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December 16, 2020

The Honorable Chuck Grassley
Chairman
The Honorable Ron Wyden
Ranking Member
Committee on Finance
United States Senate

The Honorable Richard Neal
Chairman
The Honorable Kevin Brady
Ranking Member
Committee on Ways and Means
House of Representatives

Subject: *Social Security Administration: Revised Medical Criteria for Evaluating Musculoskeletal Disorders*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Social Security Administration (SSA) entitled "Revised Medical Criteria for Evaluating Musculoskeletal Disorders" (RIN: 0960-AG38). We received the final rules on December 4, 2020. It was published in the *Federal Register* as final rules on December 3, 2020. 85 Fed. Reg. 78164. The effective date of the rules are April 2, 2021.

SSA states the final rule revises the criteria in the Listing of Impairments that SSA uses to evaluate claims involving musculoskeletal disorders in adults and children under titles II and XVI of the Social Security Act. 49 Stat. 620 (Aug. 14, 1935). According to SSA, the revisions reflect their adjudicative experience, advances in medical knowledge, and comments received from the public in response to a notice of proposed rulemaking.

Enclosed is our assessment of SSA's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rules. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shari Brewster, Assistant General Counsel, at (202) 512-6398.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Edward D. Sosar
Regulations Writer – Federal Register Liaison
Social Security Administration

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
SOCIAL SECURITY ADMINISTRATION
ENTITLED
“REVISED MEDICAL CRITERIA FOR
EVALUATING MUSCULOSKELETAL DISORDERS”
(RIN: 0960-AG38)

(i) Cost-benefit analysis

The Social Security Administration (SSA) conducted an analysis and case study with regard to this final rule and stated that the results indicate a net reduction in Old Age, Survivors and Disability Insurance benefit payments (\$263 million) and a net increase in Federal Supplemental Security Income payments (\$67 million) over the fiscal year 2021 budget projection period, fiscal years 2021-30. SSA also stated that it anticipates a slight reduction in administrative costs to SSA as a result of the rule. Finally, SSA stated that it does not believe there are any more than *de minimis* costs to the public associated with the rule.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603-605, 607, and 609

SSA certified that this final rule will not have a significant economic impact on a substantial number of small entities because it affects individuals only.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

SSA did not discuss the Act in the final rule. In its submission to us, SSA indicated that it did not prepare a written statement under the Act.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

On May 7, 2018, SSA published a proposed rule. 83 Fed. Reg. 20646. SSA responded to comments in this final rule.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501-3520

SSA stated that it uses multiple existing information collection tools approved by the Office of Management and Budget (OMB) to document disability claims for all body system disorders, including musculoskeletal disorders. According to SSA, these information collections are not specific to any particular body system disorders, so they do not require modification in any way as a result of this final rule. SSA stated that the information collections used to collect information related to musculoskeletal (and all other) disability claims under titles II and XVI of the Social Security Act are:

- OMB Control Number 0960-0579 (SSA-3368, Disability Report-Adult)

- OMB Control Number 0960-0577 (SSA-3820, Disability Report-Child)
- OMB Control Number 0960-0578 (SSA-3369, Work History Report)
- OMB Control Number 0960-0540 (SSA-3371, Pain Report-Child)
- OMB Control Number 0960-0681 (SSA-3373, Function Report-Adult)
- OMB Control Number 0960-0542 (SSA-3375, SSA-3379, SSA-3377, SSA-3378, and SSA-3379, Function Report-Child)
- OMB Control Number 0960-0635 (SSA-3380, Function Report-Adult-Third Party)
- OMB Control Number 0960-0623 (SSA-827, Authorization to Disclose Information to the Social Security Administration)
- OMB Control Number 0960-0598 (SSA-820 or SSA-821, Work Activity Report-Self Employed Person & Work Activity Report-Employee)
- OMB Control Number 0960-0144 (SSA-3441, Disability Report-Appeal)
- OMB Control Number 0960-0499 (SSA-3881, Questionnaire for Children Claiming SSI Benefits) and
- OMB Control Number 0960-0720 (SSA-3830, Certification of Low Birth Weight for SSI Eligibility).

Statutory authorization for the rule

SSA promulgated this final rule pursuant to sections 402, 405, 416, 421, 422, 423, 425, 902, 1382, and 1383, of title 42, United States Code, and relevant sections of Public Laws 98-460, 104-193, and 108-203.

Executive Order No. 12866 (Regulatory Planning and Review)

SSA stated that it consulted with OMB and determined that this final rule meets the criteria for a significant regulatory action under the Order. Therefore, SSA stated that OMB reviewed the rule.

Executive Order No. 13132 (Federalism)

SSA determined that this final rule will not have sufficient federalism implications to warrant the preparation of a federalism assessment. SSA also determined that the rule will not preempt any state law or state regulations or affect the states' abilities to discharge traditional state government functions.