

**FIRST IN SERIES ON SOCIAL SECURITY DISABILITY  
PROGRAMS' CHALLENGES AND OPPORTUNITIES**

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**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON SOCIAL SECURITY  
OF THE  
COMMITTEE ON WAYS AND MEANS  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

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JUNE 28, 2001  
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**Serial No. 107-35**

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PORTUNITIES**

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**THURSDAY, JUNE 28, 2001**

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

The Subcommittee met, pursuant to notice, at 2:16 p.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  
June 21, 2001  
No. SS-6

CONTACT: (202) 225-9263

### **Shaw Announces First in a Series of Hearings on Social Security Disability Programs' Challenges and Opportunities**

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 the first in a series of hearings on Social Security disability programs' challenges and opportunities. This hearing will provide an overview of the challenges and opportunities facing Social Security disability programs provided by the Acting Commissioner of Social Security, the bipartisan Social Security Advisory Board, and representatives from the Social Security Administration (SSA) and State agency employee groups. **The hearing will take place on Thursday, June 28, 2001, in room B-318 Rayburn House Office Building, beginning at 2:00 p.m.**

In view of the limited time available to hear witnesses, oral testimony at this hearing will be from invited witnesses only. However, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Subcommittee and for inclusion in the printed record of the hearing.

#### **BACKGROUND:**

The SSA administers two disability programs, Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI). Created in 1956 and financed out of payroll taxes, the SSDI program is an insurance program that provides disability benefits based on previous employment covered by Social Security. Today, almost 140 million Americans are insured for Social Security Disability Insurance and about 6.7 million workers and their families are receiving benefits from the SSDI program. The SSI program is a need-based program enacted in 1972, funded from general revenues of the U.S. Department of the Treasury. Today there are nearly 5.3 million disabled and needy adults and children receiving SSI disability benefits.

Both of these programs have grown steadily. For fiscal year 2001, both the SSDI and SSI programs are expected to account for approximately \$90 billion in Federal spending, or nearly 5 percent of the Federal budget. Also, nearly two-thirds of the agency's fiscal year 2001 \$7.1 billion administrative budget will be devoted to disability programs. Moreover, due to the aging of the baby boomers, Social Security's actuaries project that between now and 2010, the number of SSDI beneficiaries will increase by nearly 50 percent and the number of SSI recipients will increase by 15 percent.

Like Old-Age and Survivors Insurance, Disability Insurance will face financial challenges in coming decades. According to the 2001 Annual Report of the Board of Trustees, beginning in 2008, the Disability Insurance Trust Fund is projected to run cash deficits and by 2026, the trust fund assets will be exhausted. Administering the safety net will also become more difficult due to the aging of SSA's own workforce. By the end of this decade, nearly half of all SSA employees are expected to leave the agency, largely due to retirements.

Previous hearings by this Subcommittee have highlighted the changing nature of disability (based on medical advances, new technologies, and improvement of support services), the changing demographics of individuals with disabilities (who are younger and increasingly diagnosed with mental impairments), and SSA's fragmented and complex disability determination process, that results in claimants' often waiting more than one year for final disability decisions. The U.S. General Accounting Office continues to identify making timely and accurate disability deter-

minations along with developing comprehensive return-to-work strategies as major management challenges facing SSA.

Most recently, the bipartisan Social Security Advisory Board released reports to provide the new Administration and the Congress with a framework for considering the fundamental changes they believe need to be made to ensure disability programs are able to meet the challenges they are facing, including: unexplained inconsistencies in disability determination outcomes, changes in the disability determination process resulting from court decisions—not the Congress, the inability of SSA's administrative structure to handle today's increasingly complex and growing workloads, and the differences between Social Security's criteria for receiving disability benefits and the Americans with Disabilities Act.

In announcing the hearing, Chairman Shaw stated: "Given our nation's growing prosperity and remarkable advancements in technology and medicine, it's not surprising that Social Security's disability programs, created in the '50s and the '70s, should experience strains. Our challenge is to thoughtfully and carefully examine the challenges and opportunities faced by these essential safety net programs today to ensure they will meet the changing needs of individuals with disabilities and their families tomorrow."

#### **FOCUS OF THE HEARING:**

During the hearing, witnesses will provide their perspectives on the challenges and opportunities facing Social Security disability programs today.

#### **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 a label*, by the close of business, Thursday, July 12, 2001, to Allison Giles, 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.

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Mr. JOHNSON. [Presiding.] The Subcommittee will come to order. Thank you. Mr. Shaw is detained, so we will start the hearing without him, and I will yield to Mr. Pomeroy for an opening statement.

Mr. POMEROY. I thank the Chairman for yielding, and I am very pleased that we will spend today's hearing inquiring into the operation of the disability insurance component of the Social Security System.

At the time that Social Security was created, it was really a masterful effort to have the people of this country united in a program where all of us insured each of us against some of the otherwise unavoidable perils that we have. Obviously, the best-known feature is the peril against outliving your assets, the defined benefit retirement income.

But of course, the survivors benefit covering widows and dependent children of decedents is a program that has been extraordinarily successful. It is estimated that 98 percent of the children of this country are covered under the survivors benefits. It is about as universal a coverage as we could possibly design today.

The other is the disability feature, the one that we are talking about today, which is the feature providing disability income for those who become injured and are unable to work. It is estimated that three-quarters of all the people in the workforce today only have the Social Security coverage insuring them against income loss during a period of prolonged or chronic disability.

As of January of this year, that means that some 6.7 million people, or about 15 percent of all beneficiaries, were receiving their benefits under the disability program. It is estimated that 36 percent of these families would be living in poverty but for getting the disability income check through the Social Security program.

This is a very significant feature and obviously is one that 6.7 million people know very, very well, but I think some of the discussion, frankly, on rates of return, that tries to make Social Security look like it is just another retirement plan and how much are you making on that asset accumulation in there really misses the point and does not often count the value of having this disability insurance.

I have people say to me that "Social Security will never give me anything," and I tell them it already is; assuming they are over 18 and working, they have the disability coverage. If I am visiting a junior high or a high school and hear that, I tell them they have the survivors benefit.

The disability benefit has the value of a \$200,000 disability insurance policy and translates to an average monthly benefit of

\$755. This is the amount that people are receiving to hold them out of poverty.

I must tell you that I am a little concerned about some of the language commissioning the ongoing President's Commission on Social Security. It gave them five principles for reform, one of them, creating individual accounts, another preserving Social Security's disability and survivors components. Well, preserving the component does not necessarily mean holding harmless the benefit levels, and at \$755 a month average benefit check, you cannot have any erosion of that benefit level and meet the needs of long-term disabled individuals who are depending on this check.

In addition to concerns about where we are going relatively to privatization schemes as they relate to disability, we certainly want to make sure that the system has, now and going forward, the resources to competently discharge its function in terms of getting the coverage out there to those who need it. This is especially true looking forward, because the estimates are that disability insurance beneficiaries are going to rise by nearly 50 percent by the year 2010 and that the Supplemental Security Income (SSI) disability beneficiaries will rise by 15 percent.

What is troubling is that from some of the complaints we get in our congressional office, you get a notion that this is not always working just as well as it might. But those notions are borne out by surveys of the Social Security managers themselves. In fact, responding to a recent survey conducted by the National Council of Social Security Management Associations, managers in the field offices said to the extent of 77 percent that the quality of work produced by their offices has actually declined over the last 5 years. Of the 77 percent that noted a decline in service proficiency, 71 percent suggested the decline was directly attributable to the reduction in supervisory staff and other employees with over 15 years' hands-on experience. One manager noted that, quote: "Quality definitely takes a back seat to quantity. We simply cannot give the attention to all the work load that is needed."

Unfortunately, as you look at these staffing needs, you begin to worry about whether there is a mismatch between the needs and the actual budget request by the Social Security Administration (SSA), or at least the funding levels committed by Congress.

There is a proposal that the former Commission and I spoke about which would once again restore funding for Social Security coming from the Social Security trust fund itself. I think that that self-funding concept would greatly stabilize the long-term management of Social Security against the extraordinary budget pressures that we are going to face relative to funding the management of this program out of the general revenues of this program. I think that that is something we should think about.

I again want to commend Chairman Shaw for convening this hearing, and I certainly look forward to hearing from the Acting Commissioner as we explore these issues.

Thank you.

Mr. JOHNSON. Thank you.

I am going to read a little bit of Chairman Shaw's remarks before we get started, if you do not mind, because he has some good points.

"I would just like to say that today begins the first of several hearings which this Subcommittee will conduct, examining the challenges and opportunities faced by Social Security's two disability programs, the Disability Insurance and Supplemental Security Income. Today, we are happy to have you with us, the Acting Commissioner of Social Security; the chairman of the Social Security Advisory Board, which has completed considerable research on this topic; and several employee groups who are on the frontlines every day, serving disability claimants."

"The Disability Insurance program is under significant financial strain. The actuaries project the program to run cash deficits in just 7 years, just as the baby boom retirees reach their peak years for disability claims."

Welcome, Mr. Chairman. I am usurping your statement. Mr. Shaw has arrived.

Chairman SHAW. I would be interested to know what I had to say.

[Laughter.]

Mr. JOHNSON. And, as Mr. Shaw was saying, "Over the next decade, the number of individuals receiving disability benefits will jump by about 50 percent, and SSI recipients will increase by about 15 percent. At the same time, disability workloads are expected to increase as well. More and more seasoned employees who service disability clients are going to begin to retire. Social Security expects to lose about 50 percent of its employees in the next 10 years."

"How the system will be able to provide efficient, comprehensive, and fair service to its customers with disabilities under these conditions is of great concern."

"Given the monumental social, legal, medical, and demographic changes that have altered the disability environment over the last 40 years, it is no wonder navigating the disability claims process takes too long, and it is too complex, and it is stressful on the individuals whom we are trying to serve. The current process, already inadequate in the past decade, will never withstand the mounting needs of the next."

"The law regarding disability has not changed substantially in 30 years, but the world in which we live and the individuals with disabilities live has changed, and I think it is time for policymakers and Social Security management and employees to craft a realistic plan of action for making the disability program a functioning, viable system for the future."

[The opening statement of Chairman Shaw follows:]

**Opening Statement of the Hon. E. Clay Shaw, Jr., a Representative in Congress From the State of Florida, and Chairman, Subcommittee on Social Security**

Today begins the first of several hearings in which the Subcommittee will examine the challenges and opportunities faced by Social Security's two disability programs—Disability Insurance and Supplemental Security Income. We will begin today by hearing from the Acting Commissioner of Social Security, the Chairman of the Social Security Advisory Board—who has completed considerable research on this topic—and several employee groups who are on the front lines every day serving disability claimants.

Both disability programs are crucial links in our social safety net, but they are beginning to show their age. Disability insurance was created in 1956 and SSI in

1972. Back then, rehabilitation, treatment, and employment for individuals with disabilities were far less sophisticated than they are in today's high-tech world. Fortunately, advances in medical treatments and new technologies have transformed lives of dependency into lives of opportunity. Yet, at the same time, these very advancements have made the determination and review of disability cases more complex than ever.

Worse yet, the disability insurance program is under significant financial strain. SSA's actuaries project the program will run cash deficits in just seven years, right as the baby boom retirees reach their peak years for disability claims. Over the next decade the number of individuals receiving disability benefits will jump by almost 50% and SSI recipients will increase by 15%.

At the same time disability workloads are expected to rapidly increase, more and more seasoned employees who service disability clients will begin retiring. SSA expects to lose about 50 percent of its employees in the next 10 years. How the system will be able to provide efficient, comprehensive and fair service to its customers with disabilities under these conditions is one of my greatest concerns.

Given the monumental social, legal, medical and demographic changes that have altered the disability environment over the last forty years, it's no wonder that navigating the disability claims process takes too long, and is too complex and stressful on the very individuals we are trying to serve. The current process, already inadequate in the past decade, will never withstand the mounting needs of the next.

SSA is expected to efficiently and fairly process more than three million applications for disabled DI and SSI claimants annually. That is not happening now, and it is our job to help strike a better balance between the needs of individuals with disabilities and the time and resources that must be committed to accurately administer this program.

The law regarding disability has not changed substantially in thirty years, but the world in which individuals with disabilities live has changed tremendously. It is time for policymakers and Social Security management and employees to craft a realistic plan of action for making the disability program a functioning, viable system for the future.

Mr. JOHNSON. Now, I recognize Mr. Massanari for your testimony, sir.

**STATEMENT OF LARRY G. MASSANARI, ACTING  
COMMISSIONER, SOCIAL SECURITY ADMINISTRATION**

Mr. MASSANARI. Thank you, sir.

Mr. Chairman, Mr. Pomeroy, members of the Subcommittee, thank you for inviting me here this afternoon to discuss the direction that the Social Security Administration is taking to strengthen our disability program.

I would like to begin by acknowledging the important contributions of the Social Security Advisory Board. Their advice and their support have been extremely helpful to us at SSA.

As the Board notes in its January report, our disability programs have grown rapidly in recent years and will continue to grow in the years ahead. That growth will coincide with the anticipated retirement of many SSA employees, increasing the strain on administering our programs. In addition, new workloads such as those associated with the Ticket to Work will require more SSA resources to assist disabled beneficiaries reenter the work force.

As you know, President Bush has announced his intention to nominate Jo Anne Barnhart as Commissioner of Social Security. She will be a great asset to our agency because of her broad range of experience, including previous service as an SSA executive and as a member of the Social Security Advisory Board.

To help her address the challenges facing the disability program, we are now developing a comprehensive plan that aligns and integrates current process, automation, and operational policy initiatives.

Before discussing improvements, though, I want to note the importance of our disability programs. Social Security disability protection can be invaluable, especially for young families; it can be all that stands between them and poverty. The SSI Program serves the most economically vulnerable population with disabilities.

Almost 7 million disabled persons and their families receive disability insurance benefits, and more than 5 million blind or disabled individuals receive SSI.

Together, these programs will provide more than \$90 billion to beneficiaries and their families this year.

Social Security disability benefits also provide a gateway to Medicare, and SSI provides eligibility for Medicaid.

We know the current process works well for many people, but we also know that we can and must do better. At the heart of all our efforts to improve the disability process is our commitment to ensure that disabled Americans receive fair, accurate, consistent and timely decisions on their claims for benefits.

During my 35 years as a career manager within SSA, I have seen firsthand the hard work and dedication of SSA's employees as well as the employees in our State disability units. They do a remarkably good job of administering this highly complex program.

The solutions to many of the problems the Advisory Board raises in its reports are neither simple nor clear-cut. SSA has addressed many of the problems as part of our ongoing efforts to improve public service.

Perhaps one of the most important successes is reducing the backlog of continuing disability reviews. We became current in the Disability Insurance program last year, and we will be current with the SSI Program next year. I would like to thank this Subcommittee for supporting the Continuing Disability Reviews (CDR) funding that made this achievement possible.

Also, we have reduced the processing time for administrative law judge (ALJ) hearings by almost 100 days from the peak of 397 days in 1997. We have also reduced processing times at the Appeals Council by 140 days during the past 15 months. Processing times, though, are still too long, and we must continue to seek solutions.

After evaluating a series of options, we settled on a new initial claims process that we have been rigorously testing in 10 States since October 1999. Our results so far indicate that accuracy has improved and that we are paying people earlier in the adjudicative process.

Other initiatives during the past year include our Hearings and Appeals Council Process Improvement Plans. The Hearings Improvement Plan involves significant changes to the way in which we process our hearings workload. We have never undertaken a process change of this magnitude, and quite frankly, it has been a struggle. In some offices, we have seen progress, but in others, the progress has been much slower. We are undertaking a broad-scale evaluation of this entire initiative.

One concern cited in the Advisory Board's report is the variation in allowance rates among States. Because socioeconomic and demographic factors influence who applies for benefits, it is reasonable to expect some variation in allowance rates. These differences do not necessarily suggest inconsistent or improper application of policy. Nonetheless, substantial differences are cause for attention, and we are addressing that issue now. Refinements in our quality review process will help achieve greater consistency.

Finally, the Advisory Board recommended that we revise our quality assurance system. We shared the Board's concerns and brought in a consultant to study the current progress and make recommendations for improvement. We are carefully reviewing these recommendations now to assess their merits and to determine which ones we should adopt.

In conclusion, let me emphasize that we are strongly committed to making our disability program more responsive to claimants and more accountable to the nation's taxpayers. As we have done in the past, SSA will rise to the occasion, and we will address the challenges facing us in administering this large and complex program.

But we must have the support of the Congress in doing so. Mr. Chairman, I want to thank you and the members of the Subcommittee who have worked so hard to assure adequate funding for Social Security. We will again be relying upon your support to receive the funding that we have requested in the President's budget. Our written testimony discusses these issues in greater detail, and I would be very pleased to answer any questions that you might have.

Thank you.

[The prepared statement of Mr. Massanari follows:]

**Statement of Larry G. Massanari, Acting Commissioner, Social Security Administration**

Mr. Chairman, Mr. Matsui, members of the Subcommittee:

Thank you for inviting me here to discuss the direction that the Social Security Administration (SSA) is taking to strengthen the Social Security Disability Insurance (SSDI) and the Supplemental Security Income (SSI) disability programs. I am pleased to be testifying here in my first visit before you as Acting Commissioner, especially since SSA's stewardship of these programs touches the lives of so many people.

The monthly disability benefits provided through these programs form an economic safety net for circumstances that any of us could face in life. Few individuals have private or employer-provided long-term disability insurance.

But nearly all American workers have Social Security. And the importance of this program in the lives of American families today will only increase in the years to come as America's baby boomers age and enter their most disability prone years. We expect receipts of initial disability applications will potentially increase about by three percent per year over the next decade as projected by SSA's Office of the Actuary.

It is an enormous challenge to administer these large and complex programs efficiently, effectively and compassionately. Today I will discuss the importance of the disability programs, the challenges facing us, and what we are doing to improve our administration of these programs.

*Introduction*

Before I begin, however, I would like to acknowledge the important contributions of the Social Security Advisory Board. We greatly appreciate the Board's advice and support. The Advisory Board's reports and findings are invaluable, both now and for the future, as we work to ensure that our programs treat our citizens compassionately and meet the demands of the baby boom population as it ages. As the Advisory Board notes in its January 2001 report on Social Security's disability pro-

grams, these programs have grown rapidly in recent years and will continue to grow as the baby boom generation ages. That growth will coincide with the anticipated retirement of many of our experienced employees, increasing the strain on the administration of the program. In addition, new activities such as those associated with the *Ticket to Work and Work Incentives Improvement Act of 1999* will require a greater portion of SSA resources to assist beneficiaries with disabilities to enter or reenter the workforce.

As you know, Mr. Chairman, the President has announced his intention to nominate Jo Anne Barnhart to be Commissioner of Social Security. She will be an outstanding Commissioner and a great asset to the Social Security Administration. She comes to the position with a broad range of experience with the Congress and with the Executive Branch, including having served previously as an executive in SSA. Currently, she is a member of the Social Security Advisory Board.

We are not, however, simply waiting for a new Commissioner to arrive. In order to be in the best possible position to address the challenges facing the disability program, we are developing a comprehensive and integrated management plan that aligns and integrates current process, automation, and operational policy activities. Our goal is to have a plan ready for the next Commissioner that integrates all disability related activities across all levels of the process to achieve our goals of improved efficiency, customer service and program integrity. These activities need to be aligned to ensure balanced attention to all of the elements of the plan.

This plan will identify near-term and longer-term operational policy changes and it will continue process improvements, such as further refinements to our hearing process. It will support the Ticket to Work legislation and other return to work initiatives and strengthen our information technology capabilities. The plan will allow us to give the new Commissioner a framework and meaningful context to consider for future action.

The Advisory Board shares many of our concerns about disability program administration. The January 2001 report recommended that SSA study ways to improve the structure of its disability adjudication processes so that it can meet the demands of these increasing workloads while ensuring that claimants are treated consistently and fairly. We believe that our planning will help accomplish this.

However, the solutions to the issues the Advisory Board raises are not simple or clear-cut. SSA has taken steps to address many of them as part of its ongoing effort to improve service to the American public. For instance, while there have been complaints about our hearing process, we have reduced processing times by about 100 days, from their peak of 397 days in Fiscal Year (FY) 1997 to the current processing time of about 300 days. We have also seen real progress at the Appeals Council level. Over the past 15 months, processing times for cases at the Appeals Council level have been reduced by 140 days, and pending cases have been reduced by 45,000 cases.

These improvements have come about in part because we have modified our procedures to increase productivity. However, they also have come about because we have shifted resources to the areas of greatest need. Nevertheless, it is undeniable that these processing times, although improved, are still too long and we must continue to seek solutions.

For initial decisions, we have also seen some significant improvements as a result of our efforts. A major focus has been on improving the development and analysis of claims at the initial level so that we can pay people who should be paid as early in the process as possible. Not only is this a great benefit to the people who are allowed much earlier in the process, but it enables our Office of Hearings and Appeals to provide better service to those individuals who do move through the appeals process.

Perhaps one of our most important successes in the disability area is the progress we have made in reducing the backlog that had developed in continuing disability reviews (CDRs). SSA ensures the integrity of the DI and SSI programs by periodically reviewing the continuing eligibility of individuals receiving disability benefits to make sure that only those who continue to be disabled receive benefits. As you know, we have been working under a 7-year plan which we first developed in 1996 to process the backlog of CDRs that had grown throughout the early 1990s and to address a new workload of SSI CDRs that the Agency undertook in 1996. We became current in the SSDI program in 2000, and we expect to be current in the SSI program by the end of FY 2002.

Over the course of the entire 7-year plan, we estimate an average savings of \$10 in benefits for every administrative dollar spent. We would not have been able to accomplish this without the help of the Congress, particularly this subcommittee, in providing us with the resources we needed. For future years, FYs 2003–2011, we expect the return on investment in CDRs to be \$7 to \$1.

### *Importance of Social Security's Disability Programs*

Generally, when people think about Social Security, they think about retirement benefits. However, the disability program is an essential part of Social Security's protections. Almost 140 million people are insured for SSDI benefits and about 6.7 million workers and their families are receiving benefits. About 5.3 million blind or disabled individuals receive SSI benefits, about 30 percent of who also receive SSDI benefits.

Approval for SSDI benefits also provides Medicare coverage after 2 years of receiving benefits. These benefits provide health care coverage that to many SSDI beneficiaries is simply irreplaceable, since many would not be able to obtain insurance in private markets because they are already disabled.

The protection provided by the SSDI program is extremely important, especially for young families. For a young worker, married with two children and earning an average income, Social Security has a value equivalent to a \$208,000 disability income insurance policy, which is paid through payroll taxes.

While about one in six disabled workers is under age 40, the typical SSDI disabled worker is over age 50 and has fewer than 12 years of education. The average monthly benefit for a disabled worker, and his or her spouse and children is \$1,311. Nearly half of these families rely on Social Security for at least half of their family income. Without Social Security, 55 percent of these families would live in poverty. Additionally, SSI serves the most economically vulnerable population with disabilities, most of whom are living in poverty.

In fiscal 2001, we expect to pay about \$90 billion in benefits to disabled individuals and their families through both the SSDI and SSI programs. In addition, the SSDI program also provides eligibility for Medicare and the SSI program provides eligibility for Medicaid. We expect that this year over 2 million individuals will apply for disability benefits, and that we will perform 1.7 million CDRs to determine whether those already on the rolls remain disabled.

We also have a responsibility to the beneficiaries and to the general public to try to assist beneficiaries to return to work if they can. The programs have for many years contained some provisions designed to encourage people to return to work. With the passage of additional tools in the *Ticket to Work and Work Incentives Improvement Act of 1999*, which we have begun to implement, we are hopeful that more individuals will be able to start working or return to work.

As a matter of record, Mr. Chairman, you already know that President Bush has a strong interest in disability issues. The President has said that he is committed to tearing down the remaining barriers to equality that face Americans with disabilities today. His "New Freedom Initiative" will help Americans with disabilities by increasing access to assistive technologies, expanding educational opportunities, and increasing the ability of Americans with disabilities to integrate into the workforce.

Clearly, SSA has a great responsibility, not only to the beneficiaries of the program to provide the help they need as quickly and compassionately as possible, but also to the American people to see that benefits go only to those who are truly eligible. This is a large and complex program and SSA administers it in cooperation with the States. While recognizing that we can and must do better in some areas, I want to acknowledge the hard work and dedication of Social Security's employees and the employees in our State disability determination units. They do a remarkably good job of handling the enormous responsibilities assigned to them in administering the disability programs.

### *Processing Disability Claims*

After a disability claim is taken in one of Social Security's field offices, it is forwarded to one of the State Disability Determination Services (DDS). These State employees are the ones who actually make the initial disability determination and, if the individual is dissatisfied with the decision, they also provide the first level of review, called a reconsideration. These determinations are individualized and complex and will be made in more than 2 million initial applications, in about 585,000 reconsideration decisions of initial claims denials, and for 1.7 million CDRs this year, as I mentioned earlier. These state employees generally must obtain at least one year of medical evidence in support of the claim, scheduling medical examinations to obtain further evidence if necessary.

If an individual wants to appeal the reconsideration decision, he or she can file a request for a hearing before an administrative law judge (ALJ). If the individual wishes to appeal the decision of the ALJ, the individual may request that the claim be reviewed by the Appeals Council. This is the final administrative level of review. If the claimant is dissatisfied with the Appeals Council decision, he or she may appeal to a Federal court.

We know that the current process works well for many people, but we also know we can do better. I would like to discuss some of the areas we are working on to deal with the issues mentioned in the Board's reports.

#### *New Adjudication Process*

At the heart of our attempts to improve the disability process are our primary goals to make the right decision, make it as early in the process as possible, and ensure that policy is applied consistently at all levels of the process and by all decisionmakers in all parts of the country. This entails a major effort to document decisions in all cases so that the decisions will, right from the beginning, represent a high-quality product at every step of the adjudicatory process.

After carefully evaluating a number of different options for improving the initial claims process, we settled on a new decision process which we are rigorously testing in 10 States in a prototype environment. Testing in those states began on October 1, 1999 and is still continuing.

There are three key elements to the prototype adjudication process. First, we enhanced the role of the disability examiner in the State DDS so that they are authorized to make disability determinations in many cases without further review by a staff physician or psychologist. This allows medical consultants to spend time on more complex medical cases. (Physician or psychologist signoff, however, is still required in all cases involving children and denials involving a mental impairment.) Second, we eliminated the reconsideration step for initial disability claims. Finally, we implemented informal conferences between the decisionmaker and claimant if the evidence does not support a fully favorable determination. This provides an opportunity for the claimant to talk directly to the decisionmaker.

While we do not yet have complete results in our analysis of this process change, our early indicators suggest that accuracy of decisions for cases adjudicated under the new process has improved (as measured by quality assurance analysis as performed by SSA' Office of Quality Analysis. We also have favorable reactions from both customers and employees concerning the new process.

Processing times for awards in the prototype adjudicative process are very similar to the time for the current process. Processing time for denials takes about 20 days longer, primarily due to the addition of the claimant conference. But, importantly, we have found that by improving the accuracy of initial decisions, we can reduce the need for claimants to pursue further levels of appeal and thereby shorten their overall processing times.

Elimination of the reconsideration step would also save about 70 days for the almost 500,000 people who seek a hearing each year. (About 70 percent of claimants are not satisfied with the decision on their reconsideration request and appeal the decision to the hearings level.)

Although the results of the prototype adjudication process appear promising, we have not made decisions on extending it to other states. We do not yet have sufficient data on the decisional outcomes of the test cases through the hearing process, nor do we have all the data needed to gauge fully the impact of the new process on program costs. We expect that when we have complete information we will be able to make decisions on whether to extend the new process to other states.

#### *Hearings before the Administrative Law Judges*

One of the major concerns expressed by the Advisory Board is the amount of time we are taking to process hearings. During the past year, the Office of Hearings and Appeals (OHA) has implemented a new workload process commonly referred to as the Hearings Process Improvement initiative or HPI. Implementation of this initiative involved significant changes to the way we process our hearings workload, and the organizational structure of our hearing offices. We designed the initiative to reduce case processing times, improve productivity, and enhance the quality of our service to claimants.

We expect to accomplish these goals by putting in place several key elements. The new process streamlines the hearing workflow, with emphasis on pre-hearing analysis and development. It creates a group-based approach, which involves structural changes in the hearing office, which is intended to foster a cooperative team environment and enhance the skills of the staff. It incorporates administrative efficiencies to allow cases to be prepared for hearings faster. And it provides higher level analytical support to the ALJ and early analysis of cases.

We have never undertaken a process change with such a broad impact in OHA. More than 2,000 employees assumed different duties as a result of revised position descriptions required by the new process. An extensive effort took place to train these employees on their new duties, as well as all employees on the new process. One of the lessons we have learned is that it takes much longer than we had antici-

pated to introduce both fundamental process and cultural change. Working to change the process and culture at the same time is not easy, but these changes are mutually supportive in the long run. It is disruptive, and has taken a toll on performance. Nonetheless, we are now seeing some positive performance indicators, and we believe that a growing number of offices are benefiting from the new business process.

You should know that OHA management has been engaged in discussions with a broad spectrum of employee representatives to make adjustments in the process and to provide more flexibility to local managers. Most recently, an agreement was reached to provide needed flexibility in the rotation of support staff. Although our efforts thus far have focussed on matters directly related to the support staff, we have also taken steps to begin discussions with the ALJ union.

Over the past few months, we have responded to the challenges that have arisen in the implementation of the new process. We are also taking steps to ensure that best practices are more widely shared among hearing offices. We are confident that processing times will decline as the hearing offices gain experience with the new process and its full benefits are realized. We are continuing to make adjustments and refinements in the process in order to achieve continuous improvements.

This effort is a long-term investment. We are now undertaking a broad scale evaluation of all aspects of the new process. The Steering Committee responsible for leading the evaluation of HPI will include employee representatives. The Advisory Board will also be involved in the evaluation process. The Steering Committee has been asked to develop and execute a plan that will assess the implementation of the process in the hearing offices, solicit and consider feedback about the process from within and outside the agency, and identify ways to continually improve the OHA hearing process. I have asked the Committee to be ready to report early in the tenure of the new Commissioner.

#### *Inability to Hire Additional ALJs*

There are two areas that have the potential to affect the disability hearing process. First, since April 1999, due to litigation pending before the Merit Systems Protection Board, (MSPB) SSA has been unable to hire new ALJs to replace those who have retired. From 1999 to present, we have lost 172 ALJs without the ability to hire. We currently have 973 ALJs on board. While we were ready to hire 120 new ALJs this spring, the order issued by the MSPB has precluded us from completing that action. If we are unable to hire more ALJs, we expect the number of ALJs will decline to about 950 by the end of the year. Obviously, this has the potential to seriously affect our ability to decide cases in the hearing offices.

The order was issued in the case of *Azdell v. OPM*. The case was brought by a class of individuals who have challenged the method that the Office of Personnel Management used to compute the veterans' preference in the ranking of ALJ candidates. The MSPB has ruled in favor of the plaintiffs in the case and against OPM. The MSPB ordered OPM to revise the rankings.

On March 14, OPM issued a new register of candidates, and SSA was ready to extend offers to 120 of these candidates when, on April 12, 2001, the MSPB imposed a stay not to exceed 60 days. The stay, which would have expired on June 12, 2001, effectively precluded SSA from hiring ALJs from the March 14 register. The MSPB issued a second stay on June 11, scheduled to expire August 11.

Even if the order is not extended again and we are able to hire new ALJs beginning in August, they would not be able to begin hearing cases until well into next year, because of the training they must receive. However, we are seriously concerned that the order preventing the hiring of new ALJs may continue to be extended and further delay the hiring of additional ALJs.

#### *New Medicare Workload*

A second area that will seriously affect our hearing offices is the new responsibility we have under the *Medicare, Medicaid and State Child Health Insurance Program Benefits Improvement and Protection Act of 2000*. Under that legislation, SSA's administrative law judges are required to review local coverage determinations by Medicare contractors beginning October 1 of this year. These new hearings will require the ALJs who hear the cases to develop substantial expertise in Medicare coverage matters. Further, the legislation provides that, unlike SSA's current hearing process, these hearings must be adversarial. This will be a fundamental change in our hearing procedures.

In addition, the legislation requires that after October 1, 2002, SSA must render a decision within 90 days of the request in all Medicare cases, including those under Part A and Part B of Medicare, as well as those involving local coverage determinations. The legislation also provides that the dollar threshold for requesting a hearing

will drop from \$500 to \$100, which will result in an increase in the number of hearings.

We expect that this new workload and the stringent time requirements will have a substantial effect of the operations of the Office of Hearings and Appeals and could seriously affect our ability to process disability cases. We are evaluating exactly what the effect will be and how SSA will respond to this new workload and are working with our colleagues at the Centers for Medicare and Medicaid Services (formerly known as the Health Care Financing Administration). However, to give you some idea of the magnitude of the challenge, the Congressional Budget Office has estimated that for the Social Security Administration to fulfill the requirements of the legislation would take 1,100 workyears annually. These workyears would represent about 1 out of every 6 workyears in the hearing offices this year.

This workload and the inability to hire ALJs pose a significant challenge to reducing the workloads and improving the timeliness of decisions at the hearing level.

#### *Appeals Council Improvements*

In October 1999, a workgroup representing SSA components was convened and charged with developing a plan to assist the Appeals Council in reducing the backlog of pending cases in the short term, and to keep pace with receipts in the long term. This workgroup published the Appeals Council Process Improvement Plan in February 2000, with implementation beginning the following month. Since that time, as I mentioned at the beginning of my statement, we have made significant progress in addressing the time it takes for the Appeals Council to review and issue decisions in claims appealed to them. Processing time has fallen by 144 days and pending cases have been reduced by 45,000 cases.

We are encouraged by these positive first steps, and we expect to see continued improvement in the performance of this important component of SSA's appellate process. Currently, the Appeals Council has a task force working the oldest cases, and once these cases are processed, we expect a dramatic improvement in the overall average processing time.

We are committed to continuous process improvement in both the hearing offices and the Appeals Council. We will need to continue to make adjustments and refinements as we move forward.

#### *State Variations and Consistent Application of Policy*

One of the areas highlighted in the Advisory Board's report is the variation in allowance rates among states. I know that this subcommittee has long been interested in these differences in adjudicative outcomes.

Because of the varied socioeconomic and demographic factors that influence the proportion of a State's population that applies for benefits, it is reasonable to expect some difference among state in their allowance rates. However, such differences do not necessarily suggest inconsistent or inaccurate application of law or policy. Consistency among decisionmakers should not be measured solely by allowance rates.

Nonetheless, variations in current allowance rates are cause for attention. We are conducting a detailed regression analysis to determine the extent to which these differences in initial allowance rates can be explained by environmental and demographic factors. However, in an effort to ensure consistent decisions, we have begun to address the concern through what we term "process unification," which is a comprehensive effort to assure that all decisionmakers apply the same standards in making disability decisions. Process unification is designed to help achieve greater decisional consistency, both from state to state and at the different stages in the adjudication process.

We have seen progress with regard to improved consistency between the DDS and hearing levels over the last few years. For example, we have achieved improved compliance with difficult policy areas where nationwide training was provided. This progress is consistent with an important trend toward a higher proportion of all awards being made at the front end of the process.

#### *Quality Assurance*

The Social Security Advisory Board recommended that SSA revise its quality assurance process. The Board suggested that a revised process might shed light on why State variations exist and whether they represent problems that could or should be addressed. The Board also recommended that a revised process should apply to all levels of adjudication and that standard processes apply to all DDSs.

SSA has long shared the Advisory Board's concerns about the need for improvement to our quality assurance system. Because of these concerns, we brought in a contractor, the Lewin Group, to conduct a study of the current process and make recommendations for revisions.

The recommendations made in the report from the Lewin Group are sweeping. They call for the introduction of a whole new quality management system that defines "quality" in much broader terms than we do today. It would take us well beyond "quality assurance" and "quality control." This quality management system would focus on process analysis and process management and would move us away from end-of-line inspection and detection of error.

We believe that the Lewin report, which came to us this March, has much to offer. We are carefully reviewing these recommendations to fully assess the advantages and disadvantages of the proposals to determine which we should adopt. Already underway is a pilot of a new consistency review process for claims processed in the DDS's. The new review is intended to assure that the quality review system sends a single message to all of the States on the accuracy of their decisions.

#### *Disability Research*

The Advisory Board has also recommended that SSA study long-term policy changes to its disability programs. One of the most valuable services SSA can provide the Administration, the Congress, and other policymakers is the information they need for making sound decisions. SSA is placing a high priority on policy analysis and research that will provide the information necessary to evaluate and strengthen the nation's disability programs.

For example, design plans are well underway for the benefit offset demonstration project required by the *Ticket to Work and Work Incentives Improvement Act of 1999*. In this project, SSDI benefits will be reduced gradually by \$1 for every \$2 that a beneficiary earns over a certain level. Currently, SSDI beneficiaries face losing their entire benefit for months that they earn over \$740, the substantial gainful activity level. The fear of losing cash and Medicare benefits is often cited as a reason beneficiaries do not return to work. The benefit offset project will be designed and implemented to measure the importance that these two factors have on the beneficiary's decision to return to work. In addition, the demonstration will identify the costs and benefits of a SSDI offset as well as the determinants of return to work, characteristics of beneficiaries who participate in the project, and information on employment outcomes.

Last year, we awarded a 5-year cooperative agreement for our Disability Research Institute (DRI) to the University of Illinois at Urbana-Champaign. The DRI will conduct research that will help SSA address the needs of people with disabilities and to better understand the factors that contribute to their ability to remain in the workforce. Two DRI projects deserve special mention. The first is a design for an experiment and demonstration in early intervention.

Many experts believe that providing intervention methods to disabled individuals as close to the disability onset as possible significantly improves their chance of returning to work. We plan on testing several models including such interventions as integrated service supports and collaboration with employers. We are in the early design phase of the project, and are currently working with the DRI to develop the details for several models.

The second priority project that the DRI has undertaken is research on validating SSA's medical listings. We are working with the DRI to develop criteria that will help determine the extent to which the listings are predictive of work ability.

These are just a few examples of the research we have underway that will enable us to continue making improvements in our disability programs.

#### *Conclusion*

In conclusion, Mr. Chairman, the disability programs are large, complex programs that are critically important to the lives of millions of Americans. As the programs have changed over time, so have the challenges that confront SSA in ensuring that Americans with disabilities receive fair, accurate, consistent and timely decisions when they apply for benefits.

SSA is committed to making the Social Security disability programs both more responsive to claimants and beneficiaries and more accountable to the nation's taxpayers. We are better able to do so because of the important contributions of the Social Security Advisory Board, and I want to thank them again for their help.

In order to succeed, we will also need the support and advice of the Congress, and especially this subcommittee. I want to thank you, Chairman Shaw, and the members of this subcommittee who have worked so hard to assure the funding for Social Security. It is crucial that we receive the funding requested in the President's FY 2002 budget request. We will again be relying on your continued support to obtain the needed funding for our operations.

I truly appreciate the opportunity to come before you today, so that together we can build on the successes that we have seen in recent years and work to meet the challenges that remain. I would be happy to answer any questions.

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Chairman SHAW. [Presiding.] Larry, I want to personally thank you before I call on other members for the service that you have given us. I know that you have been looking forward to returning to Philadelphia, but you have certainly done a wonderful job for us as Acting Commissioner, and we very much appreciate your service to your country.

Mr. MASSANARI. Thank you, Mr. Chairman.

Chairman SHAW. Mr. Johnson.

Mr. JOHNSON. Thank you, Mr. Chairman.

It appears to me that everything is working better than it used to, at least at the higher level, but when you get to the administrative law judge level, it appears that the determinations are still too time-consuming, and it looks like about 59 percent of those cases that are appealed get approved.

Can you speak to that and tell me how we can address that problem?

Mr. MASSANARI. Yes. We have in fact, Mr. Johnson, made some progress over the past several years. As I mentioned in my statement, we have reduced processing times by just about 100 days since 1997. But clearly, we still need to make more improvements, and that is why we undertook last year a major process improvement effort which we refer to as the Hearing Process Improvement plan, or HPI.

We are still not satisfied with where we are. This has been a very difficult undertaking. So we are intending to undertake a major comprehensive evaluation of that entire effort. But I would agree that we need to achieve significant improvement at that level of the process.

Mr. JOHNSON. I guess you didn't tell me how you are going to do that, but that is OK—I presume you are looking at it. I believe you have about a \$7.1 billion administrative budget, and about \$5 billion of that is spent on disability, as I understand it. Has the cost of disability determination risen or fallen on a per case basis since you have been doing redesign, and what percentage of the cost of benefits paid is the cost of administrative overhead?

Mr. MASSANARI. Let me pick up on your last question first. If I understand your question, the percentage of total benefits that are captured in administrative expenses runs about 0.9 percent in terms of total administration of all of our programs.

Mr. JOHNSON. That is overall in the administration?

Mr. MASSANARI. Yes, that is overall. This program clearly is more expensive. It is a much more complex program than managing our retirement or survivors insurance program because of the nature of the decision that has to be made. These are very complex and very subjective decisions, and that is the reason why the administrative costs are higher.

But at the initial stage, cost per case has declined somewhat on average, but in a dollar amount, it continues to increase because medical costs increase as do employees' salaries.

Mr. JOHNSON. Thank you very much. I yield back the balance of my time.

Chairman SHAW. Mr. Pomeroy.

Mr. POMEROY. Commissioner, I want to join the Chairman in thanking you for that interim assignment. There probably is no tougher assignment that anyone can do; you have problems to solve, but people know you are not going to be there for the long term, and that makes the whole thing more challenging. I commend you for your effort.

Mr. MASSANARI. Thank you, Mr. Pomeroy.

Mr. POMEROY. One of the most shameful things I have ever seen in a Government program occurred in the early eighties when I was practicing law in my home town, Valley City, North Dakota, and noticed that just about everybody applying for disability was summarily rejected and people on disability summarily terminated. It was undoubtedly driven by a concern about where claims costs were going, but clearly, it was not based on what it needed to be based upon, which was factual determinations upon the eligibility criteria given the health condition of the individual involved.

Have steps been taken to make certain that some very inappropriate policy decision can never again so dramatically affect disability claims administration?

Mr. MASSANARI. Yes. In fact, Mr. Pomeroy, the Congress took steps to prevent that from happening by putting in place something called the "medical improvement standard" so that a person, when we go through our continuing disability review process, cannot be taken off the rolls unless it clearly is established that there has been medical improvement.

We have been very aggressive in carrying out our stewardship responsibilities. We are continuing to do continuing disability reviews with the help of this Subcommittee, and we are now very close to being up-to-date even in the SSI Program, but there are certainly safeguards in place, and the appeals process I think serves persons well who have been determined to have shown medical improvement where we are taking them off the rolls.

Mr. POMEROY. Are we seeing a growing backlog in the appeals process?

Mr. MASSANARI. It has actually come down some over the past couple of years, but over the past year, with the introduction of the hearing process improvement activity, backlogs are climbing. That is one of the great concerns that we have with the process improvements that we have put in place, and that is why we are undertaking an evaluation, because things are not going in the direction we would like.

Mr. POMEROY. Some have suggested that cancellation of the Senior Attorney program has actually exacerbated the problems, and the backlog is growing in the absence of that program. Can you describe to us briefly what the Senior Attorney program was and why it was cancelled?

Mr. MASSANARI. Back in the mid-nineties, backlogs had risen to unusually high levels, and we undertook a number of short-term measures. That was one where we were using some of our attorneys to do on-the-record decisions, and they were doing pre-hearing conferences, and they were permitted to make fully favorable deci-

sions. If an allowance could be made, they were permitted to make it.

I do not share the perspective that that was a greatly successful effort. Productivity was not what we had hoped, and the quality of the product was marginal—although my perspective is a bit different on that one.

Mr. POMEROY. It is my understanding that there is a review of some cases that were denied by a significant number—130,000 cases denied—and that a review is ongoing as to the appropriateness of those claims denials over a period of many years dating back to 1974. Are you aware of an initiative like that?

Mr. MASSANARI. I think that what you are referring to are not cases that were denied. These are individuals who have been on the rolls, receiving SSI benefits, and as part of an internal quality assurance review, we discovered that there may be as many as 130,000 SSI recipients who may also be eligible for Social Security Disability Insurance benefits, Title II benefits, that they may in fact be insured. So we are undertaking a major effort to determine whether those folks in fact are also eligible for Social Security benefits. We are starting that effort here in the next several weeks.

Mr. POMEROY. My last question relates to the average disability payment level. It is \$755 on average. Do you have a sense in terms of whether we can reduce this benefit in any amount as part of a formula relating to solvency or overhaul of Social Security and adequately meet the needs of disabled people depending upon this income?

Mr. MASSANARI. I would certainly think that any reduction in that benefit would make it very difficult for young families with children to make a go of it. I think it is important to underscore the fact that when the President established the President's Commission to strengthen Social Security, he of course outlined six principles to guide the work of the Commission, and as you pointed out, one of those is to preserve the disability program. We think that is important for the folks who are currently receiving benefits.

Mr. POMEROY. Yes, I would agree with you. We need to preserve the program, and we need to preserve the benefit level, if not increase it. Clearly, anything going south of \$755 a month would be catastrophic for the individuals involved.

I thank the Chairman.

Chairman SHAW. Mr. Brady.

Mr. BRADY. Thank you, Mr. Chairman.

First, I want to thank you, Mr. Chairman, for holding this series of disability hearings, and not only for your leadership but for being responsive to a request from members like myself to look into this area.

Earlier this year, our local newspaper, The Houston Chronicle, did a very good, in-depth series of articles about the disability claims in our regions, the problems with it, looking at real life examples, identifying the unusually long time it takes to get to a hearing before an administrative law judge, the differences, low approval rate, statewide and in our region, basically looking at problems occurring in our region.

Acting Commissioner, I appreciate three of the associate commissioners meeting with our office in the Houston delegation to talk

through these issues. They made a commitment at the time which we all appreciate, Republican and Democratic, in our region to expedite the creation of two more administrative law judges for our area to try to tackle that part of the backlog as well as a review on quality and accuracy to see if we can identify what those problems are. And when we look at the average numbers in our region, we have not seen those 100 days of improvement is my understanding in getting our cases heard. We do have an unusually low approval rate—not that this is a quota system where each one has an average that has to be met exactly; what we want is fairness and timeliness in the process. We want people who are truly needy to be approved quicker and those who need more information to get that as soon as possible to make their case.

I appreciate, too, the leadership of the Chairman in identifying a problem that we do need to take a hard look at reviewing and rewriting our disability laws. Thirty years is a long time. We have had a number of conflicting and contradictory rulings and regulations that I think make it difficult to hit that standard of consistency. I know that the trends of claims is growing. The trend that less claims will be granted based just on obvious physical factors has decreased, while the trend of those cases that are being decided by “You are able to work if and under these conditions and in this type of situation.”

We are seeing also from the disability community, not just in Social Security but in other parts of government, in technology and medicine and service, they have really moved past us in their potential to be working, vocationally occupied, and back on the job.

So I have a couple different questions. One, in the bigger picture first, is it time for Congress to rewrite our disability laws to create a more consistent, clear interpretation for our hearing examiners and our judges to follow?

Mr. MASSANARI. Well, at a general level, I would have to say that with a program that has the level of impact that it does in this society, I think it is always appropriate to review a program of this kind on a continuing basis to assure that it remains responsive to contemporary society, although I would not want to see significant change until a broad consensus begins to emerge around the need for change in this program. But I think that that kind of review is probably essential, as the Advisory Board has pointed out.

Mr. BRADY. Do you not see that we have reached that point? I mean, given the variations in the approval rates, in the filings, in the time it takes to get there and the different regional rulings and regulations and precedents, what more would it take to get there?

Mr. MASSANARI. I think it depends on the level that you are talking about. If you are talking about fundamental change in public policy, then, I think there probably needs to be some consensus that needs to emerge. I am suggesting that the kind of exploration that the Subcommittee is undertaking is very appropriate, and I think we need to very thoughtfully and carefully examine the current program.

But when you begin to talk more about the nature of the decisions that are being made, the fact that fewer decisions are being made on the basis of objective medical findings, decisions are becoming more subjective, and some of that has been driven by the

courts, those are the kinds of issues that we need to look at immediately. In fact, we are beginning to undertake an assessment of some of the more recent court decisions to make sure that they are consistent with the intent of Congress.

So I am really making a distinction between the policies that drive us in terms of medical determinations as opposed to very basic public policy. Those are two different things.

Mr. BRADY. I understand. I guess my point is that I think the day has come. While we focus on improvement, and everyone appreciates the progress that is being made, striving for consistency and lower variations across the country, timeliness, can be helped if perhaps Congress gives a much clearer—hopefully, clearer; not every rewrite we do is clear, by the way—but it seems to me that the time has arrived for a rewrite of our disability laws.

Secondly—

Chairman SHAW. The gentleman's time has expired.

Mr. BRADY. I was just getting going, too. Thank you very much.

Chairman SHAW. Your statement lasted 3-plus minutes.

Mr. BRADY. Do you have an additional 30 minutes that I can use?

[Laughter.]

Chairman SHAW. Mr. Becerra.

Mr. BECERRA. Thank you, Mr. Chairman.

First, Mr. Massanari, let me also congratulate you on the work that you have done and thank all the people who work for SSA for all they do, because too often, we do not recognize that this has perhaps been the most successful agency that the Federal government has ever created except perhaps for the Department of Defense, and in many ways, we do defend Americans by providing them with some guarantees about their survival and their retirement and their children.

Let me ask a couple of questions. First, let me try to follow up on something that my colleague Mr. Pomeroy asked, and that is in regard to this whole debate that we are having these days about the Social Security System, the benefits, where we are heading, the reforms.

When you mentioned in response to some of Mr. Pomeroy's questioning that in the whole larger debate on Social Security, the President has a principle to preserve the survivors and disability components of the current program, give me your sense of what we mean by "preserve." Does that mean keep the shell, or keep the heart and the guts of what we know today as the survivors and disability program under Social Security?

Mr. MASSANARI. Mr. Becerra, I really cannot define it beyond what is laid out in the Executive Order. I think the Commission will begin to work with the guidelines as they are written and will move from there. And as you know, the Commission has only held one meeting. They are at the very preliminary stages of their deliberations, and they will be meeting again on the 24th of July, and at that point, I think they hope to issue an interim report talking about the broad challenges facing the program. But I think it would be premature for me to speculate on that issue.

Mr. BECERRA. Would you like to offer your own personal opinion?

Mr. MASSANARI. I would rather not, thank you.

[Laughter.]

Mr. BECERRA. Then, let me use my time in a more valuable way and move on to another question. The Social Security Administration deals with disability under the Social Security Act. We have a definition of disability under the Americans with Disabilities Act (ADA), and there is some contention about what the true definition of disability is under both acts.

Do you have an opinion about whether or not the definition under the Social Security Act is different, and if it is, should it remain different from the definition we find within the ADA?

Mr. MASSANARI. Clearly, the definitions, Mr. Becerra, are different, but the focus of the two programs, of course, is very different. In the case of Social Security, the definition is used to determine whether or not a person meets a medical and work standard that will yield monthly cash benefits, whereas in the case of the Americans with Disabilities Act, the focus is really on providing assistance to people who are working, to provide reasonable accommodations, and to eliminate discrimination in employment.

The Supreme Court has held in the Cleveland case that while the two definitions are different, they are not in conflict with one another. In fact, they are complementary—and that they can comfortably exist side-by-side.

Mr. BECERRA. Thank you. I appreciate the answer, because I know there has been some concern that we may try to redefine disability within the Social Security Act, and I know that that would cause a number of folks some concern.

Let me ask you a question with regard to staffing. As we get closer to this crunch period—I remember talking to folks at the Department of Transportation about the crunch they are going to face with air traffic controllers who are going to be forced to retire because of mandatory age requirements, and all of a sudden, we are going to have the skies filled with planes and the towers filled with inexperienced air traffic controllers.

What are we doing to try to make sure that we can continue to hire the best and the brightest at SSA? We have to be very competitive. Obviously, a lot of folks are finding some very decent salaries out there in the private sector. What are we trying to do to make sure that we are paying our personnel adequate salaries to compete and to make sure that those who are recipients of the program continue to receive decent service?

Mr. MASSANARI. As you point out, this is a critical issue for this agency, because as we look over the coming decade, we may lose as many as 28,000 employees by retirement and another 10,000 by other forms of attrition. So hiring is critical to us.

We think that we are competitive as we go out into the marketplace. We are in fact hiring now, and we have been able to attract very good candidates.

Our concern, of course—and this is where I will make my pitch to the Subcommittee—is that we have an adequate number of new hires, and that is why we need your support—

Mr. BECERRA. And more money—more money, right?

Mr. MASSANARI. Well, in supporting the President's request in our 2001 budget for a 6.3-percent increase. We need that increase

in order to be sure that we can achieve our mission. It is particularly important in the disability program.

Mr. BECERRA. Mr. Chairman, my final comment is that I hope that you and your successor will continue to point out the stark reality that we face so that we will continue to give recognition to your needs for additional resources. Otherwise, we will face that brick wall as we come to it.

Mr. MASSANARI. Thank you, Mr. Becerra.

Mr. BECERRA. Thank you.

Chairman SHAW. Mr. Hulshof.

Mr. HULSHOF. Thank you, Mr. Chairman.

Mr. Massanari, welcome. One of the disadvantages of being first in the order to testify is that you perhaps do not have a chance to anticipate or to respond to those who may be coming behind you. So let me paraphrase a little bit what I expect we are going to hear with subsequent panels and see if you have some response.

I am especially taken by the testimony of Judge Bernoski, who is here with us somewhere, and specifically pointing out in his written testimony at page 3 his belief that the Social Security Administration, or the SSA's administration of the Office of Hearings and Appeals has really been a failure. And I am not paraphrasing; that is right there in black and white.

