

**Supporting Statement for Regulations Governing
Testimony by Employees and the Production of
Records and Information in Legal Proceedings
20 CFR 403.100-.155
OMB No. 0960-0619**

A. Justification

1. Introduction/Authoring Laws and Regulations

A Social Security Agency (SSA) employee can testify concerning any function of the agency or any information or record created or acquired by us because of the discharge of our official duties in a legal proceeding in which the agency is not a party with the prior authorization of the Commissioner. *5 USC 301* (The Plain Writing Act of 2010), *31 USC 9701* (The Independent Offices Appropriations Act of 1952), *42 USC 902* (The Social Security Act), and *42 USC 1306* (The Social Security Act) of the *United States Code* document our authority to collect this information. These laws explain how individuals seeking testimony of an SSA employee must provide sufficient information about the testimony they are seeking for the Commissioner (or designee) to authorize. In addition, the regulations at *20 CFR 403.100-403.155* of the *Code of Federal Regulations* 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, we receive requests for testimony. Among other things, the 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 explain (1) the nature and relevance of the testimony sought, (2) why the information is not available by other means, (3) 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 information or testimony provided furthers the objectives of the agency (if the agency provides the testimony as requested). This ICR covers the written requests submitted for SSA employees to provide agency information, records, or testimony in legal proceedings. 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

The collection of information in this case does not involve use of automated, electronic, mechanical, or other forms of information technology due to the individualized nature of each request and the fact that each requestor will generally submit a written request on a one-time only basis. In addition, SSA is not scheduling this collection for electronic implementation under the Government Paperwork Elimination Act (GPEA) due to the low volume of respondents.

4. Why We Cannot Use Duplicate Information

The nature of the information we are collecting and the manner in which we are collecting it preclude 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 have this information collection, the Commissioner of Social Security would be unable to render an informed decision regarding requests made to the agency for information or testimony by an employee. In addition, because we collect this information on an as needed basis only, 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 the 60-day advance Federal Register Notice on March 7, 2012 at 77 FR 13681, and we received no public comments. We published the 30-day Notice on May 17, 2012 at 77 FR 29441. If we receive any comments on the second Notice, we will forward them to OMB. We did not consult with the public on this information 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.

12. Estimates of Public Reporting Burden

Approximately 100 respondents will make requests to the agency for testimony annually with an average reporting time of 60 minutes per request, for 100 burden hours annually. The total burden represents burden hours, and we did not calculate a separate cost burden.

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 estimated annual cost to the Federal government is \$33,799. We base this estimate on SSA's Office of the General Counsel's (OGC) experience with applications for employee testimony to date. Each application requires an estimated 5 hours of SSA OGC employee time, as well as overhead.

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 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. Collection of Information Employing Statistical Methods

SSA does not use statistical methods for this information collection.