1974 Developments in Welfare Law the Supplemental Security Income Program

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On January 1, 1974, the Supplemental Security Income (SSI) program replaced the former federal-state categorical programs of aid to the aged, blind, and permanently and totally disabled in the fifty states and the District of Columbia for the purpose of ensuring a minimum level of income for all eligible individuals. Conceptually, the operational structure of the program is relatively straightforward. The federal component of SSI is administered by the Social Security Administration and financed through general funds from the United States Treasury. Uniform nationwide eligibility standards and a federal income "floor" are designed to

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2 The former state-administered grant-in-aid programs of Old Age Assistance, Aid to the Blind, and Aid to the Permanently and Totally Disabled are to continue in Guam, Puerto Rico, and the Virgin Islands. 42 U.S.C. § 301 nt. (Supp. III, 1973).
3 42 U.S.C. §§ 1381-83 (Supp. III, 1973); 39 Fed. Reg. 28,626 (1974). HEW regulations, in addition to codifying the purpose of SSI, espouse six basic principles that are to underlie the program:
   (a) **Objective tests.** The law provides that payments are to be made to aged, blind, and disabled people who have income and resources below specified amounts. This provides objective measurable standards for determining each person's benefits.
   (b) **Legal right to payments.** A person's rights to supplemental security income payments . . . [is] clearly defined in the law. The area of administrative discretion is thus limited. . . . [But see notes 21-92 and accompanying text infra.]
   (c) **Protection of personal dignity.** Under the Federal program, payments are made under conditions that are as protective of people's dignity as possible. No restrictions, implied or otherwise, are placed on how recipients spend the Federal payments.
   (d) **Nationwide uniformity of standards.** The eligibility requirements and the Federal minimum income level are identical throughout the 50 States and the District of Columbia. This provides assurance of a minimum income base on which States may build supplementary payments.
   (e) **Incentives to work and opportunities for rehabilitation.** Payment amounts are not reduced dollar-for-dollar for work income but some of an applicant's income is counted toward the eligibility limit. Thus, recipients are encouraged to work if they can. . . .
7 Id. As of July 1, 1974, the federal income "floor" for an eligible individual was $146 per month and $219 per month for an eligible couple. Id. § 1382(b). This floor will begin to rise as the automatic cost-of-living increases embodied in Public Law 93-368 (Act of Aug. 7, 1974, Pub. L. No. 93-368, § 6(b), 88 Stat. 422) take effect. See notes 132-36 and accompanying text infra. For a general discussion of the eligibility criteria and benefit levels under the SSI program, see 59 CORNELL L. REV., supra note 4, at 881-87.
provide more equitable treatment of aged, blind, and disabled persons with limited income and resources.\(^8\) In many cases, payments supplement the basic Social Security benefits.\(^9\) In addition, states may supplement this payment for certain categories of beneficiaries\(^10\) and must supplement it for those persons who would otherwise be adversely affected by the transition.\(^11\) Federal administration of a state's supplemental program is made available in such a manner as to provide a strong economic incentive for states to choose this option\(^12\) and, in fact, during 1974 a majority of states have done so.\(^13\)


\(^9\) For example, early data on aged SSI recipients suggests that of the 3.8 million aged persons (65 years of age or over) who are estimated to be eligible for an SSI payment, 2.7 million, or about 71%, are Social Security beneficiaries. Staples, Supplemental Security Income: The Aged Eligible, 36 Soc. Sec. Bull., July 1973, at 32-34. With this large SSI-Social Security overlap, the Social Security Administration was naturally chosen to administer the new program. For other advantages associated with Social Security administration of the program, see H.R. Rep. No. 231, 92d Cong., 1st Sess. 157-58 (1971) [hereinafter cited as House Report]; Hearings on the Social Security Amendments of 1971 Before the Senate Comm. on Finance, 92d Cong., 1st Sess., at 120-21 (1971) (testimony of E. Richardson, Secretary, HEW).

\(^10\) Even though most persons eligible for SSI are Social Security beneficiaries, non-beneficiaries depend more heavily on SSI for their basic income protection. For example, while Social Security beneficiaries who receive a federal SSI payment are estimated to represent 71% of eligible persons, they receive only 49% of the SSI outlays. Non-beneficiaries, on the other hand, representing only 29% of eligible persons, receive 51% of the outlays. See Staples, supra at 34. One would therefore expect that any administrative delays in reaching these nonbeneficiaries during a transition period could have disastrous consequences. For the actual results see notes 20-52 and accompanying text infra.


\(^12\) [T]he state may enter into an agreement with HEW whereby the Social Security Administration will administer the state-financed supplementary program. The state receives a distinct financial benefit from opting for the federally administered program because all administrative costs are borne by the federal government, leaving the state with only the expense of the actual benefits paid. A state which entered into such an agreement would also benefit from the 1972 Act's "hold harmless" clause which provides that state supplementation payments "shall not exceed the non-Federal share of expenditures as aid or assistance for quarters in the calendar year 1972."

\(^13\) Corn. L. Rev., supra note 4, at 889. It should be noted, however, that there is a statutory provision which prevents a state from giving too generous optional benefits while
Because SSI represents the first major step taken by the federal government in the area of welfare reform, its early development will have significance far beyond the confines of its stated purpose. For example, future efforts to overhaul the family assistance programs are likely to follow many of the same administrative principles embodied in SSI. One would therefore

the federal government is picking up the bill. See 42 U.S.C. § 1382e nt. (Supp. III, 1973). Only to the extent that a state's payments do not, on the average, exceed the state's "adjusted payment level," will it be able to take advantage of the "hold harmless" provisions of the Act. Generally, a state's adjusted payment level is the average of the money payments that individuals with no other income received in January 1972, plus the bonus value of food stamps. Id. This concept of an "adjusted payment level" is discussed more fully in connection with the "cashing out" of food stamps under the SSI program. See notes 97-98 and accompanying text infra. For an excellent and concise analysis of the relationship between "hold harmless" and a state's "adjusted payment level," see McInnis v. Weinberger, Civil No. 74-1481-T (D. Mass. Jan. 10, 1975).
hope that even though the adult programs were more susceptible to rapid and efficient reform than the family programs, the experience gained under SSI could be used to eliminate some of the many obstacles that stand in the way of more comprehensive welfare reform.

The purpose of this Note is to analyze the early judicial, legislative, and regulatory developments that have taken place in the SSI field during 1974 and to evaluate their possible implications for future welfare proposals. The year’s judicial and legislative activity has generally centered around the inevitable problems caused by the transition to a new program; Congress’s aborted attempt to abolish the Food Stamp program for SSI recipients; the “grandfather” provisions of the act; and the monumental ad-

Administration’s proposals for a Family Assistance Plan and an Opportunities for Families Program that would have made far-reaching changes in the existing AFDC-welfare structure. This reform measure was killed in the House-Senate Conference Committee largely because the House would not agree to provisions added by the Senate, nor would the Senate agree to the original House proposals. See Center on Social Welfare Policy and Law, 2 Welfare L. News No. 3 (Nov. 1972). It is interesting to note, however, that the basic administrative structure of the AFDC reform measures mirrored the structure of the SSI program that was finally adopted. See generally House Report 25-35. Only in the controversial area of work requirements and incentives did the two programs substantially differ, which is quite understandable in light of the differing populations encompassed within the two programs.

Assuming, therefore, that some type of future compromise can be designed to cope with the problem of work incentives, one could reasonably expect to see a program similar in administrative structure to SSI, or in the alternative, an enlargement of the population eligible under modified SSI guidelines. President (then Representative) Ford’s views on the future course of welfare reform were succinctly expressed when, during the debate over H.R. 1, he remarked:

Mr. Speaker, the only practical way we have to replace the present welfare system is to cast our votes today for H.R. 1 with its welfare reform title intact. There are no realistic alternatives that can or will be enacted by this Congress, and the only other course before us is to do nothing about the present welfare mess, which will be very hard for any of us to justify.

The bill we are now considering calls for a drastic realignment of Federal-State relationships; a realignment designed to end the untenable situation which sees 54 different welfare systems in operation, each with its own eligibility standards, benefit levels, and administrative procedures.

H.R. 1 provides for a basic Federal payment together with a guarantee that States which choose to supplement this payment will not have to exceed their expenditures for calendar year 1971. The 54 systems thus would be replaced by one, with national eligibility standards, a basic Federal payment, and Federal administration—a tangible illustration of the new federalism which holds that each level of government should discharge those functions it does best.

I believe that reasonable people will agree that we have not lacked for discussion on the issue of the kind of welfare system that will best meet the needs of the 1970’s. Welfare reform—meaningful reform—is within our grasp.

18 See note 11 and accompanying text supra.
ministrative delays that occurred in the initial payment of benefit checks during the first few months of 1974—despite a lead-in time period of over a year. Regulatory activity was far more comprehensive as the Social Security Administration of the Department of Health, Education and Welfare (HEW) began issuing final regulations governing the critical day-to-day operations of the program. Many of the regulations are particularly important because they have a tendency to restrict the availability and amount of benefits, often in violation of the spirit or statutory language of the Social Security Act.\(^\text{19}\) Selected regulations will be analyzed in terms of available options that were open to the Administration and the consequences of choosing one alternative over another.

