Hearing on Stopping Disability Fraud: Risk, Prevention, and Detection

HEARING

BEFORE THE

SUBCOMMITTEE ON SOCIAL SECURITY

OF THE

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTEENTH CONGRESS

FIRST SESSION

APRIL 26, 2017

Serial No. 115-SS02

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Hearing on Stopping Disability Fraud: Risk, Prevention, and Detection

U.S. House of Representatives,
Subcommittee on Social Security,
Committee on Ways and Means,
Washington, D.C

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WITNESSES

Sean Brune
Assistant Deputy Commissioner, Office of Budget, Finance, Quality and Management,
Social Security Administration
Witness Statement

Seto J. Bagdoyan
Director, Forensic Audits and Investigative Service, Government Accountability Office
Witness Statement

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Chairman Johnson Announces Hearing on Stopping Disability Fraud: Risk, Prevention, and Detection

House Ways and Means Social Security Subcommittee Chairman Sam Johnson (R-TX) announced today that the Subcommittee will hold a hearing entitled "Stopping Disability Fraud: Risk, Prevention, and Detection." The hearing will focus on the agency's ability to identify and manage fraud risk, and the status of the Social Security Administration's antifraud initiatives. **The hearing will take place on Wednesday, April 26, 2017 in 2020 Rayburn House Office Building, beginning at 10:00 AM.**

In view of the limited time to hear witnesses, oral testimony at this hearing will be from invited witnesses only. However, any individual or organization may submit a written statement for consideration by the Committee and for inclusion in the printed record of the hearing.

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Please Note: Any person(s) and/or organization(s) wishing to submit written comments for the hearing record must follow the appropriate link on the hearing page of the Committee website and complete the informational forms. From the Committee homepage, http://waysandmeans.house.gov, select "Hearings." Select the hearing for which you would like to make a submission, and click on the link entitled, "Click here to provide a submission for the record." Once you have followed the online instructions, submit all requested information. ATTACH your submission as a Word document, in compliance with the formatting requirements listed below, **by the close of business on Wednesday, May 10, 2017**. For questions, or if you encounter technical problems, please call (202) 225-3625.

FORMATTING REQUIREMENTS:

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

listed below. Any submission not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

All submissions and supplementary materials must be submitted in a single document via email, provided in Word format and must not exceed a total of 10 pages. Witnesses and submitters are advised that the Committee relies on electronic submissions for printing the official hearing record.

All submissions must include a list of all clients, persons and/or organizations on whose behalf the witness appears. The name, company, address, telephone, and fax numbers of each witness must be included in the body of the email. Please exclude any personal identifiable information in the attached submission.

Failure to follow the formatting requirements may result in the exclusion of a submission. All submissions for the record are final.

The Committee seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202-225-1721 or 202-226-3411 TTD/TTY in advance of the event (four business days notice is requested). Questions with regard to special accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

Note: All Committee advisories and news releases are available at http://www.waysandmeans.house.gov/

STOPPING DISABILITY FRAUD: RISK, PREVENTION, AND DETECTION
Wednesday, April 26, 2017

House of Representatives,
Subcommittee on Social Security,
Committee on Ways and Means,
Washington, D.C.

The subcommittee met, pursuant to call, at 10:00 a.m., in Room 2020, Rayburn House Office Building, Hon. Sam Johnson [chairman of the subcommittee] presiding.

Chairman Johnson. Thank you all for being here. Welcome to today's hearing on how Social Security is preventing and identifying fraud in its disability program.

Last month Eric Conn, a lawyer from Kentucky, pled guilty to fraud that would have caused Social Security to pay $550 million in lifetime benefits due to fraudulent submissions. Back in Texas, we would say that Conn is as crooked as the Brazos River. And it is pretty crooked. In his plea, Mr. Conn said he worked with doctors to submit false medical evidence and that he paid Social Security Administrative Law Judges around $10,000 every month to approve claims. Conn was at this since 2004.

Sadly, this isn't the only major fraud case to hit the disability program in recent years. There is New York, where New York City police officers and firefighters claimed 9/11-related injuries, when many of them never even worked at Ground Zero, in order to get disability benefits they didn't deserve.

