

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

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Executive Director
Barbara Silverstone

October 22, 2020

Commissioner Andrew Saul
Social Security Administration
6401 Security Boulevard
Baltimore, MD 21235-6401

**Re: Notice Requiring Electronic Submission of Evidence by Certain Claimant
Representatives (85 Fed. Reg. 62779)**

Dear Commissioner Saul:

These comments are 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 the October 5, 2020 Federal Register notice "Requiring Electronic Submission of Evidence by Certain Claimant Representatives" does not include a formal comment period, we write to urge you to make certain clarifications and amendments to it. These changes will make the notice more easily understood and more efficiently implemented.

As you know, NOSSCR has been a strong advocate for SSA's technological modernizations like extending iAppeals to the Appeals Council, allowing access to electronic files at the initial and reconsideration levels, and conversion from paper fax machines to efax. Like these, electronic submission of evidence has many benefits for representatives and the agency; there is little indication that SSA needs to implement penalties or warnings to convince representatives to use it whenever possible. However, it is not always possible. It is not clear from the Federal Register notice how many non-electronic submissions SSA currently receives that would be covered by this new directive,¹ but we believe that those submissions are generally a result of SSA's limitations or understandable crises such as power outages and natural disasters.

¹ The Federal Register notice indicates that approximately 72% (36 million out of 50 million) submissions are already electronic. Of the remaining 14 million, over three million are submitted directly by medical providers at the DDS levels, according to the "MER Collections" section of <https://www.federalregister.gov/documents/2020/10/08/2020-22297/agency-information-collection-activities-proposed-request-and-comment-request>. It is not clear how many of the remaining submissions occur at the hearings or Appeals Council level, in cases where there is an electronic case file, and where the claimant has a representative seeking direct payment of fees.

We recommend that SSA add a fourth criterion for cases where electronic submission is required: that the representative actually have access to the electronic folder. There are situations where the appointed representative does not yet have an Appointed Representative Services account (obtaining ARS is a multi-step process involving email, mail, phone calls, and in-person appointments; it was challenging under the best of circumstances and largely impossible during the pandemic). It is common for OHO and the Appeals Council to take days or weeks to process SSA-1696 (appointment of representative) forms necessary for a representative to have access to the claims file. The Electronic Records Express system also has occasional outages or technical problems. Requiring electronic submission under these circumstances and threatening sanctions for representatives who are unable to do the impossible makes no sense. The need for this fourth criterion is enhanced by SSA's regulations and SSR 17-4p, which create deadlines for the submission of evidence and instruct representatives to submit evidence as soon as it is received. When representatives cannot access the electronic file, it is inappropriate to sanction them for submitting evidence promptly versus electronically.

Furthermore, represented claimants may submit evidence through non-electronic means without consulting their representatives, especially if they are already sending other information to SSA and they obtained the evidence themselves (for example, hospital discharge summaries handed to them directly). They may also have good reason to submit directly, if sending the evidence to the representative for electronic submission would cause it arrive at SSA after the five-business-day deadline. Therefore, **an amended Federal Register notice should remove the phrase "including by having claimants whom they represent submit their own evidence via non-electronic means when this requirement is applicable to the representative."**

Although the Federal Register notice says that SSA "will consider the representative's individual circumstances when deciding whether to pursue sanctions for failing to comply with this requirement," it is still stressful, expensive, and time-consuming for representatives to defend against referrals for sanctions, and investigations are time-consuming for SSA. Therefore, we encourage SSA to issue guidance to hearing office and Appeals Council staff that these instances caused by SSA's own systems or caused by an unexpected and serious situation like a natural disaster or utility outage should not warrant the consideration or pursuit of sanctions at all.

NOSSCR also has concerns that the Federal Register notice includes faxing as a non-electronic means for submitting evidence, but then states that representatives must upload evidence via ERE "either online or by fax, using a barcode specific to that record." We have received several questions from members and advocates on this point. If SSA means to say **that faxing is permitted so long as the fax includes a barcode directing the document into a specific claims file**, then the agency should publish an amended Federal Register notice saying so.

Thank you for your consideration of these suggestions. We would be happy to discuss them further with you.

Sincerely,

Barbara Silverstone
Executive Director