



## JOINT SUBMISSION ON AMENDMENTS TO THE REGULATIONS RELATING TO COVID-19 SOCIAL RELIEF OF DISTRESS ISSUED IN TERMS OF THE SOCIAL ASSISTANCE ACT

(Regulation Gazette No. 11455, 7 July 2022)

26 July 2022

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The Institute for Economic Justice (IEJ) and the Socio-Economic Rights Institute (SERI) jointly prepared this submission.

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The opportunity to comment on the amendments to the Regulation of Social Assistance Act is welcome.

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### **Summary of Recommendations**

#### ***On bank verification, re-application and appeals:***

- The regulations must state clearly in which order verification checks are performed, and which information takes precedence. Given the multiple problems with bank checks, and government databases, highlighted below, precedence should be given to the personal information provided by applicants.
- Government should commit to clean and update the databases used for verification within a specified period (say 6 months) and in the interim where an applicant disputes the accuracy of UIF or SARs information, an affidavit to this effect should be accepted as proof. Penalties for false information could include disqualification from access to the grant for a specified period.
- So long as the verification process remains in place, applicants must be given the right to provide new extenuating information on appeal through a simple and easily accessible

process. Such information may include proof that deposits into bank accounts were not personal income or evidence that databases are not up to date/are inaccurate. The regulatory framework must stipulate that when an appeal is successful, payment is due from the date of the initial application.

- SASSA's regular verification should take place every three months, and monthly verification should be terminated. Verification should only be carried out on data for the month in which the verification is taking place and not applied retrospectively on previous months.

#### ***On the income threshold and the budget cap***

- The means test must be raised to R1335 and the new income threshold retrospectively applied to April, May and June applications and all applications re-verified against the new threshold.
- The means-test threshold must be indexed to the poverty lines so that thresholds are able to account for changes in the cost of living especially at a time of strong inflationary pressures and so that thresholds are not subject to regression.
- Given that the raising of the threshold, combined with other measures required to eliminate discriminatory and exclusionary procedures, is likely to significantly raise the number of eligible applicants, the budget cap needs to be removed along with provisions which imply that the SRD is a temporary intervention.
- An additional allocation must be made through normal budgetary processes, including the MTBPS, to provide for anticipated rightful grant applications, over and above the 10.5 million.

#### ***On the problems of self-exclusion, online-only applications and accessibility***

- The myriad problems with the application questionnaire must be addressed including that only mandatory questions be included, that the questions regarding how applicants obtain basic necessities without the grant should be removed, and that the form be made available in the official languages other than English. A further review of the various problems with accessibility should be undertaken and subsequent changes made as a matter of urgency to address these.
- A commitment to equity and inclusion in the context of digital barriers should be reflected in the regulations and/or in the Procedure Manual and these should deal explicitly with the cost of access to electronic systems (data costs, mobile phone costs, etc.). The provisions should ensure that these costs are not a barrier to an individual applying for or receiving their entitlements.

- The removal of the South African Post Office as a means of accessing payment should be reversed.
- Provision must be made enabling those without digital access to apply physically.

***On the work conditionality clause***

- We continue to oppose the inclusion of this clause and propose its deletion. Alternatively, it needs to be reformulated to adequately mitigate and address the significant risks to applicant/recipient welfare, as well as administrative issues. This must include a clear and considered definition of “reasonable” that addresses our below concerns.

***On access to Grantee’s bank accounts and the recovery of funds***

- Recovery of monies paid must not have a direct impact on the recipient receiving their full level of monthly entitlements from their approved grant; i.e. the approved grant must be effectively back-paid to the date of initial application, in order to recover the SRD payments without impacting the recipients’ ongoing income. This should be made clear in the regulations.
- There should be no provision or scenario whereby a grant recipient is in debt to DSD, where debt is either recoverable through future grant payments, or out of the recipient’s pocket. This will result in hardship. If payments are recovered through deductions from ongoing grants (which we do not recommend), the level of deduction (as a percentage of income) and timeframe for repayment must be stipulated.

