



April 14, 2023

Acting Commissioner Kilolo Kijakazi
Social Security Administration
6401 Security Boulevard
Baltimore, MD 21235-6401

Submitted via www.regulations.gov

Re: Omitting Food from In-Kind Support and Maintenance Calculations, Docket No. SSA-2021-0014

Dear Acting Commissioner Kijakazi:

Thank you for the opportunity to submit comments on SSA's proposal to omit food from the in-kind and support maintenance (ISM) calculations. These comments are submitted on behalf of the Social Security Task Force (SSTF) of the Consortium for Constituents with Disabilities (CCD). CCD is the largest coalition of national organizations working together to advocate for federal public policy that ensures the self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society. Since 1972, CCD has advocated on behalf of people of all ages with physical and mental disabilities and their families.

Thank you for the opportunity to comment on these proposed regulations.

I. We Support SSA's Proposal to Eliminate Food from ISM Calculations.

This proposed policy change would remove an administratively burdensome and mean-spirited policy where SSA uses its limited resources to document every time a beneficiary receives free food, including free meals at the homes of family members, and then cuts their benefits in response.¹ This rule applies to all beneficiaries even though only 1 in 10 are ultimately affected by the rule. Family members of SSI beneficiaries have reported making inhumane choices, like deciding not to invite an SSI recipient to a holiday dinner or share groceries with an SSI beneficiary who is food insecure, due to concern that sharing a meal with them will trigger a benefit cut for the SSI beneficiary. We applaud SSA for this proposal, which would streamline SSA's administrative processes and eliminate that Hobson's choice for beneficiaries and their families.

II. Removing Food from ISM Calculations is an Important Step to Streamline SSI.

¹ POMS SI 00835.400

Streamlining SSI administration is important and removing food from ISM is an important first step. In recent years, SSA has struggled to maintain adequate service for the over 70 million Americans who receive Social Security and/or SSI benefits, a matter of concern to policymakers of both parties.² Declines in SSA's real funding and staffing has driven some of these problems, but the programs' overly complex rules also waste staff time, require extensive training, clog up the queue for service, create barriers to receiving benefits, and cause payment errors.³ SSI benefits make up only 5 percent of the payments that SSA makes, but the program requires 35 percent of the agency's budget to administer, and a disproportionate amount of staff time.⁴ In contrast, SSA spends 20 percent of its budget to administer SSDI, even though it has 1.5 million more beneficiaries than SSI and shares identical medical criteria for disability benefits.⁵

As noted in this Notice of Proposed Rulemaking, SSI's ISM rules are extraordinarily difficult and expensive to administer.⁶ The rule targeted by this policy change is a good example: in order to figure out if SSI beneficiaries have received in-kind food gifts, SSA staff are required to continually monitor the support recipients' receive from family and friends by regularly requesting information about any "gift of a meal" at a relative's home or whether a child-SSI recipient has received any food outside of school from someone outside the family, including at a friend's house. Asking SSA to inquire about food at such a detailed level is extraordinarily time-consuming for SSA staff, and intrusive to SSI recipients. Removing this consideration from ISM calculations will save the agency time and remove a burden from claimants.

III. CCD Urges SSA to Prioritize Taking Additional Steps to Streamline ISM Calculations.

Eliminating food from the ISM calculation is a good first step, but it is not enough. No SSA policy is more complicated than SSI's ISM rules. In addition to asking beneficiaries to disclose any food gifts they receive, ISM calculation rules ask SSA to ascertain and evaluate any in-kind material help that they receive from family and friends, including something as basic as overnight stays on a friend's couch. For each \$1 worth of assistance, SSI benefits shrink by \$1.

These rules are extremely onerous to implement. For example, it can be very challenging to document and estimate value for informal assistance, like the value of sleeping on someone's couch.⁷ SSA's staff manual includes the equivalent of 250 single-spaced pages of instructions on living arrangements and in-kind support. According to the Social Security Advisory Board (SSAB):

The complexity of SSI is exemplified by the level of detail that it describes in its policy manual. One POMS [policy manual] section explains how to calculate ISM reductions under PMV, when one person in a household receives ISM in the form of food, such as receiving the gift of 'dinner' at a relative's home. Another POMS section explains 'breakpoints' or sudden changes in living arrangements which may change the value of ISM provided to an SSI recipient who is living on their own but receives some support, from either a roommate that they are living with (inside ISM) or a family member or friend that is not living with the SSI recipient but provides food (outside ISM). Still another POMS section explains how to handle gradual changes in

² SSA, MONTHLY STATISTICAL SNAPSHOT, Jan. 2023, https://www.ssa.gov/policy/docs/quickfacts/stat_snapshot/.

