



Administrative and Legislative Recommendations for the Social Security Administration

Transition Memo for the Biden-Harris Administration

Community Legal Services of Philadelphia (CLS), one of the largest and most respected legal services programs in the nation, congratulates President-Elect Joseph Biden and Vice President-Elect Kamala Harris on their successful election. As President-Elect Biden said in a recent speech: “We must make the promise of the country real for everybody — no matter their race, their ethnicity, their faith, their identity *or their disability*.” We applaud the Biden-Harris Administration for this commitment to disability justice. We hope that it marks the beginning of a new era of progress for people with disabilities, including the millions of Americans who rely on monthly disability payments from the Social Security Administration (SSA) – namely, Social Security Disability Insurance (SSDI) and/or Supplemental Security Income (SSI).

For millions of people with serious, long-term disabilities, access to these disability benefits programs is a matter of life and death. SSDI provides monthly income to more than eight million people who have to leave work due to disability. Its sister program, SSI, provides a fixed amount of cash assistance to nearly six million people with disabilities who do not have much work history, including more than one million children. SSDI also establishes after time eligibility for Medicare, and SSI for Medical Assistance, crucial health access supports especially for these disabled.

Disability benefits from SSA ensure that people with disabilities have a safe place to live and enough income to buy groceries, medications, and other necessities. But these benefits are very hard to access, even for people who qualify. Roughly two-thirds of applicants are denied benefits when they first apply, and the appeals process can take years to complete. Recent regulatory and sub-regulatory changes within SSA are making it even more difficult for those who need access to these benefits the most. Proposed SSA agency changes threaten to make their situation even worse.

The effects of the COVID-19 pandemic have increased the necessity of these programs while magnifying the problems for access and inequities in administration. The COVID-19 pandemic has caused severe disruptions in the workforce, including field offices that are effectively inaccessible for those most in need. While some will return to work in the coming months, many workers with disabilities may remain out of the workforce indefinitely. Older workers with disabilities were thirty percent more likely to lose their jobs during the Great Recession than the population as a whole. Many displaced workers with longstanding disabilities turn to disability benefits from SSA as they became unable to find accommodated work. Greater funding is needed for outreach and advocacy assistance to those who need these services but are not aware of their availability, as well as for proper staffing and accessibility to ensure that those who do attempt to obtain benefits are able to access the core functions.

While CLS fully endorses the transition recommendations of the Consortium for Citizens with Disabilities (CCD) and the important improvements to the SSDI and SSI programs they have identified, we highlight below several key priorities that are crucial to the well-being of the clients that we serve. Our clients, who primarily apply for SSI, are among the most vulnerable claimants served by SSA. We represent people with limited English proficiency, children, and those suffering from severe mental health impairments. The Biden-Harris Administration could, with Administrative and Legislative reforms, offer a lifeline to those who need it most.



SSA Administrative Reforms

- **Abandon the Proposed Rule on Continuing Disability Reviews**

- People who qualify for disability benefits are subject to continuing disability reviews (CDRs), which are routine reviews to see if they are still unable to work or otherwise qualify for benefits, because of the severity of their disabilities. Most people are reviewed at fixed intervals that can range from three to seven years, depending on their particular circumstances.
- In November 2019, SSA issued a proposed rule to review most people every two years instead, and especially targeting for increased reviews, older disabled beneficiaries and children on SSI. This means that SSA would conduct an additional 2.6 million reviews over the next ten years; altogether, SSA would conduct 19.3 million reviews in the next decade. The proposed rule garnered an unprecedented 130,000 comments, most negative. Even so, SSA sent the proposed rule to the Office of Management and Budget just a few days after the November 2020 election.
- The CDR process is already incredibly burdensome and stressful to the people forced to undergo it, almost all of whom are unrepresented with no assistance. Many people have their benefits ceased not because their conditions improve, but because they are unable to navigate the process, often due to their disabilities. If their benefits are ceased, they must undergo a long and difficult process to have them reinstated.
- **Recommendation: the Biden-Harris Administration should abandon the proposed rule. If it is finalized before January 20, 2021, it should use any remedies available under the Administrative Procedure Act to rescind the rule.**

