



Office *of the* Inspector General

SOCIAL SECURITY ADMINISTRATION

Audit Report

Claimant Representatives Who Were
Sanctioned by the Social Security
Administration

A-12-14-14086 | June 2018

MEMORANDUM

Date: June 6, 2018

Refer To:

To: The Commissioner

From: Acting Inspector General

Subject: Claimant Representatives Who Were Sanctioned by the Social Security Administration
(A-12-14-14086)

The attached final report presents the results of the Office of Audit's review. The objective was to determine whether the Social Security Administration appropriately processed cases in which claimant representatives violated the *Rules of Conduct and Standards of Responsibility for Representatives*.

If you wish to discuss the final report, please call me or have your staff contact Rona Lawson, Assistant Inspector General for Audit, 410-965-9700.



Gale Stallworth Stone

Attachment

Claimant Representatives Who Were Sanctioned by the Social Security Administration

A-12-14-14086



June 2018

Office of Audit Report Summary

Objective

Our objective was to determine whether the Social Security Administration (SSA) appropriately processed cases in which claimant representatives violated the *Rules of Conduct and Standards of Responsibility for Representatives (Rules of Conduct)*.

Background

If a representative violates the *Rules of Conduct*, SSA can suspend or disqualify (that is, sanction) the representative from practicing before SSA.

A representative has 30 days to respond to the *Notice of Intent to Sanction*, which is issued by SSA's Office of the General Counsel (OGC). If OGC does not take action to withdraw the charges within 15 days after the representative files an answer, it will request that SSA's Office of Hearings Operations (OHO) designate a hearing officer and proceed with a hearing. OHO should make every possible attempt to issue a sanction decision within 120 days of the *Notice of the Hearing*.

During Calendar Years (CY) 2014 through 2016, 25 representatives were sanctioned after OGC referred the cases to OHO for the hearing stage of the sanction process.

Findings

SSA appropriately processed cases in which claimant representatives violated the Agency's *Rules of Conduct*. Specifically, SSA

- notified the representatives of the charges,
- provided the representatives with an opportunity to respond to the charges, and
- notified the representatives of their appeal rights.

SSA took, on average, 277 days to complete the sanction process—ranging from 84 to 540 days. Since representatives continued serving existing and new claimants while the charges were pending, it is in the public's interest to resolve the sanction cases quickly. However, SSA did not have definitive timeframes for processing the sanction cases.

Recommendations

We recommend that:

1. OGC develop specific timeframes for referring sanction cases to OHO.
2. OHO provide training to hearing officers to issue a decision in sanction cases within 120 days of the *Notice of the Hearing*.

SSA agreed with the recommendations.

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ABBREVIATIONS

C.F.R.	Code of Federal Regulations
CPMS	Case Processing and Management System
CY	Calendar Year
FY	Fiscal Year
HALLEX	Hearings, Appeals, and Litigation Manual
OGC	Office of the General Counsel
OHO	Office of Hearings Operations
POMS	Program Operations Manual System
SSA	Social Security Administration

OBJECTIVE

Our objective was to determine whether the Social Security Administration (SSA) appropriately processed cases in which claimant representatives¹ violated the *Rules of Conduct and Standards of Responsibility for Representatives (Rules of Conduct)*.

BACKGROUND

Individuals filing an application for Old-Age, Survivors and Disability Insurance benefits or Supplemental Security Income payments may appoint a qualified individual as a representative to act on their behalf in matters before SSA.² SSA formulated the *Rules of Conduct*³ to ensure representatives provide claimants competent services (for more on the *Rules of Conduct*, see Appendix A). According to the *Rules of Conduct*, a representative must, among other things,

- act with reasonable promptness in obtaining and submitting information and evidence;
- assist the claimant in complying with SSA requests for information or evidence; and
- conduct his/her dealings efficiently, fairly, and in an orderly manner.

If the representative violates the *Rules of Conduct*, SSA can suspend or disqualify (that is, sanction) the representative from practicing before the Agency.⁴ If it appears the representative may have violated the *Rules of Conduct*, SSA's Office of the General Counsel (OGC) issues an inquiry letter to the representative to give him/her an opportunity to respond. OGC may then issue a warning letter if the conduct does not warrant formal sanction proceedings. To initiate formal sanction proceedings, OGC will issue the representative a *Notice of Intent to Sanction*

¹ In this report, we refer to both attorneys and non-attorneys who represent claimants before SSA.

² The claimant may appoint a representative who meets SSA's requirements. An attorney may serve as a claimant's representative if admitted to practice law before a State or a Federal court of the United States and not disqualified or suspended from acting as a representative before SSA or prohibited by law from acting as a representative. A non-attorney may serve as a claimant's representative if he/she is not legally prohibited from acting as a representative. A non-attorney must be generally known to have a good character and reputation and be capable of giving valuable help in connection with the claim. SSA, *POMS*, GN-General, ch. GN 039, subch. GN 03910.020 (May 8, 2013).

³ 20 C.F.R. §§ 404.1740 and 416.1540 (2017); *Social Security Act*, 42 U.S.C. § 406 (a) (2016). All claimant representatives who practice before SSA must comply with the *Rules of Conduct*. The *Rules* specify both affirmative obligations and prohibited conduct.

