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IMPROVING SOCIAL SECURITY DISABILITY INSURANCE CLAIM PROCESSING IN OHIO

HEARING

BEFORE THE

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

OF THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

FIELD HEARING IN AKRON, OHIO

NOVEMBER 15, 2010

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CONTENTS

	Page
Opening statement:	
Senator Akaka	1
Senator Voinovich	2
Prepared statement:	
Senator Brown	35

WITNESSES

MONDAY, NOVEMBER 15, 2010

Hon. Michael J. Astrue, Commissioner, Social Security Administration	5
Hon. Patrick P. O'Carroll, Jr., Inspector General, Social Security Administration	7
Richard E. Warsinskey, Manager, Cleveland Downtown District Office, and Past President, National Council of Social Security Management Associations	20
D. Randall Frye, President, Association of Administrative Law Judges	22

ALPHABETICAL LIST OF WITNESSES

Astrue, Hon. Michael J.:	
Testimony	5
Prepared statement	37
Frye, D. Randall:	
Testimony	22
Prepared statement	70
O'Carroll, Hon. Patrick P., Jr.:	
Testimony	7
Prepared statement	53
Warsinskey, Richard E.:	
Testimony	20
Prepared statement	58

VerDate Nov 24 2008 15:17 May 17, 2011 Jkt 063865 PO 00000 Frm 00003 Fmt 5904 Sfmt 5904 P:\DOCS\63865.TXT SAFFAIRS PsN: PAT

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MONDAY, NOVEMBER 15, 2010

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

The Subcommittee met, pursuant to notice, at 9 a.m., in Main Place Building, Third Floor Conference Room, 121 South Main Street, Akron, Ohio, Hon. Daniel K. Akaka, Chairman of the Subcommittee, presiding.

Present: Senators Akaka and Voinovich.

OPENING STATEMENT OF SENATOR AKAKA

Senator AKAKA. This hearing will come to order.

Aloha and good morning. Let me tell you what I meant when I said, "Aloha" and begin by saying we share such a deep Aloha between Senator Voinovich and me. And "aloha" is a Hawaiian word that has a simple meaning, and that meaning is "love." And as you know, our State is known as the Aloha State, and that word for me and for many others is a spiritual word.

But you know what love does to people. It brings about changes, and normally the changes are towards a positive direction and one that continues to look for better ways of helping people, working with people, and taking care of people's problems. And so in the State of Hawaii, we call it the "aloha spirit." And so that pervades, and we are proud of that. We try to live it. And so I thought I would take the time to explain what that word means and why I said it, because whenever there is aloha, people come together to try to do what is best. And for me, that is what we are doing here today. So this is why I said, "Aloha and good morning."

Thank you so much for joining us as the Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia meets to examine the Social Security disability process in Ohio. My very dear friend and Ranking Member of this Subcommittee, Senator Voinovich, has spent many years working on this issue, and I am very pleased to join him here today in this new facility that is open thanks in no small part to his efforts.

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Over the past years, Social Security disability claims have risen across the Nation. As baby boomers nearing retirement experience high levels of disability, a tough economy discourages workers with health problems from continuing to try to keep working. The high number of claims combined with limited resources and an insufficient number of administrative law judges (ALJs) and other staffing challenges have led to an unacceptably low and slow claims process.

Additionally, some States like Ohio and my home State of Hawaii have furloughed Disability Determination Services (DDS) employees, causing further delay. Average Ohioans must wait 479 days for their disability claims to be processed.

At the end of fiscal year 2010, the Social Security Administration (SSA) had a backlog of almost 850,000 initial claims and over 700,000 claims waiting to be heard on appeal. These are staggering numbers. However, over the past year, SSA has made a serious commitment to addressing the backlog. Some of the credit for this work, I want to tell you, is due to Senator Voinovich's sustained focus on the issue.

Senator Voinovich shed light on this issue back in 2004 when he held a field hearing in Cleveland on Social Security Disability Insurance (SSDI) claims processing. The hearing looked not only at workforce and administrative challenges in Ohio, but also at Social Security Administration's systemwide approach and strategy for resolving disability cases. Recommendations from this hearing served as a starting point for SSA as it worked to refine its staffing needs and goals. Senator Voinovich continued to focus on this issue for several years, working with General Accountability Office (GAO) and the SSA Inspector General to improve the claims system and with Senate colleagues to provide SSA with the resources needed to make lasting changes. Senator Voinovich has been a tireless advocate for the Social Security Administration and people of Ohio. I am encouraged that people like George Voinovich have chosen a life of public service, and I am very sad by his departure from the Senate. I value the years we have spent working together on the complicated management challenges our country faces, including these types of Federal benefits issues.

I believe our teamwork has made a difference. Although the issues we work on often do not receive front-page attention, they, nonetheless, have a real impact on the way the Federal Government works and the everyday lives of millions of Americans.

George, I want you to know that I plan to continue to monitor SSA resources and strategic planning as well as the workforce challenges that must be addressed to provide high-quality service to disabled Americans, and I look forward to hearing from our witnesses in order to assist our congressional oversight of this issue.

So, George, will you please go ahead with your opening statement? I also would like to defer to you to introduce the witnesses and to start questions of the rounds, if that is OK with you.

OPENING STATEMENT OF SENATOR VOINOVICH

Senator VOINOVICH. That is OK with me. I have not done it for a while.

Senator Akaka and I have been working with each other for over 10 years, and I know there is a lot of feeling in the country that somehow there is not a good feeling in the Senate among the members and that we are not getting things done because we are too busy with partisan politics. But the fact of the matter is there are some wonderful things that do happen in the Senate, and one of them is this wonderful relationship that I have had with Senator Akaka. The two of us together over the last 10 years, I think, have made the biggest changes in the Federal Title 5 since 1975. And because of his background in management schools and my background as a Governor and mayor, we understand how important the team is. We call it the "A Team," the people who are our internal customers that are so very, very important to providing the services to the citizens of our respective States and to our Nation.

One of the things I am going to really miss is the wonderful relationship that I have had with Senator Akaka. He is one of the finest people I have ever met, and he is in government for the right reasons, and together we have had a great partnership. I have gotten to know Senator Akaka and his wife, Millie, and his family, and so I just again want to thank you, Senator Akaka, publicly here in my own State for your friendship over the years and the work that we have done together. We want to try and make a difference in people's lives, and I think that we have done that, particularly for those that are in our Federal workforce.

So I want to thank you for coming to Akron. It was a lot easier for me to go to Hawaii. [Laughter.]

Our last hearing in another State was when I was in Hawaii, in Honolulu, and I think at that time we were talking about the new system for the Federal Government in terms of the defense workers, the National Security Personnel System (NSPS)—whatever. It has now gone back to the old system. And I am really pleased that Senator Akaka indicates that he is going to continue to stay on top of this so that those of you who are here testifying today know that we are going to stay on top of this and he is going to stay on top of it, because we know how important it is.

I would like to thank our witnesses here today. I thank you for the new office here, and also in Toledo, and the fact that we now have 14 new administrative law judges in the State and 37 people to support those judges.

As Senator Akaka says, we have been looking at this for some time, and I just thought particularly for maybe some of the people here from the media to remind them that this program started back in 1956, and it is to provide disability benefits to employees who work, pay Social Security taxes, and become disabled to the point where they can no longer work, and that Supplemental Security Income (SSI), is an additional program developed to provide disability payments on the basis of financial need. If a disabled person wants to apply to either program, they submit an application through their local Social Security office.

Mr. Astrue, I want to say to you that the one we have in my local community does a very, very good job. I am really pleased with the service there.

And then that application is sent to the State Disability Determination Service, the DDS, and that office is made up of State em-

ployees but are employees paid by the Federal Government. If the application is denied, there is another opportunity for reconsideration at that level. If it is again denied, then it goes on appeal through the Federal Office of Disability Adjudication and Review (ODAR), a hearing office like the one we have right here, where you have an administrative law judge and they make a decision on the case. If the applicant is still unhappy with the situation, they can appeal to an SSA appeals council, and then finally they can go to Federal court. So that is the way the system works. It is a very, very extensive—it is probably one of the most extensive judicial things in the world today.

Last year—and I think these numbers are really boggling—SSI paid $155 billion—to 14.5 million disabled workers and their families here in this country. And I have learned over the years that the process for getting those benefits is difficult. In fact, right now in my own office, we have 174 disability cases that constituents have complained about, and we are trying to follow up right now.

The reason why I am into this is because of the fact that so many people have had to turn to our office, our constituent office, to try and get help for it. Where is Michael Dustman? He heads up our caseworker office, and they do a very good job. Over the last number of years, it is hard to believe this, but we have had 6,000 cases in our office, Commissioner—that is about 500 a year—where they feel they just cannot get anywhere, and they come to us and ask us to get the job done.

What we are really striving for is they ought not to have to come to my office or to Senator Akaka's office or anybody else's office. The system ought to be able to take care of them.

So in terms of our numbers in Cleveland, I think, Senator Akaka, the national average I think is 390, and 6 years later it is still 481 days in my town. And we have the same kind of problem in some other areas.

The good news is that the ranking for cases per administrative law judge was 140th out of 149th in May 2010, and we are down to 40 right now, so that is pretty good. We are making some progress. But as Senator Akaka says, the situation has gotten worse because of the fact that we have had a 21-percent increase in the number of people who are asking for disability benefits. These are a lot of folks that were out there working at a job and did not come in for disability. Now they are coming in, and they need help. And at the same time they are coming for help, the people that handle them in Ohio, the numbers are not there because we have furloughed them. In our State, we had 20 furlough days, and I think, Senator Akaka, you had 42 in Hawaii. So the people at the State level that hear these claims initially are not working as much as they did. And I know I have talked to Governor Strickland about this. I think it is a problem, maybe the Commissioner and others, that we need to deal with nationally because we have a disconnect here. We have more people that want it, and we are furloughing more. And one of the things I pointed out to our Governor is this money is not coming from Ohio. It is coming from the Federal Government. So it is not doing anything on the Ohio budget. So I think this is something that we really need to look at if

we are going to deal with the problems that we are confronted with today.

I really again want to thank you, Senator Akaka, for being here today, and I am pleased that—we are honored today that we have the Commissioner, Michael Astrue, who is here, and Patrick O'Carroll, Jr., who is the Inspector General for the Social Security Administration. We have the Inspector General that kind of watches over them. We have the General Accounting Office that watches over them. And so we are pleased to have both of you here, and if you will stand up, as is our procedure, raise your right hand. Do you swear that the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. ASTRUE. I do.

Mr. O'CARROLL. I do.

Senator VOINOVICH. Thank you.

See, I am not used to that, Senator Akaka. I have not been doing it for a couple of years. [Laughter.]

All right. Let it be noted that they did take the oath.

Mr. Astrue, will you proceed with your statement?

TESTIMONY OF THE HON. MICHAEL J. ASTRUE,[1] COMMISSIONER, SOCIAL SECURITY ADMINISTRATION

Mr. ASTRUE. Thank you. Chairman Akaka and Ranking Member Voinovich, thank you for this opportunity to discuss our rapidly improving disability process here at our new Akron hearing office.

Your support has made this and other service improvements possible. The resources we received in the last few years have proved critical. We appreciate your commitment to a faster, more accurate disability process in Ohio, and thank you for your critical role in helping us open new Ohio offices.

Senator Voinovich, as you prepare to retire from the Senate, we at the Social Security Administration want to thank you for your commitment and for your critical role in the opening of these new offices. We will miss you.

Together we have accomplished much over the last few years despite the surge of benefit applications and the misguided furloughs of many Disability Determination Services (DDS) employees. We remain on track to eliminate the hearings backlog in 2013, our top priority. Despite many challenges, we have made progress in reducing the number of pending hearings and the average processing time.

Our progress, though, extends beyond the hearings workload. Our employees worked hard to keep the level of pending initial disability claims below our fiscal year 2010 projections, even as we receive a record number of new claims due to the recession. Despite the workload pressures, we achieved our highest level of accuracy since 1997. Waiting times in our field offices dropped, and our performance on the 800 number was our best ever. We increased staffing for program integrity, which enabled us to increase the number of Supplemental Security Income (SSI) redeterminations and improve accuracy.

[1] The prepared statement of Mr. Astrue appears in the appendix on page 37.

Our employees deserve enormous credit for these successes. Since fiscal year 2007, they have increased productivity by an average of nearly 3.7 percent each year.

Our hearing backlog plan is succeeding. In the last 2 years, we have hired about 375 new administrative law judges (ALJs) and the staff to support them. We will open over two dozen new hearing offices by the end of 2011. We have standardized our business processes, realigned our workloads, and used technology to become more efficient.

Pending hearings reached a high point in December 2008, but we have steadily worked the number down, ending fiscal year 2010 with the lowest year-end pending in 5 years. We have made these gains despite record receipts that jumped nearly 100,000 cases from fiscal year 2009.

We are also making decisions more quickly. Four years ago, some hearing requests had been pending as long as 1,400 days. Waiting this long for a decision is immoral, so we focused on handling the oldest cases first, even though that makes some of our other statistics improve more slowly. Since then, we have decided over one-half of a million cases that were 825 days old or older. Now we have a negligible number of cases in that category. This year we have again raised the bar and expect to resolve all cases 775 days old or older.

Even as we work the oldest, most time-consuming cases, we have reduced the average time to make a decision from a monthly high of 532 days in August 2008 to 377 days in October of 2010—the lowest average processing time in more than 6 years. Moreover, every hearing office nationwide had average processing times under 600 days in September and October of 2010. Two-thirds of our cases have been pending less than 270 days, which is our target processing time under our plan.

Since May 2007, when I joined Senator Voinovich in Columbus to discuss hearings in Ohio, we have improved all major performance metrics in this State. Four years ago, average processing times in the Ohio hearing offices were between 600 and 800 days. That range has fallen to 400 to 600 days, and it is still dropping. Our greatest progress is in the most backlogged offices.

For example, in May 2007, the average processing time in the Columbus Hearing Office was 760 days, the worst in the State. By the end of October 2010, the wait had decreased to 557 days.

The new Akron and Toledo hearing offices which have just opened will accelerate our progress and bring even more relief to Ohio claimants. The new Muncie Indiana Office will bring some relief as well to people now being served by the Dayton office.

As we eliminate the hearings backlog, we are responding to the additional disability claims resulting from the economic downturn. Nationwide, we received more than 3.2 million claims in fiscal year 2010, 24 percent more than in fiscal year 2008. We have responded to this increase by adding staffing in the State DDSs and Federal disability processing components, improving online services, and refining our policies and business processes. Our fast-track initiatives allowed us to issue favorable determinations to over 100,000 disability claimants last year within 20 days of filing.

A sharp increase in disability claims and high employee turnover in the Ohio Bureau of Disability Determinations (BDD) contributed to the disappointing outcomes in Ohio in fiscal years 2008 and 2009. The State furlough only compounded these difficulties.

Our prompt response has turned the situation around. We increased staffing in the Ohio BDD by over 90 new hires in the last 2 years. We transferred over 15,000 disability cases to Federal processing units, which resulted in a 10-percent drop in pending workload. Ohio closed fiscal year 2010 with about 54,000 cases pending. Accuracy improved significantly, and productivity is increasing as the new hires gain experience.

As misguided as it is for the States to respond to fiscal crisis by furloughing employees whose salaries and benefits we fully fund, many of them have done so. In Ohio, we estimate that the 20 furlough days in fiscal year 2010 and 2011 will delay decisions on nearly 16,000 disability claims and postpone over $3.7 million in Federal benefits to the State's most vulnerable citizens. Additionally, Ohio will lose over $7.3 million in Federal funds.

Nationwide, furloughs have already delayed $29 million in benefits and cost States over $56 million in administrative funding. To stop these furloughs, we have proposed legislation in the last few months that would prohibit States from furloughing DDS employees without the agency's approval. I urge Congress to take quick action on this legislation.

Our employees are proud of how far we have come over the last 2 years, and they do not want to backtrack. We are trying to maintain momentum despite the loss of employees. Due to our uncertain appropriations situation, in July we froze most hiring. Only components critical to the backlog reduction effort can replace staffing losses, and we may not be able to maintain that policy much longer.

To see continued progress, we ask Congress to approve the critical funding that the President requested for us. The American people are depending on us, and we have demonstrated that with adequate funding we deliver on our promises.

Thank you, and I am happy to answer any questions you may have.

Senator VOINOVICH. Thank you very much. Mr. O'Carroll.

TESTIMONY OF THE HON. PATRICK P. O'CARROLL, JR.,[1] INSPECTOR GENERAL, SOCIAL SECURITY ADMINISTRATION

Mr. O'CARROLL. Good morning, Chairman Akaka and Senator Voinovich. Thank you for having me here today to testify.

My office continues to assist SSA in its efforts to reduce backlogs of both initial disability claims and appeals hearings. At the end of fiscal year 2010, SSA had nearly 850,000 initial disability claims pending. More than 700,000 applicants are awaiting a hearing with an administrative law judge.

In Ohio, a disability applicant will wait 119 days for a decision on an initial claim. However, hearing offices in Ohio take 479 days on average to issue decisions on disability appeals. Here in Akron, the average disability appellant will wait 334 days for their case

[1] The prepared statement of Mr. O'Carroll appears in the appendix on page 53.

to be decided. In Columbus, the wait for an appellate decision is 557 days.

A large population of baby boomers reaching retirement age has created workloads that have taxed SSA's resources and helped cause these delays. The current economic climate has made matters worse for some States, including Ohio, that have decided to furlough DDS employees. The furloughs have delayed case decisions and benefits from reaching the people who really need them. We commend SSA for campaigning against DDS furloughs and for bolstering staffing levels. However, the backlogs remain.

In recent years, my office has placed a high priority on helping SSA improve the disability claims process and reduce backlogs. Senator Voinovich, in 2009, you asked us to review productivity levels among hearing offices and identify why some offices had productivity rates below the national average. Earlier this year, we released that report, which identified factors affecting hearing office productivity. Those factors included: ALJ motivation and work ethic; case review times; hearings management; and staff quantity, quality, and composition.

Through hiring, SSA has worked to address some of these support staff factors we identified. SSA seeks to have a national average of 4.5 support staff for every ALJ. Hearing office chief ALJs are responsible for managing ALJ performance. Managers have taken action against underperforming ALJs, but those actions primarily include mentoring and counseling rather than discipline.

In another report we issued in August, we identified four disabilities that are most often allowed by ALJs on appeal. The four impairments are: Back disorders, degenerative arthritis, diabetes, and muscle or ligament disorders. We recommended that SSA analyze why these claims were denied before being allowed by ALJs. We suggested SSA consider variables such as claimant age and representation.

In May 2007, SSA began implementing its "Plan to Eliminate the Hearings Backlog and Prevent its Recurrence." By fiscal year 2013, SSA wants to reduce pending cases to the desired level of 460,000 cases and reduce average case processing time to 270 days. The agency has determined ALJs could manage that pending case level of 460,000 cases without claimants experiencing any unnecessary delays.

In a July report, we said that SSA will achieve its fiscal year 2013 pending hearings backlog goal. SSA has made several assumptions about variables that affect the pending case level. Those variables are: Hearings requests, ALJ availability and productivity, and senior attorney adjudicator decisions. SSA must continue to assess these factors and make necessary adjustments to stay on track to meet its 2013 goal.

Finally, my office continues to encourage the creation of a revolving integrity fund that would pay for initiatives such as continuing disability reviews and our Cooperative Disability Investigations (CDI) program. These are additional ways to help SSA reduce the backlog of disability claims and to ensure that only those who are eligible for benefits receive them in a timely fashion. We continue to work with you and SSA to accomplish these goals.

Thank you again for the invitation to testify today, and I will be happy to answer any of your questions.

Senator VOINOVICH. Thank you very much.

Senator Akaka, would you like to begin the questioning?

Senator AKAKA. You proceed with your questions.

Senator VOINOVICH. OK. Does anybody have a clock or something? I will start out with 5 minutes and then let me know.

There are two things that I wrote down that are big-picture issues. First is the appropriations. I do not think the public understands what a disadvantage it puts an agency when we pass continuing resolutions and we do not do our appropriations work. I think Senator Akaka has heard me say this before that if I had been mayor and had not gotten our appropriations done on time, or Governor, I would have been impeached. That is a fundamental responsibility, and for some reason we just cannot get it done. And I suspect that when we go back, because of the change in the House, we will probably pass another continuing resolution, which I would like you, Commissioner Astrue, to—puts the question of where does that put you, because you are banking on appropriations that the President recommended in your budget. So I would like you to respond to that. And second also to fill us in a little bit about the likelihood of our possibly getting Federal legislation that will disallow States from putting these folks on furlough at a time when we need them more than ever before. And last but not least—I will give you three of them, and then I will stop—is that possibly do you think that instead of these folks working for the State that they ought to be brought into the Social Security Administration rather than being under the aegis of their respective States?

Mr. ASTRUE. Thank you, Senator Voinovich. So on the question of continuing resolutions (CRs) and appropriations, I think we are on the same wavelength. A lot of agency heads are a little reluctant to speak up on this issue because it is viewed as impolitic. But I did so a few months ago, I believe in the National Journal, which actually tracked big swings in our number of employees tied into the delays in the continuing resolution. And when you have a budget approximately in the $12 to $13 billion range, if you do not know how much money you actually have to spend until halfway through the fiscal year, which is the situation I have had to deal with, you cannot spend the money that you have as well. The contracting process and the other agencies that you have to go through to get things done takes so long that you really cannot spend your money as prudently as you should.

So I am with you 100 percent. I am old school. I would urge the Congress to pass appropriations before the start of the fiscal year to make sure that the taxpayers get the most value for their money, and the longer the Congress goes into the year with continuing resolutions, the harder it is to plan and the less wisely money is spent. So I am with you 100 percent on that.

I think we are on the same wavelength on furloughs. I have spoken up fairly vocally on this. We were caught off guard by this. This is not a historic problem. And when it started in California, I will be honest, I made the mistake of thinking this was going to be a one-off and other States would not follow California's lead. But

I turned out to be wrong on that, and we have had at any given point in time usually about 10 to 15 States in the last year and a half or so that have done at least some degree of furloughing. And your two States, just coincidentally, have been two of the most aggressive, and I think people in your States have suffered unduly for that.

