

**NATIONAL ORGANIZATION OF
SOCIAL SECURITY CLAIMANTS' REPRESENTATIVES
(NOSSCR)**

**161 Airport Executive Park • Nanuet, NY 10954
Telephone: (845) 682-1880 • email: nosscr@nosscr.org**

Executive Director
Barbara Silverstone

April 28, 2021

Senator Ron Wyden
Chair, Senate Committee on Finance
Rm. SD-219
Dirksen Senate Office Bldg.
Washington, DC 20510-6200

Via email: Statementsfortherecord@finance.senate.gov

RE: April 29, 2021 Hearing on “Social Security During COVID: How the Pandemic Hampered Access to Benefits and Strategies for Improving Service Delivery”

Dear Chairman Wyden,

This statement is submitted on behalf of the National Organization of Social Security Claimants' Representatives (NOSSCR), a specialized bar association for attorneys and advocates who represent Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) claimants throughout the adjudication process and in federal court.

Although NOSSCR members and staff engage with many components of the Social Security Administration (SSA), these comments focus on the services provided by the Office of Operations because Deputy Commissioner of Operations Grace Kim is the agency's witness for this hearing.

SSA's Operations component—which oversees field offices, program service centers, state disability determination service agencies (DDSs), international operations, and more—underwent major, rapid, changes during the COVID-19 pandemic. This in turn required members of the public, including disability claimants and beneficiaries, as well as those who represent them, to adjust the ways they interact with SSA.

Some aspects of the changes were positive: for example, we commend SSA for publishing the direct phone numbers for each field office on the agency website so people could call them directly, instead of having to go through the national 800 number. We appreciate that when we learned that some field office staff were directing people to mail in their green cards, Operations leadership issued a reminder that this was against SSA and Department of Homeland Security policy and instructed staff to offer in-person appointments when hands-on verification of these

documents were necessary. And NOSSCR had a helpful discussion with the Office of Earnings and International Operations that led to better communications and process improvements for claimants and beneficiaries living abroad.

Unfortunately, the pandemic also made many aspects of interacting with SSA more difficult and amplified many existing challenges. We will highlight a few of these issues below.

Challenges for Applicants

Closing field offices to the public means that it is harder for claimants, especially unrepresented claimants, to apply for benefits. We see this in the steep declines in [disabled worker](#) and [SSI disability](#) applications and awards over the past year. [Research shows](#) that when one field office closes in an area, it reduces the number of disability claims among people who would have been likely to be awarded benefits: closing all field offices, unsurprisingly, had an even greater effect.

One area where we are especially concerned is for people over age 62 with disabilities, who may apply for early retirement without realizing that they can also apply for SSDI. These claimants could have received retirement benefits while their disability claims were pending and received higher benefits and earlier eligibility for Medicare if they were found to be disabled, but if they apply online without field office staff to explain these complexities, many may just take the reduced retirement benefit and have less financial stability for the rest of their lives.

Field Office Interactions

When most field office employees began full-time telework at the start of the pandemic, the effects varied widely. Some NOSSCR members reported that it was easier than ever before to reach SSA staff by phone and they could quickly resolve issues. But in other offices, phones were rarely answered and voicemails were not returned. It is not clear to us how SSA tracks productivity or compares field offices to identify best practices and areas of concern.

A small number of field office employees have been working in person throughout the pandemic to process mail and faxes. We appreciate their service and realize that their jobs are extremely challenging. There are often more documents that need to be opened, scanned, connected to a specific claimant or beneficiary, and routed to teleworking employees than the people working in person can handle. This creates serious consequences for the public, who may be overpaid or underpaid until SSA processes their communications, or who must go long periods without important documents they mailed in for verification.

