

SOCIAL SECURITY NOTICES

HEARING
BEFORE THE
SUBCOMMITTEE ON SOCIAL SECURITY
OF THE
COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES
ONE HUNDRED SIXTH CONGRESS
SECOND SESSION

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SEPTEMBER 26, 2000
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SOCIAL SECURITY NOTICES

SEPTEMBER 26, 2000

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON SOCIAL SECURITY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:07 a.m., in room B-318, Rayburn House Office Building, Hon. E. Clay Shaw, Jr. (Chairman of the Subcommittee) presiding.

[The advisory announcing the hearing follows:]

ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON SOCIAL SECURITY

FOR IMMEDIATE RELEASE

CONTACT: (202) 225-9263

September 19, 2000

No. SS-23

Shaw Announces Hearing on Social Security Notices

Congressman E. Clay Shaw, Jr., (R-FL), Chairman, Subcommittee on Social Security of the Committee on Ways and Means, today announced that the Subcommittee will hold a hearing on Social Security notices. The hearing will take place on Tuesday, September 26, 2000, in room B-318 Rayburn House Office Building, beginning at 10:00 a.m.

Oral testimony at this hearing will be heard from invited witnesses only. Witnesses will include representatives from the U.S. General Accounting Office (GAO) and the Social Security Administration (SSA). However, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Committee and for inclusion in the printed record of the hearing.

BACKGROUND:

Social Security programs (Old-Age, Survivors, and Disability Insurance and Supplemental Security Income) provide monthly cash benefits to about 50 million beneficiaries. SSA mails millions of letters each year to applicants and recipients about its decisions to award, change, or deny benefits. In many cases these letters contain vital information needed by recipients and their families to make important medical, financial, and personal decisions.

Yet, in 1994, GAO found that SSA's letters were often difficult to understand, lacked essential details, presented information in an illogical order, and required complex analysis to understand how benefit adjustments had been made. Chairman Shaw has asked GAO to assess SSA's progress in improving its letters. These findings will be presented at the hearing.

In announcing the hearing, Chairman Shaw stated: "One of SSA's goals is to deliver customer-responsive world-class service. Such service must ensure that these life-changing notices are accurate and easy to understand. We need to know if agency notices provide intelligible information for today's customers and if not, how this can be corrected before workloads at the agency substantially increase with the upcoming retirement wave of the baby boomers. Providing quality notices should be one of the agency's top priorities.

FOCUS OF THE HEARING:

The hearing will focus on the quality of SSA's notices and the status of SSA's actions to address notice improvement.

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Any person or organization wishing to submit a written statement for the printed record of the hearing should submit six (6) single-spaced copies of their statement, along with an IBM compatible 3.5-inch diskette in WordPerfect or MS Word format,

with their name, address, and hearing date noted on label, by the close of business, Tuesday, October 10, 2000, to A.L. Singleton, Chief of Staff, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. If those filing written statements wish to have their statements distributed to the press and interested public at the hearing, they may deliver 200 additional copies for this purpose to the Subcommittee on Social Security office, room B-316 Rayburn House Office Building, by close of business the day before the hearing.

FORMATTING REQUIREMENTS:

Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record or any written comments in response to a request for written comments must conform to the guidelines listed below. Any statement or exhibit not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All statements and any accompanying exhibits for printing must be submitted on an IBM compatible 3.5-inch diskette in WordPerfect or MS Word format, typed in single space and may not exceed a total of 10 pages including attachments. Witnesses are advised that the Committee will rely on electronic submissions for printing the official hearing record.

2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.

3. A witness appearing at a public hearing, or submitting a statement for the record of a public hearing, or submitting written comments in response to a published request for comments by the Committee, must include on his statement or submission a list of all clients, persons, or organizations on whose behalf the witness appears.

4. A supplemental sheet must accompany each statement listing the name, company, address, telephone and fax numbers where the witness or the designated representative may be reached. This supplemental sheet will not be included in the printed record.

The above restrictions and limitations apply only to material being submitted for printing. Statements and exhibits or supplementary material submitted solely for distribution to the Members, the press, and the public during the course of a public hearing may be submitted in other forms.

Note: All Committee advisories and news releases are available on the World Wide Web at "<http://waysandmeans.house.gov>".

The Committee seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202-225-1721 or 202-226-3411 TTD/TTY in advance of the event (four business days notice is requested). Questions with regard to special accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

Chairman SHAW. Good morning.

Each year the Social Security Administration mails out millions of letters to Social Security and SSI beneficiaries. The purpose of these letters is to notify people about changes in their eligibility status or in the amount of monthly benefits that they receive.

These letters represent the official communication between the Social Security Administration and the public. Millions of elderly Americans, especially those with low income, rely on Social Security as their only source of incomes. Any changes in benefits or eligibility has an extremely important impact on these people's lives. The amount of their Social Security or SSI check may be the difference between paying the monthly bills or not paying the monthly bills.

Social Security rules are complicated enough. If someone does not understand what a letter says, they may not understand that their monthly income will change, or in some cases, even be discontinued. And they may not understand what steps they can take to address the situation if a mistake was indeed made. As a result, it is vital that SSA's letters to the public are as clear and easy to understand as possible.

Yet, SSA letters are not clear. They are confusing, sometimes illogical, contradictory, and oftentimes frightening, especially when a senior on a fixed income is told that they owe \$4,435 in 30 days. A recent court case ruled that certain letters are even constitutionally defective because they violate the principles of due process.

For many years GAO has criticized these letters and has recommended that improvements be made, and for many years SSA has agreed that a real problem does in fact exist, and they have vowed to make improvements.

Last year I asked the General Accounting Office to report on the progress SSA has made in improving their letters to the public. I am extremely disappointed to learn that the answer is little to none. GAO will testify today that improving these notices has not been a priority for SSA. The agency has taken very little action to fix the problem, and the letters remain as confusing today as they were several years ago when the problem was identified.

For an agency that prides itself on delivering world-class customer service—and it does—it is beyond me how a problem of this magnitude fails to be addressed. SSA has recognized this problem and has pledged to fix it. Yet time and time again, plans to address the problems have been rescheduled, delayed or simply put off.

In a few years millions of baby-boomers will reach their peak disability years and then their peak retirement years. As a result SSA's workload will increase substantially. Indeed, SSA has testified before the Subcommittee about the daunting challenges ahead as the agency prepares for the increased workload. It seems to me that SSA's ability to effectively communicate with the public is paramount in providing quality customer service, and this is a problem that needs to be fixed before the baby boomers become SSA customers.

I look forward to hearing from our witnesses today and to learn what SSA plans to do to address these problems, and I would now yield to Mr. Cardin for such time as you may want to consume.

Mr. CARDIN. Thank you, Mr. Chairman, and let me express Mr. Matsui's sorrow for not being able to be present today, and I would ask that his statement be made part of our record.

Chairman SHAW. Without objection.

[The statement of Hon. Robert T. Matsui follows:]

Statement of Hon. Robert T. Matsui, a Representative in Congress from the State of California

The Social Security program serves millions of people. This year, over 150 million people will work in Social-Security-covered employment, and the Social Security and SSI programs will pay benefits to 50 million. Most of the time, we don't stop to think about all the information that the Social Security Administration (SSA) provides. SSA communicates to the American people through its toll-free telephone number, its branch offices, and its website.

One of the most important ways that SSA provides information is through written notices. This year alone, SSA expects to send out approximately 390 million notices

to claimants, beneficiaries, workers, employers, and government agencies. Over the past several years, SSA has worked to improve the clarity and readability of the vast majority of its notices. The Commissioner of Social Security, Ken Apfel, testified before the Subcommittee earlier this year about the agency's initiatives.

At today's hearing, our witnesses will talk more specifically about a small subset of the agency's notices. The General Accounting Office (GAO) is here to tell us about their latest study, in which GAO examined four types of notices the SSA issues. These notices tell people whether they have been awarded or denied benefits, or that their benefit payments will be adjusted because of a change in their personal circumstances.

The people who receive these notices rely on the information contained in them to make vitally important financial and legal decisions. Whether it is the mother receiving a notice about SSI benefits for her disabled child, or the elderly widow whose benefits are changing after the death of her husband, people count on these notices to be clear and thorough.

Today, GAO will report that these four types of notices need significant improvement. The notices are often hard to follow, and the recipient may have difficulty figuring out what action SSA is taking. The notices may not explain why SSA is taking a particular action. And the notices may be missing critical facts that the recipient needs in order to make an informed decision about what to do next.

I recognize that SSA faces a monumental task in revising these four types of notices. Making the changes that GAO recommends will involve reprogramming dozens of software programs and hundreds of lines of computer code. Since these notices convey decisions about programs with very complex rules such as SSI it will always be a challenge to present this information in an easily understandable manner. Finally, because a relatively small percentage of people receive these types of notices, the large amount of resources required to improve them may not make this project very attractive.

However, these notices are sent to some of the most vulnerable members of our society the young, the sick, and the old. These people look to Social Security in times of need. To leave them, or the people who care for them, bewildered over a change in benefits or feeling as though they simply have no recourse in responding to a decision is simply unacceptable.

I am very proud of our nation's Social Security program, and I know SSA is committed to providing its clients with the best possible service. Although these changes may be difficult, I know that the agency can and will make them in a timely manner. I look forward to hearing from Ms. Bovbjerg about GAO's recommendations for improving SSA's notices and from Mr. Halter about the steps the agency is taking to implement them.

Mr. CARDIN. We join you on this side of the aisle in welcoming this hearing. We very much welcome the deputy commissioner and the testimony from GAO as to the notices being sent out by the Social Security Administration. We think this is an extremely important subject. 150 million will work in Social Security covered employment this year, and Social Security and SSI combined will pay benefits to about 50 million people in 2000.

I don't think we quite understand the enormity of the task that faces SSA in communicating with the American public about these programs. Indeed, for 2000, SSA expects to send out approximately 390 million customized notices to claimants, beneficiaries, workers, employers and government agencies, 390 million customized notices. That is quite a task.

As you point out, we have had hearings before this Subcommittee, and we know that Commissioner Apfel has made great strides in improving the annual Social Security statement that is now sent to every American worker over the age of 25. These annual statements now comprise approximately one-third of the automated notices SSA issues. About 133 million such statements will be issued for 2000.

We join the Chair in recognizing that improvements need to be made, and we must continue to conduct oversight and make sure that we improve the notices that are being sent to the beneficiaries particularly, because they rely on that information. It is extremely important they get accurate information and timely information.

But, Mr. Chair, if I might, on a personal note, make a plug for the bill that you have been working on, and that I hope to work with you on, and that is to remove the SSA's administrative budget from the discretionary spending caps, because I do think part of the problem is that we need to take a look at what is the right amount of administrative support for the agency, not just in personnel, but in systematic improvements. And competing today in Labor-HHS-Education on the discretionary caps makes little sense, and I would hope that legislation would help us in providing the necessary tools and holding SSA accountable to perform the way that our constituents expect them to perform.

So I look forward to the witnesses today and I look forward to working with you in making sure that we get the best possible service to the people of his nation under the Social Security Administration.

Chairman SHAW. Thank you, Ben. The budgetary problems that you mention, perhaps we can work together to develop an argument during this hearing with regard to that.

We have here just two panels, each comprised of one person. From the Social Security Administration we have the Honorable William A. Halter, who is the Deputy Commissioner of Social Security.

Then we have, from the U.S. General Accounting Office, Barbara Bovbjerg, who is the Associate Director of Education, Workforce and Income Security Issues, Health, Education and Human Services Division.

If neither of the witnesses has any objection, I think it would be to our advantage to be able to handle this as one panel so that we can go from question to question and people have an opportunity, particularly you, Mr. Halter, to reply to any problems that Ms. Bovbjerg may point out to us.

So, Ms. Bovbjerg, if you would please, if you have no objection to sitting here at the table together, I think it would be very helpful to us and to this hearing.

I thank you. Mr. Halter.

**STATEMENT OF HON. WILLIAM A. HALTER, DEPUTY
COMMISSIONER, SOCIAL SECURITY ADMINISTRATION**

Mr. HALTER. Thank you, Mr. Chairman, Congressman Cardin, Congressman Levin.

It is my pleasure to be here today to discuss the GAO's report and our continuing efforts to ensure that the notices the Social Security Administration sends to the public are clear and informative. Improving the notices targeted by the GAO requires diverting resources from other priorities. We have committed those resources. Furthermore, we will put in place mechanisms necessary to measure our performance for improving the notices.

Mr. Chairman, as you know and as Congressman Cardin alluded to, Social Security processes large workloads each and every day.

Fifty million beneficiaries receive the right payment on time each month. On average, each work day, about 100,000 people visit one of our 1,300 field offices, and over 240,000 people call our 800 telephone number.

Our goal at the Social Security Administration is to provide the best in business service, which includes making written notices easy to read, accurately communicating all necessary information and clearly indicating any actions or information that we expect from the recipient of the notice.

The most formidable challenge in improving our notices results from the complexity of our programs and the sheer volume of the notices we must produce. As Congressman Cardin noted, each year we send out about 390 million forms and notices to the public. This number has grown dramatically in the past year, primarily because we are now sending Social Security statements to 133 million people annually. About 95 percent of the notices are produced from automated systems. These systems use more than 10,000 different paragraphs of text to compose letters to respond to the multitude of combinations of circumstances that apply to different beneficiaries. The notices cited by GAO, the Social Security Benefit Adjustment Notices and SSI Notices, are especially complex. An average benefit adjustment notice will contain eight pages, 40 paragraphs and 225 fill-in-the-blank spots. A complicated notice can contain up to 15 pages, 100 paragraphs and 800 fill-ins. In SSI notices, each paragraph can have from 2 to 122 fill-in choices. Each of these fill-ins also has multiple variations.

All of Social Security's notices must meet certain legal requirements, especially if they involve a customer's rights and responsibilities. It is sometime very difficult to construct notice language that accomplishes this while making the notice simple. Producing millions of personalized notices where many different fact situations are present is one of our greatest challenges.

I would like to review with you today our progress so far in improving our notices and our plans for further improvements, including those steps recommended by GAO. In 1993, Mr. Chairman, 30 percent of our notices needed to be improved. Over the years we have improved our notices so that only 8 percent remain to be addressed.

Improvements made in the last few years include making 56 million more notices a year available in Spanish, improving the language in debt collection or billing notices that we sent to approximately 3 million a year, improving the language of 3½ million health insurance notices, and revising all of our hearing-level notices.

In its review GAO focused on four types of notices that go to 14.2 million people each year and convey important information about their eligibility for benefits or changes in their benefit amount. Importantly, in two months, that is to say, November 2000, we will have in place corrections for nearly 7 million of these 14.2 million notices. In addition, because of the retirement earnings test elimination legislation that was passed this past year, the 14.2 million figure will decrease by another 1.4 million in the next year as certain notices will no longer need to be sent.

The Social Security Administration has committed the resources and has a project plan that describes the steps necessary to fix the remaining 6 million notices from the GAO report. To complete the notice improvement project our plan will allow us to make steady progress on improving these, our mostchallenging notices.

Now, as I noted, we have already made progress in addressing the problems identified for two of the four notice types identified in the GAO report. For example, the remaining problems with the Social Security Award Notice will be resolved within the next two months. The remaining problems with the Social Security Benefit Adjustment Notice will be corrected by July of 2002.

We recognize that we still need to improve notices that explain the effects of the retirement test on benefits. However, thanks to the elimination of the retirement test at full retirement age earlier this year, about two-thirds fewer beneficiaries are subject to that retirement test. The number of complicated retirement notices, currently around 3½ million, will drop by approximately 40 percent.

We face our most difficult task in improving SSI Awards and Benefit Adjustment Notices. Because the SSI program is complex, explanations of the effect of income, resources and living arrangement changes will always, by their nature, be difficult to present in an easy, understandable manner. There is virtually no limit on how many variations can apply to a single beneficiary, meaning that the SSI notices must be able to handle an almost unlimited array of possibilities with a large number of variables. In addition, improvements to these notices will require an investment of information technology resources to change the SSI computational and notices systems.

Although, as noted in the GAO report, there are no quick fixes for making improvements in this area, we are committed to making the improvements needed as quickly as possible, and we have started work on these changes. For example, in February of this year we drafted and tested a prototype worksheet to be added to the SSI Award and Benefit Adjustment letters, showing how SSI benefits are computed. This worksheet shows how SSI benefits are computed in relatively uncomplicated cases. That is 90 percent of the cases in which SSI recipients have no income or only unearned income such as SocialSecurity benefits. This worksheet will be added to the SSI letters for this population as part of the major notice system changes that will be implemented by July of 2002.

We agree with GAO's recommendation to develop performance measures for notice clarity and beneficiary understanding of the most complex notices. In this coming fiscal year we will conduct a customer satisfaction survey to secure reliable baseline data on customer satisfaction with the notices that we have targeted for improvement. Using the feedback obtained from this survey, we will pursue the development of performance measures that address GAO's concerns.

Regardless of how much improvement is made in our most problematic notices, there are complex issues in which many of our customers will need to discuss the information received. Therefore, in addition to improving the majority of our notices, we have provided our public contact personnel with additional tools for responding to concerns or questions about notices. For example, as a result of the

Online Notice Retrieval System, which was implemented nationally in November of 1998, public contact personnel in our field offices and teleservice centers now have direct online access to the specific notice information and language contained in the vast majority of notices received by the public. The next release of this system planned for later this year will provide online access to virtually all remaining notices and will further enhance our ability to communicate effectively with our customers.

In addition to making internal improvements to our process, we are firmly committed to involving the public in the evaluation of products and services that affect them. This year alone we have conducted over 24 focus group tests to get the public's reaction to this worksheet that we plan to add to our SSI notices. In our annual customer satisfaction survey we ask respondents to rate the clarity of information we mail to them. Our most recent survey results indicate that 86 percent are satisfied or very satisfied with their mail from the Social Security Administration. Importantly, Mr. Chairman, this is an improvement over prior years, where the results were 65 percent satisfaction rating in FY 1993.

In conclusion, Mr. Chairman, we agree with the recommendations of the GAO report. We have already improved the language and format of about 92 percent of our notices. In fact, GAO acknowledged in its report that in spite of increasing workloads and efforts to address agency priorities such as maintaining program integrity, the Social Security Administration has made major notice enhancements. And we have recently committed resources to improving the remaining problematic notices.

Mr. Chairman, I would be happy to answer any questions you may have.

[The prepared statement follows:]

Statement of Hon. William A. Halter, Deputy Commissioner, Social Security Administration

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss the General Accounting Office (GAO) report and our continuing efforts to ensure that the notices the Social Security Administration (SSA) sends to the public are clear and informative. Effective communication between the Social Security Administration and the American public is very important. We appreciate the opportunity to discuss the progress that we have made in improving our notices and our plans for future improvements. While improving the notices targeted in the GAO report within the timeframes we have set will require diverting resources from other priorities, we have committed those resources. Furthermore, we will put in place mechanisms necessary to measure our performance for improving the notices, as recommended by GAO.

Our goal at the Social Security Administration is to provide the best in business service which includes making written notices easy to read, accurately communicating all necessary information, and clearly indicating any actions or information that we expect from the recipient of the notice. Not surprisingly, our customers tell us that a key aspect of the service we provide is the clarity of our notices. In numerous customer satisfaction surveys, notice recipients have stated that it is important for them to readily understand what we are writing to them about. Clear notices not only help the customer but also lead to a much more efficient delivery of services for the Social Security Administration.

Mr. Chairman, let me give you some examples of the magnitude of the Social Security's service responsibilities. We are committed to providing the right benefit payment to the right person on time, and we do so over 600 million times a year. This represents 50 million monthly payments to Old-Age, Survivors and Disability Insurance (OASDI) and Supplemental Security Income (SSI) recipients. On average, each workday about 100,000 people visit one of our 1,300 field offices and over 240,000 people call our 800 telephone number. Each workday we process an average of

20,000 initial claims for retirement, survivors, disability or SSI benefits, and hold 2,400 hearings before Administrative Law Judges (ALJs). Each year, we make certain that over 250 million earnings items are correctly credited to workers' accounts to ensure that future benefit payments are accurate. We take these responsibilities very seriously, because millions of Americans rely on us as they have for the past 65 years.

The most formidable challenge in improving our notices results from the complexity of our programs and the sheer volume of notices we must produce. Each year, we send about 390 million forms and notices to the public. This number has grown dramatically in the past year, primarily because we are now sending Social Security Statements to 133 million people annually. Our notices are produced from 15 separate computer software systems and from countless manual processes. About 95 percent of the notices are produced from automated systems. These systems use more than 10,000 different paragraphs of text to compose letters to respond to the multitude of combinations of circumstances that apply to different beneficiaries.

All of Social Security's notices must meet certain legal requirements, especially if they involve a customer's rights and responsibilities. It is sometimes very difficult to construct notice language that accomplishes this, while the notice is simple. Many of these notices require customized text where the result of a Social Security Administration action must be explained by computer insertion of relevant paragraphs. These insertions must also be organized in a logical manner. Producing millions of personalized notices where many different fact situations are present is one of our most challenging duties.

I would like to review with you today the process we are using to improve our notices, including our actions taken so far, and our plans for further improvements including those recommended by GAO.

We have improved the clarity of the vast majority of our notices, provided additional capabilities for staff responding to notice inquiries, and we have modernized and streamlined the way we produce notices. We have improved letters to retirement, survivors and disability beneficiaries, SSI overpayment letters, notices announcing cost-of-living adjustments, notices to employers and employees and the Social Security Statement.

Since 1985 the agency has been seeking to improve its most problematic notices and high visibility form letters. We focused our initial efforts on notices that affected the greatest number of customers and that were less complex notices to generate. This allowed us to improve 92 percent of the notices we issue each year. In 1993, the agency convened a steering committee composed of representatives of all parts of Social Security to guide these efforts. As a result of this initiative, the agency has made many major enhancements in the quality of our notices and improved the service to notice recipients. We have modernized and streamlined the notice production environment.

Improvements made in the last few years include:

- Improving the language of 3.5 million health insurance notices,
- Eliminating the use of confusing multi-use form letters that were sent to 9 million people each year,
- Improving the language in debt-collection or billing notices that we send to approximately 3 million people a year,
- Improving letters that we send to approximately 4 million people each year to confirm appointments,
- Revising all of our hearing level notices, which amount to .5 million that we send annually,
- Making 56 million more notices a year available in Spanish, and
- Consolidating duplicate notice language databases.

In 1993, 30 percent of our notices needed to be improved; over the years, we have improved our notices so that only 8 percent remain to be addressed. We have already begun to improve the remaining 8 percent, which were cited in the GAO report.

The most challenging notices to improve are:

- The Social Security benefit adjustment notices, including overpayments and underpayments, and
- SSI award notices and notices of action to be taken by the Social Security Administration regarding the recipient's SSI eligibility or benefit amount.

In its review GAO focused on 4 types of notices that together total 14.2 million pieces of correspondence each year which convey important information about eligibility for benefits or changes in benefit amount. In two months, we will have in place corrections for nearly 7 million of these notices. In addition, because of the

Retirement Earnings test legislation, the 14.2 million figure will decrease by another 1.4 million in the next year, as certain notices will no longer be sent. The Social Security Administration has committed the resources and has a project plan necessary to fix the remaining 6 million notices. To complete the notice improvement project, our plan will allow us to make steady progress on improving these most challenging notices over the next four years.

With regard to the notices that were the focus of the GAO report, we are pleased to report that we have already made progress in addressing the problems identified in the report regarding the Social Security Award Notice and the Social Security Benefit Adjustment Notice. The remaining problems with the Award Notice will be resolved within the next two months. With regard to remaining problems with the Social Security Benefit Adjustment Notice, we have a team working to complete all improvements in these notices by July 2002. The complexity with the current Social Security Benefit Adjustment Notices occurs because the notices are generated from 46 separate software programs and are composed by selecting from 146 different paragraphs. An average Benefit Adjustment Notice will contain 8 pages, 40 paragraphs, and 225 fill-ins. A complicated notice can contain up to 15 pages, 100 paragraphs, and 800 fill-ins.

Notices that explain the effects of the retirement test on benefits will be improved as part of the effort that will be completed in July 2002. However, thanks to the elimination of the retirement test at full retirement age earlier this year, about two-thirds fewer beneficiaries are subject to the retirement test. The number of complicated retirement test notices and subsequent notices dealing with the resulting overpayments and underpayments, currently approximately 3.5 million, will drop by approximately 40 percent.

We face our most difficult task and greatest challenge in improving SSI Awards and Benefit Adjustments Notices. Because the SSI program is complex, explanations of the effect of income, resources, and living arrangement changes will always, by their nature, be difficult to present in an easy, understandable manner. In addition, improvements to these notices will require an investment of information technology resources to change the SSI computational and notices systems.

