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Office of Regulations
Social Security Administration
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Baltimore, Maryland 21235– 6401

Submitted electronically to: <http://www.regulations.gov>

Re: Comments on Agency Self-Evaluation Under Section 504 of the Rehabilitation Act of 1973, 75 Federal Register 68395 (November 5, 2010), Docket No. SSA-2010-0069

To Whom It May Concern:

The National Center for Law and Economic Justice (NCLEJ) is a national organization that uses policy advocacy, litigation, training, and support for grassroots organizations to advance the cause of justice for low-income individuals. One focus of our work is ensuring that government programs and services for low-income individuals are accessible to and usable by people with disabilities. NCLEJ has assisted state public benefits agencies in several states and numerous counties in New York State in developing or improving their Americans with Disabilities Act (ADA) or Section 504 of the Rehabilitation Act policies, grievance procedures, and notice of rights materials, and is a national expert in the field of the intersection of public benefits programs and the ADA and Section 504.

Legal Services NYC (LS-NYC) is the largest organization exclusively devoted to the provision of free civil legal services to the poor in the nation. For over forty-three years, LS-NYC has provided quality legal representation to low-income New Yorkers through our nineteen neighborhood offices located in diverse communities throughout New York City. Each year, our staff assists approximately 750 clients to obtain or maintain Social Security Disability Insurance (SSDI) or Supplemental Security Income (SSI). LS-NYC also helps coordinate New York State's Disability Advocacy Program (DAP). Statewide, DAP has served over 90,000 people seeking assistance with federal disability benefits. As a coordinator for the New York City

region, LS-NYC also provides support services to dozens of disability benefit advocates. These support services can include training sessions, advice, co-counseling, and providing information related to disability law.

NCLEJ and LS-NYC are writing to provide recommendations in response to the request for comments about how the Social Security Administration (SSA) should conduct a self-evaluation pursuant to Section 504 of the Rehabilitation Act of 1973 (Rehabilitation Act).¹ Our recommendations focus on the following two topics: (I) the self-evaluation models, checklists, and forms that the SSA should consider in determining how to evaluate its facilities, activities, and programs; and (II) the outreach that the SSA should conduct to ensure that people with disabilities and advocates have ample opportunities to participate in the self-evaluation.

I. The SSA should consider aspects of self-evaluation models, checklists, and forms that have been successfully used by other agencies.

The SSA asks for “ideas and suggestions on how [it] can best perform the self-evaluation.”² A self-evaluation of an agency that serves approximately 60 million individuals³ who have a wide-range of disabilities is a significant undertaking. On a daily basis, the SSA transmits approximately one million written notices, receives approximately 250,000 calls to its toll-free number, and receives over 100,000 visitors to its field offices.⁴ The scope of its work will make it challenging for the SSA to complete a Section 504 self-evaluation in a manner that complies with applicable law. But it is not impossible for a large public agency to conduct a self-evaluation that leads to significant accessibility improvements, and there are a number of helpful precedents that the SSA can look to for guidance. In this section, we will discuss aspects of models, checklists, and forms that have been successfully used by other public agencies to improve accessibility. We recommend that the SSA consider, adapt, and adopt these proven practices.

A number of the models, checklists, or forms that we discuss in these recommendations were developed by or for the use of state and local governments. They are, however, relevant to the SSA’s self-evaluation process and the SSA should use them as resource materials in evaluating its programs, because ADA Title II requirements and Section 504 requirements are generally the same.⁵ Moreover, many aspects of SSA programs are similar to government

¹ Given that the SSA has promised to provide a separate opportunity “to submit comments about [the SSA’s] policies and practices,” 75 Fed. Reg. 68396, these comments are limited to our “suggestions on how [the SSA] can best perform the self-evaluation.” *Id.* at 68395.

² *Id.*

³ See Social Security Administration, Monthly Statistical Snapshot, October 2010, Table 1 (November 2010), available at http://www.ssa.gov/policy/docs/quickfacts/stat_snapshot/ (last visited Dec. 6, 2010).

⁴ See U.S. SOCIAL SECURITY ADMINISTRATION, ANNUAL PERFORMANCE PLAN FOR FISCAL YEAR 2011 AND REVISED FINAL PERFORMANCE PLAN FOR FISCAL YEAR 2010, at 29, available at <http://www.ssa.gov/performance/2011/FY%2010-11%20APP%20508%20Compliant.pdf>.

