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Administrative Conference of the
United States

Writer's Direct Line (213) 640-3923

April 17, 2023

Re: Identifying and Reducing Burdens in the Social Security Administrative Processes

Dear ACUS Conference Members,

The Legal Aid Foundation of Los Angeles (“LAFLA”) welcomes the opportunity to provide comments and information in response to ACUS’s request for public input on how agencies can identify and reduce unnecessary procedural burdens faced by the public who participate in administrative processes. This Memorandum identifies numerous administrative burdens and systemic barriers to participation (for claimants and appointed representatives) in adjudicatory proceedings before the Social Security Administration.

LAFLA is a nonprofit law firm that protects and advances the rights of the most underserved—leveling the playing field and ensuring that everyone can have access to the justice system. Every year, LAFLA helps more than 80,000 people in civil legal matters by providing direct legal representation and other legal assistance for low-income people across the Greater Los Angeles region.

Our collective work includes assisting poor families raising children, homeless and disabled individuals, veterans, current and former foster youth, senior citizens, and other vulnerable residents to access and maintain the basic subsistence benefits and services they need to secure food, medical care and housing. We have extensive experience representing recipients and applicants of Social Security benefits throughout the administrative process, from local SSA field office business to the full range of SSA appeal processes across most SSA benefit programs.

LAFLA’s comments offer specific suggestions for reducing burdens in applying for, receiving or renewing federal benefits and services and addresses the need for comprehensive and consistent policies and procedures amongst offices of Hearings Operations and local District Offices.

The specific topics addressed include:

Other Office Locations:

Ron Olson Justice Center, 1550 W. 8th Street, Los Angeles, CA 90017
Long Beach Office, 601 Pacific Ave., Long Beach, CA 90802
Santa Monica Office, 1640 5th St., Suite 124, Santa Monica, CA 90401
South Los Angeles Office, 7000 S. Broadway, Los Angeles, CA 90003



- I. Improving Direct Access to an Appointed Social Security Representative (Liaison) for Community Organizations Working with Disenfranchised Individuals Experiencing Barriers to Federal Entitlements.
- II. Improving Process for Enrollment in Appointments of Representative Services to Gain Access to Electronic Records Express.
- III. Improving Claimants' Access to review their e-File or paper records.
- IV. Creating Asset Exemptions Equal to Rental Debt for SSI Recipients in Eviction Proceedings to Avoid Loss of Eligibility and Disruption of Benefits due to Excess Income and Resources.
- V. Addressing Regional IX Unification of Policies and Procedures in Hearing Offices and Field Offices.

Section I: Improving Direct Access to an Appointed Social Security Representative (Liaison) for Community Organizations Working with Disenfranchised Individuals Experiencing Barriers to Federal Entitlements.

A. Overview

This section is about ways to develop and improve public services in our community and quality of life for marginalized citizens and legal residents.

The Social Security Administration (SSA) recognizes that certain groups, including people with low income, limited English proficiency, the unhoused, and the mentally ill, experience barriers that impede their ability to apply for and receive benefits. It also recognizes that community organizations can play an important role in removing the barriers to these groups.

B. Burdens/Barriers

LAFILA and others doing similar work in the community are frequently prevented from efficiently serving our clients because of extremely long telephone hold times when contacting Social Security, as well as the Agency's failure to return phone messages. Social Security beneficiaries also experience these same barriers. Often, a matter can be resolved if claimants and advocates could simply talk to an SSA representative to exchange information. However, such simple communication is almost impossible because SSA field offices have automated messages after complicated phone prompts result in one having to leave a message and those calls are not returned. Also, designated representatives are presented with inconsistent information regarding which forms are necessary to receive information about our clients' cases. For example, SSA Field Offices often refuse to honor requests for information when advocates present SSA 3288 and insist on the SSA 1696 even though advocates have not agreed to represent SSA beneficiaries in Social Security matters but are merely attempting to help claimants get information about their cases. Additional burdens include SSA Field Office losing documents and multiple requests to re-send the completed forms or documents.

C. Solutions

We propose coordination, cooperation, and collaborative agreements among the SSA and service providers. Community advocates should be provided with direct access to Social Security personnel so our clients' issues are resolved quickly. We believe that improving our direct access to Social Security staff will help reduce the workload of Social Security employees, ensure that Social Security is following their own policies and procedures and reduce the burdens that prevent the people we serve from receiving the benefits they urgently need to survive.

Establish Dedicated Director Involvement

It is our understanding that the Area Director's office oversee field offices. However, the Area Directors, at least in California, have proven ineffective in dealing with problems encountered at the field office. We get little, if any, response from the Area Director when issues of lack of response or inability to communicate with the field office is brought to their attention.

