



CONSORTIUM FOR CITIZENS
WITH DISABILITIES

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Chairman Sam Johnson and Chairman Davis and other distinguished members of the committee, thank you for the opportunity to testify today regarding work incentives in Social Security disability programs.

I am Cheryl Bates-Harris, Senior Disability Advocacy Specialist, National Disability Rights Network (NDRN). Today, I am here in my capacity as a Co-Chair of the Consortium for Citizens with Disabilities (CCD) Employment and Training Task Force.

CCD is a coalition of over 100 national consumer, service provider, and professional organizations which advocates on behalf of people with disabilities and chronic conditions and their families. Employment and Training Task Force is a smaller group within the coalition that addresses Federal disability employment issues, working to secure national public policy that advances self-determination, independence, empowerment, integration and inclusion in employment for individuals with disabilities.

The CCD Employment and Training Task Force believes that meaningful employment represents one of the best opportunities for people with disabilities as they work toward becoming a productive and independent member in their community. Unfortunately, employment opportunities continue to be very scarce especially with today's economy. Social Security Disability work programs are among the many critical avenues for social security beneficiaries to gain access to employment. We support improvements to Social Security to make it more effective in serving those who rely on it. However, we stand firm in our belief that changes to the Social Security system should not be made in the hot house environment of deficit reduction.

Bureau of Labor Statistics data paint an ongoing grim portrait of workforce participation by people with disabilities. Statistics just released in August indicate that the workforce participation rate for people with disabilities remained virtually unchanged from 2010 to 2011 at roughly 21 percent. For those with no disability, the rate was almost 70 percent. During that same period, the unemployment rate for persons with a disability rose from 16.4 percent to 16.8 percent while that for people without disabilities showed a slight decline – from 9.5 to 9.0 percent. At every level of education, persons with a disability were much less likely to be employed than were their counterparts with no disability.

Considerable attention is being given to the plight of the long term unemployed. Numerous proposals have been introduced in recent months offering enhanced tax

advantages to businesses hiring people unemployed for six months or longer or special programs targeting this population. It is essential for policymakers to understand that millions of people with disabilities are disconnected from the workforce and do not fall within the traditional definitions of "long term unemployed." People with disabilities will once again be sidelined in efforts to boost the economy if this basic fact is ignored.

Employment of individuals with disabilities requires a comprehensive approach that addresses all aspects of the service system to ensure that the vision of integrated, competitive employment is fostered and promoted. Ongoing staff development, among systems staff and service providers, is vital so that they not only embrace this vision, but also have the technical knowledge to implement it. A holistic approach also requires addressing a wide range of other issues: outreach to and engagement with employers, service monitoring and quality assurance, engagement of individuals and families, the availability of benefits counseling that supports community employment, transportation, inter-agency collaboration with public vocational rehabilitation, to name just a few. Strong transition services from school-to-work, with a clear focus on community employment are also critical.

On behalf of the Employment and Training Task Force, I appreciate the opportunity to discuss the following issues this morning as a part of my testimony:

- Urgent Need for Renewal of Important Work Incentives Programs
- Employment Network (ENs) – New Ticket Regulations
- Improvements to Ticket to Work and Work Incentives Improvement Act
- Health Care Coverage: An Essential Work Incentive
- Other Social Security Work Incentive Reforms Needed
- Promoting Work and Savings
- Business Tax Incentives

Ticket to Work and Work Incentives Improvement Act

Almost ten years ago, the Ticket to Work and Work Incentives Improvement Act (TTWWIIA) was signed into law as P. L. 106-170. Its intent was to reduce barriers to work for Social Security Title II and Title XVI disability beneficiaries by offering greater choice in vocational rehabilitation and employment services providers and to assure ongoing access to affordable health care coverage and benefits planning services.

Over the past decade, Congress has focused most of its attention only on the Ticket to Work Program and its implementation. As you know, the original regulations issued for Ticket to Work were inadequate to create the multiplicity of vocational options envisioned by proponents of the law. Corrective regulations were not issued until 2005 and were not finalized until 2007. Consequently, though these new rules are vast improvements over the old ones and the Social Security Administration (SSA) has taken steps since 2008 to publicize them and implement them, it is useful to examine the impact of the changes to Ticket in the context of the other continuing workforce barriers to people with disabilities.

At the outset, we urge your immediate attention to several provisions contained within TTWWIIA that are critical to facilitating the participation of those on Title II and/or Title XVI in the workforce and that are scheduled to expire soon. The failure to extend these programs could undermine the long-term impact of the law in improving employment opportunities for this population of people with disabilities.

