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# THIRD IN A SERIES ON SOCIAL SECURITY DISABILITY PROGRAMS' CHALLENGES AND OPPORTUNITIES

## HEARING

BEFORE THE

SUBCOMMITTEE ON SOCIAL SECURITY

OF THE

COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

JULY 11, 2002

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# THIRD IN A SERIES ON SOCIAL SECURITY DISABILITY PROGRAMS' CHALLENGES AND OPPORTUNITIES

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**THURSDAY, JULY 11, 2002**

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

The Subcommittee met, pursuant to notice, at 10:16 a.m., in room B–318 Rayburn House Office Building, Hon. E. Clay Shaw, Jr. [Chairman of the Subcommittee] presiding.

[The advisory announcing the hearing follows:]

# *ADVISORY*

FROM THE COMMITTEE ON WAYS AND MEANS

**Subcommittee on Social Security**

FOR IMMEDIATE RELEASE
July 3, 2002
No. SS–15

Contact: (202) 225–9263

## Shaw Announces Third 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 a hearing to examine the definition of disability. **The hearing will take place on Thursday, July 11, 2002, in room B–318 Rayburn House Office Building, beginning at 10:00 am.**

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:**

Last year, the Subcommittee began a hearing series examining the challenges and opportunities facing Social Security's disability programs. In the first hearing of the series, the Subcommittee heard an overview of these challenges from key stakeholders. Recommendations generally focused on how to decrease processing times at all levels of disability claims. During the second hearing, the Subcommittee examined the reasons for delays, complexities, and inconsistencies in the disability determination and appeals process, and explored recommendations for change.

The Social Security Act was amended in 1956 to create the Social Security Disability Insurance (SSDI) program, which provides workers and their families with an income safety net should a breadwinner become disabled. The Social Security Administration (SSA) also administers the Supplemental Security Income (SSI) program, created in 1972, which provides means-tested benefits to aged, blind, and disabled individuals.

Under current law, disability is defined in both programs as "an inability to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months." The SSA only pays benefits for total disability and does not pay benefits for partial or short-term disability. The law is implemented through numerous agency regulations and rulings which affect how disability decisions are made.

Many people, including the bipartisan Social Security Advisory Board, the U.S. General Accounting Office, individuals with disabilities, and their advocates have suggested the definition of disability is at odds with the desires of those individuals with disabilities who want to work but who still need some financial or medical assistance. Under current law, for example, an individual must first prove they are unable to work to receive benefits—yet, once benefits have begun, increased services and new incentives such as those provided through recent "Ticket to Work" legislation, are aimed to help beneficiaries return to work.

In announcing the hearing, Chairman Shaw stated: "Medical treatment, assistive technology, and the nature of work itself has changed significantly since Social Security's disability programs were created in the 1950s and the 1970s. It's long past time for us to carefully and thoughtfully examine how disability is defined to ensure the benefits provided today and in the future continue to keep pace with the needs of our ever-changing society."

**FOCUS OF THE HEARING:**

The Subcommittee will examine: (1) how the Social Security Administration (SSA) determines disability as defined in the statute; and (2) the degree to which the definition of disability in law, and SSA's determination of what constitutes disability, addresses the needs of today's workers, beneficiaries, and the intent of the SSDI and SSI programs.

**DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:**

**Please Note:** Due to the change in House mail policy, any person or organization wishing to submit a written statement for the printed record of the hearing should send it electronically to *hearingclerks.waysandmeans@mail.house.gov,* along with a fax copy to (202) 225–2610, by the close of business, Thursday, July 25, 2002. Those filing written statements who wish to have their statements distributed to the press and interested public at the hearing should deliver their 200 copies to the Subcommittee on Social Security in room B–316 Rayburn House Office Building, in an open and searchable package 48 hours before the hearing. The U.S. Capitol Police will refuse sealed-packaged deliveries to all House Office Buildings.

**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. Due to the change in House mail policy, all statements and any accompanying exhibits for printing must be submitted electronically to hearingclerks.waysandmeans@mail.house.gov, along with a fax copy to (202) 225–2610, in Word Perfect or MS Word format and MUST 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. Any statements must include a list of all clients, persons, or organizations on whose behalf the witness appears. A supplemental sheet must accompany each statement listing the name, company, address, telephone and fax numbers of each witness.

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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Chairman SHAW. Good morning. I apologize for being 15 minutes late in starting. Today, the Subcommittee continues our examination of the challenges and opportunities faced by Social Security's two disability programs—Disability Insurance (DI) and Sup-

plemental Security Income (SSI)—by focusing on the definition of disability.

According to law, an individual is considered disabled when they are unable to "engage in substantial gainful activity (SGA) by reason of a medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months."

While that definition would seem to outline the parameters of disability, in fact there are 270 pages of Federal regulations that discuss how to implement that law. Included is a complex list of impairments, how to consider age, education, and vocational factors, and how to evaluate pain, other subjective complaints, and activities of daily living.

Although the regulations are intended to produce objective determinations of disability, each person's circumstance is unique, and disability determinations are inherently the result of both objective review of the evidence and subjective judgment. Thus, different decisionmakers may reasonably come to different conclusions even in similar circumstances. No wonder ensuring fair and consistent treatment for all claimants remains a key challenge for the Agency as it administers this complex program.

Compounding the difficulty of implementing a fair and accurate definition of disability is the evolving nature of work. Employment opportunities for individuals with disabilities have expanded over the past several decades. The intent of the disability program has been to provide a safety net for individuals who cannot work because of long-term disability. However, new employment possibilities and the changes in and interaction between vocational, environmental, medical, and other factors have led many to question whether the definition of disability accurately reflects the intent of the program and the needs of individuals with disabilities today.

Helping us sort through all of these issues today is Martin Gerry, the Deputy Commissioner for Disability and Income Security programs at the Social Security Administration (SSA); Robert Robertson, at the U.S. General Accounting Office (GAO); Sarah Mitchell, Chair at the Ticket to Work Advisory Panel, who is making her first appearance before this Subcommittee; and various consumer, academic, and private sector experts.

President Franklin Delano Roosevelt, who signed Social Security into law and was himself an individual with a disability, turned the concept of disability on its head and we have been trying to catch up ever since. Evolutions in the workplace, society, and medicine have outpaced our progress in reviewing the program's definition of disability. Though ensuring that the definition of disability meets the needs of Americans is a difficult and complex task, it must be a priority of this Committee. American workers and their families who rely on the vital safety net Social Security disability benefits provide deserve no less.

[The opening statement of Mr. 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**

Good morning. Today the Subcommittee continues our examination of the challenges and opportunities faced by Social Security's two disability programs—Disability Insurance and Supplemental Security Income—by focusing on the definition of disability.

According to law, an individual is considered disabled when they are unable to; "engage in substantial gainful activity by reason of a medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months."

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Although the regulations are intended to produce objective determinations of disability, each person's circumstance is unique, and disability determinations are inherently the result of both objective review of the evidence and subjective judgment. Thus, different decision makers may reasonably come to different conclusions, even in similar circumstances. No wonder ensuring fair and consistent treatment for all claimants remains a key challenge for the agency as it administers this complex program.

Compounding the difficulty of implementing a fair and accurate definition of disability is the evolving nature of work. Employment opportunities for individuals with disabilities have expanded over the past several decades. The intent of the disability programs has been to provide a safety net for individuals who cannot work because of a long-term disability. However, new employment possibilities and the changes in—and interaction between—vocational, environmental, medical, and other factors have led many to question whether the definition of disability accurately reflects the intent of the program and the needs of individuals with disabilities today.

Helping us sort through all of these issues today is Martin Gerry, the Deputy Commissioner for Disability and Income Security Programs at the Social Security Administration, Robert Robertson at the GAO, Sarah Mitchell, chair of the Ticket to Work Advisory Panel who is making her first appearance before the Subcommittee, and various consumer, academic, and private sector experts.

President Franklin Delano Roosevelt, who signed Social Security into law and was himself an individual with a disability, turned the concept of disability on its head, and we've been trying to catch up ever since. Evolutions in the workplace, society, and medicine have outpaced our progress in reviewing the program's definition of disability. Though ensuring that the definition of disability meets the needs of Americans is a difficult and complex task, it must be a priority. America's workers and their families who rely on the vital safety net Social Security disability benefits provide deserve no less.

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Chairman SHAW. Mr. Matsui.

Mr. MATSUI. Thank you, Mr. Chairman. No, I have no comments. I look forward to hearing from the witnesses. Many of us will have to move in and out from time to time, and I hope that the witnesses and people will understand that, and we apologize in advance for that. Thank you.

Chairman SHAW. Thank you. Well, I have already introduced you, Mr. Gerry. We appreciate your being here. Welcome. We look forward to your testimony. We have the full text of your testimony which will be made a part of the record, so you may summarize as you see fit.

**STATEMENT OF MARTIN GERRY, DEPUTY COMMISSIONER, DISABILITY AND INCOME SECURITY PROGRAMS, SOCIAL SECURITY ADMINISTRATION**

Mr. GERRY. Thank you, Mr. Chairman, and Members of the Subcommittee. Thank you for inviting me today to discuss the definition of disability used by the Social Security Administration in evaluating applicants for Social Security and Supplemental Security Income disability benefits.

The Social Security Act broadly defines disability for adults as the inability to engage in any substantial gainful activity. I see that as the first key, element. Then, second, that inability to engage is due to a physical or mental impairment. So, that is the second key element. Third, that that physical or mental impairment has lasted or is expected to last at least 1 year or to result in death.

So, the statutory definition seems to me to contain three basic ingredients. Based on this definition, Social Security Administration regulations set out a five-step sequential evaluation process to determine disability, and I would like to briefly describe the steps.

The first step is to determine whether an individual is engaging in substantial gainful activity. In other words, not only whether they are working, but whether they are earning an income over a certain level. Under current regulations, an individual will generally be considered to be engaging in substantial gainful activity—if he is or she is earning more than $780 a month; and, in the instance of individuals who are blind, that amount is $1,300 a month.

If it is determined that the individual is engaging in substantial gainful activity, a decision is made at the first step that that individual is not disabled and medical factors are not really considered at that point. So, at step one, you either move on to discuss the disability and medical factors, or you make the decision that the individual is already engaged in substantial gainful activity, and at that point they are ineligible regardless of the severity of the disability. That is key, because there are people who are very severely disabled who are very definitely earning above the limit, and the first test that I think is clearly here is the question of whether someone is in fact not earning at that level.

The second step, if you conclude that there are not earnings above substantial gainful activity, is to determine whether or not an impairment exists and the severity and duration of a person's impairment. That is the exploration of the impairment in step two. At this step and throughout the remainder of the process, the Agency would consider all of the person's physical and mental impairments, both singly but also in combination—and Congress has been very clear about the need to look at this process in terms of the combination of factors.

If the individual does not have a medical impairment, or if the impairment or combination of impairments is determined to be "not severe"—and I will explain that in a second—then the individual would be found not disabled at the second step. The basic meaning of "not severe" is that the individual does not have an impairment that significantly limits the individual's capacity to perform basic work activities.

So, at step two, there is a question of, first, is there a medical impairment; and, second, is it severe? The severity test at this step is pretty much, does it really interfere with the ability to perform basic work activities?

If there is a medical impairment and it is severe, then we would proceed to the third step of the sequential process. At that step, a determination is made as to whether the impairment meets or equals the criteria of one of the medical listings that is published by the Agency in regulations. The listing of impairments that we publish describes impairments that are considered severe enough to prevent a person from doing any gainful activity. So, I want to distinguish that from substantial gainful activity. So, there is a presumption, a conclusive presumption in the listings, that if you in fact meet these requirements, then we will conclude at that point that you are, in fact, eligible.

Listings are not required by the statute, but the Agency has been using them in one form or another since it really first started evaluating disability claims to screen the most obviously disabled applicants.

So, at this third step, the presence of an impairment that meets the criteria of the listings is usually sufficient to establish that an individual who is not working is disabled, without the need to go further, and that would involve the consideration of the individual's age, education, and work experience.

On the other hand, it is important to note that the absence of a listing level impairment, that is, the decision that someone doesn't meet a listing, does not mean that the individual is not disabled. In fact, the Agency determines and finds people disabled at subsequent steps. The purpose of step three is to get those people who are most obviously disabled identified as early as possible in the process.

If a severe impairment does not meet or equal a listing, the Agency then assesses the individual's residual functional capacity, which roughly translates as what an individual can still do, taking into account his or her impairment, and uses that assessment in the final steps of the process, step four and step five.

At step four, we consider whether the individual has the residual functional capacity to meet the physical and mental demands of his or her past relevant work. So, we look at the actual work history of the applicant. The question is, is there evidence that this individual could do the same kind of work?

If the impairment does not appear to prevent the individual from meeting the demands of past relevant work, then the person would be found to be not disabled and the process would stop at this point.

On the other hand, if that is not the case, we would move on to step five, and that is the final step in the process, which asks the question: If the impairment prevents the individual from performing past relevant work, it must be determined at the fifth and final step whether the impairment prevents the person making an adjustment to other work. We wouldn't be looking at the kind of work the individual did in the past, but would be looking at a much broader sense of what work is. As the statutory definition states, the individual must be not only unable to do his previous work, but

cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy. I'm quoting the language of the statute.

It is worthwhile to emphasize here that the work we are talking about does not actually have to exist in the immediate area where the claimant lives. So, we are not talking about job opportunities that may be actually available to the individual at the place where the individual lives. We are talking about the overall economy, and whether in general this person could work in the overall economy. So, those are the five basic steps of the sequential evaluation process.

Mr. Chairman, Mr. Matsui, and other Members of the Subcommittee, I want to thank you again for beginning the public process of exploring the definition of disability for Social Security benefits, which I think is a very important activity of this Committee. I stand with the Commissioner and her pledge to work with the administration, with Congress, and with the dedicated and experienced employees of the Social Security Administration to make improvements in the service that the SSA provides applicants for disability and in meeting the other challenges facing the Agency. I look forward to working with you all to improve Social Security's disability programs, and welcome any questions that you might have.

[The prepared statement of Mr. Gerry follows:]

**Statement of Martin Gerry, Deputy Commissioner, Disability and Income Security Programs, Social Security Administration**

BEFORE THE SUBCOMMITTEE ON SOCIAL SECURITY, HOUSE COMMITTEE ON WAYS AND MEANS

Mr. Chairman and Members of the Subcommittee:

Thank you for inviting me today to discuss the definition of disability used by the Social Security Administration (SSA) in evaluating applicants for Social Security and Supplemental Security Income (SSI) disability benefits. I will briefly describe the programs to which the definition applies and will then elaborate some more on the definition in the Social Security Act (the Act) and in SSA regulations.

Social Security and SSI Disability Programs

The Act provides cash benefits to individuals with disabling physical and mental disorders under two major programs: Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI). Often, receipt of disability benefits also provides access to health care.

SSDI comprises a number of disability benefits for workers and their dependents and survivors. Entitlement is based on contributions to the Social Security trust funds through Federal Insurance Contribution Act (FICA) taxes. Individuals who qualify for SSDI benefits are entitled to receive medical benefits from the federal Medicare program generally after they have been entitled to benefits for 24 months. SSDI benefits include:

- *Disability Insurance Benefits.* This is a cash benefit paid to workers who have not reached retirement age, who are disabled or blind as defined in the Act, and who meet other requirements for entitlement described below.
- *Widow's and Widower's Insurance Benefits* based on disability. Disabled widows or widowers of workers may receive benefits if they are at least 50 years old. In general, the disability must have started before the worker died or within seven years after the worker's death. Surviving divorced spouses with disabilities may also qualify for this disability benefit.
- *Child's Insurance Benefits* based on disability. An unmarried, disabled child of a worker who has died, retired, or is receiving disability insurance benefits may receive this benefit. In general, the individual must be unmarried

and 18 years old or older to qualify. The individual must have been continuously disabled since before attaining age 22.

The same definition of disability applies to all these benefits. Benefits can also be payable to non-disabled spouses and children of SSDI recipients.

SSI is a means-tested program that provides a basic floor of income for individuals with limited incomes and resources. SSI benefits are paid to aged (age 65 and older), blind, and disabled individuals who have limited means. Individuals under age 65, including children (individuals under age 18) must be blind or disabled to qualify for benefits. The same definition of disability that applies for SSDI also applies for SSI benefits for adults. Children under the age of 18 have a different definition of disability for SSI which was enacted in 1996.

In addition to this basic floor of income, individuals eligible for SSI can benefit from Medicaid health insurance coverage from the States.

The Social Security Act

The Social Security Act broadly defines disability for adults as the inability to engage in any substantial gainful activity (SGA) due to a physical or mental impairment that has lasted or is expected to last at least one year or to result in death. Neither shorter-term disability nor partial disability is encompassed. The Act requires the Commissioner of Social Security to prescribe rules for obtaining and evaluating evidence and making disability decisions. The law further requires that initial disability determinations be made by State agencies, called Disability Determination Services (DDSs), following Federal rules and guidelines and fully financed by Federal funds.

Sequential Evaluation

As prescribed in SSA's regulations, disability in adults is evaluated under a five-step "sequential evaluation process." The steps are followed in order until a decision is made. The first step is to determine whether the individual is engaging in SGA. Under current regulations, in the case of blind individuals, the SGA earnings limit is set by statute, and is currently $1,300 a month. For individuals with other disabilities, if a person is earning more than $780 a month, he or she will be considered to be engaging in SGA. However, SSA does not necessarily count all the person's earnings. For example, we deduct impairment-related work expenses when we determine the amount of earnings to count. Both amounts are indexed annually to average wage growth.

If it is determined that the individual is engaging in SGA, a decision is made at the first step that he or she is not disabled without considering medical factors. If an individual is found not to be engaging in SGA, the existence, severity and duration of the person's impairment are explored. At this step, and throughout the remainder of the process, we consider all of a person's physical and mental impairments, both singly and in combination.

If the individual does not have a medical impairment, or the impairment or combined impairments are determined to be "not severe" (i.e., they do not significantly limit the individual's capacity to perform basic work activities), the individual is found not disabled at the second step. If the impairment is "severe," we proceed to the third step, where a determination is made as to whether the impairment "meets" or "equals" the criteria of one of the medical listings published in regulations by SSA.

Listing of Impairments

The Listing of Impairments describes, for each major function of the body, impairments that are considered severe enough to prevent a person from doing any gainful activity, as opposed to any substantial gainful activity. The Listings are not required by statute, but SSA has been using them in one form or another since it first started evaluating disability claims, updating them as needed, to screen the most obviously disabled applicants. Most of the listed impairments are permanent or expected to result in death, or a specific statement of duration is made. For all others, the evidence must show that the impairment has lasted or is expected to last for a continuous period of at least 12 months.

At this third step, the presence of an impairment that meets the criteria in the Listing of Impairments (or that is of equal severity) is usually sufficient to establish that an individual who is not working is disabled, without the need to consider the individual's age, education, or work experience. However, the absence of a listing-level impairment does not mean the individual is not disabled. Rather, it merely requires the adjudicator to move on to the next step of the process.

Medical-Vocational Decisions

If a "severe" impairment neither "meets" nor "equals" a listing (which would result in a finding of disability), SSA assesses the individual's residual functional capacity—what an individual can still do despite his or her impairment—and uses that assessment in the last two steps of the process. At step four, we consider whether the person has the residual functional capacity to meet the physical and mental demands of past relevant work. If the impairment does not prevent the individual from meeting the demands of past relevant work, the person is found not disabled.

Finally, if the impairment does prevent the individual from performing past relevant work (or if the person did not have any past relevant work) it must be determined whether the impairment prevents the person making an adjustment to other work at step five. As the statutory definition states, the individual must be "not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy. * * *"

The statutory standard is a method of judging disability. For example, the law specifies that the work the person can do does not have to exist in the immediate area in which he or she lives, and that a specific job vacancy does not have to be available to him or her. Work in the national economy is defined in statute as work which exists in significant numbers either in the region where such individual lives or in several regions of the country.

SSA has developed a vocational "grid" designed to minimize subjectivity and promote consistency in applying the vocational factors. The grid regulations relate age, education, and past work experience to the individual's residual functional capacity to perform work-related physical and mental activities. If the applicant has a particular level of exertion work capability—characterized by the terms sedentary, light, and medium—an automatic finding of "disabled" or "not disabled" may be required when such capability is applied to various combinations of age, education, and work experience. Otherwise, we use the rules as a framework for decision making.

Other Definitions of Disability

There are numerous other definitions of disability for different purposes. Workers compensation, vocational rehabilitation, State Medicaid programs, and private disability insurers each has its own definition of disability for its own purpose.

One notable example is The Americans with Disabilities Act (ADA). Its definition of disability is different from SSA's definition. The purpose of the ADA is to:

> (1) provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;
> (2) provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;
> (3) ensure that the Federal Government plays a central role in enforcing the standards established in this Act on behalf of individuals with disabilities; and
> (4) invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

In 1999, the United States Supreme Court held in a 9–0 decision that the pursuit, and receipt, of SSDI benefits does not automatically prevent the recipient from pursuing an ADA claim. The court's decision further noted that both ADA and SSDI claims "can comfortably exist side by side" and recognized that the two laws do not share a common definition of disability.

Disability Research

One of the most valuable services SSA can provide to policymakers is the information they need for making sound decisions. SSA places a high priority on policy analysis and research that will provide the information necessary to evaluate and strengthen the nation's disability programs.

Many experts believe that providing intervention methods to disabled individuals as close to the disability onset as possible significantly improves their chance of starting or returning to work. We plan on testing several models including such interventions as integrated service supports and collaboration with employers. We also plan to study the extent to which the listings are predictive of work ability.

Conclusion

Finally, I thank you, Mr. Chairman, Mr. Matsui, and all the members of the Subcommittee, for beginning the public process of exploring the definition of disability for Social Security benefits. Obviously, any potential changes would have to be considered in terms of the long-term solvency of the combined trust funds. I stand with the Commissioner in her pledge to work with the Administration, with the Congress, and with the dedicated and experienced employees of the Social Security Administration to find the best solutions for this and other issues facing the Agency.

Again, thank you for inviting me to be here today. I look forward to working with you to improve Social Security's disability programs.

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Chairman SHAW. Mr. Gerry, in that spirit, I have several questions which might be a little bit combative, but I would appreciate your responding to them as best as you can.

First, that the General Accounting Office found that DI and SSI disability criteria have not kept pace with the advances and changes in the nature of work, social change, medical achievement, and assistive technologies. One, do you agree? Why has this happened, and what is SSA trying to do to fix it? Is there something we should do to effect the statute in order to fix it?

Mr. GERRY. I think that was four questions, Mr. Chairman. Let me see if I can keep them in order. Without talking about every single listing, I think that the observation that the GAO report makes is generally a fair one; that is, the listings—and I am talking now not about the statutory language or even the regulations in general, but the medical listings and vocational listings which the Agency has—have not been revised frequently. There have been significant periods of time without changes.

Chairman SHAW. We are speaking of regulations now.

Mr. GERRY. They are regulations, but they are not the basic operating regulations of the program; they are specific rules that we have established at step three of the process and the eligibility system that are usually described differently, even though they are technically regulations. The medical listings are an attempt, as I said earlier, to provide a route for people to fairly quickly establish that they are disabled, without having to go through the process, which as described in my prior testimony and the Commissioner's testimony, can be a very long process.

So, the big advantage of the listings in practical terms is that if you can meet the listing or equal the listing, then you should have an allowance early in the process, and obviously a lot of days are saved at the beginning of the process. Those listings do attempt to provide specific guidance as to how to make a determination of disability, and therefore are quite sensitive to changes in the medical and rehabilitation insights. It is fair, and I think accurate, to say that over significant periods of time, a lot has changed with respect to not just the employment opportunities and supports, but also the medical and rehabilitation realities of people with disabilities. So, I think in that sense they haven't kept pace.

We are involved right now in a process to try to keep pace. When the Commissioner took office, we together spent quite a bit of time very early in the process looking at what we have been doing, and we want to pursue this vigorously. I think it is very important to do this quickly but also to do it thoroughly, so that when we do

issue new listings, they really reflect and solve the practical problems that we have had in actually applying the listings.

Let me explain for a minute. There has been a tendency in writing listings and revising listings to look at them from a technical, accuracy standpoint, kind of an academic standpoint. I think it is important to be sure that we are technically accurate, but what we want to change and expand on particularly is their actual usability. We are engaged in a new process in our policymaking activity, of going out and talking to consumers and claimants, to advocates, to professionals who are giving opinions, and then to the people who actually apply our listings at the State level in the hearings, and even in the Federal courts, to try to identify where the listings are practically creating problems.

We have a lot of hearings, close to 600,000 a year; when I came in, I asked questions about what listings, if any, are the subjects of those hearings? Are there particular listings that seem to be posing more difficulty in terms of adjudication? We haven't routinely kept that information and we haven't routinely asked the people who actually have to apply our rules where they are having difficulties.

So, what we want is to do two things at the same time: We want to keep current with the research and be sure that we have a technically and scientifically accurate description, but we also really want to do a fairly careful effort to see whether what we are writing is actually useful, or if it is creating problems for the courts, for the hearings officers, and the disability examiners. So, we have put a new process in place to do that. That reflects, I think, an agreement with the proposition that, yes, we ought to update and we ought to keep current, but that we ought to do more than just the scientific side of that. Now, I know you asked me four questions. I think I answered two or three; I may have missed one in that.

Chairman SHAW. Well, you answered one that I hadn't asked yet.

Mr. GERRY. Okay.

Chairman SHAW. So, I will go to the third one. Many of our witnesses today have suggested the definition of disability is too stringent, and that it should be modified to include short-term disabilities or partial disabilities to account for the change in work, medicine, and technology, and the expectations of individuals with disabilities. What research are you undertaking relative to these issues, and when will you be able to advise the Congress as to your particular finding?

Mr. GERRY. The Commissioner has asked me to look at the large question of how our disability program—which would include the definition as it operates—fits into the larger structure of Federal programs in terms of providing support to people with disabilities, and particularly in advancing the President's New Freedom goals, and the goals, obviously, that were reflected in the Americans With Disabilities Act (ADA).

What makes the question a little difficult to answer is that the charge to me—and I am hoping to have completed this initial work so I can discuss it with her by the end of next year—isn't just to look at our program or the definitions in the Social Security Act,

but really to ask the question of how what we are doing ought to fit into a larger integrated whole.

The question of short-term disability benefits or how we deal with people with permanent partial disability, which I think is very important—we want to look beyond just the Social Security Administration. It may be that the best way to do that would be to look at some of the other agencies or programs, or even at the tax system, to look at as a whole how we are providing support to people with disabilities, to advance this general goal of employment and economic self-sufficiency and maximize it.

So, within that context, yes, I think we are going to be looking at those topics. I don't want to suggest that we think at Social Security Administration that we are the only player in this. Congress has made several important legislative changes in the last few years, the Work force Investment Act, the Individuals With Disability Education Act amendments 1997, and, of course, the Ticket to Work legislation, all of which are part of what I hope will be ultimately an integrated approach at the Federal level. Whether we talk about benefit payments or whether we look at other ways to provide support, we are very much interested in this larger population of people.

Obviously, there is a part of that population that could become permanent and totally disabled people if we don't act early enough to provide supports, and we know that there is a lot of work to do. For example, we are talking to the U.S. Department of Labor (DOL), the U.S. Department of Education, and the U.S. Department of Health and Human Services (HHS), about how we can work together to effectively serve this population you are describing. I know that is a long answer, but I don't want to leave the impression that we are just thinking about benefits.

Chairman SHAW. Do you have a schedule that you can give us some reasonable expectation as to when you may be completing something that you can bring back to us?

Mr. GERRY. I can certainly try to provide that for the record. I know that my understanding with the Commissioner is that I would be completing that process by the end of next year. We are already talking about this and we are already beginning to do some things, but I will see if I can provide something more precise.

[The information follows:]

We are beginning to look at long-term changes in the definition of disability. We are planning to have some options developed by the end of next year. In the meantime, we have several projects underway that will provide useful information on definitional issues. For example, we are developing a new approach to updating the medical listing of impairments used to make disability determinations. SSA will ask Members of the public, disability advocates, and disability adjudicators for their advice on the medical listings before publishing proposed rules. SSA's strategy is to update the listings to reflect advances in medicine and disability evaluation as well as to consider the opinions of those who are affected by the listings and those who implement the listings. In addition, we are currently developing several demonstration projects that will yield relevant information on our disability definition.

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Mr. GERRY. On the listings, we are working right now, actively, on a revised schedule for when those listings will be completed and I hope to have that available by late this summer.

Chairman SHAW. You are going to have a negative cash flow; at least we have been told that this is going to come in 2008. What are you doing to get ready for that?

Mr. GERRY. Well, that is part of the larger questions that we are looking at. Obviously, the overall solvency of the trust fund is an important issue for the Agency; the Commissioner has focused on that, and we will be reporting back on that. Part of that, of course, has to do with the configuration of the program. The projections on the trust fund have to do with the program as it is now structured. To the extent that Congress makes changes in the program, that would affect those projections. We are looking very much at that right now. I know the Administration in general is looking at the larger issues of solvency of the trust fund. It is not a topic that I have been focused on much during my first 6 months.

Chairman SHAW. Well, is that something that we would do outside of a general review of the whole Social Security Trust Fund, or is it something that—are you going to come back with some recommendation as to just the DI portion?

Mr. GERRY. I don't know of any intention for us to come back with a specific recommendation only on the DI portion, but I could look into this more and provide a better answer to you on the record.

Chairman SHAW. If you would.

[The information follows:]

We will naturally keep the solvency of the trust funds in mind as we proceed with any proposed changes in the DI program. Once we develop proposals that we think will improve the program, however, we will not be deterred from bringing them forward if decisions on the reform of the entire Social Security program have not been completed.

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Chairman SHAW. Mr. Matsui.

Mr. MATSUI. Thank you, Chairman. I appreciate Mr. Gerry's testimony. Given the fact that you raise the issue of 2008, I think it is a very serious issue. Six years away, we are going to have a cash flow problem; 2008 or so, we are going to have an actual real problem in the system. We have to cut benefits maybe down to 72 percent. It would be my sense that we should really begin the discussion of this at this time. I mean, he raised it, and we probably ought to debate this issue now in Subcommittee, on the Floor of the House, and take a vote on perhaps the President's three proposals that he came up with about 8 months ago now, the proposal that you offered, Mr. Shaw, and certainly the proposal that Mr. Armey has offered. I think we should vote on all five of those proposals at this time so that the American public will have an opportunity to find out how we intend to solve this 2008/2037 problem.

Now, I think this hearing is very important, but the larger issue of how we deal with the unfunded part of the Social Security issue really has to be addressed before we can even talk about issues like a reevaluation of the definition of disability. Because right now the disability program itself accounts for 17 percent of all Social Security benefits being paid out. It is a very large sum.

Now, if you privatize Social Security, that then could adversely affect that 17 percent. An additional 15 percent, as everyone

knows, is for survivors benefits. So, about 32 percent of all Social Security benefits are in the form of disability and survivors benefits. You privatize Social Security, there is no question we are going to have to reduce those benefits, because Social Security is a pay-as-you-go system. So, you take 16 percent of payroll and allow a person to privatize—which is 2 percent of the payroll tax—that means there will be less money available for the current beneficiaries. So, the issue is how we are going to deal with this issue. This is a very critical issue, but it should come after the bigger issue of how we solve the problem.

You mentioned 2008, and this is an opportunity for us to really debate this. It is my hope that you would at least sign the discharge petition so we can take these bills on the Floor of the House to vote on them. If not that—I mean, if you won't do that, then perhaps what you would do is at least have a hearing on your bill, take it to the full Committee so we can vote on it, and then take it to the Floor of the House so we can vote on it, so the American public will have an opportunity to really debate this issue before we actually do it, because the President says he wants to do this in 2003, the spring of 2003. Unless the American public knows where each individual Member of the House and Senate intends to be on this issue, we could go into this thing blindly, and which is really unfair to the current 60,000 people that are receiving Social Security disability, survivors benefits, and obviously retirement benefits. It is just beyond my comprehension, I just don't understand this, how we could not discuss this, particularly in view of WorldCom, Enron, and what is going on with the stock market today. We can't talk about privatizing Social Security and at the same time be unwilling to discuss it in a fully discussed way before November, given the state of the stock market. I mean, if we had a privatized system today, imagine what some of these people would be going through.

They are going to close the WorldCom office in my district, in my congressional district. We have been getting e-mails from 80–90 people in the last couple of days, saying that they are going to lose their health insurance benefits, even though Bernard Ebbers is going to have life-time health insurance benefits along with his jet that he gets free, $1½ million a year. These people will have no 401(k) plans, they have no insurance. One fellow wrote me his wife is disabled, he doesn't know what he is going to do. They have no savings. So, we are talking about privatizing Social Security, and at the same time we are trying to pretend like we are trying to deal with the disability issue. I don't understand what is really going on.

Now, I wasn't going to raise this, but since you raised the fact that in 2008 we are going to have a problem, I think we should talk about it. This is a very serious issue, and you raised a very serious issue and I think we need to deal with it.

Now, let me ask Mr. Gerry some questions, if I may.

Chairman SHAW. You have 26 seconds.

Mr. MATSUI. I would be happy to discuss this with you. You know, you can't just show a little leg and not——

Chairman SHAW. Well—show a little leg, what a sexist remark. I will give you an extra 30 seconds for that.

Mr. MATSUI. I wish you would take this problem a little more seriously. It seems to me that you have got a lot of folks out there——

Chairman SHAW. I didn't say anything about legs, you did.

Mr. MATSUI. There are a lot of people out there today in the——

Chairman SHAW. Mr. Matsui, I would——

Mr. MATSUI. If I may make——

Chairman SHAW. Okay.

Mr. MATSUI. If I may complete my comments. Is that appropriate? There are a lot of folks out there that think the President wants to privatize Social Security. They are wondering what is going to happen. I think we need to discuss this issue. This is an issue that should be brought up now, particularly in view of what is happening in New York in the stock market. I mean, it is incomprehensible that we are not trying to relate these issues. It is a very serious matter right now. For you to not want to bring this up so we can debate it and go for it on the Floor so you know where Members are standing——

Chairman SHAW. Would the gentleman yield? I mean, you are getting—I think you are—I don't mind extending your time for your discussion with Mr. Gerry for the purpose of this particular hearing. If you are going to use it to mischaracterize what is out there—you have seen my plan, and you know right well that I don't divert one dime of Federal Insurance Contributions Act taxes.

Mr. MATSUI. Not in the——

Chairman SHAW. No, I don't.

Mr. MATSUI. In the last years you do.

Chairman SHAW. No, I don't.

Mr. MATSUI. It's a——

Chairman SHAW. No, I do not.

Mr. MATSUI. It is a claw-back. Your bill is a claw-back bill. It takes money out of the system to pay for the private accounts. I mean, it——

Chairman SHAW. Mr. Matsui, I will be glad to give you an additional couple minutes if you care to question Mr. Gerry.

Mr. MATSUI. I do have questions. Mr. Gerry, you are not actually working to change the definition of disability at this time. What you are doing is you are trying to expand on it; is that correct? I am just trying to understand.

Mr. GERRY. I am not working with the purpose of changing the definition. I think what the Commissioner has asked me to do is to look at the larger question of what we are doing in the context of all the other Federal programs and that would include looking at the definition. I think it is important for this Committee to look at the definition. It is not that I have a plan to change the definition.

Mr. MATSUI. I think what you are driving at is a very critical issue, but it probably should be done in conjunction—and I know you have mentioned Labor, you are talking to HHS—but it has to be done in conjunction with Labor and HHS because obviously the issue of funding, if you try to provide adopted technology, for example, if you try to provide health care benefits, if you try to provide for short-term disability funds, obviously that can't come out of the Social Security Trust Fund, unless we have some solution to it in

terms of the unfunded liability, because what you could be doing is jeopardizing the entire program by expanding the definition.

So, the money will have to come from some other source, and I just wouldn't want anyone to be misled into thinking that there is a pot of money out there and you can expand the definition, take care of short-term problems and, obviously, health care benefits for many of these people, and at the same time not have to deal with the funding shortfall.

Mr. GERRY. Well, I think that is right, Mr. Matsui. We have, by the way, formed a partnership as part of the President's New Freedom Initiative with HHS, Education, and Labor. So, that has been going on now for several month.

There are some things—I mean, not that I think you are wrong about——

Mr. MATSUI. No, I agree.

Mr. GERRY. Certain short-term benefits. There are some things we can do right now with existing appropriations to integrate resources that are not being effectively used. I am very interested, for example, in the Work force Investment Act and the resources under that law which ought to be going to help virtually the same beneficiaries who would be affected by the Ticket to Work.

If you look at the definition in the Ticket to Work legislation and the definition in the Work force Investment Act, they are pretty compatible. These are people in need of intensive training.

So, what we have been talking to the Labor Department about is a way to better use our resources together. The same thing with the rehabilitation program. The same thing with youth transition. We have a school-to-work transition mandate in the Individuals With Disabilities Education Act. We have a couple of million beneficiaries who could be directly affected positively in their lives if that were a successful program. How can we work together?

So, I do agree with you that to set up a new benefit program would certainly require new funding, but that one of the things we can do is, working with the existing funding, I think, integrate things in a much more effective way than we have. We are working on joint demonstrations among the agencies, using existing resources to try to see how we can do that.

Mr. MATSUI. I think we are moving in the right direction, as long as we do think about where the money is going to come from if we expand the program substantially. Thank you.

Mr. RYAN. I wanted to talk about privatizing Social Security. Just kidding.

I really have no questions at this time. I know we have a long list of witnesses, and I want to get to them. When I looked at my schedule and came down to this hearing, I thought it was a third in the series on Social Security Disability Programs: Challenges, and Opportunities. I didn't think that we were talking about other topics. So, I would like to see if we could just stick to the topic at hand, and I yield.

Chairman SHAW. Mr. Cardin.

Mr. CARDIN. Thank you very much, Mr. Chairman. I would dare say that disability issues could rank as the number one issue that people in my office try to respond to constituent inquiries on. It is complicated. I listened to your explanation, and I have gone

through a lot of the disability cases that are in our office to try to understand better what people in my district go through in trying to deal with the Social Security Administration, and it is tough. It is not easy to figure out.

So, I would hope that as we try to look at disability definitions that meet the current times—because these procedures were put into place a long time ago, and times have changed, technologies have changed, needs have changed. I would hope that we would just take a look at this, and come forward with suggestions so that we can at least put out ways in which we could perhaps make the system less complicated to our constituents and more contemporary to the current needs, because I do think we can do a better job than we are doing currently in the process that is used by SSA in reaching these decisions.

I also might say, and we haven't talked about this, is that there is a tremendous amount of administrative resources that are currently being used to try to implement these definitions. We all would like to streamline the administrative process so more money can be available for the checks that actually go out to the people who needs this income.

So, I would just hope that we would look at it from that point of view. Instead of trying to look at something that is—make sure we don't lose a dollar to anyone who shouldn't get it, and so forth, that we try to look at a system that is more understandable and more contemporary to the needs that are out there.

Mr. GERRY. I couldn't agree with you more, and I know the Commissioner agrees with that. I think that it is a very good summary of much of what she has said about what she wants to accomplish. I think it is a question of service and quality.

I think the only thing I would add, because I think it was an excellent summary, would be that there is a direct relationship there between some of our rules and policies. I am not talking about the statutory definition, but a lot of our listings and the process itself. We have tended to separate these two things as though the steps in the process are really not related to what we require to be proven, but, of course, they are totally related. The time that it takes in that chart that the Commissioner presented is influenced very much by many of the rules that we write about what particular information has to be gathered and analyzed.

So, we want to look at those connections for the first time, or at least with a much greater emphasis, and be sure that when we require some of the evidentiary requirements that we have, that we understand how much time is involved and how much work that generates, and be sure that we really need that information. Because I think the goal you are talking about, which is really the core of client services, is foremost for us.

Mr. CARDIN. I appreciate that response. Mr. Chairman, I would just make a suggestion that it might be useful for some of the staff of this Committee to talk to some of the staff that we have in our district offices to find out the type of problems that we are confronting from constituents around the country. It differs somewhat in different regions of the country, but there is a consistent theme of frustration about the difficulty of working through the disability system. Thank you, Mr. Chairman.

Chairman SHAW. You brought up a very interesting idea. Perhaps at some point we should have a hearing, and each of us will bring up one caseworker to testify before the Committee. That would be a very interesting idea. Mr. Becerra.

Mr. BECERRA. Mr. Chairman, thank you very much for holding this third of three hearings. Mr. Gerry, thank you very much for being here. I think the questions that I might wanted to have asked have to some degree been posed, and I appreciate the testimony you provided. Like Mr. Ryan, I think there are some other witnesses. I will withhold any further questions. Again, thank you. I appreciate the work that you are doing.

Chairman SHAW. Mr. Hulshof.

Mr. HULSHOF. No questions, Mr. Chairman.

Chairman SHAW. Mr. Pomeroy.

Mr. POMEROY. Briefly, Mr. Chairman. I also want to thank you for holding this series of hearings. I have found them most instructive.

The overriding concern I pull from them is it involves basically our internal administrative capacity to efficiently or minimally competently run a national disability program. I have heard a statistic, and perhaps, Mr. Gerry, you can speak to whether it is accurate or not, that three out of four workers have only the Social Security disability program as a disability protection in the event they become incapacitated and unable to work. Is that correct?

Mr. GERRY. I don't know. I would be happy to provide the answer for the record. However, based on what I do know, that seems like a reasonable estimate. I don't actually know the facts.

[The information follows:]

In the context of long-term protection for the work force as a whole, such as is offered by Social Security Disability Insurance, it is accurate to say that three out of four workers have no disability protection other than Social Security. According to the Bureau of Labor Statistics National Compensation Survey (1999), 25 percent of American workers have employer-provided long-term disability insurance, while 36 percent have short-term disability insurance. Professional and technical employees and those working in large firms are much more likely than other workers to have both kinds of disability insurance.

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Mr. POMEROY. What is the average disability payment? Do you have that?

Mr. GERRY. Yes. The average monthly payment for a disabled worker is about $814 a month. For a disabled worker with spouse and children, the amount would go up to $1,360 a month. That is last year's average, but it is going to be close this year.

Mr. POMEROY. Social insurance as a concept is one that I think has enormous value, and the protection that was extended to American families during the six decades of Social Security has been extraordinarily important. As people talk about alternative ways to design the system, the focus on maximum optimal hoped-for investment return seems to me to totally leave off the table notions of the social insurance functions of the disability program.

I think that when we construct a social insurance program, or I mean as we evaluate the effectiveness of the Social insurance program, it is important to make certain that we are having a benefit level that meets people's needs minimally but does not present the

moral hazard of almost inducing trying to obtain disability status rather than employment. At this benefit structure, it seems to me that we are about there. We meet minimum needs, but we do not incent people not to work to try and obtain disability status. Do you have an opinion on that?

Mr. GERRY. Well, I would say that if you just looked at the average monthly benefit it would be misleading, because you also have the other things added. Health insurance, for example, is an enormous factor that influences people's decisions. There are people, for example, who would lose eligibility for health insurance if they worked, because they might well take a job that doesn't have health benefits. I don't mean to suggest that everybody sits and calculates to the last penny before they make these decisions, because I think there are many people who work even though it is a disadvantage.

The health insurance part is an important part of that. I have been a lawyer for significant numbers of disabled people who have tried to wrestle with these questions and families that have tried to wrestle with them, and the health benefit issue is a very important one. That often is more important than the cash payments. So, that is the one big thing I would add to that, to the question of how the incentives work.

Then second, we have not looked, I think, comprehensively at the question of how there are different populations of people within the disability community. The problem is disabled people are not all alike at all. So, there are some groups of people that need certain kinds of supports. I think this is where the New Freedom Initiative and the Americans With Disabilities Act may be crucial, and the availability of transportation and housing. If they are not available, which they sometimes are not, that may be even more of a disincentive than cash. So, I don't mean to argue with your premise, because I think you are right about the dollar amount, but I think it is complicated with respect to what leads people.

I think our process right now, which takes a very long time, contributes to some of this. I am very concerned about not only the length of time of the process but the backlogs that we are encountering. I think the truth is that when people have to argue and go on for 4 or 5 years, trying to make the case that they are disabled, when we then talk about the Ticket to Work or we talk about other initiatives to try to get them to work, psychologically we have spent an awful long time having them prove to us that they can't work.

So, I think the process, the length of time of the process, the complexity of the process, doesn't help in terms of people deciding to work or not work.

Mr. POMEROY. I found those answers to be very interesting. Thank you.

