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THE SOCIAL SECURITY ADMINISTRATION: IS IT MEETING ITS RESPONSIBILITIES TO SAVE TAXPAYER DOLLARS AND SERVE THE PUBLIC?

HEARING

BEFORE THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

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THE SOCIAL SECURITY ADMINISTRATION: IS IT MEETING ITS RESPONSIBILITIES TO SAVE TAXPAYER DOLLARS AND SERVE THE PUBLIC?

THURSDAY, MAY 17, 2012

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

The hearing was convened, pursuant to notice, at 10:05 a.m., in room SD–215, Dirksen Senate Office Building, Hon. Max Baucus (chairman of the committee) presiding.

Present: Senators Nelson, Cardin, Hatch, Grassley, and Thune.

Also present: Democratic Staff: Amber Cottle, Chief International Trade Counsel; Alan Cohen, Senior Budget Analyst; Tom Klouda, Professional Staff Member, Social Security; and Claire Green, Detailee. Republican Staff: Chris Campbell, Staff Director; and Jeff Wrase, Chief Economist.

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

The CHAIRMAN. The hearing will come to order.

President Kennedy once said, "A nation's strength lies in the well-being of its people." No Federal program touches more American lives and benefits more American families than Social Security. Next year, the Social Security Administration will pay benefits to almost 60 million Americans. Today we will examine the Agency's performance delivering benefits to workers and their families and its role of saving taxpayer dollars. This is not a hearing about Social Security solvency.

We will hear from the Commissioner of the Social Security Administration, Michael Astrue. Commissioner Astrue, during your confirmation hearing before this committee in 2007, you committed to reduce the disability hearings backlog. Today we will evaluate the result.

At the beginning of last year, more than 771,000 people were waiting for a hearing. This is higher than when you started your term. I expect to hear why the backlog grew and what the Agency is doing to address it.

Michael Clouse, who lives in my hometown of Helena, MT, needs this backlog to be fixed. He has spent years trying to work through the red tape. Mike is a 55-year-old Army veteran, and his service did not end when he retired from the military. Mike volunteers with the American Legion and with the Disabled American Vet-

erans, helping other veterans find transportation to hospitals across Montana.

But his health problems make it tough for him to volunteer to do other work. During a military training exercise years ago, a tank next to him accidentally fired. Mike's back broke in the accident, and ever since he has suffered chronic back pain. Mike worked in heating and plumbing before joining the military. He was working as an Employment Specialist with the Montana Department of Labor Job Service in 2004 when his disabilities became just too much to bear.

He had to leave his job, and he applied for benefits shortly thereafter. Mike has waited since 2005 for his benefits, 7 years. He has been shuttled between various Social Security offices, and his paperwork has gotten lost. Mike and his wife Teese had to sell their home in Butte, MT to be closer to his hospital in Helena. They could not take the physical demands and cost of traveling.

Teese, who is his caregiver, went back to work to make ends meet. Things have been a struggle for them. The financial hardship means they are unable to visit their children and their grandchildren. At an age when many Americans are planning their retirements and their financial futures, Mike and Teese are stuck. Mike stepped up, volunteered to serve his country, but now the shoe is on the other foot. He is waiting for his country to serve him.

Fortunately, we are seeing one sign of progress at the Social Security Administration. It does not take as long for people to get a decision on their claim. At the end of 2008, it took 514 days, almost a year and a half. In 2011, a few years later, it took 360 days, about a year. This is substantial progress, but still too long. Mr. Astrue, you set a goal of 270 days by the end of fiscal year 2013. Together, we need to meet this goal.

While your Agency has seen 50 percent more retirement applications since 2001, that is, applications with respect to Social Security generally, there are fewer workers to deal with the increased workload. These challenges have been compounded because the Agency's budget remained flat during the last 2 years.

The Social Security Administration needs an adequate budget to fix the disability backlog and root out improper payments, that is, to do both. For fiscal year 2013, the President has asked for $11.76 billion. This is $370 million more than last year, most of which is dedicated to reducing improper payments, thereby improving the long-term outlook of Social Security. Every dollar spent to root out improper payments saves $6 to $10 in the long run, and those are dollars that go to help the trust fund.

Unfortunately, Congress did not provide full funding for these efforts in fiscal year 2012. Doing so would have saved taxpayers more than $800 million. If the Congress had followed the President's recommendation, it would have saved the trust fund $800 million. Social Security beneficiaries would have $800 million more of a cushion in the Social Security trust fund.

We all talk about saving Social Security. Here is a great return, saving $6 for each dollar spent or saving $10 for each dollar spent. It does not get much better than that! But still, Congress was very short-sighted and did not recognize the real pay-out here for some reason; I do not know why. We cannot afford to repeat this mis-

take. Failing to fully fund program integrity is penny wise and pound foolish.

So let us invest Social Security dollars wisely. Let us reduce the disability backlog. We could do both. Let us ensure that Americans like Michael Clouse are not stuck waiting for benefits they have earned. Let us ensure that the Social Security program is making the program stronger by improving Americans' well-being.

[The prepared statement of Chairman Baucus appears in the appendix.]

The CHAIRMAN. Senator Hatch?

OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM UTAH

Senator HATCH. Thank you, Mr. Chairman. I want to thank you for scheduling this hearing, and I join you in welcoming Commissioner Astrue.

The Social Security Administration oversees numerous programs and is responsible for the stewardship of significant taxpayer resources. We are all interested in hearing from the Commissioner about his stewardship of those resources, his plans for the future, and his strategies for confronting existing and ongoing challenges facing Social Security's programs.

A few short weeks ago we received a reminder of some of the challenges facing Social Security's finances in the Annual Report of the Trustees. According to the report, the combined Old-Age and Survivor's Insurance and Disability Insurance trust funds within Social Security are projected to be exhausted in 2033, 3 years sooner than in the previous year's report.

The trustees identified that, as the system is currently structured, Social Security beneficiaries face benefit cuts of as much as 25 percent in 2033, with further cuts thereafter. To state things simply, current promises embedded in Social Security cannot be sustained, given the system's existing structure. Worse still, the Disability Insurance trust fund is projected to become exhausted in 2016, less than 4 years from now, and 2 years earlier than estimated just 1 year ago.

Absent changes, disabled workers will very soon face the real threat of a 21-percent benefit cut in 2016. With the recent explosive growth in the ranks of Disability Insurance benefit recipients far outpacing the growth in the general working population, 2016 might be a rosy outlook in terms of when the Disability trust fund actually becomes exhausted.

Benefit programs in the Disability Insurance program have increased by a remarkable 134 percent since 2000. Following the fiscal cliff that we face at the end of this year, we have a solvency cliff in 2016 for the Disability Insurance program, and then another solvency cliff for the Social Security retirement program.

Yet in the face of these known dangers, we continue to kick the can down the road instead of addressing the known problems. We should not act like Thelma and Louise when it comes to Social Security and our economy by driving them off a cliff into an abyss of insolvency and economic decline.

Inaction is irresponsible. As the President remarked recently in advocating more tax-and-spend policies, the fact that this is an

election year is not an excuse for inaction. Unfortunately, I am not aware of any plans by the administration to tackle the looming exhaustion of the Disability Insurance trust fund or the general unsustainability of Social Security.

As far as Social Security is concerned, it appears that this being an election year is the administration's reason for inaction and is just another excuse for them to kick the can down the road once again.

So many tax provisions expire at the end of this year that a dangerous fiscal cliff has formed. By not acting now, we are just stepping on the accelerator, even as we are already perilously close to the cliff. Inaction for the rest of the year only invites careless and hasty decision-making, which leads, of course, to bad policy.

I urge the administration to work with Congress on the mountainous to-do list of expiring tax provisions and unsustainable entitlement promises in the interest of sound policymaking, certainty, and the provision of an economic environment fertile for growth and jobs, and of course for the economy generally.

There is no reason to delay efforts that will place the programs in Social Security on a sustainable financial path. As virtually everyone acknowledges, the sooner we address this issue, the better.

Now, Mr. Chairman, I appreciate you holding this hearing. Commissioner Astrue, I know that you have an insurmountable job in many ways, and we have great respect for you. I want to thank you for your service and for joining us today, and I look forward to hearing about your budget, your challenges, and your plans for the Social Security Administration. We appreciate you coming.

The CHAIRMAN. Thank you very much, Senator.

[The prepared statement of Senator Hatch appears in the appendix.]

The CHAIRMAN. Mr. Astrue, I would just like to review some numbers here and see if they are accurate. There is some talk about—oh, sorry. Do you have an opening statement? Do you want to talk? [Laughter.]

Commissioner ASTRUE. If it pleases the committee.

The CHAIRMAN. I am so excited about asking you questions.

Commissioner ASTRUE. Well, if we can contain the excitement for a minute, I will try to be brief. I understand I have a couple of minutes of grace on the standard 5 minutes, since I am the only witness today, but I will try to make it as quick and painless as I possibly can.

The CHAIRMAN. I apologize.

Commissioner ASTRUE. Chairman Baucus——

The CHAIRMAN. I will introduce you.

Commissioner ASTRUE. Oh, I am sorry. [Laughter.]

The CHAIRMAN. We have a very distinguished guest today——

Senator HATCH. And I am happy to have you introduce him.

The CHAIRMAN [continuing]. The Commissioner of Social Security, the Honorable Michael J. Astrue. We very much look forward to your testimony, Commissioner. I have known you for several years in different capacities, and you do just super work. We are very, very proud of you. As Senator Hatch said, you have a nearly impossible job, but you perform it admirably, with dignity, and

with conviction and conscientiousness, and we deeply appreciate your work.

So, why don't you proceed? You have a little more than a few minutes here. You can take your time.

Commissioner ASTRUE. Thank you, Mr. Chairman.

The CHAIRMAN. And your statement will automatically be in the record.

Commissioner ASTRUE. Thank you.

The CHAIRMAN. Yes.

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

Commissioner ASTRUE. Chairman Baucus, Ranking Member Hatch, members of the committee, thank you for this opportunity to discuss the resources we need to continue providing outstanding public service.

As we do so, we must always remember that we must maintain our responsibility to save taxpayer dollars. In every fiscal year from 1994 through 2007, Congress appropriated less money than the President requested. At the same time, our workload steadily increased because the Nation's population was growing and the Baby Boom generation entered its disability-prone years before filing for retirement.

Congress has also added dozens of new statutory responsibilities without simplifying the complexities of the Social Security Act, which has grown over 77 years. Our employees' fortitude has allowed us to keep up to some extent, but we have started to lose ground.

From 2001 through 2007, the Agency responded to budget cuts by dramatically reducing its program integrity work, an extremely poor choice from the taxpayers' perspective. As you mentioned in your opening comments, continuing disability reviews save taxpayers substantial dollars for every administrative dollar spent.

The Agency also responded to budget cuts by under-investing in its hearing and appeals staff. As a result, delays for disability hearings steadily worsened and became a national disgrace. Not only was Government failing its citizens, it was also spending more administrative money per claim to eventually handle these claims that were taking too long.

When I started as Commissioner, the first issue this committee raised was the hearings backlog. At that time, it took, on average, more than 500 days for a person to get a hearing. We all agreed that had to change. I made the case that we needed to move in new directions, and you understood it would only be possible with your support.

The investments that you made produced substantial dividends. Despite a huge increase in disability applications caused by the deepest recession since the Great Depression, we have weathered a storm that produced over 600,000 more applications each year than our actuaries projected before the recession.

We have, nonetheless, cut the average wait for a hearing decision from about 532 days in 2008 to a recent level of about 350 days, and we did so while handling the oldest cases first. Currently, every hearing office in the country has an average wait of less than

475 days. Five years ago, some offices had waits of 900 days, and 65,000 people waited over 1,000 days for a decision.

Each year we challenge ourselves by tightening our definition of an old case. This year we have already completed 90 percent of our cases over 725 days old, and next year we will focus on cases 700 days or older. While the total number of hearings has increased due to a tsunami of applications, the queue is moving faster and faster.

In fiscal year 2007, the average age of a case waiting in the queue was 324 days. Today, it is down to 209 days. We have made these improvements and maintained service also at the front end of the disability process. Despite an over 30-percent increase in initial disability applications since 2007, we have kept the average wait for an initial decision approximately steady, and the level of pending cases is much lower than we originally projected.

Quality is up over the past 5 years for these decisions, and we are now fast-tracking 6 percent of our initial applications with our new Compassionate Allowance and Quick Disability Determination processes. Severely disabled applicants, who often waited years for a decision in the past, now get one in an average of 10 to 14 days.

Five years ago, you would have probably gotten a busy signal when you called a field office. Now the busy rate is less than 10 percent. Last year, we had the lowest waits and busy rates ever on our 800 telephone number. We have also made progress in policy. We have updated medical rules that had been out of date for decades, and we have started the long, slow process of overhauling our main vocational tool, the Dictionary of Occupational Titles, which the Department of Labor largely stopped updating in the late 1970s.

Early in my tenure, I was stunned to learn that the office responsible for notices had been disbanded. We mail 350 million notices each year to the American public. Many of these important communications were inaccurate and poorly written. We have been rewriting our notices systematically in plain language to make it easier for people to understand our actions and their responsibilities. Program integrity work, while still not funded at the levels requested, is up substantially.

We are also taking advantage of technology. We redesigned our online services, which have been invaluable in helping us keep up with recession-related work. We have four of the five most highly rated electronic services in the Federal Government, and we are the only Federal agency widely offering online services in Spanish.

For the first time ever, we have a backup for our National Computer Center, and last month we finally had the ground-breaking ceremony for the state-of-the-art replacement facility. The new building, by the way, will be constructed for about $75 million less than the original cost that we and the Congress had projected.

None of these accomplishments would be possible without our employees, who have achieved an average productivity increase of 4 percent a year for the past 5 years, and a higher rate this year so far, a remarkable achievement that very few organizations, public or private, can match. We all owe them our gratitude for their work on the front lines.

I am concerned that, despite their hard work, we are seeing signs that we will soon be moving backwards for most of our key service goals. In fiscal years 2011 and 2012, the difference between the President's budget and our appropriation was greater than in any other year of the previous 2 decades. Also, last year Congress rescinded $275 million from our Information Technology carry-over funding, which will greatly damage our efforts to maintain our productivity increases through IT innovation.

We are starting to see the consequences of these decisions. Our progress in addressing our hearings backlog, for example, is not happening as quickly as the public deserves. We need your support for the President's fiscal year 2013 budget request, as well as a timely and adequate supply of well-qualified judges from the Office of Personnel Management, if we are to achieve our goal of an average processing time of 270 days by the end of next year.

Few people realize that a rapidly increasing percentage of our work results from our verification role for other Federal, State, and local entities. For example, the number of people who visited our offices to verify their benefits for a third party has increased by 46 percent since 2007. Last year we conducted 1.4 billion verifications for programs such as E-Verify, voter registration, driver's licenses, and health care programs.

While most of these verifications occur cheaply and automatically, a small but increasing number result in non-matches that strain the resources of our rapidly shrinking field offices. Many members of Congress have written about the importance of our service in local communities. Unfortunately, budget cuts do not allow us to employ the staff necessary to meet all their expectations.

By the end of this fiscal year, we will have lost 6,500 Federal and State employees in the past 2 years. As you well know, attrition by hiring freeze does not occur evenly, and many of our smaller, rural offices have been hit harder than the average office. Much of the progress we have made in the past 5 years could vanish if we keep losing staff at this rate and in this fashion.

Our accomplishments demonstrate the direct correlation between funding and service. I appreciate this opportunity to explain the wonderful work that the men and women of the Social Security Administration perform under enormous and increasing stress. They need your continued support, as reflected in the President's fiscal year 2013 budget request, to continue to serve the American people in the way that you and I expect.

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

The CHAIRMAN. Well, thank you. Thank you, Commissioner Astrue.

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

The CHAIRMAN. I would like to just indicate what the DDS Director in Montana thinks. That Director reports that the disability claims process is in the worst shape in its history. DDS there has 1,500 claims waiting to be assigned, and it takes about 45 days before someone can even look at a claim.

The Director of Montana states, "We are the poster child for what happens with a hiring freeze: high attrition and increasing

caseload." So, Commissioner Astrue, I would just like to ask you your thoughts about all that. We clearly want to see the disability hearings backlog improved, which you are working on. But we clearly do not want to leave other efforts off to the side.

Could you just comment on what will happen to your Agency if we do not get the President's budget request? Again, just in ordinary terms that people can understand.

Commissioner ASTRUE. Sure. Mr. Chairman, we are now getting very close to the level of employees that we had 5 years ago and could start dropping below that before terribly long. The retirements and the attrition do not happen evenly around the organization, so, not only do we have the problem that we have fewer people to do the work, we have the wrong people in the wrong places. With all the restrictions of Government, it is not easy to move people and move work in the way that allows for the optimal result.

So we expect that we will continue to be contracting the number of field offices that we have. We have already closed virtually all of the contact stations. We have closed most of the remote hearing offices for the Office of Disability and Adjudication Review (ODAR). We expect that we will start having backlogs at the Disability Determination Services (DDS) level that we have not had before, and people will be waiting longer for services in field offices.

I think there is a real question as to whether we are going to hit the 270-day goal at the end of next year. We had been making great progress with that. Congress wanted to check and asked the Government Accountability Office (GAO) to do a crystal ball analysis, and we did well on that a couple of years ago. I think it is really a question of will at this point.

If the Congress wants us to make that goal, it is within your control to give us the money to hit the goal. I think, if you support us adequately, it would be close now; we lost most of our margin of error last year. We could still hit it, I think, with support from Congress. But, if we do not get support for the President's budget, the chances that we will hit the 270-day goal on time are almost non-existent.

The CHAIRMAN. Would you explain a little bit about how it takes a while to train new people to do the work? I mean, this is not work that you just hand to the person—man or woman—who walks in the office the first day and say, here is your job.

Commissioner ASTRUE. That is exactly right. I think about every 3 years the Supreme Court complains about the complexity of the Social Security Act, and there are some memorable quotes about that.

We expect that, for most of our front-line workers, whether they are in the DDS in Montana or whether they are in the field office, the work is so complicated that they contribute relatively little in their first year of work. It is mostly learning.

In fact, they can be a real drain on productivity, because someone who knows how to do the work has to take the time to make sure that the person is learning and that the work is properly done.

So really, you start contributing in your second year, and you are probably not, in most cases, reasonably productive from an operations point of view until after the second year. It is a particular

problem with the DDSs, because the salary scales in the States are very low and the turnover is very high. Our attrition rate tends to be around 3 to 6 percent for the Federal employees, and tends to be 9 to 10 percent for the State employees.

The attrition rate, I think, was in the 30s in Utah a couple of years ago, and, with Senator Hatch's guidance and support, we worked with the State to reclassify the jobs so that they were a little bit more remunerative so we could actually hold onto the employees who were doing the front-line work.

The CHAIRMAN. You mentioned that most of your temporary sites are being closed. It is my understanding that you plan to offer a permanent site in Great Falls, MT. Is that correct?

Commissioner ASTRUE. Yes, that is correct. We had been planning to. We had been working with the General Services Administration to find an appropriate site at an appropriate cost. We just actually had a letter from Senator Tester that I think we just responded to yesterday or the day before confirming that a permanent site will be coming.

The CHAIRMAN. Yes. For those who are not familiar with the distances in Montana, that is very significant, because otherwise people in the Great Falls area, and even north of Great Falls, would have to go to Billings, MT. That is many, many hours' drive.

Commissioner ASTRUE. Yes.

The CHAIRMAN. It is a long, long, long way.

Commissioner ASTRUE. I understand.

The CHAIRMAN. So, it makes a big difference. We deeply appreciate that, recognizing the remote nature of our State, so people with a disability do not have to drive quite as far. I mean, that is a big burden to put on people to have to drive that great distance.

Commissioner ASTRUE. That will be a permanent video link. I think, particularly for those of you in rural States, we need your support on video. We are not going to have the staff to do everything face-to-face the way that we could 30 years ago. The quality of the video is very high. You can actually see the watermark on a driver's license now in the video well enough to use that for verification purposes from a remote location.

Also, for hearings, I am frustrated that not a lot of attorneys are taking us up on this yet. They can now do video hearings from the comfort of their own offices with a relatively small investment in equipment. It would make us much more efficient. It would allow us to spend less on bricks and mortar if more of the attorneys representing claimants would take us up now on the offer that they can run the hearings by video from their own offices.

The CHAIRMAN. Is there any incentive you could provide?

Commissioner ASTRUE. Not under the current statute, but I think that is a very fine question, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Hatch?

Senator HATCH. Well, thank you, Mr. Chairman.

Commissioner, there have been reports of problems in Social Security's disability programs, as you have outlined. Some relate to possibly careless, or even corrupt, benefit grants made by administrative law judges, and some relate to attorneys representing claimants in the appeals process.

Now, it seems to me that the stakes are pretty large. Dr. Mark Warshawsky, currently a member of the Social Security Advisory Board, recently presented evidence that administrative law judges with low claim denial rates who decide on many cases "have a fixed tendency over time to rarely deny claims" and calculated that, if remedies were put in place to shore up the claims process, we could save tens of billions of dollars.

Of course, those savings could then be used to provide benefits for the truly disabled and would help with the nearly exhausted Disability Insurance trust fund.

Let me be clear. Disabled workers who are eligible for benefits and have bona fide disabilities are fully entitled to what the DI program provides. However, there seems to be evidence suggesting that some of the decision-making could be leading to benefits being granted in cases where there is no bona fide disability.

Those cases drain taxpayer resources away from where they were intended to go and rob the DI trust fund of resources that should be going to the truly disabled. No American worker and no disabled worker likes it when someone defrauds the system and takes resources intended for those truly in need. It is truly not fair, and tens of billions of dollars may be at stake here.

Now, Mr. Commissioner, I know that you are working to address problems in the DI system, but I wonder if you could comment on where you believe further work needs to be done in addition to what you have said here, and what are you doing to enhance the integrity of the DI claims process?

Commissioner ASTRUE. That is a very fine question, Senator Hatch. I speak with a lot of well-motivated people who have a philosophical feeling that we should be granting a lot more benefits or a lot fewer benefits. I do not view that as my goal. What I view as my goal is to have our judges call it as squarely as possible on the basis of the statutes that you and the Congress have written.

I think that what gives me cause for concern are the judges who—in my opinion, out of arrogance or ideology—take it upon themselves to ignore the law that you have written and that they are pledged to uphold, and make their own judgments, either to be a Robin Hood or to be a Scrooge.

If you look at the statistics on the outliers, we have improved significantly in the last 5 years. We have done that with better training of the new judges, and we have done that with more counseling. We have also been more active in discipline, although we have not disciplined a judge for not adhering to the law yet.

But the same arrogance that leads a judge to engage in that kind of behavior also usually allows them to engage in other kinds of inappropriate behavior. So we have removed more judges for conduct on my watch than under all the previous Commissioners' combined.

That has started to have a beneficial effect, but I do not want to suggest to you, Senator Hatch, that we are where we should be. The number of judges who are basically thumbing their nose at you, the Congress, is still higher than it should be. It should be zero.

I think that my authority in that area is gray. There was a hearing on the House side—I would commend the transcript of that to you—a joint hearing with the Ways and Means Committee and the

Judiciary Committee. I think if you are concerned about the issue, I am more than willing, and the Agency is more than willing, to take it on. But I think you need to look at how to strengthen the Agency's authority, while still respecting the independence of the judiciary.

Senator HATCH. Well, thank you. Mr. Commissioner, the Disability Insurance program disbursed $130 billion in benefit payments in 2011 and is one of the fastest-growing of all of our entitlement programs. In just over a decade, aggregate payments in the DI program have risen by almost 135 percent.

Now, it does not take a rocket scientist to recognize that this type of growth is unsustainable. According to the Social Security trustees, the DI trust fund will be exhausted by 2016, and beneficiaries will face benefit cuts of 21 percent.

Now, some look back to the Greenspan Commission and suggest that we solve the problem by simply pouring funds from the Old-Age and Survivors Insurance trust fund into the DI trust fund, and yet that simply robs Peter to pay Paul, in my opinion, and does not solve any of the structural problems.

Now, one cause of the rapid expansion of DI costs, as some researchers have pointed to, stems from 1984 reforms to DI screening that led to rapid growth in the share of recipients suffering from back pain and mental illness.

Two researchers affiliated with the National Bureau of Economic Research have also written that "the DI screening procedure put in place by Congress hinges to a significant extent on an applicant's employability, not just personal health, causing the program to function much like a long-term unemployment insurance program for the unemployable."

Now, of course, anyone who is eligible and has a bona fide disability is entitled to DI benefits, but DI benefits paid to anyone who is not truly disabled simply take resources away from those who are truly disabled.

Now, I think my time is up. Can I ask these two questions?

The CHAIRMAN. Absolutely.

Senator HATCH. I have two questions related to the DI program. First, do you agree that the sometimes difficult-to-diagnose conditions related to back pain and mental illness account for some of the most rapid expansion of the DI beneficiary population?

And second, to what extent do the opinions of those making DI benefit decisions about local or national labor market conditions determine eligibility for DI benefits? That is, has DI become an unemployment benefit provider of last resort?

Commissioner ASTRUE. Senator Hatch, let me say, I think that Disability Insurance is a rapidly growing program. There have been some analyses I have seen recently that misunderstand the nature of that. Most of that has been predictable and has been predicted by the actuaries for a long time.

If you simply compare the growth in DI to the growth in population, you would think, the program is growing faster than it should. But when you factor in people like me, who at 25 are perfectly healthy, but not so much at 55, the actuaries say that almost all the growth in DI is consistent with what they have been pre-

dicting for a long time based on the Baby Boomers going through their disability-prone years.

Having said that, if you look on a more granular basis at some of the causes of growth, I certainly say, with mental illness, you are correct. We as a society are diagnosing mental illness more frequently, we are prescribing treatments for mental illness much more frequently than in the past, and it is certainly a significant factor in the growth. I am less sure that the back pain and the muscular damage is as much of a factor, but we will go back, and we will give you information on that for the record.

[The information appears in the appendix on p. 51.]

Commissioner ASTRUE. In terms of being a backup provider of unemployment, other nations—England, for instance—quite consciously did that, regretted it, and are pushing back in the other direction. I think that there is a fair amount of evidence from how the Agency has handled cases during this recession to indicate that is not true.

I think that we are calling cases squarely, for the most part, exactly as we have been, but our allowance rates have dropped at the DDS and the ODAR level to the lowest in a very long period of time. At ODAR in the last few months, it is a 50-percent allowance rate. We have not seen that since I had my first job in the Senate in 1978.

At the DDSs, you have to go back to, I think, 1997 until you see an allowance rate as low. And I do not think it is because we have become tougher or because we have changed our standard. But what happens during recessions is that economically desperate people apply, and the vast majority of them get rejected because we adhere to the statutory standard. We do not feel that we are supposed to turn it into exactly what you are concerned about.

Now, when you have 650,000 more applications in a year, are we perfect? Are there some people who slid through during the recession, were allowed benefits that probably should not have been? Probably some. But I think for the most part we have administered the program with integrity and tried to do exactly what the Congress has told us to do and not take it upon ourselves to move the standard, move the needle, in one direction or the other.

The CHAIRMAN. Thank you very much.

Senator HATCH. Thank you. I appreciate it.

The CHAIRMAN. You bet.

Senator Cardin?

Senator CARDIN. Mr. Chairman, first of all, thank you for this hearing. Commissioner Astrue, it is a pleasure to have you before the committee.

I want to acknowledge the improvements that I have seen in regards to the Annual Earnings Statement's availability to recipients. I now understand that there is a secure website where the information that would be contained in the mailed version of the Annual Earnings Statement is available.

I have communicated with you the importance of this document for people knowing and projecting where their retirement income will be, to look at the accuracy of the information, to look at their eligibility. I also understand you do have, if the President's budget level is approved, resources to mail it out to individuals as a hard

copy. I would encourage you to make that information as accessible as possible. It is very important for people to know where they are in the Social Security system.

I want to talk about the issue that you have raised. I have had a chance, as you know, to visit the SSA workforce in Maryland. These are dedicated people, working very hard. You pointed out that their productivity is up 4 percent a year now consistently. You have had 6,500 fewer workers, and the workforce is decreasing every day.

The interesting point you raise is, as you lose a person through retirement, it takes you a period of time to get another person trained to do that work. You say as much as a year could be lost in productivity as the result of retiring staff.

Commissioner ASTRUE. Yes.

Senator CARDIN. Now, you have gone through 2 years of a pay freeze. We have a projected pay increase for Federal workers that would be less than what would be normally required. We have a tax on retirement which has to have an impact. I mean, when your workers look at what Congress is considering here regarding pay and changing the retirement rules, it seems to me it encourages some people who have the ability to retire to say, why am I putting up with this?

So is this a real concern, that we are losing people who otherwise might be staying in public service and providing the services so that disability determinations can be done more timely because of people just saying, what are we doing here; there is a tax coming all the time?

Commissioner ASTRUE. I would say I am close to panic about holding on to our people, because they are the ones who do the work. We would be nothing without them. It is very hard to find the right people and to train them properly. Really, for a lot of what we do, you often need 5 or 10 years of experience to do it well. So, I work very hard to try to hold on to people.

I will tell you another factor for so many of our people on our front line that is scary. Even in a tight budget, we have invested a lot more in the physical security in our offices. I read every violence report that comes into the Agency, and they were not a big deal 5 years ago. I think there were only about 500 attacks or serious threats of assault. I think it is about 2,500 this year.

With the recession, the intensity of the incidents got worse. I think that it is easy in a lot of government agencies to be insulated from that. Most of our people are out on the front line, looking face-to-face with severely disturbed people on a regular basis.

That tension during the recession—where people have been more violent, people have been more anti-government, and there have been a lot more threats of violence—is a real factor in losing people too. That is taking a toll on people on the front line, and that is why we have invested, even in a tight budget, more on security than we have in the past.

Senator CARDIN. I know we are going to have disagreements, legitimate disagreements, on budget priorities and how to proceed to balance the Federal budget. But I think we all want to make sure that our Federal workforce is safe, that it has the support it needs.

I do not know of a member of the Senate who does not believe that the benefits provided by the Social Security Administration are vital to our country. I do not know of a member who does not want to see the services done in a more timely way, in a more professional way. When you have an agency that has an increased productivity at the level that you have been able to achieve that is being asked to do more with less, I think the least we can do is to make sure that we provide the type of support you need in order to get the job done.

Commissioner ASTRUE. Thank you.

Senator CARDIN. And I certainly would think our language here at times has been counterproductive to keeping some of our best in public service.

Commissioner ASTRUE. Thank you, Senator.

Senator CARDIN. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Senator Grassley?

Senator GRASSLEY. Thank you, Mr. Chairman. Thank you, Mr. Astrue, for your work.

Following a little bit on the last conversation you had with Senator Hatch, but asking in a little different direction, you made some reference in your opening statement about how the online application has helped "deal with the additional economy-driven claims."

This raises the question of whether the Disability Insurance program has become an alternative unemployment benefit. Those receiving benefits who are not disabled slow down the Agency's response to those who are disabled. They obviously contribute to the trust fund insolvency problem.

Two specific questions. Why should the economy have a significant impact on the number of claims? In other words, people should not be filing claims because the economy is bad; they file claims because they think they are disabled. Then second, what is the total number of applications for fiscal year 2011, and how many of those were not approved?