⁴ SSA, *POMS*, GN-General, ch. GN 039, subch. GN03970.015 (September 18, 2013). SSA employees may observe or detect suspected violations of the *Rules of Conduct*, which are referred to OGC. OGC provides the Agency with legal counsel in all matters regarding litigation against SSA. OGC has an office in each of SSA's 10 regions as well as at SSA Headquarters.

that contains a statement of the charges.⁵ See Appendix B for more information on the *Notice of Intent to Sanction*.

The representative has 30 days to respond to the *Notice of Intent to Sanction*.⁶ Then, if OGC does not take action to withdraw the charges within 15 days after the date the representative files an answer, OGC may refer the case to SSA's Office of Hearings Operations (OHO).⁷

At OHO, an administrative law judge⁸—referred to as a hearing officer in sanction proceedings—should make every possible attempt to hold a hearing and make a decision within 120 days of receipt of a request for a hearing.⁹ The hearing officer's sanction decision is mailed to the representative's last known address, and the notice informs the representative of his/her rights.¹⁰ Within 30 days of the date the hearing officer mailed the sanction decision, one of the parties may ask SSA's Appeals Council to review it.¹¹ The hearing officer's decision is final and binding unless reversed or modified by the Appeals Council upon review.¹² See Appendix C for a flow chart of the sanction process.

Of the 51 representatives who were sanctioned in Calendar Years (CY) 2014 through 2016:

- OGC referred 25 to OHO for a hearing on the charges.
- Twenty-three voluntarily accepted the proposed sanction before the hearing stage of the sanction process.¹³ By signing the disqualification form, the representative admitted to the charges and agreed to waive his/her right to a hearing and administrative appeal. Therefore, OGC did not need to request that OHO assign a hearing officer for these cases.

⁵ The *Notice of Intent to Sanction* constitutes the basis for the proceedings against the representatives. 20 C.F.R. §§ 1750 (a) and 416.1550 (a) (2017). The Notice must specify whether SSA is seeking disqualification or a suspension. SSA, *HALLEX*, vol. I, ch. I-1-1, section I-1-1-50 D 4 (December 16, 2013).

⁶ 20 C.F.R. §§ 404.1750 (c) and 416.1550 (c) (2017).

⁷ 20 C.F.R. §§ 404.1765 (a) and 416.1565 (a) (2017). SSA, *HALLEX*, vol. I, ch. I-1-1, section I-1-1-52 A (March 29, 2013).

⁸ SSA has a cadre of management-only administrative law judges who serve as hearing officers in representative sanction cases. 20 C.F.R. §§ 404.1765 (b) and 416.1565 (b) (2017).

⁹ SSA, *HALLEX*, vol. I, ch. I-1-1, section I-1-1-52 A (March 20, 2013).

¹⁰ 20 C.F.R. §§ 404.1750 (a)(4) and 416.1570 (a)(4) (2017).

¹¹ 20 C.F.R. §§ 404.1775 and 416.1575 (2017). SSA, *HALLEX*, vol. I, ch. I-1-1, section I-1-1-52 F.4 (March 20, 2013). Either OGC (on behalf of SSA) or the representative against whom the charges were made can request the Appeals Council review the case.

¹² 20 C.F.R. §§ 404.1770 (b) and 416.1570 (b) (2017). If the Appeals Council affirms or changes a hearing officer's decision, the period of suspension or the disqualification is effective from the date of the Appeals Council's decision; 20 C.F.R. §§ 404.1790 (c) and 416.1590 (c) (2017).

¹³ For example, three representatives were suspended from practicing law in the States in which they were licensed to practice and voluntarily accepted SSA's sanction. We only reviewed case documentation for 3 of the 23 representatives who did not go to the hearing stage of the sanction process.

- Three were sanctioned after appealing the hearing officer’s sanction decision.¹⁴

To conduct our review, we obtained SSA’s *Sanctioned Representative List*¹⁵ and reviewed SSA’s policies and the *Rules of Conduct*. We also interviewed attorneys in OGC, managers and staff in OHO, a hearing officer, and an administrative appeals judge. We focused most of our review on the 25 representatives who went to the hearing stage of the sanction process in CYs 2014 through 2016. Therefore, we reviewed the 25 case folders that were maintained in SSA’s Office of Appellate Operations. See Appendix D for our scope and methodology.

RESULTS OF REVIEW

SSA appropriately processed cases in which claimant representatives violated the Agency’s *Rules of Conduct*. Specifically, SSA (a) notified the representatives of the charges, (b) provided the representatives an opportunity to respond to the charges, and (c) notified the representatives of their appeal rights. However, SSA did not have definitive timeframes for processing the sanction cases, and, on average, it took SSA 277 days to sanction a representative who went to the hearing stage of the sanction process—ranging from 84 to 540 days.

SSA Appropriately Processed Cases

In CYs 2014 through 2016, when sanctioning claimant representatives who violated the Agency’s *Rules of Conduct*, SSA appropriately processed the cases. Specifically, for the 25 representatives who went to the hearing stage of the sanction process, SSA sent the representatives a

- *Notice of Intent to Sanction* for their alleged misconduct violations and gave the representatives an opportunity to respond to the charges;
- *Notice of Hearing* that contained language explaining they had a right to a hearing and an opportunity to defend themselves with representation; and
- *Hearing Decision* that imposed the sanction based on the OHO hearing officer’s review of the evidence.

