HEARING ON CLEARING THE DISABILITY BACKLOG: GIVING THE SOCIAL SECURITY ADMINISTRATION THE RESOURCES IT NEEDS TO PROVIDE THE BENEFITS WORKERS HAVE EARNED

HEARING

BEFORE THE

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U.S. HOUSE OF REPRESENTATIVES

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WEDNESDAY, APRIL 23, 2008

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
Washington, DC.

The Committee met, pursuant to notice, at 10:14 a.m., in room 1100, Longworth House Office Building, Hon. Charles B. Rangel (Chairman of the Committee) presiding.

[The advisory announcing the hearing follows:]

ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

FOR IMMEDIATE RELEASE
April 16, 2008
FC—21

CONTACT: (202) 225–9263

Chairman Rangel Announces a Hearing on Clearing the Disability Backlog—Giving the Social Security Administration the Resources It Needs to Provide the Benefits Workers Have Earned

House Ways and Means Committee Chairman Charles B. Rangel today announced that the Committee will hold a hearing on the Social Security Administration's (SSA's) large backlog in disability claims and other declines in service to the public resulting from years of underfunding of the agency's administrative expenses. The hearing will take place on Wednesday, April 23, 2008 in the main Committee hearing room, 1100 Longworth House Office Building, beginning at 10:00 a.m.

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

BACKGROUND:

In recent years, SSA's workload has grown significantly due to the aging of the population and new responsibilities stemming from Medicare and homeland security legislation. Despite a productivity increase of more than 15 percent since 2001, the administrative funding SSA has received has been well below the level needed to keep up with this growing workload. From Fiscal Year (FY) 1998 through FY 2007, SSA received a cumulative total of $1.3 billion less than was requested by the President, and $4.6 billion less than the Commissioner's own budget for the agency.

As a result, by the end of calendar year 2007, SSA staffing had dropped to almost the level in 1972—before the start of the Supplemental Security Income (SSI) program—even though SSA's beneficiary population has nearly doubled since that time.

Due to the combination of rising claims as the baby boom generation ages and prolonged underfunding, Social Security and SSI disability claims backlogs have reached unprecedented levels. More than 1.3 million applicants for disability benefits are currently awaiting a decision on their claim, and total waiting times often extend into years. In addition, as SSA tries to address the backlog crisis, the agency is forced to divert its limited resources away from its day-to-day operations in field offices and payment processing centers in order to try to manage the disability backlog. The result is an increase in long lines, delays, busy signals, and unanswered telephones, and growing concern about closures and consolidations of local field offices. Resource shortages have also forced the agency to cut back on program integrity activities, even though such activities have been demonstrated to generate considerable savings to the Trust Fund.

Under the President's FY 2009 proposed budget, the agency would be able to make modest progress toward addressing the disability claims backlog, but service in the field would continue to decline. Moreover, proposals to assign additional workloads to SSA, such as expanding SSA's role in verifying the work-authorization status of employees, would, if enacted and not funded in full each year, force SSA to shift scarce resources away from its core functions to carry out these new workloads.

In announcing the hearing, Chairman Rangel said, **"We are alarmed by the deterioration in service to our constituents and the suffering of those who must wait years to receive benefits they desperately need. Despite its well-earned reputation for being a can-do agency, the Social Security Administration simply cannot do its job without adequate funding. We have been working on a bipartisan basis to address this problem, and will continue to do so until the disability claims backlog is eliminated and SSA's capacity to provide high quality service to the public is restored."**

FOCUS OF THE HEARING:

This hearing will focus on SSA's large backlog of disability claims, its impact on applicants with severe disabilities who are awaiting a decision on their claim, and SSA's plan to reduce the backlog. It will also focus on the role of SSA resource shortages in the growth of the backlog; other effects of these shortages, including the impact on service in local field offices, telephone service, and SSA's ability to conduct program integrity activities; and the need for increased administrative funding in FY 2009 to address these problems.

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS*:*

Please Note: Any person(s) and/or organization(s) wishing to submit for the hearing record must follow the appropriate link on the hearing page of the Committee website and complete the informational forms. From the Committee homepage, *http://waysandmeans.house.gov*, select "110th Congress" from the menu entitled, "Committee Hearings" (*http://waysandmeans.house.gov/Hearings.asp?congress=18*). Select the hearing for which you would like to submit, and click on the link entitled, "Click here to provide a submission for the record." Once you have followed the online instructions, email and ATTACH your submission as a Word or WordPerfect document to the email address provided, in compliance with the formatting requirements listed below, by close of business **Wednesday, May 7, 2008**. Finally, please note that due to the change in House mail policy, the U.S. Capitol Police will refuse sealed-package deliveries to all House Office Buildings. For questions, or if you encounter technical problems, please call (202) 225–1721.

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1. All submissions and supplementary materials must be provided in Word or WordPerfect format and MUST NOT exceed a total of 10 pages, including attachments. Witnesses and submitters are advised that the Committee relies 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. All submissions must include a list of all clients, persons, and/or organizations on whose behalf the witness appears. A supplemental sheet must accompany each submission listing the name, company, address, telephone and fax numbers of each witness.

Note: All Committee advisories and news releases are available on the World Wide Web at *http://waysandmeans.house.gov*

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

ability of Committee materials in alternative formats) may be directed to the Committee as noted above.

Chairman RANGEL. We regret that we're starting late, but this is a very unusual type of hearing, because most of the work that should be done by the Congress in identifying the problem has already been done. So, it's not a Republican or a Democratic initiative; it's a question of how many Americans have played by the rules, paid their dues, have become disabled, and their Government, for whatever reason, is unable to provide the services that belong to them.

Because there are so many people, and the resources are so limited by the Social Security Administration, we have lawyers now making appeal to those people that have waited 2 and 3 and 4 years, where they claim that as lawyers they can do better than the U.S. Congress.

So people are being victimized by believing in their government, and of course in believing that they can for outside assisted.

In addition to that, a lot of Members for honorable reasons believe that the Social Security system can and should be used for other purposes because they have been so effective in getting in the past, that is, what people deserve from the Social Security system, survivor system, that they're going to expand it. That can only make matters worse.

So I just want the Ranking Member to know that in meeting with Chairman Bachus this morning we all are trying to find creative ways to get this agricultural thing going. If we come up with anything, then we would be able to present it to you, because you've played such an important role, not only with Republicans in the House, not only in the conference, but with the President, since for some reason you have a much better working relationship with him than I do.

But I won't have to worry about that too long.

[Laughter.]

Chairman RANGEL. Having said that, if the Committee would permit, what I would like to do is to yield to Mr. McNulty and then to Dr. McDermott. At some point in the hearing I would ask for them to chair that part while I'm away, and then hope that you might designate the Ranking Members on the Social Security, the family income, because they have really—Mr. Johnson and Mr. Weller have worked so hard in the national good. We don't have to—that is, Mr. McCrery and I don't have to tell you that where we disagree we don't think it's helpful to let the whole Congress and country know it; but I do believe that this is one of the subjects that we do not have any problem in recognizing the severity of what is hitting so many Americans who deserve better service than they're getting.

So I'd like to yield to you for whatever statement you'd want to make.

Mr. MCNULTY. Thank you, Mr. Chairman.

For more than 70 years, Social Security has provided essential income support for literally hundreds of millions of workers and families. In 2007 alone nearly 613 billion was provided to more

than 53 million Americans in the form of retirement, survivors' disability, and Supplemental Security Income benefits.

Through a national network of Social Security field and hearing offices and state disability determination offices, over 74,000 staff serve the public every day through work that includes processing claims, issuing Social Security number cards, crediting earnings records, and educating the public. We recognize the hard work of these dedicated professionals.

Regrettably, the Agency's service to the public has suffered in recent years. This is due in large part to limited funding at a time of increasing workloads, those increasing workloads, of course, due primarily to the aging of the baby boomers. There are longer lines at local offices, more busy signals received by callers to Social Security's 800 number, and a hearing backlog so deep, the average waiting time for a decision is over 16 months.

Commissioner Astrue has said, "It is a moral imperative to reduce the disability backlogs." I couldn't agree more, and I'm sure the Chairman also agrees.

Since his arrival, Commissioner Astrue has made addressing disability backlogs his number one priority. As he will tell us today, he has accelerated or implemented multiple initiatives to decrease the backlog and improve public service.

Congress has begun stepping up to the plate as well. This year for the first time in 15 years, Congress has appropriated more than the President's budget request for the Social Security Administration (SSA), exceeding that request by close to $150 million. I understand Commissioner Astrue was able to get into the 2009 budget request to the President a 6-percent increase of this year's budget, so that's certainly an encouraging development.

I think part of the credit for this increase in the budget goes certainly to the bipartisan work of our two Subcommittee chairmen, Mike McNulty and Sam Johnson, among others on the Committee.

Unfortunately, though, administrative funding alone can't solve Social Security's service delivery and fiscal challenges. We already face what some would call a fiscal train wreck in coming decades, when the projected costs of Medicare, Medicaid, and Social Security impose unbearable burdens on future generations. Those projections are reality today for the Social Security disability program. Its cost—and remember the Social Security disability program is funded by a specific payroll tax—we often lump together the survivors' and the disability program, but there is a separate trust fund for the disability program, and for the last 3 years the outgo has been more than the income from the payroll tax dedicated to the disability program.

Solving all of the challenges will require Members from both parties to come together to conduct a fundamental examination of the challenges and opportunities facing Social Security programs. Every day of delay means fewer choices, greater burdens on future generations. I think we all agree that our children and grandchildren deserve better than continued delay.

Thank you, Mr. Chairman.

Chairman RANGEL. I'd like to yield to Mr. McDermott.

Mr. MCDERMOTT. Thank you, Mr. Chairman. There are 750,000 Americans for whom today's hearing is a matter of grave

urgency. That's how many disability claims are pending before the Social Security Administration. The backlog is more than double what it was in the year 2000.

While the blame rests with the administration, it's not the Social Security Administration I'm talking about. Year in and year out the line of disabled Americans applying for help has grown longer, while the Social Security budget has been short-changed. Today three-quarters of a million Americans are waiting for Congress to do the obvious, find a solution. We're taking steps to fix this, because these disabled Americans deserve nothing better.

The backlog in processing disability claims is a burden and a barrier for disabled individuals who are waiting for critical cash assistance and healthcare coverage. Perhaps no group faces a greater challenge as a result of these backlogs, than those who are applying for SSI.

The SSI Program is often referred to as the "safety net of last resort for the disabled and the elderly." It provides modest cash assistance the nearly 6 million disabled individuals who have very modest incomes and limited or no resources. The average monthly benefit for a disabled individual is $471, which is used to meet basic necessities, such as food, clothing, and shelter.

Additionally, SSI beneficiaries are generally eligible for healthcare coverage once they get on the program through Medicaid. SSI applicants—remember these people have been waiting for two or 3 years with no healthcare benefits; they have to get on the program before they're eligible for Medicaid. They're much more vulnerable than most. They are being forced to wait for years when many don't have sufficient resources to buy food for the next few weeks.

Making matters worse, these people often don't have healthcare access, as I said, to healthcare at all.

For the Social Security Administration, the backlog is making it more difficult to adequately staff field offices with employees who can address the other critical needs, as well as the routine changes affecting beneficiaries, like changes in monthly income that directly affect the monthly benefit up or down.

In other words, the current backlog is a lose-lose for everybody. Committing ourselves to securing full funding for Social Security Administration administrative budget is the right thing to do for the disabled individuals who need critical assistance now, and it's the right thing to do for the Social Security Administration.

We know that nearly 80 million baby boomers will come knocking on our door in the next 20 years. As it stands now, the answer will be "Go to the end of the line." It is a long line. That's not acceptable either to them or the 750,000 disabled Americans waiting in line today.

I think you, Mr. Chairman, for having this hearing.

Chairman RANGEL. Mr. Johnson, who has really done great work with Mr. McNulty, I'd like to yield to you.

Mr. JOHNSON. Thank you, Mr. Chairman. I appreciate your recognition, and thank you for holding this important hearing.

Last year, Subcommittee Chairman McNulty and I successfully worked together to send the Social Security Administration some additional funding. The whole Committee supported that. It needs

to better serve the American people. This funding won't solve all of Social Security's challenges, but it's a good first step.

Many of those trying to receive benefits are angry. They want a process they can understand, and that's fair and that gives them the answers in a reasonable amount of time. That just isn't happening today. Commissioner Mike Astrue knows that, and he and his staff have been working hard to put into action needed changes.

As we will hear, these efforts not only include added staff but also streamlining the application process, expanding the use of technology and developing new decisionmaking tools to help reduce processing time, and insure the right decision is made as soon as possible.

Implementing needed change over the short term is necessary; however, as Ranking Member McCrery rightly points our or will point out, we cannot continue to ignore the greater challenges of facing Social Security today.

As we were recently reminded by the Social Security trustees, long-term program costs cannot be sustained without change. Even more pressing are the immediate fiscal challenges facing the disability program. We need to take action, and the sooner we get to work the better. We should begin by finding ways to make disability determinations less complex, less costly, and easier for the public to understand.

I believe we can achieve this goal while still insuring accuracy and fairness. It won't be easy to find the answers, but it's got to be done. Those who are unable to work are counting on us to secure Social Security's vital safety net. All Americans are counting on us to insure their hard-earned tax dollars are not wasted through fraud, abuse, or needless red tape. To that end I look forward to working with all my colleagues, particularly Mr. McNulty and with Commissioner Astrue.

Thank you, Mr. Chairman. I yield back the balance.

Chairman RANGEL. Thank you.

So, Mr. McCrery, if you don't have any other opening statements at this point, I would like to call on Chairman McNulty, not only to take over the hearing, and at the appropriate time to share the chair with Dr. McDermott, as I go meet with the Senators on this important issue. Thank you.

Mr. MCNULTY [presiding]. Thank you, Mr. Chairman for scheduling this hearing, and welcome, Commissioner Astrue.

Today we focus on one of the most critical challenges facing the Social Security Administration, the unprecedented backlog and applications for disability benefits.

Today more than 1.3 million Americans are waiting for a decision on their disability claims or their appeals. Due to this backlog, applicants who are suffering from severe disabling conditions often must wait for years, with little or no income and in many cases without health insurance. No one can hear their stories without being convinced that we must fix this problem and fix it soon.

The root of the problem is simple. For too long SSA has been severely under-funded. From fiscal year 1998 through 2007 SSA received a cumulative total of $1.3 billion less than what was requested by the President, and $4.6 billion less than the Commissioner's own budget for the Agency. As a result, by the end of 2007

Agency staffing had dropped to almost level in 1972, even though SSA's beneficiary population has nearly doubled since that time. Other workloads have also increased as Congress imposed new responsibilities on the agencies, such as administering major portions of the medicare prescription drug program.

SSA has worked hard to meet this challenge, increasing productivity by more than 15 percent since 2001. But these productivity increases and the hard work of SSA's dedicated employees cannot make up for the combined effects of staffing losses and increased workloads.

The consequences of prolonged under-funding also extend beyond the disability backlogs. Service to the public in SSA's local offices across the country has also declined due to staffing shortages. Our constituents increasingly face long lines, busy signals, and other delays, and field office closures are a growing concern.

Last year we made a start on turning this untenable situation around. For the first time in many years, Congress approved more money for SSA than the President had requested. This allowed SSA to hire additional administrative law judges and hearing office staff to address the backlog. But SSA's funding and staffing shortfalls are far too great to be remedied in one year.

This year we are once again making a strong bipartisan effort to provide SSA with adequate funding. Under the President's budget the Agency would continue to reduce the backlogs, but service in the field would decline even further. SSA needs at least the additional $240 million above the President's budget request recommended in the House-passed budget resolution.

I strongly urge Members of the Committee to join us in our effort to make adequate funding for SSA a priority this year, and I thank Ranking Member Johnson for his cooperation and dedication to this cause.

At the same time, we must do our part not to burden SSA with new responsibilities that are not part of the Agency's mission. The Subcommittee on Social Security will hold a hearing in the coming weeks on the impact on SSA proposals to expand its role in immigration enforcement.

Today we will hear from SSA Commissioner Michael Astrue. I commend you, Commissioner, for your untiring commitment to bring down the backlog. I'd also like to thank you for your responsiveness to the Committee's concerns, and your willingness to work and partnership with us as we seek ways to improve the disability process.

I also look forward to hearing the views of other witnesses, including representatives of both SSA's beneficiaries and its workers on the problems the Agency faces and the measures SSA is taking to address them.

It is important that the Committee have your perspectives as well, as we work to insure better treatment for applicants and beneficiaries alike.

Without objection, other Members of the Committee will be allowed to submit opening statements for the record.

At this time I would like to recognize Commissioner Astrue. Again, thank you for the work that you've done with us over the past year or so, Mike. We've made some progress. We need to make

more, and we look forward to hearing your views and to having a dialog with you.

STATEMENT OF THE HONORABLE MICHAEL J. ASTRUE, COMMISSIONER, SOCIAL SECURITY ADMINISTRATION

Mr. ASTRUE. Thank you, Mr. Chairman.

Mr. Chairman, and Members of the Committee, since I know I may not have another chance with the full Committee, I'd like to begin by thanking Mr. McNulty. He's been accessible, candid, and thoughtful, and both the Agency and I will miss him a great deal next year.

I would also like to thank all of you for your continuing bipartisan support of Social Security. The additional $148 million you helped obtain for 2008 has helped us significantly with staffing issues. We will replace SSA and DDS employees who leave this year and do a net hire of 1300 more employees for our direct service operation. In addition, we are hiring 175 administrative law judges plus up to possibly 14 more for our new national hearing center, and 143 additional support staff for these ALJs across the country.

Nevertheless, as many of you have said, we won't meet our many challenges simply by spending more money to maintain the status quo. Already some of the nearly 80 million baby boomers have begun filing for retirement. If we are not vigilant, this enormous caseload will hit while we're plowing through backlogs resulting from rising workloads and dwindling resources.

We will continue to work smarter as we seek the resources we need to meet those challenges.

On the retirement front, our upgraded E-services will include a greatly streamlined homepage and a more accurate online retirement benefit estimator. In September our simplified online retirement application will increase the usage rate, dramatically reducing filing time for the public, and 12–18 months later will begin to adjudicate the retirement claims without routine time-consuming review by our field representatives.

With respect to disability, for the first time we are updating our medical listings on a rotating 5-year schedule and providing detailed guidance on rare diseases that are particularly difficult to adjudicate. Our program consultation process now allows DDSs to electronically clarify policy concerns that we have found in their decisions. Our responses are quick, they provide policy guidance and data that we share with all adjudicators, and lead to better quality decisions and policy clarifications.

The new online appeals program will reduce errors, save field staff from the drudgery of manual inputs, and end one source of delay for claimants.

Next week we'll meet with the DDSs to again discuss replacing 54 separate COBOL-based computer systems that are increasingly difficult and expensive to maintain. If we reach consensus, I will request support in my 2010 budget for this significant upgrade.

We're making great progress with our two Fast-Track disability systems. One track is quick disability determinations, or QDD, where a computer model identifies highly probable allowances.

About 2.3 percent of all new claims are now QDDs, with a 96 percent allowance rate and a 6–8-day processing time.

The second program in this track, Compassionate Allowances, which will begin around Labor Day, identifies medical conditions that are so severe that they obviously meet our standards. Although too early to predict, we believe that by the end of 2009 about 4 percent of our claims will be Fast Track, possibly increasing to 6–9 percent by 2012.

As for the hearing backlog, unfortunately there is no silver bullet. Instead, through streamlining and better use of existing resources, we've held down the backlogs while waiting for the infusion of new ALJs and support staff and the end of our inefficient paper-based systems.

We are placing ALJs in the neediest office where space allows, while maintaining adequate support staff to ALJ ratios. Using video technology, ALJs nationwide and in the national hearing center can conduct hearings for offices with the worst backlogs. A pilot this summer will allow claimants to attend video hearings in their own lawyers' offices, an example of how new technology and thinking can be win-win for the Agency and the people we serve.

Last year we cleared 65,000 cases pending for 1,000 days or more. This year we've already completed 63 percent, or about 85,000 of the 135,000 cases pending for 900 days or more. These cases require more development and slow our backlog progress measured by total pending, but these are the most important cases, and we must resolve them first.

For Fiscal Year 2009 I hope to reduce the tolerance level below 900 days but will wait until September to decide, depending on the anticipated timing and level of our funding.

Our pilot to centralize hearing notice mailings should save considerable staff and make notices clearer. We have a number of other automation initiatives in progress.

In conclusion, although we've made progress and it's slow and frustrating, we are looking forward to the convergence of two key events later this year, the substantial elimination of the remaining paper cases and full productivity of the new class of hired ALJs. This gives me, and should give this Committee, significant hope for progress next year.

In Fiscal Year 2009, we will absorb at least an additional $400 million in built-in inflationary costs. An extended continuing resolution combined with these costs could force additional Agency contraction. Timely support of the President's budget is absolutely critical to continued improvement.

Once again, I very much appreciate the bipartisan collaboration of this Committee and its support, and would be pleased to answer any questions that you have.

Thank you.

[The prepared statement of Hon. Michael J. Astrue follows:]

Prepared Statement of The Honorable Michael J. Astrue, Commissioner, Social Security Administration

Thank you for this opportunity to update you on our efforts to improve our service to the American public.

I would like to start with Social Security's front door, the field office. The past few years have been tough for field offices. As overall agency employment dropped from 63,569 in 2003 to 60,206 at the end of 2007, field offices felt the effect of staffing losses more intensely because so many of our activities mandated by law are performed in our field offices.

As staffing fell, workload burdens grew. The general population continued to grow, and it got older, which meant more retirement applications and more disability applications. New state laws aimed at illegal immigrants increased the number of people seeking replacement Social Security cards. New Federal statutes required claims representatives, teleservice representatives, and other field staff to take on complex and time-consuming new responsibilities in Medicare Part D. This year, our field offices are processing additional requests for 1099s to help taxpayers file for payments under the stimulus bill.

Our field offices do their best, but simply cannot provide the level of service the public expects from the Social Security Administration at recent levels of funding. This Committee has recognized this problem and I would like to thank you for providing SSA with the resources to better fulfill our responsibilities to the American public. The 2008 appropriations was the first time that Congress has appropriated at or above the President's Budget request since 1993.

We are grateful to you for your support, and it is helping our field offices and teleservice centers provide improved service. We will use some of the extra funding to strengthen our direct service operation with the hiring of 3,900 employees, 1,300 employees more than the expected losses for this year. We are not going to be able to meet our challenges by continuing to ask for more money to maintain the status quo. Increases in personnel and infrastructure costs alone for the fiscal year that starts this October will be at least $400 million.

To cope with rising workloads and likely fiscal constraints, we have systematically reviewed the information that we routinely request from or provide to the public. We believe that if we can automate, reduce, or eliminate such information exchanges, we can improve efficiency as well as the quality of our service and the morale of our field employees. Our Ready Retirement Team has been leading this effort by focusing on streamlining the retirement application process, a logical choice because this past January the first of nearly 80 million baby boomers filed for retirement.

This team already has driven change by determining that retirees born in this country may not need to provide their official birth certificate to prove their age. Instead, if a retiree alleges a date of birth that satisfies our authentication standards, we will accept the allegation. This simple change will allow baby boomers to file more effortlessly over the Internet, telephone, or in our offices, employing a more efficient process that will accelerate payment of the first check. Furthermore, field employees will save time on a significant number of claims each year.

The Ready Retirement Team also has greatly improved the information available to people trying to decide the right date for their retirement. As we will soon announce, we are planning to provide people highly accurate on-line estimates of their monthly retirement benefits, which we compute by using their actual earnings records. Our current online estimators are difficult and time-consuming to use, and often fall short on accuracy. The new version will be simple, easy-to-use, and highly accurate. Our team worked hard with the technology and with privacy experts to ensure that the negligible risks of inappropriate disclosure of personal information justify the substantial benefits.

Although our electronic services are usually ranked as the best of all Federal agencies, my judgment is they are far from good enough yet to deal with the imminent tsunami of baby boomers' claims. After broad consultation with experts and advocacy groups, next month we will be unveiling our new website, which will eliminate some of the visual clutter and be significantly easier for the public to navigate, especially if they are reaching out to us for the first or second time.

Our improved website will introduce the public to the next critical Ready Retirement initiative: a total overhaul of our online retirement application. Our current online form was put up quickly about 8 years ago. It is nowhere near best demonstrated practices, and for most of this decade only about 10% of the public has chosen to apply for retirement online.

In order to keep field offices from being totally overwhelmed, we are going to need to drive that online filing figure up from about 13% to 50% over the next 5 years. The Ready Retirement Team has a September 27, 2008 deadline for the first step of a two-step implementation, and it has already shown a terrific prototype to advocacy groups, and the Social Security Advisory Board. We found that we could eliminate or simplify the vast majority of the application questions, and that we could use cues, links, streaming video, and other techniques from the best financial serv-

ices websites to give the public a friendlier, faster, and simpler experience. We expect the current 45 minutes for the average online retirement filing to drop to an average of 15 minutes.

The second step of the Ready Retirement process requires modification of 39 separate COBOL-based systems and will involve some additional improvements to the form itself. The key improvement will be that our computers will automatically send the claim to payment without the involvement of a claims representative. In the coming years, this one change could free up enormous amounts of staff time.

A similar work-saver that we recently implemented is iAppeals. As you know, State agencies, called Disability Determination Services, decide disability claims on our behalf at the first two levels of the adjudication process. Currently, to appeal an adverse Disability Determination Services decision, the claimant or the claimant's representative fills out a paper form and sends it to a field office, where the staff manually enters the appeal into a system.

iAppeals, which is now used on a voluntary basis in about 10–15% of all cases, eliminates this unnecessary manual work, reduces the likelihood of human error, and ends one source of delay that contributes to backlogs. For these reasons, in the coming year, we will propose a regulation that will require claimants' representatives to use iAppeals; the status quo will be available for unrepresented claimants.

We also are having a separate intercomponent team study the waiting areas in our field offices to improve both the efficiency of the office and the experience of the public. We expect to roll out many changes in the next year that will improve seating, layout, privacy, signage, and other small, but important, things that make visiting a field office a better experience.

Last month, I authorized the purchase of new intake kiosks for field offices that will provide a modern, fast, and user-friendly tool for the public to register the reason for their visit. These kiosks incorporate touch screen technology and are similar to those many Americans use for airline travel. We are also piloting the use of personal computers in the field office reception area to provide the public with connectivity to the SSA Internet website. These personal computers provide an option for those people who may not have access to a personal computer, or may not have understood our e-service options, to transact their business with us electronically.

We are looking at using an unobtrusive slideshow presentation to remind people of the documents they need in order to file a claim or receive a new or replacement Social Security card. Those people who do not have the necessary documentation with them can leave to get it and come back, or call a family member to bring it to them, so that they will have a fully successful visit. The slides will also provide information about our online and 800 number services so visitors know there are alternatives to visiting a field office the next time they need service.

Before I discuss our efforts to improve our disability process, I want to mention that immigration initiatives and demographic shifts have further strained some field offices with demands for new and replacement Social Security cards. To ease this pressure, we have moved to specialized card centers, mostly in densely populated and rapidly growing urban areas. These centers allow us to provide faster, more efficient, and more accurate service to the public. We are co-locating these new centers with field offices because doing so is cost-efficient, provides more career ladder opportunities to our employees, and most importantly, better serves the public.

Now, I would like to turn to the disability backlogs by starting with an update about our efforts to improve the quality and speed of Disability Determination Services decision-making. In a time of agency contraction, for most of this decade the Disability Determination Services have suffered even deeper cuts than SSA. We have taken steps to reverse this trend, and I am very pleased that the Disability Determination Services will be able to replace all staff who have left or will leave their agencies this year. This support is a key part of our effort to bring the number of pending cases at the State level down below 500,000 for the first time since 1999.

Additional resources are vital, but must be accompanied by our commitment to work smarter. A valid longstanding Disability Determination Services criticism of SSA is that our medical listings do not provide enough detail and do not keep pace with medical advances. In making disability determinations, SSA uses the *Listing of Impairments* (the *Listings*) which describes impairments that are considered severe enough to prevent a person from doing any substantial gainful activity. Although the *Listings* are a critical factor in SSA's disability determination and have been used in millions of cases since their initial development in 1955, I discovered last year that some of the important listings had not been updated for decades. Updating the *Listings* on a regular basis will allow disability adjudicators to resolve disability cases more accurately and efficiently. We have already published several

final *Listing* regulations, and we have developed a schedule to ensure that we update all of our medical listings at least every 5 years.

In addition, we have made a special effort to provide guidance to decision-makers on the rare diseases and conditions where we are most likely to delay decisions and make mistakes. This new emphasis on rare diseases and conditions is an important element of our effort to use computer technology to pull the straightforward cases out of the queue and resolve them in an unprecedented brief period of time. Our retrospective analyses indicate that a surprisingly high percentage of these cases are either decided incorrectly or take an unusually long period of time to adjudicate.

The first piece of what will be a two-track fast-track system is now up and running across the country. It is called QDD—for Quick Disability Determination—and right now about 2.3% of all new claims are being identified for QDD processing, and over 96% of them are allowances. QDD allowances are being decided in an average of 6 to 8 days. During the next several months, we expect the proportion of cases being identified for fast tracking will increase as we continue to make adjustments to, and test the limits of, the computer model. These adjustments should not affect the processing time nor the allowance rate for QDD cases.

We are also getting close to piloting the second track, which we are calling compassionate allowances. These are cases where the disease or condition is so consistently devastating that we can presume that the claimant is disabled once we confirm a valid diagnosis. By deciding more cases based on medical evidence alone, we can reduce the number of claims that require further review.

Since this is new territory, we do not know what the eventual mix of QDD and compassionate allowance cases will be, but a reasonable guess is that by the end of 2009, about 4% of our claims will be fast-tracked. By the end of 2012, that number could be 6% to 9% of our claims. I stress, however, that right now these numbers are best guesses and that we will not really know until we have pushed this effort for a longer period of time.

We have also extended nationwide the Request for Program Consultation, a Disability Determination Services quality initiative that was incorporated into Disability Service Improvement. As we are speeding up our processing of cases, it is essential that we maintain our focus on accuracy. An institutionalized forum for communication between Disability Determination Services and SSA on problematic cases is an important part of that effort.

The Request for Program Consultation provides an electronic forum to resolve disagreements between the Disability Determination Services and our Office of Quality Performance. These disagreements may involve, for instance, whether a Disability Determination Services agency obtained appropriate documentation, applied policy correctly, or decided the case accurately. The Request for Program Consultation is a web-based application that is available to Disability Determination Services nationwide. The Request for Program Consultation website allows Disability Determination Services to submit requests electronically and those requests appear instantaneously for review by the Request for Program Consultation Team. The Request for Program Consultation Team analyzes and resolves cases within seven days. Prior to this consultation process, Disability Determination Services often waited several months for a definitive resolution on complex cases. The Request for Program Consultation allows us to gather data on each request and share it with all users so that they may use that information to write better policy and make better decisions.

As we work to improve the timeliness and quality of our disability determinations, we are also considering longer-term systems improvement. We will be having important discussions with State administrators in New Orleans next week to discuss a unified information technology system to replace the current 54 separate COBOL-based systems that are increasingly difficult to modify and expensive to maintain. A similar consolidation effort collapsed in early 1999, but we have been working toward this goal for nearly a year, and I am cautiously optimistic. If we can obtain a sufficient degree of consensus with our partners in the States in the next few months, we may move forward with this essential improvement provided we have sufficient resources.

We are working on a new software tool called eCAT (Electronic Case Analysis Tool) for use by disability examiners. eCAT will prompt examiners about questions they should ask and documentation that they need before making a disability determination. The initial model for eCAT was developed by the Pennsylvania Disability Determination Services. Unfortunately, eCAT was implemented prematurely as part of Disability Service Improvement and failed miserably. The Virginia Disability Determination Services is helping us refine eCAT so that we properly implement a good concept. While eCAT will not be ready to pilot earlier than next year, it offers

the hope of using cutting-edge technology to make faster, more accurate, and better-documented decisions.

I would like to now turn to the hearings backlog. If you step back and look at the system as an economist would, we have had, for many years, issues of allocation and distribution of resources. The problem of allocation has been painfully clear—compared to 10 years ago we have about 176 % more disability cases. We have taken a big step toward resolving that problem by bringing onboard the 175 additional administrative law judges and additional staff to support them. If we can resolve space issues, we will also bring on another 14 National Hearing Center judges this year.

The resource distribution problem is neither obvious nor is its cause clear to me. Nonetheless, when you look at where we were a year ago, it is clear that there was a longstanding imbalance in Office of Disability Adjudication and Review resources. In particular, the Chicago and Atlanta regions were dramatically under-resourced compared to the rest of the country. The hearing offices in many of the most backlogged cities—such as Atlanta, Cleveland, and Detroit—were receiving 3–4 times as many filings per administrative law judge as offices in Southern California and New England.

We have moved swiftly to correct this problem. Where we can address it by changing jurisdictional lines in adjacent locations, we have done so. As an example, our suburban Pittsburgh office now serves Youngstown and other parts of eastern Ohio to take some of the burden off overloaded offices in Cleveland and Columbus. For the same reasons, we have reassigned responsibility for cases scheduled for video hearings to less busy offices. At our site in Toledo, we have video hearing capability, so that now administrative law judges in Boston assist the Toledo office with their video hearings.

Our new National Hearing Center (NHC), which holds video hearings from a central location, also gives us the capability to move cases quickly and flexibly to conduct video hearings in the cities with the worst backlogs. Right now, our NHC administrative law judges are focusing their efforts on the backlogs in Atlanta, Cleveland, and Detroit. We are planning to expand this NHC initiative as soon as we can and intend to address the backlogs in Miami, Columbus, Indianapolis, and other cities where claimants have been waiting the longest.

With the allocation of the 175 newly-hired administrative law judges, we have made equalizing resources a priority even though we have received some criticism for doing so. We are sending 10 to Ohio and just 1 to New England. That is not a regional bias—I am from Boston myself—but a data-driven decision that recognizes that there is a strong correlation between filings per administrative law judge and cases pending.

We have also received some criticism that we are not providing adequate support staff for our administrative law judge corps. In my opinion, that is a fiction designed to sidetrack some of our productivity initiatives. Since I began as Commissioner, I have increased the number of support staff per ALJ from 4.1 to 4.4. The number of staff needed to support a disposition will change as we fully implement the backlog plan, but at the moment that number is difficult to project with any certainty. We know that automating many of our clerical functions will reduce the amount of time spent by staff on more routine tasks, and allow them to absorb additional workloads. We are also working to standardize our business process, which should result in additional staff efficiencies. We will continue to monitor the appropriate staff to ALJ ratio as the new processes are implemented.

While we will still have a handful of offices that will be under-resourced due to various barriers, such as the cumbersome process for adding additional space, we are just months away from no longer being able to offer resource issues as a defense to poor productivity. It is time for everyone from senior management to the most junior support staff to commit themselves to finding the best ways to work together to make sure that nobody waits an inexcusable period of time for a final decision on an appeal. Performance varies greatly from office to office, and we are working toward having the least productive offices model themselves, to the extent possible, after the more productive offices.

While waiting for the new administrative law judges and support staff to be fully trained and productive, we have done our best to attack the backlogs with a series of administrative and regulatory changes that have slowed the increase in pending cases and slightly reduced average processing times. We could have made even greater progress, but chose instead to make the important commitment to clear out the most aged cases where the claimant has waited 1,000 days or more for a hearing. I would like to take a little time to explain why that decision is so critical.

For most of this decade, SSA created rules and incentives focused solely on the most prominent metric for measuring the backlog—total cases pending. As logical

as this decision may seem at first, if you think about it harder you will see that it creates a perverse incentive to focus on the easiest cases and to set aside the difficult ones. That is what happened until the start of the 2007 fiscal year, when we had about 65,000 cases over 1,000 days old, some of which had been pending for as long as 1,400 days.

Even though these 1,000-day-old cases generally take 5–6 times longer than new cases to resolve, we set the goal of clearing them out by the end of the year. We came within 108 cases of that goal by the end of FY 2007, and I am happy to report that all of those cases are now gone. From a moral perspective, we had to dedicate our resources to clear out these cases because it is just wrong to let claimants wait an unconscionable length of time in order to meet a hearing-pending goal.

We were not satisfied with our initial success, and for FY 2008, we redefined our goal as cases 900 or more days old. We had 135,000 of the newly-defined aged cases at the start of FY 2008. I am pleased to report that we are ahead of schedule for completing all 135,000 of these cases this year; we have already completed 63% of them. Our intention is to reduce the tolerance level again in FY 2009, but I plan to wait until September before doing so.

I know you recognize that our ability to make continued progress with this workload in the next fiscal year will depend greatly on our fiscal position. If we do not receive a timely appropriation or must deal with the uncertainties and budget reductions created by a continuing resolution of unknown duration, our task will be much more difficult to accomplish.

Reduction of the aged cases should also produce, later this calendar year, a real benefit for everyone who is waiting. The aged cases represent a large percentage of the paper cases in the system, and it is extraordinarily inefficient to run two complex hearing office systems instead of one. What should give everybody on this Committee hope for next year is that the paper cases should be substantially gone by the end of the year—around the same time that most of the new administrative law judges are reaching full productivity. The convergence of these two events means that we expect to hit the "tipping point"—where both total cases pending and average processing time are declining—sometime in January or February of next year, with the caveat that progress may be slow if we are still under a continuing resolution.

We have other possible improvements in the pipeline. In June, we expect to start a 6-month pilot program with the National Organization of Social Security Claims Representatives, an association primarily comprised of lawyers. In this pilot, we are testing a program that will allow representatives to conduct video hearings from their offices. This initiative should offer convenience and comfort for many claimants, save time for attorneys, and cut down on our investment in bricks and mortar, a cost which increases above the rate of inflation year after year.

We are planning on a test in Michigan which will use the same type of case profiling mechanisms that we used in our successful attorney-advisor and informal remand initiatives to look at cases heading from the Disability Determination Services to Office of Disability Adjudication and Review. Michigan is a "prototype" State that does not have reconsideration, and we are looking at ways of providing a quick screening tool to enhance the quality of the initial determinations. What we learn from this screening activity may help us identify cases that can be triaged at an earlier point in the appeals process.

We have started a pilot on centralized processing of notices, which may sound dull, but in theory should save an enormous amount of time for hearing office support staff that then can be used for moving cases. Regardless of the success of this pilot, at a minimum it will be an opportunity to make Office of Disability Adjudication and Review notices more up-to-date, clear, and user—friendly.

We will continue to improve Office of Disability Adjudication and Review's basic electronic system. A new system to help support staff ready files for hearing should be rolling out state-by-state by the end of the year. We are working on systems that will improve docketing and allow authenticated attorney representatives to access the records to check files for such things as case status and evidentiary development. As I have said before, there is no magic bullet answer, just a multitude of small nitty-gritty improvements necessary to run a more efficient and compassionate process for the American public.

Before I close, I feel obligated to bring one aspect of last month's Trustees' Report to your attention. Although the combined OASDI trust funds do not reach exhaustion until 2041, the disability trust fund will be exhausted in 2025 under current assumptions. Although that date is later than the 2019 trust fund exhaustion date for Medicare Hospital Insurance, it is one more reason why Congress needs to work together on a bipartisan basis with the administration to give younger Americans reason to have confidence in the future of Social Security.

To conclude, we have made slow and frustrating progress in fixing our service delivery problems, but we are making progress, and I am grateful to each Member of this Committee for your support. As I have laid out in this testimony, changes that will take place between Labor Day and the end of the year—streamlined online filing, at least 175 new administrative law judges picking up steam, and the full shift from paper to electronic systems in Office of Disability Adjudication and Review—should produce considerably more improvement next year. Operating under a continuing resolution for a prolonged period of time would worsen a situation already made difficult by years of increasing workloads and limited resources. It is also essential that we receive the full President's Budget for FY 2009 in order to keep up with increasing workloads and meet our commitment to eliminate the hearings backlog by the end of FY 2013. So I ask for your timely support of the President's budget.

Thank you for this opportunity to lay out in detail our plans and progress, and I will be happy to answer any questions you have.

Mr. MCNULTY. Thank you very much, Commissioner.

Commissioner, under your hearing backlog reduction plan, the hearing backlogs would not be eliminated until the year 2013, assuming adequate funding. Now I'm assuming that if we kind of keep on the track that we're on now, 148 million last year and maybe 240 this year, if we keep on that kind of a track, how significantly could we reduce that timeframe, in other words, get the backlog dispensed with even sooner than that?

Mr. ASTRUE. Sure. That's a good question, Mr. McNulty. So, the plan that we laid out last year was based on some assumptions of what we would able to do and the funding that we would be able to get. I want to assure you that my staff is not comfortable, that that's the minimum level of performance. We are trying to beat those goals, and we work very hard to try to do that.

So, for instance, when we laid out that plan, we assumed 150 administrative law judges with the new funding. We're going to get at least 175, and if we can resolve some space issues related to the national hearing center, we're shooting for another fourteen more this year.

So, we've exceeded the goal that we set for ourselves. We're trying to do that consistently. If we can get there faster, I want to get there faster.

Mr. MCNULTY. Thank you, Commissioner. On that office space issue, we understand that that's an issue and in some cases a barrier to adding these new administrative law judges (ALJs) and some staff in the hearing offices. What could the Committee do to help you overcome some of these barriers in order to place the staff more quickly, where they're most urgently needed?

Mr. ASTRUE. Thank you, Mr. Chairman. Some of this is built into the process. We go through GSA for leasing and renovation of space. They handle an enormous number of situations around the country. They generally do a pretty good job. But usually even under the absolute best scenario it takes at least a year, and often 18–24 months to acquire new space.

Certainly expressions of support from the Committee that something is a priority, GSA tries to be responsive to that, and we'll try to work with the Committee to indicate if there are particular locations where the space issues are going to be very critical. I think it's likely—we're doing an inventory now and probably by some time next month we can sit down with the staff and work out

where the critical places are. But they're probably Buffalo, Chicago, Albuquerque, a few other places around the country where the faster we can access space, either new space or add-on space, or renovation of space, could greatly help our efforts.

When we finish that inventory, I think sitting down and working with the Committee staff to identify those places where you can express your support for the priority for those new space acquisitions would be very helpful to us.

Mr. MCNULTY. Do you think we're actually going to be able to physically position those 175 new ALJs we're talking about for this year?

Mr. ASTRUE. Absolutely. We have actual physical space for all 175. As I mentioned in more detail in my written testimony, one of the things that I think has been a problem historically is that there has been a pattern of under-allocating to the Chicago and Atlanta regions; so my understanding is that we have, I believe, filled every vacant office in the Chicago region, and just close to that in the Atlanta region.

We are doing an inventory of our own space to see whether we can do some renovations. One of the benefits of moving away a from paper process to an electronic one is that it should free up some space So for instance, in Buffalo and some of the other hearing offices where space is an issue, we may be able to move faster with the renovation than by accessing new space if we can, for instance, clear out the paper file room, which is huge in a lot of these offices, and convert at least one or two parts of that office to a new judge's office. So, we're looking at that now, and we should be much more ready to have that conversation now that we've decided who's going where and what we're going to need next year, in the next 30 days or so.

Mr. MCNULTY. Commissioner, on this video conferencing issue, it sounds like these initiatives as a substitute for in-person hearings, will offer some relief to claimants facing long delays. But several of our leader witnesses point in their testimony that video conferencing is not a good option for some claimants, or some types of cases. What is your plan to insure that claimants maintain a meaningful right to an in-person hearing and are not faced with an impossible choice between a video hearing soon or an in-person hearing months or years later?

Mr. ASTRUE. Well, certainly my view is that the quality of this technology has improved dramatically in recent years and it's come down in cost. I've sat through a fairly sensitive video hearing, and really felt that very little was lost in that conversation.

So, I think for most claimants most of the time, this is a very real option where there's no loss in quality. On the other hand, if a claimant feels that way, they don't have to accept the video hearing and they can wait for an in-person hearing. For a lot of the claimants, the video hearing can often save on travel. If you've got a mobility impairment or some other aspect of your impairment that makes it difficult to travel, or you've got a psychological condition, where you're going to be more comfortable in your lawyer's office, or that type of thing, I think the video hearings are going to be a blessing for that certain segment of the disability population. But any claimant who doesn't feel comfortable with it; doesn't have

to do it. We find in practice that very few claimants actually turn down the option of the video hearing; but some of them do, and we're always sensitive to claimants who feel that way.

Mr. MCNULTY. Thank you, Commissioner. The Ranking Member Mr. McCrery may inquire.

Mr. MCCRERY. Thank you, Mr. Chairman.

Commissioner Astrue, there has been a lot of talk around Congress that we may end up with a continuing resolution to fund government operations for fiscal year 2009. If that's the case, what effect would that have on your operations and the effectiveness of Social Security Administration operations and customer service during the coming year?

Mr. ASTRUE. It would be bad. We would go back to a situation where we would have some form of hiring freeze. We've been looking at that recently. Probably not a full hiring freeze in the beginning. But you would see some substantial contraction of staff, so you'd see deterioration of service times in the teleservice centers and the DDSs, in particular.

To the extent that we need to make some commitments on physical space, at some point we need to show GSA that we're actually going to need the space and we're going to be able to fill them with bodies. So, there's a risk, as I understand it, that if we're back in a situation where we've got a hiring freeze and financial issues, it may also slow up the space acquisition process.

So, it would have some immediate impacts that would be bad, but it could also have a longer term impact, because we are going to need some additional space in some parts of the country in order to deliver the kind of service that I think everybody here wants us to deliver.

Mr. MCCRERY. Again, in the budget that the President has presented, it calls for a 6-percent increase over 2009 funding, is that right?

Mr. ASTRUE. Yes, it does.

Mr. MCCRERY. Will that 6-percent increase solve all your problems?

Mr. ASTRUE. I wish. One of the things that we heard loud and clear from the Congress as I came in was that the first priority had to be disability backlog production. We agreed with that. In fact, we had to talk—at one point the Senate was talking about limiting the increase in funds to only that, which I think wisely they backed off from.

But I think one of the things that wasn't clear to the Congress in past years that we've made a point of being transparent on, is that in all these years of contraction, there have been workloads that have been set aside that are less critical to most Americans. A lot of those relate to program integrity, so they have substantial long-term costs for the system.

But there is work that's not getting done, and my predecessor's last budget was predicated in part on that, but I don't think it was laid out clearly enough to the Congress what those were. I don't think Congress understood. Certainly when I came here a lot of Members did not understand why that budget request was as high as it was. So, we've been very transparent. Nobody likes to lay out where they're failing.

But I think it's important for us to explain to everyone in Congress what is not getting done, and why, and how who we've done the prioritization, so that you can make the judgments on funding as to what gets done in the coming years and what doesn't get done.

Mr. MCCRERY. Now let's talk for just a minute about the situation with the trust fund for disability. I mentioned in my opening remarks that for the last 3 years outlays of the disability program have exceeded revenue coming in, and the trust fund is going therefore slowly be drained. In less than two decades it's projected that promised benefits, current benefits won't be payable.

You've been conducting some demonstration projects around the country related to gradually offsetting benefits due to earnings, and determining the impacts of funding treatment for those with certain mental impairments. Do you have any preliminary results of those? Can you tell how those and other projects might help us to fundamentally reform the disability program?

Mr. ASTRUE. Yes. Several good questions. I also mentioned in my testimony the 2025 date on the disability trust fund. I think it would almost be insulting to raise the issue of the retirement trust fund generally. There's been so much discussion. You all know that date. But there is a tradition that the trustees and the actuaries tend to report the combined retirement and disability trust funds. I do think that the status of the disability trust fund sometimes gets overlooked as a result of that. So, I did make a point of mentioning that in my testimony, because I think that's important for the Committee to consider.

We don't have any data yet on the demonstration projects that you've mentioned. We're hopeful that they it will provide some real benefit for claimants, and some marginal improvement in the trust funds. We are also looking at the question of work incentives much more broadly. I think it's fair to say that it's my perspective that the Ticket to Work Program generally has been disappointing in terms of its result. So we do have a task force now within the Agency that's looking broadly at the question of work incentives with the idea of perhaps coming up with a package of regulatory and legislative proposals. Probably early 2009 is our timetable now.

Mr. MCCRERY. Thank you, Mr. Chairman.

Mr. MCNULTY. Thank you. The Ranking Member, Mr. Levin, may inquire.

Mr. LEVIN. Welcome.

Mr. ASTRUE. Thank you.

Mr. LEVIN. This is a hearing, as we know, on the disability backlog. So, I want us to focus on that, and look at from the perspective of the person who's waiting, and not get lost in some of the details, the organizational details that are important.

I think everybody here has to face up to what's been happening this last decade, especially those who had a major responsibility. I think we need to face the music on this. As I understand it, I have a chart that shows—and these are the appropriations these last 10 years—that from 1999 to 2007 Congress cut the SSA budget by 4.6 billion compared to what had been requested by the Commissioner. Indeed, compared to what OMB requested, which was much less than the Commissioner's request, Congress cut SSA's budget by

$1.3 billion. The result of this, one result is that today people are waiting—what's the average for a hearing, Mr. Commissioner?

Mr. ASTRUE. It's a moving target, but it's just over 500 days.

Mr. LEVIN. That's a year and a half.

Mr. ASTRUE. Yes.

Mr. LEVIN. You and have met to talk about this, and I just want everybody to have a sense of responsible and I think a sense of outrage, because that's the way our constituents who file these claims, they have every right to feel outrage.

Now you and I have discussed this. The average is a year and a half. In many places it's much more than that, right?

Mr. ASTRUE. Yes, it is.

Mr. LEVIN. For those who are covered by the office in Oak Park, Michigan, the average processing time is 764 days, right?

Mr. ASTRUE. Yes. That's close to the worst in the country.

Mr. LEVIN. What do we say to somebody who's waiting—that's over two years. Right?

Mr. ASTRUE. That's correct.

Mr. LEVIN. When Congress, the last ten years until the recent action where we increased the budget, I don't always say to them, "Now you've inherited this and this new Congress has tried to begin to rectify it." Let me just ask you—we've talked measures to balance between hearing offices. You've said it's going to take until what year before we get a total grip on this?

Mr. ASTRUE. The plan that we laid out for Congress last year, which was based on a number of assumptions that may change, was 2012. We hope to do better than that, and we work very hard to try to better than that, and I like to think that we're ahead of schedule. But if you want to say, "I want to see the real progress, I want to be able to make an initial judgment," you probably won't be able to tell whether we're really hitting the target clearly until the first quarter of next year.

We've made progress with the total pending; the increase in the total pending is down the last two fiscal years. It would have been down more except we made the priority of the aged cases, which take a lot more time to remove from the system. That was with a record low number of ALJs.

With all the improvements coming, with the infusion of new ALJs, there should be a dramatic turn somewhere around the beginning of next year, or maybe a little sooner.

Mr. LEVIN. When you say a dramatic turn, what does that mean?

Mr. ASTRUE. Well, we're hoping and expecting that the backlog will hit a tipping point when the new ALJs are fully productive, when the paper cases are substantially gone, then we're going to be able to start driving it down at approximately the same rate that it went up. It was going up at about 75,000 cases a year for most of this decade. For 2007 it went up 32,000, if I remember correctly. Annualized for the first half of this year, it's about 11,000. So, it's been coming down, even with limited lower resources, on the basis, I think, of better management and improved productivity at ODAR. I want to give the staff at ODAR a lot of credit. The only reason it wasn't a lot worse this year is we got about a 10 percent

improvement in productivity, and that's a great credit to a lot of the people that are working very hard to try to solve this.

Mr. LEVIN. My time's up. I just wanted everybody to face the facts here, and I think what has happened in this country with disability is indefensible, and we're now taking steps to—I mean the hole was dug so deeply. This institution helped to dig that hole.

Mr. ASTRUE. As you know, Mr. Levin, we've talked about this several times now. I don't disagree with your basic premise, and for me it was a motivating factor to try to come back and fix it. I mean that's really the big challenge in the Agency. A lot of the other big-picture issues have been taken away from the Agency, so when you sign up to be Commissioner these days, you're signing up to try to fix this problem, and that's what I signed up for. It's that frustrating government doesn't move quickly, but I think you've got enough data now to say "It's starting to move in the right direction; there are some good plans in place that have not had a chance to take effect yet." There is some real reason to hope it's going to be substantially better next year.

Mr. MCNULTY. Thank you, Mr. Levin. Mr. Herger may inquire.

Mr. HERGER. Thank you, Mr. Chairman. Commissioner Astrue, earlier this year, both the Office of Management and Budget and the Government Accountability Office identified the Supplemental Security Income Program as having had improper payments of over $4 billion, and the Old-Age Survivors and Disability Insurance Program is having had improper payments of over $2.5 billion in fiscal year 2007. I'd like to ask you about the Administration's effort to effectively protect against waste, fraud, and abuse. We all want to see the application process for disability benefits move as quickly and as accurately as possible. But at the same time we have an obligation to make sure that disability benefits are paid to those who are disabled and not to those who don't satisfy program requirements.

For example, for years incarcerated individuals were improperly receiving Social Security and welfare checks, until our republican-led reforms in 1996 and 1999 successfully ended this practice, saving taxpayers billions of dollars. Additional reforms in 2004 cracked down on fugitive felons who were illegally receiving Social Security and SSA disability payments.

Mr. Commissioner, what are we doing to prevent fraud and abuse in the disability application progress? As we strive to shorten waiting times, I certainly hope we continue to pay the proper attention to paying the right benefits to those who actually qualify. Would you please discuss your ability to achieve both goals, shortening waiting times, while still getting eligibility decisions right?

Mr. ASTRUE. It's a very good question. We've got so many important things that we're trying to do all at once. It's difficult, but I agree that the program integrity work is very important, and when it's set aside, there are long-term costs for the public that we'll never recoup.

So, I think it's important for the Congress—I know this Committee understands—but it's important for the Congress as a whole to understand that when the budget got squeezed over the 15-year period that Mr. McNulty laid out, one of the very important things that stopped being done the way that it should be done is that the

number of continuing disability reviews in Title XVI and re-determinations in Title IV dropped dramatically. The reason for that is it was one of relatively few discretionary workloads.

A lot of what we do is absolutely mandated by Congress. As a result, the numbers have dropped dramatically. The accuracy is not where we would like it to be in Title XVI. Last year's appropriation allows us to increase that important work. That 2009 budget anticipates that we will also move in that direction.

But when something's been allowed—as with the hearing backlogs—when something's been allowed to degrade over a decade, you know as much as it's important, I can't fix it in a year. So, even though there's substantial progress, we're not going to catch up on all the cases that should have been reviewed. We're going to be behind almost no matter what happens in the 2009 budget. But we're going to try to catch up as much as possible, get our accuracy rate as high as we can possibly get it.

I should also mention that one of the casualties has been the Inspector General's budget, which took a real cut, for instance, last year. They do some very important work. I know they're independent and they make their own requests, but they do some very important work for us, and so I would like to put in a little bit of a plug for the Inspector General, as well, who's critical in our efforts on waste, fraud, and abuse.

Mr. HERGER. I thank you, Mr. Commissioner.

Mr. ASTRUE. Thank you.

Mr. HERGER. I yield back.

Mr. MCNULTY. Thank you, Mr. Herger. Dr. McDermott may inquire.

Mr. MCDERMOTT. Thank you, Mr. Chairman. When I came to Congress I came in 1989, at a time when we had a savings and loan crisis in this country. In my view, at least a major reason why that was created was that the Reagan Administration cut the number of banking examiners, so that banks never got examined. Then we found all this mess and we spent billions of dollars bailing them out, because we did not have the proper administrative work done by the administration. It was deliberate not to go in and look at what banks were doing.

Now I think it's unfair for us to accuse, or to beat you up today, and I don't intend to. I want to say that GAO has actually taken you off the list of places where people ought to look for fraud, waste, and abuse. Well, my colleague brings that issue up. It is a red herring, in my view. It is not the place to be looking. We're talking about people who are not even adults in many cases; they're children, and we're talking about cases in my area you have to wait 575 days to get taken care of; 578 days in Seattle before your appeals is brought up for a hearing.

Now what I'd like to ask you is how many of those appeals actually qualify for SSI benefits, when all is said and done at the end of that appeal process?

Mr. ASTRUE. Right. The allowance figure at the hearings level has gone up in recent years, which is predictable, because as the delays increase, it's an open-ended process; so if people's conditions deteriorate—they may not have been eligible in the beginning of

the process, but they get benefits if they're eligible later in the process.

Mr. MCDERMOTT. The percent who get paid if they're benefits——

Mr. ASTRUE. It's a little over 60 percent.

Mr. MCDERMOTT. So . . .

Mr. ASTRUE. Well, you have to realize that relatively few of the cases appeal from the states. So, about 33–35 percent—we'll get you the precise number for the record—are allowed at the DDS level. Approximately a third. For all the hearings and appeals process, add about another 5 percent to that total, so it's about 38–40 percent who actually end up getting benefits.

[The information follows:]

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Based on longitudinal tracking of a cohort of SSI claims filed in calendar year 2003 and tracked through August 2007, 34.8 percent are allowed at the initial DDS level, another 2.5 percent at the DDS reconsideration level, and another 6.5 percent at the hearing level and above, for an overall allowance rate of 43.8 percent.

Mr. MCDERMOTT. If that's true and you have all the experience you have in the SSI Program, you must have a profile of those most likely to get approved at the end of the process 2 years from now, right?

Mr. ASTRUE. Yes. Absolutely. Again, we've embraced that in a major league way. Not just at the back end of the process, where our quality of people have been very helpful in building precisely the kind of templates that you see, so we can pull those cases out, not put them through the whole process, and decide them quickly. That's been very helpful; we've been doing that both in terms of the voluntary remand program and the attorney advisor program. We'll give you information on those templates.

[The information follows:]

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Our Office of Quality Performance has developed several profiles that we apply to all cases that are waiting for a hearing. One profile identifies cases that are most likely to be "on the record" allowances at the hearing level that can be handled by a Senior Attorney. This profile was developed based on data from the ALJ Peer Review and considers variables such as age, reason for denial and primary impairment coding.

A second profile identifies cases that may have been inappropriately denied. This profile was developed from data from the Quality Assurance sample and considers variables such as age, reason for denial and primary and secondary impairment coding.

Another profile identifies cases that may have been denied inappropriately because of insufficient evidence. This profile was developed from data from the ALJ Peer Review and considers variables such as age, reason for denial, primary and secondary impairment coding, and whether we paid for evidence.

These latter two profiles are used to determine if the DDS should look at the case again under our informal remand program.

But I think it's important to do that on the front end, as well. So we've put a lot of effort into this Fast-Tracking in the front end, and I know some people think, well, you know, the percentage isn't big enough, but if we can get that number up to approximately 10 percent of the cases in the next few years—you have to realize, we're looking at more than 2.5 million filings per year—if we can get up to 10 percent that means that a quarter million Americans each year will get their benefits within 6–8 days, which is what we're hitting now.

So, I think it's very important at every stage of the process to try to figure out where we're going wrong, figure out what the patterns are, and try to address that. We've tried to that very systematically in a way that I don't think we've done before.

Mr. MCDERMOTT. I'm aware of what you're doing, and what I'm going to ask you is: What can we do additionally to give you authority or flexibility to make those decisions earlier rather than putting people through a two-year waiting period to finally give them their benefits, by which time they are worse, and qualify?

Now some of those things you will know up front. They're going to get worse if we don't do anything medically for these people. They have no healthcare benefits. You know they're going to be worse, so you could actually save money, it seems to me, if you dealt with it up front. I'd like to hear your suggestions about things we could do to make this better for the process to work for those who you know you're ultimately give money to.

Mr. ASTRUE. Well, that's a good forward-looking question. On one of the things, we're not quite ready yet. One of the recurring debates over decades in the system is whether we need the state to perform two levels of review. There are a lot of reasons right now where it's important to claimants to have that second level of review; although there was a Clinton Administration initiative to eliminate that, and we still have eight states that don't have the recon.

There are some issues on that, and I've talked to Mr. Levin about that in some detail, because one of the reasons that the filing rates in Michigan appear to be so high is that there are probably a lot of cases coming out of the state that shouldn't be there in the first place. We've got a new Federal-level initiative to see if we can screen those out with exactly the kind of templates that you're talking about.

But I think that it's important to try to do as much right up front as possible. So, we have a new computer system that was rolled out prematurely in DSI, that was a disaster, that we pulled back. We spent a year and a half trying to do it right. It's getting close. The modified system will do a lot more queuing for the state employed in the beginning; it will help them assemble the records much more easily.

If we can do that well and we can find out much better mechanisms for getting medical records into the process early -because one of the reasons the whole system is just so ridiculously inefficient is that at the point where we make decisions, we don't have the full medical records. There's joint responsibility on that. Some of that is claimant, some of that is their attorneys. Some of it is ours. Some of it is hospitals. Some of it is physicians.

So we're trying to get a handle on that. Particularly in a time when the world is moving to electronic medical records, to try to make sure that we use our resources as efficiently and compassionately as possible, so that we make the very best decisions as early as possible in the process. We've got room for improvement, but we've got to make sure that we do it right. There's a history in this Agency because of concerns from the public of rushing a lot of things that aren't ready for prime time. There's been a lot of damage to the Agency from some very well intended initiatives.

So, one of the things again—and you may get frustrated with us about this—but if you look through the testimony of the panelists, we've got a lot of things that are being piloted. I think that's best-demonstrated practice.

Before we roll them out for the American public, we want to make sure that they operate the way that they were supposed to operate. So, the e-cat system again, which was one of those things that was inflicted on the public too early helped create backlogs in New England, where we'd never had them before. We pulled that out, but now we're trying to do it right, and before we roll that out more broadly, you can rest assured that we'll take one state, two states, tested in a limited way, before we bring it out more broadly.

But the general idea is if we can contract the process, make it as good as possible as early as possible, that's the ultimate answer to reducing some of these waiting times in the grand scheme over a slightly longer haul. That has to go in tandem with all these incremental things we're trying to do to make the status quo run better in the meantime.

Mr. MCNULTY. Thank you, Dr. McDermott.

Mr. MCDERMOTT. Thank you for your indulgence, Mr. Chairman.

Mr. MCNULTY. Thank you, Dr. McDermott.

Mr. Camp may inquire.

Mr. CAMP. Well, thank you, Mr. Chairman.

Before I ask my question, I just want to go back to something Mr. McDermott mentioned. While GAO may have taken the Agency off the high-risk category, Office of Management and Budget and the GAO have identified the Supplemental Security Income Program as having had improper payments of over $4 billion, and the Old-Age Survivors and Disability Insurance Programs as having had improper payments of over $2.5 billion. I think we all have an interest in having program integrity and insuring that improper payments are confronted so that those people who are truly needy are receiving those payments.

I just want to thank your staff on the frontlines that I know my office works with closely, and appreciate their efforts on behalf of all of those going through the disability process. Michigan is one of those ten prototype states you mentioned in your testimony, and so the reconsideration process is eliminated there. GAO in 2002 decided not to expand this because of some problems with administrative costs, increased appeals, and we're seeing in Michigan longer wait times.

Mr. ASTRUE. Right.

Mr. CAMP. You mentioned in your testimony that you're looking at a screening tool.

Mr. ASTRUE. Right——

Mr. CAMP. For states like Michigan. Could you just elaborate on this initiative and what plans it might have for states like Michigan that have seen their wait times increases?

Mr. ASTRUE. Sure. So, 14 months ago we probably spent most of the first four months trying to get a handle on DSI. Then when we resolved what we needed to do on that, we focused on the backlog nationally with as much intensity as possible. We started a process about six months ago to try to look much more at the local level at individualized solutions, to try to figure out where the problems were. In most of the prototype states, it doesn't appear that it creates an enormous problem at the hearing level, but it does appear that there's a potential problem in Michigan. So, you know, the automatic response is, "Well, we'll just make them do what everyone else does and go to recon", which would be expensive, time-consuming, politically controversial, and might not help the problem for some time.

What we've tried is to look at a faster, quicker, and smarter model. So we're looking at precisely the kind of templates that Congressman McDermott was referring to, to see if we can identify the cases that are coming out of the DDS in Michigan that probably shouldn't be there in the first place; try to do a very quick review—and by "quick" I'm talking about 7–10 days as the target, and either send them back to the DDS with instructions as to what needs to be done, or if they should simply be allowed, we will have a process within ODAR to send it over with the recommendation so that there can be a quick allowance of those cases.

If that works, it's possible that that may be a model that we could use more broadly around the country. But again, I don't like to over-promise. I like to know what's really going to happen before we roll it out to the rest of the country.

But I think it could be helpful in Michigan, and we should know, I would hope, by the end of the year.

Mr. CAMP. Well, in private disability insurance by law, those have to receive their determinations within 45 days. Many times they get their determinations in 30 days. Are there any tools that the private sector is using that the SSA could learn from?, and why are they able to make their determination so quickly?

Mr. ASTRUE. We do look at the private insurers from time to time. They also look at us. I think that there are some differences and I think that we do have much more of a problem in terms of accessing medical records.

You know, typically with private insurance, you have an employer who is very financially motivated if an employee deserves disability benefits to cooperate with that and help them walk through the process. We don't have anything comparable there. So that's one of the big differences, I think, between the private insurance and what we do, is that the challenge of assembling the medical records so that we can make a fair decision in the particular case is a little bit——

Mr. CAMP. To that end I understand you're working on a health information technology system. Clearly automating the collection of those medical records would be helpful.

Mr. ASTRUE. Right.

Mr. CAMP. Can you just sort of tell me the status of that initiative?

Mr. ASTRUE. Well, it's a moving target. We do have what we call Electronic Records Express, and that's been helpful. It will be somewhat limited until the rest of the private sector moves to electronic records. But it is helping. I think generally we're feeling we're getting more records earlier, but we still—one of the root causes of inefficiency in the system is that we just don't have the right information at the right time. We've got a long way to go before we're really up at the level that everybody would want. Some of that's not under our control, but we're trying to get there as fast as we can.

Mr. CAMP. Thank you. Thank you, Mr. Chairman.

Mr. MCNULTY. Thank you, Mr. Camp.

Mr. Lewis may inquire.

*Mr. LEWIS. Thank you very much, Mr. Chairman. Thank you, Mr. Commissioner, for your service. Thank you for being here. Mr. Commissioner, I represent Atlanta, which has the highest backlog for disability appeal in the country. The average processing time in the Atlanta Northfield Office is 828 days. That is the absolute worst, the very worst in the country.

Mr. ASTRUE. You have the second-worst in Atlanta as well.

*Mr. LEWIS. In Atlanta, it's not much better than 750 days. I have 51 individuals in my district who have contacted me for assistance in dealing with the office of hearing appeals. The oldest case has been pending in my office since August 13, 2004. In fact, I just found out that this case was resolved last week after more than 11 hundred days. That is disgraceful. That is unacceptable.

I'd like for you to tell Members of the Committee, do you have a plan for Atlanta?

Mr. ASTRUE. Yes, we have. Again, I share your feelings about the situation in Atlanta. It was the second hearing office that I went to. I went up to Boston first to get a handle on DSI, and then I wanted to see the worst places in the country, so I went to Atlanta second.

We've hired as many ALJs as we have offices now. We're looking at the possibility if the funding level comes through next year, we had plans last year for five new hearing offices that we scrapped because of the continuing resolution. Atlanta was on the list, and I would expect that Atlanta will be on the list next year.

Atlanta was one of the three cities that we focused on with the National Hearing Center, so they've been getting relief through those video hearings. We've had our quality people going in on a special initiative to help prepare cases in Atlanta. Atlanta was one of the cities with the overtime at the end of last year, where we brought in people from operations, again to prepare the old paper cases and flush them out of the system.

But Atlanta's inexcusable. I don't have any argument with you. In terms of backlog, they're the worst in the country right now. We're moving as fast we can to try to address that. I wish I could move it faster. I think you'll see some real progress in about 6 months.

But I think that over the long run, Atlanta's one of the cities I think as I mentioned before that is growing extremely rapidly. We

had four cities in this country last year that added 100,000 people or more to the population. With all the incentives to keep the status quo in the system, it's very difficult for us to move the resources into the places that need it the most, and it's a struggle for us.

But I do think that we're going to need significant additional capacity in the Atlanta area. We've got two hearing offices downtown. I would suspect that the third would probably be in suburban Atlanta.

*Mr. LEWIS. Mr. Commissioner, it is my understanding that two-thirds of all appeals are ultimately decided in favor of the applicant. So maybe the Social Security Administration is getting it wrong so many times. Following Mr. McDermott's line of questioning, is it a way to get it right the first time?

Mr. ASTRUE. That's a very logical conclusion that people come to quickly, but I think it's really not fair. A relatively small number of the claimants appeal in the first place. They are generally by definition the close-call cases, and there are a number of reasons why the decisions are different at the hearings level. One is if the condition of the claimant deteriorates, they may not have been eligible at the beginning, but particularly with the long waits, they are then eligible. They are often represented by attorneys at that stage, who are often critically helpful to claimants, not only in assembling medical records but identifying the impairment. A number of the people that get decision letters don't even allege the disabling impairment at the first level, because there is some stigma or some emotional concern. I saw this in the video hearing I attended in Dallas, where it didn't look like the claimant was going to win the appeal. I don't know, I'm pretty sure that the person did. But what was most significantly disabling, she didn't want to allege. The ALJ it out of her.

So, part of it is this is our people doing their job. You know, the ALJs don't represented just the Agency. That's a historic and unique part of our system. They represent the claimants as well. A lot of times they pull out of the claimants, even when they're represented, the real basis for the disability, or pull out the information that was not available earlier in the record to make a decision. Because the states don't see the claimant; they're doing a purely paper review. So, it does change the result to have that interaction at the later stage in a smaller number of the close-call cases.

*Mr. LEWIS. Thank you. Well, Mr. Chairman, if I just may ask just—well, Mr. Chairman, I used my time. You've been very liberal with me. So, I yield back. Thank you, Mr. Commissioner.

Mr. MCNULTY. Thank you, Mr. Lewis.

The next Member I want to introduce I want to thank, not just for his service to the Committee and for his service as Ranking Member of the Subcommittee on Social Security, but also for his heroic service to our country, Mr. Johnson of Texas.

Mr. JOHNSON. Thank you, Mr. Chairman.

I appreciate that. Commissioner, a recent inspector general report raised concerns about the performance of administrative law judges finding "that the Office of Disability Adjudication and Review's ability to process projected hearing requests and address the growing backlog of cases will continue to be negatively impacted by

the caseload performance of some ALJs if their status quo performance levels continue." Subcommittee on Social Security Chairman McNulty and I have asked the IG to dig deeper into the performance issues and assess the ALJ management tools and practices utilized by the agency. Is it not true that some ALJs are doing nothing, zero, zip during the work day? I would like to know what action you are taking and what changes in the law we can make that would help that? If you would elaborate, I would appreciate it.

Mr. ASTRUE. No, I would be delighted to. Let me first of all preface by saying the vast majority of the ALJs are solid professionals, behaving themselves well and trying to work productively.

Mr. JOHNSON. What is the total number of ALJs?

Mr. ASTRUE. Right now, let's see, we were down to about—we will correct this for the record, but we were down to about 1,025, we have 40 that came on board approximately last week. We will have a couple more classes coming in May and June, so we are hoping by the end of the year to be somewhere between 1,175 and 1,200.

[The information follows:]

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As of May 24, 2008, there were 1,111 duty ALJs.

Mr. JOHNSON. But I did not want to interrupt you, you are talking about a minimal problem but if it is 10 or 12 even, you are talking about people——

Mr. ASTRUE. No, let me separate it into two categories, although they do tend to overlap. We have had some serious misconduct issues, and we have had some serious productivity issues with a significant minority of the judges. Historically, I think this is part of the fallout from the eighties where Congress stepped in to correct certain problems in the system and protect the independence of the administrative law judges and generally I am supportive of that, but that has calcified into a lack of accountability. Many Commissioners have given up trying to discipline administrative law judges, and my feeling is that is wrong. If you are a judge, you need to treat claimants with respect, you need to treat the taxpayers with respect by putting in a full day, and we do have judges who do not do that.

I have prosecuted this ALJ to the fullest so far and I am hoping that he will be terminated. He held two Federal jobs for 3 years and falsified military documents for the other job in order to pull off the fraud. He has not been contributing in Atlanta. So, a casual attitude toward misconduct has a bottom line cost for the people that we all serve. My feeling is these are test cases. If the Merit System Protection Board removes the judge, as we have asked them to do, great, then we have made progress. If they do not, I am going to come back to all of you and scream bloody murder and say you need to do something about it.

