

# MANAGEMENT OF DISABILITY CASES

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## HEARING

BEFORE THE

SUBCOMMITTEE ON SOCIAL SECURITY

AND THE

SUBCOMMITTEE AND HUMAN RESOURCES

OF THE

COMMITTEE ON WAYS AND MEANS

HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

—————  
OCTOBER 21, 1999  
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**Serial 106-59**

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Printed for the use of the Committee on Ways and Means



U.S. GOVERNMENT PRINTING OFFICE

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# CONTENTS

---

Advisory of October 14, 1999, announcing the hearing .....	Page 2
--	-----------

## WITNESSES

U.S. General Accounting Office, Cynthia M. Fagnoni, Director, Education, Workforce, and Income Security Issues, Health, Education and Human Services Division; accompanied by Kay Brown, Assistant Director, Education, Workforce, and Income Security Issues, Health, Education and Human Services Division .....	40
Social Security Administration, Hon. Kenneth S. Apfel, Commissioner; accompanied by Susan Daniels, Deputy Commissioner for Disability and Income Security Programs .....	10

---

Association of Administrative Law Judges, Inc., Hon. Ronald G. Bernoski .....	79
Federal Bar Association, Hon. Kathleen McGraw .....	87
National Council of Disability Determination Directors, Michael W. Brennan .	75
National Council of Field Operation Locals, Council 220, and National Partnership Council, Social Security Administration, American Federation of Government Employees, AFL-CIO, Witold Skwierczynski .....	69
National Council of Social Security Management Associations, Inc., Ron Niesing .....	64
National Organization of Social Security Claimants' Representatives, Nancy G. Shor .....	95

## SUBMISSIONS FOR THE RECORD

American Bar Association, Robert D. Evans, letter .....	117
American Federation of State, County and Municipal Employees, Communication Workers of America, and Service Employees International Union, joint statement .....	118
Hall, Lisa Russell, Office of Hearings and Appeals, Social Security Administration, Paducah, KY, statement .....	119
International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, statement and attachments .....	120
National Association of Disability Examiners, Terri Spurgeon, Lansing, MI, statement .....	121
National Association of Senior Social Security Attorneys, Fort Smith, AR, Harold D. Davis, statement .....	124



## MANAGEMENT OF DISABILITY CASES

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THURSDAY, OCTOBER 21, 1999

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

The Subcommittees met, pursuant to notice, at 10:10 a.m., in room 1100, Longworth House Office Building, Hon. Nancy L. Johnson (Chairman of the Subcommittee on Human Resources) and Hon. E. Clay Shaw, Jr. (Chairman of the Subcommittee on Social Security) presiding.

[The advisory announcing the hearing follows:]

# ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

## SUBCOMMITTEE ON SOCIAL SECURITY SUBCOMMITTEE ON HUMAN RESOURCES

FOR IMMEDIATE RELEASE

CONTACT: (202) 225-9263

October 14, 1999

No. SS-8

### Shaw and Johnson Announce Joint Hearing on Management of Disability Cases

Congressman E. Clay Shaw, Jr., (R-FL), Chairman, Subcommittee on Social Security and Congresswoman Nancy Johnson (R-CT), Chairman, Subcommittee on Human Resources, Committee on Ways and Means, today announced that the Subcommittees will hold a joint hearing on the Social Security Administration's management of its disability caseload. The hearing will take place on Thursday, October 21, 1999, in the main Committee hearing room, 1100 Longworth House Office Building, beginning at 10 a.m.

In view of the limited time available to hear witnesses, oral testimony at this hearing will be from invited witnesses only. Witnesses will include the Commissioner of the Social Security Administration (SSA), representatives from the U.S. General Accounting Office (GAO), organizations representing disability examiners, Social Security caseworkers and applicants, and disability benefit recipients. However, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Committee and for inclusion in the printed record of the hearing.

#### BACKGROUND:

Social Security's disability programs help protect workers and their families against financial hardship due to disabling conditions that prevent them from working. The number of Social Security disability beneficiaries rose from 4.1 million in 1989 to 6.4 million today, an increase of 56 percent; disabled Supplemental Security Income (SSI) recipients grew from 3.1 million in 1989 to 5.3 million today, or 71 percent. Accompanying this rise has been an equally noteworthy surge in waiting periods for accessing benefits. Two-thirds of claimants filing an appeal eventually received a favorable decision, indicating potential problems with either initial or appellate decisions and raising questions about the fairness and efficiency of the process.

In response to such concerns, in 1994 SSA announced a fundamental overhaul of the process it uses to determine if claimants are eligible for disability benefits. Thus, SSA has undertaken several key initiatives involving initial workload processing, Office of Hearings and Appeals workloads, and including a new Hearing Process Initiative, and Appeals Council workloads. Following release of its initial plan, SSA issued a scaled-back plan in 1997. According to a March 1999 GAO report, "while SSA has made some progress . . . even with its scaled-back plan, SSA has been unable to keep its redesign activities on schedule and to demonstrate that its proposed changes will significantly improve the claims process."

At the same time, the number of continuing disability reviews conducted by SSA has grown rapidly. SSA processed nearly 1.4 million periodic reviews in 1998, the largest number ever and more than twice the number performed in 1997. While these reviews will result in significant savings over time, the sheer volume of re-

views, their accuracy, and how they mesh with SSA's other disability program responsibilities are matters of interest to the Subcommittees.

In announcing the hearing, Chairman Shaw stated: "Ensuring that American workers who experience a disability have all the protection they paid for is a core function of the SSA. While caseloads have grown, so have waits to get on the rolls. This hearing will help us determine whether SSA is taking steps to ensure that disabled workers get the benefits they deserve in a fair and timely fashion."

Chairman Johnson stated: "The SSI program, which is so important to many disabled recipients, needs an administrative system that strikes a balance between timely processing of beneficiary claims and ensuring adequate safeguards against fraud and abuse. Testimony from this hearing will provide useful information about SSA's plans to improve disability services."

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

The hearing will focus on SSA management of the Social Security Disability Insurance and SSI program caseloads, including the ability of SSA's disability redesign plan and hearing process initiative to address concerns regarding initial, appeals, and continuing disability determinations.

#### **DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:**

Any person or organization wishing to submit a written statement for the printed record of the hearing should submit six (6) single-spaced copies of their statement, along with an IBM compatible 3.5-inch diskette in WordPerfect 5.1 format, with their name, address, and hearing date noted on a label, by the *close of business*, Thursday, November 4, 1999, to A.L. Singleton, Chief of Staff, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515. If those filing written statements wish to have their statements distributed to the press and interested public at the hearing, they may deliver 200 additional copies for this purpose to the Subcommittee on Social Security office, room B-316 Rayburn House Office Building, by close of business the day before the hearing.

#### **FORMATTING REQUIREMENTS:**

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

1. All statements and any accompanying exhibits for printing must be submitted on an IBM compatible 3.5-inch diskette in WordPerfect 5.1 format, typed in single space and may not exceed a total of 10 pages including attachments. Witnesses are advised that the Committee will rely on electronic submissions for printing the official hearing record.

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

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

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

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

Note: All Committee advisories and news releases are available on the World Wide Web at [HTTP://WWW.HOUSE.GOV/WAYS MEANS/](http://www.house.gov/ways_means/).

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

Chairman JOHNSON. Good morning. We are here today to discuss the important issue of how the Social Security Administration is managing the disability caseload. This caseload has grown tremendously in the past 10 years and, in addition, SSA has been responsible for an increased number of continuing disability reviews. Caseworkers in my New Britain office, work daily with constituents who have questions and concerns about their Social Security disability claims and the process that they have to go through to receive their benefits. Even with excellent assistance from the local Social Security office personnel, these constituents often wait up to a year for their claims to move through all the steps in the disability determination process. Needless to say this causes tremendous hardship on the part of the people who are already in a difficult situation.

I have to say that the personnel in my local Social Security office are not only hard-working but very kindly toward my constituents and it is an excellent office. But it is not tolerable to face people who are already in terribly difficult circumstances with quite the weight and the complexity of the process that we have been using.

While SSA needs an improved administrative system that provides fair and timely processing of beneficiary claims, it also has a responsibility to ensure the safeguards that are necessary to prevent fraud and abuse. I look forward to hearing your testimony this morning and learning more about SSA's plan to improve disability services and I would like to yield to my co-chairman, Congressman Shaw.

Chairman SHAW. Thank you very much.

I would like to welcome all of you and all of our witnesses to today's hearing. This hearing will focus on whether we are doing everything we can to ensure workers and families get disability benefits in a timely and efficient manner. This is no small issue. Social Security's two disability programs, the Social Security Disability Insurance and Supplemental Security Income serve about 11 million disabled Americans and their families providing \$77 billion in annual cash benefits, usually accompanied by health care coverage.

The Social Security Administration processes literally millions of applications for disability benefits each year and reviews millions of other cases to ensure recipients remain entitled to the benefits. All told, Social Security spends about \$4 billion administering these programs. That is about two-thirds of the Social Security's total administrative budget; up from about half in 1980, even though the disability benefits represent about 21 percent of the total beneficiary population.



Despite this enormous and increasing financial commitment, the bipartisan Social Security Advisory Board in August 1998 expressed: *“serious concerns about the lack of consistency in decision-making, unexplained changes in application and allowance rates, the complexity, slowness and the cost of the application and appeals process, the lack of confidence in the system and the fact that few beneficiaries are successfully rehabilitated.”* Hopefully we will improve the last problem with the Ticket-To-Work bill. The other concerns are the topic of our hearing today.

Everyone agrees that disability decisions must be fair, swift and they must be correct. Yet, in the past decade, we have seen major backlogs develop as applications and caseloads have grown. To their credit, the Social Security Administration is testing several new initiatives to improve its management of disability cases. We are fortunate today to have a number of frontline employees who will give us their assessment of how these initiatives are working.

The future promises ever increasing numbers of disability beneficiaries. Under the worst case scenario, according to the Social Security actuaries, the number of Social Security disability beneficiaries will rise 75 percent over the next 10 years. Under the best of circumstances, it will increase by 40 percent.

As several of our witnesses will testify it is unacceptable to require some applicants to wait literally years before they are found to be disabled. That is the current dilemma. What will be the future? What will the future be like if we fail to improve this situation while millions more apply for benefits?

I look forward to the hearing and suggestions of how to fix the problem and provide better services for the American families. They certainly deserve no less.

I have here a chart which shows the time that goes between the application and the resolution of the problem. As you can see that it is taking now about 900 days. That is absolutely incredible. Many of the applicants die before their case is ever fully considered and properly adjudicated. I know we can do a lot better than this and I look forward to the witnesses' testimony and to explaining exactly the direction that we need to go.

I hope that each of the witnesses will direct their attention to this terrible problem that we are facing and this injustice that we are doing to the American families and, I might say, they deserve no less than our full attention and cooperation. At this time, I will yield to Mr. Cardin, the Ranking Member on Human Resources.

Mr. CARDIN. Thank you, Chairman Shaw.

On behalf of both Bob Matsui, who is the Ranking Member on the Social Security Committee, and myself we want to thank you and Chairman Johnson for holding these hearings. We think these hearings are extremely important. As Chairman Shaw pointed out, 2 days ago this Congress passed the Ticket-To-Work bill which deals with people who exit the disability system. Today we are talking about people who need disability insurance help entering the system. And we have to make it easier for people to get the benefits that they are entitled to. The current delays are unacceptable, particularly on the appeals determinations.

So, I think these hearings are extremely important. I want to complement Ken Apfel, the Commissioner, for the streamlining

process that he has already started to implement at SSA. I think we are already starting to see some of the positive effects of the changes that are currently underway. I also want to applaud your effort to follow the General Accounting Office's recommendations to focus on the most important reforms and test the concepts before full implementation. I think that is extremely important, also.

But, Mr. Chairman, I just really want to point out that I think we, in Congress, have a good deal of responsibility here for our past actions, I think, have contributed to the problems that our constituents are confronting in delays in disability determinations. And that is, since 1982, we have reduced the work force at the Social Security Administration by 26 percent. At the same time, the number of applications under review by the agency has increased dramatically.

I have had the opportunity to visit first-hand the men and women who work at Social Security Administration from my community. And these are hard-working men and women, who are trying to do their jobs, in some cases, very frustrated by the lack of support that we give here to their budget.

So, as we ask Social Security Administration to do more, we should also be willing to make the investments in the budget that they need to provide the type of support to our constituents; we can't continue to ask them to do more with less when we know that we are not providing adequate resources.

So, I think these hearings are extremely important. We have 6 million Americans who are receiving disability insurance under Social Security; 5 million Americans receiving disability benefits under SSI. For these 11 million and for those that are awaiting determination, it's important that we have the most efficient system possible for original determination and for appeals and I hope the hearings today will help us work together to improve the system.

Thank you.

Chairman SHAW. Without objection, each member, including Mr. Matsui, will be given an opportunity to insert their opening statement into the record.

[The prepared statements follow:]

**Statement of Hon. Nancy L. Johnson, a Representative in Congress from the State of Connecticut**

We are here to discuss the important issue of how the Social Security Administration is managing its disability caseload. This caseload has grown tremendously in the past 10 years. In addition, SSA has been responsible for an increased number of continuing disability reviews.

Caseworkers in my New Britain, Connecticut district office work daily with constituents who have questions or concerns about their Social Security disability claims process. Even with excellent assistance from local Social Security office personnel, these constituents often wait up to a year for their claims to move through all the steps in the disability determination process. Needless to say, this causes additional hardship to people in an already difficult situation.

While SSA needs an improved administrative system that provides fair, timely processing of beneficiary claims, it also has a responsibility to ensure adequate safeguards against fraud and abuse. I look forward to hearing your testimony and learning more about SSA's plans to improve its disability services.

**Statement of Hon. E. Clay Shaw, Jr., a Representative in Congress from the State of Florida**

Today's hearing focuses on whether we are doing everything we can to ensure workers and families get disability benefits in a timely and efficient manner.

This is no small issue. Social Security's two disability programs—Social Security Disability Insurance and Supplemental Security Income—serve about 11 million disabled Americans and their families, providing \$77 billion in annual cash benefits, usually accompanied by health care coverage. The Social Security Administration processes literally millions of applications for disability benefits each year, and reviews millions of other cases to ensure recipients remain entitled to benefits. All told Social Security spends about \$4 billion administering these programs. That's almost two-thirds of Social Security's total administrative budget, up from about half in 1980—even though disability beneficiaries represent about 21 percent of the total beneficiary population.

Despite this enormous and increasing financial commitment, the bipartisan Social Security Advisory Board in August 1998 expressed:

“serious concerns about the lack of consistency in decision making; unexplained changes in application and allowance rates; the complexity, slowness and cost of the application and appeals process; the lack of confidence in the system; and the fact that few beneficiaries are successfully rehabilitated.”

Hopefully we will improve the last problem with the Ticket to Work bill; the other concerns are the topic of our hearing today.

Everyone agrees that disability decisions must be fair, swift and correct. Yet in the past decade we have seen major backlogs develop as applications and caseloads have grown. To their credit, Social Security is testing several new initiatives to improve its management of disability cases. We are fortunate today to have a number of front line employees who will give us their assessment of how these initiatives are working.

The future promises ever increasing numbers of disability beneficiaries. Under the worst case scenario, according to the Social Security actuaries the number of Social Security disability beneficiaries will rise 75 percent over the next 10 years. Under the best of circumstances, it will increase by 40 percent. As several of our witnesses will testify, it's unacceptable to require some applicants to wait literally years before they are found to be disabled. That's the current dilemma. What will the future be like if we fail to improve this situation while millions more apply for benefits?

I look forward to hearing suggestions on how we can fix such problems and provide better service for working American families. They deserve no less.

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**Statement of Hon. Benjamin L. Cardin, a Representative in Congress from  
the State of Maryland**

Mr. Chairman, let me start by thanking the Chair of the Human Resources Subcommittee, Mrs. Johnson, for her commitment to forging a bipartisan consensus on how to help low-income fathers support their children. While the legislation before us may not do everything either myself or Mrs. Johnson would like to achieve, it does represent a very positive first step in reconnecting absent fathers with their families.

It goes without saying that raising children is the responsibility of both parents. When one parent intentionally evades this obligation, our child support enforcement system should be unyielding in its determination to make that individual live up to his or her parental responsibility. The 1996 welfare law made some strides in that direction by providing new tools to the States to help them track down delinquent parents and force them to pay child support.

However, there is a difference between a parent who is unwilling to support his children and one who is unable to meet this commitment. Unfortunately, the current system seldom recognizes this distinction between deadbeat and dead-broke fathers.

The Fathers Count Act would begin to reverse this oversight by making a direct commitment to help non-custodial parents who want to support their families. Under the legislation, competitive grants would be made available for communities to directly encourage fathers to become a consistent and productive presence in the lives of their children—whether through marriage, or through increased visitation and the payment of child support. These new grant funds could be used for a wide array of specific services, including counseling, vocational education, job search and retention services, and even subsidized employment.

In addition, the grant program would encourage States and communities to implement innovative policies to assist and encourage non-custodial parents to pay child support. For example, preference would be given to grant applications which contain an agreement from the State to pass-through more child support payments to low-income families rather than recoup the money for prior welfare costs. Additionally, a preference would be provided to any grant request that included a commitment to forgive child support arrears owed to the State by a non-custodial parent who was actively attempting to pay current support to their family. Such initiatives will hopefully make the child support system seem less like a hostile enemy and more like a collaborative partner for non-custodial fathers who want to provide for their families.

The legislation before us would make one other very important change to help both custodial and non-custodial parents support their children—it would expand eligibility for the current Welfare to Work program. This initiative was originally passed as part of the Balanced Budget Act of 1997, and it has proven to be a useful tool to help long-term welfare recipients and non-custodial parents of children on public assistance gain employment.

However, the current eligibility criteria under the program is far too strict for both mothers and fathers. Therefore, the Fathers Count Act would broaden eligibility and local flexibility under the Welfare to Work program—an improvement requested by the National Governors Association, the US Conference of Mayors, and the Department of Labor. I hope the Committee will build on this effort in the near future by passing a broader reauthorization of the Welfare to Work program.

Mr. Chairman, I urge Members to support this bipartisan effort to help reconnect fathers with their families. Such an initiative would help these men meet their parental responsibilities and thereby improve their self-esteem; it would help mothers attempting to raise their family single-handedly; and most of all, it would improve the lives of children, both materially and emotionally. Thank you.

Commissioner, it is my privilege to welcome you back to this Committee. In holding up the chart that I did, I do see to your credit that the hearing process has shrunk somewhat but the appellate process seems to be totally out of control and 900 days under any measurement is an incredible, unconscionable time to have many needy people to wait for their benefits, particularly, the disabled community. And I hope you will, in your statement, address that issue.

We have a copy of your statement which is going to be made a part of the record. We have a copy of all the witnesses' statements which will be made a part of the record and we would invite you to proceed and/or summarize as you see fit.

**STATEMENT OF HON. KENNETH S. APFEL, COMMISSIONER OF SOCIAL SECURITY; ACCOMPANIED BY SUSAN DANIELS, DEPUTY COMMISSIONER FOR DISABILITY AND INCOME SECURITY PROGRAMS**

Mr. APFEL. Thank you, Mr. Chairman.

Chairmen Shaw and Johnson, Mr. Cardin and Members of the Subcommittees, thank you for this opportunity to update you on Social Security's progress in improving administration of its disability programs. Joining me today is Dr. Susan Daniels, our Deputy Commissioner for Disability and Income Security Programs.

While much of the public debate about Social Security focuses on retirement, about one-third of Social Security beneficiaries are severely disabled workers and their children or surviving family members of deceased workers. In 1990, 5.7 million individuals with disabilities were receiving either Social Security or SSI disability benefits. Today, more than 9 million receive these benefits; a workload increase that represents just one of the many challenges in managing such a complex program.

However, despite the program growth of the early nineties, Social Security's disability rolls are not high compared to those of other Western countries; only about 3.5 percent of insured American workers receive Social Security disability payments. This is much lower than the Netherlands, Sweden or Norway and slightly lower than rates in Germany, the United Kingdom and Austria. All these countries have aging populations, including the United States. Actuarial forecasts indicate that as the baby boom generation ages, the number of people on SSA's disability rolls will continue to grow with disability incidence increasing from about 3.5 percent to almost 5 percent over the next decade.

As Social Security's dedicated employees work to maintain their high level of customer service while handling increasing workloads, the result is organizational stress. By identifying eligible individuals earlier in the process and streamlining the process, we plan to decrease stress and increase service.

To accomplish these goals, we've developed a comprehensive strategy which is outlined in our March 1999 report, "Social Security and Supplemental Security Income Disability Programs: Managing for Today, Planning for Tomorrow." Basically we're looking for ways to improve the disability adjudication process at all levels, to safeguard the integrity of the program and to enhance beneficiaries' opportunities to work. Our three guiding principles are quality, timeliness and efficiency.

The process improvements are based on our strong belief that through investments in the quality of our decisionmaking at the initial level of the administrative process, we can provide better service by identifying eligible individuals with disabilities as early in the process as possible. Denied claimants who appeal will experience a more efficient appeals process that will take much less time to produce decisions.

I recognize that many of the benefits expected from these improvements will not materialize immediately. We have seen results but it's going to take time for us to see full results.

While SSA expects some short-term decreases in productivity during the implementation, the long-term improvements in the system will outweigh these costs. We are also committed to enhancing the quality of decisions by ensuring that SSA's policies are applied in a consistent manner by all adjudicators and by improving the development and explanations of disability determinations.

On October 1, we implemented prototypes in 10 States to improve the initial claims process. These prototypes consist of the following: Enhanced documentation and explanation of decisions at the initial claims level; revised roles of the disability examiner and the medical consultant in State DDS determinations; an opportunity for a conference between the claimant and the State DDS decisionmaker; and elimination of the reconsideration step of the administrative appeals process.

In the past we have increased resources to address hearing office problems and this has led to significant results with hearings processing times reduced from 386 days in 1997 to an estimated 316 days in 1999. Building on these successes, our new hearings process improvement plan relies on process changes. Our goal is to reduce processing time to 257 days this year and to less than 200 days in FY 2002.

If I could take an extra minute, Mr. Chairman, I'm going to specifically address the issue of the Appeals Council process. Having reached decisions on making improvements to the initial hearing levels, we are now carefully looking at what can be done to eliminate the long wait before receiving a decision from the SSA Appeals Council. Later this year, we will release a plan to improve service in this area. Elements of this plan will include using attorneys from SSA's Office of the General Counsel to assist with case reviews; permitting claimants with cases pending at the Appeals Council to pursue new claims for periods of time subsequent to the ALJ decisions; and promoting stability and excellence in the Appeals Council by continuing SSA's efforts to obtain legislation that would provide pay parity for SSA's Appeals Council Administrative Appeals Judges with the nonsupervisory ALJs.

Quite simply, forcing individuals to wait more than a year for an Appeals Council decision is simply unacceptable, and I agree with you, Mr. Chairman.

During recent travels, Dr. Daniels and I saw firsthand how hard employees are working to implement both the prototypes in the 10 States and the hearings office changes, which combine redesign features and other initiatives. I also want to assure you that SSA is committed to guaranteeing that only those who are truly disabled will continue to receive benefits.

And I want to thank this Committee for the additional funding to conduct more continuing disability reviews than ever. In FY 1998, we processed more than twice the CDRs we did in 1996. We estimate that from the 1998 activities, over 70,000 beneficiaries who were no longer eligible will have their benefits terminated after all appeals, resulting in savings of upwards of \$4.4 billion.

And while the numbers for FY 1999 are still preliminary, our initial data indicates that we will exceed the number of CDRs that we processed in 1998 by at least 10 percent. This is progress and heads us in the right direction for the new millennium.

As we approach this millennium, I want to reiterate the administration's longstanding commitment to encouraging individuals with disabilities to return to work. I want to congratulate this Committee on its tireless efforts in bringing the Ticket to Work and Work Incentives Act of 1999 to the floor so it could pass with such a large majority.

Thank you again for inviting me here to address this important issue of the Social Security Disability programs. I promise you we are totally committed to make them more responsive to claimants and beneficiaries and more accountable to this great Nation's taxpayers.

I would be happy to answer any questions that you have.

[The prepared statement follows:]

**Statement of Hon. Kenneth S. Apfel, Commissioner of Social Security**

Chairman Shaw, Chairman Johnson, Mr. Matsui, Mr. Cardin and Members of the Subcommittees: I am pleased to be here today to discuss the progress that SSA is making to improve its administration of the disability programs. This opportunity to report on SSA's disability programs is especially relevant since October has been designated by the Congress and the President as "National Disability Employment Awareness Month."

Overall, I am happy to report that SSA has made substantial progress towards improving the service it provides to individuals with disabilities. SSA is pleased with its progress in this direction, but recognizes that more needs to be done to ensure that these vitally important programs offer the protection that they were intended to provide to the American people.

While much of the public debate about Social Security focuses on retirement, this is also a particularly appropriate time to emphasize that about one third of Social Security beneficiaries are severely disabled workers, their children, or the surviving family members of workers who have died. Because about 25 to 30 percent of today's 20-year-olds are estimated to become disabled before retirement, the protection provided by the Social Security Disability Insurance (SSDI) program is extremely important, especially for young families. For a young, married, average income worker with two children, Social Security is the equivalent of a \$233,000 disability income insurance policy. In the event of severe disability, the SSDI program stands between these families and poverty. Additionally, the Supplemental Security Income Program (SSI) serves the most economically vulnerable population with disabilities, most of whom are living in poverty.

In December 1990, 5.7 million individuals with disabilities were receiving either Social Security or SSI disability benefits. As of December 1998, 9.0 million were receiving Social Security or SSI disability benefits. As you are no doubt aware, managing such an enormous complex program presents many challenges. One way to put our disability programs in perspective is to compare them with the recent experience in other developed countries.

Comparisons aren't always simple. SSA's programs have always awarded benefits on the basis of a single strict standard of disability defined by statute. Other nations have sometimes used broader standards to make it easier for persons nearing retirement or experiencing long-term unemployment to collect disability benefits. In addition, benefits are often provided to working-age adults without any disability requirement. In tandem with these broader standards, several countries have made quite strenuous efforts to encourage hiring the disabled and enabling them to go to work.

In spite of the considerable program growth of the early 1990's, SSA's disability rolls are not high in most comparisons to other western countries. For example, in the United States, at the end of 1998, 3.5% of the population insured under Social Security were receiving disability benefits from the SSDI program. This is slightly lower than rates in Germany, the United Kingdom, and Austria, and much lower than in the Netherlands, Sweden, or Norway.



Actuarial forecasts indicate that the number of people on SSA's disability rolls will continue to grow. The rate of disability prevalence is projected to increase from 3.5% to almost 5% over the next 10 years. Although still a very small percent of the population, this represents an increase of almost 40 percent. This increase will occur largely due to the aging of the population and within the context of our very strict definition of disability.

The current growth in the disability programs has resulted in organizational stress as SSA's dedicated and capable employees have worked to maintain their traditional high level of customer service. Additionally, the resultant workload has made it even more critical that we seek ways to ensure that eligible individuals are identified as early in the process as possible.

In 1994, SSA announced an ambitious plan to streamline the disability process by eliminating unnecessary handoffs and most importantly to ensure that eligible individuals are identified as early in the process as possible. In the years following, SSA carefully tested many aspects of this plan. This testing was critical in order to make certain that our most vulnerable customers were not adversely affected by any changes.

In August 1998, the Social Security Advisory Board issued its report, "How SSA's Disability Programs Can Be Improved." In this report, the Advisory Board made a number of recommendations relating to SSA's disability programs. These recommendations included making the disability determination process more consistent and equitable, strengthening the public's trust in the integrity of the programs, and helping disabled individuals continue or return to work. As a result of SSA's prior initiative to strengthen the disability programs, SSA was already well on the way to addressing these concerns.

#### *Disability Management Plan*

SSA is now working on several initiatives designed to improve the disability adjudication process at all levels of adjudication, safeguard the integrity of the program, and enhance beneficiaries' opportunities to work.

Many of these initiatives are based on SSA's Disability Redesign Plan. After a lengthy study of the issues involved, I determined that no single initiative would be the answer. SSA needed to take concerted action in several areas. SSA needed to address longstanding issues to improve administrative efficiency and achieve greater consistency in our decisionmaking process.

In March of this year, SSA published the report, *Social Security and Supplemental Security Income Disability Programs: Managing for Today, Planning for Tomorrow*, and in August of this year, SSA published the report, *The Hearings Process Improvement Initiative: Delivering Better Service for the 21st Century*. These reports set out our comprehensive strategy and firm commitment to administer the disability programs fairly, effectively, and efficiently, so that SSA can continue to protect the millions of individuals who depend on it. To achieve this, SSA is making improvements to both the initial disability determination process and the hearing process. The improvements are premised on SSA's strong belief that, through investments in the quality of our decisionmaking at the initial level of the administrative process, such as making the claim development process more comprehensive, SSA can expect to provide better service by ensuring that eligible individuals with disabilities are identified as early in the process as possible. Denied claimants who appeal will experience a more efficient appeals process that will take less time to produce decisions.

SSA recognizes that many of the benefits expected from these improvements will not materialize immediately. While SSA expects some short term decreases in productivity during implementation, the long term improvements to the system will outweigh these costs.

#### BACKGROUND

Before I get into specifics, a brief overview of the current disability process might help put this statement in context. The Social Security Act broadly defines disability as the inability to engage in any substantial gainful activity due to a physical or mental impairment expected to last at least one year or result in death. The Act requires the Commissioner of Social Security to prescribe rules for obtaining and evaluating evidence and making disability decisions. The law further requires that initial disability determinations be made by State Disability Determination Services (DDSs) following Federal rules and guidelines and financed by Federal funds.

### *State DDS Process*

In the State DDS, a team composed of a disability examiner and a physician (or sometimes a psychologist) makes the disability determination based on an evidentiary record. The State DDS requests medical evidence from the treating physician(s) and other sources identified by the claimant. If that evidence is incomplete or conflicting, the disability examiner may request a consultative examination from the claimant's treating physician or a physician under contract to the DDS to perform these examinations. If necessary, the examiner will also obtain evidence from the claimant's family, friends, or other third parties that will help explain how the individual's impairment(s) affects his or her ability to work. The team then considers all medical and other evidence to make the disability determination.

### *Appeals Process*

A person who is dissatisfied with an initial determination, may pursue an appeal through three administrative levels and the Federal courts. The Act requires the Commissioner to provide a claimant the opportunity for a hearing, and allows for filing of a civil action in Federal court after the Commissioner's final decision. SSA's regulations also provide a reconsideration review prior to the hearing before the Administrative Law Judge (ALJ) and an opportunity for final review by SSA's Appeals Council.

Reconsideration is the first administrative review for claimants and involves a *de novo*, or fresh, review of the claim (including any new evidence) by individuals who did not participate in the original determination. The reviewers consider all of the evidence and issue a reconsideration determination.

The second level of administrative appeal is a *de novo* hearing before an ALJ who can call on medical or vocational experts, if needed, to help evaluate the evidence. Usually the claimant obtains legal representation at this point. Frequently, new evidence is introduced by the claimant and his or her representative, often at the hearing itself. Claimants are allowed to appear before the ALJ and to call witnesses.

The final administrative appeal level is the Appeals Council which may grant, deny, or dismiss a request for review of the ALJ decision. It will grant review if the ALJ decision contains an error of law, is not supported by substantial evidence, involves a broad policy issue, or if there appears to be an abuse of discretion by the ALJ. After an Appeals Council action, if the claimant is still dissatisfied, the next step is filing a civil action in Federal court.

### *Improving the Disability Adjudication Process*

Results from redesign testing showed that certain process changes resulted in:

- A higher percentage of individuals being allowed at the initial level;
- Enhanced quality of initial decisions;
- Earlier access to the hearing process for those who appeal their initial decision;

and

- High claimant satisfaction.

In addition to the information already gathered, SSA remains committed to testing the Disability Claims Manager concept as an alternative approach to claims taking. The results of this testing will allow SSA to determine if the process can provide a more user-friendly, efficient and faster way to serve claimants filing for disability benefits.

On October 1 SSA implemented prototypes in 10 states, which combine these features of redesign with other initiatives to improve the adjudicative process at all levels. These prototypes consist of the following:

- Enhanced documentation and explanations of decisions at the initial claims level;
- Revised roles of the disability examiner and medical consultant in State DDS determinations;
- An opportunity for a conference between the claimant and the State DDS decisionmaker; and
- Elimination of the reconsideration step of the administrative appeals process.

In our recent travels, Dr. Daniels and I saw first hand the commitment that SSA and DDS employees have to making the new process work. One SSA Office of Hearings and Appeals (OHA) employee succinctly pointed out that better documented and rationalized DDS determinations would make OHA's job harder because the planned initiatives ensure that only the most complex cases will get to OHA. Additionally, the new mantra for the New York DDS units participating in the prototype testing is "No easy cases to OHA."

#### *Claims at the Initial Level*

SSA is committed to enhancing the quality of decisions by ensuring that SSA policies are applied in a consistent manner by all adjudicators and by improving the development and explanations of disability determinations.

SSA's redesign experience showed that by focusing more attention at the initial determination level, SSA could expect to improve quality and identify eligible individuals earlier in the process.

#### *Revising the Roles of the Disability Examiner and Medical Consultant*

The process being tested in the prototype states enhances the existing roles of the disability examiner/medical consultant team and is derived from previous redesign tests. It permits the DDS disability examiner to make the initial determination of disability without requiring the certification of a medical consultant on the disability forms. The medical consultants will act as true consultants and generally will only be asked to review the more complex cases in which expert medical guidance is needed. Medical consultant review will, as required by law, continue to be required for all SSI childhood claims and in denials in which the evidence indicates the existence of a mental impairment.

#### *Providing a Claimant Conference*

The purpose of the claimant conference is to provide the claimant with an increased opportunity to interact with the disability decisionmaker earlier in the process and to submit further information when evidence in the initial claim is insufficient to make a fully favorable determination. Before issuing a less than fully favorable determination at the initial level, the DDS decisionmaker will contact the claimant to discuss the case. This ensures that claimants can fully present their case and allows them to have a better understanding of how their cases were decided. This initiative serves SSA's goals of improving customer service by making the process more personal and allowing appropriate claims earlier in the process.

Thorough case development and explanation practices at the initial claims level are crucial to achieving accurate decisionmaking. SSA recognizes that assuring more complete development and improved explanations of how the determination was made will require more time to be initially spent on each individual case. However, enhanced claims documentation is essential to furthering the overarching goals of improving the quality of decisions and making the correct decision early in the process. This will ultimately save time for many beneficiaries who will, as a result of these enhancements, be awarded benefits earlier in the process.

#### *Eliminating Reconsideration*

Eliminating the reconsideration step from the current four-level adjudicative process addresses SSA's goal for a streamlined, more efficient process. The improvements to the initial determination process will afford the same benefits without an additional administrative step.

#### *Improving the ALJ Hearing Process*

During the past few years, SSA undertook a number of initiatives to address large hearing workloads that have produced real results. Initiatives such as the establishment of case screening units and specialized decision writing units, helped decrease average processing time at the hearing level from 386 days in 1997 to, under a preliminary analysis, 316 days at the close of FY 1999. Despite these improvements, SSA knew that it had to do better.

Therefore, SSA convened a high-level interdisciplinary team under the direction and guidance of the Regional Chief Administrative Law Judges. The team also worked with an outside contractor (Booz-Allen & Hamilton, Inc.). The team was charged with making recommendations that would build on the recent improvements in OHA quality and timeliness and further reduce processing times, increase productivity, and enhance the quality of service to the claimant. In August of this year, SSA published the team's recommendations in *The Hearings Process Improvement Initiative: Delivering Better Service for the 21st Century*. As stated in the report, it is our intent that, when fully implemented, the Hearings Process Improvement initiative (HPI) will reduce processing times. Average processing times for all hearing cases are projected to fall from an estimated 316 days in FY 1999 to 257 days by the end of FY 2000, and 193 days in FY 2002.

The improvements envisioned by HPI differ from the more traditional response of committing additional resources to the existing hearing process that SSA has taken over the last few years. Instead, the plan relies on process changes, including new administrative processes for local hearing offices to achieve dramatic improve-

ments. On this point, I want to make clear that there are no plans to alter the organizational structure of the Office of the Chief ALJ.

Specific HPI initiatives include implementation of a "National Workflow Model" that combines pre-hearing activities, a standardized pre-hearing conference, and processing-time benchmarks for various tasks. These activities will increase the "front-end" efficiency of our hearing process and get the cases to our Administrative Law Judges sooner for decisionmaking.

With the plan set out in the report, the Social Security Administration continues its commitment to a customer-focused hearings process that is more timely and efficient while maintaining the claimant's right to a fair and impartial hearing. We will begin implementing this plan in January 2000 and expect to have the project fully implemented by March 2001.

#### *Improving the Appeals Council Process*

Having reached decisions on making improvements to the initial and hearing levels, SSA is now carefully looking into what can be done to eliminate the long wait before receiving a decision from SSA's Appeals Council. Later this year, SSA will release its plan to improve service in this area. Elements of this plan will include using attorneys from SSA's Office of the General Counsel to assist with case reviews, permitting claimants with cases pending at the Appeals Council to pursue new claims for periods of time subsequent to the ALJ decisions, and promoting stability and excellence on the Appeals Council by continuing SSA's efforts to obtain legislation that would provide pay parity for SSA's Appeals Council Administrative Appeals Judges with non-supervisory ALJs. Quite simply, forcing individuals to wait more than a year for an Appeals Council decision is unacceptable.

#### *Safeguarding the Integrity of the Program*

As I stated at the outset SSA is committed to ensuring that only those who are truly disabled continue to receive benefits. Thanks to additional funding from Congress, and particularly this committee, SSA is doing more continuing disability reviews (CDRs) than ever. In fiscal year 1998, SSA processed almost 1.4 million periodic CDRs, more than twice the number of CDRs processed in 1996. Based on the CDRs done in FY 1998, SSA estimates that 70,300 beneficiaries will have their benefits terminated after all appeals, resulting in savings of approximately \$4.4 billion when you consider the savings to the OASDI, SSI, Medicare, and Medicaid programs for the ten-year period running from 1998 to 2007. And while the numbers for FY 1999 are still preliminary, our initial data indicates that we will exceed the number of CDRs that we processed in FY 1998 by at least 10 percent.

Importantly, SSA is meeting the goals set in our 7-plan that SSA has shared with you. As you may recall, this plan calls for approximately 9.3 million CDRs to be conducted during the 7-year period, FY 1996 through FY 2002. SSA is on schedule to meet our goal of being up-to-date on all Title II CDRs by 2000, and all Title XVI CDRs by 2002. With your continued support, SSA will stay on top of this important workload.

#### *Enhancing Beneficiaries Opportunities To Work*

Before I close, I applaud this committee's work on the return to work legislation and want to reiterate the Administration's longstanding commitment to encouraging individuals with disabilities to return to work. This year, SSA promulgated regulations to increase the level of earnings at which SSA presumes that a non-blind individual is performing substantial gainful activity from \$500 to \$700. This is just one in a number of initiatives that will be taken to help individuals with disabilities enter the workforce.

SSA's emphasis on returning individuals with disabilities to work is starting to pay off. Since FY 1996, the number of beneficiaries for which SSA reimbursed state vocational rehabilitation agencies for successfully returning beneficiaries to work has almost doubled from 6,024 in 1996 to 11,124 in FY 1999. Also, our latest data show that there were approximately 16,650 working SSDI beneficiaries at the start of FY 1998 and 23,300 working SSI recipients as of June 1999. SSA will continue to do all that it can to help individuals with disabilities return to work.

In addition to the initiatives that SSA can undertake using its current statutory authority, the Administration looks forward to working with Congress to enact the Work Incentives Improvement Act. I understand that there are financing and health-and education-related policy issues that remain to be addressed.

This important legislation improves access to health care for the disabled, establishes a program that allows consumers their choice of private or public employment service providers, creates work incentive outreach programs, and reauthorizes SSA's demonstration authority to test new and innovative ways to return people to work.

## CONCLUSION

Thank you for the opportunity to be here today. SSA is committed to making the Social Security disability programs both more responsive to its claimants and beneficiaries and more accountable to the nation's taxpayers. We will tirelessly continue in our efforts to make Social Security's disability programs the best that they can be. I would be happy to answer any questions.

[The attachments are being retained in the Committee files, and may also be obtained from the Social Security Administration. They are entitled, "The Hearings Process Improvement Initiative, Delivering Better Service for the 21st Century," August 1999, "Social Security and Supplemental Income Disability Programs: Managing for Today Planning for Tomorrow," March 11, 1999; and "How the Social Security Administration Can Improve its Service to the Public," by the Social Security Advisory Board, September 1999.]

Chairman JOHNSON. Thank you for your testimony, Ken, and for your leadership of the Social Security Administration. And I did want to thank my colleague, Congressman Shaw, for this hearing because it is rare in this body that we ever do anything jointly and it is really counterproductive that we don't.

So, we are here today as both Committees and appreciate your leading off with the efforts that you are making to improve the process.

I think one of the most discouraging aspects of this whole situation for representatives, at least for me, has been the rate of overturn at the appeals level. It just is so unfair for people to go through a very long process, receive a denial and then two-thirds get overturned.

Would you describe in somewhat greater detail the changes in the initial process so that the first decision will be more thoroughly thought out?

Mr. APFEL. If we look at the overturn rates at the ALJ level, clearly, a number of cases have been overturned and that's after a very long period of time. Our goal is establish a better front-end process, a stronger process at the initial stage. What I would expect you would see is continued increases in the allowance rates at that level. And comparably I would expect to see lower allowance rates at the hearing level as more of those cases are decided earlier in the process with the steps that we're taking.

I should point out that back in 1995 at the Office of Hearings and Appeals, almost two-thirds of cases were decided favorably. In 1998, that was down to 53 percent and our expectation is—and I say expectation because I do not believe that the Commissioner of Social Security should be establishing targets for allowance rates—there needs to be independence of the ALJ in making that decision—but I believe that the process that we're putting in place will lead to even lower allowance rates if we focus on the front-end of the process—which we're doing.

Also, I want to point out that by the time a case gets to the hearings level, it is in many respects a different case—given the length of time an individual has waited, many times a disability condition worsens; also there is more evidence that the legal community has provided to make the decision. In addition, there is a need for process unification, for all of our adjudicators to have the same understanding about what our policy is.

So, I believe that over time the steps that we're taking will lead to a continued increase in allowance rates at the initial stage and an expectation of a lower allowance rate at the hearings level. Also, with more cases decided up front, you will see shorter processing times throughout the process.

Chairman JOHNSON. And the evaluation of disability, to what extent are you beginning to employ the tools that some of the States have employed to help disabled workers find careers in which their disability is not a disadvantage.

In other words, does your disability review go to that level of consideration and does it also track people into any services that would be appropriate?

Mr. APFEL. I am going to ask Dr. Daniels to handle that question.

Ms. DANIELS. Over the last 5 years, we've seen a steady increase in the number of our beneficiaries who have been referred for and successfully completed vocational rehabilitation. In fact, this year we estimate that this will be the largest number ever to have been referred and actually received services.

We're also working with private providers, additional vocational rehabilitation service providers and have enrolled almost 600 of them to be our partners in helping beneficiaries return to work.

So, we're making good strides and the legislation that is now on the horizon gives us even more tools to work on this issue. Progress is being made and these tools and the additional tools in the future will help us make even more.

Chairman JOHNSON. I thank you. It is one of the reasons why passage of the reform legislation that this Committee worked so hard on and that Chairman Shaw provided such excellent for to get over some of the humps that were ignored in the other body, is so important. Because you are doing so much more now to help disabled people get into the work force and have a whole range of opportunities in the past that they haven't had.

Thank you.

Mr. APFEL. Madam Chairman, if I could also add that the reality is we are still just touching the tip of the iceberg here.

Chairman JOHNSON. I know you are.

Mr. APFEL. There is a lot more—if we look years and years into the future, particularly over the next 10 years, with the aging of the population, we will see an increase in cases that are coming to us because of the simple natural aging of the population in the baby boom generation. As technology changes and as opportunities change, the focus on work is a key one and I believe that the legislation that I hope will be enacted very, very soon, is still only the first step in finding ways to improve incentives to return disabled individuals to work. Particularly as the population ages we need to have greater incentives in this area.

Chairman JOHNSON. I agree with you but I think that also improving the initial disability review so that it goes far more in-depth into the person's medical circumstances and connects that knowledge to our knowledge of the work force is equally important. So, I think without a more thorough initial review process, you aren't going to be able to maximize the number that are going to be able to take advantage of the services that you're now devel-

oping a lot more knowledge of, familiarity with, and capability in. So, I do think they go hand-in-hand. And I am pleased to see you focusing on that initial contact and discussion of the person's problems, because that's where we have the best opportunity.

