

October 1, 2020

The Honorable Andrew Saul
Commissioner of Social Security
US Social Security Administration
1500 Woodlawn Drive
Baltimore, MD 21241

**Re: Collection and Regular Reports on Race and Ethnicity
Data within Social Security Programs**

Dear Commissioner Saul:

The undersigned members of the Consortium for Citizens with Disabilities (CCD) and allies write to ask the Social Security Administration (SSA) to collect and regularly report data about race and ethnicity. CCD is the largest coalition of national organizations working together to advocate for federal public policy that ensures the self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society. We already know that due to differences in earnings over time and other factors, Social Security benefit amounts are lower for people of color than for White beneficiaries. However, we cannot understand the scope or cause of much of the racial disparities in the Social Security system, including in rates of denials, allowances, or other outcomes, until we have a more accurate and comprehensive snapshot of the racial and ethnic makeup of claimants and beneficiaries.

Since 2016, members of CCD and allies have urged SSA to release data on race and ethnicity. SSA previously reported this data, but stopped reporting Supplemental Security Income (SSI) data in 2002 and Old-Age, Survivor's, and Disability Insurance (OASDI) data in 2009.¹ We gratefully acknowledge that SSA released some data related to race and ethnicity of OASDI beneficiaries in the 2016 Annual Statistical Supplement and conducted some research and analysis related to race and ethnicity based on Census data. However, SSA did not release corresponding data for SSI recipients in the Annual Statistical Supplement or commit to ongoing and consistent reporting of race and ethnicity data, which would help identify patterns by race and ethnicity within SSA's programs. As explained in more detail below, historical data reveals racial disparities in allowance rates at the initial and ALJ levels within SSA. To fully understand and address racial disparities, SSA must adopt a more widespread and consistent practice of collecting and reporting data on race and ethnicity. We therefore write to renew our request that SSA collect and regularly report data about race and ethnicity within its programs.

The request for racial and ethnic data reporting is even more urgent given the current disproportionate impact of the coronavirus crisis on communities of color, essential workers, and

¹ Martin, Patricia, *Why Researchers Now Rely on Surveys for Race Data on OASDI and SSI Programs: A Comparison of Four Major Surveys*, Research and Statistics Note No. 2016-01 (Jan. 2016). Available at: <https://www.ssa.gov/policy/docs/rsnotes/rsn2016-01.html>.

the poor. The impact of the COVID-19 pandemic has both exposed and exacerbated racial inequality—higher rates of illness and death, unemployment, and barriers to treatment and social services among Black Americans, and other oppressed racial groups, compared to White Americans. In particular, data on race and ethnicity outcomes for SSA’s SSI program is needed.

The SSI program is means-based, meaning that elderly or disabled recipients must have low or no income and little or no assets to be eligible. By design, SSI “provides cash to meet basic needs for food, clothing, and shelter” to people living in high-risk conditions. Given that the rate of poverty for Black families is two-and-a-half times the rate for White families, and that one in five Black people in this county live below the poverty line, information on race and ethnicity in the SSI program would inform SSA and the public about areas where SSI is meeting its mandate to provide basic needs to elderly and disabled people struggling to make ends meet, and where the gaps lie.² In turn, SSA can use this information to improve customer service, implement rules that promote equity, and ensure that processes and outcomes are fair.

Without recent data, it is impossible to assess whether previously documented racial disparities persist. Past SSA data reveals racial disparities in aspects of SSA’s programs. A 1992 GAO report showed that Black applicants have consistently been allowed benefits at lower rates than White applicants. For example, in 1988, the allowance rate was 29% for Black DI applicants and 36% for White DI applicants. That same year, the allowance rate was 29% for Black SSI applicants, compared to 37% for White SSI applicants.³ GAO’s analysis found that these racial disparities in allowance rates could not be explained by other key factors, such as age, impairment, or education.⁴ A 2003 GAO report found that, among claimants without attorneys, Black claimants were significantly less likely to be awarded benefits compared to White claimants.⁵ GAO also found that other factors – including sex, income, and the presence of an interpreter at a hearing – had a statistically significant influence on the likelihood of benefits being allowed.⁶

Even in 2003, GAO identified several limitations in its ability to analyze data related to race and ethnicity and issued recommendations to SSA. GAO noted there were data limitations because SSA significantly scaled back its collection of race/ethnicity data beginning in 1990.⁷ GAO’s ability to analyze data was also limited by SSA’s method of coding data on race and

² Elise Gould and Valerie Wilson, *Black workers face two of the most lethal preexisting conditions for coronavirus—racism and economic inequality*, (June 1, 2020). Available at: <https://www.epi.org/publication/black-workers-covid/>.

