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Date: April 20, 2015

To: Nora Kincaid Telephone:  
Company: Bureau of Labor Statistics Fax: 202-691-5111

Subject: Comment re: ORS new collection requirement

# of Pages: 6

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Attached please find NADR's comments concerning the proposed new collection requirements of the ORS published in the Federal Register on February 18, 2015. Thank you.

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# NADR

National Association of Disability Representatives

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April 20, 2015

Nora Kincaid  
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Transmitted via fax: 202-691-5111

### **RE: Proposed collection, comment request**

Dear Ms. Kincaid:

On behalf of the National Association of Disability Representatives, I am pleased to submit these comments concerning the proposed new collection requirements of the "Occupational Requirements Survey" published in the Federal Register on February 18, 2015.

NADR is an organization of professional disability representatives who bring diverse yet specialized backgrounds to help claimants in applying for disability income assistance from SSA. Our members practice in all areas of the country and include sole practitioners, small business owners and employees of large organizations. They bring a great diversity of backgrounds to their work, including persons from the legal profession; vocational rehabilitation and mental-health; and the medical profession including nurses, physical therapists, and physicians; as well as years of experience in the trenches of Social Security field offices, DDS's, and ODAR's. Our members help individuals and their families navigate an often complex and lengthy process to demonstrate their eligibility for disability benefits.

### **Background**

In July 2012, the Social Security Administration signed an interagency agreement (IAA) with the Bureau of Labor Statistics (BLS) to develop and test occupational data collection methods that could lead to the development of a new Occupational Information System (OIS). The OIS will replace the outdated Dictionary of Occupational Titles (DOT) that SSA currently uses in its disability adjudication

process. The new OIS will include many occupational descriptors similar to those adjudicators currently use in the DOT. However, SSA expects that the OIS will expand on DOT information by describing basic mental and cognitive work requirements and providing more details about occupations' exertional and skill ratings.

Under the IAA, BLS is using the Occupational Requirements Survey (ORS) to collect occupational characteristics data that are critical to the disability adjudication process. This new ORS data is intended to allow SSA adjudicators to clearly associate the assessment of a claimant's physical and mental functional capacity and vocational profile with work requirements such as the physical demands, skill requirements, and environmental conditions of work. This should mirror the occupational descriptors found in the DOT. The ORS will collect data from a sample of employers. These requirements of work data will consist of information about the time to job proficiency, physical demands of the job, environmental conditions, and most importantly the cognitive and mental demands of the job for a sample of occupations for each sampled employer.

#### **Comments**

NADR applauds SSA and the BLS for this long-overdue effort to update the Dictionary of Occupational Titles. We believe it is both efficient and essential to an objective disability-determination process that this data base be located and updated outside of SSA. Building on the ORS also appears to be an effective starting point for the development of a new Occupational Information System that will accurately reflect the realities of the requirements of work.

The Dictionary of Occupational Titles was last updated in 1991. Much has changed in the world of work in the past 25 years, yet Social Security continues to rely upon metrics that were updated before the advent of the world wide web and Microsoft Windows 3.0. The DOT in 1986 and 1991 found 137 unskilled sedentary occupations and approximately 1600 light duty occupations.

The DOT was developed by using trained occupational analysts from several regions of the country to gather data and then evaluate, write, and revise occupational descriptions. The methodology is predicated upon strict adherence to systematic procedures learned from the intensive training given to the Occupational Analyst. These procedures included uniform job analysis, observation, evaluation, recording, writing, and job comparison to arrive at an occupation with a common definition. These procedures and expectations can be found within the Revised Handbook for Analyzing Jobs, 1991 [http://c.ymcdn.com/sites/www.nadr.org/resource/resmgr/RHAJ\\_1991\\_Final.pdf](http://c.ymcdn.com/sites/www.nadr.org/resource/resmgr/RHAJ_1991_Final.pdf), chapters 1, 2, 3, 13, 14, 15, 18, and all 3 appendices.

NADR's overriding concern is the level of training that will be provided to those who will conduct the ORS. Also of significant concern is that the results will be relying upon responses from individuals who have a supervisory view of the job (manager, human resources, supervisor, etc.) but not an actual understanding of

the true performance requirements. Without highly consistent training and process knowledge, the responses provided will likely be scattered or possibly even unreliable. When this is coupled with anticipated third-party reports submitted via an email response, the potential for errors in observational consistency becomes an overriding issue. Further, we share the concerns submitted by the International Association of Rehabilitation Professionals in their detailed comments in response to this request.

That said, we believe that it is possible to address some of these concerns within the existing framework, and look forward to working with BLS and SSA to assure that the resulting scope of the OIS will be an accurate and legally defensible reflection of both the occupational demands of work and the characteristics of jobs in the national economy.

Following are our comments in response to specific issues identified in the Federal Register comment request:

- *Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.*

There is no question that fresh data are needed: 80 percent of the DOT data was last updated in 1977 -- 40 years ago. While the BLS approach will bring fresh data into the process, it must be usable data in order to inform the disability determination process. We understand that BLS intends to collect data about occupations using the SOC code system of 820 occupations. The O\*NET has 974 distinct occupational definitions that begin with the SOC codes. It is unclear how the SOC-collected data will be applied to the O\*NET codes.

