

**NATIONAL ORGANIZATION OF
SOCIAL SECURITY CLAIMANTS' REPRESENTATIVES
(NOSSCR)**

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Executive Director
Barbara Silverstone

May 18, 2021

Office of Regulations
Social Security Administration
3100 West High Rise Building
6401 Security Boulevard
Baltimore, Maryland 21235-6401

RE: Docket ID Number SSA-2021-0008, Request for Information on the Foundations for Evidence-Based Policymaking Act of 2018 Learning Agenda

Submitted via regulations.gov

Dear Madam or Sir,

These comments are submitted on behalf of the National Organization of Social Security Claimants' Representatives (NOSSCR), a specialized bar association for attorneys and advocates who represent Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) claimants throughout the adjudication process and in federal court.

We appreciate the opportunity to provide suggestions for SSA's Learning Agenda. We encourage SSA to follow the Consortium for Citizens with Disabilities' [demonstration principles](#) in all research.

Improving the Disability Application, Determination, and Effectuation Processes

SSA should study situations in which people are eligible for higher benefits, but either do not apply for them or apply but are not granted them. Situations in the first category would include but not be limited to:

- Early retirement claimants who did not check the box on the SS-1 form to apply for SSDI but were insured and would have met the medical standards
- People with disabilities who were not listed on a disability, retirement, or survivor's benefit claim on a parent or spouse's record but would have qualified for auxiliary benefits
- SSI recipients who become insured for SSDI but do not apply for it
- Low-income and low-asset families with disabled children who do not apply for SSI (SSA should also study whether inquiring about disability, especially categories of

presumptive disability, when enumerating children at birth and treating responses as written statements of intent to file would increase takeup of SSI for eligible infants)

Situations in the second category could include:

- People listed on a parent, spouse's, or other relative's claim who were not provided auxiliary benefits
- People receiving either SSI or Title II disability benefits who apply for a different title of disability benefits and are denied. Related to this, SSA should study its collateral estoppel rules to determine if they are creating equitable, efficient results and if there are ways to improve policies and/or staff compliance with existing policies.

SSA should also conduct a process with broad stakeholder engagement to create an online SSI application available to all claimants.

SSA should publish information about what criteria lead to a case being flagged for Quick Disability Determination (QDD) processing and which criteria are most highly indicative of a finding of disability. SSA should allow the public to make suggestions about other criteria that are highly probative of disability and SSA should use modeling and sampling to test which criteria should be added to the QDD flagging process. Similarly, SSA should study which impairments or conditions are appropriate for Compassionate Allowances and/or Presumptive Disability.

SSA should study the effects of the reinstatement of reconsideration in the former "prototype" states, including the percentage of claimants who were awarded benefits at that level and the additional waiting time experienced by those who were awarded benefits at the Administrative Law Judge (ALJ) or subsequent stages.

SSA should study the costs and benefits of conducting more Targeted Denial Reviews (TDRs) of cases denied at the initial and reconsideration levels. The agency should explain the factors that lead to cases being selected for TDRs and ask for input from stakeholders about additional case criteria that would make a TDR appropriate. SSA should study variations across states in policy-compliant adjudication of different types of cases (different impairments, ages of clients, etc.) and promulgate best practices and additional trainings for states who perform more poorly.

SSA should study the percentage of consultative examinations performed by a claimant's treating provider and consider ways to increase this percentage, to improve the quality and consistency of evidence in disability claims. SSA should also study what information consultative examiners are asked to provide and whether different or additional information would be useful to adjudicators considering whether a claimant meets or equals SSA's listings or otherwise should be found disabled.

SSA has gradually been introducing centralized scheduling for hearings, but there are multiple Centralized Scheduling Units (CSUs) in different regions, causing confusion when they schedule attendees to be at multiple hearings at the same time or use different practices. SSA should study how to better coordinate scheduling to improve efficiency and reduce the number of hearings that must be rescheduled.

In approximately one in eight federal court appeals, SSA requests voluntary remand. Each of these cases was previously reviewed by the Appeals Council and not resolved or remanded at that point. A federal court appeal is costly for SSA and delays benefits for claimants. SSA should study why voluntary remands are requested and how the agency can change its policies and procedures to resolve more of these cases before federal court complaints are filed.

Once a favorable decision has been made in a disability claim, effectuating the decision and starting benefits can be complex. SSA should study ways to improve the accuracy and timeliness of effectuation (both payment of retroactive and ongoing benefits). The agency should determine what types of cases are especially difficult to effectuate (concurrent SSI/SSDI, workers' compensation, federal court remands, cases with substitution of party after the death of the claimant, and cases with auxiliary beneficiaries are likely to be among them) and develop methods to simplify the effectuation process.

