

SOCIAL SECURITY DISABILITY BACKLOGS

HEARING
BEFORE THE
SUBCOMMITTEE ON SOCIAL SECURITY
OF THE
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
ONE HUNDRED TENTH CONGRESS
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SOCIAL SECURITY DISABILITY BACKLOGS

WEDNESDAY, FEBRUARY 14, 2007

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

The Subcommittee met, pursuant to notice, at 2:01 p.m., in room B-318, Rayburn House Office Building, the Honorable Michael McNulty (Chairman of the Subcommittee) presiding.

[The advisory announcing the hearing follows:]

ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON SOCIAL SECURITY
FOR IMMEDIATE RELEASE
February 07, 2007
SS-1

CONTACT: (202) 225-9263

Subcommittee on Social Security Chairman McNulty Announces a Hearing on Social Security Disability Backlogs

Congressman Michael R. McNulty (D-NY), Chairman, Subcommittee on Social Security of the Committee on Ways and Means, today announced that the Subcommittee will hold a hearing on the Social Security Administration (SSA) disability claims backlogs. **The hearing will take place on Wednesday, February 14, 2007, in room B-318 Rayburn House Office Building, beginning at 2:00 p.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 Subcommittee and for inclusion in the printed record of the hearing.

FOCUS OF THE HEARING:

The workload of SSA has grown significantly in recent years due to the aging of the population and new workloads such as those resulting from the Medicare Modernization Act (P.L. 108-173) and the Intelligence Reform and Terrorism Prevention Act (P.L. 108-458). However, due to funding constraints affecting SSA's administrative budget, these increasing workloads are not being effectively addressed. The agency has done much to employ scarce resources efficiently, re-engineering work processes and increasing overall productivity by more than 13 percent from 2001 to 2006. Even with these improvements, however, there is a growing concern about the effect of staffing declines and other resource shortages on service delivery to the American public.

Nowhere is the situation more grave than in the processing of applications for disability benefits. Due to large and increasing backlogs, severely disabled individuals can wait years to get the benefits they need for basic economic survival. At the end of fiscal year 2006, about 1.3 million people were awaiting a decision on their initial claim or appeal for Social Security or Supplemental Security Income (SSI) disability benefits.

The President's FY 2008 budget request would provide a modest funding increase. However, given rising fixed costs and other factors, this would not be sufficient to maintain current staffing levels, which had already declined by 8 percent from FY 2006 to FY 2007. Thus, the disability backlog is projected to increase under the President's FY 2008 budget to almost 1.4 million cases.

This hearing will focus on the disability claims backlog, including how the delays impact individuals who have applied for disability benefits; the effect on other critical agency workloads, including program integrity activities; steps SSA has taken to date to resolve the backlogs; and options for addressing the problem.

In announcing the hearing, Chairman McNulty said, **"The current delays in receiving disability benefits are completely unacceptable. Americans who have worked hard and paid into the system should not have to wait for years to get benefits they have earned and desperately need. SSA must have sufficient resources to give the American people the service they deserve."**

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 on-line instructions, completing all informational forms and clicking "submit" on the final page, an email will be sent to the address which you supply confirming your interest in providing a submission for the record. You **MUST REPLY** to the email and **ATTACH** your submission as a Word or WordPerfect document, in compliance with the formatting requirements listed below, by close of business **Wednesday, February 28, 2007**. 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.

FORMATTING REQUIREMENTS:

The Committee relies on electronic submissions for printing the official hearing record. As always, submissions will be included in the record according to the discretion of the Committee. The Committee will not alter the content of your submission, but we reserve the right to format it according to our guidelines. Any submission provided to the Committee by a witness, any supplementary materials submitted for the printed record, and any written comments in response to a request for written comments must conform to the guidelines listed below. Any submission or supplementary item not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

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

Chairman MCNULTY. Our hearing today focuses on one of the most critical challenges facing the Social Security Administration (SSA), the huge backlogs and waiting times for individuals who have applied for disability benefits.

I chose to hold our first hearing on this issue, because I see it as a situation we urgently need to address. It is frankly unacceptable that people who are seriously disabled must often wait two, three, sometimes as many as four years to get the benefits to which they are entitled and that they were promised when they paid into the system. It is the number one problem I hear about from my

constituents, and I believe most Members of Congress could say the same.

Currently, more than a million people are awaiting a decision on their disability claim. The SSA has made attempts to address this problem through re-engineering efforts, including the new Disability Service Improvement (DSI) Process and the electronic disability folder. The Agency has also made significant strides in overall productivity, and is staffed with hard-working employees who do their best to provide good service to the public, and I commend them for their dedication.

However, SSA's overall workloads have significantly increased in recent years due to the aging of the population and new workloads resulting from Medicare and Homeland Security legislation. Funding for SSA's administrative budget has not been sufficient to address these increased workloads. For the last several years, the SSA's appropriation has been less than the amount requested by the President. Staffing at the Agency is declining, and the disability claims backlogs have only gotten worse.

This hearing will focus on the size of the backlogs, how the delays affect disability claimants, the impact on other critical Agency workloads, including program integrity activities such as continuing disability reviews (CDRs), and, of course, options for addressing the problem.

I am very happy that we have today with us the new Commissioner of Social Security, the Honorable Michael Astrue, who took office just two days ago. I have already thanked the commissioner. He took his oath of office on Monday. We have him at a hearing on Wednesday, but we're grateful, Commissioner, that you came yourself, and we're deeply appreciative of that. I thank you for taking on the task of administering this Agency, whose operations are so critically important to the American people.

I was particularly pleased to hear you say at your confirmation hearing that addressing the problem of disability backlog was one of your main interests in returning to SSA. You promised Senator Baucus that you would report back to him on this issue in April, and we would be very interested in hearing your findings as well.

Finally, I'd like to acknowledge the outstanding work of your predecessor, Commissioner Jo Anne Barnhart, who left office last month. The Committee had a strong working relationship with Commissioner Barnhart, and I hope that we will have an equally productive relationship with you, Commissioner Astrue, as we work to address the disability claims backlog and other challenges facing the Agency.

I would now like to turn the microphone over to one of my heroes in Congress and in life, the Ranking Member, the Honorable Sam Johnson.

Mr. JOHNSON. Thank you. I appreciate that. I thank you for holding this hearing. I want to tell you it's an honor to work with you as well.

This hearing is not about numbers. It's about real people in need of help and answers. Over the last 12 years, this Subcommittee has held many hearings on the challenges facing Social Security's disability. The good news is that changes, I'm told, are being made to help reduce processing time and ensure the right decision is being

made as early as possible. These include the implementation of electronic claims folder and the disability determination process, changes that are now being made in the Boston area.

Unfortunately, these changes aren't going to be fully implemented for five years. That's kind of long. Those that are waiting years to receive a decision on their claim need help now. I hope this testimony that you give us today will address that issue.

Finding adequate resources to fund the Agency is not going to be easy. The fiscal challenges facing our Nation are daunting. Without reform—I repeat that—without reform, the growing cost of Social Security, Medicare, and Medicaid will consume the budget in coming decades.

Our new Commissioner of Social Security is going to need to justify every dollar appropriated for Social Security is going to be spent wisely. Beyond resources, we must also find ways to make the Social Security programs easier to administer.

Members of this Subcommittee have repeatedly asked Agency witnesses to send us legislation that you need to improve Agency operations and reduce unnecessary complexities, yet none has been received. Repeat that. None. We can help you if you'll let us.

With the disability program in deficit, this area is in need of serious review by Social Security and this Subcommittee. Finding answers to these complex issues is not going to be easy, but it will be done, and must be.

To that end, I look forward to working with Chairman McNulty and the Subcommittee colleagues, and along with Commissioner Astrue. Welcome, Mr. Commissioner, on your third day of work, I believe. I yield back.

Chairman MCNULTY. I thank the Ranking Member for his comments and for his leadership. Any other Members who wish to submit opening statements in writing may do so, and they will be included as a part of the record.

With that, we'll get right down to business. I want to introduce the newly-confirmed Commissioner of the SSA, the Honorable Michael Astrue. Again, thank you, Commissioner, for coming here on your third day. I know that it would have been entirely possible and understandable for you to send someone else, and we do appreciate the fact that you came yourself.

You may proceed. I know you know the routine here. Your entire statement will appear in the record. We ask that you try to keep your comments to about 5 minutes or so. I'm not going to enforce any tight time limit on you, because we do want to hear what you have to say. Then that gives a little bit more time for the Members to ask questions. So, you may proceed.

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

Mr. POMEROY. Commissioner, I think your microphone isn't on.

Mr. ASTRUE. Okay. Thank you. Let me start again.

I'm very pleased to be here today to discuss the impact of last year's budget allocations on Social Security beneficiaries. Let me say at the outset that we appreciate your unflagging support for SSA, and I'm looking forward to working with the Subcommittee during my term.

As I said at my confirmation hearing, my goal is to be a good steward of the program for both current and future beneficiaries. For current beneficiaries, this role means setting high standards for management, performance, service, and program integrity, and committing to meeting those standards. It also means being painstaking in making sure that the Agency adheres to the law and best-demonstrated practices of accounting, efficiency, and compassion.

For future beneficiaries, good stewardship means engaging with others in the Agency and the Executive branch, with Members of the Subcommittee and other Members of Congress, as well as outside groups and experts, to provide unbiased data about all the options for safeguarding the financial stability of the program. It is part of our obligation to the American public that we must continue the best possible support for older Americans, people with disabilities, and their families in the coming decades.

SSA's mission is to deliver high-quality service to every claimant, beneficiary, and the American taxpayer. In my written statement, I detailed the magnitude of that workload. Our traditional workloads are to make Social Security and Supplemental Security Income (SSI) payments, process benefit claims, and conduct hearings on appeals of SSA decisions. We also issue new and replacement Social Security cards, process earnings records, issue Social Security statements, and handle transactions through the 800 number service centers.

At the same time, as the Chairman pointed out, other workloads are growing not only due to demographics, but also because many pieces of new legislation requiring SSA to undertake additional work.

For example, the new Medicare prescription drug program required that, among other responsibilities, SSA take applications and make eligibility determinations for individuals with limited income and resources who might qualify for "extra help" with prescription drug coverage.

In the last five years, reductions to the President's budget requests have totaled \$720 million, equivalent to approximately 8,000 workyears. These numbers are not just statistics. They represent a diminished level of service.

I share your concern about the impact this reduction has had on applicants who file for disability benefits. If I could briefly address Mr. Johnson's comments.

I've already said internally and externally that the roll-out plan for DSI is too slow, and that what we're going to do is treat it as a demonstration project, look at it intensely, try to figure out what makes sense to roll out nationally, what doesn't make sense to roll out nationally, what makes sense to modify, and try to do that as quickly as possible. I am mindful, as the Chairman mentioned, that I have a pending deadline with Chairman Baucus on the Senate Finance Committee for an update on my thinking on those matters.

One of the things that is difficult is that the Commissioner of Social Security has very little discretion relating to most of the Agency's expenditures. Almost everything that the Agency does is mandated by Congress. So, unlike a regulatory Agency that can prioritize enforcement, or a grant-making Agency that can impose

a percentage cut across the board, the Commissioner does not have that flexibility.

For example, in recent years, SSA has concentrated resources on handling initial claims. Consequently, the number of hearings pending, as well as processing times at the hearings level, have continued to increase since Fiscal Year 2001.

The outlook for Fiscal Year 2007 will be even more challenging. It appears that funding for SSA's administrative expenses in Fiscal Year 2007 will be \$200 million below the President's budget request. For a time, it appeared that the shortfall would be greater, and we appreciate the significant increase from Fiscal Year 2006 levels that was included in House Joint Resolution 20 as it was approved by the House. We are also greatly relieved that we will not have to resort to employee furloughs.

However, reductions from the President's budget for the coming year will have a direct effect on SSA's ability to process key workloads. If we had received the President's budget each year from Fiscal Year 2002 through Fiscal Year 2006, SSA would be in a better position, not only in initial disability claims and hearing backlogs, but also in program integrity work. Funding shortfalls have meant substantial reductions in scheduled program integrity activities, which include reviewing whether recipients of disability insurance benefits continue to be eligible, and whether SSI recipients continue to meet income and resource criteria for program eligibility.

We have faced some increasingly difficult decisions. Over time, as we worked to keep pace with initial claims and hearings, we reduced spending for program integrity work, and that is a very disturbing trend. This work is tremendously important for safeguarding the trust funds, as well as the Treasury's general revenue funds. Social Security CDRs save \$10 for every \$1 invested, and SSI redeterminations save \$7 for every \$1 spent.

Accordingly, the President's budget for Fiscal Year 2008 includes \$213 million for increased program integrity work, and proposes a comparable adjustment to the discretionary spending caps. My written statement details the numbers of CDRs and redeterminations we estimate this funding will allow.

In conclusion, Mr. Chairman, let me express my gratitude to my predecessor, Commissioner Barnhart, for her excellent work throughout her tenure. I will do everything I can to live up to her record and be another good steward for the SSA. I know that our employees have a deep commitment to finding better ways to be responsive to those who depend on our service and fiscal stewardship.

Thank you. I'll be happy to answer any questions you may have.
[The prepared statement of Mr. Astrue follows:]

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

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss the impact of past years' budget allocations on Social Security beneficiaries, and on applicants for disability benefits in particular. I want to thank you for holding this hearing and giving us the opportunity to tell you of our accomplishments and our challenges in this era of constrained resources and growth in SSA's workloads. This is my first appearance before the Subcommittee, and I appreciate your unflagging support for the Social Security Administration (SSA) and the programs entrusted to our Agency. The mem-

bers of this Subcommittee know well the importance of these programs to virtually every American family.

I am honored to serve as Commissioner of Social Security. SSA has a proud history of excellent service to the public, and I promise to do everything in my power to continue that tradition. I also am looking forward to working with this Subcommittee during my term.

As I said at my confirmation hearing, my goal is to be a good steward of the program for both current and future beneficiaries. For current beneficiaries, this role means setting high standards for management, performance, public service, and program integrity, and committing to meeting those standards. It also means being scrupulous and painstaking to make sure the Agency adheres to the law and employs best-demonstrated practices of accounting, efficiency, and compassion.

For future beneficiaries, good stewardship means engaging with others in the Agency and the Executive branch, with members of the Subcommittee and other members of Congress and outside groups and experts to provide unbiased data about all the options for safeguarding the financial stability of the program. It is part of our obligation to the American public that we must strive to continue the best possible support for older Americans and people with disabilities and their families in the coming decades.

Core Workloads

SSA's priority is to deliver high-quality, citizen-centered service to every claimant, beneficiary, and the American taxpayer. In FY 2006, SSA maintained individual payment records for more than 53 million people who received Social Security benefits or Supplemental Security Income (SSI) each month. During this time those payments exceeded \$586 billion. Social Security employees processed nearly 3.8 million Retirement and Survivors Insurance benefits claims; 2.5 million disability claims; over 2.5 million SSI claims; and conducted 559,000 hearings. To conduct these and other workloads, SSA served approximately 42 million visitors to its nearly 1,300 field offices in communities across America.

These are SSA's core workloads, but we do much more than pay cash benefits. Among other things, in FY 2006, SSA issued over 17 million original and replacement Social Security cards; processed 265 million earnings items to maintain workers' lifelong earnings records; handled nearly 60 million transactions through SSA's 800-number; issued over 145 million Social Security Statements; and participated in over 84 million SSN verifications for employers.

In addition, other workloads are also growing because of new legislation requiring SSA to undertake additional work. The Social Security Protection Act of 2004, the Intelligence Reform and Terrorism Prevention Act of 2004, the Deficit Reduction Act of 2005, and the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, or MMA, have all added new and non-traditional workloads.

For example, the MMA, enacted in December 2003, established the new Medicare prescription drug benefit. The new Medicare prescription drug coverage was designed to allow all people with Medicare an opportunity to voluntarily enroll in prescription drug coverage. MMA also provided for an additional level of assistance, "extra help," for people with Medicare prescription drug coverage who have limited incomes and resources. SSA, along with State Medicaid programs, was given the responsibility to take applications and to make eligibility determinations for this "extra help."

In addition, Congress is considering several immigration related bills that could have a significant impact on SSA workloads. For example, there are several bills that would require employers to verify the employment eligibility of all new hires. Depending on the details of these proposals, the impact on SSA workloads could be significant.

Since 2001, SSA has improved productivity on average by 2.5 percent per year for a cumulative improvement of 13.1 percent. These increases have been possible through the efforts of an outstanding workforce aided by technology, and despite appropriations that each year were significantly below that proposed in the President's budget. Since the President's budget requests for SSA have assumed the Agency would achieve a two percent productivity gain each year, even these impressive gains cannot compensate for the funding reductions the Agency has faced over this period.

We are moving forward with additional electronic enhancements. We offer safe and convenient online systems for individuals to file claims, submit changes of address or direct deposit information, request replacement Medicare cards, and verify benefits. In FY 2006, 335,000 people applied for benefits online, up 27 percent from the previous fiscal year. In addition, 75 percent of 265 million wage reports in FY 2006 were filed electronically online, compared to only 27 percent in FY 2001. We

are also continuing to implement the electronic disability system, known as eDib, to move from a paper to an electronic case process. We believe this will significantly reduce processing times and improve the quality of the disability determination process.

Despite budget constraints, SSA has still been able to handle more work in a shorter period of time. We have seen a reduction in processing time for initial disability claims, from 106 days in FY 2001 to 88 days in FY 2006. We have seen a significant reduction in processing time for appeals of hearing decisions, from 447 days in FY 2001 to 203 days in FY 2006, and in FY 2006 we processed over 365,000 more initial disability claims, conducted approximately 163,000 additional SSA hearings, and nearly 700,000 more retirement and survivors claims than in FY 2001.

We are also taking steps to improve the overall disability claims process. As a result of a review conducted under former Commissioner Barnhart, we developed a disability approach that focuses on making the right decision as early in the process as possible. The new initiative will be gradually implemented so that we can carefully monitor the effects of the changes on the entire disability process.

These achievements are especially noteworthy in light of the fact that our administrative expenses are less than two percent of total outlays administered by SSA.

Agency Efforts to Balance Workloads and Resources

Despite this record, we are keenly aware of how much more we could have accomplished had we received the President's budget requests in past years. In the last five years, reductions to the President's budget request have totaled \$720 million, equivalent to approximately 8,000 workyears. These numbers are not just statistics, and I share your concern about the impact this has on applicants who file for disability benefits. These numbers represent real effects on the service that people receive from our Agency, and place increasing pressure on our ability to maintain our physical and electronic infrastructure.

And the outlook for FY 2007 is even more challenging. It appears that funding for SSA's administrative expenses in FY 2007 will be \$200 million below the President's budget request. For a time, it appeared that the shortfall would be much greater and we appreciate the significant increase from FY 2006 levels that was included in H.J. Res. 20 as it was approved by the House. And we are greatly relieved that we will not have to resort to employee furloughs.

But I must tell you that we expect the level of service we are able to provide the American people to diminish during FY 2007. It is no secret that our backlogs are growing. As of December 2006, we have nearly 718,000 hearings pending, over 568,000 initial disability claims pending, as well as millions of post-entitlement actions to be processed. The number of initial disability claims and hearing requests received has remained above FY 2001 levels.

Since FY 2002, Congress has reduced SSA's budget from that requested by the President, and our funding needs have not been met. As a result, we have had to concentrate our resources on handling initial claims. Consequently, the number of hearings pending as well as processing times at the hearings level has continued to increase since FY 2001.

Even if we had received the President's budget request for FY 2007, we would still have to deal with staffing shortages. With funding at the requested level, we would have been able to fill only one out of three vacancies in our offices. With the expected funding level, we likely will have limited hiring flexibility during the remainder of the year to replace the estimated 4,000 SSA and Disability Determination Service employees who will be retiring or resigning. Since vacancies rarely are distributed evenly across offices, some places will be harder hit than others. And the overtime hours that we traditionally rely on to accomplish a number of important workloads will be cut by at least half.

FY 2008 and Program Integrity

And so we face some increasingly difficult decisions. Over time, as we worked to keep pace with initial claims and hearings, we reduced spending for program integrity work, such as continuing disability reviews, or CDRs, which determine whether an individual may still be considered disabled, and SSI redeterminations, which review non-disability eligibility criteria. SSA's actuaries estimate that CDRs save \$10 in program benefits for every dollar spent in conducting the review; SSI redeterminations an estimated \$7 in savings.

Accordingly, the President's budget for FY 2008 includes \$213 million for increased program integrity work and proposes a comparable adjustment to the discretionary spending caps. This would enable SSA to increase the number of full medical CDRs from 198,000 in FY 2007 to 398,000 in FY 2008, and the number of

SSI non-medical eligibility redeterminations from 1,026,000 in FY 2007 to 1,526,000 in FY 2008.

SSA's progress towards accomplishing its mission is directly linked to the level of resources it receives. If we had received the President's budget each year from FY 2002 through FY 2006, SSA would have been able to reduce the backlogs for initial disability claims and hearings. Funding at the President's budget level would also have allowed the Agency to fund program integrity activities at a more appropriate level. These activities permit SSA to ensure that recipients of disability insurance benefits continue to be eligible and that SSI recipients continue to meet income and resource criteria for program eligibility.

Conclusion

Finally, Mr. Chairman, I assure you that SSA will do the best it can to provide the American people with the service they need, and I know firsthand how important the program can be to a family facing catastrophic illness or the loss of a family member. It is clear that we are stretching our ability to balance funding realities with the quality service the American people have come to expect from our Agency, but I know that our employees have a deep commitment to finding better ways to be more responsive to those who depend on our service and fiscal stewardship.

Thank you and I will be happy to answer any questions you may have.

Chairman MCNULTY. Thank you very much, Commissioner. I would just remind the Members who have come since we started that we're operating under the Gibbons Rule, and also, that we expressed our gratitude to the Commissioner, because he was just sworn in on Monday. We were expecting just to have a representative of the Agency today, but he chose to come himself. For that, we're deeply grateful.

Commissioner, in your confirmation hearing, you told Senator Baucus that you would report back to him in mid-April. I mentioned that in my opening remarks regarding how we're addressing the backlog problem. I just want to get it on the record that you will also share that information with us as soon as possible.

Mr. ASTRUE. Absolutely. This is a job where if we're going to be successful, we have to reach out, work closely with the Congress, work closely with the constituency groups. I have every intention of doing that.

Chairman MCNULTY. I understand that several years ago, your predecessor developed an estimate for how long it would take a claimant to go through the entire Agency appeals process, and that estimate was 1,153 days.

Mr. ASTRUE. Yes.

Chairman MCNULTY. Can you tell us where we are on that now?

Mr. ASTRUE. If anything, it's probably getting a little worse right now. Of course, part of the problem is the resource problem, but part of the problem is the complexity of the system itself.

Commissioner Barnhart was also, I believe, famous for a 25-foot flow chart outlining the entire disability process. As you and I were talking before the hearing, I don't believe that you solve problems of complexity with more complexity.

So, one of the things I'm stressing as we do a top-to-bottom review of the process and decide what we're going to try to push forward as quickly as possible is—I'm putting a lot of emphasis on trying to keep the system simple, so that it will be faster and easier to understand.

Chairman MCNULTY. Commissioner, could you talk a little bit more about the resources and how that impacts employment at the Agency? Since I know both Ranking Member Johnson and I, and really all the Members of the Committee, want to be able to try to help you with this. How are you dealing with it now? Are you using overtime more, or—

Mr. ASTRUE. Actually not. What I've inherited here is a situation where I think Commissioner Barnhart had very little discretion in what to do. So, there has been a hiring freeze in place since we understood what the appropriation was for this year. We are going to be down, I believe, about 2,000 employees from where we were a year ago. This is an effect—that as I've met a number of Members of Congress—that you've noticed in your district offices, it doesn't fall equally among district offices, because you can't control the timing of attrition and that type of thing, but particularly in some offices, made it very difficult to live up to the standards that we want to live up to.

There are restrictions on overtime, so we can't compensate for a lot of the lost employees with more overtime. It's very restrictive on overtime as well.

So, it has been difficult, and it's been difficult for the morale of the Agency.

Chairman MCNULTY. In a report issued last fall, the Social Security Advisory Board stated that from 1999 to 2005, the number of hearings pending nationwide more than doubled from about 311,000 to more than 700,000, while the number of Administrative Law Judges (ALJs) on duty remained about the same at roughly 1,100. Do you agree with these figures? If so, how do you believe we should address that?

Mr. ASTRUE. Yes, those figures are, in fact, accurate. I think there are three things at issue here, and I do want to take advantage of the three-day period to not be very specific at this point, but the way that I look at this is that there are really three areas that need to be addressed.

The first and most important one tends to get overlooked, which is are we deciding the right cases with the right rules in the right way? I think that there is a real argument that we need to adjust how we handle this increasingly large workload that assumptions and standards that were built-in 20 to 30 years ago just aren't working very well today. I think that we need to revisit exactly which cases are going through which stages of the process, and whether we can afford to have as much process as we have, and whether we need to move to a somewhat more streamlined system. So, I think that's my first starting point.

For a shorter-term perspective, there are two categories of personnel issues here that we need to be concerned about. We leverage our ALJs with a significant amount of support staff, both people that move the paperwork around and make sure that the files, which are complicated, get in the right place at the right time for the ALJs to make the right decision, and then we also have essentially the equivalent of law clerks who do initial drafting and that type of thing.

A few years ago, we were, I believe, at a 5.2 full-time employees per ALJ ratio. I may not have this exactly right, but I believe it's

down to about 4.2 now. So, the efficiency of individual ALJs has been reduced by the staffing cutbacks that have occurred at the Office of Disability Adjudication Review (ODAR).

We've likewise had a problem in that we do have a need for additional ALJs. As I know you're well aware, there hasn't been a list coming out of the Office of Personnel Management (OPM) for almost a decade. There's also been—in fairness to OPM, there's been litigation that held that up for a long time as well.

The good news, as I understand it, is that the final regulation coming out of OPM seems to be making pretty good progress. We have realistic hope that that will move along, that there will be a list later this year, and that we can start to address some of those issues by hiring additional ALJs. I'm not in a position, obviously, because it's not under my control. I can't give you a set time frame on that.

Certainly, when we look at what we think we can afford, one of the priorities is going to be at least some additional ALJs. My guess is that, given the appropriations, there will not be enough to address the backlog as much as I would ideally like, but I think it will be a step in the right direction.

Chairman MCNULTY. Well, again, Commissioner, I want to thank you for taking on this task.

Mr. ASTRUE. Thank you.

Chairman MCNULTY. It's absolutely enormous. We're going to try to help give you the resources you need to get the job done.

Mr. ASTRUE. Thank you.

Chairman MCNULTY. The Ranking Member, Mr. Johnson, may inquire.

Mr. JOHNSON. Thank you, Mr. Chairman. I'd like to talk about your ALJs. Since you have a legal background and have worked in that area, let me ask you a straight question. How many hours a day do they work?

Mr. ASTRUE. I honestly don't know, Mr. Johnson. What I do know, and one thing that disturbs me, but I don't think I have many tools for dealing with it, is that the efficiency of the individual ALJs in the individual offices varies widely. There are—

Mr. JOHNSON. You don't have control over it, do you?

Mr. ASTRUE. It's difficult. Congress has made some decisions that it was wise to move away from the original ALJ model where the people making the decisions were called hearing examiners, and they were really viewed as, at that point, representatives of the Secretary of Health, Education & Welfare at that point in time, and the move to more of imitating an Article 3 model, where the judges are "independent."

I think that there are many advantages to that. I'm not criticizing that, but there are costs to that that sometimes people don't appreciate. One of the things that that means is my ability and the ability of the Deputy Commissioner for ODAR to tell the judges what to do and to create incentives or penalties if they're not very productive is very, very limited. We're very hamstrung on that.

Mr. JOHNSON. Well, why don't you let us know what you need in the way of legislation to help you gain control of that problem, and I'm pretty sure that we would be willing to look at it.

What performance standards do they have? Do they have any?

Mr. ASTRUE. I'm going to have to pass on that. I think there's relatively little in terms of performance standards and standards of conduct.

Mr. JOHNSON. It's—

Mr. ASTRUE. Yes—I was actually disappointed in—when I was General Counsel of the Department of Health and Human Services, we had a couple examples of highly inappropriate conduct by ALJs. The Agency came to the conclusion that it couldn't even discipline in cases of conduct that I considered absolutely outrageous and insensitive.

Mr. JOHNSON. Let me ask you another question on a little different subject. If you need dollars—you've got a decreasing work force. I think you're going to lose a lot of people for retirement in the next few years. Do you actually need the same number of people if you're going into an electronic environment?

Mr. ASTRUE. I think the answer is that we do with at least some of the current assumptions of the system, because the workloads do increase more than the rate of inflation because of the demographics and because of the additional responsibilities.

Right now, we operate, I believe, on the assumption that all 1,272 field offices need to stay in place. I know there have been suggestions from time to time that those can be reduced somewhat by telecommunications and things like that, but I don't think that we're there yet, and I'm not prepared to recommend that.

Mr. JOHNSON. Can you analyze it for future reference?

Mr. ASTRUE. We certainly can—one of the things we're going to try to do is look at where we can take reductions. It has been my observation in the past, and current understanding, that there are always large amounts of highly-repetitive workloads that are not often very popular with the staff anyway. Certainly, if you're trying to look for efficiencies as quickly as possible, trying to find some ways to do that. Even things as simple as taking a look at what the repeat questions are in the field offices and the telephone service centers, and then lining up your web site to try to make sure and see whether the information that people keep asking you about, whether you're communicating it clearly enough to the American people. I've already raised that with senior staff.

So we're going to be trying to look at some of these issues not just in an incremental way, but try to step back a little bit and look at them strategically. It's hard when you're under budget crunches to do that, but to the extent that we can, we're going to try to do that.

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

Ms. SCHWARTZ. Thank you, Mr. Chairman. I'm very new at this Committee, so we're on—I think you have a little more experience than I do on this, so you're a step ahead, but I thought I'd be further in the rankings here, but maybe it helps to be somewhat new at this. I can ask just a couple questions, if I may.

Mr. ASTRUE. Absolutely.

Ms. SCHWARTZ. First of all, congratulations and good luck.

Mr. ASTRUE. Thank you.

Ms. SCHWARTZ. I think this was referred to already, but are there standards—what do you expect to be the right—do you have a performance standard that you are aiming for? Do you feel like

there's a—what is the percentage of cases that should be pending at any one time? What's the right number of days in which to move through each of the steps in the process?

You've identified one of the jams, in terms of the ALJs, but different offices seem to do better or worse, and you identified that that may just have to do with personnel levels, but it may have to do with other things as well.

So, again, have you—and I know you're new at this, but have you actually set out that this is the right complement? This is where the backlog is? This is how long it should take in every step of the process so people have something to measure against?

Mr. ASTRUE. I think the answer to that question, and I hate to answer in this structure, but yes and no. There are parts of the process where there are set standards. Sometimes they're not adhered to, but there are set standards. For instance, the amount of time that the States have to make disability determinations at the first level of the process.

Ms. SCHWARTZ. So, they meet those. You're saying because they're standards, they do meet them?

Mr. ASTRUE. Yes. Generally, my understanding is that they do meet them. One of the things that you have to discuss is, if the time frames at the first level lead to not enough documentation and analysis for the subsequent levels, are you really saving time by that initial standard? Then later on in the process, there's very little in the way of time restrictions, and that's why the numbers get up into four digits.

So, I think that I don't want to deal with this simplistically and say, "Well, we want to make it faster and better, so we're going to make the States make their initial determinations 50 percent faster." That may actually be counter-productive, because it may mean that you have more disputed claims. They're not as well-documented. The decisions may not be as good.

I do think that you need to go through every step of the process and have, whether it's formalized in regulations or guidelines, or just part of your management expectations, to have a sense of what you're shooting for in terms of time.

I don't, for the disability, have a—right now, I look at what I consider an unacceptable length of time by a significant order of magnitude. I just—I would love to give you a number, but can't, particularly being just back after a long absence.

I've thought about this a lot over the years. The magnitude of the difficulties hit you all over again when you're actually responsible for it again. I think it would be imprudent right now to guess what might be realistic to do.

Ms. SCHWARTZ. Let me just ask one other question. My staff gave me interesting—I'm pleased to see that the Philadelphia office ranks sixth in doing well in moving hearings. The hearing office actually is ranked sixth in the Nation for its efficiency, which is actually 354 days. That's part of region three, which actually, by and large, does pretty well.

Again, are they doing something right in Philadelphia that they're not doing—I hate to pick on my own State—but not doing as well in Pittsburgh? It's just—

Mr. ASTRUE. I think when you're talking about hearing offices, I think that the answer to that question is undoubtedly yes. There are some that are extremely well-run and productive, and then there are others that are just not. Those statistics are well known. We've had issues in the past in Cleveland and Chicago and Milwaukee.

Ms. SCHWARTZ. Is it leadership? Is it training? What is it that you think would make a difference in that?

Mr. ASTRUE. Well, I think it's a mix of all those things, and it's a mix of the quality of the people that you select. Again, there's a lot of things that go into it.

My frustration on that particular part of the process is that I think that not only me but the management team several layers down have relatively limited tools for dealing with that, because we have embraced the concept of the independence of the ALJs. A lot of things that would be standard management techniques in other operations are viewed as impairing the independence of the ALJs.

So, that's a trade-off that the Congress has made in the past. I'm not being critical of that. I'm just observing that that's part of how that situation comes to be, and that in that area, your expectations of us may be a little bit lower than they are in other areas where we really do have some control and discretion.

Ms. SCHWARTZ. Well, my Chairman has been very indulgent, but I hope that someone else will get to some of the issues around technology, and where you could use technology potentially to improve productivity.

Let me just say on behalf of my office, I know my staff spends a considerable amount of time talking to constituents, and then talking to your staff in the regional offices. They've been responsive. Let me say I think that we've actually had a by and large good experience. I'm not sure it should be necessary to go to your Member of Congress's office in order to move the process forward.

So, while I think on some level it works when we do get involved, for all those thousands and thousands of people who never think to call our offices, it shouldn't have to work that way.

Mr. ASTRUE. One of the things that makes me just very proud of SSA is its great workforce. You actually go out and talk to particularly the people that work in the field offices and deal directly with the beneficiaries and recipients. They're just wonderful people. They self-select for that. You don't choose this career unless you really want to try to help people.

So, it's one of the things that's a real plus and an asset, and it's painful to know that they're struggling right now.

Chairman MCNULTY. Mr. Lewis may inquire.

Mr. LEWIS. Thank you, Mr. Chairman. Welcome, Commissioner.

Mr. ASTRUE. Thank you.

Mr. LEWIS. Given the Agency's focus on increasing the use of telephone and on-line services, is the current field office structure, both in terms of staffing and office location, ready or positioned to meet the services of the 21st century?

Mr. ASTRUE. Well, I'm just going to be brutally candid with you. I think that the level of the staff in the field offices has been something the Congress has felt very strongly about and feels that the current level is the way it ought to be. In terms of everything I

have to do, I'm not particularly interested right now in challenging that, because I don't think it's going to be productive, and I've got better ways to do things.

What I am interested in is I do think that the field offices, as great as they are, don't work as well for some constituencies, particularly in rural areas, because of the distance to the field offices. So there have been some innovative attempts at using new technology, video conferencing and things like that, that I think are going over well from a service point of view.

My main concern about this right now is that the cost of the technology is very high, and so the cost of implementing that on a fair nationwide basis is very high. I am cautiously optimistic, as it is with many technological innovations, that the cost of the technology may come down, and it may make it much more practical to bring some service improvements to rural areas that right now might not be possible for fiscal reasons.

Mr. LEWIS. As you know, since August, changes to the disability determination process are being implemented in the Boston region. Do you have an update? Can you provide us any information on that implementation?

Mr. ASTRUE. I can't. I'm tentatively scheduled to visit on March 5th, and I've had some internal discussions about it already. Although conceptually, I think of it like a demonstration project. It was not, I believe, really set up as that, so I'm still uncertain as to exactly what kind of data I'm going to have available in order to evaluate each part of the innovation. I think that it's probably likely that I'm going to have to rely more on softer input for some of this than what you would have with a traditional demonstration.

I think it's a very important part of the process, and something that, as I said to the Ranking Member, I think that I have to decide with some real urgency whether those ideas are good ideas, in-between ideas, or bad ideas, and make some cut and run judgments as quickly as possible.

So, I'm trying to avoid a lot of specific promises, but one of the things I can tell you is we're not going to assume that this is a package and roll it out one or two regions a year for the next five to seven years. We're not going to do that.

Mr. LEWIS. Thank you.

Chairman MCNULTY. Mr. Davis may inquire.

Mr. DAVIS. Thank you, Mr. Chairman. Let me ask you about another important part of this process, and that's the attorneys who end up representing a lot of the people with disability claims.

What I sometimes hear from my district staff and from people who call our office about these kinds of complaints is a little bit predictable. A lot of the lawyers who do this work, particularly in the rural areas, are frankly sometimes people who are trying to figure out something that walks in the door that may yield a fee at some point.

Your really good plaintiffs' firms tend to not do this kind of work. Your gold-plated civil defense firms tend to not do this kind of work.

Without casting any aspersions on the good lawyers who are out there, can you talk for a moment about the quality of the lawyers who tend to work on disability claims?

Mr. ASTRUE. On our side or on the other side?

Mr. DAVIS. Well, on the—I'm sure they are spectacular and superb on your side.

Mr. ASTRUE. My hands-on information on this is pretty dated. When I was a Federal law clerk, the judge divided up the workload between the two. So, I did all the Social Security disability cases, so I saw things that came in over the transom. I think that—

Mr. DAVIS. You lost the same lottery I did when I was a law clerk.

Mr. ASTRUE. Yes, that's right. Yes. My friend got all the prisoners' cases, and I got all the Social Security cases was the deal.

I think at that time, my assessment was that it was somewhat uneven, that there were some people that were very dedicated and very, very good, and then there were some that were not very good and some claimants were not very well-represented. It was sometimes frustrating when you were trying to decide the right thing to do.

