

**SUPPORTING STATEMENT**  
**United States Patent and Trademark Office**  
**Practitioner Conduct and Discipline**  
**OMB CONTROL NUMBER 0651-0017**  
**November 2015**

**A. JUSTIFICATION**

**1. Necessity of Information Collection**

The Director of the United States Patent and Trademark Office (USPTO) has the authority to establish regulations governing the conduct and discipline of agents, attorneys, or other persons representing applicants and other parties before the USPTO (35 U.S.C. §§ 2 and 32-33). The current USPTO Rules of Professional Conduct (37 CFR 11.100-11.901) prescribes the manner in which practitioners should conduct themselves professionally and prescribes their responsibilities for recordkeeping and reporting violations or complaints of misconduct to the USPTO. The procedural rules set forth in 37 CFR 11.19-11.61 govern the manner in which the USPTO investigates misconduct and imposes discipline. Sections 11.25(a) and 11.58(d) of the procedural rules also contain reporting and record-keeping requirements.

The recordkeeping rules require that practitioners who appear before the Office maintain complete records of clients, including all funds, securities and other properties of clients coming into his/her possession, and render appropriate accounts to the client regarding such records, as well as report violations of the rules to the Office. Practitioners are mandated by the rules to maintain proper documentation so that they can fully cooperate with an investigation in the event of a report of an alleged violation and that violations are prosecuted as appropriate. The Office has determined that the recordkeeping and maintenance of such records are excluded from any associated PRA burden as these activities are usual and customary for practitioners representing clients (5 CFR 1320.3(b)(2)). Additionally, in the case of most attorney practitioners, any requirements for collection of information are not presumed to impose a Federal burden as these requirements are also required by a unit of State or local government, namely State bar(s), and would be required even in the absence of any Federal requirement (5 CFR 1320.3(b)(3)). These rules also require, in certain instances, that written consents or certifications be provided. Such consents or certifications have been determined not to constitute information under 5 CFR 1320.3(h)(1).

The USPTO Rules of Professional Conduct require an attorney or agent to report knowledge of certain violations of the USPTO Rules of Professional Conduct to the USPTO (37 CFR 11.801(b), 11.803, and 11.25(a) ). If the complaint is found to have merit, the USPTO will investigate and possibly prosecute violations of the Rules and provide the practitioner with the opportunity to respond to the complaint. The Director of the Office of Enrollment and Discipline (OED) may, after notice and opportunity for a hearing, seek the suspension, exclusion, or disqualification of any practitioner from further practice before the USPTO based on noncompliance with the regulations.

Practitioners who have been excluded or suspended from practice before the USPTO must keep and maintain records of their steps to comply with the suspension or exclusion order. These records serve as the practitioner’s proof of compliance with the order.

If this information is not collected, the Director of OED would have no knowledge of alleged violations and would be unable to enforce the provisions of the Rules.

Table 1 provides the specific rules and statutes that require the USPTO to collect the information discussed above:

**Table 1: Information Requirements for Practitioner Conduct and Discipline**

IC Number	Requirement	Statute	Rule
1	Recordkeeping Maintenance & Disclosure (includes advertisements, disclosure requirements relating to soliciting professional employment, notifications by non-attorney Practitioner of inadvertently sent documents, and financial books and records such as trust accounts, fiduciary accounts, and operating accounts)	35 U.S.C. §§ 2(b)(2) (D) and 32	37 CFR 11.115(f) 37 CFR 11.404(b) 37 CFR 11.703(c)
2	Recordkeeping Maintenance Regarding Practitioners Under Suspension or Exclusion	35 U.S.C. §§ 2(b)(2) (D) and 32	37 CFR 11.58(d)
3	Complaint/Violation Reporting and Disclosure	35 U.S.C. §§ 2(b)(2) (D) and 32	37 CFR 11.801(b), 11.803, and 11.25(a)

## 2. Needs and Uses

There are no forms associated with this collection of information.

The information collected, maintained, and used in this collection is based on OMB and USPTO guidelines. This includes the basic information quality standards established in the Paperwork Reduction Act (44 U.S.C. Chapter 35), in OMB Circular A-130, and in the OMB information quality guidelines.

