



Request for Proposals

Social Security Disability Adjudication: **The Duty of Candor and The Submission of All Evidence**

The Administrative Conference is seeking a consultant to undertake a research project that will consider the Social Security Administration's (SSA) statutory authority and current regulations regarding the duty of candor and the submission of all evidence in Social Security disability claims. Proposals are due by 6:00 pm Eastern time on July 16, 2012.

Background

SSA has requested that the Conference study its statutory authority¹ and regulations² regarding the duty of candor and the submission of all evidence in Social Security disability claims. Specifically, the agency is concerned about reports that some claimants' representatives routinely withhold from the government, medical records which they believe to be potentially damaging to claimants' claims.³ Accordingly, the Conference wishes to conduct a focused study of SSA's statutory authority and current regulations regarding the duty of candor and the submission of all evidence, such as a claimant's medical records and/or other evidence necessary to accurately develop the record in a non-adversarial proceeding.

Project

The Conference wishes to conduct a study of the Social Security Act and SSA's current regulations regarding the duty of candor and the submission of all evidence in Social Security disability claims. The study should thoroughly examine and analyze the Act, any subsequent amendments to the Act, and SSA's current regulations regarding the duty of candor and the submission of all evidence in disability claims. The study should also survey the requirements from other administrative tribunals, as well as the Federal Rules of Evidence, Federal Rules of Civil Procedure, and other applicable authority, regarding the duty of candor and the submission of all evidence, even if adverse. In addition, the study should analyze the advantages and disadvantages of the approaches employed by other administrative tribunals and the Federal Rules of Evidence, Federal Rules of Civil Procedure, and other applicable authority. Based on the research conducted, the study should make recommendations for improvements in the SSA adjudication process and for future actions by SSA in these areas.

How to Submit a Proposal

¹ See Section 206 of the Social Security Act, codified at 42 U.S.C. § 406 (governing representation of claimants), specifically 42 U.S.C. § 406(a)(1) ("The Commissioner of Social Security may, after due notice and opportunity for hearing, suspend or prohibit from further practice before the Commissioner any such person, agent, or attorney who refuses to comply with the Commissioner's rules and regulations. . . .")

² See 20 C.F.R. §§ 404 .1740, *et seq.* and §§ 416.1540, *et seq.* (governing representatives' conduct).

³ See *e.g.*, Damien Paletta & Dionne Searcey, *Two Lawyers Strike Gold In The U.S. Disability System*, Wall St. J. Dec. 22, 2011, available at <http://online.wsj.com/article/SB10001424052970203518404577096632862007046.html>.



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Proposals are invited from qualified persons who would like to serve as a consultant on this project. All responses will be considered by the Conference staff and the Chairman.

A consultant's study should result in a report that is delivered first for review by the Conference staff and Chairman and providing proposed recommendations. Given the narrow scope and fast-track nature of the study, it will likely culminate in an Office of the Chairman report with recommendations but not a full recommendation of the Conference.⁴ Accordingly, the consultant will work with Conference staff to revise any drafts of the report as necessary and to provide a final report to be issued as an Office of the Chairman report.

Following the completion of an Office of the Chairman report, it is also possible that the report may be forwarded to a committee of the Conference for consideration, in which case the consultant would work with Conference staff to refine the recommendations and revise the report as necessary. Recommendations approved by the committee are then forwarded to the Council of the Conference and ultimately to the full Conference membership meeting in plenary session.

The Conference typically provides a consulting fee for a study plus a budget for expenses. The Conference also typically encourages its consultants to write up the results of their studies for publication. Thus, working as a Conference consultant provides some compensation, a publication opportunity, and the opportunity to work with Conference members from federal agencies, academia, the private sector, and public interest organizations to help shape and improve administrative law, procedure, and practice.

Those submitting proposals should understand that, in addition to the work involved in researching and writing the consultant's report, the consultant will need to work with Conference staff and committees as the Conference develops a recommendation based on the report. The consulting fee is not designed to match a consultant's normal consulting rates. It is a significant public service to serve as a consultant to the Conference.

To submit a proposal to serve as the Conference's consultant on this project, you must:

- Send an e-mail to Funmi Olorunnipa, Attorney Advisor at olorunnipa@acus.gov. *Proposals must be submitted by e-mail.*
- Include the phrase "ACUS Project Proposal" in the subject line of your e-mail.

In the body of your e-mail or in an attachment, please:

- State the name of the project for which you are submitting a proposal (Social Security Disability Adjudication: The Duty of Candor and the Submission of All Evidence).

⁴ SSA has requested that the study be completed by September 2012.



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- Explain why you would be well qualified to work on the project. Include your CV or other summary of relevant experience.
- Explain how you would research the proposed project and how you would develop recommendations based on the research. There is no required format and 2-3 should probably be sufficient for this section.
 - State how much funding you would need for expenses, keeping in mind that for this study, the consulting fee has been estimated at \$15,000 plus travel and research assistance expenses of \$5,000. There is some flexibility in the expense budget based on factors relating to the proposal (*e.g.*, the consultant's location relative to Washington, DC, and the need for research assistance and empirical or interviewing work). There is also some flexibility with respect to the award of the fee. For instance, a consultant may suggest conducting the study with another scholar and arrangements may be made to split the consulting fee as appropriate. The amount of the expenses is not a critical factor in the award of the contract; the quality of the proposal and of the consultant's ability to carry out the study will be the most important factors.
 - Propose a schedule for the project based on the September 2012 deadline for submission of the Office of the Chairman report to SSA. Because this project is under an unusually short time deadline, a draft report, which should be substantially complete and ready for review by the Chairman and Conference staff would be needed by the end of August 2012 and the final report by the middle of September 2012.

Submit your proposal by 6:00 pm Eastern time on July 16, 2012. Only proposals submitted by the stated deadline are guaranteed to receive consideration. Proposals may also be submitted or amended at any time until the award of the contract, and the Conference may consider any proposals or amended proposals received at any time before the award of the contract.

Proposals will be evaluated based on:

- The qualifications of the researcher(s)
- The quality of the proposal
- The timeline of the proposal
- The likelihood that the research will lead to recommendations that will improve government
- The cost of the proposal (although the other factors are more important)

Failure to follow the above instructions may result in your proposal not being considered. Including the phrase "ACUS Project Proposal" in the subject line of your e-mail is important so that your proposal can be easily identified.