

**Supporting Statement for Regulations Governing
Testimony by Employees and the Production of
Records and Information in Legal Proceedings
20 C.F.R. 403.100 – 403.155
OMB No. 0960-0619**

A. Justification

1. Introduction/Authoring Laws and Regulations

A Social Security Administration (SSA) employee can testify concerning any function of the agency, or any information or record created or acquired by SSA because of the discharge of its official duties in any legal proceeding in which the agency is not a party with the prior authorization of the Commissioner. SSA has authority to collect this information under *The Plain Writing Act of 2010*, *Pub. L. 117-274, 12 Stat. 2861*, as codified at *5 U.S.C. 301* note; *The Independent Offices Appropriations Act of 1952*, as codified at *31 U.S.C. 9701*; and *the Social Security Act (Act)*, as codified at *42 U.S.C. 902* and *1306*. These laws explain how individuals seeking testimony of an SSA employee must provide sufficient information about the testimony sought for the Commissioner (or designee) to authorize. In addition, the regulations at *20 CFR 403.100-403.155* establish SSA's policies and procedures applicable to requests for official agency information, records, or testimony in legal proceedings.

2. Description of Collection

Each year, SSA receives requests for testimony. Among other things, SSA regulations expressly prohibit any testimony except those approved by the Commissioner of Social Security. The regulations establish a procedure whereby an individual, organization, or government entity may request official agency information, records, or testimony in legal proceedings. An essential element of these regulations is the requirement that the requestor actually make the request for testimony to the Commissioner (or designee) in writing. The request must: (1) set out the nature and relevance of the testimony sought; (2) explain why the information is not available by other means; (3) explain why it is in our interest to provide the testimony; and (4) provide the date, time, and place for the testimony. The requestor must make the request in writing so the Commissioner (or designee) can properly and consistently evaluate the basis for the request, and the extent to which the testimony would further the objectives of the agency if it provides the testimony, as requested. Respondents are any individuals or entities who request testimony from our employees in connection with any legal proceeding.

3. Use of Information Technology to Collect the Information

SSA does not collect this information through forms or any other standardized information collection; therefore, we cannot create an electronic version for these regulatory requirements under the Government Paperwork Elimination Act. SSA obtains the information request through USPS; telephone conversations with the

recipient when we re-contact the representative payee for allegations of misuse; or through face-to-face interviews during an expanded monitoring program site visit where SSA staff visits the respondent.

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

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

5. **Minimizing Burden on Small Respondents**

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

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

If we did not collect this information, SSA would be unable to render informed decisions regarding requests made to the agency for information or testimony by employees. Because SSA collects this information on an as needed basis, the agency 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 August 20, 2021, at 86 FR 46897, and we received no public comments. The 30-day FRN published on October 26, 2021 at 86 FR 59262. If we receive any comments in response to this Notice, we will forward them to OMB. We did not consult with the public in the maintenance of this collection.

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.

Modality of Completion	Number of Respondents	Frequency of Response	Average Burden per Response (minutes)	Estimated Total Annual Burden (hours)	Average Theoretical Hourly Cost Amount (dollars)*	Average Wait Time in Field Office or for Teleservice Centers (minutes)**	Total Annual Opportunity Cost (dollars)***
20 CFR 403.100-403.155	100	1	60	100	\$27.07*	21**	\$3,654***

12. **Estimates of Public Reporting Burden**

* We based this figure on the average U.S. worker’s hourly wages, as reported by Bureau of Labor Statistics data (https://www.bls.gov/oes/current/oes_nat.htm#00-0000).

** We based this figure on averaging the average FY 2021 wait times for field office and teleservice centers, based on SSA’s current management information 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.**

Total Number of Respondents Who Visit a Field Office or for Teleservice Centers	Frequency of Response	Average One-Way Travel Time to a Field Office (minutes)	Estimated Total Travel Time to a Field Office (hours)	Total Annual Opportunity Cost for Travel Time (dollars)****
100	1	30	50	\$1,354

****We based this dollar amount on the Average Theoretical Hourly Cost Amount in dollars shown on the burden chart above.

Per OIRA, we include this travel time burden estimate under the 5 CFR 1320.8(a) (4), which requires us to provide “time, effort, or financial resources expended by persons [for]...transmitting, or otherwise disclosing the information,” as well as 5 CFR 1320.8(b)(3)(iii) which requires us to estimate “the average burden collection...to the extent practicable.” SSA notes that we do not obtain or maintain any data on travel times to a field office, nor do we have any data which shows that the average respondent drives to a field office, rather than using any other mode of transport. SSA also acknowledges that respondents’ mode of travel

and, therefore, travel times vary widely dependent on region, mode of travel, and actual proximity to a field office.

NOTE: We included the total opportunity cost estimate from this chart in our calculations when showing the total time and opportunity cost estimates in the paragraph below.

We base our burden estimates on current management information data, which includes data from actual interviews, as well as from years of conducting this information collection. Per our management information data, we believe that the average time in minutes listed in the chart above accurately shows the average burden per response for reading the instructions, gathering the facts, and answering the questions. Based on our current management information data, the current burden information we provided is accurate. The total burden for this ICR is **100** burden hours (reflecting SSA management information data), which results in an associated theoretical (not actual) opportunity cost financial burden of **\$5,008** 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 to the respondents.

14. **Annual Cost To Federal Government**

The annual cost to the Federal Government is approximately **\$35,960**. 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	\$1,093
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	\$34,167
Quantifiable IT Costs	Any additional IT costs	\$0
Total		\$35,960

* 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. It is difficult for us to break down the cost for processing a single form, as the time it takes to help respondents complete the documentation can vary greatly per respondent. In addition, 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**
There are no changes to the public reporting burden. We updated the figures to include the opportunity cost for the respondents' travel time; however, we made no other revisions to the overall burden for this information collection.
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 the OMB approval 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.