



**CONSORTIUM FOR CITIZENS
WITH DISABILITIES**

June 25, 2021

Office of Management and Budget
Attn: Desk Officer for SSA

Social Security Administration
Office of Legislation and Congressional Affairs
Attn: Reports Clearance Director,

Submitted via www.regulations.gov

Re: SSA-2021-0011, Agency Information Collection Activities: Proposed Request and Comment Request

These comments are submitted by the undersigned co-chairs of the Social Security Task Force of the Consortium for Citizens with Disabilities (CCD). We urge the Social Security Administration (SSA) to withdraw this notice and not begin the new information collection. Given the limited time to comment, our comments are limited/narrowly tailored to the impact that this information collection will have on Social Security and Supplemental Security Income disability beneficiaries. We believe this information collection would be too much of a burden on beneficiaries because of the substantial burden that already exists when they are required to undergo Continuing Disability Reviews (CDRs). This burden is currently magnified as the agency and beneficiaries continue to deal with the repercussions of the COVID-19 pandemic.

We do not believe that using the Work-Disability Functional Assessment Battery (WD-FAB) as part of the CDR process would be helpful either to beneficiaries or to adjudicators attempting to determine whether beneficiaries have experienced medical improvement that should lead to the cessation of their disability benefits. The National Academies of Sciences, Engineering, and Medicine expert committee examined the research on functional assessments, including the WD-FAB, and concluded that “[d]eterminations about a person’s ability to perform and sustain full-time work are more complicated than can be indicated by an assessment of individual body structures, functions, or impairments.”¹

The agency is proposing adding additional complex forms to the existing burden that beneficiaries with disabilities face every time they undergo a CDR. We understand that participating in this study is optional, but given the financial incentives and the official nature of the study, we believe that beneficiaries may feel pressured to participate. As we explained in our comments on SSA's now

¹ Consensus Study Report: Functional Assessment for Adults with Disabilities (May 2019), https://www.nap.edu/resource/25376/050919_Functional_Assessment_highlights.pdf.

withdrawn proposal to increase the frequency of CDRs,² everyone who receives a CDR has been found disabled by SSA, meaning they have one or more severe and medically determinable impairment that will last at least one year or be fatal. Some of these disabilities, including intellectual disabilities and mental health disabilities, directly impact an individual's ability to respond to forms and will require additional assistance from service providers or family members to complete. In addition, disability beneficiaries are often older and have lower income, less stable housing situations, and less education than the general population, providing additional challenges when they need to fill out CDR paperwork and submit supporting documents like medical records.

The full medical CDR form is burdensome in and of itself. It is 15 pages long and requires multiple stamps to be mailed back to SSA. It requires beneficiaries to write short essays, report all the medication they take and all of the medical treatments and providers they attend, and all of their daily activities. For people with disabilities, this is usually a huge amount of information. The form asks for detailed summaries of the medical treatment received over the past 12 months, information that the individual themselves is unlikely to know in the detail required and would necessitate receiving assistance from health care professionals or other service providers. While it would be challenging and time-consuming for anyone to fill out, many of those who will need to fill out the form have disabilities that will add additional complexity.

CDRs are also costly to beneficiaries, who often need to pay for medical records or appointments with their doctors and other providers to fill out forms. Although some states require medical records be provided free to Social Security disability claimants, this does not extend to beneficiaries undergoing CDRs. Beneficiaries may need to hire representatives to assist them in completing CDR paperwork or proceeding through multiple levels of appeals.

Not completing CDR paperwork or doing so incorrectly can jeopardize benefits that are a matter of life and death to people with disabilities—not only Social Security benefits, but also other critical benefits such as Medicare, Medicaid, housing assistance, and food assistance that are tied to SSA's finding of disability. Given the burden of this process already and the additional stress that the process creates for beneficiaries, we believe that any addition to the process must be absolutely necessary and as much as possible reduce the burden on the beneficiary. This information request does not provide any information on why this addition would be helpful and we think it could be actively harmful given the burden CDRs already create for beneficiaries.