He also talks about "improper implementation of policy" and suggests that an ALJ-administered independent agency should be established. Let me go from those comments and let me think about those for just a second. I know that also, Chairman Ross, who is likely to be next, also thinks that the agency's relationship with the ALJs needs to be fixed, or is broken. And I know the Advisory Board is suggesting perhaps even a Social Security court. So I have given you a couple of hardball questions and will give you a chance to respond. What is your sense of the observations made by those who are going to come after you?

Mr. MASSANARI. Well, I would have to say in response to the initial comment that SSA's management has been—and I am not sure of the term that was used—

Mr. HULSHOF. I think especially regarding the Office of Hearings and Appeals "has failed."

Mr. MASSANARI. I would say first of all that that suggests that the Office of Hearings and Appeals is not a part of the Social Security Administration. It is indeed a part of this agency, and I do not think that that is an accurate characterization at all.

There are certainly challenges facing the Office of Hearings and Appeals (OHA) both at the hearings level as well as at the Appeals Council level. These are significant challenges that face this agency. There are no quick fixes or easy solutions, but the agency has worked to try to wrestle with the public service problems we face within OHA. But to say that it is a failure, I do not think is accurate.

Mr. HULSHOF. What about this tension or relationship between SSA and the administrative law judges? What do you see as a way to maybe help turn that around?

Mr. MASSANARI. I think that clearly we need to do more to engage the ALJ union. The nature of the relationship, of course, has changed within the past year now that the administrative law

judges are now organized and have formed a union, so we have to deal with them as a bargaining unit under Title VI of the Civil Service Reform Act. So there is a little bit different relationship, but I do think we need to be more open and engaging in dealing with them to be sure that we seek their counsel as changes are made. We certainly need to provide appropriate notice and negotiate with them as appropriate as changes are made that affect their working conditions.

While I am not sure I would describe it as a “broken” relationship, it is one that needs to be worked at, and I think we need to improve communications. I think one of the things that has set us on the right track is that very recently, we concluded the negotiation of a master agreement with the ALJ union, and think it is a positive sign that we are able to reach agreement on that set of negotiations.

Mr. HULSHOF. I appreciate that.

Let me shift gears and try to end on a positive note. In your written testimony or longer testimony at page 11, something that I have the opportunity to be a fan of as we have discussions on Ticket to Work and as this Subcommittee let the effort, and this Chairman helped pass into law and make changes regarding work incentives, and that is the benefit-offset demonstration project. I know that my time is drawing short, but specifically, as we talk about and put this demonstration plan together, we are talking about gradually losing \$1 for every \$2 that a beneficiary earns over a certain level. You note that there is this 5-year cooperative agreement for Disability Research Institute to the University of Illinois.

Could you briefly—again, my time is short—describe how that is working or what you see positive in that regard?

Mr. MASSANARI. We are just in the design stage of the one-for-two demonstration. There is a bit of a challenge that we are trying to work through as we try to sort through the legislative fix that we will need to propose. When that legislation was enacted, it did not provide for continuing appropriation of benefits, and we need to deal with that, because without it, we are not going to be able to attract potential participants in that demonstration.

But we are now working with those folks outside the agency to begin to design that demonstration. We are also working with the University of Illinois as a part of the Disability Research Institute to develop a set of research protocols as a part of early intervention, which is really a different demonstration, of course, but to deal with early intervention to try to get persons who are disabled rehabilitated and back into the work force rather than getting them on the rolls and then dealing with rehabilitation.

Many believe that this is probably the future and the appropriate future for this program.

We have to have our research protocols sorted out by March of next year, with some conclusions by 2004. So we are not at a point yet where we have settled on which models we are going to pursue, but we are working with the University of Illinois and Rutgers University as well in that regard.

Mr. HULSHOF. Great. Thank you very much. Thank you, Mr. Chairman.

Chairman SHAW. Mr. Ryan.

Mr. RYAN. Thank you, Mr. Chairman.

Thank you, Mr. Commissioner. I wanted to bring your attention to a point made on page 3 of the Social Security Advisory Board's report, and we as Members of Congress also serve as activists and represent our constituents. This is a point that, going through this report, I think really says a lot. "Basically, a primary reason why the disability programs do not share the same level of public confidence as the retirement program is the perception that determinations of eligibility for disability are not being made in a uniform and consistent manner. As long as variations in decision-making remain unexplained, the integrity and the fairness of the disability programs are open to question."

These programs are too valuable and too important to the American people to be left with so many questions hanging over them. I think we have all probably experienced that ourselves when we work on behalf of our constituents. I wanted to ask you for your comments. I missed your opening statement, and you may have addressed it already, but I want to ask you if you could respond to that in fairly quick form, and then I have two more questions I would like to ask you.

Mr. MASSANARI. Clearly, variation across State lines is a significant issue for us. I had mentioned in my opening statement that because of socioeconomic and demographic differences among regions of the country and States, you would expect some variation in allowance rates. But when they are as pronounced as they are in some cases, we need to address that and try to figure out why.

We now have underway a detailed regression analysis that our Office of Policy is pursuing so that we can begin to answer the question more effectively as to why does that variation exist so that we can begin to isolate some of the reasons.

We have also built a number of things into our quality review process. We are now piloting a new consistency review activity as a part of our quality assurance activity which is intended to overcome some of those inconsistencies across State lines.

Some variation will always exist, and we can explain some of it by demographic differences, and this has been historically true. For example, those States where we have the highest filing rate tend to have the lower allowance rates, and I think that is predictable. But again, it is those unexplained differences that we are trying to address.

Mr. RYAN. Let me get into that point a little further and allow you to comment on some testimony we may be hearing later. Chairman Ross discusses federalization of the State agencies as an interim step to strengthening regulations to require States to follow the key guidelines. As a former regional commissioner who has worked extensively with the State governments relative to their State agencies, what do you think of those ideas? Do you think this is a feasible point, and what do you think the States' reaction would be to an idea like that?

Mr. MASSANARI. My own judgment is that the States have done an extraordinarily good job of handling this program. I think they perform very well. So I certainly would not urge that we do that. It is something that this body may want to explore, but I have to give the States very high marks for the way in which they make

medical determinations in this program. I think the Federal-State partnership has worked well; it has been one of the strengths of this program since the mid-fifties.

Mr. RYAN. So you would want to leave it relatively the same?

Mr. MASSANARI. I think that before such changes are made, they need to be very, very carefully evaluated.

Mr. RYAN. One more point—and I have heard this myself from some of your field personnel, and I think we are going to hear it later today from some of the witnesses who are coming from the field offices, who have spoken very highly of your Disability Claims Manager pilot. I have heard great comments about this program, and I want to get your impression of that program and what is the current status of the pilot on the Disability Claims Manager? Is it fitting the bill? Is it as successful as we are hearing, and are you continuing on with the pilot?

Mr. MASSANARI. I would not judge it a success or a failure at this point. The pilot itself ran through November of last year; that was the end point of the pilot itself, although we kept the folks in place to work off the cases that were in the pipeline. In fact, just this week, we are ending those pilot arrangements.

We are in the process now of putting together a draft report which will go out to the stakeholders within the agency, including the employee organizations, to look at. I would expect that sometime later next month, a briefing will be done for me, and recommendations will be presented to me. But I think it is too early to tell whether it is a success or a failure, although clearly the responses have been very positive from our clients as well as from employees.

Mr. RYAN. I would just like to conclude by saying there is quite a bit of room for improvement on uniformity in the disability claims area, and it is something that we need to improve upon to restore confidence that should exist within this program which I think the heart and soul, to answer my friend from California, ought to be maintained and preserved, and I think we will.

So thank you very much. No further questions, Mr. Chairman.

Chairman SHAW. Thank you.

Thank you, Larry. I want to again express the appreciation of this Committee for the fine work that you have done. If you get real lucky, this may be the last time that you will be before us.

Mr. MASSANARI. It is always a pleasure, Mr. Chairman.

Chairman SHAW. I do think that we have acknowledged your presence with both gratitude and respect, which is well-deserved. Thank you, and Godspeed on your way back to Philadelphia.

Mr. MASSANARI. Thank you, Mr. Chairman. I appreciate it.

[Questions submitted from Chairman Shaw to Mr. Massanari, and his responses follow:]

Social Security Administration  
Baltimore, Maryland 21235

*Question 1. In 1996, the Congress designated a separate line item of money, outside the appropriations cap, for reducing the number of disability reviews. You refer to your completion of the continuing disability review (CDR) backlogs as one of your greatest successes. How important to your success was that predictable stream of funding? Would you recommend this same type of special line item to your budget for dealing with other needs of the Agency for such items as enhancing of information*

*technology, building human capital or increasing efforts to ensure effective stewardship?*

Having a reliable and predictable stream of additional funding was absolutely critical to our success. It enabled us to develop and carry out a long-term plan to eliminate the CDR backlog, and it ensured that this important program integrity work did not have to compete with our other critical work, such as processing initial claims and answering the phones.

Our CDR efforts also have been very cost-effective: Over the entire 7-year period (fiscal years (FY) 1996–2002), we expect to save an average of \$10 for every administrative dollar spent. For future years (FY 2003–2011), the return on investment, while more modest, still is projected to be \$7 to \$1, assuming that sufficient administrative resources will be made available to conduct the required reviews.

In these times of limited resources and competing program initiatives, designated and predictable line items are desirable for any effort that Congress and the executive branch see as priority, “must-do” items, especially those programs that can be successful only if they receive dedicated funding for several consecutive FYs.

*Question 2. It seems that most of our employee representatives and State agency representatives in our third panel are saying they don't have enough resources, referring to increasing backlogs and the increased stress being felt by workers to continue to do more with less. Are there plans to provide these components with additional resources? If so, would this negatively affect other aspects of SSA operations?*

Within the total funding appropriated by Congress for administration of the Social Security programs, we continuously review resource allocations to ensure that they are directed to the most critical priorities. In FY 2001, we have been able to reprogram funds both to the Disability Determination Services (DDS) budget to deal with disability workloads and to our front-line SSA offices (e.g., additional overtime) to deal with claims and other customer service workloads. In addition, once resources have been allocated at the Agency level, they are often reprogrammed at regional levels (e.g., between States) to deal with specific workload issues.

At this time, the most important resource issue for SSA is congressional enactment of the President's full budget request for FY 2002. The level of service we are able to provide depends on it. If we receive the President's full request in FY 2002, which provides a 6.3-percent increase over the FY 2001 level, we will be able to fund 400 more workyears in the DDSs and ensure stable staffing in SSA offices.

I do not believe that there is a manager in government who could not put additional resources to good use. However, good service also depends on effective management practices. We constantly monitor spending in various cost categories and the relationship between spending and workloads at the national level to ensure that limited resources are distributed effectively among major Agency components, including Operations, Hearings and Appeals and the DDSs.

Similarly, and of equal importance, spending and workloads are monitored throughout the Agency down to the local level where allocations can be adjusted or work shifted among offices based on available staff. Here, because of its portability, overtime is a powerful tool for aligning resources with work.

We believe our efforts to monitor and distribute limited resources effectively strike the best possible balance among public service, program integrity and investments in technology and in our workforce. With the President's request for FY 2002, we would be able to provide more resources to our frontline operations and employees.

In an environment of limited discretionary resources Government-wide, cap adjustments are useful tools to ensure funding for cost-effective stewardship activities, such as CDRs, or for essential long-range investments, such as in information technology and workforce development. The CDR cap adjustment has certainly been critical for SSA. However, my major concern is that SSA be adequately funded to meet its mission, regardless of the source of the funds or the budget mechanism employed.

*Question 3. You state that SSA is currently developing a plan that aligns and integrates current process, automation and operational policy initiatives. Can you briefly tell us about this plan? How is it being developed and by whom? Are employee groups represented? What is the timeframe for the plan's completion?*

SSA has been working on a number of different initiatives designed to address issues in the disability program, including automation, the disability redesign process, updating the medical listings, return to work, and so forth. The plan pulls together all of the separate initiatives to make sure that all aspects of the disability program are considered as we develop our plans for further action. I have asked the Acting Deputy Commissioner for Disability and Income Security Programs to take the lead on developing the plans for addressing all of these issues. For many of these initiatives, it is a matter of identifying the activity and coordinating the initiative with involved components. For example, the lead for the development of an elec-

tronic disability process was moved from the Office of Systems to the Office of Disability. In addition, employee groups are involved in a number of the individual initiatives.

*Question 4. You state that the Office of Hearings and Appeals (OHA) management has been engaged in discussions with a number of employee representatives to make adjustments in the Hearing Process Improvement initiative. What adjustments are being made and when?*

Efforts to increase the flexibility of the new business process continue to be encouraged. In March 2001, the Associate Commissioner for Hearings and Appeals and the Chief administrative law judge issued guidance to OHA field managers and staff, outlining “good ideas” and “flexibilities” within the new business process that hearing office staff could take advantage of and still maintain the core elements of the process. In May 2001, OHA management and the American Federation of Government Employees (AFGE; i.e., the union) signed a Memorandum of Understanding, adding two new positions to the hearing office structure—the case intake technician and a full-time receptionist—to relieve employees of some of the rotational assignments to hearing office administrative functions that proved to have a negative impact on productivity.

*Question 5. You mention that SSA is refining its quality review process. Can you share with us what refinements are being made and what are the timeframes for implementation?*

I have established a workgroup comprised of senior executives and headed by the Acting Chief of Staff to provide advice to the new Commissioner on quality assurance (QA) issues. The charge to this workgroup includes, but is not limited to, consideration of the findings and recommendations by an independent consultant, The Lewin Group, Inc., which was brought in to assess the Agency’s QA needs and requirements. The workgroup will be developing recommendations for the new Commissioner on a new quality process and quality culture within the Agency. Since the workgroup has only recently begun its deliberations and the specific recommendations are not yet known, target dates for implementation of any changes in the QA process are not available at this time.

*Question 6. As the Advisory Board and other witnesses on this panel have testified, there are variations in allowance rates among States. You stated in your testimony that it is reasonable to expect some variance of allowance rates because socioeconomic and demographic factors do influence the type of individual who applies for benefits. You mention that substantial differences are cause for attention and that SSA is addressing this issue. How specifically is SSA addressing this issue and what have been the results?*

To the maximum extent practicable, SSA strives to maintain and apply uniform standards at all levels of determination, review and adjudication. In recent years this commitment has been demonstrated through the Agency’s ongoing process unification efforts, which have been supplemented by events such as the “One-SSA” meeting that was held in June. In that meeting, adjudicators and managers from all administrative levels throughout the country met to discuss the different management and policy issues facing them, including the important role that consistent application of policy plays in meeting SSA’s obligation to provide an equitable disability determination process. Through initiatives such as these, SSA will continue to take every opportunity to ingrain in its disability adjudicators the importance of ensuring that similar cases are decided in a similar manner throughout the country. The result of this program-wide emphasis has been, and will continue to be, more consistent application of Agency policy around the nation. Without reservation, SSA remains committed to providing a fair and consistent disability determination process.

In addition, we are piloting a new consistency review process that may help in narrowing variations in allowance rates among the states. This new process is described in our response to a later question.

Finally, SSA is studying a range of factors associated with variations in allowance rates using 3 years of recent data. Past analyses have shown that a substantial portion of variation in allowance rates across the States is due to differences in the characteristics of State populations. This does not mean that we should not worry about possible decisional inconsistency. Rather, it means that in assessing variation, we must first control for demographic and economic factors that have an independent impact on allowance rates. A simple example of such factors is age. A State with an older population is more likely to have a higher allowance rate because, on average, older individuals who file for disability benefits are more likely to meet the disability criteria.

SSA currently is conducting a study using regression analysis to determine the impact on State allowance rates of factors that are external to the adjudicative proc-

ess. These are factors that research has shown to be related to the incidence of disability in the population and include:

- economic indicators such as the unemployment rate, the labor force participation rate, the poverty rate and per capita income,
- demographic indicators such as the proportion of the work force in ages most vulnerable to disability (ages 50–64), the percent of the work force that is male and the educational level of the work force and
- health indicators such as the proportion of workers with health insurance, the rate of nonfatal work-related injuries and illnesses and self-reported indicators of health and disability.

We are examining the Supplemental Security Income and Disability Insurance programs separately. The analysis will enable us to assess the difference in allowance rates across States, adjusting for differences in economic and demographic factors. We will report on the results of this study in the fall.

*Question 7. You state that the results are promising in the prototype adjudication process, but you have not made a decision to extend it to other States. On what factors will your decision to extend or not to extend be based? On which data will you focus? When will the results be available?*

The decision to extend or not to extend the prototype adjudication process to other States will be based on analyses of administrative and program cost impacts. The evaluation will focus on a number of factors including processing time, quality of decisions, appeal rates and overall allowance rates. We will assess all of the available information, both quantitative and qualitative, in deciding our next steps. An interim report on the status of the prototype will be available in the next few weeks. We expect to have a further report based on a more complete set of data by the end of the calendar year.

*Question 8. You describe a pilot that is already underway which will involve a new consistency review (CR) process for claims processed by the DDSs. Can you give us an overview of this pilot program? How will it work? Will only claims from specific States be involved?*

Our Office of Quality Assurance (OQA) is piloting a new two-part CR process. The first part of this pilot is designed not only to assess the State DDS quality, but also the quality reviews of DDS disability decisions conducted by OQA's 10 regional disability quality branches (DQB). The purpose of this new assessment is to ensure consistent and uniform application of SSA policies and procedures in reviews throughout the 10 regions. It will also provide case feedback to make corrections and adjustments necessary to achieve consistent quality. This process aims to promote national consistency in the adjudication and review of disability cases. The results of the review will provide a means of monitoring the degree of consistency among the DDSs and the regions. The data from this pilot will help us to identify methods to overcome concerns raised about deviations among the several review components.

State DDSs in two to three regions will participate with the central office review component during a 3-month period. The pilot will be conducted over a 12-month period until all regions and their respective State DDSs have participated. The central review of the first three regions, Dallas, New York and San Francisco, was initiated in April 2001. Disability determinations from the State DDSs in the participating regions will be selected and sent both to the regional review component and to the central office review component (central office receives a photocopy, the regional review component receives the actual case) for a simultaneous preeffectuation review. The results of these independent reviews are compared and any discrepancy resolved prior to payment. The data collected from these reviews will help us assess our consistency, not only within the regional reviews, but throughout the regions.

The second part of this consistency review process is a review of a completed case, involving a complex policy issue, by all DDSs and all regional DQBs. A copy of the claims file, minus the original decision, is sent to all DDSs and DQBs for a separate and independent determination. Results from these separate reviews are compared and discussed by a cadre of State and Federal representatives. Areas of disagreement are identified, discussed and resolved. All participants are provided the outcome of the cadre's final report. This information is used by the DDSs and regional review components to improve consistency with the national standard and for training and future assessments. This process began in the first week of February 2001, and preliminary results should be available soon.

*Question 9. Judge Bernoski, a witness in our third panel, believes that SSA's management of the Office of Hearings and Appeals has been a failure. He suggests that an ALJ-administered independent agency should be established. What are your views*

*on this suggestion? Is such a plan realistic? Would it benefit claimants and taxpayers? What efforts are being made to improve OHA?*

We are concerned that an ALJ-administered independent agency could hamper uniform and consistent administration of the Social Security program. Over the last few years, the Association of administrative law judges and its union successor have attempted to advance recommendations to split or separate the ALJs off from SSA. We are concerned that such a plan may not be realistic and would not benefit claimants and taxpayers because it would require, for example, the establishment of another administrative structure or layer to manage and support ALJs' work throughout the government, adding to the cost of administering the disability program.

The Hearings Process Improvement (HPI) initiative is the most recent effort made to improve OHA. Its structure and core elements promote group processing of work and position the Agency for future growth in adjudicative capacity. During the transition to full HPI implementation, OHA has worked closely with the employee unions, managers and staff to: (1) encourage flexibility with the new process; (2) sign a May 2001 Memorandum of Understanding that added two new hearing office positions and reduced the need to rotate staff into administrative functions; and (3) promote HPI continuous improvement and evaluation activity.

We are now undertaking a broad scale evaluation of all aspects of the new process. Overseeing this effort is a Steering Committee, which includes employee representatives and is responsible for leading the evaluation of HPI. In addition, a representative of the Social Security Advisory Board has agreed to serve as an ex officio Member of the Committee. The Steering Committee has been asked to develop and execute a plan that will fully assess the implementation of the process in the hearing offices, solicit and consider feedback about the process from within and outside the Agency and identify ways to continually improve the OHA hearing process. The Steering Committee's report of their findings and recommendations is due at the end of October. This report will be used to determine further actions to improve the hearing process and ensure long-term success.

*Question 10. The Advisory Board has made a number of recommendations, including revisiting the definition of disability and closing the record after an ALJ hearing or certifying claimant representatives. What are your reactions to these recommendations?*

The Advisory Board has made a number of extremely important recommendations that deserve careful consideration by SSA and the Congress. Their recommendations are based on a thorough review of the disability program. The Advisory Board gathered and carefully examined available disability program data. Members of the Advisory Board conducted on-site reviews of field offices, hearings offices, and state Disability Determination Services (DDS) offices. These visits aided the Advisory Board in analyzing disability program data.

We are carefully evaluating the recommendations of the Board and will work with them and the members of this Committee to assure that these recommendations receive full consideration.

*Question 11. Mr. Korn, a Member of our third panel, suggested in his testimony that Technical Disability Experts be established in field offices. What are your thoughts on his suggestion?*

The Technical Expert for Disability (TED) proposal contains many of the same functions as the Federal Disability Claim Manager (DCM). The concept of a TED as an alternative approach for utilizing DCM-type skills is one of a number of ideas for using DCM-type skills. The draft DCM evaluation report was sent to stakeholders for comment on June 29, 2001 and a final report, expected later this summer, will be the basis for considering next steps.

*Question 12. During the hearing, Mr. Skwierczynski was questioned about the Title II disability workload program that SSA will be implementing. Mr. Skwierczynski expressed concern about the policies and procedures designed for this workload, and that the union was not given notice or consulted about the plan's implementation. Can you provide information about this plan and also comment on Mr. Skwierczynski's concerns?*

We do not agree with Mr. Skwierczynski. The principles SSA follows to process this large, important workload are longstanding and well known.

Our employees regularly detect that certain Title XVI recipients have attained insured status for title II eligibility. Employees process such cases routinely throughout the year.

The policies and procedures we are using to process this workload are the same as they have been all along and the impact on any individual employee is minimal. Although SSA developed a special handbook to process these cases, we did that to focus attention on the workload. The handbook simply reiterates existing policies and procedures.

*Question 13. Mr. Hill, a Member of our third panel and President of Chapter 224 of the National Treasury Employees Union, stated in his testimony that the Short Term Disability Plan (STDP) and its Senior Attorney program were instrumental in reducing the OHA backlog. He stated that the Senior Attorney program alone was successful in producing more than 200,000 decisions. Can you give us your thoughts on this program? Do you think the Senior Attorney program was successful as part of HPI? Why was it eliminated?*

The Senior Attorney program was established in 1995 as an initiative of the Agency's Short Term Disability Project to rapidly reduce the number of pending disability cases at the hearing level. Under this program, some 200,000 fully favorable decisions were issued without the need for approval by an ALJ, thus saving the ALJ's time for hearings and decisions on the rest of the hearing workload. In general, the Senior Attorney program had a positive impact on hearing process efficiency and productivity.

However, by the beginning of FY 2000, pending hearing workloads had declined and fewer cases lent themselves to on-the-record fully favorable decisions primarily because of process unification improvements at the initial claim level. Thus, it was decided that an adjudicator in addition to the ALJ would not be a useful element of the workflow and staffing structure and that the signatory authority of the Senior Attorney would be terminated in each office.

At the time the decision was made to terminate the Senior Attorney program, the full implementation of prototype in the DDSs was believed to be imminent. These process changes would further reduce the pool of possible on-the-record decisions at the hearing level by ensuring more allowance decisions made correctly at the DDS level and by sending fully developed and "fresher" cases to the hearing offices for adjudication.

The Senior Attorney program was never a part of HPI. However, the HPI plan institutionalized key positive aspects of the Senior Attorney program, like early screening and analysis of cases and early identification and fast-tracking of potential on-the-record decisions.

*Question 14. Several members our third panel stated how successful the Disability Claims Manager (DCM) program was. Can you give us your comments on this program, and tell us why the program was not extended? Will it be reintroduced in the future?*

Although testimonies described the success of the DCM, the evaluation results contained in the draft report are mixed and indicate that DCM:

- Accuracy was comparable;
- Processing time was faster, but not dramatically so;
- Productivity was within a range roughly comparable to the current process;
- Administrative cost was significantly higher;
- Customer satisfaction was higher especially for denied claimants;
- Employee job satisfaction was higher as compared to their former jobs; and
- Initial allowance rates were comparable. Data through the hearing level is not yet available.

DCM site operations were terminated at the end of June 2001.

- Federal and State agreement and cooperation were needed for the test, which was conducted over a 3½-year period.
- The data collection period ended in November 2000 but sites agreed to continue operation through June to allow for a smooth work transition.
- Many test participants had been in travel status during this timeframe and away from home since the test began in November 1997. It was time for them to return home. Additionally, because of significant staff attrition, additional DCMs would need to be selected and trained to keep current sites operational. This was not deemed as a viable option since it takes more than a year to bring staff up to speed.

It is too early to determine what decisions will be made regarding the DCM process. SSA Executive Staff will consider evaluation results, stakeholder input, the Federal/State relationship and costs associated with next steps as decisions are made regarding the DCM process.

*Question 15. During our hearing, we heard witness testimony and questions from the members of the Subcommittee about the backlog of cases. The backlog of cases at SSA is an issue that is dealt with continually by members' offices. Can you tell us what is being done to decrease this backlog?*

To the maximum extent possible, the Agency's available funding for FY 2001 is being reprogrammed to maximize case processing capacity. SSA's ability to manage pending workloads in the upcoming months is dependent on the enactment of the President's budget, which provides a 6.3-percent increase in the Agency's adminis-

trative budget for FY 2002. This level of funding will enable SSA to process additional disability cases in FY 2002.

*Question 16. There has been concern expressed that employee groups are not adequately represented in the HPI Steering Committee. Can you comment on this? Who comprises the Steering Committee?*

The Agency is committed to a review of the implementation of the HPI initiative in OHA. A multi-component Executive-level Steering Committee was established to develop and implement a multi-part plan that examines the performance of the HPI initiative in OHA and includes broad representation from both management and employee groups. The Executive Steering Committee is composed of representatives from:

- Office of Operations
- Office of Disability and Income Security Programs
- Office of Human Resources
- Office of Finance, Assessment and Management
- Disability Determination Services
- OHA Managers Association
- National Treasury Employees Union
- Association of Administrative Law Judges/IFPTE and
- an ex officio Member from the Social Security Advisory Board.

The American Federation of Government Employees was invited to participate but declined to do so.

A workgroup team has been established, which reports to the Steering Committee and has primary responsibility for gathering information. The workgroup team includes two bargaining unit members.

In addition to this formal representation, input is being sought from employees representing all position types through onsite visits, questionnaires and e-mail.

*Question 17. Process unification was established as part of SSA's redesign plan and was designed to improve the disability decisionmaking process. Can you tell us if this program has been successful, and if so why? Have you found that there is room for improvement?*

Process unification does have its origins in the redesign plan beginning with the establishment of an executive level Process Unification Team. The focus of the work has been to achieve consistent application of agency disability policy at all levels of adjudication. It is an ongoing process, which is similar to incremental improvements rather than to a finite project with a set number of initiatives. Although the Process Unification Team did identify specific initiatives to move the Agency forward on process unification, we are now trying to ingrain the concept with other activities such as the recent One-SSA Meeting, which focused on the entire disability program rather than just the policy application.

Finally, you asked if there is room for further improvement; and the simple answer is yes. As we have tried to articulate, process unification is an ongoing incremental improvement which probably will never have a completion date because there will always be room for further improvement.

Larry G. Massanari  
*Acting Commissioner*

Chairman SHAW. Our next witness is Mr. Stanford Ross, who is Chairman of the Social Security Advisory Board. Mr. Ross, you know the ropes. We will put your full testimony into the record, and you may proceed or summarize as you see fit.

**STATEMENT OF STANFORD G. ROSS, CHAIRMAN, SOCIAL  
SECURITY ADVISORY BOARD**

Mr. ROSS. Thank you, Mr. Chairman.

Mr. Chairman, members of the Subcommittee, on behalf of the Social Security Advisory Board, I want to thank you for undertaking this series of hearings on the challenges and opportunities of the Social Security disability programs. These programs are of immense importance to the American people, and their problems must be effectively addressed.

Serious problems exist today, and if they are to be resolved, fundamental change is needed. This hearing is an important step in the careful review that needs to take place if changes are to move forward in a timely and appropriate way.

Over the past 4 years, the Board has spent a great deal of time studying SSA's disability programs. We have consulted with the agency's leadership, visited with hundreds of managers and other employees in the field, and we have also held public hearings and benefited from the views of many individuals and organizations in individual meetings.

As has been the case with all of our work, the Board's study of disability has been conducted on a nonpartisan basis. All of our reports have been issued by consensus and without dissent.

I am not going to go through the numbers, but the huge size of this program should be remarked on. Unfortunately, despite its huge size, it is almost like a stealth program, because the agency also has the Old Age and Survivors Program, where 82 percent of the dollars are spent. But programs that approach \$100 billion in cost and constitute 5 percent of the Federal budget deserve the kind of scrutiny that you are beginning here today.

The \$5 billion administrative budget for the disability programs that we site makes up two-thirds of the agency's overall administrative budget. In terms of senior management time, I would guess that it is much more than two-thirds. Most of the problems of SSA as an administrative agency today lie in the disability area. The Old Age and Survivors Programs run relatively effectively and efficiently. The disability programs do not.

Moreover, what is really worrisome is that the disability programs are going to expand rapidly in the coming decade. As the baby boom generation approaches retirement, many of them will be applying for disability benefits, so that long before you have the problem of how to handle the baby boom generation retirement, you are going to have the problems of how to handle their coming onto the disability rolls.

At the same time, SSA faces its own retirement wave, and having adequate people in place to handle this great increase in work is a huge challenge. Part of the reason is because SSA's hiring today is not what it was 20 or 30 years ago. It is more difficult today. The agency has to be more competitive to get good people, and the people who are coming in are often older. It may be their second or third career—and they cannot be expected to have long-term careers like the present Acting Commissioner, who has maybe 30 years with the agency. They may only be there 3, 5, or 7 years. So there is going to be a constant need to try to keep up with the work load, and it is going to be a real challenge.

Our study of the disability programs has grown out of our firm belief that they are a vital part of the Nation's social insurance and welfare systems.

There has not been a full-scale review of disability policy and process in over 20 years. The result is a great deal of incoherence and, at times, demonstrable unfairness. If your claim is relatively simple, maybe it will be processed in 3 or 4 months; but if it is complex, a year could go by, and if you need to go for an appeal to the Office of Hearings and Appeals, it can be 3, 4, or 5 years

by the time that appeal is heard by the Appeals Council. Moreover, you are not able to appeal your case to a court until the administrative review is complete.

This is not good public service. These problems really need to be addressed.

We capsule our findings by saying that there is a serious gap between disability policy and the administrative capacity required to carry out that policy. Every part of the process is under stress. Field office employees lack sufficient time to explain program rules and provide the kind of assistance that many applicants need to file a properly documented claim. Backlogs are growing in many State disability agencies, and caseloads are in effect unassigned; they are sitting in stacks somewhere. We have gone out and seen this with our own eyes.

Hearing offices, the Appeals Council, and the Office of General Counsel are all struggling to keep up with the large workloads generated by the magnitude and complexity of the disability cases that are proceeding through the system.

There are strengths to the system. I want to make clear that there are many dedicated and loyal employees, thousands of them, at the Federal and State level who care deeply about the people they are serving and who are working hard to meet the needs of the people they serve under very difficult circumstances. But I would say that this is another case of a lot of very good people trapped in a broken system that needs to be fixed as promptly as possible so their efforts can be productive.

One of the important thing that can come out of this hearing is to begin the process of change, which will not be easy, but it will let people, like the people you are going to have on your next panel, understand that help is on the way, that policy makers are not going to turn back from looking at these issues and trying to make the changes that are necessary to make these programs more responsive to the needs of the present society.

There are a number of important issues, but I think the fundamental issues are three. The first is the issue of consistency and fairness. In our reports, we documented variations in the program across areas and across steps in the process. We had to pull the data together ourselves. What is remarkable is that the agency cannot provide policymakers like yourselves, on a routine and ongoing basis, information about why these differences exist so that you can begin to address them.

I think that one of the things that has to happen is that the agency has to be a better manager and produce information on a timely basis that allows it to better manage the programs and allows you to better exercise oversight.

Second, as I said before, the process can be very slow and cumbersome, and the public deserves better.

Third, the present systems is not sustainable as it is currently being administered. Changes will have to take place to meet this huge bulge that is going to come into the program, which has been predicted by the actuaries and is as sure to happen to the disability programs as it is in the Old Age and Survivors Program. This agency has to get prepared for that.

In terms of the elements of reform, we would point out three major things. The management structure needs to be made more accountable and more coherent. SSA has a weak management infrastructure, and there is just not enough attention being paid to the need for change so that the agency can be on top of this. One of the major challenges facing the new Commissioner will be to determine how to address these shortcomings.

Second, the Federal-State arrangement needs strengthening. I do not disagree that the State agencies are doing a very good job under difficult circumstances. As a Commissioner 20 years ago, I can tell you they have improved; they are very responsive, and they have very many knowledgeable people. But there are huge variations in their ability to discharge their responsibilities depending on which States they are in and what the State laws are.

We do not advocate Federalization today, but we do advocate issuing regulations that establish uniform standards so that the disability examiners have the levels of experience, training, background and pay that will enable them to do this job.

Our proposals may sound like we are interested in more Federal control. We are not. We are interested in helping the State agencies, which are often a small part of an umbrella State agency, get what they need to do the necessary work and for which the Federal government is paying 100 percent of the cost. In many States, for example, there is often a hiring freeze or other kind of restriction that curtails their capacity to do the work that the Federal Government is willing to pay for in the interest of helping people.

Chairman SHAW. Mr. Ross, could I ask you to sum up? We are going to be running over, and there will be some votes called, and that concerns me.

Mr. ROSS. Certainly. I would be happy to do that. I am almost at the end of my statement.

We think that the President has made a good move in stating his intention to name one of our own, Jo Anne Barnhart, as the next Commissioner. She will bring to the job a wealth of relevant experience and a clear understanding of the issues. You will find her to be a knowledgeable, thoughtful, and decisive representative of the agency.

We also commend Acting Commissioner Massanari, who has shown great initiative and leadership in preparing the way for the next Commissioner by establishing working groups to develop recommendations in many of the areas we have addressed.

Finally, I think it is important for me to say that it would be a mistake to underestimate how deep and numerous the problems are. Isolated incremental changes will not be sufficient to address the situation. Nothing less than a comprehensive plan for reform is needed to bring about coherent changes in the many interrelated elements of the disability program. These changes will likely have to be implemented over a long period of time but should be guided by the overall plan to avoid unexpected and unintended consequences. The Hearings Process Improvement Plan is a good example of something that has had many unintended and unexpected consequences and has not worked to improve things, but has actually worked to make things more difficult for both the people work-

ing in the Office of Hearings and Appeals and the public who have to deal with that office.

In closing, I want to emphasize that the Board is eager to work with the Congress, the administration, and the agency on the changes that need to be made.

I am very pleased to have this opportunity, and while I have gone way over my allotted time, we have spent so much time on this, you will have to excuse me for wanting to use my opportunity. I would be happy to answer any questions that you may have.

Thank you very much, Mr. Chairman.

[The prepared statement of Mr. Ross follows:]

**Statement of Stanford G. Ross, Chairman, Social Security Advisory Board**

Chairman Shaw, Congressman Matsui, members of the Subcommittee, on behalf of the Social Security Advisory Board I want to thank you for undertaking this series of hearings on the challenges and opportunities of the Social Security disability programs. These programs are of immense importance to the American people and their problems must be effectively addressed. Serious problems exist today, and if they are to be resolved, fundamental change is needed. This hearing is an important step in the careful review that needs to take place if change is to move forward in a timely and appropriate way. I appreciate the opportunity to testify before you today.

Over the last four years the Board has spent a great deal of time studying SSA's disability programs. We have consulted with the agency's leadership, visited with hundreds of managers and other employees in the field who are responsible for making the agency's disability decisions, and examined agency data. We have also had the benefit of hearing the views of many individuals and organizations in the disability community, both at public hearings and in individual meetings. As has been the case with all of our work, the Board's study of disability has been conducted on a nonpartisan basis. All of our reports have been issued without dissent.

**The Huge Scope of the Disability Programs**

Today, more than 154 million American workers are insured for Disability Insurance and rely upon this protection in case of serious illness or accident. More than 5 million disabled workers are receiving Disability Insurance benefits, and over 1.6 million spouses and children of disabled workers are also receiving benefits. More than 5 million disabled and needy adults and children, many of whom would otherwise be living in serious poverty, are receiving SSI disability benefits. About 1.6 million SSI beneficiaries also receive benefits under the Disability Insurance program.

As the baby boomers reach the age of increased likelihood of disability the growth in these programs will accelerate. The Social Security Administration's actuaries project that between 2001 and 2011 the number of DI worker beneficiaries will increase by 47 percent, and the number of SSI disability beneficiaries will increase by 15 percent. In the coming fiscal year, Social Security's disability programs are projected to cost about \$96 billion, or 5 percent of the Federal budget.

Processing disability claims is a massive operation that requires a growing portion of the time and attention of SSA staff at all levels. Each year, State disability agencies, under the direction of SSA, make initial disability determinations for more than 2 million individuals. About one quarter of these cases are appealed to an administrative law judge, requiring a face-to-face evidentiary hearing. This fiscal year, about \$5 billion, or two-thirds of the agency's \$7.1 billion administrative budget, is expected to be spent on disability work. In terms of management time, the demands of the disability programs appear to be even greater than these numbers suggest.

The public thinks of the Social Security Administration primarily in terms of the Old-Age and Survivors (OASI) programs. This is not surprising, given the fact that in calendar year 2000, these programs accounted for about \$357 billion, or 82 percent of total Federal benefit dollars paid by the agency. They represented the single largest program expenditure of the Federal government. From the standpoint of agency operations, however, the OASI programs run relatively efficiently. It is the disability programs that today are at the heart of SSA's administrative problems.

### The Gap Between Disability Policy And Administrative Capacity

Our study of the disability programs has grown out of our firm belief that these programs are a vital part of the nation's social insurance and welfare system. They are complex in conception and application and constantly changing as our society changes. They need vigilant attention in order to keep their policy and administrative structures sound and up to date.

Today, there is a serious gap between disability policy and the administrative capacity required to carry out that policy. There has not been a full-scale review of disability policy and process in over 20 years. The result is a great deal of incoherence and at times demonstrable unfairness.

All parts of the application and appeals structure are experiencing great stress. Field office employees lack sufficient time to explain program rules and provide the kind of assistance that many applicants need to file a properly documented claim. Backlogs are growing in many State disability agencies and caseloads are in effect unassigned. Most State agency administrators agree that SSA's current requirements for adjudicating claims cannot be appropriately implemented given the resources that are presently available. Hearing offices, the Appeals Council, and the Office of General Counsel are all struggling to keep up with the large workloads generated by the magnitude and complexity of the disability cases that are proceeding through the administrative and court appeals systems.

Determining whether an individual is disabled often is inherently difficult, but over the years, and particularly in the last decade and a half, changes in disability policy have made decision making increasingly subjective and complex.

For example, changes in SSA's regulations and rulings have resulted in a gradual but persistent trend away from reliance on medical listings to decisions that increasingly involve assessment of an individual's ability to function. Program rules now require all adjudicators to make a finding on the credibility of statements by claimants and others about the effect of pain and other symptoms on the claimant's ability to function. There are also more intricate rules relating to how to weigh the opinion of treating sources. Making assessments such as these is further complicated by the fact that a large portion of claims—the Board has been told half or more—involve allegations of mental impairment, which are often particularly difficult to resolve.

A number of the most significant changes that have been made have grown out of court decisions, many of which have not been appealed. These changes have not been reviewed by the Congress and there is a question as to whether the agency itself has adequately analyzed them from the perspective of—

- whether the decisions that are being made reflect the intent of the Congress,
- whether they will improve consistency and fairness in decision making throughout the system, and
- whether they are operationally sustainable for a program that must process massive numbers of cases.

We believe that the agency's regulations and rulings need to be reexamined from the standpoint of both sound policy and administrative feasibility.

Both the Administration and the Congress share the responsibility of ensuring that the agency has the resources it needs to carry out legally applicable disability policy. Today there is a large gap between disability policy and administrative capacity and the need to bridge it is urgent.

Given the magnitude and projected growth of these programs, it is increasingly important to step up and reexamine how they are working and whether the policies, resources, and administrative structure we have now are adequate to meet future needs.

### Fundamental Issues of the Disability Programs

In our January 2001 report, *Charting the Future of Social Security's Disability Programs: The Need for Fundamental Change*, we describe the major issues that we believe need to be addressed. I will not review them in detail today, but I would like to emphasize several areas of particular concern.

**First is the issue of consistency and fairness.** The Board believes strongly that consistency and fairness should be a fundamental goal of the disability programs. One of the primary strengths of the Social Security retirement program is that benefits are paid on the basis of objective rules that treat people consistently and fairly. Although determining disability is inherently more complex than determining age or work history, the objective should be to achieve as high a level of consistency and fairness in the disability programs as feasible.

These programs require sustained public support. This support can only be produced if there is transparency, so that the public believes that disability decisions are made consistently and fairly. This transparency is sorely lacking now.

A document issued by the Board in January, titled *Disability Decision Making: Data and Materials*, presents extensive data that indicate striking differences in outcomes over time, among State agencies, and between levels of adjudication. A recent independent study by The Lewin Group and Pugh Ettinger McCarthy Associates also found compelling evidence of inconsistencies in agency decision making.

For many years Members of Congress and others have expressed concern about differences such as these. Analysts have identified many factors that they think contribute to inconsistencies in outcomes, such as economic and demographic changes, regional differences in income and health status, court decisions, differences in the evidence at different levels of adjudication, and the fact that the disability claimant is often unseen until the face-to-face hearing at the administrative law judge hearing.

But many who are knowledgeable about the program, including adjudicators in State agencies as well as administrative law judges, have long believed that there are also reasons relating to program policy, procedures, and structure that are responsible for some if not many of these differences.

**Second is the slow and cumbersome nature of the disability determination process.** The time it will take a claimant to receive an initial decision currently varies according to where the individual lives, but on average takes about three to four months. Complex claims may take considerably longer, and for the many who pursue their claims through the hearing process, the final decision will likely take more than a year. The wait can be as long as three to four years if an appeal goes forward to SSA's Appeals Council. Lengthy waiting times such as these impose a heavy hardship on disabled claimants who may have no other source of income or medical assistance.

**Third is the unsustainability of the disability system as it is currently being administered.** The complexity of the current rules requires greater skills, training, and time for analysis and decision making than is currently being funded. Both State agencies and hearing offices lack sufficient staff to balance both quality of work and the high productivity that their massive workloads require. In many State agencies heavy workloads are causing employee stress, and staff attrition is a serious problem. For example, in 2000, 10 States had disability examiner attrition rates of 21 percent or higher. This is a serious impediment to public service, given the fact that most administrators believe that it takes at least 2 years to fully train a disability examiner.

Without major change, these problems will become increasingly critical as the growth in the disability workload accelerates over the coming decade.

### The Elements of Reform

I would like now to highlight the most important changes that the Board believes policy makers in the Congress and the Social Security Administration need to consider. Some of these changes are within the purview of SSA itself, but some would require Congressional action. Others would require at least the implicit concurrence of the Congress because they are likely to require additional administrative resources.

#### Strengthen SSA's Capacity to Manage

In our discussions with employees throughout SSA's massive disability structure, we have heard many expressions of concern about the agency's capacity to provide the strong and coherent leadership that the size and complexity of the disability programs require. In our observation, there are three major institutional shortcomings:

- lack of management accountability,
- a weak policy infrastructure, and
- the absence of a comprehensive quality management program that can provide the information needed by policy makers and administrators to make sound decisions.

One of the major challenges facing the new Commissioner will be to determine how to address these shortcomings. Jo Anne Barnhart, the person named to become the new Commissioner, has been an active participant in the Board's work, and is eminently qualified for this task.

Under SSA's present administrative structure, nearly every component of the agency is involved in some way in the administration of the disability programs.

The missions and interests of these many components differ, and no one other than the Commissioner has the authority to bring issues to closure. The result too often is indecision and stalemate rather than well thought out and timely action. The 1994 independent agency legislation gives the Commissioner broad organizational and appointment authority. We hope that the new Commissioner will be able to take advantage of that authority to create a management structure that will provide greater accountability and unified direction for the disability programs.

Equally urgent is the need to strengthen the expertise of the agency in the area of disability policy. SSA's ability to address important disability policy issues has diminished over the years. Downsizing and inadequate attention to the need for major new investments in this area have undermined the agency's capacity to provide adjudicators with clear and sustainable policy guidance. As noted above, SSA's regulations and rulings need careful review. There is an urgent need to develop a single presentation of policy to guide all adjudicators, update medical listings, and develop a replacement for the Department of Labor's Dictionary of Occupational Titles (DOT), which has long been used to determine whether a claimant has the capacity to work. The DOT is no longer being updated and there is need for an authoritative source for determinations of occupational capacity and related issues.

SSA also badly needs to replace its narrowly-focused quality assurance system with a new quality management system that will have much greater capacity to routinely produce the comprehensive program information that policy makers need to guide disability policy and procedures and to ensure accuracy and consistency in decision making.

I want to commend Acting Commissioner Larry Massanari for establishing working groups to come up with recommendations for how the agency can move forward as rapidly as possible in these areas. The actions he has taken should be of substantial assistance to the next Commissioner who undoubtedly will have to address all these difficult issues as promptly as possible.

#### **Change The Disability Adjudication Structure**

If problems of consistency and timeliness of decisions are to be addressed, changes in institutional structure will have to be considered.

#### **Strengthen the Federal-State Arrangement**

Since the beginning of the disability system a half-century ago, Social Security law has ceded to the States the authority for determining whether an individual is disabled. Although the Federal government pays 100 percent of the cost, the State agencies remain under the direction of the governor and the State legislature.

This administrative arrangement is inherently difficult to manage, and although it has lasted nearly 50 years, its efficacy has become increasingly questionable as the disability programs have grown in size and complexity. Many believe that the disability system should be an entirely Federal system in order to implement adequately the rules and procedures necessary to ensure high quality, uniform administration through the country. Bills to accomplish this were introduced by two former chairmen of this Subcommittee, Bill Archer and Jake Pickle. We believe it is time to reexamine the question of Federalization in the light of anticipated future needs of the disability programs.

In the short run, however, Federalization is a problematic option, given SSA's current lack of capacity to take on this major responsibility. To meet present needs, steps need to be taken as quickly as possible to strengthen the present Federal-State arrangement by issuing Federal regulations that require States to follow Federal guidelines relating to educational requirements and salaries for staff, training, quality assurance procedures, and other areas that have a direct impact on the quality of employees and their ability to make decisions that are both of high quality and timely. For example, regulations should ensure that States do not undermine the ability of the system to function by imposing hiring freezes or other actions that curtail needed State disability operations.

We believe that under the disability amendments enacted in 1980 SSA already has authority to issue these regulations, but if the agency decides otherwise, it should come to the Congress and request new legislation that will specifically authorize it to make these changes.

#### **Reform the Hearing Process**

Social Security claimants have had a right to a hearing since 1940, but the number who exercised that right was very small until the advent of the disability programs. Today, about 85 percent of appeals are disability cases, with most of the remainder being Medicare. The high volume of work demanded by the expanding number of appeals has periodically prompted SSA to press for higher administrative

law judge (ALJ) productivity, which many ALJs believe has not been balanced by an equal concern for quality. The relationship between the agency and its administrative law judges has been poor for many years, and has deteriorated now to the point where the judges have voted to form a union, with a view that this was necessary in order to have their views taken into account.

Both the agency's new leadership and the ALJs should work aggressively to repair the relationship and to develop reasonable procedures that will preserve the decisional independence of judges while also assuring promptness and consistency in decision making.

In addition, three substantive changes should be considered.

First, the fact that most claimants are now represented by an attorney reinforces the proposition that has been made several times in the past that the agency should be represented as well. We believe that having an individual who represents the agency present at the hearing would help to clarify the issues and introduce greater consistency and accountability into the adjudicative system. The proposal raises issues that would have to be addressed, such as providing representation for those claimants who do not have it, but these are essentially secondary issues that can be reasonably resolved.

Second, Congress and SSA should review again the issue of whether the record should be fully closed after the ALJ decision. Leaving the record open means that the case can change at each level of appeal, requiring a *de novo* decision based on a different record. Closing the record would heighten the need to develop the record as fully as possible before the decision is made in order to ensure that claimants are treated fairly. If new evidence emerges after the decision, a claimant would be able to make a new application, but finality would be achieved on the record presented before the hearing decision is made.

Third, we recommend that consideration be given to establishing a system of certification for claimant representatives and to establishing uniform procedures for claimant representatives to follow, such as requiring them (absent good cause) to submit all evidence within a specified number of days prior to the hearing and certify that the case is fully developed and ready for a hearing. The objective would be to provide for a more orderly and expeditious hearing procedure than currently exists.

#### **Rationalize the Role of the Appeals Council**

The Appeals Council performs two basic functions. First, it performs a case correction function by providing a final level of administrative appeal and by reviewing ALJ decisions on its own motion. Second, it reviews cases that are appealed to courts to determine whether the agency should defend them or whether it should request the court to remand them to the agency for the purpose of affirming, reversing, or remanding the ALJ's decision. The case correction function is important, but the way it is being conducted has been inadequate and needs to be rethought.

#### **Consider Changes in the Current Provisions for Judicial Review**

Over the years a number of bills have been introduced in the Congress on both sides of the aisle that would create either a Social Security Court or a Social Security Court of Appeals that would specialize in Social Security cases, with the aim of providing a framework that would produce greater uniformity in decision making. Past sponsors of such bills include former Chairmen of this Subcommittee James Burke, Jake Pickle, Bill Archer, and Andy Jacobs. In addition, the statutorily established Commission on Structural Alternatives for the Federal Courts of Appeals, chaired by Justice Byron White, recommended in 1998 that Congress should seriously consider placing judicial review of Social Security cases in an Article I court.

We believe that that the question of whether existing arrangements for judicial review should be retained or replaced by a new court structure deserves careful examination at this time by the Congress and the Social Security Administration.

#### **Bring Disability Programs Into Better Alignment With National Disability Policy**

Finally, there is a need to look at the very underpinnings of what constitutes disability today, and how best to serve the needs of individuals with disabilities.

Social Security's definition of disability has not changed in a fundamental way since it was enacted. It was conceptualized at a time when most of the work being performed required physical labor. Although the Congress has always emphasized the value of rehabilitation, there was little expectation at the time the program was developed that significant numbers of severely disabled individuals would be able to perform any kind of substantial work.

Today the shape of the labor market has changed dramatically. Many individuals with disabilities can and do work, and employment has become a major objective of many in the disability community. But there is growing concern that Social Security's definition, which requires individuals to prove that they cannot work in order to receive assistance, is inconsistent with this objective.

The issue of whether the present structure of assistance to the disabled provides sufficient help and incentive for employment requires thoughtful review. The 1999 Ticket to Work legislation, which this Subcommittee played a major role in developing and enacting, should be very helpful in encouraging beneficiaries to enter or return to work, but it is largely aimed at those who have already been determined to be disabled and are likely to have been out of the workforce for a substantial period of time.

Many experts believe that the most effective intervention is to help disabled individuals remain in their jobs or return to work as quickly as possible. Some research on ways to do this has been undertaken, but much more needs to be done. Included as part of this comprehensive research effort should be a study of whether providing some type of short-term disability assistance, combined with rehabilitation and employment services, would improve assistance for those who have disabilities while also relieving pressure on the permanent disability programs. The experience of other countries and of both private and public employers in the United States in facilitating employment for the disabled should also be examined. Where needed, specific legislative authority and funding for these studies should be provided.

#### **Conclusion: Constructive Change and Additional Resources Will Be Required**

The problems of the disability programs are not new, but they have continued to grow as the programs have become more complex, the number of claimants has grown, and resources have been constrained. Over the last few years, SSA has been working hard to find ways to bring about improvements through changes in the disability process. Employees in both SSA and the State agencies deserve great credit for performing as well as they have in the face of difficult circumstances. But it is unrealistic to think that over the next decade, as workloads soar and the agency loses more than half of its current workforce through retirement and other reasons, that even the current level of performance can be maintained.

If the Social Security Administration is to be able to provide an appropriate level of service to those who are disabled and to effectively discharge its stewardship responsibilities, fundamental changes in policy, institutional arrangements, and resources are needed.

Make no mistake. The problems are deep and numerous. Isolated, incremental changes will not work to address the situation. Nothing less than a comprehensive plan is needed to bring about coherent changes in the various elements of the disability system.

Experience teaches us that making major changes will be difficult. The issues are complex and sensitive, involving the basic well being of millions of vulnerable individuals. Changes will have to be carefully evaluated within the context of clear goals and objectives. These goals and objectives should ensure that all those who need benefits will receive them, those who can work and need assistance to do so will receive it, and the disability system will provide fair and expeditious decisions for all.

The agency and the Congress face difficult decisions. Your hearings provide the opportunity for the open discussion and debate that needs to take place to clarify issues for policy makers and the public. Importantly, the agency needs to take greater initiative in analyzing issues and recommending appropriate solutions to the Congress.

I appreciate this opportunity to present to you the views of the Board. I want to assure you that we are committed to continuing our efforts to strengthen the nation's disability system, and we look forward to assisting the agency, the new Commissioner, and the Congress in any way we can.

