

# Rules and Regulations

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## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Parts 404, 405 and 416

[Docket No. SSA-2007-0045]

RIN 0960-AG53

#### Suspension of New Claims to the Federal Reviewing Official Review Level

**AGENCY:** Social Security Administration.  
**ACTION:** Final rule.

**SUMMARY:** We are modifying our disability administrative adjudication processes to suspend new claims to the Federal reviewing official (FedRO) level, now operating in the Boston region. Claims already transferred to the Office of the Federal Reviewing Official (OFedRO) for FedRO review will continue to be processed by the OFedRO and a related component of the disability determination process, the Medical and Vocational Expert System (MVES), commonly known as the Office of Medical and Vocational Expertise (OMVE). We are making these changes to ensure that we continually improve our disability adjudication process.

**DATES:** This final rule is effective on March 15, 2008.

#### FOR FURTHER INFORMATION CONTACT:

Dean S. Landis, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 965-0520 for information about this notice. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

#### SUPPLEMENTARY INFORMATION:

##### Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at <http://www.gpoaccess.gov/fr/index.html>.

## Introduction

We are dedicated to providing high-quality service to the American public. In March 2006, we announced changes to our administrative review process for initial disability claims. We explained that the changes were expected to improve disability service. Our commitment to continuous improvement in the way we process disability claims did not end with the publication of those rules as we continually explore ways to improve service to some of the most vulnerable in our society. We face, now and in the foreseeable future, significant challenges to our ability to provide the level of service that disability benefit claimants deserve because of the increased complexity of and growth in claims for those benefits. Consequently, we are making modifications to our administrative review process that will further help us evaluate changes put in place in March 2006 and help us provide accurate and timely service to claimants for Social Security disability benefits and supplemental security income payments based on disability or blindness.

The importance of these disability benefits to the lives and subsistence of many Americans cannot be underestimated. Nearly 15 million disabled Social Security beneficiaries and supplemental security income recipients receive over \$10 billion in Federal monthly payments. The adjudication of disability claims requires evaluating complex medical and vocational evidence.

The number of claims and requests for hearings that we receive has continued to expand. In 2004-2006, we received an annual average of 2.6 million disability claims that required decisions based on medical evidence, the most time- and labor-intensive basis for deciding such claims. Along with the large number of claims, there has been a concomitant increase in the number of hearing requests. Our hearing offices have received an average of over 564,000 titles II and XVI disability hearing requests each year from 2002 through 2006, a significant increase from the annual average of almost 472,000 hearing requests in 1997-2001. As these figures show, over the 5-year period from 2002 through 2006, we received each year over 90,000 more requests for titles II and XVI hearings

than we annually received during the period from 1997 through 2001. The vast number of disability claims now filed each year, as well as other factors such as the expected increase in disability claims as the baby boomers move into their disability-prone years, probable limitations on our resources to process these claims, and the projected impending increase in filings for retirement and survivor benefits as baby boomers retire, will continue to place an even greater strain on our adjudicatory system.

We expected that the spring 2006 changes to the administrative review process for initial disability claims would "improve the accuracy, consistency, and timeliness of decision-making throughout the disability determination process." 71 FR 16424 (March 31, 2006). We planned a gradual roll-out of the changes so that we could determine their effect on the disability process overall. As we explained then, "[g]radual implementation will allow us to monitor the effects that our changes are having on the entire disability determination process. . . . We will carefully monitor the implementation process in the Boston region and quickly address any problems that may arise." 71 FR at 16440-41. Based on initial reviews of the quick disability determination (QDD) and FedRO elements of that process, and mindful of the workload challenges that we now face, especially at the hearing level, we need to modify some of the changes made last spring.

As we explain in our recently published final rule on the QDD process, 72 FR 51173 (September 6, 2007), we are extending the QDD process to all of the State disability determination services. In the current rule, we are suspending new claims going through the OFedRO and the MVES, organizationally known as the OMVE. However, claims already transferred to the OFedRO for FedRO review will continue through the OFedRO and MVES so we can continue to evaluate their effectiveness. These changes are based on our commitment to outstanding service and to continuously improving our service as we realign our resources to ensure that we are capable of processing the current and anticipated number of disability claims and reducing the number of pending hearings.

