RECOMMENDATION

BE IT RESOLVED, That the American Bar Association supports in principle the recommendations of the Final Report of the Supplemental Security Income Modernization Project, to improve access to the Supplemental Security Income program for all eligible persons, to ensure that claims are processed fairly and efficiently, and to eliminate rules and procedures that are unreasonable, demeaning and harsh.

BE IT FURTHER RESOLVED, That the American Bar Association supports the following priorities as set forth in the Final Report of the Supplemental Security Income Modernization Project:

- Increase Social Security Administration staffing.
- Increase the Federal benefit standard.
- Stop counting in-kind support and maintenance as income.
- Increase the resource limits, while streamlining the resource exclusions.
The federal Supplemental Security Income (SSI) program was created in 1972 to supplement the nation’s existing social insurance programs by providing a monthly cash benefit to lift out of poverty needy persons who were aged, blind or disabled. SSI provides basic benefits for persons 65 and older with little or no retirement income; younger adults who have disabilities but who have not worked long enough or recently enough to receive disability benefits; and disabled children whose parents may still be working, but at very low wages. For many individuals, SSI and Social Security benefits constitute the sole source of income and access to health care.

There is no doubt that during the past twenty years, SSI benefits have helped needy people of all ages. But while Congress has made several improvements in the program over the years, millions of eligible individuals remain unaware of their eligibility, or if they do apply, continue to be faced with unwarranted delays in processing claims; procedures which are unreasonable, harsh and demeaning; and benefits which are inadequate to support the basic necessities of life.

In 1990, in an effort to address these issues and others, then Social Security Commissioner Gwendolyn King appointed a panel of twenty-one experts, chaired by Dr. Arthur Flemming, to review the fundamental structure and purpose of the SSI program. The Supplemental Security Income Modernization Project was charged with determining the extent to which the SSI law, and the policies developed by the Social Security Administration to implement the law, are meeting the needs of those whom they were designed to serve. To this end, the panel reviewed all applicable laws, regulations and policies; held public hearings at locations around the country; and solicited comments from SSA employees, individuals (including former and current SSI recipients), professional organizations, advocacy groups, legal services organizations, private agencies, and federal, state and local governments, among others. The Project published an issues paper in the Federal Register in July, 1991, (to which 14,600 comments were received), and a final report in September, 1992.

The Final Report of the Experts suggests more than fifty reforms, covering twenty categories, which a majority of the panelists believe would improve the effectiveness of the SSI program. Of these, the panel finds the following to be of equal importance and top priority:

- An immediate staffing increase of 6,000 in SSA. This would constitute a first step in eliminating growing backlogs and enabling the agency to move forward providing the level of personalized services which many of the SSI population so sorely need.

- Increase the Federal benefit standard over a period of five years, so that it reaches 120 percent of the poverty guidelines by the fifth year. In 1992 the
standard for an individual is roughly 75 percent of the poverty guideline for an
individual and the standard for a couple is roughly 83 percent of the poverty
guideline for two people.

- Repeal the law which requires that receipt of in-kind support and
  maintenance (food, clothing and shelter) must be considered as income. This
  would remove a harsh and demeaning provision and it would further the goal
  of simplification.

- Change the resources test from $2,000 for an individual and $3,000 for a
couple to $7,000 for an individual and $10,500 for a couple and streamline the
exclusions. This would make the rules easier for beneficiaries to understand
and give them more flexibility in use of funds while simplifying program
administration.

On October 14, 1993, the Project presented its recommendations to the U.S. House of
Representatives, Committee on Ways and Means, Subcommittee on Human Resources.
Legislation to codify some of the recommendations has been introduced by Hon. Carrie
Meek, (D-FL.). This legislation proposes to increase SSI resource levels and simplify the
exclusion rules; to raise the benefit levels; and to eliminate in-kind support from
determination of income.

EXISTING ASSOCIATION POLICY

Recognizing that the quality of decisionmaking can have a profound effect on the
lives and well-being of millions of Americans, the Association has worked actively over the
years to promote increased efficiency and fairness in the Supplemental Security Income
program and in the Social Security Administration's disability benefits review process.

