

**SUPPORTING STATEMENT FOR PUBLIC REPORTING BURDENS POSED BY  
REGULATION RIN 0960-AG52/SSA-3401P**

**AMENDMENTS TO THE ALJ, APPEALS COUNCIL, AND DECISION REVIEW BOARD  
APPEALS LEVELS**

**20 CFR 404.933(a)–(d) and 416.1433(a)–(d), 404.933(e) and 416.1433(e), 404.935(a)–(d) and 416.1435(a)–(d), 404.938(c) and 416.1438(c), 404.939(a)-(b) and 416.1439(a)-(b), 404.948(b) and 416.1448(b), 404.950(a) and 416.1450(a), 404.961(b) and 416.1461(b), 404.969(a) – (c) and 416.1469(a) – (c), 404.974(a)-(b), (e) and 416.1474(a)-(b), (e), 404.976(a)(4)-(5) and 416.1476(a)(4)-(5), 404.977(d) and 416.1477(d), 404.982(b) and 416.1482(b)**

**OMB No. 0960-NEW**

**A. Justification**

**1. Authorizing Laws and Regulations**

*Sections 205(b)(1) and 1631(c)(1)(A) of the Social Security Act state that a claimant who is dissatisfied with an SSA benefits decision can contest it via a hearing before an Administrative Law Judge (ALJ). The Social Security Administration’s (SSA) rules for conducting these ALJ hearings and for appealing these decisions if claimants are still dissatisfied are discussed in sections 404, 405, and 416 of the Code of Federal Regulations (CFR).*

SSA plans to revise CFR sections 404 and 416 to 1) expand the use of multiple hearing level procedures from the Boston region to all SSA regions and 2) make other changes to the administrative appellate process. These new rules will apply to hearings on both disability benefits and non-disability matters. This ICR is for the regulation sections of these new rules which contain public reporting burdens (listed at the top of this document and below in #2).

**2. How, by Whom, and for What Purpose the Information is to be Used**

The information requested by these new rules will be used by SSA to assess the claims of individuals who 1) request a hearing before an ALJ or 2) want to appeal an ALJ’s decision to SSA’s Review Board. We anticipate these rules will streamline the hearings process and make it more efficient, reducing our large case backlog and making the process faster and more efficient for the affected members of the public.

Below are the sections from these new rules that contain information collection requirements. Each section from part 404 (which pertains to *Title II* of the Act) has been paired with its corresponding section in part 416 (which pertains to *Title XVI* of the Act).

**404.933(a)–(d) and 416.1433(a)–(d)** – Claimants may request a hearing by filing a written request. The information collection requirement for these sections will be fulfilled by existing form OMB No. 0960-0269 (HA-501, the Request for Hearing by an ALJ).

**404.933(a)(4) and 416.1433(a)(4)** – When requesting a hearing for disability claims, claimants should include a statement about the medically determinable impairment(s) that prevent them from working.

**404.933(d) and 416.1433(d)** – Claimants may request an extension of time (EOT) to file a request for a hearing. The request for the EOT must be in writing and must explain why the hearing request was not or will not be filed on time. SSA will be required to determine if there is just cause for allowing a late filing.

**404.933(e) and 416.1433(e)** – Claimants may request a waiver of the right to appear before the ALJ. Existing form OMB No. 0960-0284 (HA-4608, Waiver of Your Right to Personal Appearance before an ALJ) will be used for this purpose.

**404.935(a)–(c) and 416.1435(a)–(c)** – Claimants may submit evidence to an ALJ. All claimants have the option of submitting evidence, but only claimants for Social Security and/or Supplemental Security Income (SSI) benefits are required to submit evidence to support their claims for benefits. Generally, at the hearings level additional evidence is submitted to expand and update the record.

**404.935(d) and 416.1435(d)** – Claimants may request that the ALJ issue a subpoena or that a subpoena be withdrawn or limited. To subpoena documents or witnesses, claimants or their representatives must file a written request for a subpoena with the ALJ at least 20 days before the hearing date. The request must provide the following information: 1) the name and address of the witnesses (or location of the documents), 2) the information the witness or documents are expected to provide, 2) the reason why these facts cannot be shown without the subpoena. The ALJ issues the subpoena (Form HA-511) per the Hearing Appeals and Litigation Law Manual (HALLEX) I -2-5-78. Recipients of subpoenas for Social Security and/or SSI benefits hearings may request in writing that the subpoena be withdrawn or limited in scope and must provide reasons for the withdrawal/limitation request.