### **Suspending the OFedRO and MVES/OMVE Allows Reallocation of Resources to the Backlog at the Hearings Level**

In the March 2006 final rule, we replaced the State agency reconsideration level with a Federal adjudicative level, called the FedRO. Attorneys staff the FedRO positions, and they, along with the managerial, support, and administrative staff, make up the OFedRO. The OFedRO uses the MVES/OMVE to develop the medical and vocational evidence in the claims. The goal of the OFedRO and OMVE is to ensure more accurate and consistent decision-making earlier in the process. We are continuing to evaluate the effect of these new components on our program and administrative functions. Our experience over the last year in the Boston region demonstrates that the administrative costs associated with the OFedRO and its use of the MVES/OMVE to develop medical and vocational evidence is greater over the foreseeable future than originally anticipated. We do not yet have sufficient results to fully evaluate the potential improvements in program efficacy that are the goals of the OFedRO and OMVE. Therefore, we are suspending new claims going through the OFedRO and OMVE, so that we can reallocate resources to reduce the backlog at the hearing level, while we evaluate the OFedRO and OMVE through the processing of claims already received. As part of this review, we will evaluate the merits of the FedRO process separately from the OMVE process and consider whether alternative approaches to the OMVE are warranted or should be tested. Once this evaluation is completed and alternative approaches analyzed, we will make a decision whether to reinstate the processing of new claims at the OFedRO or to pursue an alternative approach to improving the disability determination process.

We are amending part 405 with provisions that will suspend new claims to the OFedRO and MVES/OMVE. This change will allow us to continue to evaluate the OFedRO and OMVE through the processing of claims already received. We expect to have approximately 20,000 cases pending FedRO review when this rule becomes effective. We will complete the processing of those pending cases, but will not transfer to the OFedRO any more cases originally filed under the new process in the Boston region that otherwise would have been slated for FedRO review. Instead, if cases are at the initial level in the Boston region or not transferred to the OFedRO on the

effective date of this rule, those cases will be assigned to State agencies for reconsidered determinations or to administrative law judges for hearing, whichever is applicable in that particular New England State. In other words, States in the Boston region, where the OFedRO and MVES/OMVE are currently functioning, will return to the same process they were following before August 2006, whether that process was reconsideration under 20 CFR 404.907 and 416.1407 or the testing procedures under 20 CFR 404.906 and 416.1406.

### **Public Comments**

In the notice of proposed rulemaking we published at 72 FR 45701 (August 15, 2007), we provided the public with a 30-day period in which to comment on the proposed suspension of new claims to the OFedRO and MVES/OMVE. That comment period ended on September 14, 2007. We received timely comments from 10 individuals and organizations. We carefully considered all the comments. Because some of the comments were lengthy, we have summarized their content. Other comments were received that did not relate to the suspension of new claims to the OFedRO and MVES/OMVE. We have provided responses to each significant issue raised by commenters that was within the scope of this rule.

In the notice of proposed rulemaking published on August 15, 2007, we also provided the public with a 90-day period in which to comment on using the MVES/OMVE in a more limited role to develop and manage a national registry of medical, psychological, and vocational experts to assist disability adjudicators in developing and/or clarifying information within the record. That comment period remains open through November 13, 2007. We will not respond to comments on this more limited role for the MVES/OMVE until such time as we may publish a notice of proposed rulemaking setting out more detailed plans for such a registry.

*Comment:* All but one of the commenters specifically expressed support for the suspension of new claims to the FedRO and MVES/OMVE. Several of these commenters discussed concerns over the processing time for claims and the claimant's or the representative's ability to contact the FedRO. One commenter also discussed concerns over FedRO case development and the quality of FedRO decisions.

*Response:* The primary reason for the processing time and service issues raised in the comments is the staffing levels of the OFedRO and MVES/OMVE. The staffing levels for these

organizations have been approximately 50% of the levels we believed would be needed to handle the Boston region workload. With the reduced staffing at the MVES/OMVE, OFedRO has experienced delays in getting required medical evidence, consultative exams, and medical expert input. Budget constraints precluded us from hiring a full staff. When we published the March 2006 final rule, we expected the changes it implemented to be budget neutral. However, as we implemented the changes, we found that the cost to the agency was much greater than expected. The agency does not have the resources to both fully staff the new OFedRO and MVES/OMVE and also resolve the growing disability hearing backlog. Accordingly, we staffed the OFedRO and MVES/OMVE to the greatest extent possible while also focusing our scarce resources on the backlog of disability hearings.