1. Judicial Activity

A. Administration

Although the early trickle of cases reported in 1974 produced no landmarks in the SSI area, many of the issues presented were symptomatic of the inherent problems caused by a changeover to a federally administered program. In no case was this more apparent than in Fuller v. Nassau County Dep't of Social Services.\(^\text{20}\) In Fuller, a class action seeking a declaratory judgment was brought in state court to determine what state and local responsibility existed after January 1, 1974, for the care of persons who had formerly been receiving adult categorical assistance and were now entitled to federal SSI benefits, but whose grants in the early months of 1974 were either terminated or reduced far below their prior entitlement.\(^\text{21}\) The background of the situation was aptly described by Judge Harnett:

The mess arose in January, 1974 with a new changeover in the Aid to the Aged, Blind, and Disabled program (AABD). Where previously the States made the assistance grants in the first instance, now the Federal Government has assumed that responsibility. In the course of what is undeniably a massive administrative task, apparently large numbers of recipients failed to receive any January or February checks, or in many other instances, received sums significantly below their true entitlement. Whether this results from machine or programming inadequacy, improper input data, lack of intergovernmental cooperation, blown fuses, or files dropped between cabinets, the

\(^{19}\) See notes 137-66 and accompanying text infra.

\(^{20}\) 77 Misc. 2d 677, 352 N.Y.S.2d 978 (Sup. Ct. 1974).

\(^{21}\) Id. at 677-80, 352 N.Y.S.2d at 981-83.
drastic facts remain that either no payment or underpayments have resulted on a large scale. These people need, want, and ask for their entitlement from someplace.\(^2\)

No one disputed the fact that the petitioners were entitled to their benefits; the only controversy concerned "who pays and when."\(^2\) Yet those seeking payment were left in a particularly precarious position.\(^2\) Although the federal government did not appear in the action, the court commented that its position was "purely one of patience—someone else's patience to be sure—the matter [to be] corrected in due time."\(^2\) The state and county, on the other hand, were worried about federal preemption and the possibility of double payments with no corresponding reimbursement.\(^2\) The court was neither moved nor persuaded by these arguments and candidly admitted that although "the case [offered] a veritable panoply of technical points through which the court and counsel have picked their way . . . . [s]imple humanity and common sense"\(^2\) required but one result: the recognition of a residual New York local duty of care for needy SSI recipients for whom all other provisions had failed.\(^2\)

Finding no language in either the federal or state SSI-related legislation that required or suggested a total preemption of state and local responsibility by the federal government, the court turned to applicable state law. There it found broad constitutional\(^2\) and statutory\(^3\) language imposing a "duty upon localities to

\(^{22}\) Id. at 678, 352 N.Y.S.2d at 981 (emphasis in original).
\(^{23}\) Id. at 677, 352 N.Y.S.2d at 981 (emphasis in original).
\(^{24}\) As the court explained:

Our poverty stricken aged, blind, and disabled, asking for their next welfare check as their financial breath, hear in horror each of the giant bureaucracies of the county, State, and Nation blithely reply, "who, me?" Unfortunately, this current version of a great American game falls with barsh impact on a most vulnerable segment of our society. In the language of legal precincts, it is Exhibit A in the mindless absorption of human beings into computerized oblivion.

\(^{25}\) Id. at 678, 352 N.Y.S.2d at 981.
\(^{26}\) Retroactive federal reimbursement for interim state payments to SSI beneficiaries was subsequently provided. Act of Aug. 7, 1974, Pub. L. No. 93-369, § 5, 88 Stat. 420. See notes 131, 133 and accompanying text infra.
\(^{27}\) 77 Misc. 2d at 679, 352 N.Y.S.2d at 983.
\(^{28}\) Id. at 683-84, 352 N.Y.S.2d at 986-87.

\(^{29}\) The aid, care and support of the needy are public concerns and shall be provided by the state and by such of its subdivisions, and in such manner and by such means, as the legislature may from time to time determine.

N.Y. CONST. art. XVII, § 1.

\(^{30}\) [E]ach public welfare district shall be responsible for the assistance and care of any person who resides or is found in its territory and who is in need of public assistance and care which he is unable to provide for himself.

meet [the] urgent and basic needs of their indigent residents," and accordingly concluded that although provision was made in 1973 State legislation for the SSI takeover of recurrent needs of aged, blind, and disabled New Yorkers previously met by State disbursement, the basic duty of care . . . remained in the State and local agencies . . . . The Federal responsibility is "primary", but it is not exclusive.

New York had specifically made provision for the former adult categorical assistance recipients whose needs were not met by the SSI program, and the court suggested that this residual channel of aid, when all others had failed, fulfilled the state's obligation under its constitutional and statutory mandate.

Under Fuller, the state's concern that the emergency payments would not elicit federal reimbursement could not "be used as a basis for denying aid so urgently needed." In fact, the court ordered the entire controversy between the competing bureaucracies over ultimate financial burden and appropriate formulas for reimbursement to proceed in another forum. The alternatives suggested by the court for protecting New York's financial interests, if future payments became necessary, included: recovery of duplicate payments, assignment of forthcoming federal assistance, and more efficient interagency communication with the federal government. Significantly, Fuller has now been followed by several:

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31 77 Misc. 2d at 684, 352 N.Y.S.2d at 987 (emphasis added).
32 Id.
34 The department may promulgate regulations . . . to provide for the needs of aged, blind or disabled persons, whose needs are not met by federal supplemental security income and/or additional state payments.
35 Id.
36 The state and local duty to provide emergency care may not be automatically invoked if an isolated SSI check simply does not arrive at the first of the month. It is only after a reasonable effort has been made at the Social Security Administration office to secure due payment, and the effort has proved unsuccessful, that the residual responsibility arises. Here, a widespread administrative breakdown is conceded in conspicuous being.
37 Id.
38 Id.

Significantly, Fuller has now been followed by several.

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77 Misc. 2d at 686, 352 N.Y.S.2d at 989. See also notes 21-22 and accompanying text supra.
35 77 Misc. 2d at 684-85, 352 N.Y.S.2d at 987.
36 Id. at 686-87, 352 N.Y.S.2d at 989.
37 Id.
38 New York has a number of possible alternatives, other than blanket denial of its duty of care, that will protect its legitimate fiscal concerns. If the State is concerned about duplicate payment, it can protect itself under existing provision allowing legal procedure against social service recipients where assets (in this case, one of double payments) are located. Indeed, it may condition its payment on assignment by the recipient of his claim to any duplicate benefit from the Federal Government. Immediate interagency communications may be established so that a due-but-late Federal check can be intercepted and stopped after a State grant has been issued (with later negotiation between the government bodies as to which one is to bear the ultimate burden for such monies expended).
eral New York cases dealing with the local government’s responsibility to provide emergency public assistance to those whose needs have not been met by SSI.\footnote{39 See Elms v. LaVine, 79 Misc. 2d 1, 358 N.Y.S.2d 590 (Sup. Ct. 1974); Szanto v. Dumpson, 77 Misc. 2d 392, 353 N.Y.S.2d 683 (Sup. Ct. 1974); Gonzalez v. Parry, 2 CCH Pov. L. REP. \textsection 19,331 (Sup. Ct. N.Y. May 31, 1974); Artrip v. Weinberg, 2 CCH Pov. L. REP. \textsection 19,200 (Sup. Ct. N.Y. April 10, 1974). \textit{See also} Dennis v. Norton, 2 CCH Pov. L. REP. \textsection 20,588 (D. Conn. Feb. 10, 1975); Dias v. Chang, 2 CCH Pov. L. REP. \textsection 20,545 (Cir. Ct. Hawaii Jan. 31, 1975). \textit{But see} Arnold v. Dumpson, 78 Misc. 2d 703, 356 N.Y.S.2d 784 (Sup. Ct. 1974). In \textit{Arnold}, the petitioner had received SSI checks for the first three months in 1974 before the checks were abruptly terminated due to a computer mix-up. She was instructed by the Social Security Administration to apply to the local Department of Social Services for interim emergency benefits and sought the help of the court in obtaining such assistance. The court directed the City Commissioner of social services to provide a portion of the requested assistance pending final trial on the merits, but also required the petitioner to apply to the federal courts for mandamus relief against the Social Security Administration. The court believed that the United States District Court would have jurisdiction in such a matter under 28 U.S.C. \textsection 1361 (1970), and that “such a procedure, if available, would eliminate the whole complicated set of consequences of an order by this court and would simply and directly order the agency primarily responsible to perform its clear duty.” 78 Misc. 2d at 706, 356 N.Y.S.2d at 787.\footnote{40 77 Misc. 2d 392, 353 N.Y.S.2d 683 (Sup. Ct. 1974).}\footnote{41 \textit{Id.} at 393, 353 N.Y.S.2d at 684-85.}}

\textit{Szanto v. Dumpson}\footnote{42 The Secretary . . . may make to any individual initially applying for benefits under this subchapter who is presumptively eligible for such benefits and who is faced with financial emergency a cash advance against such benefits in an amount not exceeding $100.\footnote{43 18 NYCRR 397 (1974).}} presented the New York courts with a situation closely analogous to that in \textit{Fuller}. Petitioner Ellen Szanto sought a judgment ordering the commissioner of the city department of social services to make public assistance payments available to her and members of a class consisting of persons in need of assistance during the pendency of their applications for supplemental security income.\footnote{44} However, in contrast to \textit{Fuller}, the defendant in \textit{Szanto} denied any responsibility by specifically referring to “emergency” assistance available to the petitioner under the federal SSI program\footnote{45 42 U.S.C. \textsection 1383(a)(4) (Supp. 111, 1973).} and the state’s Emergency Assistance for Adults program.\footnote{46 In fact, the petitioner had filed for and received the maximum federal emergency stipend of $100; however, because of the inordinate length of time needed to process her application (four to six weeks), she was presently without funds and in fear of being evicted from her home for nonpayment of rent. 77 Misc. 2d at 394, 353 N.Y.S.2d at 685.} The court noted that these one-time grants to alleviate hardship failed to meet the petitioner’s continuing need for interim assistance and, relying heavily upon the rationale of

