S. Hrg. 108–515

# THE ROAD TO RECOVERY: SOLVING THE SOCIAL SECURITY DISABILITY BACKLOG

## HEARING

BEFORE THE

OVERSIGHT OF GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE AND THE DISTRICT OF COLUMBIA SUBCOMMITTEE

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

FIELD HEARING AT CLEVELAND, OHIO

MARCH 29, 2004

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# THE ROAD TO RECOVERY: SOLVING THE SOCIAL SECURITY DISABILITY BACKLOG

**MONDAY, MARCH 29, 2004**

U.S. SENATE,
OVERSIGHT OF GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE AND THE DISTRICT OF COLUMBIA SUBCOMMITTEE,
OF THE COMMITTEE ON GOVERNMENTAL AFFAIRS,
*Washington, DC.*

The Subcommittee met, pursuant to notice, at 9 a.m., in the Vocational Guidance Services Headquarters, 2235 East 55th Street, Cleveland, Ohio, Hon. George V. Voinovich, Chairman of the Subcommittee, presiding.

Present: Senator Voinovich.

## OPENING STATEMENT OF CHAIRMAN VOINOVICH

Senator VOINOVICH. The hearing will come to order.

I would like to open by thanking the Vocational Guidance Services for allowing us to use this very wonderful, brand new facility. And I think the people of Cleveland are fortunate to have such a nice facility.

And, of course, this organization has a long history going back until 1890. So sometimes we think that some of the things we are dealing with today are just new on the scene, the last several decades. But the fact is that the challenges have been around since that time and it is nice to know the community recognized the challenge back in 1890.

I want to thank all of you for coming today. Congressional hearings are an integral part of the legislature and oversight process.

I serve as the Chairman of the Subcommittee on Government Management, the Federal Workforce and the District of Columbia. Ms. Barnhart, you should be familiar with my Subcommittee since you worked for Senator Roth on the Governmental Affairs Committee before he went to the Finance Committee.

Ms. BARNHART. Yes, I was.

Senator VOINOVICH. It is a pleasure to hold this hearing on the Social Security Disability process which impacts many Ohioans including 180,000 people whose applications were processed at the State level last year. I want you to know my opening statement is going to be a bit longer. Ordinarily I have three or four other senators sitting with me, so I'm taking advantage of their time but it will be for the better.

We are going to examine the cause of the Social Security Disability backlog and, more importantly, Commissioner Jo Anne Barnhart's approach to the overall process. The Social Security pro-

gram is a separate agency retirement program. I think people think of Social Security and know about a couple other programs that come within the purview of Social Security. It also includes Disability Insurance (DI), and Supplemental Security Income (SSI). Last year those two programs alone paid 107 billion dollars in benefits to roughly 14.5 million disabled workers and family members.

Now, during my time in the Senate I have become familiar with the problems of the disability process. In fact, Senator DeWine and I currently have 360 disability cases open on behalf of our constituents. These are people frustrated with the system and have come to us for our help. In my time in the Senate we have assisted about 950 Ohioans with disability cases.

In addition to the case load that we have in our constituency office in Columbus, I know there are thousands of constituents waiting for a hearing and trying to get through the red tape. The fact of the matter is that the disability process should be so efficient that the Members of Congress should not have to intervene on behalf of people who are frustrated with the system. And sometimes, Commissioner, perhaps we don't help the matter because we get involved and we try to expedite certain cases because of extenuating circumstances.

But I will never forget when I became governor of Ohio we had a disastrous situation with the Ohio Bureau of Workers' Compensation, which I refer to as the silent killer of jobs. And our goal was to streamline the process. State legislators were constantly contacting the Bureau on behalf of Ohio residents. And after 8 years we eliminated that problem. The Bureau stopped getting letters because the system was handling the needs of the people that were going through the process.

As many of you know, the Cleveland Social Security Office of Hearings and Appeals, OHA, has one of the longest processing times for disability cases in the Nation. And that's one of the reasons why we have so many cases come to us in our constituency office.

Currently, the national processing time at the hearing level is 368 days. The processing time in Cleveland is an astounding 550 days. Unfortunately, residents throughout Ohio face similar delays in three hearing offices in Cincinnati 412 days, Columbus 477 days, Dayton 381 days. These are all times way above the national average.

When examining the case load in Cleveland, it is evident slow processing time is only part of the problem. For instance, at the end of last month, the Cleveland hearing office had a backlog of 8,796 cases of which 5,461 had yet to be assigned to a particular judge. Those are just numbers but, folks, there are people behind those numbers.

Commissioner Barnhart joins us today to talk about how she will resolve this situation. I mentioned to her the 65,000 people that she has responsibility over, and I was with Mr. Daub who brought it to my attention, there's another 15,000 that work in the State organizations. That's a lot of people.

I thank you, Commissioner, for taking your time to be here today. I am honored you came to Cleveland. I can assure you your

visit here and the visits of the other witnesses are going to be worthwhile for you because I'm holding this hearing to help you.

I would like to commend you for not only recognizing the shortcomings of the disability system but for trying to work with your stakeholders to improve the disability process. I'm going to ask how much involvement your stakeholders have. Your challenge is to utilize today's technology to update the disability process that was created back in 1956. To accomplish this task, you must work within the confines of the Federal bureaucracy while balancing the needs of several key stakeholders. Given these parameters, it is evident that your work is cut out for you.

We all are very critical of the current situation and want to know how Congress can help you out, and make it easier for you to do your work. However, we can't fully appreciate your task until we understand some of the problems.

Unfortunately there does not appear to be one root cause of the backlog. I am only going to mention a few. Instead, several complicated interrelated factors seem to contribute to the crushing case load. One is the outdated processing system which needs to be examined and improved. There seems to be a number of steps within the disability process including the State operation process, reconsideration, the hearings, and the appeals. Applicants can even end up in supreme court. It is unbelievable.

There's specific human capital management challenges, including the Administrative Law Judge's (ALJ) hiring freeze and the hearing process improvement. In addition, perhaps your budget request did not receive adequate funding during the appropriations process.

And I am also sure people do not understand the fact that we have not been able to pass a budget on time and have had to move our appropriations into January. We have done that twice now. That makes it very difficult for an agency to figure out what their budgets are going to be and, seemingly, the media completely overlooks the fact that this happens. Again, Congress will try this year to get it done on time but it is easier said than done.

According to a January 2001 report issued by the Social Security Advisory Board the disability infrastructure was, "ill-equipped to handle today's massive and complex workload." That was back in January 2001. In fact, the system itself has changed very little since it was first created. However, since the disability programs are expected to expand by 35 percent by 2012, it is imperative this outdated infrastructure receive an overhaul. Commissioner, I would like to know how you plan on improving the process.

Second, in January of this year GAO issued human capital challenges facing State Disability Determinations Services, DDS. It outlines three key changes facing DDS across the Nation, high turnover, recruiting and hiring difficulties and gaps in key skilled areas. From an organizational standpoint, the current operating structure between the Social Security Administration and the State Disability Determinations Services is certainly a unique alignment. I would like to know if the Commissioner thinks this is the most efficient way to run the disability system.

Erik Williamson, from the Ohio Bureau of Disability Determination is here to discuss how they manage their human capital challenges. I am also interested in learning how they manage their

case load and what steps they have taken to keep their processing time close to the national average.

Third, in 1996 the merit system, MSPB, ruled the OPM scoring system unfairly favored veterans over nonveterans. This ruling started a 7-year hiring freeze of ALJs and ultimately affects Social Security's ability to manage the disability program.

SSA currently employs 1,000 administrative law judges out of the government's 1,200 judges. During ALJ's hiring freeze OPM took steps to minimize the shortage of judges at SSA by filling a motion to vacate the MSPB order. The staffing challenges did not dissipate even though the board lifted the stay in September 2001 allowing SSA to hire additional ALJs.

The question I have is, why did it take so long for the ALJ hiring freeze to be resolved. That in itself may be something we ought to look at. I wonder if this is symptomatic of the Federal appeals process in general. The ALJ issue should have been resolved in a couple years. If this were the case, we would not have had a scarcity of ALJs.

On February 20, 2003, as I mentioned the Federal circuit ruled that the ALJ scoring formula was applied lawfully and did not violate the veterans preference. This rule was upheld by the U.S. Supreme Court on March 2004, almost 8 years later.

Ms. BARNHART. Something like that.

Senator VOINOVICH. Fortunately the ALJ hiring freeze is over. Social Security Administration will hire 50 new judges and I appreciate it if you can provide insight regarding the number of judges assigned to Cleveland and Ohio to deal with the backlogs we seem to have as differentiated from some other States.

Frankly, I would like to know whether 50 judges is enough to get the job done. In addition, does the list of potential ALJs contain competent and qualified candidates, is your pay scale competitive, and is your budget adequate. These are some of the questions that we need to explore. For instance, I know State ODS in Ohio wanted to hire 20 employees last year but were only able to find 17 qualified employees. Some of these recruitment challenges may stem from the fact that your pay scale may not be adequate or we may need to do a better job of recruiting employees to take on these jobs.

Finally, regarding the backlog, can be attributed to the hearing process improvement (HPI). This three phase initiative was implemented between January and November 2000. The question I have is that November 2000, this was the last year of the Clinton Administration, why would you ever undertake such an extensive project in the last year of your administration on an overhaul that his administration should have been working on during the first 7 years. Maybe I'm being a little critical but my last year as governor I realized that and I didn't take on new initiatives. Our mindset was to wrap up any projects and get some things done rather than starting a whole new process.

Based on reports from the GAO and the SSA inspector general, the HPI initiative did not have the desired effect. And the Commissioner inherited an ineffective program. Prior to HPI, the average national processing time for disability cases in fiscal year 1999 was 280 days, 2 years later 336 days. HPI was going to improve the

system? As I mentioned earlier, the current national processing time for disability is 368 days.

According to GAO the failure of the HPI initiative in part is the result of attempting to implement large scale changes too quickly without resolving known problems. I would like to know who designed the HPI, was it a consultant firm? How often were the people actually doing the work? Were they asked about how they could improve the system, and the issue of how long it takes to get the job done?

Right now there are people complaining that we came up with a new Medicare prescription drug benefit. And a lot of people I see at meetings say it will take until 2006 to get it done. All we have is the end of this year, 2004 and 2005, that is a major undertaking to provide this kind of benefit to millions of Americans. We want to make sure it is done right, and I think that underscores, Commissioner, that you can't snap your fingers and expect something is going to get done overnight.

These are some, but not all, of the reasons for the backlog. Commissioner Barnhart, I would like to know what you are doing to improve the situation but also would like to offer you some advice. Woody Hayes, the Ohio State football coach, said that you win with people. That's what it is about. If you think about it, his words apply to the disability process as well. In order to effectively streamline and improve the disability process, you have to have the right people with the right skills and knowledge and the right places at the right time. Most importantly, however, your approach will only be successful if it improves the process to the applicants themselves.

Folders sitting in dockets across the country represent people with serious health related problems. Those individuals are my constituents and your clients and they deserve a better system. I just received a weekly report from my staff about hangups and busy signals at SSA call centers. SSA's telephone service conducted a survey with the National Council of Security Management Association and 93 percent of the managers at the local Social Security offices and 73 percent of the managers for 1–800 numbers claim their office is not providing acceptable telephone service. This gets to the point, answering the phone is vital to serving the American public and somebody ought to get on that one right away to make sure that gets done.

Before I recognize the Commissioner for her opening remarks, I would like to read excerpts from a letter I received from a constituents in Pemberville. We asked her if it would be all right to read her letter and make it a part of the hearing this morning. Her letter personifies the hardship that occurs because of a lengthy and drawn out disability process. I asked consent that it be made part of the record and since I'm running the hearing it will be. And it is a very well written letter. And I wouldn't be sharing it with you but it just does a super job of laying out the situation.

> "On September 20, 2002, I suffered a brainstem stroke. My life as I have known it to be would be forever changed from that day forth. My road to recovery was long and grueling. When I inquired from my physicians how long it might take for my recovery, I was told up to a year or longer. That became very distressing news for me because I began to wonder how I was going to manage financially for that length of time.

"After much urging from immediate family, primary physician and stroke related physician I began the process of filing for Social Security Disability in November 2002. Had I known then what I know now, I may have reconsidered that decision. The paperwork alone is a very lengthy, time consuming matter.

"I received my first notice that I was not qualifying for purposes Social Security Disability or Supplemental Security Income. I refiled for a second determination. Once again, a mountain of paperwork and once again my claim was denied.

"My local Social Security office informed me that the next step would be a third filing and a hearing before a Social Security judge. I was also told it would take another 12 months before I would be granted a hearing. The system is not structured in such a manner as to accommodate someone such as me. It is a system that only looks at me as a number, not as an individual. Every time I have contacted the Social Security administration I am first asked for my Social Security number and then, only then, do I become a person with a name.

"The changes that have occurred in my life over the past year have been devastating for me. In a nutshell, since my stroke I have lost my job, my home, my health insurance, and the majority of my savings.

"I want to know why it is necessary to endure such a cumbersome and long, drawn out process. I truly believe the system is set up for the average citizen to become so discouraged they discontinue filing their claim. It seems to me someone like me gets swallowed up in the big sea of bureaucracy of the Social Security system. I am a number with no face or voice.

"The system needs to be revamped. My voice needs to be heard. I need to know there is someone out there who is listening and someone who cares."

Commissioner, I know you have heard these stories before, perhaps not as eloquently as this woman has written. I would like to add if anyone else here today is experiencing similar difficulties, the Social Security Administration has staff in room 103, to talk to you about your case.

Commissioner, I am anxious to hear from you. I apologize to you for taking so long in my opening statement but I thought it would kind of bring everything together and I want to thank you and I want to thank all the other witnesses that have taken time, many of you to come long distances to be here with us today.

It is the custom of this Subcommittee that all witnesses be sworn in. So I, therefore, ask all of today's witnesses, are they all here, if you all stand I will administer the oath.

[Witnesses sworn.]

Senator VOINOVICH. Let the record show that everyone answered in the affirmative. I also would like to ask if the witnesses here today would limit their statements to no more than 5 minutes. I want every witness to know your written testimony will be entered into the record and be reviewed. The only witness that I'm going to make an exception to is the Commissioner herself. You've got a big job and you came from Washington, you are here today and we thank you for coming here today and look forward to hearing from you.

## TESTIMONY OF HON. JO ANNE B. BARNHART,[1] COMMISSIONER, SOCIAL SECURITY ADMINISTRATION

Ms. BARNHART. Thank you, Mr. Chairman, and thank you for providing this opportunity to return to Ohio to discuss my approach for improving the disability determination process and also

[1] The prepared statement of Ms. Barnhart appears in the Appendix on page 45.

to talk about the initiatives we have underway to improve service right here in Cleveland.

As you know, I heard earlier this year from many of your constituents about their experiences and concerns with the current disability process. And holding this hearing is clearly evidence of your personal commitment to the Social Security program and people we serve. I do appreciate that.

When I became Commissioner, I pledged to improve the Social Security Disability process. Last fall I presented my approach for improving the disability determination process to Congress and since then I have met with the House and Senate staffs, SAA employees and groups involving every staff of the disability determination process to discuss this new approach. I met with the representatives for the attorneys in Social Security, representatives of the ALJs and ALJs themselves, and many advocacy organizations. In fact, I kept track of all the groups I met with and would be happy to provide a list of the meetings for the record. I personally held sessions to discuss proposals.

Senator VOINOVICH. I would like to have them because it would let me know of the allies we might have.[1]

Ms. BARNHART. I have incorporated what I think are some very important changes in my approach to shorten the decision time and pay benefits expeditiously to people who are obviously disabled, as well as test new ways to help people with disabilities who want to return to work to do so.

I have provided a complete description of my new approach to disability determination in my written testimony, and for time constraint purposes I won't walk through the entire thing. It takes me 40 minutes. I don't want to take more time than the Chairman.

In January of this year we began rolling out what I believe is the cornerstone of my strategy to improve the disability process. The Accelerated Electronic Disability system, (AeDib). This new system is going to eliminate the current process of mailing, locating and manually organizing paper folders. That may not sound like much, but based on the content of the analysis I did on the disability process when I became Commissioner, we estimate it takes approximately 60 days to mail folders back and forth from one office to another and that it takes approximately 100 days to locate files at various stages in the process. That may sound like a lot and it is a lot but when you are staging, as we call it, over a million to two million cases a year, it's understandable that it's sometimes hard to find paper files.

Senator VOINOVICH. That was exactly the way the Ohio Bureau of Workers' Comp was organized. We had files in boxes and they would move the boxes around in the State and people would loose the boxes. Are you going to put everything electronically right from the beginning and make it a paperless system?

Ms. BARNHART. That's right. It affords us the opportunity to revolutionize the way we process disability cases. We specifically want to get to the issues in Cleveland. Now work submitted from one place to another can be done with a push of a button in terms of

[1] "Disability Service Improvement List," submitted by Commissioner Barnhart appears in the Appendix on page 146.

record review and that kind of thing and preparation of the case. By moving to electronic processing, it will reduce processing time by 25 percent.

And I'm pleased to tell you that Ohio is scheduled to have this system starting to run in late September. As we move ahead, I would be more than happy to keep you informed of our progress. I'm pleased to say that we rolled out in Mississippi on January 26, and, frankly, Mr. Chairman, this is a good example of the approach that I have taken in general in the agency dealing with the disability issue.

When I came into the agency, electronic disability was on scheduled for 7 years from the time that I came in. I said, no, that won't do. I have 5 years left in this term. I would like to accomplish it during my term as Commissioner, going to the point you made of starting things you have the opportunity to actually complete.

And I asked my staff if they had all the resources they needed and I promise you we sat down and talked about how long will it take to begin implementation. We decided it would take 23 months, which was January of this year. We met that start date in Mississippi. We are moving on to South Carolina and gradually moving from one State to another and doing one region at a time. We are currently on schedule and, in fact, we had a couple States ask if we could come sooner to them than originally planned. I think that's very significant because you and I both know the grapevine among State directors, if AeDib weren't working, other States wouldn't be interested in having it get in sooner. We are working through the issues as they arise. It's going very well and it's one of my top priorities.

In the meantime, while we have begun the electronic disability process and announced a new approach, I am working with all the stakeholders, as you put it, in order to finalize that approach. I do think it is important to point out that when I introduced my approach, I called it that because the problems in this system are so immense that it really requires an all encompassing perspective of the system working together to come up with a solution. I really didn't want to have something I developed and lay it out and say this is it and it's all signed, sealed, and delivered. I laid down an approach and I'm meeting with all the interested parties before finalizing it.

Because of the time it will take to do that, I estimate implementing a new approach probably couldn't happen until October 2005 at the earliest. This is largely because it's predicated on successful implementation of electronic disability, which will take 18 months to roll out nationwide.

There are situations like the one here in Cleveland we had to take short-term action. We had to take action to work as quickly and expeditiously as we possibly could to address the challenges faced by offices like Cleveland. To assist with the workload one of the things we did is we brought back retired administrative law judges and reemployed them on a part-time basis.

Senator VOINOVICH. Were you able to bring them back and have them work without——

Ms. BARNHART. There's like a senior ALJ program.

Senator VOINOVICH. They don't have to give up their retirement, sort of like senior service, like a Federal judge?

Ms. BARNHART. Yes, I believe we used that. And you went into great detail as to the delay of MSPB and no question that has had a very detrimental effect. We have identified 50 judges now coming on April 26 and three of those judges will be coming to Cleveland June 1. From April 26 to June 1 they will be in training at headquarters.

I have plans later this summer to bring on an additional 50 judges which means a hundred will be hired this year. You asked me if we had enough ALJs. We don't, as you pointed out. We have approximately a thousand now. I'm hiring a hundred. Ideally I would like to add a hundred more. That is simply a function of the budget situation. In addition to hiring ALJs and using——

Senator VOINOVICH. Are your administrative costs part of mandatory spending or subject to——

Ms. BARNHART. Subject to the discretionary cap. It's not clear whether the Appropriations Committee——

Senator VOINOVICH. You'll have to compete with other things in the discretionary budget.

Ms. BARNHART. There's no question that has an effect. Last year the President requested an 8.5 percent increase for SSA and we ended up with a 5.4 percent increase. This year the President requested 6.8 percent and we are hoping obviously to come very close to getting that. When we look at the budget situation, obviously there certainly is no guarantee. I think it's significant that in both years when the budget situation was certainly a pressing one, that the President requested for SSA more than twice the percentage increase for the whole Federal Government. It's a very significant increase relative to other agencies. Not getting that 8.5 percent increase obviously had an effect and if we don't get the 6.5 percent increase it will have an effect.

You correctly pointed out the whole issue of being able to hire staff because of the passed budget is very significant. We basically had to put a curb on hiring until the appropriation was passed because we didn't know what level of funding we were going to have. Obviously I wasn't going to have to run a furlough. We have been hiring judiciously. Just last Friday we completed our opinion on the initial budget, what we call budget scrub, since the appropriation was passed and so I will be putting out more FTEs around the country for people to be brought on board. But we have had to proceed in a judicious manner until we were confident of the level of appropriation we were going to receive.

Senator VOINOVICH. What I would like you to do, sorry for interrupting your testimony, is maybe give me a one pager on the disastrous effect of not passing the budget on time because I'm trying to convince my colleagues, and so is Ted Stevens, that we have to act before October 1.[1] However, with the Senate's schedule this year it's going to be difficult to do it. Over the past few years, we have delayed passing the appriations bills. I am afraid this year that we'll just delay, delay and come back after the election with

[1] "Impact of Not Passing a Budget On Time," submitted by Ms. Barnhart appears in the Appendix on page 147.

a big omnibus appropriations bill. I would like to get it done before the end of the year but it could end up in January.

Ms. BARNHART. That's a disadvantage to the Federal agency. You have a great interest in the Federal personnel system, and obviously our best recruiting time is summer up to early fall when the kids are just graduating from college. We have direct hiring authority for outstanding scholars, who are students with an overall GPA of 3.5 or higher. If we don't know what our budget is going to be in January of the next year, then many of those talented young people would have chosen to go other places by the time we were able to offer them a job. So it's very significant for us in particular.

In addition to adding to the ALJs, we have various hearing offices in the Chicago region as well as some outside of the region, that are assisting Cleveland with its work load. We plan to transfer 5,200 cases from Cleveland to other hearing offices. Over approximately 1,500 of those cases will go to our Boston region, and approximately 3,500 have been transferred within the Chicago region to other hearing offices.

I have also been moving toward using video conferences, which gives us the capability of conducting hearings via video. I think time and distance are very important factors, particularly with a pared down ALJ core and hiring delays due to the Ashdale case. Having the judges spend time traveling as opposed to conducting hearings is not efficient and sometimes it's much more convenient rather than traveling to that office to go to a location that has video capability. This also makes transfer of cases possible because claimants in Ohio don't have to leave Ohio in order for their case to be heard by a judge outside of Ohio.

We have also sent in a team of attorneys to supervise and to screen pending cases to make a decision without a hearing, so-called on-the-record decisions, and we have ALJs travel to conduct hearings.

I want to assure you the hearing and appeal staff is actively involved in the challenges of the Cleveland office. Our Chief ALJ, David Washington, has been to Cleveland several times meeting with management and heard a docket of cases himself in May. In addition, with the VTC equipment a regional chief judge in Chicago heard 45 cases from the Cleveland office and my understanding is he plans to hear 45 more.

We have conducted onsite meetings with management offices and hearing offices, and have examined a number of administrative best practices. We expect these actions to significantly reduce the time to get a decision. We know and understand how important it is for the claimant and family members who are waiting for a decision. Everyone at Social Security realizes the folders on our desk represent parties. These big tall folders aren't just files. They are people whose lives are affected by the job we do and how well we do it. These people are in dire need, and are counting on Social Security for support. I assure you this is a responsibility no SSA employee takes lightly, from teleservice representatives to claim paralegals to attorneys and judges. Everyone at Social Security is committed to providing the kind of service the American people expect and desire.

I thank you for holding this hearing and I would be happy to answer any questions and address any issues you would like me to.

Senator VOINOVICH. Thank you very much. The first one I wanted to address is the electronic disability folder and you pretty well answered that in your opening statement. You think you are going to wrap that up by October 2005?

Ms. BARNHART. I think AeDib will be implemented 18 months from January—June of next year. My thought was if we are improving a new process approach we need to not just implement it but have 6 or 7 months experience with it. That's why I was looking at no sooner of October 2005 for implementing a new process.

Senator VOINOVICH. Ohio is June?

Ms. BARNHART. September of this year.

Senator VOINOVICH. And Ohio is part of Region V?

Ms. BARNHART. Yes, Region V.

Senator VOINOVICH. Your opening statement was very thorough and you have done a good job answering my questions. In October 2003 the Social Security Advisory Board issued a report entitled "The Social Security Definition of Disability." Do you think that we need to update that definition or would you think it would be such a political hot potato that we ought not to bother with it?

Ms. BARNHART. I didn't get into that. I have limited my improvements to process improvements I could accomplish without legislation. That's one thing I didn't mention. The new approach I designed and presented can all be implemented with regulation or administrative issuances and I thought that was important because that means the process is something I could actually accomplish and see through to its completion during my term as Commissioner. My term expires in January 2007.

The definition of disability obviously would require statutory change and I think it is certainly a very complicated issue, one where people have diverse views about it.

GAO did place all of the Federal disability programs, as you know, on the high risk area. And I have had several conversations with David Walker, the controller general, about that. The Federal disability programs were not a high risk area from a management perspective. David was very clear about that in our discussions. They were considered high-risk because the disability programs as they currently exist were created in the 1950's and don't necessarily reflect what happened societally over that time period.

With the passage of the ADA almost 11 years ago, attitudes about people with disabilities and their abilities changed dramatically. Back to work legislation that Congress passed in 1999 reflects——

Senator VOINOVICH. No one has taken advantage.

Ms. BARNHART. Some people are and we are working on that, Senator. So I think there are a lot of things that contribute, and will contribute to that debate and discussion on disability. It's difficult but it definitely would be the next step after improving the process to look at the definition of disability if it were going to happen.

Senator VOINOVICH. One of the things I have been working on, human capital practices and I have been working on that since 1999. When we passed the Homeland Security Bill we were able to

add numerous flexibilities for all the Federal agencies and Senator Akaka and I worked on that. For example, hiring, allowing an agency to use a category rank in hiring instead of the rule of three. Are you using categorical hiring instead of the rule of three?

Ms. BARNHART. I don't know for certain. I would be happy to find out and let you know, Senator.[1]

Senator VOINOVICH. How about voluntary attrition and voluntary retirement? Are you using these flexibilities?

Ms. BARNHART. We have used early out, which is a voluntary decision to leave, with great success. It's one of the things that has helped the agency level out the big retirement wave. We anticipated we will have lost over the next 7 years half of the people in the agency. This is more than the number of people who have retired in the last 10 years.

Senator VOINOVICH. American people are not aware of that. I got involved in this in 1999 because I wanted to bring quality management to the Federal Government. Currently, the Federal Government is in the midst of a human capital crisis. Seventy percent of the senior executives could retire next year if they wanted to. You have a real challenge in terms of retirement. Do you think you have thought about new flexibilities you might need to make your job easier? I would ask you to share those with me.

Ms. BARNHART. I haven't. I'm glad you asked me. One of the things I mentioned is the outstanding scholar program for direct hiring authority. In other words, when we identify a talented young person at job fairs or recruiting efforts with an overall Grade Point Average (GPA) of 3.5 or higher we are allowed to directly hire that person. If that person had a 3.0 GPA, we should be allowed to directly hire him or her because that's an accomplishment and certainly speaks to the individual's ability. It also broadens the pool for us.

One of the things we really need to do is to encourage young people to come in to the government, to become the dedicated kind of employees that we are very fortunate to have.

Senator VOINOVICH. Do you have any contact with the Partnership of Public Service that Max Stier is leading. They have established a call to serve initiative and are working with colleges and universities to build interest in Federal service.

Ms. BARNHART. I haven't personally. The deputy for human resources has. One of the other things that would be possible would be speaking again to the budget situation. If we hire an employee as a term or temporary employee, sometimes it's the prudent thing to do. If you don't know what your budget is going to be, it would obviously be helpful. When we find out we are able to keep an individual then we can then make them permanent. If they work very well as a temporary or term employee to convert them to permanent status. We would have a person who is already trained and instead of having to go through all the steps to get there. Having that capability would be important.

One place that is going to be important is the prescription drug program. We are actually responsible for implementing part of the

[1] "Category Hiring vs. Rule of Three," submitted by Ms. Barnhart appears in the Appendix on page 148.

program and people are going to come to us to apply for their benefits just as they do for Medicare. To handle the workload, we estimate we will be dealing with somewhere around 30 to 40 million people. We are going to have to bring a couple thousand people on board. And then obviously once we get through the people who are currently on the rolls, we'll have an ongoing workload of a million and a half a year so we won't need all these people. It would be wonderful knowing we were not going to lose 5,000 people a year, that we could hire right from that trained pool. Even if it's in prescription drugs, they will have government experience and it would be wonderful to use them as a hiring pool for us to replenish our ongoing retirees. I have other things but won't take time now.

Senator VOINOVICH. I would be interested in having you put them down for us. We are still trying to get David Walker's new flexibilities through. And I will be at meetings in the Pentagon to talk about what they are doing with the nonuniformed employees in the Defense Department. But if there are some things we can provide to help expedite your hiring needs, I would like to hear about it and we'll be glad to work on it.

Ms. BARNHART. I appreciate that. I will send something up to your staff.

Senator VOINOVICH. Anything else you would like to share with us?

Ms. BARNHART. I wanted to make a few points on a couple things. I was taking notes. We implemented starter kits for disability applicants that is going to be mailed out soon.

Senator VOINOVICH. What is that?

Ms. BARNHART. As in the rather eloquent letter from your constituent, there's an enormous volume of paperwork. With the starter kit that idea is someone applies for disability and they'll receive this and it gives very simple instructions and explains the kind of documents they need to have.

Senator VOINOVICH. Who put that together?

Ms. BARNHART. We did at Social Security.

Senator VOINOVICH. Did you hire a consultant or——

Ms. BARNHART. We did it inside. We worked with claims representatives, teleservice representatives, and people in our program service centers. When we have undertaken projects, my approach has been actually to set up internal workgroups. For example, the service delivery budget was one of my major activities during my first year. It really has been key for all the other things we have done. It budgets where we want to be in 5 years and what are the resources it takes to get us there. The service delivery budget was based on the desire to eliminate backlogs, keep current with claims and special workloads to make the technology investments we need and so forth.

My approach is to bring in people from the district offices, field office, program service centers located around the country, and our hearing offices. It's very important to have people who are doing the work be involved in fixing the program because we sometimes form an idea in Washington or Baltimore about what is causing a problem but we are not on the ground working with it.

So people from all of the different parts of the agency that needed to be involved with the starter kit were involved. I'm hoping

that it's going to have very positive results for the claimants. What we have seen in the pilots we ran on the starter kit was that the number of people who had higher percentage of the documentation and the information when they came to the interviews increased fairly dramatically. I have no reason to believe that won't be the case. It's being rolled out across the Nation.

You mentioned HPI, and I don't want to go back and relive history I wasn't a part of. I was watching it play out from my perspective on the Social Security Advisory Board. But I think one of the points you made is really worth mentioning time and time again.

It took us many years to get to this situation we are in today. And I wish that I could wave a magic wand and get us out of it tomorrow but that is not possible. I did start working on these from the moment I was confirmed in November 2001. It was actually one of the board members who signed that January report you cited from the Social Security Advisory Board that pointed out the problems with the disability system. And there is no question that having had that experience on the board helped position me better coming into the agency to understand the really nitty-gritty the agency faced.

I want to take this opportunity to say Hal Daub, the chairman, is testifying later today but the board continues to be a wonderful place to bounce ideas and to hold my feet to the fire to make sure we actually move ahead on a regular basis.

I think that pretty much covered the comments that I wanted to make just in response to your opening comments except finally to say I do appreciate your interest and your dedication to helping solve this problem. There is no question it's going to take the full support of everyone in Congress.

We need to get the budget. When people ask me what's the one thing they can do to be helpful, to try to make sure we get our budget. Last year the Senate voted the full amount as the President requested. It was in Congress that we received a reduction. So I'm hoping I can count again on the Senate to vote 6.8 percent for Social Security. It is money put to good use. I will point out the first full year's——

Senator VOINOVICH. What budget?

Ms. BARNHART. Fiscal year 2005. The people in this agency work very hard and they care very much. I travel around quite a bit to meet with employees in the agency and many are here today. And I think it's important always when I testify on these problems to separate the problems from the people in the agency. What I would like to remind people is that, if the people in the agency were not working as hard as they are and as dedicated as they are to doing the job for the American people, the backlogs would be even greater than they are. The processing times would be longer than they are. I really appreciate the job they are doing.

We need to get additional resources so we can provide the kind of service that you and all your constituents expect. It's definitely the kind of service we want to provide.

Senator VOINOVICH. I really appreciate you being here. I have to tell you I'm very impressed with your testimony. I think it's good that we have somebody who really understands the problems of the agencies. I'm impressed with the fact you are looking at this long

term and you understand there are some short term things you need to get done. I will monitor what you said today and I will remind you. I will make a deal if Ohio receives AeDib in June, I will send you a beautiful letter, if not I will ask you what happened.

Ms. BARNHART. You got a deal. Thank you very much.

Senator VOINOVICH. Thank you very much.

Ms. BARNHART. I want to mention that I have previous commitments and I have to leave immediately to go to the airport. I did read the testimony of all of the other witnesses today and I want to say I have worked very closely with some of the witnesses coming up, Jim Hill and Kevin Dugan, I met Ms. Margolius before while I was in Cleveland. I appreciate the cooperative spirits and comments they made in their testimony. I have staff staying to listen to the entire hearing and be able to provide me with information.

Senator VOINOVICH. Thank you for being here today.

Our next panel is Hal Daub, Chairman of the Social Security Advisory Board, former Congressman and Mayor of Omaha, Nebraska. Robert Robertson is Director of Education, Workforce, and Income Security at GAO who has been paying a great deal of attention to what has been happening at the Social Security Administration. Erik Williamson is Assistant Director at Ohio Bureau of Disability Determination.

Mr. Daub, we'll start with you first. Thank you for coming here.

## TESTIMONY OF HON. HAL DAUB,[1] CHAIRMAN, SOCIAL SECURITY ADVISORY BOARD

Mr. DAUB. Thank you very much. I want to thank you for this very timely hearing. There are few of your colleagues who even want to deal with this problem, it is complex, is it technical. And in the process of preparing for this hearing I want to thank you for the attentiveness of your staff who really did dig deeply into the problems that the system does have and it should be noted they have done a very good job and are prepared now to deal with the issue and to support you.

Ten years ago, Congress created a bi-partisan Social Security Advisory Board to recommend ways to improve the Social Security programs. The Advisory Board travelled to every region in the Nation. We have talked to those involved at every level—both those who run the program and those who seek help from it. We have found widespread consensus—with which we agree—that this is a program with serious problems.

Disability decisions should be fair and consistent throughout the country and at each level of adjudication. We have found large and unexplained inconsistencies. The program lacks a comprehensive quality management system to assure careful and uniform application of the law. Improvements are needed to develop and to apply the same standards as objectively as possible at all levels of the decisionmaking. We are very pleased to see the Commissioner take bold steps to address these issues. To move ahead with major improvements in technology is a leap the agency needs to better meet

[1] The prepared statement of Mr. Daub appears in the Appendix on page 55.

its challenges. I urge you not to underestimate the scope of the problem.

As your title for this hearing states, proposed process changes and technology improvements can put the Social Security Disability programs on the road to recovery. Traveling all the way down that road will also require addressing needs such as more—and more uniform—training. There must be a stronger policy development capacity. Better human capital planning is also essential. The crucial factor for really achieving these goals is an adequate level of resources.

As the Board travelled around the country we were impressed by the dedicated and hardworking employees in Social Security offices and State disability determination services. They have been increasing their productivity. The Commissioner has proposed changes that will allow even greater improvements. That will only happen if Congress provides sufficient resources to handle the ever-growing caseload.

The agency has carefully developed a 5 year service delivery budget for bringing the backlogs down to a manageable level. But a vital increase in administrative funding is needed and the President has endorsed a very modest increased funding level. It's now up to Congress to decide whether to provide those resources or opt for growing backlogs.

The Commissioner described today her immediate plans for changes that she can quickly implement administratively. There certainly also is room for Congress to consider legislative improvements.

The Social Security Advisory Board, for example, has urged Congress to consider changes such as creating a Social Security court and changes in the hearing process itself.

Finally, there are larger issues that must be dealt with. Social Security Disability program uses a definition of disability that is a half century old. Many today feel that the focus on "inability to work" does a disservice to impaired individuals and we should find ways to change the program to better support the desire of those individuals to continue leading productive, self-sufficient lives.

The Board has recently issued a report on the definition of disability and is sponsoring a forum on April 14 to further explore this important issue. In fact, Senator, during recess you are invited, and if not you, your staff, to join us for that forum. It will be held on the Senate side.

Along with my full statement, I would like to submit for the record a copy of a Social Security Advisory Board report from October 2003.[1] It is a report on the need for fundamental changes in the disability programs and on the definition of disability. All of our reports can be viewed on the Social Security website, www.socialsecurityadvisoryboard.gov.

Senator VOINOVICH. Mr. Robertson, I would like to say before your testimony, I appreciate your tremendous cooperation and help I received from the General Accounting Office. David Walker and I have become very good friends over the years and I just want you

[1] The report entitled "The Social Security Definition of Disability," submitted by Mr. Daub with an attachment appears in the Appendix on page 58.

to carry back to your associates how much this Senator appreciates the good work you are all doing at GAO.

**TESTIMONY OF ROBERT E. ROBERTSON,[1] DIRECTOR, EDUCATION, WORKFORCE, AND INCOME SECURITY, U.S. GENERAL ACCOUNTING OFFICE**

Mr. ROBERTSON. Thank you very much. Let me begin, Mr. Chairman, reiterating one of your opening comments. That is, this is just a wonderful new building to have this hearing in. I'm also very happy that you invited me here for a discussion of what has to be one of SSA's most pressing challenges—to produce timely, consistent, high quality decisions for people who are applying for disability benefits.

As you indicated earlier, the stakes are high. The two programs we are talking about involve large numbers of people and large amounts of Federal resources. I'm going to be making four points this morning.

The first is not news but it's certainly worth stating. That is, the SSA disability programs have in the past and currently continue to experience problems in terms of producing timely, consistent disability decisions. There is some good news in the area in that SSA has made some short-term gains in improving timeliness for part of its decisionmaking process. The bad news is that, as the Commissioner has noted on previous occasions, the SSA system has a long way to go. For example, over the past 5 years the average time it takes to receive a decision at the hearing level has increased by a month, from 316 to 344 days.

Second, beyond decision timeliness and consistency, the disability program suffers from more fundamental problems related to the basic concept that disability determinations are based upon. It's been referred to in earlier statements. More specifically the programs are grounded in an outdated concept of disability that equates impairment with the inability to work. Under this concept a person is determined to be totally disabled or not. There is nothing in between. This all or nothing idea really is not in synch with medical advances and economic and social changes over the years that have resulted in greater work opportunity for people with disabilities. Further, employment assistance that could allow claimants to stay in the workforce or return to work and potentially remain off the disability rolls of Social Security are not offered until after a claimant has gone through a lengthy determination process to prove his or her inability to work. In short, the basic design of the program does little to recognize improved work opportunities for individuals with disabilities or to foster a return-to-work philosophy.

As a brief aside here, the problems SSA faces with its disability program both in terms of the management of the program and the program's basic design are not unique. There are other Federal disability programs that face the same types of problems. Based on all of these concerns we placed the Federal disability programs, including those at SSA, on our high risk list in January 2003.

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[1] The prepared statement of Mr. Robertson appears in the Appendix on page 107.

My third point is to simply recognize and acknowledge that the Commissioner has placed a high priority on addressing problems in the disability program and is developing a strategy to improve the disability process. This has included expediting the new electronic disability folder and automated case processing system, proposing changes to the determination processing system intended to produce more accurate decisions, sooner, and testing concepts intended to foster a return to work at all stages of the process.

My fourth and final point is to highlight what can only be termed as some very daunting challenges that face the Commissioner. Some of these have been mentioned earlier. More specifically, improvements in the claims processing time, are closely linked to successful implementation of the automated electronic case processing system. However, we have recently raised concerns about SSA's plan to accelerate this system's deployment.

