

**Responses to Questions for the Record for James Smith  
Vermont Division of Vocational Rehabilitation  
For the July 9, 2015 House Ways and Means Committee Hearing**

**Questions from Chairman Paul Ryan:**

1. While some preliminary results have been released, the final report on the Benefit Offset National Demonstration (BOND) project testing the effects of a benefit offset in the Disability Insurance (DI) program will not be ready for a several years. Congress does, however, have the findings of the Four State pilot. Vermont was one of the States in the pilot phase of this demonstration project. Do you believe this policy is ready to be implemented nationally? Should Congress wait for the final BOND report to be released before considering a benefit offset?

*Response:*

*In response to the first question, yes I believe the Four State Pilot results support a change of policy without waiting for the BOND to be complete. The Pilot was implemented using rigorous experimental design. A positive impact on beneficiary earnings over a substantial level was found in each of the four states. This was despite the fact there were significant challenges with implementation of the offset and that beneficiaries knew this was a very time limited study. The Pilot was intended to be a process study to help work out implementation issues for the larger BOND. So the fact that it produced statistically significant results so quickly, suggests the offset would have a positive impact if implemented as national policy.*

*In response to the second question, no I do not believe waiting for the BOND results would serve any purpose other than to delay policy change. The BOND is studying basically the same benefit offset as the Four State Pilot, and it will not provide any new information on other policy options Congress might want to consider. For example the BOND would not provide any information on the impact of starting an offset at less than Substantial Gainful Activity (SGA). Also it will not tell us anything about eliminating the Trial Work Period (TWP) or other options to simplify the SSDI program. Further, the BOND has had similar implementation issues as we experienced with the Four State Pilot, only on a much larger scale. SSA did not devote sufficient resources to BOND to overcome the backlog of administrative work associated with the TWP. Lastly, it is already clear that some—perhaps many—beneficiaries were confused or mistrustful of this experimental benefit.*

*The response to a national benefit offset policy (rather than an experimental study) without a TWP and starting at a offset below SGA is more likely to generate a much larger behavioral response and reduce benefit payments to current beneficiaries. If an offset was national policy, the disability community, employment service providers and others will understand the nature of the benefit change and will help beneficiaries use it to their full advantage. Most importantly, those beneficiaries who can increase their earnings will have a clear incentive to do so.*

*Congress might consider implementing an offset in the SSDI program with a sunset date. The earned income offset for the SSI program was originally implemented with a five year sunset date before being made permanent. A sunset date would allow Congress to assess the impact of an offset and potentially make adjustments based on real world data. For example, if an offset was set at a point below SGA, a sunset provision would provide an opportunity to determine if the offset starting point was too high or too low.*

The Four State pilot has been criticized for its poor roll out by the Social Security Administration (SSA) and its contractors. What are the lessons the SSA should take away from this experience? Do you believe the agency would be able to implement a benefit offset nationwide?

*Response:*

*Like the BOND, the offset for the Four State Pilot was implemented on top of the existing SSDI work incentives including the Trial Work Period (TWP). Most of the implementation issues for the Pilot were directly related to the administrative work associated with the TWP. This is why we advocate for the elimination of the TWP and replacing it with a simple offset design like the SSI program. This would make the program much simpler and easier to understand. It would also reduce overpayments.*

*The Social Security Administration clearly can implement a benefit offset. It currently administers the offset for the SSI program very effectively.*

2. One of the reasons beneficiaries may not return to work is due to fear that their condition might worsen and they will not be able to quickly restart benefits. Under a benefit offset approach, if earnings decreased when a medical condition worsened, benefits would increase. If the condition later improved, the worker could increase earnings again and benefits would be adjusted as necessary. Would a benefit offset approach assuage fears about conditions worsening in the future?

*Response:*

*Yes, definitely. The all-or-nothing nature of the SSDI program is a real problem for beneficiaries with chronic or unstable disabling conditions. If a beneficiary intends to work above the Substantial Gainful Activity (SGA) level, they must be prepared to lose their entire benefit. For many beneficiaries this is too great a risk. In my written testimony, John's case study illustrates this dilemma perfectly. He is a gentleman with paraplegia and related health conditions. He returned to work without fully understanding the SGA cash cliff. As a result he ended up with an overpayment over \$10,000. We suspect he will never try to work above SGA again because of this experience.*

*A benefit offset approach would greatly reduce the fear of a sudden loss of benefits. It would create a gradual ramp down of benefits as people increased their earnings. This would be particularly helpful for people who do not know how much they can work from month to month.*

**Question from Rep. Jason Smith:**

3. The district I was elected to represent has over 100,000 Social Security beneficiaries. What I hear back home from constituents is that they want to get back to work, but they're uncertain how working would impact the benefits they earned. The Disability Insurance program should promote ambition and reward work. But, DI is simply too complicated to help my constituents get back to work.