The specific provisions in question are:

Protection and Advocacy for Beneficiaries of Social Security (PABSS) -- The PABSS program was created in TTWWIIA to protect the rights of beneficiaries as they attempt to go to work. It is the responsibility of these programs to provide information and advice about obtaining vocational rehabilitation and employment services; information and referral services to beneficiaries on work incentives; advocacy or other legal services that a beneficiary needs to secure, maintain, or regain gainful employment including investigation and remedy of complaints of employment discrimination and other civil and legal rights violations ; and identify deficiencies in entities providing employment supports and services to beneficiaries. Despite this extensive set of duties and growing demand for services, the PABSS program has been funded at the same level since 1999 and its authorization expires at the end of this fiscal year.

Work Incentives Planning Assistance (WIPA) -- WIPA grants to local non-profits and other agencies fund outreach, education and benefits planning services to Social Security disability beneficiaries about work incentives and services for finding, maintaining and advancing in employment. WIPA grantees inform beneficiaries on the impact that employment will have on their disability income and medical coverage, and address many of the real fears that individuals have about going to work at the risk of losing health coverage. The authority for these grants, flat funded since their inception, will terminate September 30, 2011 unless renewed by Congress.

More needs to be done in ensuring that individuals and families are aware of the availability of WIPA services, that WIPA services consistently provide a message that encourages employment in the community rather than simply preservation of benefits, and that WIPA services are provided in a way that is fully accessible to individuals with intellectual and developmental disabilities. Consideration also should be given to encouraging use of Medicaid Waiver funds for supporting benefits counseling services that supplement and expand those available via the WIPA programs.

Title II Demonstration Authority -- SSA's Title II demonstration authority expired in 2005. The agency's disability demonstration projects can provide important information about assisting beneficiaries to attempt or to return to work and current demonstrations have been allowed to continue. While we recognize that improvements need to be made in the way SSA uses the results of its demonstrations, without this authority, the agency is unable to pilot test other promising approaches for work incentives and related provisions.

Demonstration to Maintain Independence (DMIE) -- Section 204 of TTWWIIA authorized demonstration projects to give private insurance coverage to working individuals whose health conditions or disabilities are not yet severe enough to qualify them for the program. The intent of DMIE was to test the efficacy of health insurance coverage in keeping individuals with disabilities in the workforce and off of the benefit rolls. Regrettably, these programs got a very late start in applications and funding. Furthermore, only a few states took advantage of the DMIE, largely because of the matching fund requirements of the program and their own precarious financial position. Still, preliminary findings from the DMIE indicate that this program has potential to reduce public expenditures for disability benefits and reduce employer costs related to worker health problems.¹ Unfortunately, the authority for this program ended in FY 2006 and Congress rescinded the funds remaining in the program in the 2009 omnibus budget bill.

Medicaid Infrastructure Grants (MIG) -- State Medicaid Agencies and their designees have built new state infrastructures and service support networks for workers and job seekers with a significant disability (namely, Social Security disability beneficiaries) in scores of states as can only happen at the state and local levels. Ongoing MIG grant funds targeted to these ends have made this possible. A 2010 GPRA report on the Medicaid Infrastructure Grants (MIG) and Medicaid Buy-In reported that 42 states were using MIG funds to promote employment of people with disabilities and 37 states had established a Buy-In program for working people with disabilities. States with a MIG program had a higher employment rate for people with disabilities than non-MIG states and all states receiving MIG funding must make personal attendant services [PAS] available at a level that would support competitive employment. Across Buy-In states, over 153,000 participants were enrolled in the program in 2009, a 25 percent increase from 2008. Over 309,000 Medicaid participants have benefited from the Buy-In since the first program was established in 1997. Buy-In participants' earnings totaled nearly \$896 million in 2009 across all 37 MIG/Buy-In states, a 17% increase over 2008. According to an analysis by Mathematica Policy Research, "Buy-in participants in 2005 incurred lower annual Medicaid expenditures per enrollee than other adult disabled Medicaid enrollees. This difference was observed nationwide and in most states with a Buy-In program, and suggests that Buy-In participants who are working may require fewer services or a less expensive mix of services than other disabled Medicaid enrollees."² Unfortunately, the MIG grants terminate at the end of 2011.

Employment Network (ENs) -- The Social Security Administration's Ticket to Work and Self-Sufficiency Program (Ticket to Work Program) was authorized by Public Law 160-170. The general goal of the Ticket to Work (TTW) Program is to expand the universe of service providers that are available to those individuals between ages 18-64 who are entitled to Social Security benefits based on disability (SSDI) and for those who are eligible for Supplemental Security Income (SSI) based on disability or blindness.