As you say, it's a year earlier in the process than the overturn decision and we are at a point where in support programs like Medicare, we're also looking at how do we manage chronic illness? And if we can manage chronic illness better and connect it up with disability and work then I think we'll have a system that far better serves our constituents.

Thank you.

Chairman SHAW. Commissioner, maybe it will be very helpful at this point in time if you walked us through the process. Having practiced law, myself, for over 20 years it is beyond me to see why the initial claim filing takes 100 days? Why couldn't that be shrunk to 30 days, certainly no more than 60 days? Why the hearing process people have to wait, even today, even though it has slightly improved, over 400 days, that's over a year, just to get to the hearing process. And then 900 days, that's several years, for the appellate process.

Mechanically, what in the world is going on? Who is not doing their job? What is the problem with why this system has not been streamlined? And the background of this, I would remind you, that in 1996, we tripled the budget—1996, we tripled the budget and the time periods from 1996 to 1997 to 1998 continued to grow. That is what we were after is to try to get these periods online very quickly, get the hearings, have due process, be sure they are fair hearings or accurate hearings. And that they—

Mr. CARDIN. Would the Chairman yield just to explain the tripling of which budget, are we referring to? We are somewhat amazed that we are not aware of tripling the budget.

Chairman SHAW. Oh, this is the—the Congress tripled the budget for continuing disability reviews in 1996.

Mr. CARDIN. For continuing disability reviews?

Chairman SHAW. Yes.

Mr. CARDIN. That's not the process, I think, the Chairman is currently describing. So, I just don't want to give the wrong impression out there that the budget was tripled in regards to initial determination or appeals process.

Chairman SHAW. Well, I think the Commissioner is well aware of the direction that I am going.

Mr. CARDIN. I understand but a continuing review is not the real issue that we're here today on. I don't think it is.

Mr. APFEL. Well, I think it is on both and I could address them both, Sir, if you will—

Chairman SHAW. All of this, all of this impacts the system and it is the total budget that you are working with and when we increase the budget or triple the budget for the continuing disability reviews as we did in 1996, this certainly has an impact. Now—

Mr. CARDIN. Would the Chairman yield?

Chairman SHAW. Well, let's let the Commissioner walk through this and then I will recognize you for any questions that you might have.

Commissioner.

Mr. APFEL. On the issue of funding, this Committee with my full support, established a separate pot of funds for continuing disability reviews to assure that individuals who are already on the disability rolls were having their cases reviewed on a regular basis to determine if their medical conditions had changed, and if there was a greater capacity to be able to engage in substantial gainful employment.

I think it was one of the most important things to happen to the Social Security Administration in several years and I fully supported that endeavor. The effect of that is a doubling of the number of disability cases that are being continually reviewed, and those increases continue.

I would also point out that this separate pot of money was over and above the Federal budget caps that were established which gave the Congress the flexibility to be able to give us that money to do those continuing disability reviews.

So, we are very, very thrilled about that pot of resources and I think we've been using it to take the right steps to continue to do continuing disability reviews of those individuals that are already on the rolls.

Now, our second activity though are the people that are coming onto the rolls, and you pointed out correctly, that the period of time has increased significantly for handling those cases. You asked about both the length of time it takes at the initial stage and at the hearing stage and the appeals stage. I believe that it is unrealistic and probably an incorrect assumption to assume that the initial stage could be done much faster than it is being done now. To assemble the—

Chairman SHAW. If I could interrupt you. That is what I want you to do. I want you to walk us through the process so we can understand the problems and if we are being unrealistic by wanting to shorten that process, I would hope that you would point that out to us.

Mr. APFEL. I will, Sir.

There are four steps to the process currently. At the initial step, the individual comes into one of our field offices and files a claim. The claim is processed by the States after the person has come into our field office.

If it's an application for SSI, the income eligibility is handled by our field office. The disability determination is handled at the State level.

Chairman SHAW. Right. Are we still within the first 100 days?

Mr. APFEL. We are still within the first 100 days. And my own belief is that what we need to strengthen is going to lead to some short-term increases and maybe intermediate-term increases in order to do a better job of developing that case. That means the number of days to process a case at the initial level may rise. It has actually risen, from about 97 days to about 105 days over the last couple of years.

I don't think that is inappropriate. I think spending a longer amount of time at that front-end of the process is a good investment.

If a claim is denied at the initial level, a person can apply for a reconsideration, which is the first appeals step and is a *de novo*



review at the State disability level. That takes a period of time as well.

If the case is again denied—and very few of the cases are overturned at that second step—the process moves on to the Office of Hearings and Appeals for a *de novo* review by our Administrative Law Judges, and the length of time that that has taken as recently as 1997 was 386 days. That's primarily due to the fact that there was a very significant increase in the number of cases that were coming to that level in the early nineties.

We've reduced that from 386 to 316 in FY 1999 and our next projection is about 250 days in FY 2000. But we are going to need extra investments of resources. We have shifted resources throughout our organization into the hearings process to strengthen that process, to ensure that we could get those backlogs down.

If a decision is made that is not favorable at that level it can then be appealed to the Appeals Council. And there has been a significant increase in the number of cases appealed to the Appeals Council due to the fact that the overall volume of cases has increased and, as the number of allowances have gone down at that third step, more cases are being appealed on to that fourth step.

Ultimately, at that fourth step, there are only about  $\frac{2}{10}$ ths of 1 percent of the cases that get decided—if you had 100 cases that were going to be decided favorably, only about  $\frac{2}{10}$ ths of 1 percent would be decided at that last step—so, there are very few cases that are actually being decided favorably at the Appeals Council but it also has a very large backlog.

The proposal that we've been working through, that we've articulated in our disability management plan, will strengthen the front-end of the process and that's probably going to mean a few extra days at that level to do a better job of documenting the case through claimant conferences and the development of a rationale.

Chairman SHAW. We are back in the first—

Mr. APFEL. We are back at the first step and now the actions. At the front-end process we need to do a better job of documenting that decision, to do a stronger case development, obtain better medical information, a rationale developed as to why a denial would be made, and the elimination of the second step. Because the second step, we do not believe, adds a lot of value to the decisions. We would eliminate that step entirely in the appeals process and use those savings from the elimination of that step to help strengthen both the initial step as well as to strengthen what our field offices do at the front-end of the process.

We would like to see the continual decline in the number of days at the hearings process. The hearings process approval plan provides for a more documented case to give to the ALJ so that that ALJ can make a decision independently with better information, earlier in the process. And then, at the Appeals Council, these are the very, very rare cases that go that far through the process—we've got to be able to do some shifting of resources there to get those processing times down. They are, frankly, unacceptable.

Chairman SHAW. What percentage is that, because Ms. Johnson pointed out that 56 percent of them are, in fact, reversed but that percentage may not be fair. What percentage of the people go

ahead and take the judgment that was made in the regular process?

Mr. APFEL. Well, at the initial stages, in 1995, about 30 percent of the cases were allowed. That is now up to 35 percent as more cases are allowed at that step. In the hearings process about 64 percent were allowed as recently as 1995. That's now down to about 53 percent.

So, the goal of process unification, the goal of this process is to have a more aligned process that will lead to better decision-making. It is likely that those decisions will lead to more allowances at the front end and fewer allowances at the hearings levels. So, there has been a decline and a significant decline in the number of cases decided—

Chairman SHAW. Now, most of the cases never get to any of these levels and are decided administratively. So, we are not talking about every case takes 900 days to be heard or even 100 days.

What percentage of the cases get to the hearing level?

I want to be sure we are completely fair as to the percentages that we are looking at and talking about.

Mr. APFEL. Right.

Ms. DANIELS. I would say 20 percent of the cases—if you think of 100 people coming into the agency for a claim, 20 of those will go to the hearings level. So, 80 percent of our customers will be served in the blue range over there on the average processing time.

And then 20 percent will go on into the yellow range.

Chairman SHAW. These are the people who get into the hearing process.

Ms. DANIELS. Hmm-hmm.

Chairman SHAW. I may be misunderstanding this. Someone comes in the door, they have a disability, they do all their paperwork and apply for disability. Now, are they included in that first 100 days or the first days are the people that have been denied coverage?

Mr. APFEL. No. The first 100 days are for the allowances and the denials.

Chairman SHAW. That is for everybody.

Mr. APFEL. Let me try it this way.

Chairman SHAW. So, anyone who comes in the office if they are looking for disability benefits, is included in that first 100 days.

Mr. APFEL. That is correct. The allowance of that, average, allowances as well as—

Chairman SHAW. Now, going to the hearing level. Obviously most of those people, I would assume, in that first 100 days that their cases are disposed of, that not many of them get into the hearing process because many of them have been handled administratively, is that correct?

Mr. APFEL. Well, again of the 100, if there were 100 that were coming in the door, some are decided favorably, some are denied. Those that are denied, some decide not to appeal that decision and some subset—

Chairman SHAW. That is the percentage I want. What percentage of the applicants will go through the hearing process?

Mr. APFEL. Go through the hearings process? About 20 percent.

Chairman SHAW. Twenty percent. What percentage are denied and don't go through the hearing process, do you have that figure?

Ms. DANIELS. That is 43 percent.

Mr. APFEL. That is 43 percent.

Chairman SHAW. And, so, taking it through the hearing process that was 20 percent?

Ms. DANIELS. Yes, 20 percent.

Chairman SHAW. Then they are the ones that are taken up to the 400-day level? They will be caught in this thing for about 400 days. Are some of them dropping out more quickly or are disposed of quickly through this process? Or do they all seem to go to the 400 days?

Mr. APFEL. No. That is an average and, therefore, half are above that amount of time and half are below that amount of time.

Chairman SHAW. Some people actually take more than 400 days?

Mr. APFEL. Because that is the average. But, again, that 400 days was 400 days in 1997 and in the year 2000 we are expecting to reduce it to approximately 250 days. So, we have seen significant improvements. In 1999 we were a little over 300 days.

So, clearly, the steps that we have taken to date have led to sizable improvements. Enough? Absolutely not. Which is why we need the further steps that we are taking.

Chairman SHAW. Now, of the 20 percent, what percentage of those go on to the appellate process?

Mr. APFEL. A very small number. About 3 percent.

Chairman SHAW. So, this is a small, small number that get into the actual appellate level. I guess the question that needs to be asked at this point, what can the Congress do to help you be able to shrink this number down and perhaps even cut it in half?

I mean we have got to have some objectives here. We want to be sure we have fair hearings, complete hearings, both fair to the taxpayer and fair to the beneficiary. What can we do, in the Congress? And as a sidebar to that, I would ask, did the funding that we made that Mr. Cardin pointed out, that was going to the continuing disability review, the tripling of that budget, did that have any impact on this at all?

Mr. APFEL. The funding for the continuing disability reviews had only a very, very small implication here. About 2 percent of the cases handled at the hearings level are appeals of decisions on continuing disability reviews. So, there is only a tiny amount of impact from the continuing disability reviews on the hearings process workloads.

Our goal is to cut processing time in half between 1997 and 2002 and we are on track to move in that direction. I think that what I would urge from the Congress is adequate funding to be able to continue to move forward on our activities and continued oversight. I think this is one that will continually need time, hearings, focus and attention as we move forward on these activities.

I applaud the need for hearings. I would also urge the need for resources because if the resources are not there, it will be hard to do the things that we want to be able to do.

So, there is not a change in law that is necessary in this process except for one, and it's a small one but it's an important one, Mr. Chairman. That is our Administrative Appeals Judges, by law, are

paid less than our Administrative Law Judges. It might sound like a small thing, but—because that is actually later in the process—you kind of expect that their pay would be the same or better.

We have a sizable turnover at that appellate level and actually half of the judges at the Appeals Council have only 2 years of work experience. What we have proposed is legislation to assure that that group of appellate judges be paid at the same level as our Administrative Law Judges. I think that will lead to greater retention in that area, as well. I think it would be an important legislative step to help move the process forward and to strengthen the appeals process.

Chairman SHAW. Better pay gives us better judges, is that what you are saying?

Mr. APFEL. Well, better pay gets us potentially less turnover.

Chairman SHAW. OK.

Mr. APFEL. And better pay gets us greater stability of a work force, which I think would help us.

Chairman SHAW. There is a vote on the floor at this time. So, we are going to have to recess for a moment. Chairman Johnson will be back and she will be recognizing Mr. Cardin as the next questioner.

We will be at recess for just a few moments.

[Recess.]

Chairman JOHNSON. While my colleagues haven't returned, in the interests of time, I'm going to go ahead with some questions that we had discussed among ourselves and believe need to be on the record, and if you would, please, respond?

The Social Security Advisory Board has raised the issue that the teamwork in the Social Security system is inadequate among the various components with the responsibilities for determinations and management of the cases.

To quote from them, they say,

Disability is the area in which the need for better teamwork is most manifest. The administrative arrangements for determining disability have always been fragmented.

In addition, under SSA's current structure, nearly every staff component of the agency has a role in administering the disability programs. The multiplicity of offices involved in the administration of the disability programs makes it inherently difficult for them to work together in a coordinated and cohesive way. Their interests and mission vary and there is no management mechanism to bring them together.

Now, my question to you is, do you believe this is a fair assessment of SSA's management of the disability programs and how would you correct it? Now, the urgency behind my question though derives from my long experience over the last 15 years from the changes that have gone on in manufacturing, the changes that are going on in medicine, if you look at every sector of our economy, the dramatic difference between today and yesteryear is teamwork. Quality, productivity have all emerged to be attainable at levels never before anticipated as a consequence of teamwork.

So, as an agency that is structured on the old assumptions, how do you anticipate improving teamwork and what do you think of the Advisory Board's comment?

Mr. APFEL. I think there is some truth to the comment. I believe that better communication and better teamwork is going to be a key to us to resolve the disability issues. The Social Security Administration—and this is something that many people do not realize—is increasingly a disability agency. Increasing proportions of our work force are involved in the disability front.

That will continue, I believe, for the foreseeable future. Since I became Commissioner, I have strongly voiced the need for one Agency as opposed to separate stovepipes within the organization. The importance of trying to break down “the them versus us” in this organization is critical. It is in every organization, I believe, critical to try to break down stovepipes to get less “them versus us” and more “us,” as a team, getting the work done.

I think we’ve made significant progress in this area in the implementation of the disability management plan. Moving forward to bring people together from the hearings process, the field process, and the State process, together, to resolve how to move forward as an organization, I think we have seen significant improvements here. More to do? Absolutely.

But I think we are on the right path toward greater teamwork and fewer stovepipes through the organization.

Chairman JOHNSON. Of course, good teamwork is, in part, a matter of communication and interest in teamwork.

It is also almost geographic. Again, I have been absolutely stunned by the extent to which this can work—I was in a factory recently that was on the rocks the last time I was there and now is booming along. And, you know, one of the young women employees, said, “This has just been terrific.” She said, “I just decided what I wanted to do and talked it over with my friends and we’ve rearranged ourselves physically. So, all we have to do is lean over and communicate with each other.

I don’t know that you can really attain the goals of improved teamwork without a geographic reorganization of desks and people. But one of the things that has been disappointing to me and some things that have been going on in OSHA is that when I ask the local people, were you a part of this reform, the answer is, no. So, again, it’s really hard for a bureaucracy as big as the United States government’s bureaucracies to try to change from the bottom up. But I would say that in the end teamwork only matters in the office, that’s where it’s most powerful.

So, I don’t know what you are thinking of or what the challenges are that you face, in terms of integrating the functions at the local level. But I can’t imagine that you can make the level of change that is necessary without both structural changes as well as leadership changes. And I do commend you on the focus on this issue from the leadership level.

Mr. APFEL. Well, at the geographic level, I believe that where our field offices have greater connections with the State Disability Determination offices, there is a greater alignment of mission. I don’t think it makes sense to consolidate those offices, of the State facilities as well as the Federal facilities. I think, that to the extent that it could be done, in some areas it could be helpful but there is a specific State role as well as a specific Federal role that I think needs to be continued.

I think that we should be funding States for the initial process and that should continue and at the Federal level having our hearings office handle the hearings process.

I don't think it makes sense to combine one funding stream or to have one office do the whole process. But what that does is create significant strains and it creates a tremendous need for better communications since some activities are funded at the State level, some through our field office structure and some through hearings offices. So, it is a major challenge that you have identified and I agree with you. I think communication and teamwork is going to be key to that.

Chairman JOHNSON. There were 16 recommendations made by the Advisory Commission with priority given to five of these. They are development and implementation of an ongoing joint training program for all adjudicators, development of a single presentation of disability policy binding on all decisionmakers, development and implementation of a quality assurance system that will unify the application of policy throughout the system, improvement in the quality of medical evidence that is used in determining disability claims and development and implementation of a computer system that will provide adequate support to all elements of the claims process.

Do you agree with these recommendations and have you implemented any of them?

Mr. APFEL. Our disability management plan that was released in March addresses every one of those areas and more as needs for improvement. The quality assurance, automation, every one of the areas that were listed by the Advisory Board, are areas that I believe are very important activities for us to work on.

Our plan addresses every one of those areas. We are moving ahead on every one of those areas and as I said, even more.

Chairman JOHNSON. One last question and then I will turn to my colleague, Mr. Cardin to proceed.

Administrative expenses are currently subject to the budget caps. What is the administration's and your agency's view of removing the Social Security administrative expenses from the discretionary caps?

Mr. APFEL. Well, first, I would point out that through the actions of this Committee working with the Administration, working with me, we established about \$400 million of our administrative dollars to be outside of those caps and that is the continuing disability review fund. And I was very supportive of that activity.

I must say that the Administration and the Congress have not yet taken a position on whether the Social Security administrative costs should be outside of the cap. But as the Commissioner of Social Security I personally would prefer to see our administrative costs, in total, being outside of the caps. I think it does create very tough pressures on us and as we see workloads emerge in the future, I would prefer to see us outside of those caps.

Chairman JOHNSON. Could you give me an example of how that flexibility would help you?

Mr. APFEL. Well, if we look to the future we see sizable workload pressures—the aging of the America, the increase in disability cases because of the aging of the American people, is going to cre-

ate some real strains on our system and it would seem to me that automation will be clearly part of our long-term solution for that. Understanding what those resources are going to be, I would prefer to see us outside of the caps.

Chairman JOHNSON. So, with the greater number of aged and the greater chronic debilitation that we are going to face, you believe that you could respond more efficiently and more effectively if you had control over your administrative costs?

Mr. APFEL. Well, I also believe that it does not necessarily have to reduce the role of the Congress in overseeing the size of the budget. That could be determined through the ongoing process with the President's budget request as well as with the Congress.

Chairman JOHNSON. In other words, they could still be appropriated?

Mr. APFEL. I would prefer it, personally, I would as Commissioner.

Chairman JOHNSON. Thank you.

Mr. Cardin.

Mr. CARDIN. Thank you, Madam Chairman.

Let me just follow-up on that because I agree with you. It seems somewhat hypocritical that Congress is taking the Social Security trust fund's or Social Security off-budget and yet the administrative costs are still subject to the budget caps. And then this year, there seems to be a new-found belief that we shouldn't even borrow from the Social Security trust fund for the purposes other than Social Security.

So, it would seem to me it's inconsistent for us to make your administrative budget subject to the caps. And as you point out, Mr. Apfel, that does not mean you can spend what you want to spend, you only can spend what is appropriated. You still have to go through the discipline of a budget process, but it would not be subject to the arbitrary caps that really should not apply to your agency under the other fiscal policies of our country.

So, I agree with you on that and I hope that we can make some bipartisan progress on that issue.

The Chairman, Chairman Shaw mentioned the tripling of the budget for the continuing disability reviews. And I notice in your statement that we have been successful in that regard in that you have processed almost, in fiscal year 1998, you processed almost 1.4 million periodics, CDRs, more than twice the number of 1996. And, as a result of that, we saved \$4 billion by people who shouldn't be on disability being removed from the rolls.

So, I applaud that effort and I think it just goes to show that if you get the resources you need it can be in our financial interest as well as treating our citizens properly.

And I guess the point that I raised in my opening statement and I want to make sure that it is clear on this, is that you have not—as far as your administrative support for processing people to come onto the disability rolls, not for people to come off of the disability rolls and for people to come onto the disability rolls, there certainly hasn't been any increase in your tripling of your administrative budget in that regard. Am I correct on that?

Mr. APFEL. You are correct. There have been increases and I think they have been invested wisely in those activities. But I

would point out, Mr. Cardin, that this issue is a very relevant issue because it deals with what our appropriation will be for this coming year. And over the next 12 months carrying forward on many of the endeavors that we are talking about here today, adequate resources would be helpful to be able to move forward on many of the activities that are before the Social Security Administration.

Mr. CARDIN. Thank you.

Let me point to one area where I think resources does make a difference. And that is, as you have pointed out, we have a serious problem at the appeals council level. This is the level on appeals between the administrative determinations and moving onto the Administrative Law Judges. And, currently at that level, someone who may be entitled to benefits has to wait over a year for that process to be completed. You pointed out, in both your written and in your statements here, the disparity on the salary levels between appeals council judges and Administrative Law Judges and that we have lost nearly half of our 28 judges on the appeals council.

It seems to me that has to be an issue that is affecting the number of days and I would just appreciate your comments as to whether that is one action that we could take that could help in regards to that delay?

Mr. APFEL. That is very much one action that would help. I believe greater stability of that organization in terms of its appeals judge work force would be helpful. That legislation would be one step that would be needed.

I think there are other steps that we can take and I have outlined those in my testimony. I think we are going to need even more than that. We are developing a plan that we want to have developed and published by the end of this year that goes beyond the steps that I have outlined in my testimony. It is not yet ready to be made public because it has not been finalized. But I think several steps are going to be necessary at this stage.

I would point out that very few cases get to that final step. As the Chairman pointed out, we are dealing with a very, very small percent of cases. About 80 percent of the cases are decided at the initial level, they don't go on to the hearings process.

So, because it's a very small activity, I think, we can see some significant change in that last step of the process because the numbers are not that large. There aren't that many cases that are moving to that part of the process.

Mr. CARDIN. So, sure, to summarize, as you pointed out, the initial determination, you think you are pretty close to the reasonable time necessary to make sure that you get all the information you need and to make the correct decisions considering the volume that you expect will be applying for disability. We are not too far off, the number of days that you would consider to be reasonable.

But at some parts of the process you are in the process of making structural changes in order to streamline the process and resources will also play a role, is that a fair summary?

Mr. APFEL. It is, Sir. I think we are about halfway along on where we need to be in the appeals process and we have a long way to go on that final appellate step.

Mr. CARDIN. Good.



One other question I would like to ask and that deals with the decision of the U.S. Postal Service that they may no longer rent post office boxes to persons without Federal identification. I raise this issue because there have been some private groups that have raised a concern of our seniors, particularly in high-crime areas, that use safety deposit boxes to receive their disability checks, could be at jeopardy during the transition to this new policy.

And I guess my question to you or at least my comment to you is that I would hope that you would review this situation and perhaps work with the Postal Service to make sure that seniors are not going to be disadvantaged during this period of time and that we can have a smooth transition or a way to make sure that they receive their checks timely.

Mr. APFEL. I first heard about this issue today, Mr. Cardin, and it does strike me as an area that could create some significant problems potentially for some of our beneficiaries, particularly our SSI beneficiaries. I think there are about a million SSI beneficiaries who do have Post Office boxes, and I don't know how many have photo IDs.

So, we will be reaching out to the Postal Service today to express our reservations and see what can be done to assure continued and fair access to services for our Nation's seniors and disabled Americans.

Mr. CARDIN. Thank you, Mr. Apfel.

Thank you, Mr. Chairman.

Chairman SHAW. Mr. McCrery.

Mr. MCCRERY. Thank you, Mr. Chairman.

And, thank Commissioner Apfel and Dr. Daniels for your testimony and continuing to work with us to try to improve on our disability programs. Mr. Chairman, I don't have any questions but I do want to submit for the written record of the Committee two reports done by the bipartisan Social Security Advisory Board. No. 1, in August 1998, entitled, "How SSA's Disability Programs Can be Improved" and another in September 1999, "How the Social Security Administration Can Improve Its Service to the Public."

These are both excellent reports and I think they ought to be in the record of the proceedings of this Committee.

Thank you.

Mr. APFEL. Mr. Chairman.

Chairman SHAW. Without objection.

Mr. APFEL. Actually I don't think I have asked this yet, but I ask that my written testimony be submitted in the record and also the two reports that we did on the hearings process improvements and disability process improvements also be included in the record.

Chairman SHAW. Without objection, all of the reports just mentioned by Mr. McCrery and by the Commissioner will be made a part of the record.

[The reports mentioned by Commissioner Apfel are being retained in the Committee files.]

Mr. APFEL. Thank you, Mr. Chairman.

Chairman SHAW. Mr. Doggett.

Mr. DOGGETT. I have no questions, Mr. Chairman.

Chairman SHAW. Mr. Portman.

Mr. PORTMAN. Thank you, Mr. Chairman.

Thanks for having this joint hearing of the Subcommittee. Commissioner, thank you for being here and for the work that you are doing to try to reform and improve the disability system.

I guess I just have a general question and it is one that I have had ever since being on the Social Security Subcommittee. When you look at the program from a big picture perspective, you find that about two-thirds of the appeals are being granted.

And I guess that is still true according to SSA. Those are your numbers. They are going down a little. What is your number now? How many of these appeals are being granted?

Mr. APFEL. As recently as 1995, 64 percent were being overturned and decided favorably at the hearing level and in 1998 it was 53 percent. During that same period of time, we have seen an increase in the allowances at the initial level from 30 percent to 35 percent. I think we will, over time, see a continued alignment in that general direction.

Mr. PORTMAN. I like the trend. I would still say that 53 percent is unacceptable. And, you know, there is an old saying which is, we never seem to have time to do it right but we always have time to do it over.

The problem with that is that it costs time and money and it's taxpayer money and I guess my sense would be, again, some of these appeals are probably rightly decided. But it suggests strongly to me that at the initial intake stage we need to do a much better job of having accurate information presented about the claimant's situation, look at it more clearly, treat these people more fairly, unless your appeals process is not treating them properly and be sure that we aren't wasting taxpayer dollars in having all these appeals and having more than half of them even still being granted.

I think that is the one part of the system where, again, when you look at the big picture here, it seems to me we have the most opportunity for improvement.

Mr. APFEL. Mr. Portman, I agree with almost everything that you said. I think that doing a better job at the front-end is going to be the cornerstone to having a better process, a much better process. I don't think that the 53 percent allowance rate is wrong. I don't think that the decisions by the judges are incorrect.

Mr. PORTMAN. Well, then you must think that at the intake side there are major problems since more than half of the decisions are being overturned.

Mr. APFEL. Well, there are two things. No. 1, an improved front-end process, better information, and more solid case development will help. No. 2, as that process moves forward, if we can provide a better process at that front-end, I think we will see fewer allowances ultimately at the back-end of the process, fewer cases will be moving forward to that stage.

Again, I am not at all setting targets for allowance rates. That is up to the independent Administrative Law Judges.

Mr. PORTMAN. Each case has to be decided on its merits but clearly there is a systemic problem.

Let me ask you another question quickly if I might while we still have some time. This has to do with a question that is going to come up in a future panel and you will, unfortunately, be unable to respond. But in your testimony you say there are no plans to

change the organizational structure of the office of the chief Administrative Law Judge, and I think you have confirmed that in correspondence with the Subcommittee. Yet, some of the witnesses we will hear from later today, and you can see it in their testimony, continue to be concerned about that.

They are frankly not convinced that that is the case. Can you today tell us in more detail and on the record how you have reached your decision and what your plans are with regard to reorganization at headquarters?

Mr. APFEL. Well, let me start off and I would like Dr. Daniels to follow-up. We need to strengthen the hearings process and to strengthen the management structure in the hearings process. All of our attention now is being focused on improving that at the hearings office level and through our regional offices. There is no plan to change the role or responsibility of the Chief Administrative Law Judge. So, there is no plan to do that and there has never been.

But I would like Dr. Daniels to answer.

Ms. DANIELS. Yes. Like every rumor there is a nugget of truth here and the nugget is that the Commissioner continually asks his deputies to look for better and more efficient ways to do business. So, we're always having conversations about how can we improve and some folks, when asked that question, have some answers and others have different ones. But the Commissioner never received from the Office of Hearings and Appeals a recommendation to change the Office of the Chief Judge.

But it is true that we're always thinking and talking about how to be more efficient in what we do. But his direction to us has been that we focus our energies on the hearings process improvement in order to make that process work and that is what we are doing.

Mr. APFEL. So, there is no change being contemplated, period.

Mr. PORTMAN. Thank you.

Thank you, Mr. Chairman.

Chairman SHAW. I would suggest that your conferences be behind closed doors because it set off a firestorm of concern.

Mr. APFEL. Welcome, to the life of the Commissioner of Social Security! [Laughter.]

Chairman SHAW. Mr. McCrery.

Mr. MCCRERY. Mr. Chairman, I wasn't going to ask any questions but Mr. Portman brought up something that I think needs further statements. And with respect to the issue of why there are so many claims, initial decisions that are overturned, the gist of the conversation I heard between Mr. Portman and Commissioner Apfel was problems at the lower level of the initial claims, and I am not sure that is the case necessarily, and two of the recommendations of the Advisory Board I think get to this point.

No. 1, develop and implement an ongoing joint training program for all adjudicators and, No. 2, development of a single presentation of disability policy binding on all decisionmakers, both the initial claims at the disability determinations level and at the hearings and appeals level because I have heard from some of the disability examiners that they think some of the regs are being misinterpreted by the Administrative Law Judges and the ones above them.

So, I am not sure where the problem is but I think part of the fix is to get them all in a room, you know, metaphorically speaking, and say this is the policy, you will abide by this policy.

Mr. APFEL. If I could clarify. This is not at all a criticism of the job being done by the State DDSs. The State DDSs—and you will hear testimony today—do a very superb job given the resources that they have, given the complex laws that they have to administer.

What is needed is a greater process unification so that everyone is singing from the same song page. Mrs. Johnson raised the issue of teamwork. It is centrally important, a feature to move forward with and I have gone all around the country discussing this issue. We have got to do joint training with the ALJs and our State DDSs so that there is an understanding and a confluence of agreement on policy.

I would like Dr. Daniels to speak specifically about the steps that we are taking in this area. It is a very important recommendation that we believe in fully. It is going to be part of our solution for the long-term. I don't want to point fingers either way.

Mr. MCCRERY. Nor do I. I just want to make it clear that there is a solution, I think, and I think the recommendations of the Advisory Board are good in that respect and I appreciate the Social Security Administration being willing to follow-up on those recommendations.

Thank you, Mr. Chairman.

Dr. Daniels, did you want to speak to that issue?

Ms. DANIELS. Well, Mr. McCrery, I just want to let you all know that we made a significant downpayment on that training effort over the last few years. We conducted training nationally for every single adjudicator in the disability program area on the five areas where we thought it would be most likely that there would be differences of understanding of the policy.

So, the first downpayment has been made. That doesn't mean that additional training doesn't need to be developed and continued. And if you ask people about that training you will hear that they were very pleased with the outcome of the training, State DDS people together with the ALJs so that they were learning and discussing the cases together.

Mr. MCCRERY. And are you continuing to pursue that? Because I am told that there was an initial splash but since then there has not been much done.

Ms. DANIELS. Well, that initial downpayment was quite extensive, but we are training all of the adjudicators when we issue new policy. So, we are doing—we are continuing to broaden that but, of course, the continuing efforts are not as big as that first downpayment.

Mr. MCCRERY. OK. Thank you.

Chairman SHAW. Commissioner, I would like to follow-up just 1 second on the question of the training. As you know, and I advised you that this question was coming regarding Congressman Calahan recently—he has brought to my attention—the matter of the training program, the ALJ training, which occurred during a 3-day period in late September in Orlando, Florida. And due to the short lead time there were 1,206 hearings that had to be rescheduled.

And while 11 percent of those were rescheduled to an earlier date, the remainder were rescheduled to a later date. So, over 1,200 individuals, who believed that they were unable to work and who were likely experiencing personal financial difficulty, were asked to wait an even longer time and this was perhaps even 3 months longer to have their claim heard, so, that the Atlanta judges could attend training.

It seem to me that the training programs that are necessary should be scheduled in advance so that the scheduling of the hearings could be made around that program. I understand this was called on very short notice. Perhaps you might want to comment on that because I think that does impact directly on the amount of service and the quality of service that we are getting to the beneficiaries.

Mr. APFEL. Thank you, Mr. Chairman.

Well, we always do training and that is important and that will mean that when we do training there can't be a hearing scheduled. But I think in this situation it was called very late in the process. There is a need for us to do a much better job of providing adequate lead time when training is—

Chairman SHAW. Who called the training?

Ms. DANIELS. Yes. The regional Chief Judge was able to finalize the arrangements for that training and it was a very excellent training. Actually, I attended one of the days and it was a very well received and highly motivating and informative.

Chairman SHAW. I'm not commenting on the quality of training or the need for training but it seems that the policy is bad if the Chief Judge can all of a sudden decide that he wants to go down to Orlando and call a training program and really uproot a lot of the appeals that are already in process.

Mr. APFEL. We need to make sure that the training is scheduled far enough in advance to assure that hearings are scheduled appropriately.

Chairman SHAW. Mr. Hulshof.

Mr. HULSHOF. Thank you, Mr. Chairman.

Mr. Commissioner, welcome, Dr. Daniels thank you for both being here. As the Chairman mentioned in his opening remarks and as the gentleman from Maryland also echoed in his statement regarding "Ticket To Work", what a great celebration we have this week to come together in an overwhelming vote, bipartisan vote to really try to remove some of the barriers and obstacles that are in the place of those with disabilities who want to return to work.

And, Commissioner, I remember in the last session of Congress you were in front of us when the former chairman, Mr. Bunning, now in the Senate, and I think because of your willingness to show support for that "Ticket To Work" provision that we were able to forge a good, strong bill which I think we improved in this year's version that passed 412-to-9, I think it was a better bill than we had last year.

But you mentioned, I think, in your testimony that this is a good first step and what I guess I want to follow-up on is what are steps two, three and four? I mean where do we go from here or maybe you could clarify a little further what you meant by just a good first step?

Mr. APFEL. Mr. Hulshof, what I said was I'm not sure what the next steps are but I know it's only a good first step. And the reason why I say that, Sir, is that I'm looking forward, as soon as possible, to a Rose Garden signing. I think it is very important to see that legislation be enacted into law for the sake of America's persons with disabilities.

When 2 years from now, this Committee is looking and saying, how many people are returning to work, there will be more, but it won't be enough. And what we have got to find ways to do in the disability programs is to create greater incentives for people to return to work. We are also going to need to find ways to help employers bring individuals into their labor force. It is going to be both individual incentives as well as employer incentives, I believe. I don't have the answers yet. My focus has been on the Ticket and on the health care expansions, which I think are so critical.

But I believe that this will be a focus of this Committee's activity for years and years to come. Particularly as we see the aging of America, and the new technology that is coming out to assist persons with disabilities to be able to lead a more self-sustaining life. We are going to be focused on this activity year-in-and-year-out. I believe this Committee will be focused more and more on this issue in the future. I don't have the answers yet. I have been focused very singularly on the enactment of that legislation but this will be an issue for all of us to find ways to help both employees and individuals.

Mr. HULSHOF. Well, as in the course of the months ahead if you wake up in the middle of the night and that light-bulb comes in, please, make sure that you jot down those thoughts because I do hope that we can continue to look for ways to provide some incentives. I know that the health issue which has been one of the greatest hurdles or obstacles where those with disabilities are afraid of losing health insurance, the whole idea of the income cliff, which we now have the demonstration project, assuming that this present version is signed into law, and I think even just maybe the lack of consistency, as one of my constituents who sat where you are earlier this year and said, you know, I go to the State vocational rehabilitation office and they ask me, can I work? And I have to tell them, "yes, I can," in order to qualify for their services. And, yet, then I go to the Social Security office and in order to qualify for SSI or SSDI they ask me can I work? And I have to say, "no". And, so, you're giving inconsistent answers just to try to get those services. So, I think that consistency is important.

Let me ask you this question because, again, we have a unique world we work in and often that is, where do we find the revenue offsets to pay for certain things. And I know there is a witness coming behind you, Judge McGraw testifying on behalf of the Federal Bar Association, about this 6.3 percent fee that we are now going to be charging. The testimony of Judge McGraw is that that administrative fee might discourage involvement by members of the Disability Bar in Social Security disability cases which concerns me a great deal. What response do you give to those who make that claim?

Mr. APFEL. First, I would say that I believe that user fees are appropriate in many cases and this is one. The handling of pay-

ment of attorney's fees cost the Social Security Administration about 400-work years. It seems to me to be a legitimate activity for a user fee and I applaud the action of the Committee in this area.

I would say specifically that the legislation also ensures that those costs are not passed on to beneficiaries by law, which I think is key. I also do not believe that it will create a significant disincentive for the legal community to handle these cases. It is, after all, a 6.3 percent, roughly a 6.3 percent fee. So, I don't think that the size of it is adequate enough to create a disincentive. The legislation addresses whether it will be passed on to the beneficiary; it will not be by law. And given our needs for resources, as an agency, creating a user fee in this area will help us pay for that 400-work years that we spend on this activity.

Chairman SHAW. Just to follow-up on that and I am about ready to let you go. I have heard complaints from the legal community as to the length of time it takes for them to be paid. At the end of the adjudication, how long do the lawyers have to wait for their fee, for which they will be paying us a fee for administrative costs, in seeing that they are paid?

Mr. APFEL. We have no direct measurement of attorney fee processing times, but generally, attorney fees are paid within 90 days of the date of the award notice of the claim. Cases that do not require additional development can be completed in less time.

I will provide the specific number for the record, Mr. Chairman, but I can tell you this, it's too long. It is too long. And one of the things that I believe that needs to be done with the enactment of a fee is a commitment that we will assure that those payments take place faster than they do now. Given resource constraints it is—

Chairman SHAW. I am not going to ask you to answer this question now, but perhaps you would answer it within the next few days, because it might be critical. Would it be reasonable or possible to say that if the fee is not paid within 45 days that the administrative costs would be waived or at least decreased?

Mr. APFEL. I cannot answer that at this point in time.

[The following response was subsequently received.]

The President's FY 2000 budget requested that the funds from the 6.3 percent attorney fee assessment be deposited to SSA's Limitation on Administrative Expenses (LAE) account. The intent is to use the funds raised by the fee to improve the administration of the payment process. I hope that the Congress will support it.

Assuming that the Social Security Administration receives the fiscal resources to implement this proposal, it would be my objective to reduce the attorney fee processing time as much as possible consistent with maintaining the program's integrity.

Chairman SHAW. I am not asking you to answer it now because I don't want you to get out on a limb with that one.

Mr. APFEL. You have told me something very important that I will address very, very carefully as you move toward conference.

Chairman SHAW. I think it is reasonable that we are charging the fee and I have no problem with charging the fee. However, I think it is also reasonable that if we are charging the fee that we provide good service and I think that is tremendously important.

Commissioner, I appreciate your testimony. You do a good job. Our job on our oversight is to look for the warts, point the warts

out and try to make some corrections. I certainly hope that you will do all you can to shorten the process.

By the way, you mentioned the pay level of appellate judges. What do the judges, the lower judges and the appellate judges receive in compensation?

Mr. APFEL. The maximum salary for the Administrative Law Judge is \$125,900. The maximum salary for the Administrative Appeals Judge is \$104,800.

Chairman SHAW. They both have life tenure subject to removal, don't they?

Mr. APFEL. Well, ALJs can only be removed through a process through the Administrative Procedures Act and the Merit Systems Protection Board and about maybe 10 or so have been removed over the last decade.

Chairman SHAW. But I mean they don't have to worry about being thrown off every time we change administrations?

Mr. APFEL. No, Sir.

Chairman SHAW. So, they do have some pretty good security and I assume there is also a good pension program that is in place for them.

Mr. APFEL. There is.

Chairman SHAW. So, do you know the reason why the appellate judges are paid less? They are all lawyers are they not?

Mr. APFEL. Well, it goes back to the law when the ALJs' salaries went up and this was an issue that was missed nearly a decade ago. When the ALJs' salaries were increased the Appeals Council Judges were not, so, we are trying to clean up that and create a new incentive for the Administrative Appeals Judges.

[The following response was subsequently received.]

We estimate the cost of the Administrative Appeals Judge salary parity legislation, if enacted, will be negligible or less than \$1 million.

Chairman SHAW. Well, perhaps we can also be supplied with the revenue impact of giving them the salary increase.

Thank you very much for being with us.

[Questions submitted by Chairman Shaw, and Commissioner Apfel's responses, follow:]

#### **Responses from Kenneth S. Apfel to Questions from Chairman Shaw**

*Question 1.* Disability Claim Manager: One witness alleged that, despite the "screaming success" of new disability claims manager positions, SSA is less than fully committed to proceeding with the position. What is your response? Please provide a full report on the status of the DCM initiative.

Response. SSA is fully committed to testing the effectiveness of the DCM position. The DCM Test, by design, is being conducted in two phases over a three-year period. Phase I began in November 1997 and ended in June 1999. Phase II testing started November 1, 1999. We used an independent contractor, The Lewin Group, to help us assess the first phase of testing and provide recommendations for the configuration of the second phase of testing, the formal evaluation period. Their final report concluded that the DCM is a "viable" approach to processing claims, in the limited sense that certain key outcomes were within the ballpark of outcomes under the current process.

During Phase I, DCMs were operating in a controlled environment, which focused on training, both formal and on-the-job (OJT) for state and federal DCMs. Phase I was not intended to provide a statistical basis for a formal evaluation, as DCMs were still trainees working with coaches. While the Phase I findings showed some positive indicators, it is premature to draw any conclusions.

The information obtained during the first phase of testing serves as the basis for conducting Phase II of the DCM Test. Phase II testing is designed to assess the DCM process in a more realistic work environment within a formal evaluation con-



struct. We are currently finalizing the evaluation plan. Phase II is scheduled to run at least through September 2000 and includes 36 DCM units, comprised of almost 200 DCMs, operating in 15 states.

In this second phase, we are collecting data to evaluate quality, processing time, employee and customer satisfaction, and cost effectiveness. Results will be presented in a report in late 2000. After the DCM Test concludes, we expect to have the valid test results needed to determine our next steps to improve the initial disability claims process.

*Question 2. Hearings Process Improvement:* Several witnesses expressed concerns that key stakeholders were not involved in designing the Hearings Process Improvement initiative. Please respond, especially in light of your stated commitment to teamwork in making such changes.

*Response.* In September 1998, Susan Daniels, Deputy Commissioner for Disability and Income Security Programs, commissioned an HPI workgroup to survey current hearing office procedures, looking closely at processing delays and queue times. The workgroup was comprised of individuals representing the broadest possible range of high-level internal stakeholders. The involved unions (AFGE and NTEU) and the Association of Administrative Law Judges (AALJs) received extensive briefings in October 1998. The workgroup drew on the expertise and experience of numerous other individuals within SSA and OHA in crafting the HPI vision, which was conveyed to all stakeholders (including all OHA employees) in January 1999.

An HPI "Process Action Team" (PAT) was formed in the spring of 1999 to carry out the HPI vision, under the guidance of OHA's 10 Regional Chief ALJs (RCALJs). During the successive months, there were many briefings, meetings and other communications with stakeholders. These included presentations to the AALJ's Board of Directors in April 1999 and at the AALJ's conference in July 1999, and extensive feedback from Regional Management Conferences. The Commissioner's HPI report was released in August 1999 to all stakeholders, including unions, the AALJs, SSA and OHA management and management associations, all OHA employees, and the National Organization of Social Security Claimants Representatives (NOSSCR), soliciting their comments and reactions.

More than 3,000 comments, suggestions and questions were subsequently received by the HPI team, and considered in developing the HPI process plan, process guides, position descriptions, and training plan. Agreements were reached with AFGE and NTEU in late summer 1999; these unions were invited to participate in the development of the HPI "process guides" and in the process orientation conducted during the fall of 1999.

Ongoing two-way communication between the HPI team and stakeholders has been strongly and actively encouraged during the past year. Questions and information about the development of the HPI initiative have been continuously received from and provided to OHA employees and other stakeholders by E-Mail, newsletters, flyers, "question and answer" issuances, interactive video training (IVT), and the OHA Website. In addition, members of the HPI team spoke at Regional Judicial Conferences in August and September 1999; briefed the Executive Director of NOSSCR in August 1999, the OHA Managers Association in September 1999, and the newly-formed ALJ's Union in November 1999. They also addressed the NOSSCR membership at a conference in November 1999, and visited numerous Hearing Offices to discuss HPI with the employees and managers.