Mr. Smith, you and your team work on the front lines every day helping individuals who want to return to work. How difficult is it for people to understand the current work incentives? Would simplification make it easier for people to return to work and help people achieve financial independence?

*Response:*

*The current SSDI work incentives rules are overly complex. Unfortunately, the complexity itself is a major barrier to return to work. In my written testimony, I describe how the SSDI program includes three phases during which earned income is treated differently. The rules are so complex that my agency, the Vermont Division of Vocational Rehabilitation, had to hire specialist staff to explain the SSDI work rules to beneficiaries. The Trial Work Period (TWP) and Extended Period of Eligibility (EPE) in the SSDI program cause the most confusion and frequently cause overpayments. This is why we advocate for the elimination of the TWP and EPE and suggest replacing them with a simple earned income offset similar to the SSI program.*

**Question from Rep. Kristi Noem:**

4. I want to share the story of one of my constituents. Larry Eining lives in Clear Lake, South Dakota, and until recently, he had worked for an energy company for nearly 30 years. One day while working, Larry was driving a pay loader when he was rear-ended by a teenager who was texting. Larry was thrust into the steering levers. He was unable to work for over a year due to his serious injuries.

It took less than 30 days for Larry to receive Social Security disability benefits, and after about 13 months, Larry's doctor released him to go back to work. Unfortunately, because he was away from work so long, he lost his job.

Undeterred, Larry decided to start his own business, and he notified the Social Security Administration that he didn't need benefits anymore. SSA told him that he would be

required to receive benefits for two more years. Sure enough, two years and one month later, Larry received a letter saying he owed SSA over \$40,000.

Larry began to fix the problem immediately, but SSA hasn't made it easy for him. For example, in November, Larry sent SSA a check for half the amount he owed. He sent it in November to get it done before the end of the tax year. SSA waited until February to cash it.

Later, when Larry went to SSA to discuss his account balance, he was told that the SSA employee with whom he had been corresponding did not exist. To his credit, Larry has been cheerful throughout this bureaucratic circus, and just wants to get the problem solved.

The Trial Work Period is supposed to allow beneficiaries to test their ability to work. During this time, an individual can earn any amount and continue to receive benefits. After that period ends, earnings above a certain amount cause benefits to end. But it's not just earnings that matter – Social Security also looks at expenses due to an impairment a person has because he or she is working. With all these complex rules, how is a person like Larry supposed to know if he is working in excess of the limit, and not supposed to be receiving a benefit?

Mr. Smith, how do you advise beneficiaries? Should people just expect to receive an overpayment?

*Response:*

*Larry's story is not unique, though it is very disappointing. But, the fact of the matter is that the design of the Trial Work Period frequently does cause overpayments. As noted in my written testimony, the GAO reported that the complexity of the SSDI work incentives has contributed to the program's significant overpayments (\$11 Billion between 2005 and 2014). The following are some common factors that contribute to the problem:*

- *The Social Security Administration has great difficulty accurately tracking the Trial Work Period in a timely fashion. So beneficiaries often work for many months or even years before the Social Security Administration informs them that they have been overpaid.*
- *Beneficiaries often do not understand that they may have used up their Trial Work Period in the past. So they may start a job believing in good faith that they have a nine month Trial Work Period, when in fact it is used up. As a result, they go into overpayment the very first month they earn above SGA.*
- *The income threshold for the Trial Work Period is different from the Substantial Gainful Activity Level, so it is easy for beneficiaries to confuse the two and unintentionally use up Trial Work Months.*

*All that said, there are options available to folks like Larry, and my advice would include exploring as many as possible. A person can sometimes reduce their countable income*

*towards Substantial Gainful Activity, and therefore avoid an overpayment, by using what is called an Impairment Related Work Expense (IRWE). However, a beneficiary has to know about and apply for an IRWE. Very few beneficiaries understand IRWEs exist or how to apply for them. Larry's patience is commendable, and he is a perfect example of the kinds of people we serve day in and day out: Vermonters who want to work amidst challenging circumstances. Simplifying the rules would go a long way to help reduce the unnecessary burden of overpayment.*



## Response to Questions

**John Kregel**  
**Virginia Commonwealth University**

### **Questions from Chairman Paul Ryan:**

1. *One of the roles of benefit counselors is to help people navigate the Disability Insurance (DI) program's complex rules when trying to return to work. Do individuals generally know where they are in the return-to-work process without the aid of a benefit counselor? How easy it is to keep track?*

In the SSA sanctioned benefit counselor training and certification program operate by Virginia Commonwealth University, counselors receive 40 hours of live training, pass a battery of six examinations, successfully prepare and submit a minimum of three benefits plans for rigorous review, and complete 18 hours of professional development units each year. This provides them a basic level of mastery. This level of knowledge is unattainable for virtually all beneficiaries.

