Supplemental Security Income Program the Revolution Needs Reform

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THE SUPPLEMENTAL SECURITY INCOME PROGRAM: THE "REVOLUTION" NEEDS REFORM

Enacted as part of "the most massive revision of the social security laws that the Congress has ever undertaken," Supplemental Security Income (SSI) is the nation's first federally-guaranteed cash income program. SSI provides for federal administration of congressionally-determined cash benefits from the United States Treasury to aged, blind, and disabled Americans. It also established uniform eligibility requirements, eliminated some of the worst aspects of old welfare systems, and gives states strong financial incentives to supplement the basic grants.

Prior to 1974, the Department of Health, Education, and Welfare (HEW) provided financial assistance only to state-administered plans; under SSI Congress for the first time assumed primary re-

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responsibility for a public income transfer program that directly makes payments to recipients. The states, if they choose, merely supplement the federally-guaranteed income floor. SSI is the first step toward the transformation of welfare from a state and local matter to one of primary federal concern, and therefore represents a turning point in the development and philosophy of public assistance in this country.

The implementation of SSI has been hailed by some as a "revolution," and by others more modestly as part of "a basic restructuring of the national welfare system . . . ." Inevitably it will serve as a basis for the reform of the other major categorical welfare programs, Aid to Families with Dependent Children (AFDC) and Medicaid. Accordingly, this Note will evaluate SSI not only as a system designed to meet the needs of recipients, but also as a model for the "federalization" of other welfare plans. Recent judicial, regulatory, and legislative developments will be analyzed together with the original framework of the program and its performance since 1973. Because SSI has been in operation for more than three years, it is now possible to identify the problems inherent in its statutory and regulatory structure. This Note will therefore suggest changes in the basic provisions to help the program fulfill the initial expectations of recipient and government alike.

During the Depression of the 1930's, the federal government made relief payments directly to needy individuals. This program, however, was only temporary and limited to half a dozen states. See Burke, supra note 3, at 190.

See, e.g., Bowler, supra note 3, at 1-2; Burke, supra note 3, at 190, 198. The Senate Finance Committee wrote that SSI represents "a major departure from the traditional concept of public assistance as it now applies to the aged, the blind, and the disabled." S. Rep. No. 1230, 92d Cong., 2d Sess. 384 (1972). One observer has gone so far as to say that SSI "represents a major congressional initiative on behalf of the elderly comparable to the enactment of the original Social Security Act in 1935." Future Directions, pt. 8, supra note 2, at 669 (1974) (statement of Dir. of N.Y.C. Office on Aging).

See Development of SSI, vol. 2, supra note 2, at 80 (statement of Lt. Gov. of Mass.); id. at 144 (statement of Rep. Corman); id. at 322, 326 (statement of Nat'l Ass'n of Social Workers); Future Directions, pt. 8, supra note 2, at 675 (statement of member of Bd. of Dirs. of Community Council of Greater N.Y.). Some have already made specific suggestions concerning the procedure for "federalizing" AFDC based on the experience with SSI. See, e.g., Future Directions, pt. 12, supra note 2, at 1073-74 (1975) (statement of SSA employee). Furthermore, the continuing trend towards federalization of other social programs and the institution of a national health insurance plan may hinge upon SSA's record of administering SSI. See Washington Star, Aug. 24, 1975, at A-8, col. 2 (Sunday ed.) (statement of staff att'y to Cal. state legislature). (All issues of the Washington Star cited herein are on file at the Cornell Law Review).
I

SSI IN OPERATION

The three "state-administered" grants-in-aid programs for the aged, blind, and disabled which SSI replaced were actually more than a thousand different state, county, and local welfare plans. Because responsibility was diffused, these programs created a bizarre patchwork of varying eligibility requirements, benefit levels, and miscellaneous laws that were both inequitable and unworkable. SSI, on the other hand, paved the way for the creation of a uniform national system. Economies of scale, centraliza-


These programs remain in effect only in Puerto Rico, Guam, and the Virgin Islands. 42 U.S.C. §§ 301 note, 1201 note, 1351 note (Supp. V 1975). This exclusion of SSI may be subject to successful attack under the fifth amendment's equal protection clause. See Cintron v. Richardson, [1974-1976 Transfer Binder] Pov. L. Rep. (CCH) ¶ 21,186 (April 7, 1975), 43 U.S.L.W. 2455 (D.P.R. 1975) (exclusion of American citizens residing in Puerto Rico from certain monthly Social Security benefits is unconstitutional, invidious discrimination). In any case, H.R. 8911, known as the Supplemental Security Income Amendments of 1976, would extend SSI to these areas. See H.R. 8911, 94th Cong., 2d Sess. § 9 (1976) [hereinafter H.R. 8911]. Although Congress will have to modify the program to fit the needs of these jurisdictions (see H.R. Rep. No. 1201, 94th Cong., 2d Sess. 7, 18 (1976) [hereinafter 1976 House Report]; 122 CONG. REC. S. 17705-06 (daily ed. Oct. 1, 1976) (remarks of Senator Long)), it should enact this part of the bill to streamline assistance to the aged, blind, and disabled. The federal government should not continue to administer two fundamentally different types of aid to the same population.

10 See 1971 House Report, supra note 7, at 3; Barriers to Health Care, supra note 2, at 1004 (statement of Sr. Planning Officer of Bureau of SSI); Future Directions, pt. 6, supra note 2, at 472-73 (statement of Senator Church). The adult categorical plans were a maze of federal, state, and local rules created, interpreted, and administered by about 20 congressional committees, 50 state legislatures, 54 state and territorial agencies, and 1,500 county welfare departments. See Reinhold, Welfare, Still No Cure-All, N.Y. Times, July 11, 1976, § 4, at 2, col. 3.

tion,\textsuperscript{12} and computerization\textsuperscript{13} promised inexpensive, swift, and accurate delivery of benefits to recipients. Furthermore, it was thought that the so-called adult categories,\textsuperscript{14} smaller and less troublesome than AFDC, were easier to reform.\textsuperscript{15}

Despite these advantages, the transition to SSI has been difficult. For example, the Social Security Administration (SSA) has admitted that during the first eighteen months of operation, it might have overpaid recipients as much as $800 million, or ten percent of total benefits distributed;\textsuperscript{16} in fact, the figure may approach $1 billion.\textsuperscript{17} This situation developed because of the high initial error rates—nearly one out of every four checks was written for the wrong amount\textsuperscript{18}—and because improvement in accuracy

\textsuperscript{12} In testifying before Congress, Social Security Commissioner Cardwell stated:
At the time the legislation was under consideration by the Congress, proponents of the legislation argued—and I think the Congress itself had this general understanding—that the Social Security Administration, managing this program on a national basis from a central headquarters, would be able to do so more efficiently and with less cost and with less manpower than the States.


\textsuperscript{13} Commissioner Cardwell noted that SSA operated under the assumption that “a single administration centered on advanced use of computers would be at least 100 percent more efficient than 1,150 individual administrations, not all of which were automated.”


\textsuperscript{14} OAA, AB, and APTD were known as the “adult categories” since children were not eligible for benefits under any of these programs. Children, however, may receive SSI if they meet the statutory definitions of blindness or disability. \textit{See 20 C.F.R. § 416.901 (1976), implementing 42 U.S.C. § 1382c(a) (Supp. V 1975). See also 20 C.F.R. § 416.1050 (1976), implementing 42 U.S.C. § 1382c(c)(5) (Supp. V 1975) (“child” defined).}


\textsuperscript{16} \textit{Administration of SSI}, vol. 1, \textit{supra} note 2, at 9, 35 (statement of Comm'r Cardwell). This estimate reflected overpayments or duplicate payments to eligibles and payments to ineligibles made by SSA in either the basic federal benefit or the federally-administered mandatory and optional supplementary payments. \textit{See id.} at 9.


\textsuperscript{18} \textit{Development of SSI}, vol. 1, \textit{supra} note 2, at 7 (statement of Comm'r Cardwell); \textit{Washington Star}, Aug. 16, 1975, at A-1, col. 1 (Sat. morning) (23% error rate for SSI).
has been exceedingly slow. As a result, states with federally-administered supplements have withheld approximately $200 million because of overpayment and other errors made on their behalf by SSA, and some have abandoned federal administration of supplemental benefits despite the added financial burden of doing so. Not surprisingly, SSI has generated increasing friction.

The number of mistaken payments has remained high. During the second and third six-month periods of the program's operation, the error rate was roughly the same: about 25%. Hearings on Dep'ts of Labor and Health, Educ., and Welfare Appropriations for 1977 Before the Subcomm. on the Dep'ts of Labor and Health, Educ., and Welfare of the House Comm. on Appropriations, 94th Cong., 2d Sess., pt. 6, at 292 (1976) (letter from Comm'r Cardwell to Rep. Ullman) [hereinafter House Hearings on Appropriations for 1977, pt. ___]. These rates, although exceeding HEW's objectives, are about the same as those of the states under the superseded categorical programs. Id. at 320 (statement of Comm'r Cardwell); Hearings on Dep'ts of Labor and Health, Educ., and Welfare Appropriations for 1976 Before the Subcomm. on the Dep'ts of Labor and Health, Educ., and Welfare of the House Comm. on Appropriations, 94th Cong., 1st Sess., pt. 4, at 335 (1975) (statement of Comm'r Cardwell) [hereinafter House Hearings on Appropriations for 1976]. Error rates under the old assistance plans and those under SSI are not comparable since the new program is simpler, and therefore should be more accurate. Administration of SSI, vol. 1, supra note 2, at 16 (statement of Comm'r Cardwell). See also House Hearings on Appropriations for 1977, pt. 6, supra, at 315 (states with more complex public assistance programs have higher error rates); Development of SSI, vol. 2, supra note 2, at 132 (standardization of programs reduces errors).

SSA has claimed that error rates have decreased as it has corrected initial mistakes. House Hearings on Appropriations for 1976, supra note 18, at 335 (statement of Comm'r Cardwell). Improvement in payment accuracy up to the middle of 1975, however, was almost nonexistent (1976 House Report, supra note 9, at 15), and the prospect for significant change seems remote. Commissioner Cardwell has stated that "our very best administrative efforts and our most efficient performance is not likely to develop a payment error level below 15 percent ...." Administration of SSI, vol. 3, supra note 2, at 19 (emphasis added). Further improvements in accuracy can only be achieved by simplifying the program. See id. at 19, 22, 30 (statements of Comm'r Cardwell); House Hearings on Appropriations for 1977, pt. 6, supra note 18, at 297, 314, 329-30 (statements of Comm'r Cardwell).

House Hearings on Appropriations for 1977, pt. 6, supra note 18, at 321; Development of SSI, vol. 1, supra note 2, at 19, 27-29; Washington Star, Aug. 18, 1975, at A-1, col. 1 (capital special). SSA has continued to make payments to recipients in those states that have refused to pay, but it has considered terminating federal administration, especially in cases where errors have been alleged without sufficient documentation. Development of SSI, vol. 1, supra note 2, at 28. Some states have continued to meet their obligations and have contemplated resolving disagreements by other means, including litigation. See House Hearings on Appropriations for 1977, pt. 6, supra note 18, at 320; Washington Star, Aug. 19, 1975, at A-6, col. 5 (capital special). Payment mistakes made by SSA in its administration of both optional and mandatory supplements have forced HEW to ask Congress for large appropriations to cover reimbursement to the states. See House Hearings on Appropriations for 1977, pt. 6, supra note 18, at 287, 299-300, 356-57.

States choosing to administer their own supplementary payments must assume all costs of both administration and benefits. If a state agrees to federal administration of the mandatory supplement only, HEW will assume the cost of administration. When SSA administers only the optional supplement, the federal government pays administrative ex-
between state and federal officials as well as widespread disenchantment with the Social Security Administration, an agency with a reputation as the most efficient and best-run branch of the federal government.

Furthermore, operating costs have significantly exceeded original predictions. For Fiscal Year 1977 it has been estimated that it will take more than a half-billion dollars just to administer SSI. Expenses, and the state is protected against the possible costs of increased numbers of recipients due to the more liberal eligibility rules of SSI. This "hold harmless" provision ensures that the state will not have to pay more than it did under the former categorical programs for the comparable quarter in calendar year 1972. This provision applies only to supplemental payment levels up to those in effect in January 1972; states must pay the cost of benefits above this level. Should a state agree to SSA administration of both supplements, the federal government will pay all costs of administration, and the state will pay only the cost of the supplemental benefit up to the amount of the state's expenditures for the corresponding program in 1972 plus any portion of the state supplement exceeding January 1972 payment levels in the comparable program. See 20 C.F.R. §§ 416.2001-2090 (1976), implementing 42 U.S.C. §§ 1382e, 1382e note (Supp. V 1975).


Future Directions, pt. 12, supra note 2, at 1081. Because of its deserved reputation for efficiency, the Social Security Administration has been called the "white hat bureaucracy." Forbes, Oct. 15, 1974, at 36, col. 3.

Appropriations for administrative expenses have skyrocketed in the four fiscal years (1974-77) during which SSI has been paying benefits. SSA originally estimated that it would take $321,962,000 to run the program during FY 1974. (This figure includes six months (July-December 1973) of start-up costs and six months (January-June 1974) of expenses during SSI's first half year of operation.) House Hearings on Appropriations for 1974, supra note 11, at 745, 753, 754-55. Actual costs for that period, however, were closer to $367,808,000. House Hearings on Appropriations for 1975, supra note 13, at 432. In the next year Congress first allotted $396,754,000, but SSA later asked for a supplemental appropriation (Hearings on Second Supplemental Appropriation Bill, 1975, Before Subcomms. of the House Comm. on Appropriations, 94th Cong., 1st Sess., pt. 1, at 814, 819-20, 869, 879 (1975) [hereinafter Hearings on Second Supplemental Appropriation Bill, 1975]), making the amount $473,249,000 (House Hearings on Appropriations for 1976, supra note 18, at 364). SSA first requested $498,635,000 for FY 1976 (id. at 331, 364), but spent only $495,660,000 (House Hearings on Appropriations for 1977, pt. 6, supra note 18, at 302). Estimates indicate that it will cost about $500,352,000 to operate the program in FY 1977. Id. at 287.

Although these figures are not precisely comparable because of minor adjustments in administrative procedure, they do demonstrate the fast upward trend in operating expenses. Moreover, the estimates were calculated on the premise that a significantly higher number of recipients would actually participate in the program; therefore, these figures tend to mask the true increase in per-recipient administrative cost. For example, the original estimate for FY 1974 ($321,962,000) assumed that 6.2 million individuals would be receiving basic federal payments or federally-administered state supplements. House Hearings on Appropriations for 1974, supra note 11, at 745. Persons receiving such benefits in FY 1974, however, never totaled more than 3,583,894. Soc. Sec. Bull., Dec. 1974, at 65.
Large expected savings have therefore not materialized: SSA has been operating the program at approximately the same cost as the states incurred in administering the superseded categorical plans.\(^2\)

Unfortunately, these problems tell only half the story. The real tragedy of SSI has been its effect on the aged, blind, and disabled. There are many individuals who totally rely upon the program for their survival. Despite the use of the word "supplemental" in its name, SSI is often a supplement to nothing.\(^2\) Moreover, it may take more than a year to receive the first benefit,\(^2\) a replacement check,\(^3\) or an administrative determination of one's

(Table M-23). Furthermore, there have been charges that hundreds of millions of dollars from the Social Security Trust Fund have been illegally used to finance the operation of SSI. See House Hearings on Appropriations for 1977, pt. 7, supra note 18, at 166-67 (statement of Rep. Vanik). If these accusations are true, then the estimates cited above probably understate the true administrative costs for the program. For a description of the relationship of the Trust Fund and SSI, see House Hearings on Appropriations for 1977, pt. 6, supra note 18, at 287, 289-90, 355.