As an example of the complexity of the task we face, the SSI notices computer program selects from approximately 700 paragraphs, which are tailored to the characteristics of an individual's case. Each paragraph can have from 2 to 122 fill-in choices. Each of these fill-ins also has multiple variations. The Social Security Administration produces an average of 1.4 million SSI notices each month, not including the 7.5 million cost-of-living adjustment (COLA) notices generated each November. A SSI recipient can have different income, resources, and living arrangements from month to month, coupled with overpayments and/or underpayments. Notices reflect past or present changes and the consequences of those changes. There is virtually no limit on how many variations can apply to a single beneficiary, meaning that the SSI notices must be able to handle an almost unlimited array of possibilities with a large number of variables.

Although, as noted in the GAO report, there are no quick fixes for making improvements in this area, we are committed to making the improvements needed as quickly as possible. The Social Security Administration has started work on these changes. In February 2000, we drafted and tested a prototype worksheet to be added to SSI award and benefit adjustment letters showing how SSI benefits are computed. The worksheet that we tested was intended to show how SSI benefits are computed in relatively uncomplicated cases—that is, the 90 percent of cases in which SSI recipients have no income or only unearned income, such as Social Security benefits. This worksheet will be added to the SSI letters for this population as part of the major notice systems changes that will be implemented by July 2002.

In July 2000 we tested the worksheet with SSI recipients who have a combination of earned and unearned income because we wanted to make sure that our worksheet would take care of more complicated eligibility situations. Through incremental improvements to these types of notices, by September 2004 we plan to incorporate the more complex earned and unearned situations, such as a child receiving benefits based on parents' income, into the worksheet.

We have dedicated the resources necessary to fix almost all of the Social Security notices cited by GAO by July 2002 and almost all of the SSI notices by September 2004. This will include the addition of a worksheet detailing the computation for SSI notice recipients. Furthermore, we will put in place the mechanisms necessary to measure our performance for improving the notices as recommended by GAO.

As we implement these improvements, we will not lose sight of the needs of the public for notices that are complete, clear, and accurate, and we will continue to consult with the public as to how well we are meeting their needs. Improvement

to our notices continues to be a central element to our overall plan to provide high-level service to the public.

Regardless of how much improvement is made in our most problematic notices, there are complex issues and/or unique situations in which many of our customers will need or want to discuss the information received. Therefore, in addition to improving the majority of our notices, we have provided our public contact personnel with additional capabilities to use when responding to concerns or questions about notices. As a result of the Online Notice Retrieval System (ONRS), implemented nationally in November 1998, public contact personnel in our field offices and tele-service centers now have direct online access to the specific notice information and language contained in the vast majority of notices received by the public. The next release of Online Notice Retrieval System, planned for later this year, will provide online access to virtually all remaining notices by our public contact personnel and will further enhance our ability to communicate effectively with our customers. The Social Security Administration's field offices and 800 number service provide additional assistance to people with questions about their notices.

In addition to making internal improvements to our process, we are firmly committed to involving the public in the evaluation of products and services that affect them. In FY 2001 we will conduct a customer satisfaction survey to secure reliable baseline data on customer satisfaction with notices targeted for improvement.

As early as 1987, the Social Security Administration tested notice language by obtaining public feedback, and we continue to rely on similar methods of involving the public in notice improvement activities. In 1997, we conducted a series of focus groups to test reactions to new notice formats to see if these new formats might help with notice comprehension. This year alone, we have conducted over 24 focus group tests to get the public's reaction to a computational worksheet that we plan to add to SSI notices and another 6 focus group tests to get public reaction to a work-related notice. Public input improves the final product by focusing our improvements on public needs and expectations.

Two prime examples of the Social Security Administration's use of public input to improve our notices are the Cost of Living Adjustment (COLA) notice and the Social Security Statement. The Social Security Administration used comments from in-depth interviews and focus group sessions with disability and retirement beneficiaries to improve the COLA notice by revising the language and improving its appearance through format and overall style changes. The readability of the notice also was improved by enlarging the type size and changing the order of the information. The Social Security Statement reflects our customers' requests to have the earnings and benefit information presented in an easy to read and understandable format. We simplified the explanations, reduced the number of pages from 6 to 4, enlarged the type size, increased the amount of white space on the form, and reordered the information to make it flow better.

The GAO report recommended that the "Commissioner of Social Security direct SSA officials to develop performance measures to hold the agency accountable for making the needed comprehensive changes to its Social Security benefit adjustment letters and SSI award and benefit adjustment letters. These measures should include indicators that clearly articulate the timetables and basis against which progress to complete improvements can be tracked and, as further progress is made, the effectiveness of the improvements."

Regarding this recommendation on performance measures, we looked to our annual customer satisfaction survey as the basis for a performance measure. In our annual customer satisfaction survey, we ask respondents to rate the clarity of information we mail to them. Our most recent survey results indicate that 86 percent are satisfied or very satisfied with their mail from the Social Security Administration. This is an improvement over prior years when the results were 65 percent in FY 93.

Many of these respondents received very simple notices, and we are not able to break out results for recipients of our more complex notices. Therefore, to develop performance measures for notice clarity and beneficiary understanding of the most complex notices, we need to secure benchmark information about how well our beneficiaries understand the current version of these notices. We will conduct a customer satisfaction survey for these complex notices in fiscal year 2001 to obtain this information. Using the feedback obtained from the benchmark survey, we will pursue the development of performance measures that address GAO's concerns. As revised notice language is developed, we will conduct follow up customer surveys targeted to measure the level of customer understanding of the revised notices and the degree to which the desired performance has been achieved.

Mr. Chairman, the Social Security Administration has been known for some time as a Government-wide leader in management, planning, and service to the Amer-

ican public. Customer service has always been the hallmark of the Social Security Administration. The University of Michigan gave the Social Security Administration an 82 for customer satisfaction in the 1999 American Customer Satisfaction Index Survey—That is 8 points higher than the comparable private sector index. The 1999 Government Performance Project conducted jointly by Syracuse University's Maxwell School of Citizenship and Government Executive Magazine ranked the Social Security Administration at the top of 15 Federal Government agencies in one of the most comprehensive studies of management performance ever conducted. We have also won a prestigious award from CIO Magazine—a "2000 CIO-100 Honoree." CIO Magazine presents this award annually to the top 100 organizations that exemplify the "best of the best" in various business practices. This year, the 100 honorees are organizations that excel in customer service and customer relationship management.

We understand how vital our customers are, and we are excited about this special recognition. But, in spite of these accolades, we, like all other public institutions, face significant demands, changes and challenges. We recognize the problems with some of our notices and appreciate the importance of correcting those problems. We will maintain our focus on our customers and clearly explain our decisions so that they can understand why and how we made them and what to do if they disagree.

We agree with the recommendation in the GAO report. We have already improved the language and format of about ninety-two percent of all our notices that the public receives. In fact, GAO acknowledged in its report that, in spite of increasing workloads and efforts to address Agency priorities, such as maintaining program integrity, the Social Security Administration has made major notice enhancements. We have committed resources to improve the problematic notices.

As we implement these improvements, we will not lose sight of the needs of the public for notices that are complete, clear, and accurate, and we will continue to consult with the public as to how well we are meeting their needs. Improvement to our notices continues to be a central element to our overall plan to provide high-level service to the public.

Chairman SHAW. Thank you very much.

There is a general vote on the floor. We should be gone only about 15 minutes, so we will stand in recess until we return. Thank you. [Recess.]

Chairman SHAW. Ms. Bovbjerg.

STATEMENT OF BARBARA D. BOVBJERG, ASSOCIATE DIRECTOR, EDUCATION, WORKFORCE, AND INCOME SECURITY ISSUES; HEALTH, EDUCATION, AND HUMAN SERVICES DIVISION, U.S. GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY KAY BROWN, ASSISTANT DIRECTOR

Ms. BOVBJERG. Thank you, Mr. Chairman. Before I start, I want to introduce my colleague, Kay Brown, Assistant Director in our office, who is a customer service expert.

Chairman SHAW. Okay, thank you.

Ms. BOVBJERG. I am pleased to be here to discuss the letters that Social Security sends to the public. Each year SSA sends millions of letters to applicants for and recipients of Social Security and Supplemental Security Income benefits. These letters tell people if they are eligible to receive benefits or if their benefits are changing. Because they provide such important information, the letters must be written in a way that can be clearly understood.

We have long been critical of SSA's letters and have reported on this topic twice in the past. We have now completed our most recent assessment of SSA's progress in improving letters, and my testimony today summarizes these findings. We are also issuing a report to you today that provides a more detailed description of our work. I would like to focus my remarks today on two areas: the

problems that make some letters hard to understand, and the status of SSA's actions to fix them.

First the letters' problems. We looked at four types of automated high-volume letters, two each for Social Security and for SSI. In each program we focused on benefit award letters and benefit adjustment letters because of their potential significance to the people receiving them. We used writing consultants to help us assess the clarity of communication and identify the types of deficiencies.

What we found was problematic. The majority of letters in each of the four categories we reviewed did not clearly communicate on at least one of four dimensions. The letters either failed to explain SSA's decision itself, the basis for the decision, the financial effects of the decision on the individual's benefits, or the recourse available to the individual. Our report details the frequency and specifics of the letters' shortcomings and reproduces several actual letters as examples. While time doesn't permit me to discuss all of these in detail, I have brought one letter that by itself illustrates several of the problems we have seen.

Chairman SHAW. Is the letter in the testimony?

Ms. BOVBJERG. You have one in your package in color, Mr. Chairman, but there is also a more elaborate one in the testimony itself.

You can see on the board, excerpts from an actual SSI Award Letter. Such letters are sent to applicants who have been awarded benefits for previous months but not for future months. We have color-coded it by the type of information provided. Let me run through these problems quickly.

As you can see in the yellow areas, which describe SSA's decision, the letter first tells the recipient she is eligible for benefits, then subsequently states that she is ineligible, which might seem confusing to the average person.

The first blue area down by letter "C" explains that she is ineligible for disability benefits because, first, she is disabled, and second, she lives in Massachusetts. Neither seems to support the ineligibility decision. It is only later in the letter, in the blue area by letter "D", that she can see that in fact it is her income that makes her ineligible.

The pink area suggests that she is now going to receive 8 months of benefits and a check for more than \$3,000, but the letter later states that only one month of benefits will be provided. At this point the recipient may have no idea what amount of money to expect.

And then finally, the green area at the bottom incorrectly states that if she thinks she might be eligible in the future, she must reapply before benefits can resume. This is misleading because, under SSI rules, monthly benefits can resume without reapplying if the individual becomes eligible again within a year.

I am not sure what the recipient of this letter would think, even after reading it carefully. Letters like these upset and confuse people and waste everyone's time as the recipients seek and SSA staff have to provide additional explanation. SSA sends over 100,000 award letters like this one every year.

Let me now turn to SSA's plans for fixing these letters. SSA has indeed specifically targeted these problematic letters for improvement, yet little has been done, despite the longstanding nature of

the problems. Since we began examining letters in 1994, the agency has completed only one minor improvement to one of the four types of letters we reviewed, and has announced plans to add clarifying language to other letters sometime this fall.

This small amount of progress stems from the relatively low priority SSA has placed on fixing these letters. Many of the needed fixes, particularly for SSI letters, are complex. They require changes to SSA's computer systems, and systems staff has simply not been made available to do this work. Even if SSA adheres to its current plans, comprehensive improvements will take years to achieve. If SSA is to make these improvements within a reasonable period of time, it needs to place a higher priority on its letters.

In addition, we are recommending that the agency develop performance measures to hold itself accountable for achieving these improvements. These measures should help foster greater urgency to complete this project, and will help SSA and others both monitor its progress and assess the effectiveness of changes made.

Failure to give more attention to this problem will allow poor communications to continue and will detract from the quality of SSA's customer service.

Mr. Chairman, that concludes my statement. I would be happy to answer any questions you have.

[The prepared statement follows:]

Statement of Barbara D. Bovbjerg, Associate Director, Education, Workforce, and Income Security Issues; Health, Education, and Human Services Division, U.S. General Accounting Office

Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today to discuss the letters the Social Security Administration (SSA) sends to the public. Each year SSA mails millions of letters to applicants and recipients of the Old Age and Survivors Insurance and Disability Insurance programs, commonly referred to as Social Security, and the Supplemental Security Income (SSI) program. These letters tell the public whether they are eligible to receive monthly cash benefits or whether their benefit amounts are changing. Because the letters contain important information affecting people's everyday lives, they need to be clearly written and easy to understand. Recognizing this, SSA has pledged to the public that its letters will clearly explain the agency's decisions so that the public can understand how and why SSA made the decisions and what to do if it disagrees.

We have long been critical of SSA's letters. In 1994, we testified before this Subcommittee that many SSA letters, particularly those dealing with Social Security overpayments, were difficult to understand.¹ We found letters that left out information necessary to understand SSA's decisions, presented information in an illogical order, or failed to clearly explain how SSA had adjusted benefits. More recently, you asked us to assess SSA's progress in improving its letters. We have just completed that assessment and are issuing our report on this subject to you today.² My testimony, which summarizes the key findings of our report, focuses on (1) the problems that make SSA's letters difficult to understand and (2) the status of SSA's actions to fix them.

We focused our review on four categories of automated, high-volume letters to the public: (1) letters awarding Social Security benefits, (2) letters adjusting Social Security benefits, (3) letters awarding SSI benefits, and (4) letters adjusting SSI bene-

¹*Social Security Administration: Many Letters Difficult to Understand* (GAO/T-HEHS-94-126, Mar. 22, 1994)

²*Social Security Administration: Longstanding Problems in SSA's Letters to the Public Need to Be Fixed* (GAO/HEHS-00-179, September 26, 2000).

fits.³ SSA mails about 14.2 million of these letters each year.⁴ We focused on these letters because they reach a large number of people and convey important information on their eligibility for benefits or changes in the amount of their benefits issues that can significantly affect their lives. We used writing consultants to help us develop the criteria to assess whether the letters communicated clearly and to verify our assessment of the types of problems that occur in them. We also interviewed SSA officials responsible for improving the agency's letters and reviewed documents on past and current evaluations of the letters and its initiatives to improve them.

In summary, our work showed that the majority of letters in each of the four categories we reviewed did not clearly communicate at least one of the following key points: (1) SSA's decision (that is, the action SSA was taking on a claim that prompted the agency to send the letter), (2) the basis for SSA's decision, (3) the financial effect of SSA's decision on payments to the individual, or (4) the recourse the individual could take in response to SSA's decision. The lack of clarity was caused by one or more problems, such as illogically sequenced information, incomplete or missing explanations, contradictory information, and confusing numerical information. An unclear explanation of the basis for SSA's decision that is, not clearly explaining the program rules or facts on which SSA's decision was based was the most widespread problem among the four categories of letters. We also found one particular group of SSI award letters in which none of the four key points was clear.

SSA acknowledges that these letters contain the problems we identified and agreed the problems have existed for years; however, for many of the problems, the agency has not taken any corrective action and, overall, the agency has not placed a high priority on improving its letters. Many of the problems we identified are not amenable to quick fixes but, rather, will require a comprehensive revision of the language in the letters and rewriting the agency's software applications that generate them. Competing demands for computer systems resources have led SSA to repeatedly reschedule improvements to the Social Security benefit adjustment letters, and a pending nationwide court case has led SSA to delay improvements to the SSI award and benefit adjustment letters. SSA recently announced plans to improve its Social Security benefit adjustment letters and has begun a major initiative to improve its SSI award and benefit adjustment letters. But it will be years before the improvements are completed for most of these letters, even if there are no more delays and SSA adheres to its current plans.

BACKGROUND

The Social Security program and the SSI program provide monthly cash benefits to individuals who meet the programs' eligibility requirements. In fiscal year 1999, 44.5 million persons received a total of \$382.8 billion in Social Security benefits, and 6.6 million persons received \$28.1 billion in SSI benefits. The rules affecting eligibility and benefit amounts in these programs can be complex. Once individuals are determined to be eligible for Social Security or SSI benefits, changes in their circumstances, such as changes in the amount of their income, disability or marital status, can affect their continuing eligibility for benefits or the amount of their benefits.⁵ When SSA learns of these changes either through its own review processes or from individuals reporting changes in their circumstances to the agency SSA adjusts individuals' eligibility status or benefit amounts accordingly.

The process for improving SSA's letters is complex as well. The responsibility for improving letters is shared among various SSA offices, including the office responsible for customer service, which helps identify problems, and the program offices, which are responsible for further analyzing the problems and drafting revised language. The Office of Systems, however, plays a key role because implementing changes often requires systems programmers to rewrite one of the multiple software applications that SSA uses to generate letters. Each software application has its own programmed logic to generate letters and its own language database. Depending on the particulars of a transaction, each application is programmed to select appropriate paragraphs from among the numerous paragraphs in its language database, many of which were written for use in multiple situations. Once the para-

³ SSA characterizes its letters as automated or manual. SSA considers a letter automated if its personnel input transaction data, such as a death or earnings report, and SSA's systems generate the letter without any other human intervention. If SSA personnel were involved in selecting paragraphs or providing individualized data, then SSA considers the letter to have been manually prepared.

⁴ SSA estimates that it mails about 250 million letters and forms annually to the public, including claimants, workers, employers, and government agencies, on a wide variety of issues.

⁵ Our review did not include letters sent to individuals whose benefits were terminated because they had been determined to be no longer disabled.

graphs are selected, the software is programmed to complete paragraphs by filling in case-specific information from SSA's master records and to sequence paragraphs to assemble letters. These master records contain account data for every beneficiary.

Problems in SSA's Letters Limit Their Understandability

Many of SSA's letters in our review do not meet the agency's own communication standard, and do not meet generally accepted principles of good communication. Social Security award letters, Social Security benefit adjustment letters, SSI award letters, and SSI benefit adjustment letters do not clearly communicate one or more of the following key points: SSA's decision (that is, the action SSA is taking on a claim that necessitated the letter), the basis for its decision (that is, the program rules and facts on which SSA based its decision), the financial effect of its decision on payments to the individual, and the recourse the individual has in response to SSA's decision. The unclear communication was caused by many of the same problems we identified in SSA's letters in 1994, such as illogically sequenced information, incomplete or missing explanations, contradictory information, and confusing numerical information.

Table 1 presents what we consider to be the most significant problems, because of either their frequency or their potential to adversely affect the individuals receiving the letters.

Table 1—The Most Significant Problems in Four Categories of SSA Letters and Their Estimated Frequency

Key point	Social Security letter		SSI letter	
	Award	Benefit adjustment	Award	Benefit adjustment
Decision		80% of cover letters do not include all decisions that affect payments.		
Basis for decision		100% illogically sequence explanations of SSA's decisions.	100% do not explain relationship between program rules and benefit amounts.	86% do not clearly explain relationship between program rules and changes in benefit amounts.
Financial effect		86% lack clear explanations of adjustments.		55% lack clear statement of timing or amount of change in benefits or other problems.
Recourse	95% do not state how to appeal.	24% do not fully state options for repaying overpayments or how to appeal.		

Note: We used two different approaches to quantify the frequency of problems in these letters. For the letters awarding Social Security and SSI benefits, we identified specific problems and obtained information from SSA about the number or percentage of letters that included these problems. For the letters adjusting the amount of Social Security and SSI benefits, we reviewed a statistical sample of 1 day's production of letters.

As the table indicates, we found a variety of problems in the four categories of letters.

- SSA's decision was difficult to understand in Social Security benefit adjustment letters because important information was not explained in the cover letters but, rather, was buried in the attachments or not explained at all. For example, a cover letter informed a claimant that she had been overpaid about \$600 but it requested

that she repay about \$2,200. The explanation for the different amounts SSA's decision to also recover a prior overpayment was buried in the attachment.

- Another letter mentioned three different overpayment amounts without explaining the differences.

- The basis for SSA's decisions were often difficult to understand because the program rules or facts on which the decisions were based were explained in complex language that was difficult to follow, were presented in illogical order scattered throughout letters, or were not fully explained. For example, no SSI award letter explained the relationship between program rules and the amount of the SSI benefit. An SSI award letter informed a claimant that she was awarded benefits for July 1999 through November 1999 but that she would receive a benefit for October and November lower than for the earlier months. The letter did not explain why her benefit was reduced.

- The financial effect of SSA's decision on payments to claimants was difficult to understand in most Social Security and SSI benefit adjustment letters because of conflicting information about when adjustments would occur or whether benefits were increasing or decreasing and because of unexplained numerical information used to support SSA's computation of benefit adjustments. For example, a worksheet attached to a Social Security benefit adjustment letter included computations showing that, on the basis of the claimant's earnings, SSA should have withheld about \$2,700 in benefits. But on the very next line, the worksheet states that SSA should have withheld about \$2,000 in benefits. The letter did not explain the \$2,000 figure or the difference in the two amounts.

- The recourse available to claimants in response to SSA's decisions on their claims was difficult to understand in Social Security award and benefit adjustment letters because of incomplete information. For example, the cover letters for some of the benefit adjustment letters instructed individuals to immediately repay the full Social Security overpayment without informing them of other repayment options discussed in the letters' attachments. The Social Security award letters failed to inform claimants that if they choose to appeal SSA's decision, they have to do so in writing.

Our report discusses these problems in detail, with examples of actual letters.

Now to illustrate problems in SSA's letters, I would like to discuss one particular type of SSI award letter ones sent to applicants who have been awarded benefits for previous but not future months. I have chosen an example of this type of letter not because it is representative of all SSA award and benefit adjustment letters which, given the huge number and types of letters SSA issues, no one example could be but because it illustrates in one letter problems in clearly communicating all four key points. Also, although SSA has long been aware of problems in its SSI award letters, the agency did not know about the particular problems in this type of letter until we brought them to its attention.

Figure 1 shows key excerpts from a typical letter, sent on October 13, 1999, to a disabled adult who was awarded benefits for previous months but not future months.⁶ This example illustrates the numerous contradictions, illogically sequenced explanations, and incorrect statements common to these letters. In 1998 and 1999, more than 100,000 individuals, or about 13 to 15 percent of all SSI awardees, received benefits only for previous months and thus would have gotten a similar letter.

⁶This situation occurs when individuals' circumstances change while they are waiting for SSA's eligibility decision on their application for benefits. Their circumstances make them eligible to receive benefits for 1 or more months after they applied for SSI, but a change in their circumstances makes them ineligible for SSI benefits in the current month. A common scenario involves disabled individuals who meet the SSI program's income limit only until they receive Social Security Disability Insurance benefits. Their SSI payments stop once these benefits cause them to exceed the SSI program's income limit.

Figure 1: Confusing Statements From an Actual SSA Letter

Beginning	*Through*	*Monthly Amount Payable*
February 22, 1999	February 28, 1999	\$ 00.
March 01, 1999	October 31, 1999	\$490.92. This includes \$87.58 from the State of Massachusetts.
November 01, 1999	Continuing	\$ 00.

A This is to notify you that you are **eligible** to receive Supplemental Security Income payments under the provisions of Title XVI of the Social Security Act. The rest of this letter will tell you more about our decision.

B We are sending you a check for \$3,367.36. This is money due you for March 1999 through October 1999. No further payments will be sent to you at this time.

C You met all the rules to be **eligible** for SSI beginning February 22, 1999. However, we **cannot pay SSI until the month after you first meet the rules**. In addition, we **cannot pay you any SSI for months after that because of the reason or reasons given below**.

- You were **disabled** in February 1999 on.
- You were **living in the State of Massachusetts** for February 1999 on.

D Because of your **income**, you are **not eligible** to receive Supplemental Security Income payments for November 1999 on.

E Since you are **not eligible now** for SSI, you are also not eligible now for Medicaid based on SSI.

F Because we believe that your health may improve, we will review your case in about 3 years. We will send you a letter before we start the review. Based on that review, your **SSI will continue if you are still disabled**, but will end if you are no longer disabled.

G If at any time **in the future** you think you qualify for payment, please contact us immediately about filing a new application. The **earliest month for which we can pay you is the month after you file a new application**.

Note: Bold typeface added by GAO.

SSA's decision is unclear because the letter shown in figure 1 goes back and forth about whether the applicant is eligible or ineligible for SSI. For example, the first sentence in the letter ("A") informs the applicant that she is eligible for SSI benefits, as does the first sentence on the second page of the letter ("E"). She is also told on a subsequent page that her benefits will continue if she is still disabled in the future ("H"). But elsewhere in the letter, she is told that she is not eligible for SSI ("F" and "G") and that she will not be receiving any more payments ("C," "D," and "E").

The basis for SSA's decision is unclear as well, because the letter illogically tells the applicant that she cannot receive any more payments because she is disabled and living in Massachusetts ("E"). Also, this illogical reason for nonpayment is listed before the actual reason for nonpayment namely, her income ("F").

The financial effect of SSA's decision is unclear, because the letter makes contradictory statements about the months for which benefits are payable. First, the letter informs the applicant that she will receive \$3,367.36 in benefits for March through October 1999 ("B" and "D"), but later it incorrectly states that SSA can pay benefits only for 1 month March 1999 ("E").⁷

Finally, the recourse available to the claimant is unclear, because the letter incorrectly informs her that she must file a new application before she can receive any more benefits ("I"). The letter does not explain that under SSI program rules, monthly benefits can resume without the need to file a new application if she becomes eligible again within 12 months.

⁷This incorrect statement occurs in these letters only when individuals receive more than 1 month's past due benefits—a common scenario, according to SSA.

