RESOLVED, That the American Bar Association urges Congress to enact the Supplemental Security Income (SSI) Restoration Act of 2013 (H.R.1601) or similar legislation that strengthens SSI by updating the resource limit to account for inflation, increasing the general and earned income disregards, eliminating a reduction in benefits for in-kind support and maintenance, and repealing the transfer penalty.
I. **Background**

The federal Supplemental Security Income (SSI) program was created in 1972 to replace the earlier federal grants to the states for “old-age assistance, aid to the blind, and aid to the permanently 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 children with disabilities whose parents may still be working, but at very low wages.

Over eight million Americans rely on the Supplemental Security Income (SSI) program for their survival. For many, Social Security and SSI constitute their sole source of income. Unfortunately, at present, SSI provides income that is below the poverty line and imposes resource limits that have, in effect, become progressively more restrictive each year. The maximum annual federal SSI benefit in 2013 for an individual in the continental United States is $8,520. That is 74% of the Federal Poverty Guideline for an individual, which is $11,490.¹ The central problem is that the program is still largely designed for 1972, the year it was signed into law by President Nixon. Certain financial rules of the program have stayed frozen in time since the 1970s, and they are so restrictive that a growing number of older SSI recipients become increasingly financially vulnerable each year.

The Supplemental Security Income Restoration Act (H.R. 1601), introduced in April 2013 by Rep. Raul M. Grijalva (D-AZ), modernizes a program that plays a key role in the security of millions of Americans. Specifically, it…

A. Updates the general income disregard from its current level of $20 to $110 per month.
B. Updates the earned income disregard from its current amount of $65 to $357 per month.
C. Updates the resource limit from its current level of $2000 for an individual ($3000 for an eligible couple) to $10,000 ($15,000 for an eligible couple).
D. Repeals the in-kind support and maintenance provision which currently reduces the federal payment rate by one-third.
E. Repeals the SSI transfer penalty that currently penalizes an applicant for the transfer of a resource for less than fair market value within 36 months of application.

II. **What this Policy Does.**

The resolution calls on Congress to enact H.R. 1601 of 2013 or a similar bill that will update several of the SSI program’s means testing parameters to account for more than 30 years of inflation and changing economic realities faced by low income elders and persons with disabilities. The proposed policy supports each of the five elements of the SSI Restoration Act for the reasons explained below:

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¹ See the Federal Poverty Guidelines at 74 F.R. 5182-5183 ((January 24, 2013).
A. Why an update in the general income exclusion is needed.

The SSI Restoration Act increases the SSI General Income Disregard from the current $20 to $110 per month. The general income disregard was established to reward work, by providing a $20 boost to those who worked long enough to qualify for Social Security or any other retirement benefit.\(^2\)

This Section has not been changed since President Nixon signed the SSI program into law in 1972. The cost of living is more than five and a half times what it was then, and the general income disregard is no longer very meaningful nor anchored in the economic realities faced by SSI recipients. Twenty dollars today is the equivalent of less than $4 in 1972. Currently, $110 is equal to just under $20 in 1972.\(^3\)

B. Why an update in the earned income exclusion is needed.

The SSI Restoration Act increases the SSI Earned Income Disregard from the current $65 to $357 per month. The income disregard was intended to encourage those who could to return to the work force.\(^4\) It, too, has not been changed since 1972. The amount of $357 today is equal to just under $65 in 1972.\(^5\) The exclusion is so low that its work incentive has been greatly diminished.

C. Why an update in the resources limit for individuals and couples is needed.

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 current limits are $2,000 for an individual and $3,000 for a couple.

The SSI Restoration Act increases the resources limit to $10,000 ($15,000 for an eligible couple). The resources limit has increased only once since 1972 (it was originally $1500) and today it is woefully insufficient to deal with predictable vital needs. For the older person living in their own home, $2,000 is not enough to make necessary home repairs or buy a reliable used car or to cope with other emergencies that will inevitably arise.\(^6\) While states have limited authority to increase the resource level, most do not.

\(^2\) Social Security Act, Section 1612(b)(2); 20 CFR 416.1112(c) and 416.1124(c).

\(^3\) As measured by the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W).

\(^4\) Section 1612(b) of the Social Security Act; 20 CFR 416.1112.

\(^5\) Id.

D. Why support and maintenance furnished in kind should not be included as income.

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 presumptively includes a one-third reduction in the federal benefit rate 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 considerable time verifying living arrangements and computing benefit amounts, following program instructions which comprise hundreds of pages in the Program Operations Manual.7 This unnecessary administrative burden on an already inadequately staffed agency is counter-productive and further increases the backlog of pending cases. In these times of encouraging voluntary family support, the policy serves only to discourage informal caregiving and to weaken the family structure. The SSI Restoration Act repeals the in-kind support and maintenance provision.

E. Why repeal of penalty for disposal of resources for less than fair market value is needed

Public Law (P.L.) 100-169 (Foster Care Independence Act, enacted in 1999) requires the Social Security Administration to determine if a claimant has transferred any resources for less than fair market value within 36 months prior to the filing date month. Such a transfer will result in a penalty in the form of a period of ineligibility. The SSI Restoration Act repeals the penalty. This 1999 provision is based on the assumption that people will give away valuable property for the opportunity to live on a subsistence income. Evidence for the presumption is wholly lacking.