**Amendment of regulation 2 of the regulations**

***Bank Verification***

1. *Deletion of sub-regulation (4) which removes the use of bank verification as the final determination.*
  - a. We remain concerned about the use of bank verification in this process given that it treats any money deposited in an applicant’s bank account as income. There are multiple reasons why this is not always the case—see responses to SASSA on Twitter [here](#). Many applicants receive money into their account on behalf of family members or friends who may not have bank accounts themselves or because they are making payments on behalf of such people. Others receive payments for maintenance of a child,



rather than support for the parent. There are even [reports](#) of applicants receiving delayed payments from SASSA and then having subsequent applications denied on the basis that they are now above the income threshold.

- b. While the current regulations remove the use of bank verification as the ultimate determination over information provided by applicants, its use in the approvals process remains, leaving the system open to the kind of problems highlighted above.
- c. We are also concerned that the current verification process remains reliant on databases which have been shown to include outdated or incorrect information and which researchers at SALDRU, in research prepared for National Treasury, find may unfairly exclude up to one third of SRD applicants<sup>1</sup>.
- d. Under the current regulations, the relationship between bank verification and the use of these other databases is unclear and there do not seem to be any measures in place to address the problems that have been encountered by their use in previous months.
- e. We seek clarity on the relationship between bank verification and other means tests- including the submission of information by applicants and the use of other databases in the carrying out of the verification process. We also seek clarity on what the Department of Social Development (DSD) and/or SASSA is doing to address the problems in the other databases.
- f. We recommend that the regulations state clearly in which order verification checks are performed, and which information takes precedence. Given the multiple problems with bank checks, and government databases, highlighted above, precedence should be given to the personal information provided by applicants.
- g. Furthermore, we recommend that so long as the verification process remains in place, applicants are given the right to provide new extenuating information on appeal through a simple and easily accessible process. Such information may include proof that deposits into bank accounts were not personal income or evidence that databases are not up to date/are inaccurate.
- h. Government should commit to clean and update the databases within a specified period (say 6 months) and in the interim where an applicant disputes the accuracy of UIF or SARs information, an affidavit to this effect should be accepted as proof. Penalties for false information could include disqualification from access to the grant for a specified period.

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<sup>1</sup> WIDER Working Paper 2021/165 *Simulation of options to replace the special COVID-19 Social Relief of Distress grant and close the poverty gap at the food poverty line*  
<https://www.wider.unu.edu/publication/simulation-options-replace-special-covid-19-social-relief-distress-grant-and-close>



## ***Income Threshold***

2. *The substitution for sub-regulation (5) increases the income threshold for insufficient means from R350 to R624 per month.*
  - a. We cautiously welcome this in so far as it reverses the use of an arbitrary threshold (R350) and relies rather on an objective and scientific measure of poverty in the current Food Poverty Line (FPL). However, we continue to advocate—in line with other civil society organisations and our previous comments on regulations<sup>2</sup>—that the means-test be raised and indexed to the Upper Bound Poverty Line (UBPL), currently at R1335. Anyone living below this line is classified as poor by the state’s own classification system. Using the UBPL as the threshold means test would thus ensure the SRD grant reaches all those living in poverty in South Africa, who do not receive other forms of social assistance.
  - b. We are deeply concerned about the non-payment of the grants in April and May and their delayed payment to July and August respectively which has caused significant distress to grant recipients.
  - c. We recommend that the means test is raised to R1335.
  - d. Due to the significant underspend in the current budget, and drastic fall in approvals in June, we recommend that the new income threshold is retrospectively applied to April, May and June applications and all applications are re-verified against the new threshold.
  