Additionally, we have reported that SSA faces human capital problems that affect the very people who are critical to implementing the proposed changes to the determination process. In particular, we found that the 5,600 disability examiners employed by the federally funded but State run DDSs, face high turnover, recruiting and hiring difficulties and gaps in key knowledge and skills. Finally, growing case loads can only exacerbate the challenges SSA faces. Between 2002 and 2010 SSA expects disability insurance roles to grow by about 35 percent.

Mr. Chairman, that concludes my prepared remarks. I would be happy to answer questions at the appropriate time.

Senator VOINOVICH. Mr. Williamson.

**TESTIMONY OF ERIK WILLIAMSON,[1] ASSISTANT DIRECTOR, OHIO BUREAU OF DISABILITY DETERMINATION**

Mr. WILLIAMSON. Thank you, Mr. Chairman, for the invitation to participate in this hearing on improving the backlog of Social Security disability claims. The bureau is 100 percent funded by SSA and each State has a comparable Disability Determination Service.

I would like to begin by briefly providing some background and data regarding the Ohio DDS.

Ohio has the highest productivity rate of the country's 12 DDS programs and based on the number of cases received, Ohio program is the fifth largest in the Nation.

During fiscal year 2003 Ohio produced over 183,285 Social Security Disability claims. Since fiscal year 1996 the number of claims processed by Ohio increased by 25 percent. During the same period our staff increased by 6.8 percent. The bureau has remained highly productive despite the disparity in resources and we are committed to making the most of the resources available to us. However, additional staffing commensurate with our increasing caseloads will be critical to ensure that services to the public are not severely impacted.

To prepare our workforce for the changes we see approaching, we provided over 9,000 hours of training to staff including vocational issues, medical issues and change management and problem solving for our supervisors. To prepare for the electronic disability fold-

[1] The prepared statement of Mr. Williamson appears in the Appendix on page 121.

er, we improved our hiring process to include a computer skills assessment and invested in an online electronic learning program. We regularly provide training on pertinent issues conducted by employees and medical consultants who are strong in these particular areas. And we created a mentoring program and job shadowing program. Training strains our productivity, but we realize the impact to our quality if we do not continue to provide relevant training. We ask that adequate resources for training be provided to help us to continuously improve the skills of our workforce.

The Accelerated Electronic Disability Process will transition our business process into a totally paperless environment. The Ohio DDS is scheduled for rollout later this year.

We see great benefit in the increased efficiency of moving to an electronic environment. We are also cognizant of the fact there will be a significant learning curve during implementation.

We are encouraged by our preparation today and believe it will minimize the impact to our organization. However, we do have a few concerns.

Other States in our region will not be in a position to help us during the transition as they will also be implementing the electronic folder. Ohio's caseload continues to grow at an "unprecedented rate" and we will need adequate staff to meet the challenges this presents. It takes 2 years for a recently hired adjudicator to complete training and work independently. In order to process the increased workload, the Ohio DDS budgeted to hired 80 employees during fiscal year 2004. It has received authorization to hire 20 due to budget restrictions.

Perhaps most importantly, we need the process to become fully electronic as soon as possible. The key to this issue is the National Archives and Records Administration approving the electronic file as the officially recognized document. We do not have adequate resources to support both a paper and electronic system indefinitely, which will affect our ability to serve the public. We see tremendous advantage to this project and hope that we can move to the electronic environment quickly as possible.

We agree improvements can, and need to be made, in the overall disability process. I will outline some of our concerns on the Commissioner's approach.

In-line quality reviews. An in-line review process can identify potential problems early in the process before the claim is completed, saving time and resources for our claimants and the DDS. We strive to prepare our claims for the next level of review, and therefore, we have begun piloting the in-line review concept in conjunction with our end-of-line quality assurance efforts. We would add to Commissioner Barnhart's proposal implementation of formal quality review for the field offices to ensure accuracy of application forms and also for the regional expert review units and reviewing officials.

We agree that centralized quality control would improve consistency over the current regional disability quality branch process. We are always willing to improve, and we would welcome national input to help us with the overall process.

Additionally, as far as demonstration projects, we believe there is tremendous potential in exploring new ways of doing business.

We are interesting in working in collaboration with the Ohio Vocational Rehabilitation bureau to determine if early intervention with SSDI applicants will help them to reenter the workforce and achieve financial independence. We would like to explore a temporary allowance project that will provide immediate cash and medical benefits for a specified period to applicants who are highly likely to benefit from aggressive medical care and/or vocational rehabilitation. We see great value in exploring these projects suggested by the Commissioner and look forward to the opportunity to work with SSA on the initiatives.

In closing, I would like to emphasize our desire to work with internal and external components to improve the disability process. We strongly support the transition to the electronic environment and we are excited about the benefits it will bring to our organization.

We are committed to providing the highest levels of public service possible and making the best use of our existing resources.

We ask for your consideration in providing us with adequate funding to continue to offer the level of service expected of our organization in light of the growing demands that we face.

Mr. Chairman, thank you for the opportunity to testify and I would be happy to take any questions.

Senator VOINOVICH. One of the Commissioner's approaches require State DDS examiners to fully document and explain the basis for their determination. The Commissioner contends this should result in more accurate decisions. In 2002 initial denials across the country ranged from 34 to 73½ percent which is an unbelievable difference. The Ohio DDS initial denial rate was about 70 percent, which was the fifth highest in the Nation.

To what extent do your examiners document and explain their decision and do you feel that Commissioner's documentation requirement will improve the overall disability process at the State level.

Mr. WILLIAMSON. Our adjudicators document their decisions in a PDN or personalize denial notice that goes to the claimant. The difference between what the Commissioner said would go into greater detail and perhaps be a far more technical audience to explain essentially how we got where we did in terms of the decision.

We think that the centralized quality review that she's proposed would go a long way to adding consistency to the States. So I don't know if that answers your question.

Senator VOINOVICH. Well, I mean it seems to me that more documentation requirements will cause more work or do you think that a standardized form will bring about a more accurate determination in regards to an individual and down the road result in less requests for reconsideration and appeals to the judges?

Mr. WILLIAMSON. Frankly, I have to believe it would improve the process. My personal opinion and position of the agency is, I think, it would take more resources, it would take longer to do that. I think we have to decide that it may be an investment we need to make.

Also in the Commissioner's plan she did indicate that resources would be redirected to DDS in terms of taking away some of the quick decisions and taking away the reconsideration step that

would allow our staff more time to do that inter-department analysis.

Mr. DAUB. I look at it from a perspective that on the front end a little more time will be required and will be appropriately invested for a more thorough examination of that citizen's disability request. Then, as a result of that, a quicker decision can be made and the benefits will be delivered quicker. And then those claims that take a little more time will be so thoroughly documented that they won't be in the queue for a year and a half waiting for the administrative law judge process after reconsideration. If you look at the total process it will take more time and resources on the front end, but really shorten the appeal process dramatically.

Senator VOINOVICH. One of the things we did with our workers' comp system was we had a procedure with these boards of revision—from a hearing it would go to the board of revision and we eliminated some of the procedural steps to streamline the process. Hearing people come in rather than doing it the way we were doing it in the past and it expedited things for the claimants.

Has anybody looked at it, GAO looked at it, does this system make sense? Do you believe that having the States do the initial disability determination is the best way to get the job done? Would they be better decided by the Federal Government instead of the State? In other words, your retirement Mr. Williamson, you are part of the whole Public Employee Retirement System. Has anybody looked at that whole process procedurally?

Mr. ROBERTSON. Two points to make. The first one is that the decision itself, the disability determination itself, is a very complex, difficult decision to make. So you start with that and then you put that decision in a process that is, as Hal noted earlier, very fragmented—it involves 1,300 field officers, 50 some odd DDS's, and 140 hearing offices. That makes the determination process even more difficult.

Senator VOINOVICH. Do you think the Commissioner, according to the information I have, would replace the State's reconsideration process with new SSA reviewing initiative?

Mr. ROBERTSON. I think the Commissioner is pushing for process improvements and looking at the process in its entirety. We haven't seen the details on a lot of the design yet and, of course, the devil is in the details. But much of what she is talking about in general makes sense.

Mr. DAUB. There are two changes, Mr. Chairman, that I don't think the Commissioner decided yet, but her approach to the process is looking at eliminating reconsideration and looking at the administrative law judge stage and subsequent appeal review being streamlined. It is amazing how many days it takes for a determination and then the appeals, as you point out. Interesting things are happening. In recessionary times, unemployment rises and disability claims tend to rise. The next thing that is happrning is the aging of our society. The baby boomers are coming in here. Disability tracks age; the older you get, the more disability claims come into the system.

This movement into electronic files is absolutely critical. The whole reform process is predicated upon the electronic file. That has to work first. And assuming that is on track and resources are

in place for that, the streamlining of the administrative review can occur. And the Commissioner has not decided yet which pieces will be taken out of the system but at least there are two that should cut a lot of processing time for the applicant.

Senator VOINOVICH. It gets back to the issue of, Mr. Robertson, do you think Social Security has the staffing capacity at the Federal level to meet the challenges you discussed?

One of the things, if I'm not mistaken, in the background material I read was that State disability determination systems are having human capital challenges. I hope that the Social Security Adminstration will work to alleviate these challenges. That is, why we elevated human capital as officers in each of the agencies and it's very important that they turn their reports in every year.

In terms of SSA's last GPRA report we didn't think there was enough attention made to the staff capacity that would be needed to achieve the agency's goals. Mr. Robertson, I would like you to comment on that.

Mr. ROBERTSON. As you know, Mr. Chairman, SSA is in the process of really transforming itself. Its like taking a big ocean liner and trying to make it change directions. As you know, we have examined other organizations that have successfully transformed their operations. The absolute key to their success was the human capital aspect of their plans. From Social Security's standpoint, they have to have a strong human capital management plan. However, when we looked at the DDS part of it recently we saw some things lacking.

Mr. DAUB. The comment was made earlier that it takes about 2 years to train a person to make disability determinations and learn the medical listings. It's a very complex process. And that is just to recruit and then to retain that person in the State process long enough to get them trained. Now we are going to put them through a process of getting on-line and understanding that whole new complicated process. We see a turnover factor on human capital in this agency of about 13 percent. It's a resource issue. The 5-year budget plan that the Commissioner developed would have eliminated backlogs. That budget proposal did not occur but they'll do their very best, I'm sure, to try to handle that increasing case load. It is clearly a resource and training commitment that has to be made to turn this ship around.

Senator VOINOVICH. Mr. Williamson, one of the things that the Commissioner mentioned was the fact that those States, for example, Mississippi have gone forward and implemented the program and seems to be happy about it. And the word at least around the country is it's a good system. First, do you hear good things about the system and, second, you mentioned something about training and I would like to know what you are doing in order to train your people so they can use the new system when it comes in. I know that's a lot of work because when I was county auditor we went from paper files to electronic files and frankly we had to retrain employees and some of them we weren't able to retrain. They weren't able to do it. This is a whole business of computer familiarity and all of the other tasks that are necessary. Also, from what I read about your operation I understand you've had some turnover problems.

Let's put it this way, are your employees going to be trained enough when AeDib reaches Ohio? Are you going to be able to handle this system? Do you have training going on, do you have the number of people you need and so on?

Mr. WILLIAMSON. Thank you, Mr. Chairman. We have been doing significant training. We started E-learning to get everyone's skills up, computer skills assessment. We have training that Social Security provided us on what employees can expect in the new environment. We have a technological issue of getting all the equipment in and working, and working with our Legacy software and to make sure it's user friendly and working properly for our staff.

We named one of our managers as project manager to oversee it from start to finish. And as I said, we have some concerns but we are very enthusiastic about getting the electronic folder in. And think it's going to provide significant benefits. While we are concerned somewhat about training, we think if we have the resources and staff we'll be able to meet that challenge.

Senator VOINOVICH. You said two big ifs, resources and staff. What is the likelihood you are going to have resources and staff.

Mr. WILLIAMSON. I think we'll get some of the staff we need and I think we'll get a fair number of the resources. Frankly, it remains to be seen. Our budgets aren't all final in terms of how much the DDS will get as it rolls out. We have been assured as we roll out with Levy Corporation, we'll have their full support in bringing it on and teaching our staff how to physically use it.

Senator VOINOVICH. I would like to have something in writing from you about that, where you are, what you think you need, what your resources are, and what is the probability you are going to be able to achieve what it is you are supposed to. And also is the amount of the money that you are getting from the Federal Government adequate enough to hire staff. For example, how about your classification and your salary, are they competitive enough you can bring people?

Mr. WILLIAMSON. I think they are relatively competitive.

Senator VOINOVICH. Why do you have the turnover you have?

Mr. WILLIAMSON. Our turnover is not quite as high as many DDS experience. For fiscal year 2002 we had 6.7 percent attrition. If you took our retirees, it's 3.48 percent. I don't think we are having quite the problem with that. Ninety-two percent of our workforce has 20 years experience or less. Where we are seeing the growing pains, we have approximately 54 percent of our workforce with less than 5 years experience.

Making sure they have adequate training is one of our primary goals. Interestingly, though, as far as rolling out electronic folder the people just from college are familiar with the electronic environment and aren't struggling with that transition at all.

Senator VOINOVICH. What about the ones that weren't doing it?

Mr. WILLIAMSON. They are responding very well to our training. Like I said, we put in our electronic learning. We asked all staff to complete a certain amount of courses by May before the folder comes and they are responding quite well. A lot of people are saying, gee, I wish I tried this sooner. This isn't as bad as I thought it was. We had a lot of electronic forms up on our system and use the E–View system so we can look at the same application on the

screen that the field office does. In a sense we implemented several parts of what we'll be doing and we feel relatively well prepared for both our future staff and existing staff to make that transition.

Senator VOINOVICH. Did you teach Q–Step?

Mr. WILLIAMSON. No, sir.

Senator VOINOVICH. How long have you been with the agency?

Mr. WILLIAMSON. Fourteen years.

Senator VOINOVICH. When we started quality service through partnership you weren't part of that program?

Mr. WILLIAMSON. No, sir.

Senator VOINOVICH. Are you familiar with it at all?

Mr. WILLIAMSON. I'm not.

Senator VOINOVICH. We'll send you some stuff on it.

Mr. DAUB. The Commissioner also emphasized in-line quality review from the beginning to the end. That is a real need as you implement a new system. I take it you took a similar approach, in your work as governor. I think the reviewing officer and the closing of the record at the administrative law judge level will help. The number of days that it takes once a denial is turned into an appeal is somewhat misleading because if you don't like the judge you are assigned and you know there's another judge that's a little easier or a little more willing to overturn a decision, your attorney might just be busy that day and take a continuance or postpone the case in hopes that another judge will hear it. Forum shopping to a degree does occur. I think GAO discovered this.

Also, if the record is kept open as it has been up to now, you can hold back information and wait to see how you are doing on overturning the disability determination from the beginning all the way to the final review. What that does is simply adds more days in the averaging as that case stays in the system longer. With the closing of the record and the other changes the Commissioner is thinking about we are going to get, I think, better due process to the claimants who rightfully should have a chance for an appeal and rightfully have their case reconsidered. It's going to work a lot more efficiently for the claimants.

Senator VOINOVICH. We are going to have people representing claimants in the next panel. I would like to hear what their reaction is.

Mr. DAUB. It's going to take some time to get the system going. We have been without all the judges that we needed to do some of the work for a long, long time. And then, as you know, the Congress just passed the drug bill which is also going to change the situation—about 50 to 70 judges are going to leave SSA and go over to HHS to handle Medicare appeals. That will make the SSA system short again a number of judges. Again it is a resource issue and funding issue.

Senator VOINOVICH. Seems to me that at this stage in the game, and I am going to have a hearing on April 8 next month on the new prescription drug program. I'm bringing HHS in to talk to about whether they have the capacity to implement the new Medicare modernization program and prescription drug program. I think it's important that we find out about this portion of it because one of the things we are trying to do is to make sure we have enough employees focusing on enforcement. As we are looking

through and comparing all the employees in Homeland Security we may find large discrepancy in salaries in relation to enforcement positions at other agencies. We have people outside of DHS in the other agencies and we don't want to see employees flowing from one agency to the other because they are going to get a big bump in their salary.

What you are saying to us today is you are concerned that some of your judges are going to be moved out of SSA over to Medicare to deal with their appeals process?

Mr. DAUB. That's a major situation. Somebody ought to relook at that whole big picture in terms of capacity.

Senator VOINOVICH. That gets back to you, Mr. Robertson. How do you feel? You looked at this thing. Where are they in terms of capacity to do this?

Mr. ROBERTSON. I know what I would like to say. Part of me would like to sit here and say we have a big resource concern. When we did our work on the DDS human capital side of things, many of the DDS directors we talked with noted that there are some resource constraints. The problem I would have with saying there's a resource problem, however, is that, in that same review, we found that the planning wasn't there. So, it's hard to say there's definitely a resource problem when we haven't seen the plan either at the DDS level or Social Security level. That's where we come out on that question.

Senator VOINOVICH. The point is, that the plan has not been finalized and it's difficult for you to determine if they have adequate staffing.

Mr. ROBERTSON. Yes.

Senator VOINOVICH. I'm interested in that and as chairman of the Advisory Board you ought to be also. I would like to know when you think that is going to come to be.

Mr. DAUB. Your mandate says the conversion has to be by October 2005. So it's between now and then that the details of the plan have to be finalized.

Senator VOINOVICH. In the meantime the Medicare thing is going in 2006.

Mr. DAUB. You are going to have a hearing on Part D. It's going to be interesting to see what you discover.

Senator VOINOVICH. We are having it because you are concerned.

Mr. DAUB. Congress has provided funding for SSA to hire the people needed to implement the new Part D. Once that system, Part D, is implemented, there's going to be a real pool of talent that was hired to accomplish that initial start up for Medicare eligible individuals. It would be a shame to have them hired only temporarily and then to leave the system again short. We need to look at this as a human resources potential.

Senator VOINOVICH. To see the opportunity that is there.

Mr. DAUB. It can be very helpful. Some of those folks may be available for State DDS work, too, which would be terrific.

Senator VOINOVICH. Probably what we ought to do is call a meeting with OPM and Clay Johnson and get some folks together and talk about that to see if there is some way to expedite it within the framework of the current law or whether we need some changes in the law to have it.

Mr. DAUB. Along with electronic folders and with better planning for resource allocation, we also need judges to be better trained and continuously trained on medical evidence because medicine changes. Getting all of this in the system would eliminate the need to hire more people over time. It would take a couple or 3 years to accomplish all of this.

Senator VOINOVICH. One thing I would like to mention to you, Mr. Williamson, is the issue of the quality of people that you have working. You have medical doctors on your staff. There has been some controversy about your head doctor because he lost his ability to treat patients. That's been pretty well vetted. But my concern, I don't know whether you recognize it or not, you are going to have less doctors because we are losing doctors right and left today giving up the practice of medicine because of malpractice lawsuits, premiums are going sky high. And, frankly, we are starting to see that in terms of medical school. It's having an impact on the number of people that want to go into medicine.

So if you look at agencies that need M.D.'s to review the disability cases, we may have a human capital crisis in that area.

Mr. WILLIAMSON. It's definitely a concern for us. We need to attract quality physicians and psychologists to do what is a very unprecedented growing rate of claims. So certainly that's a concern of ours and we may need to review what resources we may need.

Senator VOINOVICH. Are you seeing anything like that now in terms of your situation?

Mr. WILLIAMSON. We have been retaining fairly well. We have 92 doctors or M.D.'s and psychologists. And we, for the most part, have been retaining them without a lot of difficulty. But attracting new candidates has been an issue for us.

Mr. DAUB. Are they contracted mostly or employees?

Mr. WILLIAMSON. All consultants.

Mr. DAUB. Some States are mixed—employed and contracted.

Senator VOINOVICH. I read an article about it and about this particular individual, why don't you share that because there may be people in the news media that want to get your statement in regard to that.

Mr. WILLIAMSON. I would say first, Dr. Cantor does hold a medical license. He has more than 20 years experience with our organization. He's very knowledgeable of the SSA program and is well respected and he meets the position requirements set forth by SSA. So at this point we are very comfortable with him continuing in that position.

Senator VOINOVICH. The fact he lost his ability to treat patients because he was administering drugs to his family and friends doesn't give you any pause.

Mr. WILLIAMSON. He did lose his ability to prescribe medication, that is true. Although that does not interfere with his ability to do his duties with our organization.

Senator VOINOVICH. And you are sure that you monitored him so he's no longer——

Mr. WILLIAMSON. Yes, sir.

Senator VOINOVICH. You feel very confident of that?

Mr. WILLIAMSON. Yes, sir.

Senator VOINOVICH. From your perspective he's a competent individual doing the job he's doing but he's not able to practice medicine is not a concern to you, or see patients?

Mr. WILLIAMSON. I understand. Many of our physicians do not practice medicine. Many of them are retired or for one reason or another not practicing, including their medical insurance premiums.

Senator VOINOVICH. You may be getting more.

Mr. WILLIAMSON. We may have the opposite happen because of that, because they don't need that coverage with us. My answer would be I'm comfortable with him and we did monitor his work.

Mr. DAUB. There's another point you raised serving the rural populations of a State, and there the medical physician shortage that you are talking about is very serious. The Commissioner, in thinking through how to make good decisions at the in-take level is particularly interested in a regional kind of medical unit. It won't take away anybody's job currently working in the process, but to have regional specialists available to consult, particularly in a smaller community, can help expedite a person's application. GAO pointed this out in a number of studies, and it can be very important to a State like this for the determination folks to have the ability to pick up the phone or to video conference with physician subspecialists.

Senator VOINOVICH. There is lot of that going on today in terms of video conferencing and diagnosis in rural areas because of lack of physicians that are in those areas.

Mr. ROBERTSON. Those regional units will help with the consistency of the decisions, too.

Senator VOINOVICH. Has there been any study made as to why you have this large discrepancy in initial disability determinations. The range falls between 79 percent rejection and 35 percent? How do you reconcile that?

Mr. DAUB. It's very hard to explain. That's probably the most baffling part of the system. I think that it gets down to a training issue. In the system of administrative law judges there isn't any published precedent from one State to another as to how a particular diagnosis would be looked at on appeal. So from different parts of the country different judges and different doctors look at each human being differently as a separate unique case. I'm not sure we should get fully alarmed by the inconsistency but it's enough that I think part of the answer is in better training, and I said it a minute ago, more and regular medical training for ALJs.

Senator VOINOVICH. How about DDS?

Mr. DAUB. I think if the judges had the same training the DDS had, you would see a lot more uniformity.

Senator VOINOVICH. But the fact is the rejection rate on the State level is marked. Ohio has one the highest rejection rates, don't we?

Mr. WILLIAMSON. Yes, sir.

Senator VOINOVICH. Why are we rejecting more people than other States?

Mr. WILLIAMSON. Mr. Chairman, we looked at several facts of whether we can draw comparison with unemployment rates, demographics or downturns in the economy and we have not been able

to draw a direct nexus to those factors. We have to rely on quality statistics from Social Security Administration to make sure we are following rules and regulations and so far our quality has been very good.

I do think, as Mr. Daub said, the Commissioner's approach to centralized quality review would be a great benefit to all the States in terms of providing consistency.

Senator VOINOVICH. It's important somebody from Indiana and somebody from Ohio, Indiana says OK and Ohio rejected, why is one approved and why is one not approved, I think that in terms of fairness to individuals.

Mr. DAUB. One of the biggest difficulties is the review of mental illness disability. Physical disabilities, there's a lot more uniformity but it's less clear in the attempt to determine that someone is mentally unable to continue to perform the work they did do. And, of course, with medications today and other improvements there's so many more ways somebody can go back to work and be productive. But the definition of disability doesn't take that into account. And so everybody is working really hard to make sure you give the benefit of the doubt to that individual. I think that mental impairment in the most difficult one.

Senator VOINOVICH. What percentage of the cases are for mental impairment.

Mr. DAUB. It's over half, well over half of disability claims involve mental issues.

Senator VOINOVICH. I would like to see a breakdown of where the claims are coming from and I would like to have somebody dissect the thing a little bit and come back with some real thoughts. What are you doing with it, is anybody looking at this and if people who claim to have mental impairments—how are those being decided. The issue becomes quality of the individual that is reviewing their case and if one is reviewed and the situation can be remedied with the use of medication, you are saying that that doesn't count in terms of whether somebody should be disabled or not.

Mr. DAUB. It is a very difficult thing to look at aggressively with a degenerative circumstance in an individual and to know whether at some point that person will be able to work or not. There are so many people making judgments. To move that case along through the system you don't get time to check to see, if we prescribe medication, will that person be able in 6 months to go back to their job which they lost in the meantime. It's a difficult process.

Senator VOINOVICH. It's one that would be worthwhile if you are talking about half the cases we are seeing such a dramatic change today in terms of mental illness. That is one I think we should really look after.

Mr. DAUB. Looking at other countries, Scandinavian countries, Netherlands, you are seeing, I want to put this in a tactful way as I can, the process of disability is becoming so easy, with all due respect, that it's become a much better way to take early retirement until you are 62 or 65. In our system it's not to say we have malingerers or people are cheating. I don't know that at all.

The process makes so many judgments along the way that in the process of appealing, if you appeal long enough, you are going to win. And some of it is due to degeneration in the claimant's condi-

tion over the 2 or 3 years that the case stays in the system. Rather than pointing to any fault I think it's time in our modern society to take a look at how we define disability.

Senator VOINOVICH. I want to thank you very much for coming today. It's been very instructive today. I appreciate you getting back to me.

I'm going to recess the hearing for 5 minutes.

[Recess.]

Senator VOINOVICH. The hearing will come to order. We have our next panel and we are fortunate to have the Hon. Kevin Dugan, administrative law judge in Charlotte, North Carolina, collective vice president of the Association of Administrative Law Judges. I take it that all your judges belong to this, is that right?

And James Hill, Attorney Advisor in the Cleveland office of hearing and appeals. He's also President of Chapter 224 of the National Treasury Employees Union 224 and we are here to hear from you. I'm interested in hearing professionals and members of unions, and Colleen Kelly is a great friend of mine and has been very helpful to us in all of the work that we have done in human capital, not necessarily agreeing with all of it but she's been very constructive. I want you to know as a member of her union she's an outstanding individual trying to find a way to make things work.

Marcia Margolius who is an attorney with Brown & Margolius in Cleveland and I saw a couple people shaking their heads during some of the testimony and hopefully she will give us a perspective of the individual that represents the clients who go through this whole system.

We'll begin the testimony with you, Mr. Dugan.

## TESTIMONY OF HON. D. KEVIN DUGAN,[1] VICE PRESIDENT, ASSOCIATION OF ADMINISTRATIVE LAW JUDGES

Mr. DUGAN. Thank you, Senator. Thank you for the opportunity to testify today. This statement is presented in my capacity as Vice President of the Association of Administrative Law Judges (AALJ). It represents the professional interest of 900 administrative law judges in the Department of Health and Human Services where the new Medicare is going, by the way.

One of the stated purposes of the AALJ is to promote and preserve the claimants right to full due process hearings. As such our association has spent a substantial amount of time and resources to create a system that will deliver fair and expeditious adjudications for the American public.

The SSA administrative hearing system began in 1940 with 12 referees and it has grown to the largest adjudicative system in America. Along with the growth in size, there has been a growth in complexity. Unfortunately SSA has been unable to adequately address the difficulties that are inherent in the high volume but complex area of law. We are of the strong opinion that changes must be made if we want an efficient and fair adjudicative system.

The Association of Administrative Law Judges believes the plan put forth by Commissioner Barnhart promises lasting and mean-

[1] The prepared statement of Mr. Dugan with an attachment appears in the Appendix on page 126.

ingful changes that will produce high quality decisions in an expeditious manner. We applaud her for her bold and courageous leadership.

The plan makes many changes to the current system but promise to preserve the right of the claimant to a due process hearing. The changes that are proposed are predicated on the premise that the way to increase speed of adjudication is to first improve the quality. This is a stark contrast to many past initiatives.

We agree that improving quality at the beginning of the adjudicative system confers benefits throughout the system as the cases move forward. If cases are fully developed and fairly evaluated from the beginning some cases will be paid more quickly and the more difficult cases will be properly prepared and presented for hearing, this will lead to more consistency at all levels of adjudication.

As Commissioner Barnhart noted, however, the changes, technological changes she needs to do this will not be completed before October 2005. Meanwhile we must acknowledge that the pending backlog demands our best efforts with the tools we have now.

The consensus is that the past initiative HPI failed to such a degree it caused an immediate decrease in cases decided in OHA offices here and nationwide. Fortunately, the best managers in local and regional offices were able to adapt and, to some degree, lessen the negative impact of HPI. Those offices are often characterized by a cooperative atmosphere which utilizes the skills and resources of the judges and staff. Other offices, however, were not able to soften that negative impact and they failed to a greater degree. We believe such offices should look to the practices used by the more successful managers.

The AALJ has long been concerned about the growing backlog in Cleveland, as well as throughout the region. We have made informal suggestions and more recently put together a more comprehensive plan for the consideration of SSA managers. A copy of that letter is attached to my testimony.[1] Our suggestions include reorganizing staff to providing additional management training and increasing resources. Until OHA returns to a modified unit staffing system, however, we will not be able to fully and effectively utilize your current resources.

We have also suggested changes in case practices that could quickly increase case dispositions without additional resources. Some of the suggestions include using prehearing orders that fully involve the claimant bar in the process. This would shift some of the case preparation from the overworked staff. On a national level we have urged the adoption of rules of practice and procedure and the ABA Ethical Code of Conduct for administrative law judges.

The plan presented by Commissioner Barnhart promises to transform the disability system into an efficient and fair system and we ask that you and the rest of your Subcommittee to fully support her efforts, her budgets requirements. The association will continue to work on improving the hearing process for the benefit of the American people.

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[1] The letter referred to appears in the Appendix on page 149.

Thank you again, Senator, and I am happy to answer any questions.

Senator VOINOVICH. Thank you very much. I appreciate you coming here today. Mr. Hill.

**TESTIMONY OF JAMES A. HILL,[1] PRESIDENT, CHAPTER 224, NATIONAL TREASURY EMPLOYEES UNION, OFFICE OF HEARINGS AND APPEALS, SOCIAL SECURITY ADMINISTRATION**

Mr. HILL. Good morning. My name is James Hill. I'm the Attorney Advisor at the Cleveland hearing office for over 21 years. I'm also the President of Chapter 224 of the National Treasury Employees Union (NTEU) that represents attorney advisors and other staff members in the approximately 110 OHA hearing and regional offices across the United States. I thank you for inviting me to testify at this hearing.

The disability backlog problem at OHA is neither recent nor unique to the Cleveland Hearing Office. From the mid-1990s the backlog grew to approximately 550,000 cases nationally and WITH over 9,000 cases in Cleveland. Several highly focused initiatives, most notably the senior attorney program, produced over 220,000 fully favorable on the record decisions with an average processing time of just over 100 days. By October 1999 it reduced the number of cases pending to 311,000 nationally and slightly over 4,000 cases in Cleveland. I point out currently there are 625,000 cases pending nationally and over 8,500 in Cleveland.

Since that time a number of factors including the termination of the senior attorney program, increased receipts, inadequate staffing and implementation of the disastrous Hearing Process Improvement plan have resulted in the record number of cases currently pending. The sheer mass of cases pending has raised the processing time to nearly 400 days nationally and over 550 days in Cleveland. This is simply unacceptable.

There is no question that the current disability system is fundamentally flawed and wide ranging systemic changes are necessary.

Commissioner Barnhart and Deputy Commissioner Martin Gerry conducted a truly objective review of the entire disability system accurately identifying its strengths and weaknesses. I believe that for the first time a senior SSA official truly understands the strengths and efficiencies of the current system. This insight combined with the Commissioner's commitment to create a process that serves the needs of the public rather than the dictates of the bureaucracy has lead her to propose a plan for implementing fundamental process changes that will provide a level of service of which we can all be proud.

The plan is comprehensive and involves extensive changes such as replacement of paper folders with electronic folders, elimination of the reconsideration determination, elimination of the appeals counsel, a completely revamped quality assurance system and creation of a reviewing official process to provide an intermediary between the State agency and administrative law judges.

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[1] The prepared statement of Mr. Hill appears in the Appendix on page 133.

I am convinced this plan, if implemented, will result in efficient, effective and most importantly a fair adjudicatory reprocess.

As good as this plan is, it does not provide immediate reprieve for the Cleveland office. SSA has implemented some temporary measures that are limited in scope and have little effect nationally or in the Cleveland office.

The Cleveland office faces an emergency and fortunately actions have been taken to significantly improve the level of public service. Three additional ALJs will shortly be assigned to the Cleveland hearing office. Additionally during the past several months over 4,000 Cleveland cases have been transferred to ALJs at other hearing offices for hearings held in Cleveland in person or via video teleconferencing. More could be done. But it is essential that SSA be provided with the funding necessary to promote current and long-term initiatives to improve the level of service.

However, not every improvement is extensive. Revising the senior attorney program would during the next year result in over 60,000 fully favorable on the record decisions without a significant drain on SSA resources. The Social Security Administration and its employees recognize that significant improvement in the disability must be made if the public is to receive the level of service it has every right to expect.

I know you, Mr. Chairman and Commissioner Barnhart are committed to the SSA disability system on a short-term and long-term basis, as well as providing resources necessary to the Cleveland hearing office to provide the wealth of services that the people of this community expect. Thank you.

Senator VOINOVICH. Ms. Margolius.

**TESTIMONY OF MARCIA MARGOLIUS, ESQ.,[1] BROWN AND MARGOLIUS, L.P.A.**

Ms. MARGOLIUS. First, I would like to thank you, Senator Voinovich, for initiating this field hearing to address delays in the Social Security claims.

Under the current system people with severe disabilities are forced to wait years for an ALJ decision. These delays are harmful to the individual, undermine public confidence in the program and damage the integrity of the whole system. As a disability advocate I support any efforts and initiatives to make the process more efficient. However, any changes must ensure fairness and protect the rights of people with disabilities.

The Commissioner's plan includes several changes at the front end of the program that can have an immediate impact on new applicants and improve backlogs and delays later. Hopefully this will move forward at all possible speed and I hope it is up and operational by June 2005. However, like our Federal court system there needs to be a read-only online access to the program for the attorneys so that all parties involved can have the information and be involved in the processing of the claims. The current proposal does not allow such read-only online access that has been provided, for example, in the Federal courts.

[1] The prepared statement of Mr. Margolius appears in the Appendix on page 144.

The position of the reviewing officer is very promising as it provides that necessary point person to help expedite critical cases. However, an appeal from the reviewing official to the ALJ which is currently proposed is a duplication in the reconsideration level. Beyond duplicating a step, the way the Commissioner has proposed to rid the system of it will be confusing to the public. The way the program is proposed currently there will be an appeal from the initial level to the reviewing official and then again to the administrative law judge. However there should be one appeal from the initial level to both the reviewing official and ALJ together.

As currently proposed the reviewing official and administrative law judge will be in the same office of hearings and appeals. This is going to be very misleading to the public and people will mistakenly give up appeal rights.

Senator VOINOVICH. Will you repeat that? I'm not sure I understand.

Ms. MARGOLIUS. The way the program is now, the reviewing official and administrative law judges will be housed in the same office of hearings and appeals. The Commissioner is proposing if a claimant is denied initially, they will be appealed to a reviewing official and if a favorable decision isn't issued you appeal from the reviewing official to the——

Senator VOINOVICH. Eliminate the reconsideration at the local and go right to a reviewing official. Would that reviewing official be working in the State operation or for the Social Security Administration?

Ms. MARGOLIUS. For the Social Security Administration.

Senator VOINOVICH. That should help to alleviate some of the burden on the State offices in terms of the reconsideration.

Ms. MARGOLIUS. At the State office. But to be true to the position of reviewing official one appeal from the initial level should get the individual to the SSA level rather than making them go through two appeals. It's duplicating.

Senator VOINOVICH. The State does it, State denies, goes to the reviewing official and from reviewing goes to a judge.

Ms. MARGOLIUS. But you have to appeal from the reviewing official to the judge. You are shifting focus from the State to Federal but still making the claimant undergo as many hurdles.

Senator VOINOVICH. What would you do, eliminate the reviewing official?

Ms. MARGOLIUS. Appeal of the initial decision goes to the Federal branch of the Social Security Administration, let the reviewing official approve it or make a recommendation to the judge and then have it go right to the judge without an additional appellate procedure.

Senator VOINOVICH. I see. In order so that you don't have the paperwork that is involved, the reviewing official gets the file, looks it over, they approve it and it's done.

Ms. MARGOLIUS. Correct.

Senator VOINOVICH. You don't think it should be I will take the file and move it, any appeal is to the judge.

Ms. MARGOLIUS. Correct. Continuation of the appeal also protects the claimants. The current review process satisfies the claimants' need to have oversight of the administrative law judges decision.

A major basis for remand by the appeal counsel is not submission of new evidence but legal error committed by the ALJ. The Commissioner should maintain this process for rectifying errors administratively rather than forcing a court review.

To date, though, Senator, the fundamental problem has been staffing at the Office of Hearing and Appeals. However, judges are only part of the solution. Support staff is based on the number of judges not the number of cases. So as long as we have the current backlog that exists at the Office of Hearing and Appeals, the delays are endemic and will continue without that much needed support staff.

Senator VOINOVICH. What you are saying is even though you think we are going to bring two or three——

Ms. MARGOLIUS. Three more judges by June.

Senator VOINOVICH. And of course they are farming out a lot of these cases to other offices, I would be interested to hear from you how you feel about that, maybe not in your testimony but as a question, but it's the old staff thing.

Ms. MARGOLIUS. Correct.

Senator VOINOVICH. The thing that would be interesting to know why it is that Ohio has all these backlogs versus other offices, why is it we are farming cases out to someplace else and is it reflective. I thought this over, not in this area but even with immigration, same problem, it seems like we get shortchanged. So it would be interesting based on case load to see how the staffing levels fit with the judges. And, Mr. Hill, you might comment on that. Put that one down as a question.

Ms. MARGOLIUS. Finally, to respond to Mr. Daub's comment, I believe, forum shopping is not part of the system. If a case must be delayed, the claimant is unhappy. The case gets rescheduled with the same judge who also is not happy with any of the delays. So delays are avoided at all costs. You cannot postpone a case and have it reassigned to another judge. It goes back to the same judge.

That's the same procedure with appeal counsel remands also. If you do appeal, you get a remand, it's returned to the same administrative law judge to deal with the issues that were raised on remand. That's the end of my comments.

Senator VOINOVICH. Thank you very much. That's a good suggestion. Mr. Hill, what is your comment in terms of the staffing level here?

Mr. HILL. Staffing, there are two distinct problems. You don't have the funding for enough staffing. And I think the second is——

Senator VOINOVICH. Have you looked at your staff here versus other parts of the country to ascertain whether or not you are being shortchanged.

Mr. HILL. We are being shortchanged I suppose if you look at it that way in terms of we have fewer judges than we need. And it has been pointed out staffing is based on the number of judges. So if you are short of judges, you are going be short of staff. If you don't have enough staff, you are not going to get more judges.

Senator VOINOVICH. I think to start off with you need judges. But the question I have is for the judges that you have in terms of staffing compared to other places, are the staffing levels to support the judges same as in other jurisdictions.

Mr. HILL. It's slightly higher. When we get the three new judges it will be about the national average.

Senator VOINOVICH. You have more staff then you need right now.

Mr. HILL. Temporarily, only temporarily because we have lost three judges in the last year and we are acquiring three judges.

Senator VOINOVICH. You lost three, you got the staff that supported those judges, now you are going to get the three judges.

Mr. HILL. I don't believe we have had any hiring in quite some time as far as staff.

I think the second problem we need to look at with staff is one of the problems HPI introduced is the group system where you group employees with a group administrative law judges. In my opinion that has been a disaster. I do support Judge Dugan when he says we need to go back to a modified unit system where we have specific people working toward specific judges rather than a generalized system.

Senator VOINOVICH. Like a pool.

Mr. HILL. It's hasn't worked as well as some of the people in Baltimore thought it would. It's not very efficient.

Senator VOINOVICH. Commission Barnhart is going to change that, right?

Mr. HILL. I hope so. We haven't changed it as of yet.