⁵ See, e.g., *Henrietta D. v. Bloomberg*, 331 F.3d 261, 272 (2d Cir. 2003) (“As the District Court correctly noted, ‘[a]lthough there are subtle differences between these disability acts, the standards adopted by Title II of the ADA for State and local government services are generally the same as those required under section 504 of federally assisted programs and activities.’”); *Rodriguez v. New York*, 197 F.3d 611, 618 (2d Cir. 1999) (“Because Section 504 of the Rehabilitation Act and the ADA impose identical requirements, we consider these claims in tandem.”); see also U.S. DEPARTMENT OF JUSTICE, ADA TITLE II TECHNICAL ASSISTANCE MANUAL § II-1.4100 (1993) [*hereinafter* ADA TITLE II TECHNICAL ASSISTANCE MANUAL], available at

programs that are covered by Title II of the ADA. Some ADA Title II programs, for example, provide public benefits to low-income people and people who have disabilities. Like SSA programs, those state and local government programs have an application process and communicate with applicants and beneficiaries in person, by telephone, through written notices, and through their websites.

A. *First Steps in Developing a Self-Evaluation Plan*

The SSA should evaluate each of the five main programs it administers or for which it accepts applications: Old Age Insurance; SSDI; SSI; Survivor Benefits; and Medicare.⁶ In evaluating these programs, the SSA should examine its “formal policies and practices, contained in administrative manuals, guides, policy directives, and memoranda, as well as less formal practices that may not be written down.”⁷

In formulating its self-evaluation plan, the SSA should begin by conducting an analysis of the paths that: (1) applicants need to take to successfully obtain benefits; and (2) beneficiaries need to take to successfully maintain benefits.⁸ For applicants and beneficiaries, the SSA should consider both the “physical path traveled” as well as the “the administrative requirements of the service delivery, (e.g., eligibility criteria, application procedures).”⁹

Two documents provide a good starting place for the SSA to begin developing its self-evaluation plan. The *Title II Technical Assistance Manual*, which is published by the United States Department of Justice (DOJ), suggests that, in its self-evaluation plan, an agency should carefully examine the following twenty areas:

- 1) whether there are physical barriers to access;
- 2) the modifications needed to achieve program access, and the steps that will be taken to achieve access;
- 3) whether policies and practices exclude or limit participation of people with disabilities;
- 4) modifications of policies and practices needed to achieve program access and “complete justifications” modifications that will not be made;

<http://www.usdoj.gov/crt/ada/taman2.html> (“Title II [of the ADA] provides protections to individuals with disabilities that are at least equal to those provided by the nondiscrimination provisions of title V of the Rehabilitation Act. . . . Title II may not be interpreted to provide a lesser degree of protection to individuals with disabilities than is provided under [the Rehabilitation Act].”).

⁶ Of course, the SSA should perform only one evaluation of the features of these programs that overlap.

⁷ Cary LaCheen, *Using Title II of the Americans with Disabilities Act on behalf of Clients in TANF Programs*, 8 GEO. J. ON POVERTY L. & POL'Y 1, 64 (2001) (citing ADA TITLE II TECHNICAL ASSISTANCE MANUAL § II-8.2000).

⁸ See NATIONAL ENDOWMENT FOR THE ARTS, CIVIL RIGHTS OFFICE, SECTION 504 SELF-EVALUATION WORKBOOK 4 (OMB Number 3135-0101), available at <http://www.nea.gov/manageaward/SECTION504Workbook.doc> (describing “client path analysis” as “a walk-through of the process needed for a citizen to participate in a service you provide . . .”).

⁹ *Id.*

- 5) whether communications with applicants, participants and members of the public are as effective as communications with others;
- 6) if the public entity communicates with applicants or beneficiaries by telephone, whether TDDs or equally effective telecommunications systems are used;
- 7) if telephone emergency services are provided, whether direct access to TDD and computer modems is ensured;
- 8) whether policies and practices insure that readers will be provided to people with visual impairments;
- 9) whether interpreters or other communication measures will be provided for people with hearing impairments;
- 10) whether accommodations will be provided for people with manual impairments;
- 11) whether a method for obtaining services exists, and guidance on when they will be provided,
- 12) whether equipment has been assessed for usability and there are policies to ensure that it is kept in working order;
- 13) whether emergency evacuation procedures meet the needs of people with disabilities, and whether audio and visual warning signals should be installed and other procedures adopted;
- 14) whether decisions about whether a modification would be a fundamental alteration or an undue financial or administrative burden are made properly and promptly;
- 15) whether public meetings are physically accessible to individuals with mobility impairments;
- 16) whether employment practices comply with Section 504 of the Rehabilitation Act . . . ;
- 17) whether building and construction policies for new construction and alterations conform to [accessibility] standards;
- 18) whether employees of the public entity are familiar with the policies and practices of the agency that are necessary to ensure full participation of people with disabilities, and if appropriate, whether training will be provided;
- 19) whether programs that deny participation to drug users have taken steps to ensure that they do not discriminate against former drug users;

