

**FUNDING SOCIAL SECURITY'S ADMINISTRATIVE  
COSTS: WILL THE BUDGET MEET THE MISSION?**

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**HEARING**  
BEFORE THE  
**COMMITTEE ON FINANCE**  
**UNITED STATES SENATE**  
ONE HUNDRED TENTH CONGRESS  
FIRST SESSION

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MAY 23, 2007

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**FUNDING SOCIAL SECURITY'S  
ADMINISTRATIVE COSTS: WILL THE  
BUDGET MEET THE MISSION?**

WEDNESDAY, MAY 23, 2007

U.S. SENATE,  
COMMITTEE ON FINANCE,  
*Washington, DC.*

The hearing was convened, pursuant to notice, at 10:07 a.m., in room SD-215, Dirksen Senate Office Building, Hon. Max Baucus (chairman of the committee) presiding.

Present: Senators Rockefeller, Stabenow, Cantwell, Salazar, and Grassley.

**OPENING STATEMENT OF HON. MAX BAUCUS, A U.S. SENATOR  
FROM MONTANA, CHAIRMAN, COMMITTEE ON FINANCE**

The CHAIRMAN. The hearing will come to order.

The book of Leviticus commands, "You shall not insult the deaf or place a stumbling block before the blind."

Today we will examine the stumbling blocks that the government places before Americans with disabilities as they seek help from Social Security. Today's hearing will focus on the long waits that people must endure before they receive Social Security disability benefits, and today we will talk about ways to fix the problem.

It sometimes takes 4 years for Social Security to finally approve disability benefits. By definition, the people applying for these benefits are not able to work so they have no earnings while they wait, but they still have to pay for food, housing, and medicine. As a result of these delays, some lose their homes, their health, and their families.

Listen to what one Montanan wrote in an affidavit to the Social Security Administration: "I was living in a mold-infested camp trailer for over 1 year without running water, or a bathroom, or cooking facilities. Now I live in an 8 × 20-foot building, and I still do not have running water or a bathroom. . . . I am only able to afford food by way of food stamps. I have been unable to pay car insurance. I have been unable to pay my treating physicians for nearly 4 years, and I beg for the money for gas to drive to appointments. . . . I experience constant backaches. I can't walk, sit, or stand comfortably. I hurt all the time. I can no longer afford my medications. . . . I don't have any way to continue to receive treatment."

Listen to Susan Gobbs, an attorney in Helena, MT. Susan writes, "[W]e have an average of 10 clients who die every year from condi-

tions related to their disability, waiting for hearings. We routinely have clients who are living on the streets, or in their cars, waiting for hearings.”

Last year, the committee heard from Erwin Hathaway about the hardships that he and his family endured. He waited 4 years until his benefits were approved. The former Commissioner of Social Security, Jo Anne Barnhart, produced a study of why it takes so long to decide these cases.

She found that one of the critical factors was the huge backlog of cases waiting for either initial examinations or for appeals hearings before administrative law judges (ALJs).

At the beginning of 2002, there were 436,000 cases pending for appeals hearings. By the end of this year, Social Security expects that there will be, not 436,000, but 752,000 cases pending. That is an increase of 72 percent. As a result, it can take years to get a decision.

More than 1 in 10 of those waiting for hearings are veterans. Many of these vets have risked everything for their country. This is a poor way for the government to treat men and women who have served our country in the armed forces.

One reason that these backlogs exist is that there are not enough staff to process the cases and the appeals. The reason for the shortage of staff is that the appropriations process does not give Social Security enough money to run its programs properly. The key reason that appropriations are tight is the administration’s effort to constrain overall domestic spending. It affects this program, as well as many others.

Funding is also insufficient for Social Security to adequately fulfill its other responsibilities. Phone service in local offices is abysmal, waiting times for walk-in service in local offices are very long, and they are growing. On top of that, Social Security has new workloads, with Medicare parts B and D, and the processing of Social Security cards.

Many jobs are not getting done at all. Social Security is not processing beneficiaries’ reports on changes in their earnings, and that leads to over-payments. And Social Security is not doing as many continuing disability reviews and Supplemental Security Income redeterminations as it could.

Not doing those jobs is penny wise and pound foolish, because every dollar spent on continuing disability reviews saves \$10. Every dollar spent on Supplemental Security Income redeterminations saves \$7. We have to do better.

So let us stop the government from putting stumbling blocks in front of Americans with disabilities. Let us do what we can to promote adequate funding to get the job done. Let us do what we can to help those Americans with disabilities to save their homes, their health, and their families.

Our first witness this morning is Mr. Michael Astrue, the Commissioner of Social Security. Then we have Nancy Shor, who is the executive director of the National Organization of Social Security Claimants’ Representatives. Then, third, is Mr. Richard Warsinsky. He is president of the National Council of Social Security Management Associations. Finally, Mr. Chuck Schimmels, who is the president of the National Association of Disability Examiners.

Thank you all for coming. You will have 5 minutes each. Your statements will all be automatically put in the record.

So why don't you, Commissioner, begin?

**STATEMENT OF MICHAEL J. ASTRUE, COMMISSIONER,  
SOCIAL SECURITY ADMINISTRATION, BALTIMORE, MD**

Commissioner ASTRUE. Thank you, Mr. Chairman and members of the committee. Thank you for this opportunity to share our plans to reduce the backlog of disability claims.

As you know, our disability programs have grown significantly over the last 5 years and will continue to do so at an increasing rate as aging baby boomers reach their most disability-prone years.

At the same time, Congress has added new and non-traditional workloads to the Social Security Administration's responsibilities, while appropriating, on average, about \$150 million less each year than the President has requested since 2001. As a result, the Agency is struggling to balance its responsibilities and its traditional work within tight resource constraints.

When I appeared before you at my confirmation hearing, I promised to report back to you with my recommendations for reducing these backlogs and preventing them from occurring. Today I want to make an initial report on our first 100 days.

There are four areas which I believe hold the most promise to eliminate the hearings backlogs: compassionate allowances, streamlining hearing procedures, increasing adjudicatory capacity, and increasing efficiency with automation and business processes.

Despite the fact that our administrative law judges are achieving a record high productivity rate, backlogs continue to grow. The current number of cases waiting for a hearing decision is about 738,000, leading to an average waiting time of 505 days, the highest ever in SSA history. Pending hearings have doubled since 2001.

In addition, the number of applications for disability benefits has been extraordinarily high throughout the first 7 years of this decade and, as I mentioned earlier, funding has not kept up.

To provide more context, congressional budget reductions below the President's request from 2002 through 2007 are equivalent to processing an additional 177,000 initial claims and an additional 454,000 hearings.

Although attrition continues to reduce staffing levels, funds from the recent continuing resolution allowed us to avert employee furloughs and hire a limited number of staff in critical areas.

We thank the members of the committee for the support you gave us in obtaining these funds, and we very much need you to continue your advocacy efforts on our behalf.

The success of the initiatives that I share with you today depends on timely and adequate Agency funding. Properly funded, these initiatives will reduce the amount of time members of the public wait for a hearing decision and will lead to a reduction in the number of cases pending in our offices.

Attached to this testimony is additional information about our proposals to reduce the hearing backlogs and address the shortfalls of the disability determination process. One way to reduce the number of cases in the determination process is to use automation tools to screen cases.

We have seen the success of the Quick Disability Determination (QDD) model currently in use in New England. To date, the New England States have decided 97 percent of these cases within the required 21 days, and they have an average decision time of 11 days.

About 85 percent of these cases have been allowed during the initial review, and more have been allowed with additional documentation. We plan to build on the success of the QDD, because it is both efficient and compassionate for us to do so. To date, the majority of QDD cases are cancer cases, because the model does not yet cull a wide enough variety of cases.

Currently, QDD cases constitute only 2.6 percent of our cases, but we are committed to pushing the number of cases that can be decided through the model as high as we can possibly go, while maintaining accuracy.

An added difficulty is that our examiners are working with outdated medical listings and poorly defined categories of disabilities. Many cases that should be resolved quickly are not being determined in a timely manner because of our listings.

To help with this initiative, Secretary Leavitt has generously offered the assistance of the Department of Health and Human Services on a task force to jump-start our efforts to refine and update our rules.

Other course corrections at SSA include reorganizing the Office of Disability and Income Security Programs to better align our organizational structure with our mission of dedicated service to Americans with disabilities.

In addition, we found that two of the new electronic systems developed for Disability Determination Services (DDS) as part of the Disability Service Improvement (DSI) initiative were not ready for real-world use and were, in fact, causing considerable delays in processing caseloads, and we have pulled those systems.

Let me turn, now, to how we are improving our hearing procedures. We have already begun to attack the problem of aged cases, starting with the cases that are, or will be, 1,000 days old as of September 30, 2007. An applicant should not have to wait 3 or 4 years for his or her day in court.

We have established a goal of reducing these cases to a negligible level by the end of this fiscal year, and I am pleased to report that this number has already dropped from more than 63,000 on October 1 of last year to about 14,000 as of last week. We have made this progress by reallocating resources and redefining the metrics by which we measure success.

We are also studying the experiment of 1995 to 2000 that authorized senior attorney advisors to issue fully favorable decisions under certain circumstances. We will evaluate the lessons from this experiment for similar approaches we could adopt to improve the disability determination process.

Hiring additional administrative law judges is an essential element in a successful plan for reducing the backlog. Further improvements are expected from our plans to increase efficiency of support staff. Before a hearing can be held, there is a large amount of work that must be done to prepare the case to be reviewed. With advances in technology and improved management, there are a



number of ways to increase the efficiency of this behind-the-scenes work, and we will pursue them all.

As an interim measure, we will streamline the folder assembly portion of case preparation. Streamlining the assembly will have an even greater impact as we add the software needed to automate this function.

We will send volunteers from our field offices to hearing offices with the largest backlogs to help assemble the remaining paper files. We plan to dedicate 5,000 hours of overtime per month to this effort, which will probably continue into next year.

To a large extent, the cases pending the longest at the hearing level are the remaining 220,000 paper files. When these cases are finally adjudicated, they will be replaced by electronic files, which will require less time and effort to prepare.

We have also decided to mandate the use of the Findings Integrated Template, or FIT. This tool is now being voluntarily used by about 80 percent of our judges. It is an abbreviated decision format that captures all the key elements required for a defensible opinion. Those judges who now use FIT have a lower remand rate from the Appeals Council, which saves us substantial time and money.

In addition, we will screen our oldest cases using profiles recently developed by the Office of Quality Performance to identify cases where there may be a high probability that an allowance can be issued on the record without a hearing. This screening initiative will begin next month.

We are also planning on capitalizing on the flexibility now available to us with electronic folders and other technologies. Assigning our ALJs to 141 offices nationwide does not give us enough flexibility to address the worst backlogs.

Video hearings have successfully addressed backlogs on an ad hoc basis, and we feel that reserving a percentage of ALJs in a central office solely to do electronic hearings for the most backlogged offices is a better and smarter way to use an expensive resource.

At the hearing level, we need the ability to—

The CHAIRMAN. Commissioner, I will let you go for a couple more minutes because you are the Commissioner. We want to hear what you are doing.

Mr. ASTRUE. I will try to rip along, Mr. Chairman.

The CHAIRMAN. All right.

Mr. ASTRUE. At the hearing level, we need the ability to sign decisions electronically. In addition, we need shared access to the electronic folder. Currently, cases cannot be transferred from office to office in an electronic format. We are forced to print and mail cases that are remanded or shared with another office.

To help us reduce ALJ travel time and costs, we are installing, in all hearing rooms, video equipment to enable us to increase the number of hearings, an initiative which will particularly benefit rural areas.

We are also excited about the long-term potential of a new automation tool called ePulling. Our progress in working down our aged cases is an example of us successfully improving our business processes. Other initiatives in this area include, but are not limited to: directing the Appeals Council to issue final decisions when possible to reduce remands; be more proactive in investigating alleged ALJ

misconduct complaints; improve management training; encourage greater cooperation between hearing offices, field offices, and area directors; standardize the electronic folder in hearing offices; and implement a quality assurance program.

To conclude, Mr. Chairman, when it comes to disability backlogs, there is no single magic bullet. Our goal is to slow the growth of cases pending until we reach a tipping point next year with the addition of a substantial number of ALJs who can help us begin to drive the backlog back down.

With better systems, better businesses processes, and better ways of fast-tracking targeted cases, we hope to return to the more manageable levels we experienced at the beginning of this decade. This task will not be easy, and it will not be possible without your continued support for adequate funding.

Thank you again for your past support. I would be happy to answer any questions you may have.

The CHAIRMAN. Thank you, Commissioner, very much.

[The prepared statement of Commissioner Astrue appears in the appendix.]

The CHAIRMAN. Now, Ms. Shor?

**STATEMENT OF NANCY SHOR, EXECUTIVE DIRECTOR, NATIONAL ORGANIZATION OF SOCIAL SECURITY CLAIMANTS' REPRESENTATIVES, ENGLEWOOD CLIFFS, NJ**

Ms. SHOR. Thank you very much for inviting us to testify today. I am the executive director of NOSSCR, the National Organization of Social Security Claimants' Representatives, which is a membership organization of nearly 3,900 attorneys and other advocates who represent individuals seeking Social Security and SSI benefits.

These benefits are the means of survival for millions of individuals with severe disabilities. Delays and backlogs in adjudicating their cases have reached intolerable levels. If a case goes to the hearing level, it can easily take more than 3 years to get a decision after filing the application.

We believe that SSA is generally doing a good job with limited resources, but for now we believe the primary reason for the increase in the disability claims backlog is that the Agency has not received adequate funding. While the situation currently is dire without adequate appropriations for the Agency, the impact on claimants will only deteriorate.

I would like to say that we are encouraged by efforts to provide the Agency with adequate administrative funding. The recently approved fiscal year 2008 budget resolution conference report recommends an appropriation of \$10.1 billion, an amount that is \$430 million above the President's requested level.

Given how long many claimants currently wait for hearings, eliminating backlogs much sooner than the 5 years this funding is targeted for would be a terrific outcome.

We must remember that each claim file represents an individual with severe disabilities whose life may be unraveling while waiting for his or her claim to be properly decided. Families are torn apart, homes are lost, medical conditions deteriorate, and many claimants die while waiting for a decision. Once-stable economic security crumbles.

My written statement graphically describes the desperate circumstances of some individual clients of our members which, sadly, exemplify the serious nature of the current backlog situation, and I would like to highlight just a couple.

In Montana, one client has been waiting almost 2 years since she filed her claim for benefits. She has lost everything: her house, her car, her health insurance, and her husband has left her. She cannot afford medications. A medical exam has indicated that she is actively considering suicide.

Another client has worked at hard physical labor his entire life and led a so-called "typical" Montana lifestyle, enjoying hunting and fishing. He now has rheumatoid arthritis, coronary disease, cellulitis, and severe sleep apnea.

Described by his attorney as a "big, strong, tough Montana man," he broke down in tears during his hearing because it shames him so much that he cannot support his family and that he needs the government's help at this time in his life. He has waited 2 years for benefit approval.

Another NOSSCR member in Des Moines, IA routinely tells her clients to expect to wait 14 to 24 months for a decision after filing for a hearing. One of the hearing offices where she represents clients is short two ALJs and six support staff, causing a significant increase in the office's backlog.

One client from Boone, IA filed her hearing request in May of 2005. The hearing was held in August, 2006, but she has not yet received a decision 2 years after requesting a hearing. She lives with a friend, on food stamps. She was forced to withdraw all the money from her company's pension plan and had to pay the IRS penalties for that early withdrawal.

She has no medical insurance. She has not been able to receive adequate medical care for her impairments. Because of the stress caused by worrying about how she is going to afford to live and take care of her medical needs while waiting, she has now been diagnosed with anxiety and depression.

What do these cases, and so many others like them, tell us about the current budget situation at Social Security? First, we note the processing times have increased dramatically. According to the Agency, the average processing time for cases at the hearing level this year will be 524 days, and 541 days next year, nearly twice as long as it took in 2000.

This is just an average. Of course, many individuals will wait much longer. While the hearing-level processing times are the most striking, it is important to keep in mind that processing issues, such as the reconsideration slow-down last summer, can add to the overall processing times.

SSA's statistics show that the processing times in many hearing offices are much longer than the 524 days targeted from this year. One office in Atlanta, GA is averaging 28.5 months, nearly 2.5 years, just to have a hearing. This does not include the time for the decision to be issued after the hearing or for the individual who is found eligible to actually receive a check.

Second, the number of pending cases continues to increase dramatically. The number of pending cases at the hearing level has in-

creased almost 250 percent since 1999, despite the fact that the number of ALJs has remained almost exactly the same.

Third, staffing levels have decreased, which leads to a decrease in service. Our members have noted the loss of ALJs and support staff in hearing offices across the country. The hiring freezes and low replacement rates have had their impact, especially since many of those SSA employees retiring are those with the most experience.

Because of cuts in the budget requests over the last few years, fewer ALJs have been hired than planned. Again, this comes despite the fact that about the same number of ALJs are now expected to handle more than twice as many cases as in 1999.

Frankly, even more of a problem may be the inability to hire support staff, which directly relates to the productivity of a hearing office: files cannot be organized, records cannot be requested, hearings cannot be scheduled, and decisions are not written.

Finally, we note a decrease in service provided by SSA district offices and State agencies. While the delays, in fact, at the hearing level are the most dramatic, the current budget situation has left all SSA offices and State agency offices without adequate resources to meet all of their current responsibilities.

Under the President's fiscal year 2008 budget request, SSA will need to reduce its staff. This does not take into account reduction in 2006, or expected in 2007.

My testimony provides more details about the impact on people with disabilities. Last summer, because the initial application backlog became too high, DDS directors were authorized to temporarily redirect resources.

This means that, in several States, cases at the reconsideration level were not processed for several months. Post-entitlement work, such as processing earnings reports, is given less priority than initial applications. Fewer continuing disability reviews are performed. New caseloads are added by legislative changes without providing the funds to implement the new mandates.

We thank you for the opportunity to testify today. Because of the impact on individuals with severe disabilities, we urge Congress to provide the Agency with adequate resources to carry out its mandated responsibilities. Thank you.

The CHAIRMAN. Thank you very much.

[The prepared statement of Ms. Shor appears in the appendix.]

The CHAIRMAN. Mr. Warsinskey?

**STATEMENT OF RICHARD E. WARSINSKEY, PRESIDENT, NATIONAL COUNCIL OF SOCIAL SECURITY MANAGEMENT ASSOCIATIONS, INC., WASHINGTON, DC**

Mr. WARSINSKEY. Chairman Baucus and members of the committee, my name is Rick Warsinskey, and I represent the National Council of Social Security Management Associations. On behalf of our membership, I am pleased to have the opportunity to submit this testimony to the committee.

Social Security is a primary source of income for millions of Americans. It accounts for 90 percent of the income of the aged, non-married beneficiaries and provides for at least 50 percent of the income of 74 percent of the aged beneficiaries. People need So-

cial Security to live on. And they need to receive these resources in a timely manner. This really is the bottom line.

SSA will lose about 4,000 positions from the beginning of fiscal year 2006 to fiscal year 2008. Our Agency will be at its lowest level of staffing since the early 1970s. Field offices have lost about 2,400 positions in the last 19 months, and about 1,300 positions in the past 7 months.

It is interesting to note that, while total executive branch employment is expected to increase 2.1 percent from fiscal year 2006 to fiscal year 2008, SSA's employment is expected to increase 6.2 percent.

The CHAIRMAN. Decrease?

Mr. WARSINSKEY. Decrease. I am sorry. A big difference.

This year, an average of over 850,000 people are visiting Social Security Administration field offices every week. At the same time, field offices are also being overwhelmed by approximately 68 million business-related telephone calls a year.

The fact that the public cannot get through to SSA on the telephone is also creating an overwhelming amount of walk-in traffic in many field offices. Waiting times in many field offices are running 2 to 3 hours long.

Every day, SSA field offices and teleservice centers throughout the country are being contacted by people regarding the status of their hearings. We know that an increasing number of people are losing their homes and are going homeless due to severe delays in hearing decisions.

People are dying while waiting for hearing decisions, some as a result of suicide. Stress levels on those waiting are unbearably high. Approximately 125,000 veterans have pending disability claims, of which about half are awaiting a hearing decision. A significant percentage of those awaiting decisions have no health insurance.

Next year, in 2008, the first of 78 million baby boomers will be eligible for Social Security retirement. As a result, there will be a steady rise in retirement claims being submitted to SSA.

The rising number of workers who are baby boomers will also be reflected in the increase in disability claims. Workers over the age of 55 who lose their jobs are many times turning to filing for disability as a last resort.

The resource demands of SSA's involvement in administering the Medicare Modernization Act have been vastly underestimated, and no additional funds have been allocated for continual administration of this program. The funding needs for SSA could dramatically increase, depending on the final language in any legislation enacted relating to immigration.

The Commissioner is required, by law, to prepare an annual budget for the Agency. The budget amount submitted by the Commissioner of Social Security for fiscal year 2008 is \$10.44 billion, which is \$843 million above the level of funding that the President requested.

The Social Security Trust Fund is intended to pay benefits to future beneficiaries and finance the operations of most of the Social Security Administration. The additional funding of approximately

\$430 million proposed for SSA in the fiscal year 2008 budget conference report represents about 1/50th of 1 percent of \$2 trillion.

Don't the workers who have paid into this trust fund with their taxes deserve to receive due consideration and the very benefits they have paid for in a timely manner? Our Agency certainly needs additional funds. And additional resources would certainly help address the growing backlogs at SSA and restore good field office service. We urge Congress to provide SSA with enough resources to meet our responsibilities to the American public, your constituents.

Mr. Chairman, I thank you for the opportunity to appear before this committee, and I welcome any questions you may have.

The CHAIRMAN. Thank you, Mr. Warsinskey, very, very much.

[The prepared statement of Mr. Warsinskey appears in the appendix.]

The CHAIRMAN. Mr. Schimmels?

**STATEMENT OF CHARLES SCHIMMELS, PRESIDENT, NATIONAL ASSOCIATION OF DISABILITY EXAMINERS, OKLAHOMA CITY, OK**

Mr. SCHIMMELS. Mr. Chairman and members of the committee, I am pleased to have the opportunity to submit this testimony to you.

The National Association of Disability Examiners, NADE, is a professional association whose purpose is to promote the art and science of disability evaluation. A majority of our members work in the State DDS agencies adjudicating claims for Social Security and/or SSI disability benefits.

It is our extensive program knowledge and hands-on experience which enables NADE to offer a perspective on disability issues that is both unique and which reflects a programmatic realism.

Unfortunately, both SSA and the State DDSs are finding it increasingly more and more difficult to perform the mission, given the significant funding reductions experienced by SSA and the DDSs over the past 5 years.

In the disability process, there has been a growth in disability applications and in the number of individuals receiving disability benefits. As baby boomers age and more and more individuals retire or become disabled, this places a significant strain on already stressed resources just to manage daily work involved with maintaining benefit levels of more beneficiaries.

There is no doubt that the backlogs in the disability program have increased. This is a direct result of the hard choices that needed to be made by SSA over the past few years to deal with the realities of inadequate budgeting and staffing.

If SSA continues to be burdened with inadequate funding, this problem will only exacerbate an already over-strained system. Backlogs are a direct result of inadequate funding and staffing.

The complexity of the Social Security disability programs, coupled with the need to produce a huge volume of work, justifies even more the need for adequate resources in order to provide the service the American public has come to expect and deserve.

It takes at least 2 years for a disability examiner to be fully trained and function independently to make high-quality and time-

ly disability decisions. It is critical that DDSs be provided with the resources needed to hire and train replacement staff immediately upon staff losses so that further delays in service do not result.

Even if SSA receives the funding increase recommended by the President in fiscal year 2008, staffing will be cut due to increases in expenditures in several areas, including rent, salaries, medical expenses, security and benefit costs, which total more than the annual appropriated funds.

Limited resources have forced SSA to reduce the number of Continuing Disability Reviews (CDRs) performed. Of utmost concern to NADE is the past history of these types of actions and the resultant negative impact as the Agency falls behind in these critical reviews.

While there are some increased administrative costs with the performance of CDRs, there is the potential for increased savings in program cost. Dedicated funding above the cap has shown to be the best means of staying current with the CDR workload.

The projected cost savings from dedicated CDR funding from fiscal year 2003 to fiscal year 2006 would be \$1.8 billion over 10 years. NADE encourages this committee to recommend appropriating dedicated funding for CDRs to ensure that this workload gets the attention it deserves.

The Electronic Disability Process, e-Dib, is still a work in progress and requires ongoing refinements, upgrades, and improvements frequently in order to make the system work as efficiently and effectively as possible.

Continued attention to e-Dib is needed to ensure that the proper financial support is given to make it successful, since DDSs process over 2.5 million cases on an annual basis. Any shut-down or slow-down of this case processing system equates to a significant loss of production capacity.

NADE believes that e-Dib and its full implementation may result in a significant reduction of processing time at all levels of adjudication, from the field office, to DDS, to ODAR, and above.

In summary, inadequate resources, along with increased workloads, have not only caused backlogs, but have allowed existing backlogs to increase. Disability backlogs are affected by inexperienced staff, hiring restrictions, and the implementation of constant program changes.

Dedicated funding is necessary in order to avoid the costly possibility of having backlogs of overdue CDRs. Resources should not be diverted from e-Dib until the e-Dib system is fully operational. It is critical that necessary refinements be made to the system in order for it to produce the anticipated and desired efficiencies.

In conclusion, NADE believes that the American public wants, and deserves, to receive timely, compassionate, and efficient service from SSA and the State DDSs. Therefore, we request that you approve at least the amount included in the fiscal year 2008 budget resolution to begin the process of restoring the levels of service that the public deserves from all components of SSA and State DDSs.

On behalf of the membership of NADE, I thank you again for the opportunity to submit this testimony to the committee.

The CHAIRMAN. Thank you, Mr. Schimmels.

[The prepared statement of Mr. Schimmels appears in the appendix.]

The CHAIRMAN. This whole situation is tragic. I just cannot believe our country, the United States of America, lets this happen. I mean, it is an outrage. I hope that this hearing today, at the very least, documents and dramatizes the need for more resources so that Americans who are on disability get fair hearings in a very timely manner.

In the judicial system there is a common phrase: justice delayed is justice denied. That is true here, too. Justice delayed is justice denied. These backlogs are just unconscionable. I cannot believe this country has let this happen. So, now it is time to fix it.

First, I want to thank you, Commissioner. You have acknowledged the problem. You are not trying to dance around it and explain it away or rationalize it, and so forth. I think this committee deeply appreciates your recognition that there is a problem and you are trying your level best to help solve it.

Commissioner ASTRUE. Thank you, Mr. Chairman.

The CHAIRMAN. You mentioned, a lot of it is inadequate resources. You also mentioned that Congress appropriated less than the President's budget. That is true. That is unconscionable, too, that Congress would do that. I think, in part, the overall presidential budget submission to Congress is deficient in lots of areas, lots of social programs.

I am not on the Appropriations Committee, but I guess the Appropriations Committee decided, well, we have to cut here because otherwise we have to cut other programs within the HHS budget. It is an impossible situation to be in.

But that just means we need to do a little bit more to spend more in all these areas. I am going to do my level best to try to get that amount that is in the budget resolution—the \$430 million, roughly, increase—adopted. At the very least, that is what we have to do.

Ms. Shor, I would just like to ask if you, on behalf of claimants, and so on, and so forth, basically think it is essentially a resource problem. Is that essentially the problem, do you think?

Ms. SHOR. Yes, at the hearing level. Again, the numbers are stark. In the year 2000, and today, we have the same number of ALJs. We have a smaller support staff working in those hearing offices, and the number of cases they are processing or that they have pending at the hearing offices is up 250 percent.

So, there are lots of fixes that can improve the situation, but fundamentally such a mismatch between the size of the workforce and the size of the work is going to lead to the outcome we have today.

The CHAIRMAN. Commissioner, if the President's budget were the amount of dollars you would have, you are saying you think you can get rid of that backlog in 5 years. Is that correct, or not?

Commissioner ASTRUE. I think that it is unlikely that we would get rid of the backlog. I think we could, under the best scenarios, make some very significant progress.

What we are trying to do right now, in advance of knowing whether we can hire ALJs, in advance of whether we can hire this new group of ALJs, is to try to put the brakes on, through a variety of regulatory and administrative techniques, and essentially try to get to a steady state.



The backlog has gone up approximately 70,000 cases a year for the last 5 years. We think with the package we have here that we can, over the next 6 to 8 months, put the brakes on, get that number level, and maybe even bring it down a little bit with that.

Once we get to that point, we will get some efficiencies with some of the things that are longer-term, with technology, but it becomes much more a matter of brute force with the number of ALJs. The most direct connection you have for reducing the backlogs is increasing your capacity of ALJs.

Our target for what we think we need to accomplish the goal that you mentioned is about 1,250 ALJs. That is ambitious, because they come with a little over four support staff, each one of them. So what we are looking at is trying to shift about 700 to 900 full-time equivalents (FTEs) into the Office of Disability Adjudication and Review (ODAR). We are trying very hard to do that within the constraints of the President's budget.

We are on our first round of budget meetings. We have made some progress, but I cannot guarantee you that we are going to be able to get there this year. So we are going to hire as many as we can, given the numbers that we have, and we do not know what number yet we will have in the budget process.

The CHAIRMAN. Would others agree that a significant increase in ALJs will solve a large part of the backlog problem, as the Commissioner indicated? Do any of the other three of you have any comments on that?

Mr. WARSINSKEY. I would say that it is certainly going to help. You are going to have to have more support staff to get the cases ready, so it has to be a combination of both. You have to have staff at the back end to move the cases once the cases are decided while they are in the field offices or in the payment centers.

So you have to have a package of staff in all areas, basically, to support the whole process. But definitely, with the current level of ALJs staying basically steady for this decade while the cases have gone up so much, I do not see how—

The CHAIRMAN. How many ALJs do we have now?

Commissioner ASTRUE. It is a question of definition. I like to say "sits actually on the bench deciding cases." So we have some administrative judges; some are on disability, some are on leave. But, in terms of the best number I have been able to get today for the number on the bench deciding cases, 1,077.