We worked with the Office of Management and Budget (OMB) to come up with legislation on this topic, which we sent to the Hill too late in this legislative year to expect action this year. I believe we sent it up in August. The Legislation is a good blueprint for next year, and I would certainly ask for your support to help us line up as many initial cosponsors as possible and try to put an end to these furloughs. There is no benefit for a State to Furlough DDS employees and a lot of negatives. It has been puzzling to me that I have to continue dealing with this.

As an alternative, I would also note, having served on two gubernatorial transition teams myself in the past, it is a time of fluidity where policies are reconsidered. Both Ohio and Hawaii are going through gubernatorial transitions, so I would recommend strongly to each of you to contact your new Governors and urge them administratively to end furlough policies. Experience has taught me that Governors are not terribly impressed by my opinion, but they do need to listen to senior members of their congressional delegation. I hate to ask for your help one more time, but any contact you could make with your new Governors would be very helpful.

The third question, Senator Voinovich, was on Federalization of the DDSs. At the moment, I think the administration has not been supportive of that primarily because of the cost issue. There are some other issues as well. We have taken a look at this. It is about a $4 billion cost over 4 years, with about $2.5 billion in the second year. And it really comes from the fact that State employees get paid substantially less than Federal employees. So to bring the DDS workers into the Federal workforce would involve substantial increases in salary, and that delta has a substantial cost for the Federal Government. But certainly as we have experienced more and more difficulties with the furloughs, we have looked at this issue again, and we are not at the point to——

Senator VOINOVICH. The other thing in Ohio, we have a turnover rate that is like 15 or 16 percent. I think the average is like 8.5 or something of that sort. So you wonder whether or not the salary levels are competitive in terms of other States.

Mr. ASTRUE. Yes. We have often been in the situation with States where we have actually tried to get them to increase salaries to reduce the level of attrition. It tends to create some difficulties in terms of comparability throughout States. That is usually what we hear back. But when we see attrition rates higher than the norm, we typically do look at it and often do see if we can recommend some sort of increase, directly or indirectly, to try to reduce that attrition, because it is a real concern. About half of our examiners have 3 years of experience or less, and that is an issue.

Senator VOINOVICH. Well, that is the heart of it. If the State level is the first level of determination, then to me that is the most important. If you really had a slick operation where you had consistency in terms of determination of, when people were eligible for it,

you had training across the country—so that, Mr. O'Carroll, in your testimony and others noted the discrepancies in terms of certain cases, I think. In one State, you had a certain type of back injury; they turned them all down. And then when they got up to appeals, they overrode them and agreed to them. The system could be really done much better, and it would eliminate some of the need for the judges that we have. I mean, that is the beginning.

We did that with our Ohio Bureau of Workers' Compensation (BWC). We had a situation here where we had a three-judge hearing, and we concentrated on the intake and retrained the people, and that helped to make the system a whole lot better and more efficient. And, by the way, it saved a whole lot of money.

Mr. ASTRUE. I would agree. I do not have any significant policy concerns. I think it comes down to a flat budget question. To take us back to 1956, when the program started, I think there was some thinking that housing the DDSs with State vocational rehabilitation agencies would be a benefit to the public and to the Federal Government. I would have to say I do not think that has really worked out in practice. And, in fact, at this point in many States, they do not house the DDSs within the vocational rehabilitation agency. It is in a separate part of the State organization.

So I think it really just comes down to a question of cost. It is expensive, and we are in a period in which we are already worried about going backwards on our budget on our basic functions. I think it is just really a question of cost at this point.

Senator VOINOVICH. I think the final thing—and then I will turn it over to Senator Akaka—is that if you can get a much better DDS operation—you say that if they go on the Federal payroll they might get more money. But I would think that if you do it right you would save, as I mentioned, down the road in terms of administrative law judges, I think we are talking, what, about 4.5 people on average that we should have to help the administrative law judge. It might be a good thing to look at that so that if Congress said, "Well, it is going to cost more money," you can come back and say, "You know something? It probably will cost less money." But more important than anything else, it is going to be better for people.

Mr. ASTRUE. Yes, I agree.

Senator VOINOVICH. So often people get lost in the shuffle here, and I have several cases here, I mean, unbelievable situations where people have been out there delayed and call, especially now, they could not get their disability payment, foreclose on the house—I mean, just it really is a situation that all people should be concerned about.

Mr. ASTRUE. I agree with you, Senator.

Senator VOINOVICH. Senator Akaka.

Senator AKAKA. Thank you.

Mr. Astrue, thanks to the Recovery Act and increased funding, your agency was able to hire thousands of new employees. This has been, I think, one of the advantages that we have had with the Recovery Act. We have hired these thousands, and I am sure it has made a difference. But I would like to be more specific and ask you to describe how SSA is handling the challenge of training, the challenge of adequately training all new staff on their responsibilities.

As we know, in government management as well, we have to continue to be sure that staffs are efficient at what their responsibilities are. And with all of these new ones coming in, I want to specifically ask you about what you are doing in meeting that challenge of training.

Mr. ASTRUE. Sure. We have tried, even with all the fiscal concerns, to invest more in—and actually, we are trying to use the phrase "learning" rather than "training." "Training" tends to have sort of a top-down, hierarchical sense. We are trying to create a culture where, to some extent, we provide people with an opportunity to learn on their own and do more than is absolutely required from a top-down basis.

I think with the judges the training has gone extremely well. Typically, they spend 2 weeks in a hearing office before they go into training sessions so that they have some real-world context before they get a lot of very difficult abstract information thrown at them in a relatively short period of time. We have received positive feedback from the new judges on the training. Their performance has been quite good. We are feeling quite good about that.

With the other staff, it is a little bit more decentralized in the hearing offices. I think generally that has gone well. Probably because it is a more diffuse operation, there have been a few places where we could do better. But generally I think that is going well.

For the claims representatives, we have training that we are trying to make a little more user-friendly. We do most of that through remote video because it is too expensive to bring people into central locations. That presents some challenges, but we are doing things—for instance, there are national chat boards for the young people who are going through the training. They actually expect to interact with peers and supervisors in that way rather than in the way that would have been our expectations 20 years ago.

So we are trying to adapt to sort of new ways of learning in addition to trying to make sure we transmit information in the traditional way. I think we have a way to go. We are doing something we have not done since the 1970s. We actually are having college classes taught on the headquarters campus that people at their own expense are taking advantage of.

We are trying to create a real learning culture and transmit a lot of complicated information in different ways than we have before. Generally, I think that is going well, but I would be misleading you if I said I think we have it down perfectly, because we do not yet.

Senator AKAKA. Commissioner, as you well know, administrative law judges play a critical role in the claims process, and it is important to have access to qualified or well-qualified judges.

Mr. ASTRUE. Yes.

Senator AKAKA. This has been an issue. So my question to you is: What challenges has your agency faced in the process of hiring these judges? And how have you addressed them?

Mr. ASTRUE. Sure. Senator Voinovich and I have gone through this in a lot of detail, so he will probably remind me of things I forget to mention to you.

We are in a much better place than we have been historically. One of the things about which I am pretty sure I expressed consid-

erable frustration to Senator Voinovich in 2007 was the fact that we had not had a refreshed roster of judges from the Office of Personnel Management (OPM) in almost a decade. And if you stop and think about it, if you were hiring in your Senate offices with only the resumes that had come in 10 years before, what caliber of people would you have? And would you be proud of the staff that you would hire in that process? In 2007 and 2008, we encountered considerable resistance from OPM concerning refreshing the roster. I want to thank Senator Voinovich and several of the key Members of our Subcommittees of jurisdiction for working with me to persuade OPM to refresh the roster once and then a second time, because that was not easy.

I think that it is critical to refresh the roster, particularly as the number of ALJs being hired is increasing, not only at our Agency but at other agencies with new responsibilities, particularly Health and Human Services (HHS). We should always be able on short notice to tap a very deep list of highly qualified people for these positions. And I think John Berry, the new Director of OPM, agrees in principle, and OPM has done much better. I do not think we are still quite where I would like to see us.

I also think it would be timely for some authoritative outside groups to take a look at the criteria and the process for hiring. OPM often, because of perceived litigation risks, is not very transparent with us about the requirements, the process, the timing, even the number of people who are on the list. And that is a little bit of a frustration for me as the agency head that hires 95 percent of the judges.

I think that they have well-intentioned people within OPM who are using outdated and inappropriate criteria for the hiring of judges. And I know that there is skepticism often about the agency's motives. But I think that we have a revived Administrative Conference of the United States which has a lot of experience in these type of matters. That would be one outside experienced group that you could look to. You could look to the American Bar Association and other groups. But I really do think it is time to look at the criteria. I think we have ended up with great judges, even with a process that is highly imperfect. But if you are essentially asking me is this the best that we can do, my answer is I do not think it is. I think that we can do better. And rather than make specific recommendations, I think it is important to build a consensus around a better process.

Senator AKAKA. Mr. O'Carroll, Commissioner Astrue addressed this issue, and I would like to hear from you as well on this issue. As you know, States like Ohio and Hawaii have chosen to furlough DDS employees, even though the Federal Government pays for all costs associated with processing disability insurance and Supplemental Security Income cases. If furloughs continue, do you believe it will hinder SSA's ability to reach its backlog reduction goals?

Mr. O'CARROLL. That is a very good question, Chairman, because there is a very delicate balance in SSA's ability to meet that 2013 goal. If there is as much as a 3-percent increase in the number of new claims, that could affect SSA's ability to meet the goal. At the front end of it, because DDSs supply the information coming for-

ward, if there are DDS furloughs or more initial claims, that is all part of the balance.

We have been tracking the DDS furloughs and the productivity of these States, and have issued several reports on this. I am often asked to speak to the National Association of Disability Examiners (NADE), which is made up of DDS employees from around the country, and they are very, very interested in the furloughs. They have used OIG reports to ask for help from their local Representatives and Senators. We are extremely concerned with the furloughs, because we are having more applicants than ever before.

Transferring caseloads from one State to another State is really not solving the problem. And as Senator Voinovich mentioned before, one of our concerns, is the training level of the employees. They are very crucial, the DDS employees, at the State level because they know their work so well. It takes 2 to 3 years to really come up to speed. As Senator Voinovich mentioned, if we lose a person in 2 years for that reason, all that training is gone, and the DDS has to start over again. So it is a very delicate balance, and this influx/outflux of employment is going to hurt dramatically.

Senator AKAKA. Senator Voinovich, do you have any further questions?

Senator VOINOVICH. Yes. I would like to get back to the availability of these ALJs. We have had more cooperation from OPM, but I do not think people realize that they are the intake for just about all the Federal agencies. So basically what you are saying is that they open it up, people make application, they review the applications, and then they make the appointments, these are the people that are going to be your judges. Is that correct?

Mr. ASTRUE. It is pretty close. The only refinement I would add, Senator, is—and, again, I am not a master of the intricacies of the process—we specify the locations where we want to hire, and what OPM does is give us what they consider the three most highly ranked candidates for that position, and we hire off of that list of three. If there are some exceptions and qualifications, I will add those for the record.

INFORMATION FOR THE RECORD

The Office of Personnel Management (OPM) maintains a "register" of individuals who have applied for the position of administrative law judge (ALJ) and who meet the minimum eligibility requirements according to OPM's qualifications and criteria.

When we want to hire individuals to ALJ positions, we request a list of eligible candidates from OPM. That request identifies specific geographic locations where ALJs are most needed based on workload and where we have physical space. OPM identifies an adequate number of "eligibles" from the ALJ register, prepares a certificate, and issues the certificate to us. On average, we receive three "eligibles" per vacancy per location.

Once we receive the certificate of "eligibles" from OPM, we begin our process that includes:

- Our Office of Personnel (OPE) contacts all candidates to reconfirm their geographic availability and initiates the background investigation process.
- An outside contractor conducts background investigations of the ALJ candidates and provides us with a report.
- We conduct panel interviews of all candidates not interviewed for previous vacancies.
- Based on all of the above, we make selections.
- OPE confirms compliance with all selection procedures, and we make offers to the candidates.

We also fulfill our bargaining obligations under Article 20 of the Association of Administrative Law Judges/International Federation of Professional and Technical Engineers and Office of Disability Adjudication and Review National Agreement. We consider requests for reassignments of incumbent judges to the vacant locations prior to considering the assignment of a newly hired ALJ and before we request the certificate.

Senator VOINOVICH. But the qualifications that they are looking at are—they draft them, and you were mentioning that those qualifications could be better reviewed to make sure that they are the kind of people that you are going to need for your particular assignment. I think people do not understand. There has to be big competition. These are lifetime appointments.

Mr. ASTRUE. Yes.

Senator VOINOVICH. If you are an attorney out there and you get a chance to get a lifetime appointment if you become an administrative law judge for Social Security, that is quite an incentive.

Mr. ASTRUE. Absolutely. And, of course, a sign that you are exactly right is that the process up until recently was on an unannounced basis. All of a sudden there would be something on the OPM website saying it is open, and so many applications flooded in that they closed it usually within about 24 to 36 hours. And I think that is fundamentally unfair to a lot of the well-qualified people out there who are not clicking onto the OPM website on a daily basis. So there is an enormous amount of interest in these jobs.

I give Director Berry credit for being uncomfortable with that, so this most recent time OPM issued a press release saying it was going to be open on such and such a date. And I commend Director Berry for doing that because I think it is a step in the right direction.

But there are some fundamental questions that I think the Congress should be asking outside experts. Most notably, I think the OPM model is a one-size-fits-all for administrative law judges. And I have some question that you have non-experts in administrative law with no real experience in the area, drawing from a human resources (HR) background and putting too much weight on qualifications that I do not think matter generally. But I also think it is a reasonable position to observe the day-to-day work of our judges—we are a mass production operation. We need to have each judge produce a lot of cases numerically in order to serve the American public. It is very different day-to-day work than, say, what a judge would do at the National Labor Relations Board (NLRB) or the Securities and Exchange Commission (SEC), where it is a very fact-bound, long, adversarial process, and they may only have a caseload of half-a-dozen cases for a year; whereas, our expectation is our judges will handle 500 to 700 cases a year. And it is a different profile, and maybe we need to have agency-specific rosters. But even if we do not, I think that there needs to be more attention paid to Social Security because we hire over 90 percent of the judges. I do not think a lot of the criteria, to the extent that I understand them, really tie in very directly with what we need.

Again, having said that, we can go fairly deep on the roster, and from my vantage point, we have been seeing extremely qualified candidates.

Senator VOINOVICH. Well, that is something that you would not need legislation for. Could you not work that out with John Berry

and say, "John, we have to give him your insight in terms of the kind of people that——"

Mr. ASTRUE. Theoretically, I think that is right.

Senator VOINOVICH. In effect, you are hiring people for your system, but the people that are hiring them and making the determination—you are not making that determination. OPM is. Right?

Mr. ASTRUE. I think that is right. But I think that within the agency there is a lot of attachment to the status quo, and I think that is not likely to change until significant outside interested parties, particularly the Congress, express concern about the process and encourage the——

Senator VOINOVICH. We have talked about, even with the administrative law judges, you get the performance of them—and I have to say that their performance has improved, at least from what I can see.

Mr. ASTRUE. Right.

Senator VOINOVICH. But the fact of the matter is if you get somebody out there that is not doing a job, what do you do? I mean, you cannot do much about it.

Mr. ASTRUE. Right. My——

Senator VOINOVICH. They are there, and, we have talked about the idea of maybe having the term a 15-year term, and at the end of 15 years they are reviewed in terms of their performance, and if they are doing their job, they can come on for another period of time. If not, at least you have that over their heads in terms of their responsiveness and, performance.

Mr. ASTRUE. I agree. I want to credit the vast majority of judges who have embraced the mission, and I think are working very hard. Since the time we announced our performance expectation a couple years ago, we have moved from, 46 percent of the judges meeting our minimum case expectation to this year, 74 percent. And a substantial percentage are within striking range of our expectation.

Senator VOINOVICH. Does their performance have anything to do with their pay?

Mr. ASTRUE. No, we are not allowed to do that. I think the truth is that the agency in the 1980s overstepped its bounds with regard to the independence of judges. Congress reacted and largely tied our hands in lots of ways. And I think in general I am not going to be critical of that, but I think there were some unintended results of that. And there are a small number of outlier judges who essentially have taken early retirement while at the top of the Federal pay scale. We had one judge in Rhode Island who went 6½ years without deciding a case. When we started calling him out, he started to do a small number of cases, but he basically allows them all. From my vantage point, that is essentially theft from the public.

We have had some judges in this category, and we have benefited from the fact that the arrogance that leads you to do that also leads to misconduct at work. So we have actually been more aggressive in taking judges to the Merit Systems Protection Board (MSPB) who have engaged in inappropriate conduct. They are often low performers as well.

We had, for instance, a judge we removed in Georgia a couple years ago, and it turned out he was a low performer because he also had a full-time job in the Department of Defense for 3 years, and so he was double-dipping and not giving full effort at either Federal job.

Sometimes, by going after behavior, we remove a low performer, but it is very difficult under the current rules to take any action against a judge who is doing next to nothing or transparently not following the rules of the agency.

Senator VOINOVICH. The last part of it—and I will end on that. But, Mr. O'Carroll, could you comment on that?

Mr. O'CARROLL. Yes, Senator. Interestingly 3 years ago we did an audit on the productivity of administrative law judges, taking a look, as the Commissioner talked about, at those judges processing a few cases per year all the way up to the ones doing over a thousand per year. At the time, we worked with the agency and asked what their expectations and goals were. About 500 cases per year would have been the top of the bell curve. And the majority of judges were processing fewer than 500. I would say over the last 3 years, that has changed, and we are finding that many are processing more than 500 cases per year. As the Commissioner just said, that is happening. So we are looking at that in terms of their productivity. We have been monitoring that.

One thing that we have not mentioned too much in terms of the productivity, again, and I mentioned in my testimony, is that 4.5 support staff ratio. Very critical. We have recommended that ratio because of that first report when we were looking at the productivity of judges. We looked the better performing hearing offices compared to others, and we interviewed chief judges, judges, and support staff. And we found out that when offices had 4 to 5 support staff per ALJ, they were the most productive offices.

Our most recent work indicates that the agency is moving in a positive direction.

Senator VOINOVICH. Thank you. Senator Akaka.

Senator AKAKA. Yes, let me offer a final question to this panel, and I would like both of you to answer it, beginning with Commissioner Astrue.

You have mentioned some of the processes and what needs to be done to improve them. And based on your experiences and your work thus far, my question to you is: In the years to come, what are the top three factors you believe will determine whether SSA is successful at maintaining progress that has been made and staying on track to meet its goals? I am asking this to see maybe what we need to do legislatively to improve the entire system.

Mr. ASTRUE. Sure. Well, my first two would really be the appropriation—the first is the size, and the second is the timeliness. Our Inspector General is entirely right. He mentioned before that while we are on track to hit our goal for 2013, it is fragile, and it would not take very much for us to miss that goal.

I know that we are in a time of a lot of concern about the Federal budget; there will be cutbacks. I have tried to be responsive to that. I submitted a tighter budget this year than I ever have before. But at the end of the day, we have an aging population, which adds to the workload. We have a recession that gives us more disability

cases and more retirement cases. And we have a lot more statutory responsibilities. So workloads are going up enormously.

If we do not get budgets that reflect those workloads and the need to reduce the backlog, then we will miss the goal. I cannot tell you that we can hit the goal just by sheer administrative effort on level funding. We cannot. We will miss the goal if we go to level funding. And the timeliness, as Senator Voinovich was pointing out before, is almost as important as the amount.

I think the other factor that, again, I cannot control—and maybe the Congress only can to a fairly limited extent—is the recession. There is a lot of discussion about "the plan" to reduce the backlog, and I think GAO sometimes has wanted us to sort of lock in something and then measure against, what we expected. And it has not been that way, and it should not be. It has been a much more fluid plan, and we have had to adapt to radically changed circumstances. So we made a lot of adaptations to "the plan" when the recession hit, and all of a sudden, we are seeing over half-a-million more disability applications than we saw 2 years ago—a little less than 20 percent of which will eventually show up in the hearings and appeals process, so at least another 100,000 at the Office of Disability Adjudication Review (ODAR).

And the extent to which the recession continues at 9.5, 9.6 unemployment is critical, too, because all the studies have shown—and it has held up in this recession—that there is a very high correlation between increases in disability applications and increases in unemployment. What I need more than anything else is for people to start hiring and for that rate to go down because that will do more than anything that I can do administratively to help move these cases along. So I think those are the three most important factors.

Senator AKAKA. Thank you.

Mr. O'CARROLL. Mr. Chairman, the Commissioner said it well. One of the big issues for SSA is service versus stewardship. On the service side, the challenge is going to be, as we mentioned before, the large influx of claimants coming in, the baby boomers, etc. One aspect of that challenge that they are going to have to be looking at is Information Technology (IT) support and electronic services. We are doing a lot of oversight on that and trying to give advice to the agency on long-range planning in relation to that.

Long-range planning should happen, and one challenge is trying to address IT strategic planning as well as all the personnel and staffing issues that we have been talking about today. But, again, the IT infrastructure of the agency is going to be a challenge into the future.

On the stewardship side, I think all of government now has to be very cautious in terms of improper payments in the benefit programs. We are very involved in the issue of improper payments for the Inspector General (IG) community, representing the community in dealing with all the different agencies and departments. Specifically here at SSA, in terms of stewardship and taking a look at improper payments, two of the things that are of interest to us is an integrity fund as part of future appropriations for the agency, where money would be set aside above the cap just for doing integrity activities like continuing disability reviews (CDR). When a

claim is adjudicated through the system and approved, somebody gets benefits. Three to 5 years out, SSA conducts a CDR to see if they have improved, so there is a safety net with CDRs. And that safety net has been weakening. When the agency puts more resources towards service, there is less for stewardship, and as a result there have not been enough CDRs. So we are recommending that more resources go towards integrity; to do more CDRs and more redeterminations.

Finally, I want to mention that we have a partnership with SSA on a continuing disability investigative (CDI) process where we have State employees, SSA employees, and Office of Inspector General (OIG) employees taking a look at claims at the front end of the disability process. They try to eliminate fraudulent claims before the individuals receive benefits. These units investigate when a DDS examiner suspects somebody, and they try to make sure that the disability the person claims that they have is, in fact, genuine. And that CDI program is very successful.