20) whether audio-visual and written materials portray people with disabilities in an offensive or demeaning manner.¹⁰

Another good starting point is the *ADA Title II Action Guide for State and Local Governments*, which was written and produced by Adaptive Environments Center, Inc., with funding provided by the National Institute on Disability and Rehabilitation Research.¹¹ The *ADA Title II Action Guide* provides guidance for public entities that are reviewing the accessibility of their programs. The DOJ “reviewed for accuracy” the *ADA Title II Action Guide* and distributed it to Title II entities.¹² The *ADA Title II Action Guide* includes nine worksheets, including a “General Policies and Practices Review,” a “Communication Access Assessment,” and a “Facility Checklist.”¹³ Although these worksheets “do not cover the full range of possible [accessibility problems], they provide a helpful starting place.”¹⁴

B. *Evaluating Specific Policies, Procedures, and Practices*

The SSA’s self-evaluation should ask field and hearing offices for copies of their written policies and procedures on relevant topics. The practices of individual offices are also relevant, but they are not sufficient. In the absence of written policies and procedures, adequate compliance with Section 504 is unlikely. Based on our perception of the most significant accessibility problems that currently exist in SSA facilities, activities, and programs, we provide specific recommendations on the SSA’s self-evaluation of its policies, procedures, and practices regarding the provision of: effective communication; notices of rights; reasonable accommodations; training; guidance for its employees; and website accessibility.

1. Providing Effective Communication

Section 504 of the Rehabilitation Act of 1973¹⁵ (“Rehabilitation Act”) requires effective communication and notice.¹⁶ Specifically, the Rehabilitation Act requires the SSA to “take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.”¹⁷ Effective communication is necessary to

¹⁰ Cary LaCheen, *supra* note 7, at 64-66 (citing ADA TITLE II TECHNICAL ASSISTANCE MANUAL § II-8.2000).

¹¹ ADAPTIVE ENVIRONMENTS CENTER, INC. & NATIONAL INSTITUTE ON DISABILITY AND REHABILITATION RESEARCH, ADA TITLE II ACTION GUIDE FOR STATE AND LOCAL GOVERNMENTS (1992) [*hereinafter* ADA TITLE II ACTION GUIDE] (Copies on file with NCLEJ and LS-NYC).

¹² *Id.* at (inside cover page).

¹³ *Id.* at 99, 107, & 123.

¹⁴ Cary LaCheen, *supra* note 7, at 66.

¹⁵ See generally Rehabilitation Act of 1973, 29 U.S.C. § 794 (Consol. LEXIS 2010).

¹⁶ Effective notice is also required by the Due Process Clause of the Fifth Amendment. See, e.g., *Dusenbery v. United States*, 534 U.S. 161, 167 (2002) (“[I]ndividuals whose property interests are at stake are entitled to ‘notice and an opportunity to be heard.’”); *Stieberger v. Apfel*, 134 F.3d 37, 39 (2d Cir. 1997) (“[W]here claimants seek disability benefits because of mental illness, several circuits have ruled that notice of administrative appellate time limits is constitutionally defective when received by a person too mentally ill to understand the notice . . .”). These comments address only the Rehabilitation Act’s requirements.

¹⁷ 45 C.F.R. § 85.51(a) (2010); see *id.* § 85.12 (“The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such a manner as the agency head finds necessary to apprise such persons of the protections against discrimination assured them by [the Rehabilitation Act].”).

ensure that an otherwise qualified individual with a disability is provided with “meaningful access” to benefit programs.¹⁸ There are a number of useful tools that the SSA can utilize in evaluating whether it is providing effective communication for applicants and beneficiaries, including those who have intellectual or psychiatric disabilities.

The DOJ has provided guidance by issuing the *ADA Best Practices Tool Kit for State and Local Governments*.¹⁹ This technical assistance document includes a list of “examples of different auxiliary aids and services that may be used to provide effective communication for people with disabilities.”²⁰ An addendum to the *ADA Best Practices Tool Kit* provides a checklist that includes some of the questions that the SSA should ask regarding effective communication at its field and hearing offices.²¹ For example, with regard to auxiliary aids and services, the SSA should assess, *inter alia*, whether it: has “policies and procedures in place to deal with requests from the general public for notetakers, computer-assisted real-time transcription services, and other auxiliary aids and services for providing effective communication;” has “the equipment or arrangements with vendors so it can provide written materials in alternative formats (e.g., Braille, large print, audio format, electronic format);” “provide[s] written materials in alternative formats;” and “give[s] primary consideration to the requests of the person with a disability when determining what type of auxiliary aid or service to provide.”²²

Similarly, San Francisco’s *ADA Self-Evaluation Survey* provides a series of useful questions regarding effective communication with citizens.²³ The *ADA Self-Evaluation Survey* asks, for example, whether the agency uses the following techniques to notify members of the public that they can request alternative formats or auxiliary aids: “Verbal explanation at service window;” “Posted notice [at] program office;” “Brochure or other distributed written material;” “Recorded message;” and “Website.”²⁴ The survey also inquires about the length of time an

¹⁸ *Alexander v. Choate*, 469 U.S. 287, 301 (1985).

