

# JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

April 12, 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](http://www.regulations.gov)

**Re: Notice of Proposed Rulemaking on Omitting Food From In-Kind Support and Maintenance Calculations, 88 FR 9779 (February 15, 2023), Docket No. SSA-2021-0014**

Dear Acting Commissioner Kijakazi:

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.

Thank you for the opportunity to comment on these proposed regulations.

**We Support SSA's Proposal To Eliminate Food From ISM Calculations.**

This proposed policy change would remove an administratively burdensome policy that potentially reduces the SSI benefit of an older adult or individual with a disability if they receive help with food from family or friends. Nutrition is critically important to the health and well-being of low-income older adults and individuals with disabilities, and food insecurity is a major challenge. Food insecurity is more severe among individuals with lower incomes, with one in

*Washington, DC*



*Los Angeles, CA*



*Oakland, CA*

four seniors with incomes below the poverty line being food insecure.<sup>1</sup> Rules that hinder access to food make it harder for older adults receiving SSI to get the food they need to be healthy. Removing the need for SSA to evaluate food provided to an SSI recipient would reduce the administrative burden on individuals seeking SSI benefits, and allow family and friends to help with food as they are able, without fear of negatively affecting their loved one's SSI benefit.

Rules that increase program complexity cause a strain in the system for both agencies and individuals seeking assistance, and SSI's in-kind support and maintenance (ISM) rules provide a good illustration of this. In order to figure out if SSI beneficiaries have received in-kind food, the Social Security Administration (SSA) staff have to continually monitor what support recipients receive from family and friends. Requiring SSA to inquire about food at such a detailed level is time-consuming for SSA staff, and intrusive to SSI recipients. Removing this consideration from ISM calculations will save the agency time and remove a burden from claimants.

### **SSA Should Take Additional Steps to Streamline ISM Calculations.**

Eliminating food from the ISM calculation is a good first step, but more can be done to improve SSI's ISM rules. The SSI program's overly complex rules create barriers to receiving benefits and cause payment errors. SSI makes up only 5 percent of monthly payments from SSA but requires 35 percent of SSA's budget to administer, and a disproportionate amount of staff time.<sup>2</sup> SSA's staff manual includes the equivalent of 250 single-spaced pages of instructions on living arrangements and in-kind support. According to the Social Security Advisory Board (SSAB), which unanimously recommended simplifying ISM rules:

“The complexity of SSI is exemplified by the level of detail that it describes in its policy manual. One POMS [policy manual] section explains how to calculate ISM reductions under PMV, when one person in a household receives ISM in the form of food, such as receiving the gift of ‘dinner’ at a relative’s home. Another POMS section explains ‘breakpoints’ or sudden changes in living arrangements which may change the value of ISM provided to an SSI recipient who is living on their own but receives some support, from either a roommate that they are living with (inside ISM) or a family member or friend that is not living with the SSI recipient but provides food (outside ISM). Still another POMS section explains how to handle gradual changes in living arrangements which also require a

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<sup>1</sup> Feeding America. *The State of Senior Hunger in America in 2020: An Annual Report*. Available at [https://www.feedingamerica.org/sites/default/files/2022-05/The%20State%20of%20Senior%20Hunger%20in%202020\\_Full%20Report%20w%20Cover.pdf](https://www.feedingamerica.org/sites/default/files/2022-05/The%20State%20of%20Senior%20Hunger%20in%202020_Full%20Report%20w%20Cover.pdf) (accessed April 10, 2023)

<sup>2</sup> Social Security Administration, *Justification of Estimates for Appropriations Committees – Fiscal Year 2023*. Available at <https://www.ssa.gov/budget/FY23Files/FY23-JEAC.pdf> (Figure 2 on page 7) (accessed April 10, 2023)

reevaluation of inside or outside ISM . . . Even with and, perhaps because of, all the detail, it is virtually impossible to attain consistency in ISM analyses.”<sup>3</sup>

In addition to asking beneficiaries to disclose any food gifts they receive from family and friends, the ISM calculation rules ask SSA to evaluate if beneficiaries receive any in-kind help with shelter, including if a friend allows them to stay on their couch for a night. Oftentimes, SSI recipients do not understand the complex ISM shelter rules, which makes it difficult to navigate the ISM process and to ensure that they receive the maximum benefit for which they qualify.

Many SSI recipients encounter challenges finding housing and remaining stably housed.<sup>4</sup> Given the high cost of housing in many areas of the country, low-income older adults and individuals with disabilities often live with others due to economic reasons, which then triggers ISM processes that are challenging for individuals to navigate. Streamlining the ISM rules around shelter could help by enabling SSI recipients in these situations to retain more of their SSI benefit to meet their most urgent needs.

Two other proposals on the regulatory agenda could further streamline the ISM calculation: RINS 0960-A181 (Expand the Definition of Public Assistance (PA) Household) and 0960-A182 (Expand the Second Circuit (Connecticut, New York, Vermont), Seventh Circuit (Illinois, Indiana, Wisconsin), and Texas Rental Subsidy Policy Nationwide).<sup>5</sup> We encourage SSA to pursue these policies as sensible reforms to streamline the administration of the SSI program and reduce administrative burdens on claimants.

The first proposal would use the existing concept of Public Assistance (PA) households to streamline eligibility for SSI recipients who live in households that receive other needs-based cash assistance by not requiring an ISM calculation for SSI individuals who are part of such a household. Where another needs-based program has already determined that the household qualifies for help with basic needs, subjecting individuals in these households to ISM calculations is burdensome on both the agency and the SSI claimant. Expanding the definition of PA households to include additional public benefits like SNAP, Medicaid, and LIHEAP would reduce the burden on SSI claimants in financially struggling households that have already been found to be needy by another safety net program. It would also help stabilize low-income families by ensuring that SSI benefits reinforce rather than undercut the supportive intent of other safety net programs.

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<sup>3</sup> Social Security Advisory Board, *Statement on the Supplemental Security Income Program* (2015), <https://www.ssab.gov/wp-content/uploads/2021/03/2015-SSI-In-Kind-Support-Maintenance.pdf> (page 5) (accessed April 10, 2023)

<sup>4</sup> Technical Assistance Collaborative. *Priced Out: The Housing Crisis for People with Disabilities*. Available at <https://www.tacinc.org/resources/priced-out/> (noting that there is no United States housing market where a person living solely on SSI can afford the average rent for a one-bedroom without rental assistance) (accessed April 10, 2023)

<sup>5</sup> Office of Information and Regulatory Affairs, Agency Rule List-Fall 2022 for SSA, [https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION\\_GET\\_AGENCY\\_RULE\\_LIST&currentPub=true&agencyCode=&showStage=active&agencyCd=0960&csrf\\_token=3222236BF60042C9EA6BE157BCEF58B44D796973A37EC2A1741AC286B61B97B0EB2621E2CDFEB5A025C25744A398B80B28D1](https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST&currentPub=true&agencyCode=&showStage=active&agencyCd=0960&csrf_token=3222236BF60042C9EA6BE157BCEF58B44D796973A37EC2A1741AC286B61B97B0EB2621E2CDFEB5A025C25744A398B80B28D1).

The second proposal, expanding the Rental Subsidy policy, would similarly reduce the burden of complex ISM shelter calculations. SSI recipients in 7 states already have ISM rules that ensure that SSI recipients in certain circumstances who pay at least one-third of their monthly check towards rent do not face ISM reductions. Expanding this simple-to-follow rule nationwide would allow individuals in this situation to receive their full SSI benefit, which would help them to make ends meet.

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

Respectfully submitted,

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