So thank you for the chance to mention our important initiatives.

Mr. ASTRUE. Mr. Chairman, if I could just add briefly, I want to second what the Inspector General said. And I think if you look at the decade for the agency, as our funding contracted in the early part of the decade, not only did the backlogs go through the roof, but the program integrity work dwindled from close to optimal levels down to almost nothing. And despite tight resources, we have increased our commitment to program integrity. Every year it is not as much as we would like to do it, particularly on the continuing disability reviews.

There will be a moment—and it may be after I am gone as Commissioner—where the economy starts to improve significantly, and for intake of new cases of disability, we may be slightly overstaffed at the DDS level. Now we are not. We are nowhere close to that. We are struggling right now. But when that happens, there will be a very important moment for the Congress from a program integrity point of view, because I think it will be important to hold onto those resources and dramatically increase the number of continuing disability reviews, because as you well know, there is about a 10:1 return for the trust funds each time we do one of those continuing disability reviews, and we will have the resources in place whenever this recession starts to improve. I think it is very important for the Congress to keep an eye on that so it makes a very important choice to dedicate those resources to program integrity work when the paradigm shifts.

Senator AKAKA. Thank you very much.

Senator VOINOVICH. I would just like to ask, who decides how that budget is spent, though, in terms of the money for these reviews? Do you do that? Or is that part of——

Mr. ASTRUE. We have a process with OMB to try to set program integrity work within the budget, but then we also take guidance from the Appropriations committees on that. So usually, what we target for a year is heavily influenced by both the OMB and Congress——

Senator VOINOVICH. I am sure Senator Akaka has had people come up to him and say, "That person is on Social Security disability and they have another job," or, they are painting their

house or whatever the case may be. And, of course,, that brings discredit to the whole process. And I think, particularly right now, if you let us know that you are out there doing the job and that, we are trying to do the very best that we can and make sure that those that are eligible get it and those that are not eligible do not get it. And, again, that gets back to the initial entry into the system. If you can get it taken care of there, then it eliminates the problem down the line.

Mr. ASTRUE. The other thing, Senator in that category that is new—and I think it is working very well so far, and we are excited about it—is our Access to Financial Institutions Program (AFI) where we are very efficiently checking with banks on the asset levels of our Title XVI applicants. And we are doing this not only in continuing disability reviews, but we are building it into the front end of the process. We are not finished yet with establishing this network, but the early returns seem to be quite good, and we think that this is going to be the most important new anti-fraud initiative of the agency in quite a few years.

Senator VOINOVICH. Great. Well, listen, we thank you very much. I think that I have learned a lot today, and, again, I appreciate your coming here to Akron.

Mr. ASTRUE. And, again, thank you to the both of you for your leadership. We are more grateful than I know how to express. I guess that is all I know how to say. So thank you.

Mr. O'CARROLL. Thank you.

Senator VOINOVICH. Thank you. I just noticed that Betty Sutton is here, our Congresswoman from this area. Betty, welcome. Thank you for being here this morning.

For the next panel, Richard Warsinskey is the Downtown Cleveland District Office Manager and Past President of the National Council of Social Security Management Associations. Mr. Warsinskey, we are glad to have you here today. And Randall Frye, who is the President of the Association of Administrative Law Judges. Mr. Frye, I saw you listening intently out there and picked up some agreement or disagreement from watching your expressions.

We are very happy that you are here today, and I would like you to stand, if you will, and be sworn in, as is the protocol. Do you swear that the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. WARSINSKEY. I do.

Judge FRYE. I do.

Senator VOINOVICH. Let the record note that the witnesses answered in the affirmative, and, Mr. Warsinskey, we will start with you.

TESTIMONY OF RICHARD E. WARSINSKEY,[1] MANAGER, CLEVELAND DOWNTOWN DISTRICT OFFICE, AND PAST PRESIDENT, NATIONAL COUNCIL OF SOCIAL SECURITY MANAGEMENT ASSOCIATIONS

Mr. WARSINSKEY. Aloha and good morning.

Senator AKAKA. Aloha.

[1] The prepared statement of Mr. Warsinskey appears in the appendix on page 58.

Mr. WARSINSKEY. Chairman Akaka, Ranking Member Voinovich, my name is Rick Warsinskey, and I represent the National Council of Social Security Management Associations. Our organization represents the field office and teleservice center management from over 1,300 offices nationwide.

I also help coordinate the activities of the SSA Advocacy Group, and I have been the manager of the Social Security office in downtown Cleveland for over 15 years. I am pleased to have the opportunity to testify before you.

Today we celebrate the opening of the Akron hearing office. This opening, along with that of the Toledo hearing office, will be a significant help to thousands of Ohioans waiting for a decision on their disability hearing. We greatly appreciate Senator Voinovich's strong leadership along with the Commissioner's perseverance in ensuring the opening of these two offices.

Ohio's hearing offices have had backlogged hearing requests for many years. Senator Voinovich first held a hearing on these backlogs over 6 years ago. It was taking over 600 days for a hearing decision to be rendered. This created hardships for many Ohioans.

When Commissioner Astrue took office in February 2007, he immediately focused on addressing the hearing backlogs nationwide and in Ohio. He initiated a plan that is coming to fruition now. A key component of this was securing additional resources to open more hearing offices and to add more staff. His plan received solid support from Congress. Senators Akaka and Voinovich were strong advocates in helping SSA get additional resources.

Starting in fiscal year 2008, SSA appropriations were at or above the level the President requested. These appropriations infused much needed funds into SSA to reduce backlogs in hearing offices. Favorable funding received in fiscal years 2009 and 2010 was critically important as SSA was flooded by a dramatic increase in disability claims being filed due to the recession.

Disability claims continue to arrive in hearing offices in unprecedented numbers, contributing to an increase in the number of pending hearing requests. However, with the significant addition of new judges and support staff, SSA has been addressing this new onslaught of claims. National processing times are being reduced significantly. In October, the overall hearing processing time was 377 days, the lowest since December 2003. Processing times are also dropping rapidly in Ohio hearing offices. In October, processing times in the Cleveland, Columbus, Dayton, and Cincinnati hearing offices were about 75 days lower than they were last fiscal year. Improvement should continue with the opening of the Akron and Toledo hearing offices.

Ohio hearing offices are working diligently to adjudicate cases as efficiently as possible. One key component to the success of these efforts is the productivity of the hearing offices. Historically, the average number of clearances in Ohio has been significantly below the national average. Improving productivity will accelerate the reduction of the backlog.

The Ohio Disability Determination Service (DDS), is also under considerable pressure to process their increased workloads. The number of pending claims has risen 48 percent since the beginning of fiscal year 2009. This pressure has intensified due to the man-

dated 10-day furloughs of Ohio DDS staff in fiscal year 2010. These furloughs will continue during the current fiscal year. The furloughs have resulted in $2.3 million in monthly benefit delays reaching Ohio citizens. All of this is completely unnecessary as SSA pays for all expenses of the Ohio DDS. Nevertheless, the State has mandated the furloughs. We support the immediate ending of these furloughs and applaud the Commissioner's efforts to rectify the situation.

SSA has certainly faced many challenges in recent years. The agency is currently operating under a continuing resolution. With the significant increase in SSA's workloads, it is imperative SSA receive adequate funding. We strongly support the President's proposed funding for the Social Security Administration for fiscal year 2011. Attempting to address the current workload demands at fiscal year 2010 resource levels is not a prudent course of action. Freezing SSA's budget at fiscal year 2010 levels or lower would almost certainly lead to major service cutbacks and would be catastrophic for members of the public who rely on SSA for assistance.

We ask for your continued support for appropriate funding for SSA. We believe that the American public deserves to receive thorough, timely service for the tax dollars they have paid to receive Social Security benefits and services.

In conclusion, we want to express our great appreciation for the Senators' ongoing support of SSA funding and for all your efforts to make possible what is happening today: The opening of the Akron hearing office. I thank you for this opportunity to testify today and would welcome any questions you may have.

Senator VOINOVICH. Thank you very much. Thank you for your service. Mr. Frye.

TESTIMONY OF D. RANDALL FRYE,[1] PRESIDENT, ASSOCIATION OF ADMINISTRATIVE LAW JUDGES

Judge FRYE. Good morning and aloha to each of you. Mr. Warsinskey stole my thunder in that regard, but I want you to know it comes from the heart.

I am here today the behest of the administrative law judges of this great Nation. I serve, as indicated earlier, as President of the Association of Administrative Law Judges. We represent 1,400 administrative law judges at the Social Security Administration and Health and Humans Services (HHS). We are affiliated and known as Council Number 1 of the International Federation of Professional and Technical Engineers (IFPTE). Of the 1,600 Federal administrative law judges, we represent 1,400 of those.

I, too, am extremely pleased with what we have been able to achieve in the last 2 years. We have experienced over the decade almost insurmountable backlogs, created for the most part by staffing imbalances. We suffered budget shortages that precluded judges from having the staff necessary to hear and decide cases on behalf of the American people. I want you to know how painful that was during that period of time. Let me tell you, there is nothing worse than having a widow show up at a hearing because the spouse died waiting for the benefits from Social Security. Judges

[1] The prepared statement of Mr. Frye appears in the appendix on page 70.

have worked incredibly hard to avoid that circumstance, and I am very proud of what we have been able to achieve.

On the other hand, it is not we that deserve the credit. It is the Congress of this great Nation that provided the resources in the last 2 years to permit us to bring more judges on board and to address the rather significant backlog already in place. In my view, it is the Congress that has saved the disability adjudication system in this Nation, and I am proud of each and every Member of Congress for doing so. In doing what you have been able to achieve, you have saved the lives of many Americans, and certainly you have saved a lot of dignity. People are not losing their homes because they are waiting on benefits and are not able to work. More and more are getting their benefits. And believe me, with continued congressional support, more of that will be seen.

We have been advocates for many years of addressing the backlog by appointment of additional judges and the appropriate staff. The results of those recommendations I think are being seen in what we are able to do today. It really is—this is a manpower kind of job. You need people in place to move the cases. And we recognize and appreciate and support the idea that we are a high production operation. We take great respect in doing what we do in that area.

On the other hand, we do grow concerned when the pressure to produce numbers impairs our ability to give a fair due process hearing, and that is happening more and more. That is not to say that we do not support goals. Indeed, I think goals—and I have said this many times—are important in many aspects of our lives, personal and professional. However, goals are becoming quotas at this agency. The record numbers of cases that are being heard, I must tell you, in large part are being heard at that level because judges admittedly are not able to review all of the evidence in a file.

Our average file consists of about 400 pages of evidence. I hope the expectation of the Congress is that we read that evidence and understand that evidence. If you can imagine comparing the file we review, most of which is medical evidence and a little harder than reading a 400-page novel, but similar in many respects, because both tell a story and you cannot skip pages or chapters and still understand the story.

Not so bad, I suppose, if you are reading the novel because the worst embarrassment may well be that you look foolish to your book club when you are discussing the novel. On the other hand, if you fail to review evidence that is critical in a case and you either reverse a case that should not be or you deny a case that should be, you either hurt the claimant and the claimant's family, or you hurt the American people by reversing a case that costs $250,000 at minimum.

Now, if you think about this, even at the low end of the goals the Commissioner mentioned, 40 cases a month is worth about $12 million per judge per month, $120 to $140 million annually. We do not want judges making incorrect decisions. I am concerned that we are or at least potentially being forced to do the numbers by sacrificing the quality of their review.

Now, also understand that it is so wrong to evaluate performance on a per judge per case disposition method. Whether a judge does 2.0 cases a day or 3.0 cases a day is beyond his or her control for the most part. If I could only sit you down with me for a couple weeks and walk through what we do in a hearing office, it would probably be far better in terms of understanding than what I can explain to you. But suffice it to say that we are totally dependent on what comes into our office from DDS. Oftentimes it takes our staff significant amounts of time to create a file that can go to a judge for hearing. We then get a file that is sometimes 2 years old and no medical development. You cannot hold a hearing without medical development or at least exploring whether there is additional medical evidence. It would be unfair to the claimant and, indeed, even worse if the claimant was unable to afford some medical care and you need to order some kind of medical evaluation to assist you in the disability process.

So we are concerned about the process. We are concerned that we are measured in terms of cases per day. That is not as it should be. There is a better way to evaluate an office's performance, and we do not need to get into that here at this point, but it should be a quantitative kind of assessment based on the production or the performance of all the staff in a hearing office, not just the judge, because the judge cannot control the number that goes out each week or each month.

There are a number of things that we are very appreciative of this Commissioner. He was quick to appoint judges. He was quick to train those judges, and as a result, the American people have been well served.

There are other programs that he has established that we, too, believe have been important to help reduce the backlog. They have been mentioned, and I will not go into them at this point.

There are a couple things, however, that I want you to know that we do disagree with. We disagree with the large number of management positions that have been established in the last 2 years in the agency. In our view, that does little to assist us in addressing the backlog. What obviously from our history now assists the backlog is judges and judges' staff, not more Senior Executive Service (SES) people, not an expensive Deputy Commissioner's office, and certainly not additional management positions in the regional offices across the country. We believe those resources should have been better used in appointing staff, particularly in those offices where we do not have the 4.5 ratio. In fact, we believe judges are most productive if we have a ratio of five staff per judge. That ensures that cases get processed, good decisions get written and issued.

Senator VOINOVICH. Mr. Frye, could you kind of wrap it up?

Judge FRYE. I am. Just before doing that, there are three things that I would like to leave you with that are important to judges.

First is courtroom security. We are terribly concerned about the increased threats against judges and judges' lives because of the unfavorable decisions that are issued.

We also believe morale has been adversely affected because our judges do not have an adequate pension system. We ask you to support H.R. 2850.

And, finally, we ask that you support a bill in the Senate that would provide judges with the same leave benefit that other members of senior staff have been provided as a result of legislation in 2004.

With that, again I give you my thanks, and to you, Senator Voinovich, we wish you well in your new venture in life.

Senator VOINOVICH. Thank you very much.

You both had an opportunity to hear the testimony of Mr. Astrue and Mr. O'Carroll, and I would like to get into the issue of the DDS and their importance to the system. You just were mentioning, Mr. Frye, what kind of paperwork do you get that comes before you, and how good that is and how thorough it is has a lot to do with whether or not a judge and staff can get it ready so that you can come up with the right decision.

In addition to that, it appears that in many cases you have people turned down and then reversed when they go to the judges, and it varies around the country. You just wonder what kind of uniform training people get in terms of what is the basis of someone's eligibility.

So I would be interested in having you comment on how important that is and also the issue of this furlough business at a time when cases are increasing. You said a 48-percent increase?

Mr. WARSINSKEY. Yes. And SSA has also been getting help from the component in Chicago to look at cases. They have a component up there to help them on that. But even with help the DDSs still have more pending cases up, and I know this is startling but—I have been tracking cases week to week this fiscal year that started, 2011. They have been going up on a weekly basis, so it is not a good situation, with the furloughs.

Senator VOINOVICH. In other words, you have 48 percent more cases than you had in, what, 2008?

Mr. WARSINSKEY. At the beginning of fiscal year 2009. There is 48 percent more cases pending. That is one of the reasons why the processing time has gone up.

Senator VOINOVICH. Mr. Frye, do you want to comment on that?

Judge FRYE. Indeed, thank you. I have been an ALJ for 16 years, and I have had the pleasure of hearing cases in different parts of the country, so I have seen the work product from different DDSs. I also was at the agency when it began a process of trying to make more uniform decisions at the time—I think that program was called Process Unification—to convince the DDS to follow the Commissioner's rules and regulations.

I think there has been improvement, but I do not think there has been enough improvement. I think that there are times I am so frustrated that I want to call my congressional representatives and say please Federalize this program because we need uniformity, and it seems to me that is the only way you are going to get it in the long term.

I do not know the answer, but I do think——

Senator VOINOVICH. Do you think that is a good idea?

Judge FRYE. I think it is a great idea. I think it is—it will resolve the problem, believe me. I know it is, I have been told at least, a huge political issue because of——

Senator VOINOVICH. Well, who hires these people?

Judge FRYE. The State.

Senator VOINOVICH. So, in other words, they are applying to the State, and they have the control over it.

Judge FRYE. Yes.

Senator VOINOVICH. So you get whatever the State decided——

Judge FRYE. Indeed.

Senator VOINOVICH [continuing]. In terms of those offices.

Judge FRYE. That is correct. Yes, I think it is an area ripe for some oversight hearings and legislation.

Senator VOINOVICH. And how about this furlough thing? Would you urge Congress to try and——

Judge FRYE. It is incredibly—I cannot imagine that everyone in the country would not be outraged over furloughing employees in a State whose salary is being paid by the Federal Government. I thought it would be a slam-dunk to reverse the California decision. But, obviously, and as the Commissioner said, other States followed. It has been a battle on a regular basis. It is unfortunate. It is an American tragedy, in my view. And I am sure it is not consistent with the intent of Congress.

Senator VOINOVICH. Well, part of the problem I think is—at least that is what I have heard from our State—that we have to treat them all alike. If we did that, then the unions would come back to us and say, "If you are not furloughing these people, then, by golly, you should not be furloughing the others."

Has there been any kind of—do you belong to any national labor organizations where——

Judge FRYE. We are associated with a national labor organization, but I can assure you that we would not oppose Federally funded employees doing their jobs during periods where other non-federally funded employees may have to take a furlough. These are not like positions. They are different positions. And they are funded differently.

So I think it is most unfair that Governors have taken the positions they have and have in reality hurt the people who are the bottom of the spectrum who are waiting for decisions. I think that is unconscionable.

Mr. WARSINSKEY. There may be other ways to force the States to do things other than Federalizing them. I do agree that if you Federalize them, I think you will have uniformity because there are some differences in the approval rates among the DDSs. And I think you would have uniform training, although I think they do try to have training in every State be the same. I think there would be a lot of advantages to it. I agree with the Commissioner that it would be more costly, but in the long run, you might save money. You would have fewer cases going to the hearing offices, which is expensive and has untold hardships to the public.

On legislation, maybe the Congress could hold some money back from the States for other things that—I do not know if that is possible, because they do give a lot of money to the States. If they are not going to fully fund the DDS and they are going to furlough State employees that work on the cases then we should not pay everything.

Senator VOINOVICH. To change the subject, something that the folks have testified to and, that is, this whole business of the ap-

propriations and the continuing resolutions. You know, you are on the firing line. You run a local office. What kind of havoc does it play in terms of your offices, in terms of your decisionmaking, when you are on a continuing resolution and you are not aware of what—I mean, even the lease for this building I suspect might have been up in the air because the appropriation had not been made and they could not enter the lease because they did not know whether the money to pay for the lease would be available. Could you comment on that?

Mr. WARSINSKEY. Well, I can tell you, being in Cleveland, our offices are really busy. The walk-in traffic is very high. We are getting a tremendous number of calls. We are packed with people coming in to visit us, and a lot of it is because of the workloads we have been asked to do. SSI redeterminations is a large workload for us, continuing disability reviews, and we have a lot more people coming in to file for disability.

If you cut back, what will happen if we do not get the adequate funding this year, then we will probably go into a freeze. We will not be able to hire. We will probably have less extra hours to work.

Senator VOINOVICH. Well, where are you right now? You are on a continuing resolution. What does that mean to you? That you are just able to spend what you spent last time?

Mr. WARSINSKEY. Right.

Senator VOINOVICH. And you are anticipating that you are going to have more money because of the appropriations, but you have to hold that in abeyance until the appropriation is made?

Mr. WARSINSKEY. Correct. And so if we do not get it—I mean, we are kind of on hold—we are treading water right now, waiting. And that is very inefficient for us, as the Commissioner mentioned, because you cannot really plan ahead. You cannot do the kind of hiring you need to do for the year.

Most of the time we hire the second half of the year, and we are doing our training now for all of our hires we did this past year. It just is not efficient.

Senator VOINOVICH. Mr. Frye, would you like to comment on that?

Judge FRYE. Indeed. I have spent over 37 years in the Federal Government, and a great pleasure spending a couple of years in the Cincinnati regional office of the National Labor Relations Board as its Director. I have never seen a good situation come from spending resolutions at the end of the year. We have always had to cut back, always spend money in the most inefficient way, and more toward the end of the year, further backlogs build, even worse here, because, yes, it will build more backlogs, but the problem is much deeper than that. It hurts people. And that is why I urge Congress to please pass the budget for at least this agency or create a higher spending level for this agency. It is just too tragic for the American people. I just cannot express that enough.

Mr. WARSINSKEY. SSA does not have the flexibility to cut back. They are not an agency with a lot of programs. Most of their budget goes to paying personnel costs and to support that. So if they get cut, it is going to get cut directly into the staff that services the people.

Senator VOINOVICH. Senator Akaka.

Senator AKAKA. Thank you very much.

Mr. Warsinskey, you testified that while SSA has hired new ALJs and support staff, many current ALJs and staff are eligible for retirement now or in the coming years. What management challenges would SSA face if these employees are not replaced, and what steps have been taken to address these potential skill gaps? It has been mentioned that appropriations, of course, is one of the key parts of this. In addition to that, what management challenges do you see?

Mr. WARSINSKEY. I have always said as a manager the most important thing a manager does is who they hire and being able to hire the best people as you can and it makes the most difference. And I think we have to have the necessary time to recruit people, to hire people. I cannot speak as much for the judges, but, I know that they do hire using those lists and the rule of three, and there has been some discussions, I know, with OPM about moving away from the rule of three just for hiring in general for the Federal Government to well-qualified lists. They are making that change now. John Berry is doing that. I think that is an improvement, allowing us a little bit more flexibility in terms of who we select off a list.

I have gone to a number of recruiting fairs this year. I go personally. I meet with people to sell them on coming to work for Social Security. We work hard in our agency. I think we are one of the hardest-working agencies in government, and you have to have good people.

In terms of management, I think we have a culture to have good management. I think it is important that you don't just manage but also, I think, have a staff that wants to work for you and have good morale. I think we really preach that. We are under the gun. I mean, the staff is under the gun, and they know that. But, you try to have good morale. Every day you come to work and reflect that in management. And training, I know, Senator, both of you have been very interested in training. SSA does try to do as much training as they can. It is sometimes challenging for us to train because we are so busy and we have so much work to do and we have to take that necessary time aside to train. But you have to invest in your people.