¹⁹ U.S. Department of Justice, Civil Rights Division, *ADA Best Practices Tool Kit for State and Local Governments* [*hereinafter* *ADA Best Practices Tool Kit*], *available at* <http://www.ada.gov/pcatoolkit/toolkitmain.htm> (last visited Dec. 6, 2010).

²⁰ *Id.* at ch. 3 (“General Effective Communication Requirements Under Title II of the ADA”), *available at* <http://www.ada.gov/pcatoolkit/chap3toolkit.htm> (last visited Dec. 6, 2010). The DOJ’s list includes: “qualified interpreters, notetakers, screen readers, computer-aided real-time transcription (CART), written materials, telephone handset amplifiers, assistive listening systems, hearing aid-compatible telephones, computer terminals, speech synthesizers, communication boards, text telephones (TTYs), open or closed captioning, closed caption decoders, video interpreting services, videotext displays, description of visually presented materials, exchange of written notes, TTY or video relay service, email, text messaging, instant messaging, qualified readers, assistance filling out forms, taped texts, audio recordings, Brailled materials, large print materials, and materials in electronic format (compact disc with materials in plain text or word processor format).” *Id.*

²¹ *Id.* at ch. 3 Addendum (“Title II Checklist (General Effective Communication)”), *available at* <http://www.ada.gov/pcatoolkit/chap3chklist.htm> (last visited Dec. 1, 2010).

²² *Id.*

²³ CITY & COUNTY OF SAN FRANCISCO, MAYOR’S OFFICE ON DISABILITY, *ADA SELF-EVALUATION SURVEY 6-11* (2001) [*hereinafter* *ADA SELF-EVALUATION SURVEY*], *available at* http://www.ncej.org/disability_rep/ADAselfEvalSurvey.pdf. Like all the tools that we discuss in these comments, the *ADA Self-Evaluation Survey* is not comprehensive. *See id.* at 3 (for example, the *ADA Self-Evaluation Survey* does not address architectural barriers).

²⁴ *Id.* at 9.

applicant or beneficiary must wait for a request for an alternative format or auxiliary aid to be approved.²⁵

The United States Department of Housing and Urban Development (HUD) has conducted a “self-evaluation of all policies, procedures, and practices” pursuant to the Rehabilitation Act.²⁶ HUD used worksheets that covered seven areas, including a communication checklist.²⁷ HUD’s communication checklist focuses on auxiliary aids and services for people with visual, auditory, or speech impairments.²⁸ Although HUD’s communication checklist has some helpful elements, we believe that the SSA should not limit its evaluation of communication issues to those addressed in the HUD self-evaluation because applicants for and beneficiaries of SSA programs have a broader range of disabilities.

Many SSA notices and rules are not written in plain, understandable language. Although notices are supposed to be “written in simple and clear language,”²⁹ applicants and beneficiaries often do not understand the notices that they receive from the SSA. Understandable notices are vital because almost half of American adults have not attended school beyond the twelfth grade.³⁰ Moreover, the grade level a person reaches does not always reflect their reading ability. For example, one study has found that only thirty-five percent of high school seniors read “at or above the Proficient level.”³¹ Understandable rules are vital for SSA programs, because people who have disabilities are even more likely to have problems reading than people who do not have disabilities.³²

Rules also have to be clear for the many applicants who do not have an attorney or representative. The administrative process is intended to be non-adversarial, and claimants should not need an attorney to obtain or maintain benefits. If notices, rules, and procedures are not understandable, it is difficult for applicants and beneficiaries who have disabilities to obtain and maintain benefits for which they are eligible.

²⁵ *Id.* at 10.

²⁶ U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, REPORT ON SECTION 504 SELF-EVALUATION OF HUD CONDUCTED PROGRAMS AND ACTIVITIES – PHASE I, at 4 (March 2005), *available at* <http://www.hud.gov/offices/cpd/communitydevelopment/toolkit/files/Report%20on%20Section%20504%20selfevalrpt.pdf>.

²⁷ *See id.*

²⁸ *See id.* at 74-77.