\footnote{47 See \textit{Elms} v. LaVine, 79 Misc. 2d 1, 358 N.Y.S.2d 590 (Sup. Ct. 1974); \textit{Szanto} v. \textit{Dumpson}, 77 Misc. 2d 392, 353 N.Y.S.2d 683 (Sup. Ct. 1974); \textit{Gonzalez} v. \textit{Parry}, 2 CCH Pov. L. REP. \textsection 19,331 (Sup. Ct. N.Y. May 31, 1974); \textit{Artrip} v. \textit{Weinberg}, 2 CCH Pov. L. REP. \textsection 19,200 (Sup. Ct. N.Y. April 10, 1974). \textit{See also} \textit{Dennis} v. \textit{Norton}, 2 CCH Pov. L. REP. \textsection 20,588 (D. Conn. Feb. 10, 1975); \textit{Dias} v. \textit{Chang}, 2 CCH Pov. L. REP. \textsection 20,545 (Cir. Ct. Hawaii Jan. 31, 1975). \textit{But see} \textit{Arnold} v. \textit{Dumpson}, 78 Misc. 2d 703, 356 N.Y.S.2d 784 (Sup. Ct. 1974). In \textit{Arnold}, the petitioner had received SSI checks for the first three months in 1974 before the checks were abruptly terminated due to a computer mix-up. She was instructed by the Social Security Administration to apply to the local Department of Social Services for interim emergency benefits and sought the help of the court in obtaining such assistance. The court directed the City Commissioner of social services to provide a portion of the requested assistance pending final trial on the merits, but also required the petitioner to apply to the federal courts for mandamus relief against the Social Security Administration. The court believed that the United States District Court would have jurisdiction in such a matter under 28 U.S.C. \textsection 1361 (1970), and that “such a procedure, if available, would eliminate the whole complicated set of consequences of an order by this court and would simply and directly order the agency primarily responsible to perform its clear duty.” 78 Misc. 2d at 706, 356 N.Y.S.2d at 787.}
Fuller, granted the relief requested.\textsuperscript{44} While noting that Fuller and subsequent decisions\textsuperscript{45} were limited to persons who had previously been receiving adult categorical assistance, the court saw no rational basis for distinguishing between the two situations.\textsuperscript{46}

A recent class action filed in the Eastern District of Pennsylvania sought to attack the problem presented in Szanto more directly. Realizing the inadequacy of federal emergency assistance during the pendency of an application, and the amount of time presently taken to process an initial determination claim, the plaintiffs in Huntzman \textit{v.} Weinberger\textsuperscript{47} challenged, on fifth amendment due process grounds, the administrative procedures under which applications for SSI are processed. Because the applicable HEW regulations provide no time limitations within which determinations as to eligibility must be made,\textsuperscript{48} plaintiffs argued that the program results in a denial of reasonably prompt adjudication of their rights to such benefits.\textsuperscript{49}

The preceding cases illustrate two continuing problem areas in the federal SSI administrative structure which must be recognized in any future attempt to federalize the welfare system. First, administrative delays are to be expected during the transitional stages of any new program and it is therefore imperative that local responsibility for interim emergency assistance be clearly defined and encouraged with federal reimbursement specifically guaranteed.\textsuperscript{50} Second, if state responsibility is not desired, the federal

\textsuperscript{44} 77 Misc. 2d at 396, 355 N.Y.S.2d at 687.

\textsuperscript{45} See note 39 and accompanying text supra.

\textsuperscript{46} 77 Misc. 2d at 396, 353 N.Y.S.2d at 687.


\textsuperscript{49} The plaintiffs in Huntzman sought a declaratory judgment that the Secretary of HEW was violating their constitutional rights by failing to provide: (1) prompt and timely determinations concerning initial entitlement; (2) an opportunity to be heard for applicants who were victims of unreasonable delays; and (3) an adequate remedy for those who sought to appeal such delays. The requested relief included, \textit{inter alia}: (1) an order directing the Social Security Administration to make initial determinations within a period of 30 days; (2) payment of benefits on the 31st day and continuing until such time as a decision had been rendered; and (3) the same rights to administrative and judicial review guaranteed recipients whose assistance had been reduced, suspended, or terminated, where applications were unreasonably delayed beyond 30 days. 8 CLEARINGHOUSE REV. 462 (1974) (E.D. Pa., filed Sept. 16, 1974).

\textsuperscript{50} See Arnold \textit{v.} Dumpson, 78 Misc. 2d 703, 356 N.Y.S.2d 784 (Sup. Ct. 1974) and note 39 supra for the time-consuming alternative of federal mandamus relief. In the original House version of the SSI bill, broad administrative powers were to be given to the states during the first year of the program's operation to provide for an orderly transition. See House Report 158.

In order to achieve an orderly transition from the present State programs, your committee's bill would provide that during the first year of the program,
government should assure a reasonable amount of prompt assistance to those persons who are "presumptively eligible"51 and faced with a "financial emergency."52

B. Due Process Requirements of Notice and Fair Hearings

The attempt to summarily purge from the welfare roles those SSI recipients of questionable eligibility led to numerous class actions in 1974 challenging the government's power to carve out certain exceptions to the rule of Goldberg v. Kelly.53 In Goldberg, the Supreme Court held that a recipient must be afforded notice and the opportunity for an evidentiary hearing prior to the termination, reduction, or suspension of public assistance benefits. According to arguments advanced by HEW, the purported exceptions encompass reductions, terminations, or suspensions mandated, inter alia, by: (1) clerical or mechanical errors made with respect to eligibility determinations or amount of benefits; (2) amendments to federal law requiring automatic suspension, reduction, or termination of assistance; or (3) an incorrect decision with respect to eligibility or amount of payment at the time a recipient was "converted" to the SSI program from the superseded public assistance titles of the Social Security Act.54 The practice of terminating benefits prior to notice and a fair hearing has been attacked as interim agreements could be made between the States ... and the Secretary of Health, Education, and Welfare. These agreements would provide for a State to administer, on behalf of the Secretary, the new Federal program for the aged, blind, and disabled during a part or all of such year.

Id.


(a) Advance written notice of intent to discontinue payment because of an event requiring suspension, or reduction . . . , or terminate payments prior to effectuation of the action will be given in all cases except where:

. . . .

(2) Amendments to Federal law or an increase in benefits payable under Federal law (other than benefits payable under this part) require automatic suspension, reduction, or termination of benefits under this part; or

(3) Clerical or mechanical error has been made in effectuation of a determination or decision under this part . . . .


Determination of amount of payment in converting from the Federal-State public assistance programs to SSI is considered to be part of the initial process of establishing eligibility and amount of payment.

violative of both procedural due process and the Social Security Act. In 1974, SSI recipients succeeded in enjoining such practices in a substantial number of cases.\textsuperscript{55} \textit{Lyons v. Weinberger},\textsuperscript{56} \textit{Ryan v. Shea},\textsuperscript{57} and \textit{Cardinale v. Weinberger}\textsuperscript{58} are representative of the various factual and legal issues underlying the controversy.

In \textit{Lyons}, disabled, blind, and elderly persons who were receiving cash benefits in December 1973 pursuant to New York's Combined Program for Aged, Blind and Disabled Persons (AABD),\textsuperscript{59} and who were transferred as of January 1, 1974 to the federally administered SSI program, had their mandatory minimum state supplemental benefits reduced by federal agency officials without prior notice and hearing.\textsuperscript{60} In support of this action, and relying on recently proposed regulations, HEW argued that the reductions were merely determinations of the level of initial entitlement under the SSI program to which the \textit{Goldberg} rule was inapplicable.\textsuperscript{61} Although questioning HEW's interpretation of its own regulations,\textsuperscript{62} the court, assuming arguendo a correct interpretation, held that "the regulations, as applied, are unconstitutional and in violation of the Social Security Act . . . ."\textsuperscript{63}


\textsuperscript{56} 376 F. Supp. 248 (S.D.N.Y. 1974).


\textsuperscript{58} Civil No. 74-930 (D.D.C., filed July 13, 1974).


\textsuperscript{60} 376 F. Supp. at 251-52.

\textsuperscript{61} \textit{Id.} at 258-60. \textit{See also} notes 159-63 and accompanying text infra.

\textsuperscript{62} "While the Secretary's interpretation of his own regulations is entitled to great weight, it is possible that, after trial on the merits, the court will conclude that the regulations do require advance hearings in cases such as Mr. Lyons'." 376 F. Supp. at 259 (footnote omitted).

\textsuperscript{63} \textit{Id.} Perhaps the court's analysis can best be summarized by its statement that [a] state would not be permitted to evade the requirements of \textit{Goldberg v. Kelly} simply by transferring its public assistance programs to a new agency and, then, labeling terminations of welfare payments determinations of initial entitlement. There is, of course, no reason to suggest that Congress, in enacting the Supplemental Security Income amendments, intended such a result. Instead, Congress specifically geared the S.S.I. benefits to the assistance levels paid by the states in December, 1973.

\textit{Id.} at 260.
The court's conclusion rested on four premises: (1) converted SSI recipients have a statutory entitlement to the benefits they had been receiving from the states in December 1973;64 (2) the procedural due process requirements outlined in Goldberg apply to reductions as well as to terminations or suspensions of welfare benefits;65 (3) the proposed reductions rested on "incorrect or misleading factual premises," or on the misapplication of rules and policies to the facts of the particular case;66 and (4) that in this particular kind of case, "the individual's interest in a prior hearing outweigh[s] the Government's interest in summary adjudication."67 These four premises have formed the basis for subsequent attacks upon HEW's actions in this area of the law.