3. *The addition of subregulation 5(A) makes possible “from time to time” the amendment of the threshold.*
  - a. We seek clarity on how such amendments would be made. While such an allowance may make it possible to increase the threshold, it makes it similarly possible for the threshold to be lowered at will as was the case with the introduction of the April 2022 regulations. This introduces a great deal of uncertainty into the grants system, creates insecurity and undermines the ability to plan ahead for grant recipients, and allows for the reversal of existing entitlements.
  - b. We recommend rather that the threshold be indexed to the poverty lines so that thresholds are able to account for changes in the cost of living especially at a time of strong inflationary pressures and so that thresholds are not subject to regression.
    - i. We will continue to advocate for the expansion of the SRD grant to all people living below the upper bound poverty line, as well as the increase of the grant

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<sup>2</sup> Which states: “Civil Society partners have recommended that this grant should be means-tested at the Upper Bound Poverty Line in order to reach all in South Africa currently living in poverty”. See: IEJ. 23 March 2022. Submission on Amendments to the Regulations to the Social Assistance Act, 2004. Available: <https://www.iej.org.za/submission-on-amendments-to-the-regulations-to-the-social-assistance-act-2004/>



above the current wholly inadequate level of R350p/m, to the value of the Food Poverty Line. In the medium term, and as South Africa transitions out of a regulatory framework designed to respond to the pandemic, we propose that this grant be transitioned into a Universal Basic Income at the value of the Upper Bound Poverty Line. We note that this regulatory framework has the potential to form an administrative foundation for a UBI, and we welcome this step towards institutionalising comprehensive social protection.

### ***3 month re-application process***

#### *Amendment of regulation 5*

4. The deletion of sub-regulation (2) removes the requirement to reapply every 3 months. Subsequent SASSA statements have indicated that officials will continue to conduct assessments of the grant on a monthly basis. We continue to argue that monthly assessments are unnecessary and intrusive, increase the administrative burden on the State and have the potential to lead to continued delays in the payments to beneficiaries, and therefore should be terminated in favour of a 3 monthly verification process.
  - a. A number of uncertainties about this process remain. In the event that monthly verification is retained (which we oppose) we request clarity on the following:
    - i. Whether these monthly verifications will be limited to bank checks, or include databases.
    - ii. If a monthly verification determines that an existing recipient has become ineligible, how will this be communicated to them, and how will they be informed of the right and ability to appeal?
    - iii. Whether recipients have the ability to re-apply for the month following the month in which they were deemed ineligible, or alternatively, whether payments are automatically resumed the month after the month in which they were disqualified, pending further verification.
    - iv. Whether the approval of an initial application means that the recipient is approved for every month until the expiry of the SRD grant, unless the monthly verification finds they have become ineligible.
    - v. Whether the disqualification of an applicant on the basis of monthly verification is signed off by a human, or happens automatically/algorithmically. If the latter, what are the details of this process and what checks are in place to ensure accuracy.



- vi. Whether grant money that has already been paid will ever be retroactively deducted or recovered based on verification checks. This issue is dealt with in further detail below under the sub-heading “Access to Grantee’s Bank Accounts”.
- b. We recommend that regular verification - verification undertaken of SASSA’s own accord and not because of a beneficiary reapplying - happens every three months, and that monthly verification is terminated.
- c. We further recommend that verification can only be carried out on data for the month in which the verification is taking place and not applied retrospectively on previous months.

### **Other Outstanding issues**

#### ***Budget Cap***

5. The current amendments leave in place sub-regulation 11 which states that payments are subject to available funds and that the Agency may limit disbursements when funds are depleted.
  - a. We remain concerned that the funding allocated for the grant is insufficient to cover both those who should qualify for the grant on the basis of need, and those who do qualify for the grant on the basis of the criteria laid out in the regulations. Treasury in the 2022/3 budget has provided for 10.5 million applicants to receive a SRD grant over the financial year ending March 2023 at R350 per month (totalling a R44 billion allocation). However, DSD’s own figures show that 18.3 million people in South Africa live below the FPL, and 13.4 million have no income. This clause suggests that even if a higher number of applicants qualify for the SRD grant, the number of recipients will remain capped. This could be implemented either through an arbitrary cut-off (provided for in sub-regulation 2(11) of the amendments to the regulations to the Social Assistance Act, 2004, Government Gazette No. 11396; 22 February 2022); or deliberate tightening of qualifying criteria and administrative requirements to artificially constrain eligibility. This ability to change qualifying criteria and requirements already appears to be provided for in sub-regulation 5(A) on the threshold, and we reiterate our concerns regarding that highlighted above. In either event- using a cut-off or deliberately suppressing numbers of beneficiaries- would be grossly unfair and unlawful. The Constitution requires that social assistance be provided on the basis of a needs-based approach to identify those with a right to the grant, and that all such persons be treated consistently and equally.