Senator AKAKA. Mr. Frye, I appreciate you mentioning my ALJ leave equity bill. It would put ALJs on equal footing with other senior-level Federal employees and would be a valuable tool for recruiting talented attorneys from the private sector to government service.

What sorts of challenges or frustrations have the ALJ workforce at SSA expressed regarding recruiting and retaining qualified individuals?

Judge FRYE. I think we have been over the years as frustrated as heads of agencies have been because of some of the problems at OPM.

On the other hand, I think under Director Berry he has the system back in queue, and I think he is performing. I think we are getting good candidates. I visit usually with all of the new appointees, and I am incredibly impressed with what we are able to bring into the system. Could it be more efficient? I am sure it

could. Could they increase the qualifications? I am sure they could, to bring in perhaps more experienced candidates.

With respect to the attorney hiring, there is always some good out there when there is bad, and the recession has been bad for most of us. But I can tell you, we are hiring the best attorneys I have seen even going back 30 years with the National Labor Relations Board, and that is directly because of the recession, lay-offs in law firms. We are getting top-notch lawyers on board, and that is making a difference in terms of helping judges issue quality decisions.

Senator AKAKA. Mr. Frye, you testified that focusing on a number of dispositions issued per judge can lead to cutting corners to meet output goals. You also testified that measuring the work output of each work unit would help SSA more accurately measure productivity and direct its resources.

Would you please elaborate on that suggestion, and how you believe it would help?

Judge FRYE. Well, again, I made that statement in my testimony, written testimony, earlier. And it is based on my management experience at the National Labor Relations Board. That is the way we evaluated offices, not based on a number of decisions that a regional director issued, as an example.

A hearing office is a group of different employees assigned to do different but very important tasks to assist the judge in getting cases out. If you want an accurate measurement of the work productivity of a hearing office, you develop discrete units of work for each of those groups, and you measure then the output of the group. Believe me, judges are working as hard as they ever have. Judges are working at night. They are working on weekends to meet this 500 goal. It is unfair, I think, to put them out as the reason a judge—or a hearing office is falling below the Commissioner's goal. It is not the hearing office that is failing. It is the judge that is failing, when in reality the judge does not control the number of decisions he or she issues.

So I think it is a much better way and a better way for Congress to understand. Do I have a problem in Ohio? And if I do, where is the problem? With productivity units for all of the work units, this would take into account staffing ratios, whether you are understaffed or overstaffed. The training issue could be factored in. So many of these factors could give you a much better picture of what is going on in different hearing offices.

Now, with respect to Ohio, I know for a fact our judges have worked far more than 40 hours a week trying to address the backlog here. They are honorable men and women, and I am proud to be associated with them. I think they would be better served with a different way to measure the success of a particular hearing office.

Senator AKAKA. Thank you.

Any further questions?

Senator VOINOVICH. Just for the record, what is the starting salary of an administrative law judge?

Judge FRYE. That is a very good question. I am not certain what the starting salary is. I think, however, because of pay compression it has dropped below a GS–15 level. I do know the top pay is

around $162,000 or $163,000 to $167,000, depending on where you live based on the cost-of-living factors for those cities. I would guess it is in the low hundreds, the starting rate, and it goes up to $167,00, basically.

Senator VOINOVICH. And it is a lifetime appointment.

Judge FRYE. It is lifetime, but not the same as Article III judges. There are areas that judges can be removed for. The Commissioner indicated conduct is one, and we certainly support that. We do not want judges who are engaging in misconduct as part of our corps.

Senator VOINOVICH. What kind of peer pressure does your organization exert on your judges in terms of meeting high standards? And so you have annual training sessions every year for your members and so forth?

Judge FRYE. We do indeed. And, in fact, it is one of the real important things this organization does. We sponsor an educational seminar every year. This past year was our 19th. We developed the program. We put the program on. Judges pay their own expenses to come. And, indeed, we encourage both quantitative and qualitative performance. All of our judges understand we are in a huge, high-volume adjudicatory system, and we are proud of that fact, and we want to serve the American people well.

Believe me, this organization emphasizes performance. We do not believe, however, that judges should be hearing cases that they are not prepared to hear.

Senator VOINOVICH. Now, the staffing level is determined by you. Is that right? You hire the staffing people?

Mr. WARSINSKEY. Yes, SSA hires the staffing people. The number of people assigned to each hearing office is decided by SSA. You know, staffing comes down from the headquarters, then goes down to the regional—

Senator VOINOVICH. Let me just say this: OPM puts out the notice of job availability, correct?

Mr. WARSINSKEY. Correct.

Senator VOINOVICH. OK. And then they send you the list?

Mr. WARSINSKEY. Right.

Senator VOINOVICH. And then you select based on one in three, but you know right now under the law you can do categorical hiring, too.

Mr. WARSINSKEY. That is just changing.

Senator VOINOVICH. Pardon?

Mr. WARSINSKEY. That is just changing, right. It started November 1, right.

Senator VOINOVICH. Well, it should have been done a couple years ago.

Mr. WARSINSKEY. Yes. Right. [Laughter.]

Senator VOINOVICH. It just did not get done. So the point is, though, you are hiring the staffing people to provide the staff to your judges. Is that right?

Mr. WARSINSKEY. Right. I mean, there are two different lists. There is one for the judges, and there is a list that we have for the hearings offices, and those are advertised in USAjobs, also. And then, as you say, there was the rule of three, and now there is this category rating which they will be using to hire them.

Senator VOINOVICH. We are changing that system, aren't we, Senator Akaka? The President has an Executive Order out, and we are trying to put it in law so that——

Mr. WARSINSKEY. All the human resource departments are now implementing it now, so they will not be using the old method, right.

Senator VOINOVICH. Good. And you do the training then of those individuals, the staff and new people you bring on?

Mr. WARSINSKEY. Yes. We have to train them. I mean, anyone that comes in to work for any Social Security office generally does not understand the lingo we use. There is quite a bit of training. In the field office, you start out with usually 4 or 5 months of training, and you have a similar amount, quite a bit of training in the hearings offices. And it is just critical, and you have to have ongoing training. Our jobs are very complicated. There is no college you can go to—to learn Social Security. Obviously, in a hearings office, you are going to have a lot of attorneys, senior attorneys, plus the judges that have legal training that is specialized that they need to have.

Senator VOINOVICH. So when you were talking about the quality of lawyers that are available, these are lawyers that come in and are doing the staffing. Is that it?

Judge FRYE. That is correct.

Senator VOINOVICH. So many of the people that you hire on staffing are attorneys, correct?

Mr. WARSINSKEY. Right. They recruit often at the local law schools, like at Akron U and Cleveland Marshall, and——

Senator VOINOVICH. Those are for staffing positions in Social Security.

Mr. WARSINSKEY. Right. There are many attorneys, these attorneys provide a great deal of support in the hearing offices, and one of the things they are doing now is they are assisting the judges now on the decisions to take off some of the work on them, on the cases. Mr. Frye probably can talk more about that, but that is cutting down on some of the work, although in our written testimony we pointed out that I think the judges are having to handle probably some more complicated cases on average now because they are trying to take off some of the other cases that could be handled by the attorneys.

Senator VOINOVICH. What percentage of the cases are people who are represented by lawyers?

Judge FRYE. It probably varies geographically. In the Charlotte area, we are up to about probably 94, 95 percent. A very high rate. And that is not bad. I think that has been beneficial to the process.

Senator VOINOVICH. What do those lawyers get if they are successful?

Judge FRYE. By law, they get a percentage of the back pay that may be due the claimant up to, I think, $6,000, maybe more.

Senator VOINOVICH. What?

Judge FRYE. Up to $6,000 per case.

Senator VOINOVICH. It is a monetary limit rather than a percentage?

Judge FRYE. Indeed—well, there is a percentage, but the percentage would kick in if there is less back benefits withheld. For exam-

ple, if the back benefits due a claimant is only $4,000, they are limited to that amount.

Senator VOINOVICH. So, really, in effect, the people that represent people before you are kind of limited in terms of their compensation based on some kind of procedural standards?

Judge FRYE. They are limited to the extent that the law precludes more than 25 percent of back benefits, yes. On the other hand—and I do not want to speak for the attorneys of the world—I think most disability attorneys do quite well financially in representing claimants. And I think they do a very good job in representing claimants.

Senator VOINOVICH. But if the DDS did a lot better job, there would be less claims that needed lawyers.

Judge FRYE. No doubt about that. There is no doubt about that. I do not want to say a "better" job. Perhaps they do not have the resources they need to address the issues more accurately.

Senator VOINOVICH. Senator Akaka, do you have any other questions?

Senator AKAKA. No.

Senator VOINOVICH. Well, we want to thank you very much, Mr. Frye, for coming here and speaking for your organization.

Senator AKAKA. At this point, let me say thank you to our witnesses for testifying today. I have learned a great deal about the challenges facing the Social Security Administration, particularly in the area of furloughs and the need for increased resources. I am encouraged by the progress that has been made in Ohio and across the Nation, and I look forward to monitoring these issues in this next Congress.

George, at this point I would like to defer to you for any closing statement you have.

Senator VOINOVICH. Well, first of all, I want to again thank you, Senator Akaka, for being here today. We talked about this. Ordinarily in this time of a person's—I am retiring. Someone will ask, "What in the world are you having a hearing for?" But this is an issue that Senator Akaka and I have been working on a long time, and I really know how important it is to people. I get a weekly report from Michael Dustman, who is here, some of my staff people, and, Senator Akaka, I want to thank you for your staff people and the cooperation we have from them. But we get these reports back, and your heart goes out to these people. And this system has been around a long time, and it just seems like, it is one step forward, two steps back. And unless we stay on it, it is going to fall apart again. And I think part of the problem is that not enough people understand how important it is and how the system works. So I am hoping that, Senator, as a result of this hearing—I have written some things down. I am going to get on our new Governor and the legislative leaders and talk to John Berry again about some of the things that came up here, because John is doing a good job. He is probably one of the best OPM people that we have had since—I have been there 12 years, and he is very good. He is very conscientious, wants to do the job. So hopefully as a result of this hearing—write and tell your friends—maybe something is going to happen. Brother Akaka will be there to help out, and, Mr. Warsinskey,

thank you very much for your service, both of your services, distinguished—how many years in the Federal Government?

Judge FRYE. Thirty-seven.

Senator VOINOVICH. Thirty-seven. I have been in the business almost 45, and I thought it is time to get off the stage. So thank you very, very much, and I want to thank—probably there are people here that work in your offices that are here. We want to thank you, too, for your services to our country. You are making a difference in people's lives. You know what happens sometimes. We get in the weeds and the trees, and we kind of forget about we are touching people's lives. And I think one of the compensations that certainly I have derived—and I am sure Senator Akaka—from being in government is the opportunity to make a difference in people's lives. A great opportunity to witness the second great commandment.

So I thank you all very much for being here, and, Senator Akaka, you are the Chairman. You can adjourn the meeting.

Senator AKAKA. You can adjourn.

Senator VOINOVICH. OK, thank you. The meeting is adjourned.

[Whereupon, at 11 a.m., the Subcommittee was adjourned.]

APPENDIX

Statement
Committee on Homeland Security and Governmental Affairs, Subcommittee on Oversight of Government Management, the Federal Workforce and the District of Columbia
"Improving Social Security Disability Insurance Claim Processing in Ohio"
November 15, 2010
Senator Sherrod Brown

Thank you, Senator Voinovich and Senator Akaka for calling this field hearing. And thank you to the witnesses for joining this morning.

The topic of Social Security Disability Benefits is of utmost importance to the more than 842,000 Americans currently seeking these benefits.

Unfortunately, Ohio has the longest wait time in the country for disability benefits. On average, Ohioans must wait 591 days – almost 20 months -- to receive a hearing and a benefits decision. This is an improvement from 2008, when the average wait time was nearly 758 days; however, such an extensive delay is still unacceptable.

According to the Social Security Administration, it is estimated that that the agency will receive more than 3.3 million applications for disability benefits this year - 700,000 more applications than were received in 2009. At the same time, the workers primarily responsible for addressing disability claims are being furloughed to address Ohio's budget deficit.

Combine these staff shortages with the additional claims that have resulted from the recession and an aging population, and it is easy to see how these reductions in wait times may be reversed if action is not promptly taken.

The first step to reducing the backlog is to ensure that the Social Security Administration has the resources they need to achieve these goals. For this reason, I have consistently supported legislation that would increase funding for the Social Security Administration.

This funding has allowed two additional field offices to open in Akron and Toledo. These offices will help move Ohio one step closer to the goal set by Social Security Commissioner Michael Astrue, which is to reduce the average wait time for all six offices in the state from over 500 days to 270 days by 2013.

I have also introduced the Benefit Rating Acceleration for Veterans Entitlements (BRAVE) Act. The BRAVE Act would improve veterans' access to the benefits they have earned through the creation of a new fast-track system. This system would allow veterans who are deemed disabled by the Department of Veterans Affairs (VA) to automatically be eligible for disability benefits through the Social Security Administration (SSA). This would eliminate the repetitive and lengthy eligibility process disabled veterans must undergo to receive full benefits from the VA and SSA.

VerDate Nov 24 2008 15:17 May 17, 2011 Jkt 063865 PO 00000 Frm 00039 Fmt 6601 Sfmt 6601 P:\DOCS\63865.TXT SAFFAIRS PsN: PAT

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It is imperative that the men and women who have served our nation are treated with the utmost respect and that their claims for Social Security disability benefits are processed in a fair and efficient manner.

Finally, I am proud to have introduced the Arthur Woolweaver, Jr., Social Security Act Improvements for the Terminally Ill Act. This legislation would eliminate the five month waiting period for individuals diagnosed with a terminal illness.

I introduced this bill to honor Mr. Woolweaver, an Ohioan who passed away without receiving his disability benefits and to prevent such an unfair and tragic incident from reoccurring.

Reducing the Social Security backlog and ensuring that the men and women who have earned these benefits have access to them is a priority of mine. Thank you again Senator Voinovich for your career commitment and dedication to this important issue.

I am eager to hear the witnesses' recommendations regarding how we can reduce Ohio's tremendous backlog of Social Security Disability applicants.

Thank you.

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

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

UNITED STATES SENATE

FIELD HEARING—AKRON, OHIO

NOVEMBER 15, 2010

STATEMENT
OF
MICHAEL J. ASTRUE
COMMISSIONER
SOCIAL SECURITY ADMINISTRATION

63865.003

Introduction

Chairman Akaka, Ranking Member Voinovich, and Members of the Subcommittee:

Thank you for this opportunity to discuss our rapidly improving disability process.

A few months ago, on Social Security's 75th anniversary, President Obama noted that the Social Security programs are "a lasting promise that we can retire with dignity and peace of mind, that workers who become disabled can support themselves, and that families who suffer the loss of a loved one will not live in poverty." To keep that promise, every day the men and women of our agency provide high-quality service to the millions of Americans who turn to us for help.

I am proud to report that with the funding Congress provided in fiscal year (FY) 2010, we continue to deliver on our commitments to improve service and increase our program integrity efforts. Our accomplishments are particularly remarkable considering the continued surge of benefit applications and the furloughs of disability determination services (DDS) employees in many states.

Eliminating our hearings backlog continues to be our number one priority, and we have made substantial progress in reducing the number of pending hearings and the amount of time a claimant must wait for a hearing decision. Our progress is not limited to the hearings workload. Our employees worked hard to keep the number of pending initial disability cases below our FY 2010 expectation even though our offices were flooded with a record number of new claims, and they did so while maintaining a higher level of accuracy than we achieved for most of this decade. Waiting times in our field offices dropped, and we achieved our best performance on the 800 Number since we began collecting data nearly a decade ago. We increased staffing for program integrity, which allowed us to increase the number of Supplemental Security Income (SSI) redeterminations and improve our SSI accuracy rates.

I must give credit for these successes to our employees. From FY 2007 to FY 2010, they increased their productivity by an astounding average of nearly 3.7 percent per year. I am privileged to lead a workforce dedicated to the highest standards of public service. Despite the pressures that increased workloads bring,

VerDate Nov 24 2008 15:17 May 17, 2011 Jkt 063865 PO 00000 Frm 00042 Fmt 6601 Sfmt 6601 P:\DOCS\63865.TXT SAFFAIRS PsN: PAT

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our employees embrace the challenges and voted us one of the top ten best places to work in the Federal Government for the third consecutive year.

Our employees are grateful for the new employees now on duty in our offices, and we thank Congress for its support. In FY 2009, we received $500 million in Recovery Act funding to address our disability backlogs. For the past two years, we wisely used that funding and our annual appropriations to hire aggressively and work overtime to reduce our backlogs, handle more claims, and better serve the public. For the continuation of this important progress, we urge Congress to act swiftly to enact the President's FY 2011 Budget. Our employees are proud of how far we have come over the last two years and they do not want to backtrack.

We did what we could to prepare for the anticipated continuing resolution (CR). In July, we instituted a full hiring freeze for all headquarters and regional office staff. Since the beginning of FY 2011, we only authorized components critical to the backlog reduction effort to replace staffing losses. This plan is a temporary measure that we cannot sustain. Without enactment of the President's FY 2011 Budget, we may be forced to impose furlough days, which would devastate all that we have accomplished over the last two years. We implore Congress to approve the critical funding that the President has requested for us.

Eliminating the Hearings Backlog

Over the last three years, we have implemented a comprehensive plan to eliminate the hearings backlog and prevent its recurrence by hiring more administrative law judges (ALJ) and support staff, adding new hearing offices, realigning workloads, and introducing technology and business process improvements. Our plan is succeeding. The Government Accountability Office validated our progress in July 2009 finding that we have a 78 percent chance of meeting or exceeding our target date of 2013 to eliminate the backlog.

After pending hearings peaked in December 2008, we reduced that number by more than 60,000 cases. We ended FY 2010 with 705,367 cases pending, our lowest end of year pending since FY 2004. Two-thirds of these cases were pending less than 270 days, which is our target pending time. We have made these gains despite record FY 2010 receipts of over 720,000 hearing requests—a jump of nearly 100,000 receipts from FY 2009.

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Our ALJs are doing their part to drive down the hearings backlog. In FY 2008, we announced our expectation that each ALJ issue 500-700 legally sufficient hearing decisions each year. At that time, only 46 percent of the ALJs nationwide were deciding at least 500 cases. In FY 2010, without any significant change in the allowance and denial rates, 74 percent of ALJs completed 500 or more dispositions. Even though a lower percentage of Ohio ALJs currently meet the guideline, they are moving in the right direction. The percentage of Ohio ALJs meeting the guideline increased by 24 percent in the past year.

Last week, I addressed our newest group of 73 ALJs at their swearing-in and emphasized how critical their service is to the public. I am confident that our new hires will meet the highest professional and ethical standards expected of an ALJ. We continue to work with the Office of Personnel Management to find and hire the most qualified ALJ candidates.

Four years ago, we had cases pending over 1,000 days, and some as old as 1,400 days. Waiting this long for a hearing decision is simply unacceptable, and we committed to focus on the most aged cases. Over the last three years, we have decided over one-half million cases that were 825 days or older; now, we have essentially none. This year, we are aiming at resolving all cases 775 days or older. Even as we eliminated the oldest, most time-consuming cases, we reduced the average time it takes to make a decision by nearly five months, from a monthly high of 532 days in August 2008 to 377 days in October 2010—the lowest average processing time in more than six years. Moreover, every hearing office nationwide had an average processing time under 600 days in September and October 2010.

We are speeding decisions to claimants throughout the country, including Ohio. Since May 2007, when I joined Ranking Member Voinovich in Columbus for a roundtable discussion with chief ALJs and hearing office directors, we have improved all of our major hearing office performance metrics in the State. Four years ago, average processing times in the Ohio hearing offices were between 600-800 days. Now, the average processing has decreased to 400-600 days, and is dropping. We are making the greatest progress in the most backlogged offices. For example, in May 2007, the Columbus Hearing Office had the worst average processing time in the State at 760 days. By the end of October 2010, the wait time had decreased to 557 days, meaning claimants waited nearly seven months less for their hearing. The number of cases pending a hearing has dropped nearly 40 percent, from over 40,000 cases to about 25,000 cases. There are 50 percent

VerDate Nov 24 2008 15:17 May 17, 2011 Jkt 063865 PO 00000 Frm 00044 Fmt 6601 Sfmt 6601 P:\DOCS\63865.TXT SAFFAIRS PsN: PAT

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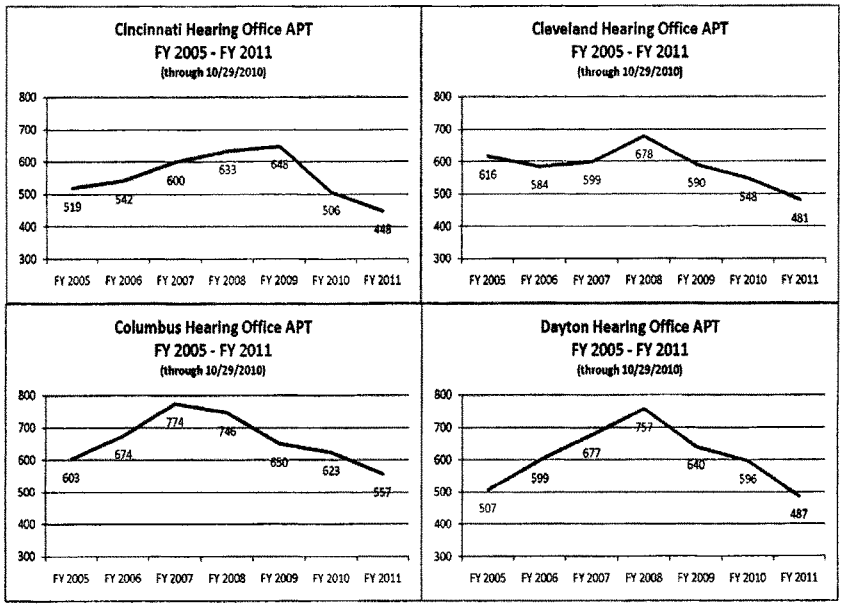
fewer cases pending per ALJ, and the number of dispositions per available ALJ has increased slightly.