The CHAIRMAN. And your goal is how many?

Commissioner ASTRUE. Our goal is 1,250. That is fairly similar, if you go back as I have, and read Commissioner Barnhart's testimony over the years, although there was a little bit of wavering on the numbers, it is essentially the equivalent of what Commissioner Barnhart had.

The CHAIRMAN. Any plan to reach that level of 1,250?

Commissioner ASTRUE. Right now, I do not know. Right now we are going through a zero-based budgeting exercise. We have done the first round of discussions with some of the components, trying to find as many FTEs as possible so that we can make that shift. But until I know what the FY 2008 budget is going to be, I am not going to be able to make a decision on how many ALJs we are going to be able to hire.

The CHAIRMAN. My time is expiring, but just one question here. Assuming you had the amount in the budget conference report, when could you reach 1,250?

Commissioner ASTRUE. When could we reach 1,250?

The CHAIRMAN. By what date would you be able to reach 1,250 ALJs if the amount appropriated were the amount that—

Commissioner ASTRUE. In the budget agreement? We would be able to do it next year. Yes.

The CHAIRMAN. Can you do it at the President's requested level?

Commissioner ASTRUE. We do not know yet. I believe we will be able to go up over the current 1,077. The question is, exactly where will we hit between 1,077 and 1,250, and I do not have enough information yet to know.

The CHAIRMAN. Thank you. My time has expired by about 2 minutes.

Senator Salazar?

Senator SALAZAR. Thank you very much, Chairman Baucus, for holding this hearing on this very important issue.

Commissioner Astrue, thank you for your work in Social Security. I know you are new—relatively new—on the job, so you have inherited a problem that has been there a long time.

But let me say a couple of things, first. I look at these numbers, and to me they are totally unacceptable. I am sure that for you and the people who are here, my Chairman here, and Senator Stabenow, it is alarming to see what has been happening with these numbers, where the numbers that I have, which came from the Social Security Administration, show that the ALJ hearing backlog was 311,000 in 1999. The delay in getting your decision out of an ALJ was 316 days, so that is about a year.

In 2008, the projection is that the backlog is 768,000, so more than double, and a delay in decision of 541 days, so almost 2 years. Almost 2 years. I go back to the point that Justice Baucus—not Justice Baucus. He should be a justice. [Laughter.] But as Senator Baucus said, justice delayed is justice denied.

So I might ask you this question. So you are the CEO. You have this problem. You are the guy who is leading the charge here, telling us how we ought to fix this problem that is unacceptable to all of us. Moving from 1,077 to 1,200 ALJs, frankly, at the end of the day it is going to be a pittance. It is not going to do much. It might move the numbers just a little bit.

So if we asked you the question this way, Mr. CEO of Social Security, what is it, within a year, that you would need to be able to do the following and achieve these visions and these goals with respect to the backlog on disability claims. One, that every disabled claimant gets their hearing and their decision from an ALJ within 90 days of the time the petition was filed. It seems to me that is a reasonable time, 90 days, to review the evidence and get a decision. Second of all, to reduce this backlog to the point that it is a reasonable backlog. There are always going to be claims in the system that are going through adjudication, so it may get down to 50,000, 100,000, a set number there.

But what would it take to get us to that kind of effectiveness with respect to the processing of these claims? Let me make it a little more simple for you. What would be the top three rec-

ommendations that you would give to this committee, to the Congress, and to the President? Unconstrained by budget issues that we are dealing with right now, what would they be?

Commissioner ASTRUE. A lot of questions there. I think something that is important—and I do not mean to disagree with the Chairman—but I have read all of our past testimony over the years and we have had a tendency to present this solely as a resource problem.

The resources are critically important, and I continue to say that, but part of fixing a problem is accepting responsibility for it. There are a lot of things that this Agency should have been doing over the years that it has not done.

Senator SALAZAR. Let me acknowledge that, that I appreciate your recognition of the problem and praise you for that. That is where we need to start: there is a problem. So this remedy then ultimately is going to be a combination of getting additional resources to do what you have to do with the ALJs, and also systemic changes that you were talking about.

Commissioner ASTRUE. Right.

Senator SALAZAR. So, acknowledging the problem. Now let us move forward. What do you need in resources? What are the systemic changes to get us to where we would want to be in a year?

Commissioner ASTRUE. Well, let me tell you some things that I do not think you want to hear, Senator Salazar. First of all, in the 90-day goal, I do not have the tools to do that.

Senator SALAZAR. Do you need changes in the law?

Commissioner ASTRUE. Well, I would. Congress has substantially tied my hands—not entirely, but substantially—in supervision of ALJs in the name of independence of ALJs. If you want to see firm time deadlines and performance targets, you are going to have to substantially change the law.

In terms of reducing the backlog—

Senator SALAZAR. What would you do in terms of those changes to the law? What would be your recommendation? Firm dates? Performance deadlines?

Commissioner ASTRUE. I do not want to wing this subject because it is a very delicate topic that Congress has wrestled with in the past, trying to make a balance between inappropriate interference from the Agency and the independence of the decision making. It is a very long topic.

I am happy to work with you to talk about what you could do. We do not have a formal proposal on the table. We are looking at what we can do administratively within the current constraints. Now, even that is difficult, but we are looking at it.

Senator SALAZAR. My time is up, but let me just say this. I, frankly, think that—

The CHAIRMAN. Go ahead, Senator. There are only a few of us here. Why don't you take a couple more minutes?

Senator SALAZAR. All right. Then please continue with your answer, because I am very, very interested.

Commissioner ASTRUE. Let me answer, I think, the other important question.

Senator SALAZAR. Thank you, Mr. Chairman.

Commissioner ASTRUE. It is not the answer you want to hear, but I cannot get the backlog down in a year no matter how much money you throw at the problem. It is going to take some time.

Part of that is, we are not going to be able to hire off the new register of ALJs for some time. I think that is the single most important thing we can do to get this problem under control. The new register will be available in late October, according to OPM.

It will take us about 4 months to go through the hiring process and honor our collective bargaining agreements and do everything that we need to do to get new ALJs on the bench. Then there will be some lead time before they become efficient.

Senator SALAZAR. Let me just say this, Commissioner. I fully appreciate the fact that it takes time to hire people, and it is going to take time to hire the additional ALJs. I appreciate the time and that there are resource limitations here in the President's budget and what Congress has appropriated for this function in the past.

But it seems to me, if I were in your shoes and CEO of SSA and looking at what is happening with disability claims and the delays, especially in the ALJ piece, over the last 10 years, I would be saying, well, here is my 5-year plan. That 5-year plan means there are additional resources that we need to provide to the system. Maybe you need 2,000 ALJs.

I do not know what you need. Maybe you need new technologies in order to be able to get rid of the paper that probably causes a lot of the delays we have to deal with. Maybe you need legal changes in terms of giving some additional authorities and deadline requirements that would be imposed by Congress.

But I think it would be a reasonable thing for all of us who agree that this is a huge issue to ask you, as a person who knows 10 times more about this issue than I do, to come up with a plan on how you effectively are going to get us to a point, over a reasonable period of time, where people can expect a timely final determination from an ALJ about their Social Security claim, and also how we are going to reduce this backlog to a level that is reasonable.

Frankly, the way that I see this conversation going and our discussion on the budget here, we are going to be back here next year, essentially with the problem continuing, and then the next year with the problem continuing. I think we need to get to a point where we have a plan of how we are effectively going to deal with the problem.

Commissioner ASTRUE. And you are perfectly entitled to be frustrated. If I were in your shoes, I would be, too. If you look at the written submission, which is much longer, you can see that there has been an extraordinary amount of activity in 100 days. We are not done.

There is a lot that we need to do where we need approval or consultation, with the unions, with OMB, with OPM, and other agencies. We are working very hard. We have regulations that we have started working on in February that are already over at OMB. We have legislative proposals that will be over there shortly.

I have not had a chance yet to submit a budget. My first budget will be the fiscal year 2009 budget. You can count on the fact that we will submit a budget that will do our very best to try to bring

the backlogs down as rapidly as we reasonably can. That is our biggest priority right now.

The CHAIRMAN. Thank you, Senator, very much.

Senator SALAZAR. Thank you.

The CHAIRMAN. Senator Cantwell?

Senator CANTWELL. Thank you, Mr. Chairman.

Commissioner, continuing on that same line of questioning, obviously I am very concerned about the backlog, and the Nation as a whole.

But I am also very concerned specifically about the northwest region in Seattle. It is my understanding that Seattle ranks second to last. Only one other region has a worse response rate in terms of the delay; at 584 days between the request for hearing and a decision, it is 172 days slower than the Philadelphia region.

So do you have any knowledge or information about why the northwest region in Seattle is so much worse than the rest of the country? And I do not want to underplay how bad the rest of the country is, because we are having this larger hearing to discuss it. But now we are at the very harsh end of that poor performance.

Commissioner ASTRUE. It is a very fair question. I look, on a monthly basis, at the ranking of our hearing offices from 1 to 141 in terms of the backlogs and have been trying to ask those types of questions. I have asked our Office of Policy to do an analysis, looking forward to how we should place judges.

It looks to me like there is at least a serious possibility that, in terms of the geographic assignments, we may have been using an overly simplistic metric for deciding how many judges to put where, because there are certain patterns. The Midwest is also highly problematic—Michigan, Ohio, and States like that.

So we are asking those types of questions, with an eye toward seeing what we should be doing to try to address that most effectively with the next round of ALJs. Some of it is random. One of the problems when you manage a system that is going down from attrition is, you are not able to replace in any sort of rational rate, that who decides to retire or who decides to go do something else dictates who is left behind.

So there are, in the district offices and the hearing offices, some that are in reasonably good shape, and some that are hurting very badly, where a big factor is just, simply, who has decided to retire or leave.

One of the things that I want to stress that I think is going to be very important going forward, we are going to try to pilot, I think, with probably about 15 ALJs initially, but I think that we will probably get much larger.

As long as we are tied strictly to hearing offices that often have three, four, five people, every time there is attrition, every time there is an issue with an ALJ, that makes a huge impact on that particular region. If we have judges in a central location that can pick up work wherever the problems are the worst, then we have a safety valve for the most affected regions, which we do not have now.

We do this on a very limited basis—for instance, Boston is doing Cleveland cases—but we do not have that much extra capacity anywhere. So, actually building some of that capacity into the system,

probably expanding that going forward, I think, is going to be very important, not only for the problematic ones in Seattle, but in the Midwest and other places.

Senator CANTWELL. Commissioner, could you look into this issue as it relates specifically to Seattle and give us a concrete answer as to what are the anomalies, or attrition issues, or administrative law judge issues?

Commissioner ASTRUE. Yes.

Senator CANTWELL. I mean, you are covering a lot of territory here, but as we look at remedies for the larger nationwide problem I think it is important for us to understand exactly what the cause is in Seattle so that, as we look at these issues from a budget perspective, we do not just say, all right, it is all about ALJs, then we come back in 2 years and find that Seattle is still drastically off what the rest of the Nation is.

Commissioner ASTRUE. Yes. First of all, I will submit something for the record. I actually was going to be out there this week, but I canceled the trip because of this hearing. We have rescheduled it for next month.

What I am trying to do is to actually look at the best and the worst. I am trying to figure out where the problems are, and I am trying to figure out what best demonstrated practices look like. So, it is certainly my intention, when I go out to the regions, to try to get a better handle on that as well.

Senator CANTWELL. Because, right now, you do not know whether it is ALJs or people who have left through attrition from the workforce that is there on the ground, or whether there is some other unique situation about cases.

Commissioner ASTRUE. It is too complicated and important for me to try to make something up, other than give general responses to what tends to happen in general. But it is a fair question, and we will submit something for the record.

Senator CANTWELL. I would very much appreciate the specifics to highlight. We have had other instances of discrepancies on Federal agencies out in Seattle. I do not know if it is just too far away from people or something, out of sight, but we have found in other instances Federal agencies without either the resources or at least on a level playing field as it relates to per capita populations. So, I think it is very important that we get down to the specifics on this.

[The information appears in the appendix on p. 55.]

Senator CANTWELL. If I could, Ms. Shor, I know that we are talking a lot about administrative law judges in general and their process. Do you think these cases are just too complicated or are you seeing too much complexity here?

Ms. SHOR. No. Certainly that is not a characterization of many of them. Certainly there are very complex ones. But I think attacking the backlog is really a two-pronged project. One is dealing with the cases that are at the hearing level and how you are going to process them more expeditiously, but certainly the second part of that is, how can you prevent cases from coming to the hearing offices at all?

If the State agencies had more resources and could better develop the evidence in these cases, you might find that many people would have their claims approved earlier in the process, they would

never file a request for hearing, and, gosh, that cannot be a better solution to the backlog problem.

Senator CANTWELL. So you are saying you think it is more about process and efficiency in the system as opposed to very complicated cases dragging the whole system down.

Ms. SHOR. Right. There certainly are very complicated cases and ones that, for one reason or another, it is almost inevitable that they are going to need to go to a hearing. But we think there are lots of cases that could be paid earlier in the process, and that is, of course, the very best way to tackle the backlog: not let it begin in the first place.

Senator CANTWELL. So, 584 days, almost 600 days between the request for a hearing and a decision. It's way off.

Ms. SHOR. Way off.

Senator CANTWELL. So what do you think that should be, just in a norm?

Ms. SHOR. I think the reality is, as Senator Salazar mentioned, there are always going to be cases in the pipeline. But why it should be more than a year from request for hearing to getting a decision—it is not enough to just have a hearing. If you have the hearing and then nothing happens, that claimant has gotten nowhere. So to get from request for a hearing to a decision in a year seems like a very reasonable target.

Senator CANTWELL. Thank you.

Senator Stabenow?

Senator STABENOW. Thank you, Madam Chairwoman. I appreciate it.

Welcome. I very much appreciate this hearing. In fact, this is something that has been a growing concern, tremendous concern for me in Michigan. I have six offices all over Michigan, from Detroit to the upper reaches of Northern Michigan, upper peninsula of Michigan, if you are familiar with Michigan; a lot of territory, a lot of people.

I have been hearing growing concerns from those who do constituent work for me. In fact, the woman who is in charge of our constituent work who has been with me for over 20 years doing work has said she had never seen it as bad and is extremely alarmed by what has been happening.

I just want to start by sharing observations that have come. This is from people from throughout Michigan. I want to speak to the first one, and I want to ask you about it. Here is what she says: "It appears that initial applications are denied on a pro forma basis—just denied—and not based on facts or merit of the individual case."

Now, that goes to the question of where you start, because, if something is not denied, then you do not have to worry about going on to a hearing and an administrative law judge. So I have a real question about how these applications are being addressed on the front end.

Second, our observations are that wait times to have an appeal hearing in Michigan scheduled after a case has been denied have steadily increased, as we have talked about, from an average of a year to over 2 years. That has been our experience in Michigan.

Then, finally, we are seeing an increase in Social Security Disability cases, particularly those who have experienced severe hardship before being found eligible. People are being forced to put their lives on hold, with no income, no ability to work. I have hundreds of cases I could share with you, but I just want to share two. A gentleman named James contacted our office in April of 2006. He had been denied SSDI, even though—even though—the VA had found him to be 100-percent disabled in March of 2003. I would really like to know how that happens.

If the VA says somebody is 100-percent disabled, this goes to the question of, are we just automatically, the first time you apply, just denying these questions? He filed an appeal in January of 2005. He and his wife filed bankruptcy in May of 2006. They then filed for separate maintenance.

He was 2 years behind in his property taxes, became suicidal, and we finally were able to help him, in June of 2006, be able to get a favorable decision after he was found, in March 2003, as 100-percent disabled by the VA. How could this be so far off?

Then I would just share one more, and Commissioner, I know you want to respond to that. A gentleman named Brian was denied SSDI in 2002. He did not appeal at that time, but he applied again in 2004 and was denied. He filed an appeal in January of 2005, but he had been unable to work since 2000. He was dependent on relatives to support his family of four children.

He became so desperate that he and his wife were forced to send their children to live with separate relatives. He contacted us in October of 2005, and we finally were able to help him get a decision in January of 2006.

So, he was unable to work since 2000, separated his family, and finally was able to get a favorable decision in January of 2006. I have, literally, hundreds of these. Every day in Michigan we are dealing with this.

And so the first question I would have is, how can we have a system where one part of the Federal Government says somebody is 100-percent disabled and they are denied by the Social Security Administration?

Commissioner ASTRUE. Senator, first of all, I would have to look at the particular case to know for sure. It is quite possible that it is a mistake on our part. On the other hand, it is possible that it is not a mistake. For instance, it is possible that the person does not qualify for Social Security benefits at all because, under the statute, there are earnings requirements and that type of thing.

Senator STABENOW. No. They ultimately were approved in June of 2006.

Commissioner ASTRUE. All right. I do not know. Sometimes it is also lack of documentation. I know we have talked with claimants' representatives. There is increasing difficulty getting physicians to cooperate, sending the paperwork that we need to support a case. We have been talking about how to deal with that issue. So the answer is, I do not know. We would be happy to look at the particular case and let you know. If we made a mistake, we will tell you.

Senator STABENOW. I guess the larger question for me is, how do you interface with other Federal systems, or do you at all? Does it matter if someone is found 100-percent disabled by another Federal



agency, or should it—should we, in order to leverage resources? Clearly, I am very sympathetic to the fact of those lack of resources.

Even though I am desperately concerned about what is happening to people, I know that there is a responsibility that has come from the administration and the Congress to get this right, and that is why we have increased the budget. But have you looked at the notion, even, of working with other agencies that are also in the business of determining disability?

Commissioner ASTRUE. Sure. We try all the time. We have looked to try to coordinate systems, for instance, for electronic hearings to try to make sure that we try to share systems and things. It is very difficult, it turns out, to do that because of procurement barriers and that type of thing. But we do try to talk to the VA; we talk to CMS all the time.

We do try to work collaboratively with other agencies. I do want to stick up for the States here, because they are the ones that make the first level of determination. I understand if a disappointed claimant feels that the system is rigged or unfair, but they do a very good job under difficult circumstances.

Our assessment of the quality of their decision-making based on the evidence they have before them is that it is generally very high. I will have to give you the exact number for the record, but at the two levels, some States have two levels in the process, some States have one, but it tends to be about 40 percent, if I remember correctly. So about 40 percent get allowed who apply at the State level.

In FY 2006, the allowance rates at the State DDS initial and reconsideration levels were approximately 35 and 13 percent, respectively. As of May 25, 2007, the allowance rates at the DDS initial and reconsideration levels for FY 2007 were approximately 35 and 13 percent, respectively.

Then at the Federal level, the ALJs, the allowance rate has been increasing fairly steadily over the years; I believe it is a 62-percent allowance rate for ALJs. So, the system is not rigged against claimants.

Again, I would be misleading you if I said we are perfect, we make the right decision in every case. In general, you have well-intentioned people doing the very best they can under a lot of pressure, under an extraordinarily complex system. But they do make mistakes, and when we find them out we try to correct them as quickly as possible.

Senator STABENOW. And this is not about individual workers, because I am certain that individual workers are working hard and doing the best they can. In fact, we have had a number of cases where individuals have gone in, people have seen, physically, the disability and they have tried to respond, and so on. This is very much both funding and system.

But I guess what I would leave you with is that we are seeing marked deterioration in what is happening. I have been, now, working in the House and the Senate, in my 11th year. We have a very aggressive constituent operation. We work with people every day.

We have an excellent relationship with people in the local offices. But it is worse than we have ever seen it, to the point where there are just tragedies every day that we are seeing. So I commit myself personally to work with you in every way we can, but this has got to change.

Commissioner ASTRUE. I would be delighted. Again, our numbers speak for themselves. It is not an acceptable situation. I have said that multiple times. I agree with you on that. We are doing the best we can with what we have.

I think one of the things that I hope you will start seeing a difference with constituents is the stories about claimants waiting 3, 4 years. We have made a commitment to try to drive those cases down. We had incentives before to deal with the easiest cases first so that it would keep the numbers down generally.

This is going to cause our numbers to go up in terms of overall numbers for a while, but I think from a moral point of view, from a system efficiency point of view, we have to just say, look, there is a point where this is America and you should not have to wait 3 or 4 years for a hearing, and we are moving in that direction, and we are moving as rapidly as we know how to do it. The numbers are actually encouraging. I did not even want to mention the goal the first time I came up here because I was not sure we could hit it.

The way the people in ODAR have gotten behind that goal, there is just this real good spirit to try to flush out those cases. I think if you could talk to the people who are hands-on in that effort, I think you would be much more encouraged about the system for the future.

Senator STABENOW. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. Thank you, Senator.

Commissioner, putting resources aside for a moment, assuming you had adequate resources—in your discussion with Senator Salazar you were saying a lot of this was not resources. You mentioned the ALJ issue, and so forth. Could you list the one, two, or three other non-resource challenges that you have in addressing the backlog?

Commissioner ASTRUE. I think something that is more within our own control, and something that we have to try to make a lot of progress on in the next 12 to 18 months is, we do have the tools to define who is disabled and then how they are triaged in the system. So we really need to have, going forward, essentially three categories of cases triaged up front.

There should be a category of cases that I call “compassionate allowances,” where, if you are entitled to benefits and you have a certain specified disease and condition and that is documented, that is it, conversation stops, you get benefits. Examples would be pancreatic cancer, amyotrophic lateral sclerosis (ALS), patients who have been comatose more than a certain period of time. Those types of cases, we should stop developing.

The CHAIRMAN. And what percent of cases would those be?

Commissioner ASTRUE. We do not know. We have not tried hard enough yet.

The CHAIRMAN. Anyway, that is one thing you can do.

Commissioner ASTRUE. Right. One of the problems with our listings right now is that we have basically stopped at the low-hanging fruit, the very big categories of cases. To really make this system efficient, we need an up-front effort now to go much further down the list, because a lot of these cases that should be clear are not going to be clear at the State level because they come up a little less often.

If we tell the States, this is a clear case, they will act on it instead of having to go out and get a consultative exam and have it wait 90, 120 days at the State level.

The CHAIRMAN. All right.

Again, what are the challenges, what are the impediments, what are the problems you have that make it difficult to get this backlog way down to, as Senator Salazar was saying, 90 days?

Commissioner ASTRUE. Right.

The CHAIRMAN. You had mentioned the ALJ issue. I would like you to mention the two, three, or four major challenges/impediments that prevent you from doing that.

Commissioner ASTRUE. I think the first one is, we have to rethink disability. We have to do a better job of defining it. We have never taken advantage of the advances of diagnostics in recent years to subcategorize large groups.

The CHAIRMAN. That is an impediment today?

Commissioner ASTRUE. Well, we just have not done it. We have to do it, and we have to do the regulations. It is going to be a lot of work. It is going to require a lot of medical resources up front to do this well and do it fast.

The CHAIRMAN. So that is one.

Commissioner ASTRUE. That is one. Obviously, ALJs are critical.

The CHAIRMAN. Can you flesh that out a little bit, please? You started to talk about it a little bit with Senator Salazar. If you could, flesh that out a little bit.

Commissioner ASTRUE. Well, the average ALJ caseload these days runs somewhere in the 500 to 600—

The CHAIRMAN. No. I am talking about the congressional—

Commissioner ASTRUE. Oh. In terms of the congressional. Right now, the ALJs have what is called “decisional independence.” We are not allowed to in any way try to affect how they decide their cases. There are also a number of other restrictions through OPM that make it very difficult for the Deputy Commissioner at ODAR to discipline or set standards for judges.

Again, this is a choice that the Congress has essentially made in the past. Maybe we are not using all of our tools for some of the most extreme cases, and we are looking at what we can do within the constraints of the current system, but, if you want more accountability from me for ALJ productivity, you have to give me the tools to make the ALJs more productive. Right now, I do not have those.

The CHAIRMAN. What potential change there comes to mind?

Commissioner ASTRUE. For instance, there is a wide range in case disposition among judges. We had, if I remember correctly, four judges last year who decided fewer than 100 cases. We had 13 that decided between 100 and 200. Right now there is no easy way

to go after those issues and try to make sure that those judges are more productive.

Another way of dealing with the backlog, if the least productive judges could be brought significantly up to what the mean is, then that would make a very significant dent in the backlog, and we are looking at ways to do that. It is a tough topic.

The CHAIRMAN. All right.

What is another problem, non-resource?

Commissioner ASTRUE. Non-resource. Again, I think this is largely under our control, but this is an extraordinarily complicated business. The systems are inadequate for dealing with it right now. Right now we are running both a paper system and an electronic system. It is the worst of both worlds.

So, flushing the paper cases out, getting away from the paper forever is a big efficiency gain in my opinion just from doing that. But the system that we have now is the basic spine. It needs to do a lot more. We are going to have over a 3-year period where we are going to need substantial systems architecture and resources focused to get that the way we need it.

The CHAIRMAN. And what are your plans to get the right architecture?

Commissioner ASTRUE. One of the things we did this year is that we went deeper than what was budgeted into the reserve fund for technology. One of the things that is an open question for me next year is looking at whether we need to go even deeper into that for next year.

I have a scheduled review for the systems projects for next year, and I am going to look at everything that is above the line and everything below the line. Everyone knows that I made adjustments last year based on that, and we may make additional adjustments this year as well.

The CHAIRMAN. Do you have another challenge/impediment?

Commissioner ASTRUE. I think those are the big ones. Again, I do think that this is hard, and there is a tendency to give up and say this is a system that cannot be managed. I do not believe that. I think if you get really good people who stay focused for a long period of time and stick with it, I do think that this is a system where we can manage this significantly better than it has been managed in the past.

The CHAIRMAN. I am just wondering if any of the other three want to comment on the basic three that the Commissioner mentioned. He mentioned better diagnostics, the ALJ problem, and also—what was the third? I have forgotten the third.

Commissioner ASTRUE. We talked about the number.

The CHAIRMAN. That is right. The architecture. Any of you three want to comment, any of those three?

Ms. SHOR. I would be glad to comment.

The CHAIRMAN. Sure. Does that make sense? Do you agree with it, disagree?

Ms. SHOR. They all make sense, but there is no getting around that resources is the number-one issue. I mean, there are problems with a small number of ALJs who are not very productive. Some of them will tell you it is because they have no staff, or they have very limited staff. There are all sorts of reasons for that.

But the number of judges whose productivity is extraordinarily low—the number of ALJs—is extraordinarily low, so you can go after that situation. And these are all excellent ideas, they just do not reach out to the over-arching problem, which is resources.

The CHAIRMAN. All right.

Either of the other two?

Mr. WARSINSKEY. I think that it is a combination of both. I agree with the Commissioner. He has a very detailed plan of things he wants to do within the Agency, and I think these are great ideas. It will, I think, take some resources. He mentioned the systems architecture. That takes resources.

His discussion regarding the ALJs, the Administrative Procedure Act, probably there needs to be some changes in that, still allowing and giving the judges independence, but also setting some minimum performance standards in terms of how fast you should get a case out.

We can always manage better and I think the Commissioner is very much committed to that; I have seen his plan. But I think it cannot be one or the other, I think it needs to be both. We need to have a good management plan and we need to have additional resources, with the additional resources very carefully monitored, and how the money is used, to make sure it is used very economically and efficiently.

The CHAIRMAN. Thank you.

Mr. Schimmels?

Mr. SCHIMMELS. I would agree with the Commissioner that our systems need to be overhauled. We do have a lot of problems, I know, operating in a dual system when you are having to work 90 percent of your cases electronically, but then you still have paper come across your desk.

Then the slow times or the down times that we have with a system that is not able to even keep up with the 90 percent we have right now coming in, new initial claims, without the system upgrades, and not being able to work 100 percent of our cases that way, we are going to continue to see slow-downs at the DDS level. We are hoping to not have backlogs there. We want to keep those backlogs down.

The CHAIRMAN. I ask these questions because some people automatically say, well, gee, that is easy for Congress to just throw more money at the problem here. The Agency should be more efficient. That is the common refrain you hear around the country. I very much appreciate your trying to address some of these non-resource solutions as part of the problem.

Commissioner ASTRUE. Thank you.

The CHAIRMAN. But I also tend to think, and I think everybody agrees—you have all four said it—it is also resources.

Commissioner ASTRUE. Absolutely.

The CHAIRMAN. This is very much resources.

Mr. WARSINSKEY. I would like to say, I think sometimes that the more resource shortage you get, the harder it gets sometimes to deal with the backlog. You have so much paper, and the hearing offices have so much.

Part of it is just because we have had such short budgets in recent years that it is making us more inefficient, because we are

having to re-work cases and they are getting older, they are getting thicker. I was at a hearings office in Cleveland. They are often a foot large. That is a lot to deal with.

The longer it takes to do a hearing, the more time it takes to put it together. If you can get these efficiencies in place, get the backlog down, then I think we will be able to use the money a lot more efficiently.

The CHAIRMAN. You, Commissioner, outlined some of the unfortunate additional burdens that are being placed upon you in terms of, as has already been mentioned, the Medicare Modernization Act, for example. What are those? Whether it is part A, B, D, or whether it is potential immigration legislation, if you could just give us a sense of the additional demands that you are going to be faced with.

Commissioner ASTRUE. In terms of the recent past, the Medicare burdens have hit us extremely hard. They are particularly frustrating because we can only do so much, and we are trying to deal with issues that are created by subcontractors of contractors that work for CMS. We are sort of the messenger and at the back end of the process. We try to do our part as best we can and communicate as best we can, but there have been huge workloads.

Every time I think we have a handle on it, I get a call from Bea Disman, who has been a saint working on these cases, and there is another pile of them that we have to work on. So, originally, I believe Congress funded us for a couple thousand FTE, I believe for a year, to deal with that, but we have had to absorb a very large FTE burden on that.

Immigration. That is more and more every year. What we do, simply, to issue a card takes more. One of the things that we are doing—and I am sad about this in a way—is we are moving to a lot more specialization, because we have to because of the complexity of the system.

So, one of the things I have greenlighted that we have piloted is Social Security card centers, where there will be co-located facilities in high-density urban areas that simply deal with the cards. When you go and look at these offices, you can see the complexity of what they now have to do. I mean, when I got my card, I just went into Rossindale Square, I filled out a form, and they gave me a card.