Commissioner ASTRUE. Senator, there has been a fairly substantial body of economic research over the years that shows that, in times of recession, with a bit of a lag because of the effect of unemployment compensation, disability applications rise. That does not mean that those are meritorious applications, but you get people who are on the margins who decide to take the chance.

There is, as much as we try to make this as black and white as possible, a random element. These are human beings, often making difficult calls, so people decide to take the chance. Now, typically what should happen—and what does happen in most cases—is that most of those claims are rejected, but we do not stop people from applying.

So it is not just this recession. If you go back historically, for instance, looking at the early 1980s and other periods of high recession, the DI workload goes up. I will give you the precise numbers for the record, but in 2011 we had somewhere between 3.2 and 3.3 million applications. If I remember correctly, at the initial level we allowed about 34 percent, but let me just double-check and make

sure. I am very close, and we will provide the precise number for the record.*

Let me also respond to what I think you and Senator Hatch are trying to get at, in a way. If you are concerned about the system not being tight enough, there are some things that I think this committee should consider looking at. Over time, I think the courts, out of sympathy for claimants, have expanded statutory language beyond your intent.

In particular, we have inconsistent rulings in the Circuits on the treating physician rule, which is critical to a lot of our cases. In the 9th Circuit, for instance, I believe it is particularly broad. They cannot all be right, and it is potentially a way of blowing open the system and allowing cases that should not be allowed, if that standard is not consistent with what I believe is Congress's original intent. That is an area that I think is worth looking at.

The area of what constitutes improvement on continuing disability reviews is also worth looking at. Courts, I think, hold us to a higher standard than what Congress originally intended. Also, the return to work area, I think, is important. As admirably intended as the Ticket to Work Program was, I think it has been a disappointment in terms of its outcome. It is not, according to the actuaries, cost-effective yet.

I think part of the reason for that is that Congress has, every 5 to 10 years, layered on more work incentives. It is so complex that I think it overwhelms people who do want to come back to work. Until recently, Congress has authorized what we call Work Incentives Planning and Assistance providers, or WIPAs, largely to explain to people how to return to work. That is a program that has not been reauthorized, and we think that it should. Although someday, I think it would be better to just simplify the program.

In general, I know that, with the way the budget trends are going, we cannot continue to do business as usual. What I would plead with the committee to consider doing is, if you cannot provide more money, let us look at ways to simplify the statute, simplify our responsibilities. I think sometimes in trying to get equity and a lot of policy perfections, we have introduced complexity that has had unintended negative consequences for the public. So, I think working on legislative simplification generally would be a very positive way for us to go.

The CHAIRMAN. Senator Nelson?

Senator NELSON. Good morning, Mr. Astrue.

Commissioner ASTRUE. Good morning.

Senator NELSON. I want to follow up on the question of publishing the names and Social Security numbers of deceased people that you and I have talked about. But Mr. Chairman, let me set the table.

What is happening is, we have a new kind of crime. It is not a crime with a gun or a knife or a crowbar; it is the use of a laptop. Once the Social Security numbers, particularly of deceased people, have been acquired—which are published by Social Security—they file in the name of the deceased or, in some cases, of a deceased

*SSA received 3,257,461 initial disability applications for fiscal year 2011, and the initial disability allowance rate in fiscal year 2011 was 34 percent.

child, most recently—in the *Morning News* out of Memphis—a deceased child that lost a 4-year battle with cancer. The name was published, the Social Security number was published. The child's Social Security number was used as a dependent on a false tax return asking for a refund.

What is happening in communities like Tampa and Orlando is, street crimes—drugs, thefts, burglaries—are going down, because it is so easy for the criminals to get all of this money from income tax refunds because they have gotten somebody's Social Security number. One of the sources, as pointed out by the *Morning News* from Memphis, is decedents' Social Security numbers being published by Social Security.

So, when I talked to Mr. Astrue about this, he said he has a lawsuit settlement that requires, under FOIA—the Freedom of Information Act—that these numbers have to be published. He says that we can only change this by statute. Well, of course, I have filed the statute. But in the meantime, the criminals are having a field day.

Now, I disagree with Mr. Astrue, and I want to bring to his attention some changed facts. In the first place, he is operating with legal counsel on the basis of a lawsuit that was settled in 1980, and the lawsuit was settled under FOIA just for the names and Social Security numbers. It was to be published once a year.

He publishes names, Social Security numbers, and other information every day. That is a big difference. I would ask you to consider that. You publish their address, you publish their date of death, you publish probably their date of birth, a whole set of information that was not required by the original lawsuit in 1980.

Mr. Chairman, I would also bring to the committee's attention that since 1980 there have been a lot of cases that have found that the deceased has a privacy interest. Let me give you one that I have some familiarity with, because, as you know, after we returned to earth on the 24th flight of the space shuttle, 10 days later *Challenger* launched. Of course, through FOIA, people were trying to get all kinds of information about the astronauts. That case ruled that the victims have a privacy interest that can be protected.

So, Mr. Astrue, I would ask, with this additional information, would you please consider, until we can pass the statute changing the law, that you do not have to publish all of this information and do so on a daily basis, which makes it so easy for the criminals to get their hands on it and do this new type of crime that is ripping off millions and millions of dollars from American taxpayers? And furthermore, would you consider that you, even under the current lawsuit settlement, could publish the names and only the last four digits, which would then prohibit the criminals from carrying out this highly new kind of effective crime?

Commissioner ASTRUE. Senator Nelson, you and I have talked about this personally, and we are just in disagreement on the law. With all due respect, this is something I have looked at extremely carefully. I am a former Agency General Counsel. I am a former White House Freedom of Information Act and Privacy Act officer—so this is an area of the law that I know something about.

You in the Congress have set the statutory time deadlines for disclosure under the Privacy Act and FOIA with some severe penalties for non-compliance under the Privacy Act. I cannot release them every year because you and the Congress have decided that I cannot do that.

I also, as we have discussed before, do not think that we have statutory authority to withhold that information. There is a strong presumption of release under those statutes. You need an exemption. The *Challenger* case is the only case on the other side. I do not believe that the *Challenger* case has broad application. No court since the *Challenger* case has applied or broadened that exception in this way, so I do not believe that that is available to me.

But, even if I were wrong on that, as a practical matter you have to understand that the Carter administration settled this case under a judicial decree in 1980. I cannot just go back and thumb my nose at a Federal court order. I would have to, first of all, get the Department of Justice to challenge it, which I do not believe that they would do because they have no basis for going back and reopening it. That is why they support the legislation that the administration has proposed that is somewhat similar to yours, and then it would probably be a 4-year process to get a definitive decision even if the Justice Department were to do that.

So I do not think it is appropriate, I do not think it is practical, and I think what has to happen is the Congress has to act. I think that this is one of those rare opportunities where we can set aside a lot of the bipartisan problems in Washington and work together in collaboration.

The administration has a bill that is similar to the congressional bills. In the House, the lead has been on the Republican side, Chairman Johnson of the Ways and Means Committee; you and Senator Durbin have introduced a bill here with the Senate. I would say to you I think that this committee and the Senate ought to take it as a personal challenge to get this bill passed this year.

I think this is one of the relatively few areas where I do not think there is a big disagreement on principle. So I would say this is the Congress's responsibility, not the executive branch's, to fix, and I would urge you to fix it as quickly as possible.

Senator NELSON. In a normal year, Mr. Chairman, this would be the kind of bill that would be considered a motherhood bill. But the fact is that, since it touches on taxes and Social Security in this political context of an election year for President, it is going to be very difficult.

In the meantime, there is a public interest to be protected. Mr. Astrue and I disagree on this, and I would just merely ask you what you just said, if you would request of the Justice Department their interpretation, so that, if perhaps you might be wrong in your considered judgment as former legal counsel, we might get some relief until we can pass this statute.

Mr. Chairman, thank you very much.

The CHAIRMAN. Thank you, Senator. Clearly, this is a problem. I think it would be worth our while to try to take up this legislation. You have your legislation, the administration has its version. They sound not dissimilar, and both are geared to resolve the same problem.

My view is, we have to try. I recognize some of the difficulties that occurred in the Congress this year, but heck, you never get anything accomplished if you do not try. So let us see what we can do to work with the administration, with you Senator, and maybe have a hearing on the subject, because it is an outrage, how people take advantage of the Social Security Administration in getting those numbers and filing for tax refunds. It just is an outrage, and let us see what we can do to stop it.

Senator NELSON. And, Mr. Chairman, we have had two hearings on this in the subcommittee that I have the privilege of chairing.

The CHAIRMAN. Right.

Senator NELSON. So the record is complete.

The CHAIRMAN. All right. Thank you.

Senator Thune?

Senator THUNE. Thank you, Mr. Chairman, for calling the hearing. I want to thank Commissioner Astrue for being here to testify.

Social Security is the single largest category of the Federal budget, and the Social Security trustees recently released their annual report on the financial status of the program. The report found that Social Security can sustain full benefit payments for only another 20 years, 3 years less than the last estimate.

That means that, without reform, Social Security is going to exhaust its trust fund reserves by the year 2033. The Social Security Disability Insurance trust fund will be in bankruptcy by 2016 at the latest. If this happens, benefits will be automatically cut for current beneficiaries.

The trustees' report underscores the need for meaningful entitlement reform to protect benefits for future generations, which is why it is always so troubling to find and to hear about and learn of fraud within the program. In addition to meaningful reform to ensure the long-term solvency of Social Security, we have to ensure that the programs are operating efficiently.

I would like to go back to something that Senator Hatch mentioned, and that is this *Wall Street Journal* report from last December about some potentially fraudulent practices on the part of law firms, such as Binder and Binder, representing claimants for disability benefits before the Social Security Administration, particularly in the appeals process where administrative law judges adjudicate claims.

The report, which I would like to submit for the record, found that claimant representatives have, in many cases, withheld medical evidence from the Social Security Administration that could prove their clients should not be eligible to receive disability benefits. Senator Coburn has done a lot of work in this area, and I want to recognize his efforts in that regard in shedding light on the issue.

[The *Wall Street Journal* report appears in the appendix on p. 94.]

Senator THUNE. But I am disappointed to learn that the Social Security Administration has refused to take action to address the allegations about this law firm and their material representations to the Social Security Administration.

I believe that full, medical continuing disability reviews must be performed on Binder and Binder claimants so that we can be sure

that only eligible claimants qualify for SSDI benefits. SSA has a sufficient budget to do so, and in my view these reviews should be done, not just on new allegations, but on prior allegations as well.

So my question is, is it not within your authority to prioritize the Social Security Administration's program integrity functions within your existing budget to ensure that there is a proper response to these claims?

Commissioner ASTRUE. Senator, I am afraid I am going to have to disagree with a number of the assumptions of your question. First of all, I am familiar with the *Wall Street Journal* article. We did not take "no action"; we did refer that to the Office of the Inspector General. If you have questions about the progress of that, I would encourage you to talk to the Inspector General.

But that article was relatively thin in terms of the content of allegations. There really was not, in my opinion, very much there. It is also based in part on a misassumption that there is a requirement for all relevant medical evidence to be provided to the judge. Right now, that is not in our regulations. The previous two Commissioners tried to change our regulations, and my understanding is that they received a lot of opposition and not much support here in the Congress for that.

So first of all, the *Wall Street Journal* had it dead wrong on what the law is. Second, there was not much in the way of allegations. Third, it would be unprecedented to go back and review all cases by a law firm on evidence anywhere near this thin.

Without proof of real fraud—and I have no information from the Inspector General that suggests that we have that—it would be totally unprecedented to do that. Any court looking at that would throw it all out immediately. It would be an enormous waste of the taxpayers' dollars for me to do that.

Senator THUNE. Do you have any indications yet, can you summarize for us any of the Inspector General's findings? There is nothing that they have reported on yet.

Commissioner ASTRUE. There is nothing publicly reported on that.

Senator THUNE. Publicly.

Commissioner ASTRUE. I do not have much more than that. Again, Senator, read that *Wall Street Journal* article very carefully. When you realize, first of all, that there is not a legal obligation to present every bit of evidence to the Agency, because our rules are not written that way, there is a factual error underlying that whole article. Past that, there is not very much that is specific in terms of evidence. There is unsupported hearsay, that type of thing. It may be true, but, in order for us to take action, we have to have some proof and evidence. The *Wall Street Journal* certainly did not provide very much for the Inspector General to go on.

Senator THUNE. I am sure we will revisit that issue.

Last month there was a Social Security Administration disability claims judge—judges, I should say—that was instructed to no longer seek out information from social media websites when deciding cases.

Commissioner ASTRUE. Yes.

Senator THUNE. As you know, in our digital world, with the Internet, including social media websites, they have provided an

important tool for ALJs to gather evidence about SSDI and SSI program applicants. Law enforcement in particular is using some of those mediums for investigative purposes. Does the recent decision by the SSA work against program integrity?

Commissioner ASTRUE. No, just to the contrary. First of all, you need to understand that to protect the public's privacy and to protect hundreds of millions of dollars—billions of dollars—of investment in systems, we have one of the toughest firewalls in the world. It is not just that we do not allow the judges to use Facebook. None of our employees can use Facebook.

I cannot get onto my computer and go on Facebook unless I specifically use a complicated work-around from the IT people. Number one, we do that to protect, first of all, the privacy of individuals and, second of all, to avoid horribly damaging malware getting into the system that could cost hundreds of millions of dollars to fix.

Number two, in my opinion, I have to run a very tight, efficient operation to meet the public's and Congress's expectations. If you allow broad social media access on government time, I think that becomes an enormous suck on productivity. I think if I were to allow it, it would be a very short period of time before I would be before a committee trying to answer the question, "How come your employees are spending all their time on Facebook and other social media sites?"

The final thing is, if a judge becomes aware of something that looks fraudulent from a social media site, we have not told them to ignore it. What we have done, consistent with our longstanding policies, is tell them to refer it to the Inspector General so that there can be a proper investigation.

I want to assure you that social media sites are not exactly clear and reliable evidence. It takes some context sometimes to figure out, well, is that really the person? Facebook puts up phony websites under my name all the time. I have never signed up for Facebook, but I am constantly asking them to take down signs on Facebook sites that purport to be mine. Spouses, angry ex-spouses do that to each other.

One has to be a little bit careful about these things, which is why you need professionally trained fraud investigators to take circumstantial evidence of fraud and see if it is real. So I think that we are doing exactly the appropriate thing to do.

Senator THUNE. All right. Well, thank you, Mr. Chairman. I see my time has expired. I do not disagree there are abuses on social media platforms. I think we are all aware of those sorts of things. But it seems to me that enrolling beneficiaries in the SSDI program who do not meet its requirements is simply inexcusable, and I just think that any fraud prevention tool that is available out there that can be used—and like I said, I mean, law enforcement is using these media for their investigative purposes. We should be doing everything we can, with every tool available to us in this day and age—particularly with the challenges we are facing fiscally in these programs—to get rid of and root out fraud and abuse at every turn.

Commissioner ASTRUE. That, I actually agree with, Senator. What I would say is, the Inspector General does use social media and other sites to start fraud investigations. They do go and ob-

serve claimants whom they suspect are committing fraud, try to video them at home, and that type of thing. They have been underresourced in recent years. Not all of what they call the Cooperative Disability Investigations (CDI) units that investigate that kind of fraud are funded now.

So, in addition to making a pitch for my budget under the President's recommendation, when you look at the IG's budget, they have in fact cut back a little bit on those CDI units. That is the most effective front-line unit that we have on fraud, and the Congress has not been fully supportive of that. So, I would ask you to take a look at that.

Senator THUNE. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Senator Hatch?

Senator HATCH. Well, I have a number of other questions, and I will just submit them to you.

[The questions appear in the appendix.]

Senator HATCH. But let me just ask this one, because it borders a little bit on Senator Nelson's concerns. I just thought maybe I should ask this. I also have a question that has arisen from my Utah constituents quite a bit.

So, as I understand it, the Social Security Administration is seeking alterations to the accessibility of information in the public death file, sometimes called a Death Master File, which the SSA releases through the Department of Commerce to any subscriber.

The SSA's legislative specifications in this regard call for modifications of current restrictions on the release of certain information, certification by the SSA Commissioner of entities eligible to purchase the information, and authority to impose fees, penalties, audits, and inspections.

There is, of course, a need to balance security concerns with data users' interests. It is unconscionable when data on deceased individuals are used in fraudulent ways, such as tax fraud and some of the ways that Senator Nelson just mentioned here.

Yet, I would have to say there are legitimate commercial uses of the data that actually serve to deter some fraudulent activities and ensure that certain payments, such as life insurance payments, are properly made. I also believe that there are legitimate uses of the data by private interests for purposes of forensic or personal genealogical research, which is something we in Utah do a lot of.

In its legislative specifications, however, the SSA explicitly identifies use of data for genealogical purposes as an illegitimate need for such public information. Now, such a stance is naturally of concern to me, and certainly to many of my Utah constituents.

Now, Mr. Commissioner, will you be promulgating new rules for accessibility of the so-called Death Master File, or are you, as I think you have indicated, indicating a statutory change or a legislative change? In either case, will you assure me that you intend to work with members of this committee on any proposals to change accessibility?

Commissioner ASTRUE. I think we are in agreement, Senator Hatch. I think I was trying to be clear with Senator Nelson that I do not view this as a problem that I can solve administratively. I do not think I have the authority to do it. In fact, the difficult

balances that you are pointing out, which I agree with completely, I think help prove my point. That is classic legislative balancing. That is not a decision that the Congress has empowered me to make.

We had a meeting in the Ways and Means Committee earlier in the week, and we had this hearing. I was hopeful that we would have the specifications converted to actual legislative language. We are not quite there. A part of that, I think, should be encouraging to you, Senator Hatch, since the specifications have become more public.

It has raised some concerns. I give the administration, broadly, credit for listening to those concerns. It means that the legislative language is being a little bit delayed. But I do not think they are approaching this from a rigid point of view; I think they are trying to figure out the best way to balance those things.

I will be quite candid: the reason we do not have the precise legislative language up here now is that there is some rethinking on a couple of the provisions, and I honestly do not know for sure, on a couple of these things, precisely how they will come out at the end.

But whatever happens, there is enough overlap between Senator Nelson's bill, the administration's bill, and Congressman Johnson's bill in the House, that it is 90-percent overlap. I think that everyone realizes that the most important thing is to get moving to make sure that the major abuses do not continue. A lot of these other things are details that we will be able to work out through the course of the legislative process, and I certainly commit to working with the committee and the Congress generally to accomplish that.

Senator HATCH. Well, thank you. I wanted to compliment you for the good work that you do.

Commissioner ASTRUE. Thank you.

Senator HATCH. You have my respect, for sure. Hopefully we can work out the statutory language so that some of these problems that have been raised can be solved. You are one of the few people I think who might be able to work that out in a way that would really work well. So I want to thank you for all the hard effort that you make, and appreciate your work.

Commissioner ASTRUE. Thank you.

Senator HATCH. Thanks so much, Mr. Chairman.

The CHAIRMAN. Thank you, Senator. Thank you, Commissioner, too.

I am just curious. You started out under one administration. You said during your confirmation hearing you wanted to serve your full 6-year term, you wanted to be independent and just do your work. Just, your thoughts now as you are near the end of your term.

Commissioner ASTRUE. Well, thank you, Mr. Chairman. It has been a very interesting experience to straddle administrations, really, I think, for the first time as kind of a constitutional experiment.

I want to give credit to the administration for trying to approach, what I am sure was not what they wished would happen, in a good

spirit, and I have tried to respond in kind. So I think it has actually worked pretty well.

Since you have asked, I will be honest; I am not sure it is a construct in the Washington of today that we can count on to work well going forward. So, even though it has worked well, at this time I think it is something that you ought to keep in mind and think about for the future.

I am in my 6th year now. It has been extraordinarily rewarding, extraordinarily draining. I am very grateful to President Bush for having given me this opportunity. I am very grateful to this committee for having given me this opportunity.

It is an incredible group of people to try to lead. The dedication to mission is remarkable. Almost everybody comes right out of high school or college and spends their career with the agency. It is the kind of thing that is remarkable.

I worked for a Commissioner in the mid-1980s, and, of course, everyone thinks about what they would actually do if they could have the boss's job. I certainly did in the 1980s, but I never thought I would have the chance to do it. So it has been a great blessing to have that opportunity. Again, I thank all of you. I was thinking about this on the way up. This is probably my last appearance, actually, before the committee.

The CHAIRMAN. You do not want 6 more years?

Commissioner ASTRUE. No, I do not think so, Senator. I think it is time for me to go home to Massachusetts. But I started working with this committee as a very young person in 1985 and really did get to know Senator Moynihan and Senator Dole quite well in that period, and some first-class staff people.

The committee treated me extraordinarily well when I was confirmed in 1989. It has been in the same spirit since. The two of you have been spectacular. Senator Grassley was spectacularly helpful too when he was ranking member. The staffs work much more collegially than is common in the Congress these days. So, I guess I feel blessed all the way around.

The CHAIRMAN. Well, we are surely blessed to have you working for us, especially the American people are blessed to have you working for the American people. You set a very good tone of collegiality and cooperation and working together. You are a good role model. That is something I am going to keep in mind throughout the years remembering you and all the good work you have done.

Commissioner ASTRUE. Thank you.

The CHAIRMAN. Thank you.

The hearing is adjourned.

[Whereupon, at 11:20 a.m., the hearing was concluded.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

HEARING BEFORE

THE FINANCE COMMITTEE
UNITED STATES SENATE

MAY 17, 2012

STATEMENT
OF
MICHAEL J. ASTRUE
COMMISSIONER
SOCIAL SECURITY ADMINISTRATION

Chairman Baucus, Ranking Member Hatch, and Members of the Committee:

Thank you for the opportunity to discuss issues related to our ability to provide quality service and value to the American public. I will try to be very clear about the service the American people and Congress can expect, which is highly dependent on future funding levels.

Before I begin, let me express my gratitude to you, Mr. Chairman and the Ranking Member, for signing the letter to the Budget Committee urging support for the President's FY 2013 funding request for the Social Security Administration (SSA), including full funding for our program integrity efforts authorized by the Budget Control Act (BCA).

Overview

Congress has expected us to manage our workloads successfully, with limited resources. In every fiscal year (FY) from 1994 through 2007, Congress appropriated less than the President requested. The agency did the best it could to meet expectations, but for the past 20 years, our workloads steadily increased. Requests for our core services have increased as the population grows, and baby boomers age and pass through their disability-prone years before retiring.

To the extent that limited resources allowed, the agency hired and trained staff for these increased workloads and used technology to make traditional work processes more efficient. Even with these new and unavoidable demands, our innovative and proactive employees maintained high service levels for some time.

Inevitably, though, increasing workloads combined with declining budgets damaged service delivery. Even with consistent year-over-year increases in employee productivity, our reduced staff could not keep up with the rising workloads. Throughout most of the past decade, the average time claimants waited for a disability hearing decision rose steadily, and in many locations, average wait times for a hearing exceeded 800, and even 900, days. Sadly, some claimants waited as long as 1,400 days—nearly four years—for a decision. We also dramatically cut the amount of program integrity work we did during these years despite the long-term harm to the trust funds.

After the Senate confirmed me as Commissioner, I made the case that we needed to move in new directions and that Congress needed to provide the funding to support that shift. For FYs 2008-2010, Congress provided funding at or above the requested level and in 2009, as part of the American Recovery and Reinvestment Act, provided us with additional funds to tackle our surging retirement and disability applications. This funding allowed us to reverse many negative trends, significantly improve service and stewardship efforts, and absorb huge increases in workloads due to the worst economic downturn since the Great Depression. We have dramatically lowered the average wait for a hearing decision, reversed the disturbing trend in program integrity work, and improved services agency-wide. We made remarkable progress.

However, in FY 2011, while we received unprecedented new workloads, Congress cut our budget more deeply than in any year of the previous two decades. Congress also rescinded a sizable portion of our IT carryover funding, which is our best mechanism for improving

productivity. With staff reductions caused by hiring freezes and attrition, our work force is contracting rapidly, field offices are consolidating, and we are struggling to maintain recent levels of service. When I leave office in 2013, the agency will have about the same number of employees that we had when I arrived in 2007, even though our workloads have increased dramatically. Since FY 2007, retirement and survivor claims have increased by 26 percent and disability claims have increased by over 31 percent.

Before I describe the current state of our service delivery, our plans for improvement, and the difficult choices we have had to make under the current budget constraints, I want to briefly explain who we are and what we do, and our accomplishments with the funding you provided in FYs 2008 through 2010.

Our Services and Accomplishments

We have just over 80,000 Federal and State employees who serve the public through a nationwide network of about 1,500 offices. Each day almost 182,000 people visit our field offices and more than 445,000 people call us for a variety of reasons – to file claims, ask questions, and change direct deposit information.

During FY 2011, we paid nearly 60 million people over $770 billion in benefits. Specifically, we paid $591.5 billion in Old-Age and Survivor Insurance benefits, $128 billion in Disability Insurance (DI) benefits, and $52.4 billion in Supplemental Security Income (SSI) benefits.

We strive to make timely and accurate payments and operate efficiently and effectively. Our administrative costs are only 1.6 percent of benefit payments. We have invested in IT and efficient business practices that have kept our overall costs down and allowed our employees to be more productive.

We are proud of our record of optimizing our resources to produce results. Last year, we:

- Reduced the time it takes to get a hearing decision to the lowest point in 8 years;
- Handled a record number of benefit applications -- over 4.8 million retirement and survivors claims, nearly 3.4 million initial disability claims, and over 795,000 hearings;
- Increased our cost-effective program integrity work --1.4 million continuing disability reviews (CDR), including over 345,000 full medical CDRs, and over 2.4 million SSI non-disability redeterminations, which improves SSI payment accuracy and provides a significant return on our investment;
- Used our Compassionate Allowance and Quick Disability Determination processes to expedite medical determinations for obviously disabled individuals in over 150,000 initial disability cases;
- Achieved the best average speed of answer and busy rates on our National 800 Number ever;
- Handled nearly 63 million National 800-Number transactions;
- Issued over 16 million new and replacement Social Security cards;
- Posted 241 million annual earnings reports;

- Increased online claims -- 41 percent of retirement claims and 33 percent of disability claims filed online;
- Maintained an average annual increase in employee productivity of nearly 4 percent over the last 5 years;
- Continued to use plain language principles to improve the 350 million notices we send Americans each year; and
- Balanced productivity with quality.

In addition to our core program workloads, we handle lesser-known services that drive millions of Americans to visit our field offices or call us each year. For example, in FY 2011, we issued about 1 million replacement Medicare cards, and handled nearly 1 million transactions in administering the Medicare low-income subsidy program. We handle about 2 million requests each year from claimant representatives asking for information we maintain. About 65 percent of these requests are from representatives handling Social Security cases, but 35 percent are from representatives who request our information for insurance claims or other government programs.

Furthermore, an increasing percentage of our work results from our duty to verify information for other Federal agencies. Last year, we completed 1.4 billion verifications ranging from the E-Verify program to health care programs, voter registration, drivers' licenses, and many other government programs. While most of these verifications occur cheaply and automatically, a small but significant percentage of these interactions produce an increasing number of non-matches that strain the resources of our rapidly shrinking field operations.

In fact, if you look at our waiting rooms today, you see very few older Americans. You do see younger Americans, often with children, waiting for a document required by another agency for authentication purposes. For example, the number of people coming into an SSA office for benefit verification has increased by 46 percent since FY 2007.

Service Delivery

I am proud of our organization and our accomplishments. We are committed to maintaining a strong level of performance on our core workloads and to working toward long-term improvement of our service to the public.

Hearing Backlog

When I became commissioner, Congress made it clear that eliminating the hearing backlog had to be our number one priority, and it remains our top priority. We have made incredible progress over the last 5 years. We cut the national average time disability claimants wait for a hearing decision by one-third, from an all-time high of 532 days in August 2008 to 354 days in April 2012. In 2007, some hearing offices had average waits of about 900 days; today the wait time in every hearing office is below 475 days. Our goal is to reach an average processing time of 270 days by the end of next fiscal year.

When we made our commitment to eliminate the backlog in 2013, we focused on reducing the number of pending cases. However, we quickly recognized that pending cases as a measure of

backlogs was a poor measure of performance, particularly in periods of rapid changes in unemployment.

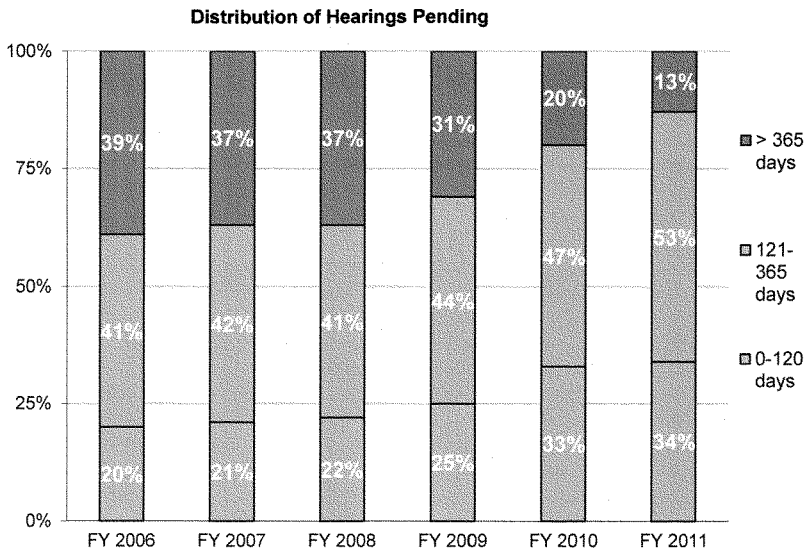
When persons request a hearing, they want to know how long it will take to get a decision. They are not interested in whether other people are waiting with them; rather, they want to know what will happen in their own individual cases. I compare it to a trip to the grocery store. When I go to the store, I do not care how many other people are there with me, or that the number of customers is increasing, unless that volume means that it takes me longer to navigate the store and check out. Like nearly all of us, I do not want to get bumped and jostled; I do not want to stand in line; and I am frustrated when there are not enough cashiers to handle the customers. With grocery stores, I can choose where I get my groceries and decide if I am willing to accept a particular store's customer service. But Americans seeking Social Security benefits have only one place to go. With your help, we have greatly improved service for disability claimants—more efficient and timely decisions.

For claimants, the most important metric is how long they have to wait for a hearing decision; consequently, our primary goal is now "average processing time" or APT, the average number of days it takes to get a hearing decision. Since overreliance on APT can produce perverse incentives, we balance that metric by focusing on "aged" cases and the average age of our pending requests for a hearing.

APT is not a new concept; we have always recognized the importance of APT in measuring the success of backlog reduction. In fact, in 2007, we linked our pending goal to our goal for APT. When we established our target of reducing the number of pending hearings to 466,000, we based it on achieving the APT of 270 days, but we did not foresee the huge increase in filings.

We have also focused on the oldest, and often most complex cases. Five years ago, we had over 63,000 people who waited over 1,000 days for a hearing, and some people waited as long as 1,400 days, which in my view is nothing short of a national scandal. Since 2007, we have decided over 600,000 of the oldest cases. We have done what few organizations like to do; each year we raise the bar by lowering the threshold for aged cases to ensure that we continue to eliminate the oldest cases first. We ended FY 2011 with virtually no cases over 775 days old. This year we are focusing on cases that are 725 days or older, and we have already completed 90 percent of them. In FY 2013 we will focus on cases 700 days or older. These improvements demonstrate that, with the right funding, we deliver.