¹⁴ One appeal was not filed timely and therefore dismissed; and two were not granted review by the Appeals Council, thereby affirming the hearing officer’s earlier decision to sanction the representatives.

¹⁵ SSA’s *Sanctioned Representative List* shows the effective dates representatives were sanctioned. Representatives whose suspensions end are removed from the list.

SSA sanctioned all 25 representatives. Hearing officers issued 20 on-the-record decisions,¹⁶ 4 representatives accepted the proposed sanction after the hearing process began,¹⁷ and 1 hearing officer held a hearing with the representative present. On average, SSA took 277 days to complete the sanction process—ranging from 84 to 540 days.¹⁸ See Appendix E for the timeframe for each case.

Of the 25 representatives, 20 were attorneys and 5 were non-attorneys. Furthermore, 19 of the 20 attorneys had been disbarred or suspended by the State court where they practiced law; and, under section 206 of the *Social Security Act*,¹⁹ SSA may disqualify any representative who has been disbarred or suspended by a court or bar. Table 1 shows why the representatives were sanctioned.

Table 1: Reasons for Sanctions²⁰

Count	Reasons for Sanctions
17	Attorney disbarred/suspended from practicing law because of professional misconduct ²¹
3	Violating fee agreements (2 attorneys and 1 non-attorney)
1	Intimidation and coercion of SSA (non-attorney)
1	Intimidation and threats to claimants (non-attorney)
1	Attorney suspended from practicing law for failure to comply with court orders and pay notary fees
1	Aggravated identity theft (non-attorney)
1	Collusion with doctor ²² (non-attorney)
25	Total

¹⁶ If the representative does not file an answer to the charges, he/she has no right to present evidence at the hearing. SSA, *POMS*, GN-General, ch. GN 039, subch. GN 03970.040 (October 17, 2012). The hearing officer may make a decision on the basis of the record or permit the representative to present a statement about the sufficiency of the evidence or validity of the proceedings upon which the suspension or disqualification, if it occurred, would be based. 20 C.F.R. §§ 404.1765 (g)(2) and 416.1565 (g)(2) (2017).

¹⁷ These four representatives admitted to the charges and voluntarily waived their right to a hearing.

¹⁸ We measured time from the date of the *Notice of Intent to Sanction* to the sanction decision date. The median was 251 days.

¹⁹ *Social Security Act*, 42 U.S.C. § 406(a)(1) (2016).

²⁰ Suspected criminal violations by a representative should be referred to SSA’s Office of the Inspector General.

²¹ Professional misconduct in these cases included, but was not limited to, dishonesty, fraud, and working without due diligence.

²² The representative was investigated as part of a criminal case.

Initial Sanction Process - OGC

Initially, OGC prepares a *Notice of Intent to Sanction* informing the representative that SSA is seeking to either disqualify or suspend him/her. OGC serves this notice to the representative via certified/registered mail.²³ SSA guidance²⁴ instructs OGC to locate the representative's current address using State bar Websites (for attorneys), SSA field offices, and a "people search Website." They may also contact an SSA hearing office to request information on the representative's last known address in OHO's Case Processing and Management System. If multiple addresses exist and there is uncertainty about which address to use, Agency guidance instructs OGC to send a copy of the *Notice of Intent to Sanction* to each address.

The *Notice of Intent to Sanction* advises the representative to file an answer with OGC within 30 days—stating why he/she should not be suspended or disqualified from acting as a representative before SSA—and informs the representative that failure to respond timely in writing will preclude him/her from presenting evidence during any sanction proceedings.²⁵ The representative's answer must be in writing and signed under oath (or affirmation).²⁶

OGC may request that a hearing be scheduled if it does not take action to withdraw charges within 15 days after the date the representative files an answer.²⁷ However, SSA does not have a policy that establishes a timeframe for OGC to refer the case to OHO for the hearing stage of the sanction process.

As shown in Table 2, in 12 cases, the representative did not respond to the *Notice of Intent to Sanction*, and it took OGC more than 15 days to refer 10 of these cases to OHO. Also, nine representatives responded untimely; and it took OGC more than 15 days to refer six of them to OHO for the next stage of the sanction process. In the nine untimely cases, one representative requested an extended period to respond to the charges for good cause; however, OGC denied the request.²⁸

²³ SSA, *POMS*, GN-General, ch. GN 039, subch. GN 03970.030 B (December 12, 2012); 20 C.F.R. §§ 404.1750 (b) and 416.1550 (b) (2017).

²⁴ SSA, *Representative Sanction Procedures Manual*, section 6, *Initiating the Formal Sanction Process*, p. 22 (January 14, 2008).

²⁵ 20 C.F.R. §§ 404.1750 and 416.1550 (2017); SSA, *POMS*, GN-General, ch. GN 039, subch. GN 03970.030 (December 12, 2012).

²⁶ 20 C.F.R. §§ 404.1750 (e)(1) and 416.1550 (e)(1) (2017); SSA, *POMS*, GN-General, ch. GN 039, subch. GN 03970.030 C (December 12, 2012).

