

**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 insurance benefits (DIB), and 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). These rules allow SSA to collect information to establish: (1) the claimant's right to administrative review; and (2) the severity of the claimant's alleged impairments 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 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 hearings 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 an administrative law judge dismissed:

- **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 Appeals Council review, 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 Form HA-85, Request to Withdraw a Hearing Request, and HA-86, Request to Withdraw an Appeals Council Request for Review. 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.

The following regulations pertain to representatives who require a reminder that it is their responsibility to make good faith efforts to obtain information or evidence that the claimant must submit for consideration under our regulations:

- **20 CFR 404.1740(b)(1) and 416.1540(b)(1)** explains that representatives must act with reasonable promptness to help obtain the information or evidence that the claimant must submit under our regulations and forward the information or evidence to us for consideration as soon as practical.

The following regulations pertain to representatives who are consistently late in providing evidence 5 days before the hearing:

- **20 CFR 404.1512, 404.1740(c)(4), 416.912, and 416.1540(c)(4)** explains that representatives must inform us about, or submit, written evidence at least 5 days before the date of a scheduled hearing, and the representative must also make good faith efforts to obtain information or evidence that the claimant must submit for consideration under our regulations.

The respondents are applicants for Title II DIB or Title XVI SSI payments; their appointed representatives; legal advocates; medical sources; and schools.

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 provides 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 *20 CFR 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 *20 CFR 404.949, 404.1449, 405.344, and 405.372(c)*. Due to the low volume of respondents for Forms HA-85 & HA-86, these forms are not good candidates for electronic implementation.

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

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*. If we did not collect the information on the HA-85 and HA-86, 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 the information on an as needed basis, 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

The 60-day advance Federal Register Notice published on July 3, 2019, at 84 FR 31972, and we received no public comments. The 30-day FRN published on September 16, 2019 at 84 FR 48694. If we receive any comments in response to this Notice, we will forward them to OMB.

9. Payment or Gifts to Respondents

SSA provides remuneration to respondents in accordance with the law. Otherwise, SSA does not provide payments or 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

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

12. Estimates of Public Reporting Burden

20 CFR Section Number	Number of Respondents	Frequency of Response	Average Burden per Response (minutes)	Estimated Total Annual Burden (hours)	Average Theoretical Hourly Cost Amount (dollars)*	Total Annual Opportunity Cost (dollars)**
404.961, 416.1461, 405.330, and 405.366	12,220	1	20	4,073	\$10.22	\$41,626**
404.950, 416.1450, and 405.332	1,040	1	20	347	\$10.22	\$3,546**
404.949 and 416.1449	2,868	1	60	2,868	\$10.22	\$29,311**
405.334	20	1	60	20	\$10.22	\$204**
404.957, 416.1457, and 405.380	21,041	1	10	3,507	\$10.22	\$35,842**
405.381	37	1	30	19	\$10.22	\$194**
405.401	5,310	1	10	885	\$10.22	\$9,045**
404.971 and 416.1471 (HA-85; HA-86)	1,606	1	10	268	\$10.22	\$2,739**
404.982 and 416.1482	1,687	1	30	844	\$10.22	\$8,626**
404.987 & 404.988 and 416.1487 & 416.1488 and 405.601	12,425	1	30	6,213	\$10.22	\$63,497**
404.1740(b)(1)	150	1	2	5	\$22.50	\$113**
416.1540(b)(1)	150	1	2	5	\$22.50	\$113**
404.1512, 404.1740(c) (4), 416.912, and	150	1	2	5	\$22.50	\$113**

416.1540(c)(4)						
405.372(c)	5,310	1	10	885	\$10.22	\$9,045**
405.1(b)(5)	833	1	30	417	\$10.22	\$4,262**
405.372(b)						
405.505	833	1	30	417	\$10.22	\$4,262**
405.1(c)(2)	5,310	1	10	885	\$10.22	\$9,045**
405.20	5,310	1	10	885	\$10.22	\$9,045**
Totals	76,300			22,548		\$230,628**

* We based these figures on average DI payments, as reported in SSA's disability insurance payment data, and average U.S. citizen's hourly salary, as reported by Bureau of Labor Statistics data.

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. **There is no actual charge to respondents to complete the application.**

The total burden for this ICR is **22,548** burden hours (reflecting SSA management information data), which results in an associated theoretical (not actual) opportunity cost financial burden of **\$230,628**. SSA does not charge respondents to complete our applications.

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 \$500. This estimate accounts for costs from the following areas: (1) designing, printing, and distributing the form; and (2) SSA employee (e.g., field office, 800 number, DDS staff) information collection and processing time.

15. Program Changes or Adjustments to the Information Collection Request

When we last cleared this IC in 2016, the burden was 22,533 hours. However, we are currently reporting a burden of 22,548 hours. This change stems an increase in the number of responses from 75,850 to 76,300. There is no change to the burden time per response. Although the number of responses changed, SSA did not take any actions to cause this change.

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.