NEEDED IMPROVEMENTS ARE STILL YEARS AWAY

SSA has been aware for several years of the more serious problems we found with three of the four categories of letters we reviewed those adjusting Social Security benefits, those adjusting SSI benefits, and those awarding SSI benefits. The agency considers sending clear letters an important element of customer service, and it specifically targeted these letters for improvement, yet it has taken only limited actions to improve them. Its efforts have focused primarily on the changes that are the easiest to complete. The more serious problems we found require more comprehensive revision of language and rewriting of software applications. Planned changes have been repeatedly rescheduled because SSA did not have the computer systems resources available to implement them because of other priorities. SSA has recently announced plans to make the needed improvements to these three categories of letters. However, SSA has not established meaningful performance measures to monitor its progress in improving the letters.

SSA Has Made Little Progress in Improving These Letters

Since at least the early 1990s, SSA has known about problems with the Social Security benefit adjustment letters, the SSI award letters, and the SSI benefit adjustment letters that we identified as being the most problematic. The agency agrees that these letters are among the least understandable and most sensitive of the agency's high-volume mailings. Annually, SSA sends out about 3.5 million Social Security benefit adjustment letters, 0.6 million SSI award letters, and 3.3 million SSI benefit adjustment letters.⁸ In various strategic and performance plans, SSA has identified sending customers clear letters as an element of good service. Beginning with its fiscal year 2000 performance plan, SSA specifically targets improving these three letters as a strategy that would increase customers' overall satisfaction with the agency. Improving its letters is listed as one of the agency's key initiatives.

Despite acknowledging numerous problems with the three categories of letters, SSA has completed only one minor improvement to one letter the Social Security benefit adjustment letter. As noted in table 1, we found that 86 percent of these letters lacked a clear explanation of adjustments to benefits. In July 1999, SSA added a worksheet to this letter to show how the agency computed the amount it underpaid or overpaid individuals on the basis of their earnings. However, SSA officials view the worksheet as an interim improvement because SSA did not rewrite the master record. The master record holds data on each individual and would have to be expanded to hold additional data so that it could provide the appropriate information to support the worksheet. We drew our sample of Social Security benefit adjustment letters after SSA began including worksheets with these letters. We found the worksheets helpful to some extent in explaining how individuals' earnings contributed to SSA's decision that it had underpaid or overpaid them. However, the worksheets sometimes did not adequately explain some of the adjustments SSA made when computing underpayments or overpayments, in part because doing so would require rewriting the master records.

In addition to the completed change described above, SSA recently began to address two of the problems we identified during the course of our present work. First, the agency has taken steps to include language that had been omitted from Social Security award letters informing individuals of the form to use to appeal the agency's decisions. After we brought this problem to SSA's attention, SSA officials told us that the responsible program office has developed revised language that the Office of Systems plans to implement in November 2000. SSA has also initiated action to correct the error in SSI award letters sent to individuals eligible for benefits in previous months but not current benefits, shown at "I" in figure 1. SSA officials told us that when the agency releases its next set of SSI systems changes in October 2000, they plan to add language to the letters to correct this problem.

Office of Systems officials told us that from a systems standpoint, these types of problems are the easiest to correct because they involve a straight substitution of language one paragraph replaces another paragraph that had been used for the same situation. This type of revision is relatively straightforward because the software logic for selecting the paragraph for insertion into a letter does not have to be revised. SSA could therefore act relatively quickly to correct these two problems.

⁸Because of recently enacted legislation, Public Law 106-182, that eliminated earnings-related reductions in benefits for beneficiaries who have reached full retirement age, the volume of Social Security benefit adjustment letters sent to individuals will decrease in the future, but SSA has not determined exactly by how much.

It Will Take Years for SSA to Make Comprehensive Improvements to Letters

SSA has made less progress in correcting problems that are more difficult to fix. As shown in table 2, the other problems we found would require significant work to revise the language of the letters and to rewrite the master records and software applications.

Table 2.—The Comprehensive Improvements Needed for Selected SSA Letters

Letter	Improvement
Social Security benefit adjustment	Revise language, rewrite program's master record, and rewrite software application so that Cover letter discloses all decisions discussed in attachment. <ul style="list-style-type: none"> • Work-related earnings rules are co-located and logically sequenced. • Letter clearly explains decision's effect on payment to individual, and. • Letter completely explains available recourse.
SSI award	Revise language, rewrite program's master record, and rewrite software application so that. <ul style="list-style-type: none"> • Letter adequately explains the basis for the decision and • Letter explains the relationship between program rules and benefit amount.
SSI benefit adjustment	Revise language, rewrite program's master record, and rewrite software application so that. <ul style="list-style-type: none"> • Letter adequately explains a decision's effect on payment, particularly how and when adjustments will be made for past months' overpayments or underpayments.

Office of Systems officials told us that the actions the agency would need to take to make the comprehensive changes that the three letters need are the most complicated from a systems perspective because they involve extensive work to revise or develop new paragraph language, to rewrite the software application including the selection and sequencing criteria for using the language and to rewrite the programs' master records to hold additional data that may be necessary to support proposed language changes.

SSA's ability to make these comprehensive improvements to the three letters depends on the agency's allocating significant systems resources. When allocating systems resources, SSA appropriately gives highest priority to projects that help the agency maintain operations essential to its mission or that it needs to undertake in order to implement legislative changes to the Social Security and SSI programs. Resources not committed to these efforts are available for SSA to use for discretionary projects, and senior officials collectively determine which discretionary projects the agency's systems staff will work on, based on each project's ranking and expected contribution to SSA's strategic objectives. However, the relative priority SSA gives projects can change. For example, SSA may decide to shift priorities and discontinue, delay, or deemphasize a specific project to undertake others in cases in which SSA does not have systems staff available.

Social Security Benefit Adjustment Letters

SSA has long had plans to make comprehensive improvements to one of the categories of letters the Social Security benefit adjustment letter. According to SSA documents, by 1996, SSA had developed and tested in focus groups comprehensive language changes for this letter. However, SSA's documents showed that since developing the language, the agency has repeatedly rescheduled the systems work required to implement the new language. Officials from SSA's Office of Systems told us that their computer systems staff did not work on projects at the scheduled times because the agency had had to divert computer programmers to other more pressing projects, such as those required to implement significant program changes resulting from legislation and to ensure that SSA's computer systems were year 2000 compli-

ant.⁹ They told us that the agency, with the emergence of workloads arising from legislative changes, had to shift priorities away from working on improvements to letters.

In July 2000, an SSA official told us that the responsible program office had recently requested that SSA senior officials designate the project to improve Social Security benefit adjustment letters as Customer Targeted Work. This is a relatively new category for the use of discretionary resources and would give the project a higher priority than it has had before.¹⁰ Although SSA is in the early planning stage of this effort, the Office of Systems has established a plan for completing the more comprehensive improvements by July 2002. However, because SSA's decision is recent, we did not evaluate the revised approach.

SSI Letters

SSA has not made comprehensive improvements to either type of SSI letter and has only recently begun developing action plans for improving them. SSA officials told us that they postponed plans to improve SSI award and benefit adjustment letters pending the outcome of the recently decided court case, a class action law suit that an SSI recipient initiated. In that case, the court upheld the plaintiffs' claim that SSA's letters denied recipients due process because the letters did not adequately explain the basis for SSA's decisions. The court ordered SSA to revise its automated SSI financial eligibility letters including its SSI award and benefit adjustment letters to more clearly communicate essential information to their readers.¹¹ SSA established a workgroup to review its SSI letters and to determine the changes that were needed to improve them. In December 1999, the SSA Commissioner signed a decision paper in which he approved the workgroup's recommendations to make comprehensive changes to SSI letters.

Improving SSI letters will take time. The workgroup recommended that SSA implement the recommendations in phases, concentrating first on better explaining how benefit amounts are determined. SSA has begun work on some of these changes. In February 2000, SSA drafted and tested with some SSI recipients a prototype worksheet to be added to SSI award and benefit adjustment letters that shows how SSI benefits are computed in the least complex cases that is, the 90 percent of cases in which SSI recipients have no income or only unearned income, such as Social Security benefits. SSA plans to add the worksheet to the SSI letters by July 2002. SSA officials estimated that it could take 10 years to implement the full range of planned improvements.

SSA Does Not Have a Means to Measure Progress in Improving Letters

Despite acknowledging problems with its letters, SSA currently has no performance measures for monitoring its progress toward improving them. In the past, SSA surveyed customers about their overall satisfaction with the agency's letters and monitored the percentage of customers rating the clarity of SSA's notices as excellent, very good, or good. The agency, however, found that the information it collected, which was a measure of general satisfaction with the letters, was not useful in identifying ways to improve letters, so SSA discontinued these surveys. Instead, SSA now relies on a relatively new program to help it target a few specific types of letters each year and develop action plans for improving them. This program the Market Measurement Program uses a variety of initiatives, such as special studies and focus groups, to gather information on the full range of services SSA provides to help the agency improve customer service overall. According to SSA's fiscal year 2001 performance plan, the agency plans to establish a new indicator to monitor improvements to its letters at a later point.

CONCLUSION

Although SSA has been aware for many years of some of the more serious problems with its letters, it has not corrected them. The agency's recently announced plans to improve the Social Security benefit adjustment letter and its SSI award and benefit adjustment letters will require significant computersystems resources

⁹For example, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law No. 104-193) made major changes to the SSI program. Among other things, it revised the criteria under which children and noncitizens are eligible for benefits and added restrictions governing the payment and use of certain large retroactive benefit amounts.

¹⁰Key initiatives requiring systems work and Customer Targeted Work must provide a significant return on investment or help meet agency strategic goals. However, to be given the higher priority of Customer Targeted Work, a sponsoring component is required to substantiate the need for extra attention and prioritization.

¹¹Ford et al. v. Apfel, No. CV-94-2736 (E.D.N.Y., Jan. 13, 2000).

and will take years to complete. If SSA is to improve its letters within a reasonable period of time, it needs to allocate the necessary systems resources for these improvements. To do this, the agency will need to better anticipate and plan for the varied demands on its computer systems' resources and place a higher priority on improving its letters.

The agency will also need to develop appropriate performance measures with which to hold itself accountable to the public for achieving these improvements. These measures should help SSA monitor its progress in adhering to the proposed timetables to help the agency stay on track. In addition, because past changes to letters have not always significantly improved clarity, SSA should develop other measures to assess whether changes to the letters have achieved the intended results.

Because failure to implement the needed improvements will mean continued poor service to the public in this area, we recommend that SSA develop performance measures to hold itself accountable for making the needed comprehensive changes to its letters. These measures should include indicators to allow SSA to track its progress in making improvements and to assess the improvements' effectiveness. In commenting on our report, SSA agreed with our recommendation and expressed its commitment to making the needed improvements in these letters as quickly as possible. SSA also outlined its plan for developing performance measures for assessing beneficiaries' understanding of its problematic letters.

Mr. Chairman, this concludes my prepared statement. I would be pleased to respond to any questions you or other Members of the Subcommittee may have.

* * * * *

For further contacts regarding this testimony, please call Barbara D. Bovbjerg at (202) 512-7215. Others who made key contributions to this testimony include Kay Brown, Jacquelyn Stewart, Ellen Habenicht, Valerie Melvin, James Wright, Michael Alexander, Jay Smale, Ann McDermott, and Patrickdi Battista.

RELATED GAO PRODUCTS

Social Security Administration: Longstanding Problems in SSA's Letters to the Public Need to Be Fixed (GAO/HEHS-00-179, September 26, 2000). [Attached report is being retained in the Committee files.]

Social Security Administration: Many Letters Difficult to Understand (GAO/HEHS-94-126, Mar. 22, 1994)

Chairman SHAW. Mr. Halter, you listened to the testimony from the General Accounting Office. What is the problem of correcting these letters? I mean, it just doesn't make any sense that all of these statements would be—

And I assume, Ms. Bovbjerg, these were all in the same letter?

Ms. BOVBJERG. All of this in one letter, yes.

Chairman SHAW. Do you have an explanation for any of that? Is this is the first time you have seen it? It is not fair to ask you the question.

Mr. HALTER. Well, actually, it is the first time I have seen it in a readable fashion, here, arriving at the hearing today. But let me try to address your more general point, Mr. Chairman, which is, how did we get here?

The fact is that for the last eight years we have been working on improving some extraordinarily complicated notices. Thirty percent of our notices needed improvement in FY 1993, and customer satisfaction with those notices was at about a 65 percent rate. Over the last 7 years, the Social Security Administration has corrected problems with 22 percent out of that 30 percent, leaving 8 percent of our notices still to be addressed. The GAO, very appropriately, focused on letters which in our universe of notices are the most complicated and the ones that are most prone to being very com-

plicated for the reader to understand. This particular letter, with respect to SSI, is probably the category that is the most difficult to understand.

The complications arise from two different levels. The first is the SSI program itself is extraordinarily complicated, and as I noted in my testimony, the range of individual circumstances that could apply to any individual beneficiary is virtually infinite when you take all of the different variables and how many different possibilities for each variable there are. When you put together a notice in an automated fashion to deal with that, you have one that is, by its nature, going to be complex.

Now, I will say that we have focused on this over time. We are focused on it now and have applied the resources that will be necessary to fix this. However, when you have a program with so many variables in it and you are trying to send something out dealing with a complicated program, it is going to be complicated to deal with.

Chairman SHAW. I understand that. But let me ask maybe a simpler question. What is this letter trying to tell somebody?

Mr. HALTER. Well, in this case, it is trying to tell the individual recipient what SSI benefit they are entitled to and how much that benefit is, when the payment is going to start, and when, in this case, it is going to stop.

Chairman SHAW. Why don't you just do that?

Mr. HALTER. Well, we do that, as you know, Mr. Chairman, millions of times a year, and when you put together an automated

Chairman SHAW. It worries me that we are getting so automated that somebody just sits at a computer, picks out paragraphs and tries to put them together that does not really communicate.

Mr. HALTER. Well, in fact, the way this works is they don't pick out those paragraphs personally. They type in the data that is necessary, and then the system produces a response.

Now, to correct that, Mr. Chairman, what we have to do is go in and put together revisions to that program, and that is, in fact, what we have under way now.

Chairman SHAW. You know, each of us in Congress, we get asked the same question over and over again, and we all put together—I imagine every member of Congress does that—you put together paragraphs explaining your position, and those paragraphs are selected in order to answer questions that come into the office. Why don't you all just do it that way?

Mr. HALTER. Well, what I will do for you, Mr. Chairman, is give you for the record the list of variables that can change each of these letters, and you will see that we are talking about literally hundreds of data items. I understand the letters that you are talking about, Mr. Chairman, because I worked on Capitol Hill and I helped put together those letters, and I understand what you are talking about. They are very straightforward and they provide your position on a particular issue, but your position on a particular issue probably does not have 10,000 different variants. You probably have a pretty straightforward position on the issue that someone is writing you about.

[The following was subsequently received:]

SSI Notice Variables

This is a highly complex process because notices reflect past or present changes and reflect the results of those changes. There is virtually no limit on how these items can be mixed and matched, meaning that the SSI notices must be able to handle an almost unlimited array of possibilities with a large number of variables. For example, a case can have different income, resources, and living arrangements from month to month, coupled with resulting newly identified overpayments and/or underpayments. Variables that affect SSI notices are as follows:

I. Computational Variants—31

- Quarterly Accounting applies prior to 4/1982
- Retrospective Monthly Accounting applies effective 4/1982
- New computation rules for Spouse-to-Spouse deeming effective 4/1982
- New computation rules for Parent-to-Child deeming effective 4/1982 with three formula
- Different rules for needs-based assistance prior to 8/1988
- Computation rules for Impairment-Related Work Expense prior to 12/90
- Different rules for treating needs-based assistance depending on which person it is
 - To compute any month, may need eligibility, payment, windfall eligibility, windfall payment computation
 - Two eligibility, payment, windfall eligibility, windfall payment computations needed for individuals with ineligible spouses
 - Computation for COLA-Coordination of Title II, Value-of-the One-third Reduction, and In-Kind-Support
 - Special computations when one member of a couple is eligible and the other is not
 - Rules when one member of a couple is in one eligibility category and the other in a different category
 - Special rules when a claimant is in multiple eligibility categories (aged, blind, disabled)
 - Optional Supplementation default processes that apply when one member of a couple is dead or when an ineligible spouse has left a household
 - Exception computation of State supplementation for Essential Persons
 - Different computation rules for in-kind support based on SSI type of claim
 - Payment rounding rules
 - Special computation rules under Section 1611(e)(1)(e)
 - Special computation rules under Section 1611(e)(1)(g)
 - Optional supplementation considerations in 1611(e)(1)(g) default periods
 - State supplementation rules when 1619(a) applies
 - Application of the Livermore Court decision
 - Special rules for Maine's disregards (and when a couple)
 - Rules that apply when a State has terminated Federal supplementation
 - Computation of Vermont's State Countable Income
 - Computation rules for Presumptive Disability
 - Rules for application of Blind Countable Income
 - Computation of payment amount based on windfall offset
 - Mandatory computations and specifically adjustments for payment computation
 - Computation rules under trial work periods
 - 2/3 rule for Child Support

II. Income Types, Disregards and Exclusions

INCOME TYPES (PARTIAL)

- State or Local Assistance Based on Need
- Refugee Cash Assistance
- AFDC
- General Assistance From Bureau Of Indian Affairs
- Disaster Relief
- Veterans Benefits Based on Need (Paid Directly or Indirectly as a Dependent)
- Veterans Payments Not Based on Need (Paid Directly or Indirectly as a Dependent)
- Social Security
- Black Lung
- Railroad Board Benefits
- Office of Personnel Management
- Pension

- Unemployment Compensation
- Workers' Compensation
- Interest
- Dividends
- Royalties/Honoraria (Unearned)
- Rental/Lease Income Not From a Trade or Business
- Alimony
- Child Support
- Other Bureau of Indian Affairs Income
- Sick Pay (Earned)
- Sick Pay (Unearned)
- Wages
- Self-employment Income
- Other Income Based on Need
- Other Income or Support Not Previously Mentioned

INCOME DISREGARDS

- \$65 per month plus ½ remainder earned income disregard
- \$20 per month general income disregard

INCOME EXCLUSIONS

- Student Child Earned Income Exclusion
- Blind Work Expense
- Income excluded under approved plan for self support
- Net loss from self-employment
- Income Related Work Expenses

RESOURCE TYPES

- Vehicles
- Life Insurance
- Household Goods and Personal Effects (Cash)
- Financial Institution Accounts
- Stocks and Bonds
- Promissory Notes/Loans/Property Agreements
- Real Property/Business Property or Equipment

RESOURCE EXCLUSIONS

- Principal place of residence
- Auto used for medical/other approved needs
- Set aside for burial expenses
- Excluded under a Plan for Achieving Self Support

FEDERAL/STATE LIVING ARRANGEMENTS

- A Federal Living Arrangement (FLA) of A is used primarily when a person is considered to be living in his /her own household or when no other FLA code applies.
 - An FLA of B is used when an individual lives in the household of another and receives food and shelter from inside the household.
 - An FLA-C is used for a child under age 18 or under or a "protected" student/child under age who lives in the same household as an ineligible parent and who is not subject to the value of the one-third reduction.
 - An FLA-D applies to an individual who lives in a public or private medical institution throughout a month and Medicaid is paying more than 50 percent of the cost of the individual's care or, effective
 - 12/96, a child under 18 subject to the \$30 payment limit while in a medical care facility in which
 - private insurance (or a combination of private insurance and Medicaid) pays over half the cost of care.
 - The following States have at least 1 State living arrangement: California , Delaware, District of Columbia , Hawaii, Iowa, Maine (prior to 4/96), Massachusetts, Michigan, Montana, Nevada, New
 - Jersey, New York, Pennsylvania, Rhode Island, Utah, Vermont, Washington, Wisconsin (prior to 1/96).

III. Payment Status Codes (Partial list)

- Non-pay Codes: Many of these are initial claim denial codes—both medical and non-medical denials, such as an aged claim denied for failure to prove age or claimant is not a citizen or lawfully admitted to the US.
- Suspense codes: These indicate a recipient was eligible to receive payment, but has since become ineligible, often temporarily, because of some reason (e.g. whereabouts unknown.) Once resolved, SSI payments can usually resume.
- Termination codes: These codes indicate the record has been terminated (e.g. death).

ELIGIBLE BUT NOT PAYABLE

- E01 Eligible but nothing is payable
- E02 Eligible for benefits but not due a payment (applies to first month of eligibility only)

BENEFITS NOT PAYABLE

- N01 Claimant has excess income or Section 1619(b) eligible—no payment due.
- N02 Claimant is a resident of public institution.
- N03 Claimant is absent from the U.S.
- N04 Claimant's nonexcludable resources exceed title XVI limitations.
- N05 FO is unable to determine eligibility for some month(s) of a period of non-payment OR failure to provide information for children overseas.
- N06 Claimant failed to file for other benefits.
- N07 Cessation of recipient's disability.
- N08 Cessation of recipient's blindness.
- N09 Claimant refuses to accept vocational rehabilitation.
- N10 Claimant failed to comply with treatment (DAA). (Obsolete)
- N11 Sanction Suspend month (DAA). (Obsolete)
- N12 Claimant voluntarily withdrew from SSI program.
- N13 Not a citizen of the U.S. or not an alien lawfully admitted to the U.S.
- N14 Aged claim denied for age.
- N15 Blind claim denied, applicant not blind.
- N16 Disabled claim denied, applicant not blind.
- N17 Failure to pursue.
- N18 Failure to cooperate.
- N19 Claimant has voluntarily terminated participation in SSI program.
- N20 Claimant failed to furnish a required report or required evidence.
- N22 Claimant is an inmate of a penal institution.
- N23 Claimant is not a resident of the U.S.
- N24 Claimant has been convicted of a felony of fraudulently misrepresenting residence in order to receive benefits/services (SSI, Medicaid, AFDC, foodstamps) simultaneously in two or more States.
- N25 Claimant is fleeing to avoid prosecution for, or custody or confinement after conviction for, a crime which is a felony (or in New Jersey, a high misdemeanor) under the laws of the place from which he/she flees, or is violating a condition of probation or parole imposed under Federal or State law.
- N27 Termination due to SGA—1619(a) or 1619(b) no longer involved.
- N30–N51 Medical Denials. (various)
- P01 Potentially Eligible—SGA involved. (Obsolete)

BENEFITS PAYABLE, BUT SUSPENDED

- S05 Prerequisite payment month development pending to determine eligibility for special 1619(a) payments to a disabled individual. S06 Claimant's whereabouts unknown.
- S07 Check(s) returned for miscellaneous reasons.
- S08 Representative payee development pending.
- S09 Temporary institutionalization (TI) systems default.
- S10 Claimant has refused to receive payments through direct deposit.
- S20 Potential Rollback case or disability decision made prior to July, 1973.
- S21 The recipient is presumptively disabled and has received 6 months' payments.

BENEFIT ELIGIBILITY TERMINATED

- T01 Death of claimant.
- T20 Received duplicate payment based on two different numbers.

T22 Received duplicate payment based on more than one SSR established with the same number or different numbers.

T30 Manual termination (payment previously made).

T31 Systems termination (payment previously made).

T50 Manual termination (no payment made).

T51 Systems termination (no payment made).

IV. *Payment Variants*

- Different rules prior to 4/1982
- Goldberg v Kelly: temporary & permanent payment protection
- Different rules for collection of overpayments
- Payment of windfall offset due amounts in Current Computation Month
- Collection of emergency advance payments/immediate payments
- Underpayments to survivors
- Dedicated accounts & installments underpayments

Chairman SHAW. I would like to think so.

Mr. HALTER. But this program, and the law, the law that we are talking about here with respect to SSI, is complicated in its very nature, and we would agree with you, Mr. Chairman, that we need to work on these notices. That is what we are doing.

Chairman SHAW. Now, I want to—we are getting to the nut of what I really want to talk about, and I want you and Ms. Bovbjerg both to address the law. Is the law the problem? Anyone who has gone to get a loan for a home within the last few years, I don't care if you are an attorney, an accountant, or a realtor or who you are, by the time you sign all those papers, you have no idea what is going on, that you just get to be where you are signing because we require so many disclosures, and we over-disclose to the point that I think the borrower is just totally confused and just wants to just get out of the closing office, so that they can go on with their life. Is the law the problem here? Is the law so complex that we should really go back and take a look at it?

Mr. HALTER. Mr. Chairman, I would argue to you that the law is a part of the problem, absolutely.

I would not wish to come before you and absolve our administration from all culpability in creating complicated notices. We are going to work on this.

I would say to you that the fact is that we have limited resources as an organization, as you very well know, and we have focused our resources particularly in the systems area on matters that have been higher priority.

Chairman SHAW. Don't you have people in-house that can redo the system as far as that is concerned, without spending a whole bunch of money? Now, if money is the problem, then we have to address that. But I don't see where putting together the right kind of program, computer program to respond, should be all that complicated that we can't do that.

Mr. HALTER. I would argue, Mr. Chairman, that it is more complicated than even I initially realized when I first sat down to prepare for this hearing, that in fact, doing the types of systems changes that we are talking about are going to require a great deal of time and effort.

