



NATIONAL ORGANIZATION OF
SOCIAL SECURITY CLAIMANTS'
REPRESENTATIVES
ESTABLISHED 1979

April 10, 2023

Shawne McGibbon, General Counsel
Administrative Conference of the United States
1120 20th Street NW,
Suite 706 South
Washington, DC 20036

Submitted via email to info@acus.gov

RE: Identifying and Reducing Burdens in Administrative Processes; Request for Comments (Docket No. 2023-03181)

Dear ACUS General Counsel:

These comments are submitted on behalf of the National Organization of Social Security Claimants' Representatives (NOSSCR), whose thousands of members represent Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) claimants before the Social Security Administration (SSA). NOSSCR members are regularly engaged with SSA's administrative programs and regularly participate in SSA's administrative processes. Accordingly, our comments are exclusive to SSA.

NOSSCR appreciates ACUS' interest in identifying and reducing unnecessary procedural and administrative burdens and hope your recommendations will help SSA improve service by modernizing and streamlining systems and processes.

Specifically, in recent years, SSA has invested a great deal of resources in its online tools to help serve consumers. One of these areas has been developing an online SSI application tool. Unfortunately, the timeline to finish the project has been delayed and remains uncertain. Completion of this valuable tool must be prioritized so that it may immediately begin serving marginalized communities.

Both SSI and SSDI provide disabled individuals with a steady source of income. However, as a resource-based benefit for those with little or no work history, SSI exclusively serves individuals that are at or below the federal poverty guidelines. The lack of a meaningful online application solely impacts populations that are more likely to be poor, elderly, persons of color, severely and persistently mentally ill, or suffering another severe long-term disability.

In theory, SSA's [Online Protective Filing tool](#), which protects the filing date for those intending to apply for SSI, is a step in the right direction. However, by not allowing a user to complete the process online, there is an increased likelihood that an application will remain unfinished. Setting up a complicated, manual process that requires SSA staff to call the claimant to schedule the appointment to file the SSI

application creates situations where the process can break down. In many instances, vulnerable claimants (homeless, transitory, or otherwise incapable) have limited access to reliable phone service.

Additionally, advocates have reported that when they arrange these callbacks for claimants and are present during the scheduled time, SSA has not called. Providing a way for SSI applications to be completed online is necessary to increase access to justice for our most vulnerable citizens and help to ensure that they have access to a vital source of income.

While the importance of an online SSI application has been discussed at length, it should be viewed as one of many tools in SSA's arsenal to serve the public. It must not replace in-person services as those are the most reliable way for vulnerable claimants to reach the administration. Vulnerable claimants have the most difficulty adhering to non-traditional processes and are best served through in-office appointments and the ability to connect directly with SSA personnel.

Another unnecessary administrative burden for appointed representatives is created by SSA's lack of transparency with accessing claims files at the initial and reconsideration stages of the adjudication process. Since 2011, Appointed Representative Services (ARS) has provided the ability for representatives to access their client's electronic folders (eFolders) for cases pending at the hearings and appeals levels. On September 19, 2020, SSA added the ability for representatives to access their cases pending at the initial and reconsideration levels, but limited access to only those files exhibited in the Disability Related Development and Medical Evidence sections of the eFolder, respectively the E and F sections. This means essential case documents such as disability determination transmittals and explanations in the Payment Documents/Decisions section (exhibited in the A section) and earnings records and queries in the Non-Disability Development section (exhibited in the D section) are not made available to representatives at these stages of the adjudication process.

Often, a claimant has already started the process of applying for disability benefits before appointing a representative. Without direct access to the entire electronic claims file at the initial and reconsideration levels, representatives are unable to verify the exact stage of the proceeding that the claimant's case is at or what the agency has already decided and why. Full access to the entire claims file would allow representatives to properly assess disability claims that are denied at initial and reconsideration and know exactly how to advise the claimant on appropriate next steps. Without such access, representatives are unnecessarily burdened at the beginning of a case and are forced to waste time trying to determine through manual efforts, such as phone calls, faxes, and letters to SSA, what forms and /or time-sensitive appeals are necessary. There is an essential and urgent need for representatives to have full access to the claims file at all levels of the adjudication process and the agency has not provided any clear rationale for why this access cannot be granted, which makes it difficult for attorneys and advocates to properly represent claimants. NOSSCR has been told it is because state agency examiners, adjudicators, and consultants that are involved in the decision-making process for claims at the initial and reconsideration levels work on and save documents inside the eFolder before they are finalized, which could cause confusion for representatives to see an interim notice or document. However, representatives do not want access to any tentative or provisional documentation and SSA has given no indication that this current practice is necessary or could not be easily changed so that only finalized documents are included in the claimant's eFolder, as they are at the hearings and appeals levels.

