

Supporting Statement for Form SSA-789
Request for Reconsideration – Disability Cessation
20 CFR 404.909, 404.1597(b), 416.995, & 416.1409
OMB No. 0960-0349

A. Justification

1. Introduction/Authoring Laws and Regulations

Section 205(b) of the *Social Security Act (Act)* requires SSA to provide a disability hearing at the continuing disability review level of appeal for claimants who received an initial continuing disability review (CDR) cessation or reconsideration pre-hearing cessation determination. The regulatory requirements for implementing Section 205(b) of the *Act* are set forth in Sections 20 CFR 404.909, 404.1597(b), 416.995, & 416.1409 of the *Code of Federal Regulations*.

2. Description of Collection

SSA conducts periodic reviews of beneficiaries to confirm that they continue to be disabled to continue qualifying for disability benefits. The primary information collection associated with that process is the Continuing Disability Review (CDR, OMB Control 0960-0072). When SSA determines through this process that claimants' disabilities medically improved; ceased; or are no longer sufficiently disabling, the claimant will receive a written notice from SSA regarding the determination and their benefits will be ceased. The notice includes a discussion of the claimant's appeal rights, including the right to continue benefits during appeal ("statutory benefits continuation"). The notice does not include a copy of the SSA-789, nor does it include a self-addressed envelope to allow potential respondents to mail the SSA-789 back to SSA. Claimants must either independently download a copy of the SSA-789 from ssa.gov, or independently request that SSA send them a copy of the SSA-789. In FY 2021 approximately 214,000 beneficiaries were ceased following CDRs, suggesting that approximately 23% of individuals who could potentially submit an SSA-789 choose to do so.

If the claimant disagrees with the determination to cease benefits, they may request an appeal. This initiates the appeal process, the first step is the "reconsideration," and this information collection covers requesting a reconsideration. During the reconsideration process, the claimant's file will be reviewed by an adjudicative team or designated person that was not involved in the initial unfavorable determination, and in most cases a Disability Hearing Officer (DHO) with Disability Determination Services will hold an evidentiary hearing where claimant has an opportunity to review the evidence, introduce new evidence, and present their objections to an unfavorable medical determination before a DHO.

The claimant has 60 days after the date of the cessation notice to request a reconsideration. We allow an additional 5 days to account for mailing time. SSA

uses form SSA-789 as the primary means of collecting the information associated with requesting a reconsideration for the CDR. Claimants can submit this request via a mailed submission to the field office or through visiting a field office and physically completing a request on site, and based on subject-matter expertise SSA believes respondents regularly use both options. SSA only accepts written requests for reconsideration and will not accept phone-based interviews as a means of submitting the request. This is due to a requirement under 20 CFR 404.909(a), which states “[w]e shall reconsider an initial determination if you or any other party to the reconsideration files a written request.”

SSA uses the information collected on Form SSA-789 to arrange for a hearing or to prepare a decision based on the evidence of record. Specifically, claimants or their representatives use Form SSA-789 to: (1) ask SSA to reconsider a determination; (2) indicate if they wish to appear at a disability hearing; (3) submit any additional information or evidence for use in the reconsidered determination (the claimant can also choose to submit this information at a later point in the reconsideration process); and (4) indicate if they will need an interpreter for the hearing. For individuals who indicate that they do not wish to appear at a disability hearing, SSA will follow-up with them to confirm their decision by having them complete and sign an SSA-773 (“Waiver of Right to Appear – Disability Hearing,” OMB Control 0960-0534). SSA does not have data on how much additional information about or evidence supporting the claimant’s request for reconsideration is provided via the SSA-789 (as opposed to being provided later in the reconsideration process).

In asking to reconsider a determination, the claimant must explain their reason for submitting the request. SSA encourages claimants to briefly describe why the individual believes he or she is still disabled, or what part of the notice he or she thinks is inaccurate, but to avoid writing, “I am still disabled and cannot work,” as this statement does not provide specific information about the individual’s reason for requesting reconsideration. Additionally, if the claimant is filing the SSA-789 late (i.e. more than 65 days after the date of the original notice ceasing benefits), then this section can also be used to explain the reason for the lateness.