The issue of whether the federal government could terminate SSI benefits prior to adequate notice and hearing was substantially narrowed in the case of Ryan v. Shea.68 In Ryan, HEW abandoned, for all practical purposes, its reliance on applicable regulations, and contended instead that before the alleged beneficiaries were constitutionally entitled to notice and a prior hearing, they must be deemed to possess a "property interest"—i.e., some form of statutory entitlement—in the continued receipt of SSI benefits.69 Plaintiffs represented a special class of "presumptively disabled" individuals who were required to meet a new federal test of disability because of their late application for state benefits under the former

64 Recipients of S.S.I. payments... have a statutory entitlement to the benefits they had been receiving in December, 1973 from the states. These payments, of course, might subsequently be determined to be too high by the Secretary under applicable statutory standards, just as, under state public assistance legislation, state and local welfare officials might determine that existing payments to particular individuals are excessive. In short, the court cannot see how transfer of aid programs to the federal government modified recipients' rights to their previously existing levels of benefits.

65 Goldberg... did not reach the question whether due process requires similar procedural safeguards in advance of reductions of benefits...

There is little room for doubt, however, that procedural due process is applicable to reduction of welfare benefits.

Particularly in cases involving those most dependent on public assistance for their survival, even a modest reduction in benefits may cause the recipient "grievous loss." In many cases, even a reduction of a few dollars may have a devastating effect

66 Id. at 262.

67 Id.


SUPPLEMENTAL SECURITY INCOME

1975

Categorical assistance programs. Once an unfavorable determination was made, their assistance immediately terminated.

The concept of a "property interest" in disability benefits was approached by the parties in Ryan in two divergent ways. Pointing to statutory language in the SSI Act, HEW argued that the applicable provisions merely gave it discretionary power to temporarily grant presumptive payments pending an initial determination of eligibility. It was contended that because payments were merely discretionary, the Act could not be construed to create a property interest. In rejecting this argument, the district court in Ryan followed a trend of authority in other district courts. Instead, attention was focused on three indicia enunciated by the

70 Individuals who would have been ineligible because they had excess resources and income or because they did not meet the federal definition of disability were "grandfathered" into the SSI program if they had been receiving aid under a state plan in December 1973 and if they met the definition of disability under the applicable state plan in effect for October 1972. 42 U.S.C. § 1382c(3)(A) (Supp. II, 1972), as amended, 42 U.S.C. § 1382c(3)(E) (Supp. III, 1973). 42 U.S.C. § 1382 (Supp. III, 1973) (originally enacted as Act of July 9, 1973, Pub. L. No. 93-66, § 212, 87 Stat. 152) added to this program a requirement that anyone who received aid under a state plan in December 1973 should receive a payment from the state supplementing the federal payment to the extent necessary to maintain that person's income at the December 1973 level.

Because of the conduct of certain jurisdictions where persons of dubious disability status were being switched from welfare rolls to state disability rolls in anticipation of the federal takeover, Congress, on December 30, 1973, enacted § 9 of Public Law 92-233 (42 U.S.C. § 1382c(3)(e) (Supp. III, 1973), amending, 42 U.S.C. § 1382c(3)(A) (Supp. II, 1972)). Section 9 modified the grandfather clause of Public Law 92-603 to provide that not only must the recipient have received benefits in December 1973, but also for at least one month prior to July 1973. Thus, the plaintiffs in Ryan who became qualified under a state plan subsequent to July 1, 1973 had to meet the federal standard of disability in order to be eligible under the SSI program. This sudden alteration of a program, which was to take effect on the following day, caused the Social Security Administration to be confronted with an insurmountable task. A new determination of disability simply could not be made for all of the people affected. To meet this situation, payments of benefits were made on the basis of "presumptive disability" for a period of three months, which was later extended to the end of 1974. 42 U.S.C. § 1383(a)(4)(B) (Supp. III. 1973), as amended, Act of March 28, 1974, Pub. L. No. 93-256, § 1, 88 Stat. 52. See also note 71 and accompanying text infra.

71 Act of March 28, 1974, Pub. L. No. 93-256, § 1, 88 Stat. 52 provides in pertinent part:

Any individual who would be considered disabled . . . except that he did not receive aid under the appropriate State plan for at least one month prior to July 1973 may be considered to be presumptively disabled . . . and may be paid supplemental security income benefits . . . on the basis of such presumptive disability . . . for any month in calendar year 1974 for which it has been determined that he is otherwise eligible for such benefits . . . except that no such benefits may be paid on the basis of such presumptive disability for any month after the month in which the Secretary of Health, Education, and Welfare has made a determination as to whether such individual is disabled . . . .

Id. (emphasis added).

72 See Brief for Appellant, supra note 69, at 17-23.

73 See note 55 and accompanying text supra.
plaintiffs that served to establish the existence of a property right: (1) plaintiffs were previously receiving state welfare benefits that constituted a property interest guaranteed due process protection; 74 (2) plaintiffs received notifications from the Social Security Administration, upon which they justifiably relied, establishing their eligibility for SSI benefits; 75 and (3) Congress in December 1973, and March 1974, acknowledged the existence of plaintiffs' property interest by placing their class in a privileged category of persons presumed eligible for SSI benefits. 76 Although the controversy over presumptive disability benefits is far from settled, and is likely to be moot after 1974, 77 the implications for future changes in the welfare structure are significant 78 and will be discussed in the final part of this section. 79


As mentioned in the factual summary . . . each member of Plaintiffs' class, by definition, has established his entitlement to welfare benefits under SSI's predecessor program . . . . This form of aid has been denominated a "property interest" and has been given full due process protection requiring notice and a hearing prior to its termination. See Goldberg v. Kelly, 397 U.S. 254 (1970) and Wheeler v. Montgomery, 397 U.S. 280 (1970). The Federal government's assumption of responsibility for the administration of this program after January 1, 1974 should not serve to negate this interest.

This Court should look, as did the Lyons court, past such self-serving labels to the substance of the action. The transfer of administration which took place in January 1974 did not extinguish Plaintiffs' pre-existing property interest. Rather, it merely phased this interest into a new form which cannot now be withdrawn summarily.

Id.

74 Brief at 34-35.
75 Id. at 33-36.
76 Defendant Weinberger argues that Public Laws 93-233 and 93-256 evince a Congressional intent to disallow plaintiffs' property interests in the continued receipt of SSI benefits. The analysis contained in Defendant's Brief does little more than state this as a conclusion. It should be noted that the original intent of Public Law 92-603 creating the presumptive disability provision was intended to grant the Secretary discretion to grant a new applicant SSI payments during the application process where two elements were present: An obviously disabling physical defect and economic hardship. In contrast, Public Laws 93-233 and 93-256 are aimed at groups of recipients being transferred from predecessor disability programs; recipients who had already established their entitlement under similar, if not identical, tests of disability. This legislation conveyed to plaintiffs the status of presumed eligibility for SSI benefits and allowed those benefits to continue until the presumption had been rebutted.

78 For instance, it was estimated by the Secretary of HEW that to abide by the district court's order in Ryan, requiring a prior hearing to all presumptively disabled persons before assistance could be terminated, would cost the government approximately $536 per hearing. Brief for Appellant, supra note 69, at 15 n.15.
79 See notes 90-92 and accompanying text infra.
To date, *Cardinale v. Weinberger*\(^8\) represents the most extensive attack upon HEW's policies in the due process area. All three exceptions to the *Goldberg* rule are forcefully assailed by the plaintiffs, with particular emphasis on the factual issues that necessarily underlie any prior termination of assistance based on a change in federal law or a clerical or mechanical error.\(^8\)

The *Cardinale* plaintiffs argue persuasively that "[d]efendant's exceptions to the rule of prior notice and hearing are based on his failure or refusal to see that the application of even the clearest rule of law may be inexorably intertwined with factual issues."\(^8\) Thus, the HEW regulation requiring automatic suspension of assistance due to amendments in federal law\(^8\)—an increase in Social Security benefits, for example—may involve a dispute whether, on the facts of a particular case, the change in federal law applies to the individual beneficiary—a situation obviously within the reach of *Goldberg* when discontinuance is proposed.\(^8\)

Similarly, it is argued that the exception for "clerical or mechanical error"\(^8\) is self-contradictory. Having necessarily admitted the initial fallibility of the SSI administrative system, HEW's position, in effect, is that the corrections of alleged errors are infallible. Not only is there no cause to believe that the first alleged error would inevitably be proved to be error, there is also no cause to believe that the "cure" might not turn out to be a compounding of errors.\(^8\) Finally, assuming that an individual has been overpaid due to a clerical or mechanical error, the question of whether future payments should be reduced to recoup the overpayment bristles with factual issues.\(^8\) The SSI Act itself prohibits recoupment if it would result in "penalizing such [an] individual, ... who was without fault in connection with the overpayment, if adjustment or recovery on account of such overpayment ... would defeat the purposes of this subchapter, or be against equity and good conscience ... ."\(^8\) The HEW regulations on the question of

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\(^8\) Civil No. 74-930 (D.D.C., filed July 13, 1974).


\(^8\) *Id.* at 6.


\(^8\) *See* Almanares v. Wyman, 453 F.2d 1075, 1079 n.3 (2d Cir. 1971), *cert. denied*, 405 U.S. 944 (1972).


\(^8\) Points and Authorities, *supra* note 81, at 7.