Chairman SHAW. I would like to follow up on Mr. Pomeroy's question with just one question, and then we will go on to the next panel. By how much or how far did the Ticket to Work legislation go toward helping those folks out that wouldn't go to work because they were losing their insurance, their health insurance?

Mr. GERRY. I think it made a significant positive contribution to that.

Chairman SHAW. Did it go far enough?

Mr. GERRY. Well, not all of the States have obviously implemented all of the options that are presented. I don't think we know yet. I mean, to be quite honest, we are finishing the rollout of the first phase.

Chairman SHAW. It would be helpful if you could give us an analysis of that, together with a look at each one of the States, because I think that was a very forward-looking piece.

Mr. GERRY. Chairman, all of the States, or the ones that are in the——

Chairman SHAW. Well, the ones that you think haven't gone far enough. Perhaps we can correspond with them and see what their problem is.

Mr. GERRY. I will provide that for the record.

[The information follows:]

The Ticket to Work and Work Incentive Improvement Act of 1999 provided several enhancements to health care for working individuals. The Department of Health and Human Services, through the Centers for Medicare and Medicaid Services (CMS), administers these health care provisions. SSA actively works with CMS in support of these enhancements. It is too early to say whether the legislation will be successful in preventing disabled individuals from losing their health insurance when they return to work and too early to judge how the individual States are faring in this regard. We can, however, describe the health care enhancements and the actions taken by the States to implement them. Two enhancements (section 112 Expedited Reinstatement and section 202 Expanded Medicare Coverage) are not State-based.

**Expedited Reinstatement (Section 112)**

- If an individual returns to work, has benefits terminated, and then finds that he/she can no longer work because of the previous (or a related) impairment, cash benefits and Medicare and/or Medicaid can be quickly reinstated. The work stoppage and application must occur within five years of the prior benefit termination.

**Expanding State Options under the Medicaid Program for Workers with Disabilities (Section 201)**

- This is an expansion of the Balanced Budget Act (BBA) 1997.
  - The BBA gave States the option to provide Medicaid coverage to individuals with disabilities whose earnings were too high to qualify under existing rules.
  - Net earnings had to be below 250% of the poverty level.
- Section 201 removed the 250% poverty limit on earnings, so now States have the option to provide Medicaid coverage to even more working people with disabilities.
- States can set their own income and resources limits to allow working individuals with disabilities who are at least 16 but less than 65 years old to buy into Medicaid.
- States have the option to provide opportunity for employed individuals with a medical improved disability to buy in Medicaid.
- States may require such individuals to pay premiums or other cost-sharing charges.
- 21 States have CMS approved plans in place.
- 2 more have a plan pending approval from CMS.
- The following identifies the status of States' implementation of this option of the BBA:
  - State Plans with CMS approval: Alaska, Arkansas, California, Connecticut, Iowa, Kansas, Maine, Minnesota, Mississippi, Nebraska, New Hampshire, New Jersey, New Mexico, Oregon, Pennsylvania, South Carolina, Utah, Vermont, Washington, and Wisconsin. Massachusetts has an 1115 waiver plan, which is similar to the Medicaid buy-in option (21 total).
  - State plans pending CMS approval: Missouri and Wyoming (2 total).

**Extension of Medicare Coverage (Section 202)**

- Effective October 1, 2000, Medicare coverage was extended an additional 4½ years for working individuals with disabilities.
- Medicare coverage continues at least 93 months after the TWP for most beneficiaries compared to the previous 39 months.
- SSA identified approximately 42,200 beneficiaries who were eligible for this extension on October 1, 2000 and mailed "Good News" notices in March 2000 to these individuals—SSDI beneficiaries who were closest to termination of their Medicare.
- SSA made system changes, modified notice language, provided training, and released operational procedures on or before the effective date.
- Approximately 52,000SSDI beneficiaries either have or had Extended Medicare coverage under TWWIIA (records selected from the effective date October 1, 2000 and later). As of July 2002, the estimated number of potential Extended Medicare coverage cases is approximately 115,000.
- Most SSDI recipients can return to work without fear of losing free Hospital Insurance for many years but still have to pay monthly SMI premium unless paid for by a third party).

**Grants to Develop and Establish State Infrastructures (Section 203)**

- States can be awarded grants to support infrastructures that provide services to working individuals with disabilities.
- The goal is for States to support people with disabilities in sustaining employment by modifying their health care systems to meet the needs of those individuals.
  - Examples of State activities: implement Medicaid buy-in program; improve personal care assistance services and programs; educate providers and consumers; create links to employment services.
- 38 States have been awarded infrastructure grants so far.
- CMS recently solicited proposals from States to develop infrastructure grants for 2003. The application cut off date was June 1, 2002. Applications are pending approval.

**Demonstration of Coverage under the Medicaid Program (Section 204)**

- This allows a State to apply for approval of a demonstration project under which specific individuals who are workers with a potentially severe disability are provided medical assistance.
- These projects are called the "Demonstration to Maintain Independence and Employment."
- This will also allow a State to target a specific population to provide services for a specified number of individuals to manage the progression of their conditions and remain employed.
- Four States are participating in this project: Both Washington D.C. and Mississippi for 500 individuals with HIV/AIDS, Rhode Island for 100 individuals with Multiple Sclerosis, and Texas for 500 individuals with bipolar/schizophrenia.
- CMS recently solicited proposals from States to develop demonstration projects for 2003. The application cut off date was June 1, 2002. Applications are pending CMS approval.

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Chairman SHAW. Thank you very much, sir.

Mr. GERRY. Thank you.

Chairman SHAW. I appreciate your testimony, and I am glad you brought that up. The next witnesses—Mr. Gerry, you may want to stay around to listen to Mr. Robertson. Well, you may not, too; I don't know. You are invited to stay around.

Mr. GERRY. Thank you.

Chairman SHAW. Robert Robertson is Director of Education, Work force, and Income Security Issues at the General Accounting Office; and Sarah Mitchell, who is the Chair of the Ticket to Work and Work Incentive Advisory Boards, whom we have already given

very good info to, I think, with the last questions that Mr. Pomeroy opened up. Welcome to both of you. We have your full testimony which will be made a part of record, and you may proceed as you see fit. Mr. Robertson, you are on.

**STATEMENT OF ROBERT E. ROBERTSON, DIRECTOR, EDUCATION, WORKFORCE, AND INCOME SECURITY ISSUES, U.S. GENERAL ACCOUNTING OFFICE**

Mr. ROBERTSON. Mr. Chairman, Members of the Subcommittee, thank you for inviting me to chat a little bit about the Social Security Administration's definition of disability. I do have a live mike here, I hope.

I just want to make three points this morning. The first point is, and I will admit right off the bat that this is stating the obvious, but sometimes that is a good thing to do. My first point is that the world has changed since the DI and SSI Programs were first initiated back in the fifties and seventies respectively. Over the years, scientific advances, changes in the nature of work, and social changes have generally enhanced the potential of people with disabilities to work. More specifically, medical advancements such as organ transplantations, assistive technologies such as advances in wheelchair designs, have given more independence to some individuals; and, at the same time, the move from a manufacturing-based economy to a service—and knowledge-based type of economy has opened new opportunities for people with disabilities.

Finally, social changes have altered the expectations for people with disabilities. The Americans With Disabilities Act, for example, has fostered the expectation that people with disabilities can work and have the right to work.

The potential implication of all of these changes to the Nation's disability programs really cut to the very heart of the questions that are the focus of this Committee's meeting this morning. In other words, to what extent do the current disability programs and, in particular, the criteria that govern the disability decisions within those programs, reflect these rather significant medical, economic, and social changes?

Now, that leads to my second major point, which is simply that, as has been referred to earlier in this hearing, in our view, the DI and SSI disability criteria have not kept pace with these advances and changes. As you are aware, depending on a claimant's impairment, decisions about an individual's eligibility for disability benefits can be based on both medical and labor market criteria. SSA is in the midst of an effort that began in the early nineties to update the medical portion of its criteria; however, progress has been slow. The SSA doesn't expect to complete developing proposed changes until the end of 2003. Furthermore, even if the criteria were fully updated, the program as currently designed by statute and regulation does not require SSA employees to consider possible effects that new treatments or assistive technologies could have on the claimant's ability to work, unless a physician has already prescribed the treatment. As a result, treatments that could help restore function in some people with certain impairments may not be factored into the disability decision. Now, with respect to the labor market portion of the disability criteria, SSA is currently using out-

dated information about the types and demands of jobs in the economy. It currently relies upon a database of occupational listings that haven't been updated since 1991.

Now I am to my third and final point—actually this is a series of points. They all fall under the general category of where do we go from here? How do we incorporate the medical advances, the labor market, and societal changes that I have been talking about into the program's disability criteria? The short answer is that some steps can be taken within the existing program design, while others would require more fundamental changes. Within the context of the current statutory and regulatory framework, SSA will need to continue to update the medical portion of the disability criteria and then vigorously expand its efforts to examine labor market changes.

However, in addition, policymakers and Agency officials should look beyond the traditional concepts that underlie the DI and SSI Programs to reexamine the very core of Federal disability programs, including looking at the eligibility standards, benefit structures, and the return to work assistance. This would be done with a focus on taking advantage of the medical, economic, and social changes that we have been talking about. This would include maximizing opportunities to work in today's environment, while providing financial support when and where it is needed.

However, before these fundamental changes can be considered, policymakers need critical information on various policy options, including what works, what needs to be fundamentally reoriented, and the cost of such changes. These hearings provide a means to explore possible program design changes and to identify the information and research that is necessary to evaluate the potential impact of these changes.

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

[The prepared statement of Mr. Robertson follows:]

**Statement of Robert E. Robertson, Director, Education, Workforce, and Income Security Issues, U.S. General Accounting Office**

Mr. Chairman and Members of the Subcommittee:

Thank you for inviting me here to testify during your hearing on the definition of disability used by the Social Security Administration (SSA) in the Disability Insurance (DI) and Supplemental Security Income (SSI) programs. Since these programs began, much has changed and continues to change in the arenas of medicine, technology, the economy, and societal views and expectations of people with disabilities. These changes have generally enhanced the potential of people with disabilities to work as well as the kinds of jobs that are available. Moreover, these programs have grown. In 2001, SSA provided $73.2 billion in cash benefits to 8.8 million working-age adults. With such an extensive cash outlay and such a large beneficiary population, it is important to use updated scientific and economic information to evaluate claims for disability benefits.

Today I will discuss the results of our examination of SSA's efforts to update the disability criteria the agency uses to make eligibility decisions for DI and SSI benefits. I will focus my remarks on (1) the scientific advances, economic changes, and social changes that have occurred in recent years that relate to the disability criteria used in DI and SSI eligibility decisions, (2) the extent that DI and SSI disability criteria have been updated to reflect these changes, and (3) the implications of fully incorporating scientific advances, economic changes, and social changes into the DI and SSI disability criteria and program design. To develop this information, we reviewed agency documents, SSA's advisory board reports, our prior reports, and other literature. In addition, we interviewed agency officials and several experts in the field.

In summary, first we found that scientific advances, changes in the nature of work, and social changes have generally enhanced the potential for people with disabilities to work. Medical advancements, such as organ transplantations, and assistive technologies, such as advances in wheelchair design, have given more independence to some individuals. At the same time, a service—and knowledge-based economy has opened new opportunities for people with disabilities, while social changes, reflected in the Americans with Disabilities Act, have fostered the expectation that people with disabilities can work and have the right to work. Second, we found that DI and SSI disability criteria have not kept pace with these advances and changes. Depending on the claimants' impairment, decisions about an individual's eligibility for disability benefits can be based on both medical and labor market criteria. SSA is in the midst of an effort to update the medical portion of the disability criteria, but the pace is slow. However, even if the criteria were fully updated, the program as currently designed does not require SSA employees to consider the possible effect that treatments or assistive technologies could have on a claimant's ability to work, unless a physician has already prescribed the treatment. Moreover, with respect to the labor market portion of the disability criteria, SSA is using outdated information about the types and demands of jobs in the economy.

Finally, regarding the implications for incorporating the advances and changes into the programs' disability criteria, some steps can be taken within the existing program design and some would require more fundamental changes. Within the context of the current statutory and regulatory framework, SSA will need to continue to update the medical portion of the disability criteria and vigorously expand its efforts to examine labor market changes. However, in addition, policymakers and agency officials could look beyond the traditional concepts that underlie the DI and SSI programs to re-examine the core of federal disability programs—including eligibility standards, the benefits structure, and return-to-work assistance—with a focus on taking advantage of the medical, economic, and social changes. This would include maximizing opportunities to work in today's environment, while providing financial support when and where it is needed. To do so, they need critical information on various policy options, including what works, what needs to be fundamentally re-oriented, and the cost of such changes. To this end, approaches taken from the private disability insurers and other countries offer useful insights.

**Background**

Established in 1956, DI is an insurance program that provides benefits to workers who are unable to work because of severe long-term disability. In 2001, DI provided $54.2 billion in cash benefits to 6.1 million disabled workers.[1] Workers who have worked long enough and recently enough are insured for coverage under the DI program. DI beneficiaries receive cash assistance and, after a 24-month waiting period, Medicare coverage. Once found eligible for benefits, disabled workers continue to receive benefits until they die, return to work and earn more than allowed by program rules, are found to have medically improved to the point of having the ability to work, or reach full retirement age (when disability benefits convert to retirement benefits).[2] To help ensure that only eligible beneficiaries remain on the rolls, SSA is required by law to conduct continuing disability reviews for all DI beneficiaries to determine whether they continue to meet the disability requirements of the law.

SSI, created in 1972, is an income assistance program that provides cash benefits for disabled, blind, or aged individuals who have low income and limited resources. In 2001, SSI provided $19 billion in federal cash benefits to 3.8 million disabled and blind individuals age 18–64. Unlike the DI program, SSI has no prior work requirement. In most cases, SSI eligibility makes recipients eligible for Medicaid benefits. SSI benefits terminate for the same reasons as DI benefits, although SSI benefits also terminate when a recipient no longer meets SSI income and resource requirements (SSI benefits do not convert to retirement benefits when the individual reaches full retirement age). The law requires that continuing disability reviews be conducted for some SSI recipients for continuing eligibility.

The Social Security Act's definition of disability for adults under DI and SSI is the same: an individual must have a medically determinable physical or mental impairment that (1) has lasted or is expected to last at least 1 year or to result in

[1] Included among the 6.1 million DI beneficiaries are about 1.1 million beneficiaries who were dually eligible for SSI disability benefits because of the low level of their income and resources.

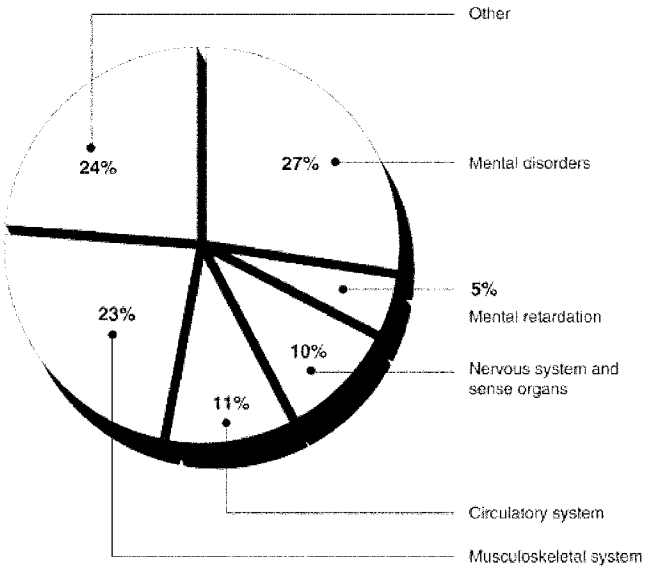
[2] Fewer than one-half of 1 percent of DI beneficiaries, and about 1 percent of SSI beneficiaries, leave the rolls each year because they are working.

death and (2) prevents the individual from engaging in substantial gainful activity.[3] Moreover, the definition specifies that for a person to be determined to be disabled, the impairment must be of such severity that the person not only is unable to do his or her previous work but, considering his or her age, education, and work experience, is unable to do any other kind of substantial work that exists in the national economy.

SSA regulations and guidelines provide further specificity in determining eligibility for DI and SSI benefits. For instance, SSA has developed the *Listing of Impairments* (the *Medical Listings*) to describe medical conditions that SSA has determined are severe enough ordinarily to prevent an individual from engaging in substantial gainful activity. SSA has also developed a procedure to assess applicants who do not have an impairment that meets or equals the severity of the *Medical Listings*. The procedure helps determine whether an applicant can still perform work done in the past or other work that exists in the national economy. While not expressly required by law to update the criteria used in the disability determination process, SSA has stated that it would update them to reflect current medical criteria and terminology. Over the years, SSA has periodically taken steps to update its Medical Listing. The last general update to the Medical Listing occurred in 1985.

In 2000, the most common impairments among DI's disabled workers were mental disorders and musculoskeletal conditions (see fig.1). These two conditions also were the fastest growing conditions since 1986, increasing by 7 and 5 percentage points, respectively.

**Figure 1: Percentage Distribution of DI Disabled Workers by Impairment Categories, 2000**

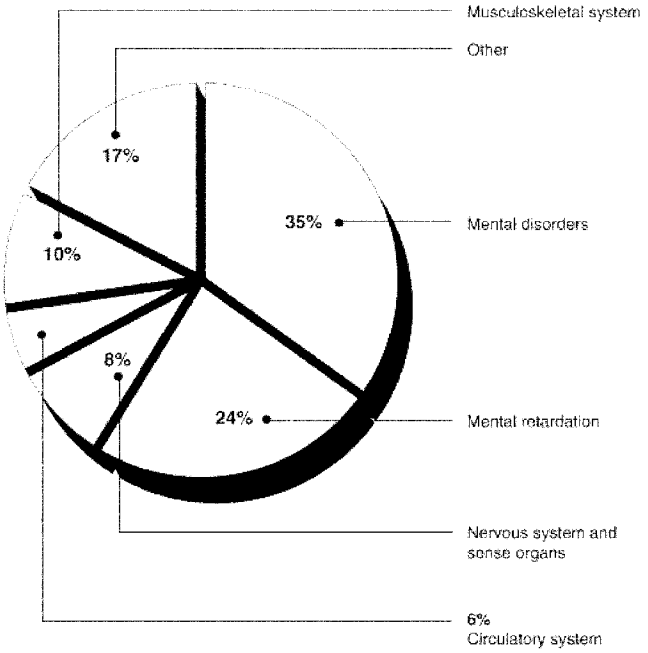



Source: Annual Statistical Supplement to the Social Security Bulletin, 2001.

In 2000, the most common impairments among the group of SSI blind and disabled adults age 18–64 were mental disorders and mental retardation (see fig. 2). Mental disorders was the fastest growing condition among this population since 1986, increasing by 9 percentage points.

[3] Regulations currently define substantial gainful activity for both the DI and SSI programs as employment that produces countable earnings of more than $780 a month for nonblind disabled individuals. The substantial gainful activity level is indexed to the annual wage index. The level for DI blind individuals, set by statute and also indexed to the annual wage index, is currently defined as monthly countable earnings that average more than $1,300.

**Figure 2: Percentage Distribution of SSI Adult Disabled Recipients by Impairment Categories, 2000**




Source: Annual Statistical Supplement to the Social Security Bulletin, 2001

**Recent Advances and Changes in Science, Work, and Society Have Enhanced Potential among People with Disabilities**

Scientific advances, changes in the nature of work, and social changes have generally enhanced the potential for people with disabilities to work. Medical advancements and assistive technologies have given more independence to some individuals. Moreover, the economy has become more service- and knowledge-based, presenting both opportunities and some new challenges for people with disabilities. Finally, social changes have altered expectations for people with disabilities. For instance, the Americans with Disabilities Act fosters the expectation that people with disabilities can work and have the right to work.

Medical and Technological Advances Lead to Better Understanding and Treatments

Recent scientific advances in medicine and assistive technology and changes in the nature of work and the types of jobs in our national economy have generally enhanced the potential for people with disabilities to perform work-related activities. Advances in medicine have led to a deeper understanding of and ability to treat disease and injury. Medical advancements in treatment (such as organ transplantations), therapy, and rehabilitation have reduced the functional limitations of some medical conditions and have allowed individuals to live and work with greater independence. Also, assistive technologies—such as advanced wheelchair design, a new generation of prosthetic devices, and voice recognition systems—afford greater capabilities for some people with disabilities than were available in the past.

Changes in the Nature of Work and Economy Expand Opportunities

At the same time, the nature of work has changed in recent decades as the national economy has moved away from manufacturing-based jobs to service—and knowledge-based employment. In the 1960s, earning capacity became more related to a worker's skills and training than to his or her ability to perform physical labor. Following World War II and the Korean Conflict, advancements in technology, including computers and automated equipment, reduced the need for physical labor. The goods-producing sector's share of the economy—mining, construction, and manufacturing—declined from about 44 percent in 1945 to about 18 percent in 2000. The

service-producing industry's share, on the other hand—such areas as wholesale and retail trade; transportation and public utilities; federal, state and local government; and finance, insurance, and real estate—increased from about 57 percent in 1945 to about 72 percent in 2000.

Although there may be more an individual with a disability can do in today's world of work than was available when the DI and SSI programs were first designed, today's work world is not without demands. Some jobs require standing for long hours, and other jobs, such as office work, require social abilities. These characteristics can pose particular challenges for some persons with certain physical or mental impairments. Moreover, other trends—such as downsizing and the growth in contingent workers—can limit job security and benefits, like health insurance, that most persons with disabilities require for participation in the labor force. Whether these changes make it easier or more difficult for a person with a disability to work appears to depend very much on the individual's impairment and other characteristics, according to experts.

Social Changes Promote Inclusion of People with Disabilities

Social change has promoted the goals of greater inclusion of and participation by people with disabilities in the mainstream of society, including adults at work. For instance, over the past 2 decades, people with disabilities have sought to remove environmental barriers that impede them from fully participating in their communities. Moreover, the Americans with Disabilities Act supports the full participation of people with disabilities in society and fosters the expectation that people with disabilities can work and have the right to work. The Americans with Disabilities Act prohibits employers from discriminating against qualified individuals with disabilities and requires employers to make reasonable workplace accommodations unless it would impose an undue hardship on the business.

**SSA Has Not Fully Updated Disability Criteria to Reflect These Advances and Changes**

The disability criteria used in the DI and SSI disability programs to help determine who is qualified to receive benefits have not been fully updated to reflect these advances and changes. SSA is currently in the midst of a process that began around the early 1990s to update the medical criteria they use to make eligibility decisions, but the progress is slow. Moreover, some changes resulting from treatment advances and assistive technologies are not fully incorporated into the decision-making process due to program design. In addition, the disability criteria have not incorporated labor market changes. In determining the effect that impairments have on individuals' earning capacity, SSA continues to use outdated information about the types and demands of jobs in the economy.

Slow Process to Update Medical Criteria Jeopardizes Progress Already Made

SSA's current effort to update the disability criteria began in the early 1990s. Between 1991 and 1993, SSA published for public comment the changes it was proposing to make to 7 of the 14 body systems in its *Medical Listings*.[4] By 1994, the proposed changes to 5 of these 7 body systems were finalized. The agency's efforts to update the Medical Listings were curtailed in the mid-1990s due to staff shortages, competing priorities, and lack of adequate research on disability issues.

SSA resumed updating the *Medical Listings* in 1998.[5] Since then, SSA has taken some positive steps in updating portions of the medical criteria it uses to make eligibility decisions, although progress is slow. As of early 2002, SSA has published the final updated criteria for 1 of the 9 remaining body systems not updated in the early 1990s (musculoskeletal) and a portion of a second body system (mental disorders). SSA also plans to update again the 5 body systems that were updated in the early 1990s. In addition, SSA has asked the public to comment on proposed changes for several other body systems. After reviewing the schedule and timing for the revisions, SSA recently pushed back the completion date for publishing proposed changes for all remaining body systems to the end of 2003.[6] The revised schedule

[4] Our analysis excludes SSA's changes to the childhood-related Medical Listings.

[5] To conduct the current update, SSA gathers feedback on relevant medical issues from state officials who help the agency make disability decisions. In addition, SSA has in-house expertise to help the agency keep abreast of the medical field and identify aspects of the medical criteria that need to be changed. SSA staff develop the proposed changes and forward them for internal, including legal and financial, review. Next, SSA publishes the proposed changes in the Federal Register and solicits comments from the public for 60 days. SSA considers the public comments, makes necessary adjustments, and publishes the final changes in the Federal Register.

[6] Social Security Administration, "Semiannual Unified Regulatory Agenda," Federal Register 67, no. 92 (13 May 2002): 34016—34038.

does not list target dates, with one exception, for submitting changes for final clearance to the Office of Management and Budget.

SSA's slow progress in completing the updates could undermine the purpose of incorporating medical advances into its medical criteria. For example, the criteria for musculoskeletal conditions—a common impairment among persons entering DI—were updated in 1985. Then, in 1991, SSA began developing new criteria and published its proposed changes in 1993 but did not finalize the changes until 2002; therefore, changes made to the musculoskeletal criteria in 2002 were essentially based on SSA's review of the field in the early 1990s. SSA officials told us that in finalizing the criteria, they reviewed the changes identified in the early 1990s and found that little had taken place since then to warrant changes to the proposed criteria. However, given the advancements in medical science since 1991, it may be difficult for SSA to be certain that all applicable medical advancements are in fact included in the most recent update.

**Although Changes Have Been Made, Treatment Advances and Assistive Technologies Are Not Fully considered in Decision-Making**

SSA has made various types of changes to the *Medical Listings* thus far. As shown in table 1, these changes, including the proposed changes released to the public for comment, add or delete qualifying conditions; modify the criteria for certain physical or mental conditions; and clarify and provide additional guidance in making disability decisions.

Table 1. Types of Changes Made (or Proposed) to SSA's Medical Listings during Current Update

| Type of Change | Examples | Rationales |
|---|---|---|
| Revise qualifying conditions | Remove peptic ulcer.[a]<br><br>Add inflammatory bowel disease by combining two existing conditions already listed: chronic ulcerative and regional enteritis. | Advances in medical and surgical management have reduced severity.<br><br>Reflect advances in medical terminology. |
| Revise evaluation and diagnostic criteria | Expand the types of allowable imaging techniques.<br><br>Reduce from three to two in the number of difficulties that must be demonstrated to meet the listings for a personality disorder.[b] | The *Medical Listings* previously referred to x-ray evidence. With advancements in imaging techniques, SSA will also accept evidence from, for example, computerized axial tomography (CAT) scan and magnetic resonance imaging (MRI) techniques.<br><br>Specific rationale not mentioned. |
| Clarify and provide additional guidance | Remove discussion on distinction between primary and secondary digestive disorders resulting in weight loss and malnutrition.<br><br>Expand guidance about musculoskeletal "deformity." | Distinction not necessary to adjudicate disability claim.<br><br>Clarify that the term refers to joint deformity due to any cause. |

[a] A condition removed from the *Medical Listings* means that SSA no longer presumes the condition to be severe enough to ordinarily prevent an individual from engaging in substantial gainful activities. However, an individual with a condition removed from the *Medical Listing* could still be found eligible under other considerations in the evaluation process.

[b] The criteria for a personality disorder are met when (a) the individual has certain behaviors defined in the *Medical Listings* and (b) those behaviors result in at least two of the following: (1) marked restriction of activities in daily living; (2) marked difficulties in maintaining social functioning; (3) marked difficulties in maintaining concentration, persistence, or pace; or (4) repeated episodes of decompensation (as specified in the *Medical Listings*).

Source: GAO analysis of SSA publications appearing in the *Federal Register*.

Despite these changes, program design issues have limited the extent that advances in medicine and technology have been incorporated into the DI and SSI dis-

ability decision-making criteria. The statutory and regulatory design of these programs limits the role of treatment in deciding who is disabled. Unless an individual has been prescribed treatment,[7] SSA does not consider the possible effects of treatment in the disability decision, even if the treatment could make the difference between being able and not being able to work. Thus, treatments that can help restore functioning to persons with certain impairments may not be factored into the disability decision for some applicants. For example, medications to control severe mental illness, arthritis treatments to slow or stop joint damage, total hip replacements for severely injured hips, and drugs and physical therapies to possibly improve the symptoms associated with multiple sclerosis are not automatically factored into SSA's decision making for determining the extent that impairments affect people's ability to work. Additionally, this limited approach to treatment raises an equity issue: Applicants whose treatment allows them to work could be denied benefits while applicants with the same condition who have not been prescribed treatment could be allowed benefits.

As with treatment, the benefits of innovations in assistive technologies—such as advanced prosthetics and wheelchair designs—have not been fully incorporated into DI and SSI disability criteria because the design of these programs does not recognize these advances in disability decision making. For example, SSA does not require an applicant who lost a hand to use a prosthetic before the agency makes its decision about the impact of this condition on the ability to engage in substantial gainful activities.

Disability Criteria Not Updated to Reflect Labor Market Changes

For an applicant who does not have an impairment that meets or equals the severity of the *Medical Listings*, SSA evaluates whether the individual is able to work despite his or her limitations. Specifically, an individual who is unable to perform his or her previous work and other work in the labor market is awarded benefits. SSA relies upon the Department of Labor's Dictionary of Occupational Titles (DOT) as its primary database to help make this determination. However, Labor has not updated DOT since 1991 and does not plan to do so.

Although Labor has been working on a replacement for the DOT called the Occupational Information Network (O*NET) since 1993, Labor and SSA officials recognize that O*NET cannot be used in its current form in the DI and SSI disability determination process. The O*NET, for example, does not contain SSA-needed information on the amount of lifting or mental demands associated with particular jobs. The agencies have discussed ways that O*NET might be modified or supplemental information collected to meet SSA's needs, but no definitive solution has been identified. Absent such changes to the O*NET, SSA officials have indicated that an entirely new occupational database could be needed to meet SSA's needs, but such an effort could take many years to develop, validate, and implement. Meanwhile, as new jobs and job requirements evolve in the national economy, SSA's reliance upon an outdated database further distances the agency from the current market place.

**Incorporating Advances and Changes into the Disability Criteria Could Have Profound Implications**

In order to incorporate the medical, economic, and social advances and changes into the programs' disability criteria, some steps can be taken within the existing program design, while others would require more fundamental changes. Within the context of the current statutory and regulatory framework, SSA will need to continue to update the medical portion of the disability criteria and vigorously expand its efforts to examine labor market changes. However, in addition, policymakers and agency officials could look beyond the traditional concepts that underlie the DI and SSI programs to re-examine the core elements of federal disability programs. This broader approach would raise a number of significant policy issues, and more information is needed to address them. To this end, approaches taken by private disability insurers offer useful insights.

Some Disability Criteria Could Be Updated Within Program Design

Within the context of the programs' existing statutory and regulatory design, SSA will need to further incorporate advances and changes in medicine and the labor market. That is, SSA should continue to update the criteria used to determine which applicants have physical and mental conditions that limit their ability to

[7] SSA's regulations require that in order to receive benefits, claimants must follow treatment prescribed by the individual's physician if the treatment can restore his or her ability to work. SSA, however, does not consider the effects of treatment that has been prescribed but not received under certain circumstances, such as when the treatment is contrary to the established teaching and tenets of the individual's religion.

work. As we noted above, SSA began this type of update in the early 1990s, although the agency's efforts have focused much more on the medical portion than labor market issues. In addition to continuing the medical updates, SSA will need to vigorously expand its efforts to more closely examine labor market changes. SSA's results could yield updated information used to make decisions about whether or not applicants have the ability to perform their past work or any work that exists in the national economy.

Fully Incorporating Advances and Changes Has Profound Implications on Program Design

More fundamentally, the recent scientific advances and labor market changes discussed earlier raise issues about the programs' basic design, goals, and orientation in an economy increasingly different from that which existed when these programs were first designed. Whereas the programs currently are grounded in assessing and providing benefits based on individuals' incapacities, fully incorporating recent advances and changes could result in SSA assessing individuals with physical and mental conditions with a focus on their capacity to work and then providing them with, or helping them obtain, needed assistance to improve their capacity to work. Moreover, reorienting programs in this direction is consistent with increased expectations of people with disabilities and the integration of people with disabilities into the workplace, as reflected in the Americans with Disabilities Act. We have recommended in prior reports that SSA place a greater priority on work, design more effective means to more accurately identify and expand beneficiaries' work capacities, and develop legislative packages for those areas where the agency does not have legislative authority to enact change. However, for people with disabilities who do not have a realistic or practical work option, long-term cash support would remain the best option.

In reexamining the fundamental concepts underlying the design of the DI and SSI programs, approaches used by other disability programs may offer some valuable insights. For example, our prior review of three private disability insurers shows that they have fundamentally reoriented their disability systems toward building the productive capacities of people with disabilities, while not jeopardizing the availability of cash benefits for people who are not able to return to the labor force.[8] These systems have accomplished this reorientation while using a definition of disability that is similar to that used by SSA's disability programs.[9] However, it is too early to fully measure the effect of these changes. In these private disability systems, the disability eligibility assessment process evaluates a person's potential to work and assists those with work potential to return to the labor force. This process of identifying and providing services intended to enhance a person's productive capacity occurs early after disability onset and continues periodically throughout the duration of the claim. In contrast, SSA's eligibility assessment process encourages applicants to concentrate on their incapacities, and return-to-work assistance occurs, if at all, only after an often lengthy process of determining eligibility for benefits. SSA's process focuses on deciding who is impaired sufficiently to be eligible for cash payments, rather than on identifying and providing the services and supports necessary for making a transition to work for those who can. While cash payments are important to individuals, the advances and changes discussed in this testimony suggest the option to shift the disability programs' priorities to focus more on work.

Reorienting the DI and SSI programs would have implications on their core elements—eligibility standards, the benefits structure, and the access to and cost of return-to-work assistance. We recognize that re-examining the programs at the broader program level raises a number of profound policy questions, including the following:

- **Program design and benefits offered**—Would the definition of disability change? Would some beneficiaries be required to accept assistance to enhance work capacities as a precondition for benefits versus relying upon

[8] U.S. General Accounting Office, SSA Disability: Other Programs May Provide Lessons for Improving Return-to-Work Efforts, GAO–01–153 (Washington, D.C.: Jan. 12, 2001). This report also addresses the reorientation of the social insurance systems of Sweden and The Netherlands toward a return-to-work focus. In addition, this report addresses the German social insurance system, which has had a long-standing focus on the goal of rehabilitation before pension.

[9] In general, for the three private insurers that we studied, claimants are initially considered eligible for disability benefits when, because of injury or sickness, they are limited in performing the essential duties of their own occupation and they earn less than 60 to 80 percent of their predisability earnings, depending upon the particular insurer. After 2 years, this definition generally shifts from an inability to perform one's own occupation to an inability to perform any occupation for which the claimant is qualified by education, training, or experience. It is this latter definition that is most comparable to the definition used by SSA.

work incentives, time-limited benefits, or other means to encourage individuals to maximize their capacity to work? What can SSA accomplish through the regulatory process and what requires legislative action?

- **Accessibility and cost**—Are new mechanisms needed to provide sufficient access to needed services? In the case of DI and SSI, what is the impact on the ties with the Medicare and Medicaid programs? Who will pay for the medical and assistive technologies and will beneficiaries be required to defray costs? Would the cost of providing treatment and assistive technologies in the disability programs be higher than cash expenditures paid over the long-term? Will net costs show that some expenditures could be offset with cost savings by paying reduced benefits?

Critical information, including various policy options, needs to be collected to address these and other issues. SSA's current research efforts could help begin to address some of these broader policy issues. SSA is beginning to conduct a number of studies that recognize that medical advances and social changes require the disability programs to evolve. For instance, the agency has funded a project to design a study that would assess the extent to which the *Medical Listings* are a valid measure of disability and has began to design a study of the most salient job demands in comparison to applicants' ability to perform work that exists in the national economy.[10] Such research projects could provide insight into ways that medical and technological advances can help persons with disabilities work and live independently. Nevertheless, these studies do not directly or systematically address many of the implications of factoring in medical advances and assistive technologies more fully into the DI and SSI programs. More research on the cost and outcomes of various program changes that bring up-front help to individuals receiving or applying for disability benefits would be needed.

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

**GAO Contact and Staff Acknowledgments**

For further information regarding this testimony, please contact Robert E. Robertson, Director, or Kay E. Brown, Assistant Director, Education, Workforce, and Income Security at (202) 512–7215. In addition, Barbara H. Bordelon, Brett S. Fallavollita, Carol Dawn Petersen, and Daniel A. Schwimer made key contributions to this testimony.

Chairman SHAW. Ms. Mitchell, welcome.

## STATEMENT OF SARAH WIGGINS MITCHELL, CHAIR, TICKET TO WORK AND WORK INCENTIVES ADVISORY PANEL, SOCIAL SECURITY ADMINISTRATION

Ms. MITCHELL. Thank you. Mr. Chairman and Members of the Subcommittee, good morning. My name is Sarah Wiggins Mitchell, and I am the Chair of the Ticket to Work and Work Incentives Advisory Panel. On behalf of the panel, I want to thank the Subcommittee for this opportunity to testify on the definition of disability underlying the disability programs administered by the Social Security Administration. I am here to represent the panel's interest and opinions on the topic in question. The definition is a key factor in determining how our country establishes not only eligibility for cash benefits, but also for health care, employment support, and many other services and supports for millions of people with disabilities.

Given that the definition is used as a gatekeeper to many public programs, the panel certainly has a keen interest in this topic. Fur-

[10] In addition, SSA has (1) sponsored a project intended to enable SSA to estimate how many adults live in the United States who meet the definition of disability used by SSA and to better understand the relationship between disability, work, health care, and community and (2) funded a study to examine the impact and cost of assistive technology on employment of persons with spinal cord injuries and the associated costs.

ther, the Social Security Administration's application of the definition of disability and its internal disability determination process are central to the implementation of the new Ticket to Work and Work Incentives Improvement Act programs and, as such, are central to the advisory duties of the panel.

Because I represent the Ticket to Work and Work Incentives Advisory Panel, I would like to say a few words about the panel and its responsibilities. The Ticket to Work legislation established the advisory panel within the Social Security Administration to advise the President, the Congress, and the Commissioner of Social Security on issues related to work incentive programs, planning, and assistance for individuals with disabilities and the Ticket to Work and self-sufficiency program established under this Act. The panel has an important role to play in the implementation of this new law, which provides new choices and opportunities for persons with disabilities to enter or reenter the workforce.

The panel is a bipartisan group of 12 citizens, 4 of whom were appointed by the President, 4 by the Senate, and 4 by the House of Representatives. We represent a cross-section of individuals with diverse racial and ethnic backgrounds, and with experience and expert knowledge as recipients, providers, disabled veterans, employers and employees in the field of employment services, vocational rehabilitation, and other disability-related support services. The majority of us are individuals with disabilities, their representatives, or family Members. Several panel Members have had personal experience as beneficiaries of Social Security as well.

The panel offers the following general suggestions on the disability determination process used by SSA. I will mention these topics just briefly now, but our written testimony provides more detail.

First, early intervention. Employment support services under the Ticket program or other programs should begin as soon as possible, even before the beneficiary quits work and spends several months demonstrating to SSA that he or she cannot work at earnings levels above the SGA threshold.

Second, higher reimbursement rates under the Ticket program. Under the Ticket program, providers of employment services will be reimbursed at a higher rate for persons in hard-to-serve categories. One possibility is that the disability determination process should incorporate a decision on whether the beneficiary qualifies for this higher reimbursement rate.

Next, the medical improvement expected designation. Because the medical improvement expected designation will be used to limit eligibility for the Ticket program, the criteria for the designation should be reviewed as part of the broader review of the disability determination process.

Then there is the question of partial disability benefits. Under the disability insurance program, a beneficiary can face a cash cliff; that is, the total loss of all cash benefits if earnings in a given month exceed a specific threshold. This all-or-nothing DI benefit structure, which is being reevaluated under the Ticket to Work program, should be considered in your review.

Finally, I would like to specifically consider persons with mental disabilities. The disability determination process through which

SSA implements the disability definition was originally designed to deal primarily with physical disabilities. A thorough review of the criteria for disability determinations to ensure equitable treatment for persons with mental or other disabilities may be appropriate.

In closing, on behalf of the panel, I would like to offer to solicit formal public comment on the disability definition and the disability determination process. Comment would be taken as part of a public meeting conducted by the panel, by letter or telephone or by e-mail. We could also solicit input from national and international researchers and experts. All of the comments and input would be considered in the panel's public discussions and deliberations. We would then report the panel's major findings and conclusions to the Subcommittee in writing.

Let me once again thank the Subcommittee for this opportunity to testify on a topic that has major implications for our panel's efforts to increase employment among persons with disabilities. On behalf of the entire panel, I want to assure you of our commitment to work in partnership with you, the administration, and the disability community on this important and far-reaching policy concern. Thank you.

[The prepared statement of Ms. Mitchell follows:]

**Statement of Sarah Wiggins Mitchell, Chair, Ticket to Work and Work Incentives Advisory Panel, Social Security Administration**

Good morning. My name is Sarah Wiggins Mitchell and I am the Chair of the Ticket to Work and Work Incentives Advisory Panel. On behalf of the Panel, I want to thank the Subcommittee for this opportunity to testify on the definition of disability underlying the disability programs administered by the Social Security Administration. I am here to represent the Panel's interest and opinions on the topic in question. The definition is a key factor in determining how our country establishes not only eligibility for cash benefits but also for health care, employment support and many other services and supports for millions of people with disabilities.

Given that the definition is used as a gatekeeper to many public programs, the Panel has a keen interest in this topic. Further, the Social Security Administration's application of the definition of disability and its internal disability determination process are central to the implementation of the new Ticket to Work and Work Incentives Improvement Act programs and, as such, central to advisory duties of the Panel.

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The Panel is a bipartisan group of twelve citizens, four of whom were appointed by the President, four by the Senate and four by the House of Representatives. We represent a cross-section of individuals with diverse racial and ethnic backgrounds and with experience and expert knowledge as recipients, providers, disabled veterans, employers and employees in the fields of employment services, vocational rehabilitation and other disability related support services. The majority of us are individuals with disabilities, their representatives, or family members. Several Panel members have had personal experience as beneficiaries of Social Security.

The Panel offers the following general suggestions on the disability determination process used by SSA. I will mention these topics briefly now but our written testimony provides more detail.

- *Early Intervention.*—Employment support services under the Ticket Program or other programs should begin as soon as possible, even before the

beneficiary quits work and spends several months demonstrating to SSA that he or she cannot work at earnings levels above the SGA threshold.

- *Higher Reimbursement Rates Under the Ticket Program.*—Under the Ticket Program, providers of employment support services will be reimbursed at a higher rate for persons in hard-to-serve categories. One possibility is that the disability determination process should incorporate a decision on whether the beneficiary qualifies for this higher reimbursement.
- *Medical Improvement Expected.*—Because the MIE designation will be used to limit eligibility for the Ticket Program, the criteria for the designation should be reviewed as part of the broader review of the disability determination process.
- *Partial Disability Benefits.*—Under the Disability Insurance Program, a beneficiary can face a "cash cliff"—the total loss of all cash benefits if earnings in a given month exceed a specific threshold. The "all or nothing" DI benefit structure—which is being reevaluated under the Ticket to Work Act—should be considered in your review.
- *Persons with Mental Disabilities.*—The disability determination process through which SSA implements the disability definition was originally designed to deal primarily with physical disabilities. A thorough review of the criteria for disability determinations to ensure equitable treatment for persons with mental or other disabilities may be appropriate.

In closing, I would like to offer, on behalf of the Panel, to solicit formal public comment on the disability definition and the disability determination process. Comment would be taken as part of a public meeting conducted by the Panel, by letter or telephone and by e-mail. We could also solicit input from national and international researchers and experts. All of the comments and input would be considered in the Panel's public discussion and deliberations. We would then report the Panel's major findings and conclusions to the Subcommittee in writing.

Let me once again thank the Subcommittee for this opportunity to testify on a topic that has major implications for our Panel's efforts to increase employment among persons with disabilities. And finally, on behalf of the entire Panel, I want to assure you of our commitment to work in partnership with you, the Administration and the disability community on these important and far-reaching policy concerns.