We have had other serious misconduct issues. One ALJ one just pled to on a prostitution charge. We have had some assault issues. I think that is inexcusable for a judge and a judge who actually does that should be terminated no question, but the Merit Systems

Protection Board has been extremely lenient on judges, which is why most Commissioners have given up. But we are not giving up, we have about a dozen cases over there now. We had one judge who had not done a case in seven and a half years and would not schedule cases, and I was advised that had to go through a redress program in order to make something stick. So, we have done that, we have been assigning hearings. He has been resisting. He has done a handful of cases now, I think they are all or substantially all allowances, so I am not sure he is doing the real work. I am going to stand up to judges like that, and it would be helpful for this Committee to have GAO take a look at some of these cases and look specifically at some of the cases that have gone before the Merit Systems Protection Board and ask the question are these one, two and three day suspensions that tend to be the most that the ALJs get in those cases, are they really adequate to protect the American public?

Mr. JOHNSON. But the Congress is sitting here ready to help you and all you have got to do is ask.

Mr. ASTRUE. Will do, and I think that we will have a lot more information shortly as to whether the MSPB is going to stand up in some of these atrocious cases.

Mr. JOHNSON. Thank you. Thank you, Mr. Chairman.

Mr. MCNULTY. I think the Ranking Member of the Subcommittee on Social Security. Mr. Becerra may inquire. Excuse me, Mr. Neal may inquire.

Mr. NEAL. Thank you very much, Mr. Chairman. Welcome, Commissioner.

Mr. ASTRUE. Thank you.

Mr. NEAL. Last week during tax disclosure time for the candidates for president, I must tell you I was delighted to read and then to hear that Senator McCain is a Social Security recipient. I offer that not as a political statement as much as it is an indication of what a policy triumph Social Security has been and its egalitarian nature. You know how ferociously many of us on this Committee guard Social Security. I think if there is one message that you would take from here, it is what the debate last year over what Social Security accomplished and it indicated very clearly that the American people were not about to forfeit Social Security without knowing what was coming next and the argument that many of us made was that we should add on to Social Security as opposed to subtracting from it. I think Senator McCain's announcement last week that he was a Social Security recipient serves all of us very, very well.

Let me be specific, my Social Security office in Springfield does a terrific job and there is great interaction.

Mr. ASTRUE. I am glad to hear that.

Mr. NEAL. Well, I have great faith in them, and I must tell you that the role the constituent work plays in Social Security is vital and people do not start with a call to a congressional office, they end up calling a congressional office.

Mr. ASTRUE. Right.

Mr. NEAL. It is a very important consideration and they have been, as I have indicated, very good to work with. Let me see if I can cut through some of this though and maybe with a general

question, you can shed some light on the issue of assignment as it relates to judges. Hearing offices around the country vary considerably in the size of their backlogs and the amount of time claimants must wait for a hearing. In some offices, the wait is less than 300 days while in others it is approaching 900 days. In some offices, each judge has fewer than 300 cases pending while in other offices each judge has 1,700 cases pending. What measures do you take, and is it similar to the criminal justice system with Federal judges in terms of trying to seek a balanced workload that can be measured for Members of the administrative judgeship discipline? How did this balance happen?

Mr. ASTRUE. Right, right. So, I appreciate that question. One of the things we laid out in the written testimony, which I believe is the first for the agency, that what has contributed to the very phenomenon that you are concerned about and Mr. Lewis is concerned about in district, of the resources that we have had, which have not been enough, we have mis-allocated them over time so that we do not have enough capacity in the right places and part of this is it does get politicized. When you are shifting around resources in Social Security, wherever you are taking them from, the Commissioner is going to get a hard time so it is easy to let the status quo go. But what we have been trying to do very systematically is to equalize the resources to a large extent around the country as best we can. So, in the allocation of the administrative law judges, I am unapologetic about the fact that some of the Members here are not getting much benefit, some are getting a lot. I am from New England, but I have no New England bias New England is only getting one. Ohio alone is getting 13. But the reason for that is if you look at the filings per administrative law judge in places like New England, southern California, you will see 300 to 400 per administrative law judge. If you look at Mr. Lewis' district, it is 1,200, 1,400, same in Cleveland and places like that, and I cannot justify that. So, in the allocation of the administrative law judges, we have realigned a lot of the service areas to try to help the struggling offices and also with the National Hearing Center so that we have got a centralized cadre of judges that can move into the worse backlog hearing offices like that because if you go through the traditional process, it can be two, three, even 4 years, before you get physical space up and running and moving and that is not fast enough. My term is over by the time that gets a benefit. That is not fast enough.

So, we are really doing the three things, the allocation this time, we have looked very systematically at the regional imbalances, to the extent that we can, we have tried to fix that with this allocation. Second, we have done realignments, some of them are very creative, the Toledo remote site is now part of Boston and those types of things but those work and they are starting to help, and I think expanding the National Hearing Center is critical to this initiative.

Mr. NEAL. What you briefly said was it is possible during your tenure that you could be there for the groundbreaking but not there for the ribbon cutting?

Mr. ASTRUE. That is pretty close, Mr. Neal.

Mr. NEAL. Thank you. Thank you, Mr. Chairman.

Mr. MCNULTY. Thank you, Mr. Neal. Mr. Brady may inquire.

Mr. BRADY. Thank you, Mr. Chairman. I may I suggest this is a critical round of questioning, both Mr. Lewis and Mr. Johnson I think ran out of time to really go deeper into their situations, perhaps at the end of this we might consider allowing both of them an additional round of questioning because I think both situations are worth exploring.

Mr. MCNULTY. We will go back to allow Members to ask additional questions.

Mr. BRADY. Thank you. Commissioner, two questions, one local, one national. In the Houston region in 2001 and 2002, we had serious problems in our disability offices, long backlogs, dramatic variance in disapproval rates and real concerns about whether there is minority bias in the decisionmaking. Since then, in the downtown office that handles our cases, my caseworkers tell me there has been a dramatic improvement in response time, the quality of the decisions and clearly they feel our people on the ground in our office——

Mr. ASTRUE. That is good to hear, I was holding my breath, thank you.

Mr. BRADY. No, you need the experts and they are, but looking at the numbers for this year, we have two offices in Houston, one in downtown that goes east, one in Bissonnet that has the western side plus the northern area. The question I have for you, in one the downtown office processing time, backlogs are 50 percent better than in the adjacent office, even the judges according to the numbers you provided are more productive. The downtown office is third in the nation in cases pending in a good way, Bissonnet 33rd. The downtown office is top 10 in processing time, Bissonnet is far below average. My question is I understand the disparity nationwide, I do not understand the disparity in the same town.

Mr. ASTRUE. Yes, that is a very fair question. A lot of these issues you can talk about as if we were a big machine, and that is helpful, but one of the things to realize is that in each of these hearing offices, the key movers are the administrative law judges. It is a relatively small number of judges in each office. If there are human issues, performance issues, it has a pretty big impact on the area. So, it is our view that the issue with the Bissonnet office is a human issue. We have got three judges there that are historically very unproductive. We have several others being counseled by the Hearing Office Chief to try to improve their productivity. So, I do not believe that there is anything terribly significant in terms of resources or the demographics of the filing profile that account for any profound differences. Again, if I am wrong, we will correct it for the record, but I believe you have got three of I think it is eight, again I may have that wrong, judges where there are some significant performance issues and that hurts everybody.

[The information follows:]

INSERT FOR PAGE 57, LINE 1387

The performance difference between the Houston Downtown (DT) and Houston-Bissonnet Hearing Offices is not due to resources or demographics. Rather, the performance difference is primarily attributable to lower-producing ALJs in Houston-Bissonnet.

Mr. BRADY. Thank you. Would your office sit down with me and just dig deeper into this.

Mr. ASTRUE. Gladly, yes.

Mr. BRADY. Obviously what we want is if someone has got a legitimate disability claim, I do not want them going into a line that is longer and moving slower by 50 percent than their neighbor across the street.

Mr. ASTRUE. Yes.

Mr. BRADY. Which is sort of the case today.

Mr. ASTRUE. I do not want that either but, as I said, we have identified that there are some issues.

Mr. BRADY. Right.

Mr. ASTRUE. We are doing our best within the considerable constraints to try to deal with that.

Mr. BRADY. Thank you. National question, I think the additional ALJ electronic system of clearing off the aged cases, again a good decision, all those are helpful. Part of the problem has been I think too many cases make the ALJ level that should be resolved either through the quick termination or at the state level, and there has been wide variances in productivity and cases determined at the state before they get to the ALJs, have you been able to measure the variance between disapproval rates and productivity levels at the state level, and maybe more qualitatively, have you been able to measure the cases that should have been determined before they went to the ALJ—before they got into the line, the very long line, that could have been disposed of in either first two determinations, have you been able to measure that?

Mr. ASTRUE. Yes, there are some inherent difficulties comparing state to state performance but within those constraints, yes, we do. We measure again not by allowances or denials but we just look at accuracy, and we look at a sample of 3 percent of the cases, an equal number of allowances and denials, to try to make sure that we are maintaining acceptable levels of accuracy. There is a threshold on accuracy, which I think I recall but I will supply that for the record, where if a state falls below that, then we go through a rehabilitation process and try to do some intensive work to get them up to the same level of accuracy. In general, the states do a pretty good job. As a matter of fact, they do a very good job, and they do it with less money than we do. Their state workers tend not to be paid as well as ours, they have a lot of struggles with turnover of staff. In general, they do a very good job, they are not perfect. Generally, they maintain high levels of accuracy by our standards but there is a level of accuracy that is hard to account for because our people look at it based on the record that they had before them. If we do not get the right information there early, we can make a right decision based on the information we have but it is not the ultimate right decision so we cannot relax there, we have got to try to push as hard as we can to try to make sure that the full medical record is available for the claimant whenever we make a decision and that the claimant has alleged what the claimant should be alleging and that is a real issue in a significant percentage of cases. Such as those involving depression, sexually transmitted diseases. A lot of times the claimant does not come forward with what is really disabling.

[The information follows:]

INSERT FOR PAGE 59, LINE 1432

The minimum threshold level for DDS accuracy is 90.6%.

Mr. BRADY. Alright, thank you, Commissioner. Thank you, Mr. Chairman.

Mr. MCNULTY. Thank you, Mr. Brady. Mr. Becerra may inquire.

Mr. BECERRA. Thank you, Mr. Chairman. Commissioner, thank you for being here and to all your staff that you bring with you as well. We appreciate the work that you have done in trying to help us increase the resources you have to hire those ALJs that we all agree you need and that is about as positive as I am going to be in the 5 minutes that I have.

Mr. ASTRUE. Okay, I understand, I am braced.

Mr. BECERRA. You have I believe something in the order 1,300 local or field offices throughout the nation to service people who come to the Social Security Administration, whether it is for disability claims, whether it is for retirement benefits, whether it is to get a new Social Security card, to renew an old one, to do an employment check, whatever it is, those 1,300 local field offices handle over 40,000,000 visits every year and it is probably going to increase once the Baby Boomers start to retire. My understanding is that the wait time for most Americans going into these offices, local field offices, is somewhere between two and 4 hours before they can be serviced by a live body in one of your offices. You can respond after I finish this.

My understanding as well is that on average half of those people who make a phone call to a local office never get through because the phone is busy. Now, I could go on and on but what concerns me is not so much what we already know, that you do not have enough resources and enough staff and that is why people wait forever and that is why you have millions, thousands of Americans waiting years to get benefits on a disability. My concern is that your budget request for this coming year, 2009, is actually less than your budget request was for 2008. The President's budget, you submit a budget to the President, the President then submits a budget to us, and then we pass a budget. The President's budget for 2009 allocates more money to ALJs but it does it at the expense of the field offices that are overloaded to begin with, and so you are taking from Peter to give to Paul. So, far, you have closed two offices, local field offices, this year. Last year, you closed 17 field offices. You plan to hire, as you have testified, somewhere between 175 to 189 administrative law judges this year. That is great, but you plan to hire 143 support staff for those AL judges. By your own accounts where you talked about having 4.4 support staff for every ALJ. If you are going to hire 175 to 189 ALJs but you are only going to hire 143 support staff, that includes the attorneys, the medical evidence technicians, all those folks who have to make the work work well for the ALJ so we do not have the abuse that some of our colleagues have talked about and the fraud, how are you going to do it when you have fewer support staff coming in than

you have ALJs coming in when you need four support staff for every ALJ? Mr. Commissioner, this is not the way we should do business, something has to change. You need to shake things up. I am surprised at how sedate this hearing is. I cannot believe that we are here talking to you as if we are going to go through another day, and we can just go ahead and go along and get along. This will not change. We are talking about people in America who work, who worked in this country, this is not welfare. In order to qualify for disability benefit under the program, you have to have worked. Many of these people are in their golden age and now facing these disabilities and first they cannot go into an office without waiting hours before they can get service. Second, once they submit their claim, it may take them not just 400 some odd days that it takes in a LA office but in Atlanta it could take up to 800 or 900 days. You should be telling us, "Mr. Chairman, Members of Congress, this cannot go on. We are going to change this, we are not going to do it with a 5-percent increase or with 175 ALJs. We have got to shake this place up."

You parachuted in recently into a mess, so this is not directed at you personally as the Commissioner. This is directed at SSA, which for years submitted budgets which were too low, to an Administration, which for years has underfunded you, and to a Congress, which until last year underfunded you to the tune of billions of dollars, and so we are all complicit. Actually, those who voted for that are complicit. I did not support those budgets.

Mr. ASTRUE. Okay.

Mr. BECERRA. What I would say to you is this, as my time has expired and if the Chairman is gracious enough to give you time to respond, fine, but I do not see how we are going to get anywhere we need to go with folks who have waited 2 hours to get serviced in a local office or those folks who have waited 700 days to receive a benefit for which they worked and paid into the system for unless you tell us we got to shake things up.

Mr. ASTRUE. Okay, I think I have got about 12 questions there, so I am not going to be able—you will have to remind me which ones I have, I am not trying to be unresponsive. So, let me just say as a predicate, most of your facts are right. The waiting times in the field offices are not anywhere near that bad. There are some really unacceptable——

Mr. BECERRA. Are you willing to come with me to one of the local field offices?

[The information follows:]

INSERT FOR PAGE 64, LINE 1548

The average waiting time for visitors without an appointment in March 2008 was 23.2 minutes and for visitors with appointments was 7.3 minutes, for an overall average of 22.9 minutes for visitors with and without appointments.

Mr. ASTRUE. We will supply the actual data.

Mr. BECERRA. Are you willing to come with me to a local field office and see how long it takes?

Mr. ASTRUE. I am.

Mr. BECERRA. Okay, we will set that up.

Mr. ASTRUE. I also say that I am aware that we have maybe 100 to 150 offices where it is really out of control and they tend to be the inner-city offices and the border offices, and that is a direct consequence of the contraction of the funding and being in long-term hiring freezes. Unless you close a lot of additional offices, it is much easier when you are contracting to take employees out of the larger offices and that is what has happened. So one of the consequences of the freeze has been McAllen Texas and 125th Street in New York, those have some very unacceptable waiting times. I have been in some of those offices, I have not been in all of them, but I have been in some of them. So, yes, I am not denying—but it is not quite as broad as you indicated. It is not the routine office, it is more localized.

Mr. BECERRA. Commissioner, if you bought a car, would you wait two years to get that car? If you bought a house, would you wait 2 years to be able to go into that house?

Mr. ASTRUE. No. I am not justifying the status quo, we have been trying to change it but let me say a couple of things, and I hope as I am not taking any of this personally, you will not take any of this personally as well.

[Gavel.]

Mr. MCNULTY. If I could just suggest to my colleague that the time has expired, let us allow the Commissioner to make an additional response and then we will move on to the next questioner. As I stated previously, if there are Members who want to have a second round, we will entertain that. So, Commissioner, why do you not wrap up on this round?

Mr. ASTRUE. So, in terms of being an advocate for the agency and being dedicated to get the proper level of funding, I will be quite honest, I do not feel like I have anything to apologize for because I walked into a situation where we were on a continuing resolution, we were on a full hiring freeze, we had furlough warnings, and despite the furlough warnings, Congress did not act and give us an appropriation. So, in that context when I made my first recommendation, which was for Fiscal Year 2009, I looked at what had been done and there was a very high request the year before and when I came up to talk to the key Members of Congress about that, they gave that the back of the hand and said, "That is a dead on arrival budget, we did not pay any attention to it." Then I also looked at the 15 years where Congress came in below the President's request and it looked to me like there was a pattern of Congress using that as a starting point as to how much lower they would go. So, in terms of my decisionmaking, I said how high can I make OMB go? I went for the number that I thought would work, it did. At 6 percent, we are way over almost every other domestic agency in the Federal government. We also worked with all of you and worked with OMB so there was no veto threat on the $148 million over the President's budget and we got it. So, as far as I am concerned, on my watch, we have done pretty well-being an advocate for the agency and getting the adequate level of funding.

I also think there is a changed environment. There is now concern about the work that we are not doing, in large part because we are telling you about it, which we were not doing before, and that may color what we do next year. But I think that what I did

in terms of my recommendation and my advocacy was to get the best possible funding with all the constraints that we could, and I think we did it. So, I want to be very clear, I do not think I have anything to apologize for in that regard.

Mr. MCNULTY. Thank you, Commissioner. Thank you, Becerra. Mr. Ryan may inquire.

Mr. RYAN. Thank you, Mr. Chairman. Commissioner, I guess I will pick up where my friend from California left off, but first let me say I appreciate your just most recent explanation here, that was very telling, very helpful. Many of us who are strong fiscal conservatives, if there is one area where we think that more resources need to be deployed, it is this area, more ALJs, all of this. So, you need to use those of us here at this dais as advocates when it comes to this appropriations process, and that is just something I want you to do.

Mr. ASTRUE. We have and all of you but particularly Mr. Johnson,——

Mr. RYAN. Yes.

Mr. Astrue [continuing]. And Mr. McNulty have been just absolutely terrific.

Mr. RYAN. Conservatives, liberals, Republicans and Democrats, we all——

Mr. ASTRUE. Again, it is why I feel I can say I take no offense. I do not see the problem here but I think in terms of making the case more broadly to the Congress, we still have a lot of work to do.

Mr. RYAN. Right, so let me get to my question.

Mr. RYAN. I just have 5 minutes.

Mr. ASTRUE. I am sorry.

Mr. RYAN. You have been parachuted in, you have put together a plan, you have to execute it, and I have three questions and I will ask them up front because this is something we are all experiencing. You mentioned in your opening statement that progress is being made in wait times for obtaining a hearing, however in Wisconsin, my constituents are experiencing an average wait period of 620 days, as an increase of almost 33 percent over the 2004 levels, and it is an increase of 3 percent over last year. So, question one, what effect will these new initiatives, such as the Quick Disability Determination, have on reducing this wait time and when do you believe this effect will be seen? That is question one.

Question two, because of the 5 minutes, I want to get through these.

Mr. ASTRUE. Yes.

Mr. RYAN. As you know, the inspector general recently released a report on ALJ caseload performance that stated among other things that a substantial minority, I think 30 percent of ALJs, have not completed even 400 cases. In Wisconsin, for example, there is currently a backlog of 998 cases per ALJ. I understand some cases take a long time, low production numbers can be misleading, but is the SSA planning on taking any concrete steps within the constraints of the administrative procedures acts to introduce reasonable production metrics and standards? That is question two.

Question three, another concern I have is the ratio of decisions of ODAR judges that they are issuing which appear to reverse the

state DDS' determination. Approximately one-third to one-half of the ODAR level cases that my office assists constituents with end up in a reversal of the state DDS decisions. So, from an appellate level, that strikes me as a bit high, the reversal rate is pretty darn high. Is this rate of reversal proportional to other areas in the country? Does the SSA see a lack of uniformity in the application of standards by the various state DDS bureaus?

Mr. ASTRUE. Okay, a lot there.

Mr. RYAN. That is why I asked them all up front.

Mr. ASTRUE. I know and, again, I apologize if I am not fully responsive, and I would be happy to supplement for the record.

Mr. RYAN. I would appreciate that.

Mr. ASTRUE. For the QDD and compassionate allowance cases, I think more than a lot of people recognize these are cases that have to a greater extent than people believe often gone off track in the system. When we have gone back, particularly at the less prominent cases, we have found that 20 to 40 percent of them either resulted in inappropriate denial or just took way too long to decide.

Mr. RYAN. Twenty to 40 percent?

Mr. ASTRUE. Yes, they should have been easy cases. So this is why we are very systematically trying to identify these cases and just stop them from being a problem. It will make things a little bit more efficient at the DDS level, I think we picked up 6 days in average processing time last year. They were mostly other from factors. I think this will be marginally helpful in the time but the main reason you do it is just to make sure that these people do not get lost in the system.

In terms of Milwaukee, my understanding is we are underresourced there and you will be moving from eight to 12 administrative law judges——

Mr. RYAN. By when?

Mr. Astrue.—There are three classes currently being brought on board, April, May and June, that will bring us up to, it is a little bit of a moving target but about 135 are in those three classes. We are trying to get to the final at minimum 175, so an additional 40 or so we should be hiring off the OPM roster by August. So, we should be up to a full 175 by August.

Mr. RYAN. So, we should expect 12 in Milwaukee by August?

Mr. ASTRUE. There may be a question if there is an August hire, it may drag because most of these judges relocate, but more or less yes. After the hearing, we will give you an update. I do not know the specifics of the particular slots that we hired in Milwaukee, but we will be happy to provide that for you.

[The information follows:]

INSERT FOR PAGE 71, LINE 1722

We hired four ALJs for the Milwaukee office under the first certificate of eligibles. One ALJ will report May 11, 2008, and the remaining three will report on June 22, 2008.

In terms of ALJ productivity, it is a real issue in the system. We have established for the first time productivity standards for the administrative law judges in that we are expecting 500 to 700 cases a year, a significant portion of them are not meeting that.

Mr. RYAN. Thirty percent of them are under 400 right now?

Mr. ASTRUE. That is right. Right now, the challenge is to change the culture and for the most extreme cases, make it clear that they are at a far deviation from the standard. I think it is a dialog we need to have with the Congress as to whether we need to put more teeth into those standards.

Mr. RYAN. These standards are now, they are out?

Mr. ASTRUE. They are out, 500 to 700.

Mr. RYAN. They are known?

Mr. ASTRUE. Yes.

Mr. RYAN. What are the consequences and the incentive structures? Are they guidelines or strictures or what?

Mr. ASTRUE. Well, I do not want to seem facetious, it is more of a guideline than a rule right now and, again, we are bumping up against a lot of the statutory requirements.

Mr. RYAN. Right, that is why I asked the question.

Mr. ASTRUE. But, yes, certainly in the extreme cases. We have a judge who has not done a case in seven and a half years, it should not be necessary but when you go to take disciplinary action, having a formal policy indicating the agency's expectations are, will be helpful in some of those extreme cases.

Mr. RYAN. You have a judge that has not done a case in seven and a half years?

Mr. ASTRUE. Well, he is now because I am making him do them but he had not for seven and a half years.

Mr. RYAN. He is still working for the SSA?

Mr. ASTRUE. He had not for seven and a half years is my understanding.

Mr. RYAN. He is still working there?

Mr. ASTRUE. In terms of the ratio of reversals, again a relatively small percentage of the cases go up to the hearing, about one million claimants do not appeal their cases. We are a little bit stuck. If we had a low reversal rate, people would say it is not a fair process, it is not truly independent, and we would get criticism for that. In recent history, it has been about a 50 percent reversal rate. That has drifted up pretty much in tandem with the increase in the delays, and I think the primary reason why the allowances are going up is because of those delays, and they are just claimants with degenerative diseases and conditions that did not qualify but two years later do qualify.

Mr. RYAN. Well, with the 620 delay, I can see the——

Mr. ASTRUE. Yes, that is right. It would be logical to assume that the reversal rate will go down when we get those backlogs down. But I also do not want to mislead you by suggesting that the system is perfect. I think between the DDSs, the range on the variances when you really get deep into the numbers is pretty small. I think they do an outstanding job by and large.

I will be honest, at the level of appeal, we do not do as good a job. If you look at the variations between administrative law judges, there is no justification for some of them. We have one that denies I think about 96 percent of the cases. We have a handful, 10 to 15, I do not remember the precise number, we will supply it for the record, who allow approximately 95 percent of their cases. I do not think either is right. We have a statute that we have to

adhere to. It is a tough standard, and there are some hard cases where as a human being you look at it and say that is a tough result but it is a statute, and we should be enforcing it, as you have told us to enforce it, and that is what I tell ODAR to do.

[The information follows:]

INSERT FOR PAGE 73, LINE 1787

As of March 28, 2008, there were 17 ALJs with an allowance rate of 95% or higher.

Mr. RYAN. Alright, thank you.

Mr. MCNULTY. Thank you, Mr. Ryan. Mr. Blumenauer may inquire.

Mr. BLUMENAUER. Thank you, Mr. Chairman. Thank you, Mr. Commissioner, for being here. I would like to I guess take up where my last two colleagues, we are not the worst in the country but we are about in the bottom 10 percent. I think we 131st was the last that I saw with over 700 days. I want to get a sense from you in an area where we do not have some of those dynamics that you are talking about, we are just playing sort of white bread, small metropolitan area, not with unusual characteristics, we are not really old, we do not have challenging populations. I am trying to get a handle on what I am able to tell people back home about why we are getting whacked around and what is going to happen about it for those of us who are not at the bottom but clearly unacceptable I am sure to you, certainly to me, and without question to the men and women who are trapped in this system in Portland and surrounding environments in Oregon.

Mr. ASTRUE. Right. If you could excuse me, I have got one thing I want to check with my staff before I respond?

Mr. BLUMENAUER. Sure, sure.

Mr. ASTRUE. I want to get the answer right, I have got some uncertainty on a couple of things related to Portland, so if you would indulge me, if I could answer that for the record, I want to make sure that we get it right. It is the right concern, and I am concerned about it too but let me make sure we get you a fair and complete answer and if we could do that for the record, I would appreciate it.

[The information follows:]

INSERT FOR PAGE 75, LINE 1822

There are a number of reasons why the performance of the Portland, OR Hearing Office is below average.

- The hearing office lost staff and was unable to replace them as our budget was under funded. This significantly affected our ability to address the increased receipts and the cases pending. Low performance can also be attributed to low-producing ALJs.
  - In FY 2004, the staffing ratio was 4.11 and decreased to 3.73 in FY 2007. We plan to hire 4 ALJs and 3 support staff for the Seattle Region.
  - In FY 2004, receipts were 1.65 per ALJ per day and increased to 2.41 in FY 2007.
  - In FY 2004, the pending was 5,455 and increased to 7,491 by the close of FY 2007 due to low ALJ productivity. However, appropriate action has been taken to improve ALJ productivity. In addition, we will be placing two new ALJs in Eugene and two in Portland.
- Aggressive management steps have been taken to address the workload. Actions taken include:
  - Assistance with Decision Writing
  - Video Hearings for Aged Cases
  - Streamlined Case Pulling
  - Portland was selected for centralized printing and mailing.
  - As of May 1st, the Salem Remote Site is now the jurisdiction of the Eugene Hearing Office. This will reduce Portland's pending by approximately 1,000 cases.

Mr. BLUMENAUER. I defer to that, we would rather have an accurate answer that does not haunt you or me. I would like some extra special attention to make sure that it is aligned properly. As I say, ours should be a region, I do not understand the special stresses, the lengthy time, it is driving the people that we are working with crazy.

Mr. ASTRUE. I do know, Senator Cantwell asked a somewhat similar question last year in a hearing before the Senate Finance Committee and one of the things that is true for the Seattle region is the productivity of the ALJs tends to be lower than most of the rest of the country if I remember correctly. It is not entirely clear why that it is true. In Washington state, I think the rotation of judges up to Alaska is a factor, and we are trying to get a handle on that. But I am not sure——

Mr. BLUMENAUER. I do not want mousetrap you, I respect your kind offer to spend a little extra time to try and get the facts nailed down.

Mr. ASTRUE. I have also just got a note. One of the things I was checking here that was in my chart did not look accurate, and I am glad that I checked. So, I do have—ODAR just told me that there are two additional judges coming in Eugene and two coming in Portland, so there is some help coming. It may not be adequate, but we are going to do the best we can as fast as we can.

Mr. BLUMENAUER. Well, I appreciate to know that there is a little help on the way, and I appreciate your kind offer to double check to make sure that we have got the facts and the situation in place and look forward to working with you and the agency to make sure that these people are properly served. Thank you.

Mr. ASTRUE. Thank you, and we are happy to do so. We have sat down, particularly recently, with a number of the Members of the Committee to talk about the situations in their states, and we would be happy to do that for you as well.

Mr. BLUMENAUER. I look forward to scheduling a few minutes to follow up to see what we can do together.

Mr. ASTRUE. Great.

Mr. BLUMENAUER. Thank you. Thank you, Mr. Chairman.

Mr. MCNULTY. Mr. Linder may inquire.

Mr. LINDER. Thank you, Mr. Chairman. Since the beginning of this hearing was used to blame Ronald Reagan for this crisis, let me just deduce some facts. It started in 1980 when Jimmy Carter agreed with two chairmen to increase the FDIC insurance from $40,000 to $100,000 and let us sleep a little less and it will become development companies, creating a huge market and jumbo CDs. Bill Frenzel proposed a solution to that four or five years later, and it would have cost $8 billion, it was turned down. That is just to put some facts on the table.

Now, on to our subject. I want to follow-up with what Mr. Ryan first raised, between December 1 of last year and April 22nd of this year, 17 of 18 appeals that we had before ODAR reversed, and it strikes me that somehow or another you need to inform me of the front-end or the back-end of this process. That is a 94 percent reversal rate.

I want to raise an issue that is going to come before us shortly that and that is Mr. Schieber is going to report that a national Research Council report highlighted real vulnerabilities facing the agency if a systematic transition has not begun more moderate infrastructure including moving away from COBOL, a 1950s system, to a current technology. For a five year period ending in 1998, Congress gave $900 million to the agency and dedicated investment to information technology, what did you do with the $900 million and are you going to be looking for more?

Mr. ASTRUE. The agency has made some significant investments in IT; we could not deal with hundreds of millions of American and their records and their service needs each year without relying on IT. I do think that some of the criticisms of the National Academy of Science report are well-founded. I think that the agency got comfortable with the COBOL technology and that the funding issues made it unrealistic to find a way out. I do think that we are to some extent painted into a box. For a number of the peripheral systems——

Mr. LINDER. Excuse me, just a moment. If you are comfortable with a COBOL-based system, and you may be the only people still using it——

Mr. ASTRUE. I am not telling you—I am saying we have been, I think my systems people will tell you I am on their case on this. We have about 36 million lines of COBOL code, and the question is how do we get rid of as much of it as quickly as we can.

Mr. LINDER. The point is if you want to move this country and you to an electronic-based medical records system, you are not going to be able to do it with that system.

Mr. ASTRUE. Right, so we have moved increasingly to web-based systems, we are making some progress but given the huge amount of code that we inherited, it is going to take some time. One of the reasons, one of the things we would hope to do if we come to agreement with the states on the state system is move it out of the 54 separate—every time we make a change in state disability determination systems, Bill Gray and his people have to do 54 separate COBOL programs amending the status quo, and it is incredibly time consuming, expensive and it is a real issue going forward. We have been negotiating with the states for about 9 months to see if we can come to an agreement on specifications to go to a web-based system or something else that is non-COBOL-based that is unified around the country. It would be an enormous step forward if we can do that, and we are looking for other opportunities to do that, and we will have to ask for special funding from the Congress for most of the changes.

One of the most problematic aspects of the NAS report is that the core of the system, which we call "MADAM," is all COBOL-based and the magnitude of moving that system to anything other than what it is now. It is enormous. So I will be honest, we have got plans for a lot of the peripheral systems to move away from the COBOL. I think we are going to be able to do it on my watch. Technologically and financially, I do not think that on my watch we are going to be able to fix the issue with the core part of the program, but we have got to start a process toward doing that. That is probably a 10 year project and 10 years is probably past my half life.

Mr. LINDER. Mine too, thank you.

Mr. MCNULTY. Thank you, Mr. Linder. Mr. Pascrell may inquire.

Mr. PASCRELL. Thank you, Mr. Chairman. Commissioner Astrue, am I pronouncing that correctly?

Mr. ASTRUE. Yes, you are.

Mr. PASCRELL. You have been very forthright today. We have confirmed that we have a large backlog of disability claims, and we confirm that this has a tremendous impact on applicants, extending the time period, et cetera, et cetera. You have a plan to reduce the backlog, you relayed it before the Committee. What is the administration's solution to this backlog since this has not just occurred in the last 6 months, this occurred over several years, has it not, Commissioner?

Mr. ASTRUE. Right, it really started in 2001.

Mr. PASCRELL. 2001.

Mr. ASTRUE. Right.

Mr. PASCRELL. More people come into the system. What is the Administration's overall plan to deal with this tremendous backlog in your mind?

Mr. ASTRUE. Well, it divides really into two categories, one is as I think we have said pretty forthrightly, in terms of resources we have had what economists would call both an allocation issue, we have not had enough, and a distribution issue in that we have not been putting it in the right places. So I think we have laid out

a fair amount of detail in the written testimony how we have been trying to do that.

Mr. PASCRELL. So, Commissioner, if you looked at the demographics back in 2002 and you saw the shrinking amount of resources, I am not talking about you personally.

Mr. ASTRUE. Thank you.

Mr. PASCRELL. You saw the shrinking amount of resources, one could very easily conclude that we are heading for a disaster here.

Mr. ASTRUE. Well, in fairness to people who were here, I do not think it was clear in 2001 what would be happening in terms of resources going forward. I am not sure that people actually believed that we would be under-funded to the extent that we were, so in fairness to people,——

Mr. PASCRELL. You mean you think the administration did not know that, did not understand what the ramifications are?

Mr. ASTRUE. I think we understood, I think the people that were within the agency understood what the ramifications would be if Congress under-funded us to the extent that actually happened. It did happen but in 2001, I do not think in fairness to the people who were here, I do not think that they anticipated that that would happen.

Mr. PASCRELL. There are quite a few Social Security disabled in New Jersey in my district. Do you know the situation at Newark, 509 days per applicant.

Mr. ASTRUE. Right.

Mr. PASCRELL. That is not acceptable to you?

Mr. ASTRUE. No.

Mr. PASCRELL. It is sure as heck is not acceptable to me. The Social Security disability backlog has caused extreme hardship. You have to talk to the caseworkers in each of our offices. They get no accolades because we think all the action is happening down here. All the action as far as I am concerned that is significant is happening back in our districts. These constituents are unable to work but still must pay for their medications. There are other healthcare needs. They have to pay for their housing, living expenses for themselves and their families while they wait months or even years for SSA to hear their case. One New Jersey resident filed for disability benefits in 2005 due to severe coronary artery disease, recurrent congestive heart failure, requiring a pacemaker defibrillator, diabetes, orthopedic impairments, hypertension, other serious ailments, his case is still pending before an administrative judge. This is cruel and unusual punishment.

Another constituent who applied for benefits in has not yet had a hearing and his temporary rental assistance is being cut off this month. Without help from SSA, he is going to be homeless. The anecdotal stories here are not anecdotal, these are real people that have faces on them. I know you care about that, I really do. I do not think there is a person on this Committee who questions your loyalty to the task and your ability to move forward, but you cannot do it without resources.

Mr. ASTRUE. That is right.

Mr. PASCRELL. What we need is more people in your department to speak out against what I consider to be an atrocity, and I do not believe you closed 17 offices during this period of time.

Mr. ASTRUE. Well, actually to go through the numbers, we have in terms of a net, we went down I think just a couple of offices this year. We do every year and it is the exact same process that has been since the Carter Administration, although under my watch, we give more notice to Members of Congress than we have historically. Historically, we have only worked through district offices, so we now give duplicate notice to Washington offices as well. We typically for the last 30 years, contract about two to three offices a year. That has been pretty much the trend, it is the same process. The numbers you are hearing come from people that I think are trying to mislead you because just—they call a consolidation of two offices a closing, they do not look at the net because we open offices too. In fact, your colleague to your left, we had this conversation that part of the reason why we do this is that we have got places like Las Vegas and Atlanta that are exploding in population and if we have contracting resources, and we cannot move any of those resources, it means that Mr. Lewis' constituents and Ms. Berkley's constituents get short-changed compared to others. So, we kept it approximately level for a long, long time.

Mr. PASCRELL. Well, then how many offices have you closed since 2001?

Mr. ASTRUE. Net—again, we will give you the precise numbers. It is the exact same trend for 30 years. It averages two to three per years. There has been no significant deviation from that trend in terms of the net.

[The information follows:]

INSERT FOR PAGE 84, LINE 2054

We have had a net loss of just 20 field offices since the end of FY 2001.

Mr. PASCRELL. Mr. Chairman, this is the lowest amount of employees for the problem that we have in 32 years.

Mr. ASTRUE. Yes, that is right and what that creates is——

Mr. PASCRELL. You cannot put icing on that one.

Mr. ASTRUE. For Mr. Lewis and Mr. Rangel and the Members that have inner-city offices, I do not think that they fully appreciated that they take a disproportionate hit. Because if you cannot close the small, under-utilized offices, where we have lost a lot more employees and the people that are the most stressed now, and there are some exceptions from it, but it is the field workers in the inner-city offices and the major border city offices because we cannot create employees out of nowhere. If we do not have the money to pay for them, they disappear.

Mr. PASCRELL. I agree.

Mr. ASTRUE. So I do not think we have done anything radical. As a matter of fact, if you look at it in the big picture, it would not be unreasonable for Congresswoman Berkley to say to me you should close more so that you can——

Mr. PASCRELL. Commissioner, my point is that the administration has been, not you, your Administration has been—the administration, the people who hired you, that is who I am talking about.

Mr. ASTRUE. I will be honest with you, I run substantially independently. No one has told me from OMB that I have to do this

or do that in terms of offices. I come in and in terms of the hearing offices, the processing centers, and the regional offices—-I look at it and I try to balance it out to say, " How can we serve the American people best?" One of the things that I think is a bit different from before is that we are trying I think a little harder to be fair regionally but that means that resources have to be moved from one place to another and if you are one of the locations that is losing a resource, I understand that people are unhappy about that but at some point, when you have a city like Las Vegas that is exploding, it is not fair to say that an office that serves four times as many people in Las Vegas than in some place in the East in an area that is not growing should not get more resources. So, a lot of the moving around has been part of an effort to balance things out geographically and the general trend. If someone is telling you we have closed net 17 offices last year, they are just wrong.

[Gavel.]

Mr. ASTRUE. That might be right, it averages two to three years and it has been about the same trend and in part it is a reaction, as you say, to the long-term under-funding of the agency. We have been forced to make a lot of hard choices, we do the best we can.

Mr. MCNULTY. Thank you, Mr. Commissioner. Thank you, Mr. Pascrell. Mr. Tiberi may inquire.

Mr. TIBERI. Thank you, Mr. Chairman. Thank you, Mr. Commissioner, for being here today and spending time with us on a very important issue. I represent a district in Columbus, Ohio, central Ohio, you mention it in your testimony and know a lot of people who work in the local office, and they are hardworking folks, overwhelmed doing their job representing or trying to help people throughout central Ohio. I would also like to thank some of your employees in Springfield, Massachusetts and Orland Park, Illinois and in Roanoke, Virginia. I am sure Ms. Tubbs Jones will thank them as well because Ohio in particular has been using this new technology to allow claimants to go before a TV set and give their testimony. But, as you know, we are being just slammed.

Mr. ASTRUE. Yes.

Mr. TIBERI. Two years in central Ohio and now claimants are going before a TV set. I know you have addressed the situation or begun to address the situation, particularly in Cleveland but also a couple of judges in Columbus and a few in Cincinnati as well. You mention in your testimony that after you deal with Cleveland and Atlanta, you are going to deal with Columbus and Indianapolis, so one question is how are you going to do that? In doing that, are you also prepared to look at not just the judge issue but also the support staff issue, the hearing room issue and all the related issues that our constituents face because it is obviously not just one problem that we need to solve, it is myriad of problems throughout the entire system that a person is backlogged for two years on.

Mr. ASTRUE. Right, so the good news from your perspective is we did look at the regional variations, and I believe that Ohio is the big winner in the country.

Mr. TIBERI. Because we were the big loser.

Mr. ASTRUE. You were the big loser before and that is right, and I think you have 13 administrative law judges coming into the state of Ohio, and so that is a first step. I think that you put your

finger on having the ability to move quickly with the electronic hearings is critically important to addressing these backlogs and, again, because they can spring up very quickly. A lot of these offices are four or five or six people. You have a judge retire, you have a couple of judges that all of a sudden become dysfunctional, and it makes a huge difference in that local area. So, having the capacity to have some judges in a few central locations who can move quickly into the areas of worst backlog and help them out as we have been helping Cleveland out——

Mr. TIBERI. But you still need hearing rooms for the claimant to go to.

Mr. ASTRUE. Yes, that is right. In some places in the country, we are pretty well set for that but to make this easier, and I went through this with Mr. Levin personally a couple of weeks ago, Oak Park is a pretty bad situation as well and right now they do not have the hearing rooms equipped so that people can have electronic hearings from other locations. That equipment is being put in now, and there will be four of those hearing rooms in Oak Park. So, we have gone through a fairly systematic review of facilities with the new model of realizing that this is going to be part of what we do going forward to make sure that the physical space in the various hearing rooms gives us the opportunity to get help from the outside because it is critically important for the most backlogged offices.

Mr. TIBERI. So, what is the plan? You mention in your testimony that Columbus, Miami, Indianapolis are next on the docket——

Mr. ASTRUE. Right.

Mr. TIBERI [continuing]. To address this problem, how do you——

Mr. ASTRUE. Right now, we have a pilot national hearing center with five administrative law judges just hearing cases from Detroit, Cleveland and Miami. We are trying to add another 14 between now and the end of the year. We are hoping that we can move more quickly than the norm because we are not trying to get new space, with all the contraction, we do have some excess space in some of our facilities and generally we can renovate space much faster than acquiring new space. So, what we are trying to do is expand in Falls Church, which is where ODAR is headquartered, we have been able to access some space. We believe we are going to be able to access space in the relatively short run in Chicago and Albuquerque, and so we should be moving up in the range of 20 to 25 national hearing center judges fairly soon. Whether we can get them on board by the end of the fiscal year, we are not sure yet for all of them but we are going to try.

Mr. TIBERI. Well, I hope you will allow me to follow up with your staff on Columbus and central Ohio as it progresses.

Mr. ASTRUE. Right, I would be happy to do that.

Mr. TIBERI. I yield back.

Mr. MCNULTY. Thank you, Mr. Tiberi. Ms. Berkley may inquire.

Ms. BERKLEY. Thank you very much, Mr. Chairman, and let me personally thank you for being so helpful to me and my office on this issue and many others. Thank you very much for being here, I enjoyed the meeting that we had in the library a few weeks

ago, and I appreciate the forthright manner in which you are addressing the Committee. We all seem to be on the same page and have the interests of our senior and disabled population in our minds when we are discussing these issues.

As you are well aware, Mr. Commissioner, my district of Las Vegas has one of the fastest growing senior populations in the country, therefore it is very important to me that the area field offices and the card center have the resources and personnel that they need to provide our seniors with the quality of service that they deserve and have earned.

Since the Las Vegas card center opened last year, I have worked very closely with the Social Security Administration and our local employees in the office to address a number of the problems. You are well aware of the problems that we started with.

Ms. BERKLEY. They range from inadequate signs, the first time I went to the Card Center, I thought I was going to a dermatologist office, and I am glad that we were able to fix that. There was insufficient seating for the elderly and disabled, people were standing for hours. There was insufficient staffing, long, long wait times and long lines where many of my—the lines were so large that they were going out the door and in 110 degree temperature having older Americans and disabled standing out in that heat was obviously very dangerous as well as unacceptable.

I cannot thank you enough and after listening to all of my colleagues' problems, I am a very grateful person but you have helped us to correct the majority of the deficiencies at the Card Center.

Mr. ASTRUE. Right.

Ms. BERKLEY. We have added 70 seats, which makes a big difference, seven additional employees, all 19 windows are now open for service, wait time has dropped from well over two hours to less than a half hour, all of that is just wonderful. I do have still concerns that I would want to share with you. There is some concern about the Card Centers, and you know that even though the Card Center is centrally located in Las Vegas, it still services many of the rural areas that surround Las Vegas. I know that, although they are not my constituents, they are Nevadans, that they can go to their field office, there are hours but there only once a month. Perhaps, and listening to other people's problems, this may not be as significant as some of the others but if you are one of the people living in these rural areas with no access, it becomes a problem, perhaps we can rather than once a month going to their field offices, perhaps we could make it a little easier by extending that to maybe twice a month if that is possible.

Also, I received I would not say complaints but there are some concerns that the employees had a lot of overtime between January and tax day, maybe that is just standard operating procedure and maybe with the additional employees that have been assigned to Las Vegas, that problem will be eliminated, but I think I feel the need to share that with you.

We also have one of the shorter waiting times for disability decisions with an average of less than a year, but having heard what some of my colleagues said, even a year in my opinion is a shamefully long time if you are waiting for these disability benefits.

But my question to you is this under the President's budget, SSA would make progress in addressing the disability backlogs but it seems that it is at the expense of other areas, other non-disability areas. If this is the case, it seems that the backlog in other areas would rise dramatically, and we would lose ground in areas that we have really made some progress. Is that the case? What do you recommend and how much would it cost to avoid this decline in service to the public? How much more do you need? Perhaps Congress ought to take some responsibility for this, if you do not have the resources to do the job we are tasking you with, what resources do you need that we should be putting in your budget?

Mr. ASTRUE. Sure. I would like to give you a more detailed response for the record but let me give you a short response. This year's appropriation, for which we are grateful, and the President's budget for next year allow us to not only improve with the disability program but also to make some significant investment in systems, to bolster the field offices, to bolster the teleservice centers, so there will be continued improvement in the front line services. We have tried to be very transparent about what we think we are going to have difficulty doing, and we are trying to get to as many of those as possible. We laid those out in the President's budget. We have actually made some progress in some of those workloads because we have had an unexpectedly large increase in productivity so far this year, so we actually are a little bit ahead of schedule on some of these back-end workloads. There is some softness in the numbers because we cannot track a lot of these things very accurately but it is in the range of $400 million in terms of the things that we are not doing in order to get staff up to that level.

[The information follows:]

INSERT FOR PAGE 93, LINE 2278

The backlog in other areas that you refer to is comprised of our less visible work, generally work that is done after an individual is approved for benefits. In the interest of full disclosure, we included the estimated annual growth to this backlog in our budget documents for the first time this year. The cost of preventing growth in the post-entitlement backlog is approximately $300 million in FY 2008 and $400 million in FY 2009. As I mentioned at the hearing, we have seen an increase in productivity since the budget was released in February. If current trends continue for the remainder of the fiscal year, the FY 2008 and FY 2009 growth in the post-entitlement backlog will be reduced.

Ms. BERKLEY. Was it $400 million or $400 billion?

Mr. ASTRUE. $400 million.

Ms. BERKLEY. Million; "M".

Mr. ASTRUE. I think we deliver pretty good value for the money. The people work very hard, the systems are getting better and better to make them more productive, and so you get a lot for your dollar in my opinion in Social Security.

Ms. BERKLEY. Let me ask you one other question, I just did not understand if that is $400 million over——

Mr. ASTRUE. Yes.

Ms. BERKLEY [continuing]. The budget?

Mr. ASTRUE. Yes, we identified the workloads where we did not ask for the money this year so that Congress would understand what choices we were making in terms of the prioritization. If they thought we made inappropriate prioritizations, you have the information to choose differently.

Ms. BERKLEY. Thank you very much.

Mr. MCNULTY. Thank you, Ms. Berkley. Ms. Tubbs Jones may inquire.

Ms. TUBBS JONES. Good afternoon, Commissioner, how are you?

Mr. ASTRUE. I am fine, thank you. How are you?

Ms. TUBBS JONES. I am doing very well, thanks. How long have you been in office now?

Mr. ASTRUE. About 14 months.

Ms. TUBBS JONES. About 14 months. I guess our first meeting was not probably the most exciting of your meetings, and I really do want to compliment you on the work that you have done, and I could put up statistics that justify the additional six judges in Cleveland. I want to thank you for them, and I will not put the statistics on the record, you already know them. I was so excited to be able to say some wonderful things to you but do you know what?

Mr. ASTRUE. Oh, do not spoil it now.

Ms. TUBBS JONES. Enjoy that moment because I am coming after you right now.

Mr. ASTRUE. I know, I know.

Ms. TUBBS JONES. I was a judge for 10 years, Commissioner, and I have been working the 10 years I have been in Congress with administrative law judges of the Social Security Administration, and you just threw them under the bus. You just threw those judges who do such a wonderful job under the bus by talking about one who has not heard a case in seven and a half years, by talking about another, I do not even remember what the heck you said about them, but I wish—see, I have learned that when you oversee a group of folks that not only do you challenge or chastise those that cause problems, you spend as much time saying great things about the people who keep the ship up when they do not have the kind of support that they need. I think that if you said it, I missed it, so I am going to give you the opportunity to say it again, the great work that the administrative law judges who are there, who are handling the kind of caseloads that they have, do a great job. I think you owe it to them, Commissioner.

Mr. ASTRUE. I have answered the same type of question several times from different angles. I have said here, first of all, the vast majority of them do great work, and I said that here earlier.

Ms. TUBBS JONES. Say it again so all those administrative law judges can hear you say that, the vast majority of them.

Mr. ASTRUE. The vast majority of them do great work. Then also in particular I gave them credit. This is a year where we have seriously had contracting resources in ODAR, and the progress on the backlog is pretty stunning. The increase in the pending is coming down dramatically and it is because not just the ALJs but the attorney advisors, the support staff, the whole team, they are working together as teams. The productivity is up about 10 percent, at least in the measure that I consider most important, and I know

some of the staff behind me has differences of opinion, they have different measures. But if you look at dispositions per ALJ per day, and again that is attributing the attorney-advisor decisions and those things to them, they are up about 10 percent this year. The backlog would be a lot worse without that improvement and there have been some particular offices that have been historically problematic that have done terrific work. But I do feel that I have to identify that there is a minority, it is 5 to 10 percent, where there are both conduct issues and productivity problems.

Ms. TUBBS JONES. That is what I want, that is what I want you to make it clear for the record because there is 5 to 10 percent and that means that you have a 95 or 90 percent staff who are doing a great job. It is important to me.

Mr. ASTRUE. Trust me, we are absolutely on the same wavelength.

Ms. TUBBS JONES. Okay.

Mr. ASTRUE. But you are in at the point now where I believe in Cleveland you will have 15.

Ms. TUBBS JONES. Thank you. I am going to stand up and say thank you.

Mr. ASTRUE. If you have one who is not carrying weight, you might not see that much of an immediate impact but for some of the other Members here, we have offices in——

Ms. TUBBS JONES. I do not want to get lost in that, I do not have a lot of time.

Mr. ASTRUE. Okay, right.

Ms. TUBBS JONES. I just wanted it to be clear.

Mr. ASTRUE. Alright, I think we are in agreement.

Ms. TUBBS JONES. Okay.

Mr. ASTRUE. Okay.

Ms. TUBBS JONES. Tell me, there is one other area that I have some concern about, and I would ask you to take a look at it, would you? Ohio is one of those states where there was a higher than average first time approval rejection, am I saying that correct?

Mr. ASTRUE. I understand.

Ms. TUBBS JONES. You understand what I am trying to say, right?

Mr. ASTRUE. The denials are higher.

Ms. TUBBS JONES. I mean denials, yes. I am not asking you necessarily to give me an answer today, but what I would like to have happen is to have a look at not only Ohio but other places across the country where we seem to have that, can we figure out what that can be attributable to.

Mr. ASTRUE. Right. It is a great question, we are getting it from a couple of other Members as well. That statistic looked at in isolation can often be very misleading because the composition of the filings, the demographics are very different from state to state. Interestingly, some of the states with the lowest allowance rates, which should give you, it is a first level cause of concern and you are asking the right question. But when you look deeper, they are putting a higher percentage of people on to disability than most of the states with very high allowance rates and part of that is—and I know there has been some criticism of insurance companies lately on this point but in my world, what I hear anecdotally from people

on the line is that a number of states have policies that refer people to us and make us make a decision before they get state benefits of one kind or another and it is a budget device. What that means is that we get a lot of people that probably should not be there in the first place that have to go through our process to comply with state requirements.

Ms. TUBBS JONES. Well, then what I would ask you to do is for someone in your shop to work with us to see if we can address that particular issue.

Mr. ASTRUE. Okay.

Ms. TUBBS JONES. Because it then becomes your business because it is in your shop and it may well be the business of the particular state, and we have an obligation to sit on the state agencies as hard as we sit on you.

Mr. ASTRUE. Right, so we will—I accept that as a charge, so we will look at that. We will give you as much detailed information about Ohio policies as possible so you can decide whether——

[the information follows:]

INSERT FOR PAGE 106, LINE 2596

- The Office of the Chief Administrative Law Judge has prepared a staffing plan that will provide staff to support the ALJs and the hearing operation. Additional staff hires will be provided in phases as losses occur throughout the fiscal year. Staffing allocations will be made to balance staffing needs in each Region. To allow for maximum flexibility, each region has identified critical staffing needs and we will target these hearing offices first.
  - In Phase I (February 6), regional offices were allocated 92 hires for immediate selection.
  - In Phase II (April 9), regional offices were allocated an additional 138 hires for immediate selection to backfill management losses to ALJ ranks, fill vacant management positions, and balance staff-to-judge ratios.
  - In Phase III (May 2008), a total of 22 hires are scheduled to be allocated to the field.

Ms. TUBBS JONES. Who I want to beat up in Ohio.

Mr. ASTRUE. Yes.

Ms. TUBBS JONES. Thanks, Mr. Commissioner.

Mr. ASTRUE. Thank you.

Mr. MCNULTY. Thank you, Ms. Tubbs Jones. We have now completed the first round. I think there are just a couple of requests for follow-up. I think Mr. Brady had a follow-up question.

Mr. BRADY. Thank you, Mr. Chairman. I will be brief and thank you for the courtesy by the way. Commissioner, I know that earlier this year, you suspended a proposed rule dealing with reforms of the inefficiencies of the appeals process, and I know you have been having conversations with various interest groups on those rules. I want to encourage you to do that, but I hope you understand that a number of us want you to pursue reforms in the appeals process. No reasonable person can justify the system we have today. We are not seeking efficiency for efficiency sake. We are seeking a quicker appeals process that is fair and more accurate and hopeful that if

we can do it as efficiently as possible, other resources can be used to quicken the process and make it more fair and accurate throughout the whole system. So, I hope you will continue to pursue the reforms that Congress needs to take.

Secondly, I appreciate the straight talk about our administrative law judges or any other part of the system. We have needed this for a long time to improve the system. It may not be comfortable but whether it is, we have some judges or staff or whatever who are not productive and a Congress that is not providing you the resources you need, we need to hear that type of straight talk, so thank you.

Final point, in the system today, just looking and reviewing the original definition of "disability," clearly medical advances, occupational advances, the fact that a quarter of the jobs we have today did not even exist 25 years ago. There are now opportunities where people who would be disabled and have no chance for a work life, today because of advances in medicine and technology are able to do that. At the DDS level, has there been an effort to expand beyond just the medical diagnosis of disability to incorporate occupational experts who can identify a potential work life that a claimant could have so that we are looking at disability in the 21st century, occupational disability rather than just as a medical issue as it was originally I think probably developed?

Mr. ASTRUE. Yes, good questions. So, in terms of the regulation question, I am proud of the fact that we have made an enormous amount of change in the last year, 99 percent of that has been relatively uncontroversial. We got caught off guard on the objections to a couple of the provisions of this regulation. I still think on the merits, we were trying to do the right thing for the right reason but the costs of having the argument are not worth it. We have had pretty good discussions with the advocates, and we think actually there may be—it may be 18 months down the road but there may be some better ways of getting to substantially the same result once we have better systems, and we can do queuing theory for docketing and that type of thing. So, we are hoping, we are not giving up, we are going to try to get to the same general result through a different process.

In terms of medical advances, I probably should not say things like this but actually I think one of the things you should have been critical of the agency for many years is we have not been good enough about keeping up. One of the reasons why cases are decided wrongly by the DDS is we do not give them clear enough guidance or updated enough guidance. We have had regulations on our listings issued on my watch that had not been updated since 1979, 1985 for the digestive listing and that is not acceptable. Right now, we are on a five year schedule for every regulation. If you look at the docket, you will see we are issuing a lot more regulations in the medical area than we have historically. We are doing every five years now, we hope to actually do every three years, I do not know if we are going to be able to get there. But I think that is critically important, and we are making it harder for that staff because we are asking them to go to a level of detail that they have not gone down to before. We have typically stopped at a fairly high incidence rate. If you look at the cases that go off track, a significant percent-

age of them are ones where it is not the DDS' fault, it is our fault in Woodlawn because we have not given them sufficient guidance.

Mr. BRADY. I guess the question is more directly did DDS examiners and ALJs have access to the occupational experts who can help determine if there is a work life that is available to a claimant?

Mr. ASTRUE. Right. To a large extent, yes, although there is an issue in some places in quality and quantity because I think we have not increased the compensation for these folks for decades. We are hoping to do that for both the medical and the vocational experts. We also need to do better in the vocational area. We have relied historically on a guide produced by the Department of Labor, which they have decided not to produce anymore, so we are going to try to take that over and not only update it but improve it and adapt it more for our purposes than what the Department of Labor does. So, I do not think it is a crisis in terms of where we are, but are we at best demonstrated practices? No. Can we do better? Yes. Are we trying to get there? Yes.

Mr. BRADY. Thank you, Mr. Chairman. Thank you, Mr. Brady. I believe Mr. Becerra had a follow-up.

Mr. BECERRA. Thank you, Mr. Chairman. Commissioner, again, thanks very much for your time and all the responses and please continue do the work. As I said to you, I did not have a lot of space in my 5 minutes for good news, but I think in every respect your responses prove that you are trying to do what you can personally, Michael Astrue is trying to do what he can as the Commissioner to make changes, so we appreciate that. I urge you to continue to be candid with us. As I said, I urge you to shake things up. When you come here, shake them up not just internally but when you come here shake them up. Recognize that you have to obviously get your paycheck but if you do the right thing, you will get paid more than just with a paycheck, so I just urge you to continue what you are doing.

Mr. ASTRUE. Thank you. We have been doing a fair amount of shaking up. We have been trying to do it as politically sensitive away as possible. I also should say I have really been blessed in that we have put together a fairly new team. There has been a lot of shaking up within the agency, and they have just really come together and done an absolutely first class job, This agency is too big for any one person to change, and I give a lot of credit to a lot of the people sitting behind me and some of the people who are not here today.

Mr. BECERRA. I would love to see it register on the Richter Scale so you keep at it.

Mr. ASTRUE. Okay.

Mr. BECERRA. Support staff?

Mr. ASTRUE. Yes?

Mr. BECERRA. You did not have a chance to get to the question to answer because I ran out of time but I do not know how much you can give us now but perhaps in writing give us a more elaborate response but I am very concerned that as you hire the ALJs that we know we need, you will not have the support staff. You already do not have the support staff, so to hire at less than a one to one ratio when you need a four to one or so or five to one ratio.

Mr. ASTRUE. Yes, so let me give you the short answer. We will give you a longer answer for the record because I do think that some people, their heart is in the right place, have misunderstood some of our budget numbers. So, one of the things that we did even in a time of contracting resources, we realized that the judges cannot do the work without the support staff, and we knew approximately when the judges were coming in. To make it as seamless as possible, we advance hired support staff in anticipation of the new ALJs to some extent. So, on my watch we started at 4.1 support staff per ALJ. Unlike a lot of the rest of the agency, that did not go down, that went up. So, that went up to about 4.4. When the new judges are absorbed and with the hiring that we also are doing of support staff, we will be back down to about 4.1.

[The information follows:]

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- The Office of the Chief Administrative Law Judge has prepared a staffing plan that will provide staff to support the ALJs and the hearing operation. Additional staff hires will be provided in phases as losses occur throughout the fiscal year. Staffing allocations will be made to balance staffing needs in each Region. To allow for maximum flexibility, each region has identified critical staffing needs and we will target these hearing offices first.
  - In Phase I (February 6), regional offices were allocated 92 hires for immediate selection.
  - In Phase II (April 9), regional offices were allocated an additional 138 hires for immediate selection to backfill management losses to ALJ ranks, fill vacant management positions, and balance staff-to-judge ratios.
  - In Phase III (May 2008), a total of 22 hires are scheduled to be allocated to the field.

Now, an interesting question is that the right number or not? For the time being, I think that will work. But one of the things that we do not know and what we want to be a little careful about over hiring. The profile of staffing you need is going to change fairly dramatically when you move from an antiquated paper system to a relatively good, admittedly needing some improvements of the electronic system profile of people and the number of people that the old studies from 1991 indicated really do not make any sense anymore. So, we are looking at that.

Mr. BECERRA. Okay.

Mr. ASTRUE. But we understand how important they are.

Mr. BECERRA. Please and if you can just elaborate more in writing, that would help us to understand how you are going to do it.

Mr. ASTRUE. We would be happy to do that.

Mr. BECERRA. Field offices, do you have any plans to close any field offices this year?

Mr. ASTRUE. My understanding is that we do not have any plans pending other than we worked through local communities and the political leaders. We do some consolidations and that type of thing. We do relatively few over the objection of Members of

Congress and political communities. There are none of that profile now. There are some routine consolidations going on and, again, I do not know. I do not get terribly involved in this process, the career people run it. Your best guess is that the future is going to look like the past. The net, there will be about 15 to 20 offices that are affected in some way. Net is at the end of the year we will be one to three fewer probably, but it might not be that many. There is no goal or anything like that. There has been I think some very regrettable partisan attacks saying that there are plans to do something that is a huge break from the past, and we are going to cut half the offices, and I just want to denounce that here. I think it is being done for partisan purposes. It scares employees. It scares the public. I think it is shameful. So, again, I have been up explaining this over and over again. It is no different from when I started. It is no different really since the Carter Administration, it is going to be about the same.

Mr. BECERRA. Then on that, again, if you just keep us informed.

Mr. ASTRUE. Will do.

Mr. BECERRA. Perhaps in writing give us a more elaborate answer to that.

[The information follows:]

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Later this calendar year, we are considering consolidating the Oxnard, CA office with the Ventura, CA office and the Sunset Hills, MO and Meramec Valley, MO offices into one office—the St. Louis (South West), MO office.

Mr. ASTRUE. Would be delighted.

Mr. BECERRA. Finally just a quick comment, on the appeals process, I want to say thank you very much for taking a breath before you move forward in instituting some of the changes that have been proposed to the system, which many of us believe could have hurt the process because it would have made it more burdensome upon the claimants, the beneficiaries, so we appreciate that and we hope you will continue to keep us apprized and all the stakeholders apprized and allow them to be a part of any system that you ultimately recommend.

Mr. ASTRUE. Okay, thank you.

Mr. BECERRA. Thank you.

Mr. ASTRUE. I should also note by the way I was out in one of the hearing offices in your district just a couple of weeks ago, which is the historical low performer for about a decade in the system, and we sent them a signal that things needed to change. I have to be honest, I was dubious that would happened but if you actually look at the statistics in your Pasadena office, there has been a remarkable pick-up in the last six months. The spirit there seems to be very different and so in terms of—part of this, as you were saying, is cultural and insisting on change. So, at least, I think you have got about four hearing offices in the vicinity of your district, one of them has really made a pretty substantial improvement in the last six months, so it can happen.

Mr. BECERRA. Thank you very much. Mr. Chairman, thank you.

Mr. MCNULTY. Thank you, Mr. Becerra. Mr. Meek may inquire.

Mr. MEEK. Thank you, Mr. Chairman. I have been in a couple of meetings in my office, but I have been listening to some of the questions that I wanted to raise here that have already been raised at least eight or nine times. You have been very skillful, Mr. Administrator, of trying to give the same response. But let me just say this very quickly, all of us are victims of closing of offices and also backlog of hearings or appeals, I have a two to three year backlog. As you know, myself and Congresswoman Debbie Wasserman-Shultz and Alcee Hastings from south Florida fought vigorously to keep the Hollandale Beach office in my district open to provide services for the people of south Broward County in Florida—I mean in Hollywood, Florida. But I wanted to ask the one thing I did not hear, and I was checking with my staff, have you all researched in any way possible some sort of information that can be gathered so we will not have so many of these appeals to try to cut them in half because right now the backlog as we look two to three a year, what kind of work has gone into trying to—I even heard your response about a person who was a judge and has not heard a case in seven some odd years, but is there anything being done outside of making sure that all hands are on deck to hear these cases to clear up the backlog or seeing if some of these cases can be resolved prior to a full blown hearing?

Mr. ASTRUE. Sure. Again, that has been an important part of the initiative and it gets complicated, so with your permission I will supplement for the record but let me give you the short answer. We have two I think successful to date initiatives at ODAR to essentially take those cases out of the system and decide them quickly. One is we have gone back to a Clinton era initiative, that I am not entirely clear why they terminated, that gave more authority to attorney advisors to get rid of cases of certain profiles to just allow them——

Mr. MEEK. I am sorry, you said attorney advisors?

Mr. ASTRUE. Attorney advisors, we have lawyers who work essentially like law clerks for our judges in the hearing offices and when I came, they could not decide anything, they only could draft for judges to decide. But a lot of the judges are overloaded and some of evidence cases changed. Maybe a technical issue that has changed. There are categories of cases that we do not need to bother an administrative law judge for, so in these cases the Attorney—advisor program has been reasonably successful. I think that program is actually continuing to add improvements.

Our Office of Quality Performance has been instrumental in helping us design templates where we can now analyze the caseload electronically and look for markers that suggest that this might be a case that is off profile, that needs more development or should just be allowed, and we have taken those cases and generally sent them back to the DDSs for a decision, a lot of those cases are allowances.

[The information follows:]

INSERT FOR PAGE 111, LINE 2727

There are three initiatives in the Commissioner's Hearing Backlog Reduction Plan that involve processing some hearing requests without a full hearing. The DDS Informal Remand Initiative, the Senior Attorney Adjudicator Initiative, and Medical Expert Screening Initiative are all designed to identify cases which have sufficient medical evidence to support a fully favorable decision. By expediting these cases, we can provide claimants with fully favorable decisions more quickly by eliminating the time that would be involved waiting for a hearing.

- DDS Informal Remand Initiative

  - The DDS informal remand initiative was developed to increase ODAR's adjudicatory capacity and to reduce the paper case backlog by having DDSs look at re-opening certain cases based on scoring profiles established by the Office of Quality Performance (OQP). Using overtime, DDSs review cases, and if they are able to make a fully favorable determination, cases are returned to the SSA field offices for adjudication. If the claimant does not contact the Agency within 30 days of the date of the DDS notice of revised determination to pursue the hearing, ODAR dismisses the request for hearing. If the DDS is unable to make a fully favorable determination, the case is fully developed by the DDS (when possible) and the case is returned to ODAR. ODAR moves these developed cases to the front of the queue for scheduling.

  - Starting in July 2007, the DDSs agreed to review approximately 20,000 cases. By the end of FY 2007, DDSs had reviewed more than 16,000 cases and made favorable decisions on 8,714 cases for a reversal rate of 35%. Through the first half of FY 2008, the DDSs have reversed an additional 1,048 cases from FY 2007, bringing the total to 9,762. Thus far in FY 08, the DDSs have accepted over 27,000 cases. By the end of March 2008, DDSs had reviewed over 20, 000 of these cases and made more than 7,000 favorable decisions for a reversal rate of 35%. The DDS Informal Remand Initiative was initially developed to deal with the large backlog of paper cases. Based on its continued success, ODAR anticipates expanding the informal remand initiative to electronic folders as the DDSs gain the functionality which will allow them to do this.

- Senior Attorney Adjudicator Initiative

  - The purpose of this initiative is to allow certain Attorney Advisors to issue fully favorable on-the-record decisions to expedite the decisions and conserve Administrative Law Judge (ALJ) resources for the more complex cases and cases that require a hearing. The interim final rule which provided adjudicatory authority was published in the *Federal Register* on August 9, 2007. ODAR developed the business process for this initiative as well as a new simplified Findings Integrated Template (FIT) for fully favorable decisions. The initiative

was implemented on November 1, 2007, and can be used for electronic cases and paper cases. Hearing offices use the profiles developed by OQP and screening tools that have been developed locally to identify cases that are likely to result in fully favorable decisions. These cases are then assigned to an Attorney Adjudicator for review. If evidence in the file supports a fully favorable decision, the Attorney Adjudicator will draft a favorable decision and adjudicate the case. When the claimant is notified of the fully favorable decision, he/she is also notified that he/she has 30 days to request a hearing. If the claimant does not request a hearing in that time period, ODAR issues an Order of Dismissal. If the evidence in file does not support a fully favorable decision, the Attorney Adjudicator will complete a worksheet to summarize the issues in the case, state the reason the case does not qualify for an on-the-record decision and indicate the additional development that is needed prior to a hearing. From November 1, 2007 through April 25, 2008, Attorney Adjudicators have made favorable decisions on 12,199 cases.

- Medical Expert (ME) Screening

  - This initiative was implemented to identify disability claimants whose impairments are most likely to meet the requirements for disability, through the use of a pre-hearing interrogatory. Prior to assignment to an ALJ, hearing offices use the profiles developed by OQP and screening tools that have been developed locally to identify cases that are likely to result in fully favorable decisions. An ME is asked to complete a brief set of interrogatories. If the case can be allowed on the record, the case is routed to an Attorney Adjudicator for review and decision. For cases that cannot be allowed, the ME's response is included in the record and the case routed to an ALJ for normal processing. ODAR implemented this initiative on March 14, 2008 and is currently collecting data on the number of favorable decisions that are being made as a result of this initiative.

We are also, as I mentioned to the Members of for the Michigan delegation, in those states that do not have reconsideration, it is probably more likely that there is a higher percentage of cases going to ODAR that probably should not be there in the first place. So we are looking at some new screens and we are up and running I think in June and July in Michigan to try to see if before those cases ever get into ODAR at all, whether they should either be sent back to the DDS or they should go to ODAR with the suggestion that they should consider a prompt allowance.

Mr. MEEK. Let me ask this question because, as you know, we are under time limits. Have those reforms as it relates to taking down the backlog before you get to a full blown hearing, I heard you talk about the fact that the appropriations process has not been helpful, and I am pretty sure the Office of Budget and Management has not been the best friend in the world of setting the stage already.

Mr. ASTRUE. I actually do not have any complaints about the OMB. I will be honest we did better with them than I thought we would.

Mr. MEEK. Okay, but it is not the ideal world that we need to get us out of the hole.

Mr. ASTRUE. Not the ideal world.

Mr. MEEK. So, I guess has this been highlighted in your request this year of saying these—especially with the backlog issue, are

these issues Congress you can look at in helping us deal with the backlog because if that is—if these reforms are working, then these are the things that we need to look to in the short term, especially under these budget restraints that we are under now, of how we can deal with some of those cases. My wife is an administrative law judge, and I can tell you right now, not for you all, I just want to clarify that.

Mr. ASTRUE. My wife used to be a Democratic staffer for a Congressman.

Mr. MEEK. I just want to clear that up, but I think it is important that we look at these, the things that are working maybe below the radar screen but would help break down the backlog because I can tell you right now, I have constituents coming into my office saying, "I do not know why I am coming to see you because you have not been able to do anything about my problem."

Mr. ASTRUE. Right.

Mr. MEEK. So I am thinking that if we can get that, if someone from your staff, at least for me, I will be an advocate as it relates to the appropriate appropriations Committee of dealing with this and saying we need to pinpoint money right here so that you have the kind of army you need to deal with those cases and set them on priority, you may be able to clear a lot of them.

Mr. ASTRUE. That is a great question, I would be happy to work with you on this. One of the things that I think is important to keep in mind is that for the first part of this decade, the backlog was going up pretty consistently about 75,000 cases a year. In my first fiscal year, that dropped to about 32,000. I think annualized right now, and I will correct this for the record if I am misremember, we are at about 24,000. It is not where we want to be. We have had fewer resources, and so there should be real progress when the resources come. Those initiatives that we put in to try to put our finger into the hole into the dam right from the get-go, I think have been working pretty well. We may need your help on some of these. So, for instance, I think the attorney—advisor proposal initiative has been helpful, it is a factor in keeping the backlog down. Right now, it is a sun-setted regulation so that will come up for permanent extension with the new Administration and, as undoubtedly you know, I am going to be inflicted on the next Administration. I think it is highly likely that we are going to want to work with the new Administration to make sure that that program is extended at a minimum and maybe we will want to expand it in certain ways. I think it is going to be important probably for some Members of this Committee to be fluent on what we are doing, satisfied that we are doing the right things and help us with the new Administration, whoever it is that is trying to figure out what to do. We are doing the right things here on some of these and where we are going to need help with the new OMB.