Table 1

OHIO HEARING OFFICES AVERAGE PROCESSING TIME (APT) FY 2005 - FY 2011



In the last three months, we have significantly increased our capacity to decide cases. The Akron and Toledo Hearing Offices both opened in August 2010. With that additional capacity, we will drastically drive down the wait times over the next year. The Toledo Hearing Office currently employs 55 staff, including 10 ALJs. The Akron Hearing Office currently employs 64 staff, including 11 ALJs. I am pleased to report that most of these hires are already on-board. We also plan to add additional staff and space in the Cincinnati, Cleveland, and Columbus hearing offices. In addition, the St. Louis National Hearing Center, which conducts hearings using video, receives 300 cases per month from the Cleveland Hearing Office and 400 cases per month from the Columbus Hearing Office.

VerDate Nov 24 2008 15:17 May 17, 2011 Jkt 063865 PO 00000 Frm 00045 Fmt 6601 Sfmt 6601 P:\DOCS\63865.TXT SAFFAIRS PsN: PAT

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Our hearing reduction plan includes innovative initiatives to make our business processes more efficient. We are using our attorney adjudicators to screen hearing requests to determine if they can issue a fully favorable decision on-the-record without the need for a hearing. In FY 2010, attorney adjudicators issued nearly 55,000 decisions.

We built upon the success of our attorney adjudicators by establishing a Virtual Screening Unit (VSU) of attorney adjudicators to assist our most heavily backlogged hearing offices. These attorney adjudicators, who are stationed in hearing offices throughout the country, screen electronic cases and write favorable decisions. The VSU started screening cases in November 2009 and went into full production in January 2010. In FY 2010, the VSU screened more than 50,000 cases and issued over 15,000 favorable decisions. The VSU has assisted 55 hearing offices, including Cincinnati, Columbus, and Dayton.

Centralized printing and mailing frees up hearing office staff from routine tasks, such as producing, folding, and mailing millions of notices annually. We electronically transmit documents from our hearing offices to a centralized print server for mailing. In FY 2008, all hearing offices began using this process. ALJs and attorney adjudicators began piloting the ability to electronically sign and centrally print decisions in FY 2009, which culminated in a national rollout in FY 2010.

We also developed a standardized electronic business process (eBP) that establishes effective, efficient, and consistent case processing methods for all hearing offices. After successful testing and piloting, we rolled out the eBP to all of our hearing offices last fiscal year. We continue to update the process to incorporate electronic processing advancements such as automated issuance of notices, enhanced protection of personally identifiable information, and payment effectuation efficiencies following favorable decisions.

We are expanding our Representative Video Project (RVP), which allows representatives who have purchased video-teleconferencing equipment to participate in hearings from their offices. Since FY 2009, we have held over 3,500 RVP hearings. We are piloting the use of a high-speed Internet connection in order to make RVP accessible to more representatives. RVP may be particularly helpful for claimants in rural communities, who otherwise would need to travel a long distance to attend a hearing.

VerDate Nov 24 2008 15:17 May 17, 2011 Jkt 063865 PO 00000 Frm 00046 Fmt 6601 Sfmt 6601 P:\DOCS\63865.TXT SAFFAIRS PsN: PAT

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Our efforts to reduce the hearings backlog and issue more ALJ decisions have created additional work for the Appeals Council. To expand adjudicative capacity at the Appeals Council, we hired new staff. We revamped training programs to take advantage of recent technological improvements, and many of our new employees have exceeded performance expectations during their training period. Appeals Council dispositions of requests for review have begun to approach the level of receipts. We expect the tipping point—when dispositions begin to outpace receipts on a regular basis—to occur in FY 2011.

These plans will make a difference to the American people but they are contingent on receiving a timely and sufficient budget. The President's FY 2011 Budget allows us to hire 70 ALJs plus their support staff, increasing our ALJ corps to over 1,450 judges. The budget would also allow us to continue our plans to open or expand 19 offices this fiscal year. Together, these staff and office additions will allow us to reduce processing times and to complete nearly 815,000 hearings, an all-time high for the agency. Our budget goal is to reduce the hearings backlog by about 40,000 cases this fiscal year, and we hope to exceed that goal.

Responding to the Rise in Disability Claims

While we drive down the hearings backlog, we must also respond to the increase in disability claims resulting from the economic downturn. The most important thing we can do to improve the disability process in Ohio and across the country is to make the right decision as early as possible. We must timely and accurately process claims at the first steps of the disability process.

The surge in disability claims over the past few years has challenged our efforts to improve service at the first steps of the disability process. Nationwide, we received more than 3.2 million disability claims in FY 2010. These receipts represent about 632,000, or about 24 percent, more claims than we received in FY 2008.

We knew we would have to respond aggressively, and our approach needed to have the flexibility to allow us to move resources where they were most needed to address growing workloads. We implemented a strategy to address the increase in initial claims and the growing pending levels, with the goal of returning our pending initial disability claims to a pre-recession level by 2014. The four objectives of our strategy are:

VerDate Nov 24 2008 15:17 May 17, 2011 Jkt 063865 PO 00000 Frm 00047 Fmt 6601 Sfmt 6601 P:\DOCS\63865.TXT SAFFAIRS PsN: PAT

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- Increasing staff in the DDSs and in the Federal disability processing components, particularly disability examiners and medical consultants;
- Improving efficiency through automation;
- Expanding the use of screening tools to assist in identifying claims likely to be allowed; and
- Refining policies and business processes to expedite case processing.

Our strategy has produced measurable and meaningful results across the country. New hires in the DDSs and the Federal disability units, automation, fast-tracking of initial claims, and policy and business process improvements have helped us handle a record number of disability claims. We are on track to reduce the number of pending initial disability claims to the pre-recession level by 2014.

While our pending levels have risen due to increased receipts, we completed nearly 350,000 more initial claims than the year before and kept the pending level about 200,000 cases below what we had anticipated. Our end of year average processing time was 20 days less than we projected. Despite the pressure from growing workloads, our most recent data show that the DDS decisional accuracy is at its highest level since 1997.

By providing the necessary personnel, case assistance, and technological support, staff can focus on more accurately completing their work. Our disability adjudicators are increasingly utilizing our Request for Program Consultation (RPC) process. The RPC process provides a standardized way for disability adjudicators and quality reviewers to resolve quickly differences of opinion concerning disability determinations by identifying policy issues that are misunderstood, unclear, or difficult to follow.

In Ohio in FY 2008 and 2009, a sharp increase in initial disability claims, high staff attrition, and a generally inexperienced staff all contributed to disappointing outcomes. Performance and productivity decreased, processing times climbed well above national averages, and pending workloads in the Ohio Bureau of Disability Determinations (BDD) reached an all-time high. The "cost-savings days" implemented by the State of Ohio further compounded these difficulties.

VerDate Nov 24 2008 15:17 May 17, 2011 Jkt 063865 PO 00000 Frm 00048 Fmt 6601 Sfmt 6601 P:\DOCS\63865.TXT SAFFAIRS PsN: PAT

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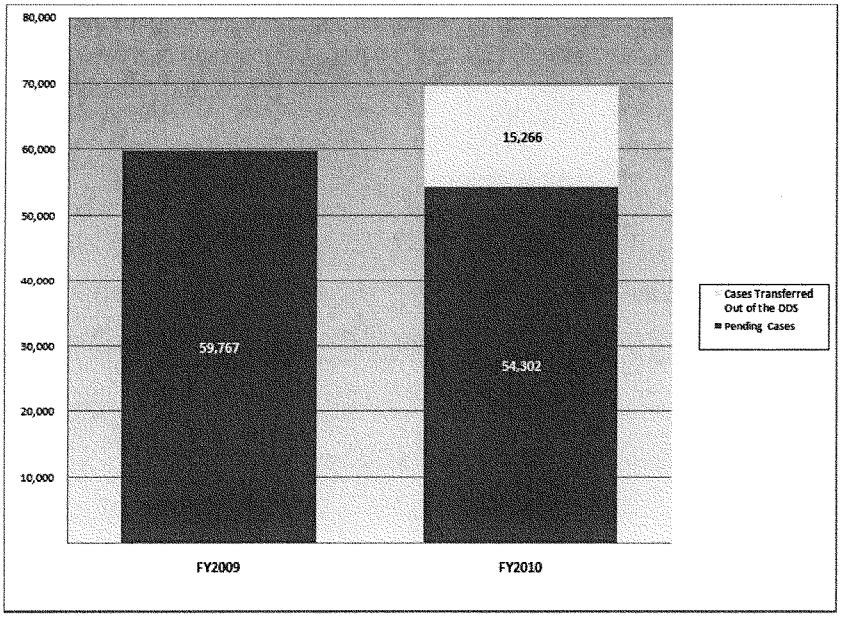
We promptly responded to the negative trends in Ohio, and we were able to turn the situation around in FY 2010. The Ohio BDD needed additional case processing capacity, so we authorized the replacement of all staffing losses and allowed the BDD to increase its staffing by over 90 new hires in the last two years. Since it takes time to fully train new employees, we provided short-term assistance to the Ohio BBD by transferring over 15,000 cases to our Federal processing units in Chicago and Baltimore. We provided Ohio with one of the highest levels of assistance in FY 2010. In addition, we worked with the new leadership in the Ohio BDD to institute several business process changes to create a more efficient process for handling electronic disability claims. As a result, pending initial disability claims fell by 10 percent in FY 2010.

Table 2

TOTAL PENDING WORKLOAD AND WHAT PENDING CASE LEVEL WOULD BE IF OHIO HAD NOT RECEIVED CASE PROCESSING ASSISTANCE



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Our proactive response has significantly improved the service we currently provide to Ohio residents. Ohio closed FY 2010 with a total pending level of 54,302 cases. We estimate that the total pending would have been almost 70,000 cases if we had not interceded with Federal processing assistance. Accuracy improved significantly from about 96 percent in FY 2009 to 98 percent in FY 2010, as our Federal assistance allowed BDD staff to focus on working fewer cases. Productivity is increasing as the new hires gain experience. The BDD is now in a position to handle the workloads. We phased out Federal assistance in July 2010, and we re-directed it to other states with a greater need. We are actively monitoring Ohio's performance and progress, and we stand ready to provide additional assistance to the State if necessary.

It is especially critical for our Ohio claimants that Congress approve the funding that the President has requested for us this fiscal year. The Ohio BDD's FY 2010 staff attrition rate of 15 percent is higher than the national average of 10.6 percent.

At a time when the DDSs need our assistance more than ever, a number of States have misguidedly imposed unnecessary and destructive furloughs on DDS employees. The Federal Government fully funds the salaries and benefits of DDS employees and all attributable overhead. It is wrong for States to respond to fiscal crisis by furloughing these employees.

Through September 2010, furloughs delayed about $29 million in benefits nationwide and have cost States over $56 million in lost administrative funding for the DDSs. In Ohio, we estimate that the 20 furlough days in FYs 2010 and 2011 will result in over $7.3 million in lost Federal funds for the Ohio BDD. Additionally, the furloughs will delay the processing of nearly 16,000 disability claims, postponing over $3.7 million in Federal benefits to the State's most vulnerable citizens. In an effort to stop these detrimental furloughs, the Administration has proposed legislation that would prohibit States from furloughing fully Federally funded DDS employees without the Commissioner's approval. We have organized more detailed data about furloughs at www.socialsecurity.gov/furloughs.

VerDate Nov 24 2008 15:17 May 17, 2011 Jkt 063865 PO 00000 Frm 00050 Fmt 6601 Sfmt 6601 P:\DOCS\63865.TXT SAFFAIRS PsN: PAT

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Increasing Staffing in DDS and Federal Processing Components

As the number of initial disability claims began to swell, we expanded our State and Federal adjudicative capacity. In the last two years, we provided the DDSs with the resources to replace staffing losses and to add about 2,800 more employees. The Ohio BDD replaced all of its losses and added over 90 new employees. The current staffing level in the Ohio BDD is 17 percent higher than at the end of FY 2008.

We also added staff in our Federal disability case processing centers to assist the DDSs most adversely affected by the increase in claims. We currently have a Federal unit in each of our ten regions and two units in Baltimore that assist the DDSs with processing claims.

We created four centralized units, similar to the NHCs, to assist states where needed. These units, called Extended Service Teams (EST), are located in Arkansas, Mississippi, Virginia, and Oklahoma. We chose these states because of their history of high quality and productivity. The ESTs have already produced significant results. The combined sites handled over 25,000 disability cases in FY 2010, and we expect them to handle 76,000 cases in FY 2011.

Improving Efficiency through Automation

We are using technology to improve our disability claims process. We have developed quicker and easier online services to meet the Baby Boomers' expectations and keep pace with the increase in recession-driven disability claims. Our online services continue to be the best in government and exceed the top private sector sites in customer satisfaction.

Our easy-to-use online application, iClaim, has been a huge success. iClaim allows the public to file for benefits at its own pace and on its own schedule. In FY 2009, we rolled out the first phase of iClaim. We immediately saw a significant increase in Internet claims and the number of iClaims continues to rise. In FY 2010, 26.8 percent of initial disability claims were filed online, an increase of 207 percent since FY 2008. Last fiscal year, the number of online disability claims steadily increased throughout the year, and we ended the fiscal year with over 30 percent of disability applications filed online in September 2010, each of which is reviewed by our employees. We are excited about the significant inroads we have

VerDate Nov 24 2008 15:17 May 17, 2011 Jkt 063865 PO 00000 Frm 00051 Fmt 6601 Sfmt 6601 P:\DOCS\63865.TXT SAFFAIRS PsN: PAT

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made with online disability claims, especially given that we had focused our online services marketing campaign on retirement applicants. Online filing for disability is a major service improvement for many claimants, particularly those in rural areas, those with significant mobility impairments, and those with anxiety-related disorders.

We have other initiatives underway to improve the electronic disability process. For example, we have streamlined the online Adult Disability Report, one of our key data collection forms in the disability process. Similarly, we are building additional online services, including an application for SSI and an online service for appointed representatives of disability applicants. These additions will provide the public with more services options and allow our front line employees to focus on more complex issues.

We are also enhancing our most significant commitment to improve quality, the Electronic Claims Analysis Tool (eCAT), which is currently in use in 34 States and 4 Federal components. eCAT improves the quality of our disability determinations by aiding disability examiners in documenting, analyzing, and adjudicating the disability claim in accordance with regulations. We expect that eCAT will produce more consistent and better-reasoned determinations that contain easy-to-understand explanations of our decisions.

In addition to enhancing the documentation, quality, and consistency of our disability decisions, eCAT has been an extremely useful training tool for the many new examiners in the DDSs. All States have the training version of eCAT. Training through eCAT is helping new examiners more quickly gain proficiency in handling complicated cases. We are also using eCAT to train experienced examiners in error-prone areas such as credibility and opinion evidence. Since it is working so well, we are accelerating the expansion of eCAT; every State should have it by April 2011.

Developing and implementing a common Disability Case Processing System (DCPS) for all 54 DDSs is a technology challenge that we hope to solve within the next few years. Currently, each of the DDSs has its own unique case processing system, all of them based on old programming language. We are working with the DDSs to gather and implement the requirements for a new common system. DCPS will use modern technology to provide a better user experience for the disability examiners and to create the foundation for a state-of-the-art disability process. After we fully implement DCPS, it will be easier and less expensive to deploy new

VerDate Nov 24 2008 15:17 May 17, 2011 Jkt 063865 PO 00000 Frm 00052 Fmt 6601 Sfmt 6601 P:\DOCS\63865.TXT SAFFAIRS PsN: PAT

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technology to our DDSs, such as health Information Technology (health IT). DCPS will enable staff to provide better service to claimants and speed up the disability application process.

We expect to award the contract for the development of DCPS this fall. We plan to begin beta-testing a common, web-based system at several DDS sites within a year after we award the contract. We are currently developing our implementation approach to minimize disruptions to service and maximize the benefit to the public. We will rollout DCPS nationally after we have successfully completed our testing.

Health IT has the potential to revolutionize our entire disability process and significantly improve service to the public. Each year, we request over 15 million medical records on behalf of our disability claimants, and we store more than 485 million disability and medical documents. We rely upon doctors, hospitals, and other healthcare professionals to timely provide medical records. In FY 2009, we became the first Government agency to use the Nationwide Health Information Network, the Department of Health and Human Services' (HHS) initiative to provide a secure connection to access electronic medical records. We are moving towards a fully electronic system of requesting and receiving medical records. With claimants' consent, we will be able to instantaneously request and receive medical records electronically.

Over the past few years, we have been using health IT to accelerate the disability process. Applicants treated at Beth Israel Deaconess Medical Center in Boston, Massachusetts or at MedVirginia facilities in Richmond, Virginia can authorize their medical records to be transferred electronically to the DDSs. Health IT allows us to request and often receive medical records in less than a minute, as opposed to the days, weeks, or months it may take using the traditional process.

We used approximately $20 million in Recovery Act funds to expand health IT to 14 healthcare organizations in 12 States. We expect to receive over 110,000 electronic medical records annually from these healthcare organizations. Wright State University and HealthBridge, which serve Ohio, are among the healthcare organizations to which we awarded contracts. We expect our latest health IT expansion to improve further the speed, accuracy, and efficiency of the disability determination process. We believe that using health IT will also reduce the cost of making a disability determination for both the medical community and the American taxpayer.

VerDate Nov 24 2008 15:17 May 17, 2011 Jkt 063865 PO 00000 Frm 00053 Fmt 6601 Sfmt 6601 P:\DOCS\63865.TXT SAFFAIRS PsN: PAT

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Expanding the Use of Screening Tools to Assist in Identifying Likely Allowances

We continue to expedite determinations for those claimants who have medical conditions so severe that they obviously meet our disability standards. One of our most successful initiatives to improve the speed of our disability process is our fast-track effort. Using predictive modeling and computer-based screening tools, we are able to identify electronic disability cases involving medical conditions where a favorable disability determination is highly likely and we can quickly and easily verify the condition. Consequently, we can complete these disability claims in days instead of months. Our Quick Disability Determination (QDD) and Compassionate Allowances (CAL) identify claims that are likely allowances in the earliest stages of the disability process. QDD uses a predictive model to identify certain claims that are likely allowances, such as low birth-weight babies, many cancers, and end-stage renal disease. CAL allows us to identify quickly applicants who are clearly disabled based on the nature of their disease or condition. The list of CAL conditions originally contained 25 rare diseases and 25 cancers. We added 38 new CAL conditions in March 2010. We have held six public hearings to obtain critical information to develop and enhance this list of conditions. We held our most recent public hearing on November 9, 2010 in Baltimore, Maryland. We are using the information we obtain at these hearings to improve other aspects of the disability process, such as updating our program rules, enhancing our QDD predictive model, or providing helpful information to our claimants.

For example, we often hear about the difficulties that claimants face as they wait for a decision. In March 2010, we began linking the over 3 million disability claimants we contact each year with important healthcare information, regardless of the outcome of their claims. Working with our partners at HHS, we direct disability claimants to websites provided by HHS, where they can find useful information and sources of assistance that may help them better understand and cope with their conditions or obtain help with prescription medications.

In FY 2010, we used our fast-track initiatives to issue favorable disability determinations to over 100,000 disability claimants within 20 days of filing, while maintaining a very high accuracy rate. Identifying and paying eligible claimants early in the disability process clearly benefits those with severe disabilities and helps our backlog reduction efforts.

VerDate Nov 24 2008 15:17 May 17, 2011 Jkt 063865 PO 00000 Frm 00054 Fmt 6601 Sfmt 6601 P:\DOCS\63865.TXT SAFFAIRS PsN: PAT

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Recently, we published a final rule that temporarily authorizes State disability examiners who handle QDD or CAL cases to adjudicate a case without a mandatory concurrence by a doctor, unless required by statute. This new rule will help us process cases more efficiently because it will give state agency medical and psychological consultants more time to work on those complex cases for which we need their expertise.

Refining Policies and Business Processes to Expedite Case Processing

We are continually looking for ways to improve and streamline our policies, procedures, and staff instructions, so that our employees can process work more efficiently without sacrificing accuracy.

The Listing of Impairments (Listings) describe for each major body system the impairments considered severe enough to prevent an adult from working or for children, impairments that cause marked and severe functional limitations. The Listings are a critical factor in our disability determination process, and we are committed to updating each listing at least every five years. In the last five years, we have revised approximately half of the Listings, and this year we plan to obtain public comments on the remaining body systems.

We currently use the Department of Labor's (DOL) Dictionary of Occupational Titles (DOT) to determine whether applicants for disability benefits can do their usual work or any other work in the national economy. Since the DOL is no longer updating the DOT, we convened a panel of experts to provide advice on a new Occupational Information System that would address our specific needs for occupational information. We will continue to work even more closely with DOL and other Federal agencies during the research and development phase of this project.

Conclusion

With appropriate funding, oversight, and hard work, we are on the way to giving the American public the level of service they expect from us. We developed a plan and have followed through to handle an unprecedented number of claims, improve service in our field sites, and increase program integrity efforts. I am proud of the real and meaningful progress our employees have made in the last three years despite challenges presented by the economy. Although we have not yet

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eliminated the disability backlogs that frustrate our claimants, we have cut processing time by about a third in the last three years and will continue to build upon our positive momentum in Ohio and nationwide. I have been to many of our field and hearing offices, including all of our Ohio hearing offices and the Ohio BDD, and have witnessed how personally committed our employees are to our mission.

We know we cannot keep the public's confidence without your help. Enactment of the President's 2011 Budget will allow us to maintain our progress toward providing the level of service Americans are demanding.

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Statement of the Honorable Patrick P. O'Carroll, Jr.,
Inspector General, Social Security Administration

Testimony before the Subcommittee on Oversight of
Government Management, the Federal Workforce, and the District of Columbia
of the Senate Committee on Homeland Security and Governmental Affairs

November 15, 2010

Good morning, Mr. Chairman and Mr. Voinovich. It's a pleasure to appear before you, and I thank you for the invitation to be here today. I've appeared before Congress several times to discuss the Social Security Administration's (SSA) disability claims backlog and the Agency's efforts to reduce that backlog so applicants eligible for benefits receive them as soon as possible. Today, we are again looking at SSA's backlog in disability claims, focusing on efforts to improve disability claim processing here in Ohio.

SSA is responsible for the nation's two primary Federal disability programs: Disability Insurance (DI) and Supplemental Security Income (SSI). In September alone, SSA provided nearly $13 billion in DI and SSI payments to nearly 16 million citizens across the country. According to the most recent SSA data, in December 2009 in Ohio, 342,000 people received DI benefits, and 274,000 people received SSI, totaling more than $473 million in benefits paid that month in the State.

