

JUSTICE IN AGING

FIGHTING SENIOR POVERTY THROUGH LAW

November 27, 2023

Office of Legislation and Congressional Affairs
Regulations and Reports Clearance Staff, Mail Stop 3253 Altmeyer
6401 Security Blvd., Baltimore, MD 21235

Submitted via www.regulations.gov

Re: Notice of Proposed Rulemaking to Expand the Definition of a Public Assistance Household, 88 FR 67148 (September 29, 2023), Docket No. SSA-2023-0015

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.

SSA's proposed rule is an urgently needed step to ensure that fewer older and disabled SSI beneficiaries are penalized for living with friends or family who themselves are low-income. SSA should finalize this proposed rule as soon as possible.

Washington, DC



Los Angeles, CA



Oakland, CA

SSA Should Update the List of Public Assistance Programs to Include SNAP Benefits

The public assistance household exception to SSI's in-kind support and maintenance (ISM) rules originated in 1980 when the landscape of income support programs was very different.¹ To be consistent with the intent of the original regulation, the criteria for establishing public assistance households should be updated to reflect the substantial changes to the safety net since 1980. Currently, far fewer households receive the cash welfare benefits included in the original rule; those benefits were known as Aid to Families with Dependent Children (AFDC) when the rule was established and as Temporary Aid for Needy Families (TANF) now. By contrast, many more low-income households receive quasi-cash Supplemental Nutrition Assistance Program (SNAP) benefits now than received Food Stamps when the regulation was established.

SNAP households today are similarly situated to AFDC households when the public assistance exception was first established. TANF reaches far fewer poor families now than AFDC did four decades ago, making TANF receipt no longer a sufficient proxy for households struggling to get by. In 1980, 73 of every 100 families experiencing poverty received AFDC; in 2020, only 21 of every 100 families experiencing poverty received TANF.² This decline is due to the erosion of TANF spending, which has lost nearly 40 percent of its real value since the program's inception in 1996, as well as its extremely restrictive eligibility criteria. As a result, very few families receive TANF. Meanwhile, Food Stamp/SNAP participation has increased over time. It closely tracks poverty trends, and an increasing share of the low-income population receives SNAP benefits.³

Although today we think of TANF benefits as reaching people in deep poverty, in the 1970s that was much less true, with more generous states providing AFDC to many families up to roughly the poverty line. The limitation of AFDC to the extremely poor began with the Omnibus Budget Reconciliation Act of 1981, enacted after SSA created the current public assistance exception. Thus, adding SNAP households to those treated as having been determined to lack the means to provide in-kind income would restore SSI's practice to a policy much closer to SSA's 1980 rule.

The preamble of the 1980 public assistance household regulations explained that people for whom another agency has determined that they "need all of their income" to meet their basic needs should not be subject to an ISM-related benefit reduction. However, the list of programs included in 1980 is too narrow to account for the programs operating today in which Congressionally mandated decisions are made that households need all of their income.

¹ Social Security Administration, Supplemental Security Income for the Aged, Blind, and Disabled: Final Rule, 45 Fed. Reg. 65,541 (Oct. 3, 1980) https://archives.federalregister.gov/issue_slice/1980/10/3/65540-65559.pdf#page=8

² <https://www.cbpp.org/research/family-income-support/cash-assistance-should-reach-millions-more-families>

³ <https://www.cbpp.org/research/policy-basics-the-supplemental-nutrition-assistance-program-snap>

SNAP is the most obvious addition to the list of public assistance programs. It is an anti-hunger program designed to help low-income people in the United States afford a nutritionally adequate diet, and it is narrowly targeted on households with the fewest resources to purchase food.⁴ Unlike most means-tested benefit programs, which are restricted to particular categories of low-income individuals, SNAP is broadly available to households with low incomes. SNAP eligibility rules and benefit levels are, for the most part, set at the federal level and uniform across the nation, though states have flexibility to tailor aspects. To qualify for SNAP benefits under federal rules, a household must have low incomes (generally, gross income below 130 percent of the poverty line and net income below the poverty line) and low assets (\$3,750 for households with a disabled or elderly member, lower for those without).

Using SNAP's determination that a household needs help to afford food is a simple way for SSA to identify which SSI beneficiaries live in financially struggling households. The original public assistance household regulation provided this exemption "in recognition of the fact that other agencies have determined that these individuals need all their income for their own needs".⁵ Expanding the definition of public assistance households to include those who receive SNAP would continue the longstanding precedent of basing the definition on actual need as determined by other agencies. It is also consistent with the longstanding principle of honoring the determinations made by other Congressionally authorized programs, in order to simplify administration, create uniform standards, and reconcile Congressional enactments.