Senator VOINOVICH. That's an aftermath of the——

Mr. HILL. HPI.

Senator VOINOVICH [continuing]. HPI and it hasn't been changed and you are hopeful for it to be changed. The question to the Commissioner is it one of the things she's going to change. Mr. Dugan.

Mr. DUGAN. On that issue it's kind of funny, it has been changed in some offices to some degree. It has been finessed a little better in others but in Cleveland it hasn't for some reason. They brought more accountability in other offices where you can match people up so people know what cases belong to who and who you go to but when you have this group thing you have a whole bunch of people responsible for a whole bunch of stuff. No one is responsible for anything and it makes it—that's why when an attorney sends in evidence, it doesn't get into files, that's why sometimes these hearings get delayed. By the date of the hearing the judge gets a stack like that. It's not the attorney's fault. The attorney is probably sending it a month ago or 6 months ago.

Senator VOINOVICH. The question is you are saying where they have changed it——

Mr. DUGAN. I can get you some offices where it's been changed for the better.

Senator VOINOVICH. It seems to me that your organization should be looking at best practices and try to share that information with your colleages. Who is the boss in Cleveland in terms of the office procedures, are you, Mr. Hill?

Mr. DUGAN. The chief judge is Alan Ramsay.

Senator VOINOVICH. So your organization could compile best practices and send it to Chief Judge Alan Ramsay. If some offices have changed the process from HPI, why don't the rest of the offices?

Mr. DUGAN. We have sent suggestions, I said in my testimony, sent them up to the associate commissioner. I'm not in a position to suggest to Judge Ramsay how he is going to run his office. We sent them to the head of the organization. It's up to them to decide. That would be outside of my realm.

Senator VOINOVICH. I would think that Ms. Barnhart would be interested if this is working some places. We ought to see if we can't get it done. So you could do that in Cleveland, right?

Mr. HILL. Yes, I suppose. Again, it's bureaucracy whatever the instructions are above you. Currently it's a group system. Because all of the offices are located all over the country there are probably more variances than a lot of organizations but technically speaking according to the rules, the group system is still in place.

Senator VOINOVICH. Why don't you let me know when you are going to get it changed. I want you to personally look into this, Mr. Hill, and get a letter to Mr. Ramsay. I want to get a letter to Mr. Ramsay, I want to know what other places are doing and get that to Ms. Barnhart so she can give her blessing that he get going on this thing. Ms. Margolius, do you think that would help a lot?

Ms. MARGOLIUS. It would help because it would allow assignment to individual judges quicker.

Senator VOINOVICH. How long have you practiced?

Ms. MARGOLIUS. Twenty years.

Senator VOINOVICH. So you've had a chance to compare the old system versus the new system?

Ms. MARGOLIUS. Yes.

Senator VOINOVICH. What is your comment about the new system?

Ms. MARGOLIUS. Cleveland hasn't seen the new system yet.

Senator VOINOVICH. Before they came up with HPI, they had staff that would be working directly with a judge, working the cases up, they would be responsible for it and then apparently they changed the process with HPI. Did you see it at that stage?

Ms. MARGOLIUS. I did. And it was much better before.

It gets to the issue of accountability, a judge could be accountable for cases earlier on, his staff was accountable, it gave you individuals to talk to. If you have a case that is sitting in the Office of Hearings and Appeals for years not assigned to a judge, it's sort of hit or miss if you can find someone for a dire need case, critical case to pick up that file and deal with it. It's an issue of accountability.

Senator VOINOVICH. You have heard testimony of Ms. Barnhart and others about the fact that they are farming these cases out to other places. Have you had any experiences with cases in that new system?

Ms. MARGOLIUS. Yes, both farmed out and with video conferencing. It's a short-term help, I mean, again, like looking at the crisis that we are trying to deal with.

Senator VOINOVICH. Is it working?

Ms. MARGOLIUS. It is working.

Senator VOINOVICH. And your clients don't feel like they are getting shortchanged because of it?

Ms. MARGOLIUS. No, sir, not at all.

Senator VOINOVICH. The idea would be getting more judges here, replace the three that you didn't have. Are you sure if you are replacing three you didn't have, seems to me you need more than three. You have this backlog building up. How many judges do you need?

Mr. HILL. I think Cleveland probably needs about 14 judges to be fully staffed.

Senator VOINOVICH. How many do we have?

Mr. HILL. We have eight right now.

Senator VOINOVICH. We go from 8 to 11 and you think we need an additional three judges?

Mr. HILL. Yes.

Senator VOINOVICH. We should ask about these 50 coming in. I will send a letter to the Commissioner on this. The 50 new individuals coming on, maybe you can respond to this, are just to replace those who have retired?

Mr. DUGAN. Yes. Commissioner Barnhart testified in September that she was short 200 judges nationwide. So this 50 is kind of you lose about 50 a year so it really just keeps us treading water as far as that is a concerned.

And connected to that is the Medicare that is coming on line. And they are going to probably take 70 immediately but eventually going to need close to 200 judges themselves.

Senator VOINOVICH. And they are going to go over and do what again?

Mr. DUGAN. Medicare Part B and hearing all the appeals from denials or overpayments under the Medicare system. And they are going to go into HHS, Congress is moving HHS.

Senator VOINOVICH. You are saying these are appeals with the current Medicare system?

Mr. DUGAN. Yes.

Senator VOINOVICH. This has nothing to do with the new system?

Mr. DUGAN. With the current system. All the Medicare cases, SSA is currently handling. They handle a contract with CMS. That is now moving on October 2005 into HHS and all those judges will have to move plus they are going to pick up some more because of the new system.

The point I am trying to make is that over the next 4 years it looks like the Federal Government is going to be hiring close to 400 to 500 administrative law judges. The problem is that Office of Personnel Management which has been responsible for that has abolished its office of administrative law judges and it is not focused like it used to be on the administrative law judge system. And that is a problem.

Senator VOINOVICH. Where has that gone?

Mr. DUGAN. They farmed it out as we can tell to different functions within the agency.

Senator VOINOVICH. Who did they farm it out to.

Mr. DUGAN. In their own system. It was in one office and farmed out the function to a different division within OPM. There is no one person in charge of the overall function.

Senator VOINOVICH. When did that happen?

Mr. DUGAN. That abolishment was probably in the last 2 to 3 years. Meanwhile we had that stay as well and they were not cre-

ating, part of the *Azdell* case that was whether they were going to create a new system and OPM never moved forward with that. Now that the stay is lifted, we have the old register and from what I was told recently, OPM is going to close that register and create a whole new one with their new system but they haven't started that yet. That could be awhile down the road. It takes a year to get another register.

Senator VOINOVICH. Could you put that down in a letter to me and I will send it over to Kay Coles James and get a reaction from her, she is the head of OPM.

Mr. DUGAN. I would be glad to.

Senator VOINOVICH. You see how many you need, and it's also phasing in people over a period of time. Somebody has to look at what kind of capacity you are going to need to meet some of these responsibilities that are coming up.

Ms Margolius, do you have some other comments you would like to make? You had a chance to sit in and listen to the other witnesses and I think you may have some colleagues attending the hearing that also represent clients. Could you comment about some of the things that you heard and what do you think of them?

Ms. MARGOLIUS. Yes, sir. First the greatest concern which I touched on very briefly was the issue of forum shopping. And I just want to make it clear that is not a practice. Certainly anyone representing disabled people wouldn't take such a step that would harm them and it would be an action very much frowned upon by judges we appear in front of repeatedly. It's just not an issue.

Second, on the issue of closing the record, the hearing record is closed after the judge's decision. There are good cause standards to get new evidence in at later appeals but this has been dealt with by the Sixth Circuit Court of Appeals which covers new material evidence and good cause standards. I don't think closing the record after the judge's hearing is really an important issue either since this is closely monitored and taken care of.

Concerning Commissioner Barnhart, I think the bar associations are very impressed with her and with her initiatives and what she wants to do. Again, I see most of her initiatives at this point being at the front end and that's not dealing with the crisis that your constituents and our clients are dealing with now and that the actions being taken as far as video teleconferences and farming out the cases to other regions and more judges hopefully will deal with the backlogs and what we see as a greater crisis currently.

Senator VOINOVICH. You were saying something about the read only files for attorneys. Tell me about that.

Ms. MARGOLIUS. Yes. With the AeDib program what they are proposing that the electronic folder is going to be available only to Social Security personnel. When we get up to a level where we will be appearing in front of a judge, they'll burn a disk for us so we can see the records. I see that as a great problem. For one thing, no judge wants me to turn in duplicate evidence but if I can't see the electronic file I'm going to be submitting evidence sort of in the dark. I don't know what they have, I am duplicating information, even though I'm submitting the most pertinent information.

The Federal courts have a read-only file, everything is electronically filed with the Federal court. We can get in and read the deci-

sions and court order. If this can be done with the court system, it seems like Social Security could duplicate that system, where we can go on line, read the records, read what is transpiring in the case but not have any right to alter any of the documents at all.

Senator VOINOVICH. So the point is that the electronic file would be worked up on the State level with all the information. If we eliminate the reconsideration in going to a hearing officer then that information the hearing officer puts in would be in the record and you would be able to access it.

Judge Dugan, can you tell us what do you think about the suggestion she's making?

Mr. DUGAN. I'm really not up to date on what she's saying. But it's clear the representative has to have access to what it is. How they are going get it, I suspect they'll work it out. We would support them having access one way or the other.

Some kind of read only file it's a little more complicated because there's a security problem when we are accessing these medical problems and getting into the database. I think that's what they are struggling on how to solve security problems and what the system needs and they are well aware of that need but I think they haven't solved it yet.

Senator VOINOVICH. Ms. Margolius, why don't you get me a letter on that. I will send it over to the Commissioner and ask her to respond to me where they are with that and if it's allowed in the Federal courts why can't we be doing it with your files if you think that would help expedite things.

What some of the difference you are asking for, I suspect a lot of the case material in Federal cases is similar to the information contained in disability files. I don't know why it could be a problem.

Mr. HILL. Probably one of the underlying problems is privacy. The medical records associated obviously with Social Security are numerous. What needs to be worked out is a secure way to transmit that information to only the people who are entitled to it. District court information is public information. I can go on and look at any case. I think we are really trying to shy away from that kind of situation. It's a technical matter IT people are going to have to work out. There is no question the representatives and claimants themselves have a need and right to see the material that Social Security Administration has, no question. I think it's a technical matter to get it straightened out. A little push would help.

Senator VOINOVICH. I would like your consensus, particularly Mr. Dugan and Mr. Hill, about this marked difference between the rejection of cases around the country as little as 35 percent, as high as almost 70 percent. Shouldn't we try to get more uniformity? We talked about having the State DDS employees better trained. You think that having a common school that they go to, is that it, and Ms. Barnhart talked about this forum, is there a uniform forum you use, Mr. Williamson, on the State level, is your forum taking information exactly the same as other States?

Mr. WILLIAMSON. Yes.

Senator VOINOVICH. So it's uniform. That seems to be something that really needs to be looked at.

Mr. DUGAN. I agree. But before I get into that, I have to say that I am familiar with DDS throughout the Nation. And these people are very knowledgeable, hard working people. They are under a crush. There's a bias at the DDS level to deny a claim. If you pay a claim, you have to work a little harder to pay it and that——

Senator VOINOVICH. You what?

Mr. DUGAN. You have to justify it a little more. Just like OHA level, if you are going to deny, you justify more than if you pay a claim. It builds in a bias at different levels. Why is there an inconsistency? It's very difficult to answer. But I think what the Commissioner is doing with that reviewing official is going to be a key to getting that consistency that we want nationwide because that reviewing official is going to be able to send cases back, as I understand it, with instructions so that you'll get some feedback. Currently there is no feedback in the system.

Senator VOINOVICH. So if she gets her way and you have the reviewing officer that would be kind of the quality control person that would look at the case and maybe send it back to the agency and say I have observed certain cases coming here by certain people that appear not to have enough information or there seems to be some lack of effort there to do the job, is that what you are saying?

Mr. DUGAN. I think it would be along that way. She calls it inline quality control.

Senator VOINOVICH. Your DDS people in Ohio, do they go to the same training nationally?

Mr. WILLIAMSON. We have our own training department.

Senator VOINOVICH. In terms of the consistency of the training in various places, it may vary substantially.

Mr. WILLIAMSON. Ours is based on SSA rules and regulations but we do.

Senator VOINOVICH. That's another area somebody ought to look at with the training. Do you have continuous upgrading of training, your judges do. Don't you have training programs for judges?

Mr. DUGAN. When I came to SSA I was shocked by the lack of training that they provided. The training provided to judges primarily is provided by the judges. We pay our own way. Only recently with the prodding of Congress did we get time off and get some small stipend but not a per diem or anything like that. It's put on by our association.

Commissioner Barnhart and Martin Gerry have worked hard to try to upgrade that but we don't get the type of training at the level we should.

Senator VOINOVICH. So that's another issue, training. That doesn't surprise me. When I came in I was trying to bring quality management to the Federal Government and I realized they had a human capital crisis. I sent out letters to 12 agencies and asked how much money they spend on training and 11 came back and said they didn't know. One letter came back and said they did know but wouldn't tell me. It's a major problem I think right across the board even with, I'm sure, these people that work these cases up that they need better training.

Are you able to attract the right people in these cases, Mr. Hill? Do you have any problems hiring people? Is the salary level adequate?

Mr. HILL. OHA level it's adequate. I don't think there's a significant problem. I think there might be a problem retaining people. Again, a lot of that is—a lot of things are involved when you have a national program. There are cultural differences and regional differences. I think you tend to find OHA employees in the Rust Belt stay a lot longer than they do in California where we have a steady turnover of attorneys. It's very unusual in the Rust Belt. A lot has to do with the economic well-being of the area.

I think to some extent regional differences show their faces in a number of areas, not the least of which may be even payment rate.

Senator VOINOVICH. In what way?

Mr. HILL. Pay rate of DDS. I don't have the statistics. I'm not management.

Senator VOINOVICH. Who determines the wage level of DDS people?

Mr. HILL. States.

Senator VOINOVICH. You could have marked differences between the pay somebody is getting in Mississippi versus Ohio or Indiana and so on?

Mr. HILL. Yes, sir.

Senator VOINOVICH. I would like to get that, too. Find out what the pay level of these people are across the country and get an idea what it is.

Mr. DUGAN. May I respond? First of all, we want to thank you for introducing our pay bill in the Senate. Part of the problem with regard to pay is that in 1990 the entry level for administrative law judges was about 15 step 6 or so. Because of a pay cap that has dropped to a level of 14 step 7. So someone like Ms. Margolius if they were to take a job as an administrative law judge not only would she have to probably take a pay cut, she would be closing down her practice and so are we getting the best people on that list is the problem. So that pay bill is important to us and we have been working on trying to put together some kind of pension so it recognizes people coming in from private industry for a shorter period of time for a career that we have put forward with your staff.

Senator VOINOVICH. One of the things we did in this legislation is it's simple but gets to the issue of whether someone is going to be willing to come to the Federal Government. But if you come in to work for the Federal Government the first year you get 2 weeks of vacation and 3 years you get 3 weeks and then at 15 years of service you get 4 weeks. So we changed that. We provided this flexibility for Sean O'Keefe, at NASA. It's a simple thing, but it's a big deal to someone out there working. Perhaps it will help recruit successful business professionals to Federal service. By the way you are here 15 years, you are going to get time off, I'm not sure how much time you get off anyhow in private practice. I didn't get that much. But those are some of the practical things that we are dealing with but I really would, Mr. Hill, get your point of view or from the judge that runs the Cleveland office.

Mr. HILL. Judge Ramsay.

Senator VOINOVICH. I would be interested to see just how our staffing levels compare with other places. That just seems like we are shortchanged. What we should be striving for is getting the three judges, replace those we have and try to get three more. Do you think that would help a lot?

Ms. MARGOLIUS. Greatly, Senator. But one point on the staffing levels, though, that the staff is tied to the number of judges but if you have judges already over worked if you are going to have too many cases for any one judge you really need to base the staff on the number of cases rather than the number of judges.

Senator VOINOVICH. The thing to look at—are these places being allocated because right now they are going to be sitting in Washington or Baltimore looking at the deal? Where are we going to put these judges and we should be putting in a real effort to say, look, we need these judges and part of the problem that we have is we just haven't had them.

Ms. MARGOLIUS. When I started 20 years ago, Cleveland had the highest number of judges they ever had. They were up to 18. And Mr. Hill says that he thinks they need 14 to work efficiently but we had 18 with fewer cases and the waiting period was minimal at that point in time.

Senator VOINOVICH. Mr. Dugan, do you have any kind of standard that you use? I'm getting into the nitty-gritty here but that kind of stuff really makes a difference in terms of case loads of various judges and in terms of productivity or anything like that if you got X number of cases that's a pretty good year or pretty good docket and when you get to this point maybe it's a little bit more than it ought to be in standards.

Mr. DUGAN. If you are looking for something like that, look at preHPI because HPI skewed everything. You can see judges doing somewhere between 25 or 50 cases.

Senator VOINOVICH. How many?

Mr. DUGAN. Twenty-five to 50 if they have the staff. If they have the staff that's the key. If the staff was assigned to them and can get the cases worked up. What happened after HPI was a terrible thing. There were judges sitting nationwide in their offices waiting for cases to come to hearing but they were not being prepared. I could ask for 45 cases to be scheduled, that's 45 hearings, they say we can only give you 20. And as that was happening, that happened for a couple years, and the backlog just continued.

If I may, that letter you wrote, someone wrote me a letter once, and this was before HPI, I paid this claim after a hearing and paid it pretty quickly, a week or two. It wasn't a hard case. And about 3 weeks after that I got a letter from his wife, she told me he had died. And she said, you don't know how important it was to him that he was validated before he died.

If that same thing were to happen today, that poor man would be dead before he would even get to the hearing much less before I could get a decision out. That's how bad it is. That's how angry we got about what was happening in the system.

Senator VOINOVICH. And you think that the Commissioner really has listened and has a good idea what to do now? The issue is, is she going to have the resources to get the job done.

Mr. DUGAN. I absolutely do. I have never met anyone in government who is so knowledgeable and open and ready to make the changes that need to be made. This is a big plan she's got. It takes a lot of courage to do it. She has a good guy, Martin Gerry, working with her. A hundred percent, the right person. Now she just needs the tools.

Mr. HILL. I concur with that 100 percent.

Senator VOINOVICH. That's good news. What we want to do is to take care of Cleveland and get those cases down and get this office geared up to what it ought to be and deal with the national problems to get moving. Any other comments anybody would like to make?

I thank you for coming here. This has been a really great hearing. I'm so glad you came and we decided to do this. Hearing is adjourned.

[Whereupon, the Subcommittee was adjourned.]

# APPENDIX

*For Release on Delivery*

**Social Security Disability Issues**

**SENATE GOVERNMENT AFFAIRS SUBCOMMITTEE ON
OVERSIGHT OF GOVERNMENT MANAGEMENT,
THE FEDERAL WORKFORCE,
AND THE DISTRICT OF COLUMBIA**

**March 29, 2004**

**STATEMENT BY**

**Jo Anne B. Barnhart**

**COMMISSIONER
SOCIAL SECURITY ADMINISTRATION**

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to come to Cleveland this morning to describe my approach for improving the process for determining the eligibility of people who apply for Social Security (SSDI) and Supplemental Security Income (SSI) disability benefits, as well as some initiatives we have undertaken to improve service provided by the local Cleveland Office of Hearings and Appeals.

As a member of the Social Security Advisory Board, before becoming Commissioner in November 2001, I was well aware that the administration of our disability programs represented one of the biggest challenges facing SSA. These essential and complex programs are critically important in the lives of almost 13 million Americans. Claimants and their families expect and deserve fair, accurate, consistent, and timely decisions.

Service Delivery Assessment

Early in my tenure I began a comprehensive Service Delivery Assessment to thoroughly examine all of SSA's workloads. We began that assessment with the disability claims process and mapped out each step from the initial claim through a final administrative appeal. Our analysis of the process showed that the length of time required to move through the entire appeals process was 1153 days -- 525 days due to backlogged cases and 628 days to move through the process.

Based on that analysis, I developed a Service Delivery Plan which now forms the basis of our annual budget submission. This year, the President's budget includes $8.878 billion for the Limitation on Administrative Expenses (LAE), a 6.8 percent increase over our FY 2004 appropriation. Given the very tight fiscal environment for FY 2005, we believe this increase in funding reflects the President's confidence in the Agency, its management, and the results we produce for the American people.

Short-term Strategies

While eliminating disability backlogs, such as we find in Cleveland, is essential to improving processing times, we recognized that improving workload management and the process itself were also required to achieve our goal of providing timely and accurate service. To tackle the management and process issues, we developed both a short-term and long-term strategy.

The short-term strategy is focused on identifying areas where immediate action was possible, while the long-term strategy would focus on improving the overall disability determination process. Over the past two years, we have implemented a number of short-term initiatives. These include:

- The participation of Administrative Law Judges (ALJs) in early screening for on-the-record decisions;
- developing a short form for fully favorable decisions;
- creating a law clerk (attorney intern) position;
- deploying speech recognition technology to hearing offices;
- ending the practice of rotating hearing office technicians among different positions;
- using scanning technology to track and retrieve folders;
- eliminating the tape transcription backlog, and
- eliminating delays in presenting cases to the U.S. District Courts.

We are in the process of implementing two other initiatives:

- allowing ALJs to issue decisions from the bench immediately after a hearing; and
- expanding video teleconference hearings.

And we are preparing to implement an initiative to digitally record hearings.

I am pleased to report that we have achieved some positive results. In FY 2003, we exceeded our Agency-wide productivity goal. SSA offices processed over 2.5 million disability claims—an increase of more than 350,000 from FY 2001. Administrative Law Judge productivity rates were the highest in history—at 2.35 cases per day. SSA's Office of Hearings and Appeals processed 40,000 more hearing decisions than FY 2002. In November 2001, the average time to appeal an unfavorable hearing decision was 467 days. In November 2003, it took 252 days.

We are pleased with our progress, but we know that the improvements have not been uniform around the nation. As you know, the backlogs in Cleveland are especially large, in large part because of a need for additional administrative law judges (ALJs).

To address the unacceptable backlogs here, our Regional Chief Administrative Law Judge, Paul Lillios, and his staff have been in constant contact with the Cleveland hearing office management staff to discuss strategies for reducing processing time and the number of pending cases. Through their hard work, we have a plan that will reduce the time it takes to hear cases and issue a hearing decision, and reduce the backlog of pending cases in the hearing office.

To reach these goals, retired ALJs were re-employed to help the Cleveland office on a part-time basis. And, after several years, a long-running lawsuit that had prevented us from hiring new ALJs has been resolved, and we can now hire ALJs. I am pleased to report that three new ALJs have been selected for the Cleveland office and are scheduled to report for training next month.

In addition, various hearings offices are assisting Cleveland with its workload. This fiscal year we expect to transfer over 5,200 cases. On this point, I want to note that new video teleconferencing equipment has been installed and is now being used to hear cases. This equipment makes the transfer of cases more efficient and more convenient for claimants in Cleveland.

We have also sent in a team of attorney supervisors to help screen pending disability cases to identify cases that can be favorably decided without a hearing and have had ALJs from other offices travel to Cleveland to conduct hearings.

Furthermore, senior Hearings and Appeals staff, including SSA's Chief Administrative Judge David Washington, visited the Cleveland hearing office several times to meet with management and union representatives.

On-site management audits have recently been conducted and the hearing office has implemented a number of administrative best practices.

We expect these actions to significantly reduce the time it takes to get a hearing decision. And we certainly know how important that it is for the claimants and family members who are waiting for decisions.

But these short-term efforts, important as they are, do not address the fundamental problems. If we are to see long-term results, we must look at the entire process as a whole, and make systemic changes.

Long-Term Strategy

A prerequisite for our long-term strategy is development and implementation of an electronic disability claims system.,

The Accelerated Electronic Disability System (AeDIB) is a major Agency initiative that will move all components involved in disability claims adjudication and review to an electronic business process through the use of an electronic disability folder. These components include the field office, regional office, the program service center, the State Disability Determination Service

(DDS), the hearings and appeals office, and the quality assurance staff. When the process is fully implemented, each component will be able to work claims by electronically accessing and retrieving information that is collected, produced and stored as part of the electronic disability folder. This will reduce delays that result from mailing, locating, and organizing paper folders.

> SSA field offices are currently collecting disability information for initial adult and child cases using the Electronic Disability Collect System (EDCS). Also, claimants can now use the Internet to submit disability information which is then propagated into EDCS. I am especially proud to announce that we began national roll-out of AeDIB in January 2004 starting in Jackson, Mississippi, and we have estimated it will be complete by June 2005. In fact, the roll-out is going well and we're right on schedule.

Designing the Approach

In designing my approach to improve the overall disability determination process, I was guided by three questions the President posed during our first meeting to discuss the disability programs.

- Why does it take so long to make a disability decision?
- Why can't people who are obviously disabled get a decision immediately?
- Why would anyone want to go back to work after going through such a long process to receive benefits?

I realized that designing an approach to fully address the central and important issues raised by the President required a focus on two over-arching operational goals: (1) to make the right decision as early in the process as possible; and (2) to foster return to work at all stages of the process. I also decided to focus on improvements that could be effectuated by regulation and to ensure that no SSA employee would be adversely affected by my approach. My reference to SSA employees includes State Disability Determination Service employees and Administrative Law Judges (ALJs).

As I developed my approach for improvement, I met with and talked to many people -- SSA employees and other interested organizations, individually and in small and large groups -- to listen to their concerns about the current process at both the initial and appeals levels and their recommendations for improvement. I became convinced that improvements must be looked at from a system-wide perspective and, to be successful, perspectives from all parts of the system must be considered. I believe an open and collaborative process is critically important to the development of disability process improvements. To that end, members of my staff and I visited our regional offices, field offices, hearing offices, and State Disability Determination Services, and private disability insurers to identify and discuss possible improvements to the current process.

Finally, a number of organizations provided written recommendations for changing the disability process, including a report issued by the Social Security Advisory Board. The report was prepared by outside experts making recommendations for process change. My approach for changing the disability process was developed after a careful review of these discussions and written recommendations. As we continue to move ahead, I look forward to working within the Administration and with Congress, as well as interested organizations and advocacy groups. The team that I created within my own office, reporting to me, to manage the process continues to work with interested parties as we continue to develop a plan. I might note that we also have a page on our website, www.socialsecurity.gov, where the public can make comments,

I would now like to highlight some of the major and recurring recommendations made by these various parties.

The need for additional resources to eliminate the backlog and reduce the lengthy processing time was a common theme, and the President's FY 2005 budget submission, which is currently before Congress, supports these efforts. Another important and often heard concern was the necessity of improving the quality of the administrative record. DDSs expressed concerns about receiving incomplete applications from the field office; ALJs expressed concerns about the quality of the adjudicated record they receive and emphasized the extensive pre-hearing work required to thoroughly and adequately present the case for their consideration. In addition, the number of remands by the Appeals Council and the Federal Courts make clear the need for fully documenting the administrative hearing record.

Applying policy consistently in terms of: 1) the DDS decision and ALJ decision; 2) variations among state DDSs; and 3) variations among individual ALJs -- was of great concern. Concerns related to the effectiveness of the existing regional quality control reviews and ALJ peer review were also expressed. Staff from the Judicial Conference expressed strong concern that the process assure quality prior to the appeal of cases to the Federal Courts.

ALJs and claimant advocacy and claimant representative organizations strongly recommended retaining the de novo hearing before an ALJ. Department of Justice litigators and the Judicial Conference stressed the importance of timely case retrieval, transcription, and transmission. Early screening and analysis of cases to make expedited decisions for clear cases of disability was emphasized time and again as was the need to remove barriers to returning to work.

My approach for disability process improvement is designed to address these concerns. It incorporates some of the significant features of the current disability process. For example, initial claims for disability will continue to be handled by SSA's field offices. The State Disability Determination Services will continue to adjudicate claims for benefits, and Administrative Law

Judges will continue to conduct hearings and issue decisions. However, my approach envisions some significant differences.

The approach proposes a quick decision step at the very earliest stages of the claims process for people who are obviously disabled. Cases will be sorted based on disabling conditions for early identification and expedited action.

Examples of such claimants would be those with ALS, aggressive cancers, and end-stage renal disease. Once a disability claim has been completed at an SSA field office, these Quick Decision claims would be adjudicated in Regional Expert Review Units across the country, without going to a State Disability Determination Service. This approach would have the two-fold benefit of allowing the claimant to receive a decision as soon as possible, and allowing the State DDSs to devote resources to more complex claims.

Centralized medical expertise within the Regional Expert Review Units would be available to disability decision makers at all levels, including the DDSs and the Office of Hearings and Appeals (OHA). These units would be organized around clinical specialties such as musculoskeletal, neurological, cardiac, and psychiatric. Most of these units would be established in SSA's regional offices.

The initial claims not adjudicated through the Quick Decision process would be decided by the DDSs. However, I also propose some changes in the initial claims process that would require changes in the way DDSs are operating. An in-line quality review process managed by the DDSs and a centralized quality control unit would replace the current SSA quality control system. I believe a shift to in-line quality review would provide greater opportunities for identifying problem areas and implementing corrective actions and related training. The Disability Prototype would be terminated and the DDS Reconsideration step would be eliminated. Medical expertise would be provided to the DDSs by the Regional Expert Review units that I described earlier.

State DDS examiners would be required to fully document and explain the basis for their determination. More complete documentation should result in more accurate initial decisions. The increased time required to accomplish this would be supported by redirecting DDS resources freed up by the Quick Decision cases being handled by the expert units, the elimination of the Reconsideration step, and the shift in medical expertise responsibilities to the regional units.

A Reviewing Official (RO) position would be created to evaluate claims at the next stage of the process. If a claimant files a request for review of the DDS determination, the claim would be reviewed by an SSA Reviewing Official. The RO, who would be an attorney, would be authorized to issue an allowance decision or to concur in the DDS denial of the claim. If the claim is not allowed

by the RO, the RO will prepare either a Recommended Disposition or a Pre-Hearing Report. A Recommended Disposition would be prepared if the RO believes that the evidence in the record shows that the claimant is ineligible for benefits. It would set forth in detail the reasons the claim should be denied. A Pre-Hearing Report would be prepared if the RO believes that the evidence in the record is insufficient to show that the claimant is eligible for benefits but also fails to show that the claimant is ineligible for benefits. The report would outline the evidence needed to fully support the claim. Disparity in decisions at the DDS level has been a long-standing issue and the SSA Reviewing Official and creation of Regional Expert Medical Units would promote consistency of decisions at an earlier stage in the process.

If requested by a claimant whose claim has been denied by an RO, an ALJ would conduct a completely new, or "de novo" administrative hearing. The record would be closed following the ALJ hearing. If, following the conclusion of the hearing, the ALJ determines that a claim accompanied by a Recommended Disposition should be allowed, the ALJ would describe in detail in the written opinion the basis for rejecting the RO's Recommended Disallowance. If, following the conclusion of the hearing, the ALJ determines that a claim accompanied by a Pre-Hearing Report should be allowed, the ALJ would describe the evidence gathered during the hearing that responds to the description of the evidence needed to successfully support the claim contained in the Pre-Hearing Report.

Because of the consistent finding that the Appeals Council review adds processing time and generally supports the ALJ decision, the Appeals Council stage of the current process would be eliminated. Quality control for disability claims would be centralized with end-of-line reviews and ALJ oversight. If an ALJ decision is not reviewed by the centralized quality control staff, the decision of the ALJ will become a final agency action. If the centralized quality control review disagrees with an allowance or disallowance determination made by an ALJ, the claim would be referred to an Oversight Panel for determination of the claim. The Oversight Panel would consist of two Administrative Law Judges and one Administrative Appeals Judge. If the Oversight Panel affirms the ALJ's decision, it becomes the final agency action. If the Panel reverses the ALJ's decision, the oversight Panel decision becomes the final agency action. As is currently the case, claimants would be able to appeal any final agency action to a Federal Court.

At the same time these changes are being implemented to improve the process, we plan to conduct several demonstration projects aimed at helping people with disabilities return to work. These projects would support the President's New Freedom Initiative and provide work incentives and opportunities earlier in the process.

My new approach also incorporates several demonstration projects, which will be voluntary for disability applicants who meet the eligibility requirements for them. These projects will give us an opportunity to try out ways that may help disabled persons earlier in the process.

Early Intervention demonstration projects will provide medical and cash benefits and employment supports to Disability Insurance (DI) applicants who have impairments reasonably presumed to be disabling and elect to pursue work rather than proceeding through the disability determination process.

Temporary Allowance demonstration projects will provide immediate cash and medical benefits for a specified period (12-24 months) to applicants who are highly likely to benefit from aggressive medical care.

Interim Medical Benefits demonstration projects will provide health insurance coverage to certain applicants throughout the disability determination process. Eligible applicants will be those without such insurance whose medical condition is likely to improve with medical treatment or where consistent, treating source evidence will be necessary to enable SSA to make a benefit eligibility determination.

Ongoing Employment Supports to assist beneficiaries to obtain and sustain employment will be tested, including a Benefit Offset demonstration to test to effects of allowing DI beneficiaries to work without total loss of benefits by reducing their monthly benefit $1 for every $2 of earnings above a specified level and Ongoing Medical Benefits demonstration to test the effects of providing ongoing health insurance coverage to beneficiaries who wish to work but have no other affordable access to health insurance.

I believe these changes and demonstrations will address the major concerns I highlighted earlier. I also believe they offer a number of important improvements:

- People who are obviously disabled will receive quick decisions.
- Adjudicative accountability will be reinforced at every step in the process.
- Processing time will be reduced by at least 25%.
- Decisional consistency and accuracy will be increased.
- Barriers for those who can and want to work would be removed.

When I introduced my approach for improving the process, it was the first step of what I believe must be -- and have worked to make -- a collaborative process. I am working within the

Administration, with Congress, the State Disability Determination Services and interested organizations and advocacy groups before putting pen to paper to write regulations. As I said earlier, and I say again that to be successful, perspectives from all parts of the system must be considered.

I believe that if we work together, we will create a disability system that responds to the challenge inherent in the President's questions. We will look beyond the status quo to the possibility of what can be. We will achieve our ultimate goal of providing accurate, timely service for the American people.

Conclusion

All of us at Social Security know that the folders on our desks represent people – people who are often in dire need of help, people who are counting on us for support. I assure you this is a responsibility no SSA employee takes lightly. From teleservice representatives to claims representatives to paralegals to attorneys and judges, we are all committed to providing the kind of service the American people expect and deserve.

Thank you again, Senator Voinovich, for holding this hearing. I look forward to working with you and your colleagues to improve the disability process.

**Statement of Hal Daub, Chairman**
**Social Security Advisory Board**
**To the Subcommittee on Oversight of Government Management,**
**the Federal Workforce, and the District of Columbia**
**Hearing at Cleveland, Ohio**
**March 29, 2004**

Mr. Chairman. I commend you for this very timely hearing.

Ten years ago, Congress created the bi-partisan Social Security Advisory Board to make recommendations to the Congress, the President, and the Commissioner of Social Security on how to improve the program and how the Social Security Administration can provide better service to the public.

The Advisory Board has devoted a great deal of attention to the long-standing problems in the Social Security disability programs. We have traveled to every region of the Nation. We have talked with those involved at every level—both those who run the program and those who seek help from it. We have found widespread consensus—with which we agree—that this is a program with serious problems.

Disability decisions in this national program should be fair and consistent throughout the country and at each level of adjudication. But we have found large and unexplained inconsistencies. The program lacks a comprehensive quality management system to assure careful and uniform application of the law. Weaknesses in the basic design of the process make for a lack of accountability and cumbersome operations. Improvements are needed in how policy is developed and communicated so as to apply the same standards as objectively as possible at all levels of decision making.

The Commissioner has kept the Board apprised of the new approach she is developing. We are pleased to see her taking bold steps to address many of these problems. And we note that, in working through the details of that approach, she is listening to parties within and outside the agency. She is also moving ahead with major improvements in technology that can help the agency better meet its challenging tasks.

I sincerely congratulate the Commissioner on the significant and substantial initiatives she is taking. But I urge you not to underestimate the scope of the problem. As your title for this hearing states, her proposed process changes and technology improvement can put the Social Security disability programs on "The Road to Recovery." Traveling all the way down that road will also require addressing needs such as more—and more uniform—training. There must be a stronger policy development capacity. Better human capital planning, as recently pointed out by GAO, is also essential.

A crucial factor for really achieving these goals is an adequate level of resources. No process improvements will change the fact this is a massive program that is asked to

handle about two and a half million disability applications each year. As the Board has traveled around the country we are impressed by the dedicated and hardworking employees in Social Security offices and State disability determination services. They have been increasing their productivity. The Commissioner's proposed changes will allow even greater improvements. But that will only happen if Congress provides sufficient resources to handle the ever-growing caseload. The agency has carefully developed a 5-year service delivery budget for bringing the backlogs down to a manageable level. The President has endorsed the need for a modest but vital increase in administrative funding. It is now up to Congress to decide whether to provide those resources or to opt for growing backlogs.

Mr. Chairman, given adequate resources, the agency can make great strides to address the administrative problems and backlogs. The Commissioner has, correctly in my judgment, decided to limit her immediate plans to changes that she can quickly implement administratively. But, there certainly is room for Congress to consider legislated improvements. The Social Security Advisory Board, for example, has urged considering changes such as creating a Social Security Court. That might help address the problem of disability policy differences that now exist from circuit to circuit. Changes in the hearings process itself might also be considered, such as the possibility of having the SSA represented at the hearing by a government representative.

Finally, there are also larger issues that must be dealt with. The Social Security disability program uses a definition of disability that is a half-century old. It dates back to a period when national disability policy viewed government's role as providing an early retirement for those who could no longer work. Many today feel that the focus on "inability to work" does a disservice to impaired individuals and that we should find ways to change the program to better support the desire of those individuals to continue leading productive, self-sufficient lives. The Board has recently issued a report on the definition of disability and is sponsoring a forum on April 14 to further explore this important issue. I hope that you or your staff will be able to join us for that forum.

Along with my full statement, I would like to submit for the record copies of the Social Security Advisory Board's report of January 2001 on the need for fundamental change in the Social Security disability programs, our report of last October on the definition of disability, and a list of the several major reports that the Board has issued or commissioned on the disability program. All of our reports can be viewed at www.SocialSecurityAdvisoryBoard.gov.

# Social Security Advisory Board Reports Relating to Social Security Disability Programs

## *Reports issued by the Board*

- The Social Security Definition of Disability, October 2003
- Charting the Future of Social Security's Disability Programs: The Need for Fundamental Change, January 2001
- Disability Decision Making: Data and Materials (Part One A), January 2001
- Disability Decision Making: Data and Materials (Part One B), January 2001
- Disability Decision Making: Data and Materials (Part Two), January 2001
- How SSA's Disability Programs Can Be Improved, August 1998

## *Studies commissioned by the Board*

- Introducing Nonadversarial Government Representatives to Improve the Record for Decision in Social Security Disability Adjudications, May 2003
- Alternative Approaches to Judicial Review of Social Security Disability Cases, March 2002

Copies of the these reports and other SSAB reports are available in electronic format from the website: www.SocialSecurityAdvisoryBoard.gov . Many of the Board's other reports also include discussions of the disability program.