As the economy has struggled and baby boomers reach their most disability-prone years, however, more Americans have turned to SSA for financial assistance. The Agency received more than 3.2 million initial applications for DI and SSI in Fiscal Year (FY) 2010, a 7 percent increase over FY 2009. These numbers have created workloads for SSA that have tested resources and caused delays and backlogs, and SSA expects the trend of increasing disability workloads to continue.

At the end of FY 2010, SSA had a backlog of some 842,000 initial disability claims, and 705,000 claimants whose applications were denied were awaiting a hearing on their appeal. These numbers are troubling to us; they can be tragic to those who will ultimately receive benefits and are waiting on these funds to pay their rent, heat, or grocery bills and meet other critical needs. The average disability claimant will wait 111 days for an initial decision on his or her claim; the average disability appellant will wait 426 days for his or her case to be heard and decided.

Ohio currently has a backlog of nearly 31,000 initial disability claims. An Ohioan who applies for disability benefits will wait on average 119 days for an initial decision on his or her claim. However, hearing offices in Ohio currently take 479 days on average to issue decisions on hearings. For example, in Akron, Ohio, the average disability appellant will wait 334 days for his or her case to be decided. In Columbus, Ohio, the wait for an appellate decision is 557 days. These numbers, across the country and here in Ohio, are unacceptable.

But while SSA has attempted to reduce the disability backlogs, the current economic climate has created budget-balancing challenges for many States, and as a result, some states are furloughing State Disability Determination Services (DDS) employees. Federal regulations discourage furloughs of DDS personnel, but this has not stopped furloughs from occurring. To date, 16 States, including Ohio, have furloughed at least some of their DDS employees.

In Ohio, from July 1, 2009 to June 30, 2011, there will be 20 furlough days for DDS employees. According to SSA's Office of Operations, as of September 30, nearly 10,000 disability cases in Ohio

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have been delayed because of furloughs, slowing the delivery of $2.3 million in benefits intended for Ohioans. Only California—where furloughs have delayed nearly $22 million in benefits—has been hit harder by DDS furloughs than Ohio.

To date, State furloughs have adversely affected more than 103,000 households across the nation; furloughs have delayed more than $29 million in disability benefit payments to America's most vulnerable population.

The furloughs continue to be troublesome, because State budgets realize no savings whatsoever from furloughing DDS employees; in fact, they lose money. The Federal Government provides 100 percent of the funding required by State DDSs to process DI and SSI administrative funding. When States furlough DDS employees, it forces SSA to redistribute these cases, along with the administrative funding, to other States or Federal case processing units that have the capacity to process additional cases. To date, furloughs have forced SSA to transfer more than 116,000 cases and redistribute more than $56 million in administrative funding to States choosing not to restrict DDS staffing.

SSA Commissioner Michael Astrue has made significant efforts to limit the effect of furloughs. He contacted all of the State Governors and many State legislators, while Vice President Biden wrote to the National Governors' Association, urging DDS furlough exemptions. In July, the Commissioner and SSA submitted legislation to Congress that would prohibit States from implementing DDS furloughs. Because of these and other efforts, three States have exempted their DDSs from employee furloughs. Ohio has not.

The *American Recovery and Reinvestment Act of 2009* (ARRA) was signed into law in February 2009, providing SSA with $500 million to process increasing disability and retirement workloads. In FY 2009, SSA hired an additional 2,415 employees in the Office of Operations, the Office of Disability Adjudication and Review (ODAR), and DDSs to process those workloads. In an August 2010 report, we determined that SSA timely reported the new staffing information to the Office of Management and Budget and Recovery.gov.

In the Chicago Region, which includes Ohio, for example, SSA hired 191 new Operations employees, 66 new ODAR employees, and 41 new DDS employees with ARRA funds in FY 2009. Also, SSA opened two new hearing offices in Ohio (Akron and Toledo) in FY 2010. While SSA should be commended for its efforts to minimize the effect of State furloughs and its other hiring and staffing initiatives, it's indisputable that State actions have resulted in delays and kept benefits out of the hands of those in need.

SSA has also created a multi-year plan to reduce the initial claims backlog. According to SSA, the key components of this plan are:

- increased adjudicatory capacity in the DDSs and Federal processing components;
- improved efficiency through automation;
- expedited IT investments to optimize systems performance;
- expanded use of screening tools to assist in identifying likely allowances; and
- refined policies and business processes to expedite case processing.

There are other SSA initiatives implemented to improve the disability application process—such as Compassionate Allowances and Quick Disability Determinations—that we in OIG have examined and agree can help the Agency reduce the initial claims backlog.

With respect to the disability hearings backlog, the OIG has done, and continues to do, significant and

VerDate Nov 24 2008 15:17 May 17, 2011 Jkt 063865 PO 00000 Frm 00058 Fmt 6601 Sfmt 6601 P:\DOCS\63865.TXT SAFFAIRS PsN: PAT

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wide-ranging work to assist SSA in reducing this backlog and seeing that claimants receive prompt hearings on denied claims.

In June 2009, Senator Voinovich requested that we review hearing offices whose daily disposition rates fell below the national average. He asked that we determine why the administrative law judges (ALJs) in these hearing offices had productivity rates that lagged behind other offices nationwide, and identify what steps might be taken to remedy the solution.

To address the request, we conducted interviews with staff members at hearing offices in nine of SSA's 10 regions. We selected these hearing offices because they had disposition rates per day per ALJ below the national average of 2.31 for FY 2009 (through June). The Columbus, Ohio, hearing office, with an average disposition per day per ALJ of 1.47 at the time, was included in the review.

Our review, released in January, identified various factors that affected hearing office productivity. Specifically, we found ALJs had control over certain factors that affected hearing office productivity—motivation and work ethic, case review time, and hearings management. Further, we identified factors related to support staff that can also affect hearing office productivity—staff quantity, quality, and composition.

Through hiring, SSA has taken steps to address some of the support staff factors we identified. We found SSA is striving to achieve a national average ratio of 4.5 support staff to every ALJ. At the end of FY 2008, six of the nine offices in our review were below the desired staffing level; by the end of FY 2009, only two of the nine offices in our review remained below the desired level.

We also followed up on the performance of 14 ALJs identified in a prior review as lower-producers. We found the performance of most of these ALJs had either minimally improved or not improved at all. In fact, the FY 2009 average dispositions per day for all 14 ALJs were below the national average of 2.31 dispositions per day.

We also found that the Hearing Office Chief ALJs, who were responsible for managing ALJ performance, had taken actions to address individual ALJ factors that affect hearing office performance. These actions primarily included mentoring and counseling, rather than disciplinary actions.

In another report we released in August, we sought to identify the impairments of initial disability cases that ALJs most frequently allowed, and evaluate the characteristics of these cases.

We identified the four impairments that were most often denied by DDSs in Calendar Years 2004 through 2006, appealed to the hearing level, and subsequently allowed. These impairments were Disorders of Back; Osteoarthrosis and Allied Disorders; Diabetes Mellitus; and Disorders of Muscle, Ligament, and Fascia.

Our analysis of cases with these four impairments disclosed:

- Claimants allowed at both the DDS and hearing levels were more likely to be 50 or older.
- More than 80 percent of claimants allowed at the hearing level were previously denied because the DDS determined the claimants had the ability to work.
- Claimant representation was more prevalent in cases allowed at the hearing level than in cases decided at the DDS level.
- Cases were allowed at the hearing level based on a different impairment than that on which the DDS made its determination.

VerDate Nov 24 2008 15:17 May 17, 2011 Jkt 063865 PO 00000 Frm 00059 Fmt 6601 Sfmt 6601 P:\DOCS\63865.TXT SAFFAIRS PsN: PAT

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- Six states—Alabama, Georgia, Illinois, North Carolina, South Carolina, and Tennessee—had DDS denial rates and hearing-level allowance rates above the national averages.
- ODAR regions, hearing offices, and ALJs had wide variations in allowance rates.

We recommended, and SSA agreed to:

1. Collect information related to claimant representation at the DDS level to determine whether representation results in more allowances at the DDS level.
2. Consider conducting a targeted review of disability determinations made in the six states we identified as having higher than average DDS denial rates and hearing level allowance rates for the four impairments we analyzed.
3. Consider analyzing variances between the hearing offices and ALJs with high and low allowance rates for the four impairments we analyzed to determine whether factors are present that support the variances.

In May 2007, SSA presented to Congress and began implementing its *Plan to Eliminate the Hearings Backlog and Prevent its Recurrence*. SSA plans to reduce the number of pending cases to a desired level of 466,000 cases and reduce the average processing time to 270 days by FY 2013. According to SSA, a pending case level of 466,000 cases would be the ideal number of pending cases based on the expected number of administrative law judges working in the Agency.

In July, we released a report in which we sought to determine whether SSA's plans would enable the Agency to achieve its goal of eliminating the pending hearings backlog by 2013. We consulted with ODAR management to obtain updated information on the status of the pending hearings backlog; and we examined ODAR's assumptions related to hearing workloads, hiring, productivity, and other factors associated with reducing the pending hearings backlog through 2013.

We believe SSA will be able to achieve its FY 2013 pending hearings backlog goal if the Agency has reliably projected hearing level receipts, ALJ availability levels, ALJ productivity levels, and senior attorney adjudicator decisions through 2013. However, the Agency has varying control over these factors; a small variance in these projections could cause SSA to exceed the targeted number of cases in its 2013 pending hearings backlog.

We estimate that SSA will have approximately 405,000 pending hearing cases by the end of 2013, lower than the stated goal of 466,000 cases. However, a small change in any one of the underlying assumptions may cause SSA to miss its 2013 pending hearings backlog goal. For this reason, SSA must continue to assess these various factors, as well as make periodic adjustments, to remain on track to reduce the pending hearings backlog.

Finally, I must point out that integrity continues to be a primary focus for the OIG. We continue to pursue the establishment of a self-funding program integrity fund for activities such as continuing disability reviews (CDRs) and the OIG's Cooperative Disability Investigations program, or CDI. The proposal would provide for indefinite appropriations to make available to SSA 25 percent, and to OIG 2.5 percent, of actual overpayments collected based on detection of erroneous payments. It would also establish a revolving fund that would be financed from the projected lifetime savings of SSA's stewardship/program activities.

With the creation of an integrity fund, SSA could utilize up to 50 percent of the estimated future lifetime program savings from such activities as CDRs, CDI, organizational representative payee oversight, and similar activities to fund initiatives that would yield at least a 150 percent return on investment within 10 years.

VerDate Nov 24 2008 15:17 May 17, 2011 Jkt 063865 PO 00000 Frm 00060 Fmt 6601 Sfmt 6601 P:\DOCS\63865.TXT SAFFAIRS PsN: PAT

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Our continuing support for increasing the number of CDRs has never wavered. As important as it is to ensure that individuals are eligible for benefits at the time they first apply, SSA must also take steps to ensure that they remain eligible as time goes by. The number of full medical CDRs SSA conducted in recent years has significantly decreased. In particular, the number decreased by approximately 65 percent between FYs 2004 and 2008. According to SSA, resource limitations and increases in its core workloads prevented the Agency from conducting full medical CDRs when they became due. As a result, SSA estimates that a backlog of over 1.5 million full medical CDRs existed at the end of FY 2010.

In our March 2010 report on full medical CDRs, we recommend that SSA continue to work with Congress to secure the funds necessary to eliminate the existing full medical CDR backlog, and to conduct the CDRs that become due each year. To the extent the resources are not available to conduct the CDRs that become due each year, SSA should report the reasons and the associated impact on Federal benefit payments in its annual CDR Report to Congress.

The CDI program is another critical piece of our integrity formula. The CDI program was established in FY 1998 as a joint effort by SSA and the OIG, working with State DDS and State or local law enforcement agencies, to pool resources and expertise for preventing fraud in SSA's disability programs. In 1998, CDI units became operational in five states. The program currently consists of 22 units in 20 states, with the most recent Unit opening in Kansas City, Missouri in September 2010. Since the CDI program was established, through September 2010, its efforts nationwide have resulted in $1.6 billion in projected savings to SSA's disability programs; and $967 million in projected savings to non-SSA programs.

The Cleveland CDI Unit, like the other 21 CDI units across the country, is continually saving money and ensuring the integrity of SSA's disability programs. Since the inception of the Cleveland CDI Unit in September 2002 through September 2010, the unit opened 2,535 cases, closed 2,377 cases and confirmed about 1,800 cases of fraud or similar fault. This Unit's work has resulted in $124.4 million in projected SSA savings, and $68.9 million in projected non-SSA savings.

As more individuals apply for benefits, allegations to these 22 CDI units across the country will increase. The OIG and SSA are committed to expanding the CDI program, as there are plans to open four new units in FY 2011. These units play a key role in ensuring that, while reducing the backlog of disability claims, SSA and the DDSs have an avenue available to them to further explore claims that may be suspicious or lack sufficient information to make a determination. Thus, the CDI program helps maintain the level of accuracy and integrity in these programs that the American public deserves.

In conclusion, my office is dedicated to working with Congress and SSA to reduce the backlog of disability claims, across the country and here in Ohio, and to ensuring that this takes place in an environment in which integrity, efficiency, and transparency play equal roles. The OIG has done, and continues to do, work in all areas of the disability claims process, from initial claim through final decision, to provide useful information to Agency decision-makers and this Subcommittee. SSA's efforts to date are commendable, and we look forward to continuing to assist in this critical undertaking.

I thank you again for the invitation to be here with you today, and I'd be happy to answer any questions.

VerDate Nov 24 2008 15:17 May 17, 2011 Jkt 063865 PO 00000 Frm 00061 Fmt 6601 Sfmt 6601 P:\DOCS\63865.TXT SAFFAIRS PsN: PAT

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United States Senate
Committee on Homeland Security and Governmental Affairs
Subcommittee on Oversight of Government Management,
the Federal Workforce, and the District of Columbia

Improving Social Security Disability Insurance Claims Processing in Ohio

Testimony of

Richard E. Warsinskey
Past President
National Council of Social Security
Management Associations Inc.

November 15, 2010

Chairman Akaka, Ranking Member Voinovich, and members of the Subcommittee, my name is Richard Warsinskey. I am a Past President of the National Council of Social Security Management Associations (NCSSMA). I have been the manager of the Social Security office in Downtown Cleveland for over fifteen years and have worked for the Social Security Administration for thirty-five years.

I also help coordinate the activities of the SSA Advocacy Group. This group works to improve SSA's services at all levels and has over 35 member organizations. Members include senior citizen organizations and disability support groups from across the country, SSA and Disability Determination Services associations, and Federal management associations and employee unions.

NCSSMA is a membership association of nearly 3,400 Social Security Administration (SSA) managers and supervisors who provide leadership in more than 1,300 field offices and teleservice centers throughout the country. We are the frontline service providers for SSA in communities all over the nation. We are also the federal employees many of your staff members contact to resolve issues for your constituents who receive Social Security retirement benefits, survivors or disability benefits, or Supplemental Security Income. One of NCSSMA's top priorities is a strong, stable Social Security Administration: One that delivers quality and prompt community based service. We also consider it a top priority to be good stewards of the taxpayers' moneys.

Background and Historic Trends with SSA Disability Hearings Backlog in Ohio

Today we celebrate the opening of the Akron Hearing Office. This opening along with that of the Toledo Hearing Office will be a great help to thousands of Ohioans waiting for a decision on their disability hearing. Our testimony will show that significant progress has been and continues to be made in improving the processing of disability hearing cases in Ohio. Senator Voinovich's strong leadership along with the Commissioner's perseverance in ensuring the opening of these two offices is highly commendable and greatly appreciated. Senator Voinovich has long been concerned about addressing the disability hearings backlog in Ohio. In fact, he was aware of this issue well before it gained national attention. On March 29, 2004, Senator Voinovich convened a hearing in Cleveland

VerDate Nov 24 2008 15:17 May 17, 2011 Jkt 063865 PO 00000 Frm 00062 Fmt 6601 Sfmt 6601 P:\DOCS\63865.TXT SAFFAIRS PsN: PAT

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titled, *The Road to Recovery: Solving the Social Security Disability Backlog*. For the full hearing transcript see: http://www.access.gpo.gov/congress/senate/pdf/108hrg/94200.pdf.

The Senator expressed concern about the disability case backlog during this hearing. He stated:

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

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

Senator Voinovich also stated that there were 8,796 cases pending in Cleveland:

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

The unfortunate truth is that the hearings backlog in Cleveland got worse, not better, in the next few years. The number of pending hearings increased by an additional 3,340 cases to 12,136 in January 2005. At the end of FY 2007 the number of pending hearings was at 14,755 cases.

However, with the strong support of Commissioner Astrue, SSA transferred a significant number of cases out of Cleveland to help reduce the hearings backlog and improve processing time. The number of pending hearings dropped in FY 2008 and FY 2009. In FY 2010 and the first month of FY 2011 (October 2010), SSA transferred 3,088 cases to other hearing offices. Recently most of the transferred cases have been going to the Akron Hearing Office. As of October 2010, the Cleveland Hearing Office has 6,558 hearings pending, which is a significant reduction.

As indicated, Senator Voinovich stated at the March 2004 hearing that the processing time in Cleveland was at 550 days. Unfortunately, processing time of the Cleveland Hearing Office along with the other three Ohio Hearing Offices continued to be very high. **But there has been a significant reduction in processing time in the past fiscal year, with an even more dramatic reduction in October 2010.**

AVERAGE PROCESSING TIME (DAYS) FOR OHIO HEARINGS OFFICES							
	Cleveland	**Columbus**	**Dayton**	**Cincinnati**	**Akron**	**Toledo**	**Nation**
FY 2005	616	603	507	519	NA	NA	443
FY 2006	584	674	599	542	NA	NA	483
FY 2007	599	774	677	600	NA	NA	512
FY 2008	678	746	757	633	NA	NA	514
FY 2009	590	650	640	648	NA	NA	491
FY 2010	548	623	596	506	NA	NA	426
Oct. 10	481	557	487	448	334	350	377

This improvement is most marked in the Cincinnati Hearing Office where the processing time has dropped from 648 days in FY 2009 to 448 days in October 2010. It is also notable that the processing time in the Cleveland Hearing Office has gone from 678 days in FY 2008 to 481 days in October 2010.

SSA has made a major resource investment to improve the disability hearings backlog situation. The agency hired 228 Administrative Law Judges (ALJs) and 1,300 additional staff to support the new ALJs nationwide. The agency is also opening or expanding 19 hearing offices, including a fifth national hearing center.

To maintain its progress, SSA must deal with an anticipated retirement wave of ALJs and support staff. As of October 1, 2009, 59 percent of the ALJs are eligible to retire now and about 76 percent will be eligible to retire in five years. Among paralegal specialists, about 39 percent are eligible to retire now and over 54 percent will be eligible to retire in five years. With this challenge, SSA has worked to have an effective recruitment vehicle that allows the agency to hire the brightest and best ALJs and support staff candidates. We applaud the Office of Personnel Management's (OPM) efforts to streamline hiring. SSA has worked closely with OPM to ensure they have up-to-date registers to hire new ALJs.

The staff of the new hearing offices in Akron and Toledo will largely be new SSA employees or current SSA employees new to the hearing offices. It will take a number of months for these new hearing offices to achieve full proficiency as the staff learns their new jobs. The good news is that the addition of these two hearing offices will quickly make a ***marked*** difference to the people of Ohio who are waiting for a decision on their case.

There are a few cautionary factors to be aware of regarding the hearing situation in Ohio:

- There has been a **dramatic rise in the number of hearings filed because of the recession**. Nationally the number of new hearings in FY 2010 was up by about 97,000 or 15 percent over FY 2009, and up 130,000, or 22 percent over FY 2008. Hearing filings have escalated at an even steeper rate in recent months.

- The national peak in the number of pending hearings was 768,540 in December 2008. From that point forward, the number of pending hearings began to decrease and in June 2010, the pending was 694,417. This downward trend then stalled, and the number of pending hearings increased again for four straight months starting in July 2010. Currently, the number of pending hearings is 718,198.

- The situation **in Ohio** differs somewhat from the national picture, but **the number of new hearings filed continues to be very high**. This is primarily for two reasons. First, Ohio's economy has struggled throughout the past decade, leading to high disability filings earlier than other parts of the country. Additionally, Ohio has an average approval rate for disability claims at the initial and reconsideration level that is lower than national average. In recent months, there has been a significant spike in the number of new hearings filed. Following is specific data for each Ohio hearing office:

VerDate Nov 24 2008 15:17 May 17, 2011 Jkt 063865 PO 00000 Frm 00064 Fmt 6601 Sfmt 6601 P:\DOCS\63865.TXT SAFFAIRS PsN: PAT

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- **CLEVELAND**: The number of hearings received on a daily basis was 30.35 in FY 2010 as compared to 31.86 in FY 2009, and 29.02 in FY 2008. It is important to note that the rate in Cleveland has increased significantly from May through August 2010. The four-month average was 35.87 hearings received per day. However, as the Akron Hearing Office started taking cases the daily receipts dropped to 24.84 in September and to 22.38 in October.

- **COLUMBUS**: The number of hearings received on a daily basis was 25.82 in FY 2010 compared to 25.32 in FY 2009 and 21.9 in FY 2008. The rate has also increased significantly in the last five months of FY 2010 and that rate was an average of 31.43 a day. It declined slightly to 29.75 in October 2010 as 1,057 cases were transferred to other hearing offices.

- **DAYTON**: The number of hearings received on a daily basis is 12.31 in FY 2010 compared to 12.51 in FY 2009, and 12.77 in FY 2008. The rate has increased over the course of the last five months of FY 2010 to 14.84 a day. It increased to 15.43 a day in October as 521 cases were transferred to other hearing offices.

- **CINCINNATI**: The number of hearings received on a daily basis increased much more dramatically in FY 2010 than in past years. It was at 24.17 on a daily basis in FY 2010 compared to 15.05 in FY 2009, and 15.33 in FY 2008. The rate has increased even more in the last five months of FY 2010 to 28.02 a day. It was 28.46 a day in October as 486 cases were transferred to other hearing offices.

Disability Workload Trends in the Ohio DDS

Before a hearing is received in an Ohio hearing office, it must pass through the Disability Determination Service (DDS) in Columbus. Although the State of Ohio administers this office, the Social Security Administration provides its funding.