*Question 3. Attorney Fees:* How long does it take to process claimant benefits when payment of attorney fees is involved? Specifically, what share take longer than 1 month to process? 3 months? 6 months? 12 months? Do claimant benefits and the attorney fee check go out at the same time? How long does it take on average for SSA to process attorney fees at present? Specifically, what share take longer than 1 month to process? 3 months? 6 months? 12 months?

*Response.* The majority of cases involving payment of attorney fees are decided at the hearing level. The average processing time for these cases from date of decision to payment effectuation/award notice to the claimant is about 30 days. Data are not available that break out the share of attorney-involved cases according to the time frames above. Until recently, SSA was required to provide a 15-day administrative review period after the receipt of the award notice, whereby the claimant, representative or the Administrative Law Judge or other adjudicator are allowed to review the case and either request a decrease or increase in the maximum fee that had been approved. This requirement delayed the processing of attorney fees by at least 30 days after the date the claimant received past-due benefits. In addition, SSA cannot calculate the past-due benefits due to the claimant and pay the attorney until all development is complete. In some cases, current benefits only are paid to the beneficiary, pending completion of development.

We have no direct measurement of attorney fee processing times, but generally, attorney fees are paid within 90 days of the date of the award notice of the claim. SSA estimates that we will save approximately 30 days on most cases—the 15 day waiting period and an additional 15 days of mail and routing time.

*Question 4.* Adjudication Officer: Why was this project terminated? How much was spent on it? What lessons, if any, were learned?

Response. The Adjudication Officer's (AO) role was intended to be the focal point for all prehearing activities. The AO was responsible for: explaining the hearing process to claimants and their representatives; working with claimants and representatives to ensure the case was ready for hearing; fully developing the issues; preparing a summary of evidence for the representative and Administrative Law Judge (ALJ); and making fully favorable decisions where warranted by the evidence. In theory, this should have substantially reduced the time for the claimant to navigate through a long hearings process. For those cases in which the AO rendered allowance decisions (15 percent), processing time was substantially reduced for the claimant. AOs forwarded the remaining 85 percent to the ALJ for hearing. It was at the ALJ level where the Agency hoped to have substantial savings in service to the public (case better prepared to go to hearing) and to recoup the AO resources invested. Substantial savings were never realized at the ALJ level, thus failing to make the AO process efficient.

Costs for the AO test were primarily related to long-term travel for participating staff and averaged between \$2–3 million per fiscal year of the test (11/95–9/99).

Although results from the AO test did not support the levels of efficiency needed for national implementation, lessons and experience from the AO test were used in the development of SSA's Hearings Process Improvement Plan. Additionally, AOs continued to provide processing support to hearings workloads during the duration of the test. Specific lessons learned from the AO process included:

- Allowing ALJs to focus on holding hearings and deciding cases. The AO being the focal point for all prehearing activity provided ALJs with additional time to focus on holding hearings and deciding cases. In addition, AOs reduced the number of hand-offs in the hearing office and increased the level of accountability since they were the prehearing focal point. However, the AO did add another step in the hearing office workflow.

- The paramount importance of a timely held hearing. The AO's primary function was to fully develop the record so that the case would be ready to be heard by an ALJ. If cases are not heard in a timely manner, the development becomes dated, resources are wasted, and redevelopment is generally required (double effort). No matter who develops the record for the ALJ, if hearings are not held in a timely manner, the Agency runs the risk of wasting valuable resources.

- Onsite Feedback Process (OFP), designed by the Appeals Team as a cross-component process in which individuals with decisionwriting experience provided AOs with immediate feedback on their decisions prior to release. The process made a significant contribution to the increase in the quality of AO decisions. The OFP is being used as a model to bolster the quality of other processes at the hearing level.

- Document Generation System (DGS) was developed by the Appeals Team and Office of Information Management (OIM) to convert the antiquated WordPerfect macros into a Microsoft Word process. DGS incorporates templates that propagate information into hearing level decisions and can substantially reduce the time it takes to write a favorable decision. This system has been adopted for hearing office use.

- Intercomponent Communication and Cooperation continues as a key to the success of any Redesign initiative. AO sites which had established a close working relationship with their hearing office(s), Disability Determination Services, Field Offices, and Regional Offices were the most successful in terms of providing a product that was of benefit to the ALJs, as well as having direct bearing on AO quality and productivity.

- Process Unification was successful at AO sites. The field offices, hearing offices, and DDSs, which were jointly involved in the AO project, gained a valuable perspective of each other's respective roles in the disability process. The location and assigned mission of the DCM position within the disability process provided the AO with a unique opportunity to bridge the gap that has long existed between the various components that administer the disability process, and demonstrated significant success in doing so. Process unification efforts continue to be a priority for the agency.

*Question 5.* Appeals Council: Please provide background about the Appeals Council, including why certain positions were set up the way they are. What is the justification for the pay raise? Is it true that judges at the Appeals Council level have

less training and experience than those at the Administrative Law Judge level below them? Why? Should this be changed? If so, how?

Response. The Administrative Law Judges (ALJs) are appointed through an OPM register under the Administrative Procedure Act (APA) and they have APA protection. The Administrative Appeals Judges (AAJs), on the other hand, are appointed by competitive application, and while they exercise independent judgment, they are an instrumentality of the Commissioner of Social Security, acting on direct delegation from the Commissioner, and they are not subject to the same protection. Prior to the passage of the Federal Employees Pay Comparability Act (FEPCA) in 1990 (PL 101-509), the members of the Appeals Council AAJs and the ALJs were all compensated at the same level (GS-15). FEPCA created the ALJ pay scale, and drew all Federal APA Administrative Law Judges into its aegis. The Appeals Council AAJs were not included in FEPCA, and they remain compensated at the GS-15 pay level. The Appeals Council AAJs are the only appellate tribunal in the Federal government who are paid less than the hearing-level judges whose decisions they review. Recently, efforts to rectify the disparity legislatively have been supported by SSA and OPM.

The training and professional experience required for appointment of AAJs and ALJs are substantially the same. Although the appointments to the Appeals Council are made by the Commissioner of Social Security through a competitive process and appointments of ALJs are made from a competitive register maintained by OPM, the qualifications for the AAJ position track exactly those of the ALJ position in terms of their legal training, number of years of legal experience, etc.

*Question 6.* Removing SSA Administrative Expenses from the Budget Caps: What are the advantages and disadvantages of moving SSA's administrative expenses out from under the discretionary caps? If legislation were to be introduced, would the Administration support its passage?

Response. Advantages:

- **Protecting Social Security:** Given the concern expressed over the past two years about "Saving Social Security," removing all Social Security resources from the budget process could be perceived as support for this goal and will reassure the public that its investment is being protected.

- **Agency Performance:** The Agency's highly-regarded service increasingly is at risk as the discretionary spending caps require the administrative expenses for the Agency to compete with defense, health and education priorities for limited resources. The September 1999 Social Security Advisory Board report: "How the Social Security Administration Can Improve Its Service To The Public" recognized this when it recommended that the Agency's administrative budget be excluded explicitly from the spending caps, consistent with the treatment of other outlays from the Social Security trust funds.

- **Ensuring Accountability:** The Agency's customers, who represent an increasing workload, especially considering the impending retirement of the baby boom generation, expect responsive and world class services for the contributions and investments they make in Social Security programs. Taking SSA's administrative expenses off budget would permit the review of administrative expenses based on program requirements and workloads rather than a share of the spending caps.

Disadvantages:

- **Discretionary Spending:** If discretionary spending were reduced for the balance of the Labor-HHS Appropriations bill in the process of moving the limitation on administrative expenses account outside of the caps, the Appropriations Committees might view this as a loss of control over spending. Also, the continuing pressure on other programs within the Labor, HHS, and Education Subcommittee, many of which will also be impacted by the aging population, might lead to a shifting of responsibilities to SSA.

- **Mandatory Spending:** If administrative expenses were removed from the discretionary cap, a separate decision would have to be made on how such funds would be classified in the budget and whether offsets would be required.

- **Proliferation of Special Treatment Budget Accounts:** Given the pressures created by the spending caps, other Federal agencies could propose arrangements that would remove their accounts from the spending caps. Maintaining fiscal discipline could be made more difficult.

If legislation were to be introduced, would the Administration support its passage?

The Administration has not yet taken a position on whether the Social Security administrative costs should be outside of the caps. In the future, the Agency will realize increasing workload pressures and significant growth in disability cases because of the aging of Americans, both of which will create a real strain on our sys-

tem. In light of these pressures, as Commissioner of Social Security, I personally would prefer to see our administrative costs, in total, outside of the caps.

We have from the General Accounting Office, Cynthia Fagnoni, the Director of the Income Security Issues, Health, Education and Human Services Division and she is accompanied by Kay Brown who is Assistant Director of Income Security Issues, Health, Education and Human Services Division.

If you would take your seats and we have your full statement which will be made a part of the record and we would ask you to proceed and/or summarize as you see fit.

And if you would, first of all, start out by correcting me on the pronunciation of your name.

Ms. FAGNONI. It is Fagnoni.

Chairman SHAW. Fagnoni.

Ms. FAGNONI. Yes.

**STATEMENT OF CYNTHIA M. FAGNONI, DIRECTOR, EDUCATION, WORKFORCE, AND INCOME SECURITY ISSUES, HEALTH, EDUCATION AND HUMAN SERVICES DIVISION, U.S. GENERAL ACCOUNTING OFFICE; ACCOMPANIED BY KAY BROWN, ASSISTANT DIRECTOR, EDUCATION, WORKFORCE, AND INCOME SECURITY ISSUES, HEALTH, EDUCATION AND HUMAN SERVICES DIVISION, U.S. GENERAL ACCOUNTING OFFICE**

Ms. FAGNONI. Thank you.

Good morning, Mr. Chairman, and Members of the Subcommittee. Thank you for inviting me here today to discuss the Social Security Administration's management of its disability caseload. My testimony today focuses on the status of SSA's efforts to improve its disability claims process and some lessons learned from the agency's efforts to date that can be applied to its current and future claims processing improvement plans. I will also talk about SSA's efforts to review the continuing eligibility of its disabled beneficiaries. The information I am providing today is based primarily on our published reports.

Regarding the status of SSA's redesign efforts, the agency is just beginning to make some headway. In 1994, SSA embarked on an ambitious plan to fundamentally redesign the process. However, we reported in 1996 that SSA had not made significant progress and had not completed any of the 38 initiatives that it had hoped to accomplish during the first 2 years. Recognizing this slow progress, SSA reassessed its approach and issued a revised, scaled-back plan in 1997. The new plan focused on eight key initiatives, each one intended to make a major change to the system.

Last spring, we reported that SSA had not met most of the milestones for testing or implementing its near-term initiatives, and had not yet demonstrated that its proposed changes would significantly improve the process.

SSA has made slow progress in part because even its scaled-back plan was so large and unwieldy that it was difficult to keep on track. While the agency was moving ahead on a number of fronts simultaneously, it also was conducting several large tests. For ex-

ample, in fiscal year 1998, SSA had five tests ongoing at over 100 sites involving over 1,000 test participants. These activities proved difficult to manage. Moreover, SSA's information technology initiative, which was to provide important support for the redesign effort, ran aground.

Based on lessons learned, we recommended that SSA focus on those initiatives most crucial to improving the process. These can include efforts to increase consistency of decisions between the different levels of the process, efforts to help ensure the accuracy of decisions and those that achieve large efficiencies through the use of technology. We also recommended that SSA test promising initiatives together in an integrated fashion and at only a few sites.

In addition, we recommended that SSA develop a comprehensive set of performance goals and measures to assess and monitor results and that SSA take steps to ensure the quality assurance processes are in place to both monitor and promote the quality of disability decisions.

Both of these items are important because implementing process changes can be even more difficult than testing them and process changes may not operate as expected outside the test environment.

After 2 years' experience under its scaled-back plan, the SSA's Commissioner issued a new disability plan in March 1999 which builds on the positive elements of the previous plan. Consistent with our recommendations, SSA's plan places emphasis on certain areas most likely to make a difference, such as efforts to improve the consistency of decisions between the DDS and hearing level.

In addition, SSA is moving to test and assess more changes in an integrated fashion, although the agency still continues large and in some cases stand-alone testing. However, much remains to be done in all of these areas and in some cases, such as the agency's information technology and quality assurance initiatives, SSA is essentially stepping back and adjusting course based on past experience.

This most recent plan contains a new feature, a bold plan to overhaul operations at SSA's hearing offices. The plan contains some positive features. For example, most of the first sites under the new hearing process will be linked with an ongoing initial claims test so that SSA can see how these changes work together. However, this new initiative involves a large-scale roll-out of an untested concept and will no doubt be a challenge to implement. Some key stakeholders oppose this initiative and organizations naturally resist change.

The SSA plan contains specific steps to help promote change such as establishing accountability for benchmarked processing times. But the large number of sites involved combined with a significant hearing office culture change required to make this work indicate the need for top management attention and careful evaluation of progress at each implementation stage.

Turning now to SSA's continuing eligibility reviews, SSA has been far more successful. In fiscal year 1996, SSA and the Congress focused on providing funding to conduct 4.3 million overdue CDRs, and keep up with new CDRs as they become due. SSA developed a plan for a 7-year initiative and recently revised it about a year ago to produce more CDRs because the DDSs had completed

more CDRs than expected under the original plan. SSA now plans to process a total of 9.3 million CDRs for the full 7-year process.

For the last 3 years, SSA has conducted more CDRs than planned. According to SSA officials, DDSs have been able to complete these additional CDRs, because they have received fewer initial claimant applications than expected. In fiscal year 2000, SSA plans to complete an additional 1.8 million CDRs.

Despite SSA's good progress with CDRs, the agency is still challenged to improve its disability claims process. Today, SSA's top leaders have a window of opportunity to improve the process before the baby boom generation reaches its disability-prone years and applications start to rise. Without their commitment and involvement, overcoming the natural resistance to change and ensuring that SSA makes real progress in improving this process could be difficult.

Mr. Chairman, this completes my statement. I would be happy to answer any questions you may have.

Thank you.

[The prepared statement follows:]

**Statement of Cynthia M. Fagnoni, Director, Education, Workforce, and Income Security Issues, Health, Education, and Human Services Division, U.S. General Accounting Office**

Messrs. Chairmen and Members of the Subcommittees: Thank you for inviting me here today to discuss the Social Security Administration's (SSA) management of its disability caseload. The nation's two major federal disability programs, Disability Insurance (DI) and Supplemental Security Income (SSI), provide an important economic safety net for individuals and families. Last year, about 11 million people received over \$77 billion in benefits from these programs. Yet both programs have long suffered from a set of serious problems. The process of applying for benefits is complex and can confuse or frustrate the applicants. Also, SSA has a backlog of applications and appealed cases, and people often have to wait as long as a year for a final decision on their eligibility. Moreover, there are concerns about the fairness of the decision-making process because of the high percentage of applicants who are initially denied benefits and then, upon appeal, are approved. Finally, once people begin receiving benefits, SSA's reviews to determine whether these beneficiaries continue to be eligible have been inadequate.

SSA, as the agency responsible for administering these disability programs, has recognized and taken action to address these problems. In 1994, the agency embarked on an ambitious plan to fundamentally overhaul the disability claims process. Since then, SSA has tested a number of significant process changes and has taken other steps intended to provide the public with better service, reduce the work backlog, and improve the consistency of decisions. SSA has also taken steps to catch up on overdue reviews to determine whether individuals remain eligible for their benefits over time. Now that several years have elapsed since SSA began these efforts, you asked us to assess its progress. Today I will discuss (1) the status of SSA's efforts to improve its claims process, (2) lessons learned from the agency's efforts to date that can be applied to its current and future claims processing improvement plans, and (3) SSA's efforts to review the continuing eligibility of its beneficiaries. The information I am providing today is based primarily on our published reports (see the list of related GAO products at the end of this statement).

In summary, SSA is only just beginning to make headway on improving its claims process but has been far more successful in catching up on overdue eligibility review of current beneficiaries. It is vital that SSA tackle its claims process problems now, before the agency is hit with another surge in workload as the baby boomers reach their disability-prone years.

The agency's first ambitious redesign plan in 1994 yielded little. When the agency scaled back its plan in 1997, progress was slow, in part because even the scaled-back plan proved to be too large to be kept on track. In addition, SSA's proposed changes initially showed disappointing and inconclusive results. We made a number of recommendations designed to improve SSA's prospects for success as it continues its efforts to improve the claims process, and, in March of this year, SSA issued a new disability plan that is consistent with some of our recommendations. For exam-

ple, it places emphasis on initiatives to improve the quality and consistency of decisions. However, much remains to be done. Moreover, the plan also includes a bold new initiative to revise operations at SSA's hearings offices. For SSA to avoid repeating some of the mistakes of the past, this hearings office initiative, as well as the entire set of steps outlined to improve the disability claims process, will require concerted management oversight and diligence.

SSA's experience with catching up on its overdue disability reviews, on the other hand, has been more successful. The agency has exceeded its goals for the last 3 years and appears on track to complete the goals it laid out in a 7-year plan. However, the state agencies conducting these reviews must balance this large workload with their other work, such as determining eligibility for incoming claims. Unanticipated increases in any of the workloads could strain the agencies' ability to keep up their current pace.

#### BACKGROUND

DI and SSI both provide cash benefits to people with long-term disabilities. The DI program, enacted in 1954, provides monthly cash benefits to workers who have become severely disabled and their dependents or survivors. These benefits are financed through payroll taxes paid by workers and their employers and by the self-employed. In 1998, 6.3 million individuals received DI benefits amounting to \$47.7 billion. SSI, on the other hand, was enacted in 1972 as an income assistance program for aged, blind, or disabled individuals whose income and resources have fallen below a certain threshold.<sup>1</sup> SSI payments are financed from general tax revenues, and SSI beneficiaries are usually poorer than DI beneficiaries. In 1998, 6.6 million individuals received SSI benefits of \$27.4 billion.<sup>2</sup> For both programs, disability for adults is defined as an inability to engage in any substantial gainful activity because of a severe physical or mental impairment. The standards for determining whether the severity of an applicant's impairment qualifies him or her for disability benefits are spelled out in the Social Security Act and extensive SSA regulations and rulings.

#### *Problems Are Associated With Complex Disability Claims Process*

SSA's disability claims process has long suffered from problems associated with its complexity and fragmentation. Figure I shows the complex process, which is in part required by law. The process begins when a claimant contacts one of SSA's almost 1,300 field offices across the country to apply for benefits. Once the application is completed, field office personnel forward the claim to one of 54 state disability determination service (DDS) agencies.<sup>3</sup> At the DDS, a team consisting of a specially trained disability examiner and an agency physician or psychologist reviews the available medical evidence and determines whether the claimant is disabled. If the claimant is dissatisfied with the initial determination, the process provides for three levels of administrative review: (1) a reconsideration of the decision by the DDS, (2) a hearing before an Administrative Law Judge at an SSA hearings office, and (3) a review by SSA's Appeals Council. Upon exhausting these administrative remedies, the claimant may file a complaint with a federal court. The cost of administering the disability programs reflects the demanding nature of the process: in fiscal year 1998, SSA spent about \$4.3 billion, or almost 66 percent of its administrative budget, on its disability programs, even though disability beneficiaries are only 21 percent of the agency's total number of beneficiaries.

<sup>1</sup>In 1998, almost 900,000 disabled children received SSI benefits.

<sup>2</sup>About 14 percent of disabled DI benefit recipients have incomes that also qualify them for SSI.

<sup>3</sup>Under a federal-state arrangement, SSA funds these DDSs, which are administered by the 50 states and the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

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The disability claims process has proved to be a lengthy one that can confuse and frustrate applicants. Since the early 1990s, claimants applying for disability benefits have often had to wait over a year for a final decision on their eligibility. Delays can be caused by the need to obtain extensive medical evidence from health care providers to document the basis for disability.<sup>4</sup> In addition, however, because of the multiple levels and decision points in the process, a great deal of time can pass while a claimant's file is passed from one SSA employee or office to another. Moreover, as a result of these multiple handoffs and the general complexity of the process, SSA believes claimants do not understand the process and have had difficulty obtaining meaningful information about the status of their claims.

Long-standing problems with this process were exacerbated when the number of claims for disability benefits increased dramatically between fiscal years 1991 and 1993—from about 3 million to 3.9 million, or almost 32 percent.<sup>5</sup> As a result, SSA's disability workload began to accumulate during this period. Most dramatically, the number of pending hearings almost doubled between 1991 and 1993—from 183,471 to 357,564. Since that time, the number of people applying for disability has fallen to just under 3 million per year; however, the hearings offices in particular have yet to recover. At the end of fiscal year 1998, there were still over 380,000 backlogged hearings. Moreover, SSA expects claims to begin to increase in the near future as the baby boom generation approaches its disability-prone years.

The current process also permits inconsistent decisions between the initial and appeal levels. In fiscal year 1996, about two-thirds of all those whose claims were denied at the reconsideration level filed an appeal, and, of these, about 65 percent received favorable decisions at the hearing level. SSA has determined that, at the initial level, denial cases are more error-prone than are allowance cases, while at the hearing level, allowance cases are more error-prone. This inconsistency has been attributed to a number of factors. According to SSA, an Administrative Law Judge (ALJ) might arrive at a different decision than a DDS because the claimant's condition has worsened, or because ALJs are more likely than DDS decisionmakers to meet with claimants face-to-face, and thus have access to more or different information. However, SSA studies have also found that DDS and ALJ adjudicators often arrive at different conclusions even when presented with the same evidence.<sup>6</sup> This is due, in part, to the fact that DDS and ALJ adjudicators use different approaches in evaluating claims and making decisions. This inconsistency of decisions has raised questions about the fairness, integrity, and cost of SSA's disability program. In fiscal year 1998, the cost of making a determination at the DDS level was \$547 per case, while the cost of an ALJ decision was an additional \$1,385.

#### *SSA Was Behind on Required Periodic Reviews*

In addition to determining whether a claimant is eligible to receive benefits, SSA is required by law to conduct continuing disability reviews (CDR) for all DI and some SSI disability beneficiaries. These CDRs are conducted by DDS personnel to determine whether beneficiaries continue to meet the disability requirements under the law. If DDS personnel find that a beneficiary's medical condition no longer meets the disability criteria, benefits will be terminated. SSA's regulations call for CDRs to begin anywhere from 6 months to 7 years after benefits are awarded, depending on the beneficiary's potential for medical improvement given impairment and age. If a DDS terminates the benefits of a current beneficiary, the individual may ask the DDS to reconsider the initial decision and, if denied again, appeal to an ALJ and, ultimately, to federal court.

Budget and staff reductions and large increases in initial claims work hampered DDS efforts to conduct the required CDRs. Previously, budget reductions in the late 1980s had led to DDS staff reductions, which in turn interfered with DDS' ability to complete CDRs on time. By 1991, DDS staffing levels had begun to increase; however, DDS resources were diverted away from CDRs to process the growing number of initial claims. By fiscal year 1996, SSA had about 4.3 million DI and SSI CDRs due or overdue. As a result, hundreds of millions of dollars in unnecessary costs were incurred each year because ineligible beneficiaries were not identified and continued to receive benefits, and program integrity was undermined.

<sup>4</sup> According to SSA, providers often do not understand the requirements, find the forms confusing, or feel burdened by the requests for evidence.

<sup>5</sup> This increase does not include applications for SSI by aged claimants.

<sup>6</sup> SSA, Office of Program and Integrity Reviews, *Findings of the Disability Hearings Quality Review Process* (Washington, D.C.: SSA, Sept. 1994) and Secretary of Health and Human Services, *Implementation of Section 304 (g) of Public Law 96-265, Social Security Disability Amendments of 1980* (the Bellmon report) (Washington, D.C.: Department of Health and Human Services, Jan. 1982).

## SSA'S PROGRESS IN IMPROVING THE CLAIMS PROCESS HAS BEEN LIMITED

SSA has been engaged in a concerted effort to streamline or redesign its disability claims process for over 5 years. In 1994, it issued an ambitious plan with a multitude of initiatives, which was followed by a scaled-back plan in early 1997. The agency's progress throughout this period was slow, in part because even the scaled-back plan proved to be too large and cumbersome to be kept on track. In addition, SSA's strategy for testing proposed changes initially led to inconclusive and disappointing results. Moreover, SSA's new information technology effort to support the improved disability claims process ran aground. It is not uncommon for government agencies to experience difficulty in similar attempts to dramatically overhaul their operations, and we have made a number of recommendations to SSA to improve the likelihood of its success. For example, we recommended that SSA further sharpen its focus on those few initiatives with the greatest potential for success and that the agency rethink its testing approach.

*SSA Has Made Little Progress Under Initial Redesign Plans*

To address long-standing problems and dramatically improve customer service, SSA embarked on a plan in 1994 to radically reengineer, or redesign, its disability claims process. This plan included 83 initiatives to be completed over 6 years, with 38 near-term initiatives. SSA planned to provide an automated and simpler claim intake and appeal process, a simplified method for making disability decisions, more consistent guidance and training for decisionmakers at all levels of the process, and an improved process for reviewing the quality of eligibility decisions.<sup>7</sup> From the claimant's perspective, the redesigned process was to offer a single point of contact and a more efficient process with fewer decision points. SSA had high expectations for its proposed redesigned process. The agency projected that the combined changes to the process would result, by fiscal year 1997, in a 25-percent improvement in productivity and customer service over projected fiscal year 1994 levels, and a further 25-percent improvement by the end of fiscal year 2000—without a decrease in decisional accuracy. SSA did not expect the overall redesigned process to alter total benefits paid to claimants, but it estimated that the changes would result in administrative cost savings of \$704 million through fiscal year 2001, and an additional \$305 million annually thereafter.

However, SSA did not actually realize these expected benefits. In our 1996 report on SSA's progress in redesigning the claims process, we concluded that, 2 years into the plan, SSA had yet to achieve significant progress.<sup>8</sup> For example, SSA had not fully completed any of the 38 near-term initiatives it had hoped to accomplish in the first 2 years. As a result, the agency was unable to demonstrate that any of its proposed changes would work. The agency's slow progress was due in part to the overly ambitious nature of the redesign plan, the complexity of the redesign initiatives, and inconsistent stakeholder support and cooperation. In order to increase SSA's chance of success, we recommended in 1996 that SSA reduce the scope of its redesign effort by focusing on those initiatives considered most crucial to improving the process and testing those initiatives together, in an integrated fashion, at a few sites.

As a result of our findings, the overall lack of progress, and stakeholder concerns, SSA reassessed its approach to redesign and issued a revised plan in February 1997. The new plan focused on eight key initiatives, each one intended to effect a major change to the system.<sup>9</sup> The plan also included updated tasks and milestones for each key initiative and expanded the time frame for the entire redesign project from 6 to 9 years, ending in 2003. Five of the eight initiatives had near-term milestones; that is, they were to be tested, implemented, or both by the close of fiscal year 1998, while the others had longer-term milestones. Table I summarizes these initiatives.

<sup>7</sup> SSA has a 25-year-old process for reviewing the quality of disability decisions. Under this process, teams of independent reviewers reexamine a portion of the decisions made by DDS personnel and ALJs. However, the Social Security Advisory Board has reported that the current quality review process is flawed and should be revised.

<sup>8</sup> *SSA Disability Redesign: Focus Needed on Initiatives Most Crucial to Reducing Costs and Time* (GAO/HEHS-97-20, Dec. 20, 1996).

<sup>9</sup> Some initiatives in the original implementation plan were deferred. Still others, considered to be good business practices, were "institutionalized;" that is, SSA shifted responsibility for implementing them from the Disability Process Redesign Team to front-line components without further testing or development.

Table 1.—Initiatives in SSA's 1997 Plan to Redesign Its Claims Process

Near-term initiatives	Description
Single Decision Maker .....	New decisionmaker position that would give DDS examiner authority to determine eligibility without requiring physician input
Adjudication Officer .....	New decisionmaker position that would help facilitate the process when an initial decision was appealed
Full Process Model .....	Process change that would combine the two above positions with a new requirement to interview the claimant before a denial and would eliminate the reconsideration and Appeals Council steps
Process Unification .....	A series of ongoing initiatives that were intended to promote more consistent decisions across all levels of the process
Quality Assurance .....	New procedures to build in quality as decisions were made and to improve quality reviews after decisions were made

  

Long-term initiatives	Description
Disability Claims Manager .....	New decisionmaker position to combine the disability claims responsibilities of SSA field office personnel with DDS staff
Reengineered Disability (Computer) System.	Initiative to develop a new computer software application to more fully automate the disability claims process
Simplified Decision Methodology	Research to devise a simpler method for evaluating and deciding who is disabled

The new decisionmaker positions were intended to help make disability decisions faster and more efficiently. Each of these new positions was to be tested in a “stand-alone” fashion—that is, not together with other proposed and related changes. The Full Process Model initiative did, however, combine the two positions and other changes into a single test.

Even under its scaled-back plan, SSA experienced problems and delays. In March 1999, we reported that SSA had made limited progress in redesigning its disability claims process.<sup>10</sup> On the positive side, under its process unification initiative, which contains a number of initiatives to improve the consistency of decisions, SSA had provided uniform training to over 15,000 decisionmakers from all components of the claims process. Agency officials told us they believe this training and other related efforts have contributed to providing benefits to 90,000 eligible individuals 500 days sooner than they might have been provided over the last 3 years. However, overall, SSA had not met most of the milestones for testing or implementing its five near-term initiatives, including its planned changes to its quality assurance process.

Moreover, the agency had not yet demonstrated that its proposed changes would significantly improve the claims process. SSA's stand-alone tests of the two near-term decisionmaker positions consumed valuable staff time, and the results were marginal or inconclusive, thus not supporting the wider implementation of the positions. For example, in one test, SSA hoped that giving certain DDS staff (the Single Decision Makers) more authority to make decisions without requiring the usual physician approval would significantly reduce the time spent reaching an eligibility decision, but the test results showed an average improvement of only 1 day. As a result, rather than implement the two near-term positions, SSA decided to wait for preliminary results of its integrated test. Full and final results of the integrated test are not yet available, but current results show a higher percentage of individuals were appropriately allowed benefits at the initial level, the quality of decisions to deny benefits at the initial level improved, and claimants who appealed their initial decisions had access to the hearing process earlier (primarily because the test included eliminating the reconsideration step).

As a result of the delays and less positive than expected results, SSA decreased its projected administrative savings and postponed the date for realizing any savings. Projections changed from saving 12,086 staff-years from 1998 to 2002 to saving 7,207 staff-years from 1999 to 2003.

SSA's inability to keep on schedule and disappointing test results were caused, in part, by the agency's overly ambitious plan and the strategy for testing proposed changes. Like its original redesign plan, SSA's revised plan proved too large and unwieldy to be kept on schedule. SSA's approach of moving ahead on many fronts simultaneously—including conducting several large tests—was difficult to manage.

<sup>10</sup>See *SSA Disability Redesign: Actions Needed to Enhance Future Progress* (GAO/HEHS-99-25, Mar. 12, 1999). We reviewed only SSA's progress on its near-term initiatives in this report.

For example, in fiscal year 1998, SSA had five tests ongoing at over 100 sites involving over 1,000 test participants.<sup>11</sup> Each test included time-consuming activities, such as coordinating the activities of many state and federal offices and building consensus among such stakeholder Groups as employee unions and associations, state entities, and advocacy groups. In addition, SSA's decision to conduct stand-alone tests contributed to disappointing and inconclusive results because key supports and related initiatives, such as the improved information technology system, were not in place during the tests. SSA conducted these stand-alone tests because it wanted to institute the two near-term decisionmaker positions quickly, hoping to achieve speedy process improvement and administrative savings. When tested alone, however, these positions did not demonstrate potential for significantly improving the process. Finally, other limitations in SSA's test design and management made it difficult for SSA to predict how an initiative would operate if actually implemented. For example, in one test of a new decisionmaker position, hearings office staff did not handle the test cases and control cases as instructed; as a result, certain test results were not meaningful.

*Progress on Key Information Technology Initiative Has Also Been Limited*

At the same time that SSA was working on its five near-term initiatives, the agency was also working on the three longer-term initiatives (see table 1). We did not review two, which were still in the early stages. However, we did assess the agency's progress on its re-engineered disability system, which was to develop a new computer software application to automate the disability claims process.

This new software application was expected to automate and integrate the many steps of the process: the initial claims-taking in the field office, the gathering and evaluation of medical evidence in the DDSs, the payment process in the field office or processing center, and the handling of appeals in hearings offices. In the early 1990s, SSA began designing and developing this software, which was expected to increase productivity, decrease disability claims processing times, and provide more consistent and uniform disability decisions. However, since its early stages, the effort was plagued with performance problems and schedule delays. In July 1999, we testified before the Subcommittee on Social Security that after approximately 7 years and more than \$71 million reportedly spent, SSA no longer planned to pursue this software development effort.<sup>12</sup> This decision was based on findings and recommendations reported by the consulting firm Booz-Allen and Hamilton, which contracted in March 1998 to independently evaluate and recommend options for proceeding with the initiative. On the basis of its evaluation, Booz-Allen and Hamilton reported that the reengineered disability software contained defects that would increase, rather than decrease, case processing time at both field office and DDS sites. First, the software had performance problems that would increase field office interview time. Furthermore, implementing this software at the DDS sites would require that the DDS examiners' caseloads be reduced from 125 cases to 25 cases. Therefore, if this reengineered disability system had been implemented, DDSs would have had to increase their staff to maintain the current processing time.

*Redesign Challenges Warrant Sharper Focus*

SSA is not the only government agency that has had trouble overhauling or re-engineering its operations. According to reengineering experts, many federal, state, and local agencies have failed in their reengineering efforts. One reason for this high degree of failure is the difference between the government and the private sector workplaces. For example, the flexibility to re-engineer a process is often constrained by laws or regulations that require that processes follow certain procedures—such as the requirement, in some cases, that a physician participate in disability cases involving children or mental impairments. Also, government agencies, unlike their private sector counterparts, cannot choose their customers and stakeholders. Agencies must serve multiple customers and stakeholders who often have competing interests. For example, as part of its redesign effort, SSA had identified over 100 individual groups with a stake in the process—both internal and external to SSA—whose involvement was, in many cases, critical.

In addition, following government procedures such as drafting and issuing new regulations and complying with civil service rules makes it difficult to implement changes at the quick pace often considered vital for successful reengineering efforts. Finally, public agencies must also cope with frequent leadership turnover and

<sup>11</sup>These tests included one of the Single Decision Maker, the Adjudication Officer, the Full Process Model, Process Unification, and the Disability Claims Manager.

<sup>12</sup>*Social Security Administration: Update on Year 2000 and Other Key Information Technology Initiatives* (GAO/T-AIMD-99-259, July 29, 1999).

changes in the public policy agenda. For example, SSA faced several policy changes during the last few years, such as the need to redetermine the eligibility of thousands of children receiving SSI benefits, at the same time that the agency was trying to conduct large tests of process changes.<sup>13</sup>

In a March 1999 report, we made a number of recommendations to enhance SSA's prospects for future success.<sup>14</sup> We based our recommendations on best practices from other reengineering efforts and lessons learned from SSA's experiences. We recommended that SSA further sharpen its focus on those initiatives that offer the greatest potential for achieving the most critical redesign objectives. Such initiatives include those that improve consistency in decision-making, such as process unification; those that help ensure accurate results, such as quality assurance; and those that achieve large efficiencies through the use of technology, similar to the goals of the reengineered disability computer system. We also recommended that SSA test promising concepts in an integrated fashion, so that the agency could judge how proposed changes would work in synergy with other changes, and at only a few sites, to more efficiently identify promising concepts. In view of the large investments of time and resources involved in conducting tests, we also recommended that SSA establish key supports and explore feasible alternatives before committing significant resources to testing other specific initiatives.

In addition, implementing process changes can be even more difficult than testing them, and process changes may not operate as expected outside the test environment. Therefore, we recommended that SSA develop a comprehensive set of performance goals and measures to assess and monitor the results of changes in the disability claims process on a timely basis. We also said SSA should take steps to ensure that quality assurance processes are in place to both monitor and promote the quality of disability decisions. SSA agreed with parts of our recommendations, including the need to emphasize process unification and quality assurance.

SSA'S NEW CLAIMS PROCESS PLAN HAS POSITIVE FEATURES BUT FACES CONTINUING CHALLENGES

After 2 years' experience under its scaled-back redesign plan, SSA's Commissioner issued a new, broader disability plan in March 1999 that outlined a comprehensive package of initiatives the agency planned to take to improve its disability programs. Among these initiatives are SSA's planned next steps for improving the disability claims process and the integrity of the disability programs.<sup>15</sup> Consistent with our previous recommendations, SSA's plan places emphasis on certain areas most likely to make a difference, such as process unification efforts to improve the consistency of decisions between the DDS and hearing levels. In addition, SSA is moving to test and assess more changes in an integrated fashion, although the agency still continues large-scale, and in some cases stand-alone, tests. Finally, SSA has laid out a bold plan to overhaul operations at its hearings offices, which is a needed change but is likely to prove challenging to implement.

*New Plan Builds on Past Success, but Much Work Remains*

Under its new plan, SSA decided to build on the improvements identified through its 1997 plan and make changes in some areas where the earlier plan did not bear fruit. Table 2 summarizes the new plan's initiatives to improve the process.<sup>16</sup>

Table 2.—Initiatives to Improve the Disability Claims Process in the March 1999 Plan

Initiatives	Description
Enhance consistency of decisions.	Implement further process unification initiatives, such as more training, unified policy and guidance, and better documentation of the reasons for DDS decisions.
Enhance quality of decisions.	Develop a more comprehensive quality review system.
Improve information technology and support.	Develop and deploy a fully automated disability claims process, using an electronic folder to transmit data from one location to another.

<sup>13</sup>Through the Personal Responsibility and Work Opportunity Reconciliation Act, enacted in 1996 and commonly referred to as welfare reform, the Congress made changes to the SSI program to ensure that only needy children with severe disabilities receive benefits.

<sup>14</sup>GAO/HEHS-99-25, Mar. 12, 1999.

<sup>15</sup>The plan also includes initiatives to enhance beneficiaries' opportunities to work.

<sup>16</sup>This plan also includes provisions to update the medical and vocational guidelines for the disability eligibility process. See SSA, *Social Security and Supplemental Security Income Disability Programs: Managing for Today, Planning for Tomorrow*, Mar. 11, 1999.

Table 2.—Initiatives to Improve the Disability Claims Process in the March 1999 Plan—  
Continued

Initiatives	Description
Streamline the disability claims process.	Test final prototype, which includes the successful features of the integrated Full Process Model test and adds a new feature to better document reasons for DDS decisions. Continue to test the Disability Claims Manager position. Overhaul hearings office procedures.

SSA's new plan is consistent with some of our recommendations, but much remains to be done. The plan emphasizes three areas that we agree offer the greatest potential for improving the overall claims process: process unification, quality assurance, and improved efficiencies through the use of technology. The plan commits the agency to further process unification activities, such as more training, continued efforts to increase uniformity in the way policy and guidance for the DDSs and ALJs are written, and added steps to improve how thoroughly decisions are documented. For the remaining two initiatives, SSA is essentially stepping back and adjusting course on the basis of its experience over the last few years. The plan outlines steps the agency plans to take to offer a more comprehensive quality review system, and SSA officials told us they are going to use an outside contractor to review the agency's approach to quality assurance. Finally, the plan outlines SSA's next steps to improve information technology and support for the disability claims process. SSA plans to use the lessons learned from the failed computer support pilot to develop and deploy an automated disability claims process for use by SSA's 1,300 field offices. This strategy includes using an electronic folder to transmit data from one processing location to another, rather than the current process of moving a paper folder from one location to another.

SSA's new approach to streamlining the claims process contains some improvements over its prior approach, but it also contains some drawbacks that could block or hinder the agency's success. Consistent in principle with our recommendations, SSA is testing a prototype that incorporates a number of initiatives and process changes in an integrated fashion. In addition to testing most of the features of the earlier integrated test, the prototype also adds one new feature to improve documentation on how decisions are made. This new feature is expected to improve both the accuracy of decisions and customer service, which is consistent with our recommendation to focus on quality. On the other hand, this feature is also likely to add to the time and cost of processing a final decision. Although we support integrated testing, by not adding this new feature until the final test, SSA is again testing a new initiative on a large scale and without a good idea of how the change will affect the entire process. This prototype began on schedule this month, according to SSA officials. However, the agency has not yet completed its evaluation plan for this prototype test, so it is difficult to tell how or when the results will be determined.

SSA is also continuing some tests that run contrary to our recommendation that it conduct more integrated tests at only a few sites. For example, SSA is testing the feature designed to improve decisional documentation alone, outside the prototype, as well as integrated within it. SSA is also continuing to conduct a large stand-alone test of the proposed Disability Claims Manager, the decisionmaker position that would combine the disability claims responsibilities of SSA field office personnel and DDS personnel.<sup>17</sup>

This stand-alone test involves nearly 300 people at more than 30 sites. This test is also inconsistent with our recommendation to establish key supports and explore feasible alternatives before committing significant resources to testing specific initiatives. SSA has not systematically explored alternatives to the Disability Claims Manager—an initiative that would require significant change from the current system.

#### *New Initiative to Reform Hearings Offices Will Be Challenging to Implement*

Finally, the 1999 March plan introduces a new initiative to improve the hearing process in order to significantly reduce processing time from the request for a hearing to final disposition. SSA issued a more detailed description of this initiative, called the Hearing Process Improvement Initiative, in August 1999. To develop this initiative, an SSA team worked with a consultant group to, among other things,

<sup>17</sup> SSA is incorporating the Disability Claims Manager position with its final prototype test at three sites.

analyze current processing and workload data and identify root causes for delays. The team found that processing delays were caused by multiple handoffs and a high degree of functional specialization, by the fact that no manager had overall responsibility for ensuring effective work flow in hearings offices, and by inadequate automation and management information. This initiative commits SSA to reduce hearing processing time from a projected level of 313 days in fiscal year 1999 to less than 200 days in fiscal year 2002 through a set of bold and significant changes in how the hearings offices do business.

For example, SSA plans both to implement a new work flow model that will result in fewer handoffs and speedier case handling and to set processing time benchmarks for the overall hearing process and for certain tasks within the process. SSA also plans to make significant changes in the hearings office organizational structure by creating processing groups or teams that will be held accountable for improved work flow. Finally, SSA plans to improve the automation of data collection and management information to better manage appealed case processing. Rather than formally testing these changes, SSA plans to begin a phased implementation at 37 of its 140 hearings offices located in 10 states in January 2000 and then to assess the results to fine-tune the process before further implementation.

We have not yet fully assessed this new initiative, but the appeals level of the process is an area that deserves attention. Most of the previous initiatives focused on improving the process at the initial determination level, leaving problems at the hearing level largely unresolved. SSA's bold plan for hearings office change contains some positive features but will no doubt be a challenge to implement. On the positive side, most of the 37 sites scheduled for the initial implementation of the new hearing process will be associated with the initial claims processing prototype sites, so that SSA can see how these changes work together. However, this new initiative involves a large-scale rollout of an untested concept. Rather than pilot test this change over a number of years, SSA has decided to use a more speedy approach to wholesale change. Organizations naturally resist change, and some key stakeholders oppose this initiative. A lack of stakeholder support could hinder SSA's ability to effect change. SSA's plan contains specific and concrete steps to help promote change, such as establishing accountability for benchmarked processing times. However, the large number of sites involved, combined with the significant changes in hearings office operations required to make this work, require top management attention at each stage of implementation.

#### SSA IS MAKING GOOD PROGRESS IN CONDUCTING CONTINUING DISABILITY REVIEWS

While SSA has experienced problems making changes to its claims process, it has made good progress in catching up on conducting required CDRs to determine whether beneficiaries remain eligible for benefits. In fiscal year 1996, to reduce the unnecessary program costs that result from not performing CDRs, SSA and the Congress focused on providing funding to conduct overdue CDRs and keep up with new CDRs as they become due. SSA developed a plan for a 7-year initiative to conduct about 8.2 million CDRs during fiscal years 1996 through 2002. To fund this 7-year initiative, the Congress authorized a total of about \$4.1 billion. On the basis of the Congress' commitment to fund increased CDR workloads, SSA negotiated with the DDSs to increase their efforts to hire new staff. During fiscal years 1996 and 1997, the first 2 years of SSA's CDR initiative, a total of 1.2 million CDRs were processed.

In March 1998, SSA prepared a revised CDR plan because, among other reasons, the DDSs had completed more CDRs than expected under the original plan. Also, SSA revised the plan to include new requirements contained in the 1996 welfare reform law. Among other changes, this law tightened the criteria to be used to determine whether a child is disabled and required SSA to make a one-time redetermination of the eligibility of children already on the rolls who may not have met the new criteria. Under the new CDR plan, SSA set a goal of 8.1 million CDRs for fiscal years 1998 through 2002. Including the 1.2 million CDRs already processed during fiscal years 1996 and 1997, SSA planned to process a total of 9.3 million CDRs for the full 7-year period.