[The attachments are being retained in the Committee files, but you can download a copy from the following websites:

Charting the Future of Social Security's Disability Programs: The Need for Fundamental Change, January 2001, <http://www.ssab.gov/disabilitywhitepap.pdf>

Disability Decision Making: Data And Materials (Part One A), January 2001, <http://www.ssab.gov/chartbookA.pdf>

Disability Decision Making: Data And Materials (Part One B), January 2001, <http://www.ssab.gov/chartbookB.pdf>

Chairman SHAW. That is why I have been so lenient with the time. Thank you very much, Mr. Ross.

Mr. Brady.

Mr. BRADY. Thank you, Mr. Chairman.

Your basic message to us, Mr. Ross, is that there are three things we should do—restructure the management of the agency to make it more accountable and coherent; strengthen the State-Federal partnership to raise the quality and consistency of it; and undertake a comprehensive plan.

If we were to ask you what are the three most important things we ought to do, would those be it?

Mr. ROSS. Yes. I would also want to be honest with you that I think, despite \$5 billion sounding like a lot of money, it may well be that more resources in the short term are required. Some of these changes will take a while to kick in and produce savings, and meanwhile, there is a huge number of claims out there that need to be addressed. The Board has favored, both during the last administration and the present one, a budget for SSA that is greater than the one in the President's budget. We think, to put it bluntly, that the programs are being run on the cheap. There needs to be an adequate number of people in the Federal and State agencies to do this work, and they need to be supported by technology and other modern management tools.

Mr. BRADY. I understand someone else will be asking you how, specifically, we ought to undertake a comprehensive plan and what should be part of that process. But following up on the short-term initiatives, you made a comment that you see HPI as a failure. Mr. Ryan asked the previous witness about the pilot program in New Hampshire and 10 other States, and that pilot program seems to me to be fairly sound in its approach, taking more time to actually meet with the claimant, get more information in their file to present their case, give the examiners in the initial examination more time to review it. I think they combined the initial examination and the reconsideration together to have more time to thoroughly look at it, and there seems to be more accuracy and consistency in that initial denial or approval phase.

Does your Advisory Board see that as a process that should be applied across the other States as well?

Mr. ROSS. I think with both the HPI and the prototype plans, there are some good elements, and there are obviously some elements that are probably going to need to be changed or adjusted.

I did not use the word "failure." But I would say that the word we hear when we go to hearings offices most often are that "It has been a disaster for us."

Now, there are some positive things that have been learned from HPI, and they can be built on, and the same is true with prototype. But one of the challenges for the new Commissioner will be to sort out the things that are worth making generally available across the Nation and those things that should be adjusted or even abandoned.

It is much too early to know how to go on some of this, but it is not too early to say there needs to be more attention given to the interrelationship of these changes, because when you change one part of this puzzle without anticipating what it is going to do to the other parts, you have not improved things.

So I would be very slow to recommend going national, say, with prototype, even though all the things you say are true. There are aspects of it, such as more attentiveness and looking at things earlier, that are valuable.

Mr. BRADY. Thank you, Mr. Chairman.

Chairman SHAW. Mr. Becerra.

Mr. BECERRA. Thank you, Mr. Chairman.

Mr. Ross, thank you very much for your testimony—and thank you for your candor, by the way.

Let me ask you a question first with regard to the definition of disability that I asked Acting Commissioner Massanari. I am wondering if you could tell me that the Board has any intention to recommend that we reconsider the definition of disability within the SSA.

Mr. ROSS. The Board's reports actually address that issue. We see important discrepancies between the definition in the ADA and the definition under the Social Security laws. Even more important than the legal definitions is the way these laws work in practice. One law emphasizes trying to keep people who are disabled in the mainstream by accommodating the workplace, ending discrimination. The Social Security law provides an incentive for people to prove total and permanent disability. And while Ticket to Work legislation which this Committee has worked so hard on may help to improve things, we know that the best time to help people is before they are determined to be disabled and try to get them some help up front to stay in the workplace.

So we think there are whole areas of policy where there needs to be a fresh look to see whether more can be done to help people stay in the mainstream and not become dependent on this program.

Mr. BECERRA. Do you see that as a marked departure from the existing definition of disability within the system?

Mr. ROSS. I do not know whether it is so much in the definition as in the application, and it may be that an adjunct program that may be even more comprehensive than Ticket to Work needs to be undertaken; it could be some temporary support to help people who want to work and try to continue to work but need some help during this period so they do not actually get into the Social Security disability system.

Other countries have done some of this; in some areas like worker's compensation, there have been some developments. There is a whole universe of things that you can look at, and the analysis and research to try to figure out how to help people in today's economy really should be looked at. We are dealing with a definition that goes back to a time when most work was physical labor, and it was pretty clear that if you could not work, you could not work, and that was the end of it. In today's world, lots of people who are disabled work because it is a service economy, the technology has changed, and the new directions that we are seeing—and many of

them come out of the disability community and their advocates—have not been recognized sufficiently in these laws. And, as a lawyer, I have to say that I do not read the Cleveland case the same way that Acting Commissioner Massanari does. It said there are two separate definitions, and if that is what Congress did, we will let it stand. It pointed out the incongruity of the Social Security rules that say that you are disabled even if the employer can and will accommodate the workplace—you can still be entitled to the benefits. So the two are not meshed.

Mr. BECERRA. I suspect we will be very interested in seeing how you and the rest of the Board continue to develop those thoughts about the definition.

Let me ask one last question since my time is expiring quickly. You made some very frank statements that there is a need for a comprehensive plan for reform and that the program has been run on the cheap. Maybe not in the 30 seconds that remain, but if you could please provide us, I would be very interested in hearing your thoughts and having more particular communications with the Advisory Board members on what you think we need to do, because you are sounding an alarm, and it will not come out just in a report, but I hear the rumbling, and the closer we put our ear to the ground, I think we are going to find out that there is a big stampede. So I hope that you are willing to give us some very frank and direct commentary on what we need to do, because if we are going to have to increase funding, if we are going to have to make some major changes, we should hear it now, because it will not be easy to do.

Mr. ROSS. Thank you. We will try to continue to help, and we will be responsive to you. Thank you.

Mr. BECERRA. Thank you. Thank you, Mr. Chairman.

Chairman SHAW. Mr. Hulshof.

Mr. HULSHOF. Thank you, Mr. Chairman.

Mr. Ross, welcome. I am interested in the part of the report that talks about trying to improve the relationship between the Social Security Administration and the administrative law judges. And I appreciate the recognition, as Mr. Becerra said, the very candid recognition, of the tension between preserving the decisional independence of an ALJ and yet trying to get that prompt determination in maintaining that independence. I know there is that tension available.

You suggest, or the report suggests, having the agency represented at the hearing. And I know that some of the ALJs, as you put it on pages 19 and 20 of your statement, are concerned about maybe a tough cross-examination because the record on appeal is going to see that maybe they piled on against the claimant and that the agency should have someone representing them at the hearing.

Now, I do not have the institutional memory that some of my colleagues here do, but hasn't that been tried before?

Mr. ROSS. Yes. During the reforms that we initiated in the late seventies and early eighties, that was done as an experiment. It was brought to a halt for a variety of reasons including an adverse court decision. But it is 20 years later, and the situation has changed dramatically.

Most claimants are represented today, and represented by people who are quite able, and the State agency decision is not defended. Now, I do not know how many of you are lawyers, but I am a lawyer, and I know that when you are not required to defend your decisions, you make mistakes. The best way to assure the quality of the agency's decisions is if they have to defend them, because a lot of their decisions would not pass the "red face" test. They are not going to get up in front of an ALJ and try to defend bad decisions.

So a number of cases would go away immediately.

Second, the ALJs cannot wear so many hats. The ALJ really has to be a judge and cannot start cross-examining and trying to figure out whether the truth is being told by this one or that one. The ALJs' jobs would be a lot better if they could be a judge and have both sides make their arguments, and then they would make a decision.

Now, there are problems that you would have to solve. You would have to make sure that those claimants who are not represented do have representation. There are lots of issues. I am not saying that it would be simple, but I do think you could solve those problems, and the end product would be a better process.

Interestingly, the new Medicare cases that have been assigned to the Office of Hearings and Appeals will be adversarial procedures, so they are going to have a large caseload that is adversarial that will provide some insights into how well this might work in the disability area.

Mr. HULSHOF. I appreciate that.

You also talked about the recommendation of closing the record after the hearing and whether we should review that issue. I am not going to spend time on that, but I wanted to make sure the record was complete that that is part of this recommendation, as well as a third recommendation of new rules for claimant representatives. I probably do not have the time to ask you about it. But one thing that I think was sort of throw in on page 21 that was not one of the main three recommendations was that you suggest that Congress review the issue of payment of attorney fees. We had this, I think, as part and parcel of a previous hearing about attorneys' complaints on statutory limits.

Do you have any suggestions for us? I know that it was not one of the main three components of suggested changes for repairing this relationship, but what kind of guidance would you provide to us on that?

Mr. ROSS. The attorney fee situation is structured in a way that the ALJs really have to ignore things that are obvious to them, such as whether somebody has done a considerable amount of work or very little work, whether they have done a good job or a poor job. Unlike in most court settings, where the judge would review the allowance of fees in a situation, that does not take place here; it is pretty mechanical.

This is a sensitive area. Certainly attorneys who work hard and do a good job for their claimants should get fees; and certainly if we go to an adversarial situation, it is important that they get fees and provide good representation.

But under the present situation, where it is a non-adversarial proceeding, I think there are more questions raised about the fee

issue because their value-added in many cases is subject to question.

Chairman SHAW. Mr. Ryan.

Mr. RYAN. I will yield, Mr. Chairman, so we can get to the next panel.

Chairman SHAW. Thank you.

Mr. Ross, I will just throw one thing in. Back when we had the city courts, I was a municipal judge, and we would bring in a city prosecutor if and only if the defendant was represented himself in order to balance it out. Maybe that is something we should look at. Even though this is not really supported to be an adversarial situation, it would appear that there should be someone in there to defend whatever the—

Mr. ROSS. Mr. Chairman, we have had some ALJs tell us that they will almost invariably go to legal services or others and tell claimants to be represented. They do not want to sit on cases any more where people do not show up with an attorney or other representative, because the program has gotten so complex that they are afraid the courts will reverse them if the case does not show that there has been representation.

So there is a different situation today than when the experiments were run in the early eighties, and your analogy may well be very helpful.

Chairman SHAW. Thank you. Thank you for what you do and for the time that you put in. Obviously, you have been very conscientious.

Mr. ROSS. Thank you very much for having me.

[Questions submitted from Chairman Shaw to Mr. Ross, and his responses follow:]

Social Security Advisory Board  
Washington, DC 20024

*Question 1. Does the Advisory Board believe the disability determination process should be federalized in the long run? By that, I mean, should the states be taken out of the process? How would the states feel about that in your view?*

The Board's principal concern is that the present Federal-State arrangement is not ensuring high quality, uniform administration throughout the country. There are wide variances among State agencies in areas that have a major impact on the quality of work that is performed, including staff salaries, hiring requirements, training, and quality assurance procedures. In addition, State agencies are sometimes subject to statewide hiring freezes or other constraints that can severely limit their ability to process claims in a timely way. The Board has urged the Social Security Administration to revise its regulations to require States to follow Federal guidelines in these areas. We have also stated that SSA should be prepared to take over the work of a State agency if, as a result of these new regulations, any State should decide to withdraw from the program.

In addition, the Board believes that the issue of federalizing the disability determination process should be examined by SSA and the Congress in light of anticipated future needs of the disability programs. This will require careful analysis of the administrative, fiscal, and political issues that federalization would entail. We do not know how States would react to being relieved of their responsibilities for making disability determinations, but this would likely depend upon the specifics of any particular federalization proposal that may be made.

*Question 2. You state that nothing less than a comprehensive plan is needed to bring about coherent changes in the various elements of the disability system. Can you suggest how SSA could develop a comprehensive plan? What particular role do you believe the Congress should play?*

The problems that need to be addressed will require changes in policy, administrative arrangements, processes, and resources. To develop a comprehensive plan, SSA will have to bring together the expertise of employees from throughout the agency, including the Office of Hearings and Appeals as well as the State agencies.

The plan will have to include not only a description of the changes that need to be made but also a careful timetable for implementing these changes in an integrated way so that there will not be unintended consequences. Implementation of all the changes that are needed will undoubtedly extend over a substantial period of time, so coordination will be important.

Changes should be made with (1) a clear understanding of their likely impact on all parts of the process, including field offices, State agencies, hearing offices, the Appeals Council, the Office of General Council, and the courts, and (2) a measure of assurance that the resources, including systems support, that will be needed to carry them out, will in fact be available. The agency and the Congress need to work together closely to develop changes that can be widely supported and successfully implemented. Initially, the Congress can be particularly helpful by holding hearings that will educate policy makers and the public on the problems that need to be addressed and the changes that are needed.

*Question 3. You testified about the lack of management accountability. One recommendation by Mr. Willman, from our third panel, is that SSA designate one person, accountable directly to the Commissioner to oversee the entire disability program. Would you recommend this to the new Commissioner?*

The 1994 legislation that established SSA as an independent agency gives the Commissioner the authority to organize the agency as the Commissioner considers necessary or appropriate. There are a number of ways the Commissioner could try to bring greater accountability and unified direction to the disability programs. The Board noted in its January 2001 report that one way to do this would be to appoint a high level individual, who would report directly to the Commissioner and have authority to make decisions that cut across functional lines, to manage the programs. Alternatively, the Commissioner may determine that, given the importance of the disability programs, it is the Commissioner who is the most appropriate person to assume direct responsibility for coordinating the many aspects of the operation. If the magnitude of the Commissioner's other responsibilities is deemed too great to make this feasible, the Commissioner could assign this responsibility to the Deputy Commissioner. Still another option would be to restructure the agency so that disability-related functions could be coordinated more coherently than under the agency's present organizational arrangements.

*Question 4. You state that there is concern that disability decisions be consistent and fair in order to sustain public support of SSA's disability programs. In order to do this, you feel that public support can only be produced if there is transparency. Can you tell us more about what you mean by transparency, and how it would help?*

The disability programs require sustained public support. This support can only be produced if it is clearly perceived by claimants and the public at large that disability decisions are made consistently and fairly. One reason the disability programs do not share the level of public confidence enjoyed by other programs administered by SSA is because there is a longstanding and widespread perception that the agency is unable to apply the statutory definition of disability in a uniform and consistent manner.

As data assembled by the Board show, there are striking differences in outcomes over time, among State agencies, and between levels of adjudication. Analysts of the disability programs have identified many factors, such as economic and demographic differences among regions of the country, which they believe contribute to these differences. However, the agency has no effective mechanism to provide the kind of information that policy makers and administrators need if they are to understand why differences are occurring and the degree to which they may be the product of the agency's own policies and procedures. The lack of transparency in how decisions are being made is harmful in two important ways. It contributes to a perception that the program is not administered consistently and fairly, and it prevents policy makers and administrators from knowing what corrective action is needed.

The Board has recommended that SSA develop and implement a new quality management system that will routinely produce the comprehensive program information that policy makers need to guide disability policy and procedures and to ensure accuracy and consistency in decisionmaking. The quality management system should incorporate all parts of the disability determination process. Making the information that it provides available to persons who are concerned with the disability programs both within and outside of the agency should promote more uniform administration and better public understanding of and support for the disability programs.

*Question 5. Another area you suggest needs a close review is reform of the hearing process. You state that Social Security claimants have had a right to a hearing since 1940, but the number who exercised that right was very small until the advent of the disability programs. You state today that about 85% of appeals are for disability*

*cases. Do you have any suggestions of what could be done to decrease the number of cases appealed such as program changes?*

Individuals who believe their cases have been incorrectly decided should be encouraged to appeal the decisions, as the agency currently does. But it is in the claimant's interest, as well as the interest of the programs, to have a determination that the claimant considers satisfactory early in the process so that an appeal is not considered necessary.

The Board's reports point to a number of improvements that need to be made in the disability system that may affect the number of cases that are appealed. For example, at the beginning of the application process claimants need to be given a better understanding of the rules of the program and the information needed to correctly process their claims. Improving the Federal-State arrangement and providing adequate resources at the field office and State agency levels should result in better developed cases and better reasoned and explained decisions. Introducing adversarial hearings at the appeals level may also have an indirect effect over the long term because State agencies may become more rigorous in their decisionmaking if the decision has to be defended at a hearing. More careful articulation of policy, and making policy uniformly applicable at both the State agency and administrative law judge levels, should produce more uniform decisionmaking, which also may affect the number of appeals. The Congress and the agency should also examine the extent to which the changes that have been made in recent years as the result of court decisions and other pressures have produced a degree of subjectivity into the process that encourages continued appeals.

In addition, both the Congress and SSA should carefully review the impact of the agency's present plan to eliminate the reconsideration step in the appeals process. SSA is currently testing the elimination of reconsideration in 10 prototype States. The agency intends to eliminate reconsideration nationwide as one of a number of changes it plans to make in the disability determination process. It is still unclear what impact the elimination of reconsideration and the other changes that are being tested will have on claimants and on the ALJ process. If the evaluation does not clearly show that the prototype changes will produce the hoped for results, including significantly fewer appeals to the ALJ hearing level, SSA should consider enhancing the current reconsideration step by offering claimants a face-to-face hearing and ensuring that it involves a de novo review that is conducted only by highly trained and experienced individuals.

*Question 6. In your testimony, you state that the role of the Appeals Council should be rationalized. You specifically point to one function, case correction, which should be reviewed because the way it is currently being conducted is inadequate. Can you explain how it is inadequate, and what could be done to improve it?*

The Appeals Council performs a "case correction" function by providing a final administrative appeal for individuals whose claims have been denied by an administrative law judge. Congress also gave the Appeals Council the authority to review ALJ decisions on its own motion in order to ensure that the agency's policy is being uniformly applied and to identify areas where policy needs to be more clearly articulated.

Currently, there are weaknesses in the performance of the case correction function from the standpoint of both individual claimants and the disability programs. For claimants, the Appeals Council step can be unreasonably slow. Although it has improved recently, the average time for processing an appeal was 505 days in fiscal year 2000. From the standpoint of the programs, the Appeals Council step appears to be ineffective in improving consistency in the application of policy or in identifying areas where policy articulation needs to be improved. Although in recent years the number of cases being remanded by the Council to administrative law judges has increased, the Board has been told that the explanations for the remands that are provided to the judges often give them little guidance as to the reasons why the decision needs to be reviewed. The Council has also been reviewing too few cases on its own motion to serve as an effective monitor of consistency and accuracy in the application of policy.

In addition, the current system allows claimants not only to present additional evidence to the Appeals Council but also to present new allegations of disability. Rather than performing an appellate review, the Appeals Council becomes involved in determining, or re-determining, facts. Closing the record after the ALJ decision would give the Appeals Council an appellate function. Claimants would, of course, have the right to file a new claim in order to present new evidence or allegations.

*Question 7. You state that over the years a number of bills have been introduced which would create either a Social Security Court or a Social Security Court of Appeals which would specialize in Social Security cases with the aim of providing a*

*framework to produce greater uniformity in decision making. Can you give us some advantages and disadvantages of creating a separate court system?*

The principal argument for a Social Security court is that it would provide more uniform case law throughout the country and increase the consistency of decisions. It would provide more uniform procedures, resulting in more consistent application of the substantial evidence rule and more uniformity in how remands are made. A separate court system would also provide a bench with greater expertise in disability program rules. Social Security cases are only a small percentage of Federal court cases, and generalist judges cannot be expected to have expertise in this subject. A final important advantage is that there would be less variance throughout the country in how long an appellant has to wait to have his case heard.

The major disadvantage would be the loss of the legal debate that now takes place as issues are discussed in various Federal circuits. Some refer to this as a "percolation" of ideas before review by the Supreme Court is sought. Another point that is raised by opponents of a separate court system is that, even though Social Security court proposals that have been made in the past provided for divisions and field panels to make the court more accessible, these might not be as convenient for claimants as the existing court system. Finally, there is the issue of the number of judges needed and the attendant costs. The issue of additional cost needs to be studied. A separate court would not create additional work but would re-distribute existing work. A study should clarify whether the costs of a separate court would be offset by savings elsewhere.

Stanford G. Ross  
Chairman

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Chairman SHAW. We now have a panel consisting of Witold Skwierczynski, who is President of the National Council of SSA Field Operations Locals, American Federation of Government Employees, AFL-CIO, Baltimore, Maryland; Steven Korn, who is President of the National Council of Social Security Management Associations, Inc.; Sue Heflin, who is President of the National Association of Disability Examiners, from Jackson, Mississippi; Douglas Willman, who is past President of the National Council of Disability Determinations Directors, from Lincoln, Nebraska; James A. Hill, President of Chapter 224, National Treasury Employees Union, from Cleveland Heights, Ohio; and finally, we welcome the Honorable Ronald G. Bernoski, who is President of the Association of Administrative Law Judges, from Milwaukee, Wisconsin.

We have all of your testimony, and I would request, in that we are getting a little late, and we want to get through all the witnesses on the panel, if you could be as brief as you can so that members will have an opportunity to question you.

We are going to be starting to vote, and when that happens, it is going to make it very difficult for us to continue the hearing, particularly because Congress will be letting out, and people will be catching planes and going home.

Mr. Skwierczynski.

**STATEMENT OF WITOLD SKWIERCZYNSKI, PRESIDENT, NATIONAL COUNCIL OF SSA FIELD OPERATIONS LOCALS, CHICAGO, ILLINOIS, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO, BALTIMORE, MARYLAND**

Mr. SKWIERCZYNSKI. Thank you, Mr. Chairman.

My name is Witold Skwierczynski. I am with the AFGE union. We represent employees who work in the 1,300 field offices and 36 teleservice centers around the country. It is a bargaining unit of about 25,000 people.

The people whom I represent interview the public; they take and process disability claims. Our frontline workers are dedicated, they care about the disability program, and they want changes.

The disability program is broken. What we are experiencing right now is higher processing times; there is no uniform decision-making; each State has different approval rates and criteria. We have a sad situation where there are 150,000 cases that SSA has sent to States that are not assigned to any disability examiners and are sitting up to 6 weeks before they are assigned.

It is our experience that the prototype is a failure. It has resulted in higher processing times. Claimant satisfaction is low. Employees are dissatisfied with the process. The claimant conference is, frankly, a joke; only 2 percent of those who do a claimant conference have a reversal. And hearings requests have escalated out of control. The States are complaining about the quality of the product that is produced in Social Security offices, and Social Security employees complain about the State backlogs.

There are some solutions, and in my statement, I include a number of them, but I will concentrate on three—more resources, the Disability Claims Manager pilot, and the Ticket to Work pilot and employee support representatives.

I think that more resources are absolutely necessary. Efficiencies, Internet claims, and streamlining the decisionmaking process will not derive the kinds of changes that the Subcommittee is looking for.

The disability process is labor-intensive. Actuaries predict that our workloads are going to go up close to 50 percent by the end of the decade. I was disappointed with Commissioner Massanari's support of the President's budget. The previous Commissioner Apfel in his budget that he proposed before he left asked for 2,426 more work years, and in that budget, he indicated that if Congress provided that kind of assistance, we would be able to process more disability cases, reduce the SSA pendings, produce more hearings, and reduce the pending hearings.

So I urge the Committee to encourage the Appropriations Committee to seriously consider the Apfel proposals.

On the Disability Claims Manager (DCM), the pilot ends today. DCM is a caseworker approach and combines the disability and entitlement decision making.

What are the results of the pilot? It is a winner. Why? High levels of customer satisfaction. I include a chart comparing customer satisfaction to the prototypes, and it is amazing.

On processing time, average processing time is 73 days. The agency in their FY 2002 goals is shooting for 108 days; that is 32 percent better than the agency's goal.

Accuracy, costs, and productivity are comparable to the current process. Employee satisfaction is very high.

Why is SSA shutting it down? It is a tragedy, actually. There is State resistance. They think it is a threat to the 45-year monopoly that the States have on the disability decisionmaking process. There is no political will for SSA to buck that trend, and they are afraid to come to you and ask for the changes that are needed in legislation to allow Federal employees to make disability decisions. We would ask that you strongly consider that in view of the success

of the DCM pilot, that having a caseworker approach is a much more efficient, speedy, and better way to process disability claims.

We would also ask you to look at the Employee Support Representative program. This Committee was the catalyst for the Ticket to Work legislation. Part of Ticket to Work is the establishment of the Employee Support Representative program. It is a pilot; there are only 32 of them. That worker plans and develops outreach and communication regarding work incentives with community groups. They also do work issues and continuing disability review investigations.

The recent evaluation on that program is excellent. For every \$1 spent on just the CDR portion of the program, the trust fund gets a \$12 return. This will reduce overpayments if we have an aggressive Employee Support Representative (ESR) program across the country.

Currently, people on disability who work is the second-highest incidence of overpayments within Social Security. It also has a redeeming social factor in that we are helping disabled people to return to work and to have more dignity in their situations and not have them permanently on the disability rolls.

We would ask Congress to urge the agency and to provide funding to expand ESR to every office in the country so that it will be a more effective program than just the 32 that we have. I think the agency is reluctant to do that. They are afraid that expanding the ESR program under current staffing constraints will cause problems in the initial disability case work.

So we need help from this Committee to urge the agency and to ensure the agency does expand that program which is of benefit not only to disabled people but enhances the viability of the trust fund.

Thank you.

[The prepared statement of Mr. Skwierczynski follows:]

**Statement of Witold Skwierczynski, President, National Council of SSA Field Operations Locals, Chicago, Illinois, American Federation of Government Employees, AFL-CIO, Baltimore, Maryland**

Chairman Shaw, Ranking Member Matsui, and members of the Social Security Subcommittee, I want to thank you for your invitation to testify on the subject of SSA's disability programs and for the opportunity to present this statement regarding the longstanding and worsening crisis in the Social Security Administration's disability programs. As President of the National Council of SSA Field Operations Locals, I speak on behalf of approximately 25,000 Social Security Administration (SSA) employees in over 1300 field offices and 36 Teleservice Centers across the country. These employees receive, process and review disability benefit applications, appeals requests, and assist disabled beneficiaries with many post entitlement issues, including recent employment support initiatives. AFGE welcomes the opportunity to encourage the prompt action that is needed to ensure that the Social Security Administration can fulfill its current and future obligation to serve the American people.

I would like to extend our gratitude to Stanford Ross and the Social Security Advisory Board (SSAB) for their continued perseverance in addressing improvements necessary to strengthen SSA's capability to respond to the demands of the disability workloads, present and future. AFGE strongly agrees with the SSAB's finding that additional resources are essential to administer these disability programs. AFGE fully supports the Board's recommendations to exclude SSA's administrative budget for Social Security from the statutory cap that imposes a limit on the amount of discretionary government spending.

While SSA disability workloads continue to increase steadily, human resources have been constrained. As this committee is aware, the crisis stems from a severe downsizing within the Agency, almost entirely in those positions that provide direct

public service. Senior SSA officials and AFGE have testified at various times to this Committee that without human capital and process improvements, our Agency will find itself with a deficit of nearly 20,000 employees to maintain the previous levels of public service. The improvements and the staff increases needed to deliver the timely, high quality service that our clients have paid for and deserve have not materialized.

AFGE supports the budget proposed by former Commissioner Apfel of \$8.2 billion for FY 2002. Chairman Shaw proposed an even larger appropriation for FY 2002 (\$8.4 billion) when he sponsored HR 5447. These resources are necessary to provide sufficient staff to enable SSA to efficiently process its disability workloads. Absent such resources SSA will process fewer claims and fewer continuing disability reviews (CDRs). Processing times will be longer and waiting times in offices will exceed tolerable limits. Overpayments will increase due to staffing shortages. These outcomes were all predicted in the former Commissioner's budget proposal. AFGE believes that the American public deserves a better deal from SSA. Actuaries predict that SSA's disability workloads will increase by over 40% by the end of the decade. Processing times are already escalating due to the increasing volume of work. In addition, overpayments are rapidly escalating due to SSA's inability to properly monitor eligibility of those currently on the benefit rolls.

SSA observers such as the SSA Advisory Board are critical of the uneven allowance rate which depend on a claimant's state of residence. Profit motivated companies have become an increasing problem in SSA. These companies have taken over some claims taking functions that have traditionally been viewed as inherently governmental. Such transfer of work has often resulted in poor service and occasionally in outright fraud and criminal activity. In addition, SSA's own management information systems have been compromised due to cutthroat competition by SSA managers over ever decreasing resources.

Solving these problems is a daunting task. A multifaceted response is required. Certainly Congress must supply adequate budgetary resources to enable SSA to process the anticipated increases in disability workloads. However, many of SSA's disability related problems can be solved if SSA rolls out two pilots which have proven remarkably successful in reducing processing times, providing greater customer satisfaction and eliminating some of the large overpayments in the Disability program. These pilots are the Disability Claims Manager (DCM) and the Employment Support Representative (ESR).

#### **Disability Claims Manager**

Today the Social Security Administration (SSA) will close down the Disability Claims Manager (DCM) pilot which is the final and only successful project of the approximately \$100 million Disability Process Redesign. SSA is abandoning this project, closing the sites and dismissing journey level Federal and State DCMs before a complete consideration of the formal evaluation results that is targeted for a mid-July release.

The DCM was designed as a proof of concept test of one stop service to SSA's disability claimants. The current bifurcated process is slowed by hand-offs between the federal claims representatives and the state disability examiners. Claimants do not understand the system. Currently federal employees interview disability claimants and secure information regarding their medical condition. The medical information is sent to state disability processing centers. Employees in the state centers secure the medical evidence of record for the claimant. Often claimants are referred for consultative examinations by contracted physicians. After all required medical information is secured, a state disability examiner decides whether the claimant is disabled and sends this decision back to the SSA field office. SSA makes decisions on all of the claimant's non-medical entitlement factors such as benefit amount, entitlement of children and spouse, correct posting of earnings in their work history, etc.

Claimants are thoroughly confused by this process. They are confused by the division of duties between the state and federal workers. They are never able to identify who makes the medical decision on their disability claims. They never are seen by this state decision-maker. The public expresses significant frustration to front line SSA employees regarding this process.

The three-year DCM test measured the capability of one person to adjudicate both the technical and medical factors of entitlement. It was intended to evaluate the overall processing time and decisional quality of the DCM as compared to the current process. The results are a resounding success! The DCMs succeeded in this position, achieved a statistically significant reduction in processing time, and maintained the same high-level quality in comparison to the current process.

The Agency's FY 2002 Performance Plan sets as a goal disability claims processing time of 108 days. DCM processing time during Phase 2 of the test was 73

days overall. Congress should closely question Agency officials who ignore such performance and prefer to maintain the current—and significantly more lengthy—process.

Congress should also examine the scandalously deteriorating performance levels of the states. The SSA Advisory Board indicated in its January 2001 report that state employee attrition levels have escalated as high as 38% per year in state DDS facilities. The inadequate pay and benefit package provided by some states cause many employees to abandon their jobs. State backlogs have become endemic in many states. The DDS is now staging cases. This means that 150,000 disability claims at any given time are unassigned to disability examiners because their case-loads are at the maximum. Such cases may not be assigned to a disability examiner for up to six weeks. And SSA is satisfied with this current system?

Customer satisfaction is the greatest accomplishment of the DCMs. They meet with the claimants at their first point of contact and explain SSA's requirements for disability eligibility. The DCMs worked concurrently with physicians, advocacy groups and the claimants on their cases. When compared to both the current process measurement study and a separate study of the Prototype process, the DCMs scored significantly higher in all areas of customer satisfaction. It is noteworthy that among claimants denied benefits, satisfaction with the DCMs was significantly superior to both the current process and the Prototype process. Under the current process, claimants do not meet a decision-maker until the hearing stage of their case. DCM claimants enjoyed the fact that they knew their caseworker and could communicate with them while the claim was being processed.

The DCMs themselves reported an 83% higher job satisfaction rating by taking responsibility for all aspects of the disability case, compared to their previous work in handing off decisions to others. It is imperative to recognize these excellent human resources and to empower employees. This would reduce the attrition rates that are increasing in both the federal and state sectors.

AFGE repeatedly has called for SSA and this Subcommittee to conduct an independent evaluation of the formal (Phase 2) DCM test. The Lewin Group assessed Phase 1 and found that the DCM provides a viable approach for processing initial disability claims. Separate SSA components measured Phase 2 processing time, customer satisfaction, employee satisfaction and quality compared to a control group. These studies proved the DCMs' effective service. SSA attempted to measure productivity and the administrative cost of the DCM and found it to be within a comparable range to the current process. A longer-range study is required to measure program cost in appeals rates and benefits paid.

Shutting down the DCM sites on June 29th clearly shows that SSA reached the wrong conclusion about the DCM in the disability process. The test is the first successful breakthrough streamlining the claims process for disability claimants. Unfortunately SSA leadership lacks the political will to demand that Congress enact legislation permitting SSA workers to make disability decisions. Such legislation is necessary to enable a full roll out of this wonderful example of good and efficient government.

The Agency favors the Prototype program, which eliminates the reconsideration process and incorporates the single decision-maker. While the Agency is willing to go ahead with the Prototype, the public is much more satisfied with the DCM process.

The following is a comparison of the results of customer satisfaction studies regarding the DCM and the Prototypes. SSA's Office of Quality Assurance conducted these studies.

Customer Service Comparison—DCM/Prototype (Excellent/Very Good Responses)

| Question   | DCM | Prototype |
|--|-----|-----------|
| Adjudicator Explained Rules/Requirements—claim allowed ..... | 74% | 46%       |
| Adjudicator Explained Rules/Requirements—claim denied .....  | 41% | 27-35%    |
| Adjudicator Caring/Helpful—claim allowed .....               | 87% | 59%       |
| Adjudicator Caring/Helpful—claim denied .....                | 60% | 38%       |
| Adjudicator Courteous/Respectful—claim allowed .....         | 87% | 67%       |
| Adjudicator Courteous/Respectful—claim denied .....          | 65% | 53%       |
| Adjudicator Job Knowledge—claim allowed .....                | 85% | 64%       |
| Adjudicator Job Knowledge—claim denied .....                 | 64% | 42-60%    |
| Amount of Time Spent with Claimant—claim allowed .....       | 78% | 58%       |
| Amount of Time Spent with Claimant—claim denied .....        | 49% | 33%       |
| How Long it Took to handle application—claim allowed .....   | 58% | 40%       |
| How Long it Took to handle application—claim denied .....    | 23% | 18%       |

## Customer Service Comparison—DCM/Prototype (Excellent/Very Good Responses)—Continued

| Question                                     | DCM | Prototype |
|--|-----|-----------|
| Clear Notice With Reason—claim allowed ..... | 69% | 41%       |
| Clear Notice With Reason—claim denied .....  | 21% | 20%       |
| Overall Service—claim allowed .....          | 79% | 47%       |
| Overall Service—claim denied .....           | 25% | 25%       |

Goals and objectives in the Social Security Advisory Board Report, January 2001, emphasize that claimants must be assisted to understand the disability rules and determination process. The disability system should provide fair and consistent treatment, ensuring high quality decisions by well-qualified and trained adjudicators, who provide expeditious processing of claims and increased claimant understanding. The DCMs provide this service and the claimant's know it!

The next step should be a nationally representative pilot of the DCM process for handling initial disability claims. It is time to provide claimants one stop service. This occurred in 36 federal and state DCM test sites for the past three years, and should be expanded to represent all states and all SSA regions. SSA's investment in resources for this successful pilot has resulted in a blueprint for a more efficient disability process. Rejecting it borders on malfeasance. Congress must take action to preserve this example of good government.

There is a critical need for the DCM in bridging the gap between the federal and state processes that currently specialize in initial disability adjudication. The investment in giving both federal and state employees control over the medical development is the incentive to involve the claimant in adequately developing communication and understanding from the outset. This will result in a consistent and equitable application of SSA's process unification approach.

AFGE asks that the Subcommittee take an oversight role in the next step—piloting the DCM nationwide. Legislative change is required to accomplish this because the current law reserves technical entitlement to the federal sector and medical entitlement to the states. The DCM provides both federal and state components an opportunity to work together to finally remedy the process for claimants who are clamoring for a responsive system that meets their needs!

#### **Employment Support Representative**

Another fundamentally crucial piece in SSA's ability to provide viable, responsive, community based service to disabled beneficiaries is the Employment Support Representative (ESR).

The Ticket to Work and Work Incentives Improvement Act, which was enacted on December 17, 1999, requires SSA to establish a community based work incentives planning and assistance program for the purpose of disseminating accurate information to disabled beneficiaries on work incentives programs and issues. The Ticket to Work and Work Incentives Improvement Act specified that this should be accomplished by:

1. Allowing disabled beneficiaries to receive assistance and/or information for disabled beneficiaries to work by "Federal, State, and private agencies and non-profit organizations that serve disabled beneficiaries and with agencies and organizations that focus on vocational rehabilitation and work-related training and counseling"; and
2. Establishing "a corps of trained, accessible and responsive work incentive specialists within the Social Security Administration who will specialize in disability work incentives under Titles II and XVI". The legislation mandates that these SSA employees be experts with respect to inquiries and issues relating to work incentives to beneficiaries, applicants, and to benefits planning and advocacy groups.

To comply with the "Ticket to Work and Work Incentives Improvement Act of 1999", SSA has redefined its mission to include promoting the employment of Social Security beneficiaries with disabilities. By the year 2005, SSA's goal is to increase the number of beneficiaries who can attain steady employment and leave the disability rolls by 100%.

SSA created the Employment Support Representative (ESR) position to improve service delivery to beneficiaries interested in returning to work and related issues. The ESR plans, develops and leads an active outreach and communications program to promote understanding and use of Social Security work incentives provisions among beneficiaries, claimants, support groups, advocates, employers and the general public. This includes organizing workshops and conferences for various advocacy groups, employers, educational institutions, vocational rehabilitation counselors

and Administrative Law Judges. The ESR initiates, coordinates, and leads outreach activities aimed at supporting beneficiaries who are interested in, or are returning to work. The ESR serves as a liaison and the primary SSA work incentive expert to advocacy groups, the public, congressional staff members, claims representatives and other field office personnel.

Although implementation of a pilot of 32 ESRs nationwide could be considered timid or meek effort on the part of SSA to comply with the legislation, the interim evaluation report demonstrates positive results. This report unequivocally shows that the ESR fills a gaping hole in providing service to disabled constituents seeking assistance in return to work, as well as providing a vital link for community organizations assisting the disabled.

Customers and organizations were highly appreciative of the service that ESRs provided, finding them to be compassionate, responsive, accessible, and highly knowledgeable. Over 83% of community organizations who responded to surveys agreed or strongly agreed that the ESRs provided helpful information on SSA programs that support work. One community organization commented: "it is [a] well needed and appreciated position. It is a long time coming. It is wonderful to be able to call a representative for questions. Shows great customer service." Other comments from organizations and beneficiaries included "I never knew SSA was so easy to work with . . . thank you, thank you, thank you!"; "to my surprise, (SSA) actually wanted me to succeed. The ESR gets my vote" and ". . . anyone on disability who has the desire to try to work should immediately be directed to the ESR."

Outreach efforts by the ESR were effective in educating customers about SSA's employment support programs. Work activity processing represents the highest percentage of employment support activities, ranging from 26-37 percent across the board. In addition to having a dedicated, discrete specialist processing these cases, ESRs have been successful in educating beneficiaries, and monitoring their work activity early on, so large overpayments are avoided. ESRs have been providing beneficiaries with a single point of contact within SSA about their work.

The ESR has also served a valuable role in processing Continuing Disability Review (CDR) cases involving return to work issues. Although most CDRs do not result in cessation, SSA's CDR process has been yielding a favorable ratio of savings to costs. For fiscal year 1998, actuaries estimate the ratio of savings to administrative costs at \$12 to \$1. In testimony before this subcommittee in March 2000, SSA stated that the second leading cause of Social Security program overpayments is disability cessation. Nearly \$294 million dollars in 1999 was caused by cessations due to work activity. While this can occur when a beneficiary fails to timely report earnings, often beneficiaries have informed SSA, many times repeatedly that they have returned to work and the cases are not processed timely. These cases are highly complex, involving extensive, time consuming development and application of many different work incentive provisions.

Hardworking employees in understaffed offices are pressed to interview, answer phones, assist callers in the reception area, clear cases, and deal with a myriad of other workload crises. Anecdotal evidence from employees throughout the country cites large backlogs of CDRs. Many involve retroactive terminations going back several years causing very large overpayments, commonly in the tens of thousands of dollars, to disabled beneficiaries. In the same testimony, SSA stated that the ESR would be monitoring these cases and this would reduce future overpayments.

The volume of work issue CDRs is growing each year, totaling over a million new receipts in FY 2000, according to SSA workload reports. These receipts have increased at an average annual rate of 25% over the past 3 years, and they will increase at a faster rate because of provisions in the Ticket to Work legislation. Additionally, as beneficiaries begin using Tickets, employment networks will in turn expect timely reimbursement, which can only occur when a determination is made on a work CDR case.

Although the testimony states that the ESR also served a valuable role in SSA's plan to improve service to the disabled who are trying to return to work, there are only 32 workers assigned to this job. Allocations should be focused or budgeted specifically to support at least one ESR in support of your constituents at each field office. If 32 ESRs could present such a favorable reaction in a limited number of locations, AFGE proposes that at least one ESR be assigned to each social security office in each congressional district.

AFGE applauds and supports SSA's focus and efforts to increase the number of disabled beneficiaries returning to work and to improve service in this crucial area. We support the role and function of the ESR in this plan. This position will ensure that disabled constituents have an accessible and responsive specialist who provides high quality and timely community based service. SSA is currently considering further implementation of the ESR. AFGE is concerned that the Agency may choose

an option of implementation significantly short of national rollout to every field office because of staffing concerns.

The national implementation of the ESR to every servicing area should not be delayed any longer. Section 121 of PL 106-170 authorized \$23,000,000 to be appropriated to establish a community based work incentives planning and assistance program for the purpose of disseminating accurate information to disabled beneficiaries on work incentives programs for each of the fiscal years 2000 through 2004. However, SSA has decided to allocate all of the \$23 million towards grants and cooperative agreements for private agencies and nonprofit organizations. SSA's decision to put all the allocated revenues into one aspect of the Ticket to Work and Work Incentives Improvement Act has depleted the Agency's ability to meet the legislative requirement to establish a corps of trained, accessible and responsive work incentive specialists within SSA. It is clear, unless Congress directs SSA to reallocate the appropriated funds provided in Section 121 of PL 106-170 or appropriates additional funding to meet the requirements of the Ticket to Work and Work Incentives Improvement Act, the most important and effective method of providing consistent and accurate information and assistance on work incentive programs will not be accessible to the majority of disabled beneficiaries. SSA needs the necessary resources to achieve a wide-scale implementation of the ESR.

### **Third Party Involvement**

SSA and AFGE created a Third Party Assistance Team for the purpose of identifying areas of concern involving third parties and developing recommendations for consideration by SSA and AFGE leaders.

Reports indicated that information to determine proper eligibility (such as income, resources, prior wage history, etc.) were being reported incorrectly as well as insufficient medical information, (such as the disabled completing their own medical reports) that would require follow-up. Additionally, reports of fraud and inappropriate actions by third party assistants (identified by Social Security employees and verified by SSA's OIG, law enforcement and district attorneys), indicated that some third party assistants and/or organizations created fraudulent medical evidence for applicants resulting in eligibility decisions that would not have otherwise been made, shared confidential records resulting in privacy act violations, withheld/failed to report income resulting in payment errors and overpayments, and charged improper fees for services.

The Third Party Assistance Team found that virtually all third parties have a financial incentive in the disability claims process. Whether they receive fees for services or they are motivated to shift the financial responsibility from state and local government to the federal government, the employee of the organization and/or the organization itself gains financially through the disability claims process. The Third Party Assistance Team determined that only SSA employees were found to be neutral in the disability claims process and the outcome of a disability decision.

Other trends identified by the Third Party Assistance Team have resulted in genuine concern. In many cases, loss of benefits would have been caused due to untrained, albeit well meaning, assistance from third parties that receive little, or no, formal training. Protective filings were not always documented properly, resulting in payment errors. Most of the time, third party assistants are not able to establish a correct date of onset, resulting in processing delays and/or loss of benefits. Some third parties conducted eligibility screening incorrectly, resulting in a disabled individual failing to file for benefits or suffering a loss of benefits. AFGE believes that eligibility screening should only be done by trained SSA employees.

The Third Party Assistance Team was briefed by the SSA Office of General Counsel regarding the legal prohibition of third parties providing reporting instructions to applicants. It was verified that only SSA employees can give reporting instructions, which includes reporting information that would effect eligibility or payment amounts. Therefore, all applicants from third parties should be contacted by an SSA employee to discuss their reporting responsibilities. This creates a counterproductive process. This leaves the door open to fraud.

The Third Party Assistance Team recommended that an automated data system was needed to identify third parties involved in the disability claims process, in order to monitor and evaluate their effectiveness. Additional recommendations addressed fraud by third parties. This topic created embarrassing adverse publicity for SSA, resulting in a hearing before the House Ways & Means, Subcommittees on Oversight and Human Resources. Rather than effectuate the joint recommendations, SSA has abandoned its work with AFGE on these important public service issues and has failed to address them independently. On the contrary, SSA has resumed the expansion of third party individuals and/or organizations. As a result, AFGE believes that fraud by "non-profit" and "for-profit" third parties may have gone and

may continue to go undetected, robbing many millions of dollars from Trust Funds and General Revenues.

AFGE has received recent reports from employees in the Atlanta region regarding a third party company that pays a commission to its employees for every approved disability case that is submitted to SSA. Company employees are encouraged to lie on the applications that are filled out for claimants to enhance the likelihood of approval. Company employees are also encouraged to change information on signed applications if doing so improves the chance of a favorable decision. SSA employees report that these "benefit specialists" coach claimants to respond to interviewer questions with false information.

Employees report that another third party company has submitted signed applications for claimants who were dead at the time the application was signed. The same company is notorious for failing to list income and resources for TXVI SSI claimants. Often such hidden income and resources are subsequently discovered by claims representatives. Knowing failure to list such income and resources is fraudulent activity punishable by fine and/or imprisonment. SSA takes no action to discipline or sanction these third parties.

The third party disability application process remains an unaccountable system that is riddled with inefficiencies as well as fraud, waste and abuse. At a minimum, it is poor public service which will be further exacerbated as SSA proceeds with plans to encourage disability claims to be filed via the Internet, instead of direct contact through local field offices. The harm to claimants, beneficiaries, and taxpayers by this ghost workforce should not be dismissed by SSA or Congress.

#### **Management Information Integrity**

In July 1996, the Management Information Integrity Partnership Team issued a 300 page Report to the SSA/AFGE National Partnership Council. The report listed 57 inappropriate practices used to manipulate work processes and work measurement, many of which involved disability claims and appeals. The practices were employed to give the false impression that service levels have been maintained, or even improved, despite a lack of adequate staffing. The report included a comprehensive set of specific recommendations to deal with this misrepresentation and to restore the integrity of the disability claims process. Virtually all were accepted, but few have been implemented.

To make matters worse, SSA institutionalized changes in disability claim work measurement that added powerful new incentives for managers to encourage cheating by their employees. A prime example is taking unnecessary claims from clearly ineligible claimants for the purpose of lowering overall processing times of Title II and TXVI disability claims. In the past, the Ways and Means Subcommittee on SSA has found these practices to be inappropriate and especially egregious.

In December 2000, SSA's Office of Inspector General produced an audit report that did not capture or address the reliability or validity of the Agency's SSI Disability claims performance measures. AFGE addressed its concerns to the SSA's Office of Inspector General on May 7, 2001. To date, AFGE has not received a response. Additionally, AFGE has recently learned of renewed practices to date stamp claims upon processing rather than upon receipt. This practice is clearly unethical and is meant to distort the overall processing time of a claim and conceal any delays in processing due to inadequate staff. AFGE is concerned that most, if not all, of the 57 inappropriate practices used to manipulate work processes and work measurement have become institutionalized.

#### **Internet Claims**

SSA has offered claimants the ability to file retirement applications on the Internet. SSA plans to offer this same service to disability applicants. Although AFGE reserves judgment about the wisdom of this plan, workers are reporting serious quality problems with the current Internet retirement claims. These problems involve potential benefit losses for both claimants and eligible auxiliary beneficiaries. AFGE urges a moratorium of any expansion of Internet claims until studies are conducted regarding the quality and accuracy of current Internet claims.

#### **Conclusion**

AFGE respectfully thanks this Committee for its work and for including SSA's employees in the process of identifying and resolving problems in the Social Security disability programs. AFGE is willing to work in cooperation with SSA's new Commissioner in a continued effort to improve the disability process that better serves the American people. AFGE and the SSA employees it represents understand and deeply care about providing the best public service possible. AFGE will continue to serve as not only the employees' advocate, but also as a watchdog for clients, taxpayers, and their elected representatives.

**Recommendations**

In summary, AFGE requests that the Committee take the following action:

1. Consider enacting amendments to current legislation that restricts the authority for making disability decisions to state employees. Expand this authority to federal employees. Direct SSA to expand the DCM pilot nationwide.
2. Urge the Appropriations Committee to consider the Apfel budget proposal.
3. Consider off-budget legislation for SSA's administrative expenses.
4. Consider legislation excluding SSA administrative expenses from the budget caps.
5. Direct SSA to implement nationally the ESR position by requiring such federal Ticket to Work activity in every SSA office.
6. Investigate Third Party Involvement in the disability claims process. Consider imposing legislative sanctions for third parties found guilty of unethical or illegal practices.
7. Investigate SSA's management information system to insure its integrity.
8. Oversee SSA's Internet claims initiatives to insure that claimants are not adversely affected due to inadequate safeguards in the process.

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Chairman SHAW. Thank you, Mr. Skwierczynski.  
Mr. Korn.

**STATEMENT OF STEVE KORN, PRESIDENT, NATIONAL COUNCIL OF SOCIAL SECURITY MANAGEMENT ASSOCIATIONS, INC., VALLEJO, CALIFORNIA**

Mr. KORN. Thank you.

Chairman Shaw and members of the Subcommittee, my name is Steve Korn, and I am here as President of the National Council of Social Security Management Associations. I thank you for giving me the opportunity to come before you today to talk about the challenges and opportunities facing SSA's disability program from the perspective of SSA's frontline managers and supervisors.

SSA's field offices are the primary points of interface for disability claimants. We hear their stories and see firsthand the effect that our processes have on their lives.

In my testimony this afternoon, I will provide information about current problems with the disability program and specifically suggest the establishment of a new position in SSA's field offices designed to improve the front-end process. I will discuss other opportunities for improving the disability program, and I will talk about the resources that will be necessary to address the significant problems facing the disability program.

By far the most common customer complaint about the disability program is the amount of time it takes to receive a decision. Claimants wait an average of almost 4 months from filing for an initial decision. And backlogs at State agencies, as we have heard already, are growing. In addition, a majority of claimants seem to have little understanding of how the process works, and what they should do to document their claim.

Fortunately, SSA is piloting a process—and you heard about this in the last testimony—that successfully addresses many of these problems. In the Disability Claims Manager, or DCM pilot, a single employee is given responsibility for the complete processing of an initial disability claim. DCMs process claims faster while maintaining a level of accuracy that is at or above the traditional process.

DCMs were more productive, and both claimants and employees alike express increased levels of satisfaction.

While nationwide implementation of DCM may be very difficult or impossible due to issues relating to the Federal-State relationship, we recommend that SSA capitalize on the success of the DCM by creating a new position in SSA's field offices whose focus would be the processing of disability claims. This Technical Expert for Disability, or TED, would receive the same basic medical training received by new DDS Disability Examiners.

Implementation of this position should accelerate initial decisions and have a positive impact on accuracy. Their medical training, coupled with their non-medical program knowledge, would equip them to truly provide single-point-of-contact service. In addition, the TED's location in community-based field offices would help to deter fraud.

TEDs could be used to make final medical decisions with the State's concurrence. For example, TEDs could make same-day decisions for claimants with terminal illnesses, decisions that can currently take weeks or even months. States that are temporarily unable to handle their full volume of cases could give TEDs authority to make final decisions for the full range of cases, and this would give SSA additional flexibility to deal with growing backlogs.

TEDs could also help focus SSA's efforts to help disabled applicants return to the work force.

Besides implementation of the TED position, SSA needs to focus its efforts to improve automated support. There is an immediate need for software that would provide field offices with an intelligent front-end interview system that would include an interview path based on the nature of someone's disability rather than SSA's current scattergun approach, in which we ask for all possible information that might be needed by the State agencies.

Other improvements in the process should include, number one, making the appeals process more efficient while significantly reducing the time it takes to receive a decision; second, a serious look at changes to the current Federal-State relationship, which should include at a minimum issues of regulations to ensure quality and uniformity in the performance of the 54-State Disability Determination Service (DDS); and third, an examination of the definition of disability to see if it is still consistent with national disability policy. The current definition, as was pointed out, does seem to focus more on the incapacities that people have rather than the abilities they might have to go back into the work force.

While the suggestions offered above will result in significant improvements to SSA's disability process, none will provide the kind of productivity gain that will allow SSA to address its currently workload problems without additional resources. Even those changes that will provide a more efficient process, such as automation of front-end intake, will require up front resources to design and implement. And of course—and you have heard this—as if the current situation were not troublesome enough, SSA expects a tremendous increase in disability applications over the next 10 years as the baby boomers reach the age in which disability is more likely.

We believe it is a mistake for the new administration and Congress to fail to provide the resources needed to address the problems affecting the disability program. Working Americans who have paid into the program since joining the workforce have every right to expect that they will receive a level of service commensurate with their investment.

With total administrative costs for the entire SSA program running at less than 1 percent of trust fund receipts, we think Americans will support increased funding devoted to disability processing.

Again, Mr. Chairman, I thank you for the opportunity to appear before this Subcommittee. I would be happy to answer any questions that you and your colleagues may have.

Thank you.