Detailed Comments: The Panel offers five comments on the definition of disability used by SSA:

- *The Need for Early Intervention.*—The Panel is concerned about the delay in the delivery of employment support services as the Ticket Program is now structured. Research has shown that many apply for Disability Insurance benefits not as the first option, but as the last resort. In many instances the person with a disability might have been able to continue working at his or her original job if provided with a key support, such as health insurance, transportation, or a workplace accommodation. Under the current system, such a person must end employment and then attempt to qualify for cash benefits, in order to be eligible for employment support services. This means that months pass during the medical determination before the beneficiary becomes eligible for employment support services under the Ticket Program. Delays in processing times exacerbate this problem. By the time of the determination the beneficiary will probably have severed the relationship with the previous employer. "Employment support services" at this point may mean both finding a new employer and arranging for a much broader range of supports. By contrast, early intervention—providing employment support services while the person is still working with the original employer—will probably minimize the services needed and maximize continued employment.
- *Higher Reimbursement Rates Under the Ticket Program.*—Under the Ticket Program, providers of job support services will be reimbursed at a higher rate for persons in hard-to-serve categories. For example, some with significant disabilities would be considered hard-to-serve. This implies that a determination must be made for each beneficiary as to whether he or she qualifies for the higher reimbursement rate. One possibility is that this determination would be incorporated into the existing disability determination process.
- *Medical Improvement Expected.*—Under the current disability determination process, some beneficiaries are assigned the designation medical improvement expected (MIE) which implies they will undergo a continuing disability review (CDR). According to the Ticket Program regulations re-

cently issued, the MIE designation will also limit eligibility for the Ticket Program. That is, the MIE designation now will be used to determine eligibility for a program without a due process mechanism in place. Because the program eligibility effects of the MIE designation have expanded considerably under the Ticket Program, the criteria for the designation should be reviewed as part of the broader review of the disability determination process. SSA is planning such a review.

- *Partial Disability Benefits.*—Under the Disability Insurance Program, a beneficiary can face a "cash cliff"—the total loss of all cash benefits if earnings in a given month exceed a specific threshold. This cash cliff is thought to pose a powerful work disincentive. It should also be noted that the SSI program uses a gradual reduction in benefits, so that SSI beneficiaries do not face a cash cliff. The "all or nothing" DI benefit structure—which is being reevaluated under the Ticket to Work Act—should be considered in your review.
- *Persons with Mental Disabilities.*—The disability determination process through which SSA implements the disability definition was originally designed to deal primarily with physical disabilities. Yet recent program statistics document the growing proportions of beneficiaries with mental disabilities. In 1999 32 percent of disabled workers under the DI program had a diagnosis of mental retardation or other mental disorder. In the same year, 59 percent of blind/disabled SSI beneficiaries had a mental disability, similarly defined. A thorough review of the criteria for disability determinations to ensure equitable treatment for persons with mental or other disabilities may be appropriate. We note that later this year SSA plans to invite public comment on the Listings of Impairments for mental illnesses.

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Chairman SHAW. Thank you. Mr. Matsui.

Mr. MATSUI. Mr. Robertson, I want to ask you some questions about— you have a rather broad approach to disability, and obviously adopted technology is part of it. I would imagine, you even mentioned somewhat the health insurance aspects of all this, although it is not a large percentage of it for people that are significantly disabled and have a permanent condition. Could you put this under the current Social Security program as it is defined? If so, what would you suggest in terms of Mr. Gerry, who—the previous speaker, in terms of how we should finance it, and whether it should come out of the current program or it should be financed out of HHS?

Mr. ROBERTSON. Well, I will answer the last part of your question first. I don't have the answer to the question on how you finance it. The first part of your question gives me an opportunity to talk a little bit about some of the concerns we have had with the definition of disability. We have discussed them in the past, and I think it is a good opportunity to talk about them again. I will go a little bit beyond the definition of disability, to some of the processes.

Basically, over the past few years, through testimony and through our reports, we have identified a number of concerns, starting with the definition, which is an either/or type of a definition—you are either disabled or you are not disabled. That just doesn't reflect the real world. The impact of a disability on a person's ability to work really ranges on a wide continuum. So, that is part of the definition that does indeed concern us.

The other thing that concerns us—again, this goes a little bit beyond the definition to the process part—is that the eligibility determinations are all geared to determining a person's incapacity rather than their capacity. So, the only way that you, quote-unquote,

win in the system is if you can prove that you are disabled. Basically, right now the process doesn't, at the very beginning, have a lot in the way of an evaluation of, okay, if you have certain services, if you have certain rehabilitation, what is the possibility of getting you back into the work force.

Mr. MATSUI. Right.

Mr. ROBERTSON. Then the final part of the process that we have had concerns with, and we have expressed this before also, is that the return to work services really don't get involved until after what could be a very lengthy determination process.

Mr. MATSUI. I think you hit it on the nose when you talked about— well, I don't want to suggest anyone would game the system, but there is an incentive to be permanently disabled to collect these benefits. Now, the problem I am having is—because I agree that we need to stop this, we need to try to get people back in the work force if we can possibly do it. Is this the right forum in which to discuss that? I mean, should this be under the Social Security program, or should it be another program sponsored by HHS or the Labor Department? See, because I don't want anyone to be misled in the audience and the American public that all of a sudden, you know, through Social Security we are going to be able to set up a program in which we bring disabled people and rehabilitate them through adopted technology, through drug treatment—not your issue—and other ways. Because that is, from my understanding, and I have been on this Subcommittee for quite a few years and going all the way back to 1983, that—1982, actually—that the purpose of disability under the Social Security system is permanent disability for—and you make it up through lost wages.

We are talking about a whole new set of issues here. I think that is wonderful, because I think we have been lacking in really trying to help people in these areas. Is this a proper function of the Social Security system, given our fundamental shortfalls coming up? Is this a legitimate issue from GAO's perspective?

Mr. ROBERTSON. I am not here to comment where this program—what Agency this program should be in. Let me just, if I can——

Mr. MATSUI. We have to. I mean, I can read an academic book and say, hey, this is great; but it has still have to fit within certain categories and certain departments. I need help in that respect. I mean, we can't—and I really appreciate—and I am not trying to be adversarial with you. We can't have you come up here and say we need to do all these wonderful things, and we say, but Social Security can't handle that. Because I don't want this to be used as a way to kind of wedge in, like we are going to promise all these benefits and it may not be possible, but go ahead.

Mr. ROBERTSON. Well, I was about to agree with one part of what you were saying in terms of what we are talking about here is—ultimately, having an approach that really cuts across the responsibilities of many agencies——

Mr. MATSUI. That is exactly right.

Mr. ROBERTSON. Right now. What you ultimately would ideally want to end up with would be something that had a very integrated approach. Now, how you get there, I am not prepared today to talk to you about.

Mr. MATSUI. You are absolutely right. That is why we probably should get the Secretary of HHS in, and some others, so that we can discuss how we can really implement some of the suggestions you have in your program. Because I think it is a legitimate issue, and it might even reduce the caseload of those people that are currently receiving disability benefits. Because, again, you may catch some of these people and find some way through rehabilitation, through some other approach.

I mean, I agree with you that the problem we are facing, we have a fifties definition for 2002; but we can't all do it through the SSA. I mean, Mr. Gerry is under a disability when he tried—because he can't get involved in rehabilitative services. I mean, he has got a backlog of a half a million people.

So, I guess that is my concern right now. I mean, somehow we need to bring in these other agencies. Am I correct about that?

Mr. ROBERTSON. Yes, but there is the need for integrated services.

Mr. MATSUI. Exactly.

Mr. ROBERTSON. It is not just unique to the disability area.

Mr. MATSUI. Right.

Mr. ROBERTSON. You know, you go into the Labor Department, and they are trying to integrate work placement services among a number of agencies. So, this is just another of the big management challenges that is accompanying modern-day life, I think.

Mr. MATSUI. If I may just ask one more follow-up question, Mr. Chairman. Are you working with—as you develop your report, are you working with HHS, and Labor as well, in terms of how they might integrate some of your thoughts into their Department? Because I think we ought to pursue this. I think HHS and Labor ought to be involved in what you are suggesting here.

Mr. ROBERTSON. Whenever we do our work, you can count on the fact that we try to take a broad cross-look at all of the issues from a number of different perspectives.

Mr. MATSUI. Great. Thank you.

Chairman SHAW. Mr. Hulshof.

Mr. HULSHOF. Thank you, Mr. Chairman. I want to seize upon the tail end of the testimony where you—and I am intrigued by the panel's offer to solicit public opinion or comment on this whole disability determination process because, as Mr. Robertson has—the entirety, the majority of his testimony is related to that conundrum that we face as far as revamping that disability determination. How would the panel undertake such an effort?

Ms. MITCHELL. Well, I don't know whether you are aware or not, but actually over the past 2 years we have had public hearings across the country. We have also had hearings by teleconference and——

Mr. HULSHOF. Not on this specific issue?

Ms. MITCHELL. Not on this specific issue. Basically, it was on the Ticket to Work and on the Notice of Proposed Rulemaking and the regulations for the Ticket to Work. I think many consumers—and certainly the panel— see this whole issue of the definition of disability and the Agency's internal disability determination process as very critical to the success of the Ticket program itself. It

is certainly one of the very critical elements that needs to be discussed.

Mr. HULSHOF. I promise this is not a loaded question. Just a little bit of background: As you know from the Ticket to Work program, back in 1998 with the former Chairman of this Committee, when we first began to discuss Ticket to Work, which was passed in 1998 but not signed into law until— Congress took another run in 1999, and then President Clinton signed it in December. That is—for which the mission that the panel has, of course, is rolling it out. I spoke a couple of months ago to the Missouri State meeting, and they are excited about it.

Can you give us some—here is the loaded question. Can you give us assurances that if you were to undertake this other mission of disability determination, that you would not—that this would not take away from your mission that you have been charged with by Congress?

Ms. MITCHELL. Well, let me clarify. I mean, we would be seeking input on that process, but probably wanting to focus it around the Ticket. So that this would not be a separate charge for the advisory panel.

Mr. HULSHOF. I got you.

Ms. MITCHELL. We would be look at it insofar as it impacts and affects people who are using the Ticket.

Mr. HULSHOF. Especially it is an interesting point you raise about early intervention.

Ms. MITCHELL. Yes.

Mr. HULSHOF. Perhaps it is too early to tell, and not that the panel has accumulated a lot of definitive information or data that you would like to publish. Does the panel think that the cost of providing early outreach would provide a significant savings in the long run, with less people coming to the disability rolls; or would they come to the rolls later in time? Does the panel have a sense on that?

Ms. MITCHELL. Well, I know when we have looked at the issue of youth coming onto the Ticket, I think the data show that the earlier people have access to employment supports and services to enter employment, the more likely it is that they are in fact going to be employed and—if they get onto benefits, the greater likelihood is that they are going to stay on benefits.

In one of our reports I think we tried to address the issue of the cost effectiveness of, for example, bringing youth on at an earlier age. So, I don't have all the data. We would be glad, I would certainly be glad to have the panel provide that to you. That is our underlying theory.

[The information was not received at the time of printing:]

Mr. HULSHOF. Good. Mr. Robertson, the record as it is being taken down, of course, is a verbal transcript of words that we—questions we ask and answers you give. At the time that you mentioned, I think to Mr. Matsui's question, that you would like to focus, or believe that the program should actually focus on the capacity for work rather than the incapacity to work, the record won't show that probably every Member that is up here was nodding in agreement with you, plus about half the spectators that are here.

Before any changes in that regard could be undertaken, I would think that the Social Security Administration would need to have some pretty good hard data or research. Are they moving forward to obtain such research? If they are, are those efforts adequate in your view?

Mr. ROBERTSON. I am really happy that you asked that question.

Mr. HULSHOF. I have your note here that says, "Ask me this question." No, I am just kidding.

Mr. ROBERTSON. For a number of years, you know, we have been asking Social Security to come up with a comprehensive plan, return-to-work type of strategy. In my view, part of that strategy would have to be an agenda of systematic research to get some of the data that we say we don't have right now.

You have picked up on this earlier, too, Mr. Chairman. Unless we have that agenda of systematic research that gives us the data we need to explore some of the options that we have talked about now and some of the options that we are going to be talking about later on, we are going to be having another hearing next year, and we are going to be asking the same questions next year, and we are going to be getting the same answers.

We don't have the data today to help us make a decision. So, I am just 100 percent behind coming up with a real good research agenda that helps us explore some of the alternatives that we will be talking about today.

Mr. HULSHOF. Thank you, Mr. Chairman.

Chairman SHAW. Mr. Pomeroy.

Mr. POMEROY. Thank you, Mr. Chairman. Very interesting panel. Mr. Robertson you indicate that the definitions need to be modernized. Is it principally along the lines of the preceding question to allow for more—how would you suggest specifically—help me understand how they need to be modernized and why they need to be modernized.

Mr. ROBERTSON. It is interesting. Yesterday we brought in some experts in the area of disability, and we were actually trying to get information and get their input and get their insights on what issues we should be concentrating on in terms of targeting our resources. A couple interesting things came up, and they directly relate to your question.

First of all, the definition of disability came up time and time again. In connection with that—and this gets to the answer to your question—I think there was uniform agreement that, really, before you start talking about how you change the definition of disability, what you have got to do is back up -—and I will go back up to the microphone now. What you have to do is back up and say, "Well, what do you want the program to do?" Then, once you have done that, then you make your criteria, your definition, fit the purpose of the program.

Mr. POMEROY. All right.

Mr. ROBERTSON. Did that answer the question?

Mr. POMEROY. Well, no. I mean, I am tracking you.

Mr. ROBERTSON. Okay.

Mr. POMEROY. I will go on to say, well, did you then have notions about whether the program—the thrust of disability benefit

ought to be changed, leading them toward backing into the definitional examination?

Mr. ROBERTSON. I guess I would have to—obviously, our work yesterday didn't go down that road; it went down a different road.

Mr. POMEROY. Right.

Mr. ROBERTSON. I would have to pretty much throw that back to you from the standpoint of saying, it is Congress that is going to determine what they want the program to do type of thing. To my mind, it would then be up to SSA, in cooperation with a number of other different organizations, to orchestrate whatever is necessary to give you the information on the implications of going down the route that you have chosen in terms of what the cost would be if you wanted to do something, what the implications on the people with disabilities would be, that type of thing.

Mr. POMEROY. I am in a quandary on this. I mean, I like the historic role of the disability program, which is long-term income replacement for those completely disabled. For the most part, that is not going to be someone coming off of disability back into the work force, although we do want to incent that activity and facilitate it. That is where the Ticket to Work enters in.

On the other hand, you moved down that road, and so you have more of an expansive early determination of disability; get them in quicker and then out quicker. You move really from this long-term income replacement model more to almost a workers comp-type short-term rehabilitation model, which is really a different set of goals, not traditionally part of the program. I am not sure we can bring that into the program. Those are issues, they need to be addressed somewhere, but I am not sure relative to this program. Ms. Mitchell, would you reflect on your thoughts relative to these conflicting considerations?

Ms. MITCHELL. I absolutely agree with you. It is certainly an issue that I know we as panel Members have grappled with over the past year. We have not specifically taken on this whole issue, but we certainly intend to—and so I don't really have a more definitive answer.

I think what you are raising is the dilemma, though. I mean, I think it clearly is. I think Mr. Robertson, you do have to decide what the program is to be about, what it is to do, then you can look at at what levels you are going to bring people in. For example, when you say people who are completely or totally disabled, that becomes definitional. Sometimes it is functional— it is a functional definition.

So, when you say completely disabled, I am not sure what that means. It certainly doesn't necessarily mean that an individual may not be able to work. The individual still may be able to work and be completely disabled. I see you looking very puzzled.

Mr. POMEROY. Yeah, that is not—I mean——

Ms. MITCHELL. That is the definitional problem I think that we get into, and why perhaps there needs to be this kind of hearing.

Mr. POMEROY. Right. Definitionally, in my own mind, I would think disabled means you can't work.

Ms. MITCHELL. All right.

Mr. POMEROY. You are right. I mean, there needs some clarity there. I am really struck by something Mr. Gerry said earlier, and

it is a—this doesn't relate to any of the earlier conflicting considerations I have, but it is another concept. That is, by the time you have a multiyear process of an individual trying to prove up their disability, we have psychologically made this person disabled. You know, everything about modern medical literature, about the relationships between mind and health and, you know, you can do it, versus, "Oh, my God, I am totally disabled," I think that is a really compelling point that he makes.

It is a shame that we have a system that rather than empowers and helps, get the Ticket to Work, we give the ticket to permanent mental incapacity— mental indisability, not incapacity—through the proof process. Your response on that?

Ms. MITCHELL. Well, I couldn't agree with you more. It certainly poses the dilemma I think for the Ticket program. Certainly as I have gone across the country and listened to consumers, and as I have gone to speak to groups about the Ticket program, they don't understand the definitional issue. They don't understand the formal terminology. I tell you, family and Members and parents come up to me and they say, "How do you figure this? We just spent 2 to 3 years getting through a process defining my son or daughter as disabled, and now you are going to give me a ticket and want me to now turn around and say he is able to go to work and he should go to work." It is very difficult and frustrating for consumers and family Members—and not just them, advocates and professionals—to understand that dilemma.

Mr. POMEROY. Very interesting. Thank you, Mr. Chairman.

Chairman SHAW. Mr. Robertson, you struck a familiar chord in my head when you were talking about how they concentrate on the disabilities rather than the abilities. Then you spoke of the fact that they hadn't upgraded their definition of jobs since 1991. Have you seen any indication that they are reacting to your report or that they are starting to try to upgrade their definitions?

Mr. ROBERTSON. We are talking about the labor market information here.

Chairman SHAW. Yes, sir.

Mr. ROBERTSON. I do believe they are aware of the fact that they have got a problem. They have got a dictionary of occupational titles that they currently use to help them in that part of the decisionmaking process that hasn't been updated since 1991, and that is a Labor Department document. The Labor Department is now moving on to a different data set.

Chairman SHAW. The Labor Department is the one that is responsible for doing that?

Mr. ROBERTSON. Yes.

Chairman SHAW. Upgrading that?

Mr. ROBERTSON. Yes. Still, but the new data set, the Labor Department is developing—a data set called ONET, Occupation Information Network— won't have the specifics on job demands and so forth that were in the old data set that they were using. So, I know that Social Security knows that they are in kind of a dilemma here on how they go about updating or getting the updated information that they need, and they are trying to work that out now.

Chairman SHAW. Going back to the point of not looking at someone's abilities, rather, looking at their disabilities, reminds me of

the Committee I used to chair when we did the welfare reform bill, in which we actually turned welfare offices into employment agencies. When someone comes in now, instead of being told that, "You are eligible for this," and going down the menu with them, they first of all want to say, "Well, how can we get you back into the job market?"

Is there any parallel to that in SSI? Do they do anything as far as job search or looking for—or coordinating with your State or local agencies in finding these people work? Is there anything going on in that regard? Do they simply just come in and say, "Okay, fine. You are disabled," or, "You are not disabled," and that is the end of it?

Mr. ROBERTSON. I believe that is basically kind of a State decision. The way it has worked out, the eligibility determination, as I indicated earlier, really focuses on are you disabled or not disabled; and do you get cash benefits right now? Our point has been and will continue to be that the early intervention with education about the services that are available, vocational, rehabilitation, and so forth, is the way to go.

Chairman SHAW. Well, if you have a laborer that comes into the office that has lost a leg, and he is being evaluated, would he be evaluated for maybe doing an assembly job on a sitting basis? Would he be evaluated saying, "Well, you can't go out and build houses and dig ditches anymore or do farm work," or whatever that was. How is that person evaluated?

Mr. ROBERTSON. Well, basically Mr. Gerry went through the process earlier this morning. They go through that five-step process that ultimately, basically, makes a determination on whether that individual can do the work that he or she did previously, or any work in the Nation. They use the Dictionary of Occupational Titles (DOT) data to help make those last determinations.

Chairman SHAW. Yes. I am not sure exactly how they would have done it. You have a professional person, a lawyer, doctor, teacher, accountant, who maybe have had a mental disorder, and they come in, they can do certain work, but they are no longer qualified to do what they did before.

If they went to work it would be at a greatly reduced salary from what they had before, but it would still be above that $780, or whatever that figure is that Mr. Gerry gave us. Are they considered disabled? There is no—as I understand it, there is no partial disability here. You are either disabled or you are not. If you can't earn a certain level and go along with those other points that he brought out, are you disabled? How would that person be evaluated? Would that person be required to take a much lesser job than they had in the first place?

Mr. ROBERTSON. Can I defer to you on that?

Ms. MITCHELL. Oh, I am not the Social Security expert.

Chairman SHAW. Well, I will just ask Mr. Gerry to submit correspondence because I think that is something important.

Mr. ROBERTSON. Going through the five-step process.

Chairman SHAW. I have got that written down on my book. It is a very subjective process, which makes it somewhat difficult. Are you not seeing—I am going to go back just a minute, and I will end with this. Are you seeing any indication that these people are

hooked up to finding employment for people rather than finding reasons to give them disability?

Mr. ROBERTSON. Not at the beginning of the process, no.

Chairman SHAW. We are not doing that?

Mr. ROBERTSON. No.

Chairman SHAW. That is probably the missing piece here. Ms. Mitchell, we are delighted to have you. You can look forward to coming back and seeing us again because in September we are going to have a hearing devoted to the work that you do, and I can tell you this Committee is very proud of the work that it performed in creating the need for you and giving people the opportunity to work without fear of losing their benefits or having to go back through the process——

Ms. MITCHELL. We will look forward to that.

Chairman SHAW. Of reapplying. Thank you very much. Excuse me. Mr. Becerra, did you have something?

Mr. BECERRA. Mr. Chairman, I suspect most of the good questions or comments were made. I would just probably add not having heard all of the testimony, and I apologize for having to slip out for a moment, that what I think the GAO has pointed out is that we have actually, I think as a people, as a society, as a government failed to truly address the needs of our disabled Americans. Whether we have a definition which talks about providing benefits to those who are disabled and can't work or whether we try to help Americans, given our new technologies, get back to work, even with a disability, the fact remains we have a whole bunch of Americans out there who aren't getting any services from us, who could go back to work or who couldn't. At the end of the day we are going to have to talk money if we want to really resolve this, whether it is to get some Americans back to work and not just on disability insurance or if we want to maintain the system and yet help the private sector address the needs of those who can go back to work.

So, I am not sure if the questions were asked or not. The only thing, I would request that you perhaps provide comment if it hasn't already been addressed and if it has I will accept that as an answer, is if we do try to redefine disability so that we can help those who might have the potential to go back to work with some assistance or some retraining or some therapy, are we saying that the government would absorb the cost of providing that assistance or are we leaving it to the wherewithal of the individual that is disabled or classified as disabled to secure that assistance in order to be able to return to work, in which case it seems to be you are jeopardizing the ability of that person to receive that government assistance as a disabled individual under SSI. Would you care to comment?

Mr. ROBERTSON. Yes I will talk to that a little bit. What you are doing is bringing up one of many, many, many questions that would be involved with any fundamental change of the system. It is one that we don't have answers to yet. We talked earlier that this is one of the reasons that SSA's research agenda has to be systematic. It has to be geared to examining some of the alternatives that we have and will be talking about today to give some of the answers to the questions that you are talking about now.

Mr. BECERRA. It is great that you are examining the definition, but it is also very scary because I think you are going to find it is all about money and who is going to carry the load, because you can't talk about people going back to work. They have got a disability and they need some assistance and for the most part we are talking about people who can't afford to secure this assistance; that is, if they don't want to go back to work and they are just trying to be on the dole. So, I think it is most promising if we begin to accept our responsibilities as a society or as a government. It is also, I think, dangerous if we are not willing to accept the next part of the answer, which is to provide the resources to make it possible for these individuals to partake in the type of programs that help them get back to work if they so can. Thank you for your testimony. Mr. Chairman, thank you for the time.

Chairman SHAW. Don't get up. I have another couple of questions.

Mr. ROBERTSON. With the five-step process.

Chairman SHAW. Did your findings show that the error is on—obviously the data that they are using to evaluate people is causing errors, otherwise you wouldn't even bring it up. Is it erring on the side of giving disability benefits to people who shouldn't have them or not giving disability benefits to people that should?

Mr. ROBERTSON. Well, if we are talking, number one, about the medical listing and the need to update the medical listing, it could go—that could go either way. I mean, if you——

Chairman SHAW. Okay. How about the job data?

Mr. ROBERTSON. That I can't comment on. I mean what we do know is that the DOT that they are currently using is really, according to the some of the labor people, based in the manufacturing era of our labor market. So it is old, and I don't know how that would play out in terms of whether that would err in providing more benefits or taking away benefits.

Chairman SHAW. How about re-evaluation of people? I know all of our congressional offices have received calls from a neighbor of somebody that says, oh, he is out there doing the yard and he is collecting disability or he has got a job and he is collecting disability. I mean, we all hear those, and quite frankly, when I get one of those I turn it over to the SSA people, and I don't think they ever even look at them frankly. Is there any follow-up when someone has disability? Are they reevaluated every year or every few years?

Mr. ROBERTSON. They have a continuing disability review that they go out and reevaluate folks. I believe the Inspector General, beyond that, has, in essence, special strike teams that do just exactly what you are asking. They go out and look for people that say they are on disability and they are out working in the yard or whatever.

Chairman SHAW. Thank you. Thank you both. Our final panel, we have Paul J. Seifert, who is the Co-Chair for the Social Security Taskforce, Consortium for Citizens With Disabilities, and we have Gooloo Wunderlich, who is a Ph.D., Study Director, Committee to Review the Social Security Administration's Disability Decision Process; Robert Anfield, M.D., Vice President and Chief Medical Officer of the Customer Care Center, UnumProvident Corp.. We have

Patricia Owens, who is a Board Member With the National Academy of Social Insurance; Bruce Growick, Ph.D., Associate Professor of Rehabilitation, Ohio State University in Columbus, Ohio; and Peter Blanck, Ph.D., Charles M. and Marion Kierscht——

Mr. BLANCK. Kierscht.

Chairman SHAW. Okay. Professor of Law, and Director, Law, Health, Policy and Disability Center University of Iowa College of Law. What is this, a married team? What do you have here? I have Charles M. and Marion——

Mr. BLANCK. Husband and wife.

Chairman SHAW. Husband and wife. Yes. Okay, fine. Who are they?

Mr. BLANCK. They are the people that gave the money to endow my Chair.

Chairman SHAW. Oh, I am sorry. Why did you put that on there? Well, you got them looking like they are sitting at the table with you. Give me a break.

Mr. BLANCK. He is the former head of Kemper Insurance.

Chairman SHAW. All right. That is fine, and if they were here, we would invite them up to the table, I am sure. However, they are not. We have each of your testimony, which is made a part of the record, and each of you may go forward as you see fit, and we will start with Mr. Seifert.

**STATEMENT OF PAUL SEIFERT, CO-CHAIR, SOCIAL SECURITY TASKFORCE AND WORK INCENTIVES IMPLEMENTATION TASK FORCE, CONSORTIUM FOR CITIZENS WITH DISABILITIES, AND DIRECTOR OF GOVERNMENT AFFAIRS, INTERNATIONAL ASSOCIATION OF PSYCHOSOCIAL REHABILITATION SERVICES**

Mr. SEIFERT. Thank you, Mr. Chairman, Members of the Subcommittee, for the opportunity to testify in this third in a series of hearings on the challenges facing the Social Security disability programs, and in this hearing in particular on the definition of disability.

It is widely held that the definition of disability for Social Security Disability Insurance (SSDI) or Title II and SSI is one of the strictest standards in the Western industrialized world, one that requires the combination of a high level of severity of disability combined with a very low level of functioning, particularly around work, in order for a person to become eligible and in the case of Title II remain on benefits. Consequently, we believe that there are several issues that should be addressed regarding the current definition.

First, when considering any changes in the definition of disability or eligibility criteria, whether the statutory definition, the five-step disability determination process or the listings, Congress and SSA should not assume that mitigating supports are available. Medical and technological advances are making it increasingly possible for some individuals to work despite severe disabilities. However, we should be cautious when contemplating changes to the disability criteria because those advances are not uniformly and widely available to all people with disabilities who need them.

Congress recognized, however, that some people do have access to those technologies and medical assistance in the passage of the Ticket to Work and Work Incentives Improvement Act 1991, and we thank you, Chairman Shaw and Mr. Hulshof, for your contributions in the passage of that landmark legislation.

Obviously, it is impossible at this time to ensure that all the technology medications and support services necessary are available to all people with every type of disability, so we would again caution against making changes in the disability determination process that would assume those services and technologies that are available.

The second issue we want to bring up is the definition of substantial gainful activity. Granted the SGA level is now indexed for inflation through the regulatory process; however, the level today is $780 per month and we at Consortium for Citizens With Disabilities believe that this is neither substantial nor gainful, and that is something that needs to be addressed particularly in light of the fact that there is for the non-blind disabled individual an SGA level of $780 but for blind individuals a level of more than $1,300. That is a discrepancy that we think should be abolished, and we support raising the SGA for non-blind disabled individuals to the same level as the blind.

Third and finally, the disability programs were created with the notion that people would be unable to work for the rest of their lives, total and permanent disability. This static view of disability meant that little thought was given to what might happen if people returned to work after they became eligible for benefits.

Consequently, in the Title II disabilities program the same requirements must be met to stay on the program as it took to qualify. This has the perverse effect of forcing people who are on the SSDI benefit rolls to diminish their work attempts. Under Title II a person can earn only $780 a month. Earning even $1 above that amount means that you lose every dollar of your DI check.

For example, a person could have a monthly Title II check of $700 and a monthly paycheck of $771. If they receive a $2.50 a week raise, 50 extra cents a day or $10 a month, they would lose all of their $700 SSDI check. Clearly that is not a very attractive economic tradeoff, and I don't think we would have to bring Milton Friedman in here to prove it. This policy is known in the disability community as the cash cliff.

A far more reasonable approach to earnings is found in the SSI Program where a person loses $1 in benefits against every $2 they earn. Between 1987 and 2001 the number of SSI working beneficiaries has doubled. Ironically, one-fifth of the working SSI beneficiaries in March of 2002 earned above the SGA level compared to hardly anyone in the DI program; or approximately 80,000 working SSI beneficiaries are working above SGA.

This fact is made all the more stark by the fact that SSI beneficiaries typically are less well educated, have a less successful interaction with work or a weaker work history and are generally far poorer than their SSDI counterparts. Yet under the SSI rules where work is rewarded the accumulation of even a small amount of savings is penalized.

The SSI asset and resource limitations ensure that people on SSI will remain in the economic under class. We have long advocated for a sliding scale in SSDI and a modification of the asset and resource limits under SSI so that people can both work and save. Again, on behalf of the Consortium for Citizens With Disabilities Social Security Taskforce, I thank you for the opportunity to testify and look forward to any questions you may have.

[The prepared statement of Mr. Seifert follows:]

**Statement of Paul Seifert, Co-Chair, Social Security Task Force and Work Incentives Implementation Task Force, Consortium for Citizens with Disabilities, and Director of Government Affairs, International Association of Psychosocial Rehabilitation Services**

Chairman Shaw, Mr. Matsui and Members of the Subcommittee, thank you for the opportunity to testify today in this third of a series of hearings on challenges facing the Social Security disability program. I am Paul Seifert, Director of Government Affairs for the International Association of Psychosocial Rehabilitation Services. I am testifying today in my role as a Co-Chair of the Consortium for Citizens with Disabilities (CCD) Task Forces on Social Security and Work Incentives Implementation. CCD is a coalition of nearly 100 national organizations advocating on behalf of people with physical, mental, and sensory disabilities.

Today's hearing focuses on one of the most critical and difficult issues facing the disability program: the definition of disability. In Social Security, the definition is tied in part to work because the disability program is meant to replace income lost due to the inability to work because of a disability. To be eligible for benefits in the Title II and Supplemental Security Income disability programs, a person must satisfy two criteria—they must have a medically determinable physical or mental impairment which is expected to result in death or has lasted or is expected to last more than twelve months; and they must be unable to perform any substantial gainful activity in the national economy. Section 223(d) of the Social Security Act

The Social Security Administration uses a five-step process to make the disability determinations that operationalize the statutory definition. SSA has established a "Listing of Impairments" whereby a person who satisfies the requirements of the listing is eligible for benefits. For those applicants who do not meet the listings, SSA has established additional tests that take into account functional limitations, age, education, and work experience.

It is widely held that the definition of disability for SSDI and SSI is one of the strictest standards in the western industrialized world. It requires a high level of severity of disability combined with a very low level of functioning in order for a person to become eligible for, and remain on, benefits. We believe that there are several issues that should be addressed regarding the current definition.

While medical and technological advances are making it increasingly possible for some individuals despite severe disabilities to be successful in the work place, we should be very cautious when contemplating any changes to disability criteria, whether statutory or regulatory, based on such advances. Medical and technological advances have had a powerful impact on the lives of some fortunately-placed individuals with disabilities and, recognizing this, Congress worked with the disability community to develop policies and reduce barriers to employment for persons with disabilities. We thank you Chairman Shaw, Mr. Matsui, and all the members of the Subcommittee for your leadership in passing the landmark Ticket-to-Work and Work Incentives Improvement Act of 1999. However, these medical and technological advances are clearly not universally or uniformly available to all who need them. For example, an individual with a severe spinal cord injury may need personal assistance services to get out of bed in the morning, eat, bathe, dress, and get to work. These services may cost more than $20,000 a year and are not fully covered under Medicare and Medicaid, and almost never available through private health insurance.

Therefore, it would be wrong to base eligibility for disability benefits using the assumption that medical or technological advances would be available to mitigate the functional impact of a disability. In fact, many of the services and supports people with significant disabilities need to work, such as personal assistances services, prescription medications, or durable medical equipment, are available to them only through Medicare and Medicaid. As you know, a primary way people with disabilities access Medicare and Medicaid is through the Title II and SSI disability programs.

Obviously, it is impossible at this time to ensure that all the technology, medications, and support services necessary are available to all people with every type of disability. Until that point comes, we have several recommendations:

First, as mentioned above, when considering any changes in disability eligibility criteria, whether to the statutory definition, the five-step disability determination process, or the listings, Congress and the Social Security Administration should not assume that mitigating supports are available.

Second, the definition of substantial gainful activity (SGA) must be addressed. Granted the SGA level is now indexed for inflation. However, the base, now $780 per month, should be re-examined in relation to what it defines: substantial **gainful** activity. If $780 per month is all a person is able to earn, we find it hard to call that amount "substantial." In this economy, you cannot pay rent or utilities and buy food for a month at that level of earnings. The issue may lie with the implementation of the SGA standard, rather than the concept of SGA. Further, there is a different SGA level for non-blind persons with disabilities than for blind individuals. We support raising the SGA level for non-blind disabled individuals to the same level as for those who are blind.

Finally, the federal disability programs were created assuming that people with disabilities would remain unable to work throughout their lives. This static view of disability meant that little thought was given to what might happen if people returned to work after receiving benefits. Consequently, in Title II disability programs, the same requirements must be met to stay on the program as it took to qualify. This has the perverse effect of forcing people to diminish their work.

For example, under the Title II disability rules a person can earn only $780 a month. Earning even one dollar above that amount (after the nine-month trial work period) means a person loses every dime of their disability cash assistance. For example, a person could have a monthly Title II disability benefit of $700 and a monthly paycheck of $771. But if they receive a two dollar and fifty cent a week raise, fifty extra cents a day or ten dollars a month, they lose all of their $700 monthly SSDI check. Clearly, it is not a very attractive trade-off. This policy is known in the disability community as the cash-cliff.

A far more reasonable approach to earnings is found in the SSI program where a person loses one dollar in benefits for every two dollars they earn. The latest data from SSA indicate that from 1987 to 2001 the number of working SSI beneficiaries doubled. Ironically, one-fifth of working SSI beneficiaries earn above the SGA level compared to hardly anyone in the DI program; a fact made all the more stark considering that SSI beneficiaries typically have weaker employment records, are typically less well educated, and are far poorer than their DI counterparts. Yet, under the SSI rules where work is rewarded, the accumulation of even a small amount of savings is penalized. Asset and resource restrictions ensure that people on SSI will remain an economic underclass.

We have long advocated for a sliding scale cash benefit offset in the Title II disability programs and we again urge Congress to remove this barrier to work. We recognize that SSA is required to study a benefit offset in Title II. Until such a policy is enacted we believe that a disconnect will remain between desire of beneficiaries to work the reality of work.

Again, on behalf of the CCD Task Forces on Social Security and Work Incentive Implementation, I thank the Chairman and Members of the Subcommittee for the opportunity to testify and I look forward to any questions you may have.

On behalf of:
American Congress of Community Supports and Employment Services
American Council of the Blind
American Network of Community Options and Resources
Association for Persons in Supported Employment
International Association of Psychosocial Rehabilitation Services
NAMI—National Alliance for the Mentally Ill
National Association for Developmental Disabilities Councils
National Multiple Sclerosis Society
National Organization of Social Security Claimants' Representatives
National Senior Citizens Law Center
NISH
Research Institute for Independent Living
The Arc of the United States
United Cerebral Palsy Associations, Inc.

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Chairman SHAW. Dr. Wunderlich.

**STATEMENT OF GOOLOO S. WUNDERLICH, PH.D., SENIOR PROGRAM OFFICER, INSTITUTE OF MEDICINE OF THE NATIONAL ACADEMIES, AND STUDY DIRECTOR, COMMITTEE TO REVIEW THE SOCIAL SECURITY ADMINISTRATION'S DISABILITY DECISION PROCESS RESEARCH**

Dr. WUNDERLICH. Good morning. I am senior program officer at the Institute of Medicine of the National Academies, and I serve as Study Director to the Committee to Review the Social Security Administration's Disability Decision Process. I am pleased to appear before you today on behalf of the Committee.

This study is sponsored by the Social Security Administration. The Committee issued its final report earlier this month and your staff has copies of it, and I have also provided copies of the executive summary.

The Committee analyzed and made recommendations on key areas, such as improving the disability determination process, developing and implementing an ongoing disability monitoring system, and building SSA's capacity for conducting the needed research for reforming the disability programs. Today I will limit myself to just some of the issues defining disability and determining eligibility as covered in our report.

The Social Security Act defines disability for both SSDI and SSI and, as you know, the standards for evaluating disability claims are specified in SSA's implementing regulations. Determination of eligibility for disability benefits is an inherently difficult task, in the face of millions of claims per year decided by more than 10,000 adjudicators at various levels of the process and high levels of legal challenge and political oversight.

Faced with large workloads increases resulting from program growth without concomitant increases in administrative resources, and concerns about the numerous longstanding problems and complaints relating to accuracy, timeliness and consistency of the disability determinations, SSA leadership decided in the early nineties to fundamentally redesign the entire claims process, including the disability decision process. At the direction of the then Commissioner, the SSA crafted an ambitious research plan for developing and testing the various assumptions made in the redesign initiative and asked the National Academies to review the research plan and to make recommendations.

The Committee conducted the preliminary review of the plan early in the study and found that it lacked the critical elements of a well-designed research plan. The Committee made several recommendations for redirection of research priorities and improvements in projects underway.

After reviewing the Committee's conclusions and recommendation and undertaking its own internal reevaluation, SSA informed the Committee in late 1999 that it had decided to drop the development of a redesigned decision process and instead make incremental improvements in selected components of the existing process. As you all know, at this time SSA is concentrating on updating and improving the listings of impairments.

The current effort for incremental improvements, like the previous redesign effort, call for comparative judgments based on before and after analysis. Such analysis does not appear to have been

done by SSA. The Committee therefore recommended that SSA should undertake analysis of information from the current decision process based on criteria established at the outset in order to assess the validity and effectiveness of the current process, whether they be individual components like the listings or the whole process, and then the same evaluation criteria should be applied to any revisions developed. Without such a capacity, proposals for "reform" may be proposals for "change," but it is impossible to determine whether they are proposals for "improvement."

The SSA's process for determining disability is not the only model of an adjudicatory system. As you all have heard already, there is a lot of pressure for SSA to redesign the definition and the eligibility criteria. The Committee recognizes the administrative difficulties involved in paying more attention in the disability determination process to the physical and social factors in the work environment, and work incentives involves problems. It is not that simple when you consider it has to be applied uniformly and consistently across millions of claimants. Such attention requires major shifts in the orientation of the programs to ways to influence the environment in which the applicant might work and to return-to-work activities. The SSA needs to begin to look into how to go about doing this by undertaking research in this area.

The impact of such changes on the people it serves as well as on the program also needs to be studied. Ticket to work issues have been addressed very adequately by Sarah Mitchell, and I won't repeat them.

In conclusion, the Committee's report makes it abundantly clear that SSA has been given a difficult task and dwindling resources to deal with it. The situation will get worse, and not better, in light of the anticipated growth in demands on the program as the baby boom generation reaches the ages of increased likelihood of disabilities. The SSA needs to have some mechanism to systematically give thought to these issues and initiate appropriate research on which to base policy decisions. Its research up until now has not addressed the major fundamental issues. The SSA cannot accomplish, this forward looking agenda, including the recommendations that the Committee has included in its report, without appropriate resources in terms of not just dollars, but also recruitment of qualified research staff.

The Committee believes that the blueprint for action that it has recommended in its report is worthy of full funding and adequate staffing support, both by the executive and the legislative branches of the Committee. Thank you for the opportunity to summarize some of the findings and recommendations of the committee.

[The prepared statement of Dr. Wunderlich follows:]

**Statement of Gooloo S. Wunderlich, Ph.D., Senior Program Officer, Institute of Medicine of the National Academies, and Study Director, Committee to Review the Social Security Administration's Disability Decision Process Research**

Good Morning, Mr. Chairman and members of the committee. My name is Gooloo Wunderlich, I am a senior program officer at the Institute of Medicine of the National Academies. I serve as study director to the committee to Review the Social Security Administration's Disability Decision Process Research sponsored by the Social Security Administration and am pleased to appear before you today on behalf of the committee. The committee issued its sixth and final report of the study and

I encourage you to look at it. It analyzes and makes recommendations in key areas such as the emerging trends in SSA's disability programs; improving the disability determination process; developing and implementing an ongoing disability monitoring system consisting of a periodic comprehensive and in-depth survey to measure prevalence and characteristics of people with disabilities and related factors supplemented by a small set of core measures in the intervening years; and building SSA's capacity for conducting the needed research and for reforming the disability programs. But today I will limit myself to the issues of defining disability covered in the report—the statutory definition of disability, how SSA determines disability, and issues in alternative approaches in defining and determining disability.

**Definition of Disability for Social Security Programs**

There is no agreement on how to define and measure disability. The meaning assigned to the term depends on the purpose and uses to be made of the concepts. SSA's focus in both the Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) programs is on work disability, as defined in the Social Security Act. The definition of disability and the process of determining disability are the same for both programs. The Social Security Act defines disability (for adults) as "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or expected to last for a continuous period of not less than 12 months" (Section 223 [d][1]). Amendments to the Act in 1967 further specified that an individual's physical and mental impairment(s) must be ". . . of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work" (Section 223 and 1614 of the Act). SSA disability programs only pay for total disability and not partial or short term disability.

**How Does SSA Determine Disability?**

Determination of eligibility for disability benefits under the Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) programs is an inherently difficult task. To qualify for benefits under these programs a person must have a medically determinable impairment. Although the existence of a medically determinable impairment is a necessary condition, it is not a sufficient condition for receipt of benefits. The statutory definition makes clear that these programs deal with work disability. While many of the factual determinations are relatively straightforward, others range from the difficult to the nearly impossible as evidenced by the lack of agreement observed in an examination of rater reliability as measured by the variations within and between states in the allowance rates by examiners.

SSA's disability decision process serves as a gatekeeper for benefits from the SSDI and SSI programs. The Social Security Act defines disability but the standards for evaluating disability claims are specified in SSA's implementing regulations (20 Code of Federal Regulation, parts 404 and 416, subparts P and I) and in written guidelines that describe a series of sequential decision points and criteria for determining whether or not a claimant meets the statutory definition of disability.

SSA uses a 5-step sequential decision process for initial claims. The intent of developing the sequential decision process is to attempt to provide an operationally efficient definition of disability with a degree of objectivity and accuracy that can be replicated with uniformity in this mass production benefit program throughout the country.

1. In the first step the SSA field office reviews the application and screens out claimants who are engaged in substantial gainful activity (SGA).
2. If the claimant is not engaged in SGA, step 2 determines whether the claimant has a medically determinable severe physical or mental impairment.
3. The third step also is a medical screen to allow benefits to the most severely impaired. The documented medical evidence is assessed against the medical criteria to determine whether the impairment meets or equals the degree of severity specified in SSA's Listings of Impairments (Listings). The Listings serve the purpose of allowing rapid payment of benefits to claimants whose presumed residual functional capacity (RFC), given the severity of their impairments, would preclude work at virtually any job. About 60 percent of the disability allowance decisions are based solely on the Listings of Medical Impairments without developing and conducting a complete in-depth functional and vocational analysis.