But now, with the amount of documentation required under Homeland Security and immigration rules, checking previous documents to see whether they are counterfeit or not, it is taking, I think, up to 16 minutes now, I think. I will double-check that for the record, but I believe it is 16 minutes just to issue a Social Security card.

On average, it is taking field employees 16 minutes to interview an individual and process a request for a Social Security card.

It is too bad, in a way. It would be nice to go into a full-service center and talk to somebody who can deal with everything. But you look at Medicare, SSI, immigration, card-related issues, it is a lot for any one person, so we are doing more specialization.

Immigration, potentially, is a big burden. We have tried to anticipate an uptick in requests under the basic pilot program. I have already authorized a systems expansion so we can handle, I believe

it is, about 5 times as many requests as we had before, depending on what happens with the legislation.

That will be way short of what we have to do, but, if the discussion of the legislation increases the number of calls, I think we are relatively prepared in the short run. But with all those things, compared to what the Agency was like when I worked in it 20 years ago, it is enormously, exponentially more complicated.

The sad thing is, we have almost exactly the same number of people that we had 20 years ago. With the demographics growing and the workloads much higher, and the burdens under the statutes much greater than before, we are feeling the stress, and there is fraying in parts of the system. We are doing the best we can to address it.

The CHAIRMAN. The next question is, how do we assure we make progress here? I am a little haunted by Senator Salazar's question or point that it sounds like we are going to be back here again, with the same kinds of problems, unless we make very significant changes.

Commissioner ASTRUE. Again, I am a big believer in not promising what you cannot deliver. I am reconciled that, until January 20 of 2013, I am going to be up here on a regular basis on this issue of the disability backlog. It is hard. It is going to take time.

I think it is a good thing that members such as you are paying attention, are monitoring the Agency and asking what our progress is, and, as you are, asking what you can do to help. I welcome that, and I think that is a good thing. So, we will be talking.

I cannot make things perfect in a year. No matter how much money you throw at me, I cannot make it perfect in a year. If we are adequately funded going forward and we do not have a lot of new burdens, we can make very substantial progress on these things.

It will happen faster in the States than it will happen in our system. The States do a better job in terms of timeliness than we do. It is going to take time at the ALJ level to get the system back into something that we can all be reasonably proud of.

The CHAIRMAN. What do the States generally do that is better?

Commissioner ASTRUE. I think that they have been doing this for a long time. They are very efficient.

The CHAIRMAN. Why?

Commissioner ASTRUE. Part of it is, it is a different process. I mean, they are getting, to some extent, the easier cases. By definition, every case that ODAR gets—almost every case—is a close call, where there is a claimant that feels exceptionally strongly that he or she is entitled to benefits and there has been disagreement below. But I think that they have been better organized over time.

The CHAIRMAN. Just because they are smaller?

Commissioner ASTRUE. Maybe it is that they are smaller. Because they are smaller, they have been better able to develop business processes that work well.

They also have not had the issues of independence. I mean, there is not a lot that I can tell an administrative law judge to do right now. In the State system, that is not true for the examiners in the State system, and that is a fairly fundamental difference.

The CHAIRMAN. Do you think it might make sense for you to look at proposed recommended changes in the law that Congress should consider?

Commissioner ASTRUE. I certainly think Congress should consider it. There is a history of being very dubious about the Agency's motives, so what I would suggest to you is, I think you are raising an appropriate issue.

I think it would be good to consult with outside experts in the field and get a really impartial look, because I do not want to aggravate any of the tensions in the system if I do not have to. I think if you get good outside advice on this, you may very well come to the conclusion that there are some changes that you want to consider making.

The CHAIRMAN. Well, that may be and that probably is the case, but you are also, in effect, the CEO.

Commissioner ASTRUE. Right.

The CHAIRMAN. It is kind of your job to manage and deal with the challenges that develop, as the top guy.

Commissioner ASTRUE. Right. We are looking at it as well. I think probably what you will see first is what we think we can do within the existing system in that zone, because I think that we do have some authority in some extreme cases relating to productivity and the actual performance of the work responsibilities that perhaps we have not been using to the extent that we should, and we are looking at that very carefully. We are not ready yet to tell you what we think we might be able to do.

The CHAIRMAN. Might you be in a position to do so at some reasonable future date?

Commissioner ASTRUE. I hope so. I do probably have to work through OPM on most of those, so I am not sure I can unilaterally give you a date. But I am certainly, as I have on a large number of issues, happy to update your staff on a regular basis on where we are.

The CHAIRMAN. All right.

Mr. Warsinskey, could you address some of the problems we are having in the field offices?

Mr. WARSINSKEY. Sure. I would be happy to. I mentioned in my testimony, I think one of the areas that we are having one of our biggest problems is just answering the telephones. We get about 68 million telephone calls, business-related calls, into the offices, which is substantially more than our 800 number gets.

The problem is, we really do not have staff devoted, by and large, to answer the telephones. Because we are losing staff, we are having to devote and redirect our staff basically to speak to people who come into the office. So I think we really could use some additional resources just to answer the telephones.

All the letters that go out from Social Security have the local office telephone number on it in addition to the 800 number, so a lot of people choose to call the local office.

Therefore, because we are getting so many calls and we cannot answer them, either the calls are just ringing or they are getting a "busy" on it. I do know the Agency is looking at replacing their phone system.



Our phone system is basically falling apart. It is over a decade old. We are looking at, I think, a Voice-Over-Internet Protocol system, VOIP. The contract is coming pretty soon. It may cost close to a billion dollars, I think, to replace. That would require a lot of resources. We do need to get it replaced.

Another area would be just the number of people we have coming in. We have more people coming in. They are having to wait longer. We have had offices where people bring chairs just to wait outside. I know one office where the fire marshall only lets so many people come into the office because there are just so many coming in.

The CHAIRMAN. The fire marshall is restricting?

Mr. WARSINSKEY. Yes. Right. That is not good. As the Commissioner said, in a lot of cases our interviews are taking longer, therefore it is creating the need for more people up front because of the waiting times, because it takes longer to take a Social Security number interview than it used to take because there are more rules that we need to look at in terms of issuing cards to make sure that we are issuing the card to someone who should have it.

The Commissioner also mentioned, as I did, part D Medicare. That is a workload that has kind of surprised us in how much it has continued to be a major factor for us in the offices, because we have had so many people coming in asking to get help from us.

Part of the problem is, they are in a triangle between us, CMS, and the providers in trying to get their premiums resolved, to get questions resolved, and in a lot of cases we do not have the authority to deal with a lot of their situations. We certainly help them with the "extra help" in trying to answer the questions. So we do the best we can in terms of helping people.

But we have been losing people. I mentioned we lost 1,300 people this year. It takes 3 or 4 years to train someone up so they are really proficient. A lot of our employees—I would say over half of them—were hired in the 1970s when we brought in SSI under our Agency, so we have to get these people trained and into the system.

We basically are the farm club for the rest of the agency, the field offices are. We train people. They move into our headquarters, they go to our regional offices all over, and even work in our systems branch. You have to understand Social Security basically to work in most of the rest of the agency. ODAR is a little bit different, but a lot of our people go to ODAR, too, to help manage those offices.

The CHAIRMAN. How many people are there? How many Americans are at the wrong end of this backlog?

Mr. WARSINSKEY. I am sorry. How many what?

The CHAIRMAN. How many Americans? How many people, how many claimants?

Commissioner ASTRUE. In terms of ODAR, the most recent number when we cleared the testimony—and it is a little higher now because of the system—is about 738,000.

The CHAIRMAN. Seven hundred and thirty-eight thousand. That is right. I mentioned that in my opening statement. Seven hundred and thirty-eight thousand.

Commissioner ASTRUE. Right.

The CHAIRMAN. And it is getting higher.

Commissioner ASTRUE. Getting higher. And probably what we would consider a backlog, as opposed to what is built into the system, is somewhere around 400,000. It is sort of built into the assumptions of the system right now, if it were functioning the way it ought to be functioning as it is defined now.

The CHAIRMAN. All right.

Does anybody want to say anything—here is your chance—that has not been said or address any question that should have been asked and was not?

Commissioner ASTRUE. No. Just, thank you again, Mr. Chairman. The continuing resolution meant a huge deal for us. We went, in March, from furlough preparation to being able to distribute approximately 2,000 FTEs.

Since you came up with the money, you might want to know where it went. We delivered about 1,250 of those FTEs to Operations with the direction that they go out primarily to the field offices. We sent 400 to the DDSs, and we sent 492 to ODAR, about two-thirds of which went into hearing offices.

The support staff ratio went up from 4.2:1 to 4.4:1, which I think is making a difference in a number of the most affected hearing offices. Some of them benefitted a lot more than the average.

The CHAIRMAN. Well, this committee is going to be watching very closely. I am not going to ask for specific benchmarks at this point, but we will be asking for progress.

Commissioner ASTRUE. Yes. I understand that.

The CHAIRMAN. If you think that you need some statutory changes, need some additional assistance in addition to the resource additions, let us know.

Commissioner ASTRUE. We are looking at that broadly. We have possible legislative proposals in a whole wide range of areas that are being drafted. I do not believe we sent the legislative ones to OMB. We went with some of the regulatory ones, particularly the ones related to DSI, first. But the legislative proposals will be coming and I would expect, in the next budget, you will see a number of those.

The CHAIRMAN. All right.

Well, thank you very much, all of you.

Commissioner ASTRUE. Thank you, Mr. Chairman.

The CHAIRMAN. We all care. We all, together, want to solve this problem. Together, we are going to solve it. Thank you very much.

The hearing is adjourned.

[Whereupon, at 11:37 a.m., the hearing was concluded.]

# APPENDIX

## ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

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### Statement of

**Michael J. Astrue**  
**Commissioner of Social Security**

#### **Mr. Chairman and Members of the Committee:**

Thank you for the opportunity to share our plans to reduce the backlog of disability claims.

As you are well aware, a major challenge that faces our agency is the disability determination process for the Disability Insurance and Supplemental Security Income programs.

For more than half of a century, Social Security has helped disabled workers and their families cope with the loss of income due to a severe disability. Unfortunately, many of today's applicants face an uphill battle simply to get a hearing before an Administrative Law Judge (ALJ). For some, the long wait for their day in court leads to homelessness and the loss of family and friends. Sadly, people have died waiting for a hearing.

As you know, our disability programs have grown significantly over the last five years and will continue to do so at an increasing rate as aging baby boomers reach their most disability-prone years. At the same time, Congress has added new and non-traditional workloads to SSA's responsibilities while appropriating on average about \$150 million less each year than the President has requested since 2001. As a result, the agency is struggling to balance its new responsibilities and its traditional work within tight resource constraints.

So it should be no surprise that the problems associated with the disability determination process are also stressing our network of field offices. Increasingly crowded waiting rooms, loss of staff and unaddressed workloads are a direct result of the growing backlogs. This situation is unacceptable.

When I appeared before you at my confirmation hearing, I promised to report back to you with my recommendations for reducing these backlogs and prevent them from recurring. Today, I want to make an initial report on our first 100 days. Our disability backlogs are a problem that I am determined to overcome. Many of you are aware that my interest in becoming Commissioner was driven by both

personal and professional interests. I handled my father's disability application when, at age 52, he suffered a severe cerebral brain hemorrhage caused by a rare form of brain cancer.

We are overdue for a change. The length of time many people wait for their final disability decision is unacceptable. I am committed to a process that is as fair and speedy as possible. Today, I want to share with you a number of important steps we have taken, will take, or are contemplating taking in the near future to better manage our workloads.

There are four areas which I believe hold the most promise to eliminate the hearings backlogs: compassionate allowances; improving hearing procedures; increasing adjudicatory capacity; and increasing efficiency with automation and business processes.

Despite the fact that our ALJs are achieving a record high productivity rate, backlogs continue to grow. The current number of cases waiting for a hearing decision is about 738,000, leading to average waiting times of 505 days, the highest ever in SSA history. Pending hearings have doubled since 2001. In addition, the number of applications for disability benefits has been extraordinarily high throughout the first seven years of this decade, and, as mentioned earlier, funding has not kept up.

To provide more context, Congressional budget reductions below the President's request from 2002 through 2007 are equivalent to processing an additional 177,000 initial claims and an additional 454,000 hearings. I want to thank you for the funding included in the FY 2007 annual appropriation. Although attrition continues to reduce staffing levels, those funds allowed us to avert employee furloughs and hire a limited number of staff in critical areas. We thank the Members of this committee for the support you gave us in obtaining these funds, and we very much need you to continue your advocacy effort on our behalf.

The success of the initiatives that I share with you today depends on timely and adequate agency funding. Properly funded, these initiatives will reduce the amount of time members of the public wait for a hearing decision and will lead to a reduction in the number of cases pending in our offices.

#### **Compassionate Allowances**

Attached to this testimony is additional information about our proposals to reduce the hearings backlogs and address the shortfalls of the disability determination process. We believe that these initiatives will have a significant impact on reducing backlogs.

One way to reduce the number of cases in the determination process is to use automation tools to screen cases. We have seen the success of the Quick

Disability Determination (QDD) model currently in use in New England. This computer model identifies cases that are most likely to be allowed. To date, the New England states have decided 97% of these cases within the required 21 days and they have an average decision time of 11 days. About 85% of these cases have been allowed during the initial review, and more have been allowed with additional documentation. We plan to build on the success of the QDD because it is both efficient and compassionate for us to do so. To date, the majority of QDD cases are cancer cases because the model does not yet cull a wide enough variety of diseases. Currently, QDD cases constitute only 2.6% of our cases but we are committed to pushing the number of cases that can be decided through the model as high as we can possibly go while maintaining accuracy.

An added difficulty is that our examiners are working with outdated medical listings and poorly defined categories of disabilities. Many cases that should be resolved quickly are not being determined in a timely manner because many of our listings are outdated. To help us with this initiative, Secretary Leavitt has generously offered the assistance of the Department of Health and Human Services on a taskforce to jumpstart our effort to refine and update our rules.

Other course corrections at SSA include reorganizing the Office of Disability and Income Support Programs to better align our organizational structure with our mission of dedicated service to Americans with disabilities. We have already received helpful advice from the Office of Inspector General, which at my request, has completed a first draft of an organizational audit.

In addition, we found that two of the new electronic systems developed for Disability Determination Services (DDS) as part of the Disability Service Improvement initiative were not ready for real-world use, and were in fact causing considerable delays in processing caseloads. While one of these systems may have potential over the long term, they both have been pulled. We are instead focusing on refining our two primary systems that will make us fully electronic. To accomplish that goal, we have used an additional \$25 million from our technology reserve fund.

#### **Improve Hearing Procedures**

We have already begun to attack the problem of aged cases starting with the cases that are or will be 1,000 days old as of September 30, 2007. I consider this initiative to be a moral imperative. An applicant should not have to wait three or four years for his or her day in court. We have established a goal of reducing these cases to a negligible level by the end of this fiscal year, and I am pleased to report that the number has already dropped from more than 63,000 on October 1 of last year to about 14,000 as of last week. We have made this progress by reallocating resources and redefining the metrics by which we measure success.

We are also studying the experiment of 1995-2000 that authorized Senior Attorney Advisors to issue fully favorable decisions. The Social Security Advisory Board has recommended this program. We will evaluate the lessons from this experiment for similar approaches we could adopt now to improve the disability determination process.

#### **Increase Adjudicatory Capacity**

Hiring additional ALJs is an essential element in a successful plan for reducing the backlog. Further improvements are expected from our plans to increase efficiency of support staff. Before a hearing can be held, there is a large amount of work that must be done to prepare the case to be reviewed. With advances in technology and improved management, there are a number of ways to increase the efficiency of this behind-the-scenes work, and we will pursue them all.

As an interim measure, we will streamline the folder assembly portion of case preparation to limit file assembly to a cover sheet and numbering pages sequentially. Streamlining the assembly will have an even greater impact as we add the software needed to automate this function.

In addition, we will send volunteers from our field offices to hearing offices with the largest backlogs to help assemble the remaining 220,000 paper files. We plan to dedicate 5,000 hours of overtime per month to this effort, which will probably continue through next year. To a large extent, the cases pending the longest at the hearing level are paper files. When these cases are finally adjudicated, they will be replaced by the electronic files which will require less time and effort to prepare. By streamlining the file assembly process and making additional staff available to prepare cases, ALJs can schedule as many hearings as possible.

We have also decided to mandate the use of the Findings Integrated Template, or FIT. This tool is now being voluntarily used by about 80% of our judges. It is an abbreviated decision format that captures all of the key elements required for a defensible opinion. Those judges who use FIT have a lower rate of remands from the Appeals Council which saves us time and money.

In addition, we will screen our oldest cases using profiles developed by the Office of Quality Performance to identify cases where there may be a high probability that an allowance can be issued on the record without a hearing. During my visits to hearing offices in Atlanta and Boston, many employees expressed their belief that cases that were initially denied because an applicant did not meet the durational definition of a disability could, at this stage in the process, now meet the time requirements associated with our programs. If true, we could make a significant impact on our backlog. This screening initiative will begin next month.

We are also planning on capitalizing on the flexibility now available to us with electronic disability folders and other technologies. Assigning our ALJs to 141 offices nationwide does not give us enough flexibility to address the worst backlogs. Video hearings have successfully addressed backlogs on an ad hoc basis, and we feel that reserving a percentage of ALJs in a central office solely to do electronic hearings for the most backlogged offices is a better and smarter way to use a very expensive resource.

#### **Increase Efficiency through Automation and Improved Business Processes**

We know that technology is instrumental in improving performance.

At the hearing level, we need the ability to sign decisions electronically. Currently, decisions are printed, signed and then scanned into the electronic folder. By implementing electronic signature capacity, the adjudicator will be able to complete the decision-making process electronically, thus sending the signed decision directly to the folder with a click of a mouse.

In addition, we need shared access to the electronic folder. Currently, cases cannot be transferred from office to office in an electronic format. We are forced to print and mail cases that are remanded or are shared with another office. For example, if a hearing office seeks assistance from another office for case preparation or drafting decisions, the electronic folder must be converted to a paper folder. If a hearing office remands a case to the DDS, the electronic folder must be converted to paper before it is returned to the hearing office. This is a waste of time, energy and resources. It also undermines the premise behind going electronic. Our Office of Systems is working on fixing this issue.

To help us reduce ALJ travel time and costs, we are installing all hearing rooms with video equipment to enable us to increase the number of hearings; an initiative which will particularly benefit rural areas.

We are also excited about the long-term potential of a new automation tool called ePulling. This program will support preparation of electronic cases for hearing. Case preparation has three components: file development, file analysis, and file assembly. ePulling will reduce the amount of time it takes to assemble folders and will allow the staff to devote more time to file analysis and development. ePulling will identify potential duplicate documents, classify documents by type of evidence and date, sequentially numbered pages, and create exhibit lists. Implementation of ePulling is projected to begin with a pilot next spring.

Our progress in working down our aged cases is an example of successfully improving our business processes. Other initiatives in this area include, but are not limited to:

- Direct Appeals Council to issue final decisions when possible to reduce remands;
- Be more proactive in investigating alleged ALJ misconduct complaints;
- Improve management training;
- Encourage greater cooperation between Hearing Offices, Field Offices and Area Directors;
- Standardize the electronic folder in hearing offices; and
- Implement a quality assurance program.

**Conclusion**

Mr. Chairman, when it comes to disability backlogs, there is no single magic bullet. Our goal is to slow the growth of cases pending until we reach a tipping point next year with the addition of a substantial number of ALJs who can begin to help us drive the backlog down. With better systems, better business processes, and better ways of fast-tracking targeted cases, we hope to return to the more manageable levels we experienced at the beginning of this decade. This task won't be easy, and it won't be possible at all without your continued support for adequate funding for this effort.

Thank you again for your past support, and I'd be happy to answer any questions you may have.



## ***ADDENDUM***

### ***Summary of Initiatives to Eliminate the SSA Hearings Backlog***

#### ***INTRODUCTION***

The Social Security Administration (SSA) currently faces a considerable challenge of processing a large backlog of requests for hearings at resource levels which have not kept pace with the rising level of receipts and pending. Many of these cases have sat for an extended period of time while Administrative Law Judges (ALJs), the adjudicators used by SSA to decide cases, and staff have struggled to keep up with the rising tide of receipts in spite of record numbers of dispositions.

The Agency has developed a four-pronged plan to eliminate the backlog and prevent its recurrence, based on (1) compassionate allowances; (2) improving performance; (3) increasing adjudicatory capacity; and, (4) increasing efficiency with automation and business processes. The most aggressive timeline for eliminating the backlog is 2012, and the agency is committed to allocating as many of its resources as possible to achieve this goal. However, obtaining the funding level recommended in the President's 2008 Budget is a critical first step to making this timeline real. Congress has appropriated on average about \$150 million less each year than the President has requested since 2001, thereby reducing initial claims processed by 177,000 and hearings held by 454,000. Even with some of the efficiencies we expect to achieve in the coming year, if the agency's annual appropriation continues to come in under the President's Budget Request, average processing times and the average age of pending cases will continue to climb.

We project 360 cases per judge as the ideal pending to maximize service to disability claimants without compromising our mission of providing both timely and legally sufficient hearings and decisions. That caseload of 360 cases per judge would result in an average processing time, or the time it would take a claimant to go through the hearings process from the point the request for hearing was made, in the range of 250-275 days. If we could maintain our pending at this level, the lengthy and heart-rending delays we are currently experiencing would end.

At the moment, the agency has approximately 1,082 ALJs at SSA. Using the optimal number of cases discussed above, we should have a pending of approximately 400,000 cases. Instead, we have a pending of approximately 740,000 cases. That means our backlog is almost 350,000 cases. Our backlog plan will address those 350,000 cases over the next five years, as well as deal with a rising number of new filings.

In the course of developing our plan to eliminate the backlog and prevent its recurrence, we considered a number of guiding principles. We will continue to maintain the legal sufficiency of our hearings, but we expect the hearing process to be an effectively and efficiently managed operation. We carefully considered all aspects of the hearing process to determine whether and what improvements were necessary. We relied heavily on what

we have learned from the past. Many of the initiatives we have adopted are proven best practices and can be applied to the hearing process in a straightforward fashion.

Triaging the backlog is a critical part of reducing it. As almost 60% of the decisions issued by our judges are fully favorable to the claimants, we are studying the experiment of 1995-2000 that authorized Senior Attorney Advisors to issue fully favorable decisions. We will evaluate the lessons from this experiment for similar approaches we could adopt now to increase adjudicatory capacity, and thereby expedite decisions to the claimants.

We must address systemic problems that affect service to the public and productivity. To make the hearing process as efficient as possible, we will end paper folder processing as quickly as possible, and make sure that our oldest cases, the paper cases, are handled expeditiously. All hearing offices will be certified to handle electronic folders by the end of FY2007. Resources from the Office of Disability Adjudication and Review, the SSA component responsible for the hearing operation, and other SSA components where possible, will be devoted to assuring the success of our plan. Resources from other components will be used primarily to provide assistance to the most heavily impacted hearing offices (HOs).

The Agency is committed to begin reducing the backlog as quickly as possible. One of our earliest initiatives is to work down the oldest of our cases by the end of the 2007 fiscal year – that is, all cases that were or would be 1000 days old as of September 30, 2007 (“aged cases”). We have reduced our aged cases from about 63,000 to about 14,000 as of last week and will have a negligible number of them left as of October 1, 2007. In FY 2008, we will continue to give priority to the oldest cases.

Several of our initiatives will be in place within six months. For example, we intend to fill ALJ hearing dockets by streamlining folder assembly on our remaining paper cases; remand likely allowances to the Disability Determination Service disability examiners; and mandate the Findings Integrated Template (FIT) Decision Writing System.

Other initiatives will take longer than six months but, with the President’s budget request, are achievable in FY 2008. For example, hiring more ALJs and support staff is essential to work the backlog down. As many gains as other initiatives may allow us to achieve, they cannot offset the need to hire adjudicators. If the budget does not permit us to do more than attrition hiring of both ALJs and certain staff, our pending workload will approach one million cases by 2013. If we cannot hire at all, the million case mark will be reached far faster. Systems technology will reduce substantially the workyears currently required to prepare cases for hearing, and will remove permanently the hearing delays caused by unworked files. More closely managing decision-writer performance will also support better and more timely decisions.

There is no quick solution to reduce the number of backlogged cases. Staff resources aren’t the only answer; good management and best practices to ensure accountability and efficiency are equally important. The plan below is a comprehensive approach to the

hearing operation that can, with adequate funding, eliminate the backlog and prevent its recurrence. A discussion of our four approaches, (1) compassionate allowances; (2) improving performance; (3) increasing adjudicatory capacity; and (4) increasing efficiency with automation and business processes, follows.

### COMPASSIONATE ALLOWANCES

We believe that several initiatives will have a significant impact on reducing backlogs.

One way to reduce the number of cases in the determination process is to use automation tools to screen cases. We have seen the success of the Quick Disability Determination (QDD) model currently in use in New England. This computer model identifies cases that are most likely to be allowed. To date, the New England states have decided 97% of these cases within the required 21 days and they have an average decision time of 11 days. About 85% of these cases have been allowed during the initial review, and more have been allowed with additional documentation. We plan to build on the success of the QDD because it is both efficient and compassionate for us to do so. To date, the majority of the 2.6% QDD cases are cancer cases because the model does not yet cull a wide enough variety of diseases. We are committed to pushing the number of cases that can be decided through QDD as high as we can possibly go while maintaining accuracy.

An added difficulty is that our examiners are working with outdated medical listings and poorly defined categories of disabilities. Many cases that should be resolved quickly are not being determined quickly because many of our listings are outdated. To help us with this initiative, Secretary Leavitt has generously offered to loan us a senior physician from the Department of Health and Human Services to lead a taskforce to jumpstart our effort to refine and update our rules.

Other course corrections at SSA include reorganizing the Office of Disability and Income Support Programs to better align our organizational structure with our mission of dedicated service to Americans with disabilities. We have already received helpful advice from the Inspector General who, at my request, has completed a first draft of an organizational audit.

In addition, we found that two of the new electronic systems developed for Disability Determination Services (DDSs) as part of the DSI initiative were not ready for real-world use, and were in fact causing considerable delays in processing caseloads. While one of these systems may have potential over the long-term, they both have been pulled. We are instead focusing on refining our two primary systems that will make us fully electronic. To accomplish that goal, we have used an additional \$25 million from our technology reserve fund.

**IMPROVING HEARING OFFICE PROCEDURES****Reduce Aged Cases**

We began FY 2007 with about 63,000 cases pending which were or would become over 1,000 days old (measured from the date of the request for hearing to the date of the hearing decision) by the end of this fiscal year. Efforts began to address this workload with increased oversight and improved management. The backlog of aged cases was reduced to 54,265 at the end of October 2006, 46,406 at the end of November 2006, 38,193 at the end of December 2006, 32,260 at the end of January 2007, 26,685 at the end of February 2007, 20,286 at the end of March 2007, and 15,668 at the end of April 2007. At close of business May 15<sup>th</sup>, this pending workload was down to about 14,000 pending cases.

While we have made significant strides in reducing aged cases and their processing is essential, in the short term, processing them will actually reduce total dispositions since aged cases are generally more complex to prepare for a hearing. Current estimates project a 3% decrease in total dispositions due to the size and complexity of these cases. This equates to 15,000 fewer dispositions in FY 2007, 12,000 fewer dispositions in FY 08, and 8,000 fewer dispositions in FY 2009 as the number of aged cases is reduced.

Aged cases take longer to process because more time is needed (as much as 17 additional hours) to complete such tasks as locating the claimant, developing and analyzing the file, conducting the hearing, and drafting the decision. Fairness dictates that cases be handled in request-for-hearing date order to the extent practicable. The current plan is to eliminate all cases that are or will be more than 1,000 days old by the end of this fiscal year, except for a negligible number of prisoner cases where a hearing has not been practicable and cases where the claimant cannot be located. In future years, we will adopt additional aggressive aged case goals.

**Study Authorization of Senior Attorney Adjudicators**

We will study the experiment of 1995-2000 that authorized Senior Attorney Advisors to issue fully favorable decisions. The Social Security Advisory Board has recommended this program. We will evaluate the lessons from this experiment for similar approaches we could adopt now to improve the disability determination process.

Of all the decisions our ALJs issue, 56% are fully favorable. Another 6% are partially favorable. We issued over 300,000 fully favorable decisions last year. Allowing non-ALJs to issue fully favorable on-the-record decisions (OTRs) would expedite the decision and conserve our ALJ resources for the more complex cases and cases that require a hearing.

**Hire Additional ALJs**

Only ALJs can issue unfavorable or partially favorable decisions at the hearing level. Despite the other initiatives to issue more fully favorable decisions, more ALJs are needed to issue decisions that are not fully favorable. Without additional ALJs, it is unlikely that the backlog will be reduced during the next five years. Our goal is to hire enough ALJs to reach the 1,250 level in FY 2008.

We currently estimate that we need a pending caseload per judge of 360 cases to achieve an acceptable processing time. Our current pending caseload per judge is over 670 cases per judge. Using these projections, an additional 170 ALJs disposing of 550 cases per year would eliminate 93,500 cases annually from the backlog.

Additionally, some support staff must be hired. Without sufficient staff in the proper positions, the ALJ resource cannot be maximized. The optimum staff-to-judge ratio and staff duties will change over time with the automation of many of the hearing operation processes. Currently, we estimate at least 4 staff for every judge is necessary to maximize the number of legally sufficient hearings and decisions the ALJs issue. We plan to hire many future support staff employees on a term basis until we determine the functions and true number of staff we need once we have automated our hearing processes to the extent possible.

**INCREASE ADJUDICATORY CAPACITY**

We will take a number of actions to increase our adjudicatory capacity. We will do so by maximizing the number of legally sufficient decisions our current ALJs issue, by increasing the number of ALJs, and by studying approaches to authorize non-ALJs, at least on a temporary basis, to issue fully favorable decisions. Among other approaches, we plan to: (1) fill the hearing dockets of our current ALJs to capacity; (2) improve the productivity of our current ALJs; (3) remand cases to the DDSs to issue fully favorable determinations or update the development of the file; (4) appoint additional Senior ALJs and ALJs from other agencies; (5) implement a medical expert screening process; and (6) open a National Hearing Center.