And Puerto Rico, where a former Social Security employee was in cahoots with a dirty doctor, who provided fraudulent medical evidence that resulted in taxpayer-funded benefits that should never have been paid in the first place.

Like organized crime, these recent scandals reveal fraud rings made up of doctors, lawyers, and even Social Security's own employees. It is a get-rich-quick scheme worth tens of thousands of dollars for every person who illegally benefits. These fraud cases show how Social Security hasn't always been able to stop disability fraud.

Now, while the Bipartisan Budget Act of 2015 included many commonsense ideas from this Subcommittee that try to address the problem, these cases have brought to light the reality is that it is like playing catchup. Bottom line, Social Security has got to be one step ahead of the fraudsters.

At today's hearing, we are going to take a hard look at Social Security's efforts to fight fraud in its disability programs and stop it before a single dollar of benefits is paid. Social Security has a number of antifraud initiatives, but without any way to judge their effectiveness, we don't know if they are working or not.

Today the Government Accountability Office will release its first report looking at agency efforts under its new fraud risk management. This report looks at how well Social Security is assessing and managing fraud risk in its disability programs. As we will hear today, in recent years, while Social Security has taken some steps in the right direction, there is still important work to do to prevent fraud. Social Security pays hundreds of billions of dollars in benefits each year, and if left undiscovered, fraud rings like those uncovered in Huntington, West Virginia, New York City, and Puerto Rico, have the potential to cost hardworking taxpayers billions of dollars.

I know stopping fraud is a goal that we all share, and although Social Security has increased its efforts to fight fraud, we need to be sure it is doing all it can to do so.

I thank our witnesses for being here today, both of you, thank you so much, and look forward to hearing your testimony.

I will now recognize Mr. Larson for any opening statement he cares to make.

Mr. Larson. Thank you, Mr. Chairman. And let me further underscore what the chairman had to say with respect to the work of this committee, and I would like to applaud his efforts, and particularly that of my predecessor on this committee, Xavier Becerra, who worked extraordinarily well together.

We owe the 61 million Social Security beneficiaries efficient administration and our most robust efforts to combat fraud, waste, and abuse wherever it exists. And while the actual number of fraud and erroneous payment cases is relatively small, those who seek to defraud the Social Security Administration, and the beneficiaries they serve, deserve nothing less than the harshest punishment. I don't know about that crooked river in Texas, but certainly we ought to make sure that that is the case.

And, again, I want to applaud this chairman and my predecessor, and for the continued work I know that this committee will do. Many of the important actions the Social Security Administration has already taken to combat fraud were the results of the efforts here by this body.

The Social Security Administration, as the chairman established already, uncovered fraud and went after fraud that existed in West Virginia, in New York City, and in Puerto Rico, as the chairman has indicated. For persons who abuse the public position of trust, such as doctors, attorneys, and current and former SSA employees, the law increased the penalties to 10 years in prison. I think in everyone's estimation on this committee and in the public, anyone who messes with the sacred trust of the American people in the program and government that they rely on the most deserves the maximum amount of punishment that the law can provide. And, again, I want to compliment our chairman and the work of this committee.

I also want to point out, though, that what we need to do as well is to take a look at the current funding levels. And while there has been a very focused area on fraud, abuse,

and waste, we have noticed that while the increase of recipients with the baby boomers, coming through the process right now, has risen dramatically, the cuts in the overall administration have dropped. This is problematic. Many of the frontline people in Social Security are actually the people that are out there recognizing and preventing the fraud, abuse, and waste.

They are the ones that pick up on the patterns. They are the ones that, along with the inspector general, are working on the kinds of reforms and processing that we need to catch this at the early stage. Further compounded by this issue, the very people we are sworn to serve then find themselves in longer waiting lines, in trouble that is reached in the disability areas, the worst it has ever been at a wait that exceeds 18 months, and in large part because there isn't the capacity there for us to reach out and serve these very deserving people.

And so I think it is important that we catch up on the fraud and we continue, as this committee and this chairman has led, to do so.

We also must recognize the very dire needs of the large group of people that are coming through this system while we are experiencing even further cuts, and also disadvantaged by the fact that the technology that we have at our disposal has not been fully modernized within the Social Security Administration so that we can use both technology and the very human services that are required in the face-to-face contacts throughout our country and in all of our districts by the Social Security Administration. It is my sincere hope that we can do that.