[The prepared statement of Mr. Korn follows:]

**Statement of Steve Korn, President, National Council of Social Security Management Associations, Inc., Vallejo, California**

Chairman Shaw and members of the Subcommittee, my name is Steve Korn and I am here today representing the National Council of Social Security Management Associations (NCSSMA). I am also the manager of the Social Security office in Vallejo, California, and have worked for the Social Security Administration (SSA) for 25 years. On behalf of our membership, I am very honored that the NCSSMA was selected to testify at this hearing on the challenges and opportunities facing SSA's disability program.

As you know, Mr. Chairman, the NCSSMA is a membership organization of 3000 Social Security Administration managers and supervisors who work in SSA's 1400 field offices and teleservice centers throughout the nation. It is most often our members who your staffs work with when problems and issues arise with Social Security recipients in your Congressional Districts. Since our organization was founded thirty-two years ago, the NCSSMA has been a strong advocate of locally-delivered services nationwide to meet the variety of needs of beneficiaries, claimants, and the general public. We, like you, consider our top priority to be a strong and stable Social Security Administration, which delivers quality services to our clients and your constituents.

While the number of people receiving Social Security or Supplemental Security Income (SSI) disability benefits constitute less than 20% of all those receiving Social Security or SSI, about two thirds of Social Security's administrative budget, approximately \$5 billion, will be spent on disability work this year. It is therefore not surprising that field offices spend a significant amount of our time and effort on the disability program. Field offices take disability claims, provide information to claimants and their representatives, initiate continuing disability reviews, and meet with the public and third parties to provide information about the disability program. Specifically, we are the primary point of interface with SSA for disability claimants. We hear their stories and see firsthand the effect our processes have on their lives. This gives us a unique perspective to look at current problems and assess opportunities for improvement.

In the following sections, we provide information about current problems with the disability program, especially from the perspective of our claimants. We support the establishment of a new position in SSA's field offices designed to improve the front-end process. We will discuss other opportunities for improving the disability program. And we will talk about the resource needs that will be necessary if we realistically expect to address the significant problems facing the disability program, both now and in the future.

**Problems Facing the Disability Program**

While considerable time and effort have been devoted throughout SSA to improve the processing of disability claims, significant problems remain. By far the most common complaint field offices hear is the amount of time it takes to receive a decision. Claimants wait an average of almost 4 months from filing to receipt of the initial decision. And the almost half million claimants who request a hearing with an Administrative Law Judge (ALJ) each year, can expect to wait, on average, over a year from the date of initial filing for a decision. Prospects for short-term improvement are not promising. At the initial level, pending claims at State agencies are

increasing with over 100,000 cases nationwide on the shelf awaiting assignment to an analyst because they already have all the cases they can handle. And despite a drop in average processing time from just under 400 days in FY 1997 to just under 300 days in FY 2000, the number of cases pending at SSA's hearing offices have again begun to rise.

While the delay in receiving a decision is the most obvious problem facing those who apply for disability benefits, it is not the only problem. A majority of claimants seem to have little understanding of how the process works and how decisions are made. They have little understanding of what is required to meet the Social Security Administration's definition of disability or what they should do to document their claim. Unfortunately, limited field office resources have placed a premium on self-help completion of forms and telephone interviews. Claims representatives rarely have the time to fully review all forms completed by the claimant or fully explain how the process works. Failure to see the claimant face-to-face also increases the opportunity for fraudulent activity.

While the other significant problems facing the disability program are not as obvious to field office employees or members of the public, they have been documented by reports issued by the Social Security Advisory Board, GAO, and others. For example, there is wide variance in allowance rates and processing times from State to State. Court decisions have added significant complexity to the disability determination process and have seemed to increase the gap between criteria used to make initial and reconsidered decisions, and criteria used at the hearing level. And, despite recent attempts to focus more attention on helping beneficiaries return to work, the "all or nothing" statutory definition of disability, and the ensuing application process, which focuses on disabilities rather than abilities, tends to discourage beneficiaries from doing so.

#### **Improving the Front-End Disability Process**

Eight years ago SSA embarked on an ambitious project to improve the disability program by significantly redesigning its processes. Unfortunately, with one major exception, most initiatives that resulted from the redesign effort have not yet demonstrated success in either reducing processing times, increasing claimant satisfaction levels, or making the process more efficient. The Disability Claims Manager (DCM) pilot was the one initiative that could be proclaimed a success by any of the above measurements. Under this initiative, one individual, either in a field office or a Disability Determination Services (DDS), was given the responsibility for the complete processing, from initial application and interview to final decision, of an initial disability claim. The DCM served as the claimant's point of contact throughout the initial claims process.

While final results of this three-year pilot are not yet available, both phase I and preliminary final results show that DCMs processed claims in less time than the current process. This was achieved while maintaining a level of accuracy that was at or above that achieved in the traditional initial claims process. DCMs have been more productive, at the peak of the pilot producing more work for the total number of staff hours involved than that produced in the current process. Claimants expressed high levels of satisfaction with the increased level of service provided under the pilot compared to the traditional process, especially claimants whose claims were denied. Moreover, employees involved in the test had a high level of job satisfaction.

Despite what we feel is the unqualified success of the DCM pilot, issues relating to the Federal-State relationship create a major and perhaps insurmountable impediment to nationwide implementation of the DCM. First of all, the law requires that disability decisions be made by State agencies rather than by SSA itself. While we agree with the Social Security Advisory Board's recommendation in its January 2001 report, "Charting the Future of Social Security's Disability Programs: The Need for Fundamental Change," that the idea of federalizing the disability determination process needs to be examined, it is unlikely such a major change will be enacted, at least in the short-term. Secondly, the establishment of both Federal and State DCMs is problematic in many States where employee pay scales are significantly below Federal pay scales. This would result in employees doing essentially the same job in the same relative location for different rates of pay.

However, the NCSSMA is recommending that SSA capitalize on the success of the DCM experience, within the confines of current law, by expanding and strengthening the role and performance of the field office in the front-end of the disability process. *Specifically, we recommend creation of new position in SSA's field offices whose focus would be the processing of disability claims*. This is fully consistent with the Social Security Advisory Board recommendation that field offices be given increased responsibility for taking disability claims. This "Technical Expert for Dis-

ability” or “TED,” for want of a better name, would be fully trained in the same basic medical determination training received by new DDS Disability Examiners (DEs). Their responsibilities would include:

- Intake of initial applications for disability benefits under both the Title II and Title XVI programs;
- Developing both the medical and non-medical aspects of certain claims;
- Making the non-medical and making or recommending the medical decisions in predetermined types of cases, with individual State agreement;
- Reviewing and taking, where indicated, the first action on disability claims being forwarded to the DDS for development and medical decision;
- Training and mentoring other field office employees involved in the disability process.

Implementation of the TED position would go a long way toward addressing one of the most pervasive problems in the initial disability decision making process by improving the quality of initial medical transmittals to DEs in DDSs. It would accelerate the timeliness and should have a positive impact on the accuracy of disability decisions. The TED would remain the primary contact for the claimant, answering questions pertaining to both the medical and non-medical decision making process, providing status on the receipt of requested medical information and explaining final decisions based on the facts of the case. When requested by the DE, they would assist with or conduct the claimant conference. Their medical training and their knowledge of the sequential evaluation process, coupled with their non-medical program knowledge, would equip them to truly provide single point of contact service.

With their primary contact in the field office, the public would have more choices in how they interact with us throughout the disability decision making process, including face-to-face when they so choose. Applicants would have help available to them from someone in their community who is familiar with medical sources, transportation issues, community resources and employment opportunities. Additionally, the TED located in community-based field offices would, through their enhanced knowledge of medical providers and sources, investigative work and personal contacts, help to strengthen the integrity of the program and thus help to deter fraud.

TEDs could be used to make final medical decision with the State’s concurrence. For example, TEDs could routinely make final and potentially same day decisions for claimants with terminal illnesses. Or States that are temporarily unable to handle their full volume of cases may choose to give TEDs authority to make final decisions for the full range of cases. This would give SSA additional flexibility to deal with growing backlogs.

Even where the TED did not make the final decision, it would help establish closer cooperation between FOs (field offices) and DDSs. It would result in a clear delineation of duties between the TED and DE, putting full responsibility for a high quality initial product on the TED, while providing that TED with the background, knowledge and focus that they need to produce such a product. It results in a shift in both process and responsibility that is essential if the TED is to develop a true feeling of ownership and accountability for this work product.

Most importantly, it provides the Agency with a way to meet the projected growth in the number of disability claims without a corresponding increase in processing time and in the number of complaints from the public, advocates and representatives about the initial disability claims process. The public can receive the level of responsive service and timely and accurate decision making to which they are entitled.

#### **Other Opportunities for Improving the Disability Process**

SSA needs to focus its efforts to produce improved automation support for the disability process. Unfortunately, we have not seen any significant results from over eight years of work on a redesigned disability system. Current efforts to produce an electronic disability folder (e-DIB) are promising, but by itself will not address many of the significant needs that now exist. Specifically, the NCSSMA sees the immediate need for improved software that would:

- Provide field offices with an intelligent front-end interview system that would allow us to obtain medical information. This would include “drop down” menus and an interview path based on the nature of the disability. Not only would this produce a more complete front-end product that should improve overall processing times and decision accuracy, but it would be more efficient than our current scattergun approach of obtaining the same basic information for all claimants whether it is relevant to their specific impairment or not. This same intelligent front-end system could also be placed on the Internet for use by claimants and third parties assisting claimants.

- Allow field offices to directly interface with DDS and Office of Hearings and Appeals (OHA) systems. This would allow all components to track processing of a case and directly post new information no matter what component received it.
- Assist in identifying and tracking the location of disability folders. Even with the eventual development of an electronic disability folder, the need to locate and retrieve pre-existing paper folders will continue for many years.

SSA needs to seriously look into significant changes to the hearing process that would make the process more efficient while significantly reducing the time it takes to receive hearing and appeals council decisions. Among the suggestions worth looking into are closing the record after the ALJ decision, agency representation at ALJ hearings, and the combining of OHA and SSA field offices. Finally, SSA and ALJs need to work together to formulate changes that will streamline the current process.

The Social Security Advisory Board in its January 2001 report, recommended that SSA exercise its authority, granted by a change in the law in 1980, to issue regulations to ensure quality and uniformity in the performance of the States. We endorse this recommendation. One of the essential problems stressing the system arises from the fact that we have 54 DDSs handling the initial medical decision function in a variety of ways. This is evidenced by the fact that allowance rates vary widely between States as does processing times. There is a need for consistency and uniformity if the American public is to get effective service.

SSA needs to reexamine the definition of disability to see if it is still consistent with national disability policy. This recommendation was also endorsed by the Social Security Advisory Board. The definition of disability currently in use has not been changed in over 30 years. It is at odds with the desire of many disabled individuals who want to work but still need some financial or medical assistance. While SSA will be challenged to come up with a new definition that will satisfy all stakeholders, its success in doing so may also lead to efficiencies in the process that were not possible within the limited scope of the redesign process initiated eight years ago.

#### **The Need for Resources**

SSA is currently struggling to keep up with disability workloads. Many State agencies are struggling to handle pending workloads with over 100,000 pending claims unassigned to DEs who have reached their limit. After a three-year drop, pendings are again increasing at OHA. Field offices also cannot keep up with the growing workloads. In their January 2001 report on disability, the Social Security Advisory Board states that, "As a result of the growth in the number of disability claimants and continued agency downsizing, field office personnel are no longer able to provide the kind of assistance many applicants need to file a properly documented claim. They lack the time to explain program rules and procedures so that applicants understand whether they meet the strict requirements of the Social Security disability definition and what items of information they need to document their case." The NCSMA released a survey in March in which field managers documented the need for an additional 5000 employees simply to keep up with current workloads.

If the current situation were not troublesome enough, SSA expects a tremendous increase in disability applications over the next 10 years as the baby boomers reach the age in which disability is more common. SSA's actuaries estimate that SSA will add 50% more Title II disability beneficiaries and 15% more SSI disability recipients over this period. During this same time, a significant portion of SSA's technical staff that processes disability is expected to retire. The employees who replace them will take several years to reach equivalent levels of productivity.

While the suggestions offered above will result in significant improvements to SSA's disability process, none will provide the type of productivity gain that will allow SSA to address even its current workload problems without additional resources. In fact, many of the recommendations will simply provide service improvements, such as decreased processing times, rather than processing efficiencies. Some will require additional resources to implement. Even those changes which will provide a more efficient process, such as automation of front-end intake or e-DIB, require up-front resources to design and implement.

We believe it is a mistake for the new Administration and Congress to fail to provide the resources needed to address the problems affecting the disability program now, and in the future. Working Americans who have paid into the program since joining the workforce have every right to expect that they will receive a level of service and a process commensurate with their investment. With total administrative costs for the entire SSA program only running at approximately 2 percent of

receipts, we believe Americans would support the increase in funding devoted to disability processing necessary to achieve the improvements outlined in our testimony. Again, Mr. Chairman, I thank you for this opportunity to appear before this Subcommittee. I would welcome any questions that you and your colleagues may have.

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Chairman SHAW. Thank you, Mr. Korn.  
Ms. Heflin.

**STATEMENT OF SUE HEFLIN, PRESIDENT, NATIONAL ASSOCIATION OF DISABILITY EXAMINERS, JACKSON, MISSISSIPPI**

Ms. HEFLIN. Chairman Shaw, members of the Subcommittee, on behalf of the National Association of Disability Examiners (NADE), thank you for the opportunity to share our views on the challenges and opportunities facing the Social Security disability programs today.

We agree with the assessment of the Social Security Advisory Board in their February 2001 report that “In recent decades, disability policy has come to resemble a mosaic, pieced together in response to court decisions and other external pressures rather than the result of a well-thought-out concept of how the programs should be operating. Policy and administrative capacity are dramatically out of alignment.”

This fragmented policy and lack of appropriate and adequate resources have seriously undermined the Social Security Administration’s ability to maintain fairness and consistency in the disability programs today.

While SSA’s administration of the retirement programs generally receives high grades in terms of public confidence, the public has significantly less confidence in the disability programs. In part, this is due to the inconsistencies in decisional outcomes between the States and regions. A larger factor, however, is the difference between DDS decisions and those made at the hearing level.

Few realize that 80 percent of the claims that are allowed are allowed at the DDS level. The need to change this perception and the reality that underlies it must be viewed as one of SSA’s biggest challenges.

Disability decisions are not made in a nationally uniform manner. While to some extent this has always been true, it has become increasingly more pronounced in recent years. We are concerned that this trend will continue. New policies developed by SSA, both in response to and independent of court decisions and other litigation, have required that increasingly more weight be given to the subjective complaints of disability applicants. Assessing these subjective complaints has added to the growing belief that there is a general lack of consistency in what should be a uniform national program.

Social Security lacks a clear quality review process that would provide meaningful feedback to all decisionmakers. Quality assurance reviews and the adjudicative climate under which claims are reviewed are inconsistent and reflective of and convoluted by politics and/or litigation. Regulations are frequently promulgated and implemented before operating procedures, instructions, and other tools have been developed.

In order to increase the consistency and uniformity of disability decisions, the Social Security Administration must become truly "one SSA." While NADE supports the current Federal-State partnership structure, we believe that it must be strengthened to provide more effective oversight of the process. Individual State government downsizing, hiring freezes, and other aspects that are particular to the different States should not be allowed to interfere with the efficient operation of the DDS.

In addition, SSA must continue with the development of a single presentation of policy that will be binding on all adjudicators. Ongoing communication between the field offices, the State DDSs, and the ALJs must become a priority.

In addition to this, NADE believes that ongoing joint training for all decisionmakers is essential if we are going to provide fair, accurate, and consistent decisions. This training must be clear and include interaction and discussion among the different components.

SSA's quality assurance process must be designed to provide nationally consistent feedback. We are encouraged that SSA is now looking seriously at the quality assurance issue. However, we are concerned that this initiative, like so many others, will be curtailed for lack of resources. Failure to devise an effective and meaningful quality assurance process would compromise the public's confidence in the program.

NADE has long supported the establishment of a Social Security court. The development of and decision on an individual's claim should not be dependent upon his or her residence or judicial jurisdiction. The ever-increasing complexity of disability claims and the growth of medical technology makes the need for a specialized court with expertise in these matters a necessity.

The State DDSs must have the necessary resources to hire and retain staff. Because this is a medical-legal decision, disability examiners must have a thorough understanding of the medical, vocational, and administrative/technical issues involved. The increasing turnover rate in the DDS due to the increasing complexity of the program and the failure of the DDSs to offer salaries commensurate with job duties invites public concern.

NADE does not support changing the definition of disability at this time. The current definition provides a solid foundation for the disability program. We do believe that any action to reform the disability program should include elimination of the 5-month waiting period for Title II applicants, and NADE has prepared a position on paper on this issue which we have included with prior testimony. There is now proposed legislation that would eliminate this.

We strongly believe in fair and equal treatment for all disabled citizens, and we urge the Congress to give favorable consideration to H.R. 344.

In conclusion, we want to echo the opinion expressed by the Advisory Board that "disability policy and administrative capacity urgently need to be brought into alignment." This is critical in light of the increase in claims from the baby boom generation who are just now entering their most disability-prone years.

We strongly concur with the Advisory Board about some of the changes that need to be done, particularly the fact that we need to given the tools that we need to render fair and timely decisions

so that the disabled citizens who come to us for assistance can be treated with respect and humanity.

Thank you.

[The prepared statement of Ms. Heflin follows:]

**Statement of Sue Heflin, President, National Association of Disability  
Examiners, Jackson, Mississippi**

Chairman Shaw, Mr. Matsui, and members of the Subcommittee, on behalf of the National Association of Disability Examiners (NADE), thank you for this opportunity to share our views on the challenges and opportunities facing the Social Security disability programs today.

NADE is a professional organization whose mission is to advance the art and science of disability evaluation. Our membership includes Social Security Headquarters staff and Field Office personnel, attorneys, claimant advocates and physicians. However, the majority of our members are employed in the state Disability Determination Service (DDS) offices and are directly involved in processing claims for Social Security and Supplemental Security Income (SSI) disability benefits. It is the diversity of our membership, combined with our “hands on” experience, which we believe provides us with a unique understanding of the challenges and opportunities facing the Social Security and SSI disability programs today. Our members face these challenges on a daily basis.

We agree with the assessment of the Social Security Advisory Board in their February 2001 report that, “In recent decades, disability policy has come to resemble a mosaic, pieced together in response to court decisions and other external pressures, rather than the result of a well-thought out concept of how the programs should be operating . . . Policy and administrative capacity are dramatically out of alignment in the sense that new and binding rules of adjudication frequently cannot be implemented in a reasonable manner, particularly in view of the resources that are currently available.” This fragmented policy and lack of appropriate and adequate resources have seriously undermined the Social Security Administration’s ability to maintain fairness and consistency in the Social Security and SSI disability programs today.

We believe that the focus of this hearing is extremely important. The Social Security Administration spends two-thirds of its administrative budget, nearly \$5 billion, on the disability program. Such a large expenditure justifies extensive oversight by this subcommittee to ensure that these funds are spent in a manner that delivers the best possible service for the taxpayer and the disabled.

While SSA’s administration of the retirement programs generally receives high grades in terms of public confidence and support, the public has significantly less confidence in the disability programs. In part this is due to the inconsistency in decisional outcomes between the states and regions. A larger factor, however, is the difference between DDS decisions and those made at the hearing level. There is a widespread public belief that “everyone” has his or her claim denied by the DDSs and must request a hearing before an Administrative Law Judge in order to receive benefits. In fact, this is not true. Eighty percent of the disability claims that are allowed, are allowed by the DDSs. However, the public’s perception of the disability program and the public’s confidence in the disability program is altered by the fact that there are widespread, *unexplained* differences in decisional outcomes between the different states and regions and between the different levels in the appeals process. These differences have undermined public confidence in SSA’s administration of the disability programs. The need to change this perception, and the reality that underlies it, must be viewed as one of SSA’s biggest challenges.

Disability decisions are not made in a nationally uniform and consistent manner. While to some extent this has always been true, it has become increasingly more pronounced in recent years. For several reasons, we are concerned that this trend will continue. New policies developed by SSA, both in response to, and independent of, court decisions and other litigation, have required that increasingly more weight be given to the subjective complaints of disability applicants. Similar impairments will affect different individuals in different ways. Assessing these subjective complaints necessarily has added to the growing belief that there is a general lack of consistency in what the public believes should be a uniform national program.

Social Security lacks a clear and uniform quality review process that would provide consistent, meaningful feedback to all decision-makers. Quality assurance reviews and the “adjudicative climate” under which claims are reviewed, are inconsistent and reflective of—and convoluted by—politics and/or litigation. Regulations are frequently promulgated and implemented before operating procedures, instruc-

tions and other tools have been developed. Decisions made by Administrative Law Judges are driven by court decisions while decisions made in the DDSs are controlled by program directives issued by SSA. SSA's recent attempt to launch a new disability claims process, currently being prototyped in ten states, and the Agency's efforts to direct DDSs to follow very specific regulations, collectively known as the Process Unification rulings, will increasingly require that DDS decisions be based on subjective complaints and treating source opinion, rather than the objective medical findings. We are pleased that the Administration recently decided to postpone national rollout of the Prototype initiative, pending additional review of its costs and benefits. However, while the national rollout has been delayed, those ten states that were involved in the prototype experiment continue to process claims in this manner while the rest of the country continues to adjudicate claims under the longstanding process. We are concerned that the public's confidence in the disability program will be affected by the fact that nationally initial claims are being adjudicated under two distinctly different processes.

In order to increase the consistency and uniformity of disability decisions, the Social Security Administration must become truly "one SSA." While NADE supports the current federal—state partnership structure, we believe that it must be strengthened to provide more effective oversight of the process. Individual state government "downsizing," hiring freezes, and other aspects that are particular to the different states should not be allowed to interfere with the efficient operation of the DDS. In addition, SSA must continue with the development of a single presentation of policy that will be *binding on all adjudicators*. Ongoing communication between the Field Offices, the state DDSs and the ALJs must become a priority. Building trust between the various components in the disability program will be a major challenge for SSA but must also be viewed as a major opportunity. We applaud recent efforts by SSA and by the various components, to improve and maintain these lines of communication. We believe that these initial efforts, if continued, will provide a more consistent message to the public and to the individual applicant and should improve both the quality and the consistency of the decision.

In addition to ongoing communication and a single presentation of policy, NADE believes that *ongoing, joint training for all decision-makers is essential* if we are to provide fair, accurate and consistent decisions. This training must be clear and consistent and include interaction and discussion between the different components, including Field Office staff, DDS staff, and OHA staff. SSA's use of technology based training, such as IVT, or Interactive Video Technology training, is a valuable training tool but it cannot replace the benefits derived from personal interaction and discussion. Technology based training, while certainly useful, must not be the sole mechanism for providing training.

Another major challenge for the disability program will be finding a suitable replacement for the Dictionary of Occupational Titles, or D.O.T. This publication, periodically compiled by the U.S. Department of Labor, has served as the guidebook for disability decisions made by the DDSs on claims that were decided on vocational issues. Unfortunately, the Labor Department has ceased compiling this information and SSA has not yet found a suitable replacement. Already, DDSs are beginning to struggle with decisions that are based on whether a claimant can return to past relevant work or to other work because the information at our disposal is outdated. Experiments with other tools, such as the O-net, have not proved beneficial thusfar. This problem will only get worse with the passage of time until and unless SSA is able to find a replacement for the information used daily by the DDSs in making their disability decisions.

SSA's Quality Assurance process must be designed to provide *nationally consistent* feedback. The Agency recently received an extensive research report based on a study of its internal quality assurance process. This report, compiled by the Lewin Group, offered two general conclusions. The first was that, "Given the challenges faced by SSA, the design of the Prototype Process, and the current performance of the existing QA system, no amount of retooling, refocusing, redesign, tinkering, or the simple addition of resources to the existing QA processes will achieve SSA's quality improvement goals." The second general conclusion was, "The only way that SSA will achieve its quality objectives for the disability programs is to adopt a broad, modern view of quality management that includes efforts outside of OQA and the current quality assurance process." NADE concurs with these conclusions. We are encouraged that SSA is now looking seriously at the quality assurance issue. We are concerned, however, that this initiative, like so many others that SSA is now considering, will be curtailed for lack of resources. This will be a mistake! Failure to devise an effective and meaningful quality assurance process would be to compromise the public's confidence in the program.

NADE has long supported the establishment of a Social Security Court. The development of—and decision on—an individual's claim should not be dependent upon their residence or judicial jurisdiction. The ever-increasing complexity of disability claims, and the growth of medical technology, makes the need for a specialized court, with expertise in these matters, a necessity.

The state DDSs must have the necessary resources to hire *and retain* staff. This will be a major challenge for the disability program. The disability program has become increasingly complex. Because this is a medical—legal decision, disability examiners must necessarily have a thorough understanding of the medical, vocational and administrative/technical issues involved. It has been widely acknowledged that it takes at least two years for a disability examiner to become proficient in the performance of their job duties. Unfortunately, more than 50% of the disability examiners in the DDSs now have less than two years of experience. This will have a tremendous impact on the public's confidence in the ability of SSA to render fair and timely decisions. The increasing turnover rate in the DDSs is due to the increasing complexity of the program and the failure of the DDSs to offer salaries commensurate with the job duties. The Social Security Advisory Board addressed this issue in its January, 2001 report and, while addressing the issue of salary levels in the DDSs, commented, . . . the disability programs are national programs and SSA has an obligation to try to ensure equal treatment for all claimants wherever they reside."

Another challenge that SSA will need to address is the growing issue of non-English speaking claimants. As our country's diversity increases, so too will the need for the disability program to make the necessary accommodations for those claimants who do not communicate in English.

NADE does not support changing the definition of disability at this time. The current definition of disability provides a solid foundation for the disability program. While the ability of the remaining structure to support the program has been questioned, we do not believe that the foundation is weak. Having constructed a solid foundation, we believe that the best efforts of those charged with administering the program, and those charged with maintaining oversight of the program, should be directed at building stronger walls and other supports before constructing the roof. Unfortunately, we do not believe that this is the current practice.

We strongly support the goals and objectives of disability program reform as outlined by the Social Security Advisory Board in their February 2001 report:

- All who are truly disabled and cannot work should receive benefits
- Those who can work but need assistance to do so should receive it
- Vocational rehabilitation and employment services should be readily available and claimants and beneficiaries should be helped to take advantage of them
- Claimants should be helped to understand the disability rules and the determination process
- The disability system should ensure high quality decisions by well-qualified and trained adjudicators
- The disability system should provide expeditious processing of claims.

When cases are complex and require more time, claimants should be informed so that they will understand why there is delay

In addition to these goals, we believe that any action to reform the disability program should include the elimination of the five-month waiting period for Title II applicants. Currently, Title II disability beneficiaries must wait five full calendar months from the onset of their disability before they can begin receiving cash benefits. Title XVI (SSI) beneficiaries, on the other hand, can begin receiving benefits immediately. This fosters a perception that the Title II program is unfair to the disabled worker who has actually paid into the system. This is particularly evident in cases involving claimants with terminal illnesses when the claimants actually die during the waiting period and, therefore, do not collect any cash benefits. NADE has previously prepared a position paper on this issue and included a copy of this paper with prior testimony before this subcommittee. There is now proposed legislation before this subcommittee that would eliminate the five-month waiting period. This proposed legislation, H.R. 344, will also eliminate the 24-month waiting period for Medicare eligibility for the disabled. We commend the Congress for recently waiving this waiting period for disabled citizens with Amyotrophic Lateral Sclerosis, commonly known as Lou Gehrig's disease. However, waiving this 24 month requirement for one group of disabled citizens, and not doing so for others, is discriminatory and may result in future litigation. We strongly believe in equal and fair treatment for all disabled citizens and strongly urge the Congress to give favorable consideration to H.R. 344.

We recognize the need to preserve the fiscal integrity of the Social Security disability fund and urge the Congress to consider revision of the medical improvement review standard. Under the current law, cessation of benefits can only occur if it can be shown that there has been medical improvement in a claimant's impairment. While this concept may appear fair at face value, it ignores the fact that ever-increasing advances in medical technology make it possible for many disabled citizens to work. However, the lack of any incentive to pursue a return to work makes it unlikely that many disabled claimants will do so. While we do not support the cessation of benefits for those who are truly disabled and cannot return to work, we believe that the necessity of demonstrating medical improvement before cessation of benefits can occur is a deterrent to the Agency's efforts to return disabled claimants to work. We also believe that the right of claimants to elect to continue benefit payments during the appeals process should be eliminated when the basis for the proposed cessation was the claimant's failure to cooperate with the decision-maker. The fact that many claimants can continue to receive benefits during an appeals process that may take years because of their own failure to cooperate with the decision-makers is an affront to justice and an embarrassment to the disability program.

In conclusion, we would like to echo the opinion expressed by the Advisory Board, ". . . disability policy and administrative capacity urgently need to be brought into alignment." This is critical in light of the likelihood of an increase in claims from the baby boom generation who are just now entering their most disability prone years. Disability workloads have grown in recent years and more growth is expected. However, the capacity of the DDSs and SSA to handle this growth in workloads has not. The Advisory Board's report makes the emphatic point that, "Although there are many capable people working in the disability system, their efforts will be of little avail unless they have the tools they need to administer the program." We strongly concur with this statement and ask that we be given the tools that we need to render fair and timely decisions so that the disabled citizens who come to us for assistance can be treated with respect and humanity.

Thank you.

Chairman SHAW. Thank you, Ms. Heflin.  
Mr. Willman.

**STATEMENT OF DOUGLAS WILLMAN, PAST PRESIDENT, NATIONAL COUNCIL OF DISABILITY DETERMINATIONS DIRECTORS, LINCOLN, NEBRASKA**

Mr. WILLMAN. Chairman Shaw and members of the Subcommittee, on behalf of our organization, thank you for the opportunity to appear here today to present our views regarding the challenges and opportunities now facing the disability programs.

The NCDDD is a professional organization of the directors of the State agencies that perform the disability determination function. Our goals include finding ways to establish, maintain, and improve accurate, timely, and economical decisions to persons applying for benefits.

We and the Social Security Advisory Board are generally in agreement as to the broad courses of action that are necessary to improve our service delivery. The following five key challenges are important areas in which we on the Advisory Board hold similar positions.

First, the disability program must have the resources that are necessary to deliver the level of service that the public deserves. The complex task of applying the statutory definition of disability requires acquisition of extensive medical evidence and careful analysis of that evidence and thorough explanation of the conclusions. Therefore, the process is costly.

The recent history of downsizing, attempts to implement multiple costly projects and the creation of new policies that are expensive to administer have contributed to the current situation in which the program and the resources available to carry it out are seriously out of alignment.

The result is that our program now has by our count about 175,000 more cases pending than we are able to handle. Assignment of these cases to caseworkers is not happening because all the caseloads are full. Worse, SSA has predicted that with the current resource allocation, this backlog will actually grow. We feel that this level of service delivery is unacceptable and amounts to a failure to provide the service that the public deserves.

Second, SSA should modify its organizational structure so the disability program occupies a level commensurate with its size and importance. As the Advisory Board has reported, SSA's current operational structure disperses function and authority for the disability program over too many components. The individual most identifiable as being responsible for the disability program is at the Associate Commissioner level. We find this curious in view of the fact that the program consumes two-thirds of SSA's administrative budget and comprises nearly 5 percent of all Federal expenditures.

Problems result because policy development, program evaluation, budgeting, systems, and so forth, are all managed separately. Such an environment does not provide for the level of accountability that the program needs. We feel that the program would benefit if it were managed by having one high-level individual who would report directly to the Commissioner and whose authority would cross functional lines.

Third, improvement in policy and training is necessary to produce more consistent and accurate decisionmaking. As reported by the Advisory Board, the most important step SSA can take to improve the process is to provide ongoing joint training for all adjudicators and all the components that make and review the disability determinations. The Board also noted that such a training program would first be based on the existence of a policy base which is clear, concise, and applicable in a real world setting.

Presently, SSA's policies are neither clear nor consistent among the components, nor practicable. This compromises our ability to decide cases consistently and accurately and is part of the reason why about 60 percent of the applicants who appeal the initial denial of benefits receive those benefits after appeal.

Fourth, the quality assurance system must be improved. We recommend that SSA assign a high priority to revising its QA system so as to achieve the goal of unifying the application of policy among all components. The present QA system is out-of-date, it applies differently to the various components, and it actually induces inconsistency of decisionmaking.

SSA is in possession of an independent consultant's report concerning changes in the QA system. We endorse many aspects of the Lewin report and recommend that it receive expedited attention by top management at SSA.

Last, SSA should find better ways to develop its computer systems. We rely on electronic systems in order to deliver high-quality service at a reasonable cost. Historically, the States have had an

excellent track record of having worked together to develop systems to support their business processes, but in the last several years, our ability to improve our own systems has been curtailed by various SSA initiatives which have been costly and which have not produced advantages commensurate with their cost.

NCDDD recommends that future development and enhancement of electronic systems be accomplished with greater reliance on State systems personnel and through the use of private sector contracting.

Mr. Chairman, members of the Committee, thanks again for the opportunity to provide this comments on the challenges and opportunities facing our program.

[The prepared statement of Mr. Willman follows:]

**Statement of Douglas Willman, Past President, National Council of Disability Determinations Directors, Lincoln, Nebraska**

Mr. Chairman, thank you for your invitation to participate in the first in a series of hearings on the challenges and opportunities facing the Social Security disability programs. As members of the disability community, we certainly agree that we all must work collegially to thoughtfully, carefully and realistically examine the challenges faced by these programs. The National Council of Disability Determination Directors (NCDDD) reaffirms all its previous commitments to participate in finding and implementing responsible solutions with accountability by all stakeholders. We agree wholeheartedly with President Bush that the first guiding principal of Social Security is to “. . . protect disability for American citizens.”

Before commenting on five specific challenges and opportunities, we would like to restate the purpose of our organization, explain the reasons for the federal state partnership, and describe our commitment to current and future solutions to the major challenges facing the disability programs.

The NCDDD is a professional association of directors and managers of the agencies of state government performing the disability determination function on behalf of Social Security. NCDDD's goals focus on finding ways to establish, maintain, and improve fair, accurate, timely, and economical decisions to persons applying for disability benefits.

Congress created the federal state relationship in response to the need for experts at the grass roots level working effectively and efficiently with other community-based services. The intention was that the DDS be the human face in government services to our disabled population. This still proves to be the case in most instances. State initiatives, cost effectiveness in personnel usage, and working within the individual state infrastructures to provide referrals to related state agencies has served the disability program and the American public well. This relationship should continue to be nurtured and supported to allow for alignment with other community-based one-stop services. In reality, the federal state partnership, while not perfect, is at its best when integrated with the Administration's mandate of empowering the states to act on behalf of and empowering our most vulnerable citizens.

The SSA/DDS partnership is held to a high standard by close contact with individual state governors, U.S. Congressional delegations and the American public. Serving the public requires close teamwork. We appreciate the recommendations of the bipartisan Social Security Advisory Board (SSAB) as stated in their report of February 2001 and generally concur with their findings, particularly in regard to strengthening the federal state relationship in the short run.

The definition of disability has remained essentially unchanged in the past 30 years. It was always meant to be a more stringent standard compared to many other programs. Recent attention has been focused on allowance rates and other issues when, in fact, the program was never designed to allow every individual with any disability. Contrary to some statements contending the disability programs have not changed over the past years, the program has indeed experienced multiple changes in leadership, focus and direction. For example, mental, childhood, pain, treating source opinion, and credibility issues have engendered many changes which in turn impacted our ability to provide thoughtful, consistent, timely adjudication of Social Security disability cases.

NCDD sees five key challenges that compromise our ability to continue to provide even basic levels of customer service for the programs that we jointly administer

with SSA. These challenges relate to the tools necessary to effectively and efficiently administer the disability programs. The essential tools consist of:

1. adequate resources;
2. an organizational structure more appropriate to the scope and importance of the program;
3. clear, concise policy;
4. a quality culture promoting consistency and integrity;
5. up to date, integrated systems support.

#### *Resources*

The complex task of applying the statutory definition of disability requires extensive development of medical evidence, expert analysis of the evidence, and careful explanation of the conclusions. The process is therefore costly. Because determining eligibility for disability benefits is far more than a medical clerical function, the process requires staff trained in making complicated medical, psychological and vocational judgments. This is not done in a "lab" situation or vacuum but rather in the real world of mounting pressures. Thus far, the DDSs have been the only component to perform the mission of the Social Security disability programs productively, responsibly, timely, consistently, and cost effectively. In fact, for years, various SSA components have referred to the state agencies as being the "best deal" in government service.

However, given the significance of the programs we jointly administer, we are greatly concerned that SSA is increasingly unable to provide the high quality of service that the public deserves and has come to expect. A clear relationship exists between the level of service we are able to provide and the resources available to provide that service. The recent history of downsizing, the attempts to implement multiple costly projects, pilots and prototypes, the creation of new policies that are expensive to administer, and other unfunded mandates have contributed to the current situation in which the program and the resources available to carry it out are seriously out of alignment.

The task-to-resource deficit has resulted in an alarming situation about which we want to be very clear. Presently our program has at least 175,000 more cases pending that we are able to process. These applications are awaiting assignment to caseworkers because all the caseloads are full. Worse, SSA has predicted that, with the current resource allocation, this number will continue to grow. NCDDD feels that this quality of service delivery is unacceptable and amounts to a failure to provide the level of service that the public deserves.

#### *Organizational Structure*

As described in the recent reports of the Social Security Advisory Board, SSA's current organizational structure disperses functions and authority for the disability program over too many separate components. The individual most identifiable as being responsible for the disability program is at the associate commissioner level which we find curious in view of the magnitude of the program. Policy development, program evaluation, budgeting, and systems are all administered separately. Such an environment does not provide for the level of accountability appropriate for such an important program.

NCDDD and the Advisory Board agree that the program would benefit if it were managed by having one high level individual who would report directly to the commissioner and whose authority would cut across functional lines.

#### *Improving Policy and Training to Produce More Consistent and Accurate Decision Making.*

As recommended by the Advisory Board in its report of August of 1998, "the most important step SSA can take to improve the process is to develop on-going joint training for all adjudicators in all the components that make and review disability determinations." The Board also noted that such a training program presumes the existence of a policy base which is clear, concise, and applicable in a real world setting.

Presently, SSA policy for evaluating disability claims is fragmented, complex, conflicting, confusing, and sometimes obsolete. This compromises the ability of the DDSs to adjudicate cases consistently and accurately and is part of the reason that about 60% of the applicants who appeal denial of benefits at the initial level receive those benefits after appeal.

While SSA should be commended for its recent efforts to introduce a greater degree of consistency into the process, much more remains to be done.

*Quality Assurance*

Along with clear and concise policy and guidelines, NCDDD recommends that SSA assign a high priority to revising its quality assurance system so as to achieve the goal of unifying the application of policy among all components. The presently QA system is out of date, applies differently to the various components, and induces inconsistency of decision making.

SSA presently is in possession of an independent consultant's report concerning changes in the QA system. NCDDD endorses many aspects of the Lewin report and recommends that it receive expedited attention by top management at SSA.

*Systems Support*

The development and enhancement of effectively performing electronic systems is critical to delivering high quality service at a reasonable cost. Historically, DDSs have an excellent track record of having worked together to develop systems capabilities to support their business processes. In the last several years, SSA has embarked on various initiatives to develop, at the centralized level, alternative systems that would replace the equipment and software used in the DDSs. These initiatives have been extremely costly and have not produced advantages commensurate with their costs. While the available resources were diverted to the unsuccessful development of SSA systems, enhancement of the DDS systems has been curtailed due to lack of funding.

NCDDD recommends that future development and enhancement of electronic systems be accomplished with greater reliance on the DDS systems personnel and through the use of private sector contracting.

Mr. Chairman and members of the committee, thank you again for the opportunity to provide these comments on the challenges and opportunities facing the disability program. Again, NCDDD restates its desire to continue to work in partnership with SSA during the continued evolution and improvement of the program. We appreciate this committee's interest in addressing and resolving barriers to improved service delivery.

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Chairman SHAW. You stopped right on 5 minutes. Thank you, Mr. Willman.  
Mr. Hill.

**STATEMENT OF THE JAMES A. HILL, ATTORNEY-ADVISOR, OFFICE OF HEARINGS AND APPEALS, SOCIAL SECURITY ADMINISTRATION, CLEVELAND HEIGHTS, OHIO, AND PRESIDENT, CHAPTER 224, NATIONAL TREASURY EMPLOYEES UNION, CLEVELAND HEIGHTS, OHIO**

Mr. HILL. Good afternoon, Mr. Chairman.

My name is James Hill. I have been an attorney advisor at the Cleveland, Ohio, OHA office for over 18 years. For nearly 11 years, I have also been the President of Chapter 224 of the National Treasury Employees Union which represents attorneys and other staff members in over 100 OHA offices across the United States.

I want to thank you for inviting me to testify regarding the challenges and opportunities facing Social Security disability programs today.

I last testified before the Subcommittee in March 2000, when the Hearings Process Improvement (HPI) Initiative was in its infancy. At that time, the backlog pending at OHA was 321,000 cases. At the end of last month, the backlog was over 405,000 cases. Indeed, in the last month alone, the backlog grew by over 10,000 cases.

Average processing time for SSA cases has increased from approximately 250 days at the end of fiscal year 2000 to the current level of 300 days and is still climbing.

In my testimony in March 2000, I predicted that HPI would fail, but I had no idea the magnitude of that failure.

We are now in yet another crisis, and corrective action must be both rapid and decisive. This is not a time for yet another untested experiment. This crisis is the latest disability in a long saga beginning in the early nineties when, for a variety of reasons, the number of cases pending at OHA skyrocketed. During the period from 1995 through December 1999, we were able to reduce the backlog by approximately 250,000 cases. During that time, senior attorneys produced approximately 200,000 fully favorable, on the record decisions, with an average processing time of about 100 days.

The correlation between senior attorney decisions and the decline in the backlog is obvious and inescapable. The Senior Attorney Program solved the backlog problem once; it can solve it again.

We recommend that SSA permanently reinstate the original Senior Attorney Program. The immediate improvement in productivity caused by this reinstatement will give SSA the time it needs to carefully consider additional changes that will further improve the adjudication process. Reinstatement of the Senior Attorney Program would permit as many as 100,000 disabled claimants to receive their benefits on a much more timely basis, without increasing the payment rate at OHA. I understand the current payment rate of OHA ALJs exceeds 60 percent. It would also commit limited OHA resources to be concentrated on those cases that require an ALJ hearing.

The Senior Attorney Program offers a nearly unique opportunity, the chance to provide better service at lower cost. OHA receives approximately 100,000 cases a year that, with minimal development, could receive a fully favorable on the record decision. Currently, these cases must go through the entire OHA adjudication process, including an ALJ hearing. During the current fiscal year, ALJs have issued slightly more than 5,000 on the record decisions. This is a far cry from fiscal year 1997, when Senior Attorneys issued nearly 50,000 fully favorable on the record decisions, and ALJs added over 10,000 more.

The expense of going through the entire adjudication process is considerable, and in those cases that should be paid on the record, that cost is excessive. Reinstating the original Senior Attorney Program would provide deserving claimants with a favorable decision in considerably less time and at considerably lower cost. To maintain the integrity of the disability adjudication system, it is essential that the original Senior Attorney Program be reestablished immediately.

Thank you.

[The prepared statement of Mr. Hill follows:]

**Statement of James A. Hill, Attorney-Advisor, Office of Hearings and Appeals, Social Security Administration, Cleveland Heights, Ohio, and President, Chapter 224, National Treasury Employees Union, Cleveland Heights, Ohio**

My name is James A. Hill. I have been employed by the Office of Hearings and Appeals (OHA) of the Social Security Administration (SSA) for more than 18 years as an Attorney-Advisor. I am also the President of National Treasury Employees Union (NTEU) Chapter 224 that represents Attorney-Advisors and other staff members in approximately 110 Hearing Offices and OHA Regional Offices across the

United States. I wish to thank the Subcommittee for inviting me to testify regarding the challenges and opportunities facing Social Security disability programs today.

The challenges facing the SSA disability program are well known and need little amplification by NTEU. The aging of the "baby-boomers" is projected to push disability applications to record heights. *The Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act of 2000* (BIPA) imposes additional workloads and time constraints upon OHA. Exacerbating the situation even more is the prospect that during the next several years the Agency will lose a substantial segment of its current workforce to retirement; another result of the aging of the "baby-boomers." Nonetheless, it is the responsibility of SSA to maintain the level of service expected by the American people despite the ever-increasing workload. While the service delivery situation has both long-term and short-term ramifications, I will limit my testimony to the service provided currently and in the immediate future by the Office of Hearings and Appeals.

We are in the midst of an emerging disaster surrounding the disability workload at OHA precipitated by the demise of the Senior Attorney decision maker and fueled by HPI. The backlog at OHA has increased from approximately 311,000 cases in September 1999 to over 405,000 cases in May 2001. The backlog has increased by over 10,000 a month in two of the last three months, a situation recalling 1994-1995. Processing times have increased from approximately 260 days in January 2000 to approximately 319 days in May 2001. The situation continues to deteriorate, so that any hope of significant improvement without bold and decisive action is unreasonable. Heretofore, SSA has failed to recognize the extent of the impending disaster, choosing to believe that somehow the passage of time would solve the problem. Belatedly, there has been some recognition of "failure," but SSA continues to believe that with some "tweaking" the process can be fixed. The loss of efficiency caused by HPI, the precipitous decline in the number of on-the-record decisions, the impending increase in disability receipts, and the imposition of a new and increased Medicare workload spells disaster. Something more than "tweaking" must be done now.

NTEU makes the following recommendations of action necessary to ensure that the Office of Hearings and Appeals delivers the quality of service demanded by the American people currently and in the immediate future:

1. All experienced OHA Attorney Advisers should immediately be converted to Senior Attorney decision makers and given the authority to issue fully favorable on-the-record decisions. These Senior Attorney decision makers would review all cases coming into the hearing office. The Senior Attorney will identify, develop as necessary, and issue on-the-record fully favorable decisions; The Senior Attorney would also evaluate which cases are subject to dismissal and which cases need further development before a hearing can be scheduled. The Senior Attorney would also select those cases that need no further development, but cannot be paid on the record, and forward those cases to the staff for appropriate action including assignment to an ALJ for immediate scheduling. The Senior Attorney would continue to provide legal advice to the ALJs and staff, and as a secondary duty, draft ALJ decisions.

2. SSA should establish a workgroup empowered to conduct a detailed review of the HPI process to identify and evaluate inefficient and counter productive practices, to evaluate the validity of the fundamental assumptions upon which HPI is predicated in light of actual experience, and to suggest changes necessary to produce the high level of public service expected of SSA.

3. SSA should establish a workgroup to examine the implementation of alternative attorney decision makers in the OHA hearing offices to work in conjunction with the ALJs in processing the ever-growing workload that faces SSA.

Mr. Chairman, the disability system has experienced one crisis after another since the early 1990's when the Social Security Administration failed to timely react to a significant increase in disability receipts leading to a disastrous increase in the number of cases pending, the disability backlog. In 1994 and 1995 a considerable number of claimants were waiting over a year for hearing decisions. By the time SSA decided to respond, the situation was entirely out of control with the OHA backlog increasing by as many as 10,000 cases a month. SSA's response was the overly ambitious and very expensive Disability Process Redesign (DPR) that was intended to introduce radical changes to the adjudication process over an extended period of time. Unfortunately, the individuals charged with the task of dealing with the disability backlog used the opportunity to forward their philosophical agenda to de-legalize the Office of Hearings and Appeals.

Little needs to be said about the DPR. It was a massive and expensive program designed to fundamentally change the Social Security Disability adjudication proc-

ess. Unfortunately, the DPR was fundamentally flawed, its scope was too large, and the project was poorly planned and executed. Cynthia M. Fagnoni, Director of Education, Workforce, and Income Security Issues; Health, Education, and Human Resources Division of the General Accounting Office, testified before the Subcommittees on Social Security and Human Resources on October 21, 1999 that,

“The agency’s first ambitious redesign plan in 1994 yielded little. When the agency scaled back its plan in 1997, progress was slow, in part because even the scaled-back plan proved to be too large to be kept on track.”

The “scaled back” plan had eight major initiatives; none have been completed and several (the Adjudication Officer and Redesignated Disability System) have been terminated. The GAO was being overly kind; the Disability Process Redesign has been a monumental and expensive failure.

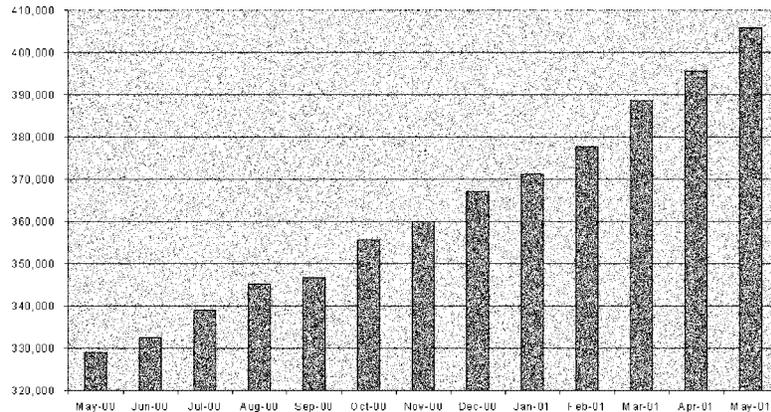
While the DPR did little to reduce the OHA backlog, the Short Term Disability Plan (STDP) and its Senior Attorney Program, which continued after most of the other STDP initiatives were terminated, was instrumental in substantially reducing the OHA backlog. During its pendency, the Senior Attorney Program produced more than 200,000 decisions. During the operation of the Senior Attorney Program, ALJ productivity achieved record levels. The backlog, which peaked at approximately 570,000 cases in 1995, was reduced to just over 311,000 cases at the end of September 1999. Indeed, the backlog decreased every single month from February 1997 to September 1999.

Given the fact that the disability adjudication program had made giant strides in reducing the number of cases pending despite less than optimum support for the Senior Attorney Program, it is difficult to justify why SSA chose to introduce the massive changes in operations entitled the Hearings Process Improvement Plan without continuing the Senior Attorney Program. The answer is quite simple: Despite the failure of the DPR and particularly the failure of the Adjudication Officer Program, SSA has never abandoned the underlying premises of these programs including the “de-legalization” of OHA. One element of the DPR, the Adjudication Officer (AO) Program, was extensively piloted for a substantial period of time, and at an enormous expense to the taxpayers, under the pretense that full-scale implementation of the Program would significantly reduce the backlog. The pilot failed, but SSA did not give up on the concept. One lesson that SSA learned from the Adjudication Officer Program Pilot was that if they do not pilot a program, they can do exactly what they want.

The result of that peculiar line of thinking is Hearings Process Improvement. In many ways HPI is an extension of the AO concept to the hearing office. The shortcomings of the piloted AO Program did not adversely affect OHA operations. Since HPI was implemented on a widespread, real world basis without adequate testing or piloting, its shortcomings are dramatic and impact directly on public service. Interestingly enough, the one aspect of the AO Program that was not included in HPI was non-ALJ decisional authority to issue fully favorable On-the-Record decisions.

That HPI has been a failure is incontestable. Then Commissioner Apfel’s written statement provided in conjunction with the March 16, 2000 hearing of this Subcommittee stated that processing time was just over 260 days. In May 2001 processing time climbed to 319 days, a 22% increase. Average age of pending has also increased at an alarming rate. Since September 1999, the backlog at OHA has increased every single month. In fact, the backlog has increased by more than 10,000 cases per month in two of the last three months, recalling the dismal performance of 1994 and 1995 that led to the implementation of the Senior Attorney Program. While a learning curve was expected, it certainly is a strange learning curve, the most severe increases have occurred in the last three months. The longer HPI is in effect, the worse OHA’s performance becomes. The following chart documents the increase in backlog at OHA during the past year.

## Cases Pending



While the Agency may point to a number of factors such as longer than estimated learning curves, the impact of time lost for training, the effect of the Prototype Programs and the inability to hire new ALJs, nearly all these factors were clearly foreseeable. While it is readily apparent that there has been a plethora of poor managerial decisions regarding implementation of HPI, poor management is not the root cause of the failure of HPI. The root cause of that failure is the plan itself. Despite the uncontested success of the Senior Attorney Program that produced over 200,000 decisions in addition to the record number of decisions produced by ALJs, SSA determined that ALJs should be the only decision makers in OHA hearing offices. Indeed, even prior to HPI, the Agency's commitment to the concept that the ALJ should be the only decision maker at the hearings level, which resulted in downsizing the Senior Attorney Program, began the inexorable deterioration in the level of service provided by OHA. HPI accelerated the process.

The former Chief Administrative Law Judge of OHA recently stated that OHA may receive as many as 100,000 cases a year that with minimum development could be paid without a hearing before an Administrative Law Judge. Prior to the implementation of HPI, Senior Attorneys could quickly, efficiently, and in a cost effective manner issue fully favorable OTR decisions for obviously disabled claimants. The average processing time for Senior Attorney decisions was just over 100 days. This was at a time when processing time at the OHA hearing level was 386 days—**more than 1 whole year**. As a result of the Senior Attorney Program, disabled claimants received their benefits nearly 9 months earlier than otherwise would have been the case.

Of course the success of the Senior Attorney Program, like the success of the ALJ due process hearings, ultimately rests on the competence of the highly trained legal professionals who serve as adjudicators. These individuals are experienced OHA Staff Attorneys who have many years experience advising ALJs and composing ALJ decisions. They are attorneys well versed in the law, and they are experienced disability practitioners. Senior Attorney decision makers have proven by their performance that pre-ALJ decision making in the OHA hearing office significantly improves the quality of service provided to the public.

