Charting the Future of Social Security's Disability Programs:

The Need for Fundamental Change

Social Security Advisory Board

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Social Security Advisory Board

An independent, bipartisan Board created by the Congress and appointed by the President and the Congress to advise the President, the Congress, and the Commissioner of Social Security on matters related to the Social Security and Supplemental Security Income programs

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How the Board Conducted Its Study

Over the last four years the Board has conducted an extensive study of the Disability Insurance and Supplemental Security Income disability programs. We have met with thousands of Social Security Administration and State agency employees in field offices, Disability Determination Services, hearing offices, and regional offices in all parts of the country. We have met many times with SSA officials responsible for operations, budget, policy, systems, hearings and appeals, and other core functions of the agency. The Board has consulted with union officials, disability advocates, and outside researchers. We have also conducted public hearings on the disability programs and service to the public.

The Board has issued three related reports: *How SSA's Disability Programs Can Be Improved* (August 1998), *How the Social Security Administration Can Improve Its Service to the Public* (September 1999), and *Disability Decision Making: Data and Materials* (January 2001).

EXECUTIVE SUMMARY

The nation's two primary disability programs – Social Security Disability Insurance (DI) and Supplemental Security Income (SSI) disability – today provide vital income support for about 10 million individuals. These programs have grown rapidly in recent years to the point where in fiscal year 2001 they are expected to account for about $90 billion in Federal spending, or nearly five percent of the Federal budget. In 2001, about two-thirds of the Social Security Administration's $7.1 billion administrative budget, nearly $5 billion, is expected to be spent on disability work. As the baby boomers reach the age of increased likelihood of disability the growth in these programs will accelerate.

This projected growth threatens to overwhelm a policy and administrative infrastructure that is already inadequate to meet the needs of the public. Long-standing problems are growing more acute and new ones are emerging. There are wide variations in decision making between different regions of the country and different levels of adjudication, raising questions about whether claimants are being treated consistently and fairly. Major changes have been made in how disability is being determined. Most of these changes have been made as the result of court decisions and have never been reviewed by the Congress. The disability administrative structure, established when the DI program was created nearly 50 years ago, is ill-equipped to handle today's massive and complex workload. Many also believe that Social Security's requirement that claimants prove they cannot work is inconsistent with the Americans with Disabilities Act and at odds with the desire of many disabled individuals who want to work but who still need some financial or medical assistance.

The purpose of this report is to provide the new Administration and the new Congress with a framework for considering the fundamental changes that need to be made if the disability programs are to meet the challenges they are facing. Some of these changes would require Congressional action. Others would require at least the implicit concurrence of the Congress because they are likely to require additional administrative resources. We believe that, taken together, these changes would accomplish fundamental reform.

The structural reforms that should be considered include: changing and strengthening SSA's administrative structure to improve the agency's capacity to provide appropriate leadership in areas of both policy and procedure; reforming the disability adjudication structure, including the present Federal-State arrangement and the appeals process; and changing the provisions for judicial review.

The issue of whether present policies provide sufficient assistance and incentive for employment also needs careful review. Funding should be provided for comprehensive research on ways to encourage rehabilitation and employment early in a period of disability.

Finally, disability policy and administrative capacity urgently need to be brought into alignment. Over the last decade and a half SSA has issued numerous regulations and rulings that require more time and expertise on the part of disability adjudicators than was the case in the past. Over this same period, workloads have grown substantially and resources have been highly constrained. Today there is a large gap between policy and administrative feasibility that needs to be bridged by introducing changes in policy, in institutional arrangements, or in funding – or most probably, in all of these complex facets of an interwoven process.

FACTS ABOUT THE DISABILITY PROGRAMS

SOCIAL SECURITY DISABILITY INSURANCE (DI) is an insurance program that provides disability benefits based on previous employment covered by Social Security. It is financed out of Social Security payroll taxes (0.85 percent each for employees and employers). The cost of the DI program for fiscal year 2001 is estimated at about $60 billion (including administrative costs).

To be eligible for DI benefits a worker must:

- have a medically determinable physical or mental impairment that has lasted or is expected to last at least 12 months or result in death and that prevents him/her from performing any substantial gainful activity (requirements differ for those disabled because of blindness);
- be fully insured, i.e., have at least one credit for work in employment covered by Social Security for each year after age 21 and prior to the year he or she becomes disabled; and
- meet a recency of work test, which requires that workers age 31 or older (other than those disabled by blindness) must have worked in covered employment at least 20 of the 40 calendar quarters ending with the quarter in which the disability began, and that younger workers have proportionally less recent covered employment.

At the end of calendar year 2000, Social Security Disability Insurance paid:

- benefits to 5.0 million disabled workers;
- family benefits to over 1.6 million spouses and children of disabled workers; and
- an average monthly benefit of $755 to disabled workers.

SUPPLEMENTAL SECURITY INCOME (SSI) is a means-tested income assistance program for aged, blind, and disabled individuals (regardless of prior workforce participation) and is funded from general revenues of the Treasury. The SSI disability program is estimated to cost about $28 billion in fiscal year 2001 (including administrative costs).

To be eligible for Federal SSI disability benefits an individual:

- must, if age 18 or older, meet the Social Security definition of disability, or, if under age 18, have an impairment that results in marked or severe functional limitations;
- cannot have monthly countable income in excess of the current Federal benefit rate ($530 for individuals and $796 for a couple);
- cannot own real or personal property (including cash) in excess of a specified amount ($2,000 for individuals and $3,000 for couples); and
- must meet certain other requirements relating to citizenship, residence, and living arrangements.

At the end of calendar year 2000, Supplemental Security Income paid:

- benefits to about 4.4 million low income disabled adults and about 0.8 million disabled children.

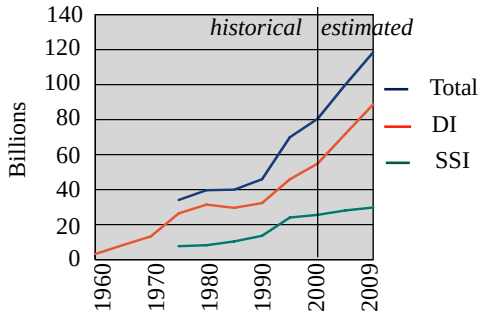
I. THE DISABILITY PROGRAMS NEED IN-DEPTH REVIEW

The nation's two primary disability programs – Social Security Disability Insurance (DI) and Supplemental Security Income (SSI) disability – are a vital but complex part of the nation's social insurance and welfare systems, requiring vigilant attention in order to keep their policy and administrative structures sound and up to date.

Today, more than 135 million American workers are insured for Disability Insurance and rely upon this protection in case of serious illness or accident. About 6.6 million people are now receiving Disability Insurance benefits, and nearly 5.2 million disabled and needy adults and children, many of whom would otherwise be living in serious poverty, are receiving SSI disability benefits.

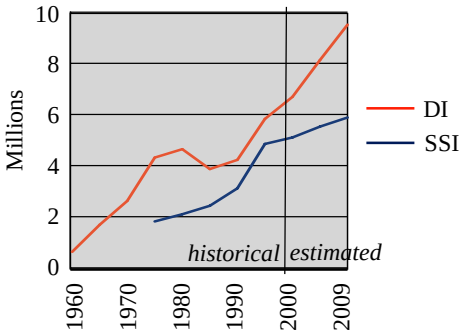
These programs have grown steadily over the years to the point where in fiscal year 2001 they are expected to account for about $90 billion in Federal spending, or nearly five percent of the Federal budget. They require a growing portion of the time and attention of Social Security Administration (SSA) employees at all levels. In fiscal year 2001, about two-thirds of the agency's $7.1 billion administrative budget, nearly $5 billion, is expected to be spent on disability work. In terms of management time, the disability programs appear to be even greater than these numbers suggest.

Chart 1. - DI and SSI Disability Payments, CY 1960-2009*
(1999 Dollars)



** Excludes administrative costs*

Chart 2. - Number of Disability Beneficiaries*
CY 1960 - 2009



**Some individuals receive both SSI and DI benefits.*

As the baby boomers reach the age of increased likelihood of disability the growth in these programs will accelerate. The Social Security Administration's actuaries project that between now and 2010 the number of DI beneficiaries will increase by nearly 50 percent, and the number of SSI disability beneficiaries will increase by 15 percent.

This projected growth in the number of disability claimants threatens to overwhelm a policy and administrative infrastructure that is already inadequate to meet the needs of the public.

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In recent decades, disability policy has come to resemble a mosaic, pieced together in response to court decisions and other external pressures, rather than the result of a well thought out concept of how the programs should be operating. Compounding the problem, the disability administrative structure, now nearly a half century old, has been unable to keep pace with the increasing demands that have been imposed upon it. Policy and administrative capacity are dramatically out of alignment in the sense that new and binding rules of adjudication frequently cannot be implemented in a reasonable manner, particularly in view of the resources that are currently available.

With the size and projected growth of the disability programs, it is increasingly urgent to step back and reexamine how they are working and whether changes in policies, resources, and administrative structure need to be made in order to meet future needs.

It has been more than two decades since either the Congress or the Administration has reviewed in a comprehensive manner the question of whether the disability administrative structure should be strengthened or changed. Numerous regulations and rulings affecting how disability decisions are made have been implemented without the review of policy makers. The question of whether the definition of disability should be changed has not undergone close examination for more than 30 years.

The reasons for this lack of scrutiny are not altogether clear, but reflect, at least in part, the extraordinarily complex and politically sensitive nature of the disability programs. Many policy makers and advocates are concerned that change may negatively impact some individuals or groups in unintended ways. Political issues relating to the roles of the Federal and State governments have tended to inhibit even the consideration of enhanced Federal management of the programs.

But there are problems in the programs that need to be addressed. Although there are many capable people working in the disability system, their efforts will be of little avail unless they have the tools they need to administer the program. It is essential for the new Congress and the new Administration to conduct an in-depth review of the disability programs in order to determine the changes that are required to better serve both those who are disabled and the public at large.