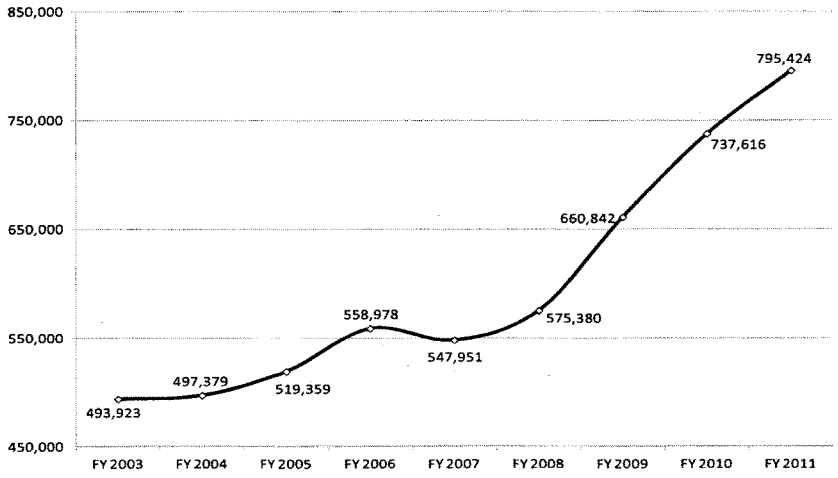
As I have mentioned, we also monitor the average age of pending (the number of days since a person filed an undecided claim) as an indicator of our productivity and efficiency. At the beginning of FY 2007, the average age of pending was 324 days. Today it is 209 days, a 35 percent decrease. As the following chart shows, 39 percent of pending hearing requests were older than one year at the end of FY 2006. We reduced this to 13 percent at the end of FY 2011.



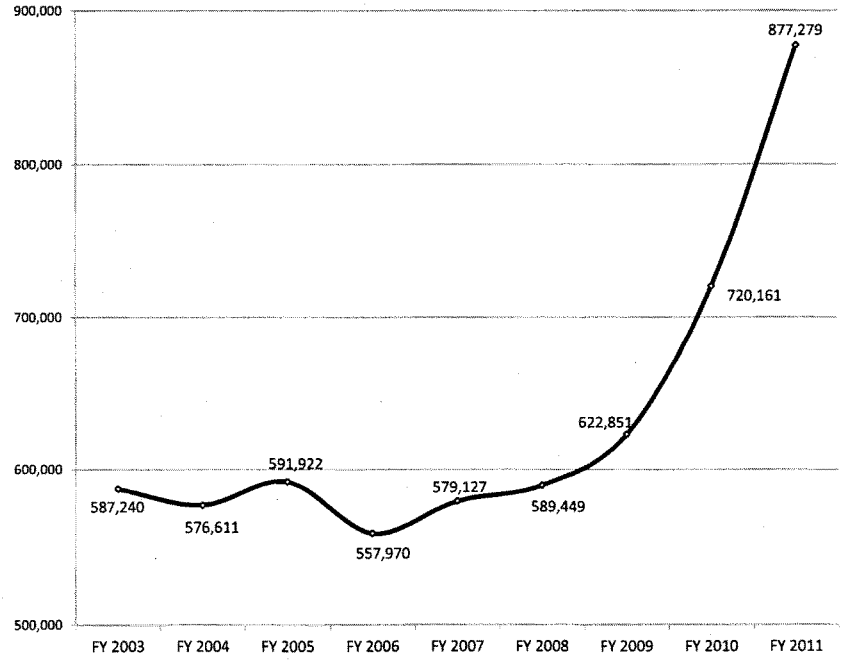
To reduce the hearing backlog, we set an expectation for how many cases our administrative law judges (ALJs) should decide annually — between 500 and 700 cases. When we established that productivity expectation in late 2007, only 47 percent of the ALJs were achieving it. By the end of FY 2011, 77 percent met the expectation, and I thank them for their hard work.

This improvement in productivity has helped us make progress despite the significant increase in requests for hearings. In FY 2011, we received about 877,000 hearing requests, almost 157,000, or about 22 percent, more requests than we received in FY 2010.

Hearing Requests Completed



Hearing Request Receipts



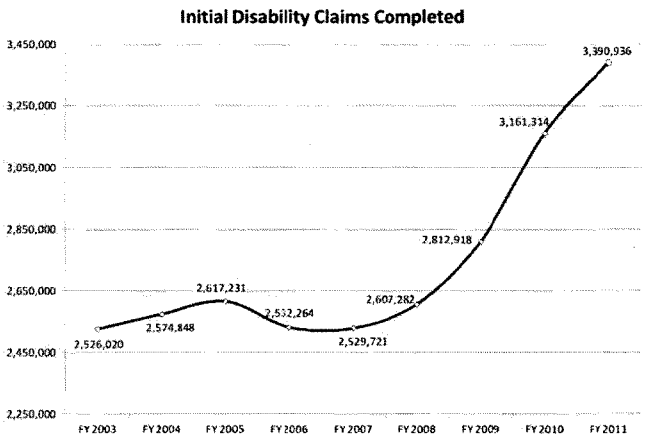
Let me be clear that our ALJs' improved productivity has not resulted in more allowances. Our ALJs are not meeting our productivity goals by "paying down the backlog," as has sometimes been alleged. In fact, our hearing level allowance rate dropped over 4 percentage points this past year.

I do want to acknowledge that progress on backlog reduction has slowed in the last year, and we lost our margin for error when we cancelled eight planned hearing offices for budgetary reasons. We are doing what we can to compensate. We considered our success in holding down the number of initial disability claims pending and the average processing time as we saw a further spike in hearings requests. Accordingly, we decided to temporarily redirect our Federal disability units, which have been helping our State disability determination services (DDS), to instead help screen hearing requests for cases where they can make fully favorable decisions without the need for a hearing before an ALJ. We are hiring additional ALJs and using our reemployed annuitant authority to bring back experienced judges who have recently retired. We are maintaining a high support staff-to-ALJ ratio to ensure cases are ready to hear, and we are allowing the hearing offices to work overtime to try to keep up with surge in hearings. Nevertheless, we need your support and we need a timely and adequate supply of well-qualified judicial candidates from the Office of Personnel Management. We also need our projections for the number of initial claims and hearing requests to be met if we are to achieve our goal of an average processing time of 270 days by the end of next year.

Initial Disability Claims

In addition to reducing the backlog of hearings, we are trying to keep pace with the rising number of new disability claims. Since 2007, initial disability claims completed have increased by about 34 percent. Due to significant increases in employee productivity and policy improvements, we have so far been able to keep pace with this growing workload and do so while maintaining – and even improving – quality.

In FY 2011, we decided over 3,390,000 initial disability claims—a record number and nearly 230,000 more than in FY 2010. The funding we received in FYs 2008-2010 allowed us to hire new employees for the DDSs who make initial disability determinations. These new hires have been critical to our success. We have fully trained these new employees, and they are steadily becoming more proficient.



In addition, we continue to make our disability processes more efficient. We have developed easier and more efficient online services to meet the Baby Boomers' expectations and keep pace with the high number of disability claims.

Our easy-to-use online application, iClaim, has been a huge success. Disability applicants can now file for benefits online at their own pace and on their own schedule. The increase in online claims has also helped us deal with the additional economy-driven claims and reduce our field office waiting times. The percentage of applications filed online continues to increase. In FY 2011, more than one million Social Security Disability Insurance (SSDI) claimants (33 percent) filed online, almost seven times higher than in FY 2007, prior to iClaim. Through April 2012, 37 percent of SSDI claimants filed online.

We continually identify ways to streamline the disability claims process. As of April 21, adults who file online now have the option of electronically signing and submitting their *Authorization to Disclose Information to the Social Security Administration* (Form SSA-827), the authorization form we use to obtain evidence. This improvement allows applicants to complete disability applications in an electronic, streamlined online session, rather than having to print, sign, and mail paper authorization forms to our local offices. Ultimately, we expect this improvement will further reduce processing times for initial decisions.

We have focused other initiatives on quality. For example, we designed the Electronic Claims Analysis Tool (eCAT), a web-based application, to assist State DDS examiners throughout the sequential evaluation process. eCAT helps examiners document, analyze, and adjudicate critical aspects of disability claims consistent with our policy. eCAT uses "intelligent" pathing whereby user-selected options determine the subsequent questions and guidance presented. eCAT's

features, such as quality checks and quick links to relevant references, aid examiners in producing well-reasoned determinations. This documentation is particularly useful for future case review because it enables an independent reviewer to understand the examiner's actions and conclusions throughout the development and adjudication of the claim. We expect every State to fully implement eCAT by September 30, 2012, which is a testament to our partnership with the DDSs.

We continue to make significant progress in developing the Disability Case Processing System (DCPS). DCPS will replace the 54 different COBOL-based systems that support the DDSs with one national system based on state-of-the-art technology. This system will integrate case analysis tools and health information technology (health IT). It will allow us to disseminate policy changes faster, and it will improve consistency among the DDSs. It will save money because each time we need to modify our system, it will be one set of changes instead of 54 separate changes. We expect that the new system will improve processing times and decisional accuracy. We plan to begin testing the initial version of DCPS later this year.

We are also working to incorporate health IT into our disability process. Health IT has the potential to revolutionize our disability determination process. We rely upon doctors, hospitals, and others in the healthcare field to timely provide the medical records that we need; we send more than 15 million requests for medical records annually. This largely paperbound workload is a very time-consuming part of the disability decision process. As the medical community moves toward electronic health records, we are pursuing an electronic system of requesting and receiving medical records. With the consent of our claimants, we will have near instantaneous access to their medical records. Health IT will dramatically improve the speed, accuracy, and efficiency of this process, thus reducing the cost of making a disability decision for both the medical community and the taxpayers. Once health IT becomes standard, our accuracy should improve significantly and we, along with Congress, will want to study changes to the disability process that build on this success.

In addition to paradigm-shifting technology, streamlining and updating our business processes will also help us to decide claims more quickly without disadvantaging the claimant. For example, we recently allowed adjudicators to proceed to step five of the sequential evaluation process when we have insufficient information about a claimant's past relevant work history to make the findings required at step four. In certain cases, if we find that a claimant is able to do other work based on his or her age, education, and residual functional capacity, we could deny the claim without determining whether the claimant is able to perform their specific past relevant work. This change should promote administrative efficiency and help us make more timely disability determinations.

We are also successfully using Compassionate Allowances and Quick Disability Determination initiatives to fast-track disability determinations for over 150,000 disability claimants each year, while maintaining a very high accuracy rate. Currently about 6 percent of initial disability claims qualify for our fast-track processes, and we expect to increase that number as we add new conditions to our Compassionate Allowances program.

Last month, in large part due to our highly productive partnership with the National Institutes of

Health, we expanded our Compassionate Allowances program to include 52 additional conditions, which brings the total number of conditions in the expedited disability process to 165. Since we began our Compassionate Allowances program, we have quickly approved disability benefits for nearly 173,000 people with severe disabilities.

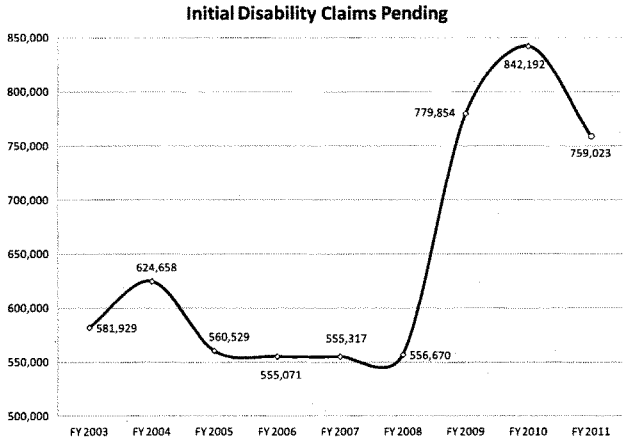
Today, our DDSs make decisions in 10-14 days for people with these conditions, who might have previously waited years for a decision. Approving clearly eligible claimants early in the disability process benefits persons with severe disabilities and, at the same time, helps reduce our backlogs. We issued a new regulation that allows disability examiners to make fully favorable determinations on cases that qualify for our fast-track processes without requiring the examiner to consult with a medical professional. This change allows us to decide these claims even faster.

To make consistent, better-informed decisions on whether disability claimants meet our disability criteria, we have started the difficult process of overhauling our main vocational tool, the Dictionary of Occupational Titles, which the Department of Labor largely stopped updating in the late 1970s. In FY 2009, we convened a panel of experts to guide us in the development of new occupational information. The panel's work and research by agency staff have laid the groundwork for moving the project to the second phase, which involves collecting data on the relevant requirements of jobs in the national economy. We are discussing the best ways to collect the required data with our Federal partners, including the Department of Labor. We anticipate a FY 2013 pilot for data collection, which, if successful, will lead to the larger scale collection of data beginning in FY 2014.

As a result of these and other enhancements, the State DDSs have increased their productivity. At the same time, the DDSs have steadily improved the accuracy of their determinations since FY 2007.

These accomplishments are particularly remarkable considering the unwarranted furloughs of DDS employees in several States. These furloughs do not save the States money as SSA fully funds the DDSs. Since December 2008, DDS furloughs have resulted in over $55 million in delayed benefits. More information on DDS furloughs is available at www.ssa.gov/furloughs. We encourage you and your constituents to visit the site, and we are happy to work with you on this issue.

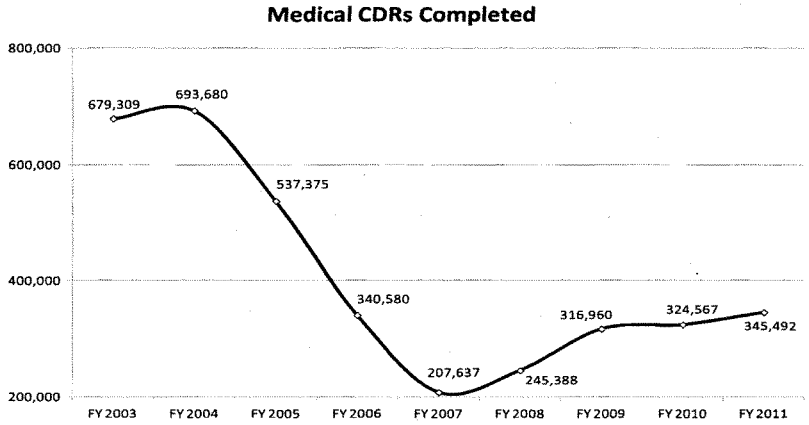
Despite all our productivity gains and policy improvements, and even though we decided a record number of initial disability claims last year, we cannot continue to handle increasing disability claims without adequate funding. By the end of FY 2010, the number of pending initial disability cases rose to 842,192, a significant improvement over our earliest projections, but still a historically high level. By the end of FY 2011, we reduced the pending claims to 759,023.



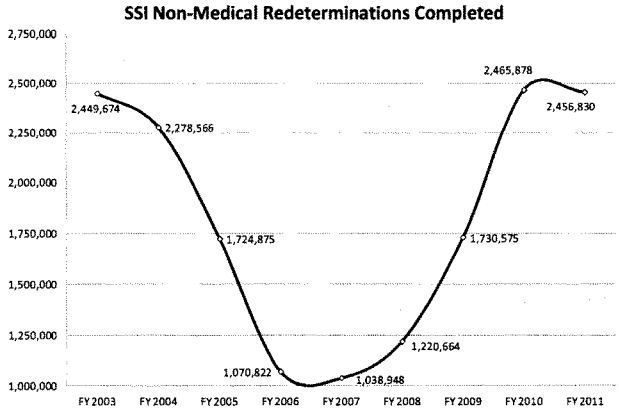
Program Integrity Work

We are committed to protecting program dollars from waste, fraud, and abuse because preserving the public's trust is an integral part of achieving our long-term goal to improve service. We pay nearly $70 billion in benefits each month to over 60 million beneficiaries; we have a duty to pay those benefits accurately and on a timely basis. Notwithstanding the complexity of our program, we have many tools to help us minimize improper payments. Many of these tools, like our medical continuing disability reviews (CDRs), which are periodic medical reevaluations to determine if beneficiaries are still disabled, and SSI redeterminations which are periodic reviews of non-medical factors of SSI eligibility such as income and resources, save billions of program dollars with a small investment of administrative resources.

In each year since 2007, we have increased this cost-saving program integrity work. In FY 2011, we completed over 66 percent more DI and SSI medical CDRs than we did in 2007. For FY 2013, we estimate that every dollar spent on CDRs will yield about $9 in program savings over 10 years. Also, we have significantly increased the number of SSI childhood CDRs that we complete each year. In FY 2012, we expect to complete nearly 140 percent more of these cases than we did in FY 2011.



We also completed 1.4 million more SSI redeterminations in 2011, a 136 percent increase since 2007. The additional redeterminations helped us increase SSI overpayment payment accuracy for the second year in a row, with an estimated savings of about $6 for every dollar spent. Congress has appropriated less money for program integrity work in recent years than the President has requested. Given the substantial and proven return to the trust funds from our program integrity works, it is vital in these tough budget times that Congress supports the President's recommendations for this important work.



We are always looking for smarter ways to handle our work. We are expanding our successful Access to Financial Institutions (AFI) initiative that allows us to receive information about undisclosed bank accounts of SSI recipients and applicants. When AFI is fully implemented, we estimate it could provide up to $900 million in lifetime program savings each year.

Building upon our AFI success, we are exploring the use of commercial databases to help us identify undisclosed non-home real property held by SSI applicants and recipients. This automated approach has the potential of helping us uncover unreported assets and improve the accuracy and integrity of the SSI program.

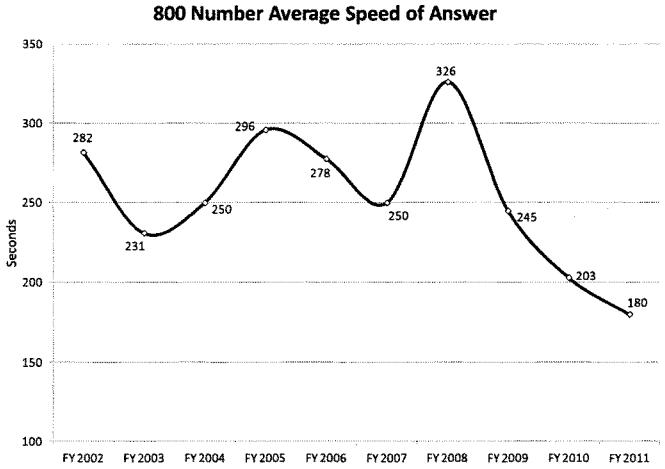
The BCA authorized a level of program integrity funding that would have required that we complete 569,000 medical CDRs in FY 2012--a 65 percent increase over the FY 2011 CDR level. The Administration strongly supports the program integrity cap adjustments authorized by the BCA, which would put Social Security on a ten-year path to eliminate the backlog in program integrity reviews. Unfortunately, our FY 2012 appropriations did not provide the BCA level of funding for program integrity work; therefore, we can only complete 435,000 medical CDRs this year. The President's Budget requests $1 billion for SSA program integrity in FY 2013, which would allow us to complete the Budget Control Act levels of program integrity in FY 2013.

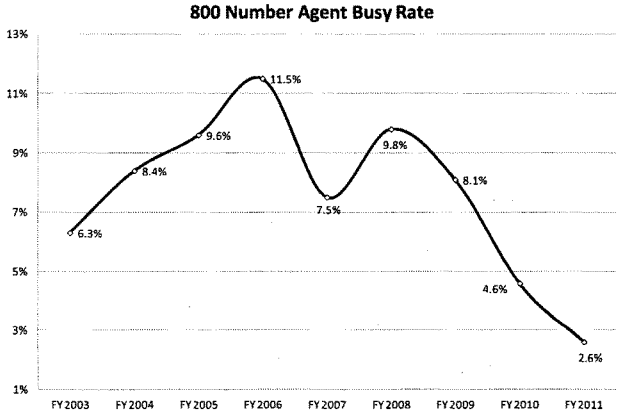
Improving Core Services

While we have focused a lot of attention on the disability process, we have balanced our efforts to improve our other core services as well.

Wait Times in Field Offices and On the Telephone --The sheer volume of work our employees handle is incredible. For instance, in FY 2011, more than 45 million people visited our field offices across the Nation. Despite the high volume of visitors, we reduced wait times in our field offices by more than 9 percent from FY 2010.

We completed more than 62 million transactions over the telephone. Given the popularity and cost-effectiveness of this service channel, we are committed to improving our telephone service. Last year, callers to our 800 Number had the shortest wait time and lowest busy signal rates ever. We reduced the time spent waiting for an agent by 45 percent, from 326 seconds in FY 2008 to 180 seconds in FY 2011. We cut our busy rate by over 70 percent since FY 2008. We attribute much of our improved performance to hiring additional teleservice representatives in FY 2009 and FY 2010, along with several technological advancements to make our 800-number more efficient.





We are replacing our 800 Number telecommunications infrastructure with a new state-of-the-art system. This system will eliminate lengthy navigation menus that frustrate the public and distribute incoming calls across the network so callers can more quickly reach an agent. We know that reaching a busy signal is frustrating for callers, and we are considering how we can use the new system to address this issue. We expect the new system to be fully functional in FY 2013.

We are also replacing the obsolete telephone system in our field offices. About 98 percent of field offices have this new system, and we plan to complete rollout in 2012. The new system has many helpful features, including a dynamic forward-on-busy service. This offers callers who would otherwise get a busy signal the option to transfer to our National 800 Number. With the new system's call management capabilities, we reduced busy rates in field offices. The overall busy rate improved from 34 percent in FY 2010 to 12 percent in FY 2011. So far in FY 2012, the busy rate is 7 percent. However, as field office staffing decreases, the busy rate will increase.

Online Services--I have already mentioned our very successful online application, iClaim. iClaim has not only helped with disability applications, but it has also helped us absorb most of the significant increase in retirement applications we received in the last few years. Through April 2012, about 42 percent of retirement applicants chose to file benefits online. The Internet has allowed us to create a vital service delivery channel that allows members of public to conduct business at their convenience and at their own pace, without the need to visit a field office. The availability of user-friendly online services is vital to good public service and our ability to keep up with the demand for our services. Without our online services, our field offices would be completely overwhelmed. We plan to expand and further improve iClaim and our other online services.

We have recently implemented a new, more secure protocol to authenticate the identity of people who are interested in conducting business with us online through a new platform called "My SSA." People who successfully authenticate will be able to verify their earnings history, receive notices, and request certain routine actions. The first service we implemented using the My SSA platform is the online Social Security Statement.

In FY 2011, we suspended the paper Social Security Statements which cost nearly $70 million each year. Moreover, the traditional paper statement could possibly cost over a billion dollars over the next 10 years. Therefore, we developed a less costly, secure, and easy-to-use online Statement. Since its launch on May 1, more than 150,000 people have used it successfully. This new service provides all of the information paper Statements provide, but it also connects users to other useful information and services to help them plan for retirement. We will email users annual reminders to check their Statement for updated earnings and benefit information.

The American public expects this type of online service. In fact, so far, most online Statement users have voluntarily opted out of receiving paper Statements in the future, which will help us achieve real savings. The $70 million we spend on printing and postage costs for mailed Statements equates to about 750 employees, who could complete 85,000 initial disability claims or conduct 70,000 continuing disability reviews.

For now, we continue to mail Statements on request to people who cannot use the online service. In February 2012, we resumed mailing Statements to workers nearing retirement age (age 60 and older), and later this year, we will begin mailing Statements to workers who turn age 25 to make them aware of our program, services, and the importance of saving.

The public is embracing our online services more rapidly because of the simplicity of design and ease of use. We have the two highest rated electronic services in the Federal government as measured by the American Customer Satisfaction Index (ASCI) – our online claims application (iClaim) and the Retirement Estimator. Furthermore, we have four of the five top-rated and five of the seven top-rated electronic Federal government applications.[1] We are also the only Federal agency to provide many major online services in Spanish.

In fact at a hearing last Wednesday before the House Subcommittee on Social Security, Mr. Larry Freed, President and CEO of ForeSee Results, Inc., commented that six of our nine online services had an ACSI score above 80, which is generally considered the threshold for excellence. He also made the point that three of our online services (iClaim, Retirement Estimator and Help with Medicare Prescription Drug Plan Costs) outperformed or tied Amazon, the highest-scoring e-retail website in history.

Last June, our Office of the Inspector General completed a review of the level of service provided to applicants filing for disability benefits using iClaim. This review, initiated at the request of Congress, found that 91 percent of survey respondents "...found their overall experience filing the iClaim (disability) application online to be excellent, very good, or good."

In addition to providing better service to the public, our online services also save time for our employees, which allows them work on more complicated issues. Our internal studies indicate that the service provided over the Internet is as high in quality as that provided in office or over the phone.

These easy-to-use online tools continue to increase the usage of our online services. Without our move to online services, we would have experienced serious new backlogs and other services failures around the agency.

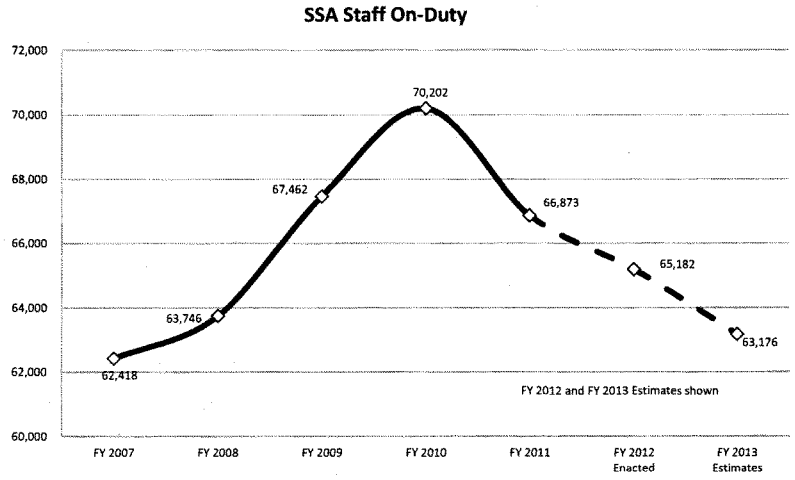
Video Services--Our increased use of video service has efficiently provided relief to many busy and understaffed offices. In addition, through video services, we are able to reach members of the public in remote sites such as American Indian Tribal centers, local community centers, senior centers, hospitals, and homeless shelters.

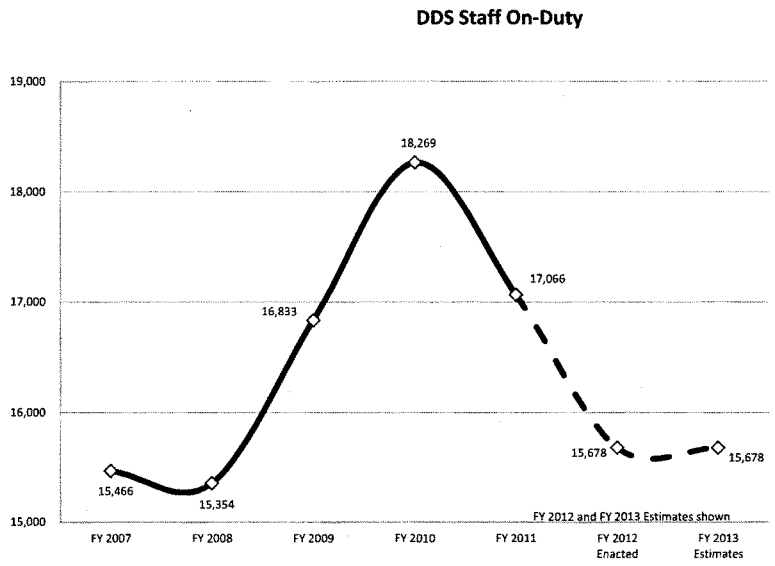
I also want to mention our Representative Video Project (RVP). We initiated this project in 2008 as part of our overall effort to increase the number of video hearings and thus decrease our ALJs' time spent traveling. It allows representatives to purchase their own video conferencing equipment and then conduct hearings from their own offices. Particularly for claimants and representatives in less populated areas, this new service channel provides substantial benefits.

[1] Extra Help for Medicare Drug Coverage is number 4, Internet Disability Report is number 5, and Business Service Online is number 7.

Effects of Recent Budgets

Our FY 2012 funding is about $1 billion less than the President's request. We had to make hard cuts because we are operating with about $400 million less than we had in FY 2010. Based on this funding level, we expect to lose over 2,500-3,000 employees in FY 2012 and over 2,000 more in FY 2013 even with the President's Budget request. These losses are in addition to the more than 4,000 employees we already lost in FY 2011 – a total loss of more than 9,000 Federal and State employees in just three years. With the hiring freeze in FY 2011 and only limited critical hiring in FY 2012, our recent levels of performance will be short-lived unless Congress accepts the President's recommendation for FY 2013. The current reduced level of funding is forcing us to choose which of our important workloads to prioritize and which core workloads we must delay.





Trained employees are our most critical resource. Even as we vigorously pursue automation, the nature of our work remains labor-intensive and thus dependent on having the necessary number of trained staff. The same employees who maintain our stewardship responsibilities must also handle applications for benefits, so without sufficient resources and trained staff we cannot keep up with both service improvements and our important program integrity work.

Regardless of our technology improvements, under current funding we project that our 800-number service will deteriorate significantly because we will not have a sufficient number of people to answer calls. We expect that busy signals will rise from 3 percent in FY 2011 to 6 percent in FY 2012. Our average speed of answer will increase from 180 seconds in FY 2011 to 285 seconds in FY 2012.

Overall service also will deteriorate in our field offices and processing centers because staffing losses do not happen evenly across the country. This year alone, nearly one-third of our field offices have experience more than 10 percent attrition, and 15 offices have lost over 30 percent of their staff. For example, I recently visited our Springfield, Massachusetts office, and the waiting room was filled to capacity. The office has lost 11 employees, 19 percent of its staff, in the last few years. We are doing what we can to assist this office, including implementing a video connection with another office, but few offices have excess capacity to help.

As another example, our Butte, Montana office has lost three of its employees over the last few years, and five of the six remaining employees are eligible for retirement. We cannot maintain

our extensive network of local field offices if we do not have enough employees to staff these offices.

We are unable to complete all of our important post-entitlement work, the work that we do after a person comes onto our rolls. For example, we will have to delay some overpayment actions, representative payee actions, and SSI status changes that can affect payment amounts, such as a change in living arrangement. This year we estimate that we will be unable to get to about 3,800 workyears of these types of actions because we do not have enough staff to complete all of the work we receive. Our inability to handle this work timely could result in improper payments and delay collecting overpayments.

Here is more specific information about our cuts in response to the current funding situation:

- We suspended the some of our lower priority notices (for example, recontact notices and direct deposit).
- We significantly reduced overtime, which we had relied on to offset our inability to hire replacement staff. We closed field offices to the public 30 minutes early each day to allow our employees to complete late day interviews without using overtime, and we are considering earlier closures next year due to fewer staff and no overtime.
- Our field and hearing office employees stopped visiting remote service sites to save travel time and costs.
- We decided not to open eight needed new hearings offices and a new teleservice center last year.
- In FY 2011, we also suspended the paper Social Security Statements because they cost nearly $70 million each year.