The Senior Attorney Program was a resounding success. It materially improved the quality of service provided to the public, especially those individuals who were disabled and entitled to receive their disability decision and benefits on a timely basis. Despite its success, the Senior Attorney as an independent adjudicator was eliminated as part of the HPI Plan. Ironically, the Senior Attorney Program is ideally suited for inclusion in the HPI process. Indeed, under HPI a new permanent position called the Senior Attorney Adviser has been created whose prime responsibility is to review cases for possible on the record decisions. The Senior Attorney position under HPI does not have independent decisional authority.

Prior to HPI, a Senior Attorney could review, develop, decide, draft and issue a fully favorable on-the-record decision with no interim handoffs. Under HPI if a Senior Attorney believes that a case he/she has reviewed may result in a fully favorable on-the-record decision, the case is forwarded to a Senior Case Technician to obtain

any needed development; the case must then be returned to the Senior Attorney after the development has been obtained to determine if the case remains appropriate for a fully favorable on-the-record decision; the Senior Attorney must then draft a memorandum to the ALJ proposing that the ALJ issue an on-the-record decision; the ALJ must review the memorandum and the case file and make an independent determination that an on-the-record fully favorable decision is appropriate; the ALJ must convey his/her decision and the case file back to the Senior Attorney; the Senior Attorney must then draft the written decision based upon the instructions from the ALJ and forward the draft decision and the case file back to the ALJ, who reviews the draft, makes changes he/she deems necessary, and signs and issues the decision. This involves many more hand-offs, requires that an ALJ duplicate the effort of the Senior Attorney, and reduces the number of other cases an ALJ can adjudicate. This is not an administratively efficient process, but it is typical of the increased complexity of the HPI process. Restoring the decisional authority to a Senior Attorney decision maker would provide the HPI process with a tested mechanism for efficiently dealing with claimants who are entitled to disability benefits at virtually no additional cost to the Agency.

SSA's Office of Workforce Analysis after site visits to eleven OHA offices stated:

"Restore the signature authority for favorable decisions that offices enjoyed under the Senior Attorney initiative so that OTRs can be moved out of the office quickly without ALJ intervention." NTEU concurs.

NTEU recommends that:

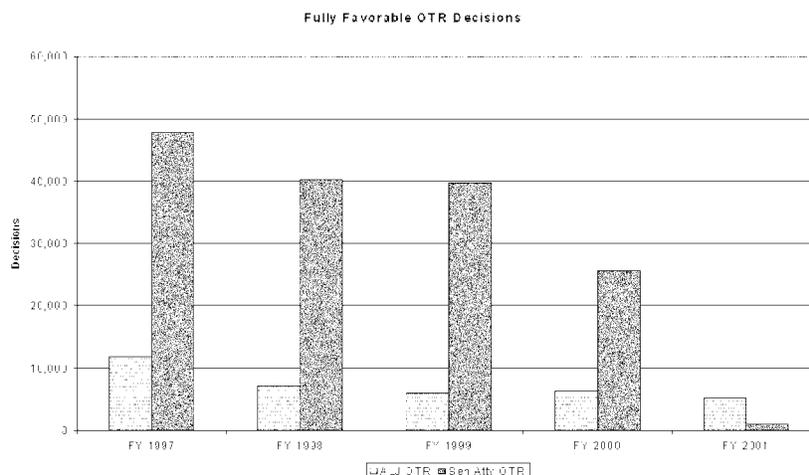
All experienced OHA Attorney Advisers should be converted to Senior Attorney decision makers and given the authority to issue fully favorable on-the-record decisions. These Senior Attorney decision makers would review all cases coming into the hearing office. The Senior Attorney will identify, develop as necessary, and issue on-the-record fully favorable decisions; The Senior Attorney would also evaluate which cases are subject to dismissal and which cases need further development before a hearing can be scheduled. The Senior Attorney would also select those cases that need no further development but cannot be paid on the record and forward those cases to the staff for appropriate action including assignment to an ALJ for immediate scheduling. The Senior Attorney would continue to provide legal advice to the ALJs and staff, and as a secondary duty, draft ALJ decisions.

The immediate conversion of OHA Attorney Advisers to Senior Attorney decision makers as described above will result in an immediate and substantial improvement in OHA service to the public with minimal disruption of current OHA structure and operations and at minimal additional cost. Based upon the Agency's experience with the original Senior Attorney Program, and with the full cooperation of hearing office management (lacking during the original Senior Attorney Program), this measure could produce as many as 100,000 decisions a year without diminishing ALJ productivity. Based upon previous experience, the average processing time for these cases would be approximately 100 days. Additionally, the minimal staff and complete lack of ALJ time spent on these cases frees the staff and ALJs to spend more time on processing those cases requiring a hearing.

The installation of the Senior Attorney decision maker will result in an immediate improvement in service to the public and permit SSA to deal with the other significant flaws in the HPI process. Given the glacial pace of the SSA bureaucracy in effecting significant beneficial change, without the Senior Attorney decision maker the OHA backlog will rise above 500,000 cases with processing times in excess of 1 year before SSA can adequately effect significant improvement in hearing office work processes.

On its surface HPI appeared to be tailored to enhance ALJ productivity. However, fundamental misconceptions regarding hearing office work processes have resulted in developing a process that degrades rather than enhances hearing office operations.

A fundamental misconception of HPI was that the process could adequately replace the on-the-record decisions lost as a result of the demise of the Senior Attorney Program. Experience shows that a vast majority of on-the-record fully favorable decisions were made by Senior Attorneys rather than ALJs. In fact, ALJ on-the-record fully favorable decisions as recorded in OHA's Monthly Activity Report actually declined with the passage of time despite the fewer number of Senior Attorney decisions made as a result of the downsizing of the Program. This is particularly noteworthy after the implementation of HPI which has failed to produce the expected number of on-the-record decisions. The failure of the process to produce a reasonable number of on-the-record decisions at a time when ALJs are paying overly 60% of the cases heard is unconscionable.



The misconceptions upon which HPI is predicated include the fallacy that ALJs were extensively involved in pre-hearing development, and that HPI would free ALJs of that activity permitting them to devote more time to hold hearings and make decisions. The fact is that few ALJs spent any appreciable amount of time developing and pulling cases; that job was primarily accomplished by GS-8 Legal Assistants who understood how each ALJ wanted his/her cases developed. The work product was tailored to a particular ALJ. Under HPI, development occurs before assignment to an ALJ so that the individual requirements of a particular ALJ cannot be applied. Nonetheless, upon receipt of the case, each ALJ's requirements must be met. Therefore, in some instances too much time is spent developing a case; in others too little time is spent developing a case prior to submission to an ALJ, requiring more work be performed after the case has been assigned.

Under HPI the group is accountable for productivity rather than an individual. This concept of group responsibility rather than individual responsibility erodes individual commitment and initiative leading to a lack of accountability and decreased productivity. After the case has been processed by the Senior Attorney and determined to be inappropriate for an on-the-record decision, it will be immediately assigned to an ALJ who has the responsibility of ensuring that the case is properly developed. This also avoids the unworkable concept of group accountability. This ensures that either a Senior Attorney or an ALJ is accountable for the proper processing of the case file.

Because of the lack of detailed knowledge of actual hearing office processes, a less than knowledgeable "ivory tower" bureaucracy developed an absolutely byzantine plan that involved an incredible number of hand-offs and "make-work" tasks that would complicate and slow down case processing. The plan and the flow charts in the glossy publications were impressive, but as events soon showed, were not based in reality. As a result of the nearly complete lack of credibility of the Plan, prior to implementation of HPI nearly every employee in hearing offices had serious doubts over the viability of HPI. It is not surprising that it has failed.

Other key misconceptions include the belief: That the tasks and duties performed by the remaining hearing office staff were so generic that any individual with minimal training could perform nearly every task required in the processing of a case; that massive disruptions in work processes, job duties, interpersonal relationships, and self-confidence would have little or no impact upon the workplace environment; that rotating staff members into master docket and scheduling positions that require extensive training would not seriously disrupt hearing office operations; that certification by someone other than the ALJ that a case is ready to schedule would add value to the process; that the impact of the culture change was minimal; and that the lack of respect for the knowledge and talents of each individual employee, including the ALJs and attorneys, would not be keenly felt by employees and would not negatively impact on morale.

The Bush Administration has indicated that it expects executive agencies to consider the cost of its business processes in preparing their FY 2003 budgets. NTEU is convinced that reliance upon ALJs as the only decision maker at the hearings

level not only results in degraded service to the public, but also raises the cost of that service. Currently, OHA does not have a sufficient number of decision makers in its hearing offices to adequately meet its mission goals. One obvious solution is to hire many, many new ALJs. The problem is that ALJs and the staff necessary to support them are expensive. Currently, more than 60% of the decisions made by OHA are favorable to the claimant. Management has estimated that as many as 100,000 receipts per year could be properly adjudicated as OTR fully favorable decisions. Approximately 200 ALJs and 800 other employees would be required to adjudicate these cases which could be adjudicated by approximately 600 Senior Attorneys. The cost of ALJ adjudication is not justified in these cases. The Senior Attorney adjudicator is a much more cost-effective alternative. Likewise there are other types of cases handled by OHA including Medicare, SSI, non-disability SSA cases, and even some disability cases which could be decided more efficiently in terms of service and cost by alternative decision makers such as hearing officers or magistrates. NTEU is not suggesting replacing ALJs, but adding different decision makers to perform adjudication of specific kinds of cases supporting the adjudication work of the ALJs. NTEU is suggesting that SSA tailor the decision maker to the specific task, utilizing a range of decision makers who are appropriate to the specific situation.

NTEU recommends that:

A workgroup be established to carefully examine the implementation of alternative attorney decision makers in the OHA hearing offices to work in conjunction with the ALJs in processing the ever-growing workload that faces SSA.

Chairman SHAW. Thank you, Mr. Hill.  
Mr. Bernoski.

**STATEMENT OF THE HON. RONALD G. BERNOSKI, ADMINISTRATIVE LAW JUDGE, OFFICE OF HEARINGS AND APPEALS, SOCIAL SECURITY ADMINISTRATION, MILWAUKEE, WISCONSIN, AND PRESIDENT, ASSOCIATION OF ADMINISTRATIVE LAW JUDGES, MILWAUKEE, WISCONSIN**

Mr. BERNOSKI. Mr. Chairman, thank you for inviting us to testify at this hearing.

I represent the Association of administrative law judges, and my comments are not those of the Social Security Administration.

The Social Security Administration has long struggled to develop and implement an efficient office procedure for its disability program. In the early 1990s, the agency tried a system called "Redesign" which failed in the pilot stage. In October 1999, the agency introduced the Hearing Process Improvement plan, or HPI. The purpose of HPI was to reduce processing time, improve quality and productivity, promote individual case management, and increase employee job satisfaction.

The HPI was developed without any input from the judges; it removed all support staff from the judges and placed them in teams; skilled clerical workers were promoted to decision writers without adequate past training or experience, and many skilled decision writers were placed in supervisory-type positions. It turned a simple procedure into a 14-step process, which I have handed out for you to look at.

The judges lost control of most of the pre-hearing case development and were left without assigned support staff. The result has been delay and confusion. Processing times are getting longer; case backlogs are growing; pre-hearing work products and decision writing is of poorer quality; employee morale is dropping, and there is a lack of accountability for work product.

Judges have on occasion been asked to issue decisions on cases where the exhibits are not in a marked exhibit record. The offices are paralyzed and are not able to deliver cases to the judges to hear. We are now in a much poorer state than we were before HPI started, and we are waiting for the next change.

Any change from HPI must return the control of the casework product to the judge and provide the judges with sufficient staff. This is needed to provide quality service to the American public.

Several groups, including the Judicial Conference, the Social Security Advisory Board, and the Administrative Conference of the United States (ACUS), have looked at the Social Security disability system, and all agree that replacing the Appeals Council with another body that can handle the case backlog and improve quality is essential.

Therefore, any change must improve the quality of the agency's final administrative decisions and reduce the Appeals Council's case backlog. The change that we propose—and it is set forth rather extensively in our statement—creates a separate adjudication component within the agency consisting of administrative law judges, that is managed by a chief judge. The appeals process is transferred to local appellate review panels, with each panel consisting of three administrative law judges, with the number of panels varying depending upon the need.

This appellate change is based upon the Bankruptcy Court system, which has been working well. This change is needed because small boards such as the Appeals Council, a board or a commission cannot handle a workload of over 100,000 cases a year. In the Bankruptcy Court system, the appellate panels have resulted in shorter processing times, higher-quality decisions, fewer appeals to the Federal courts, and fewer appellate reversals.

Under our plan, the Commissioner of Social Security retains all authority for agency rulemaking, and our plan saves money because it closes the Social Security regional management offices.

We believe, Mr. Chairman, that it is now time for us to come to a consensus on the reform for the Social Security process. The plan that we propose is a new concept for Social Security that is based on an existing system that works well. It will improve the quality and efficiency of the Social Security Administration and provide a quality product for the American public.

Our proposal has been reviewed by a former Associate Commissioner of the Office of Hearings and Appeals and a Northwestern University Law School professor, and both were enthusiastic with this realistic approach to this issue and have expressed a willingness to testify before your Committee.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Bernoski follows:]

**Statement of the Hon. Ronald G. Bernoski, Administrative Law Judge, Office of Hearings and Appeals, Social Security Administration, Milwaukee, Wisconsin, and President, Association of Administrative Law Judges, Milwaukee, Wisconsin**

Mr. Chairman and members of the Subcommittee:

## **I. INTRODUCTION**

Thank you for the opportunity to testify before you today. My name is Ronald G. Bernoski. I am an Administrative Law Judge ("ALJ") who has been hearing Social

Security disability cases at the Office of Hearings and Appeals (“OHA”) of the Social Security Administration (“SSA”) in Milwaukee, Wisconsin, for over 20 years.

This statement is presented in my capacity as the President of the Association of Administrative Law Judges (“AALJ”), which represents the ALJs employed in the SSA OHA and the Department of Health and Human Services. The stated purpose of the AALJ is to promote and preserve full due process hearings in compliance with the Administrative Procedure Act for those individuals who seek adjudication of program entitlement disputes within the SSA.

SSA has been unsuccessful in managing OHA’s mammoth appellate administrative caseload in addition to performing its many other duties. SSA also has been unable to refrain from efforts to implement policy through the OHA adjudication process. These failings chronically have interfered with the timeliness and quality of the final adjudication of Social Security Act claims by OHA adjudicators. To cure these problems, AALJ recommends that Congress create an ALJ-administered independent adjudication agency that has the exclusive jurisdiction to make the final administrative decisions of Social Security Act claims. An ALJ-administered independent agency will enable the ALJs to do their job: affording timely and high quality due process hearings and decisions to the members of the American public who seek Social Security Act benefits.

The Social Security Act hearing process should be reformed by the transfer of the authority to make final administrative adjudications of Social Security Act claims, which currently are made at the ALJ and SSA Appeals Council levels, from the Social Security Administration to a new independent adjudication agency. AALJ’s proposal would amend the Social Security Act to provide the claimants with timely, high quality, impartial and fair decisions of their claims pursuant to the Social Security Act and Administrative Procedure Act (“APA”) by adjudicators who are in an agency independent of, but within, the SSA. **A substantial amount of funds would be saved annually by our recommendations to (1) replace the Appeals Council with a nationwide network of appellate panels staffed by ALJs, and (2) abolish the ten OHA regional offices, which appears to be on the order of in excess of \$75,000,000.**

In this statement, I present (1) the reasons why an ALJ-administered independent adjudication agency that supplants the SSA OHA function is the right reform of the Social Security Act hearing process to address the timeliness and quality issues that chronically have beset the SSA OHA, and (2) a summary of the features of the proposed new agency, which may be called the United States Office of Hearings and Appeals (“USOHA”).

A detailed version of the features of the proposed new agency and the rationales for such a new agency is presented in the AALJ’s “Report and Recommendations for the Transfer of the Authority to Make Final Administrative Adjudications of the Social Security Act Claims from the Social Security Administration to a New Independent Regulatory Agency,” which is available upon request or from the homepage link on the AALJ website, [www.aalj.org](http://www.aalj.org).

## **II. REASONS TO ESTABLISH AN ALJ-ADMINISTERED INDEPENDENT AGENCY FOR THE FINAL ADMINISTRATIVE ADJUDICATION OF SOCIAL SECURITY ACT CLAIMS**

### **A. Structure, Size and Workload of the Social Security Administration, Office of Hearings and Appeals**

Essentially, OHA performs an adjudicatory function in an executive agency that was created by Congress, and handles the largest appellate administrative caseload of any agency in the world.

In 1994, the SSA became a Congressionally-created independent regulatory single commissioner agency. Social Security Administration Reform Act of 1994, Pub. L. No. 103–296, 108 Stat. 1472, *codified at* 42 U.S.C. § 901 et seq. The appellate adjudicatory function, namely the administrative review of the SSA’s initial determinations of Social Security Act claims that were partially or wholly denied by the state Disability Determinations Services agencies (“DDS”) on behalf of the SSA, takes place within the SSA OHA. There is an Associate Commissioner for OHA, who reports to the Deputy Commissioner of Disability and Income Security Programs, who is one of eight Deputy Commissioners who report to the Commissioner of SSA. SSA’s Official Internet Site, [www.ssa.gov/org](http://www.ssa.gov/org).

There are two primary organizational components of OHA. The first level of administrative appeal is handled within Hearing Operations, where a claimant is afforded an opportunity for a *de novo* hearing and decision by an Administrative Law Judge. ALJs are Article II Executive Branch competitive civil service employees who are hired pursuant to statute: 5 U.S.C. § 3501 of the APA through a Title V OPM civil service examination process. The Chief Administrative Law Judge oversees 140

hearing offices and 10 regional offices, and is described by SSA as the “principal consultant and advisor to the Associate Commissioner on all matters concerning the ALJ hearing process and all field operations.” The Chief ALJ reports to the Associate Commissioner for OHA, there are over 1,000 ALJs and about 5,600 support staff. SSA ALJs issue over 500,000 decisions per year.

The second and final level of administrative appeal is handled within the Office of Appellate Operations, where a claimant is afforded an opportunity for a record review of the ALJ’s decision by the Appeals Council. The Office of Appellate Operations has about 800 employees and received over 115,000 appeals in fiscal year 1999. The Appeals Council decided over 101,000 cases in fiscal year 1999. OHA also has a Program Management unit, which makes policy and sets procedures for OHA, including policy for the processing of cases through OHA, and an Administrative Management unit, which provides administrative support for OHA. SSA’s Official Internet Site for the Office of Hearings and Appeals, [www.ssa.gov/oha/](http://www.ssa.gov/oha/); *About SSA’s Office of Hearings and Appeals; Information on OHA’s Hearing Sites*. The Associate Commissioner of OHA is the Chair of the Appeals Council. The Appeals Council consists of administrative appeals judges who are **not** ALJs selected by the civil service procedure established by the APA. They are career civil servants who are required to be attorneys with a certain level of experience.

#### **B. The Social Security Administration’s Management of the Office of Hearings and Appeals Has Been a Failure**

The SSA’s administration of OHA has failed. Management initiatives such as process redesign, process unification, prototype, and, most recently, the Hearing Process Improvement Plan (“HPI”) and Appeals Council Process Improvement Plan (“ACPI”), have not achieved their goals. Also, most of these initiatives were undertaken by the SSA without consulting with the ALJs for their input, including HPI and ACPI, which is a major reorganization of OHA. The SSA’s plan to reorganize OHA, which became HPI and ACPI, was not revealed by SSA until shortly before the release of the first version of HPI in July 1999.

**The Failure of the Process Unification and Prototype Projects:** The failure of the process unification and prototype has been the foreshadowing for the failure thus far of HPI and ACPI. Process unification is an effort to have all DDS and OHA decisionmakers use the same standards for determining claims. The prototype is an elimination of the reconsideration determination step at the DDS level in favor of increased claimant contact and improved medical-vocational evaluations at the initial level with an evaluation of the claimant’s credibility. Even with three years of training, the simultaneous implementation of process unification and the prototype has resulted in a marked loss of efficiency, loss of experienced staff from the stress of the now complex job as an examiner, low pay, and an uneven quality of the initial determinations, according to the Social Security Advisory Board’s June 2000 *Report of the Board’s Study of Process Unification and Prototype and Implementation of the Hearing Process Improvement Initiative in California* (“SSAB California Study”). New staff require close to two years of training to do the complex work demanded by prototype and process unification and half of the training classes drop out. The move of DDS from focusing on objective medical findings to assessing credibility of the claimant has resulted in an inability of the DDS examiners in California to determine more than 12 cases per week even with extensive overtime work, which has resulted in longer case processing times and major workload backlogs that required extensive help from other non-prototype offices. The SSA underestimated the experience and quality of staff needed to do this more complex analytical work. However, the increase in the labor-intensive nature of their work has not resulted in any indication yet that the reversal rate of DDS denials at the ALJ level has declined, which was a primary purpose of process unification and prototype. *SSAB California Study*, pp. 1–9. (The SSAB’s findings are based upon the statements of those interviewed by SSAB, rather than SSAB’s own conclusions about the functioning of process unification, prototype and HPI.)

The average prototype case processing time has risen from 78 days in May 2000 to 241 days in March 2001, according to the *HPI Monthly Monitoring Report* for March 2001 by the Acting Deputy Commissioner for Disability and Income Security Programs to the Acting Commissioner (“*March 2001 HPI Report*”). The marked rise is explained in the report by a lack of a stable mix of cases among favorable on-the-record cases, dismissals, and favorable and unfavorable cases that require a hearing. The advancement of mostly favorable on-the-record cases during the first period of May 2000 through March 2001 resulted in what is described as an artificially low cumulative average processing time of 189 days, which has risen to 210 days for the Fiscal Year 2001.

**The Failure of the Hearing Process Improvement Plan:** Cases processed through HPI take longer to be heard and decided and are more labor-intensive than processing the cases in the way it was done before HPI. HPI is causing delays in claimants receiving hearings and decisions on their cases.

The HPI plan entails significant changes in job duties and titles for OHA employees that required new job descriptions for all OHA non-ALJ personnel and also entails major changes in how cases are prepared for hearing. HPI is an effort to reduce case processing time within OHA. OHA now readily admits that the implementation of the HPI process, which was supposed to reduce the time that cases are pending for a hearing and decision and increase output, so far has not done so. SSA's report on the implementation of Phase 1 of HPI generally calls HPI a success, but the data for the four months surveyed, May-August 2000, show that the average processing time and per person work years expended is greater for the HPI cases than the non-HPI cases. *Implementing a New Hearings Process in OHA: Hearings Process Improvement: Phase 1 Implementation Report*, Appendix I (October 2000).

On an ongoing basis, HPI has resulted in an increase in the backlog of cases awaiting a hearing and an increase in the processing time for the cases. SSA OHA's monthly national workload and performance statistics say it all: Nationally, the case backlog has been climbing (December 1999: 317,947, December 2000: 361,564, April 2001: 389,679), so that the backlog now is 22.5 % higher than in December 1999, just before HPI was implemented. In December 1999, the average case processing time was 287 days in HPI Phase I OHAs and 274 days in HPI Phase II/III OHAs. In December 2000, the average case processing time was 273 days in HPI Phase I OHAs and 294 days in HPI Phase II/III OHAs. However, by April 2001, the national average case processing time had risen to 316 days. The *March 2001 HPI Report* states that the average processing time for non-Medicare SSA cases in March 2001, compared to March 2000, was up 27 days (10%) in HPI Phase I OHAs and up 38 days (15%) in HPI Phase II/III OHAs. Although the report attributed the rise in processing time solely to the growth of per ALJ workloads, the downturn in dispositions far exceeds the loss of ALJ personnel (available ALJs down 8% but daily dispositions down 18% in Phase I OHAs, available ALJs down 7% but daily dispositions down 33% in Phase II/III OHAs).

The HPI process thus far has resulted in significant bottlenecks in (1) the clerical preparation of the files so that they are an organized record that is marked in exhibit form (known as case "pulling"), (2) the 'certification' of the cases as being done with pre-hearing development and ready for a hearing, and (3) the drafting of decisions by the writing staff who now also spend time reviewing and 'certifying' cases as ready for a hearing. These bottlenecks in the workflow have been acknowledged by the SSA in its formal training of the OHA hearing office staffs in the third and last wave of implementation last fall and the OHA Associate Commissioner's November 22, 2000, issue of the HPI newsletter, "HPIdeas," and on an ongoing basis by SSA management to the staff in its efforts to overcome these bottlenecks. The production statistics and anecdotal evidence strongly suggest that ALJs now are hearing cases with unpulled files and the number of cases being heard and decided using the HPI model has declined significantly from the numbers that were heard using the prior practice of having the ALJs review the cases and determining what prehearing development is needed. The *SSAB California Study* also revealed concerns with (1) taking the ALJs out of the prehearing record development process until its end, (2) how the duties of the clerical staff were changed, which "slowed the process and reduced productivity," and (3) that "HPI will require additional resources." pp. 9-10. (The SSAB findings are based upon the statements of those interviewed by SSAB, rather than SSAB's own conclusions about the functioning of HPI.)

The failure of the HPI process is typified by the experience at the Miami OHA. Despite the contrary unanimous recommendation of the ten Regional Chief Administrative Law Judges of OHA, the Associate Commissioner of OHA directed the nation-wide creation of 350 new decision-writer "paralegal" positions and the promotion of clerks and other staff members to fill these positions. These new positions involve drafting the legal decisions issued by the judges. Employees were promoted without having to demonstrate that they had the appropriate drafting skills and education to perform the job. In some cases, remedial training has been required. Because of this practice, under HPI, it is taking the Miami judges longer to edit draft decisions, adding to the delay experienced by the claimants. Under HPI, no additional attorney positions were created, although the 350 new paralegal positions are paid at the same level as attorneys.

Therefore, as is stated above, HPI cases take longer to process and are more labor-intensive than processing the cases in the way it was done before HPI, which is causing delays in claimants receiving hearings and decisions on their cases.

**The Chronic Failure of the Appeals Council:** The Appeals Council, which originally was intended as a policy making body, has failed in its function as the final step in the administrative review of Social Security claims.

In the face of a 66% increase in the number of appeals that the Appeals Council heard from fiscal year 1994 (69,171) to 1999 (115,150), its backlog of pending cases has ballooned to 144,525 and the average processing time has nearly quadrupled from 118 to 460 days. By early 2000, the average processing time climbed to 541 days. SSA OHA Appeals Council Process Improvement: Action Plan, pp. 3-4 (March 2000) (“ACPI Action Plan”); SSA OHA Associate Commissioner’s Message, *Salute to the Appeals Council* (April 2000), p. 1. At the same time, the quality of the Appeals Council decision process has plummeted. Cases that were decided by ALJs as long ago as 1995 and 1996 were remanded to ALJs in 2000. Particularly since the implementation of ACPI, numerous cases have been remanded only because the tape recording of the ALJ hearing or the entire file was lost by the Appeals Council. The Appeals Council does not have a reliable case tracking system in place.

Appeals Council decisions often do not include rationales, rarely refer to relevant statutes, regulations and cases, and only sometimes cite SSA Rulings, which reduces the consistency of the decisions. Appeals Council decisions all too frequently rely upon non-material errors that do not affect the results in the case. The unprofessional quality of the Appeals Council decisions was described by a federal Circuit Court of Appeals Judge over 15 years ago: “I have read many administrative law judges’ decisions on social security disability cases, all of which the disappointed claimant has asked the Appeals Council to review (as he had to do before he could begin judicial review proceedings), but I can remember only one occasion on which the Appeals Council wrote an opinion, even when the administrative law judge’s decision raised difficult questions.” *A Specialized Court for Social Security? A Critique of Recent Proposals*, Robert E. Rains, 15 Fla. St. U.L. Rev. 1, 28 (1987), quoting, R. Posner, *The Federal Courts Crisis & Reform*, p. 161 (1985). Decisions that are supported by a full rationale still are rare.

Although there is no significant evidence of direct agency pressure to grant or deny more claims, concern has been expressed that “SSA policymakers nevertheless are able to create an adjudicative climate that subtly and indirectly inclines the Appeals Council toward more or fewer awards, noting that the Appeals Council always reflects, to some extent, the interests and style of the OHA Associate Commissioner. Some have expressed the view that the Appeals Council is still perceived in some quarters as an even more partisan “arm of the [agency].” *The Fourth Bite at the Apple: A Study of the Operation and Utility of the Social Security Administration’s Appeals Council*, Charles H. Koch, Jr. & David A. Koplow, 17 Fla. St. U.L. Rev. 199, 236-240 (1990). The Appeals Council’s administrative appeals judges are not independent adjudicators, unlike the ALJs, whose independence is established by the Administrative Procedure Act.

Although SSA’s *ACPI Action Plan* now states that higher productivity, much shorter processing times and improved public service are necessary, SSA has allowed the Appeals Council functioning to deteriorate for years without regard to the impact on due process and fairness for the claimants. (SSA’s *ACPI Action Plan* was issued 13 years after a recommendation by the Administrative Conference of the United States to abolish the Appeals Council if it cannot be fixed, which is described below.) There is an absence of timely and efficient case processing and high quality decisions at SSA’s final stage of administrative review. SSA states that it “will measure the success of the ACPI initiatives by improvements in average processing time, the number of pending appeals, and the productivity per [employee] work year (“PPWY”).” *Action Plan*, p. 10. No measure of the quality of the Appeals Council decisions is mentioned in the Action Plan, which again demonstrates an absence of quality decisionmaking as a SSA priority.

**C. The Social Security Administration’s Improper Implementation of Policy through the Office of Hearings and Appeals Adjudication Process Has Compromised the Claimants’ Right to Timely, High Quality and Impartial Adjudications of Their Claims**

**Separation of OHA’s Adjudication Function from SSA’s Policy, Rule-making, Enforcement and Investigation Functions Is Necessary to Protect the Claimants’ Right to Timely, High Quality and Impartial Adjudications of Their Claims:** Congress made SSA independent of the Department of Health and Human Services in 1994 to ensure that “policy errors resulting from inappropriate influence from outside the agency such as those occurring in the early 1980s do not recur in the future.” *Characteristics of Independent Executive Agencies*, Statement by Rogelio Garcia, Congressional Research Service, House Subcommittee on Social Security, pp. CRS-4-CRS-5 (July 25, 1996), quoting, House Conference Com-

mittee Report No. 103–670, *Social Security Administration Reform Act of 1994*, 103rd Cong., 2nd Sess., p. 90 (1994).

However, Congress apparently was incorrect that the policy errors that led to the SSA's interference with the administration of the OHA and ALJs' decisional independence came only from influences outside SSA. The problems are within SSA, as is shown by the continuation and proliferation of inappropriate policy and policy implementation and management errors that negatively affect the timeliness, high quality, and impartiality of appellate administrative review of Social Security Act claims. A list of some of SSA's major policy abuses of the OHA adjudication process is provided at the end of this section.

Leaving the adjudication function of OHA under the administration of SSA is not compatible with efficient and high quality service to the claimants and defeats the Congressional intent of providing full and fair hearings for Social Security claimants that is embodied in the Social Security Act and Administrative Procedure Act.

In 1935, the Supreme Court held that the desirability of the neutral exercise of expertise and impartiality of decisionmaking by Executive Branch agencies warranted the power of Congress to create independent regulatory agencies and commissions to insulate agency officers from at will removal by the President. *Humphrey's Executor v. United States*, 295 U.S. 602 (1935). In 1955, the Hoover Commission strongly advocated the separation of the adjudication function of Executive Branch agencies from the agencies to protect the claimants' due process rights: "Where the proceeding before the administrative agency is strictly judicial in nature, and the remedy afforded by the agency is one characteristically granted by the courts, there can be no effective protection of private rights unless there is a complete separation of the prosecuting functions from the functions of decision." *Specialized Courts and the Administrative Lawmaking System*, Richard L. Revesz, 138 U. Penn. L. Rev. 1111, 1118–1119 (1990), quoting, *Commission on Organization of the Executive Branch of Government, Legal Services and Procedures: A Report to Congress*, 84–85 (1955).

Thus, it is difficult to justify a "role" for politically appointed Commissioners or Board members for an agency that does only adjudication, since the independent entity would not set policy. Policy-setting is the function for which political accountability is desirable, not adjudication of claims.

The rationales that have justified Congressional separation of the appellate administrative adjudication function from Executive Branch agencies include an efficient and low cost process for the claimants, expertise, high case volumes, and decisional independence of adjudicators. The maintenance of a reasonably efficient, orderly and low cost adjudication system in the traditional domain of public rights is in the public's interest, especially for programs that distribute benefits on a large scale. Specialized tribunals are more likely to make correct decisions in subject areas that are legally complex or have technical facts. The large increase in the administrative case volume also supports the use of specialized adjudication agencies. The most important rationale is the experience that effective protection of individual rights before agencies through independent decisionmaking cannot take place unless adjudications are separated from the agency's rulemaking/policy, prosecutorial/enforcement and investigatory functions.

These rationales, particularly the need to separate the adjudicatory function from other conflicting agency functions, led Congress to create the Occupational Safety and Health Review Commission ("OSHRC") in 1970, 29 U.S.C. § 661, and the Federal Mine Safety and Health Review Commission ("FMSHRC") in 1977, 30 U.S.C. § 823, as independent Executive Branch agencies outside the Department of Labor with only adjudicative authority. The OSHRC determines whether regulations promulgated and enforced by the Occupational Safety and Health Administration have been violated. The FMSHRC adjudicates violations of standards promulgated and enforced by the Mine Safety and Health Administration.

Therefore, when an agency, such as SSA, exclusively uses rulemaking proceedings to set policy, rather than also using adjudications to set policy, there no longer is any rationale for keeping the adjudicatory function within the agency. The Congressional interest in providing a check on SSA's enforcement powers, *i.e.*, to withhold disability and other program benefits, is best served by having entitlement determinations decided by an independent adjudicatory agency based on the benefits entitlement standards set by SSA. Hence our proposal that the independent agency be an adjudicatory body that is self-administered by the ALJs with a right of appeal from an individual ALJ's decision to an appellate panel staffed by ALJs.

There are additional reasons why an independent adjudication agency administered by ALJs provides a higher quality of due process for Social Security benefits claimants than the current SSA Appeals Council or an independent but politically appointed Commission or Board structure. First, a small body, such as the current

Appeals Council, or a Commission or Board, cannot be of sufficient size to do meaningful administrative review of appeals from the ALJ decisions, which now number well over 100,000 per year. The SSA ALJs are a large group of highly qualified judicial professionals who are capable of administering themselves and the appellate administrative process in a competent and effective manner. Second, creating an independent agency would eliminate political oversight by appointees (*i.e.*, Commissioners or Board members) who do not have due process and adjudicative independence as their foremost goal in agency administration. Finally, if the SSA ALJs administer themselves, they will draft and issue the procedural regulations and rules of the new agency based upon their experience and needs of the process, rather than expediency and other policy concerns as they are now. There now is no coherent set of procedural regulations and rules for the SSA appellate administrative process.

SSA's many efforts to implement policy through OHA's adjudication function, only some of which are described below, reveal the nature of the change in the Social Security claims process the American public needs: Separation of OHA's appellate administrative adjudication function into an entity that is independent of the political policy making and implementation portions of SSA. An independent adjudication agency would provide members of the American public who file claims for Social Security Act entitlement program benefits that have been denied by the SSA timely adjudications that give due process and a sense of a timely and fair hearing free of policy implementation and political pressure.

**Examples of SSA's Policy Abuses of the OHA Adjudication Process:** SSA has a long history of trying to use the adjudicatory function to implement policy, rather than just to decide cases on their merits, which undermines the ALJs' ability to provide the claimants with timely, impartial, high quality and fair adjudications of their claims. Examples of SSA's policy incursions into the ALJs' ability to timely and effectively hear and decide their cases and exercise their decisional independence, both before and since SSA became an independent agency in 1994, include:

1. SSA's reorganization in 1999–2000 of OHA's entire hearings procedure with HPI without consulting with the ALJs, which includes, among many other things, a substantial reduction in the ALJs' role in the pre-hearing development of the case records and a reduction in the control by ALJs over their work product. As is stated above, the implementation of HPI, which was completed in November 2001, has resulted in an increase in the backlog of cases waiting to be heard and a lengthening of the time it takes to dispose of cases.

2. SSA's attempt during the summer of 1999 to discharge the Chief Judge for reasons not related to good cause.

3. SSA's long term and ongoing "non-acquiescence" by SSA with decisions by the Federal Circuit Courts of Appeal. On January 31, 1997, the Commissioner of Social Security issued to the SSA Executive Staff a memorandum of law from the SSA Office of the General Counsel entitled *Legal Foundations of the Duty of Impartiality in the Hearing Process and its Applicability to Administrative Law Judges* ("Impartiality Memo"), which asserts the validity of its non-acquiescence policy as supreme over the ALJs' judicial independence in making decisions, among other things. pp. 4–5. SSA's ongoing "non-acquiescence" with decisions by the Federal Circuit Courts of Appeal. Non-acquiescence forces ALJs to choose between obeying SSA or following the law as interpreted by the Circuit Courts and risk the approbation of their employer. A bill was introduced in the 106th Congress to bar the SSA's non-acquiescence policy. That an act of Congress should be necessary to compel a federal agency to follow the law of the federal appellate courts is extraordinary.

4. The current Quality Assurance Review program, with its abuse of the adjudicatory purpose of the Appeals Council by having it implement SSA policy by reviewing only fully favorable ALJ decisions on its own motion. The SSA Office of Quality Assurance and Performance Assessment, which is not part of OHA, periodically conducts an ALJ peer review process to, among other things, assess whether ALJs' decisions are supported by substantial evidence in the record, which is the standard of Appeals Council and judicial review of ALJ decisions. The most recent peer review resulted in a finding that 92% of the ALJ denial decisions were supported by substantial evidence, but only 83% of the fully favorable decisions were supported, the latter of which was an improvement over 79% in the prior evaluation. *Findings of the Disability Hearings Quality Review Process: ALJ Peer Report III*, pp. ix, 21–32. Although ALJs performed the review, it is interesting to note that denial decisions were found to be supported by substantial evidence significantly more often than were allowance decisions. This practice subjects the ALJs' favorable decisions to more scrutiny than unfavorable decisions, which works to the detriment of the claimants and undercuts the perception of fairness and impartiality of agency adjudication of administrative claims that the APA is intended to foster. This program clearly shows that the independent SSA believes that targeting only favorable deci-

sions is permissible and now subjects all of its ALJs to such review. SSA's current Quality Assurance Review Program inherently is unfair and discourages the granting of benefits by ALJs.

5. Statements by senior SSA management and a former SSA General Counsel that SSA is not required to hold hearings pursuant to the Administrative Procedure Act, notwithstanding that SSA's hearing process uses APA judges who by law can conduct only APA hearings. However, on January 9, 2001, the Commissioner of the SSA issued a statement that "SSA always has supported the APA and is proud that the SSA hearing process has become the model under which all Federal agencies that hold hearings subject to the APA operate. SSA's hearing process provides the protections set forth in the APA, and SSA's Administrative Law Judges are appointed in compliance with the provisions of the APA." This is the first statement by a Commissioner regarding the APA and SSA hearings.

6. Statements by senior SSA management and the SSA General Counsel in the Impartiality Memo that SSA has the power to discipline or remove ALJs by proceedings brought before the MSPB based upon a failure to decide a quota level of cases each month. pp. 7–21. This position is contrary to the APA, law set forth in *Nash v. Bowen*, agency policy stated in Social Security Commissioner Gwendolyn King's memorandum on the Temporary Suspension of Numeric Performance Goals (March 5, 1990), and the agreement in the *Bono* settlement. *Nash v. Bowen*, 869 F.2d 675 (2nd Cir. 1989), *cert. den.*, 493 U.S. 813, 110 S. Ct. 59, 107 L.Ed.2d 27 (1989). The Impartiality Memo was an effort to find the outer limits of all of the ways and things for which ALJs may be disciplined, which demonstrates the SSA's desire to control the ALJs in the performance of their duties and hostility to the ALJs' independence in the adjudication of Social Security Act claims. It is also an effort to commingle the functions of a policy-making component (OGC) and an adjudication component (OHA), which clearly is contrary to the APA.

7. The SSA's longstanding preoccupation with the production of decisions in quantity at the expense of quality. In SSA's *Strategic Plan 2000–2005*, SSA states that one of its strategic goals is to "deliver customer-responsive, world-class service," which includes "strategies specific to improving service to disability applicants:"

*Make changes to the hearings and appeals processes focused on reducing processing time and improving efficiency.* Hearing process changes [HPI] include a national workflow model, group-based accountability and enhanced automation and data collection. Appeals process changes [ACPI] include short-term measures, such as case screening and expedited decisionmaking, as well as long-range proposals, such as restructuring and IT improvements designed to enhance service to the public by improving the timeliness of case processing at the Appeals Council.

pp. 23, 28. However, the quality of service is assessed mostly by statistical results: the percent of hearings decisions issued within 180 days, percent of final actions on appeals of hearings decisions that are issued within 105 days, average processing times for hearings decisions and for decisions on appeals of hearings decisions, and number of hearings and appeals processed per employee work year. Also, the substantial evidence support rate is used to assess ALJ decisional accuracy "pending development of a new accuracy indicator." *Id.*, p. 30. No measure of the quality of the Appeals Council decisions is mentioned in the Strategic Plan. SSA's disregard of quality has undermined the federal courts' respect for SSA ALJ decisions and resulted in a *de facto* appellate standard of review that is unattainably high, rather than the substantial evidence rule that is supposed to be applied.

9. The wholesale cessation of benefits of hundreds of thousands of recipients during 1980–1984 without the option to continue benefits pending appeal. Remedial legislation was necessary to end the practice.

10. There were many incidents of SSA policy and management decisions during the 1980s to attempt to compel individual judges to reduce their allowance rate, to discipline or threaten to discipline ALJs for failure to meet production quotas, to control the content of ALJ decisions, to discourage the ALJs from using medical and vocational experts at their hearings, and to ignore SSA's own regulations regarding the sequential evaluation process to deny mental impairment disability claims, among other things. For example, the SSA's Bellmon Review Program in the early 1980s was a process by which SSA had the Appeals Council do "own motion" review of 25% to 100% of only the favorable decisions issued only by ALJs who the SSA had targeted as having high allowance rates of 70% or more. In 1983, the Subcommittee on Oversight of Government Management of the Senate Committee on Governmental Affairs held hearings on the ALJs' role in the Title II disability insurance program and issued a report that stated its findings of SSA's improprieties,

including limits of ALJs' decisional independence, non-acquiescence, and increasing case quotas:

The principal findings of the Subcommittee is that the SSA is pressuring its ALJs to reduce the rate at which they allow disabled persons to participate in the Social Security Disability Program. . . . [The Subcommittee found that the SSA was limiting the decisional independence of ALJs through its Rulings, its non-acquiescence to federal court decisions, and its increasing of case quotas that reduced the time an ALJ could spend on each case to develop additional evidence that may support an allowance decision, among other things.] The APA mandates that the ALJ be an independent, impartial adjudicator in the administrative process and in so doing separates the adjudicative and prosecutorial functions of an agency. The ALJ is the only impartial, independent adjudicator available to the claimant in the administrative process, and the only person who stand between the claimant and the whim of agency bias and policy. If the ALJ is subordinated to the role of a mere employee, an instrument and mouthpiece for the SSA, then we will have returned to the days when the agency was both prosecutor and judge.

Sen. Rep. No. 98-111 (September 16, 1983). The pitched battle that the SSA ALJs had to wage against SSA during the 1980s to preserve the independent decision-making and due process under the APA for Social Security claimants was such that, in 1986, the President of the American Bar Association presented the SSA ALJs with an award to recognize their efforts to preserve the hearing process. The award states "[t]hat the American Bar Association hereby commends the Social Security Administrative Law Judge Corps for its outstanding efforts during the period from 1982-1984 to protect the integrity of administrative adjudication within their agency, to preserve the public confidence in the fairness of governmental institutions and uphold the rule of law."

#### **D. Other Federal Government Entities Have Recognized the Need for Fundamental Reform of the Final Administrative Hearing and Decision Process of the Social Security Administration**

The federal government entities that have considered the Social Security claims process all have concluded that substantial reform is necessary, especially with the Appeals Council, including the Administrative Conference of the United States ("ACUS"), the Judicial Conference of the United States ("Judicial Conference"), and the Social Security Advisory Board ("SSAB"). However, each adopts a different idea of how to go about reforming the Social Security process and none present details of how to implement the ideas. It is time to form a consensus around one idea that will work in its execution so that legislation can become a reality.

In 1987, ACUS issued a set of recommendations for improving the functioning of the Appeals Council, including reorganization, caseload control and the quality of the review of cases. ACUS concluded its recommendation by stating that "[i]f the reconstituted Appeals Council does not result in improved policy development or case-handling performance within a certain number of years (to be determined by Congress and SSA), serious consideration should be given to abolishing it." ACUS, *A New Role for the Social Security Appeals Council*, Recommendation 87-7 (December 18, 1987).

In 1990, the Federal Courts Study Committee, which was an independent review committee that was formed by Congress in 1988 to study and report on certain federal courts matters and that included Members of Congress and the federal judiciary, issued a minority recommendation in its final report that the Appeals Council be abolished and replaced with a Social Security Benefits Review Board with no further review of the ALJs' decisions by the SSA. *Report of the Federal Courts Study Committee*, pp. 58-59 (1990).

The Judicial Conference of the United States ("Judicial Conference") recently has advocated legislation to strengthen the Social Security disability claim adjudication process by establishing a new alternative mechanism for the administrative review of ALJ decisions to replace the Appeals Council. Recommendation 9 and Implementation Strategy 9a in the Judicial Conference *Long Range Plan for the Federal Courts*, p. 33 (1995). The commentary supporting this recommendation and strategy states that its purpose is to expand and improve the speed, accuracy and completeness of the administrative review process so that the frequency of the need to resort to judicial review of such claims is reduced. The 1990 proposal by the Federal Courts Study Committee for a Benefits Review Board was cited as an example of legislation that Congress may enact to improve the administrative review of Social Security Act disability claims. *Long Range Plan*, p. 33.

The SSAB makes a very strong case in favor of making fundamental changes at the SSA OHA, the concept of which was carried over into the title of its most recent report on the topic, but it does not present any specific recommendations or options for structural reform of the ALJ hearing process or Appeals Council process to engender a higher quality or faster handling of the caseload. *Charting the Future of Social Security's Disability Programs: The Need for Fundamental Change* (January 2001) (the "SSAB Report"). The SSAB Report does make the point that many support making the individual ALJ decision the final decision of the SSA, which would eliminate the Appeals Council bottle neck. However, the SSAB Report also correctly points out the impracticality of taking this step, since the SSA has shown by testing that this would result in a large increase of court appeals.

Although the SSAB Report also correctly states that the Appeals Council model needs to be changed, its suggestion that another small body be substituted for the Appeals Council, namely a Review Board, which will have the same quality and timeliness issues as the Appeals Council, will not be an improvement. No small body of less than 30 people, such as the Appeals Council or a Board or Commission, effectively can handle the caseload, which now is over 115,000 cases per year.

The use of panels of ALJs as the final administrative step, instead of the Appeals Council, likely will have the same impact as the use of Bankruptcy Judge panels in lieu of District Court review: faster and higher quality decisions that are appealed less often and, when they are appealed, affirmed more often. The relatively high number of SSA ALJs, now about 1,000, provides a large pool of locally available adjudicators who are available for such work.

The AALJ proposal for a new adjudication agency is a detailed and practical blueprint to improve the Social Security disability process. The AALJ proposal would improve the timeliness and quality of ALJ and final administrative review decisions which, at the same time, likely will reduce the claimant's need to resort to federal court review and thus reduce the federal court Social Security caseload. The process AALJ is proposing is realistic in terms of handling the large caseload, which I respectfully submit is not the case for the other proposals in this area. All of the agencies correctly recognize the need for change, but rely on the creation of small bodies, such as a Board, that would suffer from the same problems of low decision quality and untimely action as the SSA Appeals Council, another small body, has had for years.

### **III. AN ALJ-ADMINISTERED INDEPENDENT AGENCY PROPOSAL FOR THE FINAL ADMINISTRATIVE ADJUDICATION OF SOCIAL SECURITY ACT CLAIMS**

**Independent Agency within SSA; Agency Name:** AALJ recommends the creation of a new ALJ-administered independent adjudication agency for Social Security Act claims that would provide a hearing before an ALJ with a right of appeal from the individual ALJ's decision to an appellate panel staffed by ALJs. This agency may be called the United States Office of Hearings and Appeals ("USOHA"). The remainder of this section states in detail the proposals for the features of the USOHA.

The USOHA would be within the SSA for logistical reasons, but its officers and employees will not be supervised by any other part of SSA. The USOHA will be accountable only to Congress and the President. Placing the USOHA within SSA results in no new costs for office space and information systems and is a practical necessity, given the USOHA's substantial space needs that currently are in place at SSA, the need to share the SSA's information services and data bases, and the need to use the same case files.

An Article I or Article II court model cannot be used as the format for an Executive Branch agency that performs only an adjudicative function and continues to have the agency's appellate administrative adjudications performed pursuant to 5 U.S.C. §§ 551 et seq. of the Administrative Procedure Act ("APA") by APA administrative law judges. The APA provides that, for its purposes, "agency" means "each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include . . . (B) the courts of the United States . . ." 5 U.S.C. § 551(1) (section 2(a) of the original statute). The APA definition of "agency" apparently excludes not only all Article III courts and Article I tribunals in the Judicial Branch, but also all Executive Branch Article I tribunals that perform judicial review of final administrative agency adjudications and Executive Branch Article II tribunals that review initial administrative agency adjudications but are labeled "courts" by Congress.

The Attorney General's Manual on the Administrative Procedure Act (the "Manual") includes two Article I courts in the Judicial Branch and an Article II Executive Branch court as specific examples of Congress' exclusion of APA application to "the

courts of the United States: “The Administrative Procedure Act applies to every authority of the Government of the United States other than Congress, the courts, the governments of the possessions, Territories, and the District of Columbia (sec. 2(a)). The term “courts” is not limited to constitutional courts, but includes the Tax Court, the Court of Customs and Patent Appeals, the Court of Claims, and similar courts.” U.S. Justice Dept., *Attorney General’s Manual on the Administrative Procedure Act*, p. 10 (1947), *citing*, S. Rep. No. 752, 79th Cong., 1st Sess., p. 38 (1945) (the Appendix to Attorney General’s Statement Regarding Revised Committee Print of October 5, 1945).

The Tax Court was functioning as an Article II “board model” independent agency in the Executive Branch that was doing appellate administrative review of initial decisions by the IRS, not judicial review of final agency decisions, at the time that the Attorney General stated that it was excluded from APA coverage because it is called a court. Thus, bearing the label “court” is enough to exclude an Article II independent adjudication agency from APA coverage. Also, Executive Branch Article I tribunals that review final administrative agency adjudications, such as the Court of Customs and Patent Appeals and the Court of Claims were when the Manual was written, are excluded from APA coverage.

**Exclusive Jurisdiction over Final Decisions of Social Security Act Claims Vested in the USOHA; Permissive Jurisdiction over other Classes of Cases:** The USOHA would have the exclusive jurisdiction to make the final administrative decisions of Social Security Act Title II and XVI claims. The USOHA will have permissive jurisdiction over other classes of cases, so it may hear and decide Medicare cases under Social Security Act Title XVIII, including those that currently are heard by SSA ALJs, and other classes of cases such as those that the SSA ALJs have heard in the past, which have included Black Lung and FDC cases.

**Abolishment of the Final Administrative Adjudication Authority the SSA Including the Appeals Council:** The final administrative adjudication authority of SSA would be abolished, including the Appeals Council. The Commissioner of SSA, who sets and implements the policy standards for entitlement to Social Security Act benefits, will continue to have the power to make only initial decisions on Social Security Act claims. However, the Commissioner of SSA will retain all authority for all of the policy-making, policy-implementation, rulemaking, investigation, and prosecutorial functions vested in the SSA by law.

**Final Administrative Appellate Review by the USOHA:** Individual ALJs’ decisions would be appealed to appellate panels staffed by ALJs, each of which would consist of three ALJs who would review the cases locally. The appellate panel step would be the final and exclusive level of administrative appellate review. The USOHA would establish a Social Security Appellate Panel Service in each region composed only of ALJs from the hearing offices in each region. A sufficient number of appellate panels would be designated so that appeals may be heard and disposed of expeditiously. An ALJ may not hear an appeal of a case from his/her own hearing office.

**The appellate panels would be akin to the Bankruptcy Court appellate panels and is one of the key features that makes the ALJ self-administration model superior to the current SSA Appeals Council model or a Commission or Board model, all of which are small bodies that cannot timely and effectively handle a heavy caseload.** Based upon the Bankruptcy Court experience, the appellate panel model (1) is an appellate system that can handle a large caseload, (2) results in a shorter disposition time because the large pool of about 1,000 ALJs throughout the United States permits the timely determination of appeals that cannot take place with a small body such as the Appeals Council or a Commission or Board, (3) results in higher quality decisions because of expertise, (4) results in substantially fewer appeals to the courts and a substantially lower reversal rate by the courts because of the confidence in the high quality of the decisions, which reflects a higher degree of decision accuracy, (5) results in a substantially reduced federal court caseload, and (6) affords the claimants access to a local administrative appellate process.

**Judicial Review:** The final decisions of the USOHA that are made by its appellate panels would be appealed only to the federal courts, with the District Courts as the first step in the judicial review. A District Court appeal step is essential for several reasons: (1) The huge size of the Social Security appellate caseload would overwhelm the Circuit Courts if the District Court step is removed. An Article I court as a substitute for the District Courts would suffer from the same problems of being too small to effectively handle the case load that the Appeals Council does. (2) Retaining District Court judicial review keeps local decisional generalists in the appeals chain who are sensitive to due process concerns, including adherence to the Administrative Procedure Act. (3) Social Security claimants have come to rely on the

availability of the District Courts as a part of the judicial review due process. (4) Congress has a demonstrated preference for local control and decisionmaking with Social Security programs. (5) It is desirable to retain local access to the judicial review process for the often indigent Social Security claimants.