²⁷ 20 C.F.R. §§ 404.1765 (a) and 416.1565 (a) (2017). SSA, *HALLEX*, vol. I, ch. I-1-1, sec. I-1-1-52 (March 29, 2013). If a representative did not respond to the *Notice of Intent to Sanction*, when OGC requests a hearing officer, it should include the fact that the representative failed to respond and there was no basis to withdraw the charges. SSA, *Representative Sanction Procedures Manual*, section 7, *Respondent's Answer and Withdrawal of Charges*, p. 24; and section 9, *Request for Designation of Hearing Officer*, p. 28 (January 14, 2008).

²⁸ OGC denied the good cause request because the representative did not satisfy the factors set forth in 20 C.F.R. §404.911.

Table 2: The Representative’s Response to the *Notice of Intent to Sanction* and the Range in Time for OGC to Refer the Case to OHO

Representative’s Response	Total Number of Cases	Cases that Took OGC 15 Days or Fewer to Refer to OHO	Cases that Took OGC 16 to 100 Days to Refer to OHO	Cases that Took OGC Longer than 100 Days to Refer to OHO
None	12	2	6	4
Untimely (longer than 30 days)	9	3	4	2
Timely (within 30 days)	4	1	2	1
Total	25	6	12	7

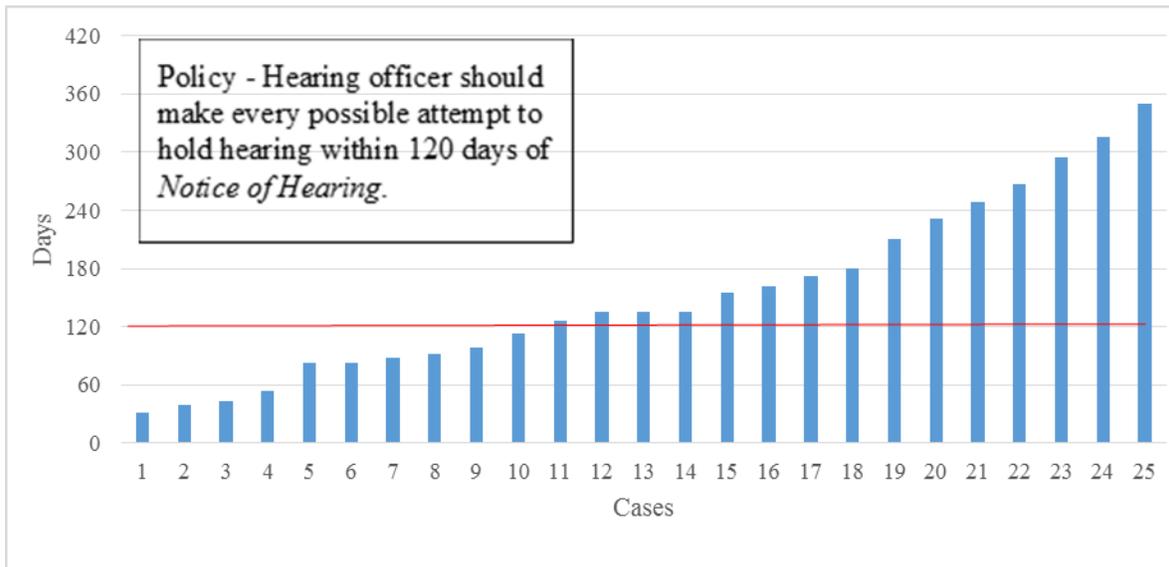
For example, on September 18, 2013, OGC sent a *Notice of Intent to Disqualify* to a representative who responded on October 17, 2013 (within 30 days of the *Notice of Intent to Sanction*). SSA did not withdraw the charges 15 days after this—that is by November 1, 2013. However, OGC did not refer the case to OHO until December 12, 2013—41 days later. The case file contained no explanation of why OGC waited 41 days to refer the case to OHO. (See Appendix F for a breakdown by region.) The representative was sanctioned because he had been permanently disbarred from practicing law because he misappropriated over \$6,000. The representative had been serving seven claimants in 2013. On May 12, 2014, OHO issued a decision to disqualify the representative. Since representatives continue serving new and existing claimants while charges are pending, it is in the public’s interest the sanction cases be resolved quickly.

Sanction Hearing Process - OHO

Of the 25 cases that went to the hearing stage of the sanction process, hearing officers met SSA’s 120-day policy goal²⁹ for issuing a sanction decision in 10. However, it took hearing officers an average of 208 days to issue a decision on 15 cases—ranging from 126 to 350 days from the *Notice of Hearing*, see Figure 1. Although SSA’s policy is to *make every possible attempt* to hold a hearing and issue a decision within 120 days of the hearing request and therefore this is not a firm timeframe, it is in the public’s interest to resolve the sanction cases quickly—as noted above—since a representative can continue to serve claimants while the charges are still pending.

²⁹ SSA, *HALLEX*, vol. I, ch. I-1-1, section I-1-1-52 A (March 29, 2013).

Figure 1: Timeliness of the Hearings Process (Days)



Seven hearing officers decided the 25 cases. Of the 15 cases that took longer than 120 days, 1 hearing officer missed the timeliness goal on all 6 of his cases, and another hearing officer missed the goal on all 3 of his cases (see Table 3).