To your question, your very direct question about is it a resource issue or just putting people up against it, I would argue to you that

it is both and that they are related, that the budgets that we have been provided, at least that I have looked at in the last six years, if additional resources had been available to Social Security, we would have been addressing this long before this point. The fact is——

Chairman SHAW. Have you come to us and asked for additional funds in order to do this with specific requests?

Mr. HALTER. Mr. Chairman, we have asked for, in the President's budget——

Chairman SHAW. I think I have been very forthcoming in this Committee in working with the Social Security Administration.

Mr. HALTER. Absolutely, yes, sir. I absolutely agree with that. But let me just point out that over the last six years, the President's budget request, relative to what has been appropriated, we are talking about a billion dollar difference in our administrative budget over that six-year period. And I would argue to you, just very straightforwardly, that if those monies had been put in place, that this problem would have been addressed much earlier. We have limited systems resources. The Congress, just this past year, passed the retirement earnings test elimination, and we, as you know, took resources, diverted them to implementing that legislation, as we should. Every time we come up with a new priority to implement, we have to divert resources away from the work that we had scheduled.

Chairman SHAW. The return of the money on the earnings penalty, this Committee reacted to that in getting more money because we understood that was necessary, and we knew that was very important.

Ms. Bovbjerg, could you comment on some of the things that Mr. Halter has just talked about as to what is your thought with regard to what has to be done? I can tell you everybody in here under 40 knows more about computers than I do. So, speak in terms that I can understand, please.

Ms. BOVBJERG. That should be easy for me because I am not a systems expert either.

I want to start off by saying that we do recognize and acknowledge the progress that the Social Security Administration has made with other notices. Indeed, they say 92 percent of 300,000 letters have been fixed; a lot of that is the Social Security statement, and we like to think that our recommendations had some bearing on the improvements in that statement that took place in the past year.

What we are saying about these notices is that just because it is a small percentage left to fix, and they are hard to fix, doesn't mean they shouldn't be fixed and shouldn't be taken more seriously. There are 14 million of these going out a year, and these notices really affect people very directly. These notices can be reducing peoples' benefits, and if they can't understand the letter, it is difficult for them to understand what is going to happen to their income. It is a whole different level of stress for people than receiving the Social Security statement, for example. So we think these letters are very important to focus on.

We are concerned because SSA has recognized problems with these particular letters, and has been talking about doing some-

thing with them for years now, and there has been no timetable for doing this.

The letters keep being pushed back further down the priority list. Our concern is that there are complicated fixes that have to be made. We don't disagree at all that this is a complex program, and it is difficult to explain some of the decisions that are made in the SSI program, but we believe it is really important to start making these fixes.

I also want to say that it is my understanding that it is not entirely a systems problem; program staff need to figure out what the problem is, write the language—the actual language in the paragraph that would address it—figure out how the paragraphs might need to be reordered, and then test it, you know, road test it, to see if these actually do address the problem of improving peoples' understanding. And then after all this is done it goes to systems. So it is really an issue that goes beyond just the systems staff.

Chairman SHAW. And would that require more administrative funding?

Ms. BOVBJERG. I am not in a position to say that. It is not clear that there aren't efficiencies or shifting that could be done within SSA to achieve this.

Chairman SHAW. Making those assessments though, coming up with those opinions, would be within the framework of what you all do though, wouldn't it?

Ms. BOVBJERG. It would be, but we would have to know what exactly needed to be done and what the timetable was for doing that. I know that in talking about SSI letters as part of the court case, SSA said that it would take ten years to fix these letters, and I understand from Mr. Halter's statement today, that they are now saying it will take four years. We don't know exactly how long it would take and what resources it would take to do that.

Chairman SHAW. Why would it take four years?

Mr. HALTER. Mr. Chairman, for SSI, what we are doing is trying to address most of the letters as quickly as we can with this worksheet that I described in my testimony, which we plan to have out by July of 2002. The issue as to why it would take that long is one that I would be happy to share with you by providing a schedule of the project which lays it out month by month. But as you go through this process of crafting the language, developing the software, testing the software, validating it, installing it, it takes time. We also have very few people with the capabilities and the background and the expertise to do this.

This is not going to be done by your standard journeyman claims representative. This takes somebody with real systems expertise within the program.

[The following was subsequently received:]

The time frame to complete the fixes to SSA's notices.

The accompanying schedules describe the steps necessary to achieve our goals for the Social Security Adjustment notices and Phase I for the SSI award/adjustment notices. Phase I focuses on approximately 90 percent of the SSI notices by supplying a detailed worksheet that describes the computations that were used to compute the final benefit amount. Phase II for SSI notice improvements is scheduled for completion in August, 2003 and Phase III is scheduled for completion in September, 2004. We expect to have our notice changes fully implemented by September 2004.

PROJECT PLAN FOR IMPROVING SSI NOTICES—PHASE 1

Finalize Language—02/00–11/30/00

Policy, Office of Systems Requirements (OSR), and Office of Systems Design and Development (OSDD) are all participating in the finalization of the language. We have used focus groups for input in designing the computation worksheet.

*Translate Notices into Spanish—Complete by 12/30/00**Develop Requirements—12/01/00–05/01/01*

OSR will provide a “template” of the new computations worksheet as soon as possible to allow OSDD to begin discussing design options. Thus, requirements development and program development times will overlap.

Design New Process—Complete by 07/01

OSDD will begin design based upon the requirements.

Development—Complete by 11/01/01

The development for this project requires extensive specialized experience because the SSI program is extremely complex. SSI processes the whole master record going back in time a number of years. This includes multiple actions, thereby causing complex explanations in the notices. Since this is a new computations and notices process, much of the required data needs to be defined, records formatted and other programs in the SSI integrated system need to make modifications to define and/or process the new record. Extensive knowledge of the existing SSI data elements and program logic flow is mandatory. The new format, language and selection logic will need to be developed and entered into the program and language data facility.

Testing—Complete by 12/28/01

This testing is done in OSDD to ensure test scenarios process as expected. In addition, the testing ensures the programs run to job completion and builds the job control language (JCL) that allows the programs to be validated and moved to the production environment.

Validation—Complete by 05/31/02

The validation will be an iterative process. Since SSI can process multiple actions that may be very complex, different paragraph combinations will occur based on the types of actions. Also, there are any number of different types of transactions processed in SSI. Each of these must be validated to ensure consistency and accuracy.

Mainframe Integration Testing—06/03/02–07/12/02

The software must be fully tested in the production arena to ensure there are no adverse affects on the scheduling of production runs.

*Release Notice Language Procedures—Complete by 07/02**Implementation—Complete by 07/02*

PROJECT PLAN FOR IMPROVING AUTOMATED BENEFIT ADJUSTMENT NOTICES

Finalize Language—07/17/00–10/17/00

Policy, Office of Systems Requirements (OSR), and Office of Systems Design and Development (OSDD) are all participating in the finalization of the language. We are using “Policy Net” to help speed up the process by getting “outside” input from other areas of SSA.

Develop Requirements—09/15/00–03/01/01

We’ve overlapped our requirements with the previous life cycle to allow us to get to development quicker. OSR will provide a “template” of the new benefit adjustment (AJS3) notices as soon as possible to allow OSDD to begin the design.

*Translate Notices into Spanish—Complete by 11/00**Design New Process—11/15/00–12/26/00*

Again, we’ve overlapped the design phase with the requirements phase to allow us to get to development quicker. OSDD will begin the design based on the “template” from OSR. This will allow us to set up a “shell” of our notice program.

Development—12/28/00—10/05/01

The development for this project requires extensive specialized experience because the AJS3 program is extremely complex. Unlike the other object programs under Title 2, AJS3 processes the entire master record going back in time up to 5 years. This includes multiple actions, thereby causing complex explanations in the notices. Since virtually all of the existing notice language is being changed, we need to remove the old and then install the new generation criteria, paragraph identifiers, and fill-ins. Extensive knowledge of the existing AJS3 data elements and program logic flow is mandatory. While in the development phase, we expect to encounter additional needs for updated language or better sequencing of paragraphs, so this will be an iterative process.

Testing—10/08/01—12/28/01

This testing is done in OSD to ensure test scenarios process as expected. In addition, the testing ensures the programs run to job completion, build job control language (JCL) that allows the programs to be validated and eventually moved to the production environment, and provide for a review of the output.

Validation—12/31/01—05/31/02

The validation will be an iterative process. Since AJS3 can process multiple actions that may be very complex, different paragraph combinations will occur based on the types of actions. Also, there are 16 different types of transactions processed in AJS3. Each of these must be validated to ensure consistency.

Mainframe Integration Testing—06/03/02—07/12/02

The software must be fully tested in the production arena to ensure there are no adverse affects on the scheduling of production runs.

Implementation—07/15/02—07/15/02

PROJECT PLAN FOR IMPROVING SSI NOTICES—PHASE II AND PHASE III
BENEFIT COMPUTATION WORKSHEET—UNEARNED INCOME NOT PREVIOUSLY
CONSIDERED

Focus Group Testing—04/03

Upon review of the focus group results from 03/02, language will be revised and tested again at this time.

Phase 2 Scheduled Completion—08/03

This phase will provide computational worksheets for recipients with earned income or a combination of earned and unearned income. Notice language describing living arrangement classifications will also be in this release. Additional modifications for language and/or restructuring will be included as defined and agreed to by the workgroup.

Phase 3 Scheduled Completion—09/04

This phase provides computational worksheets for recipients with more complicated income situations (e.g. parent to child deeming). Additional modifications for language and/or restructuring will be included as defined and agreed to by the workgroup.

And the reason that this has been deferred in the past is because other priority projects like the ones I mentioned came in, and we had to move the very people that would be doing this work off of that work and onto some of the other priorities.

Chairman SHAW. Did they get the benefit from this letter? How did it end up?

Mr. HALTER. Oh, absolutely. I mean I have no indication from anyone at GAO that anybody is not getting the benefit they are actually entitled to.

Chairman SHAW. Then why did you ask them if they think they qualify, to contact us if they have been qualified?

Mr. HALTER. I am sorry, Mr. Chairman. Say that again?

Chairman SHAW. I am reading the line at "F", and I am comparing it with the line at "B" that says "We're sending you a check" on line "B" for \$3,367. Then you go down to line "F" and it says, "If at any time in the future you think you are qualified for the payment, please contact us." Then at line "E" it says, "Since you are not eligible for SSI." What are we sending them?

Mr. HALTER. This is what we are saying to folks, as I understand it, and again, I have just seen this letter today, but my understanding is that these folks were eligible over a certain period of time. They qualified for a benefit. We were sending them a check for that amount. They are now currently not eligible for a benefit, and paragraph "E" is telling them that if in the future they think that they become eligible again, that they should contact us and file a new application.

You can ask GAO though, since they have had the benefit of actually picking this letter out, as to whether that is in fact what happened.

Chairman SHAW. I will.

Ms. BOVBJERG. I have no idea whether this person was paid. That was not something we reviewed. We assume that she was. There are 100,000 of these kinds of letters. And we asked our consultants—this is not just GAO's opinion as to whether the letters can be understood we asked our writing consultants what they thought about these. They said that one of the single most important things in clear writing is to have the most important information right up front all in one place and not to have it scattered throughout a lengthy letter, because people don't always read the whole thing. And I think that that is a particularly important issue for this letter. It is hard—it will be hard for a recipient to know that what is being said is: "You were eligible in the past, here is your check, but you are not eligible right now, and that if you are eligible in the future, there is recourse."

Chairman SHAW. Then are you required, Mr. Halter, by law, to put that paragraph "F" in there telling them that they can reapply?

Mr. HALTER. We certainly—whether we were required to do so by law or not, Mr. Chairman, we would want to do it. I will check and see whether or not in fact we are required to do it, but we would want to whether it is a requirement or not.

[The following was subsequently received:]

There is no requirement in the law for the paragraph Mr. Shaw refers to which states, "If at any time in the future you think you qualify for payment, please contact us immediately about filing a new application. The earliest month for which we can pay you is the month after you file a new application." SSA includes this paragraph as a part of SSI notices for customer service purposes.

A corrected version of the paragraph will be implemented effective October 2, 2000.

Chairman SHAW. Well, wouldn't you assume that the person applied now. I guess they know they are better, they don't need the assistance any more. But if they get in trouble again, wouldn't they

know to come back? Is that something we have to tell them? What I am trying to do, I mean, brevity is really so important in dealing—particularly in SSI. You are dealing with low-income people, of probably a low level of education, easily confused.

Mr. HALTER. Right.

Chairman SHAW. Your people also deal with the elderly, and you know, I think every member of Congress has had people coming into their office almost in tears, and say, "What is happening?"

Mr. HALTER. Right. Mr. Chairman, to answer your question on that, as to whether or not that is required by law, we will check on that, but in terms of whether we should do it, I would argue that we should err on the side of actually telling folks that if their circumstances change, they should in fact come back and reapply. That would be the predisposition I think I would have, rather than leaving it vague or unknown to them.

Ms. BOVBJERG. Mr. Chairman, could I jump in for a minute?

Chairman SHAW. Yes, please.

Ms. BOVBJERG. It is my understanding that that particular language is being changed this fall because it is actually incorrect. It tells people they have to reapply, and what it should say is that you don't have to reapply within the first year, but after 12 months you would have to submit a whole new application, so that I believe—

Chairman SHAW. So what we should be telling them is that they have a special circumstance, there is a special circumstance here, that they would have to jump back in.

Mr. Portman?

Mr. PORTMAN. Thank you, Mr. Chairman, and I am sorry I couldn't have been here for all the testimony. I did, Mr. Halter, get the benefit of hearing your testimony earlier at the beginning of the hearing, and got a chance to look over the testimony as well from GAO.

I have two questions. The first is what SSA knows about in terms of the impact of this problem on your bottom line. With the IRS, we spent a lot of time looking at the impact of both the poorly written and many of the misleading notices, as well as incorrect notices, and we found a tremendous downstream cost. I know there is a case pending in the courts which has indicated that for every 1 percent problem in terms of a letter misstating something, there is roughly a \$100,000 cost. They came up with that.

My question to you is: what are the downstream costs? What are the costs of these poorly written and sometimes inaccurate notices to SSA? We talked earlier about your need for more funding, and you in essence said, "If Congress would give us more money, we would solve these." I think we have heard some other testimony in that regard about priorities and planning and timetables, and maybe shifting some focus. But my question to you is what are the cost savings? Have we looked into that? Do you have any information?

Mr. HALTER. It is a good question, Congressman. In fact, we know that if our notices are not as clear as they could be, that that does generate telephone calls to us—

Mr. PORTMAN. I would guess your 800 number is probably tied up sometimes when it doesn't need to be, but also people prob-

ably—in my district, they walk into the SSA office with these notices in their hands sometimes.

Mr. HALTER. That is absolutely correct. Now, we do know, Congressman, about the frequency of calls to our 800 number, because we do surveys on that, and of course we know broad topics as to percentages as to who is calling and why. A fairly low number of phone calls to our 800 number is about notices.

In addition to focusing on streamlining the notices themselves, we have also focused some energy and resources on making sure that our personnel have a system available so that they can pull up the notice in question when somebody calls in, so that they can in fact pull up a copy of that notice and then help the person understand it. This is, of course, not the best outcome. It is not the one that we are shooting for. What we are shooting for is to solve these problems right there on the front end.

Mr. PORTMAN. Prevention is always the best policy.

Mr. HALTER. Absolutely.

Mr. PORTMAN. My only point is, in terms of making this higher priority, because we do have testimony indicating that—at least from GAO—that this has not been as high a priority as it should have been, despite having been aware of this problem for several years, that it would be helpful to have some data to know what the impact is, not just on our constituents, because we do hear about it and we get the case work, but also on the system. And if you are talking about money, here is a way to save money. It sometimes requires a little more planning. You said you put some time into preparing for this hearing and now you realize the problem is more complex than you thought they were.

I guess that is a good reason, Mr. Chairman, to have had the hearing, and I am glad we had it.

I would ask you whether the four-year period is realistic now that you have spent more time on this, or is it ten years, or is it six years, as we have heard from GAO? And what can we expect in terms of a timetable and what specifically are you asking for from Congress? You indicated earlier, again, that, gee, if we just had more money, this wouldn't be a problem, which again, seems to be counter to the GAO testimony.

Mr. HALTER. Actually, Congressman, I didn't say that precisely. What I did say was that if resources had been forthcoming in the past, this issue would have been dealt with. But let me go back to—

Mr. PORTMAN. That sounds like my paraphrasing is pretty much what you just repeated.

Mr. HALTER. What I said was if we had the resources forthcoming in the past—

Mr. PORTMAN. No. I'm saying what you said is, "Gee, if we had just had more money, this wouldn't be a problem."

Mr. HALTER. We would have corrected this earlier.

Mr. PORTMAN. And I would challenge that, based on what I have heard. It is about setting priorities. You know, you have got a huge budget, and you have a lot of decisions to make—

Mr. HALTER. Absolutely.

Mr. PORTMAN. And you have got to focus on certain things and less so than others, and that is why I asked the earlier question

about how to get a higher focus. But is the four-year time period one that you are comfortable with now that you have spent more time on this?

Mr. HALTER. Actually, let me walk through this because I would like to give you even more detail than that in terms of the timetable.

Of the 14.2 million notices that GAO has come in and talked about, problems with 7 million of them will be resolved within two months.

Mr. PORTMAN. Almost half.

Mr. HALTER. Yes. Problems with 1.4 million of them should go away as a result of the passage already of the elimination of the retirement earnings test. In other words, we shouldn't have a problem with those notices. So now we are down to more than half that we are dealing with.

In terms of the SSI notice with respect to the benefit award and also the benefit adjustment, the major issue, and the one that accounts for the bulk of the confusion, should be resolved by July of 2002 with the implementation of a worksheet that lays out for an individual how their SSI benefit is calculated or how an adjustment is made. For about 90 percent of those notices we should have a good workable solution by July 2002.

For the remaining 10 percent of the SSI notices—and now we are getting into very low numbers of notices here—it is going to take until 2004. And the reason is that those are even more complex than some of the others that we can solve more quickly.

So our expectation is that by September of 2004 the vast majority, in fact, I would argue that in effect, all of the problems that GAO has outlined here will be resolved. And, as I said, within two months, more than half will be resolved. By July of 2002 the vast majority of these will be handled.

Mr. PORTMAN. Thank you, Mr. Halter. My time is up, but I am glad you have some focus on it. I appreciate it.

Mr. HALTER. Thank you very much.

Chairman SHAW. Mr. Hulshof.

Mr. HULSHOF. Thank you, Mr. Chairman.

Mr. Halter, you think that whoever generated this letter actually read it before it went out?

Mr. HALTER. I could check, Congressman, but the likelihood is probably not.

Mr. HULSHOF. And I am not trying to get anybody—the individual who generated this letter into hot water, but I was interested in the dialog, colloquy you had with the Chairman, and if you compared your constituent service with what we do with constituent service, you know, it is certainly tempting to plug in the figures, do the spell check and send it out and get to the next letter, and yet, that is not really being responsive.

I am also—let me follow up on something my friend from Ohio pointed out about funding. You know, this Subcommittee, I think Social Security Administration would agree, this Subcommittee has been extremely sensitive to trying to work with SSA, specifically going to bat for you—I am thinking of Ticket to Work, where we withheld or authorized the withholding of certain attorneys' fees so that SSA could have the money to make sure that these changes

that were implemented—so I think the chairman has shown a great willingness to work with SSA. And so I am concerned with the comments that we have not been responsive. It is my understanding that SSA puts out a strategic plan each year which outlines your agency's goals and priorities for the coming years. So my question is: how many times has the strategic plan included initiatives aimed at improving notices?

Mr. HALTER. Very frequently, Congressman. I don't think you were here for the opening testimony. But the fact is we do 390 million notices a year. Improving all of those notices, or making sure that in the beginning they are well written and then improving them over time has certainly been a priority and a key initiative for the organization.

In 1993 the identification of problems indicated that 30 percent of our notices needed simplification or needed work. Over the last 7 years, that number has been whittled down to 8 percent, and as I mentioned in talking about what remains to be done, if you give us credit for what happens two months from now, knocking out 7 million out of these 14 million, that percentage will be reduced even further.

We understand and have understood for a long time that providing clear and compelling notices are something that we should be doing, and we have devoted resources to it. So I appreciate the question, and I would point out to you that in our strategic plan, we have identified notices that we worked on.

Mr. HULSHOF. In light of that then, when has SSA approached Congress with a credible plan or specifically designated cost estimate so that we could plug that number in to help you fix the problem?

Mr. HALTER. When we present a budget to the Congress, we don't present line items for these particular initiatives. And the fact is, that over the last six years, the budget that Social Security has received has been 1 billion dollars in aggregate less than what the President requested for Social Security's administrative budget. When you balance all of those priorities—

Chairman SHAW. I think the lady behind you has two fingers up, so I think it's two billion.

Mr. HALTER. No, it is actually one billion dollars over 6 years. Over eight years it might be even higher.

Mr. HULSHOF. Let me, Ms. Bovbjerg, very quickly, this is a very compelling—and I know we are taking just this one single letter, but I think it does probably speak to the issue as you have walked us through it, so thank you for that example. Do you have any data at GAO to indicate if there has been really any adverse impact on beneficiaries as a result of confusing letters like this or not?

Ms. BOVBJERG. There really isn't much information available. It is anecdotal. We know people write to their congressmen. We know that the 800 number does get calls on this. But it is my understanding that the categories that the 800 number calls are put into are too broad to really narrow it down to these notices. So we don't have much data.

Mr. HULSHOF. Okay. Thank you. Thank you, Mr. Chairman.
Chairman SHAW. Mr. Cardin?

Mr. CARDIN. Thank you, Mr. Chairman, and let me again thank our two witnesses.

One thing is clear, and that is, whether it is one billion or two billion, that SSA has received less administrative support than the administration believed was necessary, and I would suggest that probably less than what Congress thought was necessary. But during those years we were fighting discretionary budget caps that required all agencies to receive less than was needed in order to meet our goals of a balanced Federal budget. Many of us thought it did not make too much sense to include the Social Security Trust Fund on budget for the purposes of calculating the deficit. And many of us think it doesn't make a lot of sense for your administrative budget to compete with the other appropriations within Labor-HHS-Education, and you shouldn't be subject to discretionary budget caps. Now, it still means you will be subject to appropriation. There will still be oversight to make sure that it is an appropriate expenditure of public funds for every dollar you spend. But I was listening to you try to justify switching of priorities.

And I would suggest, Mr. Chairman, that in many respects, that because you turn a spotlight on one problem, you might shift some resources, and that is just going to mean next year we are going to have to have a hearing on a different subject because of the resources being diverted from maybe determinations or redeterminations or other areas that we are going to start hearing from our constituents, and indeed we do.

So I really do want to put a plug in for the bill that you have been working on, Mr. Chairman, and that is to remove the administrative budget of SSA from the discretionary budget caps. I don't think it makes any sense to do that—to subject it to it. I think that legislation should be enacted, and I hope that we can work together to get that done, and I think it would help. It is not the answer, but certainly again provides the necessary resources and tools, and then we can hold the agency accountable on a more straightforward way.

The second point I would like to underscore is the point that you made a little bit earlier. And that is that a lot of the responsibility rests with Congress. If we pass laws that are difficult to interpret or difficult to understand—for good reason—we have done that in the tax code and we have done it in Social Security code—we need to take a look at that, and we need your recommendations as to where we can simplify policy to make it easier. I don't think we did the earnings test to simplify your job. We did it because we thought it was right. But it did simplify your job.

Mr. HALTER. Absolutely.

Mr. CARDIN. And we should look for ways in which we can help you, and improve the policy as we go along, and I would encourage you to be very bold in recommending those changes to us.

The one question I want to ask that has not been raised yet, and that is the language barrier, as to how you deal, or what information you found in your study, that part of the problem is the difficulty of our constituents to understand the communication because of the language in which it is communicated. I know you have made a real effort for Spanish, but there are many other languages that my constituents feel comfortable with, and I am just

interested as to whether this is a significant problem, and what you are doing to deal with it.

Mr. HALTER. I appreciate the question, Congressman Cardin. In fact, we are very proud of what we have done in the way of making sure that American citizens calling in, but not speaking the English language, have the possibility of talking with a Social Security employee in the language that they prefer.

In fact, this past year, just as one example, over a third of our new hires are bilingual, which is an incredible percentage when you compare it to the rest of the workforces that are out there.

We have also, as you noted, done a number of notices in Spanish. We have also offered translation services in over 16 different languages, and I would be happy to provide that list of languages for the record that our staff have capability of interacting with a constituent on.

Mr. CARDIN. That would be helpful.

Mr. HALTER. We will be happy to do that. But it is definitely a diverse workforce, but it is something that we will have to continue to devote efforts to.

[The following was subsequently received:]

Notices are routinely issued in English and Spanish. Also, local offices create come-in notices in additional languages that are heavily used in a particular neighborhood, such as Chinese for San Francisco and New York's Chinatown offices.

