Supporting Statement for
Evidence From Statutorily Excluded Medical Sources (RIN 0960-AH92)
20 C.F.R. 404.1503b, 416.903b
OMB No. 0960-NEW

A. Justification

1. Introduction/Authoring Laws and Regulations

The *Bipartisan Budget Act of 2015 (BBA)*, Section *812* ("Exclusion of certain medical sources of evidence") mandates that the Social Security Administration (SSA) exclude evidence in disability decisions from certain medical sources. *BBA* Section *812* will amend section *223(d)(5)* of the *Social Security Act (Act)* by adding a subsection "C."

Section *223(d)(5)(C)* of the *Act*, as amended, requires SSA to exclude evidence (except for good cause) from medical sources: (1) convicted of a felony under sections *208 or 1632* of the *Act*; (2) excluded from participating in any Federal health care program under section *1128* of the *Act*; or (3) imposed with a civil monetary penalty (CMP), assessment, or both, for submitting false evidence, under section *1129* of the *Act*.

Pursuant to its broad authority to regulate under sections *205(a)*, *702(a)(5)*, and *1631(d)(1)* of the *Act*, SSA proposes to implement section *223(d)(5)(C)*, as amended, through new regulations, *20 CFR 404.1503b* and *416.903b*. These proposed, new regulations will require statutorily excluded medical sources to self-report their excluded status in writing each time they submit evidence related to a claim for benefits under *Titles II* or *XVI* of the *Act*. Statutorily excluded medical sources' duty to self-report their excluded status will apply to evidence they submitted to SSA directly or through a representative, claimant, or other individual or entity.

This information collection request (ICR) is for the information collection requirements of *BBA* Section *812*, as explained in a Notice of Proposed Rulemaking for *BBA 812*, published on June 10, 2016 at 81 FR 37557.

Per the BBA, SSA must finalize the regulation, and implement the provision by November 2, 2016. We are submitting this ICR for preliminary review now, post-publication of the NPRM. We will resubmit for OMB approval after the publication of the Final Rule.

2. Description of Collection

The Revisions to Rules Regarding the Evidence From Statutorily Excluded Medical Sources, RIN 0960-AH92, contains the following public reporting burdens:

- **20 CFR 404.1503b** – This regulatory section requires sources excluded by section *223(d)(5)(C)* of the *Act*, as amended, to self-report their exclusion, in writing, each time they submit evidence related to a claim for benefits under Titles II or XVI of the Act. This duty applies to evidence submitted to SSA directly or through a representative, claimant, or other individual or entity. In their written

self-report, all excluded medical sources must include: (1) the heading, "WRITTEN STATEMENT REGARDING SECTION 223(d)(5)(C) OF THE SOCIAL SECURITY ACT – DO NOT REMOVE[,]" (2) their name and title, and (3) the applicable excluding event (i.e., felony conviction under sections *208* or *1632*, section *1128* exclusion, or CMP or assessment (or both) under section *1129* for submitting false evidence). Felons must also include their date of conviction. Those imposed with a CMP, assessment, or both, must provide the date(s) of imposition. Sources excluded under section *1128* must include: (1) the basis of their exclusion, (2) its effective date and anticipated length, and (3) whether the Department of Health & Human Services' Office of Inspector General (HHS' OIG) waived it. There is no form for this request. Statutorily excluded medical sources create their own writing, within the regulatory parameters, and submit it to SSA or State agency (DDS) employees. They do not need information from someone else to create the writing. No one may remove a statutorily excluded medical source's written report of exclusion. SSA may also ask statutorily excluded medical sources to provide additional information or clarify already-provided information.

- **20 CFR 416.903b** – This regulatory section requires sources excluded by section *223(d)(5)(C)* of the *Act*, as amended, to self-report their exclusion, in writing, each time they submit evidence related to a claim for benefits under Titles II or XVI of the Act. This duty applies to evidence submitted to SSA directly or through a representative, claimant, or other individual or entity. In their written self-report, all excluded medical sources must include: (1) the heading, "WRITTEN STATEMENT REGARDING SECTION 223(d)(5)(C) OF THE SOCIAL SECURITY ACT – DO NOT REMOVE[,]" (2) their name and title, and (3) the applicable excluding event (i.e., felony conviction under sections *208* or *1632*, section *1128* exclusion, or CMP or assessment (or both) under section *1129* for submitting false evidence). Felons must also include their date of conviction. Those imposed with a CMP, assessment, or both, must provide the date(s) of imposition. Sources excluded under section *1128* must include: (1) the basis of their exclusion, (2) its effective date and anticipated length, and (3) whether the Department of Health & Human Services' Office of Inspector General (HHS' OIG) waived it. There is no form for this request. Statutorily excluded medical sources create their own writing, within the regulatory parameters, and submit it to SSA or State agency (DDS) employees. They do not need information from someone else to create the writing. No one may remove a statutorily excluded medical source's written report of exclusion. SSA may also ask statutorily excluded medical sources to provide additional information or clarify already-provided information.

