

# JUSTICE IN AGING

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FIGHTING SENIOR POVERTY THROUGH LAW

October 23, 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 Expansion of the Rental Subsidy Policy for Supplemental Security Income (SSI) Applicants and Recipients, 88 FR 57910 (August 24, 2023), Docket No. SSA-2023-0010**

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, housing, 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.

Older adults and people with disabilities face heightened risks of institutionalization, housing insecurity, and homelessness due to housing cost burdens, widespread housing discrimination, and a major shortage of accessible and affordable housing. No state has an adequate supply of affordable rental housing for the lowest-income renters,<sup>1</sup> and in 2022 the number of disabled, chronically homeless individuals, many of whom are older adults, reached record highs.<sup>2</sup> SSA's proposed rule is an urgently needed step towards ensuring that fewer older and disabled

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<sup>1</sup> National Low Income Housing Coalition, "The Gap: A Shortage of Affordable Rental Homes" (2023), available at <https://nlihc.org/gap>.

<sup>2</sup> National Alliance to End Homelessness, "State of Homelessness: 2023 Edition," available at <https://endhomelessness.org/homelessness-in-america/homelessness-statistics/state-of-homelessness/>.

people on SSI are penalized for receiving help with housing from friends, family or other informal supports – help that is often necessary to avoid institutionalization and homelessness. SSA should finalize this proposed rule as soon as possible.

**Justice in Aging Supports SSA’s Proposal to Expand the Rental Subsidy Policy Nationwide Because It Simplifies the Program, Advances Equity, and Promotes Uniformity of Treatment of Rental Assistance.**

We agree that this proposed rule will advance significant simplification and equity goals and reduce the impact of In-Kind Support and Maintenance (ISM) reductions for many SSI recipients who are paying at least one-third of their SSI benefit in rent each month. In states where this rule already applies, it helps many SSI recipients who pay a significant portion of their income towards housing costs to keep their full SSI benefit and meet more of their basic needs. Expansion of this policy will enable SSI recipients around the country to benefit from this policy.

SSI recipients cannot afford fair market rents on just the federal benefit rate in any housing market in the country.<sup>3</sup> Thus, many SSI recipients must either rely on federal housing assistance to make up the difference between their portion of the rent (typically 30% of their income – roughly \$300), double up in shared living situations with other households, or rely on family or other private assistance to pay some portion of their rent directly. However, while SSI recipients receive their full check even if they do not pay rent due to their receipt of federal housing assistance, those who rely on private assistance have seen steep benefit reductions under SSA’s ISM policy.

Adoption of this rule promotes uniformity in the treatment of rental assistance across the country, which is consistent with SSA’s recently stated goal to promote uniformity in the treatment of food assistance.<sup>4</sup> Many people wait for years or even decades for scarce federal rental assistance, and only about 23% of SSI recipients receive it.<sup>5</sup> Expansion of this policy will ensure that many SSI recipients who are on lengthy wait lists for federal rental assistance will not be financially worse off than their counterparts who do receive scarce federal housing assistance.

**We Encourage SSA to follow the Lead of Food and Nutrition Services and Simplify Further by Eliminating or Reducing the Paperwork Burden to Verify Rent.**

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<sup>3</sup> Technical Assistance Collaborative, “Priced Out: The Housing Crisis for People with Disabilities,” available at <https://www.tacinc.org/resources/priced-out/>.

<sup>4</sup> SSA’s intention to remove food from consideration of ISM, was in part to “provide consistent treatment of food support, regardless of source.” See “Omitting Food from In-Kind support and Maintenance Calculations”, 88 Federal Register 9786 (February 15, 2023).

<sup>5</sup> Social Security Office of Retirement and Disability Policy, “Characteristics of Noninstitutionalized DI, SSI, and OASI Program Participants, 2016 Update” (April 2022), available at <https://www.ssa.gov/policy/docs/rsnotes/rsn2022-01.html>.

We note that SSA is specifically seeking comment on “additional procedural considerations and/or acceptable forms of evidence ... a claimant might provide that would be minimally burdensome while satisfactorily demonstrating proof of rent amount.” NPRM at FN 35. We share SSA’s observation that “in many circumstances claimants do not provide SSA with the necessary evidence” to confirm rental liability and amount. But this is because SSA currently requires claimants to provide a copy of a rental agreement or lease, and if that is not available, current policy requires that SSA contact the landlord to verify rental liability and amount.