¹ 2008 Congressional briefing by American Public Human Services Association and National Association of State Medicaid Directors, http://cwd.aphsa.org/Home/home_news.asp

² Analysis of Medical Expenditures and Service Use of Medicaid Buy-In Participants 2002-2005, October 2009, Mathematica Policy research

However, after the first regulations were published in 2001 and the first Tickets went out to beneficiaries, the program created very little change. More than 90 percent of the Tickets went to VR agencies rather than to employment networks, or ENs. Worse, the regulations and the accompanying Transmittal 17 put VR agencies and ENs at odds by automatically assigning a beneficiary's Ticket to VR once a vocational plan, known as an Individualized Plan for Employment or IPE, was signed. In hearings before this Committee, testimony from advocacy groups told of how the regulations were unworkable. Further, the TTWWIA Advisory Panel in 2003 wrote to Martin Gerry, then the Deputy Commissioner for the Office of Disability and Income Security Programs and Robert Pasternack, then the Assistant Secretary for the Office of Special Education and Rehabilitative Services, about the problems created by the Ticket regulations and Transmittal 17.

The Social Security Administration (SSA) revised the TTW regulations in 2008 to improve the overall effectiveness of the program to maximize the economic self-sufficiency of beneficiaries through work opportunities. The TTW regulations:

- Encourage more organizations to become ENs and increase the range and number of service providers available to serve beneficiaries.
- Promote more partnering between organizations and expand the range of services offered to beneficiaries.
- Promote better coordination of a variety of services to beneficiaries at the federal, State and local levels, including coordination of VR and EN services and better coordination of SSA Work Incentives.

Partnership Plus

As a result of these changes in the 2008 regulations, Partnership Plus was established. Partnership Plus more closely equalized payments for serving SSDI and SSI beneficiaries and increased the amount that Employment Networks would be paid under the Ticket program. In addition, the new regulations redefined the relationship between SSA beneficiaries who want to work, VR agencies, and ENs. They allow VR agencies and employment networks to work together to provide a more seamless array of services to beneficiaries and help them attain and retain employment. These regulations permit SSA to pay a VR agency for serving a beneficiary under the cost reimbursement program. When the VR case is closed, the beneficiary can assign his/her Ticket to an EN that can subsequently receive Milestone and Outcome payments. If the VR agency closed the case with the beneficiary in employment, the Phase 1 Milestones are not available to the EN since VR provided the services that led to job placement. The Phase 2 Milestone and Outcome payments would be available to the EN when the beneficiary attained work and earnings adequate to trigger those payments. Partnership Plus has created opportunities for VR agencies and ENs to partner together in providing ongoing support and job retention services to assist beneficiaries as they move towards self-supporting employment.

We applaud then Associate Commissioner for Employment Support Programs Sue Suter, Dan O'Brien who succeeded Ms. Suter as Acting Associate Commissioner, and the new Associate Commissioner Bob Williams for initiating these changes and continuing to work with VR agencies and ENs to make the Ticket a program that works.

Ticket program poised to benefit from data matching advances -- Multiple government entities are involved in efforts to determine when recipients of government benefits have begun work. The government's primary goal in data matching with commercial and governmental databases is to minimize improper payments. But as this data matching improves, it will also enable the Ticket program to be more effective. While only ½ of 1% of beneficiaries go off the rolls each year due to work, 16% actually perform some work according to a 2010 study by Liu and Stapleton. About a quarter of those who attempt work earn above SGA. They would appear to be likely candidates for leaving the benefit rolls if they were provided critical supports at the time it is needed. Unfortunately SSA doesn't know who these individuals are. As better employment data matching becomes available the Ticket program could identify those who are attempting to leave the benefit rolls, and offer them supports that will increase the probability that they will be able to achieve economic self-sufficiency.

One area that has slipped due to staffing shortages, often with a very detrimental impact on people with disabilities, is the processing of earnings reports by beneficiaries. When beneficiaries faithfully notify SSA of earnings or other changes that may reduce their benefit payment amounts, it may be months or years before SSA sends an overpayment notice to the beneficiary, demanding repayment of sometimes tens of thousands of dollars of accrued overpayments. It is shocking to beneficiaries to receive these notices, when they reasonably assumed that SSA had processed the information they submitted, and it is challenging, if not impossible, for someone subsisting on benefits alone to repay the overpayments. Many individuals with disabilities are wary of attempting a return to work out of fear that this may give rise to an overpayment, resulting in a loss of economic stability and health care coverage upon which they rely.