We will inform the public of these requirements through a Fact Sheet we send to them (submitted for approval as part of this ICR), or through our Website. In addition, we will provide a sample statement as a template the affected medical sources can use to create their own written statements. The respondents for this collection are medical sources that (1) meet one of the exclusionary categories set forth in section *223(d)(5)(C)* of the *Act*, as

amended, and (2) furnish evidence related to a claim for benefits under *Titles II* or *XVI* of the *Act*.

3. **Use of Information Technology to Collect the Information**
   Given the low number of expected respondents (approximately 50 per year), SSA has no printed form and plans to collect this information via paper only (i.e., through the written self-report of medical sources excluded under section *223(d)(5)(C)* of the *Act*, as amended). SSA did not create an electronic version of the written, self-report under its Government Paperwork Elimination Act (GPEA) plan because it estimates only 50 respondents (approximately) will create the written, self-reports annually. This is less than the GPEA cut-off of 50,000.

4. **Why We Cannot Use Duplicate Information**
   The nature of the information SSA collects and the manner in which we collect it precludes duplication. SSA does not use another collection instrument to obtain similar data.

5. **Minimizing Burden on Small Respondents**
   The collection does not significantly affect small businesses or other small entities.

6. **Consequences of Not Colleting Information or Collecting it Less Frequently**
   Without providing the information requested in *20 CFR 404.1503b* and *416.903b*, medical sources excluded under section *223(d)(5)(C)* of the *Act*, as amended, will not meet their regulatory requirement to self-report their excluded status, in writing, each time they submit evidence related to a claim for benefits under *Titles II* or *XVI* of the *Act*. Additionally, because we have no other feasible way to collect the information, we cannot collect it less frequently. There are no technical or legal obstacles to burden reduction.

7. **Special Circumstances**
   Because we have no other feasible way to collect the information, we require medical sources excluded under section *223(d)(5)(C)* of the Act, as amended, to self-report their excluded status, in writing, each time they submit evidence related to a claim for benefits under *Titles II* or *XVI* of the *Act*. As such, we may require affected medical sources to self-report their excluded status more often than on a quarterly basis. We may also require these affected medical sources to prepare a written response to this information collection (IC) in fewer than 30 days after receipt of it.

8. **Solicitation of Public Comment and Other Consultations with the Public**
   SSA published a notice of proposed rulemaking (NPRM) in the Federal Register on June 10, 2016, at 81 FR 37557. If we receive any comments in response to the NPRM, we will forward them to OMB. When we publish the Final Rule, we will re-submit this ICR for formal approval of the information collection requirements described within.

9. **Payment or Gifts to Respondents**
   SSA does not provide payments or gifts to the respondents.

10. Assurances of Confidentiality

SSA protects and holds confidential the information it collects in accordance with *42 USC 1306, 20 CFR parts 401* and *402, 5 USC 552* (Freedom of Information Act), *5 USC 552a* (Privacy Act of 1974), and OMB Circular No. A-130.

11. Justification for Sensitive Questions

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

12. Estimates of Public Reporting Burden

Regulation Section(s)	Number of Respondents	Frequency of Response	Average Burden Per Response (minutes)	Estimated Annual Burden (hours)
404.1503b(c) 416.903b(c)	50	60	20	1,000

The total annual burden for this information collection is **1,000 hours**. This figure represents burden hours and we did not calculate a separate cost burden.

13. Annual Cost to Respondents

Any cost burden this information collection imposes (e.g., postal costs for mailing in the required information) is negligible.

14. Annual Cost to Federal Government

The annual cost to the Federal Government is negligible.

15. Program Changes or Adjustments to the Information Collection Request

This new information collection increases the public reporting burden. See #12 above for updated burden figures.

16. Plans for Publication of Information Collection Results

SSA will not publish the results of the information collection.

17. Displaying the OMB Approval Expiration Date

Regarding the IC for *20 CFR 404.1503b* and *416.903b*, for the paper fact sheet SSA intends to send to statutorily excluded medical sources upon the occurrence of their exclusion, we will not publish the OMB approval expiration date. OMB granted an exemption from the requirement to print the OMB expiration date on its program forms. SSA produces millions of public-use forms with life cycles exceeding those of an OMB approval. Since SSA does not periodically revise and reprint its public-use forms (e.g., on an annual basis), OMB granted this exemption so SSA would not have to destroy stocks of otherwise useable forms with expired OMB dates, avoiding Government waste.

For the public webpage containing information related to section *223(d)(5)(C)* of the *Act*, as amended, SSA is not requesting an exception to the requirement to display the OMB approval expiration date.

18. Exception 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

SSA does not use statistical methods for this IC.