Regarding judicial review at the District Court level, the SSAB did not make a convincing case in its SSAB Report for its suggestion that there is a need to replace the District Court with an Article I court. The pressing issue is to improve the final administrative adjudication process so that fewer claimants feel a need to resort to judicial review. This will result in fewer appeals to the courts. Also, as is stated above, there are several practical reasons to maintain the District Court appeal step for the claimants. These include the massive Social Security appellate caseload, which would overwhelm an Article I court of the small size typically created by Congress and result in the same quality and timeliness issues that have plagued the Appeals Council, another small body with an unmanageable caseload.

As of September 30, 1999, and September 30, 2000, the numbers of Social Security cases filed in the District Courts throughout the country during the preceding year were 13,320 and 15,829, respectively. Title II and Title XVI claims made up 99% of the cases in both 1999 and 2000. As of September 30, 1999, and September 30, 2000, the numbers of all civil cases filed in the District Courts throughout the country during the preceding year were 260,271 and 259,517, respectively. *Judicial Business of the United States Courts: 1999 and 2000 Annual Reports of the Director*, Tables S-7, S-9. Article I courts are small courts. The U.S. Court of Federal Claims has 16 judges, the U.S. Tax Court has 19 judges, and the U.S. Court of Appeals for Veterans Claims has 7 judges. As of October 1, 1999, there were 600 active and 334 senior District Court Judges, for a total of 934 Judges. As of February 1, 2001, there were 599 active and 342 senior District Court Judges, for a total of 941 Judges. Administrative Offices of the U.S. Courts, *Statistical Report for Justices and Judges of the United States*, October 1, 1999, and February 1, 2001. These numbers suggest that an Article I Social Security Court would require at least 50 to 75 judges to handle the caseload in a timely and high quality manner.

The appeals from the District Courts will remain with the regional Circuit Courts of Appeal, as they do now, rather than go only to the D.C. Circuit or the Federal Circuit. Even with District Court review, placing all of the Social Security Circuit-level appeals in either of these courts would increase their workload by over 50%. The SSAB's suggestion of a specialized Social Security Court of Appeals in its SSAB Report superficially may sound attractive as a device to have one national interpretation of the Social Security Act. However, the SSAB does not demonstrate a strong need for such a specialized court. First, as SSAB points out, the Supreme Court already serves the function of providing a national interpretation of the Social Security Act, and having the regional circuits address the issues allows for legal debate that would otherwise not occur. Second, continuing to have the appeals go to the regional Circuits allows somewhat local access to the claimants. This is the same procedure as for appeals from both Bankruptcy Court decisions after District Court review and Tax Court decisions, which are appealed to the regional Circuits, which makes sense since they also serve individual claimants throughout the country who often have limited means. (Although the Tax Court is based in Washington, D.C., it sits throughout the country.) Regional circuit review has worked for tax and bankruptcy cases, despite the obviously strong argument that a single standard for construing the tax and bankruptcy laws is desirable so that they are applied the same to everyone. Finally, the regional circuits are not being overrun with Social Security cases. During the years that ended on September 30, 1999, and September 30, 2000, only 891 and 845 Social Security cases respectively were filed with the regional Circuit Courts of Appeals. *Judicial Business, 1999 and 2000 Reports*, Table B-1A. This is less than two percent of the 54,693 cases that were filed in 1999 and 54,697 cases filed in 2000 in the regional Circuit Courts. *Judicial Business, 1999 and 2000 Reports*, Table B.

No substantive changes in the process of judicial review after the final administrative decision are recommended by AALJ, other than to amend the Social Security Act to reflect that judicial review will be from the final decisions of the new agency, not the SSA. Our recommendations pertain only to the appellate administrative adjudication process that results in a final administrative decision of the claimants' entitlement to Social Security benefits, since that is where the problems lie.

**Appointment and Duties of the USOHA Chief Administrative Law Judge, Principal Deputy Chief Judge, and Deputy Chief Judges:** A Chief Administrative Law Judge ("Chief Judge") would be appointed from the ranks of the ALJs by the President, with the advice and consent of the Senate. The Chief Judge would be responsible for the administrative operations of the USOHA. A Principal Deputy Chief Judge, who would have the authority to act in the stead of the Chief Judge,

also would be appointed from the ranks of the ALJs by the President, with the advice and consent of the Senate. The Chief Judge would recommend a candidate for Principal Deputy Chief Judge as a Schedule C appointment to the President. The Chief Judge would appoint five Deputy Chief Judges from the ranks of the ALJs. The Principal Deputy Chief Judge and five Deputy Chief Judges would perform duties and exercise powers assigned or delegated by the Chief Judge to assist the Chief Judge in administering the USOHA. The Chief Judge, Principal Deputy Chief Judge, and the Deputy Chief Judges all would be appointed for a six year term that is renewable once.

**Centralized Administration of USOHA; Abolishment of the Ten SSA OHA Regional Offices and Position of Regional Chief Administrative Law Judge:** The Chief Judge, Principal Deputy Chief Judge, and Deputy Chief Judges would administer the USOHA from a single national headquarters. The ten OHA regional offices and the position of Regional Chief Judge would be abolished so that only one set of support staff and administrative offices, instead of 11, will exist. A centralized structure also will eliminate inconsistencies in administration and carrying out policy, which has been a problem with the OHA regional offices. Also, having one central office will create a more efficient organization, in view of instant modern electronic communications.

**Cost Savings from Abolishment of SSA OHA Appeals Council and OHA Regional Offices:** A substantial amount of funds would be saved annually by the abolishment of the Appeals Council and the ten OHA regional offices, which appears to be on the order of in excess of \$75,000,000. The appellate panel work would increase the workload of the ALJs and thus additional ALJs likely will be required and additional travel and other administrative costs incurred. However, given the elimination of the Appeals Council, with its staff of 27 Administrative Appeals Judges and over 800 support personnel and substantial facilities in the OHA headquarters, the costs for the appellate panels, which can meet in already established local facilities, likely will be less than the cost of the Appeals Council. The SSA Fiscal Year 2000 Performance and Accountability Report reflects that the cost of the Appeals Council process apparently was \$64,671,200 in FY 2000. Thus, unlike the Bankruptcy Court Appellate Panel Service, which was a new creation in addition to the District Court review step that already was available, a Social Security Appellate Panel Service would replace a failed appellate review step that already exists and is funded. The staff and facilities for the ten OHA regional offices were estimated to cost about \$13,000,000 annually in 1993 by the Congressional Budget Office, which likely is a greater figure now.

**Maintenance of Field Offices:** The USOHA will maintain a sufficient number of local permanent field offices throughout the United States to conduct its business, including all of the field offices of the SSA OHA.

**Rulemaking Authority:** The USOHA would have the exclusive power to set its own rules of practice and procedure and such other regulations as it deems necessary or appropriate to carry out its functions, which will be promulgated pursuant to 5 U.S.C. § 553 of the Administrative Procedure Act.

**Administrative Budget Mechanics:** The USOHA Chief Judge would prepare an annual budget for the USOHA, which would be submitted by the President to the Congress without revision, together with the President's annual budget for the USA. The USOHA would include in the annual budget an itemization of the amount of funds required by the USOHA for the fiscal year covered by the budget to support efforts to combat fraud committed by applicants and beneficiaries. Appropriations requests for staffing and personnel of the USOHA would be based upon a comprehensive work force plan, which shall be established and revised from time to time by the Chief Judge. Appropriations for administrative expenses of the USOHA should be authorized to be provided on a biennial basis.

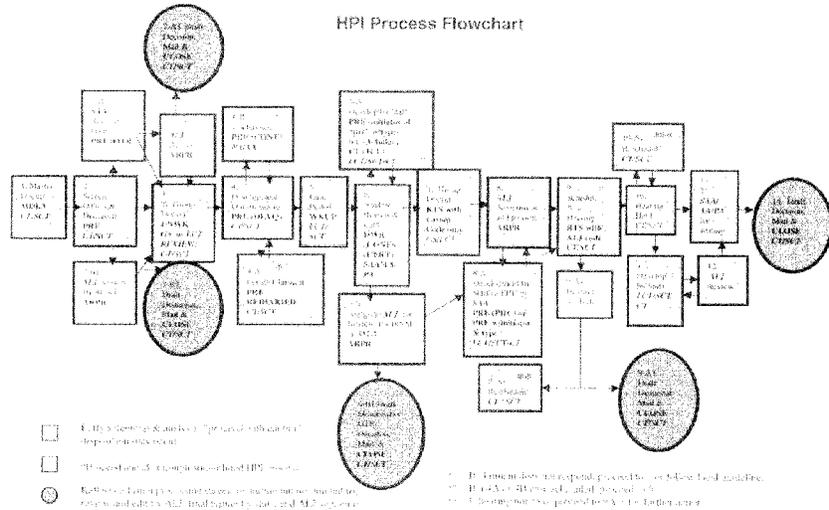
The degree of independence that an agency has is affected by the degree of control that it has in preparing and submitting its budget requests to Congress. Budget requests usually are changed by the Office of Management and Budget ("OMB"), but Congress can permit agencies to submit their budgets without revision, so that the Appropriations Committees can compare the agency budget with the OMB revisions.

**Administrative Budget Levels:** The USOHA's administrative budget for the Title II Social Security program (the old age, survivors and disability insurance programs), which is paid out of the Social Security Trust Funds, expressly must be excluded from the statutory discretionary spending caps in order for it to provide high quality service to the public. The SSI administrative budget must be treated separately because it is paid out of general revenues, rather than the Social Security Trust Funds. However, the SSI administrative budget also expressly must set in reference only to the USOHA's workforce, office space and other resource needs, not

discretionary spending caps or other artificial spending limits, in order for it to provide high quality service to the public.

**Direct Transmittals to Congress:** The USOHA would annually transmit to the Congress and the President a report and recommendations on its activities. The USOHA would transmit to Congress and the President copies of budget estimates, requests (including personnel needs), information, legislative recommendations, prepared testimony for congressional hearings, and comments on legislation. An officer of an agency, including the OMB, may not impose conditions on or impair communications by the USOHA with Congress, or a committee of Member of Congress, about the information. The degree of independence that an agency has is affected by whether it must clear its communications and information that it wishes to submit to Congress with OMB before doing so.

**Transfer Mechanics:** In order to effect the transfer of functions from the SSA OHA to the USOHA, all of the components of the SSA OHA that are necessary to effect the adjudication of the appeals of all Social Security Act claims after denial by the SSA must be transferred to the USOHA. The components of OHA that perform policy, rulemaking, investigational and/or prosecutorial functions will remain with SSA. The personnel transfers may be permissive in that the USOHA may be permitted to choose who from SSA OHA that it wants to hire and/or SSA OHA employees may be given the option to stay with SSA OHA. However, all of the SSA ALJs must be transferred to the USOHA. The SSA administrative budget for the current fiscal year and physical plant of the adjudicative portions of SSA OHA, including necessary support operations, must be transferred to the USOHA.



Chairman SHAW. Thank you, Judge.  
Mr. Brady.

Mr. BRADY. Thank you, Mr. Chairman.

One of the questions that Members of Congress are frequently asked in our town hall meetings is, Is there anything that you all agree on up there? This is a common question. So let me ask the same question of this panel. Is there anything that you all agree on that we can take steps on for improvement?

We have heard from six very smart people with about 60 different ideas for improvement. Are there one or two that are the highest priority that you can all agree on?

Mr. KORN. I think the one area that is obviously the most difficult to deal with is the resource issue. I do not think anyone on this panel would tell you that, while we all have different ideas about things that can be done to fix the system, and certainly, I think we all agree that it does need fixing, none of them by themselves will be a magic bullet. And quite honestly, regardless of how we restructure disability, whether it is setting up a different structure in OHA, in the Appeals Council, what the Federal-State relationship is, when you look at the net effects of those things, it still does not change the fact that we have backlogs that are going to take people to adjudicate, and we have a huge increase in people coming. I think it would be a mistake to take away that message, because—and again, everyone can speak for himself—but I think all six of us would tell you that these problems at some point, regardless of how we restructure, will take a significant infusion of resources. Granted you want something for those resources, and that is obviously going to have to be part of the process.

Mr. BRADY. I understand. But I think that obviously, pouring more water into a leaky bucket does not necessarily accomplish what we want to accomplish. So in addition to that, which is a good point, is there any other area—and there is even disagreement about more people, more information technology, more computer help, more integrated resources.

Yes?

Mr. WILLMAN. I think we agree on three things—first, what has already been said, that more resources are necessary; second, I think we all agree that we just have to do better. The world is changing, and the program has not changed enough with it over the course of the past couple of decades. We need to do better. I think all of us represent organizations or people who are sincerely interested in improving service to the public and will work hard to do it. And third, I think and I hope that we all agree that each component might have to give up something in order to form a program that is going to work better for the entire public, so we need to be open-minded to dissolving the lines and the barriers that have traditionally differentiated us. And I think I have heard that all of us would agree with that.

Mr. BRADY. Does any other panel member want to respond?

Mr. BERNOSKI. I think we also all agree, too, that the HPI program is a failure, as Chairman Ross indicated, and that the Social Security Administration should immediately address that issue, because if the case backlog keeps growing, as Jim Hill indicated, and if the downturn in the economy leads to increased filings as has happened in the past, we are going to have serious problems in the not-too-distant future.

Mr. SKWIERCZYNSKI. I think one area of agreement could be that—we all represent different constituencies of individuals who work either for Social Security or for the DDSs, and oftentimes, top management of the agency does not include us in the planning and decisionmaking process and to provide our expertise as to what is happening with the disability program.

I heard today Mr. Massanari was complimented for setting up a bunch of work groups that are going to report to the new Commissioner about changes that need to be made in the disability program. Well, he certainly did not invite me or the union to participate in that process.

So I think it is important—and when you are not inviting the union, you are not inviting the frontline employees, who know best how to do the work, to provide their expertise and knowledge about the problems that exist and recommendations on how it can improve. So on that area, I suspect we would all agree that we ought to be involved in the dialog.

Mr. BRADY. I am shocked that union would criticize management on these kinds of things, but I appreciate the point.

[Laughter.]

Are there any other thoughts from panel members?

Mr. HILL. Yes. I would like to second a couple things that were said. I think the comment that Witold just made about not including the people on the front lines, whether they be union members or whether they simply be people on the front lines, in the planning stages of some of these experiments, which is what they turn out to be, has caused a lot of trouble.

And the HPI—and of course, we are from OHA and have very little to do with DDS and what goes on there—but Judge Bernoski mentioned that the judges were not consulted. Nobody else was, either, in the hearing office. It was a proposal that came from on high, and this is what happens when you do that.

So I think we agree that the agency itself has to involve its frontline employees at the initial levels where we can tell them, “No, that is not going to work.”

Mr. BRADY. So additional resources; doing better by giving something up, or everyone giving up a little; HPI as a failure; and more input, especially from front line people, are all areas where there is common agreement.

Finally, let me ask you this—and I am way over my time already—I am surprised that we have not heard about the need for better information. It seems to me that in the initial examination, there are a number of cases that go through and are basically denied or not approved and later on turn out to be cases with merit. It seems to me there must be a lack of information at that point for an examiner to make the right decision. The administrative law judges tell us privately that one of the reasons for the nearly year-long delay is that there is not enough information in that case to be making a judgment at a time when, again, there are fewer and fewer cases where a medical provider says “Yes, you are disabled,” and more and more cases where a vocational counselor is saying “They are disabled if . . .,” or “They can work under this situation.”

I would think that information is one area, from a common denominator standpoint, that is needed to make these cases accurate in the future.

Are there any comments on that?

Mr. SKWIERCZYNSKI. I think the Subcommittee should question—when SSA gives you statistical data, you should question it. I will give you a case-in-point which is a little different from what you

were saying, Congressman. When the agency measures processing time on a disability case, included in that measure is a bunch of claims that are taken which I would think would be unnecessary. If somebody comes in and is clearly not eligible, some managers encourage that we take those claims basically to buildup their productivity and cut the processing time. So when you are looking at processing time statistics, you are looking at quick, 1-day cases where people are clearly ineligible and should have never filed in the first place.

So when you look at statistical data, you ought to ask a lot of questions about what it is actually measuring.

Mr. BRADY. Thank you. I appreciate the input. Thank you, Mr. Chairman, very much.

Chairman SHAW. Mr. Hulshof.

Mr. HULSHOF. Thank you, Mr. Chairman.

For the benefit of everyone else, the Chairman held a congressional field hearing in my district of Columbia, Missouri on the University of Missouri campus where we talked about the long-term solvency of Social Security. We were not pursuing any particular solution, but it was a very interactive hearing. In fact, we had people just like yourselves at tables, and at the conclusion of our presentation, we had them get together and try to formulate some sort of an end-game result so we could have long-term solvency of Social Security.

Perhaps, Mr. Chairman, we should lock these people in a room and not let them out until they resolve these matters.

[Laughter.]

Mr. HULSHOF. We welcome you. Judge, since I sort of invoked your name, hopefully not in vain, with the previous witnesses, let me ask you for a quick comment on the suggestion Mr. Ross made about having the agency represented before you. Is that a good idea, bad idea?

Mr. BERNOSKI. Yes, Mr. Hulshof—

Mr. HULSHOF. I am sorry. That was a bad question—a good idea? Is that a good idea, or is that a bad idea?

Mr. BERNOSKI. It is a good idea.

Mr. HULSHOF. OK. Why is it a good idea?

Mr. BERNOSKI. It is a good idea for the reasons that Chairman Ross indicated. These cases are becoming more complex. More claimants are being represented at the hearing. Also, the traditional role of the Social Security administrative law judge, as Mr. Ross indicated, is to wear the so-called three hats. You have to make sure that the Government's evidence is in the case; you have to make sure that the claimant's evidence is in the case; then, you have to make a decision on the record, plus you have to be very careful, as I think you raised in the question before, that you do not get into the posture where it looks like you are tipping to one side or the other in the form of the judge's questions.

So it puts the judge in a very difficult situation, and you do not get as good a quality of evidence as when both of the adversaries appear. The attorneys or representatives bring the evidence that they have available to them before the judge for the decision. It would be a much better process.

Mr. HULSHOF. I appreciate that.

Let me go to Mr. Skwierczynski. Welcome back before us. We have had occasion to hear you in prior Congresses, and it is great to have you again.

Mr. SKWIERCZYNSKI. Thank you.

Mr. HULSHOF. Let me make sure that I understand, because I have gone through your testimony. Do you agree or disagree with SSA management's attempts to make operations more efficient using information technology?

Mr. SKWIERCZYNSKI. Certainly, efficiency is laudable. If you are referring to the claims on the Internet, which I address in my written testimony, not in my oral, but we have some serious concerns about the quality of work that our employees are telling us they are seeing with regard to the retirement and survivors insurance (RSI) claims on the Internet. I have had a number of reports where individuals have said they have questioned further individuals who submitted claims to the Internet and found out, with some digging, that there were individuals who were entitled on the record but were not listed on the form; that there were wages that they had earned in the past that were not listed in their earnings record which, if they had not done the digging, they would have had a reduced monthly benefit.

I think that when you are asking basically the claimant, without any intervention of a trained interviewer, to file a claim, you are going to see those kinds of problems. Much of the RSI system is automated. Their earnings records are on the record, and a lot of claims can go pretty quickly. Disability, as has been noted here, is a little different. There is a lot of subjective decision making, and there is a lot of information regarding a medical condition that you require to make a decision.

We are already being criticized by the States for producing a poor product. The agency, because of staffing constraints, is taking about half of the disability claims over the phone. We rely on self-help. Send the claimant a form, they fill it out, we accept it, send it to the State without a lot of review. Those kinds of measures result in a poor product, and if you have no intervention at all with people who are not familiar with the form and the kind of information that is needed on it, you are looking at problems.

So what I was trying to say in my written testimony was take a step back before you automate the disability process and look at what is happening with the RSI process, do some study and close analysis, and if there are errors and mistakes in it, fix it first before you go to disability.

Mr. HULSHOF. I appreciate your response, and I want to let you respond fully. I think that that is an interesting perspective in that the Internal Revenue Service is encouraging more income tax filers to file electronically so that it would in fact result in fewer mistakes. Now, I do take your point that there are some subjective measures as far as disability is concerned, but I think the complexity is equal.

If the Chairman would permit me, because of the Ticket to Work issue being so important, again, just to make sure I am not misreading your testimony, the \$23 million that we have allocated, you talk about the Employment Support Representative, the ESR, and yet the concern about the funding and that the \$23 million

that was allocated has been primarily—or it has all been allocated, I think, according to your testimony—toward grants and cooperative agreements for private agencies and not-for-profit organizations. Do you oppose private agencies and not-for-profit organizations providing assistance to disabled beneficiaries from returning to work?

Mr. SKWIERCZYNSKI. No, we are not opposed to that. We think that the vocational rehab system that has existed in the past has not worked and that the action of your Committee and Congress to look at alternatives was a good idea. But unfortunately, the agency took the entire appropriation and used it for that.

The Employment Support Specialist, who is the Federal employee who is the outreach into the community, is attempting to sell the concept of Ticket to Work and also, in order to get a ticket, you have to have a continuing disability review, or CDR, investigation to even be eligible for the ticket. You need staff to do that.

What the agency did was take 32 existing staff and start the pilot. The results are good. They are talking about expanding it to 100. Now, we have 1,300 offices in the country; 100 is not going to do the trick. If you want a successful program, you want good outreach, you want the work that is necessary in terms of doing the CDRs in order to get eligibility for a ticket, you need to have this program across the board. Now, the agency legitimately is afraid that shifting people from one task to another is going to hurt the task, so my testimony is that if you are committed to the program, which you seem to be, provide the resources so that it can work.

Mr. HULSHOF. Thanks. Thank you, Mr. Chairman.

Chairman SHAW. Mr. Ryan.

Mr. RYAN. Thank you, Mr. Chairman.

I appreciate the panel's testimony. It was very interesting. I would like to ask the panel to focus on the backlog issue. That is really something that we are all very concerned about.

Mr. Hill, in particular I was intrigued by your comments. You believe that there is more or less a time-tested solution that you identified through the Senior Attorney program to get at that. What do you think of Judge Bernoski's proposal? I would be interested in your impression of that proposal.

It is nice to hear people coming in with different ideas on how to attack the backlog. And then, Judge, I would like to hear what your thoughts are on the Senior Attorney program as well.

Mr. Hill.

Mr. HILL. When you are talking about whether there should be an independent ALJ agency, I have some reservations about that. I think that further bifurcating how the disability program is administered and in the end, taking the decision out of the hands of the agency is probably not a way that I would like to go.

On the other hand, I strongly support—I was on the work group with the Lewin report—adversarial type hearings. I think that report said that there had been no examples of a successful system the way that ours was operated. And I think that with the great influx of cases and the expertise that the claimants' bar is now bringing, it does place a considerable burden on the ALJ, and I think that we need to take a good, hard look at that.

Chairman SHAW. Would the gentleman yield on that, please?

Mr. RYAN. Certainly.

Chairman SHAW. I am a little curious as to what that would do to the backlog situation. I think that would probably increase it substantially. Maybe Judge Bernoski could comment on that—to turn this into a fully adversarial situation.

Mr. BERNOSKI. I think that if you turned our hearings into an adversarial proceedings, the program would also have to encompass a concept or a procedure for bargaining out or settling cases, like in the civil court system.

One problem that we have in Social Security is that every case is tried, and we all know what that would do to the criminal system, it would paralyze it. But that is the way it is here, we try every case except those where the claimant withdraws the claim. In some situations the administrative law judge may suggest a “closed period,” but that is a rare situation.

So if we are going to have an adversarial process, I believe it would have to have that component in it, where the attorneys could come to some type of resolution of the case, like they do in other court proceedings, and settle some of the claims before they go to full hearing.

Chairman SHAW. Thank you.

Mr. Ryan.

Mr. RYAN. Judge, since the mike is in front of you, could you give me your comments and your opinion of the former Senior Attorney program?

Mr. BERNOSKI. Yes. Our association has taken the position that we have not been in favor of the Senior Attorney program. We have felt that there were resources that were not being efficiently utilized in the program to the extent that the attorney’s primary function was to review the case files and look for favorable cases where a decision could be written and the claim paid. So in all the cases that they go through where there is not a determination that the case can be paid the time is lost to the extent that the case is put aside, and it is placed back in the system and it has to go through the whole process.

So it is not cost-effective from a manpower standpoint. We have felt that the system would be more efficient if the attorney, when he/she would go through the file, would make some notes in the file such as: “I have gone through the file, and I found these problems, and this should be done,” so that the next person who looked at the file could build on that expertise. These are very talented people, the Senior Attorneys, they know the program, and they could add a lot to the file under those circumstances.

Mr. RYAN. So maybe a modification of the program as you just described would be in order. I kind of suspected that the two of you might have had those positions.

Judge, I am interested in your program for a separate ALJ agency. Exactly how would that work? You mentioned that it would represent substantial cost savings to the SSA; how would that be reflected, and how would the net cost savings occur?

Mr. BERNOSKI. Thank you.

The plan that we propose, even though it creates a separate component for the administrative law judge function, for the adjudica-

tion function, that component is still within the agency. It is not a new agency.

Mr. RYAN. So it would answer to the Commission?

Mr. BERNOSKI. Well, yes, to the extent that the decision of the adjudication component would be the final decision of the agency after it goes through the appellate process, but the Commissioner would be responsible, as he or she is now, for the total rulemaking of the agency.

The cost savings that we talked about, when you take the total budget of the Social Security Administration, which is in the billions of dollars, is not going to be that substantial. I believe we said it was something like \$13 million that would be saved by closing the OHA regional offices. That is based on a GAO study that was prepared when we had our prior legislation for the Unified Corps Bill, so that is what that figure is based on.

And then, we propose there would be some additional savings by the changing of the function of the Appeals Council, but many of those resources, I suspect, would be plowed back into the system.

Mr. RYAN. I appreciate the ideas for getting the backlog down. I would be interested in hearing from the other panelists, just to engage in a dialogue—what do you think is the best thing we can do right away to work on the backlog?

Mr. SKWIERCZYNSKI. My key suggestion was a rollout of the Disability Claims Manager. I think the Disability Claims Managers are very productive; they do quick work; they eliminate hand-offs. Under the current system, a Federal employee takes the case, takes the information, without understanding the adjudicative requirements of the disability process, ships it to the State, what we are seeing is that a lot of those cases do not immediately get assigned, and when they do get assigned, the State employee has to review the case for the first time, understand the principles, make a disability decision, ship it back to the Federal employee. These are hand-offs that we think are unnecessary.

The whole idea under the pilot was to see, first, if it could be done, and in phase one, we found out that it was feasible that someone could do the work, both ends of the decision making process; and second, under the formal pilot, whether it was productive, cost-effective, and whether they could do the cases, how fast they could do it, a general pilot. And although the results have not been published yet, I understand a draft is going out tomorrow—I have been briefed on it, and the results are good. I think that that would not only streamline the process but would provide additional resources into the disability-making system.

The way the pilot was designed, the States had DCMs as well as the Federal Government. Our employees were trained in the disability aspect; the State employees were trained in the entitlement factors. And it is my assessment that it works, and it would help to bring down the backlog.

Again, I do not think anything will be overly successful without additional resources. I really think that to ask the hardworking employees of both the State and Federal governments to continue to work without additional staff is unrealistic. What we have is a growth agency, claims are going up, and staffing is going down. That does not work.

Mr. RYAN. Mr. Willman.

Mr. WILLMAN. I think we have found something that we disagree on, and that is the question of the Disability Claims Manager. And actually, I am not sure that we disagree yet. What I do know is this. We all agreed to give this concept a fair test. There was a period of time under which individuals who were trained as Disability Claims Managers got very thorough training, and they got mentoring, and they got brought up-to-speed, and they were asked to do the job this way for a finite period of time during which information and data would be collected, and then there would be an analysis and evaluation piece.

Where we are now is that that analysis and evaluation piece is not done. So I think that to proclaim the success of this project now is premature. We need to see and analyze the data and make sure that it fairly represents the experience of these folks out there. It may prove to have been successful, and it may not, but I think it is clearly too soon to say now.

But to answer your question about what we need to do to reduce the backlog, we need to do one of two or a combination—and this is not my idea; this comes from the Advisory Board report—we either need to resimplify the process and stop introduce more complication and labor-intensiveness into the process and/or we need to increase the number of people who are available to do this job as the applications come in. I do not think anything else will work.

Mr. RYAN. Thank you. Ms. Heflin, did you want to make a comment?

Ms. HEFLIN. I was just going to say that we have not been briefed on the DCM process, we do not have the draft that is about, and our reservation is not that we do not believe that it can be done but that we are not convinced yet that it can be done cost-effectively.

Mr. RYAN. Mr. Korn.

Mr. KORN. I was just going to say that one of the reasons that our organization is suggesting a position—from what we could see, and I agree with Mr. Skwierczynski, we think it really has initially shown some success—we understand the limitations because of the Federal-State relationships, and we understand the concerns that both the NADE and NCDDD have. So what we wanted was a position that could take the benefits of that and still meet the concerns of the State. That really is why we developed it that way.

There are States that are very willing to have Federal help in making decisions. There are other States that do not need that help. And we really think that having a position that takes the benefits of a one-stop process that can be used when needed, or that even takes part of it, and other places where it is not needed, where the backlogs do not exist, you do not have to do that, it would really be a flexible way to address the process.

So the reason we came to that rather than a full DCM, which we think is good, was really after looking at this broader perspective to something that maybe everyone could agree on rather than what is good for one component or another.

Mr. RYAN. Thank you very much. It seems that process simplification is something that everybody seems to agree on, albeit not in the details.

I see that my time has expired, and I yield.

Chairman SHAW. Twice.

[Laughter.]

Mr. RYAN. Thanks for the 20 minutes.

Chairman SHAW. I want to thank this panel. You have been very instructive and very helpful. It is quite obvious that everyone seems to agree that we have a lot of work to do.

I was looking at the chart that was supplied to us by Judge Bernoski, and it looks like the Republican interpretation of Hillary Clinton's health plan. I have been sitting here trying to figure it out.

[Laughter.]

Mr. BERNOSKI. And it probably had the same success.

Chairman SHAW. OK. Thank you. I thank all of you for being here. We appreciate it. The hearing is adjourned.

[Whereupon, at 4:43 p.m., the hearing was adjourned.]

[Questions submitted from Chairman Shaw to the panel, and their responses follow:]

National Council of SSA Field Operations Locals  
American Federation of Government Employees, AFL-CIO  
Chicago, Illinois 60661-7576

*July 31, 2001*

**Question 1.** You are not happy with third parties, nor do you agree with SSA management's attempts to make SSA's operations more efficient using information technology despite the fact that better information technology is being demanded by the public. With access and use of information technology becoming more acceptable every day, are you saying that customers should not have access to the faster and easier service they want? Why shouldn't beneficiaries get to choose the most convenient way to get their services from SSA?

**Response 1.** AFGE agrees that customers should have access to the faster and easier service that they want. We have urged SSA Management to ask our current and future customers how they want service delivered now, but they have shown no interest. Only in 1993, through a series of focus groups conducted with groups of current and future customers, has SSA objectively asked the public how they want service delivered.

These Service Delivery Focus Groups, held throughout the country, revealed that the public preferred face-to-face service provided by SSA employees in transacting their most important business. As defined by the public, important business consists of filing applications for benefits, and resolving payment problems. Our customers expressed satisfaction with the convenience of handling more routine business, at their option, by calling a local field office or the 800 number.

Focus group moderators asked participants about other service delivery methods. Focus group participants showed little interest in doing business through third parties, or by computer, rather than with SSA employees. They were strongly opposed to use of telephone technology, such as voice mail and automated attendant, that did not involve interaction with SSA employees. SSA and AFGE have copies of these focus group tapes, and of the written report derived from this activity.

The Agency has not conducted subsequent focus groups to objectively ask the public how they wish to do business with SSA. However, customers who call the 800 number are asked if they would do future business by calling the 800 number. Over the years, the percentage who indicates they will choose this method has usually (but not always) increased slightly. SSA uses this data, from those who have shown their preference for the 800 number by using it, to argue that the general public increasingly wants to do business by telephone. Customers who visit or call field offices are not surveyed at all regarding their preferences. The increased volume of calls and visits to field offices that we have observed, neither of which is measured by SSA, demonstrates a strong continued interest in local community-based service delivery.

Constrained by administrative spending caps and staffing ceilings, and unwilling to petition the Congress for substantial increases in front-line service delivery positions, SSA has turned to third party involvement in disability claims and self-service via the Internet for retirement claims. The choices were not made by our cus-

tomers, but were foisted on the public by senior SSA officials. Incorrect payments, program integrity and fraud problems, and general mismanagement plague these service delivery methods.

All third party organizations involved in taking disability claims are motivated by money. Some make profits by charging fees, legally or illegally. Others are interested in shifting costs for income maintenance and medical coverage from state and local governments and non-profit agencies to the Federal taxpayer. Personnel in these third party organizations are not adequately trained to take applications for our complex disability programs. They cannot legally provide reporting instructions, according to SSA's Office of General Counsel, making prevention and collection of overpayments problematic. Only SSA employees are charged with administering the Social Security Act equitably, and in the interest of applicants and Federal taxpayers. Our Agency does not identify or track third party claims for quality assessment, or to monitor program integrity. For-profit and non-profit third party organizations have been involved in illegal fee-charging arrangements, and in fraudulent entitlement schemes. Some have been found guilty of fraud and even criminal activity, but we are convinced that those represent just the tip of the iceberg. Nevertheless, hundreds of millions of dollars in excess payments and medical benefits have been detected and documented.

Documentation is enclosed from the 1997 SSA/AFGE Third Party Assistance Team recommendations (Attachment A), and from a grievance filed this year in the Seattle Region that is now pending arbitration (Attachment B). More information can be supplied upon request by AFGE. The SSA Inspector General should be requested to supply information from their many investigations of fraud and other improper activities by third parties involved in disability claims and appeals.

Internet claims filing is initiated and often completed without an SSA employee ensuring that claimant rights are protected, or reporting responsibilities explained. Identity of the applicant is not verified. SSA is not conducting special studies to compare this new process to the traditional process, so little data is available and none is being shared with AFGE. We must rely, therefore, on the following disturbing reports received from our Claims Representatives:

1. Benefits are being lost when applicants are unable to complete applications, sometimes failing to establish a claim after multiple attempts.
2. Benefits are lost when customers fail to file timely, due to misunderstandings about how earnings affect entitlement.
3. Earnings Record reviews are not done with an SSA employee's assistance, and corrections not made, resulting in continuing underpayments to many beneficiaries that will never be corrected.
4. Military service credits are not calculated and included in computations, creating ongoing underpayments that will never be corrected.
5. Entitlement to auxiliary and survivor benefits for spouses and children are not always identified and paid.
6. Individuals other than the proper applicant are filing claims, providing opportunities for fraud (attachment C), because a Claims Representative does not verify identities of applicants.

Until quality and integrity of Internet claims are comprehensively studied, and compared to claims filed with Claims Representatives through traditional processes, no further expansion should be allowed.

**Question 2.** You recommend that we not restrict the authority for making disability decisions to State employees. Could you elaborate? What authority do they have now that you suggest we take away?

**Response 2.** The Social Security Act currently provides that disability determinations are the sole responsibility of a State agency. Section 221(a)(1) and 1633(a) of the Act states that the determination of whether or not an employee is disabled shall be made by a State agency, notwithstanding any other provision of law, in any State which notifies the Commissioner that it wishes to make disability determinations. The Act provides only limited circumstances in which the Commissioner may perform the disability determination function for a class or classes of cases in a State without the State's consent. These limited instances involve situations when a State's performance in making disability determinations deteriorates to an unacceptable level.

Thus, the States have a virtual statutory monopoly in the disability decision-making role. The DCM pilot was only possible with State concurrence. SSA had to obtain State concurrence in each of the fifteen pilot states. This process was long and tortuous. The states demanded a severely diminished pilot in order to participate at all.

The original union-SSA agreement provided for 750 DCM's phased in over a 3-year period on both the state and Federal side. After State objection the test began with only 115 Federal DCM's and 104 State DCM's. SSA and the union agreed to establish eight Disability Processing Centers (DPC's). This project would involve establishing disability centers in facilities with personnel that already have a working knowledge of disability decisionmaking. These Centers could have been initiated without the training effort and costs that were involved in the DCM pilot. The parties (i.e., SSA and the union) felt that these centers could concentrate on teleservice claims and have the resources and capacity to process a high volume of claims swiftly and accurately. Such an effort could relieve State DDS backlogs by shifting some of these cases to Federal Disability Processing Centers.

Unfortunately, the States refused to participate in the DCM pilot unless SSA severely limited the Disability Processing Centers. The States demanded that only three processing centers be established with a limit of 15 DCM's in each center. The States later reneged on this agreement and the DPC's were never established.

The termination of the DCM pilot is also another example of the State's control of the disability decisionmaking process. Although data indicates that the DCM pilot has been a huge success, States were unwilling to extend their 3-year agreement to test the DCM. Thus, rather than keep the pilots in place until a final DCM Evaluation Report is issued and the Commissioner makes a decision on the fate of the project, the Agency discontinued all DCM sites effective June 29, 2001. Part of the reason for this action is State refusal to continue to participate in the pilot. Due to their statutory disability decision-making monopoly, SSA is powerless to demand continuing State participation. The result is that trained DCM's return to their former jobs and their expertise in disability decisionmaking will erode due to non-use. What a waste of training resources! What an insult to the public that overwhelmingly approves of the DCM and demands better service from their government.

It is time to end this monopoly and change the statute to allow SSA employees to make disability decisions. The DCM draft evaluation report shows that the DCM exceeded both control group and current process performance in all statistically valid reviewed categories. Claimant satisfaction was overwhelmingly high. Employee satisfaction remained very high throughout the pilot despite great uncertainty about its continuance or termination. Processing time was substantially better than either the control groups or the current process. (67 days processing time for DCM T-II and T-XVI cases is 44% better than SSA's performance goal for FY 2001 and FY 2002 of 120 days). Accuracy equals and in some categories exceeds the current process. (Accuracy significantly exceeds the current process in technical accuracy for disability allowances and dollar accuracy of T-II DCM cases.) Productivity data indicated that in the last few months of the pilot, DCM productivity exceeded the current process.

The concept of the DCM is a good one: assign one individual decision maker to the claimant who will be the claimant's caseworker and will make all decisions on their case. The test shows that it works. Despite this fact, the States oppose the DCM for narrow parochial interests, namely, to preserve their monopoly. Only Congress can change this tragedy by amending the statute to expand disability decision-making ability to SSA workers.

Congress should strongly consider statutory modifications in the State monopoly. Although the union supports a full roll out of the DCM, any expansion of SSA disability decision-making requires legislative action. If SSA workers were permitted to make disability decisions on a limited degree to alleviate State backlogs or to expedite certain obvious favorable decisions, legislative change is necessary. The State currently holds all the cards and is unwilling to deal. A change is needed. This change will result in better customer service. Good government demands it.

**Question 3.** In your testimony you state your concern that overpayments are escalating because of SSA's inability to properly monitor eligibility of current beneficiaries. Can you provide us with some of the initiatives you would like to see put in place by SSA?

**Response 3.** The primary initiative that SSA should implement that would both reduce overpayments and result in the return to work of disability beneficiaries is the Employment Support Representative (ESR). Congress of Ticket To Work began the ESR initiative in response to the passage of legislation. The Ticket To Work initiative cannot succeed without Federal support. At minimum a Continuing Disability Review (CDR) investigation is required for Ticket eligibility. Under the current 32-person ESR pilot, the CDR is an ESR responsibility. ESR's are also intended to be a corps of trained, accessible and responsive work incentive specialists. These specialists plan, develop and lead an outreach and communications effort to promote

understanding and use of Social Security work incentives provisions among beneficiaries, claimants and support groups, advocates employers and the public.

The recently released Agency ESR Pilot Evaluation Report indicates that both disability beneficiaries and community organizations were highly appreciative of the ESR services. The report concluded that ESR outreach was effective in educating customers about SSA's employment support programs. All surveyed respondents indicated that ESRs were most successful when working in SSA field offices in the community. The report recommended that the ESR should be made a permanent position and that as many ESRs as possible should be placed in community based field offices.

The union enthusiastically concurs with these recommendations. SSA should assign at least one ESR in all 1300 field offices who are charged with being the "single point of contact" to beneficiaries trying to return to work, to monitor their progress, initiate reviews and updates on a timely basis, and to work the cases without the current backlogs, handoffs and bureaucratic run around that the beneficiaries are subjected to in the current environment.

Many SSA Regional Commissioners have endorsed these recommendations. Unfortunately the also express concerns that increasing the number of ESRs cannot adversely affect the daily claims pressures that exist in every field office. Reshuffling staff to emphasize the Return To Work concept would just harm the ability of SSA to process initial claims for disability, survivors and retirement benefits swiftly and accurately.

The Subcommittee wisely passed legislation implementing the innovative Ticket To Work program. However, resources are necessary for this program to succeed. The union recommends that the Subcommittee support allocation of sufficient funds to enable the ESR position to be established in every SSA field office. Such action should be taken without reducing the current field operations staffing levels that are required to process the ongoing flow of disability, survivor, retirement and SSI benefits applications and post entitlement work. This would best be done by way of a special FTE allocation for federal Ticket to Work activity that is not subject to the spending caps. Congress provided similar allocations to SSA for CDR activity in the past.

Spending money now in order to fully fund the ESR job will result in significant trust fund savings in the future. Currently only 1% of disability beneficiaries ever leave the benefit rolls. The goal of Congress with Ticket to Work was to increase this percentage. This goal can be achieved with an aggressive expansion of the ESR job.

Other initiatives that would reduce overpayments are to use trained SSA field office disability decisionmakers to assist the States in making CDR disability determinations. State backlogs are inhibiting the ability of states to process this workload are often sent to the State DDS and are not processed timely. This requires SSA to redevelop CDR's for current medical evidence before the cases can be processed. The result is wasted time, effort and money. Permitting SSA workers to make CDR medical determinations will result in a more timely and efficient process and, consequently reduce the incidence of overpayments.

Similar arguments can be made for increasing full SSI Reconsiderations. Studies have shown that expenditures for Redeterminations are cost effective and result in many times more dollars in return. If Congress desires reducing the incidence of SSI overpayments, it can require more frequent and extensive Redeterminations. Of course, sufficient FTE must be appropriated to achieve his goal.

Congress should also be cautious about SSA's increasing efforts to shift claims taking to the Internet. One danger of allowing the public to initiate retirement, survivor, disability and SSI without the intervention of an SSA worker is that the claimant will be deprived of receiving reporting instructions. One of the key requirements for SSA Claims Representatives (CR's) is to provide the public with an explanation of reporting instructions. Sending written material or posting instructions on the Internet is a poor substitute for the dialog between claimant and Claims Representative regarding the earnings test and other reporting requirements. The Internet claims experience is relatively new. It is not possible yet to assess the impact of diminished delivery of reporting instructions. Unfortunately, SSA is not initiating appropriate studies to compare Internet claims to other claims. SSA should be required to initiate studies both short term and long term to assess the impact of Internet claims. Reporting instruction impact should be an area addressed in such studies.

**Question 4.** In your testimony you state that the Management Information Integrity Partnership Team issued a 300 page report to SSA/AFGE National Partnership Council listing 57 inappropriate practices used by SSA to manipulate work processes and work measurement many of which were involved in disability claims and

appeals. You also state that these practices were employed to give the false impression of service levels had been maintained or even improved despite a lack of staffing. Can you tell us who makes up this team? Do you have any more recent data than 5 years ago? Did you share this with the Inspector General's office?

**Response 4.** The Agency's Office of Assessment verified that practices were being used to manipulate work processes and work measurement, and issued a Report in 1980, in response to concerns raised by AFGE.

AFGE surveyed employees in 4 SSA Regions in 1992 that revealed that many of these practices, and others, were being used. The Ways & Means Subcommittee on Social Security was contacted, and issued a Report. The issue was subsequently addressed in hearing testimony by AFGE to the same Subcommittee and others.

AFGE followed up with a 1993 survey of employees in all 10 Regions that showed widespread cheating encouraged and directed by Management throughout SSA. A Report was issued in early 1994. Former Commissioner Shirley Chater met with AFGE, and agreed to deal with the issue through an SSA/AFGE Partnership initiative.

The June 1996 Report of the SSA/AFGE Management Information Integrity Partnership Team pulled and analyzed data, corroborated the earlier findings, and issued a comprehensive set of recommendations. The Inspector General requested and received 15 copies, and AFGE met twice with OIG. The SSA/AFGE National Partnership Council adopted nearly all of the recommendations in August 1996, but few have been implemented. A grievance filed by AFGE is scheduled for arbitration in November 2001. One of those adopted (but unimplemented) recommendations required annual data retrieval from Management Information Systems to determine whether the particular inappropriate practices studied in depth by the Team from 1994-1996 have increased or decreased.

An AFGE survey of employees in the Seattle Region in late 1998 and early 1999 indicated that there was no overall improvement in the integrity of MI, and that the use of some practices was increasing. The results were reported in an AFGE newsletter in April 1999 (Attachment D).

In 1999, SSA changed its policy on SSI claim filing dates, allowing for a date later than the application date to be used. Later that year, technical denial disability claims were merged in Management Information Systems with claims requiring a medical determination, introducing powerful new incentives to take claims from individuals clearly not entitled to benefits. Management increased its efforts to ensure that Claims Representatives took yet more technical denial claims, allegedly resulting in a 50% increase by early 2001 (about 500,000 more claims annually). AFGE objections made to the SSA Management Information Integrity Monitoring Team regarding policy and MI changes were ineffective.

On May 7, 2001, the technical denial issue was referred to the Inspector General, who responded by saying he would do nothing (Attachment E).

The explosion in technical denials has affected the evaluation of the Disability Claim Manager position, resulting in an understatement by SSA of the success of the pilot (Attachment F).

The SSA/AFGE Management Information Integrity Partnership Team members are listed in the 300-page Report issued June 1996. Many high-ranking SSA and AFGE officials participated. Mark Blatchford, now Associate Commissioner, Office of Automation Support, Operations, was the SSA Team Co-Chair. His telephone number is (410) 965-4844. Steve Kofahl, Seattle Regional Vice-President, National Council of SSA Field Operations Locals, was the AFGE Team Co-Chair. The Co-Chairs can provide copies of the Report, which was issued to Management in all SSA facilities in 1997. Mr. Kofahl can also provide the complete 1994 AFGE survey data and Report to Commissioner Chater. Summary information from the 1980 and 1994 Reports is also included in the June 1996 Report.

**Question 5.** We would be interested in any comments you would like to make on testimony provided by other witnesses at the hearing.

**Response 5.** I will provide comments about some of the testimony provided by other hearing witnesses.

I was disappointed that Acting Commissioner Massanari did not feel that it was necessary to support the budget proposal sent to Congress by his predecessor Commissioner Apfel. Commissioner Apfel proposed an appropriation that would provide about 2400 more FTE to SSA in order to decrease both the disability claims backlogs and the hearings backlogs. SSA is a growth industry. Work is increasing and resources provided by Congress should reflect this increase in work requirements. It is disappointing that Acting Commissioner Apfel seems to think otherwise.

I was also disappointed when Acting Commissioner Massanari indicated that he would not seek a supplemental appropriation to assist in processing the Special 130,000 case T-II disability workload. This labor-intensive effort will require SSA

employees to reconstruct up to 27 years of records for some SSI beneficiaries. It will also require new disability decisions for most of these cases. SSA is busy establishing special units from existing resources to handle these cases. Resources devoted to this workload will adversely affect SSA's ability to process other work. However, the Commissioner says a neither a budget request adjustment nor a supplemental appropriation is necessary. I was very disappointed by these remarks.

I also was disappointed by the fact that Mr. Massanari did not mention the DCM in either his oral or written remarks. He should be touting this SSA success story but instead is silent.

The union applauds the strong and consistent statements from Stanford G. Ross, Chairman of the Social Security Advisory Board regarding the need to provide more administrative resources to SSA. We also echo his concern about the lack of consistency and fairness in the disability decision-making process. Disability award rates vary significantly from state to state. The union feels that a greater Federal role in the disability decision-making process will assist in reducing this problem. Rather than 50 State decision systems, Federal decisionmakers are much more likely to provide consistency and fairness. This is another reason for considering the DCM as a potential solution to the SSA disability crisis.

I am intrigued by the proposal by Steve Korn of the National Council of Social Security Management Associations, Inc. regarding the establishment of a Federal Technical Expert for Disability (TED) position that would be empowered to process some disability decision type work leaving the ultimate decisionmaking responsibility with the States. I don't think that this proposal will provide the type of DCM service that was so fully embraced by both claimants and workers. However, if Congress is unwilling to loosen up the State monopoly on disability decisionmaking, the union would be interested in examining this proposal more closely.

I was alarmed after reading the statement of Sue Heflin, National Association of Disability Examiners. She indicates that the turnover rate of Disability Examiners (DE's) is astronomical. She stated that over 50% of DE's have less than 2 years of experience. She also decried the inadequate pay and benefit package that most DE's receive. This seems to be more evidence that an increased Federal role in disability decision making will bring experience, stability and professionalism to this critical government function.

Mr. Willman, National Council of Disability Determinations Directors, complained about the 175,000 shelved cases that the DDS's couldn't process due to a "task to resource deficit." It is odd that Mr. Willman and his organization is the biggest obstacle to the DCM. Even if the DCM provides relief for the DDS backlogs, Mr. Willman opposes it. He feels that the disability decision-making monopoly must be preserved at all costs. This type of attitude is the real reason for Congress to act now to reform the statute and permit SSA workers to do the job that the DCM demonstrates that they can do.

A variety of witnesses addressed the problems with the Office of Hearings and Appeals and the Hearings Process Improvement (HPI) project. HPI was a radical change in concept that requires some time to succeed. Acting Commissioner Massanari has established a task force to with multiple stakeholders, including the union, to review the HPI experience and recommend improvements. The union endorses this effort.

The union also urges that this task force take another look at the discontinued Adjudicative Officer (AO) position. This position was able to make favorable disability decisions only. If favorable decisions could not be made, AO's would set up the files for hearings, take depositions and interrogatories for use at the hearing and arrange for consultative examinations and other additional evidence. The judges, including Mr. Bernoski, appeared much more favorably disposed to AO's than the HPI project. Unfortunately SSA discontinued the AO under mysterious circumstances without ever issuing a final evaluation of the pilot.

Thank you again, Congressman Shaw, for this opportunity to comment on the key issues facing the Social Security disability program.

Sincerely,

Witold Skwierczynski  
*President*

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

National Council of Social Security Management Associations  
Washington, DC 20002

*July 31, 2001*

**Question 1. You state that the lack of time prevents the opportunity for more face-to-face interviews and that without face-to-face interviews, there is an increased opportunity for fraud. Are you saying people should be forced to come into the office instead of using the Internet or calling the 800 number?**

NCSSMA testified that failure to see the claimant face-to-face increases the opportunity for fraudulent activity. Face-to-face interviews do increase the overall integrity of the process. In fact, SSA has recently issued draft instructions that recommend face-to-face interviews for certain cases deemed prone to fraud. Face-to-face interviews make it easier to verify the applicant's identity, and to identify inconsistencies between allegations and behavior. However, we are not suggesting that all disability applicants be required to come into the office versus using the Internet or filing by phone. Due to the very nature of the program, many applicants, especially those with mobility impairments or other severe disabilities would be better served without a face-to-face requirement. However, we believe face-to-face interviews remain an effective means of reducing fraudulent activity that needs to be balanced against the convenience of the Internet and telephone application process. At the very least, SSA must continue to allow disability applicants the option of coming in to their local field office for a face-to-face interview.

**Question 2. You state that SSA should capitalize on the success of the Disability Claims Manager program by expanding and strengthening the role and performance of the field office in the front end of the disability process. Can you explain how this would help? Would this speed the disability process or improve accuracy in disability determinations?**

NCSSMA testified that SSA should capitalize on the success of the Disability Claims Manager (DCM) pilot by expanding and strengthening the role and performance of the field office in the front-end of the disability process. Specifically, we recommended creation of a new position in SSA's field offices whose focus would be the processing of disability claims. We believe this new position, which we have labeled a Technical Expert for Disability or TED, would both speed the disability process and improve the accuracy of initial disability decisions.

DCM pilot results demonstrated that decisions were made faster than under the traditional process. In fact, in states such as New Jersey, where the DDS is experiencing performance problems, claims handled under the DCM pilot were processed up to 4 months faster in Title XVI and up to 2 months faster in Title II. Accuracy rates for claims processed in the DCM pilot were higher than for claims processed the traditional way, though the differences were not statistically valid based on the sample size. In fact, denial accuracy was 3.2% higher (93.3% versus 90.1%). We believe it stands to reason the DCM accuracy would be higher since the employees responsible for completing the medical questionnaire, that is central to the ensuing medical development, are trained medical adjudicators. In the traditional current process they have no medical adjudication training.

The TED position, which NCSSMA recommends, would be flexibly structured so that its function could vary depending on the needs of each particular state DDS. In impacted states like New Jersey, the TED would function like the pilot DCMs and provide single point of contact medical decisions. Thus we would expect the same significant processing time improvements that were demonstrated in the DCM pilot. And their knowledge of the medical adjudication process would help ensure a more accurate and targeted medical questionnaire that should result in more accurate decisions.

