

## Answers to OMB Pass Back Question on ICR 0960-0699

1. SSPA required that participants in the non-attorney demo project pass a criminal background check. SSA is requiring that applicants authorize SSA to conduct a criminal background check. However, the addendum to the supporting statement says that a number of questions are being added as part of the criminal background check (e.g. have you been convicted of a felony, etc.). Is there some reason why the criminal background check alone is not sufficient to meet the requirements of the SSPA?

**Answer** - The criminal background check will allow us to identify individuals convicted of a felony providing they give us their name and all of the aliases that they have ever used. If the applicant is convicted of a felony under a name that the applicant did not provide on the application and is not known to SSA through an SSA records check, the criminal background check will not identify that felony conviction. If SSA, through other sources, finds out about the felony conviction after the applicant has been determined eligible to participate, the applicant can be suspended from the demonstration project for lying on their application by failing to disclose the both the felony conviction and the previously used name.

OK

2. Supporting statement A2: which regulations were published to implement SSPA section 205?

**Answer** - See 71 FR 2871 – 2879, published on January 18, 2006 which amended 20 CFR 404.1745, 404.1750, 404.1755, 404.1765, 404.1770, 404.1790, 404.1799 and 416.1545, 416.1550, 416.1555, 416,1565, 416.1570, 416.1590, 416,1599

OK

3. It appears this ICR is associated with 2 different regulations (the one currently under review and the regulations to implement SSPA section 205). Is there some reason why this ICR is listed in ROCIS as not associated with a rulemaking?

**Answer** - The reason this ICR was listed in ROCIS as not associated with rulemaking is because this is an established collection originally cleared with OMB to comply with the section 303 of the Social Security Protection Act (SSPA) which was enacted March 2, 2004. The SSPA required the implementation of the Non-Attorney Demo Project by February 28 2005. This OMB clearance represents revisions to the Demo clearance, OMB control # 0960-0699, based on project experience and the consolidation of the associated Continuing Education collection under 0960-0737. SSA will delete the 0960-737 clearance after approval of this request.

OK: however, as per my previous email, the PRA expert in OMB has said that any ICRs that are submitted to OMB as a result of this rule (i.e. they are being revised because of the rule) should be submitted to OMB as "associated with rulemaking." Please make sure that box is checked.

When this ICR is reopened for amendments I will mark as "Associated with Rulemaking." (JCH 03/26/07)

4. Supporting Statement A7: SSA says applicants need to submit their applications within 6 weeks, but it is not clear what this means. Within 6 weeks of what? Also, is this instruction provided to applicants in the instruction sheet itself?

**Answer** - six weeks from the opening of the application period. Yes, the deadlines for submitting the application can be found in the Statement of Understanding and the applicant must initial to acknowledge that he/she read and understood the deadlines.

OK

5. Application instructions:

- why has the information about when the application fee is refundable been deleted? (page 1 column 2 and page 3 item #8, current application)?

**Answer** - Because the application fee is no longer "non-refundable" under the limited circumstances identified in the prior application. The application fee can now be refunded or applied to a future application period. This change was made based on experience gained in the demonstration project and on comments received from applicants. A FR notice was published on July 18, 2005 explaining the process. The rules and process for refunds or deferments can be found on the CPS website.

OK

- why have the insurance requirements been eased (page 2, column 2 of current application)?

**Answer** - SSA discovered, based on feedback received from applicants during the first application period, that insurance companies were refusing to underwrite policies for demonstration project participants based on the previously announced liability insurance requirements. SSA met with underwriters and experts from the insurance industry to get a better understanding of insurance practices for errors and omissions and amended the demonstration project liability insurance requirements accordingly.

OK: can SSA certify that this eased requirement will still be sufficient to protect claimants?

Yes. There is very limited liability in the event a representative fails to adequately represent a claimant. A claimant can file a new application. Also, prior applications can generally be reopened and there are good cause provisions that permit appeals to be filed even if an original deadline for filing an appeal is missed. The \$100,000 per incident limit is considered sufficient to reimburse the claimant for any lost benefits. (MH 03/26/07)

**Answer - check application**

6. Application

- Several items on page 8-9 of the application repeat almost word-for-word the questions asked on page 5 of the application. For example, question #6 on page 5 is exactly the same as question #5 on page 9. Please remove the duplicative questions or provide a compelling rationale for asking the same question in two different places. (the other duplicative questions are #1, 3, and 8 on pages 8-9)

**Answer** - We agree that #6 on page 5 is exactly the same as question 5 on page 9 and will remove question 5 on page 9. Question 1 on page 5 is not the same as question 1 on 8. Licensed or practicing attorneys are not eligible to participate in the demonstration project. (Question 1 on page 5) Former attorneys may be permitted to participate in the demonstration project depending on the circumstances under which the former attorney lost his or her license or the reason he or she is no longer practicing (Question 1 on page 8). We will change Question 8 on page 9 to "Can you pass all aspects of a Social Security records check?" Failing to pass an SSA record check is not an automatic disqualifying event. Failing to pass the criminal background check, however, is.

OK: can you please submit (via email) a copy of these revised questions/forms? I'd like to see these before I approve the ICR.

We expect to have the revised collection instruments sometime early this week and per your request I will email them to you. (JCH 03/26/07)

- in the current application, applicants only have to provide the last 4 digits of SSNs for any claimants they have represented in the past. in the revised application, SSA is now requesting full SSNs. To prevent identity theft, OMB discourages the collection of full SSNs when the last 4 digits would suffice. Is there some reason why collecting the last 4 digits would not suffice?

**Answer** - The last four digits of the SSN were insufficient for SSA to verify that the applicant met the representational experience requirement. SSA must have the entire SSN to verify representation. SSA must contact the applicant by telephone and request that the applicant provide the entire SSN in order for SSA to verify representational experience.

OK

- on page 13, the application refers to 10 locations but lists only 6. Is this a typo?

**Answer** - No - Six test sites have been "currently" selected for the 2008 exam based on experience gained with the first several exams. The remaining four test sites will be determined based on information obtained from the applicants who apply to sit for the 2008 exam, such as where the applicants work.

OK

- on the electronic form of the application, is there a "skip pattern" for respondents who answer the "preliminary questions" in such a way that clearly makes them not eligible to apply? For

example, if someone answers "yes" to question 1, do they get some kind of an error message that tells them they are not eligible? Or will they not know this until they have completed the whole application?

**Answer** - The application contains 6 preliminary questions:

- 1) Are you a licensed attorney?
- 2) Do you have a bachelor's degree? -- if not can you substitute (2a & 2b— both be "no")
- 3) Can you pass all aspects of the background check?
- 4) Ever convicted of a felony?
- 5) Suspended or disqualified with SSA or otherwise?
- 6) Judgment or lien for malpractice?

For those questions that were answered in a "non-conducive" way (i.e. "yes" in the felony box, or "no" for the background check) the system gives applicants a pop-up screen warning them of their ineligibility to participate in the program and why they cannot participate (i.e. if they said "yes" in the first question, it tells them that only non-attorneys can participate).

OK