Also of concern is that the 12,761 unique occupations included in the DOT must somehow be aggregated down to the 820 SOC codes. Some of these groups contain hundreds of DOT occupations, and the variability of values obtained for Specific Vocational Preparation or Strength is likely to be too great to provide useful information. Going from NAICS coding at the 2-digit level to the 5-digit level would permit a direct link to critical labor market data for numbers of people employed nationally in these targeted industries. It may require an increase in the sample size to achieve results at a reliable level, but it is necessary to assure that the information collected is a useful tool in the disability determination process.

Since this information is needed only at step 4 and step 5 of the sequential evaluation process, and skill transferability is only needed at step 5, the collection of information should primarily focus upon unskilled positions (currently SVP 1 or 2) that are performed in a sedentary or light nature (as defined by the RHAJ). The occupational demands of these positions including physical, mental, environmental, worker characteristics (temperaments in the RHAJ), and frequent

employer provisions for accommodation (i.e. rates of time off task, ability to sit or stand at will, etc.) should be intensely developed, studied, and highly replicable.

- *Enhance the quality, utility, and clarity of the information to be collected.*

The quality, utility and clarity of information collected must be sufficient to withstand a Daubert challenge if it is to be incorporated into the disability determination process. Occupational definitions must be constructed based on sound methodology in order to assure a high level of validity when there is controversy.

With regard to mental/cognitive impairments, SSA uses very specific characteristics with regard to memory, reasoning, concentration, pace, persistence, production rate, number of "steps" required to perform tasks, time permitted for the worker to be "off task," decision making, judgment, level of stress, permissible absences (particularly during the probationary period) and frequency of rest or break periods in making a disability determination. The proposed data collection by BLS does not address these factors discretely and includes too many mixed concepts. BLS should break each of these constructs out into individual scales.

Missing from the Physical Demand data collection efforts are the following useful factors that should be included: Standing (separated from walking); twisting of trunk (trunk rotation); depth perception (required for all driving positions); reaching overhead (defined as "at or above the shoulder"); color vision; balancing, touch/feeling; tasting/smelling; and visual accommodation (seeing near and then far quickly). Also missing is the capture of characteristics of typical work situations a worker would likely encounter while performing their job. These could include the directing, controlling, or planning activities of others; the ongoing and successful performance of repetitive or short-cycle work; the need to influence people in their opinions, attitudes, and judgments; the ability to perform a variety of duties without loss of composure or concentration; the need to express personal feelings; an ability or need to work alone or apart in physical isolation from others; an ability to perform effectively under stress with an understanding that stress typically is defined by the workers capacity to deal with stress; the need to attain and sustain working within precise set limits, tolerances, and standards; working under specific instructions; dealing with people; and being able to make judgments and decisions. These not only should be considered, but should be systematically evaluated on a scaled manner.

The data proposed to be collected also fails to capture traditional worker functions related to working with Data, People, Things, or Ideas (constructs that can be helpful in identifying alternative work possibilities for people). Further, this data-collection effort fails to include any information summarizing the primary activities and purpose of the work being done by the worker or any areas of specialization in which this work is done. In the DOT, these Work Fields and

Materials, Products, Subject Matter, and Services (MPSMS) codes are fundamental to the examination of occupations that may be transferable from one occupational group to another. The lack of Work Fields and MPSMS codes will fundamentally change and weaken the ability of SSA to perform transferable skills analysis for older workers at step 5.

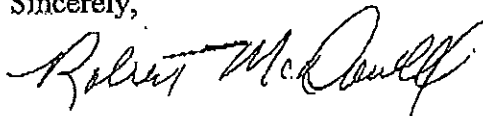
We also are concerned that the quality of the results will be compromised by collecting data from HR personnel and business owners without any direct observation and empirical measurement. For example, it is essential that weights lifted and forces exerted be verified with a simple push-pull meter; noise levels should be measured with a decibel meter; and distances walked or reached should be measured. Job analysts are on site already; a few more minutes in observation and measurement will greatly enhance the quality of the information obtained and eliminate a potential legal objection that the information is just "hearsay" since it was only described to the analyst rather than directly observed.

The ORS Collection Manual created by BLS is a good start to carefully identifying each of the factors collected. Descriptions of each of the elements should be consistent with language used by rehabilitation, mental health/psychological care providers and healthcare professionals. The ORS Collection Manual should be very carefully vetted by these kinds of professionals prior to the full data production collection effort.

It also is not clear whether Temporary Employment Agencies are included in the mix of industries surveyed by the NCS. Nearly three million workers are employed by this industry. In some occupations, as many as one-third of all workers in an occupation are temporary workers. This represents a fundamental change in how and for whom some occupations are performed. This has a significant impact on how a worker enters an industry. For some types of work, a temporary agency may be the only gateway available.

We appreciate the opportunity to provide these comments to the Bureau of Labor Statistics. We look forward to continuing to work with you to create an OIS that is accurate, up-to-date and legally defensible.

Sincerely,

A handwritten signature in cursive script, appearing to read "Robert McDowell".

Robert McDowell