Despite the advantages of centralization, automation, and economies of scale, SSA believes that administrative expenses will always be "significantly higher" than the pre-1974 estimates because of the complexity of the program. Id. at 317 (statement of Comm'r Cardwell).

\(^2\) House Hearings on Appropriations for 1976, supra note 18, at 336 (statement of Comm'r Cardwell).

\(^2\) See Future Directions, pt. 12, supra note 2, at 976 (statement of Senator Pell). Accordingly, SSI recipients have been called "America's weakest citizens." Future Directions, pt. 7, supra note 2, at 582 (statement of Exec. Dir. of Nat'l Council of Sr. Citizens). Many recipients are totally destitute, and, even with SSI benefits, do not have the means to maintain a decent standard of living. See, e.g., Development of SSI, vol. 2, supra note 2, at 167, 542 (recipients take toilet paper from facilities serving them and food from lunch programs for evening meals); id. at 167 (elderly woman shrinks her stomach with lemons and hot water when she has no food); id. at 296-97, 638 (the old must shoplift to eat); id. at 638 (25% of dog and cat food purchased in U.S. is intended for human consumption).

\(^2\) See Development of SSI, vol. 2, supra note 2, at 336 (statement of staff att'y of Nat'l Sr. Citizens Law Center); Future Directions, pt. 12, supra note 2, at 974 (statement of Senator Kennedy); id. at 1043 (statement of Vice Pres. of Mass. Ass'n for Older Ams., Inc.).

The backlog of unprocessed claims has been one of the most serious problems plaguing SSI. This situation developed in large part because SSA incorrectly handled the information it was required to process. Future Directions, pt. 7, supra note 2, at 544 (statement of Comm'r Cardwell). Thus, at one time SSA accumulated a backlog of approximately three-quarters of a million applications. Administration of SSI, vol. 2, supra note 2, at 27 (statement of Assoc. Soc. Sec. Comm'r for Program Operations). SSA originally estimated that it could "bring the backlog under full control by the end of fiscal year 1976" (U.S. News & World Report, June 2, 1975, at 61, col. 3), although it now thinks it will take longer (House Hearings on Appropriations for 1977, pt. 6, supra note 18, at 457).

\(^3\) See Future Directions, pt. 12, supra note 2, at 975-76, 1056 (statements of Senator Pell). SSA claims that it now takes an average of 7 to 10 days to replace a check. Development of SSI, vol. 1, supra note 2, at 11. Some, however, still feel that more should be done in this area. The National Senior Citizens Law Center, for example, has stated that the only solution to this problem is to authorize local Social Security offices to write replacement checks: "Any procedure which depends on a computer sending certain informa-
The most unfortunate are those who are wrongfully denied benefits initially. Withholding SSI payments can also mean a loss of Medicaid because eligibility for the two programs is currently linked in 34 states and the District of Columbia. Other evidence further outlines the plight of recipients. Additional support for the Senate's recent proposals to strengthen SSI can be found in the following:

Future Directions, pt. 12, supra note 2, at 1103-04. Senator Pell has advanced a similar solution. He is the principal sponsor of S. 985, 94th Cong., 1st Sess. (1975), reprinted in Future Directions, pt. 12, supra note 2, at 1059-65 [hereinafter S. 985], the Social Security Recipients Fairness Act of 1975, which requires that SSA issue a replacement check within one day after receipt of notification that the original was delayed three days or stolen. Id. § 101. See Future Directions, pt. 12, supra note 2, at 978, 1060-62. Although this bill does not specifically require local offices to issue such checks, the one-day-issuance provision precludes any other method because of the inherent slowness of centralized bureaucracies. See notes 87-91 and accompanying text infra.

Future Directions, pt. 12, supra note 2, at 1013 (statement of Senator Percy). During one period the national average waiting time between the filing of an appeal and a decision was more than 200 days. Id. at 985 (statement of Soc. Sec. Boston Regional Comm'r) This problem is so severe that even with the addition of personnel and increases in productivity (see id. at 1017-19; Development of SSI, vol. 1, supra note 2, at 8), SSA does not expect to bring the SSI appeals problem under control by the middle of calendar year 1978 (House Hearings on Appropriations for 1977, pt. 6, supra note 18, at 396 (statement of Comm'r Cardwell)).

The most unfortunate aspect of these backlogs is the fate of individuals cut off from benefits. There are no federal provisions for financial relief of those awaiting administrative determinations of their rights. Whatever assistance these persons receive must come from state programs, if they exist. Future Directions, pt. 12, supra note 2, at 985-86 (exchange between Senator Kennedy and Comm'r Cardwell).

There are no statistics on the number of eligible individuals erroneously denied benefits. It has been estimated, however, that there were about 100,000 to 200,000 wrongful "informal denials" during the first five months of 1974 alone. Future Direction, pt. 7, supra note 2, at 601 (statement of Dir. of Litigation of S.F. Neighborhood Legal Assistance Foundation). See also Development of SSI, vol. 2, supra note 2, at 470 (informal denials still prevent hundreds of thousands of potentially eligible recipients from receiving benefits). There is evidence that 90% of all denials are accomplished informally, i.e., by oral or visual examination. Future Directions, pt. 7, supra note 2, at 599. Therefore, no right to challenge an incorrect decision exists since an appeal may only be taken from a notice of denial after submission of a written application. See 20 C.F.R. §§ 416.1401-1413 (1976). Of those who formally apply, some are the victims of administrative errors, and since there is little re-checking or opportunity for "follow up," there are potentially thousands of eligible individuals who do not receive benefits. Future Directions, pt. 13, supra note 2, at 1188-89 (statement of North of Mkt. Health Council (S.F.)). See Murillo v. Mathews, 10 CLEARING-HOUSE REV. 477 (1976) (E.D. Cal. Aug. 16, 1976) (suit challenging SSA's policy of informally denying SSI benefits dismissed on subject matter jurisdiction grounds).

though the news media have focused attention on the truly awe-
some size of the overpayments, SSA has underpaid recipients by
millions of dollars,\textsuperscript{34} causing incalculable personal hardship and
distress.\textsuperscript{35} Furthermore, the government has used tactics of ques-
tionable constitutionality\textsuperscript{36} to recover the millions in mistaken pay-
ments.\textsuperscript{37} As a result, recipients have swamped Congress weekly

\textsuperscript{34} Washington Star, Aug. 15, 1975, at A-1, col. 5 (home final) ($35 million in under-

\textsuperscript{35} payments). See also House Hearings on Appropriations for 1977, pt. 6, supra note 18, at 292

approximately 5-6% of checks are underpayments). SSA is obligated to pay recipients the

\textsuperscript{36} amounts of underpayments. 20 C.F.R. §§ 416.542(a), .543 (1976), implementing 42 U.S.C.

\textsuperscript{37} § 1383(b) (Supp. V 1975). The Social Security Act, however, prohibits payments of under-

\textsuperscript{38} payments to a deceased recipient’s estate or spouse who is ineligible for benefits. 42 U.S.C.

\textsuperscript{39} § 1383(b) (Supp. V 1975), implemented by 20 C.F.R. § 416.542(b) (1976). Payments may be

\textsuperscript{40} made, however, if the surviving spouse is a recipient and was living with the deceased at

\textsuperscript{41} the time of the underpayment or was not separated for six months at the time of death. Id.

\textsuperscript{42} This distinction, challenged on both equal protection and due process grounds, has been


\textsuperscript{44} House Hearings on Appropriations for 1977, pt. 7, supra note 18, at 164-65 (statement

\textsuperscript{45} of Rep. Vanik). SSA’s untimely and inconsistent delivery of benefits has prompted recip-

\textsuperscript{46} ients to seek judicial relief. See, e.g., Santos v. Weinberger, [1974-1976 Transfer Binder]

\textsuperscript{47} Pov. L. Rep. (CCH) ¶ 21,230 (D. Mass. June 16, 1975) (HEW ordered to process SSI

\textsuperscript{48} applications within 45 days). States offering aid to SSI recipients also have been the target

\textsuperscript{49} of similar challenges. See, e.g., Preacely v. Trainor, 9 CLEARINGHOUSE REV. 511 (1975) (N.D.

\textsuperscript{50} Ill., filed Oct. 6, 1975) (Ill. agrees to provide housekeeping services payments more

\textsuperscript{51} promptly).

\textsuperscript{52} HEW has occasionally admitted having unlawfully reduced, suspended, or termi-


\textsuperscript{54} (CCH) ¶ 19,692 (M.D. Tenn. July 1, 1974).

Furthermore, Cardinale v. Mathews, 399 F. Supp. 1163 (D.D.C. 1975), relying on

Goldberg v. Kelly, 397 U.S. 254 (1970), held unconstitutional as a violation of due process

20 C.F.R. § 416.1336(a) (1975), which authorized SSA to reduce, suspend, or terminate

SSI benefits without advance written notice in certain situations. These include changes

made pursuant to federal law or increases in other government benefits (see 20 C.F.R.

§ 416.1336(a)(2) (1975)), correction of clerical or mechanical error (id. § 416.1336(a)(3)), or

adjustments required by facts that are complete, not subject to conflicting interpretation,

and are provided by the recipient (id. § 416.1336(a)(4)). The court enjoined enforcement

of these exceptions (399 F. Supp. at 1175-76) so that SSA must send notices of planned

reductions, suspensions, or terminations and maintain payments until the expiration of a

30-day (subsequently amended to 10-day) period or the completion of a requested recon-

sideration. See 20 C.F.R. § 416.1336(c) (1976) (amending id. § 416.1336(c) (1975)). The

parties in Cardinale have since agreed to a modification of the order. See [1974-1976 Trans-


allowed to reduce, suspend, or terminate payments without advance written notice in cases

of multiple payments to the same person or payments in excess of statutory ceilings). Addi-

tionally, HEW has recently issued proposed regulations to implement the district court’s


Although Cardinale will certainly be hailed by some as an extension of recipients’ due

process rights, it has been severely criticized by both the Executive Branch and Congress as

adversely affecting SSA and significantly increasing operating and benefit costs on the

order of $300 million a year. See Administration of SSI, vol. 3, supra note 2, at 1, 9-11, 63-64,

85-86; House Hearings on Appropriations for 1977, pt. 6, supra note 18, at 325, 370.

\textsuperscript{37} Washington Star, Aug. 15, 1975, at A-1, col. 5 (home final) ($57 million already
with thousands of requests for aid. Accordingly, the program has come under intensive scrutiny from executive agencies, congressional committees, and private interest groups.

In light of these facts, many have claimed that despite generally higher benefit levels and other advantages, the nation's aged, blind, and disabled are actually worse off under SSI than under the old assistance plans. There has been unanimous agreement that from any viewpoint—recipient, government, or taxpayer—SSI has not fulfilled its expectations. Results have been so disheartening that some have suggested that the Nixon Administration used SSI to show that the federal government is inherently incapable of
running a centralized welfare program. Many have therefore called upon Congress to abolish SSI and return responsibility to the states.

As the first three years of operation illustrate, the concept behind SSI—a guaranteed minimum income—has suffered in application. Inevitable transitional problems have played their role in its disappointing performance. It is now evident, however, that structural defects in the program have also been responsible for many initial difficulties.

44 Washington Star, Aug. 24, 1975, at A-8, cols. 2-3 (Sunday ed.) (remarks of staff att'y to Cal. state legislature). See, e.g., Administration of SSI, vol. 3, supra note 2, at 26 (Rep. Stark suggests SSA purposefully mismanaged SSI to show that HEW could not administer a national health insurance program); Future Directions, pt. 12, supra note 2, at 1026 (Nat'l Pres. of Am. Fed'n of Gov't Employees raises possibility that Nixon Administration tried to discredit the Social Security System). Although most have not imputed such ill motives, some have blamed various aspects of SSI's woes on what they believed to be calculated policy decisions of the Nixon Administration. See, e.g., Future Directions, pt. 8, supra note 2, at 723 (policy of deliberate procrastination in finding new SSI recipients to reduce benefits costs); Future Directions, pt. 7, supra note 2, at 574, 577, 582 (SSI implementation programmed for delay because of budget reasons).

45 See, e.g., Future Directions, pt. 8, supra note 2, at 688, 798 (references to testimony before N.Y.S. Assembly Standing Comm. on Soc. Serv.); Washington Star, Aug. 24, 1975, at A-8, cols. 3-6 (Sunday ed.) (remarks of former HEW Comm'r of Welfare). See also Future Directions, pt. 12, supra note 2, at 1053 (statement of unidentified SSA employee); Future Directions, pt. 7, supra note 2, at 657 (statement of SSI Alert-Action Comm. of Yonkers Branch of Westchester County (N.Y.) Legal Aid Soc'y). Others, however, have made recommendations that would have the same effect. A few have suggested that Congress merge SSI into a guaranteed minimum income plan for all Americans. These proposals would abandon the means test and recoup payments to the non-needy through taxes. See, e.g., Development of SSI, vol. 2, supra note 2, at 326 (statement of Nat'l Ass'n of Social Workers). See also N.Y. Times, Jan. 4, 1976, at 1, col. 8 (Govs. of N.J., N.Y., Pa. & Wis.). Some think that SSI should be administered by states under contract with SSA. See, e.g., Future Directions, pt. 8, supra note 2, at 750 (statement of Comm'r of W. Va. Dep't of Welfare). This solution, which is similar to the categorical grants-in-aid approach, might initially assure more uniformity in benefits and eligibility requirements than the old plans. In the long run, however, conflicting interpretations, different procedures, and "lawless" administration that were hallmarks of the old system would re-create the patchwork of state, county, and local variations. Others would transplant the superseded provisions of OAA, AB, and APTD into SSI, and return administration to the states. See, e.g., id. at 790 (statement of Independent Study Group of Bay Shore, (N.Y.)).


47 Both SSA and its critics have asserted that statutory requirements contributed to SSI's early troubles. See, e.g., Administration of SSI, vol. 2, supra note 2, at 3 (statement of Rep. Gibbons); Future Directions, pt. 8, supra note 2, at 751 (statement of Comm'r of W. Va. Dep't of Welfare). Growing recognition that problems have been caused by complex statutory provisions has led to the increasing number of recent congressional and administrative investigations. See Administration of SSI, vol. 2, supra note 2, at 3-4 (statement of Rep. Gibbons). See also notes 39-40 and accompanying text supra. Commissioner Cardwell has identified a number of serious problems, especially in the mandatory and optional supple-
II

Mandatory Supplements

Although the legislative history of SSI is sparse, it is clear that Congress originally intended to establish a program that would be as simple and inexpensive to administer as the Social Security retirement system. Indeed, the ninety-second Congress in large part passed SSI because, like Social Security, it could be sold "as a program which was amenable to a highly centralized and automated implementation effort." Moreover, the basic federal component of SSI was specifically designed so that it could be administered by a single national agency. As originally enacted, SSI, apart from the optional supplement, was a straightforward, "nationally uniform flat-grant system." It did not go as far as other programs to tailor each recipient's benefits to his particular situation. Instead, it relied more upon presumptive needs and conclusive presumptions, thereby simplifying administration. In short, the version that emerged from Congress in 1972 was, for the
most part, a program that could be administered centrally by machine processing.

