

**Supporting Statement for Rules of Conduct and Standards of Responsibility for
Appointed Representatives
20 CFR 404.1740(b)(5), 404.1740(b)(6), 404.1740(b)(9), 416.1540(b)(5),
416.1540(b)(6), and 416.1540(b)(9)
OMB No. 0960-NEW**

A. Justification

1. Introduction/Authoring Laws and Regulations

The statutory authority for this collection is in the *Social Security Act (Act)* at sections 205(a) and 1631(d)(1). Section 205(a) of the Act authorizes the Commissioner to “make rules and regulations and to establish procedures, not inconsistent with the provisions of this title, which are necessary or appropriate to carry out such provisions.” Section 1631(d)(1) of the Act incorporates section 205(a) and applies it to *Title XVI* of the Act. Additionally, sections 206(a) and 1631(d)(2) of the Act provide that the Commissioner has the authority to establish rules and regulations governing the recognition of individuals who represent claimants before the Commissioner.

Those claiming rights or benefits under the Act may appoint an individual to represent them before the Social Security Administration (SSA). These appointed representatives may be attorneys or non-attorneys (see 20 CFR 404.1705 and 416.1505 for representative qualifications) and must adhere to a code of conduct set out in SSA’s regulations at 20 CFR 404.1740 and 416.1540. This code of conduct includes a set of affirmative duties that representatives must perform and a list of prohibited actions. SSA is changing the affirmative duties for representatives to include:

- 20 CFR 404.1740(b)(5) and 416.1540(b)(5) – Notifying SSA in writing if the representative’s employee or any individual contracting with the representative drafted, prepared, or issued a medical or vocational opinion about a claimant’s disability or if the representative referred or suggested that the claimant seek an examination from, treatment by, or the assistance of the individual providing opinion evidence;
- 20 CFR 404.1740(b)(6) and 416.1540(b)(6) – Disclosing to SSA in writing immediately if the representative discovers that his or her services are or were used by the claimant to commit fraud;
- 20 CFR 404.1740(b)(7) and 416.1540(b)(7) – Disclosing to SSA in writing whether the representative has been disbarred or suspended from any bar or court;
- 20 CFR 404.1740(b)(8) and 416.1540(b)(8) – Disclosing to SSA in writing whether the representative is or has been disqualified from participating in or appearing before any Federal program or agency; and
- 20 CFR 404.1740(b)(9) and 416.1540(b)(9) – Disclosing to SSA in writing whether the representative has been removed from practice or suspended by a professional licensing authority for reasons that reflect on the representative’s character, integrity, judgement, reliability, or fitness to serve as a fiduciary.

We are making these changes to our Regulations to better protect the integrity of SSA’s

administrative process and further clarify representatives' currently existing responsibilities in their conduct with SSA. We published these revised Regulations in a Notice of Proposed Rulemaking, RIN 0960-AH63, on August 16, 2016, at 81 FR 54520.

2. Description of Collection

Individuals appointed to represent claimants before SSA must report to SSA in writing whenever one of the following situations in our revised regulations occurs:

- **20 CFR 404.1740(b)(5) and 416.1540(b)(5)** – This regulatory section requires representatives to notify SSA in writing, at the time a medical or vocational opinion is submitted, or as soon as the representative is aware of the submission to us, if the representative's employee or any individual contracting with the representative drafted, prepared, or issued a medical or vocational opinion about a claimant's disability, or if the representative referred or suggested that the claimant seek an examination from, treatment by, or the assistance of the individual providing opinion evidence;
- **20 CFR 404.1740(b)(6) and 416.1540(b)(6)** – This regulatory section requires representatives to disclose to SSA in writing immediately if the representative discovers that his or her services are or were used by the claimant to commit fraud;
- **20 CFR 404.1740(b)(7) and 416.1540(b)(7)** – This regulatory section requires representatives to disclose to SSA in writing whether the representative has been disbarred or suspended from any bar or court;
- **20 CFR 404.1740(b)(8) and 416.1540(b)(8)** – This regulatory section requires representatives to disclose to SSA in writing whether the representative is or has been disqualified from participating in or appearing before any Federal program or agency; and
- **20 CFR 404.1740(b)(9) and 416.1540(b)(9)** – This regulatory section requires representatives to disclose to SSA in writing whether the representative has been removed from practice or suspended by a professional licensing authority for reasons that reflect on the representative's character, integrity, judgment, reliability, or fitness to serve as a fiduciary.

A representative's obligation to report these events is ongoing, and a representative must report any time one or more of these events occurs. We consider this information essential to ensure the integrity of our administrative process and to safeguard the rights of all claimants. Representatives must notify SSA in writing, but there is no prescribed format for these reports. The respondents are individuals appointed to represent claimants before SSA.

3. Use of Information Technology to Collect the Information

SSA did not create an electronic version of this collection under the agency's Government Paperwork Elimination Act (GPEA) plan because we expect only 43,660 respondents to provide this information annually. This is less than the GPEA cut-off of 50,000.

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

This information collection does not significantly affect small businesses or other small entities.

6. Consequence of Not Collecting Information or Collecting it Less Frequently

If we do not collect the information described in this collection, we will be seriously limited in our ability to protect SSA's programs from fraud and abuse. Additionally, our regulations at *20 CFR 404.1740* and *416.1540* require us to collect this information. Because we only collect the information once per occurrence, we cannot collect it less frequently. There are no technical or legal obstacles to 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

SSA published a notice of proposed rulemaking (NPRM) in the Federal Register on August 16, 2016, at 81 FR 54520. 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 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

Regulation Citations	Number of Respondents	Frequency of Response	Average Burden Per Response (minutes)	Estimated Annual Burden (hours)
404.1740(b)(5)/ 416.1540(b)(5)	43,600	1	5	3,633
404.1740(b)(6)/ 416.1540(b)(6)	50	1	5	4
404.1740(b)(7)/ 416.1540(b)(7)	50	1	5	4
404.1740(b)(8)/ 416.1540(b)(8)	10	1	5	1
404.170(b)(9)/ 416.1540(b)(9)	10	1	5	1
Totals	43,720			3,643

The total burden for this information collection request is 3,643 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

The annual cost to the Federal Government is approximately \$910,602. This estimate is a projection of the costs for receiving and storing the information and for taking appropriate actions based on the reports.

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 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 of Information Employing Statistical Methods

SSA does not use statistical methods for this information collection.