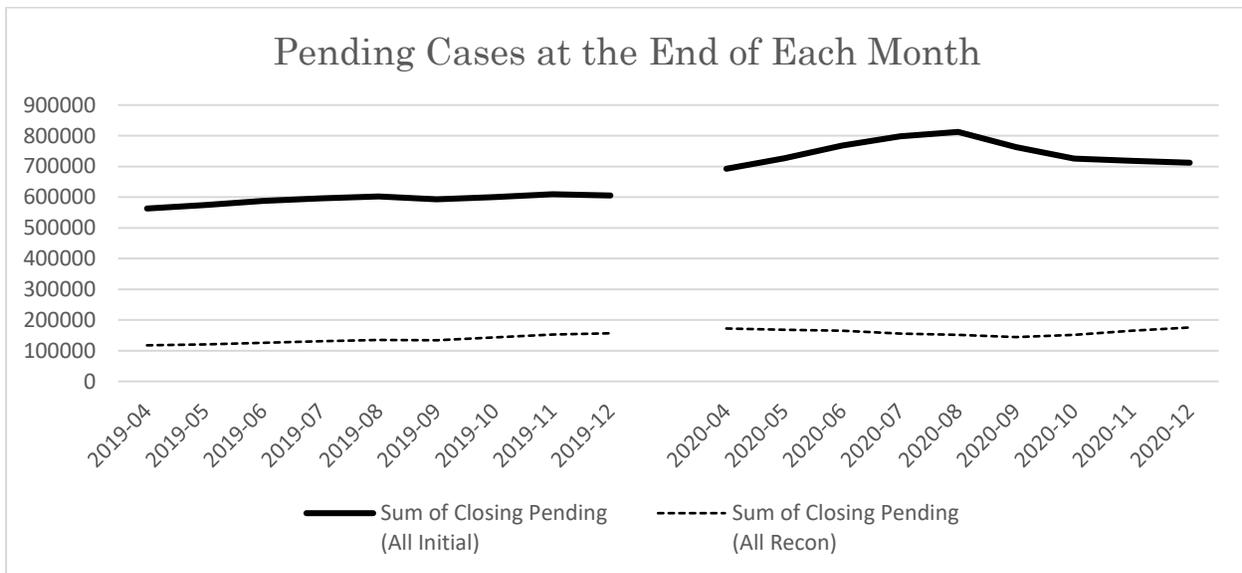
One example of document-processing challenges is the SSA-1696 form, which claimants and beneficiaries use to appoint representatives. Delays in processing the 1696 were a challenge before the pandemic, but COVID made it worse. Whether the 1696 is mailed, faxed, attached to an appeal, or submitted electronically with the online form SSA created this year, an SSA employee must still type information about the claimant and representative into several different computer systems and take other manual steps. Until this is done properly, a representative does not receive notices, cannot view the electronic file, and cannot communicate with SSA or DDSs about their client's case.

State Agency Challenges

State agencies, also known as DDSs, make medical determinations on disability claims at the initial and reconsideration levels and for Continuing Disability Reviews. Before the pandemic, some DDSs did a lot of telework and some did none. The pandemic led to much more telework and some states adjusted much better and quicker than others. In some states, mail piled up for weeks and months, fax machines were untended, and it was not possible to communicate with DDS staff. Even today, there are wide variations in how DDSs are operating—some state to state and some employee to employee within a given state.

This is especially challenging because representatives' access to electronic case files are more limited at the DDS level than when a case is scheduled for an Administrative Law Judge (ALJ) hearing or review by the Appeals Council (AC). Representatives for cases at the DDS levels cannot view the A, B, or D sections of the claims file online but need to be sent an encrypted CD. They do not have access to a status report of all their cases, and cannot upload evidence in the same way they can at the ALJ or AC levels. They are more reliant on faxes, phone calls, and the mail. And as described above, representatives can only communicate with DDSs about a case once the field office has processed their 1696s.

DDS backlogs have grown tremendously during the pandemic, though there is wide variation across states. DDSs nationwide received 11.5% fewer initial claims and 13.3% fewer requests for reconsideration in the last nine months of 2020 than they did in those same months of 2019. Although fewer cases were coming in, there were 26.5% more pending initial cases and 49.4% more pending reconsiderations in December 2020 than in April 2019. At the end of 2020, there were 887,829 initial and reconsideration claims pending at DDSs. Each claim represents someone waiting, often desperately, for SSI or SSDI.



