

Social Security Administration  
Final Plan  
Executive Order 13563

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### **Executive Summary**

Executive Order (E.O.) 13563 emphasizes the importance of maintaining a consistent culture of retrospective review and analysis throughout the Executive Branch. Before a rule has been tested, it is difficult to be absolutely certain of its consequences, including its costs and savings. E.O. 13563 charges federal agencies to devise a plan to retrospectively analyze significant rules that meet the review criteria in the Executive Order. The criteria primarily concern the effects of regulations on private-sector businesses, especially small businesses.

The Social Security Administration (SSA) generally does not regulate the private-sector marketplace. Our regulations primarily describe how persons qualify for benefits under the programs we administer. In performing a retrospective review, we can look for opportunities to reduce the burden on the beneficiaries and applicants that we serve. One way to reduce that burden is through reduced complexity. To help facilitate this effort, our plan describes a methodology and schedule to identify significant rules that may need periodic updating and details several initiatives to improve SSA's forms and reduce the paperwork burden on the public.

### **Scope of Plan**

Although our regulations do not generally address economic competitiveness or job creation, our Plan reflects the principles of E.O. 13563. The regulations cited in our Plan embrace public participation (section 2 of the E.O.), objectivity of scientific information (section 5 of the E.O.), and retrospective analysis of rules that may need updating (section 6 of the E.O.). A special priority is increased transparency and simplification.

This final plan focuses on existing medical listings that we use to determine disability under the Social Security and Supplemental Security Income programs. The listings appear in our regulations at 20 CFR Part 404, Subpart P, Appendix 1.

We are also including two initiatives that will reduce paperwork burdens on the public. In the Revised Work Activity Reports project, we are making the Work Activity Reports easier to complete by streamlining instructions and removing unnecessary or duplicative questions. For the SSA-827 e-Authorization initiative, we are expediting the authorization process by developing an electronic alternative to the wet signature currently required. These initiatives represent SSA's continued commitment to help the public transact business with us as quickly and smoothly as possible.

## Public Access and Participation

### Developing the Preliminary Plan

On January 25, 2011, we took the following steps:

- issued a press release announcing we would undertake a retrospective review;
- placed a notice of the announcement on our Internet homepage; and
- established a page on our Open Government website (<http://www.ssa.gov/open/regsreview/>) that requested comments from the public on how well our regulations reflected the principles of E.O. 13563. The website page linked to an e-mail box especially established to receive public comments for this request.

We received over 400 messages to the “RegsReview” e-mail box, nearly all of which addressed issues other than the retrospective review. We received a few messages from persons asking for their circumstances to be added to our regulations (e.g., add their medical impairment to our listings).

### Requesting Comments on the Preliminary Plan

On May 26, 2011, we posted our Preliminary Plan on our Open Government web page and requested public comments on our Plan. The Plan was also posted on the White House’s web page. Furthermore, we sent messages to over 900 stakeholder groups and individuals who have expressed interest in our development of the medical listings to alert them to our Plan and our request for comments. Finally, we published a notice in the *Federal Register* on June 2, 2011 (76 FR 31892), requested public comments on the Plan, and provided a comment period.

### Public Comments on the Preliminary Plan

We received three public comments on the Preliminary Plan. Two of the comments were from advocacy groups, and the other was from an individual in his capacity in an organization of disability examiners. Below, we condense, summarize and respond to the comments.

Comment: The Sjögren’s Syndrome Foundation expressed its appreciation for the opportunity to work with us on listings updates. The Foundation suggested that we continue to work closely with advocacy groups to ensure we include top experts in the field.

Response: We agree. We routinely update the listings to reflect our program experience, advances in medical knowledge, and comments we receive from medical experts, advocacy groups, patients, adjudicators, and at public outreach policy conferences. [Comment: This is

from the preliminary plan.] The information we obtain from medical experts and advocacy groups is an integral part of our process to update the listings.

Comment: A doctor affiliated with the National Association of Disability Examiners and who has participated in two Institute of Medicine Consensus Committees supported the Preliminary Plan. He urged us to follow the review schedule outlined in the Preliminary Plan and observed that the State Disability Determination Services must apply the listings uniformly.