Additionally, the Area Director refuses to intervene when the field office's failure to comply with SSA policy is brought to their attention. Better communication between the Area Director and the field office and more accountability of the Area Director's office to the community and accountability of the field office to the Area Director's office would go a long way to improving performance by the field office. The Area Director should more closely monitor field office performance and more proactively take steps to ensure compliance with policy and effectiveness of the field office procedures. Area Directors should also be in better communication with advocates and other community representatives to improve field office performance.

To this end, we suggest that the Area Directors be required to meet on at least a quarterly basis with advocates and community representatives so that we may raise systemic issues that are harming our clients and develop strategies to resolve them.

Additionally, maintaining and sharing updated Area Director's contact information would allow advocates to resolve field office issues and improve efficiency.

Make Existing Services More Effective

Address what needed services exist but are inadequate to serve the target populations and their designated service provider.

Recognize those within the organization who oppose change internally or who do not see the need for change (address issue of added responsibilities)

Involve the people who will make it work (encourage suggestions from both service providers, SSA staff, appointed representatives)

Create incentives that encourage staff to invest time in making changes and follow-through for improvement to Access to Services.

Focus on coordinating services of different organizations who provide a variety of services to different populations so that a participant in one program who needs other services will get them quickly and appropriately.

Encourage collaboration by educating organizations and service providers of what others are doing to assure a range of services for everyone who needs them.

Section II: Improving Process for Enrollment in Appointments Representative Services to Gain Access to Electronic Records Express.

A. Overview

Social Security has an online service for viewing the electronic claims folder called eFolder Access. Appointed representatives enrolled for this service can view, supplement, print, or copy their clients' eFolders using Electronic Records Express (ERE). Use of this service significantly reduces the administrative burdens borne by claimants, representatives, and Social Security staff by eliminating

the need to manually process or organize documents, respond to calls, or prepare physical files. We do not charge our clients a fee for our services.

B. Burdens/Barriers

Attorneys new to the practice of Social Security and seasoned attorneys who change employers are heavily burdened by the current procedures for completing enrollment in ARS which results in inefficiency and inability to access client files in a timely manner. Moreover, multiple calls are required to the ERE help desk and local Social Security office in an attempt to enroll in ARS.

There is a lack of knowledge of the process for enrolling and a lack of coordination by Social Security employees in different hearing offices within the same metropolitan area (e.g., Los Angeles).

Lack of electronic access to our client files results in a huge waste of resources for both our office and Social Security staff.

When we do not have access to our clients' files electronically, we must fax in voluminous medical records rather than upload them. We must call to have copies of our clients' files sent to us via email or CD and request an updated copy of the file before the hearing. We must make repeated calls to check on the status of our clients' cases.

All of these extra calls and faxes would be eliminated if the process for getting ERE access was clearer, simplified and communicated widely to Social Security hearing office staff.

C. Solutions

Facilitate AR access to ERE by centralizing the registration process and eliminating the need to "be invited" by a particular hearing office in order to register as a designated representative.

Eliminate the steps involved in registering to afford immediate access to client files once verification of the representative has occurred.

Section III: Improving Public Access to Claimants Seeking to Review their e-File or paper records.

A. Overview

There is a legal right of a number-holder to review their SSA folder, in particular during the appeal process. Some of these policies include:

1. [20 CFR § 401.35. Your right to request records.](#)
2. [20 CFR § 401.40. How to get your own records.](#)
3. [20 CFR § 404.916. Disability hearing—procedures.](#)
4. [20 CFR § 404.524. Review of our records related to the overpayment.](#)
5. [20 CFR § 416.1416. Disability hearing—procedures.](#)
6. [20 CFR § 416.584. Review of our records related to the overpayment.](#)

By law, SSA also must publish to the Federal Register details about the records systems it maintains (see SSA System of Records Notices, available at <https://www.ssa.gov/privacy/sorn.html>).

B. Burdens/Barriers

SSA effectively frustrates and denies members of the public to access their personal files despite statutory authority and policies that clearly articulate this right. Moreover, these statutes and publications contain

dense, technical language that is completely inaccessible to members of the general public and challenging even for experienced advocates to decode and interpret.

There is not a clear index of SSA document and form numbers as they are actually used. For example, in overpayment waiver cases, SSA uses a form entitled “SSA-635 Waiver Determination” to document SSA’s determination of the waiver request, but this form title does not seem to appear in the Federal Register entries linked under the category “60-0094 Recovery of Overpayments, Accounting and Reporting /Debt Management System (ROAR/DMS).” For a claimant who tries to appeal the denial of a waiver request, this document is highly relevant but there is no way for the claimant to know to ask for this document.

