

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

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***Executive Director***  
**Barbara Silverstone**

July 26, 2017

Dear Ms. Disman and Ms. Tittle,

Thank you for your consideration of NOSSCR's ideas for increasing efficiency and eliminating waste and duplication at the Social Security Administration. We believe that representatives provide important services that increase agency efficiency and allow claimants and beneficiaries to receive accurate and timely decisions. Ensuring that claimants and beneficiaries have access to representation is crucial. We look forward to further discussion with you about these suggestions and any other topics you wish to address.

*Prior to the Hearing Level*

**Increase the number of pre-effectuation state agency targeted denial reviews:** Reviewing more state agency denials and using targeting algorithms to target types of disabilities or other characteristics (such as aging into another grid category) could prevent claimants from having to wait for a hearing and assist with backlog reduction by taking people out of the hearing queue.

**Abolish reconsideration:** SSA has tested the elimination of reconsideration in the ten "prototype" states since 2000: Alabama, Alaska, California (Los Angeles), Colorado, Louisiana, Michigan, Missouri, New Hampshire, New York (Albany and New York City), and Pennsylvania. In states where it still exists, many representatives and claimants view the reconsideration level as a "rubber stamp" step that must be endured before moving on to a hearing before an ALJ. The processing time for a reconsideration decision added an average of 103 days in FY 2016 to an appeal, and 88% of those decisions resulted in a denial of benefits. Given that reconsidered cases are still likely to result in an appeal to an ALJ, the elimination of reconsideration and providing more time and effort to better develop disability claims at the initial level would increase efficiency and decrease the amount of time it takes people to get a decision on a disability appeal.

**Improve development of evidence earlier in the disability process:** Improvements at the initial and reconsideration level facilitates thorough development of claims and enables SSA to make the correct decision early on in the process. Inadequate case development at the DDS level can result in inappropriate denials and increased workload at ODAR, due to more appeals, as well as more cases requiring additional development, leading to longer wait times at the hearing level. Recommendations include:

- Provide more assistance to claimants at the application level regarding necessary and important evidence so that all impairments and sources of information are identified, including non-physician and other professional sources. This is especially important for claimants with mental impairments and limited English proficiency.
- Provide Electronic Records Express and Appointed Representative Services access to claims at the state agency level. This will reduce state agency time communicating with representatives about what evidence is in the file and burning and mailing CDs to representatives. It will also allow representatives to tailor their evidence requests to medical providers and others, so that evidence not already in the file can be added.
- Ensure that questionnaires and forms are understandable to claimants and as free of jargon as possible, as well as appropriately tailored to specific types of impairments and probative of information that addresses the disability standard as implemented by SSA. This “language” barrier can lead to incomplete applications missing key details needed for full development of the claim.
- Provide additional training and supervision of field office and state agency staff.
- As with paper records, electronic records need to be adapted to meet the needs of the SSA disability determination process. Many providers submit evidence electronically; these records are based on the providers’ needs but often do not address the SSA disability criteria.
- Provide better explanations to medical providers. SSA and DDS forms and questionnaires should provide better explanations to all providers, in particular to physician and non-physician treating sources, about the disability standard and should ask questions that are probative of evidence and information relevant to the standard. Unclear, hard to understand forms can result in incomplete responses as well as delays in obtaining medical evidence, even from supportive and well-meaning providers. When requesting medical records, completion of forms, or medical source statement from providers, SSA should provide links to *Disability Evaluation Under Social Security*, commonly called the “Blue Book” (<https://www.ssa.gov/disability/professionals/bluebook/>). This publication was designed to inform medical professionals about SSA’s disability programs, evidentiary requirements, and the listings of impairments.
- Improve the quality of consultative examinations. Steps should be taken to improve the quality of the CE process. There are many reports of inappropriate referrals (e.g., to providers with the wrong specialty given the claimant’s condition(s)), short perfunctory examinations, and failure to provide an interpreter during the exam. In addition, there should be more effort to have the treating physician conduct the consultative examination, as authorized by 20 CFR §§ 404.1519h and 416.919h.
- Increase reimbursement rates for providers. To improve provider response to requests for records, appropriate reimbursement rates for medical records and reports need to be established. Appropriate rates should also be paid for CEs and for medical experts who testify at hearings, to ensure availability of qualified medical professionals. Appropriate reimbursement rates would also increase the frequency with which treating physicians agree to conduct CEs at SSA’s request, enabling adjudicators to obtain additional medical evidence from a treating source already familiar with the claimant’s condition(s) and medical history.

### *At the Hearing Level*

**Reinstitute the Senior Attorney Program and increase number of policy-compliant on-the-record (OTR) decisions:** On the record decisions eliminate the need for a hearing, which assists with reducing the hearing backlog as well as preventing individuals from unnecessarily having to wait for a decision. Increasing the number of staff on the National Adjudication Team (NAT) and creating a mechanism and guidelines for representatives to submit cases with extremely strong and objective evidence directly to the NAT would also increase efficiency.

**Revise the “program uniformity” rules to either eliminate the requirement to submit evidence 5 business days prior to the hearing, or provide better guidance to ALJs on when “late” evidence will be considered:** Although the regulations require a representative to submit or inform the ALJ about evidence (20 CFR §§ 404.935 and 416.1435), many ALJs continue to reject evidence even when they are told about it more than 5 business days before the hearing. In addition, ALJs need proper instruction that 20 CFR §§ 404.935(b) and 416.1435(b), which provides the good cause exceptions to consider when the deadline is missed, need not be considered when the ALJ is informed about the evidence more than 5 business days of the hearing, because in that scenario, the representative has not missed the deadline. The practical result of the ALJs’ refusal to consider this evidence is that the case will be appealed and the district court will eventually remand the case back to the ALJ to consider the evidence, but only after years of delay causing hardship to the claimant seeking benefits.