My sense is that the bar has become much more institutionalized since '83/'84, and it is much higher quality now, but I'm really not in a position to make a general qualitative judgment.

Mr. DAVIS. One of the things I would ask—and I think it would be helpful if you tried to find this out just for your benefit and for the benefit of the Committee—I'm interested in knowing what's the average years of experience of lawyers who do this kind of work. What percentage of malpractice claims do you tend to get?

I'm curious about all that, because frankly, most people don't know if they can call the Congressional office. What Ms. Schwartz says, I don't quite get why they should have to call the Congressional office, but the reality is that seems to help. Most people don't know they can call. We estimate in our office probably only about 25 percent of the people who really have issues with disability end up calling us, so most of them are dependent on some lawyer that they sometimes find in the phone book. It seems like an interesting question.

Second of all, I'd be interested in how we can improve the quality of lawyering in this area. Are there practical incentives that local bar associations can offer to get more experienced lawyers to take on this kind of work pro bono? That strikes me as something we ought to think about.

I'm told, for example, that Legal Aid doesn't handle a lot of this work. That's not a service that they provide.

Mr. ASTRUE. I actually think that may not be right, Congressman. I spent a year actually working for a support center, a legal services corporation. At least in that time—again, dated information—but they were actually doing a fair amount of Social Security work. It may have been tilted a little bit more to—"impact" cases as to doing the routine cases.

My sense, as I said, generally, as with most things in life, as the bar has become more specialized, they've got a pretty good network, that I think the quality of that bar has gone up very substantially. They're very active on the Internet, I know. As a general matter, my belief right now is that someone represented by someone who specializes in the area gets pretty good representation.

[The information follows:]

Because experience is not a requirement for representing disability claimants, SSA does not track the years of experience of attorneys who represent them.

During fiscal years (FY) 2004 through 2006, SSA received a total of 206 complaints about attorneys who represent disability claimants. The breakdown of these years is as follows:

FY 2004—68

FY 2005—63

FY 2006—75

SSA does not track the percentage of malpractice claims filed against claimants' attorneys.

Because each bar association had different rules, SSA is not in a position to offer specific suggestions of how a bar association could encourage more experienced lawyers to represent disability claimants pro bono.

I do share your concern that I think——

Mr. DAVIS. Let me ask you one question, since time is running low. One of my colleagues was making a helpful observation that is it true that in a lot of areas, you don't even have to be a licensed lawyer to really process these disability claims? Well, not to process, but to represent people in these disability claims?

Mr. ASTRUE. Yes, that's right. There is a group of lay advocates that specialize in——

Mr. DAVIS. Who qualifies them or determines that they know what they're doing?

Mr. ASTRUE. I'm going to have to get back to you for the record—I'm not up to date as to what the credentialing is for that group of people. I'm sorry. I just don't know, but we'll supply that for the record.

[The information follows:]

A claimant may appoint as his or her representative any attorney in good standing who has the right to practice law before the court of the State, Territory, District, or island possession of the United States, or before the Supreme Court or a lower Federal Court of the United States providing that he or she is not disqualified or suspended from acting as a representative in dealings before SSA and not prohibited by any law from acting as a representative.

A claimant may also appoint a person other than an attorney if he or she is generally known to have a good character and reputation, capable of giving valuable help to the claimant in connection with his or her claim, not disqualified or suspended from acting as a representative in dealings with SSA, and not prohibited by law from acting as a representative.

Mr. DAVIS. Thank you, Mr. Chairman.

Chairman MCNULTY. Mr. Becerra may inquire.

Mr. BECERRA. Thank you, Mr. Chairman. Mr. Commissioner, thank you very much for being here, and congratulations to you.

Mr. ASTRUE. Thank you.

Mr. BECERRA. Good luck. Condolences will come second after that.

I think every one of us here really wants to work with you. You do have big shoes to fill. I think most of us believe that Commissioner Barnhart made every effort to try to work with this Committee, and probably our counterparts in the Senate as well. Given your background, I think you have certainly the credentials to do this work. I think we're going to be able to work with you very well also.

Mr. ASTRUE. Thank you.

Mr. BECERRA. That doesn't mean we're not going to ask you the tough questions.

Mr. ASTRUE. No. That's part of the job.

Mr. BECERRA. So, let me start.

Mr. ASTRUE. Okay.

Mr. BECERRA. By the way, I want to mention as well that in Los Angeles, you have excellent personnel. Whenever my district office representatives have to deal with the SSA district field office, we have tremendous relationships. We get great results. I want to thank them, because I know how much work they do in Los Angeles.

Mr. ASTRUE. That's great to hear. Thank you.

Mr. BECERRA. Keep them coming.

You have a backlog of 1.3 million Americans waiting to be processed, whether it's their initial claim or at an appeals hearing, correct?

Mr. ASTRUE. The precise number at the moment, I don't have at my fingers, but it's a lot.

Mr. BECERRA. Yes. Probably more than 1.3 million, but about 1,300,000 Americans are waiting to have their claim or their appeal processed and completed. The average wait time is something in the order of 88 days for that initial claim to be heard, 524 days for a hearing decision to be rendered. I'm shocked to see this, but in the Dallas district office, there are people, Americans waiting 890 days to have their appeal decision rendered.

You have a situation where, while productivity of your work force within the SSA has gone up over 13 percent over the last five or so years, the size of the work force you have to deal with all these claims has gone down by 8 percent from 2006 to 2007.

On top of that—and let me know when I'm saying something that's not accurate. On top of that, beginning next year, the cohort of Americans we call the baby boom generation begins to retire.

Mr. ASTRUE. Right.

Mr. BECERRA. That big swell in the sea of people becoming retirees and filing for these different kinds of claims, disability and otherwise, start to enter into the process, which means what we have now in backlog will just swell unless we're able to get rid of that backlog that currently exists.

On top of that, you now have responsibility for processing all the seniors who are receiving Medicare Part D prescription drug benefit services as well, so you now have to process all those seniors who have to get that service provided.

On top of that, because of Homeland Security and the work that we're doing to better identify Americans to make sure the people who are here belong in this country, you have to help make sure that that paperwork is processed correctly, and the people who say they have authorization to work under Social Security and so forth, that that's accurate, and you're getting back to employers.

So, all that work is on top of what you're currently doing.

Then we hear that you made a request in the budget that you submitted to the President for—let me see if I have this correct—\$10.54 billion to manage all of those things for the tens of millions of Americans who use SSA one way or the other. The President's

budget for '08 provides you with \$824 million less than what you requested.

Okay. Explain to me how—and I apologize. This is only your second or third day. Explain to me how you can even reduce the current backlog, let alone deal with all the new folks coming in because of the baby boom generation, all the work because of the Medicare prescription Part D program, all the work because of the anti-terrorism work that you have to do. How can we expect that when you come back in a year with the resources that the President says you should have, you're going to actually allow a disabled American who qualifies for a benefit under Social Security to receive that benefit in a timely manner?

Mr. ASTRUE. I want to be responsive. I think there are multiple questions there, so let me try to get as many of them as I can.

Mr. BECERRA. I don't have a lot of time, so—

Mr. ASTRUE. I don't have any quantitative data yet, but generally, the second time around on the Medicare Part D, there seems to have been a lot less of a problem.

Mr. BECERRA. Well, Commissioner, let me stop you. Okay. So, let's say you get better at dealing with this new Medicare Part D. It's new work.

Mr. ASTRUE. Yes.

Mr. BECERRA. On top of the fact that you don't have enough money to process the backlog, this is new work.

Mr. ASTRUE. Right.

Mr. BECERRA. So, what I'm asking is if you don't have enough resources and personnel, if you're shrinking in personnel to begin with today, and you're getting less money than you requested from the President in the President's budget today, and you're getting more work on top of what you can't already manage today, how can you try to reduce the backlogs, and by the way, go into the programs which I understand actually save us money, like the CDR Program or the SSI Redeterminations Program, which save us 7 to \$10 for every dollar that we spend doing those reviews and programs?

I'm trying to help you.

Mr. ASTRUE. It sounds like you're trying to talk me out of the job.

Mr. BECERRA. I know you're somewhat limited in what you can say, but this has to change. You cannot come here to this Committee and be able to tell us with a straight face that you're going to be able to accomplish these things, as much as you might want to, and as much as I know most of the people that work for SSA want to, without the resources. You can only extract so much blood from a turnip, and I think you got everything you could.

Maybe we could save some—maybe there are some ALJs that aren't doing all their work, but the reality is the basic work force of SSA is doing everything it can. It's unfair for the leadership of this country to not provide you with the resources you need to do the work for the Americans who worked so hard for so many years to pay into the system.

So, I don't know if there's an answer there, but—

Mr. ASTRUE. I think two things have to change. I do think that Congress needs to be more supportive of the Agency.

Mr. BECERRA. The President.

Mr. ASTRUE. Again, the Committees of jurisdiction, I think, haven't been the problem. I think generally, my experience has been that the Committees of jurisdiction understand the issue, but I think in the Congress, more broadly, I think that sometimes they view the Agency as a black box, and don't understand the burdens and how we can't absorb all the costs that we've been expected to absorb. Part of my job is to try to make that clear and try to make that point as clear as possible. The internal—where I disagree with you slightly, that we can't do it if we continue with business as usual, because that just goes out into time, and it is just not going to work.

So, I think that we have to go back internally, and say that while there are things that we have taken as important, that we just have to do business differently. We can't afford a 25-foot flow chart on disability. We are going to have to throw certain things overboard, think about it differently, and try to be more efficient and effective.

Mr. BECERRA. So, long as you don't throw the folks overboard.

Mr. ASTRUE. No, that is not my intention. My main goal in coming back was to try to take this on—there are a lot of other things I could have done, but this is an area that's near and dear to my heart.

This is the main reason why I came back, and I am going to give it my best, but I know enough about it to know that the funding is uncertain; not everything is under my control. If I make specific promises to you right now about results, I am not like—there is a serious risk that I can't deliver, so all I can say is: I am going to give it the old college try, do as best as I can, and continue to work with you to try to do better.

Mr. BECERRA. Thank you, Mr. Chairman.

Chairman MCNULTY. Next, I would like to introduce the senior Member of Congress who is serving on this Subcommittee, the former Chair of this Subcommittee, who is currently the Chair of the Subcommittee on Trade, Mr. Levin of Michigan.

Mr. LEVIN. Thank you. The former Ranking Member is here, I wish I had the Chair. I love your spirit, Mr. Chairman, and I am glad to be able to call you that. Welcome, you follow people who were in your position who are dedicated and committed, and we always appreciated that. I think what Mr. Becerra is saying is, and I assume the Chairman has said the same, I got here a bit late, we know the constraints, you cannot challenge the budget but it would be helpful to the extent you can to tell us where you think you might be inadequate? There may be an inconsistency there but if you cannot be as candid as possible about the constraints, it is going to be hard for us to be helpful.

Mr. ASTRUE. Right.

Mr. LEVIN. So walk that line as well as you can because we have these concerns over these long waits. So, let me give you or your staff or a memo and the Agency is now working with our office to correct this and they are being very helpful, and if necessary there will be an emergency payment, I think, but let me give you this memo. I took out the name of my constituent because this may be part of a general problem so here is basically what it says, the

onset date was April 2006, the approval date for benefits was 2006, October, after the waiting period. The payment did not come and so in early February we contacted the office and was told that the retroactive benefits would be released as soon as possible. So, I have been told that there may be a major shortfall in personnel or in procedures that would cause somebody to have an approval date of 2006 and there be no payment by early February of the next year. There is something wrong. Then what made it more difficult was that our office was told, our office in Michigan, that they would expedite payment on October 8th—February 8th, this is after initial contact on February 2nd. When it did not come, we called again and they said that the direct deposit information had been entered and this person would personally take care of submitting the payment directly to the bank account and that it would be there by Saturday. So, that is four or five days later. Well, on the 13th it had not arrived and this person was facing foreclosure on their house. I think we have to remember this well, how many people rely on these payments for the majority of their income. Now we have been told that the action was taken on the 14th of February, that is today. So, I will give this to you and if you could give it to the appropriate person.

Mr. ASTRUE. Absolutely, and we will look at it.

Mr. LEVIN. Find out if there is some structural problem here, maybe this is very atypical but our concern is that it may not be.

Mr. ASTRUE. Okay, we will definitely look at that both as an individual matter and systemic.

[The information follows:]

A review of this constituent's record did not reveal a systemic issue.

Mr. LEVIN. I think the individual matter is being taken care of, I do not want to bother you with that. Let me bother you with what may or may not be a systemic issue.

Mr. ASTRUE. Okay, we will get on it.

Mr. LEVIN. Okay, good luck.

Mr. ASTRUE. Thank you.

Chairman MCNULTY. Ms. Tubbs Jones may inquire.

Ms. TUBBS JONES. Thank you, Mr. Chairman. Welcome, Commissioner. I want to say for the record I think Jo Anne Barnhart was one of the finest Commissioners of Social Security, and I regret she is not here to answer some of the questions we have. I know you are new this, and I hope you do a great job but tell me who is the person who is in charge of disability, administrative judges, under you, sir? Who is that person?

Mr. ASTRUE. That would be Lisa DeSoto.

Ms. TUBBS JONES. Ms. DeSoto, is she here?

Mr. ASTRUE. I do not believe that she is.

Ms. TUBBS JONES. Did you think that since this was the subject matter—do you want to turn around and look again? Don't you think that since the subject matter of this hearing was the disability hearings and the backlog that it would have been a good idea to bring her along so that she might have been able to answer some of the questions that you cannot answer since you have only been in the job two days?

Mr. ASTRUE. Well, I have actually brought along some staff including Linda McMahon, Deputy Commissioner of Operations. The scope of the request was sufficiently broad that there are probably seven or eight people with substantial responsibility in those areas.

Ms. TUBBS JONES. No, no, no, let me go back. The scope of this hearing was to look at the disability backlog, right?

Mr. ASTRUE. Yes, that is part of it. My understanding is that it was a little bit broader than that. Certainly, we prepared more broadly than that.

Ms. TUBBS JONES. Well, let's focus on—and nobody has been asking about anything but disability backlogs, sir, have they? So, my point is who is the person best prepared to answer some questions about disability backlogs who you brought with you?

Mr. ASTRUE. Well, why don't you start with me, and I will do the best I can.

Ms. TUBBS JONES. I have already listened to your answers to six of my colleagues' questions, and I don't want ask the same questions so you can give me the same answer. I am asking is there anybody else better prepared than you to answer those questions?

Mr. ASTRUE. I do not believe there is anyone else prepared for today.

Ms. TUBBS JONES, but there is somebody else with you that has been doing this job longer than two days, correct?

Mr. ASTRUE. Yes, I have Deputy Commissioner McMahon with me, yes.

Ms. TUBBS JONES. Who is that? Do you mind if I ask her a few questions, sir?

Mr. ASTRUE. Be my guest.

Ms. TUBBS JONES. Deputy Commissioner McMahon, the last time we had this discussion about disability backlog, which was probably maybe over the last term, this is the 110th Congress, I think we addressed that issue in the 109th Congress, one of the issues was a lack of a sufficient number of administrative judges to hear these cases, fair?

Ms. MCMAHON. Yes.

Ms. TUBBS JONES. In the course of that, the discussion you got from the Chair, who is now the Ranking Member or Member of the Committee, and the former majority Chair was the desire on the part of this Committee, this Subcommittee that the SSA obtain more administrative judges to address the backlog.

Ms. MCMAHON. Well, unfortunately—

Chairman MCNULTY. Ms. McMahon, you just need to hit that bottom to turn your microphone on.

Ms. MCMAHON. Thank you.

Chairman MCNULTY. Thank you.

Ms. MCMAHON. I think maybe you were not here for the opening statement, and I think it actually was addressed in some earlier questions but there are several issues.

Ms. TUBBS JONES. I absolutely was not here.

Ms. MCMAHON. Okay.

Ms. TUBBS JONES. I had another Committee meeting but go ahead.

Ms. MCMAHON. I understand, there are several issues. One issue is that there has not been an updated register from which to select ALJs for nearly a decade. There was a lawsuit at OPM, OPM has been dealing with that issue.

Ms. TUBBS JONES. Wait a minute. When Commissioner Barnhart came to Cleveland, Ohio for a hearing in my congressional district, we had more than 300 people there who had disability claims and it was probably five degrees below zero outside and 10 below because the heat was not working in the church where we were, and at that juncture she made a commitment to bring in more administrative judges and she did in fact bring in more administrative judges. So, you are telling me something about a 10 year issue that would not allow you to hire administrative judges.

Ms. MCMAHON. She actually got a waiver from OPM to do that but because so much time has passed—

Ms. TUBBS JONES. Since she got that waiver?

Ms. MCMAHON. Both since she got that waiver and the list that was even used at that point, that there are really very few new people on that list.

Ms. TUBBS JONES. So, what are you doing about the list then if that is the issue?

Ms. MCMAHON. Well, it is OPM that has to do it.

Ms. TUBBS JONES. Okay.

Ms. MCMAHON. They are writing a regulation, as the Commissioner just explained, they are actually working on the regulation, which we hope will actually be done soon.

Ms. TUBBS JONES. The people out in America across the country, and this is not directed personally to you or to you, Commissioner, they do not want to hear some crap about some regulation is keeping the administrative judges from being hired when I have people calling my office constantly who have gone bankrupt, whose families have gone bankrupt trying to take care of them because of a disability claim. I apologize for my outrage but I am expressing the outrage of the people in the City of Cleveland. In 2004, we had the largest backlog in the sixteenth region, the fifth highest initial denial rate across the country. We are the fourth largest backlog behind Tampa, Birmingham, Buffalo, and Indianapolis. So, my outrage is not personal, it is on behalf of the people across the country who are saying, "You all get a life and get something going on in Social Security." So, all I am saying to you and you, Commissioner, we are ready to go to work. Whatever it is that is impeding your ability to provide disability support for the people across America, tell us what it is and let us fix it. Do not come here and be nice with us, let's fix it on behalf of the Democrats and the Republicans because the people who need disability, they are not just whites, they are not blacks and brown, they are not Republicans, they are not Democrats, they are Americans who deserve to have income to take care of their families. For the outrage, I apologize, but I am tired of it. It is not your fault but it is something we must fix. I am not looking for an answer. Thank you.

Chairman MCNULTY. Thank you very much. Mr. Pomeroy may inquire.

Mr. POMEROY. I want to follow up on the ALJ issue that my colleague was just speaking about. Mr. Chairman, I am going to suggest that we have a hearing, and I want to have OPM at that table and I want the Commissioner to come back and I want the former Commissioner, whom I have the highest regard for, to be here as well. I want to get to the bottom of this because I believe that I have been lied to, and I am absolutely furious. For two years, I have been talking to the Commissioner in this hearing room about this business of the frozen ALJ list and the problems that we have had bringing more on line. It was my absolute understanding that things were starting to move, that more ALJs were being added and that steps were taken where the list would be opened up. I am absolutely astounded, I am shocked to find out that that list has not been opened up yet. I am going to ask our staff to trace the things that have been said in this hearing.

Ms. MCMAHON. Well, the list that exists has been opened up, the problem is it is so old that there is hardly anybody on there who is still interested or capable.

Mr. POMEROY. I have got two problems with that. First, I thought the list was going to be refreshed, and I thought that steps had been taken, SSA working with OPM, to have that opened up, to have the appropriate tests administered last year. I believe that we were told that.

Ms. MCMAHON. Well, and that may be what we were told but what we have learned just this week is that we are hopeful that OPM's regulation, which is required before the tests can be renewed and therefore a new list can be made, that that regulation is close to being done but it is not done.

Mr. POMEROY. I cannot believe that. That is the most incompetent, insubordinate handling of a matter that has been worrying this Committee that I have ever seen under the Executive Branch. For two years at minimum, I have been asking about the ALJ backlog, the inability to get enough people into place to make determinations on these disability claims. Clearly, the Agency heard me. If OPM has such scant regard for the concerns of Congress relative to whether SSA can get its work done or not, well, I think they need to come here and tell us that directly. I believe that OPM has completely, arrogantly, incompetently, foolishly, stupidly, irresponsibly handled this matter and as a result there will be people dead flat broke that cannot work, that cannot get their claim adjudicated, trying to figure out how they are going to pay for supper. This is an outrage. I am really frosted. I look forward to that hearing, Mr. Chairman, that I hope you will call so that we can get to the bottom of it. It is absolutely outrageous.

Now, I have got another matter I wanted to talk to the Commissioner about, I will take a deep breath and get on to it.

Mr. ASTRUE. I think I am going to take a deep breath too.

Mr. POMEROY. It relates to a very useful technology that is available for the taking of claims for disability in a remote location. It is basically capturing technology that are otherwise—it is called video claims taking. It is a pilot that has been administered in the State of North Dakota. It has had particular application to Indian reservations, it has been run in facilities, Indian health service facilities. The early experience I believe is quite good, and I look for-

ward to talking with you about that and specifically—you have got so much to get your hands around, but I do believe this is a promising technology.

Mr. ASTRUE. I have actually discussed that just initially with the staff and the feedback that I have gotten on the demonstration is positive. I think I mentioned before you arrived that I think the only real concern is the cost; and with everything else that we have to pay for, if we were going to roll that out in an equal way around the country, what else would we not be able to do? So, I think, at least it is my understanding, that the initial assessment is very positive and that they feel that applicants on reservations sometimes tend to schedule appointments and then not show under the more traditional system. They are right there getting a health evaluation and they go in and they are more likely to follow through. I think people are very pleased by that outcome and feel that it serves the purposes of the program.

Mr. POMEROY. Yes, especially as we deal with rural reaches of the country where basically we have been rationing access to the disability program in part by distance and ability of some people to just get through this.

Mr. ASTRUE. Right, and I know that there is also some experimentation with that at the hearings and appeals level, although I am a little bit less fluent with that right now.

Mr. POMEROY. When you are seasoned, I would very much like to get you to North Dakota and show you this site personally.

Mr. ASTRUE. Sure.

Mr. POMEROY. Either that or a representative. I thank you. I am really beside myself about this. The reality is that the hardships that some are bearing out there because of utter bureaucratic nonsense, it is infuriating to say the least. I yield back.

Chairman MCNULTY. I thank the gentleman for his advocacy and his passion on the issue, and we will certainly take a suggestion under advisement for further action. I would ask, Commissioner, that when you report back in that report you are going to do on the backlog to me and Senator Baucus and the others in April, that you would pay particular attention to the ALJ issue so that we can get some more information on that.

Mr. ASTRUE. I would be delighted to do that.

Chairman MCNULTY. There may be some Members of the Committee who could not make it for one reason or another today, would you be willing to respond to their questions in writing if we supply them to you?

Mr. ASTRUE. Absolutely, and it does not even have to be in connection with the hearing, any time.

Chairman MCNULTY. I understand. I just again wanted to thank Commissioner McMahon and you for being here. We do deeply appreciate the fact that you took your oath of office on Monday and you came here on Wednesday, and both Sam and I are deeply appreciative.

Mr. ASTRUE. Thank you very much.

Chairman MCNULTY. Thank you very much. The next panel may be seated and while they are coming forward, I will introduce three of them, and I would like to ask my colleague, Stephanie Tubbs Jones, to introduce the fourth. We have on this panel Syl-

vester J. Schieber, who is the Chairman of the Social Security Advisory Board. We have Nancy Shor, who is executive director of National Organization of Social Security Claimants' Representatives; and Jim Fell, who president of the Federal Managers Association Chapter 275. The fourth panelist, I would like to ask Stephanie Tubbs Jones to introduce her constituent.

Ms. TUBBS JONES. Thank you very much, Mr. Chairman. I am just so happy to have Mr. Warsinskey back here once again on behalf of the National Council of Social Security Management Association. Know that the rage coming from me and my colleague is earnest in the process. Now that we are the majority, I have more Committees than I had before so that causes me to run out, but I wanted to welcome you and your colleagues here. Please, Rick, let's get together back in Cleveland.

Mr. WARSINSKEY. Let's get it together in Cleveland?

Ms. TUBBS JONES. Let's get together back in Cleveland.

Mr. WARSINSKEY. I am sorry, okay.

Ms. TUBBS JONES. Okay?

Mr. WARSINSKEY. All right.

Ms. TUBBS JONES. Thank you very much all of you for coming up. Mr. Chairman, I appreciate your giving me this opportunity.

Chairman MCNULTY. We all appreciate the fact that you came here today, are willing to give testimony today of all days because we know it was not the easiest of circumstances to get here, but thank you for your commitment, for your advocacy. We will of course submit all of your testimony for the record. We do ask you to summarize it to an extent and try to keep to within about 5 minutes, and we will just hear from all you and then we will go to questions. So, we will start with Mr. Schieber.

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

Mr. SCHIEBER. Thank you, Mr. Chairman. Mr. Chairman, Mr. Johnson, Members of the Subcommittee, I am pleased to have this opportunity to discuss backlogs with disability programs. I have been on the Social Security Advisory Board for nine years. This has been one of the primary focuses of the Advisory Board over that whole period. I can speak at the end if you want about the ALJ issue, or answer questions about it. We have been looking into it. There are definitely some issues here that need to be addressed. I think a hearing is probably appropriate. It may take some legislation to fix things so they work to make Social Security more effective.

Let me begin by talking about the current situation. Social security disability claimants, as you know, often face lengthy delays in the processing of their claims. The situation may actually be worse than the numbers indicate. Average times mask the fact that complex or poorly documented claims can require a processing time well in excess of the average. Moreover, hundreds of thousands of claimants each year get benefits only after additional months in the reconsideration process, and an additional year or more in the hearings process. The huge backlogs create pressures that distort the numbers. In 2006, initial claims pending declined but there was a 38 percent increase in claims pending over a half year. There

was more than a 115 percent increase in claims sitting at the reconsideration level for six months or longer.

With inadequate resources, managers face decisions where both choices are bad. Fairness says concentrate on the oldest claims but failing to act quickly on easy claims turns them into difficult ones that consume more resources down the road. Inadequate resources also push managers to divert funds from stewardship activities to claims processing. This is the ultimate example of being penny wise and pound foolish. We have heard here today about \$10.00 savings from preventing improper benefits being paid, so an additional dollar of administrative could save the program \$10.00. The problem is that the \$10.00 does not come back and allow the Administration to actually use some of those saved dollars to do more of these kinds of services. They go back into the trust funds and you do not get any credit for those dollars in the budgeting process.

How did we get here? In 2002 and each subsequent year, enacted administrative funding was well below the amount requested. The shortfall totaled \$1.4 billion compared to the official budget and over \$5 billion compared to the service delivery budget. The service delivery budget was developed by former Commissioner JoAnne Barnhart to indicate the annual budget necessary each year in order for Social Security to fulfill the range of its mission on a timely basis.

Despite the budget shortfalls, the workload demands continue to grow. Annual disability insurance applications rose 60 percent since 2000, an increase of 800,000 applicants a year. Over the next decade, we expect the total caseload receiving Social Security benefits to go from around 50 million to about 70 million people. I just did a rough back of the envelope, truly back of the envelope calculation, that is an estimated growth of about 4 percent per year. You will need to check my numbers with a calculator but 2 percent productivity growth in a stable workforce is not going to satisfy that kind of a growth rate.

Social Security employees rightly take pride in their can-do attitude but attitude can only take you so far. At some point, can-do takes on the proverbial straw that breaks the camel's back.

What can be done? Former Commissioner Barnhart initiated important changes that may eventually help ameliorate the backlog, such as the Electronic Disability Folder and the DSI Initiative. The ultimate success of these promising changes depends on adequate resources to provide the technological development and other support needed to make them work. Year after year, the Advisory Board has called attention to the need for more adequate resources. I can reiterate those pronouncements, but I am mindful of the adage that insanity lies in repeating the same failed action over and over and expecting improved results. So, I would like to suggest a few avenues you might explore to facilitate the process of matching the program's requirements and its administrative funding.

Since 1994, the Social Security Act required the submission of a workforce plan budget. Unfortunately, only the single bottom line number for that budget is made public. Making the underlying detail available could enhance the ability of Congress to understand and evaluate the Agency's needs. In the past, special budget proce-

dures have been adopted for certain high priority activities, such as investment in modern technology and accomplishment of disability reviews. There is of course always concern about overly constraining the flexibility of the people that have to run the program but there have been precedents for providing funding mechanisms directed at high-priority objectives. A third suggestion would be a thoroughgoing evaluation of Social Security programs with a view to finding policy improvements that could make the program easier to administer. The Board's first report in 1997 stressed the importance of careful research and analysis of the Agency's administrative operations to find ways to improve its service to the public. The Agency collects enormous amounts of data about its programs and operations but it still is deficient in both tools and personnel to capture and use that data for program evaluation.

Mr. Chairman, I hope these comments are helpful to the Subcommittee as it examines backlogs to Social Security disability programs. I will be happy to answer any questions. I have more extended comments that are submitted to the record.

Thank you.

[The prepared statement of Mr. Schieber follows:]

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

Chairman McNulty, Mr. Johnson, Members of the Subcommittee. 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. I would like to give you the Board's perspectives on what the situation is, how we got there, and—most importantly—what can be done about it.

What the situation is

As you pointed out in the press release announcing this hearing, Social Security disability claimants often face lengthy and sometimes unconscionable delays in the processing of their claims. I think that situation is well known. I am, if anything, a bit surprised that it does not get more attention than it has. The only thing I would add to your assessment of the current situation is that it may be even worse than some of the numbers indicate.

Average processing times mask the fact that many claims lower the average because they are simple, obviously severe (or obviously not), and are well documented. Others may require more complex evaluation that can require processing time well in excess of the average. Moreover, a very large number of those who get disability benefits are required to pursue their claims beyond the initial stage. For example, a little more than one million of those who applied for benefits in the year 2000 were ultimately found eligible. About 300 thousand of them got their benefit awards only after going through the reconsideration and/or hearing stages. So, while the average processing time for initial claims is about 3 months, it is not at all unusual to wait additional months in the reconsideration process, and much more in the hearings process where average processing times have risen to about a year and a half and many appeals take much longer.

Moreover, the very existence of long average processing times and of huge backlogs in high visibility areas such as initial pending workloads creates pressures that distort the process. Trying to control those metrics can put too much emphasis on moving easier cases or those that contribute most to the backlog count at the expense of older cases and at the expense of cases in categories such as reconsideration which are not widely reported. In fiscal year 2006, for example, the number of initial claims pending actually declined slightly from 560 thousand to 555 thousand. Given the tight budget, this looks like a major achievement. But the number of initial claims pending longer than 4 months grew by over 7000 and there was a 38 percent increase in claims pending over half a year. The situation was even more pronounced for those waiting a decision at the less visible reconsideration level. Even though the State Disability Determination Services received substantially fewer reconsideration requests in 2006, the size of the backlog grew by more than 30,000 claims and there was a more than 115% increase in the percentage of

claims that had been waiting a decision at the reconsideration stage for more than 6 months.

The number of hearings pending at the end of fiscal year 2006 showed an increase over the prior year from 708 thousand to 716 thousand, but that was far smaller than the 756 thousand projected at the start of the year. However, this was not because the agency processed more claims than it had expected to but rather because there were fewer appeals than expected. That sounds like good news, but at least part of the reduction in the number of new hearings cases is a reflection of the growing number of cases remaining undecided at the earlier, reconsideration stage. And within the hearings stage, as within the earlier stages, such progress as was made seems to have come at the expense of those claimants who have been waiting longest for a decision. While overall pending levels rose by less than 10,000, hearings cases pending more than 9 months rose by 32,000 including an increase of 16% in cases pending over a year.

In pointing out these distortions, I do not intend to be critical of the Social Security Administration's employees or management, but rather to make sure that you are not confused by some seeming good news that really masks a very serious and worsening situation caused by inadequate resources. The fact is that the Social Security programs, especially the disability programs, are complex, production operations that demand adequate resources. In the absence of those resources, program managers are faced with making decisions where both choices are bad. On the one hand, fairness would seem to dictate concentrating resources on those claims that have been waiting longest. On the other hand, failing to act quickly on easy claims will likely turn them into difficult ones that consume even more resources to update evidence and to evaluate the additional and worsening conditions that claimants experience during, and to some extent because of, the delays in processing their applications.

One of the bad choices that managers have to make when administrative funding is inadequate is whether or not they should divert funds from activities which have a long-run payoff in lower costs in order to meet the immediate pressures of rising claims backlogs. In that sort of competition, the needs of the disabled claimant obviously and correctly win out. But funding at a level that forces that choice is the ultimate in penny-wise and pound foolish behavior.

Careful actuarial studies show that stewardship activities return benefit savings that are many times their administrative costs—up to \$10 saved for each \$1 spent for some kinds of reviews. Yet, the agency has been largely abandoning these stewardship activities in order to move claims along. I realize that there is a budgetary distinction between administrative and benefit spending, but that distinction is an artificial procedural construct. Failing to achieve easily attainable reductions in improper benefit payments is not only wasteful, but it will worsen the future year total deficits that are, in the last analysis, what constrains discretionary spending. It also makes a mockery of the legislative and regulatory rules that define eligibility for benefits in the first place.

And no one should think that this is a problem that will just go away with the passage of time. Quite the contrary. Over the coming decade and a half, the projected rate of growth in the number on the benefit rolls will be roughly double what it was over the past quarter century. That is, the size of the Social Security programs will increase from about 50 million beneficiaries to over 70 million. At the same time, the agency faces a retirement wave of experienced staff, a tighter labor force that will make it more difficult and expensive to hire replacements, and a likely continuation of budgetary constraints.

How did we get here?

The Social Security Advisory Board has attempted over the years of its existence to point out the need for increased resources. Just last month, we wrote to the leadership of the Appropriations Committees that inadequate funding has prevented the Social Security Administration from providing the level of service to the public and program stewardship that American taxpayers have a right to expect. Last year, my predecessor as Chairman submitted testimony to the Finance Committee, noting that the agency has been provided resources that are inadequate to enable it to keep up with its workloads. The Advisory Board issued its first report on the disability programs in August of 1998. In that report, the Board made several references to the need for more adequate resources. Every year since then, the Board has issued one or more reports or other statements pointing out the need for more adequate resources. A quick count by our staff revealed that during my tenure on the Board since 1998 we have issued some 21 different Board reports and statements along those lines.

The Congress, in setting up the Social Security Administration as an independent agency, directed it to develop annual budgets based on comprehensive workforce plans. In each of the past several years, the official budget request for the agency's administrative operations has been lower than the amount in these "workforce plan" budgets. As shown in the table below, the actual amounts enacted in each year of this 21st Century have been below the SSA workforce budget and also below the Administration's formal budget request. The shortfall relative to the official administration budget has totaled \$1 billion over these seven years including nearly half a billion in just the last 2 years. The difference between the enacted budgets and the agency workforce plan budgets over the period totals over \$4 billion.

So what we have are several consecutive years of providing resources well below the levels recommended by the professional program managers. During that same period, the demands on the program grew rapidly. In the Disability Insurance program for example, there were 1.3 million new benefit applications in the year 2000. By 2005, that number had grown to 2.1 million—an increase of 60 percent over the period.

| Social Security Administrative Funding (millions) | | | |
|--|--------------------|-----------------------------------|----------------------------|
| Fiscal Year | SSA Request | President's Budget Request | Final Appropriation |
| 2000 | \$6,907.0 | \$6,741.0 | \$6,607.0 |
| 2001 | \$7,390.0 | \$7,134.0 | \$7,124.0 |
| 2002 | \$7,982.0 | \$7,581.5 | \$7,569.6 |
| 2003 | \$7,974.0 | \$7,937.0 | \$7,885.1 |
| 2004 | \$8,894.5 | \$8,530.0 | \$8,313.2 |
| 2005 | \$9,310.0 | \$8,878.0 | \$8,732.5 |
| 2006 | \$10,106.0 | \$9,403.0 | \$9,146.6 |
| 2007 | \$10,230.0 | \$9,496.0 | \$9,297.6 |
| Total | \$68,793.5 | \$65,700.5 | \$64,675.6 |

As you indicated in announcing this hearing, Congress has also added new workloads for the Social Security Administration during this period including significant responsibilities outside its core mission, for example, in support of the new Medicare prescription drug program and to assist with verifications of immigration status.

The Social Security Administration and its management and employees have always taken pride in their "can do" attitude even in the face of growing workloads, new workloads, and inadequate resources. But attitude can take you only so far. At some point "can do" takes on the proverbial straw that breaks the camel's back.

We can talk about Social Security as America's premier social program. We can talk about our commitment to providing "world class" service to the American public. We can talk about our concern to promptly address the needs of the most vulnerable among us, including those disabled persons who turn to the program for the benefits it promises. The reality is this. Thousands of cases of disability applications languish for years as the committed workers at the agency work through crushing backlogs, rapidly growing application rates, and steadily declining numbers of workers to process the workloads. If we want to achieve the publicly stated goals of this program, we have to pay for doing so, and at this point we are not.

What can be done?

Former Commissioner JoAnne Barnhart, who recently completed her term of office, initiated some important changes that, in the long-run, may significantly help to meet the challenges of the growing caseloads the agency will see in the future. In particular, she accelerated the development of an electronic disability case folder that is already paying dividends in terms of reduced storage and postage costs, quicker shipment of case folders from one place to the next, and greater ability for collaboration. She also initiated major changes in the handling of disability claims including restructuring of the appeals process and commitment to a much improved quality management system that can have significant payoff in efficiency, timeliness, and consistency. This is important and promising, and the Social Security Ad-

visory Board was and remains very supportive of these initiatives. But they are not magic bullets.

Many aspects of these changes are very much in the beginning stages. The new disability system is to be rolled out over the remainder of this year in the smallest, and in many ways, easiest region and expanded to the rest of the country over a period of years. The new quality management system is, at this point, a plan rather than an accomplishment. And the successes of all these initiatives are very much dependent upon the provision of adequate resources to complete them and to provide the technological development and other support needed to make them work properly. How quickly and how well those successes are achieved will be affected by whether or not they become lesser priorities in the face of the competing demands of huge backlogs of current claims and appeals.

I recently met with a group of state disability determination directors who are excited that this quality control system will help them dramatically improve the quality of their determination processes. They are also gravely concerned that the quality management system will not be rolled out on a timely basis because there are not resources available to do so.