Table 2 outlines how this information is used by the public and by the USPTO:

**Table 2: Needs and Uses for Practitioner Conduct and Discipline**

IC Number	Form and Function	Form #	Needs and Uses
1	Recordkeeping Maintenance & Disclosure	No Form Associated	<ul style="list-style-type: none"> <li>Used by the public to maintain client integrity in the day-to-day operation of their practice.</li> <li>Used by the USPTO to comply with Federal regulations.</li> <li>Used by the USPTO to impose regulations governing the conduct of attorneys, agents, and other persons representing applicants and other parties before the USPTO.</li> </ul>

IC Number	Form and Function	Form #	Needs and Uses
2	Recordkeeping Maintenance Regarding Practitioners Under Suspension or Exclusion	No Form Associated	<ul style="list-style-type: none"> <li>• Used by practitioners seeking reinstatement after a disciplinary removal to provide increased recordkeeping requirements in order to show compliance with the terms required for reinstatement.</li> <li>• Used by the public to provide evidence that a practitioner has or has not complied with the rules during suspension or exclusion.</li> <li>• Used by the USPTO to determine whether a practitioner qualifies for reinstatement.</li> <li>• Used by the USPTO to monitor recordkeeping requirements of practitioners seeking reinstatement after a disciplinary removal to ensure that compliance with the terms required for reinstatement are being met.</li> </ul>
3	Complaint/Violation Reporting and Disclosure	No Form Associated	<ul style="list-style-type: none"> <li>• Used by the public and practitioners to report knowledge of certain violations of the USPTO Rules of Professional Conduct.</li> <li>• Used by the public to maintain proper documentation in order to fully cooperate with the USPTO in an investigation.</li> <li>• Used by the USPTO to investigate and, where appropriate, to prosecute for violations of the USPTO Rules of Professional Conduct.</li> </ul>

### **3. Use of Information Technology**

While respondents to this collection have, in previous renewals, not been allowed to submit responses via automated, electronic, mechanical, or other technological collection techniques due to the sensitive nature of the information in this collection, this renewal will allow the electronic submission of items pertaining to the recordkeeping maintenance items included in this collection.

### **4. Efforts to Identify Duplication**

The data in this collection is not routinely collected or maintained elsewhere. Inasmuch as a report by an attorney or agent of an alleged violation of the USPTO Rules of Professional Conduct is made uniquely to the OED Director, there is no duplication of effort.

### **5. Minimizing Burden to Small Entities**

The reporting and recordkeeping requirements are essentially the same for all attorneys and agents. The collection of this information does not pose a significant economic impact on small entities or small businesses.

### **6. Consequences of Less Frequent Collection**

This information is collected on an event-by-event basis; it is not time-driven. Therefore, this information could not be collected less frequently. An attorney, agent, or other person representing applicants and other parties before the USPTO is obligated to make a report when a violation is discovered.

### **7. Special Circumstances in the Conduct of Information Collection**

There are no special circumstances associated with this collection of information.

## **8. Consultations Outside the Agency**

The 60-Day *Federal Register* Notice was published on June 19, 2015 (80 FR 35318). The public comment period ended on August 18, 2015. Two public comments were received.

One commenter suggested that the USPTO could enhance the information collected through this collection by specifically asking the attorney or agent to disclose the medium in which records are stored (e.g. paper or electronic files). The USPTO OED does not need to inquire into the specific method and location of records. Rules 11.115(a), 11.115(f)(1), and 11.115(f)(3) address safekeeping of clients' properties and funds. In addition, OED looks to the practitioner's jurisdiction mandates for maintaining and storing client records.

Another commenter suggested that the USPTO revise 37 C.F.R. § 11.25(a) to exclude certain traffic-violation convictions from those crimes that are required to be reported to the OED Director. Because such notification is required under the rule, OED must enforce this requirement until such time as the rule is revised. While this information collection solicitation is not the appropriate forum for requesting a change to USPTO rules, the Office will evaluate this comment in reviewing relevant disciplinary rule revisions. Furthermore, we have added a reference, to CFR 11.25(a), in table 1 to make it clear that this collection of information includes those items.

The USPTO has long-standing relationships with groups from whom patent application data is collected, such as the American Intellectual Property Law Association (AIPLA), as well as patent bar associations, inventor groups, and users of our public facilities. Views expressed by these groups are considered in developing proposals for information collection requirements and during the renewal of an information collection. No views have been expressed regarding the present renewal.