4. In the fourth decision step, claimants who have impairments that are severe, but not severe enough to meet or equal those in the Listings, are evaluated to determine if they have residual functional capacity (RFC) to perform past relevant work. Assessment of the RFC requires consideration of both exertional and non-exertional impairments. If a claimant is determined to be capable of performing past relevant work, the claim is denied.

5. The fifth and final decision step considers the claimant's RFC in conjunction with his or her age, education, and work experience to determine whether the person can perform other work that exists in significant numbers in the national economy.

The determination in the fifth step is based on the 1978 Rules and Regulations, Medical–Vocational Guidelines (referred to as the *vocational grid)*. The vocational grid, like the Listings, is intended to lend objectivity to the determination process and facilitate uniform administration of the vocational portion of the disability determination process. But the grid at this time reflects only physical (exertional) impairments. It does not consider nonexertional (e.g., mental or cognitive) impairments. The regulations also recognize that some claimants will have multiple impairments or environmental limitations (e.g., they cannot be around fumes) that are not effectively covered by the grid regulations. These cases must be decided outside the grid.

**SSA's attempts to redesign the determination process**

Over the past several years many factors have contributed to the growth in the number of people receiving disability benefits. As a result SSA has been faced with large workload increases that have not been matched by increases in administrative resources. Concerns about the numerous long-standing problems and complaints relating to the accuracy, timeliness, and consistency of the disability decision process led SSA leadership to fundamentally rethink the entire process for determining program eligibility and improve the quality of the service in the disability claims process. In the early 1990s SSA decided to redesign the entire claims process including the disability decision process, and at the direction of the then Commissioner of SSA developed a research plan for developing and testing the functional assessment instruments in the disability decision process, examining the effect of vocational factors on decisions, exploring what is being done in other disability programs, and developing a prototype for a redesigned disability decision process. At about the same time it began work on developing a comprehensive national survey to fill the gap in information on the prevalence and characteristics of the population with disabilities, and factors that influence their intent to apply for benefits. SSA asked the National Academies to review its research plan and individual research projects, and the timeline for developing a new decision disability process, as well as the design and content of the survey and offer comments and recommendations on the direction of the research.

Early in the study, the committee conducted a preliminary review of SSA's research plan and individual research projects completed and under way. The committee concluded that the research completed, underway, and planned appeared to lack the critical elements of a well-designed research plan. It made several recommendations for redirection of research priorities and improvements in projects underway.

After reviewing the committee's conclusions and recommendations, and undertaking its own internal reevaluation of its disability decision process redesign initiatives, SSA concurred with several of the committee's conclusions and some of the recommendations. However, rather than undertaking the additional research and redirection of the research as recommended by the committee, for various reasons SSA decided in late 1999 to drop the redesign of the decision process, and instead make incremental improvements in the selected components of the current sequential evaluation process to enhance quality of decisions, streamline the decision process, and update the medical and vocational rules in determining disability. At this time SSA has decided to devote its attention to updating and improving the Listings of Impairments.

Medical advances in both the diagnosis and treatment of impairments have made updating the Listings long overdue. By the late 1990s, The Office of the Inspector General, the National Academy of Social Insurance, the General Accounting Office, and the Social Security Advisory Board all were expressing concern that SSA was not updating the Listings regularly, but was simply extending the expiration dates for a number of years when the Listings expired. Limited staff resources, the need to address new legislative mandates during the 1990s, and the lack of adequate research on disability criteria to support Listings updates have been at least part of the problem.

**Nead for Baseline Criteria and Analysis**

The current effort for incremental improvements like the previous redesign effort calls for comparative judgments. It presumes analysis of baseline information from the current decision process after establishing criteria against which to assess the validity of decisions from the current process and identify the specific problem areas. The same criteria then should be applied to any revisions developed.

SSA conducted some baseline analyses for the claims process in terms of time and staff investment in processing claims and the nature and extent of inconsistencies of decisions. But to the committee's knowledge it has not conducted any such baseline analysis with predetermined criteria for evaluating the Listings component, or for that matter any other component, of the sequential determination process leading to the decision to redesign the system. SSA's research approach has focused mostly on the new decision process. The committee, therefore has recommended that prior to making changes in the current decision process *SSA should establish the criteria for measuring its performance; conduct research and analyze the data to determine how the current processes work relative to these criteria; and then apply the same criteria to evaluate the extent to which the proposed change would lead to improvements*. Analysis of data from such research in the context of the predetermined criteria would identify the nature of the gaps between what the program is supposed to achieve and its actual performance. Without such a capacity, proposals for "reform" may be proposals for "change," but it is impossible to determine whether they are proposals for "improvement."

It is also not clear to the committee what criteria were used to assign priorities for reviewing and updating specific Listings. It appears likely that the agency's agenda for reform in this area is being driven as much by internal and external anecdotal concerns, including general perceptions of which Listings are the most outdated, as by deliberate analysis of research findings based on predetermined criteria developed by SSA.

**Alternative Approaches to Defining and Determining Disability**

SSA's process for determining disability is not the only model of an adjudicatory process that might be applied to determine disability benefits. Other approaches could conceive of disability benefits designed to assist claimants in receiving appropriate medical attention and vocational rehabilitation as well as appropriate income supports. In this model the basic goal of the program would be to move claimants back toward productive work and to use benefits both as a means to facilitate the return to work process as well as an ultimate fallback for those claimants whose impairments make continued work impossible. This is the approach used by many private disability insurers who manage employment-based disability plans in the United States, and it is the dominant model in certain foreign systems, such as those in Sweden and Germany.

Recent legislation makes clear that Congress is increasingly interested in the "return to work" model and is prepared to have SSA experiment with some alternative strategies that might facilitate the pursuit of work rather than benefits. The Ticket to Work and Work Incentives Improvement Act of 1999 (PL 106–170) was signed into law on December 17, 1999. One major provision of the law establishes the Ticket to Work and Self Sufficiency Program, or Ticket Program. This provision provides that beneficiaries, after they are eligible for SSDI and SSI benefits, will receive a ticket (or voucher) they can use to obtain employment services, vocational rehabilitation services, or other support services from an approved provider of their choice. The law also expands Medicaid and Medicare coverage to more people with disabilities who work. *SSA therefore needs to initiate a research program for testing decision process models that emphasizes rehabilitation and return to work.* Also, ongoing evaluation should be conducted of the effectiveness of this program

People with disabilities and their advocates also express concern that environmental factors are not taken into consideration in defining work disability. In recent years the concept of disability has shifted from a focus on diseases, conditions, and impairments *per se* to more on functional limitations and other barriers to work caused by these factors. The Social Security definition of disability was developed in the mid-1950s at a time when a greater proportionof jobs was in manufacturing and more required physical labor than today. It was expected therefore that people with severe impairments would not be able to engage in substantial gainful activity. Over the years, many changes have occurred: the nature of work has shifted from manufacturing toward service industries; medical and technological advances have made it possible for more severely disabled persons to be employed; the mix of beneficiaries has been changing; and, in recent years public attitude also has changed as reflected in the enactment of the Americans with Disabilities Act of 1990 (ADA).

More attention may need to be paid to the environmental factors, particularly in the context of work disability and vocational rehabilitation.

The committee recognizes the administrative difficulties involved in paying more attention in the disability determination process to the physical and social factors in the work environment. Such attention may require major shifts in the orientation of the Social Security disability programs to ways to influence the environment in which the applicant might work and to "return to work" activities. *SSA should undertake research towards developing systematic approaches to incorporate economic, social, and physical environmental factors in the disability determination process; the relationship between the physical and social environment and work disability; and understanding the external factors affecting the development of work disability. SSA should also study the implications of such changes on the people it serves as well as the impact on the programs.*

If such research is fruitful, incorporating such changes in the Social Security disability determination process will begin to move it away from a heavily medically-driven approach to consideration of factors beyond physical, sensory, cognitive or emotional impairments and may ultimately involve changes in SSA's implementing regulations.

**Conclusion**

The committee's report makes abundantly clear that SSA has been given a difficult, if not impossible, task and dwindling resources to deal with it. The situation will get worse and not better in light of the anticipated growth in demands on the program as the baby boom generation reaches the age of increased likelihood of disabilities. In its recent reports the Social Security Advisory Board has reached similar conclusions and has recommended major rethinking of the disability program.

Little doubt exists that the current system is in need of major improvement. Making small changes within the current system may not resolve the basic problems. This is not adequately reflected in the agency's research agenda. SSA recognizes that the present system for determining program eligibility may not be sustainable in the future and that it must think about different orientations and different ways in which the task of making these decisions is accomplished. It needs to have some mechanisms to systematically give thought to these issues and initiate appropriate research.

SSA needs better understanding of the prevalence of disability in the population, the characteristics of that population, the factors that motivate some to work and others to apply for benefits, and better information about the job market, and about qualifications for jobs. The committee has recommended major research efforts. Such research cannot be accomplished without appropriate infrastructure and resources, in terms of both dollars and recruitment of qualified researchers, however, SSA cannot accomplish this forward-looking agenda. *This blueprint is worthy of full funding and adequate staffing support by both the Executive and the Legislative branches of government*.

Thank you for the opportunity to summarize the findings and recommendations of the committee. I shall be pleased to answer any questions you may have.

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

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Chairman SHAW. Dr. Anfield.

## STATEMENT OF ROBERT ANFIELD, M.D., VICE PRESIDENT AND CHIEF MEDICAL OFFICER, CUSTOMER CARE CENTERS, UNUMPROVIDENT CORPORATION, CHATTANOOGA, TENNESSEE

Dr. ANFIELD. Thank you, Mr. Chairman. My name is Dr. Robert Anfield, and I am the Chief Medical Officer for the Customer Care Organization of UnumProvident Corp.. I appreciate this opportunity to testify about UnumProvident's best practices as the leading provider of disability income insurance.

Many of our clients include individuals small employers, mid-size companies and Fortune 500 corporations. I would like to begin today by discussing UnumProvident's view of disability.

We know based on our experience that disability is episodic rather than being a fixed or a permanent condition. We also recognize that most claimants eventually recover from a disability and that recovery is usually incremental. In fact, our experience has shown that most claimants have some capacity for work during their recover period, and their motivation to return to the workplace depends on a number of social, vocational and attitudinal factors.

UnumProvident designs insurance contracts that define disability according to our experience and offer benefits based on return to work transitions, and we suggest that Social Security also consider offering this type of incentive for claimants.

UnumProvident has committed significant resources to actively assisting our insureds in their return to work efforts. Our employees include 85 board certified physicians in 14 specialties who train claims consultants, offer medical reviews and consult with claimants' physicians to clarify abilities and customize return to work plans. We also have more than 300 full-time clinical and vocational consultants making about 235,000 early intervention calls and more than 100,000 referrals to rehabilitation each year. In addition, we have over 1,000 field case management and support specialists.

As we consider each claim we evaluate the medical data to determine if the claimant is functionally capable of working. Based on this determination, specialized resources are provided as appropriate to help each individual regain the ability to earn an income and become self-sufficient. In addition, we continually monitor the claimant's condition throughout the disability to assess ongoing medical status and work capacity.

As a result of these services we provide, nearly half of our long term disability claimants are able to return to work within 6 months of receiving benefits. For our long-term disability claimants that are also receiving SSDI benefits, we experience a recovery rate that is more than six times the rate reported by Social Security.

UnumProvident's contracts most often feature multiple levels of benefits based on several different definitions of disability employed during the life of the claim. The Social Security definition of disability sends an unfortunate message to the benefit recipient that they are totally and permanently disabled. It creates a mindset that discourages individuals from trying to return to work with the result that the claimant frequently continues to collect benefits indefinitely.

Today, two factors are making return to work possible for many people who were previously considered permanently disabled. The first is medical advances such as protease inhibitors for AIDS patients, new treatments for coronary artery disease and diabetes. The second is assistive technology, such as computer based technology solutions, hand-held organizers that provide memory assistance for people with brain injuries and voice activated workplace tools and specialized software that allow people to overcome impairments.

Our experience at UnumProvident has taught us that a "one size fits all" approach to case management is usually ineffective. Instead we look at every claimant as an individual, conducting the medical analysis of each case and then developing an appropriate

return to work plan tailored for the individual. Such an approach demands the appropriate level of medical expertise specifically designed by the in-house clinical resources maintained by UnumProvident. We recommend that the Subcommittee consider the following key areas based on our experience in the private sector:

Adopt benefits that emphasize return to work. We do appreciate and endorse Social Security's progress in encouraging return to work through the ticket to work and self-sufficiency program.

Now it is important for Social Security to incorporate other return to work features and incentives such as transitional work funding, partial payments and proportional benefits, as well as rehabilitation services to further assist claimants in returning to work and reducing their dependence on cash benefit programs.

Acknowledge that recovery is incremental. Recovering from an impairment is an incremental process and Social Security should require ongoing review and documentation throughout the claim process. It is important to work with the claimants during the recovery period to determine the level of functionality of which they are capable at any given stage and to consider the impact of medical advances.

Offer expanded definitions of disability. The present SSDI definition of disability provides a disincentive for individuals considering returning to work. Adding more flexible definitions that reflect the current thinking about the nature of disability, how individuals recover and the changing needs of today's workers will encourage claimants to focus on becoming self-sufficient once again.

These recommendations can significantly enhance the Social Security program by altering the perception of disability and realigning objectives to help claimants return to work whenever possible. While there will be initial costs incurred, the long-term savings will prove significant. There is a dignity associated with a person's ability to work and great value in the ability to live a full and independent lifestyle.

This philosophy and its focus on abilities is what shapes UnumProvident's approach to disability and the assistance we provide for our insureds. Thank you again for offering me this opportunity to testify. I will be happy to answer questions.

[The prepared statement of Dr. Anfield follows:]

**Statement of Robert Anfield, M.D., Vice President and Chief Medical Officer, Customer Care Centers, UnumProvident Corporation, Chattanooga, Tennessee**

My name is Dr. Robert Anfield, and I am the Chief Medical Officer for the Customer Care organization of UnumProvident Corporation (UnumProvident). I appreciate this opportunity to share our corporate best practices through testimony about UnumProvident's role as the leading provider of disability income protection insurance.

**Corporate Background and Philosophy**

UnumProvident is a publicly traded insurance holding company formed by the merger of Unum Corporation of Portland, Maine, and Provident Companies, Inc., of Chattanooga, Tenn. Our insuring companies include Provident Life and Accident Insurance Company; Unum Life Insurance Company of America; The Paul Revere Life Insurance Company of America; Provident Life and Casualty Insurance Company (in NY only); and First Unum Life Insurance Company (in NY only).

UnumProvident has major centers of operation in Chattanooga, TN; Portland, ME; Columbia, SC; and Worcester, MA. Our international presence includes dis-

ability operations in the United Kingdom, Canada and Japan. In addition, the company utilizes the resources of subsidiaries in Pennsylvania, California and Wyoming. The single largest functional area within UnumProvident is our unique Customer Care area, which focuses on delivering expert claim management and empathetic return-to-work support to our customers.

UnumProvident provides insurance solutions for a wide range of clients, from individuals and small employers to mid-size companies to Fortune 500 companies. The insuring subsidiaries of UnumProvident offer a comprehensive portfolio of products and services backed by our industry-leading return-to-work resources and disability expertise.

| | |
|---|---|
| Individual income protection | #1 |
| Employee benefit income protection | #1 |
| Voluntary workplace benefits | #2 |
| Employee benefit long term care | #3 |

UnumProvident reported total revenue of $9.4 billion for the twelve months ending December 31, 2001. The company holds the following industry-leading positions in terms of in-force insurance coverage:

We maintain this leadership through delivering on our customer commitments: comprehensive product solutions, return-to-work expertise, and highly responsive service.

**How We View Disability**

I'd like to begin today by discussing how UnumProvident views the nature of disability. We have made a significant corporate commitment to understanding the science of disability. The company is a leading proponent of disability research, with groundbreaking work based on the realization that disability management goes far beyond simply verifying and paying claims. We continually make investments in understanding both the scientific and human aspects of disability at every stage of life so we can offer more than just a benefit check to our customers.

We know, based on our extensive experience, that disability is episodic, rather than being a fixed or permanent condition, and that most claimants eventually recover.

While some medical conditions do lead to total disability, many allow a person to work on a limited basis or safely return to work after a temporary period of total disability.

We also recognize that recovery from a disability is usually incremental, with claimants healing and increasing their conditioning levels over time. In fact, our experience has shown that most claimants have some capacity for work during the recovery period, and that their motivation to return to the workplace depends on a number of social, vocational and attitudinal factors. Recognizing this reality, UnumProvident designs insurance contracts that define disability according to our experience and that offer benefits based on return-to-work transitions. We suggest that Social Security also consider offering this type of incentive for claimants.

**Supporting Return to Work Success**

At UnumProvident, we have committed significant resources to offering Return-To-Work (RTW) support to employers because we know that a RTW workplace orientation can make a tremendous difference in helping people stay productive or return to work. At the core of UnumProvident's Return-To-Work emphasis is Customer Care, our claim management organization, whose employees are committed to proactively assisting our insureds in their return-to-work efforts.

Our company has a truly unique claim management model in which claims are immediately assessed and triaged to pathways based on expected duration and type of injury or illness, in contrast to more traditional geographic—or policy-based models. In addition, the process involves continual monitoring of the claimant throughout the disability duration to assess medical status and work capacity. We also provide specialized resources when appropriate to help each individual regain the ability to earn an income and become self-sufficient once again.

As the disability insurance market leader, the sheer volume of work we manage requires a scale of operations that allows us to specialize in ways that give our customers access to a superior level of resources:

- Management of more than 400,000 new disability claims each year, with over $3.6 billion in benefit paid annually.
- 85 board-certified physicians in 14 specialties. These physicians train claims consultants, offer medical reviews and consult with employees' physicians to clarify abilities and customize return-to-work plans.

- Over 300 full-time clinical and vocational consultants, making about 235,000 early intervention calls and more than 100,000 referrals to our in-house rehabilitation and other clinical specialists each year.
- 1,000 local case management and support specialists through GENEX® Services, Inc., a UnumProvident Corporation subsidiary. Vocational rehabilitation experts providing return to work planning, development of workplace accommodations, and job retraining when appropriate.

In addition to vital income replacement during disability, UnumProvident offers claimants additional rehabilitation services and return-to-work support when appropriate, including:

- Vocational/career counseling: analysis of prior work history to look for skills that would transfer to other jobs, exploring vocational interests and aptitudes, vocational testing.
- Identification of vocational alternatives: helping evaluate abilities, prior training, education and experience for alternate work; medical conditions that could impact vocational options; and most viable employment options.
- Resume preparation and assistance with job seeking skills: helping to develop a new resume if necessary, preparation for interviews, assistance in developing answers to possible interview questions, advice on how to approach employers, and how to market skills.
- Purchase of adaptive equipment: recommendation of adaptive devices that might enable the claimant to perform his or her regular occupation or other occupations. Some examples might be: a different type of keyboard, a magnifying screen for a terminal, a telephone amplifier.
- Job placement: helping identify employers who have prospective jobs and employer contacts, locally or nationally. We might also advocate for the claimant to return to work with the pre-disability employer or a new employer.
- Working with pre-disability employer to explore job accommodations or job alternatives: contacting the claimant's original employer to discuss returning to work; helping identify accommodations or alternate jobs.
- Short-term retraining: skill enhancement; computer training for individuals whose skills are outdated.

As a result of these efforts, nearly half of our new claimants are able to return to work within six months of receiving benefits. With our long term disability claimants that are also receiving SSDI benefits, we experience a recovery rate that is more than six times the reported Social Security recovery rate.[1] UnumProvident's long term disability recovery rates are more than 30% higher than the industry average.

**Definitions of Disability**

Along with the changing nature of disability, the disability income protection industry is also evolving. Today's coverage protects wage earners at all income levels and in a variety of work situations, as opposed to policies of the past that focused primarily on high income specialty occupations. As a result, traditional definitions of disability are giving way to new approaches in determining how disability is defined.

The traditional definitions of disability have included:

1. Own Occupation ("own occ"), which requires total disability preventing the insured from working in his or her own occupation, even if the insured is able to work in another occupation;
2. Any Occupation ("any occ"), which requires a claimant to be disabled from working in any occupation for which he or she is qualified;
3. Gainful Occupation, which requires a claimant to be disabled from any occupation at which the insured could earn 50–60 percent of former income.

- The "loss of earnings"[JMF1] approach included income offsets, so that the benefit for total disability would be reduced in proportion to any addi-

[1] Based on information from UnumProvident Corporation subsidiary, GENEX, November 2001.

[JMF1] Loss of earnings and loss of time and duties which isnt' mentioned here are also protection for own occupatin. They just have the added caveat of "and not working in another occupation." I also think its important to note somewhere that you do get paid a benefit if the job you go to pays less than the original job if you can't do your own occupation (a proportional benefit).

tional income, regardless of whether it came from the insured's own occupation or any other.

- The "loss of time or duties" doesn't factor in income that still may be coming in from the pre-disability occupation. Protection for own occupation is there, simply with the added caveat of "and not working in another occupation." If a claimant begins another occupation, it is important to note that individual will be paid a proportional benefit if the new job pays less than the original job if the claimant is unable to perform his or her own occupation.

These definitions often presented an either/or choice in older policies. Newer income protection policies offer a range of definitions in one integrated package. Any of these definitions may be appropriate to the same insured at different career stages:

1. Any Occ or Gainful Occ: These definitions are designed to appeal to younger insureds early in their careers when skills are more easily transferable to a new occupation.
2. Own Occ (working or not): This definition may be necessary later when skills are more specialized.

Today it's much more important to look beyond the definition of total disability and ask ourselves, "Which is more likely to occur following a disability: the insured returning to his or her occupation full time, returning part time due to disability, or beginning a new career?" The answer makes clear the need for flexibility in defining disability to meet the differing needs of insureds in the contemporary workplace.

That is why UnumProvident's contracts most often feature multiple levels of benefits based on several different definitions of disability employed during the life of the disability to make benefit decisions, as opposed to the one definition of disability used to determine eligibility for all Social Security claims.

The Social Security definition of disability—which requires total disability and the inability to work in any occupation in order to qualify for benefits—sends a message to the benefit recipient that he or she is totally and permanently disabled. It creates a mindset that discourages individuals from trying to return to work, with the result that claimants frequently continue to collect SSDI benefits indefinitely.

UnumProvident recognizes that while many individuals are disabled episodically, some claimants may have permanent impairments, such as loss of limbs or other severe conditions, that prohibit them from working. Many of them have extraordinary cost of living increases that can't be met with ordinary income replacement. Our definition of disability for catastrophic coverage does not predicate benefits on ability to return to work, but instead is based on the loss of two Activities of Daily Living (ADLs) or cognitive impairment and can pay up to 100 percent of pre-disability salary.

For claimants with such palpable impairments, we provide SSDI advocacy support for all application and appeal levels, including representing UnumProvident claimants at judicial hearings and helping them receive SSDI benefits within 8 to 12 months, compared to the national average of 22 months.[2]

**Cases in Point**

Today, two factors are making a return to work possible for many people we previously considered permanently disabled: medical advances and assistive technology. Medical advances include the protease inhibitors that are extending the lives of AIDS patients; psychotropic drugs that increase work function for individuals with depression and other affective disorders; new cancer treatments; and medications to reduce pain in chronic disorders such as osteoarthritis and other muscular/skeletal impairments.

Assistive technology is a growing field that is significantly helping people with impairments to return to work and includes computer-based technology solutions, such as hand-held organizers that provide memory assistance for people with brain injuries; speech recognition technology to compensate for repetitive motion injuries; screen magnifiers, screen readers and other devices to compensate for visual impairment.

Increasingly we are finding that some claims thought to be long term in nature actually have the potential for recovery. The following personal stories demonstrate the impact that medical advances, assistive technology and return-to-work support can have on claim results:

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[2] Based on information from UnumProvident Corporation subsidiary, GENEX, November 2001.

- A UnumProvident employee suffered a wrestling accident at the age of 17 that left him with quadriplegia. Although he has a severe condition, he has proven that physical disability doesn't need to be an impediment to succeeding in a high-level job with a large corporation. Today, with a Ph.D. in neuropsychology, he is fully productive in his role as a medical director with the help of a puff-stick and Dragon Naturally Speaking 4.5 speech recognition system—technology solutions made available by UnumProvident.

  He augments Dragon with a headset, a keyboard anchored microphone, a tele-dictation system that allows him to dictate long memos and receive the text in e-mail, and a scanner that allows him to manage visual records and forms as PowerPoint images. These assistive technology tools help him perform his daily duties within the corporation.

  "What I can do now with assistive technology is a thousand times beyond what was possible 20 years ago," he says. "The current state of continuous-speech recognition solutions in amazing, fantastic and something I could only hope for as recently as three or four years ago."

- A 48-year old Virginia AIDS claimant who stopped working in March 1996 saw his condition begin to improve in May 1999 as a result of new triple-drug therapies introduced in the mid 1990s. A UnumProvident vocational rehabilitation counselor discovered in phone discussions with the claimant that he was interested in returning to work full time. The outcome is shown in this letter from the claimant to the counselor:

  "You gave me the inspiration and courage to stand once again on my own feet. It was very encouraging when you told me that I have the skills and potential, that I just needed to polish my skills and my résumé. On a regular basis, you were in touch with me, asking how I was doing. By your blessings, I finally achieved my destination. I got a job in _____ International, Inc. Thank you very much once again for the blessings, inspiration, support and courage you gave me for the last nine months."

The growing numbers of people who are able to maintain or resume full and independent lifestyles—including work, whether in their original or a new occupation—clearly supports the need for flexibility in how we define disability.

Our experience at UnumProvident has taught us that a "one-size-fits-all" approach to case management is usually ineffective. Instead, we look at every claimant as an individual, conducting a medical analysis of each case and then—based on diagnosis and expected duration—developing an appropriate return-to-work plan tailored for the individual.

UnumProvident also strives to educate and assist employers in planning for the return to work of employees who have been absent due to specific kinds of illnesses. One example is the following White Paper, authored by two of our Customer Care employees, which discusses return to work following depression:

**Behavioral Health Disability: Depression in the Workplace**

Renee Mattaliano, MA, CRC and David McDowell, Ph.D.
UnumProvident Corporation

**Returning to Work from Depressions**

The workplace is an ever-changing panorama of policy, practice, politics and people. As a part of the high-performance requirements of the modern workplace, employees may frequently find that improvements in mobile technologies keep them connected to work around the clock. Beepers, voicemail, call forwarding, cell phones and e-mails have rendered us always accessible to the workplace and to those that make up our circle of support. There is an on-going shift to a service economy which some consider to be highly stressful.[3]

Expectations and demands from both the workplace and our personal lives can cause significant collisions between work, lifestyle and family. For many individuals depression may result. How can employers recognize and prevent potential mental health problems for employees and appropriately handle situations of depression that do occur? This paper will explore the challenges of depression in the workplace and provide sensible solutions to improve the health and productivity of your workforce.

[3] Stephen G. Minter: "Too Much Stress?" Vol. 61, Occupational Hazards, 05–01–1999

**Q. What are the most common psychiatric causes of occupational impairment?**

**A:** At UnumProvident, about half of our psychiatric disability claims are based on depression, which is the fifth leading cause of disability for our long-term disability policyholders. The World Health Organization expects that depression will be the second leading cause of disability after heart disease by 2020.[4] In fact, mental illness accounts for the fastest growing segment of recipients on Social Security Disability Income and Supplemental Security Income.[5]

Untreated depression is costly. Estimates of the total cost of depression to the nation in 1990 ranged from $30-$44 billion. Of the $44 billion figure, depression accounts for close to $12 billion in lost workdays each year. Additionally, more than $11 billion in other costs accrue from decreased productivity due to symptoms that sap energy, affect work habits, and cause problems with concentration, memory and decision-making. Costs escalate still further if a worker's untreated depression contributes to alcoholism or drug abuse.[6]

**Q: How can you tell if someone is depressed?**

**A:** The nine symptoms of depression are:

- loss of interest in or capacity for pleasure;
- weight loss or gain;
- insomnia or oversleeping;
- agitation or slowed tempo of thought and action;
- fatigue or loss of energy;
- sense of worthlessness or excessive guilt;
- impaired concentration or indecisiveness;
- depressed mood; and
- preoccupation with death.

Five of these nine are required for the diagnosis of major depression, but fewer symptoms may qualify for the diagnosis of dysthymia or adjustment reaction with depressed mood. In fact, there are at least eight different formal psychiatric diagnoses that involve depression. It may be useful to think of depression as a state in which one feels defeated, has given up and feels helpless and hopeless.

**Q: Are there accepted or standard treatments for depression?**

**A:** Yes. Because depression is one of the most common psychiatric illnesses and a leading cause of disability both for UnumProvident policyholders as well as worldwide, several organizations have established treatment protocols for depression.[7] One of the standard guidelines has been published by the American Psychiatric Association.[8] In general, these guidelines agree that for moderate or severe depression:

- medication is a critical component of treatment;
- contact between treater and patient must be frequent (at least once every two weeks or more often), particularly early in treatment before symptoms are reduced and a person's life stabilizes;
- medication dosages and types must be changed regularly, every month or two, until the right dose, the right medication, or the right combination of medications is found that returns the patient to their baseline function; and
- psychotherapy by a qualified professional must accompany medication.

Generally, the more severe or repetitive the depression, the longer one should remain on medication even after symptoms are significantly improved and the talking therapy sessions may have ended.

**Q: So when people have depression, it sounds like they must be impaired from working?**

**A:** Many people can and do continue to work while depressed and receiving treatment. Their performance may remain relatively unaffected. However, mild to moderate symptoms are indicators that treatment should be sought. While there may

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[4] Constance Holden: "Mental Health: Global Survey Examines Impact of Depressions," Science, 04–07–2000

[5] Author not Available: "Encouraging Disabled to Re-enter the Workforce," Mental Health Liaison Group Congressional Testimony, 03–17–1998

[6] National Institute of Mental Health: "The Effects of Depression in the Workplace," 06–01–1999

[7] Constance Holden: "Mental Health: Global Survey Examines Impact of Depressions," Science, 04–07–2000

[8] American Psychiatric Association: Practice Guidelines for the Treatment of Patients with Major Depression (2nd Ed), April 2000

be some decline in performance, it may not be noticeable until the symptoms worsen or become chronic and have a demoralizing effect on the employee. The more quickly one accesses effective treatment, the more likely work performance will be unaffected or affected to the same extent, say, as a death in the family or a divorce might affect an employee. These are events which interrupt the regular flow of life and work, but from which people routinely recover their capacity to work within several days to several weeks.

**Q: Are there ways to facilitate return to work?**

**A:** Yes, if your company has in-house or contracted medical professionals or an insurance carrier, they can assist in referral to a qualified professional for evaluating the person's level of impairment and prognosis. Proper authorization must exist for the exchange of information, and engaging the person's treatment provider in the return-to-work process is critical for success.

**Q: How do you determine if performance issues are caused by an underlying depressive condition?**

**A:** The rule of thumb is manage only the performance. As with any other employee you should evaluate the need for additional training, set clearer expectations, and suggest support through your Employee Assistance Program as appropriate for the situation. When and if the employee communicates there is a medical problem, that's when you enlist the help of your medical professionals or insurance carriers to assist in investigating the situation. Proper authorizations are essential. Throughout this process, the employer must remain alert to needs for reasonable accommodations and/or medical leaves of absence and continued performance management.

**Q: Do persons with depression require accommodations?**

**A:** Accommodations may be very useful in keeping a person at work or helping a person return to work. Accommodations that reduce demands and permit time away from work for treatment can help an employee remain at work despite some degree of impairment.

- You may consider reduced work time, flexibility in arranging absences, and elimination of tasks in which impairments are most pronounced.
- Accommodated schedules permitting flexible hours may be helpful, since depressive symptoms are often worse in the morning and gradually improve during the day.
- If a depressed person becomes emotional while speaking with customers, you might arrange for less or no customer contact for an initial period of two to three weeks while medications and psychotherapy are started or adjusted.
- If concentration difficulties interfere with detailed numerical analyses, work could be routed elsewhere and the employee assigned tasks requiring less sustained concentration, e.g. working from a master document to format a newsletter, or working as a member of a team on a project with multiple aspects.
- While technology may lengthen work hours by making us available to work around the clock, it can also be helpful when accommodations are required. Technology that allows working from home, or facilitates tracking job tasks and schedules, may be a critical helpful tool in accommodating home-based employees, in assisting with organization, and in transitioning employees back to full duty.

When returning from a period of psychiatric disability, an employee faces two general challenges: the fear of stigma, and eroded self-confidence. Stigma involves the question of how others will react. "Will there be ridicule?," "Whispers?," or "Exaggerated solicitousness?" The pessimism associated with depression, coupled with the effects of not working for a significant period of time, may affect self-confidence: The employee may wonder "Can I still do the work?," "Can I regain that concentration?," or "I feel rusty—how long will it take before I feel 'normal' again?"

- Gradual return to work, beginning with shorter days or fewer than five days a week, may help ease the transition. A similar graduated approach to work tasks, reserving reintroduction of those tasks thought by the employee and employer to represent the greatest challenge until some early victories are won and competencies are demonstrated, may also be a useful general approach.
- Ongoing support services are invaluable in reducing the likelihood of relapse and reducing the chronicity of the problem. These services may come

in the form of continued medical follow-up and/or support services through a company-sponsored Employee Assistance Program.

**Q: How do you handle potential employee relations issues when accommodations are made to help someone stay at work or return to work?**

**A:** Depending on the symptoms presented in the workplace, the manager may need to explain the fact that the employee's job duties are temporarily changing. It is imperative that confidentiality is maintained; consequently, the manager should inform co-workers only of the facts related to the work at hand and assure them that workflow for everyone will be monitored closely. Any difficulties from any of the workers should be reported and investigated. As with all accommodations, time parameters should be established and monitored for progress.

**Q: Are there ways to prevent employees from developing psychiatric difficulties?**

**A:** One in ten Americans will experience a significant depression in her or his life. If we could regard depression as a common human problem, rather than a strange and awkward illness better not discussed openly, we would already have made great strides in helping foster an atmosphere in which people could acknowledge to themselves that they have a problem and seek an effective solution.

The stigma which continues to surround emotional problems causes great suffering by impeding recognition and receiving medical care. The National Institute of Occupational Safety and Health (NIOSH) promotes evaluating your organization and making changes where appropriate to improve working conditions.[9] Employee Assistance Programs, support for participation in annual depression screening clinics, reasonable sharing of personal difficulties, support for education about mental health issues, and fostering overall healthy lifestyle through wellness initiatives will all improve your company's ability to foster adaptive rather than regressive attitudes and behaviors regarding psychiatric illness.

**Recommendations**

We recommend that the Subcommittee consider the following three key areas based on our experience in the private sector:

- **Adopt benefits that emphasize a return to work.** We appreciate and endorse Social Security's progress in encouraging return to work through the Ticket to Work and Self-Sufficiency Program. Now it is important for Social Security to incorporate other return-to-work features and incentives, such as transitional work funding, partial payments and proportional benefits, as well as rehabilitation services, to further assist claimants in returning to work and reducing their dependence on cash benefit programs.
- **Acknowledge that recovery is incremental.** Recovering from an impairment is an incremental process and Social Security policies should require ongoing review and documentation throughout the claims process. It is important to work with claimants during the recovery period to determine the level of functionality of which they are capable and to integrate medical advances into the continual review process.
- **Offer expanded definitions of disability.** Requiring a claimant to be totally disabled from any occupation as the only way to qualify for benefits provides a disincentive for individuals to consider returning to work. Adding more flexible definitions that reflect current thinking about the nature of disability, how individuals recover and the changing needs of today's workers will encourage claimants to focus on becoming self sufficient once again.

These recommendations can significantly enhance the Social Security program by altering the perception of disability and realigning objectives to help claimants return to work whenever possible. While there will be initial costs incurred, the long-term savings will prove significant.

**Conclusion**

There is dignity associated with a person's ability to work and great value in the ability to live a full and independent lifestyle. This philosophy—and its focus on abilities—is what shapes UnumProvident's approach to disability and the assistance we provide for our insureds.

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[9] Stephen G. Minter: "Too Much Stress?" Vol. 61, Occupational Hazards, 05–01–1999

Statistics show that the general population does want to be active in society and part of the workforce. Sixty percent of Americans not working say that they would like to if the opportunity were made available.[10]

For those of us in the income protection insurance industry, it is both our job and responsibility to ensure we make that opportunity a reality. In closing, I want to thank you again for offering me this opportunity to testify. I will be happy to answer any questions now.

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Chairman SHAW. Thank you, doctor. Ms. Owens.

**STATEMENT OF PATRICIA OWENS, CONSULTANT, BOARD MEMBER, AND MEMBER, DISABILITY POLICY PANEL, NATIONAL ACADEMY OF SOCIAL INSURANCE**

Ms. OWENS. Thank you for the opportunity to appear before you today, both for myself and from the National Academy of Social Insurance (NASI). My testimony is based largely on the work of the NASI Disability Policy Panel, of which I was a member.

At the request of this Subcommittee of the 102nd Congress, the panel examined whether the design of the SSDI–SSI Programs encouraged persons with disabilities to emphasize their impairments rather than to get back to work. It also looked at ways to better link beneficiaries with rehabilitation and work without significantly raising the cost of the program.

The panel made numerous recommendations to make it more work friendly. One of those is extending health care coverage. Another was the Ticket to Work. We are very happy that we were able to work with you and that you could use some of that research when you came up with the Ticket to Work and Work Incentives Act, Public Law 106.

The panels report also emphasized the need for administrative resources in the Social Security Administration to carry out the definitions as they currently exist and any changes made in the act. I will come back to that in a minute.

The purpose of SSDI is earnings replacement insurance—and this is what I want to emphasize. Earnings replacement insurance, public and private, limits the consequences of the inability to work because of disability by providing income support. That is very important, and I think Mr. Pomeroy had indicated it is really one of the features of social insurance.

Any work disability definition, of which the Social Security disability program is one, contains several elements. The elements are: a health condition that prevents work; work itself, and how you define work; offsetting capacities that exist; and the environment in which the person works and lives. It is a very clear cut sort of look at determining disability for the inability to work.

It is necessary that there be income replacement. Income replacement can be used when inability to work is clearly established and that inability to work cannot be removed. Income replacement can also be used temporarily during a transitional period as other remedies are explored and applied.

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[10] Richardson, Mary, 1994. The Impact of the Americans with Disabilities Act on Employment for People with Disabilities. Annual Reviews, Public Health. 15:91–105.

There are other remedies to work disability, including changing or containing the impairment through health care, modifying work requirements, enhancing the person's capabilities and environment changes, and I think we have heard a lot about that. The point I am making here is that income replacement and determining work disability can be put in place while other things are being considered and taking place for this person with the disability.

The SSDI definition of disability is very strict. It is a very strict definition of disability. It is stringent and replacement rates are frugal. It is also very generic, and I think that is an important thing that we need to focus on. The application of regulations must be systematically updated over time to reflect dynamic social changes, I think we have heard this over and over again.

You can have a definition that is generic and static. The medical conditions, the work, and so forth, change and the administration of the definition must therefore change around those changes. I was very glad to hear Mr. Gerry say that. So, Congress has from time to time actually legislated reforms because of these changes.

The NASI panel concluded that the policy should flow—and this is the important difference here in this testimony—the policy should flow from overall goals that are set up. Then each of the various programs underneath those overall goals should have its own definition of disability to fit specific remedies. The panel concluded that the primary goal of a national disability policy should be the integration of people with disabilities into American society, equal opportunity for participation, independent living, all of those pieces. So, it is that organizing principle under which the other programs need to fit. Social Security disability happens to be one of those.

I would like to submit for the record Chapter 4 of NASI's report, which goes into the different definitions that various remedies have to have in order to carry out a national disability policy. So, different definitions are in fact important. The work disability definition for wage replacement is one of those definitions. I would also like to submit Chapter 5, which goes into the panel's evaluation of SSA's methods for assessing disability and the things you have to consider for that.

[The chapters follow]

**Chapter 4—Defining Eligibility for Benefits and Services: Distinguishing Programs and Purposes**

In chapter 1, the Disability Policy Panel presented a single conceptual definition of disability for purposes of clarifying the nature of work disability. This chapter presents the Panel's review of specialized definitions of disability that are used as eligibility criteria in public laws or private contracts that offer civil rights protection, rehabilitation, other services or income support to persons with impairments or work disabilities. In reviewing these definitions, the Panel concluded that:

- different definitions of disability are appropriate for programs that offer different kinds of services or benefits;
- work disability—based on loss of ability to earn—is an appropriate eligibility criteria for earnings-replacement insurance; and
- the Social Security Act definition of work disability is very strict. A less strict test would significantly increase the cost of Social Security disability benefits.

This chapter addresses concerns that these eligibility criteria differ in their definition of disability; reviews the definitions used for specific disability-related pro-

grams; and discusses various alternative definitions of disability that have been suggested for the Social Security program. It concludes by exploring whether programs with different, specific purposes and eligibility criteria—such as vocational rehabilitation and Social Security disability insurance (DI), or the Americans with Disabilities Act 1990 (ADA) and DI—are in conflict.

### Do We Need a Single Definition of Disability?

A single, broad definition of disability, as illustrated by the conceptual model of disability adopted by the Panel, is useful in drawing meaningful distinctions among such disability-related concepts as *medical condition, impairment, functional limitation* and *work disability.* The conceptual definition of work disability is useful in clarifying its four elements—impairments, skills and abilities, tasks of work, and the broader environment—and therefore in considering various possible remedies for work disability.

But a single legal definition of disability for purposes of defining eligibility for benefits and services is neither necessary nor desirable. A one-size-fits-all definition would be ill-suited to the diverse needs of persons with impairments or work disabilities. Rather, eligibility criteria should and do relate directly to the service or benefit being offered:

- A definition of disability based on need for assistance with activities of daily living (ADLs) is appropriate for determining eligibility for publicly financed services that assist with ADLs.
- A definition of disability based on need for and likely benefit from vocational services is appropriate for determining eligibility for publicly financed vocational rehabilitation (VR) services.
- A definition of disability that encompasses all who are at risk of discrimination in employment or public access is appropriate for determining who is covered by civil rights protection.
- A definition based on loss of earning capacity is appropriate for determining who is eligible for public or private cash benefits to replace part of lost earnings.

A mismatch between eligibility criteria and benefits that are offered creates inappropriate incentives and gaps in coverage for people seeking to gain access to the services they need. For example:

- Basing eligibility for personal assistance with ADLs on a definition of disability related to work incapacity fails to cover individuals who need such assistance whether or not they are working.
- Basing eligibility for health care on a definition of disability related to work incapacity is appropriate if, and only if, people who work are ensured access to health care through their jobs. If they cannot get health care coverage when they work, then basing eligibility for health care coverage on work disability leaves uncovered those who can and do work.

Consistency in disability policy is found instead in its overarching goals. The Panel believes the primary goal of a national disability policy should be the integration of people with disabilities into American society. That includes equality of opportunity, full participation, independent living and economic self-sufficiency. These goals are pursued through a broad landscape of systems that finance health care and education for the general population and various programs that provide disability-related goods and services, legal protections and earnings replacement benefits, as discussed in chapter 1. Legal definitions of disability that are used as eligibility criteria for these various services, legal protections and cash benefits rightly differ because they target particular remedies to a specific need among the varied needs that people with disabilities have.

### Legal Definitions of Disability: Different Definitions are Appropriate for Different Purposes

The Panel reviewed a number of different definitions of disability that are used in public laws or private contracts. These legal definitions of disability are not meant to be an all-purpose definition of the meaning of disability. Instead, they are used as eligibility criteria to specify who is eligible for particular protections, services, or benefits provided by various public laws or private contracts.

Each of the programs the Panel reviewed offers a different kind of remedy or benefit to people who have impairments, functional limitations or work disabilities. As such, each employs a different legal definition of disability for determining who is eligible for what the program provides, whether that is civil rights protection, reha-

bilitation, long-term care services or earnings-replacement benefits. The programs are not in conflict with one another because they offer different remedies or because they define eligibility for different remedies in different ways. Rather, taken together, they reflect the extraordinary diversity of both abilities and needs among persons who have some sort of impairment, functional limitation or disability.

The variations among legal definitions and their match with the purposes of particular programs is illustrated by examining four different sets of disability policies: civil rights protection, vocational rehabilitation, long-term care services and earnings-replacement insurance.

