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Software & Internet Services for Vocational Decisions

August 22, 2014

Office of Information and Regulatory Affairs
Attn: OMB Desk Officer for DOL-BLS
Office of Management and Budget
725 17th Street NW., Room 10235
Washington, DC 20503

RE: Public Comment of the Proposed Test of the Occupational Requirement Survey

Via email: OIRA_submission@omb.eop.gov

Dear Michel Smyth:

Thank you for the continuing opportunity to comment on this published request. I responded initially to the initial draft review with quite a range of suggestions. I was pleased to see some good changes in the form that was sent to OMB for a new round of public comment and subsequent consideration for approval. I do have a few comments, grouped into the general areas below.

SkillTRAN LLC is a private company based in Spokane Valley, WA. SkillTRAN software products have been deployed in a wide variety of private and public organizations, including the Social Security Administration. SkillTRAN products use the venerable Dictionary of Occupational Titles (DOT), O*NET and a wide variety of other public and private resources to deliver software products and online solutions that help vocational professionals develop defensible answers to questions like:

- What is the work history of a person?
- What skills and abilities have been demonstrated?
- What other kind of work can a person do following an injury of some sort?
- What other kind of work fits with a person's interests and abilities?
- How much do these occupations pay?
- How many people perform those kinds of occupations?
- What is the long-term outlook for those occupations?
- Where could a person get training to learn those occupations?
- What industries are likely to hire for these occupations?
- Who are the companies that are likely to hire for those occupations where this person lives and is able to commute?
- Who is hiring now?

SkillTRAN's principal (Jeffrey A. Truthan) has a Master's degree in Rehabilitation Counseling. Since 1973, I have worked both in the trenches of public vocational rehabilitation and vocational evaluation. On a daily basis, I work with many vocational professionals confronted with the above issues, primarily in a forensic or contested venue. Since 1985, I have designed, tested, documented, promoted and supported multiple software solutions. Our thousands of national customers include Vocational Experts, Workers Compensation Agencies, Insurance companies, SSA, Workforce Development, Education, Military and public and private vocational rehabilitation. SkillTRAN is generally regarded as the national leader for these kinds of services. We know the DOT extremely well, warts and all, and we know of the current movement by SSA towards an O*NET-based system. This is a critical decision that has far-reaching impact on all of the industries we serve, since what Social Security chooses to do and to fund will become the de facto industry standard.

We want to see any change as important as this one **done right**. We are aware of the impending financial crisis faced by SSA in terms of its projected insolvency by 2016 for handling of disability claims. As both a taxpayer and as an individual who is deeply interested in seeing people get back to work when possible rather learn total dependency, SkillTRAN submits these comments about both the form and the direction in which all of this is headed.

Practical Utility

The various data elements to be gathered in this study are essential for more accurate claims adjudication by the Social Security Administration (SSA). The impact of this kind of new data is also highly significant in many other industries, including both public and private venues such as: State and Federal Vocational Rehabilitation, Veterans Rehabilitation, Workers Compensation, Special Education, Career Training (Secondary, Community College, and University), Work Force Development, Long-Term Disability Insurance, Career Counseling, Outplacement, and various civil proceedings (such as wrongful death, marital dissolution, personal injury, discrimination, wrongful termination, medical malpractice, and product liability). The stakes are high, as the amount of money involved in all of these kinds of situations is highly significant and an ever-increasing economic burden. Current, high quality data is essential to the equitable resolution of both disability claims management and return-to-work efforts.

While supposedly non-adversarial in nature, the cost to SSA of handling just the first level of appeal is \$ 7,200 per claim. With nearly 700,000 claims reviewed by the Office of Disability Adjudication and Review (ODAR), SSA spends more than \$5 billion per year on just this portion of the claims process.

Methodology. All data collected in this survey and certainly in subsequently planned surveys must clearly meet the burden of both scientific and particularly legal scrutiny. Increasingly, scientific method is subjected to legal standards known as the "Daubert Criteria". The trier of fact (the Administrative Law Judge – ALJ) is the "gatekeeper" to assure that scientific-expert testimony truly proceeds from "scientific knowledge."

Testimony by an expert must be relevant and reliable. Scientific knowledge must be the product of sound scientific methodology and derived from scientific method. Scientific method includes:

1. Empirical testing – Is the theory or technique falsifiable, refutable, or testable?
2. Subjected to peer review and publication
3. Have a known or potential rate of error
4. Have maintained standards and controls
5. Be generally accepted by a relevant scientific community

The current proposed survey instrument will be used an estimated 2,550 times to gain 2,678 responses. These responses will be obtained via interview with Human Resources (HR) personnel and from small business owners. In only a small sampling (of undisclosed size) will responses be obtained by direct observation of the work being performed to examine the reliability of interview data vs. direct observation. The surveys will be conducted by qualified and trained personnel at the Bureau of Labor Statistics, National Compensation Survey (NCS) group. This survey process with HR personnel and small business owners has been used for a long time by NCS to gather "soft" information useful for reporting in the NCS survey results. This soft information is helpful for career exploration, planning, and training purposes.

