



October 22, 2023

Social Security Administration
Submitted Online via <https://www.regulations.gov>

Re: Notice of Proposed Rulemaking: Docket No. SSA-2023-0010
Expansion of Rental Subsidy Policy for SSI

Dear Acting Commissioner Kijakazi:

The undersigned organizations of the Consortium for Constituents with Disabilities (CCD), including CCD's Social Security Task Force (SSTF) and Housing Task Force (HTF), thank you for the opportunity to address the proposed expansion of the Rental Subsidy Policy for Supplemental Security Income (SSI) Applicants and Recipients. CCD is the largest coalition of national organizations working together to advocate for Federal public policy that ensures the self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society free from racism, ableism, sexism, and xenophobia, as well as LGBTQ+ based discrimination and religious intolerance.

CCD Social Security Task Force focuses on disability policy issues in the Title II disability programs and the Title XVI Supplemental Security Income (SSI) program. The SSI and Title II cash benefits, along with the related Medicaid and Medicare benefits, are the means of survival for millions of individuals with disabilities. They rely on SSA to promptly pick up the phone to assist in completing applications, to adjudicate those applications for disability benefits and handle many other actions critical to their well-being.

The CCD Housing Task Force works to ensure that all people with disabilities have safe, stable, accessible, affordable, integrated housing that enables people to live with full access to home and community-based services and supports. 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,¹ and in 2022, the number of disabled, chronically homeless individuals reached record highs.² SSA's proposed rule is an urgently needed step towards ensuring that disabled people on SSI are not penalized for receiving help with housing from friends, family or other informal supports – help

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

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

that is often necessary to avoid institutionalization and homelessness. SSA should finalize this proposed rule as soon as possible.

I. CCD 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. Our members in states where this rule already applies have seen first-hand that this rule 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 beneficiaries 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.³ 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 benefit reductions under SSA’s in-kind support and maintenance policy.

Adoption of this rule promotes uniformity in the treatment of rental assistance – which is consistent with SSA’s recently stated goal to promote uniformity in the treatment of food assistance.⁴ Many people wait for years or even decades for scarce federal rental assistance, and only about 23% of SSI recipients receive it.⁵ 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.

II. 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.

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

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

⁴ 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).

⁵ 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>.

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. Our member organizations note that when representing SSI recipients who rent from small landlords, or a room in an acquaintance’s house - some of whom provide substandard housing- the landlords are very non-responsive 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 in the first instance.

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. In our experience, 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.

III. We Encourage SSA to Ensure this Policy Extends to all SSI Recipients Who Pay at Least the Presumed Maximum Value Towards Rent by Simplifying the Rental Liability Determination.

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 in sub-regulatory guidance to ensure that all SSI recipients who pay at least Presumed Maximum Value (PMV) in rent benefit from this rule. SSA should also simplify rental liability determinations, to maximize the simplification effects of the rental subsidy rule.

SSA policy recognizes that recipients can have rental liability for shared living situations, either via sublet or a flat fee for food and shelter. See POMS SI 00835.120(A). Current policy requires that SSI recipients who live in the same residence as their landlord must first establish rental liability before the proposed rental subsidy rule would apply. Thus, the question of whether an SSI claimant has rental liability is key. If an SSI claimant cannot provide a written lease or detailed signed rental receipts or whose landlord is unavailable or unwilling to talk to an SSA claims representative and confirm the rental arrangement, SSA policy requires an 11-factor test to determine if the SSI recipient is in a “separate economic unit” with rental liability. See POMS SI 00835.120(D). This 11-factor test is unnecessarily complex, intrusive, and necessarily leads to a lack of uniformity in its application.

We recommend that SSA take a more streamlined approach to acknowledging rental liability. When SSI recipients rent from someone with whom they live, SSA should find, *without any additional development*, that rental liability exists *unless* the landlord is a parent or child of the SSI recipient. If there is a parent/child relationship, the SSI recipient should be provided an opportunity to rebut the presumption that they are not a separate economic unit with evidence of a written lease, separate receipt of SNAP benefits, proof of separate bank accounts and expenses, or other relevant evidence.

Thank you for this opportunity to comment on the proposed regulation.

Respectfully submitted,

American Association of Health and Disability
American Network of Community Options and Resources
American Academy of Pediatrics
Autistic Self Advocacy Network
Autism Society of America
Autistic Women & Nonbinary Network
Caring Across Generations
Community Legal Services of Philadelphia
Consortium of Constituents with Disabilities Social Security Task Force
Consortium of Constituents with Disabilities Housing Task Force
Cure SMA
Justice in Aging
Lakeshore Foundation
National Association of Councils on Developmental Disabilities
National Association of Disability Representatives (NADR)
National Committee to Preserves Social Security and Medicare
National Down Syndrome Congress
National Disability Rights Network
National Organization of Social Security Claimants’ Representatives (NOSSCR)
Pandemic Patients
RespectAbility
Special Needs Alliance
The Arc of the U.S.
Technical Assistance Alliance

United Spinal Association