³ U.S. General Accounting Office, *Social Security: Racial Difference in Disability Decisions Warrants Further Investigation*, GAO/HRD-92-56, pg. 4 (Apr. 21, 1992).

⁴ The GAO report concluded that for SSI applicants aged 18-34, the racial difference in initial decisions was almost twice that of any other age group, and was largely unexplained by differences in impairments or demographic characteristics. (GAO 1992, pg. 5). GAO also found that, at the ALJ level, the racial difference in allowance rates was larger than at other levels, and did not appear to be related to the severity or type of impairment, age, or other demographic characteristics, appeal rate, or attorney representation. (GAO 1992, pg. 6).

⁵ GAO, “SSA DISABILITY DECISION MAKING: Additional Steps Needed to Ensure Accuracy and Fairness of Decisions at the Hearings Level,” pg. 2, (Nov. 2003). <https://www.gao.gov/new.items/d0414.pdf>

⁶ “For example, male claimants, claimants with low incomes, or non-English-speaking claimants who had a translator at a hearing were less likely to be awarded benefits.” (GAO 2003, pg. 10).

⁷ GAO 2003, pg. 2.

ethnicity.⁸ In 2002, GAO noted that SSA no longer reviews ALJ decisions for racial bias and has no plans to conduct additional studies on racial disparities in the future.⁹ In response to these limitations, GAO recommended “conducting ongoing as well as in-depth analyses of ALJ decisions by race and other factors; and publishing these results in its biennial reports.”¹⁰ GAO also recommended “that SSA take action, as needed, to correct and prevent unwarranted allowance differences, and establish an expert advisory panel to provide ongoing leadership, oversight, and technical assistance with respect to ALJ quality assurance reviews.”¹¹ We request an update on SSA’s compliance with GAO’s recommendations.

Racial inequities in other systems that are pipelines to Social Security benefits, such as healthcare, education, employment, and the justice systems, also contribute to the racial and ethnic composition of Social Security beneficiaries. Because SSA relies on evidence from these systems when making eligibility determinations, racial and ethnic disparities from outside systems may carry over into SSA’s programs if left unchecked.

Evidence shows, for example, that Black patients and other patients of color experience more barriers to access to healthcare, receive a lower quality of medical care, and suffer from higher rates of chronic and infectious illness than White patients.¹² The American Psychiatric Association has stated that “racial/ethnic, gender, and sexual minorities often suffer from poor mental health outcomes due to multiple factors including inaccessibility of high-quality mental health care services, cultural stigma surrounding mental health care, discrimination, and overall lack of awareness about mental health.”¹³ The rate of chronic illness and the barriers to treatment that exacerbate or fail to prevent disabling conditions contribute both to poor health in Black communities and communities of color compared to White communities, and, of importance to SSA’s mission to assist low-income people with disabilities, affect the medical evidence available to prove a case for SSI or SSDI benefits.

SSA also relies on evidence from schools when evaluating disability for children and young adults. School evidence includes special education records such as Individualized Education Programs (IEP) and 504 Plans. However, racial inequities in diagnosing certain disabilities among children contributes to disparities in accessing special education services and supports, which in turn influences the type and quality of records available to SSA for the disability determination. For example, a 2015 study concluded that Black children are

⁸ Prior to 1980, SSA only categorized race and ethnicity data as: white, black, or other. After 1980, SSA adopted new codes: White, Black, Hispanic, Asian or Pacific Islander, and American Indian or Alaskan Native. GAO 2003, at pg. 7.

⁹ GAO, “Additional Measures Would Enhance Agency’s Ability to Determine Whether Racial Bias Exists,” pg. 3, (Sep. 2002). <https://www.gao.gov/products/GAO-02-831>

¹⁰ GAO 2003, pg. 11.