We must also consolidate our field offices, which is always controversial but unavoidable given reductions below the President's recommended appropriation. Although we appreciate the interest in having one of our offices in every community, we have to react to fiscal realities that mean we cannot continue doing business as we always have. Consolidation saves a significant amount of money on rent and overhead costs. We estimate that each office consolidation save us about $1.2 million over 5 years. In FY 2011, we consolidated 11 offices, and in FY 2012 to date we have consolidated 12 offices and have plans to consolidate 11 more offices. Let me assure you that we do not make these decisions lightly – we analyze a number of factors to ensure that the service we deliver meets the needs of the service area. Among the factors we consider are the proximity of other offices, the service area population, employee attrition and lease timeframes.

The recent budget cuts affect our resources for IT investments. As a result of earlier funding, we were able to add protection for our critical IT infrastructure, which supports all of our programs. Consequently, we now have a fully functioning second computer center that serves as a backup and complement to our National Computer Center. Further, last month we finally had the groundbreaking ceremony for the state-of-the-art replacement for our fraying National Computer Center, which will be built for about $75 million less than the original estimated cost.

In FY 2001, facing severe budgetary constraints and recognizing the important role technology investments have in our service delivery, Congress included in that year's appropriations bill a provision that made funds that were not obligated at the end of the FY available in future years for information technology initiatives. Congress has continued to provide this authority in every succeeding appropriations act. In the FY 2011 budget, however, Congress rescinded $275 million from our IT no-year funding.

We have put these funds to good use. This authority has allowed us to make technology improvements that help our employees work more efficiently. Our IT investments have helped us achieve an average of average annual employee productivity increases about 4 percent. The ability to use prior year resources has helped us fund important projects such as making our disability process fully electronic, developing more robust and user-friendly online services, and opening our second data center. By reducing our IT carry-over funds in FY 2011, our agency was unable to invest in new IT projects which could have improved productivity and accuracy.

FY 2013 Budget Request

For FY 2013, we are requesting $11.76 billion for our administrative expenses, a modest increase from FY 2012. Our FY 2013 budget request is lean. We have already curbed lower priority activities so that we can continue to achieve two of our most important goals – eliminating the hearings backlog and focusing on program integrity work. Full funding of the FY 2013 President's budget also includes funding to resume the mailing of Social Security Statements to 158 million eligible workers. While we will achieve goals associated with these priorities, we simply cannot do all of the other work we are required to do.

I urge Congress to appropriate this level of funding because we have proven that we deliver. Through the hard work of our employees and technological advancements, we have increased employee productivity by an average of about 4 percent in each of the last 5 years, a remarkable achievement that very few organizations—public or private—can match.

To improve program integrity and stewardship, the President's FY 2013 budget includes three legislative proposals that have the potential to reduce program overpayments by testing programmatic simplification, by giving us access to important State, local government, and private insurer benefit information, and by getting more timely information about wages.

The first proposal is the Work Incentives Simplification Pilot (WISP). WISP could address a significant disincentive to work under the current disability insurance rules: the fear of losing benefits due to work activity. The current set of work incentive policies and post-entitlement procedures are very complex and have become very difficult for the public to understand and for us to effectively administer. The goal of WISP is to conduct a test of simplified program work rules, subject to rigorous evaluation protocols, that may encourage beneficiaries to work and reduce our administrative costs.

The second proposal would require State and local governments and private insurers that administer worker's compensation (WC) and public disability benefit (PDB) plans to provide us with information on WC and PDB payments. By requiring plan administrators to provide

payment information to us promptly, this proposal would improve the integrity of the WC and PDB reporting process, improve the accuracy of SSDI and SSI payments, and lessen our reliance on the beneficiary to report this information in a timely manner.

The third proposal would require employers to report wages quarterly. Increasing the timeliness of wage reporting would provide us more current information on our beneficiaries' work activity, which could help to minimize the amount of overpayments. Reverting to more frequent wage reporting would enhance program integrity not only for Social Security but also in a variety of other programs. This proposal is an important action you could take to resolve inaccurate payments.

Conclusion

Thank you for this opportunity to explain what wonderful work the men and women of the Social Security Administration are doing under enormous stress, and why we need your support to continue to serve the American people in the way that you and I expect.

I am proud of the hard-earned progress we have made over the past five years. We fully recognize that we all must tighten our belts, and therefore have examined which services, though important, we must discontinue. I want to be candid with you that we will continue cut services as funding requires, even though I know these decisions are unpopular.

The work we receive is not optional. At some point, we will have to handle every claim that comes to us, every change of address, every direct deposit change, every workers' compensation change, every request for new or replacement Social Security cards. The longer it takes us to get to this work, the more it costs to do. Funding us to keep up with the work is ultimately cheaper than delaying it. It is also the moral thing to do for the American citizens who depend on our services.

No matter what Congress decides, our employees will continue to do their best to serve the public with a smile, even as that public misdirects its frustration at our frontline employees. Our employees will keep thinking of new ideas like AFI to help us better serve the taxpayer. We will also keep improving online services that are necessary to handle our ever-increasing work.

I look forward to a constructive dialogue with you regarding how we can provide the best possible service and stewardship is this difficult fiscal climate.

U.S. Committee on Finance, Hearing on "The Social Security Administration: Is it Meeting its Responsibilities to Save Taxpayer Dollars and Serve the Public?"

Questions for the Record
Submitted by Senator Orrin Hatch

1. **There have been several recent press reports which have raised concerns about Social Security administrative law judges (ALJs) with very high benefit approval rates when claims that have been denied at the agency level are appealed to those ALJs. In fact, Dr. Coburn and I wrote a letter about this issue to the SSA Inspector General last year.**

   Commissioner Astrue, could you describe and assess the use and effectiveness of management controls available to you regarding administrative law judges' adherence to Social Security Administration policies and procedures, along with your view of whether there are any statutory limitations that make it difficult to ensure ALJ adherence to those policies and procedures?

   Could you also provide your assessment of the effectiveness of the Social Security Administration's quality review system for ALJ decisions and whether there is any scope for improvement, either within the SSA or through legislative changes?

   One of Congress' goals in passing the Administrative Procedure Act (APA) was to protect the due process rights of the public by ensuring that impartial adjudicators conduct agency hearings. We respect that goal; however, it limits our authority over ALJs, and Federal law precludes us from using many of the traditional management tools that are applicable to the vast majority of Federal employees. Specifically, the Office of Personnel Management sets ALJs' salaries independent of agency recommendations or ratings. ALJs are exempt from performance appraisals, and they cannot receive monetary awards or periodic step increases based on performance.

   In addition, the statute restricts our authority to discipline ALJs. We may take certain measures, such as counseling or issuing a reprimand, to address ALJ underperformance or misconduct. However, we cannot take stronger measures against an ALJ, such as removal or suspension, reduction in grade or pay, or furlough for 30 days or less, unless the Merit Systems Protection Board finds that good cause exists.

   Although both the courts and the Department of Justice's Office of Legal Counsel have opined that ALJs are subject to the agency on matters of law and policy, and we emphasize that point when we train our new ALJs, the APA does not expressly state that ALJs must comply with the statute, regulations, or subregulatory policies and interpretations of law and policy articulated by their employing agencies, nor does it expressly provide that agencies have the right to discipline ALJs who fail to follow the law or agency policy when they make decisions. Congress' exemption of ALJs from performance evaluations complicates our ability to discipline ALJs who fail to follow our rules and subregulatory policies. Compliance with the law and agency policy is fundamental to ensure a fully fair and effective administrative appeals process.

Our quality review system is a vital part of the management controls we use to ensure that ALJs comply with the law and agency policy and that we have a fair and effective administrative appeals process. In structuring that quality review system, however, we have been mindful of the APA and the ALJs' qualified decisional independence. Our experience with prior quality review systems has taught us that we need to be careful so that neither our adjudicators nor the courts view our quality review system as a means to coerce ALJs into lowering or increasing their allowance rates. We can use our quality review system to evaluate if ALJs correctly apply the statute, regulations, and our interpretations of the statute and regulations when they adjudicate cases. For these reasons, our regulations provide that we may use random and selective sampling techniques to identify cases for Appeals Council review that involve any type of action (i.e., fully or partially favorable decisions, unfavorable decisions, or dismissals) and any type of benefits (i.e., benefits based on disability and benefits not based on disability). We use selective sampling to identify cases that exhibit problematic issues or fact patterns that increase the likelihood of error. However, our regulations also provide that neither our random sampling procedures nor our selective sampling procedures will identify cases based on the identity of the decision maker or the identity of the office issuing the decision.

To further our commitment to an effective quality review system, we created the Division of Quality Review (DQR) in the Office of Disability Adjudication and Review's Office of Appellate Operations in 2010. This organization reviews ALJ decisions to help us identify training needs to improve the accuracy of our decisions. DQR reviews on a pre-effectuation basis a minimum of 3,500 hearing decisions a year, which provides a statistically valid sample.

DQR has also been quite successful in implementing focused post-effectuation reviews of decisions. DQR conducts these focused reviews after the 60-day period in which a claimant has the right to appeal the ALJ decision; therefore, these focused reviews do not result in a change to the decision. However, they help us develop training programs, materials, tools, and software to support ALJs and hearing offices. These reviews focus on particular issues identified through management information, findings from other reviews, and internal and external referrals received from various sources regarding ALJ non-compliance with our regulations and policies.

These steps, along with more careful hiring and training, have substantially reduced the number of "outlier" ALJs. In fiscal year (FY) 2007, 19.6 percent of the ALJ's allowed 85 percent or more of their cases; that figure so far for FY 2012 is 5.1 percent. During those timeframes, about 1 percent of ALJs allowed 20 percent or less of their cases.

2. **Certain individuals and entities are excluded from participation in Medicare and State Health Care Programs under some anti-fraud provisions of the Social Security Act's Section 1128 if, for example, they have committed fraud or have had their practitioner's license revoked or suspended. However, as I understand it, those provisions apply only to a particular definition of "federal health care programs," and Social Security's DI and SSI programs are not considered to be federal health care programs under the Social Security Act.**

   Commissioner Astrue, could you tell me what safeguards SSA has in place to ensure that a medical consultant for SSA who participates in the process of making a disability determination has not been previously excluded from participation in federal health care programs as defined in the Social Security Act?

   Prior to hiring medical and psychiatric consultants, we review the Department of Health and Human Services, Office of the Inspector General's List of Excluded Individuals and Entities to verify credentials and licensure status and to identify any sanctions against the consultants. We continue to verify this information each year for our medical and psychiatric consultants. If they are sanctioned, we do not hire or contract with them.

3. **As I understand it, the Debt Collection Improvement Act of 1996 established policies to move non-tax federal payment to electronic means. The Treasury department has generally moved to implement requirements for receipt of electronic payments and is supposed to ensure that payment recipients receive funds at a reasonable cost and with consumer protections by encouraging direct deposit. Treasury has recently proposed a rule which says that new recipients of federal payments as of May 1, 2011 and current recipients as of March 1, 2013 would be required to receive payments either by direct deposit or by use of a Direct Express debit card.**

   Commissioner Astrue, could you explain requirements for electronic receipt of benefits that currently apply or will apply to beneficiaries of the Social Security system?

   The Department of the Treasury's (Treasury) regulation (31 CFR Part 208) requires all new recipients of Federal benefit payments to receive their payments electronically effective May 1, 2011. In addition, current beneficiaries who receive their payments by check must change to electronic payment as of March 1, 2013. These provisions apply to both Social Security and Supplemental Security Income beneficiaries. Treasury may waive this requirement in certain cases.

   Could you explain any exemptions as well as processes in place for allowing benefit recipients to apply for an exemption?

   Treasury will automatically grant a waiver to beneficiaries receiving payments by check who are over age 90. Treasury will also exempt individuals whose Direct Express card has been suspended or cancelled.

Treasury may grant a waiver when a beneficiary has requested one based on his or her inability to manage an account at a financial institution or a Direct Express card account due to a mental impairment or because he or she lives in a remote geographic area that does not have the infrastructure necessary to handle electronic financial transactions.

We defer to Treasury for specific information regarding the waiver process.

Could you explain whether recipients of benefits from the Social Security system will be subjected to transactions fees upon use of any electronic payment media used or to be used by the Social Security system in making payments?

There is no sign-up fee and no monthly account fee to use Treasury's Direct Express card. Many other services are also provided free of charge.

While most services are free, Direct Express will charge customers a fee for some services. Please see this link for more details: http://www.usdirectexpress.com/edcfdtclient/docs/faq.html#17.

Could you explain whether it is your assessment that some benefit recipients may find it confusing or difficult to use electronic value storage media within which they may be receiving or may be required to receive benefits from the Social Security system?

While we defer to Treasury with respect to information about specific efforts to mitigate any confusion related to mandatory electronic payment, we actively support Treasury's efforts to educate the public about the safety, ease, and convenience of electronic payments. We believe that our joint communication efforts will go a long way towards mitigating any confusion related to the new rule.

Treasury provides information about electronic payments on its website: http://godirect.org. In addition, we have a page on our website that addresses issues related to mandatory electronic payment: http://www.socialsecurity.gov/deposit/.

Could you explain what will happen on March 1, 2013 if a deadline arrives requiring electronic payment receipt for benefit recipients who currently receive paper checks but have not signed up for either direct deposit or a Direct Express debit card? Would those beneficiaries be sent a debit card anyway and, if so, how can you ensure that they will be able to access their benefits?

We support Treasury's goal to avoid interruption to benefit payments. We defer to Treasury with respect to their plans for ensuring that payment continues without interruption.

Response to a Question From Senator Hatch Asked During the Hearing

Question: Do you agree that the sometimes difficult-to-diagnose conditions related to back pain and mental illness account for some of the most rapid expansion of the DI beneficiary population?

Answer: Back disorders make up about 50 percent of all musculoskeletal impairments in initial determinations each year. The number of determinations with a primary impairment of back disorder has increased over the past 5 years.

The statistics for initial disability determination services adult determinations are as follows:

Fiscal Year	Total Initial Determinations for Adults (Allowances and Denials)	Initial Adult Determinations with a Primary Allegation of Back Disorder (Allowances and Denials)	Percentage of Initial Adult Determinations with Primary Allegation of Back Disorder	Allowances with Primary Impairment of Back Disorder	Percentage of Back Disorder Allowances
2007	2,083,950	301,418	14.5	62,613	20.8
2008	2,146,579	306,825	14.3	68,992	22.5
2009	2,277,587	331,208	14.5	82,663	25.0
2010	2,559,222	382,531	14.9	97,512	25.5
2011	2,723,972	430,274	15.8	105,993	24.6

Source: SSA-831 Fiscal Year Files.

Questions for the Record
Submitted by Senator Tom A. Coburn, M.D

DEVELOPING EVIDENCE IN DISABILITY CASES:

1. **During the hearing, you stated there was a misassumption in recent reporting that SSA has "a requirement for all relevant medical evidence to be provided to the judge."**

   a. **SSA's Hearings, Appeals and Litigation Law Manual (HALLEX) I-2-6-56 imposes on ALJs a duty to fully and fairly develop the record in disability cases. At what point does SSA consider a record to be "fully and fairly developed?"**

      Our regulations make proving disability the claimant's responsibility. However, our regulations also require us to make "every reasonable effort" to help claimants get medical reports, generally for at least the 12 months before the month in which the claimant files the application. These regulations define "every reasonable effort" as making an initial request for evidence from the claimant's medical source and making one follow-up request if necessary. These regulations also define "complete medical history" as "the records of your medical source(s) covering at least the 12 months preceding the month in which you file your application. If you say that your disability began less than 12 months before you filed your application, we will develop your complete medical history beginning with the month you say your disability began unless we have reason to believe that your disability began earlier."

   b. **Is an individual's record only fully and fairly developed if information *supports* a claim for disability payments?**

      No. The process to develop an individual's record is explained above. Once we complete this process, we consider the claimant's record developed.

   c. **According to 42 U.S.C. §1320a-7a and 42 U.S.C. §408, making false statements and misrepresentations or omissions to receive disability benefits are prohibited by the Social Security Act and subject to civil and criminal penalties. Does the Agency not consider that these specific statutes require claimants and their representatives to provide *all* information to the agency with regard to a disability claim, including information that would counter a claim for disability benefits? Please explain and provide any supporting internal memoranda or communications.**

42 U.S.C. § 1320a-7a authorizes the Secretary of Health and Human Services to impose civil monetary penalties in the context of Federal health care programs (e.g., Medicare and Medicaid). 42 U.S.C. § 1320a-8 authorizes the Commissioner of Social Security, with the Attorney General's authorization, to impose civil monetary penalties and assessments for certain conduct in the programs that we administer.

Congress gave the agency this authority when it enacted the Social Security Protection Act (SSPA) of 2004, Pub. L. No. 108-203, § 201, 118 Stat. 493, 507. The legislative history of the SSPA shows that Congress broadened 42 U.S.C. § 1320a-8 to authorize a civil monetary penalty and assessment against a person who should have notified the agency of a changed circumstance that affected eligibility or benefit amount but did not.

Our regulations require a claimant to "bring to our attention everything that shows that you are blind or disabled" and to submit evidence, without redaction, showing how his or her impairment(s) affects his or her functioning. 20 C.F.R. §§ 404.1512(a) and (c) and 416.912(a) and (c). If we have found that a claimant is disabled, our regulations also require the claimant to notify us about events that might change his or her disability status. For example, a claimant must notify us if his or her condition improves, if he or she returns to work, or increases the amount of work, or if the claimant's earnings increase. 20 C.F.R. §§ 404.1588(a) and 416.988.

Prior commissioners proposed and then withdrew regulations that would require that all evidence be provided. These proposals were not finalized. Requiring evidence without redaction is the applicable standard under current regulations. We obtained outside expert assistance from the Administrative Conference of the United States (ACUS) to review the issues that Congress and the public raised in response to past regulatory initiatives that would have expanded the duties of disclosure for representatives and claimants. You may access ACUS' full report at http://www.acus.gov/report/duty-candor-and-submission-all-evidence-final-report . We are exploring ACUS' recommendations. We are also mindful that health information technology (IT) may help us develop a more complete medical record.

d. If an applicant or claim representative purposely failed to submit information that proved a claimant was not entitled to disability benefits, does the Agency not believe they are in violation of the aforementioned sections of U.S. Code?

Under section 42 U.S.C. §1320a-8(a)(1), if the claimant or representative, acting with the requisite intent, made a false or misleading statement or representation of a material fact, either outright or through omission, he or she would be subject to a civil monetary penalty. The claimant or representative would also be subject to

a civil monetary penalty if he or she, acting with the requisite intent, withheld disclosure of a material fact and such withholding was misleading.
If the fact withheld is not dispositive of the issue, in order to impose a civil monetary penalty, we would have to show that the fact is "material" to determining the claimant's right to disability benefits or payments. A "material fact" is one that the agency may consider in determining whether a claimant is entitled to disability benefits or payments.[1]

A claimant or representative may also be subject to a criminal penalty under 42 U.S.C. § 408(a)(3) or 1383a(a)(2) if, acting with the requisite intent, he or she made a false statement or representation of a material fact for use in determining eligibility to payment.

Under 42 U.S.C. § 408(a)(4) or 1383a(a)(3), a claimant or representative would be subject to criminal penalties only if the information withheld relates to the occurrence of an event that affects the claimant's initial or continued right to benefits, and the claimant was aware that he or she was deceiving the government and that the government would pay out more because of the deception.[2] For example, a claimant seeking child's insurance benefits would be subject to a criminal penalty under 42 U.S.C. § 408(a)(4) if he or she married during the pendency of the claim and failed to disclose that event with the intent to fraudulently obtain benefits.

e. **I understand that a disability claimants' representative can access their claimants' electronic case files with a password via a web-based application supported by the Agency. At the same time, I understand that the Administrative Law Judge ("ALJ") the claimant is appearing before cannot access the same electronic case file via the web-based program. Instead, the ALJ must personally download the electronic file, should the ALJ wish to review the file outside of their office. Please explain why the agency has decided not to give ALJs access to the same information (with the use of a password) the agency allows a claimant's representative to access.**

Our Appointed Representative Services (ARS) is a secure website that allows representatives to view and download a snapshot of their claimants' Certified Electronic Folders (CEF). There are significant challenges to granting ALJs access to ARS:

- Timeliness of Accessing Files: To minimize system performance issues, downloads via ARS are not real-time and take up to 24 hours. Once available, users must log on to the secure site to download the files to their computers.

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[1] 42 U.S.C. §1320a-8(a) (2)
[2] *United States v. Cormier*, 639 F.2d 1177, 1181 (5th Cir. 1981); see also, *United States v. Phythian*, 529 F.3d 807 (8th Cir. 2008) (noting that fraudulent intent can be inferred from the person's conduct).

This two-step process takes significantly longer than the current process where ALJs download real time files directly to laptops using our Intranet.

- Limited ALJ Access to Working Documents in Files: ARS provides view-only access, and ALJs require full access to case files. In addition, the ARS CEF does not contain everything that an ALJ would need to review a case (e.g., ALJ notes, temporary files, etc.).

Please also explain why the Agency requires the ALJ, some of the highest paid agency employees, to personally spend time downloading these files onto their laptops for flexi-place work. If the Agency asserts privacy concerns, please explain why downloading information onto a laptop is more secure than accessing a secure website. Please provide any documentation of any analysis performed by the Agency regarding this decision.

As we mentioned above, ARS would not allow ALJs full access to real time claimant information; therefore, it is not useful to ALJs for flexi-place work. Downloading electronic files from the network to laptops remains the most secure method of protecting claimants' personally identifiable information (PII) during flexi-place work because these laptops are encrypted.

2. **During the hearing, you said you referred concerns raised in December 22, 2011 reporting by the *Wall Street Journal*[1] regarding the disability firm Binder and Binder to the Office of Inspector General ("OIG").**

   a. **On what date did you ask the OIG to look into matters raised by this reporting?**

   We referred this matter to OIG for review and investigation on four separate occasions:

   - On January 4, 2012, General Counsel David Black contacted OIG regarding an anonymous caller who contacted the Office of the Commissioner, claiming to have background on "questionable practices" at Binder and Binder.
   - On January 10, 2012, an employee in our Office of Legislation and Congressional Affairs (OLCA) referred an email to OIG from an individual who alleged unethical work conditions and practices during employment in one of Binder and Binder's New York locations.
   - We copied the IG on our letter dated March 1, 2012 (enclosed) in response to a letter from Senator Coburn dated January 24, 2012 regarding the allegations against Binder and Binder.
   - We copied the IG again on our letter dated April 10, 2012 (enclosed) in response to a February 7, 2012 letter from Representative Sam Johnson,

[1] **Damian Paletta and Dionne Searcy, "Two Lawyers Strike Gold in U.S. Disability System," *Wall Street Journal*, December 22, 2011.**

Chairman of the Social Security Subcommittee, House Ways and Means Committee, regarding his concerns about the Binder and Binder allegations.

In addition to these referrals, OLCA met with OIG on April 2, 2012 to discuss the Binder and Binder allegations and the actions that OIG had taken to date.

b. What specifically did you ask the IG to review?

- In the two email referrals on January 4 and January 10, we asked OIG to review the allegations and take any action it deemed appropriate.
- In the March 1 and April 10 letters to Senator Coburn and Representative Johnson, respectively, we did not make a specific request to OIG. Rather, we copied the IG to ensure that his office was fully aware of the congressional concerns and would be able to take any appropriate action.
- In the April 2 meeting between OIG and OLCA, we discussed the possibility of referring Representative Johnson's letter to OIG for a response. OIG responded that it had received allegations concerning Binder and Binder and would keep the Social Security Subcommittee apprised of the actions it was taking. We included similar language in our response to Representative Johnson.

c. Please provide the Committee with a copy of such correspondence.

Please see the enclosed letters to Senator Coburn and to Representative Johnson.

d. As you are aware, in response to a letter I sent you on this matter, you cc'ed the Inspector General on your most recent correspondence dated March 1, 2012. In the letter, you suggested that I suspect the Binder and Binder law firm to have committed systematic fraud and that the IG's office "may have tools more helpful." When you said during the hearing that you referred concerns brought to light in media reports, did you take action other than cc-ing the IG on our correspondence? I have asked that our correspondence be entered into the hearing record.

We asked OIG to look into allegations of fraud and other misconduct by Binder and Binder.

e. During your testimony before the Committee, you described the reporting by the *Wall Street Journal* with regard to Binder and Binder as "thin." Please explain what you meant by this comment, including, but not limited to, citing the specific allegations made by the article you were referring to as "thin." Please also provide any documentation generated by the agency with regard to this analysis of the *Wall Street Journal* article.

The *Wall Street Journal* article alleges that Binder and Binder withheld evidence that it believed would be damaging to its clients. However, the article does not provide enough facts to determine whether this allegation is true or whether Binder and Binder violated our rules of conduct. Before we can determine whether a representative has violated our regulations, we must give the representative notice and an opportunity for a hearing before an ALJ. 42 U.S.C. §§ 406(a)(1), 1383(d)(2); 20 C.F.R. §§ 404.1765, 416.1565. As noted above, we referred external allegations of misconduct to the IG.

3. **Under what statutory authority did you rely on when banning ALJs from using any and all tools at their disposal (such as social media) to further develop the record to ensure the evidence before them is accurate, especially during a hearing at which the claimant may be examined under oath? Please specifically address the authority for preventing ALJs from reviewing information found on social media websites, such as Facebook, MySpace, Twitter, Tumblr, blogs, etc.**

   We developed the policy regarding the adjudicator's consideration of information from social media websites such as Facebook pursuant to the authority granted to the Commissioner under 42 U.S.C. § 405(a). We established this policy for several reasons. The Privacy Act requires us to protect the PII in our care. If employees were to enter PII into an Internet search engine or social media website, it could compromise security and confidentiality and violate our obligations under the Privacy Act.

   We also restrict our employees' access to the Internet in order to maintain the security of our computer network. Social media sites often carry damaging malware and viruses that could potentially infect our internal systems. We therefore block access to these sites for most employees.

4. **Tools to assist judges in making credibility determinations at disability hearings are extremely important. Please explain your recent mandate that DDS not pay for certain psychological testing, such as the psychological MMPI (Minnesota Multi-Phasic Personality Inventory) and the TOMM (Test of Memory Malingering). Please also provide the statutory authority for mandate. Please provide any agency memoranda or analysis supporting the decision to end payment for this type of testing.**

   We no longer purchase symptom validity tests such as the MMPI because there is no test that, when passed or failed, conclusively establishes a claimant's credibility. While a definitive statement regarding credibility would make an adjudicator's job easier, the MMPI cannot provide it; therefore, using it may cause the adjudicator to ignore the totality of evidence, as required, and issue an incorrect decision.

   Additionally, tests such as the MMPI have weaknesses in their psychometric properties that limit their consistent applicability in our program. For example, the MMPI is generally inappropriate for use with persons who have English as a second language, who cannot read at the eighth-grade level, or who have a low IQ.

While we no longer purchase validity tests, claimants or their representatives continue to submit them in support of a claim. We plan to seek external expertise to evaluate our policy and provide additional guidance to help our adjudicators determine how to best handle these tests if they are in the medical record.

5. **For the past five years, please provide the annual amount the agency paid for these types of psychological tests and the number of claimants for which they were requested.**

   We do not track the incidence of requests for symptom validity tests or the costs specifically associated with their purchase.

INFORMATION TECHNOLOGY:

1. **According to an April 2012 Government Accountability Office ("GAO") Report[2], since 2001, SSA has reportedly spent over $11 billion on information technology, including at least $5 billion was spent in upgrading its systems. Please explain what the American people received for their money, including a detailed breakdown of the use of these funds and the costs associated by project.**

   The American people have received meaningful and cost-effective services from our IT investments. Each year, we make publically available our IT exhibit documents. Our fiscal year (FY) 2012 IT investment exhibits can be accessed at http://www.itdashboard.gov/portfolios/agency=016.

   Nearly all of our SSA and disability determination services (DDS) employees rely completely on automation to do their work. Absent automation investments, Americans would have to come to our offices to receive many of the services we now offer—securely—online. Our employees would have to find, wait for, and then access paper records stored in offsite locations instead of having information at their fingertips. Our judges and claimants would have to travel for hearings instead of using video.

   Our investments have supported the tools to help us counter security threats that have the potential to jeopardize personal information and to have a secondary data center that ensures our ability to provide service in a crisis. Our automation investments have kept us highly functioning as demand has increased. In fact, we have increased our productivity by an average of over 4 percent a year for each of the last five years[3].

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[2] **U.S. Government Accountability Office, "SOCIAL SECURITY ADMINISTRATION: Improved Planning and Performance Measures Are Needed to Help Ensure Successful Technology Modernization," GAO-12-495, April 2012, http://gao.gov/assets/600/590492.pdf.**

[3] Source is the Agency's Cost Analysis System. The percent change in productivity is measured by comparing the total number of workyears that would have been expended to process current year level workloads at the prior year's rates of production to the actual workyear totals expended. The average annual productivity is calculated using a five-year average.

2. **GAO found problematic SSA's continued reliance on programs written in COBOL ("Common Business Oriented Language"), a program introduced in the 1960s which is generally considered obsolete, costly, and difficult to maintain.**

   a. **What percentage (and number) of SSA programs use COBOL?**

      Currently, our top programming language is JAVA. Less than 40 percent (108,283) of our production programs rely on COBOL.

   b. **What is SSA's plan for transitioning all programs from COBOL to a more modern programming language?**

      We are making excellent progress in evolving our computer code, once dominated by older programming languages like COBOL and ALC, to reflect a better balance of more modern code. Although we will continue to rely in part on older code where it makes sense to do so, we currently have more production computer programs written in JAVA language rather than COBOL. We will continue to take advantage of appropriate new technologies that can help us operate more efficiently and effectively.

   c. **At which date will this conversion be completed?**

      We continue to convert COBOL to more modern programming languages as quickly as we can where it make business sense to do so. It would be costly and challenging to convert all COBOL programs to another programming language because for some functions, it is still the most efficient and appropriate programming language. The use of COBOL is not unique to our agency: many large banks and insurance companies still use COBOL extensively.

   d. **To date, how much of the $11 billion has SSA spent upgrading its systems since 2001 on converting programs written in COBOL (please list the specific programs and expenditures, from 2001 to present)?**

      A significant amount of our software development spending over the last decade has been for programs written in JAVA. For example, the large majority of our public-use Internet applications have been developed in JAVA.

   e. **Given the obsolete nature of COBOL, does SSA have difficulty attracting employees who know COBOL?**

      No.

f. How much money does SSA annually spend specifically teaching new and existing employees COBOL?

We did not spend anything on COBOL training in FY 2012. From FY 2007 through FY 2011, the average annual cost was approximately $120,000, which includes refresher training.

g. Does SSA outsource any of the COBAL programming language work? If so, please explain.

The skill diversity of the contractor support we buy is wide and shifts annually based on our needs. While we do buy some COBOL skills from our vendors, our task managers are far more likely to procure contractor support in other areas.

3. GAO found SSA continues to use its Master Data Access Method database system, which does not support industry standards for automatic data access, stating that "[c]onversion to a more modern database has not been completed for one of its largest files–the Master Beneficiary Record file."

a. When will conversion to a more modern database be completed for the Master Beneficiary Record ("MBR")?

In 2015, we will complete conversion of the MBR, our fifth and final Master File conversion, to a modern database. We must carefully convert the MBR database without disrupting core daily business processing.

b. When did efforts for such a conversion of the MBR begin, how much has been expended (by year, from 2001 to the present), and on which date will this conversion be completed?