Also, Mr. Chairman, if I might, I would like to submit for the record an LA Times article on the Trump proposal to eliminate the Social Security payroll tax and why that could be extraordinarily problematic in terms of our ability not only to fight fraud, but also, I think, jeopardizes the ability of the fund itself.

And as this committee in general -- in the subcommittee, but also the committee in general -- considers tax reform, I believe that this and other articles are salient, and I would ask permission to submit for the record.

Chairman Johnson. Without objection.

Trump's proposal to eliminate the Social Security payroll tax may be his worst idea yet
Michael Hiltzik
April 10, 2017

President Trump meets with his fiscal brain trust, budget director Mick Mulvaney, center, and Treasury Secretary Steven Mnuchin. Are they plotting to eviscerate Social Security? (Evan Vucci / Associated Press)

President Trump's tax reform agenda is in trouble. That's not news, but one proposal that his team has floated as a way, ostensibly, to cut taxes on the middle class is. According to the Associated Press, they're toying with the idea of eliminating the payroll tax, which funds Social Security and part of Medicare, or cutting it drastically.

This is an absolutely terrible idea, partially because it smells like a back-door way of cutting Social Security benefits. It needs to be nipped in the bud.

"This proposal is a Trojan horse," the veteran Social Security advocate Nancy J. Altman told me. "It appears to be a gift in the form of middle-class tax relief, but would, if enacted, lead to the destruction of working Americans' fundamental economic security."

To understand why, one needs to examine the history and mechanics of Social Security, something the Trump team hasn't tried or doesn't care to do. But we can.

This proposal is a Trojan horse ... [that] would, if enacted, lead to the destruction of working Americans' fundamental economic security.

The "contributory" nature of Social Security, through which beneficiaries pay for their eventual benefits via the payroll tax, dates back to its very origins in 1935.

The most commonly quoted defense of the payroll tax comes from Franklin Roosevelt, who called the feature "straight politics" and explained: "We put those payroll contributions there so as to give the contributors a legal, moral and political right to collect their pensions. … With those taxes in there, no damn politician can ever scrap my social security program." But FDR didn't say that until 1941, six years after enactment, when he was interviewed for a government study.

The real rationale for the payroll tax was more nuanced. FDR's Committee on Economic Security, which drafted the program in 1934, had engaged in a spirited debate over whether to fund Social Security via general government revenues or from worker contributions.

There were several reasons to choose the latter. One was to make clear that Social Security wouldn't be a welfare program, but a retirement insurance benefit provided by right. Inevitably, the committee reported, a "gratuitous" pension — one funded by the general budget, "must be conditioned upon a 'means' test," which meant it would be delivered only to the poorest Americans and fulfill only the slighted needs.

"The gratuitous pension, in fairness to the legitimate demands of other needy groups, must hold all grantees down to a minimum standard," the committee advised Congress. A contributory system that amounted to an annuity, "can be ample for a comfortable existence, bearing some relation to customary wage standards." That's essentially the Social Security retirement system we have today.

Social Security's creators thought that the contribution system would not only ensure that benefits would be reasonably large, but that they wouldn't get *too* large. The idea was that the strain on workers' take-home pay resulting from too much expansion in the program would stay Congress' hand. As it happened, Social Security proved to be so popular that the public remained on board through several expansions, including coverage of spouses and dependents, and the addition of disability insurance in 1956.

As FDR foresaw, endowing Social Security with its own revenue stream has protected it over the years from grasping politicians — mostly conservatives, who have aimed since 1935 to eviscerate the program. The weekly or bi-weekly payroll deductions that go to the program have given workers a proprietary interest in benefits that has been hard to undermine.

That's why President Obama's 2010 deal with Congress to cut the employee share of the payroll tax temporarily — to 4.2% of wage income from 6.2% — also was a terrible idea. (Employers pay another 6.2%, but their share wasn't affected by the 2010 deal.)