\(^8\) *See* note 89 *infra*.

fault therefore require resolution of a myriad of factual issues.\footnote{20 C.F.R. § 416.552, 39 Fed. Reg. 2013 (1974), dealing with the question of recoupment of overpayments, would seem to require resolution of the following factual issues: (1) The individual’s understanding of the reporting requirements; (2) An agreement to report events affecting payments; (3) Knowledge of the occurrences of events that should have been reported; (4) Efforts to comply with the reporting requirements; (5) Opportunities to comply with the reporting requirements; (6) Understanding of the obligation to return checks that were not due; and (7) Ability to comply with the reporting requirements.}

Obviously, the nature of a required hearing will depend upon the kind of factual issues presented. An individual’s interest in a prior hearing must also outweigh the government’s interest in summary adjudication. But judicial recognition of the extent to which factual issues underlie many of the automatic terminations of assistance required by the existing regulations should bring about a system of determinations more in keeping with the due process guarantees outlined in \textit{Goldberg}.

As the preceding discussion illustrates, the decision to “grandfather” into the SSI program those former recipients of state categorical assistance inevitably led to much of the controversy surrounding the requisites of procedural due process in the SSI field. Administrative and political considerations were instrumental in initially securing enactment of the grandfather clauses, and yet the developing problems have ostensibly been of that very nature.

Courts that have dealt with the problem of the SSI “convert” have thus far largely based their decisions upon constitutional grounds.\footnote{\textit{See} Lyons v. Weinberger, 376 F. Supp. 248 (S.D.N.Y. 1974); Ryan v. Shea, 2 CCH \textit{Pov. L. Rep.} ¶ 19,468 (D. Colo. June 21, 1974); Brown v. Weinberger, 382 F. Supp. 1092 (D. Md. 1974); Stienstra v. Weinberger, 2 CCH \textit{Pov. L. Rep.} ¶ 20,005 (D. Minn. Nov. 11, 1974); McVey v. Weinberger, 2 CCH \textit{Pov. L. Rep.} ¶ 19,990 (N.D. Ga. June 28, 1974).} Therefore, to avoid similar problems in the implementation of future reform in the welfare area, new measures will have to be explored; mere abolition of such clauses will not adequately resolve the inequities. A streamlined, inexpensive hearing process, tailored to the factual issues likely to be presented, appears most desirable.\footnote{\textit{See} Lyons v. Weinberger, 376 F. Supp. 248, 262 (S.D.N.Y. 1974).} As for the implications of a favorable decision for the plaintiffs in \textit{Cardinale}, the possible effects would surely be felt not only in impending welfare reform measures, but also in the existing programs of SSI and AFDC.\footnote{\textit{See} 59 \textit{CORNELL L. REV.}, \textit{supra} note 4, at 938-49, for a thorough discussion of the problems associated with the current HEW regulations relating to terminations of assistance prior to notice in the AFDC area. A favorable decision for the plaintiffs in \textit{Cardinale} would not only increase that controversy, but would also add to the growing request for pretermination}
C. Food Stamp Eligibility

Only one significant case has surfaced in 1974 challenging the constitutionality of the basic food stamp provisions of the SSI program—Irizarry v. Weinberger.\textsuperscript{93} Irizarry presented the rather straightforward question of whether New York's policy of providing food stamp benefits to one group of needy SSI recipients, while denying them to others, violated the equal protection and due process clauses of the Constitution. However, to comprehend the precise issues and specific legislative provisions involved, a cursory explanation of the legislative history is necessary.

The 1972 amendments to the Social Security Act, which established the Supplemental Security Income program, originally excluded all individuals who were eligible for SSI benefits from participation in the food stamp program.\textsuperscript{94} This was in conformity with the federal government's dual long-range policy goals of: (1) providing a uniform, nationwide, no-strings-attached form of cash assistance grant to all eligible individuals similarly situated;\textsuperscript{95} and (2) gradually phasing out its program of in-kind food assistance.\textsuperscript{96} To compensate for the loss of benefits, the Act further provided that certain states had the option of increasing their supplemental payments by the "bonus value" of food stamps\textsuperscript{97} at federal

\textsuperscript{93} 381 F. Supp. 1146 (S.D.N.Y. 1974).
\textsuperscript{94} Effective January 1, 1974, section 3(e) of the Food Stamp Act of 1964 [7 U.S.C. § 2012(e) (1970)] is amended by adding at the end there of the following new sentence: "No person who is eligible (or upon application would be eligible) to receive supplemental security income benefits under title XVI of such Act shall be considered to be a member of a household or an elderly person for purposes of this Act."
\textsuperscript{95} See 20 C.F.R. §§ 110(a)-(d), 39 Fed. Reg. 28,626 (1974); notes 1-8 and accompanying text supra.
\textsuperscript{96} See House Report 362 for an example of the government's concurrent attempt in H.R. 1 (described in note 16 supra) to prohibit from participation in the Food Stamp Program all beneficiaries receiving federal public assistance.
\textsuperscript{97} [T]he term "bonus value of food stamps in a state for January 1972" (with respect to an individual) means—
(A) the face value of the coupon allotment which would have been provided to such an individual under the Food Stamp Act for January 1972, reduced by (B) the charge which such an individual would have paid for such coupon allotment . . . .
expense—i.e., “cashing out” food stamps.

Later in the year, before the program even became operational, the foregoing provisions were twice amended by Public Law 93-86 and Public Law 93-233. Under Public Law 93-86, food stamps would still be available for a person who received less in federal and state payments under the new system than he would have received under the prior state welfare plan in December 1973, plus the bonus value of food stamps (determined by the Food Stamp Schedule effective July 1973). Likewise, food stamps would not be available to a person who received more in federal and state payments than he had under the old program. Eligibility for food stamps, therefore, was to be determined on an individualized basis. The effect of the measure was explained by a later House Report:

98 Under the SSI program as originally enacted, a state could optionally supplement the basic federal grant to an eligible individual. 42 U.S.C. § 1382e (Supp. II, 1972), as amended, 42 U.S.C. § 1382e (Supp. III, 1973). Moreover, insofar as a state, such as New York, had previously provided these optional supplements under its categorical assistance programs, the Secretary of HEW would guarantee that the state would not have to spend more total dollars annually in the form of new optional supplements than it had previously spent on grants under the old Title XVI programs during the calendar year 1972. 42 U.S.C. § 1382e nt. (Supp. III, 1973). This guaranteed level is known as the “hold harmless” level. The hold harmless level was incorporated into the Act to protect states from the costs of financing increased welfare caseloads. Thus, if the annual aggregate amount of optional payments exceeds the states total outlay with respect to the aged, blind, and disabled for calendar year 1972, that excess will be paid by the federal government.

The “adjusted payment level,” however, is the statutory proviso which prevents a state from generously giving high optional benefits while the federal government picks up the bill. Id. The adjusted payment level disallows credits toward hold harmless if the state makes excessive optional payments. Specifically, 42 U.S.C. § 1382e provides that a state cannot have a credit toward “hold harmless” for any portion of the optional supplementation which exceeds the adjusted payment level. For purposes of this discussion, the adjusted payment level is comprised of the following two components: first, the theoretical money payments a totally indigent individual would have received under a state’s categorical aid program in effect for January 1972; and second, the bonus value of food stamps. If a state adds the bonus value to the adjusted payment level, it is said to have “cashed out” its food stamps. That is, an individual receives cash in lieu of food stamps. Based on January 1972 levels, the bonus value of food stamps is $10 per month for an individual and $20 for a couple. Dep’t of HEW, Social Security in Review, 38 SOC. SEC. BULL., Jan. 1975, at 1, 2.

Therefore, if a state has cashed out its food stamp program and is providing optional supplementation equal to the maximum adjusted payment level, but above the hold harmless level, some portion of these payments is being made at the federal government’s expense.

99 See note 98 supra.


The principle [behind Public Law 93-86] was an entirely reasonable one [to make sure no one suffered a loss in benefits due to the transfer to a new program] but the complexities of administration caused the States to conclude that it was unworkable. They were faced with making determinations of how much income applicants would have had under the rules of State welfare programs which were no longer operative.\(^{102}\)

Recognizing the difficulties inherent in this situation, Congress enacted Public Law 93-233.\(^{103}\) The individualized system of determining food stamp eligibility, provided for by Public Law 93-86, was postponed until July 1, 1974,\(^{104}\) and for the six month interim period\(^{105}\) persons receiving new federal benefits were to be eligible for food stamps unless they resided in a state which had elected to "cash out"\(^{106}\) the bonus value of the stamps. New York was one of five such states with a cash out program\(^{107}\) which ultimately produced the following results: (1) all SSI recipients were rendered ineligible for food stamps; (2) an amount equal to the average bonus value of food stamps was paid only to new recipients of SSI\(^{108}\)—those who first applied for benefits after January 1, 1974—to compensate them for the loss of food stamps; and (3) since those persons who had been grandfathered into the new program\(^{109}\) were only assured the same level of cash assistance as they had received under the former categorical programs,\(^{110}\) the cash out merely reduced their level of entitlement—i.e., they were rendered food stamp ineligible, but did not receive the benefit of the cash out given to newly applying recipients. This last group of SSI beneficiaries brought suit in \textit{Irizarry} challenging the constitutionality of Public Law 93-233.

The essence of plaintiffs' equal protection claim was that the amendment allegedly created two classes of persons for "food


\(^{103}\) See note 101 \textit{supra}.


\(^{105}\) \textit{Id}.

\(^{106}\) See note 98 \textit{supra}.