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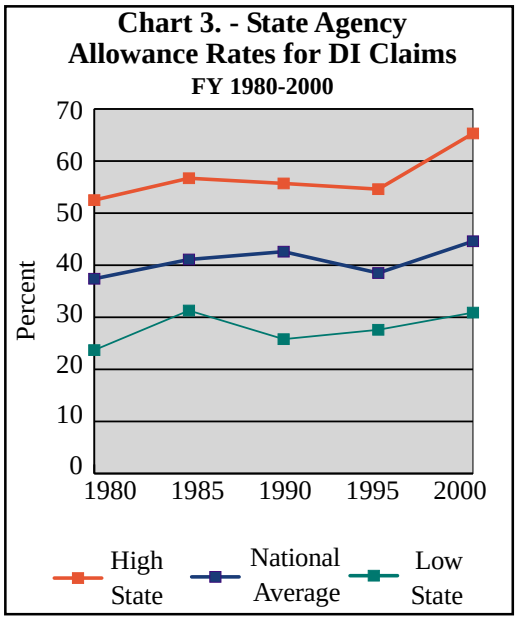
II. MAJOR ISSUES NEED TO BE ADDRESSED

A. Are disability decisions consistent and fair?

Consistency and fairness should be fundamental goals of the disability programs. One of the major strengths of the Social Security retirement program is that benefits are paid on the basis of objective rules that treat people consistently and fairly. A primary reason why the disability programs do not share the same level of public confidence as the retirement program is the perception that determinations of eligibility for disability are not being made in a uniform and consistent manner.

The Board has assembled data that show striking differences in outcomes over time, among State agencies, and between levels of adjudication. Allowance and denial rates, both overall and for specific impairment categories, vary widely from State to State and region to region. For example, in fiscal year 2000 the percentage of DI applicants whose claims were allowed by a State agency ranged from a high of 65 percent in New Hampshire to a low of 31 percent in Texas, with a national average of 45 percent. (Chart 3)

Claims denied by State agencies and appealed to the administrative law judge (ALJ) hearing level are more likely than not to be approved at the hearing level. The percent of cases reversed upon appeal to an ALJ hearing has varied over the years.



The percentage of decisions at the hearing level that were favorable for both DI and SSI claimants stood at 58 percent in 1985, grew to nearly 72 percent in 1995, fell to 63 percent in 1998, and grew again to 66 percent in 2000. Hearing offices also vary greatly from State to State in the percentage of decisions that are decided favorably for claimants. In 2000, the range went from 35 percent in the District of Columbia to 86 percent in Maine, with a national average of 66 percent.[1] (Chart 4)

[1] For further discussion and examples of differences in decision making, see the Advisory Board's January 2001 report, *Disability Decision Making: Data and Materials.*

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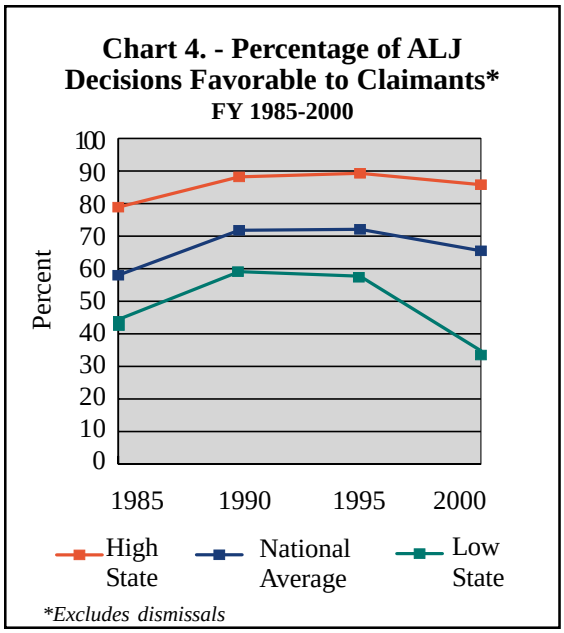

For many years both Members of Congress and others who have studied the disability programs have expressed concern about variations such as these. Analysts of the programs have identified many factors which they believe contribute to inconsistencies in outcomes, such as economic and demographic differences among regions of the country, court decisions, the fact that the claimant has no opportunity to meet with the decision maker until the face-to-face hearing at the ALJ level, and that the record remains open throughout the appeals process.

But many who are knowledgeable about the programs – including disability examiners in the State agencies as well as administrative law judges – have long believed that there are also reasons relating to program policy, procedures, and structure that are responsible for some if not many of these inconsistencies.[2] As an example, there is a widely held belief that the agency's quality assurance reviews, which are conducted by quality assurance units in each region of the country, are not being conducted in a uniform manner.

Despite these long-standing concerns, the agency has no effective mechanism to provide the information needed to understand the degree to which the programs' own policies and procedures – including their uneven implementation – are causing inconsistent outcomes in different regions of the country and different parts of the disability system.

Given the lack of data, there is no way to assess the magnitude of the problem. But as long as variations in decision making remain unexplained, the integrity and the fairness of the disability programs are open to question. These programs are too valuable and important to the American public for this issue not to be addressed.

[2] A report completed by The Lewin Group, Inc. and Pugh Ettinger McCarthy Associates, L.L.C. for the Social Security Administration in January 2001, titled *Evaluation of SSA's Disability Quality Assurance (QA) Processes and Development of QA Options That Will Support the Long-Term Management of the Disability Program*, includes a discussion of program-related factors that may contribute to differences in decisional outcomes.

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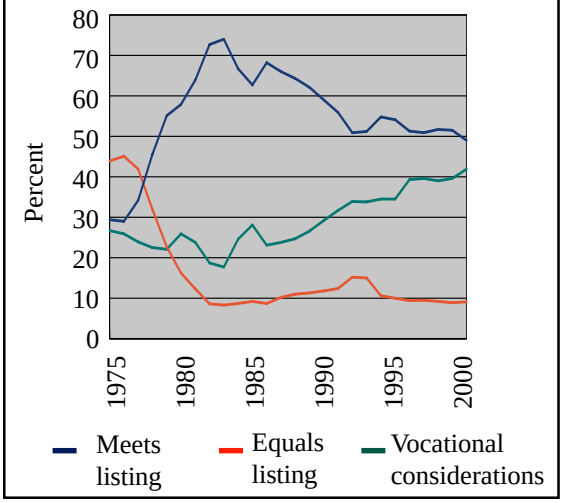
B. Is disability policy being developed coherently and in accord with the intent of the Congress?

The statutory definition of disability is broad and was designed to evolve in the light of subsequent administration and interpretation. Although Congress has not changed the law for more than 30 years, the determination of what constitutes disability has changed in fundamental ways.

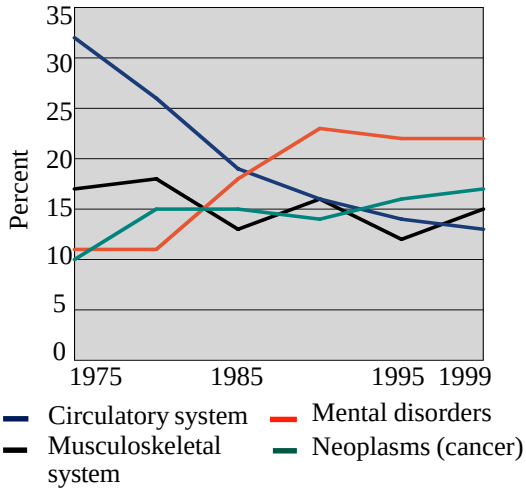
For example, there has been a gradual but persistent trend away from decisions based on the medical listings to decisions that increasingly involve assessment of function. Since 1983, the percentage of DI claimants awarded benefits by State agencies on the basis of meeting or equaling the medical listings has declined from 82 percent to 58 percent, while the percentage awarded on the basis of vocational considerations has more than doubled. (Chart 5)

Chart 5. - State Agency DI Awards by Basis for Decision
FY 1975-2000



A growing portion of claims involve allegations of mental impairment. Mental impairment has become the largest single reason for State agency DI awards, growing from 11 percent in 1980 to 22 percent in 1999. (Chart 6) Although data are not available, State agency administrators and examiners have told the Board that half or more of the cases their offices process involve issues relating to mental impairment.

Chart 6. - State Agency DI Awards by Major Cause of Disability
CY 1975-1999



There have been other significant changes. Adjudicators must adhere to more detailed and intricate rules in weighing the opinion of treating sources than was the case in earlier years of the programs. They must make a finding on the credibility of claimants' statements about the effect of pain and other symptoms on their ability to function. The effect of these and other changes in disability

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policy is that disability decision making by both State agency examiners and administrative law judges has become considerably more subjective and complex.

These policy changes have occurred through changes in regulations and rulings. A number of the most significant changes have grown out of court decisions, many of which have not been appealed. None of them have been reviewed by the Congress and there is a question as to whether the agency itself has adequately analyzed them from the perspective of –

- ***whether the decisions that are being made reflect the intent of the Congress,***
- ***whether they will improve consistency and fairness in decision making throughout the system, and***
- ***whether they are operationally sustainable for a program that must process massive numbers of cases.***

C. Can today's administrative structure support future program needs?

When the Disability Insurance program was enacted in 1956, the expectation was that the program would be relatively small. But over the last half century, the original Federal-State administrative structure has had to accommodate a dramatic growth in program size and complexity that it has been ill-equipped to handle. In addition to working within a fragmented administrative structure, employees at all levels have been buffeted by periodic surges in workloads and funding shortfalls.

At the present time, all parts of the applications and appeals structure are experiencing great stress, with every indication that the difficulties each is facing will continue to grow unless changes are made.

As the result of growth in the number of disability claimants and continued agency downsizing, field office personnel are no longer able to provide the kind of assistance many applicants need to file a properly documented claim. They lack the time to explain program rules and procedures so that applicants can understand whether they may meet the strict requirements of the Social Security disability definition and what items of information they need to document their case.

