

**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 Social Security Disability Insurance (SSDI) benefits or Supplemental Security Income (SSI) payments 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 as per our regulations in Sections 20 *CFR* 404, 405, and 416 of the *Code of Federal Regulations*. 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 SSDI or SSI payments. When a respondent applies for either Title II SSDI benefits or Title XVI SSI payments, they receive directions from SSA during each step of the process, including the administrative review process. For this collection in particular, 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 respondents learn about these regulatory requirements through SSA's website, SSA field office and hearings office staff, and through some of our notices. For most of these regulatory requirements, we request the respondent submit the information in writing via mail; however, we also allow advocates and representative payees to submit the required evidence for the regulations under 20 *CFR* 404.950, 416.1450, 405.322, and 405.1(c)(2), and 20 *CFR* 404.949, 416.1449, 405.344, and 405.372(c) through our Electronic Records Express submissions application (OMB No. 0960-0753). In addition, for the requirements under 20 *CFR* 404.971 and 416.1471 respondents can submit their requests using the electronic form options (e85 & e86), or they can complete and mail their paper forms to SSA for processing.

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 416.1449** 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 benefits; their appointed representatives; legal advocates; medical sources; and schools.

### **3. Use of Information Technology to Collect the Information**

For the regulatory requirements under *20 CFR 404.971* and *416.1471*, this collection has public-facing fillable and submittable PDF versions (e85 & e86) which utilize *Adobe Sign* technology to accept and process an electronic signature (eSignature). The online submittable versions mirror the paper versions and provide respondents with an online service option as an alternative to mailing, faxing, or bringing the forms to an SSA field office. The respondents initiate the online version from our website and complete, electronically sign, and submit it online using the *Adobe Sign* web application. Use of the *Adobe Sign* web application does not present any added burden on respondents, nor does it require respondents to download and install the application locally on their device or pay any subscription or licensing fees. Respondents enter their responses into structured data fields on the screens within the *Adobe* platform by following a secure link that *Adobe Sign* sends to the email address the respondent provides. The respondent receives an email from *Adobe Sign* with instructions for how to access, complete, eSign, and submit the form using this online service. Upon submission, the online submittable version of the forms electronically transmits an image of the completed form to the Electronic Viewing System (eVIEW) for SSA technicians to process.

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, 416.1449, 405.344, and 405.372(c)*. When a respondent needs to submit evidence to SSA which we have no electronic means of collecting it, respondents mail the evidence to SSA for processing. Respondents do not need to travel to a Field Office to drop off documentation.

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 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 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 25, 2022, at 87 FR 44180, and we received no public comments. The 30-day FRN published on October 6, 2022, at 87 FR 60721. 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 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**  
Please see the burden chart below:

Regulation Sections	Number of Respondents	Frequency of Response	Average Burden per	Estimated Total Annual	Average Theoretical Hourly Cost	Total Annual Opportunity
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			Response (minutes )	Burden (hours)	Amount (dollars)*	Cost (dollars)**
404.961, 416.1461, 405.330, and 405.366	12,220	1	20	4,073	\$19.86*	\$80,890**
404.950, 416.1450, and 405.332	1,040	1	20	347	\$19.86*	\$6,891**
404.949 and 416.1449	2,868	1	60	2,868	\$19.86*	\$56,958**
405.334	20	1	60	20	\$19.86*	\$397**
404.957, 416.1457, and 405.380	21,041	1	10	3,507	\$19.86*	\$69,649**
405.381	37	1	30	19	\$19.86*	\$377**
405.401	5,310	1	10	885	\$19.86*	\$17,576**
404.971 and 416.1471 (HA-85 & e85; HA-86 & e86)	1,606	1	10	268	\$19.86*	\$5,322**
404.982 and 416.1482	1,687	1	30	844	\$19.86*	\$16,762**
404.987 & 404.988 and 416.1487 & 416.1488 and 405.601	12,425	1	30	6,213	\$19.86*	\$123,390**
404.1740(b)(1)	150	1	2	5	\$19.86*	\$99**
416.1540(b)(1)	150	1	2	5	\$19.86*	\$99**
404.1512, 404.1740(c)(4), 416.912, and 416.1540(c)(4)	150	1	2	5	\$19.86*	\$99**
405.372(c)	5,310	1	10	885	\$19.86*	\$17,576**
405.1(b)(5) 405.372(b)	833	1	30	417	\$19.86*	\$8,282**
405.505	833	1	30	417	\$19.86*	\$8,282**
405.1(c)(2)	5,310	1	10	885	\$19.86*	\$17,576**
405.20	5,310	1	10	885	\$19.86*	\$17,576**
<b>Totals</b>	<b>76,300</b>			<b>22,548</b>		<b>\$447,801**</b>

\* 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](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.**

NOTE: We did not include travel time as per our current management information data, respondents only mail in the forms when necessary and, per our current data, do not drop them off to a field office. Should this change in the future, we will include the language and chart for travel time to a field office.

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 minutes 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 collection instrument is **22,548** burden hours (reflecting SSA management information data), which results in an associated theoretical (not actual) opportunity cost financial burden of **\$447,801**. 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 **\$374,290**. This estimate accounts for costs from the following areas:

<b>Description of Cost Factor</b>	<b>Methodology for Estimating Cost</b>	<b>Cost in Dollars</b>
Designing and Printing the Form	Design Cost + Printing Cost	\$5,000
Distributing, Shipping, and Material Costs for the Form	Distribution + Shipping + Material Cost	\$254
SSA Employee (e.g., field office, 800 number, DDS staff) Information Collection and Processing Time	GS-9 employee x # of responses x processing time	\$320,529
Full-Time Equivalent Costs	Out of pocket costs + Other expenses for providing this service	\$0*
Systems Development, Updating, and	GS-9 employee x man hours for development, updating,	\$48,507

Maintenance	maintenance	
Quantifiable IT Costs	Any additional IT costs	\$0*
<b>Total</b>		<b>\$374,290</b>

\* 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**

There are no changes to the public reporting burden.

**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.