

**Supporting Statement for Changes to the Intermediate Improvement to the Disability  
Adjudication Process: Including How We Consider Past Work**  
**20 CFR 404.1560, 404.1565, 416.960, and 416.965**  
**OMB No. 0960-NEW**

**A. Justification**

**1. Introduction/Authoring Laws and Regulations**

The *Social Security Act (Act)*, sections 42 U.S.C. 423(d)(1)(A) and 1382c(a)(3)(A)-(B), define disability as the inability to engage in any substantial gainful activity (SGA) by reason of any medically determinable physical or mental impairment (MDI) which can be expected to result in death, or which has lasted or can be expected to last for a continuous period of not less than 12 months. The *Act* in section 42 U.S.C. 1382c(a)(3)(C), also states that an individual shall be determined to have a disability only if their physical or mental impairment(s) are of such severity that they are not only unable to do their previous work but cannot, considering their age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which they live, or whether a specific job vacancy exists for them, or whether they will be hired if they apply for work.

SSA uses a five-step sequential evaluation process to determine whether an individual is disabled, as explained under sections 20 CFR 404.1520 and 416.920 of the *Code of Federal Regulations (Code)*. We evaluate at each step in the process to determine if the individual is disabled, and then go to the next step of the sequential evaluation process and continue in this way until we either find the individual disabled or find they do not meet our disability requirements. Each step in the process requires SSA to consider the individual's abilities and evaluate them in terms of their disability. The following lists our evaluations at each step in the process:

- Step 1: we consider whether an individual is working, and whether the work qualifies as substantial gainful activity.
- Step 2: we consider whether an individual has any "severe" impairment(s), which significantly limits their physical or mental ability to do basic work activities, and whether the impairment(s) meets the statutory duration requirement.
- Step 3: we consider whether an individual's impairment(s) meets or medically equals in severity an impairment(s) in the Listing of Impairments. If the individual does not have an impairment(s) that meets or medically equals in severity a listed impairment, we determine the individual's residual functional capacity (RFC) before we go to the fourth step of the sequential evaluation process.
- Step 4: we consider whether an individual, given their RFC, can perform any of their past relevant work (PRW) either as the individual actually performed it or as the work is generally performed in the national economy.
- Step 5: we consider whether an individual's impairment(s) prevents them from adjusting to other work that exists in significant numbers in the national economy, considering their RFC and the vocational factors of age, education, and work

experience.

Our current rules under sections *20 CFR 404.1560(b)(1)* and *416.960(b)(1)* of the *Code* define PRW as work an individual has done within the past 15 years, that was SGA, and that lasted long enough for the individual to learn. For initial claims, the relevant work period usually begins 15 years prior to the date of our determination or decision, with the exception of certain situations in claims under title II of the Act, when the relevant work period begins on an earlier date. In addition, our current rules under *20 CFR 404.1565* and *416.965* of the *Code* define work experience as skills and abilities an individual acquired through their PRW which may show the type of work they may be expected to do. Per sections *20 CFR 404.1568* and *416.968* of the *Code*, we categorize work experience as follows: none, unskilled, semi-skilled, or skilled. This work experience helps us determine if we find the individual disabled or not disabled, as individuals with skilled or semi-skilled work experience may have a vocational advantage if their skills are transferable. Therefore, we ask individuals about their past work when we need the information to make a determination or decision on their claim. Per sections *20 CFR 404.1512(a)(1)(iv)*, *404.1560(b)(2)*, *404.1565(b)*, *416.912(a)(1)(iv)*, *416.960(b)(2)*, and *416.965(b)* of the *Code*, the individual then must show that they cannot perform PRW and we also require them to provide information about their PRW if we request it.

Under our proposed rule, *Changes to the Intermediate Improvement to the Disability Adjudication Process: Including How We Consider Past Work*, we propose to revise sections *20 CFR 404.1560*, *404.1565*, *416.960*, and *416.965* of the *Code* to reduce the relevant work period from the current 15 years to 5 years. In many cases, this revision will reduce the number of jobs in an individual's work history that we will consider at step four of the sequential evaluation process when we determine whether an individual can perform their PRW. At step five, this revision will also change the previous work experience that we will consider under a medical-vocational profile and the medical-vocational guidelines. Because a step four finding can result in a denial but not an allowance, we anticipate that we will make proportionally fewer denial decisions at step four and proportionally more decisions at step five due to this revision. We expect this change will allow us to improve the quality of the information we receive by eliminating the individual's need to recall and consistently report detailed information about less recent work, reduce the time spent filling out work history forms, and overall reduce waiting times. Accordingly, this proposed change will improve customer service and adjudicative efficiency.