With respect to case development and quality of decisions, our Office of Quality Performance (OQP) evaluated 100% of all FedRO decisions through about April 2007, and it continues to evaluate a statistically valid sample of FedRO decisions after that date. This evaluation reviews both the manner in which the case was developed and the decision itself. OQP's cumulative agreement rate with OFedRO has been 97%, which is significantly better than its overall agreement rate with State agency reconsidered determinations in the Boston region.

We will consider these factors as we evaluate the OFedRO and MVES/OMVE through the processing of claims already transferred to the OFedRO.

*Comment:* Several commenters expressed concern over the continued use of the FedRO and MVES/OMVE for claims already assigned to FedRO on the effective date of this rule. Their concern also related to the processing time for claims, the claimant's or representative's ability to contact individual FedROs, and case development. One commenter suggested placing a 90-day time limit for FedRO review once this final rule becomes effective. This commenter suggested that any cases still pending FedRO review after 90 days be redirected to the State agency for reconsideration. Another commenter indicated support for the outright elimination of the FedRO and return of pending cases to the State agencies.

*Response:* We are not adopting the suggestions for returning cases now pending at OFedRO to the State agencies. We believe continued FedRO review for pending cases is appropriate. As we explained in the notice of

proposed rulemaking, we do not yet have sufficient results to fully evaluate the potential improvements in program efficacy that are the goals of the OFedRO and MVES/OMVE. By including the roughly 20,000 cases we expect to have pending FedRO review when this final rule becomes effective, we significantly increase the pool of cases available to assist in such evaluation.

Additionally, it will be more efficient to keep the pending cases with OFedRO than to transfer them to the State agencies. It would take considerable time for the State agency examiners to familiarize themselves with the cases, and the actual transfer would present significant challenges because the OFedRO processing system would have to communicate with six different State agency processing systems.

With respect to the processing time, we expect that once requests for FedRO review are suspended, OFedRO will be able to process the pending workload relatively quickly. Once the flow of cases is suspended, OFedRO will no longer need to review, develop, and monitor new cases. Accordingly, FedROs will have more time to devote to finalizing and writing decisions for the pending cases. Additionally, the FedROs are increasingly attaining the experience needed to process cases more quickly.

With respect to contacting individual FedROs, we have recently taken steps to address this issue. We now have additional staff assisting in handling telephone calls to OFedRO. In the event that a call goes to voice mail, updated voice mail messages ask callers to leave specific information that will facilitate the FedRO's ability to contact the caller. We also recently began sending compact disks (CDs) of the electronic folder with the copy of the acknowledgement letter to representatives in the Boston region who handle large numbers of claimants. This improvement eliminates the need for the representative to call to request the CD of the electronic folder. Once the flow of cases is suspended, support staff will no longer need to send acknowledgement letters and initial requests for evidence from the MVES/OMVE. Accordingly, we expect support staff to be able to devote more time to handling telephone calls.

In light of the comments, we are making one substantive change to proposed § 405.240 that will reduce slightly the number of cases that will continue to be processed through the OFedRO and MVES/OMVE. Proposed § 405.240 used the date an individual files a request for FedRO review to determine whether the claim would receive FedRO review. We are amending § 405.240 to use instead the date that we transfer such a request to the OFedRO. Some requests for FedRO review are transferred to the OFedRO on the same day that the request is filed, but others are not. Currently, the average time to transfer claims to OFedRO after a request is filed is over 14 days. Using the date we transfer a request to OFedRO will reduce somewhat the number of pending cases that will receive FedRO review but still provide us a significant pool of cases to help us evaluate the OFedRO and MVES/OMVE.

*Comment:* Several commenters supported careful evaluation of the FedRO and MVES/OMVE through the claims already received in conjunction with considering alternatives. Two commenters emphasized the importance of evaluating the ability of the OFedRO or its alternatives to achieve the underlying goal of getting the right decision earlier in the disability process.

*Response:* We are dedicated to providing high-quality service to the American public, and we are committed to continuously improving the way we process disability claims. Our goal is to improve the accuracy, consistency, and timeliness of decision-making throughout the disability determination process. We will keep this goal at the forefront of our efforts as we evaluate the OFedRO and MVES/OMVE and consider any possible alternatives. We plan to continue evaluating case development, the effect of the MVES/OMVE involvement on the FedRO decision, and the FedRO decision itself.