In these times of constrained budgets, it is indeed a daunting challenge to find resources adequate both to deal with the large current caseloads and to undertake the changes in technology and process that will be needed to prepare for the even larger caseloads that are on the way. As I mentioned earlier, the Advisory Board has repeatedly, over the years since you created it, called attention to the need for more adequate administrative resources. I could simply reiterate those earlier pronouncements, but I am mindful of the adage that insanity lies in repeating the same failed actions over and over but expecting improved results. So I would like to suggest a few avenues you might explore to facilitate the process of matching the program's requirements and its administrative funding. I should tell you that, because of the limited advance notice of this hearing, I have not had the opportunity to have my colleagues on the Advisory Board review these suggestions, but I believe they are generally consistent with the views the Board has expressed in the past.

As I mentioned earlier, you enacted legislation in 1994 that made the Social Security Administration an independent agency and directed the Commissioner to develop and transmit to the Congress a budget based on a workforce plan. Former Commissioner Barnhart built upon this provision by developing what she called a "service-delivery" budget—a multi-year funding and workforce plan that showed a path to reducing the current huge backlogs to appropriate levels over a period of years. The objective of this Commissioner's budget is very well described in the President's budget document for fiscal 2008. It says:

The Commissioner developed a multi-year Service Delivery Budget through 2012 to provide a context for making decisions on needed improvements in service delivery and fiscal stewardship, and the requisite staffing to accomplish both.

The Social Security Act requires this budget to be transmitted to Congress without change along with the President's own budget. In developing his budget, the President obviously has to consider all National needs. It is neither surprising nor inappropriate that his judgment as to the appropriate administrative budget for the Social Security Administration may differ from that of the Commissioner. But the workforce-plan budget required by statute can, as the words of the President's budget indicate, provide a context for decision-making.

Unfortunately, all that is included in the budget submission is the single, bottom-line number from the Commissioner's budget and none of the detail about how that number was derived. A single number does not provide a "context for decision-making"; it is simply a number. As far as I know, that number appears at the end of the Social Security Section in the budget appendix and is used for nothing. The process of deriving it may be helpful to decision makers within SSA, but it does not help the Advisory Board or the Congress understand the workforce needs of the agency. As far as I can tell, it is printed and ignored.

The justification materials presented to and considered by the Appropriations Committees are entirely based on the official budget numbers without benefit of the context that could be available if the background of the workforce-plan or service-delivery budget were included. I believe this additional transparency in budgeting could help Congress better understand what is needed to fund the administrative costs adequately, but knowing and doing are different.

In its past reports concerning the Social Security Administration's resources, the Advisory Board has on a number of occasions urged that the agency's administrative funding should not be subject to discretionary caps in the budget process. Beyond this, I would point out that Congress has in the past employed special budgetary procedures aimed at meeting identified needs in the operation of the Social Security program. For example, over a period of years, there were special amounts of funding set aside to enable the agency to upgrade its technology and to carry out continuing disability reviews. There is, of course, always a concern about overly constraining the flexibility of the Commissioner to move resources around as circumstances change, but Congress has occasionally found funding mechanisms directed at certain high priority objectives to be useful and effective.

A third suggestion I would make is for a thoroughgoing evaluation of the Social Security programs with a view to finding policy improvements that might suggest ways to make the program easier to administer. In the Board's library we have a copy of the original Social Security Act. It is somewhere between a sixteenth and an eighth of an inch thick. The current compilation of the Act is about 3 inches thick. I realize that much of that relates to Medicare, but the Social Security and SSI programs also have been amended many times over, usually with the result of adding complexity. As we move into a future with larger workloads and continuing budgetary limits, it would be useful to evaluate existing procedures and rules to see if they can be made more objective and easier to administer.

In 1997, the very first report the Advisory Board issued called upon the agency to enhance its policy research and evaluation capacity. A year later, the Board again called for improved capacity to evaluate SSA programs: "It is critically important," we said "for SSA to conduct, on a continuing basis, careful research and analysis of its administrative operations. . . . The agency must be able to know what works and what does not and be looking continually for ways to improve its service to the public." The agency collects enormous amounts of data about its programs and operations, but it still is deficient in both tools and personnel to capture and use that data for program evaluation.

Mr. Chairman. I hope these comments are helpful to the Subcommittee as it examines the backlogs in the Social Security disability programs. Those programs have been one of the major concerns of the Social Security Advisory Board since it first began operations in 1996. The Board expects to continue its careful review of them. It would be happy to provide any additional assistance you may want, and I would be happy to answer any questions you may have.

Chairman MCNULTY. Thank you, Mr. Schieber.
Ms. Shor.

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

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

Social security and SSI cash benefits and the related medical coverage they provide are the means of survival for millions of people with severe disabilities. They rely on SSA to promptly and fairly adjudicate their claims for disability benefits. However, delays and backlogs have reached intolerable levels. If a case goes to the hearing level, it can easily take more than three years to get a decision after filing the application.

We believe SSA is generally doing a good job with limited resources and some of its technological advances, such as the Electronic Disability Folder, should eventually help to alleviate the problem with backlogs. However, we believe the primary reason for

the increase in disability claims backlogs is that SSA has not received adequate funding to do the job. The current situation is dire and without adequate appropriations for the future, the deleterious impact on claimants will only grow. We must remember that each claim filed represents a person with severe disabilities whose life may be unraveling while waiting for his or her claim to be properly decided. Families are falling apart, homes are lost, medical conditions deteriorate, some claimants die while waiting for a decision and one's stable economic security crumbles.

Our written statement graphically describes the desperate circumstances of just a handful of the clients of NOSSCR members. I would like to present just one case briefly. "Ms. C," we will call her, is a 49 year old single mother who lives in Troy, New York. She applied for disability benefits in May 2005 and was denied in February 2006, nine months later. Ms. C requested a hearing in April 2006 and is still waiting for a hearing date. She previously worked for 10 years as a keyboard operator for the State of New York but has not worked since December 2003 due to her mental and physical impairments. Since filing for benefits in May 2005, her life has dramatically changed. She and her children were evicted from their apartment. Unable to provide a home for her children, she lost custody and the children now reside with their father. For four months she lived in a homeless shelter in Troy and was finally able to leave just last week. She was recently hospitalized for depression because of the multiple stressors in her life. She is now in treatment for depression. To speed up her case, her attorney asked to have this case decided "on the record," that is without a hearing but the request was denied. Her attorney reports that there was at least an 18 month wait for a hearing in the Albany, New York hearing office, which brings us to November 2007 for Ms. C. Her attorney has been told that the wait for a hearing could be even longer because four ALJs have left and only one has been replaced in that office.

How does SSA's budget situation affect individuals like Ms. C? First, as noted earlier today, processing times have increased dramatically. According to SSA, the average processing time for cases at the hearings level this year will be 17.5 months and 18 months next year, nearly twice as long as in 2000. This is just an average. In fact, many people will wait even longer. While the hearing level processing times are the most striking, it is important to keep in mind that increases in processing times at any level, such as the reconsideration slow down last summer, will add to the overall processing time. SSA's statistics show that the processing times in many hearing offices are much longer than the 524 targeted for this year. Data from January 2007 show average processing times in each of the 142 hearing offices from the date the request for hearing is filed until the hearing is held. About 40 percent of the hearing offices are above the 16 month average with many approaching the two year mark or longer just to hold a hearing. The Atlanta, Georgia office is averaging 28.5 months just to get a hearing. This does not include the time for the actual decision to be issued after the hearing or for the individual to start receiving benefits, if approved.

Second, the number of pending cases continues to increase dramatically. According to SSA statistics, the number of pending cases at the hearing level has increased almost 250 percent since 1999.

Third, staffing levels have decreased, which leads to a decrease in service. Our members have noted the loss of ALJs and their support staff in hearing offices across the country. The hearing freeze and lower replacement rates have had their impact, especially since many of those SSA employees retiring are those with the most experience. Because of cuts in budget requests over the last few years, fewer ALJs have been hired than planned. This comes despite the fact that almost the same number of ALJs are now expected to handle more than twice as many cases in 1999. Even more of a problem may be the inability to hire their support staff.

Finally, a decrease in service is provided now by the SSA district offices and State agencies. While the delays in backlogs at the hearing level are the most dramatic, the current budget situation has left all SSA offices and State Agency offices without adequate resources to meet all the current responsibilities. Under the President's Fiscal Year 2008 budget request, SSA will need to reduce its staff. This does not take into account reductions in 2006 and 2007.

My written statement provides more details, and specific examples of the impact on the people with disabilities. As evidenced from the case examples, I want to stress that NOSSCR members are dismayed by the plight of their clients as they wait for hearing and decisions in their claims for disability benefits. Our members do and will continue to do all they can to move cases more expeditiously. While the over-arching problems with the backlogs will only be resolved when SSA has adequate funding, we stand ready to help in any way that we can.

We thank you for the opportunity to testify today. We will be pleased to answer any questions you may have.

[The prepared statement of Ms. Shor follows:]

**Prepared Statement of Nancy Shor, Executive Director, National
Organization of Social Security Claimants' Representatives,
Englewood Cliffs, New Jersey**

Chairman McNulty, Representative Johnson, and Members of the Social Security Subcommittee, thank you for inviting NOSSCR to testify at today's hearing on the Social Security Administration (SSA) disability claims backlogs.

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

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

SSA is generally doing a good job with limited resources and has improved its technological capacity in ways that will help to accomplish its work. However, under

the current budget situation, people with severe disabilities have experienced increasingly long delays and decreased services in accessing these critical benefits. Processing times have continued to grow, especially at the hearing level where the delays have reached intolerable levels. In some hearing offices, our members report that claimants wait more than two years just to receive a hearing, which does not count the time for a decision to be issued.

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

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

Ms. C—Troy, NY

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

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

Ms. C calls her attorney every month to check on the status of her appeal. There is currently an 18-month wait for a hearing at the Albany, NY hearing office. Her attorney asked to have this case decided “on the record,” without the need for an in-person hearing. However, the request was denied. Assuming the 18-month processing time, Ms. C can expect to have her hearing in November 2007. Her attorney has been told by the Albany hearing office that the wait will only get longer: two administrative law judges (ALJs) have retired in the last two years; one ALJ is set to retire in May 2007; and one ALJ is now the Acting Regional Chief ALJ. There has been only one ALJ replacement.

Ms. W—Norwood, PA

Ms. W is a 46-year-old woman who lives in Norwood, PA. She filed for disability benefits in May 2005 and was denied in October 2005. She requested her hearing in December 2005. The original hearing office was in Elkins Park, PA, but without explanation, her case was transferred to the downtown Philadelphia hearing office in the spring of 2006. It is currently sitting “unworked” in the Philadelphia hearing office and will not be scheduled for a hearing until, at best, the end of 2007, which will be two years after she filed her request for hearing. According to her attorney who handles cases throughout the Philadelphia area, the longest current processing times in the Philadelphia region are at the downtown Philadelphia hearing office, although they used to have the shortest times. The processing times are shorter at the Elkins Park hearing office.

Ms. W's main impairment is status post shunt placement in 1986 for pseudotumor cerebri. She worked steadily until May 2005, but was fired due to poor attendance because of her medical conditions. Ms. W has the full support of her doctor for receipt of disability benefits. She also is being treated for low back pain with radiculopathy due to herniated discs, bilateral hip bursitis, chronic knee pain, and depression. While waiting for her hearing, she has now developed hearing loss in both ears. Recently, she was diagnosed with leukocytosis and is being tested for cancer.

While waiting for a hearing in her case, Ms. W spent all of her savings and she had to apply for welfare. She worked all of her life and hated having to file for wel-

fare, but had no alternatives. Her house went to foreclosure, but her fiancé saved it and now owns the house. He then developed colon cancer and has required surgeries. His prognosis is poor and he is the only family Ms. W has. Ms. W worries that she will lose him and her house and will have nowhere to live.

Mr. M—Bowling Green, KY

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

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

Last year Mr. M began to take a new type of heart treatment called ECT (external counterpulsation). This required regular visits to the doctor's office. However, he had to give up this promising treatment when he lost his medical coverage. He gets some help from a local church, but he is overwhelmed by his children, his medical conditions, and the frustration of dealing with SSA.

Mr. R—Pico Rivera, CA

Mr. R is 41 years old and lives in Pico Rivera, California, with a solid work history as a bottler for a soft drink company and as a bus driver. He injured his back at work for the soft drink company.

He filed his Social Security disability benefits claim on July 22, 2005. The claim was denied and he eventually filed a Request for Hearing on December 19, 2005. He finally had his hearing on February 8, 2007. He attempted rehabilitation, but despite referrals for surgery by two doctors, the workers' compensation carrier refused to cover this service. For over one year, he has been unable to receive proper medical care for his back condition or for his bilateral carpal tunnel, for which the same two doctors also recommended surgery. His inability to get treatment for his physical impairments and the lack of resolution of the workers' compensation and Social Security disability cases have resulted in total liquidation of his savings and investments and near homelessness. He now requires mental health treatment, including medication. He did attempt a return to work, with modified duties, but was unable to sustain this modified work after three weeks.

Earlier medical records showed gradual improvement, including reduced levels of pain, in response to treatment. According to his attorney, this is an individual who desired to return to work as soon as possible. However, his inability to receive proper medical care has directly resulted not only in deterioration of Mr. R's condition (as shown in recent MRIs), but also development of a severe mental health disorder.

Mr. T—Gadsden, AL

Mr. T lives in Gadsden, AL, and is 50 years old. He worked as a welder and then operated a bowling alley for 20 years until he had a stroke in November 2004, when he was only 48 years old. He applied for disability benefits in December 4, 2004, and was denied in the spring of 2005. A hearing was requested in June 2005 and was held 18 months later in December 2006. During that time, Mr. T cashed in all of his savings bonds. His health deteriorated, as did the health of his 83-year-old mother who was the only available person in the family left to look after him. His mother was hospitalized with lung cancer in 2006 (she eventually passed away), leaving Mr. T without support. His brother lost his job in Kansas because he had no choice but to move to Alabama to help Mr. T.

The unfortunate, and avoidable, part of the long wait is that in January 2007, the ALJ issued a fully favorable decision, based on a psychological consultative examination that was performed in May 2005, shortly after the initial application was filed. The psychologist concluded that Mr. T was unable to perform simple tasks, make work-related decisions, or perform at all in a work environment. If SSA had made the right decision at the time of that examination, Mr. T and his family, including his elderly and dying mother, might not have endured such hardship for an additional 18 months.

Mr. B—Garland, TX

Mr. B is a 48-year-old former machine operator living in Garland, Texas. He has been diagnosed with ischemic heart disease and filed his application for Social Secu-

rity disability benefits in October 2004. His request for hearing was filed in April 2005, twenty-two months ago, and he has yet to have a hearing. While he has been waiting for a hearing, Mr. B has lost his home as it went to foreclosure.

Mr. O—Dallas, TX

Mr. O is a 44-year-old former painter and cab driver living in Dallas, Texas. He has diabetes, high blood pressure, and kidney and heart problems. He filed his application for Social Security disability benefits in January 2005. His request for hearing was filed on November 29, 2005, and it has not been scheduled. While waiting for his hearing, Mr. O has been evicted from his apartment and is now homeless, moving from shelter to shelter.

Ms. S—Houston, TX

Ms. S is a 48-year-old former teacher living in the Houston, Texas, area. She has back, neck, carpal tunnel and arthritis problems. She filed her application for Social Security disability benefits in June 2004. Her request for hearing was filed in January 2005, twenty-five months ago, and has not been scheduled yet. While waiting for her hearing, Ms. S has developed extreme depression, anxiety and panic attacks.

Mr. G—South Euclid, Ohio

Mr. G is 41 years old and resides in South Euclid, Ohio. He suffers from diabetes but was able to maintain employment for 15 years as a security officer. However, in March 2005, he developed an abdominal fistula and required a bowel resection. Mr. G's diabetes slowed the healing of the abdominal wound, which would not close. He obviously could not work with an open stomach wound and he filed for disability benefits. His claim was denied because SSA did not believe his condition would last 12 months.

A request for hearing was filed on December 2, 2005. On June 5, 2006, his attorney submitted a letter from the treating surgeon to the hearing office. The treating surgeon explained that Mr. G continues to have an open wound and that multiple surgeries will be needed. A request by his attorney for an on the record decision accompanied the surgeon's letter. There has been no response.

In the meantime, Mr. G lost his apartment and moved in with a friend. This has been difficult because his wound requires a very clean environment. A second request for an on the record decision and photos showing Mr. G's large open wound were submitted on September 28, 2006. Again, there has been no response to this request from the hearing office. Mr. G is currently in the hospital for more staged surgeries.

Mr. S—Cleveland, Ohio vicinity

Mr. S lives in the Cleveland, OH, vicinity. He has been diagnosed with paranoid schizophrenia. He sees his psychiatrist at least twice a month and has a mental health case manager. Both have reported that Mr. S cannot work. A request for hearing was filed on December 5, 2005. In September 2006, the hearing office was alerted that Mr. S was at risk of losing his home. He was placed on the "dire need" list to expedite his hearing, but his attorney was informed that there are at least 100 individuals that qualify as "dire need." On January 9, 2007, Mr. S lost his home. He is still waiting for a hearing.

Mr. L—Bolivia, NC

Mr. L is a 52-year-old former tugboat captain who lives in Bolivia, NC, a very small town in Brunswick County, NC. He has been diagnosed with status post three level cervical fusion after a fall off the roof of his sister's house where he was helping with some repairs. He filed his application for Social Security disability benefits in June 2005. His treating neurosurgeon says his fusions need to be redone, but Mr. L has no health insurance and no money, so further surgery will have to wait. While awaiting resolution of his claim, Mr. L's home went to foreclosure, forcing him to move in with his aged and ailing mother. Prior to the hearing in December 2006, his attorney documented the foreclosure and specifically requested that the hearing office expedite his hearing to avoid foreclosure. However, the request to expedite was denied.

Mr. L's hearing was scheduled eleven months after his request for hearing was filed and was finally held in December 2006. But he is still waiting for a decision. His attorney regularly handles cases in this particular hearings office and, based on his experience, reports that hearings are held more promptly than in other locations. However, it is fairly routine to wait more than six months after the hearing is held to receive a decision, and sometimes it can take more than one year. His attorney believes that the problem is one of manpower, as the hearing office does not have the support staff to get the decisions out in a timely fashion.

attorney believes that the problem is one of manpower, as the hearing office does not have the support staff to get the decisions out in a timely fashion.

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

I. Processing times are reaching intolerable levels.

In the Hearing Advisory, Chairman McNulty stated: “The current delays in receiving disability benefits are completely unacceptable.” We emphatically agree with Chairman McNulty. The average processing times for cases at the hearing level have increased dramatically since 2000, when the average time was 274 days.¹ In the current fiscal year, SSA estimates that the average processing time for disability claims at the hearing level will be 524 days and will increase to 541 days in FY 2008,² nearly twice as long as in 2000. And it is important to keep in mind that this is just an “average.” In fact, many claimants will wait even longer than the “average” time. And, while the “average” processing times at the initial and reconsideration levels are shorter than at the hearing level, there are still individual cases that will take considerably longer, as described in several of the case examples above, that also add to the overall processing time.

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

Of the 142 hearing offices, 57 are above the 16-month average, according to SSA’s statistics.⁴ This represents about 40% of all hearing offices. Offices above the average include:

- Pasadena, CA
- San Francisco, CA
- Pittsburgh, PA
- Eugene, OR
- Portland, OR
- Dallas (North), TX
- Houston, TX

Other hearing offices that are approaching the two-year mark just to hold a hearing include:

- Albuquerque, NM: 20.5 months
- Atlanta, GA: 28.5 months
- Buffalo, NY: 24 months
- Atlanta (North) GA: 26 months
- Charlotte, NC: 22 months
- Columbus, OH: 23 months
- Dayton, OH: 20 months
- Detroit, MI: 22 months
- Flint, MI: 21.5 months
- Grand Rapids, MI: 22 months
- Jackson, MS: 22 months
- Las Vegas, NV: 21.5 months
- Miami, FL: 26 months
- Seattle, WA: 19.5 months
- Spokane, WA: 20 months
- Tampa, FL: 22 months

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

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

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

³ SSA Office of Disability Adjudication and Review, “NETSTAT” List of Processing Times—January 2007.

⁴ SSA Office of Disability Adjudication and Review, “NETSTAT” List of Processing Times—January 2007.

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

II. The number of pending cases continues to increase.

Like processing times, the number of cases pending at hearing offices continues to grow. As noted by the Social Security Advisory Board (SSAB): “The size of the pending workload in hearing offices—the hole that SSA has to dig itself out of—has followed a pattern similar to that of processing times.”⁵ The number of pending cases at the hearing level reached a recent low in FY 1999 at 311,958 cases. The numbers have increased dramatically since 1999, reaching 711,284 in FY 2005.⁶ And SSA estimates the numbers to continue a significant increase: 752,000 in FY 2007 and 768,000 in FY 2008. And these increases will occur despite an expected increase in the productivity of ALJs in issuing decisions.⁷

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

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

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

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

IV. Impact on service provided in SSA field offices.

Under the current budget situation, people with severe disabilities have experienced long delays and decreased services provided in SSA field offices, which do not have adequate resources to meet all of their current responsibilities. Of greatest concern, even with the modest increase SSA is seeking for FY 2008, is that SSA will need to reduce its staff. Despite an expected increase in the number of initial disability claims expected to be filed in FY 2008, the number of SSA and Disability Determination Services (“state agencies”) Full-Time Equivalents (FTEs) is expected to decrease from FY 2007.¹⁰ This does not take into account the drop in the number of positions from FY 2006.

⁵ SSAB Report, p. 9.

⁶ SSAB Report, p. 10.

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

⁸ SSAB Report, p. 10.

⁹ SSAB Report, p. 10.

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

A. Impact on disability claims. Under the current SSA budget situation, it can be expected that delays will grow not only at the hearing level but also at the initial and reconsideration levels. A recent action taken by SSA demonstrates the scope of the problem. In June 2006, SSA was forced to direct all available resources to the processing of initial applications, and away from processing reconsideration level cases, when the initial application backlog became too high. The decision to redirect resources was caused primarily by the cut in the President's request for fiscal year 2006. In some states, this meant that reconsideration cases were not processed for a period of time, unless the state agency was notified of dire circumstances. Two current cases handled by NOSSCR members are graphic examples of the impact that this action could have on claimants. What would have happened to these individuals if the reconsideration slow-down was in place?

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

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

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

One key example of post-entitlement work that has fallen by the wayside in the past is the processing of earnings reports filed by people with disabilities. Typically, the individual calls SSA and reports work and earnings or brings the information into an SSA field office, but SSA fails to input the information into its computer system and does not make the needed adjustments in the person's benefits. Years later, after a computer match with earnings records, SSA notifies the person was overpaid, sometimes tens of thousands of dollars, and sends an overpayment notice to this effect. These are situations where the individual is clearly not at fault. However, all too often, after receiving the overpayment notice, the beneficiary will tell SSA that he or she reported the income as required and SSA will reply that it has no record of the reports.

When this occurs, it may result in complete loss of cash benefits (Title II benefits) or a reduction in cash assistance (SSI). It also can affect the person's healthcare coverage. To collect the overpayment, SSA may decide to withhold all or a portion of any current benefits owed, or SSA may demand repayment from the beneficiary if the person is not currently eligible for benefits. Not surprisingly, many individuals with disabilities are wary of attempting to return to work, out of fear that this may give rise to the overpayment scenario and result in a loss of economic stability and

potentially of healthcare coverage upon which they rely. As a result of this long-term administrative problem, anecdotal evidence indicates that there is a widespread belief among people with disabilities that it is too risky to attempt to return to work, because the beneficiary may end up in a frightening bureaucratic morass of overpayment notices, demands for repayment, and benefit termination.

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

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

1. Conducting pre-effectuation reviews on increasing numbers of initial SSI disability allowances. SSA must review these cases for accuracy prior to issuing the decision.
2. Changing how SSI retroactive benefits are to be paid. SSA must issue these benefits in installments if the amount is equal to or more than three months of benefits. The first two installments can be no more than three months of benefits each, unless the beneficiary shows a hardship due to certain debts. Many more cases will need to be addressed because under prior law, the provision was triggered only if the past due benefits equaled 12 months or more. With the trigger at three months, it is likely that many more beneficiaries will ask SSA to make a special determination to issue a larger first or second installment.
3. New SSA Medicare workloads. SSA has new workloads related to the Medicare Part D prescription drug program, including determining eligibility for low-income subsidies, processing subsidy changing events for current beneficiaries, conducting eligibility redeterminations, and performing premium withholding. And beginning in FY 2007, SSA will make annual income-related premium adjustment amount determinations for all current Medicare beneficiaries for the new Medicare Part B premium for higher income beneficiaries. SSA will also make the determinations for new Part B applicants.

CONCLUSION

Thank you for the opportunity to testify today. The examples of claimants from NOSSCR members demonstrate, in human terms, the terrible impact of the delays caused by the disability claims backlogs. We urge Congress to provide SSA with adequate resources to perform its workloads, which are vital to people with disabilities.

Chairman MCNULTY. Thank you, Ms. Shor.
Mr. Warsinskey?

STATEMENT OF RICK WARSINSKEY, PRESIDENT, NATIONAL COUNCIL OF SOCIAL SECURITY MANAGEMENT ASSOCIATIONS, INC., CLEVELAND, OHIO

Mr. WARSINSKEY. Chairman McNulty, Congressman Johnson, and Members of the Subcommittee, my name is Rick Warsinskey and I represent the National Council of Social Security Management Associations. Our primary memberships are in the Social Security field offices and teleservice centers throughout the country but we do have some members in the hearings offices too. On be-

¹¹ SSA FY 08 Budget Justification, p. 80.

half of our membership, I am pleased to have the opportunity to submit this testimony.

SSA is facing many challenges. One of the most compelling is the 717,000 pending hearings, which take 508 days on average for a decision. In 2000, there were only 311,000 cases pending, taking on average 274 days to process. These severe delays are a national problem. They are found in the ODAR hearings offices throughout the country. For example, in the Albany, New York hearings office it takes on average about 484 days to process a hearing. In the Dallas North hearings office, it takes about 579 days. The pending hearings are expected to continue to grow in Fiscal Year 2008 to about 768,000 cases and the processing times to increase even more to 541 days while SSA's total staffing is being cut by approximately 4,000 positions from Fiscal Year 2006 to 2008. As a result, there will be very little hiring in SSA. It is interesting to note that total Executive Branch employment is expected to increase 2.1 percent for Fiscal Year 2006 to 2008 while SSA's employment expects to drop by 6.2 percent. Every day SSA field offices and teleservice centers throughout the country are being contacted by people regarding the status of their hearings, as I am sure most congressional offices are. Many of these people are desperate and they have insufficient funds to live on and the delays only add to their sense of desperation.

I would like to note that field offices are also being overwhelmed by about 68 million business-related telephone calls. The fact that the public cannot get through to SSA on the telephone is creating an overwhelming amount of walk-in traffic in many field offices. The field offices have seen a reduction of 2,000 positions in just the last 17 months and are probably at their most inadequate staffing level in recent memory. In the past couple of months, I have received hundreds of messages from SSA field offices management describing how the stress in their offices is incredible. Health problems are growing. It is truly a dire situation.

Our organization realizes that the backlogs in hearings are critical. We wish field offices could assist in clearing these backlogs. We recognize the primary purpose of this hearing is to discuss the backlogs in SSA, especially in disability, and also to find some solutions. In the long term, we believe that the Agency's Disability Service Initiative will assist in stabilizing the hearing process. We also think that continual improvements in the management of the hearings process in ODAR are very important, but we truly believe that we will be back discussing the same backlog problem that is so devastating for so many Americans this time next year and the year after and so on unless we can provide the resources necessary to bring the backlogs down. It is time to come up with a solution.

The Commissioner of SSA is required by law to provide an annual budget for the Agency. The budget amount submitted by the Commissioner for Fiscal Year 2008 is about \$10.44 billion, which is about \$843 million more than what the President has requested. The Social Security Trust Fund currently totals approximately \$2 trillion. As you know, the Social Security Trust Fund is intended to pay benefits to future beneficiaries and finance the majority of the operations of the SSA. We know that \$843 million is a lot of money but it is less than one-twentieth of 1 percent of \$2 trillion.

Don't the workers who have paid into this trust fund with their taxes deserve to receive due consideration and receive the very benefits they have paid for in a timely manner?

We urge Congress to provide SSA with enough resources to meet our responsibilities to the American public, your constituents. Resources are important, perhaps the most important element in addressing not only the backlogs in hearings but so many other challenges that we are facing and will continue to face in SSA.

Mr. Chairman, I thank you for the opportunity to appear before the Subcommittee. I welcome any questions that you and your colleagues may have.

[The prepared statement of Mr. Warsinskey follows:]

Prepared Statement of Rick Warsinskey, President, National Council of Social Security Management Associations, Inc., Cleveland, Ohio

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

The NCSSMA is a membership organization of nearly 3,400 Social Security Administration (SSA) managers and supervisors who provide leadership in SSA's 1,374 Field Offices and Teleservice Centers throughout the country. We also have members in the Office of Disability and Adjudication Review (ODAR). We work closely with many other associations including the Federal Managers Association which represents the management in ODAR.

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

Unfortunately, as we discuss prompt service, we cannot say that this is currently the case for hundreds of thousands of claimants that have filed for Social Security and SSI Disability benefits. Right now there are about 717,000 hearings pending. And at the moment it is taking 508 days, on average, for a hearings decision. Nearly 300,000 hearings have been pending over a year.

Every day SSA Field Offices and Teleservice Centers throughout the country are being contacted by people regarding the status of their hearings, as I am sure most Congressional offices are. Many of these people are desperate and have insufficient funds to live on and the delays only add to their sense of desperation.

If we step back to the beginning of this decade, we will find that there were only about 311,000 hearings pending in 2000, and that the average time for processing was just 274 days. So the pending cases have grown 130% in six years, and the average time to process a case has increased by 234 days.

SSA projects that the average time to process a hearing will increase by another 33 days, to 541, in FY 2008 if the Agency receives the level of funding proposed in the President's budget. SSA also expects the number of pending hearings to increase by another 51,000 cases to 768,000 in FY 2008.

These long waits occur after most claimants have passed the first two stages of their claim, having received an initial decision and a reconsideration. By this point, over 200 days have already passed by.

These severe delays are a national problem—they are found in Hearings Offices throughout the country. For example, in the Albany, New York Hearings Office, it takes on average 484 days to process a hearing. For the Dallas North Hearings Office, it takes 579 days.

About three years ago, Congresswoman Stephanie Tubbs Jones and Senator George Voinovich held separate hearings in Cleveland to discuss the backlogs in hearings; particularly in the Cleveland Hearings Office. Back then, the Cleveland Hearings Office had about 11,000 hearings pending and it took on average 550 days for a hearing decision. Today, three years later, there are 1,300 more cases pending in this office—or 12,300 cases. And it has taken on average 555 days to process these cases this year.

The root of this backlog started at the beginning of this decade when the number of new hearings that were being filed significantly exceeded the number of dispositions every year. It wasn't until 2006 that the number of receipts and dispositions narrowed to such a degree that the pending hearings leveled off in the low 700,000 range.

That is, at least, a little good news.

But, as I mentioned above, the pending hearings are expected to continue to grow in FY 2008 to 768,000, and the processing times to increase to 541 days. This is not unexpected as SSA's total staffing including staff in our community based field offices is being cut by approximately 4,000 positions from Fiscal Year 2006 to Fiscal Year 2008. As a result, there will be very little hiring done during this period—including in ODAR. It is interesting to note that total Executive Branch Employment is expected to increase 2.1% from FY 2006 to FY 2008 while SSA's employment is expected to decrease by 6.2%.

For Fiscal Year 2008, the President has proposed an increase for SSA of approximately \$304.0 million over the estimated final level of funding for Fiscal Year 2007. And yet, staff is being cut. This is due primarily to the fact that salaries and benefit costs, including those for the Disability Determination Services, rent, and security costs, are totaling more than these increased funds. In Fiscal Year 2007, it appears that the funding for SSA will be just barely enough to avoid an Agency-wide furlough. Although a furlough at SSA may have been avoided, as it stands now the Agency will be forced into a near hiring freeze for the entire year after only being able to replace one out of three staffing losses last year.

As a result, the FY 2008 President's budget will provide fewer, not additional, resources for SSA to assist ODAR.

One might ask if SSA Field Offices could assist ODAR with their workloads. SSA community based Field Offices are probably at their most inadequate staffing levels in recent memory. Last year Field Offices could only fill one out of every eight vacant positions and this year they haven't been able to replace any of the positions they have lost. The Field Offices have seen a reduction of 2,000 positions in just the last seventeen months. This cut works out to an equivalent reduction of ninety-five Field Offices with an average office having twenty-one employees.

Most of the cuts in Field Offices are in the critical positions of Claims Representative and Service Representative, those who assist the vast majority of the forty-two million visitors that come into Field Offices every year. Just last week, the week ending February 9, 2007 almost 950,000 people visited Social Security Administration Field Offices. Field Offices are also being overwhelmed by business-related telephone calls. SSA Field Offices are receiving approximately sixty-eight million phone calls a year. This is in addition to the forty-four million phone calls that are received by SSA's 1-800 number on an annual basis.

The fact that the public can't get through to SSA on the telephone is creating an overwhelming amount of walk-in traffic in many Field Offices. Waiting times in many Field Offices are running two to three hours long. Some visitors are even experiencing wait times over four hours.

The degradation of SSA's ability to provide good service can be seen by the results of a Harris Poll that were released on February 6, 2007. This poll ranked SSA last when compared to other Agencies in response to the question:

"Overall how would you rate the job SSA does—excellent, pretty good, only fair or poor?" Only 40% rated SSA as pretty good or excellent. The next highest (second to last) Agency had a rating of 55%.

The increase in hearings can be tied in large part to the baby boom generation aging to the point where the highest percent of disability claims are filed when they reach their 50s. Next year, in 2008, the first of seventy-eight million baby boomers will be eligible for Social Security retirement. So there will be a steady rise in retirement claims with SSA—along with an increasing number of contacts by the boomers with SSA once they start receiving benefits.

At the end of 2006, there were 40.3 million people receiving retirement and survivor benefits. This figure is expected to rise by about 1 million a year over the next ten years and accelerate after this. SSA took about 3.3 million retirement and sur-

vivor claims last year. So we are looking at a significant increase in work for SSA offices.

In the past couple of months I have received hundreds of messages from SSA Field Office management describing how the stress in their offices is incredible. Health problems are growing. It truly is a dire situation.

I would like to share with you part of a communication I received from a member of Field Office management:

"We have lost five employees recently. Two had strokes in the office in the last month and it may have been due to all the stress. Another employee is retiring next month. We are simply being hammered with work. The number of people visiting our office is well beyond our capacity to handle them. About 30% of our visitors live outside our service area. We don't receive staff for these extra visitors and the loss of staff has made it an impossible situation.

Adding to the severe stress is the sense of hopelessness that we can't replace anyone that leaves. A lot of our work just sits. We can't get to the appeals being mailed in. Internet claims being sent to us just sit. People are interviewing all day and have no desk time. Some days over two hundred people come in. This is an incredible number of people to see for a staff our size. We have given up even answering calls that come into our office because there is no one to answer the telephones.

We really have a very dedicated and wonderful staff. But so many are about to have a breakdown. We are just desperate to get help. And how can we get help if there is a hiring freeze in SSA?"

Our organization realizes that the situation in ODAR is critical. But we also realize that the Field Offices are unable to assist with this situation because the situation in the Field Offices is just as critical and affects even more people.

There are three areas of concern that **must** be examined in addressing the backlogs in ODAR. These areas are: (1) preparing the cases for the judges to hear; (2) cases that have been prepared but are still waiting for scheduling and a hearing; and (3) decisions that must be written after the hearing has been completed. Resources are needed in all three areas. If you only address two of the three areas, the backlogs will remain.

For example, I was contacted by a Field Office manager from Pennsylvania. He told me that he had recently received a call from a very frustrated staff member in his local Congressman's office. Their frustration was that the cases were taking an extremely long time to be written up, which is necessary so that the case could be paid, even though the judge had decided to approve the case.

One may suggest that the backlogs could be alleviated by shifting cases around the various ODAR offices. It is true that some offices have more backlogs than the other offices. This effort may decrease the variance in the backlogs and the time that it takes to process hearings cases in some offices, but we do not believe it will significantly reduce the backlog totals. Offices that assist backlogged offices will not be able to clear their own cases as quickly.

Another question that many of you may have is if the Agency's Disability Service Initiative will take care of the backlog problem. We definitely support this initiative. This initiative is being rolled out in New England but will take a number of years to go nationwide. It has been suggested that SSA could accelerate the implementation. We believe the initiative needs to be fully tested first to ensure that it works as planned. The initiative is fairly complicated and a quick roll out would likely create a lot of logistical problems and might create more backlogs. So we do not see DSI as being able to help address the backlogs in the immediate future. But we think DSI, coupled with bringing down the backlogs as suggested through additional resources to SSA as will be described below, will provide a long-term solution.

The Program Service Centers (PSCs) also play an important role in the processing of disability claims—especially the hearings. PSCs need to process approved Title II Social Security disability hearings. These cases are often very complicated especially when they involve worker's compensation and various offsets. So necessary resources must also be provided to the PSCs.

In addition, the Disability Determination Services must have adequate staff to make decisions on their cases. The DDSs have lost approximately 650 positions since the beginning of Fiscal Year 2006. The Disability Determination Services were forced to slow down processing of reconsiderations for the last four months of Fiscal Year 2006 in order to meet service obligations to Congress. This would not have been necessary if SSA had received adequate resources for Fiscal Year 2006.

Finally, the Office of Systems which we understand is the largest computer system in the United States, with the exception of Defense/Intelligence based systems,

must also have adequate resources. Much of SSA's computer code needs to be updated and many projects to improve the Agency's systems could be completed more timely with additional funds.

Any potential solutions suggested to address the backlogs in SSA must thoroughly examine all aspects of the process.