Now in the fifth year of the 7-year CDR plan, SSA is processing a rapidly growing volume of CDRs. For the last 3 fiscal years (1997-99), SSA has conducted slightly more CDRs than planned. According to SSA officials, DDSs have been able to complete these additional CDRs because they have received fewer initial claims applications than expected and because of improvements made by SSA to its process. In fiscal year 2000, SSA plans to complete an additional 1.8 million CDRs. Table 3 summarizes the number of CDRs planned and actually completed.

Table 3.—CDR Workloads Under SSA's 7-Year Plan, Fiscal Years 1996–2002

CDRs (in thousands)	1996	1997	1998	1999	2000	2001	2002
Planned .....	500	603	1,245	1,637	1,804	1,729	1,721
Actual .....	498	690	1,392	1,664	.....	.....	.....

Source: SSA reports and officials.

In its most recent published Annual Report on CDRs, SSA stated that of the approximately 690,000 CDRs processed in fiscal year 1997, over 89,000 resulted in termination of benefit eligibility because of medical improvement and the renewed ability to work. SSA's Office of the Chief Actuary estimates that after all appeal steps are completed about 50,000 individuals will no longer receive benefits. By the end of fiscal year 2002, the CDRs processed in fiscal year 1997 are expected to result in \$2.1 billion in reduced program outlays. Overall, SSA expects to realize, on average, lifetime program savings of about \$6 for every \$1 in administrative costs.

DDSs must balance their CDR workloads with their other work, and unanticipated increases in any of these workloads could create competition for DDS resources. For example, in our September 1998 report to the Subcommittee on Social Security, we noted that SSA's then-new CDR plan made important assumptions about the numbers of initial disability applications and requests for reconsideration.<sup>18</sup> The plan assumes the current pattern of economic strength and low unemployment will continue. If SSA's assumptions do not hold true, increases in the number of initial disability applications above the currently estimated levels could result. The plan also assumes that there will be no reconsideration request workload during fiscal years 2000 to 2002 because, at the time the plan was written, SSA's plan for redesigning the disability process called for eliminating the reconsideration step after fiscal year 1999. Because the concept of eliminating the reconsideration step is still being tested in the redesign prototype, it is not clear how SSA plans to make adjustments for coping with this workload.

One remaining workload uncertainty involves the way that CDRs are conducted. When a beneficiary's medical condition is not expected to improve, SSA sends the beneficiary a brief questionnaire, called a mailer. These mailer CDRs cost about \$50 each. The other CDRs involve full medical reviews, in which the DDS obtains a new and updated medical assessment of the beneficiary's condition. These reviews are more costly (about \$800 each in fiscal year 1996) because they are labor-intensive and involve work by staff in headquarters and field offices as well as DDS personnel. Prior to 1993, all CDRs conducted by DDSs were full medical reviews. To streamline the process, SSA began using mailers as a screening device. When using the mailer, SSA takes an additional step to determine whether the responses, when combined with other predictive data, indicate that medical improvement may have occurred. If so, the beneficiary then receives a full medical CDR. About 2.5 percent of mailer cases are referred for the more extensive full medical review.

When we completed our 1998 report, SSA's ability to use the mailers to the full extent planned was not yet certain. The decision to conduct a CDR through a mailer is based on statistical profiles for estimating the likelihood of medical improvement derived from beneficiary information such as age, impairment, and length of time on the disability rolls. For several beneficiary groups, SSA was still working to develop statistical formulas for selecting appropriate mailer recipients. Officials told us recently that the agency is still working to perfect its mailer profiles but that they expected the ratio of mailers to medical reviews to be about 50–50 in fiscal year 2000. If SSA found that it had to conduct more full medical reviews than expected, this, too, would increase the DDS workload.

#### OBSERVATIONS

Despite SSA's good progress in catching up on its required CDRs, the agency is still challenged to improve its disability claims process, which remains essentially unchanged outside the test environments. Today, SSA has a window of opportunity within which to improve its processes before claims again start to rise significantly. An economic downturn could increase unemployment, which in turn could result in more applications for disability benefits. Moreover, the aging baby boom generation is nearing its disability-prone years. Taken together, present and future workloads

<sup>18</sup> *Social Security Disability: SSA Making Progress in Conducting Continuing Disability Reviews* (GAO/HEHS-98-198, Sept. 18, 1998).



highlight the continuing pressure on SSA to move expeditiously to improve its disability claims process.

Perhaps the single most important element of successful management improvement initiatives is the demonstrated commitment of top leaders to change. Top leadership involvement and clear lines of accountability for making management improvements are critical to overcoming organizations' natural resistance to change and building and maintaining the organizationwide commitment to new ways of doing business. In addition, as SSA moves to complete testing of its prototype and implement changes at its hearings offices, it is vital that the agency take steps to enable it to closely monitor the results of changes and to watch for early warnings of problems. These steps include maintaining its momentum to improve the consistency in decisions, proceeding with plans to improve its quality assurance measures, and developing a more comprehensive and meaningful set of performance measures. Finally, SSA's track record on developing and implementing its disability claims processing computer system has not been good, and it will be important for the agency to follow industry best practices and apply lessons learned from past efforts to increase its chances of successfully deploying a system that can support its new process.

Messrs. Chairmen, this concludes my prepared statement. I will be happy to answer any questions you or other Members of the Subcommittees may have.

#### GAO CONTACTS AND ACKNOWLEDGMENTS

For future contacts regarding this testimony, please call Cynthia M. Fagnoni at (202) 512-7215. Individuals making key contributions to this testimony included Kay Brown, Yvette Banks, Julie DeVault, and William Hutchinson.

#### RELATED GAO PRODUCTS

*Social Security Administration: Update on Year 2000 and Other Key Information Technology Initiatives* (GAO/T-AIMD-99-259, July 29, 1999).

*Supplemental Security Income: Progress Made in Implementing Welfare Reform Changes: More Action Needed* (GAO/HEHS-99-103, June 28, 1999).

*SSA Disability Redesign: Actions Needed to Enhance Future Progress* (GAO/HEHS-99-25, Mar. 12, 1999).

*Social Security Disability: SSA Making Progress in Conducting Continuing Disability Reviews* (GAO/HEHS-98-198, Sept. 18, 1998).

*Social Security Administration: Technical Performance Challenges Threaten Progress of Modernization* (GAO/AIMD-98-136, June 19, 1998).

*Social Security Administration: Software Development Process Improvements Started, but Work Remains* (GAO/AIMD-98-39, Jan. 28, 1998).

*Social Security Disability: SSA Is Making Progress Toward Eliminating Continuing Disability Review Backlogs* (GAO/T-HEHS-97-222, Sept. 25, 1997).

*Social Security Disability: SSA Must Hold Itself Accountable for Continued Improvement in Decision-Making* (GAO/HEHS-97-102, Aug. 12, 1997).

*Business Process Reengineering Assessment Guide* (GAO/AIMD-10.1.15, Ver. 3, Apr. 1997).

*SSA: Significant Challenges Await New Commissioner* (GAO/HEHS-97-53, Feb. 20, 1997).

*SSA Disability Redesign: Focus Needed on Initiatives Most Crucial to Reducing Costs and Time* (GAO/HEHS-97-20, Dec. 20, 1996).

*Appealed Disability Claims: Despite SSA's Efforts, It Will Not Reach Backlog Reduction Goal* (GAO/HEHS-97-28, Nov. 21, 1996).

*SSA Disability Redesign: More Testing Needed to Assess Feasibility of New Claim Manager Position* (GAO/HEHS-96-170, Sept. 27, 1996).

*Social Security Disability: Backlog Reduction Efforts Under Way; Significant Challenges Remain* (GAO/HEHS-96-87, July 11, 1996).

Chairman SHAW. Ms. Johnson.

Chairman JOHNSON. Thank you, Mr. Chairman.

Thank you very much for your testimony, Ms. Fagnoni.

It is discouraging because it conflicts in tone with the statement of the Commissioner in my estimation. Would you agree with that?

Ms. FAGNONI. I think what we focused on and put in context was the fact that SSA has been attempting to redesign this process for a number of years, and I think SSA is at a point now where it believes its about to make some significant improvements. But it does have a long history of some difficulties in trying to accomplish what is a very difficult and challenging undertaking.

Chairman JOHNSON. Do you know how much money has been dedicated to redesign initiatives?

Ms. FAGNONI. We have asked SSA that question, and it's actually been very difficult for them to estimate. We do know, and I think we have cited it in our testimony, that they have estimates of how much they hope to save through disability redesign.

And over the years, SSA has reduced the estimate of what it hopes to save from this effort in part as a result of some of the early initiatives that didn't pan out as they had hoped.

Chairman JOHNSON. It sounds like CBO. You indicate that the failure to conduct CDRs has resulted in hundreds of millions of dollars of unnecessary costs because of ineligible beneficiaries remaining on the rolls.

SSA has been able to catch up on these reviews since we appropriated some additional money in 1995 to support that effort. And, according to your testimony SSA estimates that it would realize \$6 in savings for every \$1 of administrative costs. In your view, now, is that a realistic assessment?

Ms. FAGNONI. To date, SSA still remains on track with its CDR plan and assuming its assumptions hold, they will be able to stay on track. There are some assumptions that SSA has made that if they were to change might pose difficulties. That has to do with, for example, if the initial claims applications were to begin to rise again due to, say, economic factors changing, that might add to workloads which would make it more difficult to also conduct the CDRs. But at this point they remain on track.

Chairman JOHNSON. Their emphasis on teamwork and change in the working relationships within the agency, is, I think, very important. Are there things that they should be doing that they are not doing? They are certainly making an effort in this area, the Commissioner really seems to be conscious of it and working on it. It does seem to me hard to imagine it really succeeding without some physical reorganization of where people sit and who they communicate with.

Now, my experience has been in other industries but it does seem to me that real change requires some rearrangement of the chess board. So, A, do you think that is necessary; and B, do you think there are things that the Commissioner should be doing but isn't or is he moving along just fine on a very difficult project?

Ms. FAGNONI. We have work underway that will start to take a look at how SSA is preparing its work force for the future and that would include what plans SSA may have to reconfigure where people are located. In the absence of any physical relocation I think what SSA has attempted to do—a lot of it was through technology that so far has not panned out—was to try to link locations through technology. They still have an effort under way under their current redesign process to try to develop what they call electronic folders so that information can be in essence handed-off, not

physically with a physical folder, but rather electronically. That might help with hand-offs and help even when people are not located in the same spot.

But you are right. It's more challenging when you have a process where different pieces of the process are located in different places and different offices and requires a special amount of training and the use of effective technology to try to link those sites together and have them working together.

Chairman JOHNSON. Is there any State in which the State initial determination work force is in the same room, co-located with the Federal work force?

Ms. FAGNONI. Not to my knowledge. The SSA did have an effort underway, for example, where even though they were not co-located, they were testing out an effort where over the phone somebody in the field office could actually hand-off the initial claim once they had talked through the nondisability aspects of the claim to a disability determination service examiner. So, that even though they were not co-located the hand-off would be seamless.

This is something that to date SSA, while they allowed some sites to test this, has not really pushed this kind of effort.

Chairman JOHNSON. I am very interested in this because it also relates to the training program that is being developed. And we have found through our review of the welfare reform system that where the State departments of social services and the State departments of labor have crossed-trained so that there is a seamless knowledge of the broad eligibility and referral system, so that the same worker knows eligibility and work referral, you get far better results.

Now, that hasn't happened in a lot of States, but the degree to which there is real integration at the bureaucratic level is closely related to the success in not only getting people the assistance they need but supporting them in changing their lives. So, since the agency is moving increasingly toward managing disabled people, which have more service needs than retirees, simple sort of retirees, this issue of integration of work forces across Federalist lines is going to be, I think, an important one.

Ms. FAGNONI. They do have an initiative underway that they call process unification and you heard a little bit about that early training effort to try to have the disability examiners and the ALJs, for example, understanding more consistently what the policies are. They actually have now contracted with an outside organization to take a look at quality assurance and making sure that there is a consistent way to look at the quality of decisions which could then, in turn, help improve decisions.

Chairman JOHNSON. I yield to my colleagues now, but my experience in those things has been you can get everybody up—and it's true in this body, too—you can get everybody up to the same understanding but if you don't keep working together and keep that communication you lose it all over again.

Ms. FAGNONI. Right.

Mr. COLLINS [presiding]. Mr. Cardin.

Mr. CARDIN. Thank you, Mr. Chairman.

Ms. Fagnoni, I found your testimony very interesting and very helpful. I think the key is to have in place some performance meas-

ures or quality to determine whether the process is working right or not. We looked at this chart that was presented to us on the average process time and quite frankly we don't know whether it's good or bad. We haven't really established what the right standards should be. It's interesting to point out though that on the initial claims, that the time has not changed that dramatically between 1994 and 1998, and the overwhelming majority of people fall into that first category of initial claims.

So, I guess my question to you is, can you give us any help as to what we should be looking for as far as how to evaluate whether we are making progress in these new procedures or not? Is it the length of time? Is it the uniformity around the Nation? Is there a way that we can evaluate that? We obviously don't want to set any quotas in place because that wouldn't be fair on determinations as to whether they are successful or not successful in overturning a prior ruling. How do we know whether we're making progress or not?

Ms. FAGNONI. We have said in reports and testimonies that one of the things we think is important for SSA to do is measure performance across the entire process. And by that, we mean something that might look like an improvement in one part of the process may have repercussions for another piece. And if they are not looking at the entire process together, they won't have as good a sense of whether or not they are accomplishing their goal.

Basically the goal is to both try to make the right decision more quickly but also to make sure that there is quality assurance, to make sure that it is the correct decision. So, there has to be that balance between trying to do things more efficiently but not in the process of that somehow undermining the quality of the decisions.

Mr. CARDIN. That is certainly a good comment. On the testing, and I think that is—if I understand what your testimony is, that you don't want to see SSA roll-out a new process without testing. But you don't want to see them test it as an individual process, you want integrated testing. Can you explain that somewhat in more understandable english? What do you want them to do?

Ms. FAGNONI. Well, actually under their new prototype they are, in fact, as we said, testing a set of specific initiatives as one whole process. We think that is important and a better approach than when SSA has tested, for example, one piece of that process called the single decisionmaker, that is part of the whole prototype.

They have also tested that single decisionmaker separately. And when they tested it separately, it didn't pan out very well. But they found when they tested that in conjunction with some other changes they were making, there was more promise. That position showed more promise. And what that showed us was that again back to this point that one specific change might have repercussions or might need the support of another kind of change, and unless they test that altogether they won't really understand how the new process should work.

Mr. CARDIN. Thank you.

Thank you, Mr. Chairman.

Mr. COLLINS. Thank you.

Ms. Fagnoni, in your review and in the area of the Administrative Law Judges, and also in the area of technology, did you find

that all of the Administrative Law Judges or most of them or a portion of them or any part of them had had the sufficient equipment, computers and office equipment that they needed to perform their duties?

Ms. FAGNONI. I believe this is an area where SSA is working to improve the technology at the hearings offices, as a part of trying to ensure that the ALJs can process the cases more efficiently. So, I think SSA has recognized that there is some need for improvement in the types of technology and equipment that the offices have.

Mr. COLLINS. Did you find it sufficient? Did they have the sufficient equipment that they needed?

Ms. FAGNONI. I think overall our assessments of SSA's technology is that they have been challenged and they have difficulties trying to improve their technology and that there is considerable need for work.

Mr. COLLINS. Do I take that as it is not sufficient?

Ms. FAGNONI. Right. It needs improvement.

Mr. COLLINS. OK. Well, that's the same thing I hear from them, when I meet with them and talk to them by phone or whatever, that there is a lot of room for improvement in the area of—in fact, some of them have told me that they had to go out and buy their own personal computer to have the equipment in their office to work with.

In the area of the Administrative Law Judge, did you investigate their limits of authority or just how much authority they had over the hearings, themselves, and over the counsel representing the claimant?

Ms. FAGNONI. Mr. Collins, that is an area that I would say we haven't looked in depth. I probably cannot comment on how much authority they have and whether or not it might change under the new hearings improvement process.

Mr. COLLINS. But wouldn't that have a lot to do with processing of applicants' claims is to just how the Administrative Law Judge can handle the hearing and the requirement that they can have over the counsel, the attorney that is representing the applicant?

Ms. FAGNONI. We did do a study, actually it was for you and then-Chairman Bunning, where we looked at what are the factors that affect how quickly cases can move through those offices and what kind of controls the ALJs might have over attorney representatives, particularly where there were concerns that they may be not quickly enough coming forward and being prepared for the cases.

And what we found was that there are some administrative actions that the ALJs can take if they feel that a representative is not adequately representing a client. We also reported that SSA had put some additional regulations in place to try to beef up a little bit of the actions the ALJ can take if they weren't satisfied with the representatives.

But we also found at the same time that some of the reasons why the cases were taking so long had to do with the nature of how cases are reviewed at the OHA level. And one of those factors was the fact that they do review, as the Commissioner pointed out, evidence *de novo*, which means at that point the claimant or the rep-

representative can bring forth new information and that can add to the amount of time it takes to process those appeals.

Mr. COLLINS. But there is a quite a bit of difference in the findings of the first review than when it gets to the Administrative Law Judge under an appeal.

Ms. FAGNONI. Right.

Mr. COLLINS. There are a lot of cases that are reversed.

Ms. FAGNONI. Right.

Mr. COLLINS. A lot of decisions reversed.

Ms. FAGNONI. Right.

Mr. COLLINS. And a lot of times the decisions that are reversed are not necessarily based on new evidence or new information, according to your report here, is that right?

Ms. FAGNONI. In some cases the new evidence can be a factor. Also, another factor is that this, in many cases, may be the first time that the claimant has had a face-to-face interaction, and that has an influence on the outcome. We also, in looking at why decisions differ between the DDS level and the appeals level, found that there are different weights that the two entities place on different kinds of evidence. The DDSs tend to rely more heavily on medical evidence, whereas the ALJs had the additional information from the face-to-face interview and from the attorney representative.

These are some of the factors that SSA is attempting to try to work through in its processing of cases to try to make sure that there is some more consistency in the way the decisions are decided. Also, the two entities were relying on different documents and sources for guidance when they were applying their judgments.

Mr. COLLINS. And there is a lot of difference in the cost of making a determination at one level than the other level, is that not true?

Ms. FAGNONI. That's correct.

Mr. COLLINS. And what are those differences? Do you know?

Ms. FAGNONI. It's in our testimony.

Mr. COLLINS. At the top of page 6.

Ms. FAGNONI. Yes. We say at the DDS level it was \$547 per case and the ALJ decision was an additional \$1,385 per case. So, there is an additional cost.

Mr. COLLINS. What contributes to that difference?

Ms. FAGNONI. I think a lot of the factors have to do with the amount of time it takes to prepare the cases, to hear the new evidence. The way that dollar figures are calculated, an awful lot of SSA's costs have to do with resources that are used in that process.

Mr. COLLINS. Do you normally have attorneys at the first level?

Ms. FAGNONI. It's not as likely and my understanding is that in recent years it's become more and more likely that at the appeal level there will be an attorney involved.

Mr. COLLINS. And who pays the cost of that attorney?

Ms. FAGNONI. If the decision is rendered so that the claimant receives an award, the attorney is paid a portion of the award. My understanding is that if it is denied, then no fee is charged.

Mr. COLLINS. Well, there are a lot more reversals at the second level?

Ms. FAGNONI. That's correct.

Mr. COLLINS. So, that contributes then, too—to part of the additional cost is the cost of the attorneys.

Ms. FAGNONI. Right, that's right.

Mr. COLLINS. So, we need to be more efficient at the first level then, is that what your report is actually saying?

Ms. FAGNONI. That is correct and that is quite a bit of what SSA is attempting to accomplish—what they call it is make the correct decision earlier in the process. I think the Commissioner is correct, though, that there will always be reasons why people appeal and some need to re-look at cases but the effort is to try to have more of that done earlier in the process and fewer cases that need to go to appeal.

Mr. COLLINS. I have to go vote. There will be someone back here in just a moment to fill my chair.

And, thank you, ladies, very much.

Ms. FAGNONI. Thank you.

[Recess.]

Chairman JOHNSON. We will reconvene the hearing.

We now have at least two of us. Let me start by asking you about your testimony. It notes a problem with the disability process that has been longstanding and that is the inconsistencies that exist between the decisions made at the initial claim level and at the appeals level. This is partly due to the fact that different approaches are used to evaluate claims at each level. But how can this inconsistency be reconciled if the Administrative Law Judges use legal criteria that is different from that used at the initial stage?

And we did have testimony from the Commissioner that they are trying to create a system in which there is consistent criteria used. So, to what extent is this continuing to be a problem? To what extent are the initiatives of SSA going to address it and what is your evaluation of where they are with this problem?

Ms. FAGNONI. You are correct that one of the reasons why there are differences in the decisions made between the initial and the appellate levels is that the disability examiners and the ALJs are using, were using and are using different sources of information for their policies and procedures. And SSA is working on this. SSA has issued some policies for the purpose of having both the ALJs and the DDSs adhere to that same policies.

So, SSA has made some efforts to provide for a greater consistency in the basis upon which the decisions are made, but SSA is still continuing this and this is a challenging area. I do think there is only so far that SSA can go in reaching consistency in decisions when you have an appellate level where things are allowed to be determined *de novo*. I mean there are going to be some differences in decisions on some appeals and some appeals that are overturned.

Chairman JOHNSON. Well, I guess the concerning thing to me is that if the facts are different and sometimes the facts do evolve, the facts are different, the decision should be different.

Ms. FAGNONI. Right.

Chairman JOHNSON. But what I am hearing is that the criteria is different. Now, the criteria should be consistent. The eligibility for disability should be set in a consistent manner. That the ap-

peals process is considering different information is not surprising. Sometimes you can't get people to really buckle down and get serious about it at the first level. I mean we've had that through our casework sometimes. People say, well, I thought they would understand that. No. You have to have evidence. You know, you do have to have statements and so on.

So, sometimes the facts can change. But is this a problem of the facts changing or is this a problem of inconsistent criteria? Are the law judges using different criteria?

Ms. FAGNONI. What we had found was that they did—they were going directly to the laws, regulations, and SSA rulings, for example, while the disability examiners were using SSA's policy guidelines, which contain interpretations of laws, regulations, and rulings. In our research, we found that the way the two are written was fairly consistent. I think there was still a concern that because the sources were different this could account for some of the differences in the decisionmaking. And this is an area that SSA is working on, that has not been completed.

Chairman JOHNSON. So, the regulations are not binding on the judges?

Ms. FAGNONI. I think what the judges will tell you is that they will ultimately go to the laws and regulations when they are making their judgments. And I think what SSA is trying to do is administer, when it administers policy pronouncements, to make sure that these are considered, whether it's at the initial or the appellate level.

Chairman JOHNSON. It does seem to create an uneven system and, therefore, an unfair system if the judges have the right to ignore the regulations.

And then there has been an effort to improve the hearings process, the hearing process improvement initiative. What is your assessment of that initiative?

Has SSA learned from its mistakes?

Ms. FAGNONI. SSA is going to be moving out with that initiative without testing it, which is something that is a risk. But at the same time I think that SSA feels it needs to move forward quickly to make some improvements in its hearing process. But as you will hear, I think, from people later today, there is resistance to this change, and this is something that has been a challenge to SSA as it has tried to move forward and make changes. It has met with resistance and has had challenges in trying to overcome that.

Chairman JOHNSON. But is your evaluation that the resistance is the normal resistance that one gets with change or that, in fact, the plan is not well-thought out and that's why it's being resisted?

Or, can you make that judgment?

Ms. FAGNONI. I think, at this point, we have not been given enough detail about how this process will unfold to really understand how well-founded the resistance is. But, clearly, it is something that SSA is going to need to work through if the improvement is to succeed.

Chairman JOHNSON. And just last, do you know how long it takes a private insurance company to process a disability claim?



Ms. FAGNONI. We don't. Actually we have been asked that recently and we tried to see if we could get information and the data just weren't available to allow us to make some kind of comparison.

Chairman JOHNSON. I think we need to keep working on that.

And if there is a big disparity, we need to do more work to find out why.

Mr. Portman.

Mr. PORTMAN. Thank you, Madam Chair.

I appreciate it. I really have two areas I would like to touch on and then ask you about some specific recommendations in your report. The first is this notion of the rate of initial determinations that are overturned. I have initially questioned the Commissioner about the two-thirds rate which is apparently an obsolete number. It is no longer accurate. Now, it is in the 50 percent to 55 percent, I understand, is that your understanding?

Ms. FAGNONI. That is what they were saying, about 53 percent, that the approvals have come down—

Mr. PORTMAN. Reversals.

Ms. FAGNONI [continuing]. At the appeals level but that the approvals have gone up at the initial level.

Mr. PORTMAN. Right.

And let's assume it is 50 percent or 55 percent, that is still, of course, extremely high and would indicate that there is a major dysfunction either at the intake side or at the end of the process, the hearings process. And I think what you are saying to Mrs. Johnson is, you see an issue at the Administrative Law Judge level of inconsistency of application of the criteria that are used at the intake level, is that accurate?

Ms. FAGNONI. I think it is just making sure that the consistency is there at both places, not that there is one or the other that is doing something other than they should.

Mr. PORTMAN. But it wouldn't really matter if they were inconsistent with one another at the hearing side, so long as they were consistent with something at the initial.

Ms. FAGNONI. That's what I meant.

Mr. PORTMAN. In other words—

Ms. FAGNONI. Between the initial and the appeal.

Mr. PORTMAN. So, we've got a disconnect somewhere between the criteria that are being applied at the initial determination level and even at the administrative review level, which I understand there is also another level there that you talk about in your report, and then the criteria that are being applied at the end of the process.

Having said that, in your opinion, is most of the problem—and, again, some of these cases should clearly be reversed. I am not saying that the reversal rates are unreasonably high. I am suggesting that perhaps part of the problem is at the intake side, not just that the criteria are not being established that are consistent. But there may be a real issue as to adequate information being developed at the front-end, taking our time more at the front-end so that the back-end makes more sense.

But do you think the problem, if you were to put it in percentage terms, is more at the front-end or at the hearing end? Is it 50/50? Is it 25/75 or how would you characterize it?

Ms. FAGNONI. SSA's approach, I think, is not unreasonable. If they do more at the front end to try to make that decision the appropriate decision and not have as many cases go to the appeal level, then that will be a better fit—

Mr. PORTMAN. It saves time, it saves taxpayer money.

Ms. FAGNONI. That is right. And I should mention, there are a number of factors why there may be different decisions at the two levels. One thing that has been identified is that the DDSs in the past had not always taken care to lay out their explanations for why they reached their decisions. And, so, when the ALJs were assessing those cases they really did not understand well enough the rationales that the DDSs were using to make those decisions.

And one piece of SSA's efforts is to try and improve those explanations so they will be more useful at the appellate level.

Mr. PORTMAN. Particularly, establishing the factual record so that the ALJ has that record that the initial determination had.

Second area is timing. And again, Ms. Johnson asked you about the private side. It would be helpful actually if GSA could give us some information or GAO could give us some information on the private sector versus the public sector in terms of insurance. Now, the folks who access the Social Security disability system, although it's a social insurance system and defined as such by SSA, it's a different group of people than those who would be looking to private insurance.

One could argue that it's a group of people that is different in the sense that they need their claims processed more rapidly but it's a group that actually is more in need of expedited review.

I think what you will find based on anecdotal evidence, is that the private sector does it much more rapidly. And, so, although I agree with you that at the initial level you want to take your time and get it right so you don't have to waste time, money and taxpayer time in this case at the appeals end, there also has to be some lessons to be learned from the private sector as to how they do process claims more rapidly. And I think that is something that again you all perhaps could provide some good input on.

Final question, as my yellow light is on. You say in your testimony that in the March 1999 SSA plan, is that the most recent plan, that they follow some but not all of your recommendations. Could you be more specific about that as to which recommendations have been implemented and which have not? And how you think by implementing the rest of your recommendations it might affect the success of the effort?

Ms. FAGNONI. Key among the recommendations that SSA has taken into consideration and is implementing is the idea of testing a few key things together in an integrated fashion. And the prototype is an example of that, where instead of testing components individually they are testing different new decisionmaker pieces and the expanded rationales altogether so that they can really see how the different pieces interact with one another and achieve the overall goal.

At the same time SSA is continuing to test some of these specific initiatives separately and that is something that has not worked well for them in the past. And the concern we have about that kind of testing is that it can draw energies and resources away from

their other efforts. And we have recommended for some time that they really focus on those efforts that we have the most payoff and do them in an integrated fashion and follow them through. And I think they are still trying to do some stand-alone tests that could divert resources and make it more difficult for them to focus their efforts.

We have also recommended that they establish performance measures which they have, but we want to make sure that they establish them for the entire process so that, for example, if something that happens in the front end takes more time, they would need to see whether it has an effect on the back end. Because what you wouldn't want to have is more time at the front end and no overall positive effect from that effort.

Mr. PORTMAN. Right.

Ms. FAGNONI. So, that was another—having the performance measures. And we have also recommended that they make sure that there is quality assurance, both throughout the process as well as after it is completed, because as part of trying to do things differently at the front end, we also need to make sure that they are making the correct decisions at the front end.

And some of these are aspects that SSA is still developing. But we do see in the prototype an effort to test in an integrated fashion which we think is a positive step.

Mr. PORTMAN. Thank you.

Thank you, Madam Chair.

Chairman JOHNSON. Mr. Cardin.

Mr. CARDIN. Thank you, Madam Chair.

Just following up on Mr. Portman's point.

I guess I have some concern about us spending a lot of attention on the percentages as being the performance standards for quality. On first blush, the reversal rates going from in the 60 percentages to in the 50 percentages when you get to the judges appears to be a positive direction, but I'm not sure. I just don't know. A lot depends on how many appeals are taken to that level, what percentages of appeals.

And, as you point out, a lot is dependent upon how well the process works in the front end when you get into the appeals process. I think it underscores the point of your testimony where we have to have sound performance measures.

And I am not sure we spent a lot of time thinking about how we evaluate the progress we are making other than looking at percentages or looking at how long it takes to get through the process. And I really do think we have got to spend a lot more time thinking about these performance measures as to how successful we are. If we place people on disability very quickly who shouldn't be there, that is not good either.

Ms. FAGNONI. Right, that is right.

Mr. PORTMAN. So, I really think that we need to think about this. Or if we reverse decisions that shouldn't be reversed, that is not good either.

Ms. FAGNONI. That is right.

Mr. PORTMAN. And, of course, we want independence with our judicial reviews and there may very well be a difference in the way that the judges look at disability matters as the way it is being ad-

ministered. And if that happens, then we also have a problem that we need to correct, because I mean some people are getting benefits, where others, in similar circumstances, are not.

So, I think there is a lot of interaction here that we really need to think about and I applaud you for pointing out that we need to have performance evaluation standards and we need to think about that more than we have in the past.

Thank you, Ms. Johnson.

Chairman JOHNSON. Thank you very much for your testimony.

Ms. FAGNONI. Thank you.

Chairman JOHNSON. I would call up now the final panel.

Ron Niesing, president, National Council of Social Security Management Associations, Inc., from Green Bay, Wisconsin; Mr. Skwierczynski, president, National Council of Social Security Administration Field Operations Locals, from Chicago; Michael Brennan, president, National Council of Disability Determination Directors; The Honorable Ron Bernoski, Administrative Law Judge and president, Association of Administrative Law Judges, from Milwaukee; The Honorable Kathleen McGraw, Administrative Law Judge and Chair, Social Security Section of the Federal Bar Association, Atlanta, Georgia; and Nancy Shor, executive director, National Organization of Social Security Claimants' Representatives, from New Jersey.

It is a pleasure to have you all and we will start with Mr. Niesing. I am sorry, but we are rather late in getting to you. I hope it has not been an inconvenience.

Mr. Niesing.

**STATEMENT OF RON NIESING, PRESIDENT, NATIONAL COUNCIL OF SOCIAL SECURITY MANAGEMENT ASSOCIATIONS, INC., GREEN BAY, WISCONSIN**

Mr. NIESING. Thank you, Chairman Johnson for the opportunity to present the views of over 3,000 members of the Management Team in Social Security Field Offices and tele-service centers on disability program issues.

SSA is the face of the Federal Government for many of your constituents. We assist the public during life changing events, such as retirement, the death of a loved one or when serious disability strikes. The Social Security Advisory Board has just issued a very important report that touches upon many of the important issues that impact directly on our management of the disability program. The report is based on actual visits to field offices where service is delivered to the public.

During these visits, discussions were held with employees, managers and community groups. Important and far-reaching recommendations were made as a result of these visits. We strongly agree with the Advisory Board recommendations. First, SSA's administrative budget must be excluded from the statutory caps placed on discretionary spending. The agency could hire staff that is needed to process current and projected work.

Second, the agency needs to develop a long-term service delivery plan that would show how public services will be delivered. Our association has actually delivered such a plan from the perspective of those who serve on the frontlines. This plan has been shared with

the Commissioner and hopefully will serve as a starting point for discussion of service delivery planning.

Third, the agency needs to have a work force in place to address the retirement wave for current employees. We must have funding to advance hire for retiring employees so that we can take advantage of their expertise for training and mentoring of new staff.

Why do we agree with these recommendations? First, our workloads. In the last 15 years, we have experienced considerable growth in disability workloads. 1.6 million claims were filed this year. More dramatic increases were realized in the SSI disability program. By the mid-90s, 2.25 million SSI claims were filed annually; 90 percent of them for disability. Continuing disability reviews have increased to 1.8 million to be processed for fiscal year 2000.

The baby boom generation is now entering the peak years for disability incidence. SSA actuaries project an increase of 47 percent in Social Security disability claims and 10 percent in SSI claims.

Disability claims are complex and labor-intensive workloads. The process is still largely paper-driven and disability issues are difficult to explain and difficult to understand for filers. For SSI claims, we must also develop issues such as income, resources, living arrangements and family composition.

Second, staffing issues. Staff in field offices have declined almost 1,000 positions in the past 6 years. The number of claims representatives—those responsible for largely handling disability workloads—has increased slightly but these small increases have not kept pace with the growing volumes of work, the complexity of work and, in addition, clerical support positions have basically disappeared.

Additional resources would allow for more complete development up front, perhaps reducing the amount of time needed in the States to make a medical decision and ultimately reducing perhaps the number of appeals that are filed.

Management positions have also been cut to meet NPR initiated mandates to reduce staff/management ratios to 15 to 1. There has been an 83 percent drop in frontline supervisors since 1993, down from 2,194 to only 380 today.

As a result there has been a decrease in quality reviews, less time devoted to training, mentoring and coaching, and reduced public relations activities that are important in getting information out to the public on disability.

Third, most current employees will retire over the next 10 years. We are in the initial planning stages to handle this crisis but we do not have a service delivery plan or vision in place that dictates how or where we will process future workloads and place employees.

Finally, I would like to touch upon a number of our disability initiatives. The disability claims manager or DCM position, combines into a single position the roles of the Federal claims representative, the State disability examiner, and the medical consultant. The result is a single point of contact for beneficiaries. Interviewing and collection of data is more complete. Employees have increased job satisfaction, morale and feel they are providing better service to the public.

Processing times under the DCM pilot are significantly lower. Cases in a New Jersey site have been taking 73 days to process compared to 147 days in other New Jersey offices. In a Georgia office, processing times are 42 days lower for Social Security claims and 43 days lower for SSI claims.

Claims quality is at least equal to or better than the claims quality as claims are processed under the current process.

Allowance rates are also somewhat higher, thereby, reducing the number of claims going to hearings and appeals. We are looking at a new employment support representative position that will start in January which supports return to work initiatives as currently being looked at in Congress.

These employment support representative positions need to be placed in field office settings where we can meet face-to-face with claimants and take advantage of community contacts that have already been established with the medical community.

In summary, to process this workload effectively we need budget constraints lifted, increased staff and long-term service delivery planning.

I appreciate the opportunity to cover these issues with you today. Thank you.

[The statement of Mr. Niesing follows:]

**Ron Niesing, President, National Council of Social Security Management Associations, Inc., Green Bay, Wisconsin**

The National Council of Social Security Management Associations (NCSSMA, Inc.) has served as the voice of Social Security Administration (SSA) field office and teleservice center management for 30 years. As president, I represent over 3,000 members of SSA's management team in 1,393 facilities located across the nation. NCSSMA works constructively with Agency management officials to advance the mission of the SSA. We encourage the establishment of policies that best serve the public interest, and we work to ensure that the necessary resources are in place to deliver responsive and efficient service to the American public.

For many of our citizens today, the SSA serves as the face of the Federal government. More people visit or call a Social Security office each day than any other agency. Individuals also visit our facilities to inquire about state and local services, or they have questions about other Federal agency programs. Your constituents rely on our staffs, serving on the front-lines, during important, life-changing events such as retirement, the unexpected death of a loved one, or when a serious disability strikes. We applaud the recent report of the Social Security Advisory Board in its findings on improving the services of the Social Security system and we are pleased that their research reflected many of the concerns that Social Security managers have expressed in recent years.

In the following sections, we provide information on the growth of disability workloads since the mid-1980's. The complexity of these workloads is highlighted. We review the downsizing of SSA staff and management over the same period, and provide some insight into the effect of reduced staff in how workloads are handled. New initiatives to address the disability workload are covered. Finally, suggestions are offered that can result in better public service and improvements in the disability process.

GROWTH IN DISABILITY WORKLOADS

We applaud you for holding this important hearing on the disability program. In the last 15 years, we have seen significant growth in the disability workload at Social Security. In 1985, disability related activities constituted about one-fourth of the Agency's total workyears. Over the intervening 15 years, disability workloads have grown to claim one-third of the Agency's resources in the processing of new claims, conducting continuing disability reviews (CDR's), and handling other post entitlement issues for beneficiaries and their families.

In 1985, the Agency processed almost 1.25 million applications for Social Security disability benefits. The number of new disability filings peaked at almost 1.9 million

new cases in 1995 before beginning to level off at between 1.5 and 1.6 million cases annually toward the end of the current decade. During the same period of time, even more dramatic increases were realized in the filing of disability claims under the Supplemental Security Income (SSI) program. In the mid-1990's almost 2.25 million new claims for SSI benefits were filed each year, almost 90% of them for disability benefits. The effect of recent legislative changes makes it more difficult for some children to become eligible for SSI benefits; this can be seen in the more recent statistics on SSI claims filings.

Other disability-related workloads have also grown. Until the mid-1990's, our field offices were conducting approximately 200,000 CDR's each year. As Congress became more concerned about the burgeoning number of individuals on the disability rolls, legislative mandates were passed, and additional resources given, which set specific targets for the Agency to conduct CDR's. The number of CDR's increased dramatically, hitting almost 1.65 million for fiscal year 1999. A target of over 1.8 million CDR's has been established for the current fiscal year. The number of Agency workyears dedicated to this workload has more than doubled during the same period.

The picture for the future provides positive evidence that these workloads will continue to grow. The baby boom generation is now entering their peak years for the incidence of disability and SSA will see another dramatic increase in the number of disability claims being filed. SSA actuaries are projecting an increase of 47% in the number of Social Security disability beneficiaries between now and 2010. A lower but still significant increase of approximately 10% will occur in the number of SSI recipients receiving a disability benefit.

#### DISABILITY WORKLOADS ARE COMPLEX

These numbers are important because the disability process is one of the more complex and labor-intensive workloads handled by the Agency. Administrative expenses devoted to both the Title II and Title XVI disability programs are significantly higher than they are for the retirement and survivor's programs. Much of the disability process is still paper driven, as medical and work histories are still processed by paper application. Disability issues can be exceedingly complex. Work related issues, such as substantial gainful employment, trial work periods, extended periods of eligibility, and other work incentive provisions are difficult to explain and difficult to understand for new beneficiaries.

Processing claims under the SSI program is even more labor-intensive, difficult, and time consuming. Not only must a disability determination be made, but field office employees must develop issues such as income, resources, living arrangements, and family composition before a final determination of eligibility can be made. Many of these individuals are then selected for annual reviews of their eligibility status.

#### MORE RESOURCES ARE NEEDED TO HANDLE THE DISABILITY WORKLOAD

While our workloads have grown in volume and complexity, the staff allocated to process this work has diminished over the years. During the last five years, staff in field offices has declined almost 1,000 positions. Most non-medical development for disability claims is completed by the staff in SSA field offices. While the number of claims representatives, the position responsible for developing and processing disability applications, has increased by 604 positions over the last six years, these increases have not kept pace with the increased volume and complexity of overall workloads. Due to the pressure of increased workloads, claims representatives are forced to cut corners in order to meet productivity goals. The interview process for disability claims is very long and the program is difficult to understand for many claimants. One way to reduce interview time is to eliminate explanations of various disability claims procedures, relying on claimants to read this information on their own in pamphlets and other printed material provided at the interview.

The majority of the overall cuts in SSA have been in the management ranks. These cuts were made to meet NPR-initiated staff to management ratios of 15:1. Most significant were reductions of 83% in the number of Operations Supervisor positions, from 2,195 supervisors in 1993 to only 380 in 1998. How have these reductions in management affected the disability process? Quality reviews have been curtailed in most facilities.

NCSSMA conducted a survey of managers from across the country, covering all the regions and all types of offices—large and small, urban, suburban, and rural. A large majority of these managers feel quality has slipped due to the decrease in quality reviews. As new policies and procedures are implemented, there is less time devoted to training, mentoring, and to follow-up reviews to ensure staff under-

standing. There is less management available to control workloads and to ensure that staff is meeting Agency priorities.

Compounding the current shortage of staff is the impending retirement wave that will be hitting SSA over the next ten years. The challenge will be to replace experienced workers, provide training and mentoring for new employees, and at the same time meet Agency goals for workload processing and quality. This will be a difficult challenge unless SSA can replace staffing losses before they actually occur. Advanced hiring would allow experienced employees, before their retirements, to serve as trainers and mentors for new staff. The Agency would be in a better position to continue meeting public service needs under this scenario.

With sufficient resources, our community-based field offices and employees are in a perfect position to assist disabled individuals and their families in filing for disability benefits and pursuing initiatives to return to work. Our employees and management have worked for years with community resources and medical providers. Field offices provide the only opportunity to meet face-to-face with beneficiaries, employers, advocates, and medical providers. All of these can work together as a team to process claims and assist workers in their efforts to return to work.

#### NEW INITIATIVES CAN IMPROVE THE OVERALL DISABILITY PROCESS

The Disability Claims Manager (DCM) position is in a three year pilot. The pilot combines into a single position and within a single organizational unit the roles of a federal SSA claims representative and state disability examiner and medical consultant. The result is a single point of contact for the beneficiary for the claim-taker and decision-maker on their disability application.

There are many benefits to the DCM position. Interviewing and the collection of data and information are more complete. The claimant is better informed about the disability process and more likely to pursue medical records and appear for special examinations. If an individual is filing for both Social Security and SSI disability, they will have one person working on their application compared to four or five under the current process.

What are the results of the DCM pilot to date? Employees in both the federal and state pilot sites like working in the DCM position. They have experienced increased job satisfaction and morale, have exhibited renewed pride in their completed work, and they see the new process as an improvement in public service. Claimants and their families are more satisfied with the disability process in the DCM pilot. They have an improved understanding of the process, work more willingly with their medical providers to secure evidence, and even when denied, have expressed more satisfaction with the manner in which their claim was handled.

What about processing times and quality in the DCM pilots? In the 12 state sites and 21 federal sites located in 15 states, overall processing time is 14 days lower in DCM cases than in non-DCM cases. There are even more dramatic results in specific areas. Cases processed in Camden, New Jersey averaged 73 days overall time compared to 147 days in other New Jersey cases. In Marietta, Georgia, all claims are processed in less than 54 days compared to 88 days for cases handled throughout the Atlanta Region. The results are even better for allowances, with almost 42 days saved in Social Security disability claims and 43 days in SSI disability claims. Early results show claims quality equal to or slightly better than traditional processes. Allowance rates are also higher, meaning fewer claims are going to the hearings and appeals stages.

A new disability process is now being piloted in ten states. The full process model (FPM) has been started after five years of various disability redesign efforts and pilots. Briefly, FPM calls for the elimination of the reconsideration step of the appeals process and the implementation of the single decision-maker in the state disability determination services. It is still too earlier to report on any results, but it is hoped that processing time and quality of decisions will improve.