- b. Given that the raising of the threshold, combined with other measures required to eliminate discriminatory and exclusionary procedures, is likely to significantly raise the number of eligible applicants, the budget cap needs to be removed.
- c. The budget cap needs to be seen in the context of the fact that as at 1 March 2022, a total of 15 544 890 applications had been received by SASSA, while slightly less than 10.5 million had been approved (SASSA report as at 1 March 2022). Similarly the number of approvals had also hovered around the 10.5 million figure from December to mid-February.<sup>3</sup> As indicated elsewhere in this submission—and accepted by SASSA itself—many people have been excluded based on inaccurate databases particularly in relation to UIF and PAYE, which incorrectly reflect applicants as employed, or as having received UIF benefits. Therefore many (and possibly the majority) of the more than 5 million applicants whose applications were rejected in the previous iteration of the SRD grant were falsely excluded. Prior to the budget, government had access to research from SALDRU quantifying the likely scale of false exclusions. However, despite being aware that the number of around 10.5 million approvals in March was artificially low, Treasury took this number as the basis for its budget allocation for the next year. This decision has and continues to result in the false exclusion of people who are eligible for the grant—and will most likely continue to do so despite the proposed income eligibility threshold increase.
- d. As at 30 June 2022, SASSA had received a total of 11 369 797 applications but only 5 278 56 had been approved (SASSA report as at 30 June 2022). These low approval levels are misleading and should not be taken as an indication of legitimate need given the problems with the application process laid out in this submission, including, the impact of the low means test threshold of R350 per month. DSD itself cites concern about the low numbers of approvals in its statement of 14 July 2022 and links this to the low means test threshold. The current iteration of the grant has seen an implosion in applications and approvals- *see attached table*. This needs to be urgently addressed.
- e. The ‘available’ budget is not a static, fixed amount but has needed to be repeatedly adjusted to address the depth of the crisis which the SRD grant is attempting to ameliorate, as we have seen since the grant was introduced in April 2020. Unplanned extensions of the SRD grant have happened on multiple occasions, and the funding has duly been found. There can be no justification for arbitrarily excluding applicants who otherwise qualify, on the basis of budget allocation decisions. This provision is inconsistent with the Constitution, and we call for its deletion as a matter of priority.
- f. The Government has an obligation to continue to progressively fund social protection and assistance which has been enshrined in practice and in legislation. Section 27 of the

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<sup>3</sup> See numbers in December- February IEJ statement [here](#), drawn from official SASSA figures as well as in the table attached in appendix A. .

Constitution provides that everyone has the right to have access to social security, including, if they are unable to support themselves and their dependents, appropriate social assistance. This is reinforced by the International Covenant on Economic, Social and Cultural Rights which South Africa has ratified. The SRD grant must be provided for all those who need and are eligible for it, in the current as well as in future budgets and adjustment budgets. As recent experience has shown, with the political will the necessary resources can be found. But it would be inconsistent with these constitutional and international law obligations for government to refuse to assist people in South Africa who have no other means of support, and are facing dire hunger and distress, in the context of current large revenue overruns.