SSA needs to develop a better reporting and recording system and promptly adjust benefit payments --thus preventing these overpayments. It is important to note that, in and of themselves, overpayments do not indicate fraud or abuse as beneficiaries are encouraged to work if they are able. The problems arise when reported earnings are not properly recorded and monthly overpayments are not properly adjusted.

The Governmental Accountability Office recently stated, "SSA has achieved modest improvements in Ticket program participation for ticket holders and ENs under the revised regulations finalized in 2008, and we are encouraged that in recognition of program weaknesses, the agency is considering various improvements. ..." ³ There are signs that the regulatory improvements are having some positive impact. Ticket holders assigning their tickets to EN's increased from about 22,000 in fiscal year 2007 to over

³ Social Security Disability: Ticket to Work Participation Has Increased, but Additional Oversight Needed. May 2011, GAO-11-324

49,000 in 2010. The number of ENs increased from 1514 to 1603 and SSA's ticket payments increased from \$3.8 million to \$13 million.

AAATakeCharge Shared Payment Model

One interesting approach is that offered by AAATakeCharge. Over 25% of beneficiaries assigning their Tickets have selected the AAATakeCharge Employment Network (EN) model. AAATakeCharge gives the beneficiary 75% of the Ticket payments with the requirement that the funds must be spent on goods and services that will help them remain in the workforce or advance in their career. Many people attempting work after years of unemployment have very limited resources. If their car breaks down, if their mother becomes sick and can't take care of their kids, if they can't pay their cell phone bill and their employer can't reach them, they lose their job. AAATakeCharge provides work support payments only if clients reach certain earning milestones or go off benefits all together. Clients use the money for transportation, business clothing, technology, education/training, health costs, disability related expenses or any unexpected emergency that would interfere with their being able to work. The appeal of this cash and counseling model is that the support is very flexible. And the client makes the decisions as to how the funds should be spent. According to MJ Willard, AAATakeCharge Director, AAATakeCharge client's go off benefits at more than twice the rate of any other EN in the country.

TTWWIIA Improvements -- Additional statutory problems with TTWWIIA have yet to be addressed by Congress. Among these are the law's disconnect between its eligibility standard and Social Security's normal retirement age; the inability of those working past age 65 to participate in a Medicaid buy-in; prohibitions against Ticket holders receiving more than one ticket; and the requirement that a beneficiary wait 24 months after reinstatement to the benefit rolls before he or she can use the work incentives again.

As you know, many beneficiaries fear working to their full potential because it might cause a permanent loss of cash and/or medical benefits. This is a particular concern for beneficiaries who (a) have relapsing/remitting conditions such as mental illness or many chronic illnesses or (b) need accommodations that may be available in one employment setting, but difficult to obtain in the future. The Ticket to Work and Work Incentives Improvement Act partially addressed this problem by allowing a limited "expedited reinstatement" to benefits, but this is not a complete solution since it is available for only 60 months from termination of cash benefits.

The existing expedited reinstatement program could be improved by making the following changes:

- (1) Eliminate the 60-month time limit;
- (2) Provide provisional cash and medical benefits until SSA processes the request for reinstatement (current rules limit provisional benefits to six months);
- (3) Ensure that both cash and medical benefits are promptly reinstated once SSA has approved the reinstatement;

- (4) Explicitly recognize that people may use expedited reinstatement repeatedly; and
- (5) Provide that beneficiaries are eligible for expedited reinstatement if they are unable to engage in SGA when they are no longer working.

We feel that given adequate attention and support that the Ticket program can play an important role in increasing self-sufficiency of persons who had been dependent on SSA for cash benefits. Everyone agrees that the Ticket program had serious flaws in its original form but the reform of the program in 2008 has shown that it can be a viable part of the array of services that are needed to help people with disabilities become more independent and self reliant.

Health Care

The Affordable Care Act (ACA) included many provisions that are vital for people with disabilities to enter the workforce and attain economic self-sufficiency. Prohibitions against discriminatory insurance practices, health exchanges in which to purchase affordable coverage and an employer-based long term care insurance program offer the prospect that people with disabilities will not always have to rely on public benefits programs to obtain necessary health care coverage.

Yet the legislative and regulatory environments remain a challenge to true health system reform that will benefit people with disabilities. Should statutory changes fail or be undone through the regulatory process, there are numerous improvements that should be made to federal health programs to reduce the barriers they pose to employment for people with disabilities.