[The information follows:]

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Based on experience so far in Fiscal Year 2008, we expect the hearing backlog to increase by about 11,000 cases this fiscal year.

Mr. MEEK. Well, thank you so very much for your response. Mr. Chairman, I thank you for your work in this area. As you know, I am the only Member from Florida on this Committee, and with all of the folks that we have involved in Social Security, you know this is a majority priority for us, so thank you, and I look forward to working with your staff.

Mr. ASTRUE. Thank you.

Mr. MCNULTY. Thank you, Mr. Meek. If there are no further questions, we will close the first panel. On behalf of Chairman Rangel and Ranking Member McCrery, I want to thank you, Commissioner, for being with us today for your testimony.

Mr. ASTRUE. Thank you.

Mr. MCNULTY. For your hard work on this issue and for staying with us for about three hours to answer our questions. Shortly, we will adjourn the first panel, and I will turn the Chair over to Dr. McDermott, who is going to chair for the second panel. But before I do that, Commissioner, I know that you are very serious about tackling this backlog problem. You have shown that, you have demonstrated that by your actions, and we have been there to try to help you with the additional money in last year's budget, even more in this year's budget, and we want to keep moving in that direction. I know you have looked at this problem from the perspective of the agency, and I know you have traveled around the country to look at it from the perspective of our constituents, the American citizens. I just want to leave you with a thought about looking at it from our perspective, the representatives of the people. One of the things that we kind of pride ourselves on when we serve in elective office, and I have served in elective office for 39 years, is that when a constituent comes to us and asks for help, that we get them an answer in a timely fashion.

Mr. ASTRUE. Yes.

Mr. MCNULTY. We have all had the experience of having constituents come to us, meet with us face to face with what seems to us to be a very obvious case where they deserve these benefits, which they have paid for, and we respond back to them, "We will get back to you with an answer in a year or two years or more." This is an example of government at its worst. It is an embarrassment to us as representatives of the people. Many Americans are suffering because of what has gone on in the past with regard to this backlog issue. I am one that does not tend to look backward and try to assess blame as to how we got into the situation that we are in, I want to look forward and figure out how the hell we get out of this thing and get back to a position where we are properly representing our constituents and making sure that when they are entitled to benefits from their government, which they have paid for, that they get them in a timely fashion. So I exhort you today, Commissioner, to keep doing what you are doing, let us know when we need to do more because we want to step up to the plate and make that happen. Also that we all be on guard to make sure that other peripheral outside issues do not end up interfering with this modest progress that we have made up until now and which we hope we can accelerate in the weeks and the months and the years ahead. Thank you, Commissioner.

Mr. ASTRUE. Thank you and I agree with you 100 percent. Again, thank you for your support, Mr. Johnson's support, the support if the entire Committee has been vital to help turning around things, and we are going to count on you at least as much going forward, so thank you.

Mr. MCNULTY. Thank you, Commissioner. We will hear from the second panel and Dr. McDermott will assume the Chair.

Mr. MCDERMOTT [presiding]. The Committee will come to order. Witnesses on the panel would take their seats at the dais, we welcome you and we also are grateful that you have stayed, waiting three hours. You have now heard from the administrator and the Committee a variety of perspectives about what the problem here is and what ought to be done and so forth. You have all submitted testimony to the Committee, and without objection, your full testimony will be put into the record. I would hope that as you testify here, you do not merely re-do what is in your report because it is already there, and what we would like most from you is to respond to what you have heard so far. I think that although there are just a few Members here, there are plenty of staff listening and so this is an important learning experience for us, to hear your response to what the administrator said. I hope that with that in mind, you will adjust your testimony. I know after you have spent all that time belaboring over it, it is desirable to come and read it to us but do not please. We really want to hear what you have been thinking about for the last three hours as you have sat and listened to this hearing.

We have today with us Mr. Schieber, who is the Chairman of the Social Security Advisory Board, and we will start with you, Mr. Schieber. If you will press the little green button there in front of you, I think you can probably get on the air.

STATEMENT OF SYLVESTER J. SCHIEBER, CHAIRMAN, SOCIAL SECURITY ADVISORY BOARD

Mr. SCHIEBER. Mr. Chairman, Mr. McCrery, I want to thank you and all the Members of the Committee for holding this hearing, this is extremely important. I have been on the Social Security Advisory Board since January of 1998. The first report we wrote when I joined the Committee, the Advisory Board, was on disability. I think we have done some 15, 16 reports, statements, major statements on the disability program since then. In many regards, we have known for quite a long time about the problems that we are talking about today. They were on the horizon long before they got here.

I think as you think about this problem and how to address it and some of the issues that were raised in the earlier discussion, we need to think about this as a process from beginning to end. Part of the problem here is that there is no one single owner of the process throughout its various stages. You start with your application at the DDS level but that is really not a single process itself. There are 50 states, each has its own independent DDS. In addition to the 50 states, we have got four other systems, one for the District of Columbia, one for Guam, the Virgin Islands and Puerto Rico. Just in terms of operating systems, there are three broadly used systems but then two of the states have their own hybrid sys-

tems that they use. Even as they implement them on single platforms, there are variations from one state to another.

We heard a bit this morning about the need to move away from COBOL. The Social Security Administration, as they move into the electronic age, has been forced to cannibalize operating budgets to try and move out of the fifties technology platform that they are on and that has simply not been enough. They recently moved to the electronic disability folder and now virtually all of their applications are taken in electronic form. But to a considerable extent they cannibalized their operating budgets during the period they were developing that.

A number of years ago, I was doing a presentation, I have worked in the private sector over virtually all of my career for a major investment organization, and the chief executive officer was doing a presentation for all the senior Members of their staff, and he was talking about literally spending billions of dollars to invest in the new technology platform. They were not cannibalizing their current operating budgets, the people with money invested through them had to be able to check on what was in their accounts during that period of time. They were making a capital investment and they were going to amortize that over a period of time.

I think if you want to address the problem we have here on the system side, literally moving from the fifties into a more modern era, you may need to think about moving in that direction to deal with this problem. It does not necessarily need to be a long-term added commitment, it needs to be a capital investment with accountability, that they need to put together a system that starts from the beginning and is thought through all the way to the end of the process so there is actually integration. When we think about the DDS system and the 54 systems or whatever they have there, they are hooking up to Social Security systems and those have not been integrated in the way that they should. So, as they move into the new era, they ought to figure out how to integrate those systems.

One of the other major issues that they face as they move into the new era are productivity issues, and I raise that in my testimony and it came up a number of times here today. There was an article in the *Federal Times* last week about ODAR, Office of Disability Adjudication and Review. A number of their people have become upset as they have implemented the electronic file that they no longer can work at home as much as they used to. They cannot have as many days when they are not working on site in the office. The reason for that is all of the concern that we all know about with electronic files, and because Social Security is determined to maintain for the security of these files, they have to be kept secure computers. But as they have moved to processing electronic files, that is now required that people work in the office more than they did in the past and there has been a complaint filed and the mediator has found in favor of the worker. So, we are forcing the agency to deal with again fifties processes, revolving around paper files. In fact I am not sure paper files are any more secure at home than computer files but that is another story.

We heard some concerns about ALJ productivity. There are a couple of issues on ALJ input productivity. One of them has to do

with how many cases these ALJs hear. There are quite a substantial number of ALJs in 2006 that I know of that handled fewer than 200 cases. The Commissioner has now said that he would like for the ALJs to handle as many as 600 or 700 in a year. He is going to need to be able to encourage and actually enforce that kind of productivity if he is going to achieve what he is trying to achieve.

But there is another issue here, there is also an output productivity concern that we all need to have. There is a group of ALJs on the other side of the productivity equation, a group of ALJs that is hearing massive numbers of cases. In 2006, there was one that disposed of 2,500 cases. Think about handling 2,500 cases, these are complicated cases, in the period of a year, and one of the things that I know is that as the disposal rate goes up, the approval rate goes up and that should be a concern to all of us.

I have looked at the corps of ALJs, the ones in the 240 to 700 case disposition a year, and I have found judges that have an approval rate of 30 percent, I have found judges that have an approval rate of 99 percent. Now, I think both of those numbers are wrong. I think that if there is a judge that is not approving cases, that probably there are people who are worthy of getting these benefits that are being denied. But when we approve cases on a rubberstamp basis and we are not paying attention to the law and we are not paying attention to the facts, we are giving away money that is very substantial that we owe the taxpayers some concern about.

The average cost of one of these cases, lifetime cost, is well over a quarter of $1 million dollars. We need to be wary about the issues that we are facing and that is part of the stewardship issue that has been raised here a couple of times this morning. One of the issues on stewardship that you need to focus on, I know there is a difference between operating budgets and trust fund money, but time after time when we have looked at the stewardship issues, the review of disability cases does catch individuals who do not deserve to be receiving benefits who are receiving them. The estimate by the Social Security actuaries is that for every dollar we spend here, we return $10 to the taxpayer. But we have canceled doing much of this work in recent years because of the other burdens that the system is trying to deal with. This is pound penny wise and pound foolish. I would think that if you went home and tried to explain this to your constituents, you would have a hard time convincing them that this is good policy.

So, I guess my comments, and I will close here, are that we first of all need to think about this on a holistic basis, maybe we need to make some capital investments so we can get out of some of the morass that we are in. We cannot cannibalize operating budgets. The Commissioner is dealing with this massive backlog of cases, but if we want to move into the 21st century, we have to bring on new systems and they have to be systems that are based in the current technology and they have to be coordinated from beginning to end. I will close in saying in my opening comments, I said in some regard this reminds of the story from Greek mythology, Sisyphus. As I say, I have been on the advisory board for 10 years now, we have been look at this issue all of that period of time. We have

pushed this rock up the hill time after time, but it seems to keep rolling back on top of us and it is time that we all start thinking about this in a much more logical and smarter fashion than we have been.

Thank you very much.

[The prepared statement of Sylvester J. Schieber follows:]

Prepared Statement of Sylvester J. Schieber, Chairman, Social Security Advisory Board

Chairman Rangel, Mr. McCrery, Members of the Committee. I am pleased to have this opportunity to appear on behalf of the Social Security Advisory Board to discuss the backlogs in the Social Security disability programs as well as the current funding situation. I would like to give you the Board's perspectives on the continuing challenges facing the agency and our concerns about the future.

As I reflect on the current state of affairs at the Social Security Administration I am reminded of Sisyphus from Greek mythology. As you will recall, the gods condemned Sisyphus to endlessly pushing a rock up a hill only to have it roll down again and again. It strikes me that this is exactly what is happening to the employees of the Social Security Administration who are charged with running the disability programs and the citizens who are touched by it. We owe them a better future.

Is History Being Repeated?

The difficulties with the disability program are not new to the Advisory Board. Since the Board's inception in 1995, the bulk of its work has focused on the disability program. I personally have been on the board for more than 10 years now and it has been our major preoccupation over my entire tenure. Beginning with one of the Board's earliest reports in 1998, we expressed concerns about the sustainability of the program given the anticipated growth in the workload, its resources, its labor intensive processes, and the perceived lack of consistency in applying Social Security's own policies. And that was at a time when there were only 1.2 million new claims filed every year, and the backlog in the hearings process was under 400,000 claims. Moreover, this was after a period when the agency had diverted resources from other parts of the program in order to return the appellate process to a semblance of efficiency.

But by 2001 the Advisory Board felt compelled to issue another report citing deteriorating service in the field offices and a disability program that was swamped with a backlog of claims. By 2001, Social Security's capacity to serve the public was increasingly at risk due to a long-term reduction in staff levels, increased volume of claims, and the overwhelming burden of complex program rules. The then-Chairman of the Advisory Board told *The New York Times* in February 2001 "Unless there's fundamental change, we will soon see disruptions of service. The Social Security agency lacks the ability to handle existing workloads, and those workloads are bound to increase in the next decade. Everybody knows there is a long-term deficit in the financing of Social Security. But there's also a deficit in the agency's ability to provide good service, and that should be equally alarming to Congress and the public."

When I appeared before the Social Security Subcommittee in February 2007, applications for disability benefits were averaging 2.5 million per year. The Disability Determinations Services (DDS) had a little less than 550,000 initial claims pending. But this DDS pending backlog was due to extraordinary pressure on the DDSs to adjudicate initial claims as a priority workload. What gave the impression as being good customer service at one stage actually resulted in increased workloads and delayed processing downstream. Resources were diverted from processing reconsideration cases in order to process the initial claims. The backlog at the DDS's reconsideration stage grew by 30,000 and an ever-larger fraction of individuals found themselves waiting nearly 6 months for an initial decision.

On average, about 75 percent of those denied at the reconsideration level file for a hearing before an administrative law judge. So, it should be no surprise then that as the DDSs cleared out their backlog of reconsideration cases, cases flowing into the hearings level climbed to 579,000. By the end of 2007, there were 746,000 cases in the hearings queue waiting for an ALJ judgment.

Today, we are half way through Fiscal Year 2008, a year in which the Congress actually increased the President's budget request by $150 million. The additional funding has provided SSA with some flexibility this year. The SSA managers have

not had to choose between hiring administrative law judges and keeping the lights on in the field offices. I would like to tell you that this one time injection of additional resources has been enough to turn the tide. But it has not.

Today there are over 560,000 initial claims and 107,000 requests for reconsideration pending in the DDS and another 756,000 claims at the appellate level. I suppose that if there is any "good news" it is that the waiting time for a hearing has held steady at 503 days in the Office of Disability Adjudication and Review. Personally, I believe that taking an average of 503 days to process these cases at the hearings level should be an embarrassment to us all.

The Social Security Administration's employees have always taken pride in their "can do" attitude even in the face of growing workloads, new workloads, and insufficient resources. But the reservoir of optimism is low.

We can talk about our commitment to public service and our willingness to address the needs of those individuals who turn to Social Security on a daily basis. But the reality is that thousands of disability cases languish for years as the claims representatives, the disability adjudicators, and the administrative law judges struggle with crushing backlogs and steadily declining numbers of workers. If we want to achieve the goals of this program, we have to pay for it.

Pressure on the DDS has Negative Affects on the Hearings Level

The focus of this hearing—clearing the backlogs and providing adequate resources—needs to be about more than just the state of the workload at the hearings level. It must take into consideration the critical steps all along the determination process. It must recognize the problems with the systems infrastructure that supports the work being done by staff at all levels. It must acknowledge that the baby boomers that will cause problems for the retirement program down the road are now in their disability prone years resulting in increased applications that would require higher productivity if the workforce handling cases remained stable. But it has not remained stable; we have seen the result of the triple jeopardy: a workforce that is being shrunk relentlessly, steady workload increases, and a lack of technological investments that could balance demands.

DDS claims processors operate under processing time, productivity measures, and quality control rules that put unreasonable stress on their process and, as a result, change behavior. Forcing managers to choose to adjudicate one type of claim, whether it is an initial claim or a request for reconsideration, over another sends a very strong message about their relative importance. Moreover, a quality review process that targets allowance decisions almost exclusively also sends an unintended message. Only a small fraction of denied cases are selected for quality review. The chance of an insufficiently documented denial determination sliding through the system unchecked cannot be discounted. There may be many reasons why there has been a steady decline in allowance rates in the DDS, but it certainly seems likely that inadequate investment which has led to a "start and stop" type of work environment is a major factor. This is not about a culture of denial but more about human nature. When faced with pressure to clear cases quickly, adjudicators may take shortcuts and those shortcuts can lead to unintended outcomes.

One of the initiatives in the Commissioner's *Plan to Eliminate the Hearings Backlog* is the informal remand process. Cases that were denied by the DDS and are waiting for a hearing at the Office of Disability Adjudication and Review (ODAR) are being screened and where appropriate returned to the DDS for another look. The program has been in place for about a year now and the cases that are sent back have been purposely selected because they are the most likely to be proper allowances. Nonetheless, out of the 34,000 cases informally remanded so far, the DDSs have allowed 43 percent and well over two-thirds of those were allowed without any additional development. There are a variety of reasons why these cases are now being approved without gathering more evidence than was gathered months or years ago, but we cannot discount that processing pressures in earlier stages of adjudication could have caused inadequate review the first time around. An added sad footnote to this story is that some of the cases now being given a favorable disability determination after being remanded to the DDSs sat in the hearings queue at the ODAR level for three or four years before being returned for DDS review. Of course, this gives rise to the question: If we had enough evidence years ago to decide that these applicants were disabled, why didn't we reach the conclusions then?

From the Board's perspective, there must be investment in the front end of the process. SSA and DDS management should not have to make choices about which cases are adjudicated timely and fully developed and which are not. But that is the situation in which the disability system managers continue to find themselves.

SSA has made tremendous strides in the development of the electronic folder. For all of its strengths, it has some striking weaknesses; primarily that it is not a "sin-

gle system". Case production processes are not coordinated from beginning to end. First, there are 50 state DDSs plus five other territories and offices working with five different basic IT operating systems. Even in cases where DDSs are on a common main platform, there have been variations in their adaptation from one DDS to the next. While all of these operating systems and their variants feed data to the electronic folder, the actual development and decision analysis is captured only in each DDS's own case processing system. And beyond that, there is virtually no end-to-end consistency in developing and adjudicating cases.

The main goal in initiatives like the development of the electronic applications folder may be to drain the backlog swamp, but there are so many alligators nipping at the various components they have lost focus on the way forward. Consider the development of an approach to support the systematic case determination process for the DDSs. To this end, an electronic tool, known as eCat, was created to help adjudicators develop claims on a consistent and complete basis. The budget to develop this system was cannibalized from the Social Security operating systems budget resulting in a patchwork approach to development and support. Robbing Peter to pay Paul is generally a recipe for failure, but it is particularly unwise in systems development.

The eCat system was rushed through development, was unfinished at roll out, did not work when it was put into production and brought the rest of the electronic case processing system to a grinding halt. As a result, a promising new tool was pulled from operation because of poor execution and the rush to premature implementation. Today, there is a new initiative underway in a lab environment that appears to hold great promise, but it is not clear how it will be integrated into an overarching integrated system.

While the eCat experience is disconcerting, we recently learned that the Office of Disability Adjudication and Reviews is evolving its own electronic adjudication tools to take advantage of the electronic folder, including a format for decision writing that is designed to bring greater consistency and improved productivity. It appears that ODAR has only cursory awareness of the DDS eCat initiative and has had no input into its development even though they are the "recipients" of the decisional outcomes. Furthermore, they have not been able to explore how eCat can lead to efficiencies in the hearings development process. There appears to be a lack of a holistic electronic systems strategy that is linked to a well thought-out process structure, that is properly resourced and that emphasizes the interdependence of the operating components.

Building an Infrastructure for the 21st Century

Ten years ago the Advisory Board questioned how well the Social Security Administration would be able to develop the technological infrastructure that would be needed to support the growing number of claims. We believed then as we do now that in order for the agency to meet its workload challenges, it must have a forward—thinking service delivery strategy that capitalizes on advances in technology. The National Research Council issued a very compelling report last year wherein they stated that the agency faces fundamental challenges in its ability to deliver services and urged SSA to articulate a vision for electronic service delivery.

Furthermore, they highlighted the very real vulnerabilities facing SSA if they did not begin a systematic transition to a more modern infrastructure. This is not about buying the latest fancy personal computers. This is about moving away from COBOL-based operating systems, a 1950's technology, to modern software languages and tools. This is about moving away from manual work sampling to integrated data collection that permits inline measurement and quality review systems that can assess what works, what does not, and the difference between the two. We are talking about the potential for redesigning work in an organization that is stifled by institutional barriers between components and work rules that are crippling productivity advances.

When Social Security Commissioner Michael Astrue took over his current position, he found a backlog of disability applications that had been in the ALJ hearings queue for more than 1,000 days. Last year he set as a goal for the agency disposing of all of these cases. This year, he has set as a goal eliminating the backlog of some 135,000 cases that would be 900 days old at the end of the fiscal year. Commissioner Astrue and the people involved should be applauded for implementing any effort to reduce hearings backlogs and waiting times for decisions.

Yet we read in the *Federal Times* last week that a group of Social Security employees has filed a complaint against the agency because the implementation of the electronic disability application process has reduced the number of days that case technicians in the Office of Disability Adjudication and Review can work at home as they help prepare cases for ALJ hearings. In this modern era, with concerns

about the security of private personal information in government files, Social Security has determined that applicants' electronic files must be maintained on agency computers and the implementation of the new technology has reduced the amount of work that can be done outside of office sites preparing cases. The mediator hearing this complaint has ruled that Social Security must reinstate the work-at-home policies that were workable in the old paper-file world but outmoded in the modernized environment.

One cannot help but wonder whether the taxpaying public might find it ironic that it is unreasonable to expect people who are being paid to prepare disability cases for hearings to come to the office to work during the time they are being paid but that it is reasonable to expect disability applicants to wait up to 899 days to have their appeals for benefits heard by an ALJ. The parsing of this story may help to explain why all of the leading candidates for President from both political parties have sensed the American public's desire to change the way things are done in Washington.

We are painfully aware that future Congresses and Administrations will be facing resource constraints that will become more austere than anything we have seen to date. Rather than commit to long-term increased support of what is an unsatisfactory process for the stakeholder at all levels, maybe it is time to restore a temporary multi-year capital fund to modernize the functions at all levels of this operation and develop systems to implement the solutions. This capital budget would be for limited duration and come with a stipulation that the net results be a modern integrated system that delivers efficiencies in the operation, increases throughput of workloads, and shortens the processing time for applicants. If there is need for legislative action to modernize and facilitate the determination process as part of this modernization effort, the agency should come forward with recommendations to achieve this.

Invisible Workloads

In the Advisory for this hearing, the Committee noted that the agency is forced to divert resources away from routine workloads in the processing centers in order to manage the volume of cases awaiting decisions. This is an unfortunate trade off to be forced to make. Without adequate funding for the post-entitlement work done in the processing centers, the spouses and children of disabled workers may not receive their benefits in a reasonable timeframe. Beneficiaries who report earnings on a timely basis may be overpaid because the workers in the processing center could not reconcile the information in time to make the needed adjustments. SSA estimates that it will cost around $400 million in FY 2009 just to keep on top of this backroom work, annually, without consideration of what work is already unresolved. Unless there is sufficient investment in this workload, the post-entitlement backlogs will be the next headline.

As the agency that touches virtually every individual in the country through its benefit programs or through its repository of records, SSA is the agency that Congress turns to when it needs assistance with carrying out broad national initiatives. The welfare reform legislation in the mid-1990's meant that the field staff had to become experts in immigration and naturalization records; Medicare Modernization rules mean that they now have to make more complicated Medicare premium calculations based on complex tax rules, and they have acquired an ongoing workload comprised of determining the qualifications for Medicare Part D low income subsidy redeterminations. And now there is discussion about adding additional non-mission workloads revolving around immigration and Medicare.

Historically, Congress funds the start-up costs for these programs but does not make provisions for the ongoing costs of doing the work. The agency is expected to absorb the cost in the out years in its "base" budget. However, because fixed costs such as rent, guards, and salaries exceed the average growth in the administrative budget, there is no cushion to absorb additional work without additional resources. These workloads must be funded appropriately and that includes for the long term.

I would like to add a word of caution, however, that this is about more than just money. I know that one of the reasons that Social Security is assigned these tasks is because they have the critical national mass that does not exist elsewhere. And, they have an outstanding workforce. But the accumulation of these added mandates is reaching the point of critical stress for this agency—we are perilously close to adding the proverbial straw that breaks the spine here.

In my testimony before the Social Security Subcommittee last year, I pointed out that SSA has been forced into curtailing its stewardship responsibilities even though that workload returns benefit savings that are many times its administrative costs, $10 in savings for every $1 spent. By the end of this fiscal year, it is estimated that there will be just around 1.3 million claims sitting in a backlog that should have these reviews performed. I realize that there is a budgetary distinction

between administrative and benefit spending, but that is an artificial distinction that most taxpayers supporting Social Security would consider ludicrous. You might want to support an incentive-based stewardship approach whereby the Agency can retain a percentage of such stewardship savings. Abandoning the ability to minimize improper payments is not only wasteful, but will worsen the future year total deficits that will constrain future discretionary spending.

Maintaining Public Service in an Era of Growing Workloads

Over the next 10 years, SSA's workload will increase dramatically. Retirement claims will jump by over 40 percent and disability claims will rise by nearly 10 percent. Last December there was much fanfare as the first of the 80 million baby boomers applied for retirement benefits. The agency expects to process 4.3 million claims in 2008 and is bracing itself for a 23 percent increase by 2013. The recently released 2008 OASDI Trustees Report estimates that by 2015 there will be 50 million retirees, widows and widowers, and dependents receiving benefits and they will be expecting efficient and modern service from the Social Security Administration.

But the anticipated growth in claims does not stop there. The baby boomers are entering their disability prone years and the number of initial disability claims is projected to rise steadily from 2.5 million to close to 2.7 million by 2013. Unless there is a fundamental rethinking of the definition of disability and how this vital safety net fits into the 21st century, the Trustees tell us that the number of disabled workers receiving benefits is projected to grow from 7.1 million at the end of 2007, to 8.7 million in 2015. The "silver tsunami" of the baby boomers will most assuredly place a tremendous strain on SSA's resources unless the shortfall in funding and the need for modernization are addressed.

Long-Term Solvency

I hate to remind the Committee about the grumpy uncle whom no one wants to claim as part of the family, but I feel obligated in my position to raise with you the issue of the long-term solvency of this vital program.

The recent Trustees Report might seem to suggest that the outlook for financing has improved relative to earlier measurements. The better estimates in this year's report relate largely to changed assumptions about immigration levels and do not change the underlying story about the challenges that our nation's demographics pose for Social Security. Disability is part of that demographic challenge.

An aging population brings with it greater incidence and prevalence of disability. In this regard, the Disability Insurance (DI) Trust Fund component of the system is underfunded and the funding of DI is a problem that will need to be addressed by Congress. The timing of the disability funding shortfall precedes that of the Old Age and Survivors Insurance (OASI) Trust Fund. Thus, any surplus that might be viewed in OASI as a buffer will be short lived. The contingencies regarding disability and the related work limitations are substantially different than in the case of the Old Age insurance program and they deserve careful consideration. Resolving the disability financing situation and any reforms that might go along with it should not be an afterthought in the solvency discussion.

Mr. Chairman, I hope these comments are helpful to the Committee as it examines the backlogs in the disability programs and addresses the need for increased resources in order to support them. These critical safety net programs have been a major concern of the Social Security Advisory Board and we intend to keep a close watch on them. I would be happy to provide any additional information that may be helpful to you, and I would be happy to answer any questions you may have.

Mr. MCDERMOTT. Thank you for your testimony.

Marty Ford, who is the cochair of the Consortium for Citizens with Disabilities Social Security Task Force.

Ms. Ford?

STATEMENT OF MARTY FORD, CO-CHAIR, CONSORTIUM OF CITIZENS WITH DISABILITIES SOCIAL SECURITY TASK FORCE

*Ms. FORD. Thank you Mr. Chairman and Members of the Committee. Thank you for inviting me to testify.

As you know, Social Security and SSI benefits are the means of survival and a lifeline for millions of people with disabilities. As

you know, the delays and the backlogs are intolerable. When a decision is appealed, people can wait years for a hearing, but they also wait additional time for a decision, and then again wait for the actual payment of benefits. That needs to be kept in mind. In the meantime, their lives are unraveling, their families are torn apart, their homes are lost, their health deteriorates, and some people die before a decision is made.

One of the CCD Members, the National Organization of Social Security Claimants; Representatives conducted a quick survey of their representatives to get an update on how the backlogs are affecting people. My complete testimony has stories from 29 states, and I want to mention a few.

A man from Brooklyn, New York who has major depressive disorders and other conditions requested a hearing in March of 2004. The hearing office failed to send him a notice, and the hearing was dismissed when he did not appear. He obtained an attorney who asked to reopen the case. Following a hearing, the ALJ issued a favorable decision. He got his first SSI payment four and a half years after his appeal. While waiting, he lost access to medical coverage, his attorney helped him prevent eviction, he went to food pantries, and he actually had to borrow money to ride the subway to his hearing.

A Florida woman's disabilities stemmed from a shooting and chronic obstructive pulmonary disease. After her claim was denied, she requested her hearing in April of 2006. Nearly 2 years later, just this March, the ALJ allowed benefits. Unfortunately, she died before receiving the written decision. While waiting, she lived with her mother who has dementia and chain smokes. About a week before her death, she told her attorney that she believed she would die if she could not get into a smoke-free living situation. Her attorney believes that her compromised living situation due to lack of income shortened her life.

A 61-year-old Michigan man requested a hearing in September of 2005. His case was transferred to another hearing office because of an overload in the Grand Rapids office, and a hearing was held in 2007. Over two and a half years after his request, he received a favorable decision in February, but as yet he has received no benefits. His is dependent on his children to pay his bills.

I could go on, and as I said, my testimony contains a number of these examples. These are just a few of the claimants who have faced real hardship and the time constraints here don't allow me to fully convey the pain and anguish that they and their families have endured.

As has been fully discussed today, the problems are due to the lack of funding for the administrative process for SSA. We think that the President's budget request for fiscal 2009 does not go far enough. Even under that budget, SSA predicts a combined shortfall of 8,100 work years, 8,100 work years short for fiscal 2008 and 2009. At the same time, SSA must continue to streamline and operate more efficiently. Commissioner Astrue has indicated that the agency has begun a number of initiatives to expand technological and other improvements.

My testimony includes additional recommendations for improvements in developing evidence earlier in the process, and we think

that this is one of the keys to why some of these cases go on too long. In the case examples, there are many that are listed as having on the record decisions. While some of that may be due to the fact that the person's condition has worsened, advocates are reporting that in many cases, some of this evidence should have been obtained earlier in the process if it had been requested or if what was needed had been explained to the providers and to the claimants.

In all the initiatives, we think care has to be taken to determine how any process change will affect the claimants and beneficiaries for whom the system exists. People who find they cannot work at a sustained and substantial level due to disability are faced with a host of personal, family, and financial circumstances that impact how effectively they can maneuver the system.

SSA must continue to improve its role in ensuring that an individual's claim is fully developed before a decision is made, and we urge Congress to provide SSA with the resources necessary and provide over and above that which the President has asked for, as SSA needs it.

Thank you.

[The prepared statement of Marty Ford follows:]

Prepared Statement of Marty Ford, Co-Chair, Consortium for Citizens with Disabilities Social Security Task Force

Chairman Rangel, Ranking Member McCrery, and Members of the House Ways and Means Committee, thank you for inviting me to testify at today's hearing on Clearing the Disability Backlog—Giving the Social Security Administration the Resources It Needs to Provide the Benefits Workers Have Earned.

I am a member of the public policy team for The Arc and UCP Disability Policy Collaboration, which is a joint effort of The Arc of the United States and United Cerebral Palsy. I serve as Chair of the Consortium for Citizens with Disabilities (CCD), and also serve as a Co-Chair of the CCD Social Security Task Force. CCD is a working coalition of national consumer, advocacy, provider, and professional organizations working together with and on behalf of the 54 million children and adults with disabilities and their families living in the United States. The CCD Social Security Task Force (hereinafter CCD) focuses on disability policy issues in the Title II disability programs and the Title XVI Supplemental Security Income (SSI) program.

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

I. THE IMPACT ON PEOPLE WITH DISABILITIES OF INSUFFICIENT FUNDING FOR SSA'S ADMINISTRATIVE BUDGET

As the backlog in decisions on disability claims continues to grow, people with severe disabilities have been bearing the brunt of insufficient funding for SSA's administrative budget. Behind the numbers are individuals with disabilities whose lives have unraveled while waiting for decisions—families are torn apart; homes are lost; medical conditions deteriorate; once stable financial security crumbles; and many individuals die.[1] Numerous recent media reports across the country have doc-

[1] If a claimant dies while a claim is pending, the SSI rule for payment of past due benefits is very different—and far more limited—than the Title II rule. In an SSI case, the payment will be made in only two situations: (1) to a surviving spouse who was living with the claimant at the time of death or within six months of the death; or (2) to the parents of a minor child, if the child resided with the parents at the time of the child's death or within six months of the

Continued

umented the suffering experienced by these individuals. Access to other key services, such as replacing a lost check or promptly recording earnings, also has diminished. Despite dramatically increased workloads, staffing levels throughout the agency are at the lowest level since 1972.

Backlog in Appeals of Disability Claims: The Human Toll

The National Organization of Social Security Claimants' Representatives (NOSSCR), a member of the CCD Social Security Task Force, recently conducted a quick survey of their members for an update on how the backlogs are affecting claimants. The following short descriptions of individual's circumstances are a sampling of what is happening across the country to claimants who are forced to wait interminably for decisions on their appeals. Your own constituent services staff are likely well aware of similar situations from your Congressional district.

- Mr. R is 38 years old and lives in Brooklyn, New York. He has major depressive disorder, anorexia nervosa with severe weight loss, somatoform disorder, and generalized fatigue. He applied for SSI benefits in September 2003 and requested a hearing in March 2004. The ODAR hearing office failed to send a Notice of Hearing for the hearing, scheduled in December 2006. As a result, Mr. R did not appear and his hearing request was dismissed. He obtained representation in June 2007 after the dismissal. His attorney immediately contacted the ALJ and submitted all documents establishing that Mr. R was never informed of the hearing. She also sent all medical evidence she had obtained. The attorney asked the ALJ to reopen the case and to schedule an expedited hearing. The hearing was finally held in November 2007 and the ALJ issued a favorable decision in late November 2007. There still was a delay in receipt of benefits as Mr. R did not receive his first SSI past due installment payment until March 2008 and his first SSI monthly payment until April 2008.

  While waiting for the hearing decision and benefits payments, Mr. R lost his welfare benefits and Medicaid, so he could not receive treatment. His anorexia nervosa was so extreme as to cause severe tooth decay requiring dentures. He received an eviction notice for his apartment but his attorney worked with the landlord to stave off eviction based on the fact that a new hearing was being scheduled. Because his welfare case was closed, Mr. R had no money. He had to go to food pantries for any donation and his neighbors helped him from time to time. He even had to borrow money to ride the subway to his hearing.

- Ms. K applied for disability benefits in August 2004. She lived in Key West, FL. Her husband shot her 5 times in the liver and abdomen and then killed himself. Her disabilities stemmed from these injuries and from chronic obstructive pulmonary disease (COPD). Her claim was denied and she requested a hearing in April 2006. Nearly two years later, her hearing was held in March 2008 and the ALJ stated that benefits would be awarded. Unfortunately, Ms. K died in late March 2008 of long-term complications from her wounds and COPD, before the written decision was received. Because she did not have money to live independently, she was forced to live with her mother. The mother, who has dementia, is a chain-smoker. During the last part of her life, Ms. K had frequent hospitalizations. She would then return to her mother's house and her condition would worsen. Her attorney last saw Ms. K about a week before her death. Ms. K told her attorney that she believed she would die if she could not get into a smoke-free living situation. Since Ms. K died in part from COPD, her attorney believes that her compromised living situation, due to the lack of income, shortened her life.

- Mrs. G, a 58-year-old woman from Georgia, worked her entire life, the last 15 years at a convenience store. Over time, she developed degenerative joint disease and cardiovascular problems. In 2004, she deteriorated to the point that she stopped working. She had a house where she had lived for many years but fell behind on the payments. Her attorney had to intercede on her behalf several times to stop foreclosure. Her car, which she fully owned, sat idle because she could not pay the tag fees and could not afford gas. Three years after she applied, she had a hearing. While the ALJ stated at the hearing that a favorable ruling would be forthcoming, it still took more than six months after the hearing before she received her favorable decision. Even then she had trouble

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death. 42 U.S.C. § 1383(b)(1)(A) [Section 1631(b)(1)(A) of the Act]. In Title II, the Act provides rules for determining who may continue the claim, which includes: a surviving spouse; parents; children; and the legal representative of the estate. 42 U.S.C. § 404(d) [Section 202(d) of the Act]. Thus, if an adult SSI claimant (age 18 or older) dies before actually receiving the past due payment and if there is no surviving spouse, the claim dies with the claimant and no one is paid.

getting her monthly benefits started. Several months passed and still she did not receive past due benefits. As she still owed back mortgage payments, the mortgage company started foreclosure proceedings again. She reported to her attorney that the anxiety over her claim was making her cardiovascular problems worsen. She never received her past due benefits. She died still waiting. Her attorney notes that Mrs. G is his fourth client who has died in the last three years while waiting for a favorable decision and payment of benefits.

- Mr. M lived in the Chicago, IL, area. He had various medical problems, but the most significant one was the need for kidney dialysis, which became apparent after the application was filed. The need for dialysis meant that his impairment met one of the listings of impairments, at least as of the date that the dialysis began. His request for hearing was filed in January 2007. Mr. M's medical condition worsened. In addition, he did not have a permanent residence and stayed with his sister for part of the time that his claim was pending. However, he informed his attorney that his sister was moving, that he could no longer stay with her, and that he had no alternative place to live.

  In July 2007, his attorney began a series of contacts with the ODAR hearing office in an effort to have the case considered for an "on the record" decision or to schedule a hearing on an expedited basis given Mr. M's medical condition and lack of a permanent residence. Between July 2007 and February 2008, his attorney sent five letters, left multiple voice mail messages, and spoke with the hearing office director about Mr. M's case. Finally, in February 2008, the hearing office called to schedule the case in April 2008, sixteen months after the appeal was filed. Unfortunately, Mr. M died in March 2008. As a result, he never received the benefits to which he was entitled. He died destitute. And because this was an SSI claim, no one, including his sister who helped him, will be eligible to receive the retroactive benefits.
- Mr. O, from Richmond, Missouri, died in the lobby of the ODAR hearing office while waiting to be called for his hearing on April 2, 2008. He was 49 years old and is survived by his wife and 4 children. He filed his SSI application for disability in November 2005, alleging inability to work due to uncontrolled diabetes with neuropathy, and shoulder and arm pain. He had worked for 14 years as a truck driver. His claim was denied in March 2006 and he promptly filed a request for hearing in April 2006. While waiting for hearing, he had numerous problems with child support authorities and his home was foreclosed upon. His representative filed a dire need request in July 2007 to expedite the hearing, but he did not receive a hearing date until February 2008, when the hearing was scheduled for April 2, 2008, the day he died.
- Mr. N lived in the Charlotte, North Carolina area. He was 57 years old and died in August 2007. As an adult, he obtained a degree in theology. From 1986 to 1997, he worked doing maintenance on power generating stations. He developed heart disease and emphysema and, from 1998 to 2004, he did less strenuous work. In June 2005, he filed a claim for Title II disability benefits. His claim was denied and he requested a hearing in April 2006. During the wait, he developed a spot on his lung, but could not afford a CT scan for an accurate diagnosis. In May 2007, he received a foreclosure notice, lost his house, and had to move in with his daughter. He died in August 2007 of ischemic heart disease. In February 2008, months after his death, his claim was approved on informal remand to the DDS.
- Mrs. M, a 33 year old former waitress and substitute school teacher, lives in Muskogee, Oklahoma. She has degenerative joint disease of the lumbar spine, neck and hands; hearing loss; left wrist injury; migraines; tingling/numbness in the left knee and left foot; right hip problems; dizziness and nausea. She filed her application for benefits in August 2005 and a request for hearing in May 2006. Mrs. M is married with three children, including one son who is disabled. After a nearby plant explosion damaged their home in 2004, the family was forced to move into an apartment. Evicted in 2007, they have had no permanent residence since then and have been forced to live in a variety of temporary settings, including a shelter for women and children (Mrs. M's husband slept in the car). After the 2007 eviction, Mrs. M's attorney sent letters to the ODAR hearing office requesting an expedited hearing because of the family's homelessness. Mrs. M received a fully favorable decision on March 26, 2008, nearly two years after she filed her request for a hearing. Her disabled child also received a favorable decision on March 25, 2008. On April 7, 2008, an SSA district office worker informed the attorney that both Mrs. M and her disabled child were in pay status.

A full set of these stories, submitted from 29 states, is located at the end of this testimony. Without a doubt, people with severe disabilities are bearing extraordinary and unnecessary hardship as a result of the persistent under-funding of SSA's administrative expenses.

Inadequate Funding of SSA's Limitation on Administrative Expenses

The primary reason for the continued and growing disability claims backlogs is that SSA has not received adequate funds for its management costs. Although Commissioner Astrue has made reduction and elimination of the disability claims backlog one of his top priorities, without adequate appropriations, the situation will deteriorate even more.

Recent Congressional efforts to provide SSA with adequate funding for its administrative budget are encouraging. The Fiscal Year 2008 appropriation for SSA's Limitation on Administrative Expenses (LAE) was $9,746,953,000. This amount was $148 million above the President's request and was the first time in years that the agency has received at least the President's request.

While the FY 2008 appropriation allows the agency to hire some new staff and to reduce processing times, it will not be adequate to fully restore the agency's ability to carry out its mandated services. Between FY 2000 and 2007, Congress appropriated less than both the Commissioner of Social Security and the President requested, resulting in a total administrative budget shortfall of more than $4 billion. The dramatic increase in the disability claims backlog coincides with this period of under-funding the agency, leaving people with severe disabilities to wait years to receive the benefits to which they are entitled.

Processing Times Have Reached Intolerable Levels

The average processing time for cases at the hearing level has increased dramatically since 2000, when the average time was 274 days.[2] In the current fiscal year, SSA estimates that the average processing time for disability claims at the hearing level will be 535 days,[3] nearly twice as long as in 2000. It is important to keep in mind that this is an "average" and that many claimants will wait longer. In addition, the average processing times at the initial and reconsideration levels have grown over the last ten years by about 20 days at each level, with some cases taking much longer.[4]

The current processing times in some hearing offices are striking, and much longer than the 535 days targeted by SSA in FY 2008. SSA statistics from March 2008 for its 144 hearing offices[5] indicate that the average processing time at 47 hearing offices is above the projected average processing time. There is wide fluctuation, with some offices over 700 days and even over 800 days.

Impact on Post-Entitlement Work

While the impact of inadequate funding on the backlog in disability decisions is unacceptable, there are also other important functions which SSA cannot perform in a timely manner. SSA has many mandated responsibilities, which include: paying benefits; issuing Social Security cards; processing earnings for credits to worker's records; responding to questions from the public on the 800-number and in the field offices; issuing Social Security statements; processing continuing disability reviews (CDRs) and SSI eligibility redeterminations; and administering components of the Medicare program, including subsidy applications, calculating and withholding premiums, making eligibility determinations, and taking applications for replacement Medicare cards.

One aspect of post-entitlement work that has slipped in the past is the processing of earnings reports filed by people with disabilities. Typically, the individual calls SSA and reports work and earnings or brings the information into an SSA field office. However, due to budget constraints, SSA often fails to input the information into its computer system and does not make the needed adjustments in benefits. Months or years later—after a computer match with earnings records—SSA sends an overpayment notice to the beneficiary, demanding re-payment of sometimes tens of thousands of dollars. All too often, however, SSA will indicate that it has no record of the beneficiary's earnings reports. Many individuals with disabilities are wary of attempting to return to work out of fear that this may give rise to the over-

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[2] *Social Security Disability: Better Planning, Management, and Evaluation Could Help Address Backlogs*, GAO–08–40 (Dec. 2007) ("GAO Report"), p. 22.

[3] *Social Security Administration: Fiscal Year 2009 Justification of Estimates for Appropriations Committees ("SSA FY 09 Budget Justification")*, p. 6.

[4] GAO Report, p. 20.

[5] "National Ranking Report by Average Processing Time" for the month ending March 28, 2008.

payment scenario and result in a loss of economic stability and healthcare coverage upon which they rely.

Advocates report seeing problems of overpayments and underpayments generated by the inability of SSA to open its mail. Clients describe sending in pay-stubs and not seeing any change in benefits for 6 months. One advocate indicated that his client protested and requested waiver of an overpayment, insisting that she had reported and sent in pay stubs as required. She requested that a Claims Representative search the mail room and reported that a year's worth of specially colored envelopes from her were found lying unopened in the district office mail room.

Impact on Performing Continuing Disability Reviews (CDRs) and SSI Redeterminations

The processing of CDRs and SSI redeterminations is necessary to protect program integrity and avert improper payments. Failure to conduct the full complement of CDRs would have adverse consequences for the Federal budget and the deficit. According to SSA, CDRs result in $10 of program savings and SSI redeterminations result in $7 of program savings for each $1 spent in administrative costs for the reviews.[6] However, the number of reviews actually conducted is directly related to whether SSA receives the necessary funds. SSA's Budget Justification refers specifically to CDRs based on medical factors.[7] It is important when SSA conducts work CDRs that it assess whether reported earnings have been properly recorded and ensure that they properly assess whether work constitutes substantial gainful activity (SGA).

The Number of Pending Cases Continues to Increase

In its recent report, the Government Accountability Office (GAO) noted that the hearing level backlog was "almost eliminated" from FY 1997 to FY 1999, but then grew "unabated" by FY 2006.[8] The number of pending cases at the hearing level reached a low in FY 1999 at 311,958 cases. The numbers have increased dramatically since 1999, reaching 752,000 in FY 2008.[9]

SSA received funding in FY 2008 to hire approximately 150 new Administrative Law Judges to conduct hearings and some additional support staff. We understand that SSA has already hired 135 ALJs. It will take some time for the judges to be trained and to get up to speed in hearing and deciding disability cases. However, productivity is not related solely to the number of ALJs, but also to the number of support staff. While SSA senior managers and ALJs recommend a staffing ratio of 5.25,[10] in 2006, the ratio of support staff to ALJs was 4.12. The actual ratio represented nearly a 25 percent decrease from the recommended level, at a time when the number of pending cases had increased dramatically. When the support staff to ALJ ratio was higher (FY 1999 to FY 2001)[11], the number of pending cases older than 270 days was much lower.

Decreases in Staffing Result in Decreases in Services

Beyond the crisis in cases pending for hearings, SSA estimates that in FY 2009 it will have a staffing deficit of essentially 8,100 full-time staff.[12] The FY 2008 shortfall is 3,300 workyears, and the FY 2009 shortfall is projected to be 4,800 workyears. We understand from Social Security officials that these figures must be added together to see the cumulative shortfall of 8,100 staff. This shortfall explains the concerns mentioned above regarding the agency's ability to carry out its mandated services.

Impact of New Workloads

We were pleased that in the recent Economic Stimulus Act of 2008,[13] Congress recognized the added work that SSA will incur as a result of the legislation and appropriated an additional $31 million to the agency for FY 2008. However, over the past decade, Congress has passed legislation that added to SSA's workload, but did not necessarily provide additional funds to implement these provisions. Recent examples include:

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[6] SSA FY 09 Budget Justification, p. 18.
[7] SSA FY 09 Budget Justification, p. 92.
[8] GAO Report, p. 20.
[9] SSA FY 09 Budget Justification, p. 6.
[10] GAO Report, p. 32.
[11] *Id.*
[12] SSA FY 09 Budget Justification, page 92, Table 3.2—Key Performance Targets, under Selected Outcome Measures.
[13] Pub. L. No. 110–185.

- Conducting pre-effectuation reviews on increasing numbers of initial SSI disability allowances. SSA must review these cases for accuracy prior to issuing the decision.
- Changing how SSI retroactive benefits are to be paid. SSA must issue these benefits in installments if the amount is equal to or more than three months of benefits. The first two installments can be no more than three months of benefits each, unless the beneficiary shows a hardship due to certain debts. Under prior law, the provision was triggered only if the past due benefits equaled 12 months or more. SSA must address these hardship requests and handle the increased number of installment payments.
- SSA's Medicare workloads. SSA has workloads related to the Medicare Part D prescription drug program, including determining eligibility for low-income subsidies; processing subsidy changing events for current beneficiaries; conducting eligibility redeterminations; performing premium withholding; and making annual income-related premium adjustment determinations for the Medicare Part B program.

Mandatory Employment Verification Would Overwhelm SSA

We are very concerned about the potential impact of legislation under consideration to mandate the use of the electronic employment eligibility verification system (EEVS) to all employers. Since 1996, employers have had the option of verifying names and Social Security Numbers of new hires against SSA's database through EEVS, an e-verification pilot program operated jointly by SSA and the Department of Homeland Security (DHS). Currently 53,000 employers use it to verify the legal status of job applicants. Most are participating voluntarily, but some are required to use the EEVS by law or due to prior immigration violations. Studies have found that the current system, used by less than 1% of all employers, is hampered by inaccuracies in the DHS and SSA records. If made mandatory, the errors in EEVS would require millions of U.S. citizens and legal immigrants to interact with SSA to prove that they are eligible to work. At a hearing of the Social Security Subcommittee on June 7, 2007, the SSA witness indicated that SSA would need at least 2,000 to 3,000 additional staff to handle the new workload.

Given the current shortage in administrative resources for SSA discussed above (8,100 workyears short in FY 2009), we cannot support increased mandatory responsibilities of this magnitude. Past experience with new workloads for SSA make us wary of the capacity to fully fund the administrative responsibilities on a sustained basis. Such a mandate could have further devastating effects on the disability determination system which is already so overwhelmed.

CCD Recommendations Regarding SSA Limitation on Administrative Expenses Funding

The President's request for the SSA FY 2009 LAE does not go far enough to put the agency on a clear path to provide its mandated services at a level expected by the American public. SSA must be given enough funding to make disability decisions in a timely manner and to carry out other critical workloads. Due to the serious consequences of persistent and cumulative under-funding of SSA's administrative expenses, we strongly recommend that SSA receive $11 billion for its FY 2009 LAE. This amount will allow the agency to make significant strides in reducing the disability claims backlog, improving other services to the public, and conducting adequate numbers of CDRs and SSI redeterminations. At a minimum, SSA should receive the President's request of $10.327 billion plus $240 million for integrity work.

In addition, CCD also urges Congress to separate SSA's LAE budget authority from the Section 302(a) and (b) allocations for discretionary spending. The size of SSA's LAE is driven by the number of administrative functions it conducts to serve beneficiaries and applicants. Congress should remove SSA's administrative functions from the discretionary budget that supports other important programs. The LAE would still be subject to the annual appropriations process and Congressional oversight.

II. RECOMMENDATIONS FOR IMPROVING THE DISABILITY CLAIMS PROCESS

Money alone will not solve SSA's crisis in meeting its responsibilities. Commissioner Astrue has committed to finding new ways to work better and more efficiently. CCD has numerous suggestions for improving the disability claims process for people with disabilities. Many of these recommendations have already been initi-

ated by SSA.[14] We believe that these recommendations and agency initiatives, which overall are not controversial and which we support, can go a long way towards reducing and eventually eliminating the disability claims backlog. Finally, we have raised concerns about SSA proposals to revise the appeals process for claimants who have received initial denials of their disability claims.

Caution Regarding the Search for Efficiencies

While we generally support the goal of achieving increased efficiency throughout the adjudicatory process, we caution that limits must be placed on the goal of administrative efficiency for efficiency's sake alone. The purposes of the Social Security and SSI programs are to provide cash benefits to those who need them and have earned them and who meet the eligibility criteria. While there may be ways to improve the decision-making process from the perspective of the adjudicators, the bottom line evaluation must be how the process affects the very claimants and beneficiaries for whom the system exists.

People who find they cannot work at a sustained and substantial level are faced with a myriad of personal, family, and financial circumstances that will have an impact on how well or efficiently they can maneuver the complex system for determining eligibility. Many will not be successful in addressing all of SSA's requirements for proving eligibility until they reach a point where they request the assistance of an experienced representative. Many face educational barriers and/or significant barriers inherent in the disability itself that prevent them from understanding their role in the adjudicatory process and from efficiently and effectively assisting in gathering evidence. Still others are faced with having no "medical home" to call upon for assistance in submitting evidence, given their lack of health insurance over the course of many years. As seen earlier in this testimony, many are experiencing extreme hardship from the loss of earned income, often living through the break-up of their family and/or becoming homeless, with few resources—financial, emotional, or otherwise—to rely upon. Still others experience all of the above limits on their abilities to participate effectively in the process.

We believe that the critical measure for assessing initiatives for achieving administrative efficiencies must be the potential impact on claimants and beneficiaries. Proposals for increasing administrative efficiencies must bend to the realities of claimants' lives and accept that people face innumerable obstacles at the time they apply for disability benefits and beyond. SSA must continue, and improve, its established role in ensuring that a claim is fully developed before a decision is made and must ensure that its rules reflect this administrative responsibility.

1. Improve Development of Evidence Earlier in the Process

CCD supports full development of the record at the beginning of the claim so that the correct decision can be made at the earliest point possible and unnecessary appeals can be avoided. Improvements at the front end of the process can have a significant beneficial impact on preventing the backlog and delays later in the appeals process.

Developing the record so that relevant evidence from all sources can be considered is fundamental to full and fair adjudication of claims. The adjudicator needs to review a wide variety of evidence in a typical case, including: medical records of treatment; opinions from medical sources and other treating sources, such as social workers and therapists; records of prescribed medications; statements from former employers; and vocational assessments. The adjudicator needs these types of information to make the necessary findings and determinations under the SSA disability criteria.

Claimants should be encouraged to submit evidence as early as possible. However, the fact that early submission of evidence does not occur more frequently is usually due to many reasons beyond the claimant's control, including:

- State agency disability examiners who fail to request and obtain necessary and relevant evidence, including the failure to request specific information tailored to the SSA disability criteria;
- The failure of SSA and state agency disability examiners to explain to claimants or providers what evidence is important, necessary, and relevant for adjudication of the claim;

[14] Commissioner Astrue announced a number of initiatives to eliminate the SSA hearings backlog at a Senate Finance Committee hearing on May 23, 2007. The 18-page summary of his recommendations is available at www.senate.gov/finance/sitepages/hearing052307.htm. An update on the status of the recommendations/initiatives is the subject of the *Plan to Eliminate the Hearing Backlog and Prevent Its Recurrence: End of Year Report, Fiscal Year 2007*, SSA Office of Disability Adjudication and Review ("ODAR Report").

- Cost or access restrictions, including confusion over Health Insurance Portability and Accountability Act (HIPAA) requirements, which prevent claimants from obtaining records;
- Medical providers who delay or refuse to submit evidence;
- Inadequate reimbursement rates for providers; and
- Evidence which is submitted but then misplaced.

Claimants' representatives are often able to ensure that the claim is properly developed. Based on the experiences and practical techniques of representatives, we have a number of recommendations[15] that we believe will improve the development process:

- **Provide more assistance to claimants at the application level.** At the beginning of the process, SSA should explain to the claimant what evidence is important and necessary. SSA should also provide applicants with more help completing application paperwork so that all impairments and sources of information are identified, including non-physician and other professional sources.
- **DDs need to obtain necessary and relevant evidence.** Representatives often are able to obtain better medical information because they use letters and forms that ask questions relevant to the disability determination process. However, state disability determination service (DDS) forms usually ask for general medical information (diagnoses, findings, etc.) without tailoring questions to the Social Security disability standard. SSA should review its own forms and set standards for state-specific forms to ensure higher quality.
- **Increase reimbursement rates for providers.** To improve provider response to requests for records, appropriate reimbursement rates for medical records and reports need to be established. Appropriate rates should also be paid for consultative examinations and for medical experts.
- **Provide better explanations to medical providers.** SSA and DDSs should provide better explanations to all providers, in particular to physician and non-physician treating sources, about the disability standard and ask for evidence relevant to the standard.
- **Provide more training and guidance to adjudicators.** Many reversals at the appeals levels are due to earlier erroneous application of existing SSA policy. Additional training should be provided on important evaluation rules such as: weighing medical evidence, including treating source opinions; the role of non-physician evidence;[16] the evaluation of mental impairments, pain, and other subjective symptoms; the evaluation of childhood disability; and the use of the Social Security Rulings.
- **Improve use of the existing methods of expediting disability determinations.** SSA already has in place a number of methods which can expedite a favorable disability decision if the appropriate criteria are met, including Quick Disability Determinations, Presumptive Disability in SSI cases, and terminal illness ("TERI") cases.
- **Improve the quality of consultative examinations.** Steps should be taken to improve the quality of the consultative examination (CE) process. There are far too many reports of inappropriate referrals, short perfunctory examinations, and examinations conducted in languages other than the applicant's.

2. Expand Technological Improvements

Commissioner Astrue has made a strong commitment to improve and expand the technology used in the disability determination process. CCD generally supports these efforts to improve the disability claims process, so long as they do not infringe on claimants' rights. The initiative to process disability claims electronically has the prospect of significantly reducing delays by eliminating lost files, reducing the time that files spend in transit, and preventing misfiled evidence. Some of the technological improvements that we believe can help reduce the backlog include the following:

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[15] Our recommendations include those made by Linda Landry, Disability Law Center, Boston, MA, at the SSA "Compassionate Allowance Outreach Hearing for Rare Diseases" held in Washington, DC, on December 4, 2007. Her testimony is available online at: http://www.ssa.gov/compassionateallowances/LandryFinalCompassionateAllowances2.pdf.

[16] This evidence is often given little or no weight even though SSA's regulations provide that once an impairment is medically established, all types of probative evidence, e.g., medical, non-physician medical, or lay evidence, will be considered to determine the severity of the limitations imposed by the impairment(s).

- **The electronic disability folder: "eDIB."** The electronic folder should reduce delays caused by the moving and handing-off of folders, allowing for immediate access by different components of SSA or the DDS.
- **Electronic Records Express (ERE).** ERE is an initiative to increase the use of electronic options for submitting records related to disability claims that have electronic folders. Registered claimant representatives are able to submit evidence electronically through the SSA secure website or to a dedicated fax number using a unique barcode assigned to the claim.
- **Findings Integrated Templates (FIT).** FIT is used for ALJ decisions and integrates the ALJ's findings of fact into the body of the decision. While the FIT does not dictate the ultimate decision, it requires the ALJ to follow a series of templates to support the ultimate decision.
- **Use of video hearings.** Video hearings allow ALJs to conduct hearings without being at the same geographical site as the claimant and representative and has the potential to reduce processing times and increase productivity. We support the use of video teleconference hearings so long as the right to a full and fair hearing is adequately protected; the quality of video teleconference hearings is assured; and the claimant retains the absolute right to have an in-person hearing as provided under current regulations.[17]

3. New Screening Initiatives

We support SSA's efforts to accelerate decisions and develop new mechanisms for expedited eligibility throughout the application and review process. Ideally, adjudicators should use SSA screening criteria as early as possible in the process and we encourage the use of ongoing screening as claimants obtain more documentation to support their applications. However, SSA must work to ensure that there is no negative inference when a claim is not selected by the screening tool or allowed at that initial evaluation. There are two initiatives that hold promise:

- **Quick Disability Determinations.** We have supported the Quick Disability Determination (QDD) process since it first began in SSA Region I states in August 2006 and was expanded nationwide by Commissioner Astrue in September 2007.[18] The QDD process has the potential of providing a prompt disability decision to those claimants who are the most severely disabled. Since the QDD process's August 2006 implementation in Region I states, the vast majority of QDD cases have been decided favorably in less than 20 days.
- **Compassionate Allowances.** In July 2007, SSA published an Advance Notice of Proposed Rulemaking (ANPRM) on a proposed new screening mechanism to be known as Compassionate Allowances.[19] SSA is "investigating methods of making 'compassionate allowances' by quickly identifying individuals with obvious disabilities." While there is no definition of disabilities that are considered "obvious," there is emphasis on creating "an extensive list of impairments that we [SSA] can allow quickly with minimal objective medical evidence that is based on clinical signs or laboratory findings or a combination of both. . . ." Like the QDD process, SSA is looking at the use of computer software to screen cases by searching claims for key words in the electronic folder.

4. Other Hearing Level Improvements

- **The Senior Attorney Program.** In the 1990s, senior staff attorneys were given the authority to issue fully favorable decisions in cases that could be decided without a hearing (i.e. "on the record"). While the Senior Attorney Program existed, it helped to reduce the backlog by issuing approximately 200,000 decisions. We are pleased that Commissioner Astrue has decided to reinstate the program for at least the next two years[20] and has proceeded with implementation.[21] We believe that this initiative will help to reduce the backlog of cases at the hearing level.
- **Increasing the time for providing notice of hearings.** Current regulations in most of the country provide only a 20-day advance notice for ALJ hearings. This time period is not adequate for requesting, receiving, and submitting the most recent and up-to-date medical evidence prior to the hearing. SSA has pro-

[17] 20 C.F.R. §§ 404.936 and 416.1436.
[18] 20 C.F.R. §§ 404.1619 and 416.1019.
[19] 72 Fed. Reg. 41649 (July 31, 2007).
[20] The interim final rule reinstating the program was published in August 2007 and became effective on October 9, 2007. 72 Fed. Reg. 44763 (Aug. 9, 2007).
[21] ODAR Report, p. 3.

posed to expand the 75-day hearing notice requirement nationwide.[22] We strongly support this proposed change. This increased time period will mean that many more cases would be fully developed prior to the hearing and lead to more on-the-record decisions, avoiding the need for a hearing.

CCD Response to the NPRM: Amendments to the Administrative Law Judge, Appeals Council, and Decision Review Board Appeals Levels

On October 29, 2007, SSA published a Notice of Proposed Rulemaking (NPRM), which would make major changes to the appeals process.[23] We had very serious concerns about the proposed rule's impact on claimants and beneficiaries and submitted extensive comments on behalf of over 30 national organizations.[24] Our overarching concern was that many aspects of the proposed process would elevate speed of adjudication above accuracy of decision-making. This is problematic and not appropriate for a non-adversarial process.

On balance, we urged the Commissioner not to implement this NPRM unless significant changes were made to protect the rights and interests of people with disabilities. Our measure is whether the process will be fair. While there are some positive proposed changes, e.g., a 75-day hearing notice (the current rule provides only a 20-day notice); *de novo* review by the ALJ; and retaining a claimant's right to administrative review of an unfavorable ALJ decision, we noted that the package of proposals, as a whole, would result in more decisions that are not based on full and complete records. Claimants would be denied not because they are not disabled, but because they would not have had an opportunity to present their case. It is appropriate to deny benefits to an individual who is found not eligible, if that individual has received full and fair due process. It is not appropriate to deny benefits to an eligible individual simply because he or she has been caught in procedural tangles and barriers. We believe that the flexible nature of the current non-adversarial, truth-seeking process must be preserved.

As you know, on January 29, 2008, after the close of the public comment period, Commissioner Astrue informed Representative McNulty, Chairman of the Social Security Subcommittee, that in light of the concerns expressed by the public and Members of Congress, he was suspending the rulemaking process for the provisions that were controversial.

Following that announcement, Commissioner Astrue met with members of NOSSCR and CCD to discuss those areas of the proposed rule considered controversial. We felt the meeting was productive and believe that Commissioner Astrue and his staff are working in good faith to address the serious concerns raised by advocates. We look forward to another meeting or follow-up on those issues which SSA officials agreed to reconsider.

Claimant Stories Provided by Representatives in April 2008

ALABAMA

- Ms. S was a court reporter for 26 years in Mobile, Alabama. She stopped working in March 2002 due to severe carpal tunnel syndrome, chronic obstructive pulmonary disease (COPD), and psychiatric impairments. The claimant filed a claim on her own in 2002 and lost at the ALJ level a few years later and never appealed. She then sought representation and her attorney helped her file a new claim. Two hearings were held and there were two Appeals Council remands. By this time, Ms. S had undergone several carpal tunnel release surgeries without any real relief, became dependent on a continuous positive airway pressure (CPAP) machine to facilitate her breathing, and her dementia became increasingly progressive to the point that she was completely dependent on her adult son and her sister. Following a request to the ALJ for an "on the record" decision, after the second Appeals Council remand, the ALJ issued a favorable decision on March 28, 2008.

ALASKA

- Ms. B of Sitka, Alaska, applied for Title II and SSI benefits in March 1998. After initial denial of both claims, she had a hearing in March 2000. The unfavorable ALJ decision was issued more than one year later in April 2001. She filed a hand-written appeal to the Appeals Council in May 2001. In her appeal, she wrote that her condition was grave because she had severe headaches, dizziness, lost balance, had blurry vision, and severe head pain and fatigue. Five

[22] 72 Fed. Reg. 61218 (Oct. 29, 2007).
[23] *Id.*
[24] See: http://www.c-c-d.org/task__forces/social__sec/CCD__NPRM__comments__FINAL__12-27-07.pdf.

and one-half years later, the Appeals Council denied review in December 2006. Ms. B was unrepresented through that point. She obtained counsel to file an appeal to Federal court. Upon reviewing the administrative record, her attorney immediately noticed that the record contained substantial records from another person, including the other person's name. These are the same medical records upon which the ALJ denied her claim in 2001, including the finding that Ms. B was not credible. The fact that these records belonged to another individual was obvious.

In Federal court, the incorrect records were brought to the attention of the SSA Office of General Counsel (OGC) and the court. In May 2007, Ms. B's attorney and the SSA attorney agreed to a remand, which the court approved. Since May 2007, there has been no action by SSA to move this claim toward disposition. Ms. B's attorney has filed a request for an "on the record" decision but has received no response. Ms. B is now receiving benefits but only since 2007 when she received a favorable ALJ decision on a subsequent application. However, that decision only paid benefits starting in September 2003.

ARKANSAS

- Ms. R lives in Fayetteville, Arkansas, and filed for Title II and SSI benefits in April 2001. Her claim was denied and a hearing was held in December 2002. Her SSI claim was allowed but the Title II claim was denied based on lack of insured status. On appeal to the Appeals Council, proof was submitted that she had worked and was insured, but the claim was denied again. Ms. R filed an appeal in Federal court, which was remanded in April 2004 because the administrative record was lost. Nearly two years later, in January 2006, the Appeals Council finally remanded the case to an ALJ, certifying that all efforts to locate the file had been exhausted, to have an immediate hearing to reconstruct the file. Ms. R's attorney has continually contacted the hearing office regarding the remand hearing based on the court's order four years ago. There has still been no hearing set on this matter. Being restricted to SSI has seriously affected her financial situation and she is being denied the Title II disability payments, for which she has worked.
- Mr. M filed a claim for benefits some time in late 2005, which was denied. He lives in Pettigrew, Arkansas. A hearing was requested in October 2006 and held in January 2008. A decision has not yet been received. Mr. M has had a series of strokes, which affect his ability to comprehend and his condition continues to worsen. He also has been forced to move from place to place, because his family cannot afford to pay for his living expenses and they lost their home.
- Ms. C from Farmington, Arkansas, filed a claim for benefits in early 2006. After being denied, she requested a hearing in August 2006. A hearing was held in September 2007, but it was another six months before she received a favorable decision, which was more than two years after she filed her claim. During this time, Ms. C. lost her home, which she shared with an abusive and alcoholic man because she had no money and no other place to live. She now moves around, including staying with her parents.
- Ms. M filed a claim for benefits in August 2005 while living in Florida. The claim was denied and she requested a hearing in April 2006. Following that hearing request, Ms. M moved to Fayetteville, Arkansas, and obtained representation. Beginning in November 2006, her attorney requested that her file be transferred from Florida to Arkansas. The transfer finally occurred ten months later in September 2007. A hearing was held in March 2008. Ms. M continues to decline in physical, emotional, and mental health. She had been living with a sister, but was asked to leave. She moves from family member to family member, and has no money for medical treatment or even basic necessities.

CONNECTICUT

- Mr. C, who worked as a landscaper, has liver failure. While waiting two years for a hearing, he became homeless. By the time his hearing was held, he was living in his car in the middle of winter. He was hospitalized right after the hearing and the hospital had no place where he could be discharged. He waited for two months after the hearing for a favorable ALJ decision and another month after that to start receiving benefits.

FLORIDA

- Ms. K applied for disability benefits in August 2004. She lived in Key West, FL. Her husband shot her 5 times in the liver and abdomen and then killed himself. Her disabilities stemmed from these injuries and from chronic obstructive pulmonary disease (COPD). Her claim was denied and she requested a hearing in April 2006. Nearly two years later, her hearing was held in March 2008 and

the ALJ stated that benefits would be awarded. Unfortunately, Ms. K died in late March 2008 of long-term complications from her wounds and COPD, before the written decision was received. Because she did not have money to live independently, she was forced to live with her mother. The mother, who has dementia, is a chain-smoker. During the last part of her life, Ms. K had frequent hospitalizations. She would then return to her mother's house and her condition would worsen. Her attorney last saw Ms. K about a week before her death. Ms. K told her attorney that she believed she would die if she could not get into a smoke-free living situation. Since Ms. K died in part from COPD, her attorney believes that her compromised living situation, due to the lack of income, shortened her life.

- Mr. F filed a claim for disability benefits in September 2004 and was denied twice before his hearing in July 2006. He has well-documented uncontrolled seizure disorder and used a wheelchair for the first six months of his disability. He is 56 years old. While waiting for his hearing, he could not pay his utility bills and his electricity and water were turned off. He lived without any utilities for over six months. He and his wife lived in a trailer. For water, they would carry empty milk containers to a communal water faucet in the trailer park to fill them. They used this water to wash dishes, bathe and flush toilets for over six months. At the hearing, the ALJ approved the claim but with an onset date of only two months prior to the hearing, and Mr. F has appealed the onset date.
- Mr. B is a 48 year old former mechanic who lives in Bradenton, Florida. He has diabetes mellitus, failed back surgery syndrome, three disc herniations in his lower back and two in his cervical spine, ambulates with a cane, and has developed depression and anxiety. His application was filed in September 2004. He has not yet had a hearing, which is scheduled for June 18, 2008. He is a workers' compensation recipient. However, in the interim, his benefits were significantly reduced. He had to move in with eight other family members and depends on them for financial support. The workers' compensation carrier has denied several of his medical bills on grounds that his conditions were pre-existing, so he has had no medical care for some time.
- Ms. L was a 44 year old female with advanced, end-stage breast cancer. She lived in Bradenton, Florida. She filed an application for benefits in 2002, her request for a hearing was filed in August 2005, but she died from her condition in April 2006. She was living with her mother at the time.
- Mr. M is a 57 year old former businessman. He has end-stage kidney failure, uncontrolled hypertension, and anemia. He had numerous reports stating his condition was terminal. He filed an application in 2004 and a request for a hearing in August 2005. He was awarded benefits without a hearing in April 2006 by the ALJ, after his attorney sent two letters requesting an "on the record" decision. Until the ALJ decision, his phone, electricity, and other utilities were cut off. His house went into foreclosure. He had no medical insurance and his wife could not afford to support him.
- Mr. D was a 56 year old laborer with a 6th grade education. He had end-stage lung cancer. In 2007, he filed an application in West Virginia, then moved to Florida. He died in February 2008. While waiting for a determination, he lost his home, car, wife, and all sources of income. He died in a hospice with no family knowledgeable about his whereabouts.

GEORGIA

- Mr. A is 23 years old. He previously received SSI benefits due to a heart transplant. His benefits were terminated. Now, Medicaid will no longer pay for his anti-rejection medication. If he does not get this medication, he will die. His hearing request was filed in February 2007 but no hearing has been scheduled.
- Mrs. G, a 58 year old woman, worked her entire life, the last 15 years at a convenience store. Over time, she developed degenerative joint disease and cardiovascular problems. In 2004, she deteriorated to the point that she stopped working. She had a house where she had lived for many years but fell behind on the payments. Her attorney had to intercede on her behalf several times to stop foreclosure. Her car, which she fully owned, sat idle because she could not pay the tag fees and could not afford gas. Three years after she applied, she had a hearing. While the ALJ stated at the hearing that a favorable ruling would be forthcoming, it still took more than six months after the hearing before she received her favorable decision. Even then she had trouble getting her monthly benefits started. Several months passed and still she did not receive past due benefits. As she still owed back mortgage payments, the mortgage company started foreclosure proceedings again. She reported to her attorney that the anxiety over her claim was making her cardiovascular problems worsen. She

never received her past due benefits. She died still waiting. Her attorney notes that Mrs. G is his fourth client who has died in the last three years while waiting for a favorable decision and payment of benefits.

HAWAII

- An attorney in Honolulu reports that the ALJ who hears claims in the Honolulu ODAR hearing office has been out on sick leave since November 2007. Since then, no hearings have been held in the State of Hawaii. For reasons he does not know, the SSA Regional Office in San Francisco, CA, did not make arrangements to have the hearing docket handled by a visiting ALJ. He personally has about 50 clients waiting for their cases to be scheduled. Like other claimants, these are individuals with severe illnesses that prevent them from working and they have no income. After the attorney and his clients wrote to one of their Senators, SSA began to schedule video hearings for the end of April 2008 in Honolulu, which the attorney reports is the first action since the end of November 2007. However, the other islands in Hawaii are not set up for video hearings.

