

JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

March 2, 2023

Office of Regulations and Reports Clearance
Social Security Administration
6401 Security Boulevard, 3rd Floor (East)
Baltimore, Maryland 21235-6401

Submitted via www.regulations.gov

Re: Request for Information on the Foundations for Evidence-Based Policymaking Act of 2018 Learning Agenda, 88 FR 6355 (January 31, 2023), Docket No. SSA-2022-0065

To whom it may concern:

These comments are submitted on behalf of Justice in Aging. Justice in Aging is an advocacy organization with the mission of improving the lives of low-income older adults. We use the power of law to fight senior poverty by securing access to affordable health care, economic security and the courts for older adults with limited resources. We have decades of experience with Social Security and Supplemental Security Income (SSI) benefits, with a focus on the needs of low-income beneficiaries and populations that have traditionally lacked legal protection such as women, people of color, LGBT individuals, and people with limited English proficiency (LEP). Justice in Aging conducts training and advocacy regarding Social Security and SSI benefits, provides technical assistance to attorneys and others from across the country on how to address problems that arise under these programs, and advocates for strong protections to ensure that beneficiaries receive the benefits to which they are entitled promptly and without arbitrary denial or disruption.

We write to urge the Social Security Administration (SSA) to include the following areas in its Learning Agenda:

- **Race and Ethnicity Data**

Data already shows that due to differences in earnings over time and other factors, Social Security benefit amounts are lower for people of color than for White beneficiaries. However, SSA cannot understand the scope or cause of much of the racial disparities in the entirety of its benefit system, including in rates of denials, allowances, or other outcomes, until there is a more accurate and comprehensive snapshot of the racial and ethnic makeup of all claimants and beneficiaries.

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In its FY 2022 – 2026 Learning Agenda¹ published in February 2022, SSA indicates it will collect and analyze race and ethnicity data in a variety of contexts, such as in supporting effective and equitable delivery of services, communicating with the public about its programs, and assessing the disability programs.

We applaud these efforts and urge SSA to commit to ongoing and consistent reporting of race and ethnicity data, which will help identify patterns by race and ethnicity within all of SSA's programs. In particular, data on outcomes by race and ethnicity for SSA's SSI program is needed, for those applying based on age as well as those applying based on disability. In addition, data on post-eligibility, non-disability related outcomes by race and ethnicity for all SSI recipients is needed.

In light of the racial disparities within SSA and in related systems, collecting and reporting data on race and ethnicity is not only important, but also urgent.

- **Language Access Data**

As SSA strives to deliver effective, efficient, and equitable service to the public, it provides access to its programs and services for those who have limited English proficiency (LEP) through bilingual and multilingual employees and the national telephone interpreter and translator services contracts. While SSA currently collects and reports some data about language access services, more data needs to be collected, analyzed, and reported to ensure that all of the established policies, procedures, and guidelines for identifying LEP individuals and providing them with meaningful access to the programs and activities they conduct are being fulfilled.

More collection, analysis, and reporting of various types of data regarding language access services is need. For example, SSA can collect data based on the telephone interpreter service contract, identifying usage by field office and hearing office. This data should be reported and analyzed, to identify trends and issues with its usage. SSA can analyze information such as wait times for a telephone interpreter broken down by language, or any complaints filed by LEP individuals served by a telephone interpreter, to assess the quality of the services being provided. SSA can also use census data to compare a field office's utilization rates of telephone interpreter services with the proportion of LEP members preferring languages other than English in the area served by that field office.

Limitations in SSA's systems around language preferences must be studied, identified, and remedied. Currently, fields for language preferences are not automatically updated or propagated across SSA's systems, so that when an LEP individual indicates their language preference to one component of SSA, that information is not executed in all systems across all components, resulting in the LEP individual having to request corrections or updates to their

¹ https://www.ssa.gov/data/data_governance_board/SSA%20FY2022-2026%20Learning%20Agenda%20Final%20032322.pdf

records repeatedly. This hampers them from having meaningful access to the programs and activities they conduct with SSA.