Table 3: Sanction Cases by Hearing Officer

Hearing Officer	Cases Decided by OHO That Took Longer Than 120 Days	Cases Decided by OHO Within 120 Days	Total Cases
Hearing Officer 1	6	0	6
Hearing Officer 2	3	0	3
Hearing Officer 3	2	1	3
Hearing Officer 4	2	1	3
Hearing Officer 5	1	5	6
Hearing Officer 6	1	0	1
Hearing Officer 7	0	3	3
Total	15	10	25

For example, in one case, OHO assigned a hearing officer on January 20, 2016. The representative failed to acknowledge receipt of any *Notices* throughout the sanction process. Because the representative failed to respond to the *Notice of Intent to Sanction* and had been permanently prohibited from practicing law in the State or other jurisdictions in which he was admitted to practice law, the hearing officer could issue an on-the-record decision. However,

because the hearing officer gave the representative multiple opportunities to respond to the charges, this case took longer than 120 days.³⁰ The hearing officer took the following steps.

- Sent a *Notice of Hearing* at the end of January 2016 to the representative's last two known addresses. The notice to one of the addresses was returned to SSA as undeliverable, but the notice to the other address was forwarded and delivered to a third address. Another *Notice* was delivered in February 2016 notifying the representative of a pre-hearing conference. The representative did not attend the conference.
- Sent a *Notice of Failure to Appear* at the end of February 2016 to the representative's last two known addresses. Both notices were returned to SSA as undeliverable.
- Sent a *Second Notice of Failure to Appear* to the representative's last two known addresses plus a third address, and an agent of the representative accepted delivery at one of the three addresses. The *Notice* advised the representative that, without providing good cause within 21 days, a right to a hearing would be waived.
- Issued an *Order on Respondents Failure to Respond* in August 2016 to the last three known addresses and provided 21 days from receipt to offer evidence or rebut the initial charge and advised the decision would be entered at the close of the 21-day period.
- Issued an on-the-record decision to disqualify the representative in November 2016. A total of 315 days elapsed from the time the hearing officer was assigned until the final decision.

The representative was sanctioned based on his disbarment and misconduct for co-mingling and conversion of client funds. During this time, the representative was serving one SSA claimant.

Our September 2007 report³¹ noted that cases at the hearing stage of the sanction process were taking between 5 and 17 months (150 to 510 days). For our current review, the 25 cases that went to the hearing stage of the sanction process ranged from 31 to 350 days (see Figure 1).

Representing Claimants After Being Sanctioned

According to SSA policy, representatives against whom charges to suspend or disqualify are pending may represent claimants before SSA. When such an individual presents him/herself as a

³⁰ SSA, *HALLEX*, vol. I, ch. I-1-1, sec. I-1-1-52 E (March 29, 2013). If the representative or other party to the hearing fails to appear after being notified of the time and place, the hearing officer may hold the hearing anyway so the party present may offer evidence to sustain or rebut the charges. The hearing officer will allow the party who failed to appear to show good cause for failing to appear. If the party fails to show good cause, he/she is considered to have waived the right to be present at the hearing. If the party shows good cause, the hearing officer may hold a supplemental hearing.

³¹ SSA, OIG, *Claimant Representatives Barred from Practicing Before the Social Security Administration*, A-12-07-17057, p. 9 (September 2007).

representative in a claim,³² SSA must recognize and treat him/her in the same manner as any other representative. However, SSA should not recognize him/her as the claimant representative as of the effective date of the sanction decision.³³

In a previous report,³⁴ we noted two representatives were representing claimants after SSA sanctioned them. In that report, we recommended SSA ensure staff compares the representative's name to the *List of Sanction Representatives* each time a hearing office receives a *Form SSA-1696-U4*. SSA agreed with our recommendation and stated that hearing office staff training reflected this practice and it reinforced this in a reminder to regional and hearing office management teams in November 2007. In our current review, the 51 claimant representatives who were sanctioned in CYs 2014 through 2016 had 567 cases pending in 2013; however, we did not identify any representatives serving claimants after SSA sanctioned them.

Reinstatements and Denials

One year after SSA imposes a sanction, a suspended or disqualified representative may ask the Appeals Council for permission to serve as a representative again.³⁵ Twelve sanctioned representatives submitted petitions to the Appeals Council.³⁶ In CYs 2014 through 2016, the Appeals Council denied reinstatements to six representatives and reinstated six. Five of the six representatives who the Appeals Council had denied reinstatement had previous or ongoing fee violations, and one was sanctioned for sexual abuse of a minor. The six representatives who were reinstated had been readmitted and were in good standing in the court or bar of their States.

³² Representatives seeking to serve SSA claimants provide information on SSA's *Appointment of Representative* (Form SSA-1696-U4) or an equivalent seeking appointment. SSA, *POMS*, GN-General, ch. GN 039, subch. GN 03910.040 (August 23, 2016). When hearing office staff inputs information into CPMS, they are required to determine whether the representative seeking appointment is disqualified or suspended by matching the representative's name against SSA's *List of Sanctioned Representatives*. After checking the *List*, hearing office staff notes in CPMS either a "yes" or "no" to indicate whether the representative is/is not on the sanctioned list. If the representative's name is on the list, the representative is notified that he/she cannot represent claimants.