- **Rescind the Final Rule on Inability to Communicate in English**

- SSA rules for adults with disabilities take into account both the severity of their disabilities and how the disabilities affect ability to work. SSA must consider under the Act a range of factors in assessing an individual's ability to work, including age, education, and past work experience.
- Until April 27, 2020, SSA also considered a person's ability to speak English, with the understanding that people who have difficulties understanding, speaking, reading, or writing English may have a harder time finding work.
- The new rule enacted during the Trump Administration imposes disproportionate and discriminatory harm on people of color, while doing little to promote the goals of SSA. Its impact on the general population of SSDI and SSI applicants is minimal, as



consideration of the inability to communicate in English only affects a very small group of people who are aged 45 or older, restricted to sedentary or light work, and are without vocational skills.

- **Recommendation: the Biden-Harris Administration should use the regulatory process to roll back this harmful regulation.**

- **Abandon the Nascent Rule Revamping SSA Work Standards and the Grids**
 - In January 2020, *The Wall Street Journal* reported that SSA would soon issue another proposed rule to alter the long-standing eligibility criteria for disability benefits, especially for older people.
 - When evaluating an application for disability benefits, SSA considers whether the person meets narrow medical and functional criteria, called “the Listings.” If the person does not meet the Listings, SSA must consider under the Act age, education, and past work experience to determine if the person’s disability will allow them to work. For older workers, SSA considers a specific set of medical-vocational rules, called “the Grids.”
 - The leaked SSA proposal would revamp the Grid rules so that they would not apply to people under the age of 55, and the rules would be further limited for people aged 55 and older. It would also redefine SSA’s work rules in other ways, such as finding people who are able to work thirty hours per week ineligible for benefits, instead of at forty hours, the threshold under the current rules.
 - SSDI and SSI awards have been steadily decreasing for years and this change would only accelerate this trend, while disproportionately affecting those who are older and lack the formal education and vocational skills necessary to obtain employment. If the Great Recession is a guide, older people with disabilities are most likely to be impacted by the economic crisis precipitated by the COVID-19 pandemic, and should not face new barriers to lifesaving safety net benefits.
 - **Recommendation: The Biden-Harris Administration should abandon this rule, while taking steps to make disability benefits programs more accessible to older workers with disabilities who are displaced from supported work due to the COVID-19 pandemic.**

- **Collect or Compile and Release Data on Race and Ethnicity in all Facets of the SSI and SSDI Programs**
 - Due to differences in earnings over time and other factors, disability benefit amounts are lower for Black beneficiaries and other beneficiaries of color than for White beneficiaries.



- While there may be disparities in SSA business processes themselves, any disparities are exacerbated by well documented biases in related systems. For example, long-documented racial disparities in medical treatment or in provision of special education services affect claimants' ability to provide necessary disability evidence to support their claims.
- While some of these disparities are intuitive, we cannot fully understand and address their impact on SSA outcomes, including in rates of denials and allowances at various stages of adjudication, without a more accurate and comprehensive analysis of the racial and ethnic makeup of claimants and beneficiaries.
- The request for racial and ethnic data reporting is even more urgent given the disproportionate impact of the COVID-19 pandemic, which has both exposed and exacerbated racial inequality, through higher rates of illness and death, unemployment, and barriers to treatment and social services among Black Americans, and other oppressed racial groups, compared to White Americans. This past year approximately 40 national and regional organizations wrote to Commissioner Saul urging the restoration of racial and ethnic data reporting.

Recommendation: The Biden-Harris Administration should charge SSA to work with advocates to determine ways to collect and regularly report data about race and ethnicity, with the goal of identifying and addressing racial disparities that impact SSA disability processes.