Congress, however, substantially amended the basic legislation before its implementation. Although it did not change the method of calculating the basic federal grant, it added a mandatory state supplement to ensure that no December 1973 recipient of categorical assistance would suffer a reduction in payments due to the conversion to SSI.\(^5\) In order to calculate the mandatory supplement, there must be a case-by-case analysis of individual benefits provided under the assistance plans that existed prior to the implementation of SSI.\(^6\) In other words, this amendment, similar to

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\(^5\) See 42 U.S.C. § 1382 note (Supp. V 1975). States are not legally compelled to provide mandatory supplements to recipients. Should they refuse, however, the Secretary of HEW is empowered to withhold Medicaid funds. Id. Congress specifically excluded Texas from this requirement because that state's constitution has been interpreted as preventing direct payments to recipients unless such funds are matched by the federal government. See Act of July 9, 1973, Pub. L. No. 93-66, § 212(f), 87 Stat. 157 (codified in 42 U.S.C. § 1382 note (Supp. V 1975)). All other states and the District of Columbia, however, have a mandatory program. See 1976 STATE SUMMARY, supra note 33, at 1-35.

Congress recently amended the Social Security Act to provide that after June 30, 1977, states must maintain optional and mandatory supplements at the levels in effect during December 1976 or lose federal Medicaid funds. States initiating such supplements after 1976 must maintain these payments at initial levels and are also subject to the penalty provision. However, the penalty will apply only if a state's expenditures for these supplements in a particular year are less than those for the preceding year. Act of Oct. 21, 1976, Pub. L. No. 94-585, § 2, 90 Stat. 2901 (to be codified as 42 U.S.C. §§ 1382g & 1382e note & 1382g note).

\(^6\) Recipients are eligible for mandatory supplements if (1) they received payments under one of the superseded state-administered plans in December of 1973; (2) they are eligible for SSI; and (3) their total income from all sources including SSI is less than they received (or, in cases of changed circumstances, would have received) in the last month of 1973 under the old programs. A recipient's mandatory supplement is the difference between his total income in December 1973 (including the public assistance payment) and his total income in the current month (including the basic federal SSI payment). If a recipient's circumstances change, SSA must use the old provisions of the appropriate superseded plan, and recalculate what that recipient would have received in December of 1973. Then the mandatory supplement is adjusted accordingly. 42 U.S.C. § 1382 note (Supp. V 1975)) See note 67 infra. HEW opposed the enactment of the mandatory supplement provisions because

[t]here would be serious administrative implications arising out of the fact that for many years—as long as the "grandfathered" people remain on the rolls—there would have to be a case-by-case approach to maintaining the payments that would take into account the multitude of special provisions in the States and local jurisdictions.


Given the complicated method of computation, it is not surprising that there have been disagreements among states, SSA, and recipients about the calculation of mandatory supplements. See, e.g., Liberty Alliance of the Blind v. Mathews, 9 CLEARINGHOUSE REV. 812 (1976) (E.D. Pa., filed Jan. 9, 1976); Bass v. Weinberger, 8 CLEARINGHOUSE REV. 903
the optional supplement provisions, revived all the complexity of superseded law which SSI was supposed to eliminate.\textsuperscript{57} Not surprisingly, strong evidence exists indicating that the complex state supplements, including mandatory payments, are more prone to error than the basic federal grant.\textsuperscript{58} Furthermore, SSA has not been able to deliver such benefits in a timely manner.\textsuperscript{59} Because of these difficulties, five states have recently


\textsuperscript{58} See, e.g., \textit{House Hearings on Appropriations for 1977, supra} note 18, at 332 (statement of Comm'r Cardwell). Results of the HEW Audit Agency report for the first six-month period of SSI's operation (January to June 1974) indicated extremely high case-error rates (rates computed by number of cases with errors) for the 31 states that elected federal administration of supplementary payments. Of these 31, 6 had error rates in the 20\% range, 9 in the 30\% range, 12 in the 40\% range, 3 in the 50\% range, and 1 in the 60\% range. Administration of SSI, vol. 3, supra note 2, at 43 (summary of HEW Audit reports on SSI). Furthermore, an examination conducted by the state of Florida showed that SSA may have been responsible for a 100\% dollar-error rate (rate computed by amount of erroneous payments) in that state's supplemental payments. Washington Star, Aug. 19, 1975, at A-6, col. 4 (capital special). These statistics indicate a higher incidence of errors in supplementary payments than in the program as a whole. See note 18 and accompanying text supra.

A great potential for error exists when governing rules are complex and much information is required to determine eligibility and benefits. Consequently, administrative mistakes prevent a large number of eligible individuals from receiving SSI. See note 32 supra. A number of these errors occur as employees prepare information for machine processing. Future Directions, pt. 13, supra note 2, at 1188-89. Commissioner Cardwell has acknowledged this difficulty: he has testified that the most important reason for the serious backlogs in new claims was that "several hundred thousand cases" that presumably were eligible did not pass "the built-in computer edit checks." Future Directions, pt. 7, supra note 2, at 544. Of the three problems identified by the Commissioner as causing this situation, two could be ameliorated by simplification: (1) "information incorrectly introduced into the system by staff at the district [local] office level" and (2) "data processing problems centrally." \textit{Id.} In short, the system did not work because it could not handle the information it was required to process. See note 29 supra.

\textsuperscript{59} See notes 29-31 and accompanying text supra. Illinois dropped federal administration of its optional supplement partially because SSA could not make timely adjustments in supplementary benefits when recipients' circumstances changed. Washington Star, Aug. 19, 1975, at A-6, col. 4 (capital special) (remarks of Ill. Dep't of Pub. Aid official). See also
abandoned federal administration of their mandatory supplements.\(^6^0\) Responsibility for providing care for the aged, blind, and disabled has thus become less of a federal matter during the past three years.

Congress, intending to create a simplified system, built a program that is more complex than the one it replaced. There can now be two classes of recipients per state receiving benefits according to two different formulas.\(^6^1\) The type of plan that finally emerged is also less amenable to the centralized automation that was the initial goal of federalization.\(^6^2\) In short, the federal government has not been able to make mandatory payments accurately and efficiently because of their complexity. As the Social Security Administration has emphasized, these difficulties are not susceptible to improved procedures because they are inherent in the basic legislation.\(^6^3\)

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\(^6^1\) The five states are Illinois, Indiana, Minnesota, South Carolina, and Utah. Compare Social Security Administration, Dep't of Health, Educ., and Welfare, Supplemental Security Income for the Aged, Blind, and Disabled: Summary of State Supplementation and Medicaid Decisions, (Aug. 16, 1974), at 5, 9, 16-17 [hereinafter 1974 State Summary], with 1976 State Summary, supra note 33, at 8-9, 15, 26-27. Two states—Mississippi and Vermont—changed from state to federal administration of their mandatory supplements during July, 1974. Administration of SSI, vol. 3, supra note 2, at 91 (information supplied by Comm'r Cardwell). This, however, took place before the problems with the administration of SSI became widely known and before the other five states dropped federal administration.

\(^6^2\) Future Directions, pt. 8, supra note 2, at 771 ("discriminatory ‘two tier’ system of income supplementation"). One class—those "grandfathered" into SSI from the old programs—may receive higher benefits under the superseded public assistance formulas while new applicants may get only the basic federal payment. Most states have attempted to equalize the treatment of pre-1974 and post-1973 recipients through the creation of optional supplements, yet wide disparities still exist. See 1976 State Summary, supra note 33, at 1-35; House Hearings on Appropriations for 1977, pt. 6, supra note 18, at 286 (experience shows mandatory recipients receive higher average payments than the newly-enrolled). Although much can be said for not reducing benefits of pre-1974 recipients (see, e.g., 1973 Senate Finance Comm. Hearings, supra note 11, at 7-12 (statement of Senator Long)), there is a surprising lack of commentary on the inequitable treatment of new recipients. For one explanation why Congress legislated this discriminatory scheme, see Hearings on Second Supplemental Appropriation Bill, 1975, supra note 26, at 838 (statement of Comm'r Cardwell).

\(^6^3\) Implementation of the requirement for mandatory State supplement payments to "grandfathered" cases . . . has been beset with difficulties of great proportions, particularly in those States for which these supplements are federally administered. Development of SSI, vol. 2, supra note 2, at 93 (statement of Chairman of Nat'l Council of State Pub. Welfare Adm'rs (Am. Pub. Welfare Ass'n)) (emphasis added).

\(^6^4\) Development of SSI, vol. 1, supra note 2, at 5, 13 (statement of Comm'r Cardwell).
There are four basic solutions to this problem. First, Congress could allow the mandatory supplement program to dissipate of its own accord. This would occur in one of two ways: either by the death or change in circumstances of those presently receiving such benefits, or by the voluntary movement of recipients from mandatory to optional supplementation—a contingency unlikely to occur in the near future.\(^4\)

Second, if Congress were less patient, it could abolish the mandatory supplementation requirement altogether. This proposal would not only vastly simplify administration, but also end the discriminatory treatment of post-1973 recipients. States would then be free to distribute payments according to current needs rather than pursuant to superseded requirements of the former public assistance programs. Although this solution has received influential support,\(^6\) Congress might be reluctant to make such a major change that could reduce benefits to hundreds of thousands of recipients.

Third, Congress could hasten the end of mandatory supplements by changing the conditions under which they are made. Presently, a state must make these payments to those individuals who would receive higher benefits under the old plans.\(^6\) Legislation, however, could allow a state to end its mandatory program once the average level of optional supplements available to all mandatory recipients became greater than the average level of all individual mandatory payments. Although some recipients would be adversely affected, most would be protected against a decrease in benefits. This proposal strikes a reasonable balance between administrative necessity and recipients' needs.\(^6\)

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\(^4\) Estimated schedules on the termination of mandatory supplementation programs do not appear to exist. As of the middle of 1976, however, no jurisdiction has been able to end the payment of these benefits. Compare 1974 STATE SUMMARY, supra note 60, at 1-20, with 1976 STATE SUMMARY, supra note 33, at 1-35. Because of the high payments and special needs provisions of the adult programs (see 1976 STATE SUMMARY, supra note 33, at 1-35), it is possible that states will have to pay mandatory supplements for a decade to come.

\(^6\) The SSI Study Group, a high-level panel chosen by then HEW Secretary Caspar W. Weinberger to evaluate various aspects of the program, has made this recommendation. See DEPT OF HEALTH, EDUC., AND WELFARE, REPORT TO THE COMMISSIONER OF SOCIAL SECURITY AND THE SECRETARY OF HEALTH, EDUCATION, AND WELFARE ON THE SUPPLEMENTAL SECURITY INCOME PROGRAM 40-41 (1976) [hereinafter REPORT OF SSI STUDY GROUP]. Social Security Commissioner Cardwell agrees with this proposal. See House Hearings on Appropriations for 1977, pt. 6, supra note 18, at 304-05.

\(^6\) See notes 55-56 and accompanying text supra.

\(^6\) The Supplemental Security Income Amendments of 1976 (H.R. 8911) would make
Fourth, Congress could change the formulas by which mandatory supplements are calculated. It makes little sense to have two completely different methods of determining benefits for each state when Congress intended to create a system less subject to state-by-state variations.\(^6\) It is also illogical to retain the old, complicated method of calculating mandatory supplements when that system was specifically rejected in determining the basic federal payment. This is especially true since the mandatory supplement formulas are basically incompatible with the centralized bureaucracy that was assigned to administer SSI. One simplified method would make the average of a recipient’s three highest monthly benefits in 1973 the mandatory supplement payment. Thereafter, reference to pre-1974 formulas would be unnecessary. This solution would make these supplements easier for SSA to administer without significantly affecting the level of recipients’ benefits. Moreover, it would make federal administration more attractive to the states since SSA has special expertise in making flat-grant payments. This solution might therefore arrest the trend towards state administration of mandatory benefits.

### III

**OPTIONAL SUPPLEMENTS**

In addition to the mandatory benefits, states may make additional grants known as optional supplements.\(^6\) Under the current a minor change in the conditions under which states are obligated to pay mandatory supplements. Currently, recipients are entitled to these benefits until either death or loss of SSI eligibility; they do not lose this right even when their current payments are higher than their December 1973 income (this often happens when recipients voluntarily give up mandatory supplements in order to receive higher optional benefits). Therefore, SSA and the states must keep certain records on former mandatory recipients in the unlikely event that they will again become eligible for these payments. The 1976 SSI Amendments, however, would eliminate this problem by ending individuals’ entitlement whenever they first let these supplements lapse. Furthermore, the bill would end eligibility in other situations, \textit{e.g.}, when a recipient moves from the state responsible for providing these benefits. \textit{See H.R. 8911, supra note 9, at § 13}.

\(^6\) Your committee believes that the basic Federal assistance benefits provided under its bill represent a realistic attempt to establish uniform national minimum standards of assistance in \ldots the adult \ldots programs. These new Federal benefit levels are higher than the current levels of assistance in many States and, consequently, considerably lessen the wide variations from State to State which now exist and which are frequently criticized as inequitable and as contributing to the continuing shift of population to large urban areas. 1971 \textit{HOUSE REPORT, supra note 7, at 199.}

system, a state has complete freedom to establish its own requirements as long as it administers the program itself. Should a state elect federal administration, it may still retain any provisions it chooses, although it is somewhat limited with respect to basic eligibility and income provisions. Hence, federally-administered optional benefits can present almost the same range of complexity as mandatory ones, and they can be just as difficult to administer centrally. Because of operating difficulties, all of the states that have added optional supplements during the past two-and-a-half years have chosen state rather than federal administration.

Simplification would reduce some of these problems since the key to streamlining SSI is standardizing the manner in which payments are calculated. Reduction in the number of factors used to determine eligibility and benefit levels would decrease the amount of information that SSA would need to collect, verify, process, and store. Payments could therefore be made with greater speed and accuracy and at less cost.

The Social Security Administration may make some changes toward streamlining SSI without congressional approval. It has already taken one step in this direction by limiting to five the number of living arrangements that a state may recognize in cal-

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71 If SSA administers a state's optional supplement, the state must apply the same eligibility requirements as those employed for the basic federal payment, except that it may employ a higher income disregard (20 C.F.R. § 416.2025(c) (1976), implementing 42 U.S.C. § 1382e(c)(2) (Supp. V 1975)), and it may impose a residency requirement (20 C.F.R. § 416.2035(a) (1976), implementing 42 U.S.C. § 1382e(c)(1) (Supp. V 1975)).