SSA is also looking at improving its delivery of services to disabled individuals who want to return to work. A new position, the Employment Support Representative (ESR), will be piloted in 27 sites across the country. The ESR will engage in public information and outreach activities to increase public awareness of work incentive provisions. They will also work closely with claimants, advocates, employers, and other service providers to identify work opportunities. This position is still in the design phase, but promises significant improvements in public service. Placing this position in field offices will allow SSA to take advantage of community contacts and relationships that have already been established while allowing the claimant the opportunity for face-to-face contacts with the ESR.

The Office of Hearings and Appeals (OHA) has made some significant strides in reducing the number of pending hearings and the time needed to process these



hearings. However, it is still taking over 300 days to process a hearing request. The Hearings Process Improvement Plan (HPI) will introduce a new processing system in which groups of cooperative teams will work in concert to reduce processing times and improve quality and productivity. However, we are still concerned about the degree of involvement by Administrative Law Judges (ALJ's) in some of the more routine aspects of hearings processing. ALJ's may still be involved in administrative functions that would more effectively be handled by first-line supervisory staff. ALJ's will still have the discretion to review files for appointment times and to assess whether the file is truly ready to be scheduled for a hearing. There is a hierarchy of positions from the GS-14 to the GS-9 level that should be capable of handling such routine matters, allowing ALJ's to spend more of their time hearing cases and writing decisions.

#### WHAT IS NEEDED

NCSSMA encourages Congress to exclude the SSA administrative budget from the statutory caps that have been imposed on the total amount of discretionary spending. This would be an effective first step toward ensuring that SSA is able to deliver world class service to its disabled constituents and their families. SSA is a high impact agency with a unique service delivery mission. Spending for the Agency should be set to allow for the needs of our customers, not to fit within caps that fall into overall federal government spending targets.

With or without a release from government spending caps, NCSSMA calls upon SSA to ensure that there are sufficient resources provided to offices that are on the front-lines of service delivery. We must increase the number of staff and management in our field offices that handle the interviewing, development, and final processing of disability workloads. We need sufficient staffing resources and state-of-the-art technology in place to allow employees at our 800 # to answer public telephone calls to completion. This would free up resources in our program service centers to more timely process workloads that can not currently be handled in our network of 1,346 community-based field offices.

SSA must begin working on a transition plan that will address the future needs of the Agency as most of our current employees will be retiring in the next ten years. SSA needs to re-look at the management staffing in its field offices. Many large, urban offices in areas with difficult service areas have staff to management ratios well above the 15:1 target. Restoration of some of these management positions will result in better training, mentoring, coaching, and development of new employees. New training technologies must be made available to all facilities in SSA.

Pilots such as the DCM, have shown excellent results to date. It has already been determined that the historic federal-state relationship can not be jeopardized as a result of this pilot. NCSSMA urges SSA to look for ways to use the successes of the DCM process, even if current relationships have to be changed. Finally in the area of pilots, we urge OHA to continue looking for ways to streamline their internal processes to ensure that ALJ's are concentrating their time and talents in the actual judging of cases.

As SSA continues to pilot new positions and methods for handling the disability workload, we encourage the Agency to begin working on a long-range vision for service delivery that will cover all its programs. Such a vision or strategy will allow the Agency to steer new policies and procedures in the direction of the ultimate vision.

Chairman JOHNSON. Thank you very much.  
Mr. Skwierczynski.

**STATEMENT OF WITOLD SKWIERCZYNSKI, PRESIDENT, NATIONAL COUNCIL FIELD OPERATION LOCALS, COUNCIL 220, AND CO-CHAIR, NATIONAL PARTNERSHIP COUNCIL, SOCIAL SECURITY ADMINISTRATION, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO, CHICAGO, ILLINOIS**

Mr. SKWIERCZYNSKI. Thank you, Madam Chair.

My name is Witold Skwierczynski, and I am with the union. I represent 50,000 Social Security employees and we have a work force that is 73 percent women, we have an aging work force. The average age of our employees is about 46 years old. Our employees

are veterans. They are dedicated. They are hard working. They care deeply about the Social Security program and especially the disability program.

And, unfortunately, there are some bad things to report about the disability program today and there are also some good things to report. Bad things. Our employees are, because of staffing constraints, our employees are having an extreme difficulty handling the workloads that they are assigned. Stress and morale problems have increased. The Advisory Committee report echoes that.

Some of our workloads are not being processed. The agency oftentimes lurches from crisis to crisis in order to respond to congressional demands and public complaints. The SSA Advisory Committee report indicates which is the reality that since 1982 we have lost 29 percent of field staff. The general civilian Federal work force has decreased by 12 percent for that time. So, SSA has taken an extreme cut in staff.

Your Committee hearing announcement indicated that workloads are going to be increasing substantially over the next 11-year period. It is very difficult to complete those workloads under any scenario without additional staff support.

The SSA Advisory Board calls for that as well as technological improvements and also recommendations to take the administrative budget off of the spending cap and the union strongly echoes and supports those recommendations.

Mr. Niesing indicated that the disability claims manager is one of the agency's pilots. And the disability claims manager is a part of the 1994 redesign. He explained what it does. There is a little over 200 of those disability claims managers in a variety of States around the country. Phase I of the pilot just ended. The agency employed an outside firm, the Lewin Group, to evaluate Phase I.

What happened in that evaluation? It was a screaming success. We had a lowering of processing time on an average of 8 percent; approvals, cases that were approved on initial claims were 20 days less processing time on the average; the quality of the claims indicates that there is somewhat of a less error rate than the current process. The customer satisfaction based on focused reports is extremely high.

Customers like one-stop service, they like the explanation face-to-face of their disability criteria and they like the claimant participation.

We have numerous testimonials that some claimants and beneficiaries have sent to us. In Marietta, Georgia, we had a claimant who said that she left the DCM interview feeling really good about the experience and about the 30-day processing time of her claim. Her arthritis support group had only told her horror stories about the bureaucratic problems of Social Security. She thought the disability claims manager was a breath of fresh air.

And at Phoenix, Arizona, a claimant said the DCM program is a God-send. It puts humanity back into the system. Compared to the horror stories that person heard from their peers, they thought that the disability claims manager was a great success and they wanted to know how they could ensure implementation, further implementation across the country.

In Springfield, Illinois, a claimant wrote that even though she was denied her benefits, she was pleased with the explanation that she received and understood why she was denied and applauded the DCM project for providing a good rationale for her denial.

The employees, 84.6 percent of the employees that are participating are more satisfied with their job than they were with their previous job. This is a success story. Now, what is the agency's attitude? You heard Commissioner Apfel. He said nothing about the DCM project. The agency is suppressing the success of this project. And I think Congress needs to ask some hard questions about why they are suppressing the success of this project.

The head of operations for the agency canned an article that described the successes of Phase I in the agency magazine. You know, questions need to be asked why is this happening?

The agency officials have made statements around the country how there is no hope for the DCM being implemented and I think the main reason for that is they feel that there is a lot of resistance from the States.

This is a program that works. This is a program that should be applauded, not suppressed.

We are interested in a roll-out of this project if, in Phase II, which is beginning now and it goes through September 30 of next year, shows continuing success of this project. We think that it ought to be rolled out and we think Congress should be looking closely at it.

The prototypes, one problem that we have been having, as a union, and also with employees—and Chairman Johnson addressed the issue about teaming—is that in recent past many of these agency initiatives, such as the hearings process review, the implementation of the prototypes, have been done without union or employee involvement and the employee specialist, which is the whole return to work initiative, those three projects were all done with strictly management work teams who made management-related decisions about implementation of those programs.

The union or employees were neither to participate in the decisionmaking process nor were we in many times informed that these work groups were operating. We think that the teaming that Chairman Johnson seeks from the grassroots level is extremely important. The people who do the job know best how to do the job. And I think it is essential that Congress examine why the employees who are processing disability claims are not involved pre-decisionally in the process in many of these projects.

The prototypes that the agency has implemented are of great concern to the union. And the reason for our concern is that we feel that from a claimant perspective an appellate route, the reconsideration is being eliminated. That will result inevitably to more hearings being filed and a potential further backlog of a hearing process.

In addition, the problem with the prototypes is that the supposed pre-decision interview that the claimant does, because it's done by an employee of the State, is almost guaranteed to be a telephonic interview. Studies have shown and the focus group reports and surveys of the claimants are that they are much more comfortable with a face-to-face interview, they get a better explanation of the

rationale of the decision and have a better opportunity to interact with the decisionmaker in the process. The DCM does that. The prototypes do not.

The other problem that we see in the project is the potential of eliminating community-based service. If more and more work is shifted to centralized employees who can deal with the disability public telephonically, there will be pressures to close Social Security offices and to eliminate the ability of claimants to make a choice to have face-to-face service.

Chairman JOHNSON. We are going to have to give the other people their 5-minute testimony, but we will get back to some of these things in the question period.

Mr. SKWIERCZYNSKI. OK. Thank you.

Chairman JOHNSON. We are liberal with the lights under my guidance but I cannot ignore them completely.

Thank you very much for your testimony.

[The prepared statement follows:]

**Statement of Witold Skwierczynski, President, National Council Field Operation Locals, Council 220, and Co-Chair, National Partnership Council, Social Security Administration, American Federation of Government Employees, AFL-CIO, Chicago, Illinois**

Dear Chairman Shaw, Chairwoman Johnson, and members of the Subcommittees, my name is Witold Skwierczynski. I am the President of the AFGE National Council of SSA Field Operation Locals, AFGE Council 220. I am also the Co-Chair of the AFGE-SSA National Partnership Council. On behalf of the 50,000 working men and women represented by AFGE at the Social Security Administration (SSA), I appreciate this opportunity to appear before the joint hearing of the Subcommittee on Social Security and Human Resources of the Committee on Ways and Means to discuss SSA's management of the disability caseload.

I want you to know that AFGE Council 220 is particularly proud of the highly dedicated and productive employees who deliver direct service to the disabled and other members of the public either face-to-face or by phone. These SSA workers are found in over 1,200 field offices and 36 teleservice centers located in communities across the country. These SSA workers, 73% of who are female share a "can do" attitude that helps SSA continue to rank high among government agencies in the quality of service that it provides to the public. However, constraints on staffing, i.e. "doing more with less" and the increased complexity and size of the workloads, predictably have strained resources. Compounding the current staffing shortage is, as pointed out in SSA's current Strategic Plan, the problem of SSA's aging workforce. Over 20 percent of the Agency's employees will be eligible for retirement between now and 2002.

The Social Security Advisory Board report titled "How the Social Security Administration Can Improve its Service to the Public" dated September 1999 has drawn some conclusions about the effect inadequate human resources could have on the Agency's ability to deliver quality service. This topic may form the nucleus for a future hearing not only for the disabled but also for all members of the public.

Between 1982 and 1998, as part of the sustained effort to downsize government, the number of civilian employees was reduced by about 12 percent. Employment in SSA declined by about 26 percent while the number of beneficiaries increased significantly faster than the population as a whole. At the end of FY 1998, there were 42,544 employees in regional and field offices, program service centers and teleservice centers out of 65,407 total SSA employees. While workloads have grown in size and complexity, resources have declined. For example, examine the expansive increase in the number of benefit estimates to be mailed to workers. This is up from 36 million in FY 99, to 126 million in FY 2000. SSA neither sought, nor did Congress provide, budgetary consideration for additional resources to handle this workload. This is another issue impacting service to your constituents that you may wish to examine at a future hearing.

Severely disabled men, women and children come into their community-based Social Security offices for face-to-face contact with their government. They must meet strict criteria before being awarded benefits. The nature of the disability must be permanent, last a minimum of 12 months, or result in death. AFGE Council 220

workers believe that your disabled constituents deserve community-based, quality service and we think you will agree.

Recognizing a need for improvement in the disability program, and at the urging of Congress, SSA in 1994 announced a redesign of the disability process. The remarks presented here focus on Commissioner Apfel's announcement of his decisions regarding this Disability Process Redesign. These decisions have become part of the Agency's broader strategic planning.

Prior to announcing his decisions on improving the management of the disability program, Commissioner Apfel expressed the view that the "status quo won't go" regarding the disability program. He warned that SSA can not expect an infusion of resources to support the redesign effort, that there would not be any major shift of resources between components or between SSA and the Disability Determination Services (DDSs), and that change would occur incrementally. The Union is cognizant of this and believes our comments are consistent with SSA's goals of making its disability programs both more responsive to our claimants and beneficiaries and more accountable to the nation's taxpayers. However, we believe that no set of initiatives to improve the disability process will be successful without first recognizing that prompt action by the Administration and Congress is needed to adequately staff the Agency with additional front-line employees. We share the Advisory Board's conclusion that failure to do this will result in a serious deterioration in public service. Direct-service staffing shortages are causing employees to have difficulty in keeping up with their growing workloads. The emphasis in meeting processing time goals is causing burnout and affecting employee morale. As the representative of the majority of SSA workers who struggle under these workload pressures, AFGE thinks inaction is unconscionable. In the long run, the investment made in additional staff will pay off for disabled constituents and for all taxpaying citizens through timely and accurate service.

We conclude that SSA's plans to improve the initial claim process must include the Disability Claim Manager (DCM) in Field Offices (FOs). The DCM is consistent with the Commissioner's intent to streamline the disability adjudicative process. The DCM is a single interviewer who develops both the medical and non-medical part of a disability claim. I'll have more to say about how the DCM improves the initial disability claims process in a minute. In our judgment, the Agency must be much more pro-active in its support of the DCM concept and begin planning for national implementation after a thorough analysis of test data. An independent assessment of the DCM process conducted by the Lewin Group indicates that a disability decision-maker knowledgeable in both medical and non-medical claim issues and working with directly with the disabled applicant and/or representative can provide accurate decisions earlier in the process and more quickly.

#### COMMUNITY-BASED SERVICE

AFGE has vigorously supported and been involved in all phases of Disability Redesign. The Commissioner's five stated goals are to provide a customer friendly process, lower customer waiting times for a decision, make an appropriate allowance earlier, provide efficiency in administrative cost, and provide a satisfying work environment for employees. We believe that SSA must work to increase public support, which can only happen at the community level. We concur with the Social Security Advisory Board's assessment that the public's trust in the integrity of the disability program is of the utmost importance. We agree with the Advisory Board's assertion that cooperation is essential in achieving our objectives. We believe that both current and earlier Disability Process Redesign pilots have shown Field Office employees should be involved in all phases of the disability process and that the objectives of Redesign can best be met by providing service at the local office level. There are numerous examples of public service deterioration, e.g. within the Internal Revenue Service (IRS), which occurred as a result of over emphasizing "centralized" work processing. The appropriate commitment of time, energy and needed resources in the local offices can insure an efficient and claimant friendly disability process and increased job satisfaction for employees.

#### DISABILITY CLAIM MANAGER (DCM)

A claimant for disability benefits from the Social Security Administration faces a lengthy, bewildering process. Under the current system, there is little involvement of the claimant and/or representative in obtaining needed medical evidence. An initial decision from SSA will likely take more than three months.

The independent assessment of Phase I of the DCM test conducted by the Lewin Group indicates that the DCM process has succeeded in improving claimant satisfaction to the extent that a single point of contact has made the process feel much

more personal. Anxiety has been reduced by eliminating the need for claimants to identify a different contact person at each juncture in the adjudicative process. The Disability Claim Manager encourages claimants to work with their physicians to provide complete and accurate medical records in support of their applications. Claimants are responsive because they understand that doing so will speed up the processing of their claim. In the area of DCM processing time, there is also good news.

DCM's obtain Medical Evidence of Record (MER) from targeted sources and work with hospital social workers, advocates and other individuals in the local community in taking and processing claims. These relationships developed at the local level benefit the disabled claimants as well as the individuals and organizations assisting them in processing their claims. The outside sources are invested in obtaining and providing the MER at the initial interview and in most cases at no cost because it means faster and more accurate decisions for their clients. For example, the DCM unit in Denver, CO received recognition from the Denver Mental Health Corporation that works with the chronically mentally ill in that community. These claims can be difficult and the DCM's offer excellent service. Claims allowed earlier in the process result in a source of income and medical coverage for the disabled. Establishing these local relationships, we can arrange for obtaining MER electronically and by FAX.

Our customers should be able to access the disability process in the way they choose. The claimant needs to be able to talk to a medical adjudicator at the beginning of the disability claims process. The DCM, as an integral part of disability program implemented in the FO, can provide this service for the claimant. Implementing the DCM working within the FO structure can assure the claimant continuity of service between the medical and non-medical parts of their claim. This has improved the credibility of our process and will be particularly effective in helping the SSI claimant navigate our complex initial disability claims process. SSA is invested heavily in testing this new process and has contracted with an outside evaluator, the Lewin Group in assessing the effectiveness of this new process. We urge the Agency and the Commissioner to insure commitment from the state DDS to begin implementation of these initiatives at the earliest possible date.

#### RETURN-TO-WORK INITIATIVE

AFGE supports the effort of the Administration and Congress to increase the number of adults with disabilities who return to work. On March 13, 1998, President Clinton signed Executive Order 13078, which created the Presidential Task Force on the Employment of Adults with Disabilities. A key component of the Task Force's mission is to analyze existing federal programs and policies to determine what changes can be made to remove barriers to work. In addition, the Senate and the House passed legislation to address barriers to people with disabilities who attempt to work.

One provision of this legislation which we support directs SSA to establish a corps of work incentive specialists within the Agency to focus on improving service delivery to beneficiaries who return to work and on increasing outreach to beneficiaries advocates, and rehabilitation providers. Accordingly, SSA is making plans to implement an Employment Support Representative (ESR) position within the Agency.

While we applaud the efforts the Agency is making in order to increase the number of disabled adult beneficiaries who work, we believe the Agency's approach to the problem is fundamentally flawed. SSA's decision to exclude front-line employees from helping to plan and develop a return-to-work strategy has resulted in a minuscule, ineffective proposal. Current plans call for deployment of only 27 such work incentive specialists as part of a nationwide test. AFGE believes that such a small number of Specialists is hardly sufficient to generate enough information to decide how best to rollout the new position across the country. We ask that the Administration and Congress provide SSA with additional staffing resources that will enable the Agency to move forward with an aggressive, community-based work incentives outreach program that will insure disabled beneficiaries have equal access to employment support services regardless of where they live.

We also conclude that the Agency work incentives service delivery plan should focus on the Employment Support Representative performing his or her duties in the Field Office. This model allows claimants and those assisting them by providing timely answers to their questions and concerns. Hand-offs will be minimized and decisions will be local. Timely processing of work-related issues will reduce overpayments and beneficiary frustration with the system. Local placement of the Specialist will enhance SSA's ability to interact with local organizations that support work efforts of disabled people. The ESR will also be able to act as an on-site resource per-

son for other employees within the office. The community-based ESR will be able to consolidate functions currently performed within different components of the Agency. Travel costs will be reduced since the ESR will concentrate on the community where the Field Office is located.

#### CONCLUSION

Labor-Management Partnership and the Disability Process Redesign are inextricably connected. SSA and AFGE worked together to write the recommendations that comprised the Disability Redesign proposal. Several tests, pilots, and prototypes started during the Redesign have demonstrated the efficacy of working in partnership and cooperation with the Union in planning and implementing improved processes.

We deplore the Agency's move away from Partnership beginning in February 1997 when a unilateral decision was made to decrease AFGE representation on the Disability Process Redesign Team (DPRT) which oversees the Redesign effort. SSA created an Executive Disability Steering Committee with no Union representation. Recently the Agency began an effort to improve the hearings process. Again, this is occurring without any AFGE participation. The Agency is moving forward its Office of Hearings and Appeals (OHA) reorganization plans despite our serious concerns that, according to SSA's own figures, the with the elimination of the reconsideration and appeal step will result in an estimated 25,000 additional cases coming before Administrative Law Judges. We also feel that the Agency reorganization of Hearings Offices will needlessly create additional layers of management.

Furthermore, as I noted earlier, SSA has decided to move forward with its work incentives service improvement plan, with no substantive AFGE involvement. The Agency has decided to turn its back on the representatives of front-line workers who actually serve disabled beneficiaries. Failure to include employees and their representatives in SSA's effort to improve the disability process will be greeted with cynicism and doomed to failure.

The Social Security Advisory Board recommends cooperation and teamwork in the disability process. DDS manipulation and resistance resulted in much of Redesign not being realized. This failure dismays us. Parochial state concerns don't result in improved service delivery for the American public. DDS has opposed expanded piloting of the DCM model even though it would result in better service to the public. I urge Congress to investigate the states' refusal to provide better public service. Federal employees can process both disability and non-disability aspects of claims quickly, accurately, and successfully. The public likes one stop service, which the DCM provides. Any attempt to shift public access of the disability claim process from federal employees to the states will be opposed by AFGE.

Chairman JOHNSON. Mr. Brennan.

#### **STATEMENT OF MICHAEL W. BRENNAN, PRESIDENT, NATIONAL COUNCIL OF DISABILITY DETERMINATION DIRECTORS**

Mr. BRENNAN. Thank you.

Chairman Johnson, Members of the Subcommittee, on behalf of the National Council of Disability Determination directors, thank you for the opportunity to appear here today to present our views regarding the Social Security Administration's management of its disability workloads.

The NCDDD is a professional organization comprised of the directors and other management staff with the State disability determination services. The DDSs participate in the disability program by making the initial determinations of eligibility for disability and by conducting continuing disability reviews.

How effectively SSA manages the disability workload is a primary concern of our organization. SSA's disability programs exist in a climate of increasingly scarce resources. SSA has requested that the DDS fiscal year 2000 budget reflect a 4.2 increase in over-

all workloads, a 5.6 increase in CDR workloads, no additional hiring except for replacement hiring of attrition, and no increase in medical costs per case.

To say that these expectations are challenging would be an understatement. The NCDDD has serious reservations regarding the level of public service that the DDS will be able to provide given the fiscal year 2000 funding limitations.

We will, as in the past, attempt to manage within the budget that we are provided. However, we believe it realistic to anticipate interruptions to service delivery. Moreover, it is our belief, our concern that the level of funding that is being provided is insufficient to enable process unification efforts to continue. Process unification is the No. 1 strategic priority of the NCDDD.

Since the disability reform legislation of the eighties, there has been an obvious demarcation between the first two steps of the initial disability process which take place in the DDSs and the third step which involves a hearing before the Administrative Law Judge in the Office of Hearings and Appeals.

The ALJ reversal rate of DDS decisions has been as high as 65 percent, prompting the Social Security Advisory Board to conclude that one of the primary reasons that the disability programs do not share the level of public confidence enjoyed by other programs administered by SSA is the longstanding and widespread perception that the agency is unable to apply the statutory definition of disability in a uniform and consistent manner.

From start to finish, most individuals whose cases go through the initial decision, reconsideration and an ALJ hearing process will wait well over a year for a decision. This is likely to be a period of considerable economic hardship for claimants and their families. Disability determinations must be both accurate and timely.

As part of its effort to redesign the initial disability claims process, SSA embarked on an effort to more closely align the adjudicative perspectives of the DDS and the OHA. This began with revisions to 9 SSA rulings that have come to be known as processing unification rulings.

In addition, national training for all 14,000 adjudicators in the DDS and OHA has been provided. This effort is showing positive results in the DDS. More claimants are being allowed earlier in the process, the ALJ reversal rate of DDS decisions has decreased to about 55 percent. At the DDSs, we're hearing almost daily from OHA, that receipts are down. Moreover, those cases that do arrive at OHA are said to be better documented. This results in a more timely decision by the ALJ.

For several years now SSA who has been testing a redesign of the initial process called the full process model. The FPM consists of several significant changes to the initial process and data from the pilots show encouraging results.

The NCDDD believes that a phased roll-out is a reasonable approach. Not only will the prototype provide an evaluation of the modification to the full process model, it will provide a setting that will determine if the FPM results can be replicated in the field.

While we believe in the potential of the process changes, we do have some major concerns. First, cost. It is proposed that the elimination of the reconsideration step will provide the funding for the



improvements at the initial claims level. Our organization is not convinced that the elimination of reconsideration will result in sufficient savings to pay for the enhancements to the front-end of the process. This is an area that must be closely monitored.

Second, the hearings process improvement plan. SSA and OHA are to be commended for designing a plan for managing the disability process at OHA. The plan is pragmatic and it is based on sound management principles. We believe that it can result in significant improvements at OHA.

The prototype process however will not be judged a success if it succeeds in the DDS but not in OHA or vice versa. Implementation and successful execution of the HPI will be a determinant of the success of the new process.

In summary, the NCDDD believes that the new process will result in a more timely decision for disabled individuals, and improve the consistency and decision outcomes between the DDS and OHA.

Without adequate funding for SSA's disability programs, however, improvements in the level of service that can be provided to disabled individuals will be problematic.

Madam Chair, and the Subcommittee, thank you.

[The statement of Mr. Brennan follows:]

**Statement of Michael W. Brennan, President, National Council of Disability Determination Directors**

Mr. Chairman, Madam Chairman, and members of the subcommittees, on behalf of the National Council of Disability Determination Directors (NCDDD), thank you for the opportunity to appear here today to present our views regarding the Social Security Administration's (SSA) management of its disability caseloads.

The NCDDD is a professional organization comprised of the directors and other management staff of the state Disability Determination Services (DDS) agencies. The DDSs participate in the disability program by making the initial determinations of eligibility for disability and by conducting continuing disability reviews (CDR). How effectively SSA manages the disability workload is a primary concern of our organization.

**WORKLOAD AND BUDGET**

SSA's disability programs exist in a climate of increasingly scarce resources. Last year the DDSs were informed that the Agency was facing a flat line budget for the next five years. The most that could be hoped for in this scenario was to maintain current staffing levels in the DDSs.

SSA administers the DDSs by regulation. The DDSs must comply with SSA Regulations and other written guidelines without regard to cost. To do otherwise exposes DDS management personnel to the consequences of allegations that they are not complying with the law. There is a finite limit to the number of dispositions that an examiner can process. DDS administrators have learned through experience that unremitting pressure on examiners to increase productivity encourages shortcuts on documentation. In order to comply with SSA's regulations, the DDSs must have adequate staffing levels.

SSA has requested that the DDSs fiscal year 2000 budget reflect:

- A 4.2% increase in overall workloads
- A 5.6% increase in CDR workloads
- No additional hiring (replacement hiring of attrition considered only), and
- No increase in medical cost per case.

To say that these expectations are challenging would be an understatement. The NCDDD has serious reservations regarding the level of public service that the DDSs will be able to provide given the FY 2000 funding limitations. We will, as in the past, attempt to manage within the budget we are provided. However, we think that it is realistic to anticipate interruptions to service delivery with the austere funding level that is being proposed. Moreover, it is our belief that the level of funding that is being provided is insufficient to enable process unification efforts to continue.

Process Unification is the number one strategic priority of the NCDDD.

## BACKGROUND

Since the disability reform legislation of the 1980's there has been an obvious demarcation between the first two steps of the initial disability process which take place in the state DDSs and the third step of the process which takes place in the Office of Hearings and Appeals (OHA). SSA discovered in a series of interviews and surveys with disability applicants that the initial and reconsideration denial of their disability claims by state DDSs was viewed as a bureaucratic precursor to a favorable decision by an Administrative Law Judge (ALJ).

During the course of the late 1980's and early 1990's there was a tremendous upsurge in initial disability applications. This was compounded by the fact that SSA was required by the courts to readjudicate thousands of disability claims where it was determined that SSA was not following its own regulations. There was tremendous pressure on the DDSs to process this huge workload.

In the early part of this decade there was fundamental difference in the adjudication approach in the DDS compared to the adjudicative approach in OHA. DDS decisions focused primarily on objective medical evidence to reach conclusions about an individual's ability to work. In many cases, this led to conclusions that did not give sufficient weight to such things as treating physician opinion or the claimants symptoms and credibility.

While education and experience had prepared the attorneys at OHA to apply complex legal concepts, they were not provided extensive training in the medical aspects of disability. Accordingly, ALJ decisions were heavily weighted towards subjective complaints and opinions. The ALJ reversal rate of DDS denial decisions was 65%. Prompting the Social Security Advisory Board to conclude that, "One of the primary reasons that the disability programs do not share the level of public confidence enjoyed by other programs administered by SSA is the longstanding and widespread perception that the agency is unable to apply the statutory definition of disability in a uniform and consistent manner."

For most Americans, the wherewithal to obtain food, clothing, and shelter and to meet their other material needs comes primarily from earnings from employment. When an individual is suddenly prevented from earning a living because they develop a disabling impairment, the consequences can be tragic. A favorable decision may mean the difference between a home and homelessness, regular preventive medical care or treatment in the emergency room of a free clinic. It is vital, therefore, that disability determinations be both accurate and timely.

From start to finish most individuals whose cases go through the initial decision, reconsideration and ALJ hearing process will wait well over a year for a decision. This is likely to be a period of considerable economic hardship for claimants and their families.

Currently, processing time at OHA is about 300 days. A case that is adjudicated by an ALJ ten months after the DDS decision, is not the same case that was adjudicated by the DDS. There are legitimate reasons for ALJ awards: impairments get worse, claimants get older, new evidence is submitted. Yet a high ALJ reversal rate contributes to the perception that there are two different processes.

## PROCESS UNIFICATION

As part of its effort to redesign the initial disability claims process, SSA embarked on an effort to more closely align the readjudicative perspectives of the DDSs and OHA. This began with revisions to six SSA Rulings that have come to be known as the process unification rulings. In addition, national training for all 14,000 adjudicators in the DDS and OHA has been provided to more closely align the adjudicative perspectives of both organizations.

This effort is showing positive results. In the DDS, more claimants are being allowed earlier in the process. The ALJ reversal rate of DDS decisions has decreased to about 55%. In the DDSs, we are hearing from OHA that receipts are down. Moreover, those cases that do arrive at OHA are said to be better documented. This results in a more timely decision.

## PROTOTYPE

For several years SSA has been testing a redesign of the initial process called the Full Process Model (FPM). The FPM consists of several significant changes to the initial process including enhanced roles for the disability examiner and the medical consultant in the DDS, a conference with the claimant before a claim is denied by the DDS, and elimination of the reconsideration step. Data from the pilots showed positive results.

Early in fiscal year 1999, SSA was considering a national rollout of a modified FPM. The modifications included a decision rationale in the DDS and elimination of the adjudicative officer position at OHA. The NCDDD and other stakeholders were opposed to a national rollout of the modified FPM. SSA reconsidered its decision to rollout the process on a national basis and instead decided to implement the process in ten DDSs constituting 20% of the national workload.

Our organization supports the concept of the prototype. We believe that it is another incremental step towards process unification. Based on positive feedback from DDSs involved in the FPM pilot and the data showing improvements in the process outcomes, the NCDDD felt that a phased rollout would be a reasonable approach. Not only will the prototype provide an evaluation of the changes to the FPM, it will provide a setting that will determine if the FPM results can be replicated in the field.

The NCDDD has been actively involved in the planning for implementation of the prototype process. We believe that the changes to the initial process can result in significant improvements in public service. If the prototype process works the way it is designed to work, the DDSs will be preparing better documented disability determinations. The DDSs will be allowing cases that heretofore would have not been allowed until the ALJ hearing. Moreover, a better documented case at OHA translates into a more timely hearing.

While we believe in the potential of the process changes, we do have some significant concerns.

- *Cost.*—It is proposed that the elimination of the reconsideration step will provide the funding for the improvements at the initial level. The NCDDD is not convinced that the elimination of reconsideration will result in sufficient savings to pay for the enhancements to the front end of the process. This is an area that must be closely monitored.

- *Evaluation.*—We see this area as perhaps the most critical piece of the implementation plan. In the short run, the evaluation must provide for the rapid identification of problems. Over the long run, the evaluation must provide decision makers with the appropriate and sufficient information on which to base decisions as to the efficacy of the prototype process.

- *Quality Assurance.*—For the past five years, the DDSs have been anticipating improvements to SSA's quality assurance system. The modifications to the initial process in the DDSs will result in a significant change to the way we do business. The current way of providing quality assurance in the DDS will undergo a dramatic change. We expect and anticipate similar changes to the SSA's current quality assurance process.

- *The Hearings Process Improvement (HPI).*—SSA and OHA are to be commended for designing a plan for managing the disability process at OHA. The plan is pragmatic and is based on sound management principles. We believe it can result in significant improvements at OHA. The prototype process will not be judged a success if it succeeds in the DDS but not in OHA (or vice versa). Implementation and successful execution of the HPI will be a determinant of the success of the new process.

In summary, the NCDDD believes that the prototype process is a step in the direction of process unification. It will result in more timely decisions for disabled individuals and improve the consistency in decision outcomes between the DDS and OHA. Without adequate funding for SSA's disability programs, however, improvements in the level of service that can be provided to disabled individuals will be problematic.

Mr. Chairman, Madam Chairman, thank you again for the opportunity to be here today.

Chairman JOHNSON. Thank you, Mr. Brennan.  
The Honorable Mr. Bernoski.

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

Judge BERNOSKI. Thank you, Madam Chair.

Thank you for inviting us to testify here at this hearing. I appear as the president of the Association of Administrative Law Judges.

First, regarding Social Security workloads. We have made a substantial improvement in this area. The backlog has been reduced by over 200,000 cases since 1995 and the processing time has been reduced to less than 1 year.

With regard to the HPI, which is the Hearing Process Improvement. We were not included in the creating of this program and it has not been published for notice or comment. While the goal of providing development for Administrative Law Judges is laudable, we believe that it is not necessary to reorganize OHA when the same result can be achieved at a lesser cost by improving the current system.

The HPI places employees in teams. This change retains the deficiencies of the current system. That is, all of the responsibility for the case is placed on the Administrative Law Judge but the Administrative Law Judges do not have the capacity to control the flow of the work product. Until this problem is fixed the system will remain flawed.

The HPI is not necessary because workloads and processing times have dropped significantly. The HPI is not claimant-friendly and it places emphasis on case numbers and not on claimants. The HPI takes control of the case from the judge and gives it to the staff. It also reassigns the hearing conference from the judge to the staff. This is contrary to the position description of the Administrative Law Judge and contrary to the law which requires the judge to control and develop the case.

The HPI is also inconsistent with the Administrative Procedure Act which places control of the hearing under the Administrative Law Judge. Further, Social Security regulations specifically provide that the Administrative Law Judge is to determine whether conducting a prehearing conference is necessary and the OPM regulations provide that only an Administrative Law Judge can perform an Administrative Law Judge function.

We must remember that these legal requirements are placed in the law for the benefit of the claimant and not for the benefit of the judge.

The HPI will also assign staff attorneys to other duties instead of writing cases. This will cause a decision writing backlog as it has in the past.

We believe that the objective of the HPI can best be achieved by doing the following: First, by improving the current system and adhering to the job description of the Administrative Law Judge and legal analyst and by giving the current legal analyst the responsibility to develop the case for the Administrative Law Judges. Second, by enhancing the training of the support staff with a better training product. And, third, by developing uniform rules for hearing procedure.

We also recommend that the due process hearing in Social Security be strengthened. This can be done by creating a benefits review board in place of the Appeals Council as has been recommended by the Judicial Conference of the United States. Or, by creating an Office of Administrative Law Judges in the Social Secu-

rity Administration, under the direction of a chief judge who reports directly to the Commissioner.

Other groups, such as the American Bar Association and the Federal Bar Association favor the improving and strengthening of the ALJ hearing within the Social Security system.

We suggest that a commission be created under the jurisdiction of the Judiciary Committee because it has jurisdiction over the Administrative Procedure Act. This commission should study the Social Security hearing process and other benefit program hearings and make its findings and recommendations to the Judiciary Committee for further legislative action.

The GAO in its report, refers to a different approach between the DDS and the ALJ adjudication system. It is more than just a different approach. The ALJs use a legal standard. We apply the Federal law to the case, and we often use both medical and legal experts at our hearings. The ALJ decision must be based on the evidence in the record before that judge and it must be consistent with the law. The ALJs are more constrained in their decision-making than the DDS. The DDS can use more intuitive reasoning when it is analyzing the impairment of the claimant, while the Administrative Law Judge is bound more by the medical opinion evidence in the record.

The statement was made that Administrative Law Judges ignore the regulations. This is not true. The regulations are part of the Federal law. That is clear in administrative law. The courts have repeatedly said this. When we apply the Federal law, as we do, we apply the regulations in each and every case.

Now, with relationship to the salary structure of Administrative Law Judges that Commissioner Apfel referred to. He made a slight misstatement. He referred to the fact that Administrative Law Judges are paid at a ceiling of \$125,000. That is true for one judge. That's the chief judge in the agency. Administrative Law Judges are paid on a three-tiered system. The chief judge; then there is a second-tier which are the regional chief judges, there are 10 of these judges. The rest of us, the working judges, are in the lowest tier. We are paid between the mid-seventies and about \$113,000, with most of us being in the \$70-to-\$90,000 classification because we are going through the various levels in the third tier.

That concludes my statement.

Thank you very much.

[The prepared statement follows:]

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

#### I. INTRODUCTION

My name is Ronald G. Bernoski, I am an Administrative Law Judge assigned to the Office of Hearings and Appeals of the Social Security Administration in Milwaukee, Wisconsin.

This statement is presented in my capacity as President of the Association of Administrative Law Judges (Association) which is an organization having the stated purpose of promoting full due process hearings to those individuals seeking adjudication of controversies within the Social Security Administration (SSA) and of promoting judicial education for Federal administrative law judges.

The Association has a membership of approximately 700 administrative law judges. This is the largest organization representing the interest of Federal administrative law judges.

## II. OHA HEARING PROCESS IMPROVEMENT

The subject matter for the hearing relates in part to the SSA Hearing Process Improvement (HPI) of the Office of Hearings and Appeals (OHA). There have been several recent attempts to reorganize OHA and we requested to be included in the planning for any such change. However, our Association was not brought into either the planning or development phase of the program and we have not received any comprehensive briefing on the HPI. We are therefore not able to make any extensive comments on the proposed change. We understand that HPI will be tested at various OHA offices and that the instruction program for the trainers is about to commence.

The press release for this hearing stated that "while caseloads have grown, so have waits to get on the rolls." However, according to reports from Social Security, caseloads have not grown and the "waits to get on the rolls" have been substantially reduced. We have been advised that during FY 99 OHA issued dispositions in 596,999 cases, the case backlog has been reduced to 311,958 compared to 547, 690 cases pending in FY '95. The case backlog hovered at about 500,000 cases for three years, which means that we have adjudicated over 200,000 from the backlog, an outstanding achievement, and case processing time has been reduced to less than a year. We have also been advised that case dispositions now exceed case receipts and that during FY 2000 dispositions will exceed receipts by 30,000 cases. These are large numbers and the results show that the SSA is the largest and most productive adjudication system in the western world. SSA administrative law judges work hard to provide timely and efficient service to the public.

We understand that the goals of HPI are to provide analysis and development of cases before they are assigned to administrative law judges. This is a laudable goal. However, it is not necessary to expend millions of dollars to reorganize OHA when the same result can be accomplished by providing training to the legal analysts. In fact, the present job description of the legal analyst requires case analysis and development of each case prior to the administrative law judge scheduling the case for hearing. This responsibility was withdrawn from these employees when the case backlog was large to increase their case productivity. HPI is now apparently creating new job titles to perform established work duties. The same result can be achieved at a lesser cost by restoring the job function to the current employees. The agency could achieve more benefit by adopting uniform rules of procedure for the hearing process and by enhancing training for its employees. The agency should build upon the training currently provided to SSA administrative law judges by the Association at its annual conference.

We have concern about several aspects of the HPI which have been generally disclosed. We understand that the HPI is a management concept with staff support to administrative law judges structured in teams. It is not clear as to the number of judges or teams that will be grouped together. The cases will apparently be assigned to these teams for development. This case assignment has the potential of direct conflict with the Administrative Procedure Act, which provides that "[a]dministrative law judges shall be assigned to cases in rotation so far as practicable"<sup>1</sup> We believe that assigning cases to either a person or team for development instead of to an administrative law judge violates both the spirit and intent of that statute.

The HPI places development responsibility for the case within the control of a team. This assignment is in direct conflict with numerous Federal court decisions which have held that the administrative law judge has the duty and responsibility to develop the record for both the claimant and the agency.<sup>2</sup> The HPI policy clearly can not overrule this established law. We also have a question as to the authority of the administrative law judge after the case has been transferred to the judge for hearing. Will the administrative law judge have authority to return the case to the team for further development? If not, will the judge have adequate support staff to develop the record? A similar question exists regarding post-hearing development. Will the administrative law judge have authority to return the case to the team after the hearing for development? If not, will the judge have adequate support staff

<sup>1</sup> 5 U.S.C. Sec. 3105.

<sup>2</sup> Cases are too numerous to cite.

to perform this work? The HPI, therefore, has the potential to deny the judge the support necessary to perform his/her mandated legal responsibility.

The HPI makes a vague reference to prehearing conferences. Current SSA Regulations provide that only the administrative law judge has the authority to determine if conducting a prehearing conference will facilitate the hearing.<sup>3</sup> We question how the administrative law judge will be able to conduct this prehearing conference before the case is assigned to the judge for hearing. The HPI does not amend the existing regulations and established principles of administrative law clearly compel an agency to follow its rules. This creates a conflict between the HPI and existing regulations. The regulations of the Office of Personnel Management also provide that an agency may not detail an employee who is not an administrative law judge to an administrative judge position.<sup>4</sup>

The HPI process, as we understand it, has the potential to add another layer of bureaucracy. It provides for a preliminary conference, not previously required, which requires the attendance of the claimant and/or a representative.

The HPI will transfer many of the staff attorneys who are currently writing decisions for administrative law judges to other functions which do not include decision writing. We understand that there is no plan to replace these decision writers. This reduction in decision writing support will cause a backlog in the unwritten administrative law judge decisions. We warned of a similar problem in Action #7 of the prior SSA Short Term Initiatives. Our warning was not accepted by the agency and a large decision writing backlog occurred, which required a crisis response by the agency. We anticipate the same problem with the HPI.

This change is the third step in the development of the current staff organization of OHA. When the SSA hearing system began, the hearing offices were organized under the "unit system." Each judge was assigned a support staff to assist in administering the case. Under this system the judge was responsible for the case and the staff was accountable to the judge. The system worked well because it assigned specific work duties to particular support persons, developed personal accountability for the case and connected the staff action to the judge. However, in the 1980's OHA reorganized the staff structure under a plan known as "reconfiguration." This system left the administrative law judge responsible for the case, but removed the support staff to various "pools" under the direction of supervisors. The judge now has all the responsibility for the case but no authority to direct any of the effort on the work product of the case other than his or her own labor. Our Association took strong objection to the change and predicted it would fail because of its obvious deficiencies. The current change to the HPI is an acknowledgment of the failure of "reconfiguration" and a confirmation of our prediction of its weaknesses. We believe that we must now take care to not further worsen the system, because HPI fails to address the specific weaknesses of "reconfiguration." The teams are just small pools of employees with all the deficiencies of "reconfiguration."

The management concept of HPI is contrary to the principles of Total Quality Management (TQM), which is the stated management system of SSA. The basic theory of TQM is to eliminate middle management and place decision making at the lowest possible level in the employment chain. HPI adds more layers of middle management and denies decision making at the lowest level, i.e., the administrative law judge level.

During the 105th Congress, a hearing was conducted before the House Judiciary Subcommittee on Commercial and Administrative Law. The subject matter of the hearing related to the hearing office process and structure in one OHA hearing office. When the current management system was described to the Subcommittee, the then ranking member [now Sen. Reed (D-RI)] was astonished and questioned how the agency could accomplish as much work as it did with this office procedure.

### III. SOCIAL SECURITY HEARINGS

The hearing system of SSA is one of the oldest in the Federal system. The SSA hearings and appeals system started in the 1940 with 12 Referees and has grown into the largest institution for the administration of justice in the western world. The first Chairman of the Office of the Appeals Council (now Office of Hearings and Appeals) was the Hon. Joseph E. McElvain. Chairman McElvain was particularly interested in the independence of the Referees in making determinations. In fact, he told an interviewer in 1966 that decisional independence of the Appeals Council had been of concern to him even before he agreed to head the organization. McElvain went on to tell the interviewer that he continued to protect the independ-

<sup>3</sup> 20 CFR 404.961 and 416.1461.

<sup>4</sup> 5 CFR 930.209

ence of the Referees, even insisting on completely separate office space for the Referees in the Regional Offices.<sup>5</sup>

The U.S. Supreme Court acknowledged the history and tradition of the SSA hearing system in the case of *Richardson v. Perales*, 402 US 389 (1971), when the court stated that:

We need not decide whether the APA has general application to social security disability claims, for the social security administrative procedure does not vary from that prescribed by the APA. Indeed, the latter is modeled upon the Social Security Act.