Because SSA is an independent agency, the Commissioner is required by law to prepare an annual budget for SSA, which shall be submitted by the President to the Congress without revision, together with the President's request for SSA. This budget reflects what the Commissioner has evaluated as the level of funding necessary to meet the Agency's service delivery improvements and fiscal stewardship responsibilities through 2012. This budget also factors in that SSA has received less than the President's budget request in recent years, thus leading to the need for additional resources in the future to meet the full service delivery plan. The budget amount submitted by the Commissioner of Social Security for Fiscal Year 2008 is \$10.44 billion. This \$10.44 billion is \$843.0 million more than what the President requested. The difference between these proposed funding levels is significant. Of more significance is the difference between the final funding levels approved by Congress for SSA in comparison to the budget submitted by the Commissioner. Inadequate levels of resources have contributed to the growing inability at SSA to provide adequate levels of service.

Let me point out, that the Social Security Trust Fund currently totals approximately \$2.0 trillion. The Social Security Trust Fund is intended to pay benefits to future beneficiaries and finance the operations of the Social Security Administration. \$843.0 million dollars is a lot of money—but it is less than 1/20th of one percent of two trillion. Don't the workers who have paid into this trust fund with their taxes deserve to receive due consideration and to receive the very benefits they have paid for in a timely manner?

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

The NCSSMA believes that the American public wants and deserves to receive good and timely service for the tax dollars they have paid to receive Social Security. But Congress has to provide assistance on this issue. We urge Congress to provide SSA with enough resources to meet our responsibilities to the American public—your constituents.

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

Again, Mr. Chairman, I thank you for this opportunity to appear before this Subcommittee. I welcome any questions that you and your colleagues may have.

Chairman McNULTY. Thank you, Mr. Warsinskey.
Mr. Fell?

STATEMENT OF JAMES FELL, PRESIDENT, FEDERAL MANAGERS ASSOCIATION CHAPTER 275, ALEXANDRIA, VIRGINIA

Mr. FELL. Chairman McNulty, Ranking Member Johnson, and Members of the Subcommittee, my name is Jim Fell and I am here today representing close to 1,000 managers in the SSA's Office of Disability, Adjudication, and Review, in my role as the president of the Federal Managers Association (FMA) Chapter 275 and vice Chairman of FMA's Social Security Conference. Please allow me to take a moment to thank you for the opportunity to present our views to the Subcommittee. As Federal managers, we are com-

mitted to carrying out the mission of our Agency in the most efficient and cost-effective manner while providing necessary services to millions of Americans. Currently, I am the hearing office director in Cincinnati, Ohio Office of Disability, Adjudication, and Review and recently accomplished 36 years of Federal service, 33 of which were within SSA and 27 in SSA management, either in the field or in ODAR. Please keep in mind that I am here on my own time and my volition and speaking for FMA and not speaking for SSA.

Each month SSA pays out benefits to 48 million beneficiaries. In ODAR, however, there currently exists a backlog of over 717,000 requests for hearings. It now takes on average over 500 work days to process a typical request for hearing and these delays tarnish SSA's otherwise strong record of service to the American public. In the last five years, the number of pending hearing requests has grown by almost 250,000 despite record disposition rates in the last five years. Unless something is done to reverse the trend, the backlog could realistically reach \$1 million by 2010.

I am here today to confirm that the ongoing lack of adequate staffing levels and resources have contributed to these backlogs. If these inadequacies continue, clearing the backlogs will be impossible and service delivery will continue to deteriorate. In September 2004, FMA appeared before this Subcommittee to testify on the challenges and opportunities facing implementation of a new electronic disability process in SSA. At that time, we testified that the backlog will not decrease until staffing levels are increased and stated a desperate need for additional staffing. That request was unheeded. We are back today with a staffing situation unchanged and the backlog significantly larger.

Adequate clerical staff is necessary to prepare cases for hearing. As it stands, hearing offices do not even have the staff to accommodate the judges on duty let alone enough staff to process the new 46,500 cases ODAR receives each month. If receipts even remained flat, the backlog will remain at over 700,000 cases, almost one-third of which are over a year old.

In addition to the current staffing shortfalls, over 40 percent of SSA employees are expected to retire by 2014. Additional employees will be necessary to address both the burgeoning receipts and the stringent performance requirements of the DSI Initiative. For an example, an approximate 1,000 additional ALJs and 5,000 additional support staff would allow ODAR to work down the backlog in one year and still provide timely processing. I understand realistically that is probably not going to happen. However, the continuing resolution, which passed the House and will likely pass the Senate, was severely inadequate to address both the staffing and the backlog problem in SSA in Fiscal Year 2007.

To fix the problem, Congress should begin by passing the President's 2008 budget request of \$9.6 billion for SSA's limitation on administrative expenses account. We see this as a start. It obviously will not let us attack the backlog. In addition to having an immediate impact on the current backlog, inadequately funding, the SSA will negatively impact every service of the Agency. By fully funding the President's request, we at least can continue the tradition of employing a well-trained dedicated staff of Federal employees.

In this era of shrinking budgets, SSA has attempted to maximize its use of the 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 the stress on the Social Security Trust Funds because they are approaching retirement age 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 the disabled Americans every single day. We see people of all ages come in and out of our offices seeking the services they depend on from the SSA. We are committed to serving the community of Americans in need, but we need you to provide us the necessary resources to help these people.

Thank you again for your time, and I would be happy to answer any questions you may have.

[The prepared statement of Mr. Fell follows:]

**Prepared Statement of James Fell, President, Federal Managers
Association Chapter 275, Alexandria, Virginia**

Chairman McNulty, Ranking Member Johnson and Members of the House Ways and Means Subcommittee on Social Security:

My name is Jim Fell, and I am here today representing close to 1,000 managers in the Social Security Administration's Office of Disability Adjudication and Review (ODAR) in my role as the President of the Federal Managers Association (FMA) Chapter 275 and Vice Chairman of FMA's Social Security Conference. Please allow me to take a moment and thank you for this opportunity to present our views before the Subcommittee. 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.

I have been President of FMA Chapter 275, Office of Disability Adjudication and Review Managers Association (ODARMA) for the last 8 years. I am the Hearing Office Director in the Cincinnati, Ohio Office of Disability Adjudication and Review and recently accomplished 36 years of federal service, 33 of which were within SSA. I have been in SSA management for 27 years, the first 12 years in SSA Operations in district field offices and the last 15 as a hearing office manager and now a hearing office director in ODAR. I was also an active member of the Hearing Process Improvement (HPI) Steering Committee created by former Commissioner Kenneth S. Apfel to study the effectiveness of HPI. Please keep in mind that I am here on my own time and of my own volition representing the views of FMA. I do not speak on behalf of SSA.

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

As you are undoubtedly aware, the Social Security Administration plays a vital role in serving over 160 million American workers and their families. Each month, SSA pays out benefits to 48 million beneficiaries. Over 7 million low-income Americans depend on the agency's Supplemental Security Income (SSI) program to stay afloat in a cost-inflating world, and nearly 7.2 million disabled Americans receive benefit payments through Social Security Disability Insurance (SSDI). In her May 11, 2006 message to the House Committee on Ways and Means Subcommittee on Social Security, former-SSA Commissioner Barnhart testified that SSA's produc-

tivity has increased 12.6 percent since 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 717,000 requests for a hearing. It now takes an average of 500 work days to process a typical request for hearing and these delays tarnish SSA's otherwise strong record of service to the American public. At the beginning of 2002, SSA had 468,262 pending hearing requests. In five years, that number increased to over 717,000, despite the fact that dispositions are at record levels. Unless something is done to reverse this trend, the backlog could realistically reach one million by 2010 with the aging Baby Boom generation.

As managers and supervisors within ODAR, we are keenly aware of the backlogs and the impact these backlogs are having on our ability to deliver the level of service the American public deserves. We are here today to confirm that the ongoing lack of adequate staffing levels and resources have contributed to these backlogs. If these inadequacies continue, clearing the backlogs will be impossible and service delivery will continue to deteriorate. In September 2004, we appeared before this subcommittee to testify on the challenges and opportunities facing implementation of a new electronic disability process at SSA. At that time, we testified that the backlog will not decrease until staffing levels are increased and stated a desperate need for additional staffing, a warning which went unheeded. We are back today, with the staffing situation unchanged and the backlogs significantly larger.

Former SSA Commissioner Jo Anne Barnhart created a service delivery plan to reduce backlogs in Social Security processing over a period of years, while meeting the agency's obligations to maintain high levels of program integrity. The advent of electronic disability files and the process changes included in the Commissioner's disability service reforms promise to improve the timeliness and efficiency for future claimants; however, these changes do nothing to address the pending backlog. The hearing offices lack sufficient staff to process the work on hand and are unable to even begin to work on new incoming cases.

ODAR began fiscal year 2007 with 419,972 pending cases awaiting preparation for a hearing. In all likelihood, those cases will realistically wait at least one year before any action is initiated to prepare the case for review and hearing in front of an Administrative Law Judge (ALJ). Although clericals in hearing offices prepared 477,816 cases in FY06, claimants submitted almost 558,000 new requests during the same period. As such, the backlog of files simply awaiting preparation for review by an ALJ at the close of January 2007 totaled 413,260 cases; an increase of 19,088 cases since the beginning of Fiscal Year 2006. ODAR's processing time at the end of January was an embarrassing 499 days. 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 level limitations. At the end of January, 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.

Adequate clerical support is necessary to prepare cases for hearing. As it stands, hearing offices do not even have the staff to accommodate the judges, let alone enough staff to process the new 46,500 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.

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 can do nothing more than maintain the status quo. That means that the backlog stays the same and processing times continue at an estimated 500 days. We applaud the agency for introducing a new technology program and new procedures, which, if implemented successfully, will improve future processes and overall efficiency. However, the new systems cannot address the problems plaguing the current backlog and their impact cannot be fully realized until the backlog is reduced.

The existing staff must make room for the new cases as they attempt to address the backlog. In recent years, however, the agency has made the mistake of hiring additional Administrative Law Judges without providing adequate support staff to

prepare the cases for hearing. Commissioner Barnhart repeatedly stated that she hoped SSA would hire 100 ALJs FY07, but funding shortages have only allowed for less than 40 new hires. We recognize that the Commissioner was 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.

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 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, no staffing shortfalls can be remedied without adequate funding.

The solution to the backlog problem is simply adequate staffing levels which will allow us to address the pending cases. As of last month, the backlog was at 717, 411 requests for a hearing. 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 1 year while providing timely processing of new cases as they arrive.

In addition to the current staffing shortfalls, 40% of SSA employees are expected to retire by 2014. While hiring temporary employees may address the immediate challenge of decreasing the backlog, many new employees will be needed on a permanent basis. These employees will also be needed to address both the burgeoning receipts and the stringent performance requirements of the Disability Service Improvement initiative.

The backlog of cases at the hearing offices must be addressed immediately by providing sufficient staffing in all positions. To enable SSA to meet the goals set forth in the previous Commissioner's service delivery plan, Congress must approve a sufficient level of funding for the agency. The Continuing Resolution (CR) which passed the House and will likely pass the Senate was severely inadequate to address both the staffing and backlog problem at SSA in fiscal year 2007 despite the meager increase above the fiscal year 2006 appropriation.

The President requested \$9.494 billion in FY07; an amount which Commissioner Barnhart repeatedly stated was vital to sustain the agency. Even if SSA had received the full funding, SSA would have faced a loss of 2,000 positions, a number which will now be far greater due to the CR. The amount approved in the CR will undoubtedly cause a profound disruption of service to the American public, including significant increases of waiting times in field offices and added delays in the processing of appeals.

To fix this problem, Congress should begin by passing the President's 2008 budget request of \$9.597 billion for SSA's Limitation on Administrative Expenses account. In addition to having an immediate impact on the current backlog, inadequately funding the Social Security Administration will negatively impact every service area of the agency. SSA budgeted for a one-to-three ratio of staff retiring to the replacement of staff for FY06 and FY07, and any further reduction would force the agency to cut thousands of additional workyears.

While the President's budget request for FY08 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. I believe this is the workforce we have now, strengthened by the leadership of Commissioner Barnhart in the last six years. 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 funds because they are approaching retirement age are also entering the 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 from the Social Security Administration. We are committed to serving a community of Americans in need, but we need you to provide us the resources necessary to help them. Thank you for your time and consideration of our views.

Chairman MCNULTY. Thank you. I am really deeply grateful to all of you for being here today. When we talked to the Commissioner, we were talking in general terms about this problem, you make the problem real. Thank you, Mr. Schieber, for your advocacy. Ms. Shor, you cited, among other things, Ms. C from Troy, New York, well, Troy, New York is in my district so that is a constituent of mine. Here is an individual who, while the government bureaucracy was grinding forward, was evicted from her apartment, lost custody of her children, ended up in a homeless shelter, and was recently hospitalized. Now, I am sure there are other factors in play in Ms. C's life but certainly the failure of the government bureaucracy did not help in her situation. Mr. Fell, thank you for being specific about what we need to do in order to address this problem. I would also say Mr. Warsinskey mentioned perhaps a figure that would be helpful in addressing the staffing shortage and kind of implied that maybe we could take out of the trust fund. Well, it would be nice if the trust fund was there, if it wasn't just a fistful of IOU's. One of the things that I have been talking about for years is getting to the point in time where we are honest about budgeting in this country and that we end this 40 year practice of taking the Social Security surplus every year, stealing it, putting it in the general fund and using it for other purposes. Now, we have been doing that. On this issue, believe me, I do not make any political statement at all, I am an equal opportunity critic. Congress of both parties and Presidents of both parties have been doing this for 40 years and it started with a Democratic President in your State, Lyndon Johnson.

[Laughter.]

Chairman MCNULTY, but it is wrong. It is wrong. Last year, we had a surplus in Social Security of \$175 billion and not a penny of it went to Social Security recipients or was put aside for Social Security recipients. It was put into the general fund and it was spent on everything under the sun other than Social Security. People ask me from time to time when we are going to get serious about the so-called long term fix. Well, my cue on that will be when Members of both parties get honest in budgeting and start preserving Social Security Trust Fund monies for Social Security recipients.

So, thank you all for advocacy, and we hope to work together with you to seriously address this problem. Mr. Johnson may inquire.

Mr. JOHNSON. Thank you. Lyndon also said, "Every tombstone ought to be allowed to vote."

I like your insanity comment, it is appropriate not only to this issue but to the one we are addressing on the floor at this point too.

I would like to ask all of you, if you don't mind, Mr. Schieber, who has testified not only in this Committee but in the Education and Labor Committee, which I was on too, he suggests a thorough evaluation to find policy improvements to make the program easier to administer. I think there are or there must be ways to simplify how Social Security is administered and it is not necessarily dollars and maybe not people, but can you all address, each in his own way, that subject? How can we fix the system in other words? Ev-

everybody says we need different rules. In other words, that Congress needs to do something. What do we need to do? I recall Social Security, let's see in 1994 I think we made it a separate Agency and yet they do not have the authority that a separate Agency in the Government should have I don't think. For example, the President makes their budget request and sends it to us and there is no justification about why those dollars are there for the Congress.

Mr. SCHIEBER. If you fix that problem, you might facilitate their ability to administer the existing program. That is not going to change the nature of administering the existing programs. The issue that came up earlier about ALJs, at some juncture, lawmakers became concerned that if these people were totally selected by, hired by, and reported purely to Social Security, they might not have the independence to provide fair judgment in cases.

Mr. JOHNSON. That is why they did it that way.

Mr. SCHIEBER. So, OPM has been given the charter of setting up these lists and then, when Social Security needs an ALJ, they send them a list of three or four or five qualified candidates off of their list that Social Security can then interview and hire. OPM got sued because of the exam they were giving and the way they were scoring exams back in 1997. They closed the list. They have not renewed that list for all practical purposes since 1997. When Social Security now needs an ALJ, they are sent a list of people that were identified as qualified in 1997. Now, I think if you went to Bill Gates and you told him that the way we want you to run your company going forward, as a cutting-edge software development company, is to hire off of a list of people that you had and you would considered qualified in 1997, he would declare you an idiot.

Mr. JOHNSON. You just redefined insanity.

Mr. SCHIEBER. Yes. Now, there are a whole variety of these sorts of things that need to be addressed but the overriding concerns always come back. We have been talking about it at the Advisory Board. We have been working on an issue brief and thought we had a draft issue brief ready to go on this matter. The fact of the matter is that about in 2005, 82 percent of the Federal ALJs worked at Social Security. Many of the things that they do is very different from what goes on in the other agencies. So the one thought was, well, let's let SSA have the responsibility for developing the qualifications and administering exams and making sure that they have got a renewed list, but, again, this issue of independence raised its head. So, there are these competing interests, they need to be worked through.

In terms of disability, the definition for disability was set in 1957. Think about our economy in 1957 what it was, it was a manufacturing economy, manufacturing and rural economy. Think about what it is today. Is the definition of disability in 1957 appropriate for an economy that is now a service-oriented, intellectually-based economy? We need to re-think a whole variety of these things. Now, it is going to take some time and effort, but we ought to get under way and get on with the program.

Mr. JOHNSON. Did your board make any recommendation?

Mr. SCHIEBER. Have we made specific—well, we have made a recommendation that we ought to come back and re-visit the definition of disability. We are going to publish, I hope within the next

month, this issue brief on the ALJs. As I indicated at the outset, I have been on the Advisory Board now for nine years. Over that nine year term, we have issued 21 separate reports or major statements on the disability program. Very frankly I am not sure we have made a lot of progress.

Mr. JOHNSON. So, they are not paying attention to you. I would ask in lieu of my time being gone, if you all would mind putting in writing an answer to the question and send it to us, would that be appropriate? Thank you. Thank you, Mr. Chairman.

Chairman MCNULTY. Mr. Becerra.

Mr. BECERRA. Thank you, Mr. Chairman. To each and every one of you, thank you for your testimony. I am not sure where to go with you all because I think you all are stating what is the obvious and that is that the SSA does not have the resources it needs, that it knows it does not have the resources that it needs, that the White House knows that it does not have the resources that it needs, and the Office of Management and Budget knows that it does not have the resources it needs, and that Congress knows that SSA does not have the resources that it needs. The only folks that are suffering from all that knowledge are the beneficiaries who are not getting their benefits. Mr. Warsinskey, I sort of liked your idea and I think the Chairman sort of echoed it, that perhaps with that—what is it this year, \$170 billion surplus in Social Security funding that is provided by people who are working and may in the future have to utilize these disability services and benefits, perhaps what we should do is take some of that money and use it to help provide the services that people have paid for.

Let me ask a question to you, do you have a sense, Mr. Warsinskey, how many of the folks that you see that need to go through this process for benefits under Social Security, disability or otherwise, qualified for the majority of the tax cuts that the President has proposed over the last five years, these Bush tax cuts?

Mr. WARSINSKEY. No, I do not think most of them qualify for it, no. Most of the people that apply are poor, frankly poor.

Mr. BECERRA. We have actually—in these five years or so, we have actually seen about \$2 trillion go out the door to pay for these tax cuts that have gone principally folks who are making a sizeable amount of money. I suspect the millions of people who are waiting for these benefits that have applied have worked and paid for Social Security, hardly any of them are getting any of the \$2 trillion that has been sent out in tax cuts. On top of that, those tax cuts have been paid for using Social Security Trust Fund dollars, and we still end up with a deficit. So, I hope you all will just be forceful. Do not let us off the hook either. Congress has the power of the purse. Certainly the President, as the Executive, has to come forward with a budget that is adequate. I do not think he has. I know that the SSA and the Commissioner are to some degree shackled in what they can say and how much they can ask for before Congress, but I hope you all will speak as loud as you can, especially with the examples of individuals who are suffering as a result of the entire Federal Government's malfeasance in this regard.

Mr. WARSINSKEY. Let me also point out, much was not said about it, but we just barely avoided a furlough in Social Security,

just barely, and we are at a point of basically no hiring this year. It was going the other direction, fortunately we prevented that.

Mr. BECERRA. I think, Mr. Chairman, we may want to take up the idea that I think—is it Schieber or Schieber?

Mr. SCHIEBER. Schieber.

Mr. BECERRA. Mr. Schieber came up with about disclosing, someone came up with the notion of disclosing the SSA's budget, proposed budget, that it submits to the Office of Management and Budget. I think that might be a good idea as well because it helps us identify where SSA says its needs are. Maybe what we can do is perhaps not do everything that SSA wants but certainly, based on their expert recommendation, know where we can target some of our monies to try to make it work as well as possible, but first and foremost, I think all of us are becoming very—it is becoming very clear to us that we are not going to get there with the monies that are being allocated to the SSA as it is, and we all have to sort of buck up a bit and be prepared to do the right thing.

Mr. SCHIEBER. If you think about it, Social Security is a production shop to a very substantial degree. People walk in the door, they need a certain amount of processing. The way they actually develop these workforce budgets is they look at their expected caseload, and they have got reasonable estimates on what the time involved in each of the steps, and they start to take each of these steps and aggregate them across the people and they build it up from ground zero. It is in some regards exactly the way you want to do all budgeting.

Mr. BECERRA. I think we want to heed though the words from Mr. Johnson as well because we do not want to just put more money in. If it is an inefficient system, let's clean up the inefficiencies because, just as Congress wants to get inefficiency out of any system, I think the beneficiaries want to know that every year that they work to contribute to the system, to the degree that they are going to need to have some of that back in disability benefits, it should be in disability benefits and not to pay someone who is not doing the job. So, I hope that you will continue to give us ideas on how to make the system more efficient and make sure we have the optimal level of personnel and the most qualified personnel as well. My time has actually expired so I am going to yield back. Mr. Chairman, I thank you very much for having the witnesses come.

Chairman MCNULTY. Well, I want to thank all the Members for their participation today. In addition to responding to Mr. Johnson's last question, there may be other Members who were not able to attend today who might want to submit questions in writing, and I hope you will respond to those in a timely fashion.

I want to express our enormous gratitude to you, not just for braving the weather to get here today, but for your advocacy day in and day out for our constituents. We thank you for that, and the hearing is adjourned.

[Whereupon, at 3:45 p.m., the hearing was adjourned.]

[Questions submitted by the Members to the witnesses follow:]

**Questions submitted by Chairman McNulty and
Mr. Johnson to Mr. Schieber**

Question: In your testimony, you suggest a thorough evaluation to find policy improvements to make the program easier to administer. Do you have suggestions for ways to simplify how Social Security programs are administered?

Answer: First of all, let me acknowledge that much of the complexity in the Social Security programs is not accidental but reflects an attempt by Congress to achieve particular policy objectives or to minimize the program costs that would result from simpler rules. However, there may be cases where the complexity no longer serves an important policy objective or where multiple changes could be made that would produce savings in one area sufficient to offset the costs of simplification in another.

For example, a significant part of the workload in Social Security field offices relates to the living arrangements and earnings rules for Supplemental Security Income (SSI) recipients. In the Social Security Advisory Board's 2005 Statement on Supplemental Security Income (a copy of which is attached)*, the Board described changes that could be considered to simplify both of these areas.

Another area that might be examined is the issuance of Social Security cards. Most of the cards issued each year are replacement cards for people who have already been issued a number. This again constitutes a major workload for Social Security field offices involving substantial amounts of agency resources running to the hundreds of millions of dollars. While Social Security numbers are an important element of the program and have significant uses in income tax enforcement and in other areas, some have suggested that the cards themselves are not really necessary. This obviously is a matter with important policy implications that would need to be carefully considered, but it is an example of how careful evaluation of existing policies and procedures could provide Congress with information about what the costs and benefits are for many of the very complicated elements of the Social Security programs.

It is important that SSA strengthen its analytic and research capacity. It needs to better understand, for example, the characteristics of potential applicants so as to better develop guidelines that will enable it to determine eligibility on a more objective basis. And it needs to undertake the types of evaluation of its own processes that can identify areas where administrative or legislative changes will let it carry out the program's policy objectives in more cost-effective and efficient ways.

Question: Are there other ways to address disability backlogs, besides additional resources?

Answer: The SSA handles multiple, massive workloads affecting the lives of nearly all Americans. There is no way to avoid the fact that it requires substantial administrative funding, in excess of the funding that has been provided in recent years, in order to carry out its service and stewardship obligations to the American public. However, there clearly is room for managerial and technological initiatives that will help to address the backlog and, in particular, will better position the agency to meet the continuing challenges it will face from growing workloads in the future. The Social Security Advisory Board has recently issued two reports directly addressing this question. In April, the SSAB published an issue brief on the need for improved processes for recruiting ALJs to assure that the agency has a sufficient talent pool and that that pool has the kinds of skills needed for the complex, production oriented SSA workloads. Last September, the Board issued a report expressing concern over the current state of the hearing process and making a number of recommendations for ways to improve it in addition to providing more adequate resources. In the Executive Summary of this report, the Board made the following points:

In examining the hearing process, our goal is a process that embodies the public's interests of fairness, consistency, and efficiency. Our major concerns with the current process are lack of consistency, processing times and backlogs, productivity, hearing office management, and the SSA-ALJ relationship.

- Our concern with consistency is based on variations in allowance rates. The extent of variance, supported by data from quality assurance reports, suggests that ALJs may be applying law and agency policy differently. SSA should ensure that its policies are being applied consistently.

* Referenced document is available at <http://www.ssab.gov/documents/2005SSIRreport.pdf>.

- Processing times and pending caseloads have been rising to levels that impose an intolerable burden on claimants.
- The extent of variation in productivity indicates a need to explore the reasons for it and to take steps to increase productivity at the lower end of the spread and to ensure that the upper end is appropriately balanced with decisional quality.
- The current condition of hearing office management does not provide needed incentives and supports.
- The relationship between SSA and its ALJs seems to have improved since our last report on the hearing process but still needs attention.

I am attaching copies of these 2 publications (*Recruiting SSA ALJs: Need for review of OPM role and performance*, SSAB Issue Brief #3, April 2007 and *Improving the SSA's Hearing Process*, Social Security Advisory Board, September 2006).^{*} These publications are also available on the Board website www.ssab.gov. I would also note that the Commissioner of Social Security has recently announced a number of initiatives aimed at increasing the productivity of the hearing process, many of which seem consistent with the themes of the Board's recent reports.

In addition, as I indicated in response to another question, the level of resources needed to administer the program can be significantly affected by the legislative and regulatory policies that make the program more or less complex. In some cases, a determination of allowance can be made by evaluating an applicant's medical condition relative to a set of regulatory standards called the Listing of Impairments. In other cases, a more subjective, complicated, and costly evaluation of the individual's age, education, and vocational history is needed before an allowance or denial determination can be made. In the Social Security Advisory Board's 2003 report on The Social Security Definition of Disability, it pointed out that, in the early years of the program, over 90 percent of cases were decided solely on the basis of the medical listings. That is now down to less than 50 percent of allowances. A careful reexamination of the listings in the light of current medical knowledge might make it possible to make many decisions earlier and on a more objective and less complex basis.

Questions submitted by Chairman McNulty and Mr. Johnson to Mr. Astrue

Question: In his testimony Mr. Schieber refers to the legislation enacted in 1994 making the SSA an independent agency. The law requires the agency's budget request to be transmitted to the Congress without change, with the President's budget request. Yet the only information included is the single number without any justification.

Would you be willing to provide us the same justification materials your agency sent to OMB supporting the agency's budget request? If you want the Congress to provide you with the funds you need, do you agree that we need to fully understand the needs of the agency?

[The response from Mr. Astrue is pending.]

Question: If SSA were to receive the full amount of the Commissioner's request of \$10,440 million for SSA's administrative expenses for FY 2008, what impact would this have on total SSA/DDS workyears, on initial claim and hearing office processing times, and on the number of cases pending at the initial claims and hearings levels?

[The response from Mr. Astrue is pending.]

Question: If SSA had received the full amount of the Commissioner's request for SSA's administrative expenses for the past five fiscal years (2002–2006), how would that have affected the disability claims backlog?

[The response from Mr. Astrue is pending.]

Question: For disability claims at the hearing level, what is the average elapsed time from: 1) the hearing date to the date of disposition; and 2) the date of disposition to the date payment is issued?

[The response from Mr. Astrue is pending.]

^{*}Referenced documents are available at:
http://www.ssab.gov/documents/ALJ_Issue_Brief_3.pdf
<http://www.ssab.gov/documents/HearingProcess.pdf>

Question: What is the average processing time for each individual hearing office nationwide, according to the most recent data?

[The response from Mr. Astrue is pending.]

Question: Could you please provide the following data for each fiscal year from FY 2002 through 2006:

- The average processing times for initial claims *not including technical (non-medical) denials*
- The average processing times for the reconsideration level
- For initial claims, reconsiderations, and hearings, the distribution of pendencies by age of case (for example, the number of initial claims pending more than four months, more than six months, etc.)

[The response from Mr. Astrue is pending.]

Question: When do you anticipate that OPM will have a new registry available to use for hiring ALJs? If the new registry became available in FY 2007, would you have the funding to hire from it? Would you have the funding to hire from the new registry in FY 2008: 1) under the Commissioner's LAE request; 2) under the President's LAE request; and 3) if the appropriated LAE amount were less than the President's request?

[The response from Mr. Astrue is pending.]

Question: What percentage of your workforce is not working on claims processing? Is that the right percentage? Are you confident that every available employee is being used to process claims?

[The response from Mr. Astrue is pending.]

Question: As you know, since August, changes to the disability determination process are being implemented in the Boston region. Is there any update you can provide regarding how implementation is going?

[The response from Mr. Astrue is pending.]

Question: Given the agency's focus on increasing the use of telephone and on-line services, is the current field office structure, both in terms of staffing and office location, positioned to meet the service needs of the 21st century?

[The response from Mr. Astrue is pending.]

Question: One of your greatest challenges is likely to be how to spend the limited funds appropriated for the agency. Would you give us some insight as to what will guide you in your decision-making?

[The response from Mr. Astrue is pending.]

Question: At the end of December 2005, the period for comments on the proposed rule to revise the Ticket to Work program closed. Since then, the public has been anxiously awaiting the publication of a final rule. What is the specific status of this rule? When do you expect to issue the final rule? Once the final rule is issued, when would you expect to implement it?

[The response from Mr. Astrue is pending.]

Question: In his testimony, Mr. Schieber suggests a thorough evaluation to find policy improvements to make the program easier to administer. We have asked your predecessors for legislative proposals to accomplish this, but have received no response. Would you be willing to conduct such an evaluation, to determine both legislative and regulatory changes?

[The response from Mr. Astrue is pending.]

Questions submitted by Mr. Ryan to Mr. Astrue

Question: Mr. Astrue, you mentioned in your opening statement that the SSA has made "significant" improvements in the processing time for appeals of hearing decisions. However, I am particularly concerned about the processing time for the previous step in the appeals process; obtaining a hearing. In Wisconsin, my constituents are experiencing an average waiting period ranging from 564 days in one ODAR office, up to 606 days in an-

other ODAR office—a 14% increase since I was told this problem was being addressed in a previous inquiry I made to the SSA's Inspector General in 2005. What is your plan for addressing this growing problem both in the short term and long term?

[The response from Mr. Astrue is pending.]

Question: Another concern I have is the ratio of decisions ODAR judges 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 in a reversal of the State DDS' decision. Is this rate of reversal proportional to other areas of the country, and does the SSA see a lack of uniformity in the application of standards by the various state DDS bureaus?

[The response from Mr. Astrue is pending.]

Question: Mr. Astrue, my office receives a number of inquiries from claimants who have been successful in receiving a favorable decision for disability benefits and have already been subjected to the five-month waiting period, but have not yet received a payment from the SSA Payment Center in Baltimore. In addition, both my office and the SSA district offices have tremendous difficulty in obtaining updates on the status of payments still pending at the Payment Center. What can be done to make this system not only more user-friendly for SSA district offices, but also for Congressional inquiries?

[The response from Mr. Astrue is pending.]

Question: I have received a number of complaints from constituents who have requested an ODAR hearing, but who have had their cases re-assigned to ODAR offices in States such as Montana, New Mexico and Texas. I was informed by the SSA that this step was being taken to help relieve the workloads from Wisconsin ODAR offices and to help expedite the processing of those cases. However, my office has found that these offices are experiencing similar sized case backlogs and are far less responsive to both my office and to my constituents' concerns when contacted. Has the SSA found this practice to be successful in other areas of the country, and is the SSA undertaking other immediate practices to help alleviate the backlog in ODAR offices?

[The response from Mr. Astrue is pending.]

Question: While the SSA's Chicago Regional Office has begun to add judges and staff to the various ODAR offices in Wisconsin, it has come to my attention that due to the increasing average age of the SSA workforce, retaining these added workers has become a challenge. Can you please share your thoughts on what you think needs to be done to recruit and retain qualified individuals for these important SSA positions?

[The response from Mr. Astrue is pending.]

Questions submitted by Chairman McNulty and Mr. Johnson to Mr. Fell

Question: Are you confident that every available agency employee is being used to process claims?

Answer: We are confident that all employees in the hearing offices, including management, are being used to process hearing requests.

At the regional and headquarters levels, the answer is less definitive. Some of the regional offices, particularly in the more impacted regions, are providing case handling assistance in the form of case pulling and decision writing. We believe that there is limited hands-on claim processing at the headquarters level. Headquarters received 380 of the 872 Full Time Equivalents (FTEs) hired in fiscal year 2007 and it is unlikely that all of these positions are being used to process hearing requests. It is our position that a higher percentage of the FY07 hires should have gone to the hearing offices.

The bottom line, however, is that every single agency employee is not enough to bring down the backlog. Without appropriate staffing levels to meet the growing needs of the agency, we will continue to fall further and further behind. It must be recognized that backlogs create work at an exponential level. Because we are unable

to efficiently handle the work, more work is created in the nature of phone calls, mail, missing files, and a myriad of inefficiencies resulting from sheer numbers. This is the factor which must be brought under control.

Question: Given the agency's focus on increasing the use of telephone and on-line services, do you think the current field office structure, both in terms of staffing and office location, is positioned to meet the service needs of the 21st century?

Answer: This is not a significant component of work at the Office of Disability Adjudication and Review (ODAR). If this question was expanded to include electronic files, we would be able to respond in the affirmative. However, the backlog of paper files is delaying our ability to take advantage of the new technology.

We believe that there must be significant expansion of the Electronic Medical Express (EME), which allows our representative community access to the electronic file. This will allow us to move more efficiently into the new process. We cannot afford to be receiving paper documents that must be scanned into electronic files, nor can we afford to print electronic files for the use of those who can't or won't use the electronic capabilities that are available.

An analysis of the current workload in ODAR will clearly delineate the imbalance of office's, staffing and work. Case transfers have been tried in the past with very limited success. While building offices where the work is provides an expensive alternative, it must be done. Proposals that have been on the table for years have gone unheeded and the backlogs have grown to crisis proportions. There are no short term fixes.

Video centers provide additional possibilities; however, there must be localized sites where the claimants can go for the process to occur. In many instances, cases from backlogged offices are transferred to offices with video capability. However, the claimants must go to the local impacted offices, tying up their resources, and negating the positive impact of the hearings because the local office cannot use a hearing room that is tied up with another office doing video hearings.

SSA Commissioner Michael Astrue has talked about a central office video center. We believe that there should be multiple regional sites founded along this same premise. These sites would have the primary purpose of providing a hearing site in which the claimant could appear and resources through out the nation could be directed to conduct the hearings. These sites would not require full staffing but would require reception, guard, and contractor services.

Question: As you know, since August, changes to the disability determination process are being implemented in the Boston region. Is there any update you can provide regarding how implementation is going, based on feedback from your colleagues?

Answer: There is very little experience with Disability Service Improvement (DSI) at the hearing level. ODAR offices in Region I have not received enough DSI cases to be able to provide meaningful feedback. Region I offices are just now starting to see a regular flow of cases, so there is only a very small sample that have been prepared and scheduled for a hearing. The majority of the DSI cases are still with Federal Reviewing Officials (FedRO) in Falls Church, Va. We have anecdotal information that the FedROs are approving a much higher percentage of cases than were approved by the Disability Determination Service (DDS) at the reconsideration level and that the files are very well documented. If this information is accurate, it will definitely have a positive impact on ODAR as fewer cases will be received. However, the reality is that as long as a case is denied, it will be appealed. A well-documented denial will not be accepted as long as there is a no-cost appeal available.

FMA concurs with Commissioner Astrue that the Quick Disability Decision (QDD) Model has been successful in its limited application and agree that the QDD model should be expanded to encompass a wider range of diseases.

Question: In his testimony, Mr. Schieber suggests a thorough evaluation to find policy improvements to make the program easier to administer. What suggestions do you have for ways to simplify how Social Security programs are administered?

Answer: Commissioner Astrue outlined 36 initiatives in his Summary of Initiatives to Eliminate the SSA Hearings Backlog, submitted to the Senate Finance Committee on May 23, 2007, all of which, in one way or another, should make the program easier to administer. Focusing only on ODAR, it is our contention that the following initiatives and/or suggestions would make the program easier to administer:

1. Close the record following the hearing. This would alleviate post-hearing evidence that is often submitted following a hearing further delaying the decision. Having a definite closing date would also motivate representatives to obtain relevant information supporting their claimant's case and submit it timely. Having all of the evidence at the hearing allows the Administrative Law Judge to make an informed, legally defensible decision.

Secondly, requiring that all evidence be submitted at least 10 days prior to the hearing will ensure that the Administrative Law Judge (ALJ) has sufficient time to assimilate the evidence into the file and give the ALJ sufficient time to review the evidence prior to the hearing.

The Appeals Council often receives medical evidence that was available prior to the ALJ's decision but was not submitted. If it shows a new impairment or change in condition that the ALJ was not aware of, it sometimes requires remand unless it establishes disability. Thus, not only does it affect the Council's review, it significantly delays a final decision in the case and impacts the hearing office's workloads. The Council has to delay processing in about half their cases in order to provide the claimant an extension of time to submit such evidence. This adds months to the process. If the record was closed after the hearing, this would not be an issue and Council would be able to work the cases sooner.

Even after the Council denies a request for review, the claimant can submit additional evidence which has to be considered in terms of reopening. There is no limitation to ongoing submission of evidence. This may result in the Council reworking a case multiple times as new evidence continues to come in. This unnecessarily adds to our workload, often invalidating prior efforts, and takes time away from reviewing another individual's request for review.