SSA has asked NCS to collect "hard" (defensible) data on many different physical, environmental, mental, and cognitive demands contained on the survey form. SSA receives medical evaluations and records, testing results, psychological reports, and functional capacity evaluations, all of which come from a variety of medical and social service disciplines. These disciplines have well-established processes and procedures and generally report results in reasonably standard forms and formats, and are often reasonably consistent with the existing structure of these characteristics in the DOT.

The survey format is very open-ended for most responses. It seems designed to obtain soft information rather than clearly articulated criteria that are:

1. Measured (e.g. using a scale for weight lifted, decibels of sound, distance walked, etc.)
2. Obtained by direct observation of the occupation being performed
3. Consistent with how health care/social service professionals report functional abilities as observed through client performance in standardized situations.

Cognitive elements identified in the survey reflect terminology used internally by NCS far more than they reflect questions that are posed by the ALJ to a vocational expert in the ODAR hearing. This disconnect between what the ALJ asks in the mental-cognitive realm vs. what elements NCS will be collecting is of considerable concern. SSA needs to have solid, reliable, defensible data that it can use to more rapidly and accurately make claims decisions that stick. It is not clear how data will be aggregated and subsequently reported for use by SSA.

Another critical methodology issue is how this data will be reported. Spread across multiple documents in the original BLS-NCS request for public comments, it is estimated that about 33,000 responses will be obtained at the O*NET level of occupational classification during the full survey. That works out to about 33 responses per occupation. A huge issue that has not been addressed in any of the NCS or SSA

documents is whether that is a sufficient sample size given the wide range of Strength and Specific Vocational Preparation (SVP) expected within many of the O*NET groups. DOL represents that the O*NET groups are homogenous clusters with little variability. This is far from the reality compared to the DOT occupations that comprise or cross reference to the O*NET code broad groups.

An internal study recently conducted at SkillTRAN shows that of the 22 broad occupational groups, only 7 groups showed a limited range of values for the Strength factor (Lifting capacity). 2 of these groups (1.2% of the workforce) were Sedentary or Light in nature. The other 5 groups (22.8% of the workforce) ranged from Sedentary to Medium or Light to Heavy Strength. These more "homogeneous" groups including occupations relating to Community and Social Service; Legal; Computer and Mathematical; Business and Financial Operations; Architecture and Engineering; Food Preparation and Serving; and Building and Grounds Cleaning and Maintenance. This totals only 24% of the workforce that have a more limited range of Strength requirements.

The other 15 groups represent 76% of the workforce. Five of these groups (23.1% of the workforce) show Strength ranges from Sedentary to Heavy or Light to Very Heavy. The 10 other groups cover 52.9% of the workforce, where Strength can range anywhere from Sedentary all the way to Very Heavy work. So much for "homogeneity"!

Similar findings also show similar dramatic variability in the SVP values for each of these broad occupational groups. Only one broad group showed a 3 level spread (Computer and Mathematical Occupations with 2.8% of the workforce). Three groups showed a 5 level spread (5.6% of the workforce) with all the rest showing a 6-9 point spread on a 9 point scale.

What this underscores is that there will be enormous variability in reported results and that the reported ranges will be so large as to render the data essentially useless in developing an understanding of what an occupation requires of the worker.

How many people are employed at a specific level of Strength within an occupation also remains as a critical missing dimension in actually using this data to adjudicate claims at the ODAR hearing level. While NCS has indicated that reporting of values may be broken out at the two digit level of NAICS industry classification, this will NOT be a sufficient level of detail to reduce this variability to a tolerable level with practical utility. Industry level detail reporting needs to be carefully studied so that variability can be reduced. OES statistics (a reliable source of employment numbers) are reported at least at a 3-digit level of NAICS coding, and often at a 4 or 5-digit level of detail. This will increase the sample size required in order to get enough observations for an occupation at each industry level. This has significant financial impact on the scope of the surveys to be done, but it is work that must be done. With an average \$ 250,000 lifetime award cost per claim, far too much is at stake to not do this part properly as well.

The NCS group sends staff to an employer to conduct these interviews with the HR personnel and the small business owner. These interviewees often do NOT know the exact answer to the questions posed on this survey. The only real way to capture this data more reliably is to **directly observe the work being done, and to measure it.**

Since a lot of money is spent just to set up these interviews with willing employers, why not spend some extra time collecting solid, hard data through direct observation and measurement that will be less subject to scrutiny in an inevitable parade of Daubert challenges that will otherwise surely occur. Why not just do it right to start?

The claimant representative community is becoming more sophisticated in its understanding of various data sources. It would not surprise me that results would be quickly subjected to a "Daubert challenge". Such a challenge should not be unduly burdensome to SSA/BLS provided that all factors for which data are collected have a solid foundation in established research, that the methods and procedures are clearly defined and documented so that the data collection effort could be replicated, that error rates are reported, that standards for data collection be well established and carefully followed, and that the results become accepted and useable by the disability industry.