## **9. Payment or Gifts to Respondents**

This information collection does not involve a payment or gift to any respondent. Response to this information collection is necessary to enforce the Rules, to register a report of knowledge of certain violations of the Rules to the USPTO, and to investigate and possibly prosecute violations of the Rules.

## **10. Assurance of Confidentiality**

Confidentiality is governed by statute 35 U.S.C. § 122 and regulations 37 CFR 1.11 and 1.14. This collection contains information of a confidential (personal) nature, which is subject to the Privacy Act. A System of Records Notice was published in the *Federal Register* on March 19, 2013 (78 FR 16833). Administrative controls are used to safeguard this information as appropriate. Reports of alleged violations of the Rules of Professional Conduct are maintained in confidence until such time as an attorney, agent, or other person representing an applicant or other party before the USPTO is publicly disciplined. Violation reporting activities may result in notices published in the

*Official Gazette of the United States Patent and Trademark Office* and/or the agency's FOIA reading room. These may include notices of public reprimand, censure, suspension, exclusion, or exclusion on consent. The USPTO has been successful in declining to make available investigatory material in response to a request under the Freedom of Information Act based on 5 U.S.C. §§ 552(b)(7)(C) (investigatory records) and 552(b)(6) (unwarranted invasion of personal privacy).

## **11. Justification for Sensitive Questions**

None of the information collected is considered to be of a sensitive nature.

## **12. Estimate of Hour and Cost Burden to Respondents**

Table 3 calculates the burden hours and costs of this information collection to the public, based on the following factors:

- **Respondent Calculation Factors**

The USPTO estimates that it will receive 11,065 responses to this information collection per year, with an estimated 100 percent of those responses submitted by small entities. Of this total, the USPTO expects that less than 1 percent (50 responses) will be submitted electronically.

These estimates are based on the Agency's long-standing institutional knowledge of and experience with the type of information collected by these items.

- **Burden Hour Calculation Factors**

The USPTO estimates that it will take the public between 1 and 20 hours, depending upon the complexity of the situation, to gather, prepare and/or submit the necessary information.

These estimates are based on the Agency's long-standing institutional knowledge of and experience with the type of information collected and the length of time necessary to complete responses containing similar or like information.

- **Cost Burden Calculation Factors**

The USPTO expects that agents will complete the Recordkeeping Maintenance & Disclosure item at an hourly rate of \$307 as published in the 2015 AIPLA Report of the Economic Survey and that practitioners will complete the Recordkeeping Maintenance Under Suspension or Exclusion from the USPTO item at an hourly rate of \$410 as published in the 2015 AIPLA Report of the Economic Survey. The USPTO further expects that members of the public will complete the Complaint/Violation Reporting and Disclosure at a blended hourly rate of \$293.33. This blended rate is based on data from both the 2015 AIPLA Report of the Economic Survey and the 2014 Bureau of Labor Statistics (BLS) National Occupation Employment and Wage Estimates, and is comprised of 50 percent by the practitioner hourly rate of \$410; 25 percent by the agent hourly rate of \$307; and 25 percent by the hourly rate for Scientists and Engineers of \$46.32.

Using these hourly rates, the USPTO estimates \$3,827,273.00 per year for the total hourly costs associated with respondents.

**Table 3: Burden Hour/Burden Cost to Respondents for Practitioner Conduct and Discipline**

IC Number	Information Collection Instrument	Estimated Response Time (Hours) (a)	Estimated Annual Responses (b)	Estimated Annual Burden Hours (a) x (b) = (c)	Rate (\$/hr) (d)	Total Cost (\$/hr) (c) x (d) = (e)
1	Recordkeeping Maintenance & Disclosure	1	10,825	10,825	\$307.00	\$3,323,275.00
2	Recordkeeping Maintenance Regarding Practitioners Under Suspension or Exclusion	20	40	800	\$410.00	\$328,000.00
3	Complaint/Violation Reporting and Disclosure	3	200	600	\$293.33	\$175,998.00
	<b>TOTALS</b>	-----	<b>11,065</b>	<b>12,225</b>	-----	<b>\$3,827,273.00</b>

**13. Total Annualized (Non-hour) Cost Burden**

There are no capital start-up, maintenance, or recordkeeping costs for this collection, nor are there any associated filing fees. The recordkeeping costs included with the recordkeeping-related responses are a burden hour/burden cost to respondents and are not part of the annualized cost burden for this collection. There is, however, a non-hour cost burden in the form of postage costs.