2. Improve ALJ productivity and accountability. The Administrative Procedures Act (APA) has built in immunities that often impede processing cases timely. All SSA employees must be held accountable, including administrative law judges.
3. Transition to the electronic environment will make the program easier in a number of areas. One of the most labor intensive jobs at the ODAR hearing offices is "pulling" (organizing) the file, removing unwanted duplicate evidence and numbering the judicial exhibits. The files in ODAR are quite large and this function can take over four hours. E-Pulling will reduce this task to minutes saving many hours of labor intensive work.
4. Review and update the disability regulations. People are living longer now and SSA is still using rules that grant 50 year old benefits because they can only perform sedentary work. There is much concern over the Trust Fund and how SSA will pay for future benefits, yet guidelines and regulations for awarding disability have not been brought current to reflect longevity of life, improvements in medical care, and a more modern society even though the retirement age has been extended. Minimum wage is less than Substantial Gainful Activity (SGA), so it is conceivable that someone could work 40 hours per week and still draw disability.
5. Finally, our ability to administer our programs is significantly impacted by out-dated hiring procedures and untimely budgets. Although not directly related to policy, these issues have a significant negative impact on ODAR. Having the ability to hire quickly without out-dated procedures such as the "Rule of Three" and having budgets in October would go a long way in helping ODAR meet its challenges.

Question: Are there other ways to address disability backlogs, besides additional resources?

Answer: Unfortunately, the answer to this question can already be seen in the current state of the backlog. We believe that the agency and its employees have done a heroic job in attempting to keep up with the work without the resources. Unfortunately this is no longer possible. Not only are there disability backlogs, but there are additional workloads which have received little or scaled back attention (CDRs, redeterminations, etc . . .) and consequently are not considered part of the backlog.

Initiatives to deal with the backlogs need to be developed in concert with management in the field. Because so many of the efforts are being driven from a high level, implementation is difficult at best. Many of the Commissioner's 36 initiatives will be necessary in the coming years. The one that would have the most immediate impact is improving ALJ productivity. This has long been a problem in the hearing

offices and we would support whatever initiatives would assist with the establishment of accountability to the programs for employees at all levels, including ALJs.

As noted above, inter-regional case transfers have, for all intents and purposes, failed to address the problems and have not resulted in any relief in the assisted offices. The level of transfers needed is already being labeled impossible. Something has to be done before the offices become unable to function. There is a wide disparity with regard to pending requests for hearings from Region to Region and office to office. For example, there were 164,756 pending requests for hearing in the Chicago Region at the close of May 2007, while there were 46,627 pending requests in the San Francisco Region. Both Regions have 20 hearing offices. The imbalances are striking with the average pending per ALJ in Chicago of 1001.64, while the average pending per ALJ in San Francisco is 387.26. The four ODAR offices in Ohio have 41,086 requests for hearing or 88.1% of the Region's (IX) entire pending. Region IX was the recipient of the majority of Region V's transfers over the last several years, but the transfers have clearly failed to balance the workload. Seven of Region V's 20 offices have over 10,000 pending, with the pending per ALJ count for these offices between 967.27–1725 pending per ALJ, almost 5 times the "ideal" level. These imbalances are unconscionable.

Questions submitted by Chairman McNulty and Mr. Johnson to Ms. Shor

Question: In your testimony, you provided accounts of individuals who suffered serious hardships during lengthy waits for decisions on their disability claims. Are you aware of other individuals who have experienced such hardships? If so, could you provide us with accounts of their experiences as well?

Answer: We have received many more stories from our members regarding claimants who are experiencing extreme hardships while waiting for decisions on their claims. Because of the number of stories, they are attached to this letter as Addendum A (p. 9) and are listed in alphabetical order by state. As demonstrated by these accounts, the situation of individuals with disabilities filing claims for benefits grows increasingly dire—families are torn apart; homes are lost; medical conditions deteriorate because they cannot obtain necessary medical treatment; many claimants die while waiting; and once stable economic security disappears.

Question: In his testimony, Mr. Schieber suggests a thorough evaluation to find policy improvements to make the program easier to administer. What suggestions do you have for ways to simplify how Social Security programs are administered?

Answer: We strongly support efforts to make the process more efficient, so long as they do not affect the fairness of the process to determine a claimant's entitlement to benefits. Any changes to the process must be measured against the extent to which they ensure fairness and protect the rights of people with disabilities. We support retaining several key components of the administrative process, which are listed below, because they are central to protecting the rights of claimants:

- The claimant's right to a *de novo* hearing before an ALJ.
- The claimant's right to submit new evidence.
- The claimant's right to request review of an unfavorable ALJ decision by the Appeals Council.
- The claimant's right to seek judicial review in the federal district courts and courts of appeals.

We describe below several areas where the disability program can be made more efficient without impairing the rights of claimants:

• ***Improve full development of the record earlier in the process***

Changes at the "front end" can have a significant beneficial impact on improving the backlogs and delays later in the appeals process, by making correct disability determinations at the earliest possible point. Emphasis on improving the "front end" of the process is appropriate and warranted, since the vast majority of claims are allowed at the initial levels.

Developing the record so that relevant evidence from all sources can be considered is fundamental to full and fair adjudication of claims. The decision-maker needs to review a wide variety of evidence in a typical case, including: 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 decision-maker needs these types of information to determine the claimant's residual functional capacity, ability to return to former work, and ability to engage in other work which exists in the national economy in significant numbers. Once an impairment is medically established, SSA's regulations require that all types of relevant information, both medical and nonmedical, be considered to determine the extent of the limitations imposed by the impairment(s).

The key to a successful disability determination process is having an adequate documentation base and properly evaluating the documentation that is obtained. Unless claims are better developed at earlier levels, procedural changes will not improve the disability determination process. Unfortunately, very often the files that denied claimants bring to our members show that inadequate development was done at the initial and reconsideration levels. Until this lack of evidentiary development is addressed, the correct decision on the claim cannot be made. Claimants are denied **not** because the evidence establishes that the person **is not disabled**, but because the limited evidence gathered cannot establish that the person **is disabled**.

A properly developed file is usually before the ALJ because the claimant's representative has obtained evidence or because the ALJ has developed it. Not surprisingly, different evidentiary records at different levels can easily produce different results on the issue of disability. To address this, the agency needs to emphasize the full development of the record at the beginning of the claim.

We support full development of the record at the beginning of the claim so that the correct decision can be made at the earliest point possible. 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 reasons beyond the claimant's control.

Our recommendations to improve the development process include the following:

- SSA should explain to the claimant, at the beginning of the process, what evidence is important and necessary.
- DDSs 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. DDS forms usually ask for general medical information (diagnoses, findings, etc.) without tailoring questions to the Social Security disability standard. The same effort should be made with nonphysician sources (e.g., therapists, social workers) who see the claimant more frequently than the treating doctor and have a more thorough knowledge of the limitations caused by the claimant's impairments.
- Improve treatment source response rates to requests for records, including more appropriate reimbursement rates for medical records and reports.
- Provide better explanations to medical providers, in particular treating sources, about the disability standard and ask for evidence relevant to the standard.
- Improve the quality of consultative examinations (CEs). There is a need to secure higher quality CEs and to increase the reimbursement rates for these examinations. There are far too many stories about inappropriate referrals, short perfunctory examinations, and examinations conducted in languages other than the applicant's. This is wasted money for SSA and unhelpful to low-income individuals who do not have complete medical records documenting their conditions and who need a high quality CE report to help establish their eligibility.

Eliminate reconsideration

We support elimination of reconsideration and adding some type of pre-decision contact with claimants.

Since the late 1990s, SSA has been testing elimination of the reconsideration level in ten "prototype states" [AL, AK, CA, CO, LA, MI, MO, NH, NY, PA]. An analysis of the prototype testing, conducted about five years ago, showed positive results for claimants. Benefits were awarded at a slightly higher rate (40.4% vs. 39.8%) and about 135 days sooner. Further, the overall accuracy rate was slightly higher under the prototype. For denied claims under the prototype, cases reached ALJs about 70 days sooner than under the traditional process. Thus, the preliminary results of the prototype showed that claims are awarded earlier in the process; that accuracy is comparable to non-prototype cases; and that denied claims moved to the next level sooner. We have not seen any recent analysis of the prototype testing, even though it has continued in the ten states, other than New Hampshire for applications filed on August 1, 2006, or later under the new Disability Service Improvement (DSI) process.

Elimination of the reconsideration level was scheduled to be implemented nationwide in 2002. However, SSA announced in mid-2001 that the nationwide rollout

would be deferred pending further analysis because of increased administrative and program costs and increased appeals to the ALJ level.

We support providing claimants with a face-to-face meeting with the decision-maker. Until early 2002, the prototype testing included a pre-decision interview, known as a “claimant conference.” We believe that the most beneficial features of the original objectives of the claimant conference should be incorporated. Early and ongoing contacts with claimants during the development process are goals that we strongly endorse. Many claimants’ representatives and others would like to participate earlier in the process since they are able to assist the disability examiners in obtaining medical evidence and focusing the issues. The conferences also allow claimants to further explain their limitations.

Technological improvements

Commissioner Astrue has made a strong commitment to improve the technology used in the disability determination process. We fully support the Commissioner in this effort, as we believe that much of the delay in the system could be rectified with improved technology. These initiatives could not only reduce delays, but also provide better service to the public and not require fundamental changes to the process.

- **The electronic folder (eDIB).** Commissioner Astrue is moving forward with the electronic disability folder, “eDIB.” In his testimony before the Senate Finance Committee on May 23, 2007, Commissioner Astrue’s “Summary of Initiatives to Reduce the Hearings Backlog” includes a number of features related to eDIB.
- **Electronic Records Express (ERE).** Electronic Records Express (ERE) is an SSA initiative to increase use of electronic options for submitting records related to disability claims. If working with an electronic folder, electronic options can be used to submit additional evidence by submission through SSA’s **secure website or by dedicated fax**. A barcode is provided by the SSA hearing office that is handling the claimant’s disability claim. The information in the barcode directs the information submitted by the representative to the claimant’s unique disability folder. To participate in ERE, representatives must first register with SSA. After registering, they receive a user name and password.

According to his “Summary of Initiatives,” Commissioner Astrue is proposing to expand the use of ERE to include providing direct access to the electronic folder, electronic mailing of notices and other correspondence, and filing appeals over the Internet.

- **Findings Integrated Template (FIT).** FIT integrates the ALJ’s findings of fact into the body of the decision. It is a “smart” decision-writing process, i.e., while it does not dictate the ultimate decision, it requires the ALJ to follow a series of templates to support the ultimate decision. It is available online to the public at: www.ssa.gov/appeals/fit. The website allows representatives to use FIT to draft fully favorable decisions for ALJs and the Chief ALJ has issued a Memorandum to all Regional Chief ALJs endorsing use of FIT by representatives. One NOSSCR member in Iowa reports that he recently used FIT to draft a decision and received a fully favorable decision for his client less than two weeks later.
- **Video hearings.** This allows 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. Claimants and their representatives have participated in video hearings in many locations and states. Our members have reported a mixed experience, depending on whether the video site is closer to home for claimants, the quality of the equipment used, and the hearing room set-up. Also, they report that the video hearing process is not optimal for claimants and representatives with certain types of impairments. We support the claimant’s right, under the current regulations, to opt out and have an in-person hearing.

Question: Are there other ways to address disability backlogs, besides additional resources?

Answer: After the February 14, 2007, Subcommittee hearing, NOSSCR developed a set of short-term recommendations for reducing the backlog. The recommendations are attached to this letter as Addendum B (p. 25). In his recent Senate Finance Committee “Summary of Initiatives to Reduce the Hearings Backlog,” the Commissioner included some provisions that are similar to our recommendations such as:

- Reinstating the senior staff attorney program. The Commissioner is analyzing the feasibility of implementing this program on a short-term basis.
- Allowing review of “unpulled” cases and hearings to be held on these cases.
- Allowing representatives to submit draft favorable decisions. As mentioned above, this has been authorized by the Internet posting of the FIT templates and the Chief ALJ urging ALJs to allow representatives to submit draft favorable decisions.
- Continuing with implementation of technological initiatives.

Question: As you know, since August, changes to the disability determination process are being implemented in the Boston region. Is there any update you can provide regarding how implementation is going, based on feedback from your members?

Answer: To date, the information about DSI implementation from our members primarily relates to the Federal Reviewing Official (FedRO) level. We have not had any reports from members who have DSI cases at the ALJ hearing level. Their comments regarding the FedRO level focus on four areas: (1) processing times; (2) ability to contact the FedRO assigned to a case; (3) medical evidence development; and (4) allowance rate vs. denial rate, compared to reconsideration.

- **Processing times.** Overall, the representatives are not seeing cases decided more quickly than at reconsideration, including denials. A sample of the comments includes the following:
 - An attorney in Massachusetts received two denials at the end of May. These cases had been pending at the FedRO level since October 2006.
 - An attorney in New Hampshire notes that the FedRO level is delaying decisions. Previously, New Hampshire was a prototype state (see p. 3) where SSA had been testing the elimination of reconsideration for a number of years and initial denials were appealed directly to the ALJ level.
 - Another attorney in Massachusetts reported that the FedRO cases “seem to take forever,” with 6 or more months the norm. He used to count on 3 to 4 months for reconsideration.
- **Ability to contact the FedRO.** The experience has been mixed on the ability of representatives to contact FedROs. The main reasons representatives want to contact FedROs are: to discuss what additional evidence is needed; to discuss the issues in the case; to expedite decisions in “dire need” cases; and to request a copy of the CD, which contains the evidence of record.

An attorney in Rhode Island who is representing a number of clients at the FedRO level describes his experiences with the FedROs as “generally positive.” He has spoken to some of the FedROs handling his cases. He describes them as “on the ball” and knowledgeable about the claims. A few of the FedROs called him first and he found that very helpful as he was able to discuss the issues in the case and what specific evidence was needed from treating sources. However, most of the FedROs do not initiate calls and since their direct phone numbers are not on the initial acknowledgment letter, the representative cannot make the first call to the FedRO.

An attorney in New Hampshire has had less positive experiences: “My limited experience with FedRO shows that they take an unconscionably long time to decide claims and do not respond to requests to expedite decisions due to ‘dire need’ as outlined in HALLEX I-2-1-40.” On March 5, 2007, the attorney requested review by a FedRO for her client at the SSA district office. In a cover letter, she requested an expedited decision based on “dire need” and enclosed notices of overdue and unpaid electric service bills and a letter from the bank with a notice of breach of the mortgage agreement. On April 9, 2007, she faxed to the district office updated medical information from the treating physician and a memorandum in support of a favorable decision. Between April 9 and May 31, 2007, she also faxed updated medical records to the FedRO electronic file and, on May 31, 2007, another letter from the bank stating that a foreclosure sale would start on June 14, 2007. To date, the FedRO has not responded when asked what other information is needed for a decision and he has not responded to the “dire need” requests. The attorney notes that this lack of response is in stark contrast to the responsiveness of the Manchester, NH hearing office.

Most representatives have found that the FedROs reply to requests for CDs relatively promptly at the beginning of the case so that the representative can review the record to determine what additional evidence is needed. However, one attorney noted that if the FedRO obtains new evidence, there is no duty to share that new evidence with the representative and it will not be on the CD obtained at the beginning of the case. Also, one representative reported that his office was recently told

that the FedRO office was backed up and would let the representative know when the CD would be sent out, with no specific date provided.

- **Medical evidence development.** It appears that few claimants obtain representation at the FedRO level. Where representation is sought after the FedRO denial is received, representatives do not find the cases fully developed in terms of obtaining evidence from treating sources or evaluation of subjective symptoms such as pain. These types of errors lead to increased appeals to the ALJ level. A repeated concern is that there is too much emphasis on objective medical evidence and inadequate evaluation of credibility regarding pain.
- One representative in Massachusetts reported: "I just saw a FedRO denial. The claimant was *pro se* but had good medical records and a strong case. It seemed as if the reviewer was looking to deny benefits. Where evidence could have been interpreted in a positive way, it wasn't."
- After reviewing FedRO denials, an attorney in Massachusetts found that overall, the FedROs do less real development of the record, like soliciting treating source opinions, than had been done by the DDS. He also found that the evaluation of the claimant's past work, though done by a vocational expert, is based on incomplete evidence, since claimants are not asked specific questions about their jobs.

Another concern is that the current configuration of the Office of Medical and Vocational Expertise (OMVE) is causing significant delays and affecting the FedRO decisionmaking process. As currently implemented, the OMVE does not provide the type of quality expert medical evaluations envisioned in the DSI regulations. Rather, requests for consultative examinations are handled by the state DDSs, the same as before DSI. And the federal DDS reviews the cases in the situations required by the regulations. Our members report that referrals to the OMVE, which in reality is the federal DDS, are resulting in longer processing times.

- **Allowance/denial rates compared to reconsideration.** Generally, our members have found that there has been no significant increase in the allowance rate at the FedRO level, compared to reconsideration. In late April 2007, the FedRO denial rate was 72%, only slightly lower than the reconsideration denial rate of 76%. The experience of our members is similar—they do not see any significant difference in the denial rate at the FedRO level, compared to reconsideration. At a session on DSI at the April 2007 NOSSCR conference, we asked attendees whether they had received any FedRO allowances and/or denials. The ratio of representatives whose clients had received denials versus favorable decisions was similar to the overall percentages.

Other DSI issues. While our members have the most experience with cases at the FedRO level, there are a few other issues they raise concerning DSI:

- There have been some delays noted in sending appeals to the FedRO when the appeal is filed in the district office. This problem is likely attributable to the general workload issues in district offices, which was raised in the NOSSCR testimony for the February 14, 2007 Subcommittee hearing.
- Based on statistics received by NOSSCR in response to a Freedom of Information Act, the first dispositions by ALJs were all dismissals. Through the end of January 2007, of the 13 requests for hearing filed after FedRO denials, there were 8 dispositions, all dismissals. [Under the DSI regulations, the claimant has the right to appeal an ALJ dismissal to the Decision Review Board (DRB), after first presenting the request to review the dismissal to the ALJ.] The information we received does not explain the grounds for these dismissals, but the numbers do raise concerns about inappropriate dismissals for claimants who are proceeding without representation.
- The number of represented claimants at the FedRO level is quite low, about 24% according to the statistics received in response to the NOSSCR FOIA request. The initial denial notice does not encourage claimants to obtain representation at the FedRO level or provide information to help them find representation resources.

ADDENDUM A:

ADDITIONAL STORIES OF CLAIMANTS EXPERIENCING HARDSHIPS

ARIZONA

An attorney in **Prescott, AZ** has had several clients who have lost their homes. One case involves a formerly stable family with six children. Due to the financial problems, the wife, who is not the claimant, developed a severe drug and alcohol addiction problem requiring in-patient treatment. The father, who is the claimant,

has had difficulties following through with appointments because “he just wants to give up.” The father was a construction worker who had a solid work history. The attorney became involved after the hearing request was filed seven months ago. He has sent in two requests for an on-the-record decision but has received no response on either request.

The attorney notes that this family has a history with delays in the disability claims process. The claimant’s father was also disabled and some years ago applied for Title II disability benefits. After waiting a significant amount of time, the claimant’s father went to the local SSA district office to check on his claim. He was told that no decision had been made and that it would still be some time before he received a decision. He returned to his truck, extremely frustrated and upset since he was running out of money. After feeling ill, he drove to a VA hospital where they found he had experienced a heart attack and he was admitted. The claimant’s father died three days later.

ARKANSAS

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

COLORADO

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

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

IDAHO

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

To survive while waiting for his hearing, he was forced to pawn almost all of his belongings, including his musical equipment. The lack of income, in addition to his health conditions, created a crisis as he had no money and no health insurance. He ended up with few clothes, living in a subsidized apartment.

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

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

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

how frustrated a disabled person would be after waiting 2 years for a “fair” hearing only to be cut off by the judge.

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

Mr. A lives in **Coeur d’Alene, ID**. He obtained legal representation about November 2005 and most of the time since then he has been living in his truck without water and electricity. The summers are hot and the winters are cold. He has a borderline IQ, a traumatic brain injury, and a personality disorder. He filed for benefits in May 2005, was denied, and filed for a hearing in January 2006. In May of 2007 he received an on-the-record favorable decision after Congressional inquiries and multiple efforts by his attorney to get the hearing office’s attention. During most of this period, he had no income and no medical care.

Ms. C, **Genesee, ID** applied for SSI benefits as a child in September 2004. While this application was pending she turned 18 years old. Her medical history begins with extreme abuse from her parents and moving from place to place with her family. She finally settled in Genesee and lives with a cousin. She has multiple severe mental health impairments. She requested a hearing in July 2005. The hearing was held in March 2007 and she is waiting for a decision. Her Medicaid coverage from TANF ended in September 2004 when she reached age 18. Her financial assistance from Idaho ended at the same time. She lived on the street with no medical or psychiatric care.

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

An attorney in **Sandpoint, ID** represents clients with hearings in Billings, MT, Kalispell, MT, and Spokane, WA. He notes that the Spokane hearing office is a good office but is very far behind in hearings. This has gotten progressively worse in the past five years. One of the greatest frustrations is that there have been several periods when ALJs cannot hold hearings because the case handlers are too far behind and have not pulled cases for hearings. Development by the Idaho DDS is inadequate and ALJs are required to send claimants out for additional development, which adds to the delay.

Over the past four years, this attorney has had four clients commit suicide. One client with chronic pain took his life after an Appeals Council remand and while waiting months for a new hearing date. The attorney went with law enforcement to make positive identification of one of his clients. Northern Idaho has some of the poorest of the poor. The rough winter conditions increase the problem of not only maintaining housing, but heat. The attorney provided a few examples of his clients’ circumstances:

Ms. L is 51 years old and is from **Priest River, ID**. She has a long history of mental health issues. She received SSI beginning in 1991, but it ended when she married in 1995 and no longer met the financial requirements. Her husband was killed in a logging accident. She has no income or other source of help. She filed a new SSI claim and her attorney requested that the case be treated as a priority claim in June 2006. A second request for an expedited claim was made in July 2006. The hearing finally was held in April 2007 but the ALJ could not make a decision and sent her for a consultative examination in May 2007. The client may be homeless soon.

Ms. B is a 60 year old widow from the **Sandpoint, ID** area. She lost her husband one year before filing for disabled widows benefits and disability benefits. She has arthritis and chronic back and hip problems. She lost her house and had to live with friends and relatives. Repeated requests for an on-the-record decision were denied. Finally, after losing her home and most of her possessions, she was approved after a hearing at Spokane, WA hearing office.

IOWA

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

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

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

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

She lives with a friend and gets food stamps. While waiting for a decision on her claim, she has exhausted the money withdrawn from her pension plan at work, in addition to the penalties paid for early withdrawal. She has borrowed money from her family and has taken out a lien on her car, which she had already paid off. She has no medical insurance and has not been able to get adequate medical care. She did apply for a patient assistance program to get cheaper medication, but does not like the idea of people knowing about her dire financial condition. Due to the stress of wondering how she is going to afford to live and take care of her medical needs while waiting to get a decision on her claims, she has been diagnosed with anxiety and depression.

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

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

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

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

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

. . . I know its [sic] only been around 2 years, but it feels like 10. My hands and my spine are getting really bad. [My doctor] took x-rays and confirmed what I didn't

want to hear . . . My pain is getting out of control . . . My joints are growing, and my fibromyalgia is slamming me with hammers, boots, rocks, and knives. And due to our circumstances we've had to relocate.

KANSAS

An attorney in **Mission, KS** has a client who is a veteran with diabetes and related neuropathy along with swelling in his ankles and toes and blurred vision. He also suffers from bipolar disorder with a history of anxiety, panic disorder and at least one suicide attempt. A hearing was requested for this client two years ago, **on May 17, 2005**.

In June 2006, the attorney learned that his client was living in a VA transitional program but was two months behind in his rent payments. As a result, he immediately sent a request for an expedited hearing to the Kansas City hearing office. The request was denied because, according to the hearing office, the client's situation did not meet its requirements for an expedited hearing.

In March 2007, the attorney learned that the client's transition program had been suspended. The attorney again requested that the client's hearing be expedited and was advised again that the request would be denied and that the case would be processed as a normal hearing. Days later, the VA program manager notified the client that as of April 1, 2007, he would be homeless due to his inability to pay rent. On March 29, 2007, the attorney yet again wrote to the Kansas City hearing office requesting an expedited hearing based upon the fact that the client was now homeless. As of late May 2007, no reply had been received nor has the case been set for a hearing.

The attorney notes: "I wish I could say that the above-described example was an exception to our experience in obtaining hearings for our clients. However, it is routinely taking 18 to 24 months or more from the date of a hearing request before these disability hearings are being scheduled. Too many of our clients suffer loss of residence and deteriorating health conditions while they are awaiting a hearing on their disability applications."

An attorney is representing a woman from **Coffeyville, KS**. The hearing request was filed in October 2005 and they just received notice, dated May 2, 2007, that the file is now ready for review. No hearing is scheduled. Since the appeal was filed, the client and her husband have had to file for bankruptcy. She just told her attorney that the Bankruptcy Trustee is renting out their house, forcing them to move to a smaller, less expensive rental. They barely make ends meet, as she has over \$1,300 in prescriptions each month. Fortunately, they have some medical insurance, but her co-pay is around \$300, which is still a significant amount for a single income family.

The same attorney has another client who has been waiting for a hearing since February 2006. He has been without medical insurance since being injured at work in 2001. His medical bills have mounted due to medications and necessary surgery, and he has to limit doctor calls to a bare minimum. He and his wife live on her \$8.00 per hour job, and with the cost of medications (he is diabetic, in addition to many other medical conditions), they barely get by. So far, they have not lost their house, but he calls regularly to see if there is a hearing date because of their financial circumstances.

Ms. A, **Wichita, KS** filed a claim for disability benefits in March 2004 and filed a hearing request in January 2005. The original hearing office was Wichita, KS, but her case was transferred to the Omaha, NE office in order to expedite the hearing via video conferencing. The hearing was held in March 2006 and a supplemental hearing in June 2006. The representative's office made monthly status requests to the Omaha hearing office and was repeatedly told it was on the ALJ's desk. Then, in November 2006, an Omaha hearing office employee contacted the representative requesting a copy of the claimant's file because they could not find theirs. The representative forwarded a copy of the claimant's file the same day. The client finally received a decision, a denial of benefits, on April 18, 2007. The claimant waited 11 months after the hearing for a decision and is now appealing the ALJ's decision. Ms. A has extreme abdominal pain due to irritable bowel syndrome, anxiety, insomnia, depression and history of psychiatric problems for which she frequently obtains medical treatment. She would miss 2 to 5 days a week when working. Her hospital calls the representative monthly requesting a status on the client's claim as they are trying to collect on her unpaid bill.

Mr. and Mrs. P are a married couple living in **Wichita, KS**. Mr. P filed for disability benefits on September 27, 2006. He has a degenerative disorder of the spine, asthma and mental impairments. He has been denied at the initial and reconsideration levels and filed a request for hearing earlier this year. Mrs. P filed her claim on August 8, 2005, and her hearing acknowledgement was received on May 30,

2006. A request for an on-the-record decision was submitted on June 9, 2006. The request was denied and Mrs. P is waiting for a hearing to be scheduled. Mrs. P last worked as a home healthcare giver in August 2005. She is diabetic, has neuropathy and nerve damage in her feet and legs making it difficult to balance or walk, and is now attending a mental health facility for depression. With neither Mr. nor Mrs. P working, the couple's utilities were shut off. They have no vehicle. And, they lost their home and were forced to move in with Mr. P's mother. A dire need request was made to the hearing office on April 13, 2007. Her representative has asked about the status, but as of this date no response has been received. Mrs. P calls her representative daily to check on the status.

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

MAINE

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

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

A **Yarmouth, ME** attorney has a client with serious, well-documented psychiatric impairments. He filed his application in mid 2004 and his request for hearing in early 2005. While the hearing was pending, he became homeless with his wife and two young children. He was evicted and lived with friends and in a shelter. His family could not stay in the shelter continuously due to the children. At times, he and his family lived in his car. A fully documented request for an on-the-record decision was made, with an alternative request for an expedited hearing. The on-the-record request was rejected by a hearing office staff attorney. Months later, a hearing was scheduled—22 months after the request for hearing was filed. The ALJ issued a bench decision after a short hearing.

Another client of this attorney is a young woman with a history of psychiatric treatment from early childhood. She filed her application in fall 2004 and her hearing request in spring 2005. The client had very unstable living conditions, and while waiting for a hearing, she underwent two psychiatric hospitalizations. The staff at the second hospital contacted the attorney, emphasizing the importance of the client obtaining benefits so she can have a stable living environment and medical coverage. Documentation was obtained and a request made in mid 2006 for an on-the-record decision. No response was received and a hearing was eventually scheduled eight months later—and 23 months after the hearing request. While waiting, the client lost her Medicaid coverage; continued to live in unstable circumstances, moving with friends and relatives; and did not receive adequate treatment. At the hearing the ALJ stated that he agreed with the argument made in the on-the-record request, but it had not been shown to him.

Another client of the same attorney has multiple traumatic physical injuries due to falls from scaffolding and a roof. He lived in a backwoods cabin without running water. He required orthotic devices and further surgery but could not obtain them due to lack of resources and limited Medicaid coverage. He filed his application in late 2004 and his hearing request in fall 2005. While the hearing was pending, he was in severe pain, living in primitive circumstances, and unable to obtain the medical care he needed. A hearing was finally scheduled in spring 2007—19 months after his hearing request. The ALJ issued a bench decision, allowing him to get the medical care he needed. The client remarked that this gave him "a whole new life."

MASSACHUSETTS

A client lives in **Pittsfield, MA**. The original hearing request was filed January 2006 but was only logged in at the Springfield, MA hearing office in April 2007,

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

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

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

MONTANA

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

I was living in a mold-infested camp trailer for over one year without running water or a bathroom or cooking facilities. Now I live in an 8'x20' building and I still do not have running water or a bathroom. . . . Even if I were somehow able to obtain a modest apartment, I wouldn't be able to afford electricity, water, garbage or sewer or the basic amenities to maintain an apartment and appease a landlord. . . . I have been unable to pay my treating physicians for nearly four years. . . . I hurt all of the time and I can no longer afford my medications. I have accumulated and continue to accumulate medical bills. I don't have any way to continue to receive treatment. . . . I suffer from depression and it is only getting worse as well. I consider suicide an option to fix my problems; I no longer can afford my anti-depressants. . . . The stresses of having no money and becoming homeless are destroying my emotional, mental, and physical health. I have reached a breaking point and I am not sure how long I am willing to live this way. I will not be able to survive without shelter, money and medical treatment.

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

A 49 year old Native American woman who lives outside of **Helena, MT** has uncontrolled diabetes with neuropathy in her feet and legs, bipolar disorder, recurrent pancreatitis, and other conditions. She has a solid work history of nearly 30 years and is raising her nephew who graduates from high school this month. In the two years since she filed for benefits, she has lost her car (Helena, MT has very limited public transportation and she lives outside of town effectively losing any means of transportation). She has been unable to afford her medications, including insulin,

for several months at a time, thus making her medical conditions worse. She came within days of losing the property her trailer sits on because she was unable to pay the back taxes which were only \$500. Her hearing was recently held and her attorney asked that the decision be expedited. She is currently waiting for her first SSDI check and past due benefits.

A 49 year old Native American man who has chronic pancreatitis, chronic obstructive pulmonary disease, asthma, and other disabling conditions was living in his car during the Montana winter where temperatures are routinely below zero. He previously had suffered from frostbite of both his hands during the winter of 2004 when he was also living in his car. He was unable to stay at the local homeless shelter because of conflicts with other individuals. He waited for two years from the time he applied for benefits until he received them.

A 47 year old woman has degenerative disc disease with herniated discs, severe depression and other disabling conditions. During the almost two years she has been waiting for benefits, she has lost her car, her house, her health insurance and her husband left her. She can not afford her medications and has been without them for months at a time. The consultative examination performed after her hearing revealed that she is actively considering suicide but was waiting until her son graduates from high school next month to follow through on her plan. The attorney hopes that a favorable ALJ decision will be issued in the near future.

A 49 year old man with severe sleep apnea, cellulitis, coronary disease and rheumatoid arthritis has been waiting for benefits for almost two years. He has a high school education and has worked at hard physical labor jobs his entire life. His wife works but they can not afford the drug injections he needs for his rheumatoid arthritis and he is getting them through a program with the drug company. They have a 6 year old child who helps his father as much as he can. This "big, strong, tough" Montana man broke down in tears during his hearing because it shames him so much that he cannot help support his family and he needs the government's help at this time in his life. The attorney and client are waiting for a favorable decision in his case.

A 58 year old man diagnosed with paranoid schizophrenia, severely abscessed teeth, and other serious medical conditions waited over two years to receive his benefits. His dental problems led to infections in his blood stream which negatively impacted his mental illness making it much more difficult to control. When he did get his SSI past due benefits, he immediately had his teeth pulled and had dentures fitted. He needed to use his back award to pay for this treatment because no dentist will accept Medicaid for dental work in his community.

A 49 year old survivor of domestic violence waited for over two years for her benefits. She suffers from post-traumatic stress disorder and also had a motor vehicle accident which resulted in head trauma and other injuries. She was living in a series of shelters until she was able to get into subsidized housing.

A 7 year old Native American girl who was exposed to meth and alcohol *in utero* was adopted by a single mother who was unaware of her medical conditions. She has severe psychological, neurological and physical problems. She waited two years to receive SSI childhood disability benefits.

A 7 year old boy, diagnosed with bipolar disorder, has severe psychological problems, which result in difficulties at school and at home. It was three years before he received SSI childhood disability benefits.

A 60 year old registered nurse who has an excellent work history could no longer work because of physical and mental health issues. She and her husband went through great marital difficulties due to her depression and were unable to complete construction on their home because of financial problems and her inability to work. It took over two years before she received benefits.

A 35 year old mother of three had severe neuromuscular injuries that left her confined to a wheel chair. It was two years before she received benefits. During that time, her husband left her. As a result, she and her children were forced to move in with her mother until her benefits were received and she could get a home health aide to help her.

A 31 year old radiology technician with a college degree suffers from a severe seizure disorder, resulting in major cognitive difficulties, which no longer allow her to work. She was forced to move in with her parents so they could help provide for her. It took over two years for her to receive her benefits.

A 51 year old woman applied for disability benefits in November 2004. She lives in the northern part of Montana. She agreed to travel to have a hearing in Billings. The hearing was finally scheduled in January 2007. There are few ALJs covering all of Montana and they rarely travel to the northern part of the state.

NEW MEXICO

Mr. R is a 36 year old father of four who has been diagnosed with Chronic Lymphocytic Leukemia, hypoxemia, depression, hematuria, and sleep apnea. He suffers from chronic pain, has been undergoing chemotherapy, and is on oxygen 24 hours a day. A former pipeline inspector, he has been unable to work since September 2005. He initially filed for disability in November 2005, and his request for reconsideration was denied on July 6, 2006. That July denial apparently did not take into account an on-the-record request filed by his attorney on June 27, 2006. He filed his request for hearing on July 17, 2006, and on July 21, 2006, his attorney filed a renewed request for an on-the-record decision. To date, Mr. R has heard nothing about a hearing date and has heard nothing on his request for an on-the-record decision. He has now had to file for bankruptcy, since his wife's income as a bank teller is insufficient to support the family.

A client who lives in **Grants, NM** applied for disability benefits in December 2005 due to kidney cancer. He was 61 years old at onset. His claim was denied and he filed a request for hearing in October 2006. His attorney advised the Albuquerque hearing office in February 2007 that the client's cancer had spread to his lungs and pancreas. There was no response. His attorney also sent a proposed Findings of Fact to the supervisor of the decision-writers. The client died in May 2007 and the hearing office was advised of his death. The client's widow is now waiting for a response but there has been none.

Ms. K suffers from Wegener's granulomatosis, a disease that causes drastic inflammation which has settled in her pulmonary system and has affected her heart, kidneys, skin, and immune system. She is on oxygen 24 hours a day. K is a 48 year old wife and mother. She has not been able to work in catering and food service since July 2003. Her disease went into remission but not enough to allow a return to work, which she had hoped for. As a result, she did not apply for disability benefits until July 2006. She did not know that waiting would affect her ability to receive Title II disability benefits. Because her disability insured status had expired, she could only apply for SSI, which was denied in September 2006. She filed her request for reconsideration in November 2006, and is still waiting for a decision, six months later.

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

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

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

A 52 year old man who lives in **Portales, NM** requested his hearing in October 2005 and it was finally held on May 1, 2007. Before becoming disabled, he owned his own business. He had to file bankruptcy recently and is expecting to receive the foreclosure paperwork shortly. He has experienced significant family problems as a

result of the financial strain. He worries about being homeless and his mental impairments have been exacerbated by the delay on his disability claim.

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

NEW YORK

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

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

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

NORTH CAROLINA

Mr. F is a 47 year-old father of two young girls who has Listing-level congestive heart failure, as attested to on multiple occasions by his treating cardiologist. He lives in Wilmington, NC. He applied for disability benefits in February 2004 and had his hearing in March 2006. While his wife works some, without his income the family could not pay the mortgage on their home. As a result, they were forced to sell their house in lieu of foreclosure and now live in a very small apartment. Every time Mr. F's attorney meets with his client and Mr. F's wife, he can see the toll the wait has taken on their marriage. This is not uncommon and can be much more disastrous than more readily identifiable hardships. Mr. F lost his COBRA health insurance coverage while waiting for his hearing. Now he has no insurance and, of course, cannot obtain insurance. His attorney submitted supporting documentation of Mr. F's disability to the hearing office and requested an expedited, on-the-record decision, in order to allow Mr. F to continue his COBRA coverage. The request was not approved.

As documented by echocardiograms, Mr. F's condition is worsening. Despite his treating cardiologist's efforts, the ALJ denied Mr. F's claim and he has filed an appeal with the Appeals Council. His lack of income and health insurance coverage continues.