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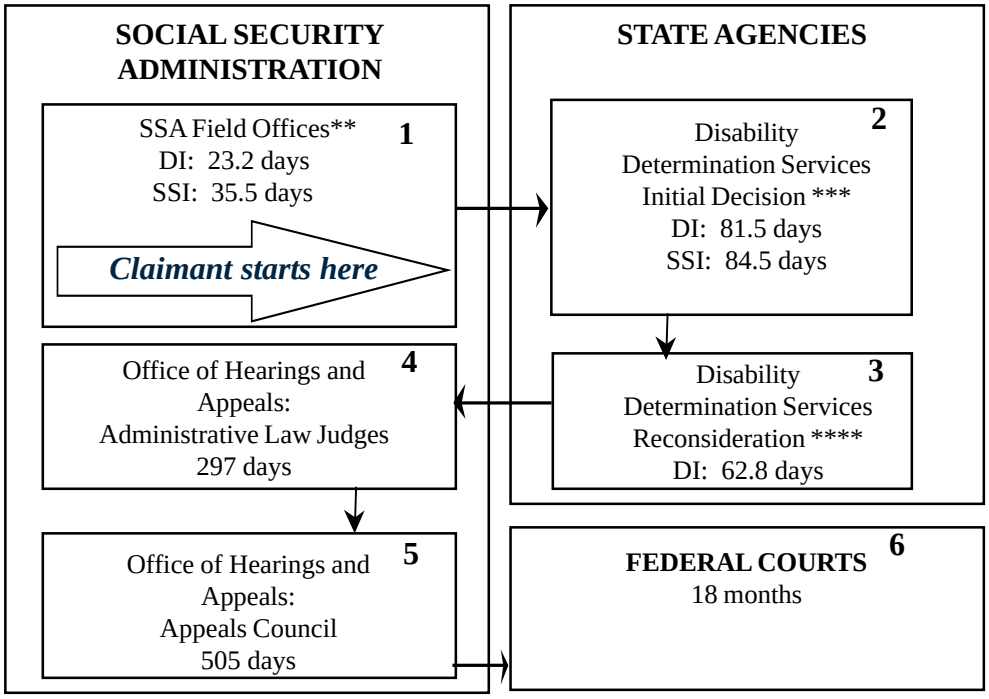
Chart 7. - DI and SSI Claims Process: Steps and Average Processing Time*
FY 2000



* *Processing times shown above are additive.*

** *Field office processing time includes all components of the field office work, including taking the claim and processing it after the State agency makes a determination.*

*** *SSA reports DDS initial processing time by programs; average total processing time (DI and SSI) is not available.*

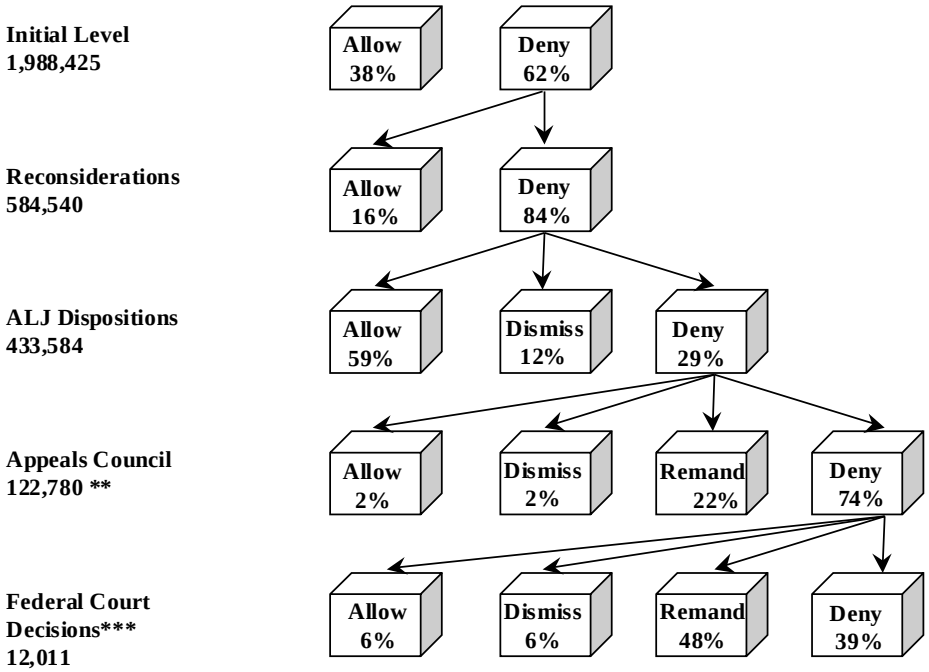
**** *SSA does not have data available for SSI reconsideration processing times.*

The State agencies that make disability determinations on behalf of SSA face even more difficult challenges. At the same time that workloads are growing, SSA's regulations and rulings are requiring State agency examiners to make increasingly complex and subjective decisions. This means that State agencies should have ever more expert and experienced staff. Yet these agencies are bound by State-imposed rules relating to staff salaries and qualifications. Too frequently, either because of State limitations or because of inadequate Federal funding, the State agencies lack the ability to hire and retain qualified staff and to provide the training they need.

Many hearing offices have heavy loads of appeals and are struggling to keep up with their workloads. The popular wisdom is that claimants whose applications are denied by a State agency need only to pursue their claims at a hearing with an administrative law judge and they will likely be awarded benefits. The data tend to bear this out. About 80 percent of DI claims and 70 percent of SSI adult disability claims that are denied by the State agency at the reconsideration level are appealed to the hearing level. In 2000, more than 75 percent of all hearing level decisions were favorable in the case of DI claimants, and more than half were favorable in the case of SSI claimants.

Chart 8. - DI and SSI Disability Determinations and Appeals*

FY 2000



Total Allowances

	Number	Percent
Total	**1,106,344**	**100.0**
Initial Applications	**759,191**	**68.6**
Reconsiderations	**90,805**	**8.2**
ALJs	**253,615**	**22.9**
Appeals Council **	**1,999**	**0.2**
Federal Court ***	**734**	**0.1**

** Data relate to workloads processed (but not necessarily received) in fiscal year 2000, i.e., the cases processed at each adjudicative level may include cases received at 1 or more of the lower adjudicative levels prior to fiscal year 2000. Not all denials are appealed to the next level of review.*

******* Includes ALJ decisions not appealed further by the claimant but reviewed by the Appeals Council on "own motion" authority.*

**** Remands to ALJs by the Appeals Council and Courts result in allowances in about 60 percent of the cases.*

Today, there is far less policy guidance for the disability system by the Social Security Administration than was the case in earlier years.

Prior to 1972, a special office in Baltimore provided unified policy guidance to all State agency examiners by reviewing nearly all State agency decisions. When a Federal reviewer disagreed with the decision of an examiner, there was an exchange of views, a procedure that helped to further define the policy to be followed by all parts of the adjudicative system. Appeals to an administrative law judge were relatively infrequent in the early years of the program, reaching 27,000 in 1969, compared to about 490,000 in 2000.

There are currently about 15,000 disability adjudicators throughout the disability system. Their qualifications and the rules and procedures they follow differ, sometimes dramatically. In some instances, a State agency adjudicator may be a high school graduate with relatively limited experience. In others, the decision may be made by a highly-educated and well-trained adjudicator with many years of experience.

Adjudicators may receive vastly different training and draw upon very different resources. For example, State agency adjudicators receive significantly more training on medical listings than do administrative law judges. As the result of court decisions, ALJs in some parts of the country make their decisions only after seeking the opinion of a vocational expert on whether an individual can perform work in the national economy. These experts are not used at the State agency level. At the hearing level, nearly all claimants now have an attorney or non-attorney representative. This development has greatly impacted the appeals process and, if it should extend to the State agency level, would have a major impact on the process at that level as well.

As noted earlier, the disability programs are expected to continue to grow substantially. Factors such as those described above raise questions about how well the administrative structure will be able to meet the challenge of this growing workload.

D. Is Social Security's definition of disability appropriately aligned with national disability policy?

There are many who believe that the Social Security Act definition of disability, which requires claimants to prove they cannot work in order to qualify for benefits, is inconsistent with the Americans with Disabilities Act (ADA) and is at odds with the desire of many disabled individuals who want to work but who still need some financial or medical assistance. Recent Ticket to Work legislation is aimed at helping people who are already on the disability rolls to return to work by providing increased services and new incentives, but does not fully address these basic inconsistencies.

As the General Accounting Office recently testified, fundamental weaknesses remain. These include an eligibility determination

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process that concentrates on applicants' incapacities rather than their capacities, return-to-work services offered only after a lengthy determination process, and an "all-or-nothing" benefits structure that characterizes individuals as incapable of work.

These same points were made at a public hearing held by the Board on strategies to encourage employment of the disabled. Witnesses stressed that programs and services are much more effective when they address what people can do rather than what they cannot do, and that with the many accommodations that exist today it is possible to fit many individuals with disabilities into a satisfying job. Because the nature of work has changed dramatically in the last few decades people with disabilities have many more employment possibilities available to them than existed in a manufacturing economy. The Board also heard testimony on the need to refer individuals for vocational rehabilitation services immediately upon their first contact with the agency.

In recent testimony the Consortium of Citizens with Disabilities questioned whether the Social Security definition of disability adequately captures "the spectrum and continuum of disability today. Does it reflect the interaction of vocational, environmental, medical and other factors that can affect the ability of someone on SSI or SSDI to attain a level of independence?"

The Ticket to Work legislation enacted last year authorizes SSA to conduct experiments and demonstration projects related to encouraging rehabilitation and employment, including earlier referral of individuals for rehabilitation. This demonstration authority provides the agency with an opportunity to find ways to bring greater coherence to the nation's disability policies.

Definitions of Disability

The Social Security Act and the Americans with Disabilities Act (ADA) take substantially different approaches regarding what is meant by "disability." The Social Security Act has a very strict definition that is designed to identify people who are so disabled that they are unable to work. The ADA has a broader definition designed to prevent discrimination against disabled people who wish to work.

Social Security Definition: The Social Security Act considers people disabled only if they have an "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months." This disability has to be so severe as to prevent them from doing any "substantial gainful work which exists in the national economy," whether a specific job is available or not.

The disability must result from a physical or psychological abnormality that is "demonstrable by medically acceptable clinical and laboratory diagnostic techniques."

ADA Definition: The ADA prohibits job discrimination against an individual because of a disability who could "with or without reasonable accommodation" perform the essential functions of the job.

A disabled person in the ADA means a person with a physical or mental condition that "substantially limits" a life activity, that has a record of such a condition, or is "regarded as having" such a condition.