Updating the public assistance rule to include receipt of SNAP would lessen hardship among struggling families. About half of SSI beneficiaries live in poverty, in part because the federal benefit rate is so low — \$914 per month, only three-quarters of the federal poverty line for an individual.⁶ For couples, the benefit level is an even smaller fraction of the poverty line. More than half of SSI benefit recipients have no other source of income. And yet, under current SSI rules, beneficiaries affected by ISM have their benefits reduced by up to one-third because they receive needed support from family or others. This leaves individual beneficiaries with about \$600 per month in SSI benefits to pay other expenses, including housing, food, utilities, clothing, medical care, and transportation. Adopting the proposed rule would recognize that SSI recipients who live in financially struggling households should not face ISM reductions.

Including SNAP Benefits Would Simplify the ISM Rules

SSA's proposed rule would take an important step toward simplifying one of the most complicated and burdensome SSI rules. SSI's in-kind support and maintenance (ISM) rules reduce benefits dollar-for-dollar for the value of support from family or friends, such as a place to sleep or help with groceries, up to one-third of benefits. SSI is the only federal program to do so. While fewer than 1 in 10 SSI beneficiaries have their benefits reduced for ISM, the current

⁴ <https://www.cbpp.org/research/policy-basics-the-supplemental-nutrition-assistance-program-snap>

⁵ [45 FR 65542](#), Oct. 3, 1980

⁶ CBPP, "Policy Basics: Supplemental Security Income," February 21, 2023, <https://www.cbpp.org/research/social-security/supplemental-security-income>.

ISM rules affect nearly every SSI beneficiary. SSA staff typically ask detailed questions about living arrangements, other household members, and budgeting, as well as requiring a detailed accounting of shelter expenses (e.g., rent, heat, water, and electricity) to determine whether and how much help SSI beneficiaries receive — and then have to repeat the process as beneficiaries’ circumstances change. This process places an undue burden on beneficiaries, requiring time-consuming, intrusive, and complicated paperwork. For SSA, the rules are also inefficient and costly to administer, and their complexity leads to many errors, making ISM the third leading cause of overpayments within SSI.⁷

SSI’s income deeming rules are similarly complicated and burdensome to administer. Typically, a portion of a beneficiary’s spouse, parent, or immigration sponsor’s income is deemed to the beneficiary, whether or not that income is actually available to the beneficiary. SSA must develop not only the source and amount of the beneficiary’s income, but also the incomes of those other household members subject to deeming. Income from public assistance benefits, or that is used to determine eligibility for such benefits, is not deemed.

The proposed rule would update and streamline SSI’s rules. It would expand the definition of “public assistance household” by including those who receive SNAP benefits. Public assistance households are exempt from ISM development and income deeming — two of the most complicated and burdensome features of SSI. Exempting more beneficiaries from these rules will reduce needless and complex paperwork and calculations. This would reduce burdens for both applicants and beneficiaries as well as SSA staff, in keeping with the 2021 executive order on improving customer service.⁸ In the NPRM, SSA estimates that the rule would save nearly 79,000 hours. The agency also estimates a 50 percent reduction in the number of people who need to complete burdensome ISM-related paperwork, relieving applicants, beneficiaries, and SSA staff from detailed development of household expenses and budgeting.

The proposed rule is a straightforward way to simplify needlessly complex SSI rules, which the agency must do to efficiently execute its responsibilities. Streamlining SSI policy within SSA’s statutory authority is critical for an agency struggling to serve its applicants and beneficiaries at current resource levels.⁹ Declines in SSA’s real funding and staffing has exacerbated some of these problems, but SSI’s overly complex rules also consume significant staff time, require extensive training, clog up the queue for service, and cause payment errors — all of which disproportionately absorb the agency’s resources. Administration of SSI benefits requires 33 percent of the SSA’s budget, compared to 45 percent for the Social Security program, which

⁷ SSA, “Payment Integrity,” 2020, <https://www.ssa.gov/finance/2020/Payment%20Integrity.pdf>.

⁸ The White House, “Executive Order on Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government,” December 13, 2021, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/12/13/executive-order-on-transforming-federal-customer-experience-and-service-delivery-to-rebuild-trust-https://www.wmata.com/fares/Reduced-Fare-Programs/MetroLift/index.cfm-in-government/>.

⁹ Kathleen Romig, “Security Administration Needs Additional Funding to Avoid Exacerbating Customer Service Crisis,” CBPP, September 22, 2023, <https://www.cbpp.org/blog/social-security-administration-needs-additional-funding-to-avoid-exacerbating-customer-service>.

serves eight and a half times more beneficiaries.¹⁰ ISM rules are perhaps the most complicated that SSA must administer.¹¹

SSA Should Expand the PA Definition to Include Households Where *Any Other* Member Receives Public Assistance

The current definition of a public assistance household requires that “every other” member of the household receive a listed benefit. The NRPM invites comments on expanding the definition to include households in which “any other” member receives such a benefit. Including households where any member receives a public assistance benefit would allow more SSI beneficiaries to keep their full benefit, and thus give families with very low incomes and SSI benefits more resources to meet their basic needs.