Without the assistance of a benefits counselor, a beneficiary must keep track of where they are in their Trial Work Period, which requires extensive documentation of the prior work history going back many years. After completing their Trial Work Period, they must understand the cessation and grace periods. Assuming the beneficiary is working above the Substantial Gainful Activity level, he or she must report earning to SSA, which requires completing a work activity form and a submitting monthly pay stubs. If the beneficiary is attempting to use a work incentive such as the Impairment Related Work Expense, he or she must write a letter justifying the request and then submit monthly receipts for the approved expenses. The beneficiary must track progress throughout the 36 month Extended Period of Eligibility, after which their benefits will terminate.

The examples described above are just the major components of the program. Each of the components has its own rules, requirements, and record-keeping. Without the assistance of a benefit counselor, beneficiaries face extraordinary challenges when attempting to understand and comply with all program provisions.

2. *In your testimony, you noted that people are more likely to choose what is certain over what is possible. How does a benefit offset help people choose what is possible when it comes to returning to work?*

The psychological impact of risk aversion and loss aversion are well-established in the applied economics field. Potential losses loom larger than gains in the minds of decision-makers, with

the practical effect that anticipated losses are weighted more heavily and have a greater influence than anticipated gains of the same magnitude. Research has demonstrated that a loss is typically estimated to have twice as much influence on individuals' decisions as an equivalent gain. To many SSA beneficiaries, a work attempt under the current system is a highly risky decision, with their essential benefits at risk if a change in their health status precludes their ability to remain in the work force for an extended period of time.

The most serious risks in life are precisely those high-stakes events that involve potentially enormous quantities of wealth, such as unemployment, and disability. Research has demonstrated that individuals with less income and wealth are more risk averse than those with higher income and wealth. Moreover, individuals who are in poor health and individuals who are unemployed or not in the labor force are more risk averse than individuals who are in better health and who are employed or self-employed. For those with few possessions and no employment, every financial loss is significant.

A key advantage of the benefit offset is that it greatly lessens the financial risks for beneficiaries who return to the workforce and earn above the Substantial Gainful Activity level. As with the SSI program, beneficiaries who work will always have higher income (wages plus benefits) than they would by relying only on their disability benefits. A benefit offset would also protect beneficiaries from the sudden, complete loss of benefits that will occur after an individual has completed the Extended Period of Eligibility. It would provide a beneficiary with a more solid foundation from which to make employment decisions and pursue their vocational goals.

- 3. One of the most important work incentives in the DI program is the treatment of Income Related Work Expenses (IRWEs), which allows beneficiaries to deduct the out of pocket costs for disability-related work expenses from the SGA determination. In your testimony, you discussed the 3 million DI beneficiaries who are employed or looking for work, yet according to the Social Security Administration, only 10,000 DI beneficiaries claimed IRWEs last year. Why don't many people use IRWEs? Is it because many just do not know about them and may not bother to fill out more government paperwork?*

The purpose of the Impairment-Related Work Expense (IRWE) is to take the costs associated with an individual's disability into account when assessing the value of the beneficiary's earnings. For an IRWE deduction to be allowable, five criteria have to be met:

1. First, the expense must be directly related to enabling the beneficiary to work.
2. Second, the expense has to be related to a medically determinable impairment that is being treated by a health care provider rather than being a cost that anybody would incur by working. This means that things like health insurance premiums are not permissible as IRWEs.

3. Third, the expense must be paid for out-of-pocket by the individual and not reimbursable from another source.
4. Fourth, in most cases, the expense must be paid for in a month during which the individual was working. Under some circumstances, costly durable goods purchased during the 11-month period preceding the month work started may be deducted as an IRWE. Expenses incurred in a month of work but paid for after work stopped also can be considered.
5. Finally, the expense must be “reasonable,” which Social Security generally defines as “usual and customary” or the typical cost for that item or services in the persons community.

There are a number of reasons (IRWEs) may not be appropriate for all Title II disability beneficiaries. These are described below.

**People don't know this work incentive exists.** Information on IRWEs is contained in the Red Book, but the availability of this work incentive is not widely disseminated. SSA sends SSDI beneficiaries a form to fill out when they become aware that the individual is work does ask appropriate questions about potential IRWEs, but most beneficiaries don't understand what these questions mean.