III. REFORM SHOULD HAVE CLEAR GOALS AND OBJECTIVES

In our August 1998 report on the disability programs, *How SSA's Disability Programs Can Be Improved*, the Board recommended ways to strengthen the disability programs within the present structure. These recommendations emphasized the need of the agency to improve its management of the programs by providing joint training of all adjudicators; developing a single presentation of disability policy that is binding on all decision makers; providing strong and consistent leadership of the programs; strengthening the agency's disability program policy staff; revising the quality assurance system; and developing a computer system capable of supporting all stages of the disability process.

These changes are necessary regardless of whether more fundamental changes are undertaken, and, although it is only a beginning, we are pleased that SSA has taken some steps to respond to a number of the recommendations made in our report.

After two additional years of study of the disability programs, however, we are convinced that the issues facing the disability programs cannot be resolved without making fundamental changes. In our view, these changes must be evaluated within the context of clear goals and objectives which should include –

- **All individuals who are truly disabled and cannot work should receive disability benefits.**
- **Those who can work but need assistance to do so should receive it.**
- **Vocational rehabilitation and employment services should be readily available, and claimants and beneficiaries should be helped to take advantage of them.**
- **Claimants should be helped to understand the disability rules and the determination process.**
- **The disability system should provide fair and consistent treatment for all.**
- **The disability system should ensure high quality decisions by well-qualified and trained adjudicators.**
- **The disability system should provide expeditious processing of claims. When cases are complex and require more time, claimants should be informed so that they will understand why there is delay.**

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IV. THE ELEMENTS OF REFORM ARE CHALLENGING

To build a disability system that can meet the challenges of the future will require changes in policy, procedure, and structure. Below we propose a number of changes that we think policy makers in the Congress and in the Social Security Administration should consider. Some of them would require Congressional action. Others would require at least the implicit concurrence of the Congress because they are likely to require additional administrative resources. We believe they provide a framework for discussion that could lead to consensus for change. Taken together, they would accomplish fundamental reform.

A. Strengthen SSA's capacity to manage

In our discussions with employees throughout SSA's massive disability structure, we have heard many expressions of concern about the agency's capacity to provide the strong and coherent management that the size and complexity of the disability programs require. In our observation, SSA's ability to manage is undermined by three major shortcomings:

- **There is a lack of management accountability.**
- **The policy infrastructure is weak.**
- **The agency lacks a quality management system that can provide the information needed to make sound decisions.**

Addressing these shortcomings should be one of the highest priorities of reform.

Provide accountability. – Under the current administrative structure, nearly every component of the agency has a role in administering the disability programs.[3] This dispersion of functions throughout many different entities poses a particularly difficult problem for the disability programs, which lack the tightly defined policy and administrative parameters that are typical of the retirement and survivors programs.

For example, the development of a redesigned disability computer system may appropriately rest with the Office of Systems, but that entity lacks the program knowledge needed to design a system that takes into account the relationships between hearing offices and State disability agencies, or between State disability agencies and their parent State agencies.

[3] For a description of the responsibilities of 14 SSA staff components that are involved in the administration of the disability programs, see the Advisory Board's report, *Disability Decision Making: Data and Materials*, January 2001, p. 119.

To build a disability system that can meet the challenges of the future will require changes in policy, procedure, and structure....we propose a number of changes that we think policy makers in the Congress and in the Social Security Administration should consider.

The Office of Quality Assurance and Performance Assessment, which is organizationally separated from the Office of Disability, operates the quality assurance system. In theory, this system simply measures the extent to which disability decisions follow agency policy with respect to eligibility and documentation requirements. In practice, the quality process has a significant ability to shape disability policy, including who gets on the disability rolls, through subtle messages imparted by tighter or looser reviews, the kinds of decisions selected for review, or by increased or decreased sampling rates.

The missions and interests of the many offices that are involved in disability administration differ, and no one other than the Commissioner has the authority to bring them together. The result too often is dissonance and stalemate rather than well thought out and timely action.

Under the current administrative structure, nearly every component of the agency has a role in administering the disability programs....The result too often is dissonance and stalemate rather than well thought out and timely action.

We urge the new Commissioner to use the authority provided in the 1994 independent agency legislation to organize the agency and appoint such personnel as the Commissioner considers appropriate in order to ensure greater accountability and unified direction for the disability programs.

There are a number of ways this could be achieved. The Commissioner may determine that, given the importance of the disability programs, it is the Commissioner who is the most appropriate person to assume direct responsibility for coordinating the many aspects of their operation. If the magnitude of the Commissioner's other responsibilities is deemed too great to make this feasible, the Commissioner could assign this responsibility to the Deputy Commissioner. An additional option would be to appoint another high level individual, who would report directly to the Commissioner and would have authority to make decisions that cut across functional lines, to manage the programs. Still another option would be to restructure the agency so that disability-related functions could be coordinated more coherently than under the agency's present functional organizational arrangement.

Strengthen the policy infrastructure. – In recent years, SSA has taken several steps designed to strengthen the policy base for the disability programs. In 1994 it promised that it would develop a single presentation of policy to guide all adjudicators, a so-called "one book." In 1996 it attempted to bring State agency and ALJ decision making closer together by issuing nine new policy rulings. And more recently it has tried to increase its technical capacity by hiring some additional staff.

These steps have been well intended, but problems persist.[4]

For many years there have been too many voices articulating disability policy. Adjudicators in State agencies and in SSA's quality assurance system are bound by instructions presented in SSA's Program Operations Manual System (the POMS),

[4] For a description of SSA's initiatives to improve the disability process, see the Advisory Board's report, *Disability Decision Making: Data and Materials*, January 2001, p. 105.

which, according to SSA's description, provides the "substance" of the law, regulations, and rulings issued by the Commissioner, but does not necessarily follow their wording. The POMS is supplemented by other administrative issuances from SSA. Administrative law judges and the Appeals Council, on the other hand, are bound only by the statute, along with regulations and rulings that have been published in the Federal Register. They also have their own operating instructions in a Hearings, Appeals, and Litigation Law Manual (HALLEX).

We believe a single presentation of policy for all adjudicators is critical to the objective of providing consistent and fair decisions for all claimants and we urge the agency to proceed with this effort as quickly as possible.

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To expedite this process we propose that the agency combine the knowledge and experience of employees from both the Office of Disability and the Office of Hearings and Appeals, bringing them together into a single policy unit. If employees from both of these offices participate in writing the agency's policy, it is more likely to take into account the important differences in the perspectives and needs of adjudicators in both State agencies and hearing offices. It is also more likely to be interpreted and implemented uniformly throughout the disability determination process.

The development of sound disability policy requires far greater medical and vocational expertise than the agency currently has. Over the years SSA has lost many of its skilled medical and vocational specialists and they have not been replaced with sufficient rapidity. As a result, important medical listings have not been kept up to date to reflect advances in medical diagnosis and treatment and vocational guidelines do not take into account the changes that have occurred in the workplace.

Of perhaps even greater concern is the fact that the Department of Labor's Dictionary of Occupational Titles (DOT) is no longer being updated. This document, which describes the types of jobs that are available in the national economy, has long served as a primary tool for adjudicators in determining whether a claimant has the capacity to work. SSA currently has no replacement for the DOT, leaving a critical policy vacuum at a time when program rules require more and more decisions to be made on the basis of vocational factors.

Without a stronger policy base, the quality of disability decision making cannot be substantially improved, regardless of any procedural or structural changes that may be made.

Without a stronger policy base, the quality of disability decision making cannot be substantially improved, regardless of any procedural or structural changes that may be made. This essential foundation must be provided as quickly as possible.

Establish a new quality management system. – Much of the information the agency relies upon at the present time to assess the accuracy and consistency of decision making is derived from its quality assurance system. As a recent outside evaluation of SSA's system has pointed out, however, SSA's current system is of limited value in analyzing overall performance and in providing information that can be used to improve the quality of decision making.[5]

...SSA urgently needs to develop and implement a new quality management system that will routinely produce the comprehensive program information that policy makers need to guide disability policy and procedures and to ensure accuracy and consistency in decision making.

[5] Lewin, *op. cit.*

As the baby boomers rapidly enter their disability-prone years, it becomes ever more urgent for both policy makers and administrators to have a clear understanding of whether the programs are functioning as intended.

Quality should be a central objective of the disability programs. To make this an operating reality within the agency, SSA urgently needs to develop and implement a new quality management system that will routinely produce the comprehensive program information that policy makers need to guide disability policy and procedures and to ensure accuracy and consistency in decision making. Such a system is essential if the agency is to be able to detect problems promptly and correct them appropriately. It is also needed to evaluate agency initiatives such as process unification, prototype, and hearings process improvement.

The quality management system should incorporate all parts of the disability determination process. It should ensure high quality and consistency in all regions of the country and at all levels of decision making. The information it provides should be made available to persons who are concerned with the disability programs both within and outside of the agency.

As the baby boomers rapidly enter their disability-prone years, it becomes ever more urgent for both policy makers and administrators to have a clear understanding of whether the programs are functioning as intended.

B. Change the disability adjudication process

Strengthen the Federal-State arrangement

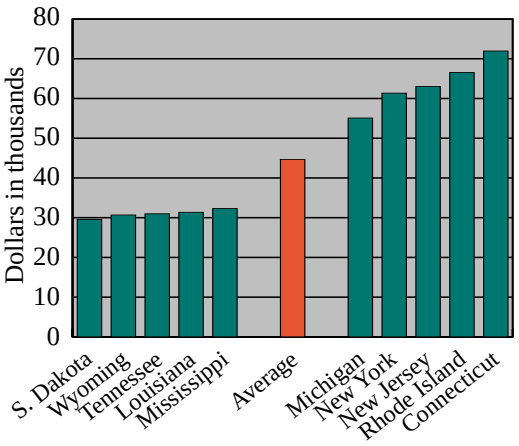
Although the law gives SSA the basic responsibility for administering the disability programs, it requires that disability decisions be made by State agencies rather than by SSA itself. The Federal government pays 100 percent of the cost.[6]

Whether the disability decision making authority should belong to the States or to the agency has been a subject of debate since the arrangement was established nearly five decades ago. Proponents of federalizing the process have long argued that the Federal-State administrative structure is inherently difficult to manage and that federalization of the responsibilities of the State agencies is necessary to ensure high quality, uniform administration throughout the country. They have questioned the capacity of the States to carry out Federal policies in an efficient and uniform way.