¹¹ *Id.*

¹² Institute of Medicine, *Unequal Treatment: Confronting Racial and Ethnic Disparities in Health Care*, 77-78 (2003). Black Americans are less likely to access specialists for care than white Americans. *Id.* at 112.

¹³ American Psychiatric Association, *Mental Health Disparities: Diverse Populations* HYPERLINK "https://www.psychiatry.org/psychiatrists/cultural-competency/education/mental-health-facts?mc_cid=9a6268a61d&mc_eid=7c934afe6f" https://www.psychiatry.org/psychiatrists/cultural-competency/education/mental-health-facts?mc_cid=9a6268a61d&mc_eid=7c934afe6f (last visited Aug. 6, 2020).

underdiagnosed across five disability categories for which special education services are commonly provided.¹⁴ Because SSA relies on special education records that are built on racial disparities in diagnosis, it is inevitable that those same racial disparities would influence SSA's decision-making.

Racial inequity in the criminal justice system is well-documented, and also directly impacts claimants' or beneficiaries' entitlements to Social Security benefits, particularly SSI benefits. Black and Latinx people are more likely to face arrest, conviction, and lengthier sentences than White people, with Black men facing the harshest treatment.¹⁵ Furthermore, "[a]lthough African Americans and Latinos comprise 29% of the U.S. population, they make up 57% of the U.S. prison population."¹⁶ SSI recipients who are incarcerated for more than 12 months—people who already have documented disabling conditions, and many with serious mental illness¹⁷—are automatically terminated and must reapply for SSI when they return to the community.¹⁸ Yet people returning from incarceration lack adequate documentation of their disabilities due to poor physical and mental health treatment in prisons and jails.¹⁹ Logic would dictate that racial inequities inherent in the criminal justice system, in turn lead to inequities in Social Security because Social Security suspension rules and disability adjudications are based on time incarcerated and medical care received.

In light of the racial disparities within SSA and in related systems, collecting and reporting data on race and ethnicity is not only important, it would also bring SSA in line with other federal agencies:

- a. The U.S. Department of Health and Human Services has an Office on Minority Health that "provides the most current quantitative information related to minority health."²⁰
- b. The U.S. Department of Justice collects data on race and ethnicity for topics such as victimization and jail and prison censuses.²¹

¹⁴ Specifically, Black children are less likely than otherwise similarly situated White children to be identified as having impairments at the following rates: learning disabilities - 58%; speech or language impairments - 63%; intellectual disabilities - 57%; health impairments - 77%; and emotional disturbance - 64%. Paul L. Morgan, George Farkas, Marianne M. Hillemeier, Richard Mattison, Steve Maczuga, Hui Li, Michael Cook, *Minorities Are Disproportionately Underrepresented in Special Education: Longitudinal Evidence Across Five Disability Conditions*, Educational Researcher (June 1, 2015). Available at: <https://doi.org/10.3102/0013189X15591157>.

¹⁵ Sentencing Project, *Report to the United Nations on Racial Disparities in the U.S. Criminal Justice System* (April 19, 2018).

¹⁶ *Id.*

¹⁷ Approximately 2 million times each year, people who have serious mental illnesses are admitted to jails across the nation. Once incarcerated, they tend to stay longer and have a higher risk of returning to jail upon release, largely due to a lack of resources and missed opportunities for connections to treatment. The Council of State Governments, *Improving Cultural Competency Working With People in the Criminal Justice System* (May 16, 2020), available at https://csgjusticecenter.org/webinars/improving-cultural-competency-working-with-people-in-the-criminal-justice-system-who-have-mental-illnesses/?mc_cid=9a6268a61d&mc_eid=7c934afe6f

¹⁸ 20 CFR § 416.1335.

