



NATIONAL ORGANIZATION OF  
SOCIAL SECURITY CLAIMANTS'  
REPRESENTATIVES

ESTABLISHED 1979

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The Honorable Edward "Ted" Kaufman  
Chairman  
Biden-Harris Transition Team  
1401 Constitution Ave., NW  
Washington DC 20230

Dear Senator Kaufman,

On behalf of the National Organization of Social Security Claimants' Representatives (NOSSCR), I would like to congratulate President-elect Biden and Vice President-elect Harris on their victory in the 2020 Presidential election. NOSSCR is eager to work with the Biden administration and Congress to implement improvements to our nation's social security system for those seeking their Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI) benefits.

As you work to develop the Biden Administration agenda, NOSSCR wanted to share with you and your team our top proposals to secure and strengthen America's SSI and SSDI programs.

NOSSCR is a specialized bar association for attorneys and advocates representing SSDI and SSI claimants throughout the adjudication process and in federal court. Founded in 1979, NOSSCR is a national organization with a current membership of more than 2,000 members from the private and nonprofit sectors.

As advocates for those with disabilities, NOSSCR members are dedicated to ensuring that their clients receive top flight representation and that they are awarded the benefits that they have earned and deserve. NOSSCR members fight to ensure that Americans with disabilities can maximize their dignity, stability, and independence.

NOSSCR members help the Social Security Administration (SSA) operate more effectively by assisting clients in navigating complex policies and procedures. Additionally, Social Security claimants' representatives help clients obtain and submit evidence, question expert witnesses at hearings, write briefs, and assist their clients in completing crucial paperwork.

The Social Security system faces numerous challenges over the coming years, but with leadership from our elected officials and sound policy decisions, it will remain strong and continue to be a crucial safety net for generations to come.

The two greatest challenges to Social Security are its overall solvency and ensuring that Social Security claimants have access to high-quality representation. Both of these issues can be addressed through simple updates to the Social Security system.

## **Reforms to Title II and Title XVI Programs**

NOSSCR appreciates President-elect Biden's detailed and thoughtful plans for Social Security reform that the campaign outlined in its policy positions titled "[The Biden Plan for Full Participation and Equality for People with Disabilities](#)," and "[The Biden Plan for Older Americans and Retirement](#)." NOSSCR applauds the Biden Administration's commitment to "ensuring that people with disabilities are included in policy development" and its pledge to create a "Director of Disability Policy" within the Domestic Policy Council.

Additionally, NOSSCR commends the Biden Administration's commitment to increasing work opportunities for individuals with disabilities. As you know, many Americans have disabilities that preclude them from working full time. These individuals rely on either SSI or their earned benefits from SSDI. Ensuring these programs remain financially viable is critical to guaranteeing that Social Security's promises are met for all Americans.

NOSSCR proudly joins The Biden Administration in calling for reforms to the SSI system. President-elect Biden's proposed SSI reforms in "The Biden Plan for Full Participation and Equality for People with Disabilities" would end the marriage penalty, and the in-kind support and maintenance provision, that penalizes SSI recipients who are being fiscally responsible by sharing housing costs. This proposal will also help ensure that SSI benefits will create a livable standard by raising the SSI level to at least 100% of the poverty level and raising the SSI asset limits for the first time since 1984.

To help ensure SSI recipients are not living in poverty, and to respect the dignity of work, NOSSCR calls upon the Biden Administration to embrace the following policies:

- exclude from SSI income calculations state and local earned income tax credits and child tax credits,
- increase and inflation adjust SSI's general and earned income exclusions, without a corresponding loss in benefits

These simple reforms will pull many of those on SSI out of poverty, and ensure that they and their families live with dignity.

NOSSCR applauds President-elect Biden's proposed reforms to our nation's SSDI program. NOSSCR joins the Biden Administration in calling for eliminating the five-month waiting period for SSDI benefits and the additional two-year waiting period for Medicare eligibility. These unnecessary waiting periods compromise the health and wellbeing of this already vulnerable population. The five-month waiting period for SSDI benefits means that individuals may lose their housing to foreclosure or eviction, or incur crushing debt and find themselves unable to meet their basic needs. Allowing individuals to claim their earned benefits as soon as they are found eligible will help avoid these catastrophic financial situations.

After enduring a five-month wait for their earned benefits, SSDI recipients must wait an additional 24 months for their earned Medicare benefits. This delay in access to healthcare unnecessarily risks the health of this already vulnerable population. SSDI recipients have mortality rates 3-6 times higher than their same-aged peers. Ending this unnecessary delay will greatly improve health outcomes for this vulnerable population.

These simple policy shifts will help ensure that Social Security beneficiaries are not living in poverty and that American workers receive their earned benefits in a timely and equitable manner.