## **2. Description of Collection**

As mentioned above, under sections *20 CFR 404.1560*, *404.1565*, *416.960*, and *416.965* of this rule, reduce the relevant work period from the current 15 years to 5 years. We expect that this change will more accurately reflect how an individual's acquired skills and knowledge may become less relevant over time after they have stopped performing previous work. In addition, as we largely rely on individuals' self-reporting for information about past work, and we find that self-reported information is often less accurate and complete with the passage of time.

In addition, this proposal will reduce the information collection burden on individuals by reducing, on average, the number of jobs about which they must provide us with information. We anticipate that requesting work history ending at the 5-year mark will be significantly less burdensome than the current longer work history. We use different forms to collect the work history information necessary for the type and level of adjudication of a claim. Therefore, we anticipate a burden reduction for each of these forms when using a 5-year relevant work period.

Under the Notice of Proposed Rule Making for the Changes to the Intermediate Improvement to the Disability Adjudication Process: Including How We Consider Past Work, we anticipate reducing the amount of PRW needed for the following information collections: 0960-0300, HA-4633, Claimant's Work Background; 0960-0578, SSA-3369, Work History Report; and 0960-0579, SSA-3368, Disability Report – Adult. We anticipate this will result in a reduction in the overall burden for these information collections.

Respondents are applicants for, or recipients of, Social Security disability benefits (SSDI); SSI payments; or their representatives.

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

SSA collects the information for an individual's work history through several means, including paper forms, personal interviews using the Electronic Disability Collect System (for the SSA-3368 and SSA-3369), as well as Internet screens (for the SSA-3368 through our i3368 application, and HA-4633 through Electronic Records Express). We discuss this, as well as the agency's expected efforts to create electronic means for the public to submit this information, in more detail under the specific OMB documentation for each of these information collections.

### **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 SSA did not collect the information on the SSA-4633 (OMB No. 0960-0300) claimants might not present evidence pertinent to their claims for disability payments. As defined in the *Act*, the HA-4633 collects the minimum information necessary for an ALJ to assess an individual's work history, thus creating a legal impediment to reducing the overall burden requirement on the public. In addition, if we did not use Form SSA-3688 (OMB No, 0960-0579), the public would have no way to apply for disability benefits, and we would deprive individuals of the right to present evidence pertaining to their claim. In addition, we would violate regulatory requirements relating to due process. Finally, if we did not use Form SSA-3369 (OMB No. 0960-0578), we would be unable to determine whether claimants are disabled and could not discharge our mandate to pay benefits to

disabled claimants. Because we collect the information on these forms/applications 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**

SSA published a notice of proposed rulemaking (NPRM) in the Federal Register on September 29, 2023, at 88 FR 67135. If we receive any public comments pertaining to our time estimate or the collection of this information, we will share them with 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.

SSA's Privacy Policy covers all information obtained through the Internet version of this form for Internet Services. Our Internet privacy policy is:

- The respondent does not need to give us personal information to visit our site.
- We collect personally identifiable information (name, SSN, DOB or e-mail) only if specifically and knowingly provided by the respondent.
- SSA will use personal identifying information the respondent provides only in conjunction with services the respondent requests as described at the point of collection.
- We sometimes perform statistical analyses of user behavior in order to measure customer interest in the various areas of our site. We will disclose this information to third parties only in aggregate form.
- We do not give, sell, or transfer any personal information to a third party.

Additionally, SSA ensures the confidentiality of the respondent's personal information in several ways:

- SSA encrypts all electronic requests using the Secure Socket Layer (SSL) security protocol. SSL encryption prevents a third party from reading the transmitted data even if intercepted. This protocol is an industry standard, and is used by banks such as Wells Fargo and Bank of America for Internet banking.
- SSA gives the respondent adequate warnings that the Internet is an open system, and there is no absolute guarantee that others will not intercept and decrypt the personal information he or she has entered. SSA advises the respondent of alternative methods of providing personal information, i.e., visit to a field office or a call to the 800 number to speak with a customer service representative.

Only upon verification of identity does SSA allow the respondent access to additional Internet applications that allow requests and changes to personal information from SSA records.

**11. Justification for Sensitive Questions**

These information collections do not contain any questions of a sensitive nature.