Even more troubling, in reconsideration cases, the SSA representative that receives the request for documents is often the same representative who is reviewing (and defending) SSA’s adverse action, creating a conflict of interest. Even if highly relevant documentation is in the record, the SSA rep has no incentive to conduct a thorough search for records that will contradict SSA’s proposed action (which they are effectively defending). The number-holder is placed in a position of having to rely on the judgment of the reconsideration decision-maker about what documents are relevant and responsive to the issue being appealed. This erodes public trust in the SSA appeals system and leads to many incorrect SSA decisions.

SSA representatives who receive document requests tend to be extremely impatient, and when a person asks for records that will take longer than the representative wants to devote to the request, they will simply deny the request outright because it will “take too long,” often because they have another appointment coming up soon. From the number-holder’s perspective, SSA’s time-management and scheduling is beyond their control and an invalid excuse to deny a proper records request. SSA also does not seem to routinely track the substance of record requests or reasons for denying or limiting the responses to requests. In practice, SSA representatives know that there will be minimal accountability if they refuse to fulfill a records request.

Additionally, one of the most common issues that arise in appeals cases relates to past communications and document submission records between the number-holder and SSA. Often, a claimant will allege that they spoke to someone about a particular issue, or they previously submitted a document that SSA claims they did not submit. These communications are often essential to the appeal issue. SSA maintains a number or records systems to track this information, and these records sometimes become available at the ALJ hearing stage of an appeal but are almost never provided to claimants who ask for a copy of their file when submitting a reconsideration or waiver request.

Because there is no clear way for claimants to ask for these records, SSA conveniently elects not to provide them to claimants. This is beneficial from the SSA worker’s perspective because it entails less work and a lower chance of the claimant obtaining evidence to counter SSA’s proposed action (which reflects negatively on the original SSA decision-maker who may have made a mistake). Such requests can also reveal internal SSA notes on a case that the number-holder has a right by law to access but that SSA would prefer not be revealed, creating an implicit quasi-confidentiality policy. This presents a clear conflict of interest that leads to a denial of record access and due process for the public.

From the records obtained at the hearing level in one Title II overpayment case, there were highly relevant documents in the following (non-exhaustive) list of records systems or document categories: EZTOOL, OPwiz, QROP, MCS, “Comment Form,” “Generic Form,” “Telephone Contact” form, Determination Form 559, diary alerts, eNDSS, NDRed (Non-disability Repository Fax Coversheet) Fax Coversheets, DMS RMKS, Remarks/Skiptracing/Contact Attempts screens, eNon-Disability Summary Sheet, Summary of Social Security Payments and Adjustments, and an untitled worksheet containing

“paid” vs “S/H/B” paid (should have been) monthly calculations. In theory, a number-holder could ask for these records by name in the course of the waiver or reconsideration process, but in practice this virtually never happens, and SSA field office employees have little interest or incentive to educate Creating Asset Exemptions Equal to Rental Debt for SSI Recipients in Eviction Proceedings to Avoid Loss of Eligibility and Disruption of Benefits due to Excess Income and Resources.

This may also be a technical failing in the SSA process in which it is too time-consuming and laborious for an individual worker to print these records for a claimant, placing the SSA worker in a position of having to prioritize a records request versus other scheduled work for which they will be held accountable. Regardless of where responsibility lies, SSA’s current practices deny claimants their legal right to access information in their file that is needed to meaningfully review the agency’s actions.

C. Solutions

There are many potential technical and administrative solutions to this problem. One option would be to provide a plain-language list of document categories and document systems to claimants who request their records so they have a point of reference when asking for records. This could be combined with an easier system for SSA representatives to print requested items to avoid denials based on time limitations for SSA appointments. Another option would be to provide private computer terminals at field offices that allowed individuals to look through their own SSA file and identify items to print rather than relying on the thoroughness and interpretive accuracy of individual SSA representatives.

Section IV: Creating Asset Exemptions Equal to Rental Debt for SSI Recipients in Eviction Proceedings to Avoid Loss of Eligibility and Disruption of Benefits due to Excess Income and Resources.

A. Overview

SSI asset policy causes SSI terminations for recipients in eviction proceedings. Eviction attorneys recommend that their clients save their rent money during the eviction process because this money may be required to pay the landlord as part of the resolution to the eviction lawsuit. This can include prevailing against the landlord at trial on a defense of uninhabitable housing conditions, which will typically require the tenant to pay a reduced percentage of the back-rent as a condition for entry of a favorable court judgment. It can also include certain settlements, such as a “pay & stay” agreement under which the tenant pays the landlord the outstanding back rent in exchange for dismissal of the eviction.