### **Ensuring American's Access to High Quality Representation**

The other major challenge facing Social Security claimants is ensuring that they will be able to access high quality professional representation when they interact with the Social Security Administration. Claimants for SSI or SSDI often hire a representative. Attorney and non-attorney representatives can help claimants by gathering evidence and submitting it to SSA, counseling claimants on Social Security law and policy, interacting with SSA, and advocating for claimants before Administrative Law Judges (ALJs). Representatives can receive payment for representing claimants by signing a fee agreement with the claimant or submitting a fee petition. This fee, which is paid by the claimant and has no cost to Social Security or effect on its solvency, must always be authorized by SSA. The cap on fees under fee agreements was set by the Omnibus Reconciliation Act of 1990 (OBRA) at \$4000; OBRA also gave the Commissioner of Social Security authority to increase the cap. The Commissioner has only exercised this authority twice in the past 30 years: the Commissioner raised the fee cap to \$5300 in 2002 and to \$6000 in 2009. The failure to raise the fee cap to keep pace with inflation threatens claimants' access to representation.

The lack of a fee adjustment in the last eleven years has put the entire system at risk. As the costs of running a business continue to increase, Social Security claimants' representatives' compensation continues to decline, leaving Social Security claimants' representatives in an untenable financial situation. In most cases, representatives must also pay a "user fee" back to SSA for the work the Agency does in processing the fee payments. This user fee increases every year (from a maximum of \$75 in 2000 to a maximum of \$98 in 2021), thereby reducing even more the fee received by a representative for a successful claim.

Since 2009, the last time Social Security claimants' representatives received an increase in the fee cap, inflation has increased by 19.51% nationwide, according to the Bureau of Labor Statistics. With certain localities experiencing inflation greater than 30%, this business model is not sustainable. Many Social Security claimants' representatives have reported having to lay off staff or take out loans just to meet payroll.

These continuing financial challenges are forcing many representatives to take fewer Social Security cases so that they can focus on more economically viable practice areas to help cover the losses they incur from Social Security cases. Even more troubling, many Social Security claimants' representatives have decided to leave the field altogether as it is no longer economically feasible for them to continue. Those who remain are fearful for the future of their practice and the future of the entire profession. The current exodus of experienced Social Security claimants' representatives is further complicated by challenges in recruiting new representatives, many of whom choose alternative career paths that are economically sustainable.

NOSSCR and many of its allies in the disability community realize that without immediate action to raise the cap on fees, Social Security claimants' ability to have professional representation will be permanently, and perhaps irreversibly, damaged. NOSSCR and its allies request that the Commissioner of the Social Security Administration exercise his statutory power to raise the fee agreement fee cap based on changes to primary insurance amounts; this modest increase would keep pace with national

growth in wages over time, as Congress intended. Additionally, we ask that SSA automatically adjust the fee cap each year. Annual adjustments to the fee cap will ensure that Social Security claimants' representatives will be able to continue to provide the vital services necessary to their clients.

### **The Continuing Tragedy of the Eric Conn Case**

We would like to bring one additional issue to your attention that is greatly affecting the lives of thousands of individuals in the Appalachian region of Kentucky and in West Virginia. In 2017, Eric Conn, a disgraced former attorney who was never a NOSSCR member, and former Administrative Law Judge (ALJ) David Daugherty were convicted and sentenced to jail for committing the largest fraud in Social Security's history. NOSSCR is grateful for the dedicated Social Security employees who brought this fraud to light and the federal agents who brought Messrs. Conn and Daugherty to justice.

Unfortunately, many of Mr. Conn's former clients, **who had no knowledge of this fraud**, are paying the price for these crimes. As a result of Mr. Conn's and ALJ Daugherty's convictions, many of Mr. Conn's former clients, who were not aware of his fraudulent activities that impacted their otherwise valid claims, are no longer receiving the disability benefits they are entitled to. Many of these individuals had their benefits suspended after perfunctory hearings where the ALJ refused to consider their medical evidence. Even though the Sixth Circuit Court of Appeals subsequently ruled that the SSA used an unconstitutional process to cut off payments to these individuals, (*Hicks v. Commissioner of Social Security*, 909 F.3d 786 (6th Cir. 2018), reh'g en banc den. (Mar. 29, 2019)) many are having difficulty having their earned benefits reinstated.

While this would be a devastating turn of events for any beneficiary, it is especially challenging for this economically disadvantaged community in the heart of Appalachia. The financial hardship caused by Mr. Conn's fraud and SSA's unconstitutional suspension of benefits reportedly led to multiple suicides of claimants who were no longer able to receive their SSA benefits. NOSSCR has been working with the office of Congressman Hall Rogers (R-KY) and others to correct this injustice (see attached letter from Rep. Rogers.) NOSSCR would value the opportunity to speak with you or your transition team colleagues to discuss how to correct this injustice and best address the other issues in this letter

Please do not hesitate to contact Michael Linskey, [mlinskey@nosscr.org](mailto:mlinskey@nosscr.org), NOSSCR's Director of Political and Legislative Strategy, to schedule a meeting or if we can be of any assistance to you or the transition team. NOSSCR looks forward to working with you and the Biden Administration.

Sincerely,



Barbara Silverstone  
Executive Director

cc: Carolyn Colvin  
Scott Frey