

Supporting Statement for Form SSA-437-BK
Complaint Form for Allegations of Discrimination in Programs or Activities
Conducted by the Social Security Administration
OMB No. 0960-0585

A. Justification

1. Introduction/Authoring Laws and Regulations

The SSA-437-BK obtains information from individuals who believe the operation of an agency-conducted program or activity violated their civil rights. As SSA offers federally conducted education and training programs and activities, it complies with *Executive Order 13166 (Improving Access to Services for Persons with Limited English Proficiency)* and *Executive Order 13160 (Nondiscrimination on the Basis of Race, Sex, Color, National Origin, Disability, Religion, Age, Sexual Orientation, and Status as a Parent in Federally Conducted Education and Training Programs)*. 5 U.S.C. 301, 29 U.S.C. 794(a), and 42 U.S.C. 902(a)(5) of the *United States Code (Code)* authorize Social Security Administration (SSA) to collect this information. Section 504(a) of the *Rehabilitation Act* and 29 U.S.C. 794(a) of the *Code* provides that an executive branch agency shall not discriminate based on disability in programs and activities the agency conducts. The Federal Housekeeping statute, 5 U.S.C. 301, authorizes an agency head to prescribe regulations for the government of the agency and the performance of agency business. In addition, Section 702(a)(5) of the *Social Security Act (Act)* (42 U.S.C. 902(a)(5)) authorizes the Commissioner of the Social Security Administration to prescribe such rules and regulations necessary or appropriate to carry out the functions of the agency. SSA's anti-discrimination program is also necessary to comply with the *Religious Freedom Restoration Act of 1993*, and, in circumstances raising due process considerations, the Fifth Amendment to the U.S. Constitution. Other pertinent anti-discrimination authorities that inform SSA's compliance program include the *Age Discrimination Act of 1975* and the *Civil Rights Act of 1964's* Title VI (race, color, national origin) and Title VII (sex, race, color, national origin, religion).

2. Description of Collection

When an individual believes SSA, or SSA employees, contractors, or agents, discriminated against them in connection with programs or activities conducted by SSA, they have the right to file a complaint. Respondents begin the complaint process by completing Form SSA-437-BK, which is available on SSA's website. Once complete, respondents have the option to either print and mail the form to SSA or submit it via e-mail. SSA collects information on Form SSA-437-BK to investigate and formally resolve complaints of discrimination based on disability, race, color, national origin (including limited English language proficiency), sex, sexual orientation, age, religion, or retaliation for having participated in a proceeding under this administrative complaint process in connection with an SSA program or activity. Individuals who believe SSA discriminated against them on any of the above bases may file a written complaint of discrimination.

SSA uses the information to: (1) identify the complaint; (2) identify the alleged discriminatory act; (3) establish the date of such alleged action; (4) establish the identity of any individual(s) with information about the alleged discrimination; and (5) establish other relevant information that would assist in the investigation and resolution of the complaint.

This form has no bearing on any right to pursue, obtain, or keep Social Security benefits. The civil rights complaint process and the use of this form is entirely voluntary. SSA will also accept a letter or other written communication in the alternative to this form. Individuals do not need to use this form or submit a letter or otherwise exhaust administrative remedies before filing a discrimination lawsuit in U.S. District Court. There is no survey associated with this form. Respondents can submit the form by mail or email. Respondents may fill out the form with help from a person they choose, such as a relative, friend, or lawyer. They will not need information from others to complete it. SSA uses its existing Microsoft Office software to collect and work with incoming complaints. The Respondents are individuals who believe SSA, or SSA employees, contractors, or agents, discriminated against them in connection with programs or activities conducted by SSA.

3. Use of Information Technology to Collect the Information

The SSA-437-BK is available as a fillable PDF on SSA's website. Individuals can fill out the form online. Once complete, respondents have the option to either print and mail the form to SSA or submit it via e-mail. In accordance with the Government Paperwork Elimination Act (GPEA) plan, SSA accepts Form SSA-437-BK, or other written communications via email. This collection does not currently have a fully public-facing Internet version, as we prioritized other information collections for full electronic conversions. Given that IT Mod programming is an ongoing, dynamic project, we cannot provide specific timelines for when we will be able to make any particular ICR available via Internet web-based application. We will ultimately convert most existing ICRs to full electronic versions depending on how they fall within our overall IT Mod schema, but this may be unconnected to the PRA approval lifecycle.

In the interim, we evaluated this collection for conversion to a submittable PDF. Given the high volume of conversions we are coordinating and the more urgent nature of some of the other conversions, we ultimately decided not to prioritize this ICR for conversion to fully submittable PDF at this time. When we are able to schedule this form for conversion to a submittable PDF, we will submit a Change Request to OMB to request prior approval.

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 significantly affect small businesses or other small entities.
- 6. Consequence of Not Collecting Information or Collecting it Less Frequently**
If we did not use Form SSA-437-BK, we would not be able to investigate incidents of alleged discrimination. We would also not be able to ensure that persons who allege discrimination due to any of the protected bases (disability, race, color, national origin (including limited English language proficiency), sex, sexual orientation, age, religion, or retaliation for having participated in a previous discrimination complaint) are not excluded from; denied the benefits of; or subjected to discrimination solely on the basis of disability in the programs and activities SSA conducts. Because we only collect this information on an as-needed basis, we cannot collect it less frequently. There are no technical or legal obstacles that prevent 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 June 30, 2022, at 87 FR 39153, and we received no public comments. The 30-day FRN published on September 20, 2022 at 87 FR 57551. 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 revision of this form.
- 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 nature of alleged discrimination by the individual may require SSA to ask questions of a sensitive nature. For example, SSA may ask individuals who alleged discrimination based on religion to identify their religion, or we may ask individuals who alleged discrimination based on disability to identify their disability. SSA only requests information directly relating to the allegations the individual raises, and that SSA deems necessary to fully investigate the complaint. SSA does not require an individual to file complaints of discrimination; however, if individuals choose to do so, and they want a decision on, or resolution of a complaint, we may, on occasion, request them to provide information they may otherwise consider sensitive.

12. Estimates of Public Reporting Burden

Please see the burden chart below:

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)*	Total Annual Opportunity Cost (dollars)**
SSA-437-BK	500	1	60	500	\$19.86*	\$9,930**

We based this figure by averaging both the average DI payments based on SSA's current FY 2022 data (<https://www.ssa.gov/legislation/2022factsheet.pdf>), and 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).

** 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.**

We base our burden estimates on current management information data, as well as from years of conducting this information collection. Per our management information data, we believe that **60** minutes 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 collection instrument is **500** burden hours (reflecting SSA management information data), which results in an associated theoretical (not actual) opportunity cost financial burden of **\$9,930**. 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 **\$7,500**. 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 of-	GS-9 employee x # of re-	\$4,080

Office, 800 number, DDS staff) Information Collection and Processing Time	responses x processing time	
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	\$3,420
Quantifiable IT Costs	Any additional IT costs	\$0*
Total		\$7,500

* 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 field office 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 2019, the burden was 255 hours. However, we are currently reporting a burden of 500 hours. This change stems from an increase in the number of responses from 255 to 500. 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

OMB granted SSA an exemption from the requirement to print the OMB expiration date on its program forms. SSA produces millions of public-use forms with life cycles exceeding those of an OMB approval. Since SSA does not periodically revise and reprint its public-use forms (e.g., on an annual basis), OMB granted this exemption so SSA would not have to destroy stocks of otherwise useable forms with expired OMB approval dates, avoiding Government waste.

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.