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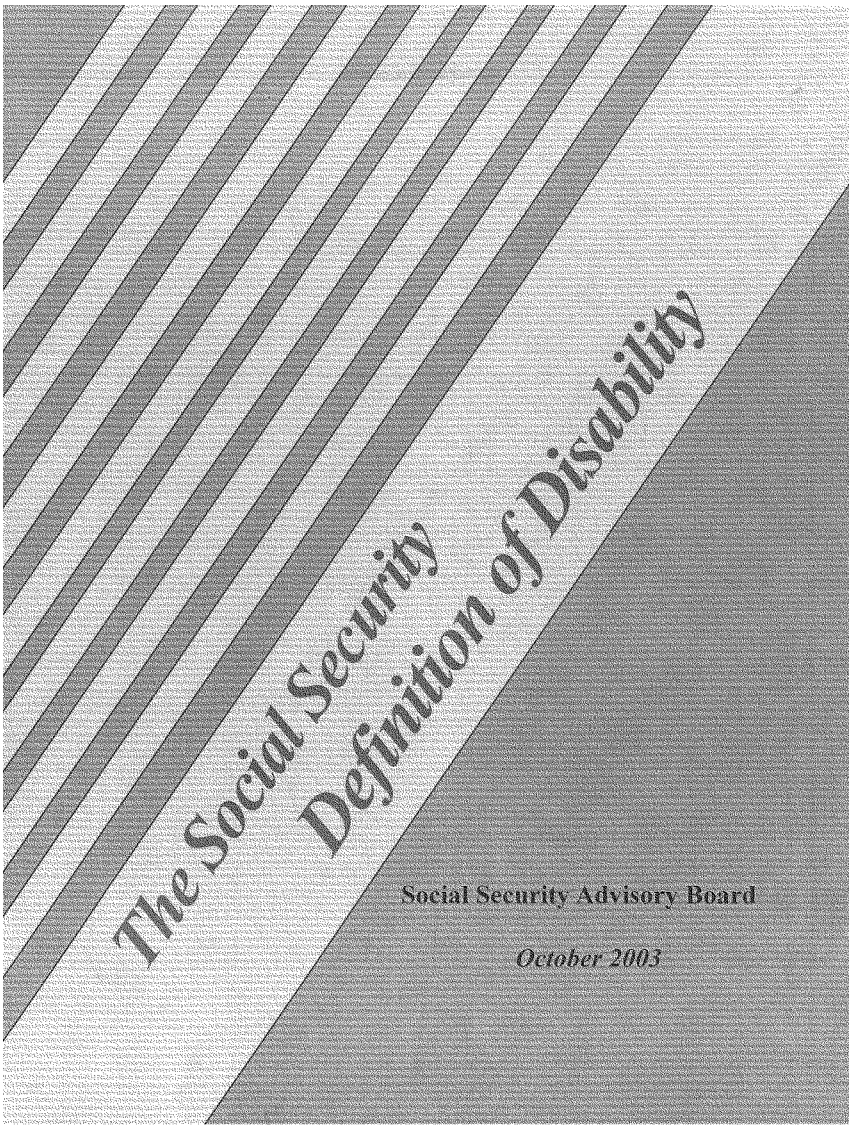
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Definition of Disability
Social Security Advisory Board
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***is conditional on demonstrating a lack of ability to work,***
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# The Social Security Definition of Disability: Is it Consistent with a National Goal of Supporting Maximum Self Sufficiency?

## INTRODUCTION

When a working-age person suffers a disabling event, there are, apart from purely medical considerations, two fundamental needs that arise:

- the need to replace, at least to some degree, the income lost to the individual because of the disability, and
- the need to overcome the effects of the disability to allow the individual to resume as independent and productive a life as possible.

These objectives have both complementary and contradictory aspects, and programs designed to deal with them have adopted a variety of approaches.

When the Social Security Disability Insurance (DI) program was enacted in 1956, it was intended for the "totally and permanently disabled," a population for whom work was not an option. But over the past half-century, there have been many changes in the Social Security disability programs and other programs, in the economy, in medicine, in rehabilitative technology, in attitudes about disability and the disabled. As a result, deciding who should receive benefits and who should receive other forms of support has become increasingly complex.

The provisions of law governing the Social Security disability programs have always included work-related elements such as incentive features and rehabilitation requirements. But these programs are based on a definition that is widely viewed as inimical to work motivation. While positive incentives can be added, as long as benefit receipt is conditional on demonstrating a lack of ability to work, disincentives will be inherent to the system.

In our January 2001 report, *Charting the Future of Social Security's Disability Programs: The Need for Fundamental Change,* we raised the question of whether Social Security's definition of disability was appropriately aligned with national disability policy as reflected, for example, in the Americans with Disabilities Act. We said that there are many who believe that the Social Security definition "is at odds with the desire of many disabled individuals who want to work but who still need some financial or medical assistance" and noted that the Ticket to Work program does not fully address the basic inconsistencies. In that report, we also reported that at one of our public hearings, "witnesses stressed that programs and services are much more effective when they address what people can do rather than what they cannot do, and that with the many accommodations that exist today it is possible to fit many individuals with disabilities into a satisfying job."

In this report, we look at the background of the program and how it has changed, the growing difficulty of appropriately determining who can and cannot work, and the various attempts to build in work incentives. While recognizing that this is a large and important part of our national income security system, the Board concludes that the Nation must face up to the contradictions created by the existing definition of disability. Our report briefly catalogs some of the alternative approaches that might, in some combination, be incorporated into a revised program. Any such changes must be made carefully and with due regard for the importance of this program to the lives of America's disabled citizens and to its impact on other elements of national income security. But the Board believes that the time has come to seriously address the definitional issue. We look for this report to focus attention on that issue, and we expect to do additional work in this area in the near future.

# BACKGROUND

When the Social Security Act was passed in 1935, it increased the authorized funding for the program of grants to the States for vocational rehabilitation programs and created a new program of grants to the States for public assistance programs for the blind. It did not, however, include any general program of disability income support either as part of the payroll-tax funded insurance program or as a part of the grant-in-aid system supporting State public assistance programs.

In 1950, the House Ways and Means Committee recommended adding disability income support programs to the Act. It recommended such programs both as a part of the Social Security social insurance program and as part of the federally assisted State public assistance system. In describing the proposed Social Security disability program, the Committee viewed it as primarily targeted at older workers who had chronic impairments forcing them to leave the workforce early with a consequent income gap during the years prior to qualifying for retirement benefits. "The addition of permanent and total disability benefits will inject more realism into the retirement concept, and will effectively counteract pressures for a reduction in the age of normal retirement." (H.Rept. 81-1300, p. 27). The Committee saw the public assistance provisions as serving the same basic purposes for individuals who worked in non-covered employment or who had become disabled prior to qualifying for Social Security. It was a program for the "permanently and totally disabled." The Senate Finance Committee recommended against including either program. The legislation as enacted included the public assistance program but not the Social Security program.

When the Social Security Disability Insurance program was added to the law in 1956, the Committee report language even more explicitly depicted the program as designed for those who were forced to retire early by reason of disability, and the new program limited benefits to those age 50 and over.

The original Social Security disability programs were thus designed to serve those who had no realistic expectation of a return to the workforce because of the combination of severity of disability and attainment of near-retirement age. The legislation was not entirely single minded in that it did include some provisions for vocational rehabilitation, but the committee report noted that such programs were really more applicable to younger workers. Congress expected that it could be administered in a way that limited benefits to those for whom work was not an option. The disability programs' definition of disability continues to embody this fundamental design concept, but there have been many changes over the past half-century which raise questions as to whether that design continues to be appropriate and sustainable or whether structural changes in the Social Security disability programs and other programs are needed to rationalize the Nation's disability policies.

***The original Social Security disability programs were thus designed to serve those who had no realistic expectation of a return to the work force because of the combination of severity of disability and attainment of near-retirement age.***

# I. The Definition of Disability In an Evolving Program and an Evolving World

## *A. Adoption of the Definition*

When Congress, in 1950, created the grant-in-aid program for State public assistance programs for the disabled, it left the States the discretion of how to determine eligibility. However, the eligible population was defined, in the statute, as those who were "totally and permanently disabled." When the Disability Insurance program was enacted in 1956, it defined disability as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration."

This definition pretty clearly envisions a program structure that neatly divides those who have work potential (and are therefore ineligible) from those who have no work potential (and are therefore eligible). It provides income support for the eligibles and nothing for the ineligibles, who must therefore look to themselves, their families, or other programs to meet the needs created by their less than total and permanent disabilities.

## *B. Applying the Definition*

Even at the time of original enactment, the theoretical definition had to be applied in ways that undoubtedly had less than perfect results. In the program's first five years (1957-1961), SSA handled hundreds of thousands of disability applications each year and, by the end of that period, had awarded benefits to nearly a million disabled workers. Dealing with massive numbers of claims requires the establishment of standards of proof some of which are quite objective and some of which require a great deal of subjective decision making. For an inherently multi-dimensional issue such as whether a given individual has the capacity for substantial work activity, there will always be a trade-off. The more objective the standards, the easier the program will be to administer but the more likely it will be that individuals will be incorrectly included or excluded. To give an entirely hypothetical example, to say that a claimant is automatically eligible if he or she has had a heart attack would eliminate the need for labor-intensive individualized assessment of work capacity for a large number of applicants but would also possibly allow on the rolls many who really

***This definition pretty clearly envisions a program structure that neatly divides those who have work potential (and are therefore ineligible) from those who have no work potential (and are therefore eligible).***

could continue working. Changing to a standard that requires two heart attacks for automatic eligibility would lower the number who get on the rolls despite retaining the capacity for work but would also increase the number of cases (all those with just one heart attack) who would have to be individually assessed.

Former Social Security Commissioner Robert Ball has written that the Social Security Administration decided to adopt an approach under which an individual would be considered disabled if he or she had a medical condition which would be of sufficient severity to preclude an "average" person from working. The agency developed lists of very specific medical conditions that were considered to indicate work-preventing severity. If the claimant presented medical evidence showing that he or she had one of the specified conditions on these lists (or "listings" as they came to be called), eligibility was established as long as the claimant was not, in fact, working. If the individual did not qualify because of having a condition described in the medical listings (but did have a disability of some severity), the adjudication would move to a more individualized assessment. That assessment determined whether the limitations imposed by the conditions would prevent performing the kinds of work that might be available in light of the claimant's age, education, training, and work experience. In the early years of the program, over 90 percent of the cases were decided on the basis that the claimant's medical condition was specifically included in the listings or was of equal medical severity. Even in those cases, there would be close-calls in which different adjudicators might reach different conclusions as to whether the medical standards were met, but the degree of subjectivity clearly is more substantial where the decision moves from entirely medical standards to an assessment of the individual's vocational capacity.

## *C. A Half Century of Change*

Over the past half century, there have been many changes in the Social Security disability programs and other programs, in the economy, in medicine, in rehabilitative technology, in attitudes about disability and the disabled. Many of these changes have tended to work at cross-purposes with the original simple model of a clear-cut distinction between ability and inability to work or have tended to complicate the program in other ways.

***Many of these changes have tended to work at cross-purposes with the original simple model of a clear-cut distinction between ability and inability to work or have tended to complicate the program in other ways.***

Major changes in the disability law itself included the extension of eligibility to workers younger than age 50, and the substitution of a 12-month minimum expected duration for the previous rule of "long-continued and indefinite duration." Both of these changes undercut the original view of the program as an "early retirement" system. The adoption of automatic benefit increases for Social Security in the early 1970s interacted with the high inflation rates of those years to rapidly drive up benefit rates, thus also changing to some degree the relative attractiveness of work and benefits. While subsequent amendments corrected the ongoing and unintended over-indexation, replacement rates were stabilized at a somewhat higher level than the rates prevailing previously. Also in the 1970s, the enactment and implementation of the Supplemental

**Disability Benefit Percentage Replacement of Career Earnings***

| Year | Low Earner | Medium Earner | High Earner |
|---|---|---|---|
| 1960 | 54.8 | 37.3 | 31.0 |
| 1965 | 50.1 | 34.6 | 29.9 |
| 1970 | 52.6 | 36.8 | 32.9 |
| 1975 | 66.4 | 48.8 | 44.4 |
| 1980 | 64.5 | 47.3 | 40.8 |
| 1985 | 59.9 | 43.7 | 37.3 |
| 1990 | 61.2 | 44.6 | 38.0 |
| 1995 | 61.7 | 45.0 | 38.4 |
| 2000 | 60.2 | 43.9 | 37.4 |
| 2002 | 61.9 | 45.1 | 38.5 |

**worker disabled at age 40*

*Source: Office of the Chief Actuary*
*Social Security Administration*

Security Income (SSI) program (federalizing the prior State assistance programs for the disabled) massively increased the size and complexity of the agency's task and gave it responsibility for running a disability program with the same definition but applied to a population with quite different needs and characteristics.

A number of other legislative enactments, many court decisions, and regulatory initiatives have also significantly affected the nature of the program even though they did not modify the base definition of disability. For example, eligibility was tightened somewhat by amendments in 1980 requiring a substantial proportion of pre-effectuation reviews and mandating minimum levels of continuing disability reviews. Amendments adopted in 1984 made it significantly more difficult for the agency to terminate eligibility. Other elements of the 1984 amendments and their implementing regulations are also generally believed to have broadened eligibility, particularly with respect to claims based on mental impairments. Other legislative, judicial, and regulatory changes have significantly affected such areas as SSI childhood disability benefits, benefits for individuals with substance abuse problems, benefits for non-citizens, the standards for evaluating pain and other subjective symptoms, and the reliance to be placed on evidence from the applicant's treating sources.

In addition to the changes in the disability insurance program and the creation of a new

***...legislative enactments, many court decisions, and regulatory initiatives have also significantly affected the nature of the program even though they did not modify the base definition of disability.***

federal income assistance program for the disabled (SSI), the integration of medical coverage with these income-support programs greatly increased the importance to individuals of qualifying and retaining eligibility. In 1973, the Medicare program extended eligibility (after a 2-year waiting period) to disability insurance beneficiaries. The Medicaid program, enacted in 1965, provided medical assistance benefits to recipients of public assistance under the State-run grant-in-aid program of Aid to the Totally and Permanently Disabled. When that program was converted to the federal SSI program under 1972 legislation, Medicaid coverage was generally made available to SSI recipients.[1]

Another change affecting the disability programs over the past half-century is the increasing participation of women in the labor force. Where a family has two earners, there is less of an impact on household income when one earner's income from employment is replaced by income from disability benefits. Social Security benefits make up less than half of the income of about 52 percent of disabled worker families. In 2001, about one-quarter of disabled worker families had incomes of $45,000 or more, and about one-quarter had income below $15,000. (The 2001 official poverty threshold for a 3-person family was $14,128.) To the extent the other worker in the household has employment providing family medical insurance coverage, the impact of the 2-year waiting period for Medicare may also be reduced. On the other hand, that factor also reduces the extent to which Medicare eligibility might be a major consideration in whether to apply for or try to retain disability benefit status.

***Medical advances and improved rehabilitative knowledge and technology have also taken place over the past 50 years. These increasingly call into question the ability of a program to neatly draw a line between those who can and those who cannot work.***

Medical advances and improved rehabilitative knowledge and technology have also taken place over the past 50 years. These increasingly call into question the ability of a program to neatly draw a line between those who can and those who cannot work. To some extent, these changes can be incorporated into changed standards. But in many cases they may place increasing stress on the theoretical definition of disability.

There have also been major changes in the nature of work and of the workforce. At the time the program was enacted in the mid-1950s work in the economy typically involved significant physical exertion. Over 40 percent of all jobs were in manufacturing, construction, or mining. By 2002, jobs in those industries represented only 18 percent of all jobs. We have become much more of a service economy where it is harder to measure the degree to which a

***At the time the program was enacted in the mid-1950s work in the economy typically involved significant physical exertion.***

[1] States are permitted to restrict Medicaid coverage to only those recipients who would continue to meet the former State assistance standards. However, over 95 percent of SSI recipients are also Medicaid eligible.

medically determinable impairment limits the individual's ability to engage in employment. Increasingly the question of eligibility hinges on a vocational assessment in which the decision involves a combination of factors, namely, the amount of functional capacity remaining after considering the impairment and the individual's age, education, and prior work experience. For these and other reasons, in the Disability Insurance program the proportion of initial allowances based strictly on medical factors has declined from around 93 percent in the early years of the program to 82 percent in 1983 and to a 2000 level of 58 percent. By the end of the appeals process, the proportion of allowances based on strictly medical factors is around 40 percent and, because of coding deficiencies, possibly even lower.

Attitudes about disability and work have also undergone substantial change over the years. The concept of being able to categorize an individual as "unable to work" was once not generally challenged. It was particularly secure in the context of the original program that was limited to those age 50 and over and that operated in a manufacturing economy. Today, there is much less certainty about the appropriateness and even feasibility of making that distinction. One expert on vocational rehabilitation recently expressed to the Board the view that one should only feel confident making a judgment of inability to work in the case of an applicant who is comatose. While this view may lie at one extreme, there clearly has been a marked shift in attitudes among the disabled and in society as a whole. There is no longer general support for the basic premise that one can define a set of medical conditions that appropriately classify an "average" person as unable to work. Rather there seems to be increasing recognition of a fundamental distinction between the concept of "impairment" and the concept of "inability to work." Changing public attitudes are reflected to a considerable extent in the adoption in 1990 of the Americans with Disabilities Act that required employers to make reasonable accommodations as necessary to enable the employment of disabled individuals. In its preamble, that Act condemned "stereotypic assumptions not truly indicative of the individual ability of [disabled] individuals to participate in, and contribute to, society."

The core definition of disability for the Social Security program adopted fifty years ago was inability to do substantial work by reason of a physical or mental impairment. That core definition itself remains unchanged, but the context in which it operates has changed a great deal, and its validity, both as an administratively feasible definition and as an appropriate standard of benefit eligibility, is increasingly subject to challenge.

***That core definition itself remains unchanged, but the context in which it operates has changed a great deal, and its validity, both as an administratively feasible definition and as an appropriate standard of benefit eligibility, is increasingly subject to challenge.***

# II. Work as an Objective of Social Security Disability Programs

Despite their core definition of disability as inability to do any substantial gainful work, the Social Security programs include elements aimed at helping or encouraging beneficiaries to engage in work activity. Such elements have been incorporated from the very beginning. The 1956 amendments to the Social Security Act which created the Disability Insurance program included in that program provisions for referring beneficiaries to the State vocational rehabilitation agencies. That legislation also added to the grant-in-aid program of Aid to the Totally and Permanently Disabled a requirement that State plans include a description of any services provided to help applicants or recipients attain self-support.

The original inclusion of such provisions may have been intended as a counterweight to the very substantial opposition to the enactment of the program from those who felt that emphasis should be on rehabilitation rather than income support. It may have represented a recognition that, as a practical matter, the task of distinguishing those able to work from those not able to work was not likely to be fully achievable. It may have represented a simple judgment that independence and self-support are such important human values that they should never be ruled out.

Whatever the original objective or combination of objectives may have been, the programs over their history continued to include and build upon these original work-oriented provisions. Again, different policy objectives may have driven the changes. Program experience showed that, at least for some beneficiaries, rehabilitation was, in fact, a feasible objective and that, from a financial perspective, providing rehabilitation services could be cost effective even if only a quite small proportion of the caseload participated. Programmatic changes opening eligibility to shorter-term disabilities and to younger workers also made the incorporation of work-encouraging features more obviously appropriate. Changes in medical technology and in the attitudes of the population generally, and the disabled population in particular, undermined the concept that a clear division could or should be made between inability and ability to work.

## *A. Vocational Rehabilitation*

The Social Security disability program, as currently defined and constituted, has as its major goal the provision of income to those who are unable to work. The national Vocational Rehabilitation program has the goal of assisting the disabled to attain independence and self-support.

Prior to World War I, there was no formal national system of addressing the employability needs of disabled Americans. With thousands of disabled veterans returning from that War, the Congress passed a series of laws dealing with rehabilitation – some directed specifically at veterans but others aimed also at the civilian population. In 1920, the Smith-Fess Act created a federally matched, State administered program of Vocational Rehabilitation. The Public Health title of the 1935 Social Security Act increased and made permanent the authorized appropriation for that Vocational Rehabilitation program. The 1935 Act also provided a grant-in-aid program to allow States to provide public assistance to the blind. The following year the Randolph-Sheppard Act was passed

### Work Incentives for DI Beneficiaries

**Trial work period** – Beneficiaries may work for nine months (not necessarily consecutive) in a 60-month rolling period without the earnings affecting their benefits. A trial work month is any month in which earnings are more than $570. When nine trial work months are completed within a 60-month period, SSA reviews the work to see if earnings are "substantial" (generally, $800 per month or more, $1,330 per month for blind beneficiaries). If they are, benefits would continue for a three-month grace period and then stop.
**Extended period of eligibility** – This 36-month period follows the ending of benefits due to work. During this period, a beneficiary may receive a benefit for any month in which earnings fall below $800 per month.
**Continuation of Medicare** – Beneficiaries who have Medicare hospital insurance and start working may have at least 8½ years of extended coverage (including the trial work period). After that they can buy Medicare coverage by paying a monthly premium. Some people with low income and few resources may be eligible for State assistance with the cost.

### Work Incentives for SSI Beneficiaries

**Continuation of SSI** – Beneficiaries who work may continue to receive SSI payments until their countable income exceeds the SSI limit.
**Continuation of Medicaid eligibility** – Medicaid eligibility will usually continue even if beneficiaries earn too much to receive SSI payments if they cannot afford similar medical care and depend on Medicaid in order to work.
**Earned income exclusion** – The first $65 ($85 if the beneficiary has no unearned income) of any monthly earned income, plus one-half of remaining earnings are excluded from countable income.
**Student earned income exclusion** – For students under age 22 who are regularly attending school and neither married nor the head of a household, up to $1,340 of earned income per month, to a maximum of $5,410 per year, is excluded from countable income.
**Work expenses of the blind** – Any income earned by a blind individual that is used to meet expenses needed to earn that income is excluded from countable income.
**Plan for achieving self-support (PASS)** – A PASS allows a disabled or blind individual to set aside income and resources to get a specific type of job or to start a business. The income and resources that are set aside are excluded under the SSI income and resource tests.

### Work Incentives for Both DI and SSI Beneficiaries

**Expedited reinstatement of benefits** – There is a 60-month period in which a former beneficiary may request reinstatement of benefits without filing a new application. For DI beneficiaries, the 60 months follow the extended period of eligibility.
**Impairment-related work expense exclusion** – The cost of certain impairment-related services and items that a beneficiary needs in order to work are excluded from countable income for SSI purposes and are deducted from earnings when determining if work is substantial.
**Continued payment under a vocational rehabilitation program** – Beneficiaries who medically recover while participating in a vocational rehabilitation program that is likely to lead to becoming self-supporting may continue to receive benefits until the program ends.

to allow blind individuals to operate vending stands in federal buildings. Major amendments to the Vocational Rehabilitation program were adopted in 1943.

During the 1950s, Congress considered highly contentious legislation to add disability benefits to the Social Security program. In 1952, the Social Security Act was amended to "freeze" a worker's Social Security record during the years when they were unable to work due to a disability. While this measure offered no cash benefits, it did prevent such periods of disability from reducing or wiping out retirement and survivor benefits. The 1952 provision, however, was essentially a "statement of principle" since it contained self-repealing language that prevented it from going into effect. The "freeze" provisions were enacted into law again in 1954 along with a requirement for the Social Security Administration to refer applicants to the State Vocational Rehabilitation agencies. In 1956, Congress added cash disability benefits to the Social Security program. The provision for referring applicants for Vocational Rehabilitation was modified to withhold benefits for anyone who refused to accept available rehabilitation services.

In 1965, the Finance Committee report on that year's amendments noted that very few disability beneficiaries were receiving any rehabilitation services. To address that issue, the law was amended to allow payments for such services from the Disability Insurance trust fund subject to an overall limit of 1 percent (later raised to 1.5 percent) of the disability benefits paid in the previous year. The 1972 legislation establishing the Supplemental Security Income (SSI) program included similar provisions (payable from the general fund) for rehabilitation services to SSI recipients. The Rehabilitation Act of 1973 mandated a priority to serve persons with severe disabilities and established affirmative action programs for severely disabled individuals.

Despite these changes the number of Social Security disability beneficiaries rehabilitated remained quite small. In the late 1970s, General Accounting Office reports criticized the programs for both Disability Insurance and Supplemental Security Income. In the 1981 Budget Reconciliation Act, Congress changed the funding rules. Instead of reimbursing Vocational Rehabilitation agencies for the costs of services provided to Social Security beneficiaries, reimbursement was paid for such services only if they actually restored the individual to employment at a level that resulted in benefit termination.

This change in the funding mechanism resulted in an immediate drop in the amount of funding, but it improved the extent to which the program resulted in a demonstrable net reduction in costs. The 1980 Social Security amendments called for demonstration projects to test alternative methods of encouraging employment, and, in the mid-1990s, SSA began to allow private entities to apply for rehabilitation funding in cases where a beneficiary had been referred to the State Vocational Rehabilitation Agency but that Agency did not provide services. In 1999, the system of referral for Vocational Rehabilitation services (and the penalties for refusing to participate in such services) were replaced by the Ticket to Work Act described below. Thus far, most of the Ticket to Work activity continues to involve Vocational Rehabilitation agencies, and the VR reimbursement method is still used in those areas where the Ticket to Work program has not yet been implemented.

## *B. Ticket to Work and Work Incentives Improvement Act of 1999*

The Ticket to Work and Work Incentives Improvement Act of 1999 (P.L. 106-170)

amended the Social Security Act to create the Ticket to Work and Self-Sufficiency Program, a voucher program that allows beneficiaries a greater choice of vocational rehabilitation and employment service providers. The new law also expanded the availability of health care coverage for working individuals with disabilities, and included a number of other provisions designed to help disabled individuals to continue working or to return to work.

The centerpiece of the legislation, the Ticket to Work program, is intended to increase access to and the quality of rehabilitation and employment services available to disability beneficiaries. It provides eligible Social Security Disability Insurance and Supplemental Security Income disability beneficiaries with a "Ticket" which can be used to obtain vocational rehabilitation, training, employment services, or other support services through public and private providers. The providers can be Employment Networks (public or private organizations that take responsibility for the coordination or delivery of services), or State Vocational Rehabilitation agencies.

The program is voluntary. When an individual gets a Ticket, he or she is free to choose whether or not to use it, as well as when to use it. Generally, beneficiaries who are eligible for Tickets include current Social Security Disability Insurance and Supplemental Security Income disability beneficiaries between the ages of 18 and 65.

The Ticket program is being implemented in phases. Phase I of the program was implemented in 13 States beginning in February 2002, and Phase II in another 20 States plus the District of Columbia beginning in November 2002. Phase III of the program will be implemented in the remaining States and territories in November 2003 and continuing into 2004.

As of July 7, 2003, SSA had mailed about 4.7 million tickets to beneficiaries in the first two phases of program implementation. About 2.3 million tickets were mailed during Phase I, and 2.4 million during Phase II. SSA continued to mail tickets in the Phase II States at the rate of about 250,000 per month through September 2003. As of July 7, SSA had enrolled 809 Employment Networks in the Phase I and Phase II States, with another 109 applications under review.

Participation in the program has been minimal. As of July 2003, the program manager for the Ticket program had only handled 200,000 calls (4.3 percent of the total number of tickets mailed) from beneficiaries since the onset of the program. About 20,500 beneficiaries (about 0.44 percent of those who had been mailed tickets) had assigned their tickets. Of those, about 18,100 (88 percent) had been assigned to State Vocational Rehabilitation agencies, and about 2,400 (12 percent) had been assigned to Employment Networks. Of the tickets assigned to the State Vocational Rehabilitation agencies, 11,246 were from beneficiaries who were new to the system.

As of July 4, 2003 SSA had made over 554 outcome and milestone payments to Employment Networks, representing 196 beneficiaries working (.004 percent of those who have been mailed tickets). These payments total $169,456.

The other key provision of P.L. 106-170 expanded the availability of health care services to working DI and SSI disability beneficiaries. The law provided several enhancements to Medicaid and Medicare including giving States more options in providing Medicaid coverage to more people ages 16-64 with disabilities who work, and extending full Medicare coverage for 4 1/2 years beyond the previous limit for Social Security disability beneficiaries who return to work.

## *C. Work Activity of Disability Beneficiaries*

Until this year, SSA has not tracked monthly earnings of Disability Insurance worker beneficiaries, and full-year data are not yet available. SSA began in 2001 to break out data on DI worker beneficiaries whose benefits have been terminated because of work above the level of substantial gainful activity. In 2002, 29,000 disabled worker beneficiaries, or about one-half of one percent of the total, had their benefits terminated for that reason. About a third of those terminated had a primary diagnosis of mental illness.

Under the SSI program, returning to work at the "substantial gainful activity" level does not cause benefits to stop simply because the individual has shown a capacity to work. Since SSI is a means-tested program, however, benefit levels are reduced because of earnings and phase out when the combination of earnings and other income rises above the income eligibility level. Even after benefits are reduced to zero, recipients generally continue to qualify for Medicaid. A little less than 6 percent of all disabled SSI recipients have some work activity, but two-thirds of those with earnings have $500 or less in monthly earnings. Forty-two percent of those with earnings have a diagnosis of mental retardation.

***Despite the many work incentive features that have been incorporated into the Social Security Disability programs over the last five decades, the Social Security Advisory Board finds little evidence that those incentives have substantially encouraged self-sufficiency in the disabled population.***

# III. Conflicting Policy Objectives

Despite the many work incentive features that have been incorporated into the Social Security Disability programs over the last five decades, the Social Security Advisory Board finds little evidence that those incentives have substantially encouraged self-sufficiency in the disabled population. Nor do we find that there exists much expectation that this situation is likely to change to any significant degree in the future. At the same time, the Social Security Disability programs are an established and important part of our Nation's income security system. They provide vital ongoing income support and, through their relationship to Medicare and Medicaid, health insurance for millions of disabled Americans. In previous reports, the Board has expressed concerns over many aspects of the existing disability programs and has identified a number of areas in which major improvements are needed. In testimony before the House Social Security Subcommittee in May 2002, the Chairman of the Advisory Board said:

**As we have emphasized in our reports, disability is at the heart of SSA's many challenges. It accounts for two-thirds of the agency's administrative budget – about $5 billion this fiscal year. Disability benefits will account for nearly $100 billion in spending this year, or nearly 5 percent of the Federal budget. The current disability structure is seriously flawed and needs to be reformed in the interests of both claimants and taxpayers.**

The Board's 2001 report on the need for fundamental change in the disability program said "All parts of the disability policy and administrative structure are under increasing stress....The disability administrative and policy infrastructure is weak, and resources are inadequate to the task." Some of the concerns we have previously expressed, especially with respect to resources and improved systems support, are beginning to be addressed, but much remains to be done in those and other areas. This report raises an issue that we have mentioned in previous reports but have not previously addressed fully, and that is the question of whether the very definition that is at the heart of the existing disability programs is consistent with our society's basic beliefs about disability and work. Moving away from that definition would very clearly involve significant programmatic changes. Given the importance and significance of these programs any such changes would have to be carefully developed and carefully implemented. A first step in addressing this issue would be a consideration of the competing choices policymakers would face including the issue of the extent to which the desired results could be achieved by changes within the existing programs.

***What are the major areas of concern with the existing program and its relationship to encouraging self-sufficiency?*** General issues are whether the definition of disability is really administrable or whether it will always be administered in a way that provides benefits to a substantial number of impaired people who could work and/or disqualifies a substantial number of impaired people who have no realistic prospect of working. From a work-incentive perspective, the existing definition is widely viewed as inimical to work motivation in that applicants, required to prove inability to work, are likely to be reluctant to engage in activities that would undermine their claim for benefits. To the extent that the application of the definition is difficult and somewhat arbitrary, there is a question as to whether the program's benefit levels and its integration with Medicare and (for SSI) Medicaid make eligibility an attractive alternative to available work, especially for low-skilled workers. The difficulty of administering the definition also raises the question of whether the program is inherently susceptible to varying award rates based on subtle messages suggesting tighter or looser adjudication and to inconsistencies of administration—geographically, at different levels of the process, and even from one adjudicator to the next.

## Work Disincentives for Social Security Beneficiaries

**Definition of disability** – The definition of disability requires a person to demonstrate the "inability to engage in any substantial gainful activity." Since the system rewards people that demonstrate they cannot work, applicants may be reluctant to engage in any activity that would undermine their claim for disability benefits. Work activity after becoming eligible also may result in a loss of benefits. The trial work period and extended period of eligibility mitigate this disincentive, but beneficiaries know that, at some point, attempting to work may cause benefit loss.

**Impact on attitudes and motivation** – Even apart from the financial disincentive, the desire to work is an important factor in employment of persons with impairments. To the extent the current program requires applicants to prove that they cannot work, it may undermine their motivation and desire for employment.

**Availability of health benefits** – Beneficiaries receive health benefits (Medicaid for SSI; Medicare after a waiting period for DI) in addition to their monthly payment. For many beneficiaries the health benefits may be even more important than cash benefits. Getting a job that exceeds their yearly benefit amount may not be enough if the job does not also provide adequate and dependable health insurance coverage.

**Delayed and incomplete availability of health benefits** – For certain categories of disabilities, the lack of availability of health benefits may be a significant factor in preventing an individual from seeking or engaging in employment. Health benefits become available only after the often prolonged process of establishing eligibility under SSI or DI (and, for DI, only after a 2-year waiting period). Also, in some cases, the benefits available then may not include the drugs or other services needed to permit employment.

**Delayed rehabilitation services** – The Social Security Act provisions designed to encourage and assist in rehabilitation only become available after the often prolonged period of establishing eligibility. Vocational rehabilitation experts tend to believe that rehabilitation has the best chance of success if offered early while the impaired individual still has a strong attachment to working and may also have a continuing relationship with an employer.

**Complexity of work incentives** – The number and complexity of the work incentives in the Social Security programs may be confusing to beneficiaries so that they remain suspicious that their attempt to do any work will result in termination of their benefits even in situations where that would not be the case.

**All-or-nothing choice** – The Social Security definition of disability presents a largely all-or-nothing approach to eligibility. Because of the restrictions imposed by the disability or by vocational deficits, available employment opportunities may offer income that is only marginally higher (or even lower) than what the individual gains from benefit eligibility. This situation may have been accentuated in recent years by increasing participation of other family members in the work force and by increasing benefit replacement rates for lower income workers.

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***What could be done within the confines of the existing program with its definition of disability as inability to work?*** More attention could be paid to policy development and better systems of quality management to improve the level of confidence that the current definition of disability is being appropriately applied. Work incentives built into the program might be used to offset to some extent the definitional contradiction. The Board has heard from several commenters that there is such a maze of different incentives that the very attempt to understand them becomes intimidating and a source of beneficiary fear about inadvertently doing something that causes benefit loss or overpayment liability. On the other hand, consideration could be given either to simplification or providing better availability of counseling. Recent efforts to improve counseling seem to have had some success, but the level of confusion and the degree of success of counseling efforts are both essentially anecdotal. It would be useful to have a carefully designed survey to help gauge the extent of misunderstanding and to identify the areas which might be most promising for better public information or simplification. The Ticket to Work program, now in its early implementation stages, is itself an attempt to encourage beneficiary employment. Thus far, success has been limited and a number of problems have been identified, but this does represent an approach to encouraging work activity and there may be ways to improve it. There are also demonstration projects that have been done in recent years and others that are getting underway addressing possible ways to give the existing program a more effective work orientation such as:

- assigning caseworkers to encourage, monitor, and assist claimants to stay in the labor force,
- early intervention to provide work-oriented services prior to actually applying for benefits, and
- alternative benefit rules such as a gradual phase out of benefits in place of a sharp cutoff.

***Is continuing the definition of disability as "inability to work" important to maintaining support for the program?*** The adoption of the Social Security disability program was not uncontroversial. Although there was discussion of such a program as far back as the 1930s, it was not passed by the House of Representatives until 1950 and did not win Senate support even then. It was enacted into law in the 1956 Social Security

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Amendments by virtue of a highly contested Senate amendment opposed by the Committee of jurisdiction. That amendment, adding a disability program to the bill, was approved by only a 2-vote margin. A major concern expressed in the debate was whether it would be possible to administer the programs in a way that limited benefits to those who were really prevented from working by virtue of their disability.

The language of the original definition responded very directly to that concern by specifying that benefits would be available only to those who, by reason of a disability, were unable to engage in any substantial gainful activity. In 1967, Congress attempted to make that policy even clearer by specifically stating that an individual could qualify only if there was no work that he or she could do that existed in the national economy even if it did not exist in the local economy or even if there was no prospect that the individual would actually be hired for that work.

***What is the realistic potential of the Social Security disability population for work?*** Is nearly everyone who is not comatose a potential candidate for work? Or is there only a very marginal group of beneficiaries who could realistically be expected to work even with appropriate supports and incentives? Both views seem to be fairly widely held. There is no doubt that all, or at least nearly all, Social Security disability beneficiaries have serious impairments. Even if one accepts the premise that, given sufficient motivation, employment opportunities, and appropriate support structures, many highly impaired individuals could work, many would argue that it is unlikely that very substantial numbers of Social Security disability beneficiaries would be good candidates for return to work. On the other hand, despite improvements in medical care and advances in rehabilitation, the incidence of Social Security disability eligibility has continued to grow. Some would argue that this is evidence that, despite its seemingly absolute definition – or perhaps even because of the perverse incentives that definition creates – individuals who are impaired but who have realistic employment potential are winding up on the benefit rolls and will continue to do so in the absence of significant structural changes.

***How effective are the current eligibility processes at drawing the line between the able and the disabled and is significant improvement, if needed, possible?*** As discussed earlier, there have been many important developments over the history of the disability program. Some of these changes seem likely to have weakened the ability of the existing processes to draw an appropriate line between those who are and those who are not able to work. The approach of allowing claims because of medical conditions considered sufficiently severe to prevent an "average" person from working may have been a significantly better decision tool in the early days of the program. At that time eligibility was limited to those nearing retirement age and minimal medical and rehabilitation techniques existed to assist those with significant impairments to work despite those impairments. The huge caseload increases of the past decades have also forced the Social Security Administration to move to a less intense examination of eligibility. Prior to the 1970s, every claim was subjected to two levels of professional review and decision makers were required to explain in writing the reasoning behind their decision. Now reviews are much more limited and rationales are brief or non-existent.

As the Board has pointed out in previous reports, we do believe there can be improvements. SSA needs to place increased emphasis on policy development and to implement a much stronger quality management system. Many of the policy standards currently used to determine eligibility are badly outdated and do not reflect

the current state of medical knowledge or the realities of today's workplace. In developing these standards, the agency needs to be sure that it has sufficient and highly capable policy staff and that they develop policies which realistically reflect both the impact of impairments on capacity to work and the need to enable adjudicators to apply policies more objectively.

In a system that has too long operated under the pressures of inadequate resources, it is difficult to sort out the problems that are attributable to administrative limitations from those that are attributable to inadequate policy development. And it may be that an outdated definition of disability is itself a major barrier to the kind of policy development that would support more objective and consistent decision making. Moreover, even though existing processes for determining eligibility can and should be substantially strengthened, the fundamental questions remain about whether it is appropriate or feasible to base eligibility on an attempt to equate impairments with inability to work.

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The concept of disability has both medical and functional components. The world of work has a wide variety of tasks that require a range of physical and intellectual functional capacities. The qualifications for different occupations can vary from little training and experience to advanced degrees and extensive experience.

Therefore, a given medical condition may or may not be "disabling" depending on the specific functional capacities and how they interact with the educational and vocational profile of the affected individual. A medical condition that precludes highly exertional physical activity may be "totally" disabling for an older individual with little education and an unskilled work history and not disabling for another individual who is highly skilled and educated.

In a theoretical sense, accurately determining eligibility for Social Security disability benefits would require that each individual be evaluated to determine how their medical condition limits their functional capacity and then how these limitations interact with each individual's age, work history, and education. The end result would be a decision whether the medical impact on the individual's functional capacities makes work feasible. There would still be difficult judgments about medical and functional determinations, but overall the process should attain the right results in a reasonably consistent manner.

However, the huge volume of claims processed in the Social Security disability program makes it impossible to make highly individualized medical and vocational determinations. Consequently, the program from its very beginnings used screening devices aimed, in large measure, at enabling

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the program administrators to handle massive caseloads. Very early in the program's history a decision was made to create a list of specific medical conditions that, if present, would presume that a claimant is disabled. In the early days of the program this seemed to be a very adequate tool. Over 90 percent of the awards were based on these lists (or "listings"). This only left a relatively small portion of disability decisions that had to be given a more individualized assessment that looked specifically at how the medical condition limited that individual's functional capacities. However, with changes in the program, in the workplace, and medical treatment, the ability to make decisions solely based on the medical listings declined. Each year an increasing number of decisions had to be made on an individualized basis that took into account the claimant's functional limitations and vocational profile. As the number of these more complex determinations increased, the agency attempted to cope with the administrative burden by developing a set of vocational standards that operated roughly in the same manner as the listings. How the medical condition affected the individual was translated into residual capacities to do such tasks as lifting, sitting, bending, and so on. These residual capacities were then compared with a set of vocational standards (called vocational grids) that took into account the claimant's age, education, and work history (for example, skilled or unskilled) to determine the disability decision.