*Comment:* One commenter addressed the clarity of the proposed rule by suggesting that we include a Definitions section in this rule.

*Response:* We have not adopted this suggestion because part 405 of our rules, which this final rule amends, already contains a Definitions section.

In addition to the changes discussed above, we are making the following

clarifying changes. We are making changes to §§ 405.10(d) and 405.240(d) to clarify what types of notices we intend to publish if we take further action pursuant to those provisions. We are also making changes to the appendix to subpart A of part 405. We are revising the language to clarify that if a claimant files a disability claim in one State but then moves to another State, adjudicators at subsequent levels of review will apply the regulations applicable at the time of such subsequent review in the State where the claimant filed the disability claim. We have removed the examples because we believe they could result in misunderstanding. We are making a change to § 405.240(a) to specify the date on which this final rule is effective and a change to § 405.240(b) to correct a typographical error. Finally, we are making a change to § 405.240(b), and conforming changes to subpart J of part 404, subpart D of part 405, and subpart N of part 416 of our rules, to clarify that we will follow the procedures in part 405 of our rules to process hearings before an administrative law judge and any subsequent administrative review in claims affected by suspension of the FedRO level.

#### Regulatory Procedures

##### *Executive Order 12866, as Amended, and the Congressional Review Act*

We have consulted with the Office of Management and Budget (OMB) and determined that this final rule meets the criteria for an economically significant regulatory action under Executive Order 12866, as amended, and thus meets the criteria for a major rule under the Congressional Review Act. Accordingly, this final rule was reviewed by OMB, and it will be effective 60 days after publication. We have also determined that these final rules meet the plain language requirement of Executive Order 12866, as amended.

The Office of the Chief Actuary (OCACT) estimates that this rule will result in program savings of roughly \$1.0 billion in OASDI benefit payments and cost of \$0.1 billion in Federal SSI payments over the next 10 years, as shown below (in millions of dollars):

TABLE 1.—ESTIMATED EFFECT ON OASDI AND FEDERAL SSI BENEFIT PAYMENTS OF A REGULATION SUSPENDING NEW CLAIMS TO THE FEDERAL REVIEWING OFFICIAL AND MODIFYING THE ROLE OF THE MEDICAL AND VOCATIONAL EXPERT SYSTEM, FISCAL YEARS 2008–17

[In millions]

Fiscal year	OASDI	SSI	Total
2008 .....	–\$14	–\$3	–\$18

TABLE 1.—ESTIMATED EFFECT ON OASDI AND FEDERAL SSI BENEFIT PAYMENTS OF A REGULATION SUSPENDING NEW CLAIMS TO THE FEDERAL REVIEWING OFFICIAL AND MODIFYING THE ROLE OF THE MEDICAL AND VOCATIONAL EXPERT SYSTEM, FISCAL YEARS 2008–17—Continued

[In millions]

Fiscal year	OASDI	SSI	Total
2009 .....	–42	–9	–51
2010 .....	–51	–8	–60
2011 .....	–57	–15	–72
2012 .....	–45	–6	–51
2013 .....	–53	9	–44
2014 .....	–122	22	–100
2015 .....	–192	29	–163
2016 .....	–248	40	–208
2017 .....	–219	82	–137
Totals:			
2008–12 .....	–209	–41	–251
2008–17 .....	–1,042	140	–902

Notes:

1. The estimates are based on the assumptions underlying the President's FY 2008 Budget.
2. Federal SSI payments due on October 1st in fiscal years 2012, 2017 and 2018 are included with payments for the prior fiscal year.
3. Totals may not equal sum of components due to rounding.

Table 1 above presents the estimated short-range effects on OASDI benefit payments and Federal SSI payments that will result from implementation of this final rule, measured relative to the baseline used for the President's Fiscal Year 2008 Budget and assuming that the final rule will become effective for initial determinations made on or after April 1, 2008. The FY 2008 Budget assumed that DSI would be gradually

implemented at the pace of one region per year and be fully implemented for new claims in all regions by the beginning of FY 2016. For the 10 States where the Prototype determination process has been or is being tested, the effect of this final rule will be to retain or restore the Prototype process so that the first level of appeal of an initial disability decision will be to an administrative law judge.