**Fill Administrative Law Judge (ALJ) Hearing Dockets to Capacity**

To maximize the number of legally sufficient decisions our current ALJs issue, we must fill their hearing dockets to capacity. We have determined that our current ALJs would schedule an additional 3,600 hearings per month if we could fill their hearing dockets to capacity. Because of the amount of time it takes to prepare files for hearing and the limited staff available to do so, the agency has not been able to fill all ALJ hearing dockets to capacity.

We are adopting four approaches to accomplish this objective: (1) increasing the overtime allocation; (2) hiring additional staff; (3) streamlining folder assembly; and, (4) using personnel from other SSA components to assist the most affected hearing offices.

We have increased the overtime allocation for the hearing operation to authorize as much overtime as the staff can use effectively and efficiently. This overtime is being used primarily for case preparation and decision writing activities. While this approach is helpful in the short term, over the long term staff working excess overtime hours harms productivity and service. However, in the short term we are maximizing the use of overtime to jumpstart our efforts to eliminate the backlog. We will also commit overtime usage in other SSA components to assist us with implementation of this plan.

Despite the limits on hiring additional staff during 2007 due to budget constraints, we have allocated 492 of these positions to the hearing operation. The additional staff will assist us in filling ALJ hearing dockets to capacity and in drafting decisions the ALJs issue.

Complicating the issue of making sufficient cases available to fill ALJ hearing dockets to capacity is the fact that some of our ALJs choose not to review files that are not reassembled in a manner to which they have become accustomed. Indeed, in some cases, staff devote extraordinary effort to prepare files in a manner acceptable to individual ALJs.

Traditionally, when cases reach the hearing level, the folders have been re-assembled to place the medical evidence in chronological order to the extent possible, to eliminate duplicate documents, to label each document as an exhibit and number each page within that exhibit, and to prepare an exhibit list. We have not had sufficient staff for some time to re-assemble all the folders in a manner that is acceptable to all ALJs. Accordingly, some judges refuse to review cases that are not reassembled, and do not hold all the hearings for which they have time. Needless to say, this is wasteful and not efficient use of a precious resource while many claimants languish.

To make more cases available for review, we are authorizing a streamlined approach to file assembly. Many judges advise us that they do not use the exhibit list, and it is virtually impossible to place all medical evidence in strict chronological order. They have volunteered to hold hearings with files that are not re-assembled and to review files assembled in the same format used by the disability examiners at the DDSs. We are authorizing this practice to support these judges and the claimants they serve.

To maximize the efficiency of the ALJs who handle these cases, we will continue to adequately develop the files and to prepare the file summary sheet which documents the staff's file analysis. In addition, we will sequentially number the pages in the folders to allow for easy reference by all who have access to the file, including the ALJ, the claimant, and the representative and to ensure a record is created for appeal. This streamlined file assembly approach will save staff preparation time on each file and will

significantly increase the number of files the staff can make available to ALJs for hearings. To facilitate this streamlined process, we will also encourage claimants' representatives to discontinue submission of duplicate documents because this practice creates unnecessary time and delay.

This streamlined approach to file assembly will be used for the 225,000 backlogged paper folders and will be done on a limited basis, starting with ALJs willing to hear cases in this streamlined format. We expect to complete assembly of the paper folders by the end of this calendar year. We are working on acquiring software to automate this function for electronic folders.

We recognize this streamlined file assembly approach could result in some increased ALJ and decision writer time as they become comfortable with the new format, but believe the positive aspects of this approach far outweigh the limited disadvantages.

Staff from other components will also be used to assemble files for the hearing level in our most heavily affected hearing offices. This assistance may also be used for photocopying, mail association, releasing files, and similar hearing process activities. They will do this work on overtime so as not to adversely impact the service their components provide to the public. To the extent possible, these individuals will work out of the hearing office at the end of the day or on weekends to minimize moving the folders from one office to another.

#### **Improve ALJ Productivity**

Most ALJs are among our best employees -- hard-working and dedicated to achieving the agency's mission of service to the American people. However, not all ALJs hold as many hearings, issue as many decisions, or issue decisions that are legally sufficient as should be expected of individuals in their positions. By increasing the output and quality of decisions, fewer additional adjudicators would be necessary. The agency at all levels must support improving output and quality. Output and quality may be improved by supporting ALJs, providing training, making sufficient cases available for them to hear and decide, and by taking appropriate administrative action in accordance with law.

We ask the ALJs to issue 500 – 600 dispositions each year. We may increase this range to 500 – 700. Based on historical data, we believe that this is achievable. Approximately 400 of our judges are issuing at least 500 dispositions each year. Another 400 are issuing between 400 and 500 dispositions. Approximately 300 judges are issuing fewer than 400 dispositions each year. If each of our judges issued at least 500 dispositions each year, an additional 60,000 dispositions would be issued each year. If the judges who issue less than 500 dispositions each year issued just one more disposition each week, an additional 30,000 dispositions would be issued each year.

While we are concerned that some of our judges are issuing far fewer dispositions than we believe are reasonable, we have similar concern about judges issuing far more dispositions than we expect. We will explore the reasons for both phenomena and take appropriate action.

**Remand Cases to Disability Determination Services (DDSs)**

Using profiles developed by the Office of Quality Performance (OQP), cases will be screened and triaged to determine whether an allowance can be issued without a hearing, whether an allowance may be issued with further development without a hearing, or whether the case requires a hearing. Cases that can be handled at the DDS will be remanded to DDSs for a determination of whether an allowance may be issued. Cases that require a hearing would be scheduled for hearing. Cases that may result in an allowance at the DDS with additional development will be remanded to the DDS. If allowed, the DDS would issue a favorable determination, and the hearing request would be dismissed. If not allowed, the DDS would update the development of the file and return the case to the Hearing Office for adjudication. If the DDS adequately develops the record in cases that are not allowed, upon return of the case to the hearing level, the case would be given priority scheduling for disposition.

**Appoint Senior Judges and Hire ALJs from Other Agencies**

We will hire Senior ALJs on an as-needed basis. For the last several years, insufficient staff has been available to maximize the service provided by full-time ALJs. As more staff are hired and more efficiencies are implemented, Senior ALJs are being appointed to hearing offices that have ALJ needs and staff to support them. We estimate we will be able to appoint approximately 12 – 15 additional Senior ALJs this year. As Senior ALJs generally work part-time, we estimate each will issue approximately 20 - 25 dispositions each month during their terms.

We will also likely appoint an additional 6 – 8 re-employed annuitant Senior ALJs who work full-time. We expect them to issue as many dispositions as any of our full-time ALJs, i.e., approximately 500 – 700 dispositions each year. Allowing more retired ALJs to return as re-employed annuitant Senior ALJs will increase this pool of adjudicators.

In addition, we plan to hire 4 – 8 additional ALJs who have recent SSA experience this year from other agencies. Again, we expect these ALJs to issue the same number of dispositions as other full-time ALJs once their pipeline of cases is filled. ALJ hearings are generally scheduled 2 – 3 months in advance.



**Implement Medical Expert Screening Process**

When screening by hearing office staff identifies cases likely to result in favorable on-the-record (OTR) decisions with medical input, we will have those cases reviewed by hearing operation medical experts (MEs) before assignment of the case to an ALJ. These medical experts would complete a set of standard interrogatories on whether the impairments meet or equal a listing and, if not, the limitations imposed by the impairment(s). Cases in which the ME provides an opinion that allows a conclusion that the claimant is disabled will be routed to an adjudicator to consider issuing a fully favorable on-the-record decision. Cases in which the ME provides opinions which are not likely to be allowed in this fashion will be assigned to an ALJ for review and scheduling for a hearing. We have tried this approach to screening in several of our hearing offices and have positive results. While the pool of cases in this category is not large, we estimate approximately 10,000 – 15,000 cases each year would fall into this category.

**Open National Hearing Center (NHC)**

In addition to appointing ALJs to current hearing offices where the receipts justify additional ALJs, we will also establish and appoint ALJs to a centralized, fully electronic National Hearing Center (NHC) to handle electronic files and conduct only video hearings. The ALJs in the NHC would be assigned cases from throughout the country to balance workloads. If the claimant in a case assigned to an ALJ in the NHC chooses to opt out of a video hearing, the claimant's case will be returned to the local hearing office. We believe an NHC will allow us the flexibility to balance workloads and process cases where the need is greatest in our attempt to provide hearings within a reasonable time to all claimants throughout the country.

In addition, the NHC will be used to refine our new electronic hearing process, test new initiatives, and help us determine the ideal staff-to-judge ratio in a fully electronic environment.

**INCREASING EFFICIENCY WITH AUTOMATION  
AND IMPROVED BUSINESS PROCESSES**

Currently a number of electronic initiatives are being developed which, if funded, would save many work years for hearing offices. The electronic folder has the potential of significantly decreasing the time it takes hearing office staff to prepare and exhibit files, associate correspondence, prepare and send notices and transfer workloads. In March 71% of disability claim receipts were electronic and 31% of the cases pending in hearing offices were electronic.

**Develop a New Case Processing and Management System for the Appeals Council**

We need to develop a new case processing and management system for the Appeals Council (Appeals Council). The AC currently uses a series of dBase systems to control their workloads, including requests for review (RR) and the civil action (CA) cases. None of these systems currently interfaces with the electronic folder. The Appeals Council has a number of "workarounds" for dealing with electronic folder cases. This shortcoming not only creates problems because there is no way for data to propagate from the Case Processing and Management System (CPMS) on a limited basis, but it also prevents a case remanded to a hearing office to remain in electronic format. The result of this lack of an electronic processing system is that personnel in the hearing office must print out the entire electronic folder in order to process the remand. In FY 2006, the Appeals Council remanded 31,873 cases (RR and CA cases) to the hearing offices. When an electronic case is remanded to a hearing office, the case must be manually reestablished in CPMS and it takes approximately one hour per case to print the folder out and arrange it. This adds significant time to the processing of a case. Since the focus of SSA is to support the electronic processing of disability cases, there is an obvious need for the Appeals Council to have a case processing system which contains the functionality to process these electronic cases. The new system will interface with the electronic folder for incoming cases and outgoing decisional data. It will provide automation and support for the receipt, processing, development, tracking and closure of Appeals Council cases. In addition, it provides management information based on the new system. The initial phase of this new system should be released within 9 months. Not only will this new system require less staff time, but it will also fully integrate the Appeals Council into the electronic process.

**Increase the Amount of Data Propagated to the Hearing Office Case Processing System**

While there is much information currently entered into the hearing office case processing and management system (CPMS), there is a need for additional information in CPMS, such as the Disability Determination Services disability decision data. At the present time, hearing office staff must manually enter these data. With increased propagation, not only does the chance of erroneous inputs decrease, but hearing office staff time is saved by not having to enter data manually into CPMS.

**Provide the Ability to Sign Decisions Electronically**

Another automation initiative which is needed is the functionality to sign decisions electronically. Currently, decisions are printed, signed, and then scanned into the electronic folder. By implementing electronic signature capacity, the adjudicator would be able to sign the decision electronically. Functionality to sign decisions electronically would enable adjudicators to sign and send the decision to the electronic folder with a click of a mouse. The ALJ would sign the decision/order using his/her logon PIN.

When signing a decision/order, the ALJ will also be able to verify a number of facts, including whether the decision is favorable, unfavorable, or partially favorable; the disability onset date; and the disability ending date, if any. The ALJ may also be permitted to verify additional data which have already been identified and entered into the decision by the decision writer such as impairments and recommended diary type. The signature will confirm these facts as accurate. If the type of decision, onset date, and/or termination dates differ at the point of signature from the point at which instructions were issued, a verification alert will be displayed to alert the signer to the discrepancy. The signature will ensure that these facts are posted to CPMS as the final ALJ decision/order, and that these facts are protected permanently from any subsequent alteration unless the decision/order is unsigned. Should the ALJ decide to change the decision/order, the ALJ, and only the ALJ, would be able to “unsign” the decision/order.

Once a decision/order is signed, it will be protected against alteration through the entire process of being uploaded into the document management architecture (DMA) and being printed out for distribution. Decision/orders and notices would need to be printed for external distribution only, e.g., to claimants and representatives. Distribution of notices and decision/orders within SSA would be replaced by an automated alert, with the recipient of the alert able to view the decision/order in DMA should that be necessary. Once a notice date has been entered into CPMS, a decision/order can no longer be unsigned. A history will be maintained in CPMS of all signings and un signings including the identity of the authorized signer and the date and time the action was taken. For signings, additional information will be maintained in CPMS including whether the decision was favorable, unfavorable, or partially favorable, the disability onset date, and disability end date, if any. Electronic signature functionality will be necessary to utilize centralized printing and mailing of decisions and other documents.

#### **Centralize Printing and Mailing**

Implementation of centralized printing and mailing would result in large work year savings. The following notices are routinely sent on each case: Acknowledgement of Hearing, Notice of Hearing (sent to claimant, representative, vocational and/or medical expert (VE/ME) –in FY 2006 there were 423,604 hearings and VE’s were used in 289,887 cases and ME’s in 75,531 cases), Notice of Hearing Reminder Notice (sent to claimants and representatives), Case has been Exhibited letters (sent to claimants and representatives), Congressional status letters (usually sent monthly on all Congressional interest cases), Request for Evidence letter (sent to representative or medical source – there may be multiple requests on one case), Consultative Exam (CE) has been Requested Notice (sent to claimants and representatives), Letter transmitting copy of CE (sent to claimants and representatives if HO requests a CE), and the Decision or Dismissal notice (which currently requires a wet signature and is sent to claimant and representative on electronic media).

All of these notices could be routinely handled through a centralized printing and mailing process. Hearing offices sent 3.6 million documents containing 21 million pages in FY 2006. Documents requiring HO staff customization could still be prepared in the HO but printed and mailed from a central location by a vendor. Documents containing information entirely in CPMS could be generated and printed centrally without HO staff involvement. Based upon receipts of 550,000 cases per year, the hearing operation could save significant numbers of workyears with the implementation of centralized noticing and printing.

Another benefit of this initiative is to allow forms to be maintained at a central location to ensure the most current form is always downloaded and mailed to the claimant. Currently, individual hearing offices maintain supplies of forms. We would no longer need to print forms in advance and send them to hearing offices.

#### **Enhance Hearing Office Management Information**

The HO system currently has an extensive management information application. Enhancements to the HO Management Information system will provide additional methods to track HO workloads at any point in time and would allow tracking of processing time by case status, updating workload summaries nightly rather than weekly, and providing additional information for managers to better control cases.

#### **Provide Support to Send Additional Documents to the Electronic Folder**

Although many documents can be automatically sent to the electronic folder now, additional documents need to be sent. Some electronic documents, such as earnings records, cover sheets, applications, and requests for hearing, must be downloaded, printed, and then scanned back into the electronic folder. There is no automated way to send these documents to the electronic folder. Printing and scanning the queries and then shredding the paper copies takes about 15 minutes per case. This entire amount of time could be eliminated if the capacity to send selected queries and other documents directly to the electronic folder were implemented.

#### **Provide Shared Access to the Electronic Folder**

We need to provide additional functionality for shared access to the electronic folder. Currently, if a hearing office receives a remand from the Appeals Council of an electronic folder, the folder must be converted to a paper folder. If a hearing office seeks assistance from another hearing office with case preparation or decision drafting, the electronic folder must be converted to a paper folder. If the hearing office remands a case to the DDS as an informal remand, the electronic folder must be converted to a paper folder upon return to the hearing office. This initiative will insure that electronic folders remain electronic even if the cases are temporarily transferred to other hearing offices or components or remanded to either the DDS or to the hearing operation from the Appeals Council. This functionality allows HOs to process AC and Court remands and

re-openings in an electronic environment. This functionality would also facilitate temporary transfers for assistance from other HOs, informal remands to DDSs, and utilization of Pediatric Medical Units (PMUs) to assist the HOs. This initiative could be implemented for remands and re-openings within 10 months with additional functionality being added within 18 months.

#### **Expand Internet Support for Representatives**

We are requesting two enhancements to the Electronic Records Express (ERE) system currently available to authorized representatives. Currently, representatives can be authorized to submit evidence to the electronic folder by using the ERE website. When a representative needs a copy of an electronic file, hearing office staff must produce a CD of the folder and mail it to the representative. Both of these activities would be eliminated by the functionality requested with this initiative. This expanded Internet support for representatives is needed to allow more functions to be available via the Internet. The enhancements under this proposal would allow registered representatives to download the contents of electronic folders through the ERE website, would allow HO staff to send notices and other documents to registered representatives through ERE, would reduce the need for staff to produce and provide CDs of the file, and would allow filing of an appeal over the Internet through iAppeals. We estimate we could save up to 45 minutes per case with the implementation of this functionality. The savings attributed to these ERE enhancements result from eliminating the need to print and mail bar codes to the representatives, to print documents and mail them to authorized representatives, to burn CDs and mail them to authorized representatives, to encrypt CDs, to send encryption codes under separate cover, and to make frequent calls to representatives about their requests.

#### **Provide Additional Video Hearing Equipment**

Currently, 394 of 904 hearing rooms are equipped with video equipment. This includes 231 of 677 HO hearing rooms, 148 of 227 permanent remote site hearing rooms, 13 regional offices, and 2 at central office in Falls Church. Funding of \$4.7 million for FY 2007 has been made available to support this effort. Fully operational video hearing rooms reduce ALJ travel time and travel costs. Implementation is ongoing. In FY 2006, ODAR scheduled 55,127 video hearings and held 41,457 video hearings. In FY 2007 through the end of April, 32,298 video hearings were scheduled and 24,359 video hearings were held.

#### **Update Hearing Office Systems Infrastructure**

Approximately \$12 million has been set aside this fiscal year to bring up to date systems infrastructure (servers and telecommunications equipment) in the hearing offices. This effort supports electronic folder processing by increasing the capacity of the infrastructure underlying the electronic folder and other electronic services.

**Implement ePulling – Electronic File Assembly**

ePulling (electronic file assembly) is an automation tool that will support preparation of electronic cases for hearing. Case preparation has three components: file development, file analysis, and file assembly. ePulling will dramatically reduce the amount of time it takes to assemble folders and will allow the staff to devote more time to file analysis and development. ePulling will identify potential duplicate documents, classify documents by type of evidence, sequentially number pages, and create exhibit lists. We estimate that it takes approximately 4 to 4 ¼ hours to fully prepare a folder. ePulling will dramatically reduce the time necessary for the file assembly portion of electronic folder preparation.

**Implement eScheduling**

Currently, the HO processing system supports the scheduling of a hearing and provides for the selection of attendees and location. Additional software enhancements are needed to implement eScheduling by incorporating calendaring functionality. These enhancements would facilitate the scheduling of ALJs, claimants, representatives, expert witnesses, hearing reporters, interpreters, and hearing rooms through the use of calendars. This would require the creation and upkeep of calendars for all potential attendees. Use of this enhanced calendaring function in conjunction with ERE and centralized printing and mailing would help create a seamless process and minimize HO staff involvement.

**Transition to the Electronic Folder**

We expect all states will be certified to use the electronic folders for all disability cases by the end of June. New York is the only state still to be certified. Approximately 30% of all HO judges and staff are trained to process cases electronically. Training will be rolled out to the remaining judges and staff as the electronic workload builds and the Agency transitions to an electronic environment. While electronic folder processing initially has an adverse impact on productivity due to the need to process cases in both paper and electronic format and the training and lead time required for judges and staff to become proficient, we expect electronic folder processing to make us more efficient and improve service to the public. Electronic folder processing eliminates the need for mailing files and prevents the loss of files in transit. In addition to the claimants enduring the loss of personally identifiable information, recreating lost files is resource-intensive and further delays the processing of cases.

**Mandate Findings Integrated Templates (FIT) Decision Writing System**

Mandating the use of the Findings Integrated Templates (FIT) for all decision writing should improve the hearing business process. Data suggests that improved legal sufficiency and productivity result with the use of this tool. Additionally, as the use of FIT has matured, the rate of Appeals Council remands is significantly lower for decisions written using FIT than for decisions written without using FIT. The impact of mandating

the use of FIT as of October 1, 2007, will improve the legal sufficiency of hearing decisions, conserve resources, and reduce average processing time.

**Have Appeals Council Issue Final Decisions when Possible to Reduce Remands**

The Appeals Council (AC) will assist in reducing hearing level receipts by making technical corrections to decisions whenever possible instead of remanding them to the hearing level. Upon request for review, many ALJ decisions contain relatively minor errors which could compromise the support of the decision in court, but do not ultimately affect the correctness of the decision. Instead of remanding these cases to the hearing level, the AC will issue a new decision with the technical issue corrected. This initiative should improve overall processing time and reduce the number of cases remanded to the hearing office.

**Provide Improved Training to Hearing Office Management Teams**

Training programs for new Hearing Office Directors, Group Supervisors, and Hearing Office Chief Judges are being prepared to supplement the traditional core management training program. Development of these programs involves a threefold approach – orientation, online (distance) training with the oversight of management, and one week of classroom training to address task specific training. In addition, we will be providing guidance to all field managers on good management techniques through conference calls, memos and other helpful documents, IVTs, videos on demand, and management conferences. Managers who do not employ good management techniques will be retrained and expected to follow national policy.

**Expand Cooperation Between HOs and FOs/ADOs**

Efforts to expand cooperation between Hearing Offices and SSA Field Offices (FOs) and SSA Area Director Offices (ADOs) will continue. While most relationships among the various components at the regional and field level are harmonious and mutually beneficial, relationships can be improved in some field locations to maximize opportunities to improve service to the American people. We will engage in additional activities to further the “One SSA” concept. Field level managers, judges, and staff will continue to learn the impact their actions have on other components which should result in improved timeliness and legal sufficiency of service. Meetings and discussions with individuals from other components to share concerns and requests for assistance will be encouraged.

In addition to enhancing communication between components, local arrangements may be possible where offices may assist each other with training, systems support, and other areas of need. We also intend to co-locate some ODAR offices with field offices, which will improve coordination.

**Work with OQP to Designate a Business Process Review Team to Help Establish a Standardized Electronic Business Process**

Implementation of the electronic folder will allow the hearing operation to standardize its business processes. The processes and organizational structures of hearing offices vary dramatically from office to office. This variation sometimes impedes efficiency. We will work with the Office of Quality Performance (OQP) to designate a business process review team to help establish standardized electronic business processes. The Review Team will visit hearing offices, analyze the current electronic folder process, and help identify the most effective processes. These best practices will be implemented nationally to ensure a standardized process for providing timely and legally sufficient hearings and decisions in every hearing office.

**Implement Quality Assurance Program for Hearings Process**

Working with the OQP, we will develop and implement a quality assurance program for the hearing process. This quality assurance program will ensure that all offices follow Agency policy. For example, the program will ensure that the file analysis maximizes the efficiency of the ALJ and supports a legally sufficient decision. Instructions to the decision writers should be adequate and the draft decisions received by the ALJs should require little if any editing. Ideally, this quality assurance program will result in fewer AC and federal court remands, and a reduction in the time required for ALJs to review files and re-work decision drafts. This is especially important for new employees to prevent repetition of mistakes. This initiative will be used both as a management tool and as an educational tool.

**Expand OQP Review of Reconsideration Denials Using Profiles**

Using the profiles the OQP is developing, OQP will increase the number of reconsideration denials it reviews. Approximately 14,000 reconsideration denials will be subjected to this review, and we estimate that 2,200 will be returned to the DDSs for further action, and 1,300 fewer requests for hearing being filed as a result. This initiative will probably have a significant impact on hearing receipt levels.

**Conduct Manual Time Allocation Studies for Each Stage of the Electronic Business Process**

Reliable data do not exist that show the amount of task time on average it takes to perform each hearing process function. Working with the OQP, the hearing operation will conduct manual time allocation studies of the hearing process to gather this data. Having the data readily available will assist with future analysis of the efficiency of the current process and proposed enhancements.



**Continue Decision Writer Productivity Improvement Initiative**

We have undertaken a decision writer productivity improvement initiative in FY 2007. The intent of the initiative is to improve the timeliness of the draft decisions the ALJs receive from the attorneys and paralegals who draft the decisions. The initiative has three components: (1) advising the attorneys and paralegals of the amount of time it should take on average to draft decisions; (2) encouraging supervisors to assign work in smaller units on a more frequent basis; and, (3) publishing a monthly Decision Writer Performance (DWP) Report by hearing office and region. Based on historical data, we advised the decision writers that, absent special circumstances, to draft legally sufficient decisions it should take on average 4 hours for fully favorable decisions and 8 hours for unfavorable and partially favorable decisions. Some will take less time, others more. We have learned that the most efficient offices are ones that assign work in smaller units, i.e., two cases to be written that day. Offices that allow staff to self-assign work or that assign work by the month tend not to be as efficient. The monthly DWP report presents the percentage the number of decisions that were written in the time taken to draft those decisions compared to the number of decisions that should have been written, based on historical data. The first monthly report showed a productivity improvement of 79%. The most recent report showed a productivity improvement of 82%.

**Effectuate Temporary Service Area Realignment**

Traditionally, the hearing operation transferred cases around the country to balance workloads, and will continue doing so as necessary. However, a better approach is to temporarily re-align service areas by assigning hearing offices without a backlog to become part of service areas that have backlogs. Video-equipped hearing rooms in the assisted hearing office or in a permanent remote hearing site will be assigned to the assisting hearing office to handle the new service area. This approach is better than case transfers because it reduces the boxing and unboxing of files, encourages the assisting hearing office to treat the claimants and service area as its own, allows the remand of cases from the Appeals Council back to the same office that issued the original decision, and prevents the assisted office from transferring only its hardest cases. All cases, both current pending and new receipts, from the designated service area are forwarded directly to the assisting hearing office by the designated field office(s).

**Continue Interregional Case Transfers**

To balance caseloads nationally until the backlog is eliminated, interregional (and intra-regional) case transfers will continue to be made if temporary service area realignments are not possible. This approach will be limited and last for only short periods, as such an approach has a number of negatives such as wasting resources by boxing and unboxing files and increasing travel costs. Although video equipment is the first choice for conducting hearings in these cases, this is not always possible, either because the claimant opts out of the video hearing or insufficient video hearing rooms are available for this purpose. In an attempt to equalize processing times nationally this approach is

currently being used on a temporary basis. To balance caseloads nationally, 80,000 files would have to be transferred. We do not plan to transfer that many files at this time because we believe the negative consequences that would result from the transfer of such a large number of cases outweigh the positives.

#### **Use Weekly Workload Reporting and Monitoring**

Traditionally, management information for the hearing operation is reported on a monthly basis. While reasons exist for this approach, this may result in delays in case processing, as employees process more cases at the end of the month to meet a monthly goal. We are in the early stages of publishing workload and performance data on a weekly basis. This is a significant change in culture and will be used to encourage accomplishment of weekly goals that should have the overall effect of improving productivity and creating a more stable work process. While this initiative is in its early stages, increased devotion to this approach will have a long-term positive effect.

#### **Co-locate Remote Hearing Sites with Field Offices**

Holding hearings at temporary remote hearing sites is difficult especially with electronic files. Permanent remote hearing sites are often stand-alone offices requiring additional agency expense for systems and similar support. Also, security at both permanent and temporary remote hearing sites is difficult to provide and expensive. We will be moving toward co-locating all possible future remote hearing sites with field offices where necessary to accommodate the public. Co-locating remote hearing sites with field offices will allow us to provide more convenient locations for the public and will conserve agency resources.

#### **Improve Public ALJ Alleged Misconduct Complaint Process**

The process to handle public complaints against ALJs was adopted as an interim process in 1992. It was intended as a short-term process until the permanent process could be adopted. Fifteen years later, the permanent process has still not been adopted. We continue to handle public complaints but are working on developing a permanent process that results in consistent, timely action. The Office of the General Counsel, Office of the Chief Judge, Office of Appellate Operations, and Office of Labor Management and Employee Relations are working together to improve the process allowed by the current regulations and to propose changes to the regulations to provide a process that the public, the ALJs, and the agency all believe serves its intended purpose.

**Response From Michael Astrue to a Question From Senator Cantwell  
May 23, 2007**

Historically, hearing receipts have outpaced dispositions in the Seattle Region, resulting in increased pending levels and longer processing times. Economic conditions further contributed to increased receipts in Washington, Oregon, and Alaska, as individuals experiencing health problems filed disability claims to replace lost income.

Also, during the last three fiscal years, 4 of 33 available Administrative Law Judges (ALJs) in the Seattle Region suffered major medical problems, leading to significant periods of absence and eventually retirement of one of the Judges. The lost productivity from four ALJs during intermittent periods resulted in 300-500 fewer dispositions per year, further exacerbating increased pending levels and longer processing times.

We are also looking at the possibility that travel to Alaska, which has about 13% of the receipts for the region, may be a factor in poor efficiency. While we have not made any final decisions on new hearing offices, Anchorage is high on the evolving list.

Finally, an inability to hire ALJs and support staff as attrition occurred created additional pressures on the system. In the current fiscal year alone (FY 2007), a loss of 8 support staff has resulted in significantly fewer cases assembled, scheduled, and heard by the ALJs.

See attached Seattle Region fact sheet.

## Seattle Region

### Hearing Office Statistics Through Fiscal Year to Date as of May 25, 2007

	Pending Per ALJ	Average Processing Time	Daily Dispositions Per ALJ
Seattle HO	623.40	571	1.82
Spokane HO	976.60	529	2.25
Region	707.46	560	1.95
Nation	692.42	508	2.11

Source: CPMS' Caseload Analysis Report

### 1000 Day Cases As June 7, 2007

	Number of 1000 day Cases	% of 1000 Day Cases Pending
Seattle HO	209	1.9%
Spokane HO	36	0.3%
Region	428	4.0%
Nation	10,718	

Source: 1000 Day National Workload Summary (03) Report.

\*1000 Day National Workload Summary (03) Report is a daily report that includes all cases that are currently over 1000 days and cases that will become 1000 days by the end of the fiscal year.

### Hearing Office Rankings\* Through Fiscal Year to Date as of May 25, 2007

	Rankings for Pending Per ALJ	Rankings for Average Processing Time	Rankings for Daily Dispositions Per ALJ
Seattle HO	#69	#111	#114
Spokane HO	#113	#91	#54

Source: CPMS National Ranking Reports

\*National Ranking Reports for May 2007 includes non-hearing offices (Regional Offices 1 and 7; and the Madison satellite office). We have excluded these offices from the rankings reflected above and revised rankings accordingly.