Mr. A is 50 years old and applied for disability benefits in 2003. He has a documented IQ of 63 and suffers from back issues and HIV. He now lives in an abandoned house, with the owner's permission, but has no electricity. He is hoping his case will be resolved soon because he doubts his ability to continue the hardships of another cold winter.

NORTH DAKOTA

Ms. G is a 51 year old former cashier who lives in **Dickinson, ND**. She has a number of medical conditions which prevent her from working including: cervical and lumbar degenerative disc disease; spinal stenosis; coronary artery disease; atherosclerotic heart disease; and cardiac dysrhythmias. While waiting for her hearing, Ms. G underwent extreme financial difficulties, and was teetering on the edge of bankruptcy. She had reached the limit on her credit cards and borrowed money from everyone who would lend it to her in an effort to pay her rent, buy some food,

and most importantly, pay for her medications. Her attorney received many desperate calls from Ms. G about her need for disability benefits and asking why it was taking so long. Her attorney tried to help by referring her to for food stamps and heating assistance.

Ms. G was so desperate to get a hearing date that she called all of her Members of Congress to ask for their assistance and wrote a letter to SSA about her situation:

The reason I am writing is I really need help *bad*. I've been unable to work for 1 year and 2 months now. I've zeroed out my checking account, maxed out 3 credit cards paying bills and purchasing medicine. In July 2006 they finally gave me food stamps help of \$152.00 a month thank God for that things are finally looking up for me, and then I had a heart attack (sic) in July 2006 they had to put 3 stints (sic) in my heart. What hurts is the medicine [is] \$300.00 every 2 weeks I don't have it, Medicaid (sic) won't help me unless my disability goes through. The doctor said I have to take the medicine or I won't make it so I'm asking to please help me by speeding up my appeal hearing. I know from taking (sic) to the Senator, Governor and Congressmen that you are really piled with work but I have no place else to turn to help. I pray to God that I will receive help soon.

Ms. G is in payment status now because she received a fully favorable on-the-record ALJ decision, nine days before her hearing. However, she had to wait nearly two months before receiving her first check.

OREGON

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

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

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

TEXAS

Ms. B filed for disability benefits in June 2001 with cervical and lumbar disc disease with chronic pain. She had prior problems with her back and neck but the situation became worse in June 2001 after she was kicked by a horse. At the time of her accident she was in her late 30s. Ms. B has two young children.

Ms. B's first hearing was held on April 21, 2003; a supplemental hearing was held on October 2, 2003. A decision denying Mrs. B benefits was issued on November 26, 2003. During the entire period at issue Ms. B had difficulty obtaining healthcare due to the inability to afford treatment that her doctors recommended. In August 2004, Ms. B's husband, a pilot, divorced her and left her with the children. For a brief period she was able to get Medicaid, but then lost that coverage. In February 2005 the Appeals Council remanded the case for a new hearing. At that point Ms. B had to wait until September 29, 2006 to have her remand hearing. After that hearing a favorable decision was finally issued in October 25, 2006, nearly 5½ years after her application was filed.

Ms. X is a 41-year-old former broker with a Master's Degree from **Dallas, TX**. She has chronic fatigue syndrome (CFS) and filed her application for disability benefits in November 2002. Her hearing was not held until May 2005. She received an unfavorable ALJ decision and appealed to the Appeals Council. The Appeals Council remanded her case for another hearing on March 17, 2006. One year later, she is still waiting to have the second hearing, nearly four and one-half years after her application was filed.

Before her CFS diagnosis, Ms. X was a high wage-earner in the \$60,000 range. She is single and, after filing for disability benefits in 2002, she no longer had any income or health insurance. Consequently, she lost her home and has gone through

her savings to pay for medical care. She began living with a series of friends and now is living with her elderly parents. Her symptoms have not improved and are steadily worsening. She cannot afford private medical insurance and is now relegated to indigent care. She has no home, no car, no saving, no income, and no health insurance.

WASHINGTON

While his appeal was pending, a veteran from the **Spokane, WA** area with multiple physical and mental problems became homeless and was living at a local mission. Before becoming disabled, he successfully worked selling recreational vehicles and cars. His claim was ultimately approved following after a hearing. His attorney relates: "I still remember leaving the hearing with him, driving him to the mission where he picked up a paper bag with all of his possessions, and then driving him to the local VA hospital where he began in-patient treatment for his medical conditions."

A woman from **Spokane, WA** filed her claim for disability benefits in October 2004 and requested a hearing in August 2005. While waiting for a hearing date, she died in the past year from the impairments that formed the basis of her claim. A hearing was held in 2007, with the case continuing on behalf of her surviving children.

WEST VIRGINIA

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

ADDENDUM B:

NOSSCR RECOMMENDATIONS TO ADDRESS THE BACKLOG

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 SSA to promptly and fairly adjudicate their applications for disability benefits, and to handle many other actions critical to their well-being.

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

We believe that the main reason for the increase in the disability claims backlogs is that SSA has not received adequate funds to provide its mandated services. This paper provides some additional short-term suggestions for addressing the backlogs.

PROVIDE SSA WITH ADEQUATE RESOURCES TO MEET CURRENT AND FUTURE NEEDS

To reduce delays, better develop cases, and implement technological advances, SSA requires adequate staffing and resources. NOSSCR supports commitment of sufficient resources and personnel to resolve the waiting times and make the process work better for the benefit of the public. To meet this need, NOSSCR has been a strong supporter of efforts to ensure that SSA receives adequate funds in its administrative budget for fiscal year 2008.

IMPROVE DEVELOPMENT OF EVIDENCE EARLIER IN THE PROCESS

SSA can improve development of the record at the beginning of the claim so that the correct decision can be made at the earliest point possible. Claimants should be encouraged to submit evidence as early as possible. The benefit is obvious: the earlier a claim is adequately developed, the sooner it can be approved. However, critical pieces of evidence are missing when claimants first seek representation, usually at the hearing level, and it is necessary for representatives to obtain this evidence, even though it was available earlier in the process.

Recommendations to improve the development of evidence include: (1) Explaining to the claimant in writing, at the beginning of the process, what evidence is important, relevant, and necessary; (2) Ensuring that DDSs obtain necessary and relevant evidence, especially from treating sources, including non-physician sources (therapists, social workers) who see the claimant more frequently than the treating doctor and have a more thorough knowledge of the claimant; (3) Improving provider response rates to requests for records, including more appropriate reimbursement rates for medical records and reports; and (4) Providing better explanations to medical providers, in particular treating sources, about the disability standard and asking for evidence relevant to the standard.

REINSTATE THE SENIOR STAFF ATTORNEY PROGRAM

In the 1990s, as an initiative to reduce the backlog of cases at hearings offices, 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”). This program was well received by claimants’ representatives because it presented an opportunity to present a case and obtain a favorable result efficiently and promptly. And, of most importance, thousands of claimants benefited. While the Senior Attorney Program existed, it helped to reduce the backlog by issuing approximately 200,000 decisions. The initiative was phased out in 2000, just about the same time that the backlog began to increase.

We support reinstating senior attorney authority to issue decisions in cases that do not require a hearing and expanding ways that they can assist ALJs. For instance, they also can provide a point person for representatives to contact for narrowing issues, pointing out complicated issues, or holding prehearing conferences.

ALLOW REVIEW OF “UNPULLED” CASES AND ALLOW HEARINGS TO BE HELD ON “UNPULLED” CASES

We believe that one of the causes of the dramatic increase in the backlog is the lack of ODAR staff to organize or “pull” cases. With the hiring freezes and inability to replace staff over the past few years, many ODAR hearing offices lack sufficient administrative staff to perform this critical function. As a result, in many hearing offices, “unpulled” cases cannot be reviewed for on-the-record decisions. Further, many ALJs do not hold hearings on “unpulled” cases. Clearly authorizing ALJs to review “unpulled” cases for on-the-record decisions, to determine the need for additional development, or whether a hearing can be held sooner, will allow some cases to be cleared from the backlog.

ALLOW REPRESENTATIVES TO SUBMIT DRAFT FAVORABLE DECISIONS

Judges in courts often ask counsel to draft favorable decisions and orders. SSA should consider allowing representatives, on a nationwide basis, to submit draft favorable decisions to ALJs. Some ALJs have asked representatives to draft favorable decisions, which were then reviewed, edited, and finalized by the ALJ. This can expedite the decision-writing process where delays exist.

Some hearing offices previously shared a prior decision-drafting software program, the Favorable Electronic Decisional Shell (FEDS), with experienced representatives in the local community. The newer decision writing program, Findings Integrated Template (FIT), could be similarly adapted. We believe that expanded use of decision-writing software for submission of draft decisions could reduce the time for the issuance of on-the-record decisions or between the hearing and issuance of the decision, especially since use would be limited to favorable decisions.

INCREASE THE TIME FOR PROVIDING NOTICE OF HEARINGS

The current regulations 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. Some hearing offices, but not on a nationwide basis, do provide much longer advance notice, some as long as 90 days. Under the Disability Service Improvement (DSI) regulations, the time was increased to 75 days, with the goal of providing adequate time to obtain new evidence (although, there is no requirement that evidence be provided in that time period). We strongly support the DSI change and would support a similar nationwide change. This increased time period would mean that many more cases would be fully developed prior to the hearing and could, in fact, lead to more on-the-record decisions.

CONTINUE WITH IMPLEMENTATION OF TECHNOLOGICAL INITIATIVES

We generally support the technological improvements so long as they do not infringe on the rights of claimants and beneficiaries. These initiatives include the elec-

tronic disability folder (eDIB), video hearings, and digital recording of hearings. If properly implemented, these initiatives will not only reduce delays, but also provide better service to the public. The electronic folder reduces delays by eliminating lost files, reducing the time that files spend in transit, and reducing misfiled evidence.

With eDIB, representatives should be able to obtain a single CD that contains all evidence in the file. Early access to the record will allow representatives to determine what additional evidence is needed and to promptly try to obtain it. Given the need for access at all levels and as early as possible, we hope that SSA will explore allowing claimants' representatives to have online access to the files through secure sites, such as those used by the federal courts. This would free up SSA staff, while also allowing representatives to access the file when necessary.

SSA also should consider expansion of the "electronic records express" system (ERE), which allows representatives to upload medical evidence electronically that directly goes into the electronic folder.

**Questions submitted by Chairman McNulty and Mr. Johnson to
Mr. Warsinskey**

Question: Are you confident that every available agency employee is being used to process claims?

Answer: As of today our answer would be no. Field Offices are losing employees at an alarming rate. This Fiscal Year alone Field Offices have lost 1,400 employees. Since the beginning of FY 2006, Field Offices have lost 2,500 employees. These losses have occurred at a much greater rate than those of other SSA components. In part, this is due to the fact that other components have been permitted to replace a higher percentage of their losses. Additionally, Field Offices also serve as the training ground for most of the other components of SSA. Field Office positions provide an understanding of programs, procedures and policies that is crucial to performing many other SSA jobs that are not direct service positions.

We recognize the need for, and value of, Field Offices providing staff for other parts of SSA. The problem is that we have not been able to replace our losses which has a significant negative impact on the service we are able to provide the public in front line positions.

We would support an in-depth study of all SSA components to evaluate component share of losses/replacements and current staffing levels in order to evaluate if the public would be better served and the agency more effective by shifting future available FTEs back to Field Office direct service positions.

Question: Given the agency's focus on increasing the use of telephone and on-line services, do you think the current field office structure, both in terms of staffing and office location is positioned to meet the service needs of the 21st century?

Answer: Field Offices have always adapted their service quickly to new technologies. Currently we take about 30.0% of our claims by telephone. The number of Internet claims continues to rise but currently is less than 10.0% in most offices.

1. Field Offices have also adapted their structure and procedures so that more of their staff can handle any inquiry. Field Offices have a very flat organization. A high percentage of staff in Field Offices are Claims Representatives who are also trained to do the work of Service Representatives. Additionally, Claims Representatives are now trained to be generalists in order to handle all SSA programs. Management is also capable of assisting with the operational work.

Currently, millions of Americans do not have access to the Internet or do not feel comfortable conducting business via the Internet. Many Americans do not even have access to a telephone. The only way to contact SSA for many people is to walk into an SSA office. Still many others prefer to walk into an SSA office to take care of their business. (About 850,000 visitors a week come into SSA Field Offices.) We provide service to all Americans, rich and poor, educated and uneducated.

While we believe that Internet and telephone service will help reduce the demand on Field Offices over time, the public's preferred method of contacting SSA (particularly when applying for benefits) is through a community based Field Office, and, in many cases, the public wants to do business face-to-face. Field Offices receive approximately 44 million visitors a year and approximately 68 million telephone calls a year. People deal with Field Offices because they can handle many more types of services than the 800 number can. In addition, 800 number agents frequently

have to refer callers to their local Field Offices. The request for Field Office services is growing not declining.

People contact us to file claims at transitional and often vulnerable points in their lives: when they retire, become disabled, or lose a spouse or parent to death. These are typically one time contacts where a citizen wants to deal with a person face-to-face at a local, community based office.

Social Security programs are complex, and most post-entitlement issues (for example, returning to work, requesting a waiver, or having a personal conference) are definitely not intuitive. They require extensive knowledge of the programs and skilled explanations tailored to the understanding of the person being addressed. Such situations are further complicated by the fact that over 50.0% of SSI disability beneficiaries and over 40.0% of Title II disability beneficiaries have been diagnosed with either a mental illness or a cognitive deficiency as their primary impairment. Many other beneficiaries have these conditions as a secondary diagnosis. This type of beneficiary cannot be served adequately by self-help programs.

Internet claims are usually not clean, neat, or even complete when they come into Field Offices. There is a considerable amount of back end work to ensure that the processing and payment of the case are correct. Again, the nature of the programs SSA administers, especially the disability program, is complex—not simple.

The process for applying for a Social Security Number (SSN) card has, in effect, become a face-to-face process due to the Intelligence Reform and Terrorism Protection Act (IRTPA). IRTPA requires that citizens seeking a replacement Social Security card submit a picture identification card issued by a federal or state government if they have such a document, or can get such a document within ten days. In most cases, the document that a person must submit for evidence of identity is their driver's license. Our experience is that very few people want to send their driver's license to us through the mail. The SSN workload accounts for about one-third of all walk-in visitors to our Field Offices. It is possible that future requirements on SSN enumeration (biometric cards) may require an even more widespread Field Office presence.

While we think that expanded Internet and telephone service are, and will continue to be, vital service delivery options, we also know that face-to-face service will be necessary and in high demand well into the future. We believe we must fund and staff our community based offices to meet this demand and to provide the level of service the American public has paid for and deserves.

2. We have about 1,300 Field Offices nationwide. We support placing offices in areas that best serve the public. There are offices that are relatively close to each other, and in many cases consolidating these offices may make good business sense. But, in some cases it may make more sense to move the offices closer to where the population is moving.

In many areas of the country where explosive population growth has taken place, offices have crowded reception areas and inadequate staff to provide effective service. We support building larger facilities or creating new offices where rapidly growing areas do not have a nearby office.

Some of our offices are so depleted of staff that maintaining them and providing adequate service to the public is no longer possible.

One of the challenges we are facing is correct location of Field Offices. It is presently very timing consuming and bureaucratic to move an office or to consolidate offices in locations that are more logical and cost effective. Congressional interest in office locations and consolidation of offices is usually very high.

Recent proposed consolidation of Field Offices has generally made sense. We agree you have to balance the convenience to the public with the overall cost of running Field Offices. Rent costs are growing and taking higher percentages of our administrative dollars. Each Field Office requires an armed guard. These costs are also rising very quickly.

We believe local Field Offices are very efficient. And we agree the public doesn't want to drive an unreasonable distance to a Field Office. Moving or consolidating an office can take many years. We support streamlining this process so it takes place more quickly.

3. There are 39 Teleservice Centers (TSCs) in the country. We support keeping this number of TSCs rather than moving to larger more consolidated ones. Having TSCs throughout the country allows for Teleservice representatives to be readily available for promotion into more FOs and to provide back-up service assistance in the FOs when the TSC call volumes are low.

Question: As you know, since August, changes to the disability determination process are being implemented in the Boston region. Is there any

update you can provide regarding how implementation is going, based on feedback from your colleagues?

Answer: The news regarding the Disability Service Initiative (DSI) being piloted in the Boston Region continues to be mixed. One positive outcome of DSI is the Quick Disability Decision process whereby cases are flagged for probable approvals, and worked on by dedicated teams of examiners in the Disability Determination Services. These cases are processed in an average of less than eight days. Another positive of DSI is that the cases being reviewed by the newly created Federal Reviewing Official (FedRO) are very well documented. So any appeals of FedRO cases reviewed by ODAR should be much less time consuming to process and require fewer resources. The FedRO is also approving cases at nearly double the rate of the Reconsiderations at the DDS level. The higher allowance rate, results in fewer cases being passed to ODAR from the FedRO.

On the negative side, cases are already backing up in the FedRO at an alarming rate. The number of decisions made by the FedRO has been small. It appears more resources will be needed for the FedRO to avoid severe delays. The question is: can we afford the additional resources that are needed?

The Social Security Disability Insurance and SSI Disability programs pay out about \$130.0 billion a year. In today's dollars that is \$1.3 trillion over a decade. Given that the program dollars for these two programs are enormous, it is essential that adequate administrative dollars be spent to ensure that those that receive benefits are being paid properly.

For years there has been a significant discrepancy in the approval rate at the DDS level compared to the approval rate at the hearings level. There have also been major differences in approval rates between individual state DDSs and between individual Administrative Law Judges. The FedRO was created to help bridge this gap. If the FedRO leads to more accurate decisions and payment of disability dollars, then it makes sense to spend administrative dollars to support it. Additional spending, however, should not come at the cost of shortchanging funding for the Field Offices or ODAR.

Whatever decision is made about the future of the FedRO, the variances in allowance and denial rates between the varying state DDSs and Administrative Law Judges needs to be addressed.

We did want to make note that we are in favor of the national expansion of the Quick Disability Decision (QDD) pilot. This has clearly been a success.

Question: In his testimony, Mr. Schieber suggests a thorough evaluation to find policy improvements to make the program easier to administer. What suggestions do you have for ways to simplify how Social Security programs are administered?

Answer: We have spent a considerable amount of time developing and debating suggested legislative changes. We have come up with approximately 20 suggested changes. These changes are included as an addendum to this response.

Question: Are there other ways to address disability backlogs, besides additional resources?

Answer: On May 23, 2007 the Commissioner of Social Security submitted to the Senate Finance Committee 18 pages of initiatives to eliminate the SSA hearings backlogs. See: <http://finance.senate.gov/hearings/testimony/2007test/052307testma1.pdf>

We agree that these initiatives all have potential to help eliminate the backlogs. There are a few key issues that need to be considered regarding the Commissioner's suggested initiatives:

1. Many will require additional funding to be effectively implemented. This funding will be necessary to provide for increased staff, overtime, additional equipment (such as video hearing equipment), and improved computer systems that support the hearings process. If SSA receives an increased level of appropriated funding for FY 2008 it is likely that a part of those additional resources will be necessary to support the Commissioner's proposed initiatives.
2. These initiatives were developed at an Executive Staff level in the Central Office of SSA. To effectively and successfully implement any major change, input from staff involved is critical. ODAR hearings offices are represented by three unions. In addition, there are two chapters of the Federal Managers Association that represent management and chief judges. It will require a real effort to bring these groups together. Feedback from the various stakeholders will be needed; SSA traditionally has been most effective in implementing change when it consults and involves the relevant stakeholders.

3. The proposed initiative to increase the production of underproductive judges could be supplemented with more legal authority added to the Administrative Procedures Act (APA). We recommend Congress consider reviewing and revising or amending the APA.
4. One of the proposals calls for interregional transfer of cases to even out the backlogs. But the proposal then states this transfer will be limited. We believe there are some hearings that are so backlogged now that immediate transfer of cases to offices that are less backlogged is needed.
5. Field Offices have numerous formal and informal communication networks to share best practices and procedures. We suggest that ODAR establish such networks to improve their efficiencies.

ADDENDUM

NCSSMA LEGISLATIVE PROPOSALS, JUNE 2007

DISABILITY LEGISLATIVE PROPOSALS:

- ***Change the close out period for Title II to 60 days to conform to the existing Title XVI close out period.***

Comments: The six month protective filing period for Title II claims is antiquated, based on times with less access to communications and transportation. The needs based SSI program only affords a 60 day protective period on close out notices. Administration of the program would be easier if the periods were consistent.

- ***Eliminate direct payment of attorney/representative fees.***

Alternate proposal: Increase the attorney "user fee" to reflect the cost of administering the direct attorney fee provision, eliminating the \$77.00 assessment cap.

Comments: NCSSMA members report the administration of the attorney fee provisions are labor intensive and problematic when coupled with SSI Windfall Offset Provisions. Elimination of this provision would save significant administrative time and effort. As an alternate proposal, capping attorney fee assessments at \$77.00 does not reflect the cost of administering this provision. The original assessment was an uncapped 6.3%. We support removing the assessment cap and studying if the actual cost to the agency of collecting this assessment should be higher.

Eliminate medical Continuing Disability Reviews (CDRs) for all DIB beneficiaries with a permanent impairment, and for all DIB beneficiaries over a certain age.

Allow DDS to declare SSI Disabled Children Awards as meeting Adult Disability Standards when appropriate, eliminating the Age 18 medical redetermination in those cases.

Comments: NCSSMA supports study of disability reviews to determine the age where medical CDRs are no longer cost effective. When this age is established, we feel that scarce CDR funds would be better directed toward possible recovery cases. Similar savings would be found by removing the Age 18 medical redetermination for SSI Disabled with permanent disabilities that would be approved at any age. Currently, all SSI Disabled Child cases receive a medical review at Age 18 no matter how severe the disability. Establishing permanent adult disability eligibility could eliminate this unproductive review.

Require attorneys, non-attorney representatives, and for-profit third party disability companies to use the Internet to complete disability forms.

Federal Courts now require case actions to be filed electronically. The representatives listed above should be required to complete and submit required disability forms electronically in order to take full advantage of Social Security's EDCS system. Failure to do so would result in the action being dismissed. This would save SSA administrative effort, create an additional control of Disability cases at the earliest point, and it would require a higher level of involvement by the representatives who are charging our claimants for their services.

Reduce the waiting period for Medicare to 18 months.

Comments: Changing the Medicare waiting period to 18 months coincides with the end of COBRA coverage. This is a more natural crossover point, and would reduce a 6-month gap in coverage for vulnerable individuals.

GENERAL LEGISLATIVE PROPOSALS:

- ***Reverse Medicare D legislation requiring SSA to make available the option of having Part D premiums withheld from Title II benefits.***

Comment: This is one of the greatest public relations problems local SSA offices face every day. Communication problems between CMS, prescription drug providers, pharmacies and beneficiaries place SSA offices in an uncomfortable situation of trying to deal with premium problems with no power to change the amounts paid on our own benefits. Since SSA has little ability to affect the premium amount, we feel the prescription drug providers should collect the premiums themselves.

- ***Require States to verify public records electronically.***
- ***Eliminate collateral verification of domestic birth certificates.***

Comment: Electronic Verification of Vital Records is called for in the Intelligence Reform and Terrorism Protection Act (IRTPA), but is currently stalled in negotiations between SSA and the States. Pursuit of this provision would expedite SS-5 and claim verifications, and promote ID protections.

NCSSMA strongly supported the elimination of the collateral verification process for domestic birth certificates. The current process is time consuming, expensive, and seldom identifies identity problems.

- ***Change the representative payee accounting requirements for parents with custody of minor children and spouses with custody of adult claimants to a custody check.***

Comments: In the case of parents with custody and spouses with custody of adult beneficiaries, the reporting requirement should be limited to a custody check. The financial accounting requirements in these cases seldom result in a change of payee, and are very difficult to develop. When issues are raised in these cases, reporting is generally directly reported by the principals involved. The follow up on this workload is labor intensive, and produces little in value or protection for beneficiaries.

- ***Raise the administrative tolerance of overpayments to \$750.00.***

Comments: There is universal support among our NCSSMA Executive Committee for some change in this tolerance. Proposals ranged from setting the figure to equal the SSI Federal benefit rate (currently \$623.00) to \$1000.00. Some concern was raised that increasing the tolerance would hurt enforcement of some regulations. It is also possible that legislation is not required in this area, that, in fact, the Commissioner of Social Security has the authority to set the Administrative Waiver limit.

Title XVI LEGISLATIVE PROPOSALS:

- ***Simplify Earned Income Provisions:***
- ***Make Title II Disability monthly earnings provisions the same as Title XVI provisions to be counted when paid not earned.***

Comments: The differences in the Title II and Title XVI monthly earned income provisions are not understood by claimants and reporting employers alike. Changing provisions to counting earnings when paid is consistent with the way earnings are reported to other government agencies. Under current provisions, adjudicators have discretion to average earnings and consider subsidies and Income-Related Work Expenses (IRWE) in making Substantial Gainful Activity (SGA) determinations. These provisions would still be in place and would ensure that workers are not disadvantaged by this change. This change would only affect income counted for disability provisions. There would be no change in Retirement Test provisions.

- ***Expand what is acceptable proof of wages for SSI.***

Comments: Such sources include State Department of Labor records. These requests are currently used in matching processes, but could save substantial Field Office time if used as primary verification. A similar provision allowing SSA to use W-2 reports as Annual Earnings Test information saved considerable administrative time in Social Security Retirement, Survivor and Disability cases several years ago. Also, we should accept telephone reports of wages by claimant/worker/deemor. This process has been piloted in the past with some success. We should also be able to accept allegation of termination of employment without verification. Backup computer matches already in place would serve as a check against erroneous reports.

- ***Increase the Earned Income Disregard for Title XVI Payments to reflect inflation.***

Comments: The \$65.00 earned income disregard has not been increased since the inception of the program. At that time \$65.00 was the equivalent of half of the original Federal benefit rate, or FBR, (\$130.00) and approximately 40 times the prevailing minimum wage at the time (\$1.25 per hour). An increase to even \$200.00

would reduce the number of work reports needed from sheltered workshops and other supported employment programs, while increasing work incentives in the program. Social Security is not required to verify wages below the earned income disregard amount, so significant administrative costs would be saved.

- *Eliminate the dedicated Account Provision and Installments of the Law.*

Comments: Both provisions are labor intensive, and do not provide the savings or improved behavior intended by the sponsors of the provisions. Exceptions to both provisions make the rules almost meaningless.

- *Simplify Burial Fund Exclusion, adopt Medicare Part D Extra Help rules.*

Comments: In Medicare Part D Extra Help determinations, adjudicators are allowed to accept the allegation of applicants that up to \$1500.00 of their resources will be used for their burial. Current rules in this area are a hodgepodge of developmental practices, often changing from State to State. Simplifying this provision will allow both administrative savings and also consistency in application among applicants. Some NCSSMA members also propose a larger exclusion due to increases in burial costs.

- *Simplify Living Arrangements.*

Comment: The NCSSMA Title XVI Committee proposal would eliminate In-kind support and Maintenance (ISM) and replace it with a 15.0% reduction for shared living arrangements. While the details may require additional vetting, there would undoubtedly be an administrative savings in this proposal, and the new reduction would help make this proposal revenue neutral.

- *Count All Non-excluded Active Duty Military Pay as Earned Income.*

Comment: A workload that affects some areas more than others. While there would be a nominal increase in program costs, this provision would be supportive of military families. The proposal would save administrative costs as all military pay would be covered under the same provision.

- *Eliminate SSI Retrospective Monthly Accounting (RMA) Rules for prisoners released from jail.*

Comment: Currently, RMA rules allow payment of full SSI benefits for those reinstated from prisoner suspension for up to three months. Reinstated Title II payments—if paid the month after SSI reinstatement would not be counted until two months later. Adoption of this provision would eliminate an unintended windfall and double payment.

- ***Title XVI Windfall Offset Reform—allow payment of retroactive benefits of either Title II or SSI payments first in order to prevent delay of past due benefits.***

Currently, retroactive Title II payments are held until retroactive Title XVI payments are made in SSI Windfall Offset Cases (most often in appeal cases). This policy was developed because that payment of SSI in the “past due” period was needed in order to determine Medicare eligibility. Experience of SSA Field Offices is that release of the retroactive Title II is often delayed well beyond the Title XVI adjudication date due to workload backlogs and windfall offset issues. In order to ensure that retroactive Medicaid eligibility is considered, a “Medicaid Only” computation could be performed in cases where the Title II payment was released first. The retroactive Title II payment would be disregarded in this computation, and Medicaid eligibility would be decided based on income actually received in the affected months. This should be a less complex look back than our current offset provisions. The proposal would also expedite Title II payments and reduce PSC backlogs. Because offset would still occur, the proposal should save administrative funds and be revenue neutral to program funds.

[Submissions for the Record follow:]

Statement of James F. Allsup, Belleville, Illinois

Chairman McNulty, Representative Johnson, and Members of the Social Security Subcommittee, thank you for considering my written testimony regarding the Social Security Administration’s (SSA) disability claim backlogs.

My name is James Allsup, and I am the founder, president and CEO of Allsup, Inc., a firm that helps people navigate through the Social Security Disability Insurance (SSDI) claims process. I am pleased to offer this testimony on behalf of the 84,000 Americans with disabilities who have obtained Social Security Disability ben-

efits with our assistance. I also offer this testimony on behalf of our 420 employees who work diligently, day in and day out, to help our customers obtain the disability benefits they are entitled to receive.

I have witnessed the historical evolution of SSA's disability problems for nearly 30 years. From 1977 to 1982, I worked for SSA as a claims and field representative in Storm Lake, Iowa and Manhattan, Kansas. As an SSA employee, I experienced the helpless feeling of attempting to console an obviously qualified individual who did not know how she would survive financially while waiting for a claim that may or may not be awarded.

Defining the Problem

Since that time, SSA has experienced a significant and growing crisis, which is the result of multiple factors. First, our disabled population is growing. The number of disabled workers who draw SSDI has more than doubled since 1990, growing by over 3½ million additional persons since that time. As the baby boomer generation continues to age into their 60s and 50s, the annual number of individuals with disability claims is expected to rise significantly.

Second, the number of SSA field staff available to assist claimants and help develop complete factual records for SSDI determinations is plummeting. According to the Social Security Advisory Board, the field staff workforce in 2005 was 30 percent smaller than 20 years ago. This reduction is due in large part to the resources available to the SSA, but in addition, the SSA is losing a significant number of experienced employees due to planned retirement. This trend is expected to continue.

Third, the determinations are growing much more complicated. As the scope of medical tests and services becomes more sophisticated and complex, the challenges in preparing and interpreting a comprehensive medical record for each claimant also continues to grow.

As a result, current claimants are experiencing unacceptable delays in obtaining determinations. These problems have been well-documented in a number of government studies and reports, and the Social Security Administration is implementing a new claims review process that is intended to address some of these inadequacies.

Third Party Representatives—A Well-Established Solution

Fortunately, a proven system exists that can help address the unnecessary delays and erroneous rejection of claims that creates needless stress and hardship for this extremely vulnerable population. Third party organizations, such as my company, Allsup Inc., are well-tested and available to assist increasing numbers of individuals with applying for SSDI claims. In this way, third party representatives can ease the process for applicants and remove significant administrative burdens for the SSA.

After leaving SSA, I founded Allsup Inc. in 1984, making it the first private nationwide service of its kind. Similar to the way in which professional tax preparation services help people complete and file their income taxes, Allsup Inc. prepares and submits disability claims and appeals to SSA for our clients. Our services assist the disability applicant throughout the entire application and appeals process as much as possible. In fact, for every ten individuals who receive benefits with our assistance, eight are never required to travel to make personal appearances or otherwise required to deal directly with SSA. For this vulnerable population of individuals with significant disabilities, this process removes a significant physical and emotional burden. Even for those claims that must be appealed to an Administrative Law Judge (ALJ), two-thirds of the awards received by our clients from ALJ's are rendered "on the record"—without the need of a personal (and stressful) appearance at an oral hearing.

Our call centers respond to client inquiries regarding the status of their claims and the SSDI claims process, eliminating a significant number of inquiries that otherwise would be directed to SSA staff. For the disability applicants that we represent, SSA's role primarily is limited to that of a decision maker. Allsup submits a complete claim to the field office, assists the Disability Determination Service (DDS) as needed with medical developments, and submits a brief to the ALJ to facilitate "on the record" hearing decisions, eliminating the need for oral hearings in two-thirds of our cases.

The SSA recognizes the value of our services and encourages claim techniques that Allsup Inc. pioneered, including "on the record" hearing decisions. SSA also recognizes the value of Allsup's entire business model and increasingly relies on us and similar companies for a complete, accurate and well-documented claims file that is ready for a decision. In the absence of assistance from third party representatives, SSA personnel are typically charged with compiling these claims files.

Building on the Success of Third Party Representatives

SSA recently contacted Allsup Inc. and several other third party representatives to help determine if a market exists for the electronic submission of "bulk" claims data from third party organizations. Currently, SSA's systems only allow for the electronic submission of one claim at a time. Updating SSA's systems to permit bulk data transfers, coupled with the necessary administrative changes, would expand the market for companies such as Allsup Inc. and provide the needed assistance that SSA cannot afford.

This assistance is free to SSA, as our fees are paid by insurers, employers and disability applicants. Just as taxpayers choose to pay for assistance with their tax returns, disability applicants, insurers and employers currently choose to pay for our assistance with disability claims.

Private participation through third party representatives on a larger scale would be of immeasurable benefit to both SSA and to disability applicants. Such a system would build on SSA's longstanding policies that permit companies to represent individuals with disabilities in pursuing SSDI claims. SSA could reallocate and assign more staff to the critical task of deciding cases, preventing the intolerable backlogs that exist today. In addition, assistance from the private sector would ease the pressure on SSA to replace retiring employees. Most importantly, disability applicants, the neediest of all SSA stakeholders, could focus on their health while the representative of their choice handles their claim.

This model would replicate the Internal Revenue Service's (IRS) history with professional tax preparation services, which experienced a substantial growth in the mid-1950s when the IRS began closing the field offices that provided free tax preparation assistance. Although SSA is not closing individual field offices yet, field offices have lost 2,000 positions in just the last 17 months. This loss is the equivalent of closing 95 field offices that employed an average of 21 employees each. Under the current trends, the stresses on the SSDI process will continue to grow.

Straightforward Steps for Both the Short- and Long-Term

The decision to hire a private company for assistance with a disability claim should be a choice—not a requirement. Many people hire attorneys and non-attorneys for assistance now, but usually only to appeal a denied claim.

SSA could increase the benefit of using third party representatives by ensuring that disability applicants are informed *before* they initially apply for benefits that they have a choice: file the claim directly with SSA at no cost, or enlist the assistance of a private company that has met eligibility criteria for participation with SSA. Similar to tax preparation services, these companies would have systems capable of interfacing with and exchanging large volumes of claims data with SSA.

Disability applicants and SSA employees need help immediately. Streamlining SSA's process and moving to an all electronic file are the right things to do. Although much attention is focused on the looming crisis with Social Security retirement benefits, the disability crisis is here already. Despite the budgetary and demographic realities, the solution to this crisis does not have to be difficult. Relying on the private sector is an efficient solution that is real and available for use. Such an arrangement will not immediately eliminate the backlogs of today, but it is absolutely an important component of an overall solution.

Chairman McNulty, Congressman Johnson, thank you again for the opportunity to provide testimony on this important issue. I am confident that businesses such as Allsup Inc. are able to assist SSA and people with disabilities in processing disability claims. I look forward to working with you to address this growing crisis.

Statement of Association Of Administrative Law Judges

I. INTRODUCTION

Thank you for the opportunity to provide this statement regarding the backlog of disability cases at the Social Security Administration, Office of Disability Adjudication and Review. My name is Ronald G. Bernoski. I am an administrative law judge who has been hearing Social Security Disability cases in Milwaukee, Wisconsin, for over 25 years.

I also serve as President of the Association of Administrative Law Judges (AALJ), a position I have held for over a decade. Our organization represents the administrative law judges employed at the Social Security Administration and the Department of Health and Human Services. One of the stated purposes of the AALJ is to promote and preserve full due process hearings in compliance with the Administrative Procedure Act for those individuals who seek adjudication of program entitle-

ment disputes within the SSA. The AALJ represents about 1100 of the approximately 1400 administrative law judges in the entire Federal Government.

II. STATEMENT

The Association of Administrative Law Judges is most grateful for the interest expressed by the Subcommittee in its recent hearings. We too find it most painful that the American people who are in the disability hearing process have been disadvantaged by long delays in their cases because of the inadequacy of the Congressional funding levels in prior years. On a positive note, however, I am most pleased to inform you that individual administrative law judge productivity has increased every year over the last decade and is presently at historic highs. However, that level of productivity cannot further increase as we are producing, on average, over 2 cases per day. In this regard, it is of interest to note that in an attempt at reform in the 1990s, referred to as *Disability Process Reengineering*, a time study was performed of the entire disability process. The result of that study, insofar as administrative law judge performance, revealed that an administrative law judge could efficiently and effectively produce between 25 to 55 cases each month. If an administrative law judge performed at this level, he/she would spend approximately four hours total time on each case. This would include time spent by the administrative law judge reviewing the file and making notes prior to the hearing, time conducting the hearing and time reviewing and editing the draft decision. In view of the importance of these cases to the American people and the cost to the trust fund (over \$200,000 per case), we respectfully submit that an average investment of four hours per case per judge represents a reasonable cost-benefit limitation on administrative law judge productivity.

As the Subcommittee is aware, the SSA disability process requires, for maximum performance, a ratio of staff to administrative law judge of $4\frac{1}{2}$ staff for each administrative law judge. Ideally, the complement would include $2\frac{1}{2}$ attorneys and 2 staff available for each administrative law judge. Presently, the staff to administrative law judge ratio is in the 3.5 range which means the agency needs to hire close to 1000 staff just to maintain the status quo. However, the AALJ submits that the American people, whose cases constitute our disability back log deserve much better than the status quo. The answer is simply greater funding to hire more administrative law judges and more staff. The hearing process itself has been refined and while we note below certain additional refinements that could be made, the present due process hearing system which we employ suffers largely from the lack of resources. Indeed, as noted in the testimony of the Honorable Sylvester J. Schieber, Chairman, Social Security Advisory Board, during the recent hearing, "The difference between the enacted budgets and the agency workforce plan budgets over the period (the last seven years) totals over \$5 billion."

