

Supporting Statement for SSA-964I
Incorporation by Reference of Oral Findings of Fact and Rationale in
Wholly Favorable Written Decisions (Bench Decision Regulation)
20 CFR 404.953 and 20 CFR 416.1453
OMB No. 0960-0694

A. Justification

1. *Section 702(a)(5) of the Social Security Act (the Act)* allows the Commissioner of the Social Security Administration (SSA) to implement the rules and regulations necessary to administer Title II and Title XVI Social Security programs. *Sections 205(a) and 1631(d) of the Act* require the Commissioner to regulate the collection and furnishing of evidence needed to determine entitlement to Titles II and XVI payments. As part of the entitlement determination process, SSA must give reasonable notice and opportunity for a hearing if applicants for benefits request one, and, if a hearing is held, SSA must make a decision on the basis of evidence produced there [*Sections 205(b)(1) and 1631(c)(1)(A)*]. Both *the Act* and SSA's regulations discuss the administrative review process for determining entitlement to payments. The regulations also discuss the processes for reviewing disputed claims: in such cases, hearings are held before administrative law judges (ALJs) employed by SSA's Office of Disability Adjudication and Review (ODAR).

20 CFR 404.953 and 416.1453 of the Code of Federal Regulations (the Code) state that if an ALJ makes a wholly favorable oral decision for a claimant of Title II or Title XVI payments at an administrative appeals hearing, and if this oral decision includes all findings and the rationale for the decision, the records from the oral hearing preclude the need for a written decision. This is known as the incorporation-by-reference process. These regulations also state that if the involved parties want a record of the oral decision, they may submit a written request for these records.

2. SSA uses the identifying information collected under the aegis of sections 20 CFR 404.953 and 416.1453 of the Code to determine how to send interested individuals written records of a favorable incorporation-by-reference oral decision made at an administrative review hearing. Since there is no form that can be used to request a written record of the decision, the involved parties send SSA their contact information and reference the hearing they would like a record of. Respondents are applicants for Disability Insurance Benefits and Supplemental Security Income payments based on disability.
3. There is no standardized form for collecting this information, and the frequency of request for a copy of the oral (bench) decision is too low to warrant the resources that electronic implementation would require; therefore, we have no plans to create an Internet method which respondents can use. However, we do accept responses through email as well as fax.
4. 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 SSA that collects data similar to that collected here.

5. This collection does not impact small businesses or other small entities.
6. If this information collection were not conducted, parties wishing to request written records of incorporated-by-reference oral rulings would have no means of doing so. This would be a violation of claimants' rights, and would compromise the integrity of the incorporation-by-reference procedure. Since the information is only collected when a claimant requests a written record of an incorporated-by-reference oral procedure, it cannot be collected less frequently. There are no technical or legal obstacles that prevent burden reduction.
7. There are no special circumstances that would cause this information collection to be conducted in a manner inconsistent with 5 CFR 1320.5.
8. The 60-day advance Federal Register Notice was published on August 20, 2007 at 72 FR 46529, and SSA has received no public comments. The second Notice was published on October 18, 2007 at 72 FR 59132. There have been no outside consultations with members of the public.
9. SSA provides no payment or gifts to the respondents.
10. The information collected 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. The information collection does not contain any questions of a sensitive nature.
12. SSA estimates that 2,500 respondents take 5 minutes annually to request a copy of the incorporated-by-reference procedure, for a total of 208 burden hours. The total burden is reflected as burden hours, and no separate cost burden has been calculated.
13. There is no known cost burden to the respondents.
14. The annual cost to the Federal Government is approximately \$40,000. This estimate is a projection of personnel time costs and the cost of copying and sending records of the requested oral decision. Since the information collected through these regulations is not associated with a form, SSA cannot account for any costs for this regulation through a form's ICR.
15. The reduction in the number of annual burden hours by half is based on SSA's experiences during the past three years. The estimate given in 2004 was based on SSA's projections and not on experience. Now that we have experience to work with, we have lowered our numbers to reflect our current knowledge of the response rate.
16. The results of the information collection will not be published.
17. SSA is not requesting an exception to display the OMB expiration date.

18. 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 are not used for this information collection.