Thus far in Fiscal Year (FY) 2007, the pending in the Seattle Region currently stands at 707.46 cases per Administrative Law Judge (ALJ), ranking 6th in the nation. FY 2007 national pending level is currently at 692.42 per ALJ. The Seattle and Spokane Hearing Offices (HO) have a combined pending of 14,235 cases, or 57 percent of all pending cases in Region X (24,805). Region X's receipts continue to outpace dispositions, resulting in an increase in the number of cases pending at the hearing level by over 526 cases since the end of FY 2006 (24,279). However, the Region has made notable improvement in its productivity since February 2007.

#### **Seattle Hearing Office**

The ALJs on duty have remained static throughout the fiscal year; however, staff attrition has negatively impacted the number of cases ready for hearing. The staff-to-judge ratio was 4.11:1 at the beginning of the fiscal year and is currently 3.73:1 as of May 12, 2007. However, 4 additional hires (Senior Case Technicians) have been authorized for the Seattle HO.

The HO's daily dispositions per ALJ rate is lower (1.82) than the national average (2.11), and the Average Processing Time is higher (571) than the national average (508). In an effort to balance the workloads, inter-regional case transfers were authorized for the Region and 1,000 cases were transferred to the San Francisco Region earlier this fiscal year. In addition, the hearing office utilized 336 hours of overtime for decision drafting and 499 cases were transferred to other offices for writing. The HO utilized 1,178 hours of overtime for case pulling and transferred out 117 cases to other offices for file assembly.

#### **Spokane Hearing Office**

The HO's daily dispositions per ALJ rate (2.25) is above the national (2.11) and regional (1.95) averages. Since December 2006, the HO's pending per ALJ has steadily improved. The office only has 5 Judges on duty, which is down from the beginning of the fiscal year (6.50), resulting in a higher staff-to-judge ratio 6.00:1. The additional staff has provided a sufficient number of cases for hearing. Spokane's pending per ALJ is higher (976.60) than the national average (692.42) as a result of losing 2 ALJs in April. The hearing office productivity index is 99.22.

**Statement of Senator John F. Kerry  
Senate Finance Committee Hearing  
Funding Social Security's Administrative Costs: Will the Budget Meet the Mission?  
May 23, 2007**

Mr. Chairman, thank you for holding this important hearing. I agree with you that this is a critical issue that needs to be addressed. This issue is not just about budget cuts and backlogs. It is about individuals who are left in a state of despair while they wait for their benefits to be processed. I read Ms. Shor's testimony and we need to do better for these individuals.

At a time when disabled individuals are in dire need of assistance, they should receive all the help that they can from the government. They should not have to wait over three years to find out whether or not they are eligible for benefits. My office repeatedly hears from constituents that are having trouble getting their calls answered and often once they get through, they do not receive helpful information.

I am concerned that the Social Security Administration keeps having additional burdens placed on it without adequate funding. Those applying for disability benefits should not have to suffer because the SSA has to administer part of the prescription drug program and other programs.

At the end of the fiscal year 2006, there were approximately 1.3 million people awaiting a decision on their initial claim or appeal for Social Security or Supplemental Security Income (SSI) disability benefits. Under the Administration's budget for FY2008 this would increase to almost 1.4 million cases

The SSA has worked hard in recent years with scarce resources to improve productivity. We need to work together to determine how to further improve productivity and substantially reduce the backlog. Disabled individuals should not have to experience years of gridlock before they receive their benefits.

I look forward to hearing the actions taken by the Social Security Administration and Commissioner Astrue's comprehensive plan to reduce the backlog. Today's hearing will help us identify the problem and determine where additional resources are needed and what changes can be made to substantially eliminate the unacceptable lengthy delays far too many Americans face in receiving their disability benefits.

Thank you.

**Senator Jay Rockefeller  
Opening Statement**

**Funding Social Security's Administrative Costs:  
Will the Budget Meet the Mission?**

**May 23, 2007**

Chairman Baucus and Senator Grassley, thank you for your attention to the serious issue of the Social Security backlog of disability claims, and the remaining concerns about Medicare Part D for low-income seniors. My team of West Virginia caseworkers deals with these problems facing disabled individuals and their families on a daily basis.

First, I want to acknowledge the dedication and hard work of the Social Security staff and field offices. Many federal employees work long and hard to serve our families and try to ensure that people get the benefits they have earned, and need.

But the reality is: dedication is only so much of the solution. Workers need resources, full staffing and technology to manage the enormous disability workloads. Today's hearing will talk about numbers, but as we start I would like to highlight a quote from Nancy Shor's written testimony:

“...However, we must recognize that behind each number and claim is an individual with disabilities whose life is coming apart; homes are lost; medical conditions deteriorate (and many claimants die while waiting for a decision); and once stable financial security crumbles...”

Over 76,000 West Virginians depend on Social Security disability benefits, and nationwide, it is over 6 million Americans, plus their spouses and dependents. These are workers who contributed to the Social Security system, but were struck with a disability. They earned their benefits, and they deserve them in a timely manner, with compassionate and professional service.

Today's hearing is to learn how we can invest in the system to achieve this fundamental goal of service and support to our disabled workers and their families.

**WRITTEN TESTIMONY  
Of The  
NATIONAL ASSOCIATION OF DISABILITY EXAMINERS**

**Chuck Schimmels, President  
P. O. Box 24400  
Oklahoma City, OK 73124**

**Prepared For**

***U. S. Senate Finance Committee***

***Hearing on  
Funding Social Security Administrative Costs:  
Will the Budget Meet the Mission?***

**May 23, 2007**

Chairman Max Baucus and members of the Committee, my name is Chuck Schimmels and I represent the National Association of Disability Examiners (NADE). I have been a NADE member and worked for the state Disability Determination Services for 13 years. I am pleased to have the opportunity to submit this testimony to the committee.

NADE is a professional association whose purpose is to promote the art and science of disability evaluation. The majority of our members work in the state Disability Determination Service (DDS) agencies adjudicating claims for Social Security and/or Supplemental Security Income (SSI) disability benefits. In addition, our membership also includes SSA Central Office personnel, attorneys, physicians, and claimant advocates. It is the diversity of our membership, combined with our extensive program knowledge and "hands on" experience, which enables NADE to offer a perspective on disability issues that, is both unique and which reflects a programmatic realism.

NADE members – throughout the state DDSs, Regional Office(s), SSA Headquarters, OHA offices and the private sector - are deeply concerned about the integrity and efficiency of both the Social Security and the SSI disability programs. Simply stated, we believe that those who are entitled to disability benefits under the law should receive them; those who are not, should not. We also believe decisions should be reached in a timely, efficient and equitable manner. We believe this is part of the fundamental mission of SSA and the state DDSs – to provide the American public with compassionate and timely service. Unfortunately both SSA and the state DDSs are finding it increasingly more and more difficult to perform its mission given the significant funding reductions experienced by SSA and the DDSs over the past five years.

Along with the reductions in funding, SSA has been asked not only to manage an increasing workload with fewer staff but also to perform Congressional mandated



responsibilities outside of its core mission, such as supporting the Medicare prescription drug program and assisting with verifications of immigration status, with no additional resources or staffing. In the disability process, there has been a burgeoning growth of disability applications and growth in the number of individuals receiving disability benefits. The number of disabled workers drawing Social Security Disability Insurance has more than doubled since 1990 from 3 million to 6 ½ million, an increase of 117% and the number of disabled SSI beneficiaries has increased during this same time period by 66%. As baby-boomers age and more and more individuals retire or become disabled, this places a significant strain on already stressed resources just to manage the daily work involved with maintaining benefit levels of more beneficiaries. This poses significant challenges for both SSA and the DDSs as we try to manage this workload.

In addition, both SSA and state DDSs face a retirement wave of experienced staff and a tighter labor force that will make it more difficult and expensive to hire replacements – EVEN if full funding for replacing staff was available. The disability program has become increasingly more complex as new advances in medicine and treatment have allowed individuals with disabilities to live longer and more productive lives and it takes longer for new staff to learn all the complex rules and regulations to be able to process disability cases. The complexity of the program, the changing nature of the program and the sheer volume of claims, coupled with diminishing resources, has brought a significant amount of stress to an already over-burdened system.

### **Resources**

There is no doubt that backlogs in the disability program have increased. This is a direct result of the hard choices that needed to be made by SSA over the past few years to deal with the realities of inadequate budgeting and staffing. If SSA continues to be burdened with inadequate funding, the problem will only exacerbate the already over-strained system. Backlogs are a direct result of inadequate funding and staffing. SSA's administrative budget is only 2% of its overall program, a bargain compared to private industry or other governmental programs. Continuing to under fund SSA's and state DDSs' administrative costs will only increase the disability backlogs and timely service to the public will continue to deteriorate.

For the past five years, the SSA budget has not been what the previous Commissioner of Social Security or the President requested from Congress. The prior Commissioner reported to Congress several times that if the President's proposed budgets for SSA this past five years had been granted, SSA would have been able to eliminate its disability backlogs. The results of years of under-funding has been at the cost of service to the American public who suffer severe disabilities and have to wait long periods of time before their disability case can be processed.

The complexity of the Social Security Disability Program, coupled with the need to produce a huge volume of work, justifies even more the need for adequate resources in order to provide the service that the American public has come to expect and deserves from SSA. It takes at least two years for a disability examiner to be fully trained and function independently to make timely and high quality disability decisions. It is critical

the DDSs be provided with the resources needed to hire and train replacement staff immediately upon staff losses so that further delays in service do not result. Given the complexities of the program and the continuing changes in the nature of disease processes, new technologies and treatment, it is also critical that adequate resources be provided for on-going training to ensure that staffs maintain their highly developed disability evaluation skills to provide continuing quality service to the American public. Unfortunately, low salaries, hiring restrictions and the stress of the job contribute to high turn-over in some DDSs, with a loss of approximately 400 DDS employees nationally in FY 2007 alone and an average 12 percent examiner attrition rate over the years. Given the hiring restrictions and inadequate resources placed on the SSA and DDSs, it is amazing that the disability backlogs are not even higher than they are currently and that the number of claims processed has continued to increase despite inadequate funding and resources. NADE believes this is a positive testament to the dedication of its members to the American public and their pride in providing high quality service despite these hardships.

SSA over the past decade has attempted to redesign the disability claims process in an effort to create new processes that will result in more timely and consistent disability decisions. Results of numerous tests undertaken by SSA to improve the disability process have not produced the results expected. In fact the majority of them have only slowed the processing of claims while employees adjusted to the constant changes. The impact of these changes has also contributed to the inability to manage the high workloads experienced during this time and decreased efficiency of operations as DDSs have struggled to incorporate these changes into their daily case processing.

“Medical costs” is an important budget item unique to the DDS. It includes both Medical Evidence of Record (MER), which consist of reports from the claimant’s treating sources, and the cost of Consultative Examinations (CEs). The DDS arranges consultative examinations to obtain additional medical evidence required for adjudication. Medical costs can easily account for a quarter of a DDS’s operating budget.

The payment for MER varies from state to state but averages about \$15 for each report, which is significantly less than the amount paid by insurance companies and others in the private sector for the same service. Given the limited budget in recent years, most state DDSs have been unable to increase the fees. While the majority of doctors, hospitals and clinics are cooperative in providing their records, there are a growing number of sources who refuse to send a response for the fee paid by the DDS. This can result in the DDS not having access to a critical piece of medical evidence and may require that they obtain a more costly consultative examination.

Consultative Examination fees are also considerably lower than the fees paid by other disability benefits programs including workers compensation programs and private disability insurers. While the DDSs currently obtain a good standard examination from our CE sources, the exams are sometimes not thorough enough to fully document a hidden or unusual medical condition. The DDS also arranges for CEs conducted by the

treating physician, but most doctors decline the request because of the low fees paid by the DDS.

In the Institute of Medicine's December 2005 report entitled "Improving the Social Security Disability Process – Interim Report", it is recommended that "Reimbursement should be adequate to cover the full costs of consultative examination, which involves more than a standard examination, whether it is focused or comprehensive in scope. This will require a substantial increase in fees over the amounts currently paid in most states." Higher fees would likely increase the pool of medical sources willing to conduct CEs and would provide incentive for more attending physicians to be willing to perform consultative examinations. These improvements in the CE process would be expensive and impossible to implement, even in a limited fashion, with the current DDS budget.

Even if SSA receives the funding increase recommended by the President in Fiscal Year 2008, staffing will be cut due to increases in expenditures in several areas. Rent, salaries, medical evidence, security and benefit costs are totaling more than the annual appropriated funds.

### **Backlogs**

Addressing disability backlogs is a high priority for NADE. As baby boomers are increasingly filing for disability as they age, without sufficient funding and staff to process these workloads, backlogs will continue to increase. However, we think it is important to remember that while there are a large number of cases pending at some DDSs, the most significant delays in the process still occur at the Office of Disability Adjudication and Review (ODAR) where an average claim takes over 500 days, compared to the 84 day average at the DDS. These backlogs create pressure to adjudicate claims quickly without being able to fully develop and give proper attention to analyzing and explaining the disability decisions due to the pressures of dealing with high caseloads and limited resources for processing them. This can often lead to less careful case adjudications. One incorrect allowance can represent a quarter of a million dollars in SSA/Medicare benefits. Delays in case processing make claims more expensive to process, as resources are devoted to dealing with the management of the backlogs instead of working the cases. This results in increased administrative costs over the long run as increasing numbers of staff will be required to manage larger and larger backlogs.

NADE agrees that many people suffer needlessly as a result of these types of backlogs and that individual conditions can worsen or lead to death during waiting time. It is critical that adequate resources be provided to all levels of SSA involved with disability case processing.

As a result of the reduced SSA budgets over the last few years, SSA mandated that initial level disability claims be given top priority. This necessitated other claims, such as reconsiderations and continuing disability reviews (CDRs), not receiving the attention they deserved and resulted in backlogs of these claims at the DDSs. However, it should also be noted that while the DDS's have already disposed over 2 million claims in the FY

2007, the overall receipts have increased and the backlogs have grown by an additional 26,000 cases at the DDS's.

NADE strongly believes that the Single Decision Maker (SDM) process which currently exists in ten states can help to alleviate some of the backlogs at the initial level of case processing. This was the one successful piece of SSA's redesign efforts and it has proven to be one of the most efficient and cost-effective ones. The SDM process has proven to be successful in producing high quality decisions and a time saver when processing claims. NADE believes that SSA should expand the SDM initiative to all states to not only reduce initial case backlogs, but to lower processing times at the initial level.

#### **Continuing Disability Reviews (CDRs)**

Limited resources have forced SSA to reduce the number of CDRs performed. Of utmost concern to NADE is the past history of these types of actions and the resultant negative impact as the agency falls behind in these critical reviews. When we experienced a backlog of CDRs previously, it took a great deal of effort by all components of SSA to reach a point where CDR reviews were being conducted as scheduled. It took a significant number of years of dedicated funding solely for the purpose of conducting CDRs before SSA was current with CDR reviews. With decreasing the number of CDR reviews done in the past few years, there is now a real danger that we will once again find ourselves in the position of having backlogs of overdue CDRs.

While there are some increased administrative costs with the performance of CDRs, there is a potential for significant savings in program costs. If a beneficiary is found to no longer be eligible for disability benefits, the estimate is that over \$10 of program funds is saved for every \$1 spent in administrative costs on conducting CDRs. While NADE agrees that it was necessary to decrease the number of CDRs done over the last couple of years given the current budget situation, this decision has repeatedly been described by many, including the former SSA commissioner, as "penny-wise and pound-foolish". We agree.

It is essential to program integrity that CDR reviews be conducted in a timely manner to ensure that only those who continue to be eligible are receiving disability benefits. NADE's experience has been that the only way to ensure that this happens and that the necessary funds for CDRs don't get transferred to process other SSA workloads is for Congress to provide "dedicated funding" for CDRs. Dedicated funding has shown to be the best means of staying current with the CDR workload. The projected cost savings from dedicated CDR funding from FY 2003 to FY 2006 would be \$1.8 billion over 10 years. NADE encourages this committee to recommend appropriating dedicated funding for CDRs to ensure that this workload gets the attention it deserves.

#### **Electronic Disability Process (eDib)**

eDib is still a work in progress and requires ongoing refinements, upgrades and improvements frequently in order to make the system work as efficiently and effectively as possible. The impact on the electronic system as a whole when these changes are made

is unpredictable, and currently results in case processing systems slowness or inability to work at all.

Since Disability Determination Services (DDSs) process over 2.5 million cases on an annual basis, any shut down or slow down of the case processing system equates to a significant loss of production capacity.

Continued attention to eDib is needed to insure that the proper financial support is given to make it successful. NADE believes that eDib at its full implementation may result in a significant reduction in processing time at all levels of adjudication, from the Field Office to the DDS to ODAR and above. Careful and deliberate efforts to ensure the system is operating at full functionality and as efficiently as possible in addition to full funding for necessary changes is critical to ensuring that the anticipated savings in cost and time of a fully electronic case process are realized.

#### **Summary**

- Inadequate resources along with increased workloads has not only caused backlogs, but has allowed existing backlogs to increase
- Disability backlogs are affected by inexperienced staff, hiring restrictions, and implementation of constant program changes
- Dedicated funding is necessary in order to avoid the costly possibility of having a backlog of overdue CDRs.
- Resources should not be diverted from eDib to implement disability service improvement changes until the eDib system is fully operational. It is critical that necessary refinements be made to the system in order for it to produce the anticipated and desired efficiencies.

#### **Conclusion**

NADE believes that the American public wants and deserves to receive timely, compassionate and efficient service from SSA and the state DDSs. Therefore, we request that you approve at least the amount included in the FY 2008 House Budget Resolution, to begin the process of restoring the levels of service that the public deserves from all components of SSA and the state DDSs.

On behalf of the members NADE, I thank you again for the opportunity to submit this testimony to the committee.

**NATIONAL ORGANIZATION OF  
SOCIAL SECURITY CLAIMANTS' REPRESENTATIVES  
(NOSSCR)**

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*Executive Director*  
**Nancy G. Shor**

**HEARING ON FUNDING SOCIAL SECURITY'S ADMINISTRATIVE  
COSTS: WILL THE BUDGET MEET THE MISSION?**

**May 23, 2007**

**SENATE COMMITTEE ON FINANCE**

**STATEMENT OF NANCY G. SHOR, EXECUTIVE DIRECTOR**

**National Organization of Social Security  
Claimants' Representatives (NOSSCR)**

Chairman Baucus, Senator Grassley, and Members of the Senate Finance Committee, thank you for inviting NOSSCR to testify at today's hearing on the funding of Social Security's administrative costs.

I am the Executive Director of the National Organization of Social Security Claimants' Representatives (NOSSCR). Founded in 1979, NOSSCR is a professional association of attorneys and other advocates who represent individuals seeking Social Security disability and Supplemental Security Income (SSI) disability benefits. NOSSCR members represent these individuals with disabilities in proceedings at all SSA administrative levels, but primarily at the hearing level, and also in federal court. NOSSCR is a national organization with a current membership of nearly 3,900 members from the private and public sectors and is committed to the highest quality legal representation for claimants.

The focus of this hearing is extremely important to people with disabilities. Title II and SSI cash benefits, along with the related Medicaid and Medicare benefits, are the means of survival for millions of individuals with severe disabilities. They rely on the Social Security Administration (SSA) to promptly and fairly adjudicate their applications for disability benefits. They also rely on the agency to handle many other actions critical to their well-being including: timely payment of their monthly Title II and SSI benefits to which they are entitled; accurate withholding of Medicare Parts B and D premiums; and timely determinations on post-entitlement issues that may arise (e.g., overpayments, income issues, prompt recording of earnings).

SSA is generally doing a good job with limited resources and has improved its technological capacity in ways that will help to accomplish its work. However, under the current budget situation, people with severe disabilities have experienced increasingly long delays and decreased service in accessing these critical benefits. Processing times have continued to grow, especially at the hearing level where the delays have reached intolerable levels. In some hearing offices, our members report that claimants wait more than two years just to receive a hearing, which does not count the time for a decision to be issued. There are thousands of cases that have been pending three years or more.

We believe that the main reason for the increase in the disability claims backlogs is that SSA has not received adequate funds to provide its mandated services. Former Commissioner Barnhart has stated that if the proposed budgets requested by the President over the past five years had been fully funded, there currently would be no backlogs. While the current situation is dire, without adequate appropriations to fund SSA, the situation will deteriorate even more.

We are encouraged by Congressional efforts to provide SSA with adequate funding for its administrative budget. The recommendation in the recently approved Fiscal Year 2008 Budget Resolution conference report recommends an appropriation for SSA's administrative budget of \$10.1 billion, \$430 million above the President's requested level. We urge support for this amount, at a minimum, as an appropriation for SSA's Fiscal Year 2008 administrative budget.

Other witnesses today will address the current state of SSA's inadequate level of resources. Later in my testimony (beginning on page 15), I also will discuss these issues. However, we must recognize that behind each number and claim is an individual with disabilities whose life is coming unraveled while waiting for his or her claim to be properly decided – families are torn apart; homes are lost; medical conditions deteriorate (and many claimants die while waiting for a decision); and once stable financial security crumbles. Described below are only a very small number of cases from

NOSSCR members that starkly demonstrate the desperate circumstances in which their clients find themselves while waiting for their claims to be decided.

#### MONTANA

- An attorney from **Kalispell, MT**, has a client who lost her home. The client's doctors have said that she is disabled due to back problems, depression and pain syndrome. Her attorney submitted a report from a vocational rehabilitation counselor who said that given the client's limitations she was not competitively employable. The client filed her application in May 2005 and her request for hearing in June 2006. Her attorney recently submitted a "dire need" affidavit to the hearing office, in which the client explains her circumstances:

I was living in a mold-infested camp trailer for over one year without running water or a bathroom or cooking facilities. Now I live in an 8'x 20' building and I still do not have running water or a bathroom ... Even if I were somehow able to obtain a modest apartment, I wouldn't be able to afford electricity, water, garbage or sewer or the basic amenities to maintain an apartment and appease a landlord ... I have been unable to pay my treating physicians for nearly four years .... I hurt all of the time and I can no longer afford my medications. I have accumulated and continue to accumulate medical bills. I don't have any way to continue to receive treatment .... I suffer from depression and it is only getting worse as well. I consider suicide an option to fix my problems; I no longer can afford my anti-depressants....The stresses of having no money and becoming homeless are destroying my emotional, mental, and physical health. I have reached a breaking point and I am not sure how long I am willing to live this way. I will not be able to survive without shelter, money and medical treatment.

An attorney for a non-profit legal organization reports that her organization, with several offices in Montana, has a combined case load of over 600 Social Security and SSI disability clients at any given time. The organization has an average of 10 clients who die every year from conditions related to their disability while they are waiting for hearing. They routinely have clients who are living on the streets or in their cars while waiting for hearing. Because the state does not have general assistance or state medical assistance, many have no source of income and no health insurance coverage. The attorney finds that it takes on average over two years for a case to be processed. The organization also reports delays at the initial and reconsideration levels. The following stories are a few examples from the organization's caseload:

- A 49 year old Native American woman who lives outside of **Helena, MT**, has uncontrolled diabetes with neuropathy in her feet and legs, bipolar disorder, recurrent pancreatitis, and other conditions. She has a solid work history of nearly 30 years and is raising her nephew who graduates from high school this month. In the two years since she filed for benefits, she has lost her car (Helena, MT has very limited public transportation and she lives outside of town effectively losing any means of transportation). She has been unable to afford her medications, including insulin, for several months at a time, thus making her medical conditions worse. She came within days of losing the property her trailer sits on because she was unable to pay the back taxes which were only \$500. Her hearing was recently held and her attorney asked that the decision be expedited. She is currently waiting for her first SSDI check and past due benefits.



- A 49 year old Native American man who has chronic pancreatitis, chronic obstructive pulmonary disease, asthma, and other disabling conditions was living in his car during the Montana winter where temperatures are routinely below zero. He previously had suffered from frostbite of both his hands during the winter of 2004 when he was also living in his car. He was unable to stay at the local homeless shelter because of conflicts with other individuals. He waited for two years from the time he applied for benefits until he received them.
- A 47 year old woman has degenerative disc disease with herniated discs, severe depression and other disabling conditions. During the almost two years she has been waiting for benefits, she has lost her car, her house, her health insurance and her husband left her. She can not afford her medications and has been without them for months at a time. The consultative examination performed after her hearing revealed that she is actively considering suicide but was waiting until her son graduates from high school next month to follow through on her plan. The attorney hopes that a favorable ALJ decision will be issued in the near future.
- A 49 year old man with severe sleep apnea, cellulitis, coronary disease and rheumatoid arthritis has been waiting for benefits for almost two years. He has a high school education and has worked at hard physical labor jobs his entire life. His wife works but they can not afford the drug injections he needs for his rheumatoid arthritis and he is getting them through a program with the drug company. They have a 6 year old child who helps his father as much as he can. This "big, strong, tough" Montana man broke down in tears during his hearing because it shames him so much that he cannot help support his family and he needs the government's help at this time in his life. The attorney and client are waiting for a favorable decision in his case.
- A 58 year old man diagnosed with paranoid schizophrenia, severely abscessed teeth, and other serious medical conditions waited over two years to receive his benefits. His dental problems led to infections in his blood stream which negatively impacted his mental illness making it much more difficult to control. When he did get his SSI past due benefits, he immediately had his teeth pulled and had dentures fitted. He needed to use his back award to pay for this treatment because no dentist will accept Medicaid for dental work in his community.
- A 49 year old survivor of domestic violence waited for over two years for her benefits. She suffers from post-traumatic stress disorder and also had a motor vehicle accident which resulted in head trauma and other injuries. She was living in a series of shelters until she was able to get into subsidized housing.
- A 7 year old Native American girl who was exposed to meth and alcohol *in utero* was adopted by a single mother who was unaware of her medical conditions. She has severe psychological, neurological and physical problems. She waited two years to receive SSI childhood disability benefits.
- A 7 year old boy, diagnosed with bipolar disorder, has severe psychological problems, which result in difficulties at school and at home. It was three years before he received SSI childhood disability benefits.
- A 60 year old registered nurse who has an excellent work history could no longer work because of physical and mental health issues. She and her husband went through great marital difficulties

due to her depression and were unable to complete construction on their home because of financial problems and her inability to work. It took over two years before she received benefits.

- A 35 year old mother of three had severe neuromuscular injuries that left her confined to a wheel chair. It was two years before she received benefits. During that time, her husband left her. As a result, she and her children were forced to move in with her mother until her benefits were received and she could get a home health aide to help her.
- A 31 year old radiology technician with a college degree suffers from a severe seizure disorder, resulting in major cognitive difficulties, which no longer allow her to work. She was forced to move in with her parents so they could help provide for her. It took over two years for her to receive her benefits.
- A 51 year old woman applied for disability benefits in November 2004. She lives in the northern part of Montana. She agreed to travel to have a hearing in Billings. The hearing was finally scheduled in January 2007. There are few ALJs covering all of Montana and they rarely travel to the northern part of the state.

#### IOWA

A firm in Des Moines, IA has three attorneys who devote the majority of their time to representation of Social Security disability claimants. Their clients must expect to wait between 14 and 24 months for a decision on their claims, after requesting an ALJ hearing. One of the hearing offices where they represent clients is short two ALJs and six support staff, causing the backlog to grow significantly, despite the implementation of new technology. The impact on their clients is devastating:

[L]ying just below each and every social security number included in this mounting backlog is a living and breathing individual, as well as – in the majority of cases – a household .... Virtually every day, our firm receives a phone call from one or more of our clients who are slowly growing more and more desperate as they grapple with foreclosure notices on their homes, with eviction notices, with utility shut-off notices...and...the loss of any access to medical care, often coupled with the inability to buy medications and other treatment.

Several stories from the firm's clients describe how they and their families have been affected while waiting for their claims to be decided:

- Ms. H from **Boone, IA**, was initially unable to work due to a fractured pelvis and was subsequently diagnosed with degenerative disc disease and osteoarthritis. She is not a good candidate for surgery. She has not been able to work since November 2003. She filed her application for disability benefits in September 2004. She was denied and filed a request for hearing in May 2005, which was held in August 2006. She has not yet received a decision.

She lives with a friend and gets food stamps. While waiting for a decision on her claim, she has exhausted the money withdrawn from her pension plan at work, in addition to the penalties paid for early withdrawal. She has borrowed money from her family and has taken out a lien on her car, which she had already paid off. She has no medical insurance and has not been able to get adequate

medical care. She did apply for a patient assistance program to get cheaper medication, but does not like the idea of people knowing about her dire financial condition. Due to the stress of wondering how she is going to afford to live and take care of her medical needs while waiting to get a decision on her claims, she has been diagnosed with anxiety and depression.

- Mr. A from **Altoona, IA** had a workplace injury in February 2005 and has been unable to work due to chronic shoulder and back pain with numbness. He had surgery in February 2007, but the doctors believe it will not resolve the pain. He also has been diagnosed with depression due to the pain and due to stress about not being able to help meet the needs of his family. He filed for disability benefits in February 2005 and was denied. He filed a request for hearing in November 2005. He received a notice in November 2006 that his case was ready to schedule but no hearing date has been set.

He lives with his wife and four children. His wife has started to work to support the family but earns only \$390 every two weeks. Due to his pain, he is unable to help care for the younger children. They have had to borrow \$6000 in loans from friends to help pay for rent, household items and vehicle repairs. His wife had an injury and was unable to work for a month.

- Another client from **Altoona, IA** stopped working in October 2003. She had back surgery in March 2004 with numbness in her left foot. She also has diabetes, which has caused hernias that have required surgical repair. She has developed multiple complications from the surgeries. Her diabetes is not well controlled and her doctor is now concerned that she may have early signs of kidney failure. She has Medicaid but must spend down \$1300 every two months before Medicaid will cover the remaining medical costs. Her doctor would like her to go to the University of Iowa Hospital for tests, but she does not have transportation or gas money to go. She has many medical bills and has three judgments against her for unpaid medical bills. Her truck is not working but there is no money to fix it. Her mother helps pay for some medications but this is a loan. One of her medications costs over \$150.00 per pill.