**Civil Rights Protection**

The ADA defines disability for the purpose of providing legal remedies to those at risk of discrimination in employment or public access (figure 4–1). The ADA defines disability broadly for the purpose of identifying who is covered by the civil rights protection of the Act:

- "Disability" means with respect to an individual (1) a physical or mental impairment that substantially limits one or more major life activities of such individual, (2) a record of such an impairment, or (3) being regarded as having such an impairment.[1]

[1] 42 U.S.C. 12102(2).

**Figure 4–1. Definitions of Disability for Civil Rights Protection and Eligibility for Services**

| Program or law | Purpose of definition | Definition |
|---|---|---|
| **Civil rights protection** | | |
| Americans with Disabilities Act | To determine who is protected by the nondiscrimination and public accommodation provisions of ADA. | Individual with a physical or mental impairment that substantially limits one or more major life activity; a record of such an impairment; or being regarded as having such an impairment. |
| **Eligibility for rehabilitation services** | | |
| Vocational rehabilitation (public program) | To determine who is eligible to receive VR services. | An individual who (i) has a physical or mental disability that constitutes or results in a substantial impediment to employment and (ii) can benefit in terms of an employment outcome from vocational rehabilitation services provided. |
| Vocational rehabilitation (private employment-based disability insurance) | To determine who might be offered employer-financed VR services (which are not part of the contractual employee benefits agreement). | Cost/benefit analysis. Employer—or insurer-financed VR services are offered at the discretion of the employer/insurer and are provided based on their cost recovery potential from the employee returning to work. |
| **Eligibility for long-term care services** | | |
| Medicaid (institutional care) | To determine who is eligible for Medicaid-financed institutional care, or community-based alternatives. | Needs assistance with ADLs or medical assessment of need for institutional care. Depends on the state plan. |

Abbreviations: ADA = Americans with Disabilities Act, ADLs = activities of daily living, VR = vocational rehabilitation.

- "Major life activities"means functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.[2]

Regarding discrimination in employment, the ADA states that no covered entity shall discriminate against a "qualified individual with a disability" because of disability in regard to job-application procedures; the hiring, advancement or discharge of employees; employee compensation; job training; and other terms and conditions of employment.

[2] U.S. House of Representatives, *Americans with Disabilities Act 1990: Report Together with Minority Views,* Rpt. No. 101–485, Part 2 (Washington, DC: U.S. Government Printing Office, 1990), p. 51.

- A qualified individual with a disability is an individual with a disability who, "with or without reasonable accommodation, can perform the essential functions of the employment position that such person holds or desires."[3]

Employers are required to provide reasonable accommodation, unless the accommodation would place an undue hardship on the operation of the business. Undue hardship is an action that would require significant difficulty or expense. It is determined on a case-by-case basis.[4]

The broad definition of who is covered by the ADA is appropriate for the purpose of the Act, which is to offer legal remedies to those who face discrimination in employment or public accommodation. For that purpose, it is appropriate to include not only those who have impairments, but also those who are believed to have impairments or in the past have had impairments because they too may be at risk of discrimination.

**Vocational Rehabilitation**

The Federal/state program that provides VR services defines disability in terms of the need for and likely benefit from the rehabilitation services the program offers. The Vocational Rehabilitation Act, as amended in 1992, adopted the ADA definition for setting its research, training and independent-living center goals. The definition used for eligibility for VR services, however, remains related to the need for and likelihood of benefiting from the services the program offers. That is:

> An individual who (i) has a physical or mental disability that constitutes or results in a substantial impediment to employment and (ii) can benefit in terms of an employment outcome from vocational rehabilitation services provided.[5]

The 1992 amendments modified the eligibility criteria by adding:

> it shall be presumed that an individual can benefit in terms of an employment outcome from vocational rehabilitation services . . . unless the designated state unit can demonstrate by clear and convincing evidence that such individual is incapable of benefiting from vocational rehabilitation services in terms of an employment outcome.[6]

The change shifts the burden of proof from the applicant to the VR agency in determining whether a person can benefit from VR services. The eligibility criteria, however, remain based on the need for, and prospect of benefiting from, services that VR agencies offer.

Private employers or disability insurers also offer vocational rehabilitation services. The services rarely, however, are an entitlement or contractual obligation to the individual worker from the employer or insurer. Instead, eligibility for insurer-financed rehabilitation services is based on the cost recovery potential to the employer or insurer of paying for those services, so the employee can return to work and leave the private disability insurance rolls.

**Long-Term Care Services**

Programs that provide long-term care services, while neither widely developed nor uniformly available in the United States, generally define disability in terms of limitations in performing ADLs. They provide institutional or community-based services to assist individuals with ADLs.

The Medicaid program is the main source of public financing to provide individuals with very significant disabilities with long-term care services, such as institutional care in nursing homes for elderly persons or intermediate care facilities for persons with mental retardation (ICFs/MR). To encourage community-based alternatives to institutional care, Medicaid waivers have allowed states to arrange long-term care in the community for individuals who would otherwise meet the state's test of need for institutional care, if the community-based alternative costs no more than institutional care. The Medicaid program has also permitted states to fund user-directed, community-based personal assistance services.[7] To qualify for institu-

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[3] 42 U.S.C. 12111.

[4] N.L. Jones, "Essential Requirements of the Act: A Short History and Review," *The Americans with Disabilities Act: From Policy to Practice,* J. West (ed.) (New York, NY: Milbank Memorial Fund, 1991), pp. 36–37.

[5] Section 7(8)(A) of the Rehabilitation Act, as amended in 1992.

[6] Ibid., section 102 (a)(4)(A).

[7] This is made possible by a regulation (42 CFR 440.170(f)) "that permits personal assistance services to be provided in a person's home by an individual, not a Member of the family who is qualified to provide such services, where services are prescribed by a physician in accordance with a plan of treatment and are supervised by a nurse." Because this regulation does not speci-

tional or community-based services, individuals must meet the state's eligibility criteria, which are usually based on need for assistance with ADLs such as bathing, eating, toileting, getting around inside the home and getting in or out of bed or a chair.[8]

**Earnings Replacement Insurance**

Cash benefit programs that are designed to replace earnings from prior work all use a definition of disability based on loss of ability to work. In addition, they all have other eligibility rules that require a record of prior work from which contributions toward disability protection were paid (by the employee, the employer or both) and all, in one way or another, relate the amount of the benefit paid to the prior level of covered earnings that have been lost because of work disability. Various definitions used to determine eligibility for benefits to replace lost earnings are summarized in figure 4–2. They differ mainly in the range of jobs that must be considered in determining whether the insured individual is unable to work.

- **Private long-term disability insurance** (LTDI) contracts usually define disability in terms of inability to perform one's usual occupation, although after a period of time (often 2 years) the definition shifts to a stricter test of inability to perform the duties of any occupation for which one is qualified by training, education or experience.[9]
- **Private short-term disability insurance** contracts usually define disability in terms of inability to perform one's own job, which is a less strict test than the "own occupation" test used for long-term disability insurance. The job-specific test is used for short-term disability benefits because it is generally assumed that the employee will be able to return to his or her job after he or she recovers from temporary illness, injury or maternity.
- The **U.S. Civil Service Retirement System** definition of long-term disability for eligibility for disability retirement pensions is similar to an occupational test in private LTDI—inability to perform the employee's current position or another available position in the same agency at comparable pay for which the person is qualified.
- The **Railroad Retirement System** offers an occupational definition of disability (inability to perform their usual occupation) for workers with 20 years of service and a current connection to the railroad industry. Railroad workers with fewer years of service, or those who have left railroad employment, can receive disability benefits from the Railroad Retirement System if they meet a definition of disability that is essentially the same as the Social Security definition.
- The **Social Security Act** definition of long-term disability is clearly the most stringent. It defines disability as:

"the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less that 12 months . . . An individual shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy . . ."[10]

All of these systems have in common the purpose of providing income to replace part of lost earnings while the worker is unable to work as a result of illness, injury or work disability. Their definitions of disability all relate to the demands of work. They differ in terms of the range of jobs or job tasks that are considered in determining work disability. Short-term disability usually considers the worker's current job; insurance or pensions for long-term disability often consider the full range of jobs within the worker's occupational group. Social Security disability insurance has the most demanding standard because it considers the person's ability to do any work that exists in significant numbers in the national economy. (The Social Security Act definition is discussed in greater detail in chapter 5.)

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fy the amount of nurse supervision required, it permits states to allow a great deal of consumer direction in the daily management of one's personal assistance needs. G. DeJong and T. Wenker, "Attendant Care as a Prototype Independent Living Service," Caring, November 1982, pp. 26–30.

[8] These need-for-service eligibility criteria are in addition to the Medicaid categorical criteria (SSI or AFDC receipt, or over age 65) and the Medicaid income and resource eligibility criteria.

[9] M.W. Kita, "Morbidity and Disability," *Journal of Insurance Medicine,* Winter 1992, p. 272.

[10] Section 223(d)(1)(A) and (2)(A) of the Social Security Act.

***The Panel concludes that work disability is an appropriate legal definition—or eligibility criterion—in public laws or private contracts that are designed to pay benefits to replace part of lost earnings from work.***

On the other hand, work disability is not necessarily a proper eligibility criterion for allocating publicly financed services or benefits that people need whether or not they are working, particularly if these services or benefits are not available to people with impairments or chronic health conditions who do work. Examples of services people need whether or not they are working include health care coverage and, in some cases, personal assistance services or other ongoing impairment-related supports.

The Social Security Act definition, while very strict, is consistent with the Panel's conceptual model of work disability. Work disability involves the interaction among a person's medically determinable impairment; the environment in which he or she is expected to work; the tasks that constitute work the person can reasonably be expected to do; and his or her offsetting capacities or compounding limitations in performing those tasks.

**Figure 4–2. Definition of Disability for Cash Benefits**

| Program or law | Purpose of definition | Definition |
|---|---|---|
| **Replacement of prior earnings** | | |
| Disability insurance (OASDI) | Eligibility for benefits to partially replace past earnings. | INABILITY TO WORK. Inability to engage in SGA because of a medically determinable physical or mental impairment expected to last 12 months and of such severity that individuals cannot, after considering their age, education, and work experience, do their previous work or other work that exists in the national economy. |
| Private long-term disability insurance | Contractual entitlement to benefits to partially replace past earnings. | OWN OCCUPATION/ANY OCCUPATION. Often, for first 2 years, inability to do own occupation. Then inability to do any suitable occupation. |
| Private short-term disability insurance | Contractual entitlement to benefits to temporarily replace earnings. | OWN JOB. Inability to perform own job. |
| U.S. Civil Service disability | Federal employees' entitlement to disability pension. | OCCUPATIONAL. Because of disease or injury, unable to render useful and efficient service in the employee's current position or in a vacant position in the same agency at the same pay level for which the individual is qualified for reassignment. |
| Railroad retirement disability annuity | Railroad workers' entitlement to monthly benefits based on disability. | Regular disability: same as OASDI. For workers with 20 years of service and a current railroad job, inability to perform the worker's regular railroad job. |

Abbreviations: OASDI = Social Security old-age, survivors, and disability insurance, SGA = substantial gainful activity.

## Alternative Definitions of Disability for Social Security

Because the Social Security test of disability is very strict, it is often criticized for requiring that applicants be unable to do "any substantial gainful activity" in order to qualify for benefits. That is, of course, true. The Panel considered various less strict tests of work disability for Social Security. The appeal of such alternatives is that they would make Social Security more "work friendly" by paying benefits to more persons who can and do work. The drawback of such proposals is that they would increase the number of people who would qualify for Social Security disability benefits and, therefore, would increase the cost of the DI program.

### Occupational Test of Disability

The occupational test of disability—inability to perform one's own occupation—that is used in many private long-term disability insurance plans is less strict than the Social Security test. This test would allow benefits to be paid to workers who are no longer able to do their usual occupation, but nonetheless are quite capable of doing other work, including work at relatively high pay.

The Panel reviewed a comprehensive reform proposal that involved an occupational test of disability for DI that would allow benefits if the applicant were unable to do his or her usual occupation.[11] This occupational test was estimated to increase the cost of the DI program by about $20 billion per year (in 1994 dollars) after 10 years, or by roughly 50 percent.[12]

### Partial Disability

Some European social insurance programs pay partial disability benefits. In The Netherlands, for example, if workers have a loss of 15 to 80 percent of their working capacity, they may receive a partial disability pension. If such workers are employed, they are eligible for a fraction of the full disability pension. In Sweden, partial disability pensions may be paid at 25 percent, 50 percent or 75 percent of a full disability pension for either the universal disability pension or the earnings-related pension.[13]

Both The Netherlands and Sweden spend significantly more on disability benefits than does the United States. The United States in 1991 spent 0.7 percent of its gross domestic product (GDP) on Social Security and SSI disability benefits. In contrast, The Netherlands and Sweden spent 4.6 and 3.3 percent of their GDP, respectively for their disability benefit systems that include partial disability benefits.[14]

In the United States, permanent partial disability benefits also are provided by state workers' compensation programs. Compensation for permanent partial disability is one of the most complicated and contentious aspects of workers' compensation. Broadly speaking, three different bases are used for determining compensation for permanent partial disability:

- Impairment-based methods provide compensation based on physical or mental loss of use of bodily function. This method pays a specified amount for such factors as loss of motion, loss of strength or loss of a part of the body.
- Wage-loss methods base the benefit on the actual partial loss of earnings as a result of the permanent partial impairment. The amount of the benefit is based of demonstrated loss of past earning capacity.
- Earnings-capacity-loss methods take into account the impact of the worker's age, education and work experience in combination with the permanent partial impairment to estimate the consequences of the injury for the worker's future stream of earnings.

A recent blue ribbon panel on workers' compensation concluded that each of these methods has certain advantages as well as significant flaws. *Impairment-based valuations* of loss can be measured with ease, but the benefit is not related to the economic consequences of the loss for the individual worker. *Wage-loss systems* come the closest to the traditional purpose of workers' compensation, but they provide dis-

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[11] A.I. Batavia and S.B. Parker, "From Disability Rolls to Payrolls: A Proposal for Social Security Program Reform," Journal of Disability Policy Studies, Vol. 6, No. 1, 1995.

[12] Social Security Administration, Office of the Actuary, memorandum, "Estimated Increase in OASDI Benefit Payments Under the 'Batavia-Parker' Proposal To Modify the DI Program," September 10, 1993.

[13] Social Security Administration, *Social Security Programs Throughout the World—1995* (Washington, DC: U.S. government Printing Office, July 1995), pp. 316–17.

[14] L.J.M. Aarts and P.R. de Jong, "European Experiences with Disability Policy," *Disability, Work and Cash Benefits,* J.L. Mashaw, et al., (eds.) (Kalamazoo, MI: W.E. Upjohn Institute for Employment Research, forthcoming).

incentives for workers to return to full employment if the amount of the benefit is related to the demonstrated partial wage loss. In addition, it is difficult to determine whether the wage loss experienced long after the injury is due to the injury or to other factors, such as economic conditions. Finally, assessment of *earnings-capacity loss* takes account of both the impairment and its future economic consequences, but the assessment is highly subjective and often involves dispute and litigation about the valuation of future earnings lost due to the injury.[15]

In brief, experience in other countries and with workers' compensation in the United States suggests that partial disability benefits tend to be costly as well as difficult and contentious to implement. The Panel believes that the disabled worker tax credit it is recommending as a wage subsidy for low-income workers with disabilities is a far preferable way to provide partial support to low-income workers whose capacity to earn is reduced, but not eliminated, by a disabling impairment (see chapter 7).

**Veterans' Compensation Impairment Test**

The veterans' compensation (VC) system in the United States uses a wholly different concept for paying cash compensation. It pays monthly benefits to veterans whose impairments resulted from injury or disease incurred or aggravated while in active military service. The amount of compensation depends solely on the degree of impairment, rated as a percentage of normal function that is lost. One appeal of this approach is that receipt of benefits is not based on work incapacity. Veterans with service-connected impairments receive benefits for life, regardless of their future success in the labor market. Monthly payments range from $89 for an impairment with a 10-percent rating to $2,165 for a 100-percent impairment rating in 1995. Applying this concept to Social Security for all Americans is problematic for at least two reasons:

**Cost versus Benefit Adequacy.** The VC impairment test for paying compensation is much more expansive that the Social Security test based on "inability to engage in any substantial gainful activity." Of the 1.3 million people under age 65 receiving veterans' compensation, only about 9 percent are classified as "unemployable," a concept similar to the Social Security definition of work disability. About 22 percent have impairment ratings of 50 percent or more.[16] The rest have lesser impairments. If the distribution of impairments in the general population is comparable to that among veterans receiving compensation, then;

- To compensate all Americans who have an impairment equal to the VC rating scale from 10 to 100 percent would cover about 10 times the number of people who meet the Social Security test of work disability.
- To compensate only those Americans who had an impairment rating of 50 percent or more on the VC scale would cover a population more than twice the size of the Social Security beneficiary population.
- To pay this much larger group would require either a tremendous increase in Social Security benefit outlays, or a significant reduction in the current level of support for those who are found unable to work, or both.

**Problem of Rationale.** Veterans' compensation is based on a unique employer-employee relationship where the Federal government is the employer. It has the authority to draft people into military service and subject them to extremely hazardous duty. While the draft has not been used since 1974, the government has the authority to reinstate it when needed. Even with an all volunteer military, there is a special responsibility of the Federal government to compensate people in the armed forces and their family Members for lives lost or impairments sustained in order to attract a volunteer force that is subject to the rigors and dangers of military service.

This compensation concept is not based on the veteran's need for income support. Rather, it is based on the government's liability, as employer, to compensate the veteran for the harm sustained while in the government's employ. The amount of compensation is related to the degree of harm as determined by the veteran's impairment rating. It is not directly related to veterans' need for support either because of their lost earnings capacity or because of the cost of particular impairment-related services or supports they have to buy. In fact, the Federal government generally pays for those other services for injured veterans—such as medical care, attendant allowances, prostheses, equipment and rehabilitation—in addition to cash compensation for their impairments.

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[15] Blue Ribbon Panel on Workers' Compensation, *Policy Statement on Permanent Partial Disability* (Denver, CO: National Conference of State Legislatures, 1992).

[16] Disability Policy Panel, *Preliminary Status Report of the Disability Policy Panel* (Washington, DC: National Academy of Social Insurance, 1994), table II–4, p. 44.

In short, the rationale for the Federal government to compensate veterans or their survivors for harm sustained or lives lost while on active duty in the armed forces does not apply to income support for all Members of society.

On the other hand, the idea of compensating for some of the impediments or financial costs people face because of their impairments is an important element of U.S. disability policy. It is not based on government liability, but rather on the social value of leveling the playingfield between people with and without impairments. Examples include: eliminating environmental barriers and providing job accommodations as called for in the ADA, providing publicly financed rehabilitation services and compensating for some of the added costs that people face because of their impairments. This "leveling of the playingfield" concept of compensation underlies the Panel's recommendation for a federal income tax credit for expenditures for personal assistance by working taxpayers with disabilities (see chapter 8).

Such policies that compensate for impairments by leveling the playingfield promote employment and full participation for people who have various kinds of impairments. But they are not a substitute for income support to replace earnings while workers are unable to work because of illness or disability.

## Are Programs with Different Purposes in Conflict with Each Other?

Some observers are troubled by the multiplicity of program definitions of disability and are concerned that the programs involved have conflicting goals and work at cross-purposes. The Panel, however, finds that programs are not in conflict simply because they are designed to meet different needs of various subsets of the population who have impairments or work disabilities. Nor are they in conflict because they use different definitions of disability to target the different services, legal protections or earnings-replacement benefits that they offer.

### Rehabilitation and Social Security

Cash benefits to replace earnings are not in conflict with vocational rehabilitation aimed at improving an individual's skills and abilities to perform the tasks of work. They complement each other: cash benefits can provide income to meet daily living expenses while rehabilitation and a job search take place. At the same time, not everyone who receives cash benefits is a good candidate for vocational rehabilitation. Some who receive Social Security disability benefits are too ill to work. In focus group interviews, many beneficiaries indicated they had exhausted other options for rehabilitation or return to work before they applied for Social Security benefits (see the appendix). DI beneficiaries tend to be older than rehabilitation clients. While about half those who enter the DI rolls are over the age of 50, about half those successfully rehabilitated by state VR agencies are younger than age 35.[17] Nonetheless, a subset of Social Security beneficiaries may be good candidates for rehabilitation and return-to-work services. Linking beneficiaries with return-to-work services and providing income support while return to work is tried are complementary elements of disability policy. The Panel's proposal for issuing return-to-work tickets to Social Security beneficiaries is designed to improve that linkage and to expand the supply of service providers who can be paid to assist beneficiaries to return to work (see chapter 6).

The Panel also recognizes that VR services can be beneficial to persons who are not Social Security beneficiaries. The large majority of persons that state VR agencies successfully place in competitive employment (85 percent) are not recipients of DI or SSI benefits.[18]

In brief, both Social Security and VR are important elements of disability policy. In many cases they serve different subsets of the population. In other cases, individuals with severe work disabilities receive earnings-replacement benefits from Social Security while they engage in vocational training to return to work.

### Social Security and the ADA

The income support provided through the Social Security Act and the civil rights protection of the ADA are both essential pillars of disability policy, but one is not a substitute for the other. Some work disabilities are amenable to the solutions offered by the ADA. Others are not. The ADA provides legal remedies to workers who face discrimination in employment. Social Security provides income support to those who have lost their capacity to work. The two laws typically target different needs of the very diverse population of persons who have impairments or disabilities.

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[17] U.S. Department of Education, Rehabilitation Services Administration.

[18] See table 6–2.

The ADA bans discrimination against workers who have impairments but who are nonetheless able to perform the essential functions of the jobs they seek to hold or retain. It requires employers to make "reasonable accommodations" for those workers. Whether an accommodation is "reasonable" or whether it poses "an undue hardship" on employers is evaluated on a case-by-case basis that depends on the circumstances of the individual, the employer and the employer's ability to bear the cost. Accommodations that are not considered "reasonable" for a particular employer under a particular set of conditions may be "reasonable" for another employer or when circumstances change.

Research has shown that job accommodations, such as those now required by the ADA, have delayed the point at which ill or injured workers leave the work force and turn to Social Security.[19] The focus group interviews in appendix A indicate that beneficiaries often had received accommodations before they turned to DI benefits. They left their jobs when they could no longer perform them even with accommodations.

In general, Social Security is for workers whose impairments, in conjunction with their other abilities and the demands of work, are not usually amenable to reasonable accommodation by their current employers. It provides benefits that partially replace earnings when people are out of work and it is reasonable to conclude that the severity of their impairment is the cause. It is meant to do so in a way that enables workers to retain their dignity and self-respect while they cope with the human and financial losses associated with lost capacity to earn. Without Social Security, those who receive it often would be destitute or dependent on relatives or public assistance for support. By providing wage-replacement income, Social Security promotes individual empowerment and community integration. By basing entitlement to benefits on prior contributions and scaling benefit amounts to the worker's former purchasing power from earnings while working, Social Security promotes economic self-sufficiency.

While Social Security is paid only to those who meet a very strict test of work disability, it is not necessarily paid for life. Some people medically recover and others may gain new skills and abilities that enable them to return to work and leave the benefit rolls. In some cases, persons who legitimately qualify for DI may, with appropriate accommodations in a new setting, be able to return to work. The extent to which society is willing and able to invest in accommodations, jobs and the human capital of workers with significant impairments will affect the numbers who turn to Social Security and the number who return to work and leave the benefit rolls.

At any given time, different people need the civil rights protections of the ADA or earnings-replacement benefits from Social Security. And any particular individual may need both, though at different stages of his or her life or under different environmental circumstances.

## Chapter 5
## Operationalizing the Social Security Definition: Assessing the Assessment

For any system of benefits or services, applicants must be assessed to determine their eligibility. For disability-related programs, the assessment must include an evaluation of disability. The assessment of work disability is inherently complex because work disability itself is not a simple concept. As discussed in chapter 1, an impairment is an essential element of work disability. But the assessment of work disability must also consider the person's residual functional capacity in relation to the tasks of work in the context of the broader environment.

Moreover, the assessment of work disability made by different programs will differ according to the type of remedy or benefit offered. The first section of this chapter explores how the assessment of work disability for wage-replacement benefits differs from an assessment of disability for the purpose of offering rehabilitation services. That is, the assessment for cash benefits is concerned with the severity of the disability, and whether it constitutes a legitimate basis for paying benefits based on inability to earn. The assessment for rehabilitation focuses on assessing the individual's needs for particular kinds of services.

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[19] R.V. Burkhauser, et al., "The Importance of Employer Accommodation on the Job Duration of Workers with Disabilities: A Hazard Model Approach," *Labor Economics,* June 1995, pp. 1–22; and K.K. Charles, "Employer Accommodation and the Early Post-Onset Separation of Disabled Workers," unpublished paper, Cornell University, June 1995.

The balance of the chapter is about the Social Security disability assessment. It begins with a review of the elements of the definition of disability in the Social Security Act. It then describes the sequential process the Social Security Administration (SSA) uses to determine whether an applicant for Social Security disability benefits meets the definition in the Act. The final sections contain the Disability Policy Panel's evaluation of SSA's assessment process and its findings and recommendations on ways to improve that process.

### Social Security Assessment Is Different from a Rehabilitation Assessment

If the purpose of an assessment of disability is to allocate rehabilitation services for persons with impairments, the assessment might pose two questions. First, does the applicant for services have an impairment that interferes with his or her ability to work? If not, the person could be denied services because the scarce resources available for rehabilitation should target only persons with work-limiting impairments, not persons who need other kinds of employment assistance. If the person has a work-limiting impairment, a rehabilitation assessment might then ask the second question: is the person likely to benefit from services the provider can offer? If so, the person would be found eligible for services. When private insurers or workers' compensation programs evaluate whether to pay for rehabilitation, the first question has already been answered in the affirmative because they consider paying for rehabilitation only for persons already found eligible for insurance or compensation payments based on a finding of work disability (see box 5–1).

### Box 5–1.—Cash Benefits and Rehabilitation: Distinguishing Assessments

Many concerns the Panel has heard about the Social Security assessment of disability appear to reflect the view that it should be more like the kind of assessment that is used for determining rehabilitation potential or service needs.

The Social Security assessment is necessarily different from an assessment of rehabilitation potential. Its purpose is not to determine who should be offered services or what services they should be offered. Rather, its purpose is to determine which applicants for benefits meet the definition of work disability used to award wage-replacement benefits.

Private disability insurance distinguishes between assessing work disability for purposes of wage-replacement insurance and assessing rehabilitation potential. Employees covered by private long-term disability insurance have a contractual entitlement to cash benefits if they meet the eligibility criteria in the insurance contract. It usually requires a medical diagnosis, an evaluation of medical prognosis and a finding that the employee is currently unable to work. The insurer may then arrange for a second kind of assessment to evaluate the employee's rehabilitation potential. In this case, the decision to offer and pay for rehabilitation services takes into account the insurer's future benefit liability as well as the employee's return to work prospects. Favorable indicators for the insurer to invest in rehabilitation services, on a case-by-case basis, include the employee's prospects for medical stability and his or her youth, aptitude, motivation and need for vocational services in order to return to work.

The Panel is recommending ways to increase access to rehabilitation and return-to-work services for Social Security beneficiaries. Because the Social Security Administration does not have the expertise or resources to assess rehabilitation potential, the Panel's proposal draws on the expertise of service providers to make that assessment and offer services (see chapter 6).

When the purpose of an assessment of work disability is to allocate earnings replacement insurance benefits, the assessment necessarily focuses on the severity of the work disability. The purpose of the assessment is to determine whether applicants for benefits should receive them because of their inability to work. A review of disability determinations in the social insurance programs of six countries highlights commonality across countries in the complex assessment of work disability for this purpose:[1]

- Eligibility for disability pension benefits is based on a demonstrated incapacity for work due to sickness, injury or disease. The purpose of these programs is to alleviate the financial disruption that the loss of regular earnings causes.

[1] F.S. Bloch, "Disability Benefit Claims Processing and Appeals in Six Industrialized Countries: Canada, Germany, Sweden, the Netherlands, Great Britain and the United States," *Occasional Papers on Social Security* (Geneva, Switzerland: International Social Security Association, 1994).

- In all countries, the disability standard is based ultimately on the inability to earn. However, the formulation of the standard varies: in Germany, the test is whether the applicant can engage in gainful activity only irregularly or can achieve only insubstantial income; in both the United States and Canada, the line is drawn at the inability to perform substantial gainful activity; in the United Kingdom the reference is simply incapacity for work. Each of these is effectively a full incapacity requirement; benefits are paid only if the applicant cannot work at all, at least not at a job reasonably within his or her vocational limits.
- Impairment alone does not trigger the award of a benefit; rather benefits are awarded based on the effect of an impairment on an applicant's capacity for work. Moreover, proof of incapacity for work, while always due to impairment, is measured against an individualized vocational standard appropriate for the particular applicant. As a result, disability assessment procedures must be designed to identify and categorize individual vocational factors such as age, education and past work experience, and then to evaluate how and to what extent these factors may limit the range of work an applicant can be expected to perform.

In brief, the assessment of eligibility for cash benefits in all countries focuses on the severity of the work disability. And the assessment encompasses the varied elements of work disability: the severity of the applicant's impairment, the tasks of work he or she can reasonably be expected to do, and his or her ability to perform those tasks. In each country's system, a particular individual may need and qualify for earnings replacement income and also be a good candidate for rehabilitation services. But the assessment of eligibility for the two kinds of interventions necessarily differs.

**Definition of Disability in the Social Security Act**

The statutory definition of work disability for Social Security benefits is both very strict and quite generic. The exact rules for implementing it are spelled out in regulations issued by SSA. The regulations are updated periodically and any changes in regulations are subject to public review and comment before they become final policy.

Because the statutory definition is generic, its application in regulations can and should be updated over time to reflect changes in the broader society that have an impact on the nature of work disability—such as new disabling diseases, new treatments for existing conditions that make them less disabling than in the past, and environmental changes in the nature of work, the tasks that constitute work, and the skills required to perform those tasks. Key concepts defined in the law are discussed below.

The law defines work disability generically as *inability to engage in any substantial gainful activity* (SGA). The law does not further define SGA, but specifies that the executive branch should prescribe criteria for determining when services performed or earnings derived from services demonstrate an individual's ability to engage in SGA.

The definition of work disability takes account of *vocational factors* and uses a *national economy test.* It asks whether applicants, *given their age, education, and work experience,* can do *any kind of work that exists in the national economy,* which is further defined to mean *work that exists in significant numbers in the region where the applicant lives or in several regions of the country.* Because disability is defined in relation to the demands of work, the nature of what constitutes work disability should change as the nature of work changes. Further, the law recognizes that individuals' educational attainment and transferable skills influence what they can do. As educational and skill requirements of jobs change, the evaluation of the interaction between impairments and the ability to do jobs that exist in the national economy should also change.

The Social Security Act specifies that a *medically determinable physical or mental impairment* that is expected to last 12 months is necessary, but not sufficient, for a finding of work disability. The condition must be considered to be directly related to the person's inability to engage in SGA. According to the law, it also must be demonstrable *by medically acceptable clinical and laboratory diagnostic techniques.*

These elements of the statutory definition of work disability in the Social Security Act are brought together as follows:

- Disability means inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which

can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months;

- An individual shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work.
- "Work which exists in the national economy" means work which exists in significant numbers either in the region where such individual lives or in several regions of the country.

"A physical or mental impairment" is an impairment that results from anatomical, physiological or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.

- The Commissioner of Social Security shall by regulations prescribe the criteria for determining when services performed or earnings derived from services demonstrate an individual's ability to engage in substantial gainful activity.[2]

**Sequential Disability Determination Process**

A five-step sequential process is used to determine whether an applicant for Social Security disability benefits meets the definition of work disability in the law. The sequential process is spelled out in regulations and is illustrated in figure 5–1. Each step in the sequence poses a different question about the nature of the disability. At each step a decision is made either to allow or deny the application or to move on to the next step.

- **Step 1** asks, "Is the applicant is engaging in SGA?" If so, the application is denied.
- **Step 2** asks, "Does the applicant have a severe impairment?" If not, the application is denied.
- **Step 3** asks, "Does the applicant have a medically determinable impairment that meets or equals the medical listings?" It refers to listings in regulations of over 100 medical conditions that are considered to be of such severity that the condition can be presumed to constitute work disability.[3] At this step, SSA draws on medical evidence from treating sources or a consultative exam (by a physician paid by SSA) to document the existence, severity, duration and prognosis of the person's impairment. If the applicant's condition meets or equals a listed condition, benefits are allowed. If benefits are not allowed at Step 3, the sequential process calls for an assessment of the person's residual functional capacity (RFC) to do various kinds of work activities.
- **Step 4** asks "Does the impairment(s) prevent doing past work?" The applicant's RFC is compared with functional capacities required to do his or her past work. RFC is classified mainly in terms of the exertional demands of jobs. The current RFC assessment produces a finding that the person is capable of sedentary, light, medium or heavy work. That capacity is then compared with the person's prior work experience to determine whether he or she can do work at the exertional levels required by past work. If the person can do past work, the application is denied. If the person is unable to do past work, the assessment goes to Step 5.
- **Step 5** asks "Does the impairment prevent doing any other work?" Applicants' RFCs are considered in conjunction with their age, education, and work experience to determine whether they can do any other work that exists in significant numbers in the national economy. Their age, education and transferable job skills are taken into account to determine whether they have the residual capacity to do kinds of work they have not done before.

For persons with solely exertional impairments, the assessment of ability to do other work is aided by the "vocational grid," which was codified in 1979 regulations

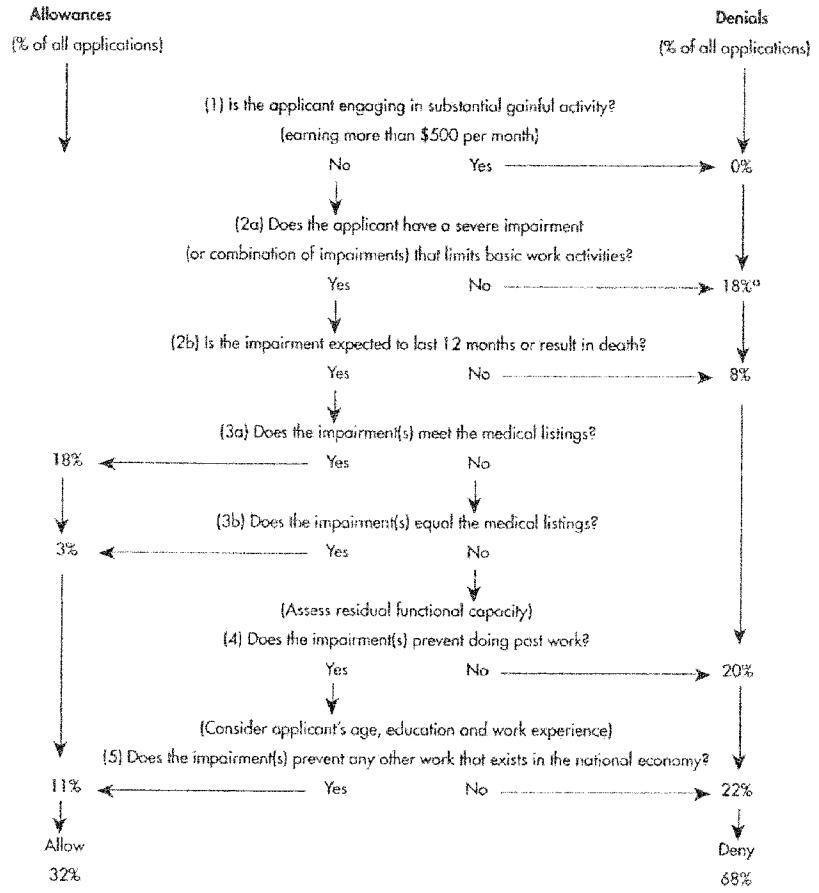
[2] Sections 223(d)(1)(A), 223(d)(2)(A), 223(d)(3) and 223(d)(4) of the Social Security Act.

[3] The other evidence that supports this presumption is discussed in the following section and in box 5–3.

and has not been updated. The grid dictates a decision about work disability (and eligibility for benefits) based on the person's age, education and transferable skills, in conjunction with his or her RFC to do sedentary, light, medium or heavy work. If the person is found able to do other work, the application is denied. If not, the application is allowed.

For persons with impairments other than exertional ones—such as cognitive, emotional, sensory, postural (stooping, crouching, kneeling) or environmental (inability to tolerate fumes, dust, noise) impairments—the grid does not apply. It is to be used, however, as a "framework" for evaluating the person's ability to do other work. If the grid does not apply, opinions of vocational specialists[4] or vocational experts[5] can be used as evidence that there are, or are not, jobs the particular individual can do.

**Figure 5-1. Social Security Disability Determinations: Sequential Decisionmaking Process and Outcomes of Decisions on Initial DI Applications, 1994**




a. This response includes 5 percent of claims that were denied because the applicant failed to cooperate in obtaining evidence needed for the claim. The other 13 percent were denied for "impairment not severe."
Abbreviation: DI = Social Security disability insurance.
Source: Social Security Administration, Office of Disability.

[4] Used by state agencies in initial decisions.
[5] Used by administrative law judges at hearings on appeals of denied applications.

## Assessing the Assessment: The Panel's Findings

In evaluating the five-step sequential process used to determine which applicants for disability benefits meet the Social Security Act definition, the Panel finds at least four objectives to be traded off against each other:

- the accuracy of the assessment of an individual's work disability (validity),
- the consistency of these assessments across deciders (reliability),
- the perceived legitimacy or credibility of the criteria as viewed by applicants and the public (credibility), and
- the capacity of the system to produce reasonably prompt and low-cost decisions (administrative efficiency).

Using these criteria, the Panel evaluated the sequential determination process and the role of medical evidence, functional assessment and the vocational factors—age, education and work experience—in that determination process.

### The Sequential Process

Each step in the five-step disability determination process requires a progressively more in-depth, detailed and individualized assessment of the applicant's ability to work. As such, the sequence as a whole seeks to achieve *administrative efficiency* by allowing or denying applications at early steps in the process when that can be done with acceptable levels of *validity, reliability* and *credibility.*

**Steps 1** and **2** are used only to deny applications. They are used to screen out cases that would ultimately be denied, and to do so promptly, to avoid the administrative burdens, costs and delays that applicants, disability adjudicators, private physicians and others experience when asked to provide medical and other evidence needed to make determinations at later stages in the process. As such, both steps rank high on *administrative efficiency* in providing prompt, low-cost decisions.

**Step 1** ranks high on *validity, reliability* and *credibility.* If the applicant is engaging in SGA, that is prima facie evidence that the person has the capacity to do so (*validity*). SGA is measured as a test of monthly earnings, which can be measured with consistency (*reliability*). And the fact that one is working is easily understood to be evidence of ability to do so (*credibility*).

The measure of earnings that constitute SGA takes into account certain impairment-related work expenses or employer subsidies. These expenses or subsidies are deducted from earnings when determining whether a given level of work effort constitutes SGA. In order to maintain the validity and credibility of the SGA standard, the Panel is recommending that the level of earnings that constitutes SGA be updated and automatically adjusted to keep pace with the economy (see chapter 9). With these changes, the Panel finds that the SGA test is an appropriate first step in the determination of work disability.

**Step 2** also ranks high on *administrative efficiency.* This step avoids the need to develop medical evidence and conduct a nonmedical functional assessment in cases where the person is out of work for reasons other than disability, such as unemployment or the person's choice not to work.

**Step 3** is the first step at which benefits are allowed. At this step, the medical listings are used as a proxy for work disability. They are used to presume that an applicant whose condition meets the medical listings meets the statutory definition of work disability.

The presumptive validity of the listings is supported by the context of their use. Benefits are allowed at Step 3 if and only if the presumption of work disability based on the severity of the applicant's impairment is corroborated by other circumstantial evidence. In the case of Social Security disability insurance (DI), the presumption of work disability at Step 3 is buttressed by the following findings:

- the person has significant and recent employment prior to the onset of the disabling condition (as shown by meeting insured status requirements, which is ascertained before the disability assessment begins); but
- the person has not been engaging in SGA for at least 5 months (Step 1); and
- the person has applied for benefits that generally amount to less than half of his or her prior earnings from work; and
- the person has a severe medical condition that is expected to last at least a year or result in death.

Only when all these conditions are met are DI benefits allowed based on the presumption that an impairment that meets or equals the medical listings constitutes work disability.

The use of the medical listings as a proxy for work disability has several advantages. The listings promote *administrative efficiency* because medical assessments are more readily available than functional assessments of ability to work. If properly constructed, medical listings criteria should be *reliable* and *credible.* They are based on consensus medical opinion and are defined, insofar as is possible, in objective terms. Because the listings are used to presume work disability, they are and should be set at a high threshold of impairment severity to achieve *validity.* They are designed only to answer the question, "Is this applicant highly likely to meet the statutory test of disability, without further inquiring into vocational issues?"

In the Panel's view the continued use of the medical listings approach is sound adjudicative practice. As discussed further below, however, we believe that further work needs to be done to ensure that the listings measure equivalent severity of presumptive work disability across body systems and that they are kept current in relation to medical practice and the demands of the work place.

**Medical Evidence Is the Foundation of the Disability Assessment for Social Security Benefits**

Some have questioned the reliance on medical evidence to establish work disability, which by its nature is a functional rather than strictly a medical construct. The Panel finds nevertheless that medical evidence has many valuable properties in assessing work disability for Social Security benefit purposes. The Panel recognizes the value of "demedicalizing" disability assessments for other disability-related purposes, such as to allocate nonmedical goods or services (see box 5–2). However, for the purpose of assessing work disability for Social Security benefits, the Panel believes that any attempt to shift to a purely functional assessment would be a mistake—indeed a virtual impossibility for the reasons outlined below. At the same time, functional assessment is a critical part of the disability assessment.

**Medical evidence often is functional in nature.** For example:

- Treadmill tests are used to measure cardiovascular functioning under work-like exertional conditions; and ejection fraction tests (the proportion of the volume of the left ventricle that is ejected when the heart pumps) are used to measure the heart's functional efficiency.

**Box 5–2.—Medical versus Functional Assessment**

Is a functional assessment always the right way to evaluate disability? Whether it is the "right" way depends on the purpose of the disability assessment.

Over the past 20 years there has been a move to "demedicalize" the assessment of disability when the purpose is to allocate nonmedical goods and services—such as vocational rehabilitation, assistive devices or personal assistance services. All of these goods and services are designed to improve the functioning of persons who have impairments. For this purpose, a functional assessment is greatly preferred over a strictly "medical" or "impairment-based" assessment for a number of reasons. Some of these reasons for preferring a functional assessment do not necessarily apply to the Social Security assessment of work disability.

**Is it used to allow or deny eligibility?** First, a functional assessment can increase the chances that services being sought will be appropriately allowed. Too often in the past a medical assessment of the person's impairment was used to deny rehabilitation services by concluding that the applicant's impairment was so severe that he or she "could not benefit in terms of an employment outcome." A functional assessment, in contrast, focuses on persons' abilities rather than their impairments. Consequently, services are appropriately allowed to people who can benefit from services despite having significant impairments.

In the Social Security assessment, medical evidence of impairment severity is not used to deny benefits. Rather, it is used to allow the earnings replacement benefits that are being sought, but only when other evidence buttresses the presumption that the severe impairment constitutes work disability (see box 5–3).

**What kinds of goods or services will be provided?** Second, a functional assessment is associated with more consumer control over the kinds of goods and services that are provided, once the person is found eligible to receive them. For example, in developing a vocational rehabilitation plan, consumers' career goals and assessment of their own training needs are an important part of plan development. In the case of assistive devices, consumers' own assessment of their functional needs are important in selecting the type of device that will maximize their independence in the environment in which they live and work.

Once a beneficiary is found eligible for Social Security, no further decision is needed about what will be provided or how it is used. A benefit allowance provides wage-replacement benefits that are prescribed by law and the beneficiary decides how it will be used.

These reasons for strongly preferring functional over medical assessment for the purpose of allocating nonmedical goods and services do not apply in the same way to the Social Security assessment. Proper assessment of work disability for eligibility for Social Security benefits requires both medical assessment of impairment severity and functional assessment of ability to perform the tasks of work.

- Exercise tests are used for respiratory conditions to measure respiratory function similar to treadmill tests for cardiovascular conditions.
- Range of motion tests are a form of functional assessment of musculoskeletal conditions.
- Diagnostic tests that include medical evidence of functioning and symptomatology are used for many mental disorders.