ILLINOIS

- Mr. M lived in the Chicago, IL, area. He had various medical problems, but the most significant one was the need for kidney dialysis, which became apparent after the application was filed. The need for dialysis meant that his impairment met one of the listings of impairments, at least as of the date that the dialysis began. His request for hearing was filed in January 2007. Mr. M's medical condition worsened. In addition, he did not have a permanent residence and stayed with his sister for part of the time that his claim was pending. However, he informed his attorney that his sister was moving, that he could no longer stay with her, and that he had no alternative place to live.

  In July 2007, his attorney began a series of contacts with the ODAR hearing office in an effort to have the case considered for an "on the record" decision or to schedule a hearing on an expedited basis given Mr. M's medical condition and lack of a permanent residence. Between July 2007 and February 2008, his attorney sent five letters, left multiple voice mail messages, and spoke with the hearing office director about Mr. M's case. Finally, in February 2008, the hearing office called to schedule the case in April 2008, sixteen months after the appeal was filed. Unfortunately, Mr. M died in March 2008. As a result, he never received the benefits to which he was entitled. He died destitute. And because this was an SSI claim, no one, including his sister who helped him, will be eligible to receive the retroactive benefits.
- Mr. R, age 48, has Lou Gehrig's Disease and became disabled in January 2006. His claim was denied and his hearing request has been pending since October 2007. He spent five years caring for his ailing mother prior to her death and now needs assistance with most activities of daily living. However, his wife cannot afford to stop working and he cannot afford to hire an assistant. He may not live long enough to have a hearing.
- Mr. J is 51 years old. He previously received disability benefits for five years due to a back injury. He returned to work as a truck driver but was re-injured on the job. His employer did not have workers' compensation insurance. He has an inoperable spinal disorder. His application was filed in October 2005 and his hearing request was filed more than two years ago in March 2006. His attorneys' requests for an "on the record" decision and for expedited reinstatement of benefits have been denied. Mr. J's treating physician strongly supports this disability claim. Mr. J and his wife have lost every financial asset that they accumulated while they were working and they now live with the wife's elderly mother who lives on a fixed income. Exacerbating his impairment, Mr. J was in a car accident in April 2008, which injured his neck and head and knocked him unconscious.
- Ms. K is a 52 year old woman, and a resident of Joliet, IL. She has major depression with psychosis, diabetic neuropathy, chest pain, and arthritis. She was 48 years old when she applied for Title II disability benefits in 2004. She requested an ALJ hearing in February 2006 and still does not have a hearing scheduled. Since she applied in 2004, she has suffered deteriorating health and severe financial hardship, including a utility shutoff during one of the coldest winters in recent memory. Her attorney has been told that because she has a paper file, this has further delayed the scheduling of her hearing. Her attorney requested an "on the record" decision without the need for a hearing based on the strength of her case and her long wait, but this request was denied.

- Mr. B from Freeport, IL, requested a hearing in November 2001 and a hearing was held in May 2002. No decision was issued and the ALJ scheduled a supplemental hearing, which was held nearly 18 months later in October 2003. An unfavorable decision was issued, more than two years after a hearing was requested. He appealed to the Appeals Council but the file was misplaced. After Congressional intervention, the file was located and a decision remanding the case to the ALJ was issued in August 2007, more than three years after the ALJ decision. It has been more than 6 years since he first requested a hearing. Mr. B, who is impoverished, is still waiting for a new date for his remand hearing.

INDIANA

- Mr. I, a 46 year old resident of Indianapolis, Indiana, was a school bus driver. He developed high blood pressure, diabetes and lost vision in one eye. He could no longer work. He applied for benefits in February 2004. Without income, he had to choose food over his medication. His diseases became uncontrolled and he was found unconscious on his apartment floor. He was hospitalized and eventually died in February 2007. A favorable decision was issued in August 2007, nearly six months after his death.

IOWA

- Ms. H is a Henderson, IA, resident and is now 48 years old. She filed her application in March 2005 and requested a hearing in December 2005. Nearly two years later, the hearing was held in November 2007, but she still has not received a decision five months later. All evidence was submitted before the hearing and there was no post-hearing development ordered by the ALJ. Ms. H has Hepatitis B and C and has had Interferon treatments for almost a year. She also has severe arthritis, gastroesophageal reflux disease, and depression. Her physician has written that she needs to rest three hours out of an eight hour work day and that pain would interfere frequently with her attention and concentration.

KENTUCKY

- Ms. R, age 53, of Richmond, Kentucky, worked as an inspector for a rubber operation. She had cancer and then disability due to a mastectomy, nerve damage, emphysema, hypertension, plus other conditions, including depression. She applied for benefits in October 2006. Her case was appealed to the ALJ level. However, before a hearing was scheduled, Ms. R died in March 2008. Her family continues the case.

MARYLAND

- Ms. W is a 30 year old former retail employee who lives in Westminster, Maryland. As a result of an automobile accident, she has various cervical, thoracic and lumbar spinal conditions which cause severe instability in her legs and affect her in all activities of daily living, including working. She has not been able to work since the accident and will be unable to work indefinitely. She filed her application for benefits in early 2006, which was denied. She requested a hearing in August 2007. The hearing was held on February 13, 2008, and a favorable decision was issued on March 27, 2008. While this story has had a positive end result, the path to getting there was anything but positive. By the time of her February 2008 hearing, she was homeless and had been living out of her beat-up, old car for months. She was unable to pay any bills, including rent, and she was evicted. During this time, she was unable to communicate with her attorney. She also could not obtain proper medical treatment, and her condition continued to deteriorate. She has finally found shelter, but is still awaiting receipt of her first benefits payment.

MASSACHUSETTS

- Ms. W lived in Worcester, MA, and was 45 years old when she died from end-stage liver disease. She died in January 2008, while waiting for a hearing. She filed an application in 2005 but it was lost. She filed another application in late 2006 or early 2007, which was denied, in part, because of failure to consider that her condition was expected to result in death. She obtained representation and requested a hearing in July 2007, but the appeal was not processed promptly pending receipt of the 2005 file, which had been lost. Between September 2007 and January 2008, her attorney contacted the SSA district office and the ODAR hearing office on eight different occasions, requesting that the processing be expedited because Ms. W was in desperate need of funds and was feeling quite ill. In December 2007, the district office said the file had been sent to the

hearing office, but the hearing office denied receiving the file. On January 14, 2008, the attorney finally received a letter from the hearing office acknowledging receipt of the hearing request. Ms. W died on January 18, 2008.

- Mr. F is a 45 year old sheet metal mechanic from Fitchburg, MA, who worked for the same company for 25 years. He filed his application in May 2006 at the urging of his doctor. Following surgery for a cervical fusion, he has had complications, including decreased range of motion, severe and constant headaches, severe chronic pain, arm and hand numbness, and hip and back pain. His hearing request was filed in December 2006. While waiting more than two years for a hearing, he also developed severe anxiety and chest pain. By the time of his hearing in October 2007, he had lost his beloved home to foreclosure, lost both his wife's and his cars to repossession, lost his boat, lost his 401(k) account, and nearly lost his 16 year old daughter to severe depression after they lost their home and were forced to move into the unfinished basement of a relative. Mr. F received a favorable ALJ decision in December 2007 after his attorney requested an expedited hearing.

MICHIGAN

- An attorney in Saginaw, Michigan, reports that the current delay between filing a request for hearing and the date of the hearing in his area ranges from 24 to 28 months. This delay is on top of waiting anywhere from two months to four months to hear whether the initial application has been approved. While some ALJs will issue a decision on the record, it often takes one to two months to get the written decision and another one to four months for the individual to actually get paid. Many clients are experiencing a delay of three years or more between the time of initial application and the time they finally get their benefits. He has had numerous clients who have lost their homes, cars, and other property while waiting. Many of his clients have had to go through bankruptcy because of the delay. These financial stresses also contribute to family stresses and several of his clients have gotten divorced and attribute the divorce directly to financial stresses.
- Mr. H is 61 years old and lives in Holland, Michigan. He was unable to work and applied for disability benefits in March 2005. He requested a hearing in September, 2005, more than 30 months ago. His attorney requested an "on the record" decision in the fall of 2007, after his case was transferred to another ODAR hearing office because of overload in the Grand Rapids, Michigan ODAR office. The ALJ denied the request and a hearing was held in November 2007. Two years and 8 months after requesting the hearing and 3 months after the hearing, he received a favorable decision from the ALJ in February 2008. As of April 10, 2008, he has received no benefits. Mr. H needs his disability benefits so his children do not need to continue to pay his bills.
- Ms. M, a 46 year old woman living in Muskegon, Michigan, applied for disability benefits in March 2004 because she could no longer work due to degenerative osteoarthritis of the hips and spine, obesity, and psychological impairments. While waiting for her hearing, she received a foreclosure notice on her house and was behind on her utility bills. Her impairments worsened due to stress and uncertainty about where she would live. Her representative filed a request for an expedited hearing based on "dire need" in May 2006. After the hearing, the ALJ issued a favorable decision in September 2006 but she never received any of her benefits until December, 2006—far too late to save her house.

MISSISSIPPI

- Mr. C, a 58 year old former machinist who lives in Como, Mississippi, has severe neck, right shoulder and arm pain after . . . ound tumor was removed from his neck, and he is illiterate. These conditions prevent him from working. He filed his application for benefits in November 2004. He had a hearing January 9, 2008. During his wait for a hearing, he lost his home to foreclosure and was unable to afford required tests for his impairments.
- Ms. D, a 47 year old former data entry clerk who lives in Doddsville, Mississippi, has fibromyalgia, chronic obstructive pulmonary disease, and severe anxiety, which prevents her from performing even simple work tasks. She filed her application for benefits in March 2005. While waiting for a hearing, she has become homeless and unable to stay in a shelter, due to having to work for board, which she is unable to do. Because she has nowhere to cook, she only is able to eat food that does not require cooking.
- Mr. L, a 45 year old former equipment operator who lives in Louisville, Mississippi, lost 20% to 30% of his lung capacity in a workplace accident. He also

has severe migraine headaches, daily blackout spells, and severe post-traumatic stress disorder (PTSD), all of which prevent him from working. He filed an application for benefits in February 2006. While waiting for a hearing, he is 3 payments behind on his home and risking foreclosure, has lost all of his vehicles, and all utility bills are about 3 months behind.

- Mr. J is a 50 year old former truck driver who lives in Leland, Mississippi. He has Type I diabetes, a pinched nerve, and back problems. He applied for benefits in March 2006. While waiting for a hearing, he has been forced to live in his truck for four months.
- Mrs. G is a 53 year old former machine operator who lives in Greenwood, Mississippi. She has Type II diabetes, moderate degenerative disc disease, a herniated disc, and an esophageal restriction. She applied for benefits in October 2006. She is currently waiting for a hearing date. Her home is in the final stages of foreclosure.
- Mrs. K is a 53 year old former secretary who lives in Kosciusko, Mississippi. She has diabetes, protruding discs, spinal stenosis, arthritis, carpal tunnel syndrome, and depression. She applied for benefits in March 2006, and is waiting for a hearing date. She has just become homeless.

MISSOURI

- Mr. O, from Richmond, Missouri, died in the lobby of the ODAR hearing office while waiting to be called for his hearing on April 2, 2008. He was 49 years old and is survived by his wife and 4 children. He filed his SSI application for disability in November 2005, alleging inability to work due to uncontrolled diabetes with neuropathy, and shoulder and arm pain. He had worked for 14 years as a truck driver. His claim was denied in March 2006 and he promptly filed a request for hearing in April 2006. While waiting for hearing, he had numerous problems with child support authorities and his home was foreclosed upon. His representative filed a dire need request in July 2007 to expedite the hearing, but he did not receive a hearing date until February 2008, when the hearing was scheduled for April 2, 2008, the day he died.
- Mrs. C is a 40 year old Marine Corps veteran who lives in Columbia, MO. She has been unable to work as an over-the-road trucker since December 2004 because of migraines, degenerative disc disease of the neck and lower back, and depression. Her husband, a truck mechanic, supports the family of four, including a daughter in college, on $1,900 monthly take-home pay. Mrs. C filed for benefits in April 2005 and requested a hearing, which took place in March 2007. Her claim was denied in December 2007 and she appealed to the Appeals Council in February 2008. In March 2008, Mrs. C traveled from Missouri to Colorado and had neurosurgery, following a diagnosis of Chiari Malformation. Her recovery is uncertain.
- Mrs. Y is a 37 year old registered nurse, from Columbia, Missouri, who is married with three small children. She had a very good work record until she became incapacitated by pelvic and hip pain in December 2004, following the worsening of an injury during delivery of one of her children. Her claim for Title II benefits was denied in December 2006 and she requested a hearing. The family had already filed for bankruptcy. While waiting for a hearing, her condition worsened. She needs a rare surgery performed by only a few surgeons in the country and which requires a six-month recovery period in a hospital bed and another six months using a wheel chair. The family would need a different house that is accessible. Despite the financial and medical information, SSA did not expedite the hearing for 13 months. She finally received a favorable ALJ decision in February 2008.
- Mr. L, a 26 year old former nurse's assistant from St. Louis, Missouri, has grand mal seizures that have been occurring more and more frequently, and that make it dangerous for him to work. He had to stop working as a nurse's assistant, as he had some severe seizures at work, which caused injury to him and the fear of injury to patients with whom he worked. He filed his application for benefits in August 2006. Since he has been awaiting a hearing, he has become homeless. He now lives with his girlfriend's family, which is very difficult for Mr. L and his girlfriend's family, as they are forced to care for and financially assist a young man who is not related to them, simply because they do not want to see him homeless. Mr. L has no health insurance, and he cannot afford the very expensive medications that are needed to help keep his seizures under better control. It is a "Catch 22" for him since he cannot work because he has seizures that are uncontrolled, yet he cannot control the seizures until he has the money to pay for the medications. He has been waiting almost two years to even be heard by an ALJ.

NEBRASKA

- Ms. O is now 56 years old and lives in Omaha, Nebraska. By late 2004, symptoms from her bipolar disorder, combined with a new diagnosis of cerebral degeneration, worsened her coordination and cognitive skills, and precluded all work. In January 2005, she lost her job as a cashier at a grocery store where she had been employed for 15 years. She filed her claim in June 2005. She filed a request for hearing January 2006. On October 26, 2006 she asked for an "on the record" decision because she had been hospitalized for both her physical and mental impairments and her treating sources found significant limitations. The request was denied and she is still waiting for her hearing to be scheduled, more than two years after her appeal was filed. She has exhausted all of her savings and is dependent on county general assistance and the county mental health clinic for all of her treatment.
- Mr. B, a 46 year old former cook who lives in Seward, Nebraska, has Bipolar I Disorder, unspecified organic brain syndrome, paranoid personality disorder and borderline personality disorder, which prevent him from working. He filed his application for Title II and SSI benefits in December, 2005. While waiting for a hearing, which was requested in July 2006, he has lost his Medicaid benefits and has been without medical treatment and prescriptions since July, 2007.
- Ms. K, a 49 year old former dry cleaning clerk who lives in Omaha, Nebraska, has depression, post-traumatic stress disorder, adjustment disorder with anxiety, chronic obstructive pulmonary disease and fibromyalgia, which prevent her from working. She filed her application for Title II benefits in October 2005 and requested a hearing in July 2006. Ms. K is in an abusive marital relationship, but has been unable to move out and find an alternative residence because she does not have the income and resources to leave her husband. Also, she is dependent upon her husband's health insurance so that she can receive treatment and prescription medications for her disabling conditions.

NEVADA

- Ms. L is 45 years old and lives in Las Vegas, Nevada. She worked as a clerk for an area resort. She has back, hip, knee and breathing problems and suffers from pain including headaches and abdominal pain. She also has depression and has not been able to continue working. She applied for benefits in March 2005 and was denied in August 2005. Her case was appealed to reconsideration and she received a decision, again denying the claim, nearly three years later in April 2008. Her case is now pending at the ALJ hearing level. She has received utility cut-off notices and foreclosure notices. She recently has contacted her Congressional representative to help expedite her case.

NEW JERSEY

- Mrs. E, a 50 year old former cardiac nurse who lives in Eastampton, New Jersey, has severe pain from impairments of her lower back, hips and shoulders (post-surgeries bilaterally) as well as depression and anxiety attacks. These conditions have made it impossible for her to work since 2003. She applied for benefits in 2005. While waiting for a hearing, she has exhausted all of her retirement savings and is now being threatened with foreclosure due to past-due mortgage payments. Her hearing has finally been scheduled for May 2008.
- Mr. N, now 59 years old, from Northvale, New Jersey, was originally denied by an ALJ in February 2005. After appeals through the Federal court level, the case was remanded to the ALJ in November 2006. In January 2008, 14 months after the court remand order and 35 months after the first ALJ denial, the ALJ issued a fully favorable "on the record" decision. Mr. N has a severe mental impairment and has expressed suicidal ideation throughout the process. At the time the claim was approved in January 2008, foreclosure proceedings were started by his mortgage company. Mr. N is married with 2 teenage sons.
- Mr. H was living in a homeless shelter in Hackensack, New Jersey, at the time of his February 2006 hearing. The ALJ, despite knowing of the client's homeless situation and receiving a letter from the client threatening suicide, did not issue a decision until October 2006, more than 7 months after the hearing date.
- Mr. F is a resident of Florence, New Jersey. He originally filed his claim for Title II and SSI benefits on December 1, 1997. He has mental retardation, a separate learning disability, and a herniated lumbar disc. His claim has been heard by an ALJ three separate times so far. After his last hearing, he was found to be disabled at a date after his Title II insured status expired. He has been eligible for SSI benefits of less than $600.00 per month and not the Social Security benefits of at least $1,000.00 per month he had worked to earn. The

last ALJ decision was appealed to the Federal district court, which remanded the case on June 1, 2007. A fourth hearing is now scheduled for May 1, 2008.

NEW MEXICO

- Mr. R lives in Rio Rancho, New Mexico, and applied for benefits in November 2005. His hearing was held in August 2007. Eight months later, he is still waiting for a decision from the ALJ. In the meantime, he tried to return to work in order to have money for living expenses. An acquaintance gave him a job with accommodations for his disability. Even with the accommodations, he was unable to complete even two months on the job, which SSA considers to be an unsuccessful work attempt. Now Mr. R is certain that he cannot work at any job.
- Ms. A lives in Albuquerque, New Mexico, and applied for benefits in October 2005. Her hearing was held in November 2007, more than two years later. She has had to give up her own home and move in with her adult children. She calls her attorney every month, and the attorney calls the hearing office to check on the status of the case. Her case is still in post-hearing review with the ALJ, even though there is no further development that needs to be completed.

NEW YORK

- Mr. R is 38 years old and lives in Brooklyn, New York. He has major depressive disorder, anorexia nervosa with severe weight loss, somatoform disorder, and generalized fatigue. He applied for SSI benefits in September 2003 and requested a hearing in March 2004. The ODAR hearing office failed to send a Notice of Hearing for the hearing, scheduled in December 2006. As a result, Mr. R did not appear and his hearing request was dismissed. He obtained representation in June 2007 after the dismissal. His attorney immediately contacted the ALJ and submitted all documents establishing that Mr. R was never informed of the hearing. She also sent all medical evidence she had obtained. The attorney asked the ALJ to reopen the case and to schedule an expedited hearing. The hearing was finally held in November 2007 and the ALJ issued a favorable decision in late November 2007. There still was a delay in receipt of benefits as Mr. R did not receive his first SSI past due installment payment until March 2008 and his first SSI monthly payment until April 2008.

  While waiting for the hearing decision and benefits payments, Mr. R lost his welfare benefits and Medicaid, so he could not receive treatment. His anorexia nervosa was so extreme as to cause severe tooth decay requiring dentures. He received an eviction notice for his apartment but his attorney worked with the landlord to stave off eviction based on the fact that a new hearing was being scheduled. Because his welfare case was closed, Mr. R had no money. He had to go to food pantries for any donation and his neighbors helped him from time to time. He even had to borrow money to ride the subway to his hearing.

- Ms. T lives in Ronkonkoma, New York. She is 55 years old. She was a pharmacy technician for over thirty years. She has been hospitalized three times in the past year for chronic obstructive pulmonary disease (COPD). She has been unable to work since December 2005. She filed for benefits in January 2007 and requested a hearing in May 2007. Her husband's income is not enough to meet their needs and they have had to borrow money from family in order to meet living expenses. This winter, they had no choice but to reduce their expenditure on oil for the household. They tried to reduce the household temperature, but this causes worsening of her lung symptoms. In addition, Ms. T is depressed and constantly worries about what will happen when the next month's bills become due.

NORTH CAROLINA

- Mr. N lived in the Charlotte, North Carolina area. He was 57 years old and died in August 2007. As an adult, he obtained a degree in theology. From 1986 to 1997, he worked doing maintenance on power generating stations. He developed heart disease and emphysema and, from 1998 to 2004, he did less strenuous work. In June 2005, he filed a claim for Title II disability benefits. His claim was denied and he requested a hearing in April 2006. During the wait, he developed a spot on his lung, but could not afford a CT scan for an accurate diagnosis. In May 2007, he received a foreclosure notice, lost his house, and had to move in with his daughter. He died in August 2007 of ischemic heart disease. In February 2008, months after his death, his claim was approved on informal remand to the DDS.
- Ms. G, from the Charlotte, North Carolina area, was 50 years old when she died. She had worked in the garment trade, in management, and retail. She ap-

plied for Title II benefits about January 2007 and requested a hearing in June 2007. She died April 4, 2008, probably from heart disease with complications of chronic pancreatitis and hyperparathyroidism. Her attorney notes that the facts leave out that Ms. G was a funny, vital woman, with two children age 18 and 21. She had left an abusive and controlling husband, and was trying to make it on her own, with absolutely no income.

- Mr. E died on August 21, 2007, at age 52 from congestive heart failure, chronic atrial fibrillation, pneumonia, obesity and peripheral artery disease. He lived in the Charlotte, North Carolina area and worked for 15 years as a pipe insulator, and usually held a second job. He applied for Title II benefits in March 2006, which was denied, and requested a hearing in November 2006. Four months after his death, on December 27, 2007, a favorable decision was issued without hearing.
- Ms. R, a 52 year old former cook and waitress who lives in Rocky Mount, North Carolina, has Major Depressive Disorder, post-traumatic stress disorder, panic attacks, carpal tunnel nerve damage in both hands, chronic obstructive pulmonary disease, and migraine headaches. These conditions prevent her from working. She filed her application for benefits in November 2006. While waiting for a hearing she encountered numerous hardships, including: being on the verge of committing suicide; having extreme debilitating joint pain and disk pain; becoming homeless; and having frequent nausea due to migraine headaches. Her claim was approved in March 2008 by the ALJ after her attorney submitted a "dire need" request.

OKLAHOMA

- Mr. H, from Tulsa, Oklahoma, filed an application for disability benefits in March 2006, due to Hepatitis B and liver and renal failure. Unfortunately, he died on September 13, 2007, without having been able to attend a hearing.
- Ms. B, from Tulsa, Oklahoma, filed an application in April 2006 and has not yet been scheduled for a hearing. She has Multiple Sclerosis and a mental impairment. In July 2007, her attorney wrote the hearing office requesting an "on the record" decision. She is so desperate that she is willing to change her date of disability onset to a later date. As of April 2008, no action has been taken on the request. Since the request was made, Ms. B has been hospitalized on at least two occasions for her psychiatric condition.
- Ms. K, from the Tulsa, Oklahoma area, has a rare kidney disease and is passing a kidney stone almost once a week, which causes severe pain. She is diagnosed with Major Depressive Disorder, Graves Disease, recurrent and severe pain disorder, and recurrent kidney stones. Her treating physician has stated that she could not return to work. After her application was denied in 2006, she requested a hearing. In the summer of 2007, her attorney submitted additional evidence from her treating doctor. No action has been taken. She is in dire financial straits.
- Mrs. M, a 33 year old former waitress and substitute school teacher, lives in Muskogee, Oklahoma. She has degenerative joint disease of the lumbar spine, neck and hands; hearing loss; left wrist injury; migraines; tingling/numbness in the left knee and left foot; right hip problems; dizziness and nausea. She filed her application for benefits in August 2005 and a request for hearing in May 2006. Mrs. M is married with three children, including one son who is disabled. After a nearby plant explosion damaged their home in 2004, the family was forced to move into an apartment. Evicted in 2007, they have had no permanent residence since then and have been forced to live in a variety of temporary settings, including a shelter for women and children (Mrs. M's husband slept in the car). After the 2007 eviction, Mrs. M's attorney sent letters to the ODAR hearing office requesting an expedited hearing because of the family's homelessness. Mrs. M received a fully favorable decision on March 26, 2008, nearly two years after she filed her request for a hearing. Her disabled child also received a favorable decision on March 25, 2008. On April 7, 2008, an SSA district office worker informed the attorney that both Mrs. M and her disabled child were in pay status.

SOUTH CAROLINA

- Mr. A was living in Augusta, South Carolina, when he was in a car accident. In his 30s, he had been working as a computer professional, but the accident resulted in a severe and chronic pain condition. He could not sit down, stand up or lay down for more than 15 minutes at a time. He applied for SSDI benefits in January 2003. His case was denied in September 2003. At reconsideration, his case was denied again in August 2004. His mother was required to

return to work from her retirement to help him with medical costs. Mr. A died five months before his December 2006 hearing from an accidental overdose of pain medication. He would have been 41 years old this year. The ALJ denied the claim and his mother has continued the case by filing an appeal to the Appeals Council. No decision on the appeal has been received.

TENNESSEE

- Ms. B from Tiptinville, Tennessee, died in July 2006 just shy of her 52nd birthday due to chronic obstructive pulmonary disease (COPD). Ms. B was a school cafeteria cook her entire life and stopped working in September 2002 due to back and lung impairments. She was on an oxygen machine, as well as a continuous positive airway pressure (CPAP) machine. She filed her claim for benefits in 2002 and was denied for the first time by an ALJ in February 2005 after waiting 5 months for a decision from her first hearing in September 2004. The claim was appealed to the Appeals Council and two years later was remanded back to the ALJ to reconsider the treating doctor's opinion. An ALJ allowed the claim with an "on the record" decision in April 2008.

TEXAS

- Ms. T is 34 years old and had a good work history. Four years ago, she developed gastrointestinal problems and lupus. She has no health insurance or other income to use for medical treatment, even though recent tests indicate she has had heart damage. She is 5 feet, 6 inches tall, but over the last four years her weight has been as low as 77 pounds, which should meet a listing of impairments. She has been waiting for a hearing over 1000 days even though her attorney has sent "dire need" letters and requested an "on the record" decision. The ALJ has denied the requests. A hearing has finally been set for later in April 2008.
- Mr. D is a veteran and living in domiciliary care at an area VA Hospital. He was homeless and had cancer three times in a period of just over two years. During the second episode of cancer, he had a pulmonary embolism and was put on life support. The VA could not find his family to see about ceasing the life support and the veteran was in the nursing home for a period of time. Miraculously, Mr. D survived and then had to have surgery for a brain tumor. He had to wait over one year for his hearing. There were thousands of pages of medical records in his file. At the hearing, he and his attorney learned that the hearing office had not sent the medical records to the medical expert witness for pre-hearing review. This delayed the decision. Mr. D eventually received a favorable decision and his benefits.
- A woman in the Paris, Texas area had heart and kidney problems. She had a stent inserted so she could have dialysis. She was waiting to start dialysis when her condition deteriorated and she died. Three weeks later, she received a favorable ALJ decision. Her attorney had requested an "on the record" decision before the claimant died, but to no avail.

VIRGINIA

- Ms. H was a 47-year-old receptionist living in a nursing home in Fairfax, Virginia, after having been homeless on and off since 2003. She had an extensive medical history which included cervical, dorsal and lumbar spinal strains, pinched nerve, shoulder pain, uncontrolled diabetes mellitus, diabetic neuropathy, nephritic proteinuria, hypertension, obesity and dyslipidemia. She also had severe kidney disease including an acute episode of renal failure. In June 2007, she was hospitalized with a myocardial infarction after which she had two strokes. One in the cerebellum was complicated by hydrocephalus requiring neurosurgical relief.

  Ms. H first applied for SSI and Title II benefits in January 2004, having last worked in October 2003. She had an ALJ hearing in August 2005 and was denied again in October 2005. She was not represented at that hearing. She reapplied on her own sometime in 2006 and obtained legal assistance in July 2006. Another request for hearing was filed in March 2007. Ms. H had a heart attack in June 2007 but her legal representative was not informed until August 2007. The representative immediately requested a favorable "on the record" decision. The ODAR hearing office did not respond until January 2008. Ms. H received her Notice of Award on February 4, 2008. She received her retroactive benefits on March 28, 2008. She died on April 3, 2008.

WASHINGTON

- Ms. S is a 38 year old resident of Seattle, Washington, who is dealing with a combination of autoimmune diseases, which have progressively worsened. She

had to drop out of medical school because of her medical condition. She cannot work and her chronic disease continues to worsen. She applied for benefits in May 2003. Her representative sent briefs to the ODAR hearing office in February 2004 and July 2005. Her case was denied by the ALJ, remanded by the Appeals Council, denied by the ALJ again, and eventually appealed to Federal district court. The court remanded the case for a new ALJ hearing. As of April 2008, her case is still pending for a third ALJ hearing, yet unscheduled.

- Mr. W is 48 years old and was a manager at a social services organization in the area of Oshkosh, Wisconsin. He experienced a worsening of mental illness (neurotic depression) and stabbed himself. He survived but endured homelessness. He lived in a boarding house for a time. He was getting food from shelters and the Red Cross. He filed for benefits in March 2006 and was finally approved for benefits in February 2008.

CONCLUSION

As you can see from the circumstances of these claimants' lives and deaths, delays in decision-making on eligibility for disability programs can have devastating effects on people already struggling with difficult situations. On behalf of people with disabilities, it is critical that SSA be given substantial and adequate funding to make disability decisions in a timely manner and to carry out its other mandated workloads. We appreciate your continued oversight of the administration of the Social Security programs and the manner in which those programs meet the needs of people with disabilities.

Thank you for the opportunity to testify today. I would be happy to answer questions.

ON BEHALF OF:

American Council of the Blind
American Foundation for the Blind
American Network of Community Options and Resources
Council of State Administrators of Vocational Rehabilitation
Easter Seals, Inc.
Epilepsy Foundation
Goodwill Industries International, Inc.
Inter-National Association of Business, Industry and Rehabilitation
National Alliance on Mental Illness
National Association of Disability Representatives
National Disability Rights Network
National Multiple Sclerosis Society
National Organization of Social Security Claimants' Representatives
NISH
Paralyzed Veterans of America
Research Institute for Independent Living
The Arc of the United States
Title II Community AIDS National Network
Tourette Syndrome Association
United Cerebral Palsy
United Spinal Association

Mr. MCDERMOTT. Thank you very much for your testimony.

Ms. Mara Mayor is on the AARP Board of Directors in Bethesda. Ms. Mayor.

STATEMENT OF MARA MAYOR, MEMBER, AARP BOARD OF DIRECTORS, BETHESDA, MARYLAND

*Ms. MAYOR. Good afternoon. Thank you very much Chairman McDermott, Ranking Member McCrery, Members of the Committee.

AARP appreciates this opportunity to give our perspective on what underfunding the Social Security Administration means for Americans, especially those who are 50 and over. I would just add as a parenthesis, my husband is a retired attorney who volunteers at a local social services agency where one of the things he does

is he works with people on disability appeals on a regular basis, so I have sort of an extra view from the trenches on this one.

The programs under the jurisdiction of the Social Security Administration are for not only the promise of earned and deserved benefits, but also the promise that they will be reasonably, in fact compassionately, administered. Unfortunately, as we are hearing, today SSA is no longer the gold standard of service it once was. The deterioration in service reflects an increased workload and a pernicious pattern of underfunding. SSA's core responsibility is managing the Old Age and Survivor's Insurance Program, the Disability Insurance Program, and the Supplemental Security Income Program.

These tasks will be even more challenging as the boomers apply for Social Security benefits. You have heard numbers. Just one interesting statistic, in the next 10 years alone, nearly 13 million new beneficiaries will be added to the roles, which translates to 16,000 per working day. That is a lot of people. The boomer retirement comes at a time when the SSA field offices are, as you know, strained. Despite the hard work of thousands of dedicated Social Security employees and managers, SSA is dealing with service issues that would make even the strongest of organizations blanch.

To complicated the problem, SSA now plays a key role in assessing the correct premium for Medicare Parts B and D, and processes applications for the low-income subsidy of Medicare Part D. That is not all. In recent years, the agency has become an important element in the nation's homeland security efforts. By conducting millions of Social Security number employment verifications and other immigration related activities. Given the enormous strain the Agency already faces in meeting its obligations, AARP has grave concerns about proposals to expand these types of activities.

To make matters worse, as you know, resources have only been shrinking. SSA is at its lowest staffing level in 35 years despite having about twice the number of beneficiaries it had 35 years ago. In addition, we know that some field offices have been closed or consolidated. The numbers may be modest, as the Commissioner indicated, but AARP is very concerned about the trend. If the trend continues in this direction, essential services will slip even further.

AARP Members and the general public are counting on the fact that Social Security will be there financially when they retire or become disabled, and need to be able to count on the fact that the Social Security office will be there. You have heard about the infrastructure, I won't go into that, it is clearly a big issue. Clearly important resources are needed to ensure the Agency can meet its workload, and it is not happening and so the question is why. Although SSA's administrative expenses are paid from the trust funds, these expenses are subject to non-Social Security spending caps and across the board cuts. This means funding has been artificially low in order to comply with spending targets unrelated to Social Security. As a result, over time there has been a steadily increasing gap between SSA's needs and the final appropriation. Reducing funding as though SSA actually competed for discretionary dollars has ill-served the Agency and the millions who rely on it.

We want to stress the impact on the American people, and particularly those who are 50 and over, of these expanding responsibil-

ities coupled with less adequate resources. Clearly, inefficient funding will hamper the Agency's ability to serve the wave of boomers as they retire, and it will make it impossible to make significant headway in reducing the horrendous backlog of services in its disability program. While the disability programs are potentially available to anyone regardless of age, it is those over 50 who make up a major percent of their recipients.

AARP believes Congress must respond to this funding crisis in several ways. Provide the Agency with the resources it needs to address the disability backlog, reject any further expansion of administrative activities not directly related to the Agency's core mission, and exclude SSA funding from any domestic spending cap. We need to keep the promise of reasonable administration of programs overseen by the Social Security Administration, programs on which the American people, and particularly those 50 plus rely.

On behalf of the more than 39 million Americans who are Members of AARP, I thank you for this opportunity and would be happy to answer questions.

[The prepared statement of Mara Mayor follows:]

TESTIMONY BEFORE THE

HOUSE COMMITTEE ON WAYS AND MEANS

ON

THE SOCIAL SECURITY ADMINISTRATION'S SERVICE TO THE PUBLIC

April 23, 2008

WASHINGTON, D.C.

WITNESS: MARA MAYOR
AARP BOARD OF DIRECTORS

For further information
Contact: Darrin Brown or Evelyn Morton
Government Relations
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Chairman Rangel, Ranking Member McCrery, Subcommittee Chair McNulty, Ranking Member Johnson, and members of the Ways and Means Committee: Good morning. I am Mara Mayor, a member of the Board of Directors for AARP. AARP is a nonprofit, nonpartisan membership organization that helps people age 50+ maintain independence, choice, and control in ways that are beneficial and affordable to them and to society as a whole. With over 39 million members, AARP is the largest organization representing the interests of Americans age 50 and older and their families. We appreciate this opportunity to give our perspective on the decline in service to the public by the Social Security Administration (SSA).

As was reported in the AARP Bulletin last year, the Social Security Administration touches the lives of nearly every American, and was once known as the standard for government agency service by which all others were measured. Over time, however, the agency's mission has been diluted by additional responsibilities not related to its core mission while the agency itself has faced a loss of staff and a budget that is woefully inadequate.

A Workload Not Matched with Resources

The Social Security Administration was made an independent agency in 1995 to provide the program with consistent direction and professional management and help insulate it against decisions not based on Social Security-related issues.

In the ensuing years, the agency has been tasked with numerous other responsibilities that fall outside its core mission of managing the Old Age and Survivors Insurance (OASI), Disability Insurance (DI), and Supplemental Security Income (SSI) programs. SSA now plays a key role in assessing the correct premium for Parts B and D of Medicare. In addition, SSA processes applications for the Low Income Subsidy of Medicare Part D and conducts outreach to those who may potentially qualify for the extra help.

In recent years the agency has become an important element in the nation's homeland security efforts as it conducts millions of Social Security number (SSN) verifications for employment purposes and other immigration-related activities. In light of the added administrative burden these activities have placed on the agency, and the impact that burden has on the timely delivery of services to beneficiaries, AARP has grave concerns about proposals that would further expand these activities or mandate new ones.

The extra work given to SSA by Congress comes at a time when the nation is confronting a significant, long-anticipated demographic challenge, the coming of retirement age of the Baby Boom generation, which will add nearly 80 million new beneficiaries to the Social Security rolls – nearly 13 million in the next 10 years alone, and upwards of 16,000 per working day. It is not difficult, then, to understand the enormity of the task the agency faces in foreseeable work alone.

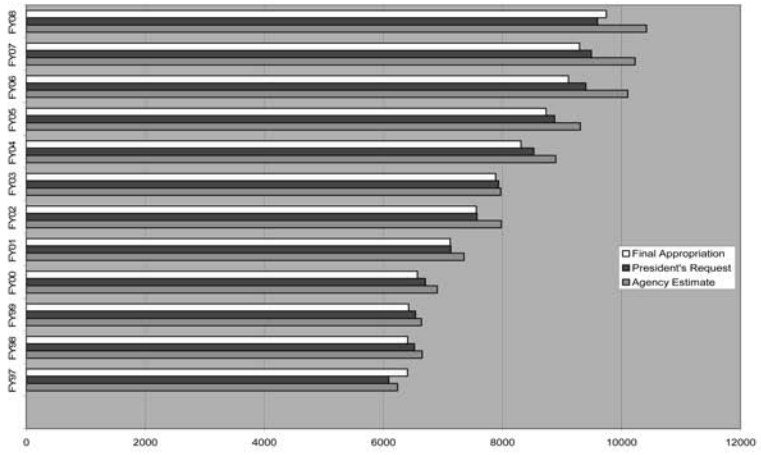
And what will those millions of Boomers face when they make their initial applications? They will deal with SSA field offices that served an average of 870,000 people each week in 2007. That number continues to grow with each passing week. Earlier this year, on two separate occasions, SSA field offices set all-time record highs for the number of visitors served.

The real impact of the demand on SSA is serious. In the next fiscal year alone, the agency expects to provide benefits to 60 million beneficiaries, properly assign nearly 275 million earning items to workers' earnings records, and issue 20 million Social Security cards. It is not difficult to see, then, how work that also includes hearing cases, dealing with incorrect payments, and everyday customer service activities can begin to backup. Despite the hard work of thousands of dedicated Social Security employees and managers, SSA is dealing with service issues that would challenge even the strongest of organizations.

SSA is at its lowest staffing level in 35 years and is closing offices across the country, despite the record number of retirees coming into the system and its new responsibilities. SSA caseworkers are overwhelmed with a backlog that can make individuals wait up to three years before receiving disability benefits. In FY 2007, Social Security faced a funding crisis that nearly resulted in employee furloughs.

Efforts to deal with the SSA's service problems, however, are hampered by insufficient funds. Although the SSA's administrative expenses are paid from the trust funds, such payments are insufficient because the agency's administrative expenses have been included as part of non-Social Security spending subject to caps and across-the-board cuts. This means the SSA's funding may have been artificially low in order to comply with spending targets unrelated to Social Security.

Consider this chart of the history of Social Security appropriations during its time as an independent agency:



Source: Congressional Research Service

This chart shows how, over time, Congress and the Administration have whittled away at SSA's budget in order to meet other discretionary targets, even though the agency does not compete for discretionary dollars. We believe this treatment has ill-served the agency and the millions who rely on it to administer the benefits they have earned and are entitled to receive.

For FY 2008, Congress appropriated $148 million over the President's request, but still short of the $10.1 billion authorized by the budget resolution and the amount SSA had originally requested of the Administration.

Insufficient funding will hamper the agency's ability to serve the wave of Boomers who have begun entering retirement or to make any headway in reducing the backlog of services in its disability program. And, as Congress gives the agency additional responsibilities that are outside its core mission, the agency will continue to struggle to reclaim its place as the model government agency.

The Claims Keep Coming...And Waiting

A scene from the comedy classic, *I Love Lucy*, is familiar to most of us. Lucy and Ethel have a job packaging chocolate candy that comes to them via conveyor belt. It seems easy enough when they are shown what to do, however, the pace quickens and the candy begins to stack up. No amount of creativity can ease the back up – working faster, stacking the candies on top of one another, shoving them in their pockets, even eating some of the candy – cannot put Lucy and Ethel back on track.

This is a humorous story, of course, but it has a real world counterpart that is not funny, but sadly very tragic. We refer to the number of people forced to wait for a determination of their application for disability benefits. In a similar fashion the cases keep coming in, but the pace is too fast for workers to handle and the

output is too slow. Not boxes of candy but real human lives are being stacked up and forced to wait; they wait in pain, frustration, and financial hardship.

The backlog of disability cases is a direct result of the agency's underfunding and results in a waitlist which should embarrass all of us.

The backlog numbers are astounding:

- 1.4 million people were awaiting a decision on their initial claim or appeal for Social Security or Supplemental Security Income (SSI) disability benefits as of early 2008.

- Initial applications for disability benefits have grown over 20% in the last decade.

- As of March 2008 the backlog of appealed cases is over 750,000. These people wait, on average, nearly 500 days from the beginning of their claim to receiving a final determination. Almost 300,000 of these cases are over a year old.

- Veterans who have sacrificed tremendously for our country are not spared the indignity. Over 90,000 of the pending appeals hearings are veterans'.

It is important to remember that the time cases are waiting for a hearing are in addition to the time it takes to process one's initial claim.

Where Will They Turn for Help?

At a time when it would appear that additional help is needed to handle the incoming and pending workload, the agency is unfortunately forced to cut back due to the chronic and demonstrated underfunding that has plagued SSA.

In recent years the agency has made the unfortunate but necessary decision to close offices and consolidate operations across the nation. Since FY 2006, at least 18 offices have been closed or merged in an effort to do more with less. AARP is very concerned that if this trend continues, even routine service will slip even further. While many in the general public are already concerned whether their full Social Security benefit will be there for them when they retire or when they become disabled, they shouldn't also have to be concerned that their Social Security office will be there too.

In addition to office closures, many locations are seriously understaffed due to employee attrition. Employees who retire or otherwise leave the agency are not replaced because the resources are just not available.

In fiscal year 2009 staffing at SSA will reach its lowest level since 1972, before SSI was established; yet SSA today has about twice the number of beneficiaries it had in 1972. According to SSA's Budget Appendix for FY 2009, SSA's civilian full-time staff employment for Fiscal Year 2009 will remain essentially unchanged.

Even the use of technology and other efficiency efforts have their limitations. Call centers (800 numbers) handle tens of millions of contacts through agents and automation, but customers will still get a busy signal nearly 10 percent of the time, and have long waits once they do get through.

The ever-decreasing number of offices is also handling an increasing number of calls directed to them directly or through other call operations. Customers hoping to reach someone this way will get a busy signal more than half the time.

As if service degradations were not enough, the status quo prevents program integrity efforts from realizing their potential. Congress has consistently provided for separate, additional funds for SSA to conduct Continuing Disability Reviews

(CDR) and SSI eligibility redeterminations. When fully utilized, CDR's result in savings of over $10 in program costs for every $1 in administrative funding used to conduct the reviews. SSI redeterminations help save $7 for ever $1 spent. Not enabling the agency to pursue these activities simply because of an artificial barrier like the discretionary spending caps is indeed "penny wise and pound foolish."

How Congress Should Act…And Soon

Since SSA administrative expenses (less than 2% of annual benefit outlays) are funded from the trust funds rather than general treasury revenue, they should not be treated like other discretionary spending. Instead, the annual budget resolution should include a separate cap for the agency's LAE that is tied to some other measure, such as a percentage of projected annual outlays in benefits.

In addition, we urge that there be no further expansion of administrative activities that do not directly enhance the prompt delivery of services to beneficiaries. Extraneous administrative functions contribute to the lack of timely service delivery generally and likely exacerbate the disability claims backlog. In particular, those activities which have no direct relationship to the delivery of benefits, and which would normally be funded through discretionary dollars, should not be funded from the trust funds, and especially not if a separate cap for the agency's LAE is implemented.

The time to act has long since passed. On behalf of the more than 39 million Americans who are members of AARP, I thank you for the opportunity to address the committee.

Mr. MCDERMOTT. Thank you for your testimony.

Mr. Skwierczynski, who is the president of the American Federation of Government Employees National Council of Social Security Field Operations Locals, your testimony please.

STATEMENT OF WITOLD SKWIERCZYNSKI, PRESIDENT, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, NATIONAL COUNCIL OF SOCIAL SECURITY FIELD OPERATIONS LOCALS, BALTIMORE, MARYLAND

*Mr. SKWIERCZYNSKI. Thank you, Congressman McDermott, Congressman McCrery, and the rest of the Committee, thanks for inviting me.

I am with the union, I represent 50,000 bargaining employees who work for Social Security, and we certainly have a crisis due to the failure of the Administration and Congress to properly fund the Agency. The witnesses here and the Commissioner have already talked about some of the disconnects that have occurred with regards to the disability process.

Part of the problem is that not only have we been forced to deal with an incredibly increasing workload in the disability process, but Congress has asked us to do other work, such as the Medicare D subsidy, Medicare B appeals, and more stringent evidentiary standards for Social Security number work. If in fact there is some effort to expand our work with no match in e-verify workloads in the immigration area, it will require an incredible infusion of resources not only for staff but also to upgrade our computers.

Applicants who file for disability hearings, from the time they file the initial claim, takes about two years to get a decision. That is outrageous. Right now, in this fiscal year the Agency is only going to do 33 percent of its continuing disability reviews and 60 percent of its SSI reconsiderations, ensuring that many un-reviewed beneficiaries will incur unnecessary overpayments. Fifty-one percent of the people who tried to call a field office last year got no answer, and 25 percent who called the 800 number couldn't get through. Right now, with the baby boomers filing initial claims, retirement claims this year, we have about 16-percent increase in traffic into our offices. Efforts by the public to try to communicate with SSA employees have become a frustrating experience characterized by delays, busy signals and unanswered calls.

Clearly we need more resources. We would suggest that an $11 billion administrative budget in fiscal year 2009 would be a start, and also an increase of 5,000 FTE over current numbers would be a start. Enacting off budget legislation for the SSA administrative budget is the only conceivable solution to the yearly struggle against budget caps and Congressional scoring requirements that results in inadequate SSA budgets year after year, staffing cuts, and the consequent poor service. Off budget could solve the absurdity of a system where the trust fund is making huge surpluses, but it is used for everything but SSA's resource requirements.

We also would recommend federalizing the disability program and eliminating the current Federal/state bifurcation in deciding disability claims. What we have now is we have 54 different disability systems out there with different qualities of workers, different rules, and different training systems. There is no consistency. In some states the approval rates are 55 percent on initial

claims, others are 25 percent with no evidence that, in those states with higher approval rates, the people are more sick than in other states. The current system no longer makes sense, it needs to be federalized. It would provide consistency not only to the staff, but to the decisionmaking process and to the training.

The most disturbing impact of the budget shortage is that the Administration is using the lack of resources as an excuse to initiate fundamental changes in SSA's evidentiary standards and the way the Agency operates that will permanently damage Social Security as a responsible social program and harm the American public who rely on Social Security as their primary source for retirement, survivor, and disability security. The major transformation supported by the administration is to diminish the historical personal service role of SSA employees in the claims process. If claims can be filed by the public without employee review and assistance, the savings to administrative expenses certainly could be substantial.

But what would be the impact of that change? Already this year, SSA has made some major changes in evidentiary requirements. No longer do we ask for proof of age from applicants for retirement benefits if their allegation upon retirement matches their allegation when they got their Social Security card. No longer to we check on somebody's citizenship, again if their allegation matches when they first got a card to when they filed for a claim. No longer do we seek wag earnings information, that is earnings not posted on their earnings record of individuals who file for retirement even though that information would tend to increase their benefits.

All three evidentiary requirements I just mentioned hinge on an SSA employee to review the evidence and certify its accuracy. Eliminating such evidence enhances the opportunity for fraud and incorrect payments.

SSA intends to introduce a new Internet Social Security benefit application in September. The goal is to allow claimants to file applications on the Internet without intervention or review by a Social Security employee. Currently, all Internet claims are reviewed by a Social Security employee.

We have done surveys with the people who do review those claims. 61 percent of our claims reps who review these claims have informed us that over 50 of the claims they review, the individuals have chosen months of election to start their retirement benefits that are to their disadvantage. If you have no reviews, you will have millions of people who will be filing claims that will be choosing a pathway to retirement which are not in their best interests.

Mandatory reviews and contacts ensure advice and assistance on advantageous month of election, pursuit of benefits for other eligible family members that ensure that the claimants understand the impact of their benefit choices whether they file for widow's benefits or retirement benefits or spouse's benefits, and also that they get an explanation of their reporting responsibilities.

The Internet application also eliminates a number of questions which are designed to ferret our fraudulent people who are retiring that aren't really retiring and also to elicit earnings from the military or the railroad which would tend to increase their benefits.

The stated Administration goal is to eliminate the claims review so that it will be the applicant's responsibility to make the right choices without help. As a substitute to employee assistance, the administration plans to provide pop-up screens and expanded access to third parties. Rather than have trained government employees with a public service motivation assisting claimants, SSA plans to shift that role to third parties who will charge fees for their services and will have minimal training and knowledge of the program. The Administration has shifted its entire public relations program to a push for SSA claimants to file Internet claims. Some communications offer the public no other option.

Concurrent with its emphasis on Internet claims, SSA has accelerated its office closing program with totally removes the option of face to face service to many SSA customers. Last year, the Commission closed 17 offices, which was the highest number of offices closed in the history of this Agency. Despite what the Commissioner said, you ought to review his numbers, the only offices that were open last year were enumeration centers which are not full workload offices, they just do Social Security number work.

SSA's evidentiary changes and Internet claims without employee review will undoubtedly lead to an increase in fraud and incorrect payments. It will also lead to the transformation of a respected social agency from one where employees were trained to personally assist the applicants to benefits to navigate a complex system at a time of personal crisis when people are filing for retirement or disability or survivors benefits, perhaps because of the death of their husband or their wife or their mother or their father, to an agency that expects claimants to fend for themselves. If such claimants make unwise choices, it is their problem.

Is this the Social Security Administration that Congress wants? If not, I would strongly urge that you ask some hard questions of the people who run Social Security and engage in some serious oversight and enact legislation preventing this tragic transformation of Social Security from occurring.

I also ask that you please support Congressman Higgins' bill, H.R. 5110, which will require SSA to provide notice and rationale to Congress of any office closing, and also require the SSA Commissioner to submit the Agency budget directly to Congress, which is optional under the independent Agency system we have, rather than to OMB.

Thank you.

[The prepared statement of Witold Skwierczynski follows:]

Prepared Statement of Witold Skwierczynski, President of the American Federation of Government Employees National Council of Social Security Field Operations Locals, Baltimore, Maryland

I thank Chairman Rangel, Ranking Member McCrery and Members of the Committee, for the opportunity to present this statement regarding the Social Security Administration's (SSA's) large backlog in disability claims and other deterioration in public service due to years of inadequate funding of the Agency's administrative expenses.

As President of the American Federation of Government Employee's (AFGE) National Council of Social Security Administration Field Operations Locals and Spokesperson for the AFGE SSA General Committee,

I present this statement on behalf of approximately 50,000 bargaining unit Social Security employees who work in over 1500 facilities nationwide. The employees represented by the Union work in Field Offices, Program Service Centers, Teleservice

(800 Number) Centers, Regional Offices of Quality Assurance, Offices of Disability Adjudication and Review, Regional Offices, Headquarters Offices, the Wilkes-Barre Data Operations Center, and other sites throughout the country where SSA employees take, process and review claims for retirement, survivor, disability benefits and appeal requests for SSA and SSI benefits.

The primary message the Union wants to convey to this Committee is that Social Security is in *dire need* of both additional administrative funding and Congressional oversight of its service delivery practices. The crisis in the disability program as manifested in the obscene delays in processing disability hearings appeals is primarily due to the failure of the President and Congress to adequately fund administrative expenses. Staffing levels have become much too low in SSA. This has affected not only the disability workloads but also all work that the Agency is required to accomplish.

Unacceptable backlogs have escalated and critical integrity workloads are not done. The employees who work in the SSA front lines and interact with the public are assigned impossible workloads. They are expected to increase their productivity, interview more and more claimants, maintain a high level of accuracy, provide friendly and compassionate service while interacting with the public while Congress and the President not only assign more programs and workloads to the Agency but do so while reducing staff. Dedicated veteran employees are fed up with the deteriorating stressful work environment and count the days till they can retire. SSA changes priorities and engages in crisis management efforts to plug the rapidly multiplying holes in the dam. Employees are not asked or encouraged to provide input regarding what should be done to solve the Agency's problems. Instead they are just told what to do. The unfortunate victims of the decisions that have been made to starve the Agency are the American public who rely on SSA to provide them and their families with retirement, disability and survivor's benefit security. Also affected are the poor aged, blind and disabled who rely an SSA to provide subsistence SSI benefits so that they can survive. These victims are frequently faced with delays of over 2 years when they file for either SSA or SSI disability benefits. Only 30 % of initial claims for disability are allowed due to an archaic system in which state employees make decisions on whether claimants are eligible for a Federal disability program. If their initial claim is denied, the applicant is faced with a nightmare scenario of delays of one to three years before their appeal is decided by the Agency. Claimants find it difficult to interact with a Social Security employee when they need assistance. 25 % of the calls to the 800 number are unanswered. If a claimant calls their local office they can't get through 51% of the time. Due to the decision to save money by closing offices, many claimants face lengthy commutes to find an SSA office. When they arrive they face lengthy waits. If they try to file their application through the internet, they must confront a complex set of questions and choices with little assistance. Consequently, re-contacts by SSA employees are virtually universal and can cause lengthy delays in the claims process. In order to stretch resources, SSA has loosened evidentiary standards. Standard evidence such as proof of age, citizenship and development of recent wages not posted on a wage earner's earnings record is no longer requested in most cases. Thus, more ineligible claimants are approved for erroneous payments and more claimants are paid incorrectly. Once applicants begin receiving benefits, SSA can no longer review the accuracy of disability and SSI benefits by conducting Continuing Disability Reviews (CDRs) at the required levels due to staff shortages. In FY 08 the Agency will only conduct 33% of scheduled CDRs. Consequently, thousands of individuals who have recovered from their disabilities simply continue to collect benefits. Thousands of SSI recipients who have not reported changes in their income, resources or living arrangements continue to be paid incorrectly since the Agency doesn't have enough staff to review their cases and conduct redeterminations. In FY 08, SSA will only process 60% of scheduled SSI redeterminations. When their cases are reviewed, SSA assesses these SSI recipients with overpayments which are difficult or impossible to collect from a marginal population.

Budget cuts and a shortage of personnel have been an issue at Social Security for over 20 years, but this Agency is now using both of them as an excuse to make a number of "backdoor" changes that AFGE feels will disadvantage the millions of Americans who are part of the "Baby Boom Generation." These changes include loosening evidentiary requirements that will enhance the possibility of fraud. In addition, SSA is planning to reduce the assistance provided to claimants when making their choices of when to effectuate retirement benefits. Such changes will increase the likelihood that claimants will make choices against their interests. This is all part of a plan to save money by shifting service to internet claims without employee review.

Offices around the United States are being closed at an alarming rate. In 2007 SSA closed 17 offices—the highest number in SSA history. These offices are closed without examination of the adverse impact that such closures have on the affected community.

SSA staffing shortages have encouraged 3rd party businesses to fill the void and offer to assist claimants in their interactions with SSA. Such assistance, of course, is for a price. Few claimants attempt to navigate the SSA hearings appeal system without representation. However, SSA has plans to encourage and assist 3rd parties in expanding the menu of services that they offer claimants for a fee. SSA traditionally has provided assistance to claimants as part of the FICA taxes that wage earners have paid during their working lives. Now SSA has plans to encourage claimants to fend for themselves and use 3rd parties who charge a fee instead of SSA employees. Expanding 3rd party involvement in the claims process due to budgetary constraints can only lead to pressure for future contracting out of core SSA services.

Disability

Since Commissioner Astrue's arrival at SSA, he has made a few positive changes to address the short term problems regarding disability hearing backlogs, such as targeting cases older than 1000 days and accelerating the rollout of the quick decision determination process throughout the agency. He has worked with OPM and Congress to hire 175 additional Administrative Law Judges (ALJs). He terminated most aspects of the ill conceived Disability Service Improvement plan initiated by his predecessor Jo Anne Barnhart. However, Commissioner Astrue has decided to hire and train insufficient support staff that each new ALJ relies upon to prepare cases for hearing and write and process post-hearing decisions. The Agency intends to hire only 143 support staff for the new judges. SSA budgets 4.3 support staff for every ALJ. 0.8 support staff per the new ALJs falls extremely short of what is necessary to properly assist the ALJs. Failure to provide adequate support staff is a recipe for future disaster and will probably lead to continuing backlogs. The support staff is needed to schedule hearings, assemble case files and evidence, work with attorneys to insure smooth hearings, order and schedule consultative examinations and to write and process the eventual decisions. Absent such support, the system breaks down. Thus, we urge Congress to insist that SSA provide each ALJ with the staff necessary for them to do their job.

Commissioner Astrue has reassigned Agency attorneys to review cases awaiting hearing. These attorneys are empowered to reverse denied reconsideration cases if the evidence indicates a disability. This has been done in an effort to reduce the 752,000 case backlog that existed at the beginning of FY 08. AFGE feels that SSA should expand this effort by utilizing non-attorneys within the Agency that have displayed the ability to make appellate decisions. SSA has previously used non-attorneys in this roll with no evidence of adverse effect in the decision making process (e.g., Adjudicative Officers). The requirement of a law degree for this task limits the Agency's ability to expand the effort to concentrate energies to reduce the disability hearings case backlog and the lengthy processing times.

SSA's approach to disability, past and present, fails to address the problems and inadequacies of the State Disability Determination Services (DDS). AFGE strongly believes that if problems with inconsistent decisions at the initial claims level are addressed, appeals will diminish. Disability claimants deserve consistent initial claims decisions and payments as soon as possible in the claims process.

Unfortunately, the chances for a claimant to be approved at the initial level have a lot to do with where they live and their income rather than the nature of their disability. That's inherent in the system. Each state has different criteria for hiring Disability Examiners. Each state provides them with different pay and benefit packages. Some are unionized—others are unorganized. Each state provides somewhat different training to their employees. Employee retention rates vary dramatically from state to state. In effect, there are 50 different disability programs when there should be one.

For example, State Agency Operations records indicate that those who can obtain medical attention early and often have a better chance of being approved for benefits than those who have limited income or resources. (See Attachment A) Nationwide, those applying for Social Security disability have a much greater chance of being approved than those who only apply for the Supplement Security Income (SSI) program.

So far in FY 08 more than 61 percent of Social Security disability claims for benefits are approved in the Washington DC DDS, while just 30 percent of those who file for benefits are approved in the South Carolina DDS. New Hampshire approves the most initial SSI only disability cases with more than a 55 percent allowance rate. However, residents of Michigan, Ohio, Alabama, South Carolina and Georgia

are approved less than 30 % of the time by their respective DDS. The concurrent disability process shows inexplicable variable allowance rates depending on the state of residence. Allowance rates are low in every state. In New Hampshire and Washington the allowance rate is slightly more than 40 percent of the concurrent SSI/SSA initial disability claims. Less than 18 percent of those filing concurrent disability claims are approved in Georgia and Ohio. There is no evidence to show that residents of some states are twice as susceptible to become disabled as residents in other states. Obviously, different state initial claims approval rates have more to do with the bifurcated system than the health of residents of these states. Claimants are entitled to consistent decisions regardless of their state of residence or whether they are filing for Social Security or SSI disability benefits.

According to the Government Accountability Office (GAO [1]), a majority of DDS's do not conduct long-term, comprehensive workforce planning, which should include key strategies for recruiting, retaining, training and otherwise developing a workforce capable of meeting long-term goals. The State DDS' lack uniform minimum qualifications for Disability Examiners (DE's) and have high turnover rates for employees and do not provide ongoing training for DE's.

AFGE is convinced that SSA is not able or willing to correct these problems. AFGE has expressed these concerns to the Subcommittee for several years and has seen little improvement with the State DDS situation. The State DDSs are required to use different disability criteria than those at the hearing levels. This has not been addressed by this Administration. It is a key problem that must be reconciled in order to reform the disability system. ***AFGE strongly believes that the only way to resolve the problems that plague the State DDS' is to federalize them. This will bring consistency to the initial claims decisions in the same way that the Supplemental Security Income program that was established in 1974 created a uniform system of benefits for low income blind, disabled and aged population.***

As AFGE has emphasized in previous testimony before the House Ways and Means Social Security Subcommittee, the Disability Claims Manager (DCM) pilot (another SSA initiative) proved to be highly successful in addressing many problems in the disability program. DCMs were responsible for making both the entitlement and disability decisions for initial disability claims. Processing time was significantly better than the bifurcated process. In fact, the DCM processing time of 62 days was just over half of SSA's initial disability claim processing time goal of 120 days. Customer service improved dramatically and claimants expressed record high satisfaction rates with the DCM. The public preferred a process which allowed them to interact with the decision maker. Currently, the only interaction with the disability decision maker occurs at the hearing level when the ALJ conducts the hearing. Observation of the impact of the alleged disabling condition and evaluation of the credibility of the claimant is a prime reason for the high percentage of reversals at the hearing level. If the system was reformed so that claimants could interact with decision makers at all levels, it could result in improvements in the initial claims process.

SSA surveys indicated that the public preferred the DCM caseworker approach to the current process. The DCM was a positive step in ensuring the public that consistent and equitable disability decisions were made by the Agency. Unfortunately, despite the positive DCM experience, SSA terminated the pilot. Although SSA contended that the DCM would cost more than the current process, the pilot was terminated before valid statistical data could be compiled regarding full program costs.

It appears that the primary reason SSA terminated the DCM pilot was due to State resistance. Such resistance certainly was not based on a poor pilot result. Instead the decision appears to have been based on political considerations and the fear of losing work. Although the DDS system is completely funded by SSA, DDS employees are State workers enmeshed in their respective state bureaucracies. Unfortunately this split system is a major reason that so many disability cases are appealed and that the system is broken. Under the DCM pilot, even claimants who were denied expressed satisfaction with the process since they had the opportunity to have the decision explained to them by the DCM. Congress should be very concerned when SSA spends millions of dollars for a process that demonstrably improves the disability processing time and results in high claimant satisfaction but is rejected for political reasons. The concerns of the states are understandable in view of their unacceptably poor performance regarding decision consistency from state to state and their poor processing time in comparison to the DCM. However,

[1] GAO Report 04–121, "Strategic Workforce Planning Needed to Address Human Capital Challenges Facing the Disability Determination Services"

the only real criteria should be the level of service that is provided to the claimant. Using customer service as a measure, the DCM exceeds State DDS performance in virtually every category.

AFGE recommended to Commissioner Astrue that he reconsider the Agency decision to terminate the DCM pilot and implement the position of the DCM at SSA as soon as possible. The Commissioner has not acted on AFGE's recommendation. The Union is willing to work with the Commissioner in an incremental approach to improving the disability process. We understand there will need to be changes in policy, processes and institutional arrangements, as well as funding to implement the DCM. However, we feel that federalizing the entire disability process is a key to improving disability claims processing and correcting the current appellate nightmare.

Legislative amendments to the Social Security Act would be necessary to allow SSA workers to make disability decisions; however, the crisis in disability processing requires immediate and long-term changes. When trained to make medical decisions, SSA employees can provide immediate relief to backlogged Disability Determination Agencies and provide faster and better service to the public by serving as a single point of contact. The pilot demonstrates that the public likes the DCM, employees enthusiastically support it, employees are capable of mastering all aspects of the claims process and that it provides substantially better service than the current disability product. As a short-term approach not requiring legislative change, AFGE is supportive of the "Technical Expert for Disability" position. It would provide high quality, trained field office employees the tools to assist disability claimants in both programmatic and medical issues, provide professional, personalized, service to applicants, focus the disability interview, make or recommend disability decisions, and assist the DDS's in their development and backlogs. This position could be utilized in the Commissioner's efforts to create a quick decision process for those claimants who are obviously disabled. In fact, training and enabling Technical Experts for Disability at the SSA field office will eliminate the current hand off to the DDS of such claims. This should further streamline the process and result in even faster decisions.

AFGE Recommendations—

- AFGE strongly urges Congress to enact legislation which permits Federal employees to make disability decisions without requiring the approval of States and take the necessary action to ensure the DCM is part of the solution to the disability problem.
- AFGE requests that Congress examine the current combined Federal and state role in the disability claims system and enact legislation to federalize the disability claims process.
- AFGE recommends that Congress urge the Commissioner to eliminate the requirement that post reconsideration disability adjudicators require a law degree.

SSA Budget and Staffing Cuts

Based on the President's proposed budget for the next fiscal year, SSA will have lost more than **9%** of its staff *in just four years*. SSA has experienced a dramatic increase in workloads as members of the Baby Boom Generation reach their peak years for becoming disabled and start filing for retirement benefits in 2008. From 2001 to 2007, productivity climbed an average of **2.5%** per year, for a total gain of **13.1%** since 2001. SSA expects the increase in productivity for FY 2008 to be **2%**[2].

[2] SSA Budget FY 09

	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Budget Proposed	9,379,324	9,403,000	9,496,000	9,677,000	10,327,000
Budget Enacted	9,178,556	9,286,000	9,294,000	9,745,000	
SSA Full-Time Equivalents (FTEs)	62,937	63,131	58,985	60,064	60,293
SSA Medicare Modernization (FTEs)	1,268	0	0	0	0
Subtotal SSA FTEs (including OIG)	**64,205**	**63,131**	**58,985**	**60,064**	**60,293**
Overtime/Lump Sum Leave	2,992	2,389	1,307	2,231	2,245
Overtime (associated w/ Medicare Modernization)	1,567	0	0	0	0
Subtotal Overtime Lump Sum Leave	**4,559**	**2,398**	**1,307**	**2,231**	**2,245**
Total SSA Work years (including OIG)	**68,764**[3]	**65,529**[4] (−3,235)	**61,292** (−4,237)	**62,295** (+1003)	**62,538** (+243)

Unless there is a turnaround in Social Security's operating budget, SSA's ability to get its work done will completely break down within the next five to ten years. According to SSA's own records, **1 out of 4** callers failed to get through on Social Security's 800-number on any given day. Those who called any of the 1260 field offices for service in FY 07 did not have their calls answered 51% of the time. People line up before dawn outside many offices. The time it takes to pay disability claims to the most vulnerable people we serve can be measured in years instead of days or months.

The President's budget request for SSA in FY 09 is $10.327 billion. This budget would result in an increase in staff of only 229 FTE. After years of cuts, a modest increase is better than nothing but hardly enough to allow the Agency to reduce its backlogs while continuing to process its day to day work. Both the House and the Senate Budget Committees have recommended that the President's budget be increased by $240 million. AFGE and other groups interested in the SSA administrative cost crisis recommended that SSA be allocated $11 billion in administrative cost or $673 million over the President's budget. This amount would restore some lost staff and allow the Agency the opportunity to significantly reduce backlogs.

Currently, Congress borrows from the Social Security Trust Fund to offset deficit spending and finance the war in Iraq and other budget priorities. Meanwhile, Social Security is given barely enough funding to accomplish its basic service demands, resulting in poor public service, excessive delays and ***billions*** of dollars of improper payments. This is then case even though the trust fund collects $ billions more that is spent every year.

The Omnibus Reconciliation Act of 1990 provided that SSA FICA taxes and benefits payments were "off budget." Congress later interpreted that SSA's Limitation on Administrative Expenses (LAE) was not covered by the Omnibus Reconciliation Act of 1990, although the Social Security Act stipulates that administrative costs for the Social Security program must be financed by Social Security Trust Funds.

Since the SSA LAE (e.g., staffing, office space, supplies, technology, etc.) is "on budget," Congress decides on a yearly basis the amount that will be authorized and appropriated to administer SSA programs. Such appropriations are often insufficient to provide adequate staffing since funds for SSA's LAE are a part of the overall Labor, HHS, and Education appropriations. Programs such as medical research, healthcare and "No Child Left Behind" state grants are often viewed as more politically popular than SSA's LAE. Often SSA is left with insufficient staff and limited overtime making it next to impossible to adequately service the public. Such shortages adversely affect disability processing time and cause severe integrity problems.

AFGE does not believe the American public deserves poor service from SSA. Some claimants waiting for a disability hearings decision lose their homes, declare bankruptcy, and some die before a decision is made on their disability claims appeal.

[3] SSA, FY 06 Justification of Estimates for Appropriation Committees
[4] President Bush Budget for FY 08 for SSA, pg 1030

Their families suffer tremendous financial hardships; some lose everything during the prolonged wait for a decision. The public deserves efficient, expeditious service. Currently, SSA's LAE is less than 2% of total estimated outlays. Historically, SSA's LAE has ***never*** exceeded 2% of expenditures.

Removing SSA's LAE from discretionary spending caps will allow Congress to assess SSA's administrative requirements without regard to the competing budgetary demands of the Departments of Labor, HHS and Education agencies.

In an "off budget" environment Congress would continue to maintain spending authority but would be unencumbered by artificial caps and budgetary scoring rules. ***However, AFGE strongly recommends continued Congressional authorization, appropriations and oversight of SSA's LAE***.

Congress should continue to appropriate SSA administrative expenses to ensure integrity and efficiency. Legislation should require SSA's Commissioner to document (in performance reports mandated under the Government Performance and Results Act) how funds have been and will be used to effectively carry out the mission of the agency, to meet expected levels of performance, to achieve modern customer-responsive service, and to protect program integrity. Most importantly, GAO must annually inform Congress regarding SSA's progress in achieving stated goals. Congress should also mandate that SSA's Commissioner submit the proposed budget directly to Congress as is now only optional in the independent agency legislation (P.L. 103–296, § 101.) This requirement to submit the SSA budget directly to Congress is also contain in H.R. 5110 sponsored by Congressman Higgins of New York and endorsed by AFGE.

AFGE Recommendations—

- Congress should enact off budget legislation including SSA administrative expenses with benefits which are already off budget. Congress should retain appropriations and oversight authority albeit unencumbered by artificial budget caps and scoring restrictions.
- Congress should enact legislation requiring the Commissioner to submit the SSA appropriation request directly to Congress.
- Congress should support the House Budget Committee recommendation to increase the SSA administrative budget by $240 million over the President's budget request.

Integrity Workloads

SSA integrity work (i.e., continuous disability reviews (CDRs) and SSI redeterminations) has been significantly diminished due to budget cuts. Former Commissioner Barnhart suspended all SSI Redeterminations and Medical Continuing Disability Reviews (CDRs) during particularly tight budget periods. In FY 2008, SSA Commissioner Michael Astrue has significantly reduced these workloads. SSA projects completing 235,000 medical CDRs in FY 08 instead of the scheduled 700,000. Instead of processing 2 million SSI redeterminations scheduled in FY 08, the Agency will only complete 1.2 million. These reviews return $10 for every dollar invested in CDRs and $7 for every dollar invested in Redeterminations. Without these reviews, ***billions*** of dollars of incorrect payments result. SSA will never collect some of the overpayments caused by insufficient integrity reviews.

Furthermore, the collapse of integrity oversight of SSA's programs compromises the solvency of the Social Security Trust Fund. According to GAO's 2004 report on overpayments related to SSA programs, overpayment detections increased from about $1.9 billion to nearly $3 billion between fiscal years 1999 and 2003 [5] In 2005, SSA improperly paid $6.3 billion. OPM now reports that of eight Federal programs, including SSA's Old Age, Survivors and Disability Insurance and SSI programs, SSA accounted for more than 89 percent of the government's improper payments in FY 2006.

AFGE supports fully funding Continuing Disability Review and SSI Redetermination workloads. AFGE does not support artificial spending limits for such workloads. Congress should authorize the resources necessary so that SSA can produce CDR and Redeterminations levels as envisioned in the Social Security Administration's strategic plan.