The client applied for disability benefits in March 2005 and was denied. After the reconsideration denial, she filed a request for hearing in November 2005. Her hearing was finally scheduled in April 2007.

- An attorney from **Davenport, IA** has a client who filed a request for hearing in June 2005. In April 2006, the hearing office sent an acknowledgment letter that the request had been received, but no hearing has been scheduled. She has degenerative disc disease and fibromyalgia, causing extreme pain. She has a long work history. The attorney received a letter from his client on May 16, 2007, describing her current situation:

...I know its [sic] only been around 2 years, but it feels like 10. My hands and my spine are getting really bad. [My doctor] took x-rays and confirmed what I didn't want to hear...My pain is getting out of control...My joints are growing, and my fibromyalgia is slamming me with hammers, boots, rocks, and knives. And due to our circumstances we've had to relocate.

### MASSACHUSETTS

- A client lives in **Pittsfield, MA**. The original hearing request was filed January 2006 but was only logged in at the Springfield, MA hearing office in April 2007, some 15 months later. It appears that it was lost and eventually found at the Springfield, MA district office. The client's main impairment is depression. She also has been a domestic violence victim in the past. These impairments, along with the fact that she does not speak English as a first language have all made her the ideal candidate to fall through the cracks. The attorney first met her in February 2007. While the attorney called the Springfield hearing office shortly thereafter to locate the file, he was told that it was not yet logged in even though the hearing request was over a year old at that point. This is when the search for the file began. He began to reconstruct the file but then the original was found.

The greatest hardship for this client was living in a shelter with two young daughters, having been in an unsafe situation. The husband is now in jail because of other activity, so she escaped the abuse, but also lost his financial support. She was placed in subsidized housing in Pittsfield, MA. While it provides shelter, she is very isolated in a new community with no family and no supports and virtually no services for Spanish speakers, which has meant a lapse in obtaining mental health services.

- Another attorney is representing a client from **Worcester, MA** who is currently homeless. The client has past work as a cashier, customer service agent, and doing temporary agency jobs. Her hearing was requested September 2006, and she is still waiting for a hearing date. She has 3 children – the oldest is in United States Air Force, but the other two children live with relatives. She has been living outside in the woods for the past three years. Recently, she began staying in rooming houses and is trying to get housing with a women's shelter. Her impairments include bipolar disorder, anxiety and depression, pulmonary disease, hepatitis C with sclerosis of the liver, arthritis, knee injuries from a past rape, and an enlarged heart. The client's health is deteriorating and she still does not have income to afford secure and safe housing.

### KENTUCKY

- **Mr. M, Bowling Green, KY**, is 43 years old. He is a former general manager for a mobile home sales company. He became unable to work in December 2004 due to heart problems, diabetes, neuropathy in his legs, two herniated discs, high blood pressure, and depression. He filed his claim for disability benefits, without representation, in early 2005. He sought legal help in September 2005 because he had not received a decision. It was then discovered that the SSA district office had no record of an appeal that the claimant insists he filed. As a result, Mr. M had to start his case over in September 2005 and file a new application. He is now waiting for a hearing with an ALJ and it will be at least several more months before the hearing is scheduled.

Mr. M is a single parent and the father of five minor children who all live with him. He became a single parent last year when his wife committed suicide.

Last year Mr. M began to take a new type of heart treatment called ECT (external counterpulsation). This required regular visits to the doctor's office. However, he had to give up this promising

treatment when he lost his medical coverage. He gets some help from a local church, but he is overwhelmed by his children, his medical conditions, and the frustration of dealing with SSA.

#### WEST VIRGINIA

- An attorney in Wheeling, WV represents an individual who has a solid work history as a longtime municipal government employee (a supervisor of a water treatment plant). This gentleman is having serious financial problems. His attorney has forwarded to the ALJ in the Morgantown, WV, hearing office eviction notices and detailed letters explaining the case for an on the record decision. No response has been received. Nor has a hearing been scheduled. The attorney relates that a great majority of his clients call him often and complain of their financial problems, which are worsened by the processing delays. The attorney also notes a significant problem with the Wheeling, WV SSA district office. Apparently, they do not have a full-time person to handle appeals, and cases can sit there for 4 to 6 months or longer after the appeal documents have been received.

#### NEW MEXICO

- Rick is a 36 year old father of four who has been diagnosed with Chronic Lymphocytic Leukemia, hypoxemia, depression, hematuria, and sleep apnea. He suffers from chronic pain, has been undergoing chemotherapy, and is on oxygen 24 hours a day. A former pipeline inspector, he has been unable to work since September 2005. He initially filed for disability in November 2005, and his request for reconsideration was denied on July 6, 2006. That July denial apparently did not take into account an on the record request filed by his attorney on June 27, 2006. He filed his request for hearing on July 17, 2006, and on July 21, 2006, his attorney filed a renewed request for an on the record decision. To date, Rick has heard nothing about a hearing date and has heard nothing on his request for an on the record decision. He has now had to file for bankruptcy, since his wife's income as a bank teller is insufficient to support the family.
- A client who lives in Grants, NM applied for disability benefits in December 2005 due to kidney cancer. He was 61 years old at onset. His claim was denied and he filed a request for hearing in October 2006. His attorney advised the Albuquerque hearing office in February 2007 that the client's cancer had spread to his lungs and pancreas. There was no response. His attorney also sent a proposed Findings of Fact to the supervisor of the decision-writers. The client died in May 2007 and the hearing office was advised of his death. The client's widow is now waiting for a response but there has been none.
- K suffers from Wegener's granulomatosis, a disease that causes drastic inflammation which has settled in her pulmonary system and has affected her heart, kidneys, skin, and immune system. She is on oxygen 24 hours a day. K is a 48 year old wife and mother. She has not been able to work in catering and food service since July 2003. Her disease went into remission but not enough to allow a return to work, which she had hoped for. As a result, she did not apply for disability benefits until July 2006. She did not know that waiting would affect her ability to receive Title II disability benefits. Because her disability insured status had expired, she could only apply for SSI, which was denied in September 2006. She filed her request for reconsideration in November 2006, and is still waiting for a decision, six months later.

- A client who is Native American lives outside of **Gallup, NM**, on a Navajo reservation. He filed his applications for disability benefits in early 2004 and his request for hearing in December 2004. He suffers from multiple impairments, including uncontrolled Type II diabetes, degenerative disc disease with chronic back pain, sciatica, and chronic renal insufficiency. He takes numerous medications. After many telephone calls and a letter to the Albuquerque hearing office, he was offered a hearing at the end of May 2007 at 8 a.m. in Albuquerque, because the Gallup hearing site was closed. He has difficulty riding in a car – Gallup is more than two hours from Albuquerque each way. It also is a financial hardship because it will require a hotel stay the night before the hearing. His objection to the hearing location was denied and he will try to attend, despite the hardships.

- A client who is Native American lives in **Gallup, NM**. He has a back impairment, post-fusion, and he is on numerous medications. He has depression and hypertension, which his doctor said may be secondary to pain. He is unable to participate in physical therapy because the therapist said he could not tolerate positional changes and he was unable to lie flat on his back or stomach without complaining of extreme pain in his lower back and right leg. His treating doctor wrote that the client is “totally disabled for at least the next two years.”

The request for hearing was filed in December 2005 and his attorney requested an on the record decision in July 2006, but there has been no response. The attorney updated the record with more reports in September 2006, to which there has been no response. The client was evicted from his apartment in August 2006. The attorney interviewed him and took photos of the shack where the client lives. It has a dirt floor and his 3 year old son sleeps on a blanket laid over the dirt. The attorney reminded the hearing office in March 2007 of the on the record request and sent photos of the living conditions. A fully favorable on the record decision was received on March 26, 2007. The client requested an immediate emergency payment at the Gallup, NM SSA district office. They have not processed the request because they require proof of any TANF payments and wages. In addition, they want all of his bank statements, which he no longer has. The bank charges \$2 per page for copies and he cannot afford to pay that amount.

- A 52 year old man who lives in **Portales, NM** requested his hearing in October 2005 and it was finally held on May 1, 2007. Before becoming disabled, he owned his own business. He had to file bankruptcy recently and is expecting to receive the foreclosure paperwork shortly. He has experienced significant family problems as a result of the financial strain. He worries about being homeless and his mental impairments have been exacerbated by the delay on his disability claim.

- A client who has a 100% VA disability applied for Title II disability benefits. It took two years to get a hearing. His case was heard by an ALJ in October 2006 and as of May 11, 2007, he still has not received a decision.

#### MAINE

- An attorney has a client from **Augusta, ME** who has significant mental health impairments. The client receives general assistance to pay his rent, but has no income to buy gas for his car so that he can attend appointments. MaineCare will not pay for some of his medications, forcing his doctor to change his prescriptions to other medications which are not as effective.

He is thinking of relocating to Massachusetts to live with family as he is really struggling. This concerns him because, in the past, he had substance abuse problems (likely related to self-medication due to bipolar disorder) and he is afraid he will connect to old friends and associates which may not be good for him. In late 2006, the attorney received notice that 44 of his cases were being transferred from the Portland hearing office to the Boston hearing office. Fourteen of these cases had hearing requests filed in mid 2005. So far, only one case has been scheduled for a June 2007 hearing date. Before the transfer, he filed requests for on the record decisions in two of the cases but has received no response.

- A **Yarmouth, ME** attorney has a client with serious, well-documented psychiatric impairments. He filed his application in mid 2004 and his request for hearing in early 2005. While the hearing was pending, he became homeless with his wife and two young children. He was evicted and lived with friends and in a shelter. His family could not stay in the shelter continuously due to the children. At times, he and his family lived in his car. A fully documented request for an on the record decision was made, with an alternative request for an expedited hearing. The on the record request was rejected by a hearing office staff attorney. Months later, a hearing was scheduled – 22 months after the request for hearing was filed. The ALJ issued a bench decision after a short hearing.
- Another client of this attorney is a young woman with a history of psychiatric treatment from early childhood. She filed her application in fall 2004 and her hearing request in spring 2005. The client had very unstable living conditions, and while waiting for a hearing, she underwent two psychiatric hospitalizations. The staff at the second hospital contacted the attorney, emphasizing the importance of the client obtaining benefits so she can have a stable living environment and medical coverage. Documentation was obtained and a request made in mid 2006 for an on the record decision. No response was received and a hearing was eventually scheduled eight months later – and 23 months after the hearing request. While waiting, the client lost her Medicaid coverage; continued to live in unstable circumstances, moving between with friends and relatives; and did not receive adequate treatment. At the hearing the ALJ stated that he agreed with the argument made in the on the record request, but it had not been shown to him.
- Another client of the same attorney has multiple traumatic physical injuries due to falls from scaffolding and a roof. He lived in a backwoods cabin without running water. He required orthotic devices and further surgery but could not obtain them due to lack of resources and limited Medicaid coverage. He filed his application in late 2004 and his hearing request in fall 2005. While the hearing was pending, he was in severe pain, living in primitive circumstances, and unable to obtain the medical care he needed. A hearing was finally scheduled in spring 2007 – 19 months after his hearing request. The ALJ issued a bench decision, allowing him to get the medical care he needed. The client remarked that this gave him “a whole new life.”

#### ARIZONA

- An attorney in Prescott, AZ has had several clients who have lost their homes. One case involves a formerly stable family with six children. Due to the financial problems, the wife, who is not the claimant, developed a severe drug and alcohol addiction problem requiring in-patient treatment. The father, who is the claimant, has had difficulties following through with appointments because “he just wants to give up.” The father was a construction worker who had a solid work history. The

attorney became involved after the hearing request was filed seven months ago. He has sent in two requests for an on the record decision but has received no response on either request.

#### ARKANSAS

- The client was diagnosed with a recurrence of breast cancer. She is Stage IV and probably meets the Listing for breast cancer, but she and her attorney have been unable to have SSA expedite her case. The client was a school teacher for thirty years.

#### OREGON

- An attorney in **Portland, OR**, reports that in the last 18 months, he has had 15 clients die while waiting for a hearing, which averages about two years in the Portland, OR, hearing office. Two of his clients were suicides, including one hanging. Two other clients were terminally ill and their requests for on the record decisions were not acted upon before their deaths. In one of those cases, the decision was mailed two days after the client's death. Others in the group were uninsured, had no effective medical care, and had medical symptoms that went untreated.

- One of this attorney's clients, Mr. A, had worked in construction and in a chicken production factory. He died in June 2005 at age 41 of hypertensive cardiovascular disease. He also had been diagnosed with undifferentiated schizophrenia, recurrent major depression, degenerative disc disease, and mild mental retardation. He was frequently homeless and moved around between family and friends. He requested a hearing in November 2004. A hearing was finally held in 2007, more than two years later and long after his death. If there is a favorable decision, his mother will be eligible for the past due benefits.

- An attorney in **Bend, OR** has a client who applied for disability benefits in March 2004. She requested a hearing in November 2004. The hearing was held eight months later, but it took 14 months for a favorable decision to be issued. The client had to wait 5 more months before she began to receive benefits. It took nearly three years from the date of application until she received her benefits.

#### NEW YORK

- Ms. C is a 49 year old single mother who lives in Troy, NY. She applied for Social Security disability benefits on May 2, 2005. She previously worked for ten years as a keyboard operator for the State of New York. Ms. C has not worked since December 2003. She was denied benefits in February 2006, nine months after her application was filed. Ms. C requested a hearing in April 2006.

Since filing for benefits in May 2005, Ms. C and her children were evicted from their apartment. Unable to provide a home for her children, she lost custody and the children now live with their father. For four months, Ms. C lived in a homeless shelter in Troy, and was finally able to leave just last week. She was recently hospitalized for depression because of the multiple stressors in her life. Ms. C also has a borderline IQ and bilateral neural stenosis in her cervical spine. Also, she is in treatment for a depressive disorder at a local mental health clinic.



Ms. C calls her attorney every month to check on the status of her appeal. There is currently an 18 month wait for a hearing at the Albany, NY hearing office. Her attorney asked to have this case decided on the record. However, the request was denied. Assuming the 18 month processing time, Ms. C can expect to have her hearing in November 2007. Her attorney has been told by the Albany hearing office that the wait will only get longer: two administrative law judges (ALJs) have retired in the last two years; one ALJ is set to retire in May 2007; and one ALJ is now the Acting Regional Chief ALJ. There has been only one ALJ replacement.

- A client in the **Buffalo, NY** area was 53 years old when she filed her claim. She had worked at a credit union for over thirty years, eventually becoming a senior loan officer. She suffered a traumatic brain injury when young, which began to severely impact on her ability to concentrate and she began making mistakes at work. She finally had to stop working in early 2005. She also had serious heart problems and major depression along with her cognitive problems. The wait at the Buffalo, NY hearing office is two years. As the waiting process went on, she lost her house to foreclosure, used up her entire 401(k), and lost the health insurance that she had been obtaining through COBRA. It was not until all these things occurred that she was eligible to file for "dire need" at the hearing office. But by then, this middle-class, middle-aged woman was reduced to seeking help from social services who told her that she would have to move again since her \$450 rent (including all utilities) was too extravagant. Her attorney sent all of this information to the hearing office with a request for an on the record decision. She was approved on the record, but by then she had lost everything she had worked for her entire life.

- Ms. F lives in **Bohemia, Long Island, NY**. She has cancer of the brain and of the base of her skull and other impairments. She applied for disability benefits in July 2005. A hearing was requested in March 2006. Her attorney has filed several requests for an on the record decision. All have gone unanswered and there is no date in sight for a hearing. She worked as a housekeeper for 25 years. But now she sees numerous doctors and the cost of obtaining medical evidence has been significant.

- A client requested a hearing in May 2005. The hearing, in the **Queens, NY** hearing office, was held in January 2007. The attorney and client were advised that a favorable decision would be issued. However, no decision has been received to date, even though the attorney has written and visited the hearing office twice about the case. There is a minor child who will be eligible for dependents benefits. The client has no income now to support the child.

#### IDAHO

- An attorney has a client in **Moscow, ID**. The client worked as a cook and professional musician. He has a history of colon cancer and needs a colostomy bag. He now has bladder cancer (diagnosed while waiting for the hearing), in addition to gout in his legs and arthritis in his wrists. The client tried to work when he moved to Idaho but could not maintain employment due to his impairments and filed for disability benefits in August 2004. His claim was denied and he requested a hearing in June 2005. The hearing was not held until late March 2007, and a favorable decision was received two days after the hearing.

To survive while waiting for his hearing, he was forced to pawn almost all of his belongings, including his musical equipment. The lack of income, in addition to his health conditions, created a

crisis as he had no money and no health insurance. He ended up with few clothes, living in a subsidized apartment.

He was able to petition the county for indigent funds to pay for his medical care and for supplies to service his colostomy (e.g., bags, seals, etc.). These funds are a no interest loan, not a gift. They are not provided automatically and a new application must be filed for each medical visit. He was also forced to get loans from his father and friends. This caused him embarrassment and stress worrying about how he would repay these debts for living expenses and medical care, especially given the cancer recurrence. He was not able to seek consistent and comprehensive medical care for his problems due to the lack of health insurance and long delay in deciding his case.

- An attorney in **Boise, ID** who has represented clients in Social Security disability claims for more than 20 years related the following:

Over the past several years I have experienced delays consistently more than 18 months from the time an ALJ hearing is requested until it is held. Many times there are 6 more months before the decision is issued. I have many clients who have sold their homes, spent their life savings and filed bankruptcy as a result of these delays. Most of my clients have no medical insurance, so they are not being treated during this time. To make matters worse, I had hearings this week in which the ALJ informed me I had only 45 minutes to present my case, which was mandated as a way to have more hearings per day to reduce the backlog. You can imagine how frustrated a disabled person would be after waiting 2 years for a "fair" hearing only to be cut off by the judge.

Another attorney represents clients in the north to north-central Idaho area. The hearing office in Spokane, WA covers this part of Idaho but does not have video hearing capacity for this area. This means that clients must wait for an ALJ to travel to Lewiston, ID to hold hearings and hearings are not held in Lewiston every month. "We tell our clients at the start that they will have to wait at least 18 months to have a hearing." For clients without health insurance, there are few options and Idaho has no cash grant program. He provided the following case examples:

- **Mr. A** lives in **Coeur d'Alene, ID**. He obtained legal representation about November 2005 and most of the time since then he has been living in his truck without water and electricity. The summers are hot and the winters are cold. He has a borderline IQ, a traumatic brain injury, and a personality disorder. He filed for benefits in May 2005, was denied, and filed for a hearing in January 2006. In May of 2007 he received an on the record favorable decision after Congressional inquiries and multiple efforts by his attorney to get the hearing office's attention. During most of this period, he had no income and no medical care.
- **Ms. C**, **Genesee, ID**, applied for SSI benefits as a child in September 2004. While this application was pending she turned 18 years old. Her medical history begins with extreme abuse from her parents and moving from place to place with her family. She finally settled in Genesee and lives with a cousin. She has multiple severe mental health impairments. She requested a hearing in July 2005. The hearing was held in March 2007 and she is waiting for a decision. Her Medicaid coverage from TANF ended in September 2004 when she reached age 18. Her financial assistance from Idaho ended at the same time. She lived on the street with no medical or psychiatric care.

- Mrs. D, **Pierce, ID**, worked in the lumber mills of north central Idaho. The mill closed in 2000 and she was unable to find any work. Her husband is also disabled. She had minor children at home. While working, she injured her knees. She experiences chronic severe pain as well as an inability to walk even two blocks. She was not eligible for Medicaid. She initially filed for benefits in March 2001 and was denied. She reapplied in January 2003. Her hearing was held on October 19, 2006. She had no medical coverage and no income other than her husband's benefits. At her hearing, the doctor said she was disabled as of the original March 2001 application.

#### WASHINGTON

- While his appeal was pending, a veteran from the **Spokane, WA** area with multiple physical and mental problems became homeless and was living at a local mission. Before becoming disabled, he successfully worked selling recreational vehicles and cars. His claim was ultimately approved following after a hearing. His attorney relates: "I still remember leaving the hearing with him, driving him to the mission where he picked up a paper bag with all of his possessions, and then driving him to the local VA Hospital where he began in-patient treatment for his medical conditions."
- A woman from Spokane, WA filed her claim for disability benefits in October 2004 and requested a hearing in August 2005. While waiting for a hearing date, she died in the past year from the impairments that formed the basis of her claim. A hearing was held in 2007, with the case continuing on behalf of her surviving children.

#### KANSAS

- An attorney is representing a woman from **Coffeyville, KS**. The hearing request was filed in October 2005 and they just received notice, dated May 2, 2007, that the file is now ready for review. No hearing is scheduled. Since the appeal was filed, the client and her husband have had to file for bankruptcy. She just told her attorney that the Bankruptcy Trustee is renting out their house, forcing them to move to a smaller, less expensive rental. They barely make ends meet, as she has over \$1,300 in prescriptions each month. Fortunately, they have some medical insurance, but her co-pay is around \$300, which is still a significant amount for a single income family.
- The same attorney has another client who has been waiting for a hearing since February 2006. He has been without medical insurance since being injured at work in 2001. His medical bills have mounted due to medications and necessary surgery, and he has to limit doctor calls to a bare minimum. He and his wife live on her \$8.00 per hour job, and with the cost of medications (he is diabetic, in addition to many other medical conditions), they barely get by. So far, they have not lost their house, but he calls regularly to see if there is a hearing date because of their financial circumstances.
- Ms. A, **Wichita, KS**, filed a claim for disability benefits in March 2004 and filed a hearing request in January 2005. The original hearing office was Wichita, KS, but her case was transferred to the Omaha, NE office in order to expedite the hearing via video conferencing. The hearing was held in March 2006 and a supplemental hearing in June 2006. The representative's office made monthly status requests to the Omaha hearing office and was repeatedly told it was on the

ALJ's desk. Then, in November 2006, an Omaha hearing office employee contacted the representative requesting a copy of the claimant's file because they could not find theirs. The representative forwarded a copy of the claimant's file the same day. The client finally received a decision, a denial of benefits, on April 18, 2007. The claimant waited 11 months after the hearing for a decision and is now appealing the ALJ's decision. Ms. A has extreme abdominal pain due to irritable bowel syndrome, anxiety, insomnia, depression and history of psychiatric problems for which she frequently obtains medical treatment. She would miss 2 to 5 days a week when working. Her hospital calls the representative monthly requesting a status on the client's claim as they are trying to collect on her unpaid bill.

- Mr. and Mrs. P are a married couple living in **Wichita, KS**. Mr. P filed for disability benefits on September 27, 2006. He has a degenerative disorder of the spine, asthma and mental impairments. He has been denied at the initial and reconsideration levels and filed a request for hearing earlier this year. Mrs. P filed her claim on August 8, 2005, and her hearing acknowledgement was received on May 30, 2006. A request for an on the record decision was submitted on June 9, 2006. The request was denied and Mrs. P is waiting for a hearing to be scheduled. Mrs. P last worked as a home health care giver in August 2005. She is diabetic, has neuropathy and nerve damage in her feet and legs making it difficult to balance or walk, and is now attending a mental health facility for depression. With neither Mr. nor Mrs. P working, the couple's utilities were shut off. They have no vehicle. And, they lost their home and were forced to move in with Mr. P's mother. A dire need request was made to the hearing office on April 13, 2007. Her representative has asked about the status, but as of this date no response has been received. Mrs. P calls her representative daily to check on the status.

The representative notes that individuals lose their State medical coverage prior to their hearings. They are allowed only two years of assistance through the State program and in some cases it takes longer than the two years to get scheduled for a hearing. They are left with no medical assistance for checkups and prescriptions. This also makes it extremely difficult to prove and document their disabling conditions.

### COLORADO

- The client appealed a 2000 continuing disability review (CDR) decision to terminate benefits. The case was appealed to federal court and was remanded by the judge in 2005 for a new hearing. The attorney wrote to the ALJ to expedite the case, but the ALJ now wants more up to date records. The client has degenerative disc disease which has deteriorated, based on current MRI evidence and statements from his doctors. The client has received VA service-connected disability benefits because his original injury sustained while he was in the Navy in 1986 when he tried to "catch" a piece of falling equipment which came loose from a crane.

While waiting for his case to be resolved, the client has experienced significant financial and family difficulties. He has consulted with a bankruptcy attorney. He has lost his family – his wife divorced him and his kids are living on their own or with their mother. He lost his house to foreclosure last year. He now lives with his elderly mother.

What do these cases tell us about the current situation at SSA?

**I. Processing times are reaching intolerable levels.**

The average processing times for cases at the hearing level have increased dramatically since 2000, when the average time was 274 days.<sup>1</sup> In the current fiscal year, SSA estimates that the average processing time for disability claims at the hearing level will be 524 days and will increase to 541 days in FY 2008,<sup>2</sup> nearly twice as long as in 2000. And it is important to keep in mind that this is just an “average.” In fact, many claimants will wait even longer than the “average” time. And, while the “average” processing times at the initial and reconsideration levels, there also are many cases with delays at these two levels.

The current processing times in some hearing offices are striking, and much longer than the 524 days targeted by SSA in FY 2007. Data from January 2007 indicates that the average time from the request for hearing to the date the hearing is held is 16 months, or about 485 days. The average time from the date of the hearing to the decision is two months, an additional 60 days. Thus, the average as of January 2007, only four months into the fiscal year, is already 545 days.<sup>3</sup>

Of the 142 hearing offices, 57 are above the 16-month average, according to SSA’s statistics.<sup>4</sup> This represents about 40% of all hearing offices. Many other hearing offices are approaching the two year mark just to hold a hearing.

It is important to keep in mind that the 16-month processing time is only an “average” and only counts the time until the hearing is held. The actual processing time is even longer. When the “average” time from “hearing held” to ALJ’s decision is added (60 days), many more hearing offices are approaching the two year and longer mark. As noted in some of the cases described above, even those hearing offices with below average times may, in fact, have considerably longer processing times when the time from the date of the hearing until the decision is issued is added.

The impact of the budget and staffing cuts in district offices also affect the processing times at the hearing levels. Our members have reported that cases are sitting longer in district offices after requests for hearings are filed, often adding months -- or years -- to the processing time. In a case from Providence, RI, a claimant is currently waiting for an ALJ hearing where the request for hearing was filed by the claimant *pro se* in 2004. The request was timely sent to the hearing office but without the claims folder. The hearing office returned the file to the SSA district office, where the case sat for **more than two years**. The hearing request and folder were finally sent to the hearing office in January 2007 after an attorney became involved in the case and started to track what happened. The hearing office has finally scheduled the case for an expedited hearing in view of the more than two year delay.

**II. The number of pending cases continues to increase.**

Like processing times, the number of cases pending at hearing offices continues to grow. As noted by the Social Security Advisory Board (SSAB): “The size of the pending workload in hearing

<sup>1</sup> Social Security Advisory Board, *Improving the Social Security Administration's Hearing Process* (Sept. 2006)(“SSAB Report”), p. 8

<sup>2</sup> *Social Security Administration: Fiscal Year 2008 Justification of Estimates for Appropriations Committees* (“SSA FY 08 Budget Justification”), p. 81.

<sup>3</sup> SSA Office of Disability Adjudication and Review, “NETSTAT” List of Processing Times – January 2007.

<sup>4</sup> SSA Office of Disability Adjudication and Review, “NETSTAT” List of Processing Times – January 2007.

offices – the hole that SSA has to dig itself out of – has followed a pattern similar to that of processing times.<sup>5</sup> The number of pending cases at the hearing level reached a recent low in FY 1999 at 311,958 cases. The numbers have increased dramatically since 1999, reaching 711,284 in FY 2005.<sup>6</sup> And SSA estimates the numbers to continue a significant increase: 752,000 in FY 2007 and 768,000 in FY 2008. And these increases will occur despite an expected increase in the productivity of ALJs in issuing decisions.<sup>7</sup>

However, even for hearing offices with a lower number of pending cases, the numbers do not tell the whole story. Because of the disparities between hearing offices, many of our members have reported that SSA has been transferring cases from offices with high numbers of pending cases to offices with lower numbers where the hearings are held by video conference, if the claimant agrees. While this is understandable in a national program, it nevertheless means that claimants who live near hearing offices with lower numbers of pending cases will end up waiting longer.

### **III. Staffing levels have decreased which means a decrease in service.**

Our members have noted the loss of ALJs and support staff in hearing offices around the country. Former Commissioner Barnhart had planned to hire an additional 100 ALJs in FY 2006 but due to cuts in the President's budget request, she was able to hire only 43. The real impact of the burden on the current ALJ corps can be seen by comparing statistics from 1999 and 2005, when nearly the same number of ALJs were expected to handle more than twice as many cases: In 1999, there were 1090 ALJs to handle 311,958 cases, while in 2005, there were 1096 ALJs to handle 711,284 cases.<sup>8</sup>

Whether there are an adequate number of ALJs may not even be the primary staffing issue in hearing offices. Productivity is not related solely to the number of ALJs, but also to the number of support staff. In 2005, the median hearing office had 4 to 4.5 staff members per ALJ. This represents a significant decrease, about 20 to 25 percent, from the 5.4 staff per ALJ in 2001 at a time when the number of pending cases was much lower.<sup>9</sup>

### **IV. Impact on service provided in SSA field offices.**

Under the current budget situation, people with severe disabilities have experienced long delays and decreased services provided in SSA field offices, which do not have adequate resources to meet all of their current responsibilities. Of greatest concern, even with the modest increase SSA is seeking for FY 2008, is that SSA will need to reduce its staff. Despite an expected increase in the number of initial disability claims expected to be filed in FY 2008, the number of SSA and Disability Determination Services ("state agencies") Full-Time Equivalent (FTEs) is expected to decrease from FY 2007.<sup>10</sup> This does not take into account the drop in the number of positions from FY 2006.

<sup>5</sup> *SSAB Report*, p. 9.

<sup>6</sup> *SSAB Report*, p. 10.

<sup>7</sup> *SSA FY 08 Budget Justification*, p. 81. SSA keeps statistics on the number of pending cases in each hearing office, which NOSSCR has received through Freedom of Information Act (FOIA) requests. The numbers vary dramatically from office to office and do not necessarily correlate to large population centers.

