

**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. 0960-0804**

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. On July 2, 2018, SSA published these revised regulations at 20 CFR 404.1740 and 416.1540 in a Final Rule, RIN 0960-AH63, at 83 FR 30849, and expanded 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.

The regulations do not prescribe a specific format for the representatives to submit the required disclosures under *20 CFR 404.1740(b)(5)-(9) and 416.1540(b)(5)-(b)(9)*. Accordingly, we have previously secured a new OMB approval for the collection of this information outside of an existing OMB-approved form, in July 2018. We are now requesting a renewal without changes to this existing collection.

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 is unable to create an Internet version of this information collection, as SSA does not collect the information through forms or any other standardized information collection. We will reassess this ability if and when technological advances are created that would allow for us to make this collection available via the Internet. In the meantime, we allow respondents to notify us via email or through our Representative Payee portal from mySocial Security.

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**

The 60-day advance Federal Register Notice published on March 1, 2021, at

86 FR 12068, and we received no public comments. The 30-day FRN published on June 1, 2021 at 86 FR 29348. If we receive any comments in response to this Notice, 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**

Regulation Citations	Number of Respondents	Frequency of Response	Average Burden Per Response (minutes)	Estimated Annual Burden (hours)	Average Theoretical Hourly Cost Amount (dollars)*	Total Annual Opportunity Cost (dollars)**
404.1740(b)(5)/ 416.1540(b)(5)	43,600	1	5	3,633	\$26.45*	\$96,093**
404.1740(b)(6)/ 416.1540(b)(6)	2	1	5	0	\$69.86*	\$0**
404.1740(b)(7)/ 416.1540(b)(7)	50*	1	5	4	\$69.86*	\$279**
404.1740(b)(8)/ 416.1540(b)(8)	10*	1	5	1	\$69.86*	\$70.00**
404.170(b)(9)/ 416.1540(b)(9)	10*	1	5	1	\$69.86*	\$70.00**
Totals	43,672			3,639		\$96,512**

*We based this figure on average hourly wages for paralegals/legal assistants and lawyers as posted by the U.S. Bureau of Labor Statistics (https://www.bls.gov/oes/current/oes_nat.htm).

These figures do not represent actual costs that SSA is imposing on representatives to complete the required disclosures; rather, these are theoretical opportunity costs for the additional time representatives or their employees and associates will spend to complete the required disclosures. **There is no actual charge to representatives to complete the required disclosures.

The total burden for this information collection request is **3,639 hours** (reflecting SSA management information data*), which results in an associated theoretical (not actual) opportunity cost financial burden of **\$96,512**. SSA does not charge representatives to

complete the required disclosures.

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 **\$104,839**. This estimate accounts for costs from the following areas:

Description of Cost Factor	Methodology for Estimating Cost	Cost in Dollars*
Designing and Printing the Form	Design Cost + Printing Cost	\$0
Distributing, Shipping, and Material Costs for the Form	Distribution + Shipping + Material Cost	\$0
SSA Employee (e.g., field office, 800 number, DDS staff) Information Collection and Processing Time	GS-9 employee x # of responses x processing time	\$104,839
Full-Time Equivalent Costs	Out of pocket costs + Other expenses for providing this service	\$0
Systems Development, Updating, and Maintenance	GS-9 employee x man hours for development, updating, maintenance	\$0
Quantifiable IT Costs	Any additional IT costs	\$0
Total		\$104,839

* We have inserted a \$0 amount for cost factors that do not apply to this collection.

SSA is unable to break down the costs to the Federal government further than we already have. First, since we work with almost every US citizen, we often do bulk mailings, and cannot track the cost for a single mailing. In addition, it is difficult for us to break down the cost for processing a single form, as field office and State Disability Determination Services staff often help respondents fill out several forms at once, and the time it takes to do so can vary greatly per respondent. As well, because so many employees have a hand in each aspect of our forms, we use an estimated average hourly wage, based on the wage of our average field office employee (GS-9) for these calculations. However, we have calculated these costs as accurately as possible based on the information we collect for creating, updating, and maintaining these information collections.

15. Program Changes or Adjustments to the Information Collection Request

When we last cleared this IC in 2018, the burden was 3,643 hours. However, we are currently reporting a burden of 3,639 hours. This change stems a decrease in the number of responses from 43,720 to 43,672. 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. These figures represent current Management Information data.

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.