The transfer penalty causes considerable hardship for recipients without accomplishing any worthwhile objective. It also creates a substantial additional burden on the Social Security Administration to investigate financial records covering three years retrospectively and adds to the processing burden of cases at a time when the agency is already overburdened and understaffed.

IV. Need for ABA Action

The ABA stands in a unique position as a major spokesperson for the legal profession in the United States. Where a minimally sufficient standard of living is denied to vulnerable persons who cannot financially survive on their own because of age or disability, the ABA has always stood on the side of ensuring just laws that support a right to social security and a decent standard of living.

The need to update SSI has been an ABA priority since the Social Security Administration completed an SSI Modernization Project Report in August 1992. It was the first comprehensive review of the SSI program since it was begun in 1974. The project was chaired by the late Arthur S. Fleming, who was also a member of the ABA Commission on Legal Problems of the Elderly (now the Commission on Law and Aging). The purpose of the Project was to provide a full examination of how well SSI law and the policies developed by the Social Security Administration (SSA) serve persons with very low or no income who are over 65 years of age, blind, or otherwise have a disability. Then Commissioner of Social Security Gwendolyn King appointed 21 experts, representing a wide range of programs serving persons who are age 65 or over, blind, or have a disability to work on the project.

Members of the SSI Modernization Panel set four top priorities for program improvement: (1) increase SSA staffing, (2) increase the federal benefit standard, (3) stop counting, as income, in-kind support and maintenance, and (4) increase the resource limits, while streamlining the resources exclusions. At the 1994 ABA Midyear Meeting, the ABA adopted policy supporting in principle the recommendations of the SSI Modernization Project. See “Related ABA Policy.”

V. Related ABA Policy

The ABA House of Delegates adopted the following policy in 1994 supporting in principle the recommendations of the SSI Modernization Project:

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 proposed policy reiterates two of the above bullets – those calling for repealing of the in-kind support and maintenance and increasing the resource limits. Even further back in 1984, the ABA adopted broader policy in support of SSI legislation that urged Congress…

... to make improvements in the administration of such programs as Supplemental Security Income by resolving inequities and anomalies in such areas as income and resource exclusions, personal needs allowances, notice provisions, overpayment procedures, and clarity in official communications, in ways which enhance the efficiency, effectiveness, fairness, and accessibility of such programs. (84A114)

The ABA has adopted multiple policies over the years supporting the retirement and disability benefit titles of the Social Security, as well as the Medicare and Medicaid titles. This line of
policy has consistently sought to secure the program’s funding integrity, its independence, efficient administration, due process protections, and benefits.

VI. Conclusion

In the past 20 years, opportunities in Congress to modernize the Supplemental Security Income program have been few and far between. The present affords an opportunity for the ABA to renew its long-standing support for SSI and to adapt it to the economic realities of today’s world. The current policy resolution is entirely consistent with a long history of existing ABA policy. Accordingly, the Commission on Law and Aging requests the House of Delegates to adopt the resolution herein.

David M. English, Chair
ABA Commission on Law and Aging
August 2013
1. **Summary of Resolution(s).**

   This resolution supports the SSI Restoration Act (H.R. 1601), introduced in April 2013, or other similar legislation that amends the Supplemental Security Income Program (Title 16 of the Social Security Act) to:
   
   A. Update the general income disregard from its current level of $20 to $110 per month.
   B. Update the earned income disregard from its current amount of $65 to $357 per month.
   C. Update the resource limit from its current level of $2000 for an individual ($3000 for an eligible couple) to $10,000 ($15,000 for an eligible couple).
   D. Repeal the in-kind support and maintenance provision which currently reduces the federal payment rate by one-third.
   E. Repeal the SSI transfer penalty that currently penalizes an applicant for the transfer of a resource for less than fair market value within 36 months of application.

2. **Approval by Submitting Entity.**

   Approved by the Commission on Law and Aging May 3, 2013.

3. **Has this or a similar resolution been submitted to the House or Board previously?**

   A resolution similar in part to this was previously proposed and adopted in 1994. See below.

4. **What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?**

   The ABA House of Delegates adopted policy in 1994 supporting in principle the recommendations of the 1992 SSI Modernization Project Report, calling for:

   - Increased Social Security Administration staffing.
   - An increase in the Federal SSI benefit standard.
   - An end to counting in-kind support and maintenance as income.
   - An increase the resource limits, while streamlining the resource exclusions.

   The proposed policy, among other things, reiterates two of the above bullets – those calling for repealing of the in-kind support and maintenance and increasing the resource limits.

   The ABA has adopted multiple policies over the years, consistent with the proposed policy, supporting the retirement and disability benefit titles of the Social Security, as well as the Medicare and Medicaid titles, all of which seek to secure the program’s funding integrity, its independence, efficient administration, due process protections, and benefits.
5. **What urgency exists which requires action at this meeting of the House?**

There are no immediate legislative deadlines, but the changes called for by this resolution have been sought without success since the early 1990s. Favorable legislation currently is pending in Congress.