<sup>8</sup> *SSAB Report*, p. 10.

<sup>9</sup> *SSAB Report*, p. 10.

<sup>10</sup> *SSA FY 08 Budget Justification*, p. 81 and 90. In FY 2007, it is projected that 577,000 new disability claims will be filed; in FY 2008, the estimate is 627,000 claims. In FY 2007, the total SSA/DDS workyears is estimated to be 74,823; in FY 2008, the estimate is 74,596 workyears.

**A. Impact on disability claims.** Under the current SSA budget situation, it can be expected that delays will grow not only at the hearing level but also at the initial and reconsideration levels. A recent action taken by SSA demonstrates the scope of the problem. In June 2006, SSA was forced to direct all available resources to the processing of initial applications, and away from processing reconsideration level cases, when the initial application backlog became too high. The decision to redirect resources was caused primarily by the cut in the President's request for fiscal year 2006. In some states, this meant that reconsideration cases were not processed for a period of time, unless the claimant knew to notify the state agency of "dire circumstances." Two recent cases handled by NOSSCR members where claimants with severe and life-threatening impairments were denied initially and needed to request reconsideration are graphic examples of the impact that this type of action could have on claimants:

▪ **Ms. S – Hardville, KY.** Ms. S is 57 years old and worked as a certified nursing aide. She was involved in a terrible automobile accident leaving work in the fall of 2006. Due to her pulmonary injuries, she will be bedridden and on a ventilator for the rest of her life. After months in the hospital, she is at home and her daughter is taking care of her. After receiving preliminary approval for disability benefits, her initial application was inexplicably denied. She has no health insurance and was forced to leave a rehabilitation hospital due to lack of insurance coverage. She also has no means to pay for home health care. She does not qualify for any community-based or state-funded programs because her husband's monthly disability check places their family income above the income eligibility levels. Her representative submitted to the state agency medical evidence supporting the severity and permanence of her injuries and her dire financial and medical needs.

▪ **John – Dickinson, ND.** "John" (his name has been changed for privacy reasons) has a chordoma, which is a rare form of a brain tumor. In addition, he suffers from failing kidneys. The radiation therapy that John underwent for his tumor is killing off all of the glands in his body. John has been told by his doctors that his condition will kill him. The only question is when. John applied for Social Security disability benefits in October 2006 and was inexplicably denied on December 29, 2006. Because they are experiencing financial hardship paying for John's medications and medical bills, John and his wife had to apply for heating assistance last winter. With the assistance of his attorney, John filed a request for reconsideration.

**B. Impact on post-entitlement work.** These accumulated staffing reductions have already translated into SSA's inability to perform post-entitlement work, let alone reducing the backlogs in the disability appeals process. Not surprisingly, with millions of new applications filed each year, SSA emphasizes the importance of processing applications, determining eligibility, and providing benefits. Once a person begins to receive monthly benefits, there are many reasons why SSA may need to respond to contacts from the person or to initiate a contact, known as "post-entitlement work." Generally, this workload does not receive the priority it should. Frequently, when SSA is short on staff and local offices are overwhelmed by incoming applications and inquiries, they are necessarily less attentive to post-entitlement issues. For people with disabilities, this can discourage efforts to return to work, undermining an important national goal of assisting people with disabilities to secure and maintain employment.

One key example of post-entitlement work that has fallen by the wayside in the past is the processing of earnings reports filed by people with disabilities. Typically, the individual calls SSA and reports work and earnings or brings the information into an SSA field office, but SSA fails to

input the information into its computer system and does not make the needed adjustments in the person's benefits. Years later, after a computer match with earnings records, SSA notifies the person was overpaid, sometimes tens of thousands of dollars, and sends an overpayment notice to this effect. These are situations where the individual is clearly not at fault. However, all too often, after receiving the overpayment notice, the beneficiary will tell SSA that he or she reported the income as required and SSA will reply that it has no record of the reports.

When this occurs, it may result in complete loss of cash benefits (Title II benefits) or a reduction in cash assistance (SSI). It also can affect the person's health care coverage. To collect the overpayment, SSA may decide to withhold all or a portion of any current benefits owed, or SSA may demand repayment from the beneficiary if the person is not currently eligible for benefits. Not surprisingly, many individuals with disabilities are wary of attempting to return to work, out of fear that this may give rise to the overpayment scenario and result in a loss of economic stability and potentially of health care coverage upon which they rely. As a result of this long-term administrative problem, anecdotal evidence indicates that there is a widespread belief among people with disabilities that it is too risky to even attempt a return to work, because the beneficiary may end up in a frightening bureaucratic morass of overpayment notices, demands for repayment, and benefit termination.

**C. Impact on performing continuing disability reviews (CDRs).** The processing of CDRs is necessary to protect program integrity and avert improper payments. Failure to conduct the full complement of CDRs would have adverse consequences for the federal budget and the deficit. According to SSA, CDRs result in \$10 of program savings for each \$1 spent in administrative costs for the reviews.<sup>11</sup> The number of CDRs is directly related to whether SSA receives the funds needed to conduct these reviews. The number of reviews in 2006 was reduced by more than 50%, due to the lower level of appropriations. Even though the great majority of CDRs result in continuation of benefits, the savings from those CDRs that result in terminations are substantial because of the size of the program and the value of the benefits provided.

**D. New caseloads are added without providing the funds to implement these provisions.** Over the past few years, Congress has passed legislation that added to SSA's workload, but does not necessarily provide additional funds to implement these provisions. Recent examples include:

1. Conducting pre-effectuation reviews on increasing numbers of initial SSI disability allowances. SSA must review these cases for accuracy prior to issuing the decision.
2. Changing how SSI retroactive benefits are to be paid. SSA must issue these benefits in installments if the amount is equal to or more than three months of benefits. The first two installments can be no more than three months of benefits each, unless the beneficiary shows a hardship due to certain debts. Many more cases will need to be addressed because under prior law, the provision was triggered only if the past due benefits equaled 12 months or more. With the trigger at three months, it is likely that many more beneficiaries will ask SSA to make a special determination to issue a larger first or second installment.

<sup>11</sup> SSA FY 08 Budget Justification, p. 80.



3. New SSA Medicare workloads. SSA has new workloads related to the Medicare Part D prescription drug program, including determining eligibility for low-income subsidies, processing subsidy changing events for current beneficiaries, conducting eligibility redeterminations, and performing premium withholding. And beginning in FY 2007, SSA will make annual income-related premium adjustment amount determinations for all current Medicare beneficiaries for the new Medicare Part B premium for higher income beneficiaries. SSA will also make the determinations for new Part B applicants.

### **CONCLUSION**

Thank you for the opportunity to testify today. The examples of claimants from NOSSCR members demonstrate in human terms the terrible impact of the delays caused by the disability claims backlogs. SSA must be given enough funding to make disability decisions in a timely manner and to carry out its other mandated workloads.

As required by law, the Commissioner of Social Security submits a budget request separate from the President's request. The Commissioner's request for fiscal year 2008 indicates that the agency needs \$10.44 billion in funding its administrative expenses. This amount is almost \$1 billion more than the President's request of \$9.6 billion.

We support the Commissioner's budget request of \$10.44 billion. But, at a minimum, we urge that SSA be provided with \$10.1 billion, the amount recommended in the Fiscal Year 2008 Budget Resolution conference agreement. This amount provides additional resources to address the disability claims backlog and provides a \$213 million adjustment to the discretionary spending limit to conduct continuing disability reviews and SSI redeterminations. This funding is critical to provide SSA with adequate resources to perform its workloads, which are vital to people with disabilities.

United States Senate  
Committee on Finance

Testimony  
of

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

May 23, 2007

Chairman Baucus, Senator Grassley and Members of the Committee, my name is Richard Warsinskey and I represent the National Council of Social Security Management Associations (NCSSMA). I have been the manager of the Social Security office in Downtown Cleveland, Ohio for twelve years and have worked for the Social Security Administration for over thirty-one years. On behalf of our membership, I am pleased to have the opportunity to submit this testimony to the Committee.

The NCSSMA is a membership organization of over 3,400 Social Security Administration (SSA) managers and supervisors who provide leadership in SSA's 1,374 Field Offices and Teleservice Centers throughout the country. We are the front-line service providers for SSA in communities all over the nation.

We are also the federal employees with whom many of your staff members work to resolve problems and issues for your constituents who receive Social Security retirement benefits, survivors or disability benefits, or Supplemental Security Income. From the time our organization was founded thirty-seven years ago, the NCSSMA has been a strong advocate of efficient and prompt locally delivered services nationwide to meet the variety of needs of beneficiaries, claimants, and the general public. We consider our top priority to be a strong and stable Social Security Administration, one that delivers quality and prompt community based service to the people we serve - your constituents.

**Impact of SSA's Appropriated Funding Levels and Staffing Losses on SSA Field Offices and Teleservice Centers**

For Fiscal Year 2008, the President has proposed an increase for SSA of approximately \$304.0 million over the final level of funding for Fiscal Year 2007. And yet, staffing levels in SSA offices across the country are being cut. In fact, SSA will lose about 4,000 positions from the beginning of Fiscal Year 2006 to Fiscal Year 2008. SSA will be at its lowest staffing level since the early 1970s - before it took over the administration of the Supplemental Security Income (SSI) program from the states.

The most significant staffing losses in SSA have occurred in the agency's Field Offices. Field Offices have lost about 2,400 positions in the past 19 months and about 1,300 positions in the past 7 months. The vast majority of these losses have been in the most critical positions in the Field: Claims Representatives and Service Representatives. All of this comes after five years of reductions to the President's Budget Requests, which total \$720.0 million dollars, and about 8,000 work years. It is interesting to note that while total Executive Branch employment is expected to increase 2.1% from FY 2006 to FY 2008, SSA's employment is expected to decrease by 6.2%.

In 2007, an average of over 850,000 people are visiting Social Security Administration Field Offices every week. At the same time, Field Offices are also being overwhelmed by business-related telephone calls. SSA Field Offices are receiving approximately sixty-eight million business-related telephone calls a year. This is in addition to the forty-four million telephone calls handled by live agents that are received by SSA's 1-800 number on an annual basis. The fact that the public can't get through to SSA on the telephone is creating an overwhelming amount of walk-in traffic in many Field Offices. Waiting times in many Field Offices are running two to three hours long. Some visitors are even experiencing wait times of over four hours.

SSA Field Offices must also contend with telephone equipment that is antiquated, malfunctioning, and is in desperate need of replacement. Replacing this equipment in all Field Offices will be expensive. Agency estimates indicate that it may cost nearly one billion dollars to complete the long-anticipated transition to VOIP service. With approximately sixty-eight million calls coming in, Field Offices must have phones that work.

Another factor to consider is that SSA is facing a retirement wave as many of its employees were hired around the time SSA took over the Supplemental Security Income (SSI) program in 1974. It is important for the agency to be able to replace this wealth of knowledge and experience. It can take up to four years before newly-hired Claims Representatives become fully proficient in the very complicated programs SSA administers.

The impact of inadequate resources in recent years is also apparent in the severe cutbacks in processing Continuing Disability Review cases and SSI Redeterminations. For every one dollar spent on a Continuing Disability Review, over ten dollars is saved. SSA currently has a backlog of 1.3 million Continuing Disability Review cases. The agency has only budgeted to clear about 200,000 cases this year. SSA also saves seven dollars for every one dollar spent on an SSI redetermination. Up until the past few years SSA processed over 2.0 million of these cases. The agency has only budgeted to clear about a million cases this year.

Even if SSA receives the funding increase recommended by the President for Fiscal Year 2008, staffing levels will still be reduced as SSA's expenditures continue to increase in a number of areas. Salaries and benefit costs, including those for the Disability Determination Services, rent, and security costs, are totaling more than the annual increases in appropriated funds. And for Fiscal Year 2007, SSA's final level of funding was just enough to avoid an agency-wide furlough. Although a furlough was avoided, the agency is faced with limited hiring for the entire year after only being able to replace, on average, one out of three staffing losses last year.

As a result, the FY 2008 President's Budget Request will provide fewer, not additional, resources for SSA. **Therefore, we respectfully request that additional funding, above the level requested by the President, be appropriated for SSA in FY 2008. We hope that the increased discretionary funding levels approved as part of the Fiscal Year 2008 Budget Resolution will allow Congress to direct much-needed resources to the Social Security Administration. Appropriated funding of at least \$10.1 billion for SSA's administrative expenses would be a major step forward in restoring SSA's service to appropriate levels.**

#### Survey of Our Members

Our association just completed a survey of our members. Over 2,000 responded. The gravity of the losses in the Field Offices can be seen in an answer to one question. The question was: "Do you have enough staff to keep workloads current?" Only 3.2% answered "yes" to this question.

The losses in staff in Field Offices are having a significant impact on our ability to provide good service. In answer to the question: "What percent of the time are Field Offices able to provide prompt telephone service?" nearly 63.0% said they can only do this 50.0% or less of the time. Nearly a third said they can provide prompt telephone service less than 25.0% of the time. The impact of these staffing losses can also be seen in the increased waiting times for the public. In answer to the question as to whether waiting times had increased in the past two years, 80.0% said "yes" and nearly a third said the waiting times were significantly longer.

Below are a few samples from over 200 pages of comments submitted in response to the survey:

► *There is simply no wiggle room in most Field Offices, and any loss is BIG. Our Congressional representatives need to be more informed about the level of service Field Offices are able to provide, and the bleak future for improved Field Office service as our resources dwindle!*

► *I have seen my staff decrease from 33 to 24 employees over the last two years, while our workloads have increased. My staff is experiencing burnout. While most of the losses are due to retirement, a third were due to the employees resigning because of their inability to handle the increasing job pressures. I had originally planned on working longer, but will retire in January 2008, primarily because the lack of adequate staffing is making the job unbearable. I truly feel sorry for those that have years to work with nothing positive to look forward to in terms of staffing.*

► *The most critical issue facing SSA field management is lack of resources. This impacts virtually every aspect of our ability to deliver service. We do a terrible job of answering local telephone lines because we simply do not have the staff. Our office serves a local population of over 750,000, and on a good day we can devote three people to answering General Inquiry telephone lines. Virtually everyone that tries to call our General Inquiry line gets a busy signal.*

Please see <http://www.ncssma.org/Files/2007/2007SurveyofManagementReport.doc> to read the full survey.

**Disability Backlogs**

It is also important to note that receiving prompt service is not the case for hundreds of thousands of claimants that have filed for Social Security and SSI Disability benefits. Currently, there are nearly three quarters of a million hearings pending. At this time, it is taking 517 days, on average, for a hearing decision. Nearly 300,000 hearings have been pending over a year. SSA estimates that the hearings backlog could grow to one million cases by 2010 if additional resources are not provided for the agency. SSA also has a total of about 1.4 million disability cases pending at the initial claims, reconsideration, and hearings levels.

At the beginning of this decade there were only about 311,000 hearings pending, and the average time for processing was just 274 days. The pending cases have grown 130.0% in six years, and the average time to process a case has increased by 243 days. These long waits occur after most claimants have passed the first two stages of their claim, having received an initial decision and a reconsideration. By this point, over 200 days on average have already passed by.

Every day SSA Field Offices and Teleservice Centers throughout the country are being contacted by people regarding the status of their hearings as I am sure most Congressional offices are. Below are some significant examples of the impact of these delays:

- Increasing number of people are losing their homes and/or going homeless due to severe delays in hearing decisions.
- People are dying while waiting for hearing decisions - some as a result of suicide. Stress levels on those waiting are unbearably high.
- Approximately 125,000 veterans have pending disability claims, of which about half are awaiting a hearing decision.
- A significant percentage of those awaiting decisions have no health insurance. An individual must be on Social Security Disability for two years in order to receive Medicare. Many states make Medicaid contingent on being approved for SSI. Therefore, many individuals do not receive adequate health care for extended periods of time, which further impacts their health and their lifespan. Many of the individuals that apply have mental impairments and may also have violent tendencies. Having the proper health care available to them is vital to their mental health, personal safety and safety of the public.

**The Impact of the Baby Boomers Retiring**

Next year, in 2008, the first of seventy-eight million baby boomers will be eligible for Social Security retirement. As a result, there will be a steady rise in retirement claims being submitted to SSA - along with an increasing number of contacts by these retirees with the agency once they start receiving benefits.

At the end of 2006, there were 40.3 million people receiving retirement and survivor benefits. This figure is expected to rise by about 1.0 million a year over the next ten years and accelerate after this. SSA took about 3.3 million retirement and survivor claims last year. We are looking at a significant increase in work for SSA offices.

The rising number of workers who are baby boomers will also be reflected in an increase in disability claims. Workers over the age of 55 who lose their jobs are many times turning to filing for disability as a last resort. Workers are eligible for disability benefits up to their full retirement age which will be age 66 in 2008.

**Potential Impact of Immigration Legislation**

The funding needs for SSA could *dramatically* increase depending on the final language in any legislation enacted related to immigration. We understand language being considered would require all employers to electronically verify the eligibility of new hires, and allow for the verification of all current employees.

We understand as well that language currently being considered would make sure that a worker's identity documents - likely to include a tamper-proof Social Security card and possibly a revamped driver's license - are an exact photo match of information on file. Employers would also have to send in the workers' Social Security Numbers.

**The most extensive proposals being considered could require a doubling of the budget and staff of SSA.** If such legislation is passed and does not include the necessary funding for these increased workloads it could cripple SSA's service capabilities and negate any progress that we are working to achieve in addressing the disability backlogs.

Therefore, we urge Congress to thoroughly examine any additional responsibilities it legislates for SSA related to immigration policy and to ensure that the necessary funding is provided for SSA to meet any increased responsibilities.

**Impact of Medicare Part D**

**There is great frustration among Field Office and Teleservice Center management regarding implementation of the Medicare Modernization Act.** The resource demands of SSA's involvement in administering the Medicare Modernization Act have been vastly underestimated and no additional funds have been allocated for continual administration of this program. The ongoing confusion regarding payment of Part D premiums and the blurred lines of responsibility among SSA, CMS, and the insurance companies has both bewildered and angered the public and makes SSA appear to be powerless to correct problems.

**The Commissioner's Budget**

Because SSA is an independent agency, the Commissioner is required by law to prepare an annual Budget Request, which is submitted by the President to Congress without revision, together with the President's Budget Request for SSA. This Budget Request reflects what the Commissioner has evaluated as the level of funding necessary to meet the agency's service delivery improvements and fiscal stewardship responsibilities through 2012. The Commissioner's Budget Request also factors in that SSA has received less than the President's recommended level of funding in recent years, thus leading to the need for additional resources in the future to meet the full service delivery plan.

**The budget amount submitted by the Commissioner of Social Security for Fiscal Year 2008 is \$10.44 billion.** This \$10.44 billion is \$843.0 million above the level of funding that the President requested. The difference between these proposed funding levels is significant. Of more significance is the difference in recent years between the final funding levels approved by Congress for SSA in comparison to the Budget Requests submitted by the Commissioner. **Inadequate levels of resources have contributed to the growing inability of SSA to provide adequate levels of service.**

#### Social Security Trust Fund

The Social Security Trust Fund currently totals approximately \$2.0 trillion. The Social Security Trust Fund is intended to pay benefits to future beneficiaries and finance the operations of the Social Security Administration. The additional funding of approximately \$430.0 million proposed for SSA in the FY 2008 Budget Resolution represents about 1/50<sup>th</sup> of one percent of two trillion. Don't the workers who have paid into this trust fund with their taxes deserve to receive due consideration and the very benefits they have paid for in a timely manner?

The Social Security Trust Fund contains the necessary resources to make up the difference between the level requested by SSA's Commissioner and the President. Yet, because of the levels of service that SSA and its various components that process disability claims are currently able to provide, many of these taxpayers must wait so long for service that they die before a decision is made on their case. They never receive the benefits that they have paid for. This also applies to receiving good service in Social Security Field Offices - it currently is not at the level it ought to be and people are not receiving what they have paid for and what they deserve.

It is also important to note that Social Security is the primary source of income for millions of Americans. It accounts for 90% of the income of the aged nonmarried beneficiaries and provides for at least 50% of the income of 74% of the aged beneficiaries. The point is that millions of people need Social Security to live on. And they need to receive these resources in a timely manner. This really is the bottom line.

Many may ask if \$10.1 billion would be a sufficient level of funding to meet SSA's administrative needs in Fiscal Year 2008. Will that level of funding eliminate the backlogs in hearings and restore a good level of service in Field Offices?

Our agency certainly needs additional funds. And additional resources would certainly help address the growing backlogs at SSA and restore good Field Office service. **But to fully address the situation SSA would need to receive the Commissioner's Budget Request of \$10.44 billion.** And SSA needs to receive closer to the Commissioner's Budget Request in future years to overcome the impact of reduced appropriated funding in recent fiscal years.

We certainly would expect Congress to be concerned that any additional funds given to SSA be expended in such a way that will in fact deal with the Disability backlogs and degradation of service in Field Offices. And we certainly support Congress monitoring the use of additional funds so that they are directed toward this purpose.

**Conclusion**

The NCSSMA firmly believes that the American public wants and deserves to receive good and timely service for the tax dollars they have paid to receive Social Security. **We urge approval of no less than \$10.1 billion for SSA in Fiscal Year 2008. Additional resources above the President's Budget Request of \$9.597 billion are absolutely essential to begin the restoration of the service levels that the public deserves from SSA.**

On behalf of the members of the NCSSMA, I thank you again for the opportunity to submit this statement to the Committee. Our members are not only dedicated SSA employees, but they are also personally committed to the mission of the agency and to providing the best service possible to the American public. We respectfully ask that you consider our comments and would appreciate any assistance you can provide in ensuring that the American public receives the necessary services that they deserve from the Social Security Administration.



## COMMUNICATIONS

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Testimony  
Before the United States Senate  
Committee on Finance  
May 23, 2007

Funding Social Security's Administrative Costs: Will the Budget Meet the Mission?

### **Assessing the State of the Social Security Administration: Support Staff is a Vital Component to Addressing the Disability Case Backlog**

#### **Statement Submitted for the Record by The Federal Managers Association**

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Chairman Baucus, Ranking Member Grassley and Members of the United States Senate Finance Committee:

On behalf of the Federal Managers Association and the nearly 1,000 managers in the Social Security Administration's Office of Disability Adjudication and Review (ODAR), please allow us to take a moment and thank you for this opportunity to present our views before the Committee. As federal managers, we are committed to carrying out the mission of our agency in the most efficient and cost effective manner while providing necessary services to millions of Americans.

Established in 1913, the Federal Managers Association is the largest and oldest association of managers and supervisors in the federal government. FMA was originally organized to represent the interests of civil service managers and supervisors in the Department of Defense and has since branched out to include some 35 different federal departments and agencies including many managers and supervisors within the Social Security Administration (SSA). We are a non-profit professional membership-based organization dedicated to advocating excellence in public service and committed to ensuring an efficient and effective federal government. FMA members and their colleagues in the SSA Office of Disability Adjudication and Review are responsible for ensuring the success of the administration of Social Security's disability determination process and providing needed services to American customers.

As you are keenly aware, the Social Security Administration plays a vital role in serving over 160 million American workers and their families. Each month, SSA pays out benefits to 48 million beneficiaries. Over 7 million low-income Americans depend on the agency's Supplemental Security Income (SSI) program to stay afloat in a cost-inflating world, and nearly 7.2 million disabled Americans receive benefit payments through Social Security Disability Insurance (SSDI). In her May 11, 2006 message to the House Committee on Ways and Means Subcommittee on Social Security, former-SSA Commissioner Barnhart testified that SSA's productivity has increased 12.6 percent since 2001. Considering the magnitude of its mission, the Social Security Administration does a remarkable job administering critical programs.

At the close of May, however, the Office of Disability Adjudication and Review had 743,828 pending requests for a hearing; an increase of 28,260 since the start of the fiscal year and the number of cases pending is growing at an average of 3,532 per month. At this rate, the pending will grow by

over 42,000 by the close of this fiscal year, resulting in a backlog of nearly 760,000 cases. It already takes over 500 work days to process a typical request for hearing and these delays tarnish SSA's otherwise strong record of service to the American public. Chairman Baucus acknowledged in his opening statement that we could close out fiscal year 2007 with an increase of 72 percent from our 2002 pending. Unless something is done to reverse this trend, the backlog could realistically reach one million by 2010.

The managers and supervisors within ODAR are acutely aware of the backlogs and the impact these backlogs are having on our ability to deliver the level of service the American public deserves. We are going on record to confirm what you've heard several times before - that the ongoing lack of adequate staffing levels and resources have contributed to these backlogs. If these inadequacies continue, clearing the backlogs will be impossible and service delivery will continue to deteriorate. In September 2004, we appeared before the House Ways and Means Social Security Subcommittee to testify on the challenges and opportunities facing implementation of a new electronic disability process at SSA. At that time, we testified that the backlog will not decrease until staffing levels are increased and stated a desperate need for additional staffing, a warning which went unheeded. We returned before the Subcommittee in February of this year with the staffing situation unchanged and the backlogs significantly larger. We at FMA appreciate the attention the Senate Finance Committee has placed on examining the reasons for the backlog and addressing remedies to the problem. However, the time for examination has passed; now is the time for action as the needs are reaching crisis proportions.

FMA would like to commend Commissioner Astrue for his comprehensive and aggressive plan to help reduce the backlog of disability appeals in ODAR. Although he has only been in office for a short period of time, it is apparent that he recognizes the challenges we face as an agency and we applaud him for attempting to address them swiftly. In the addendum to his testimony before the Committee, the Commissioner set forth a five year plan to tackle the backlog. However, we at FMA believe that reducing the backlog must be a two to three year plan and would support an even more aggressive approach in the areas of staffing and Administrative Law Judge (ALJ) productivity in order to tackle the massive backlog.

At present, the bottleneck of processing takes place where cases are prepared for ALJ review. ODAR began fiscal year 2007 with 419,972 pending cases awaiting preparation for a hearing and

ended May with 436,035. In all likelihood, those cases will realistically wait at least one year before any action is even initiated to prepare the case for review and a hearing in front of an Administrative Law Judge. Although clericals in hearing offices prepared a record 477,816 cases in FY06, claimants submitted almost 558,000 new requests during the same period. As such, the backlog of files simply awaiting preparation for review by an ALJ at the close of May 2007 totaled 436,035 cases; an increase of 16,063 cases since the beginning of fiscal year 2007.

At the beginning of FY07, ODAR had over 63,000 cases which were over 1,000 days old; a number which is unacceptable to the agency as well as to the American people. Commissioner Astrue identified these cases as ODAR's number one priority and this backlog has since been reduced to just over 11,000. The Commissioner is committed to reducing this critical workload to a negligible level by the end of the fiscal year. FMA applauds the Commissioner for his efforts and we are committed to working with him to achieve this goal.

Within SSA, there are currently 1,074 Administrative Law Judges on duty and given the total number of pending cases, this translates into 693 cases waiting for review by an ALJ. Commissioner Astrue has indicated that the ideal pending would be approximately 360 cases per ALJ for timely processing at the current staffing levels. Therefore, in order to reach that level ODAR would have to nearly double the work that can be handled efficiently. At current levels of production, we can expect the approximately 1,074 ALJs to decide roughly 520,000 cases for fiscal year 2007. Thus far in FY07, ODAR has received 376,484 new requests for hearing or an average of 47,060 new requests each month. That means that at the current levels of production and receipts, our pending will actually grow by approximately 45,000 cases by the end of FY07.

FMA supports Commissioner Astrue's goal of hiring more ALJs and support staff, and believes that an ALJ body of more than 1,250 will be needed to handle the backlog. Adjusting for attrition, this would mean hiring at least 170 ALJs. The same "baby boom" issue causing the growing number of receipts makes hiring adequate ALJs and staff to replace those eligible for retirement a difficult challenge. In Commissioner Astrue's addendum to his testimony, he indicated that ALJs are being asked to issue 500-600 dispositions per year. A total of 1,250 ALJs deciding 550 cases results in a dispositional level of approximately 687,500 cases which will undoubtedly allow the agency to attack the backlog. However, in order to achieve this, SSA will have to operate at

maximum efficiency and we support the Commissioner's efforts to ensure appropriate dispositional accountability for the ALJ corps.

Every case on the docket brings with it massive amounts of mail, phone calls, congressional inquiries and most importantly documents of the hardship the claimants are experiencing. As the number of pendings grow, the work associated with those cases also grows exponentially. In his testimony before your Committee, Commissioner Astrue indicated that as an interim measure SSA will streamline the folder assembly portion of case preparation. The folder assembly portion is very labor intensive and often takes several hours to complete for each case. This initiative will only have marginal success if presented as a voluntary recommendation. Although some ALJs will agree to accept the streamlined folder, it is our belief that many will not. Secondly, it takes time to train someone on the art of case assembly. Volunteers from the field offices would have only a marginal impact preparing cases the typical way. We do not believe this effort will provide significant impact to the backlogs.

ODAR also needs adequate support staff on duty and trained to ensure that enough cases are prepared and ready to be scheduled and heard when the ALJs report for duty. Commissioner Astrue addressed the current ratio of four support staff to one ALJ; a ratio which served us adequately when our pending was 400,000 cases, but we believe that it is inadequate in the current environment of working towards reducing the backlog. Significant clerical support is necessary to prepare cases for hearing, in addition to handling the massive amounts of mail and inquiries generated by this backlog. Hearing offices do not even have the staff to support the current judges, let alone enough staff to process the 47,000 new cases the Office of Disability Adjudication and Review receives each month. It is our belief that a ratio of six support staff for every ALJ is necessary to reduce the backlog and manage the ongoing work.

With the aging Baby Boom population, it is reasonable to assume that receipts will continue to out-pace dispositions. As the requests for hearings continue to rise, more is demanded from ODAR staff on all levels. The *bottom line* is that the hearing offices lack sufficient staff to process the work on hand much less even begin to work on new cases. This is evidenced by the fact that our pending has grown steadily over the past six years even with record dispositions. That means that the backlog remains and processing times continue at an estimated 505 days.