In addition, there are still many types of notices and forms that are not available to those who prefer to receive and complete documents in Spanish, and there are no forms or notices available for those who read and write in a language other than English or Spanish. SSA should research what additional notices and forms need to be provided in Spanish, as well as what other languages notices and forms should be provided in, to ensure that LEP individuals have meaningful access to SSA programs, services, and information.

Furthermore, SSA needs to conduct additional data collection, reporting and analysis regarding the language access services being provided by the states' Disability Determination Services (DDSs). We continue to see notices being sent by various DDSs that are not compliant with SSA's policies regarding the availability of free interpretation, and hear about DDS telephone services that do not offer free interpretation via bilingual employees or the telephone interpreter services contract. DDSs also continue to contract with consultative examiners (CEs) who do not offer free interpretation services at appointments for LEP disability claimants. These practices do not follow SSA's policies for providing service to LEP individuals, and do not meet the requirements of Title VI of the Civil Rights Act of 1964.

- **“Potential Entitlement” Workloads**

Since FY 2021, SSA has sent out over 2 million targeted mailers regarding SSI benefits to individuals who receive a low amount of Title II benefits. SSA has begun to analyze the results of these mailers, and should continue to do so. Preliminary results have indicated that this is one method that can be effective at reaching those who are most likely to be eligible for SSI as concurrent beneficiaries but who have not yet applied for SSI. Should the full analysis of the targeted mailers demonstrate its effectiveness, SSA should adopt this outreach method on an ongoing basis.

SSA should also study sending targeted mailers regarding SSI benefits to the following individuals:

- A. Those who receive a low amount of Title II benefits and recently reported to SSA an address change from a territory where SSI isn't provided (such as Puerto Rico) to a state or Washington, DC.
- B. Those who receive a low amount of Title II benefits and recently became a US citizen.
- C. Those who receive a low amount of early retirement or survivors benefits and recently turned age 65.

Other populations that SSA should study for effective outreach methods are those whose Title II or SSI benefits were terminated when they were incarcerated or stayed in a hospital or skilled nursing facility, when SSA learns that they are going to be released. It is vital for these individuals to receive any benefits they are currently eligible for as soon as they return to living

in the community. SSA should explore effective methods of pre-release outreach for these populations.

- **Disability screening for early retirement applicants**

SSA should research how effectively those who apply for early retirement benefits are screened for eligibility to receive a higher amount of Social Security Disability Insurance benefits or disabled widow(er)'s benefits. For example, SSA should study:

- A. The percentage of online early retirement claimants who check “yes” for the question on the retirement application that asks “During the last 14 months, have you been unable to work because of illnesses, injuries or conditions that have lasted or are expected to last at least 12 months or can be expected to result in death?”, compared to the percentage of people who apply for early retirement benefits in person or by phone who make that same indication.
- B. Any trends in the percentage of early retirement claimants and beneficiaries who also apply for SSDI and/or disabled widow(er)'s benefits.
- C. The accuracy and quality of SSA's follow-up contact with those who indicate that they have been unable to work due to a medical condition during the past 14 months: Is a disability claim taken? How long does it take for someone to contact the claimant and take the disability claim? What decisions are made on the disability claims? What percentage are awards? For denials, are they medical, technical, failure to cooperate, etc.?

- **“Presumptive Disability” for adults experiencing homelessness who have a diagnosis of schizophrenia or related disorders**

In 2016, SSA reported on a pilot conducted for adults experiencing homelessness who had diagnoses of schizophrenia and related disorders.² The pilot intervention led to higher allowance rates at the initial adjudicative level, fewer requests for consultative examinations, and reduced time to an award of SSI benefits. At the end of the report, researchers noted additional questions, such as calculating administrative savings in processing these applications for those with the intervention, and using more rigorous statistical techniques to control for differences between the treatment group and comparison groups.

Years have passed since the pilot was reported on. SSA should research the rates of approval of those diagnosed with schizophrenia and related disorders at all levels of adjudication and consider adding a Presumptive Disability category for those experiencing homelessness with a diagnosis of schizophrenia or related disorders. These are some of the most vulnerable people in our country who deserve more intensive assistance than they currently receive from SSA.