Nationwide, approximately 600,000 new initial disability claims were filed in FY 2010 as compared to FY 2008. As of October there were more than 260,000 additional disability claims pending in DDSs across the country than in FY 2008. This is approximately a 47 percent increase. Currently there are nearly 41 percent more reconsiderations pending nationwide than there were in FY 2008. Once these cases move past the reconsideration stage, the applicant or their representative can file a request for a hearing before an ALJ.

Ohio has not seen the same rate of growth in new disability claim filings as many other states. As indicated, the Ohio economy began to slump well before the current recession. In addition, Ohio approves fewer initial disability claims on average than most states. The following chart indicates the annual receipts of disability claims in the Ohio DDS since FY 2010.

VerDate Nov 24 2008 15:17 May 17, 2011 Jkt 063865 PO 00000 Frm 00065 Fmt 6601 Sfmt 6601 P:\DOCS\63865.TXT SAFFAIRS PsN: PAT

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ANNUAL RECEIPTS DISABILITY CLAIMS - OHIO DDS			
FY 2001	92, 909	FY 2006	114,293
FY 2002	103,194	FY 2007	117,406
FY 2003	109,447	FY 2008	121,106
FY 2004	118,749	FY 2009	135,587
FY 2005	110,979	FY 2010	129,506

Ohio is one of seven states that are currently furloughing state employees, including DDS employees. This is despite the fact that SSA provides 100 percent of the funding necessary for the DDSs to operate. Ohio furloughed employees 10 days in FY 2010 and will furlough employees ten days again in FY 2011. Hawaii is furloughing employees a total of 42 days from July 1, 2009 to June 30, 2011. SSA has opposed the decision to implement furloughs by the State of Ohio and other states.

Furloughs have contributed to the increase in the number of pending claims in the Ohio DDS, as well as the extended processing times. As of October 2010, the Ohio DDS had 37,983 claims pending compared to 25,669 claims pending at the end of FY 2008. This is an increase of 48 percent. The pending claims at the Ohio DDS are slightly below the final FY 2009 pending level of 40,878.

The Ohio DDS has also experienced an increase in its processing time along with the nation as a whole as detailed in the chart below. The processing times in Hawaii have increased for initial claims. For reconsiderations, processing time deteriorated considerably in Hawaii in FY 2010.

DDS CASE PROCESSING TIME (AVERAGE DAYS)			
Title II Disability Initial Claims			
	Ohio	**Nation**	**Hawaii**
FY 2008	90.9	81.2	84.8
FY 2009	89.1	80.7	82.5
FY 2010	112.5	90.7	98.5
Title XVI Disability Initial Claims			
	Ohio	**Nation**	**Hawaii**
FY 2008	92.6	81.9	92.2
FY 2009	91.8	83.1	89.2
FY 2010	114.8	93.9	105.3
Reconsideration Cases			
	Ohio	**Nation**	**Hawaii**
FY 2008	83	73.3	132.1
FY 2009	86.6	69.3	97.3
FY 2010	108.3	86.2	136.8

VerDate Nov 24 2008 15:17 May 17, 2011 Jkt 063865 PO 00000 Frm 00066 Fmt 6601 Sfmt 6601 P:\DOCS\63865.TXT SAFFAIRS PsN: PAT

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The processing times outlined above only include the time DDSs handle the cases. There is additional time required to completely process all disability cases. This includes the time the field offices take to interview a claimant and approve payment. There is also a sample review of cases done by SSA regional offices that can add to the overall time involved for a case. All of this can add up to 15 to 20 additional days to process a case.

The furloughs in Ohio have resulted in the loss of $4,545,221 in funding for the Ohio DDS, and have delayed benefits related to about 9,826 cases through September 2010. The furloughs have resulted in monthly benefit delays of $2,317,636 reaching Ohio citizens. In Hawaii, the furloughs have resulted in the loss of $653,592 in funding for the Hawaii DDS, and have delayed benefits related to about 1,032 cases through September 2010. The furloughs have resulted in monthly benefit delays of $378,000 reaching Hawaii citizens who are in desperate need of assistance. **This is very unfortunate for the citizens of both states and the other states in the nation who are in desperate need of assistance. This is an unnecessary tragedy. Despite this additional obstacle, DDS management and staff are making their best efforts to work as many cases as they can.**

The DDS workloads include more than making medical decisions on initial and reconsideration disability claims. A key workload performed by the DDSs is the review of Continuing Disability Reviews (CDRs). SSA currently **has a backlog of about 1.5 million un-worked medical CDRs**.

The savings realized by completing medical CDRs is substantial. For every $1 spent, there is about $10 in lifetime savings. The capacity of the DDSs to work CDRs is reduced by the increased number of initial claims being filed. The DDSs could complete additional CDRs if they had the funding necessary to do so.

The DDSs also have the capacity to review cases awaiting a hearing decision through an informal remand process. In general, about 25 to 33 percent of these informal remand cases are approved. Unfortunately, due to the significant increase in the number of new claims, the DDSs reviewed only about 6,000 of these cases in FY 2010. The Ohio DDS reviewed less than 10 cases through the end of FY 2010.

One of the challenges confronting the DDSs is the high turnover of staff. This is illustrated by the chart below.

DDS STAFF ATTRITION						
	ALL DDS STAFF			DDS Examiners		
	Nation	Ohio	Hawaii	Nation	Ohio	Hawaii
FY 2008	10.2%	10.2%	4.5%	12.8%	9.8%	9.1%
FY 2009	12.2%	12.6%	7.3%	12.2%	12.7%	14.6%
FY 2010	10.6%	15.0%	1.5%	14.5%	15.7%	2.8%

Nationwide, DDS turnover for all staff has remained steady compared to FY 2008, but nationally for examiners it rose in FY 2010. For the Ohio DDS, attrition has increased significantly for both examiners and total staff and is higher than the national average. (For Hawaii, turnover in FY 2010 was quite low.) The high turnover in the DDSs results in additional training costs for new staff and staff time that would otherwise be spent on processing cases. Much of the turnover is driven by cuts

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in pay and furloughs in the states. Reducing the turnover rate in DDSs would certainly help make the DDSs more efficient and productive.

The Ohio DDS allowance rates have been lower than the national average. This results in a higher number of denied claimants who may file for a hearing. This can contribute to more hearings being filed in Ohio. However, it is notable that in FY 2010, the gap between the national and Ohio allowance rate narrowed. The fact that the Ohio DDS has had a lower allowance rate than the nation as a whole does not indicate that the interpretation and implementation of the rules is incorrect. There is a human judgment factor involved with decisions made by DDS examiners and reviewers.

One change that may improve consistency in decisions is amending the law that requires a 50 percent review of all approved and 5 percent of all disapproved initial and reconsideration disability cases. The intent of this final review is to ensure consistency in approvals in all states, as SSA's Office of Quality Assurance completes this review as opposed to the state DDSs. A legislative change to require a truly random review of all disability decisions may help reduce the hearings backlog, save administrative dollars, and prevent hardships for some claimants.

In Ohio, local SSA field offices are working closely with the State Department of Mental Health Services, local mental health agencies, and the Ohio DDS to identify individuals who need special assistance. These are often homeless individuals that are severely ill. An example is in the Cleveland Downtown SSA office. A local Mental Health Services Representative locates these individuals. She provides our office with detailed packages of completed forms and medical documentation which are then expedited by the Ohio DDS. *To date almost all of these cases have been approved.*

Hearing Office Productivity

The productivity of each hearing office is a factor to consider when analyzing the hearings backlog and attempting to reduce it. The following are the disposition rates per available ALJ per day for the nation, the four Ohio hearing offices, and the Honolulu Hearing Office:

ALJ HEARING DISPOSITION RATE PER DAY BY HEARING OFFICE						
	FY 05	**FY 06**	**FY 07**	**FY08**	**FY09**	**FY 10**
Nation	2.2	2.2	2.19	2.3	2.37	2.38
Cleveland	1.86	1.81	2.17	2.37	1.93	2.17
Columbus	1.79	1.9	1.61	1.92	1.56	1.72
Dayton	2.1	1.98	1.98	1.95	2.03	2.01
Cincinnati	1.79	1.9	1.61	1.92	1.56	1.9
Honolulu	3.33	3.08	3.32	3.9	2.89	3.65

In Ohio in FY 2009, the available ALJs produced 18,079 hearing dispositions. The average daily dispositions for all available ALJs in Ohio were 1.76 in FY 2009. Had the disposition rate been at the national average, the total hearings disposed by the available ALJs in Ohio would have been 24,345. This difference of 6,166 hearings would have reduced the hearings backlog in the Ohio hearing offices.

VerDate Nov 24 2008 15:17 May 17, 2011 Jkt 063865 PO 00000 Frm 00068 Fmt 6601 Sfmt 6601 P:\DOCS\63865.TXT SAFFAIRS PsN: PAT

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In a report released in July 2010, SSA's Office of Inspector General (OIG) reviewed ALJ productivity as a factor in SSA's goal to eliminate the hearings backlog by FY 2013. The report was titled, *The Office of Disability Adjudication and Review's 2013 Pending Hearings Backlog Plan* and may be viewed at the following link: http://www.ssa.gov/oig/ADOBEPDF/A-12-10-20114.pdf.

SSA has stated that a reduction of total hearings pending to 466,000 nationally will eliminate the backlog. As indicated earlier, the number of hearings pending as of October 2010 is 718,198. The OIG stated that it is important that ALJ productivity does not decline and indicated that a 3 percent decrease in ALJ productivity from FY 2010 to FY 2013 could result in 495,000 pending hearings by FY 2013. However, if ALJ productivity increased by 3 percent from FY 2010 to FY 2013, the number of pending cases would be reduced to 314,000 by FY 2013.

Any fluctuation in ALJ productivity will have a significant impact on the hearings backlog. It is important to note that there are about 4.6 staff members supporting each ALJ. Hearing dispositions occur due to the collective work of all staff in a hearing office. SSA has made significant additions to the number of support staff for each hearing office, including the Ohio hearing offices. The agency is also introducing many new technology enhancements to improve the productivity of hearing offices.

A key element to improving SSA's and hearing office productivity is to provide timely, adequate resources for training. Because SSA's funding has improved in the last few years, SSA has been able to invest more in training. Senator Voinovich has certainly been a leader in supporting training, especially for management. We believe this is a prudent position and appreciate this support.

SSA also reinstituted the Senior Attorney Adjudicator program in November 2007. Senior Attorneys can adjudicate a fully favorable on-the-record decision, which conserves precious ALJ resources. In FY 2010, Senior Attorneys disposed of 2,551 total hearings in Ohio hearing offices as follows: Cleveland – 964; Columbus – 409; Dayton – 349; and Cincinnati – 829.

This is a significant increase over FY 2009 when Senior Attorneys produced only 1,146 case dispositions in the four Ohio hearing offices.

Because of the Senior Attorney Adjudicator program and the informal remand of cases to DDSs, hearings adjudicated by the ALJs often require more development and testimony from vocational experts. While this may result in slightly lower productivity figures for some ALJs, the overall result of the combined approach serves to reduce the hearings backlog and processing times.

Local management in the Ohio hearing offices has also worked hard to streamline processing of cases. Local management has been greatly assisted by the entire organization of the Office of Disability and Adjudication Review (ODAR). With the addition of the Akron and Toledo Hearing Offices, the number of hearing dispositions in Ohio should increase significantly. Such an increase in dispositions will reduce the hearings backlog even more rapidly.

VerDate Nov 24 2008 15:17 May 17, 2011 Jkt 063865 PO 00000 Frm 00069 Fmt 6601 Sfmt 6601 P:\DOCS\63865.TXT SAFFAIRS PsN: PAT

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SSA Funding

It is important to understand that annual appropriated funding levels for SSA have a critical impact on the hearings backlog. In the years following the March 2004 hearing convened by Senator Voinovich in Cleveland, the hearings backlog increased significantly, both nationwide and in Ohio, well in advance of the recession. One of the most significant reasons for this increase was the significant underfunding of SSA, which we illustrate in the following chart. It compares funding levels approved by Congress for SSA to the requests from the President and the Commissioner of Social Security. From FY 2004 to FY 2007, the final appropriated funding levels totaled $854 million less than the President's requests and $3.071 billion less than the Commissioner's requests.

SSA FUNDING REQUESTS AND FINAL APPROPRIATIONS: FY 2004 – FY 2007					
($Billions)	Commissioner's Request	President's Request	Final Appropriation	Final vs. President	Final vs. Commissioner
FY 2004	$8.895	$8.530	$8.313	($0.217)	($0.585)
FY 2005	$9.310	$8.878	$8.733	($0.145)	($0.577)
FY 2006	$10.106	$9.403	$9.109	($0.294)	($0.977)
FY 2007	$10.230	$9.496	$9.298	($0.198)	($0.932)
Total	$38.541	$36.307	$35.453	($0.854)	($3.071)

However, as you can see from the next chart below, from FY 2008 to FY 2010, the cumulative final appropriation level was $203 million **more** than the President's requests. In addition, SSA received nearly $1.0 billion in Recovery Act funding. Half of the Recovery Act funds were designated to replace the aging SSA National Computer Center. Much of the other Recovery Act funding has been utilized to help address the hearings backlog at SSA.

SSA FUNDING REQUESTS AND FINAL APPROPRIATIONS: FY 2008 – FY 2010					
(figures are in $Billions)	Commissioner's Request	President's Request	Final Appropriation	Final vs. President	Final vs. Commissioner
FY 2008	$10.420	$9.597	$9.745	$0.148	($0.675)
FY 2009	$10.395	$10.327	$10.454	$0.059	$0.127
FY 2010	$11.793	$11.451	$11.447	($0.004)	($0.346)
Total	$32.608	$31.375	$31.646	$0.203	($0.894)

The increased resources for SSA became even more essential as the agency's workloads grew at a very rapid pace following the beginning of the recession. With this increased funding SSA has been able to complete significant hiring of additional ALJs, support staff, and DDS staff. The addition of hearing offices such as those in Akron and Toledo has also been possible.

SSA has also increased production in other areas during this period. For example, the number of SSI redeterminations SSA field offices completed has doubled from 1.2 million to 2.4 million from FY 2008 to FY 2010. These efforts will save taxpayers $7 for every $1 spent on this workload.

VerDate Nov 24 2008 15:17 May 17, 2011 Jkt 063865 PO 00000 Frm 00070 Fmt 6601 Sfmt 6601 P:\DOCS\63865.TXT SAFFAIRS PsN: PAT

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For FY 2011, the President has requested $12.379 billion for SSA's administrative budget. This funding is essential to maintain the progress achieved on the hearings backlog, handle the increasing workloads from the recession, and process program integrity workloads such as SSI redeterminations and medical Continuing Disability Reviews. There have been some discussions about freezes or even across the board cuts for SSA's FY 2011 appropriation using the FY 2010 funding as the baseline. If SSA receives funding at the FY 2010 level for FY 2011, this would reverse the positive progress that has been achieved in all of SSA's workloads. Attempting to address the FY 2011 workload demands at SSA with FY 2010 resource levels is not a prudent course of action. Freezing SSA's budget at FY 10 levels or lower would almost certainly lead to significant cutbacks and would be catastrophic for members of the public who rely on SSA for assistance.

SSA's community based field offices have contact with thousands of people every day that are desperate for help and the numbers are increasing. In FY 2010, field offices saw a record 45.3 million customers while handling about 60 million phone calls. One of the major roles SSA field offices play is to refer people to other agencies for assistance. SSA field offices maintain an extensive list of places to refer people to for help. These nearly 1,300 offices located in communities throughout the country provide a valuable and necessary safety net to assist the public. It is extremely vital that SSA has the resources necessary to ensure that the public is not harmed by reduced SSA services. At the same time, SSA must maintain the progress accomplished in reducing the disability hearings backlog.

Incentives to Return to Work

While a comprehensive review of the Supplemental Security Income (SSI) program should be considered to simplify the program and reduce administrative costs, such a review would be a difficult and lengthy process. However, we believe there are areas where the Social Security Disability and SSI programs can be improved. These improvements would benefit both the public and SSA in addition to yielding significant administrative savings.

One of the most complex and time-consuming workloads for SSA field offices is return to work cases. Modifying the incentives for disabled beneficiaries to return to work would save valuable workyears, thereby increasing productivity and improving the services provided to the public.

The Congressional Budget Office (CBO) released a report on July 22, 2010 titled: *Social Security Disability Insurance: Participation Trends and Fiscal Implications*. See: http://www.cbo.gov/ftpdocs/116xx/doc11673/07-22-SSDisabilityIns_Brief.pdf for the full report. This report states that the number of people receiving Social Security Disability benefits has tripled from 2.7 million to 9.7 million from 1970 to 2009. The CBO projects the number of disability beneficiaries will grow to 11.4 million by 2015. Each year about 7 percent of the beneficiaries leave the program. About half of disability beneficiaries transfer to the retirement program upon reaching age 66, approximately 40 percent pass away, but only about 1 percent is found to no longer be disabled.

NCSSMA supports consideration of modification of the Return to Work provisions. Studies have repeatedly shown that beneficiaries are very often afraid to return to work for fear of losing their benefits and Medicare. Instead of using complex determinations for trial work periods, extended periods of eligibility and tracking wages, the following changes should be considered:

VerDate Nov 24 2008 15:17 May 17, 2011 Jkt 063865 PO 00000 Frm 00071 Fmt 6601 Sfmt 6601 P:\DOCS\63865.TXT SAFFAIRS PsN: PAT

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1. Using an Earnings Test similar to retirement benefits to determine when benefits are paid.
2. Eliminating work as a cause of Disability cessation.
3. Basing earning determinations on the date paid, consistent with SSA's SSI program.
4. Assuring lifetime eligibility for Medicare.

Serious consideration should be given to legislation to effect these changes. In addition to reducing administrative costs through simplification and program efficiencies, these changes would be equitable to beneficiaries and promote attempts to return to work by the disabled.

Recommendations

We offer the following key recommendations to improve services at SSA and in particular the Ohio Disability workloads:

1. Approve at least the $12.379 billion for SSA's administrative funding proposed by the President for FY 2011.
2. Consider multiyear budgets to continue the progress SSA is making in handling both the disability hearings backlog and increased workloads from the recession.
3. Exclude SSA's administrative funding from any cap that sets an arbitrary ceiling on discretionary spending.
4. Remove SSA's administrative funding from discretionary budget caps and provide a separate limit in the Budget Resolution.
5. Consider legislation that withholds federal funds from states like Ohio that furlough DDS employees.
6. Consider legislation to ensure a more consistent and thorough review of approved and denied disability cases.
7. Consider legislation to modify work incentives for Social Security Disability beneficiaries that return to work.

Conclusion

The Social Security Administration has been severely challenged over the last several years by increased disability filings and the subsequent hearings backlog, which has resulted in unfortunate delays for disability claimants. The situation in Ohio Hearing Offices and the Ohio DDS was particularly acute with delays and backlogs worse than the national average.

Ohio hearing offices have made and continue to make **significant improvement** in the processing times of hearings, following a national trend. We have presented statistical information and trends which demonstrate the progress that has been achieved and is continuing to be made. This data alone does not fully illustrate the initiatives undertaken to make this a successful effort. Local hearing office management is making significant gains to reduce the hearings backlog and improve efficiencies of their offices.

The additional resources provided by Congress are critical and will make a huge difference in maintaining the momentum gained in reducing the hearings backlog and providing valuable assistance to the public. With the Commissioner's strong support, SSA is distributing these resources to meet

VerDate Nov 24 2008 15:17 May 17, 2011 Jkt 063865 PO 00000 Frm 00072 Fmt 6601 Sfmt 6601 P:\DOCS\63865.TXT SAFFAIRS PsN: PAT

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the workload challenges and backlogs. In the end, SSA needs to have adequate and stable funding without the interruption of a Continuing Resolution.

The disability programs that SSA administers are vital to our nation. John F. Kennedy said this on June 30, 1961:

"It is with great satisfaction that I have signed into law the Social Security Amendments of 1961. They represent an additional step toward eliminating many of the hardships resulting from old-age, disability, or the death of the family wage earner. . . . A Nation's strength lies in the well being of its people. The social security program plays an important part in providing for families, children, and older persons in time of stress, but it cannot remain static. Changes in our population, in our working habits, and in our standard of living require constant revision."

As we are emerging from a severe recession, SSA continues to serve our nation by ensuring that all Americans receive the benefits they have contributed to and deserve in a timely and accurate manner.

On behalf of the members of NCSSMA, I thank you again for the opportunity to submit this written testimony to the Subcommittee and to state our views. We respectfully ask that you consider our comments and appreciate any assistance you can provide in ensuring that the American public receives the critical and necessary service that they deserve from the Social Security Administration. An increased investment in SSA is prudent as the agency has a proven record of effectiveness and efficiency in providing service to the American public.

VerDate Nov 24 2008 15:17 May 17, 2011 Jkt 063865 PO 00000 Frm 00073 Fmt 6601 Sfmt 6601 P:\DOCS\63865.TXT SAFFAIRS PsN: PAT

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Senate Committee on Homeland Security,

Subcommittee on Oversight of Government Management, the Federal Workforce and the District of Columbia

Statement of the Honorable D. Randall Frye, President, Association of Administrative Law Judges

November 15, 2010

Chairman Akaka, Ranking Member Voinovich and members of the Subcommittee;

Thank you for inviting me to testify at this hearing. My name is D. Randall Frye. I am an administrative law judge who has been hearing Social Security Disability cases in Charlotte, North Carolina for about 14 years. I have also served as administrative law judge for the National Labor Relations Board for 1 ½ years. I am currently President of the Association of Administrative Law Judges (AALJ). The AALJ is Judicial Council Number 1 of the International Federation of Professional and Technical Engineers, AFL-CIO-CLE. AALJ represents the approximately 1400 administrative law judges employed at the Social Security Administration (SSA) and the Department of Health and Human Services. One of the stated purposes of the AALJ is to promote and preserve due process hearings in compliance with the Administrative Procedure Act (APA) and the Social Security Act for those individuals who seek adjudication of program entitlement disputes within the SSA. It is the long standing position of the AALJ that ensuring full and fair due process *de nova* hearings brings justice to the American people. The AALJ represents most of the approximately 1600 administrative law judges in the entire Federal government.