In prior reports, the Board has expressed concern about the policy capacity of the agency to keep both the medical standards and the vocational standards up to date. Beyond this issue is the fundamental question of whether this approach is the right approach. The fundamental purpose of the listings was to simplify the administrative task by setting medical-only guidelines that would minimize the need for the more complicated task of comparing each individual's remaining functional capacities against the universe of real jobs for which he or she had the vocational background. That worked well in a world where it was possible to find medical standards that would cover the vast majority of applicants but would not result in allowances for a substantial number of individuals who, in fact, were able to work. That seemed to have been possible in the 1950s. It is not clear that it is possible today.

In recent years there has been some discussion of moving towards a system that would make the assessment of functional limitations the primary way to evaluate disability claims. During the 1990s, the Social Security Administration proposed, but later abandoned, the idea of moving away from the listings towards a more functionally based "index" of conditions for determining eligibility. Although the complete overhaul was not implemented, changes in the listings in recent years have tended to move in the same direction, incorporating measurements of functional capacity rather that relying strictly on medical findings. Some experts have criticized these changes. They point out that this is undermining a major purpose of the listings, which was to make the program's administration easier and more consistent by creating a very objective eligibility screen based solely on medical findings. However, as indicated above it is not clear that the listings are capable of effective screening.

In looking at the question of whether the definition of disability remains appropriate, one question that needs further examination is whether the existing definition is itself the barrier to developing a more functionally-based set of eligibility standards that might, under a differently designed and defined program, reduce rather than increase the complexity of administration. Because the current definition is a one-shot, all-or-nothing proposition, the standards that are used as screening devices are somewhat broad in order to cope with the massive number of claimants. While this clearly needs more research and consideration one can hypothesize the possibility of a

bifurcated program. This program could have more narrowly drawn medical standards that identify individuals with the most serious disabilities for long-term income support. The remaining individuals would have functionally based standards to move them into an employment-oriented program.

***How does a disability program fit into the overall and greatly changing picture of income security?*** The Social Security Disability programs are large and expensive. They provide an important level of income security for both their current beneficiaries and for all who face the risk of unexpectedly suffering a severe medical impairment. But the disability programs do not exist in isolation. Rather they are but one element in an overall mix of institutions and programs, which comprise our national system of income and health security. The overall Social Security tax supports not just the retirement program, but also the disability program. In the past, unexpected growth in the disability program has necessitated changing the allocation of that tax between the two programs. The most recent report of the Social Security trustees indicates that such action will likely be needed again since the exhaustion date for the disability fund is estimated at 2028, 14 years earlier than the more commonly cited date for the combined funds.

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In considering changes to our disability programs, it is important that policymakers attempt to consider the interactions between those programs and the context they operate in. Some recent studies, for example, have reached a conclusion that the rapid growth of the disability rolls in the 1990s reflects an interaction between loosening standards of disability and a shrinking availability of jobs for low-skill workers. Similarly, increasing health costs and their impact on employer sponsorship of health insurance can affect the incentives for impaired workers to seek either continued employment or disability benefits.

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Policy changes to deal with the financial problems of the retirement program can also have important interactions with disability policy. In looking at the financial status of the retirement program, one area receiving attention is the possibility that, with increasing life spans, it may be appropriate to incorporate stronger incentives for later retirement. Recent research indicates that the long-standing trend towards earlier retirements has recently leveled off and may even have moderately reversed course. Sustaining that change would have a positive impact on the financial status of Social Security and on the economy generally. To the

extent that changes are considered in the retirement program to reflect and encourage this trend, the impact on older impaired workers will also need to be considered. For example, some proposals have been advanced for making further upward modifications in the age of eligibility for retirement benefits. The consideration of such proposals would need to take into account the fact that, while the population in general is enjoying more and healthier years, there still is a greater tendency for older rather than younger workers to have impairments and the ability of older workers to adapt to new forms of employment tends to be more restricted.

At the same time, however, broad assumptions that age in and of itself is a good predictor of inability to work are being challenged. Policies aimed at encouraging employers to make employment opportunities more available and attractive for older workers could also appropriately include both older and younger workers with impairments.

The Social Security Advisory Board's legislative mandate includes making recommendations as to how the Social Security programs should operate in conjunction with other public and private systems to "most effectively assure economic security." The Board is currently undertaking a broader study to examine those issues, but it recognizes that not only does the question of design, definition, and administration of the disability programs need to be addressed in its own right but it also needs to be addressed in that broader context.

***How can the impact of disability programs on motivation to work be improved?*** One of the most frequently heard criticisms of the existing system is that it seems designed to create precisely the wrong mindset. The adjudication process averages three months and often takes very much longer. During this period, the program gives applicants a clear message that help will be available if, and only if, they prove to the agency that they cannot work. If, in fact, the overwhelming majority of those who wind up on the rolls are those who really have no realistic prospects of returning to work, the criticism may still be important, but if a substantial proportion of those on the rolls could work, the criticism may be crucial. Clearly, impaired individuals will find it harder to work than non-impaired individuals. Motivation may be (and is frequently cited as) the single most important determinant in whether an impaired person continues in or resumes employment. A system that primarily rewards those who can prove they cannot work undermines that motivation. The way the current program deals with health benefits aggravates this problem. For many impaired individuals the availability of health benefits may be the most important consideration. But the road to health care goes through disability benefit eligibility that, in turn, requires proving inability to work. For some individuals, this may mean that getting the medical benefits that might make work possible is only attainable by establishing that work is not possible.

***Does the disability program, as currently defined, fail to meet the legitimate needs of a significant portion of the impaired population?*** The current system devotes a substantial amount of national resources to those who "make the cut" in the Social Security definition of ability/

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inability to work. While research about the characteristics of those who are denied benefits is limited, the studies which have been done show that many of them do not return to work and suffer substantial reductions of income. The Board is aware that a new study based on agency administrative data is nearing completion, but more detailed research into both the work history and other characteristics of those who are denied benefits is needed. Such research could help in understanding the implications of the facially inconsistent levels of allowances that exist regionally and at different adjudication levels. It also could help to determine the extent to which the existing definition of disability, as it is applied, is appropriate and the extent to which it is an artificial construct that does not really separate the able from the unable, but rather draws a somewhat arbitrary line that has a questionable relationship to employability. The results of such research would be relevant to the question of whether resources (either new or some share of the existing Social Security resources) should be directed to serving more of the impaired population by modifying the definition of disability (or its application). For example, disability definitions along the lines of workers' compensation and veterans' compensation view disability not as an all-or-nothing condition but as a continuum in which income support can be provided in a manner that reflects the degree of impairment. Moreover, the current definition's all-or-nothing approach to income support spills over into focusing rehabilitation efforts in the same manner. One common observation of researchers is that the impaired population have a tenuous attachment to the workforce and their employability declines rapidly once they stop working. It is plausible that the existing program not only does not help those impaired individuals who are ultimately found ineligible but actually damages their capacity for self-help by putting them through a protracted adjudication process during which they dare not attempt work and are encouraged to prove themselves incapable of work.

***Should work-oriented services be targeted on beneficiaries or on applicants?*** One goal of vocational rehabilitation provisions in the disability programs (which has been carried over to Ticket to Work) is to assure that services pay for themselves. To do this, services are necessarily limited to those who have completed the process and established their eligibility for benefits so that savings can be measured by having those claimants subsequently lose eligibility by virtue of returning to work. The advantages of this approach are that it creates a self-policing system that provides strong incentives for service providers to concentrate on the kinds of services that are relevant to restoring employability. A disadvantage, however, is that this postpones the provision of services until the end of the disability adjudication process, by which time they may be too late to be effective. It also might disadvantage highly motivated but more severely impaired individuals to the extent that providers would concentrate on more obviously remediable impairments.

***What should be the role of the Social Security Administration if there is a major restructuring?*** The Social Security Administration is a large entity with enormous responsibilities for maintaining earnings histories of all workers, adjudicating claims for retirement, survivorship, and disability benefits, and paying monthly benefits to some 50 million beneficiaries. The agency takes tens of millions of actions each year to maintain the accuracy of the benefit rolls. Even though the disability caseload represents only one-fifth of the beneficiary population, the disability programs are the most complex and expensive of the administrative tasks faced by the agency.

In some respects, it would seem to make sense to give SSA responsibility for any revised disability program since the agency already is in existence and has a large presence throughout the country. However, SSA's mission and expertise are in the areas of

eligibility determination, benefit payment, and maintenance of the benefit rolls and earnings records. Operating a more services-oriented program which aims to foster the employment potential of applicants would involve quite different skills and objectives that might not fit well with the existing structure and personnel. The experience with implementing the SSI program may be somewhat instructive. Even though that program seemed to represent a good match with the agency's basic benefit payment responsibilities, it presented SSA with new challenges of operating a program based on difficult-to-determine factors of income, resources, and living arrangements. Implementing that program seriously taxed the agency's capacity to provide a high level of service to both its new and older beneficiaries. Taking on an entirely different type of responsibility in the form of an employment-oriented program might be even more problematic. In any new approach that might be adopted, there would, of course, be a need for close coordination between SSA's traditional benefit-paying role and the new employment-related aspects. However, careful consideration would need to be given to the appropriate administrative structure to avoid disrupting the ability of SSA to carry out its other responsibilities.

***Operating a more services-oriented program which aims to foster the employment potential of applicants would involve quite different skills and objectives that might not fit well with the existing structure and personnel.***

# IV. Issues Related to Alternative Program Designs

For those disabled individuals who could work, the current program's definition of disability is an impediment to their remaining in the work force. Changing the definition, however, would not amount to tweaking the existing program. It would require a major redesign of all or part of the program. It would almost certainly have substantial implications for program costs, caseloads, and administrative resources. To the extent it involved changes in eligibility or benefit levels, a long transition would be needed to assure that current beneficiaries are not adversely affected.

Ultimately, policy makers would need to decide whether the monetary and social gains from such a major shift of direction are worth the monetary and social consequences that might result.

The existing Social Security program attempts to limit eligibility for benefits to those who are so disabled that they are unable to do any substantial work and then provides various incentives and services aimed at encouraging work on the part of those who have proven themselves unable to work. If our society should decide that it no longer thinks it appropriate to continue this approach that starts by defining disability as inability to work, there are several basic questions that would need to be answered about any alternative program, such as:

- What would be the appropriate definition (or definitions) of disability?
- Would it increase or decrease the extent of eligibility and the cost of the program?
- Would benefit levels differ from the existing program and in what ways?
- Would it continue to be administered by the Social Security Administration and, if not, by what agency or agencies?
- Would it emphasize services or just provide benefits under a different set of rules designed to rely on stronger economic incentives for working?

These are difficult questions and they are, in many respects, interrelated. Given the projected large increases in future costs of entitlement programs under existing law, it may be difficult to classify as realistic any proposal which would have significant additional costs. However, since the existing definition of disability is stated as "inability to work," a change in definition might be seen as loosening that definition in a way that could increase the potentially eligible population. While proponents of such a program might argue that any increased potential eligibility would be offset by greater workforce

***Changing the definition, however, would not amount to tweaking the existing program. It would require a major redesign of all or part of the program.***

participation, it is not clear that cost-estimators would find evidence to support that argument. If increased costs are to be offset in other ways, one possibility would be to modify the existing benefit structure as it applies to new entrants into the program in such a way as to avoid increased costs. To the extent that this might mean that benefit levels would be lower than existing-law benefits for those who would have qualified under current law, such a change would likely encounter significant opposition. A program design involving intensive services is likely to be expensive and subject to considerable doubt as to the effectiveness of the services. On the other hand, the population involved is a particularly vulnerable one that might need individualized assistance.

If Congress wanted to adopt a different definition of disability, many different structures and combinations of structures are possible. Some of the possible elements that might be considered include:

- Paying benefits based on an essentially medical definition of what constitutes a "severe"[2] disability, without requiring a finding as to the impact of the disability on each individual's ability to work.

- Reducing benefits gradually as earnings rise rather than cutting them off at a particular dollar level of "substantial gainful activity."

- Divorcing eligibility for health benefits from eligibility for cash benefit programs, or perhaps, for certain categories of the disabled, providing the health care necessary for employment rather than cash benefits.

- Dividing the Social Security program into two programs. A "permanent" program roughly equivalent to the existing program would begin only after a longer waiting period (perhaps two or three years) or might be available immediately only to those with the most severe disabilities. A new temporary program would be available during that waiting period. The temporary program might differ from the permanent program by such things as having easier eligibility rules, different benefit levels, and stronger and perhaps more individualized medical and other services needed to support workforce participation. It might be available from the earliest point of disablement (or in the case of children during the transition to adulthood). A temporary program might be administered by a different agency from SSA with SSA retaining responsibility for the "permanent" program. Many variants of this approach are possible depending on program objectives and costs.

- Changing the current all-or-nothing concept of disability eligibility to a program providing percentages of disability based (at least for less than 100 percent levels) on very specific medically determinable criteria.

- Changing the disqualifying event from "becoming able to work" to something roughly along the unemployment compensation lines of failure to seek or accept work.

[2] This would not necessarily be the same as the concept of "severe disability" in the current program.

## *DEFINITIONS OF DISABILITY*

The Social Security Act and the Americans with Disabilities Act (ADA) take substantially different approaches regarding what is meant by "disability." The Social Security Act has a very strict definition that is designed to identify people who are so disabled that they are unable to work. The ADA has a broader definition designed to prevent discrimination against disabled people who wish to work.

**Social Security definition:** The Social Security Act considers people disabled only if they have an "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months." This disability has to be so severe as to prevent them from doing any "substantial gainful work which exists in the national economy," whether a specific job is available or not. The disability must result from a physical or psychological abnormality that is "demonstrable by medically acceptable clinical and laboratory diagnostic techniques."

**ADA definition:** The ADA prohibits job discrimination against an individual because of a disability who could "with or without reasonable accommodation" perform the essential functions of the job. A disabled person in the ADA means a person with a physical or mental condition that "substantially limits" a life activity, who has a record of such a condition, or who is "regarded as having" such a condition.

Many other definitions of disability exist in public and private programs. A recent publication of the Interagency Committee on Disability Research identifies 67 different statutory provisions defining disability for various federal programs. Many of these are identical or overlap in various ways, but there clearly are a substantial number of different definitions.

# V. Conclusion

The Social Security disability programs had their origins in the 1950s—a world vastly different from today's world in several important respects including the nature of available work, the educational levels of the work force, medical capacity to treat disabling conditions, and the nature and availability of rehabilitative technology. Over the course of the past half-century, there have been a number of changes in the disability programs. But the core design of the program, rooted in a definition of disability as inability to do substantial work, has remained unchanged.

It is clear that the Social Security disability programs have assumed an important role in the Nation's system of economic security. Each year hundreds of thousands of insured workers are found to be eligible for Disability Insurance benefits and today 5.5 million such workers and their families receive monthly payments. Another 3.5 million low-income disabled individuals receive assistance from the Supplemental Security Income program.

Yet, questions are increasingly raised as to whether these programs truly reflect our society's attitudes toward disability. A dozen years ago, Congress passed the Americans with Disabilities Act announcing "the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals." The definition of disability in the Social Security Act often appears to undermine those goals by providing incentives for impaired individuals to prove to the agency and, presumably to themselves, that they are incapable of any substantial work.

On the other hand, changing the definition of disability in the Social Security programs would clearly represent a very major change in one of society's fundamental instruments of economic security. This report has suggested some of the questions that would need to be answered, some of the policy issues that would need to be explored, and some of the options that might be available if a basic change of definition were to be pursued.

***The Social Security disability programs had their origins in the 1950s—a world vastly different from today's world in several important respects including the nature of available work, the educational levels of the work force, medical capacity to treat disabling conditions, and the nature and availability of rehabilitative technology.***

There is always an inertia that attaches itself to the existing ways of doing business. That inertia is all the stronger when change affects an institution like Social Security disability that provides vital income support to a large and vulnerable population. But the Board believes that this is an issue that needs attention. The Board finds widespread dissatisfaction with the existing system. It may be that, in the end, the existing definition will be retained, and ways will be found to administer it in a manner more consistent with society's current approach to disability policy. Or it may be that only a definitional change will serve to meet the needs of today's impaired population in a way that society can approve. In any case, the problems and inconsistencies of the existing system are significant and demand action. The time has come to address these issues intensively.

We hope with this report to focus more attention on these issues. We intend to follow up with a series of consultations through reports and/or one or more forum discussions to get the views of interested parties and experts on disability and rehabilitation. We encourage the Administration and the Congress to carefully consider how the Social Security Disability programs can better meet the high goals set by the Americans with Disabilities Act of assuring the disabled "equality of opportunity, full participation, independent living, and economic self-sufficiency."

***There is always an inertia that attaches itself to the existing ways of doing business. That inertia is all the stronger when change affects an institution like Social Security disability that provides vital income support to a large and vulnerable population. But the Board believes that this is an issue that needs attention. The Board finds widespread dissatisfaction with the existing system.***

## APPENDIX A

### Approaches of European Countries

European disability systems are similar to that in the United States in several ways. Most long-term disability benefit systems for non-work-related disabilities consist of a social insurance program, similar to the U.S. Disability Insurance program, and a separate program without prior employment requirements, similar to the SSI program. Work injury plans, similar to workers' compensation in the U.S., provide coverage against loss of wages due to work-related injuries or illness.

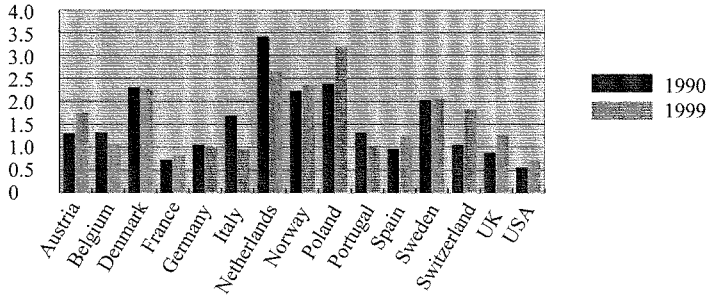
There are also some major differences. The provision of universal health care coverage removes one of the incentives that disabled people in the U.S. have to claim long-term public disability benefits. In addition, most European countries have sick-pay plans that provide coverage against the loss of wages due to temporary illness. The period of employer responsibility for sick-pay benefits varies from country to country, but these plans maintain the employer-employee relationship.

Sick-pay systems are an important element in European return-to-work efforts. In some countries, such as Sweden and the Netherlands, employers are required to develop plans for the employees' return to work. The International Labor Organization reports, "In most systems, the critical work resumption threshold has passed once the disabled worker exhausts the term of sickness or short-term disability benefit, or otherwise meets the criteria for a long-term disability benefit."

There are also differences among European programs. Among other factors, programs differ in the generosity of their benefits and their requirements to qualify for benefits. As a result, expenditures on disability programs vary widely. As Figure 1 shows, the Netherlands and Poland have had very high expenditures as a percentage of GDP. The Netherlands began tightening program eligibility in 1993, and its expenditures have fallen. Poland implemented reforms in 1997 that may have a similar effect.

**Figure 1**

**Disability Program Expenditures as Percentage of GDP, 1990 - 1999**



There are also major differences in social institutions that affect the disability system. On the continent, there is a tradition of "social partnership" between labor and management that is reflected in the institutional structures in which the labor market functions. For example, in France, Germany, Sweden, and the Netherlands, laws control how workers are hired and how they are dismissed. English-speaking countries, on the other hand, place more emphasis on individual claims and civil rights. As a result, continental countries impose obligations on employers to behave in certain ways toward defined groups, for instance through quota systems, while English-speaking countries are more likely to use disability discrimination laws that provide legal recourse to individuals.

## EUROPEAN POLICIES AFFECTING RETURN TO WORK

**Wage subsidies and partial benefits**

While English-speaking countries tend to have all-or-nothing benefit systems, continental European systems tend to provide partial, as well as full, benefits, depending on the remaining capacity for work. These systems permit beneficiaries to combine earnings with partial benefits. In Sweden, for example, benefits may be paid at the 25 percent, 50 percent, 75 percent, or 100 percent level, depending on severity.

European countries also use wage subsidies, recruitment grants, and relief from national insurance contributions to create jobs for disabled people and other targeted groups, such as the long-term unemployed. In France, for example, disabled workers with reduced productivity can have their wages supplemented up to the minimum wage level. And in the Netherlands, disabled workers who accept a job with lower earnings than that on which their disability benefit was based can get a supplementary benefit.

Some subsidies support a trial return to work. In Sweden, beneficiaries can retain sickness benefits while testing their ability to do their previous job or another job to which they are better suited. Germany provides for "step-wise" rehabilitation by providing sickness benefits to supplement wages for up to six months while employees gradually increase their working hours.

**Quotas**

Quota systems provide incentives for employing disabled people and provide funds for services for the disabled. France, for example, uses a quota-levy system. Firms of a specified size are expected to employ a target percentage of disabled workers. If they do not, they are required to pay a levy to a fund that is used to support the costs to employers of employing disabled workers and to promote the employment of disabled workers.

**Job protection**

Germany, for example, prevents the dismissal of registered disabled workers without the approval of an agency of the state. The Netherlands prohibits the dismissal of disabled workers for two years, and then only with the approval of the authorities.

**Public provision of rehabilitation services**

Germany and Sweden have established a strong link between benefit payments and rehabilitation. In Germany, the principle of "rehabilitation before pension" leads to the public pension funds' considering first medical and then vocational rehabilitation, before the payment of a pension. The Swedish system works with employers to help workers regain lost ability to work.

Sweden, France, and Germany provide funding for such items as training, adaptations, wage subsidies, and services needed to return disabled people to work. The range of in-kind benefits in Germany includes modifications to the home and to transport.

**Private insurance**

While employer-purchased private disability insurance is more common in the United States and Canada, the private insurance market has been growing in the United Kingdom and in the Netherlands. Private insurers have an interest in returning beneficiaries to work in order to minimize their payments.

## RECOGNIZED PROBLEMS WITH RETURN-TO-WORK POLICIES

A recent report of the International Labor Organization (ILO) noted that return-to-work policies are "often fragmented, not coordinated and sometimes even contradictory," with little coordination across policy areas. This lack of coordination makes it difficult for agencies to maximize their effectiveness. It also makes it difficult for employers and disabled people to find their way through the maze of programs and providers. The ILO also noted that physicians play a large role as gatekeepers for both benefits and rehabilitation, although they tend to have little training in assessing work capacity and little knowledge of the workplace. In addition, it can take months to complete needed assessments, frequently delaying interventions for vocational rehabilitation until the contacts to the former employer are already broken. Beneficiaries rarely return to work once they have begun receiving long-term disability benefits, even in countries that make use of temporary or partial benefit awards.

## SOME RECENT DEVELOPMENTS IN RETURN-TO-WORK POLICIES

Several countries have made changes recently to reduce the prevalence of disability benefits and to encourage reintegration of disabled workers into the work force. Following are examples of recent changes:

**Benefits**

Germany established a new definition of disability that distinguishes between full and partial disability, based on the number of hours a claimant can work. It also requires temporary grants of benefits.

**Assessment**

The United Kingdom has tightened its assessment of claimants' eligibility for benefits, with an emphasis on collecting information on the claimant's capability rather than disability.

**Incentives**

The United Kingdom established a disabled persons' tax credit that has the effect of providing a minimum income to disabled people who work at least 16 hours a week. The Netherlands made employer premiums for disability benefits experience-based.

**Employment rights**

Germany has established statutory rights to work assistance, workplace accommodations, and part-time employment.

**Support**

The Netherlands has implemented a new supported employment program and measures for subsidized employment.

**Coordination**

Switzerland has established one-stop shops in each canton, with full responsibility for both benefit awards and rehabilitation. Sweden offers a one-stop service for employers and social insurance offices, through a contractor, at the county level. The United Kingdom merged its benefits agency and employment service to provide more integrated service. It also integrated supported and sheltered employment organizations and gave them new output-based funding provisions.

## APPENDIX B

## SSA's Previous Employment Support Demonstration Projects

Despite its longstanding commitment to providing VR services to Social Security disability beneficiaries, each year less than 1 percent of SSDI and SSI disability beneficiaries leave the rolls because they have returned to work. In an effort to improve its performance in this area, SSA – at the direction of Congress – has studied a number of approaches aimed at effective delivery of VR and employment services.

Section 505(a) of the Social Security Disability Amendments of 1980 authorized SSA to initiate vocational rehabilitation and work incentive demonstration projects. Section 12101 of the Consolidated Omnibus Budget Reconciliation Act of 1985 later extended this authority. These demonstration projects became known throughout the agency as the "505(a) demonstrations." Between 1987 and 1989, SSA received more than 600 applications for demonstration grants to explore innovative ways of providing VR and employment services to disability beneficiaries. In order to continue building on these earlier efforts, Congress extended the 505(a) demonstration authority in 1989, and again in 1994. Ultimately, SSA awarded 116 grants to a mix of public and private organizations in 37 States and the District of Columbia.

In addition to the 505(a) demonstrations, Section 1110(b) of the Social Security Act authorized demonstration projects that assist in promoting the objectives of the SSI program, including successful rehabilitation leading to work. These demonstrations became known as the "1110(b) demonstrations."

A major outgrowth of the 505(a) and 1110(b) demonstrations is Project NetWork, initiated by SSA in 1991 to test four different service delivery models that offered alternatives to SSA's traditional VR program. Project NetWork used a case management approach that provided participants with a broad range of rehabilitation services, including job placement and on-the-job support. Project NetWork was designed to fully involve disability beneficiaries in setting their own employment goals and selecting service providers that were most appropriate to their own, personal situation. In conjunction with Project Network, SSA also initiated a demonstration project called Able Beneficiaries Link to Employers, or Project ABLE, to provide expanded employment opportunities through an automated referral system for SSA beneficiaries. The Project ABLE database linked disabled, job-ready beneficiaries with federal, State, and local agencies and private sector employers that needed their skills and abilities.

The findings from these early demonstrations – including both Project NetWork and SSA's tests of the effectiveness of using private providers of VR and employment services – have indicated that disabled beneficiaries can be referred to a variety of public and private VR and employment service providers and, once referred, beneficiaries do choose to receive services that lead to job placements. Results also indicated that more beneficiaries would return to work if referral for VR and employment services occurred earlier in the process – under the present system in most States – applicants for DI and SSI disability benefits are referred for VR services only after it has been determined whether or not they are disabled. The demonstrations also indicated

that further refinement of the VR system, including the use of case managers who specialize in SSA-type clients and use of specialized VR programs designed for persons with specific impairments, would increase the availability, quality, and effectiveness of VR and employment services.

However, after further analysis of Project NetWork and Project ABLE by SSA, the General Accounting Office, and a team of private economists, SSA determined that, on the whole, these demonstration projects were not as successful as they had hoped in helping people with disabilities to develop and maintain a significant relationship with the workforce. GAO, in particular, cited a lack of statistical validity to the design of these projects and was critical of the agency for insufficient follow-up of the participants. Reviewers generally agreed that it was difficult to draw conclusions from the experiences that SSA and participants had operating under these demonstrations. Both Project NetWork and Project ABLE were terminated in the mid-1990s.

However, as a result of the things that SSA did learn from Project NetWork and Project ABLE, the agency implemented an alternate payment method for VR services in June of 1996. In addition to state VR agencies, SSA expanded its VR referral and payment program to allow providers other than the designated state VR agencies to service disability beneficiaries by entering into contracts with qualified providers who responded to SSA's Request for Proposals (RFP). An alternate provider has been defined as any public or private agency (except a participating state VR agency), institution, organization, or individual with whom SSA entered into a contract for the provision of VR services. Under this alternate payment program, SSA paid providers for the services that they provided to SSA's beneficiaries if those services resulted in the individual going to work and earning above the SGA level for more than nine consecutive months – essentially the same requirements for payment as those used to reimburse the state VR agencies. The option of serving disability beneficiaries was offered first to the state VR agencies. If, after four months from SSA's referral to the state VR agency, SSA had not been notified that the individual had been accepted for services, SSA placed that individual's name on a bulletin board that was available to alternate providers serving disability beneficiaries with similar impairments in the same geographical area. Alternate providers were not required to serve all persons whose names appear on the SSA bulletin board.

While the alternate provider program was never formally terminated, participating providers viewed these new payment rules as merely a transition toward their participation in the Ticket to Work Program that was being formulated by the agency throughout the late 1990s. With the support of disability and employment support advocates, the Ticket legislation was eventually enacted in 1999. Those providers who had participated in work support efforts under the alternate provider program did, indeed, reorganize their efforts toward becoming employment networks under the Ticket program. For all practical purposes, the new work support environment that was created by the Ticket program supplanted the alternate provider program. In addition, Section 505(a) demonstration authority was subsumed under the new Ticket act in Section 234.

## APPENDIX C

## Current and Planned Demonstration Projects

### Early Intervention Projects

SSA's early intervention projects involve screening DI and SSI applicants during the application process in an attempt to reach a quick judgment as to who is (1) likely to be eligible for benefits based on a disability, and (2) a good return-to-work candidate. The formal disability determination process is bypassed. Those who are found to meet the test will be given immediate access to benefits for one year along with Medicare eligibility without the usual 24-month waiting period. They will then be provided with rehabilitation services to see whether they can be placed in employment that would keep them from needing to go permanently on the disability rolls. SSA's plan is to run several pilot projects in three States (New Mexico, Vermont, and Wisconsin) during the next few years and then to create a larger demonstration project that will yield nationally valid data. SSA hopes to start these demonstration projects in 2004.

### Disability Navigators

The Department of Labor (DOL) has established a number of centers throughout the country for jobseekers called "Career One-Stops." These are places where individuals can search for jobs, locate public workforce services, explore alternative career paths, compare salary data for different occupations, and get resume writing tips and job interview strategies. Businesses can also use them to identify job-ready workers with the right skills. Recently, SSA and DOL announced that they plan to place Disability Program Navigators (similar to case managers) at the One Stops to work with individuals with disabilities (especially those connected with the Ticket to Work program) to link them to local employers, and help them get access to housing, transportation, health care, and assistive technologies.

### State Partnership Initiatives

In the late 1990s, SSA awarded cooperative agreements to California, New York, Illinois, North Carolina, Iowa, Ohio, Minnesota, Oklahoma, New Hampshire, Vermont, New Mexico, and Wisconsin to develop integrated service delivery systems statewide to help persons with disabilities who want to work. Each of the participating States developed its own methodology, but most of them target mentally ill SSI and/or DI beneficiaries and establish some form of benefit, work incentive, and vocational rehabilitation counseling. The agreements were awarded for 5 years, at a total cost of $25 million.

### Youth Transition Demonstration Project

The Youth Transition Demonstration Projects will design, implement, and evaluate approaches to improving the transition from school to work for youth aged 14-25 who receive SSI benefits, DI, or childhood disability benefits. Projects may also serve youth at risk of receiving such benefits, including those with a progressive condition or a prognosis for decreased functioning and those who may become eligible for benefits at age 18, when deemed parental income no longer applies. Activities of this initiative reflect two themes: 1) facilitating transition services and 2) altering SSI's benefit structure to increase incentives for youth to pursue further education.

SSA will award seven cooperative agreements at approximately $500,000 annually for up to five years.

**Sliding Scale Benefit Offset**

SSA plans to test the impact and costs of a sliding-scale benefit offset for DI beneficiaries, including a $1-for-$2 benefit offset. Disability benefits will be reduced by a certain amount for each dollar a DI beneficiary earns above a given threshold, probably the current substantial gainful activity amount ($800). Currently, beneficiaries are in danger of losing their entire DI benefit if their earned income is above SGA, even by $1. This potential complete loss of benefits and eventually of the corresponding access to Medicare benefits is thought to discourage beneficiaries from attempting to work.

## APPENDIX D

## Selected Data Related to Social Security Disability Programs

There are two separate Social Security disability programs that share a common definition of disability: Disability Insurance (DI) and Supplemental Security Income (SSI).

The Disability Insurance program provides benefits to disabled workers who have enough coverage under Social Security to meet the program's "fully insured" status requirement and who also have substantial recent work under Social Security (generally at least five years of work in the 10-year period preceding disablement). There is no minimum age requirement for disability insurance benefits, but the insured status requirement results in very few cases of entitlement prior to age 20. When disabled workers reach normal retirement age (currently 65 plus 2 months), they are converted from DI beneficiaries to Retirement Insurance beneficiaries. Benefits are also paid under the Disability Insurance program to disabled adult children of disabled worker beneficiaries and also to certain non-disabled dependents. Disabled adult children of retired and deceased workers and disabled widows and widowers also may qualify for benefits on the basis of disability that are paid from the Old-age and Survivors Insurance Trust Fund.

The Supplemental Security Income program provides an income guarantee for low-income disabled individuals without regard to whether or not they have any prior work history. Benefits are payable to children with disabilities using a special definition requiring marked and severe functional limitations. Strictly speaking, benefits are payable at any age but non-disabled individuals can qualify for SSI at age 65. Thus, applicants age 65 and over are, in almost all cases, coded as "aged." However, those who initially become eligible on the basis of disability continue to be coded as "disabled" even past age 65. As of the end of 2002, a little less than 15 percent of SSI disabled and blind recipients were age 65 or over. SSI payments are funded from the General Fund of the Treasury on an entitlement basis but through appropriations acts.

There is also significant overlap between the Social Security DI and SSI disability programs in that individuals with small DI benefit levels and low income from other sources can qualify for additional payments from SSI. Generally speaking, however, the characteristics of the two categories of beneficiaries are substantially different.

The table on page 36 shows the various categories of individuals who receive benefits as a result of their disability or that of a family member. This table excludes SSI recipients who are coded as disabled but are age 65 or over since they would almost all qualify for SSI on the basis of age even if they were not disabled.[3] The table does include about 25,000 disabled adult children who are age 65 and over and also get SSI.

[3] In a small number of cases involving alien status, eligibility for SSI can only be established if the indivdual is disabled.

**Disability Beneficiaries Under Social Security Act Programs December 2002**

| | Social Security | Also Receive SSI | Receive SSI Only | Total |
|---|---|---|---|---|
| Disabled Workers | 5,535,860 | 798,740 | | |
| Disabled Adult Children | 60,760 | 41,830 | | |
| -of disabled workers | | | | |
| -of retired workers | 193,150 | 98,060 | | |
| -of deceased workers | 494,750 | 157,920 | | |
| Disabled Widows and Widowers | 205,870 | 37,540 | 3,618,959 | |
| Other Under-Age-65 SSI recipients | | | | |
| Total Receiving Benefits Based on Own Disability | 6,490,390 | 1,134,090 | 3,618,959 | 10,109,349 |
| Non-disabled Spouses of Disabled Workers | 151,260 | 10,880 | | |
| Minor Children of Disabled Workers | 1,472,330 | 41,440 | | |
| Total Disability-Related Beneficiaries | 8,113,980 | 1,186,410 | 3,618,959 | 11,732,939 |

Figure 2 shows the number of individuals getting disability benefits over the history of the programs. The numbers are not additive, because a significant number of individuals get both SSI and Social Security disability benefits. The Social Security Administration does not have data which permits a breakout over the entire period of those getting benefits under a single program from those getting benefits concurrently from both programs.

Figure 3 shows the costs of the 2 programs in constant (2003) dollars. This chart does include payments to SSI disability recipients who are over age 65 because historic data is not available on a basis which excludes them.

Figure 2

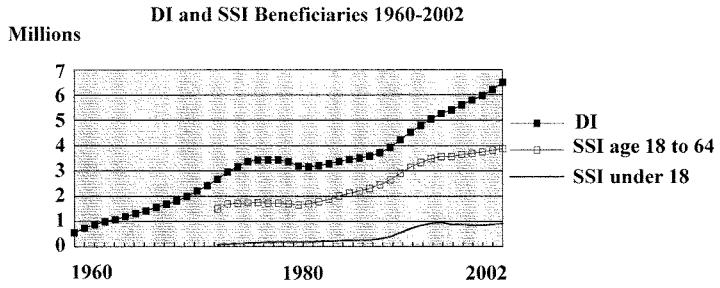
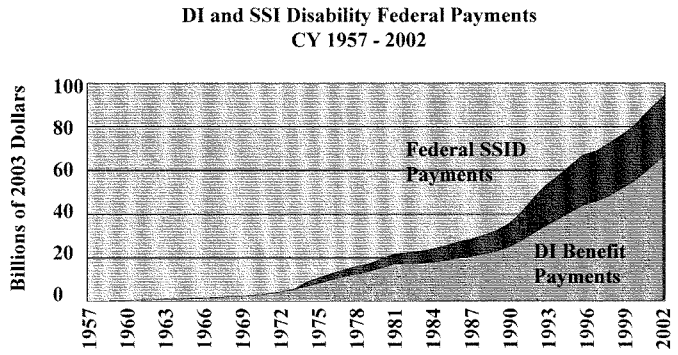



Figure 3



**Charactistics Of SSI Disabled Adults (age 18-64)**

- 48 percent of the disabled adults have 12 or more years of education
- 60 percent of the disabled adults have mental disorders as their diagnostic group.
- The most common diagnostic group for all age categories is mental disorders.

| **SEX** | **1995** | **2002** |
|---|---|---|
| Men | 45% | 43% |
| Women | 55% | 57% |

| **AVERAGE AGE** | **1995** | **2002** |
|---|---|---|
| Under 50 | 66% | 62% |
| 50 and older | 34% | 38% |

| **EDUCATION** | **1999** |
|---|---|
| 0 – 8 Years | 28% |
| 9 – 11 Years | 24% |
| 12 Years | 34% |
| 13 – 15 Years | 11% |
| 16+ Years | 3% |

| **DIAGNOSTIC GROUP** | **1995** | | |
|---|---|---|---|
| | **All** | **18-49** | **50-64** |
| Mental Disorders | 59% | 68% | 36% |
| Nervous System/Sense Organs | 9% | 9% | 6% |
| Musculoskeletal | 7% | 4% | 18% |
| Circulatory | 5% | 2% | 15% |
| All Other Disorders | 21% | 17% | 25% |
| | **2002** | | |
| | **All** | **18-21** | **50-64** |
| Mental Disorders | 57% | 66% | 38% |
| Nervous System/Sense Organs | 8% | 9% | 6% |
| Musculoskeletal | 8% | 5% | 17% |
| Circulatory | 4% | 2% | 10% |
| All Other Disorders | 23% | 19% | 30% |

**Characteristics Of Disability Insurance Beneficiaries**

- From 1996 to 2002 the percentage of disabled workers who are women increased from 35 percent to 45 percent.
- 75 percent of the disabled workers have 12 or more years of education.
- 47 percent of the disabled workers under 50 have mental disorder as their diagnostic group. This is a much higher rate of mental disorders than for older disabled workers.
- Musculoskeletal disorders is the most common diagnostic group for disabled workers over 50.
- In 1990 circulatory disorders was the most common diagnostic group (25 percent) for disabled worker over 50. This has decreased to 14 percent and is now third behind musculoskeletal and mental disorders.

| **SEX** | **1990** | **2002** |
|---|---|---|
| Men | 65% | 55% |
| Women | 35% | 45% |

| **AVERAGE AGE** | **1990** | **2002** |
|---|---|---|
| Men | 50 | 51 |
| Women | 51 | 51 |

| **AGE DISTRIBUTION** | **Under 30** | **30-34** | **35-39** | **40-44** | **45-49** | **50-54** | **55-59** | **60-64** |
|---|---|---|---|---|---|---|---|---|
| **1990** | 4% | 6% | 9% | 10% | 11% | 13% | 19% | 28% |
| **2002** | 3% | 4% | 7% | 11% | 14% | 18% | 21% | 23% |

| | **1990** | **2002** |
|---|---|---|
| Under 50 | 40% | 38% |
| 50 and older | 60% | 62% |

| **EDUCATION** | **1998** | **2001** |
|---|---|---|
| 0 – 8 Years | 13% | 11% |
| 9 – 11 Years | 18% | 14% |
| 12 Years | 36% | 39% |
| 13 – 15 Years | 23% | 27% |
| 16+ Years | 11% | 9% |

| **DIAGNOSTIC GROUP** | **1990** | **All** | **Under 50** | **50 and Over** |
|---|---|---|---|---|
| Mental Disorders | | 29% | 44% | 18% |
| Musculoskeletal | | 19% | 13% | 23% |
| Circulatory | | 17% | 6% | 25% |
| Nervous System/Sense Organ | | 11% | 13% | 9% |
| All Other Disorders | | 24% | 24% | 25% |

| | **2002** | **All** | **Under 50** | **50 and Over** |
|---|---|---|---|---|
| Mental Disorders | | 33% | 47% | 25% |
| Musculoskeletal | | 24% | 16% | 29% |
| Circulatory | | 10% | 4% | 14% |
| Nervous System/Sense Organ | | 10% | 11% | 9% |
| All Other Disorders | | 23% | 22% | 24% |

**Growth and Age Structure of The Disability Insurance Rolls**

In the last 25 years there has been significant growth of the Social Security disability rolls. Growth can be measured by absolute numbers, the number on the rolls relative to the number of insured (prevalence rate), and awards relative to the number insured (incidence rates). All three measures confirm the there has been very substantial growth despite factors that should have slowed or reversed this trend. For example, during the 1990s the growth continued despite the prosperous economy, improvements in medical treatment, and the tightening of the rules for evaluating drug addicts and alcoholics.