³³ SSA, *POMS*, GN-General, ch. GN 039, subch. GN 03970.055 (October 17, 2012). The hearing officer's decision is final and binding unless reversed or modified by the Appeals Council upon review (20 C.F.R. §§ 404.1770 (b) and 416.1570 (b) (2017)). The parties may ask the Appeals Council to review the decision within 30 days from the date of the decision. If neither party appeals and the designated hearing officer's decision becomes the final decision, then the date of that decision is the effective date, and OGC notifies OHO of the disqualification or suspension. SSA, *HALLEX*, vol. I, ch. I-1-1, sec. I-1-1-55 (March 29, 2013).

³⁴ SSA, OIG, *Claimant Representatives Barred from Practicing Before the Social Security Administration*, A-12-07-17057 (September 2007).

³⁵ SSA, *HALLEX*, vol. I, ch. I-1-1, sec I-1-1-60 (March 29, 2013). A person suspended or disqualified for longer than 1 year can petition for early reinstatement with the Appeals Council for permission to serve as a representative. The suspended or disqualified person must make a clear showing that the conditions or circumstances that gave rise to the complaint no longer exist, and are very unlikely to recur.

³⁶ Of the 12 representatives, 10 were sanctioned before CYs 2014 through 2016; 1 was sanctioned in 2014; and 1 was sanctioned in 2015.

New Rules Proposed for Sanction Proceedings

On August 16, 2016, SSA proposed new regulations for its *Rules of Conduct*.³⁷ For example, the proposed regulations shorten the time

- representatives would be allowed to respond to the notice of charges from 30 to 14 days,
- hearing officers would have to notify representatives of the time and place of the hearing from 20 to 14 days, and
- representatives would have to appeal a hearing officer's decision from 30 to 14 days.

In addition, the rule proposes that, if the petition for reinstatement is denied after 1 year, the representative must wait 3 years before petitioning again. Further, the proposed rule would allow the use of an on-the-record decision before a hearing if there is no genuine dispute as to any material fact, and a hearing would be unnecessary and delay the final decision. The proposed rule specifies that, before granting a motion for an on-the-record decision, the hearing officer would provide both parties with the opportunity to submit evidence and briefs. Since representatives may continue serving existing and new claimants while the charges are pending, it is in the public interest to resolve sanction cases quickly. According to SSA, the Office of Management and Budget accepted the final rule on April 24, 2018, and the formal 90-day review period will end on July 23, 2018.

CONCLUSIONS

SSA appropriately processed cases in which claimant representatives violated the Agency's *Rules of Conduct*. Specifically, SSA (a) notified the representatives of the charges, (b) provided the representatives an opportunity to respond to the charges, and (c) notified the representatives of their appeal rights. However, SSA did not have definitive timeframes for processing sanction cases. On average, it took SSA 277 days to sanction the representative for the 25 cases that went to the hearing stage of the sanction process—ranging from 84 to 540 days. Since representatives continue to serve existing and new claimants while the charges are pending, it is in the public's interest to resolve the sanction cases quickly.

³⁷ The proposed regulation was published in the Federal Register on August 16, 2016; see *Revisions to Rules of Conduct and Standards of Responsibility for Appointed Representatives*, 81 Federal Register 54520 pp. 54520 - 31 (August 16, 2016).

RECOMMENDATIONS

We recommend that:

1. OGC develop specific timeframes for referring sanction cases to OHO.
2. OHO provide training to hearing officers to issue a decision in sanction cases within 120 days of the *Notice of the Hearing*.

AGENCY COMMENTS

SSA agreed with the recommendations, see Appendix G.

A handwritten signature in black ink that reads "Rona Lawson". The signature is written in a cursive style with a long, sweeping underline.

Rona Lawson
Assistant Inspector General for Audit

APPENDICES

Appendix A – THE RULES OF CONDUCT

The Social Security Administration's (SSA) *Rules of Conduct and Standards of Responsibility for Representatives* include the following provisions.¹

- A representative must provide competent assistance to the claimant and recognize SSA's authority to lawfully administer the process.
- Representatives should act with reasonable promptness to obtain the information and evidence the claimant is required to submit in support of his/her claim and forward the same to SSA for consideration as soon as practicable.
- The representative needs to assist the claimant in complying, as soon as practicable, with SSA's requests for information or evidence at any stage of the administrative decisionmaking process in his/her claim.
- The representative needs to conduct his/her dealings in a manner that furthers the efficient, fair and orderly conduct of the administrative decisionmaking process, including the following duties.
 - Provide competent representation to a claimant. Competent representation requires the knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. This includes knowing the significant issue(s) in a claim and having a working knowledge of the applicable provisions of the *Social Security Act*, as amended, and the regulations.
 - Act with reasonable diligence and promptness in representing a claimant. This includes providing prompt and responsive answers to SSA's requests for information pertinent to processing the claim.
 - Conduct business with SSA electronically at the times and in the manner SSA prescribes on matters for which the representative requests direct fee payment.
- A representative must not:
 - In any manner or by any means threaten, coerce, intimidate, deceive, or knowingly mislead a claimant, or prospective claimant or beneficiary, regarding benefits or other rights under the *Social Security Act*.
 - Knowingly charge, collect, or retain, or make any arrangement to charge, collect or retain, from any source, directly or indirectly, any fee for representational services in violation of applicable law or regulation.
 - Knowingly make or present, or participate in the making or presentation of, false or misleading oral or written statements, assertions, or representations about a material fact or law concerning a matter within SSA's jurisdiction.