Public Information materials have been created in languages beyond English and Spanish. Materials have been developed in Korean, Chinese, Polish, Russian, Haitian Creole, Arabic, Armenian, Cambodian, Lao, Portuguese, Punjab, Spanish, Vietnamese, Farsi, Greek, Italian, Hmong, and Tagalog. These publications are available from field offices, through FAX on Demand, and through the Internet. Local offices may translate materials into languages heavily represented in their service areas.

SSA will provide interpreters and conduct interviews in the customer's preferred language for all languages. Our policy is to use bilingual employees whenever possible within an office for interpretations and translations, and within a region for translations. Beyond these boundaries, our policy is to provide interpreter and translation services through outside contractors.

SSA has over 6,000 bilingual public contact employees. The top 10 languages spoken by bilingual public contact employees are:

- Spanish
- French (including French Creole or Haitian)
- Tagalog or other Philippine Dialects
- Chinese (various dialects)
- Vietnamese
- German
- Italian
- Russian or Ukraine
- Hmong, Cambodian or Lao
- Portuguese

If bilingual employees are not available SSA has the ability to obtain translation and/or interpreter services in 97 languages.

Mr. CARDIN. I am wondering whether part of the problem is the constituents or the beneficiaries' difficulty in understanding the language. I mean, is that part of the problem we have here?

Ms. BOVBJERG. That was not the problem that we looked at in this particular evaluation. We looked at English. And asked writing consultants, who are accustomed to looking at all the basics of effective communication to evaluate these notices.

I think that it was in the back of our minds that the people who are getting these notices may not be very well educated. SSI is a welfare program. Beneficiaries may not have a very good command of English. We did not review whether a translation worked, but instead were concerned that even in English not all of notices are very effectively communicated.

Mr. CARDIN. And, of course, the primary responsibility is to make sure that it is understandable in English, but then I would just urge that—we have to make sure that people who are entitled to these notices can comprehend and understand what is involved here. So you have to take it to the next level.

Ms. BOVBJERG. Yes, I agree.

Mr. CARDIN. Thank you, Mr. Chairman.

Chairman SHAW. Mr. Collins?

Mr. COLLINS. Thank you, Mr. Chairman. Bill, good to see you again.

Mr. HALTER. Nice to see you, Congressman.

Mr. COLLINS. This is a computer generated letter; is that right? And somebody has to put this language in that computer for it to generate the letter.

Mr. HALTER. Yes, sir. What happens, Congressman, is we fashion paragraphs that are then mixed and matched by the computer, depending upon the individual circumstances of that particular beneficiary. And there is a software program that determines the order in which those paragraphs are put in.

Mr. COLLINS. Maybe we should send on to the computer. You know, how many pages is this letter? Three?

Ms. BOVBJERG. Eight.

Mr. COLLINS. How many?

Ms. BOVBJERG. Eight.

Mr. COLLINS. Eight pages.

Mr. HALTER. Congressman, we don't actually have the letter, and this is the first time I have seen this, so I can't tell you about the actual letter.

Mr. COLLINS. Well, you talk about a lot of other letters that need to be revamped. Have you seen those?

Mr. HALTER. I have definitely seen samples, yes, sir, but as you know, we send out 390 million forms, notices, letters a year, so I only reviewed a sample.

Mr. COLLINS. They're not 390 million different messages though. How many letters does that actually come down to be a minimum of?

Mr. HALTER. Well, with respect to SSI, I think what has been indicated here is we are talking in the range of about 4½ to 5 million.

Mr. COLLINS. Well, you have got a letter for this, a letter for this, a letter for that. Are there 20 letters? Are they different letters? Are there five different letters, ten different letters?

Mr. HALTER. Actually, a much larger number than that, Congressman, when you put it all together.

The key thing is that for this particular category of letters that GAO is presenting to us here today, let us assume that it is around 5 million that are different letters in this category, that there are literally thousands of different permutations and combinations of

that one letter, depending upon the individual circumstances of the beneficiary. There are literally hundreds of different variables that can affect the way the letter is put together in the automated system, and that is the complexity that we are trying to deal with.

And as the Chairman mentioned, and as Congressman Cardin mentioned, a lot of that is driven by the complexity of the program, and we have no choice administering the program and putting together the benefits for that individual person. It depends upon the circumstances and the variations are variations that are written into the law.

Mr. COLLINS. Well, whoever put this software together should have known, had better sense or more common sense than to put an eight-page letter in that thing to be kicked out. You know, if I received this letter, and it tells me right up front that I am—this notifies me I am eligible for Social Security income—it says payments—I think it ought to be subsidy, because that is what it is, it is a subsidy. And then I look down here and I see some numbers of how much a month. Then I see another paragraph that follows it that says I am going to receive a check for \$3,367. I would quit reading there and go to the mailbox. And I would stand by that mailbox, and when that \$3,367 ran out, I might pick the letter up and read further in it, or I would pick up the phone and call the office and find out why I am not getting any more money.

You know, this just doesn't make good common sense, Bill. I mean, I don't know who put this together, but you need to go pull those folks into your office this afternoon when you get back over there, and say, "Look, this is dumb." And, Bill, I am going to tell you one other thing, one other thing.

Mr. HALTER. Okay. Let me just respond to that real quick, because I want you to know, Congressman, I have already pulled them into my office, and we have had a conversation about it and—

Mr. COLLINS. It shouldn't take three, four years to rewrite something like this. You know, scrap this software thing and start writing some common sense letters.

And I am going to tell you something else, I don't think you need any more money. I think you could better use the money you already have. This is a waste of folks' money, writing letters like this. This is just not good common sense.

Mr. HALTER. Well, let me respond to that, because you know we have a great working relationship, and I just want to talk a little bit about what would happen if we decided not to use an automated system, but in fact went back and, as you say, put some good common sense to it, and then generated individual letters. You would be talking about an incredible use of people's time to put together 5 million individually put together letters.

Mr. COLLINS. I didn't say that.

Mr. HALTER. Well, but that is the implication.

Mr. COLLINS. I didn't say that, Bill. I mean, we all get thousands of letters a year too, and we have letters that answer specific issues. And if we had to wait four or five years to write a letter to answer, you know, tell our computer, "Spit this letter out, wait four years", because it is going to take us that long to come up with

an answer, we wouldn't be here after two years to come up with an answer.

Mr. HALTER. Well, I appreciate that.

Mr. COLLINS. It is just that you need to review these letters. Somebody needs to review them, and I think it ought to go right on up to the top and come up with some good common sense approach to tell somebody why they are eligible, why they are not eligible, because they are not going to read this. They are not going to read eight pages. I wouldn't read it. I can tell, I would see the first two or three paragraphs, and I would go stand by the mailbox and wait for my money, and I would enjoy it when I got it. But this is just not good business.

Mr. HALTER. You know I take to heart your personal recommendations, and I want you to know that your first recommendation has already happened, that the meeting that you wished to happen, happened long ago, and in fact, the proposals that are being put forward here to you today, do reflect an increase in the speed with which we as an organization are dealing with this, and so that meeting that you described has already happened.

Now if you are recommending to me that we go back and have another meeting, I am happy to do that too. But the fact is—and I would also, Congressman, be happy to spend some time with you directly and talk through some of the complications of this, because this is not an easy thing, and I think you and I could come to a pretty good joint understanding of what is going on with this particular set of issues.

This is not something—I just have to say—this is not something that we look at as a non-problem. We recognize that this is a problem, and we are working on it.

Mr. COLLINS. Well, Bill, you recognized that in 1990. You didn't, but somebody did.

Mr. HALTER. Well, I appreciate you pointing that out.

Mr. COLLINS. That is ten years.

Mr. HALTER. I understand, and as you know, I have been there ten months, but the fact is—

Mr. COLLINS. I think you have addressed everything that I have known you to address in a very fashionable and appropriate manner, but this one you need to address too. And I think if you do, you concentrate on this, you will come up with a solution that makes a whole lot more sense than this stuff.

Mr. HALTER. Well, that is our goal, Congressman, and I hope by the end of it, that you will look back and say that that is exactly what we accomplished.

Mr. COLLINS. Well, draft your letter and send me a copy of it, and I will tell you how it sounds. [Laughter.]

Mr. HALTER. I tell you what, I will send you ten.

Mr. COLLINS. Ten different ones.

Mr. HALTER. Ten different ones.

Mr. COLLINS. You can send 20 if you want to.

Mr. HALTER. Okay.

Mr. COLLINS. Don't make them eight pages long though.

Mr. HALTER. Well, now, this is something I have got to respond to

Mr. COLLINS. Because I will send them back to you unread.

Mr. HALTER. Now, with respect to this program we are under court order to have particular information in these letters and that lengthens these letters. I mean, we are under a court order that tells us particular language that has to be in there. And part of what we are working on, in terms of the timetable—and we have expedited it from what GAO initially believed—is in fact a response to a court case, and a court agreement, and so we are complicated in our response by that as well.

Mr. CARDIN. Mr. Chairman, could I ask unanimous consent that the entire letter be put in our record?

Chairman SHAW. Without objection, I think that is a good idea. [The information was subsequently received.]

Social Security Administration

Supplemental Security Income Notice of Award

Date: October 13, 1999

Claim Number

*Application Filed—February 22, 1999

*Type of Payment—*Individual—Disabled

This is to notify you that you are eligible to receive Supplemental Security Income payments under the provisions of Title XVI of the Social Security Act. The rest of this letter will tell you more about our decision.

How Much We'll Pay

Beginning	*Through*	*Monthly Amount Payable*
February 22, 1999	February 28, 1999	\$.00.
March 01, 1999	October 31, 1999	\$420.92. This includes \$87.58 from the State of Massachusetts.
November 01, 1999	Continuing	\$.00.

Information About Your Payments

We are sending you a check for \$3,367.36. This is money due you for March 1999 through October 1999. No further payments will be sent to you.

You should receive the check no later than October 16, 1999.

Your SSI Is Based On These Facts

- You met all the rules to be eligible for SSI beginning February 22, 1999. However, we cannot pay SSI until the month after you first meet the rules. In addition, we cannot pay you any SSI for months after that because of the reason or reasons given below.

- You were disabled in February 1999 on.
- You were living in the State of Massachusetts for February 1999 on.
- The amount of money we pay you from the State of Massachusetts depends on the State's rules.

- You are living in someone else's home for March 1999 on.
- You have monthly income which must be considered in figuring your payment as follows:

- Your Social Security benefits—before deductions for Medicare if any—of \$812 for November 1999.

- The food and shelter you got in someone else's home or apartment. We value that food and shelter at \$166.66 for February 1999 through November 1999.

- We must count the full amount of any benefit listed above as income even though all or part of a benefit shown is being withheld to recover an overpayment.

- Because of your income, you are not eligible to receive Supplemental Security Income payments for November 1999 on.

Information About Your Back Payments

We are sending you a Supplemental Security Income check for \$3,367.36 in October 1999. We will not count the part of this money which was due for back payments as your resource for 6 months. If the money is not spent before May 01, 2000, we will count any money left over as part of your resources. But things bought—with this money may count as resources the month after they are bought. Your Social Security office can tell you which things count as resources. You cannot get SSI if the resources we count have a value of more than \$2000.00.

Information About Medicaid

Since you are not eligible now for SSI you are also not eligible now for Medicaid based on SSI. However, if you need help with medical bills, you may still be eligible for medical assistance. Also, you may be eligible for Medicaid for the months we paid you SSI.

Contact the nearest Massachusetts Division of Medical Assistance office for information about your State's medical assistance programs and your eligibility for Medicaid. When you visit that agency; please take this letter with you. It will help the people there answer your questions.

Things To Remember

• Your 551 payments may change if your circumstances change. Therefore, you are required to report any change in your situation that may affect your SSI. For example, you should tell us if:

- you move
- anyone else moves from or into your household
- your marital status changes
- income or resources for you or members of your household change
- your medical condition improves
- you go to work

This will help us pay you correctly.

Please read the booklet "When You Get SSI-What You Need To Know" carefully for additional information about this requirement.

• Because we believe that your health may improve, we will review your case in about 3 years. We will send you a letter before we start the review. Based on that review, your SSI will continue if you are still disabled, but will end if you are no longer disabled.

• This decision refers only to your claim for Supplemental Security Income payments.

• If at any time in the future you think you qualify for payment, please contact us immediately about filing a new application. The earliest month for which we can pay you is the month after you file a new application.

• The application you filed for SSI was also a claim for Social Security benefits. We looked into this, and decided you can't get any Social Security benefits except the benefit you are already getting. If you disagree with the decision, you have the right to appeal. A case review, described later in this letter, is the only kind of appeal you can have regarding Social Security benefits.

• Would you like to work? If so you should know about special Supplemental Security Income (SSI) rules. These rules can help you keep Medicaid and may help you keep getting some SSI even though you are working. The enclosed fact sheet tells you more about special SSI rules for people who work.

If You Disagree With The Decision

If you disagree with the decision, you have the right to appeal. We will review your entire case, even the parts you agree with. We also will consider any new facts you have and then will make a new decision. The new decision could be more favorable to you than the one you already have. But, keep in mind that the new decision also could be the same as or less favorable than the decision you already have.

- You have 60 days to ask for an appeal.
- The 60 days start the day after you receive this letter. We assume you got this letter 5 days after the date on it unless you show us that you did not get it within the 5-day period.
- You must have a good reason for waiting more than 60 days to ask for an appeal.

- To appeal, you must fill out a form called “Request for Reconsideration.” The form number is SSA-561. To get this form, contact one of our offices. We can help you fill out the form.

How To Appeal

There are two ways to appeal. You can pick the one you want. If you meet with us in person, it may help us decide your case.

- *Case Review.* You have a right to review the facts in your file. You can give us more facts to add to your file. Then we’ll decide your case again. You won’t meet with the person who decides your case. This is the only kind of appeal you can have to appeal a medical decision.

- *Informal Conference.* You’ll meet with the person who decides your case. You can tell that person why you think you’re right. You can give us more facts to help prove you’re right. You can bring other people to help explain your case.

If You Want Help With Your Appeal

You can have a friend, lawyer or someone else help you. *There are groups that can help you find a lawyer or give you free legal services if you qualify.* There are also lawyers who do not charge unless you win your appeal. Your local Social Security office has a list of groups that can help you with your appeal.

If you get someone to help you, you should let us know. If you hire someone, we must approve the fee before he or she can collect it.

If You Have Any Questions

If you have any questions you may call us toll-free at 1-800-772-1213, or call your local Social Security office at 1-617-282-4159. We can answer most questions over the phone. You can also write or visit any Social Security office. The office that serves your area is located at: Social Security, 2nd Floor, 540 Gallivan Blvd., Dorchester, MA 02124.

If you do call or visit an office, please have this letter with you. It will help us answer your questions. Also, if you plan to visit an office, you may call ahead to make an appointment. This will help us serve you more quickly when you arrive at the office.

We are sending you a pamphlet which contains important information you should know. The pamphlet is called “When You Get SSI-What You Need to Know.” We are also enclosing additional information about rules that can help you if you are working or if you decide to work.

KENNETH S. APFEL
Commissioner of Social Security

Enclosures: SSI Rules That Help You Work

SSI RULES THAT HELP YOU WORK

We want to tell you about some special Supplemental Security Income (SSI) rules that can help you while you are working or if you begin working. These rules can help you get or keep Medicaid and may help you keep getting some SSI even though you are working.

How Your SSI May Change If You Work

If you work full-time or part-time and make \$65 or less each month, your SSI will usually not change. As the money you earn from your job goes up, your SSI will go down. However, if you have no other income (money or support), you can earn up to \$1,313.77 a month and still get at least \$1 in SSI.

If You Stop Working or Start Earning Less

If you stop working or start earning less, please let us know right away. We can increase your SSI check, or start your SSI and Medicaid again if they have stopped. You may not even have to file a new application.

Medicaid

If you get Medicaid, it will usually continue as long as you get SSI. If your SSI stops because you begin earning too much money, you can often keep getting Medicaid as long as the following are true:

- You continue to be disabled or blind under our rules; and
- You can’t pay your medical bills without Medicaid.

We Don't Count Some of Your Earnings Used for Work Expenses

The earnings you use for some of your working expenses may not count as income. For example, we sometimes don't count earnings used to pay for transportation to and from work. Also we don't count the cost of special equipment that helps you to work.

A Plan Can Help

You may be able to keep more of your SSI if you develop a special plan to support yourself. We call this a plan to achieve self-support (PASS). This plan lets you set aside money for a certain amount of time for a work goal. For example, you may set aside money to start a business, go to school, or get training for a job.

We don't count what you set aside when we figure your SSI. This can help keep you on SSI or help you get more SSI. A PASS may also help someone you know qualify for SSI.

If You Need Help Finding a Job

We can ask someone who offers vocational rehabilitation services to help you find a job or give you training.

If You Want To Know More

If you want to know more about these rules, contact any Social Security office and ask to speak to someone about work incentives.

Mr. COLLINS. Well, you just brought another interesting comment up, and it adds to the problem, because there is a lack of a lot of common sense when it comes to the courts too. But I think the answer, even to the courts, is to come up with something that makes sense, simple, to the point, the old KISS theory. But this is just so confusing, complex and ridiculous that it is not even worth the effort and the time and the money it costs to mail it out. Thank you, Bill.

Mr. HALTER. Thank you very much, Congressman.

Chairman SHAW. How much of the courts' orders that you are complying with have to do with due process, and how much has to do with the wording of the legislation or interpretation of legislation?

[The information was received and is answered on page 48.]

Mr. HALTER. Mr. Chairman, I would have to get back to you with an answer on that, a precise answer on that.

Chairman SHAW. I would like you to go beyond that issue if you would. If you would just summarize to us the requirements that you see the letter has to have pursuant to the statute and pursuant to the court order. It may be that the court order has gone too far, and that might be able to be corrected by statute, and I think we ought to take a look at it, because, again, I think, certain information has to be given. And I understand that. But if you give too much information, it is lost and Mr. Collins isn't going to read that eight-page letter, and I think that needs to be—really needs to be reviewed, particularly when you are dealing with the education level that most of these people have that are receiving these funds.

Mr. HALTER. We will be delighted to do that, Mr. Chairman.

Chairman SHAW. Ms. Bovbjerg, I believe she is the one that said that you all are going to have to make a correction in paragraph "F" up there, and that a new application would not be necessary in this particular instance. What is involved in making that correction and why couldn't that correction be done system wide?

Mr. HALTER. My understanding, Mr. Chairman, with respect to that particular item, is that it is going to be corrected in the month of October, but I want to ask our folks to confirm that. That in fact is going to happen in less than 30 days.

Chairman SHAW. Well, then the question is: why can't some of this other stuff be addressed within the next 30 days? I think we need to take a whole assessment of what is going on.

Mr. HALTER. I would partition the answer, Mr. Chairman, in that there are some things that if it is just a language change, we can make those very expeditiously, but if

Chairman SHAW. I think what we have here is an excess of language.

Mr. HALTER. Well, let me—as I partition this, I think it will become clear what I am talking about. If it is simply changing the words in a particular paragraph that is in the system, we can do that very quickly. If, on the other hand, what you are talking about is changing the software that mixes and matches those paragraphs—and that is really the root of this problem—that takes much longer for us to do, and that is the real complication. So with respect to paragraph “F” and paragraphs like that, where it is simply the case that we need to change the actual language in the text, we can do that very straightforwardly. If, on the other hand, you are talking about the sequencing between paragraphs A, B, C, D, E and F, that is much more complicated, and that is what is driven by all the variables that we have been talking about with respect to the program.

Chairman SHAW. But you could certainly—am I correct on this? And again, I am asking for information on it. I don't understand how these programs work. But if you took that paragraph “F” and put a period right after “immediately”, and just struck the rest of that paragraph, it seems to me that that would work.

Mr. HALTER. And, Mr. Chairman, I believe that the change that will be forthcoming here in the next few days or the next few weeks will in fact be something like that. But I would like to confirm that and get back to you with that particular thing.

[The following was subsequently received:]

Change in language to an SSI paragraph

The language in the paragraph referred to by Mr. Shaw will be corrected effective October 2, 2000. The replacement language will be: “If you think you may be eligible for SSI again, please contact us. If you do not contact us before [fill in appropriate month and year], you may have to file a new application. If you have to file a new application, the earliest month for which we can pay you is the month after you file.”

The revised language clarifies when a new application is needed.

Chairman SHAW. I don't think you have to put that last sentence, “The earliest month for which we can pay you is the months after”—well, you won't have a new application—but I don't know whether any further information is necessary. I think that is really what you have to really look at, is how much information are you required to give, because it looks to me that this is just totally confusing.

Mr. HALTER. Right.

Chairman SHAW. Ben, do you have anything else?

Mr. CARDIN. No.

Chairman SHAW. Well, I want to thank you both. Now, you are going to follow up and give me the information that we have requested?

Mr. HALTER. Yes, sir.

Chairman SHAW. Setting forth statutory requirements and the requirements of the court. And if you could have your legal counsel also to advise us as to whether this court required information is under dueprocess or as to the statutory interpretation. Then we will have to look at it and see if we see a way that we can

Mr. HALTER. Mr. Chairman, I would be delighted to do that, and we will follow up with you on those.

[The following was subsequently received:]

What the law requires to be in Social Security Notices

We are required to by Section 205(b)(1) (title II) and Section 1631(c)(1)(A) (title XVI) to “make findings of fact, and decisions as to the rights of any individual applying for a payment under this title.” We include all the information in our notices to satisfy these sections. When the courts find our notices legally insufficient, it is usually because they determine we have not included enough information, or not stated the information clearly, to explain our findings of fact and an individual’s appeal rights.

Listed below are other specific citations that discuss notice requirements.

Specific Notice Requirements

Section 205(s) (title II) and section 1632(o) (title XVI) require SSA notices be written in “simple and clear language,” and include a local social security office address and telephone number.

Section 205(j)(2)(E)(ii) (title II) and section 1631(a)(B)(xii) (title XVI) give notice requirements to explain that a representative payee will receive benefits on behalf of an individual. The notice must be clearly written in easily understandable language, identify the person chosen, and explain the right to appeal that a representative is needed, appeal who the representative is, and review the evidence we used to make our decision.

Section 205(b)(3)(B) (title II) and section 1631(c)(1)(B)(ii) (title XVI) require, in an adverse situation, SSA include the effect on possible eligibility for payments of choosing to reapply rather than appeal the decision.

Section 206(a)(2)(D) (title II) and section 1631(d)(2)(A) (title XVI) require a notice about a fee agreement to include: the past-due amount, past-due amount payable to the claimant, amount of the maximum fee that can be charged, and explanation of review procedures.

Section 206(c) (title II) and section 1631(d)(2)(B) (title XVI) require the notice to tell the beneficiary he/she can have an attorney help with an appeal and that qualifying individuals can get legal services free of charge.

Section 1631(k) (title XVI) requires notification of blind and/or disabled individuals about the potential eligibility under section 1619 at the time of the award, when income is \$200 or more for a month, and periodically afterwards as long as the individual’s income is \$200 or more for a month.

Section 1631(l) (title XVI) requires SSA to provide individuals applying for or receiving benefits because of blindness the following notice options: receive a supplementary notice by telephone within 5 working days after SSA mails the initial notice; receive the initial notice by certified mail; or receive notification by some alternative way established by SSA and agreeable to the individual. Title II notices also follow this requirement.

Sections 205(b)(1) and 1631(c)(1)(A) of the Social Security Act require the Commissioner of Social Security to “make findings of fact, and decisions as to the rights of any individual applying for a payment under this title” (either title II or title XVI). If a decision involves a determination of disability and is partially or wholly unfavorable to the individual, the notice describing the determination must contain a statement of the case, in understandable language, setting forth a discussion of the evidence and stating the determination and the reason or reasons upon which the determination is based.

COURT CASES THAT SPECIFY NOTICE REQUIREMENTS

*We have annotated the cases where due process was an issue.

Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950). When government action threatens the deprivation of an individual's property, due process requires that the individual receive notice that is reasonably calculated, under all circumstances, to apprise the individual of the action taken and afford him or her an opportunity to present objections. **Due process.**

Goldberg v. Kelly, 397 U.S. 254, 267–68 (1970). The Supreme Court held that before welfare benefits can be terminated, due process requires “that a recipient have timely and adequate notice detailing the reasons for a proposed termination, and an effective opportunity to defend by confronting any adverse witnesses and by presenting his own arguments and evidence orally.” **Due process.**

Cardinale v. Mathews, 399 F. Supp. 1163 (D.D.C. 1975). The court applied the holding in *Goldberg v. Kelly* to reductions, suspensions, and terminations of SSI benefits. As a result, SSA's notices explaining intended reduction, suspension, or termination of SSI benefits must explain that the individual has the right to a review of SSA's determination and that the individual may choose a case review, informal conference, or formal conference. **Due process.**

Califano v. Yamasaki, 442 U.S. 682 (1979). The Supreme Court held that title II beneficiaries who request waiver of collection of an overpayment are entitled to the opportunity for a prerecoupment oral hearing. Consequently, SSA must inform individuals whose waiver request cannot be granted based on the written request of their opportunity for an oral hearing. **Based on the language of section 204(b) of the Social Security Act.**

Benson v. Schweiker, 652 F.2d 406 (5th Cir. 1981). The court determined that the notice of the right to be represented by counsel must include an explanation of the fee limitations in sections 206 and 1631(d) of the Social Security Act, of the possibility of representation by a private attorney on a contingent fee basis, and of the possibility of free representation if the claimant cannot afford a lawyer. See also *Holland v. Heckler*, 764 F.2d 1560 (11th Cir. 1985). **Based on statutory language.**

Wall v. Califano, (N.D. Cal. July 6, 1982). In a settlement agreement, the Secretary agreed to simplify the language describing the three ways to appeal SSI post-eligibility reduction, suspension, and termination decisions. The settlement agreement set forth specific readability and content standards. **Settlement agreement.**

Muir v. Schweiker, (D. Or. February 24, 1983). In a class action settlement agreement, the Secretary agreed to include on the SSI notice of the decision to recover an overpayment a statement advising recipients that “appearing in person may help the person deciding your case to make a decision.” The settlement agreement applied nationwide. **Settlement agreement.**

Ellender v. Schweiker, 575 F. Supp. 590, 600 (S.D.N.Y. 1983). To be constitutionally adequate, SSI overpayment notices must explain to the beneficiaries the time periods during which overpayment arose, the amount of overpayment in each time period and in total, the amount of any prior repayments, the reason for overpayment, that the recipient has a right to appeal and/or reconsideration, and that under specified conditions the recipient may have the right to a waiver of repayment of the overpayment. **Due process.**

Buffington v. Schweiker, No. 734–73C2, (W.D. Wash. Feb. 7, 1983). The court established standards for notifying a title II beneficiary about the scheduling of a personal conference on the issue of waiver of the overpayment when an initial paper review regarding waiver is adverse. The written notice must contain: all the necessary information about date, time, place, the procedure for reviewing the file prior to the hearing, the procedure for seeking a change in the scheduled date or time or place, and all other information deemed necessary by the Commissioner to fully inform the claimant about the personal conference. **Due process.**

Page v. Heckler, No. 82–1388 slip op. (M.D. Pa. July 2, 1984). In this State-wide Pennsylvania class action, the court agreed to a proposal to have SSA follow the same waiver of overpayment procedures under title XVI as were required in *Buffington* for title II overpayments and waivers. The Commissioner is required to send a notice of a personal conference, which meets the standards announced by the *Buffington* court to overpaid SSI recipients seeking waiver. **Due process.**

Powell v. Heckler, 789 F.2d 176 (3d Cir. 1986). The court held that the Appeals Council cannot review an entire case when the claimant appeals only part of the decision unless the Council gives the claimant notice of its intention to do so within 60 days of the ALJ decision. **Due process.**

Gonzalez v. Sullivan, 914 F.2d 1197, 1203 (9th Cir. 1990). The court held that SSA's initial notice of an adverse determination violated Fifth Amendment due process because it did not clearly explain the difference between appealing the denial

and filing a new application. The notice did not clearly indicate that if no request for reconsideration is made, the determination is final. **Due process.**

Ford v. Apfel, No. CV-94-2736 (E.D.N.Y. January 13, 2000). After negotiations between the parties, the court required that SSA revise its automated SSI financial eligibility notices (e.g., denial, change in payment amount) to better explain the financial calculations that affect eligibility and payment amount. Among other things, the court required that SSA include in the notices information regarding the individual's right to review his or her claim and how the appropriate legal citations can be obtained from SSA. **Due process.**

Greenawalt v. Apfel, No. 99-CV-2481 (E.D.N.Y. December 26, 1999). In a nationwide class action settlement agreement, the Commissioner agreed to extend the practices and procedures followed in Pennsylvania pursuant to Page in all SSI overpayment cases where the recipient seeks waiver. Notices must comply with the standards used in Buffington and Page. **Settlement agreement. Challenge was based on due process and equal protection.**

Chairman SHAW. And, Ms. Bovbjerg, can you do an assessment? Are you all prepared to give us an assessment as to what funding would be necessary in order to write new programs? You said you are not a systems operator, and I am certainly not. Do you have the expertise at the General Accounting Office to take a look at what their plan is for doing this over four years and see if you can see a way that it can short-circuited and whether new funding would be required?

Ms. BOVBJERG. I believe someone at the General Accounting Office has that expertise.

Chairman SHAW. Okay. Well, take a shot at it.

Ms. BOVBJERG. But you were correct it wouldn't be me doing systems work.

Chairman SHAW. Take a shot at it, please. Thank you very much. The hearing is adjourned.

[Whereupon, at 11:41 a.m., the hearing was adjourned.]

[Submissions for the record follows:]

BILINGUAL SERVICES WORKING GROUP
October 6, 2000

The Honorable E. Clay Shaw, Jr.
Chairman, Social Security Subcommittee
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

Dear Representative Shaw:

Thank you for the opportunity to submit written comment for the hearing record on the very important issue of the quality and effectiveness of Social Security notices. Although the Social Security Administration (SSA) has put some effort into notice improvement, many notices remain unintelligible to the public, who are being held increasingly responsible through the various anti-fraud initiatives for understanding and responding appropriately to the complex rules and reporting responsibilities in the benefit programs administered by the agency. As the agency moves forward with its programs to encourage disability benefit recipients to work, it is critical for the agency's notices to clearly explain the rules and recipient responsibilities in the work incentive programs, as well as the effect of work on benefits. Understanding the agency's notices is an especially difficult problem for those with cognitive limitations, mental impairments, low educational levels, and for those who do not speak English or have limited English proficiency.

Because I write on behalf of the Bilingual Services Working Group, I will confine the remainder of this statement to issues involving SSA customers with limited English proficiency. The Bilingual Services Working Group is a national group of Social Security and SSI advocates who have been working for several years with

SSA to increase access to SSA's services for persons with limited English proficiency.

The pressing issue for persons with limitations in English is the need to receive notices in a language they will understand. In order to make that happen, SSA must develop the capability to identify the language spoken by each of its customers. Currently, the only language, other than English, in which the agency even attempts to provide written notices in Spanish. However, even this limited attempt is not well executed because SSA does not, at present, determine and capture the language spoken by its customers, except for new claims.

As you know, the President recently issued an Executive Order on "Improving Access to Services for Persons with Limited English Proficiency." 65 Fed. Reg. 50119 (Aug.16, 2000). The Executive Order requires each agency administering a Federally conducted program to develop and implement a plan consistent with the compliance standards established for the States by the Department of Justice Office of Civil Rights. 65 Fed. Reg. 50123 (Aug.16, 2000). This order will go far to ensure equal access to services. It will also enhance program efficiency and integrity. Unfortunately, the Executive Order makes clear that it cannot be enforced against Federal agencies.

If the OCR standards were applied to SSA, the agency would clearly be required to identify the languages spoken by its customers and provide written notices in many different languages. It is unlikely that any other benefit agency in the nation serves as a great number of recipients who are limited in English proficiency. The eligibility rules for the Supplemental Security Income (SSI) program are particularly complex, requiring frequent contact with and many notices from the agency, and the percentage of aged SSI recipients who are limited in English proficiency continues to grow each year. Yet, the agency is woefully behind in providing notices in a language the benefit recipient understands.

SSA needs to provide written notices in the languages spoken by its customers and must place the highest priority on identifying the languages spoken by all SSI recipients. Until SSA has the capability of capturing the language spoken by its customers, it is unable to send notices in a language the customer understands. It is also unable to provide timely and effective service with interpreters when it does not know the language the customers speaks. SSA must undertake the necessary systems changes now to identify and capture language preference to avoid an even larger workload later on and further delays in providing these critical services.

SSA has made great strides over the past few years in the development and implementation of its excellent policy with regard to the provision of interpreters for conducting SSA business. It now needs to make similar progress on the provision of written notices in the customer's language. There are highly dedicated individuals within the agency who participate in a work group for improving services to individuals with limited English proficiency. Further progress will be hampered, however, unless and until the agency has the ability to capture the languages spoken its customers.

SSA undoubtedly sends out more notices to the public on issues of vital importance than any other Federal or State agency. It should set the example when it comes to providing notices in the languages of its customers. I urge the Committee to determine what needs to be done to enable the agency to meet the written notice standards set forth in the exemplary OCR policy guidance. The Executive Order should not be ignored simply because it is unenforceable against SSA. Its spirit should be followed because it is good public policy for the reasons stated above.

Respectfully submitted,

Linda L. Landry, Esq.
Disability Law Center, Boston, MA
Gerald McIntyre, Esq.
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October 9, 2000

The Honorable E. Clay Shaw, Jr.
Chairman of the Subcommittee on Social Security
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

Dear Representative Shaw:

I am writing to submit these comments for inclusion with the September 26, 2000 hearing record on the issue of the quality of the Social Security Administration's (SSA) benefit notices and the status of SSA's actions to address notice improvement. At the outset, let me state how appreciative I am to the Committee for addressing these problems and for holding this hearing to place pressure on SSA to remedy the notice problems that remain essentially unchanged despite over 8 years of promises to correct them.

My name is Christopher J. Bowes and I am the Executive Director of CeDAR, the Center for Disability Advocacy Rights. CeDAR is a not for profit poverty law office providing legal advice and representation to poor persons with disabilities and older persons before the Social Security Administration. Through our daily work, CeDAR's staff has a wealth of experience dealing with the problems created by SSA's poorly drafted Supplemental Security Income (SSI) and Social Security Disability (SSD) benefit notices. CeDAR's attorneys are also co-counsel for eight of the thirteen named plaintiffs and the plaintiff class in *Ford, et. al. v. Apfel*, 87 F. Supp. 2d 163 (E.D.N.Y. 1999), the nationwide SSI class action that successfully challenged the adequacy of SSI notices mentioned in the GAO's report.

I hope that the Committee will consider incorporating the entire *Ford* decision with the record of this hearing as the findings contained therein provide a careful analysis of the issues before the Committee, including SSA's failure to make any significant headway with respect to Notice improvement since September 1992 when the Office of the Inspector General issued a report harshly critical of SSI financial notices. Moreover, while I know that the Committee has heard testimony severely critical of the quality of SSA's notices, I believe that the *Ford* decision provides additional detail regarding the harm visited to over 6.5 million SSI recipients.

Highlights of the Court's Decision in Ford

The Court found that SSA's SSI notices violated due process because the notices fail to convey essential factual and legal information necessary to inform the reader. The Court found that the risk of erroneous deprivation was great given that SSI recipients already subsist on the edge of poverty. Finally the Court held that SSA would not be unduly burdened if required to correct the SSI notices.

- The Notices Fail to Convey Underlying Factual and Legal Assumptions

The Court noted that it was common knowledge that SSA's SSI notices failed to contain the factual and legal premises with which a person can make a decision as to the correctness of the notice. The Court cited the Office of Inspector General's September 1992 report recommending the addition of abenefit worksheets itemizing gross payment and all applicable deductions. The Court also cited the 1994 General Accounting Office's (GAO) report finding that even GAO staff with an accounting background and years of Social Security program knowledge had difficulty determining or verifying specific points contained in the SSI notices. Several of the named plaintiffs testified to the fear caused by the SSI notices that they could not understand, leaving them upset and humiliated.

- The Likelihood of Erroneous Deprivation is Great

Next the Court considered the likelihood that a confusing SSI notice would erroneously deprive an SSI recipient of desperately needed cash assistance. Each recipient of a potentially erroneous SSI notice is either elderly or suffering from severe mental and/or physical disability. SSA's own witnesses testified that SSI claimants are often intimidated simply by the fact they have received a government letter. It is to this audience that the inadequate SSI notices are sent, and the recipient is placed in the position of trying to first ascertain whether a negative determination has been made against them, and secondly whether it is factually and legally proper. Although SSA provides for a 60-day appeal period, the notice recipient must in

fact make a decision whether to appeal within 10 days in order to maintain their benefits at the status quo. While SSA has an 800 telephone number where a claimant can call toll free for information, that system requires that the caller be on SSA's MSSICS computer system. As it turns out, only twenty percent of all SSI recipients have their information stored on MSSICS, making a call to the 800 number an inadequate solution for the vast majority of SSI recipients. Moreover, there is a dearth of trained poverty law attorneys available to assist these individuals.¹

- Revising the Notices Will Not be Unduly Burdensome on SSA

Finally, the Court considered whether notice improvement would be unduly burdensome for SSA. SSA provided testimony that notice improvement would require substantial modification to its computer systems. The Court considered the testimony of Charles Wood, Associate Commissioner of the Office of Systems and Design and Development, who testified that it would take six months for three to four computer programmers to test and debug the proposed changes and two years to fully implement the changes sought by the plaintiffs. Other SSA experts testified that SSA would have to buy additional computers to handle the additional workload imposed by improved notices. On the other hand, SSA's witnesses testified that improved notices would reduce SSA's workload because clear notices result in fewer inquiries to SSA by recipients seeing notice clarification. Overall, the Court held that notice improvement would not unduly burden the SSA.

The Glacial Pace of SSI Notice Improvement

We are obviously concerned regarding the slow pace of SSA's proposed implementation, particularly given Associate Commissioner Wood's testimony at trial that all the changes sought by the Ford plaintiffs could be completed in two years. We are therefore surprised to hear that it may take 10 years to fully implement all of the changes. It has also come to our attention that SSA has no intention of issuing any worksheets in so-called "very complex" cases (representing three percent of all notices) because it would be too difficult. SSA's timeline and the scope of implementation should be revisited and scrutinized so that *all* SSI financial notices include worksheets and that this is done as soon as possible, not at a pace that is administratively convenient.

We are also vexed at the suggestion mentioned in the GAO report that SSA held off on SSI notice improvement pending the outcome of the *Ford* litigation. Because this is prominently stated twice in the GAO report, it should be noted that this statement is not supported by fact. Throughout the course of this litigation, the Court repeatedly urged the parties to settle and assigned a magistrate judge to preside over the proceedings. Plaintiffs would have been more than happy if SSA had agreed to implement the worksheet and other changes suggested in 1992 by the OIG and in 1994 by the GAO. At trial, it was established that SSA opposed the OIG and GAO suggestions regarding worksheets because such changes were perceived by SSA to be too costly and burdensome.

Lastly, I must bring to the Committee's attention problems with SSA's intention to increasingly rely on the Internet as a means of disseminating program information to SSI and SSD recipients. See September 26, 2000 Testimony of Deputy Commissioner William Halter regarding the Online Notice Retrieval System (ONRS). While this may generally be a worthwhile endeavor, with respect to the SSI population, the unstated assumption that SSI recipients are computer literate and have ready access to computers is unfounded. To the contrary, the technological "digital divide" is a tremendous obstacle to the effective use of the ONRS. See *Falling Through the Net*, July 8, 1999 and revised in November 1999. The July 1999 report is available on the Internet at <http://www.ntia.doc.gov/ntiahome/ftn99/contents.html>; see also www.digitaldivide.gov. It is noted that "[w]hile a significant majority of Americans (58.9 percent) making over \$75,000 frequent the Internet from any location, many fewer persons (16.0 percent) at the lower end of the payscale (\$5,000-\$10,000) use the Internet." A quick overview of this report will debunk any assumption that the poor are computer literate and with ready access to the Internet.

¹I am aware that this Committee has recently heard testimony regarding a possible amendment to the Act that would allow withholding of past due SSI benefits for payment of attorneys fees. While this proposed amendment is likely to encourage more private attorneys to represent SSI claimants seeking *disability* benefits, the amendment will not help SSI claimants who seek clarification of their SSI notices for the simple reason that SSI financial notice cases typically do not result in an award of past due benefits.

Thank you again for considering these comments and for tackling this difficult issue. Please feel free to contact me if you have any questions regarding this letter or the status of the Ford case.

Respectfully submitted,

CHRISTOPHER JAMES BOWES
Executive Director

[An attachment is being retained in the Committee files.]

**Statement of Gerald R. Tarutis, National Alliance for the Mentally Ill,
Arlington, VA**

Chairman Shaw, Representative Matsui and members of the Social Security Subcommittee, I am Gerald R. Tarutis of Seattle, Washington. In addition to serving on the Board of the National Alliance for the Mentally Ill (NAMI), I am also an attorney in private practice. I am pleased to have the opportunity to share NAMI's views regarding ongoing problems with the Social Security Administration's letters to beneficiaries with disabilities and their families.

In over 25 years of practicing law, I have represented many clients with severe disabilities who have been claimants for Social Security cash benefits. While some of my clients' cases before Social Security were dealt with in a fair and straightforward manner, many others found the experience of endless appeals, examinations and bureaucratic delays frustrating and in many cases, humiliating. This is especially true for adults with severe mental illnesses and other disabilities that are not readily apparent to the staff of the Social Security Administration (SSA) field offices.

Too many adults with severe mental illnesses, and their families, find their dealings with the SSA on matters ranging from appeals for denial of eligibility, to reporting wages, to seeking a straight answer regarding an alleged overpayment to be intimidating. Nowhere is this process more frustrating than in trying to interpret and understand the letters that claimants and beneficiaries receive from the agency. It would be difficult for me to overstate the confusion and aggravation that NAMI members feel when they receive important correspondence from SSA regarding eligibility, benefit adjustments and overpayments with conflicting and confusing information.

For adults with serious brain disorders including schizophrenia, manic-depression, major depression and severe anxiety disorders both SSI and SSDI serve as a critical Federal safety-net program that is essential to meeting the most basic needs for food, clothing and shelter. In NAMI's view, it is critically important that these most vulnerable Americans, and their families, get clear information from SSA about eligibility and benefits. The receipt of confusing or conflicting information about eligibility and benefits can have disastrous consequences particularly for individuals who work part-time under SSA's limited employment programs, i.e. 1619 for SSI beneficiaries and the trial work period (TWP) for SSDI beneficiaries. As these programs expand under the Ticket to Work and Work Incentives Improvement Act (P.L. 106-170), it will be all the more important for beneficiaries to get clear and precise information from SSA about where they stand.

In fact, TWWIIA itself points to the frustration that individuals with disabilities have had over the years with SSA's letters. As an aside, NAMI would like to again thank you Chairman Shaw, and all the members of this Subcommittee on both sides of the aisle, for your leadership in passing this historic legislation to help adults with severe mental illnesses and other disabilities go to work. As you know, Congress included a provision in TWWIIA authorizing a new "benefits counseling and assistance" program to assist beneficiaries in their decisions regarding employment. What is most noteworthy about this initiative is that Congress insisted that these benefits planning programs be independent of SSA largely because of the low level of confidence among beneficiaries and their families about the accuracy of the information they receive from Social Security. While some of this may be caused by past histories of overpayments (which too often results from confusing or out of date information given by SSA field office staff), it is surely also a result of confusing and difficult to understand letters from SSA itself.

An examination of the General Accounting Office's (GAO) recent report on SSA's longstanding problems with its letters to the public illuminates why beneficiaries and their families are so frustrated. GAO reviewed several categories of letters, including those awarding and adjusting SSI benefits. In analyzing these letters, NAMI

understands that the GAO used a team of writing consultants (including English teachers) to assess whether the letters communicated clearly and to verify the types of problems that regularly occur with these letters.

The GAO's findings are remarkable. The majority of the letters in every category (including SSI eligibility and adjustments) did not clearly communicate on at least one of the following: 1) SSA's actual decision on the claimant's action, 2) the basis for SSA's decision, 3) the financial recourse of SSA's decision on the beneficiary, or 4) the recourse available to the beneficiary. Among the factors noted by GAO and their consultants were illogically sequenced information, incomplete or missing information, contradictory information and confusing numerical information.

The GAO report notes that:

- An unclear explanation of the basis for SSA's decision was the most widespread problem cited by the GAO, i.e. 80 percent of sampled letters were described as unclear, principally because the cover sheet failed to disclose all of the decisions contained in the attachments.
- 100 percent of the sampled SSI award letters do not explain the relationship between program rules and the amount of the actual SSI benefit (86 percent of SSI benefit adjustment letters failed to explain this as well).
- More than half of the surveyed SSI benefit adjustment letters lacked a clear statement of timing or the amount of change in benefits.
- Letters sent to SSI beneficiaries who are eligible for a previous, but not a future, month's benefit, were unclear in communicating all of the criteria.
- A startling 95 percent of award letters for Social Security benefits (including those to SSDI claimants) fail to detail how to appeal the decision.

In its report, GAO noted that while SSA acknowledges many of these problems, changes have been slow in coming. Both GAO and SSA appear to acknowledge that comprehensive revision of the language used in beneficiary letters is needed, as well as an overhaul of the computer software used to generate these letters. NAMI is hopeful that this process will be accelerated as a result of a 1999 Federal court order for SSA to develop a comprehensive plan to improve its SSI letters. Unfortunately, GAO reports that SSA has "not placed a priority on improving its letters to the public, and it will be years before improvements are completed to most of these letters, even if there are no more delays and SSA adheres to its current plans."

Because so many people with the most severe and disabling mental illnesses rely on SSI and SSDI for basic support to live in the community, NAMI believes that SSA should take the steps necessary to ensure that information regarding eligibility and benefits is understandable. NAMI would concede that the complicated nature of SSA's disability cash benefit programs and their interaction with health care programs does not make this task easy. However, the GAO report makes clear that improving the content of letters to beneficiaries has not, this far, been a high priority at SSA.

What needs to be done? NAMI recommends that Congress direct the Commissioner to put in place a comprehensive plan to improve SSI benefit award and adjustment letters. As the GAO recommended in its report, such a system should include performance measures that hold SSA accountable, with specific timetables and outcomes to assess progress.

Moreover, SSA should invest in training for field office staff to help these officials better understand severe mental illness and the unique challenges that they (and their families) face in becoming eligible for SSI and SSDI. The overriding experience of too many NAMI members is that the stigma associated with severe mental illness, and the lack of understanding among field office staff has served as a barrier to getting quick, accurate and fair decision from the agency. On August 21, SSA completed work on revised criteria for "Evaluating Mental Disorders." These new criteria revise SSA "adult neurological listings." SSA is now in the process of training field office staff and State disability determination offices on these criteria. NAMI believes that this provides a unique opportunity for SSA to educate field office staff and State determination agencies on how to more effectively serve claimants and beneficiaries with severe mental illnesses.

Mr. Chairman, thank you for the opportunity to present testimony on this important issue for NAMI's consumer and family membership.

**Statement of Charles Robert, Robert, Lerner & Robert, Rockville Centre,
NY**

Thank you for the opportunity to present testimony to be placed in the Record of the Hearing on Improving Social Security Notices. Since the 1974 beginning of the Supplemental Security Income (SSI) program implemented by President Nixon to replace State welfare programs providing benefits to the aged, blind, and disabled, I have represented SSI recipients appealing incomprehensible SSI denial and reduction Notices.

Chairman Shaw's Opening Statement accurately highlights the importance of the accurate and comprehensible Notices for SSI recipients. "The amount of their Social Security or SSI check may be the difference between paying the monthly bills or not."

A. The clandestine SSA nonacquiescence policy as a root cause of the incomprehensible SSI Notices.

In the past two decades of legal representation, almost all of my SSI clients' appeals have included a challenge the SSA nonacquiescence policy whereby the SSA has denied or reduced SSI benefits because of a standard *established by Executive Branch counsel* and *not* as established in a duly promulgated SSA regulation. See *Glasgold v. Califano*, 558 F. Supp. 129 (E.D. N.Y. 1982), *aff'd sub. nom. Rothman v. Schweiker*, 706 F. 2d 407 (2d Cir. 1983), *cert. den. sub. nom. Guigno v. Schweiker*, 464 U.S. 984 (1983). *Ruppert v. Bowen*, 671 F.Supp. 151 (E.D.N.Y. 1987), *aff'd in part, rev'd in part, Ruppert v. Bowen*, 871 F. 2d 1172 (2d Cir. 1989), *Gordon v. Shalala*, 55 F. 3d 101 (2d Cir. 1995), *cert. den.* 116 S. Ct. 1317 (1996).

As a result of the HHS and SSA nonacquiescence policy, the SSA Commissioner has not equally applied SSI standards in all 50 States as intended by the Congress. This is one of the root causes of the incomprehensible SSI Notices.

The survival of this clandestine nonacquiescence policy into 2000, has been in large part because of the continued use of the indecipherable SSA Notices which do not explain the standard applied or cite to the applicable law. Over the past decades HHS General Counsel Juan del Real, SSA Chief Counsel Donald Gonya, and SSA General Counsel Fried knew that if they had explained the "nonacquiescence" policy in the SSI Notices, then even the legally defenseless aged, blind, and disabled SSI recipients would have intuitively known that something was wrong when a *different* standard was used to compute monthly SSI benefits for SSI recipients who lived in *different* States in a Federal program established by the Congress to apply a uniform Federal standard.