Postage

Customers may incur postage costs when submitting some of the items covered by this collection to the USPTO by mail. The USPTO expects that practitioners will submit affidavits with attachments via postal mail or hand delivery in association with the Recordkeeping Maintenance Regarding Practitioners Under Suspension or Exclusion item, and estimates that 99 percent of those affidavits will be submitted by mail with the remainder submitted by facsimile or hand delivery. The USPTO further expects that 25 percent of the Complaint/Violation Reporting and Disclosure item will be submitted electronically. Of the non-electronic submissions for that item, 1 percent of the total responses will be submitted by hand delivery or facsimile and the remaining 74 percent will be submitted by postal mail. These two items are estimated to produce a total of 187 mailed submissions.

The average first-class USPS postage costs for a one-pound mailed submission in a flat-rate envelope and a three-pound mailed submission in a small flat-rate box are \$5.75 and \$5.95, respectively. The Recordkeeping Maintenance Regarding Practitioners Under Suspension or Exclusion item requires the more expensive of those two postage options, while the Complaint/Violation Reporting and Disclosure item requires the cheaper flat-rate envelope.

Table 4 calculates the postage costs for this collection of information:

**Table 4: Non-hour Cost Burden for Practitioner Conduct and Discipline (Postage)**

IC Number	Information Collection Instrument	Estimated Mailed Responses (a)	Postage Cost Per Item (b)	Total Postage Cost (a) x (b) = (c)
1	Recordkeeping Maintenance & Disclosure	0	\$0.00	\$0.00

2	Recordkeeping Maintenance Regarding Practitioners Under Suspension or Exclusion	39	\$5.95	\$232.05
3	Complaint/Violation Reporting and Disclosure	148	\$5.75	\$851.00
	<b>TOTAL</b>	<b>187</b>	<b>-----</b>	<b>\$1,083.050</b>

Therefore, the total annual (non-hour) cost burden for this information collection, in the form of postage, is projected to be \$1,083.05.

#### 14. Annual Cost to the Federal Government

There are no government costs associated with registered practitioners maintaining their recordkeeping systems.

Various levels of pay grades reflect the different actions involved in reaching the assumptions behind the time and burden to the government for collecting the information in this collection. The Director of the OED and a combination of staff attorneys provide the professional effort to review the complaints/violations, generate inquiries as needed, review responses, and perform other follow-up activities. The clerical staff establishes and maintains the files and associated updates. Paralegals primarily track all case status and docket information. Administrator and analyst efforts generally represent coordination with other functional areas; this type of coordination would primarily track against the unit of work from which all other disciplinary efforts spring; i.e., the complaint/violation reports.

The USPTO estimates that items in this collection will be processed by OED staff in the GS-9, 11, 12, 13, 15 and SES grades. The agency added an additional 30% to the current OPM hourly wage rates of the D.C. metro area, to account for a fully loaded hourly rate.

Table 5 calculates the processing hours and costs to the Federal Government:

**Table 5: Burden Hour/Burden Cost to the Federal Government for Practitioner Conduct and Discipline**

IC Number	Information Collection Instrument	Estimated Response Time (hours) (a)	Estimated Annual Responses (b)	Estimated Annual Burden Hours (a) x (b) = (c)	Rate (\$/hr) (d)	Total Cost (\$/hr) (c) x (d) = (e)
1	Recordkeeping Maintenance & Disclosure	0	10,825	0	\$0.00	\$0.00
2	Recordkeeping Maintenance Regarding Practitioners Under Suspension or Exclusion from the USPTO	0	40	0	\$0.00	\$0.00
3	Complaint/Violation Reporting and Disclosure	6	200	1,200	\$112.31	\$134,772.00
	Director	16		3,200	\$78.60	\$251,520.00
	Staff Attorneys	7		1,400	\$52.34	\$73,276.00
	Paralegal	2		400	\$55.14	\$22,056.00
	Administrator	3		600	\$67.89	\$40,734.00
	Analyst	6		1,200	\$36.09	\$43,308.00
	Clerk					
	<b>TOTAL</b>	<b>-----</b>	<b>11,065</b>	<b>8,000</b>	<b>-----</b>	<b>\$565,666.00</b>

## 15. Reason for Change in Burden

### Summary of Changes Since the Previous Renewal

OMB previously approved this information collection in April of 2013 with 10,766 responses, 11,926 burden hours, and \$552 in annual (non-hour) costs. For this proposed renewal, the USPTO estimates that the total annual responses will be 11,065 and the total annual burden hours will be 12,225. This increase of 299 responses and 299 burden hours is due to administrative adjustments.