¹ 20 C.F.R. §§ 404.1740 and 416.1540 (2017).

- Through his/her own actions or omissions, unreasonably delay, or cause to be delayed, without good cause, the processing of a claim at any stage of the administrative decisionmaking process.
- Divulge, without the claimant's consent, except as may be authorized by regulations prescribed by SSA or as otherwise provided by Federal law, any information SSA furnishes or discloses about a claim or prospective claim.
- Attempt to influence, directly or indirectly, the outcome of a decision, determination, or other administrative action by offering or granting a loan, gift, entertainment, or anything of value to a presiding official, Agency employee, or witness who is or may reasonably be expected to be involved in the administrative decision-making process, except as reimbursement for legitimately incurred expenses or lawful compensation for the services of an expert witness retained on a non-contingency basis to provide evidence.
- Engage in actions or behavior prejudicial to the fair and orderly conduct of administrative proceedings, including, but not limited to,
 - repeated absences from or persistent tardiness at scheduled proceedings without good cause;
 - willful behavior that has the effect of improperly disrupting proceedings or obstructing the adjudicative process; and
 - threatening or intimidating language, gestures, or actions directed at a presiding official, witness, or agency employee that result in a disruption of the orderly presentation and reception of evidence.
- Violate any section of the *Social Security Act* for which a criminal or civil monetary penalty is prescribed.
- Refuse to comply with any SSA rules or regulations.
- Suggest, assist, or direct another person to violate SSA rules or regulations.
- Advise any claimant or beneficiary not to comply with any SSA rules or regulations.
- Knowingly assist a person whom SSA suspended or disqualified to provide representational services in a proceeding under Title II and Title XVI of the *Social Security Act*, or to exercise the authority of a representative described in 20 C.F.R. §§ 404.1710; 416.1510.
- Fail to comply with SSA's sanction decision.

Appendix B – NOTICE OF INTENT TO SANCTION

The Social Security Administration’s (SSA) Office of the General Counsel prepares a *Notice of Intent to Sanction* that contains the statement of charges that constitutes the basis for the proceeding against the representative. See Table B–1.

Table B–1: Contents of Notice of Intent to Sanction

Section	Description of the Section
Authority	This is a statement of legal authority concerning SSA’s jurisdiction to initiate sanction proceedings – it will vary depending on whether the charges involve: misconduct; disbarment, suspension or disqualification from a court, bar, or Federal agency or programs; or non-attorney qualifications.
Statement of Charges	This is a statement of the specific law or regulations that were allegedly violated, and the factual specifications upon which the Office of the General Counsel based the charges.
Requested Sanction	This section specifies whether SSA seeks disqualification or suspension, and if a suspension, the specific amount of time (not less than 1 year nor more than 5 years).
Acceptance of Proposed Sanction	This section allows the representative to resolve the action early in the process by admitting the charges and accepting the proposed sanction.
Notice of a Right to a Hearing	This provides the representative with notice of the right to a hearing before a hearing officer.
Notice of Right to Representation	This informs the representative of the right to be represented by an attorney or non-attorney, and the representative must give appropriate notice if represented.
Address for Filing All Notices, Pleading and Other Documents	This section provides information to the representative of where to file an answer. It also indicates who the SSA attorney of record is for the case.

Appendix C – SANCTION PROCESS

The flow chart illustrates the sanction process when the agency believes that a claimant representative may be violating the *Rules of Conduct and Standards of Responsibility for Representatives*.



Appendix D– SCOPE AND METHODOLOGY

To accomplish our objective, we:

- Reviewed the Code of Federal Regulations, including the *Rules of Conduct and Standards of Responsibility for Representatives*.
- Reviewed the Social Security Administration’s (SSA) Hearings, Appeals, and Litigation Law Manual and Program Operations Manual System.
- Reviewed SSA’s Representative Sanction Procedures Manual.¹
- Reviewed paper case folders for 25 representatives who went to the hearing stage of the sanction process and were sanctioned during Calendar Years (CY) 2014 through 2016.
- Calculated the time elapsed from when SSA’s Office of the General Counsel (OGC) issued the *Notice of Intent to Sanction* until OGC requested a *Designation of Hearing Officer* and determined which OGC Region issued the *Notice of Intent to Sanction*.
- Calculated the time from when the hearing office sent the representative a *Notice of Hearing* until the hearing officer issued a *Notice of Decision*.
- Compared the date on the *Notice of Intent to Sanction* to the date the representative responded—to determine whether the representative responded within 30 days of the *Notice of Intent to Sanction*. If there was no evidence the claimant representative responded, we documented that there was no response.
- Reviewed documents for 3 of 23 cases where the representatives signed the *Acceptance of Disqualification* form before the hearing stage of the sanction process and waived his/her right to a hearing by voluntarily admitting the charges and accepting the proposed sanction.
- Reviewed three cases that were appealed to the Appeals Council in 2014.²
- Reviewed 12 representative sanction cases where the representative had petitioned the Appeals Council for reinstatement to practice before SSA.
- Reviewed a prior Office of the Inspector General report related to representatives practicing before SSA.³

¹ We reviewed SSA’s January 2008 and October 2014 manuals.