Use of the WD-FAB will also increase the amount of time SSA and DDS staff must spend on each CDR, because of additional evidence to review and data to input. Claims examiners, medical and psychological consultants, and others will need significant additional training to properly interpret the findings of the WD-FAB. Field office employees will need to spend more time answering questions from beneficiaries who have been asked to complete the WD-FAB. These additional burdens on employees are likely to increase SSA's CDR backlog.

That is particularly the case over the next few years as both SSA and beneficiaries deal with the repercussions of the COVID-19 pandemic. Many beneficiaries have been unable to safely go to the doctor, meaning that getting updated medical records will be a challenge. Field offices have been closed and CDRs were postponed for several months, creating additional bureaucratic challenges and a backlog

² Comment from Consortium for Citizens with Disabilities Social Security Task Force, submitted January 17, 2020, <https://www.regulations.gov/comment/SSA-2018-0026-48844>

for SSA. As more doctors re-open and as SSA works through the backlog, CDRs will carry extra implications for beneficiaries who are still being cautious about their safety, especially those who are immuno-compromised and unable to take the vaccine. This is not the time to be adding additional burdens to an already stressful process.

We are also concerned about the potential use of any of the data collected from the WD-FAB in the existing CDR process. Will SSA staff also have access to the data? Given that this is a new instrument, many beneficiaries might unknowingly answer questions in contradictory ways. Given the potential harm to the beneficiaries of incorrect CDRs, we do not believe this is an appropriate risk.

Finally, due to the limited comment period, we were unable to complete a comprehensive study of the literature on WD-FAB. However, we have the following questions about the use of this study in particular.

1) The tool appears to be designed to be cross-disability, but the survey as laid out in the notice excludes individuals with intellectual disabilities or other disabilities who cannot give affirmative consent. This means that, by definition, the tool will not capture whole segments of the populations served by SSA. How would the results be helpful to SSA's analysis if these populations are excluded?

2) The consent process consists of a verbal interview with the participant, without any additional context regarding their disability. For some people with disabilities, in particular mental health disabilities, a verbal interview might not provide the necessary context to ensure that the beneficiary can give consent. How does the agency plan to ensure that beneficiaries who would not be able to give consent will not be subject to the WD-FAB in error?

3) How will SSA use WD-FAB information, given that it is fully self-reported and therefore different from medically determinable evidence? In particular, how will SSA address the fact that people with many different disabilities, including but not limited to dementia, intellectual disabilities, psychotic disorders, personality disorders, stroke, and traumatic brain injuries may have limited insight into their behavioral health (in fact, this may be a hallmark of their disabilities) and thus may not accurately convey their functional abilities?

Additionally, how will SSA accommodate people whose disabilities affect their ability to consider and answer questions or communicate verbally (such as autism, hearing impairment, speech impairment, the impairments listed in the previous paragraph, etc.)?

4) Low income populations often lack access to the internet, although access via smart phones is more common. How will SSA accommodate people who do not have internet access or cannot use technology well?

5) Why is SSA proposing to apply the WD-FAB to people undergoing CDRs? CDRs apply the Medical Improvement Review Standard (MIRS), an eight-step process which, if the beneficiary is not performing substantial gainful activity and is not found to meet or equal a listing, requires adjudicators to consider a Comparison Point Decision (CPD) to see if medical improvement occurred (see 20 CFR 404.1594; <https://secure.ssa.gov/poms.nsf/lnx/0428005015>). Using the WD-FAB during the CDR process is not useful because it was not used when beneficiaries were initially found to be disabled and its findings will not be able to be compared to the CPD: it will not be possible to determine whether a beneficiary did

better, worse, or the same on the WD-FAB at the time of the CDR than he or she did when the disability began.

Given these concerns, we recommend that SSA not proceed with this information collection.

Sincerely,

Stacy Cloyd, National Organization of Social Security Claimants' Representatives

Tracey Gronniger, Justice in Aging

Bethany Lilly, The Arc of the United States

Jeanne Morin, National Association of Disability Representatives