Source: <https://www.ssa.gov/disability/data/ssa-sa-mowl.htm>

There is no one correct amount of processing time. Some cases involve more evidence, more barriers to communication, or more complicated facts. It is possible for a case to be moved too quickly: if a decision is issued before medical providers have the chance to submit evidence or before the 1696 is processed and a representative can communicate about the claim, then everyone is poorly served. But NOSSCR members often report that they have submitted all evidence in clear-cut cases that languish for months at DDSs—and that it is difficult or impossible to contact anyone at the DDS to address these concerns.

Paper and Non-Disability Appeals

At times, SSA must adjudicate not whether a person meets the medical standard for disability, but whether they qualify for SSI or Title II benefits (and for what amount of benefits they qualify) based on age, work history, marital status, citizenship, income, assets, living situation, and a plethora of other criteria. These “non-disability” cases can be extremely complex. Adding to the complexity, many of these cases are not electronic but rely on paper files that are mailed from one SSA office to another. Some disability cases are also “paper cases.”

SSA has had extreme difficulty processing paper and/or non-disability cases during the pandemic. SSA leadership has communicated to some extent with advocates about these issues. The agency has made some progress, but the number of cases pending in field offices that need to be moved to the Office of Hearing Operations has actually increased in the past few months. Cases awaiting effectuation of ALJ decisions, cases pending due to systems issues, and cases that SSA misplaced or needs to redevelop are also not decreasing. And we remain concerned that SSA may have paper files that are not included in these statistics because they have been lost in field offices or not properly tracked. These situations can sometimes be resolved with the efforts of a dedicated representative, but unrepresented claimants have an even harder time. Proper adjudication of these cases is crucial if SSA is to provide due process, comply with Congressional intent, and reach high standards of payment accuracy.

Communicating with Program Service Centers and Workload Support Units

SSA has a variety of offices within the Operations component that even before the pandemic were much more opaque to the public than field offices or DDSs. These include the Office of Central Operations (OCO), Program Service Centers (PSCs) and Workload Support Units (WSUs). The pandemic has made it even harder for claimants, beneficiaries, and representatives to get information from those offices, which play critical roles in effectuating benefits, addressing over- and underpayments, and processing claims. Notices can be confusing, telephone messages are often not returned, and field office staff are frequently unwilling or unable to inquire about cases being handled by OCO, PSCs or WSUs.

For example, NOSSCR and other member organizations of the Consortium for Citizens with Disabilities Social Security Task Force asked SSA to establish ways for representatives to send documents to PSCs, as SSA did with the Representative Call Center at OCO. SSA’s written response was, “Representatives should continue to fax material to the PSCs using the existing channels they have relied on for service in the past.” The problem is that SSA has not published any fax numbers for the PSCs (there is a single fax number only for fee payment issues for Title

II claimants under age 54, whose claims are processed at OCO, not the PSCs). The system of submitting documentation to field offices who would then send them on to PSCs was barely serviceable before the pandemic and has completely broken down now that there is limited staff going to the field offices. Publicizing fax numbers and/or secure email addresses for representatives to submit documentation directly to PSCs would speed effectuation and reduce an unnecessary burden on field office staff. When questioned again about this, SSA's response was

The Social Security Office Locator webpage now displays the fax lines and phone numbers for each of our Field Offices (FOs). While our employees continue to work remotely during the pandemic, they are able to receive faxes electronically and take all appropriate action on cases. The FO will route the material to the Payment Center (PC) if the FO is unable to work the case. We want to keep these existing communications channels intact during the pandemic to ensure we handle the flow of work into our FOs and PCs efficiently. If there is an extended processing delay, please contact the local field office via their general inquiry line.

This again misses the point that communicating through the field offices is inefficient and extremely flawed. Expecting field office managers to do "manager to manager" communications with the PSCs on behalf of represented claimants, while they are also often the only people physically in the office to process all mail and faxes and handle in-person appointments, is not reasonable.