Enhance the use of the Medicaid buy-ins for working people with disabilities – The Medicaid buy-in programs created under the 1997 Balanced Budget Act and TWWIIA need to become available to all working people with disabilities to alleviate the patchwork of access across the country. A 2006 study by Mathematica Policy Research recommended that greater outreach by states with existing Medicaid buy-ins could improve the number of participants.⁴ Another evaluation by Mathematica suggested that those states with higher income and asset criteria have higher numbers of working people with disabilities participating in the buy-in program.⁵

The availability of Medicaid coverage on a sliding scale through the Medicaid buy-in program that is now available in 42 states, allows individuals to maintain this necessary medical coverage at levels beyond the SGA threshold level. According to DRRK Disability Research, Medicaid buy-in enrollees earn more money, work more hours, contribute more in taxes, and rely less on food stamps than people with disabilities who are not enrolled. Individuals with intellectual and developmental disabilities must be

⁴ The Three Es: Enrollment, Employment and Earnings in the Medicaid Buy-In Program, Mathematica Policy Research, Contract No. 500-00-047, Ref. No. 6170-330, April 11, 2008

⁵ Interaction of Policy and Enrollment in the Medicaid Buy-In Program, Final Report, Mathematica Policy Research, Contract No. 500-00-047, Ref. No. 6170-330, May 2007

made much more clearly aware of these and other work incentives, that will allow them to succeed in jobs and careers in the community. Studies have shown that the availability of comprehensive benefits counseling positively impacts the ability and willingness of individuals to go to work.

Access to the Medicaid buy-in programs could be achieved either by requiring all states to establish Medicaid buy-in programs or by establishing deemed Medicaid eligibility for Title II beneficiaries up to the current buy-in earnings levels. Medicaid buy-ins are a vital tool for people with significant disabilities to receive the services they may need in order to go to work or maintain employment.

One of several barriers and challenges for beneficiaries with disabilities to participate in the labor force despite the availability of the Social Security Disability Programs is concern over loss of their public benefits if they go to work. The myths and misunderstanding regarding benefits among individuals, families, and service system staff are widespread. For example, many individuals say they cannot go to work because of loss of concerns over Medicaid. Yet under the Social Security Work Incentive 1619(b), individuals can earn up to a threshold amount without impacting their Medicaid coverage. This threshold level ranges from \$26,000 in Mississippi to over \$50,000 in Alaska.

Eliminate the Medicare "homebound" rule -- Current Medicare policy for durable medical equipment (DME) restricts its use to "in the home", meaning that people on SSDI who use devices and technology they need for independent living risk violating the law if they use their DME to go to work. Congress should repeal Medicare's restrictive coverage of mobility devices so that people with disabilities can work and live independently.

Allow permanent premium-free access to Medicare for beneficiaries who work -- Under TTWWIIA, working beneficiaries are able to have premium free Part A Medicare coverage for up to 90 months, after which they can buy in to the program for continued coverage. However, the costs of the premiums can be prohibitive for many working individuals with disabilities. We recommend providing lifetime Medicare coverage for beneficiaries who have lifelong conditions. Providing continued attachment to Medicare for working beneficiaries would ensure on-going eligibility for health care whether or not they are employed in a company that supplies coverage.

Offer tax incentives to assist people with disabilities in purchasing employer-provided health coverage – Health insurance premiums paid by working people with disabilities should be considered an impairment related work expense and deductible on their 1040.

Other Work Incentives Needed In Title II and Title XVI

Over the years, CCD has offered proposals to remove a host of barriers to work in the Title II and Title XVI disability programs.

Establish an earnings offset in Title II. One of the most difficult and enduring barriers to work for Title II beneficiaries is the sudden termination of cash benefits when someone crosses the substantial gainful activity (SGA) threshold. Not only does this affect the individual's benefits but his or her dependents' benefits as well. We recommend establishing a \$1 for \$2 earnings offset in Title II to parallel the provision in the SSI program. It would eliminate the "cash cliff" for beneficiaries who are able to work and help ensure that individuals are financially better off by earning than by not earning.

Allow ongoing presumptive re-entitlement for those able to work, but who have continuing disabilities – Continued Attachment. We recommend that Title II and SSI disability beneficiaries have a "continued attachment" to the programs as long as their impairments last, even if they do not receive cash benefits because of their work earnings. Beneficiaries of the programs who are sometimes able and other times unable to be employed should have continued attachment to the cash and medical benefits that can be activated with a simple and expedited procedure that is as "seamless" as possible.

Revise rules for impairment related work expenses (IRWE). We recommend revising the impairment-related work expenses provisions. Under current rules, SSI and Title II disability applicants and beneficiaries can deduct from earned income the costs of impairment-related work expenses (IRWEs). The IRWE deduction can be a significant work incentive by allowing individuals with disabilities to obtain services, medical items, and other assistance that allow them to engage in work activity. IRWE deductions are made for SGA determinations in SSI and Title II disability claims and for SSI income determinations.