**Question 3. You state in your testimony that your organization recommends the creation of a new position called a "Technical Expert for Disability (TED)." This position would be in SSA's field office and would focus on processing of disability claims. This SSA employee would essentially receive the same basic medical determination training received by new Disability Determination Service (DDS) Disability Examiners. What would then be the role of the state DDS? Could these positions be filled from within SSA? How many employees would SSA need to effectively fulfill its role to process disability claims? Do you have an estimation of the cost of creation of this position?**

NCSSMA has recommended the creation of a new field office position called a "Technical Expert for Disability" (TED) that would focus on the processing of dis-

ability claims. We suggested this position to take advantage of the positive results of the Disability Claims Manager pilot, within the confines of the current Federal-State relationship, as well as to shore up what we have identified as current weaknesses in the initial intake and adjudication process. As indicated above, we believe this position would both improve the timeliness and accuracy of initial disability decisions. The TED would offer other advantages, as well. Applicants would have help available to them from someone in their community who is familiar with medical sources, transportation issues, community resources and employment opportunities. Additionally, the TED would, through their enhanced knowledge of medical providers and sources, investigative work and personal contacts, help to strengthen the integrity of the program and thus help to deter fraud.

As envisioned, the role of the state DDS would not substantially change with creation of the TED position. In fact, the TED would be flexibly structured so that its function could vary depending on the needs of each particular state DDS. States that need the most assistance, like New Jersey, could give TEDs authority to make final decisions for the full range of cases. This would give SSA additional flexibility to deal with growing backlogs. In less impacted states, TEDs could simply make final and potentially same day decisions for claimants with severe and easily defined disabilities, such as those with terminal illnesses.

Even where the TED did not make the final decision, it would help establish closer cooperation between field offices and DDSs. It would result in a clear delineation of duties between the TED and DE, putting full responsibility for a high quality initial product on the TED, while providing that TED with the background, knowledge and focus that they need to produce such a product. It results in a shift in both process and responsibility that is essential if the TED is to develop a true feeling of ownership and accountability for this work product.

The number of TEDs needed would vary from state to state depending on their degree of involvement in making disability determinations. We do yet not know exactly how many TEDs an office would need to function most effectively. However, we can say that the number could vary from a single individual in a smaller field office in which the TED's role is limited to intake and review of claims going to DDS, to a half dozen or more in larger offices where the TED is truly responsible for the entire initial claim, from intake to decision. Because TEDs would generally be filled from SSA's existing pool of 16,000 Claims Representatives (CRs), they would not affect current DDS staffing levels or require any additional allocation of staff to field offices.

We do not believe the cost to create the TED position would be very significant. The major cost would be the initial training effort. However, because CRs are already fully trained in non-medical adjudication, training would simply focus on medical adjudication and development. SSA could use its existing Interactive Video Training (IVT) network to deliver this training at the employee's worksite. While the TED would probably grade out at the GS-12 level, this would represent a relatively minor cost and is consistent with SSA's service vision which envisions the agency moving toward a higher graded technical workforce. Finally, it should be noted that creation of the TED position does not require any growth in either the SSA or DDS workforce. While we think such growth is warranted to deal with current backlogs and future workload growth, the TED would allow SSA to more efficiently deal with the disability workload regardless of staffing levels.

**Question 4. You indicated in your testimony that one of the biggest problems is the lack of understanding by the claimants as to how the process works and how decisions are made. What suggestions do you have to ensure the process is better explained to claimants?**

NCSSMA testified that one of the significant problems with the current disability program is that a majority of claimants seem to have little understanding of how the process works and how decisions are made. Claims Representatives fail to fully explain the process to applicants for two main reasons, their lack of a full understanding of how disability decisions are made, and lack of time.

NCSSMA believes establishment of the Technical Expert for Disability (TED) position in field offices would address the first reason. Unlike CRs, TEDs would receive full medical decision adjudication training. TEDs would personally conduct a significant percentage of initial disability interviews. The DCM pilot demonstrated that applicants—especially applicants whose claim was denied—were significantly more satisfied with the disability determination process when the claim was taken by a DCM trained in disability adjudication, than under the tradition process where the claim is taken by a CR. And there is a strong correlation between applicant satisfaction and their understanding of the disability decision process.

Even when the TED did not conduct the interview, they would work side by side with CRs involved in the disability process, and would provide training and men-

toring to ensure they have a better understanding of the medical decision making process. In addition, the TED would review the first action on disability claims being forwarded to the DDS for development and medical decision, which would enable them to provide continuous feedback to CRs, thus reinforcing this knowledge.

While the TED will help ensure that field office employees have the knowledge base necessary to help applicants fully understand the process and how disability decisions are made, they will continue to be challenged to find the time to actually do so. This is a function of the overall resources available in field offices. Quite simply, staffing levels in field offices must be increased to ensure that field office employees have sufficient time to fully explain the process to disability applicants and answer all their questions. As a result of NCSSMA's recently completed Staffing Survey, which was distributed to all Congressional offices in March of this year, NCSSMA believes that field office staffing should immediately be increased by 5000 positions to address significant service delivery gaps, including the lack of adequate time to fully explain the process to disability applicants.

**Question 5. We would be interested in any comments you would like to make on testimony provided by other witnesses at the hearing.**

I would like to comment on a point made by Douglas Willman of the National Council of Disability Determinations Directors in his written testimony. Mr. Willman testified that the DDSs currently have at least 175,000 more cases pending than they are able to process, and he expects this backlog to grow. We agree. And with the demise of the DCM pilot, SSA simply does not have any internal means for assisting DDS with this backlog.

Establishment of the Technical Expert for Disability (TED) position in SSA's field offices would give SSA another option. With the state's consent, TEDs could significantly reduce or eliminate the number of cases DDS does not have the resources to handle. While using TEDs in this fashion will obviously impact on other field office workloads, if overall staffing levels are not increased, at least SSA will have the ability to address this growing disability claims backlog to the extent it is determined to be a high priority. The capacity to do so does not currently exist regardless of its relative importance.

Sincerely,

Steve Korn  
President

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National Association of Disability Examiners  
Jackson, Mississippi 39215

**Question 1. You state that there is inconsistency in decisional outcomes between states and regions. Why do you think this is? You also state to a larger extent this is more evident between DDS decisions and those made at the hearing level. Why is this?**

Numerous reasons have been cited to explain the inconsistencies in decisional outcomes and/or allowance rates between the various states and regions of the country. While it is reasonable to expect some differences due to social and economic factors, the failure of SSA to adequately explain these factors, or to offer an explanation of the other reasons that would contribute to such inconsistency, has helped dilute the public's confidence in the disability program. NADE welcomes the opportunity to address some of these issues.

**Quality Assurance.** While SSA has denied the role that their quality assurance process has had in contributing to these inconsistencies, the fact remains that *quality assurance drives policy*. This fact cannot be overstated. Quality assurance is the responsibility of SSA's Office of Quality Assurance and Performance Assessment but the important function of quality assurance is not conducted in the central office. Instead, the responsibility for "policing" the decisions made by the DDSs has been given to the Disability Quality Branch (DQB) offices in SSA's ten Regional Offices. Disability Examiners have long known (and SSA has failed to acknowledge) that these ten Regional Offices have different views regarding case documentation requirements or other case development actions. Although our information is anecdotal, examiners who have moved from one Region to another have consistently reported that a claim which would be returned for further development in the Region they left would not be returned in the new Region. Likewise, a claim that would not have been returned in the Region they left would be returned for further development in the new Region. It has been our observation that views regarding impairment severity also differ among the Regional Offices. Since the Regional DQBs appear to rate impairment severity differently the DDSs will rate impairment severity

differently. Hence, a case may be allowed or denied simply because of the claimant's geographic residence. In addition, all decisionmakers are not reviewed equally or by the same component. A high percentage of DDS allowances are reviewed by the DQB via the pre-effectuation (PER) review while ALJs have more denials than allowances reviewed by the Appeals Council.

**Social and Economic Conditions.** A second factor, one which impacts on the allowance rate, is the social and economic condition in the state. States with strong economies, or strong social supports such as General Assistance or short term disability benefits, generally produce fewer disability claims. When claims are filed they are likely to be filed by people with more severe impairments. States with weaker economies and/or limited social supports generally see a higher incidence of disability applications, and many of these are filed by people who are seeking financial relief of any sort that is available to them. Such filings adversely affect that state's allowance rate and contribute to the public's perception of inconsistency in what they expect should be a nationally uniform program.

**Experience and Training.** Also contributing to inconsistencies in decisional outcomes is the ability of the DDSs to attract and retain highly qualified people to perform the job. Disability decision making is an art, not totally a science. The job of the disability examiner is much more complex today than it has ever been, and it is becoming increasingly more so. Yet, most states have not recognized this change and have not adjusted the pay levels for disability examiners accordingly. It is generally acknowledged that it takes two years or longer for a disability examiner to become proficient in the job. However, *currently, more than 50% of the disability examiners in the DDSs have less than two years of experience.* This combination of inexperience and the inability to attract and retain highly qualified employees means that DDSs, out of the necessity created by the increasing turnover in their staff, are spending too much of their training budgets on initial training, leaving little money in the budget for ongoing training of current staff. Additionally, increasing caseloads make it difficult for DDS Administrators to arrange suitable times for staff training even when the budget permits such training. Couple this with the fact that claimants—and the impairments they allege—have changed dramatically over the years, requiring more documentation of impairments and impairment related symptoms.

In the past the majority of claimants were older workers who had a significant physical impairment, more easily documented with objective *medical* findings. Today's typical applicant is younger and is more likely to allege a mental impairment and/or impairment related symptoms which require significant non-medical development and evaluation (obtaining Activities of Daily Living information from the claimant and collateral sources and assessing credibility).

*Ongoing, comprehensive training of all decision makers, not just DDS staff, is imperative to ensure that decisions are made as consistently as possible.* As more weight is afforded to individual subjective factors such as pain, fatigue, assessing credibility and treating source opinions, there is a greater likelihood of more "inconsistent" decisions. *A single presentation of policy that is binding on all decision-makers and consistent QA reviews of all decisionmakers can assist in ensuring that policies are being applied consistently across states, regions and decisional levels.*

**Appeals.** Much attention has been focused on the differences in decisions between the DDSs and those produced by the Office of Hearings & Appeals. The most common explanation for this is that the time interval between the DDS decision and when the ALJ sees the case (months or years) adds more subjective and objective medical and vocational information. This results in a "de novo" decision on what has become an outdated—or frequently a totally different—case to review. We are, in essence, adjudicating a different case. While this may be true in some cases, we believe that the differences in decisional outcomes between DDS and ALJ decisions is due to the fact that DDS decisions are based primarily on medical evidence, considering the subjective issue of pain, the credibility of the claimant's complaints and the appropriate weight of the treating source opinion, while the Hearings decision is based primarily on the outcome of a legal procedure. The sources of information for a Hearing decision are different in that there is no required Medical Consultant review. Medical evidence is likely to be developed to support a specific outcome. The claimant is represented by a professional, who interprets medical and vocational information along with the rules and regulations in building their case for the ALJ. SSA has chosen not to have anyone present at the ALJ hearing to explain the DDS decision for fear of creating an adversarial environment. The result, of course, has been that the Administrative Law Judge is presented only one side of the story and if they choose to question the facts in the case presented to them, they are fearful of being labeled as biased. NADE supports having the DDS decision explained at the hearing level by someone qualified to do so.

**Court Decisions.** SSA's acquiescence rulings customarily only apply in the circuit which issues the court decision. Thus these policies become mandatory in a handful of states in a particular circuit. Because there are numerous acquiescence rulings, and because the Federal judicial circuits do not correspond to SSA regions even states within the same region have different adjudicative mandates.

**Question 2. One of the many initiatives SSA has implemented is the Prototype process. This initiative is being tried in ten states and by all accounts, this process has been met with mixed reviews. Can you tell us about your experiences in the states where this initiative is used?**

NADE members have expressed similar mixed reviews. The stronger implementation of Process Unification in the Prototype states has given the DDSs the ability to allow claims they might have otherwise denied. Examiners participating as Single Decision-Makers have reported this to be a positive and fulfilling experience on a personal and professional basis. However, without additional staffing, backlogs build and the production pressures on the disability examiner increases to the point that the personal and professional fulfillment is not worth the stress of the workload. In addition, while the new claims process was expected to produce a better public understanding of the disability program and higher claimant satisfaction with the decision and, thereby, reduce the appeal rate, the opposite has occurred. Without a reconsideration step, Hearing Offices in these prototype states are being overwhelmed by the growing number of appeals.

It takes longer to process a claim under Prototype and it costs more to do the additional development required. The elimination of the reconsideration has not produced the savings anticipated to pay for the additional costs. SSA's initial plans for a face to face "claimant conference" between the initial disability examiner and the claimant were quickly scrapped when SSA realized that there were insufficient funds to pay for this process, a fact that NADE had made clear very early in the process. Now, the Agency acknowledges that the elimination of the reconsideration step will not produce sufficient savings to pay the additional costs of the prototype process.

The basic idea behind prototype, to allow claims which should be allowed as early in the process as possible, was good. NADE has always endorsed this concept. Increasing the personal contact between the trained disability examiner and the claimant is a good idea but any realistic plan to achieve this goal must also examine its costs. Our concern with the prototype process, however, was always, "How will SSA pay for this?" Now we know—they can't

**Question 3. In your testimony you state that NADE does not support changing the definition of disability. How do you respond to the concerns expressed by other witnesses who do support changing the definition of disability?**

NADE does not support changing the definition of disability AT THIS TIME. We are not opposed to changing it later if it becomes necessary to do so. Our position on this matter is simple—SSA has too many other problems right now and they need to direct their attention and resources to finding credible solutions to these problems. The definition of disability is the foundation of the disability program. It does not represent a significant problem for the Agency at this time. In fact, it is the only part of the house that is not crumbling at this time. Repairs are urgently needed to the roof and walls and once these have been achieved, then it may be time to examine the foundation.

The aging of the baby boom population and the increased incidence of disability anticipated with that, as well as a transitioning labor force due to increased retirements, make this a time of massive hiring and training with large workload increases. We need stability within the core of the program to be able to make a successful transition. In addition, with so many changes taking place in the system we would not be able to effectively measure the effects of the change in definition compared to the other changes. NADE urges Congress and SSA to proceed cautiously in any attempt to change or overhaul the definition of disability.

**Question 4. You state that you do not support demonstrating medical improvement before the cessation of benefits because this policy discourages disabled claimants from working. Why do you think this policy is unwarranted?**

The issue of medical improvement is one that needs close examination, especially if the Congress decides to also look at the definition of disability. Individuals who receive disability benefits have a right to rely on the validity of the decision and expect that they will continue to receive these benefits unless there is a change in their condition that would justify termination of these benefits. However, one major problem with demonstrating medical improvement is that it requires evidence that the underlying condition has changed for the better. When a person is allowed bene-

fits without a significant medical condition, it will be difficult, if not impossible, to show improvement even though the person may be perfectly capable of working. NADE is on record as supporting the Medical Improvement Review Standard but we have supported making changes in that standard.

We believe that the time has come that the issue of medical improvement should be revisited to ascertain if it is still relevant. Improvement in a medical condition is not the only change that can occur that would justify termination of benefits. Technology and an expanding job market has created many opportunities for disabled people to return to work. The federal laws have changed in recent years making it easier for disabled people to return to work.

It is time to ask the question, "Has the Medical Improvement Review Standard outlived its usefulness?" However, whether or not the medical improvement standard is changed we believe that it is vital that SSA become, *and remain*, current on the Continuing Disability Reviews.

**Question 5. You state that SSA has developed new disability policies in response to court decisions and litigation. These new policies are increasingly giving more weight to subjective complaints. How important is a full assessment of subjective complaints in your view? How should such complaints be assessed?**

An individual's subjective complaints are very important and should be given full consideration by the disability examiner. This goes to credibility for the system. When people feel they are disabled and they have multiple subjective complaints on which they base that belief, failing to consider those complaints will result in the person believing the system failed. If they then take the same complaints to a hearing and receive an allowance, they can prove the system failed them. So, full assessment is critical.

The current SSA medical model with an individualized functional assessment is an appropriate "balance" but implementing and administering the policies and procedures associated with that has been extremely problematic due to the lack of a single presentation of policy binding on all decision-makers, the lack of consistent feedback from quality review components regarding applying these and the lack of follow through on clarification of policies once they are implemented. Much stronger guidance is needed regarding how to integrate objective tests, clinical findings and claimant symptoms to arrive at a correct assessment of what a particular claimant can reasonably do as a result of their medical condition. This guidance must be provided to, and be binding on, all decision-makers. Discounting objective evidence because it is inconsistent with subjective complaints is clearly the wrong way to go. We believe the subjective complaints should only be applied to a decision when it is consistent with the objective findings.

SSA, the Congress, and the American public must also recognize that consideration of these subjective complaints have contributed to the growth in inconsistencies in the decisions made on disability claims by the DDSs. Also, evaluating subjective complaints is more time consuming for examiners, hence it is a more costly process. The need to document and evaluate the severity of such complaints has created stronger decisions but has added to the growth in complexity in the program and added to the growth in pending cases. It takes more time to process each case as examiners attempt to contact the claimants and third parties to obtain more detailed information about the claimant's objective and subjective complaints.

**Question 6. We would be interested in any comments you would like to make on testimony provided by other witnesses at the hearing.**

Our responses to the other testimonies presented at the hearing is as follows:

**Acting SSA Commissioner**—NADE generally supports the testimony presented by the Acting Commissioner of Social Security but we were disappointed that this testimony did not address the increased costs of doing business under the new disability claims process that is being tested in the prototype study. SSA has invested much of its pride and hopes for the future in this process while refusing to acknowledge the increased costs. Nor have they been honest about some of the data and the data they have released has not generally supported their position that the new process is more efficient and more customer friendly.

NADE has maintained from the outset that the elimination of the reconsideration step in the appeal process would not produce the required savings to pay for the enormous costs of implementing the new claims process. SSA has only recently acknowledged this to be so and delayed the expected national rollout of this new process while they seek more information.

Also, much of the highly touted savings in processing time that SSA has used to justify this new process was created simply by the elimination of the reconsideration step and not by any new policies showcased on the new claims process. Unfortunately, the data appears to show that the time saved by the elimination of the re-

consideration step will be added to the appeals process as the backlogs at the appeals process have increased

**Social Security Advisory Board Chairman**—NADE is in fundamental agreement with SSAB reports and with the testimony presented at this hearing

**AFGE**—NADE concurs with the statement made by the AFGE spokesperson that solving the problems inherent in the Social Security and SSI disability program will be a daunting task and will require a multi-faceted approach. We do not understand, and strongly disagree with, the conclusion that many of SSA's disability related problems can be solved if SSA rolls out two pilots, namely the Disability Claims Manager (DCM) and the Employment Support Representative (ESR). While we have little or no experience with the ESR, the superiority of the DCM was vastly overstated. While the concept may be feasible, it was never tested in a "real world" situation. Our experience with Prototype (which was piloted as the "Full Process Model") demonstrates that a process which appears successful when piloted must undergo dramatic changes when implemented on a larger scale. Production and processing time considerations, in addition to resource and staffing concerns, have required SSA and the DDSs to implement a number of "expedients" (shortening the claimant conference, including more of the claimant conference information in an initial letter to the claimant, shortening the rationale, etc.) in order to process cases. The DCM could not survive in its present form if implemented nationally and continuing to pilot this process will not add anything to the information already gathered.

**National Council of Social Security Management Association**—The proposal for a Technical Expert for Disability (TED) makes absolutely no sense, especially in light of NCSA's testimony that, "Field offices also cannot keep up with the growing workloads." We do agree that SSA must address . . . one of the most pervasive problems in the initial disability decisionmaking process by improving the quality of initial medical transmittals to DEs in the DDSs." However, the DDSs do *not* need the Field Offices to develop medical evidence or to assist in making the medical decision. Rather, we need them to provide *complete, accurate* applications and detailed descriptive observations when the application is taken in person.

**NCDDD**—NADE concurs with the testimony presented by NCDDD.

**NTEU**—NADE believes that it is absolutely amazing that the solution to the problems facing the disability program is the creation of more Federal jobs. This is what we see when we read the testimonies presented by the spokespersons for the various Federal unions and management associations. Based on the testimony presented by NTEU, it is clear that they believe that the creation of the Senior Attorney program would solve all of the problems in the program.

**Association of Administrative Law Judges**—NADE shudders at the thought of an independent ALJ corps. SSA presently exercises very little control over the Office of Hearings & Appeals and we believe that many of the problems in the program can be traced to this very fact. OHA has strongly resisted SSA's attempts to introduce change in the manner in which OHA conducts its business, a resistance that has seriously impaired the ability of SSA to successfully move forward with its new disability claims process at the DDS level. SSA needs greater control over the Administrative Law Judges. NADE does support a mandate that SSA should proceed to develop as soon as possible a single presentation of policy—that is that the rules guiding the decisions made by the DDSs and the ALJs should be the same. We also agree with the assessment that subjecting favorable decisions to more scrutiny than unfavorable decisions works to the detriment of the claimants and undercuts the perception of fairness and impartiality of agency adjudication. NADE has consistently advocated for review of an equal percentage of allowances and denials at all levels in the adjudication process.

Sue Heflin  
*President*

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National Council of Disability Determination Directors  
Lincoln, Nebraska 68512  
*July 31, 2001*

Hon. E. Clay Shaw, Jr.  
Chairman, House Subcommittee on Social Security  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Congressman Shaw:

This responds to your letter of July 13 in which you asked five questions in follow up to testimony presented at a hearing on June 28, 2001. I am happy to have the opportunity to respond to your questions.

*First*, you asked if the NCDDD feels that the definition of disability, essentially unchanged in 30 years, is in need of review and possible revision.

Certainly a review of the basic definition is in order. The world of medicine and the world of work in particular, and our economy and our culture in general, have experienced such dramatic changes over the past three decades that the original definition delineating the requirements for receiving cash disability benefits should be reconsidered. In this millenium, there are few, if any, medical conditions that can be said to "preclude any substantial gainful activity." Persons who are totally without sight, or totally without hearing, or confined to wheelchairs are gainfully employed and fully participate and contribute to our economy. The Americans with Disabilities Act made fundamental changes to retaining and regaining the contributions that persons with medical impairments can make to the workplace and society. The relationship between the disability program and the ADA can be a starting point for re-examining the definition of total and permanent disability.

*Second*, you asked which elements of the Lewin Report are the most important to implement.

The Lewin Report is a lengthy, detailed, and complex document that includes many far reaching and overlapping recommendations. Much work among the various components in the disability program will be required to sort out and prioritize Lewin's suggestions. Our point is not to endorse the report in its entirety, but to urge SSA to start the dialog that will be necessary to realize any benefits from the potentially valuable report. For too long, the report has been locked in bureaucratic inertia and the time is long past to start considering some action. The following are among its more important aspects.

(1) The structure of the disability program is too fragmented with too many components responsible for the various pieces of the program and too little coordination among those units. We particularly agree with Lewin's recommendation that SSA develop a new organizational structure that clearly establishes responsibility and authority for the disability program across all SSA functions. This would include not only operations and quality review but also policy development, budgeting, training, and systems design.

(2) The current model is based on a decades old industrial approach to quality control in which end-of-process reviewers check a sample of the completed product and report and describe "errors." The primary effect is not to educate the frontline workers or to develop their abilities but simply to make them fearful of being identified as error prone workers. The SSA quality assurance system should place much more emphasis on in-line process improvement and much less emphasis on finding and reporting on defects.

(3) The front line workers and the quality reviewers should develop a shared definition of what "quality" means to replace the current process in which they view the concept much differently. Presently, front line workers must always simultaneously balance concerns for the amount of documentation, the thoroughness of analysis and explanation, case processing time, and case costs. The operations definition of "quality" includes all these elements. But at the case review level, "thoroughness" is the only consideration and cost and timeliness of case processing are entirely ignored. The result is that operations workers on the front lines receive feedback from the quality reviewers which is virtually impossible to apply to the reality of the work environment. SSA needs to establish a quality concept that all components can work toward rather than continue the present model which places the components in adversarial positions to one another.

(4) Lewin recommends that DDSs be responsible for first level reviews (which would incorporate emphasis on in-line improvements) and that federal resources be used to coordinate and develop the DDS QA units rather than to perform direct reviews of the DDS work.

*Third*, in regard to the development of information systems, you asked what enhancements would be helpful and what SSA is doing toward providing these enhancements.

Our concerns in the area of information systems focus on the question of which component will be responsible for designing and developing the hardware and software which is critical to our operation. The DDSs, as a community, have a history of systems development which has been successful both in terms of effectiveness and economy. Our systems work every day, and they have been developed and are being maintained at very reasonable cost. Most DDSs rely on support from the private sector for the maintenance and enhancement of the systems that support their business processes.

But from time to time, SSA introduces major systems initiatives without adequate consultation or input from the state agencies. Usually these initiatives involve hardware and software replacements which are centrally and federally conceived and

managed. These initiatives do not have a history of success. Most recently, SSA spent most of a decade and tens of millions of dollars attempting to develop a replacement system called the Redesigned Disability System (RDS). Although the great majority of the project has been abandoned, its real cost goes well beyond the direct expense. The real cost includes the fact that enhancements to the DDS systems was curtailed while RDS consumed, with almost no positive result, the vast majority of the resources available for systems development.

One of the key challenges to systems development in the future will be adapting the DDS world to the electronic exchange of medical evidence. This will soon become critical as the health care community adapts its practices to the Health Information Portability and Accountability Act. We urge that SSA continue to involve the DDS systems personnel in this challenge and to rely upon the local development of necessary systems capabilities rather than attempting another centralized approach. Because of their placement in state government and their varying local circumstances, DDSs must retain control of their information processing systems. We also believe it is reasonable to consider if systems software development should be a task for which the knowledge, skills, and abilities of the private sector, by way of the contract process, could be better utilized.

*Fourth*, you asked how SSA should change its policy instructions for evaluating disability claims.

As indicated in our testimony, medical policy in the disability program is complex, fragmented, and confusing. We have four suggestions for changing policy development and implementation.

- (1) policy should be developed and “enforced” by the same component;
- (2) the presentation and communication of policy should be identical among initial level adjudicators, appeals level decisionmakers, and quality reviewers—they should all use the same policy to make decisions;
- (3) training in the policy should involve more emphasis on “real world” application rather than being so focused on theory and philosophy;
- (4) SSA must reconsider its increasing emphasis on subjective and “functional” considerations and keep in mind that objectivity in policy results in more consistent and less costly application.

*Fifth*, you asked if NCDDD would like to comment on the testimony of the other witnesses at the hearing. We do have a few comments.

The testimony of Stanford Ross of the Social Security Advisory Board was very impressive. NCDDD agrees with the great majority of Mr. Ross’ comments and recommendations. We take note of the fact that the Board, not representing any particular component in the program, is in a position to offer an objective and impartial point of view.

We do disagree with the manner in which two witnesses characterized the recently concluded test of the Disability Claims Manager (DCM) concept. The test was described as a “resounding success” and as having shown that the concept “is a winner” because it resulted in higher levels of customer satisfaction, higher levels of employee satisfaction, lower case processing time, and higher productivity all at comparable cost. Accuracy of decision-making was described as equal to above the traditional process.

At the time of the hearing, we did not have the draft report of the DCM test. Now that we do, we are able to comment on the above description of the outcome of the test.

With regard to *administrative costs*, the draft report estimates that the DCM process **was between 6% and 20% more costly than the existing process**. We believe that this summary figure is understated because some cost categories were not included. We doubt that such an increase in administrative spending will become available and even if it did, we feel it could be better invested in program changes other than DCM.

With regard to *accuracy*, the correctness of DCM allowance decisions was comparable to the control group, but the correctness of denials fell short of the regulatory minimum threshold for acceptable decisionmaking. Denial accuracy for traditional cases was 93.3% while that for DCM cases was 90.1%. The accuracy for non-medical decisions on Title XVI cases is not known.

With regard to *processing time*, the DCM process did save 10 days on Title II cases and 6 days on Title XVI cases. This is a noteworthy achievement, but is less impressive than one of the witnesses characterized to the committee. The witness stated that

Average processing time is 73 days. The agency in their FY 2002 goals is shooting for 108 days; that is 32 percent better than the agency’s goals.

This statement, while factually correct, could be interpreted to state that DCM approach improves processing time by 35 days. In fact, it does not. The real gain was about eight days, and this gain was achieved only by controlling case receipts, excluding some types of complex cases from the workload, and excluding delayed development of cases. These controls are not possible in a "real world" setting.

With regard to productivity, SSA's draft report estimates that DCM productivity, depending on the model used to measure it, was between 87% and 108% of the traditional process. But those chosen as personnel for the test were historically more productive than their peers, so the result may represent an actual loss in productivity.

Any evaluation of the DCM test must consider the very unusual circumstances under which the test was conducted. These included the following: the test utilized exceptionally well qualified personnel; attrition among the DCM corps was considerably less than for personnel handling comparison cases; all of the Federal DCMs received promotions for participating in the test; DCMs were able to set limits on the size of their caseloads; DCMs were not required to handle some types of cases that are regarded as more difficult; and DCMs received amounts of training, mentoring, and coaching that are unprecedented in the history of the disability program.

While *customer satisfaction* was improved under DCM, this may result more from the investment of significantly more resources and the artificial conditions of the work than from the DCM concept itself. Curiously, the increase in customer satisfaction was accompanied by an increase in the number of denied applicants who filed for reconsideration.

We do want to thank the state and Federal personnel who undertook this pilot, and we will work proactively with SSA in order to glean positive results and usable work processes from it. Even so, we must point out that the actual outcomes of the test fall far short of what was characterized at the hearing.

Thank you for the opportunity to provide this additional information and explanation. Please contact me again if further information is desired.

Sincerely,

Douglas Willman  
Past President

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National Treasury Employees Union, Chapter 224  
Cleveland Heights, Ohio 44118

**Question 1. You asked, "What do you mean by de-legalize the Office of Hearings and Appeals?"**

"Delegalization" is the process of eliminating or reducing the use, independence and effectiveness of attorneys, whether they are ALJs, staff attorneys or claimant's representatives in the disability decision process. The disability system has experienced one crisis after another since the early 1990's when the Social Security Administration failed to timely react to a significant increase in disability receipts leading to a disastrous increase in the number of cases pending, the disability backlog. In 1994 and 1995 a considerable number of claimants were waiting over a year for hearing decisions. By the time SSA decided to respond, the situation was entirely out of control with the OHA backlog increasing by as many as 10,000 cases a month. (I note that for the past 4 months, April to July 2001, the backlog has again gone up an average of more than 10,000 cases a month.)

SSA's response then was the overly ambitious and very expensive Disability Process Redesign (DPR) that was intended to introduce radical changes to the adjudication process over an extended period of time. Unfortunately, the individuals charged with the task of dealing with the disability backlog used the opportunity to promote their philosophical agenda to de-legalize the Office of Hearings and Appeals. Unfortunately, the DPR was fundamentally flawed, its scope was too large, and the project was poorly planned and executed. Cynthia M. Fagnoni, Director of Education, Work force, and Income Security Issues; Health, Education, and Human Resources Division of the General Accounting Office, testified before the Subcommittees on Social Security and Human Resources on October 21, 1999 that,

The agency's first ambitious redesign plan in 1994 yielded little. When the agency scaled back its plan in 1997, progress was slow, in part because even the scaled-back plan proved to be too large to be kept on track.

SSA once again has an overly ambitious and very expensive plan, but it is not a response to the disability backlog crisis but the cause of it. Under the guise of preparing for the future, SSA has implemented many of the concepts of the ill-fated

Disability Process Redesign under the rubric of the Hearings Process Improvement Plan. Delegalization begins at the very core of HPI with the elimination of the Senior Attorney decision maker. While the name "Senior Attorney" remains, its effectiveness has been stripped away along with all its decision-making authority. Similarly, the "Supervisory Attorney" position is now a "Group Supervisor" and is more likely to be filled by a non-attorney paralegal than an attorney. Attorneys and non-attorneys, worried about violating state bar ethical considerations or engaging in the unauthorized practice of law must carefully consider whether each supervisory directive involves the legal aspects of an attorney's work. This is an inefficient process that demoralizes both attorney and supervisor. Consistent with this delegalization, attorneys represent a much smaller percentage of the individuals responsible for drafting ALJ decisions under HPI. Thus, HPI has effectively reduced the use and effectiveness of attorneys in the pre-Hearing process, the post-Hearing process and in supervision of the process. This "de-legalization" has helped contribute to the 21.5% increase in processing time since the close of January 2000, the month that the Phase I offices implemented HPI, and an increase in the backlog of almost 75,000 cases this fiscal year alone, more than 44,000 cases in the last 4 months alone.

**Question 2. You asked, "What oversight is there of Senior Attorneys? Who reviews your decisions?"**

While the job title "Senior Attorney" continues to be used in SSA, the position has no decisionmaking authority and thus there are no decisions to review. The Hearing Office Director is the first-line supervisor of the current Senior Attorney and the Hearing Office Chief Administrative Law Judge is the second-line supervisor.

In the Senior Attorney program prior to the Hearing Process Improvement plan (HPI) Senior Attorneys did issue fully favorable decisions. Senior Attorneys were supervised by a Supervisory Attorney as the first line supervisor and the Hearing Office Chief administrative law judge as the second line supervisor. The fully favorable decisions issued by Senior Attorneys were subject to offsite quality review by the Office of Quality Assurance and Performance Assessment (OQAPA), which reviewed a random sample on a post-effectuation basis; own motion case reviews of a random sample of cases by the Appeals Council on a pre-effectuation basis also was part of the review process. Case examination referrals were conducted by OQAPA where an OQAPA screened case was selected to meet an automatic profile and the case was forwarded to the Appeals Council for consideration of own motion review, where appropriate, again on a pre-effectuation basis.

In addition to these review processes, beginning in July 1998 Supervisory Attorneys in each office were directed to select a random sample of approximately 10 percent of Senior Attorney dispositions for on-site quality review feedback on a post-effectuation basis. For new Senior Attorneys, the Supervisory Attorney was to review at least 50 percent of the dispositions for the first 3 months. The Supervisor completed an on-site review checklist that was provided to the Senior Attorney and returned the case file to the Senior Attorney if the Supervisor identified a correctable error. On a quarterly basis the Supervisor was instructed to collate his or her comments and furnish a summary to the regional training coordinator for planning purposes. Finally, if the Senior Attorney or an effectuating component, discovered an error in a decision or received additional evidence that precluded a fully favorable decision, procedures were in place to terminate effectuation of the decision and schedule the case for a Hearing before an administrative law judge, or for the Appeals Council to either vacate the dismissal of the claimant's Request for Hearing or reopen and revise the decision of the Senior Attorney, as appropriate.

NTEU believes that, with minor changes, this same process would work well in a new attorney decisionmaker program. Most offices no longer have a Supervisory Attorney with supervisory responsibility over all attorneys in the office. Such a position must be re-established to have an effective on-site quality review program. Further, SSA is critically understaffed in the ALJ position and thus ALJs should not be removed from production to perform quality reviews of attorney decisions. Finally, to be consistent with the SSA Performance Plans, decisional accuracy should be based on the "substantial evidence" standard with the same accuracy goal as that for ALJ decisions, 89% in FY2002 and 90% by FY2005. Like ALJs, attorney decisionmakers will need training and continuing legal education to attain these goals.

**Question 3. You asked me to comment on my statement that HPI was a failure and it appeared to be tailored to enhance ALJ productivity.**

I certainly do not think that SSA intended HPI to increase the backlog, increase processing time, decrease production, decrease productivity and decrease service to the public, but that is what HPI did. Clearly management wanted to enhance ALJ productivity, since they eliminated the only other OHA decisionmaker, the Senior Attorney decisionmaker.

If their goal had been merely to increase OHA productivity, rather than specifically ALJ productivity, why would they have eliminated a program that decreased the backlog, decreased processing time, increased production, increased productivity and increased service to the public; particularly a program that did it with few added resources at a much lower cost per decision than an ALJ decision?

HPI, however, was based on a number of fundamental misconceptions that would have been made apparent had it been tested prior to implementation.

First, it was based on the belief that ALJs spent significant amounts of time on the pre-hearing development of their cases. This was simply not true. Most ALJs spent time instructing staff as to how they wanted their cases developed and staff members actually performed the developmental functions. Even if development of the case could be effectively delegated, the ALJ could not delegate the pre-hearing review of the case necessary for the Judge to prepare for questioning the witnesses at the hearing and the later review of the case necessary to making a decision on the merits. The Judge has to review the actual evidence and no amount of summarization, review by the staff or certification can substitute for this. Thus, removing the ALJ from pre-hearing development saved virtually no ALJ time that could be used for ALJs to hold more hearings and decide more cases.

At the same time, because of the reorganization of the process in Hearing Offices, employees worked for groups rather than individual ALJs, as was common prior to HPI, and could no longer develop each case to meet the requirements of each ALJ. ALJs, who still required that cases be developed as they desired thus had to spend more time on pre-hearing development assuring that all the development they needed was obtained. In some offices, the attempts to avoid this problem through long and detailed "standing orders" got the ALJs the cases developed as they desired, but at great expense in terms of staff time and staff productivity. In many cases the ALJs associated with a group could not agree on "standing orders" so none were issued. Therefore, the group did not know how the ALJ wanted them to prepare the file. This resulted in over-development in some cases, and the need for further development in other cases.

HPI also added the function of certifying that a case was "Ready to Hear." Since ALJs had lost significant control over the pre-hearing development of the case but not the ability to require that the case be developed as they required before they held a hearing, the certification that a case was "Ready to Hear" was a meaningless waste of limited assets that added no value to most cases.

Most importantly, the designers and directors of HPI failed to recognize the skills and abilities required to perform the many different tasks in processing cases from docketing the claim to mailing the decision when they eliminated "stove-piping" and organized the office in groups of technicians and analysts. They so under valued the work performed by employees that they assumed that everyone could do virtually everything with less training than a new crew member gets at McDonald's. They promoted many employees out of clerical jobs that they did well, into the job of drafting ALJ decisions, a difficult job for which many did not have the basic skills and for which they were not sufficiently trained. It will take years, if ever, for them to become skilled at this job. Those employees that were not promoted were often left with even more difficult jobs, with substantial new tasks added to all the tasks they had to perform before, again with little if any training on how to perform the tasks and no decrease in production expectation on the old tasks in spite of the additional duties added. In many cases the added tasks were those previously associated with lower graded positions, so that those not promoted often found their position to have been degraded.

Finally, HPI failed because OHA employees had neither confidence in the plan nor the management that designed it and implemented it. Employees correctly viewed the failure to test HPI not as a sign of confidence by management that it would be a success but a sign that management knew that it would fail the test. It was a common saying by OHA employees that the only thing that SSA learned from the failed Adjudication Officer pilot was never to pilot a program again. Nothing was more damaging than management insisting that HPI "reduced handoffs" and then producing a flow chart showing fewer hand-offs of cases under HPI. It was very clear to all employees that the flow chart simply combined or left off many of the steps in the process and that the process had many more handoffs than what offices were doing prior to HPI.

By any measure HPI has been a failure. It has not increased ALJ productivity even though that was clearly its design. Monthly ALJ productivity in FY2001 has approached, but never reached, what it averaged in FY2000.

**Question 4. You asked me if I was interested in commenting on the testimony provided by other witnesses at the Hearing.**

I was disappointed that Acting Commissioner Massanari did not consider the Senior Attorney Program to be very successful. Neither Commissioner Chater nor Commissioner Apfel expressed these concerns when they authorized and reauthorized Senior Attorney decisionmaker programs. One of Social Security Administration's goals is to provide claimants with the correct decision at the earliest possible time. When the Senior Attorney Program began in 1995 the disability backlog was 570,000 cases and OHA disability processing time averaged 386 days. During the life of the Program Senior Attorneys provided decisions to over 200,000 claimants with an average processing time of just over 100 days. Overall, the backlog was reduced to just over 310,000 cases and processing time for all claimants was reduced to just over 260 days. Furthermore these attorneys continued to provide most of the decision writing support for Administrative Law Judges and the time needed to draft ALJ decisions was maintained at approximately 10 days. This provided the administration with the flexibility to address workloads and allowed the Agency to utilize assets in an efficient, cost effective manner.

I was even more disappointed by Acting Commissioner Massanari's misleading statement regarding disability processing time. He reported to you that the processing time had been reduced almost 100 days from its peak of 397 days in 1997. That is true as far as it goes, but it hides the deterioration that has occurred in the last few months. In actuality, in large part due to the senior attorney program, processing times had been reduced to just over 260 days by January 2000. Overall processing time by the end of June 2001 had actually increased to 316 days (306 days for SSA cases only). Because of the increase in processing time and the backlog at OHA, we believe that HPI can categorically be described as a failure. Indeed Mr. Ross's statement that people view HPI as a disaster seems to be the most accurate description of these changes.

Acting Commissioner Massanari also raised concerns about the quality of the decisions rendered. The dramatic improvements in processing time and the decreased level of pending produced by the Senior Attorney program only represents a true improvement in public service if the decisions issued were correct. Had Commissioners Chater and Apfel had significant concerns about the quality of the Senior Attorney decisions they would not have continued to authorize and reauthorize the program from 1995 until November of 2000. The Appeals Council reviewed senior attorney decisions using the same criteria they use to review administrative law judge decisions and found them to be of the same quality. Please see my response to question #2 for more information on this point.

Finally, I note with satisfaction that ALJ Ronald Bernowski, President of the ALJ Union, testified that with some changes, re-institution of the Senior Attorney Program would significantly improve the backlog problem at OHA.

James A. Hill  
*President*

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Association of Administrative Law Judges  
Milwaukee, Wisconsin 53203  
*July 31, 2001*

Hon. E. Clay Shaw, Jr.  
Chairman, Subcommittee on Social Security,  
Committee on Ways and Means,  
B-316 Rayburn House Office Bldg.  
Washington, D.C. 20515

Re: June 28 Hearing on Social Security Disability Programs' Challenges and Opportunities

Dear Mr. Shaw,

I again thank you for the opportunity to testify before your Subcommittee at the hearing on the Social Security Disability Programs' Challenges and Opportunities. The following are my answers to the questions that you posed in your letter dated July 13, 2001, to complete the hearing record, which I submit to you on behalf of the Association of administrative law judges ("AALJ"):

**Question 1.** You propose an ALJ-administered independent agency and that you want a separate budget, not subject to review by the President or any executive branch officer, special treatment that an independent agency like SSA does not have. Why would the taxpayer and the claimants have any confidence in a government agency with few or no controls on it through the purse string?

**Response:** Congress directly would control the purse string for a new independent adjudicative agency for Social Security Act cases, the United States Office of Hearings and Appeals (“USOHA”), the same as it does for all of the other independent agencies that Congress has created. AALJ’s recommendation for the administrative budget process of a USOHA is identical to that which the Social Security Administration (“SSA”) currently has. AALJ’s recommendation is substantively the same as the provisions of 42 U.S.C. § 904(b), which sets forth the budget process for the SSA as an independent agency, including (1) having the USOHA Chief Judge prepare an annual budget for the USOHA, which would be submitted by the President to the Congress without revision, together with the President’s annual budget for the USA, (2) making appropriations requests for staffing and personnel of the USOHA based upon a comprehensive work force plan that is established and revised from time to time by the Chief Judge, and (3) appropriations for administrative expenses of the USOHA would be authorized to be provided on a biennial basis. Thus, the USOHA budget would be subject to review by the President, but Congress also would see the budget that the Chief Judge of the USOHA prepared in view of only the need to have timely and high quality adjudications.

The degree of independence that an agency has is affected by the degree of control that it has in preparing and submitting its budget requests to Congress. Budget requests usually are changed by the Office of Management and Budget (“OMB”). However, Congress can and has permitted independent agencies, including SSA, to submit their budgets without revision, so that the Appropriations Committees can compare the agency budget with the OMB revisions.

In order to address the concerns raised by the Social Security Advisory Board (“SSAB”) that the SSA has not adequately staffed the OHA to produce timely and high quality decisions, Congress may want to consider barring OMB from submitting revisions of the new USOHA’s budget requests, as Congress did for the U.S. Postal Service, 39 U.S.C. § 203, 3604, and the U.S. International Trade Commission, 19 U.S.C. § 2232. As the SSAB has pointed out in its September 1999 report entitled *How the Social Security Administration Can Improve Its Service to the Public*, the SSA’s reduced staffing and other tight resource constraints has limited its capacity to respond to growing and more complex workloads, which has resulted in diminishment in the quality and timeliness of program service to the public. pp. 3, 19–20, 47–49.

The claimant’s and taxpayers should have the utmost confidence that Congress would provide the funds sufficient to get the work of the final administrative appeals of Social Security Act cases done efficiently and well without permitting waste. Also, the Chief Judge of an independent USOHA would have the one goal of the adjudication of the cases in a timely and high quality fashion in setting the budget needed to carry out this task, rather than the conflicted goals that currently exist within SSA that the SSAB found wanting.

**Question 2.** Your proposal basically recommends setting yourself separate from all other branches of government because you do not want [to] be managed by the Commissioner in the executive branch. The Congress sets Social Security policy and the President through his Commissioner carries it out and the courts interpret the policy.

(a) In your proposal, in what part of government will you operate and who will you be accountable to?

**Response.** The USOHA will be an independent adjudication agency within the executive branch that is accountable only to the President and Congress. It will function as an independent agency within SSA for logistical reasons, but its officers and employees will not be supervised by any other part of SSA. (Placing the USOHA within SSA results in no new costs for office space and information systems and is a practical necessity, given the USOHA’s substantial space needs that currently are in place at SSA, the need to share the SSA’s information services and data bases, and the need to use the same case files.)

The USOHA would have the exclusive jurisdiction to make the final administrative decisions of Social Security Act Title II and XVI claims. The USOHA will have permissive jurisdiction over other classes of cases, so it may hear and decide Medicare cases and other classes of cases such as those that the SSA ALJs have heard in the past, which have included Black Lung and FDIC cases. The final decisions of the USOHA that are made by its appellate panels would be appealed only to the Federal courts, with the District Courts as the first step in the judicial review.

(b) If you want to stay within the executive branch, then you will have to be accountable to the President of the United States, isn’t that correct?

**Response:** Yes.

(c) Since the Commissioner carries out Social Security policy for the President, will your Chief Judge then have to become the equal of the Commissioner in policy execution?

**Response:** No. The Chief Judge of an independent USOHA would not have any authority to implement Social Security policy. The authority to implement Social Security policy would remain exclusively with the Commissioner of SSA.

Only the final administrative adjudication authority of SSA would be abolished, including the Appeals Council. The Commissioner of SSA, who sets and implements the policy standards for entitlement to Social Security Act benefits, will continue to have the power to make only initial decisions on Social Security Act claims. However, the Commissioner of SSA will retain all authority for all of the policymaking, policy-implementation, rulemaking, investigation, and prosecutorial functions vested in the SSA by law. An independent USOHA would have the power only to render the final administrative adjudications of Social Security Act claims, as well as adjudicate any other classes of claims that Congress sees fit to authorize the USOHA to hear and decide, or that other agencies contract with the USOHA to hear and decide.

(d) How is the public assured that one national Social Security disability policy can be maintained?

**Response:** The USOHA would be administered centrally by the Chief Judge, Principal Deputy Chief Judge, and Deputy Chief Judges from a single national headquarters, which makes sense for an agency that would adjudicate claimant for national programs. The ten OHA regional offices and the position of Regional Chief Judge would be abolished so that only one set of support staff and administrative offices, instead of 11, will exist. A centralized structure will eliminate inconsistencies in the interpretation and communication to the administrative law judges of policies that affect the adjudication of claims arising out of the national Social Security programs, which has been a problem with the OHA regional offices.

The several Deputy Chief Judges can perform the administrative duties of the Regional Chiefs. There will be fewer administrators and only one support staff and set of offices at the department headquarters, instead of ten support staffs and offices in addition to the headquarters staff and offices. Also, having one central office will create a more efficient organization, in view of instant modern electronic communications such as e-mail and fax.

**Question 3.** You mention in your testimony that SSA policymakers have the ability to subtly and indirectly incline the Appeals Council to more or fewer awards. Can you explain how SSA does this and why?

**Response:** Your question is asking about an observation that was made by the two authors of a law review article that was an exhaustive review of the operation and use of the Appeals Council that was published in 1990, which was as follows: "SSA policymakers nevertheless are able to create an adjudicative climate that subtly and indirectly inclines the Appeals Council toward more or fewer awards, noting that the Appeals Council always reflects, to some extent, the interests and style of the OHA Associate Commissioner. Some have expressed the view that the Appeals Council is still perceived in some quarters as an even more partisan "arm of the [agency]." *The Fourth Bite at the Apple: A Study of the Operation and Utility of the Social Security Administration's Appeals Council*, Charles H. Koch, Jr. & David A. Koplow, 17 Fla. St. U.L. Rev. 199, 236-240 (1990). As is stated in my testimony, there is no significant evidence of direct agency pressure by SSA upon the ALJs to grant or deny more claims. The article expressed a concern that SSA policymakers can use the Appeals Council to set a tone as to what is expected and desired in terms of the proportion of cases that are granted, even though no examples were given. However, there are examples of SSA directing the Appeals Council to do "own motion" review of only the favorable decisions of ALJs, which has the effect of indirectly pressuring ALJs to issue fewer favorable decisions. The Appeals Council's administrative appeals judges have had no choice in this matter, since they are not independent adjudicators, unlike the ALJs, whose independence is established by the Administrative Procedure Act.

The SSA's Bellmon Review Program in the early eighties was a process by which SSA had the Appeals Council do "own motion" review of 25% to 100% of only the favorable decisions issued only by ALJs who the SSA had targeted as having high allowance rates of 70% or more. The details of how the Bellmon Review was conducted and its impact on the ALJs' decisional independence are set forth in *Association of administrative law Judges v. Heckler*, 594 F.Supp. 1132, 1134-1136 (D.D.C. 1984) and *Specialized Court*, 15 Fla. St. U.L. Rev. at 12-15.

A Federal district court found that SSA's Bellmon Review Program in the eighties had the Appeals Council do "own motion" review of 25% to 100% of only the favorable decisions issued only by ALJs who the SSA targeted as having high allowance

rates. The court also found that the Bellmon Review, together with SSA's practices of non-acquiescence, having ALJs who have a high allowance rate attend peer counseling, and threatening MSPB disciplinary actions was an "unremitting focus on allowance rates in the individual ALJ portion of the Bellmon Review Program [that] created an untenable atmosphere of tension and unfairness which violated the spirit of the APA, if no specific provision thereof," *Heckler*, 594 F.Supp. at 1139, 1143.

In 1983, the Subcommittee on Oversight of Government Management of the Senate Committee on Governmental Affairs held hearings on the ALJs' role in the Title II disability insurance program and issued a report that stated its findings:

The principal findings of the Subcommittee is that the SSA is pressuring its ALJs to reduce the rate at which they allow disabled persons to participate in the Social Security Disability Program . . . [The Subcommittee found that the SSA was limiting the decisional independence of ALJs through its Rulings, its non-acquiescence to Federal court decisions, and its increasing of case quotas that reduced the time an ALJ could spend on each case to develop additional evidence that may support an allowance decision, among other things.] The APA mandates that the ALJ be an independent, impartial adjudicator in the administrative process and in so doing separates the adjudicative and prosecutorial functions of an agency. The ALJ is the only impartial, independent adjudicator available to the claimant in the administrative process, and the only person who stand between the claimant and the whim of agency bias and policy. If the ALJ is subordinated to the role of a mere employee, an instrument and mouthpiece for the SSA, then we will have returned to the days when the agency was both prosecutor and judge.

Sen. Rep. No. 98-111 (September 16, 1983).

In 1997, the SSA General Counsel publicly rationalized SSA's making an end run around the APA to justify the SSA's current Quality Assurance Review program practice of having the Appeals Council do "own motion" review of only favorable decisions by all of the ALJs and remand them for new proceedings, if they are found to be not supported by substantial evidence in the record or defective in any respect. This practice subjects the ALJs' favorable decisions to more scrutiny than unfavorable decisions, which works to the detriment of the claimants and undercuts the perception of fairness and impartiality of agency adjudication of administrative claims that the APA is intended to foster. The newly independent SSA has decided it is legally permissible to again do "own motion" review only of favorable decisions, just as long as only ALJs with high allowance rates are not the only ones whose cases are reviewed. This clearly shows that the independent SSA still believes that targeting only favorable decisions is permissible and now subjects all of its ALJs to such review. SSA's current Quality Assurance Review Program inherently is unfair and discourages the granting of benefits by ALJs.

SSA's use of the Appeal Council in this fashion is an intrusion of its policy-implementation function into the adjudication process. The intrusion of the policymaking and policy-implementation functions of the SSA into the adjudication process is the primary reason why the adjudication process must be independent of SSA.

**Question 4.** In their testimony, the Advisory Board cited variability in disability determinations across states and lack of consistency in decisionmaking. Can you tell us how having OHA as a separate agency decreases variability in disability determinations and help promote consistency in decisionmaking across all states at the hearing level of appeals?

**Response:** Please the answer to question 2(d).

**Question 5.** Please provide your views as to the recommendations of the Advisory Board relative to the Office of Hearings and Appeals and the appeals process.

**Response: Need for fundamental change.** The SSAB makes a very strong case in favor of making fundamental changes at the SSA OHA, the concept of which was carried over into the title of its most recent report on the topic, but it does not present any specific recommendations or options for structural reform of the ALJ hearing process or Appeals Council process to engender a higher quality or faster handling of the caseload. "*Charting the Future of Social Security's Disability Programs: The Need for Fundamental Change*" (January 2001) (the "SSAB Report"). The SSAB Report, which was submitted to your Subcommittee, makes the point that many support making the individual ALJ decision the final decision of the SSA, which would eliminate the Appeals Council bottle neck. However, the SSAB Report also correctly points out the impracticality of taking this step, since the SSA has shown by testing that this would result in a large increase of court appeals.

**SSAB recommendation to improve SSA-ALJ relations.** AALJ would welcome the improvement of the relationship between SSA's management and its administrative law judges.