The first step of a major systems change is planning and analysis, which we began prior to beginning the overall Master File database conversion effort in 2005. We finished conversion of the Alphident and Numident Master Files in 2007, the Earnings Record Master File in 2009, and the Supplemental Security Income (SSI) Master File in 2012. We are now focused on the MBR conversion.

Costs for the broader Master File conversion effort include staff work years and dollars for expert vendor consultant support.

FY	Work Years	Dollars
2001	3.55	$ 0
2002	2.41	$ 0
2003	1.12	$ 0
2004	1.47	$ 0
2005	4.18	$327,000
2006	6.36	$420,000
2007	10.90	$463,000
2008	7.71	$389,000
2009	12.12	$336,000
2010	8.92	$312,000
2011	11.43	$336,000
2012	7.52	$192,000

4. **Why did you make the decision to eliminate the Associate Chief Information Officer ("CIO") position and convert his responsibilities to the Office of Systems which already oversees myriad functions including (SSA system security, keeping the hardware and software running, developing, implementing and maintaining the system to support the retirement, disability programs, earnings, customer service, representative payee system and much more)?**

   We combined the Office of the CIO and the Office of Systems (OS) into one office, OS/CIO, to promote more efficient and more effective use of our limited resources. Before the reorganization, the agency split nearly all IT duties between the Office of the CIO and OS, sometimes resulting in confusion and duplication of effort. Now, the OS/CIO leads IT planning, IT capital planning and investment management, IT security, IT workforce planning, enterprise architecture, e-government initiatives, and all systems acquisitions, development, and integration efforts. The reorganization has had the effect of clarifying IT accountability.

5. **Why has the IT strategic plan not been updated since 2007 given the Agency updated its overall strategic plan in 2008 and again in 2012?**

   a. **How does the Agency's overall strategic plan align with the Agency's outdated IT strategic plan?**

      OS issued the current version of the IT plan, *Information Resources Management (IRM) Strategic Plan: FY 2012 - 2016* (www.socialsecurity.gov/irm/) in May 2012. We fully aligned the new IT plan with our current strategic plan (http://www.ssa.gov/asp/index.html). Going forward, we are committed to updating the plan annually.

b. When can Congress expect the Agency to issue a new, long-term IT strategic plan?

See our response to question 5.a above.

6. In his white paper "SSA-2020: Vision and Strategy," former SSA Associate Chief Information Officer for Vision and Strategy Ephraim Feig, Ph.D. stated that early into his tenure at SSA, he "observed that none of SSA's long-range plans discussed issues of budgetary constraints...To me, this is not planning; this is wishful thinking."[3] Please share with the Committee any written guidance SSA has issued to staff to help them make the most efficient use of taxpayer money when engaging in long-term planning and projects.

We do not agree with Dr. Feig's statement; we are and must be cognizant of resources in our planning. For example, we cite fiscal constraint as a key factor in plan development in our *Agency Strategic Plan* (page 27) and our *Information Resources Management (IRM) Strategic Plan* (page 5).

Our budget submissions also serve as key multi-year plans, driven by Office of Management and Budget (OMB) guidance that focus on fiscal constraints.

7. Dr. Feig also asserts SSA's planned new data center will not alleviate the problem of its outdated IT system. Dr. Feig argues, "[o]n the contrary, it will increase SSA's IT costs and all the Agency will be doing is building a replica of [an] old car using modern parts."[4] He notes that while SSA is planning to spend hundreds of millions on a new data center, "this data center will be a clone of SSA's current environment, except that the equipment will all be modern." Dr. Feig made clear that "[a]s a clone, it completely misses the reality of IT evolution, that in five years, *the same amount of processing, storage and communications power will require less than one-fifth the space*" (emphasis added).

a. In your testimony, you state that the data center has already cost $75 million less than originally expected. What specific changes to the original plan occurred to produce these cost savings?

Market changes, clarity of design, and a competitive procurement process have all contributed to a current cost that is lower than the original cost estimates from four years ago.

The General Services Administration (GSA) has stated that the design-build procurement enabled bidders to propose industry best practices and innovative

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[3] **Ephraim Feig, Ph.D., "SSA-2020: Vision and Strategy," http://ephraimfeig.files.wordpress.com/2011/07/social-security-2020-vision-and-strategy.pdf.**

[4] **Ephraim Feig, Ph.D., "SSA-2020: Vision and Strategy," http://ephraimfeig.files.wordpress.com/2011/07/social-security-2020-vision-and-strategy.pdf.**

approaches, while still meeting the project requirements, which resulted in project savings. The design-build contract award was under budget because the contract represented a building that was approximately 100,000 gross square feet smaller and utilized a more effective mechanical electrical approach than originally planned.

b. Does SSA anticipate future savings above what the project was initially projected to cost, and in addition to the $75 million that has already saved?

Our understanding from GSA is that the project budget includes a contingency for claims and changes. Any potential savings associated with this contingency are not yet known, since claims and/or changes may develop as construction progresses.

c. Has SSA conducted any reviews to determine if plans to scale back building plans (and therefore save taxpayer dollars) is prudent given the changing reality of IT? If so, please share such analysis and resulting decisions with the Committee.

A key aspect of the detailed planning process for sizing the data center was a formal computing capacity growth model the EMC Corporation developed (see the enclosed one-page summary of the report). Its comprehensive analysis considered many factors, including expert assumptions about IT trends. Agency experts, with decades of experience with continually changing technologies, thoroughly vetted the EMC report. Our IG, with the assistance of an independent IT firm, also reviewed the document and determined it to be accurate.

8. Please provide the Agency's plan to improve compliance with the Clinger-Cohen Act requiring Agencies to establish performance measures.

We assign performance goals for each major IT investment. Some measures are investment-specific and others more broadly measure impact on our agency strategic objectives. Program managers regularly review performance results for IT investments and update them on a public website. In FY 2013, we are initiating a program of in depth post-implementation reviews to assess pre-investment performance expectations against actual outcomes.

OVERPAYMENTS

1. **In your testimony, you state SSA has "significantly increased" the number of SSI childhood CDRs that it completes each year. Yet a November 2011 Inspector General report[5] found SSA is not doing 79 percent of statutorily-required childhood SSI CDRs and 10 percent of age 18 redeterminations in a timely manner. The OIG estimated that as a result of this non-compliance with the Social Security Act, SSA improperly paid $1.4 billion in SSI payments to 513,300 recipients under age 18. Additionally, SSA will continue improperly paying $461.6 million annually until these reviews are completed. The IG also found that SSA improperly paid about $5.7 million in SSI payments to approximately 5,100 recipients who did not have an age 18 redetermination completed by age 20. Additionally, SSA will continue improperly paying $6.3 million annually until these reviews are completed. The IG recommended that SSA conduct childhood CDRs and age 18 redeterminations within the specific timeframes provided for in the Social Security Act.**

    a. **What specific actions have you taken since issuance of this report to comply with the IG's recommendations?**

    We have steadily increased the number of full medical continuing disability reviews (CDR) we complete every year since FY 2007. In FY 2012, we completed more than double the number of full medical CDRs we completed in FY 2007. The FY 2013 President's budget request would fund 650,000 full medical CDRs, the level authorized by the Budget Control Act (BCA) of 2011.

    In FY 2012, we completed nearly 65,000 SSI childhood CDRs, which is more than we completed in the previous five years in total. We originally planned to complete a larger number of childhood CDRs, but we had to reduce our total CDR workload by almost 25 percent because the program integrity funding level in our appropriation was lower than the level specified in the BCA.

    We continue to release age 18 redeterminations to our field offices two months prior to the recipient's 18th birthday. These cases are the highest priority in the CDR workload, and we complete the overwhelming majority of these cases within the appropriate timeframes. We are working to identify the cases that have not been completed in a timely way and take appropriate action.

    We conduct more Social Security Disability Insurance (SSDI) CDRs than SSI CDRs because SSDI CDRs yield a higher return on investment than SSI CDRs. SSDI beneficiaries have benefit rates that are, on average, almost twice as much as SSI childhood payment rates and usually have longer payback periods in the savings calculations. While we completed significantly more full medical CDRs

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[5] **Social Security Administration, Office of Inspector General, "Follow-Up: Childhood Continuing Disability Reviews and Age 18 Redeterminations," September 2011 A-01-11-11118, http://oig.ssa.gov/sites/default/files/audit/full/pdf/A-01-11-11118_0.pdf.**

in FY 2012 than we did in FY 2011, we were not able to complete as many as we would have with the level of funding authorized under BCA. The BCA allows increases to the Government's annual spending caps through FY 2021 for program integrity spending, and these increases would allow us to complete substantially more CDRs at considerable savings to the taxpayers.

Conducting childhood CDRs and age 18 redeterminations within the specific timeframes provided for in the Social Security Act (Act) requires timely and sufficient appropriations. We prioritize the program integrity work as best we can based on available funding.

For example, the FY 2013 House Labor, Health and Human Services, Education, and Related Agencies Appropriations Subcommittee bill would provide $272 million in program integrity funding compared to the $1.024 billion authorized under BCA and the FY 2013 Senate bill. Stephen Goss, our Chief Actuary, estimates that the House level of program integrity funding would increase program spending by between $5 to $6 billion above what it would be under the BCA agreement.

b. How do you plan to ensure timely compliance with requirements of the Social Security Act relative to childhood SSI CDRs and age 18 redeterminations in the future?

We will continue to complete SSI childhood CDRs and age 18 redeterminations to the extent possible within our budget constraints.

2. A December 2009 found $12.6 million lost in the SSDI program due to SSA's failure to post or apply spousal pensions and reduce benefits accordingly. What is the agency doing to improve its process to ensure spousal pensions are posted timely on the MBR and the GPOs are accurately imposed?

We assume your question refers to a 2012 SSA IG audit entitled *Spousal Beneficiaries Who Reported They Were Entitled to a Government Pension.* The audit reports on findings from a sampling of cases the IG identified in December 2009 to evaluate the effectiveness of our "controls and procedures over spousal beneficiaries who reported they would be entitled to a Government pension in the future."

When individuals apply for spousal benefits, we ask whether they receive or expect to receive a pension based on earnings not covered by Social Security. Applicants who are not receiving a pension must promptly report when they receive their pension. While we conduct data matches with the Office of Personnel Management to identify Federal workers who do not report promptly, there is no similar data system to obtain information on State or local government pensions. Therefore, we must rely on beneficiaries' timely self-reporting their State and local pension information. We have taken several steps to improve our ability to identify beneficiaries who do not report receiving a pension and to ensure that we post reported pensions timely and accurately.

For applicants who report that they or their spouses are eligible for, but have not yet received, a Government pension, we record the date the beneficiaries state that they or their spouses expect to begin receiving the pension. Our automated system creates a diary for that date, at which time we contact the beneficiary or pension provider, verify the pension amount and payment date, and determine the offset amount. If beneficiaries are still not receiving their government pension, we obtain a revised future pension date and establish a new diary.

To help ensure that we do not fail to take action on these diaries, we recently requested an enhancement for our automated diary process to generate follow-up alerts every 90 days until we either update a future pension date or document receipt of the pension. Also, we enhanced our operating instructions to reinforce the importance of updating our records when a beneficiary changes the expected future pension date.

The President's Budget includes a proposal that would require State and local government pension payers to report to us and would provide funding for the States and localities to develop automated data exchanges with us for this purpose.

3. **A March 2001 OIG audit found $8.2 million in improper SSI payments were made to claimants who failed to report their marriage to SSA despite being told of this requirement. Why did SSA refuse OIG's recommendation to review each of the 3,000 cases, arguing that it would cost them $500,000 to review, if such a review would save SSA potentially $8.2 million? If they did not review these cases, were they referred to OIG?**

As we stated at the time of the 2012 audit, we continue to work with OIG as it conducts further analysis to identify the cases in the audit population that are most likely to result in an overpayment. However, we do not have the resources to review more than 3,200 possible cases identified by OIG where an individual may have been living with an unreported spouse. We must prioritize this work with other cost-saving program integrity work.

This audit also acknowledged that our performance in identifying married couples receiving SSI or a combination of SSI and Old-Age, Survivors, and Disability Insurance greatly improved between OIG's 2008 and 2011 audits and stated that our improvements in this area saved taxpayers as much as $16 million.

Since SSI recipients sometimes have cognitive challenges and higher rates of limited English proficiency, we must consider each case separately to determine if a fraud referral is appropriate.

4. **A July 2009 OIG Audit found that by using LexisNexis, the Agency would have prevented $551 million in improper SSI payments due to excess automobile resources. A similar June 2011 Audit found LexisNexis would have prevented about $2.2 billion in improper payments due to excess real property resources.[6]**

    1. **Despite estimated savings of $8 for every dollar spent, the Agency determined it "did not want to impose a burden on field office staff" to check LexisNexis for vehicle ownership. Please explain how such a decision complies with Executive Order 13520, which requires agencies to "make every effort to confirm that the right recipient is receiving the right payment for the right reason at the right time."[7]**

        We recognize the potential for program saving through use of database services such as LexisNexis. We have already had success with our Access to Financial Institutions (AFI) project to locate undisclosed accounts. We are currently refining use of a search methodology for real property.

        We conducted a proof of concept (POC) involving 1,000 stewardship review cases processed from October 2011 to February 2012 to test the use of Accurint, a product of LexisNexis, as a source of undisclosed real property.[4] Findings established that Accurint is a viable method of identifying non-home real property. We are currently assessing how to efficiently integrate the use of Accurint into SSI business processes. If we can establish a cost-effective methodology, we intend to test whether other types of undisclosed resources, such as automobiles, are accurately detectable through such searches.

    2. **Are SSA employees being encouraged to use Lexis and other tools to verify information provided by claimants during the initial and redetermination process?**

        In many cases, our programmatic instructions *require* our employees to use tools such as the data we receive from our computer interfaces (such as our interface with the Internal Revenue Service), the AFI system, and State database information to verify an SSI claimant's allegations. For example, during redeterminations of eligibility, our employees are required to query earnings data to see if an SSI claimant has unreported earnings. Employees are also required to use the AFI system to verify alleged bank account data and search for undisclosed accounts any time an SSI claimant alleges more than a certain amount in liquid

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[6] **Social Security Administration, Office of Inspector General, Supplemental Security Income Recipients with Unreported Real Property, Report No. A-02-09-29025, http://oig.ssa.gov/sites/default/files/audit/full/pdf/A-02-09-29025.pdf.**

[7] **Executive Order 13520-- Reducing Improper Payments and Eliminating Waste in Federal Programs, http://www.whitehouse.gov/the-press-office/executive-order-reducing-improper-payments.**

[4] In our stewardship reviews, we review the non-medical aspects of a sample of completed SSI cases. We use the findings from these reviews to report the accuracy of our SSI payments.

resources. We provide our employees with access to The Work Number, a wage verification service, so they can obtain wage information more quickly.

We currently provide LexisNexis access to some employees involved in the initial claim and redetermination processes, but we do not mandate its use. We are looking into whether the tool can be used more effectively.

3. **In response to the June 2011 Audit, the Agency stated it initiated a pilot study on the use of LexisNexis regarding real property. Please provide an update on the status of that pilot study and provide any documentation, including any memoranda regarding the pilot study.**

   Stewardship policy instructions include a requirement to conduct negative property searches, i.e., to contact the local custodian of property records in the county of residence, to determine if the SSI recipient (or parents or spouse) own undisclosed non-home real property. In the POC referenced in response to question 4.1 above, we tested the accuracy and efficiency of using Accurint to identify undisclosed real property. Reviewers searched for property in Accurint, then verified the existence (or non-existence) of property with the SSI recipient and the custodian of record. We also compared Risk Management, another LexisNexis product used by OIG for its audit, to Accurint. After analyzing the POC data, we determined the information available in Accurint is more current and easier to navigate than Risk Management. We are currently assessing how we might integrate the use of Accurint into initial claims and redetermination processes, taking into account diminishing resources.

SOCIAL SECURITY NUMBER PRINTOUTS:

1. **In its December 2011 report,[8] the Inspector General found SSA has not sufficiently strengthened controls for issuing Social Security Numbers ("SSN") printouts since its December 2007 report on the same issue. The IG found an increase in printouts, an increase in the volume of number-holders obtaining 10 SSN printouts in a day and a year, and occurrences of fraud involving printouts. While the IG recognizes that SSA is bound to comply with the Privacy Act and OMB guidelines that grant individuals appropriate and timely access to their SSN information, the IG asserted stronger controls are needed.**

   a. **What actions have you taken to date in response to the IG's findings and recommendations?**

      As the IG recommended in the December 2011 report, we immediately issued reminders to all field offices about the policy for issuing SSN printouts.

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[8] **Social Security Administration, Office of Inspector General, "CONTROLS FOR ISSUING SOCIAL SECURITY NUMBER PRINTOUTS," A-04-11-11105, December 2011, http://oig.ssa.gov/sites/default/files/audit/full/pdf/A-04-11-11105.pdf.**

In addition, we:

- Are working on improvements to no longer issue SSN printouts to individuals who call the National 800 Number.
- Conducted an SSN printout study in field offices nationwide, to determine the frequency and reasons for these requests. We are using the results of that study to work with third party organizations (Departments of Motor Vehicles, State and local Human Service agencies etc.) to use existing or new data exchanges between agencies to minimize the requests for the SSN printout.
- Began a 90-day pilot in June 2012 in three field offices: Chicago near Southwest, Illinois; Albany, Georgia; and Roanoke, Virginia. Additionally the Sacramento, California card center participated in the last few weeks of the pilot. These offices require applicants for SSN printouts to provide the same evidence of identity as applicants for replacement SSN cards (e.g., a current driver's license or United States Passport). To ensure compliance with these document requirements, pilot offices enter all requests for SSN printouts into the Social Security Number Application Process, a web-based evidence documentation process used for all SSN applications. We have completed the pilot and are now assessing evaluation results.

b. SSA reported it has established a workgroup to study the best method to standardize fees, define the business process to charge and collect fees, and determine the costs to implement a remittance process to collect fees for certain services. Please provide the Committee with an update about the workgroup's efforts, including the dates of any meetings held, and any recommendations or findings produced. If no findings or recommendations have been produced, at what date to you expect this workgroup to produce a final set of findings and recommendations?

Based on the workgroup's recommendations, we:

- Developed a methodology to standardize fees in compliance with OMB Circular A-25, *User Fees*. The methodology ensures we capture the full cost of providing services or information for non-program related work. We used statistically valid time studies and included all applicable overhead rates, including the costs of implementing a remittance process to collect the fees. We will collect the fees prior to completing the request for services or information.
- Established eight standardized fees for non-program related services and published them in the Federal Register on August 22, 2012. We also created a schedule to reevaluate the fees no less than every two years to ensure we continue to capture the full cost of providing these services or information requests.

c. **In addition, SSA stated that its workgroup will evaluate the legislative changes needed to authorize SSA to charge fees for statutorily mandated services and the use of the resulting revenues. Please describe for the Committee what legislative changes the Agency believes are required and/or desired to improve upon this area.**

Based on our current analysis, we no longer believe legislative changes are necessary to implement the standard fees described above. Instead, we are notifying the public via a *Federal Register* notice (see our response to question 1.b above). Please note that we can seek reimbursement only for our full cost of providing services, but we cannot profit.

DICTIONARY OF OCCUPATIONAL TITLES:

SSA currently uses the Department of Labor's Dictionary of Occupational Titles ("DOT") to determine whether a claimant can do his or her past work as it is usually performed in the national economy or to find other occupations the claimant could do base on their medical-vocational profile. The Labor Department has abandoned the DOT, which has not been updated since 1977. Therefore, it does not reflect the current status of jobs available in the American economy.[9]

The Department of Labor replaced the DOT with the Occupational Information Network ("O*NET"), which contains current information on occupations. SSA, however, asserts that O*NET does not provide the data the Agency needs to adjudicate disability claims.

1. **Please explain why the agency believes O*NET does not provide the data needed to adjudicate disability claims.**

Currently, O*NET does not measure strength and physical requirements in a way that our disability rules require. Our regulations and program policies contain specific definitions of the physical exertion requirements of work in the national economy and classify jobs as sedentary, light, medium, heavy, and very heavy. O*NET does not measure work using these definitions. Additionally, regulations provide specific definitions of skill requirements that we use to assess whether a disability claimant can adjust to other work that exists in the national economy. For example, the regulations define unskilled work as a job a person can usually learn to do in 30 days. O*NET does not contain data at this level of detail.

We believe that there are aspects of O*NET that we can use. We are currently working with the Department of Labor's Bureau of Labor Statistics (BLS) to determine if they can meet our data needs. Using the names, descriptions, and tasks of occupations in the

[9] **See Social Security Administration, Office of the Inspector General, Job Information Used in the Social Security Administration's Disability Claims Adjudication Process, Report No A-01-10-21024, http://oig.ssa.gov/sites/default/files/audit/full/pdf/A-01-10-21024_7.pdf.**

O*NET system as a starting point, we are working with BLS to test the feasibility of using the BLS National Compensation Survey platform to collect additional information on strength, specific vocational preparation, and non-exertional requirements necessary for our disability programs.

2. **Please provide any supporting documentation generated by SSA, including, but not limited internal memoranda, communications, and any report or study performed or produced by the Agency or a third party.**

   Our past research and views over the last decade or more are discussed extensively in Chapter 8 of the National Academy of Sciences report on O*NET.[5] In addition, our Occupational Information Development Advisory Panel (OIDAP) issued a review of the National Academy of Sciences report on O*NET and included questions and answers with National Academy of Science staff on issues about O*NET.[6]

In lieu of using O*NET, the Agency is currently developing its own Occupational Information System ("OIS"). In April 2010, you stated the development of OIS would take four years and cost about $100 million.[10]

3. **Please explain the current state of the development and estimate cost of OIS and provide any supporting documentation regarding the financial status of the project, as well as the date in which the Agency intends OIS to be ready for use.**

   We previously estimated the cost of developing a new OIS at $108 million over five years. However, several months ago we modified our approach. In FY 2012, we signed an interagency agreement with BLS for approximately $400,000, which funded research planning activities to test the collection of data on strength, specific vocational preparation, and non-exertional requirements using the specific definitions and measurements required by our regulations for a broad set of occupations using approximately $800,000 in appropriated FY 2012 funds. In FY 2012, we negotiated a separate agreement for about $11 million to fund the test.

PROGRAM FUNDING, STAFFING, EFFICIENCY:

1. **If sequestration budget cuts go into effect per the Budget Control Act, what adjustments does SSA plan to make to its budget and operations?**

   For information on the effect of sequestration, please see the Sequestration Transparency Act Report released by OMB on September 14, 2012.

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[5] http://www.nap.edu/catalog.php?record_id=12814

[6] http://ssa.gov/oidap/Documents/COMPLETE%20FINAL--Findings%20Report%20OIDAP%20062810.pdf

[10] ***Id., citing*** **Social Security Administration, Occupational Information Development Advisory Panel, Content Model and Classification Recommendations for the Social Security Administration Occupational Information System, p. 21.**

2. **Deputy Commissioner Carolyn Colvin has testified that SSA is being forced to do "less with less" under the current funding. What specifically is not getting done, and how is this impacting public service and program integrity?**

   Our available funding in FY 2012 was almost $400 million less than what we operated with in FY 2010, and we are currently operating under a continuing resolution for approximately the first six months of FY 2013. As a result, we had to make hard cuts, which helped us keep our doors open.

   - Since FY 2007, disability claims increased by over 31 percent. Due to significant increases in employee productivity and policy improvements, we were able to keep pace with this growing workload last year. However, the backlog of initial disability claims is beginning to rise again as staffing continues to be a challenge. Our progress in reducing the hearings backlog has also slowed in the last year.
   - The progress we made in improving our 800-number service over the last few years is slipping. Busy signals and the average speed of answer are climbing due to a lack of staff in our teleservice centers to answer calls.
   - Regarding program integrity, we are unable to complete the work we do after a person comes onto our rolls, known as post-entitlement work. Our inability to handle this work in a timely manner may result in improper payments and a delay in collecting overpayments. Moreover, we did not complete as many full medical CDRs as we could have had we received full BCA funding.
   - Overall service in our field offices and processing centers is also a concern because staffing losses do not happen evenly across the country. This year, nearly one-third of our field offices have experienced more than 10 percent attrition, and 15 offices have lost over 30 percent of their staff.
   - We are closing field offices to the public 30 minutes early each day to allow our employees to complete late day interviews and handle claims work without using overtime. In addition, beginning on January 2, 2013, we are closing our offices to the public at noon every Wednesday.
   - We stopped visiting remote service sites to save travel time and costs. We also decided not to open eight needed new hearing offices and a new teleservice center last year.

REGIONAL OFFICES AND STAFF

1. **Please explain the Agency's position on whether SSA should close regional offices to achieve funding and staffing efficiencies.**

   We have no plans to close regional offices; however, the limited hires we have made are for frontline employees who work directly with the public. As we continue to lose employees in staff jobs, managers will have to reassess how to get staff work done, including moving work that has historically been done in headquarters to the field.

2. **The ODAR regional offices require a significant expenditure of taxpayer dollars. Please explain the purpose and goal of the regional offices, including how the offices increase efficiency with regarding to adjudicating disability claims. Please explain why it is not in the best interest of the taxpayer and disability claimant to redirect those resources expended on regional offices to process disability cases?**

   Since 2007, the number of employees in our Office of Disability Adjudication and Review (ODAR) headquarters and regional offices has decreased. Regional offices have reduced staff even though the hearing operation (which includes hearing offices, regional writing and case-pulling units, national hearing centers, and the National Case Assistance Center) has grown over 50 percent and hearing requests have also increased by about 50 percent.

   While some people view regional offices (RO) as overhead, RO staffs here are responsible for the implementation of national policies, goals, and objectives for the ALJs and support staff in the region. They also handle workload management, personnel actions, and budgeting, allowing hearings offices to focus on claims.

3. **What is the total annual cost of the office space for ODAR regional offices?**

   For FY 2011, the annual cost of office space for ODAR regional offices was approximately $4.6 million.

4. **Please provide a list of the positions in these regional offices as well as the pay grades of these positions. Please provide the number of individuals in these positions in each of the regional offices.**

   We have a total of 292 employees in our ODAR regional offices. The enclosed staffing list details the number of employees in each position.

5. **I understand management analysts are employed in the ODAR Regional Office. Why were they hired and what is their pay grade and job function?**

   Management analyst pay grades range from GS-9 to GS-12. These analysts perform a variety of administrative functions, including handling issues related to budget, facilities, security, and personnel. They also handle program-related matters, such as administrative reviews of fee authorizations and policy inquiries from the hearing offices within their regions.

6. **Please provide the number and increase in percentage of staff positions in the ODAR Regional Offices since you became Commissioner. Please provide the increase in percentage in hearing office support staff in the same period.**

   Please see the answer to question 2 above.

7. **What are the functions of a Regional Chief Judge and the Assistant Regional Chief Judges? How many cases per year do they, on average, adjudicate?**

   The Regional Chief Administrative Law Judge (RCALJ) acts on behalf of the Deputy Commissioner for ODAR and the Chief ALJ at the regional level on all matters involving the hearing process and is directly responsible for the effective execution of the hearing process within the region. The RCALJ is responsible for the regional implementation of national policies, goals, and objectives for the ALJs and support staff in the region. We do not expect RCALJs to adjudicate cases; however, RCALJs in smaller regions hear and decide cases as the RCALJs are available.

   There is no official Assistant Regional Chief Judge position; however, the RCALJ may consider informally asking a Hearing Office Chief ALJ to serve in that role from time to time to assist in managing the activities of the regional office.

JOB TRAINING & EMPLOYMENT:

1. **Would you support a change in law that gradually reduces cash benefits under the SSDI program as a way of encouraging greater work activity?**

   We are conducting the Benefit Offset National Demonstration, which tests the effect of disability benefit offsets on work activity by reducing benefits as work increases. Once we complete the project, we will assess the results to determine if we should pursue changes requiring legislation.

2. **Do you think there should be a stronger relationship between SSA and State Vocational Rehabilitation programs to increase the likelihood of people going to work? Please explain.**

   State Vocational Rehabilitation (VR) agencies already play a crucial role in returning disability beneficiaries to work, and we value our relationship with them. In fact, we amended our Ticket to Work program rules in 2008 to permit State VR agencies to work collaboratively with employment networks (qualified State, local, or private organizations that provide or coordinate the delivery of employment support services) in an arrangement known as Partnership Plus. This team approach allows State VR agencies to provide training and job placement services and then refer beneficiaries to employment networks that can offer ongoing job retention support. This initiative increases the likelihood that beneficiaries will keep working, become self-supporting, and leave the rolls. In addition, the local American Job Center Network is working closely with the State and local VR agencies, including as Ticket Plus partners, to serve customers who are receiving Social Security disability benefits.

ADJUDICATION OF DISABILITY CLAIMS

1. **I understand the agency has established benchmarks, which establish a timetable for processing disability cases at different stages. For example, a judge has a limited number of days to develop the case and a limited number of days to review and edit the draft decision.**

    a. **What is the basis for these benchmarks?**

    We want to be clear that these benchmarks are not mandates. About five years ago, the Office of the Chief Administrative Law Judge (OCALJ) established the current benchmarks. The benchmarks are based on reasonable estimates of the maximum time that a case should remain in a given status under normal circumstances. These benchmarks have been very useful tools for managers at the local, regional, and national level to monitor workflow, quickly resolve case processing bottlenecks, and provide timely public service.

    b. **What temporal analyses for establishing these benchmarks were conducted? Please provide any documentation of such analyses.**

    As we noted in response to question 1.a above, the benchmarks are based on reasonable estimates of the maximum time that a case should remain in a given status under normal circumstances. Setting benchmarks has had a positive effect on public service by contributing to a dramatic drop in average processing time. Benchmarks have proven effective in identifying both patterns of untimely case processing as well as problems with specific cases. Once identified, management can work with ALJs to address both docket management and case-specific problems. Without benchmarks, these positive trends could quickly reverse, and the American people could wait longer for decisions. OCALJ maintains the benchmark chart and posts it to its Intranet site.

    As a result of instituting benchmarks for quality case processing, average processing time has dropped dramatically.

2. **Do the benchmarks allow for certain situations, such as claimants who fail to appear for the scheduled hearing or for representatives who fail to fully develop the case in advance of hearing?**

    Yes. We established and refined the benchmarks to protect claimants and to maximize the efficiency of our processes without undermining our commitment to providing quality hearings and decisions.

3. **The Agency contends that ALJ decisions must be legally defensible. Please explain what you consider the difference to be, if any, in legally defensible and legally correct decisions.**

   ALJ decisions must be both legally sufficient and defensible. See HALLEX I-2-8-1 and I-2-0-5. This means that a decision is able to withstand judicial scrutiny. We generally do not use the term "legally correct." Instead, we use the legal sufficiency standard, which encompasses the concept of "harmless error." If an ALJ decision has errors, but the errors would not substantially change the outcome of the decision, the decision is legally sufficient and legally defensible. In essence, the agency's standard is not that a decision must be perfect, but that it must be able to withstand judicial scrutiny.

4. **How is the Agency ensuring that disability decisions are correct, both factually and legally?**

   Upon receiving a claimant's request for review, the Appeals Council evaluates the ALJ's decision, all of the evidence of record, including any new and material evidence that relates to the period on or before the date of the ALJ's decision, and any arguments the claimant or his or her representative submits. To ensure an ALJ decision is both legally sufficient and defensible, the Appeals Council will review a decision if: 1) there appears to be an abuse of discretion by the ALJ; 2) there is an error of law; 3) the action, findings or conclusions of the ALJ are not supported by substantial evidence; or 4) there is a broad policy or procedural issue that may affect the general public interest.