There has been a 36 percent increase in the disability prevalence rate since 1980 and an increase of 55 percent just since 1990. There are increases in all age categories except for 60-64. (All age categories show increasing rates between 1985 and 2002.)

**Disability Prevalence Rates**

(Number In Current Pay per 1,000 Insured)

| | All | 20-24 | 25-29 | 30-34 | 35-39 | 40-44 | 45-49 | 50-54 | 55-59 | 60-64 |
|---|---|---|---|---|---|---|---|---|---|---|
| 1980 | 28.5 | 1.7 | 5.0 | 9.6 | 13.9 | 19.9 | 32.5 | 52.0 | 91.2 | 154.2 |
| 1985 | 24.2 | 1.7 | 4.8 | 8.8 | 13.0 | 17.9 | 25.8 | 43.9 | 74.3 | 124.2 |
| 1990 | 25.0 | 1.9 | 5.6 | 10.6 | 15.8 | 21.3 | 29.6 | 44.9 | 76.6 | 116.9 |
| 2002 | 38.8 | 3.4 | 7.3 | 12.6 | 21.1 | 31.5 | 43.8 | 62.6 | 98.2 | 146.0 |
| % Increase / Decrease (1980-2002) | +36% | +100% | +46% | +31% | +52% | +58% | + 35% | +20% | +8% | -5% |

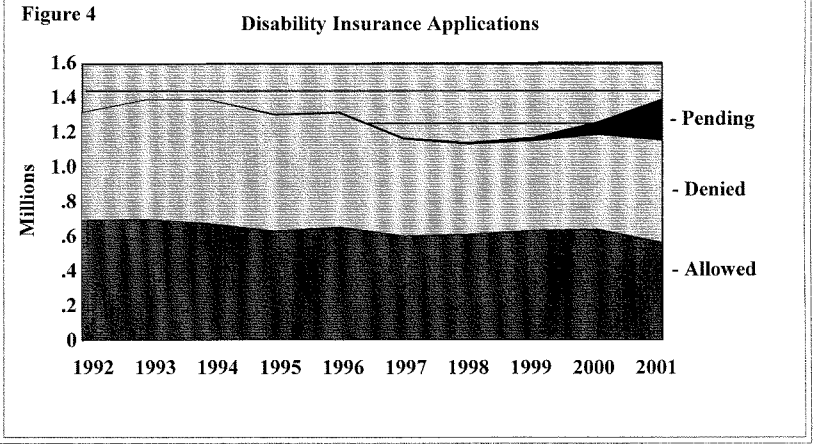
There are two important reasons for the overall increase — increased allowance rates and decreased termination rates.

**Allowance Rates**

In 1980, the allowance rate (awards as a percentage of applications) was 31.4 percent. The allowance rate remained at this level until 1984. Starting in 1984, the allowance rate steadily increased until it reached a high of 52 percent in 1998. Allowances rates have decreased since 1998, but the 2002 allowance rate of 44.6 percent is still significantly higher than 1980.

Although there are many factors that influence allowance rates, one of the most important is the increase in the number of claims allowed with mental impairments. This increase can, at least in large measure, be traced to the 1984 Amendments and the revised criteria for evaluating mental impairments that were published in the *Federal Register* in August of 1986. In 1986, 20 percent of disabled workers on the rolls had a mental illness diagnosis. In 2002, that had increased to 28 percent.

**Figure 4**




Application rates also affect the rate of growth of the rolls. As Figure 4 shows, the number of disability insurance applications rose in the early 1990s, dropped somewhat in the mid-1990s, and rose again at the end of the 1990s and since. To a considerable extent, the increasing allowance rate offset the lower application rate in the mid-1990s. (This chart is based on the year of application and includes decisions at all levels.)

**Termination Rates**

In 1980 the rate of benefit termination (the number per 1,000 beneficiaries) was significantly higher than in 2002. In 1980 the termination rate was 145 per 1,000 and in 2002 the termination rate was 85 per 1,000. The significantly higher termination rates for 1980 hold true for the three primary reasons why benefits are terminated — death, conversion, and recovery (which includes the return to substantial work activity).

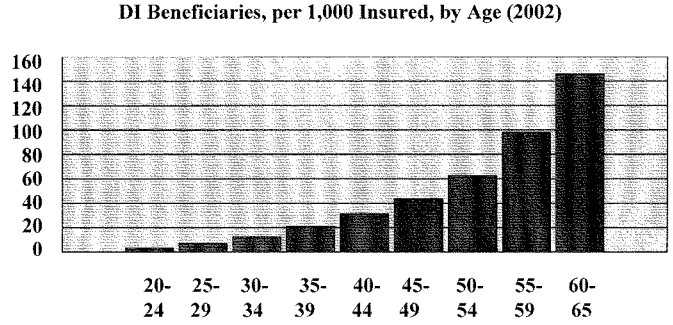
**Termination Rate**

(Number of Terminations per 1,000 on the Rolls)

| | Total | Death | Conversion | Recovery | Other |
|---|---|---|---|---|---|
| 1980 | 145 | 48 | 68 | 28 | 1 |
| 2002 | 85 | 32 | 39 | 11 | 2 |

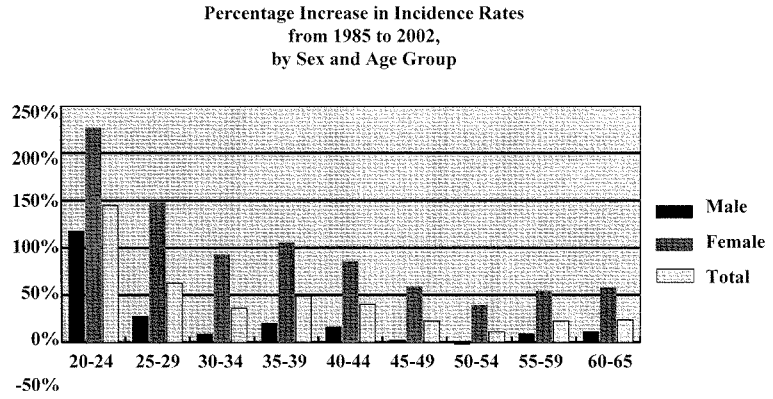
The decrease in the death and conversion termination rates is the result of a combination of factors, including improved medical treatment, the significant increase in the number of young beneficiaries, and an increase in the number of awards based on mental and other conditions with lower mortality rates. The reduction in the recovery termination rate can be traced, in part, to the 1984 Amendments. The 1984 legislation established a strict medical improvement standard that required substantial evidence of medical improvement before benefits could be terminated. Termination rates can also be adversely affected by limited agency resources, which result in fewer continuing disability reviews.

**Figure 5**




As Figure 5 shows, workers at older ages are more likely to be on the disability rolls than younger workers. This reflects both the fact that older workers are more at risk of disabling disease and disability and the fact that the disability program standards are designed to make it easier for older workers to qualify on the basis of vocational factors. However, Figure 6 shows that the incidence of disability, that is the number of workers per 1,000 insured, has been growing more rapidly for younger workers over the years since 1985. This trend has been particularly true of women. Factors which may explain the male-female differential include possible differing impact of the liberalization of disability standards since 1984 and the increasing participation of women in occupations formerly performed mainly by men. However, there do not appear to be any research results available to validate those hypotheses.

Figure 6


Percentage Increase in Incidence Rates
from 1985 to 2002,
by Sex and Age Group
250%
200%
150%
100%
50%
0%
-50%
20-24
25-29
30-34
35-39
40-44
45-49
50-54
55-59
60-65
Male
Female
Total

# *The Social Security Advisory Board*

***Hal Daub, Chairman***

Hal Daub is currently a partner with the law firm of Blackwell Sanders Peper Martin in Omaha, Nebraska and Washington, D.C. Previously, he served as Mayor of Omaha, Nebraska from 1995 to 2000, and as an attorney, principal, and international trade specialist with the accounting firm of Deloitte & Touche from 1989 to 1994. Mr. Daub was elected to the United States Congress in 1980, and reelected in 1982, 1984, and 1986. While there he served on the House Ways and Means Committee, the Public Works and Transportation Committee, and the Small Business Committee. In 1992, Mr. Daub was appointed by President George H.W. Bush to the National Advisory Council on Public Service. From 1997 to 1999, he served on the Board of Directors of the National League of Cities, and from 1999 to 2001 served on the League's Advisory Council. He was also elected to serve on the Advisory Board of the U.S. Conference of Mayors, serving a term from 1999 to 2001. From 1971 to 1980, Mr. Daub was vice president and general counsel of Standard Chemical Manufacturing Company, an Omaha-based livestock feed and supply firm. A former member of the U.S. Army, Mr. Daub is a graduate of Washington University in St. Louis, Missouri, and received his law degree from the University of Nebraska. Term of office: January 2002 to September 2006.

***Dorcas R. Hardy***

Dorcas R. Hardy is President of Dorcas R. Hardy & Associates, a government relations and public policy firm serving a diverse portfolio of clients. She was Commissioner of Social Security from 1986 to 1989. Ms. Hardy launched and hosted her own primetime, weekly television program, "Financing Your Future," on Financial News Network and UPI Broadcasting. She has also hosted "The Senior American," an NET political program for older Americans. She speaks and writes widely about domestic and international retirement financing issues and entitlement program reforms and is the author of *Social Insecurity: The Crisis in America's Social Security System,* and *How to Plan Now for Your Own Financial Survival.* Ms. Hardy consults with seniors organizations, public policy groups and businesses to promote redesign and modernization of the Social Security and Medicare systems. She received her B.A. from Connecticut College, her M.B.A. from Pepperdine University and completed the Executive Program in Health Policy and Financial Management at Harvard University. She is a Certified Senior Advisor and serves on the Board of Directors of The Options Clearing Corporation, Wright Investors Service Managed Funds, and First Coast Service Options. She is also a member of the Board of Visitors of Mary Washington College and the Board of Rehabilitative Services of the Commonwealth of Virginia. Term of office: April 2002 to September 2004.

***Martha Keys***

Martha Keys served as a U.S. Representative in the 94th and 95th Congresses. She was a member of the House Ways and Means Committee and its Subcommittees on Health and Public Assistance and Unemployment Compensation. Ms. Keys also served on the Select Committee on Welfare Reform. She served in the executive branch as Special Advisor to the Secretary of Health, Education, and Welfare and as Assistant Secretary of Education. She was a member of the 1983 National Commission (Greenspan) on Social Security Reform. Martha Keys is currently

consulting on public policy issues. She has held executive positions in the non-profit sector, lectured widely on public policy at universities, and served on the National Council on Aging and other Boards. Ms. Keys is the author of *Planning for Retirement: Everywoman's Legal Guide*. First term of office: November 1994 to September 1999. Current term of office: October 1999 to September 2005.

***David Podoff***

David Podoff is a visiting Associate Professor at the Baruch College of the City University of New York. Previously he was Minority Staff Director and Chief Economist for the Senate Committee on Finance. He also served as the Committee's Minority Chief Health and Social Security Counselor and Chief Economist. In these positions on the Committee he was involved in major legislative debates with respect to the long-term solvency of Social Security, health care reform, the constitutional amendment to balance the budget, the debt ceiling, plans to balance the budget, and the accuracy of inflation measures and other government statistics. Prior to serving with the Finance Committee he was a Senior Economist with the Joint Economic Committee and directed various research units in the Social Security Administration's Office of Research and Statistics. He has taught economics at the University of Massachusetts and the University of California in Santa Barbara. He received his Ph.D. in economics from the Massachusetts Institute of Technology and a B.B.A. from the City University of New York. Term of office: October 2000 to September 2006.

***Sylvester J. Schieber***

Sylvester Schieber is Director of the Research and Information Center at Watson Wyatt Worldwide, where he specializes in analysis of public and private retirement policy issues and the development of special surveys and data files. From 1981 to 1983, Mr. Schieber was the Director of Research at the Employee Benefit Research Institute. Earlier, he worked for the Social Security Administration as an economic analyst and as Deputy Director at the Office of Policy Analysis. Mr. Schieber is the author of numerous journal articles, policy analysis papers, and several books including: *Retirement Income Opportunities in An Aging America: Coverage and Benefit Entitlement; Social Security: Perspectives on Preserving the System*; and *The Real Deal: The History and Future of Social Security*. He served on the 1994-1996 Advisory Council on Social Security. He received his Ph.D. from the University of Notre Dame. First term of office: January 1998 to September 2003. Current term of office October 2003 to September 2009.

***Gerald M. Shea***

Gerald M. Shea is currently assistant to the president for Government Affairs at the AFL-CIO. He previously held several positions within the AFL-CIO, serving as the director of the policy office with responsibility for health care and pensions, and also in various executive staff positions. Before joining the AFL-CIO, Mr. Shea spent 21 years with the Service Employees International Union as an organizer and local union official in Massachusetts and later on the national union's staff. He was a member of the 1994-1996 Advisory Council on Social Security. Mr. Shea serves as a public representative on the Joint Commission on the Accreditation of Health Care Organizations, is a founding Board member of the Foundation for Accountability, Chair of the RxHealth Value Project, and is on the Board of the Forum for Health Care Quality and Measurement. He is a graduate of Boston College. First term of office: January 1996 to September 1997; current term of office: October 2000 to September 2004.

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United States General Accounting Office

GAO

Testimony

Before the Subcommittee on the Oversight of Government Management, the Federal Workforce and the District of Columbia, Committee on Governmental Affairs, U.S. Senate

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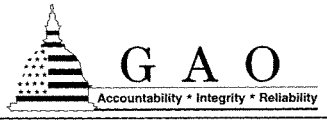
# SOCIAL SECURITY DISABILITY

# Commissioner Proposes Strategy to Improve the Claims Process, but Faces Implementation Challenges

Statement of Robert E. Robertson, Director
Education, Workforce, and Income Security Issues




GAO-04-552T

March 29, 2004

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# Highlights

Highlights of GAO-04-552T, a testimony before the Subcommittee on the Oversight of Government Management, the Federal Workforce and the District of Columbia, Committee on Governmental Affairs, U.S. Senate

## SOCIAL SECURITY DISABILITY

# Commissioner Proposes Strategy to Improve the Claims Process, But Faces Implementation Challenges

### Why GAO Did This Study

Delivering high-quality service to the public in the form of fair, timely, and consistent eligibility decisions for disability benefits is one of SSA's most pressing challenges. This testimony discusses (1) the difficulties SSA faces managing disability claims processing; (2) the outmoded concepts of SSA's disability program; and (3) the Commissioner's strategy for improving the disability process and the challenges it faces.

### What GAO Recommends

This testimony, which is based on prior GAO reports and testimonies, does not contain recommendations. However, these previously-issued products contained a number of recommendations to SSA aimed at addressing concerns about (1) implementation of the electronic disability folder and the automated case processing systems and (2) human capital challenges such as high turnover, recruiting difficulties, and gaps in key knowledge and skills among disability examiners.

### What GAO Found

SSA is at a crossroads in its efforts to improve and reorient its disability determination process. Although SSA has made some gains in the short term in improving the timeliness of its decisions, we found that:

- SSA's disability decisions continue to take a long time to process. Despite some recent progress in improving the timeliness of disability decision-making, individuals who initially are denied disability benefits and who appeal still have to wait almost an additional year before a final hearing decision is made. In addition, evidence suggests that inconsistencies continue to exist between decisions made at the initial level and those made at the hearings level.

- SSA's disability programs are grounded in an outdated concept of disability that has not kept up with medical advances and economic and social changes that have redefined the relationship between impairment and the ability to work. Furthermore, employment assistance that could allow claimants to stay in the workforce or return to work—and thus to potentially remain off the disability rolls—is not offered through DI or SSI until after a claimant has gone through a lengthy determination process and has proven his or her inability to work.

- The Commissioner has developed a strategy to improve the disability determination process, including the timeliness and consistency of decisions. While this strategy appears promising, we believe that several key challenges have the potential to hinder its progress, including risks to successfully implementing a new electronic disability folder and automated case processing systems; human capital problems, such as high turnover, recruiting difficulties, and gaps in key knowledge and skills among disability examiners; and an expected dramatic growth in workload.

www.gao.gov/cgi-bin/getrpt?GAO-04-552T.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Robert E. Robertson as (202) 512-7215 or Robertsonr@gao.gov.

Mr. Chairman and Members of the Subcommittee:

Thank you for inviting me here today to discuss one of the Social Security Administration's (SSA) most pressing challenges—delivering high-quality service to the public in the form of fair, timely, and consistent eligibility decisions for disability benefits. SSA administers two of the largest federal disability programs, Disability Insurance (DI) and Supplemental Security Income (SSI). In calendar year 2003, SSA paid over $85 billion in cash benefits to about 8.6 million beneficiaries (ages 18 to 64) with disabilities.[1] In addition, SSA has spent more than $100 million since the first half of the 1990s to address long-standing challenges concerning the timeliness, accuracy, and consistency of its disability decisions. However, continuing difficulties with claims processing—together with a program design that is out of synch with technological and medical advances that have increased the potential for some people with disabilities to work—led us in 2003 to designate modernizing federal disability programs, including DI and SSI, as a high-risk area urgently needing attention and transformation.[2]

Today, I will discuss some of the difficulties SSA is experiencing in its disability determination process and challenges the agency is facing as it attempts to address these issues. The information I am providing today is based primarily on work we have conducted over the last several years.

In summary, we believe that SSA is at a crossroads in its efforts to improve and reorient its disability determination process. SSA continues to experience lengthy processing times for disability decisions and inconsistencies in these decisions. In addition, SSA's disability programs are grounded in an outdated concept of disability that has not kept up with medical advances and economic and social changes that have redefined the relationship between impairment and the ability to work. To address these concerns, the Commissioner has developed a strategy to improve the disability determination process. While this strategy appears promising, we believe that several key challenges have the potential to hinder its progress, including risks to successfully implementing a new electronic

[1]Excludes dependents and survivors who receive DI benefits. Also excludes persons 65 and over and children under 18 who receive SSI payments. SSI beneficiaries include recipients of federal SSI, federally-administered state supplementation, or both. In calendar year 2003, 833,269 DI workers also received SSI benefits because of low income and assets. The number of beneficiaries is based on draft SSA data.

[2]U.S. General Accounting Office, *High-Risk Series: An Update*, GAO-03-119 (Washington, D.C.: Jan. 2003).

disability folder and automated case processing systems; human capital problems, such as high turnover, recruiting difficulties, and gaps in key knowledge and skills among disability examiners; and an expected dramatic growth in workload.

## Background

To be considered eligible for benefits for either SSI or DI as an adult, a person must be unable to perform any substantial gainful activity by reason of a medically determinable physical or mental impairment that is expected to result in death or that has lasted or can be expected to last for a continuous period of at least 12 months. Work activity is generally considered to be substantial and gainful if the person's earnings exceed a particular level established by statute and regulations.[3]

The process of determining eligibility for SSA disability benefits is complex, fragmented, and expensive. The current decision-making process involves an initial decision and up to three levels of administrative appeals if the claimant is dissatisfied with the decision. The claimant starts the process by filing an application either online, by phone or mail, or in person at any of SSA's 1,300 field offices.[4] If the claimant meets the non-medical eligibility criteria, the field office staff forwards the claim to one of the 54 federally-funded, but primarily state-run Disability Determination Service (DDS) offices. DDS staff—generally a team composed of disability examiners and medical consultants—obtains and reviews medical and other evidence as needed to assess whether the claimant satisfies program requirements, and makes the initial disability determination. If the claimant is not satisfied with the decision, the claimant may ask the DDS to reconsider its finding.[5] If the claimant is dissatisfied with the reconsideration, the claimant may request a hearing before one of SSA's

[3]The Commissioner of Social Security has the authority to set the substantial and gainful activities level for individuals who have disabilities other than blindness. In December 2000, SSA finalized a rule calling for the annual indexing of the nonblind level to the average wage index of all employees in the United States. The 2004 nonblind level is set at $810 a month. The level for individuals who are blind is set by statue and is also indexed to the average wage index. In 2004, the level for blind individuals is $1,350 of countable earnings.

[4]SSA permits DI, but not SSI, applicants to file for benefits online.

[5]In her September 2003 testimony before the House Committee on Ways and Means, the Commissioner said that she intended to revise the disability determination process. For example, she proposed eliminating the reconsideration and the Appeals Council stages of the current process.

federal administrative law judges in an SSA hearing office. If the claimant is still dissatisfied with the decision, the claimant may request a review by SSA's Appeals Council.[6] The complex and demanding nature of this process is reflected in the relatively high cost of administering the DI and SSI programs. Although SSI and DI program benefits account for less than 20 percent of the total benefit payments made by SSA, they consume nearly 55 percent of the annual administrative resources.

## SSA Faces Difficulties Managing Disability Claims Processing

SSA has experienced difficulty managing its complex disability determination process, and consequently faces problems in ensuring the timeliness, accuracy, and consistency of its disability decisions. Although SSA has made some gains in the short term in improving the timeliness of its decisions, the Commissioner has noted that it still has "a long way to go."[7] Over the past 5 years, SSA has slightly reduced the average time it takes to obtain a decision on an initial claim from 105 days in fiscal year 1999 to 97 days in fiscal year 2003, and significantly reduced the average time it takes the Appeals Council to consider an appeal of a hearing decision from 458 to 294 days over the same period. However, the average time it takes to receive a decision at the hearings level has increased by almost a month over the same period, from 316 days to 344 days.[8] According to SSA's strategic plan, these delays place a significant burden on applicants and their families and an enormous drain on agency resources.[9]

Lengthy processing times have contributed to a large number of pending claims at both the initial and hearings levels. While the number of initial disability claims pending has risen more than 25 percent over the last 5 years, from about 458,000 in fiscal year 1999 to about 582,000 in fiscal year 2003, the number of pending hearings has increased almost 90 percent

[6]If the claimant is not satisfied with the Appeals Council action, the claimant may appeal to a federal district court. The claimant can continue legal appeals to the U.S. Circuit Court of Appeals and ultimately to the Supreme Court of the United States.

[7]Statement of the Honorable Jo Anne B. Barnhart, Commissioner, Social Security Administration: Testimony before the Subcommittee on Social Security of the House Committee on Ways and Means, September 25, 2003.

[8]Beginning with fiscal year 2000, the basis for calculating the average elapsed time of hearings level cases was changed from those cases processed only in September of the fiscal year to those processed throughout the fiscal year.

[9]Social Security Administration, *Strategic Plan 2003-2008*.

over the same time period, from about 312,000 to over 591,000.[10] Some cases that are in the queue for a decision have been pending for a long time. For example, of the 499,000 cases pending in June 2002 at the hearings level, about 346,000 (69 percent) were over 120 days old, 167,000 (33 percent) were over 270 days old, and 88,500 (18 percent) were over 365 days old.

In addition to the timely processing of claims, SSA has also had difficulty ensuring that decisions regarding a claimant's eligibility for disability benefits are accurate and consistent across all levels of the decision-making process. For example, the Social Security Advisory Board has reported wide variances in rates of allowances and denials among DDSs, which may indicate that DDSs may be applying SSA standards and guidelines differently.[11] In fiscal year 2000, the percentage of DI applicants whose claims were allowed by a DDS ranged from a high of 65 percent in New Hampshire to a low of 31 percent in Texas, with a national average of 45 percent.[12] In addition, the high percentage of claimants awarded benefits upon appeal may indicate that adjudicators at the hearings level may be arriving at different decisions on similar cases compared to the DDSs. In fiscal year 2000, about 40 percent of the applicants whose cases were denied at the initial level appealed, and about two-thirds of those who appealed were awarded benefits.[13] Awards granted on appeal happen in part because decision-makers at the initial level use a different approach to evaluate claims and make decisions than those at the appellate level. In addition, the decision-makers at the appeals level may reach a different decision because the evidence in the case differs from that reviewed by the DDS. We are currently reviewing SSA's efforts to assess consistency of decision-making between the initial and the hearings levels.

[10]The number of pending hearings includes Medicare hearings.

[11]Social Security Advisory Board, *Charting the Future of Social Security's Disability Programs: The Need for Fundamental Change* (Washington, D.C.: January 2001).

[12]A 2002 study found that adjusting for economic, demographic, and health factors cuts the variation in allowance rates among states in half. See Strand, Alexander, "Social Security Disability Programs: Assessing the Variation in Allowance Rates," ORES Working Paper No. 98, Social Security Administration, Office of Policy.

[13]U.S. General Accounting Office, *Social Security Disability: Efforts to Improve Claims Process have Fallen Short and Further Action is Needed*, GAO-02-826T (Washington, D.C.: June 11, 2002).

Moreover, in 2003, we reported on possible racial disparities in SSA's disability decision-making at the hearings level from 1997 to 2000 between white and African-American claimants not represented by attorneys.[14] Specifically, among claimants without attorneys, African-American claimants were significantly less likely to be awarded benefits than white claimants. We also found that other factors—including the claimant's sex and income and the presence of a translator at a hearing—had a statistically significant influence on the likelihood of benefits being allowed.[15]

## SSA's Disability Programs Currently Grounded in Outmoded Concepts

In addition to difficulties with the timeliness, accuracy, and consistency of its decision-making process, SSA's disability programs face the more fundamental challenge of being mired in concepts from the past. SSA's disability programs remain grounded in an approach that equates impairment with an inability to work despite medical advances and economic and social changes that have redefined the relationship between impairment and the ability to work. Unlike some private sector disability insurers and social insurance systems in other countries, SSA does not incorporate into its initial or continuing eligibility assessment process an evaluation of what is needed for an individual to return to work.[16] In addition, employment assistance that could allow claimants to stay in the workforce or return to work—and thus potentially to remain off the disability rolls—is not offered through DI or SSI until after a claimant has gone through a lengthy determination process and has proven his or her inability to work. Because applicants are either unemployed or only marginally connected to the labor force when they apply for benefits, and remain so during the eligibility determination process, their skills, work habits, and motivation to work are likely to deteriorate during this long wait.

[14]U.S. General Accounting Office, *SSA Disability Decision Making: Additional Steps Needed to Ensure Accuracy and Fairness of Decisions at the Hearings Level*, GAO-04-14 (Washington, D.C.: Nov. 12, 2003).

[15]Due to the inherent limitations of statistical analysis, one cannot determine whether these differences by race, sex, and other factors are a result of discrimination, other forms of bias, or variations in currently unobservable claimant characteristics.

[16]U.S. General Accounting Office, *SSA Disability: Other Programs May Provide Lessons for Improving Return-to-Work Efforts*, GAO-01-153 (Washington, D.C.: Jan. 12, 2001).

## Commissioner's New Strategy for Improving the Disability Determination Process Appears Promising, but Faces Several Challenges

In SSA's most recent attempt to improve its determination process, the Commissioner, in September 2003, set forth a strategy to improve the timeliness and accuracy of disability decisions and foster return to work at all stages of the decision-making process. SSA's Commissioner has acknowledged that the time it now takes to process disability claims is unacceptable. The Commissioner has also recognized that going through such a lengthy process to receive benefits would discourage individuals from attempting to work.[17] To speed decisions for some claimants, the Commissioner plans to initiate an expedited decision for claimants with more easily identifiable disabilities, such as aggressive cancers. Under this new approach, expedited claims would be handled by special units located primarily in SSA's regional offices. Disability examiners employed by the DDSs to help decide eligibility for disability benefits would be responsible for evaluating the more complex claims. To increase decisional accuracy, among other approaches, the strategy will require DDS examiners to develop more complete documentation of their disability determinations, including explaining the basis for their decisions. The strategy also envisions replacing the current SSA quality control system with a quality review that is intended to provide greater opportunity for identifying problem areas and implementing corrective actions and related training.

The Commissioner has predicated the success of her claims process improvement strategy on enhanced automation. In 2000, SSA issued a plan to develop an electronic disability folder and automated case processing systems. According to SSA, the technological investments will result in more complete case files and the associated reduction of many hours in processing claims. SSA also projects that the new electronic process will result in significantly reduced costs related to locating, mailing, and storing paper files. SSA is accelerating the transition to its automated claims process, known as AeDib, which will link together the DDSs, SSA's field offices, and its Office of Hearings and Appeals. According to the Commissioner, the successful implementation of the automated system is essential for improving the disability process.

Beyond steps to improve the accuracy and timeliness of disability determinations, the Commissioner's strategy is also consistent with our 1996 recommendations to develop a comprehensive plan that fosters

[17]Statement of the Honorable Jo Anne B. Barnhart, Commissioner, Social Security Administration: Testimony before the Subcommittee on Social Security of the House Committee on Ways and Means, September 25, 2003.

return to work at all stages of the disability process and integrates as appropriate: 1) earlier intervention in returning workers with disabilities to the workplace, 2) identifying and providing return-to-work services tailored to individual circumstances, and 3) structuring cash and medical benefits to encourage return to work.[18] The Commissioner has proposed a series of demonstrations that would provide assistance to applicants to enhance their productive capacities, thus potentially reducing the need for long-term benefits for some. The demonstrations include early interventions to provide benefits and employment supports to some DI applicants, and temporary allowances to provide immediate, but short-term, cash and medical benefits to applicants who are highly likely to benefit from aggressive medical care. In addition, demonstrations will provide health insurance coverage to certain applicants throughout the disability determination process.

While the Commissioner's proposed approaches for improving the disability determination process appear promising, challenges, including automation, human capital, and workload growth, have the potential to hinder its success.[19]

**Automation.** We have expressed concerns about AeDib, which could affect successful implementation of the Commissioner's strategy. Our recent work noted that SSA had begun its national rollout of this system based on limited pilot testing and without ensuring that all critical problems identified in its pilot testing had been resolved.[20] Further, SSA did not plan to conduct end-to-end testing to evaluate the performance of the system's interrelated components. SSA has maintained that its pilot tests will be sufficient for evaluating the system; however, without ensuring that critical problems have been resolved and conducting end-to-end testing, SSA lacks assurance that the interrelated electronic disability system components will work together successfully.

[18]U.S. General Accounting Office, *SSA Disability: Return-to-Work Strategies from Other Systems May Improve Federal Programs*, GAO/HEHS-96-133 (Washington, D.C.: July 11, 1996).

[19]These are problems that have been well established in our previous reports. We currently have a study underway that, among other issues, is reviewing challenges to implementing the new strategy.

[20]U.S. General Accounting Office, *Electronic Disability Claims Processing: SSA Needs to Address Risks Associated With Its Accelerated Systems Development Strategy*, GAO-04-466 (Washington, D.C.: Mar. 2004).

Additionally, while SSA has established processes and procedures to guide its software development, the agency could not provide evidence that it was consistently applying these procedures to the AeDib initiative. Further, while SSA had identified AeDib system and security risks, it had not finalized mitigation strategies. As a result, the agency may not be positioned to effectively prevent circumstances that could impede AeDib's success. To help improve the potential for AeDib's success, we have made a number of recommendations to SSA, including that the agency resolve all critical problems identified, conduct end-to-end testing, ensure user concurrence on software validation and systems certifications, and finalize AeDib risk mitigation strategies.

**Key human capital challenges.** We have also expressed concerns about a number of issues surrounding human capital at the DDSs that could adversely affect the Commissioner's strategy. The more than 6,500 disability examiners in the DDSs who help make initial decisions about eligibility for disability benefits are key to the accuracy and timeliness of its disability determinations. The critical role played by the DDS examiners will likely be even more challenging in the future if the DDSs are responsible for adjudicating only the more complex claims, as envisioned by the Commissioner. Yet, we recently found that the DDSs face challenges in retaining examiners and enhancing their expertise.[21]

- **High examiner turnover.** According to the results of our survey of 52 DDSs, over half of all DDS directors said that examiner turnover was too high. We also found that examiner turnover was about twice that of federal employees performing similar work. Nearly two-thirds of all directors reported that turnover had decreased overall staff skill levels and increased examiner caseloads, and over one-half of all directors said that turnover had increased DDS claims-processing times and backlogs. Two-thirds of all DDS directors cited stressful workloads and noncompetitive salaries as major factors that contributed to turnover.

- **Difficulties recruiting staff.** More than three-quarters of all DDS directors reported difficulties in recruiting and hiring enough people who could become successful examiners. Of these directors, more than three-quarters reported that such difficulties contributed to decreased accuracy in disability decisions or to increases in job stress, claims-

[21]U.S. General Accounting Office, *Social Security Administration: Strategic Workforce Planning Needed to Address Human Capital Challenges Facing the Disability Determination Services*, GAO-04-121 (Washington, D.C.: Jan. 27, 2004).

processing times, examiner caseload levels, backlogs, and turnover. More than half of all directors reported that state-imposed compensation limits contributed to these hiring difficulties, and more than a third of all directors attributed hiring difficulties to other state restrictions, such as hiring freezes.

- **Gaps in key knowledge and skill areas.** Nearly one-half of all DDS directors said that at least a quarter of their examiners need additional training in areas critical to disability decision-making, such as assessing symptoms and credibility of medical information, weighing medical opinions, and analyzing a person's ability to function. Over half of all directors cited factors related to high workload levels as obstacles to examiners receiving additional training.

- **Lack of uniform staff standards.** SSA has not used its authority to establish uniform human capital standards, such as minimum qualifications for examiners. Currently, requirements for new examiner hires vary substantially among the states. Over one-third of all DDSs can hire new examiners with either a high school diploma or less.[22]

Despite the workforce challenges facing them, a majority of DDSs do not conduct long-term, comprehensive workforce planning. Moreover, SSA's workforce efforts have not sufficiently addressed current and future DDS human capital challenges. SSA does not link its strategic objectives to a workforce plan that covers the very people who are essential to accomplishing those objectives. While acknowledging the difficulties SSA faces as a federal agency in addressing human capital issues in DDSs that report to 50 state governments, we have recommended that SSA take several steps to address DDS workforce challenges to help ensure that SSA has the workforce with the skills necessary for the Commissioner's strategy to be successful. These include developing a nationwide strategic workforce plan addressing issues such as turnover in the DDS workforce, gaps between current and required examiner skills, and qualifications for examiners.

**Future workload growth.** According to SSA's strategic plan, the most significant external factor affecting SSA's ability to improve service to

[22]Some DDSs may have higher educational requirements for some applicants or may use standards other than or in addition to education. The minimum educational requirements described do not necessarily reflect the actual credentials of DDS examiners hired by the DDSs.

disability applicants is the expected dramatic growth in the number of applications needing to be processed. Between 2002 and 2012, SSA expects the DI rolls to grow by 35 percent, with applications rising as baby boomers enter their disability-prone years.[23] Over the same period, more modest growth is expected in the SSI rolls. SSA estimates that, between 2002 and 2012, the number of SSI recipients with disabilities will rise by about 16 percent.[24]

The challenges SSA faces in keeping up with its workload have already forced agency officials to reduce efforts in some areas. For example, the Commissioner explained that in order to avoid increasing the time disability applicants have to wait for a decision, she chose to focus on processing new claims rather than keeping current with reviewing beneficiaries' cases to ensure they are still eligible for disability benefits, called Continuing Disability Reviews (CDRs). In fiscal year 2003, SSA did not keep current with the projected CDR caseload. The Commissioner says that this situation will continue in fiscal year 2004, despite the potential savings of $10 for every $1 invested in conducting CDRs.[25] However, in reducing the focus on CDRs, not only is SSA forgoing cost savings, but the agency is also compromising the integrity of its disability programs by potentially paying benefits to disability beneficiaries who are no longer eligible to receive them.

In closing, as stated earlier, SSA is at a crossroads and faces a number of challenges in its efforts to improve and reorient its disability determination process. Mr. Chairman, this concludes my statement. I would be pleased to answer any questions that you or other members of the subcommittee may have at this time.

## Contacts and Acknowledgments

For further information regarding this testimony, please contact Robert E. Robertson, Director, Education, Workforce, and Income Security at (202) 512-7215, or Shelia Drake, Assistant Director, at (202) 512-7172. Michael

[23]Social Security Administration, *Strategic Plan 2003-2008.*

[24]Social Security Administration, *Annual Report of the Supplemental Security Income Program*, May 2002.

[25]Statement of the Honorable Jo Anne B. Barnhart, Commissioner, Social Security Administration: Testimony before the Subcommittee on Social Security of the House Committee on Ways and Means, February 26, 2004.

Alexander, Barbara Bordelon, Kay Brown, Beverly Crawford, Marissa Jones, Valerie Melvin, Angela Miles, and Carol Dawn Petersen made key contributions to prior work covered by this testimony.

# Related GAO Products

*Electronic Disability Claims Processing: SSA Needs to Address Risks Associated With Its Accelerated Systems Development Strategy.* GAO-04-466. Washington, D.C.: March 2004.

*Social Security Administration: Strategic Workforce Planning Needed to Address Human Capital Challenges Facing the Disability Determination Services.* GAO-04-121. Washington, D.C.: January 27, 2004.

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*SSA Disability: Other Programs May Provide Lessons for Improving Return-to-Work Efforts.* GAO-01-153. Washington, D.C.: January 12, 2001.

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*Social Security Disability: SSA Must Hold Itself Accountable for Continued Improvement in Decision-making.* GAO/HEHS-97-102, Washington, D.C.: August 12, 1997.

*SSA Disability: Return-to-Work Strategies from Other Systems May Improve Federal Programs.* GAO/HEHS-96-133. Washington, D.C.: July 11, 1996.

Statement of Erik Williamson, Assistant Director, Ohio Bureau of Disability Determination, Columbus, Ohio

Before the Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia

Hearing on "The Road to Recovery: Solving the Social Security Disability Backlog"

March 29, 2004

Mr. Chairman, thank you for the invitation to participate in this hearing on improving the backlog of Social Security Disability claims. The Bureau of Disability Determination (BDD), which is a part of the Ohio Rehabilitation Services Commission (RSC), processes disability claims for the Social Security Administration (SSA). The Bureau is 100 percent federally funded by SSA. Each state has a comparable Disability Determination Service (DDS).

I would like to begin by briefly providing some background data regarding the Ohio DDS:

WORKLOADS/QUALITY

- Ohio has the highest productivity rate of the country's 12 largest DDS programs, and based on the number of cases received, Ohio's program is the fifth largest in the nation.
- Decisional accuracy rates compiled by SSA measure the quality of our work. Ohio's initial denial accuracy rate for the fiscal year to date is 95.7 percent, compared to the Chicago Region (IL, IN, MI, MN, and WS) at 92.9 percent and the nation at 91.8 percent. Overall, our accuracy for the fiscal year to date is 97.0 percent, the Region is at 94.2 percent, and the Nation was at 93.5 percent.
- We measure our efficiency through the mean processing time of our claims. At present, BDD completes claims on average 93 days after we receive them. Although our processing time is higher than the Region at 83.4 days, and the Nation at 83.6 days, we have improved by over eight days since Federal Fiscal Year 2002 and are studying how to reduce this time substantially.
- During Federal Fiscal Year 2003, BDD processed 183,285 Social Security disability claims. 60,317 of these cases were approved for benefits. Of this number, 4,278 were reconsideration claims which are appealed at the DDS level.
- Nationally, through the entire SSA Disability Claims process, considering all claims approved for benefits, 75% are approved at the DDS level.
- Sharing feedback through our workgroup and liaison with the Office of Hearings and Appeals, we will continue to explore ways to improve our business process.

STEWARDSHIP

- The Bureau completed 28,469 Continuing Disability Review claims in Federal Fiscal year 2003.

- Ohio established a Cooperative Disability Investigation Unit in fiscal year 2003 in conjunction with the Office of the Inspector General of the Social Security Administration. Total SSA and non-SSA (e.g., Medicaid, Medicare, etc) savings in fraud prevention to date are nearly 15 million dollars.