**SSAB recommendation to have adversarial SSA proceedings and close the record after the ALJ hearing.** The SSAB's recommendations that the SSA be required to have representation at the hearings and that the record be fully closed after the hearing before the administrative law judge are procedural choices that the new USOHA should be permitted to make in its discretion. AALJ has proposed that the USOHA have the exclusive power to prescribe such rules of practice and procedure and other regulations as it deems necessary or appropriate to carry out the adjudicatory functions of the Office of Hearings and Appeals. The Administrative Procedure Act provides that "[a] party is entitled to appear in person or by or with counsel or other duly qualified representative in an agency proceeding." 5 U.S.C. § 555(b). Therefore, the SSA, as a party, will have a right to appear on its own behalf at the proceedings before the Office of Hearings and Appeals, if it wishes to do so, and also may choose to waive its right to appear. The USOHA's decisions are for the parties, rather than just on behalf of the SSA or the USOHA. The purposes of separation of the appellate administrative adjudication process from SSA is to provide more timely and higher quality adjudications for the claimants, not to make the process more complex and difficult for the claimants to negotiate.

**SSAB recommendation to close the record after the ALJ hearing.** SSA regulations currently do not close or limit the record at any point in the administrative adjudication process. Even at the final step of administrative review, the Appeals Council engages in plenary review unless it says to the contrary. *Sims v. Apfel*, 530 U.S. 103, 120 S. Ct. 2080, 2085-2086, 147 L. Ed. 2d 80 (2000), *citing*, 20 C.F.R. § 404.975. The SSA regulations also state that "[w]e will consider at each step of the review process any information that you present as well as all the information in our records." 20 C.F.R. § 404.900(b). "The regulations further make clear that the [Appeals] Council will 'evaluate the entire record,' including 'new and material evidence,' in determining whether to grant review." *Sims*, 120 S. Ct. at 2086, *quoting*, 20 C.F.R. § 404.970(b). The reason the SSA keeps the record open is explained by the provision in the "judicial review" section of the Social Security Act, which authorizes the remand of a case when a claimant shows that there is material new evidence and there is good cause for not including it in the record earlier. 42 U.S.C. § 405(g).

However, not limiting the documentary record at all results in a significant number of additional remands of cases by the Appeals Council to the ALJs for a supplemental hearing based upon new evidence submitted to it that would not occur if the record were closed at the ALJ hearing level. Not closing the record also permits some abuse by a few representatives who hold back evidence until the Appeals Council level. However, the claimants' advocacy groups oppose closing the record because doing so would foreclose the claimants' ability to continue to provide evidence of new or worsening impairments as their cases progress. Also, while closing the record at the ALJ level would reduce the number of Appeals Council remands and abuse of the process, there may well be an increase in new applications being filed because of new or worsening impairments that occurred after the record was closed and thus cannot be considered in the pending case.

One effective way to address the competing interests in what the record should include is to keep the record open without limit for new and material medical evidence that is regarding medical treatment that occurred on or after the State agency (DDS) determination that is being appealed or is newly discovered evidence. New and material documentary evidence of treatment that occurred before the appealed State agency determination was issued should not be admitted unless good cause is shown for why it was not submitted during an earlier proceeding. This standard is in keeping with that set forth in the "judicial review" section of the Social Security Act for the courts, which is described above. 42 U.S.C. § 405(g).

Using the same "good cause" standard at all levels will prevent the confusion by the claimants and their representatives that would occur if different standard were used at different levels. Admitting all new and material medical evidence that arose since the date of the appealed State agency determination is appropriate at the ALJ level because the ALJ hearing is a de novo proceeding. (Admitting such new and material medical evidence at the appellate panel/Commission level will prevent excessive appeals to the district courts just to get remands to consider the new evidence pursuant to 42 U.S.C. § 405(g).) Always allowing evidence of new treatment since the last determination or decision into the record creates a climate of fairness for the claimants. Allowing evidence of new treatment also eliminates the need for claimants to file new claims in order to get their new evidence reviewed that a closing of the record at the ALJ level would require. Setting a "good cause" standard

for admitting older evidence is likely to discourage representatives from holding back existing evidence. Finally, a “good cause” standard will encourage the State agencies to gather all of the documentary evidence to make the record complete as possible. A more complete record at the State agency level will result in more accurate State agency determinations of disability.

The proposal for closing the record pertains only to documentary evidence. Testimony regarding all relevant periods may be taken at the hearing without limit.

**SSAB recommendation of a Review Board as an Appeals Council substitute:** Although the SSAB Report also correctly states that the Appeals Council model needs to be changed, its suggestion that another small body be substituted for the Appeals Council, namely a Review Board, which will have the same quality and timeliness issues as the Appeals Council, will not be an improvement. No small body of less than 30 people, such as the Appeals Council or a Board or Commission, effectively can handle the caseload, which now is over 115,000 cases per year.

The use of panels of ALJs as the final administrative step, instead of the Appeals Council, likely will have the same impact as the use of Bankruptcy Judge panels in lieu of District Court review: faster and higher quality decisions that are appealed less often and, when they are appealed, affirmed more often. The relatively high number of SSA ALJs, now about 1,000, provides a large pool of locally available adjudicators who are available for such work.

The AALJ proposal for a new adjudication agency is a detailed and practical blueprint to improve the Social Security disability process. The AALJ proposal would improve the timeliness and quality of ALJ and final administrative review decisions which, at the same time, likely will reduce the claimant’s need to resort to Federal court review and thus reduce the Federal court Social Security caseload. The process AALJ is proposing is realistic in terms of handling the large caseload, which I respectfully submit is not the case for the Board suggested by the SSAB. SSAB correctly recognizes the need for change, but relies on the creation of a small body, a Board, that would suffer from the same problems of low decision quality and untimely action as the SSA Appeals Council, another small body, has had for years.

**SSAB recommendation of an Article I court as a District Court substitute:** Regarding judicial review at the District Court level, the SSAB did not make a convincing case in its SSAB Report for its suggestion that there is a need to replace the District Court with an Article I court. The pressing issue is to improve the final administrative adjudication process so that fewer claimants feel a need to resort to judicial review. This will result in fewer appeals to the courts. The final decisions of the USOHA that are made by its appellate panels would be appealed only to the federal courts, with the District Courts as the first step in the judicial review. A District Court appeal step is essential for several reasons: (1) The huge size of the Social Security appellate caseload would overwhelm the Circuit Courts if the District Court step is removed. An Article I court as a substitute for the District Courts would suffer from the same problems of being too small to effectively handle the caseload that the Appeals Council does. (2) Retaining District Court judicial review keeps local decisional generalists in the appeals chain who are sensitive to due process concerns, including adherence to the Administrative Procedure Act. (3) Social Security claimants have come to rely on the availability of the District Courts as a part of the judicial review due process. (4) Congress has a demonstrated preference for local control and decisionmaking with Social Security programs. (5) It is desirable to retain local access to the judicial review process for the often indigent Social Security claimants.

Also, as is stated above, there are several practical reasons to maintain the District Court appeal step for the claimants. These include the massive Social Security appellate caseload, which would overwhelm an Article I court of the small size typically created by Congress and result in the same quality and timeliness issues that have plagued the Appeals Council, another small body with an unmanageable caseload.

As of September 30, 1999, and September 30, 2000, the numbers of Social Security cases filed in the District Courts throughout the country during the preceding year were 13,320 and 15,829, respectively. Title II and Title XVI claims made up 99% of the cases in both 1999 and 2000. As of September 30, 1999, and September 30, 2000, the numbers of all civil cases filed in the District Courts throughout the country during the preceding year were 260,271 and 259,517, respectively. *Judicial Business of the United States Courts: 1999 and 2000 Annual Reports of the Director*, Tables S-7, S-9. Article I courts are small courts. The U.S. Court of Federal Claims has 16 judges, the U.S. Tax Court has 19 judges, and the U.S. Court of Appeals for Veterans Claims has 7 judges. As of October 1, 1999, there were 600 active and 334 senior District Court Judges, for a total of 934 Judges. As of February 1, 2001, there were 599 active and 342 senior District Court Judges, for a total of 941

Judges. Administrative Offices of the U.S. Courts, Statistical Report for Justices and Judges of the United States, October 1, 1999, and February 1, 2001. These numbers suggest that an Article I Social Security Court would require at least 50 to 75 judges to handle the caseload in a timely and high quality manner.

**SSAB recommendation of a specialized Social Security Court of Appeals as a regional Circuit Courts of Appeal substitute:** Under the AALJ proposal, the appeals from the District Courts will remain with the regional Circuit Courts of Appeal, as they do now, rather than go only to the D.C. Circuit or the Federal Circuit. Even with District Court review, placing all of the Social Security Circuit-level appeals in either of these courts would increase their workload by over 50%. The SSAB's suggestion of a specialized Social Security Court of Appeals in its SSAB Report superficially may sound attractive as a device to have one national interpretation of the Social Security Act. However, the SSAB does not demonstrate a strong need for such a specialized court. First, as SSAB points out, the Supreme Court already serves the function of providing a national interpretation of the Social Security Act, and having the regional circuits address the issues allows for legal debate that would otherwise not occur. Second, continuing to have the appeals go to the regional Circuits allows somewhat local access to the claimants. This is the same procedure as for appeals from both Bankruptcy Court decisions after District Court review and Tax Court decisions, which are appealed to the regional Circuits, which makes sense since they also serve individual claimants throughout the country who often have limited means. (Although the Tax Court is based in Washington, D.C., it sits throughout the country.) Regional circuit review has worked for tax and bankruptcy cases, despite the obviously strong argument that a single standard for construing the tax and bankruptcy laws is desirable so that they are applied the same to everyone. Finally, the regional circuits are not being overrun with Social Security cases. During the years that ended on September 30, 1999, and September 30, 2000, only 891 and 845 Social Security cases respectively were filed with the regional Circuit Courts of Appeals. *Judicial Business, 1999 and 2000 Reports*, Table B-1A. This is less than 2 percent of the 54,693 cases that were filed in 1999 and 54,697 cases filed in 2000 in the regional Circuit Courts. *Judicial Business, 1999 and 2000 Reports*, Table B.

No substantive changes in the process of judicial review after the final administrative decision are recommended by AALJ, other than to amend the Social Security Act to reflect that judicial review will be from the final decisions of the new agency, not the SSA. Our recommendations pertain only to the appellate administrative adjudication process that results in a final administrative decision of the claimants' entitlement to Social Security benefits, since that is where the problems lie.

**Question 6.** How would an independent OHA agency be more successful at handling the huge appellate administrative caseload? How would OHA revise its processes to reduce the time spent waiting for an appeal decision?

**Response:** The USOHA will have a two tier appellate process: a decision after a hearing by an ALJ and then an appeal to a local panel of three ALJs akin to the Bankruptcy Court Appellate Panel model. The Appellate Panels will be required to give deference to the individual ALJs' decisions, if they are supported by substantial evidence in the record. Deference will end the Appeals Council's current practice of just substituting its opinion for that of the individual ALJs, which has been criticized by the SSAB.

The two tier appellate process is modeled in principal on the Bankruptcy Court Appellate Panel statute, 28 U.S.C. § 158. Individual ALJs' decisions would be appealed to appellate panels staffed by ALJs, each of which would consist of three ALJs who would review the cases locally. The appellate panel step would be the final and exclusive level of administrative appellate review. The USOHA would establish a Social Security Appellate Panel Service in each region composed only of ALJs from the hearing offices in each region. A sufficient number of appellate panels would be designated so that appeals may be heard and disposed of expeditiously. An ALJ may not hear an appeal of a case from his/her own hearing office. This also would be a good assignment for senior judges.

**The appellate panels would be akin to the Bankruptcy Court appellate panels and is one of the key features that makes the ALJ self-administration model superior to the current SSA Appeals Council model or a Commission or Board model, all of which are small bodies that cannot timely and effectively handle a heavy caseload.** The Bankruptcy Court system is another nationwide network of tribunals that hears a high volume of cases in a specialized area that is generated mostly from individual petitioners. There are 92 Bankruptcy Courts situated in proximity to the District Courts. 28 U.S.C. § 152. There are 140 Social Security hearing offices. Over 1,300,000 cases were filed in Bankruptcy Court in 1999. *Judicial Business of the United States Courts: 1999 An-*

*nual Report of the Director*, Table F. Over 500,000 cases are brought before Social Security ALJs every year. Accordingly, Social Security claimants can benefit from the use of an appellate system that demonstrably works on a large scale.

The Bankruptcy Court Appellate panels have a short average disposition time, which was only 75 days in the Ninth Circuit in 1994. *The Establishment of Bankruptcy Panels Under the Bankruptcy Reform Act 1994: Historical Background and Sixth Circuit Analysis*, Tisha Morris, 26 U. Memphis L. Rev. 1501, 1530 (1996). The large pool of over 1,000 ALJs permits the timely determination of appeals, which has not occurred with the Appeals Council, despite the SSA's implementation of the recent Appeals Council Process Improvement plan. Timely and high quality review also cannot occur with a Board or Commission, which likely will not have more than 12 members and would have to resort to hiring Appeals Council-type reviewers to handle the caseload.

In addition to being an appellate system that timely can handle a large caseload, the appellate panel system has several other benefits that would afford high quality service to the Social Security claimants and likely reduce the requests for judicial review. Based upon the Bankruptcy Court experience, the appellate panel model (1) is an appellate system that can handle a large caseload, (2) results in a shorter disposition time because the large pool of about 1,000 ALJs throughout the United States permits the timely determination of appeals that cannot take place with a small body such as the Appeals Council or a Commission or Board, (3) results in higher quality decisions because of expertise, (4) results in substantially fewer appeals to the courts and a substantially lower reversal rate by the courts because of the confidence in the high quality of the decisions, which reflects a higher degree of decision accuracy, (5) results in a substantially reduced Federal court caseload, and (6) affords the claimants access to a local administrative appellate process.

As is stated in answer 2(d), the USOHA will be run as nationally, rather than regionally, administered operation to provide centralized and efficient adjudication service for the national Social Security programs.

**Question 7.** We would be interested in any comments you would like to make on testimony provided by other witnesses at the hearing.

**Response:** The testimony of the Honorable Stanford Ross, the Chairman of the SSAB, and the witnesses for the six SSA and DDS employee organizations were consistent in their statements that SSA's recent reorganization of the hearing level of OHA operations, which is called the Hearing Process Improvement plan, has failed and resulted in an increasing backlog of cases waiting for a hearing, longer processing times for claimants to receive a hearing and decision of their cases, and lower quality decisions. Also Mr. Ross stated that "the entire role of the Appeals Council should be carefully considered in terms of how well it is performing its functions." All of the witnesses who commented on the OHA process agreed that fundamental change in the administration and structure of OHA is needed at the hearing and/or Appeals Council levels to achieve timely and high quality adjudications for the members of the American public who apply for Social Security benefits.

I gladly will provide any additional information that you wish.

Sincerely,

Ronald G. Bernoski  
President

[Submissions for the record follow:]

**Statement of the American Federation of State, County and Municipal Employees, AFL-CIO**

These comments are submitted on behalf of the 1.3 million members of the American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO. AFSCME represents unionized workers in state and local government, and health care facilities around the country. AFSCME members work in state Disability Determination Services (DDS) and our members who become disabled rely upon the benefits provided by the federal disability programs. One of our members served on the Social Security Administration's (SSA) Redesign Internal Advisory Committee and our members staffed some of the Redesign working groups.

Our members working in state disability determination offices (DDS) perform the medical portion of the federal disability claims. AFSCME represents adjudicators, medical and psychological consultants, and support and technical staff. Our members are very concerned about the future of the disability programs because they

see first hand some of the failures of the current system and have specific recommendations on how to improve the program. Many of their concerns are similar to those in the report of the Social Security Advisory Board's Report, *Charting the Future of Social Security's Disability Programs: The need for Fundamental Change*, January 2001 [hereinafter, the Advisory Board Report].

Our comments address two major issues: the Redesign proposal and the issue of caseloads and workloads in the context of Redesign and the projected increase in beneficiaries.

Redesign raises many of the issues that the Social Security Administration and the state Disability Determination Offices face in the future. The Social Security Administration is to be commended for its efforts to make the application system more user-friendly and decrease the case processing time. Everyone agrees that the system needs improvements. However, AFSCME is very concerned that the current Redesign prototype will not improve the system. Indeed, without additional resources for the proposed system that will be implemented over a period when the caseload is expected to increase, matters will only get worse for claimants.

AFSCME opposes Redesign's elimination of the requirement that a physician sign off on applications. Both our members who are adjudicators and our members who are physicians oppose this proposal. Although we appreciate the function and importance of disability examiners, they are not licensed medical consultants. This provision would undermine medical licensure laws by permitting disability examiners to make what are often sophisticated medical judgments. Determination of a disability is a very complex process, based on objective medical impairments. Elimination of the mandatory sign-off by a medical does not contribute to the goals of redesign, which are: to allow claims at the earliest point in the process, provide more opportunity for claimant interaction with the decision maker and reduce the amount of case processing time.

It is our belief that only persons trained as physicians can make an accurate medical assessment of a claim for medical disability. If SSA eliminates the requirement for physician involvement in each claim, the program will no longer be a benefit program for people with medically determinable physical or mental impairments. Without mandatory physician involvement, there will be no medical determination. Eliminating the physicians' role will not address the variance in allowance rates between the DDS and the administrative law judges. Rather, process unification should accomplish this.

We are aware the future of the Redesign is uncertain, but even if the Redesign is not implemented and the current system remains with minor changes, policy makers must address the issue of workloads and caseloads in the context of providing sufficient resources to staff state disability offices. The issue of high staff turnover, an issue of concern in the Advisory Board Report, relates back to the issue of high caseloads and workloads. Each step added to the determination process adds additional case processing time, thereby increasing each adjudicator's workload.

Redesign highlights the issue of workloads and caseloads because the prototype adds additional case processing time to the initial determination by requiring the informal disability conference prior to a denial of a claim and requiring a detailed rationale for a denial. The informal disability conference and the writing of the detailed rationale for the denial can add up to two hours to each denial. Imposing additional responsibilities to the workloads of disability examiners without reducing caseloads could have an adverse impact on the quality of the decision, and a negative impact on the state's performance rating and, more important, on the claimant.

AFSCME is also concerned about the impact of the Redesign prototype on the current caseloads. Staff working in the Redesign prototype are assigned fewer cases than those not working on the prototype cases, creating a large backlog of cases in prototype states. The Advisory Board Report indicated that generally backlogs are climbing dramatically in state agencies. The backlog will increase if more states institute the prototype. If Redesign is implemented as currently proposed, and SSA does not give DDS the resources to hire additional adjudicators, backlogs will increase and service to claimants will decline.

The Advisory Board Report also found that heavy workloads are causing employees stress and staff attrition, with attrition rates climbing to 21 percent or higher. This is especially disturbing because it takes at least two years to train a disability examiner. Also, many disability examiners who are seasoned veterans will be retiring in the upcoming years, presenting more challenges to state and federal agencies.

The Advisory Board Report projects the number of DI beneficiaries to increase by nearly 50 percent and the number of SSI beneficiaries to increase by 15 percent. These dramatic increases will put enormous burdens on state and federal agencies.

AFSCME is concerned that the Social Security Administration (SSA) is poised to implement the prototype nationally. The Advisory Board Report raised several

issues that should be addressed before major changes in the disability determination process are implemented. We agree with the Advisory Board Report caution against national implementation of the prototype until administrative capacity is increased.

The Advisory Board Report recommended that there be federal guidelines for educational requirements and staff training to improve quality. If SSA decides to implement a national certification program, it is important that all stakeholders participate in developing this program, including unions representing state workers.

The federal government pays one hundred percent of the state agency personnel costs. Therefore, it is up to the federal government to decide what kind of program they will operate. We urge that it be one that provides claimants first class service by giving the states sufficient resources to hire sufficient staff to operate a quality program.

AFSCME is submitting these comments on behalf of our members. However, in future hearings our members would be available to testify before this Committee so that members of the Committee can hear first hand from the frontline workers how the system can be improved and better serve the people who rely upon it for their financial security.

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**Statement of Elizabeth B. Dameron, President, Association of Attorney  
Advisors, Greenville, South Carolina**

The Association of Attorney Advisors is the national professional organization of attorneys who work for the Office of Hearings and Appeals. Our members consist of bargaining unit attorney-advisors, senior attorney-advisors, processing group supervisors, hearing office directors, and Appeals Council analysts. Our common goal is to promote the role and professionalism of attorneys in OHA.

As the attorneys of OHA have many concerns about the effects of the HPI process, the Association of Attorney Advisors greatly appreciates the importance of this series of hearings, and commends the Subcommittee for its proactive stance on the issues. As demonstrated by the testimony offered on June 28, 2001, no one questions the necessity of refining the disability programs of Social Security, particularly the hearing process. As is also demonstrated by the testimony, there are as many opinions as to how the process could be improved as there are witnesses on this issue.

OHA attorneys are uniquely qualified by their education, experience, and role in the current HPI process to provide an employee's insight on the process to the Subcommittee. As a group, we produced the only successful and efficient redesign component to date—the Article 7, Short Term Disability Project's Senior Attorney Project. The success of this project, despite significant lack of support by management in some hearing offices, the Administrative Law Judges as a group, and by the Agency, was the result of a concerted effort by the attorney-advisors. It was not only through the efforts of the senior attorneys themselves that made this project a demonstrated success, but it was also the efforts of those attorneys who were not acting as senior attorneys and who continued to diligently draft decisions for the Administrative Law Judges. As NTEU Chapter 224 President Jim Hill stated in his testimony before this Subcommittee, not only did the Senior Attorney project produce decisions, it did so in the setting of unprecedented Administrative Law Judge production levels. Those production levels were, in large and pertinent part, the result of the non-senior attorneys drafting Administrative Law Judge decisions so that the senior attorneys could concentrate on producing their own workload.

Imagine then, how utterly insulting and demoralizing it was and is for those same attorneys to have the Agency denigrate their efforts and refuse to include the demonstrated successful components of the Senior Attorney program into HPI. Imagine how frustrating it is to watch application receipts escalate and production levels stagnate and fall, knowing you could be making a significant and meaningful contribution to serving the disability claimants, but not being allowed to do so. This is the situation in which the attorney advisors of OHA currently find themselves. The agency is not reaping the possible benefits of our education and talents. We could be used in a much more productive and meaningful manner, yet our duties and responsibilities have been diluted and our significant contributions trivialized. Ronald Bernoski, in his testimony as president of the Association of Administrative Law Judges, pointed out the incongruous fact that no additional attorney positions were included in HPI—while 350 promotions to the “paralegal” writer position were created for non-attorney employees. Surely nothing more needs to be said about a process in which it is considered advantageous to deliberately hire less educated em-

ployees at the same salary as licensed attorneys to perform the vital role of creating the ultimate result of the OHA process, the decision itself.

Rather than having a meaningful and professional role in the Hearing Process Improvement process, OHA attorneys are forced to take on more counterproductive responsibilities with no control over their work product. In addition to writing decisions, we are asked to screen cases for possible on the record payment, but can do no more than make recommendations. We are asked to screen cases for hearing readiness, but told to do so in only the most cursory and superficial manner possible, which not only is a waste of our time, but essentially eviscerates the pre-hearing work-up goals of HPI. We are asked to write more and more decisions, but to do so only by balancing our other new duties. The effect of this is that decision writing productivity has decreased. The hands of the attorneys of OHA have been tied behind our backs as we watch the agency's backlog increase to what must inevitably become unprecedented numbers. Given responses to recently distributed surveys to the members of the Association of Attorney Advisors, and my own conversations with members across the nation, it is fair to state that current morale and job satisfaction among attorneys is dismal at best.

As the appellate branch of the Social Security process, OHA finds itself squarely in the center of the traditional conflict between science and the humanities. At the initial and reconsideration levels, disability decisions are much more influenced by purely medical concerns, even in the setting of process unification. Only when a claim is at OHA does the adjudicator face the claimant and solicit testimony under oath. Only at OHA are the subjective and highly individualized concepts of pain and credibility fully addressed. This heightened attention to the individual, to the human involved in the process, is both the pride and the bane of OHA. It is our pride in that each individual claimant is afforded notice and the opportunity to be heard—due process—the cornerstone of our legal philosophy. The bane—in that providing due process absolutely defies quantification—is that quantification is the goal that must always be near to the hearts of the bureaucrats charged with administering this overwhelmingly large public program.

The Hearing Process Improvement plan, or HPI, is an attempt to quantify what we do at OHA. While certainly our process must be as efficient as possible, it is apparent that HPI, in its current form, is not the answer. In the prior testimony, others have set out the statistics which document its shortcomings. The Association of Attorney Advisors wishes merely to offer our proven and effective services to the Agency—again. We could certainly be used in a more effective manner by restoring the senior attorney program as it was, to include signature authority for cases which could be paid without a hearing. The statistics from that now defunct program show a documented process which could begin to stem the ever growing backlog of cases being caused by HPI. I would also like to note that the old senior attorney program did not infringe upon the workload of the Administrative Law Judges. In fact, it was an excellent complement to the hearing process. Furthermore, all OHA attorneys are trained and ready to assume these responsibilities, and we can immediately show positive results by beginning to issue fully favorable on-the-record decisions on the cases we have already pre-screened while still drafting decisions for the Administrative Law Judges.

In his testimony, Jim Hill, president of NTEU Chapter 224, one of the two unions which represents attorneys in OHA, set out his proposal for a return to and expansion of the Senior Attorney program. Based on input received in member surveys, the Association of Attorney Advisors supports Mr. Hill's proposal. We are also very interested in exploring other avenues in which we can use our education and experience to maximize service to disability claimants. Mr. Hill touched on this in the third recommendation he made in his testimony, i.e., to examine the implementation of alternative attorney decision makers in OHA. Stanford G. Ross, Chairman of the Social Security Advisory Board, suggests that the Agency should be represented by attorneys at the OHA level hearing. This intriguing suggestion, which would not only assist claimants, but would also benefit your other constituents and tax payers, is also contained in the SSAB's January 2001 statement. At this point, it is safe to say that OHA attorneys are essentially an untapped and unrealized resource. The Association of Attorney Advisors wholeheartedly embraces the exploration of ways to expand and enhance the role of attorneys in the disability adjudication process.

In conclusion, as president of the Association, I commend the Subcommittee on its interest in the increasingly disturbing challenges facing Social Security Disability Programs. Our Association is committed to expanding the role of attorneys at OHA to best serve the Agency, OHA, and the individual disability claimant. We ask to have a voice in and be made a party to the changes that effect us all.

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**Statement of Al Cannistraro, Clifton Park, New York**

The vast majority of disability determinations at all levels turn on an assessment of the claimant's physical and/or mental functional abilities and how they relate to the requirements of past work or other kinds of work to which the claimant might reasonably be expected to be able to adjust. In other words, a kind of equation is postulated with functional abilities on one side and the demands of work on the other. It is my suggestion that Congress fund research to bolster both sides of the equation.

I also suggest the funding of a study of generic "sedentary work."

Assessments of functional abilities are made, by and large, without reference to any underlying scientific principles, academic body of knowledge, or empirical research. This is a void that I feel Congress should consider filling through funded research.

In my opinion, functional assessments tend to be subjective, depending on the frame of reference and experience base of the assessor and perhaps also reflecting local and organizational customs and values. Therefore, it is not surprising that the Social Security Advisory Board recently found a lack of national consistency in adjudicative outcomes. (See Agenda for Social Security: Challenges for the New Congress and the New Administration, Social Security Advisory Board, February 2001, page 7.)

On the other side of the equation, it is suggested that Congress consider funding continuing research into the physical and mental requirements of jobs as they are performed in the current era. The Dictionary of Occupational Titles (DOT), a reference work that was compiled by the Department of Labor, is outdated and not being kept current. The DOT has been the primary source of information available to adjudicators when they seek information about the demands and other characteristics of jobs in the national economy.

Additionally, it is suggested that Congress initiate a study of "sedentary work" and the ways in which generically sedentary jobs might easily be adapted for individuals who cannot (or prefer not to) sit continually at traditional desks and tables. The inability to meet the physical demands of sedentary work is currently a gateway to disability benefits for so many individuals who, for medical reasons, cannot sit at a traditional desk or table for six hours out of eight on a full-time basis.

For example, it is my thesis that if the traditional (lower) desk/chair setup were to be replaced by a higher bench/stool arrangement that would permit workers to sit, lean or stand according to their own needs and preferences, then individuals who cannot sit full-time might still be able to work full-time at jobs that are traditionally considered to be "sedentary."

Personal information: I have been employed by a state Disability Determinations Service continuously for over 27 years, much of that time as an adjudicator, and I have a masters degree in disability determinations from New York University. I currently serve as a supervisory level Administrative Hearing Officer whose work unit adjudicates appeals of determinations to cease disability benefits due to medical improvement or other reasons. My staff and I act as single decision-makers in the appeals that we adjudicate.

Thank you for the opportunity to comment.

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Knoxville, Tennessee 37929  
July 11, 2001

Subcommittee on Social Security  
c/o Allison Giles, Chief of Staff  
Committee on Ways and Means  
1102 Longworth House Office Building  
Washington, D.C. 20515

Re: Social Security Disability Determination—Finally Learning from Past Mistakes?  
OHA in the 21st Century

Dear Committee Members:

**OHA is facing another workload "boom"**

There is no question that the workload of the Office of Hearings and Appeals (OHA) component of the Social Security Administration (SSA) is cyclical. Similarly, there is no real question that another "boom" cycle is beginning to hit OHA. The

“baby boomer” generation is reaching the age where disability claims peak. OHA and SSA are about to get hit by a wave of new claims like it did in the early 1990’s. Such surges have always caused long delays at all levels of disability determination. OHA’s workload will be expanded further due to changes in Medicare law. The Medicare changes are about to generate thousands of additional hearings.

OHA’s workload is also strained by DDS/SSA actions at the prehearing level. Some DDS’s routinely ignore regulatory requirements regarding evidentiary development, leaving OHA personnel to request mandated follow-up. Some DDS’s routinely deny cases with only minimal rationale for their determinations. This can result in erroneous determinations and in any case makes comparison point determinations much more time consuming. All but a few DDS’s have been ordered not to implement the 1996 PUTT rulings, which require improved evidentiary development in keeping with longstanding regulatory requirements; provide more detailed rationale for their determinations; follow regulatory requirements regarding the weight of evidence, etc. (see, the May 2, 2001 Disability Determination Services Administrators’ Letter, No. 566 from Deputy Commissioner Kenneth D. Nibali to all DDS administrators).

Resulting delays at OHA have often been particularly long. There are many reasons for this effect. There are reasons both within and outside the control of OHA management. The major reason is the level of staffing. OHA is a relatively small component with SSA. An increase in workload always has a greater impact on a smaller workforce. OHA often has not been able to add staff to deal with “boom” periods. “Downsizing” the federal government has been a priority for years, pushing to cut the “fat” from the government payroll. However, the axe has been cutting away a frightening amount of “meat” at the local hearing office level. It has become very difficult to even hire replacements for employees who leave an office. Increasing staff to prepare for approaching workload surges or predictable attrition has been out of the question.

The ALJ corps has been shrinking for several years. None have been hired since 1997. The number of ALJs was about 1050 as recently as 1999. The current total is continuing to decline toward 950. Hiring replacements under the current selection process will be very difficult, if not impossible, for the foreseeable future. Acting Commissioner Massanari testified that SSA wanted to hire 120 new ALJs now. Closer to 1200 adjudicators will be needed soon. The judge in *Azdell v. OPM* has stayed OPM from issuing any certificates of ALJ candidates through August 13, 2001. The case is very complex. There are a large number of intervening parties with very divergent interests. Given these factors, I believe an early resolution is very doubtful. I would not be surprised if OPM is prevented from issuing a certificate until 2002 at the earliest.

The support staff for ALJs has also been shrinking, in particular, the legally trained staff available to draft decisions for and provide assistance to ALJs. The last hiring of attorneys in significant numbers was in 1995, when 500 temporary Attorney-Advisors were hired. In spite of the conversion to permanent status of many of the temporaries, the total number of OHA Attorney-Advisors has declined since 1995 and many of those have been assigned duties in addition to the traditional decision drafting and research duties.

#### **HPI—an attempt to prepare**

The Hearing Process Improvement (HPI) initiative is a large scale attempt to allow OHA “to do more with less”, to help deal with the increase. I believe it is too early to tell how successful or unsuccessful HPI will be in the long run. However, the productivity gains predicted prior to implementation certainly appear unduly optimistic. Except for the recent drop arising in conjunction with HPI implementation, productivity per employee at OHA had steadily climbed during the 1990’s. New PC’s, improved software and improved organizational structure can and has often helped OHA employees become more productive. More such gains are still possible. However, there are many tasks involved in adjudication that take time and must be allowed to take time. It takes time to read, review and analyze the evidence in a file, hold a hearing, reach a decision, draft a written decision and edit it. While there are certainly techniques that can be used to speed up these tasks, there is no question that the proverb “haste makes waste” applies. Would you want one of your family members to receive a decision drafted in twenty minutes, on the instructions of an Administrative Law Judge, who reviewed the file for ten minutes and held a three minute hearing? No one can reasonably expect a fair determination from such a setting. Furthermore, none of these functions [with the occasional exception of holding the hearing], can be omitted.

Another major function of the disability determination process that requires extensive time is evidentiary development. Not only is this process time intensive, but

since it depends on the cooperation of third parties, it is outside of OHA's and SSA's control! Setting strict informal deadlines for the submission of evidence is not consistent with current Social Security law. Speeding case processing by shortcutting at this step will result in improper determinations. Medical evidence favorable to the claimant would often not entered in the record at early stages of the process, especially in the case of unrepresented claimants.

Therefore, significant productivity gains cannot and should not be expected in many of the most time intensive functions at OHA. Expecting huge productivity gains above those attained during the 1990's without significant staffing increases is just not reasonable.

#### **Dealing with the ALJ shortage**

OPM's ALJ selection process has significant problems, as it applies to Social Security Administration, apart from those at issue in *Azdell v. OPM*. OPM's current process puts great emphasis on experience, regardless of the subject matter of that litigation, and expertise in federal and state evidentiary and procedural law. Experience in non-adversarial administrative settings, such as Social Security, is given markedly reduced weight by OPM. Essentially all ALJs, in agencies other than SSA, hold adversarial hearings. This policy arguably has some validity for selecting ALJs for those agencies, but even that may be limited.<sup>1</sup>

In any case, it is difficult to understand why this policy should be applied to selecting Administrative Law Judges for the Social Security Administration. SSA ALJs do **not** hold adversarial hearings! Federal and state procedural and evidentiary law does not apply. Expertise at Social Security law is critical to the job. It should be a primary selection criterion, if not THE primary selection criterion. The pertinent regulations provide that selectees with special expertise in the selecting agency's subject area may be given increased compensation as an aid to recruiting experts in the field. Anecdotal evidence suggests that agencies other than SSA, have routinely given candidates, with extensive experience in the law pertinent to the particular agency, preference in selection over candidates without such experience. This is only sensible. Justice (then Professor) Antonin Scalia commended agencies that sought "selective registers" of candidates with specialized experience. (*The ALJ Fiasco—A Reprise*, 47 *University of Chicago Law Review* 57 (1979)).

In addition to the focus on trial experience as a primary selection factor, the current OPM selection process apparently put great emphasis on two other concepts:

1. There is a value in bringing some people with diverse [*i.e.* non-SSA] backgrounds; and
2. Selecting ALJs solely from an agency's pool of staff attorneys should be avoided. This appears to have been a reaction to the perceived situation in the 1930's and 1940's. Hearing officers almost exclusively were selected from the ranks of agency attorneys. Agency managers often put heavy pressure on those hearing officers to rule in the agency's favor. The Administrative Procedure Act (APA) was developed to address these issues among others. It is important to note, that the critical threat to due process and fairness was the manager's ability to interfere with the adjudicator's independence. The work history of the hearing officer was a rather insignificant secondary issue in comparison. (*Id.*)

Unfortunately, OPM has ignored the fact that the APA itself provides extensive protections for adjudicatory independence. It has taken those two suggestions to an absurd extreme in scoring applicants and preparing certificates ALJ eligibles for SSA. The evidence shows that very few attorneys with significant experience in Social Security law were ever given scores high enough to permit selection as an Administrative Law Judge. Throughout the 1990's, 80—90% of the ALJs selected by SSA had little or no experience in Social Security law prior to their appointment. This is akin to "selecting the best physicians in the country" for a 10 doctor cardiac care unit and ending up with two orthopedic surgeons, an endocrinologist, a psychiatrist, three gynecologists, an oncologist, a proctologist and only one cardiologist. It's still possible that such a group could eventually provide quality cardiac care,

<sup>1</sup> However, there is also argument that trial experience has been over-valued in ALJ selection in agencies that hold adversarial hearings. Administrative Law Judge Jesse Etelson explained how the bulk of a non-SSA ALJ's time is not spent in hearings, but in analyzing the written record and the applicable law, reaching the decision and preparing the written opinion. He also pointed out that top litigators are generally known for their fierce advocacy of the client's position, often to the exclusion of a "neutral" or objective position. In contrast, he noted that agency staff attorneys, are encouraged and rewarded for taking a "neutral" or objective position in analyzing cases. *The New Administrative Law Judge Examination: A Bright, Shining Lie Redux*, 43 *Administrative Law Review* 185 (Spring 1991).

but it would take a very long time for everyone but the cardiologist to get up to speed.

SSA research has shown that ALJs without experience in the SSA/OHA process have a significantly longer "learning curve" before they become fully productive than do ALJs with SSA experience. Therefore, new selections under the current process, (assuming such selections are permitted before the end of this calendar year), typically would not begin to make a significant impact on OHA until late 2002 at the earliest. Faster alternatives are available.

**Creation of a new position, the "Administrative Judge," can alleviate these problems.**

The "Administrative Judge" would be a GS 14/15 position, with a ten year renewable term. Selection criteria would put a premium on expertise in Social Security law, whether received in the private or public sector. They can be further specialized, with one group authorized to hear Medicare claims and the other disability claims. Other critical selection criteria would include judicial demeanor, organizational skills (e.g. handling a large docket), oral and written communication skills, and interpersonal skills. Computer skills have become increasingly important in all career areas. It should also be a significant factor in the selection of Administrative Judges, since computer literacy/drafting most of their own decisions could help ease the strain on the decision-writing component (note, computer literacy is ignored in the current OPM ALJ selection process).

Prompt adoption of an Administrative Judge option could bring online hundreds of adjudicators already familiar with Social Security law within a few months. Since they are not Administrative Law Judges, their selection would not be subject to the Azdell stay. They will make an immediate positive impact on OHA dispositions since experience in Social Security law and computer literacy would be important selection criteria. Giving the position a fixed term provides a way to reduce the number of SSA adjudicators should the workload level decline in the future. It also provides a way to "weed out" selectees who do not prove effective. The position could also be used as a training ground for future Administrative Law Judges selected after the Azdell litigation is finally resolved.

Returning signatory authority to the Senior Attorney-Advisors, as advocated by Mr. Hill of NTEU, is another change that could provide significant "bang for the buck," in dealing with OHA's increasing workload. However, Senior Attorney-Advisors under Mr. Hill's proposal, may only issue favorable on-the-record decisions. Even his large scale expansion of the Senior Attorney-Advisor program will not allow OHA to keep up with the upcoming workload. OHA must have more adjudicators who can hold hearings and issue both favorable and unfavorable decisions.

**OHA also faces an increasing shortage of legal talent at the hearing office level.**

Everyone agrees that in addition to increasing numbers of claimants, OHA's workload has increased in complexity. More and more of the decisions to be drafted are of the complexity requiring an attorney's analysis. Common sense and simple logic dictate that OHA would have a program in place to ensure that the number of Attorney-Advisors was increasing to meet these workload demands.

Last December, I asked then Acting Commissioner Halter why no such plans were in place. He responded in a letter that can be summarized as follows:

500 temporary Attorney-Advisors were hired in 1995 to help deal with the Welfare Reform caseload. Most of them had been made permanent. About 350 Paralegal Analysts were promoted in 2000 under HPI to help deal with the decision-writing shortfall.

I find his explanation inadequate. Many temporary Attorney-Advisors were released from employment, in spite of meritorious performance. Mr. Halter himself admitted in his letter that the total number of current OHA Attorney-Advisors has declined since 1995. The effects of normal Attorney-Advisor attrition have been accelerated by HPI/OHA's new business process. Hundreds of the most experienced Attorney-Advisors have moved up to positions as Senior Attorney-Advisors, Group Supervisors and Hearing Office Directors. More will be pulled into the ranks of the new Administrative Judge corps. The corps of experienced decision writers is further reduced. First, by the attrition of experienced Paralegal Analysts.<sup>2</sup> Second, virtually all of the Supervisory Attorney-Advisors were converted to Group Supervisors or Hearing Office Directors. A few others became Senior Attorney-Advisors and the rest retired. Group Supervisors and Hearing Office Directors have much wider man-

<sup>2</sup>Many of our experienced Paralegal Analysts are rapidly approaching retirement age.

agement responsibilities and much less time to assist with decision drafting than did the Supervisory Attorney-Advisors. Thus most of the writing, provided in the past by the Supervisory Attorney-Advisors, has effectively disappeared. Third, the complexity of disability decision-writing has continued to increase, thus increasing the demand for attorney writers.

Many of the new HPI Paralegal Analysts will develop into skilled writers with proper training and supervision. Paralegal analysts are not expected to draft the most complex cases. Attorney-Advisors and Senior Attorney-Advisors are expected to handle these. New Attorney-Advisors must be hired now to develop the experience and expertise needed to replace our veteran personnel as they move on to other positions or retirement. It is reasonable to expect OHA's caseload to reach 700,000 soon, close to 100,000 more cases than in 1999.

The productivity of the new Paralegal Analysts will improve over the coming months. Hearing Office Directors and Group Supervisors may eventually be able to spend a bit more of their time drafting decisions. However, it is also clear that normal attrition will account for several score of writers leaving OHA per year. A significant number of current Attorney-Advisors and Senior Attorney-Advisors will be selected for the new Administrative Judge position. These factors combined with the expected increase in OHA's workload fully support the immediate hiring of 200-300 new Attorney-Advisors over 2001 and 2002, with smaller annual classes to follow, in line with workload trends and actual attrition levels.

Adjudication and decision drafting are complex jobs. As most of the witnesses pointed out, it takes over a year to develop a newly hired employee into a fully productive one in such positions. Please provide SSA the resources and guidance so that it recruits the necessary legal personnel to deal with the upcoming workloads now. Let us not repeat the crisis of the early 1990's where backlogs grew to intolerable levels.

Sincerely,

James R. Hitchcock  
Senior Attorney-Advisor  
Office of Hearings and Appeals

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Independent Life Center, Inc.  
Craig, Colorado 81626  
June 5, 2001

Allison Giles, Chief of Staff  
1102 Longworth House Office Building  
U.S. House of Representatives  
Washington, DC 20515

Dear Ms. Giles,

I am writing to express my concern about the way in which people with disabilities can qualify for Social Security Disability Income (SSDI).

The Social Security Administration tells people with Amyotrophic Lateral Sclerosis (ALS) that they qualify immediately; even though that disease takes a three to five-year period to progress fully, according to Dr. Koop's medical information Web site.

Terminal cancer patients with a much shorter life expectancy, among others, who apply for SSDI are told by the Social Security Administration that they must wait as long as 2½ years for their SSDI payments to begin.

I am told that the practice of making people wait continues because the US Congress does not want the Social Security Administration to hire any more people. If this is true, then Members of Congress need to explain to people like the gentleman whose situation is described in the accompanying letter why they and their families must be deprived of the medical services and financial assistance which could bring them some relief. There must be a better way.

Sincerely,

Evelyn Tileston  
Executive Director

Independent Life Center, Inc.  
 Craig, Colorado 81626  
*June 15, 2001*

Wayne Allard, U.S. Senator  
 215 Federal Building  
 400 Rood Avenue  
 Grand Junction, CO 81501

Dear Senator Allard,

I am writing to ask for your assistance for Mr. Edward Gore, SSAN 522-68-9239, 572 Colorado, Craig, CO 81625, home telephone number (970) 826-0898, in his attempt to be made eligible for Social Security Disability Income (SSDI).

Mr. Gore is a Vietnam vet who has a service-connected disability. He has operated his own Barber shop in Craig, Colorado until March of this year. Unfortunately, he was diagnosed with stomach cancer and is not expected to live for more than a year. Mr. Gore had stomach cancer surgery at the VA Hospital in Grand Junction, and was advised by his doctor that he would not be able to return to work due to the nature of the surgery and the debilitating affects of the cancer.

Being not able to work, and having a wife and 16-year-old son to support, Mr. Gore applied for SSDI, having worked for more than enough quarters to qualify. He has been granted Supplemental Security Income SSI with Medicaid; but feels that he should be receiving SSDI as it would give him a larger cash payment each month.

As I'm sure you know, it usually takes more than two years for a person to begin receiving any help through SSDI. Only people who suffer from ALS can get immediate SSDI payments. In my mind and heart, this situation is outrageous. Here we have a man who has paid into the system in several ways, as a veteran and as a businessman; but when he needs the help he has paid for, he cannot get it. Is there any way that Mr. Gore's SSDI application can be speeded up? Why should only some terminally ill people (those who have ALS) be given "most favored applicant" status when other terminally ill people are not? Where is the fairness in this system?

Being a responsible husband and father, Mr. Gore is trying to do the very best he can for his family. Is there any way he can receive the help he needs through the Social Security Administration?

Sincerely,

Evelyn Tileston  
*Executive Director*

**Statement of Jeremy Rosen, Staff Attorney, National Law Center on Homelessness & Poverty**

Mr. Chairman, thank you for this opportunity to submit testimony to the Committee. I am Jeremy Rosen, Staff Attorney for the National Law Center on Homelessness & Poverty, a not for profit organization based in Washington, D.C. The National Law Center does not receive any federal funding. The Law Center advocates for programs and policies that address the underlying causes of homelessness. Toward this end, the Law Center monitors implementation of federal programs that assist homeless persons, and works with non-profit organizations from all over the United States to advocate on behalf of homeless and poor Americans.

Over the past twelve years, the Law Center has devoted significant resources to studying the Supplemental Security Income (SSI) program, and its impact on homeless people. Throughout that time, the Law Center has focused on two areas: (1) increasing access to the SSI program, so that more eligible homeless persons are able to apply for benefits; and (2) improving SSI eligibility rules, so that more homeless SSI applicants are approved for benefits.

Today, this Committee will be discussing the challenges and opportunities facing the Social Security Administration's (SSA's) disability programs. I welcome the opportunity to provide the Committee with some brief comments on this topic, as it pertains to America's homeless population.

Numerous studies have shown that over 30% of homeless persons are unable to work due to one or more disabilities. However, a December, 1999 study by the Interagency Council on the Homeless found that only 11% of homeless people receive SSI

in any given month. This means that at least two thirds of the homeless individuals who are potentially eligible for SSI are not receiving benefits. My testimony today will explain the reasons for this enrollment gap, and suggest ways in which SSA can act to eliminate it.

This gap is particularly tragic because the SSI program serves as a critical income support. With disability benefits, homeless persons can receive health insurance through Medicaid, and can access supportive housing or other federally funded public or subsidized housing. Without benefits, the same individuals are likely to be trapped on the street or in a homeless shelter.

Over the past decade, SSA has made one significant effort to increase access to SSI benefits for homeless people. During fiscal years 1990–96, SSA conducted a series of SSI outreach demonstration programs. Under the programs, SSA awarded funds to local non-profit groups, to conduct outreach to specific SSI eligible populations. These projects were designed to allow SSA to evaluate whether increased outreach would result in an increased number of SSI beneficiaries. More than one third of the outreach programs focused on homeless people.

SSA hired the Sociometrics Corporation, a private contractor, to evaluate the outreach programs. SSA field offices which worked with outreach program sites reported that SSI applications increased by 20% under those programs, while award rates jumped by 10%. Clearly, the programs were successful. These positive statistics prompted Sociometrics to recommend that SSA “make a strong organizational commitment to promoting outreach through third-party agencies.”

However, instead of continuing to fund outreach to eligible homeless persons, SSA ignored the findings of the Sociometrics reports. There is no evidence that any permanent change was made, to any aspect of the SSI program, as a result of the success demonstrated by the outreach demonstration projects. In addition, SSA did not publicize the Sociometrics program evaluation reports.

The Law Center believes that SSA should implement the “best practices” from these outreach demonstration programs. To that end, the remainder of this testimony will identify twelve specific measures, many of which were proven to be successful by the outreach projects, that SSA should adopt. If these twelve steps were implemented, many additional *qualified* homeless persons would receive the SSI benefits to which they are *entitled* by law.

- **SSA should authorize the use of and appropriate a portion of its Research Account funds to support grants to entities that work in partnership with SSA field offices to develop or expand Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI) outreach, application, and re-determination services specifically for people experiencing homelessness.**

Funds should be distributed to state or local public or nonprofit organizations through a competitive process. Applicants should be required to demonstrate a commitment to apply the effective practices identified through SSA’s homeless outreach and enrollment demonstration projects.

- **SSA should reform the representative payee system.**

Homeless clients are unlikely to have a friend or relative available to serve as a representative payee. Currently, there are an insufficient number of well-qualified non-profit agencies that are willing to serve as representative payees. Since, in many cases, no benefits can be paid without a payee, many homeless persons are faced with no choice but to select an unqualified representative payee who may mismanage their benefits.

To fix this problem, SSA should work to increase the number of qualified representative payees. In addition, SSA must accept liability for the replacement of benefits that are stolen or misused by unscrupulous representative payees. This will prevent needy beneficiaries from being adversely affected by payees who abuse their fiduciary duties.

- **SSA should extend presumptive eligibility for SSI to people experiencing homelessness whose primary health care provider alleges that they are eligible for SSI.**

The Mental Health Advocacy Project, in Baltimore, MD., reached an agreement with their local SSA field office to process presumptive eligibility cases in this manner. Over the course of that agreement, more than 95% of the clients initially given presumptive eligibility were permanently approved for SSI benefits.

- **SSA field offices and state DDS agencies should establish special homeless claims units.**

This would ensure partnership building with homeless advocates and homeless service providers, targeted outreach to people experiencing homelessness, targeted information about applicant rights at all stages of the application, appeals, and re-determination processes, expedited review of applications, planning and system

change within SSA and DDS systems, ombudsperson functions within SSA and DDS on behalf of people experiencing homelessness, and outcome and performance measurement.

- **When creating homeless claims units, SSA should be required to shorten case processing times for homeless persons.**

Homeless clients suffer a disproportionate impact from inflated case processing times. While it is important to maintain a high rate of decisional accuracy, homeless clients who may be living on the street cannot afford to wait up to two years for a final decision on their claim. To speed up decisions for homeless claimants, their applications should be flagged and sent to dedicated caseworkers in the state disability determination service (DDS) agencies. This procedure, already being followed in Massachusetts, would result in reduced waiting times for a population that is typically in desperate need of SSI benefits.

- **SSA staff should be required to assist homeless claimants in obtaining basic verifications, such as proof of identity, immigration status, or assets.**

In order to file an application for SSI, all claimants must meet these standard verification requirements. Unfortunately, many homeless persons have lost the documentation necessary to do so. In addition, they are unlikely to have sufficient funds to obtain replacement documentation. All too often, busy SSA caseworkers turn these people away, telling them to come back and apply when they have the proper documents. This should not continue. Instead, SSA representatives should work with homeless clients to help them obtain this information, through inquiries (via computer match or U.S. Mail) with state vital records agencies and/or INS.

- **Homeless persons should be given extra assistance in completing SSI application forms.**

Often, SSA caseworkers seek to complete each application as quickly as possible. In their haste, many important details can be overlooked. Unfortunately, homeless clients cannot easily be reached, to correct mistakes or discrepancies in their applications. Accordingly, extra care should be taken to ensure that the initial application is completed in a thorough manner. This will result in a greater percentage of decisions that are both accurate and timely.

- **SSA should follow current rules regarding the receipt of SSI benefits while in a public institution, and simplify the rules which permit the resumption of benefits after release from an institution.**

Currently, many homeless clients are improperly cut off from benefits when they enter public, emergency homeless shelters. When SSI benefits are properly suspended due to residence in a public institution, SSA must simplify the rules regarding the prompt resumption of benefits after a claimant has been released from that institution. This will help prevent homelessness by more quickly providing released individuals with a stable income and with Medicaid.

- **SSA should ensure that State DDS staff make every effort to obtain all medical records of homeless claimants, prior to scheduling consultative examinations (CE's).**

If insufficient records are available, thus necessitating that a CE take place, DDS staff must, under current law, give preference to scheduling those examinations with the claimant's treating physician. If the claimant does not have a treating physician, CE's should be scheduled with independent physicians, who are compensated at their standard hourly rate. This will prevent claimants from being sent to CE "mills," where doctors prepare incomplete CE reports after examining patients for no more than a minute or two.

- **The SSA Commissioner should be required to prepare and submit to Congress and the President, by September 30, 2002, a report that describes current policy and practice barriers to access and utilization of SSI and SSDI programs by people experiencing homelessness and recommendations for removing those impediments.**

In establishing the plan, the Commissioner should consult with people experiencing homelessness, nonprofit organizations advocating for people experiencing homelessness, and representatives of State, local, and tribal government. This will provide SSA with clear guidance regarding how to better serve homeless persons.

- **The SSA Commissioner should also be required to establish a permanent Advisory Committee on Homelessness, with responsibility for conducting ongoing reviews of policy and practice barriers to access and utilization of SSI and SSDI programs by people experiencing homelessness, and making recommendations for removing those impediments.**

- **SSA should restore SSI eligibility for people whose primary qualifying disability is substance abuse.**

An April, 1999 study, performed by the National Law Center on Homelessness & Poverty and the National Health Care for the Homeless Council, indicated that as

a direct result of losing their SSI due to this restriction, 76% of persons (who were paying for their own housing) lost that housing and became homeless. Restoring SSI to those individuals would dramatically increase the number of homeless persons eligible for SSI. This, in turn, would result in many more homeless people obtaining housing and Medicaid coverage.

The National Law Center on Homelessness & Poverty would be glad to provide the Committee with any additional information. We would welcome the opportunity to meet with you further, to discuss these critically important issues. Thank you for your consideration of this testimony.