- g. Further it is bad policy to plan based on one budget allocation. As we have seen previously, the stop-start approach to the SRD grant has caused multiple social and administrative problems, including for DSD and SASSA's ability to effectively administer the grant. Therefore a provision which implies that this is a temporary intervention, when the President has clearly communicated the need for a permanent response to the crisis, is confusing and creates further uncertainty. This clause should be removed from the regulations.
- h. Deleting the provision for a budget cap does not create an unfunded mandate for DSD and SASSA. There is a clear policy decision to provide the SRD Grant for all eligible applicants. We recommend that an additional amount be allocated through normal budgetary processes, including the MTBPS, to provide anticipated rightful grant applications, over and above the 10.5 million provided for.

### ***The problems of 'self-exclusion'***

6. The current amendments do not address the problems related to the "self-exclusions" which arose in June (on which basis SASSA stated that around 2 million applications had been rejected) and which stem primarily from the application form currently being used and the questions contained within it.
  - a. The application form currently has a number of onerous and unnecessary questions and does not distinguish clearly between those which are mandatory and those which are optional. Requirements to provide identification numbers for partners and parents are particularly onerous and the rationale for the collection of this information is unclear and questionable.
  - b. A number of questions are worded in such a way so as to lead people to incorrectly exclude themselves.
  - c. We recommend that only mandatory questions are included in the form.



- d. We recommend that the questions regarding how applicants obtain basic necessities without the grant should be removed.
- e. We further recommend that the form be made available in the official languages other than English.

### ***Online-only applications***

7. The current amendments do not address the issue of online-only applications which prejudice the large number of potential applicants who do not have access to the internet.
  - a. We are aware of high barriers to access to electronic systems including digital exclusion and digital illiteracy which are likely to disproportionately affect grant applicants. This threatens the constitutional rights to social assistance and to equality in sections 27 and 9 respectively. An inability to access or navigate electronic systems must not disadvantage applicants or cause delays compared to applicants who can access and navigate electronic systems. This is especially of concern where applicants may need to travel to access other assistance in order to apply for the grant.
  - b. We recommend that a commitment to equity and inclusion in the context of digital barriers should be reflected in the regulations and/or in the Procedure Manual.
  - c. Moreover, we recommend that the regulations and/or the Procedure Manual should deal explicitly with the cost of access to electronic systems (data costs, mobile phone costs, etc.) which could serve as a barrier to access to the SRD. The provisions should ensure that these costs are not a barrier to an individual applying for or receiving their entitlements.
  - d. Previously DSD has committed to zero-rating the online application site. We request clarity on whether this has been achieved or not. We also recommend that a review of the various problems with accessibility is undertaken and changes are made as a matter of urgency to address this.
  - e. Provision must be made enabling those without digital access to apply physically.

### ***The narrow appeals process***

8. The current amendments do not address the issue of the narrow appeals process under regulation 14(1)(b) which prohibits appellants from submitting new or additional evidence during the appeals process.
  - a. The retention of this clause *inter alia* discriminates against applicants unjustly rejected on the basis of outdated or incorrect databases continuing to be used for verification, or unique circumstances such as receiving maintenance for a child, holding money for a family member or indeed receiving backpayed grants from SASSA.



- i. Applicants must be given the ability to submit new or additional evidence.
- b. No provision within this section clarifies whether successful appeals entail payment from month of appeal being approved, or from month of initial application or rejection.
  - i. The regulatory framework must stipulate that payment is due from the date of the initial application.

### ***The removal of the South African Post Office (SAPO) as a means of accessing payment***

9. In May 2022, SAPO announced that they would no longer be serving as a place of access for SRD grant payment and that these would be shifted to *inter alia* supermarket chains. This significantly limits accessibility for grant beneficiaries and also serves to further privatise the provision of grant payments. The use of private entities to administer grants has been shown to have negative impacts on grantees as was the case with the use of Net1 and Cash Paymaster Services.
  - a. This decision should be reversed. Varied payment options which don't force people to travel long distances or pay fees, or allow private companies to capture and exploit recipient data, are crucial to protect against discriminatory or perverse outcomes.