**404.938(c) and 416.1438(c)** – The claimant may acknowledge the notice of hearing using the existing OMB approved form 0960-0671 (HA-504, Acknowledgement of Receipt (Notice of Hearing)).

**404.939(a) and 416.1439(a)** – Claimants notify the ALJ of an objection to the time or place of the hearing. This requirement is cleared by regulation sections in OMB No. 0960-0671 (HA-504).

**404.939(b) and 416.1439(b)** – Notices of hearings are sent to claimants and their representatives containing a statement regarding the issues to be considered at the

hearing. If the claimant objects to the issues stated in the notice, he/she must notify the ALJ in writing at least 5 days before the hearing and state the reasons for the objection(s).

**404.948(b) and 416.1448(b)** – Claimants may file a statement indicating they do not wish to appear at a hearing. Existing form OMB No. 0960-0284 (HA-4608) is used for this purpose.

**404.950(a) and 416.1450(a)** – Claimants may present evidence at a hearing before an ALJ. This information collection requirement is approved through OMB No. 0960-0671 (HA-504).

**404.961(b) and 416.1461(b)** –The ALJ (ALJ) may require, or the claimant may request, a pre-hearing conference (phone or in person). At any time prior to the conference, the ALJ may request or the claimant may submit a pre-hearing statement describing why the ALJ or claimant disagrees with the previous determination. In addition, the ALJ may require or the claimant may request a post-hearing conference. The conference may be by phone or in person but is usually conducted by phone.

**404.969(a)–(b) and 416.1469(a)–(b)** – To initiate an appeal before the Review Board, claimants must file a notice of appeal within 60 days after the date they receive notice about the ALJ hearing decision or dismissal (unless the claimant requests and is granted an extension of the time period). Existing form OMB No. 0960-0277 (HA-520, Request for Review of Hearing Decision/Order) will be used for this purpose.

**404.969(b)(2) and 416.1469(b)(2)** - Claimants may request an extension of time (EOT) of the 60-day appeal period to file a request for a review of a hearing by the Review Board. The request for the EOT must be in writing and must explain why the review hearing was not or cannot be filed on time. The Review Board determines if good cause for late filing applies.

**404.969(c) and 416.1469(c)** – Appeals must be in writing (OMB No. 0960-0277, form HA-520), and should include: 1) any documents or other evidence the claimant wishes to have considered by the Review Board; 2) a written statement identifying any errors the claimant believes the ALJ made; 3) an explanation of why those alleged errors require reversal or modification of the ALJ’s hearing decision or dismissal; and 4) applicable laws and administrative record facts which support the appellant’s contentions.

**404.974(a) and 416.1474(a)** – As part of the Review Board’s procedures, claimants may request and receive copies of or a statement about the documents or other written evidence upon which the hearing decision or dismissal was based. If a hearing was held before an ALJ, a copy of the recording for that hearing can be requested as well.

**404.974(b) and 416.1474(b)** – As part of the Review Board procedures, claimants may file a brief or other written statement about the facts and law relevant to the case. It should be filed with the Request for Review or within 10 days after filing the Request for Review.

**404.974(e) and 416.1474(e)** – As part of the Review Board procedures, claimants may request an appearance before the Review Board to present oral arguments. The Review Board may grant the claimant's request if it decides that the claimant's case raises an important question or that oral argument would help the Review Board reach a correct decision.

**404.976(a)(4) and 416.1476(a)(4)** – The Review Board may dismiss any proceedings pending if the claimant and all other parties to the proceedings file a written request for dismissal.

**404.976(a)(5) and 416.1476(a)(5)** – After dismissal of an appeal by the Review Board because of claimant, another person connected to the claimant may request that the dismissal be vacated if he or she submits a written appeal and shows that he or she may be adversely affected by the determination that was under appeal.

**404.977(d) and 416.1477(d)** – When an ALJ sends a case to the Review Board with a recommended decision, claimants will be given 20 days to file briefs or other written statements about the facts and law relevant to the case.

**404.982(b) and 416.1482(b)** – Any party to the Review Board's final decision, or to an expedited appeals process agreement, may request in writing that the time for filing an action in a Federal District Court be extended. The request must be in writing and must include the reasons why the action was not or cannot be filed within the stated appeal period.

### **3. Use of Information Technology to Collect the Information**

For those regulation sections which are covered by existing forms OMB No. 0960-0269 (HA-501) and 0960-0671 (HA-504), electronic versions of these forms are available under the Agency's Government Paperwork Elimination Act plan. For those sections which pose new burdens, some will not be submitted electronically because it would not be appropriate for those types of collections. Others will be submitted through the Electronic Records Express (Representative) system, which is currently under review at OMB.