The issue of federalizing the disability determination process needs to be examined in the light of anticipated future needs of the disability programs. In the short term we believe it is necessary to strengthen the present Federal-State arrangement. Underpinning this view is the fact that, as evidenced by the findings in the Board's previous reports, SSA currently lacks the administrative and staffing capacity to take on the significant additional responsibility that federalization would entail.[7] Nonetheless, the present arrangement is inadequate to meet the needs of the programs today, and problems need to be addressed as quickly as possible.

There are wide variances among States in areas that can have a major impact on the quality of work that is performed, such as staff salaries, hiring requirements, training, and quality assurance procedures. Salary levels in the highest paying State are two and a half times greater than in the lowest paying

Chart 9. - State Agency Average Examiner Compensation, Low and High States and National Average*
FY 1999



**Average compensation includes full time pay, full time overtime pay, part time pay, part time overtime pay, and total employee fringe benefits.*

[6] Chart 7, p. 7 shows the various components involved in the disability adjudication process.

[7] For a discussion of SSA's urgent need to improve its capacity to manage the disability programs, see the Board's earlier reports, *How SSA's Disability Programs Can Be Improved* (August 1998) and *How the Social Security Administration Can Improve Its Service to the Public* (September 1999).

There are wide variances among States in areas that can have a major impact on the quality of work that is performed, such as staff salaries, hiring requirements, training, and quality assurance procedures.

State. In addition, State agencies are sometimes subject to Statewide hiring freezes that can severely limit their ability to process claims in a timely way.

A change in the law in 1980 gave SSA the authority to issue regulations to ensure high quality performance, but the agency exercised this authority in a limited way.

The agency's regulations should be revised to require States to follow specific Federal guidelines relating to educational requirements and salaries for staff, training, carrying out quality assurance procedures, and other areas that have a direct impact on the quality of their employees and their ability to make decisions that are both of high quality and timely. Regulations should also ensure that State hiring freezes will not apply to State agency disability operations.

We believe the agency has authority under existing law to issue new regulations in these areas. If SSA believes it should have new and more explicit authority, however, it should ask the Congress to provide it.

Some will argue that attempting to exert greater Federal authority over the State agencies will not be effective. However, the disability programs are national programs and SSA has an obligation to try to ensure equal treatment for all claimants wherever they reside. If any States should decide to withdraw from the program, then the agency should be prepared to take over that obligation.

...the disability programs are national programs and SSA has an obligation to try to ensure equal treatment for all claimants wherever they reside.

At the same time, SSA also has an obligation to the State agencies to listen to their concerns and to ensure that they are adequately funded to adjudicate the claims of State residents on a timely basis and in accordance with the law.

In our observation, the Federal-State relationship is now stronger and more cooperative than it was in earlier years. SSA and the States should work together to enhance it even more.

In addition, both the Congress and SSA should review the agency's present plan to eliminate the reconsideration step in the appeals process, a step that the States are currently performing.

In our observation, the Federal-State relationship is now stronger and more cooperative than it was in earlier years. SSA and the States should work together to enhance it even more.

As part of its disability redesign plan in 1994, SSA proposed to eliminate reconsideration on the grounds that streamlining the appeals process would promote faster decisions and ensure that claimants do not inappropriately withdraw from the process on the perception that it is too difficult or time-consuming to pursue their appeal rights. SSA is currently "testing" the elimination of reconsideration in 10 prototype States. The agency intends to eliminate it nationwide as one of a number of changes it plans to make in the disability determination process.

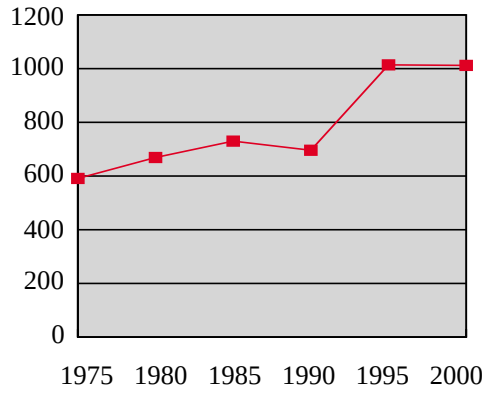
From the standpoint of claimants, reconsideration was an important step in the early years of the disability system. In 1959, for example, the reversal rate at the reconsideration level approached 50 percent. In the 1970s, about one in three claimants who requested a reconsideration had their claims approved at that level. Today, the reconsideration reversal rate stands at 15 percent, and many believe that it has become merely an unnecessary delaying step in the adjudicatory process.

It is still unclear what impact the elimination of reconsideration and other changes being tested in the 10 prototype States will have on claimants and on the ALJ process. If the evaluation does not clearly show that the prototype changes will produce the hoped-for results, including significantly fewer appeals to the ALJ hearing level, SSA should consider enhancing the current reconsideration step by offering claimants a face-to-face hearing and ensuring that it involves a *de novo* review that is conducted only by highly trained and experienced individuals.

Reform the hearing process

The formal right of Social Security claimants to a hearing was adopted by the agency in 1940. Initially there were only 12 "referees" around the country to hear appeals. But with the enactment of the disability programs the number of appeals began to increase rapidly. In 2000, SSA's hearing offices processed nearly 540,000 appeals, about 85 percent of which were disability cases. There are now about 1,000 administrative law judges and 6,800 other employees to handle the appeals workload.

Chart 10. - Number of Administrative Law Judges FY 1975-2000



In addition to becoming a vastly more massive operation than was originally envisaged, the hearing has changed in another fundamental respect. Administrative law judges have traditionally been required to balance three roles. They are obligated to protect the interests of both the claimant and the government, and to serve as objective adjudicator. But as attorney and other third party representation on behalf of claimants has increasingly become the norm, ALJs are finding it difficult to maintain the balance. Nationally, about 80 percent of DI claimants are now represented by an attorney, a situation that many believe has made the process too one-sided.

Finally, in the last 25 years the high volume of work generated by disability appeals has prompted SSA to make periodic efforts to increase ALJ productivity. This emphasis on productivity, which many ALJs believe has been insufficiently balanced by an emphasis on quality, has generated considerable tension between the agency and the judges. Many ALJs have viewed SSA's efforts to exert management control over administrative matters as an infringement on their decisional independence. The relationship has deteriorated to the point where the judges recently voted to form a union, with the view that this was necessary to have their views taken into account.

As the result of our study of these developments, we make the following recommendations.

Improve the SSA-ALJ relationship.– First, SSA's relationship with the ALJs needs to be changed from one of confrontation to cooperation. Many ALJs throughout the system strongly resent what they perceive as the agency's unwillingness to consult them about changes that are made and to consider their views. Many believe that the Office of Hearings and Appeals is buried too low in the agency and should be elevated so that the head of the office would report directly to the agency leadership. Others believe that there should be independent status for an administrative law judge organization.

...SSA's relationship with the ALJs needs to be changed from one of confrontation to cooperation....We urge SSA and ALJs to work together to develop reasonable procedures that will preserve the decisional independence of judges while also assuring promptness and consistency in decision making.

As we have met with ALJs throughout the country we have been impressed by the thoughtfulness and dedication that many of them have demonstrated. Most are dedicated professionals who have much to contribute to the agency. Their experience and insights should be valued and taken advantage of much more frequently and consistently than has been the case in the past.

At the same time, ALJ sensitivity to measures that might challenge their decisional independence has led some to reject even the notion that the agency has an obligation to try to ensure that hearing decisions are made as promptly and consistently as possible. There is an understandable tension between these objectives, but in our view they are not irreconcilable. We urge SSA and ALJs to work together to develop reasonable procedures that will preserve the decisional independence of judges while also assuring promptness and consistency in decision making. We also recommend consideration of three substantive changes in the hearing and appeal process.

Have the agency represented at the hearing. – First, the fact that most claimants are now represented by an attorney reinforces the proposition, which has been made several times in the past, that the agency should be represented as well.

Unlike a traditional court setting, only one side is now represented at Social Security's ALJ hearings. We think that having an individual present at the hearing to defend the agency's position would help to clarify the issues and introduce greater consistency and accountability into the adjudicative system. It would also help to carry out an effective cross-examination of the claimant. Many ALJs have told us that they are sometimes reluctant to

...the fact that most claimants are now represented by an attorney reinforces the proposition, which has been made several times in the past, that the agency should be represented as well.

conduct the kind of cross-examination they believe should be made because, upon appeal, the record may make them appear to have been biased against the claimant. Consideration should also be given to allowing the individual who represents the agency at the hearing to file an appeal of the ALJ decision.

If the agency is represented at the hearing there are issues that would have to be addressed, for example, who would have the responsibility for performing that function. Whoever had the responsibility would need substantially increased resources, at least in the short run. However, if government representation resulted in better-reasoned and justified decisions at the front end of the process, as many believe would be the case, then over time the number of appeals should go down, with savings to both the system and to claimants. The problem of representation for claimants who do not have it would also have to be addressed, but this is an issue that with a good faith effort should be able to be worked out.

...if government representation resulted in better-reasoned and justified decisions at the front end of the process, as many believe would be the case, then over time the number of appeals should go down, with savings to both the system and to claimants.

Close the record after the ALJ hearing. – Second, Congress and SSA should review again the issue of whether the record should be fully closed after the ALJ decision. Following legislation in 1980, SSA issued a regulation that bars the submission of new evidence that pertains to a period after the ALJ hearing decision, but allows new evidence to be submitted if it relates to the period on or before the date of the decision.

...Congress and SSA should review again the issue of whether the record should be fully closed after the ALJ decision.

Leaving the record open means that the case can change at each level of appeal, requiring a *de novo* decision based on a different record. SSA has no data on the percentage of cases that are remanded back to ALJs that involve new evidence, but many ALJs have told us that in their observation it is more than half and that it adds substantially to their workload. They argue that leaving the record open provides an incentive for claimants' representatives to withhold evidence in order to strengthen an appeal at a later stage. They also believe that it gives representatives an incentive to prolong the case in order to increase their fees. Other ALJs do not believe that representatives hold back evidence for these reasons. If evidence is held back, they maintain, it is because the rules for presenting evidence are lax and representatives do not take the time or spend the money to obtain additional evidence unless required to do so as a result of an unfavorable hearing decision.