¹⁹ Andrew P. Wilper et al., *The Health and Health Care of US Prisoners: Results of Nationwide Survey*, 99(4) Am. J. Public Health 666-672 (April 2009) <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2661478/>

²⁰ U.S. Dep't of Health and Human Services. <https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=1&lvlid=4>

²¹ U.S. Dep't of Justice, Bureau of Justice Statistics <https://www.bjs.gov/index.cfm?ty=dca>

- c. The U.S. Department of Labor’s Bureau of Labor Statistics collects demographic information, including race and ethnicity data for reports of labor force statistics.²²
- d. The U.S. Department of Housing and Urban Development’s Office of Policy Development and Research collects racial and ethnic demographic data to make reports on housing discrimination every decade, the last report was in 2012.²³
- e. The National Center for Education Statistics (NCES) has conducted a series of reports on status and trends in education for different racial and ethnic groups.²⁴
- f. The U.S. Department of Agriculture National Agriculture Statistics Services produced a report on race and ethnicity data from 2017 related to farming and agriculture land values and producer profiles, among other areas.²⁵
- g. The Office of Veterans Affairs has created an Office of Health Equity (OHE) to share data, tools, research, and resources to help eliminate racial and ethnic disparities confronting veterans. In 2016, the office produced a National Veteran Health Equity Report detailing veteran healthcare by, among other demographics, race and ethnicity.²⁶

We look forward to discussing our request with SSA. As a starting point, we propose a conversation with advocates, data scientists, and researchers about collecting and regularly reporting data about race and ethnicity to help inform next steps in this process. Please contact Sara Lynch at slynch@clsphila.org or 215-227-9983; Claire Grandison at cgrandison@clsphila.org or (215) 981-3726; and Tracey Gronniger at tgronniger@justiceinaging.org to discuss how to proceed.

Sincerely,

Action Center on Race and the Economy (ACRE)
 Advocacy and Training Center, Cumberland, MD
 AFL-CIO
 American Academy of Pediatrics
 American Association on Health and Disability
 American Council of the Blind
 American Physical Therapy Association
 Autistic Self Advocacy Network
 Bay Area Legal Aid
 Center for Public Representation
 Charlotte Center for Legal Advocacy
 Community Legal Aid Society, Inc.
 Community Legal Services of Philadelphia (CLS)

²² U.S. Dep’t of Labor. Bureaus of Labor Statistics. <https://www.bls.gov/cps/demographics.htm>

²³ U.S. Dep’t of Housing and Urban Dev, Office of Policy Development and Research https://www.huduser.gov/portal/publications/fairhsg/hsg_discrimination_2012.html.

²⁴ Nat’l Center for Ed Statistics, *Status and Trends in the Education of Racial and Ethnic Groups* (2018) <https://nces.ed.gov/programs/raceindicators/>.

²⁵ U.S. Dep’t. of Agric., Nat’l Agric. Statistics (2019) <https://www.nass.usda.gov/Newsroom/2019/10-01-2019.php>

²⁶ Office of Veterans Affairs, Office of Health Equity Report (2016) <https://www.datahub.va.gov/stories/s/3a67-rjkmv/stories/s/3a67-rjkm>.

Disability Law Center
Easterseals
Economic Opportunity Institute
Economic Policy Institute
Empire Justice Center
Georgia Legal Services Program
Gray Panthers NYC
Inner City Law Center
Justice in Aging
Lakeshore Foundation
Latinos for a Secure Retirement
Law Foundation of Silicon Valley
Legal Aid Society of the District of Columbia
Legal Council for Health Justice
Legal Services of New Jersey
NAACP
National Committee to Preserve Social Security and Medicare (NCPSSM)
National Disability Rights Network
National Education Association
National Employment Law Project (NELP)
National Organization of Social Security Claimants' Representatives (NOSSCR)
National Women's Law Center
Paralyzed Veterans of America
Philadelphia Welfare Rights Organization
Pisgah Legal Services
Shriver Center on Poverty Law
Social Security Works
Southeast Louisiana Legal Services
Strengthen Social Security Coalition
The Arc of the United States

CC:

Stephanie Hall, Chief of Staff, Social Security Administration
Joie Hill, External Affairs, Social Security Administration
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Senator Sherrod Brown
Representative Karen Bass
Representative Joyce Beatty
Representative Dwight Evans
Representative Steven Horsford
Representative Hank Johnson
Representative John Larson
Representative Richard Neal
Representative Brenda Lawrence
Representative A. Donald McEachin
Representative Frederica Wilson