

**Supporting Statement for Revisions to 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. 0960-0803**

**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 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) – Disclose in writing, at the time a medical or vocational opinion is submitted to SSA or as soon as the representative is aware of the submission to SSA, if the representative’s employee or any individual contracting with the representative drafted, prepared, or issued the medical or vocational opinion, 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) – Disclose to SSA immediately if the representative discovers that his or her services are or were used by the claimant to commit fraud against SSA;
- 20 CFR 404.1740(b)(7) and 416.1540(b)(7) – Disclose to SSA whether the representative is or has been disbarred or suspended from any bar or court;
- 20 CFR 404.1740(b)(8) and 416.1540(b)(8) – Disclose to SSA 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) – Disclose to SSA 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 Final Rule, RIN 0960-AH63, on \_\_\_\_\_, 2018, at 83 FR \_\_\_\_\_.

## 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 disclose to SSA in writing, at the time a medical or vocational opinion is submitted to SSA, 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 immediately if the representative discovers that his or her services are or were used by the claimant to commit fraud against SSA;
- **20 CFR 404.1740(b)(7) and 416.1540(b)(7)** – This regulatory section requires representatives to disclose to SSA whether the representative is or has been disbarred or suspended from any bar or court to which he or she was previously admitted to practice, including instances in which a bar or court took administrative action to disbar or suspend the representative in lieu of disciplinary proceedings; If the disbarment or suspension occurs after the appointment of the representative, the representative will immediately disclose the disbarment or suspension to SSA;
- **20 CFR 404.1740(b)(8) and 416.1540(b)(8)** – This regulatory section requires representatives to disclose to SSA whether the representative is or has been disqualified from participating in or appearing before any Federal program or agency, including instances in which a Federal program or agency took administrative action to disqualify the representative in lieu of disciplinary proceedings. If the disqualification occurs after the appointment of the representative, the representative will immediately disclose the disqualification to SSA; and
- **20 CFR 404.1740(b)(9) and 416.1540(b)(9)** – This regulatory section requires representatives to disclose to SSA 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. If the removal or suspension occurs after the appointment of the representative, the representative will immediately disclose the removal or

suspension to SSA.

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, and we received no public comments pertaining to our time estimate or the collection of this information. SSA published the Final Rule in the Federal Register on \_\_\_\_\_, 2018, at 83 FR \_\_\_\_\_. If we receive any comments in response to the Final Rule, we will forward them to OMB.

**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**

<b>Regulation Citations</b>	<b>Number of Respondents</b>	<b>Frequency of Response</b>	<b>Average Burden Per Response (minutes)</b>	<b>Estimated Annual Burden (hours)</b>
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
<b>Totals</b>	<b>43,720</b>			<b>3,643</b>

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 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.