

**Supporting Statement for the HA-85, HA-86, and Regulations  
Request to Withdraw a Hearing Request; Request to Withdraw an Appeals Council  
Request for Review; and Administrative Review Process for  
Adjudicating Initial Disability Claims  
20 CFR Parts 404, 405, and 416  
OMB No. 0960-0710**

**A. Justification**

**1. Introduction/Authoring Laws and Regulations**

The *Social Security Act (Act)* provides direction for individuals applying for disability, disability insurance benefits (DIB), and or Supplemental Security Income (SSI) based on disability or blindness. Section 205(a) of the *Act* permits us to make rules and regulations necessary or appropriate to carry out the functions of the Social Security Administration (SSA). The rules allowing SSA to collect information to establish: (1) the claimant's right to administrative review and (2) the severity of the claimant's alleged impairments are located in 20 CFR Parts 404, 405, and 416. The rules do not significantly alter these activities, but they do affect the manner in which SSA collects some of the information. The rules allowing SSA to collect information to establish the claimant's right to administrative review also include requests to withdraw a hearing request, and requests to withdraw an Appeals Council request for review.

**2. Description of Collection**

Claimants have a statutory right under the *Act* and current regulations to apply for Social Security DIB or SSI payments. SSA must collect information from each step of the administrative review process to adjudicate claims fairly and efficiently. SSA collects this information to establish a claimant's right to administrative review and the severity of the claimant's alleged impairments. SSA uses the information to determine entitlement or continuing eligibility to DIB or SSI payments, and to enable appeals of these determinations. The respondents are applicants for Title II DIB or Title XVI SSI payments; their appointed representatives; legal advocates; medical sources; and schools.

The following regulations pertain to pre-hearing and post-hearing conferences:

- **20 CFR 404.961, 416.1461, 405.330, and 405.366** stipulate how an individual may request a pre-hearing or post-hearing conference.

The following regulations pertain to presenting evidence at a hearing, and the issuing of subpoenas:

- **20 CFR 404.950, 416.1450, and 405.332** explain an individual's right to present evidence at a hearing, including the subpoena process.

- **20 CFR 405.372(c)** explains an applicant's right to submit additional evidence to the Appeals Council; the Council will only consider the additional evidence if it meets certain criteria.
- **20 CFR 405.1(c)(2)** explains the requirement for applicants to provide evidence to support their claim when they appeal SSA's decisions.

The following regulations pertain to written and oral arguments in addition to pre-hearing statements:

- **20 CFR 404.949 and 404.1449** stipulate an individual's (or designated representatives') rights to appear before an administrative law judge to present an oral or written statement of a case.
- **20 CFR 405.334** stipulates how an individual (or designated representative) may, at any time before the hearing begins, submit a pre-hearing statement with an explanation of the alleged disability.

The following regulations pertain to dismissals of requests for hearing before an administrative law judge, including requests to withdraw a request for hearing, and the notice of dismissal:

- **20 CFR 404.957, 416.1457, and 405.380** explain the conditions under which an administrative law judge may dismiss a request for hearing.
- **20 CFR 405.381** outlines the contents of the notice of dismissal and the procedures for requesting Appeals Council review of the dismissal decision.

The following regulations pertain to administrative procedures before the Appeals Council, including claims dismissed by an administrative law judge:

- **20 CFR 405.401** explains procedures for requesting review of a hearing decision or a dismissal of a hearing request and the conditions under which the Appeals Council will consider new evidence.

The following regulations pertain to dismissals of requests for review by the Appeals Council, including requests to withdraw a request for review:

- **20 CFR 404.971 and 416.1471** explain the conditions under which the Appeals Council may dismiss a request for review. These regulations also allow the claimants to use Forms HA-85 and HA-86. The information obtained on the completed HA-85 and HA-86 establishes a legally sufficient written record of the request of the party to withdraw their request for a hearing or their request for review.

The following regulations pertain to the extension of time for filing an action in a Federal district court:

- **20 CFR 404.982, 416.1482, and 405.505** inform individuals who file for an extension of time to file a civil action must do so with the Appeals Council.
- **20 CFR 405.20** informs individuals who want extensions past the deadline to request administrative or judicial review, to establish good cause for missing the deadline.

The following regulations outline the conditions under which we may reopen a final decision or determination:

- **20 CFR 404.987, 416.1487, 20 CFR 404.988, 416.1488, and 405.601** explain the procedure for reopening a final determination or decision, and the reasons an individual may use to reopen a final determination or decision.

The following regulations pertain to applicants who are dissatisfied with SSA's final decision:

- **20 CFR 405.1(b)(5) and 405.372(b)** explain procedures for applicants who pursued their claims through all levels of administrative process and are dissatisfied with SSA's final decision may request judicial review by filing an action in Federal district court within the stated time period.