If the surveys proceed as outlined, without direct observation and measurement, attorneys will appeal decisions based on this new data as "hearsay evidence", or worse, argue that the claimant was denied "due process" because the new occupational data source is flawed in its data collection and reporting processes.

How has the hearing process been expedited or improved in any way if a vocational expert can only testify that an occupation performed by the claimant or that a claimant could perform might be anywhere from Sedentary to Very Heavy in Strength, and/or that the range of SVP could be anywhere from 1 to 9? And how are "significant employment numbers" derived from any of this?

I shudder to think how this plays out when we really look at the many critical issues with how this data will actually be used in the ODAR hearing process. It just does not seem that SSA has taken an active enough lead or thought through the implication of reducing the level of occupational detail from 12,761 DOT occupations to a mere 974 O*NET groups for which employment data is available for only 760 SOC/OES groups and in which there will be so much variability in these factors. To me, it is like stepping into quick sand without a rope.

Estimate of Burden

NCS estimates that it will take 76 minutes to complete this form. It is unclear if this refers to 76 minutes per occupation (as many as 8 occupations are shown as being collected on a single form). Private rehabilitation personnel, doing onsite job analysis in a workers compensation claim spend 2-3 hours observing, measuring, and collecting this data. If NCS believes it can reliably collect all this data for 8 occupations in 76 minutes, that implies less than 10 minutes total per occupation. I do not understand how that can be reliably achieved even for one occupation in just 76 minutes.

Enhanced Quality, Utility, and Clarity

Among the Cognitive elements, the definition of complexity (Item 1) has improved from the initial draft, but again, multiple dimensions remain for this factor. The number of tasks is one dimension and the amount of judgment required is another. The ability to

"analyze" is also another dimension. It is better to break this into 3 questions than one. The scientific constructs from which "complexity" was derived are unclear.

Item 2 – "Closely controlled" – remains another multiple dimension item. Number or level of instructions is intermixed with autonomy, supervision, ingenuity, and goal orientation. Break these out separately IF these are relevant to the questions that SSA asks about during the ODAR hearings ... again the disconnect with practical application.

Item 3 is vastly improved. Missing from this area is capture of "Time off task".

Items 4-7 are more Social than Cognitive items. Verbal interaction is unclear. Does it mean using words? If so, in what language(s)? Does it include hand signals or gestures? Written instructions? In person? On the phone? Perhaps the better way to describe these dimensions is "communication" rather than "verbal interaction".

Missing from the cognitive mix is the ability of the person to reason.

In the Physical Demands area, instructions are to capture "duration". It is unclear if this means actual time (which would be better) since it could later be broken out into better defined ranges of time.

Standing is not the same as Walking. These two elements should be captured separately.

Lifting/Carrying – This should be actually measured in addition to capturing the frequency.

Gross Manipulation needs to be better defined, as does Fine Manipulation.

"Getting Low" is a terrible heading – use "Posture" or something else.

Bending and Twisting are critical aspects of Posture that are difficult for persons with back, hip, knee, and foot injuries.

Balancing is missing from this list and is relevant for some occupations.

Missing from the Climbing area is the Terrain on which the climbing occurs.

Driving omits collection of Distance, Frequency, Duration, and Terrain

Communicating Verbally is unclear. By what means? Speech, text, hand signals, phone, public speaking, selling, writing, documenting?

Hearing – First example is doubled up. There is no example or instance in which hearing must happen when there is background noise or sounds present that could easily impede full comprehension of spoken words.

Vision omits capture of any requirement for depth perception or color discrimination ... important in many occupations.

In Environmental Conditions:

The noise intensity level should be captured live in the actual work environment. A \$20 device will do that.

"Other Hazards:" should be captured so that they could be categorized later if encountered often enough.

MISSING:

There is no collection of Temperament factors, which are work situations to which the worker must adapt in order to perform the occupation satisfactorily.

There is no estimation of Aptitude values being attempted here. These are highly relevant to training/re-training efforts.

There is no collection of any of the traditional Reasoning, Math, and Language factors. This is very odd since the ability to function at some of these traditional DOT levels is impaired after traumatic brain injury, stroke, and in some other physical and mental/emotional conditions. Is it expected that the first 4 factors collected in the Specific Vocational Preparation section will suffice?

Note that Professional Certification and state or industry license will vary significantly from state to state.

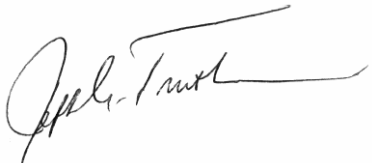
Minimized Burden of Response

SkillTRAN advocates for all levels of appropriate technology, and particularly measuring instruments such as weight scales, tape measures, and decibel meters be used to provide objective and reliable assessment of these key values in the vocational planning/testimony process.

After the formal data collection is done, DO ask about accommodations. Some employers have spent a lot of money on this and will be happy to share their thoughts!

Thanks for the opportunity to make some comments. I would be very interested in discussing these further if there is some interest by OMB, BLS/NCS and/or SSA.

Sincerely,



Jeffrey A. Truthan, President
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Certified Vocational Evaluator - CVE