Response: We agree and remain on course to complete the entire first comprehensive refreshment of the listings by the end of calendar year 2012.

Comment: The HIV Law Project suggested that we offer an informal public comment period on an Institute of Medicine report immediately after we receive it and before we propose revised listings. Doing so would give members of the public the “opportunity to comment on the assumptions, findings, and conclusions of the [Institute of Medicine] report, before these become integrated into proposed revisions to the listings.”

Response: We partially agree with the comment. The Institute of Medicine already posts its final reports on its website for the public to review. We agree that, when we receive a final report from the Institute of Medicine, we will post on our website a link to the report on the Institute of Medicine’s website. This action will facilitate the public’s ability to review the report.

However, we do not believe that we need to provide a separate review and comment period for an Institute of Medicine report. We have no editorial control over Institute of Medicine Consensus Committee reports. Institute of Medicine reports are not SSA work products, and we do not adopt or reject findings in Institute of Medicine reports. We may use information in reports from the Institute of Medicine as one source of guidance when we develop our proposals to revise the listings, just as we may use other guidance from other sources. When we publish a notice of proposed rulemaking proposing changes to our listings, we also provide the public with a list of the references on which we relied in developing the proposed rules, and we invite the public to comment on those references. Thus, we already offer numerous and robust opportunities for comment, both formal and informal.

### **Current Efforts Independent of E.O. 13563**

The medical listings help ensure disability determinations have a sound medical basis, claimants receive equal treatment based on specific criteria, and disabled individuals can be readily identified and awarded benefits if appropriate. We screen all disability claimants who do not perform substantial gainful activity and have severe impairments to quickly identify individuals who clearly meet the definition of disability.

As we noted above, we routinely update the listings to reflect our program experience, advances in medical knowledge, and comments we receive from medical experts, advocacy groups,

patients, adjudicators, and at public outreach policy conferences. We also update the listings to reflect the universal standard of care in the medical field. For example, we update our listings to reflect the standards and types of medical evidence we receive nationwide, making our requests for medical evidence more targeted.

Regular updates of our medical listings benefits claimants because they receive decisions faster and need to file fewer appeals. We can allow claims earlier in the sequential evaluation process using the medical listings step based on updated and accurate medical criteria.

We already have a detailed process in place to review our medical listings. Since 1985, we have established “sunset” dates in the rules for the medical listings that we use as part of the sequential evaluation process we use to determine if persons are disabled under the Social Security and Supplemental Security Income programs. We organize the medical listings by body system and use the schedule of the sunset dates to periodically analyze whether the existing medical listings need updating to reflect advances in medical knowledge, practice, and treatment, and our program experience.

Our business plan for updating the listings provides for:

- Systematic early input from the public, through such methods as public outreach meetings and advance notices of proposed rulemaking. We organize the outreach meetings by specific topic within a body system. We invite speakers, such as clinicians in private or hospital practice, advocates, adjudicators, and patients, to provide information to us;
- Medical and academic review, by the Institute of Medicine (a component of the National Academy of Sciences), of the existing medical listings to determine whether they remain current; and
- Review of the new listings, one year after we publish final rules, to retrospectively analyze if the new listings resulted in the effects we had expected.

We use the Administrative Procedure Act’s public-notice-and-comment process to propose and issue changes to the listings.

We provide a more detailed explanation of our business plan for the medical listings in the Appendix to this Plan.

### **Elements of Final Plan/Compliance with E.O. 13563**

Over the next two years, we anticipate reviewing the following medical listings, for which we may issue notices of proposed rulemaking (NPRM) or final rules as appropriate. The listings we expect to review are:

2011:

- Respiratory NPRM
- Growth NPRM
- Hematological NPRM
- Neurological NPRM
- Genitourinary Impairments NPRM
- Impairments that Affect Multiple Body Systems NPRM
- Immune Systems Disorders NPRM
- Skin Disorders NPRM
- Special Senses - Vision NPRM
- Digestive System NPRM
- Malignant Neoplastic Diseases NPRM
- Musculoskeletal System NPRM

2012:

- Mental Disorders final rule
- Cardiovascular System NPRM
- Speech and Language Disorders NPRM

The high-level agency official responsible for retrospective analysis is Dean Landis, Deputy Chief of Staff ([Dean.Landis@ssa.gov](mailto:Dean.Landis@ssa.gov)). The Deputy Chief of Staff position is located in the Office of the Commissioner, which oversees the subordinate components responsible for writing and implementing regulations.