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

For those regulation citations requiring submission of evidence, we rely on the availability of the electronic disability system, Electronic Records Express (OMB Control No. 0960-0753), which provide for enhanced data and evidence collection through electronic means. An increasing number of advocates and medical sources transmit medical and non-medical records to us electronically. We estimate approximately 20% of all respondents use Electronic Records Express for the regulation citations *404.950, 416.1450, 405.322, and 405.1(c)(2)*. In addition, we estimate approximately 84% of the appointed representative respondents use the Appointed Representative Services through SSA's website to submit evidence through Electronic Records Express for the regulation citations *404.949, 404.1449, 405.344, and 405.372(c)*. At this time, SSA will not make the HA-85 or HA-86 available electronically under the Government Paperwork Elimination Act due to the low volume of respondents.

4. **Why We Cannot Use Duplicate Information**

The nature of the information we collect and the manner in which we collect it preclude duplication. SSA does not use another collection instrument to obtain similar data.

5. **Minimizing Burden on Small Respondents**

The collection of medical information involves several types of medical providers, including physicians, psychologists, hospitals, clinics, and schools. These medical providers may or may not be a part of a small business or entity. The same is true of non-medical information provided by legal advocates. We only collect the information we need to make a disability determination, so, in this way, we have minimized the burden on small businesses or entities to the maximum extent possible. The Federal government pays for many costs associated with developing the claimant's record. Others who provide information may charge fees to perform this service for profit, not as a public service.
6. **Consequence of Not Collecting Information or Collecting it Less Frequently**

If we did not conduct the information collection requirements of these regulations, we would have no way to adjudicate claims for disability as provided by the *Act*. Because we only collect the information when we need to make disability determinations, we cannot collect it less frequently. There are no technical or legal obstacles to burden reduction.

Concerning the HA-85 and HA-86, if we did not collect the information, it could disrupt the Hearing or Appeals Council's review processes, as it ensures that claimants understand the effect of withdrawing their request for hearing or review. Because we only collect this information in very limited situations, we cannot collect it less frequently. There are no technical or legal obstacles that prevent burden reduction.
7. **Special Circumstances**

There are no special circumstances that would cause SSA to conduct this information collection in a manner inconsistent with *5 CFR 1320.5*.
8. **Solicitation of Public Comment and Other Consultations with the Public**

The 60-day advance Federal Register Notice published on July 5, 2016, at 81 FR 43691, and we received no public comments. SSA published the second Notice on September 12, 2016, at 81 FR 62788. If we receive comments in response to the 30-day Notice, we will forward them to OMB. We did not consult with the public in the revision of this information collection.
9. **Payment or Gifts to Respondents**

SSA provides remuneration to respondents in accordance with the law. Otherwise, SSA provides no gifts to respondents.
10. **Assurances of Confidentiality**

SSA protects and holds confidential the information it collects 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**

One may consider some of the information required sensitive. The Privacy Act protects this information and only necessary SSA personnel and security-cleared contractors will see it.

12. **Estimates of Public Reporting Burden**

20 CFR Section Number	Number of Respondents	Frequency of Response	Average Burden Per Response (minutes)	Estimated Annual Burden (hours)
404.961, 416.1461, 405.330, and 405.366	12,220	1	20	4,073
404.950, 416.1450, and 405.332	1,040	1	20	347
404.949 and 416.1449	2,868	1	60	2,868
405.334	20	1	60	20
404.957, 416.1457, and 405.380	21,041	1	10	3,507
405.381	37	1	30	19
405.401	5,310	1	10	885
404.971 and 416.1471 (HA-85; HA-86)	1,606	1	10	268
404.982 and 416.1482	1,687	1	30	844
404.987 & 404.988 and 416.1487 & 416.1488 and 405.601	12,425	1	30	6,213
405.372(c)	5,310	1	10	885
405.1(b)(5) 405.372(b)	833	1	30	417
405.505	833	1	30	417
405.1(c)(2)	5,310	1	10	885
405.20	5,310	1	10	885
<b>Totals</b>	<b>75,850</b>			<b>22,533</b>

The total burden for the ICR is **22,533** hours. This figure represents burden hours, and we did not calculate a separate cost burden.

13. **Annual Cost to the Respondents (Other)**  
This collection does not impose a known cost burden on the respondents.
14. **Annual Cost To Federal Government**  
SSA has no employees for whom their only or main duty is collecting and processing the information. Any time spent by an administrative law judge or support staff in collecting or processing the information related to these regulations would be a very small part of their total daily work activities. We lack reliable and accurate ways to estimate the amount of time employees spend collecting or processing the information.  
  
For the HA-85 and HA-86, the annual cost to the Federal Government is approximately \$500 for printing and distributing the collection instrument and for collecting the information.  
  
SSA will only provide a PDF version available for download on the agency's website. Therefore, we are estimating a small amount to cover the possibility that it may cost money to print the forms within the next three years.
15. **Program Changes or Adjustments to the Information Collection Request**  
There are no changes to the public reporting burden.
16. **Plans for Publication Information Collection Results**  
SSA will not publish the results of the information collection.
17. **Displaying the OMB Approval Expiration Date**  
SSA is not requesting an exception to the requirement to display an expiration date.
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 employing statistical methods**

SSA does not use statistical methods for this information collection.