   We have also devoted significant resources to review the quality of our determinations and decisions. Our Office of Quality Performance (OQP) reviews final actions by the agency and provides feedback to the appropriate agency component regarding its findings. Our Request for Program Consultation team reviews case deficiencies cited by the OQP reviewer and disputed by the DDS adjudicator, and provides feedback to the appropriate agency component regarding its findings. Furthermore, pursuant to our regulations, the Appeals Council has also implemented quality reviews of favorable hearing level decisions, called "own motion" reviews. Cases for own motion reviews are selected from a random sample before payment is issued to the claimant. The Appeals Council evaluates the case and if no action is necessary sends it forward for payment. If one of the reasons for review set forth above is present, then the Appeals Council can issue a corrective decision or remand the case for further action. In addition, the Appeals Council is providing feedback on the accuracy of these decisions to hearing office management.

   We have also devoted substantial resources to develop extensive training for our adjudicators at all levels and to provide mentors to assist newer adjudicators in evaluating claims.

5. **The medical-vocational grid rules have been in effect for approximately four decades. What plans currently exist, if any, to review and modify these rules to make them more relevant to the current workforce?**

   Federal courts at all levels have supported our medical-vocational grid rules (grid rules). In an effort to keep our policies current, we continue to consider potential changes to our grid rules and believe our research related to the development of the next OIS may provide us with data that could inform changes to vocational policy, including the grid rules.

6. **Recently, Chief Administrative Law Judge Debra Bice stated that judges should spend only 2.5 hours on each disability case.**

   a. **Please explain how that is sufficient time for an ALJ to thoroughly prepare for the hearing, reading all of the records, especially the medical documents, conduct a full and fair hearing, prepare decisional instructions, and issue a correct decision that will withstand close scrutiny by reviewing courts.**

      In response to an inquiry as to how much time most ALJs spend on a case, Chief ALJ Bice stated that we have no exact statistics. She then stated that she spent an average of 2.5 hours on each case, although some cases required less time and others more. The 2.5 hour estimate was based on an average of an hour for pre-hearing review, an hour for the hearing and instructions to the decision writer, and a half-hour for editing and signing a decision. Clearly, each individual case may take shorter or longer periods of time.

      Before an ALJ receives a case, a legal assistant categorizes the documents and annotates the exhibit list with data, such as the source of the document and pertinent dates. The electronic folder retrieves pertinent data from various databases, such as application dates from earlier levels of adjudication. Most claimants are represented at the hearing level and many representatives submit briefs on the case. Additionally, the vast majority of ALJ decisions are drafted by attorney advisors or paralegals in the office and involve disability law, regulations, and policy.

   b. **Please provide any documentation or analyses conducted regarding this stated time frame.**

      Judge Bice based her comments on personal experience.

7. **If judges are to spend only 2.5 hours on each disability case, please explain why attorneys who prepare draft affirmations for the judge are allocated 8 hours and four hours for denials.**

   Judge Bice based her estimates on personal experience and was not suggesting that we mandate this amount of time. A paralegal or attorney advisor, pursuant to the ALJ's

instructions, writes the decision in a case. These instructions may be hand-written or typed, and vary in length and complexity. The ALJ's instructions should identify the impairments and the residual functional capacity, assess credibility of the claimant and the weight given to medical source statements, and identify the basis for allowing or denying the claim.

It is our expectation that, on average, a decision writer should write fully favorable decisions in four hours and partially favorable or unfavorable decisions in eight hours. The decision writer must review the evidence in the file, confirm that exhibits have been correctly entered into the record, and when necessary review portions of the hearing. Decision writers must also perform a number of tasks in the decision-writing process to accurately reflect each ALJ's decision, carry out the instructions provided by the ALJ, and ensure that each decision is legally sufficient. Decision writers must verify that the correct dates are used, articulate the proper procedural history of the case, summarize the evidence and testimony, provide a full and complete rationale for each step of the sequential evaluation process, and fully address credibility and the weight given to medical source opinions. Any clerical errors made at the decision-writing stage would have significant impact on the decision. All paralegals and the majority of attorney advisors type the decisions themselves. Affording the decision writers this amount of time to draft a legally sufficient and accurate decision on behalf of the ALJ allows the ALJs to focus on holding hearings and deciding cases.

8. The established goal for judges is to issue 500-700 cases each year.

a. What studies were conducted to support such a range? Were times studies performed?

Former Chief ALJ Frank Cristaudo established the 500-700 case expectation after consulting with a number of managers and ALJs about the reasonableness of the expectation. At the time the goal was established, almost 50 percent of ALJs were issuing at least 500 dispositions each year. The goal was dependent upon the agency providing adequate staff support, both in terms of numbers of staff and the quality of the staff support provided. From the start, we intended the 500 number to be a goal and not a mandate. We have made clear that all dispositions must be legally sufficient dispositions, and we are demonstrating that we are serious about quality with our investments in the Appeals Council.

b. Please provide supporting documents for any study or analysis performed.

Former Chief ALJ Cristaudo testified before Congress on behalf of the agency about the 500-700 case expectation. Please see his September 16, 2008 testimony for additional details on how he established that expectation http://www.socialsecurity.gov/legislation/testimony_091608.html.

9. When you established these current goals, did you consider the Agency's 1994 study that concluded, based on a number of variables, that judges should be expected to issue from 24 to 55 cases per month, or 288 to 660 annually?

Yes, we considered the 1994 study.

10. A number of judges have informed my staff that the overall complexity of the current mix of cases is more difficult than 5-6 years ago because many of the easier cases are being allowed earlier in the process. That being so, should judges be expected to competently hear and decide 500-700 cases annually?

The vast majority of ALJs are meeting the 500-700 case expectation. With 77 percent of ALJs meeting this expectation in FY 2011 (as shown in the chart below) while maintaining a high level of decisional quality, we believe the expectation remains reasonable.

Percent of Tracked ALJs Disposing of 500 Plus Cases	
FY 2007	46%
FY 2008	56%
FY 2009	71%
FY 2010	74%
FY 2011	77%

11. What action, if any, would be taken by the Agency if a judge works extremely hard, fully develops the record, conducts a full and fair hearing, and issues a legally correct decision in each of his/her cases but is only able to issue 300 cases in a year?

We would work with the specific ALJ to determine if he or she needs additional docket management training, computer training, or additional training on the disability program to try to increase the number of decisions that he or she is able to issue. We would also work with the ALJ to explore whether there are any other issues in the hearing office preventing the ALJ from issuing more decisions, such as staff failing to obtain the additional necessary evidence or failing to schedule requested consultative examinations for the claimant.

12. The U.S Supreme Court in *Sims v. Apfel*, 530 U.S. 103 (2000) held that administrative law judges must develop each case whether the case is affirmed or reversed. Please explain how this Supreme Court mandate is being followed by the agency?

In *Sims*, the Supreme Court held that claimants who exhaust administrative remedies need not also exhaust issues in a request for review by the Appeals Council in order to preserve judicial review of those issues. It is standard practice for the Appeals Council to review all issues for legally sufficiency, whether or not the issue is raised by a claimant or representative.

In the body of the decision, the Court states, "[i]t is the ALJ's duty to investigate the facts and develop the arguments both for and against granting benefits." This is completely consistent with existing agency practice and policy. An ALJ "must inquire fully into all matters at issue and conduct the administrative hearing in a fair and impartial manner." See HALLEX I-2-6-1. Sections 205(b) and 1631(c) of the Act require the ALJ to base a decision on "evidence adduced at the hearing." Under 20 CFR 404.944 and 416.1444, an ALJ must look fully into the issues, question the claimant and the other witnesses, and accept as evidence any documents that are material to the issues. This includes developing arguments both for and against granting benefits.

The responsibility of fully inquiring into the issues and developing the arguments is different from independently researching and producing evidence. An ALJ should inquire about any issue in the case that is undeveloped or unresolved and must ensure the medical record is fully developed. However, it is not consistent with the Court's decision or agency policy for an adjudicator to independently produce adverse evidence in a claim for benefits when the evidence cannot be corroborated because of due process concerns. Adjudicators cannot reliably determine the accuracy of independently produced, uncorroborated adverse evidence, and instead, we instruct our adjudicators to contact OIG or a Cooperative Disability Investigations unit if they are aware of information that suggests fraud on the part of the claimant. Such information is investigated, and potentially corroborated, by OIG.

13. What specific steps, if any, has the Agency taken to insure this Supreme Court mandate is followed in each of the Hearing Offices? Please provide copies of all training materials or instructional memos on this point.

Please see the answer to question 12 above.

14. Having the government represented at the hearing would provide the government a right of appeal on favorable decisions issued by judges, just as claimants now have the right of appeal if they receive an unfavorable decision. Why is having the government represented at these hearings not in the best interest of the American people?

Since the beginning of the Social Security program, Congress has expressed its intent that entitlement to benefits should be determined in a non-adversarial manner. As far back as 1939, when Congress enacted the hearings provisions of the Act, it viewed the procedures that should apply to hearings in "benefit granting" agencies differently from hearings in "regulatory" agencies. The 1939 amendments to the Act specifically link the provisions that Congress contemplated for Social Security's administrative review process with the non-adversarial process utilized by the Department of Veterans Affairs. See H.R. Rep. No. 76-728, at 42 (1939). In 1960, the Harrison Subcommittee on the Administration of the Social Security Laws further clarified Congress' intent that claimants receive assistance in demonstrating their entitlement to benefits: "The subcommittee believes that substantial assistance must be supplied to disability claimants if their rights are to be protected during the complicated appeals procedure. This is particularly true at the hearing." Preliminary Report to the Committee on Ways and Means, at 30 (March 11, 1960). The Supreme Court recognized Congress' intent to make Social Security disability hearings non-adversarial in *Richardson v. Perales*, in which it stated: "There emerges an emphasis upon the informal rather than the formal. This, we think, is as it should be, for this administrative procedure and these hearings, should be understandable to the layman claimant, should not necessarily be comfortable only for the trained attorney, and should not be strict in tone and operation. This is the obvious intent of Congress so long as the procedures are fundamentally fair." 402 U.S. 389, 400-01 (1971).

Notwithstanding the well-established principle of non-adversarial hearings, we published regulations establishing the Social Security Administration Representation Project (SSARP) in August 1982 following extensive consultation with Congress. See 47 Fed. Reg. 36, 117 (August 19, 1982). The regulations called for an agency representative to review disability cases before a hearing in select offices, and, if necessary, initiate development of further evidence. The regulations also called for the agency representative to present the agency's view at disability hearings if the claimant had representation. The purpose of the SSARP was to: 1) help improve the overall disability adjudicatory process; 2) reduce delays in conducting hearings and issuing hearing decisions; 3) improve the quality of hearing decisions; 4) increase the productivity of ALJs; 5) achieve more uniformity and consistency in hearing decisions; and 6) reduce hearing costs. In July 1986, the United States District Court for the Western District of Virginia permanently enjoined the use of SSARP nationwide, holding that the project violated the Act, intruded on ALJ independence, was contrary to congressional intent that the process be "fundamentally fair," and failed the constitutional requirements of due process. *Salling v. Bowen*, 641 F. Supp. 1046 (W.D. Va. 1986).

We decided to discontinue the SSARP due to the testing interruptions caused by the *Salling* injunction, significant congressional opposition to further testing of the SSARP, and fiscal constraints. In May 1987, we published a final rule revoking all field-testing of the SSARP. See 52 Fed. Reg. 17, 285 (May 7, 1987).

15. If you were president of a large insurance company and one of your policy holders sued the company for a denial of a claim for $300,000, would you have an attorney represent the company at the trial?

Yes. In fact, when a claimant seeks judicial review of our final decision in U.S. district court, we are represented by legal counsel.

16. For the past five years, please provide the annual number of Requests for Voluntary Dismissals filed in Federal court on behalf of the agency with regard to disability cases.

Fiscal Year	Total requests for voluntary remand*	Total number of cases remanded by Federal court**	Total number of cases appealed to Federal court**	Percentage of total number of cases remanded by Federal court**
2011	2,229	5,881	13,955	42.1
2010	2,418	5,988	12,420	48.2
2009	2,400 (est.)[7]	6,433	12,167	52.9
2008	2,403	6,353	12,257	51.8
2007	2,496	6,620	11,868	55.8
2006	2,753	7,146	13,006	54.9

* A request for voluntary remand occurs when the agency and the claimant agree that the agency will take the case back from Federal court for further administrative proceedings. The case is returned procedurally to the agency through a stipulated remand from the Federal court.

** Additional data is provided for a more complete context for remand numbers from Federal court. Overall, there have been declines in the total requests for voluntary remands, total number of cases remanded by Federal court, and the percentage of cases remanded by Federal court (total number of cases remanded by Federal court divided by the total number of cases appealed to Federal court). We continue to actively work in a variety of areas to maintain these downward trends by ensuring that policies are followed and decisions are factually accurate and procedurally adequate.

[7] The total number of requests for remand is unavailable for 2009, due to software changes. We estimate that the figure is in line with the surrounding years.

Enclosures

DEVELOPING EVIDENCE IN DISABILITY CASES

1. Question 2.c

   - Letter to Senator Tom A. Coburn, M.D. dated 03/01/12
   - Letter to Representative Sam Johnson dated 04/10/12

INFORMATION TECHNOLOGY

2. Question 7.c

   - EMC Growth Model Summary

REGIONAL OFFICES AND STAFF

3. Question 4 – ODAR Regional Office Staffing

Enclosure

DEVELOPING EVIDENCE IN DISABILITY CASES
Question 2. c.

SOCIAL SECURITY
The Commissioner

March 1, 2012

The Honorable Tom A. Coburn, M.D.
United States Senate
Washington, D.C. 20510

Dear Senator Coburn:

I write in response to your January 24, 2012 follow-up letter regarding allegations made in a Wall Street Journal article that attorneys at Binder & Binder withheld material medical information from us during the appeals process.

As we explained to the Wall Street Journal prior to the publication of the December 22, 2011 article entitled "Two Lawyers Strike Gold In U.S. Disability System," our current regulations require claimants, or their representatives, to present all medical evidence that *supports* their allegation of disability. In both 1997 and 2005, we proposed, without success, regulations that would have created an affirmative duty for claimants and their representatives to submit *all* medical evidence to us, including evidence that does *not* support their claim.

While we have the authority to conduct an early medical continuing disability review (CDR) for a particular claimant if we have cause to question that claimant's continuing eligibility for benefits, the information in the article does not provide us with individualized information regarding a specific claimant that we would need to initiate an early CDR. The article does not support doing 40,000 targeted CDRs, which would raise serious concerns about the fundamental fairness of the CDRs that could expose us to significant risk of litigation.

It appears that you suspect that Binder and Binder committed systemic fraud; therefore, our Office of the Inspector General may have tools that are more helpful. I am copying our Inspector General, Patrick P. O'Carroll, Jr., on this response should you wish to contact him.

If you need additional information, please contact me or have your staff contact Scott Frey, our Deputy Commissioner for Legislation and Congressional Affairs, at (202) 358-6030.

Sincerely,

Michael J. Astrue

cc:
Inspector General Patrick P. O'Carroll, Jr.

Enclosure

DEVELOPING EVIDENCE IN DISABILITY CASES
Question 2. c.

SOCIAL SECURITY
The Commissioner

April 10, 2012

The Honorable Sam Johnson
Chairman, Subcommittee on Social Security
Committee on Ways and Means
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I write in response to your February 7, 2012 letter regarding allegations made in a Wall Street Journal article that attorneys at Binder and Binder withheld material medical information from us during the appeals process.

In your letter, you reference Section 201 of the Social Security Protection Act, which allows for civil monetary penalties if a person misleads or withholds information material to the determination of benefits. Our Office of the Inspector General (OIG) has exclusive authority to impose civil monetary penalties. We contacted OIG, and it is our understanding that to date OIG has received broad allegations concerning malfeasance and deceptive practices of client/beneficiary information at Binder and Binder. OIG has informed us that it will keep the Subcommittee informed of the result of any investigation and any subsequent civil administrative proceedings. I am copying our Inspector General, Patrick P. O'Carroll, Jr., on this response so that he is aware of your concerns and can take action, as appropriate.

If you need additional information, please contact me or have your staff contact Scott Frey, our Deputy Commissioner for Legislation and Congressional Affairs, at (202) 358-6030.

Sincerely,

Michael J. Astrue

cc:
Inspector General Patrick P. O'Carroll, Jr.

Enclosure

INFORMATION TECHNOLOGY
Question 7.c

EMC Growth Model Report Summary

The "EMC Growth Model and Space, Power, Cooling Report for GSA/SSA National Support Center", dated November 23, 2010 (EMC Document), is a culmination of EMC's effort, in concert with SSA, GSA, and Jacobs, to define the IT infrastructure that will be housed in the National Support Center (NSC) facility for the next twenty-plus years. This effort took place between the July 13, 2009 to November 23, 2010 timeframe, and its primary objectives included:

- Forecast the space, power, and cooling requirements of IT equipment over the projected life of the NSC; and
- Define facility requirements for the main computer room (i.e. the white space).

Several forecasting models were created and the different versions are contained in this document. It represents multiple iterations of the technical analyses of the space, power, and cooling required for SSA's IT equipment over the projected lifetime of the NSC, by focusing on key dates in Year 1, Year 10, and Year 20. These analyses were designed to identify and document SSA's IT infrastructure requirements based on the expected services that the agency is expected to provide for the life of the facility. They were derived from the best information available at the time regarding technology trends and SSA's 30 years of experience forecasting systems needs to support their workload trends.

Extrapolating the data from the different report iterations resulted in the following:

	Year 1, 2014 (MW)	Year 10, 2024 (MW)	Year 19, 2033 (MW)
High	3.0	5.9	13.5
Medium	2.6	3.0	11.3
Low	2.5	1.7	2.8

SSA determined that the NSC power needed 6MW to support a Data Center Strategy for the first ten years, with an increase to 10 MW at year 10. This strategy balances the urgency of business requirements while providing a flexible implementation roadmap that enables a conservative investment plan (e.g. by breaking down increased power requirements over multiple builds instead of providing the entire capacity on day one).

Enclosure

REGIONAL OFFICES AND STAFF

Question 4

LIST OF ODAR REGIONAL OFFICE POSTIONS WITH PAYGRADE

Region	Position Title	Pay Plan	Grade	Onduty Pay Period Ending 7/14/12
Region 1	MANAGEMENT ANALYST	GS	09	1
Region 1	STAFF ASSISTANT	GS	09	1
Region 1	MANAGEMENT ANALYST	GS	13	1
Region 1	SUPERVISORY PARALEGAL SPEC	GS	13	1
Region 1	IT SPECIALIST (SYSADMIN)	GS	11	1
Region 1	MANAGEMENT ANALYST	GS	12	1
Region 1	SUPV MANAGEMENT ANAL	GS	14	1
Region 1	LEAD ATTORNEY-ADVISER (GEN)	GS	14	1
Region 1	REGIONAL MANAGEMENT OFFICE	GS	15	1
Region 1	MANAGEMENT ANALYST	GS	12	1
Region 1	SUPVRY ATTORNEY-ADVISER (GEN)	GS	14	1
Region 1	SUPERVISORY PARALEGAL SPEC	GS	13	1
Region 1	IT SPECIALIST (SYSADMIN)	GS	11	1
Region 1	IT SPECIALIST/SUPERVISOR	GS	13	1
Region 1	REGIONAL MANAGEMENT OFFICER	GS	15	1
Region 1	REGNL CH ADMINV LAW JUDGE	AL	02	1
Region 1	IT SPECIALIST (SYSADMIN)	GS	12	1
Region 1	MANAGEMENT ANALYST	GS	12	1
Region 1	MANAGEMENT ANALYST	GS	11	1
Region 1	ATTORNEY-ADVISER	GS	13	1
Region 1	MANAGEMENT ANALYST	GS	09	1
				21
Region 2	HR SPECIALIST (EE & LABOR RELS)	GS	13	1
Region 2	MANAGEMENT ANALYST	GS	11	1
Region 2	MANAGEMENT OPERATIONS SPEC	GS	12	1
Region 2	MANAGEMENT ANALYST	GS	11	1
Region 2	ATTORNEY-ADVISER	GS	13	1
Region 2	MANAGEMENT OPERATIONS SPEC	GS	12	1
Region 2	IT SPECIALIST (SYSADMIN)	GS	12	1
Region 2	REGIONAL CHIEF ALJ	AL	02	1
Region 2	SUPERVISORY MANAGEMENT ANALYST	GS	14	1
Region 2	MANAGEMENT OPERATIONS SPEC	GS	12	1
Region 2	STAFF ASSISTANT	GS	09	1
Region 2	LEGAL ASSISTANT (OA)	GS	06	1
Region 2	SUPERVISORY MANAGEMENT ANALYST	GS	14	1
Region 2	REGIONAL MANAGEMENT OFFICER	GS	15	1
Region 2	IT SPECIALIST (SYSADMIN)	GS	12	1
Region 2	SECRETARY (OA)	GS	06	1
Region 2	SUPVRY ATTORNEY-ADVISER (GEN)	GS	14	1
Region 2	FIELD SUPPORT SPECIALIST	GS	09	1
Region 2	MANAGEMENT ANALYST	GS	11	1
Region 2	MANAGEMENT ANALYST	GS	11	1
Region 2	IT SPECIALIST (SYSADMIN)	GS	11	1
Region 2	SUPVY ATTORNEY-ADVISER (GENERAL	GS	14	1
Region 2	PROGRAM ANALYST	GS	13	1
Region 2	BUDGET OFFICER	GS	12	1
Region 2	SUPVY IT SPECIALIST (SYSADMIN)	GS	13	1
Region 2	PARALEGAL SPECIALIST	GS	12	1
Region 2	IT SPECIALIST (SYSADMIN)	GS	12	1
Region 2	ATTORNEY-ADVISER	GS	13	1
Region 2	ATTORNEY-ADVISER	GS	13	1
Region 2	ATTORNEY-ADVISER	GS	13	1
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Region 3	HR SPECIALIST (EE & LABOR RELS)	GS	13	1
Region 3	ATTORNEY-ADVISER (GEN)	GS	12	1
Region 3	HR SPECIALIST (EE & LBR RELS)	GS	12	1
Region 3	ATTORNEY-ADVISER	GS	12	1
Region 3	ATTORNEY-ADVISER (GEN)	GS	11	1
Region 3	ATTORNEY-ADVISER	GS	12	1
Region 3	PROGRAM ANALYST	GS	12	1
Region 3	IT SPECIALIST (SYSADMIN)	GS	12	1
Region 3	PROGRAM ANALYST	GS	13	1
Region 3	MATERIAL RESOURCE ANALYST	GS	12	1

Region 3	PROGRAM ANALYST	GS	13	1
Region 3	STAFF ASSISTANT	GS	13	1
Region 3	PARALEGAL SPECIALIST	GS	09	1
Region 3	REGNL CH ADMINV LAW JUDGE	AL	02	1
Region 3	ADMINISTRATIVE OFFICER	GS	13	1
Region 3	HR SPECIALIST (EE & LABOR RELS)	GS	13	1
Region 3	REGIONAL MANAGEMENT OFFICER	GS	15	1
Region 3	SECRETARY (OA)	GS	08	1
Region 3	IT SPECIALIST (SYSADMIN)	GS	12	1
Region 3	IT SPECIAUST	GS	11	1
Region 3	MANAGEMENT ANALYST	GS	12	1
Region 3	IT SPECIALIST (SYSADMIN)	GS	11	1
Region 3	MATERIAL RESOURCE ANALYST	GS	12	1
Region 3	REGIONAL ATTORNEY ADVISER	GS	14	1
Region 3	SUPERVISORY ATTY ADVISOR (GEN)	GS	14	1
Region 3	SUPVY IT SPECIALIST (SYSADMIN)	GS	13	1
Region 3	PROGRAM ANALYST	GS	13	1
Region 3	IT SPECIALIST (SYSADMIN)	GS	12	1
Region 3	MANAGEMENT ANALYST	GS	12	1
Region 3	SUPERVISORY MANAGEMENT ANALYST	GS	13	1
Region 3	ATTORNEY-ADVISER (GEN)	GS	12	1
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Region 4	ATTORNEY-ADVISER (GEN)	GS	13	1
Region 4	ATTORNEY-ADVISER (GEN)	GS	13	1
Region 4	SUPERVISORY MANAGEMENT ANALYST	GS	13	1
Region 4	PROGRAM ANALYST	GS	12	1
Region 4	SUPERVISORY MANAGEMENT ANALYST	GS	14	1
Region 4	SUPERVISORY MANAGEMENT ANALYST	GS	14	1
Region 4	MANAGEMENT ANALYST	GS	11	1
Region 4	IT SPECIALIST (SYSADMIN)	GS	11	1
Region 4	PARALEGAL SPECIALIST	GS	12	1
Region 4	MANAGEMENT ANALYST	GS	11	1
Region 4	PROGRAM ANALYST	GS	12	1
Region 4	IT SPECIALIST (SYSADMIN)	GS	11	1
Region 4	PARALEGAL SPECIALIST	GS	12	1
Region 4	PROGRAM ANALYST	GS	12	1
Region 4	MANAGEMENT ANALYST	GS	11	1
Region 4	PROGRAM ANALYST	GS	12	1
Region 4	PROGRAM ANALYST	GS	13	1
Region 4	IT SPECIALIST (SYSADMIN)	GS	12	1
Region 4	PARALEGAL SPECIALIST	GS	12	1
Region 4	PROGRAM ANALYST	GS	13	1
Region 4	IT SPECIALIST (SYSADMIN)	GS	11	1
Region 4	PROGRAM ANALYST	GS	12	1
Region 4	MANAGEMENT ANALYST	GS	11	1
Region 4	REGIONAL MANAGEMENT OFFICER	GS	15	1
Region 4	REGNL CH ADMINV LAW JUDGE	AL	02	1
Region 4	IT SPECIALIST (SYSADMIN)	GS	11	1
Region 4	PROGRAM ANALYST	GS	13	1
Region 4	IT SPECIALIST (SYSADMIN)	GS	11	1
Region 4	SUPVY ATTORNEY-ADVISER (GENERAL	GS	14	1
Region 4	PROGRAM ANALYST	GS	12	1
Region 4	EXECUTIVE ASSISTANT	GS	13	1
Region 4	IT SPECIALIST (SYSADMIN)	GS	11	1
Region 4	PROGRAM ANALYST	GS	13	1
Region 4	IT SPECIALIST (SYSADMIN)	GS	11	1
Region 4	SUPVRY ATTORNEY-ADVISER (GEN)	GS	14	1
Region 4	PROGRAM ANALYST	GS	12	1
Region 4	MANAGEMENT ANALYST	GS	11	1
Region 4	PARALEGAL SPECIALIST	GS	12	1
Region 4	IT SPECIALIST (SYSADMIN)	GS	11	1
Region 4	SUPERVISORY MANAGEMENT ANALYST	GS	13	1
Region 4	MANAGEMENT ANALYST	GS	11	1
Region 4	ATTORNEY-ADVISER (GEN)	GS	13	1
Region 4	IT SPECIALIST (SYSADMIN)	GS	12	1
Region 4	MGMT DEVELOPEMENT PROGRAM SPEC	GS	12	1

Region 4	MANAGEMENT ASSISTANT	GS	06	1
Region 4	STAFF ASSISTANT	GS	09	1
Region 4	PARALEGAL SPECIALIST	GS	12	1
Region 4	SUPERVISORY MANAGEMENT ANALYST	GS	13	1
Region 4	ATTORNEY-ADVISER (GEN)	GS	13	1
Region 4	ATTORNEY-ADVISER (GEN)	GS	13	1
Region 4	ATTORNEY-ADVISER (GEN)	GS	13	1
				51
Region 5	ATTORNEY-ADVISER (GEN)	GS	12	1
Region 5	ATTORNEY-ADVISER (GEN)	GS	12	1
Region 5	IT SPECIALIST (SYSADMIN)	GS	11	1
Region 5	IT SPECIALIST (SYSADMIN)	GS	12	1
Region 5	REGNL CH ADMINV LAW JUDGE	AL	02	1
Region 5	IT SPECIALIST	GS	11	1
Region 5	SUPERVISORY PROG MGMT SPEC	GS	13	1
Region 5	MANAGEMENT ANALYST	GS	12	1
Region 5	IT SPECIALIST (SYSADMIN)	GS	11	1
Region 5	IT SPECIALIST (SYSADMIN)	GS	11	1
Region 5	MANAGEMENT ANALYST	GS	11	1
Region 5	MANAGEMENT ANALYST	GS	12	1
Region 5	MANAGEMENT ANALYST	GS	12	1
Region 5	MEVE PROGRAM COORDINATOR	GS	11	1
Region 5	SUPERVISORY MANAGEMENT ANALYST	GS	14	1
Region 5	MANAGEMENT ANALYST	GS	12	1
Region 5	EXECUTIVE ASSISTANT	GS	13	1
Region 5	MANAGEMENT ANALYST	GS	12	1
Region 5	SUPVY IT SPECIALIST (SYSADMIN)	GS	13	1
Region 5	IT SPECIALIST (SYSADMIN)	GS	12	1
Region 5	MANAGEMENT ANALYST	GS	12	1
Region 5	IT SPECIALIST	GS	12	1
Region 5	SUPVRY ATTORNEY-ADVISER (GEN)	GS	14	1
Region 5	MANAGEMENT ANALYST	GS	12	1
Region 5	MANAGEMENT ANALYST	GS	12	1
Region 5	REGIONAL MANAGEMENT OFFICER	GS	15	1
Region 5	SUPERVISORY MANAGEMENT ANALYST	GS	13	1
Region 5	MANAGEMENT ANALYST	GS	11	1
Region 5	MANAGEMENT ANALYST	GS	12	1
Region 5	SUPVY ATTORNEY-ADVISER (GENERAL	GS	14	1
Region 5	SUPERVISORY MANAGEMENT ANALYST	GS	14	1
Region 5	SECRETARY (OA)	GS	05	1
Region 5	OFFICE AUTOMATION ASSISTANT	GS	05	1
Region 5	MANAGEMENT ANALYST	GS	12	1
Region 5	ATTORNEY-ADVISER	GS	13	1
Region 5	LEAD ATTORNEY-ADVISER (GEN)	GS	14	1
Region 5	PROJECT MANAGER	GS	13	1
Region 5	MANAGEMENT ANALYST	GS	11	1
Region 5	ATTORNEY-ADVISER (GEN)	GS	13	1
Region 5	ATTORNEY-ADVISER (GEN)	GS	12	1
Region 5	ATTORNEY-ADVISER (GEN)	GS	12	1
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Region 6	PROGRAM ANALYST	GS	11	1
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Region 6	ATTORNEY-ADVISER (GENERAL)	GS	12	1
Region 6	SUPERVISORY MANAGEMENT ANALYST	GS	14	1
Region 6	REGNL CH ADMINV LAW JUDGE	AL	02	1
Region 6	SUPERVISORY MANAGEMENT ANALYST	GS	14	1
Region 6	SUPVRY ATTORNEY-ADVISER (GEN)	GS	14	1
Region 6	MANAGEMENT ANALYST	GS	12	1
Region 6	MANAGEMENT ANALYST	GS	12	1
Region 6	PROGRAM ANALYST	GS	12	1
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Region 6	PROGRAM ANALYST	GS	12	1
Region 6	MANAGEMENT ANALYST	GS	12	1
Region 6	PROGRAM ANALYST	GS	12	1
Region 6	SUPERVISORY MANAGEMENT ANALYST	GS	13	1