**Medical evidence is often essential to establish the prognosis and duration of a particular disease or impairment.** If a condition has a very poor prognosis, it would be inhumane to delay a finding of work disability until an individual actually experienced the kind of functional loss that would show up on a solely nonmedical functional assessment. Examples of such a condition may include AIDS, neoplasms and other progressive diseases. If a person is not working and has a very poor medical prognosis, it is appropriate to allow benefits before the expected functional loss becomes evident in nonmedical terms—such as debilitation or total collapse.

A related situation occurs when medical evidence shows that a health problem (such as certain cardiac conditions) would be exacerbated with high risk of catastrophic functional loss if the person returned to usual work activity. In such cases, the humane policy is to allow benefits based on medical evidence showing a high risk of catastrophic functional loss, rather than requiring the person to work until the catastrophe actually occurs.

Medical findings are necessary to predict the duration of a particular impairment. A nonmedical functional assessment is a finding established at a specific point in time. Because benefits are paid only for impairments expected to last a year (or result in death), medical evidence can show that the expected duration is likely to be met, without waiting until death or the required duration has actually occurred.

**Evidence from medical sources enhances *validity* and *credibility.*** Medical evidence can serve as a check on apparent functional limitations that might be motivational in nature. As such, it also lends legitimacy and public acceptance to the disability determination and the benefits that are paid. Assessments by medical professionals have *credibility* in the public's perception. While well-trained lay persons are quite capable of implementing rules and procedures to assess work disability in many situations, the medical component of the assessment is important for public acceptance that the judgments are valid and fair.

Evidence from medical professionals enhances *validity, administrative efficiency* and *credibility* in other ways as well. Over-reliance on evidence from nonmedical sources—such as neighbors, supervisors or co-workers—poses several risks: it may unduly burden the providers of evidence (a problem that has been raised by schools in the case of child applicants); it may weaken public acceptance that the evidence is, in fact, valid; and it may be viewed as an unnecessary violation of the privacy of the individual, whose disability application, at least arguably, is not the business of neighbors or others who may know the person. In some cases, evidence from nonmedical sources is needed. However, good reasons exist for allowing applications based on medical evidence when that evidence is sufficient.

**Medical evidence can, in many instances, improve the consistency and *reliability* of decisions across decisionmakers.** The use of medical criteria enhances objectivity and consistency through the use of scientific findings and by, in effect, borrowing the unifying tendencies of medical judgment that result from medical training and clinical practice.[6]

**Medical evidence is often more readily available than are nonmedical functional assessments.** When it is available and is adequate for presuming inability to work, relying on medical evidence reduces burdens and delays for both applicants and adjudicators, thereby enhancing *administrative efficiency* (see box 5–3).

[6] As greater reliance is placed on evidence provided by a claimant's physician, rather than on evidence from a consultative exam by a physician employed by SSA, there may be a need for more broadly educating the medical community about the kinds of medical evidence that is used to assess work disability.

In summary, nonmedical functional assessments are an essential part of the full sequential determination process, the Panel believes that medical evidence is the foundation for assessment of work disability for cash benefits. A finding of a medically determinable impairment is required by the statute and it is important for the *validity, reliability, credibility* and *administrative efficiency* of disability decisions.

**Functional Assessment Is Essential to Determine Work Disability When It Cannot Be Presumed**

When medical evidence is not sufficient to presume that a person is work disabled, a functional assessment is needed to determine whether, in fact, the person is unable to engage in substantial gainful activity. To determine whether applicants can or cannot work requires assessing their residual functional capacity and comparing it with the demands of their past work. If unable to do past work, applicants' residual functional capacities are assessed in light of their age, education and work experience to determine whether they can do any other work that exists in the region in which they live or in several regions of the country.

**Box 5–3.—The Role of the Medical Listings**

If a person whose impairment meets the medical listings is working, does that mean the listings are flawed?

Not necessarily. It has always been recognized that some people who have impairments that meet the Social Security Administration's (SSA) medical listings are working. That is not a problem, it is a success. President Roosevelt (who used a wheelchair) and perhaps President Kennedy (with Addison's disease) could be counted among those successes.People who work despite having impairments that meet the listings may have extraordinary motivation and drive. They may also have unique skills and specialized abilities to perform work that is not affected, or only marginally affected, by their impairments. For example, scientists, attorneys, executives and decisionmakers can still think, analyze, lead, direct and decide despite having significant physical impairments that would make it impossible for others to continue their jobs as construction workers, longshoremen, short-order cooks or hospital orderlies. Furthermore, when a person's skills are in high demand, an employer's view of reasonable accommodation may be more expansive than what would be considered reasonable for other workers whose skills are more easily replaced.

In theory, SSA's disability assessment could be tightened to require that all applicants demonstrate that they are unable to do their past work or any other work that exists in the national economy. That would avoid making a *presumption* of work disability. But it would have a significant cost in terms of reduced administrative efficiency. But its greatest impact would be to rule out the theoretical possibility of benefit allowances—theoretical because it would "deny" benefits in cases where people do not apply for them, because they are working. This is because the medical listings are used to allow benefits only when the presumption of work disability is buttressed by the following circumstances. The applicant:

- is not engaging in substantial gainful activity (SGA),has not been engaging in SGA for at least 5 months,
- has significant recent work experience, as indicated by having met disability insured status requirements,
- has applied for disability benefits that generally represent less than half of his or her prior earnings level,
- has a severe impairment that is expected to last at least a year or result in death.

Only when all these conditions are met are Social Security disability insurance benefits allowed based on the presumption that an impairment which meets or equals the medical listings constitutes work disability.

The medical listings should be set at a high threshold of impairment severity—one that for most people of average ability would result in work disability. They should also be updated periodically to reflect changes in the nature of work, in environmental accommodations and in medical technology. If some people with specialized skills are working despite severe impairments, that does not mean the listings are flawed. Nor does it mean that everyone else with similar impairments should be presumed able to work and therefore be denied benefits.

Functional assessments have valuable properties with regard to the *validity* of disability determinations. They are an actual test of work disability, rather than a presumption of that finding. A finding of disability based on functional assessment is not a lower standard of severity. Instead, it is a different and more direct test of work disability (see box 5–4). At the same time, the *validity* of functional assessments depends on how closely the functions being assessed relate to the demands

of work that exist in significant numbers in the national economy. As the demands of work change, the functional assessment of work disability needs to be updated.

**Vocational Factors—Age, Education and Transferable Skills from Prior Work—Are Essential Elements of the Assessment of Work Disability**

The law specifies that vocational factors—age, education and work experience—be taken into account when determining whether a person with a medically determinable impairment is, in fact, able to do his or her past work or any other work despite the existence of a severe impairment.

The Panel believes that age, educational attainment and prior work experience are critical to the *validity* of determinations about whether a person is functionally able to work despite the existence of a severe impairment. With favorable vocational factors—such as advanced education—a person can work despite quite significant physical impairments. On the other hand, with negative vocational factors—such as advanced age, limited education and no transferable skills—impairments that make workers unable to do the kind of work they have done in the past would constitute work disability.

As discussed in chapter 1, the prevalence of work disability in the general population as reported in household surveys rises sharply with advanced age. And the risk of work disability declines with advanced education (table 1–5). While those who report a work disability in-household surveys do not necessarily meet the strict test of disability in the Social Security Act, the survey data show the strong connection between age, education and work disability.

The nature of a person's prior work experience is also critical in determining whether he or she can continue to work despite the onset of a significant impairment. The same impairment might constitute total incapacity for a whole range of jobs, yet not interfere with the ability to perform another set of jobs. Whether or not workers are able to return to their prior work has much to do with the nature of that work. If not able to do their prior work, their age, transferable skills (as measured by work experience) and aptitude (as approximated by educational attainment) are key factors in determining whether it is feasible or economically rational for individuals or for society as a whole to invest in retraining for new careers that require new job skills.[7]

For these reasons, the Panel finds that vocational factors such as age, education and transferable skills from work experience are essential to the validity of the assessment of work disability (see box 5–4). It also believes that these criteria need to be updated as the tasks of work and skill levels required for work change.

**Box 5–4.—Objective versus Subjective Evidence of Work Disability**

There is a belief that meeting the medical listings is "real" disability. It is "objective." Being allowed benefits based on assessment of residual functional capacity in conjunction with age, education and work experience is somehow viewed as "soft" or subjective. This is a misconception.

Medical evidence adds to credibility. But, it is used to support a presumption of work disability, when corroborated by other evidence of labor market disadvantage.

Assessment of residual functional capacity in conjunction with vocational factors is more valid, but it is also more labor intensive. As discussed in chapter 1, work disability, by its very nature, involves the interaction of the individual's impairment with the tasks of work he or she can reasonably be expected do to and his or her offsetting capacities or compounding limitations in performing those tasks. The Social Security assessment of functional capacity in conjunction with the applicant's age, education and prior work experience are necessary parts of the determination of work disability.

In short, neither medical nor functional assessments of work disability are inherently more objective or subjective. Both are essential elements of the assessment of work disability for the purpose of determining eligibility for cash benefits.

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[7] Walter Oi observes that, in addition to the severity of the disabling condition, the disabled worker's expected remaining working-age years—which are a function of the age at onset, expected duration of the condition and its impact on life expectancy—are key determinants of whether it is economically rational for the individual or society at large to invest in training and return to work efforts for the individual. W.Y. Oi, "Employment and Benefits for People with Diverse Disabilities," Disability, Work and Cash Benefits, J.L. Mashaw, et al., (eds.) (Kalamazoo, MI: W.E. Upjohn Institute for Employment Research, forthcoming).

## Recommendations for Improving the Assessment

Based on its evaluation of the SSA disability determination process, the Panel makes several recommendations for improving this process. Each requires targeted research in order to implement it.

### Systematic Ways to Assess the Interaction Between Nonexertional Impairments and Vocational Factors are Needed

In response to longstanding concerns about the lack of consistency in disability assessment, SSA in 1979 published in regulations its vocational grid. The grid is used to determine disability based on the interaction between vocational factors and the applicant's residual functional capacity to perform various levels of work, which is defined in exertional terms—sedentary, light, medium or heavy work.

During the last 15 years, disability applications based on nonexertional impairments have become more common. These include conditions such as cognitive, emotional, sensory, postural (stooping, crouching, kneeling) or environmental (such as inability to tolerate such conditions as fumes, dust or noise) impairments. For these conditions, the grid does not apply. Instead, regulations say it is to be used as a framework for evaluating the person's ability to work despite his or her impairment. According to SSA, disagreements as to when the grid applies, and the assessment of work capacity when it does not, are common causes for initial disability decisions to be reversed on appeal.[8]

The obvious question is whether the reliability of decisions on mental and other nonexertional impairment applications could be improved by developing systematic criteria—perhaps in the form of appropriate grids—for evaluating the interaction of specific categories of nonexertional impairments and vocational factors such as age, education and work experience. While the Panel is not in a position to answer this question, it believes it is an important area for research and policy development at SSA.

### Medical and Functional Criteria Should Be Periodically Updated to Take Account of Changes in the Environment

The definition of work disability in the Social Security Act is a dynamic one that can and should be interpreted in light of changes in the broader environment. Impairments that constitute inability to work should be expected to change gradually as medical and rehabilitation techniques change, new assistive technology becomes available and the nature of work changes. Advances in medical care include improvements in diagnostic abilities, as well as therapeutics, that may affect degrees of disability and other functional outcomes. As the Americans with Disabilities Act brings about a more accessible environment for persons with mobility impairments, those impairments may become a lesser barrier to work. At the same time, changing work demands may make cognitive or emotional impairments a greater impediment to work. Updates in the regulations—the medical listings, assessment of RFC and vocational factors—should be expected to gradually change to keep pace with the changing nature of work disability.

Categories of impairments that account for a significant portion of the disability rolls, or where rapid growth has prompted concern are good candidates for expert review to ensure that recent experience, new research and state-of-the-art knowledge are incorporated into the Social Security assessment of work disability. For example, the mental impairment standards have been in place for 10 years. It would be timely to undertake a full review of the mental impairment standards in light of recent experience and research in the professional mental health community.

The assessment of pain is an important element of disability determination for a range of musculoskeletal impairments. As required by Congress, SSA convened a Commission on the Evaluation of Pain, which reported in 1986, and a Committee on Pain and Disability of the Institute of Medicine, which reported in 1987. Both recommended research to develop pain assessment instruments, which has now been completed.[9] SSA should convene an expert group to determine whether and

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[8] Social Security Administration, Deputy Commissioner for Finance, Assessment and Management, memorandum, "The Disability Hearings Quality Review Process," October 17, 1994.

[9] U.S. Department of Health and Human Services, *Report of the Commission on the Evaluation of Pain,* (Washington, DC: U.S. government Printing Office, 1986); M. Osterweis, A. Kleinman, and D. Mechanic, (eds.), *Pain and Disability: Clinical, Behavioral and Public Policy Perspectives* (Washington, DC: National Academy Press, 1987); K.S. Rucker, et al., "Final Report on All Aspects of the Pain Assessment Instruments Development Project," unpublished paper, Virginia Commonwealth University, Richmond, VA, 1994.

how to apply what has been learned to the Social Security disability determination process.

**Criteria to Target Continuing Disability Reviews Should Be Refined**

SSA's initial determination of eligibility for benefits also screens those allowed benefits according to their prospects for medical improvement. The screen is used to diary a date for a later continuing disability review to determine whether medical improvement has occurred. According to SSA, the screens currently used are poor predictors of medical improvement.

The Panel believes that research should be undertaken to refine these initial screens to more accurately predict cases where medical improvement is expected and set a date for subsequent review. That expectation should be communicated to the beneficiary when benefits are awarded to set the expectation for return to work.

The Panel is recommending a wholly new approach to linking beneficiaries with return-to-work services (see chapter 6). The cost effectiveness of this new approach rests on having reasonably valid criteria to identify and screen out beneficiaries who are likely to medically improve and regain the capacity to return to work without receiving services for which providers would be compensated under this plan.

**Research Is Needed to Evaluate the Consistency of the Medical Listings**

Experts on SSA's medical listings report that considerable variation exists among the medical listings for different body systems in terms of the severity of impairments that are presumed to constitute work disability. The medical listings for each body system—such as musculoskeletal, cardiovascular, respiratory, or mental conditions—have been developed separately over the years. The listings for each body system are updated separately, usually by convening medical specialists in that particular body system to develop criteria that are believed to constitute work disability. To date, no systematic research has been done to evaluate the consistency of the presumptions underlying the medical listings. The Panel believes that such research should be undertaken and that the Disability Evaluation Study being developed by SSA is an opportunity to do so.

In evaluating and updating the disability adjudication criteria, greater attention needs to be given to issues of specificity and sensitivity. In clinical practice, when a physician seeks to diagnose a patient's condition, *specificity* refers to the desire to avoid making a false diagnosis when the condition is not in fact present. *Sensitivity* refers to the desire to avoid missing the diagnosis of a condition that in fact exists. Whether the diagnostician is more concerned about making a false diagnosis or missing a true one depends on the seriousness of the condition and the dangers involved in treating it. For example, in diagnosing a condition for which open-heart surgery is the proper treatment, the physician wants to be very sure about the specificity of the diagnosis. On the other hand, when diagnosing the risk of a condition that poses great dangers for the patient (or to public health at large) and the treatment for which is relatively benign and cheap, such as preventive vaccine, the physician would emphasize the sensitivity of the diagnosis to ensure that all potential cases are treated.

In the case of Social Security disability determinations, the condition decision-makers seek to identify is inability to engage in SGA because of a medically determinable impairment. The intervention it offers is cash benefits to partially replace earnings that have been lost for the duration of the work disability. Whether one should be more concerned about "false positives" (allowing benefits when the individual might, in fact, be able to work) or "false negatives" (denying benefits when the person is unable to work) depends on value judgments about the negative consequences of either type of error and the prospects for remedying it.

In the case of Social Security disability, inappropriate denials would mean that the individual would be without support from either earnings or disability benefits. In the absence of a generalized income support safety net, criteria causing wrong denials bring the risk of economic deprivation of those wrongly denied. These adverse consequences are partially mitigated by the ability to appeal the denial or to reapply for benefits.

Criteria that permit inappropriate allowances could result in unwarranted benefit expenditures and the loss of public confidence. These adverse consequences are mitigated to some extent by work incentive provisions that encourage beneficiaries to return to work despite the existence of their impairments. The risk of inappropriate allowances is also mitigated, to some extent, by other program design features that make benefits an unattractive alternative to work for those who can maintain their earnings despite significant impairments.

Given the cost of either type of error, it is clear that proper adjudication of disability applications has high social value. Research needs to be done to evaluate the

disability adjudication criteria in terms of both their specificity and their sensitivity. For example, it is not known what proportion of individuals in the general population could meet the medical listings for a particular condition, yet are working, nor how vocational factors, such as age, education and work experience, or other environmental factors serve to compensate for or compound the work limitations posed by the medical condition. SSA's Disability Evaluation Study provides an opportunity to address such questions in a national probability survey.

The answers to these questions are important for various policy reasons. In particular, there should be some consideration of setting standards for sensitivity and specificity for the disability criteria; both for the medical listings in and of themselves and for the sequential process as a whole, which takes account of actual performance of SGA, residual functional capacity and vocational factors.

Research using data on actual work experience, in conjunction with medical and vocational characteristics—such as age, education and work experience—and individualized assessments of work capacity, could be used to evaluate the consistency of the medical listings across body systems and provide a systematic way to validate the criteria used to determine work disability for benefit eligibility. The Panel recommends that resources be devoted to the data collection and analysis necessary to complete such research.

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Ms. OWENS. Then finally, there are other remedies, and this Congress did, in Public Law 106, introduce a demonstration project where Social Security could test return to work tracks. They are doing a demonstration of a return to work track so that applicants can choose a track, rather than benefits and get temporary benefits and health care benefits, and so forth. We need to look at the results of that demonstration to see if that does give us more information on making change. Thank you.

[The prepared statement of Ms. Owens follows:]

**Statement of Patricia Owens, Consultant, Board Member, and Member, Disability Policy Panel, National Academy of Social Insurance**

Thank you for the opportunity to appear before you today. My testimony is based largely on the work of the Disability Policy Panel of the National Academy of Social Insurance (NASI) of which I was a member.

At the request of this Subcommittee in the 102nd Congress, the Panel examined whether the design of Social Security Disability Insurance encouraged Americans with disabilities to emphasize their impairments as a means to securing and maintaining disability benefits; what changes could be made to encourage people with disabilities to use their residual work capacity; and how rehabilitation could be incorporated into the benefit programs without greatly expanding costs or weakening the right to benefits for those who cannot work.

The Panel made a number of recommendations to make Social Security and SSI disability benefit provisions more "work friendly." The Panel emphasized the importance of extending health care coverage (Medicare and Medicaid) to working individuals with disabilities. It devised an innovative "return to work ticket" to link beneficiaries with providers of return-to-work services. These recommendations were influential in the design of the "Ticket to Work and Work Incentive Improvement Act of 1999," (PL 106). Finally, it emphasized that adequate administrative resources are essential to serve both beneficiaries and the public fiscal interests. I will return to this point in my concluding remarks.

The Panel also concluded a comprehensive review of the definition of disability. The statutory definition of disability is based on the loss of ability to work. Establishing a work disability involves the interaction of four elements:

- a health condition that produces impairment and loss of function;
- work—the tasks that a person can reasonably be expected to do for remuneration;
- offsetting capacities or compounding limitation in performing work related tasks; and
- the environment in which the person works and lives.

Income support is appropriate when work disabilities are clearly established and cannot by removed. Income support is also appropriate during transitional periods as remedies are being explored and applied. Remedies could include:

- Changing or containing the impairment through health care, medications, or medical restoration;
- Modifying the work requirements through job accommodation or assistive technology;
- Enhancing the person's abilities and skills through education, training, or vocational rehabilitation; and
- Environmental changes such as architectural modification or public access improvement including transportation.

The statutory definition of work disability is stringent and replacement rates are frugal. The on-going challenge is to design benefit replacement policies that give meaningful support but still provide incentive to return to work if possible and, of course, are affordable.

Even though the SSDI/SSI definition of disability is very strict, it is also generic. Thus, its application in regulations must be systematically updated over time to reflect dynamic societal changes including:

- medical conditions, their impacts, and their remedies;
- the changing nature of work requiring new skills and abilities;
- scientific and technological advances; and
- social and economic conditions.

To some extent, recent legislation represents an acknowledgement of the changing nature of the workplace and of chronic illnesses/impairments. For example, a demonstration project in three states, (Wisconsin, Maryland, and Delaware) allows for a potential beneficiary (who passes a screening process using the statutory definition of disability) to be given temporary benefits quickly. These beneficiaries also receive services aimed at getting them back to work. Results from this demonstration may help determine the impact of timely assistance on outcomes.

In considering overall disability policy, the work of the NASI Panel concluded that policy consistency should flow from **goals**, not uniform definitions. The Panel stated, "the primary goal of a national disability policy should be the integration of people with disabilities into American society." Equal Opportunity, full participation independent living, and economic self-sufficiency should be the goal of disability policy. Definitions of disability used as eligibility criteria for government programs should differ in order to target particular remedies to specific needs. For example, health care and income support programs may not need to share a common definition of disability.

I would like to submit for the record Chapter 4 of the NASI report, "Defining Eligibility for Benefits and Services: Distinguishing Programs and Purposes." Among the key findings are:

- "Different definitions of disability are appropriate for program that offer different kinds of services or benefits;
- Work disability—based on loss of ability to earn—is an appropriate eligibility criteria for earnings-replacement insurance [that SSA provides]; and
- The Social Security Act definition of work disability is very strict. A less strict test would significantly increase the cost of Social Security disability benefits [because more people would qualify]."

I would also like to submit for the record Chapter 5 of the NASI report, "Operationalizing the Social Security Definition: Assessing the Assessment." The chapter outlines the panel findings on the sequential process SSA uses to determine disability. It assessed ot om terms of four overall objectives:

- the accuracy of the assessment of an individual's work disability (validity),
- the consistency of these assessments across deciders (reliability),
- the perceived legitimacy or credibility of the criteria as viewed by applicants and the public (*credibility*), and
- the capacity of the system to produce reasonably prompt and low-cost decisions (*administrative efficiency*).

The Panel found that each step of the sequential process has a rational rational in terms of these objectives. Any definition of disability used to determine eligibility should reflect these broad goals.

Finally, the Panel found that adequate administrative resources are essential. Determining whether an applicant meets the definition in the law requires assembling and evaluating detailed medical evidence and evidence of functional capacity. This

requires skilled personnel and resources. The Panel urged that the Administration and Congress provide SSA adequate administrative resources to ensure that assessments are done fully, fairly, and timely for all applicants.

I will be happy to respond to any questions concerning this testimony or any questions you may have about comparable issues in private sector disability work programs with which I have had significant experience.

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

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Chairman SHAW. I was just inquiring how many pages those chapters were.

Ms. OWENS. I didn't read them.

Chairman SHAW. Thank you. Dr. Growick.

**STATEMENT OF BRUCE GROWICK, PH.D., ASSOCIATE PROFESSOR OF REHABILITATION SERVICES, OHIO STATE UNIVERSITY, COLUMBUS, OHIO; CHAIRMAN, LEGISLATIVE COMMITTEE, AND PAST PRESIDENT, INTERNATIONAL ASSOCIATION OF REHABILITATION PROFESSIONALS**

Dr. GROWICK. Thank you, Chairman, and good morning. It is still morning. I will try to be brief, respect your time. I am Bruce Growick, from Ohio State University, where I train rehabilitation counselors, case managers, the very people that work for insurance companies like Unum helping individuals with disabilities go back to work.

I am also the past Director of the Rehabilitation Division of the Ohio Bureau of Workers' Comp, and Workers' Comp in Ohio is somewhat unique in that it is an exclusive State because we have primarily a State fund that runs worker comp, analogous to the Social Security Administration in the way in which it collects premiums through payroll deductions and protects people against disability.

Over the last few years, the rehabilitation services in Ohio and the Bureau of Workers' Comp have been deregulated and vended out to rehabilitation case managers, the students that I teach and our graduates, much like the private insurance company, to very good results by the way.

I am also a past President of the International Association of Rehab Professionals. We have about 3,400 Members all over the country and elsewhere who do this very thing in terms of helping individuals with disabilities go back to work.

Last, if that isn't enough, I am also a Vocational Expert for Social Security, and I have been doing that for about 14 years, and I have sat in probably over a thousand disability hearings. So, I actually have been in hearings, the last adjudicatory step in that five-step sequential process where individuals actually have to come in before an administrative law judge and demonstrate the fact. If they don't meet the list, they have functional limitation severe enough, according to the medical evidence, that they can't do any of the jobs that are described in the DOT, that Dictionary of Occupational Titles, which is really our source document that the Labor Department produces. It is from that experience that I provide the following remarks.

My basic concern is that the Social Security Administration, from all of my readings and all of my experience, is centered on benefits

rather than services, and there is really a disconnect between having individuals go before a system, a rather complex and lengthy system, prove disability, all the while they are not receiving, many of them, the appropriate services to go back to work, which is the antithesis of what the insurance companies do.

Now, if you run the Social Security Administration like an insurance company you would want to address the claimant with a claim for disability while providing them with the appropriate services. Unfortunately, that is not happening to a tremendous degree. As a matter of fact, when I was first hired as the VE, Vocational Expert, for Social Security, I was specifically told that I was only there to provide an opinion, to opine on whether that individual can go back to work as they currently are, not consider rehabilitation at all, and that disconnect continues to exist.

The disconnect is really, I think, one of the major issues, and obviously it is a very complex problem that we are dealing with, is a very major issue inasmuch as you need to create some systemic changes across the Federal Government leaping from one agency to another. The Ticket to Work is an excellent start. I had the pleasure, thanks to you, 5 years ago, to testify in front of this Committee and we did get the Ticket to Work law passed. Unfortunately, a ticket to work happens after the claimant has already been granted disability. As mentioned by the Director of the Council that was created, many of our constituents, the individuals who apply for disability, don't understand why they have to go through this lengthy process and all of a sudden they get a ticket. The rehabilitation has to start up front. That is the basic premise of the industry we are in, the field. Rehabilitation services need to be provided early.

The insurance company has done loads of studies showing the benefit-cost analysis of providing those services. Return on investment, anywhere from $8 to $25 on each dollar spent. The insurance companies would not be doing what they are doing if it wasn't smart practice, and that is in part what the Social Security Administration needs to do.

I applaud you for trying to look at the definition of disability, the front end of the process, and one of my major suggestions in my written testimony is that the evaluation process for eligibility should also consider something for feasibility. There is a slight difference, and I don't want to try to become too academic, but the difference between eligibility and feasibility, eligibility from a legal standpoint you are eligible for benefits, which is quite different to say that you have residual capabilities and you are feasible for return to work, which is what the 3,400 Members of our international association do. They help individuals with all the brandnew technology, with the benefits of the Americans with Disabilities Act and everything else to return to work.

So, my recommendation is that up front you should have feasibility as well as eligibility. You might want to look at time-limited benefits. The horse is already out of the barn, so to speak. Once a person has been granted disability the Federal government tells me I am permanently totally disabled, end of story. I am receiving my benefits.

Unfortunately, now, one last recommendation is that you do have the reauthorization of the Rehabilitation Act coming up next year, and I also had the opportunity to testify in front of the Work Force Development while that was—the Rehab Act was part of it. My recommendation is somehow take a look at what is happening with reauthorization of the Rehabilitation Act, the State-Federal system, combining those sources with Social Security in some way.

The other recommendation is the new office in the Labor Department. The President's Committee on Employment of the Handicapped was moved over to the Labor Department. The Labor Department started, the very first time, with a lot of promise in terms of returning individuals to work. I think as you look at the Social Security system, including the definition of disability, you should look at leveraging what you are doing there with what other governmental agencies are doing so that you don't have these separate silos, as we call it in the Midwest, these resources that are not talking to one another and are not working together. Thank you very much.

[The prepared statement of Dr. Growick follows:]

**Statement of Bruce Growick, Ph.D., Associate Professor of Rehabilitation Services, Ohio State University, Columbus Ohio; Chairman, Legislative Committee, and Past President, International Association of Rehabilitation Professionals**

To the Honorable Chairman Shaw, Ranking Member Representative Matsui, and Members of the Subcommittee, thank you for this opportunity to testify regarding the present definition of disability and its impact on Social Security Disability programs. I am very pleased to be able to speak to this distinguished committee on this matter, which is both timely and crucial to the future success and existence of the Social Security Disability Trust Fund.

I am Dr. Bruce Growick, an Associate Professor of Rehabilitation Services at The Ohio State University, where I teach courses, advice students, and conduct research in the area of rehabilitation. Rehabilitation as a disciple deals with the overall adjustment, including employment, of individuals with disabilities. I am also the former Director of Rehabilitation for the Ohio Bureau of Workers' Compensation where I ran a state-agency helping injured workers return to employment. Presently I serve as the Chairman of the Legislative Committee of the International Association of Rehabilitation Professionals (IARP) after having been their President in 1995. IARP is an international organization of 3,400 members who work in the field of rehabilitation, providing services to people with disabilities in business and industry, for insurance companies, and at home.

Finally, and of particular interest as part of the foundation of my testimony today is my personal experience as a vocational expert for the Office of Hearings and Appeals of the SSA for the past thirteen years. As a vocational expert in the disability determination process, I am asked by the ALJs to classify the applicant's work experience, and to provide an opinion on their employability. As such, I have participated in thousands of Social Security hearings, and have been continually dismayed by the large percentage of individuals who apply for disability without receiving vocational rehabilitation. Therefore, in my testimony, I will address the issue of the definition of disability as it relates to incorporating vocational rehabilitation into the disability determination process, and the subsequent implications for the success of the Ticket to Work program.

**The Definition of Disability: the Dilemma of Eligibility for Benefits vs. Feasibility for Services**

The definition of disability as presently defined by the Social Security Administration creates an "all or nothing" climate. In order to be eligible for SSA, an individual must prove their inability to engage in any substantial gainful activity, i.e., work. This definition forces individuals to focus on their inabilities. For those individuals who have fought so hard for their eligibility, the likelihood of returning to work is unfortunately very small. There is no room in the present definition of disability to recognize the possibility of improvement through rehabilitation.

Acknowledging the potential benefit of rehabilitation services, time-limited eligibility is an option to consider. This definition of disability would be appropriate for individuals who cannot perform their past work, but might be capable of performing other work in the economy. This definition would then allow for the early identification of individuals with rehabilitation potential and increase the number of returns to work. This trend is seen in the private disability insurance system, such as workers' compensation, and long term disability policies.

If the medical condition deteriorates, then the inability to perform any work would result in the determination of permanent and total disability, and eligible for benefits. With this definition, rehabilitation intervention and return to work assistance can take place before the individual has been classified as permanently and totally disabled. Transforming the definition of disability in this way would require incorporating the assessment of rehabilitation potential into the disability determination system (DDS). We know from the statistics related to Workers' Compensation and Long Term disability case management that the earlier the return to work services are provided, the greatly the likelihood that the individual will return to work, if at all possible.

Since the DDS process can take up to eighteen months to be completed, many individuals with disabilities have become unemployed and have remained unemployed in order to not jeopardize the process. As a result, their skills, motivation to work, and work habits begin to deteriorate. They begin to lose their identity as a worker and to adopt the identity of an individual with a disability. With a graduated definition of disability, early intervention through vocational rehabilitation can prevent this deterioration.

You have heard from others that the concept of disability in the Social Security programs is out-of-step with current thinking, and I concur. The work and experiences of practitioners, researchers and disability advocates have resulted in increased knowledge about the barriers to employment that confront people with disabilities. From these experiences we have begun to recognize that the inability to work results from the interaction of the individual's functional limitations and work skills with the work environment. However, DDS continues to make determinations of eligibility for benefits on the basis of the idea that disability is "medically determinable." This concept of "medically determinable" disability focuses on diagnosis and not on the functional ability and rehabilitation potential of the individual.

Reports by the GAO have consistently shown that return to work is not occurring in the Social Security system, even with the advent of numerous incentives and the Ticket to Work program. Rehabilitation is coming too late in the process, after the individual has already been declared disabled.

**The Need for Rehabilitation Evaluation and Services**

As stated by others, SSA still needs to incorporate into its eligibility assessment process an evaluation of what is needed for an individual to return to work. The GAO has recommended developing a comprehensive return-to-work strategy that focuses on identifying and enhancing the work capacities of applicants and beneficiaries, and I strongly concur. May I respectfully recommend that the SSA consider using its staff to develop guidelines that will connect the application for disability with the automatic referral for rehabilitation services? In this way, the SSA applicant will be appropriately evaluated for return-to-work services, in addition to disability determination. There is currently a total disconnect between the disability determination process and RTW, unlike the private insurance industry where rehabilitation professionals are used on a routine basis to evaluate disability applicants for RTW potential. This process saves money for the insurance companies, as well individuals from disability status.

Unfortunately, the recently passed 'ticket-to-work' law addresses this disconnect, after the fact. Even though the law's intentions are laudable, the personal affects of declaring someone disabled dooms the process to failure. It is good that the 'private-sector' is being asked to assist in the delivery of rehabilitation services, but this intervention needs to occur earlier in the process of disability adjudication.

My overall recommendation to this subcommittee is to look at ways in which the definition of disability in SSA can be changed to include rehabilitation as early as possible. This disconnect between the SSA disability application process and rehabilitation needs to be changed so that the best efforts of the rehabilitation field can be incorporated into the disability determination process. Thank You.

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Chairman SHAW. Thank you. Dr. Blanck.

**STATEMENT OF PETER BLANCK, CHARLES M. AND MARION KIERSCHT PROFESSOR OF LAW, AND DIRECTOR, LAW, HEALTH POLICY, AND DISABILITY CENTER, UNIVERSITY OF IOWA COLLEGE OF LAW, IOWA CITY, IOWA**

Mr. BLANCK. Thank you, Mr. Chairman, for the opportunity to be here. I am also from the Big 10 like Bruce, except instead of being a Buckeye I am a Hawkeye. I am principal investigator on the large project funded by the National Institute for Disability Rehabilitation Research and a Member of the President's Committee on Employment of People with Disabilities and have been asked to speak on one very focused point, and that is that, as has been brought out today in the testimony, that the definition of disability under the DI programs as compared to the Americans with Disabilities Act they serve different yet important complementary national policy goals.

Now we have heard testimony about the definition of DI and the incapacity to work. The ADA in contrast, we should be clear, is to encourage work. It seeks to eliminate discrimination against individuals with disabilities. The law defines, as you know, a physical or mental impairment that substantially limits a major life activity, but to be covered under the ADA the individual does not have to be totally unable to work. As a matter of fact, a person who is qualified to work often works with the provision of reasonable accommodations, and studies that I have done and studies that have been done at UnumProvident have shown really important cost effective benefits to employers accommodating workers with disabilities in the workplace and getting them back to work.

So, there are different statutory purposes of ADA and the DI program. Primary among these differences is that when an individual is disabled for purposes of the DI programs it does not take into account the possibility of reasonable accommodation. So, since I am the last to go today, I will summarize briefly my opinions in this area and then perhaps give a longer time for questions to the Committee.

Number one, a person with a medical condition obviously may be entitled to disability benefits under DI and still be a qualified person under the Americans with Disabilities Act, and that is simply because the person can perform particular job functions in a particular job perhaps with reasonable accommodations.

Number two, a person may qualify for DI benefits on the basis of these regulatory presumptions, this five-step process we have heard about, that he is not able to work, and this may be true, even though that individual could return to work in a particular job with reasonable accommodations, and therefore these regulatory presumptions that I think has been brought out by the testimony of the UnumProvident doctor are really not related to a definition of who is a qualified individual with the disability for purposes of the ADA.

Third, I think importantly, because as has also been brought out, disability changes dramatically over time in terms of severity and time. A person who is qualified to work today who perhaps is discharged in violation of the Americans with Disabilities Act can nevertheless become increasingly disabled and then appropriately receive disability insurance benefits.

So, finally, for these reasons, the one point I have been asked to talk about today is that let's not confuse the definition of disability under the Americans with Disabilities Act with definitions under the DI programs. The ADA is much more specialized. It is on a case-by-case basis. Perhaps it is a model for some of the reasons we have heard today about how to think about new concepts of the definition of disability under DI programs. Certainly, and I think my views, by the way, have been endorsed by the U.S. Supreme Court in the 1999 Cleveland v. Policy Management case, where they unanimously said these same sorts of points, that both of these definitions, can comfortably co exist. The DI definition, to advance the national goal of returning people to work primarily by providing monetary support and insurance, and the ADA independently is to prevent discrimination on the basis of disability in the workplace. Thank you, Mr. Chairman, and I look forward to your questions.

[The prepared statement of Mr. Blanck follows:]

**Statement of Peter Blanck*, Ph.D., Charles M. and Marion Kierscht Professor of Law, and Director, Law, Health Policy, and Disability Center, University of Iowa College of Law, Iowa City, Iowa**

**Introduction**

Mr. Chairman, members of the Committee, my name is Peter Blanck. I am the Charles M. and Marion Kierscht Professor of Law at the University of Iowa.[1] I am the director of the Law, Health Policy, and Disability Center at the University of Iowa College of Law.

I am the Principal Investigator for the National Institute on Disability and Rehabilitation Research (NIDRR), U.S. Department of Education, funded Rehabilitation Research and Training Center (RRTC) on Workforce Investment and Employment Policy for Persons with Disabilities. I have conducted research and written articles and books on the implementation of federal disability law and policy and the Americans with Disabilities Act (ADA), particularly with respect to the application of the reasonable accommodation provision.[2]

My testimony focuses on two related conclusions:

(1) the definition of disability under the SSI/SSDI programs and under the Americans with Disabilities Act (ADA) serves different important yet complementary national policy goals; and,

(2) to further the goal of a cohesive national disability policy framework, additional dialogue and study on the SSI/SSDI and ADA definitions of disability are required.

**1. The definition of disability under SSI/SSDI and under the Americans with Disabilities Act (ADA) serves different important yet complementary national policy goals.**

SSI/SSDI. The Social Security Act provides monetary benefits to eligible participants with a disability. The definition of disability for an adult in the Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI) programs is based upon the individual's inability to work. Eligibility for these programs requires that an individual cannot perform substantial gainful activity (SGA) due to a medi-

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[1] Ph.D. in psychology from Harvard University, J.D. from Stanford Law School; Member of the President's Committee on the Employment of People with Disabilities; former Senior Fellow of the Annenberg Washington Program; former Commissioner on the American Bar Association Commission on Mental and Physical Disability Law.

[2] See, e.g., Peter Blanck, *The Americans with Disabilities Act and the Emerging Workforce* (1998); Peter Blanck (ed.), *Employment, Disability, and the Americans with Disabilities Act* (2000).

cally determinable physical or mental impairment that is expected to either result in death or to last not less than a continuous period of 12 months.[3]

The inability to work under SSI/SSDI is assessed by a five-step disability determination process. If a claimant is employed at SGA, the application is denied in the first step of the process. Other aspects of the disability determination process assess the applicant's capability to be employed—taking into account factors such as prior employment, age, education, and residual functional capacity through medical evidence and the applicant's narrative.[4]

**ADA.** The ADA seeks to eliminate discrimination against individuals with disabilities.[5] The ADA defines disability as a physical or mental impairment that substantially limits one or more major life activities. The term "substantially limits" is based upon the nature and severity of the impairment, and the length of time the impairment is expected to last. To be covered by the ADA, however, an individual does not have to be totally unable to work. The ADA prohibits discrimination by covered employers against a "qualified individual" with a disability—that is, a person who is able to perform the essential functions of the job, with or without reasonable accommodations.[6] Reasonable accommodations may include modifications to the work environment, policies, or procedures.[7] Prior study has shown that highly individualized ADA workplace accommodations, when developed through the ADA's interactive process, often result in measurable benefits to the employee and employer.[8]

**Different Statutory Difinitions Yet Copmplementary.** The definition of disability under SSI/SSDI and the ADA thereby reflect different statutory purposes. Primary among the statutory differences is that when the SSI/SSDI determines an individual is disabled for purposes of its programs, it does not consider the possibility of reasonable accommodation.[9] The U.S. Supreme Court has concluded in its 1999 *Cleveland v. Policy Management Systems Corp.* decision:

> [the difference in the SSI/SSDI and ADA definition of disability] reflects the facts that the SSI/SSDI receives more than 2.5 million claims for disability benefits each year; its administrative resources are limited; the matter of reasonable accommodation may turn on highly disputed workplace-specific matters; and an SSI/SSDI misjudgment about that detailed, and often fact-specific matter would deprive a seriously disabled person of the critical financial support the statute seeks to provide.[10]

In addition, unlike the ADA's individualized process, the SSI/SSDI administers its benefit programs under a five-step procedure containing presumptions about disabilities and job availability.[11] Also unlike the ADA, the Court concludes that SSI/SSDI presumptions about disability eliminate "consideration of many differences potentially relevant to an individual's ability to perform a particular job."[12] Therefore, an individual may qualify under SSI/SSDI for program benefits but be a qualified individual for purposes of the ADA, able to perform essential job functions with or without accommodation. SSDI also grants monetary benefits to eligible beneficiaries who can work during a "trial-work period."[13]

To summarize my opinions about the different yet complementary purposes of SSI/SSDI and the ADA:[14]

> (1) A person with a medical condition may be entitled to disability benefits under SSI/SSDI and still be an ADA qualified individual because that individual can perform the particular essential job functions with reasonable accommodations. Moreover, as the SSI/SSDI eligibility process does not consider

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[3] See 42 U.S.C. 423(a)(1)(D), 423(d)(1)(A); see also Definition of Disability, 20 C.F.R § 404.1505 (45 FR 55584, Aug. 20, 1980, as amended at 51 FR 10616, Mar. 28, 1986; 57 FR 30120, July 8, 1992); Definition of Disability for Adults, 20 C.F.R. § 416.905 (45 FR 55621, Aug. 20, 1980, as amended at 56 FR 5553, Feb. 11, 1991).

[4] See 20 CFR § 404.1520(b–f) (1998).

[5] See *Cleveland v. Policy Management Systems Corp.*, 526 U.S. 795, 802 (1999).

[6] Id.

[7] Id.

[8] Peter Blanck, Communicating the Americans with Disabilities Act: Transcending Compliance—1996 Follow-up report on Sears Roebuck and Co." *The Annenberg Program, Washington, D.C.* (1996).

[9] *Cleveland*, at 803.

[10] Id.

[11] Id. at 804.

[12] Id.

[13] 42 U.S.C. §§ 422( c), 423(e)(1); 20 CFR § 404.1592 (1998).

[14] For development of these views, see Brief for the United States and the Equal Employment Opportunity Commission as Amici Curiae Supporting Petitioner, in *Cleveland*, 1998 WL 839956 (illustrating logic adopted by the Court).

whether reasonable accommodations might be required under the ADA, a person may be entitled to SSI/SSDI benefits even if he could perform his prior job with reasonable accommodations.

(2) A person may qualify for SSI/SSDI on the basis of the regulatory presumptions set out in the five-step eligibility process that he is not able to work. This may be true even though that individual is not prevented from working in particular jobs. Thus, the SSI/SSDI regulatory presumptions are not related to the assessment of an ADA qualified individual.

(3) SSI/SSDI permits beneficiaries to receive benefits even though they are presently employed (e.g., trial-work period) to encourage individuals to return to work.

(4) Because disability severity, type, and status change over time, a person discharged from work in violation of the ADA (e.g., because of the lack of a reasonable accommodation) subsequently may become increasingly disabled and then appropriately receive SSI/SSDI benefits.

(5) The determination of reasonable accommodation under the ADA cannot be transferred to the determination of disability eligibility under SSI/SSDI.[15]

As the United States stated in its amicus brief in the *Cleveland* case (which logic was adopted by the Court in its decision):

> Social security benefits and the ADA are *not* necessarily alternative remedies between which people with disabilities must choose. Rather *they are complementary measures* that provide financial support to people with physical or mental impairments who face practical barriers to work while at the same time encouraging and facilitating their efforts to move off the benefit rolls and return to work.[16]

The Supreme Court in *Cleveland* endorsed this view, stating "there are too many situations in which an SSDI claim and an ADA claim can comfortably exist side by side."[17] Together, SSI/SSDI and the ADA advance the national disability policy goal to aid people with disabilities to return to work by providing monetary support (SSI/SSDI) and preventing discrimination on the basis of disability in the workplace (ADA).