AFGE Recommendations—

- Congress should authorize the resources necessary so that SSA can produce CDR and Redetermination results as envisioned in the SSA strategic plan.

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[5] GAO Report 04–924,"SSA Should Strengthen Its Efforts To Detect and Prevent Overpayments"

Internet Claims, Internet Social Security Benefits Application and Ready Retirement

The Social Security Administration has offered the public access to Internet services for almost a decade but with mixed results. On the positive side, "service" can be provided without contacting an SSA facility. The negative affects are not so obvious ***or*** made public by the Agency. Unfortunately, little has been done to correct these problems.

They include:

- Programming flaws that do not correctly identify the "protected filing date."
- Identity and privacy concerns
- Incorrect payments
- High volume of errors, resulting in re-contacts.
- Creation of a new backlog at Social Security
- No review process of the public's accuracy in completing applications.

Additionally, SSA has implemented new policy changes in an effort to eliminate employee review of claims filed through the Internet altogether. These changes include:

- Lag earnings will no longer be routinely developed.
- No longer requiring proof of citizenship for age 60 or over
- No longer requiring proof of age for age 60 or over
- No longer assisting the claimant in determining the most advantageous month of entitlement.

SSA argues that savings in work years that they project will be achieved through the relaxation of evidentiary standards and the elimination of advice and assistance to claimants will allow the Agency to concentrate on elimination of backlogs and improve Agency service. Unfortunately, AFGE asserts that such changes are dangerous and will result in enabling fraud, causing incorrect payments, and result in claimants making decisions that are not in their best interests. Therefore, the Union and the employees of SSA strongly disagree with the Agency's recent policy decisions.

No Development of Lag Earnings—Effective 1/23/2008

Lag earnings are wages earned but not yet posted to the earnings record. In the past, the claims representative determines if the prior year's earnings have been posted to the applicant's earnings record. If not, they are manually added to determine an accurate and full benefit estimate. If the applicant has his/her W–2 form available, the wages can be easily added to the benefit computation at the initial interview. Lag wages tend to increase the benefit amount for most wage earners. Eventually SSA conducts a re-computation of the benefits when the IRS verifies the earnings and pays the beneficiary(s) accordingly if lag wages are not developed for the initial claim. Unfortunately, this process could take several months. The process sometimes takes years if particular conversion problems occur. Eliminating lag wage development insures that most claimants will be paid incorrectly until the benefit amount is recomputed after receiving IRS data.

No Development of Proof of Age and Citizenship—Effective 2/11/2008

Historically, SSA requires claimants to submit evidence to establish their rights to benefits. One of the most important parts of the claims process is the gathering, recording and evaluation of this evidence.

Why proof of age? To be entitled to reduced retirement benefits, a claimant must be fully insured and have attained age 62. Thus, the exact date of birth is critical to a claimant's eligibility for benefits. The year of birth also affects the benefit calculation. Retirement benefits at age 62 are reduced for every month prior to the full retirement age. Therefore establishing a correct date of birth is necessary to establish correct payment.

Why proof of citizenship? In 1996, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA or Public Law 104–193) was signed into law. Section 401(a) of the Personal Responsibility Act places restrictions on the payment of benefits to aliens in the U.S. under Title II of the Social Security Act. An alien eligible for benefits under Title II of the Social Security Act can be paid when he/she is "lawfully present in the United States as determined by the Attorney General." The Attorney General defined the phrase "lawfully present in the United States" for purposes of paying Title II benefits in regulations published on September 6, 1996 by the Department of Homeland Security (previously known as the Immigration and Naturalization Service).

In February 2008, SSA made major policy changes that no longer require proof of age or citizenship for those filing for benefits that are over age 60 and make an allegation of date and place of birth that agreed with their Social Security number record, known internally as a "numident" record. Thus, if an individual lied about their date and place of birth in order to get a Social Security number for a job and the person uses the same erroneous information at the time of benefit application, a match will exit and neither proof of age or citizenship will be requested by SSA. This change was instituted in February, 2008 without any regulatory notice.

AFGE strong believes this is bad policy that will lead to fraud and incorrect payments.

Until the 1980's Social Security cards were issued without any form of identification. Much like a library card, one simply completed a short application, submitted the application to SSA and the Agency issued a number and a card. Allegations of date and place of birth were accepted on face value without evidentiary requirements. For the Baby Boomer generation, the Social Security card was an easy record to obtain if someone wanted to change their identity, age or even place of birth. The Administration's reckless decision to accept a person's allegation, as long as it agrees with the allegation on the original application, is inconceivable and unlawful.[6] Its purpose is not to insure accuracy or to improve public service. The reason for these evidentiary relaxations is to create the ability for claimants to file Internet applications without any review or intervention of an SSA employee.

Accept Allegation of Month of Entitlement—Effective September 2008

SSA officials have announced that in September, 2008 SSA will introduce a new Internet Social Security Claims Benefit Application (ISBA) which is a simpler retirement application, and which will be the vehicle for the Agency's ultimate goal of automated adjudication requiring no human review or intervention.

Additionally, SSA will implement a new procedure that will require SSA claims specialists to stop providing advice and assistance to the retirement applicant to help them decide on the effective month to start their retirement benefits (i.e., month of election).

Determining the correct or most advantageous month of entitlement (MOE) for an applicant is one of the most complicated and error prone issues in processing a retirement claim. Many factors must be considered when determining a MOE such as current work history, self employment, Totalization rules, and past disability history.

In preparation for this hearing, AFGE has reviewed Sample RSI Quality Feedback Reports which capture errors taken form Regional Office of Quality Assurance reviews of retirement claims. These sample cases clearly exhibit various actions on the part of SSA resulting in incorrect payment amounts to the beneficiary. The following were some of the most common errors listed in these reports——

- Incorrect Date of Entitlement Causes Underpayment
- Incorrect Month of Election Given Causes Underpayment and Overpayment
- Failure to Discuss Reduced Rate of Entitlement Date Causes Underpayment
- Incorrect Determination on Entitlement Date Causes Underpayment
- Failure to Determine Government Pension Offset Applies Causes Overpayment
- Failure to Include Military Service Credits Resulting in an Underpayment
- Incorrect Posting of Military Service Credits Resulting in an Overpayment
- Incorrect Processing of Military Service Credits Causes Underpayment
- Failure to Identify Military Service Issue Results in an Underpayment
- Failure to Use 2001 Lag Wages Results in an Underpayment
- Failure to Take Action on Wage Gap After 1977 Causes Underpayment
- Failure to Discuss Earnings Record Thoroughly results in Underpayment

An applicant's allegations will go unchecked unless all Internet claims are required to be reviewed by a trained SSA Claims Representative. SSA employees and AFGE are shocked and appalled that such changes will go forward despite the vast number of claims that currently require correction.

Internet Proficiency

SSA employees assist people who are elderly, disabled, uneducated, poor and homeless. Many applicants struggle just to complete simple forms. SSA's applications were created to obtain information which will meet all requirements of the law including identifying potential individuals who may be eligible for benefits on a

[6] Soc. Sec. Act as Amended in 1996, Sec. 202(y); P.L. 104–193; P.L. 104–208; P.L.105–33 8 CFR 103.12.

wage earner's record. As a result, SSA has invested millions of dollars to train its Claims Representatives (CR). However, the Agency now intends to create an Internet application which will not be reviewed by an SSA employee. This is prescription for disaster.

SSA asserts that 2.5 million electronic transactions were completed by the public in FY 07. However, a substantial number of these electronic transactions were problematic to the degree that SSA employees were required to recontact the transactor. SSA employees are very concerned about the direction of the Agency strategy toward unreviewed Internet transactions because few Internet applications are completed accurately and, consequently, require recontact by SSA employees. A Claims Representative from the Seattle region who has processed Internet claims for more than a year recently told AFGE: *"I can only think of 2 [disability claims] which were done right. One was completed by a disabled registered nurse, and the other was completed by a physician who had cancer."* AFGE recently surveyed SSA employees who process Internet claims. Seventy percent of the employees who responded stated that 90–100% of the claims they reviewed required some kind of re-contact. Such re-contacts included the need to develop new applications for spouses and children, obtaining correct dates of onset of disabilities, development of the correct month of entitlements for retirement claims, obtaining medical information, development of incorrect wage information, obtaining complete and accurate work histories, identifying government pensions and correct military service information. Employees reported that Internet claims take an average of 2 re-contacts to secure the necessary information to complete the claim. Employees also report that each re-contact takes an average of 30 minutes, which they feel is not reflected in Agency statistics. In many cases, ***it takes weeks and even months*** to get in touch with the applicant, who thought the claim was completed and, therefore, had no reason to communicate with SSA. Employees strongly believe that if they had assisted the claimants either face to face in the office or by telephone that the claims would have been done correctly—without the need for any re-contacts.

Unfortunately, this cannot be verified by Agency statistics. SSA **does not and will not** perform audits on the Internet claims prior to employee review and correction. Instead, the claim is reviewed after an SSA employee makes the necessary corrections. This creates the illusion that the claims were completed correctly by the public. Thus, SSA has no data to indicate that a decision to remove Internet claims review will be beneficial to the public.

Loss of Protected Filing

An application filing date protects a person's claim for benefits. This date is often used to establish eligibility and to determine when benefits can begin. In accordance with 20 CFR.630, 408.330 and 416.330, SSA must use a written statement (such as a letter) indicating the applicant's intent to file for benefits for themselves or another person. This is referred to as a protective filing, which can also serve as an application date. The law is clear that an expression of intent to file for benefits need not be on a specific form or any particular format. Therefore, the same rules apply to oral requests.

Because potential payments are involved, SSA is required to send letters to people who fail to keep appointments and notify them that their benefits will be protected for up to six (6) months. If SSA does not send this letter, the protective filing date is left open and a person could be paid ***years of retroactive benefits*** if the matter is not dealt with promptly.

However, SSA has decided **NOT** to apply this law to Internet claims. Under the current system, when someone initiates an application on SSA's Internet site but cannot complete it, SSA issues a confirmation number to the individual to re-access the application but the Agency does not consider the unsuccessful attempt to file evidence of a desire to file which would protect the date of filing. When, and if, a person completes the application and "submits" it to SSA, that is considered the date of filing. If a month or more pass, the claimant could have lost benefits. Listings and/or access to partially completed internet claims are not available to field office employees for follow-up purposes. AFGE believes this failure to protect the applicant's intent to file a claim **is a violation of law**. SSA has stated the new Internet application due to be released in September 2008 should establish a protective filing. However, there has been no effort to correct the current situation which due to the complexity of the Internet claims process is common and results in loss of benefits for some applicants.

Identity and Privacy Concerns

SSA employees are unable to identify and verify the person who filed the application for benefits on-line. Employees have become aware of spouses, children, grand-

children, and unauthorized third parties (such as employees of the applicant) filing Internet claims. This leaves the system vulnerable to fraud, as claims could be easily filed with stolen identities. Recent SSA internal reports indicate that applicants continue to struggle to provide accurate, basic information, such as "name" information. In SSA's April 11, 2008 client vs. internet discrepancy report, more than 83% of the applications received had discrepancies in this area. To a trained Claims Specialist, this would be a red flag and suggest that the applicant may not be the number holder, but rather someone else filing on his/her behalf. Without verifying that the number holder actually filed or authorized the claim, the SSN holder's privacy could be compromised if claims are allowed to be processed through the Internet without employee review.

Internet Claims Processing and Backlog Potential

Every office handles these cases differently. In some places, the Claims Representative can schedule an appointment to thoroughly review the application, remind the applicant of the documents that are needed, and check for any possible claims leads. Most offices force their employees to fit these claims into hours when the office is closed to the public or during overtime. Employees have not noticed any changes in the volume of teleclaims and in office claims due to the accelerated utilization of Internet claims by the public. Claims workload in general has increased as a result of the 1946 initial baby boom generation reaching retirement age in 2008. Thus, Internet claims review and recontact workload is an add on that requires finding time to process.

Payment errors will increase if claimants are allowed to file Internet claims without review. Claimants are not familiar with the Windfall Elimination Provision (WEP) and the Government Pension Offset (GPO) provisions of the Social Security Act and the impact of these laws on their benefits.

Applicants are confused when electing their Month of Entitlement (MOE). They generally do not understand how the annual earnings test works. Often, they will take advice from a friend or neighbor whose experience is very different from their own. The result: a loss in benefits (including Medicare at age 65). SSA employees who review Internet claims identify the choice of the month of election as the most frequent error. Currently, if upon review a disadvantageous month of election is found, the SSA reviewer must recontact the claimant and explain why the choice that they made appears disadvantageous. If the claimant insists on picking a disadvantageous month to start their benefits, employees must document the file that an explanation was given yet the claimant chose the disadvantageous start date anyway. The Agency is planning to eliminate this assistance and advice step completely concurrent with the introduction of the ISBA in September.

Other Problems with Incorrectly Completed Claims

Claims submitted by spouses, family members or other third parties are often lacking information about prior marriages and/or children from prior marriages and/or relationships. Many times the person completing the forms simply does not know the relationship history of the applicant. By law, SSA considers the names of former spouses and/or children as leads for benefits. Without further investigation by a trained Claims Representative, these potential leads would be missed and family members would not be paid the benefits they are due.

When an identified third party helps an applicant file for Social Security benefits on-line, we are required to obtain an Appointment of Representative (SSA–1696) form, signed and submitted to SSA. We also need Consent for Release of Information (SSA–3288) form signed and submitted before we can release any information to someone other than the claimant. An Internet claim does not provide this form.

In spite of the numerous problems with Internet claims raised by the Union, Commissioner Astrue has directed all SSA employees to pass this message along to the public: use the internet ***rather than*** call the 800-number or visit an office. In some parts of the country, field office employees and teleservice representatives (800-number agents) have been directed to tell each and every person contacting Social Security: "the next time you have a problem, use our on-line service." This approach has not been well received and is perceived by the public as rude. Many SSA employees have been documented for poor performance for **not** directing the public to the Internet.

This emphasis on Internet service deviates from the pledge that SSA has made to the American public which is reiterated every year when they are sent their earnings statements from SSA. This pledge is that the public determines which method they will utilize to interact with SSA. It can be in person, by phone, by mail or through the Internet. The Agency now is asking employees to sell the public on Internet claims even though employees realize that phone and/or face to face service

is more likely to result in an accurate and complete application. Some Agency letters to the public now only provide the Internet option as the exclusive method for contacting the Agency.

AFGE Recommendations—

Require SSA Commissioner Astrue to:

- Restore lag wage development in claims
- Restore proof of age development using the rules in effect before the 02/08 change
- Restore proof of citizenship development using the rules in effect before the 02/08 change
- Maintain a system of employee review of all Internet claims
- Pilot the new Internet Social Security Benefit Application before Agency wide implementation.
- Provide Congress with the pilot results which will include an evaluation of claims accuracy prior to SSA employee review prior to implementation
- Maintain employee review of all Internet applications until it can be shown that the accuracy level of Internet claims matches or exceeds the accuracy level of telephone and in person claims.
- Request Authorizing Committees to hold hearings on the effects of Internet claims on SSA workloads and on claimants.
- Continue to permit SSA customers to select the methodology for interacting with SSA that they prefer.

3rd Party Claims

In another effort to determine how to do the Agency's business with inadequate resources, the Agency has been developing increasingly friendly relationships with 3rd parties that want to take over portions of SSA work. The plans for the ISBA application would allow 3rd parties to file claims and protect filing dates on behalf of the claimant. Initially, claimants will be required to sign an authorization document to enable 3rd parties to act on their behalf. However, SSA's goal is to eliminate that requirement. In fact, SSA intends to solicit 3rd parties to engage in bulk filing of electronic claims for multiple claimants. This will enable for profit companies to offer a filing service for claimants in return for a fee. Of course, currently filing applications through the Agency either via the teleservice system, face to face in an office or through he Internet is free. (The service was already paid for through taxes.) AFGE's concern is that expanding 3rd party claims opportunities to profit making companies is the first step to potentially contracting out core inherently governmental Agency functions. Allowing 3rd parties to file claims on behalf of individuals through the Internet without SSA review would enable these 3rd parties to actually authorize payment to their clients. This is a dangerous step towards the privatization of the Agency.

SSA employees complain frequently about the low quality of the work product of many current 3rd party claims organizations. Typically states and institutions contract with 3rd parties who file disability claims with Social Security to, hopefully, remove such individuals from state benefit roles or to defray an institution's costs of care. The work product is frequently poor and requires recontacts for missing information or to correct erroneous information. Allowing an expansion of this effort to use 3rd parties to other types of applications without strict regulatory requirements will only result in problems.

Currently attorneys and other 3rd parties are regulated with respect to the fees that they can charge for representation of claimants in hearings before ALJs. No rules exist for representation fees in initial claims. There are currently no regulatory standards regarding competency and fees for 3rd parties at the initial claim level.

AFGE Recommendations—

- Congress should enact legislation limiting contracting out in SSA due to the inherently governmental work of much of the Agency's business.
- Congress should pass legislation proscribing maximum fees for 3rd parties in initial claims.
- Congress should pass legislation requiring 3rd parties to register with SSA and requiring them to maintain minimal competency standards.
- Congress should pass legislation enabling SSA to revoke 3rd parties registration privileges upon discovery of incompetence, fraud, price gauging, etc.
- SSA should be empowered to sanction 3rd parties for inappropriate conduct.
- 3rd parties should not be permitted to register if they have a conflict of interest (e.g., relationships with SSA employees).

- 3rd party fee structures and complaints against 3rd parties and 3rd party registration information should be fully disclosed to claimants.
- Access to claimants information protected by the Privacy Act should be severely limited to 3rd parties
- Claimants should be required to sign authorizations prior to SSA providing any claimant data to 3rd parties.
- SSA should be required to evaluate 3rd party performance through accuracy reviews. Such reviews should be released to the public.

Office Closures

Face-to-face interviews in Social Security offices increased by nearly a million visitors from 2006 to 2007. Despite that increase, the Administration has decided to accelerate the closure Social Security offices across the country.

SSA's criteria for office closure consideration are unknown to the union. Last October Commissioner Michael J Astrue informed AFGE that smaller offices in urban areas will be reviewed as office leases approach expiration. However, other high level Agency officials have informed their employees and union officials that SSA will look at all offices of 15 employees or less. When I asked Linda McMahon, Deputy Commissioner of Operations, in October 2007 about the Agency's office closing strategy, she responded that the Agency could close between 50 and 200 offices.

However, in February 2008, Commissioner Astrue publicly denied this after AFGE alerted Congress to the Agency office closing initiative. Since the Commissioner's public denial of an office closing plan, AFGE has been notified by SSA that additional offices will be closed in the future. Additionally, AFGE records indicate that in 2007 SSA closed a record number of offices. In 2007, the Administration closed 17 offices including:

- Burbank, CA
- Industry Hills, CA
- San Fransisco-Parkside, CA
- SF Western Addition, CA
- San Pedro, CA
- Hallandale, FL
- Miami-Central, FL
- St Louis NW, MO
- Warrensburg, MO
- Auburn, NY
- Bay Ridge, NY
- N Charleston, WV
- Nacogdoches, TX
- Cheektowaga, NY
- Bronx River, NY
- Carbondale, PA
- Brentwood, PA

In 2008 SSA closed the Oskaloosa, IA office and recently announced its plans to close the Clinton, IA office effective June 1, 2008. SSA has also notified affected employees of its intention to close the St. Paul MN and the Portland OR Teleservice Centers in 2009.

In recent media publications SSA stated that they agreed to keep the Bristol, CN office open due to an increase in the FY08 budget. This office was scheduled to close in 2007, but will remain open on a year to year basis, depending on budget constraints. Employees in the Clinton, IA office were also told that the Clinton office was being closed for budgetary reasons. The press was informed that the Agency would save $632,000 over a 5 year period by closing the Clinton office. No verification was provided for the $10,500/mo rent and utility costs for the 3 person office.

AFGE is very disturbed by these statements. The Commissioner has neither notified Congress nor the union of the level of appropriation required to maintain the current field office structure. If these closures are due to budgetary shortfalls, then why hasn't this been brought to the attention of Congress? Why hasn't the Commissioner notified the Authorizing and/or Appropriating Committee?

In Fiscal Year 2008 Social Security will be at its lowest staffing level since 1972. SSA continues to lose personnel through retirement and attrition and the announced FY 07 replacement ratio will result in an additional 1012 FTE reduction. The Bush Administration and SSA Commissioner Astrue are reluctant to ask Congress for more staff but that is the only answer to this crisis. Yet they are willing to reduce services to the public. AFGE strongly believes that SSA should be providing help through community-based field offices that offer full services. This can

not be accomplished through further reductions of service to claimants and beneficiaries.

SSA pays benefits to about 50 million people every month. Every year, SSA employees handle more than 6 million new claims for Retirement, Disability, and Survivors benefits. SSA also process 18 million requests for Social Security cards and posts 265 million annual earnings items for covered workers. The Agency expects significant increases in the Continuing Disability Review (CDR) workloads, "no match" cases required by the Department of Homeland Security and the e-verify system. Under legislation proposed by Congressman Schuler and another bill by Congressman Sam Johnson, e-verify would be mandatory and result in 3.6 million additional interviews in the first year after enactment. Closing offices puts a significant burden on these 3.6 million workers to correct their SSA records so that they can work. These workloads will further challenge employees. All this is accomplished at less than 2% administrative costs, while private insurance companies have administrative costs of between 12–16%. **How does closing the field office in your district improve this record of service?**

It has become very clear to the employees of SSA and AFGE that the only effective method to prevent unnecessary office closures is to request legislation to provide for Congressional oversight on decisions impacting Social Security offices. On January 24, 2008, Representative Brian Higgins (D/NY) introduced the Social Security Customer Service Improvement Act, H.R. 5110. This legislation provides procedures that SSA's Commissioner must follow before closing an office. Those procedures include:

- Providing a detailed report to the House Ways and Means Subcommittee on Social Security and the Senate Finance Committee outlining and justifying the process for selecting field offices to be closed or otherwise have limited access. Such report shall include——
  - an analysis of the criteria used for selecting field offices for closure or limited access;
  - the Commissioner's analysis and consideration must include factors relating to transportation and communication burdens faced by seniors and the disabled;
  - a cost-benefit analysis for each field office closure that takes into account:
    - the anticipated savings as a result of the closure;
    - the anticipated burdens, including communication and transportation burdens, placed on elderly and disabled citizens; and
    - the anticipated costs associated with replacing the services lost by the closure.
- The Commissioner must wait 6 months after the submission of the report to Congress to close or limit access to a Social Security field office.

AFGE urges each Member of this Committee to support and co-sponsor this very important legislation to ensure that customer service is at a level that citizens deserve.

Until such legislation is passed by Congress, AFGE Recommends—

- Congress passes legislation enacting a moratorium on all office closures.

Social Security Card Centers

In the last few years, Social Security has opened 6 Card Centers in New York City, Phoenix, Las Vegas and Orlando. The Commissioner informed the union that he intends to open at least 20 more such card centers. Existing personnel was used to staff these new offices. This card center concept is a bad idea. In fact, **Social Security Card Centers are an example of how to provide *really bad* public service**!

During Fiscal Year 2007, SSA processed 17.6 million Social Security Number (SSN) applications for new or replacement Social Security cards. Most of them were processed in the 1260 field offices across the country. Virtually all of SSA's field office staff has been trained to process SSN applications. This would include clericals, Service Representatives, Claims Representatives, Technical Experts and management.

Once card centers are opened, the public in a broad geographic area is required to do all their SSA card business in the card center. Local full service offices will not do SSN card work. This requires the public to travel in some cases long distances to get their SSA card business done. The Las Vegas card center services 5 county jurisdiction. Outlying cities are 200 miles from the card center. If a person has both SSA card business and other business with SSA, they are forced to visit

2 offices since card centers do no other work. Thus, the Agency has created a system insuring lengthy commutes for many customers and two stop shopping for others.

The Las Vegas card center experienced huge workloads earlier this year. In January customers frequently started lining up at 6 AM at the card center door that didn't open till 9 AM. At the end of the day when the office closed at 4 PM, the 175 capacity waiting room was full and lines were out the door. Often the last customer was serviced after 7 PM. SSA clients are inconvenienced, forced to wait hours for service and employees were faced with mandatory overtime to service all the customers. Universal e-verify or a resumption of the No Match program will only exacerbate this situation.

SSA has always required its offices to be full service facilities. There are no offices exclusively devoted to disability or retirement claims. All field offices process whatever business that the public has with SSA. The card centers are the 1st deviations from this policy. They were established for security purposes. It was thought that employees who only did SS card work would have unique expertise. However, every SSA office outside of the card center jurisdictions does a high volume of SSA card work. Employees in field offices have as much expertise as card center employees in doing this work. The amount of inconvenience that is created with card centers is unnecessary. AFGE recommends that SSA drop the concept of card centers.

SSA is unwilling to change this policy. Therefore, AFGE believes Members of Congress should:

- Require SSA Field offices to become full service facilities.
- Request Commissioner Astrue to reverse SSA's policy of forcing the public to leave a field office and commute to a Social Security Card Center when they either went to the wrong office or had multiple business with the Agency.
- Request Commissioner Astrue to suspend all plans to open additional Social Security Card Centers until this policy is reversed.
- Request the authorizing Committees to hold hearings on policies and problems related to Social Security Card Centers.
- Request Appropriation Subcommittees on Labor, HHS and Education to include language that would prevent SSA from using appropriated dollars to fund Social Security Card Centers.

Conclusion

The Social Security system's Disability programs are a crucial component of the social safety net, and AFGE's Social Security employees take great pride in providing service to disability beneficiaries. Employees are sincerely concerned about the wellbeing of disability beneficiaries, and consider their role as helping those who are unfortunate enough to have experienced a disability to obtain the Social Security benefits they have earned.

The Social Security Administration has a long and proud tradition of working constructively with its unionized workforce to make the Social Security system efficient, fair and "customer-friendly." That is why Social Security remains so popular and successful. It is unfortunate; however, that I must report that the years of doing more with less has had a severe toll on the employee morale at SSA. In a recent AFGE survey of SSA workers, 45% reported that they are dissatisfied or extremely dissatisfied with their work experience at SSA. Survey responses would indicate that employee's greatest frustrations are staff shortages and a lack of time to process pending cases due to the pressure of constant interviewing. Overwhelmingly, employees report that they do not have enough time to devote to a quality work product, which includes accuracy, complete and proper explanations of rights and responsibilities to clients, investigation of any and all inaccuracies, etc—Backlogs are growing at tremendous rates.

I urge the Committee to do whatever is necessary to insure that SSA receives sufficient appropriations to do the work that Congress demands from the Agency.

AFGE is committed to serve, as we always have, as the employees' advocate AND a watchdog for clients, taxpayers, and their elected representatives.

This concludes my statement. I will be happy to answer any questions that Members of the Committee may have.

Mr. MCDERMOTT. Thank you for your testimony. We will now hear from one of those administrative law judges we have been hearing about.

Frederick Waitsman is an administrative law judge from Social Security Division of the Federal Bar Association in Atlanta, Georgia.

STATEMENT OF THE HONORABLE FREDERICK WAITSMAN, ADMINISTRATIVE LAW JUDGE, SOCIAL SECURITY ADMINISTRATION, AND VICE CHAIR, SOCIAL SECURITY SECTION OF THE FEDERAL BAR ASSOCIATION, ATLANTA, GEORGIA

*Mr. WAITSMAN. Thank you Congressman McDermott and thank you Ranking Member McCrery and Members of the Committee. Thank you for convening this hearing on an issue of vital importance to millions of Americans.

I am pleased to be here on behalf of the Social Security section of the Federal Bar Association. Although I am an administrative law judge, I am not here in that capacity and my remarks are solely those of the Social Security Section of the Federal Bar. You should know the Federal Bar represents a broad array of stakeholders working at all levels of the disability adjudication process.

The primary concern of the Federal Bar is the integrity, independence, fairness, and effectiveness of the disability hearing process. The Commissioner is faced with a daunting task and limited resources. He has developed a number of initiatives to reduce the backlog and processing times. We have seen some of these initiatives result in progress and congratulate him on these successes.

However, we believe even more can be accomplished with fiscal year 2009 funding in excess of the President's request. Therefore we have made the following six recommendations.

One, SSA should continue to hire administrative law judges and fully staff the hearing operations. We have already talked quite a bit today about that needed staffing ratio. It has been said that hiring 175 judges without adequate staffing is like buying 125 trucks with gas for only 25. I would just caution that when we talk about these various reports that show the staffing ratio, make sure you know exactly what goes into them. The Atlanta area has two hearing offices, and when Medicare Part D subsidy went into effect, 10 of the decision writers were detailed for a year and half, physically moved, did Medicare work, yet they were counted as part of that staffing ratio. So, the intent of the 4.5 staffing ratio is workers actually at the work site conducting Social Security disability work.

Two, Social Security should continue to fully implement the electronic disability process. SSA is strongly committed to a paperless file called eDIB that is a work in progress and needs to be fully funded to be successfully implemented. Improvements can be made to ensure the system can support the growing workload and not risk a slowdown or even a crash of the system with hundreds of thousands of claims.

Third, SSA needs to fund capital expenditures to add new hearing offices and permanent remote sites. Both the current and the prior Commissioner approved several new hearing offices based upon the needs, but then, as the Commissioner said today, there were not enough funds available to build those facilities. That is one area that I think we need the Congressional help for additional appropriations so we can have facilities where the claimants and the cases are. I think we are truly in a crisis situation, and I would

refer back to what we did when we faced Hurricane Katrina and the damage that did. I am more familiar of Mississippi, which was part our responsibility when I was in the management of the Atlanta eight state region. We lost an office to the hurricane, and so we had judges that volunteered to come in from all over the country and help out, and so we had, on short notice we were able to get temporary space, have it wired for video. The whole area didn't have hotel space, which was destroyed or occupied by FEMA workers, contractors, and everybody else, so we couldn't get hotels to send people, but we could do the video hearings, and so that area of southern Mississippi was not disadvantaged or as badly disadvantaged from lack of services. So, while it takes a long time to maybe build a full scale hearing office, more emergent efforts could be made.

Fourth, Social Security should test initiatives before full implementation and not count on their success to justify reduced staffing. The Government Accountability Office has issued a number of reports highlighting weaknesses at Social Security caused by implementation of newer initiatives without sufficient preliminary testing. We believe that Social Security should hire temporary employees if it contends that we don't need as many employees because we are going to have some kind of new initiative that may reduce it somewhere in the future. There are plenty of retired employees and government programs for bringing back fully trained employees to work on a temporary basis.

Fifth, Social Security should realign the workforce and staffing at the hearing level by transferring cases. We have talked about that a lot today, but the disparity across the country is striking.

Sixth, the correct decision should be made as early as possible in the claim review process to reduce processing time, expense, and hardship to the claimant.

I would point out two initiatives by the Commissioner that really proves the point that many of these claims shouldn't make it to the Administrative Law Judge stage, that it should have been approved at an earlier stage. These two processes sound the same, but actually involve totally different people.

In the Atlanta region, or Atlanta's two offices, we have DDS, which is the state agency employees reviewing our 900 day old cases if the judge is not going to get to those in short order. They are reviewing the same evidence we have. They may update the evidence, but they don't have any authority to pick a later onset date so they are fully favorable. They are paying a high percentage of these cases without the necessity of a hearing, and these are the same employees or the same state agency which had denied it previously.

Then we have DQB, the division of quality control which monitors the state agencies for their quality, and they have an initiative where they are coming in and also reviewing a different set of 900 day old cases, and once again, approving a large number of cases without any amendment to the onset date.

So, Mr. Chairman, thank you once again for the opportunity to appear before you today. The Social Security section of the Federal Bar looks forward to working with you and the Social Security Administration in improving the disability process.

Thank you.

[The prepared statement of Hon. Frederick Waitsman follows:]

Prepared Statement of The Honorable Frederick Waitsman, Administrative Law Judge, Social Security Administration, and Vice Chair, Social Security Section of the Federal Bar Association, Atlanta, Georgia

Chairman Rangel, Ranking Member McCrery and Members of the Committee:

I am Rick Waitsman, Vice Chair of the Social Security Section of the Federal Bar Association. I am an Administrative Law Judge in the Office of Disability Adjudication and Review of the Social Security Administration in its Atlanta North office. As an Administrative Law Judge at SSA for the past fourteen years, I have heard and decided well over 8,000 appeals. I also have served in the management positions of Assistant Regional Chief Administrative Law Judge for Region IV–Atlanta and Administrative Law Judge in Charge of the Medicare Division. I have served in three hearing offices.

I am very pleased to be here today representing the Social Security Section of the Federal Bar Association (FBA). My remarks today are exclusively those of the Social Security Section of the Federal Bar Association, and do not necessarily represent the views of the FBA as a whole. Moreover, my remarks are not intended to, nor do they necessarily reflect, the views of the Social Security Administration.

Thank you for convening this hearing 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. Sixteen thousand members of the legal profession belong to the Federal Bar Association. They are affiliated with over 85 FBA chapters in many of your districts. There are also more than a dozen sections organized by substantive areas of practice, such as the Social Security Section.

Unlike other organizations associated with the Social Security disability practice that tend to represent the narrow interests of one specific group, the Federal Bar Association's Social Security Section embraces all attorneys involved in Social Security disability adjudication. Our members include:

- Attorney Representatives of claimants
- Administrative Law Judges (ALJs)
- Administrative Judges at the Appeals Council
- Staff Attorneys at the Office of Disability Adjudication and Review
- Attorneys at the Social Security Administration's Office of General Counsel
- U.S. Attorneys and Assistant U.S. Attorneys
- U.S. Magistrate Judges, District Court Judges and Circuit Court Judges

The common focus of the FBA's Social Security Section is the effectiveness of the adjudicatory process primarily with hearings in the Office of Disability Adjudication and Review (ODAR), 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.

We appreciate the concern that was expressed by this Committee and the Social Security Subcommittee that resulted in the Commissioner's withdrawal of proposed rules that would have reduced the due process rights of claimants and cut disability benefits by two billion dollars. We strongly believe that the disability appeals backlog has not grown out of an excess of due process. While there should be a constant quest to improve the disability program, reforms should not arise out of procedural roadblocks that cannot be navigated by claimants.

Furthermore, it is the Section's collective view that the Social Security disability program is under considerable strain. Current delays in the processing of claims are unacceptable. The Federal Bar Association previously urged Congress to increase funding for fiscal year 2008, and we applaud the Congress for appropriating funds in excess of the President's request.

We thank the Ways and Means Committee for holding this hearing and for shining the spotlight on this unconscionable problem and the harm endured by hundreds of thousands of claimants who continue to wait for years to receive a final agency decision on their disability claim. During the painful wait, some appellants have lost their homes, others have been deprived of medical care and necessary medication,

some have undergone bankruptcy, while others have suffered even the loss of custody of their children, and in perhaps the most tragic of cases, suffered from depression so severe that it has resulted in suicide. Sadly, it is no longer unusual to review a disability claim at the hearing level in which the claimant has died from the disabling impairment or taken one's life from the stress of lack of resources, without the benefit of temporary assistance from the Social Security Administration.

I serve in the Atlanta North hearing office that was profiled in the February 2008 CBS Evening News Report on the hearing backlog. ALJs and appellant representatives who are members of the FBA's Social Security Section agree that the CBS report was an accurate depiction of the lives of those who await final agency decisions in the Atlanta North office, as well as other offices dealing with long waits. Some statistics about my office and its caseload illustrate the crisis at ODAR. The Atlanta North office started fiscal year 2003 with 3,104 pending cases and during that year disposed of 3,624 cases with an average processing time of 302 days. In that same year, we successfully reduced the number of cases pending. However just 4 years later, at the start of 2007, our caseload had grown to 10,490 cases. And though we disposed of a record number of cases, our pending caseload continued to grow to 11,922 cases. That's why our processing time for 2007 jumped from 302 days to 751 days, despite a record—breaking number of decisions for the office and its ALJs. The backlog in fact would have skyrocketed even more had the Atlanta North Office not transferred over 1,000 cases to other offices. While productivity issues can take their toll, the influx of new cases without additional resources was the foremost cause of waits for claimants. During this rapid growth in cases, we were able to dispose of about 2 cases per ALJ per day, but received about 4 cases per ALJ per day.

When fiscal year 2008 began, the Commissioner of Social Security gave the Atlanta North office a numerical goal for the number of case dispositions relative to the size of our ALJ and support staff. The Commissioner's national goal was to dispose of all cases that had remained pending at ODAR for 900 or more days. Yet if we met our numerical goal, we still would not have disposed of enough cases to have eliminated our 900 day-old cases because we had more 900 day-old or older cases than our disposition goal. The goal did not even take into account claimants entitled to expedited case handling, such as Veterans from Iraq and Afghanistan, terminal illness cases, dire need, on the record requests, and court and Appeals Council remands.

In the starkest and simplest of terms, we do not have the resources locally to handle the cases we are assigned. The Commissioner is providing help by sending in visiting ALJs, utilizing their support staff and permanently transferring cases to other offices. But these measures by themselves are insufficient. The bottom line is that SSA sorely needs a substantial increase in its funding so that meaningful justice can be promptly and fairly delivered to the hundreds of thousands of disability claimants who await an answer to their appeals.

Social Security has an expression, "Put a Face to the Case." We are not dealing with just numbers or files, but real people and real lives. Social Security at all levels has a dedicated workforce. It simply doesn't have enough employees to do the job the public expects and deserves. It should be emphasized that the issue is the length of time claimants must wait to receive a final agency decision. While the solution involves studying all steps of the process, we should not lose sight of the fact that in addition to the hearing backlog, the claimant waits approximately 103 days for an initial decision and 242 days for the Appeals Council. Approximately, 40 states provide a reconsideration step after an initial denial which results in additional delays. In previous testimony, the Social Security Section of the Federal Bar Association has urged that reconsideration be eliminated because the few cases that are approved do not justify the delay and expense. Notwithstanding that recommendation, additional funding is needed to increase the speed and accuracy of all stages of the application and appeal process.

The Commissioner is faced with a daunting task and limited resources. He has developed a number of initiatives to reduce the backlog in offices with longer processing times. We have seen some of these initiatives result in progress and congratulate him on these successes. However, we believe even more can be accomplished with fiscal year 2009 funding in excess of the President's request.

Therefore we offer the following six recommendations:

1. SSA Should Continue to Hire Administrative Law Judges and Fully Staff Hearing Operations

2. SSA Should Continue to Fully Implement the Electronic Disability Process (eDIB)

3. SSA Needs to Fund Capital Expenditures to Add New Hearing Offices and Permanent Remote Sites

4. SSA Should Test Initiatives Before Full Implemenation and Not Count on Their Success to Justify Reduced Staffing

5. SSA Should Realign the Workforce and Staffing Components of the Office of Disability Adjudication and Review, and

6. The Correct Decision Should Be Made as Early as Possible in the Claim Review Process to Reduce Processing at the Hearing Level

Now let's take a look at each of these recommendations:

1. SSA Should Continue to Hire Administrative Law Judges and Fully Staff Hearing Operations

The Commissioner has announced plans to hire 175 ALJs this fiscal year, with offers accepted by 135. The first group will be reporting to training soon. Studies have shown that to have an effective hearing operation, it is necessary to have approximately 4.5 staff for each ALJ. The new hiring plan does not apply the 4.5:1 staffing formula to new ALJs or significantly address the continuing shortage of staff in the offices. The current staffing is well below the target and largely negates much of the potential productivity of the ALJs.

While hiring additional ALJs is important, it should be noted that the hiring of approximately 135 ALJs is not an absolute increase in ALJs from prior years. It is only a down payment on the attrition that has taken place and does not come close to matching the phenomenal increase in pending cases. To hire ALJs without appropriate staff, however, is like hiring pilots to solve the problem of an airline not flying on time. The lack of support staff for an airline will still result in delays in boarding passengers, refueling, loading and unloading luggage, and necessary maintenance. It is the same with hiring ALJs without adequate staffing. Without adequate staff the cases will not be entered in a timely fashion into the computer system, the written evidence in cases will not be associated and placed in evidence, hearings will not be promptly scheduled, medical and school records to be utilized as evidence will not be ordered, inquiries from Congress, claimants and their representatives will not receive timely responses, consultative examinations will not be ordered, and decisions will not be timely drafted and mailed.

Experience has shown that the loss of an ALJ in an understaffed hearing office does not usually result in a large percentage of his or her case production being lost. The support staff can only prepare so many cases to be heard and can draft only so many decisions. The other ALJs who were previously underutilized with the existing staff will pick up most, if not all, of the cases the departing ALJ would have produced. My office lost two ALJs to retirement during the last year, yet disposed of more cases than ever before. It is often said that hiring more ALJs without staff is just slicing the pie into more pieces without increasing the size of the pie.

There is another worrisome concern, owing itself to the attrition of valuable support staff. The Commissioner has offered early retirements to ODAR employees and others. In addition, many of the newly hired ALJs were formerly either Hearing Office Directors, who are the highest non-ALJ in the office, or attorneys, who were either group supervisors or senior attorneys. This means that ODAR will be losing many of its best and most seasoned support staff. It is critical that these staff positions and others be filled. If SSA only hires ALJs, total productivity will rise only marginally, as the total number of cases will just be split more ways. Also there will be a loss of productivity as we use ALJs and senior staff to train the new ALJs and staff hired or promoted to new responsibilities.

2. SSA Should Continue to Fully Implement the Electronic Disability Process (eDIB)

SSA is strongly committed to a paperless file—called eDIB—but it is a work in progress and needs to be fully funded to be successfully implemented. Improvements need to be made to assure the system can support this growing workload or we risk a slowdown or even a crash of the system, which contains several hundred thousand electronic files.

SSA is experimenting with National Hearing Offices in Falls Church and Albuquerque, in which ALJs will hear electronic cases from across the country by video. Since the two National Hearing Offices will only hear cases by video and not conduct in-person hearings, we are concerned that claimants will not have a realistic choice regarding their entitlement to an in-person hearing. Many of our members do not regard video hearings to be sensitive enough to decide close disability cases. It is often difficult to decide issues of pain, mental health, or veracity in person. A mere video image of a claimant may not promote the accurate resolution of such subtleties. For some claimants, appearing before a video camera makes them nervous, confused or otherwise unable to properly present their claims. We believe it

may be a Hobson's choice to have a video hearing now, or an in-person hearing a year-and-a-half from now. Video hearings can help reduce the backlog provided the claimant always retains the right to an in-person hearing in the not distant future. We urge the Commissioner to provide real protection for the right to opt out of a video hearing without the punishment of additional significant delays. We caution that the amount of resources dedicated to electronic hearings not cause the Administration to lose sight of the claimant who has been waiting years to be heard on his paper file.

3. SSA Needs to Fund Capital Expenditures to Add New Hearing Offices and Permanent Remote Sites

A hearing office is an office where ALJs and staff are permanently assigned and hear cases. A permanent remote site is a location that SSA controls through ownership or lease where ALJs hold hearings, but no ALJs or staff are assigned. In the absence of permanent remote space, SSA uses temporary space, such as hotel conference rooms on an as needed basis, to hold hearings. Both the current and the prior Commissioner approved several new hearing offices based on the pressing need for the facilities. However, when the budgets were awarded, it was determined that adequate funding was not available. Two of the offices were Tallahassee and Ft. Myers, Florida. The need for permanent sites is even more important in an eDIB environment where computers are needed for each of the participants. An ideal situation provides for a permanent location so the equipment does not need to be stored, transported and set up for each day of hearings. Tallahassee not only does not have a hearing office, despite being approved by two Commissioners, but does not even have a permanent remote site. The option of video hearings does not exist in temporary remote sites because there is no place to install video communication lines and equipment. We believe additional funding is needed to establish permanent hearing offices at appropriate sites. Utilizing 2006 census data, Florida (with a population of 3.6 million people per office), Georgia (with 2.3 million people per office) and North Carolina (with almost 3 million people per office) have an extremely low number of offices relative to their population. By contrast, the other Region IV states have less than 1.5 million people per office. Undoubtedly, SSA needs additional funding to establish hearing offices and permanent remote sites within reach of the claimants they are mandated to serve.

4. SSA Should Test Initiatives Before Full Implementation and Not Count on Their Success to Justify Reduced Staffing

Late last year the Government Accountability Office issued a report that found that some of the key reasons for the backlog were the increase in applications, losses of key personnel, and management weaknesses. (*Social Security Disability: Better Planning Management and Evaluation Could Help Address the Backlogs*, December 7, 2007, GAO–08–40) Management weaknesses were compounded by the implementation of new initiatives without sufficient preliminary testing. The Disability Service Improvements initiative (in the New England region) and the Hearing Process Improvement initiative were severely criticized by GAO for lack of adequate testing.

We are similarly concerned that SSA's current implementation of new initiatives—like e-scheduling and other software improvements—without sufficient testing in pilot demonstrations will not offer promised productivity that SSA is counting on, and even possibly contribute to a larger backlog. For example, one new initiative—e-scheduling—is a centralized and computerized process of scheduling hearing participants: representatives, claimants, vocational experts, medical experts, and contract hearing reporters. Currently, a clerk calls these individuals to schedule and assure their availability. On the other hand, e-scheduling is more primitive in that it does not take into account the many variables that are involved in scheduling hearings. For example, many attorney representatives of claimants practice in multiple hearing offices, and the e-scheduling software does not know their Federal or state court schedule, the amount of time it takes to get from one hearing office to another if they are being scheduled for two offices in a day, how close an ALJ usually is able to keep on schedule, and other factors. While e-scheduling may work in some locations, it should be thoroughly tested before widespread implementation. More important, it should not be prematurely counted as a success that justifies a staffing reduction until it has been successfully implemented on a widespread basis. We have similar concerns regarding plans for the development of software to select and number medical evidence and eliminate duplicate exhibits. We believe ODAR should hire temporary employees to reduce the backlog until these initiatives are proven worthwhile.

5. SSA Should Realign the Workforce and Staffing Components of the Office of Disability Adjudication and Review

ODAR's workforce is not sufficiently balanced—in terms of the locations of ALJs and staff—to deal with the rising case backlog. For example, four offices have less than 300 cases pending per ALJ, while 26 offices have over 1,000 cases pending per ALJ. A realignment can be accomplished by a combination of case transfers and the realignment of service areas. Although the Commissioner plans to actually reduce case transfers, this approach had proven largely successful, though used only sporadically. We urge the Commissioner to continue these transfers until there is roughly the same processing time throughout the nation.

Variances in waiting time are due to inadequate staffing, high growth of new cases, and the misaligned boundaries of service areas. While lack of productivity is sometimes used to explain long waits, the data shows that 35 offices receive less than two cases per ALJ per day, but eight offices receive over four cases per day per ALJ. Since average ALJ productivity is less than 2.5 cases per day, the misalignment of ALJs and cases in those eight offices contribute to the backlog. Until these underlying reasons are addressed and successful action taken to correct the problems they create, an aggressive case transfer process is needed. Historically, case transfers have been short term efforts, but they need to be viewed as an integral part of the business process until the inequalities in waiting times are resolved.

6. The Correct Decision Should Be Made as Early as Possible in the Claim Review Process to Reduce Processing at the Hearing Level

There is great disparity among the various state agencies that make the initial and reconsidered determinations on disability claims. In fiscal year 2006, the national average of initial claims allowed was 35%. Yet, Georgia allowed 25%, Tennessee allowed 23%, Kansas allowed 28%, Ohio allowed 27% and South Carolina allowed 23%, while New Hampshire allowed 59%, District of Columbia allowed 54%, Hawaii allowed 53% and Virginia allowed 44%. Congress has held hearings on this issue and there is still no compelling explanation of the disparity. One of former Commissioner Barnhart's proposals in the Disability Service Improvement initiative was to create a Federal quality assurance program involving centralized review of cases from all over the country by the same Federal office. This is currently being carried out on a localized or regional basis when the reviewing entity and respective review standard are known by the state. We believe there should be a quality assurance process that applies a national and uniform policy of review. Such a policy should address the sufficiency or completeness of medical evidence before a decision is made. We support further inquiry to better to determine the reasons for the wide disparity in allowance among the states and at different levels.

If SSA continues the current process of excessively denying eligible claimants initially, the administrative costs will naturally escalate as more cases continue to be appealed and waiting times increase. Obviously, wrongful initial denials cause great hardship to citizens who have paid their Social Security taxes to obtain insured status and do not receive the benefits to which they are entitled.

Eleven years ago, GAO testified to the House Social Security Subcommittee that "Despite SSA attempts to reduce the backlog through its STDP initiatives, the agency did not reach its goal of reducing this backlog to 375,000 by December, 1996." (*Social Security Administration: Actions to Reduce Backlogs and Achieve More Consistent Decisions Deserve High Priority*, April 24, 1997, GAO/T–HEHS–97–118) The backlog at that time was defined as cases pending for more than 270 days, and the goal was to reduce pending cases to the 375,000-mark. Today, the backlog has exploded to more than 750,000 pending cases. Last year, SSA targeted adjudicating aged cases of 1,000 days at ODAR and this year is targeting 900-day-old cases. GAO has issued other reports addressing the lack of an effective quality assurance program and the failed effort of improving consistency between the initial decisions and hearings at the appeals level. (*See, e.g., Social Security Administration: Disappointing Results from SSA's Efforts to Improve the Disability Process Warrant Immediate Attention*, February, 27, 2002, GAO–02–322) SSA needs to be sure its national criteria are applied as uniformly as possible at all levels and in all states.

While the experience of the members the FBA's Social Security Section is associated more directly with ODAR and the Appeals Council, we have noticed a significant decrease in service at the district offices, the teleservice center (800-number), the payment center, and the disability determination services. Essential workload such as continuing disability reviews and age 18 redeterminations to determine whether beneficiaries continue to qualify for benefits appear to be receiving less attention. It has been shown that continuing disability reviews (CDRs) save over $10 of program funds for every $1 spent in administrative costs of conducting CDRs. We urge the Congress to appropriate sufficient funds so that the backlog of CDRs and

redeterminations can be significantly reduced and bring about service increases in all components.

Mr. Chairman, 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 the disability process. I would be happy to answer any questions you may have.

Mr. MCDERMOTT. Thank you very much for your testimony. I thank all the panel. Mr. McCrery will inquire.

Mr. MCCRERY. Mr. Schieber, the focus of this hearing, of course, is on the problems that we are having near the end of the disability determination process and getting those appeals processed. But if some of these issues have been handled better early in the process, we maybe wouldn't have as big a problem to discuss today. What in your opinion are the most important investments and changes we can make to the beginning of the disability determination process to improve the whole system?

Mr. SCHIEBER. Part of the challenge here is to gather sufficient information and good information as early in the process and on a systematic basis as you can. If you look at the DDS application process right now, in some states there is a relatively structured process for gathering information.

This is a complicated program, and people come in with many disabling characteristics. Oftentimes, it really is quite difficult to ferret out exactly what it is that is the disabling condition. If you don't go through collecting the information on a systematic process, then it is going to be extremely uneven.

Now, the Commissioner talked about the development of their eCAT system that they tried to roll out as part of DSI in the Northeast. Conceptually, it is an extremely good idea. They had an electronic process for leading the examiner through collecting information to build file so a decision could be made. But when they rolled it out, it had not been properly developed, had not been tested, and basically tied up their whole operating system so they had to take it back down.

SSA and the DDSS have started to redevelop. They have been going through a process with the state of Virginia and redeveloping this in what they call a lab environment. We actually visited with the folks in Virginia and some of the Social Security folks just a couple of weeks ago, and it looks like they have something extremely promising. They are going to come out with an updated version, in July. Connecticut is using this system, and it looks extremely promising. I think you need to begin to gather the data on a consistent basis across all of these states, and it needs to be as complete as possible.

One of the things that Social Security has done, it worried about the processing time at the front end of the application process, and encouraged the DDS's to move the application through in 90 days. Oftentimes that 90 day hurdle comes up and the medical data is not in the file. So, the DDS makes a denial, and they send it on up the line. When it gets up to ODAR for the appeals that medical evidence to be obtained for the file. Then as the ALJ begins to consider the case, they are considering a very different base of information than was considered at the front end of the process.

That is what I was talking about earlier when I said we need to integrate this process from beginning to end. We need to think about getting all of the information as quickly as we can so we can make a comprehensive decision as soon as we can.

Mr. MCCRERY. What can we do in Congress, if anything, to facilitate that?

Mr. SCHIEBER. Well I certainly think that as you think about budgets and how money is going to be spent, you should strongly encourage, one, that they get themselves into a consistent DDS platform across all of the states. The Federal government is paying for the DDS operations. They need to be on a consistent platform. Then it needs to be totally integrated with the subsequent steps in the process. If there is determination that the information that has been passed on to ODAR has been insufficiently developed, the hearing office staff needs to be able to determine that very quickly and get it back to the DDS to get it fully developed.

We just heard here about cases that are now being referred back to the DDSs from ODAR that have sat there for 900 days, and now there are decisions being made that this person is disabled without further development. This case sat there for 900 days with the information we are using today to make a determination this person is disabled. That is insane. I don't have to go explain it to them, but I am sure you do occasionally, and I would think you would want to put a stop to that sort of activity.

Mr. MCCRERY. If I might just ask one more question about physician's records.

Mr. MCDERMOTT. Sure.

Mr. MCCRERY. It seems that that is a recurring problem in getting everything together. We have a problem sometimes getting records from the physicians that have treated the individuals. Mr. Waitsman, do you find that to be a problem often?

*Mr. WAITSMAN. It is. In Georgia, we pay a nominal fee, either free or $10 for the doctor to get the records or for the hospitals to give us the records. If you keep going back to the doctor at the initial stage, at reconsideration, the attorney every 6 months, every year, they write for records, and I write letters requesting records, eventually the providers just refuse to have anything to do with the program.

Mr. MCCRERY. So, what can we do about that? Does anybody have any suggestions as to how we can——

*Mr. WAITSMAN. What doctors and hospitals have asked for was increased reimbursements so that they get more than $10 for giving years worth of medical records.

Mr. MCCRERY. Ms. Ford.

*Ms. FORD. The representatives that we work with in our coalition have indicated that, once they get involved in the case, they do some very practical things that SSA ought to look at doing. One of them is in fact, paying more for those records.

Another thing is providing better explanations to the providers, the medical providers or whomever, exactly what the case is about and what evidence is needed. In addition, SSA should do a bit more targeted questioning when they know what the issues are. Further, more should to be done with the claimants in terms of explaining to them the process and why it is so important that they let SSA

know all of the doctors and hospitals and providers that they have seen, and let SSA know everything that there is going on with the individual so that those impairments that are revealed at the last minute can come out earlier in the process.

In addition, SSA must address training of adjudicators to ensure that they are all working from the same rules, and that they understand properly the evaluation of childhood disability, the use of the Social Security rulings, and the evaluation of the mental impairments, and pain and other subjective symptoms.

These are some very practical things that need to happen, and there is a good bit of that in my written testimony. Thank you.

Mr. MCCRERY. Thank you.

Mr. MCDERMOTT. Mr. Johnson will inquire. Excuse me, Mr. Lewis will inquire.

*Mr. LEWIS. Thank you very much Mr. Chairman. Mr. Chairman, let me thank each Member of the panel for being here today. I would just like to take a moment to welcome Judge Waitsman for being here. I know you are a graduate of Emory University, located in the heart of my district, and thank you for all of your work, and thank each of you for your good work.

Judge Waitsman, you know from firsthand experience the huge problem we are having with Social Security disability appeals in Atlanta. You know that people are dying, literally dying waiting for disability benefits that they deserve.

Ms. Ford listed a dozen, unbelievable in your written testimony, are heartbreaking stories of people losing everything while they wait for benefits they deserve.

These people who are too sick to work, too disabled to work, in Atlanta in my office, more than anything else, more than any other case or problem we have, the caseworkers, is dealing with Social Securities, Social Security disability. They call my office asking how they will pay their rent, how they will pay for medicine, how they are going to pay for food, or some people losing their homes while they wait for benefits. I don't think it is fair, I don't think it is right, I don't think it is just in a society such as ours.

I appreciate all the work that you are doing, Judge Waitsman in Atlanta, as an administrative law judge. I know, as a human being, not just as a judge, you know that people shouldn't wait any longer. You heard the Commissioner talk about the steps they are taking in Atlanta. In your opinion, what needs to be done in Atlanta to really reduce the backlog? What does the Social Security Administration need from Congress to make sure that people get the benefits they need and get it now? I don't understand it, I really don't understand why people have to wait 600, 700, 800, 900 days. You talked about what happened during Katrina. If for some emergency, why can't we make the government work in such a fashion that we can transfer people from one part of the country to another part of the country to intervene. Can we hire more administrative law judges or hire more Social Security Employees to make it work?

*Mr. WAITSMAN. Congressman, thanks for the kind introduction. We just don't have enough resources in Atlanta, and I think when you have four cases coming in every day for every judge and average productivity is about two to two and a half cases, it is a

resource issue above everything else. So, we have technologies that we can transfer cases around the country, we need more hearing space. For example, we hear cases in Atlanta, Gainesville, Augusta, and Athens. To the extent we get help in Augusta, we have only got one room, so we need more help. If we had a second room—we could hear more cases.

*Mr. LEWIS. Do you travel? You travel from one—Do you actually travel?

*Mr. WAITSMAN. Yes.

*Mr. LEWIS. From one office to another office to hear a case?

*Mr. WAITSMAN. Yes, we call them remote sites, and so we travel to all of those, plus we can do it by video. So, I think some of those offices—We are doing it to some degree, I don't think sufficient level, having judges from California and other areas that don't have enough work load, who receive less than two cases per day per judge, so they hear some cases. Part of the issue is if they do it by video, it is a three hour time change, so——

*Mr. LEWIS. How do you feel as a human being when you hear that someone came before you, they were trying to get their benefits, and a few weeks later, maybe a month later, a year later, you heard that they passed and never got their benefits?

*Mr. WAITSMAN. It is extremely frustrating. It used to be unusual that we would have a death while a claim was pending. Now it is very common. It is not just the individual, it is a whole family that is affected for the one that doesn't—if it is not a death, it is a family problem and issue. People are losing their homes. Many of the homeless shelters aren't set up for families or couples, and so you are splitting up a family.

You will have diseases such as an uncontrolled diabetic that maybe could be controlled if they had their insulin. If they don't have their insulin, you see that case progress. Eventually, it is going to be a loss of vision, kidney failure, peripheral neuropathy. It is just a heartrending situation, that you know that the person that is not getting their hearing. And not getting their benefits. You are picking up that file that has been sitting around for two to 3 years, that it is a matter of time, before a tragedy and maybe that time arose before you even got the file.

Mr. MCDERMOTT. I'm going ask Mr. McNulty to take the chair again [continuing]. I have a commitment I've got to go do. But I want to say that I think your last comments really raise the issue of why we can't deal with poor people. We watched Katrina. We can't seem to get that figured out. But we sure do spend a lot of time trying to speed up the licensing over at the FDA and a lot of other places when we can't seem to put the resources in to deal with really what are the terrible.

When you read these cases that this floor brought before us and you see people dying in the waiting room, you have got a serious failure of a system which I don't think anybody—maybe no one deliberately sets out to do, but by our actions—and I think we can fix them—we can restore some integrity to the system.

So, I appreciate all of you coming here and testifying before the Committee.

Mr. McNulty?

Mr. MCNULTY [presiding]. Thank you, Dr. McDermott. Mr. Johnson may inquire.

Mr. JOHNSON. Thank you, Mr. Chairman.

Mr. Schieber, you talked about a *Federal Times* article. I've got a copy of that article. It can be distributed, and I request it be inserted into the hearing record.

Mr. MCNULTY. Without objection.

[The information follows:]

**********COMMITTEE INSERT**********

Mr. JOHNSON. Both the government and private sector have abysmal records on computer security breeches, along with protecting Social Security number, and preventing ID theft. This Committee is trying to stop that through legislation. Even our veterans have had their information stolen.

What I'd like to know is why are we allowing employees to work from home? Personal information must be protected and not carried home. Can you tell us what you think about that?

Mr. SCHIEBER. Well, I think protecting personal information should be of the highest order of concern. The reasons why people work at home, I think partly tie to history, partly tie to evolving social acceptance of work at home in not only government sector but in the private sector. There is a sense that in many regards it may be more efficient. It may be green. We're in Earth Week, I think. That if we can allow people to do their job without having to commute, it saves them time, it saves resources, it doesn't spew things into the atmosphere that would be spewed if they came to work.

But the issue, though—I managed people in the private sector for 30 years, and we had some work at home flex schedules that we allowed our employees. But it's always a bit of a challenge. It seems to me the important thing is that we should do it if people can do the work at home and can be as efficient, and in many cases maybe even more efficient than they are by coming to the office.

Mr. JOHNSON. Well, how do you protect the information that way?

Mr. SCHIEBER. Well, I'm guess I'm getting to the punchline here. If you have to come to the office to do the work, then it seems to me that's where you do the work, and going back to the fact that security here is of the highest order of importance, it may require that we rethink the way we were handling these files. Maybe that's where work has to be done. Maybe moving into this more efficient environment is going to require some changes to work policies. We need some flexibility to get there, or we're not going to be able to realize the efficiencies that Commissioner Astrue was talking about.

Mr. JOHNSON. You know, Mr. Skwierczynski—is that close?

*Mr. SKWIERCZYNSKI. Skwierczynski.

Mr. JOHNSON. Sorry.

*Mr. SKWIERCZYNSKI. Skwierczynski. Thank you. Stated that we should not believe people about their birth dates when they're applying for retirement benefits. It seems to me that if a guy's been working forever and using a birth date for 50–60 years, he shouldn't have to provide a birth certificate for somebody to look at before he gets his retirement. What's your opinion on that?

Mr. SCHIEBER. Well, I was just sitting here thinking about my situation.

Mr. JOHNSON. Yeah, and do you know where your birth certificate is?

Mr. SCHIEBER. Well, at the moment I don't.

[Laughter.]

Mr. JOHNSON. I didn't think so.

Mr. SCHIEBER. I think I applied for my Social Security card it probably in 1960, and I have consistently told the Social Security Administration since then that I was born on July 24, 1946. You know, if I file for Social Security benefits, retirement benefits when I reach normal retirement age, they'll have had that birth date on record for more than a half century.

I think what the Commissioner is trying to do is look at the situation that he's facing. This overwhelming burden of the baby boomers about to descending upon them, applying for benefits. Even if they can electrify the application process, so I can apply for my benefits online, under the old rules I was going to have to find my birth certificate and I was going to have to take it to a Social Security office. Well, we've been hearing here about how hard it is to get into the Social Security office, how overburdened the Social Security offices are, what the Commissioner is trying to do is find some practical ways that to deal with these issues.

We have talked to him extensively about some of these things, about the application process. He's taking things out of the application process that he thinks are peripheral to making a realistic and adequate and careful determination in most cases. He thinks that if I have been telling him I was born on July 24, 1946 for a half century, that, you know, if I came in and I told him that today, so I could qualify for benefits, then maybe they'd be suspect. But I surely wouldn't have thought of that 50 years ago, so I could qualify for benefits today.

Mr. JOHNSON. Well, you know, a lot of states are going automatic on all that stuff. I mean you could even get licenses for your car on a computer nowadays. They believe what you put in there. I mean they don't ask you for a piece of paper. I think that's enough said on that.

Thank you for the time, Mr. Chairman.;

Mr. MCNULTY. Thank you, Mr. Johnson.

Mr. Brady may inquire.

Mr. BRADY. Thank you, Mr. Chairman. I appreciate you all being here today and offering your insight. Clearly, the Social Security disability process needs dramatic improvement. We all have different suggestions on how to do it, but your insight as users and providers of the system is a huge help.

I will note, Sam, that I decide earlier that even if I had a question for Mr. Skwierczynski, I wasn't going to ask it anyway, just for fear of mangling the name.

So, I appreciate you having a——

Mr. MCNULTY. It's phonetic.

Mr. BRADY. So, thank you. Mr. McCrery asked my question. I too think that we have a continuing problem on the accuracy, completeness, and the timing of the medical records. I have always assumed that because the Social Security claimant representatives

are skilled, that there would be a huge difference between the medical records of a claimant and one of those represented by a representative.

But my question to you—and maybe I'll ask Ms. Ford this—to your knowledge, have we ever measured the difference between the completeness and the timeliness of the medical records for claimants who have representatives and those who don't? I mean you talked about some of the areas that representatives helped claims provided; that makes to me perfect sense. But have you ever measured the difference? Because clearly the more complete and more timely that medical record, my assumption is the more accurate and hopefully the quicker the system would render an accurate decision for that person.

*Ms. FORD. Just a couple of points in response to that. I don't think that we have done any studies on the development of evidence. One thing I would want to know is, of those people who are represented, whether representation, for different lengths of time prior to the hearing; makes a difference. And it depends on the individual and how soon they find somebody as to how long that representative has had to help develop the record.

I'm being reminded by my colleague that the GAO is currently working on a report on the development of evidence. Hopefully there will be something helpful that comes out of their work. But, the representatives have said for years that there are some very practical things that can be done, that should be done by SSA, and perhaps these cases wouldn't even reach the appeals level if the evidence was gathered earlier in the process.

Mr. BRADY. No, it seems to me to make sense. I was just wondering if we need to try to find some way to measure that, so we can find out what those best practices are. You know what I mean? Because obviously I think that is one of the many keys to improving the whole process.

So, Mr. Chairman, again, thank you all for being here. Thank you, Chairman.

Mr. MCNULTY. Thank you, Mr. Brady.

If there are not further questions, I want to thank the panel on behalf of Chairman Rangel and Ranking Member McCrery and all the Members of the Committee.

I want to thank all of you, not just for your testimony today, but for your advocacy on behalf of our constituents and the American people. Sometimes we have these hearings to try to figure out what the problem is. We know what the problem is. We know, we are painfully aware of what the problem is. You have given us some good ideas about solutions. The ball is now in our court. We need to do these things in cooperation with the Administration and the Social Security Agency.

So we have made some modest progress in the last couple of years, and the extra $150 million last year. We've got $240 million extra in our House budget resolution this year. We're hiring 175 new administrative law judges. We're making some modest progress.

But I thank particularly Mr. Skwierczynski for referring to a possible problem with continuing with the progress, and that's some of us getting together and passing new laws, creating new addi-

tional massive workloads for the Social Security Administration that don't have anything directly to do with Social Security. We need to guard against that, because I think you will agree that if we do something like that, it blows that progress we've made so far to smithereens.

So, we need to keep our eye on the ball. We need to continue to make more progress beyond what we have done so far. Thank you for steering us in the right direction, and we look forward to working with each and every one of you to make more and more progress on this issue in the weeks, the months, and the years ahead.

The hearing is adjourned.

[Whereupon, at 2:09 p.m., the hearing was adjourned.]

[Questions for the Record follow:]

CONSORTIUM FOR CITIZENS
WITH DISABILITIES

June 3, 2008

The Honorable Charles B. Rangel
Chairman
Ways and Means Committee
U.S. House of Representatives
Washington, DC 20515-6348

Dear Chairman Rangel:

Thank you for the opportunity to respond to a question for the record following the Committee's hearing on April 23, 2008 on Clearing the Disability Backlog – Giving the Social Security Administration the Resources It Needs to Provide the Benefits Workers Have Earned.

I am responding to the following question:

> As of March, 2008, the average wait time for someone who has filed an appeal on their disability claim is about 510 days to receive a decision by an Administrative Law Judge. Under the President's budget for fiscal year 2009, the wait would drop to 506 days. In your view, how long is a reasonable amount of time for claimants to have to wait for a hearing decision?

The CCD Task Force on Social Security believes that 95 days should be the goal. Once an individual has filed the appeal, SSA should notify the claimant within five days with the scheduled date for the hearing. The claimant should be given 75 days notice in which to gather additional up-to-date evidence for the hearing. Claimants should be given the opportunity for one additional 75-day period, if requested, to gather additional evidence. Within 15 days following the hearing, the claimant should be notified of the decision or the Administrative Law Judge's need for more information.

This time frame would break down as follows:

- Within 5 days of claimant's notice of appeal – SSA notifies claimant of hearing date.
- Claimant has 75 days notice of the hearing date to gather any additional evidence needed. Claimant may request an additional 75 day period for gathering needed evidence.
- Within 15 days following the hearing – ALJ notifies claimant of decision or need for more evidence.

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While this time-frame is clearly much shorter than under current practice, it must be remembered that the claimant has already waited a considerable period of time since initial application and this time-frame adds more than 3 months to the wait for a decision.

We hope this is useful information and appreciate the opportunity to submit additional information for the record. Please let me know if you have any questions on the above.

Sincerely,

Marty Ford
Co-Chair
CCD Social Security Task Force

Congress of the United States
U.S. House of Representatives
COMMITTEE ON WAYS AND MEANS
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Washington, DC 20515-6348
http://waysandmeans.house.gov

May 13, 2008

The Honorable Michael J. Astrue
Commissioner
Social Security Administration
500 E Street, SW, Suite 850
Washington, DC 20254

Dear Commissioner Astrue,

Thank you for testifying before the Committee on Ways and Means on April 23, 2008 on Clearing the Disability Backlog – Giving the Social Security Administration the Resources It Needs to Provide the Benefits Workers Have Earned. In order to complete the record of the hearing, please respond to the attached questions by Tuesday, May 27, 2008.

The Committee relies on electronic submissions for printing the official hearing record, therefore, please send an electronic submission in a Word or Word Perfect attachment to *hearingclerks.waysandmeans_d@mail.house.gov* and to *jennifer.beeler@mail.house.gov* .

If you have any questions concerning this matter, please feel free to have your staff call Kathryn Olson of the Subcommittee on Social Security at (202) 225-9263.

Sincerely,

Janice Mays

Janice Mays
Chief Counsel and Staff Director

Committee on Ways and Means

Hearing on Clearing the Disability Backlog - Giving the Social Security Administration the Resources It Needs to Provide Benefits Workers Have Earned

Wednesday, April 23, 2008

Questions for the Record

to The Honorable Michael J. Astrue, Commissioner
Social Security Administration
500 E Street, SW, Suite 850
Washington DC 20254

Disability Determination Process

1. Of all the individuals who apply for disability benefits (either Title II or Title XVI), what percentage are ultimately allowed?

2. Of those individuals who file an appeal after being denied at the initial level, what percentage are ultimately allowed (including allowances at any stage of the appeals process)?

3. At each stage of the process (initial, reconsideration, hearing, and Appeals Council), what percent of cases are allowed?

4. What percent of denials at each stage (initial, reconsideration, hearing, and Appeals Council) appeal?

5. You indicated that SSA was building templates that would allow cases which are likely allowances to be identified early and pulled out for faster processing. Can you elaborate on the nature of these templates? How does using these templates differ from your current procedure?

6. Please provide information on Ohio policies regarding requiring applicants for state or local assistance programs to apply for Title II or Title XVI benefits.

Hearings Backlog

7. As of March, 2008, the average wait for someone who has filed an appeal on their disability claim is about 510 days to receive a decision by an Administrative Law Judge

(ALJ). Under the President's budget for fiscal year 2009, the wait would drop to 506 days. In your view, how long is a reasonable amount of time for claimants to have to wait for a hearing decision? Under your backlog reduction plan, when will SSA achieve that goal?

8. Can you explain why the Portland, Oregon hearing office has such high processing time: 705 days compared to the national average of 510 days? (March 2008 data) What steps are you taking to address this issue?

Office of Disability Adjudication and Review (ODAR) Staffing and Productivity

9. In the past, you have said that your target is a core of 1250 ALJs. Is this still the case? When do you expect to have this number of ALJs on board?

10. You testified that SSA recently hired enough support staff to bring the staff to ALJ ratio up to 4.4:1, but that once that new ALJs are absorbed and additional support staff hired, that ratio will go back down to about 4.1:1. Witnesses on the second panel expressed concern that SSA's plans for hiring ODAR support staff are not adequate, and that this understaffing will impede productivity. One witness stated that "studies have shown that to have an effective hearing operation, it is necessary to have approximately 4.5 staff for each ALJ." In addition, the Committee has heard directly from ALJs who say that lack of staff is currently a significant barrier to productivity. You testified, however, that automation improvements ODAR is developing may reduce the need for support staff, and that in an electronic environment the desired staffing ratios may be different from those identified in earlier studies.

    To help the Committee better understand this issue:

    a. Please provide the current national average ratio of support staff to ALJs and the range of support staff ratios at hearing offices across the country.

    b. Please provide the national average ratio of support staff to ALJs and the range of hearing office support staff ratios for each of the past ten fiscal years.

    c. Assuming sufficient funding, what do you consider to be the ideal staff to ALJ ratio: 1) without the automation improvements you anticipate; and 2) with those automation improvements fully implemented?