### **4. Why Duplicate Information Cannot Be Used**

The nature of the information being collected and the manner in which it is collected preclude duplication. There is no other collection instrument used by OMB that collects data similar to that collected here.

### **5. How Burden on Small Respondents is Minimized**

This collection does not impact small businesses or other small entities.

**6. Consequences of Not Collecting Information or Collecting it Less Frequently**

If this information was not collected, claimants would have no way of requesting hearings, contesting decisions, or doing anything else described in the regulations. Since the information specified by these rules will only be collected once, it cannot be collected less frequently.

There are no technical or legal obstacles that prevent burden reduction.

**7. Special Circumstances that Need to be Explained**

There are no special circumstances that would cause this information collection to be conducted in a manner inconsistent with 5 CFR 1320.5.

**8. Solicitation of Public Comment and Other Consultations with the Public**

The Federal Register Notice for this Notice of Proposed Rulemaking was published on October 29, 2007 at 72 FR 61218. We will forward any comments we receive in response to this Notice.

There have been no outside consultations with members of the public.

**9. Payment or Gifts to Respondents**

SSA provides no payment or gifts to the respondents.

**10. Assurances of Confidentiality**

The information requested is protected and held confidential in accordance with 42 U.S.C. 1306, 20 CFR 401 and 402, 5 U.S.C. 552 (Freedom of Information Act), 5 U.S.C. 552a (Privacy Act of 1974), and OMB Circular No. A-130.

**11. Justification for Sensitive Questions**

The information collection does not contain any questions of a sensitive nature.

**12. Estimates of Public Reporting Burden**

Below is a chart of the regulation sections containing public reporting requirements and the burden they impose. For those sections whose burdens are accounted for by existing OMB-approved collections, a 1-hour placeholder burden is inserted. The total burden is reflected as burden hours, and no separate cost burden has been calculated.

Part 404 sections are for Federal Old-Age, Survivors and Disability Insurance, and Part 416 sections are for Supplemental Security Income for the Aged, Blind, and Disabled.

**NOTE:** As the chart below indicates, the total hourly burden is 757,732 hours. The total number originally reported in the Federal Register Notice for the NPRM was 725,761 hours. This discrepancy is due to our obtaining updated/corrected data after the NPRM had published.

<b>Title/Section &amp; Collection Description</b>	<b>Annual number of respondents</b>	<b>Frequency of response</b>	<b>Average burden per response (minutes)</b>	<b>Estimated annual burden (hours)</b>
<b>404.933(a)-(d)</b> <b>416.1433 (a)-(d)</b> How to request a hearing – claimants must request a hearing by filing a written request	-	-	-	1  (covered by OMB No. 0960-0269/form HA-501)
<b>404.933 (a)(4)</b> <b>416.1433 (a)(4)</b> If disability is an issue, a statement of the medically determinable impairment should be included in the written request for a hearing	493,155	1	5	41,096
<b>404.933(d)</b> <b>416.1433(d)</b> Extension of time to request a hearing – claimants may ask us for more time to request a hearing	10,959	1	10	1,827
<b>404.933(e)</b> <b>416.1433(e)</b> Waiver of right to appear – claimants may ask the ALJ to decide their case without a hearing	-	-	-	1  (covered by OMB No. 0960-0284/form HA-4608)
<b>404.935(a)-(c)</b> <b>416.1435(a)-(c)</b> Submitting evidence	547,950	1	60	547,950

<b>Title/Section &amp; Collection Description</b>	<b>Annual number of respondents</b>	<b>Frequency of response</b>	<b>Average burden per response (minutes)</b>	<b>Estimated annual burden (hours)</b>
to an ALJ				
<b>404.935(d)(1)&amp;(2)</b> <b>416.1435 (d) (1) &amp; (2)</b> Subpoena – claimants must file a written request for a subpoena	3,750	1	30	1,875
<b>404.935(d)(4)</b> <b>416.1435 (d) (4)</b> Subpoena – claimants may ask the ALJ to withdraw or limit the scope of the subpoena	10	1	30	5
<b>404.938(c)</b> <b>416.1438 (c)</b> Acknowledging the notice of hearing – we will ask claimants to return a form to inform SSA that they received the notice	-	-	-	1  (covered by OMB No. 0960-0671/form HA-504)
<b>404.939(a)</b> <b>416.1439(a)</b> Objections – claimants should notify the ALJ in writing if they object to the time and place of their hearing	-	-	-	1  (covered by OMB No. 0960-0671/form HA-504)
<b>404.939(b)</b> <b>416.1439(b)</b> Objections – claimants should notify the ALJ in writing if they believe that issues in the hearing notice are incorrect	10	1	30	5
<b>404.948(b)</b> <b>416.1448(b)</b> Deciding a case without a hearing	-	-	-	1  (covered by OMB No.