**2. To further the goal of a cohesive national disability policy framework, additional dialogue and study on the SSI/SSDI and ADA definitions of disability are required.**

In 2002, the United States Supreme Court reiterated the important national disability policy objectives of the ADA in the case *US Airways v. Barnett.*[18] The Court concluded that, unlike prior federal government law and policy:

> [The ADA] seeks to diminish or to eliminate the stereotypical thought processes, the thoughtless actions, and the hostile reactions that far too often bar those with disabilities from participating fully in the Nation's life, including the workplace. . . . These objectives demand unprejudiced thought and reasonable responsive reaction on the part of employers and fellow workers alike. They will sometimes require affirmative conduct to promote entry of disabled people into the workforce.[19]

The Court's enunciated goal of the ADA is to insure equal opportunity, full participation, independent living, and economic self-sufficiency by individuals with disabilities in all aspects of society enjoyed by those without disabilities.

Since the passage of the ADA in 1990,[20] there has been unprecedented change brought to public policy that recognizes "disability as a natural part of life experience," no longer defined purely in a medical context but now explained by social and

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[15] This view is consistent with guidance set out on the subject by the Equal Employment Opportunity Commission (EEOC). See EEOC Enforcement Guidance on the Effect of Representations Made in Applications for Benefits on the Determination of Whether a Person Is a "Qualified Individual with a Disability" Under the Americans with Disabilities Act of 1990 (ADA), EEOC Notice, Number 915.002, Feb. 12, 1997, at http://eeoc.gov/docs/qidreps.html.

[16] Brief for the United States and the Equal Employment Opportunity Commission as Amici Curiae Supporting Petitioner, in *Cleveland*, at 5 (emphasis added).

[17] *Cleveland* at 802–03.

[18] *U.S. Airways, Inc. v. Barnett*, 122 S.Ct. 1516, 1522–23 (2002).

[19] Id.

[20] Pub. L. 101–336, 104 Stat. 327, (1990).

environmental barriers and facilitators.[21] The prior paradigm of disability often viewed people with disabilities as "defective and in need of fixing."[22] The new paradigm embodies a "disability policy framework,"[23] as articulated in the ADA, and sets forth the goals of "equality of opportunity, individualization, full participation, independent living and economic self sufficiency."[24]

The goals of the disability policy framework have provided organizing principles adopted by Congress in passage of the Workforce Investment Act (WIA) of 1998 and the Ticket to Work and Work Incentives Improvement Act (TWWIIA) of 1999, as well as in its reauthorizations of the Rehabilitation Act of 1973 and the Individual with Disabilities Education Act (IDEA).[25]

These public policy achievements have moved significantly beyond historically imposed policy and attitudinal barriers that subjected persons with disabilities to lives of dependency, segregation, and paternalistic treatment.[26] The ADA, SSI/SSDI, and subsequent Congressional actions such as TWWIIA and WIA have set out new expectations about the abilities of persons with disabilities to learn, work, return to work, and be included in the mainstream of American life.[27]

In assessing the effectiveness of such strategies, dialogue and study of questions may be considered such as the following:

- In what ways is the ADA facilitating access to reasonable accommodations, including assistive technology tools, so as to enhance access to work, return to work, career advancement, and job productivity?
- In what ways may SSI/SSDI eligibility support an applicant or newly eligible beneficiary to retain meaningful employment while maintaining appropriate access to financial, health care, and other benefits provided by SSI/SSDI?

NIDRR has funded a RRTC on Workforce Investment and Employment Policy, as well as other projects, that are seeking answers to these and other questions. Researchers and policy analysts are beginning to understand the initial implementation phase of WIA and TWWIIA, as well as the ongoing impact of the ADA.

Additional study is needed to identify the characteristics of those who enter the workforce and return to meaningful work from SSI/SSDI benefit programs. Study is warranted of the economic and social factors that facilitate the reduced need for benefits. Dialogue and research are needed on issues such as the nature of hidden or attitudinal discrimination against individuals with disabilities in the workplace, and on the ways to facilitate ADA reasonable accommodations and the provision of assistive technology in the workplace for qualified individuals.[28]

Lastly, a recent GAO report on the effects of the SGA level identifies several significant data limitations that presently hinder valid and reliable assessment of the employment status of SSI/SSDI beneficiaries.[29] These data limitations include a lack of useful information on the monthly earnings of beneficiaries or the beneficiary's engagement in a trial work period or extended period of eligibility. The Social Security Administration is addressing these issues by using enhanced means to track the wages and earnings of people who participate in the Ticket to Work program.

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[21] NIDRR Long Range Plan (64 Fed. Reg. 68608). See also Peter Blanck & Helen Schartz, Towards researching a national employment policy for persons with disabilities, in LR McConnell (ed), *Switzer Monograph Series* (July 2001); Harlan Hahn, Disability Policy and the Problem of Discrimination, 28 *Am. Behav. Sci.* 293, 294 (1985).

[22] Peter Blanck & Michael Millender, Before disability civil rights: Civil War pensions and the politics of disability in America, 52 *Alabama L. Rev.* 1 (2000); Peter Blanck, Civil War pensions and disability, 62 *Ohio State L. J.* 109 (2001).

[23] See Robert Silverstein, Emerging Disability Policy Framework: A Guidepost for Analyzing Public Policy, 85 *Iowa L. Rev.* 1691 (2000).

[24] NIDRR Long Range Plan (64 Fed. Reg. 68578).

[25] Workforce Investment Act (WIA) of 1998, P.L. 105–220, 112 Stat. 936 (1998); Individuals with Disabilities Education Act Amendments of 1997, P.L. 105–17, 111 Stat. 37–157 (1997); Ticket to Work and Work Incentives Improvement Act (TWWIIA), P. L. 106–170, 113 Stat. 1860 (1999).

[26] Emerging Disability Policy Framework, 85 *Iowa L. Rev.* 1691.

[27] Id.

[28] See Scott Burris & Kathryn Moss, A Road Map for ADA Title I Research, in Blanck (ed.), *Employment, Disability, and the Americans with Disabilities Act* (2000).

[29] SSI/SSDI Disability: *SGA Levels Appear to Affect the Work Behavior of Relatively Few Beneficiaries, but More Data Needed,* United States Government Accounting Office, GAO–02–224 (Jan. 2002).

**Conclusion**

Recent U.S. Supreme Court decisions interpreting the ADA's definition of disability have highlighted the different yet complementary purposes of SSI/SSDI and the ADA. The Supreme Court has articulated the national policy goals of the ADA and the emerging disability policy framework. Congress, the disability community, employers, researchers, and others now must work together to implement SSI/SSDI programs and the ADA in ways that further these objectives.

This common purpose is required to develop meaningful information about effective policy and implementation strategies that advance the economic independence of Americans with disabilities. The information learned will shape the lives of the next generation of children with disabilities who have experienced integrated education and who will become part of the competitive labor force of the 21st century.

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Chairman SHAW. Thank you very much. This has been very insightful. I was just asking Kim Hildred, our chief staff person here, as to when is the last time other than the Ticket to Work that Congress really took a close look at that and she said 1984. So, I guess we are just as guilty as the SSA of using 1991 job descriptions. So, I think that there is an awful, awful lot that we have gained today and learned today from all of you witnesses.

Dr. Growick, I would like to thank you publicly for your input with regard to the Ticket to Work legislation, which is something that as Chair I am very proud of and I am sure every Member of this Committee is very proud of as well as our staff. Your input and contribution to that was great. Mr. Becerra.

Mr. BECERRA. Thank you, Mr. Chairman, and I appreciate the comments of all the witnesses. Let me see if I can try to condense the various questions that I have in my mind so I can try to do it all in 5 minutes and get some thoughtful responses.

What I hear you all saying is that we should try to restructure our view of the disability insurance program so that we are not just trying to give someone something for a disability and treat them as if they can never get back to being functional, but to try to help them, if possible, get back to a stage where they are functional and therefore self-sustaining. If that is our course, it seems that what we are going to probably find is that a lot of these individuals can probably return to some state of functionality, but will require quite a bit of assistance, treatment, modalities that are out there these days, the automation that is out there to try to help them.

Who would be responsible for the cost to providing that? If I could ask you to be brief in that because I can then follow up with some other questions. Who would take on the responsibility for that individual to cover the cost of the treatment, the program, the equipment that would be necessary?

Mr. SEIFERT. If it didn't fall to their private insurance, and some private disability and health insurance companies do provide those types of services and technologies, then it would have to fall to the government. We are talking about incredibly expensive technologies that are quite beyond the means of a person whose income is diminished by disability or, in the event that they are still working to some degree before maybe filing for DI, is somewhat diminished from where it was. So, but again it is an individualized thing.

Mr. BECERRA. So, if there is no private insurance then you are probably looking at the government to cover the cost?

Mr. SEIFERT. More than likely, and like you said, it all comes down to the money. If the government doesn't pay for the assistive technology, then it will pay for the benefits. So, it just depends—if Medicaid pays for the specific technology and the person doesn't come under Social Security, well, then you have saved on one side but you have spent on the other side.

Mr. BLANCK. There is another area, too, and that is tax incentives and tax credits to employers to provide many of these accommodations, which often are expensive but often are rather modest in price. In Iowa we have passed legislation which we are quite proud of, maybe other States have it as well, to have a tax credit for small employers who employ people with disabilities who need these sort of assistive technologies. It is a nice way to get people back to work, to encourage cost effective strategies for employers, and to remove it out of the governmental insurance system as well. It is a win-win for everybody really.

Ms. OWENS. I want to make one point. I think that there are certain people of working age for whom these additional services and benefits will make a difference and will return them to work. It is also important that there be a baseline program for people to have wage replacement. There are a certain number of people who cannot go back to work and need to have that baseline program. Perhaps that didn't come out clearly in my statement.

When you are looking at that other group of people, one of the things we have heard is that there are a lot of programs available within the government that aren't integrated. I think Mr. Gerry mentioned that and I think we need to take a look at that. How do we integrate those programs and be sure that the goals are the reintegration of people who can be back into society.

Dr. ANFIELD. I would like to raise two points that I think are suggested in the testimony that I provided. One is the recovery rates for our long-term benefit claimants who also receive SSDI benefits are considerably higher than Social Security, and the other is since implementing the more rigorous stewardship of the experience, investing in the resources that I have described, my company has achieved a rate of recovery that is 30 percent higher than the industry average. This has been demonstrated through the mergers of three companies and thus is a proven model.

Mr. BECERRA. Dr. Anfield, a quick question to you, and maybe you can provide something in writing if you don't have a response that you can give orally. Has there been a comparison made between what private insurance offers in terms of both the rehabilitative assistance or other opportunities to try to get back to work along with the cash benefits for the disability and compared that to what SSDI provides and so you have a good comparison?

The other part is the clients that you have versus the clients that SSA gets. I would imagine that for the most part SSA is going to get the folks who don't have the wherewithal or didn't have employers who offered disability insurance, so they're going to have a universe that is going to be a lower income, a more modest income than some folks that you have been able to provide assistance to. Maybe I could ask you to do that just as a follow up, if you could do that.

[The information follows:]

Our company has not conducted any studies that compare the private insurance industry with SSDI in terms of rehabilitative assistance and benefit payments, but we believe the General Accounting Office has recently completed such a study that the Subcommittee may find helpful.

UnumProvident and SSA share common claimants. About 86 percent of all Unum, Provident, and Paul Revere Long Term Disability claims beyond 3 years have SSDI offsets. In the second quarter of 2002 the average monthly gross benefits (UnumProvident + SSA benefit) for recovered claims receiving an SSDI offset was $1,746 (thus, the average annual income on which wage replacement benefits were predicated is approximately $33,000). Our recovery rate demonstrates the effectiveness of our return to work model: It was 5.3 percent in 2001 compared to 3.2 percent in 1999 (the year of the merger between Unum and Provident). The SSA has previously reported its SSDI recovery experience at a rate of one-half of 1 percent.

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Mr. BECERRA. Mr. Chairman, if I could ask one last question of Dr. Blanck.

Chairman SHAW. Go ahead.

Mr. BECERRA. Dr. Blanck, you mentioned reasonable accommodation, and ADA provides that, and I think that has worked tremendously well. Reasonable accommodations for the most part requires the employer to make the accommodation at the employer's expense?

Mr. BLANCK. Right.

Mr. BECERRA. If we are now looking at the possibility of DI, disability insurance beneficiaries into a workplace setting again, reasonable accomodation, are we still assuming that the employer covers the entire cost of that accommodation? Are we looking to now have the individual, the government providing the disability insurance to do that? How do we do it because I suspect that the accommodations that would be required for some of the folks that would be receiving disability insurance would be greater, and that I would think would impose a heavy burden on the employer to try to accommodate that individual?

Mr. BLANCK. That is quite right and I think that is a very astute point. There needs to be a partnership clearly. This is a study for GAO to look at the net return of X numbers of thousands of dollars that the government might provide for an accommodation with the extended work life of that particular individual, and I think that strategy, combined with tax credits, is a very powerful strategy. I mean employers need workers. They need workers in our knowledge-based setting. It is clearly increasingly people with disabilities work in knowledge-based jobs. We are moving away from our manufacturing sector, and a partnership of that sort would be very effective. You are quite right, under the ADA the employer is obligated to bear the cost of that typically.

Mr. BECERRA. Thank you all for your testimony. I think it is enlightening and I hope it spurs us to move in a positive direction. I am not sure what direction that is because, as I said, I have some trepidation about where it takes us if we are not willing to put the money behind what we say, but I thank you very much. Mr. Chairman, again thank you so much for having these three hearings. It is great.

Chairman SHAW. Just for your information and the information of the people here, the General Accounting Office is doing a certain amount of research and they are going to report back to us on what

is the effectiveness of some of these incentive plans that are out there, some programs that will give us some guidance. Mr. Hulshof.

Mr. HULSHOF. Thank you, Mr. Chairman. I want to echo what Mr. Becerra said as far as the series of hearings we have had, especially even today. With one, only one, exception, everybody has been really focused on the topic at hand. This has been really so fascinating I guess to us as a Subcommittee, if we could somehow trumpet in a national town meeting that is televised, I mean these sort of issues, because I really do think that we are on the cusp of some significant changes and you all have addressed them. It also raises the challenges that we face, and that is what if we, Congress, could enact policy in a vacuum? Where would we go? Mr. Becerra has mentioned trepidation.

My friend Mr. Pomeroy from North, by gosh, Dakota as he says, mentioned quandary of the policy. Mr. Seifert, you mentioned policy changes. Here we have had this program that has been very successful, but it has been primarily a safety net to provide cash benefits for individuals who can't work, and then we are trying to focus now on shifting that program to returning to work, as Ms. Mitchell is nodding back there.

We talked about early intervention and, Dr. Growick, as you said very eloquently, we are moving in a direction that we can provide rehabilitation services in an earlier fashion. We have got assistive technologies. I mean, what a dynamic area this is. What is the right policy and that of course is, as you mentioned, somewhat academic exercises of policy. Then when you add the politics that we deal with, and I mentioned Dr. Growick, just, you know that, Mr. Chairman, when you came to my district and we had convened a field hearing, we were greeted with protesters as you remember. Whether it is time limited benefits, which is an intriguing idea, but, boy, think of the politics there.

Mr. Seifert, you mentioned in your testimony support raising substantial gainful activity level for non-blind disabled individuals to the same level as those who are blind. Boy, there is a political issue. My constituents back home are still wondering why I haven't gotten on certain pieces of legislation to support the blind and raising it and tying it back into certain Social Security levels.

So, you have got the policy and the politics, and then we have also heard today from—the challenges of implementation. We have heard from both SSA. We have heard from GAO, even these great ideas and great legislations that were enacted in 1999, and we still are talking about how do we make it work. So, again, I think it has just been fascinating.

Let me zero in because I also have limited time. Mr. Seifert, just a couple of things. Specifically, a point that I find you made that is very well taken, and that is the sliding scale. I have a very active disabled community back home in Missouri, specifically in Columbia, Missouri, my home. This whole cash cliff or income cliff, which, when we talked about this and we now have this demonstration project, the sliding scale. I am going to ask you to be a devil's advocate. Can you think of any reason why we should not make this demonstration project the law of the land? I mean, can you think of any policy reason or political reason why not to have the sliding scale? Because I, from day one, I know we had to do

the demonstration project, but from day one it seemed just that the policy should be, you know, when we have this Ticket to Work, that we should make this not just a demonstration project but it should go across the country. Are there any arguments against making the demonstration project uniform?

Mr. SEIFERT. There are some who would perceive that a sliding scale on the DI benefit would fundamentally change it to a partial disability program and would entice people to apply. That is the argument that is advanced by some people. It is a facetious argument, but the people who make it happen to be actuaries who score it and they score it high, and so consequently we don't have it. It was probably the one biggest thing, of all the things we did in the Ticket to Work, that we did not fix, I mean, we crossed several jurisdictional boundaries in this Congress. It is implemented across several departments of the Federal Government. It was a huge piece of legislation. It enjoyed wide bipartisan support.

The thing we didn't do in that bill was eliminate the SSDI cash cliff. We didn't do it because a couple of actuaries said it might cost a lot of money, offering not a shred of proof, with no evidence. In fact, from my understanding with some experience in the private sector, quite to the contrary, there is evidence that it would in fact save money. Other than their concerns, I can think of no reason not to do that then.

Mr. HULSHOF. Well, again, I just thank each of you for the contributions you have made and the series of hearings has been quite enlightening and also pointing up, though, the challenges we continue to face, especially in this dynamic area of trying to help people return to work. It is not often, as I have said several times, it is not often that we have a group of individuals across the country who come to us to Congress and say we want to be taxpayers and yet this is the group that, as you know, the opportunity to work is a basic human dignity. I do agree that the Ticket to Work is a major step forward, probably the greatest thing since ADA, to help a segment of our population that is trying to become self-sufficient. So, with that, and seeing the red light on, Mr. Chairman, again my compliments on this series of hearings and thank the panels.

Chairman SHAW. Thank you. I would like to associate myself with the comment of Mr. Becerra and the comment that you just had with regard to the value of this hearing. We have got a system that is broken. We have got to do a better job. It is easy to sit up here and blame others, but Congress certainly is to blame. We have got a cliff. The Social Security is aware of that. It did say it was going to cost billions of dollars. Perhaps we should be a little more innovative with some tax credits or something if they lose all their benefits, and that is a big problem.

The fact that we haven't heard anything about job counseling at this hearing worries me. The fact that we don't have this program hitched up to rehabilitative services for those that require it is of great concern. I think we have a system now where we are just saying that all you have to do is continue to be a disabled person and not work and you will continue to get your benefits.

That echoes and rings a little bit like what we were doing before with welfare reform. We were paying people not to get married, have children, and not work. Believe it or not, that is exactly what

a lot of folks did. In this situation we make it very, very difficult, and I am not drawing a parallel between this and the broken welfare reform bill, but we are making it very difficult for people to break out of this and try to—we went a long way with the Ticket to Work. I think we do have to take another look at this and to be sure that some rehabilitative process is in place and is connected with this.

We have got so many people doing so many things in so many areas, and they never see each other. Whether we have it in the offices administering the Temporary Assistance to Needy Families payments or whether they are doing—taking care of people that have been laid off and receiving benefits for a period of time. There are just so many people that are doing these things, and we don't seem to be doing anything in this area except just simply evaluating and sending out checks, and I think there is a lot more that we can do to help the people that we all want to help.

I want to thank this panel for coming. When you get back to Iowa, be sure to tell Marion and Charles that we asked about them. I have got to tell you, it is written here as if it is a witness. I know I have trouble with names, but this one is your fault. Thank you all very much. This hearing is concluded.

[Whereupon, at 12:40 p.m., the hearing was adjourned.]

[Questions submitted by Chairman Shaw to the panel, and their responses follow:]

SOCIAL SECURITY ADMINISTRATION
BALTIMORE, MD 21235
*August 28, 2002*

E. Clay Shaw, Jr., Chairman
House of Representatives
Ways and Means Committee
Subcommittee on Social Security
Rayburn House Office Building B–317
Washington, DC 20515

Dear Chairman Shaw:

**1. The U.S. General Accounting Office (GAO) found that your agency is using outdated information about the types and demands of jobs in the economy when determining whether an individual is capable of doing other work—is this true? What efforts are underway to address this? Do you have research on the number and characteristics of individuals who might receive benefits if these criteria were updated?**

**Answer**:

SSA uses the most up-to-date occupational information available when determining whether an individual is capable of performing work that exists in the national economy. Although the job information contained in the Department of Labor's (DOL's) Dictionary of Occupational Titles (DOT) has not been revised since 1991, it remains the most up-to-date detailed description of occupational information available that matches with the level of analysis used in the current SSA disability determination process.

DOL has developed a new database system of occupational information, the Occupational Information Network (O*NET). As required by the Office of Management and Budget, this system is based on the 2000 Standard Occupational Classification (SOC) system and contains information on approximately 950 occupational categories, as opposed to the nearly 13,000 separate job titles in the DOT. DOL is currently collecting new data from current workers through a survey process. It will take a number of years to update the entire database. In the meantime, the occupational characteristics data in the current O*NET database are analyst ratings derived from analysis of the component DOT occupations. SSA is continuing to use the data at the more detailed DOT level. In addition, as DOL acknowledges, O*NET is not designed for use in adjudicative programs and, even when complete, it will not

meet SSA's needs. We have been working, and will continue to work, with DOL to address our occupational data needs, which require more detail on the physical demands of work, in order to compare it to an individual's residual functional capacity.

For the past couple of years, DOL and SSA staff have been working together with individuals from the private sector (e.g., vocational rehabilitation representatives and those of insurance industry workers' compensation programs) to develop approaches that will yield occupational data that we can use in our programs. SSA's Associate Commissioner for Disability recently met with the Assistant Secretary for the Employment and Training Administration, the component in DOL that is responsible for the development of O*NET, to discuss how our Agencies can best work together to develop the occupational information and data that SSA needs. Our staffs are currently preparing a white paper that will form the basis for cooperation in developing this kind of occupational data.

We currently have two other related projects:

1. Job Demands: This is a Disability Research Institute (DRI) project intended to identify the physical and mental demands required to perform work. It should result in more useful descriptors for jobs. We plan to follow-up with another project to validate and calibrate job demands and to develop instruments for occupational analysis.

2. Non-Medical Factors: This project is intended to assist SSA in updating its other vocational policies (i.e., not directly related to DOT/O*NET issues). It began with a research contract to investigate the effects of age, education, literacy, and skills in terms of vocational capacity assessments.

We do not have information about the number and characteristics of individuals who might be affected if these criteria were updated. That would depend on how the criteria are updated.

**2. You mentioned in your testimony that you have begun looking at disability programs, including the definition of disability, in the context of other Federal programs for individuals with disabilities. What is the timeline for any action or results from this examination? What role do short-term disability or partial disability, changes in work, medicine, and technology, and individual's expectations play in this examination?**

**Answer**:

Work on developing the concepts for this project has just begun. We are currently assessing what is known about public and private disability insurance program design and experience to construct a knowledge base for all aspects of disability insurance coverage and program provisions. We intend to take a comprehensive look at definitions of disability from both the medical and functional perspectives, assess the potential of current technology in mitigating the disabling impacts of physical and mental impairments, look at issues related to personal motivations and incentives to work, and consider the private and foreign experience with short-term and partial disability benefits in the context of enhancing return to work efforts. Since this work is just beginning, we do not have enough information as yet to set a firm timeframe for the completion of all the many tasks involved in an undertaking of this scope. We will inform you as soon as a workplan is adopted for this project.

**3. You stated in your testimony that SSA has formed a partnership with the Departments of Labor, Health and Human Services, and Education, as a part of the President's New Freedom Initiative. Would you explain this partnership, including its goals, the research SSA is undertaking as part of it, and its timeline for action?**

**Answer**:

There are several collaborative efforts underway as part of SSA's response to the New Freedom Initiative:

- ***Department of Labor (DOL) Navigators:*** SSA is collaborating with DOL, Employment and Training Administration, to conduct research into establishing within the State-operated One-Stop Centers a staff position that will provide employment services and expert information on SSA's employment support programs. This position in DOL One-Stops is tentatively called the Disability Program Navigator (DPN) or "Navigator." The Navigator would be responsible for addressing the needs of individuals with disabilities who are seeking training and employment opportunities by helping them access, facilitate, and navigate the various complex Federal, State, and local programs. The demonstration of this position will be performed during fiscal year (FY) 2003 and FY 2004.

- ***Comprehensive Employment Opportunities (chief executive officer) Demonstration:*** Under the leadership of Secretary Thompson, the Centers for Medicare and Medicaid Services is working together with other Federal agencies to offer States the opportunity to implement a comprehensive employment demonstration project. The demonstration will use existing grant funds with pre-approved waivers and other resources to create a coherent package that addresses the major obstacles to employment. The grant announcement for these demonstration projects will be published in early FY 2003 with projects beginning in the second half of FY 2003 and continuing for 5 years.
- ***Youth Employment Strategy:*** Under the New Freedom Initiative, the Departments of Education, Labor, Health and Human Services, and SSA have formed a working partnership to help children with disabilities who receive Supplemental Security Income (SSA's income assistance program) improve their economic status. The four agencies will be pooling their resources to develop demonstration projects that would assist impoverished children transition from school to employment. Pilot projects will begin in early FY 2003 and a general announcement of grant availability should be published in Spring 2003. Projects would begin in late FY 2003 and continue for 3–5 years.
- ***Early Intervention Demonstration:*** SSA is also developing an early intervention demonstration project which would provide medical and other support benefits to individuals with disabilities before impairments become permanent. SSA plans to use its demonstration waiver authority to offer certain applicants for disability benefits the option of choosing a cash stipend and return-to-work services in lieu of pursuing the benefits application with the goal of returning to work without coming on to the benefits rolls. This project will take extensive time to plan and test operating procedures. It is expected that the early test sites will be operational in late FY 2003 with full implementation of a large demonstration in 2005.

**4. The actuaries tell us that beginning in 2008, the disability insurance (DI) program outlays will exceed income. Are we to expect either a legislative proposal or a plan for changes that the agency will be making via regulation to address DI trust fund solvency? When will it be ready?**

**Answer**:

DI trust fund solvency must be addressed within the context of the overall solvency of the OASDI trust funds.

**5. You mention in your testimony that SSA plans on testing several models including such interventions as integrated service supports and collaboration with employers. Also, you state that you plan to study the extent to which the listings are predictive of work ability. Could you please explain these projects more? What are the specific goals that you hope to accomplish with each? What is the time line for each project?**

**Answer**:

There are several research projects, highlighted under the response to question #3 above, that relate to our efforts to strengthen the links between SSA's disability programs and employers. The key to the success of these initiatives is the use of the Department of Labor's One-Stop system to provide a single point of contact for information and access to all benefit programs and employment services available in each beneficiary's community.

In addition to the Youth Transition, Comprehensive Employment Opportunities, and Early Intervention demonstrations, mentioned above, SSA plans to conduct research into the potential for improvements in the treatment of serious mental illness, particularly mood (affective) and anxiety disorders, as a means of enhancing the independence and productivity of beneficiaries with these conditions and of reducing their dependence on disability benefits. The research will be designed during FY 2003, and should be implemented in early FY 2004 and run for about 4 years with preliminary results available by FY 2006.

The study on the extent of the predictability of the medical listings is under development.

**6. To what degree do the Listings of Impairments take into consideration prescribed treatment, or the availability of assistive technology or advanced prosthetics in determining disability? Recognizing these are clearly very difficult and complex issues, as many individuals simply do not have**

**access to needed medicine or rehabilitation, are changes to the listings to address these issues being considered by SSA? How?**

**Answer**:

The design of the disability program limits the extent to which SSA might assess an applicant on the basis of anticipated benefits from medical treatment that has not been prescribed by the individual's treatment source(s), and that the individual has not undergone. The law states that "Nothing in this title shall be construed as authorizing the Commissioner or any other officer or employee of the United States to interfere in any way with the practice of medicine or with relationships between practitioners of medicine and their patients, or to exercise any supervision or control over the administration or operation of any hospital." Social Security Act section 216(i).

However, program updates (i.e., revisions to the Listing of Impairments) do reflect advances in medical treatment and technology. That is one of the most important reasons we periodically update these criteria. Further, program rules require that we consider any benefits that individuals have received from medical treatment when making our disability determinations. Finally, we do have rules and procedures for assessing whether an individual willfully fails to follow the treatment prescribed by a treating source and these rules preclude the payment of benefits for any individual who willfully fails to follow prescribed treatment.

**7. In their testimony, GAO points out the need for SSA to reorient or change the direction of their disability programs from being centered on an inability to work to one focused on capacity to work with assistance given to promoting return to work. Reorienting these programs, however, would raise a number of issues. For example, would the definition of disability change, how would the programs' involvement with Medicaid and Medicare be affected, and would accessibility and costs of medical and assistive technologies outweigh the benefits? Are you currently looking into these issues and how?**

**Answer**:

All of these issues are important in a comprehensive approach to the complex medical, functional, and behavioral aspects of disability and the programs affecting people with disabilities. Addressing these issues will require coordinating the efforts of several Federal agencies with responsibilities for these various programs and a commitment to resolving conflicts between the programs. SSA is working with the Departments of Health and Human Services, Education, and Labor to create a comprehensive approach to all the needs of people with disabilities, their service providers, and employers through the One-Stop system nationwide. Discussions are also beginning to address the housing and transportation issues unique to people with disabilities to further strengthen program and service coordination.

**8. Some have suggested that SSA play a more active role in helping to provide vocational rehabilitation or employment support services for claimants, even before they begin receiving benefits, and providing time-limited benefits while individuals with disabilities are undergoing this rehabilitation. Could you explain the process by which claims are now referred to a State vocational rehabilitation office? Would you comment on the idea of time-limiting benefits for individuals who may be able to return to work quickly through rehabilitation, and the idea of linking the application for benefits with an automatic referral for vocational rehabilitation, as one of our later witnesses, Dr. Growick suggests? What are your thoughts on providing additional employment support services early in the application process, or soon after receiving benefits? What would you say are the pros and cons of providing these services? What are your thoughts on allowing SSA's disability program to provide more employment resources, much as the current welfare system operates?**

**Answer**:

- **Could you explain the process by which claims are now referred to a State vocational rehabilitation office?**

The Ticket to Work and Work Incentives Improvement Act 1999 repealed the mandated referral of applicants for disability benefits to State VR agencies. SSA Field Offices and State Disability Determination Services (DDS) are discontinuing the referral of beneficiaries as the Ticket program is rolled out. The referral process is no longer applicable in the initial 13 ticket States and will be discontinued in the

remaining States as we phase in the Ticket program for those States. The mandatory referral requirement will end nationwide by late 2003.

For those States where the Ticket program is not yet implemented, the State DDS using criteria supplied by the State VR agency decides which applicants for disability benefits have rehabilitation potential and refers them to the appropriate State VR agency for formal evaluation. This occurs at the same time that the DDS determines if the applicant satisfies the criteria for receipt of disability benefits.

- **Would you comment on the idea of time-limiting benefits for individuals who may be able to return to work quickly through rehabilitation, and the idea of linking the application for benefits with an automatic referral for vocational rehabilitation, as one of our later witnesses, Dr. Growick suggests?**

The use of time-limited benefits may work well with applicants who are good candidates for participating in a return-to-work program and have a high probability of being ready to work within a relatively short period of time. SSA is currently developing plans for a demonstration of early referral for rehabilitation and return-to-work services at the time of application for benefits. For applicants who are judged to have a high probability of being awarded benefits and who appear to be good candidates for return-to-work services, current plans would let the applicant choose to put the application for benefits "on hold" in exchange for immediate referral and evaluation for services. Participants would receive cash stipends during evaluation and receipt of services. For rehabilitation attempts that are unsuccessful, applications for benefits would be "reactivated" without penalty.

As for automatic referral for rehabilitation services, we believe such a policy would be advantageous only for those with good rehabilitation potential. Many applicants for disability benefits are too impaired and/or are of advanced age and are, thus, not likely to be able to participate in a VR program or return to work. Also, since motivation to actively pursue a plan of rehabilitation is essential to successful completion of the plan, assessment of rehabilitation potential, including motivation, is an efficient means for allocating scarce rehabilitation services. We believe the voluntary nature of the Ticket to Work program, combined with the Benefits Planning, Assistance and Outreach network of expert advisors, is consistent with this approach.

- **What are your thoughts on providing additional employment support services early in the application process, or soon after receiving benefits? What would you say are the pros and cons of providing these services?**

It is a truism of rehabilitation that the closer the intervention is to the onset of the disabling condition, the better the chances of successful return to work. We embrace this concept and the Early Intervention demonstration, referenced above, will test the effectiveness of intervention at the time of application for benefits. We are collaborating with other Federal agencies, particularly through support of the DOL's One-Stop program, in an attempt to identify and assist individuals who need services before they decide to apply for benefits.

- **What are your thoughts on allowing SSA's disability program to provide more employment resources, much as the current welfare system operates?**

We believe the involvement of individuals who are potential disability beneficiaries in return-to-work services, where appropriate, at the earliest feasible point after the onset of a disabling condition is essential for the long-term success of SSA's disability programs. From the perspective of impaired individuals with rehabilitation potential, the earliest possible return to productive activity is the preferred outcome after experiencing a disabling event. From a program perspective, early intervention is good risk management that would improve the cost effectiveness of SSA's developing return-to-work programs and reduce burdens on the disability trust fund and the general revenues. At the same time, SSA is only one of several Federal agencies with a role to play in developing and maintaining an effective system of return-to-work services. We are working with the DOL, DOE, and HHS to create a comprehensive and coordinated system of benefits and services across agency programs for current and potential disability beneficiaries.

**9. Ms. Mitchell, of the Ticket to Work Advisory Panel, suggested categorizing disability beneficiaries according to whether they would be considered "hard-to-serve" for employment services. What are your thoughts on this? What would you see as the pros and cons of this?**

**Answer**:

Such classifications are problematic in part because they tend to advantage one group of deserving beneficiaries at a cost to other groups of deserving beneficiaries. Also, the Ticket to Work program has at its heart the concept of choice for both beneficiaries and Employment Networks. A better approach is to retain the voluntary nature of the interactions between beneficiaries and providers of employment services. In addition, a beneficiary's motivation to work is essential for successful completion of an employment services plan. There is no scientific way to determine motivation, and providers of return-to-work services are expert in assessing a potential client's motivation. SSA does not have within its or the DDS' field structure or systems the capability to make such determinations. We favor continuing the individualized assessments that are at the core of the Ticket to Work program.

**10. Would you provide an analysis of how the Ticket to Work legislation has helped those who wouldn't have returned to work because of the potential loss of their health insurance? Has this effort gone far enough? What else needs to be done? Please provide an analysis of how the Ticket to Work program is working in the current roll-out states, with a particular emphasis on the States you believe have not implemented all of the available options.**

**Answer**:

SSA recognizes that continuation of health care is vital to all individuals with disabilities. Fear of losing health care is probably the biggest factor in preventing a disability beneficiary from returning to work. There are several Medicare and Medicaid work incentives that help minimize that fear.

The Ticket to Work and Work Incentive Improvement Act 1999 (TWWIIA) provided several enhancements to health care for working individuals. The Department of Health and Human Services, through the Centers for Medicare and Medicaid Services (CMS), administers these health care provisions. SSA actively works with CMS in support of these enhancements.

The TWWIIA health care enhancements include:

Expanding State Options under the Medicaid Program for workers with disabilities. (Section 201)

- This is an expansion of the Balanced Budget Act (BBA) 1997.
  - The BBA gave States the option to provide Medicaid coverage to individuals with disabilities whose earnings were too high to qualify under existing rules.

Net earnings had to be below 250% of the poverty level.

- Section 201 removed the 250% poverty limit on earnings, so now States have the option to provide Medicaid coverage to even more working people with disabilities.
- States can set their own income and resources limits to allow working individuals with disabilities who are at least 16 but less than 65 years old to buy into Medicaid.
- States have the option to provide opportunity for employed individuals with a medical improved disability to buy in Medicaid.
- States may require such individuals to pay premiums or other cost-sharing charges.
- 26 States have CMS approved plans in place.
- The following identifies the status of States' implementation of this option of the BBA:
  - State Plans with CMS approval: Alaska, Arkansas, California, Connecticut, Florida, Illinois, Indiana, Iowa, Kansas, Maine, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, Oregon, Pennsylvania, South Carolina, Utah, Vermont, Washington, Wisconsin, and Wyoming. Massachusetts has an 1115 waiver plan, which is similar to the Medicaid buy-in option (26 total).

Grants to Develop and Establish State Infrastructures (Section 203)

- States can be awarded grants to support infrastructures that provide services to working individuals with disabilities.
- The goal is for States to support people with disabilities in sustaining employment by modifying their health care systems to meet the needs of those individuals.

- Examples of State activities: implement Medicaid buy-in program; improve personal care assistance services and programs; educate providers and consumers; create links to employment services.
- 38 States have been awarded infrastructure grants so far.
- CMS recently solicited proposals from States to develop infrastructure grants for 2003. The application cut off date was June 1, 2002. Applications are pending approval.

Demonstration of Coverage under the Medicaid Program (Section 204)

- This allows a State to apply for approval of a demonstration project under which specific individuals who are workers with a potentially severe disability are provided medical assistance.
- These projects are called the "Demonstration to Maintain Independence and Employment."
- This will also allow a State to target a specific population to provide services for a specified number of individuals to manage the progression of their conditions and remain employed.
- 4 States are participating in this project: Both Washington D.C. and Mississippi for 500 individuals with HIV/AIDS, Rhode Island for 100 individuals with Multiple Sclerosis, and Texas for 500 individuals with bipolar/schizophrenia.
- CMS recently solicited proposals from States to develop demonstration projects for 2003. The application cut off date was June 1, 2002. Applications are pending CMS approval.

Extension of Medicare Coverage (Section 202)

One of the most significant enhancements for SSDI beneficiaries is the Extension of Medicare coverage (effective October 1, 2000). SSA took the lead in timely implementation of section 202.

- Medicare coverage extended an additional 4½ years for working individuals with disabilities.
- Medicare coverage continues at least 93 months after the TWP for most beneficiaries compared to the previous 39 months.
- SSA identified approximately 42,200 beneficiaries who were eligible for this extension on October 1, 2000 and mailed "Good News" notices in March 2000 to these individuals—SSDI beneficiaries who were closest to termination of their Medicare.
- SSA made system changes, modified notice language, provided training, and released operational procedures on or before the effective date.
- Approximately 52,000 SSDI beneficiaries either have or had Extended Medicare coverage under TWWIIA (records selected from the effective date October 1, 2000 and later). As of July 2002, the estimated number of potential Extended Medicare coverage cases is approximately 115,000.
- Most SSDI recipients can return to work without fear of losing free Hospital Insurance for many years (Still have to pay monthly SMI premium unless paid for by a third party).

Expedited Reinstatement & Health Care

Expedited Reinstatement (Section 112) also is important. If an individual returns to work and finds that he or she can no longer work because of the previous impairment, cash benefits and Medicare/Medicaid (if it had been lost) can be quickly reinstated. The work stoppage and application for reinstatement must occur within 5 years of the prior benefit termination.

The Ticket to Work program has made a good start during Phase One of the implementation process. Over two million Tickets to Work have been provided in a graduated process to eligible beneficiaries in the Phase One 13 States, including over 8,000 Tickets requested by beneficiaries for early release before release of their Tickets is scheduled. Through the outreach and recruitment activities of SSA and MAXIMUS, the Program Manager, 536 providers of services have applied to be Employment Networks, with 438 applications approved so far following contract review by SSA.

Ticket-holders have assigned over seven thousand Tickets to Employment Networks and State vocational rehabilitation services, and seventy-five requests for payment have been received from Employment Networks, indicating that Ticket-holders are going to work with the assistance of Employment Networks. In addition to conducting Employment Network Opportunity Conferences and making recruiting presentations at other professional conferences, MAXIMUS has responded to almost

108,000 calls from beneficiaries, interested providers of services, and other organizations in the 13 Phase One States. MAXIMUS has also made almost 11,000 calls to beneficiaries, providers, and other organizations in these States concerning the Ticket to Work program.

We do not consider that any options available under the Social Security Act and the regulations implementing the Ticket to Work program have been underutilized in implementing the First Phase of the program.

**11. Some have suggested that the $780 substantial gainful activity (SGA) amount for disability is too low to be able to provide an individual with any of the basic necessities, and that it should be raised to the level provided for individuals who are blind, which is $1,300. What do you think is the right amount that an individual should be able to earn before he or she cannot receive benefits?**

**Answer**:

The Social Security Act provides that the Commissioner is to prescribe by regulation the criteria for determining when earnings demonstrate the ability to engage in SGA for disabled individuals who are not blind. Thus, the SGA guidelines are a way of measuring an individual's ability to work and not a measure of an individual's need for income. The historical relationship between the SGA amount and average wage growth was roughly consistent between 1961 (when the SGA guideline was first issued by regulation) and 1980. In 1990, we raised the SGA amount to $500 from $300 to coincide to some degree with the growth of the average wage during the eighties. The increase in the SGA amount in July 1999 to $700 approximately corresponded to the increase in the average wage since 1990. Beginning January 2001, we have indexed the SGA amount to average wage growth (by regulation) to maintain the historical relationship. We believe that this is the appropriate SGA amount for those people with impairments other than blindness.

Before 1977, section 223(d) of the Act authorized the Commissioner to prescribe the level of earnings that demonstrate SGA for all title II applicants and beneficiaries and all title XVI applicants. In 1977, that Act was amended to provide a different criterion for setting the SGA level for people who are blind. The House and Senate conference report accompanying the Social Security amendments 1977 clearly stated that a different SGA amount was being established for blind persons, and that the conferees did not intend that the amount be applied to people with impairments other than blindness.

**12. Is SSA examining any options (other than the 2-for-1 demonstration), or conducting research on ways to prevent the "cash-cliff" that disability beneficiaries face? If yes, please describe this research, or if not, please explain why.**

**Answer**:

As mentioned earlier, both the Comprehensive Employment Opportunities grants and the Early Intervention demonstrations will test various strategies that will help individuals with disabilities overcome the "cash-cliff" and mitigate the fear of losing benefits.

**13. What number and percent of workers have private disability insurance? What percent of workers have only Social Security disability insurance?**

**Answer**:

It is estimated the 36 percent of the private sector work force is covered by some form of private disability insurance, though only 25 percent have long-term disability coverage. SSA's Office of the Chief Actuary estimates that 85 percent of men and 75 percent of women who are working or have worked in the past are insured for disability insurance benefits. It is likely that most persons who have private long-term disability coverage are insured for Social Security Disability Insurance (SSDI). Thus, by deducting them from the percentage of all workers who have SSDI coverage, the assumption would be that over half of workers have only SSDI coverage for long-term disability protection.

U.S. GENERAL ACCOUNTING OFFICE
WASHINGTON, DC 20548
*August 20, 2002*

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

Dear Mr. Shaw:

**1. We all know that quality research is one of the most important aspects in developing any policy, and especially in determining whether changes are necessary, which changes to make, and how to evaluate them. Could you comment on SSA's research plans regarding disability, including how effective it is, whether they are undertaking the research they should, and whether they are able to do this?**

As I noted in my testimony, SSA is conducting a number of research projects that could begin to address some of the broader policy issues raised by reorienting the Disability Insurance (DI) and Supplemental Security Income (SSI) programs to focus upon capacities. While the projects may provide useful information, the studies do not directly or systematically address many of the issues that will need to be studied to address the broader implications of updating disability programs. SSA should identify the information it will need to build a strategy to further shift the disability programs toward helping beneficiaries maximize their work potential. This information will likely include data on the costs and impact on program size of various alternatives. Once these information needs are identified, SSA will need to develop a comprehensive research agenda. The research agenda should lay out in a systematic manner the research questions, methodologies, analysis plan, resources, costs, timeframes, and other pertinent factors to complete the research agenda and apply the results. Senior management needs to fully support moving in this direction. Although SSA has added additional staff and resources to its research planning efforts in recent years, our work under the recently completed assignment did not assess whether SSA has positioned itself with adequate resources and the correct skill sets to meet its research needs.