11. Have all of the automation improvements planned for ODAR been fully developed and tested? If not, when does the agency expect these advances to be fully developed, tested, and operational in all SSA hearing offices? If they will not be available immediately, what are SSA's plans to fill the gap in support staff in the meantime? In addition, does SSA have a "Plan B" in case the agency cannot implement the automation improvements

as quickly as planned?

12. Many observers have noted that SSA's recent experiences in rolling out automation initiatives that had not been fully developed and tested resulted in declines in productivity. As SSA moves to implement new automation initiatives in ODAR, what steps will the agency take to ensure that this will not happen again?

Quality Assurance

13. You testified that for SSA's quality assurance reviews (QARs) of State DDS decisions (the reviews that are used to determine whether individual DDSs perform acceptably; i.e. non-Pre-Effectuation Review quality reviews), you review an equal number of allowances and denials. However, since only about 35 percent of cases are allowed at the initial level and only about 13 percent at the reconsideration level (FY 2006), reviewing the same *number* of cases means that the *percentage* of cases reviewed is significantly less for denials than for allowances.

    For example, in FY 2007, 2 percent of initial level allowances received a QAR review, but only 1 percent of denials; for the reconsideration level, the discrepancy was even greater, with 5 percent of allowances reviewed but only 0.9 percent of denials. This means that an allowance has a higher chance of being selected for review than a denial.

    Why does SSA not review the same percentage of allowances as denials for the QAR reviews? Could this difference in review rates provide a structural incentive to deny cases?

Field Operations

14. SSA is beginning to make progress in addressing the disability backlogs, but service in many non-disability areas is worsening. In fact, according to SSA's budget documents, the backlog in "Other Work/Services in Support of the Public"will increase by 3300 workyears in FY 2008, and would increase by an additional 4800 workyears in FY 2009 under the President's budget.

    a. What type of activities and workloads are included under this outcome measure?

    b. What are some of the ways in which staffing deficits and backlogs in these areas affect the public?

    c. How much additional funding would SSA need to avoid any decline in these areas in FY 2009? How much funding would the agency need to bring these workloads back up to the FY 2007 level?

15. What is the average waiting time to see a representative in your field offices? You mentioned that there were about 100 to 150 offices where waiting time was "...really out of control...". For these offices, please list the office name, city and state, average waiting time for an individual with an appointment, average waiting time for an individual without an appointment, and overall average waiting time.

Field Office Closures and Consolidations

16. Could you describe SSA's Service Delivery Assessment process?

17. How does SSA decide to close or consolidate field offices?

18. a. Please provide a table that, for each fiscal year from FY 2001 - present, shows the total number of field offices at the close of the fiscal year (or, for 2008, the current number), broken down by type of office (field office, card center, contact station, or resident station).

    b. In each fiscal year from FY 2001 to present, how many field offices has SSA closed or consolidated (not including contact stations or resident stations)? During the same period, how many field offices has SSA opened each fiscal year (not including contact stations or resident stations)? In each fiscal year from 2001 to present, how many card centers has SSA closed or consolidated, how many card centers has SSA opened? Please provide the name and location for each office included above.

    c. In FY 2008, where is SSA planning to close or consolidate field offices (not including contact stations or resident stations)? During the same period, where is SSA planning to open field offices (not including contact stations or resident stations)? In FY 2008, where is SSA planning to close or consolidate card centers and, where is SSA planning to open card centers?

Ready Retirement

19. In your written statement, you discussed the efforts of the Ready Retirement team to streamline the retirement application process. Specifically, you mentioned an upcoming change that would allow retirement claims to be processed "...without routine, time-consuming review by our field representatives." What is the projected timeline for making this change? In addition, members of the second panel expressed concerns about this, saying it could result in overlooking potential entitlement to other benefits, disadvantageous choices by the applicant, and incorrect payments. What steps is SSA taking to make sure that all relevant issues will be identified and resolved prior to allowing a claim to be processed in this manner?

Congress of the United States
U.S. House of Representatives
COMMITTEE ON WAYS AND MEANS
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May 20, 2008

Ms. Marty Ford
Co-Chair
Consortium for Citizens with Disabilities Social Security Task Force
1660 L St., NW, Suite 701
Washington, DC 20036

Dear Ms. Ford,

Thank you for testifying before the Committee on Ways and Means on April 23, 2008 on Clearing the Disability Backlog – Giving the Social Security Administration the Resources It Needs to Provide the Benefits Workers Have Earned. In order to complete the record of the hearing, please respond to the following question by Tuesday, June 3, 2008:

> As of March, 2008, the average wait for someone who has filed an appeal on their disability claim is about 510 days to receive a decision by an Administrative Law Judge. Under the President's budget for fiscal year 2009, the wait would drop to 506 days. In your view, how long is a reasonable amount of time for claimants to have to wait for a hearing decision?

The Committee relies on electronic submissions for printing the official hearing record, therefore, please send an electronic submission in a Word or Word Perfect attachment to *hearingclerks.waysandmeans_d@mail.house.gov* and to *jennifer.beeler@mail.house.gov* .

If you have any questions concerning this matter, please feel free to call Kathryn Olson of the Subcommittee on Social Security at (202) 225-9263.

Sincerely,

Janice Mays

Janice Mays
Chief Counsel and Staff Director

Congress of the United States
U.S. House of Representatives
COMMITTEE ON WAYS AND MEANS
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May 14, 2008

The Honorable Michael Astrue
Commissioner of Social Security
Social Security Administration
6401 Security Blvd.
Baltimore, MD 21235

Dear Commissioner Astrue,

Thank you for your April 23rd testimony to the Committee on Ways and Means discussing the current state of disability backlogs and other service delivery challenges and the steps you are taking to address these challenges. In order to complete our hearing record, I would appreciate your response to the following questions:

1. While overall the cost of administering Social Security programs is less than 2 percent of total outlays, personnel costs and certain fixed infrastructure costs rise significantly each year. According to your testimony, these costs are expected to increase by $400 million in Fiscal Year 2009.

    a. Given increasing workloads and the fiscal challenges facing the federal budget in coming years, do you believe the agency's rising administrative costs will be sustainable without further backlogs and other declines in public service and if not, what needs to be done?

2. In his testimony, Mr. Schieber talks about the processing time, productivity, and quality pressures impacting State Disability Determination Services (DDSs) employees that can lead to shortcuts resulting in unintended outcomes.

    Your focus at the front end of the process by updating the list of severe impairments that prevent work and implementing two fast track systems, Quick Disability Decisions and compassionate allowances, are strong first steps to ensuring those eligible for benefits are processed as quickly as possible.

    a. Have you analyzed the impacts of other operational pressures, including changing standards for productivity and processing time, along with budget pressures on the State agencies?

b. Have you determined whether spending more on the front end of the decision or adjusting certain performance expectations would improve service and save costs in the long-run?

3. We know the agency is working to expedite service delivery to our nation's Wounded Warriors returning from Iraq, Afghanistan and elsewhere.

   a. Would you provide an update on these efforts and how these claims are expedited and how many of these claims may be part of the hearings backlog?

4. One of the most difficult decisions the agency makes is the decision to close a local Social Security office. At the same time, to meet service delivery demands you have opened new field offices, hearing offices, and Social Security number card processing centers.

   a. Please describe the process your agency uses in order to make these decisions.

   b. What is the number of new offices and the process for opening new offices?

5. Congress passed ticket to work legislation back in 1999, yet after years of implementation efforts and millions spent, very few beneficiaries are going back to work. Worse, for years new regulations have been promised to improve ticket to work programs, yet the regulations have never been issued.

   a. Once an individual is awarded benefits, how is the Social Security Administration (SSA) helping individuals who want to work prepare for or find jobs?

   b. What share of disability recipients take advantage of those SSA programs?

   c. Regardless of whether they take advantage of SSA programs designed to promote work, what share of all disability recipients ever leave the disability benefit rolls for work?

   d. Is there any update you can provide regarding updated return to work regulations?

   e. What more should the Congress and the agency be doing to promote work by disability recipients?

6. Many, but not all, disabilities last forever.

    a. How does the SSA know whether someone's disabling condition might have improved?

    b. Especially with improved medications and other technologies, is this an issue on which Congress and the SSA should be paying more attention – finding new ways to help disability benefit recipients overcome their disabilities and join or re-join the labor force?

    c. What are other countries doing on this front?

7. The Income Security and Family Support Subcommittee recently had a hearing on unemployment and the Committee has marked up an extended unemployment benefits bill. Although there was disagreement on the scope and proper timing of such an extension, there was acknowledgement that certain areas of the country have been hit harder than others during the current economic slowdown.

    a. Over the years, has there been any relationship between periods of rising unemployment and the number of disability and Supplemental Security Income (SSI) applications and ultimately beneficiaries?

    b. Was there a spike in applicants, and later disability beneficiaries, during or after the 2001 recession and has there been any noticeable change in the past year?

    c. We are trying to determine if at certain times in the economic cycle some long term unemployed individuals turn to disability benefits for support. Does SSA have any information about how many Social Security disability insurance beneficiaries or SSI recipients were receiving unemployment benefits prior to becoming eligible for benefits and if so, what are those numbers?

8. Your testimony mentions a new software tool, called the electronic case analysis tool or eCAT used by disability examiners in the State DDSs that prompts questions they should be asking and documentation they need before they make a determination. It sounds like this tool has the potential to be very useful, yet both you and Mr. Schieber point out that it was implemented prematurely and as a result failed.

Mr. Schieber also points out that eCat has not been developed in consultation with the Administrative Law Judges who will be the recipients of decisions resulting from eCat that may be appealed.

a. What have you and the agency learned from these failed efforts and how will you ensure needed testing and cross-component consultation takes place going forward?

9. Your testimony mentioned initiatives the private sector has employed to promote speed and efficiency in customer relations. Some airlines have begun charging a modest fee for more intensive customer services, as opposed to those services customers can obtain over the internet. That reflects the simple fact that everything has a cost, and those who would like to have more hands-on service should expect to pay a little more for that higher level of service.

a. Have you examined changes in private sector industries that involve a large customer service component?

b. Is there anything for SSA to learn from such private sector experiences?

c. What does SSA save when a retiree "books" his or her retirement benefits online as opposed to by coming into a field office to do so?

d. What are you doing to encourage more people to do so, freeing more of SSA's resources for those who need more hands-on service?

10. Over the past five years, in 34 States, the SOAR program (SSI/SSDI Outreach, Access and Recovery) has achieved remarkable success in bringing homeless people through the SSI/SSDI process and ultimately into stable housing. By helping those who cannot help themselves, SOAR eases the burden on the DDS and ALJ backlogs, in part because SOAR caseworkers have assisted with obtaining medical evidence and ensuring claimant responsiveness.

a. Are there lessons of the SOAR program that we can apply more broadly to the disability application process?

Finally, I would like to bring to your attention certain questions that were asked at the hearing by Mr. Sam Johnson, Mr. Kevin Brady, and Mr. Paul Ryan, and your promise at the hearing to answer these questions in writing. These questions may be found in the hearing's transcript at: Page 49 at Line 1169, Page 56 at Line 1366, Page 59 at Line 1429, and Pages 68 to 69.

I would appreciate your response to these questions by May 30, 2008. Please send your response to the attention of Kim Hildred, Chief Social Security Advisor, Subcommittee on Social Security, U.S. House of Representatives, B-316 Rayburn House Office Building, Washington, D.C., 20515. In addition to a hard copy, please also submit an electronic copy of your response in WordPerfect or Microsoft Word format to Jennifer.Beehler@mail.house.gov. If you have any questions concerning this request, you may reach Kim at (202) 225-4201.

Thank you for your leadership at the Social Security Administration, and thank you for taking the time to answer these questions for the record.

With warm regards I am

Sincerely yours,

Jim McCrery
Ranking Member

SOCIAL SECURITY

The Commissioner
June 16, 2008

The Honorable Charles B. Rangel
Chairman, Committee on Ways and Means
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for Janice Mays' letter of May 13, 2008, which requested additional information in order to complete the hearing record for the April 23, 2008, Ways and Means Committee hearing on clearing the Social Security disability backlog. Enclosed you will find the answers to your specific questions. I hope this information is helpful. If I may be of further assistance, please do not hesitate to contact me, or your staff may contact Margaret Hostetler, Deputy Commissioner for Legislation and Congressional Affairs, at (202) 358-6030, who is available to meet with your staff if requested.

Sincerely,

Michael J. Astrue

Enclosure

Questions for the Record
For the April 23, 2008 Hearing
On the Disability Backlog and Other Service Delivery Challenges
Questions from Janice Mays

Disability Determination Process

1. **Of all individuals who apply for disability benefits (either Title II or Title XVI), what percentage are ultimately allowed?**

   Of all the individuals who applied for disability benefits in calendar year 2003 and were tracked longitudinally through 2007 (the last year complete appeal data for all adjudicative levels is available), approximately 54% were allowed, and most of those allowances occurred at the initial level. Below is a distribution of the 54% of the applications that were allowed, by adjudicative level.

Initial level:	37%
Reconsideration Level:	3%
ALJ Level:	14%
Appeals Council/Fed. Court:	<1%

   To put this in perspective, below is a distribution of all allowances, by adjudicative level.

Initial level:	69%
Reconsideration Level:	6%
ALJ Level:	24%
Appeals Council/Fed. Court:	1%

2. **Of those individuals who file an appeal after being denied at the initial level, what percentage are ultimately allowed (including allowances at any stage of the appeals process)?**

   Of those disability claims filed in calendar year 2003 and tracked longitudinally through 2007, approximately 734,000 individuals appeal the initial level denial. Of those, approximately 413,000, or 56% of those who file an appeal, are approved at a subsequent adjudicative level (reconsideration, ALJ, Appeals Council, or Federal Court).

3. **At each stage of the process (initial, reconsideration, hearing and Appeals Council) what percentage of cases are allowed?**

   The following are allowance rates for each adjudicative level. These rates are based on the longitudinal tracking of 2.5 million calendar year 2003 filers through August 2007.

Initial Level:	36.9%
Reconsideration Level:	14.3%
ALJ Level:	63.6%
Appeals Council:	2.0%

4. **What percentage of denials of each stage (initial, reconsideration, hearing and Appeals Council) appeal?**

   Based on calendar year 2003 disability claims longitudinally tracked through 2007, we have found that, of the individuals whose disability claims are denied, the following percentage choose to appeal to the next adjudicative level:

From Initial Level Denial:	48%
From Reconsideration Denial:	72%
From ALJ Denial (Estimated):	53%
From Appeals Council Denial (Estimated):	15%

   Please note that the appeal rates from ALJ to Appeals Council, and from Appeals Council to Federal Court, are estimated. This is due to the fact that the source files used to build our longitudinal files have combined appeals data at the ALJ level and above. Therefore, we must estimate the appeal rates at the later adjudicative levels based on our workload data. While we feel these rates are good estimates, we cannot provide them with the same level of confidence as the initial level and reconsideration appeal rates.

5. **You indicated that SSA was building templates that would allow cases which are likely allowances to be identified early and pulled out for faster processing. Can you elaborate on the nature of these templates? How does using these templates differ from your current procedure?**

   Our Office of Quality Performance has developed several profiles that we apply to all cases that are waiting for a hearing. One profile identifies cases that are most likely to be "on the record" allowances at the hearing level that can be handled by a Senior Attorney. This profile was developed from data from the ALJ Peer Review and considers variables such as age, reason for denial, and primary impairment coding.

   A second profile identifies cases that may have been inappropriately denied. This profile was developed from data from the Quality Assurance sample and considers variables such as age, reason for denial, and primary and secondary impairment coding.

   Another profile identifies cases that may have been denied inappropriately because of insufficient evidence. This profile was developed from data from the ALJ Peer Review and considers variables such as age, reason for denial, primary and secondary impairment coding, and whether we paid for evidence.

These latter two profiles are used to determine if a Disability Determination Services (DDS) agency should look at the case again under our informal remand program.

In the past, potential favorable on the record cases, or cases that are good candidates for remand to DDS, were identified by normal case review rather than by focusing on specific cases. By identifying cases that are likely reversals, our case review process yields much more efficient results.

At the DDS level, we currently use the Quick Disability Determination (QDD) process. This process uses a computer-based predictive model to analyze specific elements of data within the electronic claims file to identify initial claims where there is a high potential that the claimant is disabled and where evidence of the person's allegations can be quickly and easily obtained. Our QDD process, in essence, is a workload triaging tool that enables us to expedite cases that are most likely to be allowed. As of February 2008, the QDD process was fully implemented nationwide.

We are also testing a second DDS-level initiative, Compassionate Allowances. These are cases where the medical condition is so consistently devastating that we can presume that the claimant is disabled once we confirm a valid diagnosis. Currently, we are in the process of developing and testing templates to identify and evaluate these conditions quickly. This will save adjudicators' valuable time in researching a medical condition, learning what medical evidence is necessary to substantiate the condition's severity, and determining under what listing to evaluate the condition.

6. **Please provide information on Ohio policies regarding requiring applicants for state or local assistance programs to apply for Title II or Title XVI benefits.**

When individuals wish to apply for Medicaid in Ohio, they are required to apply for Social Security disability benefits before they can file the Medicaid application. The requirement applies even to individuals who do not allege they have a medical impairment.

The Ohio Disability Financial Assistance (DFA) program requires that individuals apply for Social Security disability benefits as a condition of DFA eligibility.

Hearing Backlog

7. **As of March, 2008, the average wait for someone who has filed an appeal on their disability claim is about 510 days to receive a decision by an Administrative Law Judge (ALJ). Under the President's budget for fiscal year 2009, the wait would drop to 506 days. In your view, how long is a reasonable amount of time for claimants to have to wait for a hearing decision? Under your backlog reduction plan, when will SSA achieve that goal?**

We are reassessing the issue of a reasonable amount of time for claimants to wait in light of many recent policy and operational changes.

8. Can you explain why the Portland, Oregon hearing office has such high processing time: 705 days compared to the national average of 510 days?

I would like to first point out that one of the ways we are addressing Portland's high processing time is by placing two new ALJs in the Portland hearing office.

There are a number of reasons why the performance of the Portland, OR Hearing Office is below average.

- In FY 2004, the staffing ratio was 4.11 and decreased to 3.73 in FY 2007. The support staff ratio reflects the staffing in the hearing offices. The computation excludes management positions and those not involved in direct case processing (such as IT positions) and is computed by taking the total number of staff and dividing by the number of ALJs. Hiring additional ALJs will decrease the staff to ALJ ratio. Without a proportionate increase in support staff, a decrease in productivity will result.

- The hearing office lost staff and was unable to replace them due to budget constraints. This significantly affected our ability to address the increased receipts and the cases pending.

- In FY 2004, receipts were 1.65 per ALJ per day and increased to 2.41 in FY 2007.

- Some of the ALJs in this office are low producers. In FY 2004, the pending was 5,455 and increased to 7,491 by the close of FY 2007 due to low ALJ productivity.

In addition to hiring new ALJs and support staff, we have taken aggressive management steps to address the workload. Actions taken include:

- Assistance with Decision Writing,
- Video Hearings for Aged Cases,
- Streamlined Case Pulling,
- Portland was selected for centralized printing and mailing, and
- Jurisdictional realignment. (As of May 1st, the Salem Remote Site is now the jurisdiction of the Eugene Hearing Office. This will reduce Portland's pending by approximately 1,000 cases.)

Furthermore, the region has been addressing timeliness issues with all of the ALJs. The Hearing Office Chief ALJ and Regional Chief ALJ have had conversations with the ALJs to move their cases forward more timely. Management has provided information to the ALJs to demonstrate how effective they are in processing their assigned cases when compared to other ALJs in the region.

Office of Disability Adjudication and Review (ODAR) Staffing and Productivity

9. In the past, you have said that your target is a core of 1250 ALJs. Is this still the case? When do you expect to have this number of ALJs on board?

We plan to hire 189 ALJs in FY 2008 and enough ALJs in FY 2009 to reach 1,250 on-duty. The exact number of hires necessary will depend on actual ALJ losses. Once the target number of ALJs is reached, we plan to continue hiring ALJs each year to maintain this level.

10. You testified that SSA recently hired enough support staff to bring the staff to ALJ ratio up to 4.4:1, but that once that new ALJs are absorbed and additional support staff hired, that ratio will go back down to about 4.1:1. Witnesses on the second panel expressed concern that SSA's plans for hiring ODAR support staff are not adequate, and that this understaffing will impede productivity. One witness stated that "studies have shown that to have an effective hearing operation, it is necessary to have approximately 4.5 staff for each ALJ." In addition, the Committee has heard directly from ALJs who say that lack of staff is currently a significant barrier to productivity. You testified, however, that automation improvements ODAR is developing may reduce the need for support staff, and that in an electronic environment the desired staffing ratios may be different from those identified in earlier studies.

To help the Committee better understand this issue:

a. Please provide the current national average ratio of support staff to ALJs and the range of support staff ratios at hearing offices across the country.

As of April 26, 2008, the current national average ratio of support staff to ALJ is 4.24 to 1. Because of uncontrollable attrition rates, support staff ratios around the country range from a low of 3.0 to 1 to a high of 12.5 to 1. We are currently bringing new ALJs on duty which also affects the support staff to ALJ ratio. Support staff ratios are additionally affected by our ability to locate ALJs only where the Agency has adequate space.

However, we are able to mitigate these unbalanced ratios because 73 percent of the hearing office workload is now electronic. This means that work can be transferred to a location where there are available resources to handle it. Furthermore, when possible, we offer claimants an opportunity to have their hearing conducted via video at a remote site. In this situation, the claimant and representative may appear at the remote location while the ALJ and any experts may be at an alternate location. This arrangement allows us to hold more hearings and shorten the time our claimants have to wait for a hearing.

b. Please provide the national average ratio of support staff to ALJs and the range of hearing office support staff ratios for each of the past ten fiscal years.

10 - Year National Staff to ALJ Ratio

Year	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
Ratio	4.74	4.98	5.10	5.33	4.52	4.66	4.62	4.19	4.23	4.46

We do not have the data to provide the range of hearing office support staff ratios for all of the fiscal years requested.

c. **Assuming sufficient funding, what do you consider to be the ideal staff to ALJ ratio: 1) without the automation improvements you anticipate; and 2) with those automation improvements fully implemented?**

Our current staff ratio, as of April 26, 2008, is 4.24 support staff to 1 ALJ; this will support our existing process at current productivity levels. If we hire ALJs without support staff, the ratio of support staff to ALJs decreases. Once the new ALJs are on board, the ratio will be 4.1:1. The number of staff needed to support a disposition will change as we fully implement the backlog plan, but at the moment that number is difficult to project with any certainty. There are several reasons. We are currently in a transition from a paper environment to a fully electronic environment -- a transition which started several years ago and will continue for several more. We know that automating many of our clerical functions will reduce the amount of time spent on more routine tasks, and allow the clericals to absorb additional workload. We are also working to standardize our business process, which should result in additional efficiencies. We continue to evaluate the impact that these initiatives will have upon staffing levels in the hearing operation. When we are further along with both our automation initiatives and our efforts to keep ALJ dockets filled, we will have a better fix on what the right mix of staff resources should be.

11. **Have all of the automation improvements planned for ODAR been fully developed and tested? If not, when does the agency expect these advances to be fully developed, tested, and operational in all SSA hearing offices? If they will not be available immediately, what are SSA's plans to fill the gap in support staff in the meantime? In addition, does SSA have a "Plan B" in case the agency cannot implement the automation improvements as quickly as planned?**

A number of the automation initiatives have already been implemented, while others are still in the development phase. Centralized printing and the Appeals Council processing system are examples of initiatives that are in production. We are still developing the automated case preparation software and enhancements to the Electronic Records Express website that will allow authorized representatives to view the case file. We expect to begin piloting both of these initiatives this fiscal year and anticipate rolling them out in fiscal year 2009.
We have numerous technological enhancements under development, each of which is on its own schedule. As stated earlier, some enhancements are already in place while others are

about to enter pilot phases or still in the planning and development phase. For example, automated scheduling software is about 24 months away from full implementation.

On May 31, 2007, we implemented the streamlined folder assembly method of preparing paper folders and earlier this year, expanded this streamlined approach to electronic folders. Through April 25, 2008, we have prepared 21,653 folders through this method. Additionally, since June 2007, employees from components outside of our hearings operation have worked overtime in hearing offices to provide assistance with a variety of tasks. Some of these tasks include:

- burning copies of the electronic folder to CDs for representatives, expert witnesses and claimants,
- scanning medical evidence into the electronic folder,
- purging duplicate pieces of evidence from the file,
- placing evidence in chronological order,
- associating paper mail with files, and
- copying files for consultative examinations.

This overtime initiative is expected to continue throughout fiscal year 2008.

The Attorney Adjudicator initiative should increase our capacity to make decisions on cases which should be allowed earlier in the process. On March 3, 2008, we extended this initiative for two years. Attorney adjudicators screen cases and if the record supports that a fully favorable decision can be made, the attorney adjudicator issues one. As of April 25, 2008, attorney adjudicators have decided 12,199 cases.

We also have remanded pending paper cases to the State Disability Determination Services (DDSs) to determine whether or not they could issue fully favorable decisions without the need for a hearing. This initiative began June 1, 2007, and through April 25, 2008, we have resolved 9,252 hearing cases as a result of the DDSs making fully favorable decisions on cases. We now are using this approach to process electronic cases as well.

12. Many observers have noted that SSA's recent experiences in rolling out automation initiatives that had not been fully developed and tested resulted in declines in productivity. As SSA moves to implement new automation initiatives in ODAR, what steps will the agency take to ensure that this will not happen again?

When we prematurely rolled out the electronic Claims Analysis Tool (eCAT) as a part of the Disability Service Improvement Process, it was a failure. We learned our lesson and are striving to ensure that testing and cross-component consultation are part of the software application process.

For each Office of Disability Adjudication and Review (ODAR) automation initiative, the Office of Systems (OS) works closely with ODAR during all phases of the process to ensure

a common understanding of the functionality requested. Prior to bringing any software into production, we test and validate it to ensure that it works as expected. When we release new or significantly upgraded software, there generally is a decline in productivity as users experience a learning curve while becoming accustomed to the new functionality. However, we take a number of steps to mitigate these productivity declines such as: training users, piloting the new functionality in a few offices, and tracking and resolving any problems that may arise after implementation. In addition, we have a help desk and support mailboxes in place to assist users.

Our experience over time demonstrates that once the learning curve is over, our productivity increases, in great part, because of the automation enhancements.

Quality Assurance

13. You testified that for SSA's quality assurance reviews (QARs) of State DDS decisions (the reviews that are used to determine whether individuals DDSs perform acceptably; i.e. non-Pre-Effectuation Review quality reviews), you review an equal number of allowances and denials. However, since only about 35 percent of cases are allowed at the initial level and only about 13 percent at the reconsideration level (FY 2006), reviewing the same *number* of cases means that the *percentage* of cases reviewed is significantly less for denials than for allowances.

For example, in FY 2007, 2 percent of initial level allowances received a QAR review, but only 1 percent of denials; for the reconsideration level, the discrepancy was even greater, with 5 percent of allowances reviewed but only 0.9 percent of denials. This means that an allowance has a higher chance of being selected for review than a denial.

Why does SSA not review the same percentage of allowances as denials for the QAR reviews? Could this difference in review rates provide a structural incentive to deny cases?

As noted in the question, the percentage of cases (allowances and denials) selected for the Federal Quality Assurance Review (QAR) are very low, and there is a strong process in place for any State DDS to dispute a proposed Federal deficiency. We do not believe that there is any structural incentive from this review to deny cases.

The QAR review currently draws 70 randomly selected initial claim allowances, and 70 randomly selected initial claim denials per State, per quarter. The reconsideration draw is even lower at 20 allowances/20 denials per State, per quarter. We periodically confirm the statistical validity of the sample size, and while we have considered varying the selection based on individual State claims volume, and/or the percentage of allowances and denials, the overall change in the sample selection to any individual State would be slight, and we find that uniformity aids in operational understanding and compliance. In addition, the QAR review is designed to collect an adequate volume of detailed national data on characteristics

of allowance error so that we can maintain an effective case selection model for the statutory Pre-Effectuation Review of allowances referenced in the question.

Field Operations

14. SSA is beginning to make progress in addressing the disability backlogs, but service in many non-disability areas is worsening. In fact, according to SSA's budget documents, the backlog in "Other Work/Services in Support of the Public" will increase by 3300 workyears in FY 2008, and would increase by an additional 4800 workyears in FY 2009 under the President's budget.

a. What type of activities and workloads are included under this outcome measure?

This measure generally includes work that is done after an individual is approved for benefits. Some of these workloads are:

- Change of address and direct deposit requests;
- Medicare enrollment actions and corrections;
- Overpayments and underpayments, including requests for waivers and personal conferences;
- Child support orders for which benefit verification is needed;
- Phone calls to local offices;
- Congressional inquiries (e.g., for case status);
- Earnings record changes (postings or corrections to records, which could affect payment);
- Identity theft inquiries;
- Wage reports (regular wage reporting results in accurate and timely SSI payments); and
- Recomputation of benefits.

b. What are some of the ways in which staffing deficits and backlogs in these areas affect the public?

The staffing deficits and resulting backlogs of our less visible workloads affect the overall service we provide to the public in many ways. This includes increased waiting times and longer lines at field offices, as well as more people receiving busy signals when they call their local office. Delays in processing work often have a significant effect on individuals and overall program costs. For example, if we cannot promptly enter an SSI recipient's income information into the system, that recipient might be over or underpaid monthly benefits. If he is underpaid, he may not be able to meet his basic needs. If he is overpaid, we probably will not be able to collect the overpayment.

c. How much additional funding would SSA need to avoid any decline in these areas in FY 2009? How much funding would the agency need to bring these workloads back up to the FY 2007 level?

The cost in FY 2009 of preventing growth in the "Other Work/Services in Support of the Public" backlog that was assumed in the FY 2009 budget is approximately $400 million. To avoid the backlog growth in FY 2008 and FY 2009 that was assumed in the FY 2009 budget, we would need an additional $700 million. However, we have seen an increase in productivity since the budget was released in February. If current trends continue for the remainder of the fiscal year, the FY 2008 and FY 2009 growth in the post-entitlement backlog will be reduced.

15. What is the average waiting time to see a representative in your field office? You mentioned that there were about 100 to 150 offices where waiting times was "...really out of control...". For these offices, please list the office name, city and state, average waiting time for an individual with an appointment, average waiting time for an individual without an appointment, and overall average waiting time.

We have attached waiting time information requested at the end of these responses. It includes the 100 offices with the longest waiting times for people without appointments (for the month of April 2008). In April 2008, the average waiting time for all SSA office visitors without an appointment was 23.2 minutes.

Field Office Closures and Consolidations

16. Could you describe SSA's Service Delivery Assessment process?

Our process to determine whether an office needs to be opened, or consolidated with another, is comprehensive and long-standing, and balances service delivery with the cost of providing that service. Service area reviews may be warranted when workloads increase or decrease, population increases or decreases, or other demographic factors change. Other reasons for review include staffing changes or imbalances and lease or space considerations. These events may suggest the need for a review; however, we assess all facilities at least once every 5 years to ensure they are fulfilling our mission and effectively meeting the needs of the community.

We examine FO changes on a case-by-case basis. There are unique factors that may affect each decision, including the type and size of workloads, quality of local roads, distance from other facilities, the presence of geographic barriers (e.g., rivers), and the availability and use of public transportation in the community. Other factors such as demographic changes, economic conditions and the proximity of private and public institutions also influence the decision.

Our Regional Commissioners oversee SDAs in their regions. Their staffs identify and schedule the service areas to be reviewed, complete the reviews, and take any appropriate actions. The regions maintain records to assure full adherence to this process. On occasion, we may ask a region to provide headquarters with assessment information concerning a particular office to respond to service inquiries at the national level.

The SDA process consists of the following steps:

1) The regional office (RO) schedules FOs for review and collects demographic and workload data.

2) Accessibility, unique service area characteristics, and special needs are documented by local management. Since convenience for service area residents is central to our community-based service, we consider in our assessments and document in the SDA report the following:

   - Average distance and travel time to the FO for beneficiaries from home;
   - Accessibility from major highways and roads;
   - Availability, convenience and cost of public and privately-sponsored transportation;
   - Availability, convenience and cost of parking for the public and employees; and
   - Accessibility for people with disabilities (transportation, parking, building accommodations, etc).

3) Unique service area characteristics are considered and must be documented if they are relevant to the recommendation for change/no change. The following list is not all inclusive; it only highlights those characteristics that are common to many service areas:

   - Safety/high risk location,
   - Bilingual needs,
   - Minority population needs,
   - Location of trade or business centers,
   - Proximity to social service/community agencies and organizations,
   - Proximity to and collaborative work activity with other local, state and federal government agencies,
   - Level of community interest,
   - Proximity to major institutions (e.g., educational, medical, cultural),
   - Availability of communications media outlets (target audiences, extent of coverage), and
   - Proximity of large employers.

4) Local management completes a careful review and analysis of the data and produces a narrative discussion and summary analysis of the service area needs and current service delivery. This results in a recommendation to maintain or to change existing service.

5) The completed SDA and any accompanying change proposals are sent to regional management for review. Any proposal that involves a change (such as a proposed consolidation) is then forwarded to headquarters personnel for review and approval.

17. How does SSA decide to close or consolidate field offices?

We consider many factors in deciding whether or not to consolidate existing field offices. The decision to consolidate is made only after an in-depth analysis of the SDA has been completed. A recommendation for consolidation must include an analysis of the following:

- The demographic and workload data for the most recent fiscal year;
- Existing and projected population of the new service area;
- Expected service delivery improvements as a result of consolidation;
- Planned presence in the old location; e.g., a reduced-hours contact station to meet the needs of the public. A contact station is a facility that is not permanently staffed. Instead, our employees visit on a schedule to conduct business. Contact Stations provide face-to-face service for communities or neighborhoods without easy access to full service Field Offices;
- Effect on the public as a result of consolidation;
- Discussions held with various community leaders, elected officials and local institutions;
- Availability and cost of space for housing the consolidated office;
- Cost to modify existing facilities for consolidation;
- Planned management of the service area by the newly consolidated office; and
- Disbursement of existing staff to other field offices.

We take consolidation decisions very seriously. We put a great deal of time and effort into an analysis that goes far beyond financial considerations. We want to ensure that the needs of the public are met, if not surpassed, through the larger consolidated offices and, where necessary, placement of contact stations. Although budget cuts have brought us to the brink of furloughs in recent years, we value our field operations. In fact, we have had a net loss of just 20 field offices from the 1,287 we had 7 years ago. We anticipate no significant changes going forward unless we experience dramatic budget cuts.

18. a. Please provide a table that, for each fiscal year from FY 200I - present, shows the total number of field offices at the close of the fiscal year (or, for 2008, the current number), broken down by type of office (field office, card center, contact station, or resident station).

Fiscal Year	Field Offices	Resident Stations	Contact Stations	Card Centers
2001 (10/00-9/01)	1287	50	963	0
2002 (10/01-9/02)	1287	49	871	0
2003 (10/02-9/03)	1283	46	871	1
2004 (10/03-9/04)	1277	45	871	1
2005 (10/04-9/05)	1275	44	810	2
2006 (10/05-9/06)	1273	44	810	3
2007 (10/06-9/07)	1265	32	648	5
2008 (present)	1261	30	728	6

b. In each fiscal year from FY 2001 to present, how many field offices has SSA closed or consolidated (not including contact stations or resident stations)? During the same period, how many field offices has SSA opened each fiscal year (not including contact stations or resident stations)? In each fiscal year from 2001 to present, how many card centers has SSA closed or consolidated, how many card centers has SSA opened? Please provide the name and location for each office included above.

Since 2001, we have consolidated 38 offices:

	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Consolidations	1	6	7	3	3

	FY 2007	FY 2008
Consolidations	13	5

FY 2001		
High Point, NC	10/2000	Consolidated with Greensboro, NC
Livermore, CA	11/2000	Consolidated with Hayward, CA

Arcadia, CA	06/2001	Consolidated with Pasadena, CA
FY 2002		
Nogales, AZ	02/2002	Re-classified as a Resident Station
FY 2003		
Rumford, ME	10/2002	Re-classified as a Resident Station
Herkimer, NY	03/2003	Consolidated with Utica, NY
Port Angeles, WA	04/2003	Re-classified as a Resident Station
Pacific Beach, CA	04/2003	Consolidated with San Diego, CA
Plainfield, NJ	04/2003	Office has closed but there has been no official consolidation with the Elizabeth office.
Brookline, MA	05/2003	Consolidated with Boston, MA
FY 2004		
Downey, CA	10/2003	Consolidated with Norwalk, CA
San Sebastian, PR	06/2004	Consolidated with multiple other Puerto Rico Offices
Winfield, KS	06/2004	Consolidated with Wichita, KS
Duncan, OK	07/2004	Consolidated with Lawton, OK
Irvington, NJ	07/2004	Consolidated with Clinton Hills, NJ
Bedford-Stuyvesant, NY	08/2004	Consolidated with Bedford Heights (Crown Heights), NY
Devils Lake, ND	2004	Re-classified as a Resident Station
FY 2005		
Ottawa, KS	09/2004	Consolidated with Topeka, Pittsburg, Emporia & Lawrence KS
Newport Beach, CA	06/2005	Consolidated with Laguna Niguel, CA & Fountain Valley (Huntington Beach), CA
Kings Plaza, NY	09/2005	Consolidated with Brooklyn Flatbush, NY
FY 2006		
St. Louis NE, MO	05/2006	Consolidated with St. Louis No. County, MO
Roseville, CA	05/2006	Consolidated with American River, CA and renamed Roseville, CA
No. Bywater, LA	08/2006	Consolidated with New Orleans Downtown, LA
FY 2007		
Culver City, CA	12/2006	Consolidated with Westwood, CA
North Charleston, SC	01/2007	Consolidated with Charleston, SC
Miami Central, FL	01/2007	Consolidated with Little Havana, FL
Baychester & Bronx River Pkwy, NY	03/2007	Consolidated with new Laconia, NY office
SF-Western Addition, CA	03/2007	Consolidated with SF Downtown, CA
Nacogdoches, TX	04/2007	Consolidated with Lufkin, TX
St. Louis NW, MO	06/2007	Consolidated with Clayton, MO
Carbondale, PA	07/2007	Consolidated with Scranton, PA
Brentwood, PA	07/2007	Consolidated with Pittsburgh, PA
Burbank, CA	08/2007	Consolidated with Media Cities, CA
Industry Hills, CA	09/2007	Consolidated with Puente Valley, CA
Warrensburg, MO	09/2007	Consolidated with Independence, MO and Sedalia, MO

San Pedro, CA	09/2007	Consolidated with Long Beach, CA
FY 2008		
Cheektowaga, NY	10/2007	Consolidated with West Seneca, NY - New Office Ridge Road
Auburn, NY	10/2007	Consolidated with Geneva and Syracuse, NY
Parkside, CA	12/2007	Consolidated with San Francisco Mission, CA
Hallandale, FL	01/2008	Consolidated with Hollywood, FL
Oskaloosa, IA	02/2008	Consolidated with Ottumwa, IA

Since 2001, we have opened eight Field Offices:

	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Openings	0	0	0	0	1

	FY 2006	FY 2007	FY 2008
Openings	1	5	1

Office Name	Date	Action
FY 2005		
Kissimmee, FL	04/2005	New Social Security Field Office
FY 2006		
Henderson, NV	05/2006	New Social Security Field Office
FY 2007		
Conway, AR	03/2007	New Social Security Field Office (Former Resident Station)
Barstow, CA	04/2007	New Social Security Field Office (Former Resident Station)
Morongo Basin	04/2007	New Social Security Field Office (Former Resident Station)
Nogales, AZ	04/2007	New Social Security Field Office (Former Resident Station)
Show Low, AZ	04/2007	New Social Security Field Office (Former Resident Station)
FY 2008		
Newnan, GA	04/2008	New Social Security Field Office (Former Resident Station)

Since 2001, we have not closed or consolidated any Social Security Card Centers, but we have opened six Social Security Card Centers:

	FY 2003	FY 2005	FY 2006	FY 2007	FY 2008
Openings	1	1	1	1	2

Office Name	Date	Action
FY 2003		
Brooklyn, NY	11/2002	New Social Security Card Center
FY 2005		
Las Vegas, NV	04/2005	New Social Security Card Center
FY 2006		
Jamaica, NY	07/2006	New Social Security Card Center
FY 2007		
Phoenix (DTN), AZ	09/2007	New Social Security Card Center
FY 2008		
Phoenix (North), AZ	10/2007	New Social Security Card Center
Orlando, FL	03/2008	New Social Security Card Center

c. In FY 2008, where is SSA planning to close or consolidate field offices (not including contact stations or resident stations)? During the same period, where is SSA planning to open field offices (not including contact stations or resident stations)? In FY 2008, where is SSA planning to close or consolidate card centers and, where is SSA planning to open card centers?

In FY 2008, we are not planning to consolidate any further field offices or card centers. In addition, we do not plan to open any new field offices or card centers in FY 2008.

19. In your written statement, you discussed the efforts of the Ready Retirement team to streamline the retirement application process. Specifically, you mentioned an upcoming change that would allow retirement claims to be processed"...without routine, time-consuming review by our field representatives." What is the projected timeline for making this change? In addition, members of the second panel expressed concerns about this, saying it could result in overlooking potential entitlement to other benefits, disadvantageous choices by the applicant, and incorrect payments. What steps is SSA taking to make sure that all relevant issues will be identified and resolved prior to allowing a claim to be processed in this manner?

The Ready Retirement Team is currently projecting a 2010 release for this transformational change which will allow some retirement claims to be fully automated. Due to the reasonable concerns surrounding automating claims, we are conducting an exhaustive research effort to ensure the following:

- *That we do not inadvertently overlook potential entitlement to other benefits*. This includes conducting planning and analysis meetings with employees who are subject

matter experts and have experience in processing claims and dealing with complex issues. These meetings have yielded a significant amount of data on claims types and the manner with which they are cleared.

- *That applicants are not disadvantaged in deciding when to begin receiving benefits*. We are conducting a campaign to educate the public on issues they need to consider in determining when they should begin receiving benefits. This includes information on savings, retirement income, family composition, and life spans.

- *That applicants receive the correct amount of benefits*. Prior to any release of an automated system, extensive testing will be completed to ensure claims and payment accuracy. This has always been a priority for us—to pay the right check to the right person at the right time.

- *That all relevant documentation and evidence is identified and collected*. The new streamlined application will contain dynamic pathing that will ask relevant questions of the applicant. In addition, new and existing information will be collected from both internal and external data sources to ensure all necessary documentation is gathered prior to adjudicating any claim. Also, we are currently developing robust protocols that will authenticate individuals applying for retirement benefits in the automated process. These protocols will conform to all applicable Government standards.

Attachmenf for Question 15 --- Field Office Waiting Times

City	State	Office Name	With Appointment	Without Appointment	Total
FAR ROCKAWAY	NY	FAR ROCKAWAY NY	13.3	38.6	37.2
WASHINGTON	DC	POSTAL PLAZA DC	10.9	38.8	36.7
NEW YORK	NY	EAST VILLAGE	16.6	38.8	38.0
SAN LEANDRO	CA	SAN LEANDRO CA	9.9	39.1	36.6
ANAHEIM	CA	ANAHEIM CA	11.2	39.3	35.2
COMPTON	CA	COMPTON CA	9.2	39.4	37.7
GEORGETOWN	TX	GEORGETOWN TX	10.8	39.4	36.4
WINSTON SALEM	NC	WINSTON SALEM NC	8.5	39.4	35.6
NEW YORK	NY	NY MIDTOWN NY	8.8	39.4	37.4
BALTIMORE	MD	BALTO ROSSVILLE MD	14.9	39.4	35.8
ONTARIO	CA	ONTARIO CA	6.7	39.5	36.1
MODESTO	CA	MODESTO CA	5.2	39.5	35.4
NEW YORK	NY	CHINATOWN NY	7.1	39.8	37.3
BROOKLYN	NY	BEDFORD HEIGHTS NY	13.3	39.8	38.3
CLEARWATER	FL	CLEARWATER FL	6.6	40.2	36.9
BROOKLYN	NY	CANARSIE NY	14.5	40.6	38.0
LITTLETON	CO	LITTLETON CO	5.1	40.8	35.0
SAFFORD	AZ	SAFFORD AZ	17.3	40.9	38.4
COLUMBIA	MD	COLUMBIA MD	8.0	41.1	37.4
CORONA	CA	CORONA CA 25	7.6	41.2	38.5
HACKENSACK	NJ	HACKENSACK NJ	10.4	41.3	38.5
MERRILLVILLE	IN	MERRILLVILLE IN	5.5	41.4	37.9
MEMPHIS	TN	MEMPHIS NORTH TN	7.4	41.4	38.5
FAIRFAX	VA	FAIRFAX VA	3.7	41.4	38.3
EGG HARBOR TWP	NJ	EGG HARBOR TWP NJ	14.2	41.5	38.3
ROCKVILLE	MD	ROCKVILLE MD	6.6	41.5	37.5
STROUDSBURG	PA	STROUDSBURG PA	5.9	41.5	37.8
LAKEPORT	CA	LAKEPORT CA	5.7	41.6	37.7
MONTEBELLO	CA	MONTEBELLO CA	5.0	42.0	38.3

Attachmenf for Question 15 --- Field Office Waiting Times

City	State	Office Name	With Appointment	Without Appointment	Total
SUITLAND	MD	CAMP SPRINGS MD	10.5	42.4	40.7
CHULA VISTA	CA	CHULA VISTA CA	10.1	42.4	39.8
VALDOSTA	GA	VALDOSTA GA	10.2	42.5	40.3
GLENDALE	NY	GLENDALE NY	6.9	42.6	39.6
CHICAGO HEIGHTS	IL	CHICAGO HEIGHTS IL	8.0	42.8	40.1
ROCHESTER	NY	ROCHESTER NY	8.9	42.9	38.2
ATLANTA	GA	ATLANTA WEST GA	14.1	43.0	41.6
DEL RIO	TX	DEL RIO TX	38.2	43.0	42.8
GLEN ALLEN	VA	RICHMOND-WEST	5.9	43.1	37.9
FLUSHING	NY	FLUSHING NY	22.7	43.5	39.9
AURORA	IL	AURORA IL	9.7	43.7	40.1
PALATKA	FL	PALATKA FL	8.0	44.5	39.5
WEST NYACK	NY	WEST NYACK NY	4.4	44.8	40.2
WAYCROSS	GA	WAYCROSS GA	4.4	44.8	40.9
NORWALK	CA	NORWALK CA	11.4	44.8	40.3
HOUSTON	TX	HOUSTON SOUTHWEST TX	9.9	45.2	42.8
MORROW	GA	SOUTHLAKE GA	13.8	45.3	40.8
SAN FRANCISCO	CA	SF DOWNTOWN CA	12.9	45.3	40.9
AURORA	CO	AURORA CO	6.0	45.6	40.9
JERSEY CITY	NJ	JERSEY CITY NJ	7.2	45.7	43.3
HONOLULU	HI	HONOLULU HI	6.3	45.9	42.4
CLEARWATER	FL	PINELLAS PARK FL	7.5	46.3	41.8
PORT RICHEY	FL	NEW PORT RICHEY FL	7.5	46.4	41.4
CHICAGO	IL	CHICAGO LAWNDALE IL	11.1	46.6	44.7
AUSTIN	TX	AUSTIN TX	7.6	46.7	44.2
COVINGTON	GA	COVINGTON GA	4.9	46.9	41.7
EL PASO	TX	EL PASO DOWNTOWN TX	8.8	47.0	45.5
MCALLEN	TX	MCALLEN TX	6.9	47.0	44.5
ALBUQUERQUE	NM	ALBUQUERQUE NM	6.8	47.2	42.4

Attachmenf for Question 15 --- Field Office Waiting Times

City	State	Office Name	With Appointment	Without Appointment	Total
NAPLES	FL	NAPLES FL	4.2	47.3	42.4
RALEIGH	NC	RALEIGH NC	5.3	47.5	41.9
CHICAGO	IL	CHICAGOLOOP IL	3.9	47.8	45.5
CORPUS CHRISTI	TX	CORPUS CHRISTI TX	7.7	48.0	41.8
BRONX	NY	BRONX HUB NY	17.9	48.4	47.3
OCALA	FL	OCALA FL	15.7	48.6	43.2
CHICAGO	IL	CHICAGO-SOUTH I	5.2	48.7	44.1
MONTCLAIR	NJ	MONTCLAIR NJ	10.0	48.8	44.8
PAINESVILLE	OH	PAINESVILLE OH	7.5	49.2	41.6
JOLIET	IL	JOLIET IL	6.9	49.8	44.9
MARIETTA	GA	MARIETTA GA	10.0	49.9	46.3
BROOKLYN	NY	EAST NEW YORK FO	43.0	50.1	49.2
PORTERVILLE	CA	PORTERVILLE CA	8.2	50.4	45.6
MANTECA	CA	MANTECA CA	6.7	51.1	41.0
BAKERSFIELD	CA	BKRSFLD-EAST HILLS CA	5.2	53.0	49.2
EAST ORANGE	NJ	EAST ORANGE NJ	28.2	53.0	50.4
GREENVILLE	SC	GREENVILLE SC	7.4	53.8	47.7
BRONX	NY	BRONX SOUTH BRONX NY	50.3	53.9	53.7
LAS VEGAS	NV	LAS VEGAS NV	8.1	54.1	50.0
MIAMI	FL	LITTLE HAVANA FL	23.1	54.4	50.9
LONG BEACH	CA	LONG BEACH CA	9.6	55.1	51.9
NEW BRUNSWICK	NJ	NEW BRUNSWICK NJ	18.1	55.1	50.0
PEMBROKE PINES	FL	HOLLYWOOD FL	8.7	55.1	49.4
NEWARK	NJ	SPRINGFIELD AVE NJ	15.6	55.3	51.4
NEW YORK	NY	NY WASHINGTON HTS NY	24.8	55.4	54.1
HUNTINGTON PARK	CA	HUNTINGTON PARK CA	7.7	55.5	51.3
SAN FRANCISCO	CA	SF-CHINATOWN CA	6.9	55.5	52.0
BRONX	NY	WEST FARMS NY	8.4	56.6	53.3
OXNARD	CA	OXNARD CA	6.5	57.5	48.7

Attachmenf for Question 15 --- Field Office Waiting Times

City	State	Office Name	With Appointment	Without Appointment	Total
NEW ORLEANS	LA	NEW ORLEANS DWNTWN LA	8.5	57.9	53.6
MIAMI	FL	ALLAPATTAH FL	16.1	58.3	56.3
SAN ANTONIO	TX	SAN ANTONIO NW TX	6.1	58.4	53.2
ORLANDO	FL	ORLANDO FL	13.4	58.4	52.1
HANFORD	CA	HANFORD CA	8.1	58.6	52.3
BROOKLYN	NY	BROOKLYN BUSHWICK NY	50.4	59.6	58.9
BROWNSVILLE	TX	BROWNSVILLE TX	8.6	60.1	55.1
BROOKLYN	NY	CYPRESS HILLS	17.8	60.6	57.4
FORT MYERS	FL	FORT MYERS FL	4.9	61.2	55.2
CHICAGO	IL	CHICAGO-SE IL	11.0	63.1	58.4
HICKORY	NC	HICKORY NC	3.8	65.0	55.7
NORTH LAS VEGAS	NV	NORTH LAS VEGAS NV	8.8	66.8	61.5
WASHINGTON	DC	WASHINGTON M ST DC	18.1	70.8	67.1

SOCIAL SECURITY

The Commissioner
June 16, 2008

The Honorable Jim McCrery
Ranking Member, Committee on Ways and Means
House of Representatives
Washington, D.C. 20515

Dear Mr. McCrery:

Thank you for your May 14, 2008, letter requesting additional information to complete the record of the April 23, 2008, hearing on clearing the disability backlog. Enclosed you will find the answers to your specific questions. I also have included my answers to Representatives Johnson, Brady, and Ryan's questions as inserts to the hearing transcript.

I hope this information is helpful. If I may be of further assistance, please do not hesitate to contact me, or your staff may contact, Margaret Hostetler, Deputy Commissioner for Legislation and Congressional Affairs, at (202) 358-6030, who is available to meet with your staff if requested.

Sincerely,

Michael J. Astrue

Enclosure

Questions for the Record
For the April 23, 2008 Hearing
On the Disability Backlog and Other Service Delivery Challenges
Questions from Representative Jim McCrery

1. **While overall the cost of administering Social Security programs is less than 2 percent of total outlays, personnel costs and certain fixed infrastructure costs rise significantly each year. According to your testimony, these costs are expected to increase by $400 million in Fiscal Year 2009.**

   Given increasing workloads and the fiscal challenges facing the federal budget in coming years, do you believe the agency's rising administrative costs will be sustainable without further backlogs and other declines in public service and if not, what needs to be done?

   I would like to first point out that while many of our costs increase each year regardless of what we do, we are doing our best to minimize the cost of things that are in our control. We strive to get the most out of every dollar of our appropriation by continuing our efforts to improve productivity across the Social Security Administration (SSA). Since 2001, our efforts to innovate and automate, coupled with the dedication of our staff, have improved productivity by over 15 percent. With full funding, we believe we can sustain incremental productivity improvements.

   However, we should point out that, as is often the case, the productivity increases of the last few years were attained by selecting the areas of the highest return on investment and so our ability to achieve dramatic gains in productivity ongoing will be less.

   We face the challenge of eliminating the disability backlogs by the end of FY 2013 and handling the retirement of 80 million baby boomers—at the average rate of 10,000 a day for the next two decades. With claims increasing and our workloads becoming more complex, it is critical we receive adequate funding in FY 2009 and continue to receive adequate funding in the years ahead.

2. **In his testimony, Mr. Schieber talks about the processing time, productivity, and quality pressures impacting State Disability Determination Services (DDSs) employees that can lead to shortcuts resulting in unintended outcomes.**

   Your focus at the front end of the process by updating the list of severe impairments that prevent work and implementing two fast track systems, Quick Disability Decisions and compassionate allowances, are strong first steps to ensuring those eligible for benefits are processed as quickly as possible.

   a. **Have you analyzed the impacts of other operational pressures, including changing standards for productivity and processing time, along with budget pressures on the State agencies?**

      We analyzed the issue, and the most critical element keeping the DDSs from processing all workloads is budgetary pressure. Historically, the DDSs, along with

the rest of SSA, have been funded at levels inadequate to process all incoming work, including integrity workloads such as continuing disability reviews (CDRs). Under-funding results in our having to pick and choose which workloads are the most critical to fund. Most often, that result in our telling the DDSs not process CDRs in order to process initial and subsequent appeal cases. Even when we receive additional funding, it frequently is appropriated later in the year; this results in lost time and opportunities to process the work.

b. Have you determined whether spending more on the front end of the decision or adjusting certain performance expectations would improve service and save costs in the long-run?

We currently have several workgroups investigating various quality and performance outcomes. Front-end high-quality intake continues to be a priority for us; however, we do not yet know what service improvement or cost savings will result from these efforts.

It currently costs about two and a half to three times more to process a hearing at the Office of Disability Adjudication and Review (ODAR) than to process a case at the DDS level. If we can spend a little at the front-end of the process and keep cases from going to the hearing level, we expect an improvement in both service and costs.

3. **We know the agency is working to expedite service delivery to our nation's Wounded Warriors returning from Iraq, Afghanistan and elsewhere.**

   Would you provide an update on these efforts and how these claims are expedited and how many of these claims may be part of the hearings backlog?

   We are actively continuing our efforts to provide high-quality service to Wounded Warriors. We work with the Federal Recovery Coordinators, the Soldier and Family Assistance Centers, the Veterans Administration's Transition Patient Advocates, and other advocacy groups to provide information and training on available services and benefits for Wounded Warriors.

   We also collaborate with the Department of Defense to obtain certain data elements from its records and integrate those elements into our records. This integration enables us to identify Wounded Warriors when those individuals contact us.

   All Wounded Warrior disability claims receive our highest priority. We have implemented policy and procedures to identify Wounded Warrior claims when they are filed and we give them priority processing through all stages of case development and adjudication for a quicker disability decision.

   As of May 22, 2008, there were 291 Wounded Warrior claims pending at the hearing level.

4. **One of the most difficult decisions the agency makes is the decision to close a local Social Security office. At the same time, to meet service delivery demands you have opened new field offices, hearing offices, and Social Security number card processing centers.**

a. Please describe the process your agency uses in order to make these decisions.

We consider many factors in deciding whether or not to consolidate existing field offices. The decision to consolidate is made only after an in-depth analysis of the Service Delivery Assessment (SDA) has been completed. The local and regional management are the first to notify field offices for possible closing or consolidation. A recommendation for consolidation must include an analysis of the following:

- The demographic and workload data for the most recent fiscal year;
- Existing and projected population of the new service area;
- Expected service delivery improvements as a result of consolidation;
- Planned presence in the old location; e.g., a reduced-hours contact station to meet the needs of the public (A contact station is a facility that is not permanently staffed. Instead, our employees visit on a schedule to conduct business. Contact Stations provide face-to-face service for communities or neighborhoods without easy access to full service Field Offices (FO).);
- Effect on the public as a result of consolidation;
- Concerns of various community leaders, elected officials, and local institutions;
- Availability and cost of space for housing the consolidated office;
- Costs to modify existing facilities for consolidation;
- Planned management of the service area by the newly consolidated office; and
- Disbursement of existing staff to other field offices.

We take consolidation decisions very seriously. We put a great deal of time and effort into an analysis that goes far beyond financial considerations. We want to ensure that the needs of the public are still met, if not surpassed, through the larger consolidated offices and where necessary, contact stations. Although budget cuts have brought SSA to the brink of furloughs in recent years, we value our field operations. In fact, we have had a net loss of just 20 field offices from the 1,287 we had 7 years ago. It is difficult to predict the number of offices being consolidated in a year due to the changing demographics and workloads; however absent a major budget reduction we do not anticipate we would close a large number of offices in any given fiscal year.

b. What is the number of new offices and the process for opening new offices?

Our process to determine whether an office needs to be opened, or consolidated with another, is comprehensive and long-standing, and balances service delivery with the cost of providing that service. Service area reviews may be warranted when workloads increase or decrease, population increases or decreases, or other demographic factors change. Other reasons for review include staffing changes or imbalances caused by such things as retirements and space considerations including leases expiring. These circumstances may suggest the need for a review; however, we assess all facilities at least once every 5 years to ensure they are fulfilling our mission and effectively meeting the needs of the community.

We examine FOs changes on a case-by-case basis. There are unique factors that may affect each decision, including the type and size of workloads, quality of local roads, distance from other facilities, the presence of geographic barriers (e.g., rivers), and the availability and use of public transportation in the community. Other factors such as demographic changes, economic conditions and the proximity of private and public institutions also influence the decision.

Our Regional Commissioners are responsible for overseeing the SDA program in their regions. Their staffs identify and schedule the service areas to be reviewed, complete the reviews, and take any appropriate actions. The regions maintain records to assure full adherence to this process. On occasion, we may ask a region to provide headquarters with assessment information concerning a particular office to respond to service inquiries at the national level.

The SDA process consists of the following steps:

1) The regional office (RO) schedules FOs for review and collects demographic and workload data.

2) Local management documents accessibility, unique service area characteristics, and special needs. Since convenience for service area residents is central to our community-based service, we consider in our assessments in the SDA report the following:

   - Average distance and travel time from beneficiaries' home to the FO;
   - Accessibility to major highways and roads;
   - Availability, convenience, and cost of public and privately-sponsored transportation;
   - Availability, convenience, and cost of parking for the public and employees; and

- Accessibility for persons with disabilities (transportation, parking, building accommodations, etc).

3) We consider unique service area characteristics and document them if they are relevant to the recommendation for change or no change. The following list is not all inclusive; it only highlights those characteristics that are common to many service areas:

   - Safety/high risk location;
   - Bilingual needs;
   - Minority population needs;
   - Location of trade or business centers;
   - Proximity to social service/community agencies and organizations;
   - Proximity to and collaborative work activity with other local, State, and federal government agencies;
   - Level of community concern;
   - Proximity to major institutions (e.g., educational, medical, cultural);
   - Availability of communications media outlets (target audiences, extent of coverage); and
   - Proximity of large employers.

4) Local management completes a careful review and analysis of the data and produces a narrative discussion and summary analysis of the service area needs and current service delivery. This results in a recommendation to maintain or to change existing service.

5) The completed SDA and any accompanying change proposals are sent to regional management for review. Any proposal that involves a change (such as a proposed consolidation) is then forwarded to headquarters personnel for review and approval.

Since 2001, we have opened eight FOs:

	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005
Openings	0	0	0	0	1

	FY 2006	FY 2007	FY 2008
Openings	1	5	1

Office Name	Date	Action
FY 2005		
Kissimmee, FL	04/2005	New Social Security Field Office
FY 2006		
Henderson, NV	05/2006	New Social Security Field Office
FY 2007		
Conway, AR	03/2007	New Social Security Field Office (Former Resident Station)
Barstow, CA	04/2007	New Social Security Field Office (Former Resident Station)
Morongo Basin	04/2007	New Social Security Field Office (Former Resident Station)
Nogales, AZ	04/2007	New Social Security Field Office (Former Resident Station)
Show Low, AZ	04/2007	New Social Security Field Office (Former Resident Station)
FY 2008		
Newnan, GA	04/2008	New Social Security Field Office (Former Resident Station)

Since 2001, we have opened six Social Security Card Centers:

	FY 2003	FY 2005	FY 2006	FY 2007	FY 2008
Openings	1	1	1	1	2

Office Name	Date	Action
FY 2003		
Brooklyn, NY	11/2002	New Social Security Card Center
FY 2005		
Las Vegas, NV	04/2005	New Social Security Card Center
FY 2006		
Jamaica, NY	07/2006	New Social Security Card Center
FY 2007		
Phoenix (DTN), AZ	09/2007	New Social Security Card Center
FY 2008		
Phoenix (North), AZ	10/2007	New Social Security Card Center
Orlando, FL	03/2008	New Social Security Card Center

5. Congress passed ticket to work legislation back in 1999, yet after years of implementation efforts and millions spent, very few beneficiaries are going back to work. Worse, for years new regulations have been promised to improve ticket to work programs, yet the regulations have never been issued.

a. Once an individual is awarded benefits, how is the Social Security Administration (SSA) helping individuals who want to work prepare for or find jobs?

Within 60 days of the award of cash benefits, we issue Tickets to eligible disability beneficiaries. An eligible beneficiary may also request a Ticket at any time. As of May 9, 2008, 10.6 million beneficiaries have Tickets and 204,710 beneficiaries are using them to receive return to work services.

- We have made major changes in the Ticket rules, along with the various recruitment and outreach strategies, to encourage more organizations to become Employment Networks (ENs). We published the new Ticket Program regulations in the *Federal Register* on May 20, 2008. We anticipate that these new rules will promote more partnering between organizations, thereby resulting in the following: more service provider choices and services for beneficiaries, better coordination of services, and better work outcomes for the beneficiaries.

- Through a recruitment and outreach contractor, we are initiating targeted outreach strategies to encourage more beneficiaries to participate in the Ticket Program. We are also undertaking a major recruitment effort to increase the number of ENs. For example, our March 2008 Ticket Partners Summit brought together more than 400 people to learn about the changes we planned to make in the Ticket regulations. The summit also facilitated networking and partnership development. In addition, we are presenting information on the Ticket at national and State conferences, and bringing beneficiaries and ENs together at local Work Incentives Seminars (WISE) events throughout the country.

We are also working on other important initiatives to help individuals who want to work prepare for or find jobs.

- Our Work Incentives Planning and Assistance (WIPA) projects [formerly known as Benefits Planning, Assistance and Outreach (BPAO) projects] originally authorized under the *Ticket to Work and Work Incentives Improvement Act of 1999*, provide supports to beneficiaries with disabilities through 104 cooperative agreements awarded to community-based organizations throughout the country and U.S. territories. WIPAs, through Community Work Incentives Coordinators (CWICs), work with our beneficiaries with disabilities directly to help them understand how federal, state, and local work incentives can assist them in their return to work goals and how work may affect their benefits. Over 240,000 beneficiaries took advantage of the BPAO program, which transitioned to the WIPA program in 2007. The WIPA projects served over 86,000 beneficiaries between October 2006 and December 2007.

- CWICs also assess beneficiaries' on-going employment support needs and refer them on a case-by-case basis to Vocational Rehabilitation (VR) agencies, Protection and Advocacy agencies, ENs, One-Stop Career Centers, and other community-based organizations that provide employment-related services. In establishing the WIPA projects, we emphasized that beneficiaries should develop individualized, comprehensive, and long-term work plans. The CWICs are in close contact with the beneficiary at critical transition points in employment, such as medical improvement, work attempts, training, and employment. The *Social*

Security Protection Act of 2004 reauthorized and extended the program through September 2009.

- Protection and Advocacy for Beneficiaries of Social Security, also originally authorized under the *Ticket to Work and Work Incentives Improvement Act of 1999*, provides support to beneficiaries with disabilities through 57 grants administered by us. These grantees provide information, advice, advocacy, and other services to beneficiaries. *The Social Security Protection Act of 2004* reauthorized and extended the program through September 2009.

Finally, our employees provide vital services to our beneficiaries. We have trained networks of specialists that help persons with disabilities understand and take advantage of the work incentives and employment supports. These employees include the Work Incentive Liaisons in each field office, the Area Work Incentive Coordinators, and the Plan to Achieve Self Support or PASS Cadre. We also rely on our regional staff to help us with outreach efforts by presenting and exhibiting at national and local events, as well as being involved in other community events to help foster partnerships.

b. What share of disability recipients take advantage of those SSA programs?

Over 204,000 beneficiaries participate in the Ticket Program, and 240,000 in the WIPA.

c. Regardless of whether they take advantage of SSA programs designed to promote work, what share of all disability recipients ever leave the disability benefit rolls for work?

Each year, about 35,000 (one-half of one percent) of our title II beneficiaries leave the cash benefit rolls and return to work. About 90,000 SSI beneficiaries in any given month have their total cash benefit withheld due to working.

d. Is there any update you can provide regarding updated return to work regulations?

We published the Ticket to Work regulation in the *Federal Register* on May 20, 2008.

e. What more should the Congress and the agency be doing to promote work by disability recipients?

Thus far, the results of the Ticket to Work program have been less than everyone expected and clearly less than Congress intended. We need to monitor the results of this regulation closely, but it is highly likely that Congress will need to revisit the statute in the next few years in order to achieve the goals that it intended.

We also are conducting several demonstration projects that involve testing interventions related to disability work activity. In addition, we have recently

completed design work for our Benefit Offset National Demonstration (BOND) project that will test providing Social Security Disability Insurance (SSDI) beneficiaries a $1 benefit offset for every $2 in earnings above the substantial gainful activity (SGA) level which presently is $940 per month. We believe the results of these demonstration projects, with other research, will provide us with valuable information.

6. Many, but not all, disabilities last forever.

a. How does the SSA know whether someone's disabling condition might have improved?

In general, benefits will continue as long as an individual remains disabled. However, we review an individual's case periodically to see if that person is still disabled. The frequency of our review depends on whether we expect the individual's condition to improve.

If medical improvement is:

- "Expected," we usually review the individual's case within 6 to 18 months after benefits start.
- "Possible," an individual's case will normally be reviewed no sooner than three years.
- "Not expected," an individual's case will normally be reviewed no sooner than seven years.

The primary reasons we decide that an individual is no longer disabled and to stop their benefits are:

- An individual's works at the SGA level. In 2008, we usually consider average earnings of $940 or more per month ($1,570 or more per month for blind persons) to be SGA;
- An individual's medical condition has improved to the point that the individual is no longer disabled.

b. Especially with improved medications and other technologies, is this an issue on which Congress and the SSA should be paying more attention – finding new ways to help disability benefit recipients overcome their disabilities and join or re-join the labor force?

Current law addresses the role of medical technology in determining ongoing disability. When we review an individual's case to see if that person is still disabled, we must consider the effect of improved medical technology on that individual's ability to work (42 U.S.C. 423 (f)). Furthermore, when we revise the criteria for our Listing of Impairments, we consider advances in medical technology. We use these regulations as a part of our disability evaluation process.

We also have several demonstration projects underway that will provide important information to Congress and policymakers as they look to find new ways to help people with disabilities remain in the workforce or rejoin the workforce.

In 2003, we began the *Youth Transition Demonstration* (YTD), an initiative intended to help young people with disabilities make the transition from school to work. By waiving certain disability program rules and offering services to youth who are either receiving disability benefits or at risk of receiving them, these projects are expected to encourage youth to work and/or continue their education. We have implemented YTD projects in eight sites across the country. The evaluation of YTD, which we will complete in 2014, will produce empirical evidence on the effects of the waivers and services on employment and earnings, receipt of benefits, and other outcomes for youth with disabilities.

The *Mental Health Treatment Study* (MHTS) will provide study participants with mental health disorder treatments (pharmaceutical and psychotherapeutic) and/or employment supports not covered by other insurance. The MHTS will determine the effect these services would have on outcomes such as medical recovery, functioning, employment, and benefit receipt for SSDI beneficiaries with a primary diagnosis of schizophrenia or affective disorder.

The *Accelerated Benefits Demonstration* (AB) provides immediate health benefits, care management, and employment supports to newly entitled SSDI beneficiaries during the 24-month waiting period for Medicare. The AB tests whether providing disabled beneficiaries with health benefits early might improve their health and enable them to return to work.

Next year we plan to implement the *Benefit Offset National Demonstration* (BOND) to test whether providing a $1 for $2 benefit offset to SSDI beneficiaries who return to work above the SGA level will increase work activity. This project will address a major disincentive to work, commonly referred to as the "cash cliff." The cash cliff occurs because we have to withhold the entire cash benefit when a beneficiary engages in SGA.

Organization for Economic Cooperation and Development (OECD) – Youth Transition Study

We, along with the Department of Education, are co-funding an OECD study on transition issues for youth with disabilities. The OECD is an international organization of 30 countries, including the United States, which addresses economic, environmental, and social issues. It provides a setting in which governments can compare policy experiences, seek answers to common problems, identify good practices, and co-ordinate domestic and international policies.

The OECD study is examining the correlation between transition outcomes for youth with disabilities and such variables as post-secondary education, type of disability, family characteristics, institutional structures and practices, and public policy and

legislation. The objective is to identify and disseminate best transition practices. Better education and employment outcomes would decrease the number of youth with disabilities who later, as adults, must rely wholly or partially on public benefits.

c. What are other countries doing on this front?

The information below is from the 2003 OECD report, "Transforming Disability into Ability: Policies to Promote Work and Income Security for Disabled People."

Anti-discrimination Legislation

Australia, the United Kingdom, and the United States all passed legislation in the 1990s that prohibited discrimination against persons with disabilities in all aspects of the employment process. This legislation requires employers to accommodate persons with disabilities who are able to fulfill job requirements in the workplace, unless this would cause undue hardship or cost. Several European countries (e.g., Sweden, Norway, and Germany) have adopted more general anti-discrimination legislation within the last few years.

Employment Quotas

More than one-third of OECD countries have employment quotas for persons with disabilities, meaning that employers are required to have a certain percentage of persons with disabilities among their workforce. In Italy, for example, the percentage is 7 percent; in France and Poland it is 6 percent, and in Germany it is 5 percent. In all countries that have these quotas, the requirement is limited to employers with a specified number of employees. For example, employers in Korea with less than 300 employees are exempt.

However, quota fulfillment is relatively low in most countries, generally fluctuating between 50 percent and 70 percent. For example, a German employer with 1,000 employees would be required to employ 50 disabled workers (5 percent of his or her labor force) but might only employ 25 to 35 disabled workers. Nevertheless, those countries which use quotas regard them as important because the quotas help reintegrate disabled workers into the labor force.

Labor or Work Environment Legislation

Some countries, such as Norway, Sweden, Belgium, Spain, and the Netherlands have passed legislation that requires employers to provide workplace accommodations and rehabilitation.

Employer Sanctions

Countries that have anti-discrimination laws and mandatory employment quotas employ a variety of sanctions to compel employers to cooperate. Some countries impose fines on employers who do not comply with the law, while others allow

employees to sue employers who refuse to provide workplace accommodations. However, the latter is something of a hurdle for most persons with disabilities and few cases of legal action have been reported.

Rehabilitation and Sick Pay

Some countries, such as Sweden and the Netherlands, require employers to be involved in the rehabilitation of employees. Those countries require employers to continue paying disabled employees in the hope that employers will invest in prevention and retention measures. Most employers in these countries take out private insurance to cover their risk.