As explained in more detail in the Sections discussing Solicitor General Waxman's courageous decision to withdraw the Ford appeal, the accuracy of SSA General Counsel Fried's May 22, 1997 sworn Congressional testimony, the implementation of the *Jackson* nonacquiescence policy, and SSA General Counsel Fried's decision not to acquiesce to *Christensen v. Harris County*, SSA General Counsel Fried has known that when an "acquiescence" decision was made to limit the application of Circuit Court decision to that Circuit's States, the SSA computer was *not* reprogrammed. Thus, SSA General Counsel Fried has always cynically known that there was no practical difference between the pre-June 3, 1985 "nonacquiescence" policy of HHS General Counsel del Real and the post-June 3, 1985 "acquiescence" policy of SSA General Counsel Fried because other than the named litigants in an "acquiescence" case, the SSA Notices sent to all other similarly situated SSI recipients within that Circuit and in all other Circuits was the "incorrectly" decided Executive Branch counsel's interpretation of the SSA statute and implementing regulations that the *unappealed* Circuit Court had rejected.

When the new President appoints the new SSA Commissioner, that new SSA Commissioner's duty will be to comply with Judge Sifton's *Ford* decision and construct "Ford" Notices that cure the present due process violations. The new SSA Commissioner will have to program the SSA computer to explain the standard that Congress intended to be applied equally in all 50 States. If the same legal standards are applied in all 50 States, then the new SSA Commissioner will have de facto ended SSA General Counsel Fried's clandestine nonacquiescence policy.

If the new SSA Commissioner's staff provides him/her with accurate information, then the new SSA Commissioner will learn that for decades *incorrect* standards had been used to deny and reduce six million SSI recipients benefits based on the legal opinions of HHS General Counsel del Real, SSA Chief Counsel Gonya, and SSA General Counsel Fried. If the SSA staff provide accurate information, then the new SSA Commissioner will also learn that these Executive Branch counsel believed that

they had the extraordinary authority to be de facto Supreme Courts and in effect “overrule” Circuit Court decisions by *not* changing the standards used in all 50 States. The new SSA Commissioner will also learn that in order to prevent any case from percolating to the Supreme Court, that these Executive Branch counsel had made the critical litigation decisions *not* to appeal what they believed to have been the “incorrectly.” decided District and Circuit Court decisions. See 20 C.F.R. §416.1485 *Application of Circuit Court Law*. Hence, the critical timing of this Subcommittee’s Hearing prior to the appointment of the new President’s new SSA Commissioner who will have the immediate duty to construct new SSI “Ford” Notices to comply with Judge Sifton’s now unappealed *Ford v. Apfel* certified nationwide class decision. Therefore, the Chairman should consider raising the SSI Notice issue at the confirmation hearing of the new President’s SSA Commissioner and inquire of the new SSA Commissioner whether he/she will be implementing SSA General Counsel Fried’s nonacquiescence policy whereby the SSI standards have not been equally applied to six millions aged, blind, and disabled SSI recipients.

B. Solicitor General Waxman’s courageous decision to withdraw SSA General Counsel Fried’s Ford appeal

On September 11, 2000, Solicitor General Waxman courageously withdrew SSA General Counsel Fried’s Second Circuit appeal of Judge Sifton’s *Ford v. Apfel*, 87 F. Supp. 2d 163, decision which certified a nationwide class of SSI recipients whose due process rights were violated because the SSI Notices did not explain the standards applied or cite to the applicable law. Upon information and belief, the key reason why Solicitor General Waxman withdrew the appeal was because Solicitor General Waxman, the “people’s lawyer”, apprehended the impossibility of defending SSA General Counsel Fried’s clandestine nonacquiescence policy when “Ford” Notices would have to explain the *same* standards to be applied in all 50 States and cite to the *same* Federal regulations duly promulgated pursuant to the SSA Commissioner’s compliance with the Administrative Procedure Act (APA).

In *Ford*, Judge Sifton discussed the plight of SSI recipients who did not the reasons why the benefits were denied by citing to *Gray Panthers v. Schweiker*, 652 F. 2d 146, 168–169 (D.C. Cir. 1980):

Unless a persons is adequately informed of the reasons for the denial of a legal interest, a hearing serves no purpose—and resembles more a scene from Kafka than a constitutional process. Without notice of the specific reasons. . . a claimant is reduced to guessing what evidence can or should be submitted in response and driven to responding to every possible argument. . . at the risk of missing the critical one altogether. . . *Id.* at 181.

Judge Sifton’s harsh conclusion was based in part on SSA Commissioner Apfel’s own SSA computer experts trial testimony which revealed the problems with the SSA computer and the limitations in the SSI Notices that were sent to six million legally *defenseless* aged, blind, and disabled citizens. That trial testimony revealed that when an “acquiescence” decision was made by Executive Branch counsel, the SSA computer was not reprogrammed with the new “acquiescence” standard. As a result, the old “nonacquiescence” standard continued to be applied in all cases except for the litigants in the “acquiescence” case. This was not an innocent mistake of an overburdened Federal agency with an outdated computer, but the cold calculating intentional decision of Executive Branch counsel to clandestinely implement a nonacquiescence policy. See *City of New York v. Bowen*, 106 S. Ct. 2023 (1986).

As discussed in more detail regarding the *Jackson* nonacquiescence policy, upon information and belief, Solicitor General Waxman apprehended that the “Ford” Notices will have to be constructed with explanations of the *same* legal standards applied and cite to the *same regulation* to be equally applied in all 50 States. If SSA General Counsel Fried’s clandestine nonacquiescence policy continues unabated, then the “Ford” explanation of the SSA standard and the citation to the applicable law will result in evenmore incomprehensible Notices as the new SSA Commissioner will have to explain General Counsel Fried’s reasons why the same standards are *not* to be applied in each Circuit.

Given that the Solicitor General represents the citizens of the United States and not the client agency, the courageous Solicitor General Waxman has had to confront the toxic legacy of the continuation of the pre-June 3, 1985 nonacquiescence policy of HHS General Counsel del Real that on July 25, 1985 Members of Congress had been advised had ended on June 3, 1985. Since that July 25, 1985 sworn Congressional testimony had not been accurate, Solicitor General Waxman knew that he could no longer ratify the clandestine implementation of the nonacquiescence policy of HHS General Counsel del Real, SSA Chief Counsel Gonya, and SSA General Counsel Fried when the “Ford” Notices were constructed and sent to six million SSI recipients in all 50 States.

Upon information and belief, Solicitor General Waxman apprehended that contrary to the sworn July 25, 1985 Congressional testimony, the nonacquiescence policy did *not* end on June 3, 1985 because the HHS-SSA computer had *not* been reprogrammed when HHS General Counsel del Real, SSA Chief Counsel Gonya, and SSA General Counsel Fried made their subsequent “acquiescence” decisions. Upon information and belief, Solicitor General Waxman apprehended that SSA General Counsel Fried’s May 22, 1997 sworn Congressional testimony was not accurate because the *same* legal standards have *not* been applied at all levels of SSA adjudication. Upon information and belief, Solicitor General Waxman has determined that AG Reno’s DOJ should end its implementation of SSA General Counsel Fried’s Constitutionally suspect “co-ordinate Branches of Government” theory that Executive Branch counsel has equal authority to the Judiciary to interpret the intent of Congress.

Thus, Solicitor General Waxman’s courageous litigation decision to withdraw SSA General Counsel Fried’s *Ford* appeal was based on his realization that the new “Ford” Notices will have to explain the *same* standard in all 50 States and cite to the *same* regulatory standards that the Congress intended were to be *equally* applied by the SSA Commissioner in all 50 States. Therefore, because the *Ford* appeal has been withdrawn, whomever the new President appoints as the new Attorney General, the new AG will have to instruct the client agency to cure the due process violations as determined by Judge Sifton in his now unappealed *Ford* decision.

C. SSA General Counsel Fried’s sworn May 22, 1997 Congressional testimony that the nonacquiescence policy had ended in the June, 1985 and that the same legal standards were applied at all levels of SSA adjudication

On May 22, 1997, Social Security Administration General Counsel Arthur Fried testified before the Committee on Judiciary Subcommittee on Commercial and Administrative Law and advised Members of Congress under oath that the Social Security Administration does acquiesce to Circuit Court decisions and that the nonacquiescence policy had ended in June, 1985. SSA General Counsel Fried also testified that the same legal standards were applied at all levels of SSA adjudication. Copy of the May 22, 1997 sworn Congressional testimony is attached as Exhibit A.

SSA General Counsel Fried explained the SSA “acquiescence” policy:

When a U.S. Circuit Court of Appeals publishes a decision on a claim for Social Security Benefits, or Supplemental Security Income (SSI) payments, and that decision conflicts with our national policy, we either issue an Acquiescence Ruling, change our national policy, or, in rare cases, seek review by the Supreme Court. *We never ignore these decisions. This has been our policy since 1985, and the publication of our current policies in regulations in 1990 essentially ended criticism by the courts in this area.* Emphasis Added.

General Counsel Arthur Fried testified that the nonacquiescence policy had ended in June, 1985. This was prior to the July 25, 1985 sworn House Subcommittee testimony of Acting SSA Commissioner Martha Mc Steen, Deputy Attorney General Carolyn Kuhl, and SSA General Counsel Donald Gonya testified that the pre-June 3, 1985 nonacquiescence policy of HHS General Counsel del Real had ceased:

This is not the first hearing before the subcommittee on administrative law concerning this issue. Back in 1985, SSA testified about the change in our policy from nonacquiescence to acquiescence. *Prior to that point, when a circuit court decision was inconsistent with our interpretation of the law and regulations, SSA’s practice had been to apply the decision only to named litigants in that particular case.* In June of 1985, however, reacting to criticism in both Congress and the courts, we announced a new policy wherein we would apply circuit court decisions at the hearings level, following an Acquiescence Ruling, in adjudicating claims in the circuit. No legislation was enacted at that time. Since then, *we have gone even farther—we acquiesce to circuit court decisions at all levels of administrative adjudication.*

SSA General Counsel Arthur Fried advised how national policy is made in collaboration with the Department of Justice when there are no regulations promulgated pursuant to the Administrative Procedure Act by the application of a “careful scrutiny” test by “SSA officials” and the Office of General Counsel:

Instead, the interpretation of a circuit court’s decision and its consistency with SSA policy is appropriately made with careful scrutiny by SSA officials who have a broad understanding of national policy and who work closely with Department of Justice attorneys in this effort. If an ALJ or other decisionmaker believes that a particular circuit court decision conflicts with

SSA policy, *the decisionmakers can provide input to the Office of the General Counsel through the appropriate channels about either appealing the case or issuing an Acquiescence Ruling.*

SSA General Counsel Arthur Fried, apparently sincerely, emphasized that it is the Social Security Commissioner who makes all the rules in order to have uniformity throughout the Social Security Administration:

Nonetheless, *it remains the Commissioner's responsibility to decide what Agency rules are.* This is vital in order to maintain decisional consistency not only within a particular adjudicatory level, but cross levels as well—a key goal in our process unification efforts to obtain similar results in similar cases at all levels of SSA adjudication. *There is no other way to ensure that constitutional and statutory requirements are properly and consistently applied and that the Agency can be held accountable for any failure to do so. Emphasis Added.*

However, then SSA General Counsel Arthur Fried admits to the implementation of the nonacquiescence policy that occurs when a circuit court renders its decision that conflicts with the national policy. He advises that the Social Security Administration does not comply with the APA and amend the policy by rulemaking, but rather, issues an Acquiescence Ruling regarding that particular circuit:

As I stated before, whenever any circuit court decision conflicts with our national policy, SSA's published regulations require us to issue an Acquiescence Ruling if we are not changing national policy unless it is one of the rare occasion that we appeal. It is the Agency's responsibility to tell our decisionmakers how to implement a conflicting holding when we do not appeal, but we do not arbitrarily reject circuit court decisions.

Needless to say, SSA General Counsel Fried did not inform the Members of the House Subcommittee that he knew that the SSA computer was *not* reprogrammed when an "acquiescence" decision was made. SSA General Counsel Fried also did *not* inform the Members of the House Subcommittee that regulations were *not* applied equally in all 50 States notwithstanding his representation that the *same* legal standards were applied at all levels of SSA adjudication.

The "smoking gun" evidence of that fact SSA General Counsel Fried's May 22, 1997 Congressional testimony was not accurate is found in the sworn *Ford* trial testimony of SSA Commissioner Apfel's SSA computer experts and in SSA General Counsel Fried's implementation of the April 21, 1986 "Jackson" regulation, 20 C.F.R. § 416.1130 (b), that is only applied in the Seventh Circuit States of Indiana, Illinois, and Wisconsin. The Chairman should consider reading that *Ford* trial testimony and the *Jackson* regulation to determine for himself whether the May 22, 1997 sworn Congressional testimony of SSA General Counsel Fried was accurate.

D. The Jackson intra-circuit and inter-circuit nonacquiescence policy

Perhaps, the best evidence of how the SSA Notices have been intentionally deceptive, is SSA General Counsel Fried's implementation of the *Jackson* nonacquiescence policy. Given the *Ford* nationwide class, SSA Commissioner Apfel will now have to decide whether the "Ford" Notices will explain the SSI income standard that is to be applied when an SSI recipient, who cannot afford to pay the rent with the SSI monthly payment that is set below the poverty level, receives a *private* rent subsidy to avoid eviction. The history of the *Jackson* regulation reveals the importance of compliance with the APA in order for SSI recipients and the public be advised of the standards applied in a national program which Congress intended to have the uniform standards applied by SSA in all 50 States.

On January 6, 1984, fourteen years prior to the *Christensen* decision, Chief Judge Sharpe in *Jackson v. Heckler*, 581 F. Supp. 871 (N.D. Ind. 1984), ordered Secretary Heckler to promulgate an SSI in-kind income regulation in order to comply with the Seventh Circuit's unappealed 1982 *Jackson* remand order:

As an initial matter, the court will consider the parties' dispute over *whether the Secretary must amend the relevant regulation or simply modify internal operation procedures and manuals.* The plaintiff argues that the relief mandated by the court of appeals will be effectively implemented only if SSI claimants and *their representatives or advocates have access to the modifications throughout the regulations found in the Federal Register and the Code of Federal Regulations.* Otherwise, persons using the normal research tools will find nothing but the regulation which found inadequate by the court of appeals and will have no indication that it has been modified. While instructions and guidelines in internal operating manual and policy statements may be effective means of informing social security administration personnel it is not an effective means of informing claimants and their representatives. *There is simply no basis for assuming internal operational*

manual are generally available. Furthermore, the Secretary has not advanced any compelling reason why the regulation should not be amended. Therefore, this court will require an amendment to the challenged regulation. Emphasis Added.

On July 25, 1985, Acting Commission Martha Mc Steen, DOJ Deputy Assistant Attorney General (DAAG) Carolyn Kuhl, and SSA Chief Counsel Donald Gonya advised a House Subcommittee considering legislation to end the HHS nonacquiescence policy that the nonacquiescence policy of HHS General Counsel del Real had ended on June 3, 1985 and that Jackson was not a "nonacquiescence case." They announced the establishment of a Policy and Review Committee (PRC), that would be reviewing all court decisions:

. . . recommend to the Commissioner which issues and cases should be re-litigated in order to obtain a definitive ruling from the appropriate Court of Appeals of the Supreme Court. For those cases in which relitigation is not recommended, the Committee will address what changes, if any, in SSA policies and procedures need to be made. Acting Commissioner Mc Steen's June 24, 1985 *Implementation of Acquiescence Policy* attached as Exhibit B.

On October 10, 1985, Judge Sharpe issued a Jackson order requiring publication of the amendment to the SSI in-kind income regulation to comply with the Seventh Circuit's order in *Jackson v. Schweiker*, 683F. 2d 1076 (7th Cir. 1982). However, contrary to the July 25, 1985 Congressional testimony, Secretary Heckler limited the proposed regulation to only the State of Indiana.

On December 3, 1985, Judge Bua in the unappealed *Beckless I v. Heckler*, 622 F. Supp. 715 (D.C. Ill. 1985), certified an Illinois class of SSI recipients and applied the *Jackson* to Illinois SSI recipients:

However, it is not clear from the *Jackson* decision whether the Secretary is refusing completely to comply with the Seventh Circuit's decision. The Secretary has not issued a policy of non-acquiescence as was done in *Lopez*, and without further evidence, it is unclear whether the Secretary has failed to perform her duties as a public official. *Id.* at 719. Emphasis Added.

On March 27, 1986, based on the unappealed *Jackson v. Schweiker* Seventh Circuit decision, Secretary Bowen certified a proposed amendment to the SSI regulation, 20 C.F.R. § 416.1130. However, without explanation, Secretary Bowen limited the regulation's application to only SSI recipients who resided in the Seventh Circuit States of Indiana, Illinois, and Wisconsin. *See* 51 FR 13487 (April 21, 1986). This limitation was also contrary to the July 25, 1985 sworn testimony of Acting Commissioner McSteen, DAAG Kuhl, and SSA Chief Counsel Gonya that the pre-June 3, 1985 nonacquiescence policy had ended and that *Jackson* was not a non-acquiescence case.

Because the SSA computer was not reprogrammed within the Seventh Circuit States, a decade later the *Jackson* intra-circuit nonacquiescence policy was explained in the unappealed *Beckless II v. Chater*, 909 F.Supp. 575 (N.D.Ill. 1995). Judge Bucklo noted how SSA Chief Counsel Gonya's interpretation of *Jackson* had eviscerated the Seventh Circuit *Jackson* holding:

The defendant essentially argues that the "Exception" applicable to the Seventh Circuit should be read out of section 416.1130(b). *Opposition def. br. 10. By its words, the exception does not confine a business arrangement to payment of full rent charged by a landlord. Rather, a business arrangement exists "when the amount of monthly rent required to be paid equals or exceeds the presumed maximum value. . . ." Id.* at n. 4, p. 580. Emphasis Added.

Notwithstanding his sworn May 22, 1997 Congressional testimony, SSA General Counsel Fried continued to implement the clandestine *Jackson* nonacquiescence policy. In the unappealed *Ragsdale v. Apfel*, 999 F. Supp. 814 (E. D. Vir. 1998), Judge Payne echoed Judge Bua's 1985 admonishment of Secretary Heckler in *Beckless I* and Judge Bucklo's 1995 admonishment of Secretary Shalala in *Beckless II*, and admonished SSA Commissioner Apfel for not applying the *Jackson* standard to Virginia SSI recipients:

This litigation need never have occurred. And, that it did, reflects poorly on the Agency which elected not to seek review of the decisions issued by the Second or Seventh Circuits and then put the Ragsdales to the needless task of establishing the obvious: that the decisions of the Second and Seventh Circuit were correct. Citizens residing in the Fourth Circuit should not be required needlessly to incur costs and fees in order to achieve the rights already enjoyed by those individuals residing in the Second and Seventh Circuit. It may be that the Agency's conduct is not sanctionable in this case,

but it must be hoped that the Agency will not, in the future, pursue the course which it has followed here. Id. at 824. Emphasis Added.

However, notwithstanding SSA General Counsel Fried's sworn May 22, 1997 Congressional testimony, based on the advice of his counsel, SSA Commissioner Apfel has continued to defy Judge Payne's Ragsdale admonition. Fortunately, Solicitor General Waxman decided not to defy Judge Payne's Ragsdale admonition. Hence, the litigation stage is now set for the new SSA Commissioner to construct "Ford" Notices to be sent to SSI recipients, like the Ragsdales, who reside in all 50 States and will now be provided the basic due process rights of explanations of the standards applied to deny and reduce their benefits with the new SSA Commissioner citing to the applicable law.

E. SSA General Counsel Fried's decision not to acquiesce to the Supreme Court's Christensen decision

On May 1, 2000, the Supreme Court decided *Christensen v. Harris County*, 120 S. Ct. 1655 (2000). Justice Thomas clarified the *Chevron* deference standard:

Here, however, we confront an interpretation contained in an opinion letter, *not one arrived at after, for example, a formal adjudication or notice-and-comment rulemaking*. Interpretations such as those in opinion letters-like interpretations contained in policy statements, agency manuals, and enforcement guidelines, *all of which lack the force of law*—do not warrant *Chevron*-style deference. *Id.* at 1662. Emphasis added.

However, quite incredibly, SSA General Counsel Fried has determined not to acquiesce to Justice Thomas' *Christensen* decision because he does not want to cite to the duly promulgated *regulations* in the "Ford" Notices. Rather, SSA General Counsel intends to continue to use the multi-volumed POMS as the "law" to which the "Ford" Notices will cite. Upon information and belief, SSA General Counsel Fried recommended to SSA Commissioner Apfel that the "Ford" Notices inform the SSI recipients to surf the internet and to "call up" the cited POMS on the work-in-progress SSA home page to learn the reason why their SSI benefits were denied or reduced.

SSA General Counsel Fried knows that if the SSA Commissioner acquiesces to *Christensen*, then this will be the de facto end to his clandestine implementation of the SSA nonacquiescence policy because the "applicable law" will be properly promulgated regulations and not the Executive Branch counsel created POMS. Hence, the importance of the new President's SSA Commissioner acquiescing to *Christensen* when constructing the "Ford" Notices and programming the SSA computer. The Chairman now has an extraordinary October, 2000 opportunity to assist six million legally defenseless SSI recipients by inquiring of SSA General Counsel Fried the basis of his decision not to acquiesce to *Christensen* and not to include in the "Ford" Notices citations to the "law" which is the duly promulgated regulations. It is most respectfully submitted that if the Chairman asks SSA General Counsel Fried whether the proposed "Ford" Notice will be citing to the "Jackson" regulation that will be provided to the millions of SSI recipients in all 50 States who cannot afford to pay their rent without a private rent subsidy, then SSA General Counsel Fried will inform the Chairman that in his legal opinion, as Executive Branch counsel, he has the Constitutional authority not to heed the admonition of Judge Payne in his unappealed Ragsdale decision.

The Chairman and the Committee are now witnesses to SSA General Counsel Fried's extraordinary expansion of HHS General Counsel del Real's and SSA Chief Counsel Gonya's nonacquiescence policy which they applied to District and Circuit Court decisions. That nonacquiescence policy has now become SSA General Counsel Fried's Constitutionally defying policy and practice not to acquiesce to a decision of the United States Supreme Court. Hence, the importance of this Committee warning the new SSA Commissioner of the expectation that the SSA Commissioner will acquiesce to Justice Thomas' *Christensen* holding and in the "Ford" Notices cite to applicable duly promulgated regulations.

Summary

Please excuse the harshness of the comments which have evolved over two decades of tortuous litigation challenging the HHS-SSA nonacquiescence policy notwithstanding the sworn Congressional testimony that the nonacquiescence policy had ended in June, 1985. However, as Judge Sifton has determined, after taking trial testimony from SSA Commissioner Apfel's own expert witnesses, SSA Commissioner Apfel's present administration of the SSI program as to SSI recipients is a Kafkaesque procedure whereby SSA Commissioner Apfel does not explain in simple

English the standards that he has used to deny and reduce benefits to legally defenseless aged, blind, and disable SSI recipients.

The present incomprehensibility of the SSA Notices is not because of the enabling statute or duly promulgated regulations, but rather is a result of an expansion of Executive Branch power based on the nonacquiescence policy and SSA General Counsel Fried's "co-ordinate Branches of the Government" Constitutional theory. Thus, the seemingly simple issue of the production of readable SSI Notices masks a more fundamental issue of the Executive Branch not only providing inaccurate information in sworn Congressional testimony, but now usurping the Constitutional authority of the Supreme Court. Hence, the importance of this Committee's bi-partisan Report regarding Improving Social Security Notices becoming a Constitutional challenge to the new Congress and the new SSA Commissioner.

Thank you for considering these comments and considering the suggestion that the Chairman inquire of SSA General Counsel Fried whether he has recommended to SSA Commissioner Apfel that the SSA Commissioner should acquiesce to Christensen when the "Ford" Notices are constructed by citing to the duly promulgated regulations in order that six million aged, blind, and disabled legally defenseless citizens will understand the Notices that result in the reduction and denial of benefits upon which their very lives depend. SSA General Counsel Fried's answer to the Chairman's Christensen inquiry could be an excellent bright line standard for the new President's new SSA Commissioner to evaluate prior to the SSA Commissioner's confirmation hearing.

[Attachments are being retained in the Committee files.]

SOUTH BROOKLYN LEGAL SERVICES
NEW YORK, NY 11201
October 6, 2000

Congressman E. Clay Shaw, Jr.
Chairman, Subcommittee on Social Security
Committee of Ways and Means
A.L. Singleton, Chief of Staff
Subcommittee on Social Security
Committee of Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
5 Washington, D.C. 20515

Re: Social Security Notices

Dear Congressman E. Clay Shaw, Jr., and Mr. A.L. Singleton,

In response to your September 19, 2000 notice soliciting comments, I write to complain about a notice used by Social Security's administrative appellate board, the Appeals Council. I am a legal services attorney who represents indigent persons seeking Supplemental Security Income ("SSI") and Social Security Disability ("SSD") benefits. These comments are submitted on behalf of these clients. Included as part of these clients are Mitzie Girvan and Rosa Calderon, both of whom could not understand the Appeals Council's notice and therefore missed their statutory deadlines with which to file their appeals in Federal court.