Many renters do not have written leases. Those renters are extremely burdened by the pressure to obtain one to ensure their SSI payment is not reduced. It is difficult to get a small, non-commercial landlord to answer an unsolicited phone call or letter from SSA to verify the rental. When SSI recipients rent from small landlords, or rent a room in an acquaintance’s house - some of whom provide substandard housing - the landlords are not likely to respond to all of their tenants’ requests. The non-responsiveness may come from hesitance to provide any information of any kind to governmental agencies, particularly around providing substandard housing. This is doubly true when these landlords have already chosen not to provide the security of a written lease agreement.

Other SSI claimants have little choice but to sublet a room or pay a flat fee rent to share living quarters, as renting a place of their own is well beyond their means. These sublease-type agreements are typically oral. Because the circumstances around the rental can be unwanted by the landlord the situation can be tense, as often SSI recipients double up with other low-income households who are already overcrowded in one- or two-bedroom units. Requiring SSI recipients to press the issue and request a written rental agreement to avoid a benefit reduction can jeopardize an already unstable living arrangement for people with few affordable housing options.

SSA should follow the lead of the Food and Nutrition Service (FNS) that administers the Supplemental Nutrition Assistance Program (SNAP). While the amount of a SNAP recipient’s rent is a factor in determining the level of SNAP assistance provided, FNS does *not* require written verification of the rent in its eligibility or benefit calculation. See 7 C.F.R. § 273.2(f)(1) (mandatory verification of eligibility and benefit level factors). Neither should SSA require written verification of a rental agreement as many agreements are oral, and it is often difficult to get the cooperation of landlords in the verification process.

If SSA does continue to require documentation of rent, SSA should accept proof of rent payment, no matter its format, to establish both the rental agreement and amount. Specifically, in addition to the accepting proof of electronic transfer of funds to the landlord as adequate verification as suggested in the NPRM, SSA should also accept a wide range of proof of payment, including: money order copies, cancelled checks, and proof of electronic payments via common digital payment systems including but not limited to Paypal and Venmo.

**We Encourage SSA to Ensure the Simplification Exemplified in this Policy Extends to all SSI Recipients Who Live with Others and Pay at Least One-Third of the SSI Benefit Towards Shelter Expenses.**

We agree with SSA's stated rationales for extending existing rental subsidy policy nationwide: chiefly, that ISM should only be countable if the SSI recipient gets "actual economic benefit" or "increased purchasing power" from the subsidy. SSA should take additional steps to ensure that all SSI recipients who live with others and pay at least one-third of the SSI benefit toward shelter expenses benefit from this rule.

The living arrangements that SSI older adults and people with disabilities are able to obtain with their limited income can vary widely. When an individual is living with others and making a contribution toward their shelter expenses, whether the payment the SSI individual makes is called "rent" or is described differently, the impact is the same—a payment toward their shelter costs. At times, these contributions to shelter expenses represent most or nearly all of an individual's SSI monthly benefit. While this proposed rule addresses the situation where rental liability is found, the similar situation where a shelter payment is made but rental liability is not found is addressed in a different part of the in-kind support and maintenance rules. For individuals who live with others and make a contribution toward shelter expenses that is not explicitly considered a rental payment, we encourage SSA to modify the policy in 20 C.F.R. § 416.1132(c)(4) to ensure that individuals who pay at least one-third of the SSI Federal Benefit Rate toward shelter expenses are considered to be living in their "own household" and thus not subject to an in-kind reduction of their SSI benefit. This modification would allow these individuals to also benefit from the simplification inherent in this proposed rule.

We urge SSA to finalize these proposed regulations, as well as the previously published proposal on Omitting Food from In-Kind Support and Maintenance Calculations (Docket No. SSA-2021-0014) and the proposal to Expand the Definition of a Public Assistance Household (Docket No. SSA-2023-0015) currently open for comment. These policies are sensible reforms to streamline the administration of in-kind support and maintenance in the SSI program, and will reduce burdens on SSI applicants and recipients, as well as the agency itself. They will also help ensure that SSI rules do not drive those who are on the edge of homelessness deeper into poverty.

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