²⁹ *See* 42 U.S.C. § 405(s) (stating this requirement for SSDI); 42 U.S.C. § 1383(o) (stating this requirement for SSI).

³⁰ *See* U.S. CENSUS BUREAU, 2006-2008 AMERICAN COMMUNITY SURVEY 3-YEAR ESTIMATES, Table S0201 (2008), *available at* http://factfinder.census.gov/servlet/IPTable?_bm=y&-geo_id=01000US&-geo_id=NBSP&-ds_name=ACS_2008_3YR_G00_&-reg=ACS_2008_3YR_G00_S0201:001;ACS_2008_3YR_G00_S0201PR:001;ACS_2008_3YR_G00_S0201T:001;ACS_2008_3YR_G00_S0201TPR:001&-_lang=en&-_caller=geoselect&-redoLog=true&-format= (showing that, for 45.1% of Americans who are at least 25 years old, the highest level of education attained is a high school degree or less).

³¹ *Cf.* U.S. DEPARTMENT OF EDUCATION, NATIONAL CENTER FOR EDUCATION STATISTICS, THE NATION’S REPORT CARD: 12TH-GRADE READING AND MATHEMATICS 2005, at 5 (2007), *available at* <http://nces.ed.gov/nationsreportcard/pdf/main2005/2007468.pdf>.

³² *See* U.S. DEPARTMENT OF EDUCATION, NATIONAL CENTER FOR EDUCATION STATISTICS, A FIRST LOOK AT LITERACY OF AMERICA’S ADULTS IN THE 21ST CENTURY, Table 2 (2005), *available at* <http://nces.ed.gov/NAAL/PDF/2006470.pdf> (showing that, of those individuals studied who were found to have “below basic” prose literacy, 46% were individuals who had at least one disability).

The SSA should use elements of a number of existing tools to evaluate whether it is providing effective communication for applicants and beneficiaries who have intellectual or psychiatric disabilities. For example, the *ADA and Section 504 Guide: A Quick Reference For Identifying Problems in Welfare Programs* suggests that an agency should evaluate whether “[c]ommunication with people with disabilities, including those with cognitive impairments and learning disabilities, is effective.”³³ The *ADA and Section 504 Guide* also suggests that an agency should evaluate whether its written notices are “designed to be understood by people with cognitive impairments [or] learning disabilities, so that individuals are not denied effective notice because of a disability.”³⁴

Another instrument, which has been used to evaluate ADA Title II entities in South Carolina, provides a template for conducting a self-evaluation.³⁵ The Bazelon Center for Mental Health Law issued a report that describes how public agencies in South Carolina worked with organizations that include or represent people with mental illnesses to develop this instrument.³⁶ The South Carolina Instrument includes a series of questions for an interview with the director of a facility, a tour of a facility, an interview with an applicant or beneficiary, and an interview with a staff member.³⁷ It includes sections for reviewing an agency’s materials, including “application forms, brochures and posters to ensure that the reading level is in accord with the level of the majority of individuals served and that the forms are easily understood.”³⁸ Similarly, the template for the tour includes an expansive review of potential accessibility problems, including “potential barriers for individuals with mental illnesses.”³⁹

2. Providing Notices of Rights under Section 504

The Rehabilitation Act requires the SSA to provide individuals who have disabilities with notice of their rights under Section 504.⁴⁰ The SSA must “disseminate sufficient information to employees, applicants, participants, beneficiaries, and other interested persons to apprise them of the rights and protections afforded by [the Rehabilitation Act].”⁴¹ This information should, at the very least, be included in notices and on posters that could be prominently placed in the SSA’s field and hearing offices.⁴²

³³ Russ Overby et al., *ADA and Section 504 Guide: A Quick Reference For Identifying Problems in Welfare Programs*, [hereinafter *ADA and Section 504 Guide*], available at http://nclej.org/disability_rep/checklist.htm (last visited Dec. 1, 2010). The ADA Policy of the New Jersey Department of Human Services incorporates this document as “Attachment B.”

³⁴ *Id.*

³⁵ Instrument for Self-Evaluation of Compliance with Title II of the ADA [hereinafter *South Carolina Instrument*] (Copies on file with NCLEJ and LS-NYC).

³⁶ See VICTORIA L. RINERE, *OPENING PUBLIC AGENCY DOORS: TITLE II OF THE AMERICANS WITH DISABILITIES ACT AND PEOPLE WITH MENTAL ILLNESS: A COLLABORATIVE APPROACH FOR ENSURING EQUAL ACCESS TO STATE BENEFIT AND SERVICE PROGRAMS* (1995).

³⁷ See *South Carolina Instrument*.

³⁸ *Id.* at Step IV, pt. A, § H.2.

³⁹ *Id.* at Step IV, pt. B, pages 14-15.