³ Kathleen Romig, *After Years of Budget Cuts, Increased Funding Would Help Social Security Restore Staff and Improve Customer Service*, CTR. ON BUDGET AND POL'Y PRIORITIES (Nov. 18, 2022), <https://www.cbpp.org/blog/after-years-of-budget-cuts-increased-funding-would-help-social-security-administration-restore>.

⁴ SSA, JUSTIFICATION OF ESTIMATES FOR APPROPRIATIONS COMMITTEES – FISCAL YEAR 2023 at 7 (Figure 2).

⁵ *Id.*

⁶ *Omitting Food From In-Kind Support and Maintenance Calculations*, 88 F.R. at 9785.

⁷ SSA-2021-0014-0003, *Listening Session: Notice of Proposed Rulemaking Omitting Food From In-Kind Support and Maintenance Calculations* (Sept. 28, 2022) at 3-4

living arrangements which also require a reevaluation of inside or outside ISM . . . Even with and, perhaps because of, all the detail, it is virtually impossible to attain consistency in ISM analyses.⁸

It is no surprise that, in addition to ISM being very administratively burdensome on SSA and claimants, ISM policies are a leading cause of overpayments and underpayments.

Food or housing insecure individuals with severe disabilities, who are the most likely to be subject to these rules, are also the most in need of full benefits.⁹ ISM calculations as currently formulated can be extremely harmful by exposing very vulnerable people to complicated and inconsistent benefit reductions based on informal help, which is hard to value.

CCD is pleased that there are two other proposals on the regulatory agenda that would likely further streamline ISM calculations: RINS 0960-A181 (Expand the Definition of Public Assistance (PA) Household) and 0960-A182 (Expand the Second Circuit (Connecticut, New York, Vermont), Seventh Circuit (Illinois, Indiana, Wisconsin), and Texas Rental Subsidy Policy Nationwide).¹⁰ We encourage SSA to pursue these policies urgently. We see them as sensible and sorely needed reforms that would streamline the administration of the SSI program and reduce administrative burdens on claimants.

Respectfully submitted,

American Association on Health and Disability
American Academy of Pediatrics
American Association of People with Disabilities
American Network of Community Options and Resources
Autistic People of Color Fund
Autistic Self Advocacy Network
Autism Society of America
Autism Speaks
Autistic Women and Nonbinary Network
Caring Across Generations
Center for Law and Social Policy (CLASP)
Community Legal Services of Philadelphia (CLS)
Cure SMA
Epilepsy Foundation
Family Voices
Justice in Aging
Lakeshore Foundation
National Academy of Elder Law Attorneys
National Association of Disability Representatives (NADR)
National Committee to Preserve Social Security & Medicare (NCPSSM)

⁸ SSAB, *Statement on the Supplemental Security Income Program* at 5 (2015), https://www.ssab.gov/wp-content/uploads/2021/03/2015_-SSI_In-Kind_Support___Maintenance.pdf.

⁹ SSA-2021-0014-0003, *Listening Session: Notice of Proposed Rulemaking Omitting Food From In-Kind Support and Maintenance Calculations* (Sept. 28, 2022) at 3-4.

¹⁰ Office of Information and Regulatory Affairs, Agency Rule List-Fall 2022 for SSA, https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST¤tPub=true&agencyCode=&showStage=active&agencyCd=0960&csrf_token=3222236BF60042C9EA6BE157BCEF58B44D796973A37EC2A1741AC286B61B97B0EB2621E2CDFEB5A025C25744A398B80B28D1.

National Disability Rights Network
National Down Syndrome Congress
National Organization of Social Security Claimants' Representatives (NOSSCR)
Muscular Dystrophy Association
Paralyzed Veterans of America
SourceAmerica
Special Needs Alliance
The Arc of the United States