As required by OMB Circular A–4 (available at <http://www.whitehouse.gov/omb/circulars/a004/a0-4.pdf>), in Table 2, we have prepared an accounting statement showing the annualized economic impact of suspending new claims to the FedRO level. All estimated impacts are classified as transfers.

TABLE 2.—ACCOUNTING STATEMENT: ESTIMATED ECONOMIC IMPACT OF SUSPENDING NEW CLAIMS TO THE FEDRO LEVEL FROM 2008–2017 IN 2007 DOLLARS

Category	Transfers
Annualized Monetized Transfers .....	\$70.4 million (7% discount rate).
From Whom To Whom? .....	\$74.3 million (3% discount rate).
	From SSA beneficiaries to the Social Security trust fund and the general fund.

Suspending new claims going through the FedRO and OMVE will allow us to reallocate resources to reduce the backlog at the hearing level by holding more hearings and making system improvements to increase the efficiency of our hearings process.

We will also continue to evaluate the FedRO and OMVE through the processing of claims already received. This evaluation will include an assessment of DSI, as the pilot is currently implemented in the Boston region, with existing claims. In the analysis we will analyze DSI's impact on the timeliness of disability determinations, on overall program costs, as well as its impact on the administrative costs required to implement this new process. Once this evaluation is complete and alternative approaches analyzed, we will make a

decision whether to reinstate the processing of new claims into the FedRO or pursue an alternative approach to improving the disability determination process.

*Regulatory Flexibility Act*

We certify that this rule will not have a significant economic impact on a substantial number of small entities as it affects only States and individuals. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

*Paperwork Reduction Act*

These rules impose no new reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—

Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006, Supplemental Security Income.)

**List of Subjects**

*20 CFR Part 404*

Administrative practice and procedure; Blind; Disability benefits; Old-Age, Survivors, and Disability Insurance; Reporting and recordkeeping requirements; Social Security.

*20 CFR Part 405*

Administrative practice and procedure; Blind; Disability benefits; Old-Age, Survivors, and Disability Insurance; Public assistance programs, Reporting and recordkeeping requirements; Social Security; Supplemental Security Income (SSI).

## 20 CFR Part 416

Administrative practice and procedure; Aged, Blind, Disability benefits, Public Assistance programs; Reporting and recordkeeping requirements; Supplemental Security Income (SSI).

Dated: October 31, 2007.

**Michael J. Astrue,**  
*Commissioner of Social Security.*

■ For the reasons set out in the preamble, we are amending subpart J of part 404, subparts A, C and D of part 405, and subpart N of part 416 as set forth below:

#### **PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950— )**

##### **Subpart J—[Amended]**

■ 1. The authority citation for subpart J of part 404 continues to read as follows:

**Authority:** Secs. 201(j), 204(f), 205(a), (b), (d)—(h), and (j), 221, 223(i), 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 404(f), 405(a), (b), (d)—(h), and (j), 421, 423(i), 425, and 902(a)(5)); sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)—(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 note); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 2. Amend § 404.906 by adding a fourth sentence to paragraph (b)(4) to read as follows:

##### **§ 404.906 Testing modifications to the disability determination procedures.**

\* \* \* \* \*

(b) \* \* \*

(4) \* \* \* If you requested review by a Federal reviewing official under part 405 of this chapter and we considered that request a request for review by an administrative law judge as a result of § 405.240(b) of this chapter, we will apply the procedures contained in subpart D of part 405 of this chapter.

■ 3. Amend § 404.930 by adding paragraph (c) to read as follows:

##### **§ 404.930 Availability of a hearing before an administrative law judge.**

\* \* \* \* \*

(c) If you received a reconsidered determination instead of a decision by a Federal reviewing official as a result of § 405.240 of this chapter, we will apply the procedures contained in subpart D of part 405 of this chapter to your request for a hearing before an administrative law judge.

#### **PART 405—ADMINISTRATIVE REVIEW PROCESS FOR ADJUDICATING INITIAL DISABILITY CLAIMS**

■ 4. The authority citation for part 405 continues to read as follows:

**Authority:** Secs. 201(j), 205(a)—(b), (d)—(h), and (s), 221, 223(a)—(b), 702(a)(5), 1601, 1602, 1631, and 1633 of the Social Security Act (42 U.S.C. 401(j), 405(a)—(b), (d)—(h), and (s), 421, 423(a)—(b), 902(a)(5), 1381, 1381a, 1383, and 1383b).