STAFFING

- Since Federal Fiscal Year 1996, the number of claims processed by the Ohio Bureau of Disability Determination has increased by 25 percent. During this same period, our staff increased only 6.8 percent. The Bureau has remained highly productive despite this disparity in resources, and we are committed to making the most of the resources available to us, however additional staffing commensurate with our increasing caseloads will be critical to ensure that services to the public are not severely impacted.
- To prepare our workforce for the changes we see approaching, we provided over nine thousand hours of training to staff in FY 03 including vocational issues, medical issues, and change management and problem solving for our supervisors. To prepare for the electronic disability folder, we improved our hiring process to include a computer skills assessment, and invested in an online electronic learning program. We regularly provide training on pertinent issues, conducted by employees and medical consultants who are strong in these particular areas, and we created a mentoring program and a job-shadowing program for employees. Training strains our productivity, but we realize the impact to our quality if we do not continue to provide relevant training. We ask that adequate resources for training be provided to help us to continuously improve the skills of our workforce.
- We have increased quality reviews (to assure compliance with Social Security Administration rules and regulations) on cases in our claims units and through special reviews conducted by our Quality Assurance department. Our vocational specialists provide training to make sure case issues are correctly identified. We recently updated our Goals and Standards for all staff, and established competencies for testing in order to promote into our advanced adjudicator positions.

The Ohio Bureau of Disability Determination has demonstrated a commitment to public service, collaboration, and an efficient and effective operation. We will continue to work to provide timely and accurate decisions for the citizens of Ohio, and work to allow cases as early in the process as possible where appropriate.

With this in mind, I would like to discuss how the Ohio BDD fits into the comprehensive approach proposed by Commissioner Barnhart, including the implementation of the electronic case folder. We commend Commissioner Barnhart for showing the courage to propose these significant changes in the interest of improving the entire disability claims process.

**AeDib**

The Accelerated Electronic Disability Process (AeDib) will transition our business process into a totally paperless, electronic environment. The Ohio DDS is scheduled for rollout later this year. Managing nearly 200,000 cases without paper will require different methods, management information, and worker skills.

We see great benefit in the increased efficiency of moving to an electronic environment. We are also cognizant of the fact that there will be a significant learning curve during implementation. The Ohio Bureau of Disability Determination has been proactive in preparing staff for the transition by:

- Adding electronic forms to our system several years ago, and using the "E-View" system in conjunction with SSA field offices to view disability applications on the computer.
- Sponsoring ongoing employee workgroups to determine ways to improve our internal systems and processes.
- Offering experiences gained from the Bureau of Vocational Rehabilitation and the Bureau of Services for the Visually Impaired in the Ohio Rehabilitation Services Commission that implemented an electronic folder in the fall of 2003.
- Helping SSA search for alternatives that will assist hospitals and all other medical providers to transition to sending medical records electronically at a time when most medical records are still mailed or faxed in a paper format.
- Conducting training to show staff what they can expect in the electronic environment, and how it will affect the way they do their jobs, and by
- appointing one of our Area Managers to be project manager of the Accelerated Electronic Disability Process implementation and strategic planning.

We are encouraged by our preparation to date, and believe it will minimize impact to our organization. We do have a few concerns:

- Other states in our region will not be in a position to help us with our workload during the transition as they will also be implementing the electronic folder.
- Ohio's caseload continues to grow at an unprecedented rate, and we will need adequate staff to meet the challenge this presents. It generally takes two years for a recently hired adjudicator to complete training and work independently. In order to process the increased workload, the Ohio DDS was budgeted to hire 80 employees during Fiscal Year 2004; it has received authorization to hire only 20, due to budgetary restrictions.
- Perhaps most importantly, we need the process to become fully electronic as soon as possible. Key to this issue is the National Archives and Records Administration approving the electronic file as the officially recognized document. We do not have adequate resources to support both a paper and electronic system indefinitely, which will affect our ability to serve the public. We see tremendous advantage to this project and hope that we can move to the electronic environment

as quickly as possible. Making the electronic folder the official record would remove a large hurdle for us.

**New Disability Process**

We agree that improvements can, and need to be made, in the overall disability process. We commissioned KPMG to do a workflow study on the business processes of the BDD in 2002, and benefited from implementing many of their suggestions. As with any proposal, we found areas of disagreement, but had dialogue and made our own suggestions. The same would be true of the Commissioner's approach, and I will outline some of our concerns, and areas where we share common opinion.

- **In-line Quality Reviews**: An in-line review process can identify potential problems early in the process before the claim is completed, saving time and resources for our claimants and the DDS. We strive to prepare our claims for the next level of review, and therefore we have begun piloting the in-line review concept in conjunction with our end-of-line Quality Assurance efforts. We would add to Commissioner Barnhart's proposal implementation of formal quality review for the Field Offices to ensure accuracy of application forms, and also for the Regional Expert Review units and Reviewing Officials. We agree that Centralized Quality Control would improve consistency over the current regional Disability Quality Branch (DQB) process. We would also suggest that all components at all levels of adjudication use the same review criteria. We are always willing to improve, and we would welcome national input to help us with the overall process.

- **Quick Decision Claims**: The Commissioner's proposal indicates that "quick decision claims" would be adjudicated at Regional Expert Review units in SSA across the country without going to a state DDS. The DDS's and Field Offices already give priority to these types of claims, and we are curious whether this will provide a significant benefit. Therefore, within the next 60-90 days, we plan to implement a Quick Decision unit in our DDS, to see if we can use this model to further improve the process within our own component. We will be happy to share any management information we develop from this pilot.

- **Demonstration Projects**: We believe there is tremendous potential in exploring new ways of doing business. We are interested in working in collaboration with The Ohio Vocational Rehabilitation bureau to determine if early intervention with SSDI applicants will help them to reenter the workforce and achieve financial independence. Additionally, we would like to explore temporary allowance projects that will provide immediate cash and medical benefits for a specified period to applicants who are highly likely to benefit from aggressive medical care and/or vocational rehabilitation. We see great value in exploring these projects suggested by the Commissioner, and look forward to the opportunity to work with SSA on these initiatives.

**Closing**

In closing, I would like to emphasize our desire to work with internal and external components to improve the disability process. We believe that remaining current on our Continuing Disability Review (CDR) workload should be a priority. Anecdotal data suggests that for every dollar we expend reviewing CDR claims, SSA saves nine dollars. I will emphasize again that migrating to a paperless process, and recognizing the electronic file as the official federal document will help us better manage our transition to the Electronic Disability Folder, and save significant resources. We strongly support the transition to the electronic environment, and we are excited about the benefits it will bring to our organization.

We are committed to providing the highest levels of public service possible and making the best use of our existing resources. We ask for your consideration in providing us with adequate funding to continue to offer the level of service expected of our organization in light of the growing demands that we face.

Mr. Chairman, thank you kindly for the opportunity to testify today, I will be happy to take any questions you may have.

**STATEMENT ON BEHALF OF THE**

**ASSOCIATION OF ADMINISTRATIVE LAW JUDGES**

**By**

**D. KEVIN DUGAN, VICE PRESIDENT**

**Before the**

**SENATE SUBCOMMITTEE ON THE OVERSIGHT OF GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA**

**FIELD HEARING**
**CLEVELAND, OHIO**
**MARCH 29, 2004**

*"The Road to Recovery: Solving the Social Security Disability Backlog"*

Senator Voinovich:

Thank you for the opportunity to testify before you today. My name is Kevin Dugan. I am an Administrative Law Judge ("ALJ") in the Social Security Office of Hearings and Appeals ("OHA") in Charlotte, North Carolina.

This statement is presented in my capacity as the Vice President of the Association of Administrative Law Judges ("AALJ"), which represents the professional interests of approximately 900 administrative law judges employed in SSA and the Department of Health and Human Services ("DHHS"). One of the stated purposes of the AALJ is to promote and preserve full due process hearings in compliance with the Administrative Procedure Act ("APA") for those individuals who seek benefits under the Social Security Act. As such, our Association has spent a substantial amount of time and resources to help create a system that will deliver fair and expeditious adjudications for the American public.

The SSA administrative hearing system is one of the oldest in the Federal Government. The Social Security hearings and appeals system started in 1940

with 12 referees and it has grown into the largest adjudicative system in America. Along with the growth in size, there has also been a growth in complexity. Unfortunately, management initiatives have been unable to adequately address the difficulties that are inherent in a high volume, but complex area of law. We are of the strong opinion that the changes implemented under the hearing process improvement (HPI) plan must be reversed if we want an efficient and fair adjudicative system.

The Association of Administrative Law Judges believes that the plan put forth by Commissioner Barnhart promises lasting and meaningful changes that will produce high quality decisions in an expeditious manner. We applaud Commissioner Barnhart's bold and courageous leadership.

The plan makes many changes to the current system, but it promises to preserve and protect the right of the claimant to a due process hearing before an Administrative Law Judge. The changes that are proposed are predicated on the premise that the way to increase speed of adjudications is to first improve the quality. This is in stark contrast to many past management initiatives.

We agree that improving quality at the beginning of the adjudicative system confers benefits throughout the system as the cases move forward. If cases are fully developed and fairly evaluated from the beginning, worthy cases will be paid more quickly, and the more difficult cases will be properly prepared and presented for hearing. This will lead to more consistency at all levels of adjudication.

However, it must be recognized that the disability reform plan will provide additional functions and new technologies for the Office of Hearings and Appeals. These new functions and technologies, which include the Federal Reviewing Official, the Judge Review Panels and e-DIB, will require additional staff personnel and resources to perform these new responsibilities in the manner described by the Commissioner in her testimony before your Subcommittee and in other statements. Therefore, we respectfully urge you to support providing sufficient resources to permit the Commissioner to implement the disability reform plan in the manner she has described.

As the Commissioner has testified, however, her plan will not be implemented before the technological changes are completed. October 2005 is the implementation date. Meanwhile, we must recognize that the pending backlog demands our best efforts with the tools that we have.

The consensus is that HPI failed to such a degree that it caused an immediate decrease in cases decided in OHA offices nationwide. It is well documented that the judges lost the ability to have staff prepare sufficient number of cases for hearing while the quality of writing resources declined. This problem

occurred when staff personnel was taken from the judges and placed in common work groups. It was predictable that such a plan would fail.

Fortunately, the best managers in local and regional offices were able to adapt and, to some degree, lessen the negative impact of HPI. Those offices are often characterized by a cooperative atmosphere, which utilizes the skills and talents of the judges and staff. Other offices, however, were not able to soften the negative effects, and they failed to a greater degree. We believe such offices should look to the practices used by the more successful managers.

The AALJ has long been concerned about the growing backlog in Cleveland, as well as throughout the Region. We have made informal suggestions and, more recently, put together a more comprehensive plan for the consideration of SSA managers. (A copy of our letter is attached.)

Our suggestions include reorganizing staff to increase accountability, providing additional management training, and increasing resources. For instance, each judge must have assigned staff, and decision writing must be improved by increased use of attorney writers.

We have also suggested changes in case practices that could quickly increase case dispositions without additional resources. Some of the suggestions include using prehearing orders that fully involve the claimants' bar in the process – this would shift some of the case preparation from the overworked staff. In this vein, the judges should meet monthly with each other to discuss problems and ideas – it is folly not to use their skills and experience. The judges should also meet periodically with the local bar for the same reason.

On the national level, we have urged the adoption of Rules of Practice and Procedure, and the ABA Ethical Code of Conduct for Administrative Law Judges. Until OHA returns to a modified unit staffing system, however, we will not be able to fully and effectively utilize our current resources.

The ALJs are a valuable resource for the agency and are employed after a rigorous merit-based civil service selection process. Our ALJs have a broad range of legal, judicial and other leadership experience upon which the agency can draw for suggestions to improve the adjudication process.

With regard to hiring more ALJs, we note that OPM is responsible for oversight of the ALJ program in the Federal Government. However, it has abolished the office which previously had that specific responsibility, and it has not updated the ALJ register in about 5 years with some few exceptions. This is of extreme importance as the federal government is likely to hire over 500 ALJs over the next couple years. We suggest that the ALJ oversight be placed in an ALJ Conference modeled on the U.S. Conference for Federal courts.

In closing, the plan presented by Commissioner Barnhart promises to transform the SSA disability adjudication system into an efficient and fair system. We urge you and the rest of your committee to fully support her efforts. But it must also be recognized that some offices are lagging relative to others in OHA and we believe an effort to bring better practices to those offices should be made.

The Association of Administrative Law Judges will continue to work with the Commissioner on improving the hearing process for the benefit of the American people.

Thank you again, Senator Voinovich, for your interest in this very important issue. We continue to be available to you and your staff at any time. I will gladly answer any questions you may have.

Respectfully submitted,

D. Kevin Dugan,
Executive Vice President
Association of Administrative
Law Judges

ASSOCIATION OF ADMINISTRATIVE LAW JUDGES
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January 7, 2004

Honorable A. Jacy Thurmond, Jr.
Associate Commissioner
Office of Hearings and Appeals
One Skyline Tower, Suite 1600
5107 Leesburg Pike
Falls Church, VA 22041-3255

Dear Associate Commissioner Thurmond:

As you know, the Cleveland Office of Hearing and Appeals is in dire straits. The backlog has grown over the last 4 years at such a rate that even though cases have been transferred to other offices there are still over 11,000 pending cases. Predictably, the office ranks last in Region V in terms of how long it takes a claimant to get a decision. Moreover, it appears that the case processing problems may be affecting the accuracy of the records, thus impacting the fairness of the process.

The Association of Administrative Law Judges is greatly concerned with this situation as are you. Accordingly, we conferred with the Judges in the office to determine what can be done to improve that office. As you will note, some of the following suggestions address problems that exist in OHA offices nationwide and some address problems specific to the Cleveland Office. We offer these suggestions to you and the Commissioner for your consideration.

I. **Management Improvements:**

**Problem:** The problems in the Cleveland Office did not occur overnight. Nonetheless, managers in Cleveland and the Region have failed to effectively address the problems. There has been no effort to empower the staff to help find a solution. Moreover, Judges who have made efforts to solve case processing problems have been ignored at best.

**Suggestions:** Clearly, the first step is to give more professional training to managers, including the head of the Cleveland Office and the Region. Communication with the Judges and the staff needs to improve; managers need to learn how to communicate in an effective manner. They need to be trained on how to work with a team. Further, it is time to decide whether assets in the Regional office can be better used at the hearing level.

II. **Staff Configuration**

**Problem:** There is a lack of accountability. Local mangers have taken the position that the persons who have to hear and decide cases, the judges, should have no input into how the cases are prepared. This has caused a disconnect between the staff who are charged with processing the cases and the Judges who actually use the staff work product. This also contributes to a lack of accountability. Moreover, management ignores the Judges' advice as to what problems exist in the office.

**Solution:** The office staff needs to be reassigned. There should be direct interaction between a Judge and the staff assigned to perform that Judge's casework. There should be objective standards so the staff will know what is required. Quality will be improved by daily interaction and feedback between the staff and the Judges.

III. **Increase resources**

**Problem:** Because of the backlog growth, the current office does not have enough resources.

**Solution:** First, have every office in the nation prepare one docket of Cleveland cases (25-30 cases per docket). This will produce approximately 3300 to 4000 cases ready to hear. Second, create a register of judges who will volunteer to go to Cleveland to hear cases. Arrange adequate hearing space. Also, seek judges who will hear Cleveland cases by videoconferencing and install the necessary equipment to use those judges.

While the above efforts are ongoing, hearings by local judges should be increased. This can be done if the Judges are given the staff support identified above along with the procedural changes we suggest below. We agree that the agency should hire more judges and staff for the Cleveland office (for instance, because there is no receptionist, people are pulled from their higher level work to perform that function). Nonetheless, with the suggested changes there should be an increase of cases adjudicated locally even while the traveling judges attack the backlog.

If there are eight to ten travel/videoconferencing dockets done monthly, we can have an additional 3500 cases adjudicated this year. This figure does not include local increases that could come from improved management practices, staff reorganization, and efficient procedural changes.

**IV. Case Practices:**

**Problem:** Current office practices are inefficient. Also, some agency procedures do not allow Judges to efficiently control case adjudication.

**Solution:** Improve local practices and change national procedures that prevent the Judges from efficiently adjudicating cases.
We suggest:

1. Use prehearing orders that will get representatives involved early in the process. This will allow Judges to use the resources of the private bar to assist in ensuring quality adjudications in a reasonable time. This is especially important since staff resources are a critical issue.
2. Make sure representative can review and copy files when necessary.
3. Return to assigning cases on a rotational basis as required by law to ensure that older cases are heard first.
4. Identify non-disability cases upon docketing and fast track for decision.
5. Make sure Child cases have school records and a pediatric ME where needed.
6. Have monthly Judges' meetings to discuss local problems and solutions that can be implemented.
7. Meet periodically with claimants' representatives and other concerned parties to discuss problems and solutions.

Other suggestions that we have made on the national level that can help Cleveland include:
1. Adopt Rules of Procedure and Practice that will bring greater accountability to the process. (These have already been prepared and submitted.)
2. Adopt the ABA Ethical Code of Conduct for Administrative Law Judges and install a peer review process to increase professionalism.
3. Use a modified unit staffing system throughout OHA.

The above suggestions do not exhaust all possible improvements but do set forth some basics that will bring short and long term improvements. The Association of Administrative Law Judges stands ready to assist in the implementation of these ideas. Feel free to call upon us for any assistance.

Please send a copy of this letter to both Commissioner Barnhart and Deputy Commissioner Gerry. We understand that the Commissioner may attend a town hall meeting in Cleveland on Social Security this week and this letter may be of benefit to her for that meeting.

Thank you for your cooperation. We look forward to working with you on correcting the existing problems in the Cleveland hearing office.

Sincerely,

Ronald G. Bernoski
President

# Testimony
# of
# James A. Hill

## Office of Hearings and Appeals
## Social Security Administration

## President
## Chapter 224
## National Treasury Employees Union
## Cleveland, Ohio

## On

## Solving the Social Security Disability Backlog

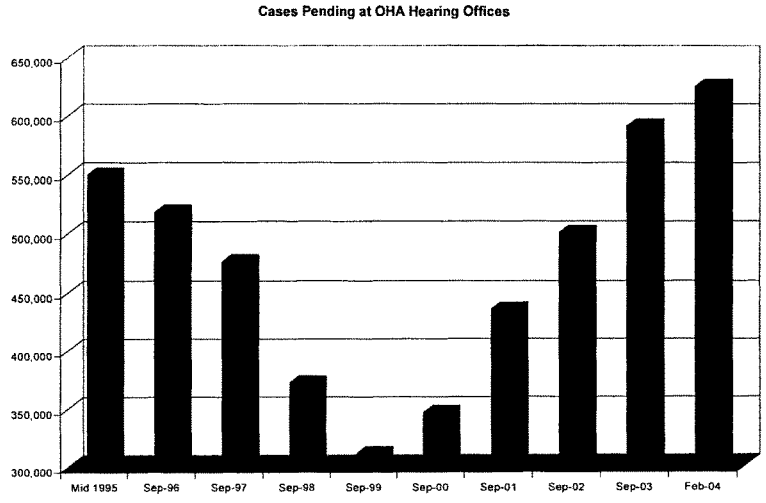
## March 29, 2004
## 9:00 A.M.

## Vocational Guidance Services Headquarters
## 2235 East 55th Street
## Cleveland, Ohio

My name is James Hill. I have worked as an Attorney-Adviser in the Office of Hearings and Appeals for over 21 years. I am also the President of Chapter 224 of the National Treasury Employees Union (NTEU) that represents Attorney-Advisers and other staff members in approximately 110 OHA Hearing and Regional Offices across the United States. I thank the Subcommittee for allowing me to testify regarding The Road to Recovery -- Solving the Social Security Disability Backlog.

The Backlog at OHA – A Problem Inherited by Commissioner Barnhart

The disability backlog problem at OHA is neither recent nor unique to the Cleveland Hearing Office. Nonetheless, a quick review of the history of the number of cases pending at OHA demonstrates that the backlog problem is not altogether intractable. The backlog problem in the SSA disability program began in the early 1990s. Primarily as a result of increased receipts and SSA inaction, cases pending at OHA hearing offices rose from approximately 180,000 in 1991 to approximately 550,000 cases nationwide by mid-1995 with over 9000 cases pending in Cleveland. However, by October 1999 the number of cases pending was reduced to 311,000 nationally and to slightly over 4000 cases in Cleveland. Since 1999, a number of factors including the termination of the Senior Attorney Program, increased receipts, and the implementation of the disastrous Hearings Process Improvement Plan (HPI) have resulted in a record number of cases pending. Currently, there are approximately 625,000 cases pending at OHA hearing offices and processing times in some hearing offices are significantly in excess of one year. The number of cases pending in Cleveland rose to over 11,000 because of record receipts, fewer ALJs and the demise of the Senior Attorney Program.



As discouraging as the increase of cases pending may be, it does not fully reflect the harmful effect of the inefficient disability process on the public. Average processing time at OHA was approximately 270 days in 2000; it is currently 388 days and shortly will top 400 days. This is an unconscionably long wait for a disability decision, and it is causing untold harm to some of the most vulnerable members of society. None will dispute that the public deserves far better service than SSA is presently providing.

There is no question that the current disability system is fundamentally flawed and that wide ranging systemic changes are necessary. SSA recognized this as early as 1993, yet despite several major initiatives, the situation remains essentially the same. These initiatives not only failed, but in the case of HPI, they actually made things worse. A persistent lack of vision and leadership at SSA resulted in programs that were more in tune with then senior SSA officials' personal philosophy than actual operational requirements. They were massive, expensive programs that introduced untested and ill-advised changes with little concern for operational realities. Simply stated, the previous initiatives, the Redesigned Disability Process and HPI did not address the root causes of the problems. Not surprisingly, they failed to improve the disability process, and in fact, wasted resources while actually harming the adjudicatory process.

There was one notable exception to the steady train of ineffective (or worse) initiatives. The Senior Attorney Program, which authorized experienced OHA Attorney Advisors to issue fully favorable on-the-record decisions where justified, during the period from 1995 through 1999 produced over 220,000 fully favorable on-the-record decisions with an average processing time of just over 100 days. It is not a coincidence that during the time the Senior Attorney Program was in operation the number of cases pending at OHA hearing offices dropped from 550,000 to 311,000. The Senior Attorney Program was focused on a specific problem: the many cases coming to OHA that could be adjudicated favorably to the claimant without the need for an ALJ hearing. It was a small, low cost program that addressed a specific operational reality. Additional benefits of the Senior Attorney Program included a reduced case pulling workload and focusing ALJs on cases requiring a hearing. The termination of the Senior Attorney Program was simply a bureaucratic blunder. SSA Management believed that HPI obviated the need for the Senior Attorney Program. Since the advent of HPI the number of cases pending in OHA hearing offices has nearly doubled.

The Beginning of a Solution

At the beginning of her term, Commissioner Barnhart was confronting a discredited disability process with severe structural and operational problems at all levels. Commissioner Barnhart and Deputy Commissioner Martin Gerry conducted a truly objective review of the entire disability system resulting in a remarkably accurate picture of its strengths and weaknesses. I believe that for the first time senior SSA officials truly understand the deficiencies of the current system. This insight combined with the Commissioner's commitment to create a process which serves the needs of the public rather than the dictates of the bureaucracy, has led her to propose a plan for implementing fundamental process changes that will provide a level of service of which we all can be proud.

It is apparent that a considerable amount of research and thought went into the process of formulating this plan. The systemic problems that have plagued the disability adjudicatory process have been identified and politically plausible and operationally sound solutions have been advanced. Specifically, problems including the State Agencies' inadequate development of the record, the State Agencies' cursory rationale for unfavorable determinations, and the State Agencies' chronic failure to award many deserving claimants are all addressed and potentially solved through the "Quick Decision Process", the elimination of the Reconsideration Determination, and the creation of the Reviewing Official. Additional problems including long delays at the hearing level, the lack of adequate development prior to the ALJ hearing, closing the record after the ALJ decision, the lack of decisional consistency at the various levels of adjudication, the excessive number of voluntary remands from the U.S District Courts, and the lack of an effective appellate process are also addressed and potentially solved.

Other mechanisms which will be employed to improve the adjudication process are the elimination of regional Disability Quality Bureaus (DQBs) and the introduction of an integrated quality control process, the placement at the regional level of medical and vocational experts who are available to adjudicators at all levels, and the replacement of the Appeals Council with three judge review panels.

The SSA disability adjudication system must be a truly integrated system that better utilizes the expertise of its various components in the most efficient manner. To view or analyze each component individually without considering its role in the entire system leads to a distorted view and introduces needless inefficiencies. The Commissioner's Approach must be viewed in its totality recognizing the effects changes at one level have at the other levels.

Quick Decision – An Excellent Idea

In order to provide benefits to those who are "obviously disabled, the Commissioner has proposed "The Quick Decision Process" It will significantly improve the disability adjudication process for those claimants with specified medical conditions that normally result in a finding of disability. A Panel of Medical Experts that will be located in various regional offices will review those with verified medical conditions and quickly determine whether these claimants should receive disability benefits. The Commissioner projects that approximately 10 % of initial claims can be handled through the this process. The Quick Decision process will perform a valuable service in identifying those "obviously" disabled claimants.

The Role of the State Agency

The disability adjudication process is an integrated process that should promote the efficient, accurate, and fair adjudication of disability claims. Accurate adjudication of disability claims requires a relatively complete compilation of the record. Decisional consistency is significantly enhanced if at the different levels of adjudication, the adjudicators are considering essentially the same record. Therefore increased emphasis should be placed upon full development of the record at the earliest practicable time – at the State Agency level.

The time constraints under which the State Agencies currently operate, the lack of a realistic incentive to properly develop the record before sending the case to OHA, and the backlog of cases at OHA have created a situation in which OHA is forced to expend considerable time and resources developing the record. An efficient disability adjudication process must recognize that some adjudicatory tasks are better performed by one component than by others. The State Agencies are far better situated to develop the record than either the Reviewing Official or the OHA Hearing Office.

Consequently, primary responsibility for developing the record should be placed upon the State Agencies. Securing possession of the medical documents necessary to adjudicate a claim is a difficult and at times a time-consuming process. Dealing with medical professionals can be difficult and time-consuming, particularly when you are asking them to perform a function for which they are poorly, or not at all, compensated. Currently, much of the mail now received in Hearing Offices is "trailer mail" that consists of documentation that was requested by the State Agency. Adequately developing the record not only permits the State Agency to engage in a more accurate decision-making process, it also decreases the time that must be taken at subsequent adjudicatory levels. Better development at the State Agency means better decision making at that level, fewer cases being appealed to OHA, and fewer resources being expended at the OHA level to develop cases. It also permits both the State Agency and OHA to make the right decision as quickly as possible.

The Commissioner's Approach will provide the resources for the State Agencies to more completely develop a case. The Commissioner has promised that the appropriations provided to the State Agencies will not be decreased. The State Agencies will receive 10% fewer cases because of the Quick Decision Process, and this combined with the elimination of the Reconsideration Determination will permit more resources to be directed toward more completely developing the record.

Heretofore, there has been no adverse consequence to the State Agencies for forwarding incompletely developed cases to OHA. The ability of the Reviewing Official to remand inadequately developed cases to the State Agency will certainly provide the incentive to more completely develop the case. The overall efficiency of the adjudication process is enhanced by the changes suggested by the Commissioner.

The Role of the Reviewing Official (RO)

Perhaps the most innovative initiative contained in the Commissioner's approach is the creation of the Reviewing Official (RO), a federal attorney with complete adjudicatory authority placed between the State Agency and the ALJ. The RO process does more than replace the current Reconsideration Phase. The Reconsideration Determination has very little credibility with the public or with ALJs because it is viewed as a mere rubber stamp of the initial determination. One of the most important aspects of the RO process is to introduce an element of credibility that is presently lacking prior to the ALJ hearing because the State Agencies persistent denial of benefits to many claimants who are obviously disabled. The reversal rate of State Agency

determinations by ALJs clearly demonstrates that the current process fails to make the right decision at the earliest possible time.
The RO will apply the same adjudicatory standards as will the ALJs. Past experience with the Senior Attorney Program and the current ALJ review of unpulled files demonstrates that the application of those standards results in a fully favorable decision in approximately 30% of the cases reviewed. The review and decision making by the RO will result in many disabled claimants being awarded benefits in as little as 30 days rather than subjecting the claimant and the Agency to the time and resource consuming activities associated with conducting a full ALJ hearing.

Currently, the State Agency provides almost no rationale for their unfavorable determinations further undermining their credibility. The introduction of the RO will permit State Agencies to focus on developing the record and issuing disability determinations that do not require the detail of a legally defensible decision. They do not have the personnel qualified to craft legally defensible decisions that must withstand U.S. District Court and Appeals Court review.

The RO will have the legal expertise of an attorney to apply the law, regulations, and rules established by the Agency to the evidence and draft and issue a convincing, well-reasoned and legally defensible decision. Fortunately, SSA already employs personnel with the education, training, and experience to decide and draft disability decisions necessary to assure the success of the RO process -- OHA Attorney Advisers. Attorney Advisors have many years of experience in deciding and/or drafting disability cases.

To be effective the RO must establish its credibility to a number of interested parties including the claimant, the State Agency, the Administrative Law Judge, and of course the American public. The importance of an accurate, complete, convincing, and legally defensible decision that explains in detail the rationale for each finding of fact and conclusion of law cannot be overstated. The credibility of the RO and the entire process at the pre-ALJ level hinges upon the quality and credibility of that decision. This necessitates that the RO have extensive legal and disability program knowledge and experience.

One of the chief objectives of the RO position is to facilitate decisional consistency at all decisional levels. While the Agency has for some time contended that there was decisional consistency at all levels, none, except perhaps some SSA officials, gave those protestations much credit. The inconsistency of decision-making between the State Agencies and the ALJs is undeniable. Through the Process Unification effort, the agency did take some measures to attempt to create a higher level of consistency. Despite some level of success, primarily represented by an increase in payment rates by some State Agencies, decisional consistency still eludes the Agency.

The RO stands between the State Agencies and the ALJs and as such must be able to speak the language of each. The successful performance at the RO level requires a high degree of expertise not only in the medical aspects of disability but the legal aspects as well. It should be understood, that in the end, despite the importance of the medical facts, the decision of whether an individual is disabled is a legal and not medical decision. The ALJ due process hearing is a "legal procedure" and the ALJ decision is the product of "legal reasoning". The RO's

"Recommended Disallowance" is a legally defensible decision with a "legal" analysis of why the claimant is not disabled. If the RO "Recommended Disallowance" is to be credible, it must be in the legal terms using the legal concepts that the Administrative Law Judges use in their decision-making process. In fact, one of the recommendations from the Association of Administrative Law Judges, and one that we fully support, is that the RO and the ALJ use the same standards for adjudication.

It is essential to the success of the Commissioner's Approach that the decisions made by the RO be recognized as independent decisions by an individual who has the discretion to award or deny benefits as justified by the record. To attain credibility with the American public, ROs must have the discretion to decide and issue favorable and unfavorable decisions that are recognized as well reasoned, comprehensive and literate explanations of why a claimant is or is not entitled to disability benefits.

The introduction of the RO will significantly improve decisional quality as well as consistency through all the levels of adjudication. The RO will be a federal employee whose primary function is to review claimant appeals from the State Agency and render a decision. The RO will conduct an essentially paper review of the file, but will perform some development if needed. The RO will provide a legally defensible decision which contains a detailed rationale explaining why the claimant is or is not entitled to disability benefits.

The RO is responsible for performing an independent evaluation of the evidence and exercising his/her independent judgment in determining whether the claimant is or is not disabled. It is essential that the claimants and their representatives recognize that the RO is conducting an independent review of the record and has the decisional independence to issue the appropriate decision. The "Recommended Disallowance" will be a comprehensive, legally defensible decision explaining why the claimant is not entitled to disability benefits, while not affecting the claimant's right to a due process hearing before an Administrative Law Judge.

The result of the RO adjudication process will be a comprehensive decision that commands the respect of claimants, their representatives and ALJs. The increased level of decisional consistency promoted by the RO will result in the reality and perception that the proper decision is being made at the lowest possible level.

The ALJ Hearing

The Commissioner's approach wisely retains the Administrative Law Judge hearing process essentially unchanged. Hearing offices will continue to prepare cases for hearing, Administrative Law Judges will continue to conduct due process hearings, and the decisional independence of the ALJ continues to be protected by the APA. However, concern has been expressed about the relationship between the RO and the ALJ. It must be made perfectly clear that the RO decision is not entitled to any deference on the part of the ALJ. The reality of the *de novo* hearing must be maintained.

Elimination of the Appeals Council

As currently constituted the Appeals Council serves two distinct purposes. It serves as an appellate body and as a quality assurance entity, but performs neither with distinction. This is not intended to disparage the hard-working employees at the Appeals Council, but rather its basic concept and design. The Commissioner's approach replaces the Appeals Council with an end-of-line review by a centralized quality control staff and then a potential review by the Commissioner's Oversight Panel. The Agency, in its effort to improve quality assurance at the ALJ level of adjudication, should take care not to repeat its mistakes of the early 1980s when it attempted to interfere with ALJ decisional independence. In order to avoid the appearance interference with ALJ decisional independence, it is essential that ALJs be intimately involved in any quality assurance program. The function of the QA review of ALJ hearing decisions and the Oversight Panels should be combined in one entity and one process.

There is a concern that the lack of a right of administrative appeal of the decision of the Administrative Law Judge will result in a substantial increase in the caseload of the District Courts. We agree that any action that significantly increases the caseload of the district courts is unacceptable. However, assuming that this step will not significantly increase District Court caseload, an administrative appeal of the ALJ decision is unnecessary in the context of the entire adjudication system set forth in the Commissioner's Approach.

Currently, the State Agency unfavorable determinations are given little credibility due to their nearly complete lack of a comprehensive explanation to the claimant and his/her representatives why he/she is not entitled to the disability benefits. Consequently, it is commonly believed that the first step at which an individual can receive fair consideration of his/her application is at the ALJ level. Therefore, appeal to the Appeals Council represents the second time that the claimant's application receives fair consideration. The lack of credibility of the determinations made prior to the ALJ decision virtually mandates an additional (second) level of appeal.

The Commissioner's approach contains an entirely new step, the review and decision by the Reviewing Official. The fact that the RO is an attorney enhances the view that the RO is an independent decision maker, and therefore the decision of the RO will have a higher level of credibility with ALJs and the public. For those cases that the RO cannot issue a decision favorable to the claimant, the Commissioner's approach mandates that the RO prepare a detailed explanation of why the claimant is ineligible for benefits. It is essential that the explanation of why the claimant is, or is not, entitled to disability benefits be thorough, fair and unbiased. As such, the decision of the RO represents the first step at which the claimant receives a detailed and credible explanation of why he/she is not entitled to disability benefits. Under the Commissioner's approach, the ALJ is the second level at which a claimant receives a detailed decision from an independent decision maker. In as much as the ALJ process involves a *de novo* hearing rather than the appellate review currently performed by the Appeals Council, dissatisfied claimants actually have more substantial reviews and greater opportunities to achieve a favorable result than provided by the current system. The combination of the RO process and the ALJ hearing process render an additional administrative appellate step unnecessary.

The Commissioner's Approach calls for major changes in the SSA disability process, and if properly implemented, will result in substantial improvement in disability adjudication. However, because it will require substantial changes in both organization and process, and because it is predicated upon the completion of Ae-DIB, it will be at least two years before her Approach results in substantial improvement in the disability process.

Ae-DIB

The year 2004 will be notable in SSA history for a number of reasons, not the least of which are the changes in business processes driven by Information Technology (IT). This year will see the introduction of a new case tracking system (CPMS), the change from analogue to digital recording of hearing proceedings, the further expansion of videoteleconferencing for conducting hearings, and the implementation of the electronic folder as part of the Ae-DIB. Each of these programs, once installed and operating properly, will improve Agency operations. By far the most far reaching change will be brought about by the electronic folder. The savings, both in time and money, that can be realized by converting from paper folders to electronic folders are substantial and will result in improved service to the public. The electronic folder will significantly increase the Agency's flexibility in managing its workload and permit cases to be processed more expeditiously.

These innovations recognize the advances in information technology and demonstrate SSA's commitment to maximize the efficient use of its limited resources. My concern is that the current schedule for implementation is overly aggressive. Information technology changes are notoriously problematic, and significant disruptions in operations may occur as the result of IT problems. I am also concerned that the implementation of the Commissioner's Approach to Disability Adjudication is dependent upon the operational success of Ae-DIB. While it is clear that functional electronic folders can greatly enhance the operational efficiency of the Commissioner's Approach, it is considerably less clear that its implementation requires Ae-DIB to be fully functional. It makes little sense to delay the improvement in service that the Commissioner's new approach will cause, simply because of IT delays involving the electronic folder.

Short-Term Fixes

The Commissioner's Approach to disability adjudication will not be implemented until October 2005 at the earliest. While it promises to significantly increase the level and quality of service, it will not help those currently awaiting disability decisions. Furthermore, the backlog continues to grow and has reached such proportions that it may well strangle the new, more effective process planned for the future. Something must be done about the backlog now.

SSA is hiring 50 new ALJs who will begin work in the hearing offices by July 2004. Of course they will not be very productive at first, and even after a nine-month learning curve their productivity will probably be less than that of their more experienced colleagues for some time to come. While the new ALJs are certainly welcome, they do require more staff support than experienced ALJs. OHA hearing offices are already understaffed and this creates a regrettable but unavoidable loss of overall productivity. Hiring additional ALJs, while necessary, will not

bring immediate relief and will require the acquisition of additional staff (4.7 employees for each additional ALJ). Unfortunately, SSA can only supply adequate staffing at the cost of decreased productivity elsewhere in the organization. Robbing Peter to pay Paul is seldom a successful strategy.

SSA implemented a series of "Short-term Initiatives" intended to increase productivity. Most of these initiatives which included contract pulling, hiring 11 law clerks, having ALJs rummage through the master docket files looking for on-the-record favorable decisions rather than holding hearings and deciding the more aged cases have been ineffectual at best. Heretofore, little attention has been paid to the past. The last time SSA faced such a backlog crisis it turned to the Senior Attorney Program. The results were striking. The backlog actually disappeared. Unfortunately, SSA sometimes fails to learn from its successes. SSA needs to revisit the successes in the past.

The Best Short-Term Solution – Reinstitute the Senior Attorney Program

Given the present state of resources, the current workload, and the direction that the Commissioner's Approach is taking the Agency, the Commissioner should immediately reinstate the original Senior Attorney Program. In addition to making a positive, immediate, and effective impact on the backlog, it would act as a good transition to the Reviewing Official.

SSA should return to a Senior Attorney (Decisionmaker) Program modeled on the original successful Senior Attorney program that began in 1995. All OHA Attorney Advisors with at least one year experience at the GS-12 level should be promoted to join the current Senior Attorneys at GS-13. The Commissioner should republish the Senior Attorney regulation, deleting the sunset date, which authorized her to delegate her authority to issue fully favorable decisions to these GS-13 Senior Attorneys.

A well designed and well managed Senior Attorney program should be able to process at least 60,000 fully favorable reversals in a year without reducing the number of ALJ decisions or affecting the overall reversal rate at OHA. Based on experience, and looking at profiled cases that are more likely to be reversals, those 60,000 cases should be processed in an average of less than 120 days each. This will enable ALJs to handle the more difficult and complex cases that require a hearing before an ALJ before a decision can be made rather than handling cases that should have been paid before they came to an ALJ.

This program would require limited new hiring to maintain the attorney decision drafting support that the ALJs now have, as new Senior Attorneys would continue, in most cases, to draft ALJ decisions at least part of the time. The new attorneys will not only help with current decision writing but will be able to handle decision writing when the Commissioner's new disability approach is implemented. To produce the same 120,000 plus cases over a two year period without Senior Attorney Decisionmakers, SSA would have to hire at least 150 ALJs and approximately 600 additional support staff, and train them all. These ALJs would be in addition to the ALJs that must be replaced due to attrition.

The great majority of the attorneys I represent are experienced decision makers who were temporary GS-13 Senior Attorney Decisionmakers in the 1995-2000 time period prior to the disastrous implementation of HPI. They can begin deciding cases again as soon as the Commissioner can republish the regulation. They helped this Agency eliminate the backlog once before and they can do it again.