After the adoption of the historic Administrative Procedure Act (APA) in 1946 the U.S. Supreme court in the case of *Universal Camera Corp. v. National Labor Relations Board*, 340 U.S. 474 (1951), discussed the impact of that legislation on the function of the hearing examiners (now administrative law judge) as follows:

To the contrary, Sec. 11 of the Administrative Procedure Act contains detailed provisions designed to maintain high standards of independence and competence in examiners. . . . Both statutes thus evince a purpose to increase the importance of the role of examiners in the administrative process.

The U.S. Supreme Court continued to define the role and responsibilities of the Federal administrative law judge. In the case of *Butz v. Economou*, 438 US 478 (1978), the court described the duties of the Federal administrative law judge as follows:

There can be little doubt that the role of the modern federal hearing examiner or administrative law judge within this framework is "functionally comparable" to that of a judge. His powers are often if not generally, comparable to those of a trial judge. He may issue subpoenas, rule on proffers of evidence, regulate the course of the hearing, and make or recommend decisions. See Sec. 556(c). More importantly, the process of agency adjudication is currently structured so as to assure that the hearing examiner exercises his independent judgment on the evidence before him, free from pressures by the parties or other officials within the agency. Prior to the Administrative Procedure Act, there was considerable concern that persons hearing administrative cases at the trial level could not exercise independent judgment because they were required to perform prosecutorial and investigative functions as well as their judicial work . . . and because they were often subordinate to executive officials within the agency . . . Since the securing of fair and competent hearing personnel was viewed as "the heart of formal administrative adjudication," . . . the Administrative Procedure Act contains a number of provisions designed to guarantee the independence of hearing examiners. They may not perform duties inconsistent with their duties as hearing examiners . . . When conducting a hearing under Sec. 5 of the APA, 5 USC Sec. 554, a hearing examiner is not responsible to or subject to the supervision or direction of employees or agents engaged in the performance of investigative or prosecution functions for the agency . . . Nor may a hearing examiner consult any person or party, including other agency officials, concerning a fact at issue in the hearing, unless on notice and opportunity for all parties to participate. Hearing examiners must be assigned to cases in rotation so far as is practicable . . . They may be removed only for good cause established and determined by the Civil Service Commission after a hearing on the record. Their pay is also controlled by the Civil Service Commission.

The Congress and other Federal courts have recognized the merit of the SSA hearing system. In 1983 the Subcommittee on Oversight of Government Management of the Committee of Governmental Affairs in the United States Senate conducted a hearing which inquired into the role of the administrative law judge in the Title II Social Security Disability Insurance Program. The Committee issued its conclusions on September 16, 1983, which provided in part as follows:

The APA mandates that the ALJ be an independent, impartial adjudicator in the administrative process and in so doing separates the adjudicative and prosecutorial functions of an agency. The ALJ is the only impartial, independent adjudicator available to the claimant in the administrative process, and the only person who stands between the claimant and the whim of agency policy. If the ALJ is subordinated to the role of a mere employee, an instrument and mouth-

<sup>5</sup> *A Quest For Quality, Speedy Justice*, Department of Health and Human Services, Social Security Administration, (1991, pages 1 and 2)



piece for the SSA, then we will have returned to the days when they agency was both prosecutor and judge.<sup>6</sup>

In the case of *Salling v. Bowen*, 641 F. Supp. 1046 (1986), a Federal district court reviewed a SSA test project relating to the use of government representation in Social Security disability cases. The court granted a permanent injunction enjoining further use of the project, and stated as follows:

We have seen that the administrative procedures in making Social Security disability determinations are a cumbersome "Rube Goldberg" process at best, which have been further encumbered by a threat to the independence of the ALJs who are the only people in the entire system who are oriented towards the main goal which should be the seeking of truth and the ultimate triumph of justice. This experimental administrative program has been improperly implemented from its inception in violation of the Secretary's Public Regulations. . . .

This case and Senate Committee Report stand for the principle that the Commissioner must respect the independent fact finding role of the administrative law judge, which is protected by the U.S. Constitution, Federal case law and the APA. The case also clearly holds that the policies of the Commissioner must be consistent with his rules and regulations. As stated, we have concern that the HPI is inconsistent with both existing law and regulations.

The SSA administrative law judges demonstrated their commitment to the rule of law in the 1980's when they stood between an oppressive government and the people, at great personal risk, to protect the due process and equal protection rights of the citizens of this nation. The American Bar Association issued a commendation to the SSA administrative law judges, which stated:

*Be It Resolved*, That The American Bar Association hereby commends the Social Security Administrative Law Judge Corps for its outstanding efforts during the period from 1982-1984 to protect the integrity of administrative adjudication within their agency, to preserve the public's confidence in the fairness of governmental institutions, and to uphold the rule of law.

#### IV. THREATS TO THE SSA HEARING SYSTEM

The function of an independent administrative law judge is not a monument to the administrative law judge. It is a protection provided by the Constitution and law to the citizens of this nation. The administrative law judge is not free to establish policy for the agency. The administrative law judge is bound to follow the Constitution, statutes, Federal circuit law and agency regulations. The administrative law judge is only free to use his/her independent judgment to make a decision on the evidence in the record. The decision must be supported by both the facts in the record and the controlling law. Americans have fought and died to protect their rights under the Constitution and it would be a grievous error to adopt policies which curb or limit the basic rights of due process and equal protection under the law.

The SSA has adopted a series of policies during the last several years that we believe have the objective of asserting undue influence and control over the decisions of SSA administrative law judges contrary to the Constitution, the Administrative Procedure Act and the decisions of the U.S. Supreme Court.

In January 1997 SSA issued a memorandum, prepared by the Office of the General Counsel, which stated that the agency may establish practices and programmatic policies that administrative law judges must follow. The memorandum further concluded that administrative law judges may be disciplined for violations of these policies even if such policies are not consistent with the law.<sup>7</sup> We are concerned that this memorandum is the beginning of a structure that the agency will use to enforce its policies upon administrative law judges regardless of whether the policies are consistent with Federal circuit law. The Association has requested that this memorandum be withdrawn, but the agency has not done the same.

The SSA has subsequently taken another step to implement the objective of the "impartiality memorandum." It has changed the agency disciplinary procedure for administrative law judges. Previously this function was within the authority of the Associate Commissioner of OHA. This procedure has been changed and the Associate Commissioner of OHA now only has the authority to investigate claims and

<sup>6</sup>98th Congress, 1st Session, Committee Print, S. PRT. 98-111, U.S. Government Printing Office, October, 1983.

<sup>7</sup>*Legal Foundations of the Duty of Impartiality in the Hearing Process and its Applicability to Administrative Law Judges*, Office of the SSA General Counsel, (January 28, 1997).

prefer disciplinary charges against administrative law judges to the Merits Systems Protection Board. The Office of General Counsel now has the responsibility to prosecute the case for the agency before the Merit Systems Protection Board. The Association is of the opinion that this change co-mingles the policy making and adjudication function of the agency. It places the Office of the General Counsel, which has a policy making function, in a position where it can force agency policy on administrative law judges through its disciplinary power. This creates a "chilling effect" for administrative law judges and violates both the spirit and letter of the Administrative Procedure Act. We have requested that the agency return to the former procedure but the same has been denied.

During the last year the SSA/OHA attempted to reorganize the Office of Hearings and Appeals and remove all responsibility from the Chief Judge for daily operations of the adjudication function of the agency. This change would have removed the Chief Judge from the chain of authority and would have had the Regional Chief Judges reporting directly to the Associate Commissioner. This proposed change would have violated the Administrative Procedure Act by joining the independent adjudication function with the policy making branch of the agency and would have politicized the SSA hearing process. The agency withdrew the proposed reorganization after considerable concern was expressed to the agency by Members of Congress and other interested groups and persons.

SSA has also recently attempted to convince the Office of Personnel Management (OPM) to change the criteria for selecting administrative law judges and instead adopt a method of "selective certification" that would have placed disproportionate weight on the experience of staff attorneys of the agency. This change would have changed a long standing method for selecting administrative law judges that had been developed in conjunction with legal groups including the American Bar Association. The change would have discriminated against veterans, women and other minorities, federal attorneys in other agencies and attorneys engaged in the private practice of law. It would have allowed the SSA to determine the composition of the administrative law Corps by its selection process for staff attorneys. OPM decided to not grant the request of SSA only after strong objections were raised to the proposal by the Chairpersons of the House Subcommittee on Civil Service and House Judiciary Subcommittee on Commercial and Administrative Law.

Each of these efforts consisted of an attempt by SSA to obtain a greater measure of control of the administrative law judge function in the agency. These are the exact types of undue agency influence that the drafters of the Administrative Procedure Act intended to prohibit.

#### V. RECOMMENDATIONS

We believe that a more meaningful result can be achieved by improving and strengthening the administrative law judge hearing structure of SSA to bring it into full compliance with the requirements of the Due Process Clause of the U.S. Constitution, the Administrative Procedure Act and related case law. For many years this Association advocated establishing a unified Corps of administrative law judges for all Federal agencies. We have also recommended that a Review Commission be created for the SSA administrative law judge adjudication function, or that an Office of Administrative Law Judges be created in SSA under the direction of a chief judge who reports directly to the Commissioner. (See attached).

It should be noted that even the Department of Health and Human Services (before SSA was separated from that department) has questioned the wisdom of having the judges employed by the same agency whose cases they decide. In a May, 1981 Management Oversight Review Report in the Office of Hearings and Appeals and the SSA, the Office of the Inspector General found that the appeals process could be more effectively located outside the Social Security Administration. The report highlighted the appearance of impropriety and the incongruity in having one arm of the SSA making the basic eligibility determinations in cases while the Office of Hearings and Appeals arm of SSA adjudicates that decision. It went on to question the wisdom of the arrangement of putting the Office of Hearings and Appeals under the direction of an Associate Commissioner because the SSA staff controls the resources, space, equipment and supplies of the Office of Hearings and Appeals which, if restricted, could indirectly control the number and quality of the hearings held.

The recent attempts by SSA to control the administrative law judge function of the agency, are current examples of agency conduct that meets the concerns of the agency Inspector General.

Other groups in the legal community share our concern with the current danger signs in the SSA administrative adjudication system and support a change to the hearing structure that strengthens the administrative law judge function. The

American Bar Association is on record with a resolution which supports the independence of the administrative law judge in Social Security hearings. The Resolution stated that it supports "reforms in the Social Security disability adjudication process to eliminate the backlog that threatens the ability of Social Security administrative law judges to assure due process, including:

- (2) that certain measures be taken at the hearing level to assure the integrity of the fact-finding function; and
- (3) that claimants for disability benefits continue to be entitled to a due process hearing before an administrative law judge.<sup>8</sup>

The Judicial Conference of the United States issued a report which recommended that the quality of the Social Security hearing be improved by creating a Social Security Benefits Review Board for the SSA administrative law judge hearing.<sup>9</sup> Recently the Social Security Disability Section of the American Trial Lawyers Association recommended that the Public Affairs Committee of that organization formally support the proposals of the Association to improve the SSA hearing system.

The Association recommends that a Commission be created under the jurisdiction of the House Judiciary Subcommittee on Commercial and Administrative Law because of the subcommittee's jurisdiction over the administrative hearing conducted under the Administrative Procedure Act. The Commission should be given the mission to study ways to improve the administrative hearing system of the Social Security Administration. The Commission should also study the hearing system of other benefit programs and determine whether several adjudication systems should be heard by a single benefits review commission or board. This takes into consideration the fact that Social Security now adjudicates HCFA cases for the Department of Health and Human Services. The Commission should make a report of its findings and recommendations to the Subcommittee within one year. The Commission should include representatives from groups such as the American Bar Association, the Federal Bar Association, the American Trial Lawyers Association, the Association of Administrative Law Judges, the Federal Administrative Law Judge Conference, the Judicial Conference of the United States, claimants groups and claimant representative organizations.

The objective is to develop an administrative hearing system for SSA, which meets the requirement of the Constitutional due process hearing, the Administrative Procedure Act and Federal law.

Rather than adopting the costly HPI, we recommend that the agency improve its current management system by:

- 1. Adhering to the job descriptions of administrative law judges and legal analysts;
  - 2. Adopting uniform rules for hearings practice and procedure in consultation with the Association; and,
  - 3. Enhancing the positions of support staff through training.
- [Attachments are being retained in the Committee files.]

Chairman JOHNSON. Thank you, Judge Bernoski.  
Now, we will hear from Judge McGraw.

**STATEMENT OF HON. KATHLEEN MCGRAW, ADMINISTRATIVE LAW JUDGE, AND CHAIR, SOCIAL SECURITY SECTION, FEDERAL BAR ASSOCIATION, OFFICE OF HEARINGS AND APPEALS, SOCIAL SECURITY ADMINISTRATION, ATLANTA, GEORGIA**

Judge MCGRAW. Thank you, Chairperson Johnson.

Thank you for convening this hearing this morning. I am very pleased to be here on behalf of the Federal Bar Association at the request of its President Jackie Goff. As you probably know, the Federal Bar Association is the foremost professional association for

<sup>8</sup>*Policy and Procedures Handbook*, American Bar Association, 1995-1996, page 186.

<sup>9</sup>*Long Range Plan for the Federal Courts*, Judicial Conference of the United States, December 1995.

attorneys who practice before administrative agencies and Federal courts. Unlike the other panelists before you here this morning, the Federal Bar Association does not represent the narrow interests of any one specific group. Rather, the Federal Bar encompasses all attorneys and judges involved in disability adjudication.

The primary concern of the Federal Bar Association is the effectiveness of the adjudicatory process. Our highest priority is assuring the integrity, independence, fairness and effectiveness of the disability hearing process.

For most claimants, a disability hearing is their first and only encounter with the legal system in the United States and is on a matter of paramount importance to both them and their families. It is the FBA's position that the key to a disability decision is an individualized assessment of a claimant's impairments.

Two people with identical medical impairments may have very different functional limitations flowing from those impairments. I could have a herniated disk, Ms. Shor could have a herniated disk. I may be completely debilitated by pain, Ms. Shor may be able to function perfectly well on a day-to-day basis. One of us would be disabled, the other would not. How does SSA decide which one of us with a herniated disk is disabled and which one of us is not?

I submit to you that at the first levels of decision, the DDS examiners, they are relying primarily upon the objective medical evidence. The two people with the same impairment will get the same decision at the DDS level. If those people move on to the OHA level, something more happens in a due process hearing. They receive an individualized assessment. That judge will for the first time see the two of us face-to-face. The judge will look at the total record and hear the testimony of the claimant regarding her or his subjective complaints. The judge has to make a credibility assessment as to whether that person is telling the truth about their subjective complaints.

Judges are trained to make this determination. It is a legal process. This is not to say that the folks at the DDS would be unable to perform this determination but there has been much talk here this morning about process unification training. Process unification training was an attempt to get all examiners and judges using the same standards.

I was a process unification trainer. I went across the country, and it became clear to me that at the DDS level they are relying on objective evidence. DDS examiners said, we do not have the time or the capability to make that difficult credibility assessment that the judges make. And, therein, I think lies the difference in the two levels of adjudication.

OHA is the place where this credibility assessment has to occur. And OHA was doing a fairly good job of that until the numbers crunch of the nineties. It put an unbelievable strain on the system. And I think what happened was Social Security program folks looked at how quickly the DDS was doing its job and said, if we could control the judges and get them to do things the way that the DDS is doing them, maybe they could move faster as well.

Well, that cannot be done if you are going to preserve the integrity of the due process hearing. You have to have that individualized assessment.

HPI, the hearing process improvement plan, is coming up and it has a lot, it has some good things, some good ideas in it. OHA desperately needs improved automation. It needs streamlining. It needs development of cases for judges. And it needs group-based accountability for the work.

I applaud those things but I do believe that judges have to be in charge of this process. In order to have this individualized assessment it needs to be headed up by judges. I would also say that the No. 1 difficulty for me as a judge doing my job is a lack of accountability within OHA for performance by its employees. Employees need to have a quantifiable performance appraisal system in place so that performance can be assessed on a very objective basis.

The FBA has made a number of specific recommendations with respect to disability adjudications. They are in my written testimony and I hope that you will give them consideration. I would be glad to answer any questions you have about them.

Thank you very much.

[The prepared statement follows:]

**Statement of Hon. Kathleen McGraw, Administrative Law Judge, and Chair, Social Security Section, Federal Bar Association, Office of Hearings and Appeals, Social Security Administration, Atlanta, Georgia**

#### INTRODUCTION

Chairman Shaw, Chairwoman Johnson and Members of the Subcommittee: I am Kathleen McGraw, chair of the Social Security Section of the Federal Bar Association. I am an administrative law judge in the Office of Hearings and Appeals of the Social Security Administration in its Atlanta North office. As an Administrative Judge for the U.S. Merit Systems Protection Board for 13 years and as an Administrative Law Judge for Social Security for the past four years, I have heard and decided well over 2,000 appeals. I am very pleased to be here today representing the Federal Bar Association at the request of its President, Jackie Goff. My remarks today are exclusively those of the Social Security Section of the Federal Bar Association and do not reflect the official position of the Social Security Administration.

Thank you for convening this hearing this morning on a matter of critical importance to the Federal government's delivery of effective services to the American people. As you know, the Federal Bar Association is the foremost professional association for attorneys engaged in the practice of law before federal administrative agencies and the federal courts. Fifteen thousand members of the legal profession belong to the Federal Bar Association. They are affiliated with over 100 FBA chapters in many of your districts. There are also over a dozen sections organized by substantive areas of practice such as the Social Security Section, of which I am the Chair.

Unlike other organizations associated with Social Security disability practice that tend to represent the narrow interests of one specific group, the Federal Bar Association's Social Security Section encompasses all attorneys involved in Social Security disability adjudication. Our members include:

- Attorney Representatives of claimants
- Administrative Law Judges (ALJs)
- Staff Attorneys at the Office of Hearings and Appeals
- Attorneys at the Social Security Administration's Office of General Counsel
- U.S. Attorneys
- U.S. Magistrate Judges, District Court Judges and Circuit Court Judges

The greatest interest of the FBA's Social Security Section is in the effectiveness of the adjudicatory processes associated with hearings in the Office of Hearings and Appeals, the appeal process at the Appeals Council and judicial review in the federal courts. Our highest priority is to assure the integrity, independence, fairness, and effectiveness of the Social Security disability hearing process for those it serves—both Social Security claimants themselves and all American taxpayers who have an interest in assuring that only those who are truly disabled receive benefits.

A hearing at the Office of Hearings and Appeals is a critical event in the life of a Social Security claimant. For many, it is their only encounter with the legal sys-

tem and it is their only opportunity for a face to face hearing on a matter of paramount importance to them and their families.

#### AN INDIVIDUALIZED ASSESSMENT IS KEY TO A DISABILITY DECISION

The key to disability adjudication is an individualized assessment of each claimant's impairments. Any two people with identical medical conditions may have very different limitations flowing from those conditions. One may be disabled and the other not. A due process, individualized hearing is essential to fair adjudication.

The Social Security Section of the FBA believes that the assurance and preservation of an impartial hearing process relies critically upon the separation of the regulatory and adjudicative functions within Social Security. Judges, not bureaucrats, need to be in charge of the adjudicative function, with the necessary support from the administrative branch.

Why is this the case? A decision was made some time ago that the hearing to which the disability claimant was entitled would be conducted by an Administrative Law Judge. A judge, of course, is a person trained in principles of law, including the law of evidence. A judge is expected to know when evidence supports a disability decision and when it does not. A judge is trained to evaluate evidence pertaining to witness credibility, a skill that cannot be overstated in the Social Security arena. And a judge knows when additional evidence is needed and how and from where that evidence can be gathered. The judge also is expected to be familiar with case law from the federal District and Appeals Courts. And it has been decided that the judge is to oversee a nonadversarial adjudication process, a process in which the claimant is usually represented and the government is not. Given the nature of the adjudicative process, the role of the judge is pivotal in the delivery of the due process to which more than lip service must be paid.

Within Social Security there has been an ongoing tension, some might call it a struggle, between the regulatory or program side of the agency and the adjudicative side which is the Office of Hearings and Appeals.

As you know, the Social Security Administration has contracted with the States to handle the first two levels of decision-making in disability cases. Examiners in the State Agencies collect the medical evidence and, with input from medical consultants, make the initial and reconsideration determinations. At these levels, historically, there is no face to face interaction between the examiner and the claimant. It is strictly a determination based on documentary evidence which is primarily medical in nature.

It is probably fair to say that there are those who believe the State Agencies doing these initial and reconsideration determinations do them quickly and efficiently, while the Office of Hearings and Appeals does not. Accordingly, under this view, if program and operations people within Social Security could "control" the judges, they could better control the workload at the Office of Hearings and Appeals and make it more efficient. Cases could be done faster and in larger numbers, under this view.

The fact is, however, that due process hearings are not the same as the determinations made at the State Agencies. Claimants are entitled to a hearing in front of an impartial judge who will take the time necessary to give each person a full and fair hearing. To afford claimants their due process rights in an individualized hearing takes time, and there is more to efficiency than numbers and speed. Efficiency encompasses making the right decision at the earliest point possible. State Agency determinations are affirmed only about 50% of the time by ALJs. In contrast, ALJ decisions are affirmed about 80% of the time by the federal courts.

The task an ALJ performs is a difficult one, and the product of the process—the ALJ decision—is subject to review by the federal courts. It needs to be the product of legally trained employees. A U.S. Magistrate Judge recently told me that Social Security cases are the most difficult ones he handles because he needs to become totally conversant with all the evidence of record in order to be able to render a fair decision based on the individual circumstances in each case. He acknowledged that disability cases take a lot of time if they are accorded the attention they deserve.

The processes at the State Agency and the Office of Hearings and Appeals are fundamentally different. State Agency decisions are driven almost exclusively by the objective medical evidence of record, which often is sparse and incomplete at that level. ALJs consider not only the objective evidence but also the claimant's subjective complaints. They often are assisted in their task by able practitioners who marshal and present the evidence. Ultimately, however, it is the responsibility of the judge to see that all pertinent evidence has been gathered to enable the fair adjudication that the regulations contemplate.

To reach a decision, inevitably there must be an assessment of the claimant's credibility. In fact, the Social Security Administration has made clear in its regulations and rulings that a disability determination must include an assessment of the claimant's subjective allegations such as pain, and the courts have repeatedly made clear that such an assessment is critical. Credibility assessments are difficult to make and even more difficult to articulate. State Agency examiners recoil from the task and instead rely solely on objective findings. Therein lies the fundamental difference between the two bureaucratic determinations at the State Agency and the disability decision at the hearing level.

Three years ago, Social Security, as a part of redesign, undertook a massive training of all disability adjudicators, called Process Unification Training. It focussed on eight Social Security rulings that reiterated existing rules and policy on assessing credibility, medical opinion, and residual functional capacity. State Agency examiners, medical consultants, quality reviewers, judges and writers were all trained together for the first time. As a facilitator for this training, I traveled across the country and interacted with all components being trained. It became clear to me during this training that State Agency examiners, although hardworking and well-trained in the medical area, were not assessing a claimant's subjective allegations. Moreover, they were overwhelmed by the prospect of having to do so. They uniformly agreed they did not have the time to make such assessments and produce the number of determinations expected of them.

They were confounded by the task of assessing a claimant's subjective allegations and articulating a reasoned basis for their conclusion. Notwithstanding the clear message from the Process Unification training that State Agency Examiners were expected to perform individualized assessments and rationalize their determinations, they have failed to do so. State agencies balked at this requirement, and examiners' determinations continue to be devoid of rationale and continue to be driven almost exclusively by the objective findings. It is the only way they can maintain the production expected of them. Meanwhile, the Office of Hearings and Appeals continues to assume the thorny obligation of assessing the subjective allegations of claimants.

It was the intent of Process Unification to have the correct decision for a claimant rendered at the earliest point possible in the process. During the training, I heard State Agency examiners say they sometimes tell claimants to appeal to the Office of Hearings and Appeals because the judge will be able to allow their claims based on their subjective complaints but they, the examiners, could not based solely on the objective evidence of record. If the examiner were to allow the case, it would result in an error being assessed by the Disability Quality Branch of Social Security. This would adversely impact the examiner's performance evaluation and the so-called accuracy rate for the State Agency. In this way through its Quality Control Branch, Social Security can control the decision-making process of the State Agencies. An independent ALJ, who is not subject to performance ratings, can apply the law as it should be applied. This independence is the essence of the due process hearing and the reason Social Security perceives the Office of Hearings and Appeals and its judges as being beyond its control. Again, this is the root of the tension between Social Security and its adjudicatory branch—the Office of Hearings and Appeals.

#### REFORM OF THE DISABILITY PROCESS

When the Social Security Administration became overwhelmed by the number of cases that were inundating the Office of Hearings and Appeals in the mid-1990's, Social Security embarked on a redesign of the disability process. Many initiatives were undertaken including Screening Units, the Senior Attorney Program, and the Adjudication Officer (AO) program. The first two initiatives were designed to cull out the cases that could be paid on the record without a hearing.

The third initiative, the Adjudication Officer Program, was designed to have the Adjudication Officer develop the case, allow it if it could be allowed, and if not, pass it on to the Administrative Law Judge as a fully developed case ready to be heard. The concept was a good one, but the program did not work because the AO's could not produce the numbers of cases per day necessary to handle the disability workload. Moreover, although a face to face meeting was contemplated between the AO and the claimant, those meetings did not occur, and often the AO's could not accurately assess the severity of the claimant's subjective complaints.

The latest initiative, the Hearing Process Improvement Plan (HPI) is an effort to distill the ideas of redesign. The concept behind the plan—the development of the case for the ALJ—is a good one. The problem with the plan, however, is that it envisions control and development of the cases prior to hearing by persons other than

judges, without input from judges, and predominantly by persons without legal training.

The plan appears to be the product of judges. At the head of HPI there is one Regional Chief Administrative Law Judge. Moreover, the plan is known as the plan of the Regional Chief Administrative Law Judges. It was not until after the plan was unveiled, however, that there was any significant effort to solicit input from the judges in the hearing offices who perform the daily work of adjudicating cases.

While Social Security's Chief Administrative Law Judge had limited input in the early stages of the development of HPI, since the beginning of 1999 he has been out of the loop. The Regional Chief Judge in charge of HPI answers to the Deputy Commissioner for Disability and is working in Baltimore, not Falls Church where the Office of Hearings and Appeals and the Chief Judge are located. The Regional Chief Judge is not working for and through the Chief Judge and Associate Commissioner, who run the Office of Hearings and Appeals. A recent preliminary proposal within Social Security, in fact, to remove the management authority of the Chief ALJ over the local hearing offices and ALJs would have seriously diminished the role of the Chief ALJ and all ALJs. Fortunately, the agency more fully considered the merits of that proposal and ultimately rejected it. However, the organizational and cultural attitude that prompted such a proposal to emasculate the authority of the Chief Administrative Law Judge continues to persist within the agency and lies at the heart of this tension between its regulatory and adjudicatory components.

In the course of redesign a myriad of memos has been generated by Social Security officials outside the Office of Hearings and Appeals. The tenor of many of these memos is an antipathy for the Office of Hearings and Appeals and its independent ALJs and an expression of the need for Social Security to take control of the hearing process. One such memo stated in part:

A significant portion of the problem with OHA is that the ALJs exercise wide discretion to interpret the law and regulations as they see them and in relation to their local environment, while the rest of the agency follows a philosophy of a national program with one set of meticulously laid out policies and procedures

A more productive process could be achieved through an operational structure with non-ALJ control/management. A change in culture needs to be introduced which instills accountability for productivity. ALJs need to understand and accept they are a part of the organization working toward organizational, not individual, goals. The hearing entity should include strong non-judicial leadership—titles and degrees do not matter . . . As stated before, OHA should be under the Deputy Commissioner for Operations with the regional staff and hearing offices under the Regional Commissioner.

There is concern that the HPI plan may be the first step down the very slippery slope to an Office of Hearings and Appeals controlled by non-ALJs. The office structure under HPI is a move away from judge control. While the Hearing Office Chief ALJ still is the titular head of the office, the ALJs themselves are entirely out of the chain of command. Working for the Hearing Office Director, who many anticipate will be an employee new to the Office of Hearings and Appeals coming from the program side of Social Security, the analysts and technicians will develop cases before they are seen by or assigned to a judge. The plan does allow for "standing orders" from the ALJs as to how they want cases developed, but the staff will have no idea for which judge they are developing a case so those orders will mean little or nothing. Moreover, within a processing team of approximately 16 employees, who will support four judges, there is only one position exclusively for an attorney—the Legal Advisor. The analysts, which are GS-9/11/12 positions, are for either attorneys or paralegals. While there is conflicting information as to the agency's final plans, there appears to be a shift away from attorneys, and under HPI those who are attorneys will in many cases be supervised by non-attorneys—a situation that may run afoul of Bar requirements in many states.

The work of the Office of Hearings and Appeals is judicial in nature. It requires the input of attorneys. While there is a legitimate place for paralegals in the process, the trend seems to be to supplant the attorneys with paralegals. Ironically, the grades for both are identical. Thus, for no additional money Social Security could be employing lawyers educated in the concept of due process and the evaluation of evidence; yet, the preference seems to be to hire paralegals who may not have a college degree let alone training in these critical legal concepts. That is not to say that many of the Office of Hearings and Appeals paralegals do not do a creditable job. It is to point out, however, Social Security's inclination to de-legalize the hearing process.



It should also be pointed out that when one hears the term “paralegal,” one assumes a certain level of training in the law. At Social Security, that is not the case. The title “paralegal” has been given to a job that for the most part is held by employees who have been promoted from clerk-typist, to clerk, to legal assistant to paralegal. These employees have no legal training and are in no better position to analyze evidence and write legal decisions containing credibility assessments than the examiners in the State Agencies. It is the perception that legal training is not necessary to perform these tasks. This represents another change in the perception of the Social Security Administration about the due process hearing.

This de-legalization of the hearing process is also manifesting itself in other respects, including the representation of claimants by attorneys. The current version of H.R. 3070, Ticket to Work and Work Incentives Improvement Act, proposes to assess a “user fee” when the Social Security Administration has approved and certified direct fee payment to attorneys (from past-due benefits payable to beneficiaries) for their representation of claimants. The proposed fee would be computed at a rate of 6.3% of the fee paid to attorneys who use the statutory withholding and direct fee payment mechanism. Attorney fees for Social Security claimants using the mechanism are already capped and are highly regulated. The user fee will reduce the net fee paid to the attorney and will discourage involvement by members of the disability bar in Social Security disability cases. Yet, disability claimants are often a segment of the population most in need of competent representation. The due process hearing—a legal process—is critical to the fair assessment of their claims.

HPI’s proponents anticipate a 21% decrease in processing time and 16% increase in productivity through its implementation. Judges are currently producing on average about two cases per workday or 42 per month. There is a breaking point. All the efficiencies in the world relating to case development cannot change the fact that in order to provide a claimant a fair hearing, the judge must read the entire record in a case, including all the medical evidence. That takes time. Claimants are not widgets whose cases can be mass-produced. Each deserves the individual attention of the judge with a careful weighing of the evidence and assessment of credibility.

The ALJs nationwide are doing their job well and efficiently. Associate Commissioner Rita Geier recently issued “Dialog 2000,” setting forth the accomplishments of the Office of Hearings and Appeals for fiscal year 1999. Specifically, at the hearing level there were 596,999 dispositions and a total of 311,958 cases pending at end of year—the lowest level of pending cases since FY 1992. Average case processing time was down to 316 days from 371 the previous year. Ms. Geier described these as “great accomplishments for our claimants and for public service.”

#### THE NEED FOR MANAGEMENT AUTHORITY BY JUDGES

The foremost problem within the Office of Hearings and Appeals is not the judges or the configuration of offices. Rather, it is the fact that the judges have no managerial authority over the staff who work for them. This diminishes significantly the accountability of employees for the tasks they are charged with performing. For example, hearing clerks are responsible for scheduling cases, monitoring cases in post-development and releasing decisions. Legal Assistants are responsible for “pulling” cases (ordering the evidence in the file) and associating mail with the files. Writers are responsible for writing decisions. None of these employees is managed by judges, the persons most affected by their work product—or lack thereof. Moreover, there are no quantifiable standards by which their performance is measured. When tasks are not done in a timely manner, are not done correctly, or not done at all, it is the claimants who ultimately suffer the consequences—their cases are delayed. Employees at the Office of Hearings and Appeals seldom suffer consequences for poor performance. The good employees carry the load for the non-producers, and morale is low.

Under HPI, Social Security has announced three areas of improvement:

- Administrative efficiencies, such as the elimination of handoffs, to streamline case processing;
- A group-based approach that will better ensure accountability; and
- Improvements in automation and data collection to provide the tools for monitoring and tracking case progress more efficiently.

Let me speak to each of these initiatives, starting with the last first. No one can argue that the Office of Hearings and Appeals does not need improvement in the area of automation and data collection. The systems and equipment are way behind the times. Only in the past year has each employee been provided with a computer, and the case tracking systems are very outdated. There is a vast opportunity for improvement in this area.

As for eliminating handoffs, it does not appear that HPI will accomplish this goal. For example, currently under the Senior Attorney program, a case goes to a senior attorney who either allows it and issues a decision or returns it for ALJ processing. Under HPI, the case analysts, who may or may not be attorneys, must hand the case off to the judge if they think it should be allowed. The judge must review and concur and then return it for disposition. This does not eliminate handoffs.

As for the group approach providing more accountability, unfortunately it will in all likelihood lead to less accountability. Right now, each employee has a specific job to do and it is painfully clear when it is not done. Under HPI, it will be difficult to know who is doing what, since case technicians will be responsible for a large array of tasks. Nonetheless, there presently are no consequences for failure to perform, even when it is clear what an employee is supposed to be doing. Absent some commitment to genuine assessment of performance with quantifiable standards and consequences for failure to perform, HPI will not improve this problem. The reconfiguration talks about accountability but offers no mechanism for achieving it.

#### RECOMMENDATIONS FOR IMPROVEMENT

The key to improving the Office of Hearings and Appeals is to put the judges in charge of the people who work for them. As the system now runs and as it would probably run under HPI, the support function operates oblivious to the day to day needs of the judges. The support function takes on a life of its own and judges are viewed as interfering with that function when they voice dissatisfaction or even try to express how they might better be served.

All this said, it cannot be ignored that justice delayed is justice denied. A wait of approximately one year for an ALJ decision, which has been the norm over the past few years, is unacceptable. The Office of Hearings and Appeals must do better and is doing better.

There are many reasons for the delays. First and foremost is the dramatic increase in receipts at the Office of Hearings and Appeals. In 10 years the dispositions have more than doubled from 280,000 in FY 1988 to 596,999 in FY 1999. Staff has been increased by 50%, but a backlog was inevitable. As of 1996, average processing time was at an all time high of 378 days. It was reduced to 316 days in FY 1999—a significant decrease.

This swell of cases, however, has moved through the hearing offices and is now located at the Appeals Council which is currently overwhelmed by its workload. In FY 1999, claimants waited on average 460 days for a decision, and a wait of up to two years is not unusual. Moreover, the quality of the decisions is spiraling downward, according to practitioners and ALJs. The number of voluntary remands by U.S. District Court, where Social Security's attorneys agree to a remand based on deficiencies in the record that were not caught by the Appeals Council, is growing. Clearly help is needed at the Appeals Council level. One proposal under consideration is the elimination of the Appeals Council request for review as the final step in the administrative appeals process for disability claims. Given the current glut of cases, where review is cursory at best, the Appeals Council is doing little or nothing to contribute to the individualized assessment of a claimant's case. One might ask if the resources of the Appeals Council could not be put to better use at the hearing level, which is the only point where a claimant gets a true individualized assessment in a face-to-face impartial hearing.

Curiously, Appeals Council judges who are reviewing the Administrative Law Judge's decisions are not themselves Administrative Law Judges. They have not gone through the rigorous screening and selection process for ALJs. Rather, they are attorneys at the GS-15 level. They are assisted by a staff of analysts, who encumber non-attorney positions, although some of the incumbents happen to be attorneys. This anomaly raises serious question about the value of Appeals Council review.

Grounded in the premise that a Social Security disability determination requires an individualized assessment of a claimant's impairments and their impact upon the claimant, the Social Security Section of the Federal Bar Association offers the following recommendations for improvement of Social Security disability case management:

- *Ensure the separation and independence of the adjudicative function from the regulatory function within the Social Security Administration.*—This could be done in a number of ways, one of which would be to make the Chief Administrative Law Judge answerable directly to the Commissioner of Social Security.

- *Put judges in charge of the personnel who work for them.*—The support function needs to truly provide support to the work of the judges and not take on a life of its own oblivious to the needs of the judges.

- *Pursue the concepts within HPI of thorough case development under supervision by judges and of improved automation and data collection methods.*—Implement a real performance appraisal system with quantifiable standards and take improvement action when warranted.

- *Strengthen the attorney presence within the Office of Hearings and Appeals to better accomplish the legal work of the Office of Hearings and Appeals.*—Attorneys are educated in the evaluation and analysis of conflicting evidence, and they understand the concept of due process that is at the heart of the individualized assessment to which each claimant is entitled.

- *Eliminate the reconsideration determination as planned by the Commissioner.*—It is a rubber stamp. Instead, put those resources into the initial determination thereby allowing State Agency examiners to take the time to assess a claimant's credibility. This is currently planned in the HPI prototype states.

- *Eliminate the Appeals Council request for review.*—This is currently being tested in the Full Process Model, but further consideration should be given to the idea. Attorney representatives have indicated that this step is of minimal value in the process.

With the implementation of these recommendations and a heightened regard throughout the Social Security Administration for the responsibilities and independence of its administrative judiciary, the disability management process would become significantly more efficient and effective.

This concludes my prepared remarks. Thank you once again for the opportunity to appear before you today. The Social Security Section of the Federal Bar Association looks forward to working with you and the Social Security Administration in improving disability workload management. I would be happy to answer any questions you may have.

Chairman JOHNSON. Thank you very much, Judge McGraw.  
Ms. Shor.

**STATEMENT OF NANCY G. SHOR, EXECUTIVE DIRECTOR, NATIONAL ORGANIZATION OF SOCIAL SECURITY CLAIMANTS' REPRESENTATIVES, MIDLAND PARK, NEW JERSEY**

Ms. SHOR. Thank you very much, Chairman Johnson, and Members of the Subcommittees here today.

I am very pleased to be here today to speak about the management of the disability programs and I am going to offer a particular focus on the hearings and appeals process. But I certainly want to commend you for holding a hearing today on programs on which so many with disabilities depend.

By way of background, I have been the executive director of the National Organization of Social Security Claimants' Representatives for 20 years. We are a nationwide association of almost 3,500 attorneys and others who routinely represent people with disabilities in their claims for Social Security and SSI benefits. Our members' collective experience is at every level of the process. To a limited degree, they represent claimants at the initial and the reconsideration level. The bulk of their work is at the hearing level and at the Appeals Council and pursuing cases into Federal court.

We have heard a lot this morning on the subject of performance criteria and assessment criteria and we would like to ensure that not only are efficiency and timeliness factored in but also the fairness of the process and the accuracy of the ultimate decision. These are not widgets. These are people with disabilities and that's how the system has to treat them.

Very briefly, the redesign plan currently underway at the Social Security Administration is suggesting two very significant changes at the very front-end of the process. One is, in addition to the sys-

tem and one is a subtraction from the system. The first, the addition is the pre-decision interview, the PDI, which we certainly support as an opportunity for a face-to-face meeting between the claimant and the decisionmaker. We have concerns about how PDI may be implemented but we are very optimistic that this is an opportunity that will allow a claimant to better and more fully present their case and lead to an accurate decision at the initial level.

We also support, with some apprehension, the elimination of reconsideration which over the years has served as a paper review. Not very many decisions were changed from an initial denial. Only about 11 percent were awarded benefits at reconsideration. We are apprehensive, as I believe Social Security is as well, as to what will be the impact on the numbers of cases coming directly to the Office of Hearings and Appeals as a result of the elimination of reconsideration.

The hearings and appeals process is really the focus of where our members do their representation of Social Security disability claimants and in light of some of the earlier comments this morning, I just did want to suggest that it is perfectly plausible that a decision denying benefits coming from a disability examiner at a State agency can certainly be correct on the basis of the evidence in the file at that time, and a decision of an Administrative Law Judge subsequently awarding benefits may also be perfectly accurate in light of several factors, including the worsening of the individual's condition, new evidence which has been gathered, the opportunity to take testimony from the claimant and from the claimant's witnesses, as well as the opportunity to call vocational expert and medical experts to the hearing and, finally, because a large proportion of claimants at the hearing level are represented and the attorneys and other representatives are knowledgeable about the system and how best to present a claimant's case.

Speaking specifically to the initiative entitled, Hearing Process Improvement Plan, we have not a great deal of information about it. But based on what we have seen and the over-arching goal of it, we are certainly supportive. The over-arching goal that Social Security has identified is to move cases through the Office of Hearings and Appeals in a more timely manner. And it would be impossible, I think, for anyone not to support that as long as no sacrifices are made in the accuracy of the decisionmaking process including due process rights of the claimant and the decisional independence of Administrative Law Judges.

In my written testimony, I have identified several of the concerns, many of the concerns that we have about how HPI may be implemented but in many ways it is premature for us to offer our observations in practice because HPI has not yet begun.

We will certainly be vigilant in monitoring the role that HPI makes in how OHA functions, as I am sure you will be as well.

Very briefly, we are concerned, deeply concerned about the delays at the Appeals Council which absolutely dwarf the delays at the Office of Hearings and Appeals. It is hard to choose a word beyond, unbelievable, and we are alarmed that the Social Security Administration has selected this time to increase the workload at

the Appeals Council by beginning an energetic program of own-motion review.

Not only do we not think that the Appeals Council has the proper resources to undertake an additional workload but we are apprehensive as well that we are turning to revisit the Bellmon review and that checkered past back in the early eighties.

Our members do support a continued right of review for aggrieved claimants into the Federal District Courts as presently constituted.

I would want to highlight that we believe the most fundamental problem within the disability adjudication process is development of the cases. One result of that is that frequently denials from the State agency disability examiners are not just because a person has not established disability, but because the file may be incomplete. Due to uncooperative doctors, difficulty getting a hold of evidence, oftentimes, denials are based more on incomplete files than they are on files that establish non-disability.

And we believe that until the development problems, development of the record problems are addressed, claimants are going to find themselves drawn further and further into an extremely lengthy hearing and appeals process.

Finally, I certainly want to commend the Committee for the work that you have done on the work incentives legislation. We are very supportive of it. We are very optimistic that beneficiaries will get full explanations from Social Security as to how they can avail themselves of it, and that the high goals that this Committee has set for this legislation can be realized.

And we certainly want to commend you again for holding the hearing today.

Thank you very much.

[The statement of Ms. Shor follows:]

**Statement of Nancy G. Shor, Executive Director, National Organization of Social Security Claimants' Representatives, Midland Park, New Jersey**

Chairman Shaw, Chairman Johnson, and Members of the Subcommittees: I am very pleased to be here today to speak about management of the disability programs, with a particular focus on the hearings and appeals process. I commend you for holding this hearing on these programs on which so many people with disabilities depend.

For the past twenty years, I have been the executive director of the National Organization of Social Security Claimants' Representatives (NOSSCR). Neither NOSSCR nor myself has received any government grants or contracts in the current or past two years. NOSSCR's current membership is approximately 3,450 attorneys and others from across the country who represent claimants for Social Security and Supplemental Security Income benefits. Collectively, we have many years of experience in representing claimants at every level of the process and welcome this opportunity to share some observations and concerns with you.

Today's hearing focuses on SSA's management of the disability program caseloads. Two extremely important criteria for such a review are efficiency and timeliness. But these are not the only criteria. Today's hearing should be directed to ensure the fairness of the process of determining whether or not a claimant is entitled to benefits. The American public needs to know that the system treats claimants fairly, so they can know that the process will be fair in the event they become disabled in the future.

**A. THE HEARINGS AND APPEALS SYSTEM—A SOUND STRUCTURE**

A claimant files an application for benefits, most often at a Social Security district office. Under the current system, the state disability determination agency decides whether or not that claimant is eligible for benefits. If the claim is denied, the

claimant can file for a reconsideration by the same state agency. If the claim is denied on reconsideration, the claimant can pursue the appeal to an Administrative Law Judge at SSA's Office of Hearings and Appeals. If the claim is denied by the ALJ, the claimant can file a request for review with the Appeals Council. (If the claim is allowed by the ALJ, the Appeals Council may exercise own-motion review.) A claimant who is denied by the Appeals Council can file suit in federal district court.