##### **Subpart A—[Amended]**

■ 5. Amend § 405.10 by adding paragraph (d) to read as follows:

##### **§ 405.10 Medical and Vocational Expert System.**

\* \* \* \* \*

(d) This section will no longer be effective on the same date as described in § 405.240(c) of this part unless the Commissioner decides that the Medical and Vocational Expert System should be continued and extends the sunset date as described in § 405.240(d) of this part by publishing a notice of proposed rulemaking and a final rule in the **Federal Register** before that date.

■ 6. Revise the appendix to subpart A of part 405 to read as follows:

##### **Appendix to Subpart A of Part 405—Claims That Will Be Handled Under the Procedures in This Part**

(a) We will apply the procedures in this part to disability claims (as defined in § 405.5) filed in Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, or Connecticut.

(b) If you move from one State to another after your disability claim has been filed, adjudicators at subsequent levels of review will apply the regulations applicable at the time of such subsequent review in the State where you filed the disability claim.

##### **Subpart C—[Amended]**

■ 7. Add § 405.240 to read as follows:

##### **§ 405.240 Sunset of this Subpart.**

(a) If you filed a request for review by a Federal reviewing official and we transferred your claim to the Office of the Federal Reviewing Official on or before March 17, 2008, the Federal reviewing official will review and issue a decision on your claim.

(b) If you have received an initial determination under subpart B of this part, we will process any request for additional administrative review not described in paragraph (a) of this section as either a request for reconsideration by the State agency or a request for hearing before an administrative law judge if your State uses the testing procedures under

§§ 404.906 and 416.1406 of this chapter. In any hearing before an administrative law judge on your claim, and in any further review of your claim, we will follow the procedures in this part.

(c) This subpart will no longer be effective the day after a Federal reviewing official issues a decision on the last of the claims accepted for review under paragraph (a) of this section.

(d) If compelling evidence shows that the Federal reviewing official process is efficient, effective, and sustainable given available Agency resources, the Commissioner may reinstate the Federal reviewing official process by publishing a notice of proposed rulemaking and final rule in the **Federal Register**.

##### **Subpart D—[Amended]**

■ 8. Amend § 405.301 by revising the first sentence of paragraph (a) and the first sentence of paragraph (c) to read as follows:

##### **§ 405.301 Hearing before an administrative law judge—general.**

(a) This subpart explains what to do if you are dissatisfied with a decision by a Federal reviewing official, a reconsidered determination you received as a result of § 405.240 of this part, or an initial determination subject to a hearing by an administrative law judge under the procedures in this part as a result of § 404.906(b)(4) or § 416.1406(b)(4) of this chapter. \* \* \*

(b) \* \* \*

(c) You may examine the evidence used in making the decision or determination under review, submit evidence, appear at the hearing, and present and question witnesses. \* \* \*

■ 9. Revise § 405.305 to read as follows:

##### **§ 405.305 Availability of a hearing before an administrative law judge.**

You may request a hearing before an administrative law judge if you are dissatisfied with the Federal reviewing official's decision on your disability claim, the reconsidered determination you received as a result of § 405.240 of this part, or an initial determination subject to a hearing by an administrative law judge under the procedures in this part as a result of § 404.906(b)(4) or § 416.1406(b)(4) of this chapter.

■ 10. Amend § 405.310 by revising the first sentence of paragraph (b) to read as follows:

##### **§ 405.310 How to request a hearing before an administrative law judge.**

\* \* \* \* \*

(b) \* \* \* An administrative law judge will conduct a hearing if you request one in writing no later than 60 days

after the date you receive notice of the Federal reviewing official's decision, the reconsidered determination you received as a result of § 405.240 of this part, or the initial determination subject to a hearing by an administrative law judge under the procedures in this part as a result of § 404.906(b)(4) or § 416.1406(b)(4) of this chapter (or within the extended time period if we extend the time as provided in paragraph (d) of this section). \* \* \*

## PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

### Subpart N—[Amended]

■ 11. The authority citation for subpart N of part 416 continues to read as follows:

**Authority:** Secs. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 12. Amend § 416.1406 by adding a fourth sentence to paragraph (b)(4) to read as follows:

#### § 416.1406 Testing modifications to the disability determination procedures.

\* \* \* \* \*

(b) \* \* \*

(4) \* \* \* If you requested review by a Federal reviewing official under part 405 of this chapter and we considered that request a request for review by an administrative law judge as a result of § 405.240(b) of this chapter, we will apply the procedures contained in subpart D of part 405 of this chapter.