### ***Work Conditionality***

10. The current amendments leave in place the regulations stating that a person qualifies for social relief of distress if they do not “unreasonably refuse to accept employment or educational opportunities”. SASSA has stated that they are negotiating data sharing agreements with other agencies to verify and enforce this. We are strongly opposed to this provision, propose its deletion, and reiterate previous concerns with this process.
  - a. It is unclear how this clause will be interpreted, operationalised, and verified. Without clear parameters for this requirement there is an extremely high risk of this clause being deployed in an unfair and coercive way against grant recipients, with perverse outcomes. It also carries the risk of supporting predators and exploitative employment practices. Various documented barriers exist to persons living in poverty to accessing work and educational opportunities, including the costs of transport, data, and printing. Where offered work or educational opportunities are likely to impose unreasonable costs on recipients compared to benefits, where they are characterised by unsafe and precarious conditions and do not adhere to decent work standards, and in a number of other scenarios, grant recipients should have the right to refuse such work. If a modified clause is to be retained, the regulations should therefore define conditions such as these under which it is reasonable for beneficiaries to refuse an employment opportunity.



- b. If the state creates conditions whereby workers are unable to refuse offered work, this heavily distorts labour market power relations and gives rise to predatory and exploitative labour practices on the part of employers, who are able to coerce workers into accepting exploitative or unsafe working conditions.
- c. It is also unclear how this clause will be monitored and enforced; will it be through public reporting, through the gathering and surveillance of applicants' personal information by SASSA or another agency, or will SASSA be responsible for offering work or educational opportunities to SRD applicants?
- d. We continue to oppose the inclusion of this clause and propose its deletion. Alternatively, it needs to be totally reformulated to adequately mitigate and address the significant risks to applicant/recipient welfare, as well as administrative issues. This must include a clear and considered definition of "reasonable" that addresses our above concerns.

#### ***Access to Grantee's Bank Accounts***

- 11. We continue to be concerned about the regulations calling for the SRD grant to be "recovered" if it has been paid illegitimately (as in 3(c)(i)(8) of the April amendments to the Social Assistance Act, 2004). It is unclear under what circumstances SASSA or anybody else has the ability to deduct monies from peoples' accounts or from grant payments. We are concerned about the possibility for this to create a situation of indebtedness - and remain concerned about the ability of the government to recover or deduct grant money.
  - a. Recovery of monies paid must not have a direct impact on the recipient receiving their full level of monthly entitlements from their approved grant; i.e. the approved grant must be effectively back-paid to the date of initial application, in order to recover the SRD payments without impacting the recipients' ongoing income. This should be made clear in the regulations.
  - b. There should be no provision or scenario whereby a grant recipient is in debt to DSD, where debt is either recoverable through future grant payments, or out of the recipient's pocket. This will result in hardship. If payments are recovered through deductions from ongoing grants (which we do not recommend), the level of deduction (as a percentage of income) and timeframe for repayment must be stipulated.

**Appendix A: Table showing SRD grant applications, approvals and payments over time**

	APPLICATIONS	APPROVALS	PAID
<b>10 Nov 2021 report</b>	14 527 226	9 898 486	9 840 199
<b>December 2021</b>	Not available	10 448 885	10 363 810
<b>January 2022</b>	Not available	10 564 418	10 436 969
<b>15 February 2022 report</b>	15 329 512	10 681 457	10 387 108
<b>March 2022</b>	15 860 000 <sup>4</sup>	10 901 236	10 381 098
<b>April 2022</b>	8 148 777	4 766 354	3 253 324
<b>May 2022</b>	10 615 570	Not available	Not available
<b>30 June 2022 report</b>	11 369 797	5 278 563	3 729 525
<b>Difference March-June</b>	-4 490 203	-5 622 673	-6 651 573

<sup>4</sup> This is a rounded figure provided to IEJ directly from SASSA. Other figures were compiled by the IEJ from SASSA reports. Discrepancies between figures provided for particular months may result from differences in the particular date on which they were drawn.