Despite these restrictions, a state may elect to recognize additional factors not used to calculate the federal base payment. For example, it may wish to use five living arrangement variables instead of the three that are recognized to determine the basic federal benefit (see notes 75-77 and accompanying text infra), or it may consider such additional factors as whether a recipient's residence has cooking facilities (see note 81 infra).

72 See Development of SSI, vol. 1, supra note 2, at 13 (statement of Comm'r Cardwell).
73 These states are Florida, Indiana, Maryland, New Mexico, Ohio, South Dakota, Utah, and Virginia. Compare 1974 State Summary, supra note 60, at 3, 5, 7, 12, 14, 16-18, with 1976 State Summary, supra note 33, at 6, 9, 13, 19, 22, 26-27, 29. Four others—Delaware, Maine, Montana, and Vermont—established optional supplements during July, 1974 and chose federal administration. Administration of SSI, vol. 3, supra note 2, at 91 (information supplied by Comm'r Cardwell). Since that time, however, no state has opted for federal administration of either old or new optional programs. Compare 1974 State Summary, supra note 60, at 1-20, with 1976 State Summary, supra note 33, at 1-35.

74 The experience with SSI indicates that the high number of variables—criteria for determining eligibility or payment amounts—in federally-administered optional supplements have created opportunities for error and increased administrative costs. See House Hearings on Appropriations for 1977, pt. 6, supra note 18, at 318 (statement of Comm'r Cardwell). See also Development of SSI, vol. 2, supra note 2, at 132 (standardization decreases paperwork, produces savings, reduces errors).
calculating a federally-administered optional supplement, and SSA could further reduce this number. Such a regulation would improve operating efficiency as well as have a beneficial side effect for recipients. A number of states presently base the calculation of their optional supplements on a wide range of living arrangements; verification of these variables, however, causes an unnecessary and objectionable invasion of privacy. If fewer arrangements are used to determine payments, the government will need correspondingly less information.

Congress, of course, could legislate more fundamental changes. For example, it might allow SSA to administer only uniform optional supplements that would be available to all recipients (except those hospitalized over long periods). Even more than the basic federal SSI payment, these unchanging supplements would be relatively simple and inexpensive to make, as well as largely immune to error. Moreover, this recommendation conforms to Congress's original intent to have the federal government handle only flat-grant benefits. Less sweeping legislation could give SSA the authority to refuse to administer provisions that require an excessive amount of information, lack general applicability, create needless distinctions among recipients, or call for intrastate varia-

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76 See Part IV C infra.
77 North Carolina bases its state-administered optional supplements on 10 different living arrangements, while New Jersey provides different federally-administered optional benefits depending upon the number of people recipients choose to live with in a household. 1976 STATE SUMMARY, supra note 33, at 18, 21. When such fine distinctions are drawn, SSA (or the states) must enforce the law by seeking detailed information on matters that should remain beyond the reach of government.
78 Congress established SSI to furnish a minimum income. Hence, it should be available without regard to place, or type, of residence in order to allow recipients to make decisions uninfluenced by government interference. See text accompanying notes 112-13 infra.
79 See REPORT OF SSI STUDY GROUP, supra note 65, at 38-40, 42-43.
80 In general, it is anticipated that the same rules and regulations would be applied to both Federal and State supplemental payments with the only difference being the level of such payments. However, the Secretary could agree to a variation affecting only the State supplemental if he finds he can do so without materially increasing his costs of administration and if he finds the variation consistent with the objectives of the program and its efficient administration. 1971 HOUSE REPORT, supra note 7, at 200.
tions. Special allowances that are available only to a few individuals and require local administrative expertise should be made by local agencies. Congress could furnish states with additional financial incentives to drop unnecessary provisions in their optional programs and elect federal administration.

Standardization of optional supplements would clearly make SSI easier to administer. Yet it would also lead to inevitable hardship for certain recipients, especially the blind and disabled who have special needs. SSI does not currently provide special (“non-recurring”) aid similar to that available under Emergency Assis-

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81 These recommendations are consistent with Congress's intent to create a program in which the federal government would make flat-grant payments providing an income floor and the states would administer relief for special needs. Accordingly, there are certain types of provisions that should not be administered by SSA's highly centralized and automated bureaucracy. See, e.g., Cal. Welf. & Inst. Code § 12200(e) (West Supp. 1976) (special allowance in federally-administered optional supplement for those who must purchase all meals because they lack home cooking facilities); 18 N.Y.C.R.R. § 352.8(a)(1) (1974), as amended, id. § 352.8(b)(1) (1974) (special payments for room and board for those not living in own home authorized).

The California "meals out" allowance is available only to those with special needs, and requires additional effort to administer, especially if SSA independently verifies all the facts needed to determine eligibility. Furthermore, it is discriminatory since it is not available to those who have kitchens but are physically unable to cook (and therefore must purchase meals outside of the home). But see Committee of the Rights of the Disabled v. Swoap, 48 Cal. App. 3d 505, 122 Cal. Rptr. 52 (1975) (classification does not violate federal or state equal protection provisions). Before SSI, some counties that administered the New York allowance made these payments only to those who lived with unrelated individuals, but not to those living with relatives. There is no justification for allowing such a distinction based solely on the location of residence within a state at a certain period of time. Moreover, it is unfair to penalize those who choose to live with relatives instead of unrelated individuals since there is no evidence that the former have less need for the allowance. See Woloszynski v. Lavine, [1974-1976 Transfer Binder] Pov. L. REP. (CCH) 19,347 (S.D.N.Y. May 28, 1974) (consent order entered).

These two examples illustrate the type of provisions that should not be administered by the federal government. Both allowances are inconsistent with the flat-grant concept since they authorize benefits to an extremely limited class of recipients. Furthermore, they require additional information and are consequently more difficult to handle. Finally, both create illogical classifications. States wishing to make such payments should do so as a part of local emergency relief programs. See notes 82-94 and accompanying text infra.

82 Special or “nonrecurring” aid is short-term relief granted to cover specific emergencies. Future Directions, pt. 8, supra note 2, at 745. See also Development of SSI, vol. 2, supra note 2, at 242-43, 245-46, 542, 546, 552-60, 801-02 (statements of various recipient advocate groups); id. at 150-51, 156-57, 459-60, 506, 510 (statements of Reps. Holtzman, Abzug, Solarz, and Ottinger); Future Directions, pt. 8, supra note 2, at 688-89 (statement of Exec. Dir. of N.Y. State-Wide Sr. Action Council).

Because SSI does not provide nonrecurring aid, a number of New York cases have held that the state has a residual responsibility to provide this type of emergency assistance. See, e.g., McWilliams v. Staszak, 82 Misc. 2d 546, 570 N.Y.S.2d 307 (1975) (utility shut-off); Thomas v. Dumpson, 8 CLEARINGHOUSE REV. 903 (1975) (N.Y. Sup. Ct. Dec. 17, 1974) (eviction).
stance to Needy Families with Children (EANFC) and state assistance programs. But special relief will be needed if SSI becomes more of a flat-grant system inherently incapable of furnishing aid tailored to individual needs. Hence, the crucial issue is which level of government is better suited to deliver this type of aid.

The federal government currently administers SSI through a highly-automated and centralized bureaucracy which is designed to make relatively unchanging flat-grant payments. Under these circumstances, the system can administer benefits efficiently and inexpensively, but it responds slowly to change. Furthermore, SSI does have a form of short-term interim relief known as Emergency Assistance to Adults (EAA). 42 U.S.C. § 1383(a)(4) (Supp. V 1975). EAA authorizes (1) advances in benefits up to $100 for financial emergencies to presumptively eligible individuals awaiting final determinations; and (2) full benefits for up to three months to presumptively disabled claimants. It does not, however, provide nonrecurring aid for special needs, and it has been criticized on other grounds as well. See, e.g., Future Directions, pt. 8, supra note 2, at 747-48 (EAA covers only claimants, not recipients, who fail to receive checks); Future Directions, pt. 7, supra note 2, at 654 ($100 cannot cover month's living expenses and is available only once).


For examples of SSI recipients needing nonrecurring relief, see Development of SSI, vol. 2, supra note 2, at 460 (elderly diabetic needing expensive special diet eats for half a month and literally starves until next check); Future Directions, pt. 7, supra note 2, at 643-44 (widower with cancer, arteriosclerosis, diabetes, arthritis, and heart condition needs money to travel to clinics); id. at 644 (double amputee loses housekeeper services).

Ozawa, supra note 49, at 34. Dias v. Chang, [1974-1976 Transfer Binder] Pov. L. Rep. (CCH) ¶ 20,545 (Hawaii Cir. Ct. Jan. 31, 1975), held that the state of Hawaii must provide payments to individuals whose own resources could not provide a minimum standard of decency and health. The opinion stated that the SSI flat-grant system was appropriate only as a starting point for determining needs and that the state had an additional obligation to make case-by-case reviews of recipients' circumstances. In other words, Dias implicitly recognized the inherent limitations of the straight-benefit approach in providing for all the income needs of recipients. Also see In re Lee (Smith), [1976] 2 Pov. L. Rep. (CCH) ¶ 23,468 (N.Y. Sup. Ct. Sept. 22, 1976) (state has responsibility to those for whom SSI flat-grant benefits do not provide a minimum standard of need).

It is neither feasible nor wise to fix the benefits of every person at a level that would adequately provide for the most destitute. Hence, some have suggested that Congress scrap flat-grants and return to the calculation of individual budgets to determine payments. See, e.g., Development of SSI, vol. 2, supra note 2, at 333, 506, 551 (statements of Reps. Corman, Solarz, and Rangel). A better solution, however, is to establish a referral system: if recipients received benefits from the many other assistance programs to which they are entitled, they could put together an “integrated package” to meet even extraordinary needs. Consequently, the return to individual budgets would be unnecessary. See id. at 363, 366 (statement of Nat'l Ass'n for Retarded Citizens).

The same agency that administers SSI also makes Social Security retirement pay-
the Social Security Administration is subject to the federal government's strong desire for fiscal accountability and control, a factor that further encumbers the system. Given these limitations, it is unlikely that SSI will ever be able to respond as rapidly as the

ments. The latter program spends an amount equal to approximately 2.1% of benefits for administrative costs (House Hearings on Appropriations for 1977, pt. 6, supra note 18, at 317), and has an error rate of approximately 2% (Senate Hearings on Appropriations for 1975, supra note 59, at 3610). SSI, by contrast, spends an amount equal to approximately 7.6% of benefits to operate (House Hearings on Appropriations for 1977, pt. 6, supra note 18, at 300-01, 310), and has an error rate of approximately 25% (id. at 292). See notes 16-19 and accompanying text supra. The discrepancy between the statistics for the two programs stems in part from the more complicated nature of SSI. See Report of SSI Study Group, supra note 65, at 190. Unlike Social Security payments, SSI benefits often fluctuate as recipients' income and circumstances change. If Congress simplifies SSI, the federal government will be able to make payments accurately and at less cost since automated and centralized systems can administer flat-grant benefit programs effectively.

8 See Development of SSI, vol. 2, supra note 2, at 710, 712, 713-14 (statement of member of Passaic County (N.J.) Welfare Bd.). This commonly-shared observation has prompted suggestions that the administration of SSI should be either returned to the states, or that SSA should decentralize its operations, which presently require information to be sent to one national center, and has an error rate of approximately 25% (id. at 292). See notes 16-19 and accompanying text supra. The discrepancy between the statistics for the two programs stems in part from the more complicated nature of SSI. See Report of SSI Study Group, supra note 65, at 190. Unlike Social Security payments, SSI benefits often fluctuate as recipients' income and circumstances change. If Congress simplifies SSI, the federal government will be able to make payments accurately and at less cost since automated and centralized systems can administer flat-grant benefit programs effectively.

90 Both SSA and its critics acknowledge that the federal government's concern for reducing fraud and keeping track of expenditures has impeded the system's ability to deliver benefits quickly. See, e.g., Adens v. Sailer, 312 F. Supp. 923 (E.D. Pa. 1970). Even though centralization may be the "crux" of SSI's problems (see Administration of SSI, vol. 2, supra note 2, at 37), Congress should not decentralize the program or return responsibility to the states. Instead, it should authorize reimbursement to localities that administer the type of aid that requires quick delivery: interim and nonrecurring relief. SSA could then concentrate on making the flat-grant basic federal payments, a task in which reliability (not speed) is the important factor.

88 See Development of SSI, vol. 2, supra note 2, at 710, 712, 713-14 (statement of member of Passaic County (N.J.) Welfare Bd.). This commonly-shared observation has prompted suggestions that the administration of SSI should be either returned to the states, or that SSA should decentralize its operations, which presently require information to be sent to one national center, and has an error rate of approximately 25% (id. at 292). See notes 16-19 and accompanying text supra. The discrepancy between the statistics for the two programs stems in part from the more complicated nature of SSI. See Report of SSI Study Group, supra note 65, at 190. Unlike Social Security payments, SSI benefits often fluctuate as recipients' income and circumstances change. If Congress simplifies SSI, the federal government will be able to make payments accurately and at less cost since automated and centralized systems can administer flat-grant benefit programs effectively.

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Although many have looked to Washington to take over all responsibility for public assistance, the experience with SSI indicates that the federal government will not deliver benefits as quickly as the states partially because of this concern for accountability. Therefore, Congress should authorize reimbursement to localities that deliver nonrecurring or interim aid to recipients of "federalized" public assistance programs such as SSI.
states to changes in recipients’ particular needs.

Since speed is essential for the delivery of nonrecurring aid, the states, which have demonstrated that they can process payments quickly,91 should undertake this obligation.92 Congress could encourage local assumption of this assistance by furnishing financial incentives on a matching or other appropriate basis as it did for interim relief.93 Under this system, both the states and the federal

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91 Some states, less concerned about fiscal accountability than the federal government, have developed systems that can deliver benefits to recipients within a matter of hours. See Future Directions, pt. 8, supra note 2, at 752 (West Virginia processes AFDC applications within 24 hours).

92 Congress intended that states administer such relief:

[1]t is customary in many states to take into account, on a case-by-case basis, certain special needs of some . . . aged, blind, or disabled people who are in unusual circumstances leading to financial needs that are not met under the general standards established by the States. . . . Your committee believes, however, that the responsibility of the Federal Government in administering a State program of supplemental payments should generally be limited to administration of a basic uniform payment which does not vary according to such “special need” and is the same throughout the State and that any additional “special need” payments should be generally made directly by the State. Thus, a State could also pay an additional amount on an individual case-by-case basis to recompense the special needs cases. This additional payment would have no effect on either the amounts payable under the Federal program or the federally administered State uniform supplementation program.


The President’s Commission on Income Maintenance Programs, while recommending the enactment of a nationally administered and financed universal cash supplement plan, noted that the states should provide aid to those “who have exceptional emergency needs or who suffer a sudden large drop in income” since the federal government “cannot extend aid as rapidly and as sensitively as a locally-administered assistance program.” The Report of the President’s Commission on Income Maintenance Programs, Poverty Amid Plenty: The American Paradox 70 (1969).