This definition would be simpler to administer and make more sense, particularly in the context of adding SNAP. A SNAP household generally consists of people who live together and purchase and prepare food together. Some people — such as some college students and legal permanent residents — are not eligible for SNAP benefits, even if they otherwise meet the SNAP criteria. However, the incomes and assets of these ineligible individuals are often included to determine if the household is financially eligible for SNAP. Determining the SNAP receipt of each person living with an SSI beneficiary would be unnecessarily complex, compared to simply determining that at least one member of the household receives SNAP. Because SNAP is a household-level benefit, the entire household will have been determined to qualify for food aid, making it unnecessary for SSA to then verify the eligibility of each individual in that household. A household that includes a person excluded from SNAP for reasons unrelated to need is still a household with a demonstrated need of assistance to pay for food.

The two programs’ definitions of “household” will typically be the same, allowing SSA to make a simplifying assumption to ease program administration. Among SSI beneficiaries who live with others, nearly half live in households with 3 or more members, so adopting this rule would save the agency from doing multiple benefit verifications in a large proportion of ISM cases.¹² It would also mean the agency would not have to redevelop public assistance household status each time a new person moves into the household.

Additionally, some individuals are excluded from SNAP for reasons unrelated to need. This would lead to disparate treatment of similarly situated SSI recipients. In addition to the examples of excluded individuals given in the NPRM, most college students are excluded from participation in the SNAP program.¹³ If SSA maintains its requirement that *all* other household members receive public assistance, it would disadvantage those SNAP-receiving low-income

¹⁰ Social Security Administration, “Justification of Estimates for Appropriations Committees Fiscal Year 2024,” March 2023, <https://www.ssa.gov/budget/assets/materials/2024/FY24-JEAC.pdf>.

¹¹ Nancy Altman, “The Pressing Need to Update, Expand, and Simplify SSI,” SSAB, 2020, https://www.ssa.gov/oact/ssir/SSI20/2020_SSAB_Nancy_Altman_Statement.pdf.

¹² <https://www.ssa.gov/policy/docs/rsnotes/rsn2022-01.html>

¹³ See 7 CFR § 273.5 (students).

households with a member who is in post-secondary education. SSA's policies should support individuals to obtain post-secondary education that increases their employability and future economic prospects. Expanding the definition of PA household to include households in which *any* other household member receives public assistance would ensure that all qualified and similarly situated SSI beneficiaries are treated equally.

Stigma in receiving public assistance and fear may also keep some individuals in a household from applying. For example, veterans who are food insecure may feel reluctant to seek help, and in fact veterans are less likely to participate in SNAP than non-veterans.¹⁴ And 1 in 4 adults in mixed-status households do not participate in noncash government benefit programs due to immigration concerns, even if they are not subject to public charge.¹⁵

Although SSA anticipates a net administrative cost to SSA of \$105 million over 10 years to implement this proposal, this reflects largely upfront costs to change the overly complex ISM system. The costs over time will be outpaced by the time saved by agency staff in developing household expenses and contributions and in dealing with ISM-related overpayments.¹⁶

SSA Should Share Data with State SNAP Agencies to Confirm SNAP Participation

SSA could further reduce the burden on SSI applicants and beneficiaries by confirming receipt of SNAP (and other public assistance programs) directly with the state agencies who administer these programs. Under current policy, SSA is permitted but not required to confirm public assistance household status by contacting the administering state agency. SSA should explore creating agreements with all states to directly verify public assistance in order to reduce the burden on respondents to provide such proof.

SSA Should Expand Public Assistance Households to Include Receipt of Medicaid

While the Administration should move quickly to finalize this rule, agency policymakers should also consider further expanding the number of public assistance programs in future rulemaking. For instance, households receiving housing assistance have been found by another government agency to lack the resources necessary to afford their basic needs for shelter. Those receiving Medicaid or CHIP have been identified as not having enough income to meet their basic health care needs. Those qualifying for Low Income Home Energy Assistance Program (LIHEAP) benefits cannot afford to keep their homes safely warm in the winter and cool in the summer. In each case, federal, state, or local agencies have determined that these families face economic strain and need government assistance to fill in the gaps between their income and the cost of basic needs.

¹⁴ The War Horse, "[Veterans Who Are Food Insecure Are Less Likely to Seek Help Than Civilians](#)", 2023

¹⁵ Urban Institute, "[One in Four Adults in Mixed-Status Families Did Not Participate in Safety Net Programs in 2022 Because of Green Card Concerns](#)", 2023

¹⁶ ISM is the third leading cause of SSI overpayments. See SSA, "Payment Integrity," 2020, <https://www.ssa.gov/finance/2020/Payment%20Integrity.pdf>.

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.

Respectfully submitted,

Tracey Gronniger
Managing Director, Economic Security
Justice in Aging