\(^{107}\) The five “cash out” states are California, Massachusetts, Nevada, New York, and Wisconsin. The Secretary of HEW has determined that pursuant to Public Law 93-233, these states provide state supplementary payments that have been specifically increased to include the bonus value of food stamps. In California Legislative Council for Older Americans \textit{v.} Weinberger, 375 F. Supp. 216 (E.D. Cal. 1974) plaintiffs unsuccessfully attacked the manner in which the Secretary made this finding as to California, as well as the finding itself. \textit{Cf.} \textit{McNinis} \textit{v.} Weinberger, Civil No. 74-1481-T (D. Mass. Jan. 10, 1975).

\(^{108}\) Hereinafter referred to as optional SSI beneficiaries.

\(^{109}\) Hereinafter referred to as mandatory SSI beneficiaries.

assistance” purposes. The first class included needy New York recipients of SSI who were, but for the challenged amendment, financially eligible for food stamp benefits. The second class included all other needy New York residents who were eligible for benefits either in the form of food stamps or in the form of a food stamp cash out. The denial of benefits to a needy class of individuals was challenged as arbitrary, capricious, and not reasonably related to the purposes of the Food Stamp Act.\textsuperscript{111}

The court dismissed these allegations by following the principle established in \textit{Dandridge v. Williams}:\textsuperscript{112} “If the classification has some ‘reasonable basis,’ it does not offend the Constitution simply because [it] ‘is not made with mathematical nicety or because in practice it results in some inequality.’”\textsuperscript{113} Mandatory SSI beneficiaries indisputably received neither food stamps nor a food stamp cash out, but the court was quick to point out that they did receive “as a result of congressional mandate, considerably greater SSI assistance than the optionally supplemented class . . ., food stamp ‘cash out’ included.”\textsuperscript{114} This was so because the former level of cash assistance provided by the state to mandatory SSI recipients, and grandfathered into the SSI Act, was greater than the level of assistance New York optionally sought to furnish new applicants. Once this basic fact was established, it was easy for the court to conclude that “[i]t would be entirely rational for Congress then to decide that it furthers its purpose of income maintenance for the elderly, blind, and disabled to permit the states to grant an additional SSI benefit to the less well situated optionally supplemented class in the form of a food stamp ‘cash out’ without giving any additional benefit to plaintiffs’ mandatorily supplemented class.”\textsuperscript{115}

The plaintiffs’ novel due process claims were also summarily dismissed.\textsuperscript{116} Congress had intended the very result occasioned by

\textsuperscript{111} Generally the Act’s purpose is to alleviate hunger and malnutrition among low income households by permitting such households the opportunity “to purchase a nutritionally adequate diet through normal channels of trade.” 7 U.S.C. § 2011 (1970).

\textsuperscript{112} 397 U.S. 471 (1970).

\textsuperscript{113} \textit{Id.} at 485, \textit{quoting} Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 78 (1911).

\textsuperscript{114} 381 F. Supp. at 1154.

\textsuperscript{115} \textit{Id.} at 1154-55.

\textsuperscript{116} It was contended that in enacting the challenged amendments Congress erroneously assumed that all SSI recipients would receive food stamps or a food stamp “cash out.” Plaintiffs then proceeded to characterize this alleged error as one that created, by statute, a conclusive, irrebuttable presumption against which the plaintiffs could present no evidence. This, it was claimed, resulted in harm to them in violation of their due process rights. \textit{Id.} at 1155.
the implementation of the Act in New York and, although the method chosen was characterized as a "legislative sleight of hand," the court nevertheless concluded "it [was] not constitutionally vulnerable in this instance."\textsuperscript{117}

The legislative background leading to the case of \textit{Irizarry} illustrates the tremendous administrative problems associated with the implementation of a new welfare program. Equity and good conscience dictate that those who are "converted" suffer no reduction in previously existing benefit levels; administrative considerations, on the other hand, argue for a system that does not become a bureaucratic morass. These goals are not mutually exclusive and both might have been implemented when the SSI program was first initiated by providing a level of federal assistance adequate to meet the needs and rights of those persons grandfathered into the program. As time passes, and the grandfathered group of recipients dwindle, a uniform standard of eligibility will eventually be achieved. In the interim, however, continuing controversy is likely to be generated by the dual system of providing aid to the aged, blind, and disabled.

\section*{II \hspace{1cm} \textbf{Legislative Activity}}

With one possible exception,\textsuperscript{118} the SSI legislation passed by Congress in 1974 was of an administrative nature and basically remedial in character. Unavoidable delays, unrealistic time constraints, and the general problems associated with the implementation of a new governmental program explain most of the legislative activity that did take place. Because many of the substantive enactments have already been discussed in previous sections of this Note,\textsuperscript{119} the purpose of this section will be to explain the rationale behind their passage, to evaluate their effectiveness, and to suggest possible forms of incorporation, or change, with respect to future welfare reform measures.

The time-consuming administrative process of determining the initial eligibility under the SSI program of approximately 1.3 million disabled recipients of categorical assistance\textsuperscript{120} precipitated

\textsuperscript{117} Id.
\textsuperscript{118} See notes 132, 134-36 and accompanying text \textit{infra}.
\textsuperscript{119} See notes 7, 26, 71, 104 and accompanying text \textit{supra}.

The Department of Health, Education, and Welfare has indicated that enact-
the first of a series of remedial legislative enactments which were ultimately passed in 1974. All persons formerly receiving disability benefits under the superseded titles of the Social Security Act had to be identified and those individuals most recently placed on the welfare rolls were required to satisfy a new federal test of disability.\footnote{121} The time table for completing this prodigious task was originally three months.\footnote{122} But as the deadline approached, the eligibility of approximately one-half to two-thirds of SSI converts, for whom redeterminations had to be made, remained in doubt.\footnote{123} Rather than suspend presumptive disability benefits to these individuals, the Secretary of HEW asked for and received standby authority to continue such payments until the end of the year.\footnote{124} The Act also provided that those who did not meet the federal standard of disability would not be considered to have been overpaid during the time it took to review their cases.\footnote{125} As the preceding situation illustrates, some type of initial standby authority to dispense presumptive eligibility payments for an adequate period of time—as determined by the Secretary—to those converted to any new welfare program is essential.

Later in the year, the complexities involved in administering certain provisions of the SSI program\footnote{126} precipitated further congressional postponement of the “individualized eligibility tests” for

\begin{itemize}
  \item \footnote{121} See notes 70-71 and accompanying text supra. Disability is now defined under the federal law as follows:

    An individual shall be considered to be disabled for purposes of this subchapter if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months ...


  \item \footnote{123} The Secretary of HEW had originally estimated that redeterminations of eligibility would be required for 300,000 individuals who were converted to the SSI rolls. By the end of March 1974, nearly 150,000 to 200,000 people were still awaiting such a determination. H.R. Rep. No. 871, 93d Cong., 2d Sess. 2 (1974).

  \item \footnote{124} See note 71 supra.


  \item \footnote{126} An explanation of the legislative background and problems associated with the administration of Public Law 93-86, which required individualized determinations for food stamp eligibility, is discussed in notes 93-106 and accompanying text supra.
\end{itemize}
The legislative history of the measure indicates that Congress itself was not happy with the specific provisions of the bill, but passed it to avoid the undesirable results associated with inaction, and to give itself more time to work out a satisfactory permanent solution to the problem. What that solution will be is not yet evident, but if state administrators have anything to say about the matter, the chances of a return to the provisions of Public Law 93-86 seem highly remote.

The final piece of SSI legislation passed in 1974 was perhaps the most significant. It guaranteed federal reimbursement to the states for interim assistance provided during the initial stages of the program, and established an automatic cost-of-living adjust-

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127 Public Law 93-335 (see note 104 supra) extended from six to eighteen months (ending June 30, 1975): (1) the provisions of Public Law 93-233, which suspended operation of the relevant provisions of Public Law 93-86; and (2) the provisions of Public Law 93-233, which made all SSI beneficiaries eligible to purchase food stamps in states where there had not been a specific “cash out,” and made beneficiaries in those states which provided a “cash out” ineligible to purchase food stamps.

128 The House Ways and Means Committee Report accompanying Public Law 93-335 stated:

[The] committee is not happy with the provisions of this bill as a permanent solution and it, accordingly, is providing a period of 1 year in which to work out more satisfactory provisions. However, in view of the pressures of time, the undesirability of withdrawing either cash or food stamps from a significant number of individuals in view of the recent price level increases and because the Social Security Administration has not yet gotten the SSI claims load under a satisfactory degree of control, an extension of time rather than an attempt to solve the problem permanently was considered desirable.


129 The Committee Report summarized the results of inaction as follows:

(1) In the 45 States which have made no “cash out” a substantial proportion—probably a majority—of SSI beneficiaries would lose their food stamps with no prospect of compensating amounts of cash. In view of the rate of increase in food prices in recent months this would be a highly undesirable result.

(2) All States including those which had made a “cash out” would be faced with the individual determination described above. The States still believe that the provisions of Public Law 93-86 [which] would become effective July 1 are virtually unworkable. Moreover, the estimates of administrative costs in setting up a dual determination system runs many millions of dollars. The Governor of one large State has estimated the additional administrative costs at $35 million for his State alone.

(3) In the five “cash out” States—California, Massachusetts, Nevada, New York and Wisconsin—the same determination would have to be made and some SSI beneficiaries would receive the “cash out” of about $10 and have their eligibility to purchase food stamps restored. For such beneficiaries the Federal Government would be paying twice for the bonus value of food stamps.