Vocational Rehabilitation

Most countries have vocational rehabilitation programs. In some countries it is voluntary, but in others it is mandatory for some persons, depending on the nature of the disability and the type of work the disabled person does. In some countries, such as France, Germany, Austria, and Poland, vocational rehabilitation is a right, and is unrestricted.

Subsidized Employment

Some countries, such as Sweden, Austria, Denmark, Germany, and Norway, subsidize employers who hire the disabled by compensating them for a portion of their labor costs. The subsidies are generally very high, up to the full wage (Germany and Austria) and in most cases are phased out over a period of years. In some countries, however, the subsidies are either permanent or repeatedly renewable.

Supported Employment

Supported employment involves extensive on-the-job support through an individual job coach. In most countries, supported employment is phased out over a few years, but Denmark provides extensive support (up to 20 hours per week) for an extended period of time. Austria has developed a comprehensive vocational counseling program, the goal of which is to find an available job and obtain that job for a disabled person through mediation. Germany gives persons with disabilities the right to supported employment for a period of three years.

Sheltered Employment

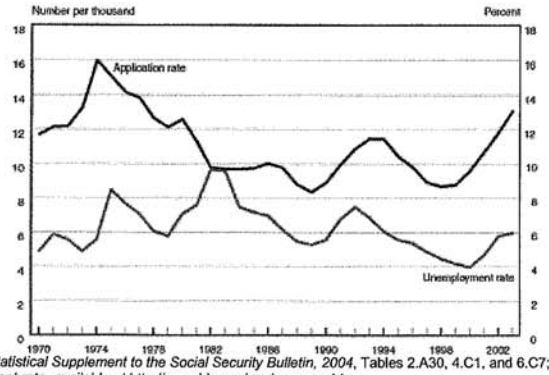
Most OECD countries offer special employment in a controlled environment, such as a sheltered workshop, special businesses for persons with disabilities or a protected segment of an ordinary company. Some countries, such as Spain, the United Kingdom, and the Netherlands, have been trying to transition workers from sheltered employment into ordinary jobs, but such attempts have been successful in only a few cases. Only in Norway, which has achieved a 30 percent transition rate, has this effort met with significant success.

7. **The Income Security and Family Support Subcommittee recently had a hearing on unemployment and the Committee has marked up an extended unemployment benefits bill. Although there was disagreement on the scope and proper timing of such an extension, there was acknowledgement that certain areas of the country have been hit harder than others during the current economic slowdown.**

   a. **Over the years, has there been any relationship between periods of rising unemployment and the number of disability and Supplemental Security Income (SSI) applications and ultimately beneficiaries?**

      Although numerous factors influence the number of disability applications and awards, historical data demonstrate a clear correlation between economic downturns and the incidence of disability applications. Disabled-worker application rates have tended to rise in periods of increasing unemployment and fall in periods of decreasing unemployment. One apparent exception to this pattern occurred in the early 1980s, when unemployment approached 10 percent and the rate of applications declined dramatically (Chart 1). However, at the same time, a tightening of the program and reductions in benefits were taking place and these factors may have had a greater influence in the decline in application rates.

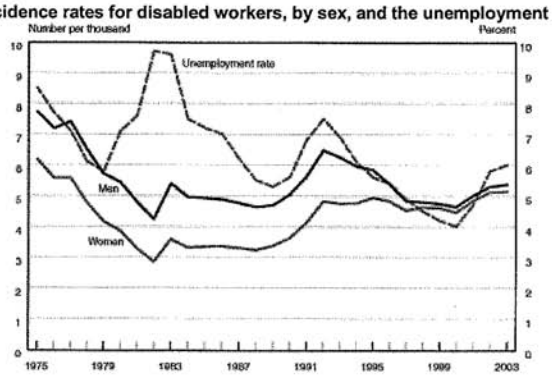
Chart 1.
Rate of disabled-worker applications per 1,000 disability-insured workers and the unemployment rate, 1970–2003



SOURCES: *Annual Statistical Supplement to the Social Security Bulletin, 2004*, Tables 2.A30, 4.C1, and 6.C7; Bureau of Labor Statistics, unemployment rate, available at http://www.bls.gov/cps/prev_yrs.htm.

The incidence rate for DI workers (awards per 1,000 in the disability-insured population) also tends to follow the unemployment rate (and application rate), with the same caveat about the period of the early 1980s (Chart 2).

Chart 2.
Age-adjusted incidence rates for disabled workers, by sex, and the unemployment rate, 1975–2003



SOURCES: Tim Zayatz, *Social Security Disability Insurance Program Worker Experience*, Actuarial Studies No. 114 (June 1999) and No. 118 (June 2005) (Washington, DC: Social Security Administration, Office of the Chief Actuary), Table 4; Bureau of Labor Statistics, unemployment rate, available at http://www.bls.gov/cps/prev_yrs.htm.
NOTE: Incidence rates are the number of awards of disabled-worker benefits per 1,000 disability-insured workers.

Because of the limited work history of SSI applicants, one might not expect their rates of applications and new entrants to follow unemployment rates in the same pattern as the rates for DI applicants, who have a substantial work history. The patterns, however, are quite similar.

Chart 3
Rates of SSI applications and entry for blind and disabled adults per 1,000 in population aged 18–64 and the unemployment rate, 1980–2003

SOURCES: *2004 Annual Report of the Supplemental Security Income Program*, Tables IV.A1, IV.B1, and IV.B2; Bureau of Labor Statistics, unemployment rate, available at http://www.bls.gov/cps/prev_yrs.htm.
NOTE: The reference population is the "Selected Social Security Area Population" of the appropriate age group and includes the population of the United States and several additional areas. See the glossary for a complete definition.

b. Was there a spike in applicants, and later disability beneficiaries, during or after the 2001 recession and has there been any noticeable change in the past year?

Chart 1 shows that the disability application rate declined for several years in the 1990s. It began to increase in 1999 and has increased each year since then. The unemployment rate increased from 4 percent in 2000 to 6 percent in 2003. The SSDI application rate increased by an average of 11 percent per year during that time. Chart 2 shows an increase in the award rate starting in 2001, although awards did not increase as quickly as applications. SSI applications for disabled adults also increased in each of those years. Due to the special disability workload (SDW), we now take title II applications for some individuals who likely do not qualify for SSDI benefits. This began around the year 2000 and has continued since. This procedural change may have increased the number of applications in some years by 400,000 or more.

Between 2006 and 2007, the number of SSDI applications grew by only 2.6 percent and the number of awards grew by only 1.3 percent. The unemployment rate remained stable at 4.6 percent. The marginal increase in applications was most likely due to an increase in the insured population and more baby boomers entering the disability-prone years.

c. We are trying to determine if at certain times in the economic cycle some long term unemployed individuals turn to disability benefits for support. Does SSA have any information about how many Social Security disability insurance beneficiaries or SSI recipients were receiving unemployment benefits prior to becoming eligible for benefits and if so, what are those numbers?

We have limited information on the number of SSDI and SSI beneficiaries who were receiving unemployment benefits prior to becoming entitled to disability benefits. A survey conducted in 1992 and 1994 asked disability benefit applicants if they had received unemployment benefits during the past 2 years. In 1992, 10.4 percent responded that they had and in 1994, 12.7 percent responded similarly. SSDI applicants were much more likely than SSI applicants to have received unemployment benefits (Table 1). A 2004 study using two different data sources looking back over different time periods found comparable results (Table 2).

Table 1. Percentage of Applicants Reporting Receipt of Unemployment insurance benefits in the 2 years prior to application

Received Unemployment Insurance in 2 years prior to Application	Year	
	1992	1994
Total	10.4%	12.7%
Title II Application only	14.0%	17.6%
Title XVI Application only	4.4%	4.4%
Concurrent Application	15.2%	18.6%

(Source: SSA's 1992 and 1994 Two Day Field Office Surveys of Applicants)

Table 2. Percentage of DI beneficiaries receiving Unemployment insurance benefits, by data source and gender

	SIPP (1996 Panel)	CPS (1997, 1999)
Period of study	Up to 48 months before DI receipt	Calendar year prior to DI receipt
Males	14	7
Females	10	6

Source: Honeycutt, Todd. 2004. "Program and benefit paths to the Social Security Disability Insurance Program," *Journal of Vocational Rehabilitation*, 21 83-94.

8. Your testimony mentions a new software tool, called the electronic case analysis tool or eCAT used by disability examiners in the State DDSs that prompts questions they should be asking and documentation they need before they make a determination. It sounds like this tool has the potential to be very useful, yet both you and Mr. Schieber point out that it was implemented prematurely and as a result failed.

Mr. Schieber also points out that eCat has not been developed in consultation with the Administrative Law Judges who will be the recipients of decisions resulting from eCat that may be appealed.

What have you and the agency learned from these failed efforts and how will you ensure needed testing and cross-component consultation takes place going forward?

When we prematurely rolled out the electronic Claims Analysis Tool (eCAT) as a part of the Disability Service Improvement process, it was a failure. We learned our lesson and are striving to ensure that testing and cross-component consultation are part of the software application process.

Examiners and medical consultants in both the Virginia and Connecticut DDSs are testing the electronic Claims Analysis Tool (eCAT). The tool is logic-driven, based on disability policy (sequential evaluation), and prompts the user for the "next" answer, dependent on answers to earlier questions. Early feedback from users and the Office of Quality Performance confirm that the tool is policy-compliant and user-friendly. We continue to add advanced functionality of the tool on a daily basis.

Despite the adversities encountered with the earlier versions of eCAT, many of the users appreciated the tool as DDS quality and accuracy increased with its use. Policy, operational, and systems components, and adjudicators (including DDS staff and Administrative Law Judges) worked together closely to develop the current version of eCAT, eCAT 3.

When we test the next version of eCAT in July 2008, we will meet with additional users, including appeal components. We will ensure all prospective users of the tool are involved in future development. We are strongly encouraged by the enhanced quality in eCAT determinations. In the first 1700 cases completed by the Virginia DDS, only one had a substantive quality deficiency. We are hopeful that eCAT can improve the quality of all of our decisions.

9. Your testimony mentioned initiatives the private sector has employed to promote speed and efficiency in customer relations. Some airlines have begun charging a modest fee

for more intensive customer services, as opposed to those services customers can obtain over the internet. That reflects the simple fact that everything has a cost, and those who would like to have more hands-on service should expect to pay a little more for that higher level of service.

a. Have you examined changes in private sector industries that involve a large customer service component?

We informally examined both private and public sector industries that involve a large customer service component. It is difficult, however, to find any specific comparable customer service examples due to the complexity and size of Social Security programs and services. Nevertheless, our workgroup currently evaluating our front-end field office processes is looking at other methods of service delivery based on successful public and private sector examples.

b. Is there anything for SSA to learn from such private sector experiences?

As in the private sector, we are trying to encourage the public to use more self- help Internet services, more self-help telephone services, and fewer in-person contacts. At the same time, we are also considering ways to make the customer service experience more relaxing and pleasant for our visitors while increasing efficiency and productivity.

An interesting corporate model for handling large volumes of visitors can be found in major theme park models. These parks use aesthetics, music, good design, specific flow patterns, and entertainment to make the time their visitors spend waiting not only pleasant, but efficient. Although some of these factors may appear to be unimportant, they improve efficiency and productivity by decreasing public stress, increasing employee morale, and reducing incidents of outbursts by the public.

Another way in which we are modeling successful private sector technologies is by implementing touch screen technology in all field offices for visitor check-in. This technology is widely used in public and private sectors. It is more intuitive and easy to use for the public, while providing us with greater flexibility in how we control our in-office visitor traffic. It also offers many options to accommodate different languages and disabilities beyond the current monitor technology we have in place.

We are learning from the experience of others and will continue working to incorporate the same or similar technologies into improving our processes as resources allow.

c. What does SSA save when a retiree "books" his or her retirement benefits online as opposed to by coming into a field office to do so?

When a retirement claim is filed online, we save 25 percent of the total time necessary to process the claim. We realize these savings because an online retirement claim does not require a pre-adjudicative review by the field office claims representative. Furthermore, the claims processing system imports the data entered

by the applicant online, thereby reducing the amount of keying by our employees. Once the applicant submits the online claim, a field office claims representative performs a quality review. The accuracy of Internet retirement claims is consistent with all title II claims we take.

d. What are you doing to encourage more people to do so, freeing more of SSA's resources for those who need more hands-on service?

Currently, we are piloting two concepts in field offices to encourage use of our eServices with additional initiatives planned for the future. One current pilot project is called "Social Security TV." This pilot involves placement of a wall-mounted television in office reception areas which utilizes eye catching slides and video clips with a musical background to educate the public about our services, in particular our Internet services. The music also serves to both relax visitors and to muffle the conversations between our employees and visitors. This helps us protect the public's private information.

The other pilot currently in progress has field offices installing one or more dedicated computer workstations in either reception areas or front end interviewing rooms which are available for our visitors to use to conduct their business online at www.socialsecurity.gov. These stations will be monitored and restricted to SSA-related use. We expect the introduction of these workstations into our field offices will encourage visitors to reduce their wait times by using our eServices. The presence of one of our employees to assist customers with their transactions and answer questions should also reassure those visitors hesitant to use a computer.

As we evaluate these pilots, our service delivery will continue to improve and evolve into a more efficient and productive process while maintaining our high standards for public service.

Finally, we are currently engaged in an ongoing campaign to increase the public's awareness of our online claims application. This campaign includes:

- Public service announcements;
- Advertising on public transportation vehicles in multiple cities;
- Development of new publications and marketing materials; and
- Use of management information reports for all levels of managers.

10. Over the past five years, in 34 States, the SOAR program (SSI/SSDI Outreach, Access and Recovery) has achieved remarkable success in bringing homeless people through the SSI/SSDI process and ultimately into stable housing. By helping those who cannot help themselves, SOAR eases the burden on the DDS and ALJ backlogs, in part because SOAR caseworkers have assisted with obtaining medical evidence and ensuring claimant responsiveness.

Are there lessons of the SOAR program that we can apply more broadly to the disability application process?

We are aware of the SOAR initiative developed by the Department of Health and Human Services' (HHS) Health Resources Services Administration (HRSA) and Substance Abuse and Mental Health Services Administration (SAMHSA), though we are not aware if there are lessons in the SOAR program that we can apply more broadly to the disability application process at this time.

The evaluation contract for the SOAR initiative was awarded to Mathematica Policy Research, Inc. earlier this year. We provided input to HRSA and SAMHSA on the final study design and asked to meet with representatives of Mathematica in an effort to determine if we could apply any lessons of the SOAR program more broadly to our disability application process. We will continue to work collaboratively with HRSA and SAMHSA and will follow-up with them and their evaluation contractor to determine if there are broader applications for us to apply to our disability application process.

[Submissions for the Record follow:]

Statement of America's Health Insurance Plans

I. Introduction

America's Health Insurance Plans (AHIP) is the national association representing approximately 1,300 health insurance plans that provide coverage to more than 200 million Americans. Our members offer a broad range of products, including private disability income insurance to help consumers replace lost income in the event that a disabling condition forces them to leave the workforce for an extended period of time.

We appreciate the Committee's interest in reducing the backlog of pending claims for Social Security Disability Insurance (SSDI) benefits and ensuring that this important Federal program is meeting the needs of Americans with disabilities in a timely manner. As the Committee reviews these issues, we believe it is important to keep in mind the important role that private disability insurers play in offering products that protect consumers against the financial risk of a disabling illness or injury that prevents an individual from working for an extended period of time. Our statement provides an overview of private disability insurance, while also discussing the value this coverage offers to policyholders and a national education campaign we have launched to increase awareness about the importance of disability income protection. The statement also includes a brief description of steps that AHIP and our disability insurer members have undertaken to help the Social Security Administration (SSA) speed and improve SSDI claim adjudication.

II. Overview of Disability Income Insurance

Private disability income insurance provides tens of millions of Americans with protection that complements the safety net provided by the SSDI program. Approximately 38 percent of U.S. workers in private industry are covered by employer-sponsored short-term disability coverage, while 30 percent receive long-term disability insurance through their employers[1]. In addition to extending benefits to many persons who are not eligible for SSDI, or during the time the SSA is adjudicating an SSDI claim, this coverage provides a level of disability income benefits that spares many Americans from financial hardship.

Short-term disability coverage typically pays benefits for 13 to 26 weeks based on a specified percentage of the employee's pre-disability income—typically 60 percent—after sick leave has been exhausted. Circumstances that may trigger the payment of short-term disability benefits include temporary musculoskeletal or connective tissue conditions, pregnancies, and other illnesses or conditions that are resolved within a relatively short timeframe, thus allowing the employee to return to work before benefits are exhausted. The valuable protection offered by short-term disability coverage can be purchased at a reasonable price—an average of $174 annually, according to one study based on 2001–2003 data, when purchased as group coverage by employers[2]. This short-term protection can be purchased in combination with long-term disability coverage as part of a seamless package, with the short-term and long-term benefits coordinated to ensure that disabled workers can meet their daily expenses and avoid financial hardship.

Additional protection is offered by long-term disability coverage that begins to pay benefits when an individual's sick leave and short-term benefits are exhausted. These long-term disability benefits continue anywhere from five years to the remainder of an individual's life. Long-term disability insurance allows policyholders to sustain themselves financially if a catastrophic illness, injury, or disability takes them out of the workplace for an extended period of time.

III. Value for Consumers

In 2006, more than 500,000 individuals received long-term disability payments from private insurers. One-third of these individuals did not qualify for SSDI. Moreover, 95 percent of reported disabilities were not work-related and, therefore, not eligible for coverage under workers compensation.[3]

Private disability insurers resolve claims within 30 days or less for approximately 75 to 80 percent of claimants, thus ensuring that benefits can be paid promptly to replace an eligible claimant's lost wages. Our members' track record exceeds the requirements set by Federal regulations, which establish a 45-day timeframe for the

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[1] National Compensation Survey: Employee Benefits in Private Industry in the United States, 2006, U.S. Department of Labor, Bureau of Labor Statistics

[2] An Employer's Guide to Disability Income Insurance, AHIP

[3] 2006 Council for Disability Awareness Claims Review

initial resolution of private disability claims and allow an extension—of up to a total of 105 days—if, for reasons beyond the control of the insurer, more time is required to gather information.

In addition to replacing lost income for claimants in a timely fashion, private disability insurers play a key role in restoring disabled workers to financial self-sufficiency and maintaining productivity for America's businesses. By investing in rehabilitation and return-to-work programs, private disability insurers are actively engaged in helping workers with disabilities return to the workforce. In fact, a survey by Milliman, Inc. found that private disability insurers spent an average of $3,200 in 2005 on each disabled employee receiving rehabilitation and return-to-work services.[4]

These innovative programs include a wide range of strategies in recognition of the fact that persons with disabilities are highly diverse and face varying circumstances. Services offered by rehabilitation and return-to-work programs include medical case management, vocational and employment assessment, worksite modification, purchase of adaptive equipment, business and financial planning, retraining for a new occupation, and education expenses. The Milliman survey found that annual budgets for these programs, which vary by size of company, range from $450,000 to more than $10 million.

Additionally, private disability insurers have been very proactive in designing policies that help claimants return to work. As a result, persons receiving private disability payments often have access to work incentive benefits, rehabilitation benefits, workplace accommodation benefits, and child or dependent care benefits during rehabilitation. These innovative benefits reflect our members' strong commitment to promoting employment and self-sufficiency among persons with disabilities.

Disability insurers also help consumers exercise their rights under the Social Security program. Specifically, disability insurers provide assistance in the application process to beneficiaries who may be eligible to apply for SSDI benefits. Claimants with expected long-term disabilities are encouraged to apply for SSDI benefits and, according to one study, two-thirds of individuals receiving private long-term disability income benefits also qualify for SSDI benefits.[5]

By encouraging and assisting claimants in pursuing SSDI benefits, disability insurers help them gain access to benefits beyond disability income payments. This includes additional benefits for a spouse and/or dependents, access to vocational assistance and other support from the SSA, and eligibility for Medicare benefits after a period of 24 months.

A similar approach is taken by the Federal Employee Retirement System, which requires disabled beneficiaries to file for SSDI benefits. A requirement to apply for SSDI benefits is also part of many states' workers' compensation systems, as well as public employee retirement systems.

IV. National Education Campaign

AHIP has launched a national education campaign to promote awareness about the importance of disability income protection and to highlight the value disability insurance provides for workers, employers, and taxpayers.

Recognizing that more than 100 million Americans lack private disability income protection, our campaign has created a Web site—www.yourincomeatrisk.org—focused on educating consumers about a wide range of disability-related issues. The need for such education is highlighted by survey findings showing that many American workers have misunderstandings about their likelihood of experiencing a disability.

AHIP released survey findings in March 2008 indicating that most baby boomers underestimate their risk of suffering a disability that would cause them to miss work for an extended period of time. The survey, conducted by Harris Interactive on behalf of AHIP, found that just over a third of baby boomers think the chances of becoming disabled due to illness or injury is 5 percent or less, a slight majority think the chances are 10 percent or less, and two-thirds think the chances are 20 percent or less. In reality, a worker has a 30 percent chance of suffering a disabling injury or illness causing him or her to miss three or more months of work before reaching retirement, according to the SSA.

The survey also found that 47 percent of baby boomers say they are not too concerned about their chances of suffering a disabling illness or injury. One of the reasons baby boomers underestimate their risk is because they are unaware of the most common causes of disability, mistakenly believing that injuries cause more dis-

[4] Survey of Rehabilitation and Return-to-Work Practices Among U.S. Disability Carriers, Milliman, Inc., May 2007

[5] Council for Disability Awareness, 2006 Long-Term Disability Claims Review

abilities than illnesses. According to the survey, baby boomers believe the most common causes of disability are back, muscle, or joint problems (26%), injuries on the job (18%), and injuries off the job (16%). In actuality, research shows that the most common causes of disability are illnesses such as cancer, heart disease, and diabetes.

In the coming months, AHIP will be taking additional steps to continue our national education campaign. These steps include a retooling of our "Your Income At Risk" Web site, an updated consumer guide on disability income insurance, a new publication for policymakers and the media, and additional research on key disability issues.

V. Private Disability Insurers Partnering with SSA to Help Speed SSDI Claim Adjudication

AHIP and its disability insurer members are well aware of the challenges facing SSA and the SSDI program, and believe that the Agency needs more resources. Applications for SSDI benefits have increased steeply in recent years—and now arrive at the rate of more than 2.5 million each year. The increased SSDI workload also comes at a time of very serious limits on the Agency's budget for administering its retirement income security and disability income security programs; attrition of the Agency workforce; and the addition of new responsibilities supporting the Medicare program and homeland security efforts.

Congress has recognized SSA's need for additional resources, and took steps last year to increase the Agency's administrative funding. The Commissioner and his staff are also moving aggressively to reduce SSDI claim delays and backlogs through steps such as hiring additional Administrative Law Judges.

AHIP and its private disability insurer members are also reaching out to offer assistance to help SSA speed and improve SSDI claim adjudication. For privately-covered workers who become short-term disability and/or long-term disability claimants, private disability insurers compile extensive disability claim information that is also of significant potential relevance and value to the SSDI claim adjudication process. SSA and a group of AHIP's private disability insurer members are currently working to test new procedures that will facilitate SSA access to key claim information that will help SSA speed and improve the adjudication of private claimants who apply for SSDI. The test is initially focused on providing the Agency with objective medical evidence, such as attending physician statements and lab and test results, for claims expedited based on presumptive diagnoses and/or terminal prognosis.

By providing the SSA with quality medical evidence already resident in private disability claim files, we can begin to demonstrate the benefits of enhanced cooperation between private disability insurers and the nation's primary public disability income assistance program. These steps can lead to even more robust information sharing and other enhanced public-private cooperation in the future.

VI. Conclusion

AHIP and our members look forward to maintaining a dialogue with Committee Members about the challenges facing the SSDI program and the role of private disability insurance in providing consumers with financial protection against the high costs associated with disability.

Statement of the American Bar Association

Dear Mr. Chairman:

On behalf of the American Bar Association ("ABA") and its more than 400,000 members nationwide, I write to present the views of the American Bar Association on clearing the Social Security Administration's backlog of disability claims and providing the agency with the resources it needs to provide the benefits earned by workers in this country. The American Bar Association commends the House Committee on Ways and Means for maintaining a sharp focus on working to solve a set of agency problems that inflict a terrible human toll on hundreds of thousands of Americans who are disabled and suffering financially due to the loss of their income and who are unable to obtain timely and fair determinations of their disability claims. The unprecedented backlog of cases was created because for many years SSA was severely under-funded.

The ABA has a long-standing interest in the Social Security Administration's disability benefits decision-making process, and we have worked actively for over two decades to promote increased efficiency and fairness in this system. As a diverse organization representing the legal profession in the United States, the ABA has been able to draw upon the considerable expertise of our membership—claimants' representatives, administrative law judges, academicians and agency staff—to develop a wide-ranging body of recommendations on the disability adjudication process. The Section of Administrative Law, the Judicial Division and the Commission on Law and Aging have worked to develop our ABA recommendations, the goals of which are to improve the quality of decision-making, increase fairness and efficiency for claimants, help alleviate the backlog, encourage clarity in communications with claimants, promote procedural due process protections, and seek the application of appropriate, consistent legal standards at all stages of the adjudication process.

At its April 2008 meeting, the ABA's Board of Governors adopted policy pertaining to the Social Security Administration's administrative budget. The policy states:

RESOLVED, That the American Bar Association urges Congress to enact a level of administrative funding for the Social Security Administration that permits the Social Security Administration to provide its mandated services in a timely manner, promptly and fairly adjudicate applications for disability insurance and supplemental security income benefits, overcome significant disability claims processing times and backlogs, and build the infrastructure necessary to manage the expanding workload challenges presented by serving the aging baby boomers filing disability and retirement claims.

The President's FY 2009 budget proposes administrative resources of $10.460 billion for the SSA, a six percent increase over FY 2008. While this represents a praiseworthy step forward toward reducing the backlogs and improving services to the public, it is inadequate to provide mandated services in a timely manner and to promptly and fairly adjudicate applications for disability insurance and supplemental security income benefits. As Commissioner Astrue testified at your April 23rd hearings, SSA requires a minimum increase of $400 million to meet increases in personnel and infrastructure costs alone for the fiscal year that starts in October 2008. The President's budget is insufficient to maintain an adequate number of administrative law judges and support staff and continue reducing the backlog, and does not address the inadequate levels of service provided to the public in SSA field offices and customer service centers. It is up to Congress to determine the responsible measure of support needed above and beyond the President's proposal. We commend this Committee for pursuing the tough fiscal and strategic question of determining a level of funding that will ensure that the agency does the job that the American people and their elected representatives expect it to do.

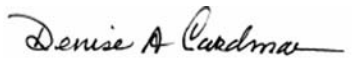
The ABA urges Congress, now and in future years, to provide SSA with sufficient administrative funding to continue to work to reduce the significant backlog of initial claims and appeals of disability cases, to reverse crippling cuts in services to the public, and to provide a sustained level of administrative funding that permits the agency to provide its mandated services in a timely manner, promptly and fairly adjudicate applications for disability insurance and supplemental security income benefits, overcome significant disability claims processing times and backlogs, and build the infrastructure necessary to manage the significant workload challenges presented by serving the aging baby boomers filing disability and retirement claims.

We appreciate the opportunity to submit our comments and would be pleased to offer our assistance to the Committee as it addresses the backlog in disability claims

and other declines in service to the public resulting from years of under-funding of the agency's administrative expenses.

Thank you for considering our views on this important matter.

Sincerely,



Denise A. Cardman
Acting Director

cc. Members, Committee on Ways and Means

Statement of Barbara Gay

The American Association of Homes and Services for the Aging (AAHSA) is pleased to submit this comment on the need to include long-term care in any legislated reform of the U.S. healthcare system. AAHSA members (www.aahsa.org) help millions of individuals and their families every day through mission-driven, not-for-profit organizations dedicated to providing the services that people need, when they need them, in the place they call home. Our 5,800 member organizations, many of which have served their communities for generations, offer the continuum of aging services: adult day services, home health, community services, senior housing, assisted living residences, continuing care retirement communities and nursing homes. AAHSA's commitment is to create the future of aging services through quality people can trust.

In his April 15 testimony, former Senator David Durenberger said that addressing long-term care financing would be a first step toward an income security policy for this country. We would add our voice to his in calling on policymakers not to overlook long-term care in developing a more rational system of healthcare coverage for Americans.

On November 2, 1993, the Ways and Means Health Subcommittee held a hearing on healthcare reform. At that time, we testified that, "the demographic imperative is upon us," and pointed out that the lack of coverage for long-term care can be just as catastrophic for families as the lack of general health insurance.

Sadly, little has changed in the intervening fourteen years in the way long-term care is financed. In 1993, private insurance covered only three percent of long-term care costs. The annual cost of long-term care far outstripped the ability of most individuals and families to pay for it. The cost of long-term care for those who had spent down their financial resources and become eligible for Medicaid was a substantial and growing burden on Federal and state governments. Family members often exhausted their physical and financial abilities to provide care at home and businesses experienced growing costs of employee sickness, absenteeism, and diminished productivity due to this "major unfunded liability," as our testimony termed the lack of long-term care coverage.

Today, Medicaid continues to be the primary governmental source of coverage for long-term care, and the cost to states in particular supplants spending on other important state responsibilities such as education and transportation. Individuals and families cover 52% of long-term care costs out of pocket. The cost of paid long-term care is only the tip of the iceberg; approximately 75% of long-term services and supports are provided by family members on an unpaid basis, often at a heavy physical and financial cost, including lost opportunities for employment, health insurance, and retirement savings. Despite almost three decades of marketing and generous Federal tax incentives, the "take-up" of private long-term care insurance has been sluggish, and this coverage is unavailable to the thousands of Americans who have experienced a serious illness or other "pre-existing condition." As a result, private long-term care insurance continues to cover only a fraction of long-term care costs.

Consumers often are surprised that nursing home care and services provided in the home and community are not covered either by private health insurance or for the most part by Medicare. In fact, it makes no intrinsic sense to separate coverage of long-term services and supports from other kinds of healthcare coverage. Long-term care involves many of the same healthcare providers—nurses, doctors, hospitals, pharmacists—who provide other forms of healthcare. Services that in the past were provided primarily in hospitals now often are provided in nursing homes

or in community-based settings. The line between long-term care and the rest of healthcare was never bright and the evolution of healthcare over the last generation has obscured it even more.

Costs do not disappear if they are not covered by government programs or private insurance. The burden of covering them simply shifts to different levels of government, to private businesses, and to individuals and their families, often at a time when they are least prepared to handle them. Including long-term care in healthcare reform is essential to integrate services for consumers and to prevent the inefficiencies that result from hidden cost-shifting.

Recognizing the need for a new approach to financing long-term care, AAHSA has spent the last few years researching and developing a proposal for an equitable and affordable system of long-term care coverage. Our plan calls for a public insurance program, with participation on an "opt-out" basis to make it as universal as possible, financed by participants' premium payments. Benefits would be paid on the basis of disability, assessed according to the level of need for assistance with activities of daily living. Our Long-Term Care Financing Cabinet issued its recommendations last year, and we have since completed economic modeling that demonstrates the feasibility of our financing proposal. More information on our proposal and on the need for a better system of long-term care financing is available on our website, at http://www.thelongtermcaresolution.org/LearnMore.aspx.

A consensus on the need for long-term care financing reform along these lines is emerging among many organizations that represent elders and people with disabilities. Recently, the Leadership Council of Aging Organizations and the Coordinating Council for Disabilities jointly endorsed the principles underlying our proposal. Together, the two coalitions represent over 150 organizations of elders, people with disabilities, and providers of health, housing and supportive services.

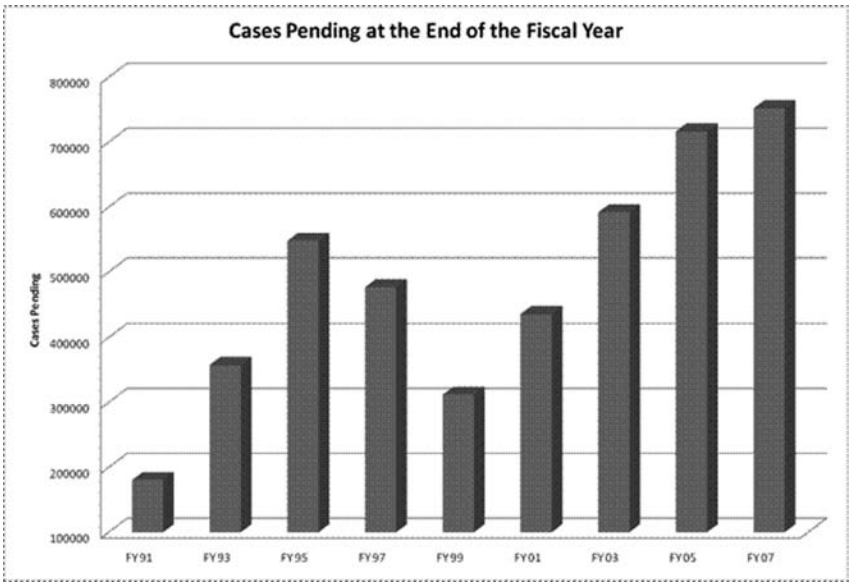
In another fourteen years, the oldest of the baby boomers will reach age 76. We no longer have the luxury of predicting a future train-wreck in financing long-term care; the trains are now within sight of each other. To truly protect American families against catastrophic healthcare expenditures, Congress must include long-term care in whatever healthcare reform plan it considers.

Every family faces the potential costs of long-term care, and every family needs a structure for personal planning with the protection of a public program as well. AAHSA and our members look forward to working with the Ways and Means Committee on a comprehensive and badly-needed reform of our entire healthcare system that will address long-term supports and services along with other health issues and give Americans a healthy, ethical, and affordable system of which we can all be proud.

Statement of Colleen M. Kelley

Good morning Chairman Rangel, Ranking Member McCrery and Members of the Committee on Ways and Means. My name is Colleen M. Kelley and I am National President of the National Treasury Employees Union (NTEU). NTEU represents over 150,000 Federal employees in 31 agencies. Among them are the nine hundred Attorney-Advisers and other staff members in approximately 110 Office of Disability Adjudication and Review (ODAR) Hearing and Regional Offices across the United States. Our union has long been troubled by the unacceptable backlog of cases before ODAR and believes that prompt congressional action is needed to resolve this crisis in service to the American public, particularly those disabled Americans applying for earned social insurance benefits.

Disability adjudication at SSA has a long and troubled history. The current problems with the SSA disability program began in the early 1990s when the cases pending at OHA hearing offices rose from approximately 180,000 in 1991 to approximately 550,000 in mid-1995. Currently over 750,000 cases are pending at ODAR hearing offices and processing times in 85% of all hearing offices are in excess of one year. However, a quick review of the history of the number of cases pending at ODAR demonstrates that the backlog problem is not altogether intractable.



The number of cases pending at OHA hearing offices declined from 1995 through 1999, and in fact by the end of FY 1999 there was no longer a backlog, since 300,000 cases was deemed to be the optimum number of pending cases for efficient adjudication. The decline in pending during that time period is the direct result of the over 220,000 decisions produced by initiatives included in the Short Term Disability Program (STDP), the vast majority of which were produced by Senior Attorneys. The Hearing Process Improvement program (HPI) ended the Senior Attorney Program. The demise of the Senior Attorney Program and the rise of the backlog were not coincidental and are illustrative of the management deficiencies that have plagued the disability program.

Over 750,000 cases are currently pending at ODAR hearing offices. This translates into an average processing time of 510 days at ODAR. Even this is somewhat misleading. Currently, the average processing time for a case that proceeds through an ALJ hearing decision is 553 days. In the Chicago Region the average processing time through an ALJ hearing decision is 727 days; 3 days short of two years. Even these unconscionable numbers do not include the time the case was at the State Agency for an initial and reconsideration determination. To further darken the picture is the specter of significantly increased receipts resulting from the aging "baby boomers" and the less than robust national economy. Unless decisive action is taken now, the dysfunction of the disability system may lead to the public's loss of faith in Social Security.

The salient fact about the current SSA disability adjudication process is that it is unconscionably slow causing untold harm to some of the most vulnerable members of society. None will dispute that the public deserves far better service than SSA is presently providing. The current situation is both a failure of adequate funding and of proper planning and management.

Additional resources are very much needed as well as a reform of an inefficient adjudicatory process characterized by an insufficient number of adjudicators and the misuse of those adjudicators. Requiring an Administrative Law Judge (ALJ) to adjudicate each and every case at ODAR hearing offices is grossly inefficient and extremely expensive. Many cases (dismissals, fully favorable on-the-record cases, and requested closed period cases) can be disposed of without ALJ involvement.

Given the underfunding of the agency, SSA is under an absolute duty to use what funding it has as efficiently as possible. This year Congress has provided greater funding, and SSA has decided to use part of that increase to hire 175 new Administrative Law Judges; unfortunately, SSA has not seen fit to provide adequate staff to support these new ALJs. Recently, SSA conducted the largest hiring of ALJs (135 ALJs) in this nation's history, and intends to hire at least 40 more ALJs before the end of the fiscal year. Certainly, the hiring of such a large number of new adjudica-

tors will have an impact on SSA's disability backlog. However, the number of support staff for ALJs in ODAR was critically low before the recent hiring. While it is not altogether clear how many additional support staff SSA intends to hire this year, even the most optimistic projections (143) are grossly inadequate. Hearing offices were critically understaffed before the acquisition of as many as 135 new ALJs (and 40 more to be added this fiscal year) and are in far worse position now.

In his recent response to questions from the House Appropriations Committee, the Honorable Ronald G. Bernoski, President of the Association of Administrative Law Judges, stated that a judge could not perform his/her work in isolation and the support of sufficient competent and trained staff is essential. He further indicated that adequate staff included 2.5 attorneys and 2.0 clericals for each ALJ. While hiring a large number of new ALJs "looks good", unless they and the current ALJs are properly supported, a reasonable return for the expenses incurred simply will not happen.

Without sufficient staff, SSA cannot prepare enough cases to fill the dockets of the ALJs or timely prepare and issue the written decisions. More ALJs without more staff will mean even more unfilled dockets, decreased ALJ productivity and wasted SSA assets. It is prudent, if nothing else, to use remaining funds to hire the necessary staff to make current ALJs productive.

No doubt part of the reluctance to properly staff ODAR hearing offices is the Administration's commitment to "contracting out" many inherently governmental activities. Additionally, the Agency places a great deal of emphasis on the benefits of automation in improving Agency operations. The GAO Report of December 2007 reported that many SSA senior managers and ALJs recommended a staffing ratio of 5.25 support staff to administrative law judge. It also indicated that the recommended staffing ratio could change as SSA implemented planned automation initiatives intended to improve the hearing process and increase efficiency. In many instances this emphasis on automation may well be justified, but in other areas experience has shown its relative merits are questionable. Automation may improve the situation over time, but the fact of the matter is that SSA automation initiatives rarely, if ever, come in on time, and even more rarely deliver what was promised.

SSA is also committing funds to establishing "National Hearing Centers". The first is already operational in Falls Church, VA; the Commissioner recently announced a second to be situated in Albuquerque, NM, a city that already has a hearing office. It is not clear what operational efficiencies are achieved through the establishment of these adjudicating entities that are not already and better served at hearing offices. Certainly the capacity for conducting video-conference hearings already exists in nearly every current hearing office to facilitate conducting remote hearings and for adjudicating temporary excess workloads. The centralized nature of National Hearing Centers will alienate the public and further damage the Agency's credibility. For more than seventy years SSA has strived to maintain face-to-face contact at the local level with the public it serves. This is one of the factors that separate SSA from the majority of Federal agencies. National Hearing Centers would significantly weaken the bond between SSA and the public it serves.

The advent of the electronic hearing folders facilitates movement of cases to other hearing offices as easily as to a National Hearing Center. There is no operational justification for the establishment of such centers. Moreover, their unique staffing structure emphasizes the Agency's commitment to achieving its political goals over providing high quality service to the public.

Interestingly enough, in addition to hiring new ALJs, SSA has already commenced a program that if properly implemented will eliminate the backlog. Commissioner Astrue has reinstituted a version of the old Senior Attorney Program that was responsible for eliminating the disability backlog in the 1990's. Not surprisingly, the current program, the Attorney Adjudicator Program, is proving to be a success in spite of some ill-founded limitations. However, since its commencement, improvements have been authorized and its scope expanded. Nonetheless, it is this program with further modifications and additions that shows the way to an adjudicatory process at ODAR that is both effective and fiscally responsible.

Judge Bernoski has noted on numerous occasions the necessity of reducing the number of cases that proceed to an ALJ hearing. In his response to questions from the Appropriation Committee he stated, "Social Security can no longer have over 90% of its disability cases continuing on to a full hearing before an administrative law judge." Judge Bernoski further stated "nowhere in our judicial system is a judge required to take to hearing such a high percentage of cases compared to the total docket." NTEU absolutely concurs.

The simple fact of the matter is that neither a hearing nor an ALJ is needed to dispose of every case. By relieving ALJs of the responsibility for adjudicating cases which do not require an ALJ, the ability of ALJs to focus on those cases requiring

their expertise can be enhanced. That is the rationale behind the Attorney Adjudicator Program.

Attorney Adjudicators, who have limited decisional authority, augmenting the ALJ corps constitute an effective and fiscally responsible adjudicative process. The one area of controversy involving the former Senior Attorney Program, decisional accuracy, is not a problem with the current program. Initial accuracy figures for the Attorney Adjudicator Program show an accuracy rate of 95%.

Experience has demonstrated that between 25–40% of claims appealed to ODAR hearing offices could result in fully favorable decisions without an ALJ hearing. Additionally, 15–17% of cases appealed to hearing offices are dismissed, many because of abandonment by the claimant or technical defects. Very few of these cases require ALJ involvement. Such dismissals should be handled by Attorney Adjudicators thereby freeing the ALJ to adjudicate cases requiring an ALJ decision. Consequently, 40–50% of appeals to ODAR can potentially be adjudicated without the involvement of an ALJ.

The success of the former Senior Attorney Program in eliminating the backlog of the 1990's and the very favorable beginning of the current Attorney Adjudicator Program render arguing the merits of the concept of attorney adjudication unnecessary. Management has recently announced a significant increase in the number of Senior Attorneys that will further increase the capacity of the current Attorney Adjudicator Program.

Nonetheless, despite the promise of the Attorney Adjudicator Program, the current crisis is of such magnitude that additional changes are required if SSA is to get control of the backlog problem within an acceptable timeframe. Recently, the Agency announced an increase in the number of Senior Attorneys to 450; a net increase of 81 positions. However, the time allocated to case adjudication is typically 25% or less. At this rate, the Agency expects approximately 30,000 fully favorable adjudications this fiscal year. While this may temporarily stem the increase in the pending cases, its long term effect, even considering the augmentation of the ALJ Corps to 1,250 ALJs, will not eliminate the backlog.

By increasing the number of Senior Attorneys to 700 and permitting them to spend 50% of their time reviewing every disability case appealed to ODAR and adjudicating the 40–50% of cases that do not require ALJ participation, SSA can immediately reduce its pending cases by well over 100,000 cases a year in spite of the increased receipts expected.

The Attorney Adjudicator Program does involve decreasing the availability of the attorney advisers for their traditional role of drafting ALJ decisions. However, several other efficiencies are promoted by the Attorney Adjudicator Program. Attorney Adjudicators work on "unpulled" or "unassembled" files. Those that result in fully favorable decisions do not have to be "pulled". The benefit from not having to "pull" these cases cannot be overstated. Today there are approximately 442,000 cases pending pulling; a workload that will require over 200 days to complete if no new cases were received by ODAR during that 200 days. Most ALJs will not hold hearings on "unpulled" cases and ODAR's difficulty pulling sufficient cases to maintain ALJ dockets is a significant factor in the creation and maintenance of the current backlog. Each disposition by an attorney adjudicator is one less case that must be pulled.

Attorney Adjudicators would continue to draft ALJ decisions in addition to handling their own adjudicatory dockets. Skilled decision drafting remains a vital component of the ALJ adjudicatory process. Retaining ODAR's most skilled staff to perform that duty is essential if ODAR is to continue to produce quality decisions. Assigning decision making duties to attorneys whose primary duty now is to advise ALJs and draft decisions is obviously going to result in a decrease in decision drafting capacity. SSA now has the assets to hire an additional 200 attorneys to maintain sufficient decision drafting capacity and 100 additional technical staff to process the increased number of decisions. Even considering the cost of the promotions of current employees consistent with their new duties, the total expense is far less than that involved with hiring the massive number of ALJs and the staff that would otherwise be necessary to support the ALJs.

In addition to increasing the number of attorney adjudicators, small procedural adjustments would further enhance operational efficiency. Currently, Attorney Adjudicators may conduct pre-hearing conferences. Currently they can issue interrogatories to secure vocational and medical expert input. Often this is all that is required to perfect the record and allow for a fully favorable decision. While written interrogatories significantly expand the number of cases for which Attorney Adjudicators can issue fully favorable decisions, they can be cumbersome and time consuming. ODAR should authorize the attendance of medical and vocational experts

at the pre-hearing conference thereby increasing decisional accuracy while decreasing processing time.

If the current Attorney Adjudicator Program is expanded as detailed above, ODAR attorneys could dispose of 100,000 fully favorable decisions and dismissals or more each year, while still spending nearly half their time drafting ALJ decisions and advising ALJs. These cases would not require the expenditure of any ALJ resources and would involve relatively little staff time. This would allow the Agency to commit a greater amount of its resources to the cases that required ALJ adjudication.

Let me also address the situation with OFEDRO. SSA has suspended further expansion of the Office of Federal Reviewing Officer (OFEDRO). OFEDRO has the potential to meaningfully help with the disability determination backlog if properly implemented. If SSA intends to resume hiring of new staff for FEDRO, it should give preference to the existing, high qualified and experienced staff at ODAR. In order to recruit the best and brightest staff for any expansion of the program, it should provide relocation allowances for all new hires recruited from elsewhere in the agency. This is a common recruitment tool in the Federal sector for highly qualified professionals and has been underused by the agency.

Mr. Chairman, I thank you for this opportunity to present NTEU's statement on this important matter. NTEU remains ready to work with the Ways and Means Committee to do all that we can to address the crisis in the disability determination backlog. Thank you.

Statement of Connie Plemmons

As project manager for the Disabled Homeless Project at Catholic Social Services of Baldwin County, I see the backlog of Social Security Disability cases first hand. The HUD grant I administer targets those who are backlogged in this system. These people are being told by the local SSA office they will get a determination within 90 days. Most of them believe they will get a check following those 90 days. They are devastated when they learn most cases are denied within 90 days, and then they must wait 18 months before they are scheduled for a hearing, then another 60 to 90 days before they get a check. My question is; what is the office of Determination doing? Why are these cases being denied by Determination just to be approved later by the ALJ? Has anyone looked at the cases denied at the Determination level and compared them to the cases approved at the ALJ level? Now I am being told that a new level of bureaucracy is being created with an "assumptive approval" being allowed by folks not employed by the Office of Determination and Appeals. How can people who are not trained to do this job do a better job than the folks at Determination? It is a classic case of waste on the part of the United States Government! My tax dollars must be better spent. Fix the system we have. Do not create more levels of bureaucracy to use resources that could be helping the folks that really need the help, the disabled folks!

Yours in service to God and our country,

Connie Plemmons

Statement of David Hansell

The New York State Office of Temporary and Disability Assistance (OTDA) is the state agency charged with helping New York's most vulnerable citizens achieve and maintain economic security through a range of work supports and services. OTDA's mission is multi-faceted: Assist those who are working but still struggling to meet basic needs; help work-capable individuals find and maintain employment; and assist those individuals with special needs for whom engaging in work is not a realistic priority. In order to fulfill this complex mission, OTDA oversees a range of programs that together weave a web of services and benefits to help families who often face more than one barrier to economic independence. These programs include employment and training services, food stamps, child support, home energy assistance, immigration services, public assistance, and SSI state supplementation. Additionally, OTDA includes the Division of Disability Determinations (DDD), the entity which serves as the Disability Determination Service in New York, and as such is responsible for making Federal disability determinations for claims filed with the Social Security Administration (SSA).

Since OTDA's oversight includes Federal disability determinations, the state's public assistance programs and SSI state supplementation, our perspective encompasses both our successful relationship with the Social Security Administration with regard to disability determinations and the troubling impact the SSA backlog has on New Yorkers generally, and on public assistance clients awaiting an appeal in particular.

DDD makes medical determinations on disability claims filed with the Social Security Administration (SSA) for Supplemental Security Income (SSI) and/or Social Security Disability Insurance (SSDI). The office collects all relevant medical evidence, and if needed, arranges for the claimant to have an examination to gather further information. A decision regarding medical eligibility is then made by DDD based on all of the evidence. These two programs represent the major economic support systems for the disabled. Additionally, individuals receiving Federal disability benefits also become eligible for essential health insurance through Medicare and Medicaid.

New York's DDD has long had a strong partnership with the SSA. We value this relationship greatly, as it is beneficial for our State, for the Federal government, and most importantly for disability claimants. In addition, the DDD has a solid performance record, meeting and often exceeding performance standards. Indeed, in addition to its standard responsibilities, DDD often takes on extra tasks such as working with SSA on pilot projects or helping other locations with reviewing their disability applications. For example, DDD is currently working to assist SSA with addressing the backlog through the Informal Remand Initiative. Under this initiative, the SSA sends certain cases to DDD to review in an effort to reduce the workload of the hearing officers.

Despite this initiative and other efforts by the SSA, the backlog in appeals cases persists, and the impact on New York is enormous, both at the individual and state government levels. Nearly 38,000 New Yorkers are waiting for an appeal. These individuals wait 21 months on average, a delay that in many cases results in a tragic loss of savings, home or even life for some of the chronically ill or critically disabled individuals seeking Federal benefits. Of this total, more than 17,000 individuals awaiting an appeal are on public assistance. This state-funded assistance is intended to be a short-term stopgap. However, because of the long waiting period resulting from the backlog, the state is providing months, sometimes more than a year of assistance for individuals who, but for the backlog, are truly the responsibility of the Federal government. More importantly, since the public assistance grant is typically less than the disability payment, the long delay means that disabled individuals are not getting the level of financial support to which they are entitled and need from the Federal government.

Moreover, the long wait places the state in a troubling position with regard to the Federal rules governing the Temporary Assistance for Needy Families (TANF) program. In cases where it has been determined by the TANF program that a public assistance client meets the Federal requirements for a disability and the appropriate application has been filed to receive SSI, New York exempts the individual from TANF work requirements, and provides him or her with public assistance for the duration of the disability determination. However, while the state exempts these individuals from TANF work requirements, Federal TANF rules do not. Therefore, while the state is providing income support to these individuals who are not able to engage in full-time work due to their disability, we are at risk of penalties for not meeting the required TANF work participation rate. This policy is extremely problematic for states attempting to balance the conflicting demands of these two Federal programs, and New York has been vigorously advocating for a common sense solution through changes in TANF regulation. However, not only is this problem not resolved, it has been exacerbated by the long waits for Federal assistance resulting from the enormous backlog.

By reducing the backlog in appeals and, therefore, reducing the waiting period, individuals whose appeals are accepted would begin timely receipt of appropriate Federal assistance, therefore freeing up scarce state public assistance dollars for other pressing needs. And for all who are waiting, reducing the waiting period would minimize the potential for loss, both financial and personal, and help these people on a path to economic stability.

Through the strong relationship between the DDD and SSA, OTDA recognizes that SSA is making a valiant effort to address the backlog despite a difficult combination of circumstances: years of insufficient funding, expansion of responsibilities, and an overstretched staff. This problem is due in part to an inadequate number of Administrative Law Judges (ALJ) and support staff at the SSA to conduct hearings and make determinations. However, despite repeated requests for increased funding to address this issue, the SSA has not received adequate funding

to address this staffing shortage. While Congress provided an increase in the FFY 2008 omnibus appropriations with language directing that the funds be used for this purpose, given the size of the backlog and the extensive wait times, more funding will certainly be needed. We urge Congress to provide the SSA with sufficient funding to address this backlog and prevent it from happening again in the future.

Given the increase in funding for FFY 2008, OTDA commends SSA for hiring 135 new ALJs this year. However, we join Senators Charles Schumer (D–NY) and Hillary Clinton (D–NY) in asking that the geographical allocation of the new ALJs be revisited. We understand from the testimony at the House Ways and Means Committee hearing on the disability backlog that the allocation was intended to help offices carrying a significant backlog caseload, yet only 10 of the 135 new ALJs were assigned in New York, and to only four of the State's nine hearing offices. Furthermore, no new ALJs were assigned to the Buffalo office, even though that office currently has one of the longest wait times in the country. The explanation that the allocation was made in this manner due to the lack of office space for additional staff is troubling. Thousands of individuals should not be made to wait for disability assistance to which they are entitled because SSA cannot find office space. OTDA urges SSA to reconsider the allocation plan, and stands ready to offer assistance in finding adequate office space if necessary.

In addition to increased funding and a reallocation of new ALJs, OTDA recommends that Congress consider changing the criteria currently used to determine eligibility at the time of the initial application. ALJs are allowed significantly more discretion in allowing cases at appeal, and DDD can often tell when a case that is being rejected based on the standard of evidence for the initial application will be approved upon appeal. If the DDD were allowed similar discretion to the ALJs, then the process would be expedited without impacting the integrity of the decision process, thereby reducing the number of cases going to appeal, and reducing the backlog.

For the millions of individuals dealing with disabilities, SSI and SSDI are the lifeline that helps them maintain economic stability and security. With sufficient funding and other changes, the SSA will be able to eliminate the backlog and provide this critical support to many vulnerable people eligible for and entitled to Federal disability assistance.

We hope hearings like this one will catalyze changes for the SSA. We thank you for the opportunity to comment on this important issue.

Statement of Harry Wanous

Committee Chairman Charles B. Rangel

Representative Rangel there is a Bill that seats in the House Ways and Means Committee it is, H.R. 2943. The Title of the Bill is (To amend titles II and XVI of the Social Security Act to provide for treatment of disability rated and certified as total by the Secretary of Veterans Affairs as disability for purposes of such titles.)

The short Title is (This Act may be cited as the 'Benefit Rating Acceleration for Veteran Entitlements Act of 2007'.) I think this is a very good Bill, I don't understand why we have two Government agencies wasting tax payers dollars fighting over the disability of veterans, even when the Secretary of Veterans Affairs has certified the veteran as totally Disabled.

I would hope that you could get this Bill H.R. 2943 out of Committee and back to the floor for a Vote; at last look on the internet this Bill has about 105 Cosponsors. I'm asking you as a veteran fighting with the Social Security system for Disability sense 2006 I had to finally hire a Lawyer to help me fight the system.

Harry Wanous

Statement of James F. Allsup

Chairman Rangel and Members of the Committee, thank you for considering my written testimony regarding the Social Security Administration's growing disability claim backlog.

My name is James Allsup and I am the founder, president and CEO of Allsup Inc., a Social Security Disability Insurance representation company that has helped more than 100,000 Americans with disabilities obtain Social Security disability benefits. For more than 30 years, I have experienced firsthand the challenges facing

the SSDI system. I am a former SSA claims and field representative. I left the agency and founded Allsup 24 years ago because I wanted to help people with disabilities collect the insurance benefits they paid for.

Our nation's disability insurance system is bursting at the seams. As Commissioner Astrue himself has stated, people are dying while awaiting an SSDI decision. I am not going to go into detail with the appalling backlog numbers and SSA staffing problems because this Committee already knows that the SSDI system is in crisis. Instead, I want to offer solutions.

Problems and Solutions

As many have acknowledged, the core problem is that the SSA does not have the staff or the technology to process the exploding number of SSDI applications. Hiring additional administrative law judges is a step in the right direction, but it is similar to using a Band-Aid to fix a leaking dam. It is simply too little, too late. The agency and this Committee can effectively attack this crisis on two fronts: (1) Move more quickly to embrace modern technology to move claimants through the process faster, and, (2) Form professional relationships with third-party SSDI representatives.

The SSA is moving forward on improving its technology initiatives. These include:

- **Appeals**—This new Web-based appeals process has supplanted the traditional paper appeals form. Allsup uses iAppeals for all its filings and we have seen faster processing times and improved accuracy. We strongly support the agency's proposal to require all claimants with representation to use iAppeals.
- **Electronic Records Express**—Secure, online submission of health records and claims evidence. Allsup uses this system to electronically submit evidence in support of cases pending at the hearing level. A typical claim that reaches the hearing level consists of 700 to 800 pages of medical evidence, Activities of Daily Living reports, denial letters and a multitude of Social Security Administration application documents. Everyone, especially the agency, benefits when third-party representatives are allowed to submit evidence electronically.

Other technological improvements would help reduce the overload of interactions between SSA and its claimants. An example would be giving third-party representatives access to claimant data to confirm application status. This would include forms that have been received, status of medical records and earnings information.

Allsup supports these and other initiatives to streamline the SSDI process. There is, however, no substitute for the hands-on, personal service that experienced third-party representatives offer. Even with the aforementioned technological advances, the application process is still unwieldy, complex and bewildering to the typical applicant. They still need help to properly complete the forms and a professional to guide them through the process.

I respectfully submit that the agency and this Committee should look for ways to increase awareness that professional assistance is available. Most SSDI applicants simply do not know help is available when they begin the process. By the time they reach the hearing level, about 84 percent of them have such help, but why not earlier in the process when it is so desperately needed and can reduce the number of people who end up in the hearing backlog? The effectiveness of third-party representatives has been proven in recent years.

We screen potential claimants to help ensure they will meet SSDI criteria, accumulate the necessary medical evidence, and we work closely with applicants to ensure that all documents are properly completed in a timely manner; furthermore, we provide our customers valuable program education and set realistic expectations. Hundreds of thousands of worker-hours would be saved if every application processed by the SSA was professionally documented before it was submitted.

We primarily work with claimants on the telephone and through the mail, so they do not have to travel to SSA field offices. We help pre-qualify claimants, we ensure eligibility and we develop accurate, comprehensive and factual records that save the agency many hours of claim development.

When an on-the-record hearing decision is warranted, we prepare all the evidence, write the legal brief and submit everything as a package to a judge for a decision. Our process is so effective that more than 70 percent of our claims that reach the hearing level are approved on the record, which cuts months from the waiting process for the disabled individual. About 85 percent of our claimants are awarded benefits without ever having to speak to an SSA employee. Furthermore, our call-center employees respond to tens of thousands of client inquiries about the status of their claims and the SSDI claims process each month. These are calls that would otherwise be handled by an overworked SSA staff.

Third-party representation would be even more effective if the SSA could electronically exchange claimant and case status information. The result would be fast-

er decisions, fewer backlogged claims, and certainly less personal and financial stress. In turn, the SSA could focus its overstretched resources on making application decisions.

I emphasize that this proposal is not a step toward privatization. It is simply a strategic partnership between the government and industry to meet the demands of the people with disabilities, today and well into the future. Allsup is on the front lines of the disability backlog challenge. Everyday, we work with individuals and their families who are desperate because they have fallen on hard economic times because a serious injury or illness is preventing them or a family member from working.

Chairman Rangel and Members of the Committee, I commend you for holding this hearing to raise awareness of these issues. Thank you again for the opportunity to provide testimony. I look forward to working with you to address this growing crisis.

Statement of Linda Fullerton

Members of the Committee:

My name is Linda Fullerton, and I currently receive Social Security Disability Insurance/SSDI and Medicare. I have an inoperable blood clot and tumor in my brain, and several incurable autoimmune disorders, which have caused me to become permanently disabled. Social Security Disability is an insurance policy which was created to be a safety net for millions of disabled Americans, and for many such as myself, it has become their only lifeline for survival. I have personally suffered from the affects of the severe hearing backlogs (Buffalo NY OHA), due to the enormous waiting time I endured, and I am very discouraged to know that conditions are continuing to decline. It is hard enough to deal with all the illnesses that I have, but then to have my entire life destroyed with the stroke of pen by a neglectful government employee, to whom I was just an SS number, is more than I can bear. So now, not only will I never recover from my illnesses, but now I also will never recover from the permanent financial devastation this has had on my life. I don't know how I am going to survive without some miracle like winning the lottery. I lost all my resources, life savings, and pension money during the 1½ year wait for my SSDI claim to be processed. I know first hand about the pain, financial, physical and emotional permanent devastation that the SSDI process can cause. My "American Dream" will never be realized. I have now been forced to live the "American Nightmare" for the rest of my days, because I happened to get sick, and file a claim for Social Security Disability benefits, a Federal insurance policy that I paid into for over 30 years. As a result, I will never be able to own a home, replace my lost financial resources, or replace my only means of transportation—a failing 11 year old car, and several other necessities that have now broken down. I currently live strictly on the inadequate, monthly SSDI check I receive, teetering on the brink of disaster. I am now doomed to spend what's left of my days here on earth, living in poverty, in addition to all my medical concerns. When things break down now, I cannot fix them and have to do without. I struggle every day to pay for food, medicines, healthcare, gas etc, and this totally unbearable, continuing source of stress and frustration, along with my worsening health conditions, is killing me. I did not ask for this fate and Congress and the SSA are totally responsible for it. My personal horror stories can be found on my websites at:

A Bump on the Head

http://www.frontiernet.net/lindaf1/bump.html

Social Security Disability Nightmare—It Could Happen to You!

http://www.frontiernet.net/lindaf1/
SOCIALSECURITYDISABILITYNIGHTMARE.html

Please know that in spite of my horrible experience, I am committed to joining forces with Congress and the SSA to fix the problems with this disability benefits program. I am devoting whatever is left of my life to make sure that nobody else will ever have to endure the hell that I have been forced to live with every day, and I hope you will join me in that quest. I also ask that you forgive the harshness in the tone at times of the this testimony, but I feel it is the only way to fully, and accurately describe the severity of this issue.

It is also important to note that I am also President/Co-Founder of the Social Security Disability Coalition, which is made up of thousands of Social Security Disability claimants and recipients from all over the nation, and our membership increases by the day. It was born out of my frustration with my own experience and

the notion that others may be dealing with that same frustration. Our group is a very accurate reflection and microcosm of what is happening to millions of Social Security Disability applicants all over this nation. If you visit the Social Security Disability Coalition website, or the Social Security Disability Reform petition website:

Social Security Disability Coalition—offering FREE information and support with a focus on SSD reform:

http://groups.msn.com/SocialSecurityDisabilityCoalition

Sign the Social Security Disability Reform Petition—read the horror stories from all over the nation:

http://www.petitiononline.com/SSDC/petition.html

You will read over five years worth of documented horror stories on our Messageboard (over 18,000 messages), and see thousands of signatures (over 7600) and comments on our petition, from disabled Americans whose lives have been harmed by the Social Security Disability program. You cannot leave without seeing the excruciating pain and suffering that these people have been put through, just because they happened to become disabled, and went to their government to file a claim for disability insurance that they worked so very hard to pay for. I must take this opportunity to tell you how very proud I am of all our members, many like myself, whose own lives have been devastated by a system that was set up to help them. In spite of that, they are using what very little time and energy they can muster due to their own disabilities, to try and help other disabled Americans survive the nightmare of applying for Social Security Disability benefits. There is no better example of the American spirit than these extraordinary people!

This organization fills a void that is greatly lacking in the SSDI/SSI claims process. While we never represent claimants in their individual cases, we are still able to provide them with much needed support and resources to guide them through the nebulous maze that is put in front of them when applying for SSDI/SSI benefits. In spite of the fact that the current system is not conducive to case worker, client interaction other than the initial claims intake, we continue to encourage claimants to communicate as much as possible with the SSA in order to speed up the claims process, making it easier on both the SSA caseworkers and the claimants themselves. As a result we are seeing claimants getting their cases approved on their own without the need for paid attorneys, and when additional assistance is needed we connect them with FREE resources to represent them should their cases advance to the hearing phase. We also provide them with information on how to access available assistance to help them cope with every aspect of their lives, that may be affected by the enormous wait time that it currently takes to process an SSDI/SSI claim. This includes how get Medicaid and other State/Federal programs, free/low cost healthcare, medicine, food, housing, financial assistance and too many other things to mention here. We educate them in the policies and regulations which govern the SSDI/SSI process and connect them to the answers for the many questions they have about how to access their disability benefits in a timely manner, relying heavily on the SSA website to provide this help. If we as disabled Americans, who are not able to work because we are so sick ourselves, can come together, using absolutely no money and with very little time or effort can accomplish these things, how is it that the SSA which is funded by our taxpayer dollars fails so miserably at this task?

Social Security Disability Claimants Face Death and Destruction When Applying for Benefits

I must report with great sadness and disgust, that there is blood and destruction on the hands of both the Social Security Administration and Congress. Both have been systematically killing and devastating the lives of the most vulnerable citizens of this nation for decades. I firmly believe (while nobody from the SSA or Congress will ever admit this), the Social Security Disability program is structured to be very complicated, confusing, and with as many obstacles as possible, in order to discourage and suck the life out of claimants, hoping that they "give up or die" trying to get their SSDI benefits!

During 2006 and 2007, at least 16,000 people fighting for Social Security Disability benefits died while awaiting a decision (CBS News Report—Disabled And Waiting—1/14/08). NOTE: This is more than 4 times the number of Americans killed in the Iraq war since it began.

During 2007, two-thirds of all applicants that were denied—nearly a million people—simply gave up after being turned down the first time (CBS News Report—Failing The Disabled—1/15/08)

In 2007 there were 2,190,196 new applications for SSDI benefits, and as of March 2008 there have already been 563,769 new applications.

As of April 2008 there are about 1,327,682 total pending cases and out of that number, 154,841 are veterans.

Nationally as of March 2008, over 64% of disability cases were denied at the initial stage of the disability claims process and it took from 104.5–114 days for claimants to receive the initial decision on their claim.

If a claimant appeals the initial denial asking for reconsideration, in all but 10 test states where the reconsideration phase has been removed, 86.5% of cases were denied and the waiting time for this phase was an average of 88.8 days.

As of April 2008 over 756,000 are waiting for hearings with an average wait time of 517 days

As of April 2008 over 286,000 (38%) hearings have already been pending over a year, and there are only 951 Administrative law judges (ALJ's), to hear all those cases, with an average of 738.02 cases pending per judge nationwide.

Source: Social Security Administration Reports

Two-thirds of those who appeal an initial rejection eventually win their cases (New York Times 12/10/07)

According to Health Affairs, The Policy Journal of the Health Sphere, 2 February 2, 2005: Disability causes nearly 50% of all mortgage foreclosures, compared to 2% caused by death.

MarketWatch: Illness and Injury As Contributors To Bankruptcy—February 2, 2005—found that: Over half of all personal U.S. bankruptcies, affecting over 2 million people annually, were attributable to illness or medical bills. Fifteen percent of all homeowners who had taken out a second or third mortgage cited medical expenses as a reason.

According to an insurance survey, conducted by the International Communications Research of Media, PA from Jan 10–14th 2007, on behalf of the National Association of Insurance Commissioners, researchers found 56% of U.S. workers would not be able pay their bills or meet expenses if they become disabled and unable to work. 71% of the 44% who had insurance, stated it was employer provided, so if they lose or change jobs they would no longer have disability coverage.

In April 2006, Parade Magazine in an article called "Is The American Dream Still Possible?"—published the results of their survey of more than 2200 Americans who earned between $30,000 and $99,000 per year, most stating that they were in reasonably good health. Sixty-six percent say they tend to live from paycheck to paycheck and nearly 83% say that there is not much money left to save after they have paid their bills.

Other Important Disability Statistics:

Nearly 1 in 2 (133 million) Americans live with a chronic condition.

20.6% of the population, about 54 million people, have some level of disability

9.9% (26 million people) have a severe disability

Note: The sources for these statistics and even more information is listed here:

http://www.mychronicillness.com/invisibleillness/statistics.htm

This is totally unacceptable and there is absolutely no excuse for this!

On behalf of the Social Security Disability Coalition, our response to Congress and the SSA for this situation is:

For everyone of us that starves, becomes homeless or loses our healthcare during this process—we blame you!

For everyone of us who files for bankruptcy during this process—we blame you!

For the unfathomable stress and suffering we have inflicted upon us during this process—we blame you!

For everyone of us who becomes more ill or worse yet dies during this process—we blame you!

Horrendous Customer Service On The Part Of SSA And Congress

A January 2007 Harris poll designed to evaluate the services provided by 13 Federal agencies, the public rated SSA at the bottom of the list and it was the only agency that received an overall negative evaluation. At one time in the recent past SSA was viewed by the public as one of the best Federal agencies in delivering service. Now after substantial staffing cuts, SSA is at the bottom of the public acceptance list. SSA Field Offices have lost over 2,500 positions since September 2005 and nearly 1,400 positions since September 2006. In 2007 SSA Field Offices are averaging about 850,000 visitors a week. Constituents visiting these local Field Offices continue to experience lengthy waiting times and the inability to obtain assistance via the telephone.

In our country you're required to have auto insurance in order to drive a car, you pay for health insurance, life insurance etc. If you filed a claim against any of these policies, after making your payments, and the company tried to deny you coverage when you had a legitimate claim, you would be doing whatever it took, even suing, to make them honor your policy. Yet the government is denying Americans their right to legitimate SSDI benefits everyday. This is outrageous when something this serious, and a matter of life and death, could be handled in such a poor manner. No other company or other government organization that I know of operates with such horrible results and turn around times. If any other corporation in this country did business like this, the majority of employees would be fired on the spot, and the company would be shut down within a year, yet these problems have been growing worse for decades.

Congressional offices as part of their functions, contact Social Security on behalf their constituents going through the SSDI process all the time, so you must be fully aware of all the problems, and are the ones who can help correct many of them. I find it incredulous that almost nothing has been done to initiate reform of the system that is wreaking havoc on the disabled citizens of this nation. While the majority of Americans were shocked at the reaction of the Federal government in the aftermath of hurricane Katrina, I wasn't surprised at all to see people dying in the streets. I shudder to think of how many more lives will be further ruined or lost, when the mentally and physically disabled victims of Katrina, other natural disasters, 9/11 victims who survived that day, but are now disabled and facing a similar fate, Veterans and the millions of other disabled Americans, encounter their next experience with the Federal government as they apply for their SSDI benefits. Little or nothing is heard about the service men and women who are injured and have to go through this nightmare to get their SSDI benefits, in addition to their struggles with the VA. Horrible treatment for those who give of their lives to protect our country. We are all being abused at the hands of our government, and to date our cries for help have continually been ignored. This apathetic, negligent attitude towards this crisis must be changed immediately. I am sad to say that you have failed us miserably, doing us a grave injustice in this area. It's time that you speak out about the crimes being committed against your constituents, and create the legislation needed to correct decades of abuse and corruption of this Federal program. Keep in mind a country is only as strong as the citizens that live there, yet the current Social Security Disability program preys on the weak, and decimates the disabled population even further.

Permanent Devastation Resulting From The SSDI Claims Process

Many are under the mistaken notion that once the SSDI benefit checks come, if one is finally approved for disability benefits, that everything will be OK. Often the devastation caused while waiting for SSDI claims to be processed leaves, permanent scars on one's health and financial wellbeing as it did for me. Unbearable stress, severe depression and suicidal thoughts are very common side effects of the disability claims process. I know this not only from my own personal experience, but from thousands of others that have contacted me to relate their personal experiences with the SSDI claims process. The abuse and worry that applicants are forced to endure, causes even further irreparable damage to their already compromised health, and is totally unacceptable. Due to the total devastation on their lives and health as a result of the SSDI claims process, use of the SS Ticket to Work program, or any future chance of possibly getting well enough to return to the workforce, even on a part time basis, becomes totally out of the question. Plus there is always the stress of having to deal with the SS Continuing Disability Review Process every few years, where the threat of having your benefits suddenly cut off constantly hangs over your head.

Call For Open Congressional/SSA Disability Hearings

I also find it deeply disturbing, and glaringly obvious, that at this latest hearing, and at past hearings over the last several years on this issue, that not one panelist/witness selected to appear, has been a disabled American, and one who has actually experienced this nightmare first hand. Something is severely wrong with that picture! You continually choose the same panelists from the legal, disability advocate community etc when there is any representation at all. Unless you personally have experienced these problems yourself, you cannot even begin to fully understand how devastating they really are, and therefore are not fully qualified to be the only authority on these issues. It is my understanding that there are also those within the SSA itself, who have wanted to testify for several years, and until recently have also been shut out of these hearings as well. In my opinion, it seems that you don't want to know what is really going on. If you don't actually have to face us in person, we remain a bunch of SS numbers whose lives can be destroyed without guilt. We are in fact, your mothers, fathers, sisters, brothers, children, grandparents, honorable veterans who have served this country, your friends and neighbors.