As noted above, we plan our retrospective analysis based on the schedule of approaching sunset dates of the various body system listings. We will use the analysis to determine if we need to revise specific medical listings.

### **Components of Retrospective Cost-Benefit Analysis (CBA)**

We generally do not issue the kind of regulations that require a cost-benefit analysis as defined by the Office of Management and Budget. Nonetheless, when we analyze medical listings one year after we issued them as final rules, we compare the allowance rate before and after we issued the final rules. We use the results of this analysis to make additional revisions to the listings based on our programmatic experience.

In addition, we will also consider how regulations might be designed and written in ways that facilitate evaluation of their consequences and thus promote retrospective analyses and the measurement of actual results. For example, we may consider using experimental or quasi-experimental designs, including randomized controlled trials, when promoting the empirical testing of the effects of rules.

## Reducing Paperwork Burdens

We are committed to reducing the burden we place on the public to the greatest extent possible. We take seriously our obligation to develop innovative solutions that eliminate unjustified complexity for applications and that reduce the public reporting burden. Initiatives such as the two new activities described below illustrate our commitment to that obligation. They are:

- **Revised Work Activity Reports - Providing Better Instruction and Streamlining -** Social Security disability beneficiaries and Supplemental Security Income (SSI) recipients receive payments based on their inability to engage in substantial gainful activity because of a physical or mental condition. When beneficiaries or SSI recipients resume work, they must report the work so we can evaluate and determine if they continue to meet the disability requirements of the law. We use the SSA-820-F4, Work Activity Report-Self-Employed Person, and SSA-821-BK, Work Activity Report-Employee, to obtain work activity information.  
We plan to streamline our Work Activity Reports, the SSA-820-F4 and SSA-821-BK, to provide better instruction and to make them easier to understand and complete. We also plan to revise our procedures to eliminate unnecessary questions in certain self-employment cases. By streamlining the forms and eliminating certain procedures, we anticipate simplifying the process and reducing the current paperwork burden for these collections. We estimate this initiative will save 37,500 hours.
- **Authorization to Disclose Information to SSA, SSA-827 - Electronic Authorization -** When claimants file for Social Security disability insurance or SSI benefits, they generally sign form SSA-827 (Authorization to Disclose Information to SSA), which serves as the claimants' written request to a medical provider or other source to release information to us. Currently, claimants generally sign the SSA-827 so we can obtain medical and other records related to the claim. Acquiring a signature on this form can often take weeks, causing unnecessary delays in processing claims for one of the most vulnerable segments of our population.  
In fiscal year (FY) 2009, we began developing an electronic authorization process that eliminates the need for a signature on the paper form SSA-827. Our new process will allow respondents to use an electronic signature process similar to the one we currently use in many of our electronic forms systems. An electronic authorization process supports faster processing of disability claims and improves service to the public by eliminating the need to wait for the claimant to sign and return the paper form to us. We estimate this initiative will save 42,166 hours.

In addition to these initiatives, we continue to develop new electronic platforms to reduce the public burden and make working with us easier. Our efforts enable faster and more efficient communication with the public, which is an integral part of our public service mandate. For example, we continue to search for ways to expand the services we offer on-line. We invite

public comments about possible new initiatives, also designed to reduce complexity and burdens. It is important to note that although we serve nearly every member of the American public, we account for less than half a percent of the total public reporting burden.

### **Periodic Review**

Executive Order 13563 calls not for a single exercise, but for “periodic review of existing significant regulations,” with close reference to empirical evidence. It explicitly states that “retrospective analyses, including supporting data, should be released online wherever possible.” Consistent with the commitment to periodic review and to public participation, we will continue to assess our existing significant regulations in accordance with the requirements of Executive Order 13563. We welcome public suggestions about appropriate reforms, which you may send to us via facsimile at (410) 966-2830. If, at any time, members of the public identify possible reforms to streamline requirements and to reduce existing burdens, we will give those suggestions careful consideration.