Improving Representation

SSA should track the time it takes to process SSA-1696 (Appointment of Representative) forms submitted in different ways and processed by different field and hearing offices. The agency should study ways to improve the speed and accuracy of processing these forms, which are necessary for representatives to obtain information about their clients' claims.

SSA should also create a plan for providing representatives' access to the full electronic file (Sections A, B, and D as well as the current E and F) at the DDS level and for Continuing Disability Reviews (CDRs). The agency should also create a plan to not merely scan paper cases but make them available through Electronic Records Express/Appointed Representative Services (ERE/ARS).

SSA should create a plan to recognize firms as representatives for the purpose of payment of fees, and when multiple reps in a firm are authorized for fees on the same claim, to allow all representatives to be paid on the same day.

SSA should also publish more data about representative fees, including fees paid on SSI claims, and provide average fees for cases awarded the initial, reconsideration, ALJ hearing, and later levels of appeal. SSA should also collect and publish data on the time it takes to approve fee agreements and authorize fee petitions in different SSA offices, using it to identify best practices and provide additional training and management to poorly-performing offices. The agency should identify types of cases where fees take a long time to approve and pay or where there are frequent errors in withholding, authorizing, and paying fees. For example, concurrent cases, non-disability (CDR, overpayment, etc.) cases resolved by field offices, and cases with auxiliary benefits seem especially error-prone and subject to delays.

Encouraging Work Activity

SSA should study the effects of increasing the non-blind Substantial Gainful Activity (SGA) level to the blind level on disability claims, awards, work activity, and financial stability of claimants and beneficiaries.

SSA should also study the best ways to ask SSI and SSDI beneficiaries who report earnings whether they have subsidies, Impairment-Related Work Expenses, or other work incentives that require additional development and may allow them to keep more of their benefits and increase household income.

SSA should track the time it takes for different field offices to process requests for expedited reinstatement when SSDI recipients whose benefits ended because of work activity stop working or experience decreases in income. SSA should study differences in policy compliance and share best practices from the most efficient and accurate field offices.

SSA should also evaluate its temporary final rule on overpayment waivers during the pandemic. The agency should consider whether field offices properly applied agency procedures, and what percentage of the people eligible for waivers applied for them. It would be useful to know whether the beneficiaries who had part of their overpayments waived during the “pandemic period” also received waivers for the remaining portions. Additionally, how many overpayments were discovered by SSA too late to be eligible for the expedited waiver procedures, but would have been eligible if discovered sooner?

SSI Improvements and Expansion

SSA should build on the recent [report](#) from Justice in Aging and the National Consumer Law Center and study situations where SSA fails to properly develop reports of property ownership before suspending benefits or issuing overpayments. SSA should consider ways of improving its policy and how current policies are implemented.

The Social Security Act allows for up to three months of temporary institutionalization (TI) benefits for SSI recipients who are hospitalized for at least a full calendar month who need their benefits to maintain their living arrangement upon discharge. SSA should remove, on either a pilot or permanent basis, the [POMS’ requirements](#) in section B.4 and B.5 for eligibility for these TI benefits. SSA should also use information received from data sharing with CMS and other entities as acceptable proof of the length of institutionalization. It is not practical for many SSI recipients who are so sick as to need over a month of hospitalization and/or nursing home care to obtain written certifications from their medical providers and draft statements about their living arrangements and housing costs and submit these to SSA before they are discharged. Suspending benefits, or charging overpayments, to SSI recipients who are by definition have low income and assets and are elderly and/or disabled, and who have spent over a month in a hospital or nursing home, increases poverty and instability and creates a large workload for SSA—made larger when people need benefits reinstated or submit new SSI applications. It would be simpler for SSA to pay benefits for the first three months of admission to an institution that qualifies the recipient

for TI benefits, so long as the beneficiary remains alive and SSA has no information that would otherwise suspend or terminate eligibility for SSI.

SSA should study the effects on SSI benefits and on administrative workload of no longer considering the provision of food as part of In-kind Support and Maintenance (ISM). SSA removed clothing from consideration in 2005 through regulations and could likely remove food in the same way.

SSA should study how many SSI recipients are classified as living in public assistance households, how many live in such households and are not correctly classified, and what effect this has on SSI benefits and agency workloads. The agency should study techniques to better identify public assistance households.

Given the upcoming Supreme Court case of *U.S. v. Vaello-Madero*, SSA should begin developing a plan for how the agency will manage the extension of benefits to Puerto Rico, Guam, American Samoa, and the U.S. Virgin Islands should the Court's ruling require it. This planning should involve many of SSA's components, including Policy, Operations, Systems, General Counsel, Hearings Operations, and others.

Thank you for your consideration of these comments. We would be glad to discuss any of these ideas in greater detail with you at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Barbara Silverstone". The signature is written in a cursive, flowing style.

Barbara Silverstone
Executive Director