Closing the record would heighten the need to develop the record as fully as possible before the decision is made in order to ensure that claimants are not unfairly penalized. Closing the record would not preclude filing a new application.

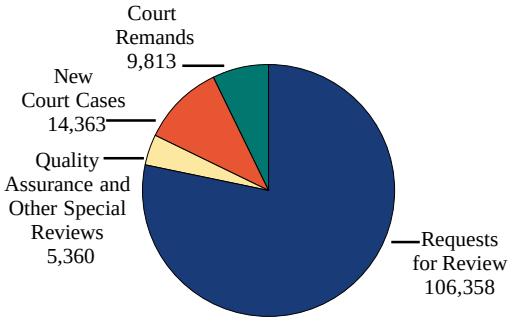
Consider new rules for claimant representatives. – Third, we recommend that consideration be given to establishing a system of certification for claimant representatives. Federal rules would regulate the representation of claimants. Consideration should also be given to establishing uniform procedures for claimant representatives to follow, such as requiring them (absent good cause) to submit all evidence a specified number of days prior to the hearing and to certify that the case is fully developed and ready for a hearing. The objective would be to provide for a more orderly and expeditious hearing procedure than currently exists.

In addition, both the Congress and the agency should review the issue of the payment of attorney fees. Many attorneys complain that the current statutory limit of $4,000 for any one case is unfair to them. But ALJs and other hearing office employees believe that the present law requirement that SSA generally withhold and pay to the attorney a fee equal to 25 percent of the back payment due to a claimant is often unfair to claimants whose representatives fail to carry out their responsibilities appropriately.

Rationalize the role of the Appeals Council

When the Social Security Board established the right to a hearing in 1940, it established an Appeals Council to handle the appeals. As noted above, appeals were heard by a handful of "referees" located around the country. They were reviewed by a small staff in the central office. The Appeals Council evolved into what is now called the Office of Hearings and Appeals. The office now known as the Appeals Council is a component within OHA.

Chart 11. - Appeals Council Workload
Fiscal Year 2000



The Appeals Council performs two basic functions. First, it performs a "case correction" function by providing a final step of appeal within the agency for individuals whose claims have been denied by an ALJ. In addition, it has authority to review ALJ decisions on its own motion. In 2000, the Council conducted preeffectuation reviews of about 4,000 allowances. (The percentage of cases chosen for review has varied over the years, largely reflecting the volatility of the Council's workload.) Second, it reviews cases that are appealed to the courts to determine whether the agency should defend them or whether it should request the court to remand them to the agency for the purpose of affirming, reversing, or remanding the ALJ's decision.

...we recommend that consideration be given to establishing a system of certification for claimant representatives.

As part of its 1994 disability redesign plan, SSA proposed to eliminate Appeals Council review of ALJ denials, thereby allowing appeals to go directly to the courts. The Council would continue to review cases that were appealed to the courts and decide whether the agency should defend the ALJ's decision as the final decision of the Commissioner. It would continue to seek remand of cases for the purpose of affirming, reversing, or remanding the ALJ's decision and would conduct own motion reviews of both ALJ allowances and denials for purposes of quality assurance.

Several years ago the agency conducted an initial test of the impact of eliminating Appeals Council review of ALJ denials. The test showed that the number of cases that would be appealed to the courts would likely increase substantially. Apparently the agency has not decided to abandon this proposal, however, because it is currently undertaking a second round of testing.

We urge both the Congress and the agency to study carefully the function that the Appeals Council is currently performing or that it could potentially perform. The Council has been subjected to much criticism over the years. Many believe that the ALJ decision should be the final decision of the agency and that too often decisions by the Appeals Council simply reflect the substitution of the opinion of one adjudicator for another.

We believe that the case correction function is important, but how it is conducted needs to be rethought.

The Carter Administration proposed to replace the Appeals Council with a Review Board. Under this proposal, the evidentiary record was to be closed after the ALJ hearing, giving the Board an appellate review role rather than allowing it to redetermine facts.

We urge both the Congress and the agency to study carefully the function that the Appeals Council is currently performing or that it could potentially perform.

In the view of the Board, any proposal for change in the Appeals Council role should include an evaluation of how it will impact the quality of ALJ decisions.

Consider changes in the current provisions for judicial review

Concerns about national uniformity in policy and procedure have led many to consider whether there is a need for changes in the current provisions for judicial review by the Federal courts. The courts frequently issue decisions that vary from district to district and circuit to circuit, resulting in the application of different disability policy in different parts of the country. The number of disability cases

Concerns about national uniformity in policy and procedure have led many to consider whether there is a need for changes in the current provisions for judicial review by the Federal courts.

that have been appealed to the Federal courts has risen substantially over the last decade, from about 5,600 in fiscal year 1990 to about 14,700 in 2000. It is projected to climb considerably higher in future years, further stressing SSA's Office of the General Counsel, which has the responsibility to handle these cases, but has insufficient staff to do so even with the current workload.

Over the years a number of bills have been introduced in the Congress that would create either a Social Security Court or a Social Security Court of Appeals.

Social Security Court. – Under bills introduced by Congressmen William Archer, J. J. Pickle, and James A. Burke, all of whom served as Chairman of theWays and Means Social Security Subcommittee, a new Social Security Court would be created, which for Social Security purposes would replace the Federal district courts. There would be a Chief Judge who would establish uniform court rules and procedures. Decisions of the Court would be appealed to a single circuit court, either an existing one or a new separate circuit court.

The principal argument for the Social Security Court is that it would provide greater uniformity in case law throughout the country and would allow for the more orderly presentation of issues for resolution by the Social Security Administration and the Congress. Those who oppose the court have argued that retaining the generalist judge of the present system is necessary to ensure a truly independent judicial decision.

Impact of Court Decisions*

Following is a brief example of how court decisions have affected disability policy and procedures in a substantial way.

Since the early years of the Disability Insurance program a number of judicial circuits have in varying ways addressed the question of how much weight should be given to the evidence of the claimant's treating physician. Several ruled that more weight should be given than SSA provided in its regulations. Although there was disagreement among the circuits on this issue, it was not appealed to the Supreme Court.

An important development in this area in recent years was when the 2nd Circuit through the *Schisler* case held in 1986 that its case law should be followed within the Circuit rather than the policy of the agency. The case law held that a treating physician's opinion is entitled to controlling weight "unless contradicted by substantial evidence." The district court judge in the *Schisler* case issued a ruling spelling out this case law and ordered SSA to follow it within the Circuit. In 1991, SSA issued new regulatory language describing the circumstances in which treating source opinion should be given controlling weight that largely followed the *Schisler* rule.

*For a detailed listing of major court cases affecting the disability programs, see the Advisory Board's January 2001 report, *Disability Decision Making: Data and Materials*, p. 115.

The statutorily-established Commission on Structural Alternatives for the Federal Courts of Appeals, chaired by Justice Byron White, stated in its final report in December 1998 that Congress should seriously consider proposals that would place judicial review of Social Security cases in an Article I court. The Commission further observed that if Congress should at some point take this action, it might want to consider placing exclusive appellate jurisdiction over the court in the Federal Circuit. It stated that it would seem appropriate for the standard of review for Social Security cases to be the same as for veterans' appeals, namely, a limitation of appellate review to questions of statutory and constitutional interpretation.[8]

Social Security Court of Appeals. – Another former Chairman of the Social Security Subcommittee, Andy Jacobs, introduced a bill to establish a U.S. Court of Appeals for the Social Security Circuit. The purpose of the Court was to provide appeal to a single court for all Social Security cases decided in Federal district courts, thereby eliminating the differing case law that comes out of the 11 Circuit Courts of Appeal. Opponents of the bill argued that it would eliminate the "percolation" of ideas through the various circuits before review of an issue might be sought in the Supreme Court.

Few would contest that throughout the history of the disability programs the courts have played a major role in defining the standards for disability. Whether existing arrangements for judicial review represent the best public policy is a legitimate question that deserves careful study by the Congress and the Social Security Administration.

Give field offices increased responsibility for taking disability claims

The work the field offices are currently responsible for performing does not include making disability decisions. However, their work can have a major impact on the quality of the decisions that are made at later stages in the process.[9]

In the early years of the DI program, field offices played the major role in taking and developing claims. Because of the many offices throughout the country, employees in these offices were able to work on a face-to-face basis with claimants. In many offices,

[8] *Commission on Structural Alternatives for the Federal Courts of Appeals, Final Report*, submitted to the President and the Congress pursuant to P.L. 105-119, December 18, 1998, p. 74.

[9] The agency is currently testing a new way of handling disability claims that gives a single individual (who may be either an SSA or State agency employee) the responsibility both for fully developing the claim and for determining whether a claimant is disabled. That individual, who is called a Disability Claims Manager, is responsible for all contacts with the claimant.

Few would contest that throughout the history of the disability programs the courts have played a major role in defining the standards for disability. Whether existing arrangements for judicial review represent the best public policy is a legitimate question that deserves careful study by the Congress and the Social Security Administration.

claims representatives specialized in taking disability claims, developing expertise in interviewing, describing impairments, and developing evidence.

Over time, the pressure of high workloads and limited resources has pushed the agency to reduce the field office role. In the early 1970s, the responsibility for developing evidence was given to the State agencies and the narrative interview providing observations of the claimant's disability was generally replaced by a checklist approach. More recently, the practice in field offices is to encourage claimants to fill out their own forms and mail them in. Administrators of several State agencies have told us that now more than half of the claims they receive are teleclaims. In these cases, claimants may never be observed unless their claims are denied by a State agency and appealed to an administrative law judge. As SSA relies more and more on taking claims by telephone and (in the future) by Internet, the number of claims filed without any face-to-face contact is expected to grow.

At the same time, there appears to be recognition within SSA and the State agencies that better documentation of the claim at intake leads to speedier and better disability decisions. Thus, the agency is currently making special efforts to encourage field offices in the States where it is implementing disability prototype to improve the quality of the disability application. Whether substantial improvement will in fact be achieved and sustained is open to question, as pressures on employees to speed up case processing continue and employees have been given no incentives to do otherwise.