⁴⁰ 45 C.F.R. § 85.12.

⁴¹ 53 Fed. Reg. 26559 (July 13, 1988).

⁴² See *id.*

To our knowledge, the SSA does not regularly provide oral or written notice to applicants or beneficiaries of the rights that they have pursuant to the Rehabilitation Act.⁴³ Notice should be provided to all applicants and beneficiaries repeatedly, and in different forms, including individual notices.⁴⁴ The SSA should also make fliers or brochures on Section 504 available in SSA offices, with applications, and available for downloading on its website. The fliers or brochures should include examples of the types of reasonable accommodations to which applicants and beneficiaries are entitled under Section 504. This is essential because some SSA programs are designed and intended for people with disabilities. It is therefore clear that notices of Section 504 rights will be relevant to a significant percentage of the people who interact with the SSA.

Notice of Section 504 rights cannot simply be provided at the time a person applies for benefits. Posters are also not sufficient because many beneficiaries rarely visit SSA offices. Because the needs of people with disabilities often change significantly over time, all correspondence that the SSA sends to applicants and beneficiaries should include a statement of their rights to reasonable accommodations. Continuing notice of Section 504 rights is essential because it is unreasonable to expect that a beneficiary who develops a need for an accommodation years after he or she applied for benefits will remember having been notified at that time about the types of accommodations to which he or she is entitled.

The *ADA and Section 504 Guide* sets forth several questions about notices of rights that would be useful for the SSA to consider in its self-evaluation. The questions focus on: whether the agency gives applicants and beneficiaries notice of their rights; whether the notice is “in form[at]s that are accessible to people with disabilities;” and whether “the agency use[s] several different methods of notice,” including brochures, waiting room signs, notices in the application, notice in written application denials or other adverse actions, verbal review with applicants and beneficiaries, video in waiting rooms, audiotape, and ASL interpreters.⁴⁵

3. Providing Reasonable Accommodations

The Rehabilitation Act requires the SSA to make reasonable accommodations in policies, practices, or procedures when accommodations are necessary to avoid discrimination on the basis of disability.⁴⁶ The SSA should consider incorporating a number of the questions regarding reasonable accommodations that are included in the *ADA and Section 504 Guide* that is incorporated into the ADA Policy of the New Jersey Department of Human Services. In addition to asking about the ways in which people with disabilities are provided with reasonable

⁴³ The SSA has, however, recently sent notices of rights under Section 504 to *American Council of the Blind v. Astrue* class members. See Social Security Administration, Special Notice Option, available at <http://www.ssa.gov/notices/> (last visited Dec. 6, 2010); see also *American Council of the Blind v. Astrue*, No. C 05-04696 WHA, 2009 WL 3400686, at *28 (N.D. Cal. Oct. 20, 2009).

⁴⁴ The notices should be provided in the language that is spoken by the applicant or beneficiary and in a format that is accessible to the applicant or beneficiary.

⁴⁵ *ADA and Section 504 Guide*, *supra* note 33.

⁴⁶ See 45 C.F.R. § 85.3 (defining “Qualified individual with handicaps” to mean, *inter alia*, an individual who meets the essential eligibility requirements “without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature”); see also *Alexander v. Choate*, 469 U.S. 287, 301 (1985) (“[T]o assure meaningful access, reasonable accommodations in the grantee’s program or benefit may have to be made.”).

accommodations in a given program's policies, practices, and procedures, the *ADA and Section 504 Guide* asks whether specific types of accommodations are provided, including extensions of time limits, the provision of supportive services, the provision of assistance in the application process, and flexible scheduling.

Reasonable accommodation policies in general, and scheduling practices in particular, are a good example of why the SSA has to perform a self-evaluation of individual field and hearing offices. Different SSA offices might have different practices and policies regarding how they schedule or reschedule appointments and whether they provide accommodations to a general "first come, first served" policy for applicants or beneficiaries who cannot wait for long periods of time due to their physical or psychological impairments.

San Francisco's *ADA Self-Evaluation Survey* provides questions that would help the SSA evaluate what procedures its offices utilize when an applicant or a beneficiary requests a reasonable accommodation.⁴⁷ This survey also inquires about how a facility notifies the public that "they may request such [accommodations] when needed" and what the wait time is for a decision."⁴⁸ In addition to answering these questions, we recommend that the SSA require offices to provide their written procedures concerning, *inter alia*, the following:

- 1) the process followed by staff members in providing a particular type of accommodation;
- 2) which staff members are responsible for deciding whether an accommodation will be provided and the type of accommodation to be provided;
- 3) which staff members are responsible for providing the accommodation and recording relevant information about requests for and decisions on accommodations in the individual's file;
- 4) the time frames within which decisions on accommodations must be made and within which accommodations must be provided;
- 5) what staff members do if they are not sure whether an accommodation is needed or what type of accommodation to provide;
- 6) how individuals are notified about the decision regarding a request to provide an accommodation;
- 7) when accommodations are offered, even if they are not explicitly requested; and
- 8) examples of reasonable accommodations of non-essential program rules that are provided.