While the Congress has expressed concern in prior years, over developing backlogs, budgets were never made available to fully process the increasing number of disability claims. However, we believe that Congress can not wait any longer to address this problem and respectfully submit the following approach.

III. FUNDING

The backlog of pending disability cases must be processed as quickly as possible. We currently have approximately 1140 administrative law judges at SSA. 300 cases is a reasonable case docket for each judge. This docketing will take about 300,000 cases leaving an effective backlog of about 417,000 cases. To efficiently process this backlog, we believe that funding should be made available to hire at least 150 additional administrative law judges and the necessary staff to support them. In addition, funding should be provided to bring the current staff level up to the $4\frac{1}{2}$ ratio, as noted above.

In addition to these hires, funding should be made available to employ retired administrative law judges (Senior Judges) and temporary staff to assist them. A provision currently exists in OPM regulations for the hiring of senior judges. The senior judges will provide SSA with a Corps of trained judges with vast experience in hearing and deciding Social Security cases. We believe that if Congress would fund this program, as they have on a more limited basis in the past, by providing the full salary of an administrative law judge and also permit them to retain their pension income, we would be able to employ at least 100 senior administrative law judges. As these would be temporary appointments, their assignments would end with the disposition of the backlog. Funding would also be necessary for staff for these judges. Attractive candidates for these positions would be recently retired hearing office employees who already possess the skills and experience necessary to perform efficiently. They too could be hired on a temporary basis.

We are committed to walk hand in hand with Commissioner Astrue to ensure that the American people are well served by the timely and efficient processing of their disability cases. We will work tirelessly with him to achieve this end. We wholeheartedly agree with his hearing statement that "For current beneficiaries, this role means setting high standards for management, performance, public service, and program integrity, and committing to meeting those standards." As noted earlier, administrative law judges have performed at historic levels and we are committed to continue to work as efficiently and effectively as we can. We look forward to discussing with the new Commissioner our vision for the future. Over the last decade there have been far too many management decisions whose impact has reduced the efficiency of the administrative law judge and has had a negative impact on the backlog. For example, we are still hampered by management decisions which have placed our hearing clerks in decision writing positions. Our experience reveals that attorneys perform this critically important function far more efficiently and effectively than high school graduates. Another example, involves management decisions that prevent administrative law judges from working in the hearing offices after regular work hours. In our view, administrative law judges should always be given access to their offices to work on our critically important cases.

IV. ADDITIONAL CHANGES TO IMPROVE THE EFFICIENCY OF THE ADMINISTRATIVE JUDICIARY AT SSA

As the Subcommittee is patently aware, SSA is in need of additional administrative law judges. Pursuant to the Administrative Procedure Act, the Office of Personnel Management has the responsibility for administering the administrative law judge program in the Federal Government. One aspect of this responsibility is to create and administer an appointment process which includes a complete evaluation of the qualifications of attorney candidates who submit an application. OPM reviews the qualifications and administers a written examination. Ultimately, the candidate is given a numerical score and placed on a register from which SSA and other agencies may hire. For various reasons, the register has been closed for over seven years. Thus, interested attorneys have been denied the opportunity to have their qualifications reviewed for potential appointment as an administrative law judge. This system is broken and needs a Congressional fix.

As you may be aware, a bill was introduced in the 106th Congress to remove the management of the administrative law judge function from OPM and place it in a separate Office under the management of a Chief United States Administrative Law Judge. This change is modeled after the Judicial Conference of the United States which administers the Federal courts. This change is badly needed as the OPM has demonstrated that it will not manage the administrative law judge function in an efficient manner, as required by the Administrative Procedure Act. In fact, OPM's unwillingness to manage this program and its demonstrated contempt for administrative law judges is evidenced by the elimination of its own Office of Administrative Law Judges. Also, in prior Congressional testimony, representatives from OPM have shown contempt for the Administrative Judiciary. We urge this Subcommittee to conduct a hearing on this subject as recommended by Representative Pomeroy (D-ND). We also urge members of this Subcommittee to support our efforts to enact legislation to establish an administrative law judge conference.

For your further information, we believe there are also things the agency can do to address backlog issues. We believe SSA should change its policy on "no show" dismissal cases. Presently, the Appeals Council remands most of these dismissals because of the agency policy. This results in additional work for staff to reschedule hearings on multiple occasions. We believe that when a claimant neither appears for the hearing nor communicates an inability to appear, that case should be dismissed, absent a showing of "good cause". The claimant's rights are preserved since they can file a new application for benefits thereafter and seek reopening of the dismissed case.

In addition, SSA should require the Appeals Council to reverse cases, when appropriate, rather than remanding case to administrative law judges for hearing. This change would provide quicker decisions for the claimant and would reduce our backlog of cases waiting to be heard.

SSA should also adopt comprehensive procedural rules designed to promote efficiency in the hearing process. At our urging, the agency has adopted some procedural rules with the implementation of Disability Service Improvement, a plan implemented by the previous Commissioner. However, we believe that additional procedural rules are necessary, except for pro se claimants, to maximize our efficiency. Those rules were previously recommended to Commissioner Barnhart by a Joint Rules Committee, but were not implemented. The Rules should place more responsibility for the conduct of the hearing on claimant representatives. The representative

should be responsible for preparing a pre-hearing brief which declares the specific impairments upon which the claim for disability benefits is based, describes the theory of the case, the law and the evidence upon which the claim is based. These requirements are within the accepted duties of an attorney as an "officer of the court" and are part of the services provided to the claimant for which attorney fees are paid.

Finally, we believe that SSA should reorganize its Regional hearing offices and devote the personnel in these offices to direct case processing. We believe that the role of the Office of the Chief Judge should be enhanced and that Regional functions be centralized and placed under the direct responsibility of the Chief Judge. With the advent of technology and electronic communications, central management authority is, in our view, a far more efficient and effective method of managing the hearing function.

We pledge Commissioner Astrue our full support in addressing the disability backlog issues and we look forward to meeting with him to further discuss our ideas, concerns and recommendations. We also look forward to working with the Subcommittee in any way we can be of service.

Statement of National Association of Disability Examiners, Oklahoma City, Oklahoma

Chairman Michael R. McNulty and members of the Committee, as you consider new approaches for addressing the backlogs for the Social Security Disability Program, the National Association of Disability Examiners (NADE) wishes to present our views on the on-going challenges facing the disability program.

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

NADE members—throughout the state DDSs, Regional Office(s), SSA Headquarters, OHA offices and the private sector—are deeply concerned about the integrity and efficiency of both the Social Security and the SSI disability programs. Simply stated, we believe that those who are entitled to disability benefits under the law should receive them; those who are not, should not. We also believe decisions should be reached in a timely, efficient and equitable manner.

Significant challenges facing SSA in the disability program include dealing with inadequate resources, managing the backlogs, the Continuing Disability Review (CDR) program, on-going management of the implementation of the electronic disability process (eDib), and the continuing hardships imposed on disability beneficiaries by the Five Month Waiting Period and the 24 month Medicare Waiting Period. The disability program has become increasingly more complex as new advances in medicine and treatment have allowed individuals with disabilities to live longer and more productive lives. The complexity of the program, the changing nature of the program and the sheer volume of claims, coupled with diminishing resources, has brought a significant amount of stress to an already over-burdened system.

Resources

There is no doubt that backlogs in the disability program have increased. This is a direct result of the hard choices that needed to be made by SSA over the past few years to deal with the realities of inadequate budgeting and staffing. NADE feels that if SSA continues to be burdened with inadequate resources, the resulting backlogs and staffing problems will only multiply. For the past five years, the SSA budget has not been what the previous Commissioner of Social Security or the President requested from Congress. The prior Commissioner reported to Congress several times that if the President's proposed budgets for SSA this past five years had been granted, SSA would have been able to eliminate its disability backlogs.

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

decisions. It is critical the DDSs be provided with the resources needed to hire and train staff that can perform these duties. Low salaries, hiring restrictions and the stress of the job contribute to high turn-over in some DDSs. Given the hiring restrictions and inadequate resources placed on the SSA and DDSs, it is amazing that the disability backlogs are not even higher than they are currently and that the number of claims processed has continued to increase despite inadequate funding and resources.

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

Backlogs

Addressing disability backlogs is a high priority for NADE. However, we think it is important to remember that while there are a large number of cases pending at some DDSs, the most significant delays in the process still occur at the Office of Hearings and Appeals (OHA) where an average claim takes over 400 days, compared to the 89 day average at the DDS. NADE agrees that many people suffer needlessly as a result of these types of backlogs and that individual conditions can worsen or lead to death during this waiting time. It is critical that adequate resources be provided to all levels of SSA involved with disability case processing.

As a result of the reduced SSA budget for 2006, SSA mandated that initial level disability claims be given top priority. This necessitated other claims, such as reconsiderations and continuing disability reviews (CDRs), not receiving the attention they deserved and backlogs resulting of these types of claims at the DDSs.

NADE strongly believes that the Single Decision Maker (SDM) process can help to alleviate some of the backlogs at the initial level of case processing. This part of the prototype effort has proven to be successful in producing high quality decisions and a time saver when processing claims. NADE believes that SSA should expand the SDM initiative to all regions to not only reduce initial backlogs, but to lower processing times at the initial level.

Continuing Disability Reviews (CDRs)

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

While there are increased administrative costs (including the purchase of medical evidence, claimant transportation costs and increased utilization of contract medical consultants) with the performance of CDRs, there is a potential for significant savings in program costs with the elimination of benefits paid to beneficiaries who are found to be no longer eligible for disability benefits due to no longer meeting the SSA Disability program requirements. The estimate is that for every \$1 in administrative cost spent on conducting CDRs, \$10 of program funds is saved. While NADE agrees that it was necessary to decrease the number of CDRs done over the last couple of years given the current budget situation, this decision has repeatedly been described by many, including the former SSA commissioner and members of this committee, as "penny-wise and pound-foolish". We agree. It is essential to program integrity that CDR reviews be conducted in a timely manner to ensure that only those who continue to be eligible are receiving disability benefits. NADE's experience has been that the only way to ensure the necessary funds for CDRs don't get transferred to process other SSA workloads is for Congress to provide "dedicated funding" for CDRs. Dedicated funding has shown to be the best means of staying current with the CDR workload. NADE encourages this committee to recommend appropriating dedicated funding for CDRs to ensure that this workload gets the attention it deserves.

Electronic Disability Process (eDib)

eDib is still a work in progress and requires ongoing refinements, upgrades and improvements frequently needed to make the system work as efficiently and effectively as possible. The impact on the electronic system as a whole when these changes are made is unpredictable, and currently results in systems slowness or inability to work at all.

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

Continued attention to eDib is needed to insure that the proper financial support is given to make it successful. eDib at its full implementation may result in a significant reduction in processing time at all levels of adjudication without the need for significant changes to the adjudicative process.

5 Month Cash Benefit Waiting Period and 24 Month Medicare Waiting Period

It is important to note that in Title II disability claims, persons found disabled under the Social Security Disability program must complete a full five month waiting period before they can receive cash benefits. So, a disability allowance decision, even when it is processed quickly, will not resolve the issue of having to wait five full calendar months before the claimant will be able to receive any cash benefits. NADE believes that requiring some individuals (Title II claimants) to serve a waiting period before becoming eligible to receive disability cash benefits while not requiring others (Title XVI claimants) to serve the same waiting period is a gross inequity to American citizens with disabilities.

We are also deeply concerned about the hardship the 24 month Medicare waiting period creates for these disabled individuals, and their families, at one of the most vulnerable periods of their lives. Most Social Security disability beneficiaries have serious health problems, low incomes and limited access to health insurance. Many cannot afford private health insurance due to the high cost secondary to their pre-existing health conditions.

It has been proven time and time again that earlier medical intervention could help disabled individuals return to the work force. Therefore, NADE supports the elimination of, at the very least a reduction, of the Five Month Cash Benefits and 24 Month Medicare Waiting Periods.

Summary

- Inadequate resources along with increased workloads has not only caused backlogs, but has allowed existing backlogs to increase
- Disability backlogs are affected by inexperienced staff, hiring restrictions, and implementation of constant program changes
- Dedicated funding is necessary in order to avoid the costly possibility of having a backlog of overdue CDRs.
- Resources should not be diverted from eDib to implement disability service improvement changes until the eDib system is fully operational. It is critical that necessary refinements be made to the system in order for it to produce the anticipated and desired efficiencies.
- The five month cash benefit and 24 month Medicare waiting periods for Social Security disability beneficiaries should be eliminated or reduced.

Statement of National Council on Disability

Introduction

The National Council on Disability (NCD) is an independent federal agency, composed of 15 members appointed by the President and confirmed by the U.S. Senate. NCD's overall purpose is to promote policies and practices that guarantee equal opportunity for all individuals with disabilities, regardless of the nature or severity of the disability; and to empower individuals with disabilities to achieve economic self-sufficiency, independent living, and integration into all aspects of society. In furtherance of NCD's statutory mandate to advise the Administration and Congress on issues that affect people with disabilities, I would like to share the following information and recommendations from NCD's report, *The Social Security Administration's Efforts to Promote Employment for People with Disabilities: New Solutions for Old Problems* (<http://www.ncd.gov/newsroom/publications/2005/ssa-promoteemployment.htm>), regarding the Social Security Administration's (SSA) disability backlogs.

The Disability Determination Process

NCD's Social Security report noted that the disability determination process is upsetting, adversarial, and extremely inconsistent. Both the timeliness and the uniformity of the SSA's disability determination process leave much to be desired. Decisions often take an extremely long time to process, and individuals who appeal after initially being denied benefits often have to wait nearly another full year before a final hearing decision is reached. Furthermore, there are often significant discrepancies between the initial decisions and those made at the hearings level.

NCD also noted that the other determination, that of disability status, is made by contracted state agencies. The disability determination process is complex and lengthy. There is inconsistency from state agency to state agency, and determinations that an individual is not disabled are often appealed, leading to lengthy waits before final resolution. For example, a table from the SSA Annual Statistical Report for 2003 offers data on the outcomes of applications filed between 1992 and 2003. **According to that data, 22,062 applications from 2000 were still pending in mid-2003.**

Further, for a number of years, SSA has been reducing staffing levels in its local offices. At the same time, the number of individuals applying for and receiving benefits has steadily increased. The result is an overworked SSA workforce that must deal with an overwhelming and growing workload. Insufficient staffing has often led to long lines and poor service. The processing of appeals and back-to-work issues is not performed in a timely manner. Misinformation is frequent, and mistrust is common.

Beneficiaries often report that SSA needs to improve customer service. Frequently reported problems include offices and meeting spaces that are too noisy for individuals with hearing loss, lack of information in accessible formats for individuals with vision loss, and misunderstandings about how work incentives might relate to specific impairments. Long waits for service in field offices are common, as is the frequent loss of essential paperwork sent to SSA. In some field offices, it is not uncommon for the main telephone numbers to be busy for extremely long periods of time. Trying to access specific staff members is often quite difficult, and it is frequently reported that staff do not return messages left by beneficiaries or their advocates in a timely manner.

For additional information and recommendations, please see the Executive Summary from NCD's Social Security report, included below. Again, the full report is available at: <http://www.ncd.gov/newsroom/publications/2005/ssa-promote-employment.htm>.

Executive Summary

Americans with disabilities remain underemployed, despite the fact that many are willing and able to work. Although the Social Security Administration (SSA) has instituted a number of incentives to reduce the numerous obstacles to employment faced by its Supplemental Security Income (SSI) and Social Security Disability Insurance (DI) beneficiaries, such efforts have had little impact because few beneficiaries are aware of these incentives and how they affect benefits and access to healthcare.

Introduction to the Problem

Social Security beneficiaries with disabilities must spend months or even years convincing SSA that they are unable to work as a condition of eligibility. Yet, upon their receipt of benefits, SSA begins to communicate to beneficiaries that work is an expectation for them. Congress and SSA have developed a variety of work incentives and special programs designed to encourage beneficiaries to attempt to obtain and sustain employment. Yet SSA's efforts to eliminate work disincentives have often added to the complexity of the entire program, confusing beneficiaries and making them leery of any actions that might unknowingly jeopardize their benefits.

Current SSA benefit amounts are quite small and merely allow beneficiaries to live at a basic subsistence level. SSI resource limits make it very difficult to accumulate the financial resources necessary to move toward economic self-sufficiency. Tying eligibility for Medicaid or Medicare to eligibility for SSA benefits forces individuals with high-cost medical needs who could otherwise work to choose between pursuing a career and retaining the medical insurance that sustains their very lives.

The fear of losing benefits and medical insurance through an unsuccessful employment attempt starts well before adulthood with SSI beneficiaries. Many SSI recipients first apply for benefits as children while enrolled in public schools. These individuals often remain on the rolls well into adulthood, with very few transitioning from high school into substantial employment after graduation. Failure to focus on Social Security and other public benefits during transition is not only a missed op-

portunity, but harm may be caused when students and family members are not educated or prepared for the effect of earnings on cash benefits and medical insurance.

There is also the problem with poor educational attainment of DI beneficiaries who enter the disability system later in life. Efforts to help this population return to work are stymied by their lack of education and marketable job skills—particularly in today's highly competitive information economy. It is now more important than ever that people of all ages have access to higher education and the financial means with which to pay for training and education.

Response of Congress and the Social Security Administration to the Problem

Well aware of the enormity and seeming intractability of this problem, Congress and SSA have initiated multiple efforts to promote employment and return to work among SSA beneficiaries. In recent years, a number of work incentives for SSI and DI beneficiaries have been implemented, allowing individuals to keep more of their earnings while retaining their benefits. Work incentives are aimed at reducing the risks and costs associated with the loss of benefit support and medical services as a result of returning to work. Some of the most commonly used incentives are Section 1619(a) and (b) provisions; impairment-related work expenses (IRWE); trial work period (TWP); Plan for Achieving Self-Support (PASS); extended period of eligibility (EPE); and continued payment under a vocational rehabilitation program.

However, despite efforts by SSA and the Federal Government that have led to more favorable conditions for returning to work, most SSI and DI beneficiaries continue to stay on the disability rolls. The work incentives offered by SSA remain largely underutilized; in March 2000, of the total number of eligible working beneficiaries, only 0.3 percent were using PASS, 2.8 percent were using IRWEs, 7.5 percent were receiving Section 1619(a) cash benefits, and 20.4 percent were receiving Section 1619(b) extended Medicare coverage (SSA, 2000). The major reasons cited for the extreme underutilization of these work incentives by beneficiaries were (1) few beneficiaries knew that the work incentives existed, and (2) those who were aware of the incentives thought they were complex, difficult to understand, and of limited use when entering low-paying employment (GAO, 1999).

The Office of Program Development and Research (OPDR) and the Office of Employment Support Programs (OESP) under the Deputy Commissioner for Disability and Income Security Programs are primarily responsible for the implementation of multiple components of the Ticket to Work and Work Incentives Improvement Act of 1999 (TWWIIA). The TWWIIA provides a number of new program opportunities and work incentives for both SSI and DI beneficiaries, including the Ticket to Work (TTW) and Self-Sufficiency Program; development of a work-incentives support plan through the creation of national network of Benefits Planning, Assistance, and Outreach (BPAO) programs; and new work incentives, including expedited reinstatement (EXR) of benefits and postponement of continuing disability reviews.

The National Council on Disability's Study of the Problem

It is not known whether the new TWWIIA programs will have any more success than past attempts by SSA to impact the employment rate and earnings of beneficiaries. What is clear is that there has not been, in recent times, a comprehensive, research-based examination of the practices that are most likely to support the employment of SSI and DI beneficiaries. This study has been undertaken in response to the need for such a comprehensive analysis. The study was designed to address four research questions:

1. What are the evidence-based practices that promote the return to work of working-age beneficiaries of DI and SSI programs?
2. What policy changes are needed, given recent trends in program participation and employment?
3. Are there proven and documented practices that work better for some populations of people with disabilities and not others?
4. Which factors ensure that documented and evidence-based practices could be adapted/adopted by SSA and other entities that seek to ensure the employment of people with disabilities? Which factors prevent adaptation/adoption?

A four-step approach was taken to implement the study. First, a comprehensive literature synthesis was completed through a review of published and unpublished literature. Second, detailed structured interviews were conducted with key stakeholders, including SSA beneficiaries, federal SSA officials, representatives of other federal agencies, consumer and advocacy organizations, service organizations, community service providers, and business representatives. Third, a preliminary list of findings, evidence-based practices, and recommendations based on the literature re-

view and structured interviews was used to develop seven topic papers. These papers were used to facilitate discussion and obtain reaction from participants who were invited to a consensus-building conference at the end of January 2005. Individuals with disabilities (including current and former SSI and DI beneficiaries), advocacy organizations, service providers, and policymakers who attended the conference had the opportunity to further develop the recommendations that appear throughout the report.

Major Findings of the Study

Purpose and Mission of SSA's Disability Benefit Programs

Our nation's current disability benefit programs are based on a policy principle that assumes that the presence of a significant disability and lack of substantial earnings equates to a complete inability to work. The current SSA eligibility determination process thwarts return-to-work efforts, because applicants are required to demonstrate a complete inability to engage in substantial gainful activity (SGA) in order to qualify for benefits. The definition fails to recognize that, for many consumers, disability is a dynamic condition. The length of the application process in our current programs actually contributes to the ineffectiveness of our return-to-work efforts and our inability to intervene early in the disability process.

For DI individuals, lack of a gradual reduction in benefits as earnings increase and lack of attachment to the DI and Medicare programs after an individual has maintained employment for an extended period of time make return to work unfeasible. For SSI beneficiaries, the program's stringent asset limitations thwart efforts toward asset development and economic self-sufficiency. Inconsistencies in program provisions lead to confusion and inequities for beneficiaries of both programs.

Beneficiary Perspective and Self-Direction

To receive benefits, applicants must characterize their situation as an inability to work long-term. They must demonstrate that they are unable to work in any significant way. Once they are determined to be eligible for disability benefits, beneficiaries face a host of complex program rules and policies related to continuing eligibility for cash benefits and access to healthcare. Many beneficiaries are confused or uninformed about the impact of return to work on their life situation and have shied away from opportunities to become self-sufficient through work.

Beneficiaries report that their experience with SSA is often unfavorable. Insufficient staffing has led to long lines and poor services. Misinformation is frequent, and mistrust common. Local SSA field office staff members are overburdened with accurate and timely processing of post-entitlement earnings reporting, which often leads to overpayments to beneficiaries. Beneficiaries do not trust SSA to make appropriate and timely decisions. There is prevalent fear that work attempts would result in either a determination that the disability had ended or the need to repay benefits.

SSA has implemented many legislative changes, program modifications, training initiatives, and automation efforts in the past 15 years to improve its customer service. Although efforts to streamline processing and improve customer service should be lauded, they have not significantly improved beneficiaries' ability to direct and control their own careers.

Income Issues and Incentives

A multitude of rules regarding employment income, continued eligibility for disability benefits, waiting periods, earnings reporting, management of benefit payments, and management of assets (among many others) come into play once an individual is determined to be eligible for DI or SSI. SSA rules regarding employment and income are such that many beneficiaries will actually be worse off financially if they work full time. Disincentives to employment in the current benefits programs include a sudden loss of cash benefits as a result of earnings above the SGA level for DI beneficiaries. Despite a number of programs that are designed to encourage asset building among SSI beneficiaries, it remains very difficult for beneficiaries to save and accumulate resources under SSI, which contributes to long-term impoverishment and dependence on public benefits.

Over the past decade, SSA has devoted considerable resources to promoting employment and return to work among SSI and DI beneficiaries. The agency has aggressively implemented a number of new initiatives authorized under the TWWIIA, such as the Ticket to Work and Self-Sufficiency Program, the BPAO program, area work incentive coordinators, and Protection and Advocacy for Beneficiaries of Social Security. It has modified program rules to provide increased work incentives to beneficiaries, such as the EXR and protection from continuing disability review pro-

visions of TWWIIA, indexing the SGA threshold, and increasing the level of earnings allowed during the Trial Work Period (TWP). The agency has also launched or is planning to initiate a number of demonstrations that will test the efficacy of new modifications to work incentives within the DI program and services targeted toward youth with disabilities. Yet, while SSA has taken steps to improve its return-to-work services through the provision of work incentives, these efforts are hampered by the underlying program rules that were designed for individuals assumed to be permanently retired from the workforce and individuals who were viewed as unable or unlikely to work in the future.

Coordination and Collaboration Among Systems

Expansion of the disability programs and the poor employment rates of adults with disabilities have become major concerns for SSA and disability policymakers across the country. Too often, the alarming growth of the Social Security disability rolls has been represented and perceived as SSA's problem to solve in isolation, when in fact it is a larger societal problem with myriad complex causes. Receipt of Social Security disability benefits is merely the last stop on a long journey that many people with disabilities make from the point of disability onset to the point at which disability is so severe that work is not possible. All along this journey, individuals encounter the policies and practices of the other systems involved in disability and employment issues. When these systems fail to stem the progression of disability or work at cross-purposes with one another to prevent successful employment retention or return to work, it is the Social Security disability system that bears the eventual brunt of this failure. Any meaningful effort to slow down or reverse this relentless march toward federal disability benefits will require significant and sustained collaboration and coordination among SSA and the other federal agencies with a stake in developing disability and employment policy.

The complex obstacles to employment faced by SSA beneficiaries require a comprehensive set of solutions. New approaches must be identified that emphasize beneficiary control of career planning and the ability to access self-selected services and supports. Public and private healthcare providers must develop new collaborations and new approaches to combining coverage from multiple sources to improve program efficiencies. SSA must continue to work with the Rehabilitation Services Administration (RSA) and the Department of Labor (DOL) to improve implementation of the TTW program and identify new approaches that will overcome the traditional inability of SSA beneficiaries to benefit from services provided by the nation's employment and training programs. Secondary and postsecondary educational institutions must emphasize benefits counseling and financial management training as the foundation for beneficiary self-direction and economic self-sufficiency. Federal agencies and the business community must realize that collaborative approaches to incorporating beneficiaries into the workforce are needed as a way to reduce dependence on federal benefits while simultaneously enhancing the productivity and competitiveness of large and small business.

Recommendations

A total of 38 specific recommendations have been developed in the areas of Beneficiary Perspective and Self-Direction, Income Issues and Incentives, and Coordination and Collaboration Among Multiple Public and Private Systems. The recommendations are presented and justified in Chapters III, IV, and V of the report, and a complete list is provided in Chapter VI. The key recommendations resulting from the study are summarized below.

Beneficiary Perspective and Self-Direction

Customer Service—SSA should take immediate steps to improve the services provided to beneficiaries by improving the accessibility of SSA field offices and Web sites; redesigning field office personnel roles, staffing patterns and work assignments; continuing efforts to automate work reporting procedures; and enhancing outreach efforts to beneficiaries.

Ticket to Work Program—Congress and SSA should address current shortcomings in the TTW program by (1) expanding Ticket eligibility to include beneficiaries whose conditions are expected to improve and who have not had at least one continuing disability review (CDR), childhood SSI beneficiaries who have attained age 18 but who have not had a redetermination under the adult disability standard, and beneficiaries who have not attained age 18; (2) modifying the TTW regulations to ensure that Ticket assignment practices do not violate the voluntary nature of the program and beneficiary rights to grant informed consent; and (3) implementing a strong national marketing program to inform beneficiaries about TTW and other SSA programs.

Facilitate Beneficiary Choice—Congress should authorize and direct SSA, the Rehabilitation Services Administration (RSA), the Centers for Medicare and Medicaid Services (CMS), the Department of Housing and Urban Development (HUD), and the Department of Labor Employment and Training Administration (DOLETA) to develop and implement an integrated benefits planning and assistance program that coordinates resources and oversight across several agencies that enables beneficiaries to access benefit planning services within multiple federal systems. Congress should also authorize and direct these agencies to consider changes to the existing BPAO initiative to improve the accuracy and quality of services provided to individual beneficiaries.

Reduce SSA Overpayments to Beneficiaries—Congress and SSA should implement a series of procedural reforms to reduce overpayment to beneficiaries by increasing the use of electronic quarterly earnings data and automated improvements to expedite the processing of work activity and earnings; piloting the creation of centralized work CDR processing in cadres similar to PASS and Special Disability Workload Cadres; and enhancing efforts to educate beneficiaries on reporting requirements, the impact of wages on benefits, and available work incentives.

Eliminate the Marriage Penalty—Congress and SSA should undertake a complete review of the SSI program and make program modifications that eliminate the financial disincentive to marriage inherent in the present program, including amending the current Title XVI disability legislation to modify the manner in which 1619(b) eligibility is applied to eligible couples.

Income Issues and Incentives

Ease the SGA Cash Cliff for DI Beneficiaries—Congress should modify the current Title II disability legislation to eliminate SGA as a post-entitlement consideration for continued eligibility for Title II disability benefits and provide for a gradual reduction in DI cash benefits based on increases in earned income.

Reduce Restrictions on Assets for SSI Beneficiaries—Congress should direct SSA to (1) develop and test program additions and regulatory modifications that will enable SSI beneficiaries to accumulate assets beyond existing limits through protected accounts and other savings programs, and (2) change current program rules and work with other federal agencies to modify and expand the value of individual development account (IDA) programs to SSA beneficiaries.

Decrease the Complexity of the DI/SSI Program Rules Governing Income and Resources—Congress should direct SSA to (1) simplify regulatory earnings definitions and wage verification processes so that they are consistent across the SSI and DI programs, and (2) direct SSA to modify regulations related to the treatment of earnings in the DI program by applying the same rules currently applied in the SSI program.

Coordination and Collaboration Among Multiple Public and Private Systems

Health Care Systems—Centers for Medicare and Medicaid Services (CMS) and SSA should work together closely to (1) modify existing program regulations in order to uncouple Medicare and Medicaid coverage from DI/SSI cash payments; (2) identify and eliminate the many employment disincentives currently built into the Medicaid waiver, Medicaid buy-in, and Health Insurance Premium Payment (HIPP) programs; (3) expand benefits counseling services to include the full range of financial education and advisement services; and (4) work collaboratively with public and private insurance providers and business representatives to design public-private insurance partnerships that will expand access to healthcare for individuals with disabilities.

Vocational Rehabilitation (VR) System—SSA should modify TTW program regulations to allow the SSA's traditional VR cost reimbursement program to carry on as a parallel program to the Employment Network (EN) outcome or outcome-milestone payment mechanisms, and ensure that an EN is able to accept Ticket assignment from a beneficiary, refer that individual to the VR agency for needed services, and not be required to reimburse the VR agency for those services.

Federal Employment and Training System—Congress, SSA, and the Department of Labor should undertake an analysis of the impact of allowing DOL One-Stop Career Centers to receive cost reimbursement payments for successfully serving beneficiaries under the TTW program, evaluate the impact of the Workforce Investment Act (WIA) performance standards on beneficiary participation in WIA programs, and design and test a set of waivers that will assist beneficiaries in accessing and benefiting from WIA core and intensive services, as well as individual training accounts.

Educational System—Congress should direct SSA to work with the Department of Education (ED) to (1) ensure that benefits planning and financial management services are available to the transition-aged population; (2) expand the current stu-

dent earned income exclusion (SEIE) and the Plan for Achieving Self-Support (PASS) to encourage involvement of SSA beneficiaries in postsecondary education and training; and (3) implement a policy change that would disregard all earned income and asset accumulation limits for beneficiaries who are transitioning from secondary education to postsecondary education or employment for at least one year after education or training is completed.

Employers, Business Community, and Private Insurance Industry—Congress should direct SSA and the Department of the Treasury to (1) evaluate the possible effects of a disabled person tax credit as a means of increasing the use of disability management programs in business to prevent progression of injured and disabled workers onto the public disability rolls, and (2) collaborate with Department of Labor's Employment and Training Administration (DOLETA), the Small Business Administration (SBA), and the Rehabilitation Services Administration (RSA) to develop and implement an employer outreach program targeted toward small and mid-size businesses.

NCD is available to provide you with advice and assistance pertaining to issues of importance to people with disabilities and welcomes any inquiries. Please contact NCD's Congressional Liaison, Mark Seifarth, or reach NCD by telephone.

Statement of Social Security Disability Coalition, Rochester, New York

I am dedicating the following testimony in memory of Dane Edwards, who applied for Social Security Disability benefits in October 2006, because of terminal lung and brain cancer. When he would call to check on the status of his claim he was told that he must wait like everyone else, and that he should stop calling to inquire about the status. He obviously did not have the luxury of time. Dane will no longer be calling and he never received his benefits. He died on February 13, 2007—his SSDI disability claim still waiting for approval at the NYS (DDS) ODTA.

My name is Linda Fullerton, I am permanently disabled and currently receive Social Security Disability Insurance/SSDI and Medicare. I am one who was personally affected by the problem of disability backlogs, which this hearing is supposed to be addressing today. I must say right from the start, that 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 benefits! This is how the government systematically robs you of your money in order to use it for other purposes. This program which was originally set up to help the disabled is currently failing miserably at this task, and in fact, in many cases it is causing devastating, irreversible harm to both their health and financial wellbeing.

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. Our group and experiences, are a very accurate reflection and microcosm of what is happening to millions of Social Security Disability applicants all over this nation. As a person who has gone through the Social Security Disability claims process myself, I know first hand about the pain, financial, physical and emotional devastation that the current problematic SSDI process can cause, and I will never be able to recover from it, since I can no longer work.

I find it disturbing that at this latest hearing and at past hearings, that glaringly absent from your panel is representation from other disability organizations such as mine. You continually choose the same panelists from the legal, disability advocate community when there is any representation at all. 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 via video/phone teleconference before Congress, since I could never afford to travel, 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 propose that Congress immediately set up a task force made up of claimants 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.

If you visit the Social Security Disability Coalition website, or the Social Security Disability Reform petition website:

Social Security Disability Coalition—offering FREE knowledge 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 four years worth of documented horror stories and see thousands of signatures of 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.

My organization fills a void that is greatly lacking in the SSA claims process. 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! While we never represent claimants in their individual cases, we are still able to provide claimants 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 to 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?

Now I will relate my own personal horror story, to give you a first hand look at the havoc, these backlogs can wreak on a disabled person's life. On January 14th 1997, due to medical negligence and complications from a simple bump on the head back on November 3rd 1996, I had major brain surgery (Occipital Craniotomy) due to 2 forms of strep/1 form of staph infection, which ate their way through my skull and formed abscess in my cerebellum. As a result of this Osteomyelitis of skull, I had to have the base of my skull surgically removed where the brain stem meets my spinal chord. A few months after the surgery I developed a huge inoperable blood clot in my brain in the left internal jugular vein. I managed to go back to work for a few years but as a result of the infections in my brain, and my body's inability to see that they were gone, I developed several incurable autoimmune disorders (Scleroderma, Raynaud's Disease, Rheumatoid Arthritis, Fibromyalgia, Hashimoto's Thyroiditis, Esophageal Reflux Disease, Calcinosis, Telangiectasia) which got progressively worse over time. By December 6th 2001, I could no longer work and filed

a claim for Social Security Disability benefits. I brought in a stack of medical records almost 2 inches thick when I filed my claim at the local office to prove my disabling conditions, in hopes that it would speed up the process. I was sorely mistaken, as it took 4 months (March 2002) to process my initial claims denial. I couldn't understand how it was possible that anyone could read about all the medical problems I have, and it not be totally transparent that I should qualify for benefits, and that I never should've been denied in the first place!

I live in NY State, one of the ten test states where the Reconsideration phase has been removed. Needless to say I was still disabled and I immediately filed for an appeal, had to go through an even more complicated process and was told it would be at least August of 2003 before I got my hearing if I didn't die first! On 9/13/02, when I called the Office of Hearings and Appeals in Buffalo, NY, to check on my claim the receptionist told me, that my file was still in the un-worked status, meaning that nobody was assigned to my claim yet, or even looked at the file at all since March, when I originally filed my appeal. I expressed my disgust that after six months in their possession that it had not even been touched yet! I called them again on 1/23/03 and they told me that STILL nobody had been assigned to my case and it would be a MINIMUM of five months more or longer since they were just starting to work on cases that were filed in November of 2001! The receptionist expressed her sympathy for my cause, and literally begged me to let others know (especially the government and media) about how much of a problem they are having. Imagine my surprise when I was calling them for help and they were begging me—a disabled person, to get them help! That just proves even further how poorly run the SSD program is. I was told that there were only 50 employees handling hundreds of thousands of cases.

I also contacted the Social Security Office of Public Inquiries and the Inspector General's office in MD on the problems I was dealing with, and contacted all my elected officials. In March 2003 I called the hearings and appeals office and again they said it would be at least August 2003 before someone would look at my case. I then did some research and found out that I could request copies of my file (Freedom of Information/Privacy Act) including the reports of the SSD IME doctor I was sent to, and the notes of the original DDS claim examiner that denied me, and when I received them, my worst allegations were then confirmed. Even though I have no real neurological problems they sent me to a neurologist to examine me, so of course he would find nothing wrong with me, and say that I did not qualify as disabled. I should have instead, been sent to a Rheumatologist since most of my problems are caused by autoimmune disorders. I also discovered that the DDS examiner purposely manipulated my medical information in order to deny my claim. Even though I filed my disability claim based on all the physical problems I have, as a PRIMARY diagnosis for disability, the DDS examiner purposely wrote depression as a primary diagnosis instead of as secondary one, so of course I would be denied based on that as well. This was after I had already submitted tons of documents to prove my PHYSICAL disability—reports/documents that he chose to ignore. I also filed a formal willful misconduct complaint to the Office of the Inspector General in Washington, DC, against the DDS office. In April 2003, I requested an immediate pre-hearing review of my case on the grounds of misconduct and additional physical evidence. In order to get that process going I had to fax the OHA copies of their own regulations, since the person I spoke with there had no clue what I was talking about. Once they got all my paperwork to request the review, a senior staff attorney, and then a hearing and appeals judge granted my request and my case was then sent back to the DDS office that originally denied my claim. Finally it was seen by a different DDS person who actually knew how to do their job. In two weeks my case was approved at the DDS level and then was selected randomly by computer (7 out of every 10 cases get chosen) for Federal review. It then took another three weeks to be processed there. By this time, I had wiped out my life savings and lived off my pension from a previous employer which is totally gone now, due to the enormous wait. One month before becoming totally bankrupt, homeless, losing my health insurance, and everything else I had worked for the last 30 years of my life, all the retro pay just showed up in my bank account and I finally won my case by myself, with no lawyer representing me, exactly 1½ years to the day from when I originally filed my claim. I actually received my official approval letter on May 26th, 2003.