Social Security Act Legislative Reforms

- **Support Funding for Enhanced Outreach and Advocacy Assistance to Those Who Need Disability Benefits Most**
 - SSI and SSDI applications are complicated and stressful under the best of circumstances, especially for people who need benefits most: people with serious behavioral health conditions, including trauma disorders; people who are limited English proficient; people who are experiencing homelessness; and people who are returning from incarceration. Most applicants have no assistance in applying and getting through the adjudicative processes.
 - The COVID-19 pandemic has made the disability benefits system even more difficult to access. SSA field offices are closed to the general public for walk-in traffic, and SSA's online and telephone systems are overburdened and difficult to navigate. SSA reports that SSI applications have plummeted during the pandemic. In CLS's home state of Pennsylvania, applications declined by 30% in the first six months of the pandemic, a percentage representative of the national decline, even as workers with disabilities lost supported jobs due to the economic crisis.



- As the pandemic continues and even worsens, SSA field offices will remain inaccessible well into 2021, and SSA systems will be stressed even after the pandemic ends, as potential claimants flood field offices to finally address benefits issues.
 - Investment in remote (telephonic and online) access will make SSA more accessible to people who need disability benefits immediately. And third-party assisters – legal aid advocates, social service providers, and medical case managers – can help the hardest to reach and most challenged claimants, while shouldering some of the burden that would otherwise overwhelm SSA staff.
 - **Recommendation: The Biden-Harris Administration should partner with Congress to ensure funding to make SSA systems accessible during and after the COVID-19 pandemic, by supporting advocacy assistance and expanded telephonic and online access.**
- **Ensure that SSI Recipients who Are Returning from Incarceration Can Reconnect to Disability Benefits**
 - People with serious disabilities often lose SSI when they are incarcerated. Under the Social Security Act, people who are incarcerated for twelve months or longer have to reapply for SSI from scratch when they are released, even if they still have serious disabilities. (People who have SSDI do not typically have to reapply.)
 - Qualifying for SSI is difficult and can take years, especially for people who have been in prison. SSA asks for a lot of medical evidence to confirm disability. This is hard for people returning from incarceration, because treatment in prison is typically inadequate, and prison medical records are spotty. It can take years for people to requalify for SSI, even if they have serious, lifelong disabilities.

People returning from incarceration with serious behavioral health conditions often have no income while they wait to requalify for SSI. They are likely to experience homelessness, and many are unable to access medical care. Without the means to get regular treatment, especially mental health care, they are at risk of reincarceration.

- A simple change to the Social Security Act can make it easier for people to keep their SSI. Aligning SSI rules with SSDI rules, so that people do not have to reapply for benefits when they are released from incarceration, would mean that people could reconnect to their SSI benefits without a gap, though they would still be subject to regular disability reviews. This simple fix would prevent homelessness and reincarceration, saving taxpayer dollars.



- **Recommendation: The Biden-Harris Administration should partner with Congress to revise the Social Security Act so that SSI recipients who are incarcerated can reconnect to disability benefits upon release.¹**

- **Abolish the Seven-Year Time Limit Limiting SSI Benefits for Refugees and Other Humanitarian Immigrants**
 - Refugees and other humanitarian immigrants generally arrive and are welcomed into the United States with little more than the clothes on their backs and often have no relatives in the country. SSI benefits are the sole source of income for many refugees and other humanitarian immigrants who aged or have work-preclusive disabilities, including post-traumatic stress disorder and physical injuries related to the violence that they are fleeing.
 - Refugees and other humanitarian immigrants are subject to a law that limits their SSI eligibility to their first seven years in the United States unless they are able to become naturalized citizens within that time.
 - All of the refugees and other humanitarian immigrants who could lose SSI as a result of this provision are unable to work due to disability or old age. Many are unable to naturalize within seven years, often for reasons beyond their control, including the complexities of Trump Administration-era immigration rules. If their SSI (and related Medicaid benefits) are terminated, many will be left with no other source of income.
 - **Recommendation: The Biden-Harris Administration should partner with Congress to abolish the seven-year time limit that often terminates SSI eligibility for refugees and other humanitarian immigrants.**

¹ While CLS supports legislative alignment to SSI and SSDI rules for people who are institutionalized, including people facing longer-term incarceration, we also support shorter-term administrative fixes. For example, the Biden-Harris Administration could issue guidance that people returning from incarceration who have lifelong behavioral health conditions like schizoaffective disorder should be evaluated based on older medical evidence than is usually considered by SSA disability examiners.