B. Burdens/Barriers

When a tenant loses an eviction lawsuit, he/she will also owe the rental debt to the landlord as part of an eviction judgment, which can then result in attempts to levy the tenant’s bank account and other collections actions. Some landlords will also agree to waive back rent owed in exchange for the tenant agreeing to move out, in which case the tenant is expected to use the saved rent to locate and purchase housing elsewhere (including first month’s rent and security deposit).

SSI recipients who are involved in eviction proceedings become unable to access their SSI income because of a lack of clarity regarding SSA asset exemption policy for rental debt. For an SSI recipient facing eviction, this creates a horrible dilemma: protect their housing or protect their SSI income.

Prior to and during the unlawful detainer (“eviction”), a process which can take months to resolve in court proceedings, a landlord will stop accepting rent because acceptance of rent constitutes a reaffirmation of the tenancy (which prevents an eviction action from proceeding through the state court).

For an SSI recipient, following a housing attorney’s best advice to protect their access to housing will almost always lead to them temporarily being over the \$2,000/\$3,000 SSI asset limit, even though this money is essentially earmarked to repay a rental debt to the landlord, or to secure alternative housing as part of a settlement agreement.

As a result of navigating a housing crisis, a second income crisis arises when SSA discovers the resource limit issue and the beneficiary loses access to SSI, often in the middle of eviction proceedings when they need this income stability the most. The disruption to SSI income can then drive a *subsequent* eviction case for lack of rent money or prevent the SSI recipient from working out a pay & stay agreement with the landlord to preserve their housing and avoid homelessness or significant housing precarity. SSI policy that causes housing instability is SSI policy that is failing its recipients.

C. Solutions

We urge SSA to issue a new or revised POMS provision providing clarity that the value of rental arrears can be excluded from countable resources in instances where the landlord has stopped accepting rent in anticipation of or during the eviction process.

Current SSA policy arguably supports treating rental debt that accrues during a landlord-tenant dispute as exempt from the SSI asset limit, but the policy is far from clear and requires interpreting multiple POMS together in a favorable light. Most SSA representatives are unfamiliar with or refuse to accept this interpretation of current policy.

Given the enormous stakes and interests involved for SSI recipients in the eviction process and facing potential homelessness, SSA should clarify this policy to unambiguously recognize an asset exemption equal to the rental debt owed to a landlord who either refuses to accept rent or has filed an eviction lawsuit.

This would involve minimal administrative verification documentation on the part of SSA, as it already screens for rental liability as part of living arrangements. The tenant would only need to establish through attestation or document submission that the landlord had stopped accepting rent or filed an eviction case, and the exemption amount would be calculated simply by multiplying the monthly rental liability by the number of rental payments refused. In cases where SSA discovers the asset issue after the housing dispute has been resolved, similar verification can be performed retrospectively to avoid an overpayment assessment.

Excerpts from current policy that support this SSI exemption of rental debt from countable assets:

[POMS SI 01140.200 Checking and Savings](#) Accounts (Section G.3)(emphases added)

3. Allegation of check that has not cleared the bank

A claimant’s bank statement shows a checking account balance of \$1,350 as of May 1st, which combined with her other alleged countable resource exceeds \$2,000 as of the first of the month. The claimant alleges that the statement balance includes a rent check of \$500 written and given to her landlord on April 25th, *but that the landlord has not cashed the check yet.*

The CS examines the claimant’s check register and finds an annotation for check number 1345 for \$500 written on April 25th. The CS also notes that check 1346 has already cleared the bank and the amount has

been deducted from the claimants account on the bank statement. Next, the CS notes that the claimant has written a \$500 check to her landlord for rent on the 25th of each month for the last 6 months since the claimant moved into the apartment.

Since there is evidence that the claimant has written the check and legally obligated those funds in the account, and the records provide a complete and consistent picture of the account, the CS can deduct the amount of the uncashed check from the May 1st of the month balance. *The CS can deduct the uncashed check because SSI equity value rules state that in determining equity value, we deduct encumbrances from the current market value (CMV).* The new balance of \$850 permits resource eligibility.

[SI 01110.400 What Values Apply to Resources](#) (emphasis added)

1. DEFINITIONS

- a. The current market value (CMV) of a resource is the going price for which it can reasonably be expected to sell on the open market in the particular geographic area involved.
- b. Equity value (EV) is the CMV of a resource minus any encumbrance on it.
- c. An encumbrance is a legally binding debt against a specific property. . . .