While the SSA-789 requests that claimants provide any additional information or evidence available to use in the reconsideration determination, claimants do not need to provide this information as a part of submitting the SSA-789. Evidence to support the reconsideration determination may always be submitted up until the hearing. Additionally, at the claimant’s request, the Disability Hearings Officer has the discretion to accept evidence up to 15 days after the hearing if the evidence was not available prior to the hearing and the DHO determines the evidence has bearing on the determination.

Note that the SSA-789 is exclusively for reconsideration appeals for claimants whose benefits have ceased via CDRs. For claimants who received denials through the initial benefits application process, the request for reconsideration is

made via the SSA-561 or the i561 web application (under the iAppeals web application), both of which are under OMB Control 0960-0622.

The respondents are disability claimants for Social Security benefits or Supplemental Security Income (SSI) payments who wish to appeal an unfavorable disability cessation determination.

3. Use of Information Technology to Collect the Information

The SSA-789 is available as a fillable PDF on SSA's website. While we currently do not allow for electronic submission of this information collection as described under the Government Paperwork Elimination Act, we updated the form to remove the signature requirement. Therefore, respondents can complete the form electronically, download it, and either send or bring it to a field office for processing, with no need for a wet signature (or a signature of any kind). Field offices are responsible for receiving and adjudicating this form. We evaluated this collection for conversion to an electronically submittable PDF; however, 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 preclude 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-789, we would deprive claimants of their due process right to appeal a determination to cease Social Security disability benefits. The information we collect using Form SSA-789 also provides the claimant with the opportunity to state the need for an interpreter at an administrative hearing with a Disability Hearing Officer. 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 April 6, 2021 at 86 FR 17874, and we received no public comments. The 30-day FRN published on June 23, 2021 at 86 FR 33007. 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

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)*	Average Wait Time in Field Office (minutes)**	Total Annual Opportunity Cost (dollars)***
SSA-789	49,000	1	13	10,617	\$13.30*	24**	\$401,886***

* We based this figure on the average DI payments based on SSA's current FY 2024 data (<https://www.ssa.gov/legislation/2021FactSheet.pdf>).

** We based this figure on the average FY 2024 wait times for field offices, based on SSA's current management information data.

*** This figure does not represent actual costs that we are 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.**

In addition, OMB's Office of Information and Regulatory Affairs (OIRA) is requiring SSA to use a rough estimate of a 30-minute, one-way, drive time in our calculations of the time burden for this collection. OIRA based their estimation on a spatial analysis of SSA's current field office locations and the location of the average population centers based on census tract information, which likely represents a 13.97-mile driving distance for one-way travel. We depict this on the chart below:

Total Number of Respondents Who Visit a Field Office	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)****
49,000	1	30	24,500	\$325,850****

**** 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 **13** minutes shown in our 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 **10,617** burden hours (reflecting SSA management information data), which results in an associated theoretical (not actual) opportunity cost financial burden of **\$727,736**. 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 \$65,025. 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	\$275
Distributing, Shipping, and Material	Distribution + Shipping + Material	\$0*

Costs for the Form	Cost	
SSA Employee (e.g., field office, 800 number, DDS staff) Information Collection and Processing Time	GS-9 employee x # of responses x processing time	\$60,000
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	\$4,750
Quantifiable IT Costs	Any additional IT costs	\$0*
Total		\$65,025

* 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 2018, the burden was 6,500 hours. However, we are currently reporting a burden of 10,617 hours. This change stems from an increase in the number of responses from 30,000 to 49,000. 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.

NOTE: The total burden reflected in ROCIS is **54,717**, while the burden cited in #12 of the Supporting Statement is **10,617**. This discrepancy is because the ROCIS burden reflects the following components: field office waiting time + a rough estimate of a 30-minute, one-way, drive burden. 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.