The tax cut was a device to put a few more bucks into families' pockets during the depths of the Great Recession. But although it was understood that the lost revenues would be made up dollar for dollar from the federal budget, the arrangement risked permanently undermining the system's finances. Making it worse, the cut failed to steer the additional funds to the families who needed it the most. Every worker got the same tax break — billionaires got the same maximum $2,136 cut as anyone else earning the maximum $106,800 in wages subject to the payroll tax at the time.

Under the targeted Making Work Pay program that was replaced by the payroll tax cut after Republicans refused to continue the program, low-income families were entitled to up to $800 — any family earning $40,000 or less would have received more from Making Work Pay than the tax cut, while everyone else, including CEOs and members of Congress, did better under the new arrangement.

The full payroll tax eventually was restored after two years, but the erosion of the link between wages and Social Security has lived on; to this day, some people still think Social Security is financed by the federal budget, even though that's not the case.

The Trump proposal potentially raises the manipulation of the payroll tax to a new level. The details reported by the Associated Press are sketchy and preliminary. But thus far, there's no indication that Trump views this change as a temporary measure. If it's designed as a permanent conversion of Social Security's revenue stream from the payroll tax to general revenues, that's a wide-open door to budget-cutting at the expense of retirees and workers.

Already, conservatives and budget hawks repeat as a mantra that the cost of Social Security is "unsustainable." That's their claim even though the program runs a surplus today and ensuring its fiscal stability for the future would require a modest increase in the tax rate or removal of the cap on taxable wages ($127,200 this year).

Scrapping the payroll tax would make it easier for Congress to cut Social Security benefits under the guise of saving the government money. And that's just another way to funnel more money to the rich, at the expense of the working class. And who needs that, other than people who already have enough?

Mr. Larson. Thank you, Mr. Chairman.

I also would like to thank our witnesses, and we look forward to hearing from them and the ensuing questions that will come.

Chairman Johnson. Thank you.

As is customary, any member is welcome to submit a statement for the hearing record.

Before we move on to our testimony today, I want to remind our witnesses, please limit your oral statements to 5 minutes. We get fidgety up here. However, without objection, all of the written testimony will be made a part of the hearing record.

We have two witnesses today seated at the table. They are Sean Brune, Assistant Deputy Commissioner, Office of Budget Finance, Quality, and Management, Social Security Administration. That is a long title.

Seto Bagdoyan, Director, Forensic Audits, Government Accountability Office, is also with us.

Mr. Brune, welcome and thanks for being here. Please proceed.

STATEMENT OF SEAN BRUNE, ASSISTANT DEPUTY COMMISSIONER, OFFICE OF BUDGET, FINANCE, QUALITY AND MANAGEMENT, SOCIAL SECURITY ADMINISTRATION

Mr. Brune. Chairman Johnson, Ranking Member Larson, and members of the Subcommittee, thank you for inviting me to discuss how the Social Security Administration works to detect and prevent fraud in our programs. I am Sean Brune, Assistant Deputy Commissioner for Budget, Finance, Quality, and Management at Social Security Administration.

We appreciate your leadership on this important topic. In particular, we appreciate the support the Congress provided in passing recent legislation, which included provisions that have already enhanced and strengthened our ongoing anti-fraud efforts.

     Even with those new tools, we must remain constantly vigilant to protect the agency's benefit programs from fraud.

It is despicable that some people will try to take advantage of our programs, which serve the most vulnerable members of society. Our message to those who attempt to defraud Social Security is clear: we will find you, we will seek the maximum punishment under law, and we will fight to restore the money you have stolen from the American people.

Today I will give you an overview of our antifraud efforts since we last discussed this issue with the subcommittee in 2014. We would like to thank the Government

Accountability Office for recognizing the progress we have made and their acknowledgement that we have established an organizational culture and structure conducive to fraud risk management.

In 2014, we established the Office of Anti-fraud Programs to centralize oversight and accountability for our anti-fraud efforts. This office leads our ongoing work to maintain policies and internal controls to detect and prevent fraud before we make a benefit payment.

We agree with GAO's recommendations to complete a comprehensive fraud risk assessment of our disability program. We will complete this assessment by the end of the year, and we are moving forward to integrate ongoing risk assessments into our anti-fraud efforts.

Next I would like to discuss a few important aspects of our anti-fraud program.