² The sanction proceedings for these three cases began before FY 2014, but the Appeals Council reviewed the cases between CYs 2014 and 2016.

³ SSA, OIG, *Claimant Representatives Barred From Practicing Before the Social Security Administration*, A-12-07-17057 (September 2007).

- Reviewed Office of Hearings Operations (OHO) Case Processing and Management System (CPMS) data to determine (a) how many claimants the sanctioned representatives were serving in 2013 (before their sanctions) and (b) whether sanctioned representatives were serving claimants after their sanction dates.⁴
- Interviewed attorneys in OGC, managers and staff in OHO, a hearing officer, and an administrative appeals judge.

We determined the CPMS data were sufficiently reliable to meet our objective. The entities audited were OGC and OHO. We conducted this performance audit from March 2017 through February 2018 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

⁴ We also reviewed documents in SSA's electronic disability folder and On-line Retrieval System.

Appendix E – TIMEFRAME FROM *NOTICE OF INTENT TO SANCTION* TO THE SANCTION DECISION

Table E–1 shows the timeframe from the date on the *Notice of Intent to Sanction* to the date the Office of Hearings Operations’ hearing officer sanctioned the representative.

Table E–1: Sanction Process Timeframe

Case	Date on <i>Notice of Intent to Sanction</i>	Sanction Date	Days to Complete Sanction Process
1	June 28, 2016	September 20, 2016	84
2	May 16, 2014	September 2, 2014	109
3	April 7, 2014	August 22, 2014	137
4	December 15, 2014	May 5, 2015	141
5	November 19, 2015	April 28, 2016	161
6	September 9, 2014	March 3, 2015	175
7	October 10, 2014	April 17, 2015	189
8	July 23, 2014	February 5, 2015	197
9	September 18, 2013	May 12, 2014	236
10	August 26, 2015	April 20, 2016	238
11	April 16, 2014	December 12, 2014	240
12	January 8, 2014	September 10, 2014	245
13	February 3, 2016	October 11, 2016	251
14	May 9, 2013	January 17, 2014	253
15	June 25, 2014	March 25, 2015	273
16	February 28, 2014	December 2, 2014	277
17	October 24, 2013	August 13, 2014	293
18	January 22, 2015	November 20, 2015	302
19	July 28, 2014	June 12, 2015	319
20	June 8, 2013	May 27, 2014	343
21	April 9, 2015	May 31, 2016	449
22	January 7, 2014	May 1, 2015	479
23	July 29, 2015	November 30, 2016	490
24	January 13, 2015	May 26, 2016	499
25	November 7, 2013	May 1, 2015	540
		Average	277

Appendix F – REGIONAL BREAKDOWN FOR CASES THAT WENT TO THE HEARING STAGE OF THE SANCTION PROCESS

Table F–1 shows which Social Security Administration regional Office of the General Counsel (OGC) issued the *Notice of Intent to Sanction* to the claimant representative.

**Table F–1: OGC Requests for a Hearing Officer
Calendar Years 2014 – 2016**

Region	Number of Sanction Cases
Boston	2
New York	4
Philadelphia	2
Atlanta	1
Chicago	3
Dallas	3
Kansas City	2
Denver	5
San Francisco	0
Seattle	3
Total	25

Appendix G – AGENCY COMMENTS



SOCIAL SECURITY

MEMORANDUM

Date: May 31, 2018

Refer To: S1J-3

To: Gale S. Stone
Acting Inspector General

From: Stephanie Hall
Acting Deputy Chief of Staff

Subject: Office of the Inspector General Draft Report, “Claimant Representatives Who Were Sanctioned by the Social Security Administration” (A-12-14-14086) -- INFORMATION

Thank you for the opportunity to review the draft report. Please see our attached comments.

Please let me know if we can be of further assistance. You may direct staff inquiries to Trae Sommer at (410) 965-9102.

Attachment

**COMMENTS ON THE OFFICE OF THE INSPECTOR GENERAL DRAFT REPORT,
“CLAIMANT REPRESENTATIVES WHO WERE SANCTIONED BY THE SOCIAL
SECURITY ADMINISTRATION” (A-12-14-14086)**

GENERAL COMMENTS

We agree that timely processing of the representative sanctions workload is in the public interest. We continue to take steps to improve our timeliness in processing sanctions cases and have already taken a number of steps to clarify the guidance we provide to our regional offices. We note that many variables impact the time it takes for the Office of the General Counsel (OGC) to determine when to ask the Office of Hearings Operations (OHO) to assign an administrative law judge as a hearing officer. These reasons include: (1) taking steps to protect the due process rights of individual representatives; (2) attempting to resolve cases without hearings; and (3) pausing the sanction process to avoid undermining an Office of the Inspector General investigation. Below are our responses to the recommendations.

Recommendation 1

OGC develop specific timeframes for referring sanction cases to OHO.

Response

We agree. We will consider adopting firmer timeframes for referring sanction cases to OHO. Such timeframes must be flexible to account for variables that could influence when and if OGC refers a sanction case for hearing.

Recommendation 2

OHO provide training to hearing officers to issue a decision in sanction cases within 120 days of the *Notice of the Hearing*.

Response

We agree.

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