Recommendations

NTEU makes the following recommendations for action necessary to ensure that the Office of Hearings and Appeals delivers the quality of service demanded by the American people currently and in the future:

1. SSA should pursue the development of the Commissioner's Approach to disability adjudication as expeditiously as possible. Implementation of the Approach or parts thereof should not, unless absolutely necessary, depend on the status of the electronic folder.

2. All qualified OHA Attorney Advisers should be converted to Senior Attorney decision makers and given the authority to issue fully favorable on-the-record decisions. These Senior Attorney decision makers would review profiled cases as well as provide decision writing support for the ALJs and should transition to the RO position as soon as possible.

3. SSA should commence a limited hiring of new Attorney Advisers to maintain current ALJ decision writing resources as well as the necessary writing resources for the future.

**PRESENTATION OF MARCIA MARGOLIUS**

First, I would like to thank Senator Voinovich for initiating this forum to address delays in the processing time for Social Security hearings and more specifically, the backlog at the Cleveland Office of Hearings and Appeals. I would also like to commend the Commissioner for her participation.

Under the current system, people with severe disabilities are forced to wait years for a final decision. This delay is harmful to the individual and his or her family in a time of great need. But the delay not only hurts the disabled individual, it also damages public confidence and the integrity of the system.

In September, 2003, Commissioner Barnhart announced a plan to reform the disability claims process. These initiatives are meant to bring an aging bureaucratic system into the 21st century. As disability advocates, I and my colleagues, support all efforts to reduce unnecessary delays for claimants and to make the process more efficient. However, any changes must ensure fairness and protect the rights of people with disabilities.

The Commissioner has identified several changes at the front end of the process that can have an immediate beneficial effect for new applicants and will improve the backlogs and delays later. Hopefully, implementation of the electronic folder will move forward with all possible speed. EDib should reduce delays from handing off the file and will allow immediate access by any component of Social Security working on the claim. On line, read-only access should also be arranged for counsel so that the constant changes in the development of these cases are available to all participants. The Quick Decision Process for claimants who are obviously disabled can not happen soon enough. The process benefits everybody and is consistent with the overall purposes of the Social Security Act.

Other proposed changes raise greater challenges to the fairness owed to our disabled citizens. The new position of Reviewing Officer is very promising as it provides the necessary "point person" to help expedite critical cases. However, a separate appeal from the RO, who is located at the Office of Hearings and Appeals, to the ALJ, also at the Office of Hearings and Appeals, will be confusing to the public and ends up looking like nothing more than a replacement of reconsideration, and perhaps a counter-productive hurdle to the process. One appeal from the initial stage should cover review by both the RO and the ALJ, and avoid potential additional time delays to the system.

The record should not be closed after the ALJ's decision. Closing the record is not beneficial to a process meant to be informal, non-adversarial and with the primary overarching purpose of seeking the truth. This is not meant to say that records should not be submitted as soon as possible; they should and attorneys should strive for this efficiency. But submission is not always in the attorneys control, or for that matter, in the unrepresented claimant's control. Claimant's may be mentally impaired and unable to effectively assist in case development. Moreover, a claimant's health is not static -

hospitalizations occur, specialists get involved, and diagnoses are definitively reached. Means for submission of such important medical information can't be foreclosed in order to protect the claimant and the integrity of the determination process.

An underlying issue we must face is the balance between procedure and efficiency, and the potential prejudice arbitrary or administrative procedures may cause towards a just Social Security disability determination. There are merits to both efficiency and due process allowances, yet these goals sometimes conflict.

Continuation of the Appeals Council protects claimants. The current review process satisfies claimants' need to have oversight of the ALJ decision. A major basis for remand by the Appeals Council is not submission of new evidence, but legal error committed by the ALJ. The Commissioner should maintain this process for rectifying errors administratively, rather than forcing federal court review. This review stage is vital to a claimant's rights.

Cleveland's immediate problem is that there are disabled people with urgent needs that can not wait until October, 2005, when the Commissioner's plan is projected to be fully operational. People who are later adjudicated to be disabled under Social Security standards in this region are losing their homes, having utilities shut off and are losing health coverage because of delays in Social Security decisions.

Cleveland has the largest hearing backlog in a six state region. The decisions are generally fair, but the length of time to get a hearing and the processing time after the hearing is extreme.

The fundamental problem is one of staffing, there are just not enough judges or support staff to process the 11,000 plus cases waiting for hearing. When I first started in 1982 there were 18 judges. With a higher caseload, Cleveland has currently has 8 judges with the promise of 2 more. However, judges are only part of the solution. Support staff is based on the number of judges, not the number of cases, so, as long as there is a backlog of over 11,000 cases, the delays are endemic. At the current staffing level, the Cleveland Office of Hearings and Appeals will continue to be mired in delays.

The state disability determination service, which issues the decisions prior to the hearing level, is also part of a systemic problem. In Ohio, only 30% of the applications are approved initially. Compare this to Michigan, Illinois and Pennsylvania where 40% of the claims are approved.

The Commissioner's plan has some very favorable points. However, the Cleveland Office of Hearings and Appeals receives over 500 cases a month and currently issues only 380 decisions a month. These numbers mean that the delays will probably worsen unless there is a genuine climate for change and increased productivity. Cleveland needs not only the long run changes which the Commissioner suggests, but an immediate injection of additional judges and personnel to deal with this extremely important human issue.

**Disability Service Improvement**

**5/21/2004**

Commissioner Barnhart has met with the following regarding the New Approach:

AARP Board of Directors
ALJ Association (**IFPTE**)
American Association on Mental Retardation
American Bar Association
American Council of the Blind
American Federation of Government Employees (**AFGE**)
American Federation of State, County, and Municipal Employees (**AFSCME**)
Appeals Council & Support Staff
ARC of the United States
Association of Persons in Supported Employment
Association of University Centers on Disability
Center for Budget and Policy Priorities
Congressional Staff (Ways & Means Committee)
Disability Determination Service (**DDS**)
Family Policy Associates
Federal Bar Association
Government Accounting Office (**GAO**)
Hearings Office & Field Office Raleigh North Carolina
Judicial Conference
Multiple Advocate Groups
National Association of Councils on Developmental Disabilities (**NACDD**)
National Association of Disability Examiners (**NADE**)
National Association of Disability Representatives (**NADR**)
National Association of Protection and Advocacy Systems, Inc.
National Council of Disability Determination Directors (**NCDDD**)
National Council of Social Security Management Associations (**NCSSMA**)
National Council on Disabilities
National Institute of People with Disabilities
National Organization of Social Security Claimants' Representatives (**NOSSCR**)
National Treasures Employee Union (**NTEU**)
ODISP Employees (**SSA**)
Office of Quality Assurance (**SSA Employees**)
Paralyzed Vets of America
Press (Conference Call)
Public Policy Collaboration (**ARC/UCP**)
Social Security Advisory Board
SSA's Ticket to Work and Work Incentives Advisory Panel

## Impact of Not Passing a Budget On Time

- SSA is a workload-based Agency, and much of our annual administrative budget is driven by the workyears needed to process that work (retirement and disability claims, hearings, wage postings, answering the phones, etc.). The annual payroll costs needed to fund those workyears (i.e., hiring and overtime) are driven largely by mandatory factors such as Federal pay raises, health benefit premium increases, and retirement system contributions (Civil Service Retirement System and Federal Employees' Retirement System).

- Other mandatory increases over which SSA has little control are the cost of rent payments to the General Services Administration and guard service contracts for our nationwide network of offices. SSA's budget also pays the full cost of State employees who process disability determinations for us. The cost of those employees' salaries is driven by State pay raises and other factors.

- SSA's Fiscal Year (FY) 2005 budget request includes mandatory cost increases for these categories amounting to over $300 million. Assuming that workyears remain relatively level from FY 2004, over $200 million of that increase is related to payroll costs.

- When a budget for the FY is not enacted by October 1, SSA, like all agencies in the same situation, must operate under continuing resolutions (CR) at the previous year's funding level. Even if the CR is short-term, agencies must operate during that period assuming that the restricted funding level will be available for the entire year.

- Given the payroll cost increases and other mandatory items that must be funded within that CR level, spending policies are put in place to enable the Agency to operate under constrained CR funding authority. For example, planned replacement of staff losses are delayed and overtime workyears reduced during the early part of the year. Even if the full budget is available later (an unlikely outcome) when annual appropriations are passed, the impact on workloads processed and related public service is very difficult to make up and requires large amounts of overtime and extraordinary efforts on the part of our staff. As a result of the CR restrictions, most of SSA's hiring has to be deferred until the second half of the FY. This puts a further strain on our resources since the training and mentoring of new hires cannot be spread out over the entire year.

- In addition, non-payroll expenses are cut back or deferred during CR periods. Significant investments (i.e., software and hardware contracts) intended to upgrade SSA systems and improve public service often have to be deferred until annual spending authority is available. Major procurements must be compressed into 6 or 7 months, rather than 12, which places a strain on our acquisition process and results in a greater chance that an award cannot be made in a timely manner. Other spending categories affecting important projects (employee training, public information materials, etc.) are also deferred or cut back during such periods. The result is that the Agency has to accomplish in a short period, what should have been spread out over 12 months.

**Category Hiring vs. Rule of Three**

As of the date of this hearing, SSA uses the traditional method (i.e., rule of three) to evaluate and select candidates under competitive examining vacancy announcements. However, we are developing an Agency category rating procedure. We expect to complete our final reviews within the next few weeks and implement an interim SSA category rating procedure in early May. As required under the Homeland Security Act and the interim Office of Personnel Management (OPM) regulations for category rating published last year, our procedure provides for the collection of the information needed for the annual category rating reports to OPM and Congress.

SSA appreciates the recent legislative initiatives providing personnel flexibilities to Federal agencies. We believe our managers will find category rating to be an effective tool for quickly identifying the best qualified candidates and will welcome the opportunity to be able to select from among any of the candidates within the highest quality category, in accordance with veterans' preference requirements.


SOCIAL SECURITY
The Commissioner

The Honorable George V. Voinovich
Chairman, Senate Subcommittee on Oversight of
Government Management, the Federal Workforce
and the District of Columbia
Committee on Governmental Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

As a follow up to the committee meeting in Cleveland on March 29, I appreciate the opportunity to further elaborate on the need for additional personnel flexibilities to allow the Social Security Administration (SSA) to successfully recruit the quantity and caliber of staff who will be needed to maintain SSA's tradition of excellence in serving American citizens. We appreciate the support you have given to recent legislative initiatives which would improve and modernize the Federal personnel system. A streamlined, professional approach to Federal recruitment is absolutely essential if we hope to attract the best and brightest candidates into public service careers.

The most urgent need for reform relates to employment authorities. While SSA is known for its stable workforce, those who joined the Agency during its largest period of growth are now reaching retirement age. Over the past 3 years, we have lost almost 13,000 employees, mostly through retirement. We anticipated and prepared for the impact of the retirement wave and have hired 3,000 to 4,000 new employees in each of the past 3 years. To do this, we mounted an aggressive, national recruitment campaign focused on filling our mission-critical positions. In doing so, we used the full range of hiring options presently available to us. Nonetheless, our workforce staffing challenges continue to build. Today, 20 percent of our employees are eligible to retire. By 2013, 57 percent of our current employees will be eligible for retirement. During this period, competition will also intensify for qualified workers. In spite of our best efforts, we will be hard-pressed to meet our future workforce needs without additional personnel flexibilities. There are three personnel flexibilities, in particular, which would significantly improve our ability to attract the next generation of SSA employees:

- **Expanded "direct-hire" authority is needed for our mission-critical positions**. We are constantly in the marketplace competing with other employers for talent; the time-consuming Federal hiring procedures often cause us to lose candidates to employers who can offer positions on-the-spot. We do use extensively the Outstanding Scholar Program, which is a direct hire authority, to fill GS-5/7 level positions. However, this authority may only be used to appoint candidates with a cumulative undergraduate grade point average (GPA) of 3.5 or better or who graduate in the top 10 percent of their class. Competition is extremely keen for candidates with such high academic credentials.

There are many outstanding individuals whose GPA is 3.0 or higher. They too are in high demand, and we need to be able to select them without going through a bureaucratic, time-consuming process. We are hopeful that legislative relief will allow us to make direct hire appointments of college graduates who attain a GPA of 3.0. The ability to make direct offers to all who have achieved at least a 3.0 GPA would substantially improve our recruitment position by broadening the applicant pool. It would also provide us with more leverage to hire candidates from colleges who are known to have unusually tough standards of grading. To assure that veterans receive the maximum opportunity for consideration, we would support a broad direct hiring authority exclusively for those with veteran's preference.

- Authority is needed to **convert certain temporary employees to permanent employment without a second round of competition**. Under the current rules, applicants for term/temporary appointments must be selected initially through competitive examining procedures; they then must compete again in order to be converted to a permanent appointment. For example, if SSA hires a Claims Representative under a Term Appointment and invests in lengthy formal/on-the-job training, the employee must compete a second time in order to be retained permanently in the position they have been performing. This is a wasteful, time-consuming and counter-intuitive process. We need the authority to non-competitively convert employees who have already been trained and have demonstrated their worth. Of course, we would make it clear to applicants on the initial announcement that such appointments could become permanent. SSA expects to use Term Appointments as one element of our staffing strategy to address new workloads resulting from the Medicare Prescription Drug Improvement and Modernization Act. So, the need for relief in this area is imminent.

- Finally, to strengthen performance and accountability once new employees are on board, **the initial probationary period must be increased from 1 year to 2 years.** We find that the 1-year probationary period often does not provide enough time for managers to determine employees' fitness for continued employment. Because of the complexity of many of our positions, new employees undergo lengthy periods of intensive technical training. Often, managers are forced to make a decision whether to retain an employee when there has been little time to observe real performance outside the training environment. A 2-year probationary period would afford managers with the time needed to realistically assess the new employee's potential. Also, it would provide additional time to work with the marginal performer to bring them to the full performance level and avoid losing the substantial investment in their formal training.

I hope that our "top three" priorities, as presented above, provide a flavor of the types of reform which are needed by SSA and other Federal agencies to function in today's highly competitive human resource arena. We would be pleased to more fully brief you or your staff on these proposals, as well as other personnel flexibilities that we believe would be beneficial to the Federal community. Again, thank you for all of your support and your willingness to advocate changes which would enhance our ability to better serve citizens. If you have additional questions, please contact me or have your staff contact Mr. Robert M. Wilson, Deputy Commissioner for Legislation and Congressional Affairs, at (202) 358-3060.

Sincerely,

Jo Anne B. Barnhart

**QUESTIONS FOR THE RECORD FROM CHAIRMAN VOINOVICH FOR THE MARCH 29, 2004 FIELD HEARING "THE ROAD TO RECOVERY: SOLVING THE SOCIAL SECURITY DISABILITY BACKLOG."**

1. On January 23, 2004, President Bush signed the FY 2004 Consolidated Appropriations Act, which provided seven agencies with their annual appropriations four months into the fiscal year. What are your thoughts regarding the impact that the delayed appropriations process has on your ability to manage the Social Security Administration?

   **Answer:**

   The Social Security Administration (SSA) has a dedicated staff, capable of managing for results even in the most difficult situations. However, for planning and management purposes, ideally SSA would know its appropriation prior to the start of the fiscal year (FY).

   SSA is a workload-based Agency, and much of our annual administrative budget is driven by the workyears needed to process that work (retirement and disability claims, hearings, wage postings, answering the phones, etc.). The annual payroll costs needed to fund those workyears (i.e., hiring and overtime) are driven largely by mandatory factors such as Federal pay raises, health benefit premium increases, and retirement system contributions (Civil Service Retirement System and Federal Employees' Retirement System).

   Other mandatory increases over which SSA has little control are the cost of rent payments to the General Services Administration and guard service contracts for our nationwide network of offices. SSA's budget also pays the full cost of State employees who process disability determinations for us. The cost of those employees' salaries is driven by State pay raises and other factors.

   SSA's FY 2005 budget request includes mandatory cost increases for these categories amounting to over $300 million. Assuming that workyears remain relatively level from FY 2004, over $200 million of that increase is related to payroll costs.

   When a budget for the FY is not enacted by October 1, SSA, like all agencies in the same situation, must operate under continuing resolutions (CR) at the previous year's funding level. Even if the CR is short-term, agencies must operate during that period assuming that the restricted funding level will be available for the entire year.

Given the payroll cost increases and other mandatory items that must be funded within that CR level, spending policies are put in place to enable the Agency to operate under constrained CR funding authority. For example, planned replacement of staff losses is delayed and overtime workyears reduced during the early part of the year. Even if the full budget is available later (an unlikely outcome) when annual appropriations are passed, the impact on workloads processed and related public service is very difficult to make up and requires large amounts of overtime and extraordinary efforts on the part of our staff. As a result of the CR restrictions, most of SSA's hiring has to be deferred until the second half of the FY. This puts a further strain on our resources since the training and mentoring of new hires cannot be spread out over the entire year.

In addition, non-payroll expenses are cut back or deferred during CR periods. Significant investments (i.e., software and hardware contracts) intended to upgrade SSA systems and improve public service often have to be deferred until annual spending authority is available. Major procurements must be compressed into 6 or 7 months, rather than 12, which places a strain on our acquisition process and results in a greater chance that an award cannot be made in a timely manner. Other spending categories affecting important projects (employee training, public information materials, etc.) are also deferred or cut back during such periods. The result is that the Agency has to accomplish in a short period, what should have been spread out over 12 months.

2. Please provide me with the historical breakdown of those applying for disability based on physical and/or mental impairments and the approval/denial rate for each.

**Answer:**

We have enclosed a table showing allowance and denial counts, as well as rates for mental impairments, for physical impairments, and for all claims for the last 14 years (FY 1990-FY 2003).

3. One of the provisions in the Medicare Act of 2003 transfers the adjudicative function of the Medicare appeals process from SSA to HHS. This provision includes the transfer of ALJs to the Centers for Medicare and Medicaid Services. I am concerned that the end result could add to the existing Social Security disability backlog. Will this affect the backlog? How many ALJs will SSA lose under this program? What actions will you take to minimize the impact at SSA from the loss of judges?

**Answer:**

Section 931 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) provides for the transfer of Administrative Law Judge (ALJ) functions from the responsibility of the Commissioner of Social Security to the Secretary of the Department of Health and Human Services (HHS) and placement in an administrative office that is "organizationally and functionally separate from such

Centers." However, MMA does not provide for the transfer of ALJs from SSA. Additionally, in the joint report to Congress entitled "Plan for the Transfer of the Responsibility for Medicare Appeals," submitted March 25, 2004, HHS indicated that it plans to initially hire about 50 ALJs through various hiring options, including hiring from the existing Office of Personnel Management (OPM) register, re-employed annuitants, and other ALJ selections that may result from HHS vacancy announcements. While some SSA ALJs may choose to apply for future HHS vacancies, there will be no transfer of SSA staff to HHS.

Transfer of the ALJ function for Medicare appeals to HHS will not negatively impact the Social Security disability backlog. With the transfer of the Medicare workload, all SSA ALJs will be able to spend 100 percent of their time on the disability workload. Additionally, a new class of 53 ALJs has recently been hired, and we expect to hire another 50 ALJs this FY and more next FY. SSA and HHS are committed to working together to ensure a smooth transition, including avoidance of any adverse impact on SSA's processing of its disability workload.

4. In November 2003, President Bush signed legislation creating the Department of Homeland Security. The law contained several human resource reforms that Senator Daniel Akaka and I added. Specifically, the law improves the hiring process by allowing agencies to use a category ranking hiring method instead of the "Rule of Three." The law also provided governmentwide authority for voluntary early retirement; more recently, Congress enhanced the student loan repayment program. Is SSA using these flexibilities? Are there any other personnel flexibilities that you need to help transform your workforce?

**Is SSA using these flexibilities?**

**Answer:**

SSA appreciates the recent legislative initiatives providing personnel flexibilities to Federal agencies. The Agency's use of the specific flexibilities is discussed below:

*Category Ranking Hiring Method*
SSA has developed a category rating procedure for making competitive examining selections as an alternative to the traditional numerical rating procedure that requires selections to be made in accordance with the "Rule of Three." The SSA category rating procedure was implemented effective May 1, 2004. As required, our procedure provides for the collection of the information needed for the annual category rating reports to OPM and Congress. We believe our managers will find category rating to be an effective tool for quickly identifying the best qualified candidates and will welcome the opportunity to be able to select from among any of the candidates within the highest quality category, in accordance with veterans' preference requirements.

*Voluntary Early Retirement Authority (VERA)*
SSA has requested and received VERA approval from OPM for the current FY. The expanded criteria make VERA a more useful tool for our efforts to lessen the impact of the retirement wave by modulating employee departures, making the recruitment and training demands on us more manageable, and enabling us to redeploy our resources in the coming years. Under the expanded VERA criteria, agencies may request VERA approval from OPM based on situations that will result in an excess of personnel because of a substantial delayering, reorganization, reduction in force, transfer of function, or other workforce restructuring or reshaping, consistent with agency human capital goals. Previously, VERA authority could only be requested if agencies were undergoing major reductions in force, major reorganizations or major transfers of function that would result in the involuntary separation of a significant percentage of the employees serving in the agencies.

*Student Loan Repayment Program*
SSA has decided not to implement a Student Loan Repayment Program at this time. We have not experienced difficulty in recruiting for specific skills that require us to offer student loan repayments as a hiring incentive. SSA is continuing to offer other recruitment flexibilities, including recruitment and relocation bonuses, retention allowances, and above minimum starting salaries.

**Are there any other personnel flexibilities that you need to help transform your workforce?**

**Answer:**

There are three personnel flexibilities, in particular, which would significantly improve our ability to attract the next generation of SSA employees:

- **Expanded " direct-hire" authority is needed for our mission-critical positions.** We are constantly in the marketplace competing with other employers for talent; the time-consuming Federal hiring procedures often cause us to lose candidates to employers who can offer positions on-the-spot. We do use extensively the Outstanding Scholar Program (OSP), which is a direct hire authority, to fill GS-5/7 level positions. However, this authority may only be used to appoint candidates with a cumulative undergraduate grade point average (GPA) of 3.5 or better or who graduate in the top 10 percent of their class. Competition is extremely keen for candidates with such high academic credentials. There are many outstanding individuals whose GPA is 3.0 or higher. They too are in high demand, and we need to be able to select them without going through a bureaucratic, time-consuming process. We are hopeful that legislative relief will allow us to make direct hire appointments of college graduates who attain a GPA of 3.0. The ability to make direct offers to all who have achieved at least a 3.0 GPA would substantially improve our recruitment position by broadening the applicant pool. It would also provide us with more leverage to hire candidates from colleges who are known to have unusually tough standards of grading. To

assure that veterans receive the maximum opportunity for consideration, we would support a broad direct hiring authority exclusively for those with veteran's preference.

- Authority is needed to **convert certain temporary employees to permanent employment without a second round of competition**. Under the current rules, applicants for term/temporary appointments must be selected initially through competitive examining procedures; they then must compete again in order to be converted to a permanent appointment. For example, if SSA hires a Claims Representative under a Term Appointment and invests in lengthy formal/on-the-job training, the employee must compete a second time in order to be retained permanently in the position they have been performing. This is a wasteful, time-consuming and counter-intuitive process. We need the authority to non-competitively convert employees who have already been trained and have demonstrated their worth. Of course, we would make it clear to applicants on the initial announcement that such appointments could become permanent. SSA expects to use Term Appointments as one element of our staffing strategy to address new workloads resulting from the MMA. So, the need for relief in this area is imminent.

- Finally, to strengthen performance and accountability once new employees are on board, **the initial probationary period must be increased from 1 year to 2 years.** We find that the 1-year probationary period often does not provide enough time for managers to determine employees' fitness for continued employment. Because of the complexity of many of our positions, new employees undergo lengthy periods of intensive technical training. Often, managers are forced to make a decision whether to retain an employee when there has been little time to observe real performance outside the training environment. A 2-year probationary period would afford managers with the time needed to realistically assess the new employee's potential. Also, it would provide additional time to work with the marginal performer to bring them to the full performance level and avoid losing the substantial investment in their formal training.

5. During the hearing, you mentioned SSA's use of the Outstanding Scholar program. You also said that you would like to see the regulations changed to allow students that have a 3.0 Grade Point Average (GPA) to qualify for the program. Currently, the regulations require a 3.5 GPA. Has your agency discussed this issue with OPM? How many more employees could you hire if this authority was expanded?

**Answer:**

We have discussed modifications to the OSP with OPM in the past. OPM has advised us that they are unable to change substantive OSP provisions, including the academic criteria and the positions covered, because the program was not established through legislation and regulation, but by a consent decree approved by the U.S.

District Court for the District of Columbia now known as *Angel G. Luevano, et al., v. Janice Lachance, Director, Office of Personnel Management, et. al.* The decree resolved a class-action suit that alleged the Professional and Administrative Careers Examination, which the Government had been using to hire into about 120 occupations at the GS-5 and GS-7 levels, had adverse impact on certain groups for reasons that were not job related.

SSA would not expect to hire a greater number of employees if we received direct hire authority to appoint college graduates who obtained a GPA of 3.0 or better on a 4.0 scale. Our primary reason for needing this authority is to broaden our applicant pool and enable us to make on-the-spot offers to a wider range of applicants.

6. I firmly believe training federal employees should be a top priority for each agency. What type of training programs do you offer your employees? How much money do you allocate to training? Do you have special training program for ALJs?

**What type of training programs do you offer your employees?**

**Answer:**

Providing appropriate and timely training to a diverse workforce of approximately 65,000 employees is a significant endeavor. At SSA, training is delivered via a variety of methods, from classroom training to computer-based training to our extensive satellite-based Interactive Video Teletraining (IVT) network.

*Training for Public Contact Employees*

SSA offers comprehensive training programs for all of its incumbent employees assigned to positions in field operations who directly serve the public. Most of the training for public contact employees is conducted through the use of IVT (a form of distance learning technology). IVT allows trainees across the nation to remain in their home offices and participate in the training. The students begin class at the same time, and this medium ensures that they receive a consistent message concerning SSA's programs, policies, and procedures. In addition to IVT, the Agency conducts some traditional face-to-face classes as well, particularly for 800 number agents and positions in Program Service Centers.

Currently, all SSA employees are trained on the mission and values of the Agency, proper administration of the programs, and the tools available to support workload processing. Each training program is supported by a complete written training package that includes activities to reinforce learning. Throughout the courses, there are also several breaks for on-the-job training where employees are able to put into practice the concepts learned during their training. The training for these public contact employees ranges from 12-24 weeks.

Recently, SSA developed and implemented a competency-based training program for its key frontline positions in field offices. This competency-based approach focuses on technical knowledge and skills, such as program knowledge and workload management, as well as communication and diversity awareness that employees need to perform their job tasks. While competencies were already included in the entry-level training program, this effort identified areas where additional emphasis was needed or where the sequencing of some topics needed to change. The courses have been completely restructured, and training on necessary competencies has been incorporated through this initiative.

The training process does not end with completion of the entry-level training. Employees in Operations receive frequent training on legislative, policy, and systems changes. This training is done through a variety of mechanisms including IVT, face- to-face, as well as online training courses. Employees also have access to numerous resource materials that are available online through SSA's Intranet website, as well as additional support from their local and regional offices.

*General Skills and Leadership Training*

SSA uses multiple means of delivering general skills and leadership training. This "blended learning" approach acknowledges differences in adult learning styles and makes efficient use of our training resources. SSA's general skills training programs include:

- Hundreds of online training courses through SSA's Office of Training (OT) Intranet site (on topics ranging from ethics to computer skills);
- Over a thousand online courses through SSA's Online University (OLU), which enables employees to take courses at home or at work;
- IVT programs for simultaneous broadcast to national audiences on general interest topics (e.g., Sexual Harassment Prevention, Stress Management, and Diversity Awareness);
- Classroom training for a limited number of employees on general skills topics such as Project Management, Writing Skills, and Analyst Training;
- Specialized training curricula for some positions, such as Human Resources Specialists and Project Officers; and
- Seminars and classroom training for new and experienced supervisors to ensure our leaders are well trained.

SSA also takes advantage of excellent leadership training programs coordinated by other Federal agencies, such as:

- OPM's Management Development Courses, which offer excellent leadership training at multiple levels of management (we send about 50 people per year);
- Department of Labor's Senior Executive Service (SES) Forums for executives (we enroll 25 participants each year); and

- The Federal Executive Institute's programs for executives (12 are sent each year).

SSA regional and local offices also provide general skills and leadership training opportunities for their staff.

*Career Development Programs*

- Career development programs have historically served as primary staffing mechanisms for the development of employees demonstrating the most potential for assuming higher-level positions in SSA.

- In 1997, SSA examined the demographics of its workforce and identified a potential employee retirement wave that projected the loss of a large number of its managers by 2002.

- In anticipation of such a significant loss of institutional knowledge and experience, the Agency aggressively implemented the revitalization of national leadership development programs to develop leaders from entry level to the SES.

- The programs are the SES Candidate Development Program (CDP) for GS-15s, the Advanced Leadership Program (ALP) for GS-13 and GS-14 employees, and the Leadership Development Program (LDP) for GS-9 to GS-12 employees.

- The programs run 12-18 months for the SES CDP, 18 months for the ALP, and 12 months for the LDP.

- Program features include mentor/protégé relationships, developmental assignments, career development plans, training, and exposure to senior management.

- SSA also manages the Presidential Management Fellows program sponsored by OPM. This is a 2-year program designed to attract outstanding graduate students to the Federal service who have an interest in a career in the analysis and management of public policies and programs. The features of this program are the same as those for the other development programs, and the grades range from GS-9 to GS-12.

- In addition, the regions and headquarters components have established component rotational programs that complement SSA's national programs and are aimed at supporting our succession planning efforts.

*SSA Web-based Training*

- The SSA OLU is an Internet site consisting of over 1,600 courses available to SSA employees from any computer with an Internet connection. The purpose of the OLU is to enhance the ongoing training and development opportunities for all employees by improving access to quality training resources.

- While SSA has always succeeded at building and maintaining one of the most highly trained workforces, the SSA OLU was key to enabling SSA to overcome some of the barriers that accompany the more traditional training methods (e.g., space and budget limitations, travel costs, and balancing the need for training with the need to maintain the level of service to the public).

- Using the SSA OLU, employees can take courses at home, at their local library, or at work. Currently, the SSA OLU has nearly 1,600 online courses to choose from--courses ranging from information technology to professional development and leadership.

- To ensure that we reach all SSA employees, including those with disabilities, the OLU site complies with a strict interpretation of Section 508.

- SSA also offers a variety of courses via the SSA Intranet. These courses, located on the OT website, are open to all SSA employees. Courses offered include Office Automation, Programmatic, and General Skills.

- The OT website is the second most visited site in SSA.

**How much money do you allocate to training?**

**Answer:**

In SSA, major training efforts such as SES development and other Agency-wide leadership/management programs are directed and funded by the Office of Human Resources (OHR). In addition, each SSA component also decides how much of its own funding allocation to use on other training programs. For example, the Office of Systems must provide a significant amount of technical training to keep its employees' knowledge base current with the latest developments in hardware, software, and telecommunications.

In FY 2003, SSA spent about $29 million on various training activities. These costs included training tuition and fees paid to vendors, staff travel related to training, training contracts managed by OHR (e.g., interagency agreements with OPM and other agencies), and the cost of the training staff in OHR who oversee SSA's training programs.

**Do you have special training program for ALJs?**

**Answer:**

- A 5-week training program is provided to new ALJ hires. The training agenda incorporates an orientation and topics associated with Disability Evaluation, Case Management, and Conduct of the Hearing.

- After 1 year on the job, new ALJs receive 1 week of supplemental training. In addition, ongoing training is offered to ALJs covering a variety of topics.

- There is also a bi-monthly IVT broadcast training series entitled "OHA Hour" that is geared specifically to address programmatic issues.

7. One of our hearing witnesses discussed the need for attorneys to have "read only" access to their client's electronic disability folder, once it is online. Do you think this is possible? What are the impediments for this to occur?

**Answer:**

There are security issues with providing sensitive claimant information over the Internet that have yet to be resolved. In the meantime, we can provide attorney representatives with either a compact disk containing the applicable file or a printed copy.

8. Re-employing retired federal employees is one way agencies can meet their short-term and long-term hiring needs. During your testimony, you indicated that SSA has hired retired ALJs on a part-time basis in the Cleveland office to help ease the disability case backlog. I commend you for using this existing hiring flexibility. However, does SSA have to receive approval from OPM prior to re-employing an ALJ? Also what impact, if any, does this action have on an ALJ's retirement benefits?

**Answer:**

To help meet the need for additional ALJs, SSA has reemployed retired ALJs under the Senior ALJ Program to help reduce the disability case backlog. OPM maintains a list of retired ALJs who are eligible for temporary reemployment. When SSA requests OPM approval to reemploy a retired ALJ, OPM provides a list of qualified, interested ALJs from which to choose.

Normally, when retired ALJs are reemployed as Senior ALJs, they work on an intermittent work schedule (i.e., no regularly scheduled tour of duty) and they continue to receive their regular annuities. However, their salaries are reduced by the amount of their annuities. Since 2000, OPM has granted SSA the authority to reemploy Senior ALJs with waivers of the dual compensation salary reduction in

order to help reduce the disability backlog. Senior ALJs who agree to temporary reemployment on a full-time work schedule may have the salary reduction waived so that they will receive the full salaries for their ALJ positions as well as their regular annuities. Senior ALJs who are willing to work only on an intermittent basis may not receive waivers, thus their salaries are reduced by the amounts of their annuities, and they continue to receive their regular annuities. Reemployment under the Senior ALJ Program, with or without a waiver, has no impact on an ALJ's retirement benefits.

9. Could you please provide me with a comparison outlining the salaries earned by State disability examiners across the nation?

**Answer:**

We have enclosed a table showing minimum and maximum salaries for State Disability Examiners by State (arranged by region).

Enclosures

## INITIAL DISABILITY CLAIMS
## INITIAL ADJUDICATIVE LEVEL
## ALLOWANCE[/1] AND DENIAL COUNTS & RATES
## MENTAL, PHYSICAL & ALL IMPAIRMENTS[/2]
## FY 1990-2003

| | MENTAL IMPAIRMENTS | | | | PHYSICAL IMPAIRMENTS | | | | ALL IMPAIRMENTS | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| FY | ALLOW | RATE | DENY | RATE | ALLOW | RATE | DENY | RATE | ALLOW | RATE | DENY | RATE |
| **1990** | 213,388 | 57.5 | 157,800 | 42.5 | 393,453 | 34.0 | 763,029 | 66.0 | 606,841 | 39.7 | 920,829 | 60.3 |
| **1991** | 281,340 | 61.9 | 173,445 | 38.1 | 470,610 | 35.6 | 850,843 | 64.4 | 751,950 | 42.3 | 1,024,288 | 57.7 |
| **1992** | 416,832 | 63.2 | 243,007 | 36.8 | 580,856 | 35.6 | 1,051,602 | 64.4 | 997,688 | 43.5 | 1,294,609 | 56.5 |
| **1993** | 421,290 | 55.3 | 340,206 | 44.7 | 542,984 | 32.0 | 1,152,493 | 68.0 | 964,274 | 39.2 | 1,492,699 | 60.8 |
| **1994** | 356,326 | 44.0 | 453,413 | 56.0 | 499,545 | 28.9 | 1,230,403 | 71.1 | 855,871 | 33.7 | 1,683,816 | 66.3 |
| **1995** | 294,861 | 36.5 | 512,150 | 63.5 | 483,353 | 28.3 | 1,224,105 | 71.7 | 778,214 | 30.9 | 1,736,255 | 69.1 |
| **1996** | 249,052 | 34.9 | 464,614 | 65.1 | 455,444 | 29.0 | 1,114,423 | 71.0 | 704,496 | 30.9 | 1,579,037 | 69.1 |
| **1997** | 230,753 | 37.2 | 389,493 | 62.8 | 444,762 | 30.5 | 1,014,433 | 69.5 | 675,515 | 32.5 | 1,403,926 | 67.5 |
| **1998** | 230,070 | 41.6 | 323,070 | 58.4 | 461,579 | 32.9 | 940,365 | 67.1 | 691,649 | 35.4 | 1,263,435 | 64.6 |
| **1999** | 249,772 | 43.9 | 319,287 | 56.1 | 485,981 | 34.8 | 912,144 | 65.2 | 735,753 | 37.4 | 1,231,431 | 62.6 |
| **2000** | 262,551 | 45.6 | 313,806 | 54.4 | 492,719 | 35.3 | 903,411 | 64.7 | 755,270 | 38.3 | 1,217,217 | 61.7 |
| **2001** | 302,715 | 48.8 | 316,970 | 51.2 | 544,388 | 36.7 | 939,713 | 63.3 | 847,103 | 40.3 | 1,256,683 | 59.7 |
| **2002** | 328,737 | 46.8 | 373,381 | 53.2 | 566,148 | 35.1 | 1,048,332 | 64.9 | 894,885 | 38.6 | 1,421,713 | 61.4 |
| **2003** | 348,473 | 45.3 | 420,683 | 54.7 | 567,430 | 33.5 | 1,126,095 | 66.5 | 915,903 | 37.2 | 1,546,778 | 62.8 |

[/1] - Allowance Counts Include Closed Period Decisions.
[/2]-The impairment classification was based solely upon the primary impairment code.

SOURCE: FY 1990 - FY 2003 SSA-831 FILES
PREPARED BY : SSA,ODISP,ODP, ODPIS
DATE PREPARED: APRIL 2004

FY 2004

**Disability Examiners Salaries**

| | Disability Examiners | |
|---|---|---|
| | Min | Max |
| **BO REG** | | |
| CT | $45,684 | $57,753 |
| ME | $27,726 | $38,313 |
| MA | $38,011 | $51,917 |
| NH | $31,727 | $42,998 |
| RI | $38,104 | $53,081 |
| VT | $28,392 | $47,486 |
| **NY REG** | | |
| NJ | $37,597 | $51,433 |
| NY 1/ | $45,347 | $56,193 |
| PR | $16,128 | $41,268 |
| **PH REG** | | |
| DE | $24,386 | $36,578 |
| DC | $43,053 | $55,494 |
| MD | $28,749 | $44,453 |
| PA | $37,360 | $56,763 |
| VA | $27,323 | $72,899 |
| WV | $23,784 | $43,992 |
| **AT REG** | | |
| AL | $28,434 | $45,287 |
| FL | $29,785 | $47,610 |
| GA | $30,000 | $49,908 |
| KY | $28,188 | no max |
| MS | $22,852 | none listed |
| NC | $25,781 | $41,569 |
| SC | $31,547 | $48,804 |
| TN 2/ | $23,436 | $37,044 |
| **CH REG** | | |
| IL | $33,696 | $49,104 |
| IN | $30,888 | $47,190 |
| MI | $36,982 | $47,757 |
| MN | $30,882 | $44,683 |
| OH | $33,280 | $43,264 |
| WI | $36,888 | $48,810 |

| | | |
|---|---|---|
| **DA REG** | | |
| AR | $23,768 | $46,732 |
| LA | $23,280 | $43,308 |
| NM | $30,025 | $53,375 |
| OK | $26,616 | $33,268 |
| TX | $32,316 | $44,112 |
| **KS REG** | | |
| IA | $29,556 | $45,278 |
| KS | $27,889 | $36,460 |
| MO | $29,196 | $44,088 |
| NE | $27,828 | $41,748 |
| **DE REG** | | |
| CO | $33,120 | $47,964 |
| MT | $28,396 | $40,520 |
| ND | $21,300 | $35,508 |
| SD | $21,237 | $31,992 |
| UT | $29,474 | $44,283 |
| WY | $22,044 | $44,856 |
| **SF REG** | | |
| AZ | $30,949 | $43,577 |
| CA | $31,584 | $59,964 |
| HI | $32,040 | $45,612 |
| NV | $29,670 | $41,447 |
| **SE REG** | | |
| AK | $39,648 | $56,904 |
| ID | $30,121 | $49,874 |
| OR | $31,968 | $44,376 |
| WA | $31,032 | $39,492 |

1/ The New York DDS - salaries listed are for FY02. The DDS has not had a salary increase since FY 02.

2/ The Tennessee DDS- salaries listed are for FY 03. No salary increase for FY 2004. There is a 2 5% across the board raise pending legislative approval. If obtained it will be effective 7/1/04.