In 1984, the ABA began advocating for improvements in the SSI program, going on
record in support of legislation designed to resolve inequities in such areas as income and
resource exclusions, personal needs allowances and overpayment procedures. In 1985 the
ABA and the Administrative Conference of the United States (ACUS) sponsored a
symposium on the Social Security administrative appeals process. The symposium produced
a set of recommendations that resulted in the development of an extensive policy statement

In 1986 and again in 1991, the ABA adopted policies aimed at further improving the
disability claims process and protecting the rights of persons who may be entitled to or who
are already receiving benefits. Also in 1991, the Association urged Congress to enact the
Homeless Outreach Act, requiring SSA to undertake affirmative efforts in locations where
homeless people congregate, to ensure that eligible individuals receive SSI benefits to which
they are entitled. And in 1992, the Association approved a resolution calling for welfare
programs to be funded at a level required to meet the need for the basic essentials of life.
The Association has advocated these positions effectively in a variety of forums, testifying before Congressional committees and the Administrative Conference of the United States; commenting on proposed regulations; and directing projects affecting persons eligible for benefits under these programs. In 1986, the Association filed an amicus curiae brief in the landmark United States Supreme Court case, *Bowen v. City of New York*,4 in which the Association successfully argued that the Social Security Administration should reopen the cases of thousands of claimants with mental disabilities who were denied disability benefits because they failed to meet sub rosa requirements and appeal deadlines.5 In September, 1991, the ABA commented on the draft report and recommendations of the SSI Modernization Project, and in December, 1992, submitted comments to the *Final Report of the Experts*.

**PROPOSED RESOLUTION**

It is with this background that the House of Delegates is urged to support the goals and objectives of the *Final Report of the SSI Modernization Project*. While the ABA does not have policy addressing each of the more than fifty recommendations of the SSI Modernization Project, and while we have not taken positions on the specific timing and financing of the recommended reforms, existing policy is in accord with the principles underlying the creation of the Project; and with the issues which the Panel deems most compelling.

**Staffing**

The ABA is committed to promoting improvements within the entire justice system, by advocating for balanced and adequate funding for, and timely access to, each element of that system, including administrative agencies.6 As a public agency, the Social Security Administration is charged with the duty to provide benefits to all eligible applicants. But between 1984 and 1990, the Social Security Administration underwent significant staff reductions. Also during that time, the ongoing workload increased, creating massive backlogs in the processing of claims before the agency. The backlog of disability cases (social insurance and SSI) alone currently numbers in the hundreds of thousands. Without changes in staffing patterns, including increases in staffing, many of the substantive and procedural improvements for which the ABA has advocated over the years in all likelihood will not be achieved.

For example, the Association has worked to improve the quality of medical and vocational evidence at the initial stages of the disability review process. We have recommended that SSA be directed to make vigorous efforts to compile necessary documentation and to supplement reports which are not sufficiently detailed or comprehensive. We have further recommended that SSA increase its efforts to educate the medical community regarding the eligibility criteria used in the disability program, and the kind of medical evidence which SSA requires. Since medical reports may not provide a sufficient picture of the claimant's total functional capacity, we have urged that SSA obtain evidence concerning claimants' symptoms and limitations from non-medical sources such as social service workers, family members, previous co-workers and others.
To ensure that the review process is efficient and fair, the ABA has argued that SSA must afford claimants the opportunity to review their files, and provide them notice of any information not in the file, which normally should have been included, and an opportunity to submit further evidence in support of their claim. Only after the evidence has been properly developed, and the claimant afforded the opportunity for a personal interview with agency decisionmakers, should a decision be made on the claim.

Currently, a claim which is denied at this stage in the process is submitted for reconsideration. Association policy, however, endorses appeal directly to an Administrative Law Judge. If the quality of intake and case development is improved, there would be little reason for reconsideration at the state level of the appeals process, particularly given the low reversal rate and delays involved at this step.

Increased staffing will also be essential to the Social Security Administration's outreach programs. The Panel proposes continuing and expanding the Social Security Administration's efforts to reach the significant numbers of low-income, elderly and disabled individuals who are eligible for SSI, but do not receive benefits. Mental illness, physical disability or social isolation have prevented many eligible persons from applying. In 1990-91, the ABA's Commission on Legal Problems of the Elderly, along with the National Senior Citizens Law Center and the American Association of Retired Persons, administered an outreach demonstration project under a cooperative agreement with SSA. That effort provided an opportunity for first hand observation of the vast numbers of SSI-eligible individuals who are never reached.