Section III of the *ADA Self-Evaluation Survey* focuses on evaluating the types of accommodations that are available for applicants or beneficiaries. For example, the survey asks

⁴⁷ ADA SELF-EVALUATION SURVEY, *supra* note 23, at 18

⁴⁸ *Id.* at 11-12.

whether a staff member is “available to help those individuals who may require assistance in completing an application” and what type of assistance is available.⁴⁹ There are also questions about waiting room procedures, the procedures for accommodations that are needed on an ongoing basis, whether “the termination process include[s] an effort to determine whether the cause for termination is related to the participant’s disability (e.g., client’s failure to call or appear for appointment was result of [a] psychiatric crisis),” and how the facility explains the appeal process to applicants.⁵⁰

Applicants and beneficiaries commonly need certain types of accommodations in order to have meaningful access to SSA programs. The SSA’s self-evaluation should examine whether the SSA in general and specific SSA programs and offices have written procedures that discuss these accommodations and specific details about how these accommodations will be provided, who will provide them, and when will they be provided. As discussed more completely in the comments to this notice that are being submitted by, *inter alia*, the Disability Rights Education and Defense Fund, commonly-needed accommodations include:

- 1) assistance to complete necessary forms, including application forms;
- 2) assistance to gather documentation that is necessary to obtain or maintain benefits;
- 3) assistance to challenge the accuracy of information that jeopardizes an individual’s eligibility for SSA benefits; and
- 4) waiver of SSA program requirements that are not essential, including, for example, in-person interviews.

4. Providing Training

The SSA should also evaluate what if any Section 504 training is provided to employees. Two models in particular provide helpful guidance for the SSA’s self-evaluation of this aspect of its programs.

Section VI of San Francisco’s *ADA Self-Evaluation Survey* includes a series of questions that focus on training topics and frequency.⁵¹ It also includes questions about whether staff members receive training in working with people who have psychiatric disabilities, learning or cognitive disabilities, speech impairments, hearing impairments, visual impairments, mobility impairments, and immune system disorders.⁵²

The South Carolina Instrument also includes questions about the training that “front line staff” receives.⁵³ Because they are the first people who applicants and beneficiaries interact with at SSA field offices, it is essential to determine whether security guards and receptionists are provided with training regarding serving people with disabilities and the types of reasonable

⁴⁹ *Id.* at 18.

⁵⁰ *Id.* at 18-20.

⁵¹ See *id.* at 26-29.

⁵² *Id.* at 26.

⁵³ South Carolina Instrument, *supra* note 35, at Step IV, pt. A, § G.6.

accommodations to which they are entitled. The South Carolina Instrument’s template for a staff interview also includes a number of questions that can be used to evaluate the content and frequency of the training that an agency is providing.⁵⁴

5. Providing Appropriate Guidance through the POMS

The Program Operations Manual System (POMS) is “a primary source of information used by Social Security employees to process claims for Social Security benefits.”⁵⁵ The SSA’s self-evaluation should examine whether the POMS provides SSA employees with information that enables them to comply with the Rehabilitation Act.

Based on our search, it appears that only a few sections of the POMS explicitly invoke the Rehabilitation Act in describing how services or offices should be accessible to people with disabilities.⁵⁶ Many other sections, however, cover topics that are relevant to the accessibility of SSA programs and benefits. For example, the subchapter on “General Applications and Interviewing Policy” for the SSI program includes a number of sections that implicate accessibility.⁵⁷ Although some of these sections include helpful information, during its self-evaluation, the SSA has to make sure that the POMS provides clear and comprehensive guidance on what Section 504 requires. The SSA also must evaluate, *inter alia*, the Hearings, Appeals and Litigation Law Manual (HALLEX), Social Security Rulings (SSRs), and the Social Security Handbook to make sure that they provide information and guidance that are consistent with the Rehabilitation Act’s dictates.

6. Providing an Accessible Website

Section 508 of the Rehabilitation Act requires the SSA website and the content on that website to be accessible to people with disabilities.⁵⁸ The self-evaluation should examine whether the SSA has adequate policies and procedures for: (1) ensuring that the website and content posted on the website is accessible; (2) ensuring that modifications to existing content are carried out in a manner that does not impair accessibility; and (3) monitoring accessibility of the website to ensure that it is in fact accessible so problems are identified and can be addressed.