At least one state has enacted a special needs statute. In 1976, Pennsylvania amended its Public Welfare Code to broaden the conditions under which the state will provide SSI recipients with cash assistance for nonrecurring emergencies. Furthermore, legislation also increased the number of people who may receive this aid by expanding eligibility for optional benefits. See Act No. 28, § 1, 1976 Pa. Legis. Serv. 50 (Purdon) (to be codified as Pa. Stat. Ann. tit. 62, § 432 (Purdon)). SSA administers Pennsylvania’s optional supplement (see 1976 State Summary, supra note 33, at 25), and the state makes the special payments.

government would administer the type of aid that they handle best.\textsuperscript{94}

If the calculation of optional (as well as mandatory) supplements were simplified to make them more susceptible to centralized processing, it would be preferable for the federal government to administer all supplemental payments.\textsuperscript{95} Since SSA already has

\textsuperscript{94} A recent analysis labeled the federal takeover of the administration of special needs payments as \textit{the cause} for SSI's continuing operating difficulties. \textit{See Report of SSI Study Group, supra} note 45, at 38-40, 190. SSA should not attempt to deliver nonuniform benefits because states are in a better position to administer this type of assistance. Nevertheless, there have been some proposals to include nonuniform special allowances in the basic federal payment. The most important of these is H.R. 6769, 94th Cong., 1st Sess., § 2 (1975), \textit{formerly introduced as H.R. 4308, 94th Cong., 1st Sess., § 2 (1975)} [hereinafter H.R. 6769] which would authorize a "Supplementary Housing Benefit" to those making special application who must spend more than a third of their income on rent (or other shelter expenses). \textit{See infra} note 139.

Some form of rent assistance is necessary, but it is inappropriate to include this type of provision—one that authorizes payment only under restricted conditions to a narrow class—in a centrally-administered flat-grant plan. Moreover, the inclusion of other special allowances, such as one for fuel costs (\textit{see Development of SSI, vol. 2, supra} note 2, at 189-90), would in effect reintroduce the discredited calculation-of-individual-budgets method which SSI was supposed to eliminate. Any attempt to run a program similar to the old needs-based system from SSA's highly automated and centralized bureaucracy will result in the slow, expensive, and inaccurate delivery of benefits as the experience with federally-administered supplements unfortunately illustrates. \textit{See notes 58-63, 72-74, 87-90 and accompanying text supra.} Furthermore, whenever Congress has departed from the concepts of standardization and uniform payments in SSI, such as in the living arrangement and resource areas (\textit{see Parts IV A, IV C infra}), it has posed significant administrative problems for SSA. \textit{See Development of SSI, vol. 2, supra} note 2, at 86-87 (statement of Chairman of Nat'l Council of State Pub. Welfare Adm'r's (Am. Pub. Welfare Ass'n)). Hence, special allowances of any type should not be included in the federal basic payment. Money for nonrecurring needs can be delivered by states pursuant to federal reimbursement (\textit{see note 92 supra}), or through increased optional supplements geographically adjusted for variations in the cost of living (\textit{see note 139 infra}).

The ultimate (and most costly) approach to the delivery of nonrecurring relief calls for a substantial increase in the basic federal payment in order to allow recipients to meet most emergencies. It has been argued that this solution would be less expensive in the long run for two reasons. First, it would eliminate state supplementation (\textit{see note 102 infra}), thereby saving overhead costs. Second, it would make people self-sufficient so they can contribute to the growth of the economy. \textit{See Development of SSI, vol. 2, supra} note 2, at 811-12 (statement of Exec. Dir. of West Side (N.Y.) Community Alliance).

\textsuperscript{95} Congress envisioned federal administration of all supplementary payments:

\textit{Although . . . there may be a continuing need for State supplementation of the new Federal assistance programs, it would appear generally desirable that such supplementation be provided through [SSA]. This would avoid unnecessary duplication of administrative costs, would permit the States to take advantage of the improved methods and procedures which the bill would require, and would tend to foster national uniformity in the operation of assistance programs.}

\textit{1971 House Report, supra} note 7, at 199. If SSA assumes the costs of delivering all the supplements, states could use their administrative resources to make special needs payments.
the resources and recognized expertise in machine processing, the incremental administrative costs would not be great.

Clearly, Congress could compel the states to surrender their administration of optional supplementary payments either by coercion (withholding federal money under other programs or using the commerce and supremacy clauses of the Constitution) or by persuasion (financial incentives). But a complete federal takeover may be undesirable at the present time because SSA has not yet demonstrated its ability to administer the program within its present requirements. Through legislative and administrative simplification, however, SSI can achieve the promise of economies of scale and greater uniformity. The alternative—the present complicated and inequitable system of state-by-state and intrastate variations—can only continue to aggravate current problems. Had Congress gone one step further and assumed more responsibility for this type of assistance, it could have avoided many of the difficulties. In this case, reform of the system was not as sweeping as it should have been.

See, e.g., Radin, supra note 49, at 7.

SSA estimates that it could administer benefits to two million more SSI recipients with little incremental cost. See House Hearings on Appropriations for 1977, pt. 6, supra note 18, at 317 (statement of Comm'r Cardwell).

Congress has already adopted this approach for SSI. See note 55 supra.

Because of the number of recipients affected and the size of payments involved, Congress could declare public assistance to the aged, blind, and disabled to be a matter affecting interstate commerce, and exclusively regulate it under the supremacy clause.

Presently an added financial commitment by the federal government might be politically unfeasible. In 1975 SSA estimated that it would cost $1.3 billion a year to assume the cost of all state supplementary benefits. Development of SSI, vol. 1, supra note 2, at 20 (statement of Comm'r Cardwell). This figure, however, would not measure the full price of such legislation since it would still leave wide disparities in benefits from state to state, and it is unlikely that low-benefit jurisdictions would allow federal tax dollars to reimburse the more generous ones without some added incentive.

One argument can be made for federal assumption of a larger share of the costs of SSI. Congress initially expected 6.2 million recipients in January of 1974 and 7.1 million in FY 1975. See 1971 House Report, supra note 7, at 147. The number of recipients, however, has never gone above April 1976's total of 4,353,580 (see Soc. Sec. Bull., Sept. 1976, at 64 (Table M-23)), and it is not expected to reach 4.6 million until the end of FY 1977 (House Hearings on Appropriations for 1977, pt. 6, supra note 18, at 285). The federal government, therefore, is operating a program substantially smaller than the one originally envisioned, so the addition of new financial responsibilities would not necessarily make SSI more expensive than Congress originally intended.

See Part I and notes 58-63, 73 and accompanying text supra.

The AFL-CIO has presented one of the most far-reaching and costly solutions to optional supplementation problems: raise the basic federal payment to eliminate the need for state supplementation. Development of SSI, vol. 2, supra note 2, at 766 (letter of AFL-CIO Dir. of Dep't of Legislation to Rep. Fulton).
PROPOSAL FOR SSI REFORM

IV

BASIC FEDERAL PAYMENT

Congress hoped to solve the traditional problems of welfare administration with the enactment of SSI. It therefore designed the program to be both simple and inexpensive to administer. Although many of the problems that plagued the superseded state plans were eliminated, some difficulties remain, and there are a number of measures that either Congress or SSA could adopt to streamline the administration of SSI and to aid recipients.

A. Living Arrangement Variables

Three living arrangements are recognized in calculating the basic federal SSI payment. First, those who maintain their own home and who are completely responsible for their own well-being receive the full SSI benefit reduced only by their countable income. Second, individuals who receive food and shelter while living in households of others suffer a one-third reduction in benefits. Third, recipients who are in medical facilities throughout any month and who have more than half the cost of their care covered by Medicaid receive a maximum of twenty-five dollars per month. If Congress wanted to simplify this aspect of the program, it could eliminate the second and third variables which have already come under sustained attack from many concerned groups.

The one-third reduction provision attempts to promote equality among recipients by reducing the benefits of those who receive significant amounts of in-kind income. By employing an easily-administered conclusive presumption, Congress partially eliminated the need to make time-consuming and costly determinations of the value of food and shelter on a case-by-case basis. Many,

106 See REPORT OF SSI STUDY GROUP, supra note 65, at 65-66, 70-71 (repeal of one-third reduction recommended); cf. 1976 HOUSE REPORT, supra note 9, at 11 (proposal to limit reduction to one-fifth rejected as incomplete solution).
107 See Development of SSI, vol. 2, supra note 2, at 737 (statement of Senator Taft); Development of SSI, vol. 1, supra note 2, at 16 (statement of Comm'r Cardwell).
however, have severely criticized this aspect of the program as creating hardship by limiting benefits\textsuperscript{108} and thereby forcing people into institutions.\textsuperscript{109} Hence, some advocate a return to the periodic valuation of in-kind income.\textsuperscript{110} Such a step would be undesirable for two reasons. First, it would be virtually impossible to administer equitably because of the inability to make precise determinations of the value of food and shelter.\textsuperscript{111} Second, the present verification process would cause an undesirable invasion of privacy by the government.

Insofar as the one-third provision simplifies administration and protects privacy, it is a step in the right direction. Nevertheless, if only the receipt of cash were counted as income, the elimination of the one-third requirement could be justified on other grounds. It would make SSI easier to administer because it would decrease the number of variables recognized in calculating payments. SSA would then have less need to investigate recipients' living habits and sources of support. Moreover, since there would be no reduction in benefits for free receipt of food and shelter, this change would encourage, although not require, private and family aid to recipients. Furthermore, the elimination of the one-third rule would remove present impediments to free association between recipients and their relatives and friends. Most important, however, the one-third reduction is inconsistent with the concept of SSI as an income floor. The old categorical plans attempted to tailor recipients' payments to individualized needs. Under these programs, it was logical that benefits were reduced by the value of in-kind transfers since their receipt decreased need. SSI, on the other hand, was established to supplement inadequate incomes with flat-grant payments and allow recipients freedom to manage their own affairs with a minimum of government interference.\textsuperscript{112}

\textsuperscript{108} See, e.g., Future Directions, pt. 8, supra note 2, at 690 (statement of Exec. Dir. of N.Y. State-Wide Sr. Action Council); Future Directions, pt. 7, supra note 2, at 591 (statement of Exec. Bd. member of Nat'l Council of Sr. Citizens).

\textsuperscript{109} See, e.g., Development of SSI, vol. 2, supra note 2, at 323, 328 (statement of Nat'l Ass'n of Soc. Workers); id. at 353-54, 359-60 (statement of Nat'l Ass'n for Retarded Citizens). The institutionalization of recipients is often medically unnecessary (id. at 564) and is substantially more expensive than the payment of full benefits (id. at 139, 748).


\textsuperscript{111} SSA has already reviewed the problem of valuing in-kind income and has yet to find a "better substitute" for the one-third rule. Development of SSI, vol. 1, supra note 2, at 40 (statement of Comm'r Cardwell).

\textsuperscript{112} The "basic purpose" underlying the program is "to assure a minimum level of in-
Because the one-third provision requires SSA to intrude on the privacy of individuals, it runs counter to the program's basic philosophy.\textsuperscript{113}

Aside from the level of benefits,\textsuperscript{114} no other aspect of SSI has attracted as much criticism as the one-third rule. Congress has implicitly recognized that the application of this provision is not desirable in all situations. It has recently created a narrow exception to prevent reductions in benefits when certain disasters force recipients to live in households of others.\textsuperscript{115} For the reasons cited above, Congress should eliminate the reduction altogether.

Congress may still wish to count in-kind transfers as income in order to prevent some people from receiving both SSI benefits and substantial contributions of food and shelter. Legislation could alleviate the existing problems of imprecise and costly valuations by partially disregarding the receipt of food, shelter, and other in-kind items. Here Congress has two alternatives: it could create an aggregate disregard\textsuperscript{116} for food, shelter, and common household expenses or three separate ones for each of these categories.\textsuperscript{117} The first alternative is preferable since it would be easier to administer. Furthermore, the government has little interest in how recipients allocate their money among the three categories. Whichever course Congress chooses, these new disregards should be set at levels high enough to eliminate difficult valuation problems, but not so high as to allow the undeserving to retain eligibility.

Congress could also eliminate the third living arrangement...
variable: the twenty-five dollar benefit for recipients in Medicaid-supported facilities. Similar to the one-third requirement, this provision embodies an easily-administered conclusive presumption. Nonetheless, it is difficult to administer—SSA often cannot make timely reductions, thereby requiring recovery of overpayments from recipients.\textsuperscript{118} Furthermore, the twenty-five dollar provision also causes hardship for those institutionalized for short periods since reduced SSI payments prevent recipients from meeting their continuing obligations. For example, individuals are often released from Medicaid facilities only to find that they have been evicted for nonpayment of rent since the twenty-five dollar benefit cannot cover this expense.\textsuperscript{119} Hence, this reduction increases dependence on costly institutional care.\textsuperscript{120} In order to prevent windfalls to some, the Secretary of HEW could give SSA authority to reduce payments to twenty-five dollars after a finding that the recipient will be institutionalized for longer than a specified period such as three or six months.\textsuperscript{121} This proposal would not only eliminate paperwork, but also promote the independence of temporarily institutionalized individuals.

The variables discussed above are not the only troublesome aspects of the basic federal payment in this area. There are two miscellaneous SSI provisions that either reduce or terminate payments, and therefore unduly restrict recipients in choosing their

\begin{itemize}
\item \textsuperscript{118}See \textit{Report of SSI Study Group}, \textit{supra} note 65, at 33.
\item \textsuperscript{119}Future Directions, pt. 8, \textit{supra} note 2, at 746 (statement of Exec. Dir. of Nat'l Council on Aging). See \textit{id.} at 804-05 (letter from Pres. of Am. Nursing Home Ass'n to Senator Church).
\item \textsuperscript{121}Periods of either three or six months appear to be reasonable compromises between the competing considerations of providing aid to maintain the independence of temporarily institutionalized recipients and preventing unjust enrichment to those hospitalized indefinitely. The House Ways and Means Committee and the SSI Study Group favor the three-month alternative (\textit{see 1976 House Report, supra} note 9, at 9-10, 20; \textit{Report of SSI Study Group, supra} note 65, at 33, 42-44), while New York has adopted the six-month period (\textit{see N.Y. Soc. Serv. Law} § 303(1)(g) (McKinney 1976)). The New York provision authorizes state assistance to the aged, blind, and disabled for "[h]ousehold expenses essential to the maintenance of a home, in the case of a person whose supplemental security income benefit has been reduced because he has been placed in a medical facility." \textit{Id.} The statute further requires that
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\begin{itemize}
\item within forty-five days following placement in such a facility, the social services official shall determine whether, and payments under this subdivision shall not continue unless, such person is expected to remain in such a facility for less than \textit{one hundred eighty days} following the reduction in such benefits;
\end{itemize}

residence. The first of these is section 1616(e) of the Social Security Act, which reduced benefits to those living in facilities that could be covered by Medicaid, but which did not meet certain standards.\(^\text{122}\) The intent was to prevent federal support of sub-standard institutions\(^\text{123}\) which is a praiseworthy goal. Yet this section has no place in a flat-grant income maintenance plan because it was administratively infeasible,\(^\text{124}\) and it is inappropriate for the federal government to tell people how and where they should live. SSI was created to provide economic security, not to direct the lives of the aged, blind, and disabled.\(^\text{125}\) Eligibility and payments should hinge on recipients' income and resources, not on extraneous factors.\(^\text{126}\) Moreover, section 1616(e) was bad social policy: by effectively preventing recipients from living in certain types of facilities, it halted development of alternative arrangements for those not requiring full institutional care.\(^\text{127}\)

Congress, however, recently passed Public Law 94-566, effective October 1, 1976, which repeals section 1616(e) and devises a new scheme to upgrade facilities.\(^\text{128}\) This legislation requires states to establish and enforce standards by October 1, 1977, for institutions, homes, or group living arrangements where "a significant number" of recipients reside or will reside.\(^\text{129}\) Such guidelines must govern admission policies, safety, sanitation, and civil rights protection and be "appropriate to the needs of [SSI] recipients and the character of the facilities involved . . . ."\(^\text{130}\) Administrative provisions of the law require states to (1) reveal the standards and enforcement procedures they have established and a list of all waivers granted and violations discovered;\(^\text{131}\) and (2) annually certify their


\(^{123}\) See Report of SSI Study Group, supra note 65, at 65; Development of SSI, vol. 2, supra note 2, at 351 (statement of Nat'l Ass'n for Retarded Citizens); id. at 703 (statement of Comm'r of N.J. Dep't of Institutions and Agencies).