**IRWEs are not available during the Trial Work Period.** During the Trial Work Period, any amount of earnings will have no effect on the Title II disability check. Beneficiaries complete the Trial Work period when they have achieved nine months of earnings above a threshold amount (in 2015 this amount is \$780.00 in gross earnings per month). IRWEs are not applicable during the Trial Work Period, because there is no limit on the amount of earnings a beneficiary can achieve while receiving a benefit check during the Trial Work Period.

**To use an IRWE, a beneficiary must be earning above Substantial Gainful Activity (SGA).** In 2015, the SGA threshold is \$1,090.00 for individuals with disabilities, and \$1,820.00 for individuals who are blind. Social Security uses work incentives such as IRWE to bring the beneficiary's countable earnings below the SGA threshold, to allow beneficiaries to remain on benefits, and pay for services or items needed to work, and become stable in employment. If, after applying all applicable work incentives (such as IRWE), if the beneficiary's countable earnings are above SGA, Social Security will make a cessation decision for benefits. Individuals who are working and are not yet earning SGA do not need to use IRWEs, as their benefits will continue as long as earnings are below SGA.

**The approval process for IRWEs is lengthy and complicated.** There is no standard form to use when applying for an IRWE, so beneficiaries must write a letter requesting approval that addresses each of the criteria described above. After receiving the letter, it may take SSA a month or more to review and make a decision on the IRWE. The range of allowable

expenditures under IRWE is extensive and includes costs of adaptive equipment or specialized devices, attendant care, special transportation costs, costs for the care of service animals, the cost of job coach services if paid by the beneficiary, and anything else Social Security thinks is reasonable, considering the person's impairment(s) and circumstances. There are no definitive lists of acceptable IRWEs. What Social Security will allow as an IRWE deduction depends on the consumer's situation, the impairment, and the reasonableness of the cost. Field Office Claims Representatives must make subjective determinations related to the IRWE criteria based on the information submitted to them by the beneficiary to determine if the IRWE expense is reasonable. Therefore, an IRWE that may be approved in one Social Security office may not be approved in another office.

The IRWE is a powerful work incentive for some beneficiaries. Like all work incentives, it may not be applicable for all individuals. The application and documentation process is challenging, the eligibility criteria are very specific, and the benefit for specific individuals will vary widely based on how long beneficiaries have worked, earnings level, and other factors.

4. *Social Security pays benefits to workers who are unable to work due to a medical condition, as well as to dependent family members, such as children. In your testimony you noted that under current law, when a worker's benefit is terminated due to work above substantial gainful activity, any associated family benefits are also terminated. What would happen under a benefit offset? Would such an approach be less of a shock to a family's finances?*

Under existing regulations, when an SSDI beneficiary engages in SGA and cash payments cease, all payments to dependent family members also are suspended. This serves to make the "cash cliff" more precipitous for the beneficiary and makes it more difficult to fully replace the value of the benefits through wages. For example, if Tim receives \$1,800 per month in SSDI and his 6 year old son and wife receive an additional \$900 in dependent's benefits, Tim would risk losing more than \$2,700 in Social security benefits each month by earning more than \$1,090 in countable monthly wages (the 2015 SGA guideline). To fully replace the value of the Social Security benefits received by the family, Tim would need to earn more than \$2,700 each month AFTER taxes and payroll deductions. That would equate to a gross annual salary of approximately \$42,000. For many individuals with severe disabilities, this level of earnings (at least initially) is simply not possible. For many beneficiaries like Tim, the only financially viable option is to work part-time earning less than the SGA guideline so that cash benefits are retained.

Under an offset program, benefits of dependent family members are not suspended until wages are sufficient to cause the SSDI cash payment to be reduced to zero. This allows beneficiaries to gradually increase earnings over time as benefits payments are reduced rather than suffering a

sudden and significant loss of income. The offset approach encourages beneficiaries to work and earn more while still retaining attachment to the SSDI program and eases the transition from dependence on disability benefits to reliance upon earned income. The offset approach allows beneficiaries with limited earnings capacity to work over the SGA guideline and still retain partial benefit payments. For Tim, this means he could accept employment earning \$2,000 per month (\$24,000 per year) and be confident that his SSDI check would be reduced, but not suspended entirely, and the \$900 in dependent's benefits would continue. The offset would allow Tim to gain valuable work experience and have more disposable income available to support the family.