### 1. *Redesign for Initial and Reconsideration Levels*

The redesign plan makes two significant changes in the initial and reconsideration steps. The opportunity for a "pre-decision interview" (PDI) will be added to the former, and the latter will be eliminated. At this time, we believe that these changes are positive. We have long advocated the value of providing claimants with a face-to-face meeting with a decision-maker. Our support is tempered, however, by concerns about how the concept of PDI is implemented. How will the interviewer memorialize the meeting? Will most PDIs be brief telephone conversations and not face-to-face meetings? Will claimants be discouraged from pursuing an appeal, if the PDI decision on their application is a denial?

### 2. *Hearings and Appeals Process*

A claimant's right to file a request for hearing before an Administrative Law Judge (ALJ) is central to the fairness of the adjudication process. This is the right to a full and fair administrative hearing by an independent decision-maker who provides impartial fact-finding and adjudication, free from any agency coercion or influence. The ALJ asks questions of and takes testimony from the claimant, may develop evidence when necessary, considers and weighs the medical evidence, evaluates the vocational factors, all in accordance with the statute, agency policy including Social Security Rulings and Acquiescence Rulings, and circuit case law. For claimants, a fundamental principle of this right is the opportunity to present new evidence in person to the ALJ, and to receive a decision from the ALJ that is based on all available evidence.

Current processing times at most of the Offices of Hearings and Appeals (OHA) across the country, though decreasing, are still unacceptably high. SSA's response is a top-to-bottom reorganization plan termed "Hearing Process Improvement (HPI)." It is based on assessments that the current process simply takes too long. The most recent quarterly data show an average of 314 days between a request for hearing and the hearing itself. HPI's goal is to reduce that to 180 days. We certainly support changes in the process that will reduce or eliminate unnecessary delays for claimants.

We do, however, approach HPI with serious concerns for any violations of claimants' due process rights to a full and fair hearing, as well as any encroachments on the decisional independence of Administrative Law Judges. For example, if ALJs are expected to be more productive because many of their "non-judicial" functions are being removed and reallocated to staff, is this a way of giving them quotas? What will be the impact on the complete development of cases and the recognition of issues? Will a process which relies on case technicians to screen cases for on-the-record decisions prove adequate? Unfortunately, the authority which senior attorneys now have to issue fully favorable on-the-record decisions is scheduled to expire. Will cases be "certified" as fully developed before they actually are? Our experience with the recent Adjudication Officer project suggests that this often happened there. What about new evidence? SSA offers assurances that ALJs will accept new evidence at the hearing, but in light of processing goals, will they feel free to do so? Although clearly the agency and the ALJs prefer that all evidence be submitted as early in the process as possible, a practice which NOSSCR fully supports, the ALJs must accept new evidence. SSA offers assurances that the ALJs may keep the record open for post-hearing development, but will they be encouraged not to? SSA offers assurances that ALJs can decide that the development is a "certified" case is not complete, and undertake that development themselves, but again, will they be encouraged not to? Will the prehearing conferences have value, or will they be just a formality, as they often were in the adjudication officer program?

What we know about HPI at this time comes from SSA's plans and statements, and not from any actual implementation. While we support efforts to decrease processing time at the hearing offices, we will be vigilant in monitoring any encroachments on claimants' due process rights, including the decisional independence of ALJs. As part of a process to move cases efficiently and fairly, we would urge SSA to retain the senior attorney program.

Turning to the Appeals Council, we can only describe processing times there as unbelievable. It is not at all unusual for a claim to be at the Appeals Council for

more than 18 months. A claimant cannot go forward with an appeal into federal district court until the Appeals Council has acted. As a result, claimants are increasingly returning to the front end of the process and filing new applications. This generally provides them with no relief, however, because SSA policy is to join the second application to the first which is pending at the Appeals Council. Thus, while their medical and financial situations are deteriorating, claimants hear nothing on their Social Security appeals for many months. We share our clients' frustrations with the length of time that their appeals wait at the Appeals Council.

Yet, we see no agency plans to address delays at the Appeals Council. In fact, while delays at the Appeals Council grow, SSA has authorized extensive own-motion review by the Appeals Council. This review is limited to only those ALJ decisions that are favorable to claimants. The review resonates with overtones of Bellmon review, which resulted from a mandate in the early 1980's to review favorable decisions exclusively from ALJs whose allowance rates were considered "too high." The court struck down that Bellmon review because it interfered with the decisional independence of ALJs by "targeting" those ALJs who had higher allowance rates. By its plans to review only claimant-favorable ALJ decisions, this new own-motion review plan is subject to the same criticism. What message does it send to claimants? What message does it send to ALJs? We believe that any own-motion review program that the Appeals Council conducts must be even-handed, so that the Council reviews both favorable and unfavorable decisions and that there is no perception of bias.

The last and very important component of the hearings and appeals structure is access to review in the federal court system. At this level, the review is not *de novo*; rather, the judges are applying the substantial evidence test. We believe that both individual claimants and the system as a whole benefit from the federal courts hearing Social Security cases. Given the wide variety of cases they adjudicate, federal courts have a broad background against which to measure the reasonableness of SSA's practices. Federal court review in Article III courts should be maintained.

#### B. HOW EVIDENCE IS OBTAINED—AN UNRELIABLE PROCESS

Developing the record so that relevant evidence from all sources can be considered is fundamental to full and fair adjudication of claims. The decision-maker needs to review a wide variety of evidence in a typical case, including, for example, the medical records of treatment, opinions from medical sources, pharmacy records of prescribed medications, statements from former employers, and vocational assessments. The decision-maker needs these types of information to determine the claimant's residual functional capacity, ability to return to former work, and ability to engage in other work which exists in the national economy in significant numbers.

Unfortunately, very often the files that claimants with denials from the reconsideration level bring to our members show how little development was done at the initial and reconsideration levels. Until this lack of development is addressed, the correct decision on the claim cannot be made. Claimants are denied not because the evidence establishes that the person is not disabled, but because the limited evidenced gathered cannot establish that the person is disabled.

A properly developed file is usually before the ALJ because the claimant's counsel has obtained evidence or because the ALJ has developed it. In fact, the redesign plan relies on claimants' representatives to obtain the evidence. Not surprisingly, these different evidentiary records can easily produce different results on the issue of disability. This is one part of the explanation for the wide disparity in the claims files at the DDSs and at OHAs.

To address this, the agency needs to emphasize the full development of the record at the beginning of the claim. This includes an explanation to claimants of the need to submit evidence as early as possible. The benefit is obvious: the earlier a claim is adequately developed, the earlier it can be correctly decided.

#### C. LEGISLATIVE REFORMS—ENCOURAGING RETURN TO WORK

NOSSCR supports efforts that encourage disabled beneficiaries to return to work. Many of them fear losing medical insurance. They fear that even a brief episode of employment will terminate their Social Security benefits, even if they are unable to sustain that employment. Many do not understand the provisions in the current law for trial work periods and extended periods of eligibility. SSA needs to provide more information and answers to specific questions on an on-going basis for those on the disability rolls who are able to consider a return to the workforce.

We appreciate the House Ways and Means Committee's efforts in developing work incentives legislation. We hope that this Congress will pass legislation that will remove barriers to work and ensure maximum benefit for people with disabilities. We

urge that the legislation be paid for with offsets that do not harm the very people with disabilities whom the legislation is designed to help.

#### D. CONCLUSION

We commend the two Subcommittees for holding this joint hearing today to look at SSA's management of its disability programs. We are committed to supporting the basic structure of the hearings and appeals process, and to working with the agency on reducing the backlogs. Better development of the claims before they reach OHA would produce a great benefit, both to claimants and to the hearings and appeals process. In formulating any plans to decrease processing time and to move cases more quickly, we urge SSA to be mindful of its responsibility to administer a hearings and appeals process which respects claimants' due process rights and decisional independence for ALJs. Today's claimants and future claimants are entitled to no less.

Chairman JOHNSON. Thank you very much.

And I thank the panel for their comments, and for their straightforwardness, and for their depth.

What I am hearing is a considerable disagreement about the HPI process, is that correct? And would those of you who have now heard the others' testimony want to enlarge on your support for the current proposal or opposition to it?

Judge BERNOSKI. I think there is a great deal of uncertainty with the program because of the way it was created. As I indicated in our testimony, the Administrative Law Judges, our association, was not brought into the development or creation of the process. As it is unfolding, it is an unknown, as Nancy Shor indicated.

There are some problems, and those are the problems that I outlined in my testimony. We have serious reservation and concern with them. There is a function shifting here which is contrary to the existing law and regulations which is problematical under the best of circumstances.

Chairman JOHNSON. Do you think those things can be worked out?

Judge BERNOSKI. Well, the law problems would require a change in the regulations. Where it conflicts with the statutory law it could be worked out only with a change in the program. As Nancy Shor indicated, the over-arching goal of getting a fully developed case to the Administrative Law Judge is certainly laudable and we agree with that. But maybe, just improving the present system, as we indicated, and better training of the current staff could accomplish the same result with less confusion.

Chairman JOHNSON. It is very interesting to me that all of the participants have not been involved in the planning. And it does seem odd that you would not have been involved in the planning and it does seem odd to me that the union members would not have been involved in the planning.

I think that is a pretty old-fashioned way of doing things.

Mr. BRENNAN. I do have to speak up and say that while the association may not have been involved, there were a number of Administrative Law Judges that helped in the development of this, the hearings process improvement.

Judge BERNOSKI. There were some Administrative Law Judges. Unfortunately, the Administrative Law Judges that were in the program didn't represent anyone. We represent the over-arching



group. And, so, the people that are participating are representing primarily their own interests and not the interests of the broader group.

Chairman JOHNSON. I doubt that they would agree with that. But I get your point.

Judge MCGRAW. I would also point out that the judges who were involved were really a part of management and I think that it is important to have grassroots involvement. I believe that judges need to be able to direct the work of development of cases. And I foresee HPI as creating a unit of workers separate and apart from the judges doing a job without the input of judges and, to a great extent, even with fewer lawyers than are now involved in the process.

I see a tendency toward the use of paralegals, non-legally trained employees doing this work. And I really think that it needs to be under the direction of judges.

Chairman JOHNSON. The other thing I just would like to bring up to any of the rest of you who have any comments is Mr. Skwierczynski's discussion of the DCM pilot and his belief that it has been a big success. And then last, does anyone want to comment on the money that we gave you in 1995, was it well spent?

Mr. SKWIERCZYNSKI. If I could just add, the Lewin Group that evaluated the first phase issued a report. And what I would like to do if it would be acceptable is offer this as an exhibit or attachment to my testimony, because this is the independent party that reviewed it, the Phase I, is the party that indicates it is a success.

Chairman JOHNSON. We will accept that as part of the record.

Mr. Brennan.

Mr. BRENNAN. When we set up this pilot, and there were members of the NCDDD as well as AFGE and other folks from around the organization that set it up, it was determined that because it takes about 2 years to train a disability examiner and it takes about 2 years to train a Social Security claims representative, that this pilot would have to extend for about 3 years. Phase I was a success. But now we are going to get into some more difficult aspects of the program and I do not have any problems with what Lewin said about Phase I, but I think that it needs to be acknowledged that the pilot is supposed to run for 3 years and that will not be completed until I believe next year.

Chairman JOHNSON. Thank you.

Mr. Cardin.

Mr. CARDIN. Thank you, Madam Chair.

And let me thank each of our participants here for not only their testimony today but their willingness to work with us as we really plough new fields, hopefully, in figuring out what is the best system to help the millions of people who are affected by this. And I think we cannot lose sight of the fact that we are dealing with people's lives here, millions of people's lives, and we have to figure out a more efficient way. It is not a turf battle. We have got to work together to figure out how to do it.

Let me just ask, one point that has concerned me is that if I understand it, the council fee issue, Ms. Shor, I do not necessarily agree with the Commissioner or what Congress did in regards to the user fee because, quite frankly, there are some mutual benefit

here. We have imposed restrictions on what attorneys can charge to protect the beneficiary and then, yes, we do the collections. So, I think there is some mutual benefit to what we have set up here and I am not sure that the user fee fairly represents the assessment of costs.

On the other hand, as I understand it, your fee can very much be determined by the amount of the arrearages. That is the amount of money that has not been paid. And does that not act as a reverse incentive for an attorney to delay a case because their fees can be greater by delaying a case?

I know lawyers never want to do things like that but it does seem to me there is an inherent conflict here.

Ms. SHOR. I have been in my position for 20 years and for 20 years I have heard that suggestion made. And for 20 years we have been offering testimony and doing everything we can to assist Social Security in developing cases so they can be paid as early in the process as possible.

Mr. CARDIN. I understand that and I understand that you are—and we are all working to do that but for the individual practitioner, attorneys are particularly sensitive to the appearance of a conflict. It seems to me that the system has an apparent conflict in it and that we should be getting suggestions perhaps to modify that.

Ms. SHOR. I think two points I would like to make may be helpful. The first is that most claimants don't choose to hire a lawyer until they are up to the hearing level. So, even though our members are very interested in representing claimants at the initial level, it takes the claimant's initiative to hire an attorney. And most claimants going into a Social Security office, it's the last thing on their mind that they are going to have any problem with getting an application approved.

So, most claimants don't hire an attorney until they are pretty far into the process and are facing the rather terrifying prospect of coming up against an ALJ.

And second, most of the delays within the processing at the ALJ level are not attributable to attorneys. Attorneys have filed the request for hearing or the claimant has come to them after the request for hearing has been filed and the attorney works on the case and will eventually receive a notice from OHA that a hearing date has been selected in approximately 3 weeks.

Our members are very active in identifying cases that can be paid in what we call an on-the-record situation which means that there doesn't need to be a hearing with the scheduling and all of the time attendant with that. We are very interested in identifying cases that can be paid on the record, in large measure, because it will get the case through more quickly and get the clients into pay status more quickly.

Mr. CARDIN. I think that is a very fine answer but I can still see an individual practitioner who needs to request a postponement for whatever reason, in the best interests of their client, being in a conflict situation because it can mean that that individual practitioner's attorney's fees are higher by the delay.

And that, in and of itself, presents a conflict that we should try to avoid. And I think your answer is as strong as it can be. I would

just urge us to work to get potential or apparent conflicts out of the situation where lawyers are confronted.

Thank you, Madam Chair.

Chairman JOHNSON. Thank you.

Mr. Portman.

Mr. PORTMAN. Thank you, Madam Chair, and thank you for the good testimony because you are shedding light on a lot of these issues. I wish we had had the Commissioner after you all, as well as GAO.

But let me ask one specific question. In your testimony, Mr. Skwierczynski, you say that Congress should investigate States' refusal to provide better service due to some States opposition to establishing disability processing centers and expanding pilot testing of a disability claims manager position. Can you flesh that out a little more? And then I would love Mr. Brennan to comment on that as to whether that is an issue whether Congress ought to take up?

Mr. SKWIERCZYNSKI. Part of the process when the redesign was proposed in 1994 was the agency dealt with a variety of stakeholders regarding implementation of the redesign concepts. And they dealt with the union and we negotiated some agreements regarding implementation of the disability claims manager and also disability processing centers. And we had agreed that disability processing centers in Social Security we have large processing centers, six of them around the country and a headquarters processing center. There are seven large processing centers, each of which have close to 1,000 workers in there. And they would be, all of those processing centers have disability examiners in place, already trained, who don't require any massive training effort to learn how to process a disability claim.

And what we agreed with, with the agency was that we would have in these disability processing centers, experiments on doing a soup to nuts disability claim, where individuals probably telephonically, those who chose to file by telephone, would, their applications would be taken in these processing centers and those employees would be empowered to make decisions both on the disability aspects and the nondisability aspect of their claim. Theoretically meaning that you would have quicker processing time, less hand-offs, a streamlining of the operation.

States opposed it and we had a stakeholders meeting and they actually agreed to experiment with it, and didn't uphold their agreement and they were never implemented.

Mr. PORTMAN. And, Mr. Brennan, do you have any comment on that? Is this your understanding of how it has operated and what should happen now with regard to investigating that?

Mr. BRENNAN. Actually it wasn't, Mr. Portman. Let me explain that. When the original memorandum of understanding was signed between SSA and AFGE the State DDSs didn't have much input in that. The number of DCMs that were requested was something that we couldn't contemplate and still do our primary workload. We take our obligation to provide the safety net to the disabled people very seriously.

The DCM, as I just related, requires a lengthy training period both on the Federal side and on the State side. Our objection was

not to the DCM, it was our inability to deal with all the training and all the issues surrounding that that would have had to go on.

We have fully cooperated with the pilot as it turned out and I am not aware of the payment center issue except for the fact that we said there were  $x$  number of employees that would be State employees, there were  $x$  number of employees that would be Federal employees and our organization said how you place those, would you put them in a field office or would you put them in a payment center, is totally up to you.

We had no objections to where they wanted to put them. It was a numbers thing with us.

Mr. PORTMAN. Is it your understanding that this issue should be resolved at SSA level or based on your testimony, you indicated that Congress ought to hold additional hearings on this, is that correct?

Mr. SKWIERCZYNSKI. Well, I think it is my opinion that what we have here is a process, the disability claims manager which combines the two functions, which—and frankly, the employees I represent have not done the disability function before. And what the evidence indicates is that they have quickly learned it and they are providing excellent service and it is possible for an individual to do both parts of the function, both the nondisability aspects and the disability aspects. And if that process streamlines the operation, if the public likes it, which they appear to like it, then it seems to me we should be strongly encouraging its implementation.

The agency unfortunately is not doing that at all. In fact, they are down-playing the success story of the first phase of the disability claims manager pilot and instead top officials are around the country telling our employees who are involved with it that it is not going to fly.

And I think that when we hear statements like it is a dead issue, the culture does not exist currently for further roll out of this project, the Congress will never agree to pass legislation to allow an individual to do both aspects of the disability claim, we are puzzled. If something is claimant-friendly, if something is perceived by the public, if the public has a chance to face-to-face deal with the decisionmaker, if you can streamline the process, cut down the error rate, make it faster, let's explore how to do it?

Mr. PORTMAN. Well, I would agree. My time is up but I do have some additional questions. Maybe the Chair will recognize me later. Maybe I should go right now.

With the indulgence of the Chair, a couple of further questions. Ms. Shor, you mentioned earlier and I know I am taking this out of context, but the terrifying prospect of coming up against an ALJ. And I am terrified to ask these two ALJs these questions but I am going to anyway, as terrifying as it is.

But, you know, I again, getting back to some of the initial questions that came up earlier that I think you were sitting in the audience as we raised them about the process, itself, the amount of time that it takes, No. 1; and No. 2, the degree to which cases, initial determinations are overruled. I mean I still think more than half of the cases being overturned at your level is a system that is dysfunctional.

Now, what I hear you saying is that process unification has its limits. And that there are certain roles that are legal roles that must be reserved for an ALJ. And I, of course, cannot dispute that. But I do think that there has to be more we can do at the initial stage where the ALJ is not involved but where people who do not have your training can make individual assessments.

And I listened to Judge McGraw's statement, understanding again that she knows a lot more about this system than I do, you have spent a lot of time looking at process unification. But this notion that an individualized assessment can only be made by an Administrative Law Judge and I am a recovering attorney, myself, so, you know, just to get that on the record. But I understand the degree to which it is a question of law or interpreting the statute in an individualized sense. Obviously, that is something that should be reserved for the Administrative Law Judge.

But why not at the entry level, which in this case would be at the DDS level, and I understand there is some concern among the DDS representatives and they can speak for themselves but this is not something that they would necessarily be comfortable with, but an individual assessment should be made at the initial level in my view. And, again, I am not an expert on your process, and I may be missing something but this notion that somehow you need to have a judge to be individualized and that anybody who does an individualized assessment without the training of a judge is somehow incapable. And you mentioned the herniated disk. I am a herniated disk sufferer myself and you are right, herniated disks can mean different things to different people. And it relies in large measure, as you know, on the initiative the person takes to get the right kind of physical therapy and treatment and stretching.

But I don't see why people can't look beyond the objective data and get into the individualized case so that at the end of the day the process takes less time, No. 1; and No. 2, there is not this additional cost that is in our current system of more than half the cases being overturned on appeal.

Thank you, Madam Chair, for your indulgence.

Judge MCGRAW. Mr. Portman, I didn't mean to imply that a DDS examiner could not make an individualized assessment. And, in fact, it was the point of process unification training with the Social Security rulings, one of which involved the assessment of symptoms and the assessment of credibility. The intention of process unification training was that DDS examiners would do credibility assessments and would attempt to consider allegations such as pain.

Being a trainer, I was out there, I listened to the DDS examiners and they said that we do not have the time to do that. We don't know how to do that. And we don't have the resources. Social Security, if you really want us to do this, you are going to have to plough a lot of resources into DDS because we do huge numbers of cases and we simply cannot take the time to do that. You also have to be able to articulate the basis for your credibility assessment.

That takes time. And DDS examiners were saying constantly we don't have the time to do that. I had DDS examiners come up to me and say, "I sometimes tell claimants keep going, because if you

get to the judge level, they will be able to assess your pain." I'm not saying it cannot be done, I'm saying that given the system it hasn't been done.

Process unification training, the goal of it was to have DDS examiners do it. I am telling you it is not being done by DDS examiners.

Mr. PORTMAN. I appreciate your response. And, Mr. English, you have been very patient. My only response would be that as GAO has pointed out, we need better performance measurements, first; and No. 2, to the extent we have those the cost will either be incurred at the outset or they will be incurred at a higher degree at the appeals level. And there will be a cost, when more than half the cases are being reversed, obviously, the system is not working. And, so, I would encourage you to continue your efforts and to push for that and I appreciate your clarification on the individual assessment.

Thank you, Madam Chair.

Chairman JOHNSON. Thank you, Mr. Portman.

Mr. English.

Mr. ENGLISH. Thank you, Madam Chair.

This is a particularly timely and useful panel. It is the best assemblage I have ever seen of expertise on the issue. And this discussion is timely because since I came to Congress in 1994, my single largest source of casework in my district office has been Social Security disability cases that for the most part have been protracted in a most extraordinary way and in a way that is impossible to explain to constituents.

So, I am grateful to all of you for coming and all of you helping us unravel this knot and I am curious. I think all of you heard Commissioner Apfel's testimony earlier. He laid out a fairly aggressive timetable, I thought, for shortening the average hearing process time to less than 200 days by the year 2002.

You have seen the hearing process improvement initiative laid out. Mr. Niesing, do you think that this is a realistic timetable, less than 200 by 2002?

Mr. NIESING. Well, certainly as the disability numbers come down, the hearings numbers come down. I think part of it is just the factor of the volume of the work that they produce and the volume of hearings that have gone to that level. They have gone down.

So, certainly you are going to have a lessening in the number of days to process. One of our concerns though I think which is opposite is in the hearing process improvement looking at it from the perspective of a field office manager, it just seems like the ALJs and even though a lot of what they do is predicated by law, it just seems like they are spending a lot of time in the minutiae of cases and getting involved in looking at whether a hearing is actually ready or whether it fits with their schedule and so on and so forth. And our feeling is that we need to remove some of those functions and let ALJs do what ALJs should do, and that is judging cases.

Now, that is from the perspective of a field office manager and looking at the fact that I don't get involved in those kind of things in claims that are flowing through my office. You know, I leave that up to the staff who are assigned those kind of functions.

Mr. ENGLISH. Following upon a thread in your testimony, you mentioned that due to the Administration's national performance review initiatives the number of supervisors at local Social Security offices has declined from over 2,000 to less than 400. And that as a result, quality reviews have been curtailed in most facilities.

In your view, what has been the fallout of fewer quality checks and are there more payment inaccuracies?

Mr. NIESING. Well, I think that there are two things to answer there. First of all, I think it is a staffing issue for one thing. I think that the fact that we have growing workloads and, yet, our staff have declined. Our claims representatives, when we do a disability interview, spend probably less time than they could of have in the past on looking, working with the claimant and getting like claimant observations, getting better descriptions of claimants which I think would help in the disability determination services as far as making their decisions.

And then because of that, you know, also having less supervisors, if we want to review that kind of process and look at a disability claim or review disability claims that are flowing through our offices it is difficult or more difficult to do that now when you don't have a supervisor in the office perhaps to perform that function.

Mr. ENGLISH. Similarly, on the question of resources, Mr. Skwierczynski, you note in your testimony that resources are inadequate to handle growing workloads because of budget cuts. And that more resources should be provided to hire new staff. However, and I think that the Chair noted this, that my impression is that SSA's administrative expenses were substantially increased in 1995, specifically for this purpose. Were the staffing cuts in your view budget related or were they caused by SSA decisions to direct resources elsewhere?

Mr. SKWIERCZYNSKI. Well, there are two problems. The 1997 legislation regarding the spending caps has made it very difficult for the agency to obtain additional staff from Congress. And before that, the Administration, the Clinton administration had staffing ceilings that were established for the agencies which also made it difficult.

Now, what the agency does, if you appropriate resources, for instance, to do CDRs, what really happens is that the agency concentrates a lot of energy to do CDRs and stops doing other facets of the work process. The agency, for instance, has an 800-number and in order to meet the commitments that they have made to—they call them the Porter commitments for Congressman Porter over in appropriations—in order to meet the commitments to answer the 800-number, they have shifted extraordinary amounts of staffing resources into meeting the 800-number whose real job is to do something else. And the something else that they are assigned to do doesn't get done.

So, when I say there is a need for additional resources, I say the agency, as a whole, needs to stop lurching from crisis to crisis and from problem to problem. The disability problems that the agency has, has caused the agency to pump a lot of resources into hearings and appeals but when they do that they are not getting additional staff from you overall, from Congress, they are shifting it from other areas. So, the people I represent who work in the 1,300 field

offices and tele-service centers, they are getting hit with some staffing problems.

And our offices have the staffing in our basic field offices, where the claimants come face-to-face and meet us, has dropped considerably in the last 15 years. And what the agency's response to that is, well, let's increase our telephone service and try to make do with the resources that they have. But certain things don't get processed and I think the Advisory Committee report acknowledges that. If you ask an employee, if you go back to your district and maybe visit a Social Security office and talk to the workers—

Mr. ENGLISH. And I have.

Mr. SKWIERCZYNSKI [continuing]. You will know that post entitlement work is given a second priority and often sits and doesn't get processed.

Mr. ENGLISH. I know that and I have visited our local office and I think they do a terrific job for what they are up against.

Madam Chair, I have one other brief question if I could be indulged and I will keep it brief if you will indulge me.

Thank you.

Judge McGraw, one question I needed to ask you and it has to do with a provision that had been proposed by the Clinton administration that you reference in your testimony. It having been folded recently into the ticket to work bill, which was reported out of our Committee and that is specifically the user fee.

I wonder—my impression from Commissioner Apfel's testimony is that the agency feels that it has been doing a great deal of work that is in effect work being done reducing the workload of the attorneys in the system and not charging them for it. Do you think that is a fair assessment and can you elaborate on your concern that this fee might ultimately reduce access to the appropriate legal services for claimants?

Judge MCGRAW. I don't believe—I did not understand Commissioner Apfel to say that the agency is lessening the task of the attorney who has to appear in a disability hearing. I think that attorneys continue to do a great deal of work in that regard. With respect to discouraging attorneys participation I think that is the No. 1 concern about the user fee. There are lots of practitioners who belong to the Federal Bar and they have uniformly said to me that attorney fees are hard enough to get in Social Security cases, it takes forever to get them paid. And now, they are being slapped with what they perceive to be a tax. That is 6.3 percent has nothing to do with anything other than a tax. And the feeling is that it is hard enough to get the money and this may be the straw that breaks the camel's back. We may be losing practitioners saying, it's hard enough as it is.

It is particularly difficult in SSI cases where there is no withholding by Social Security for attorneys to get their fees. SSI claimants often go off and do not pay the attorney.

So, it's a difficult situation for representatives with respect to being paid.

Mr. ENGLISH. Thank you, Judge.

And Madam Chair, I really appreciate your indulgence.



Chairman JOHNSON. Before I turn the gavel back over to my colleague, Mr. Shaw, let me just ask the panel if you agree with the following statement.

That the claimant needs to be able to talk to a medical adjudicator at the beginning of the disability claims process if they choose.

Mr. SKWIERCZYNSKI. I would wholeheartedly endorse that. And that is the whole focus of the disability claims manager, the ability of the claimant to talk to the person who makes the decision on their claim.

Chairman JOHNSON. But do they currently have that right to talk to a medical adjudicator?

Mr. SKWIERCZYNSKI. No. In the prototype States only on a pre-decision interview they can have a telephonic conversation. But the only really place where they—and the DDS is in many States—where I am from in Chicago, in Illinois, there is a DDS in Springfield. And no one from Chicago is going to be traveling to Springfield to have an interview with someone in the DDS. The DDS does not move. They are in one spot and that is it.

The only people that are located, community-based, are people who work in Social Security field offices.

Chairman JOHNSON. Is that part of the rationale then to have people cross-trained so that they can do both aspects?

Mr. SKWIERCZYNSKI. That people are cross-trained. Well, the disability claims manager is an attempt to see if one individual is capable of doing both the adjudicative tasks for the nondisability portion of the claim and the disability issues and make a decision on the disability issues. There was some skepticism before the DCM started whether an individual could do that because there is a lot to know in order to do both initiatives.

The Phase I of the pilot indicates that it is feasible and that the people who are, the 200-or-so people who are involved in the pilot are capable of doing both of those tasks.

Chairman JOHNSON. This goes to the disagreement between you and Judge McGraw on that point.

Mr. SKWIERCZYNSKI. I did not hear your question.

Chairman JOHNSON. This goes to the disagreement between you and Judge McGraw on that point in the sense that she felt that when she participated in the training that people felt that they didn't want to have that responsibility.

Mr. SKWIERCZYNSKI. Well, she was talking about disability examiners and DDSs who do not see the claimant. So, when Congressman Portman asked the question about the ability of a non-judge to make a credibility determination I would think it would be very difficult for someone over the telephone to make a full credibility determination.

However, if one were in a face-to-face interview, say in a Social Security field office, I don't see anything that would inhibit an individual to make an assessment of pain or other factors or other credibility factors in the course of interviewing an individual at the initial stage.

Chairman JOHNSON. Hmm-hmm.

Mr. Brennan.

Mr. BRENNAN. Just to follow-up a little bit on a couple of things. First of all, disability examiners do make credibility assessments and they do make individual assessments on each claim. Second point, the way it is now, I mean if you're talking about a right to talk to the medical disability examiner, of course, the claimant has a right to do that. In many cases, the disability examiners will call the claimant and discuss their impairments, get additional information. Many DDSs send out an introductory letter explaining who they are because it is a State/Federal program and sometimes people get confused about it.

We routinely send out letters, we routinely speak to people about it. As to the issue about whether you need to see somebody face-to-face to make a credibility determination, I suggest you don't. Judges do cases on the record, as DDSs do. I think there are some cases where you might need to do that and the new prototype process will certainly avail people or give the claimants the ability to do that.

Chairman JOHNSON. Thank you very much.

Chairman SHAW. I would like to question the two judges in regard to the measure of productivity as it relates to the tremendous backlog. I think both of you were here when we were questioning the Commissioner as to the tremendous length of time that is required to get these cases to final adjudication, particularly those that go through the appellate process.

I have two questions I would like for both of you to answer. Do some judges have extraordinary backlogs, longer than other judges? And, second, how would you suggest that we measure the productivity of the judges?

Judge McGraw.

Judge MCGRAW. Mr. Shaw, as far as—in our office I know that judges—no one judge has a larger backlog than another. And, in fact, I would point out that OHA is becoming more and more current. The delay is decreasing dramatically. I used to look at cases that were about 13, 14 months old. I am now looking at cases that are about 6 months old.

Chairman SHAW. Now, are you on the initial hearing bench? You are not on the appellate?

Judge MCGRAW. Yes. I am on the initial hearing bench. And I believe that with the decrease in the caseload at OHA, cases are going to move through much more quickly. And in respect to the—I think that in the nineties a huge number of cases came in. I think they have moved through OHA and I think they are now sitting at the Appeals Council, the big bulge is at the Appeals Council now.

And with respect to the Appeals Council I did want the opportunity to point out to you, you were asking earlier about the Appeals Council judges and whether they had tenured protection. And I wanted to make sure you understood that ALJs at the initial hearing level go through the OPM selection process and they are secure. They have tenure. They cannot be removed except for misconduct.

The Appeals Council judges are GS employees. They are GS-15, subject to performance appraisal like any other government employee. And I just wanted you to understand that there is a specific

difference between the status of the ALJs and the administrative Appeals Council judges.

I think that that should be corrected.

Chairman SHAW. So, it seems backward that the judges that stand in judgment of you have less tenure and they also have lower pay.

Judge MCGRAW. That is correct.

Judge BERNOSKI. Mr. Chairman, with relationship to the question of the backlog, from a matter of personal experience, as far as I am talking about the delay of the case going through the process and the number of days waiting for a hearing. I remember back in the mideighties, we went through a period of time when the caseload dropped down precipitously. And even at that time, it was noted that about a 4- to 6-month period was about as rapidly as you could move the case to the hearing stage after the case came into the office because, first of all, attorneys have schedules themselves. Their workload is scheduled out 4 to 6 months, so, our cases are compatible to some extent with their calendars because we schedule a hearing, you know, we coordinate with their availability.

Also, many times those cases aren't ready for hearing. The attorney does more work on the case and, so, they are accumulating evidence and preparing the case for hearing. So, about 4 to 6 months, in my opinion, is about as rapidly as you can realistically hear that case after it comes into the hearing office just for the reasons I mentioned.

Chairman SHAW. What is the delay following the hearing and your reaching your verdict and handing down your opinion?

Judge BERNOSKI. From the hearing to the decision? I would say in our office it is about—from 30 to 90 days, depending on where the case is written. You see, some of the cases are written in the office by our own decision writers, those cases are handled quicker because the case is kept in the office, retained there and the decision is written. Some of the cases, if they fall behind, are sent to other offices and writing centers to be written. Those cases take longer just because of the logistics of the situation, putting the case in the box, sending it out, writing it, send it back. So, there is a loss of time just in the way the process is working.

Chairman SHAW. What is the length of time of the average hearing?

Judge BERNOSKI. An average hearing would run approximately an hour to an hour and a half.

Chairman SHAW. And then it takes a month or better to get the written verdict?

Judge BERNOSKI. Correct.

Chairman SHAW. What can we do to correct that? I mean you must, when you come out of the courtroom, have a feel of what—

Judge BERNOSKI. Correct. Most of the judges I believe, make their decision immediately after the hearing. But there are times where the case is held open after the hearing, because the claimant has a right which is generally protected by the judge, to add evidence to the record subsequent to the hearing. So, if that happens, that would be what I would call claimant-induced delay.

Chairman SHAW. If that doesn't happen, how long does it take you to render your written opinion?

Judge BERNOSKI. My draft decision, I make almost immediately. The written decision, if it is done in the office would come out approximately 30 days later.

Chairman SHAW. You were trying to shorten that process. There are stenographers covering your cases, I assume. I am correct on that, that you could almost just dictate it from the bench at the conclusion of the case if you are comfortable in doing that. Would anything preclude from doing that?

Judge BERNOSKI. Well, strange enough, our association had made that recommendation to the agency at one time, especially in favorable decisions. To render the decision from the bench, we thought that would be a reasonable way to handle a favorable decision. A denial decision, of course, is more difficult. It takes more reasoning, it has to be——

Chairman SHAW. Well, if you are denying it, you would just as soon they get out of the courtroom.

Judge BERNOSKI. It takes more time, of course, because you have to prepare a better record for the appellate review. But a claim that is paid on a favorable case, there is no reason why it could not be a bench decision with an order following.

Chairman SHAW. Are you prevented from doing that now?

Judge BERNOSKI. The Social Security Administration frowns upon it, yes.

Chairman SHAW. We should take a look at that.

I want to get into one last area. I got into this with the Commissioner and he agreed that there are some real problems in the delay of awarding attorney's fees.

Ms. Shor, you and I had a conversation about this earlier this morning with regard to the delay. And it's hard to say that we are performing a service for the attorney if we make them wait for their fee forever. Judge McGraw, you made mention in answer to some of Mr. English's questions with regard to the length of time.

What is the average length of time following the disposition of the case in which the fee can be distributed to the attorney?

Ms. SHOR. I think when the system is working smoothly, probably 3 or 4 months but much more frequently the system is not working smoothly and it is easily over a year.

And, in addition, it is oftentimes that the claimant's past due benefits are held up as well and that is certainly a source of concern to us. On occasion, the attorney's fee is going to be less than the amount that Social Security is withholding and so that some of the money they are withholding will ultimately go to the attorney but some of it will go to the claimant and they are not getting it either.

Chairman SHAW. Then this chart that is over here to the left, showing that it takes as much as 900 days to go from the initial filing to the conclusion of the appellate level, or it takes 400 days just to get through the hearing process and I assume that is an average. I can say that actually then you may have concluded the case but there is another 30 to 120 days before the claimant gets his money and before the attorney is paid.

Well, I think there is something we can do about that. Judge McGraw, do you agree with what Ms. Shor just had to say?

Judge MCGRAW. I do not handle, I am not involved in the payment of the fees but I do hear constant complaints from attorneys about the delay in receiving payments.

Chairman SHAW. Well, I am concerned about the attorneys being delayed particularly since we are going to tax them for this great service that we are going to give them. But I am more concerned about the claimants and the people that really are the disabled who really need this money. That is unconscionable that this delay has occurred and I can assure you that we will be working with the Commissioner to shorten that time.

Mr. SKWIERCZYNSKI. Congressman, the agency did pilot an initiative called the adjudicative officer, which the intention of that was to have an in-between step between the reconsideration stage and the hearing stage to have a trained—somebody who is trained on making disability decisions who would review the case on the record and could make a decision if only a favorable decision, not a denial, and in that way screen a number of cases that may have been denied at the reconsideration stage but actually should have been approved or because of the course of time the claimant's condition changed in such a way that one could make an approval based on the record.

Now, that resulted in a certain percentage of cases being processed much more quickly. And would have the effect of reducing the processing time. That individual also had the ability to have conferences with the attorney, solicit additional medical evidence so that when the hearing occurred there would be a full evidence of record and there would be less likely to have situations where the judge would suspend the hearing or schedule it at another time because there was a lack of medical evidence.

Now, that is an initiative which I thought as a union representative we had people who were doing that job, which was quite successful. But the agency canned that initiative and they never issued any kind of final report of an analysis of the success or failure of that initiative. I suspect that one of the reasons that it was eliminated or canned was because of resistance from ALJs and the Office of Hearings and Appeals.

The people who were adjudicative officers, who were not necessarily employees of the Office of Hearings and Appeals and there was sort of a reluctance in that unit for outsiders to be engaged in making decisions that ought to be, in their opinion, done by ALJs.

But we thought that was a very successful initiative. That ended on September 30, unfortunately, and I think further exploration of that by your Committee about why the agency canned that program is necessary.

Judge MCGRAW. I would beg to disagree with those statements that there was dissatisfaction by ALJs. I was in a State where we had the DDS doing the AO project, and I was an AO judge. I welcomed the project. I think they did an excellent job. I believe that the project ran into trouble because the AOs were unable to produce the numbers of cases that are necessary to make the program viable.

They were doing the kind of work that ALJs do and they were finding that it is very time consuming. And I believe it is numbers that brought a halt to that program. But I welcomed it, it was very well done in Georgia.

Judge BERNOSKI. I concur with that. I was also one of the so-called AO judges. I worked on a test project and I heard these cases from the AOs and the reason that it was terminated as far as I understand was for the exact reasons that Judge McGraw indicated.

Mr. SKWIERCZYNSKI. The problem, congressman, is the agency never issued a final analysis of the reasons and why they terminated the project. They just terminated it. And I think that is where you and your colleagues may want to question the Commissioner and other agency officials about why they just made a decision to terminate a project without having a reasoned analysis and a reasoned final report on the pilot.

Chairman SHAW. I will correspond with the Commissioner and ask for a written reply to the question that has been raised that we will leave the record open and have that inserted in the record of this hearing. And that it does raise a very serious question.

I want to thank all of you for being with us this afternoon and for your patience in dealing with the schedule of those of us sitting up here.

And we appreciate your good work. We are all here to serve the people and we can do a better job and I think a lot of questions have been raised that the Congress will have to address. The question of the delay in the payment of the attorney's fees, the problem that the Commissioner acknowledged that as a problem and he is working on it and we will be working with him.

And we will be particularly paying attention to the delay in payment to the beneficiaries, the disabled who had put in for this because there is no excuse for that and the system has to be streamlined in order to take care of that.

[The following questions submitted by Chairman Shaw, and Mr. Brennan's responses are as follows:]

**Letter from Michael W. Brennan, President, National Council of Disability Determination Directors to Hon. E. Clay Shaw, Jr., Chairman, Subcommittee on Social Security**

NATIONAL COUNCIL OF DISABILITY  
DETERMINATION DIRECTORS  
*December 14, 1999*

The Honorable E. Clay Shaw, Jr.  
Chairman, Subcommittee on Social Security  
Committee on Ways and Means  
*U.S. House of Representatives*  
*Washington, DC 20515*

Dear Chairman Shaw:

The National Council of Disability Determination Directors (NCDDD) is appreciative of the opportunity to respond to your questions regarding the Disability Claims Manager position which is currently being tested by the Social Security Administration (SSA).

*Question 1.* The Social Security Administration (SSA) is currently testing the Disability Claims Manager (DCM) position. Please discuss the testing process, the history as to how it was agreed to and the role of the Disability Determination Services (DDS).

Response. In 1994, SSA issued a plan to redesign the initial disability process. Although SSA regulates and monitors the disability programs, disability determinations are made by the state DDSs. The DDSs are staffed with about 14,000 employees; 6,000 of which are disability examiners. Logically, since most of the work involved in the initial disability process takes place in the DDS, the majority of the redesign changes have the greatest impact on processes that occur in the DDS.

The original redesign plan included 83 initiatives. The DDSs were involved in most of the initiatives. In 1997, SSA scaled back the number of initiatives and focused on eight key initiatives. The DDSs have been involved in seven of the eight key initiatives. A significant number of DDS employees have been involved in the following pilots. Single Decision Maker, Adjudication Officer, Full Process Model, and the Disability Claims Manager.

Early in fiscal year 1996, SSA negotiated a series of "memoranda of understanding" with the American Federation of Government Employees (AFGE). Without any consultation with the states, SSA and AFGE agreed to pilot the DCM position with 750 federal and 750 state employees. And, after one year, the pilot would expand to include another 1,500 DCM. The NCDDD had several concerns.

The redesign plan viewed the concept of the DCM to be dependent on certain process improvements (enablers) such as the redesigned disability system, and the revised decision methodology. The NCDDD had reservations regarding the practicality of a pilot of this size without the enablers that were viewed as essential to the success of the concept.

Despite our reservations, there was agreement by the states that the DCM could and should be tested under controlled and observed conditions. There was concern, however, that SSA's intention to develop 1,500 DCM positions (3,000 in a two year period) would constitute a roll out rather than a test and that once the project had begun on such a large scale it would be very difficult to control.

Additionally, while 750 employees may be insignificant to an organization the size of SSA with 65,000 employees, there are only 6,000 state disability examiners. The involvement of such a large number of state disability examiners in the DCM pilot would have compromised the ability of the states to process the initial, the CDR, and the legislatively mandated workloads that are the primary responsibility of the DDS.

We expressed our concerns to SSA and in a series of meetings involving all stakeholders (including NCDDD, AFGE, the National Association of Disability Examiners (NADE), and the state unions), an agreement on the number of DCMs that would participate in the pilot was reached. The final number was determined on the basis of a careful analysis of what would be required to produce valid test results plus an additional number as a hedge against attrition.

Professionals in the area of research design from SSA's Office of Quality Assurance and the Office of Workforce Analysis were consulted and helped in determining the final number of DCMs that would be required as well as the parameters of the test. It was concluded that because of the length of the training required for the DCM the evaluation would take up to four years to complete. All stakeholders agreed to conduct the test with 230 DCMs rather than the number originally agreed to by SSA and AFGE (1,500).

*Question 2.* What impact has the DCM test had on the State DDS's ability to process other workloads?

Response. The total claims processing impact of the testing of the DCM position has varied considerably within the thirteen states involved in the test. However, initially in almost all of the states, participation meant devoting considerable resources to training the federal DCMs that could have been used for processing other workloads. In some states, training the federal DCMs meant delays in hiring and training examiners, which compounded the negative impact. Additionally, most states assigned some of their most knowledgeable and productive examiners to be state DCMs and to be trainers and coaches for the federal DCMs.

State DCMs had to spend many weeks in training that would have otherwise been spent in processing normal workloads as examiners. State computer systems, accounting systems, and telephone systems had to be modified to accommodate the federal DCMs as well as the additional duties to be assumed by the state DCMs. Currently, the DCMs are collectively about half as productive as an equal number of mainstream disability examiners. Although it is somewhat difficult to definitively quantify the impact of the DCM testing, it is obvious that the DCM test has consumed resources that could have been utilized to produce thousands of additional claims.