The ABA is on record in support of outreach programs targeted specifically to homeless people. Since 1988, the Association has provided assistance to state and local bar associations and other legal organizations to develop and maintain programs offering pro bono legal services to homeless clients. Several programs are designed specifically to serve the needs of homeless mentally ill people. According to staff at those programs, "persons who are homeless and those who have mental impairments (comprising 30% to 35% of the homeless) are the least capable of accessing and securing SSI benefits, without some external outreach and advocacy support"; (San Diego Volunteer Lawyers Program) and "the needs of the homeless cannot be met without vigorous outreach programs" (University of Chicago Mandel Legal Aid Clinic).

Reports from around the country demonstrate that homeless people face extraordinary difficulties in trying to apply for SSI benefits. Isolated in shelters or on streets and lacking any financial resources, eligible homeless people are often unable to travel to government offices to inquire about or apply for benefits. Lacking a permanent address or telephone, potential applicants who are homeless face often insurmountable barriers in communicating and maintaining communication with government offices. For homeless persons with mental disabilities, negotiating the complex application process is even more formidable a task.

Increased staffing for the Social Security Administration will improve access to services, alleviate delays, and better develop evidence at the early stages of the SSI claims process. Careful decisionmaking at the administrative level also will relieve the federal courts
of many appeals now before them. The Association therefore supports the Project's recommendation that this issue be accorded top priority.

**Benefits and Resources**

As far back as 1984, the ABA urged that the Social Security Administration resolve inequities in the SSI program by increasing benefit levels, raising resource limits and eliminating consideration of in-kind support as income to the beneficiary. In addition to being outdated and demeaning, these policies impose an administrative burden on SSA. Implementation and enforcement take up valuable staff time, adding to the number of benefit denials and appeals and as a consequence, delaying access to the system for other claimants.

**Benefit Levels**

Monthly SSI income standards in 1993 are roughly 75% of the federal poverty guideline ($434.00) for a single person, and roughly 83% of the federal poverty guideline ($652.00) for a couple. (Some states supplement federal benefits). These percentages have remained relatively unchanged since the program began in 1974, and produce benefits which are simply inadequate to meet basic expenses for food clothing and shelter.

The Panel points out in its Final Report that Congress has lifted the criteria for program access to 120% of the poverty level or more, for approximately fifteen other programs which serve poor people. Benefit levels at 100% of the poverty guidelines, or greater, would at least begin to approach the standards used in most other needs based programs.

**In-Kind Support and Maintenance**

In calculating benefit levels, the SSI program takes into consideration income received by a person from a variety of sources, including work, other benefit or retirement programs, etc. The program also counts as income "in-kind support and maintenance," the value of food, clothing or shelter a beneficiary receives. Calculation of in-kind support varies depending upon the circumstances and living arrangements involved, but can include a one-third reduction in benefits for an individual who is living in the home of another.

This arbitrary reduction severely penalizes truly needy elderly persons or persons with disabilities who, for a variety of legitimate reasons, live with friends or relatives. Many SSA claims representatives spend between one-fourth and one-third of their time verifying living arrangements and computing benefit amounts, following program instructions which comprise 150 pages in the Program Operations Manual! This unnecessary burden on an already inadequately staffed agency further increases the backlog of pending cases. And in these times of encouraging voluntary support, the policy serves only to discourage informal caregiving and to weaken the family structure.

**Resource Limits**

Like most other needs-based programs, the SSI program considers resources to be cash, personal property, and real property that a person owns and has the right to convert to cash. Certain property, such as the home, an essential automobile or a burial plot or funds, is
excluded. In addition, resources belonging to certain other people, such as a spouse, may be deemed to be available to the SSI recipient. If an individual's resources exceed the established limits at any time during a given month or months, he or she will be ineligible for benefits for the entire month(s).

The resource limits were originally set at $1500 for an individual and $2250 for a couple; they remained unchanged for the first ten years of the program, until they were increased to the current figures over a four year period beginning in 1985. The current limits are $2,000 for an individual and $3,000 for a couple. Like the benefit standards and in-kind income rules, the resource guidelines involve issues which recipients may not understand, and complex calculations to which SSA representatives must devote significant time. Moreover, the rules severely restrict the ability of persons who are elderly or who have disabilities to meet medical needs not covered by Medicaid (i.e. major dental work, customized wheelchair), or to retain even a small "nest egg" for emergencies. The ABA's 1984 policy supports raising the resource limits and streamlining the process by which certain resources are excluded, so as to simplify administration of the program and allow greater flexibility to beneficiaries in the conservation and use of their funds.