### **Publishing the Agency’s Plan On-line**

SSA will publish the retrospective review plan on its Open Government website.

[Appendix: Business Plan for updating the medical listings](#)

## Appendix

### Business Plan for Updating the Medical Listings

#### Background

SSA first included the listings in its regulations in 1968 to help expedite the processing of disability claims under the Disability Insurance program. The listings have also been used for the Supplemental Security Income program since it began in 1974. The listings for each body system describe impairments that are considered severe enough to prevent an adult from doing any gainful activity or to cause marked and severe functional limitations in a child younger than 18 years old. Most of the listed impairments are permanent or expected to result in death; however, some include a specific statement of duration. For all others, the evidence must show the impairment has lasted or can be expected to last for a continuous period of at least 12 months.

The listings are organized by major body systems—14 for adults and 15 for children, although adult criteria can be applied to children if the disease processes have a similar effect on adults and children. Altogether, SSA has over 100 listed impairments.

The listings help ensure disability determinations have a sound medical basis, claimants receive equal treatment based on specific criteria, and disabled individuals can be readily identified and awarded benefits if appropriate. All disability claimants who are not performing substantial gainful activity and have severe impairments are screened against the listings to quickly identify individuals who clearly meet the definition of disability. If the claim is not allowed based solely on the medical evidence, then the agency determines whether the claimant can do his or her past work. If the claimant cannot do his or her past work, the agency makes a disability determination based on the claimant's abilities, age, education and vocational history. Quick identification of cases in which the agency can make a favorable determination allows SSA to avoid time-consuming and resource-intensive inquiries into all of the facts of many cases.

From 1968 to the mid-1980s, SSA revised the listings for various reasons by adding or deleting information/criteria as necessary. The last comprehensive update of the listings was made in 1985, when expiration dates ranging from 3 to 8 years were inserted for listing sections. SSA stated that expiration dates were necessary to ensure the Agency periodically reviews (and, if necessary, updates) the listings to consider medical advances in the treatment and evaluation of disabilities and program experience.

#### SSA'S New Process for Updating the Medical Listings

In 2003, SSA implemented a new process for revising the listings. This new process was designed to ensure there are continuous updates and monitoring of the listings about every 3 to 4 years. Under this new process, the agency conducts a review within 1 year of the newly published listing and determines whether an action is necessary—such as training, formal instructions, or a new regulation. If no action is needed, SSA will continue to monitor the listing, conduct another review 4 years before the expiration date of the listing and begin the process of updating the listing.

Under this new model, SSA has incorporated a feedback loop to allow for increased input. After a regulation is published, SSA solicits questions from agency components and performs internal and external studies 1 year after the listing is published. SSA solicits questions from agency components and looks at cases to see how adjudicators are applying the new listing. An Advance Notice of Proposed Rulemaking (ANPRM) may be published in the *Federal Register*. The agency solicits comments regarding the ANPRM through outreach efforts to medical experts, advocacy groups, patients, and



adjudicators and receives input from SSA Regional staff and Medical Specialists. SSA develops the proposed listing and the Office of Management and Budget reviews the draft notice of proposed rulemaking (NPRM). SSA then publishes a Notice of Proposed Rulemaking (NPRM) and again seeks input before publishing the final regulation.

In 2004, SSA awarded a contract to the Institute of Medicine (IOM), seeking advice on improving the listings. The IOM recommended that SSA increase the value and utility of the listings by examining and monitoring their performance, evaluating and improving their effectiveness in expediting awards in obvious cases, and making timely changes in response to these evaluations.

In October 2008, SSA contracted with the IOM to establish a Standing Committee of medical experts to advise the agency in keeping the listings up to date. In FY 2009, the Standing Committee--consisting of approximately 15 members--began serving a 3-year term to survey literature, look for ideas to improve the listings, hold meetings, and organize workgroups and public sessions. Subsequently, the Standing Committee formed two Consensus Study Committees to research and survey literature to look for ideas to improve the Cardiovascular and Immune (specifically HIV) body systems. In August 2010, SSA received IOM Consensus Committee reports that included recommendations for updating and revising the Cardiovascular and Immune (HIV) body systems for which work is already underway.