**2. Given all the changes that have happened, and are expected to continue, in technology, medicine, and work, do you think the criteria to determine disability can keep pace with these changes? If yes, how? What changes would need to be made?**

We fully recognize that the pace of change in our society, including changes brought by the rise of new information technologies, has been rapid and will likely continue to be so in the future. The pace of change can challenge any disability system—public or private—to keep current. Nevertheless, the disability criteria that SSA currently uses need to be updated, especially labor market data. Updates will help SSA maintain public confidence and help meet its fiscal responsibility. As part of this effort, SSA needs to publish a schedule of specific strategies it will take to conduct periodic and on-going update efforts. A broader perspective, however, suggests that if DI and SSI focused more on work and individual capabilities, the programs would more readily stay current with scientific advances and labor market changes. For instance, if, in the future, beneficiaries have strong incentives to improve their functioning and skills level and have access to needed supports and services, then those who are able could more likely take advantage of medical advances and assistive technologies than do current beneficiaries. Likewise, if, under a refocused program, beneficiaries have strong incentives to compete in the labor force, then they will be more integrated with today's economy than current beneficiaries. Although beneficiaries may take greater advantage of supports, services, and opportunities afforded by today's labor market if DI and SSI offers stronger incentives to do so, SSA would still need to update disability programs in a systematic and comprehensive manner.

**3. You mention that the updating of the medical listings was stopped in the early nineties for a variety of reasons—including staffing resources and competing priorities. SSA recently renewed efforts to update the medical listings, but the completion of the updates has been delayed. Could you explain why these updates have been delayed again? Would you expect more or fewer people to be considered disabled and eligible for benefits once all the listings are updated?**

As SSA explained to us, SSA's acting administrator approved the completion dates initially submitted to us for updating the *Medical Listings*. When the new Commissioner was confirmed in November 2001, she subsequently reviewed the schedule and timing of revisions. As a result of that review, according to SSA officials, the dates were revised (in some cases by less than a year). We do not have information that allows us to assess whether the revised *Medical Listings* will likely lead to a greater or fewer number of persons deemed eligible for benefits. Conceivably, some applicants whose severity no longer meets or equals the severity of conditions in the *Medical Listings* could still be allowed benefits under the decisionmaking steps that follow the *Medical Listings* step; others may be denied benefits after completing these steps.

**4. The SSA is faced with a potential problem about how to assess whether an individual would be able to perform any work—part of the criteria for assessing disability. It now uses the Dictionary of Occupational Titles (DOT) to help assess whether an individual is able to work—but, this source has not been updated since 1991, and the Department of Labor does not plan to update it again. Instead, they have created a replacement, called the O*NET—but this does not contain all the detail about the physical or mental demands of any particular job. How would you recommend SSA address this problem?**

SSA needs to make updating the labor market data used in disability decisionmaking an important priority. SSA's options include the possibility of using a modified O*NET, an updated DOT, or some other database. To help make important decisions about which direction to proceed, SSA will need to continue to work closely with Labor on this issue. Ultimately, as disability is currently decided, SSA has a responsibility to use current labor market data in the disability determination process and as such, the agency has a responsibility in identifying and, if necessary, facilitating the development—perhaps by Labor or others—of updated labor market data. We recognize SSA's task is complex yet it is important for SSA to be decisive in developing a strategy because a workable long-term solution will likely take much time and effort.

**5. Some have suggested that the $780 substantial gainful activity (SGA) amount for disability is too low to be able to provide an individual with any of the basic necessities, and that it should be raised to the level provided for individuals who are blind, which is $1,300. What do you think is the right amount that an individual should be able to earn before he or she cannot receive benefits?**

In response to suggestions calling for a raise in the SGA level because it does not accurately reflect the dollar amount needed to meet basic necessities, it is important to note that the SGA level represents SSA's principal standard for determining whether an individual with a disability is able to work. In fact, in 1996 the National Academy of Social Insurance characterized the low level of the SGA screen as one of several provisions to mitigate an inherent incentive to claim disability benefits.[1] The SGA level is used to help make decisions about both initial eligibility and continuous eligibility for program benefits. Neither the law nor regulations specify that the SGA level reflects a minimum dollar threshold needed to afford the necessities of living. It is a policy decision whether the Congress wishes to further define or redefine the function of the SGA level beyond its current purpose. In response to comparisons between blind and nonblind beneficiaries, we testified in the past that higher SGA levels were established for blind beneficiaries primarily on the basis of the assumption that certain adverse economic consequences associated with blindness are unique.[2] Few empirical studies have compared the work-related experiences of blind individuals with those of people who have other disabilities.

**6. Do you think it is time to view disability in the context of short-term and long-term? If so, why? If not, why not? What would be the drawbacks?**

There are several ways to characterize disabilities, including short—versus long-term, partial versus total, and cyclical versus permanent. DI and SSI's definition of disability requires that, among other things, an impairment last, or can be expected to last, at least 1 year or result in death. We believe that assessing the merit of

[1] National Academy of Social Insurance, *The Environment of Disability Income Policy: Programs, People, History, and Context* (Washington, D.C.:1996). In 1996, the SGA level was $500 per month.

[2] U.S. General Accounting Office, *Social Security Disability Insurance: Raising the Substantial Gainful Activity Level for the Blind,* GAO/T–HEHS–00–82 (Washington, D.C.: March 23, 2000).

individual changes to DI and SSI, such as allowing benefits for short-term disabilities, is best viewed in consideration of a comprehensive strategy to re-orient these programs. Our position has been that offering earlier intervention to DI and SSI beneficiaries can help individuals restore their capacities to return to work. Some beneficiaries may require short-term support, while others may require periodic support over an extended period of time. Of course, some individuals will continue to require long-term benefits. There is the argument that providing short-term benefits in DI and SSI could draw additional persons onto the rolls and raise program costs. More targeted research from SSA on this issue could help predict the extent that this might occur. Moreover, potential costs would need to be balanced with potential savings from reduced cash benefits accrued from persons leaving the rolls to return to work.

**7. It is always helpful to get the perspectives on issues from the private sector. In his testimony, Dr. Anfield provided some interesting recommendations based on his experience in the private sector. His three key recommendations were:**

**—adopt benefits that emphasize a return to work (providing transitional work funding, partial payment and rehabilitation services);**

**—acknowledge that recovery is incremental (work with individual at every stage of recovery to determine the level of functioning); and**

**—offer expanded definitions of disability so that individuals can focus on becoming self-sufficient.**

**Can you provide your comments on each of Dr. Anfield's recommendations? Do you think these are valid recommendations? Will they work? If SSA adopts these recommendations into their policy, will claimants benefit?**

The general direction suggested by Dr. Anfield's recommendations is consistent with the recommendations that we have made in the past that SSA needs to put greater emphasis on return to work, including earlier intervention, earlier identification and provision of necessary return-to-work assistance for applicants and beneficiaries, and changes in the structure of cash and medical benefits. In fact, our work has partly drawn from our review of private sector disability insurers, including the organization where Dr. Anfield works—UNUMProvident. We agree with Dr. Anfield's recommendation that the programs should emphasize return to work through the benefits structure. His second and third recommendations must be assessed more fully in a comprehensive strategy. To this end, we continue to encourage SSA to develop a comprehensive return-to-work strategy and identify needed legislative changes to make such a return-to-work focus a reality. It is in this context that the soundness of changes such as an expanded definition of disability must be evaluated.

Sincerely,

ROBERT E. ROBERTSON
*Director, Education, Work force, and Income Security Issues*

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INSTITUTE OF MEDICINE, NATIONAL ACADEMIES
*Washington, DC 20001*
*August 28, 2002*

E. Clay Shaw, Jr., Chairman
House of Representatives
Ways and Means Committee
Subcommittee on Social Security
Rayburn House Office Building B–317
Washington, DC 20515

Dear Chairman Shaw:

I am responding on behalf of the National Academy of Science's Committee to Review the Social Security Administration's Disability Decision Process Research. I should state at the outset that the scope of the committee's inquiry and deliberations were limited to the contract mandate as specified by SSA. These were (1) to review the research plan, timeline, and all completed research projects for developing a new decision process for disability and offer comments and recommendations on the direction to the research; and (2) to review the scope of work for the disability survey in the request for proposals, and the design and content of the survey as proposed by the survey contractor and subsequent modifications made and

make recommendations as appropriate. My responses, therefore, will be based on, and limited to, the committee's deliberations in these areas of study.

**Question 1: We've heard from many sources, including the GAO and the Social Security Advisory Board, that management of the disability program needs to be strengthened. Is the lack of research and basic analysis tools for disability a matter of priorities, a management issue, or a resource issue? Please explain.**

The Committee in its final report endorsed these concerns about disability policy and management that underscored the need for fundamental change in the Social Security disability programs. In fact, SSA also recognized these problems when in the early nineties it decided to rethink and fundamentally redesign the disability decision process. At that time it stated that "the fragmented nature of the disability process is driven by and exacerbated by the fragmentation in SSA's policymaking and policy issuance mechanisms. Policy making authority rests in several organizations with few effective tools for ensuring consistent guidance to all disability decision makers. Different vehicles exist for conveying policy and procedural guidance to decisionmakers at different levels in the process. ". . . the organizational fragmentation of the disability process creates the perception that no one is in charge of it. . . ." (*Plan for a New Disability Claims Process,* SSA, 1994).

After reviewing these concerns and based on its own assessment, the Committee concluded that SSA desperately needs a long-term, systematic research program to inform and guide (a) the anticipated growth in demands on SSA's disability programs, and (b) improvements in the disability determination process. For many years much of the research and analysis was in the same organization as program operations. Moreover in the past two decades downsizing adversely affected both the Office of Research, Evaluation, and Statistics and the Office of Disability Programs. It is critically important for research and statistics to be independent of the program operations in order to be able to rise above and beyond the immediate programmatic needs. At the same time the two organizations need to collaborate in identifying short-term and long-term research and analysis needs. In the past 2–3 years SSA has taken some steps to strengthen its research and statistics arm. Clearly much more is needed to meet the demands for research and statistics in the coming years. It should be noted here that most Departments of the Federal government have these components separate and the Committee hopes that SSA will continue to do so.

Therefore the answer to your question—Is the lack of research and basic analysis tools for disability a matter of priorities, a management issue, or a resource issue?—has to be all of the above.

**Question 2: Your Committee recommended that SSA improve its research in several ways, including (1) to develop criteria to measure performance, and evaluate the current processes and any proposed changes relative to these criteria, to assess rehabilitation and return to work decisions, and (2) to develop ways to incorporate external factors into the disability determination process and understand the effects of changes on the people they serve. If the agency were given the appropriate resources, does the Committee believe that the agency is capable and willing to conduct this research, and conduct it correctly?**

Yes, the Committee recommended improved and enhanced research in several areas including the two specified by you. In its second interim report issued in the summer 1998, the Committee recommended that early in the redesign effort, SSA should specify how it will define, measure, and assess the criteria it will use to evaluate the current disability determination process, as well as any alternative processes being developed. As the Committee explained, in any scientific process, the standards of acceptance or rejection are declared before, and not after, data are analyzed. Similarly in an evaluation research process, evaluative criteria and validation plans should be determined by the agency early in the research process, and not as planned at that time by SSA, after the prototype decision process is developed. In its concluding remarks the Committee urged SSA to adopt a rigorous research design process to develop, early in the research, objective validation criteria and plans to be able to make the ultimate judgments on whether or not the proposed changes will yield the desired results.

Since then SSA has decided to give up the research for redesigning the disability determination process and informed the Committee that it will undertake improvements within the current system and devote its attention at this time to updating the medical listings. The same issues regarding SSA's research approach identified by the Committee in 1998 appear to exist today, and in the absence of information to the contrary, the Committee has assumed that the agency again has not con-

ducted such baseline analysis leading to the current activities to improve the existing process incrementally.

Regardless of whether SSA attempts to redesign and develop a new disability determination process or leaves the current process in place and makes improvements within the individual components of the sequential process, it needs to establish objective measurable criteria against which the current process can be assessed. Studies should be conducted on the existing process and data analyzed in the context of the established criteria in order to identify the nature of the problems with the current process, and then evaluate the extent to which any proposed change would lead to improvement. As the committee has pointed out, without such a capacity proposals for reform may be proposals for change, but it is impossible to determine whether they are proposals for improvements of the present.

Moreover, throughout the documents relating to the redesign research reviewed by the Committee, SSA appears to recognize the need to test the new disability decision process by applying standards of validity, reliability, sensitivity, specificity, credibility and flexibility, simplicity in administration, consistency, accuracy, timeliness, equity and fairness. Yet, to the Committee's knowledge no measurable criteria have been established to test the current and the new or updated components of the process along any of these lines.

The Committee was encouraged to learn that SSA through its Office or Research, Evaluation, and Statistics awarded a cooperative agreement to the Disability Research Institute to undertake research for developing a process of validation of the Listings in order to assess them and to ensure that changes made actually result in improvements in the disability decisions. When the project is completed and implemented, it should help validation efforts for future revisions of the Listings and other components of the decision process, but no such input exists for the revisions currently underway or completed.

Noting the limited resources allocated to Social Security research activities and the need to revitalize and strengthen the research programs of the Office of Research and Statistics, the Committee recommended in 1998 and again in its final report that SSA's research, statistics, and evaluation staff and its extramural program be expanded substantially. No amount of extramural research will replace the need for the agency to invest in the internal research capacity; extramural research places its own demands on the agency's research staff. Even when the external researchers are competent, the oversight responsibility rests with the agency for careful evaluation of the work to ensure the quality, adequacy, and appropriateness of the products, and for designing the approaches to testing and experimentation.

The committee, therefore, believes that if the agency were given the appropriate resources in terms of both dollars and enhancement of qualified research staff on the ORES, it should be able to conduct the research correctly. The underlying assumption of course is that the SSA will give priority to conduct of such research.

**Question 3: It is appealing to look at other providers of disability insurance, such as the private sector and other countries, to see what works there. However, they often have different goals and the Social Security's disability program. Although SSA has begun programs to help individuals with disabilities return to work, wouldn't you say that the main goal has been that of a safety net to provide cash benefits for individuals who cannot work? Assuming research shows that these return-to-work programs are successful, would you recommend a change in the ultimate goal of the program? If yes, how would you recommend SSA undertake these changes, especially given the lack of success with large-scale changes to the program to date?**

You are correct in stating that various providers of disability benefits in the private sector and in other countries have different goals depending on the purposes of the programs. The Social Security Disability Insurance is a social insurance program; it is meant to serve as a safety net of last resort for those who are no longer able to earn because of severe disabilities.

The Ticket to Work and Work Incentives Improvement Act 1999 makes clear that Congress is increasingly interested in the "return-to-work" model and is prepared to have SSA experiment with some alternative strategies that might facilitate the pursuit of work rather than benefits. Under this program, however, the recipients of the vouchers to obtain employment and vocational rehabilitation services first have to be eligible for disability benefits under the current statutory definition and SSA's determination process, i.e., they have to be totally disabled. Ongoing evaluation is needed to assess the effectiveness of the program for the population it serves, and also in light of changing attitudes toward disability and work, SSA needs to test decision process models that emphasize rehabilitation and return to work and

the implication on program resources and on the people the programs serve that impacts the lives of many people.

The issue of changing or not changing the goal of the program was outside the scope of the Committee's review and deliberation. However we would emphasize that SSA should learn from past experience and undertake adequate and appropriate testing and research before making major changes nationally in this mass production program.

**Question 4: Do you think it is time to view disability in the context of short-term and long-term? If so, why? What would be the advantages? If not, why not? What would be the drawbacks?**

The Committee did not address the advantages and drawbacks of short-term and long-term disability for Social Security programs. As stated at the outset the Committee's tasks were very specific and our analysis focused on the current statutory definition of disability as it applies to SSA.

**Question 5: Ms. Owens stated in her testimony that in conducting their research into disability income policy, NASI concluded that determining disability should be based on the amount of earnings that an individual is capable of achieving. Do you think determining disability should be based on earnings? Why is it important to use this criterion or why is it not important? What should be the threshold of earnings to determine an individual's capacity to work?**

Determining the optimum threshold of earnings was clearly outside the scope of the Committee's study mandate.

**Question 6: Some have suggested providing time-limited benefits to individuals who may need cash assistance while they are participating in vocational rehabilitation services. What are your views on this subject?**

The Committee did not discuss this issue; it was outside the bounds of its contract with SSA. However, the Committee has repeatedly stated in its reports that SSA should conduct appropriate studies to investigate the feasibility and practicality of any change and then to analyze the data to ensure the change will be an improvement over the status quo as measured against objective predetermined criteria. It should be noted that the current law provides for retroactive reimbursement for vocational rehabilitation if the beneficiary recovers enough to leave the rolls because of substantial gainful activity.

**Question 7: It has also been suggested that SSA should refer claimants for vocational rehabilitation when they apply for benefits. What are your views on this issue? Do you believe State vocational rehabilitation bureaus have the resources to potentially serve such an influx of people?**

More than a million workers with severe disabilities annually apply for disability benefits. That is not a small number. Before Congress enacts such a change in the program it needs to consider the implications on financing such a program and providing adequate resources to vocational rehabilitation agencies to absorb the mass influx of clients. The Social Security Act does have provision for vocational rehabilitation and work incentive programs for beneficiaries.

**Question 8: Many advances have occurred since the disability programs were implemented, such as changes in the field of medicine regarding diagnosis and treatments, as well as technological advances such as synthesized voice devices. Can you provide your thoughts on the role remedies play relative to disability, such as advances in medication and assistive technology that allow individuals with disabilities to become less dependent on a care giver? Should these advances be considered in defining and determining disability? If so, should individuals who do not have access to these advances be penalized? Shouldn't all individuals with disabilities be treated fairly?**

As the Committee has stated in its final report, in recent years the concept of disability has generally shifted from a focus on diseases, conditions, and impairments per se to one of functional limitations caused by these factors. The definition of disability used in the Social Security disability programs was developed in the mid-fifties when a greater proportion of jobs were in manufacturing and more required physical labor than today. It was therefore expected that people with severe impairments would not be able to engage in substantial gainful activity. Over the years, the nature of work has shifted from manufacturing toward service industries; medical and technological advances have made it possible for more severely disabled

persons to be employed. At the same time the changing demands of work also limit employment prospects for individuals whose social and adaptive functioning is impaired by mental disorders. The current labor marketplaces emphasis on cognitive and technical skills, advanced education, and the ability to communicate and interact with others. People with disabilities, especially those with mental impairments, have poor employment prospects in such a market.

In recent years, public attitude also has changed as reflected in the enactment of the Americans with Disabilities Act 1990 (ADA). Critics have suggested that SSA's definition of disability and its process for determining program eligibility have not kept pace with the changes. The Committee recognizes the administrative difficulties involved in paying more attention in the disability determination process to the physical and social factors in the work environment. Moreover, it might require major shifts in the orientation of the Social Security disability programs to ways to influence the environment in which the applicant might work and to "return-to-work" activities, and might ultimately involve changes in SSA's implementing regulations. In the face of these challenges, the Committee recommended that in order to develop systematic approaches to incorporate environmental factors in the disability determination process, SSA should first undertake research on the dynamics of disability; the relationship between the physical, social, and work environment; and understanding the external factors affecting the development of work disability.

**Question 9: The SSA is faced with a potential problem about how to assess whether an individual would be able to perform any work—part of the criteria for assessing disability. It now uses the Dictionary of Occupational Titles to help assess whether an individual is able to work—but this source has not been updated since 1991, and the Department of Labor does not plan to update it again. Instead, they have created a replacement, called the O*NET—but this does not contain all the details about the physical or mental demands of any particular job. How would you recommend solving this problem SSA is faced with?**

As indicated in your question, the Dictionary of Occupational Titles (DOT) is no longer being updated by the Department of Labor, leaving SSA with no replacement. The DOT has served as a primary tool for determining whether a claimant has the capacity to work. The Department of Labor (DOL) is replacing DOT with the Occupational Information Network (O*NET). The Committee expressed concerns about the problem and made recommendations to SSA early in the study and then again in its final report. It had several discussions with SSA, as well as with DOL staff and others on this matter. It was a subject of discussion at its workshop. Because of the critical importance of this issue and the attention given by the Committee, I am summarizing below from the Committee's reports.

The Committee, in its preliminary assessment of SSA's research plan for redesigning the disability determination process (the second interim report issued in 1998), had expressed its concerns that O*NET as it was being developed for DOL would not meet SSA's needs and made recommendations toward resolving the problems. Among other problems, O*NET provides average rather than minimum levels of performance for each occupation as needed by SSA. O*NET's physical ability scales may be inappropriate for persons with disability. It was not clear to the committee how SSA planned to overcome these problems. The Committee also questioned how SSA planned to supplement O*NET with respect to contextual and other factors that are not well-covered in O*NET. There were no indications in the research plan that the gaps in O*NET will be carefully considered and no specific research to fill those gaps was identified. The Committee, therefore, had recommended that SSA should develop an interim plan for an occupational information classification system until a more permanent solution is found, and to explore entering into an interagency arrangement with the DOL to initiate a version of O*NET that would better serve SSA's needs to assess ability to engage in SGA.

Discussions at the workshop sponsored by the Committee on Measuring Functional Capacity and Work Requirements (IOM, 1999) pointed out the problems associated with using O*NET for SSA's purposes. The DOL expects to use O*NET, as a comprehensive database of work requirements for use in job training, job counseling, and job placement for the department's employment and training programs and for use by individual state Employment Security Agencies in the extensive work that they do with workers who need jobs or who have recently become unemployed.

As discussed at the workshop, although O*NET is very useful for DOL's purposes, SSA's purpose in defining the functional capacity to work for purposes of the disability legislation is very different from the purposes of the DOL in creating O*NET. SSA's purpose is much more difficult. Moreover, the labor market and occupational

literature indicate that there are many difficult measurement problems related to occupation and job characteristics. Information developed by job incumbents is not always consistent with the information developed by job analysts, and the information developed by job analysts is not always consistent with the views of workers' supervisors. In addition, from the perspective of the worker—as with a disabled individual—it is often a bundle of capabilities that the worker brings to the job that makes the work experience a success or a failure.

Workers with the same educational backgrounds have different skills, work ethics and orientations to work. These in turn bring a different bundle of capabilities to a job, and their performance is affected by those capabilities. In addition, the task of developing a set of factors that capture the essence of each occupation that makes practical sense is complex and difficult. Clearly, a great deal more careful research and experimentation is required to evaluate what functional capacity to work really means and exactly how it would be applied to persons with disabilities.

When the Committee reviewed SSA's redesign research plan, there were no indications in the plan that the gaps in O*NET will be carefully considered and no specific research to fill those gaps was identified. The Committee, therefore, had recommended that SSA should develop an interim plan for an occupational information classification system until a more permanent solution is found. The committee also suggested that SSA enter into an interagency arrangement with the DOL to initiate a version of O*NET that would collect information on minimum, in addition to average, job requirements to better serve SSA's needs to assess ability to engage in SGA.

Subsequent to the Committee's assessment of the problems in 1998, SSA asked its redesign contractor to undertake a comprehensive assessment of O*NET as a replacement data source for the current decision process. Although SSA did not necessarily expect this work to produce a resolution to the problem, it believed that it must complete such an analysis to move forward. This assessment surfaced several negative aspects of the O*NET structure and content that could lead to problems if SSA incorporated O*NET into the decision process. The contractor found that more than half of the occupational units had at least one domain for which the majority of descriptors were unreliable. A major overarching problem with O*NET is the numerical ratings. These ratings do not seem to be consistent across occupational units. The contractor's analysis found that the ratings of more than half of the descriptors are unreliable. Moreover, the DOT titles are grouped by dimensions that are unrelated to worker characteristics or requirements of the O*NET descriptors. Several of the 54 selected descriptors contain O*NET ratings with interrater reliabilities lower than.70.

The contractor's report concluded that the numerical ratings on O*NET descriptors, and therefore on any O*NET occupational unit, underlie the problems of O*NET. Therefore, SSA must exercise extreme caution in drawing inferences about the relation between specific numerical values on a rating scale and specific level of required functioning. The report further states that the foregoing concerns provide sufficient evidence to warrant SSA's careful consideration of the quality of either analyst or incumbent ratings as conducted and proposed for O*NET. The report also suggests that O*NET's descriptor data may not be as precise as they seem, resulting in measurement errors as well as improper interpretation of the severity of claimants' impairments.

On further inquiry regarding any progress made by SSA in working with DOL to bring about a resolution of the problems, the Committee was informed in late 2001 that SSA realizes that O*NET will not work for its needs without major reconstruction of the system. The Committee was informed at that time that SSA is taking steps toward resolving the problems and has reopened its dialog with DOL to explore other ways of incorporating information about the requirements of work into the decision process and is actively pursuing with DOL the issue of an occupational database on a national level to avoid two separate databases with separate funding. It was also planning to meet with the various associations of rehabilitation specialists, occupational and physical therapists, and workers' compensation analysts. Private sector stakeholders have organized an interdisciplinary task force. It plans to meet with SSA and DOL to decide what is needed and how best to go about getting the information. The committee has no further information on these activities, but hopes that they were productive.

Clearly, without an appropriate characterization of job requirements that can be matched to the vocational characteristics of disability claimants, SSA might be cast back into the era in which it relied extensively on the testimony of "vocational experts," or their written evaluations, as the way to integrate claimants' functional capacities, vocational factors, and the demands of work into an objective determination of their capacity to engage in substantial gainful employment. Barring some resolution, SSA will be left with no objective basis upon which to justify decisions con-

cerning an individual's capacity to do jobs in the national economy. SSA needs to undertake without further delay needed research and collaboration to improve its ability to identify and measure job requirements for the purpose of determining work disability.

**Question 10: Some have suggested that the $780 substantial gainful activity (SGA) amount for disability is too low to be able to provide an individual with any of the basic necessities, and that it should be raised to the level provided for individuals who are blind, which is $1,300. What do you think is the right amount that an individual should be able to earn before he or she cannot receive benefits?**

The issue of what is the right amount that an individual should be able to earn and yet receive benefits was not discussed by the Committee as it was beyond the purview of the Committee.

That completes the answers to the questions submitted to me. I will be happy to meet with you to discuss and/or elaborate on any of the issues covered in my responses.

Sincerely,

GOOLOO S. WUNDERLICH
*Study Director*

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NATIONAL ACADEMY OF SOCIAL INSURANCE
Washington, DC 20001
*August 16, 2002*

E. Clay Shaw, Jr., Chairman
House of Representatives
Ways and Means Committee
Subcommittee on Social Security
Rayburn House Office Building B–317
Washington, DC 20515

Dear Chairman Shaw:

Thank you for the opportunity to respond to questions following my testimony before your Committee on July 11th regarding the definition of disability in the Social Security programs. My answers draw on the work of the Disability Policy Panel of the National Academy of Social Insurance (NASI) on which I served. Some of my replies refer to sections of our final report, *Balancing Security and Opportunity: The Challenge of Disability Income Policy.*

**1. You mentioned a demonstration project currently ongoing in three states (Wisconsin, Maryland, and Delaware) in which temporary disability benefits are being given. What is the status of this project? Do you think the goals of this project show promise? If so, why?**

The demonstration project was authorized under the Ticket to Work and Work Incentive Improvement Act 1999, which added section 234 to the Social Security Act. It calls for the Social Security Administration (SSA) to carry out demonstrations to evaluate various changes in the disability benefit program and authorized SSA to test interventions with applicants, as well as beneficiaries. The Early Intervention Demonstration to Return Applicants for Social Security Disability Benefits to Work is being designed by researchers affiliated with SSA's Disability Research Institute. Professor Monroe Berkowitz of Rutgers University is leading the design work. In collaboration with SSA, they will select three or four states to pilot test the demonstration early in 2003. A detailed report on the design plan can be found at www.disabilityresearch.rutgers.edu/research.htm. This is the first time that SSA has experimented with offering return to work services to applicants and I look forward to seeing the results.

**2. You stated in your testimony that in conducting their research on disability income policy, NASI concluded that determining disability should be based on the amount of earnings that an individual is capable of achieving. Can you provide your thoughts as to why determining disability should be based on earnings? Why is it important to use this criterion? What should be the threshold of earnings to determine an individual's capacity to work?**

My main point was that *work disability*—that is loss of capacity to earn a living from work—is the right concept for determining eligibility for wage-replacement

benefits from Social Security. This definitional concept fits with the purpose of Social Security, which is to provide income to partially replace lost wages.

The NASI Panel reviewed a range of other disability definitions. It concluded that different definitions are appropriate for programs that offer different kinds of services or benefits. For example:

- A definition based on need for assistance with activities of daily living is appropriate for determining who should receive help in paying for services that assist with these activities.
- A definition based on need for, and likely benefit from, vocational rehabilitation services, is appropriate for deciding who should be eligible for publicly financed VR services.
- A broad definition that encompasses all who are at risk of discrimination in employment or public access is appropriate for defining who is protected by civil rights legislation in the Americans with Disabilities Act.

When the purpose of the program is to provide cash benefits to help people meet their living expenses because of they are unable to earn wages from work, then a definition based on work incapacity is appropriate.

The Panel found that the definition of work disability used in the Social Security program is very strict. It is more stringent that definitions commonly used in private short-term, or long-term disability insurance. It is also more strict than definitions used in many public employee benefit systems for Federal, state, or local employees. A less strict definition of work disability for Social Security would allow more people to qualify for benefits and, consequently, would increase the cost of the program. (The Panel's review of other definitions is in chapter 4 of *Balancing Security and Opportunity,* which I submitted for the record.)

**3. Do you think it is time to view disability in the context of short-term and long-term? If so, why? What would be the advantages? If not, why not? What would be the drawbacks?**

Short-term disability insurance (STDI) is now provided in five State programs: California, Hawaii, New Jersey, New York, and Rhode Island. It is also offered by some employers in other States. Many European countries provide STDI to all their citizens.

Short-term disability insurance has a number of advantages from the perspective of both workers and employers.

- First, STDI provides income continuity for workers when they have health problems that are a temporary impediment to work. The worker retains the job to which he or she is expected to return after full recovery. There is an advantage to the employer and other workers in supporting sick workers while they recover at home instead of "working sick" to the detriment of the productivity, health, and safety of other workers.
- Second, STDI provides support during the first phase of what may turn out to be a long-term, or permanent, impairment. The worker retains a connection to his or her employer and may be able to return to a different job with the same firm when the medical condition is stable.

The NASI Panel found that many American workers lack the protections of short-term disability insurance. Fully 30 percent of private sector employees have neither formal sick leave nor short-term disability insurance. Another 26 percent of such workers have only sick leave, which typically pays for a few days or weeks—far less than the 5 month waiting period for Social Security disability insurance.

The NASI Panel considered a proposal to adopt universal short-term disability insurance in the United States, but did not recommend it because of its cost. The rationale for such a proposal would be threefold: to fill gaps in income during temporary disability; to promote early intervention by linking workers with return to work services to accommodate permanent impairments; and, it is hoped, to reduce reliance on long-term disability benefits. The main drawback of such a proposal is its cost. One study, done a number of years ago, estimated that such a plan would cost roughly 1 percent of earnings that are subject to Social Security taxes (*Balancing Security and Opportunity,* p. 24).

**4. Some have suggested time-limiting benefits to individuals who may need cash assistance while they are participating in vocational rehabilitation services. What are your views on this?**

The NASI Panel considered a policy of imposing time limits on Social Security disability benefits, but did not recommend it. Such a policy is very different from short-term disability insurance. Accordingly, it is not likely to have the same advantages

unless other features of STDI are also adopted. Key differences between STDI and Social Security disability insurance include the following:

- STDI begins at the onset of disability, or after sick leave has been used, without a 5 month waiting period before interventions begin.
- Ill or injured workers on STDI continue their connection with the current employer. A job remains available for them. DI beneficiaries, in contrast, no longer have a job.
- Employers who provide STDI usually provide health insurance as well. In 2000, just over half (52 percent) of private sector employees were included in their employers' health insurance plans, while about a third (34 percent) were covered by short-term disability benefits (U.S. Department of Labor, 2002). The health coverage continues while the worker is on short-term disability benefits so that he or she has access to treatment. Applicants for Social Security benefits, in contrast, include people who did not have health coverage on their prior job and those who lost health coverage when they left their jobs.
- The definition of disability for STDI is less strict than the Social Security test. It typically relates to "inability to do one's own job" rather than "inability to perform any significant work in the national economy."
- Finally, when private sector return-to-work efforts are not successful, employers or their insurers often help the individual qualify for Social Security benefits. In contrast, if Social Security were time-limited, there would be no other safety net to turn to.

The NASI Panel found that current Social Security policy already has aspects of time limits, which can set an expectation for return to work when that is feasible. That is, when benefits are first allowed, beneficiaries who have some prospects for medical recovery or return to work are scheduled for a continuing disability review (CDR) within the next 1–3 years. During that time, they may get vocational services. When implemented with compassion and integrity, CDR policy can set an expectation of recovery or return to work when that is feasible, while still providing continued support for those who don't recover or find jobs they can do.

There are three other points I would like to make about return to work and Social Security disability benefits. First, the NASI Panel emphasized that the large majority of beneficiaries will not be able to return to work. It is a program for people with very severe and long-lasting impediments to work. The title of our report reminds us of this, *Balancing Security* (for those who can not return to work) *with Opportunity* (for those who can).

Second, it is important to measure our successes well. The return-to-work rate varies greatly depending on the period of time being examined. We often hear a very low return-to-work rate of less than 1 percent. This rate compares the number of people who return to work in a year with the total number of people on the DI rolls that year. But recovery and return to work take time.

The Panel received special tabulations from the Social Security Administration that followed people who entered the DI rolls in a given year over the next 5 to 6 years. These data show more positive results about the fraction of beneficiaries who recovered or returned to work, as well as sobering results about others (*Balancing Security and Opportunity,* page 110). The results are attached as Table 1. Within 5 to 6 years of entering the DI rolls:

- Just over half (53 percent) of people were still on the disability benefit rolls;
- Fully a quarter (26 percent) had died;
- Nearly a fifth (18 percent) had shifted to retirement benefits; while
- About 3–4 percent had recovered or returned to work.

The 3–4 percent success rate may not be as high as some would like, but it is better than the more common figure of less than 1 percent. Perhaps more important, these data show (as we would hope) that younger beneficiaries are the most likely to recover or return to work. When measured as a percent of those who were still alive and not retired, 6 percent of all beneficiaries had left the rolls because of recovery or return to work. They include:

- 11 percent of those under age 40 and
- 13 percent of those under age 30.

The 11–13 percent success rate for young adults leaving the DI rolls is better news than we usually hear. These data covered the period between 1988 and early 1994. During part of that time, SSA had stopped doing continuing disability reviews in order to process a backlog of new claims, because it lacked the resources to do both. It would be useful to know whether results are different now. You could ask

SSA to provide this kind of information each year so that policy makers can track how changes in policy, administrative practices, and the broader economy affect recovery and return-to-work rates.

This brings me to my last point. The NASI Panel urged that SSA be provided adequate administrative resources so that it can fairly and promptly decide new claims and conduct continuing disability reviews as called for in current policy. Failure to properly fund administration ill serves both beneficiaries and taxpayers.

**5. It has also been suggested that SSA should refer claimants for vocational rehabilitation when they apply for benefits. What are your views on this issue? Do you believe state vocational rehabilitation bureaus have the resources to potentially serve such an influx of people?**

It is clear that State vocational rehabilitation (VR) agencies are not equipped to serve all applicants for Social Security disability insurance and SSI disability benefits. In fiscal year 1999, VR agencies served about 1.2 million people and rehabilitated about 232,000 (U.S. Department of Education, 2001). In fiscal year 2000, SSA received about 1.6 million applications for Social Security disability insurance and about 1.6 million applications for SSI benefits, most of which were for disability (SSA, 2001). (Some individuals may have applied for both types of benefit.) It is highly unlikely that VR agencies could serve more than twice as many people with their current resources. More importantly, many people who receive Social Security or SSI disability benefits are not good candidates for the services State VR agencies offer.

The NASI Panel examined the experience of VR agencies in placing Social Security and SSI beneficiaries and other clients in competitive employment. It found that VR agencies had higher success rates with young adults and that many of the clients they had successfully placed were not received Social Security or SSI (*Balancing Security and Opportunity,* table 6–2, page 106). While some have criticized VR agencies for not serving more Social Security and SSI beneficiaries, their results with non-beneficiaries are also important. In many of these cases, VR agencies may be "getting rehabilitation first" so that their clients get the assistive devices and training they need without turning to the Social Security program.

**6. Do you believe the Listing of Impairments should be altered in terms of their consideration of prescribed treatment, or the availability of assistive technology or advanced prosthetics in determining disability?**

The NASI Panel concluded that listings should be regularly reviewed and updated in light of changes in medical technology, the nature of impairments, and the demands of work. This analysis is discussed in chapter 5 of Balancing Security and Opportunity, which I submitted for the record.

**7. The SSA is faced with a potential problem about how to assess whether an individual would be able to perform any work—part of the criteria for assessing disability. It now uses the Dictionary of Occupations Titles to help assess whether an individual is able to work—but, this source has not been updated since 1991, and the Department of Labor does not plan to update it again. Instead they have created a replacement, called the O*NET—but this does not contain all the detail about the physical or mental demands of any particular job. How would you recommend SSA solve this problem?**

The NASI Panel did not address this specific issue. This is a separate and important question. If the Committee wanted NASI to undertake such a study, I would be happy to propose it to the NASI Board of Directors, on which I serve.

**8. Some have suggested that the $780 substantial gainful activity (SGA) amount for disability is too low to be able to provide an individual with any of the basic necessities, and that it should be raised to the level provided to individuals who are blind, which is $1,300. What do you think is the right amount that an individual should be able to earn before he or she cannot receive benefits?**

NASI's Disability Policy Panel review the SGA threshold and recommended changes in it. At the time, the threshold was $500 a month. It had remained $500 since 1990 and had been $300 between 1980 and 1990. We recommended that the SGA threshold be updated to the amount it would have been had it been indexed to keep pace with wage growth since the beginning of the DI program. That would have been about $760 in 1996. We further recommended that it be indexed to keep pace with wage growth in the future (*Balancing Security and Opportunity,* pages

159–160). Changes consistent with the Panel's recommendations were adopted in regulations during the nineties.

To raise the SGA threshold to $1,300 would enable more people with significant impairments to receive Social Security disability benefits. Consequently, it would increase the cost of the DI program. The NASI Panel considered, but did not recommend, this change because its charge was to propose low-cost ways to strengthen the connection between disability benefits, rehabilitation, and work.

**9. It is always helpful to get the perspectives on issues from the private sector. In his testimony, Dr. Anfield provided some interesting recommendations based on his experience in the private sector. His three key recommendations were to:**

- **Adopt benefits that emphasize a return to work (providing transitional work funding, partial payment, and rehabilitation services);**
- **Acknowledge that recovery is incremental (work with individual at every state of recovery to determine the level of functioning); and**
- **Offer expanded definitions of disability so that individuals can focus on becoming self-sufficient.**

**Can you provide comments on each of Dr. Anfield's recommendations? Do you think these are valid recommendations? Will they work? If SSA adopts these recommendations into their policy, will claimants benefit?**

These recommendations represent enlightened disability management in the private sector. I, too, have private sector experience in disability management. If these initiatives were widely adopted in the private sector, somewhat fewer people would turn to Social Security. As I mentioned earlier, workers with severe impairments turn to Social Security when private disability management efforts don't work or aren't available because employers don't provide private disability insurance and disability management in the first place. I would add that employers and private insurers have flexibility in their policies that is not available in public programs. In the private sector, we can use discretion to offer services and supports over and above those required in our contractual obligations to workers when we believe those efforts will be cost effective. Return to work investments can be cost-effective when workers have special skills that are difficult and costly for the employer to replace. Less skilled workers who are easily replaced by healthy, and perhaps younger and lower paid workers, are not as likely to receive added investments in return to work.

As a public program, Social Security has an obligation to treat all applicants equally. The benefit expansions Dr. Anfield proposes are likely to benefit some Social Security claimants. Others would not benefit. The changes are also likely to increase the cost of the program.

Thank you for the opportunity to respond to these questions. I will be happy to provide any other information that would be helpful to the Committee or its staff.

Sincerely,

PATRICIA M. OWENS
*Member, Disability Policy Panel*

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**References**

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Attachment

**Table 1. Recovery and Return to Work Experience of DI Beneficiaries Over a 5 to 6 Six Year Period Benefit status in February 1994 of persons awarded benefits in 1988, by age in 1988**

| Status in February 1994 | Age in 1988 | | | | | | |
|---|---|---|---|---|---|---|---|
| | Total | Under Age 40 | | | 40–49 | 50–59 | 60–64 |
| | | Total | Under 30 | 30–39 | | | |
| Number of persons awarded DI in 1988 (in thousands) | 409.1 | 99.8 | 36.7 | 62.9 | 78.5 | 146.9 | 84.1 |
| Total percent | 100 | 100 | 100 | 100 | 100 | 100 | 100 |
| Still receiving DI benefits | 53 | 72 | 74 | 71 | 69 | 60 | 0 |
| Died | 26 | 19 | 15 | 22 | 27 | 32 | 25 |
| Shifted to retirement benefits | 18 | - | - | - | - | 6 | 75 |
| **Recovered or returned to work** | | | | | | | **0** |
| **Percent of total** | **4** | **9** | **11** | **7** | **4** | **2** | **0** |
| **Percent of those alive and not retired** | **6** | **11** | **13** | **9** | **5** | **3** | **0** |

Source: *Balancing Security and Opportunity: The Challenge of Disability Income Policy,* Final report of the Disability Policy Panel, National Academy of Social Insurance, 1996, page 110. Special tabulations provided by the Office of Disability, Social Security Administration.

[Submission for the record follows:]

NATIONAL ASSOCIATION OF DISABILITY EXAMINERS
Raleigh, North Carolina 27602–0243
*July 19, 2002*

House Committee on Ways and Means
The Honorable E. Clay Shaw, Jr., Chairman
Subcommittee on Social Security
B–316 Rayburn House Office Building
Washington, DC 20515–6353

Dear Mr. Shaw:

The National Association of Disability Examiners (NADE) has reviewed with great interest the testimony presented before the Subcommittee on Social Security on July 11,2002. This hearing focused public and congressional attention on the definition of disability as it applies to Social Security's disability programs.

NADE is a professional association whose members primarily work in the State Disability Determination Service (DDS) agencies and are responsible for the adjudication of claims for Social Security and Supplemental Security Income disability benefits. We believe that our immense program knowledge and our "hands on" experience enables our Association to offer a perspective on disability issues that is unique and reflective of a pragmatic realism.

In our testimony before the Subcommittee on June 28, 2001, we stated, "NADE does not support changing the definition of disability at this time" (emphasis added). Fundamentally we believe:

- 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

SSA's definition of disability has proven to be a solid foundation for a program that has become characterized by increasingly complex changes in its rules and administrative procedures. We believe that, with the expectation of a significant increase in the number of initial claim filings in the next decade, coupled with a corresponding decline in the level of institutional knowledge within the disability program, this foundation will be needed more than ever.

However, we also believe that it is critically important that disabled individuals who have the capacity to return to work, should be identified as early in the process as possible and given the assistance necessary that will make it possible for them to return to work. We acknowledge that this may require changing the definition of disability. However, any change in the definition of disability will have a significant effect, either positive or negative, on the number of people who are allowed benefits. It will also have a significant effect on those who process the applications. We strongly believe it is essential that the potential impact of any proposed changes should be fully researched and evaluated. Because of the diversity of our membership and our "hands on" experience, we believe NADE is in the best position to recognize and assess the potential impact of any proposed changes in the definition.

Several of the witnesses appearing before the Subcommittee noted that SSA was continuing to rely on outdated information in making decisions about the types and demands of jobs in the national economy. NADE previously testified to this fact before the Subcommittee. We concur that it is critically important that SSA should develop, and implement, a suitable replacement for the outdated Dictionary of Occupational Titles, and to do so as soon as possible.

The current five-month waiting period would appear to present a major obstacle to any early return to work initiatives. Claimants who are awarded disability benefits under Title II must wait five full calendar months before they can begin to receive cash benefits. We believe that it will be very difficult to convince claimants, who have already invested a great deal of time and effort to demonstrate that they are disabled, to risk the loss of their benefits, even before they can begin to receive them, by attempting to return to work. Efforts to return disabled individuals to work must be coupled with recognition that the five-month waiting period should also be eliminated.

Franklin Delano Roosevelt, the President of the United States who created Social Security, was himself, severely disabled. Yet, he chose to work and ten years after the onset of his disability, he moved into the White House. President Roosevelt did more than create the Social Security system. He presented us with the model for what one can achieve by overcoming disability and returning to work! It should become the goal for the disability program to provide claimants with the technical and financial assistance they need to return to the workforce.

NADE appreciates this opportunity to present our opinion regarding the definition of disability and we look forward to working with you and the Subcommittee in the future to improve the services provided to America through its disability programs.

Sincerely,

JEFFREY H. PRICE
*President*

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