**12. Estimates of Public Reporting Burden**

The following chart shows the time burden information associated with the proposed rule:

<b>OMB #; Form #; CFR Citations</b>	<b>Number of Respondents</b>	<b>Frequency of Response</b>	<b>Current Average Burden Per Response (minutes)</b>	<b>Current Estimated Total Burden (hours)</b>	<b>Anticipate d New Burden Per Response Under Regulation (minutes)</b>	<b>Anticipate d Estimated Total Burden Under Regulation (hours)</b>	<b>Estimated Burden Savings</b>
0960-0300 HA-4633 (Paper Form) 410.1560; 416.960	32,300	1	30	16,150	20	10,767	5,383
0960-0300 HA-4633 (ERE) 410.1560; 416.960	157,700	1	30	78,850	20	52,567	26,283
0960-0578 SSA-3369 (Paper Form) 410.1560 416.960	1,553,900	1	60	1,553,900	40	1,035,933	517,967
0960-0578 SSA-3369 (EDCS Screens) 410.1560 416.960	38,049	1	60	38,049	40	25,366	12,683
0960-0579 SSA-3368 (Paper Form) 410.1560 416.960	6,045	1	90	9,068	80	8,060	1,008
0960-0579	1,263,104	1	90	1,894,656	80	1,684,139	210,517

SSA-3368 (EDCS Screens) 410.1560 416.960							
0960-0579 i3368 (Internet Screens) 410.1560 416.960	989,361	1	90	1,484,042	80	1,319,148	164,894
<b>Totals</b>	<b>4,040,459</b>			<b>5,074,715</b>		<b>4,135,980</b>	<b>938,735</b>

The following chart shows the theoretical cost burdens associated with the proposed rule:

<b>OMB #; Form #; CFR Citations</b>	<b>Number of Respondents</b>	<b>Anticipated Estimated Total Burden Under Regulation from Chart Above (hours)</b>	<b>Average Theoretical Hourly Cost Amount (dollars)*</b>	<b>Average Wait Time in Field Office or Teleservice Centers (minutes)**</b>	<b>Total Annual Opportunity Cost (dollars)***</b>
0960-0300 HA-4633 (Paper Form) 410.1560; 416.960	32,300	10,767	\$12.81*		\$137,925****
0960-0300 HA-4633 (ERE) 410.1560; 416.960	157,700	52,567	\$29.76*		\$1,564,394****
0960-0578 SSA-3369 (Paper Form) 410.1560 416.960	1,553,900	1,035,933	\$12.81*		\$13,270,302****
0960-0578 SSA-3369 (EDCS Screens) 410.1560 416.960	38,049	25,366	\$12.81*	21**	\$495,529****
0960-0579 SSA-3368 (Paper Form) 410.1560	6,045	8,060	\$12.81*	21**	\$130,355****

416.960					
0960-0579 SSA-3368 (EDCS Screens) 410.1560 416.960	1,263,104	1,684,139	\$12.81*	21**	\$27,236,942***
0960-0579 i3368 (Internet Screens) 410.1560 416.960	989,361	1,319,148	\$12.81*		\$16,898,286***
<b>Totals</b>	<b>4,040,459</b>	<b>4,135,980</b>			<b>\$59,733,733***</b>

\* We based this figure on the average DI payments based on SSA's current FY 2023 data (<https://www.ssa.gov/legislation/2023factsheet.pdf>); on the average U.S. citizen's hourly salary, 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)).

\*\* We based this figure on the average FY 2023 wait times for field offices and hearings office, as well as by averaging both the average FY 2023 wait times for field offices 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.**

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, as well as anticipated changes due to the proposed rule. Per our management information data, we believe that the burdens per response for each form shown on the chart above accurately show the average burden per response for learning about the program; receiving notices as needed; reading and understanding instructions; gathering the data and documents needed; answering the questions and completing the information collection instrument; scheduling any necessary appointment or required phone call; consulting with any third parties (as needed); and waiting to speak with SSA employees (as needed). Based on our current management information data, the current burden information we provided is accurate. The total adjusted burden for this ICR is **4,135,980** burden hours (reflecting SSA management information data), which results in an associated theoretical (not actual) opportunity cost financial burden of **\$59,733,733**. SSA does not charge respondents to complete our applications.

As noted above, upon OMB approval of the final rule, we will update the burden figures in the associated information collections under 0960-0300, 0960-0578, and 0960-0579 to reflect these revised burdens.

**13. Annual Cost to the Respondents (Other)**

These collections do not impose a known cost burden on the respondents.

**14. Annual Cost to the Federal Government**

We estimated the annual cost to the Federal government for these forms under their individual OMB numbers. We list no cost here, as we do not want to double count the cost to the government.

**15. Program Changes or Adjustments to the Information Collection Request**

The new proposed rule decreases the overall public reporting burden for these information collections. See question #12 for updated burden figures. As noted in #1 and #12 above, upon OMB approval of the final rule, we will update the burden figures in the associated information collections under 0960-0300, 0960-0578, and 0960-0579 to reflect these revised burdens.

\* Note: The total burden reflected in ROCIS is **4,593,499**, while the burden cited in #12 of the Supporting Statement is **4,135,980**. This discrepancy is because the ROCIS burden reflects the field office and telephone waiting time. In contrast, the chart in #12 of the Supporting Statement reflects actual 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**

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.