<b>Title/Section &amp; Collection Description</b>	<b>Annual number of respondents</b>	<b>Frequency of response</b>	<b>Average burden per response (minutes)</b>	<b>Estimated annual burden (hours)</b>
before an ALJ – claimants state in writing that they do not wish to appear at a hearing				0960.0284/ form HA-4608)
<b>404.950(a)</b> <b>416.1450(a)</b> Presenting evidence at a hearing before an ALJ	-	-	-	1 hour placeholder burden (covered by OMB No. 0960-0671/form HA-504)
<b>404.961(b)</b> <b>416.1461(b)</b> Prehearing and posthearing proceedings – claimants may submit a prehearing statement describing why they disagree with the reconsidered determination	36,500	1	30	18,250
<b>404.969(a)-(b)</b> <b>416.1469(a)-(b)</b> How to appeal to the Review Board – to begin the appeal claimants must file a notice of appeal	-	-	-	1 hour  (covered by OMB No. 0960-0277/HA-520)
<b>404.969(b)(2)</b> <b>416.1469(b)(2)</b> How to appeal to the Review Board – claimants may ask that the time for filing a notice of appeal be extended	2,000	1	10	333
<b>404.969(c)</b> <b>416.1469(c)</b> Contents of the Appeal – claimants	93,461	1	60	93,461



<b>Title/Section &amp; Collection Description</b>	<b>Annual number of respondents</b>	<b>Frequency of response</b>	<b>Average burden per response (minutes)</b>	<b>Estimated annual burden (hours)</b>
should include a written statement with their notice of appeal				
<b>404.974(a)</b> <b>416.1474(a)</b> Procedures before the board, obtaining copies of evidence – claimants may request and receive copies or a statement of documents and other written evidence	45,000	1	10	7,500
<b>404.974(b)</b> <b>416.1474(b)</b> Filing briefs with the Review Board – claimants may file a brief or other written statement	45,000	1	60	45,000
<b>404.974(e)</b> <b>416.1474(e)</b> Oral arguments – claimants may ask to appear before the review board to present an oral argument	300	1	10	50
<b>404.976(a)(4)</b> <b>416.1476(a)(4)</b> Dismissal by Review Board - claimants may file written a request for dismissal	600	1	10	100
<b>404.976(a)(5)</b> <b>416.1476(a)(5)</b> Dismissal by Review Board - a person other than the claimant may file a written appeal	20	1	20	7
<b>404.977(d)(1)</b> <b>416.1477(d)(1)</b>	20	1	60	20

<b>Title/Section &amp; Collection Description</b>	<b>Annual number of respondents</b>	<b>Frequency of response</b>	<b>Average burden per response (minutes)</b>	<b>Estimated annual burden (hours)</b>
Filing briefs with the Review Board – claimants may file briefs or other written statements with the Review Board				
<b>404.982(b)</b> <b>416.1482(b)</b> Review of final decisions in Federal District Court - claimants may request an extension in time for filing an action in federal district court	1,475	1	10	245
Total	-			757,732*

\*Please note this number is an approximation due to rounding.

**13. Annual cost to the Respondents (Other)**

There is no known cost burden to the respondents.

**14. Annual Cost to Federal Government**

For those regulation sections whose burden is covered by existing information collection tools, the annual cost to the Federal Government is accounted for in their ICRs. For those sections with new burden, the cost is negligible. Because the cost of maintaining the system which collects this information is accounted for within the cost of maintaining all of SSA's automated systems, it is not possible to calculate the cost associated with just one Internet application.

**15. Program Changes or Adjustments to the Information Collection Budget**

This is a new information collection which will increase the public reporting burden.

**16. Plans for Publication of Results of Information Collection**

The results of the information collection will not be published.

**17. Request not to Display OMB Expiration Date**

SSA is not requesting an exception to publishing the OMB expiration date (except for those existing OMB-approved forms which already have this exemption).

**18. Exceptions to Certification Statement**

SSA is not requesting an exception to the certification requirements at 5 CFR 1320.9 and related provisions at 5 CFR 1320.8(b)(3).

**B. Collections of Information Employing Statistical Methods**

Statistical methods will not be used for this information collection.