**Reinstate the policy to call representatives before scheduling hearings:** SSA’s policy, found in HALLEX I-2-3-10, provides that hearing office staff “will generally contact hearing participants to ascertain availability before scheduling a hearing.” This is a change from earlier HALLEX instructions to call participants to ascertain availability. As a result of the current policy, many hearings are scheduled before determining the representative’s availability, which results in hearings being scheduled when a representative is unable to attend. For example, representatives are now having hearings scheduled in two places at the same time or during another conflicting time. Although it may appear that it is not efficient to determine availability in advance of scheduling a hearing, in reality, this new policy results in more rescheduled hearings, thereby creating a more complicated process.

**Remove cases continued at the claimant’s request from the “aged cases” category:** Claimants may be unable to appear for a scheduled hearing due to medical emergency, difficulty in traveling on a specific day, a belated attempt to obtain representation, or numerous other reasons. Inadequate scheduling practices at some hearing offices (see prior suggestion) have led to numerous situations where representatives are scheduled for hearings at different offices at the same time, forcing them to request continuances. ALJs are at times reluctant to grant continuances for these and similarly necessary circumstances because they do not want to suffer professional consequences for having too many “aged” cases. Efficiency and justice would be better served if reasonable continuances could be granted at the claimant’s request. Removing such cases from the “aged” category so they can be rescheduled in a reasonable amount of time would help further that goal.

## *Representation*

### **Help claimants obtain representation earlier in the process to assist with development:**

Representatives play an important role in obtaining medical and other information to support their clients' disability claims and helping SSA streamline the disability determination process. They routinely explain the process and procedures to their clients with more specificity than SSA. They obtain and organize evidence from medical sources, other treating professionals, school systems, previous employers, and others who can shed light on the claimant's entitlement to disability benefits. Representatives also highlight the relevant issues and conditions that SSA should consider. Given the importance of representation, Section 206 of the Social Security Act requires SSA to provide information on options for seeking legal representation, whenever the agency issues a notice of any "adverse determination." This statutorily required information, such as contact information for bar associations and legal service providers, is typically provided only once the claimant has requested a hearing before an ALJ. SSA should provide claimants with more information on options for representation before and during the initial application process. These lists of representative sources should also be verified on a regular basis, as many of these forms are out of date.

### **Create procedures to process Appointment of Representative and related forms promptly:**

A large portion of SSA's workload at hearing offices and field offices includes inputting 1696 (Appointment of Representative) and 1695 (Identifying Information for Possible Direct Payment of Fees) forms. When these forms are not processed correctly and in a timely manner, representatives contact SSA and are often told to re-submit them. Allowing these forms to be scanned and attached to iAppeals, and the institution of WorkTrack, have helped address this situation, but SSA staff must still manually input information from 1695s and 1696s. Further automating this process at all stages would increase efficiency and reduce the amount of errors that must later be corrected.

**Recognize firms as representatives:** This change would increase efficiency for SSA as the agency contacts representatives, schedules hearings, and pays representative fees.

**Raise the cap on fees under fee agreements to reduce the need for fee petitions:** Fee petitions take longer to process and use valuable ALJ time to evaluate and approve. Fewer fee petitions, and fewer requests for enhanced fees under fee agreements (where 25% of retroactive benefits is an amount higher than the fee cap), would be required if the cap on fees under fee agreements was raised to reflect inflation since the last fee cap increase in 2009.

**Provide guidance to ALJs on the need for timely consideration and determinations of fee requests:** Processing fee requests is an important part of ALJs' caseloads because without ALJ approval, disability claimants and their representatives in some cases cannot receive the funds SSA owes them. Waits of many months, or even more than a year, are increasingly common and extremely difficult for individuals to bear. Delays in fee payments cause representatives to leave the Social Security practice area, limiting claimants' access to representation. SSA staff cite unrepresented claimants as a major cause of delays at the hearing level (*see* OIG Audit Report A-05-17-50268, June 2, 2017, "Congressional Response Report: Reasons for Hearing-Related

Delays”), so ensuring that claimants who want representatives can find them is important to agency efficiency.

### *General Policy*

**Repeal the “all evidence” rule:** Implementation of this rule has led to some unintended consequences, including extremely large files (often with repetitive evidence) and the need for claimants and representatives to submit extraneous or repetitious content to ensure compliance with the rule. Eliminating the rule would lead to increased efficiency and a return to more manageable files for decisionmakers without duplicative content. If repeal is not an option, SSA should issue very clear guidance to decisionmakers, claimants, and representatives about what constitutes a duplicate and what evidence need not be submitted so that unnecessary and non-probative evidence does not slow down the appeal process.

**Eliminate or simplify in-kind support and maintenance in the SSI program:** Gathering information about in-kind support and maintenance (ISM) and adjusting benefits in keeping with law and policy is a complicated and inefficient job for SSA staff. Reducing benefits for SSI recipients who receive ISM increases poverty and creates disincentives for people to take care of their friends and relatives. SSA should include a legislative proposal to abolish ISM in the Acting Commissioner’s FY 2018 budget request and encourage President Trump to include a similar proposal in his FY 2019 budget request. Without Congressional action, SSA can still simplify ISM through a variety of measures, such as eliminating food from ISM calculations, increasing the \$5 tolerance in POMS SI 00835.160, no longer inquiring about “earmarking,” and better identifying public assistance households who are not subject to ISM reductions.

Thank you again for your consideration of these ideas. We would be glad to provide additional information or answer questions about any of them.

Sincerely,



Barbara Silverstone  
Executive Director