CONCLUSION

To date, most efforts by Congress and the Administration to initiate improvements in Social Security Administration programs have been piecemeal. When then Commissioner King charged the SSI Modernization Project "to create a dialogue that provides(s) a full examination of how well the SSI law, and the policies developed to implement the law, serve people with very low or no income who are over 65 or blind or disabled," she recognized the need for a comprehensive review of structure and purpose of the SSI program. Endorsement in principle of the efforts of the SSI Modernization Project will allow the ABA to promote dialogue in Congress and other forums, to participate therein, and to reaffirm its long-standing position that a fair and equitable Supplemental Security Income program, efficiently administered, goes far toward ensuring equal access to justice for those members of our society who are least able to protect their own rights -- low-income older persons, individuals with disabilities, and those who are homeless and otherwise disenfranchised.

The improvements recommended in the Final Report will increase the expenditures of the SSI program. Recognizing this, the Panel states:

Many experts believed that the identification of potential sources of financing program improvements should be under the purview of persons with expertise in public finance; and they, in general, are not such experts. Thus, the Commissioner of Social Security has asked the Chairman to chair a follow-up group of public finance experts to develop options for financing the improvements identified in this report and to complete their work in six months.
That analysis was delayed by the change in Administration, but when it becomes available, and the options are presented, our Commission will study them and report further to the House, with our recommendations. Meanwhile, the House should go on record as supporting in principle the Recommendations of the Final Report of the Supplemental Security Income Modernization Project.

Respectfully submitted,

Alexander D. Forger
Commission on Legal Problems of the Elderly

February, 1994
3. Id. at 40743.
8. Id. at 40746.
9. Id. at 40743.
10. Id. at 40747.
110

GENERAL INFORMATION FORM

Submitting Entity: Commission on Legal Problems of the Elderly
Submitted By: Alexander D. Forger

1. Summary of Recommendation(s).
   Support in principle the recommendations of the Final Report of the Supplemental Security Income Modernization Project, to improve access to the SSI program; to ensure that claims are handled fairly and efficiently, and to eliminate rules and procedures that are unreasonable; to increase Social Security Administration staffing; to raise the SSI benefit and resource levels; and to stop counting in-kind support as income.

2. Approval by Submitting Entity.
   0 October 1993 Commission on Legal Problems of the Elderly

3. Has this or a similar recommendation been submitted to the House or Board previously? No

4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?
   Related ABA policies include support for improvements in the administration of and removal of inequities in programs such as Supplemental Security Income (1984); recommendations for improving the disability claims process and protecting the rights of current beneficiaries (1986 and 1991); support for legislation requiring the Social Security Administration to improve outreach and access to benefits for homeless persons; and a call for welfare programs to be funded at a level required to meet basic needs (1992).

   This Recommendation affirms previous Association positions, but goes further by supporting a comprehensive evaluation of the SSI program.

5. What urgency exists which requires action at this meeting of the House?
   The Recommendations were presented to Congress on October 14, 1993. The Association has policy on some discrete recommendations, but no position on which to support a comprehensive review. Adoption of this resolution will allow the ABA to promote a national dialogue on reform of the SSI program.
6. **Status of Legislation.**

H.R. 2676 (Meek, D-Fl) proposes to codify some of the recommendations. Currently pending before the Subcommittee on Human Resources, House Ways and Means Committee.

7. **Cost to the Association.** (Both direct and indirect costs.)

None

8. **Disclosure of Interest.** (If applicable.) (conflict of interest question)

N/A

9. **Referrals.**

- Section of Administrative Law
- Section of General Practice, Committee on Government Lawyers
- Section of Individual Rights and Responsibilities
- Section of Family Law
- Section of Taxation
- Senior Lawyers Division
- Government and Public Sector Lawyers Division
- Young Lawyers Division
- Commission on Homelessness and Poverty
- Commission on Mental and Physical Disability Law
- Consortium on Legal Services and the Public
- Standing Committee on Legal Aid and Indigent Defendants
- Standing Committee on Lawyers Public Service Responsibility
- National Conference of Administrative Law Judges

10. **Contact Person.** (Prior to the meeting.)

    Stephanie Edelstein (202) 331-2633

    ABA, 1800 M Street, NW, Washington, DC 20036

11. **Contact Person.** (Who will present the report to the House.)

    Alexander D. Forger

12. **Contact Person Regarding Amendments to This Recommendation.** (Are there any known proposed amendments at this time?)

    None