² Michelle Stegman Bailey, Debra Goetz Engler, and Jeffrey Hemmeter, *Homeless with Schizophrenia Presumptive Disability Pilot Evaluation*, Social Security Bulletin, Vol. 76, No. 1, 2016, <https://www.ssa.gov/policy/docs/ssb/v76n1/v76n1p1.html>.

- **Differences in outcomes for those who are represented v. unrepresented**

In 2016, a working paper was presented at the SSA Disability Research Consortium on the effect of representation at the initial level of the disability determination process for SSDI claimants.³ The researchers found that claims with representatives were more likely to be allowed at the initial level, and representatives were more likely to be involved in cases with older and English-speaking claimants with impairments in more difficult to document diagnosis groups. They also found that claims with representatives were more likely to be denied at the initial level for insufficient evidence or failure to submit records from a medical examination, and spent more time at the Field Office and had a lower predicted probability of a quick decision.

This line of research should be continued and expanded upon. Further study should be conducted on which claimants are more likely to have representation at all stages of the disability determination process, and for all types of disability benefits (SSDI, SSI, CDB, DWB), with an examination of the outcomes based on whether or not claimants are represented. The scope of this research should also be expanded to study the effect of representation in post-eligibility appeals, including SSI non-disability suspensions, continuing disability reviews, and age 18 redeterminations.

- **Differences in “failure to provide information” (N20) suspensions**

SSA suspends SSI payments with a status of “N20” when an SSI recipient fails to provide information needed by SSA to determine continuing SSI eligibility and benefit amount. Payments are stopped, not because the recipient had excess resources or income or became ineligible for SSI for any other reason, but because they were unable to provide the agency with requested information.

In the past, SSA’s data has shown that the rate of the use of the N20 code is not similar or proportionate throughout the country. In FY 2021, the number of N20 suspension actions in the San Francisco region was greater than the total for the combined Atlanta, Boston, and Kansas City regions, and yet the San Francisco region only has 60% of the total number of SSI recipients as those three regions combined. Examining the data from states within a Region and then at particular Field Offices within states showed that N20 actions were disproportionately high in certain states, and that some offices very rarely suspended SSI payments because of “failure to provide information,” whereas other offices did so often.

³ Hilary Hoynes, Nicole Maestas, and Alexander Strand, *The Effect of Attorney and Non-Attorney Representation on the Initial Disability Determination Process*, Working Paper DRC NB16-15, Sept. 2016
<https://www.nber.org/programs-projects/projects-and-centers/retirement-and-disability-research-center/center-papers/drc-nb16-15>

Recently, on February 10, 2023, SSA issued revised instructions to employees in the Program Operations Manual System (POMS) section SI 02301.235, *Failure to Provide Information (N20)*.⁴ We recommend a study of the use of the N20 process, to examine disparate use of N20 actions between and within Regions, and to compare trends in the use of N20 actions from before and after the changes to SI 02310.235.

- **Payee selection, recruitment of payees**

SSA's representative payee program is critical for ensuring that older adults who cannot manage their own finances have the necessary support to age in dignity. To protect seniors from financial exploitation or interruptions in their benefits, it is imperative that those providing oversight of the payee program are aware of key issues related to ensuring that older beneficiaries are not harmed by this arrangement.

Studies have shown that SSA's current representative payee program does not adequately protect seniors who are at risk of losing their benefits due to misuse or lack of a representative payee. In particular, the program seems to be underutilized by people over 65, while, at the same time, an aging population and an increase in Alzheimer's and other cognitive disorders point to a growing need.

SSA should prepare for the increased need for representative payees by studying methods to recruit and retain eligible representative payees. SSA should also study the capability determination process and resulting payee appointments, to ensure that autonomy and financial independence are retained for as long as possible. Creditors acting as representative payees should be identified in their own category by SSA and they should undergo audits every three years. SSA should review third party monitoring of representative payees to ensure that it includes the appropriate level of oversight and protects older adults from financial abuse. SSA should develop more in-depth training, support, and resources for representative payees and Field Office personnel on the capability determination process and the payee selection process.

Thank you for the opportunity to provide these comments. If there are questions concerning this submission, please contact Tracey Gronniger at tgronniger@justiceinaging.org.

Respectfully submitted,

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⁴ <https://secure.ssa.gov/apps10/poms.nsf/lnx/0502301235>