The responsibility of the field office in taking disability claims is critical and should be carefully delineated so that the field office function can be made more effective. We believe that more, rather than less, face-to-face contact with claimants would improve the disability process. Today, many claimants have little understanding of what they should do to fully document their claim. They also have little understanding of what is required to meet the strict Social Security definition of disability. There is no way to know what impact these factors have on the number and quality of claims that are filed, but anecdotally they appear to be significant. We question whether SSA's policy of increasing reliance on self-help and teleclaims is consistent with the objectives of good service to the public, decisional quality, and program integrity.

The agency should develop performance measures to hold field offices accountable for the quality of the disability claims intake work they perform. Even more important, the Social Security Administration should have a workforce-based budget that provides sufficient resources to field offices so that they are able to carry out the functions that are required.

The responsibility of the field office in taking disability claims is critical and should be carefully delineated so that the field office function can be made more effective....Today, many claimants have little understanding of what they should do to fully document their claim. They also have little understanding of what is required to meet the strict Social Security definition of disability.

C. Align policy and administrative capacity

Nearly every part of the Social Security Administration has been affected by the downsizing and restraint on government hiring that has occurred over the last two decades. But for various reasons, the disability programs in particular have tended to suffer. Important decisions have been made affecting the disability determination process without the careful attention that their importance has warranted.

As noted earlier, over the last decade and a half SSA has issued numerous regulations and rulings that require more time and expertise on the part of all disability adjudicators than was the case in the past. Over this same period, however, workloads have grown substantially and resources have been constrained. The result is that disability policy and administrative capacity are now seriously out of alignment and threaten to become more so as the agency moves toward national implementation of several new initiatives.

Of particular importance are the series of nine rulings issued by SSA in 1996. They are commonly referred to as "process unification" rulings, because they were aimed at bringing State agency and ALJ decisions closer together. Despite the good intentions of the agency, many State agency administrators claim that some of the rulings are so complex and difficult that State agency employees cannot adhere to them without spending substantially increased time on a large percentage of the cases they are adjudicating. In addition, these new rules for adjudicating cases require analytical and writing skills that many employees do not have.

Because of resource demands, implementation of the rulings has been proceeding unevenly. For purposes of quality assurance measurement, SSA is enforcing them only in the 10 prototype States. As the result of court challenges, however, three additional States are also being required to implement them, and a number of other States, concerned about being challenged in court, have undertaken to implement them as fully as possible on their own initiative. SSA's data show that in most States where prototype is being implemented backlogs are climbing dramatically, despite SSA's efforts to relieve the State agencies by transferring part of their workloads to other States or to SSA itself.

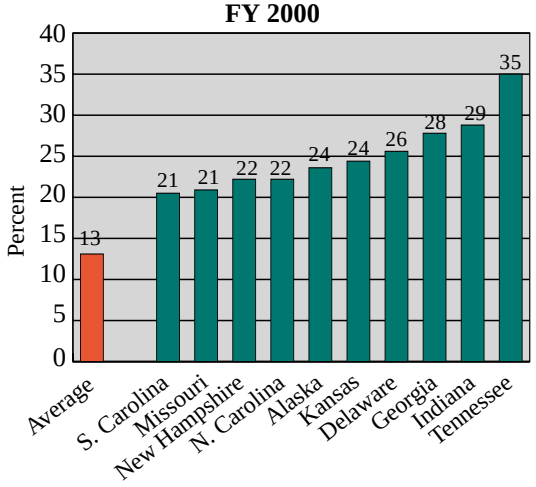
As the number of applications grows, backlogs are growing in other States as well. In many State agencies heavy workloads are causing employee stress and staff attrition is a serious problem. For example, in 2000, 10 States had disability examiner attrition rates of 21 percent or higher. This is a serious impediment to public service, given the fact that most administrators believe that it takes at least 2 years to fully train a disability examiner.

The process unification rulings establish standards for developing cases that some ALJs believe will prove over time to be difficult for them to meet as well, potentially increasing the number of cases remanded from the courts and causing ALJ workloads to grow.

...disability policy and administrative capacity are now seriously out of alignment and threaten to become more so as the agency moves toward national implementation of several new initiatives.

Chart 12. - State Agency Examiner Annual Attrition Rates, Average and High Ten States

FY 2000



The agency's process unification rulings and the regulations on which they are based need to be reexamined from the standpoint of both sound policy and administrative feasibility. Most State agency administrators agree that these rulings cannot be implemented given the resources that are presently available. The rulings may create a resource problem for hearing offices as well.

Both the new Administration and the new Congress will share the responsibility of ensuring that disability policy and administrative capabilities are properly aligned. The basic point that needs to be acknowledged is that today there is a big gap between policy and administrative feasibility that needs to be bridged by introducing changes in policy, in institutional arrangements, or funding – or most probably, in all of these complex facets of an interwoven process.

Finally, as the Board has recommended previously, the agency should develop a comprehensive work force plan and base its appropriations requests on this plan, as directed by the 1994 independent agency legislation. We hope that both the Administration and members of Congress will approve the Board's recommendation to exclude SSA's administrative budget for Social Security from the statutory cap that imposes a limit on the amount of discretionary government spending.

D. Examine ways to improve incentives for early rehabilitation and employment

The Social Security definition of disability was written at a time when most of the work being performed in the national economy required physical labor. There was little expectation that severely disabled individuals would be able to perform any kind of substantial work.

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Americans with Disabilities Act in 1990 clearly showed, the attitude of individuals who have disabilities has also changed. Employment for the disabled has become a major objective of disability advocacy groups and individuals. The public at large also appears to support this objective. But there is growing concern that the present definition of disability is inconsistent with the objectives of the ADA.

The issue of whether the present structure of assistance to the disabled provides sufficient help and incentive for employment requires thoughtful review. The fact that disability claimants currently must establish that they are unable to perform any substantial gainful activity in order to qualify for cash and medical benefits makes it unlikely that they will be motivated to sign up for vocational rehabilitation services, at least until they are awarded disability benefits, a process that can take up to a year or even more. The 1999 Ticket to Work legislation should encourage some beneficiaries to enter or return to work, but it is aimed at those who have already been determined to be disabled and are likely to have been out of the work force for a substantial period of time.

Most experts believe that the most effective intervention is to help disabled individuals return to work as quickly as possible. More comprehensive research on ways to improve incentives for rehabilitation and employment early in a period of disability is needed. This may include new or different arrangements for cash or medical benefits or for rehabilitation and employment services. The experience of other countries and of both private and public employers in the United States should be taken into account.

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Included as part of this comprehensive research effort should be a study of whether providing some type of short-term disability assistance, combined with rehabilitation and employment services, would improve assistance for those who have disabilities while also relieving pressure on the permanent disability programs. The studies that are conducted should include cost-benefit analyses. Where needed, specific legislative authority and funding for these studies should be provided.

V. CONCLUSION: CONSTRUCTIVE CHANGE AND ADDITIONAL RESOURCES ARE REQUIRED

Social Security's disability rolls have grown steadily, and the agency's actuaries project continued rapid growth as baby boomers reach the age of increased likelihood of disability. At the same time, disability policy has been growing more complex, while resources have been constrained.

All parts of the disability policy and administrative structure are under increasing stress. If the Social Security Administration is to be able to provide an appropriate level of service to those who are disabled and to the public, fundamental changes are needed.

Today, the many thousands of SSA and State agency employees who are responsible for administering the disability programs lack the tools they need to carry out their work. The disability administrative and policy infrastructure is weak, and resources are inadequate to the task.

These deficiencies manifest themselves in unfortunate ways. The application and appeals process is too slow, and there are inconsistencies in decision making among different regions of the country and different parts of the disability system. Disability policy and process are difficult for claimants to understand and difficult for adjudicators to implement and to explain. Disability rules and procedures differ in significant ways from one level of adjudication to another.

The problems with the administrative infrastructure begin at the top, where SSA's current organizational structure diffuses responsibility over nearly every component of the agency. They continue throughout the disability system, where a fragmented and uncoordinated administrative arrangement makes consistency and fairness in decision making difficult to achieve.

Problems in the area of policy are equally critical. For many years disability policy has tended to be guided by court decisions and other pressures rather than by a well thought out concept of how the programs should be operating. Policy is articulated by too many voices, with no single source of policy to which decision makers can turn for guidance and direction. More fundamentally, there is concern that disability policy is inconsistent with the objective of many disabled individuals to participate in the economic mainstream through employment.

In this report we have described changes that we think would make the disability programs more responsive to the needs of claimants and would provide greater accountability and transparency for the public. We have also emphasized the need to provide the resources that are required to provide the public with the high quality of service that it deserves.

We urge the new Administration and the new Congress to undertake a fundamental review of the disability programs as soon as possible. This review will require the involvement of many individuals and organizations whose views will be diverse and often conflicting. But discussion and debate are needed to clarify the issues and to inform policy makers and the public. Resolving differences and reaching consensus will be difficult, but we strongly believe that major changes in the disability programs are required if they are to serve the needs of the disabled and the public at large.

GLOSSARY

Administrative law judge (ALJ): Administrative law judges in SSA's Office of Hearings and Appeals conduct hearings and make decisions on cases that are appealed by individuals whose claims have been denied by State agencies.

Appeals Council: The organization within SSA's Office of Hearings and Appeals that makes the final decision in the administrative review process. When an individual disagrees with the decision or dismissal of the ALJ, he or she may, within 60 days of receiving the hearing decision, request that the Appeals Council review the decision. The Appeals Council may deny or dismiss the request for review, or it may grant the request and either issue a decision or remand (return) the case to an ALJ. The Appeals Council may also review any ALJ action on its own motion within 60 days after the ALJ's action.

Equals listing: A step in the sequential evaluation process. Regulations issued by SSA include a Listing of Impairments which describes, for each major body system, impairments that are considered severe enough to prevent a person from doing any substantial gainful activity. A determination that an impairment is equal in severity to the criteria in the listings is sufficient to establish that an individual who is not working is disabled within the meaning of the law. (See sequential evaluation process.)