The Association of Administrative Law Judges is most grateful for the oversight of the Social Security disability program provided by the Subcommittee, particularly during the recent past when provided resources were inadequate to address the mounting backlog of disability cases. We too find it most painful that the American people, who are in the disability hearing process, have been disadvantaged by long delays in the adjudication of their disability cases. Our testimony today will address the President's FY 2011 budget, the status of the backlog, the impact of the Commissioners initiations on the backlog, the impact of the bac log on the ability of judges to provide due process to the American people and related issues which affect judges.

THE ADMINISTRATIVE JUDICIARY

VerDate Nov 24 2008 15:17 May 17, 2011 Jkt 063865 PO 00000 Frm 00074 Fmt 6601 Sfmt 6601 P:\DOCS\63865.TXT SAFFAIRS PsN: PAT

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In 1946, the Congress enacted the Administrative Procedure Act (APA) to reform the administrative hearing process and procedures in the Federal government and to protect, *inter alia*, the American public by giving administrative law judges decisional independence. "Congress intended to make hearing examiners (now administrative law judges) 'a special class of semi-independent subordinate hearing officers' by vesting control of their compensation, promotion and tenure in the Civil Service Commission (now the Office of Personnel Management) to a much greater extent than in the case of other federal employees". [*Ramspeck v. Federal Trial Examiners Conference*, 345 US 931 (1953)]. The agencies employing them do not have the authority to withhold the powers vested in Federal administrative law judges by the APA.

Prior to the enactment of the APA the tenure and status of these hearing examiners were governed by the Classification Act of 1923, as amended. Under that Act, the classification of the hearing examiners was determined by ratings given to them by the Agency and their compensation and promotion depended upon their classification. This placed the hearing examiners in a dependent status with the Agency employing them. Many complaints were voiced against this system alleging that hearing examiners were "mere tools of the Agency" and thus subservient to Agency heads when they decided and issued decisions on issues involving Agency determinations appealed to them. With the adoption of the APA, Congress intended to correct these problems. As earlier noted, this rather significant reform was undertaken to protect the American public by giving administrative law judges decisional independence.

BUDGETARY RELIEF

The AALJ and its membership deeply appreciate the recent budgetary support from Congress. These increases have resulted in much-needed hiring to fill the many support staff vacancies and to appoint new administrative law judges. For this support we are sincerely grateful. The shortfalls in funding by past Administrations created Agency wide staffing shortages which played a significant and long term role in preventing administrative law judges from addressing the developing backlog. The additional resources provided by the Congress permitted the Agency to reduce the backlog and to issue 658,600 dispositions in 2009 and 737,616 dispositions in FY 2010. In FY 2009, 147 new administrative law judges were appointed and approximately 1000 support staff hired. In FY 2010, 228 new administrative law judges were appointed and 1300 additional support staff hired. In addition, to better serve the American people, the Agency opened or expanded 19 new hearing offices in FY 2010. As you know, two of those new offices are located in Akron and Toledo.

Without question, the Congress of this great nation saved the disability adjudication system by its recent increases in financial resources to SSA. In so doing, the American people have been better and timelier served.

CONTINUED SUPPORT IS NEEDED

VerDate Nov 24 2008 15:17 May 17, 2011 Jkt 063865 PO 00000 Frm 00075 Fmt 6601 Sfmt 6601 P:\DOCS\63865.TXT SAFFAIRS PsN: PAT

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Although we have made progress in reducing the backlog, additional resources are still needed. At the rate of reduction in FY 2010, without considering any increase in applications, it would still take over four years, to the first of CY 2015, to reduce the backlog to a level of under 400,000 cases, the number SSA says it needs to keep the processing pipeline filled. However, in our view, it does not appear that this level will be reachable as applications are actually continuing to rise, and thus moving the date of "zero backlog" farther back in time.

More judges and commensurate staff are needed. New applications for disability benefits have increased at the DDS level and will continue at a high level as long as we have high unemployment and until the last of the baby boomers reach retirement age. The current level of judges available, about 1400, is not, in our view, sufficient to significantly increase the rate of reduction of the backlog nor even enough to prevent the backlog from increasing.

Equally important, the current level of staff is still not adequate. The judges in some offices are not getting cases in sufficient numbers to fill their schedules. In some offices, the staff ration to judge is under 4. While the Agency goal is 4.5 staff for each judge, we believe the judge would be most productive with a ratio of 5 to 1. Additionally the quality of preparation of the cases by staff has suffered as a result of shortcuts permitted by management before Congress increased SSA's budget. Insufficient preparation increases the amount of time required for the judges to review the case and increases the amount of time required for the decision writer to draft the decision. The amount of time saved by staff is more than doubled in time wasted by the judge and the decision writer, both of whom are paid at higher levels. For every dollar saved, several are spent.

Finally, resources are badly needed to perform Continuing Disability Reviews (CDRs) to insure that those receiving benefits are still disabled. This effort has been reduced even though it has historically returned ten dollars for every dollar spent.[1] Similarly, the Agency estimates that every dollar spent on SSI redeterminations yields $8 in programs savings. In our view, it is unwise to neglect these important program integrity areas.

As you know, the President's FY 2011 budget request for Social Security is $12.528 billion, which includes $12.379 billion in administrative funding through the Limitation on Administrative Expenses (LAE) account. This budget increases SSA's staffing by only 614 positions over FY 2010. To effectively and efficiently discharge our responsibilities under the Social Security Act, we respectfully submit that the President's budget is inadequate. As you also know, the Commissioner of Social Security submitted an independent budget which proposed $13.1 billion for the LAE account which would increase SSA's staffing level by 3758 positions over FY 2010. We continue to support the Commissioner's proposed funding for FY 2011. This level of funding, if so directed, could add at least 100 more administrative law judge positions and 500 support staff. This additional staffing is needed to address the increasing number of requests for hearing.

[1] Statement of the Hon. Patrick O'Carroll, Inspector General, SSA, before the Subcommittee on Social Security of the House Committee on Ways and Means, Sep 16 2008

VerDate Nov 24 2008 15:17 May 17, 2011 Jkt 063865 PO 00000 Frm 00076 Fmt 6601 Sfmt 6601 P:\DOCS\63865.TXT SAFFAIRS PsN: PAT

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RECORD ADJUDICATIONS BY JUDGES

The judges and support staff in ODAR have been increasing productivity per judge year after year. The productivity of the judges is a tribute to the continuing effort of the administrative law judge corps. As above noted, in FY 2009, we issued 658,600 dispositions, and in FY 2010, we issued 737,616 dispositions. However, we continue to disagree with the use of per judge dispositions to measure the performance of a particular hearing office. This disagreement is founded in the fact that administrative law judges, for the most part, do not and cannot control the number of monthly dispositions. Factors such as staffing ratios, availability of cases to schedule, complexity of the cases, quality and training of staff, whether claimants are represented, whether interpreters are required, whether expert witnesses are necessary and whether the bar is skilled and cooperative are beyond the control of the Judge. Thus, a more accurate measurement of performance would be to measure the work output of each work unit. In our view, measuring discrete units of work for all groups of employees in a hearing office would result in a more precise and accurate productivity picture for each hearing office.

OTHER AGENCY INITIATIVES HAVE BEEN SUCCESSFUL

The Commissioner's Quick Disability Determination (QDD) and Compassionate Allowances (CAL) initiatives have been quick successful and well received. Importantly, cases are identified at the earliest stage that is likely to result in allowances. Characteristics of certain cases are profiled and used to quickly identify claimants who are clearly disabled as a result of their illness or disease. Employing these programs has clearly inured to the benefit of the disability claimant and to the American people as they have had a positive impact on the backlog.

The expansion of the senior attorney program has also had a positive impact on the backlog. Under this program, profiled cases are screened to assess whether the case can be reversed without the need for a hearing before an administrative law judge. This was expanded in 2010 so that senior attorneys review profiled cases from heavily backlogged areas of the country. This latter approach was facilitated by have the ability to retrieve case information electronically.

Another initiative which the agency has introduced at the DDS level is the Automated Electronic Claims Analysis Tool (eCAT). This is a software program which requires DDS disability examiners to follow and apply Agency regulations and law to the facts of a given case. The Agency's assessment thus far has been positive. While this software may well prove to be helpful at the DDS level, we strongly oppose its application at the administrative law judge level. In this regard, the imposition of findings of fact and conclusions of law by using eCat would violate the APA and materially interview with the ability of the judge to provide due process and justice. The APA requires that we provide a *de nova* on the record hearing. Thus, it is the administrative law judge who must always make the initial findings of fact and conclusions of law based of their independent determinations as to the facts and the application of relevant law to those facts. DDS decisions, forced by computer software can never become the substitute for the "judgement" of the judge or the "decision" of the judge. To permit such a result would undermine a judge's decisional

VerDate Nov 24 2008 15:17 May 17, 2011 Jkt 063865 PO 00000 Frm 00077 Fmt 6601 Sfmt 6601 P:\DOCS\63865.TXT SAFFAIRS PsN: PAT

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independence and ultimately permit "agency heads" to decide important disability issues through carefully crafted software design. As earlier noted, this type of interference, although not envisioned by Congress at the time, is precisely the kind of intrusive conduct by agency officials that Congress prohibited when it enacted the APA.

AGENCY STEWARDSHIP

For the last decade, the AALJ has consistently advocated that the most effective way to address the rising backlog was by the appointment additional ALJs and staff. We commend the Commissioner for his wisdom in appointing additional judges and staff. These new appointments have already made an impact on the backlog and will continue to do so until the backlog is eliminated. However there are other issues created by Agency management which we believe has an adverse affect on our ability to serve the American people. Reports of the GAO and SSA's OIG show the Social Security disability process is plagued with serious systemic problems and that "silver bullet" solutions or attempts to scapegoat one or more classes of employees will not address, let alone solve, the problems confronting the Agency. Moreover, SSA's plan to further reduce the backlog discloses an over-reliance on future gains from technology. In our view, the Agency has, at times, over-estimated the benefits of technology and has often implemented the technology before it has been ready for efficient use. Further, technology does little to reduce the time judges they adjudicating cases. For example, judges still need to review and develop the case before hearing, conduct the hearing, prepare the hearing decisional instructions and edit the draft decision. The Agency has previously asserted that technology, such as ePulling, will reduce the number of staff employees needed to support administrative law judges. This has not been the case. The ePulling software, reportedly able to do most of the organizing of claim files, has failed, after the investment of substantial resources.

An Agency policy has been detrimental to the American people is constant pressure on judges to continue to increase the number of cases they adjudicate. This pressure is forcing judges to hear cases before they are prepared to do so. This impairs the judge's ability to adequately and thoroughly adjudicate cases. While some judges may be forced to hear and decide a higher volumn of cases, higher producing judges tend to pay a higher percent of claims.[2]

> As one Hearing Office Chief Judge pointed out, *If goals are too high the corners get cut and the easiest thing to do is to grant a case."*[3]

From this unsound practice, some claims may be reversed which should have been denied. For decades judges have paid an average of 60-70% of claims. The judges issuing up to 600 dispositions per year are still in that range. However, it appears that judges issuing more than 600 dispositions per year reverse more.

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[2] Statement of the Hon. Patrick O'Carroll, Inspector General, SSA, before the Subcommittee on Social Security of the House Committee on Ways and Means, Sep 16 2008., page 5.
[3] *Id.*

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Another problem and irony in ODAR is that, in addition to a shortage of support staff in some offices, it is "top heavy" with management and management support staff. In our view, too much of the additional budget resources recently provided by Congress were allocated to the ODAR Regional Offices and the ODAR Deputy Commissioner's office. Indeed, with a fully staffed Office of the Chief Judge, there is absolutely no need or purpose for a Deputy Commissioner's organization at ODAR. This type of structure is archaic and is based on yesterday's approach to management. We need forward thinking approaches to the way we manage the largest adjudicatory system in the world. The best stewards of such a system are judges.. Further in this time of declining budgets, we recommend that the number of managers in ODAR be substantially reduced and staff transferred to the hearing offices to work on disability cases. We continue to recommend that the ODAR regional offices be closed and the staff personnel be transferred to the hearing offices. There is a hearing office in each regional office city and this reform will not cause significant change of location for employees. In this electronic age, the functions of the ODAR regional offices can be more efficiently handled by the Office of the Chief Administrative Law Judge.

Finally, replacing paper files with electronic files (e-Files), begun under former Commissioner Jo Anne Barnhart, is an initiative that the AALJ endorses and supports. What is unacknowledged is that the system, like virtually all new systems, has difficulties. It needs some modifications. Moreover, it is slower for most judges to use in reviewing the file and in conducting a hearing. For many judges, electronic files slow the process because pages take longer to "load" and view. Electronic organizing of files has not yet been perfected. Electronic signing of cases still requires more time than signing with a pen. Although improving, equipment failures cause delays, some for long periods, because the system is often not capable of handling peak work loads. Judges spend too much of their work day making computer entries, work that should be assigned to staff.

JUDGE'S PRODUCTIVITY

As above noted, the pressure on judges to produce an ever increasing number of cases has reached epidemic levels. In evaluating our concerns, it is critical that members of the Subcommittee understand the role of staff in the disability claims process. When case files arrive in a hearing office, they must be "worked up" or "pulled", that is, electronically organized for use in the hearing. This is a significant task which, if done properly, requires skill and one to three hours of time as the contents of a given file arrive in the hearing office in random sequence, unidentified, without pagination, with duplications and without any numbered exhibits or table of contents to locate the exhibits. A staff member must identify and eliminate duplications, identify exhibits from the same source, label them, arrange them in chronological order, number and paginate the exhibits and prepare the List of Exhibits. After it is worked up, the file is ready for the assigned judge to review.

The judge must review all the evidence in the file, an average of around 400 pages, and then direct staff to obtain any missing evidence. When the record is fully developed, the judge determines if a hearing is needed or whether a favorable decision can be made on the evidence of record, without a hearing. In most cases a hearing is required and the judge then determines what expert witnesses

VerDate Nov 24 2008 15:17 May 17, 2011 Jkt 063865 PO 00000 Frm 00079 Fmt 6601 Sfmt 6601 P:\DOCS\63865.TXT SAFFAIRS PsN: PAT

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will be required for the hearing. After this review, the staff secures the expert witnesses and schedules the case for hearing. Once the hearing is scheduled, the judge continues to be involved with the case reviewing newly submitted evidence and considering and resolving pre-hearing motions and issues. Typically, a day or two before the hearing, the judge will conduct another review of the file to review whatever additional evidence has been added and to insure familiarity with the facts and issues for the hearing. When the hearing is concluded the judge must prepare thorough decisional instructions for the writing staff and later review and edit the draft decision. Once satisfied with the decision, the judge signs it.

As earlier noted, in courts and other agencies, trials and adjudications are conducted under the adversarial process in which the case is developed during trial by evidence introduced by opposing counsel. The judge studies and reviews the evidence as the trial progresses. However, in Social Security disability hearings, administrative law judges preside over an inquisitorial process, in which the judge develops the facts and develops the arguments both for and against granting benefits. In large part, this is required because the Social Security Administration is not represented at the hearing and the courts have been sympathetic to unrepresented claimants. Therefore, Social Security judges are required to wear the so-called three hats, referenced earlier. Nearly all the evidence is gathered and entered into the record before the hearing begins. After reviewing the evidence, the judge often sees a need for additional evidence which must be obtained. The inquisitorial system places more responsibility on the judge. Hearings based on this model are more time consuming and labor intensive for the judge.

Certainly, there is variance in the number of decisions issued by each judge, however, such a distribution is normal in all human activities, usually graphed as a "bell curve", and here it is further dependent on the numerous factors such as adequate and well trained staffing, the complexity of the cases, the number of unrepresented claimants and the sophistication of the bar. These are factors clearly beyond the control of the judges. A recent SSA OIG report[4] which specifically addressed factors affecting hearing office productivity, confirmed this result.

Quite compelling is SSA's last study on the issue of numerical goals for ALJs, *Plan for A New Disability Claim Process*. This study was conducted in 1994 and projected a time line for a disability claim at all levels of the process. The study, based on an average month of 4 and 1/3 weeks, concluded that a reasonable disposition rate for an administrative law judge should be in the range of 25 to 55 cases per month. The study also revealed that a judge would spend a range of 3 to 7 hours of time in processing cases.

It is acknowledged that there have been changes in the process since 1994, but, at the present time, most of those serve to slow down, not speed up the process. The average file size grows every year. The review of electronic files (eFiles) at present is slower than use of paper files. Even electronic signing (eSigning) of decisions takes several times as long as using a pen. While technology may

[4] *Congressional Response Report: Administrative Law Judge and Hearing Office Performance*, Office of the Inspector General, Social Security Administration, A-07-08-28094.

VerDate Nov 24 2008 15:17 May 17, 2011 Jkt 063865 PO 00000 Frm 00080 Fmt 6601 Sfmt 6601 P:\DOCS\63865.TXT SAFFAIRS PsN: PAT

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have reduced overall processing time for claims, it has not to reduced the amount of time most judges must spend in adjudicating a case.

In considering numerical performance it is important to understand that a judge must carefully review the voluminous documentary evidence in the claimant's file to effectively prepare and conduct the hearing and to issue a correct decision. Additionally, each case carries an average cost to the trust fund of $250,000. A judge hearing 40 cases per month is entrusted to correctly decide cases valued at $10,000,000 per month, or $120,000,000 annually. Nonetheless, judges are being subjected to various pressures to meet ever increasing production "goals" which in many cases become *de facto* quotas. Judges are sometimes required to provide written explanations for not meeting the goals and written plans on how they intend to meet the goal, taking valuable time away from adjudicating the case. Some middle managers have actually written that judges "must" make the "goals".

The result of the pressures to meet or exceed goals often is that some judges consciously or unconsciously take shortcuts. Cases get shorter reviews, facts go unseen and incorrect decisions reached. Obviously, this is detrimental to understanding the case. In some offices judges are still being asked, or told, to accept un-worked cases, cases which have not been organized by staff. These cases will have many duplicate records, records out of sequence, exhibits unidentified and not paginated. The result is a large amount of judge hours wasted; hours which could be spent on reviewing and hearing more cases.

Reviewing our 400 page case file is not unlike reading a 400 page novel. In both instances, one must read carefully to understand the story being presented. Skipping pages in either would likely distort ones understanding of the story. However, if you skip pages in a novel, the worst that may happen is that you could be embarrassed during discussions of the novel at your book club meeting. If a judge skips evidentiary pages in a case file, the judge could make incorrect decisions in that case, harming either the claimant or the cost the American tax payers $250,000 for the incorrect decision. Selectively reviewing evidence is a short cut that must cease; otherwise fairness and justice disappear from our adjudicatory system.

THE OHIO HEARING OFFICES

I am incredibly proud of the performance of the judges and staff in the Dayton, Cincinnati, Cleveland, Columbus and Toledo Hearing Offices over the past decade. Understaffed and flooded with a huge wave of cases, these honorable men and women worked incredibly hard to adjudicate cases. Some judges in Cleveland even attempted to implement procedures to more efficiently and effectively handle the huge volume of cases. However, such attempts were met with disdain by prior Agency management who imposed discipline on these judges for their gallant efforts. I personally know many of the judges in the Ohio Hearing Offices and have worked closely with some when we worked together at the National Labor Relations Board. Please accept my assurances that the judges in these offices are outstanding lawyers and highly competent and dedicated members of the administrative judiciary. The Ohio Hearing Offices have had to deal with the largest backlog in the nation. However, even though these judges were faced with a huge

VerDate Nov 24 2008 15:17 May 17, 2011 Jkt 063865 PO 00000 Frm 00081 Fmt 6601 Sfmt 6601 P:\DOCS\63865.TXT SAFFAIRS PsN: PAT

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volume of cases and substantial staff shortages they have consistently performed at levels well within the range of acceptable performance found appropriate by the Agency in its *Plan for a New Disability Claim Process*. We are proud to be associated with these dedicated, hardworking and honorable judges.

Judge Moral and Performance

There are several troublesome areas which affect performance that can and should be addressed by the Congress. Presently, judges enter the corps later in life. Several years ago, the average age of new judges was 57. For a full pension, those judges must work until age 87. Presently, we have a large number of judges in their late 70's and 80's. Many of these judges prefer to retire but without a full pension cannot do so. We have introduced HR 2850, which corrects this unfortunate circumstance by permitting an earlier retirement. This bill is fully funded by increased pension contributions, a fact which has been confirmed by the Congressional Budget Office. We respectfully request that you support this important legislation during the Lame Duck session.

Another important legislative initiative for administrative law judges is S. 1228 introduced by Senator Akaka. This bill is intend to correct a misinterpretation by the Office of Personnel Management of the Federal Workforce Flexibility Act, enacted in 2004. This legislation, which was also sponsored by Senator Akaka, permitted Agency's to credit private sector experience for purposes of leave. At the time of passage, OPM arbitrarily declined to follow its previous policy of including aljs along with members of the Senior Executive Service when implementing legislation providing similar benefits. S 1228 corrects this erroneous interpretation. We urge that you also support this legislation during the Lame Duck session.

Finally, security in our courtrooms has become a substantial concern to practically every judge. Threats of violence and bodily harm are regularly made to judges by claimants whose cases are denied. In addition, threats of bodily harm and violence are being made against the spouses and children of our judges. Such threats have been specific and have included, on occasion, the address of the judge. The AALJ is extremely concerned that these threats will be acted upon. Previously, two judges have been forced to take retirement because of injuries sustained by claimants in the hearing office. We simply cannot let this happen again. While the Agency has taken some steps to improve security, much, much more is needed.

Our security needs must be addressed promptly. We urge your quick and effective oversight to ensure that no more judges receive disabling injuries or that members of their families fall in harms way.

SSA has probably the largest adjudicatory system in the world. With the support of the Congress, it should also have the best.

Conclusion

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I want to thank you on behalf of the AALJ for this opportunity to be heard today and present you our views on these important issues. We are most hopeful that you will further pursue the issues we raise to ensure that claimants receive a full and fair due process hearing by administrative law judges. The Social Security Program is absolutely vital to the American people. Our judges are working extremely hard to address the backlog of cases under the most adverse of circumstances. We truly appreciate your support.

Senator Voinovich, I particularly want to thank you for your support of the administrative judiciary over the years. We wish you well as you enter a new phase in your life.

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