\(^{124}\) See Report of SSI Study Group, supra note 65, at 65-66.

\(^{125}\) SSI regulations state that "[n]o restrictions, implied or otherwise, are placed on how recipients spend the Federal payments." 20 C.F.R. § 416.110(c) (1976). Section 1616(e), of course, did not technically tell individuals how they may spend their SSI checks, but it had this practical effect since it reduced benefits if people chose to live in certain facilities.

\(^{126}\) See Report of SSI Study Group, supra note 65, at 65-66.

\(^{127}\) See Development of SSI, vol. 2, supra note 2, at 96, 145-47, 263, 346, 350-52, 700-03, 809-10 (statements of various people and organizations testifying before Congress).


\(^{130}\) Id.

\(^{131}\) Id. § 1382e(3)(2) (Supp. 1976).
compliance to the Secretary of HEW. Finally, Public Law 94-566 reduces SSI benefits whenever recipients live in facilities not meeting the new guidelines. This legislation unfortunately does not lessen excessive government management of recipients' lives since it only decentralizes responsibility for establishing residence standards. Although Congress has encouraged state-adopted alternatives to unnecessary institutional care, it has not yet abandoned federal paternalism since the new law still requires SSA to monitor recipients' living arrangements. Congress should help improve conditions in facilities serving the aged, blind, and disabled, but not as a part of an income program, and certainly not at the expense of recipients. In this respect, Public Law 94-566 does not represent an improvement over old section 1616(e).

The second miscellaneous aspect of the program is the "inmate of a public institution" provision. As a general rule, SSI should be available to all people without income and resources. There is one group, however, who should not receive benefits: those incarcerated in penal institutions or committed to mental hospitals. These people should not be eligible because the public has already assumed responsibility for meeting all their needs. Accordingly, SSI legislation prohibits payments to "an inmate of a public institution." HEW, apparently disregarding the ordinary meaning of the word "inmate," has interpreted this provision broadly to deny eligibility to those residing in group facilities serving four or more people that are under some form of state control. Yet many who fall in this category need a periodic income supplement such as SSI. Furthermore, HEW's interpretation has terminated benefits to those living in community homes, thereby preventing the "deinstitutionalization" of those not requiring full medical care. Therefore, similar to old section 1616(e), the "inmate of a public institution" provision discourages experimentation with alternative living arrangements and improperly restricts recipients' freedom of choice.

Congress has recently mitigated the harshness of HEW's in-

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132 Id. § 1382c(e)(3) (Supp. 1976).
133 Id. § 1382c(e)(4) (Supp. 1976).
interpretations by excluding publicly-operated community residences serving no more than sixteen people from the definition of a "public institution." This amendment strikes a good compromise between the competing considerations noted above that have made resolution of this problem such a difficult matter.

The changes suggested in this Note would almost eliminate the need for SSA to monitor individuals' living arrangements. They would also effectively raise benefits, yet there would be large offsetting savings in overhead costs and decreases in processing times because of less paperwork. More important, these proposals would lessen the objectionable government intrusion into the lives of recipients, and they would be consistent with the concept of the right to a minimum income without regard to place of residence. Such recommendations would therefore promote the independence and dignity of recipients, a goal that SSI was originally designed to foster.


138 See notes 107-21 and accompanying text supra.

139 Many seeking to aid recipients have suggested changes that would increase the need for government supervision of recipients' residences. Representative Holtzman, for instance, introduced legislation to create a special allowance primarily to aid those who live in urban areas where rents are high. H.R. 6799, supra note 94, § 2, would authorize a "Supplementary Housing Benefit" of up to $50 per month to those recipients whose rent, mortgage payments, real estate taxes, and heating expenses exceed a third of their annual income. See Development of SSI, vol. 2, supra note 2, at 149-50, 155, 191-93 (statements of Rep. Holtzman). See also id. at 296, 297, 377, 421-22, 463, 506, 510, 543, 545 (similar housing allowance proposals of various groups and other New York Representatives in Congress).

Since some recipients must spend three-quarters of their income for rent (see id. at 506), clearly some type of relief is needed. A special allowance, however, is not the best solution. This proposal would require SSA to collect, verify, and store even more information about matters outside the scope of official inquiry than is presently required.

In order to pay for extraordinary needs without intruding on the privacy of recipients, Congress and the states could join together to provide more money through federally-administered, uniform, optional supplements. See notes 78-80 and accompanying text supra. If the level of benefits were more adequate, individuals would then have enough to meet their particular needs. See notes 94, 102 supra. States could then take advantage of the existing provision that allows up to three geographical cost-of-living variations per state in optional payments made by SSA. See 20 C.F.R. § 416.2030(a)(1) (1976). Additional aid, therefore, could be targeted to regions where particular costs (or costs in general) are higher.


141 See REPORT OF SSI STUDY GROUP, supra note 65, at 43.

142 See note 112 supra.
B. Unearned Income

Current law counts interest, dividends, Social Security and other government benefits, and payments from pensions or annuities against SSI income limitations. These amounts are classified as "unearned," so that after an initial twenty-dollar per month disregard, there is a dollar-for-dollar reduction in benefits. Consequently, SSA is required to collect, verify, and process information on small amounts of income that may have an insignificant impact on recipients. These provisions unduly complicate administration and discourage saving. Therefore, SSI, a program which should encourage independence and savings, instead promotes reliance on government programs and discriminates against the frugal.

Congress could simplify the operation of SSI and encourage individuals to save by adopting any of several proposals. First, it could increase the twenty-dollar disregard. This option, however, would tend to shelter only Social Security payments in most cases unless the disregard were set at an extremely high level. Therefore, it would do little to simplify the program if the exclusion were not large enough to reach the other types of income that are difficult to monitor. Second, legislation could create separate disre-

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146 Earned income, on the other hand, receives more favorable treatment. The first $85 per month ($65 per month if $20 has already been excluded from unearned income) and one-half of the remainder is excluded for purposes of determining eligibility. 20 C.F.R. § 416.1167, implementing 42 U.S.C. § 1382a(b)(4) (Supp. V 1975). There are also special work incentives for the blind and disabled. See 20 C.F.R. §§ 416.1169, .1171, .1731 (1976), implementing 42 U.S.C. § 1382a(b)(4)(A), (B) (Supp. V 1975). For a description of these incentives, see House Hearings on Appropriations for 1976, supra note 18, at 338-39 (statement of Comm'r Cardwell).

147 Future Directions, pt. 8, supra note 2, at 697 (statement of Rep. Griffiths). In one case an aged widow was denied SSI because she had $2,000 in the bank—$500 over the limit—even though she owned no car and had only a $15,000 house. This woman penalized herself by saving, because she could have become eligible by spending the $500 on a car or a more expensive home. Id.

148 During December 1975, the last month for which statistics are available, 52.7% of all SSI recipients received Social Security benefits. This group's average monthly payment under the latter program was $130.01. Soc. Sec. BULL., Sept. 1976, at 92 (Table Q-20).
gards or an aggregate shelter for the various types of non-Social Security income so that SSA would not have to keep track of them constantly. As in the in-kind income area, these new disregards could be set at levels to make SSI easy to administer and to exclude those who do not need benefits. Third, Congress could adopt a more sophisticated approach by converting applicants' "unearned" income into "annuities" and assuming that they would liquidate their holdings to meet their individual needs. This scheme would amortize savings over life expectancies, and only the amount presumed spent by this formula each year would count against the income limitation. Even though this proposal might initially involve slightly more paperwork than current law requires, once the "annuity" had been calculated there would be no need to make adjustments. Congress could decide that, for the sake of administrative convenience, changes in recipients' circumstances, either favorable or adverse, would not affect the initial computation. Emergency aid could be furnished by localities for those whose savings were unexpectedly cut off or dissipated.

Since these three options would simplify the administration of SSI, savings in operating costs would partially offset resulting increases in benefits. Furthermore, all the proposals would encourage individuals to save in any form to protect themselves in the future. These suggestions would make the program more equitable since they would not significantly penalize those who had saved during their lifetime; under these recommendations, accumulated savings would at most reduce benefits, not bar them altogether.

Gifts, inheritances, charity, in-kind transfers, and other items are also defined as "unearned" income.\textsuperscript{149} Hence, their receipt causes a dollar-for-dollar reduction in benefits over the initial twenty-dollar disregard. The operating costs involved in monitoring such transfers and in making appropriate changes in benefits are high. Aside from considerations of administrative efficiency, these provisions create a strong disincentive for individuals to help recipients by making small charitable gifts.\textsuperscript{150} Furthermore, the dollar-for-dollar reductions severely handicap both private organizations and even public agencies in furnishing assistance. For ex-


\textsuperscript{150} See Future Directions, pt. 8, supra note 2, at 716, 718 (statement of Senator Taft).
ample, SSI legislation originally considered as income all in-kind assistance provided by private nonprofit retirement homes and other similar institutions. This created a situation of diminishing returns: subsidies furnished by these organizations to resident recipients reduced SSI benefits, thereby requiring larger subsidies, which in turn further reduced payments eventually to zero.\(^1\)

Congress solved this problem by passing Public Law 93-484,\(^1\) which generally provides that the value of support and maintenance will not count as income as long as the cost is borne by the nonprofit home or institution itself or by another nonprofit organization. This law, however, does not shelter assistance from charitable organizations to noninstitutionalized recipients.\(^1\)

Congress has recently passed a major reform in this area. Public Law 94-566 provides that state or local assistance based on need, furnished to individuals or institutions, will not reduce the basic federal payment.\(^1\) Furthermore, such aid need no longer be furnished in cash,\(^1\) as old law required.\(^1\) To further improve the program, Congress could pass comprehensive legislation sheltering all assistance provided by state or federal statutes and by charitable institutions.\(^1\) Moreover, it could establish a partial disregard for gifts up to a certain amount.\(^1\) Although it might want to keep


\(^1\) The Supplemental Security Income Amendments of 1976 would remedy this important omission. See H.R. 8911, supra note 9, at § 16.


\(^1\) Id.


\(^1\) Current law already authorizes a limited number of exclusions from income. First, 20 C.F.R. § 416.1145(a) (1976), shelters payments authorized by federal statute where exclusion is required by law. For a list of these benefits, see id. § 416.1146. (These are also excluded as resources if not commingled. Id. §§ 416.1210(j), .1236.) Second, 20 C.F.R. § 416.1145(b) (1976) authorizes a small number of other exclusions, such as those for tuition scholarships (defined in id. § 416.1153) and foster care payments (defined in id. § 416.1159). Third, even though SSI legislation on its face counts the receipt of nonrecurring aid (see 42 U.S.C. §§ 1382a(b)(6), 1382e(a) (Supp. V 1975)), 20 C.F.R. § 416.2001(a)(2) (1976) shelters this type of emergency relief. Despite these provisions, many other important benefits, such as housing assistance, vocational rehabilitation, and veterans payments still count against the income limitations. See Development of SSI, vol. 2, supra note 2, at 189, 354, 359, 369-70, 371-72, 407, 413-14, 419, 686, 772.

\(^1\) Current law counts the receipt of gifts, inheritances, prizes, and other items as income in the month of receipt and as resources in succeeding months. The effect of
the “earned” versus “unearned” distinction to preserve a work incentive,\textsuperscript{159} it should not impose a 100 percent “tax”\textsuperscript{160} on this type of aid. This is especially true if Congress and the states are not prepared to raise benefits to more adequate levels. A complete tax on all forms of “unearned” income is not only difficult to administer, but also fosters dependence on public aid, a result SSI was designed to prevent.

C. Resource Limitations

The largest number of errors in the administration of SSI occurs in the enforcement of the law’s resource provisions.\textsuperscript{161} This task involves a great expenditure of time and manpower, but rarely affects the outcome of claimants’ applications.\textsuperscript{162} In this area, as well as others, simplification is the solution.\textsuperscript{163}

Former law allowed a recipient to exclude the value of his disregarding these acquisitions would be to immediately treat them as resources. Other suggestions in this Note, discussed in Part IV C \textit{infra}, would further disregard these items as resources should they fall into one of the enumerated categories: (1) automobile; (2) personal effects; or (3) household goods. These suggestions, taken together, streamline the operation of SSI by ignoring transfers that are difficult to monitor and which often have little practical effect on eligibility or benefits.


\textsuperscript{159} Since “earned” income is treated more favorably than “unearned” income (\textit{see notes 143-46 and accompanying text supra}), Congress has created a financial incentive to work. After the initial disregard (\textit{see note 146 supra}), every dollar of “earned” income reduces benefits by only 50 cents. 42 U.S.C. § 1382a(b)(4) (Supp. V 1975). If Congress adopted a similar 50% reduction for “unearned” income, it would reduce the incentive to work since receipt of “unearned” income would then be just as beneficial to the recipient as receipt of “earned” income. Not everyone agrees that SSI should have a work incentive. \textit{See, e.g., Development of SSI}, vol. 2, \textit{supra} note 2, at 639, 642-43 (statement of Community Org. Dir. of Phila. Corp. for Aging).

\textsuperscript{160} The word “tax” denotes the percentage reduction in benefits caused by receipt of income.

\textsuperscript{161} \textit{Development of SSI}, vol. 1, \textit{supra} note 2, at 38-39 (statement of Comm’r Cardwell).

\textsuperscript{162} \textit{Id.} at 10 (statement of Comm’r Cardwell); \textit{Report of SSI Study Group}, \textit{supra} note 65, at 68.