Hearing: The level following reconsideration in the administrative review process. The hearing is a *de novo* procedure at which the claimant and/or the claimant's representative may appear in person, submit new evidence, examine the evidence used in making the determination under review, give testimony, and present and question witnesses. The hearing is on the record but is informal and non-adversarial.

Hearing office: One of the 138 locations of SSA's Office of Hearings and Appeals at which hearings are held.

Hearings Process Improvement initiative: A plan which SSA is implementing in its hearing offices with the goal of reducing processing time and increasing productivity in the hearings process through process improvements, group-based accountability, and automation.

Medical listings: A common term for the Listing of Impairments issued by SSA as part of the regulations on determining disability. The listings describe, for each major body system, impairments that are considered severe enough to prevent a person from doing any substantial gainful activity. An impairment that meets or equals the criteria in the listings is sufficient to establish that an individual who is not working is disabled within the meaning of the law.

Meets listing: A step in the sequential evaluation process. Regulations issued by SSA include a Listing of Impairments which describes, for each major body system, impairments that are considered severe enough to prevent a person from doing any substantial gainful activity. An impairment that meets the criteria in the listings is sufficient to establish that an individual who is not working is disabled within the meaning of the law. (See sequential evaluation process.)

Process unification: An SSA initiative with the objective of fostering similar results on similar cases at all stages of the administrative review process by the consistent applications of laws, regulations and rulings. Process unification activities include training, development of a single presentation of policy and enhancing documentation and explanations at the DDS level.

Prototype: The implementation of elements of a redesigned disability process in 10 States (known as "prototype States") in preparation for national implementation. This prototype began in October, 1999. The elements of the prototype are: elimination of reconsideration; an expanded role for disability examiners to make decisions without approval of a medical consultant; the opportunity for a telephone conference with an adjudicator for claimants whose claims would receive an unfavorable decision; and enhanced rationales for decisions.

Reconsideration: An independent reexamination by State agencies of all evidence on record related to a case. It is based on the evidence submitted for the initial determination plus any further evidence and information that the claimant or the claimant's representative may submit in connection with the reconsideration. A reconsideration determination is made by a different disability examiner and physician/psychologist from the ones who made the original determination.

Sequential evaluation process: The five-step process used in determining whether an individual meets the definition of disability in the law. A determination at any step that an individual is disabled or not disabled ends the process. The steps are:
1) Substantial gainful activity — If the claimant is, in fact, continuing to work and that work is found to be substantial gainful activity the process calls for a finding that he or she is not disabled.
2) Not severe — If it is determined that the claimant's medical impairments are not severe, i.e., do not significantly limit the ability to perform basic work activities, he or she is not disabled.
3) Listing of Impairments — If the claimant meets the criteria for an impairment listed in the regulations, or has an impairment or combination of impairments that is medically equivalent, he or she is to be found disabled.
4) Relevant past work — If a claimant's impairments do not prevent performance of relevant work he or she has done in the past, he or she is not disabled.
5) Other work — At this step, if a claimant, considering age, education, and work experience, cannot do other work which exists in the national economy, he or she is found to be disabled.

State agency: A common term for Disability Determination Services, the State agency which makes the initial and reconsideration determinations of whether a claimant is disabled or a beneficiary continues to be disabled within the meaning of the law.

THE SOCIAL SECURITY ADVISORY BOARD

Establishment of the Board

In 1994, when the Congress passed legislation establishing the Social Security Administration as an independent agency, it also created a 7-member bipartisan Advisory Board to advise the President, the Congress, and the Commissioner of Social Security on matters relating to the Social Security and Supplemental Security Income (SSI) programs. The conference report on this legislation passed both Houses of Congress without opposition. President Clinton signed the Social Security Independence and Program Improvements Act of 1994 into law on August 15, 1994 (P.L. 103-296).

Advisory Board members are appointed to 6-year terms, made up as follows: 3 appointed by the President (no more than 2 from the same political party); and 2 each (no more than one from the same political party) by the Speaker of the House (in consultation with the Chairman and Ranking Minority Member of the Committee on Ways and Means) and by the President pro tempore of the Senate (in consultation with the Chairman and Ranking Minority member of the Committee on Finance). Presidential appointees are subject to Senate confirmation. Board members serve staggered terms.

The Chairman of the Board is appointed by the President for a 4-year term, coincident with the term of the President, or until the designation of a successor.

Members of the Board

Stanford G. Ross, Chairman

Stanford Ross is a partner in the law firm of Arnold & Porter, Washington, D.C. He has dealt extensively with public policy issues while serving in the Treasury Department, on the White House domestic policy staff, as Commissioner of Social Security, and as Public Trustee of the Social Security and Medicare Trust Funds. He is a Founding Member and a former Director and President of the National Academy of Social Insurance. He has provided technical assistance on Social Security and tax issues under the auspices of the International Monetary Fund, World Bank, and U.S. Treasury Department to various foreign countries. He has taught at the law schools of Georgetown University, Harvard University, New York University, and the University of Virginia, and has been a Visiting Fellow at the Hoover Institution, Stanford University. He is the author of many papers on Social Security and Federal taxation subjects. Term of office: October 1997 to September 2002.

Jo Anne Barnhart

Jo Anne Barnhart is a political consultant and public policy consultant to State and local governments on welfare and social services program design, policy, implementation, evaluation, and legislation. From 1990 to 1993 she served as Assistant Secretary for Children and Families, Department of Health and Human Services, overseeing more than 65 programs, including Aid to Families with Dependent Children, the Job Opportunities and Basic Skills Training program,

Child Support Enforcement, and various child care programs. Previously, she was Minority Staff Director for the U.S. Senate Committee on Governmental Affairs, and legislative assistant for domestic policy issues for Senator William V. Roth. Ms. Barnhart served as Political Director for the National Republican Senatorial Committee. First term of office: March 1997 to September 1998; current term of office: October 1998 to September 2004.

Martha Keys

Martha Keys served as a U.S. Representative in the 94th and 95th Congresses. She was a member of the House Ways and Means Committee and its Subcommittees on Health and Public Assistance and Unemployment Compensation. Ms. Keys also served on the Select Committee on Welfare Reform. She served in the executive branch as Special Advisor to the Secretary of Health, Education, and Welfare and as Assistant Secretary of Education. She was a member of the 1983 National Commission (Greenspan) on Social Security Reform. Martha Keys is currently consulting on public policy issues. She has held executive positions in the non-profit sector, lectured widely on public policy in universities, and served on the National Council on Aging and other Boards. Ms. Keys is the author of *Planning for Retirement: Everywoman's Legal Guide*. First term of office: November 1994 to September 1999; current term of office: October 1999 to September 2005.

David Podoff

David Podoff is visiting Associate Professor at the Department of Economics and Finance at the Baruch College of the City University of New York. Recently, he was Minority Staff Director and Chief Economist for the Senate Committee on Finance. Previously, he also served as the Committee's Minority Chief Health and Social Security Counselor and Chief Economist. In these positions on the Committee he was involved in major legislative debates with respect to the long-term solvency of Social Security, health care reform, the constitutional amendment to balance the budget, the debt ceiling, plans to balance the budget, and the accuracy of inflation measures and other government statistics. Prior to serving with the Finance Committee he was a Senior Economist with the Joint Economic Committee and directed various research units in the Social Security Administration's Office of Research and Statistics. He has taught economics at the University of Massachusetts and the University of California in Santa Barbara. He received his Ph.D. in economics from the Massachusetts Institute of Technology and a B.B.A. from the City University of New York. Term of office: October 2000 to September 2006.

Sylvester J. Schieber

Sylvester Schieber is Director of the Research and Information Center at Watson Wyatt Worldwide, where he specializes in analysis of public and private retirement policy issues and the development of special surveys and data files. From 1981 to 1983, Mr. Schieber was the Director of Research at the Employee Benefit Research Institute. Earlier, he worked for the Social Security Administration as an economic analyst and as Deputy Director at the Office of Policy Analysis. Mr. Schieber is the author of numerous journal articles, policy analysis papers, and several books including: *Retirement Income Opportunities in An Aging America: Coverage and Benefit Entitlement; Social Security: Perspectives on Preserving the System;* and *The Real Deal: The History and Future of Social Security*. He served on the 1994-1996 Advisory Council on Social Security. He received his Ph.D. from the University of Notre Dame. Term of office: January 1998 to September 2003.

Gerald M. Shea*

Gerald M. Shea is currently assistant to the president for Government Affairs at the AFL-CIO. He previously held several positions within the AFL-CIO, serving as the director of the policy office with responsibility for health care and pensions, and also in various executive staff positions. Before joining the AFL-CIO, Mr. Shea spent 21 years with the Service Employees International Union as an organizer and local union official in Massachusetts and later on the national union's staff. He was a member of the 1994-1996 Advisory Council on Social Security. Mr. Shea serves as a public representative on the Joint Commission on the Accreditation of Health Care Organizations, is a founding Board member of the Foundation for Accountability, Chair of the RxHealth Value Project, and is on the Board of the Forum for Health Care Quality and Measurement. He is a graduate of Boston College. First term of office: January 1996 to September 1997; current term of office: October 2000 to September 2004.

* Gerald Shea, who rejoined the Advisory Board on October 24, 2000 and therefore did not participate in the study or the drafting that preceded the issuance of this report, has decided not to sign it.

Mark A. Weinberger

Mark A. Weinberger is currently the Director of the U.S. National Tax Practice for Ernst & Young LLP. Mr. Weinberger has previously served as Chief of Staff and Counsel to the President's 1994 Bipartisan Commission on Entitlement and Tax Reform (the Kerrey-Danforth Commission). He also is a former Commissioner of the National Commission on Retirement Policy. Mr. Weinberger served as Chief Tax and Budget Counsel to Senator John Danforth, and also as a tax advisor to the National Commission on Economic Growth and Tax Reform (the Kemp Commission), which studied fundamental tax reform. Mr. Weinberger has written and lectured extensively on tax, budget, political and retirement security issues. He graduated from Emory University; holds a Masters degree in Business Administration and a law degree from Case Western Reserve University; and has an L.L.M. from Georgetown University Law Center. Term of office: October 2000 to September 2006.

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