Moreover, the current SSI blindness rule should be applied to both Title II and SSI disability claimants and beneficiaries to allow the consideration of all work expenses, not only those that are "impairment-related." For Title II and SSI disability claimants and beneficiaries, only those work expenses that are "impairment-related" will be considered. However, the SSI income counting rules for individuals who qualify based on statutory blindness are more liberal because all work expenses can be deducted, not only those that are "impairment-related." There is no policy basis for this continued disparate treatment of people with different disabilities.

We also recommend allowing individuals to include their health insurance premiums as IRWEs. This would recognize the higher costs incurred by workers with disabilities who must pay premiums for the Medicaid Buy-In or for continued Medicare after the termination of free Part A benefits.

Expand work incentives for youth under Title II and Title XVI -- Legislative changes must be made to Social Security rules to help encourage young people with disabilities to enter the adult workforce, to the best of their ability. We propose a series of recommendations to help youth with disabilities maximize their potential while ensuring that they have the income and health care supports needed to succeed. We believe that these proposals can help existing public systems better coordinate services and provide

stronger support for young people who are able to work as adults. Over time, there should be savings for SSA as more young people with disabilities work and receive reduced or no cash assistance.

(a) Protect eligibility for Medicaid

We recommend that young adults with disabilities remain eligible for Medicaid, regardless of whether they are working or ever received SSI. This means that individuals who received SSI as a child or young adult would retain Medicaid eligibility even if they lose SSI due to medical improvement or if their earnings rise above SGA. The provision would require Medicaid to serve as the last payer after individuals exhaust their worker-based or other available health insurance.

(b) Ensure that past work above SGA level does not create work disincentives for people who would otherwise qualify as DAC beneficiaries.

We recommend amending the statute to protect young people with severe disabilities, whose conditions began prior to age 22, who might attempt SGA but fear losing future eligibility to receive disabled adult child (DAC) benefits when their parents retire, die or become disabled. Individuals who earn above the SGA level at any time before applying for DAC benefits, will not be eligible for them. This is a significant work disincentive for people who are severely disabled during childhood and who may need the benefits earned for them by their parents.

Existing law allows re-entitlement to DAC benefits after a 7-year re-entitlement period if the beneficiary's previous entitlement had terminated because of earnings above the SGA level. This same principle could apply to individuals whose parents have not yet retired, died or become disabled. If an individual would receive a DAC benefit, except that his/her parents have not yet retired, died or become disabled, then the individual should not lose DAC eligibility due to earnings above SGA.

A clear statement in the statute could establish that individuals otherwise eligible for DAC benefits (i.e. when their parent dies, retires or becomes disabled) will qualify for those benefits even if they performed work at SGA level at any time during their life. To implement this recommendation, SSA could allow families to secure "protective filing status" for their eligible children. Families would provide SSA with evidence that their children have disabling conditions prior to age 22 and receive a statement from SSA that, should the person ever need the DAC/CDB benefits because of their inability to work, they will qualify. The use of electronic files now facilitates this process and can ensure the availability of records in future years when needed.

(c) Exempt DAC beneficiaries from the family maximum if they live outside the family home.

We recommend exempting the disabled adult child's benefit payment from the family maximum calculation when that individual does not live in the family home. When a disabled adult child draws benefits, the retired worker's spouse's

benefits are adjusted for the family maximum. If three or more beneficiaries live in the same household, expenses and income can be shared as a family. However, people with disabilities are increasingly receiving support to live more independently and often individuals who qualify for DAC benefits do not live with their parents. Even though they do not share expenses with their adult child, the retiree and spouse receive a reduced monthly income. It is possible to resolve the situation by following the precedent established by treatment of a divorced spouse: even though the divorced spouse draws from the retiree's record, the divorced spouse's benefit does not affect the family maximum or the benefits of other family members.

(d) Codify current rules regarding continuing disability reviews (CDRs) for children and young adults.

We recommend that SSA not conduct CDRs or redeterminations for children engaged in transition-to-work activities and that the current mandatory SSI redetermination at age 18 be moved to age 22 to parallel the time frames in IDEA and Social Security/DAC programs. Current regulations provide that benefits will continue for students age 18 through 21 if they receive services under an individualized education plan, even if they recover medically or their disability has been determined to have ended. This is consistent with the statutory provision that provides continuation of SSI and Title II disability benefits where disability has ceased if (1) the individual is participating in vocational rehabilitation, employment, or other support services; and (2) completion or continuation in the program will increase the likelihood of permanent removal from the disability rolls. We recommend that this provision be codified since it encourages young people with disabilities to remain in school and complete their educational and vocational training. Evidence shows that there is a positive relationship between staying in school and employment success for students with disabilities.