Region 6	MANAGEMENT & PROGRAM ANALYST	GS	13	1
Region 6	IT SPECIALIST (SYSADMIN)	GS	12	1
Region 6	MANAGEMENT ANALYST	GS	12	1
Region 6	HR SPECIALIST (EE & LABOR RELS)	GS	13	1
Region 6	MANAGEMENT ANALYST	GS	12	1
Region 6	MANAGEMENT ANALYST	GS	09	1
Region 6	IT SPECIALIST (SYSADMIN)	GS	11	1
Region 6	SUPVY IT SPECIALIST (SYSADMIN)	GS	13	1
Region 6	MANAGEMENT ANALYST	GS	12	1
Region 6	PROGRAM ANALYST	GS	13	1
Region 6	SUPERVISORY PARALEGAL SPEC	GS	13	1
Region 6	PROGRAM ANALYST	GS	12	1
Region 6	MANAGEMENT & PROGRAM ANALYST	GS	13	1
Region 6	MANAGEMENT ANALYST	GS	12	1
Region 6	PROGRAM ANALYST	GS	13	1
Region 6	ATTORNEY-ADVISER (GEN)	GS	13	1
Region 6	MANAGEMENT ANALYST	GS	12	1
Region 6	MANAGEMENT ANALYST	GS	09	1
Region 6	IT SPECIALIST (SYSADMIN)	GS	12	1
Region 6	IT SPECIALIST (SYSADMIN)	GS	12	1
Region 6	HR SPECIALIST (EE & LABOR RELS)	GS	13	1
Region 6	MANAGEMENT ASSISTANT	GS	06	1
Region 6	MANAGEMENT ASSISTANT	GS	05	1
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Region 7	MANAGEMENT & PROGRAM ANALYST	GS	12	1
Region 7	ATTORNEY-ADVISER (GEN)	GS	13	1
Region 7	SUPERVISORY MANAGEMENT ANALYST	GS	14	1
Region 7	MANAGEMENT & PROGRAM ANALYST	GS	12	1
Region 7	IT SPECIALIST (SYSADMIN)	GS	11	1
Region 7	IT SPECIALIST (SYSADMIN)	GS	12	1
Region 7	ATTORNEY-ADVISER (GENERAL)	GS	13	1
Region 7	REGIONAL MANAGEMENT OFFICER	GS	15	1
Region 7	SUPVY IT SPECIALIST (SYSADMIN)	GS	13	1
Region 7	FIELD MANAGEMENT OFFICER	GS	13	1
Region 7	SUPVRY ATTORNEY-ADVISER (GEN)	GS	14	1
Region 7	IT SPECIALIST (SYSADMIN)	GS	12	1
Region 7	MANAGEMENT AND PROGRAM ANALYST	GS	12	1
Region 7	REGN VII EE DVPMT ASSOC	GS	13	1
Region 7	REGIONAL CHIEF ALJ	AL	02	1
				15
Region 8	SUPVRY ATTORNEY-ADVISER (GEN)	GS	14	1
Region 8	PROGRAM ANALYST	GS	12	1
Region 8	LEGAL ASSISTANT	GS	08	1
Region 8	REGIONAL MANAGEMENT OFFICER	GS	15	1
Region 8	IT SPECIALIST (SYSADMIN)	GS	12	1
Region 8	MANAGEMENT ANALYST	GS	12	1
Region 8	IT SPECIALIST (SYSADMIN)	GS	12	1
Region 8	MANAGEMENT ANALYST	GS	12	1
Region 8	SUPERVISORY MANAGEMENT ANALYST	GS	14	1
Region 8	REGNL CH ADMINV LAW JUDGE	AL	02	1
Region 8	SUPVY IT SPECIALIST (SYSADMIN)	GS	13	1
Region 8	ADMINISTRATIVE OFFICER	GS	13	1
Region 8	PROGRAM ANALYST	GS	12	1
Region 8	LEAD ATTORNEY-ADVISER (GEN)	GS	14	1
Region 8	ATTORNEY-ADVISER	GS	13	1
Region 8	STAFF ASSISTANT	GS	09	1
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Region 9	MANAGEMENT ANALYST	GS	12	1
Region 9	SUPERVISORY MANAGEMENT ANALYST	GS	14	1
Region 9	IT SPECIALIST (SYSADMIN)	GS	11	1
Region 9	IT SPECIALIST (SYSADMIN)	GS	11	1
Region 9	STAFF ASSISTANT	GS	09	1
Region 9	REGIONAL MANAGEMENT OFFICER	GS	15	1
Region 9	IT SPECIALIST (SYSADMIN)	GS	11	1
Region 9	SPECIAL PROJECTS OFFICER	GS	14	1
Region 9	SUPERVISORY MANAGEMENT ANALYST	GS	14	1

Region 9	BUDGET ANALYST	GS	11	1
Region 9	MANAGEMENT ANALYST	GS	12	1
Region 9	SUPVY IT SPECIALIST (SYSADMIN)	GS	13	1
Region 9	LEAD ATTORNEY-ADVISER (GEN)	GS	14	1
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Region 9	MANAGEMENT ANALYST	GS	12	1
Region 9	IT SPECIALIST (SYSADMIN)	GS	12	1
Region 9	PROGRAM ANALYST	GS	13	1
Region 9	MANAGEMENT ANALYST	GS	11	1
Region 9	ADMINISTRATIVE OFFICER	GS	13	1
Region 9	PROGRAM ANALYST	GS	13	1
Region 9	EXECUTIVE ASSISTANT	GS	13	1
Region 9	MANAGEMENT ANALYST	GS	12	1
Region 9	MANAGEMENT ANALYST	GS	12	1
Region 9	SUPERVISORY MGMT ANALYST	GS	13	1
Region 9	IT SPECIALIST (SYSADMIN)	GS	12	1
Region 9	REGNL CH ADMINV LAW JUDGE	AL	02	1
Region 9	MANAGEMENT ANALYST	GS	12	1
Region 9	SUPVRY ATTORNEY-ADVISER (GEN)	GS	14	1
Region 9	ATTORNEY-ADVISER (GEN)	GS	13	1
Region 9	ATTORNEY-ADVISER (GEN)	GS	13	1
Region 9	ATTORNEY-ADVISER	GS	12	1
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Region 10	IT SPECIALIST (SYSADMIN)	GS	11	1
Region 10	SUPVY IT SPECIALIST (SYSADMIN)	GS	13	1
Region 10	SUPVRY ATTORNEY-ADVISER (GEN)	GS	14	1
Region 10	ADMINISTRATIVE LAW JUDGE	AL	03	1
Region 10	MANAGEMENT AND PROGRAM ANALYST	GS	13	1
Region 10	SOCIAL INSURANCE SPEC (PRGANAL)	GS	12	1
Region 10	HR SPECIALIST (EE & LABOR RELS)	GS	13	1
Region 10	REGIONAL MANAGEMENT OFFICER	GS	15	1
Region 10	REGNL CH ADMINV LAW JUDGE	AL	02	1
Region 10	MANAGEMENT ANALYST	GS	12	1
Region 10	MANAGEMENT ANALYST	GS	12	1
Region 10	MANAGEMENT ANALYST	GS	12	1
Region 10	IT SPECIALIST (SYSADMIN)	GS	12	1
Region 10	SUPERVISORY MANAGEMENT ANALYST	GS	14	1
Region 10	ATTORNEY-ADVISER (GEN)	GS	13	1
Region 10	IT SPECIALIST (SYSADMIN)	GS	12	1
Region 10	ATTORNEY-ADVISER (GEN)	GS	13	1
				17
			Total	292

COMMITTEE ON FINANCE
NEWS RELEASE
Max Baucus (D-Mont.)
http://finance.senate.gov

Hearing Statement of Senator Max Baucus (D-Mont.)
Regarding the Social Security Administration and Improving Service
As prepared for delivery

President Kennedy once said, "A Nation's strength lies in the well-being of its people."

No federal program touches more American lives and benefits more American families than Social Security. Next year, the Social Security Administration will pay benefits to almost 60 million Americans.

Today we will examine the agency's performance delivering benefits to workers and their families, and its role saving taxpayer dollars. This is not a hearing about Social Security solvency. We will hear from the Commissioner of the Social Security Administration, Michael Astrue.

Commissioner Astrue, during your confirmation hearing before this Committee in 2007, you committed to reduce the disability hearings backlog. Today we will evaluate the result. At the beginning of last year, more than 771,000 people were waiting for a hearing. This is higher than when you started your term. I expect to hear why the backlog grew, and what the agency is doing to address it.

Michael Clouse, who lives in my hometown of Helena, Montana, needs this backlog to be fixed. He has spent years trying to work through the red tape.

Mike is a 55 year-old army veteran, and his service didn't end when he retired from the military. Mike volunteers with the American Legion and the Disabled American Veterans, helping other veterans find transportation to hospitals across Montana. But his health problems make it tough for him to volunteer or do other work.

During a military training exercise years ago, a tank next to him accidently fired. Mike's back broke in the accident, and ever since, he's suffered from chronic pain.

Mike worked in heating and plumbing before joining the military. He was working as an Employment Specialist with the Montana Department of Labor Job Service in 2004 when his disabilities became too much.

He had to leave his job, and he applied for benefits shortly thereafter. Mike's waited since 2005 for his benefits. He's been shuttled between various Social Security offices and his paperwork has gotten lost.

Mike and his wife Teese had to sell their home in Butte to be closer to his hospital in Helena. They couldn't take the physical demands and costs of traveling.

Teese, who is his caregiver, went back to work just to make ends meet. Things have been a struggle for them. The financial hardship means they're unable to visit their children and grandchildren.

At an age when many Americans are planning their retirements and their financial futures, Mike and Teese are stuck.

Mike stepped up and volunteered to serve his country. But now that the shoe is on the other foot, he's waiting for his country to serve him.

Fortunately, we're seeing one sign of progress at the Social Security Administration. It doesn't take as long for people to get a decision on their claim.

At the end of 2008, it took 514 days, almost a year and a half. In 2011, it took 360 days. This is substantial progress, but still too long. Mr. Astrue, you set a goal of 270 days by the end of fiscal year 2013. We need to meet this goal.

And while your agency has seen fifty percent more retirement applications since 2001, there are fewer workers to deal with the increased work load. These challenges have been compounded because the agency's budget remained flat during the last two years.

The Social Security Administration needs an adequate budget to fix the disability backlog and to root out improper payments. For fiscal year 2013, the President has asked for $11.76 billion. This is $307 million more than last year, most of which is dedicated to reducing improper payments, thereby improving the long-term outlook of Social Security.

Every dollar spent to root out improper payments saves six to ten dollars in the long-run. Unfortunately, Congress didn't provide full funding for these efforts in fiscal year 2012. Doing so would have saved taxpayers more than $800 million. We can't afford to repeat this mistake. Failing to fully fund program integrity work is penny wise and pound foolish.

So let us invest Social Security dollars wisely. Let us reduce the disability backlog. Let us ensure that Americans like Michael Clouse aren't stuck waiting for benefits they've earned. And let us ensure the Social Security program is making our country stronger by improving Americans' well-being.

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SUBMITTED BY SENATOR COBURN

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WSJ.com

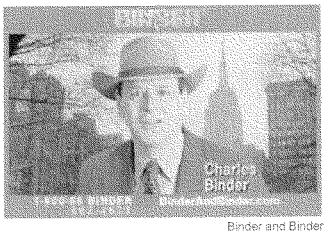
LAW | DECEMBER 22, 2011

Two Lawyers Strike Gold In U.S. Disability System

By DAMIAN PALETTA And DIONNE SEARCEY

Lawyers Harry and Charles Binder began representing applicants for Social Security disability benefits in the 1970s, when the field was a professional backwater. Last year, their firm collected $88 million in fees for guiding clients through the system, government data indicate, making it the nation's largest Social Security disability advocate by far.

"We'll deal with the government," a cowboy-hatted Charles Binder proclaims in his firm's ubiquitous television ads. "You have enough to worry about."



Binder and Binder

Binder & Binder co-founder Charles Binder in one of his firm's TV ads.

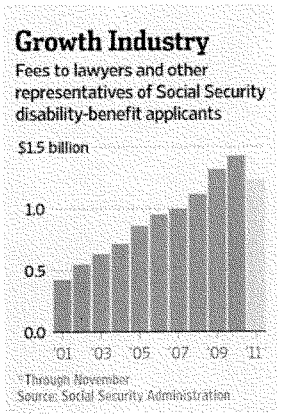
Having firms like Binder & Binder deal with the government was supposed to be part of the solution for a federal disability-insurance system staggering under a growing backlog of cases. The Social Security Administration figured cases would move through the pipeline faster if more claimants were guided by experts. So in 2004 the agency and Congress relaxed rules governing representation, making it easier for nonlawyer advocates to get paid. Binder swiftly hired lower-paid nonlawyers to handle cases, ramped up advertising and began processing far greater numbers of clients.

The rise of such specialty firms now is testing the system in new ways.

Kenneth Nibali, a top agency disability official before his retirement in 2002, says the way firms are paid could encourage them to push boundaries in how they craft appeals. The firms collect fees only if they win, and at the hearings where decisions are made, there are no government lawyers pushing back against applicant claims, leaving it solely up to an administrative law judge to sniff out misleading applications. "Does it raise questions about whether we are getting the most objective information? I think that's a legitimate issue," says Mr. Nibali.

Binder & Binder has been reprimanded by the Social Security Administration for backdating documents, and the agency is investigating whether it forged signatures of ex-employees. Five former Binder employees said in interviews that staffers routinely withheld from government submissions medical records that they believed to be potentially damaging to client claims. The firm had a system, they said, that used red stickers to highlight unfavorable information in client files, and that material often would be left out of court submissions.

In a May 4, 2005, memo sent to "lawyers, writers, and folks who review meds," or medical records, Charles Binder wrote that a general



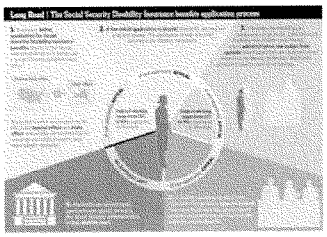
principle was, "if it is not harmful to the client, it should be submitted." The words "not harmful" appear in bold letters.

The 2004 federal law that opened the door for greater participation by nonlawyers also stipulated that applicants or their advocates must not omit from government submissions "a fact which the person knows or should know is material to the determination of any initial or continuing right to or the amount of monthly insurance benefits."

The Binder brothers declined to comment for this article. A person close to management acknowledged that the firm labels its records with colored stickers, but said that it doesn't withhold "material facts" from court submissions.

Long Road

The Social Security Disability Insurance benefits application process



Judges long have complained that the Social Security Administration should have another official at the hearings to serve as a counterweight to the people seeking benefits for claimants, which they say would make the process more fair. Judges are obligated both to defend the government's pool of disability money and to make sure deserving applicants receive benefits, noted Randall Frye, head of the Association of Administrative Law Judges, in a letter to Congress in July. He said the "SSA uses a model unheard of throughout our land to find facts in a judicial-type setting."

Earlier

- Disability-Benefits System Faces Review
- Ex-Judge's Disability Rulings Probed
- Doctor Revolt Shakes Disability Program
- Probe Sought Into Disability Delays
- Disability Cases Delayed to Meet Goals
- Puerto Rico Disability Claims Probed
- Path Clear for Disability Reviews
- Social Security Judge Retires Amid Probe
- High-Paying Disability Judges Costing Taxpayers
- Lawmakers Seek Disability Probe
- Social Security Judge Steps Down
- Disability Judge Put on Leave From Post

The Social Security Disability Insurance system is intended to provide a safety net for people who no longer can work due to a physical or mental condition. Those who qualify receive a monthly stipend and access to federal health-care programs, often until they turn 66 and Social Security retirement benefits fully kick in.

High unemployment and an aging population have left the system under severe financial pressure. The number of people collecting benefits rose to 10.6 million in November, from 6.9 million at the end of 2001. Budget experts say the program could exhaust its reserves within six years, making it the first major entitlement program to do so.

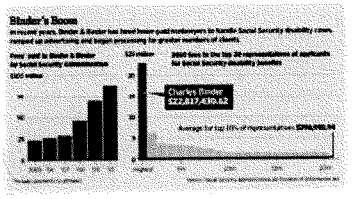
The greater involvement of claimant advocates like Binder, along with pressure on judges to move cases faster, has helped reduce the average time to clear a case to 360 days, from 514 in 2008. But the number of pending appeals continues to mount. At the end of September, 771,318 people were waiting to have cases heard, compared with 705,367 one year earlier, and 463,052 in 2002.

Many cases are handled by small law firms or legal advocates for the poor, which generally have modest client rosters and offer more personalized service than bigger firms, according to judges, lawyers and claimants. Other

firms have built large national practices similar to Binder's, including Disability Group Inc. of Santa Monica, Calif.

Hauppauge, N.Y.-based Binder, which has offices in a dozen states, advertises heavily to attract clients, spending more than $20 million on TV ads in the past year, according to Nielsen. Between 2001 and 2010, it represented about 200,000 clients, according to records from a recent lawsuit stemming from a dispute with a competitor.

Initial applications for disability benefits usually are decided in state agencies that work with the Social Security Administration. Applicants are required to provide medical records establishing that they are unlikely to be able to work for at least a year, or that their health problems are terminal.



If denied at the state level, applicants can request a hearing before an administrative law judge. Often, that is the point at which lawyers get involved. If the appeal is successful, the applicant is entitled to "back pay"—disability payments dating to the time of the injury or disability. Lawyers can collect 25% of that award, up to $6,000. Further appeals can eventually land the case in U.S. district court.

Cases that reach the appellate level are sometimes murky, involving possible mental illness, substance abuse or other complex issues.

Theodore Lawler, 61 years old, of Staten Island, N.Y., was turned down for disability benefits in 2007 after claiming he suffered from post-traumatic stress disorder, depression and hearing loss from serving in the infantry in the Vietnam War.

In a January 2009 appeal, he told an administrative law judge he stopped working as a union carpenter because "I wasn't getting along with a lot of people and I was getting a bad reputation, like I was losing control of, I guess, my nerves," according to records from a later federal-court hearing. The administrative judge, citing one doctor's 2007 conclusion that he was "in remission," turned him down. Mr. Lawler hired Binder to appeal.

Last month, a federal district judge in Brooklyn vacated the decision, saying earlier rulings relied too heavily on the 2007 doctor's report, over other doctors who offered contrary evidence.

"It was all taken care of by them," says Mr. Lawler about Binder. "I just stayed home and they called me up and told me they won the case."

The cap on legal fees has made such work financially unattractive for many lawyers. But specialty firms like Binder have figured out a way to make it lucrative.

In 2010, a $1.4 billion slice of the disability awards paid by the Social Security Administration under its primary disability program went to disability advocates as fees, up from $425 million in 2001. The $88 million the Binder firm collected last year was more than triple the $26 million it got in 2006, according to data obtained under a Freedom of Information Act request. Direct payments to Charles Binder, who is 61, totaled $22.8 million last year.

In 2010, the brothers sold a large stake in their company to a division of H.I.G. Capital, a Miami-based private-equity firm, for an undisclosed sum. H.I.G. declined to comment.

Several administrative law judges say Binder's business model is based on volume. Anthony Washington, a former Binder case manager in New York, describes the operation as "like a warehouse" with the goal of seeing "how much money they can make."

Some judges said in interviews that the firm has the practice down to a science, creating a model that many competitors are working to mirror. Other judges said they have chastised the firm's employees for submitting incomplete files or for introducing themselves to their clients only five minutes before a hearing.

To prepare for appellate hearings, lawyers frequently seek to bolster the cases by supplementing the case record with additional medical reports. Although the 2004 law obligates claimant advocates not to omit material information, the Social Security Administration doesn't have a definitive policy about what should be submitted. Agency spokesman Mark Hinkle says firms have to be "forthright" with the agency.

Robert E. Rains, a law professor at Pennsylvania State University and director of the school's Disability Law Clinic, says his view on the 2004 law is that medical records that directly pertain to disability claims must be turned over, although he adds that "Social Security has been admittedly less than clear on this point."

The five former Binder employees said that once Binder collects the additional medical records, employees affix colored stickers to the documents. According to the former employees, green ones go on documents that either don't need further review or will help clients win benefits, such as a report on a scan showing an injury; yellow ones on material that might give pause to judges, such as doctor references to jail time; and red on material such as references to current substance abuse or a doctor's opinion that a person can still work, walk long distances or lift heavy things.

The five former employees said records with red stickers often were not handed over to the Social Security Administration. Shawn Beckett, a lawyer at Binder from April 2008 through February 2009, said he was instructed by a superior "that anything that was not favorable should be 'red' and not turned into the record." He said he felt uncomfortable withholding records and didn't do so, but said that many colleagues did.

Mr. Beckett and one other former employee said they reviewed applications they believe would have been denied had all of the information been presented. Mr. Beckett said he recalled cases in which doctors said the person applying for benefits was capable of returning to work, but that information was withheld from the application.

Mr. Beckett said he was fired by Binder in 2009 for taking on clients outside the firm's auspices.

Two other former Binder lawyers who said they were not fired and did not work with Mr. Beckett also said that medical information was withheld that would have undermined clients' cases, as did two other former employees who weren't lawyers. Three of those former employees said supervisors often made the decision about which medical information was withheld. It isn't clear whether any Binder clients were aware of the practice.

According to the person close to Binder management, those who received the 2005 memo from Charles Binder—the one suggesting that a medical record generally should be submitted "if it is not harmful to the client"—"understood that 'harmful' referred to incomplete, incoherent, illegible, misappropriated or potentially immaterial medical evidence in need of further review, clarification or completion before being submitted."

The Social Security Administration says its job isn't to police firms that represent disability applicants. "We are not so much in the business of, quote unquote, monitoring law firms," says the agency's commissioner, Michael Astrue. "We are in the business of monitoring the quality of the legal services provided to our claimants in our courtrooms."

Mr. Hinkle, the Social Security spokesman, says the agency's inspector general, not the agency itself, is responsible for enforcing the 2004 law. A spokesman for the inspector general says investigators had "not received allegations of law firms withholding material information from SSA, but were we to receive such allegations, we would review them as we would any allegation."

The agency has complained to Binder about some of its practices. On April 11, it instructed Charles Binder to stop attaching "privacy statements" to disability appeals—which could have denied the agency the right to speak to various third parties, such as an applicant's friends and neighbors. Several administrative law judges said the firm has since stopped the practice.

Mr. Astrue, the agency's commissioner, said in an interview that the agency had reprimanded Binder for backdating documents, although he declined to elaborate. Dates on disability applications can be crucial to meeting deadlines and determining fees.

In addition, the agency is investigating whether Binder forged the signatures of some employees who had left the firm, said one person with knowledge of the probe. The alleged practice might have been used by Binder to petition the government for fees after it wins an appeal, even if the employee who represented the client no longer works at the firm, that person said.

Binder has told officials that employees signed "power of attorney" forms that gave Binder the ability to sign their names, people familiar with the matter said. The agency spokesman said he couldn't "confirm or deny" the existence of an investigation.

Many Binder clients say they appreciate the firm's ability to get results. Michael Plouffe, 31, of Old Lyme, Conn., had been trying for four years to get a claim approved based on sclerosing mesenteritis, a disease that causes inflammation of the small intestine. His pain was so bad, he says, that he quit his job as an emergency medical technician in April 2007. His application for disability benefits also noted he suffered from depression.

He says his case was a tricky one because he had a history of substance abuse, mostly painkillers. He contended it was tied to his pain, rather than an addiction, a position past judges deemed subjective and cited in denying him benefits.

Binder represented him in a series of appeals that eventually landed the case in federal district court in Connecticut.

Binder provided medical records that contended the substance abuse was caused by Mr. Plouffe being "wracked with intense physical pain, obsessed with trying to numb it," according to the federal court records. On Dec. 1, the federal court awarded him benefits.

"It was a long tough battle, and they stuck with it for nearly five years for me," says Mr. Plouffe, who says he's been drug-free in recent years. "They were very persistent."

Top Reps

The Social Security Administration pays legal firms directly for successfully winning disability benefits for their clients. Here are the top 10 individuals collecting fees from 2010.

Name	2010 payments	Based	Comment?
Charles Binder	$22,817,430.62	Hauppauge, N.Y.	Declined to comment
Thomas Nash	$6,292,296.41	Chicago	Didn't respond to request for comment
Eric Conn	$3,815,512.96	Stanville, Ky.	Didn't respond to request for comment
Michael Sullivan	$3,614,429.13	Lousiville, Ky.	Didn't respond to request for comment
Frank Latour	$3,464,262.24	Colton, Calif.	Didn't respond to request for comment
Ronald Miller	$3,241,150.42	Santa Monica, Calif.	A spokesman for Disability Group, the firm run by Mr. Miller, said, 'Statistically, claimants who employ an attorney to represent them are much more likely to win than those who go unrepresented. We are proud of the results we have achieved for our clients, helping them obtain justly deserved benefits. The $3.2 million is for the work performed by our national firm to help clients achieve their deserved benefits.'

Juan Hernandez Rivera	$2,816,311.80	Bayamon, Puerto Rico	Didn't respond to request for comment
Robert Friedman	$2,531,046.93	Seattle	Didn't respond to request for comment
Matthew Greenbaum	$2,004,375.65	New Orleans	Didn't respond to request for comment
Thomas Bothwell	$1,668,758.92	Yakima, Wash.	Declined to comment

Source: Social Security Administration

COMMITTEE ON INTELLIGENCE
COMMITTEE ON INDIAN AFFAIRS
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United States Senate
Senator Tom Coburn, MD

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS
COMMITTEE ON THE JUDICIARY
RANKING MEMBER
SUBCOMMITTEE ON THE CONSTITUTION

December 22, 2011

Via U.S. Mail and Email (suzanne.payne@ssa.gov)

The Honorable Michael J. Astrue
Commissioner
United States Social Security Administration
6401 Security Boulevard
Baltimore, MD 21235

Dear Commissioner Astrue:

I write in response to an article in the *Wall Street Journal* regarding potentially fraudulent practices by the law firm of Binder & Binder in representing claimants for disability benefits before the Social Security Administration ("SSA"). That article, which I have attached, found that claimant representatives at the Binder & Binder firm has often withheld medical evidence from SSA that could prove their clients should not receive disability benefits.

Binder & Binder allegedly engaged in this practice, even though making false statements and misrepresentations or omissions to receive disability benefits are prohibited by the Social Security Act and subject to civil and criminal penalties. *See* Social Security Act, 42 U.S.C. §1320a-7a; 42 U.S.C. §408.

This practice raises a number of concerns, including the dire need for general reform to the SSA disability program application process. Most troubling, however, is the number of disability beneficiaries that are potentially improperly receiving benefits. Therefore, I request that SSA perform full medical continuing disability reviews ("CDRs") on all current disability beneficiaries – both Social Security Disability Insurance ("SSDI") and Supplemental Security Income ("SSI") – that were represented by the Binder & Binder law firm. These individuals should receive a full medical CDR whether they are currently scheduled to receive one or not.

This review of Binder & Binder's clients will ensure the integrity of the disability programs and that the American public is not financing benefits for individuals that do not meet the disability program criteria. Please also provide my staff with a briefing on how SSA plans to prevent claimant representatives from failing to provide all relevant medical evidence in the future. Please contact Andrew Dockham at 202-224-2224 with any questions regarding this request, as well as to schedule the requested briefing.

Sincerely,

Tom A. Coburn, M.D.
United States Senator, Oklahoma

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SOCIAL SECURITY

The Commissioner

January 12, 2012

The Honorable Tom A. Coburn, M.D.
United States Senate
Washington, D.C. 20510

Dear Senator Coburn:

I write in response to your letter regarding the *Wall Street Journal* article published December 22, 2011, which alleges that attorneys at Binder & Binder regularly withheld material medical information from Social Security during the appeals process that could affect disability determinations.

We take allegations of claimant representatives' misconduct seriously. All new allegations are being reviewed, which will help determine appropriate action.

Continuing disability reviews (CDR) and other important program integrity tools require administrative resources and trained staff. We were gearing up to handle significantly more medical CDRs consistent with the Budget Control Act; however, Congress did not support that increase within the program integrity funding it passed in the Disaster Relief Appropriations Act of 2012, and thus declared its intent about how much of this work we should do. I would ask you to be an advocate with your peers for increased support in fiscal year 2013 for our program integrity efforts.

If you have any questions, please contact me or have your staff contact Scott Frey, our Deputy Commissioner for Legislation and Congressional Affairs, at (202) 358-6030.

Sincerely,

Michael J. Astrue

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
RANKING MEMBER
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

United States Senate
Senator Tom Coburn, MD

COMMITTEE ON FINANCE
RANKING MEMBER
SUBCOMMITTEE ON SOCIAL SECURITY, PENSIONS, AND FAMILY POLICY
COMMITTEE ON THE JUDICIARY
RANKING MEMBER
SUBCOMMITTEE ON PRIVACY, TECHNOLOGY, AND THE LAW

January 24, 2012

Via U.S. Mail and Electronic Mail (suzanne.payne@ssa.gov)

The Honorable Michael J. Astrue
Commissioner
United States Social Security Administration
6401 Security Boulevard
Baltimore, MD 21235

Dear Commissioner Astrue:

I was disappointed by your letter dated January 12, 2012, which did not describe any steps the Social Security Administration ("SSA") intends to take in response to recent allegations the Binder & Binder law firm has made material misrepresentations to SSA. For the reasons listed below, I resubmit my request that SSA perform a targeted review of current disability claimants that were represented by Binder & Binder. Reviewing only "new allegations," as your letter suggests, is a wholly inadequate response to serious allegations of misconduct, which if true could carry both criminal and civil penalties.[1]

The *Wall Street Journal* article provides troubling allegations that Binder & Binder law firm "staffers routinely withheld from government submissions medical records that they believed to be potentially damaging to client claims."[2] Full medical continuing disability reviews ("CDRs") must be performed on Binder & Binder claimants to determine if they truly qualify for the disability programs or if material evidence suggesting otherwise was withheld from the agency. Removing Binder & Binder claimants from program rolls that failed to truthfully represent their disability or residual functional capacity before agency decision-makers could provide significant savings.

Your letter indicates you do not believe Congress provided SSA with the requisite funding to perform CDRs on the Binder & Binder claimants. However, Congress specifically allocated over $756 million to SSA in CDR funding for Fiscal Year 2012.[3] According to cost estimates provided by your staff, a full medical CDR costs approximately $1,000.[4] If this is correct, performing CDRs on just 40,000 Binder & Binder represented beneficiaries would cost 0.05 percent of your total 2012 CDR budget. Such an undertaking would result in significant savings

[1] *See* Social Security Act, 42 U.S.C. §1320a-7a; 42 U.S.C. §408.

[2] Damian Paletta and Dionne Searcey, *Two Lawyers Strike Gold in U.S. Disability System*, Wall Street Journal, December 22, 2011, http://online.wsj.com/article/SB10001424052970203518404577096632862007046.html.

[3] This amount for funding of CDRs includes $273,482,140.00 in funding through the 2012 Consolidated Appropriations Act and $482,570,215.00 through the 2012 Disaster Relief Act. Information provided by Congressional Research Service.