The notice in question is used to deny a request for review of an unfavorable Administrative Law Judge decision, and typically bears the heading "ACTION OF APPEALS COUNCIL ON REQUEST FOR REVIEW." (The text of the notice is typed at pages 7-8 of these comments, while an original copy is attached as exhibit A). The notice is impossible to understand unless you have 15 and a half years of education (the equivalent of three and one half years of college.) In fact, according to a common yardstick used by courts and writers to assess the readability of a document, a typical applicant for Supplemental Security Income ("SSI") or Social Security Disability ("SSD") benefits is better able to understand Lincoln's "Gettysburg Address" or the 1040 EZ tax instruction form than the contents of this notice. The notice is sent annually to about 75,000 persons¹ who have had crucial Social Security and SSI benefits denied, terminated or reduced. Congress requires that Social Security notices be written in "simple and clear language." 42 U.S.C. §§405(s);

¹ SSA Key Workload Indicators, Hearings—Appeals—Civil Actions, Attorney Fees, for fiscal years 1997 and 1998 respectively reveal that 69,369 and 78,991 requests for review to the Appeals Council were denied resulting in the issuance of the appended notice.

1383(o). While Social Security is well aware that the notice is statutorily defective, See e.g. *Mosley v. Apfel*, 98-CV-6652 (E.D.N.Y.),² it has not re-written the notice. Accordingly, I ask that this sub-committee require Social Security to change its Appeals Council notice.

The Appeals Council notice at issue is not written in simple or clear language as statutorily required. Rather it is laced with legalese, long sentences, and difficult words. For example, when describing a persons's right to file an appeal, the notice does not use simple language such as "if you want to file an appeal" or "if you think this decision is wrong". Rather, the notice states:

if you *desire* court review of the Administrative Judge's Decision you *may* commence a civil action by filing a complaint in the United States District Court for the judicial district in which you reside within sixty (60) days from the date of the receipt of this letter. . . .

(Emphasis supplied on difficult or poor word choice.)

Nor does the Appeals Council notice have any useful headings as in the Commissioner's other notices, such as "*Your Right to Appeal*" or "*If You Disagree with the Decision*." Nor does it give the address of the Federal court where the appeal could be filed, or the address of a local Social Security office (as required by 42 U.S.C. §§ 405(s); 1383(o)) where one could obtain instructions regarding how and where to file an appeal in Federal court.

Further, an analysis of the word choice used in the appended Appeals Council notice indicates that one needs 15.41 years of education (the equivalent of three and a half years of college) to understand its meaning.³ This means that the Appeals Council notice is harder to understand than either Lincoln's "Gettysburg Address" or the instructions to a 1040 EZ tax form.⁴

Documents written for a general audience should be written at a six to eighth grade level.⁵ Indeed, a typical SSA notice containing the appeal rights of a person denied SSI at the initial level is written at the nine and one half grade level.⁶ Clearly, Social Security knows how to make a notice readable when it wants to.

The consequences of not using simple language and not providing the address of the court house where the appeal could be filed, or a social security office where additional information could be obtained about how to file a Federal court appeal, are serious. First, if you do not file your appeal, your case is finished and, generally, cannot be reopened. Here, the appended Appeals Council notice does not state the consequences of its decision or of not filing an appeal in Federal court. Rather it vaguely states in rather difficult prose that "your request [for review of the Administrative Law Judge's decision] is denied and the Administrative Law Judge's decision stands as the final decision of the Commissioner of Social Security in your case."

Second, if you do not file your Federal court appeal on time, the Commissioner will move to dismiss it (and generally will win, thereby precluding any further appeal). This is true even if you filed the appeal pro se, have a marginal education, and state you did not understand the notice. Indeed, this happened to two of my clients, Ms. Calderon and Ms. Girvan. Ms. Calderon, a woman with a seventh grade education, missed her deadline to file her Federal court appeal by a few weeks.⁷ The pro se clerk suggested that she explain why she was late. With the aid of her daughter, she wrote that she "was unable to comprehend the notice given to me," and still Social Security sought to dismiss her complaint as untimely. Similarly, Ms. Girvan, who reads and writes only marginally well, filed her appeal 19 days late because the Appeals Council notice "didn't state where to go. I never know [sic] where to

² *Mosley* was a class action challenging the language in the Appeals Council notice in question. It was dismissed as moot after the defendant waived the 60 day time limit for the named plaintiff to seek judicial review.

³ To obtain a measure of the readability of the Appeals Council notice, I typed the text of the notice into my computer and ran the Grammatik program on my WordPerfect 7.0 program. The Grammatik's analysis of the Appeals Council notice placed it at the 15.41 grade level on the Flesch-Kincaid index for readability. Courts have used the Flesch-Kincaid index to assess the readability of notices. *Pereira v. Shalala*, 841 F. Supp. 323 (C.D. Cal. 1993).

⁴ The Grammatik's program on readability places Lincoln's "Gettysburg Address" at the 12.9 grade level and the 1040 EZ instructions at the 10.5 grade level.

⁵ See definition of Flesch-Kincaid Grade Level, in "help" box of Grammatik. Corel (WordPerfect) Corporation 1996. See also *David v. Heckler*, 591 F. Supp. at 1037 (documents at 12-14th grade level "defy understanding by the general populace"); *Pereira v. Shalala*, 841 F. Supp. at 327 (documents at 13-15th grade level "likely to confuse and deceive areasonable claimant").

⁶ See September 12, 1995 notice (form SSA-L444) which scored 9.5 on the Flesch-Kincaid Grade Level. It is appended in full at the end of these comments (pgs 8-9) and attached as exhibit B.

⁷ *Calderon v. Apfel*, Eastern District of New York (CV-99-5157), The Commissioner later waived its jurisdictional defense for reasons other than it's defective notice.

go or who to ask.”⁸ The Federal court judge nevertheless dismissed Ms. Girvan’s complaint.⁹

Finally, the incomprehensibility of the Appeals Council’s notice robs low income persons of crucial benefits that often are obtained by appealing to Federal court.¹⁰ The Federal reporters are filled with cases in which Social Security’s decision denying benefits are overturned. Indeed, a review of this office’s docket for 1999 and 2000 indicates that of the 13 Federal court appeals we obtained from litigants who appeared pro se before administrative law judges, three were reversed for payment of benefits by Federal judges while eight were remanded for de novo hearings.

In conclusion, Social Security must change its Appeals Council notice in order to comply with its statutory obligations that it be written in “simple and clear language.” 42 U.S.C. §§ 405(s); 1383(o). Its failure to do so results in tens of thousands of persons failing to pursue crucial benefits to which they often are entitled. Changing the language would not be hard. As a starter, I would change the fifth paragraph from:

[if you desire a court review of the Administrative Law Judge’s decision, you may commence a civil action by filing a complaint in the United States District Court for the judicial district in which you reside within sixty (60) days from the date of the receipt of this letter. . .

to

If you think this decision is wrong, you may file an appeal at the Federal court house located at [insert address of Federal court house]. You must go there and file the appeal soon. If you do not go in the next 60 days your case will be over and you will not be allowed to appeal any further. If you have questions about this letter, you can ask for help at your local social security office. Your local Social Security office is located at [insert address and phone number].

Thank you for considering these comments. Please feel free to contact me if further information is needed.

Sincerely,

JOHNSON M. TYLER, ESQ.
SSI Unit Director

cc: Kenneth Apfel, Commissioner, Social Security Administration
Arthur Fried, Chief Counsel, Social Security Administration

Social Security Administration

Refer to: TAHB5
SS# ###-##-###

OFFICE OF HEARINGS AND APPEALS
FALLS CHURCH, VA 22041-3255
June 22, 1999

ACTION OF APPEALS COUNCIL ON REQUEST FOR REVIEW

Ms. Mitzi Girvan
416 Rockaway Parkway,
Apt. 17B
Brooklyn, NY 11212

Dear Ms. Girvan,

The Appeals Council has considered the request for review of the Administrative Law Judge’s decision issued on September 22, 1997.

Social Security Administration regulations provide that the Appeals Council will grant a request for review where: (1) there appears to be an abuse of discretion by the Administrative Law Judge; (2) there is an error of law; (3) the Administrative Law Judge’s action, findings, or conclusions are not supported by substantial evidence; or (4) there is a broad policy or procedural issue which may affect the general public interest. The regulations also provide that where new and material evidence is submitted with the request for review, the entire record will be evaluated and

⁸ *Girvan v. Apfel*, Eastern District of New York (CV-99-5649).

⁹ Her case is presently pending at the Court of Appeals, Second Circuit, *Girvan v. Apfel*, 00-6242.

¹⁰ The notice also deprives city and State welfare agencies of “interim assistance” payments that might be obtained if the applicant appealed to Federal court and ultimately prevailed.

review will be granted where the Appeals Council finds that the Administrative Law Judge's actions, findings, or conclusion is contrary to the weight of the evidence currently of record (20 CFR 416.1470).

The Appeals Council has concluded that there is no basis under the above regulations for granting your request for review. Accordingly, your request is denied and the Administrative Law Judge's decision stands as the final decision of the Commissioner of Social Security in your case. In reaching this conclusion, the Appeals Council has considered the applicable statutes, regulations, and rulings in effect as of the date of this action.

If you desire a court review of the Administrative Law Judge's decision, you may commence a civil action by filing a complaint in the United States District Court for the judicial district in which you reside within sixty (60) days from the date of the receipt of this letter. It will be presumed that this letter is received within five (5) days after the date shown above unless a reasonable showing to the contrary is made. The complaint should name the Commissioner of Social Security as the defendant and should include the Social Security number(s) shown at the top of this notice. The right to court review is provided for in section 1631(c)(3) of the Social Security Act (42 U.S.C. 1383(c)(3)).

If you cannot file your complaint within 60 days, you may ask the Appeals Council to extend the time in which you may begin a civil action. However, the Council will only extend the time if you provide a good reason for not meeting the deadline. Your reason(s) must be set forth clearly in your request.

If a civil action is commenced, the Commissioner must be served by sending a copy of the summons and complaint by registered or certified mail to the General Counsel, Social Security Administration, Room 611, Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235. (See rules 4(c) and (i) of the Federal Rules of Civil Procedure). In addition, you must serve the United States Attorney for the district in which you file your complaint and the Attorney General of the United States, as provided in the Federal Rules of Civil Procedure.

Sincerely yours,

SUSAN C. MCNABB
Appeals Officer

Supplemental Security Income Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES, SOCIAL SECURITY ADMINISTRATION.

Social Security Number:
xxx-xx-xxxx

JOHN DOE
BROOKLYN, NY 11231
Sept. 12 1995

We have determined that you cannot get supplemental security income payments based on the claim that you filed. The attached page explains why we decided that you are not disabled or blind. However, you may appeal this determination if you still think you are disabled or blind.

The determination on your claim was made by an agency of the State. It was not made by your own doctor or by other people or agencies writing reports about you. However, any evidence they gave us was used in making this determination. Doctors and other people in this State agency who are trained in disability evaluation reviewed the evidence and made the determination based on Social Security law and regulations. The law is explained on the second page of this letter.

YOUR RIGHT TO APPEAL

If you think we are wrong, you can ask that the determination be looked at by a different person. This is called a reconsideration. **IF YOU WANT A RECONSIDERATION, YOU MUST ASK FOR IT WITHIN 60 DAYS FROM THE DATE YOU RECEIVE THIS NOTICE. IF YOU WAIT MORE THAN 60 DAYS, YOU MUST GIVE US A GOOD REASON FOR THE DELAY.** Your request must be made in writing through any Social Security office. Be sure to tell us your name, Social Security number and why you think we are wrong. If you cannot write to us, call a Social Security office or come in and someone will help you. You can give us more facts to add to your file. However, if you do not have the evidence yet, you should not wait for it before asking for a reconsideration. You may send the evidence in later. We will then decide your case again. You will not meet with the person who will decide your case. Please read the enclosed leaflet for a full explanation of your right to appeal.

There are groups that can help with your appeal. Some of these groups may be able to give you the name of a lawyer who will help you for free. Contact any Social Security office if you want the names of these groups.

New Application

You have the right to file a new application any time, but filing a new application is not the same as appealing this decision. If you disagree with this decision and file a new application instead of appealing you might lose some benefits, or not qualify for any benefits. So, if you disagree with this decision you should file an appeal within 60 days.

This determination refers only to your claim for supplemental security income payments. You will be notified separately if you also filed a claim for Social Security benefits.

If you have any questions, call, write, or visit, any Social Security office. Most questions can be handled by telephone or mail. If you visit a Social Security office, please take this notice with you.

DISABILITY AND BLINDNESS REQUIREMENTS

To get Supplemental Security Income payments:

You must be unable to work due to a medical condition which has lasted or will last for at least 12 months in a row. The condition must be severe enough to keep you from working not only at your usual job, but in any other substantial gainful work. We look at your age, education, training and work experience when we decide whether you can work. Children under age 18 must be found disabled based only on a severe physical or mental condition.

OR

Your eyesight must be no better than 20/200 in the better eye with the use of a correcting lens or your visual fields must be restricted to 20 degrees or less.

OTHER IMPORTANT INFORMATION

Definitions of disability are not the same in all government and private disability programs. Government agencies must follow the laws that apply to their own disability programs. A finding by a private organization or other government agency that a person is disabled does not necessarily mean that the person meets the disability requirements of the Social Security Act.

[Additional attachments are being retained in the Committee files.]

FORM SSA L444

LAW OFFICES OF VOLLMER & TANCK
UNIONDALE, NY 11553
October 9, 2000

The Honorable E. Clay Shaw
Chairman, Subcommittee on Social Security
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
5 Washington, D.C. 20515

Dear Congressman Shaw:

Thank you for the opportunity to submit this written comment for the hearing record on the topic of the quality and effectiveness of Social Security notices. In your opening statement, you noted that Social Security Administration ("SSA") notices "are confusing, illogical [and] contradictory," and referred to "a recent court case [ruling] that certain [Social Security] letters are. . . 'constitutionally defective' because they violate the principles of due process." I am one of the attorneys of record in that court case.

In *Ford v Apfel*, 87 F.Supp.2d 163 (E.D.N.Y. 1999), Robert Ford, a disabled recipient of Supplemental Security Income ("SSI"), challenged the constitutional adequacy of financial eligibility and benefit notices sent by SSA to 6.5 million elderly, blind and/or disabled SSI claimants nationwide. Mr. Ford did not challenge the readability of the SSI notices (that is, the level of comprehension of the language used),

but rather the substantive content and accuracy of those notices (that is, whether the notices and SSI benefit payment amounts were based on complete information and were correctly calculated).

I submit this letter to request that the text of the Ford decision be included in its entirety in the record of this hearing. I also write to provide your Subcommittee with historical information obtained through discovery and at trial about SSA's non-compliance with SSI notice improvement recommendations made in the 1992 and 1994 Reports of the Office of the Inspector General of the United States Department of Health and Human Services ("OIG") and the United States General Accounting Office ("GAO").

During her testimony on September 26, 2000, Barbara D. Bovbjerg, an Associate Director of the GAO, summarized the key findings of a newly released GAO report which updated your Subcommittee on the extent to which SSA adopted and/or implemented the notice improvements that OIG and GAO recommended more than 8 years ago.

Regrettably, Ms. Bovbjerg testified that "SSA has not made comprehensive improvements to [SSI award notices or SSI benefit adjustment notices] and has only recently begun developing action plans for improving them." She reported that SSI award and benefit adjustment notices still do not adequately explain the basis for the decision, the relationship between program rules and benefit amounts, or a decision's effect on the claimant's SSI payment precisely the same deficiencies identified by IOG in 1992 and by GAO in 1994.

When GAO inquired why SSA had not undertaken comprehensive corrective action over the last 8 years, Ms. Bovbjerg, citing *Ford* in a footnote, reported to the Subcommittee that

. . . SSA officials told [GAO] that they postponed plans to improve SSI award and benefit adjustment letters pending the outcome of a recently decided court case [finding] that SSA's letters denied [SSI] recipients due process because the letters did not adequately explain the basis for SSA's decisions.

If this recitation of SSA's position is accurate, then SSA, having failed to revise its SSI notices as pledged, now seeks to revise history instead. Contrary to SSA's portrayal, the pendency of this litigation did not postpone SSA's plans to improve its SSI notices consonant with GAO and OIG recommendations because no such plans existed. Nor did SSA formulate such plans when plaintiffs repeatedly offered to settle the litigation if SSA stipulated to implement those recommendations.

From October, 1995 through December, 1998, United States Magistrate Steven M. Gold presided over multiple settlement conferences in a concerted effort to avoid trial and expedite the notice modifications that were eventually won by plaintiffs after trial. I personally attended every settlement conference on behalf of plaintiffs. Throughout these negotiations, plaintiffs offered to settle the case if SSA agreed to implement the GAO and OIG recommendations.

Specifically, plaintiffs demanded that SSA include a budget worksheet with SSI notices which summarized how the benefit amount was calculated. Plaintiffs also sought limited textual revisions to the SSI notices to enable SSI claimants to ascertain how their benefit amount was determined, why their SSI applications were denied, what legal authority supported the intended action, and how they could access and review their case files for further information.

SSA made only two counterproposals. In March, 1997, SSA offered to include generic notice language inviting SSI claimants to "contact [SSA]. . . if you have any questions about how [SSA] made these decisions [or] to review [SSA] records with you." This fell far short of the GAO and OIG recommendations and was rejected by plaintiffs.

In February, 1997, SSA agreed to include boilerplate notice language which recited that the SSI claimant had the right to review and obtain free copies of his/her SSA records, but rejected every other notice modification because "SSA is virtually unable to produce routine notices with the amount and type of information which plaintiff seeks." Again, this fell far short of GAO and OIG recommendations and was rejected by plaintiffs.

SSA never engaged in serious settlement discussions to implement the GAO and OIG recommendations. Had they done so, the matter could have been resolved at any point in time from the 1994 filing of this litigation through the entry of final judgment after trial in January, 2000.

By Judgment and Order dated January 13, 2000, the Honorable Chief Judge Charles P. Sifton directed SSA to

. . . expeditiously prepare and implement a plan. . . that modifies [SSA's] automated SSI financial eligibility notices so as to provide information re-

quired in order to understand the reasons for the award, modification, termination or denial of SSI benefits in such detail as is necessary to permit a reasonable person to understand the basis for the agency's action. . .

The Court directed SSA to implement an array of notice modifications so SSI claimants could obtain "information and explanation" about their living arrangement category (a key factor in computing the actual monthly SSI benefit payment), permissible resource levels, the right to review case files and the legal authority for the intended action. Reflecting the import of the OIG and GAO reports that were introduced at trial, Chief Judge Sifton also ordered SSA to include "benefit computations in worksheetform."

The Court retained jurisdiction for the purpose of enforcing compliance, and directed SSA to submit an implementation plan with its time line for the completion of the notice modifications within 120 days and to update the Court on progress every successive 120 days until implementation was complete.

In her testimony, Ms. Bovbjerg stated that "SSA plans to add the [budget] worksheet to the SSI [notices] by July 2002," but "SSA officials estimated that it could take 10 years to implement the full range of planned improvements." If SSA is permitted to proceed at its present pace, it will take longer for SSA to implement SSI notice improvements than it took NASA to land men on the moon.

The addition of another decade to SSA's timeline hardly constitutes "expeditious" implementation, and is especially troubling given SSA's historical propensity to pledge one thing and do another.

In September, 1992, OIG recommended that SSA

. . . include a worksheet with all award and postentitlement [SSI] notices. This worksheet should itemize the gross payment, all deductions, the net payment amount, and the payment date.¹

In her written response to OIG's recommendations, Gwendolyn King, then-Commissioner of SSA, assured OIG that SSA would "take the suggestions into consideration. . . when we revise our notices [and] determine whether certain of the suggestions are technically feasible."²

Despite the former Commissioner's pledge to assess "technical feasibility," plaintiffs established at trial that the worksheet recommendation was never brought to the attention of Charles Wood, SSA's Associate Commissioner of the Office of Systems Design and Development, George Schmittle, SSA's computer expert in charge of SSI notices, or Lorna Leigh, defendant's computer specialist in charge of SSI computational software. *Ford*, 87 F.Supp.2d at 171-172.

In 1994, Joseph F. Delfico, then-Director of the GAO, testified before this very Subcommittee that

. . . GAO selected and read over 500 [notices] to get a sense of how easy or difficult they were to understand. GAO staff with an accounting background and years of Social Security program knowledge had difficulty determining or verifying specific points contained in the [notices].³ In its findings, GAO reported that

. . . the purpose of [the notices is] not being clearly stated, no information [is provided] on dollar amounts used by SSA to adjust payments, . . . and the reader must] perform complex analyses to reconstruct adjustments to benefits.

At trial, Nancy Lloyd, SSA's program analyst in charge of operational aspects of the SSI program, testified that SSA decided to reject GAO's recommended inclusion of a budget worksheet with SSI notices because "it was found to be too costly and too burdensome on [SSA]." Donna Goon, a member of SSA's notice clearance and review staff, testified that SSA considered GAO's conclusions, but took no action to redress the problems identified by GAO. Instead, SSA made a policy decision to suspend improvements to SSI notices while SSA devoted its computer resources to other matters. *Ford*, 87F.Supp.2d at 171-172.

Although SSA now claims that implementation of the requisite notice improvements will require another decade, Charles Wood, SSA's Associate Commissioner of the Office of Systems Design and Development, and Lorna Leigh, defendant's computer specialist in charge of SSI computational software, both testified at trial the

¹See "Office of Inspector General's Clarity of Supplemental Security Income Notices, September 1992," page 11.

²See "Office of the Inspector General's Examples of revised Supplemental Security Income Notices, September, 1992," page A-4.

³*Social Security Administration: Many Letters Difficult to Understand* (GAO/T-HEHS-94-126, March 22, 1994).

GAO's proposed budget worksheet would could be "designed and debugged" within six months. Commissioner Wood also testified that implementation of all forms of plaintiffs' relief (notice textual changes and budget worksheet) would take just two years under current staffing levels that assign just 13 computer programmers to format and produce all SSI notices. *Ford*, 87 F.Supp.2d at 163, 183. With the addition of additional staff, the requisite notice improvements could doubtless be completed in less than 2 years.

Despite the urgings of the OIG, GAO and a Federal court, SSA continues to balk at implementation of the requisite SSI notice improvements. Consider, for example, SSA's response to the inclusion of appropriate legal citation in the text of its SSI notices.

Among his fact findings, Chief Judge Charles P. Sifton noted in *Ford* that SSI notices

. . . fail to identify the provision of Federal law, Federal regulation or [SSA policy material] that has been applied to make determinations to grant or deny, change or terminate benefits. Without reference to such authorities (and most often without other legal assistance), plaintiffs are deprived of any meaningful way of correcting legal error by consulting such legal texts as may be available in public libraries, regional SSA offices or elsewhere. *Ford*, 87 F.Supp.2d at 180-181.

In its current implementation plan, SSA intends to "provide information regarding legal authorities via the Internet" in lieu of inclusion of specific citation within the body of the SSI notices themselves. Instead, SSA intends to develop notice language "referring the SSI individual to the website."

According to the National Telecommunications and Information Administration of the United States Department of Commerce, there is a growing "digital divide" that deprives low income households of internet access.⁴ According to that agency, only 6.1 percent of households with annual income equivalent to SSI income levels had internet access.⁵ Our nation's SSI population surely fall on the wrong end of this digital divide.

In December, 1999, SSA provided SSI benefits to 6.5 million claimants nationwide.⁶ One in three is over age 65, and one in six is over age 75⁷. One in every three suffer suffers from mental retardation or some other mental disorder.⁸ While disability can also be a barrier to understanding written notices, Internet access also requires not only reading and comprehension skills, but a set of "computer literacy" skills. Poverty, marginal education, blindness, mental impairments and advanced age surely impede Internet access for this vulnerable, low-income population. It is difficult to envision a classification of persons less suited to rely on the Internet than SSI claimants.

Although the Court in *Ford* retained jurisdiction to oversee the implementation of SSA's notice improvements, courts are generally reluctant to micromanage the internal operations of a government agency. That supervisory function is reserved to the executive and legislative branches of government.

In your opening statement, you expressed extreme disappointment that SSA had made little or no progress in improving its notices despite the agency's repeated pledges to make improvements. You correctly noted that SSA simply must accelerate corrective actions "before millions of baby boomers reach their peak disability years." I urge the Subcommittee to use its influence to encourage SSA to implement GAO's recommendations with all deliberate speed.

In a slightly different context, former President Ronald Reagan once noted that it is important to "trust, but verify." I respectfully submit that it is time for your Subcommittee to schedule annual hearings on this very important issue in order to verify that SSA does its utmost to implement these long-overdue notice improvements on behalf of our nation's most vulnerable constituency.

Respectfully submitted,

PETER VOLLMER, ESQ.



⁴ See *Falling Through the Net*, a Report of the National Telecommunications and Information Administration of the United States Department of Commerce dated July 8, 1999, which is available via the internet at <http://ntia.doc.gov/ntiahome/fttn99/contents.html>.

⁵ *Id.* at page 15, Chart I-21.

⁶ See 1999 SSI Annual Statistical Report of the Social Security Administration, page 11.

⁷ *Id.* at page 11, 32.

⁸ *Id.* at page 36.