(e) Disregard all earnings from income and resource calculations for children and young adults who have a transition plan under special education or vocational rehabilitation.

In order to promote work effort for young people who are transitioning, we recommend that SSA disregard any income that children and young adults may earn when calculating either eligibility or the benefit payment for SSI. Under current rules, a blind or disabled child who is a student regularly attending school can only earn up to \$6,240 of earned income per year. We believe that these young people with transition plans should be allowed to save all of their earnings and that SSA should not depress work effort by counting earnings against the SSI income and resource limits.

(f) Use SSA funds for staff to work directly with students, their families and school systems.

Beginning at age 12, children should have access to staff that can help them and their families with transition plans. Schools are required to assist with transition planning for children eligible for IDEA. However, using SSA funds to support and

train transition coordinators could expand available assistance for children and their families to design and implement an individualized plan. The plans will vary, but may include: secondary and post-secondary education, vocational rehabilitation, on the job training and additional medical care. Staff hired to assist families should help parents understand all available opportunities and the various program rules and eligibility criteria.

(g) Modify “deemed” SSI eligibility to protect Medicaid for certain working people who transition to Title II.

The deeming of SSI eligibility is important to avoid creating an unintended disincentive to work, especially for younger individuals who receive DAC benefits. There is existing precedent for deeming SSI eligibility and four groups can continue to receive Medicaid after becoming eligible for either a new Title II benefit or for an increased amount: “Pickle People” (for concurrent beneficiaries whose SSI is lost due to Title II COLAs); “Kennelly widows” (SSI lost due to improved formula for disabled surviving spouses); “COBRA widows” (SSI lost due to eligibility for early Title II surviving spouse benefits); and DACs (SSI lost due to new eligibility for, or increase in, DAC benefits).

Currently, the statute creates a constraint against attempting to work because it only provides protection when the sole reason the person’s income exceeds the SSI level is the Title II benefit increase (i.e., “Pickle People”). Thus, working and having any earnings will automatically make the person ineligible for the deemed SSI status that protects his or her Medicaid. This is especially ironic, because if s/he had been solely an SSI recipient, the person would be able to benefit from the 1619(a) and (b) work incentives. This can be fixed by providing that SSI deemed status will continue so long as the person’s only other reason for ineligibility is earnings from work.

(h) Clarify work subsidy issues as they impact determinations of SGA.

Another work disincentive for disabled beneficiaries arises because of the current interpretation of how to value a worker’s work effort, i.e. does it exceed SGA. The approach is different for people in supported employment depending upon whether they are supported directly by an employer or by services from an outside source (e.g., a state-funded supported employment agency). As a result, an individual’s work effort may exceed SGA when there is third party support while that same work effort may be found not to exceed SGA when there is employer support. This is an arbitrary distinction for the individual, but the result could be critical if, for instance, the individual is found not to qualify for DAC benefits because s/he exceeded SGA level in the past.

There may also be additional complications regarding the nature and scope of support provided when determining SGA. For instance, the individual may perform the actual task (bagging groceries, assembling a package, etc.), but may be unable to do so without a job coach who ensures that the individual arrives at work on time properly attired, that he/she interacts appropriately with customers

and co-workers, and that he/she remains focused on the assigned job tasks, among other things. SSA appears to distinguish subsidies/non-subsidies depending on whether the job coach does actual “hands-on” work or coaches from the side. We recommend clarifying this issue to help beneficiaries fully utilize Title II work incentives.

Promoting Work and Savings

Raise the SSI asset limit and income disregards and index annually for inflation. The unearned income disregard has remained at \$20 since the inception of the SSI program in 1974 and is now worth about \$5. Raising the asset limit and income disregards will provide working beneficiaries the opportunity to save for home ownership, education or retirement and will protect Medicaid. We recommend raising both the asset limit and income disregards to the amounts that they would have been if indexed since their inception.

Legislation has already been introduced in Congress to alleviate the limitations of the SSI asset tests. Called the Achieving a Better Life Experience [ABLE] Act this measure will create a valuable savings mechanism that will enable individuals with significant disabilities to develop assets and private resources without restriction or penalty. The need for savings is often greater for a child with a disability, particularly a significant disability, than other children in order to offset additional spending on medical treatment, adaptive equipment or personal supports over the course of the individual’s life. The savings accounts created by the ABLE Act would provide the option to invest private funds for the long-term well-being of individuals with disabilities through tax-advantaged savings tools. This bill will enable individuals with disabilities to live a meaningful and productive life without having to impoverish themselves, as is currently the case, and will ultimately help individuals become less dependent on public benefits.