Another procedural burden in the administrative process is caused by SSA's reliance on the postal service and paper documents to communicate with the general public, including disability claimants and

beneficiaries and their appointed representatives. Important notices such as requests for forms completion and reminders to return forms or attend a consultative examination, as well as decisional notices, notices of hearing, notices of award, etc. are only sent by SSA via U.S. mail instead of electronically to representatives via online portals, such as Appointed Representative Services (ARS), or to claimants and beneficiaries via secure my Social Security accounts.

Utilizing the U.S. mail to send these important notifications only in paper format is inefficient given the inherent delays and unreliability of the postal service, as well as the deficiencies in SSA's ability to timely process outgoing mail. See SSA OIG Audit Report, [The Social Security Administration's Mail Processing During the COVID-19 Pandemic](#) (A-08-21-51115) (May 13, 2022). This causes unnecessary confusion and complications regarding important deadlines and creates more work for claimants, representatives, and SSA staff to ensure timely processing and correct any mistakes. This also requires representatives and claimants to call SSA to advise of and follow-up on issues, which is inefficient for all parties involved, especially given SSA's systemic phone issues, which include lengthy hold times and frequent busy signals. See [SSA Monthly Data for Field Office Telephone Service National Answer and Busy Rates](#) and [SSA Monthly Data for National 800 Number Network Call Volume and Agent Busy Rate](#).

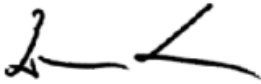
Another significant administrative burden could be reduced by expanding access to SSA's Health IT (HIT) program to appointed representatives, which would save time, reduce costs to claimants and representatives, and ensure decisions are made on a complete record. NOSSCR is a strong proponent of SSA's HIT initiative, which is an electronic records transmission program that allows SSA to request and obtain medical records from participating providers instantaneously at no cost to the claimant or representative.

Under Sections 223(d)(5)(A) and 1614(a)(3)(H)(i) of the Social Security Act (the Act), the Social Security Administration (SSA) cannot find that an individual is disabled "unless [he/she] furnishes such medical and other evidence of the existence thereof as the Commissioner of Social Security may require." The Act places primary responsibility for the development and submission of evidence on the claimant. As explained in [Social Security Ruling \(SSR\) 17-4p](#), "[SSA's] regulations require appointed representatives to assist claimants in complying fully with their responsibilities under the Act and [SSA's] regulations. All representatives must faithfully execute their duties as agents and fiduciaries of claimants. In that regard, representatives must assist claimants in satisfying the claimants' duties regarding the submission of evidence and in complying with [SSA's] requests for information or evidence..." As such, on behalf of their clients, NOSSCR members routinely request medical records from covered entities and their business associates to submit them as evidence in Social Security disability cases and have a significant interest in the fees and timeframes for receiving a client's medical records, especially after the decision in *Ciox Health, LLC v. Azar, et al.*, No. 18-cv-0040-APM (D.D.C. January 23, 2020), which vacated the extension of the patient rate for fees for copies of protected health information (PHI) sent to third parties.

While only agency staff can currently utilize HIT directly, NOSSCR advocates for HIT to be expanded to representatives and for SSA to utilize HIT whenever possible to obtain records. The HIT initiative is a major success that needs to be expanded in terms of access and the number of participating providers to reduce the unnecessary administrative burden of manually requesting and following up on medical records from claimants' various healthcare providers.

Thank you for your work on this project and for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to be 'D. Camp', with a long horizontal stroke extending to the right.

David Camp
Chief Policy Officer