The solutions to the backlog problem are simply adequate staffing levels and timely budgets which will allow us to address the pending cases. As noted earlier, ODAR's pending is 743,828 requests for a hearing. Using the Commissioner's figure of 400,000 as the ideal pending, a backlog of 343,828 cases remains. Like the Commissioner, FMA would like to see the backlog reduced to a manageable level as quickly as possible. By their very nature, the backlogs generate work which must be eliminated as quickly as possible to allow for maximum efficiency. We believe that a five year plan is simply too long and we ask Congress to support a level of funding that would permit ODAR to reduce the pending within three years.

Of course, none of the above can be achieved without adequate and timely funding from Congress. The Continuing Resolution (CR) which was signed into law earlier this year was severely inadequate to address both the staffing and backlog problems at SSA for fiscal year 2007 despite the meager increase SSA received above the fiscal year 2006 appropriation. Since 2001, Congress has appropriated on average \$180 million less than the President has requested. The dollar value of this differential is equivalent to processing an additional 177,000 initial claims and 454,000 hearings according to SSA. Without a doubt, this has had a devastating effect on the services provided to the American public, as evidenced by the situation we are in today.

To remedy this unfortunate situation, Congress should begin by passing the \$10.44 billion submitted by the former Commissioner for fiscal year 2008 for SSA's Limitation on Administrative Expenses account. Commissioner Barnhart felt the agency was in even greater need and before her term expired, she had asked the President to request \$10.44 billion for SSA in FY08. Inadequately funding the Social Security Administration for an eighth straight year will negatively impact every service area of the agency. The agency has reached a point where rather than figuring out what we can get done we must consciously decide what will *not* be done. We are encouraged that the FY08 Budget Resolution approved by Congress included \$10.1 billion for SSA salaries and expenses, an increase of \$430 million over the President's request. We are asking Congress to go even further and approve the requested \$10.44 billion to allow SSA to address the backlog as well as handle new work.

In this era of shrinking budgets, SSA has attempted to maximize its use of scarce resources to provide the best possible service to the American public. The challenges faced by the managers and supervisors are not short term; they are a demographic reality. The same citizens putting stress on

the Social Security trust fund because they are approaching retirement are also entering their most disability-prone years. ODAR is struggling to handle the current workload and will be hard pressed to manage the anticipated increase in hearing requests without additional staff.

We are the men and women who work with disabled Americans everyday. We see people of all ages come in and out of our offices seeking the services they depend on for survival from the Social Security Administration. We are committed to serving a community of Americans in need, but we need you to provide us with the necessary resources to help them. Thank you for your time and consideration of our views.



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Testimony Submitted for the Record  
Senate Finance Committee  
May 23, 2007 Hearing

“Funding Social Security’s Administrative Costs: Will the Budget Meet the Mission?”

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**NADR Supports Efforts to  
Reduce the Disability Backlog and Shorten Time For Decisions**

The National Association of Disability Representatives is a professional organization comprised of non-attorneys and attorneys who assist people in applying for disability income assistance from the Social Security Administration. Our members help individuals and their families navigate an often complex and lengthy process to demonstrate their eligibility for disability benefits. As advocates for claimants, we want to commend Chairman Baucus and all of the Committee members who have demonstrated a keen interest in pushing for improvements in the SSA disability determination process, and especially in the unconscionable delays that are part of the current system. We firmly believe that improvements will only be achieved IF both the Senate and House members with jurisdiction over the SSA continue to spotlight this problem and call for change. Our members have been favorably impressed with the ideas that Commissioner Michael Astruc has shared with the Congress and with us. It is our sincere hope that the synergy of this new Commissioner, a new Congress, and the Chairman’s interest on this issue will translate into real and positive change for claimants. NADR has met with the Commissioner and provided suggestions for ways to make the determination process more efficient, timely, and therefore more compassionate for persons with disabilities. Today, we would like to share those with the Committee.

Because NADR members are on the “front lines” helping claimants with applications, we see first-hand the serious toll that the long wait for decisions can take on people, most of whom are already experiencing significant life changes, traumas, and hardships. After applying for disability assistance, it now takes an average of 28



months to get a hearing decision. Those facing grave or terminal illnesses may not live to see the fiduciary promise they paid for each week in their paycheck from their Social Security taxes. Families who need care-givers or other assistance to provide necessary relief and support in helping their loved ones may have to hang on for years, trying to balance family needs without any help. This strains marriages, parent/child relationships, and impoverishes people at a time when their need is greatest.

Amazingly, this happens when they are “insured” for disability, having paid their Social Security taxes, including those that fund SSA disability benefits. Most assume that these benefits will only be needed at retirement. Yet, when accidents or illness strike, people reasonably expect to receive the critical support that disability payments can offer. And, they most certainly expect to get it within a reasonably time-frame.

Unfortunately, many Americans are not finding the government reliable in this arena.

#### **Scope of Problem: “Bad and Projected to Get Worse”**

In looking at testimony provided in the House and Senate this year, a dismal picture is painted of the current system.

##### **Cases Pending**

2002:	468,262 requests for a hearing
2007:	717,000 (300,000 requests over a year old).
2008:	768,000 (projected backlog by SSA)
2010:	1 million case backlog could exist (ADARMA House testimony, 2/14/2007).

##### **Average Time to Obtain Hearing Decision**

2000:	274 days
2006:	500 days
2008	541 Days (if President’s Request of \$9.597 billion is enacted)

##### **Decisions Expected in 2007**

2007: Under current staffing parameters, 550,000 decisions could be made this year. (ADARMA House testimony, 2/14/2007) In 2006, 558,000 requests for a hearing came into SSA (ODAR).

This bottom line is that these projections show NO progress in reducing the backlog, and, in fact, show SSA barely able to keep pace with the new cases coming in daily.

#### **NADR Supports Earlier Decisions by Expanding QDD and Prioritizing Backlog Cases for Quick Decisions**

NADR believes SSA can expedite movement through the backlog by targeting certain claims that can be resolved quickly – i.e. that have a high likelihood for “on the record” decisions. These same criteria can also be added to SSA’s Quick Disability Determinations so that cases with a likely outcome of disability are processed fastest.

Prioritizing of select cases can be started nationally, or in two or three demonstration projects that target areas with both “medium” and “high” backlogs.

What are the cases that can be culled from initial applications and backlogs for speedy review?

### **1. Claimants 55 and Older & Cases Involving Claimants with Limited Education**

#### **Age/Grid Issues**

Currently SSA evaluates claims using criteria that include age and education. In a nutshell, the older a claimant (particularly those who attain age 55 and over) and the more limited the education that a claimant has, the greater the latitude allowed to obtain a favorable determination. When an individual achieves age 55, the grids will find a person disabled when they have a limited education, have only performed unskilled work in the past 15 years, and are limited in their ability to sit for six hours in an eight hour day and lift more than 10 pounds occasionally. There are certainly additional nuanced issues which must be considered in many cases but we believe that a cursory review, based upon a computer run of persons who are over age 55 or have attained age 55 during the application process, have a limited education, and are physically limited in their capacity to lift, sit and/or stand, may provide an expedited conclusion of disability with reduced processing time. If a person has turned age 55 while awaiting a hearing, this may further increase the potential of a favorable finding based upon the grids.

### **2. Cases Denied Because the Claimant Did Not Meet the Requirement of Being Impaired for 12 Consecutive Months**

The definition of disability requires that a person cannot be found disabled unless their disabling condition has lasted or can be expected to last for 12 consecutive months, or that the condition is expected to result in their death (durational requirement). Oftentimes individuals with various impairments have applied for benefits within a month or two after they have discontinued work. Many are quickly found to be “not disabled,” as there is a projection or expectation that the impairment, while severe, will be resolved within the 12 month window. These cases, when appealed, are then placed into the queue with all other persons who have requested such. Since it typically takes nearly a year to have a case heard by an Administrative Law Judge, persons with durational denials may be easily screened after the 12<sup>th</sup> month, given a quick review, and with minor updates of medical information, found either eligible or continue to wait for the hearing

### **3. Back Cases with Multiple Surgical Interventions**

Severe back pain significantly limits an individual’s capacity to sustain substantial gainful activity. Persons who have had more than three back surgeries or have been diagnosed with “failed back syndrome” are oftentimes deemed eligible for disability due to this impairment. Yet, at the DDS levels, reviewers often do not adequately consider how pain, fatigue, and the side effects of pain medication impact an individual’s capacity to sustain work. In our experience, persons with a diagnosis of “failed back syndrome” – those who have had several surgical interventions that have left the individual with significant pain, requiring regular utilization of pain medication or the need for additional surgery – will ultimately be found disabled. These cases make sense to prioritize.

#### **4. Claimants with a Significant History of Mental Health Impairments**

Individuals with severe mental health difficulties will oftentimes but periodically have problems caring for themselves effectively. They may meet Social Security's "C" criteria at times but due to the cyclical nature of their disease, not at others. Individuals with mental health impairments which wax and wane, that are usually widely recognized as disabled, such as those with repeated hospitalizations or those who have been institutionalized, can be quickly and efficiently identified as persons who have disabling mental health conditions. For example, a longitudinal history of the following would provide trusted markers which demonstrate serious mental health impairments:

- Consistently low "Global Assessment of Functioning (GAF)" scores (rating criteria determined by a mental health professional in accordance with the DSM-IV);
- Necessity to live in structured living environments;
- Special education placements throughout their school career.

SSA should pull and review from the backlog all cases that match these criteria.

#### **5. Improve Communication Between Representative and Administrative Law Judge**

There are periods of time subsequent to a file being reviewed or "pulled" that a claim sits, simply waiting for administrative action. During this time the issues which need clarification have been identified but not revealed to the representative. There is little to no communication from the Administrative Law Judge to the representative thus, when entering a hearing, the representative rarely knows the specific reasons that the ALJ believes the hearing was necessary. It would be valuable and highly cost effective if a statement of issues could be presented at the time the file is pulled or the hearing is scheduled so the representative can investigate and provide documentation that addresses the judge's concerns. This may reduce or even eliminate the need for some hearings. As an example, oftentimes it only becomes evident when before the ALJ, that the only reason a hearing is being held is because earnings have been identified that are over substantial gainful activity and after the person says they are disabled. This can be anything from incorrect earnings - to insurance payments - to supported work. A brief discourse before the hearing asking for clarification of this issue may preclude the need for a hearing by the representative obtaining the necessary documentation.

We appreciate the opportunity to make suggestions for this Committee and the Commissioner to consider. Our goal is to help our clients get the assistance they need in the more efficient way possible. We have a long way to go in transforming SSA's disability program into a more timely and responsive safety net, but your leadership and attention gives many of us reason to hope for improvements.

**Testimony Presented to the Senate Committee on Finance Regarding  
“Funding Social Security’s Administrative Costs: Will the Budget Meet the Mission?”**

John R. Vaughn, Chairperson  
National Council on Disability  
May 23, 2007

**Introduction**

The National Council on Disability (NCD) appreciates the opportunity to provide information for the Senate Finance Committee’s “Funding Social Security’s Administrative Costs: Will the Budget Meet the Mission?” hearing. NCD is an independent federal agency with the overall purpose of promoting policies and practices that guarantee equal opportunity for all Americans with disabilities, regardless of the nature or severity of the disability, and to empower Americans with disabilities to achieve economic self-sufficiency, independent living, and integration into all aspects of society. On November 30, 2005, NCD released a report examining the Social Security Administration’s (SSA) disability benefit programs and offering recommendations to promote employment of Americans with disabilities. The report, *The Social Security Administration’s Efforts to Promote Employment for People with Disabilities: New Solutions for Old Problems*, is available at <http://www.ncd.gov/newsroom/publications/2005/ssa-promoteemployment.htm>.

The report outlines in detail 38 recommendations in three key areas: customer service, employment incentives, and collaboration among systems. The sections of the report addressing customer service, and, specifically, staffing concerns, raise the issue of the impact of funding levels in these areas. In its report, NCD notes the following:

- As the number of applicants for social security disability benefits steadily increases, SSA staffing levels have decreased, causing an overworked staff. This trend has led to long lines, poor service, lack of timely processing of appeals and back-to-work issues, and frequent misinformation and mistrust.
- Work incentive liaisons serve as a primary contact for beneficiaries, rehabilitation professionals, and agencies that work with people with disabilities. The designated liaisons have changed frequently, making it difficult for consumers to build rapport with liaisons. The work incentive duties are additional job duties on top of normal SSA responsibilities, which limits the amount of time liaisons can devote to work incentive issues.
- Area work incentive coordinators conduct public outreach on work incentives; provide, coordinate, and oversee training on SSA’s employment support programs for all local SSA personnel; handle some highly sensitive disability work-issue cases; and monitor the disability work-issue workloads in their assigned areas. Feedback from beneficiaries consistently indicates that SSA field office staff struggle with correctly implementing the complex work support rules for beneficiaries with disabilities.

NCD recommends a redesign of SSA field office personnel functions, staffing patterns, and work assignments to prioritize activities that assist beneficiaries attempting to work. These programs should encourage people with disabilities to seek and sustain employment.

NCD also recommends requiring disability awareness training for all frontline staff, making work incentive liaisons fulltime positions at most large field offices, requiring ongoing training for work incentive liaisons, and increasing the number of area work incentive coordinators in the field. For additional information and recommendations, please see the Executive Summary from NCD's Social Security report, included below. Again, the full report is available at: <http://www.ncd.gov/newsroom/publications/2005/ssa-promoteemployment.htm>.

#### **Executive Summary**

Americans with disabilities remain underemployed, despite the fact that many are willing and able to work. Although the Social Security Administration (SSA) has instituted a number of incentives to reduce the numerous obstacles to employment faced by its Supplemental Security Income (SSI) and Social Security Disability Insurance (DI) beneficiaries, such efforts have had little impact because few beneficiaries are aware of these incentives and how they affect benefits and access to health care.

#### **Introduction to the Problem**

Social Security beneficiaries with disabilities must spend months or even years convincing SSA that they are unable to work as a condition of eligibility. Yet, upon their receipt of benefits, SSA begins to communicate to beneficiaries that work is an expectation for them. Congress and SSA have developed a variety of work incentives and special programs designed to encourage beneficiaries to attempt to obtain and sustain employment. Yet SSA's efforts to eliminate work disincentives have often added to the complexity of the entire program, confusing beneficiaries and making them leery of any actions that might unknowingly jeopardize their benefits.

Current SSA benefit amounts are quite small and merely allow beneficiaries to live at a basic subsistence level. SSI resource limits make it very difficult to accumulate the financial resources necessary to move toward economic self-sufficiency. Tying eligibility for Medicaid or Medicare to eligibility for SSA benefits forces individuals with high-cost medical needs who could otherwise work to choose between pursuing a career and retaining the medical insurance that sustains their very lives.

The fear of losing benefits and medical insurance through an unsuccessful employment attempt starts well before adulthood with SSI beneficiaries. Many SSI recipients first apply for benefits as children while enrolled in public schools. These individuals often remain on the rolls well into adulthood, with very few transitioning from high school into substantial employment after graduation (GAO, 1996b; GAO, 1998b). Failure to focus on Social Security and other public benefits during transition is not only a missed opportunity, but harm may be caused when students and family members are not educated or prepared for the effect of earnings on cash benefits and medical insurance (Miller and O'Mara, 2003).

There is also the problem with poor educational attainment of DI beneficiaries who enter the disability system later in life. Efforts to help this population return to work are stymied by their lack of education and marketable job skills -- particularly in today's highly competitive information economy. It is now more important than ever that people of all ages have access to higher education and the financial means with which to pay for training and education (Moore, 2003).

#### **Response of Congress and the Social Security Administration to the Problem**

Well aware of the enormity and seeming intractability of this problem, Congress and SSA have initiated multiple efforts to promote employment and return to work among SSA beneficiaries. In recent years, a number of work incentives for SSI and DI beneficiaries have been implemented, allowing individuals to keep more of their earnings while retaining their benefits. Work incentives are aimed at reducing the risks and costs associated with the loss of benefit support and medical services as a result of returning to work. Some of the most commonly used incentives are Section 1619(a) and (b) provisions; impairment-related work expenses (IRWE); trial work period (TWP); Plan for Achieving Self-Support (PASS); extended period of eligibility (EPE); and continued payment under a vocational rehabilitation program.

However, despite efforts by SSA and the Federal Government that have led to more favorable conditions for returning to work, most SSI and DI beneficiaries continue to stay on the disability rolls. The work incentives offered by SSA remain largely underutilized; in March 2000, of the total number of eligible working beneficiaries, only 0.3 percent were using PASS, 2.8 percent were using IRWEs, 7.5 percent were receiving Section 1619(a) cash benefits, and 20.4 percent were receiving Section 1619(b) extended Medicare coverage (SSA, 2000). The major reasons cited for the extreme underutilization of these work incentives by beneficiaries were (1) few beneficiaries knew that the work incentives existed, and (2) those who were aware of the incentives thought they were complex, difficult to understand, and of limited use when entering low-paying employment (GAO, 1999).

The Office of Program Development and Research (OPDR) and the Office of Employment Support Programs (OESP) under the Deputy Commissioner for Disability and Income Security Programs are primarily responsible for the implementation of multiple components of the Ticket to Work and Work Incentives Improvement Act of 1999 (TWWIIA). The TWWIIA provides a number of new program opportunities and work incentives for both SSI and DI beneficiaries, including the Ticket to Work (TTW) and Self-Sufficiency Program; development of a work-incentives support plan through the creation of national network of Benefits Planning, Assistance, and Outreach (BPAO) programs; and new work incentives, including expedited reinstatement (EXR) of benefits and postponement of continuing disability reviews.

#### **The National Council on Disability's Study of the Problem**

It is not known whether the new TWWIIA programs will have any more success than past attempts by SSA to impact the employment rate and earnings of beneficiaries. What is clear is that there has not been, in recent times, a comprehensive, research-based examination of the

practices that are most likely to support the employment of SSI and DI beneficiaries. This study has been undertaken in response to the need for such a comprehensive analysis. The study was designed to address four research questions:

1. What are the evidence-based practices that promote the return to work of working-age beneficiaries of DI and SSI programs?
2. What policy changes are needed, given recent trends in program participation and employment?
3. Are there proven and documented practices that work better for some populations of people with disabilities and not others?
4. Which factors ensure that documented and evidence-based practices could be adapted/adopted by SSA and other entities that seek to ensure the employment of people with disabilities? Which factors prevent adaptation/adoption?

A four-step approach was taken to implement the study. First, a comprehensive literature synthesis was completed through a review of published and unpublished literature. Second, detailed structured interviews were conducted with key stakeholders, including SSA beneficiaries, federal SSA officials, representatives of other federal agencies, consumer and advocacy organizations, service organizations, community service providers, and business representatives. Third, a preliminary list of findings, evidence-based practices, and recommendations based on the literature review and structured interviews was used to develop seven topic papers. These papers were used to facilitate discussion and obtain reaction from participants who were invited to a consensus-building conference at the end of January 2005. Individuals with disabilities (including current and former SSI and DI beneficiaries), advocacy organizations, service providers, and policymakers who attended the conference had the opportunity to further develop the recommendations that appear throughout the report.

### **Major Findings of the Study**

#### **Purpose and Mission of SSA's Disability Benefit Programs**

Our nation's current disability benefit programs are based on a policy principle that assumes that the presence of a significant disability and lack of substantial earnings equates to a complete inability to work. The current SSA eligibility determination process thwarts return-to-work efforts, because applicants are required to demonstrate a complete inability to engage in substantial gainful activity (SGA) in order to qualify for benefits. The definition fails to recognize that, for many consumers, disability is a dynamic condition. The length of the application process in our current programs actually contributes to the ineffectiveness of our return-to-work efforts and our inability to intervene early in the disability process.

For DI individuals, lack of a gradual reduction in benefits as earnings increase and lack of attachment to the DI and Medicare programs after an individual has maintained employment for an extended period of time make return to work unfeasible. For SSI beneficiaries, the program's stringent asset limitations thwart efforts toward asset development and economic self-sufficiency. Inconsistencies in program provisions lead to confusion and inequities for beneficiaries of both programs.

**Beneficiary Perspective and Self-Direction**

To receive benefits, applicants must characterize their situation as an inability to work long-term. They must demonstrate that they are unable to work in any significant way. Once they are determined to be eligible for disability benefits, beneficiaries face a host of complex program rules and policies related to continuing eligibility for cash benefits and access to health care. Many beneficiaries are confused or uninformed about the impact of return to work on their life situation and have shied away from opportunities to become self-sufficient through work.

Beneficiaries report that their experience with SSA is often unfavorable. Insufficient staffing has led to long lines and poor services. Misinformation is frequent, and mistrust common. Local SSA field office staff members are overburdened with accurate and timely processing of post-entitlement earnings reporting, which often leads to overpayments to beneficiaries. Beneficiaries do not trust SSA to make appropriate and timely decisions. There is prevalent fear that work attempts would result in either a determination that the disability had ended or the need to repay benefits.

SSA has implemented many legislative changes, program modifications, training initiatives, and automation efforts in the past 15 years to improve its customer service. Although efforts to streamline processing and improve customer service should be lauded, they have not significantly improved beneficiaries' ability to direct and control their own careers.

**Income Issues and Incentives**

A multitude of rules regarding employment income, continued eligibility for disability benefits, waiting periods, earnings reporting, management of benefit payments, and management of assets (among many others) come into play once an individual is determined to be eligible for DI or SSI. SSA rules regarding employment and income are such that many beneficiaries will actually be worse off financially if they work full time. Disincentives to employment in the current benefits programs include a sudden loss of cash benefits as a result of earnings above the SGA level for DI beneficiaries. Despite a number of programs that are designed to encourage asset building among SSI beneficiaries, it remains very difficult for beneficiaries to save and accumulate resources under SSI, which contributes to long-term impoverishment and dependence on public benefits.

Over the past decade, SSA has devoted considerable resources to promoting employment and return to work among SSI and DI beneficiaries. The agency has aggressively implemented a number of new initiatives authorized under the TWWIA, such as the Ticket to Work and Self-Sufficiency Program, the BPAO program, area work incentive coordinators, and Protection and Advocacy for Beneficiaries of Social Security. It has modified program rules to provide increased work incentives to beneficiaries, such as the EXR and protection from continuing disability review provisions of TWWIA, indexing the SGA threshold, and increasing the level of earnings allowed during the Trial Work Period (TWP). The agency has also launched or is planning to initiate a number of demonstrations that will test the efficacy of new modifications to work incentives within the DI program and services targeted toward youth with disabilities. Yet,



while SSA has taken steps to improve its return-to-work services through the provision of work incentives, these efforts are hampered by the underlying program rules that were designed for individuals assumed to be permanently retired from the workforce and individuals who were viewed as unable or unlikely to work in the future.

#### **Coordination and Collaboration Among Systems**

Expansion of the disability programs and the poor employment rates of adults with disabilities have become major concerns for SSA and disability policymakers across the country. Too often, the alarming growth of the Social Security disability rolls has been represented and perceived as SSA's problem to solve in isolation, when in fact it is a larger societal problem with myriad complex causes. Receipt of Social Security disability benefits is merely the last stop on a long journey that many people with disabilities make from the point of disability onset to the point at which disability is so severe that work is not possible. All along this journey, individuals encounter the policies and practices of the other systems involved in disability and employment issues. When these systems fail to stem the progression of disability or work at cross-purposes with one another to prevent successful employment retention or return to work, it is the Social Security disability system that bears the eventual brunt of this failure. Any meaningful effort to slow down or reverse this relentless march toward federal disability benefits will require significant and sustained collaboration and coordination among SSA and the other federal agencies with a stake in developing disability and employment policy.

The complex obstacles to employment faced by SSA beneficiaries require a comprehensive set of solutions. New approaches must be identified that emphasize beneficiary control of career planning and the ability to access self-selected services and supports. Public and private health care providers must develop new collaborations and new approaches to combining coverage from multiple sources to improve program efficiencies. SSA must continue to work with the Rehabilitation Services Administration (RSA) and the Department of Labor (DOL) to improve implementation of the TTW program and identify new approaches that will overcome the traditional inability of SSA beneficiaries to benefit from services provided by the nation's employment and training programs. Secondary and postsecondary educational institutions must emphasize benefits counseling and financial management training as the foundation for beneficiary self-direction and economic self-sufficiency. Federal agencies and the business community must realize that collaborative approaches to incorporating beneficiaries into the workforce are needed as a way to reduce dependence on federal benefits while simultaneously enhancing the productivity and competitiveness of large and small business.

#### **Recommendations**

A total of 38 specific recommendations have been developed in the areas of Beneficiary Perspective and Self-Direction, Income Issues and Incentives, and Coordination and Collaboration Among Multiple Public and Private Systems. The recommendations are presented and justified in Chapters III, IV, and V of the report, and a complete list is provided in Chapter VI. The key recommendations resulting from the study are summarized below.

**Beneficiary Perspective and Self-Direction**

Customer Service - SSA should take immediate steps to improve the services provided to beneficiaries by improving the accessibility of SSA field offices and Web sites; redesigning field office personnel roles, staffing patterns and work assignments; continuing efforts to automate work reporting procedures; and enhancing outreach efforts to beneficiaries.

Ticket to Work Program - Congress and SSA should address current shortcomings in the TTW program by (1) expanding Ticket eligibility to include beneficiaries whose conditions are expected to improve and who have not had at least one continuing disability review (CDR), childhood SSI beneficiaries who have attained age 18 but who have not had a redetermination under the adult disability standard, and beneficiaries who have not attained age 18; (2) modifying the TTW regulations to ensure that Ticket assignment practices do not violate the voluntary nature of the program and beneficiary rights to grant informed consent; and (3) implementing a strong national marketing program to inform beneficiaries about TTW and other SSA programs.

Facilitate Beneficiary Choice - Congress should authorize and direct SSA, the Rehabilitation Services Administration (RSA), the Centers for Medicare and Medicaid Services (CMS), the Department of Housing and Urban Development (HUD), and the Department of Labor Employment and Training Administration (DOLETA) to develop and implement an integrated benefits planning and assistance program that coordinates resources and oversight across several agencies that enables beneficiaries to access benefit planning services within multiple federal systems. Congress should also authorize and direct these agencies to consider changes to the existing BPAO initiative to improve the accuracy and quality of services provided to individual beneficiaries.

Reduce SSA Overpayments to Beneficiaries - Congress and SSA should implement a series of procedural reforms to reduce overpayment to beneficiaries by increasing the use of electronic quarterly earnings data and automated improvements to expedite the processing of work activity and earnings; piloting the creation of centralized work CDR processing in cadres similar to PASS and Special Disability Workload Cadres; and enhancing efforts to educate beneficiaries on reporting requirements, the impact of wages on benefits, and available work incentives.

Eliminate the Marriage Penalty - Congress and SSA should undertake a complete review of the SSI program and make program modifications that eliminate the financial disincentive to marriage inherent in the present program, including amending the current Title XVI disability legislation to modify the manner in which 1619(b) eligibility is applied to eligible couples.

**Income Issues and Incentives**

Ease the SGA Cash Cliff for DI Beneficiaries - Congress should modify the current Title II disability legislation to eliminate SGA as a post-entitlement consideration for continued eligibility for Title II disability benefits and provide for a gradual reduction in DI cash benefits based on increases in earned income.

Reduce Restrictions on Assets for SSI Beneficiaries - Congress should direct SSA to (1) develop and test program additions and regulatory modifications that will enable SSI beneficiaries to accumulate assets beyond existing limits through protected accounts and other savings programs, and (2) change current program rules and work with other federal agencies to modify and expand the value of individual development account (IDA) programs to SSA beneficiaries.

Decrease the Complexity of the DI/SSI Program Rules Governing Income and Resources - Congress should direct SSA to (1) simplify regulatory earnings definitions and wage verification processes so that they are consistent across the SSI and DI programs, and (2) direct SSA to modify regulations related to the treatment of earnings in the DI program by applying the same rules currently applied in the SSI program.

#### **Coordination and Collaboration Among Multiple Public and Private Systems**

Health Care Systems - Centers for Medicare and Medicaid Services (CMS) and SSA should work together closely to (1) modify existing program regulations in order to uncouple Medicare and Medicaid coverage from DI/SSI cash payments; (2) identify and eliminate the many employment disincentives currently built into the Medicaid waiver, Medicaid buy-in, and Health Insurance Premium Payment (HIPP) programs; (3) expand benefits counseling services to include the full range of financial education and advisement services; and (4) work collaboratively with public and private insurance providers and business representatives to design public-private insurance partnerships that will expand access to health care for individuals with disabilities.

Vocational Rehabilitation (VR) System - SSA should modify TTW program regulations to allow the SSA's traditional VR cost reimbursement program to carry on as a parallel program to the Employment Network (EN) outcome or outcome-milestone payment mechanisms, and ensure that an EN is able to accept Ticket assignment from a beneficiary, refer that individual to the VR agency for needed services, and not be required to reimburse the VR agency for those services.

Federal Employment and Training System - Congress, SSA, and the Department of Labor should undertake an analysis of the impact of allowing DOL One-Stop Career Centers to receive cost reimbursement payments for successfully serving beneficiaries under the TTW program, evaluate the impact of the Workforce Investment Act (WIA) performance standards on beneficiary participation in WIA programs, and design and test a set of waivers that will assist beneficiaries in accessing and benefiting from WIA core and intensive services, as well as individual training accounts.

Educational System - Congress should direct SSA to work with the Department of Education (ED) to (1) ensure that benefits planning and financial management services are available to the transition-aged population; (2) expand the current student earned income exclusion (SEIE) and the Plan for Achieving Self-Support (PASS) to encourage involvement of SSA beneficiaries in postsecondary education and training; and (3) implement a policy change that would disregard all earned income and asset accumulation limits for beneficiaries who are transitioning from secondary education to postsecondary education or employment for at least one year after education or training is completed.

Employers, Business Community, and Private Insurance Industry - Congress should direct SSA and the Department of the Treasury to (1) evaluate the possible effects of a disabled person tax credit as a means of increasing the use of disability management programs in business to prevent progression of injured and disabled workers onto the public disability rolls, and (2) collaborate with Department of Labor's Employment and Training Administration (DOLETA), the Small Business Administration (SBA), and the Rehabilitation Services Administration (RSA) to develop and implement an employer outreach program targeted toward small and mid-size businesses.