One issue we would encourage you to consider as the bill moves through the legislative process would be the inclusion of a tax credit for account contributions in favor of or in combination with the proposed deduction allowance. Our concern stems from our belief that the ABLE Act intends to provide savings incentives for many families with low or moderate annual incomes. The majority of these families opt for the standard deduction on their tax returns in favor of itemization, compromising the value of the bill’s proposed deduction for those families who will benefit the most from having an ABLE account. A tax credit approach would more effectively incentivize savings for these families.

Helping Business Hire People with Disabilities

The tax code currently contains several incentives for employers to hire people with disabilities. As Congress explores ways to make the tax code work more efficiently for taxpayers and job creators, we urge you to include the following improvements that will foster employment of people with disabilities.

The Work Opportunity Tax Credit – WOTC provides for an annual tax credit of varying amounts to employers that hire people from certain targeted low-income groups, including: VR Agency Referrals, Individuals using a Ticket to Work assigned to an Employment Network (signed IWP), SSI, TANF, Food Stamp Recipients, Qualified ex-felons, High-risk youth, Qualified summer youth employees and veterans. However, the paperwork and documentation required to use the WOTC makes it burdensome and difficult for businesses to take advantage of it. Moreover, Congress often allows the WOTC to expire then reinstates it retroactively, making it unpredictable for many businesses. Indeed, the WOTC is set to expire at the end of this year unless it is renewed.

HR 2082 would provide a three year extension of this tax credit and make multiple improvements in its application. It broadens the application of WOTC to certain recently discharged service connected disabled veterans and provides an alternative certification process for certain targeted groups where employers can easily obtain the needed documentation.

Small Business Tax Credit and Architectural/Transportation Barrier Tax Deduction -- A Small Business Tax Credit [Sec. 44] provides a tax credit of up to \$5,000 annually for certain small businesses to be used for the cost of providing reasonable accommodations such as sign language interpreters, readers, materials in alternative format, the purchase of adaptive equipment, the modification of existing equipment, or the removal of architectural barriers. Unfortunately, the Section 44 credit covers only 50% of eligible access expenditures, posing a significant financial burden for many small companies.

The Architectural/Transportation Tax Deduction [Section 190] allows businesses of any size to deduct up to \$15,000 annually for the costs of removing barriers to accessibility. Only certain expenses are deductible and modifications must meet certain standards under the IRS Code. As a consequence, the deduction is often difficult for businesses to understand and utilize. Business representatives and experts on disability issues interviewed by the GAO agreed on the need to improve education and outreach efforts on these incentives and suggested that technical assistance be provided to small businesses in filing the paperwork necessary to claim the credits or deductions or streamlining the process for filing. Other recommendations included expanding the size of companies able to use the disabled access credit and the type of accommodations that qualify for the barrier removal deduction.⁶

In sum, the task force recommends the following:

- Swift reauthorization of PABSS and WIPAs
- Reinstatement of Title II Demonstration Authority and the Demonstration to Maintain Independence
- Extension of Medicaid Infrastructure Grants

⁶ Op. cit., GAO-03-39, p. 26

- Continued improvements in the Ticket to Work program
- Enhancement of the use of the Medicaid buy-ins for working people with disabilities
- Elimination of the Medicare "homebound" rule
- Allowing permanent premium-free access to Medicare for beneficiaries who work
- Tax incentives to assist people with disabilities in purchasing employer-provided health coverage
- Establishment of an earnings offset in Title II
- Ongoing presumptive re-entitlement for those able to work, but who have continuing disabilities
- Revision of rules for impairment related work expenses (IRWE)
- Expansion of work incentives for youth under Title II and Title XVI
- Raising the SSI asset limit and income disregards and indexing them annually for inflation
- Extension and modification of the Work Opportunity Tax Credit and improvements in existing business deductions and tax credits for workplace accommodations

In closure, thank you for the opportunity to testify regarding the views of the CCD Employment and Training Task Force concerning employment opportunities for people with disabilities afforded through the Social Security Disability Work Programs. The CCD Employment and Training Task Force is ready to work in partnership to ensure that all people with disabilities are able to work in their communities and remain valued, contributing members of society.

Respectfully,
CCD Employment and Training Co-Chairs

Cheryl Bates-Harris, National Disability Rights Network
Charlie Harles, I-NABIR
Susan Prokop, Paralyzed Veterans of America
Susan Goodman, National Down Syndrome Congress
Paul Seifert, Council of State Administrators of Vocational Rehabilitation
Alicia Epstein, NISH