*Question 3.* Has the National Council of Disability Determination Directors (NCDDD) made any suggestions to SSA on how to improve the DCM testing process? If so, what was the agency's response to these suggestions?

Response. The NCDDD reaction to the agency's announcement that the initial DCM test would involve 750 state DCMs and 750 federal DCMs and the subsequent discussions and negotiations which led to a test with a smaller number of DCMs was the single most important "suggestion" we made to the agency. This suggestion was accepted by all stakeholders and consequently limited the negative impact of the DCM test on the ability of the DDSs to process normal workloads. Otherwise, the negative impact would have been seven or eightfold.

Since that time we have been closely involved in the testing and our many suggestions have been acted on appropriately by the agency. That is to say, even when not accepted our suggestions have been given thoughtful consideration.

*Question 4.* What is the NCDDD's position on the Lewin Report on Phase I of the DCM test.

Response. Individuals who adjudicate disability claims are required, as a matter of routine, to deal with the interplay of abstract medical, vocational, and legal concepts. Although disability examiners are provided a formal training period of from four to six months, the bulk of the knowledge is learned on the job and with the help of supervisors, quality assurance specialists, and program physicians. It is the DDS experience that it takes about two years before a return is realized on the training investment. Trainee examiners are started out with the most non-complex claims and receive a reduced claim intake as well as intensive coaching and mentoring.

Our primary concern with the long term viability of the DCM concept has to do with two efficiency issues. DCM requires a substantially increased investment in training resulting from the fact that more training time is required to learn the wider range of job duties (the current DCMs have yet to be trained in the full range of claims representative or disability examiner job duties). Second, our initial estimate (which is consistent with the preliminary results) was that the DCMs would not be able to achieve the level of productivity that is required in view of the workload and the available resources.

The NCDDD believes that the Lewin Report was a very thorough and valuable assessment of Phase I of the test. However, the primary conclusion that, ". . . the DCM is a "viable" approach to processing claims, in the limited sense that certain key are outcomes are within the ballpark of outcomes under the current process." is premature. Phase I of the DCM test was conducted in a "test tube" environment. While there is much to be positive about in Phase I; Phase II of the test will, hopefully, provide a more real world setting. Decisions about the "viability" of the DCM concept need to be postponed until the serious questions posed in Phase II are answered, since what is possible is not often efficient or reasonable.

This concludes the NCDDD response to your follow up questions to the joint subcommittee hearing on October 21, 1999. However, we have a comment that we would like to be part of the record.

For the past four years the DDSs have committed significant resources to redesign pilots. This participation has continued even though our resources have been stretched almost to the breaking point by the additional CDR workloads and the additional and complicated workloads created by legislation during the same time period.

The effort of the states to work in partnership with SSA and other stakeholders despite the considerable adversity of the past four years is testimony to the hard work, the commitment, and the dedication of DDS employees. We believe that effort to be worthy of the approbation of honest critics.

We want to thank you, once again, for the opportunity to provide additional information relating to the DCM position.

Sincerely,

MICHAEL W. BRENNAN  
*President*

Thank you very much and the hearing is now concluded.  
[Whereupon, at 1:58 p.m., the hearings was adjourned.]  
[Submissions for the record follow:]



AMERICAN BAR ASSOCIATION  
GOVERNMENT AFFAIRS OFFICE  
*November 3, 1999*

The Honorable E. Clay Shaw  
Chair, Subcommittee on Social Security  
Committee on Ways and Means  
*U.S. House of Representatives  
Washington, DC 20515*

The Honorable Nancy Johnson  
Chair, Subcommittee on Human Resources  
Committee on Ways and Means  
*U.S. House of Representatives  
Washington, DC 20515*

Dear Mr. and Madam Chair:

On behalf of the American Bar Association, I write to you with respect to the hearings your Subcommittees held on October 21, 1999, regarding the Social Security Administration's management of disability cases. We appreciate the opportunity to submit this letter and request that it be included in the hearing record.

As the national representative of the legal profession in the United States, the American Bar Association strives to promote the rule of law and to ensure fairness and integrity in our justice system, particularly for members of society who are least able to advocate for themselves. Over the years, the Association has drawn upon the considerable expertise of members with backgrounds as claimant representatives, administrative law judges, academicians and agency staff, to develop a wide-ranging body of recommendations for a fair and efficient Social Security appeals process. We have carefully followed the Social Security Administration's efforts to improve the disability appeals process, and we commend the agency on these steps. We agree with the premise that the correct decision should be made as early in the process as possible.

However, we are concerned about the continued backlog in processing appeals, particularly at the Appeals Council stage, and about the impact of delays on public confidence in the system, on agency staff, and, most importantly, on claimants. The timeliness and the quality of decision-making has a profound effect on the lives and well-being of millions of Americans for whom Supplemental Security Income and Social Security disability benefits constitute the sole source of income and access to health care. We should do all we can to ensure that the system works accurately and efficiently.

With its "Hearing Process Improvement" plan, the Social Security Administration hopes to improve efficiency and create consistency of decision-making at all levels of the disability appeals process. We support these goals. In too many cases, claims are denied at the initial stages but awarded at the hearing level, simply because the evidence presented is more complete by the time it is presented to the administrative law judge. We suggest that the initial stages could be improved by providing claimants with a statement of the applicable eligibility requirements, the claimant's responsibilities, a description of the administrative steps in the process, an explanation of relevant medical and vocational evidence, and notice of the availability of legal representation. We also encourage SSA to take affirmative steps to compile accurate documentation and to supplement reports (particularly those from treating physicians) that are not sufficiently detailed or comprehensive. Agency staff could speed up the process by educating the medical community about eligibility criteria used in the disability program, and the kind of evidence required to establish eligibility for benefits, and by assisting claimants in compiling necessary documentation and in supplementing incomplete reports.

We support the Social Security Administration's plan for pre-decision interviews and urge the agency to ensure that these interviews are face-to-face wherever possible. In cases where denial of the claim is possible, the interview stage would provide the opportunity for staff to inform claimants of reasons why the finding of disability cannot be made; ensure that they have access to all the evidence in their file, including medical reports; provide them the opportunity to submit further evidence; and advise claimants' health care providers of deficiencies in the medical evidence and give them the opportunity to supply additional information.

The ABA supports the plan to eliminate the reconsideration level of appeal. If the quality of intake and development of evidence at the early stages is improved, there is little reason for reconsideration, particularly given the historically low reversal rate and substantial delays involved at this level.

We also agree wholeheartedly with the need to reduce processing times at the Office of Hearings and Appeals, and with efforts to improve this system. However, we caution that any new administrative processes must preserve claimants' rights to due process, including a hearing on the record and the opportunity to present new evidence before an administrative law judge whose authority as an independent fact-finder is assured. The hearing offers claimants a full and fair review of the claim, and provides administrative law judges the opportunity to take testimony from the claimant, develop evidence when necessary, consider and weigh medical evidence, and evaluate vocational factors so as to reach an impartial decision.

Like those who testified at the hearing, we are disturbed by the lengthy processing times at the Appeals Council level and hope to see improvement in the very near future. We were also quite surprised and concerned about reports of extensive own-motion Appeals Council review of decisions of administrative law judges, particularly since those reviews are limited to decisions that are favorable to claimants. The ABA has advocated for many years for a complete study of Appeals Council procedures and functions to determine whether own-motion review is even necessary and to explore possible changes in the Council's role. Past attempts by the agency to direct the rate at which administrative law judges allowed claims (Bellmon reviews) severely compromised the independence and impartiality of administrative law judge decision-making. The scope of such review must be limited to clear errors of law or lack of substantial evidence for factual conclusions, with the latter based on specific documentation and review of the hearing tapes.

We look forward to working with your Subcommittees and with the Social Security Administration on these issues in the future. Thank you for the opportunity to submit this letter for the record of the hearings.

Sincerely,

ROBERT D. EVANS

**Statement of the American Federation of State, County and Municipal Employees (AFSCME), Communication Workers of America (CWA), and Service Employees International Union (SEIU)**

We are pleased to have the opportunity to submit testimony on behalf of the American Federation of State, County and Municipal Employees (AFSCME), the Communications Workers of America (CWA), and the Service Employees International Union (SEIU). We represent approximately 8,000 workers in the Disability Determination Services (DDS) Offices across the country. We have been involved with the Redesign Process on many levels since 1994, serving on the Advisory Board and participating in the SSA Work Groups. We also represent the DDS workers in some of the prototype states.

We have grave concerns about some of the elements of the prototype and national implementation of a program that has not been tested fully. While certain elements have been tested individually, the current prototype has not been tested as an integrated whole. This alarms us since the word "prototype" is not synonymous with "test." If you listen carefully, you learn that we are now testing a model so that it can be refined and implemented nationwide.

For example, SSA has decided it wants to eliminate the first level of appeal, known as Reconsideration. In an earlier pilot project, SSA substituted a new position (labeled "Adjudication Officer") for the current Reconsideration process. The prototype now underway, however, does not include the Adjudication Officer position; it merely drops the Reconsideration step. There is no empirical justification for this—it's just a stab in the dark. We do not anticipate major cost savings or reductions in waiting times for clients. On the other hand, it will force additional claimants to hire an attorney or drop their claim altogether.

In addition, we are concerned that eliminating mandatory physician involvement in the decision process will reduce the accuracy and credibility of state disability decisions. Physician involvement establishes a two-person review of the medical evidence. There are broad differences in the background and training of physicians and disability examiners. The program should provide benefits to claimants based on solid, uniform medical background and training of the people making the medical decision. The physicians have a depth of knowledge of most of the disease processes, in contrast to the training for the enhanced examiner position (known as a Single Decision Maker), which consists of lectures on body systems. Such limited medical knowledge does not permit them to sort out limitations on the literally hundreds of medical conditions that claimants allege. We think that SSA is inviting a flood

of complaints from the public (and Congressional offices) and possibly even lawsuits if physicians do not review each case.

Finally, we echo the budgetary concerns voiced by the National Council of Disability Determination Directors. The disability claims process is complicated, and understanding the new process innovations is more complicated. But for the people whose hands move disability cases every day, the impact of the changes is simple: Do more with less. SSA is requiring more written documentation of decisions. SSA is requiring telephone conferences with people whose claims are being denied. These are significant additional duties for an examiner juggling more than 100 cases at a time. For FY00, SSA is predicting a 4.2 percent increase in workloads and telling states to hold staffing levels constant. Everyone would like faster, more accurate decisions on disability claims, but it's not going to happen if we continue to disregard the laws of physics.

In summary, we hope that members of the subcommittee continue to monitor closely the implementation of the prototypes and hope that you will consider the opinions of the workers on how the new process is actually working.

**Statement of Lisa Russell Hall, Staff Attorney, Office of Hearings and Appeals, Social Security Administration, Paducah, Kentucky**

I am a staff attorney with the Office of Hearings and Appeals. I support the comments presented by the Federal Bar Association. The FBA thoroughly and accurately represents the difficulty issues currently being addressed by the Social Security Administration in regards to the Office of Hearings and Appeals, particularly in regards to the planned Hearing Process Improvement.

Traditionally, there has been a tension between SSA's position disability determinations under the Social Security Act are medical decisions which can be processed rather quickly based solely on medical findings and the OHA view that disability determinations are legal decision, which involve due process concerns. With HPI, the conflict is brought to a head; HPI is the first step is undermining judicial independence, by giving processing benchmarks precedence over thorough and fair case development. The Administration is at a crossroads. It is imperative that this committee directs the future path SSA will take once and for all.

No matter which direction is chosen, great changes must occur. If the Committee determines that OHA is performing a "medical" process, the OHA in its current form should be dissolved in its entirety. It is unreasonable for the taxpayers of this country to be paying the salaries of the Administrative Law Judges to make medical determinations. The support staff comprised of GS-12 and GS-13 paralegals and attorneys is not needed if this is a medical process. The ALJs should be replaced with GS-8 disability hearing officers, this is strictly a medical determination.

It is my position that OHA performs a legal service in administering the disability programs. If the committee chooses to affirm this role for OHA, HPI must be stopped to preserve the integrity of the decision making process. However, changes still have to occur. Here are my suggestions:

1. Office Analysis: The projected average processing time for cases is 313 days. As this is an average, some offices are doing much better and some are doing much worse. A committee, composed of OHA leaders with at least 15 years of OHA office level experience, should look at each office to determine what the very productive offices are doing right and how specifically the less productive offices can be improved. Under HPI, which implements broad changes across the board, some offices are being "fixed" which are not "broken."

2. Education Requirements: Currently, OHA employs a significant number of "paralegals," many of whom have only high school education. When "paralegal" positions are filled, former clerks are promoted from within; the jobs are not advertised to outside applicants. Real paralegals with legal experience and training are not given an opportunity to compete for these jobs. For future "paralegal" hires, at least 20 hours of college classes in subjects such as legal research, legal writing and administrative law should be required. If such an education is not required, the job position should be renamed "administrative assistant" and the position should be reclassified at a lower GS level.

Further, the value of the attorneys' education should be recognized. Under HPI, SSA builds a career path where the "paralegals" can assume most management positions and supervise attorneys. On multiple occasions, the HPI committee has stated that education is not as important as "real world experience." This position is absurd. If the OHA process is a legal process, a legal education should have some value to the agency. In many offices, attorneys are justifiably assigned the more dif-

difficult cases and assist the paralegals in their case developments. The value of legal expertise should be reflected by promotion of agency staff attorneys to the level of GS-13 and the continuation of the successful Senior Attorney Program.

3. Adversarial Process: The role of agency staff attorneys should be expanded to make the hearing process adversarial in nature. Currently, it is entirely the responsibility of the ALJ to develop the case fully at the hearing while remaining impartial. This is particularly difficult in cases with active and aggressive claimant's representatives. The Agency should have a representative present to ensure that both sides of the case are fully developed and act as a safeguard to ensure no issues are overlooked. By requiring the staff attorneys to represent the Agency at hearing, the taxpayers are more likely to have a full and fair hearing regarding the distribution of benefits. More cases of fraud would be exposed.

Further, the Agency would be more effectively using the skills of its licensed staff. Finally, the ALJs' role would shift from being case developers to full time adjudicators, making better use of their time and expertise. SSA should be using the staff attorneys similar to the INS, whose agency attorneys present cases and issues at hearings.

4. Empower Management: One of the largest problems OHA faces is the inability of management to effectively supervise its employees. OHA employees are not held to performance standards. Employees are not given real assessments of their work performance. There is little management can do to eliminate non-productive workers or reward productive workers. To increase overall agency productivity, management must be given the tools to manage its work force.

With concentration on these areas, great steps can be made to improve the quality of work performed at SSA and increase service to both the taxpayer and the claimant. The broad, sweeping changes proposed by the supporters of HPI do not effectively address the underlying problems of the agency. The changes proposed will be expensive considering the amount of training involved and the significant number of unnecessary promotions proposed. I hope the committee will consider the comments of Administrative Law Judge McGraw very carefully.

#### **Statement of International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW)**

This written statement is being submitted on behalf of the International Union, United Automobile Aerospace and Agricultural Implement Workers of America (UAW). We represent the disability examiners, psychiatrists, physicians and clerical staff of the Michigan Disability Determination Service. The members of the UAW have been involved in many aspects of the Redesign Process including the Adjudication Officer (AO), Single Decision Maker (SDM), Disability Claims Manager (DCM), and Process Unification (PU). We appreciate this opportunity to present this statement and to provide helpful insights, based on our members' long experience, into improving service to our claimants—your constituents in Michigan, as you may know, is an SSA Prototype state. We wish to express some of our concerns over certain aspects of Prototype.

In general, the UAW supports the concept of Prototype in making the disability process more efficient and customer friendly. However, we do have some concerns over SSA's willingness to give us the proper tools and funding to do the job.

We need, *and want*, better training what SSA actually wants us to do. Of the training given so far, most has been through the Interactive Video Training (IVT) run by SSA. Much of the IVT sessions have been lacking in "real world" specificity. The content of the IVT indicates they have been crafted and implemented by those without recent and relevant field experience at either the DDS or SSA Field Office level. This is borne out by the fact that many of the key documents and forms mandated by SSA to use in the Prototype seem to be adrift in a sea of constant change. As an example, SSA wanted a written rationale explaining the basis for the disability decision on all initial disability claims. When they discovered how much time it would take, the rationale was changed into the Key Issues Index (KII), a checklist to be used. SSA then killed the KII and replaced it with the Disability Determination Sheet, which evolved into the DDS form and is now the DD sheet. The DD sheet, which has had many more revisions than name changes, still remains a checklist. Keep in mind, the absolute last and final version of the DD sheet still contains at least one type that must be manually corrected in each case. If you find this somewhat confusing as to what form is to be used when and in what manner, you're not alone.

SSA also wants us to assess claimant credibility but has not offered any training on assessing credibility in mental impairment cases. Yet assessing claiming credibility remains an important and integral part of Prototype. This lack of training is an impediment to providing "world class" service to our claimants. In fact, given the number of cases that have a mental impairment component to them, it is a disservice to those same claimants.

SSA also wants increased disability examiner participation in evaluating statutory mental impairment claims. In her October 8, 1999 letter to Linda Dorn, Director of the Michigan DDS, Assistant Regional Commissioner Donna Mukogawa provided the Office of Disability's interpretation of who is responsible for assessing psychiatric impairments (Attachment #1). Their interpretation clearly represents a significant change from pre-Prototype practice and may run contrary to legislative intent. Despite this, SSA has not provided any additional training to date in the area of psychiatric impairments.

And now for the Claimant Conference (CC). It began life as the Pre-Denial Interview (PDI). That term was deemed too politically incorrect so it became the Pre-Decisional Interview thus enabling the same acronym to be used. At this point in time, SSA was not actively discouraging face-to-face contact at the PDI between the decision maker and the claimant. That changed. The PDI became the Claimant Conference (CC) and face-to-face contact in the CC process became actively discouraged by SSA. In fact, forms have been drafted and issued as desk aids to help disability examiners discourage claimants from having a face-to-face CC. And the only training on the CC was a DDS in-house training session on interviewing skills done October 28, 1999 at 9:00 a.m. The training consisted of watching two videotapes with a Q and A, and short presentation given by a Michigan DDS examiner who was sent to Baltimore for a three-day training session. Keep in mind, SSA envisions the CC to have the same allowance rate as the now defunct reconsideration step in the 10 Prototype states. However, without training and with an ever-changing concept of the CC, is this possible? We don't know.

For Prototype to work, process unification must work. The DDSs and OHA must adjudicate similar claims in a similar fashion. We agree. In the Prototype states, OHA starts its Hearing Process Improvement (HPI) plan on January 1, 2000. For Prototype and HPI to work, adequate funding must be in a place to pay for the requisite training, implementation, staffing and evaluation. SSA plans to pay for all of this from the savings realized by the elimination of the reconsideration step in the appeal process. Yet, SSA tells us we will have "flat budgets" over the next few years. Essentially, this means that we will have a shrinking budget. This, despite the fact the Social Security Advisory Board's recommendation, found on page 49 of its September, 1999 report, suggests otherwise. In fact, the Advisory Board reports that SSA expects its disability caseload to *increase* over the same years they want to "flat line" the DDS budgets. We can't do the work without the money to process the cases. To fund for Prototype with a flat line budget as SSA suggests, what will be sacrificed? Training? Staffing? Acquisition of medical records? Accurate decisions? All these scenarios lead to less efficient claimant service.

We ask these Subcommittees and the Congress to ensure that adequate training and funding is made available to the DDSs so that the disabled population we serve is not disadvantaged by the changes being made in the disability process.

[Attachments are being retained in the Committee files.]

**Statement of Terri Spurgeon, President, National Association of  
Disability Examiners, Lansing, Michigan**

On behalf of the members of the National Association of Disability Examiners (NADE), thank you for this opportunity to comment on the Social Security Administration's management of its disability caseload.

NADE is a professional association with the majority of our members being disability examiners, quality assurance and public relations personnel, hearing officers, physicians, administrators and support staff employed in the state Disability Determination Service (DDS) agencies. However, our membership also includes physicians, psychologists, attorneys, advocates, representatives from private insurance companies, Social Security claims representatives and other professionals not in the DDSs who work with, and are interested in, the evaluation of disability claims. We believe it is the diversity of our membership, as well as our experience working directly with the Social Security and SSI disability programs, which provides us with a unique perspective and understanding of those programs and the public they serve. Many of our members have been, or are currently, involved in testing the

process changes envisioned in the Redesign initiative. For a number of reasons we are concerned about the management of the disability caseload.

Since 1994, SSA has piloted various initiatives in an effort to redesign the disability claims process. In March 1999 Commissioner Apfel announced his decision to prototype a new disability process which encompassed several of those initiatives. This new process creates new roles for both the disability examiner and the State Agency medical consultant and includes a claimant conference (an opportunity for the applicant to talk directly with the decision maker if a fully favorable decision cannot be made based on the evidence already in file), elimination of the reconsideration level of appeal and improvements in the hearings process. At the DDS level claims will no longer require medical sign-off except where required by statute. This is expected to allow State Agency medical consultants additional time to assist with the more difficult and complex claims. The prototype involves 10 states and approximately 20% of the initial disability caseload (continuing disability reviews are not included in the new process).

NADE applauded the Commissioner's decision to proceed with a prototype rather than national rollout. Although the time frame to prepare for implementation of the new process was short we felt that the October 1, 1999 start up date was feasible. Unfortunately, however, many of the operating instructions and notification letters necessary to implement the new process were not available to the DDSs by that date and as late as mid-October claims which were ready for a claimant conference were being held pending operating instructions and training. This is unfortunate for DDS staff and for individuals applying for disability benefits but it continues a long established pattern by SSA of proceeding with its announced plans regardless of whether the necessary tools for implementing those plans are in place, or even exist.

Moreover, we continue to be concerned that elimination of the reconsideration step will impact negatively on the Office of Hearings and Appeals by increasing the number of appeals to that level. Statistics and claimant satisfaction surveys available from the pilots have shown that the claimant conference (formerly known as the pre-decision interview or PDI) actually had a negative impact on the claimant's satisfaction with the process if the claim was denied and increased the likelihood that the individual would file an appeal. In addition, for the new process to succeed, changes at the front end must necessarily be accompanied by changes at the hearings level. These have been proposed. Unfortunately, we are already seeing strong resistance by certain elements within OHA to the announced changes at this level. NADE agrees with the opinion offered by the GAO and the Social Security Advisory Board that the planned changes at the hearings level will be very difficult to implement and will require the active involvement and strong support of SSA leadership.

Despite our reservations NADE is committed to providing full support for the new process. While we do not believe in change for the sake of change we strongly support any initiative to assure that claims which should be allowed are allowed at the earliest level possible. In numerous previous testimonies we have expressed our commitment to the concept of a nationally uniform disability program with consistent application of policy at all levels in the adjudicative process. It is our hope that the process currently being prototyped, which does include process unification initiatives and improvements at the hearing and appeals level, will lead to this uniformity.

It is important to recognize that the initiatives contained in the new prototype process will increase processing time for initial claims. They will also almost certainly increase the administrative costs of the program. However, we believe that while all government agencies must be fiscally responsible it is imperative that SSA's administrative budget is sufficient to ensure efficient operation—and that it provides appropriate resources for the DDSs and the Field Offices. Ensuring that the Field Offices and the DDSs have adequate and well-trained staff is essential to reaching SSA's stated goal of strengthening the public's understanding of the Social Security programs. We are concerned that the cost savings projections forecasted by the elimination of the reconsideration step will not be sufficient to pay for the increased front end costs associated with the new disability process. If the projections are incorrect, then where will SSA obtain the necessary funds to pay these new costs? There does not seem to be a contingency plan in place and we have been warned that SSA cannot expect to receive additional new appropriations. However, at all levels, and for all components, adequate resources, including appropriate staffing levels, ongoing training initiatives, and clear and timely operating instructions, must be provided.

The Telecenters and Field Offices are the first point of contact for most disability applicants. While disability is a relatively small part of their workload the quality of the completed application at this level can have a significant impact on the efficiency with which the claim is processed at the DDS level. It is important, then,

that these components work together to provide quality service to all applicants. To do this requires ongoing communication and an emphasis on teamwork. Unfortunately, communication between the Field Offices and the DDSs was severely curtailed with the workforce reductions in the 1980s. Efforts to increase communication between all components have recently been initiated and these efforts must be maintained. This, again, will require adequate staffing levels and coordinated training initiatives. SSA must invest in the training of its personnel to insure that those who take the applications for disability benefits, as well as those who adjudicate the claims, have the necessary skills and knowledge to do so.

The new disability process requires experienced staff. It also requires new skills for both the disability adjudicator and the State Agency medical consultant. Unfortunately, the reality of staff turnover in the DDSs is that the experience level in these offices is at its lowest point ever. Nearly 50% of all disability examiners have less than two years of program experience. This is a critical statistic since it has long been acknowledged that it takes a new disability examiner a minimum of two years to become proficient at the job and to be a productive employee. In addition, in FY'96 Congress appropriated funding specifically earmarked for continuing disability reviews. This has resulted in significant program savings. However, these congressionally mandated reviews have diverted experienced DDS staff from initial claims processing. This could be problematic for states involved in the prototype.

SSA's Strategic Plan recognizes the employees of SSA and the DDSs as the Agency's most important asset. A highly skilled, high performing and highly motivated workforce is critical to SSA's ability to achieve its mission. Ongoing training is essential if the new process is to succeed. Adjudicators must have sufficient program and medical knowledge to conduct a claimant conference and to do so in a manner which can be understood by the applicant. Because process unification requires the disability adjudicator to evaluate not only the objective medical evidence but to also consider the individual's subjective complaints and to assess credibility, the adjudicator must also have appropriate training and experience in this area. State agency medical consultants must be able to explain complex medical issues to the adjudicator and frequently must do so in a way that will allow the adjudicator to then explain these issues to the applicant. Further, the Social Security Advisory Board, in its August 1998 report, concluded that, "The most important step SSA can take to improve consistency and fairness in the disability determination process is to develop and implement an ongoing joint training program for all of the 15,000 disability adjudicators, including employees of the State disability determination agencies (DDSs), Administrative Law Judges (ALJs) and others in the Office of Hearings and Appeals (OHA) and the quality assessment staff who judge the accuracy of decisions made by others in the decision making process." NADE would echo that sentiment. Ongoing training is important; joint training is essential.

Nationally uniform decisions with consistent application of policy at all adjudicative levels, requires a consistent and inclusive quality assurance review process. Without ongoing, joint training and an inclusive and consistent quality review process the decision making process will remain fragmented and public confidence in the program will not be restored. NADE has, on several occasions, urged SSA to address the problems and the perceived problems in the federal quality assurance review process. We have frequently expressed concerns that the quality assurance review process is too fragmented and allows for at least the perception that the process is not nationally consistent. It must be recognized that SSA's quality assurance review process does have a significant ability to shape disability policy and impact program costs and caseloads through subtle messages imparted by tighter or looser reviews, the kinds of decisions that are selected for review, or even by increasing or decreasing the size of the review sample. The quality assurance review process can and should be a major tool for identifying and correcting errors in policy and procedure to assure that program policy is implemented in a manner that is consistent and fair to individuals. Likewise, the quality assurance review process should apply in a similar manner to decisions made by the DDSs and by OHA.

Commissioner Apfel, in his testimony, compared our disability programs with those in other developed countries. As he stated, "Comparisons aren't always simple." By the same token we would like to point out that it is not reasonable to compare private disability insurance programs and the Social Security and SSI disability programs. As the Commissioner noted, "SSA's programs have always awarded benefits on the basis of a single strict standard of disability defined by statute." Not only is SSA's standard stricter than private insurance programs, the documentation requirements are stricter. Decisions made by private insurance disability programs are not subject to the extensive quality assurance review process to which Social Security and SSI disability claims are and these companies are able to make decisions using a more liberal documentation standard. In addition, private dis-

ability programs offer partial or short term disability programs. They rely on the decision made on the individual's Social Security claim to determine eligibility for long term benefits.

Agreeing with Chairman Shaw that, "Ensuring that American workers who experience a disability have all the protection they paid for is a core function of the SSA," NADE recently prepared a Position Paper calling for the elimination of the five month waiting period for Title II applicants. Title II disability beneficiaries must currently wait five full calendar months from the onset of their disability before they can begin receiving cash benefits. The Title XVI (SSI) beneficiary, on the other hand, can begin receiving benefits immediately. This fosters a perception that the Title II program is unfair to the disabled worker who has actually paid into the system. This is particularly evident in cases involving claimants with terminal illnesses. Many of these claims are closed by the DDSs as "no decision" cases due to the fact that the claimant died during the waiting period. We have been strongly encouraged by recent actions by the Congress and by SSA to address many issues that deal with the public's confidence in the disability program and the public's perception of "fairness" between the two disability programs. NADE strongly urges Congress and SSA to work together to produce legislation that will eliminate, or significantly reduce, the waiting period. We offer the expertise of our membership to assist in this effort.

Mr. Chairman, Madam Chairman and members of the subcommittees, NADE members take pride in the quality of the service we deliver. We understand and appreciate that the Social Security and Supplemental Security Income programs make an enormous difference in the quality of life of millions of people. We are proud of our part in the administration of these programs. We welcome this opportunity to comment on the Social Security Administration's management of its disability caseload and to offer our support of, and suggestions for, improvements in the process. Thank you.

**Statement of Harold D. Davis, Supervisory Attorney, Office of Hearings and Appeals, Social Security Administration, Fort Smith, Arkansas, and President, National Association of Senior Social Security Attorneys**

I. INTRODUCTION

My name is Harold D. Davis. I am employed as the Supervisory Staff Attorney in the Office of Hearings and Appeals of the Social Security Administration (SSA) in Fort Smith, Arkansas.

This statement is being presented in my capacity as President of the National Association of Senior Social Security Attorneys (NASSSA), a professional/management association recognized by the agency and representing primarily Supervisory Staff Attorneys and Regional Attorneys within the Office of Hearings and Appeals (OHA).

II. BACKGROUND

The last decade has seen explosive growth in the size of the disability programs administered by the SSA. The press release which announced this hearing noted that since 1989 the number of beneficiaries receiving Disability Insurance Benefits (commonly known as DIB or Social Security disability) under Title II of the Act has increased 56%; while the number of persons receiving Supplemental Security Income disability (SSI) under the provisions of Title XVI of the Act has increased 71% to 5.1 million. This rapid growth in the disability programs has also led to many problems, including long and unacceptable delays in the length of time deserving claimants must wait before receiving benefits. In addition, given the serious solvency issues facing the Social Security trust funds, this explosive growth rate has serious budget implications which Congress, as well as the agency, must address.

The serious budget implications of this runaway growth in the disability programs is underscored by the solvency issues facing the Social Security trust funds. Moreover, it should be noted that individuals who are approved for DIB under Title II of the Act are also entitled to Medicare after two years. Therefore, the high allowance rate on Social Security disability also has serious budget implications for the Medicare Trust Fund. Given the serious budget problems facing it, the added drain of disabled individuals on the Medicare Trust Fund takes on an added sense of importance and urgency.



### III. SOCIAL SECURITY INITIATIVES

In order to meet the challenges presented by an ever-expanding disability workload, and longer delays experienced by deserving disability claimants before receiving benefits, SSA has attempted to streamline the adjudication process involved in the disability programs by what is commonly described as the Disability Redesign. Two key features of the Disability Redesign are proposals to abolish the second step of the appeals process. Currently, before being given an opportunity for a hearing, claimant's claims are adjudicated at an initial step and at a reconsideration step. Removal of the second step would allow claimants to request a hearing before an Administrative Law Judge (ALJ) after receiving only consideration at the initial step, or one denial. A second proposal has been to abolish the Appeals Council, the step in the administrative appeals process following the issuance of a hearing decision. This change would allow claimants who receive an unfavorable hearing decision from an ALJ to immediately file a civil action in federal court.

Another more recent initiative has been to completely reorganize the OHA in an attempt to streamline the hearing process. This initiative has gone by several names in the past and is currently being labeled the Hearing Process Initiative (HPI). Unfortunately, none of these initiatives address the real issues facing the agency in its administration of disability programs.

While HPI has yet to be rolled out, the agency plans to pilot the program in several states beginning early next year. One of the stated goals of the HPI has been to reduce delays in the hearing process by reducing the number of "handoffs" of the casefile within OHA and develop more of the medical record prior to the hearing. While this appears to be a worthwhile goal, we contend that it is unnecessary to expend millions of dollars to reorganize the entire OHA to achieve the stated goal. Rather, it is NASSSA's position that HPI is fatally flawed because it ignores the historical distinction made between administrative and legal functions within OHA and increasingly places the Administrative hearing process in the hands of non-lawyers.

### IV. HPI DIMINISHES THE ROLE OF THE LAW AND LAWYERS IN THE ADMINISTRATIVE LEGAL PROCESS

OHA represents the appellate branch of the SSA and it was designed to be under the control of lawyers and judges. After all, the ALJ hearing is the third, and arguably the most important, step in the administrative appeals process. In most cases, the ALJ is the finder of fact, and in that way, occupies a position similar to that of a trial court. Except for the small possibility of substantive review by the Appeals Council, the ALJ hearing decision represents the last step before the case goes to court. As an appellate body, the function of OHA is to protect due process of law and ensure that each claimant receives a fair and impartial adjudication of his or her case based on the merits of the case. Anything short of this represents a failure of due process of law and a complete failure of OHA's mission.

When cases leave OHA, they are frequently bound for the federal courts. This means that the same case which is denied at the ALJ hearing level is very likely to be the subject of a civil action. In fact, it is no exaggeration to say that the case which is denied at the ALJ hearing level may ultimately be decided by the United States Supreme Court. Therefore, prudence would dictate that SSA take great care to make sure that each case is adjudicated in a competent and legally sufficient manner before it proceeds to court. To accomplish this, the agency must do at least two things. First, it must see to it that each hearing be conducted in a competent manner. Second, it must see to it that the hearing decision is well written and able to withstand legal scrutiny. The hearing decision must be clearly and understandably written, articulate sound rationales in the application of law to facts, and represent an individualized assessment of the merits of a particular claimant's case. For these reasons, hearing decision writing should remain under the control of attorneys who are trained in the law and who possess the advocacy skills needed to produce a hearing decision which is both legally sufficient and able to withstand legal scrutiny. However, the unfortunate reality is that SSA is currently attempting to de-emphasize the role of lawyers with OHA, thereby creating an environment which may result in the denial of due process for claimants.

Nowhere can this de-emphasis of the role of lawyers with OHA be seen more vividly than in SSA's gradual shift from using attorneys to write ALJ hearing decisions to that of using non-attorneys to write hearing decisions. Many of the non-attorneys have no demonstrable writing ability and neither have they been afforded a formal education with the necessary training to enable them to perform legal research, legal analysis, or legal writing. It should be noted that although SSA refers to these non-attorney hearing decision writers as "paralegal specialists," that term should be

used advisedly in this context. For the most part, these individuals have never had any formal training in either law, legal research, or writing. In fact, many have no formal education beyond high school. It is completely unrealistic for SSA to expect these writers to be able to write ALJ hearing decisions which are both legally sufficient and able to withstand legal scrutiny. This is particularly true where a claimant is represented by legal counsel. Most claimants are represented at the hearing by legal counsel and frequently the claimant's counsel submits a brief and cites case law which MUST be answered in the hearing decision.

Another essential element critical to a legally defensible hearing decision is a thorough discussion of the evidence in that particular case. This requires an evaluation of credibility of the evidence of record, including the testimony offered at the hearing. After all, due process of law requires that the claimant be given a fair and impartial adjudication of his or her claim based on its merits. In the case of an unfavorable hearing decision (which is likely to be appealed to court), this may well require that the credibility of some of the evidence (including testimony offered at the hearing) be impeached. While this process is time consuming, it is absolutely essential if the case is to be legally sufficient and able to withstand judicial scrutiny.

Good legal writing involves advocacy skills which attorneys learn as part of their trade. However, non-attorney writers may or may not possess these skills. Unfortunately, in order to accommodate the increasing number of non-attorney hearing decision writers in its ranks and in an attempt to increase productivity of its writers, SSA is currently attempting to de-emphasize individualized assessment of the merits of a claimant's case, and is turning instead to hearing decisions filled with "canned language" and "boilerplate," which is short on rationale and devoid of any individualized assessment of the merits of a claimant's case.

Hearing decisions written in this manner fail to meet the essential requirements of due process and have little chance of withstanding the scrutiny of the courts. In fact, we would like to point out that in the late 1980's, OHA was required to perform a wholesale overhaul of its hearing decision writing methodology as a direct result of the high number of court remands. An inquiry revealed that the courts and U.S. Attorneys objected to what was perceived by them as "cookie cutter" hearing decisions which were long on canned language and conclusory statements and short on rationale and a meaningful evaluation of the evidence. In response, the agency shifted away from boilerplate and toward a more meaningful evaluation of the merits of the claimant's case as required by law.

It seems that in 10 years, we have come full circle. For the sake of producing higher numbers of hearing decisions and accommodating employees with lesser writing skills, we are now returning to hearing decisions filled with boilerplate, conclusory statements, and only a cursory evaluation of the merits of the case at hand. The predictable result will be that within two years (or less) this agency will once again be awash in court remands and forced to make wholesale revisions in its approach to hearing decision writing once again. While this "canned language" approach to hearing decision writing may produce some short term benefit, it is a very short-sighted approach and will ultimately produce heavier workloads and larger backlogs due to the increased number of court remands. Moreover, we would point out that the agency frequently pays legal fees to the claimant's attorney under the Equal Access to Justice Act when cases are remanded to the ALJ by the courts. The cost to the public of these additional remands could be staggering.

The shift from using attorneys to non-attorneys to write ALJ hearing decisions makes little sense, especially when considering the cost to the agency of hiring paralegal specialists can equal or exceed the cost of hiring staff attorneys. Both positions are GS-12's and paralegal specialists frequently have more seniority, thereby warranting a higher wage. For SSA to expect non-attorneys with no legal background or training to produce a legally sufficient hearing decision, able to withstand judicial scrutiny, is unrealistic and bespeaks a fundamental misunderstanding of both the legal process and OHA's mission. Yet, SSA has recently indicated that it will continue to turn away from using lawyers to write hearing decisions and rely instead on non-attorney writers. Regardless of its motivation, this decision does not serve the taxpayers.

#### V. HPI BLURS THE HISTORICAL DISTINCTION BETWEEN LEGAL AND ADMINISTRATIVE FUNCTIONS WITHIN OHA

Under HPI, the agency has indicated its intention to decrease the number of Staff Attorneys and increase the number of paralegal specialists used to write hearing decisions. In addition, under the current proposal, both the positions of Supervisory Staff Attorney (Supervisory Attorney Advisor) and Hearing Office Manager (HOM) will be abolished. In their place, two new positions, Hearing Office Director (HOD)

[GS-14] and Process Group Supervisor PGS [GS-13] will be created. Both of these positions will have administrative supervision over hearing decision writing and other legal functions within the hearing office. Yet, these positions are being created as non-attorney positions. While attorneys may apply for these positions, it is NOT necessary to be an attorney to qualify for either position. It is disturbing that these positions will have administrative supervision over attorneys and the production of legal documents.

Another example of the agency assigning legal functions to a non-attorney is the automatic conversion of the HOM to a paralegal specialist position under HPI. This despite the fact that the HOM is a purely administrative position which requires only a high school education and does not involve writing ability, research, or other skills appropriate to legal analysis or writing.

We are not saying that none of the paralegal specialists employed by OHA are capable of writing hearing decisions which are legally sufficient. Neither are we suggesting that none of the individuals functioning as HOM's are capable of performing the job of a paralegal specialist. What we are saying is that hearing decision writing is the creation of a legal product which ultimately must withstand the scrutiny of the courts. For that reason, hearing decision writing should remain under the control of attorneys who are trained in the law and who possess the advocacy skills needed to produce a hearing decision which is legally sufficient and able to withstand judicial scrutiny. This is especially true since the agency can hire attorneys for no more money than it is currently paying paralegal specialists.

#### VI. CONFLICT WITHIN THE AGENCY

Even the casual observer of the SSA can soon discern that there is a culture of conflict within the agency. In fact, SSA has been described as an "agency at war with itself." This conflict centers around a power struggle between the administrators on one hand and the lawyers (represented by OHA) on the other. The administrators criticize OHA, the ALJs in particular, for their lack of program knowledge and technical expertise. The lawyers criticize the administrators for their lack of knowledge of the law and lack of concern for due process. It is no exaggeration to state that neither side entirely trusts or understands the other.

After 25 years of experience within the SSA (7 years of it in a field office), the author has come to realize that both sides have a valid point of view. While both sides are partially correct, neither side is entirely correct. It is true that there is a disturbing lack of program knowledge within OHA, and that this lack of technical expertise is particularly evident among the ALJ corps. For the most part, ALJs who are hired have no prior agency experience and have little in the way of technical knowledge of SSA programs. Probably more troubling still is the attitude which is openly displayed by many judges that they do not need program knowledge to do their job.

This is an untenable situation, especially since Social Security hearings are informal and non-adversarial in nature. While the claimant may, and usually does, have counsel present at the hearing, no one represents the agency, other than the ALJ. Therefore, the ALJ must always wear two hats, and sometimes three. In addition to being an impartial arbiter, the ALJ has the added burden of representing the agency (that is, the taxpayers) and, in those cases in which the claimant is not represented, the ALJ has the added obligation of representing the claimant as well.

Under the best of circumstances, this is a difficult, and perhaps, an impossible task. But clearly, it is not possible for an ALJ to represent the agency's point of view if he or she does not have a thorough knowledge of SSA programs and policies. Indeed, how can one represent a point of view he or she does not fully understand? Two remedies might restore the proper balance. First, require that candidates for the ALJ position have significant experience in SSA programs and policies, either as an attorney within the agency or as a private attorney who devotes a significant percentage of his or her practice to Social Security law. The current method of selection gives candidates very little credit for agency experience. In fact, the Merit Systems Protection Board recently held that the OPM discriminated against attorneys with agency experience. Giving greater credit for agency specific experience would significantly improve the hearing process in a short period of time. Unfortunately, under the present scheme, it is very difficult for agency attorneys to become ALJs. Despite a mandate contained in the 1984 Disability Benefits Reform Act, SSA has yet to create a mechanism which would allow attorneys within OHA a meaningful opportunity to obtain experience needed to qualify to become ALJs. Second, consider making Social Security hearings adversarial and allow the agency to be represented by counsel at the hearing. While such a change would involve some significant costs initially and would involve some initial increases in backlogs and waiting

times; it would ultimately prove cost effective in the long run with lower allowance rates, decreased backlogs of claims, and shorter waiting times.

#### VII. CONCLUSION

The press release which announced this hearing also noted that two-thirds of those individuals who file claims for disability under Title II or XVI eventually have their claim approved. A large percentage of these cases are approved at the hearing level. This fact suggests that there may be something wrong with the appeals process. However, this situation may be viewed in one of the following two ways: it could mean that many people who are truly disabled are having their claims denied at the initial and reconsideration levels or it could also mean that too many cases are being approved at the ALJ level. The fact that the agency has seen explosive growth in its disability programs may also be related to the high allowance rate.

It is widely believed that too many disability cases are being approved at the hearing level. Truly, it is difficult to believe that two-thirds of those individuals applying for disability benefits meet the very stringent standard for disability as it is defined in the Social Security Act. The large backlog of claims and the long period of time which deserving claimant must wait before receiving benefits are problems which are directly related to the large allowance rate. The widely held perception is that the persistent claimant will eventually be rewarded and found to be disabled. This perception has some basis in fact and as long as it persists, it is unlikely that the twin problems of large backlogs of claims pending and long waiting periods to receive benefits will be solved.

Many feel that in order to solve these problems, it is necessary to overhaul OHA and the hearing process. This is probably a valid point of view, but great care must be taken not to compromise the mission of OHA, which is to assure the claimant's right to due process and a fair and impartial adjudication of his or her claim based on its merits. Placed in that context, SSA must realize that the mission of OHA goes to the very heart of the mission of the agency in general. It is clear that change is needed within OHA; however, it is also clear that before enacting any changes in OHA and the administrative appeals process, great care must be taken to see to that the requirements of due process of law are satisfied. In order to accomplish this, the agency must accept the fact that it must allow OHA to serve its function and that means allowing it to maintain some degree of autonomy and respecting the role of its attorneys and judges in the process. If the agency continues to de-legalize the hearing process, the results will be disastrous.

On behalf of the members of NASSSA, I would like to thank the joint chair and the members of the subcommittees for their gracious invitation to offer testimony. I sincerely hope our testimony has been useful. Thank you for your kind attention.

