). Past-due benefits do not include:

- (1) Continued benefits paid pursuant to § 404.1597a of this part; or
- (2) Interim benefits paid pursuant to section 223(h) of the Act.

Representative means an attorney who meets all of the requirements of § 404.1705(a), or a person other than an attorney who meets all of the requirements of § 404.1705(b), and whom you

appoint to represent you in dealings with us.

We, our, or us refers to the Social Security Administration.

You or your refers to any person claiming a right under the old-age, disability, dependents', or survivors' benefits program.

[45 FR 52090, Aug. 5, 1980, as amended at 72 FR 16724, Apr. 5, 2007]

§ 404.1705 Who may be your representative.

(a) *Attorney.* You may appoint as your representative in dealings with us, any attorney in good standing who—

(1) Has the right to practice law before a court of a State, Territory, District, or island possession of the United States, or before the Supreme Court or a lower Federal court of the United States;

(2) Is not disqualified or suspended from acting as a representative in dealings with us; and

(3) Is not prohibited by any law from acting as a representative.

(b) *Person other than attorney.* You may appoint any person who is not an attorney to be your representative in dealings with us if he or she—

(1) Is generally known to have a good character and reputation;

(2) Is capable of giving valuable help to you in connection with your claim;

(3) Is not disqualified or suspended from acting as a representative in dealings with us; and

(4) Is not prohibited by any law from acting as a representative.

§ 404.1706 Notification of options for obtaining attorney representation.

If you are not represented by an attorney and we make a determination or decision that is subject to the administrative review process provided under subpart J of this part and it does not grant all of the benefits or other relief you requested or it adversely affects any entitlement to benefits that we have established or may establish for you, we will include with the notice of that determination or decision information about your options for obtaining an attorney to represent you in dealing with us. We will also tell you that a legal services organization may