[4] *See* Social Security Administration Presentation, *Continuing Disability Review Process*, page 6, July 2010.

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to trust fund expenditures, since SSA estimates that each dollar spent on CDRs results in $10.50 in program savings.[5] The possible savings from reviewing Binder & Binder clients could even be much higher.

Moreover, your letter is incorrect that funding provided by Congress "declared [congressional] intent about how much of this [CDR] work [SSA] should do." CDRs are required by law, as well as by SSA's own regulations.[6] It is up to you as Commissioner to ensure the priority of SSA's program integrity functions. CDRs ensure disability benefits are provided only to those individuals that rightfully qualify for the programs. If these program integrity functions are not performed in accordance with current statutes and regulations, it is a direct result of a policy decision made by the agency. Congressional funding levels do not determine the responsibility of your agency to comply with governing statutes and regulations. Your assertions that congressional funding represents your legally binding program integrity obligations are inapposite.

In sum, it is unclear to me why SSA is not targeting disability claimants admitted to program rolls under the allegedly fraudulent practices of the Binder & Binder law firm. As Ranking Member on the Finance Committee Subcommittee on Social Security, I strongly urge SSA to prioritize and adequately fund program integrity, beyond what is specifically allocated by Congress. Making common sense decisions to target beneficiaries for CDRs that are likely receiving benefits improperly will extend the life of the disability trust fund, currently scheduled for exhaustion in 2018.[7]

As previously requested, please provide my staff with a briefing on how SSA plans to prevent claimant representatives from failing to provide all relevant medical evidence. Please contact Andrew Dockham at 202-224-2224 to schedule this briefing.

Sincerely,

Tom A. Coburn, M.D.
United States Senator, Oklahoma

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[5] Social Security Administration, Office of the Inspector General, *Full Medical Continuing Disability Reviews*, A-07-09-29147 (March 2010).

[6] *See* 42 U.S.C. § 421(i); 20 C.F.R. § 416.990.

[7] The 2011 Annual Report of the Board of Trustees of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds.

SOCIAL SECURITY

The Commissioner

March 1, 2012

The Honorable Tom A. Coburn, M.D.
United States Senate
Washington, D.C. 20510

Dear Senator Coburn:

I write in response to your January 24, 2012 follow-up letter regarding allegations made in a Wall Street Journal article that attorneys at Binder & Binder withheld material medical information from us during the appeals process.

As we explained to the Wall Street Journal prior to the publication of the December 22, 2011 article entitled "Two Lawyers Strike Gold In U.S. Disability System," our current regulations require claimants, or their representatives, to present all medical evidence that *supports* their allegation of disability. In both 1997 and 2005, we proposed, without success, regulations that would have created an affirmative duty for claimants and their representatives to submit *all* medical evidence to us, including evidence that does *not* support their claim.

While we have the authority to conduct an early medical continuing disability review (CDR) for a particular claimant if we have cause to question that claimant's continuing eligibility for benefits, the information in the article does not provide us with individualized information regarding a specific claimant that we would need to initiate an early CDR. The article does not support doing 40,000 targeted CDRs, which would raise serious concerns about the fundamental fairness of the CDRs that could expose us to significant risk of litigation.

It appears that you suspect that Binder and Binder committed systemic fraud; therefore, our Office of the Inspector General may have tools that are more helpful. I am copying our Inspector General, Patrick P. O'Carroll, Jr., on this response should you wish to contact him.

If you need additional information, please contact me or have your staff contact Scott Frey, our Deputy Commissioner for Legislation and Congressional Affairs, at (202) 358-6030.

Sincerely,

Michael J. Astrue

cc:
Inspector General Patrick P. O'Carroll, Jr.

STATEMENT OF HON. ORRIN G. HATCH, RANKING MEMBER
U.S. SENATE COMMITTEE ON FINANCE HEARING OF MAY 17, 2012
THE SOCIAL SECURITY ADMINISTRATION: IS IT MEETING ITS RESPONSIBILITIES TO SAVE TAXPAYER DOLLARS AND SERVE THE PUBLIC?

WASHINGTON – U.S. Senator Orrin Hatch (R-Utah), Ranking Member of the Senate Finance Committee, today delivered the following opening statement at a committee hearing examining the Social Security Administration:

Mr. Chairman, thank you for scheduling this hearing. I join you in welcoming Commissioner Astrue.

The Social Security Administration oversees numerous programs and is responsible for stewardship of significant taxpayer resources. We are all interested in hearing from the Commissioner about his stewardship of those resources, his plans for the future, and his strategies for confronting existing and ongoing challenges facing Social Security's programs.

A few short weeks ago, we received a reminder of some of the challenges facing Social Security's finances in the annual report of the Trustees. According to the report, the combined Old-Age and Survivors Insurance and Disability Insurance Trust Funds within Social Security are projected to be exhausted in 2033, three years sooner than in the previous year's report. The Trustees identify that as the system is currently structured, Social Security beneficiaries face benefit cuts of as much as 25 percent in 2033, with further cuts thereafter. To state things simply, current promises embedded in Social Security cannot be sustained given the system's existing structure.

Worse yet, the Disability Insurance Trust Fund is projected to become exhausted in 2016, less than four years from now, and two years earlier than estimated just one year ago. Absent changes, disabled workers will very soon face the real threat of a 21 percent benefit cut in 2016. And with the recent explosive growth in the ranks of Disability Insurance benefit recipients, far outpacing growth in the general working population, 2016 might be a rosy outlook in terms of when the Disability Trust Fund actually becomes exhausted. Benefit payments in the Disability Insurance program have increased by a remarkable 134 percent since 2000.

Following the fiscal cliff that we face at the end of this year, we have a solvency cliff in 2016 for the Disability Insurance program and then another solvency cliff for the Social Security retirement program. Yet in the face of these known dangers, we continue to kick the can down the road, instead of addressing the known problems. We should not act like Thelma and Louise when it comes to Social Security and our economy by driving them off a cliff into an abyss of insolvency and economic decline.

Inaction is irresponsible. As the President remarked recently in advocating more tax-and-spend policies, the fact that this is an election year is *not an excuse for inaction*.

Unfortunately, I am not aware of any plans by the administration to tackle the looming exhaustion of the Disability Insurance Trust Fund or the general unsustainability of Social Security. As far as Social Security is concerned, it appears that this being an election year *IS* the administration's reason for inaction and is just another excuse for them to kick the can down the road once again.

So many tax provisions expire at the end of this year that a dangerous fiscal cliff has formed. By not acting now, we are just stepping on the accelerator even as we are already perilously close to the cliff. Inaction for the rest of this year only invites careless and hasty decision making, which leads to bad policy. I urge the administration to work with Congress on the mountainous to-do list of expiring tax provisions and unsustainable entitlement promises in the interest of sound policymaking, certainty, and the provision of an economic environment fertile for growth in jobs and the economy generally.

There is no reason to delay efforts that will place the programs in Social Security on a sustainable financial path. As virtually everyone acknowledges, the sooner we address the issue, the better.

Mr. Chairman, thank you again for holding this hearing. Commissioner Astrue, thank you for your service and for joining us today. I look forward to hearing about your budget, your challenges, and your plans for the Social Security system.

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COMMUNICATIONS

United States Senate Committee on Finance
"The Social Security Administration: Is it Meeting its Responsibilities to Save Taxpayer Dollars and Serve the Public?"

Thursday, May 17, 2012

Statement of James F. Allsup
President, CEO and Founder of Allsup
300 Allsup Place
Belleville, IL 62223

Chairman Baucus and Members of the Committee, thank you for considering my written testimony regarding the Social Security Administration's important work and the steps that can be taken to increase the value of the vital services it provides to the American people.

My name is James Allsup, and I am a former employee of the Social Security Administration and the founder and CEO of Allsup, a national non-attorney Social Security Disability Insurance (SSDI) representation company. Since 1984, we have helped more than 170,000 eligible individuals obtain disability benefits.

Along the way, we have obtained unique insights into the challenges of those with disabilities and how they navigate the SSDI process. And in recent years, we've looked more closely at how we—and all third-party representatives—could support the SSA as it strives for efficiencies.

The *Allsup Disability Study: Income at Risk* found that in the first quarter of 2012, the unemployment rate for people with disabilities was more than 74 percent higher than the rate for people without disabilities. While 8.4 percent of Americans overall were considered unemployed, 14.6 percent of Americans with disabilities could not find work. The financial strain on SSDI claimants – the vast majority of whom have never before used a government assistance program – is clear. One-third of Allsup claimants waiting to hear if they will be awarded SSDI benefits missed, or expect to miss, a mortgage payment. One in five has filed or expects to file for bankruptcy. One-third expect to lose their healthcare insurance, according to our research.

The incredible challenges facing Americans who can no longer work because of a disability make it vital for Congress to equip the SSA to continue providing quality services with maximum efficiency. In his testimony before the Committee, Commissioner Astrue referenced the enormous burden currently being placed on the SSA due to lower-than-requested budgets. He also outlined the cuts in service, speed and program integrity work that the SSA can handle as a result of the budget restrictions.

In spite of this burden, the SSA has had success in recent years in reversing some of these trends, as Commissioner Astrue noted. However, our experiences at Allsup provide insight into further efforts the SSA could take to reduce costs and improve efficiency. Specifically, efforts that better incorporate and improve interactions with third-party representatives could yield efficiencies for the Social Security disability program, including for government workers, beneficiaries and the Trust Funds.

One component of this is reducing the burden on the SSA by allowing third-party representatives electronic access to SSDI claim files at earlier levels of the process. The agency has made some progress in its use of new technology, such as iClaims for online retirement and disability

applications, which is now used in about a third of cases. Other services also are extremely beneficial, such as the Appointed Representative Suite of Services (ARSS), the Representative Video Project (RVP) and other technology applications that support claimant representatives, and video conferencing for hearings.

Commissioner Astrue indicated in his discussion with the committee that third-party representatives do not support the use of disability video hearings. With all due respect to Mr. Astrue, this isn't true with regard to Allsup. Allsup recognizes the potential benefits of allowing claimants to participate in video hearings from hearing sites nationwide, including on-site at representatives' locations, and is working with SSA to advance this option. This option allows claimants the opportunity to reduce travel, and it provides cost-savings potential for the SSA and other parties in the disability adjudication process.

While the SSA has made progress in some areas, advancements to support claimants and their representatives most effectively have lagged behind those of another large, federal agency serving most Americans – the Internal Revenue Service (IRS). The IRS has adopted an interdependent model under which it co-exists with taxpayers and approved providers of tax services and tax software – to the benefit of everyone. Nearly 80 percent of 2011 tax returns were filed electronically, almost two-thirds of which were submitted by a professional tax preparer, according to IRS data. Pursuing electronic access as aggressively as the IRS would benefit the SSA and the people it serves.

Allsup is a proponent of electronic processes. Our organization has participated in SSA pilot programs and digital initiatives to ensure compliance and participation, as well as to improve efficiencies in serving the public and qualified disability applicants. In the current system, third-party representatives have electronic access to SSA records at the hearing level, which reduces the administrative workload on SSA staff and speeds up the process of preparing documents relevant to a claim. Enhancing electronic access using secure methods throughout the process, including the earliest stages, will improve and streamline interactions for all parties, reducing the administrative workload on SSA while also providing faster decisions for the millions of Americans waiting to learn if they will be found eligible for SSDI benefits.

In his testimony before the Committee, Commissioner Astrue also referenced the fact that SSA handles roughly 2 million requests each year from claimant representatives asking for information SSA maintains, about two-thirds of which come from representatives handling Social Security cases. I'd like to elaborate on this information by explaining that third-party representatives do not exacerbate the burden on SSA. Instead, as is Allsup's case, our professionals facilitate numerous administrative tasks, provide answers and information, and educate thousands of individuals about the SSDI process, including helping them realize when they are not eligible and keeping those claims out of the program. In fact, the SSA itself has found that third-party representatives play an important role in reducing costs and minimizing the time between a claimant's application and decision.

The SSA's Office of Inspector General (OIG) reported[1] that third-party representatives have a larger and more important role to play in obtaining SSDI benefits earlier in the disability review process for those clearly eligible and qualified, saving claimants time and the SSA money. It advocated a closer look at the value representatives provide when they assist with the SSDI claim application.

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[1] Social Security Administration, Office of The Inspector General, Disability Impairments On Cases Most Frequently Denied By Disability Determination Services and Subsequently Allowed by Administrative Law Judges, August 2010.

There are two additional steps the SSA can take that would create rapid cost savings for the agency. First, by notifying all applicants that representation is an option when they apply for benefits and encouraging early representation, SSA could help reduce ineligible initial applications and maximize efficiency in the claims process.

Sixty-six percent of initial claims are rejected by the SSA, for a range of reasons, including lack of medical severity. But hundreds of thousands of initial claims are rejected because they do not meet SSA's technical requirements. For example, the individual lacks sufficient work history or is not a legal resident entitled to benefits. Still the SSA must expend the resources to handle each and every claim submitted. Allsup rigorously pre-screens potential applicants to determine whether they meet technical as well as medical standards for eligibility *before* submitting an application to SSA for consideration. Encouraging representative involvement earlier in the process could shift the burden caused by ineligible applicants and reduce unnecessary claims that stress SSA's limited resources and slow legitimate claimants in obtaining their award.

Still others are rejected unnecessarily because applicants applied without professional help – the OIG reported that representation at the DDS level is "infrequent." A 2009 Allsup survey found that 78 percent of awarded claimants experienced barriers to handling the disability process on their own, including reading, understanding and completing forms. An experienced representative can help claimants develop the medical and work history documentation for their case and complete the forms correctly so they are processed more efficiently.

In spite of the clear benefits of involving representatives early in the SSDI claim process, Allsup found that half of the claimants we surveyed didn't know that a third-party representative could help them apply for SSDI benefits. Thirty-five percent of claimants we surveyed said SSA did not inform them that they had the right to representation at the appeal level, even though SSA's policy is to inform claimants of their right to representation.

The OIG found that for the impairments it evaluated, involving representatives earlier in the process would have saved the claimants time – some as many as 500 days – and the SSA money. If the SSA broadened its existing policy and took steps to notify SSDI applicants consistently at both the early and appeal levels, use of the third-party representatives would likely increase, giving claimants more choice and appropriate guidance. Almost nine in 10 Allsup survey respondents said they would have found it useful for the SSA to inform them in advance of their options for receiving help with their SSDI application. Another 83 percent would have found it helpful if the SSA had provided them with a list of authorized third-party representatives from which to choose.

National organizations such as Allsup have demonstrated success in guiding eligible claimants through the SSDI system and reducing the number of ineligible claimants who tax the program. They also offer streamlined processes for keeping accurate and thorough claims that speed benefits to those who are eligible. In addition, they absorb the cost of educating and providing customer service to claimants – many of whom struggle with disabilities that affect their cognitive abilities, requiring significant levels of personalized support.

Recently Allsup undertook an exercise to determine the level of impact the third-party representative model could have on the SSA administrative costs if it was utilized to its full potential. This third-party model of representing claimants at DDS or initial application level could generate $2.1 billion in administrative cost-savings for the SSA over a three-year period. This projection includes savings of $22.6 million to handle technical denials, $210.8 million in

reduced initial application costs, $179 million in ODAR appeal costs and $100 million for in-person hearing costs.

The potential success of the activities Allsup has outlined above highlight the value and potential savings for the SSA, government workers, claimants and the American people. Several other simple steps can be taken to work toward a common goal. They include:

- moving forward with SSA's proposed change to include organizations in the definition of "representative;"
- accelerating programs to provide representatives with online access and related initiatives, including ARSS, data access and retrieval, application submission and more;
- adopting wider use of electronic signatures for claimants;
- posting approved providers of Social Security disability representation on the SSA website and in field offices so claimants can be assured their national provider is reputable, properly trained and approved by the SSA; and
- notifying all applicants of their right to representation when they first apply for SSDI benefits.

Chairman Baucus and Members of the Committee, the challenges facing SSA are large, but under the leadership of Commissioner Astrue and partnership between SSA, claimants and third-party representatives, we can tackle them together. By shifting some of the burden to claimant representatives, SSA staff could be freed to address other agency priorities, such as the backlog of Continuing Disability Reviews (CDR) and improving core services upon which so many Americans rely.

Comments for the Record

United States Senate Committee on Finance
The Social Security Administration: Is it Meeting its Responsibilities to Save Taxpayer Dollars and Serve the Public?
Thursday, May 17, 2012, 10:00 AM
215 Dirksen Senate Office Building

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Chairman Baucus and Ranking Member Hatch, thank you for the opportunity to address this topic. In our view, there are two ways of looking at this issue. One is using the standard oversight model and the other is to look at whether things can be better.

Under the standard model, we need only ask whether costs are under control and whether benefit checks are delivered accurately and promptly. If there were problems in this area, they would both be in the news and we would hear about them anecdotally from constituents and family members. Aside from the odd mistake about being declared dead, which grabs headlines, the system is regarded as quite reliable.

The second question is more interesting. How can the system be improved? To some extent, the questions of saving taxpayer dollars and serving the public are contradictory. Ending the entitlement to benefits for all who are eligible, or in some way limiting it, will certainly save taxpayer dollars, however that may not serve the public interest. If the vast majority of beneficiaries are made worse off because inflation adjustments are less generous, this will be a drag on the economy and force more family support. We find it hard to believe that this would be in the public interest.

Neither would means testing benefits be seen in this light, as creating the perception that benefits are welfare will have some beneficiaries forgo benefits, even if they cannot afford to do so. If excess benefits are paid to those who do not need them because of wealth, the best way to attack this problem is through the tax system, possibly by allowing wealthier beneficiaries to increase tax withholding to 100% and have the proceeds go toward the program rather than the general fund.

Any discussion of reform also leads to the question of personal accounts in Social Security. Had the proposed solution of President Bush's Commission to Save Social Security been enacted, the impact of the Great Recession on retirees would have been devastating, especially in the immediate aftermath of Congress yielding to popular pressure and voting against the TARP, which saw the largest one-day decline in wealthy in American history. Oddly, many of those who would have been most affected would have been those who called for the TARP to fail. Be that as it may, it was the perfect lesson on why the Bush proposals were unworkable.

The Center for Fiscal Equity, under its previous name, the Iowa Center for Fiscal Equity, submitted an alternative plan for personal accounts. Unlike the Administration proposals, it would have muted the crash in two ways, had it been fully implemented in 2008. While this itself is an impossibility, because full implementation takes decades, the possible effects on the future should not be discounted. Under our plan, Old Age and Survivors Insurance revenues would not be diverted to Wall Street, but instead would be invested in the employee's own workplace. At full implementation, not only would most firms be employee-owned and therefore not in the market, but they would also take over most financial services for their employees, from mortgage finance to consumer loans. In contrast to the securitization and speculation which caused the financial crisis of 2008, which we are still suffering from, Wall Street itself would have faded away and there would be no market for subprime mortgages, as there would be no subprime jobs.

The Center has updated its proposals from the Bush era and placed them in the context of comprehensive tax reform. As you know, our reform occurs in four parts:

- A Value Added Tax (VAT) to fund domestic military spending and domestic discretionary spending with a rate between 10% and 13%, which makes sure very American pays something.
- Personal income surtaxes on joint and widowed filers with net annual incomes of $100,000 and single filers earning $50,000 per year to fund net interest payments, debt retirement and overseas and strategic military spending and other international spending, with graduated rates between 5% and 25% in either 5% or 10% increments. Heirs would also pay taxes on distributions from estates, but not the assets themselves, with distributions from sales to a qualified ESOP continuing to be exempt.
- Employee contributions to Old Age and Survivors Insurance (OASI) with a lower income cap, which allows for lower payment levels to wealthier retirees without making bend points more progressive.

- A VAT-like Net Business Receipts Tax (NBRT), which is essentially a subtraction VAT with additional tax expenditures for family support, health care and the private delivery of governmental services, to fund entitlement spending and replace income tax filing for most people (including people who file without paying), the corporate income tax, business tax filing through individual income taxes and the employer contribution to OASI, all payroll taxes for hospital insurance, disability insurance, unemployment insurance and survivors under age 60.

One of the most oft-cited reforms for dealing with the long term deficit in Social Security is increasing the income cap to cover more income while increasing bend points in the calculation of benefits, the taxability of Social Security benefits or even means testing all benefits, in order to actually increase revenue rather than simply making the program more generous to higher income earners. Lowering the income cap on employee contributions, while eliminating it from employer contributions and crediting the employer contribution equally removes the need for any kind of bend points at all, while the increased floor for filing the income surtax effectively removes this income from taxation. Means testing all payments is not advisable given the movement of retirement income to defined contribution programs, which may collapse with the stock market – making some basic benefit essential to everyone.

Moving the majority of Old Age and Survivors Tax collection to a consumption tax, such as the NBRT, effectively expands the tax base to collect both wage and non-wage income while removing the cap from that income. This allows for a lower tax rate than would otherwise be possible while also increasing the basic benefit so that Medicare Part B and Part D premiums may also be increased without decreasing the income to beneficiaries.

If personal accounts are added to the system, a higher rate could be collected, however recent economic history shows that such investments are better made in insured employer voting stock rather than in unaccountable index funds, which give the Wall Street Quants too much power over the economy while further insulating ownership from management. Too much separation gives CEOs a free hand to divert income from shareholders to their own compensation through cronyism in compensation committees, as well as giving them an incentive to cut labor costs more than the economy can sustain for purposes of consumption in order to realize even greater bonuses. Employee-ownership ends the incentive to enact job-killing tax cuts on dividends and capital gains, which leads to an unsustainable demand for credit and money supply growth and eventually to economic collapse similar to the one most recently experienced.

As we wrote in the January 2003 issue of Labor and Corporate Governance, we would equalize the employer contribution based on average income rather than personal income. A major strength of Social Security is its income redistribution function. We suspect that much of the support for personal accounts is to subvert that function – so any proposal for such accounts must move redistribution to account accumulation by equalizing the employer contribution.

In the unlikely even that personal accounts find consensus, we propose directing personal account investments to employer voting stock, rather than an index funds or any fund managed by outside brokers. There are no Index Fund billionaires (except those who operate them). People become rich by owning and controlling their own companies. Additionally, keeping funds in-house is the cheapest option administratively. I suspect it is even cheaper than the Social Security system – which operates at a much lower administrative cost than any defined contribution plan in existence.

Safety is, of course, a concern with personal accounts. Rather than diversifying through investment, however, I propose diversifying through insurance. A portion of the employer stock purchased would be traded to an insurance fund holding shares from all such employers. Additionally, any personal retirement accounts shifted from employee payroll taxes or from payroll taxes from non-corporate employers would go to this fund.

The insurance fund will save as a safeguard against bad management. If a third of shares were held by the insurance fund than dissident employees holding 25.1% of the employee-held shares (16.7% of the total) could combine with the insurance fund held shares to fire management if the insurance fund agreed there was cause to do so. Such a fund would make sure no one loses money should their employer fail and would serve as a sword of Damocles' to keep management in line. This is in contrast to the Cato/ PCSSS approach, which would continue the trend of management accountable to no one. The other part of my proposal that does so is representative voting by occupation on corporate boards, with either professional or union personnel providing such representation.

The suggestions made here are much less complicated than the current mix of proposals to change bend points and make OASI more of a needs based program. If the personal account provisions are adopted, there is no need to address the question of the retirement age. Workers will retire when their dividend income is adequate to meet their retirement income needs, with or even without a separate Social Security program.

No other proposal for personal retirement accounts is appropriate. Personal accounts should not be used to develop a new income stream for investment advisors and stock traders. It should certainly not result in more "trust fund socialism" with management that is accountable to no cause but short term gain. Such management often ignores the long-term interests of American workers and leaves CEOs both over-paid and unaccountable to anyone but themselves.

Progressives should not run away from proposals to enact personal accounts. If the proposals above are used as conditions for enactment, I suspect that they won't have to. The investment sector will run away from them instead and will mobilize their constituency against them. Let us hope that by then workers become invested in the possibilities of reform. Indeed, real reform is only possible if workers become more radicalized to the possibilities of workplace ownership and democracy.

The bargain struck in the Roosevelt era to allow capitalism to exist in exchange for moving workers into the middle class. As that bargain has been abandoned on one side, there is no reason for workers not to pick up old demands for workplace democracy. Indeed, it is essential that they do so in order to quit losing ground.

Social Security was part of a new social compact which, along with very high marginal tax rates and partnership with organized labor, built the middle class while keeping corporate capitalism in place. In a very real way, these programs were a reaction to not only the Great Depression, but a preventative to a very real movement toward more direct employee control and ownership of the workplace by the union movement. The passage of Taft-Hartley Act restrictions on concentrated ownership of the workplace were set in place as much to protect management from being swept away as they were a desire to diversify pension assets to protect workers.

This social context is important to understanding options for the future of Social Security. In the early 1980s, Social Security was close to having to draw from the General Fund. Ronald Reagan's conservatism was ascendant, with recently passed income tax cuts being phased in over a three year period and a beginning of the end of the bargain with the union movement to maintain labor peace in exchange for not pushing for a larger ownership share. Indeed, for all practical purposes, labor had become de-radicalized over time. It had moved to seeking to preserve benefit levels rather than advancing the interests of workers into the management suite.

In this context, a new grand bargain was created to save Social Security. Payroll taxes were increased to build up a Trust Fund for the retirement of the Baby Boom generation. The building of this allowed the government to use these revenues to finance current operations, allowing the President and his allies in Congress to honor their commitment to preserving the last increment of his signature tax cut, where the only other realistic option at the time was to abandon some or all of them, which was politically unacceptable given Republican control of the White House and the Senate.

Actions should be taken as soon as possible, especially when they must be phased in, as it is a truism that a little action early will have a larger impact later.

This trust fund is now coming due, with the expectation that shortfalls in Social Security payroll taxes will be covered by both income from interest income from the Social Security trust fund and eventually revenue from the general fund. The cash flow problem currently experienced by the Trust Fund is not the Trust Fund's problem, but a problem for the Treasury to address, either through further borrowing – which will require a quick resolution to the debt limit extension or through higher taxes on those who received the lion's share of the benefit's from the tax cuts of 1981, 1986, 2001, 2003 and 2010. At some point, Congress must ignore the interests of its major donors (to both parties) and honor the bargain it made to shore up the trust fund. This is entirely appropriate, given the fact that much of the Trust Fund was built up in order to preserve the income tax cuts of 1981.

As luck would have it, adequate personal income tax increases to finance repaying the Trust Fund will occur automatically on January 1, 2013. This revenue profile, not current tax rates, must be considered the baseline on which any new bargain is formed.

The complication, and there are always complications, is that low tax rates enacted on capital gains, income and dividends during the Clinton and Bush administrations have created two asset based recessions, the first in the technology sector and the second in housing.

The recent recession is more accurately described as a Depression, since the financing of the real estate bubble has still not been resolved, even while economic growth numbers have begun to rebound. This new has both temporary and permanent effects on the trust fund's cash flow. The temporary effect is a decline in revenue caused by a slower economy and the temporary cut in payroll tax rates to provide stimulus.

The permanent effect is the early retirement of many who had planned to work longer, but because of the recent recession and slow recovery, this cohort has decided to leave the labor force for good when their extended unemployment ran out. This cohort is the older 99ers who need some kind of income now. The combination of age discrimination and the ability to retire has led them to the decision to retire before they had planned to do so, which impacts the cash flow of the trust fund, but not the overall payout (as lower benefit levels offset the impact of the decision to retire early on their total retirement cost to the system).

It would be entirely inappropriate to renege on promises to the baby boomers to fund further income tax cuts by further extending the retirement age, cutting promised Medicare benefits or by enacting an across the board increase to the OASI payroll tax as a way to subsidize current spending or tax cuts. The current fiscal crisis should not be an excuse to use regressive Old Age and Survivors Insurance payroll taxes to subsidize continued tax cuts on the top 20% of wage earners who pay the majority of income taxes. Retirement on Social Security for those at the lowest levels is still inadequate. Any change to the program should, in time, allow a more comfortable standard of living in retirement.

The ultimate cause of the trust fund's long term difficulties is not financial but demographic. Thus, the solution must also be demographic – both in terms of population size and income distribution. The largest demographic problem facing Social Security and the health care entitlements, Medicare and Medicaid, is the aging of the population. In the long term, the only solution for that aging is to provide a decent income for every family through more generous tax benefits.

The free market will not provide this support without such assistance, preferring instead to hire employees as cheaply as possible. Only an explicit subsidy for family size overcomes this market failure, leading to a reverse of the aging crisis.

The recommendations for raising net income are within the context of comprehensive tax reform, where the first 25-28 percent of personal income tax rates, the corporate income tax, unemployment insurance taxes, the Hospital Insurance payroll tax, the Disability Insurance payroll tax and the portion of the Survivors Insurance payroll tax funding survivors under the age of 60 have been subsumed by a Value Added Tax (VAT) and a Net Business Receipts Tax (where the net includes all value added, including wages and salaries).

Net income would be adjusted upward by the amount of the VAT percentage and an increased child tax credit of $500 per child per month. This credit would replace the earned income tax credit, the exemption for children, the current child tax credit, the mortgage interest deduction and the property tax deduction. This will lead employers to decrease base wages generally so that the average family with children and at an average income level would see no change in wage, while wages would go up for lower income families with more children and down for high income earners without children.

Gross income would be adjusted by the amount of tax withholding transferred from the employee to the employer, after first adjusting net income to reflect the amount of tax benefits lost due to the end of the home mortgage and property tax deductions.

This shift in tax benefits is entirely paid for and it would not decrease the support provided in the tax code to the housing sector – although it would change the mix of support provided because the need for larger housing is the largest expense faced by growing families. Indeed, this reform will likely increase support for the housing sector, as there is some doubt in the community of tax analysts as to whether the home mortgage deduction impacted the purchase of housing, including second homes, by wealthier taxpayers.

Within twenty years, a larger number of children born translates into more workers, who in another decade will attain levels of productivity large enough to reverse the demographic time bomb faced by Social Security in the long term.

Such an approach is superior to proposals to enact personal savings accounts as an addition to Social Security, as such accounts implicitly rely on profits from overseas labor to fund the dividends required to fill the hole caused by the aging crisis. This approach cannot succeed, however, as newly industrialized workers always develop into consumers who demand more income, leaving less for dividends to finance American retirements. The answer must come from solving the demographic problem at home, rather than relying on development abroad.

This proposal will also reduce the need for poor families to resort to abortion services in the event of an unplanned pregnancy. Indeed, if state governments were to follow suit in increasing child tax benefits as part of coordinated tax reform, most family planning activities would be to increase, rather than prevent, pregnancy. It is my hope that this fact is not lost on the Pro-Life Community, who should score support for this plan as an essential vote in maintaining a perfect pro-life voter rating.

Obviously, this proposal would remove both the mortgage interest deduction and the property tax deduction from the mix of proposals for decreasing tax rates while reducing the deficit. This effectively ends the notion that deficit finance can be attained in the short and medium term through tax reforms where the base is broadened and rates are reduced. The only alternatives left are a generalized tax increase (which is probably necessary to finance future health care needs) and allowing tax rates for high income individuals to return to the levels already programmed in the law as of January 1, 2013. In this regard, gridlock is the friend of deficit reduction. Should the President show a willingness to let all rates rise to these levels, there is literally no way to force him to accept anything other than higher rates for the wealthy.

Thank you for the opportunity to address the committee. We are, of course, available for direct testimony or to answer questions by members and staff.