⁵⁴ *Id.* at Step IV, pt. D, pages 28-30.

⁵⁵ Social Security Administration, SSA’s Program Operations Manual System Home, *available at* <https://secure.ssa.gov/apps10/poms.nsf/Home?readform> (last visited Dec. 6, 2010).

⁵⁶ See GN 00203.012 (Special Interviewing Situations (Deaf and Hard-of-Hearing Individuals)), *available at* <https://secure.ssa.gov/poms.NSF/lnx/0200203012> (last visited Dec. 6, 2010); DI 39527.040 (DDS Office Space Planning), *available at* <https://secure.ssa.gov/poms.nsf/lnx/0439527040!OpenDocument&Click=> (last visited Dec. 6, 2010); and NL 00603.600 (Accessing Public Information Materials In Alternative Media), *available at* <https://secure.ssa.gov/apps10/poms.nsf/lnx/0900603600> (last visited Dec. 6, 2010).

⁵⁷ For example, a section on interviewing SSI claimants advises SSA employees to (1) “[b]e sensitive to the needs, circumstances and limitations of individuals who contact SSA about SSI”; and (2) “[b]e aware of barriers that may inhibit the smooth progress of the interview, such as: . . . problems in communicating due to . . . the effects of the individual’s disability . . . , lack of mobility, and anxiety due to misconceptions about eligibility requirements” and directs employees to “[m]ake any reasonable accommodations necessary to deal with these factors before and during the interview.” SI 00601.060(C) (“Supplemental Security Income (SSI) Interviewing”), *available at* <https://secure.ssa.gov/apps10/poms.nsf/lnx/0500601060> (last visited Dec. 6, 2010).

⁵⁸ 29 U.S.C. § 794d(a)(1); 36 C.F.R. pt. 1194.

Section 508 of the Rehabilitation Act requires the SSA, when “developing, procuring, maintaining, or using electronic and information technology,” to ensure that SSA employees and members of the public who have disabilities have access to and use of information that is comparable to the access and use that is available to SSA employees and members of the public who do not have disabilities.⁵⁹ The SSA’s self-evaluation should examine whether it has adequate policies and procedures for ensuring that these requirements are implemented and compliance is monitored.

2. The SSA should engage in a wide variety of efforts to ensure that people with disabilities and advocates have ample opportunities to participate in the self-evaluation.

The SSA should employ a number of different strategies to ensure that it provides people with disabilities and advocates with sufficient opportunities to participate in its self-evaluation. In addition to public meetings and requesting the submission of written comments, the SSA should:

- 1) conduct interviews of applicants and beneficiaries at field offices and hearing offices;
- 2) conduct a survey of a random sample of applicants and beneficiaries;
- 3) hold focus groups of applicants and beneficiaries; and
- 4) provide notice and information about the self-evaluation to:
 - (a) independent living centers,
 - (b) peer organizations,
 - (c) nursing homes,
 - (d) assisted-living facilities,
 - (e) senior-housing facilities,
 - (f) naturally-occurring retirement communities, and
 - (g) not-for-profit organizations that provide services for senior citizens or individuals with disabilities.

The SSA also might want to consider contracting with third-parties to conduct some or all of these outreach activities.

The South Carolina Instrument includes a template for interviews with applicants or beneficiaries. This template includes questions about whether the individual: was able to choose the day or time of his or her appointment; waited for a significant amount of time; needed assistance with the application or other forms; needed a form in an alternative format; needed help gathering required documentation; needed other accommodations; encountered barriers; received information regarding his or her rights; is aware of his or her rights; and had any

⁵⁹ See 29 U.S.C. § 794d(a)(1)(i)-(ii).

recommendations regarding changes the agency should make.⁶⁰ The SSA or a third-party contractee should adapt this questionnaire and use it to conduct interviews of applicants and beneficiaries at field offices and hearing offices. Similar questions could also be used in a survey of a random sample of applicants and beneficiaries.

The SSA or a third-party contractee should also hold focus groups in selected locations to elicit detailed feedback from individuals with disabilities. In putting together the focus groups and advertising public meetings, the SSA should reach out to a wide array of facilities and organizations that provide services for individuals with disabilities in the relevant areas.

Conclusion

Although the SSA should have conducted a Section 504 self-evaluation many years ago, we are glad that it is finally planning to do so. We hope that a self-evaluation will lead to more accessible programs for the millions of people with disabilities that the SSA is charged with serving.

Thank you for giving us an opportunity to provide these comments.

Respectfully submitted,

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⁶⁰ South Carolina Instrument, *supra* note 35, at Step IV, pt. C, pages 16-27.