\textsuperscript{163} \textit{Development of SSI}, vol. 1, \textit{supra} note 2, at 38-39 (statement of Comm’r Cardwell); \textit{Future Directions}, pt. 12, \textit{supra} note 2, at 1002-03 (statement of Comm’r Cardwell).
home and appurtenant land in calculating resources as long as their value did not exceed a "reasonable" amount,164 determined to be $25,000 current market value ($35,000 in Alaska and Hawaii).165 This provision had been one of the most troublesome aspects of the program for SSA to administer. It left little room for regional variations in real estate values;166 it ignored equity value, which is a better measure of an individual's resources;167 the determination of assessed value had proven difficult to make;168 HEW had not adjusted the upper dollar limits of the disregard to keep pace with inflation or the general appreciation in land values;169 and finally, this limit presented individuals with the un-


165 20 C.F.R. § 416.1212(a) (1976). SSA deserves credit for solving one of the most inequitable aspects of the valuation of a "home." Initially, the definition of "homes" did not include "farms." Therefore, a person who was eligible in all other respects could live on a "farm" with a total assessed value of $3,800 and still not be eligible for benefits. When the problem was brought to its attention SSA quickly corrected this glaring inequity by regulation. See Future Directions, pt. 7, supra note 2, at 584-86. For a discussion of a similar problem, see id. at 580 ("land poor" in rural areas are ineligible for SSI).

166 Numerous groups had suggested that HEW should have allowed for more variation in the maximum value of homes. See, e.g., Future Directions, pt. 8, supra note 2, at 767 (statement of Nat'l Ret. Tchrs. Ass'n & Am. Ass'n of Ret. Persons); Future Directions, pt. 7, supra note 2, at 615, 621 (statement of staff att'y of Nat'l Sr. Citizens' Law Center). But see Future Directions, pt. 8, supra note 2, at 756 (statement of Comm'r of W. Va. Dep't of Welfare).

167 Congress established the resource test to require people to pursue alternative means of support before falling back on SSI. The presently-used market value method, however, fails to recognize that encumbered goods cannot be liquidated at full value to provide for living expenses. Hence, those who favor the equity approach argue that the only purpose of the current method of valuation is to prevent the appearance of affluence. See, e.g., Future Directions, pt. 8, supra note 2, at 767 (statement of Nat'l Ret. Tchrs. Ass'n & Am. Ass'n of Ret. Persons). Commissioner Cardwell has candidly admitted that this concern motivated SSA to adopt the market value method. See House Hearings on Appropriations for 1977, pt. 6, supra note 18, at 303.


168 See House Hearings on Appropriations for 1975, supra note 13, at 410-11 (great disparity between assessment and market values); Future Directions, pt. 8, supra note 2, at 767 (property values depend upon market conditions and other factors not subject to precise determination).

169 See Development of SSI, vol. 2, supra note 2, at 266 (statement of Nat'l Ret. Tchrs. Ass'n & Am. Ass'n of Ret. Persons). The low level of this disregard has made some recipients ineligible for benefits because inflation revalued their homes above the cut-off. Development of SSI, vol. 1, supra note 2, at 22 (statement of Comm'r Cardwell).
enviable choice of keeping their homes or receiving benefits.  

SSA could have solved these problems by adjusting the upper limits of the disregard to exclude the value of all (or all but the most expensive) homes. It did nothing, however, so Congress recently passed legislation to completely disregard homes. This approach, already adopted for the Food Stamp program, makes SSI substantially easier and less expensive to operate. Moreover, it also makes the program more attractive to the recipient since the new law furthers the purpose behind the original legislation: to promote the independence and dignity of the aged, blind, and disabled. Furthermore, this change does not extend SSI to the undeserving. There is little danger that potential eligibles will convert substantial assets into a home to qualify for benefits since the law's low income and resource limitations do not allow an individual to maintain an expensive house or pay local taxes.

Congress or SSA should also consider changing the law with regard to automobiles, personal effects, and household goods. Presently, the market value of these items is not counted against the resource limitation as long as they are within certain confines set by HEW. Their valuation, of course, is a difficult task that

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170 One group noted that potential eligibles have three options: sell their property to be eligible, refuse benefits they desperately need, or cheat. Future Directions, pt. 8, supra note 2, at 689 (statement of Exec. Dir. of N.Y. State-Wide Sr. Action Council). In order to alleviate all of the problems associated with the former homestead disregard, California has established a general assistance program to aid those who would qualify for SSI but for the ownership of their home. See Cal. Welf. & Inst. Code § 12152(b) (West Supp. 1976); Development of SSI, vol. 2, supra note 2, at 304 (statement of Dir. of L.A. Dep't of Soc. Serv.).

171 Increasing resource limits to simplify SSI has received some, but not much, support from those appearing before Congress. See, e.g., Future Directions, pt. 8, supra note 2, at 787 (letter from Pres. of N.Y. & N.J. Council of Soc. Sec. Dist. Off. Employees to Senator Church).

172 See Act of Oct. 20, 1976, Pub. L. No. 94-569, § 5, 90 Stat. 2700 (amending 42 U.S.C. § 1382(b)). This new law embodies an approach that has gained support from those testifying before Congress (see, e.g., Future Directions, pt. 8, supra note 2, at 767 (statement of Nat'l Ret. Tchrs. Ass'n & Am. Ass'n of Ret. Persons)), as well as others studying the program (see, e.g., Report of SSI Study Group, supra note 65, at 67-68).

173 Food Stamp regulations exclude "[t]he home and lot normal to the community" in determining the resources of a household. 7 C.F.R. § 271.3(c)(4)(iii)(a) (1976).

174 See Future Directions, pt. 8, supra note 2, at 724 (statement of Nat'l Ret. Tchrs. Ass'n & Am. Ass'n of Ret. Persons); Future Directions, pt. 7, supra note 2, at 584 (statement of Coordinator of Knoxville, Tenn. Sr. Aides Program).

175 House Hearings on Appropriations for 1977, pt. 6, supra note 18, at 303 (statement of Comm'r Cardwell). See Development of SSI, vol. 2, supra note 2, at 97, 107 (homestead maximum limit rejects "self-regulating economic process").

176 The limitation for household goods and personal effects considered together is
not only makes SSI more costly to administer, but also increases the
time needed to process applications.\textsuperscript{177}

In this area there are a number of possible solutions. Similar to
the recently-enacted homestead exemption,\textsuperscript{178} Congress could
amend current law to completely exclude the value of these items
from counting against the resource limitation,\textsuperscript{179} or SSA might
raise the level of the individual disregards to accomplish the same
result. Alternatively, it could permit recipients to satisfy this re-
quirement by making oral declarations that they do not have goods
of "unusual or exceptional value."\textsuperscript{180} These solutions would be ad-
vantageous to both government and recipient. Although these re-
sources can be liquidated, most of them have little or no market
value. Those that do, such as cars, are necessary, and therefore will
not be sold.\textsuperscript{181} Total disregard accomplished by any of these
methods would significantly reduce the paperwork that contributes
to operating difficulties. Equally important, it would lessen the ex-
tent of the federal government's intrusion into people's lives, and
thereby remove one of the more distasteful aspects of means-tested
assistance programs.

Some have suggested that Congress allow recipients more dis-
cretion in the allocation of their resources. One proposal, for ex-
ample, would permit those who do not own a car (and who there-
fore cannot use the $1,200 vehicle disregard\textsuperscript{182}) to hold higher

\textsuperscript{177} See note 162 and accompanying text supra. This proposal would also eliminate
other problems with the tabulation of resources, such as unrealistically high appraisals of
property (see Future Directions, pt. 7, supra note 2, at 592), the use of market value instead
of recipients' equity (see id. at 615-16, 621; note 167 supra), and the unfairness of valuating
heirlooms (see Future Directions, pt. 8, supra note 2, at 767). Food Stamp regulations com-
pletely exclude the value of "one licensed vehicle, household goods . . . and personal
effects" from the calculation of the resources of a household. 7 C.F.R. § 271.3(c)(4)(iii)(a)
(1976).

\textsuperscript{178} See note 172 and accompanying text supra.

\textsuperscript{179} See REPORT OF SSI STUDY GROUP, supra note 65, at 68-69.

\textsuperscript{180} See Development of SSI, vol. 2, supra note 2, at 267 (statement of Nat'l Ret. Tchrs.
Ass'n & Am. Ass'n of Ret. Persons). SSI may have in effect adopted oral declarations for
these goods by administrative practice since current law is too difficult to enforce. Even if a
change will have no practical effect, Congress should still amend SSI legislation. No pro-
gram should contain unrealistic statutory requirements. Furthermore, the Social Security
Act, like any other law, should be enforced as written; otherwise, administration of SSI will
become uneven and subject to abuse.

\textsuperscript{181} The value of an automobile will be totally excluded from the calculation of re-
sources if it is either (1) used for employment or medical treatment (20 C.F.R. § 416.1218
(b) (1976)), (2) modified for the transportation of handicapped persons (id.), or (3) essential
for self-support (id. § 416.1224(d)).

\textsuperscript{182} See id. § 416.1218(b) (1976).
amounts of other assets. If enacted, this recommendation would remove some of the unfairness inherent in the present system. A better solution would be to eliminate the individual categories of disregards and establish a single aggregate limit for all noncash property such as automobiles, personal effects, and household goods. By adopting this approach, Congress would both streamline the administration of SSI and allow recipients greater freedom in the disposition of assets. The current scheme encourages individuals to spread their resources among various categories in order to take maximum advantage of the disregards. An aggregate approach, on the other hand, would permit recipients to group all assets in one category and still qualify for the total disregard. It would therefore tend to decrease needless government influence on personal decisions.

D. Verification

Under the declaration method of eligibility determination (or self-declarations), applicants' or recipients' statements, unless "spot checked," are subject to further investigation only if they are "incomplete, unclear, or inconsistent" on their face. Prompted by HEW, states have already experimented with this system for the adult categories with encouraging results. Congress, however,

184 See example cited in note 147 supra.
185 See Development of SSI, vol. 2, supra note 2, at 377 (statement of Am. Jewish Cong.); Development of SSI, vol. 1, supra note 2, at 22 (statement of Comm'r Cardwell); Future Directions, pt. 8, supra note 2, at 697 (exchange between Senator Church and Rep. Griffiths).
186 See 45 C.F.R. § 205.20 (1970) (superseded). These regulations for OAA, AB, APTD, AABD, AFDC, and Medicaid provided:

[Whenever] statements of the applicant or recipient are incomplete, unclear, or inconsistent, or where other circumstances in the particular case indicate to a prudent person that further inquiry should be made, and the individual cannot clarify the situation, the State agency will be required to obtain additional substantiation or verification. In such instances, verification is obtained from the individual or the agency's records or from the public records, or with the individual's knowledge and consent, from another source.

45 C.F.R. § 205.20(a)(3) (1970). Furthermore, the regulations required "spot checking": when the rate of incorrect eligibility decisions in a sample exceeded "a 3 percent tolerance level," HEW required a 100% verification of those factors identified as causing the problems for as long as the difficulties persisted. Id. § 205.20(c)(5)(iii).
specifically rejected its use for SSI.188 Accordingly, SSA initially attempted to verify every aspect of each SSI application independently.189 It soon discovered, however, that the process of corroboration was more complex, time-consuming,190 and expensive191 than it had originally anticipated, and that it caused long processing delays that plagued the program.192

Since results with complete verification have not been promising,193 Congress should reconsider the use of self-declarations194 to speed the initial delivery of benefits and cut administrative costs. The only objection to the declaration system is that it would initially allow overpayments and payments to ineligibles. But the annual redetermination provision, which requires a periodic reexamination of eligibility,195 would correct these difficulties to some extent.196 Furthermore, the institution of the self-declaration

that this system has achieved results similar to those of the traditional investigation method. Future Directions, pt. 13, supra note 2, at 1158 (statement of Regional Rep. of Nat'l Council on the Aging). Although the declaration system has not been used extensively in the welfare field, the concept is similar to the self-assessment approach of the federal income tax.


189 See Future Directions, pt. 12, supra note 2, at 1021 (statement of Comm'r Cardwell).


191 House Hearings on Appropriations for 1976, supra note 18, at 257 (statement of Comm'r Cardwell).

192 Future Directions, pt. 7, supra note 2, at 639 (statement of Nat'l Ass'n of Soc. Workers). See Future Directions, pt. 12, supra note 2, at 1002 (statement of Comm'r Cardwell).

193 In addition to being complex and costly, the traditional verification method has been called "particularly onerous, needless, and wasteful where the aged, blind, and disabled are concerned." Committee for Economic Development, Improving the Public Welfare System 21 (1970). Furthermore, it has been criticized as preventing "a great many people who are truly eligible for benefits from applying for them." Future Directions, pt. 13, supra note 2, at 1158 (statement of Regional Rep. of Nat'l Council on the Aging).

194 The use of the declaration system may not prove successful when benefits are claimed on the basis of disability. Since the statutory definition is strict (see 42 U.S.C. § 1382c(a)(3)(A) (Supp. V 1975), implemented by 20 C.F.R. § 416.901(b)(2) (1976)) and the standard is difficult to apply, there have been numerous disagreements between SSA and claimants in this area. At one time 95% of all requests for reconsideration of new eligibility decisions involved medical determinations of disability. Future Directions, pt. 12, supra note 2, at 1017 (statement of Comm'r Cardwell). Superseded federal regulations for public assistance programs specifically excluded the use of the declaration method for disability determinations. 45 C.F.R. § 205.20(a)(3) (1970). See also 20 C.F.R. § 416.901(c) (1976) (statements of applicant alone are insufficient to establish disability).


196 For additional material on redeterminations, see Claims Manual, pt. 13, supra note
procedure would reduce both the intrusion on privacy that verification causes and the stigma attached by the questioning of one's honesty by the government.

Since SSA is developing the capability to electronically verify the amount of Social Security and other government benefits, it is unlikely that Congress would ever accept the declaration method for all aspects of SSI. But in other areas, this system is a good solution to administrative problems that have affected the program.

If Congress does not adopt self-declarations, SSA could partially remedy the problem by eliminating full investigation of statements. It has already taken some steps in this direction, especially with automobile registrations, unearned income, and age determinations, and it could continue to experiment in this area. Either approach—use of the declaration method or limited

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197 There is little invasion of privacy when SSA checks public documents such as automobile registrations or tax assessors' records. The problem is more serious, however, when the government investigates details of homelife (especially when it must verify the number of people residing in a particular household), or when it contacts people in the applicant's or recipient's community, including relatives, neighbors, friends, or merchants. See Development of SSI, vol. 2, supra note 2, at 659 (statement of Chief of Law Reform of Phila. Community Legal Servs., Inc.).

198 "The social stigma attached to welfare is the unfortunate by-product of the case-method of investigation to determine eligibility . . . ." Ozawa, supra note 49, at 34. See Development of SSI, vol. 2, supra note 2, at 663 (people prefer to suffer without SSI rather than be investigated and stigmatized).

199 See Administration of SSI, vol. 3, supra note 2, at 22, 30, 92, 98.

200 Superseded federal regulations that required experimentation with self-declarations allowed states to continue to verify information on Social Security benefits. See 45 C.F.R. § 205.20(a)(3) (1970). Such rules evidence the government's reluctance to completely abandon independent checking for these types of easily-verified payments.

201 SSA district offices verify automobile registrations only where there is a question as to the value of a vehicle (such cases comprise less than 5% of the total). Hearings on Second Supplemental Appropriation Bill, 1975, supra note 26, at 850 (statement of Comm'r Cardwell). SSA believes that this "shortcut" procedure reduces processing time and does not "materially affect the accuracy of SSI eligibility determinations." Id.