**Question from Rep. Jason Smith:**

5. *The district I was elected to represent has over 100,000 Social Security beneficiaries. What I hear back home from constituents is that they want to get back to work, but they're uncertain how working would impact the benefits they earned. The Disability Insurance program should promote ambition and reward work. But, DI is simply too complicated to help my constituents get back to work. Dr. Kregel, how difficult is it for people to understand the current work incentives? Would simplification make it easier for people to return to work and help people achieve financial independence?*

Simplification of the SSDI program rules is urgently needed. Current rules and SSA procedures make it extremely difficult for beneficiaries to (1) find information on existing work incentives, (2) understand the intricacies of the program rules, and (3) work with local Social Security Field Offices to apply the work incentives in an accurate and timely manner.

Beneficiaries can find information on the program rules and work incentives online. However, the rules and work incentive provisions are quite extensive, difficult to understand, and often open to interpretation. It is extremely difficult for a single individual to acquire and understand all the necessary information to use as a basis for major employment and financial decisions without having access to the services of a Work Incentive Planning and Assistance (WIPA) project, or devoting considerable time in telephone discussions with knowledgeable SSA representatives.

Even assuming that a beneficiary can compile and study all the relevant information, he or she must be very vigilant that the work incentives are applied accurately and in a timely manner. Mistakes commonly occur and decisions are often delayed. Too frequently, beneficiaries diligently work to comply with all rules, provide all necessary notifications and documentation, and still receive inaccurate benefit payments. When a program reaches this level of complexity, when a reasonable, honest individual is attempting to fully comply with regulations yet is still making mistakes or having rules applied incorrectly, immediate efforts to simplify the program are necessary and justifiable.

**Question from Rep. Kristi Noem:**

6. *I want to share the story of one of my constituents. Larry Eining lives in Clear Lake, South Dakota, and until recently, he had worked for an energy company for nearly 30 years. One day while working, Larry was driving a pay loader when he was rear-ended by a teenager who was texting. Larry was thrust into the steering levers. He was unable to work for over a year due to his serious injuries.*

*It took less than 30 days for Larry to receive Social Security disability benefits, and after about 13 months, Larry's doctor released him to go back to work. Unfortunately, because he was away from work so long, he lost his job.*

*Undeterred, Larry decided to start his own business, and he notified the Social Security Administration that he didn't need benefits anymore. SSA told him that he would be required to receive benefits for two more years. Sure enough, two years and one month later, Larry received a letter saying he owed SSA over \$40,000.*

*Larry began to fix the problem immediately, but SSA hasn't made it easy for him. For example, in November, Larry sent SSA a check for half the amount he owed. He sent it in November to get it done before the end of the tax year. SSA waited until February to cash it.*

*Later, when Larry went to SSA to discuss his account balance, he was told that the SSA employee with whom he had been corresponding did not exist. To his credit, Larry has been cheerful throughout this bureaucratic circus, and just wants to get the problem solved.*

*Dr. Kregel, I tell this story because it shows us how beneficiaries' lives can be turned upside down when SSA overpays.*

*The Trial Work Period is supposed to allow beneficiaries to test their ability to work. During this time, an individual can earn any amount and continue to receive benefits. After that period ends, earnings above a certain amount cause benefits to end. But it's not just earnings that matter – Social Security also looks at expenses due to an impairment a person has because he or she is working. With all these complex rules, how is a person like Larry supposed to know if he is working in excess of the limit, and not supposed to be receiving a benefit?*

Mr. Eining's experience is one that is particularly frustrating. It appears that he was given erroneous information when he was told that he was "required to keep benefits for two years". While this is an extreme example, it is not uncommon that beneficiaries contact Social Security Field Offices, provide complete information on their employment status, and then are totally surprised when they subsequently receive a notice of a large overpayment, creating a huge financial hardship on them as they attempt to restart their careers.

The rules are complex, but a larger problem occurs when beneficiaries receive inaccurate information. Some SSA employees are not thoroughly versed on the work incentives and even knowledgeable staff members often have little time to spend with beneficiaries. Staff shortages make it difficult for SSA to process work activity reports and complete work-related Continuing Disability Reviews in a timely manner, which should have occurred in Mr. Eining's case.

Another problem that Mr. Eining may have faced is the complexity and confusion involved the SSA wage reporting requirements. He notified the Field Office that his benefits needed to stop, but the earnings reporting process requires monthly submission of pay stubs. If he had received complete and accurate information, he could have ensured that his benefits stop. His overpayment should never have reached the \$40,000 level.

One sure way that Mr. Einings can receive reliable information is from the North Dakota Work Incentive Planning and Assistance (WIPA). The North Dakota project is operated by Rehab Services, Inc. and is called the Social Security Benefits Project. They do a great job.