All the SSD retro pay I received was spent almost immediately—used to pay off debts incurred while waiting for approval of my benefits, which are nowhere near enough to live on for the rest of my life. 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. This is a total waste of taxpayer money since there are no cures for anything I have, and in fact my health has gotten progressively worse. In addition to what I origi-

nally filed for disability on, I now also have: Gastritis, Hiatal Hernia, Diverticulosis, Colitis, Irritable Bowel, severe Anemia, Food Allergies (Celiac Disease Symptoms) and enough other conditions to fill two 8x10 pages (single spaced 10pt font). I can understand the SSA wanting to verify that I am still alive and my contact info, but anymore than that at this point is a total waste of SSA resources which could be used to process new claims.

Since current Medicare eligibility requirements discriminate against disabled Americans by making them wait for 24 months after their disability date of entitlement, I didn't become eligible for Medicare until June 2004, having to spend over half of my SSD check each month on health insurance premiums and prescriptions, not including the additional co-pays fees on top of it. I still continually deal with enormous stress and face the continued looming threat of bankruptcy and homelessness, due to the cost of my Medicare, HMO healthcare, co-pays and basic living expenses, not qualifying for any public assistance programs.

The American dream has now become the American nightmare for me, since day to day I don't know how I'm going to survive without some miracle like winning the lottery. I'm now doomed to spend what's left of my days here on earth, living in poverty, in addition to all my medical concerns since I'm no longer able to work. Despite what you may hear, Social Security Disability benefits rarely cover the basic necessities of life. Stress is the worst thing for anyone who is already ill to have to deal with. Since my health has deteriorated so rapidly since this experience, I now see doctors several times a month, and my medical records fill a huge filing cabinet. If one does not suffer from severe depression before filing for SS Disability benefits, chances are highly likely that as a result of the current process, they will be able to add that to their list of qualifying disabilities. I also know for a fact that many people contemplate suicide because of the destruction and humiliation they are subjected to. I did not ask for this fate and would trade places with a healthy person in a minute. In spite of everything, I am not asking for pity or sympathy for what has happened in my life. I just don't want anyone else to have to live like this, which is why I share my story with you today, since you in Congress have the ability to prevent horror stories like mine from happening. Nobody ever thinks it can happen to them. I am proof that it can and anyone reading this, including you, could be one step away from walking in my shoes at any moment! More of my personal horror story can be found here:

A Bump on The Head

<http://www.frontiernet.net/lindafl/bump.html>

Keep in mind a country is only as strong as the citizens that live there, yet as you can now see, the Social Security Disability process preys on the weak, and decimates the disabled population even further. 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. Nowhere is this more evident, yet rarely mentioned, than in the way the Social Security Administration has been systematically destroying disabled Americans for decades. Americans saw when hurricane Katrina struck, how the poor and disabled were left to die in the streets when they needed help the most. 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, and the other disabled Americans in general, encounter their next experience with the Federal Government as they apply for their SSDI/SSI benefits. Also nothing is heard about the Veterans who are injured in the line of duty and have to go through this same scenario to get their benefits too. There are cases of Veterans rated 100% disabled by the VA who get denied their Social Security Disability benefits and end up living in poverty on the streets. Horrible treatment for those who protect and serve our country.

Social Security Disability/SSDI is a disability INSURANCE plan, yet the disabled are often treated like criminals when they have to apply for it. The general feeling is that we are all frauds trying to scam the system and the SSA must "weed out" the frauds by making it as hard as possible for a claimant to get benefits. In fact the percentage of claims that in the end, are not legitimate are very miniscule. Nobody in their right mind would want to go through this process and live in poverty on top of their illnesses if they could in fact work. In our country you are 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 legitimate Social Security

Disability Insurance claims everyday, and it is no wonder why claimants are outraged!

According to the report: A Disability System for the 21st Century—Social Security Advisory Board—September 2006:

“The process itself tends to make an individual who might have been able to work at an earlier point in time less and less capable of doing so.”

Now to the hearing backlogs. As you can see from what happened in my case, and in the thousands of others still pending, the state DDS office made a bad decision on the initial claim, and the claimant must now file an appeal to get the proper decision. 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.

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. The proper weight is not given to their treating physicians when evaluating claims and precious time and money is wasted on fraudulent IME exams. Claimants are forced to see doctors who are not even specialists in the diseases for which they are sent to be evaluated. 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.

States of Denial

Since Social Security is widely known as a Federal program, where you live should not affect your ability to obtain benefits. Sadly this is not the case. What most don’t realize is that after you file your initial disability claim at your local Social Security Office or online, that information goes to a state DDS/Disability Determination Services facility in the state where you live to be processed. There, the most crucial part of your disability claim, the medical portion, is reviewed by a case-worker/adjudicator and medical doctor on their staff who never sees you, and in most cases never even communicates with you at all. Then they decide whether or not they feel you are disabled based on the information that you and your doctors have provided.

Since both Congressman McNulty and myself are from NY State I will use our state as an example here.

The following is from NYS ODTA/Office of Temporary and Disability Assistance Website (2006)

http://www.otda.state.ny.us/otda%20internet%20search/ddd/resources/ddd_resources_nysserv.htm

“This year the New York Division of Disability Determinations is expecting to process 275,000 Federal disability claims under Social Security and Supplemental Security Income criteria. It generally takes approximately three months for the disability team to gather all of the medical and vocational information, evaluate the impact on daily activities, make a determination and process it through the Federal system. Claimants usually receive notification of the decision within 15 days after a determination is made.”

For example the following is a compilation of the DDS allowance percentage rates in NYS and how they compare to the national average of allowances vs denials:

| | T2 Initial (SSDI) | | T16 Initial (SSI) | | Concurrent Initial (SSDI/SSI) | |
|-------------------------|-------------------|------|-------------------|------|-------------------------------|------|
| | Allow | Deny | Allow | Deny | Allow | Deny |
| NATIONAL AVERAGE | 44.2 | 55.8 | 36.4 | 63.6 | 25.3 | 74.7 |
| New York Region | 51.4 | 48.6 | 42.8 | 57.2 | 33 | 67 |
| Buffalo, NY | 47 | 53 | 33.8 | 66.2 | 23 | 77 |

Source: Statement by Witold Skwierczynski—President Representing the National Council of SSA Field Operation Locals—AFGE, AFL—CIO—Congressional Testimony Before the House Ways and Means Subcommittee on Social Security on Social Security Disability Service “Improvement” on June 15, 2006—National and NYS Data—Office of Hearings & Appeals—ALJ Favorable/Unfavorable Decision Rates—SSA Program Totals—Number of cases that were originally denied at the state level and were appealed to the Federal level, and where DDS decisions were either overturned, upheld or dismissed.

At an overall average 60% denial rate out of 275,000 applicants, 165,000 people were denied their SSDI/SSI benefits in NYS at the initial level in 2006. What happened to the 165,000 people who were denied their SSDI/SSI benefits last year, not including those who have filed appeals from previous years and are still waiting to get their cases heard?

Social Security Disability Program Problems—Contributing Burden Factor on Medicaid/Social Service Programs For States

A majority of SSDI claimants are forced to file for welfare, food stamps and Medicaid, another horrendous process, after they have lost everything due to the inadequacies in the Social Security Disability offices and huge claims processing backlog. If a healthy person files for Social Service programs and then gets a job, they do not have to reimburse the state once they find a job, for the funds they were given while looking for work—why are disabled people being discriminated against? Claimants who file for Social Service programs while waiting to get SSDI benefits, in many states have to pay back the state out of their meager SSDI benefits once approved, which in most cases keeps them below the poverty level and forces them to continue to use state funded services. They are almost never able to better themselves and now have to rely on two funded programs instead of just one. This practice should be eliminated. In all states there should be immediate approval for social services (food stamps, cash assistance, medical assistance, etc) benefits for SSDI claimants that don't have to be paid back out of their SSDI benefits once approved.

From SSA website ssa.gov dated 6/3/04:

“In the New York region, there are 14 offices of hearings and appeal, with a total staff of 560, including administrative law judges, staff attorneys, decision writers, paralegal and clerical staff.”

| Yearly Totals | Total Depositions | Favorable | Unfavorable | Dismissals |
|-----------------|-------------------|-----------|-------------|------------|
| 9/28/02–9/30/05 | 110,950 | 65,637 | 25,307 | 20,006 |

Source: Social Security Administration

According to the figures above, that is 65,637 mistakes, and lives that were most likely devastated by the faulty decisions made by the NYS DDS office in the past four years. That does not take into account the percentage of people again, who are still waiting for hearings, those that have given up and rely totally on NYS support, when they may in fact still be entitled to benefits but were too weak to appeal, and worse yet those who may have died while waiting.

Excerpt from the report: Disability Decision Making: Data And Materials—Social Security Advisory Board—January 2001:

“In the last two decades, the percentage of claims adjudicated at the ALJ level that are allowed has been considerably higher than the percentage allowed by the DDS's at the initial level.”

Here are some of the factors that the Social Security Advisory Board (SSAB) listed in 2001, that affect the discrepancies of disability decisions between the State and Federal levels of the disability determinations process.

During the initial claims process at the State level, most claims are decided based on a paper review of case evidence. There is very little, to no communication whatsoever between the claimant and the adjudicator who makes the first decision on a claim. There is no face to face contact with an adjudicator until a claimant has an ALJ hearing.

Differences in training given to ALJ's and state examiners
 Lack of clear and unified policy guidance from SSA
 The involvement of attorneys and other claimant representatives at the ALJ hearing

Excerpts from GAO Report GAO-04-656—SSA Disability Decisions: More Effort Needed To Assess Consistency of Disability Decisions—Washington—July 2004 which can be 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 . . . 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 . . . In addition, claimant lawsuits against three state DDS's have alleged that DDS adjudicators were not following SSA's rulings or other decision making guidance . . . However, according to DDS stakeholder groups, SSA has not ensured that states have sufficient resources to meet ruling requirements, which they believe may lead to inconsistency in decisions among states. Furthermore, SSA's quality assurance process does not help ensure compliance because reviewers of DDS decisions are not required to identify and return to the DDS's cases that are not fully documented in accordance with the rulings. SSA procedures require only that the reviewers return cases that have a deficiency that could result in an incorrect decision . . . Early on, SSA also provided extensive cross-training of DDS and ALJ adjudicators, although the scope of its efforts has since diminished . . . While SSA initially made progress carrying out efforts to improve policies and training to better ensure the consistency of decisions, the agency has not continued to actively pursue these efforts . . . Although SSA has tried to address these problems, its inability to resolve them has contributed to our decision to include federal disability programs on our list of high risk government programs."

Excerpts from Office Of The Inspector General—Social Security Administration—The Effects Of Staffing On Hearing Office Performance—March 2005—A-12-04-14098

<http://www.ssa.gov/oig/ADOBEPDF/audittxt/A-12-04-14098.htm>

HEARING OFFICE DISPOSITIONS, TIMELINESS, AND STAFFING

“Over the last 5 years hearing office receipts have outpaced total dispositions every year resulting in a large increase in pending claims (up nearly 104 percent) and a worsening of average processing time (up nearly 24 percent).”

“OHA might improve its productivity if it based its staffing allocations on hearing office staffing ratios, defined as the number of support staff per ALJ If SSA would define performance standards for hearing office employees, SSA could determine an ideal staffing ratio for OHA’s hearing offices.”

TRENDS IN STAFFING, PRODUCTIVITY AND TIMELINESS

“The number of hearing office employees on duty has increased over 10 percent since FY 1999 (see Figure 2). The number of ALJs on duty at the end of FY 2004 was up more than 2 percent from FY 1999 levels.”

“However, even with increased staffing levels, average processing time worsened. Average processing time increased by over 24 percent since FY 1999, increasing from 316 days during FY 1999 to 391 days during FY 2004. Average processing time has been impacted by many factors. Some of the factors influencing timeliness that are not under OHA’s control are the number of new hearing receipts (close to 21 percent higher than FY 1999 levels, see Figure 1) and restrictions on ALJ hiring.”

“Hearing offices with lower staffing ratios had, on average, worse hearing office disposition rates.”

“Staffing ratios may be a good indicator for hearing office timeliness.”

“Fluctuating staffing levels make it difficult for OHA to balance staffing ratios in hearing offices. OHA must wait for a hearing office with a higher-than-average support staff ratio to lose an employee before another employee can be hired in a hearing office that needs more support staff. OHA would be better able to manage hearing office staffing if it had an ideal staffing ratio for its hearing offices.”

“To determine an ideal staffing ratio for OHA hearing offices, SSA would need to conduct national performance standards on the work performed by hearing office support staff.”

CONCLUSION AND RECOMMENDATIONS

Hearing office staffing levels rose more than 10 percent since FY 1999 and OHA achieved a record national disposition rate in FY 2004. However, increased staffing levels have not been as effective in decreasing national average processing time. Staffing ratios may be a good indicator for hearing office disposition rates and timeliness, especially in hearing offices with low staffing ratios. In most hearing offices with below average staffing ratios, disposition rates were below national averages and average processing times were above national averages. National performance standards for the work performed by hearing office support staff could help OHA management determine an ideal staffing ratio. Furthermore, it does not appear OHA awarded file assembly contracts based on any of the hearings key workload indicators, nor could we find any evidence OHA determined the effect that the additional human resources (file assembly contractors) have had on staffing ratios, disposition rates or average processing time for hearing offices that had received file assembly contracts.

To improve overall staffing at the hearing offices and assist OHA in meeting its performance goals, we recommend SSA:

Consider developing an ideal national staffing ratio to assist OHA in allocating staff to hearing offices; and

Consider prioritizing file assembly assistance for those hearing offices that have staffing ratios below the national staffing ratio.

Early Case Screening and Analysis by Administrative Law Judge—In Early Case Screening, ALJs examine unassembled cases from the Master Docket and may issue immediate on-the-record favorable decisions. Screening helps eliminate standard delays and additional expense associated with holding a hearing. Screening also helps identify cases that need further development which helps move the cases along at an earlier stage. In FY 2003, ALJs screened about 66,000 cases and issued favorable decisions to approximately 21,600 claimants, and screened 70,781 cases resulting in over 25,000 on-the-record decisions in FY 2004.

Short Form Software for Fully Favorable Decisions—OHA's hearing offices use standardized software to allow ALJs to create fully favorable decisions. In FY 2003, ALJs wrote over 23,600 decisions and 18,750 decisions in FY 2004 using the Short Form Software for Fully Favorable Decisions, which reduced handoffs and further delays.

Bench Decisions—In Bench Decisions, an ALJ issues a decision as soon as the hearing is over. ALJs issued over 1,100 favorable decisions from the bench in FY 2003, and issued 3,350 decisions in FY 2004.

Expanding Video Hearings—Video Hearings enhances OHA's ability to expeditiously schedule hearings in remote sites. In FY 2003, OHA prepared and published final regulatory changes, which permit OHA to schedule video hearings without obtaining advance consent from the claimant. At the end of FY 2003, OHA had video hearing equipment in 35 sites. The total number of fully operational video hearing sites was 162 at the end of FY 2004.

Dragon Naturally Speaking, Speech Recognition Software—Dragon Naturally Speaking, Speech Recognition Software assists ALJs and support staff with drafting decisions. In FY 2003, OHA distributed the software to more than 1,000 decision writers and ALJs.

Digitally Recording Hearings—Digitally Recording Hearings is a new method of recording hearings that replaces OHA's aging audiocassette recorders with notebook computers. The notebooks have state-of-the-art software to record hearing proceedings in a digital file that can be stored on a hard drive, a local server and in the electronic folder. The entire digital recording rollout is expected to be completed early in 2006.

Case Processing and Management System—OHA implemented the Case Processing and Management System (CPMS) in all 10 Regions in FY 2004. CPMS is OHA's new case tracking system and a critical component of the Agency's Electronic Disability Project (eDib). CPMS provides users in OHA hearing offices with a system to control, process and produce management information on disability hearings. CPMS includes the following functions: initiative appeals, case receipt, case development, ALJ review, scheduling features, information about hearings, case closing and management information.

Centralized Screening Unit—At the beginning of the third quarter of FY 2004, OHA established an early case screening program at OHA Headquarters, which was authorized by the Commissioner during the second quarter of FY 2004. Employees in the Centralized Screening Unit screened cases from across the country for on-the-record decisions, with priority consideration given to hearing offices with receipts and pending levels above the national average and support staff levels below the national average. The objective of the Unit is to expedite the decision-making process and reduce the pending levels in the hearing offices. Through the end of the third quarter of FY 2004, the Centralized Screening Unit received over 2,500 cases and screened approximately 1,484 cases. Of the cases screened, 463 (29 percent) received fully favorable decisions.

The following are recommendations by the Social Security Disability Coalition for Congressional legislation and SSA regulations. We believe that these improvements to the initial phase of the disability claims process, will help to alleviate the hearing backlog problem, since there will be less need for appeals to the hearing stage, if claims are handled properly from the onset.

All money that is taken out of American's paychecks for Social Security should not be allowed to be used for anything else other than to administer the program and pay out benefits to the American people. Increase staffing levels and training throughout the SSA instead of cutting back staff which is currently being proposed at a time when the population's need for these services due to disability/age is increasing.

Currently we call for a thorough investigation of the state DDS/Offices of Temporary Disability Assistance, as to the large number of questionable denials of claims, which are then overturned at the Federal level, their enormous backlogs and processing times. Lack of staff and proper training can lead to a "rubber stamping" of claim denials. We recommend the increase of staffing levels, proper training of all staff at the state level and the creation of an independent oversight panel for these offices to maintain quality service.

Create independent oversight panel (possibly the GAO) to investigate the problems including major backlogs at all levels of the SSDI/SSI claims process.

Consolidation/Coordination—The Disability Common Sense Approach

For the future, the most ideal customer service scenario would be to have ALL phases of the disability claims process be handled directly out of the SSA field offices. Since SSDI/SSI are Federal benefits why has a State DDS level been added

to this process at all? We must question why this common sense solution is not being instituted as part of the DSI. We ask that SSA, Congress and the GAO look into reforming this program in such a way that ALL who handle benefit claims are Federal employees and consolidate ALL phases of the SSDI/SSI process into the individual SSA field offices throughout the nation. More Federal funding is necessary to continue to create a universal network between all outlets that handle SSDI/SSI cases so that claimant's info is easily available to caseworkers handling claims no matter what level/stage they are at in the system. Since eDib is not fully functional at this time, and even when it is, keeping as much of the disability process as possible in the SSA field offices would dramatically cut down on transfer of files and the number of missing file incidences, result in better tracking of claims status, and allow for greater ease in submitting ongoing updated medical evidence in order to prove a claim. In addition, all SSA forms and reports should be made available online for claimants, medical professionals, SSD caseworkers and attorneys, and be uniform throughout the system. One universal form should be used by claimants, doctors, attorneys and SSD caseworkers, which will save time, create ease in tracking status, updating info and reduce duplication of paperwork. Forms should be revised to be more comprehensive for evaluating a claimant's disability and better coordinated with the SS Doctor's Bluebook Listing of Impairments.

Strict enforcement of, and fines to be instituted for, violation of Federal Regulation CFR20 404.1642 Processing Time Standards to be monitored by the GAO.

http://www.ssa.gov/OP_Home/cfr20/404/404-1642.htm

(a) General. Title II processing time refers to the average number of days, including Saturdays, Sundays, and holidays, it takes a State agency to process an initial disability claim from the day the case folder is received in the State agency until the day it is released to us by the State agency. Title XVI processing time refers to the average number of days, including Saturdays, Sundays, and holidays, from the day of receipt of the initial disability claim in the State agency until systems input of a presumptive disability decision or the day the case folder is released to us by the State agency, whichever is earlier.

(b) Target levels. The processing time target levels are:

- (1) 37 days for Title II initial claims.
- (2) 43 days for Title XVI initial claims.

(c) Threshold levels. The processing time threshold levels are:

- (1) 49.5 days for Title II initial claims.
- (2) 57.9 days for Title XVI initial claims. [46 FR 29204, May 29, 1981, as amended at 56 FR 11020, Mar. 14, 1991]

For every day over the threshold for Title II and Title XVI claims under Federal Regulation CFR20 404.1642 Processing Time Standards, daily compounded prime bank interest is to be paid by the SSA to claimant as compensation.

Strict monitoring and enforcement of Federal Regulation CFR20 404.1643 Performance Accuracy Standard by the (GAO) Government Accounting Office and not the SSA

http://www.ssa.gov/OP_Home/cfr20/404/404-1643.htm

(a) General. Performance accuracy refers to the percentage of cases that do not have to be returned to State agencies for further development or correction of decisions based on evidence in the files and as such represents the reliability of State agency adjudication. The definition of performance accuracy includes the measurement of factors that have a potential for affecting a decision, as well as the correctness of the decision. For example, if a particular item of medical evidence should have been in the file but was not included, even though its inclusion does not change the result in the case, that is a performance error. Performance accuracy, therefore, is a higher standard than decisional accuracy. As a result, the percentage of correct decisions is significantly higher than what is reflected in the error rate established by SSA's quality assurance system.

(b) Target level. The State agency initial performance accuracy target level for combined Title II and Title XVI cases is 97 percent with a corresponding decision accuracy rate of 99 percent.

(c) Intermediate Goals. These goals will be established annually by SSA's regional commissioner after negotiation with the State and should be used as stepping stones to progress towards our targeted level of performance.

(d) Threshold levels. The State agency initial performance accuracy threshold level for combined Title II and Title XVI cases is 90.6 percent.

If the state offices cannot abide by the Federal standards as stated above, we recommend that these duties be removed from the states and turned back over to the Federal Government for good.

Also a new regulation needs to be legislated for case processing standards for Title II & Title XVI claims for hearings by ALJ and Federal Appeals courts.

For ALJ hearings, the hearing must be completed, decision made and processed within 3 months of initial denial at DDS level. For every day over the 3-month deadline for processing, compounded prime bank interest is to be paid to claimant as compensation.

For Federal Appeals court hearings, the hearing must be completed, decision made and processed within 3 months of initial denial at the ALJ level. For every day over the 3-month deadline for processing, compounded prime bank interest is to be paid to claimant as compensation. Again these regulations would be strictly enforced and monitored by the GAO.

Expand use of Federal Reviewing Official position to all 50 states as soon as possible.

Expand Emergency Advance Payments (EAP), Presumptive Disability (PD), and Presumptive Blindness (PB) Provisions to include those applying for Title II (SSDI) benefits. We also ask Congress legislate for these benefits to take effect for ALL disability claims immediately upon a claimant's request for an appeal, after the initial denial at the DDS level, until a satisfactory decision is reached, or all levels of appeal are exhausted on that disability claim. In addition these benefits would not have to be paid back by the claimant no matter what the outcome of their claim is.

Disability benefits determinations should be based solely on the physical or mental disability of the applicant. Neither age, education, nor work experience should ever be used when evaluating whether or not a person is disabled, as long as they meet the non-medical requirements for receiving benefits. If a person cannot work due to their medical conditions—they CAN'T work no matter what their age, or how many jobs or educational degrees they had.

Too much weight at the initial time of filing, is put on the independent medical examiner's and DDS/OTDA caseworker's opinion of a claim. The independent medical examiner only sees you for a few minutes and has no idea how a patient's medical problems affect their lives after only a brief visit with them. The caseworker at the DDS/OTDA office never sees a claimant. There needs to be more oversight that disability decisions be based with controlling weight given to the claimant's own treating physicians opinions and medical records in accordance with (DI 24515.004) SSR 96-2p: Policy Interpretation Ruling Titles II And XVI: Giving Controlling Weight To Treating Source Medical Opinions. Even though this policy ruling is in place, this is very often not happening.

All doctors who are licensed to practice medicine should be trained and required to fill out Social Security Disability forms for their patients who need them. FREE copies of medical records to be provided to all people with disabilities (unless it could be proven that it is detrimental to their health) upon request. This is crucial information to ensure that claimants are receiving proper healthcare and a major factor when a person applies for Social Security Disability.

In cases where SS required medical exams are necessary, they should only be performed by board certified independent doctors who are specialists in the disabling condition that a claimant has (example—Rheumatologists for autoimmune disorders, Psychologists and Psychiatrists for mental disorders). These exams must only be required to be performed by doctors who are located within a 15-mile radius of a claimant's residence. If that is not possible—any transportation or travel expenses incurred for this travel by the claimant, must be reimbursed or provided by the agency requiring the exam. Audio and/or videotaping of all IME exams to avoid improper conduct by doctors. Copy of IME doctor's findings must be sent to claimant free of charge within one week of exam unless deemed detrimental to a patient's health at which point it would be sent to their treating physician instead.

More communication between caseworkers and claimants throughout all phases of the disability process. Review of records by claimant should be available at any time during all stages of the disability determination process. Before a denial is issued at any stage, the applicant should be contacted as to ALL the sources being used to make the judgment. It must be accompanied by a detailed report as to why a denial might be imminent, who made the determination and a phone number or address where they could be contacted. In case info is missing or they were given inaccurate information the applicant can provide the corrected or missing information before a determination at any level is made. This would eliminate many cases from having to advance to the hearing or appeals phase.

Remove regulation that requires SSDI recipients pay back the State for any assistance they receive while waiting for their Federal Benefits to be processed. They should require any payback from the Federal Government itself NOT the disability claimants retro benefits.

The SSA "Bluebook" listing of diseases that qualify a person for disability should be updated more frequently to include newly discovered crippling diseases such as the many autoimmune disorders that are ravaging our citizens. SSD's current 3 year earnings window calculation method fails to recognize slowly progressive conditions which force people to gradually work/earn less for periods longer than 3 years, thus those with such conditions never receive their 'healthy' earnings peak rate.

The need of lawyers/rep's to file claims and navigate the system adds another cost burden to the claimant. The automatic percentage for payment of representative's fee, and current high cap on that fee out of a claimant's retro pay is proving to be 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" thus not properly representing the claimant. In cases where claimant uses a paid representative, and is found in fact to be disabled, any/all expenses incurred for the representation of that claimant should be paid by the SSA. Also the SSA should provide claimants with a listing in every state, of FREE Social Security Disability advocates/rep's when a claim is originally filed as well.

Institute a lost records fine—if Social Security loses a claimant's records or files, an immediate fine (TBD) must be paid to claimant, since lost records will cause a major delay in claims processing, which can be major detriment to claimant's health and financial wellbeing.

When a veteran has a disability that is 100% service connected, receives VA benefits approval for that rating, and it is deemed by the VA that they can no longer work, that veteran should automatically be approved for their Social Security Disability, as long as they also meet the Non-Medical requirements for SSDI/SSI benefits. In addition all VA doctors should be trained and required to fill out Social Security Disability forms for their patients, whose VA disability rating is less than 100%, but may still be unable to work due to their disabilities and require SSDI/SSI benefits. This will eliminate many applicants from the hearing/appeals phase of the program.

More Federal funding is necessary to create a universal network between Social Security, and all outlets that handle SSD/SSI cases so that claimant's info is easily available to caseworkers handling claims no matter what level/stage they are at in the system. All SSA forms and reports should be made available online for claimants, medical professionals, SSD caseworkers and attorneys, and be uniform throughout the system. One universal form should be used by claimants, doctors, attorneys and SSD caseworkers, which will save time, create ease in tracking status, updating info and reduce duplication of paperwork. Forms should be revised to be more comprehensive for evaluating a claimant's disability and better coordinated with the SS Bluebook Listing of Impairments.

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 work force, even on a part time basis. Then, sometimes weeks after they are finally approved for SSD/SSI benefits, they receive a "Ticket To Work" packet in the mail. A cruel joke to say the least and it is no wonder that the disabled fear continuing disability reviews, utilization of the Ticket to Work Program, and distrust the Federal Government! Yet ironically once they are approved they are allowed to earn up to \$900 and still receive benefits. Confusing to say the least. The Ticket to Work Program is often viewed as a carrot and stick it to the disabled approach. We recommend in addition to the current Ticket to Work Program, 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. Say a claimant would be eligible for \$1000 disability benefit if approved for full SSDI benefits. They would apply for interim disability to start and for every month they could not work they would get a full check. For those months that they could work they would be paid the difference or nothing based on the percentage of the \$1000 benefit they would earn by 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.

We also urge Congress to pass the following legislation:

Waiting period for initial payment of benefits should be removed instead of the current five month waiting period from disability date of eligibility. The withholding of five months of benefits greatly adds to the financial burden of a claimant, and

compromises their financial status to a point, that most can never recover from due to their inability to work. Until this is instituted, prime rate bank interest should be paid on all retro payments due to claimants, as they are losing this as well while waiting for their benefits to be approved. It should be kept in mind that many Americans do not even have health insurance let alone private disability plans. Then factor in, that once you are unable to work for an extended length of time, and are either terminated by your employer, or make the agonizing decision to never return to work again for the rest of your life, those employer sponsored benefits often expire and you are left with nothing—no employer sponsored health or disability insurance! Studies have shown that most in this country have about two weeks worth of financial resources to live off of, and that is assuming that they are healthy, yet currently it is expected that a population who can no longer work, go without five months of pay and wait several months to several years to have their disability claims processed.

Immediate eligibility for Medicare/Medicaid upon disability approval with NO waiting period instead of the current 2 years. The current two year waiting period causes even further harm to an applicant's already compromised health and even greater financial burden on a population who can least afford it, since they cannot work. This also forces many to have to file for Medicaid/Social Service programs who otherwise may not have needed these services if Medicare was provided immediately upon approval of disability benefits.

Both of these current regulations are a major contributing factor to the lasting poverty that claimants have to deal with as part of the aftermath of filing for Social Security Disability benefits. Changes in these regulations would greatly enhance the quality of life for disabled Americans.

I am well aware as I write this, that there are some who have abused the system and that is a shame, because it casts a bad light on those who really need this help. Yet, there are ways to "weed them out," without causing harm to legitimate claimants. It is time that the government fixes the problems, so that the people who really need this help can access it as soon as possible, instead of being treated as frauds, and criminals on trial, when they need to file a claim for benefits. Social Security, SSDI, SSI and Medicare are great programs when they function properly, and have helped millions of Americans who may never have survived without them.

Most of us were once hard working, tax paying citizens with hopes and "American dreams" but due to an unfortunate accident or illness, have become disabled to a point where we can no longer work. Since we can no longer work due to our disabilities, we are often considered "disposable" people by general and government standards. In addition our cries and screams are often ignored, many preferring that we just shut up or die. Does that mean we are not valuable to our country, or give the government/society the right to ignore or even abuse us? We are your mothers, fathers, sisters, brothers, children, friends and acquaintances and remember that disease and tragedy do not discriminate on the basis of age, race or sex. Wake up America! If you think this couldn't happen to you—you could be DEAD wrong!

I ask that you please act urgently on these items, as millions of American's lives depend on you. Thanks very much for your time and consideration.

Statement of Michael A. Steinberg, Tampa, Florida

I am an attorney who has been practicing in the area of Social Security Disability law for over 24 years. I have written articles for periodicals and have lectured at National Social Security Disability Law Conferences. I have handled thousands of cases at all levels of the administrative and appeals process. Although my office is located in Tampa, Florida, I have handled cases for claimants throughout the country.

Last year, I submitted testimony to this subcommittee about the backlog of cases pending a hearing before an Administrative Law Judge, and the need to pass legislation to give claimants some relief from these delays. I advised that several times per year one of my clients would die waiting for his or her hearing. Just this past Monday, February 5, 2007, another client died before she could get her hearing scheduled. She was without medical coverage, and perhaps she would still be alive had she had her hearing scheduled earlier and already received a decision. I have permission from her family to disclose her name. It is Mary Welch, and I'd be happy to provide details of her case upon request.

Every year or so this subcommittee holds a hearing about the backlog of disability cases before Social Security. A representative from Social Security will testify about how many more cases they are handling compared to the previous year. The Com-

missioners have touted new plans to improve the hearing process. Yet every year the backlog grows and your subcommittee introduces no legislation to effectuate changes.

I know each of the members of Congress receives hundreds of calls from Social Security claimants every year complaining about the waiting time to get a hearing. Everyone knows that the cause of the delays is that Congress will not appropriate enough money to the Social Security Administration, so that they can do their job timely and efficiently. It is time that the members of this subcommittee take action.

There is a measure that can be passed that would force a resolution to this problem. As I have suggested before, if 42 U.S.C. § 423 were amended to provide for interim benefits to claimants who have not received a hearing and decision within a certain period of time from the date they filed a request for hearing (provided they were without fault in causing the delay), Social Security would have to provide quicker hearings and decisions, or pay many claimants who otherwise would not qualify for these benefits. Since it is unacceptable to pay in large numbers those who do not qualify, additional money would then have to be appropriated to be able to get hearing decisions out before the deadline.

Claimants for Social Security Disability Insurance Benefits contributed to the disability part of the Social Security Trust Fund, out of every paycheck, when they were working. They were promised that if they became disabled they would receive disability benefits. It is not fair to make these people, most of whom are eventually approved, wait three years or longer to receive a hearing and decision.

Since this is a new Congress, perhaps some of you are not aware of how long this problem has existed and how many times we who are involved in this program have heard the same excuses and the same promises. Please don't make the same mistake of relying on assurances by representatives of the Social Security Administration that measures such as electronic files and a different evaluation process will fix the problem. Without penalties for failure to meet timeliness standards, the backlog will continue to grow.

Statement of Walter Walkenhorst, Jenkintown, Pennsylvania

As an attorney who practices full time in the Social Security disability field, I write in support of greater funding for the Social Security Administration's hearing offices. On a daily basis my staff and I hear stories of clients who are suffering needlessly because of delays in having their cases decided. Justice delayed is justice denied. Given the current hearing delays, justice is being denied on a daily basis.

The problem with Social Security's service delivery is primarily one of numbers. The hearing offices have become increasingly understaffed. Although the number of cases is growing each year, there are fewer judges and support staff to handle this increasing volume. Technology alone cannot solve this problem. Only more human resources can.

The disabled are our most vulnerable citizens. If the government won't help them, no one will. How a nation treats its disabled says much about it. Our country must not continue to ignore the disabled. When my clients are losing their homes or cars or going without essential medical treatment because their valid disability claims are languishing, what do I tell them? I tell them that only Congress can solve the problem, and that Congress either doesn't know about their plight or doesn't care about it.

I am writing to help in the education process. If you heard the stories my staff and I hear, I am certain you would approve the necessary funding. The format for this submission does not allow for scanned attachments. If it did, I would attach the full letter I am about to quote. The letter moved me and I hope and pray it will move you as well.

The letter is from a current client of mine. She is 56 years old. She lives in Willow Grove, PA, a suburb of Philadelphia. She suffers from schizophrenia, yet managed to work for many years. Her work history report shows that she worked in five different jobs from January, 2005 until March, 2006, when she last worked. None of those jobs lasted more than a few months. Her first psychiatric admission was in 1979. The most recent was in April, 2006. Despite mental health treatment and medication, she still hears voices. Her initial application, like most, was denied by the state agency. The reviewer found she was capable of making "simple decisions" and would not require "special supervision." She is now waiting for a hearing at a hearing office with a backlog of over 5,000 cases. Her wait could easily be another year, as the hearing request was filed in October, 2006. This is what she wrote in long hand on four pages of lined paper:

2/13/07

To whom it may concern:

I currently have a disability case pending and I was hoping that maybe someone could help move up the hearing date ASAP. I tried every day to find a job but no one is calling me back . . . I have tried the free training on computers at Career Links, night school and the agencies, but it is just too stressful for me. I just can't pick it up. I am bi-polar and have depression. I am taking medication and they have been giving me so many bad side effects I just don't know if I can even accept any jobs anyway . . . Each day is getting harder and harder. My unemployment ran out last year. My husband makes very little. He wanted to get a second job but I said "NO." He is a very hard worker. He worries so much about me. Now he has some medical problems as a result of all this. He has been my biggest supporter next to God. Thank goodness we have God in our lives. We tried to get a cheaper apartment but it would cost us \$2,400 to move . . . Our heat is included in the rent where we live which is nice because I am always freezing with these meds and I have turned it up to 80 degrees most of the time. My husband doesn't like the heat but he never complains. I have developed osteoporosis, high blood pressure, hyper and hypo thyroidism. I have a long list of side effects (serious) from my meds. I sleep in the afternoon sometimes and usually from 7-10:00 pm. I had to turn down a job because it involved driving a van for a nursing facility. I didn't want the responsibility of those patients if I fell asleep at the wheel . . . Maybe if I wasn't mentally ill I could probably take any position, but the ones I applied for are too stressful, too much responsibility, too much concentration or too many hours. I called Medicaid and couldn't get through so I left a message. I haven't heard anything yet. We have depleted our savings and two other small savings accounts. My husband now has to take out his IRA's and CD's which isn't much. And what do we do when that runs out? It's only a temporary solution. Sometimes on weekends we go to New Jersey to visit my mother-in-law, just to get away from it all. She is on a fixed income and she still manages to give us \$100 each month toward our car payment. She pays for every meal every time we go. What would we do without her. We feel so guilty but what can we ever do to pay her back. She is 86 and the sweetest lady. Now when I talk to her on the phone she sounds depressed because she worries so much about us. She eats like a bird and doesn't sleep . . . I am getting upset writing this so I will stop now. We would appreciate any help you can to speed up the hearing. Thank you. (signature)

This is just one story. We have heard many others that are just as compelling. We literally hear them daily. You have the ability to help this woman and tens of thousands like her. Please approve the Commissioner's requested funding for Social Security's hearing offices. Please search your hearts and do the right thing for these, the forgotten of our society.