202 Whenever information about unearned income is "not readily available," SSA personnel may check "post-adjudicatively"; i.e., verify after processing an application. SSA, for example, may accept individuals' statements "as to amount, source, and frequency of payments . . . unless there is reason to doubt them." Claims Manual, pt. 12, supra note 2, at § 12357(c) (July 1976). This may be done when "it appears that evidence is not available and the individual has cooperated in trying to obtain it . . . as long as there is no evidence or facts to cast doubt on the . . . allegations." Id. § 12357(c)(1).


204 SSA is moving towards "postverification" of selected items "where experience has
verification—would be better than the current time-consuming and costly procedures.

V

**Fixed Sum Reimbursement and Recovery of Overpayments**

Simplification of two other aspects of SSI would also improve the operation of the program. The present procedures by which SSA determines states' liability to the federal government and the method of recovery of overpayments are unnecessarily cumbersome and counterproductive. Simple changes, however, may alleviate these difficulties.

A. Reimbursement

One impediment to continued federal administration of supplementary benefits has been the present formula for computing the reimbursement of HEW by the states. Under the current system, states pay for the exact amount of benefits disbursed unless an exception, such as the hold harmless rule,\(^2\) applies. Hence, HEW and the states settle their accounts after the review of payments made to individuals.\(^2\) Because of the many errors made by SSA during the first three years of the program's operation in optional and mandatory supplements, the determination of state and federal financial liability has become a long and drawn out task.\(^2\) This system has led to a continuing dispute between SSA and almost every state utilizing federal administration,\(^2\) not only as to the amount of money at stake, but also as to the method of determining liability.\(^2\) Understandably, this has been one of the

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205 See note 22 supra.

206 States choosing federal administration of their optional and/or mandatory supplements sign contracts with the Secretary of HEW which, among other things, provide for the manner of reimbursement and establish procedures for the determination and settlement of federal payment errors. See 20 C.F.R. §§ 416.2001-2090 (1976), implementing 42 U.S.C. § 1382e (Supp. V 1975); REPORT OF SSI STUDY GROUP, supra note 65, at 105-30.

207 See note 20 and accompanying text supra.

208 See note 23 and accompanying text supra.

209 Three methods have been used to fix financial liability. The first is the case-by-case approach, which was incorporated into contracts for calendar year 1974. States oppose this method since they must meet the burden of identifying those cases where they are entirely without fault. SSA agreed to scrap this system for the January to June 1974 period in favor of the second approach—HEW audits. Under this method the HEW Audit Agency, with
factors in the unfortunate trend away from federal administration. Review of individual cases, however, is not the only method by which the states and the federal government could determine their respective financial liabilities. Congress could scrap the present system and give the Secretary of HEW authority to contract with the states on a different basis. For example, agreements could provide for reimbursement in a fixed sum determined in advance by federal-state negotiations. Such amounts could be based upon the expected average payments to each class of SSI recipients and the anticipated number of eligible recipients in each class, with an allowance for a certain percentage of errors. In the case of optional supplements, there could be a provision to reduce the negotiated sum for any expected hold harmless payments. Finally, as an added inducement to accept federal administration, there could be an adjustment provision to reduce a state's liability in case the actual number of recipients or size of average payments fell below certain negotiated levels.

This type of fixed-sum reimbursement would accomplish two objectives. First, it would remove the continuing source of friction between SSA and the states. Once the parties signed an agreement, state assistance, evaluates the accuracy of payments and the accounting of liability. States prefer audits to the third method, SSA's Quality Assurance System. This program, now contained in administration contracts, provides for review of a statistically-selected monthly sample of cases by interviews with recipients and others. Although states have the right to audit subsamples of their own choice, they dislike this method, partially because of known inaccuracies and lack of opportunity to help develop the system. The SSI Study Group, however, recommends the permanent adoption of a revised Quality Assurance System audited and validated by HEW. See Report of SSI Study Group, supra note 65, at 105-30; House Hearings on Appropriations for 1977, pt. 6, supra note 18, at 292-94 (letter from Comm'r Cardwell to Rep. Ullman); Administration of SSI, vol. 3, supra note 2, at 41-43 (summary of HEW audit reports on SSI). For additional information on the Quality Assurance System, see Claims Manual, pt. 13, supra note 2, at §§ 13900-13970 (Sept. 1976).

State contracts for administration of supplements, after disregarding mistakes of less than $5, make SSA fiscally liable for errors in excess of 5% for payments and 3% for eligibility decisions. These are the same quality control measures that HEW seeks to impose on the states for AFDC. Report of SSI Study Group, supra note 65, at 109-10. See also Administration of SSI, vol. 3, supra note 2, at 77 (letter from Comm'r Cardwell to Rep. Vanik).

Erroneous payments are the result of complex statutory and administrative requirements; therefore, it is logical that the flat-grant Social Security program has an extremely low error rate of .2%. See note 87 supra. As Congress and HEW simplify optional and mandatory supplements, states should expect improvement in payment accuracy and negotiate decreases in contractual error tolerances. See note 18 supra.

A federal district court has found that the AFDC tolerance levels of 3% and 5% (see 45 C.F.R. § 205.41 (1975)) were arbitrarily established, and therefore invalid as inconsistent with the Social Security Act. See Maryland v. Mathews, 415 F. Supp. 1206 (D.D.C. 1976).
states would not have to worry about paying for SSA's errors or checking the accuracy of review procedures. Second, this arrangement would place a greater incentive on SSA to make more accurate payments because the federal government would be responsible for errors above the agreed allowance. Negotiated reimbursement agreements, therefore, could solve some of the problems that have prompted states to administer their own supplementary benefits.

B. Recovery of Overpayments

The large number of erroneous payments made during the first three years of SSI's operation makes the issue of recoupment a serious matter. SSA has already collected millions of dollars in mistaken payments, and, bowing to strong congressional pressure, it has announced its intention to continue these efforts.

The law requires SSA to waive the recovery of erroneous payments if the recipient was "without fault," and if such efforts "would defeat the purposes of [SSI legislation], or be against equity or good conscience, or (because of the small amount involved) impede efficient or effective administration ...." Under this standard, it has been estimated that eighty to ninety-five percent of the overpayments are waivable. It would be inefficient, therefore, to re-

211 In making a determination whether to seek repayment, SSA first examines the size of the mistake since it does not attempt to recover any amount under $45. If the error is above this limit, and if the recipient is responsible for the mistake, it will seek recoupment. In these cases, the only question is the manner of recovery. If the recipient is without fault, however, the government looks at the expense of collection and the capability to repay (although most are found able to do so since the government is willing to take installments and tailor repayment). The burden of establishing an overpayment has been gradually shifting to SSA. Recipients have a right to notice and a hearing before making repayment. See 20 C.F.R. §§ 416.535, .537-.538, .550-.570, .2045 (1976); CLAIMS MANUAL, pt. 5, supra note 2, at §§ 5595-5599.5 (Nov. 1976); Administration of SSI, vol. 1, supra note 2, at 26-27 (statement of Comm'r Cardwell); Future Directions, pt. 12, supra note 2, at 1014 (statement of Comm'r Cardwell); Miller, Supplemental Security Income Overpayments, 10 CLEARINGHOUSE REV. 193 (1976).

212 SSA has been told that it should make the recovery of overpayments its "first priority." Administration of SSI, vol. 1, supra note 2, at 35 (statement of Rep. Gibbons). Accordingly, Commissioner Cardwell has publicly stated that SSA will recover "wherever possible." Washington Star, Aug. 16, 1975, at A-5, cols. 3-4 (Sat. morning).


214 See Washington Star, Sept. 7, 1975, at E-9, col. 2 (Sunday ed.). Although a Bureau of SSI study estimates that approximately 22% of the overpayments can be recovered (Washington Star, Aug. 20, 1975, at A-6, col. 1 (home final)), this figure represents a maximum of what can be returned (see Administration of SSI, vol. 3, supra note 2, at 19 (statement of Comm'r Cardwell)).
view each case to find those few instances where money could be returned. Furthermore, as Social Security Commissioner Cardwell lamented, "we are living in the age of 'due process'. . . ." With these added constitutional requirements, SSA may spend more in attempting to recover excess payments than it can collect. In short, further efforts to rectify past payment errors will burden already overworked Social Security field employees and further decrease their capacity to handle existing problems. Moreover, recoupment has already caused unnecessary hardship on recipients. Since limitations on income and resources are low, the only practical means to recover overpayments is to offset amounts from future checks. But recoupment of SSI benefits, which were designed only as a floor, could reduce a recipient's income below the minimum necessary to survive. Despite the large amount still outstanding, Congress should authorize a blan-

215 House Hearings on Appropriations for 1976, supra note 18, at 259.
218 The case-by-case review of overpayments has been cited as one of the causes of a serious decline in morale of SSA field workers. See, e.g., Washington Star, Sept. 7, 1975, at E-9, col. 2 (Sunday ed.).
219 See Administration of SSI, vol. 3, supra note 2, at 36; Administration of SSI, vol. 2, supra note 2, at 38 ($2,000 bill for SSI overpayments made recipient depressed causing recommitment to state mental hospital); Washington Star, Aug. 30, 1975, at A-5, col. 3 (Sat. morning) (some who never applied for SSI received bills for overpayments); Washington Star, Aug. 17, 1975, at A-1, col. 5 (Sunday ed.) ($1,460 in SSI checks deposited in ineligible's bank pending unsuccessful attempts to repay almost caused loss of Medicaid).
221 In some cases SSI benefit levels are below the poverty level (see Future Directions, pt. 8, supra note 2, at 670), so recoupment often leaves recipients destitute. Not surprisingly, many have spent overpayments just to meet essentials. See Administration of SSI, vol. 2, supra note 2, at 38. This problem has prompted Senator Pell to propose legislation that would allow SSA to withhold no more than 25% of each monthly check for repayments. See S. 985, supra note 30, at § 401; Future Directions, pt. 12, supra note 2, at 978, 1058 (statement of Senator Pell). Presently, there is no limit on recoupment deductions, but administrative practice is to subtract small amounts over a long period of time. See note 211 supra.
ket waiver of erroneous payments. SSA could then devote its resources toward preventing the problems that cause overpayments in the first place.

VI

SSI as a Model for “Federalization”

The federal government’s assumption of responsibility for public assistance is an idea that has appealed to a broad spectrum of opinion. It has even been considered the ultimate answer to what has been repeatedly characterized as the “welfare mess.” The recent experience with SSI, however, suggests that improved administrative methods alone cannot eliminate the traditional problems of slow, erroneous, and inefficient delivery of benefits—simplification of statutory provisions is also necessary.

The transition from the adult categorical assistance programs to SSI illustrates this point. As previously noted, Congress originally designed SSI as an easily-administered flat-grant system. It retreated from this concept, however, because some categorical aid recipients would have received lower benefits under the new program. To remedy this situation, new legislation implanted all the complicated aspects of the old assistance plans onto SSI through the creation of mandatory supplements thereby preserving all the individual calculations required by superseded law. This attempt to ensure a steady, continuing level of benefits has caused many of the initial difficulties with SSI.

There were strikingly similar difficulties in the “cashing out” of the Food Stamp program. The 1972 Social Security Amendments initially made SSI recipients ineligible for Food Stamps, although it encouraged states to “cash out”—i.e., include the “bonus value” of these coupons in optional supplementary pay-


225 Under the Food Stamp program, certified households pay only a fraction of the
ments at federal expense. This scheme provided a simplified plan for combining the adult categorical and Food Stamp programs. It worked to the disadvantage of some, however, since it conclusively presumed that the value of the coupons to each recipient was ten dollars per month (twenty dollars per couple), even though it may have actually been more.

Congress changed this simple statutory scheme before SSI went into effect by passing Public Law 93-86. This amendment provided that recipients could continue to receive Food Stamps for every month in which they received less in both federal and state SSI payments than they would have received in December 1973 under the superseded programs plus the “bonus value” of the coupons. Thus, the law provided that states would have to determine Food Stamp eligibility for thousands of recipients on a case-by-case basis every month. This solution, like the mandatory supplement provisions, ensured that no one would be hurt by the change in programs because it required that entitlements be continually calculated in accordance with superseded law. Congress has delayed the implementation of Public Law 93-86 four times and it probably will never go into effect because the states have complained that it is virtually impossible to administer. Congress has delayed the implementation of Public Law 93-86 four times and it probably will never go into effect because the states have complained that it is virtually impossible to administer.

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229 Id. § 3(b), 87 Stat. 246 (codified in 7 U.S.C. § 2012(e) (Supp. V 1975)).


231 The principle [behind Public Law 93-86] was an entirely reasonable one [to ensure that no recipient suffered a decrease in benefits due to the transition to SSI] but the complexities of administration caused the States to conclude that it was unworkable. They were faced with making determinations of how much in-
gress, however, did not postpone the implementation of mandatory supplements, even though they presented almost identical problems of administration.

These two examples suggest that if Congress ever "federalizes" AFDC, it should not attempt to preserve the old method of calculating benefits. In the two cases in which it has preserved superseded provisions, Congress has created unworkable laws. The experience with SSI and Food Stamps demonstrates that the retention of periodic case-by-case determinations is impractical and even counterproductive. If Congress wants to maintain recipients' benefits in the transition to a new program, it should adopt a simplified method232 and discard the old formulas and provisions.

CONCLUSION

Congress designed SSI to be a simple flat-grant program to provide an income floor for aged, blind, and disabled Americans.233 As such, it was not meant to take care of special needs, preserve former benefits by incorporating old law, or influence personal decisions of recipients. SSI's initial problems, some of which still plague the program, have been caused in large measure by attempts to accomplish these inconsistent goals.

If SSI is ever to fulfill initial expectations, Congress will have to simplify those aspects of the program that make it less amenable to central administration and machine processing, and eliminate the parts that are incompatible with the concept of a guaranteed income plan. Furthermore, it must provide adequate financial incentives to the states for special needs relief which the federal applicants would have had under the rules of State welfare programs which were no longer operative.


232 See Part II supra.

233 There is a trend towards simplification of public assistance programs here as well as abroad. In this country, two events highlight this development. First, the enactment of SSI evidences the concern over the complexity of rules governing income maintenance plans. Second, more than half the states, including those with the largest number of recipients, have adopted the flat-grant method to determine the size of AFDC benefits. See Dep't of Health, Educ., and Welfare, Press Release HEW-F21 (June 12, 1975). In Europe, Belgium, Switzerland, and France are either studying or have undertaken attempts to simplify programs providing assistance to the needy aged. M. Horlick, Supplemental Security Income for the Aged: A Comparison of Five Countries 71-77 (1973).
government is not well-equipped to render. Only with these changes will SSI adequately solve the persistent problems of welfare.

Clearly SSI will come under intensive public scrutiny in the coming months. The new Administration has promised not only a fresh emphasis on management of public assistance programs, but also a welfare reform package this year. A review of SSI, however, cannot come too soon. The severe hardships that the program's current requirements impose on both recipient and taxpayer makes reform one of the most urgent matters before the new Congress and administration.

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