130 See notes 102, 128 and accompanying text supra.

131 Act of Aug. 7, 1974, Pub. L. No. 93-368, 88 Stat. 420. Statutory authority guaranteeing federal reimbursement for state interim assistance expires June 30, 1976. To receive these payments, however, a state must enter into certain agreements with the Secretary of HEW, and the individual benefited by state payments must sign a written authorization assigning any subsequent federal payment to the state. Id.
ment in applicable benefit levels.\textsuperscript{132} The first provision was largely in response to disputes arising out of the late or nonexistent receipt of benefit checks, as previously discussed.\textsuperscript{133} It protects both the state and federal governments from the possibility of duplicate payments to an otherwise eligible individual and ensures that states will not suffer financially because of an administrative error on the part of the federal government. A similar provision is likely to be incorporated in any new welfare scheme.

The primary rationale behind the automatic adjustment in benefit levels is to compensate for an increasing cost-of-living among those beneficiaries on a fixed or stable income. It represents a more logical approach to the problem than prior tactics used to raise AFDC benefit levels,\textsuperscript{134} but its effectiveness could be seriously threatened due to a large loophole in the law. While federal assistance is hereinafter tied to rises in the cost-of-living, state supplementation, both mandatory and optional, is not. In fact, there is nothing in the federal law to stop a state from correspondingly decreasing its assistance payments whenever the federal government is required to increase the benefits it provides.\textsuperscript{135} As of

\textsuperscript{132} Id. The cost-of-living increases in SSI benefit levels are directly tied to similar percentage increases in Social Security payments. 42 U.S.C. § 415(i) (Supp. III, 1973).

\textsuperscript{133} See notes 20-52 and accompanying text supra.


(a) A State plan for aid and services to needy families with children must

\ldots

(23) provide that by July 1, 1969, the amounts used by the State to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established, and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted .\ldots

\textsuperscript{135} The "loophole" in the cost-of-living provision is indicative of a problem that pervades the entire SSI scheme—the lack of control by the federal government over the level of optional state supplementation. However, the operation of the cost-of-living provision will have its desired effect in at least two possible situations: first, in the obvious case of those 16 states which do not provide optional state SSI payments (Arkansas, Florida, Georgia, Indiana, Kansas, Louisiana, Maryland, Mississippi, New Mexico, Ohio, South Dakota, Tennessee, Utah, Virginia, West Virginia, and Wyoming); and second, in those states such as California and Massachusetts which provide yearly cost-of-living increases in their own state supplementation levels. See generally CAL. WELF. & INST'NS CODE § 12201 (West Supp. 1975); MASS. ANN. LAWS ch. 118A, § 2 (Cum. Supp. 1974); Rigby, State Supplementation Under Federal SSI Program, 57 SOC. SEC. BULL., Nov. 1974, at 21, 25. On the other hand, in a state such as New York, where optional supplementation merely provides for the difference between the basic federal grant and a total fixed payment, as the federal grant rises through operation of the automatic cost-of-living provisions, the state supplement
this early date, no reliable data is available to determine what the states’ response to this peculiar situation is or will be. One can posit, however, that if remedial legislation is not forthcoming, the federal government will be bearing an increasing share of all SSI payments.\footnote{136}

III

REGULATORY ACTIVITY

In terms of sheer volume, regulatory activity on the part of the federal government, implementing the statutory provisions of the SSI program, far surpassed any other development that occurred in 1974. Newly adopted interim and final regulations appeared almost weekly in the Federal Register, and even as of this late date—nearly three years after SSI legislation was first enacted—no end appears in sight. Consequently, a comprehensive discussion of all or a significant part of the activity that did take place is beyond the scope of this Note. Instead, the purpose of this section will be to identify and briefly analyze three particular regulatory areas which have been, or are likely to be, entangled in litigation concerning their constitutional validity and/or statutory basis.\footnote{137}

The principle of eligibility based on need was specifically embedded as one of the cornerstones of the SSI program in the introductory language of the Act:

Every aged, blind, or disabled individual who is determined to be \textit{eligible on the basis of his income and resources} shall, in accordance with and subject to the provisions of this subchapter, be paid benefits by the Secretary of Health, Education, and Welfare.\footnote{138}

Congress tempered this principle, however, with certain non-need

\footnote{136} Recent gross data on the operation of the SSI program seems to support this general proposition. \textit{See} Dep’t of HEW, \textit{Social Security in Review}, 38 Soc. Sec. Bull., Feb. 1975, at 1, 54:

State-administered supplementary payments, which amount to $9.8 million in August [1974], continued their downward trend. This total represented a decline of $371,000 from July [1974] and $5.1 million from January [1974] \ldots .

The decrease in State payments since January is due primarily to the increase in Federal SSI payments in February and July; the Federal payment was increased to a point above the former State payment or above the current State payment standard. State supplementation, therefore, was no longer required for many of the recipients in the States.

\footnote{137} It should be noted at the outset that while some of the regulations to be discussed are clearly required by the applicable provisions of the SSI Act and, therefore, only vulnerable to constitutional attack, others have a questionable statutory basis and are thus subject to statutory as well as constitutional assault.

eligibility criteria that included, *inter alia*, optional state residency requirements\(^{139}\) and a system of attribution of income.\(^{140}\)

HEW regulations in effect during 1974 provided that a state could impose, as a condition of eligibility, a residency requirement which would exclude from optional state supplemental payments "any individual who has resided in such State . . . for less than a minimum period of time prescribed by the State."\(^{141}\) This provision merely echoed the applicable statutory language found in the Social Security Act.\(^{142}\) The nature and extent of its implementation by the states is not yet known, and until specific statutes begin to surface, it seems pointless to argue that the federal provision is unconstitutional in the abstract.\(^{143}\) Unlike the statute involved in the case of *Shapiro v. Thompson*,\(^{144}\) the current SSI regulation does not even mention a maximum period of time beyond which a durational residency requirement is proscribed and, in fact, it might be argued that the word "minimum" in the regulation means just what it implies—a short period of time.\(^{145}\) Nevertheless, the consensus of reported opinion to date advances the belief that state

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\(^{142}\) Any State (or political subdivision) making supplementary payments . . . may at its option impose as a condition of eligibility for such payments . . . a residence requirement which excludes individuals who have resided in the State (or political subdivision) for less than a minimum period prior to application for such payments.

\(^{143}\) The language employed by the Supreme Court in the case of *Shapiro v. Thompson*, 394 U.S. 618 (1969), when it analyzed the constitutionality of a similar federal statute, is particularly appropriate:

> On its face, the statute does not approve, much less prescribe, a one-year [residency] requirement.

> But even if we were to assume, *arguendo*, that Congress did approve the imposition of a one-year waiting period, it is the responsive state legislation which infringes constitutional rights. By itself § 402(b) has absolutely no restrictive effect. It is therefore not that statute but only the state requirements which pose the constitutional question.

394 U.S. at 639-41 (emphasis in original). The same remarks could be made about the SSI statute.


> [t]he Secretary . . . shall not approve any plan which imposes as a condition of eligibility for aid to families with dependent children, a residence requirement which denies aid with respect to any child residing in the State (1) who has resided in the State for one year immediately preceding the application for such aid . . .

\(^{145}\) Carrying this argument one step further, it is possible to view 42 U.S.C. § 1382e(c)(1) (Supp. III, 1973) as an effective enforcement mechanism that could be used by the federal government to strike down state residency requirements which were above a minimum time period—one month for example.
[d]urational residency requirements for state supplementary grants under SSI would operate to penalize indigents who have exercised their right to travel. Thus a standard of strict constitutional scrutiny would appear applicable. Supportive of this conclusion is the fact that the gravity of this individual interest in supplementation is substantial. There is little likelihood that such a waiting period requirement would be grounded on a legitimate state interest of sufficient importance to render impingement in these circumstances of the right to travel constitutionally permissible.\textsuperscript{146}

Another non-need criterion embodied in the SSI program—utilized to determine the level of an applicant's income and resources for eligibility purposes—established the principle that an individual's "income and resources shall be deemed to include any income and resources of [a] spouse, whether or not available to such individual, except to the extent determined by the Secretary to be inequitable under the circumstances."\textsuperscript{147} Standing alone, the presumption created in the first clause of the provision appeared vulnerable to constitutional attack.\textsuperscript{148} It was therefore hoped that standards carrying out the intent of the second clause could be formulated to eliminate this infirmity. The proposed regulations issued by the Secretary of HEW in January 1974 not only dashed this hope, but also created two further presumptions designed to restrict the availability and amount of SSI benefits: (1) a maximum allowable deduction placed on the spouse's expenses attributable to earning the "deemed income"; and (2) the treatment of earned income of the spouse as unearned income of the recipient.\textsuperscript{149} An


\textsuperscript{147} 42 U.S.C. § 1382c(f)(1) (Supp. III, 1973). This income attribution principle applies only if the spouse (further defined in §§ 1382c(d)(1)-(2) as a legal spouse under state law, or one who holds himself out to the community in which he resides as the spouse of the applicant) lives in the same household as the applicant. Id.

\textsuperscript{148} See 59 CORNELL L. REV., supra note 4, at 886-87 n.172.

\textsuperscript{149} In the case of an individual who is living in the same household with a person not eligible for benefits under this part who is or who is considered to be such individual's husband or wife . . . such individual's income shall be deemed to include any income . . . of such spouse whether or not such income is available to such individual. However, in the case of earned income . . . of [the] spouse, such earned income will be reduced by $65 a month . . . for all expenses attributable to the earning of such income . . . Income deemed to the eligible individual will be treated as unearned income.

argument can be made that both of these propositions are of questionable validity in light of recent Supreme Court decisions in the welfare area and the statutory language of the SSI Act itself.