The currently approved annual (non-hour) cost burden for this collection is \$552. For this renewal, the USPTO estimates that the total annual (non-hour) costs will be \$1,083.05. This increase of \$531.05 is due to administrative adjustments.

### Changes since the 60-Day Notice Publication

When the 60-day notice for this renewal published on June 19, 2015, it used the 2013 AIPLA Report of the Economic Survey to arrive at the hourly rates for the agents and practitioners who would be completing items in this information collection. Since that time, AIPLA released the 2015 Report of the Economic Survey, which increased the hourly rates for both of those two groups. As such, the new hourly rates have been integrated into this document where applicable and the hourly cost burden has been adjusted accordingly.

### Change in Respondent Cost Burden

The total respondent cost burden for this collection has increased by \$635,861, from \$3,191,412 to \$3,827,273, from the previous renewal of this collection in September of 2010 due to:

- **Increase in estimated hourly rates for agents, practitioners, and members of the public.** In 2013, this collection estimated an hourly rate of \$263 for agents, \$371 for practitioners, and \$228 for a combination of attorneys, paralegals/paraprofessionals, and scientists/engineers to prepare the items in this collection. For this renewal, all three of those rates have increased; the hourly rate for agents is estimated to be \$307, the hourly rate for practitioners is estimated to be \$410, and the hourly blended rate for the individuals preparing the complaint/violation reporting is estimated to be \$284.83.
- **Increase in estimated burden hours.** The total estimated burden hours have increased from 11,926 in the 2013 renewal to 12,225 for the current submission due to an overall increase in the number of estimated annual responses.

### Changes in Responses and Burden Hours

For this renewal, the USPTO estimates that the total annual responses will increase by 299 (from 10,766 to 11,065) and the total burden hours will increase by 299 (from 11,926 to 12,225) from the currently approved burden for this collection. These changes are due to the following administrative adjustments:



- **Increase of 299 estimated annual responses.** The USPTO estimates that the Recordkeeping Maintenance and Disclosure information collection item will receive an additional 299 annual responses annually over the three-year period covered by this renewal request. This adjustment caused the number of burden hours for this item to rise by 299; since this item was the only one to experience an adjustment in either responses or response time, this increase led to the overall increases in both responses and burden hours.

#### Changes in Annual (Non-Hour) Cost Burden

For this renewal submission, the USPTO estimates that the annual (non-hour) costs will increase by \$531.05, from \$552 to \$1,083.05, due to an administrative adjustment, as follows:

- **Increase in postage costs.** This collection is currently approved with a total of \$552 in postage costs. For this renewal, the USPTO estimates that postage costs will increase to \$1,083.05 as an administrative adjustment. This increase is due to an increase in the postage rates used to calculate the cost of submitting a single instance of the Recordkeeping Maintenance Regarding Practitioners Under Suspension or Exclusion from the USPTO and the Complaint/Violation and Disclosure Reporting items.

#### Changes in Federal Government Cost Burden

For this renewal submission, the USPTO estimates that the federal government cost burden for processing the items in this collection will decrease by \$55,040.00, from \$620,706.00 to \$565,666.00, due to an administrative adjustment, as follows:

- **Adjustments to federal wage rates.** This collection includes adjustments made to federal wage rates to represent the accurate hourly wages for the individuals responsible for the items in this collection. These adjustments corrected a previously-high federal cost burden which has been adjusted for this collection.

#### **16. Project Schedule**

There is no plan to publish this information for statistical use.

#### **17. Display of Expiration Date of OMB Approval**

There are no forms in this information collection. Therefore, the display of the OMB Control Number and the expiration date is not applicable.

#### **18. Exception to the Certificate Statement**

No exceptions to the certificate statement are included in this collection of information.

**B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS**

This collection of information does not employ statistical methods.