6. **Status of Legislation.** (If applicable)

The Social Security Restoration Act (H.R. 1601) was introduced by Rep. Raul M. Grijalva, (D-AZ) on April 17, 2013. The bill would implement the five elements proposed in this policy.

7. **Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.**

The policy will enable the ABA to explicitly and visibly support H.R. 1601 or bills similar to it in Congress.

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

None

9. **Disclosure of Interest.** (If applicable)

None

10. **Referrals.**

    Standing Committee on the Delivery of Legal Services  
    Standing Committee on Government Affairs  
    Standing Committee on Legal Aid and Indigent Defendants  
    Standing Committee on Pro Bono and Public Service  
    Special Committee on Bioethics and the Law  
    Commission on Disability Rights  
    Commission on Domestic and Sexual Violence  
    Commission on Hispanic Legal Rights and Responsibilities  
    Commission on Homelessness and Poverty  
    Commission on Immigration  
    Commission on Youth at Risk  
    Section of Administrative Law and Regulatory Practice  
    Section of Dispute Resolution  
    Section of Family Law  
    Government and Public Sector Lawyers Division  
    Section of Health Law  
    Section of Individual Rights and Responsibilities  
    Judicial Division
11. **Contact Name and Address Information.** (Prior to the meeting. Please include name, address, telephone number and e-mail address)

   Charlie Sabatino, Director, ABA Commission on Law and Aging  
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   E-mail: [charles.sabatino@americanbar.org](mailto:charles.sabatino@americanbar.org)

12. **Contact Name and Address Information.** (Who will present the report to the House? Please include name, address, telephone number, cell phone number and e-mail address.)

   David M. English, Chair  
   University of Missouri Columbia Law School  
   203 Hulston Hall  
   Columbia, MO 65211-4300  
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EXECUTIVE SUMMARY

1. Summary of the Resolution

This resolution supports the SSI Restoration Act (H.R. 1601), introduced in April 2013, or other similar legislation that amends the Supplemental Security Income Program (Title 16 of the Social Security Act) to:

A. Update the general income disregard from its current level of $20 to $110 per month.
B. Update the earned income disregard from its current amount of $65 to $357 per month.
C. Update the resource limit from its current level of $2000 for an individual ($3000 for an eligible couple) to $10,000 ($15,000 for an eligible couple).
D. Repeal the in-kind support and maintenance provision which currently reduces the federal payment rate by one-third.
E. Repeal the SSI transfer penalty that currently penalizes an applicant for the transfer of a resource for less than fair market value within 36 months of application.

2. Summary of the Issue that the Resolution Addresses

The central issues addressed are several means testing parameters of the SSI program, many of which have been unchanged since 1972, the year SSI was signed into law by President Nixon. The financial constraints are so restrictive that a growing number of SSI recipients who are age 65 or over, blind, or have a disability have become increasingly financially vulnerable as each these program parameters have stayed frozen.

The general and earned income disregards. The general income disregard was established to reward work, by providing a $20 boost to those who worked long enough to qualify for Social Security or any other retirement benefit. The Section has not been changed since 1972. Similarly, the earned income exclusion has not changed during that same period. The income disregard was intended to encourage those who could to return to the work force. The cost of living today is more than five and a half times what it was in 1972, and the general income disregard and earned income exclusion are no longer proportional to the economic realities faced by SSI recipients.

The resources limit. The resources limit has increased only once since 1972 (it was originally $1500) and today it is woefully insufficient to deal with perfectly predictable needs. For the older person living in their own home, $2,000 is not enough to make necessary home repairs or buy a reliable used car or to cope with other emergencies that will inevitably arise.

The one-third reduction. This arbitrary one-third reduction of benefits resulting from living in the household of another 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 considerable time verifying living arrangements and computing benefit amounts, applying lengthy and complicated program instructions.
The transfer of resources penalty. This 1999 provision is based on the assumption that people will give away valuable property for the opportunity to live on a subsistence income.

The current transfer penalty applies to any transfer of resources for less than fair market value within three years of application. The penalty causes considerable hardship for recipients without accomplishing any worthwhile objective. It also creates a substantial additional burden on the Social Security Administration to investigate financial records covering three years retrospectively.

3. Please Explain How the Proposed Policy Position will address the issue

The resolution addresses the problem by calling on Congress to enact H.R. 1601 or similar bill that will update several of the program’s means testing parameters to account for more than 30 years of inflation and changing economic realities faced by low income elders and persons with disabilities. Specifically, calls on Congress to:

A. Update the general income disregard from its current level of $20 to $110 per month.
B. Update the earned income disregard from its current amount of $65 to $357 per month.
C. Update the resource limit from its current level of $2000 for an individual ($3000 for an eligible couple) to $10,000 ($15,000 for an eligible couple).
D. Repeal the in-kind support and maintenance provision which currently reduces the federal payment rate by one-third.
E. Repeal the SSI transfer penalty that currently penalizes an applicant for the transfer of a resource for less than fair market value within 36 months of application.

4. Summary of Minority View

Currently none.