■ 13. Amend § 416.1430 by adding paragraph (c) to read as follows:

#### § 416.1430 Availability of a hearing before an administrative law judge.

\* \* \* \* \*

(c) If you received a reconsidered determination instead of a decision by a Federal reviewing official as a result of § 405.240 of this chapter, we will apply the procedures contained in subpart D of part 405 of this chapter to your request for a hearing before an administrative law judge.

[FR Doc. E8–148 Filed 1–14–08; 8:45 am]

BILLING CODE 4191–02–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 9376]

RIN 1545–BD54

#### Guidance Under Section 1502; Miscellaneous Operating Rules for Successor Persons; Succession to Items of the Liquidating Corporation

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations under section 1502 of the Internal Revenue Code that provide guidance regarding the manner in which the items (including items described in section 381(c) but excluding intercompany items under § 1.1502–13) of a liquidating corporation are succeeded to and taken into account in cases in which multiple members acquire the assets of the liquidating corporation in a complete liquidation to which section 332 applies. These final regulations affect corporations filing consolidated returns.

**DATES:** *Effective Date:* These regulations are effective January 15, 2008.

*Applicability Date:* For the date of applicability, see § 1.1502–80(g)(7).

**FOR FURTHER INFORMATION CONTACT:** Amber C. Vogel or Marie C. Milnes-Vasquez, (202) 622–7530 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### Background

On February 22, 2005, the IRS and Treasury Department published in the **Federal Register** (70 FR 8552) a notice of proposed rulemaking (REG–131128–04) under section 1502 proposing guidance as to how multiple consolidated group members (distributee members) that acquire assets in a liquidation to which section 332 applies succeed to and take into account the items of the liquidating corporation. The proposed regulations apply single-entity principles and allocate the items of the liquidating corporation that could be used to offset the income or tax liability of the group or any member to each distributee member to the extent that such items would have been reflected in investment adjustments to the stock of the liquidating corporation owned by such distributee member under the principles of § 1.1502–32(c) if, immediately before the liquidation, any stock of the liquidating corporation

owned by nonmembers had been redeemed, and then such items had been taken into account.

The proposed regulations also provide allocation rules for the credits and earnings and profits of the liquidating corporation. Under the proposed regulations, each distributee member succeeds to the credits of the liquidating corporation to the extent that the items of income, gain, loss, or deduction attributable to the activities that gave rise to the credit would have been reflected in investment adjustments to the stock of the liquidating corporation owned by such distributee member under the principles of § 1.1502–32(c) if, immediately before the liquidation, any stock of the liquidating corporation owned by nonmembers had been redeemed, and then such items had been taken into account. The proposed regulations provide similar rules for allocating the liquidating corporation's earnings and profits to the distributee members.

Under the proposed regulations, a distributee member generally succeeds to any other items of the liquidating corporation if, immediately before the liquidation, such distributee owns stock in the liquidating corporation meeting the requirements of section 1504(a)(2) without regard to the application of § 1.1502–34. In contrast, a distributee member that does not meet the ownership requirements of section 1504(a)(2) without regard to the application of § 1.1502–34 (a non-80-percent distributee) succeeds to any remaining items of the liquidating corporation only to the extent that it would have succeeded to those items if it had purchased, in a taxable transaction, the assets or businesses of the liquidating corporation that it received in the liquidation and had assumed the liabilities that it assumed in the liquidation.

In addition, the proposed regulations also provide guidance regarding the method for allocating the intercompany items of a liquidating subsidiary in cases in which multiple members acquire the assets of a liquidating subsidiary in a complete liquidation to which section 332 applies. The IRS and Treasury Department continue to study those rules. Accordingly, that portion of the notice of proposed rulemaking is withdrawn, and the final regulations do not apply to the intercompany items of the liquidating corporation. For rules applicable to the treatment of those items, see § 1.1502–13(j)(2)(ii).

No public hearing was requested or held. Written and electronic comments responding to the notice of proposed rulemaking were received. After