1382a(b)(2), (4) (Supp. III, 1973). Only a maximum of $20 per month of unearned income is disregarded in determining the countable income of an SSI recipient. On the other hand, $65 per month of earned income is disregarded, plus one-half of any earnings above this figure. Id. It is therefore to the recipient's advantage to secure classification of the greatest part of his income as "earned." The regulation in question sets up an irrebuttable presumption against such a procedure.


The SSI Act provides that only the work expenses of the blind will be excluded in determining a person's countable income for eligibility purposes. 42 U.S.C. § 1382a(b)(4)(A)(ii) (Supp. III, 1973). Regardless of the constitutionality of this provision (possible violation of the 14th amendment equal protection rights of aged and disabled individuals), the 1973 regulations stipulate that in determining the unearned income of an individual, "[t]he gross amount is reduced by any ordinary and necessary expenses incurred in getting or receiving [it]." Proposed HEW Reg. § 416.1120, 38 Fed. Reg. 27,407 (1973). By placing a maximum allowable deduction of $65 on the spouse's work-related expenses, the 1974 regulation therefore seems to conflict with the reasoning underlying the court's opinion in Vialpando.

A constitutional argument might also be advanced that the 1974 regulation creates an "irrebuttable presumption" that work expenses will never exceed $65, thereby resulting in a denial of due process to those individuals whose expenses exceed that amount. See generally United States Dep't of Agriculture v. Murry, 413 U.S. 508 (1973); United States Dep't of Agriculture v. Moreno, 413 U.S. 528 (1973).

That portion of the regulation dealing with the attribution of income might be attacked in three ways.

First, earned income of the spouse that is not actually and currently available to the recipient is not "income" within the statutory sense of the word. "Income" is defined for purposes of Title XVI (SSI) as "the receipt by an individual of any property or service which he can apply, either directly or by sale or conversion, to meet his basic needs for food, clothing, and shelter." Proposed HEW Reg. § 416.1102, 38 Fed. Reg. 27,407 (1973). Obviously, there is no "receipt" (actual or constructive) in the situation described above if the spouse's earnings are not actually and currently available. Not even under the most expansive definition of income found in the tax statutes would such earnings be deemed a recipient's income. See generally James v. United States, 366 U.S. 213 (1961); Commissioner v. Glennshaw Glass Co., 348 U.S. 426 (1955); Helvering v. Bruun, 309 U.S. 461 (1940); Edwards v. Cuba Railroad, 268 U.S. 628 (1925); Eisner v. Macomber, 252 U.S. 189 (1920). Finally, one might simply point out that the statute creates an irrebuttable presumption that a spouse's income is "received," in violation of a beneficiary's due process rights. See United States Dep't of Agriculture v. Murry, 413 U.S. 508 (1973); United States Dep't of Agriculture v. Moreno, 413 U.S. 528 (1973); 59 CORNELL L. REV., supra note 4, at 886-87 n.172.
The general problems associated with prolonged delays in making determinations of initial entitlement have been mentioned in previous sections of this Note.\textsuperscript{152} Congress also recognized that financial emergencies might arise during the pendency of an application by providing for cash advances up to $100 for all those presumptively eligible for SSI benefits and for presumptive disability payments to certain individuals for a period of three months.\textsuperscript{153} These relief measures were premised on the belief that initial determinations would be made within a period of thirty days and no longer than ninety days would be needed to make a final decision concerning an applicant's disability.\textsuperscript{154} When early experience under the program belied the accuracy of these assumptions, it was hoped that HEW would at least promulgate regulations setting a time constraint under which initial determinations would have to be made, thereby effectively encompassing the congressional premises into the operation of the statute. In September

Second, assuming, arguendo, that earned income of the spouse is "income" to the recipient, it is not unearned income. Here, one might argue that because earned income of an eligible spouse is treated as earned income of a recipient, there is no rational basis for treating an ineligible spouse's income differently on equal protection grounds. As the regulations now stand, an ineligible spouse with earned income of $2,000 will deprive an applicant of all benefits under the SSI Act (only $240 will be disregarded), whereas if the deemed income were to be categorized as earned income of the recipient, that person would still receive more than $1,000 a year in SSI benefits (at least $1,500 would be disregarded). See note 149 supra.

Finally, even assuming that earned income of the spouse is unearned income of the recipient, the regulation is invalid, in part, because it provides no exceptions to the deemed income rule when it would be inequitable under the circumstances, i.e., when it can be shown that the spouse's income is not actually or currently available. See 42 U.S.C. § 1382c(f)(1) (Supp. III, 1973).

\textsuperscript{152} See notes 40-52 and accompanying text supra.


The Secretary—

(A) may make to any individual initially applying for benefits under this subchapter who is presumptively eligible for such benefits and who is faced with financial emergency a cash advance against such benefits in an amount not exceeding $100; and

(B) may pay benefits . . . to an individual applying for such benefits on the basis of disability for a period not exceeding 3 months prior to the determination of such individual's disability, if such individual is presumptively disabled and is determined to be otherwise eligible for such benefits . . . .

\textit{Id.}


By providing for the payment of as many as 3 months' benefits prior to the initial determination where disability may be presumed, Congress has allowed at least 90 days for the making of an initial determination in a supplemental security income claim based on disability. In other supplemental security income claims, Congress set the amount of emergency cash advance at $100 because it was expected that in those cases the initial determination can be made within 30 days.
1974, Secretary of HEW Weinberger rejected the invitation, preferring instead to adopt a "wait and be patient attitude." This type of approach was exemplified in his statement that

[although, at the present time, title XVI nondisability initial determinations are taking longer to process than intended by Congress, efforts are currently being directed toward making these determinations in the shortest possible time and, as a result, the Social Security Administration expects that, in the not too distant future . . . nondisability initial determinations can be made in 30 days . . . .][155]

A further justification for the rejection was that some SSI cases were taking longer than thirty days to process and a thirty-day maximum would therefore be "unrealistic."[156] This type of reasoning is not only circuitous, but if it represents the true state of affairs in the Social Security Administration, the SSI Act should immediately be amended to give the Secretary discretionary power to provide cash advances above the statutory maximum of $100 to those persons adversely affected by substantial delays. If this type of legislative action is not taken, a judicial solution, somewhat analogous to that requested in Huntsman,[157] may be forthcoming.[158]

Much of the controversy surrounding the suits brought by converted SSI recipients, who had their benefits reduced or terminated prior to adequate notice and a fair hearing, involved HEW's interpretation of what was in effect introductory language to a proposed set of regulations. The language provided that a "[d]etermination of amount of payment in converting from the Federal-State public assistance programs to SSI is considered to be part of the initial process of establishing eligibility and amount of payment."[159] It was HEW's contention that these "regulations" did not require a prior opportunity to be heard in cases where a determination was made that a recipient obtained payments from a state for which he was ineligible in December 1973.[160] Regardless of the constitutional validity of such an argument, [161] other regula-

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155 Id.
156 Id.
158 See notes 47-49 and accompanying text supra.
161 See notes 59-79 and accompanying text supra.
tions in effect during 1974 point to an opposite conclusion. For example, written notice of an initial determination must be mailed to the affected party and, if the initial determination states that the party's eligibility for benefits has ended or a reduction is to be made, such "determination shall state the basis for the determination and shall provide notice and an opportunity for [an] evidentiary hearing before such determination is effectuated."\textsuperscript{162} The regulations further require that "[u]pon receipt of a timely filed request for reconsideration of such initial determination, the Administration shall continue benefits . . . and provide the parties thereto an opportunity for a formal conference . . . ."\textsuperscript{163} In light of these provisions, the volume of judicial activity that occurred in 1974, centering around the procedural due process rights of converted SSI recipients, was surprisingly large.

One court has recently observed that the entire dispute in this area easily could have been avoided if Congress, in enacting the SSI program, had simply made a clean break with all former categorical programs—\textit{i.e.}, if it had required a new determination of eligibility to be made for all former aid recipients.\textsuperscript{164} It explained that

\begin{quote}
[h]ad this route been taken by legislative . . . action, a claimant would [have] encounter[ed] serious difficulties in showing an entitlement to these due process rights [of notice and a fair hearing]. \textit{But} neither the Secretary nor Congress pursued this avenue, probably because of the recognition that a large number of the individuals involved would suffer great hardship if they had to await a determination of their status before the payments commenced.\textsuperscript{165}
\end{quote}

In establishing any new welfare program to replace AFDC, Congress will again have to balance the hardship likely to be encountered by former recipients of state assistance, if they are required to reestablish their eligibility, against the administrative difficulties involved in grandfathering those individuals into a new program. Experience gained under SSI should provide the legislators with a better perspective of the consequences likely to ensue from choosing one alternative over another.Hopefully, this knowledge can be employed to establish a system that is both administra-

\textsuperscript{165} Id. (emphasis added).
tively efficient and equitable to those who have come to rely upon a certain level of assistance to maintain their daily existence.\textsuperscript{166}

**CONCLUSION**

The criticism directed against SSI in 1974 has ranged from miniscule to monumental, but in the final analysis, the program's basic structure has remained unscathed. Most of the early activity that did occur centered around administrative abuses of power by the Secretary of HEW, remedial legislation passed by the Congress, and the delays associated with the emergence of a new welfare scheme. When this initial period of turbulence begins to subside, one can expect to see a more vigorous assault on the premises underlying many of the substantive provisions of the Act.

Basic reform is urgently needed in the federal government's remaining family assistance programs. The principles embodied in SSI can serve as a guide for future reform measures in this area, and the lessons gleaned from 1974 can be used to avoid many of the problems likely to be encountered by a program similar in character and administrative structure.

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\textsuperscript{166} See notes 90-91 and accompanying text \textit{supra}.