Similar issues exist with the WSUs that handle online claims. When a representative files a claim on behalf of their client, the WSU (or field office, if they are processing the claim) needs to send the claimant an attestation to make sure the person really did want to file. That is a good thing, but it seems to be working less well recently, probably partially because of SSA and partly because of declines in the US Postal Service's speed and accuracy. NOSSCR members note that some WSUs seem to be working better than others and that some but not all field offices can see what documents are in the WSU's WorkTrack system of files scanned and waiting to be processed. This means that in some cases, if the claimant submitted the attestation packet but it hasn't been processed, field office staff could check the WSU's WorkTrack and communicate with a representative. This is especially helpful when a disability claimant qualifies for expedited processing (for dire need, presumptive disability, compassionate allowances, etc.), but this is not universal. It is not clear what data Operations collects with regard to WSUs, what backlogs there are at different WSUs, and how SSA plans to reduce them.

Effectuating Benefits and Representative Fees

When SSA does determine that a person qualifies for disability benefits, there are a host of actions that must be taken to calculate retroactive and ongoing benefits for the claimant and his or her dependents (considering factors like the Windfall Elimination Provision and Government Pension Offset; worker's compensation offsets; SSI rules on income, assets, and living arrangements, etc.); determine where to send the benefits (direct deposit or Direct Express card; to the claimant or a representative payee); handle Medicare eligibility; pay representative fees and state Interim Assistance reimbursements; communicate with the Treasury Department for any offsets; and more. This effectuation process is complicated and time-consuming, but it is incredibly important to ensure that the proper benefits are paid.

Problems that predated the pandemic have only worsened over the past year. Notices of Award (NOAs) are often delayed, sent to the claimant and not the representative, or lost in the mail and SSA will not issue a replacement. And sometimes the Notice is not accurate: it might have math errors, inaccurately characterize a government pension or workers' compensation, leave off auxiliary beneficiaries, etc. This causes challenges for ensuring that benefits are effectuated properly, and representative fees are accurately paid. And as described above, it can be nearly impossible to talk with the people who are effectuating the cases, either at field offices, OCO, or PSCs. It would be helpful to know what management information SSA collects on if the NOA was sent out in a timely fashion, whether it was also mailed to the representative as the POMS directs, and if it is accurate. Does anyone at SSA compare claims processed by OCO, the different district offices, and various Program Service Centers to see how they are doing on this workload, collect best practices, and provide additional training to staff who are not sending NOAs or sending inaccurate ones?

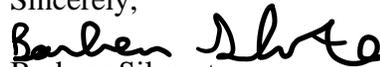
Sometimes effectuating a decision requires reviewing documents like birth, death, or marriage certificates or proofs of citizenship. With field offices closed, effectuation is more difficult. SSA [only allows in-person appointments](#) for benefit issues when the beneficiary is without food, shelter, utilities, or medical care or coverage and requires an in-person appointment to resolve it. This is interpreted in very different ways by different hearing offices and individual employees. When appointments are offered, they are often many weeks or months away; people are sometimes told that their only option is to mail the documents and they are understandably hesitant to do so.

There are also delays and inaccuracies in the representative fee process. Again, this is not a new issue but it has become harder to resolve during the pandemic. NOSSCR often hears from members who helped their clients receive favorable disability determinations and have been waiting over a year to be paid for their services. In some situations, SSA withholds 25% of a claimant's past-due benefits, but takes months or years to determine what portion goes to the claimant and what to the representative. In other cases, SSA misapplies its own policies and fails to properly withhold past-due benefits to pay the representative's fee. SSA should collect and publish more data about the timely and accurate processing of representative fees, and include goals on this topic in the agency's Annual Performance Report and Plans.

Conclusion

Thank you for your consideration of this statement and for your valuable oversight of SSA in this hearing and many other ways. We would be glad to provide additional information to the Committee if that would be helpful.

Sincerely,



Barbara Silverstone

Executive Director