[SI 01110.100 Distinction Between Assets and Resources](#) (emphasis added)

1. RESOURCES DEFINED

Resources are cash and any other personal property, as well as any real property, that an individual (or spouse, if any):

- owns;
- has the right, authority, or power to convert to cash (if not already cash); and
- is not legally restricted from using for his/her support and maintenance.

[SI 01110.115 Assets That Are Not Resources](#) (emphasis added)

A. Policy Principle — General Rule

Assets of any kind are not resources if the individual does not have:

- any ownership interest; or
- the legal right, authority, or power to liquidate them (provided they are not already in cash); or
- the legal right to use the assets for his/her support and maintenance.

Section V: Region IX- Unification of Policies and Procedures in Hearing Offices and Field Offices

A. Overview

As providers of free legal services, LAFLA advocates submit SSA-1696 before a hearing that authorizes representation on hearing advocacy and “post-entitlement issues” by checking the proper box for the latter on the form. As such, advocates often have to call field offices concerning post-entitlement issues (e.g. obtaining an award letter, etc.).

Often, the Social Security office is the party requesting information from a consumer that an Appointed Representative can provide.

In a perfect world, all field office representatives honor SSA 1696 and provide the advocate with information that is necessary to ensure proper follow up post-hearing. That is not the case.

B. Burdens/Barriers

In some instances, field office representatives refuse to utilize the same AR-1696 submitted before hearing to provide information concerning post-entitlement or PERC issues. Similarly, field office representatives refuse to accept 3288 to provide information to legal advocates. This clearly reveals a lack of understanding of the agency’s own form language and thwarts what the form is intended to cover.

Advocates often see inconsistent responses depending on the field office representative they happen to get on the phone.

For example, one SSA representative informed the Appointed Representative that the only time they can give information over the phone without the consumer is before the hearing, and that they are not allowed to provide any further information after hearing. One representative may accept a 3288 or an existing AR form, another from the same office may not. This leaves advocates uncertain whether an administrative hurdle is the result of a global SSA policy or simply the practice of an individual employee.

Unnecessary hardship and delay are created for consumers and representatives alike, who have to pre-schedule when both parties can be available for a phone conversation with SSA; and unduly sit on the phone together for the SSA representative to provide basic information about the case.

Long wait times on the telephone in national and local offices

Because of lengthy wait times and busy schedules for advocates and consumers alike, often must call field offices without the consumer present to obtain information about a case. SSA has a release of information form (3288) that individuals are instructed to complete if they want SSA “to give information or records about you... to an individual or group.” But field office representatives often refuse to accept this form and decline to provide requested information to an advocate where explicitly authorized in writing. This creates unnecessary hardship to consumers who as a result have to wait on the phone with the advocate for SSA to share basic information about their case. It can prevent successful resolution of issues altogether where an

advocate is unable to schedule a convenient time for both consumer and advocate to call SSA together, which often must be done more than once, to obtain or provide information.

C. Solutions

Uniform acceptance of SSA Forms from pre-hearing development through post-hearing effectuation.

SSA should adopt and enforce a policy of accepting 1696 submitted pre-hearing to provide ARs with information concerning post-entitlement PERC issues.

SSA should adopt and enforce a policy of accepting Form 3288 for its stated purpose (to give the information listed on the form to any authorized individual or group), particularly where the requesting group is a non-profit legal services provider, rather than limit acceptance narrowly to medical or insurance company requestors.

Need for consistent training for SSA reps providing information to the public

As important as specific policy changes are in field office procedures, effective training and guidance on policy and best practices is crucial to provide certainty to advocates and consumers that the policy will be consistently followed at the field office level and in various hearing offices within the same metropolitan area or region.

SSA should adopt a practice of providing uniform written guidance to field offices about existing policy, policy changes, and best practices. SSA should also ensure that field office representatives are trained in accordance with the guidance by developing uniform and mandatory training and providing employees with sufficient time in their schedule allotted for participation in said trainings.

Training and monitoring for compliance should be done in accordance with policy goals.

Provide Direct Extension Numbers for the ALJ clerks to avoid undue delay

In order to expedite time spent on the telephone, assigned ALJs should include the direct extension of his/her clerk on the hearing notice. This would allow for greater efficiency where a hearing needs to be postponed or rescheduled, where contact information needs to be updated, and/or an unforeseen emergency arises. This step assures that the ALJs have the most up to the minute notice instead of going through the receptionist on the main line.

Sincerely,

Legal Aid Foundation of Los Angeles
Tanya McGary, Supervising Attorney
Yolanda Arias, Managing Attorney