How you get an accurate handle on this situation without all the facts and possible witnesses who wish to testify in person? I find it hard to believe that these hearings cannot be scheduled in such a way that more appropriate witnesses could be chosen to testify. As an actual disabled American, I ask again as I have in the past, that in future Congressional hearings on these matters, that I be allowed to actively participate instead of being forced to always submit testimony in writing, after the main hearing takes place. I often question whether anybody even bothers to read the written testimony that is submitted when I see the results of hearings that were held in the past. I am more than willing to testify before Congress, to risk my very life for the opportunity, and I should be permitted to do so. I want a major role in the Social Security Disability reformation process, since any changes that occur have a direct major impact on my own wellbeing and that of our members. Who better to give feedback at these hearings than those who are actually disabled themselves, and directly affected by the program's inadequacies! A more concerted effort needs to be utilized when scheduling future hearings, factoring in enough time to allow panelists that better represent a wider cross section of disabled Americans, to testify in person. It seems to me if this is not done, that you are not getting a total reflection of the population affected, and are making decisions on inaccurate information, which can be very detrimental to those whom you have been elected to serve. I also propose that Congress immediately set up a task force made up of SSDI claimants, such as myself, who have actually gone through the SSDI system, that has major input and influence on the decision making process before any final decisions/changes/laws are instituted by the SSA Commissioner or Members of Congress. This is absolutely necessary, since nobody knows better about the flaws in the system and possible solutions to those problems, then those who are forced to go through it and deal with the consequences when it does not function properly.

There are three key reasons why the Social Security Disability program has been broken for decades, lack of proper funding for the SSA, apathy on the part of Congress and the SSA to fix the problems, and lack of oversight on all crucial parts of the program.

SSA Commissioner Improperly Allocates ALJ's For SS Disability Hearings

Recently SSA Commissioner Michael Astrue asked Congress to approve extra funding in order to hire additional ALJ's to try and reduce the severe SS Disability hearings backlogs across the country. While I agree that the SSA does need more funding, in fact way more than was actually finally given to them, there must be some major oversight by independent entities to ensure that these funds in fact are actually used/allocated appropriately. Here is a recent example that raises a red flag for such oversight and an immediate investigation. At the link below you will find a spreadsheet that shows the locations where the newly acquired ALJ announced by the SSA Commissioner have been allocated

As of March 2008:

It takes 669 days (nearly two years) for the average Western New Yorker to have their SSA case heard and processed in the Buffalo Hearing Office. This office is the worst in NY State for SS Disability hearing backlogs and out of 145 hearing offices nationwide, Buffalo ranks at 126, as one of the worst processing times in the country.

It ranks at 111 out of 145 hearing offices, at 47%, for the number of SSA hearings SSA cases in the Buffalo Hearing Office have been pending for over a year, among the highest percentages in the country.

Administrative Law Judges in Buffalo have some of the largest caseloads in the country, with an average of 895 cases pending before each judge.

Source: Compiled from various SSA reports March 2008

Commissioner Astrue used the Argument that there was not enough office space in the Buffalo hearing office but that was immediately refuted by Congressman Brian Higgins:

Congressman Higgins Says Lack of Space Is Poor Argument for Staffing Shortfalls in Local Social Security Disability Office—4/24/08

http://higgins.house.gov/newsroom.asp?ARTICLE3116=7715

"If the problem is office space, I would be happy to find them available space in downtown Buffalo tomorrow," Higgins added, pointing out that according to a Militello Realty report on downtown Buffalo property, as of January 779,228 square feet of Class A office space was vacant in the immediate downtown area. Congressman Higgins noted that staffing shortages aren't exclusive to the Administrative Law Judges. Staffing at Western New York field offices have decreased substantially—by approximately 170 employees—over the past 25 years, even though the need for services has increased."

How many other states is this happening to? Where is the much needed oversight on this issue?

Severe under staffing of SSA workers at all levels of the program

Claimants waiting for weeks or months to get appointments, and hours to be seen by caseworkers at Social Security field offices

Extraordinary wait times between the different phases of the disability claims process

Very little or no communication between caseworkers and claimants throughout the disability claims process before decisions are made.

Employees being rude/insensitive, not returning calls, not willing to provide information to claimants or not having the knowledge to do so

Complaints of lost files and in some states, case files being purposely thrown in the trash rather than processed properly

Security Breaches—Complaints of having other claimants information improperly filed/mixed in where it doesn't belong and other even worse breaches

Fraud on the part of DDS/OHA offices, ALJ's, IME's—purposely manipulating or ignoring information provided to deny claims, or doctors stating that they gave medical exams to claimants that they never did.

Claimants being sent to doctors that are not trained properly, or have the proper credentials in the medical field for the illnesses which claimants are being sent to them for.

Complaints of lack of attention/ignoring—medical records provided and claimants concerns by Field Officers, IME doctors and ALJ's.

Employees greatly lacking in knowledge of and in some cases purposely violating Social Security and Federal Regulations (including Freedom of Information Act and SSD Pre-Hearing review process).

Claimants cannot get through on the phone to the local SS office or 800 number (trying for hours even days)

Claimants getting conflicting/erroneous information depending on whom they happen to talk to at Social Security—causing confusion for claimants and in some cases major problems including improper payments

Proper weight not being given to claimants treating physicians according to SSA Federal Regulations when making medical disability determinations on claims.

Complaints of ALJ's "bribing" claimants to give up part of their retro pay (agreeing to manipulation of disability eligibility dates) or they will not approve their claims

Poor/little coordination of information between the different departments and phases of the disability process

Complaints of backlogs at payment processing centers once claim is approved

Federal Quality Review process adding even more wait time to claims processing, increasing backlogs, no ability to follow up on claim in this phase

NOTE: These complaints refer to all phases of the SSDI claims process including local field offices, state Disability Determinations offices, CE/IME physicians, Office of Hearings and Appeals, the Social Security main office in MD (800 number).

States Of Denial—Federalize State DDS Offices

Since Social Security Disability is a Federal program, where you live should not affect your ability to obtain benefits. Sadly this is not the case. The only way to solve this inconsistency is to Federalize the State DDS's and we are in agreement with AFGE on this. The first problem that must be addressed, and major cause for the huge backlog of disability hearing claims, is the overwhelming denial rate at the initial DDS level of the claims process. If claims were processed properly at this stage of the process there would be no need for the claimant to appeal to the ALJ hearing phase in the first place, and that would be a huge factor in reducing the hearing backlogs. It seems that this fact has been greatly ignored.

The SSDI/SSI process is bogged down with tons of paperwork for both claimants and their treating physicians, and very little information is supplied by Social Security, as to the proper documentation needed to process a claim properly and swiftly. When you file a claim for benefits, you are not told that your illness must meet standards under the Disability Evaluation Under Social Security "Blue Book" listing of medical impairments, or about the Residual Functional Capacity standards that are used to determine how your disability prevents you from doing any sort of work in the national economy, or daily activities, when deciding whether or not you are disabled. In other words since the process is so nebulous from beginning to end, the deck is purposely stacked against a claimant from the very start. Many times when medical records are supplied by the claimant, they are lost or ignored.

Excerpts from GAO Report GAO–04–656—SSA Disability Decisions: More Effort Needed To Assess Consistency of Disability Decisions—Washington—July 2004 which can found at:

http://www.gao.gov/new.items/d04656.pdf

"Each year, about 2.5 million people file claims with SSA for disability benefits . . . About one-third of disability claims denied at the state level were appealed to the hearings level; of these, SSA's ALJ's have allowed over one-half, with annual allowance rates fluctuating between 58 percent and 72 percent since 1985. While it is appropriate that some appealed claims, such as those in which a claimant's impairment has worsened and prohibits work, be allowed benefits, representatives from SSA, the Congress, and interest groups have long been concerned that the high rate of claims allowed at the hearing level may indicate that the decision makers at the two levels are interpreting and applying SSA's criteria differently. If this is the case, adjudicators at the two levels may be making inconsistent decisions that result in similar cases receiving dissimilar decisions."

"Inconsistency in decisions may create several problems . . . SSA rulings are binding only on SSA adjudicators and do not have to be followed by the courts . . . Adjudicators currently follow a detailed set of policy and procedural guidelines, whereas ALJ's rely directly on statutes, regulations, and rulings for guidance in making disability decisions . . . If deserving claimants must appeal to the hearings level for benefits, this situation increases the burden on claimants, who must wait on average, almost a year for a hearing decision and frequently incur extra costs to pay for legal representation. . .SSA has good cause to focus on the consistency of decisions between adjudication levels. Incorrect denials at the initial level that are appealed increase both the time claimants must wait for decision and the cost of deciding cases. Incorrect denials that are not appealed may leave needy individuals without a financial or medical safety net. . .

What would be an incentive for states to deny Federal claims? Since many Social Security Disability claims are SSI or both SSI/SSDI combined claims and many states offer to supplement SSI payments at a higher benefit amount, therefore they want to keep as many off the rolls as possible so they do not have to pay out this supplement. Also since there is a different pay scale for government vs state employees who are often underpaid, lack training, are overworked, and must meet quotas of cases processed, the tendency is greater to rubber stamp denials to move it off their desk when a case need too much development. Thus the explanation for the fluctuation in denial/approval/backlog rates by state. Unfortunately there is very little if any training or oversight on the state DDS offices to make sure they are making the proper decisions on disability claims. This is why so many claimants appeal to the hearing level where a huge percentage of bad claims decisions are overturned and cases are finally approved. Anyone who doesn't see that a "Culture Of

Denial" has become a pervasive part of an SSDI claimants encounter with the SSA, is either totally out of touch with reality or is reacting evasively to the subject.

Social Security Disability Program Problems—Contributing Burden Factor on Medicaid/Social Service Programs For States

There seems to be a relationship, between SSDI claims processing issues/backlogs, and the need for claimants to also apply for state funded Medicaid/Social Service programs. Many are forced to file for Medicaid, food stamps and cash assistance, another horrendous process. Those who file for these programs while waiting to get SSDI benefits, in many states, have to pay back the state out of their meager benefit checks once approved. As a result they're often kept below the poverty level, almost never able to better themselves since they can't work, and now are forced to rely on both state and federally funded programs instead of just one of them. This practice should be eliminated.

Improper CE/IME Medical Exams Ordered By Social Security Result In Higher Rate Of Denials/Appeals

CE/IME examiners are paid a fee by Social Security for each person they see, so the more claimants they process, the more money they make. Often times they are caught saying they performed exams that they in fact never performed, or make mistakes, even false statements about claimants. Many times the DDS offices or ALJ's are sending claimants to doctors that have very limited knowledge of their specific health conditions, who are not specialists, or even the proper type of doctor, to be examining a claimant for the type of medical conditions that they have. Even though a claimant's treating physicians are supposed to be given greater weight in decision making, this is often not the case. These doctors see you once for a few minutes, and yet their opinion is given greater authority than a claimant's own treating physician who sees them in a much greater capacity? Something is way out of line with that reasoning, yet it happens every day. It therefore results in a waste of time, money and energy, for both the claimants and the SSA, when the claimant ends up appealing a denial based on these improper SSA ordered examinations.

Detrimental Regulations

There are some very detrimental, regulations that SSDI applicants are subject to as well, and are a great shock to them. Under Federal law, there's a five month benefit waiting period, and five months of back money withheld, which claimants will never see again. It was originally six months but Congress voted to reduce it to five. Apparently it is assumed that disabled Americans do not need that money. Studies have shown that most Americans have about two weeks of financial resources to live on. SSDI recipients must also wait another 24 months, in addition to the 5 month waiting period from disability date of eligibility (the date that SS determines that you were officially disabled) in order to qualify for Medicare benefits. Keep in mind that if you let any sort of health insurance policies lapse for too long, and don't maintain continuous health coverage, you may have a very difficult time getting a new insurance carrier, since they may hold your poor health against you, and consider many things as "pre-existing conditions" so you may not be covered for those illnesses. Congress expects a population who can no longer work, to go without five months of retro pay, have no health insurance, and wait several months to several years to have their disability claims processed. In my state when a healthy person loses their job, provides the necessary documents and files for Unemployment Insurance, their payments automatically start within a few weeks. It is blatantly obvious that those who find this to be acceptable standards are totally out of touch with reality and have no regard for human life.

Ticket To Work Program—Catch 22—Fear and Mistrust of the SSA

According to SSA disability guidelines: Social Security pays only for total disability. No benefits are payable for partial disability or for short-term disability. You have a valid claim if you have been disabled or are expected to be disabled for 12 consecutive months, or your condition will result in your death. Your condition must interfere with basic work-related activities for your claim to be considered. If your condition is severe but not at the same or equal level of severity as a medical condition on the list, then they must determine if it interferes with your ability to do the work you did previously. If it does not, your claim will be denied. If you cannot do the work you did in the past, the SSA looks to see if you are able to adjust to other work. They consider your medical conditions and your age, education, past work experience and any transferable skills you may have. If you cannot adjust to other work, your claim will be approved. If you can adjust to other work, your claim will be denied. Currently the SSA forces the disabled to go through years of abuse trying to prove that they can no longer work ANY job in the national economy due

to the severity of their illnesses in order to be approved for benefits. The resulting devastation on their lives, often totally eliminates the possibility of them ever getting well enough to ever return to the workforce, even on a part time basis, in order to utilize the SS Ticket to Work program. Yet ironically once they are approved they are allowed to earn up to $900 and still receive benefits. Confusing to say the least. Then sometimes weeks after they are finally approved for SSD/SSI benefits, after their health and finances have been totally destroyed beyond repair, they receive a "Ticket To Work" packet in the mail, another waste of SSA funds. A cruel joke to say the least and it is no wonder that they fear utilization of the Ticket to Work Program, and distrust the Federal Government! The Ticket to Work Program is often viewed as a carrot and stick it to the disabled approach. I recommend in addition to the current Ticket to Work Program, funding for the creation of an Interim (transitional) SSDI disability program for those who are chronically ill, but still may be able to work a few hours a week/month. They would apply for interim disability benefits to start and for every month they could not work they would get a full check. For any full month or portion of a month that they could work they would be paid the difference or nothing based on the amount of the SSDI benefit they would earn by not working that month. They would be eligible for full Medicare benefits from the onset. When their illnesses progressed to a point that working is no longer an option, full SSDI benefits would automatically kick in. This would continue to increase benefits for the SSA trust fund, since these part time workers would still be contributing to the fund.

Continuing Disability Review/CDR Process Must Be Changed

Many people suffer from conditions acquired at birth or chronic conditions that have NO cures and over time these diseases grow progressively worse with no hope of recovery or ever returning to the workforce. The threat of possible benefits cut off, and stress of a review by Social Security again is very detrimental to a recipients health. This factor needs to be taken into consideration when reforming the CDR process. In those cases total elimination of the tedious medical component of CDR's should be considered, only requiring verification of contact info, or a longer period of time between reviews such as 10–15 years rather then every 3–7 years, as is currently the case. This would save the SSA a great deal of time, money and paperwork which could then be used to get new claimants through the system faster.

Eliminate Need For Proposed Third Party Claims/Paid Legal Representation

First of all the SSDI claims process should be set up so there is very little need for cases to advance to the hearing and appeal stage since that is where the major backlog and wait time exists. I feel strongly that an SSDI claimant should not have to pay for legal representation to get benefits that they have already paid for with their taxes. I am also highly opposed to the possibility of a claimant having to pay a third party for assistance to file a claim at the onset. Congress must intervene immediately to prevent this from happening, and in fact change the law that the claimant has to pay for legal representation at all. This adds an additional financial burden to the claimant. The current SSDI claims process is set up to line the pockets of the legal system, as you are encouraged from the minute you apply for benefits to get a lawyer. The need of lawyers/reps to navigate the system and file claims, and the SSD cap on a lawyer's retro commission is also a disincentive to expeditious claim processing, since purposely delaying the claims process will cause the cap to max out—more money to the lawyer/rep for dragging their feet adding another cost burden to claimants. In other words the system is structured so that it is in a lawyer's best interest for your case to drag on since they get paid 25% of a claimant's retro pay up to $5300—the longer it takes the more they get. From the horror stories I hear from other claimants, many attorneys are definitely taking advantage of that situation. The SSA should instead provide claimants with access to FREE resources that can help in the process of filing SSDI claims and keep the legal community out of it.

Americans Most Sensitive Data in Jeopardy

The following article discusses the SSA employee work at home situation.

Concern Over Federal Times Article: Arbitrator Tells SSA To Restore Telework, Negotiate Changes—Federal Times—Courtney Mabeus—4/16/08

http://www.federaltimes.com/index.php?S=3482166

I am very concerned with the increased possibility of identity theft if SSA employees are allowed to take work home because they are too overloaded on their jobs. Employees should never be allowed to take this sensitive data home for any reason. Sensitive data has already been compromised at the VA, and this should not be allowed to happen ever again, especially jeopardizing our most vulnerable citizens to this very real and stressful possibility. I have personally caught the SSA in some major security breaches already, and this practice will only make those incidents even more common. Every effort must be made to properly secure this most sensitive information for the American people. In order to properly protect citizen's identities ALL sensitive data should only be able to be accessed on government secure systems at the job site only. This is obviously going to require more manpower and financial resources, and Congress must make sure that the SSA has every resource it needs to protect this data, at their disposal immediately.

Influx Of Improper SS Disability Claim Filings Due To State And Private Insurance Company Policies

There is a growing number of claims being filed by people who may not actually qualify for disability benefits under SSDI guidelines, but are being forced to file SSDI claims by their private disability and state disability carriers or risk not being eligible for benefits under those programs. Recently there was an article on this issue in the NY Times which can be found here:

Insurers Faulted As Overloading Social Security—NY Times—Mary Williams Walsh—4/1/08

http://www.nytimes.com/2008/04/01/business/01disabled.html

Congress and the SSA needs to immediately look into this issue and this practice needs to be stopped immediately as this greatly adds to the disability backlog problem.

Reinstate DCM

Currently, the most crucial part of a disability claim, the medical portion, is reviewed by a state DDS caseworker/adjudicator and medical doctor on their staff who never sees you, and in most cases never even communicates with you at all. Then they make a critical life changing decision as to whether or not they feel you are disabled based on the information that you and your doctors have provided. It is absolutely necessary for a claimant to be able to communicate with the decision maker and to be able to provide updated information on their medical conditions, especially before a decision is made on a claim. It is common sense, that proper communication at the initial level, would definitely result in a reduction of appeals at all further levels of a disability claim. The high decision reversal rate at the hearing (ALJ) level is concrete proof of that. It is recommended that the Disability Claims Manager (DCM) pilot, where DCMs were responsible for making both the entitlement and disability decisions for initial disability claims, be reinstated, and eventually extended to the entire country. With proper staffing to allow for communication between decision maker and claimant, this would definitely result in time and cost savings, for both the SSA and the claimants if this were reinstated.

Excerpts from GAO Report GAO–04–656—SSA Disability Decisions: More Effort Needed To Assess Consistency of Disability Decisions—Washington—July 2004 which can found at:

http://www.gao.gov/new.items/d04656.pdf

An appeal adds significantly to costs associated with making a decision. According to SSA's Performance and Accountability Report for fiscal year 2001, the average cost per claim for an initial DDS disability decision was about $583, while the average cost per claim of an ALJ decision was estimated at $2,157. . .An appeal also significantly increases the time required to reach a decision. According to SSA's Performance and Accountability Report for fiscal year 2003, the average number of days that claimants waited for an initial decision was 97 days, while the number of days they waited for an appealed decision was 344 days.

Changes/Proper Funding Necessary For SSA

SSA should not have to compete each year for funding with the Departments of Labor, HHS and Education which are more publicized and often popular programs. As stated in the previous testimony provided by Witlold Skierwczynski—President—

National Council Of Social Security Administration Field Operation Locals to this Committee on 4/23/08 it is recommended that:

Congress should enact off budget legislation including SSA administrative expenses with benefits which are already off budget. Congress should retain appropriations and oversight authority albeit unencumbered by artificial budget caps and scoring restrictions.

Congress should enact legislation requiring the Commissioner to submit the SSA appropriation request directly to Congress.

Congress should support the House Budget Committee recommendation to increase the SSA administrative budget by $240 million over the President's budget request.

Concern Regarding SSA's Future Movement Away From Personalized Customer Service

I totally disagree with the agency's goal of eliminating an SSA employee to assist with the filing of a claim. I am very concerned about recent changes that emphasize the use of the internet for filing Social Security Disability claims. In fact I always urge our members to file in person rather than use the internet to file their disability claims. Many disabled Americans do not have access to the internet or their disabilities prevent them from using it properly. This can result in improper filing of a claim and delay or result in a denial of benefits. Since we encourage our members to provide as much medical information as possible to the SSA at the initial filing of their claim in order to speed up the process, it is impossible to provide this information if a claimant chooses to use the internet instead. I agree with previous testimony provided by Witlold Skierwczynski—President—National Council Of Social Security Administration Field Operation Locals to this Committee on 4/23/08, that here are several flaws with this proposed movement as follows:

Programming flaws that do not correctly identify the "protected filing date/disability date of eligibility."

Identity and privacy concerns

Incorrect payments

High volume of errors, resulting in re-contacts.

Creation of a new backlog at Social Security

No review process of the public's accuracy in completing applications

I am very concerned about the loss of protected filing for internet claims and this should never be allowed. This could result in a major loss of much needed benefits which is not acceptable. Immediate efforts must be made to look into and correct this situation.

Lag earnings must also continue to be properly developed so that a claimant's wages can be easily added to the benefit computation at the initial interview and to make sure that proper payments are made to claimants right from the start. The encouragement of internet claims filing will make this almost impossible. This will cause a dramatic increase in improper payments, and unnecessary wasted time for both the claimants and SSA resources.

I am totally against the implementation of the Accept Allegation of Month of Entitlement—Effective September 2008. The majority of the general public, and especially Americans with disabling conditions, are in no way knowledgeable enough to properly make this life altering decision without full disclosure and human assistance. This again will cause many unnecessary under and over payments and could result in permanent harm to disability claimants.

The American people must always be given the option to file their claims using whatever method best suits their capabilities, and be ensured that the results will be accurate and in their best interest, no matter what option they choose. It must become mandatory that every internet claim submitted, must be fully reviewed and followed up by personal contact between an SSA employee and the claimant to ensure its total accuracy. Every effort must be made on the part of the SSA to continue provide personal customer service to the most vulnerable citizens of this nation. Anything less than that is unconscionable and totally unacceptable.

Unacceptable Office Closures

I am very discouraged by the number of SSA Office closures that I continually hear about. It is another example of poor customer service to the American people when the need for that service is only going to increase over time as the population ages. In fact a record number of offices were closed in 2007 and more closures are on the horizon. This puts more stress and strain on the health of disability applicants, and increased financial burden, when they have to travel several miles just to do business with Social Security. They often have to wait months for claim proc-

essing appointments, and have to stand in lines for hours as well when they can get to the nearest SS office at all. There is no good excuse for this. Where is the oversight?

I support the Social Security Customer Service Improvement Act, H.R. 5110, which was introduced by Representative Brian Higgins (D/NY), on January 24, 2008, which contains procedures that the SSA Commissioner must follow before closing an office. I urge Congress to quickly pass this proposed legislation and pass additional legislation putting a moratorium on all office closures, before more disabled Americans are harmed and inconvenienced.

I highly recommend that for the best, most efficient customer service to the American people, that ALL SSA operations be federalized, and that ALL phases of the Social Security Disability program, initial decisions, reconsiderations, hearings and appeals be moved to, and handled out, of the individual field offices throughout the country. I also recommend that more offices be opened to properly serve the public and to implement the changes properly.

The Nightmare Continues—Excerpts From Social Security Administration: Inadequate Administrative Funding Contributes to the Disability Claims Backlog Crisis and Service Delivery Challenges—Prepared by the National Council of Social Security Management Associations (NCSSMA) March 13, 2008

Due to budget constraints in recent years the amount of administrative funding the Social Security Administration (SSA) has received through the appropriations process has been significantly below the level necessary to keep up with the agency's workloads.

As a result, the backlog of unprocessed disability claims has grown to unprecedented levels and the system is now in a state of crisis. As the backlog grows, claimants face multi-year delays for hearings on their claims for benefits. The long wait for their day in court often leads to homelessness, lack of medical care and the loss of family and friends. And sadly, thousands die while waiting for a hearing.

The effects of the backlog also extend throughout the agency. As SSA works to address the crisis, the agency is forced to divert its limited resources away from its day-to-day operations in Field Offices and Payment Processing Centers in order to try to manage the disability backlog. SSA disability claims and hearings continue to grow and hearing processing times are at record highs. If SSA does not receive funding above the President's Budget Request for FY 2009, the hearings backlog will still be quite significant.

The 800 Number had a busy rate of 7.5% in FY 2007 and handled about 59 million calls through agents and automation. At the same time over 60 million phone calls are directed to SSA Field Offices each year. In FY 2006, 51% of callers who tried to reach a Field Office received a busy signal.

Staffing is at its lowest level in 35 years: Staffing at SSA will reach its lowest level since 1972, before SSI was established; yet, SSA today has about twice the number of beneficiaries it had in 1972. Since the beginning of Fiscal Year 2006, SSA Field Offices have lost nearly 1,800 Claims Representatives and over 460 Service Representatives. The Teleservice Centers have lost about 560 Teleservice Representatives. In Fiscal Year 2008 Field Offices will not be able to adequately address staffing losses. The Disability Determination Services (DDSs) have lost over 1,200 positions since the beginning of Fiscal Year 2006, as a result their staffing levels are down nearly 8%. The Program Center that handles disability actions (Office of Disability Operations) has about 750,000 actions pending. This compares to 511,000 actions pending at the beginning of FY 2007. The average amount of time it takes for a Benefit Authorizer to process a Post Eligibility case they are assigned as of the end of February 2008 is 327 days. For Claims Authorizers it is 378 days.

SSA's workloads continue to rise: Congress continues to add to SSA's workloads—for example, by assigning SSA responsibility for administering portions of Medicare Parts B and D, and conducting Social Security Number verifications and other immigration-related activities. However, SSA's administrative funding has not kept pace with the agency's increased responsibilities. 870,000 people on average visit SSA Field Offices each week. Since the beginning of the year, SSA Field Offices have been averaging about 950,000 visitors per week. In two separate weeks at the beginning of Calendar Year 2008, SSA offices set all time record highs for visitors. As of FY 2008 SSA has a backlog of 3,300 work years. This is expected to grow to 8,100 work years in FY 2009. This backlog includes hearing cases, overpayments and underpayments on cases, check problems, earnings record corrections and recomputation of benefit, Medicare enrollment actions and returning phone messages.

In Closing On Behalf Of The Social Security Disability Coalition:

The Social Security Disability program, which was originally set up to help us is currently failing miserably at this task, and in fact, in many cases it is causing devastating, irreversible harm to our health and financial wellbeing. We have contributed our hard earned money to this system hoping we would never need it until we were ready to retire. Where is the money going that has been mandatorily been taken from our paychecks every week? Why should we have to become homeless, bankrupt, starve, lose our healthcare coverage, suffer untold stress on top of our illnesses and even die trying to get our benefits? Why should we have to hire lawyers, wait years for hearings, go before administrative law judges and be treated like criminals on trial? Why have you ignored this crisis for so long, and done virtually nothing to reform it? We, the disabled citizens of this nation, have been forced to tackle a very daunting system and we challenge you to do the same, and correct these problems which have festered for decades. We ask that you please start taking care of the U.S. citizens living in this country first before the rest of the world, especially the sick and the dying, who trust you with their very lives and whom elected you into office. It is your duty as elected officials to serve all those that voted you into that office, and even those of us who didn't. When the next election comes around we will not forget those who have forgotten us. We may be disabled but we still have, and will use our right to vote. They say you can judge a country by how it treats its most vulnerable citizens. Based on current statistics, the USA should hang its head in shame! It is our hope, and our right as American citizens, to expect that you will come together as elected officials, and finally act swiftly to do what is proper to protect and serve us.

I not only have complaints, but also solutions, so I hope you will join me in my quest for total reform of this program. Thank you for your time and consideration.

Sincerely,

Linda Fullerton
President/Co-Founder—Social Security Disability Coalition
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585–225–3019/585–235–8412
PO Box 26378
Rochester NY 14626

Social Security Disability Coalition—offering FREE information and support with a focus on SSDI reform:

http://groups.msn.com/Social Security Disability Coalition

Sign the Social Security Disability Reform Petition—read the horror stories from all over the nation:

http://www.petitiononline.com/SSDC/petition.html

Please check out my website "A Bump On the Head" at:

http://www.frontiernet.net/lindaf1/bump.html

Social Security Disability Nightmare—It Could Happen To You!

http://www.frontiernet.net/lindaf1/SOCIALSECURITYDISABILITYNIGHTMARE.html

CBS Evening New With Katie Couric—Disabled And Waiting—1/14/08

http://www.cbsnews.com/stories/2008/01/14/cbsnews—investigates/main3712627.shtml

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Statement of the National Association of Disability Representatives

The National Association of Disability Representatives is a professional organization comprised of non-attorneys and attorneys who assist people in applying for disability income assistance from the Social Security Administration. Our members help individuals and their families navigate an often complex and lengthy process to demonstrate their eligibility for disability benefits. As advocates for claimants, we want to commend Chairman Rangel and all of the Committee Members who have demonstrated a keen interest in pushing for improvements in the SSA disability determination process, and especially in the unconscionable delays that are part of the current system.

Because NADR members are on the "front lines" helping persons with disabilities complete applications, claimants, gather and submit evidence, and attend Administrative Law Judge hearings with applicants, we see first-hand the serious toll that the long wait for decisions can take on people, most of whom are already experiencing significant life changes, traumas, and hardships. The average processing time for cases at the hearing level is now 535 days. Beyond this unconscionable hearing delay, claimants must again wait for a decision, and if successful, must wait still longer for actual payment of their claims. Those facing grave or terminal illnesses may not live to see the fiduciary promise they paid for each week in their paycheck from their Social Security taxes. Families who need care-givers or other assistance to provide necessary relief and support in helping their loved ones may have to hang on for years, trying to balance family needs without any help. This strains marriages, parent/child relationships, and impoverishes people at a time when their need is greatest.

As an illustration of the hardship real people have suffered as a result of the hearing backlog, following is the story of a claimant represented by a NADR member:

- David filed concurrent claims for Social Security Disability Insurance Benefits and Supplemental Security Income disability benefits on November 9, 2004, alleging onset of disability on June 15, 2004. Medical records indicated David suffered from diabetes mellitus, hypertension, hypotension, chronic anemia, arterial calcification of his left lower extremity and chronic diarrhea. The initial claim was denied on February 25, 2005. Upon reconsideration, the claim again was denied on June 24, 2005. An ALJ hearing was requested July 22, 2005. On March 13, 2008, nearly 3½ years after David filed his initial claim, a fully favorable decision was issued. Unfortunately, at that point David had been dead for almost a year and a half.

Other NADR members have reported the following examples of claimants who died while waiting for a hearing:

- Chiquita filed her claim on January 25, 2006. She requested a hearing on April 26, 2006. She died on March 22, 2007 while awaiting a hearing.
- Barry filed his claim on March 3, 2005. He requested a hearing on June 6, 2006. He died on April 27, 2007 while awaiting a hearing.
- Alex filed his claim on September 13, 2006. He requested a hearing on December 29, 2007. He died on January 17, 2008 while awaiting a hearing.

Amazingly, these stories are happening to individuals who are "insured" for disability, having paid their Social Security taxes, including those that fund SSA disability benefits. Most assume that these benefits will only be needed at retirement. Yet, when accidents or illness strike, people reasonably expect to receive the critical support that disability payments can offer. And, they most certainly expect to get it within a reasonable timeframe. Unfortunately, many Americans are not finding the government reliable in this arena.

Scope of Problem

The hearing level backlog has increased dramatically from the FY 1999 level of 311,968 cases, reaching 752,000 cases in FY 2008.

Cases Pending

2002: 468,262 requests for a hearing
2007: 717,000 (300,000 requests over a year old).
2008: 752,000

We applaud Congress' effort last year to address the backlog by appropriating, for the first time in 15 years, not just the President's budget request, but an additional $148 million for SSA administrative expenses. While this is an important first step, sustained increases in funding over several years are needed to get the backlog under control. The President has requested an additional $600 million for SSA's administrative expenses for FY 2009, bringing total funding to $10.327 billion. NADR believes that, at a minimum, SSA should be funded at the level of the President's request plus $240 million for integrity work. We recommend that Congress provide SSA with $11 billion in FY 2009 in order to truly have an impact on the disability backlog, while continuing to carry on other related administrative functions to serve beneficiaries and applicants.

That said, it will take more than additional funding to address the issues SSA faces as a result of the dwindling resources and increased workload it has sustained over the past decade.

NADR Supports Earlier Decisions by Expanding QDD, by Developing the Technology Necessary to Allow for Compassionate Allowances and by Prioritizing Backlog Cases for Quick Decisions

NADR believes SSA can expedite movement through the backlog by targeting certain claims that can be resolved quickly—i.e. that have a high likelihood for "on the record" decisions. These same criteria can also be applied to SSA's Quick Disability Determinations (QDD) and the Commissioner's proposed new screening mechanism for Compassionate Allowances so that cases with a likely outcome of disability are processed fastest. Prioritizing of select cases can be started nationally, or in two or three demonstration projects that target areas with both "medium" and "high" backlogs.

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

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

(Age/Grid Issues)

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

2. Cases Denied Because the Claimant Did Not Meet the Requirement of Being Impaired for 12 Consecutive Months (Durational Denial)

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

3. Back Cases with Multiple Spinal Surgical Interventions

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

4. Claimants with a Significant History of Mental Health Impairments

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

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

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

5. Improve Communication Between Representative and Administrative Law Judge

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

Conclusion

We appreciate the opportunity to present our views on ways to reduce the social security backlog. Our goal is to help our clients get the assistance they need in the most efficient way possible. We have a long way to go in transforming SSA's disability program into a more timely and responsive safety net, but your leadership and attention gives many of us reason to hope for improvements. We look forward to continuing to work with Congress and with SSA Commissioner Michael Astrue to assure that SSA is able to provide people with disabilities the benefits to which they are entitled in a timely fashion.

Statement of National Law Center on Homelessness & Poverty

This testimony is submitted on behalf of the National Law Center on Homelessness & Poverty and the National Policy and Advocacy Council on Homelessness. The National Law Center on Homelessness & Poverty (NLCHP) serves as the legal arm of the national movement to prevent and end homelessness. The National Policy and Advocacy Council on Homelessness is a grassroots, anti-poverty organization. NLCHP and NPACH work with legal services attorneys, healthcare providers, case managers, and social service and housing agencies that assist homeless persons with disabilities who are seeking Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) benefits.

Serving homeless people poses a tremendous challenge to the already overburdened SSI/SSDI applications process. However, relatively small regulatory changes combined with effective outreach would grant a lifeline to America's most vulnerable citizens while freeing up SSA resources to focus on the remainder of the SSI/SSDI application backlog.

Each year more than three million Americans experience homelessness. Many homeless people are likely eligible for SSI or SSDI. According to the largest and most rigorous Federal study of homelessness ever done in the U.S.—the National Survey of Homeless Assistance Providers and Clients (NSHAPC)—at least 32% of the overall homeless population had serious mental health problems and at least 46% had one or more chronic health conditions, such as AIDS, cancer, or lost limbs.

At present, the SSI/SSDI application process has largely failed these people.

According to the NSHAPC data, only 11% of homeless people received SSI benefits, compared to 29% of formerly homeless people surveyed. Further, two local studies found that only 10–15% of homeless applicants were initially approved, compared to 37% of all applicants nationwide. Lengthy appeals, costly in time and dollars, follow initial denials.

Barriers that prevent eligible homeless persons from receiving SSI and SSDI benefits include: (i) difficulty staying in contact with SSA; (ii) difficulty in retaining or

researching necessary documents and information; (iii) lack of an approved, state-issued ID to allow access to SSA offices in Federal buildings or to prove identity, and (iv) difficulty obtaining medical records for purposes of documenting a disability. Even when medical records are available, they may not be from the limited types of healthcare professionals recognized as "acceptable medical sources" by SSA for the purpose of providing primary medical evidence of a disability.

SSI and SSDI benefits provide more than a source of income for homeless people. In many states, receipt of SSI benefits provides access to medical care through the Medicaid program. In many communities, receipt of benefits also makes clients eligible for supportive housing, providing a permanent route out of homelessness.

We believe that SSA has the authority to make regulatory changes and issue directives that could significantly address some or all of these barriers. Some SSA offices have implemented processes that have helped improve access for homeless people. However, these steps are incomplete, apply only in a few places and allow significant barriers to remain.

An examination of these points shows that positive changes are possible.

Barriers and Problems that Contribute to SSA Backlog

Homeless applicants for SSI and/or SSDI face many bureaucratic barriers that are extraordinarily difficult to overcome. These barriers needlessly contribute to denials and lengthy appeals that continue while an individual remains living on the street without any source of income.

Studies have shown that persons with disabilities who are homeless for long periods of time often consume disproportionate amounts of emergency medical services, law enforcement resources, and social service agency time and attention.

Homeless applicants for SSI/SSDI also may have difficulty navigating the complex SSI/SSDI application process, resulting in incomplete or technically incorrect applications, filing repeatedly and failing to follow appeals processes in ways that allow accurate outcomes. Lack of an address also makes it difficult for SSA offices to follow-up with clients to obtain additional information.

These injuries are compounded when the homeless applicant is left with no access to the services or housing that could help end homelessness for the individual and long-term homelessness for states and communities. The record is rife with stories of otherwise eligible SSI/SSDI applicants, faced with delays that may last from 1–3 years, simply succumbing to worsened or terminal health conditions.

In short, the current process is a systemic and personal disaster—a disaster made all the worse because it is avoidable.

Over the years, community providers, homeless advocates, and those focused specifically on assisting homeless individuals through the SSI/SSDI process have developed an intimate familiarity with the problems in the system and in so doing have identified an array of potential solutions.

(1) *SSI/SSDI application procedures fail to recognize unique needs of different target populations.* The SSI/SSDI application process presumes that communication by mail is a sufficient means of notifying applicants of appointments, requests for information and their progress through the system. Homeless applicants along with those marginally or transiently housed are thus left unserved.

Applicants are expected to provide comprehensive and complete non-medical or non-disability information as well as medical histories. But roughly half of SSI/SSDI applicants allege a mental impairment. This impairment by its very nature complicates the document collection and retention process.

A few local programs have succeeded in addressing some of these barriers. A cooperative program between SSA and the Massachusetts' Disability Determination Services ensures that homeless applications are "flagged" and referred to a special team that processes homeless applications. Creation of this special unit has resulted in increased approvals of homeless applications.

Through demonstration projects such as the Baltimore SSI Outreach Project and the SSA funded HOPE grants, SSA recognized the need to provide greater assistance to homeless individuals. These demonstration projects have been successful in improving the quality of the applications submitted to SSA and improving results for applicants. Unfortunately, however, these programs' processes have not been integrated nationally into SSA's instructions to their field offices, and as a result of the end of the demonstration projects, funding has largely stopped for these community providers. What is needed is funding not for demonstration projects but rather for changed institutionalized processes.

Recommendation:

Require SSA to form partnerships and to establish flexible processes nationally for the populations applying for SSI/SSDI who require special assistance to navigate

the process. Require SSA to work with State Disability Determination Services offices to establish teams that will specialize in serving the mixed populations of applicants who need additional help and services. These specialists could work collaboratively with community groups to ensure the kinds of collaboration needed to process claims efficiently and accurately on initial application.

Require SSA to report housing status along with data already reported on the applicant population and outcomes (included in SSA homelessness plan and not yet done).

(2) ***SSA offices are not able to maintain field representative staff, making it harder to reach homeless persons with disabilities.*** As the demand on SSA has increased and staffing has decreased, many SSA offices no longer have field representatives. These staff were able to go out in the community to assist the populations of individuals, such as homeless adults, to apply for benefits. In addition, these representatives often formed collaborative relationships with community providers who could assist with locating people and providing information. The reduction in field representative staffing has contributed to greater difficulty in processing claims for this very heterogeneous population.

Recommendation:

Restore hiring of field representatives to SSA offices.

(3) ***Photo identification required to access Federal buildings prevents homeless persons from getting to the SSA office.*** Many homeless adults lack photo IDs needed to enter Federal buildings. Although the application process per se does not require a photo ID, accessing the SSA office often does.

Recommendation:

Federal buildings with SSA offices should establish procedures for acceptance of alternative ID, such as a letter of introduction from a shelter or community service provider. A process under which people without ID can be escorted from a building entrance to an SSA office within should be implemented.

(4) ***Limits on communication with SSA other than by mail make it difficult to reach homeless applicants.*** As noted above, people without fixed address are not going to be served by the SSA policy of generally communicating by mail. But even for applicants who are willing to go to SSA offices (if they are allowed in), the reduced staffing in SSA offices means that staff are not readily available to answer questions. Waits to meet with staff in person are long. Rarely can one contact a claims representative by phone. As a general practice, applicants are not given the phone number for their claims representative. Rather, people are urged to contact a toll-free number at a different location where staff are often unfamiliar with the details of particular claims. Information provided through this service thus is often inaccurate.

Because of this poor communication, homeless applicants often do not know how and when to follow up and frequently receive a technical denial because of their lack of follow-through. Without an advocate to assist with applications, many homeless adults simply cannot navigate the process. Tenacious homeless applicants will frequently re-apply over and over again but because of their reliance on incorrect information and the barriers described herein their efforts remain futile and simply serve to clog the system.

Recommendation:

Require local SSA offices to provide phone contact information for claims representatives to applicants whom they assist. Provide phone information on the SSA website for supervisors and managers in these offices.

Staff the SSA local offices sufficiently so that long waits, communication only by mail can be avoided and so that partnerships with the community are fostered and established on an ongoing basis.

(5) ***Documentation for non-medical criteria is difficult for homeless persons to obtain***. The application process with SSA is dependent on an applicant's ability to provide necessary documentation such as birth certificates, immigration papers, any and all documentation of any assets, etc. Most homeless adults do not have these papers and cannot afford even the minimal fees required to obtain copies of such papers. Once again, this leads to technical denials, which means wasted time on the part of the applicant and wasted time and resources of the SSA staff—waste that contributes to backlogs.

Recommendation:

Provide SSA with the ability to access birth certificates and other needed documents without cost to the applicant, especially for individuals in dire need such as homeless applicants.

(6) ***Cognitive impairments may make it more difficult for homeless persons to complete the application process***. Homeless applicants often have serious mental health problems and other health issues that may impair their ability to think clearly and to provide clear and comprehensive medical information. Information that may exist is missed without anyone to ask for it and obtain it. Critical aspects of disability such as histories of trauma, histories of brain damage, and learning problems are often missed as the applicant is unaware or does not know how to describe such problems in a way that doesn't feel demeaning or stigmatizing. Often, a person with these problems has simply adapted to them and, therefore, is not able to report them in a useful way for the disability determination process.

Recommendation:

Encourage SSA to develop a culture whereby the agency is part of a community network and is seen as receptive to suggestions and requests from those who are assisting applicants.

Fully fund the low-cost programs that collaborate with SSA to help homeless applicants through the process. Outreach programs such as HOPE and the highly successful SOAR initiative have shown promise in developing procedures wherein case workers can help applicants assemble the requisite documentation and present the material in a form acceptable to DDS staff. SOAR trained sites have increased rates of initial approval for homeless applicants to an average of 62%. Technical denials and the need for appeals are reduced when homeless people are helped through the system and into housing. SSA also benefits as this most challenging segment of their client population is removed from the backlog.

(7) ***Sporadic, incomplete, transient treatment histories*** make it difficult to obtain medical records. Many homeless applicants have not had consistent treatment for their medical problems. Emergency room visits are common; notes from these visits are cursory. Serious and ongoing health problems are treated on an acute basis only. Putting together a true picture of impact on functioning and ability to work is extraordinarily challenging and beyond the means of already overtaxed SSA staff.

Many communities do not provide regular access to physicians and/or psychologists who are viewed as the only acceptable medical sources for diagnostic information for most health problems. Nurse practitioners, physicians' assistants, and social workers are often the main providers of treatment and yet are considered collateral sources who cannot provide diagnoses. In most public care settings, individuals spend very little time with physicians. Yet, physicians are the professionals asked to provide comprehensive information about applicants.

Recommendation:

Expand the list of acceptable medical sources for applicants identified as homeless to include nurse practitioners, physicians' assistants, and licensed clinical social workers. These are the staff who provide much of the care to uninsured individuals in physical health and mental health settings. In many rural settings, these are the only healthcare providers available to low-income and homeless people.

(8) ***Reliance on consultative examinations results in underreporting of disabilities.*** In the absence of comprehensive medical histories from an acceptable medical source, consultative exams are scheduled with physicians and/or psychologists who contract with DDSs to complete such evaluations. Because notification for these appointments is by mail, homeless applicants often miss their examination. This lack of follow through has been identified as the principal cause of technical denials for homeless applicants.

In addition, people who go to these evaluations often deny their mental health problems or do not recognize them as such and, therefore, do not discuss their impact. The examinations are often cursory. They are always costly.

In some communities, access to a consultant is extraordinarily limited. For example, in parts of Montana, applicants must travel 70 miles to receive a consultative examination—clearly a challenge for homeless applicants.

Recommendation:

To reduce the need for consultative examinations, SSA should expand the list of acceptable medical sources for applicants identified as homeless to include nurse practitioners, physicians' assistants, and licensed clinical social workers. SSA also should ensure current medical providers are contacted and all records obtained prior to scheduling a consultative exam. Most homeless applicants have complex histories that are unlikely to be adequately presented to a complete stranger in the brief amount of time allotted to a consultative examination. National licensing criteria could be established for this purpose with the support of both the newly eligible medical sources and traditional medical sources who would benefit from having

those in need enrolled in Medicare and Medicaid programs rather than receiving costly uninsured care in emergency rooms.

Additionally, SSA should encourage state Disability Determination Services to expand their consultative evaluators' list to include programs and physicians that serve people who are homeless, e.g., Health Care for the Homeless clinics and Federally Qualified Health Centers.

(9) ***"Everyone is denied two times and has to go to a hearing***." The high rates of denials of homeless applications leads many service providers to believe the process is futile and discourages some groups from assisting homeless clients to apply for SSI/SSDI benefits. Lack of awareness by SSA representatives of how homelessness impacts disabilities further exacerbates the problem.

Recommendation:

SSA should involve community service providers in the training of SSA claims representatives and DDS claims examiners about specialty issues and populations who are applicants. For example, homeless advocates or service providers should provide training on the demographics of homelessness, and the impact of homelessness on substance use and co-occurring disorders, HIV/AIDS, and developmental disabilities.

(10) ***Lack of understanding of disability determination process by community service providers impairs their ability to assist homeless applicants in preparing applications***. Despite SSA's provision of ongoing training, many service providers are not knowledgeable about the requirements that a person must meet to be eligible for SSI/SSDI. Therefore, the information that SSA and the DDS need to process claims may not be provided to those agencies. For many social service agencies, translating the collection of information in a client's case file into what SSA and DDS need can be daunting.

Recommendation:

As discussed above, SSA should be enabled to hire specialists to work collaboratively with community groups to ensure the kinds of collaboration needed to process claims efficiently and accurately on initial application.

SSA should also form partnerships and establish flexible processes nationally for the populations applying for SSI/SSDI who require special assistance to navigate the process.

Additionally, SSA should update their Plan on Homelessness, a document that has not been reviewed since 2002. The revised plan should include procedures for identifying and including key homeless agencies and their representatives in efforts to implement the updated and revised plan.

(11) ***Inherent disconnect in the disability determination process between information required to make a disability determination and the information normally contained in medical records.*** In general, the information provided to make disability determinations is in the form of medical records. The purpose of medical records is to assess symptoms, provide a diagnosis, and prescribe treatment. Rarely do these records contain the functional impairment information that is part of the disability determination process, especially for people with mental impairments. Additional information is often needed to answer the questions in this process and may not be available without additional work on the part of community providers

Recommendation:

SSA should bring together a workgroup to develop strategies to address this inherent disconnect in the process. Such a workgroup should include direct service providers, community clinicians, professional school representatives (e.g., medical and other graduate schools), medical records department representatives and others who are involved in compiling the information needed to address the SSA disability criteria.

The solutions outlined here will take time, effort and in many cases additional Federal investments. However, the payoff in reducing the SSI/SSDI backlog and the ensuing human toll will ultimately reduce costs in cities and states that currently must cope with people who are eligible SSI/SSDI applicants living without assistance for their disabling conditions. Homeless people with disabling conditions consume an enormous and disproportionate share of local healthcare and public safety resources.

Beyond the fiscal argument lies the moral imperative of providing concrete steps to end homelessness in the United States. Any examination of reforms to the SSI/SSDI application process should include improvements to address the barriers presented above. As advocates working to eliminate homelessness in America we are

committed to working with Congress and all relevant agencies to refine and implement these ideas.

Statement of the Service Employees International Union

Dear Chairman Rangel and Members of the Committee: On behalf of our Members, the Service Employees International Union (SEIU) Local 1000 urges the esteemed Members of the House Ways and Means Committee to increase funding to reduce the backlog in disability claims that are determined at the Disability Determination Services Division (DDSD) operating under the Social Security Administration. While we commend Commissioner Astrue's hiring of 144 Administrative Law Judges at the hearings level, resources need to be directed to the earlier levels of the determinations process. Commissioner Michael Astrue admits that they are working with the lowest staffing levels in over thirty years. To process claims effectively with a decreased number of staff is especially untenable in California, where we process 10 percent of the nation's claims. Thus, the workloads at the branches of the Disability Determinations Service Division (DDSD) are at an unprecedented high, and the department expects another increase in disability claims as baby boomers begin to reach retirement and disability-prone age. SEIU Local 1000 represents over 1,400 Disability Determination Service workers in 8 offices across the state. Our members in these offices deeply believe in the service they provide. They know that receiving SSI and SSDI is often a life or death situation. Yet the Department continues to focus on the number of closures of cases, not quality. On more than one occasion, analysts have been told by their managers that they "are not social workers," and that "the priority is closing cases." Instead, the workers believe, the priority should be accurate and compassionate disability determinations. Nor do they have the tools to process claims efficiently. In California, for example, they have fewer physicians to refer claimants to than they did in the past. Program technicians in several DDSD branches statewide have informed us of having to schedule appointments for people into the next year. They also don't have enough in-house medical consultants to refer psychiatric cases to. As a result, cases are farmed out to other states, thereby lengthening the processing time of cases. Furthermore, the fairly recent implementation of the electronic claims processing system (eDIB) is grossly unpredictable and unreliable. Many support staff haven't been given the equipment necessary to complete their work in a paperless environment (i.e., scanners, computer screens, etc). A report generated by the California DDSD showed that between May 3 and September 17 of this year, the system incurred slow downs, complete shut downs, and other problems totaling hundreds of hours. Yet, analysts are forced by their managers to process the same amount of cases they would in a regular eight hour day. The caseload is so high at the California DDSD offices that an alarming number DDSD workers have gone on leave due to stress, work related injuries or have had nervous breakdowns. Yet when a worker is out sick, it is the Department's policy to still assign those person cases, which then go untouched for days. The policy is absurd because it is impossible for individuals out on sick leave to physically process claims and to ask those employees recovering from an illness to perform work assigned to them during their leave. DDSD workers speak to claimants on a daily basis. They talk to claimants—veterans, the elderly, and the parents of disabled children who struggle to make ends meet while they wait for a decision on their claim. We've seen DDSD workers work through their lunch hours and breaks. We've seen them come in early and leave late because they took the time to carefully review people's claims. Yet, they are facing pressure to close cases as quickly as possible. The SSA plans to hire more appeals judges, but they also need to hire more field office staff. Increased staff in the field offices could reduce the number of appealed decisions reversed. We urge you to increase funding to California to address the disability backlog at the early stages of the disability process and protect thousands of individuals who have no other means of income. If you have any questions about the disability backlog in California or this letter, please contact Joanna Gin at (916) 554–1231. Thank you.

Statement of the American Civil Liberties Union

The American Civil Liberties Union ("ACLU") commends the House Ways and Means Committee ("Committee") for holding a hearing on the Backlog of Social Security Disability Claims and appreciates the opportunity to submit testimony for the

record. The current Social Security disability claims backlog is both unreasonable and violates due process. At a time when the Social Security Administration ("SSA") is struggling to fulfill one of its principal functions of administering disability claims, Congress is now seriously considering imposing a new radical duty on SSA—the checking and verification of all workers in the U.S. Two bills pending in the House of Representatives—Secure America Through Enforcement and Verification Act of 2007 ("SAVE" Act, H.R. 4088) and the New Employee Verification Act of 2008 (H.R. 5515)—would impose a mandatory electronic employment verification system ("EEVS") on all employers and would place that verification duty squarely on the SSA. There is no doubt that the imposition of such a sweeping national mandate would exacerbate the already unreasonable delays in processing claims for Social Security disability benefits under Title II of the Social Security Act, 42 U.S.C. §§ 401, et seq., and the Supplemental Security Income Program, Title XVI of the Social Security Act, 42 U.S.C. §§ 1381, et seq. While the ACLU has serious privacy, due process, and civil rights concerns with these proposals, we urge the Committee to reject any type of mandatory EEVS proposal primarily in order to ensure that the SSA can focus on performing its historic and critical function of processing disability claims in a timely and fair manner.

The ACLU is a nonpartisan public interest organization dedicated to protecting the constitutional rights of individuals. The ACLU consists of more than half a million members, countless activists and supporters, several national projects, and 53 affiliates nationwide. The ACLU has been active in protecting the rights of people with disabilities for over 35 years. At the dawn of the disability rights movement the ACLU challenged the institutionalization of people with mental illness in cases in Alabama (*Wyatt* v. *Rodgers, Wyatt* v. *Stickney*), New York (*Willowbrook State School on Staten Island*, Index No. 72 Civ. 356, 357 (JRB) and Florida (*O'Connor* v. *Donaldson*, 422 U.S. 563 (1975)). In recent years the ACLU has participated in landmark litigation under the Americans with Disabilities Act ("ADA") including *Bragdon* v. *Abbott*, 524 U.S. 624 (1998); *Sutton* v. *United Airlines, Inc.*, 527 U.S. 471 (1999); *Chevron, USA, Inc.* v. *Echazabal*, 122 S. Ct. 2045 (2002). The ACLU has also played a national leadership role in drafting and negotiating the ADA of 1990 and the ADA Restoration Act of 2007.

Delays in processing and deciding Social Security disability claims have been held to violate the Due Process Clause of the Constitution and the Administrative Procedures Act ("APA"), 5 U.S.C. § 706(1).[1] Although the Supreme Court has rejected "the imposition of mandatory deadlines on agency adjudication of disputed disability claims," *Heckler* v. *Day*, 467 U.S. 104, 119 (1984) and prevented courts from imposing class-wide mandatory deadlines, courts retain other traditional equitable powers where delay is unreasonable and "where, in the particular case, the court finds that the interest of justice so require[s]."[2] As a general matter, courts have not definitively determined what length of time constitutes "unreasonable delay." However, the Supreme Court in Day left standing the undisputed trial court finding that the delays suffered by the named respondents were unreasonable,[3] which was not disputed by the Federal government.[4] In analyzing claims of unreasonable delay under the APA, the courts have noted that "delays that might be reasonable in the sphere of economic regulation are less tolerable when human health and welfare are at stake," and Social Security disability claims clearly involve "human health and welfare."[5]

The current delays in Social Security disability hearings and determinations are clearly unreasonable. The SSA's "data as of the end of January 2008 indicate that the number of cases waiting for a hearing decision was 751,767, leading to average

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[1] *See White, et al., v. Mathews,* 434 F.Supp. 1252 (D. Conn. 1977), aff'd 559 F.2d 852 (2d Cir. 1977), cert. denied 435 U.S. 908; *Caswell, et al. v. Califano,* 435 F Supp 127 (D. Me. 1977), *aff'd* (1st Cir.) 583 F. 2d 9.

[2] *Rivera* v. *Apfel*, 99 F.Supp.2d 358 (S.D.N.Y. 2000), vac't on other grounds, No. 00–6241, 2000 WL 33647061 (2d Cir. Nov 14, 2000) (citing Day, 467 U.S. at 119 n. 33, 104 S.Ct. 2249).

[3] Respondent Day was forced to wait 340 days between his hearing request and reconsideration determination; respondent Maurais waited 280 days between his hearing request and reconsideration determination. See Day, 467 U.S. at 107 nn. 6–7.

[4] *See Id.* 467 U.S. at 111 & n. 15. "[T]he District Court's declaratory judgment that the plaintiff class is entitled to relief is not at issue." Id. at 120, (Marshall, J., dissenting). *See also, Barnett* v. *Bowen*, 794 F.2d 17, 22 (2d Cir. 1986) ("The [Supreme] Court stated that the Secretary did not challenge the district court's determination that hearings must be held in a reasonable time or that the delays encountered by plaintiffs violated that requirement.").

[5] *Telecommunications Research and Action Ctr., et al.* v. *FCC*, 750 F.2d 70, 80 (citing with approval *Blankenship* v. *Secretary of HEW*, 587 F.2d 329 (6th Cir. 1978).

waiting times for FY 2008 of 499 days."[6] "In fiscal year 2006, 30 percent of [disability] claims processed at the hearings stage alone, took 600 days or more."[7] Between 2000 and 2006, Social Security disability claims processing times for hearing and decisions nearly doubled.[8] These delays are undoubtedly unreasonable and infringe on disability claimants' due process rights. According to a Governmental Accountability Office Report published in December 2007, approximately 60 million phone calls are placed to SSA Field Offices each year, and over half of these callers receive a busy signal.[9] The SSA's staffing is at its lowest level since 1972. Despite the shortage of personnel, the SSA is facing an extremely heavy workload with the recently added duties of processing Medicare Part D and prescription drug claims, as well as processing retirement claims for the baby boomer generation now hitting retirement age. Social Security retirement benefits claims are expected to increase by 13 million over the next decade.[10] As the SSA struggles to administer its primary duties of processing retirement and disability claims, Congress is now considering heaping yet another duty on the SSA—the verification of all workers in the U.S.

II. A Recipe for Exacerbating the Social Security Disability Processing Backlogs—Adding Mandatory Electronic Employment Verification to SSA's Mandate

Two bills (H.R. 4088, H.R. 5515) introduced in this Congress would impose a mandatory electronic employment verification system ("EEVS") on all employers in the U.S. Both mandatory EEVS bills propose that the SSA would play the critical function of checking and verifying work authorization for all workers in the U.S. This massive overhaul calls for sweeping changes to SSA's historic functions of processing disability and retirement benefits claims. The SSA has never performed the complicated task of verifying people's immigration status. The ACLU urges Congress to reject any type of mandatory EEVS proposal, in order to ensure that people with disabilities are not further harmed by the already unreasonable delays in Social Security disability claims processing.

In addition to having to screen everyone in the U.S. for work authorization, the SSA would be tasked with responding to the majority of erroneous EEVS findings, which would include fielding telephone calls and responding to in-person queries at SSA Field Offices. The SSA has testified numerous times before Congress that approximately 10 percent of the 240 million Wage and Tax Statements (W–2 forms) received annually by SSA do not match the names and Social Security numbers in SSA's records. According to the SSA's Office of Inspector General, the Social Security database has a 4.1 percent error rate. The vast majority of errors involve U.S. citizens. The mandatory EEVS proposal contained in the SAVE Act (H.R. 4088) would strip workers of Social Security credit for their earnings if they work more than one job during a year—unless they visit a SSA field office to prove with documentation that they, in fact, worked two jobs. This provision will apply to anyone who works more than one job, who changes jobs, or whose employer changes ownership in a calendar year.

By its own estimates, the SSA calculates that making EEVS mandatory would result in an additional 3.6 million visits or telephone calls to SSA field offices per year, which would result in 2,000 to 3,000 more work years for the SSA. Considering that currently over half of all telephone calls placed to SSA field offices do not get answered, moving to a mandatory EEVS regime would result in a practical shutdown of SSA field offices as SSA is swarmed by irate workers who are desperate to fix their Social Security records in order to work.

Furthermore, in April 2008 the Congressional Budget Office released a score report for the SAVE Act (H.R. 4088) and estimated that the SAVE Act would decrease Social Security trust fund revenue by more than $22 billion over 10 years by in-

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[6] The Disability Backlog at the Social Security Administration, Before the H. Comm. on Appropriations, Subcomm. on Labor, Health and Human Services, Education, and Related Agencies, 110th Cong., 2d Sess. (2008) (statement of Patrick P. O'Carroll, Jr., Inspector General, SSA), February 28, 2008. Available at http://www.ssa.gov/oig/communications/testimony__speeches/02282008testimony.htm.

[7] United States Government Accountability Office, *Social Security Disability, Better Planning, Management, and Evaluation Could Help Address Backlogs* at 3 (December 2007). ("GAO Management Report".) Available at http://www.gao.gov/new.items/d0840.pdf.

[8] *Id.* at 14.

[9] *Id.*

[10] The Disability Backlog at the Social Security Administration, Before the H. Committee on Appropriations, Subcommittee on Labor, Health and Human Services, Education, and Related Agencies, 110th Cong., 2d Sess. (2008) (statement of Richard Warsinskey, National Council of Social Security Management Associations, Inc.) Feb. 8, 2008. Available at http://socsecperspectives.blogspot.com/2008/02/social-security-advocacy-group-written.html.

creasing increase the number of employers that will pay workers in the cash economy, outside of the tax system.

III. Mandatory Electronic Employment Verification Poses Serious Privacy, Due Process, and Civil Rights Concerns.

In addition to crippling the SSA's ability to process disability claims, a mandatory employment verification system raises serious privacy, due process, and civil rights concerns. A mandatory EEVS would require the creation of a new data-exchange system between the SSA and the Department of Homeland Security ("DHS"). SSA would be required to share data with DHS based on discrepancies in SSA's database that have nothing to do with immigration status. According to SSA, reasons for errors in its database include clerical errors made by employers in completing their W–2's; the fact that workers might have used one name convention (such as a hyphenated name or multiple surnames) when applying for a Social Security card and a different one when applying for a job; or name changes due to marriage, divorce, religious conversion, or other reasons. The SSA database does not contain complete information about workers' immigration status, and the limited immigration status information that does exist in the database is not automatically updated when a worker's immigration status or work authorization status changes.

According to the Office of the Inspector General at SSA, by conservative estimates, at least 3.3 million non-citizen records in the SSA database contain incorrect citizenship status codes. A mandatory EEVS regime would result in the SSA erroneously divulging the private information of U.S. citizens (including their Social Security numbers) to the DHS because SSA is unable to accurately identify an individual's citizenship status via its databases. And the DHS has proven that it cannot be trusted with private information. The House Oversight and Government Reform Committee gave a "D" to the DHS in computer security for 2006 (up from an "F" for the previous three years). The DHS's failure to comply with Federal Information Security and Management Act standards since its inception demonstrates that it cannot be relied upon to make significant improvements in this area, which translates down the road into workers' private information being left vulnerable to hackers and other cyber-threats.

Furthermore, the information-sharing provisions set forth in both H.R. 4088 and H.R. 5515 do not require independent review, monitoring of disclosure, privacy protections, notice to workers that their private information or records have been disclosed, or recourse if overbroad information is sought or misused.

Finally, moving to a mandatory EEVS would subject many lawful workers to illegal employment discrimination on the basis of race and/or national origin. Some employers facing a mandate of verifying all workers will fire workers or refrain from hiring candidates on the basis of their race, surname, accent, or other proxies for unlawful discrimination.

The ACLU appreciates the opportunity to submit this written statement and urges the Committee to reject imposing the new radical duty of mandatory electronic employment verification on the SSA.

Statement of the Federal Managers Association

Chairman Rangel, Ranking Member McCrery and Members of the House Ways and Means Committee:

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

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

rity's disability determination process and in providing needed services to American customers.

As you are keenly aware, the Social Security Administration plays a vital role in serving over 160 million American workers and their families. Each month, SSA pays out benefits to 48 million beneficiaries. Over 7 million low-income Americans depend on the agency's Supplemental Security Income (SSI) program to stay afloat in a cost-inflating world, and nearly 7.2 million disabled Americans receive benefit payments through Social Security Disability Insurance (SSDI). At the February 28, 2008 hearing, Commissioner Astrue testified that SSA's productivity has increased over 15% since fiscal year 2001. Considering the magnitude of its mission, the Social Security Administration does a remarkable job administering critical programs.

In the Office of Disability Adjudication and Review, however, there currently exists a backlog of over 757,000 requests for a hearing. It already takes over 500 days to process a typical request for hearing and these delays tarnish SSA's otherwise strong record of service to the American public. At the beginning of 2002, SSA had 468,262 pending hearing requests. In six years, that number increased to over 750,000, despite the fact that dispositions are at record levels. Although clericals in hearing offices prepared 472,168 cases in FY07, claimants submitted almost 557,970 new requests during the same period. As such, the backlog of files simply awaiting preparation for review by an Administrative Law Judge (ALJ) at the close of January 2008 totaled 442,399 cases; an increase of 3,116 cases since the beginning of fiscal year 2007. Unless something is done to reverse this trend, the backlog could realistically reach one million by 2013 with the aging Baby Boom generation.

As managers and supervisors within ODAR, we are acutely aware of the impact these backlogs are having on our ability to deliver the level of service the American public deserves. We are here to confirm what you've heard several times before—that the ongoing lack of adequate staffing levels and resources have contributed to these backlogs. If these inadequacies continue, clearing the backlogs will be impossible and service delivery will continue to deteriorate.

We at FMA appreciate the attention the Committee is placing on examining the reasons for the backlog and addressing remedies to the problem. ODAR began fiscal year 2008 with 419,752 pending cases awaiting preparation for a hearing. In all likelihood, those cases will realistically wait at least one year before any action is even initiated to prepare the case for review and hearing in front of an Administrative Law Judge. In January, processing times across the nation ranged from a low of 343 days in the Boston region to a high of 649 days in the Chicago region. The American public deserves better service.

Within ODAR, production is measured by the number of dispositions completed per day by an Administrative Law Judge. In FY05 and FY06, this record-level figure was 2.2 dispositions per day per ALJ. A work year is approximately 250 work days, yielding a reasonable expectation that an ALJ can produce an estimated average of 550 dispositions a year given the current staffing limitations. At the end of January 2007, SSA employed 1,088 ALJs, resulting in a best case scenario of 557,150 dispositions for FY07, which is about the same number of new cases filed in a given year.

Earlier this year, hiring letters went out to 144 of the 175 administrative law judges SSA plans to employ this fiscal year. Already 136 judges have accepted. A total of 175 ALJs could translate into an additional 82,500 dispositions, but only if adequate staff is available to prepare the cases for review. While this is certainly a step in the right direction, Administrative Law Judges alone will not solve the problem. Without additional staffing, the current level of prepared work would be distributed among more judges, essentially resulting in the same dispositional outcome. Without adequate support staff to prepare cases for the judges, both existing and new, we will not achieve an increase in hearing dispositions—the only solution to reducing the backlog.

Undoubtedly, adequate clerical support is necessary to prepare cases for hearing. As it stands, hearing offices do not even have the staff to accommodate the current judges, let alone enough staff to process the nearly new 47,000 cases the Office of Disability Adjudication and Review receives each month. If receipts remained flat, the backlog will remain at over 700,000 cases, almost one-third of which are over 365 days old. At the beginning of FY07, ODAR had over 63,000 cases which were over 1,000 days old; a number which is both unacceptable to the agency as well as the American people it serves. Commissioner Astrue identified these cases as ODAR's number one priority and this backlog has since been eliminated. FMA applauds the Commissioner for his efforts; however, the 900 day old cases are now approaching this milestone. Currently, just fewer than 54,000 cases will be over 900 days old by the close of FY08. We are committed to working with the Commissioner as he tackles this challenge.

With the aging Baby Boom population, it is reasonable to assume that receipts will continue to out-pace dispositions. As the requests for hearings continue to rise, more is demanded from ODAR staff on all levels. The *bottom line* is that the hearing offices lack sufficient staff to process the work on hand much less even begin to work on new cases. It should be evident that under the best case scenario, the current staffing levels in ODAR barely maintain the status quo. That means that the backlog stays the same and processing times continue at an estimated 500 days.

The existing staff must make room for the new cases as they attempt to address the backlog. In recent years, however, budgetary constraints have forced the agency to hire additional Administrative Law Judges without providing adequate support staff to prepare the cases for hearing. We recognize that the Commissioner is trying to address the backlog by adding these judges; however, additional ALJs without the supporting clerical staff to prepare cases in a timely manner will not solve the problem. By following in his predecessor's footsteps, Commissioner Astrue will encounter the same problems—no matter how many new judges come on board, without clerical staff to prepare cases for them, the backlog cannot be addressed.

As previously stated, there is currently insufficient support staff to ensure optimal ALJ productivity and to handle the backlog. The accepted staff to ALJ ratio has been four to four and one half production staff per ALJ. However, this only ensures productivity necessary to handle *incoming* work, not the backlog. For offices with heavy backlogs, the four and one half to one standard is inadequate. Management and administrative employees should not be included in these figures, as they are not the employees performing the production work on hearing requests. And, of course, staffing shortfalls cannot be remedied without adequate funding.

The solutions to the backlog problem are simply adequate staffing levels and timely budgets which will allow us to address the pending cases. As of last month, the backlog was at 757,221 requests for a hearing. However, it is worth noting that the agency can reasonably process 400,000 cases at any given time. As such, the actual "backlog" is around 350,000 cases. As noted earlier, a trained, productive ALJ, with adequate support staff, should be able to produce about 550 dispositions in a given year. Approximately 1,000 additional ALJs and 5,000 additional support staff would allow ODAR to work down the backlog in one year while providing timely processing of new cases as they arrive. We at FMA recognize that these numbers present a large funding challenge for Congress.

To enable SSA to meet the goals set forth in Commissioner Astrue's testimony before your Subcommittee on February 28, 2008, Congress must approve a sufficient level of funding for the agency. The Continuing Resolution (CR) which was signed into law in March 2007 was severely inadequate to address both the staffing and backlog problem at SSA for fiscal year 2007, despite the meager increase SSA received above the fiscal year 2006 appropriation. Since 2001, Congress has appropriated, on average, $180 million less than the President has requested each year. The dollar value of this differential is equivalent to processing an additional 177,000 initial claims and 454,000 hearings. Over the last ten years (FY98—FY07), Congress has appropriated nearly $1.3 billion less than the President's request. Without a doubt, this has had a devastating effect on the services provided to the American public, as evidenced by the situation we are in today.

Recognizing the needs of SSA, Congress appropriated $150 million above the President's request for FY08 in an effort to bring down the backlog. Congress should be applauded for their commitment to serving the American people in this capacity. In fact, it is this increase which is allowing the agency to hire the additional 175 ALJs.

The President requested $10.327 billion for SSA's administrative expenses in FY09, only $100 million below Commissioner Astrue's request and six percent more than Congress appropriated this fiscal year. Furthermore, the House Budget Resolution (H.Con.Res. 312) provided for an additional $240 million for SSA's administrative expenses. We applaud these efforts.

To remedy the unprecedented backlog situation, Congress should *at a minimum* pass the President's 2009 budget request of $10.327 billion for SSA's Limitation on Administrative Expenses account. Under his budget, the agency would be able to process 85,000 more hearings in FY09 than in FY08. In FY06 and FY07, SSA replaced one worker for every three that retired. The President's budget will allow for a 1 replacement ratio.

In addition to having an immediate impact on the current backlog, underfunding the Social Security Administration will negatively impact every service area of the agency. Staffing at SSA will soon reach its lowest level since 1972; however, SSA today has nearly twice the number of beneficiaries it had in 1972. SSA officials estimate that more than 40% of its 65,000 employees will retire by 2014. Reversing this trend is a necessary step to reducing the backlog.

While the President's budget request for FY09 is a start, it is certainly not a cure all solution. Throwing money at the problem will not fully solve it without a well-trained, dedicated staff of Federal employees willing to avert a crisis in the coming years. We believe this is the workforce we have now, strengthened under the leadership of former-Commissioner Barnhart and Commissioner Astrue. By fully funding the President's request, we can continue this tradition.

In this era of shrinking budgets, SSA has attempted to maximize its use of scarce resources to provide the best possible service to the American public. The challenges faced by the managers and supervisors are not short term; they are a demographic reality. The same citizens putting stress on the Social Security trust fund because they are approaching retirement are also entering their most disability-prone years. ODAR is struggling to handle the current workload and will be hard pressed to manage the anticipated increase in hearing requests without additional staff.

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