We are excited to expand our use of data analytics technology to combat fraud, including use of the Anti-fraud Enterprise Solution, or AFES tool. AFES is a multi-year, multi-phase initiative that will replace and expand our current anti-fraud systems. The tool will provide advanced data analytics to help us identify and investigate high risk transactions across all of our programs. It will run in real time to identify situations that look similar to known fraud schemes or are otherwise unusual, and score cases for their relative fraud risk. The tool will integrate with the fraud referral form to improve our coordination and information sharing about alleged fraud with the Office of Inspector General, OIG.

We continue to expand our Cooperative Disability Investigations, or CDI, program. The CDI program places our partners in OIG and law enforcement in a position to stop people who attempt to fraudulently receive benefits. Chairman Johnson and this Subcommittee have long championed the CDI program, and we thank you for that support. In particular, recent legislation requires the agency to expand the CDI program to cover all States and Territories. We currently have 39 units that cover 33 States, the Commonwealth of Puerto Rico and the District of Columbia. We will continue to work within available agency funding to secure law enforcement partners to cover the remaining 17 States and Territories.

In an other important effort, for more than a decade our Fraud Prosecution Project has sent our attorneys to the Department of Justice to act as Special Assistant U.S. Attorneys. These attorneys have increased the number of prosecutions of violations of the Social Security Act. They obtain criminal sanctions, including imprisonment, and recover funds for the agency through criminal restitution and forfeiture.

Before concluding my statement, I would like to acknowledge the contribution of our front-line employees. In all our anti-fraud efforts, our front-line employees remain an important line of defense in detecting and preventing fraud. Our employees prevent fraud by promptly referring allegations to the OIG for investigation and by assisting the OIG in developing case information for fraud investigations.

As I have discussed today, we have a comprehensive and integrated anti-fraud program. We use a risk-based framework to manage our fraud risk and we are working to increase prevention through advanced predictive analytics. We will measure our progress and continue to keep you informed as we move forward.

As an important reminder, everyone can play a role in protecting our investment in Social Security. If you suspect fraud, report it online to the OIG at oig.ssa.gov/report or by phone through the OIG's Social Security Fraud Hotline at 1-800-269-0271.

I would be happy to answer any questions you have.

COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON SOCIAL SECURITY

U.S. HOUSE OF REPRESENTATIVES

April 26, 2017

STATEMENT FOR THE RECORD

SEAN BRUNE
ASSISTANT DEPUTY COMMISSIONER
FOR BUDGET, FINANCE, QUALITY, AND MANAGEMENT
SOCIAL SECURITY ADMINISTRATION

Chairman Johnson, Ranking Member Larson, and Members of the Subcommittee:

Thank you for inviting me to discuss how the Social Security Administration (SSA) takes seriously our charge to efficiently and effectively detect, deter, and mitigate fraud in the Social Security programs. I am Sean Brune, the Assistant Deputy Commissioner for Budget, Finance, Quality, and Management at SSA. We have testified before this Subcommittee several times about our anti-fraud efforts, and we appreciate your leadership on this important topic over the years, and your leadership on enacting anti-fraud legislation.

Background

I would like to provide a brief overview of our programs. We administer the Old-Age, Survivors, and Disability Insurance (OASDI) program, commonly referred to as "Social Security." Individuals earn coverage for Social Security retirement, survivors, and disability protection and benefits by working and paying Social Security taxes on their earnings.

We also administer the Supplemental Security Income (SSI) program, which provides monthly payments to people with limited income and resources who are aged, blind, or disabled. Adults and children under age 18 can receive payments based on disability or blindness. General tax revenues fund the SSI program.

Few government agencies touch the lives of as many people as we do. Social Security pays monthly benefits to approximately 62 million individuals, consisting of 42 million retired workers and 3 million of their spouses and children; 9 million workers with disabilities and 2 million dependents; and 6 million surviving widows and widowers, children, and other dependents of deceased workers. During fiscal year (FY) 2017, we expect to pay more than $940 billion to Social Security beneficiaries. In addition, in FY 2017, we expect to pay nearly $55 billion in Federal benefits to a monthly average of approximately 8 million SSI recipients. In carrying out these programs, our discretionary administrative costs represent about 1.3 percent of benefit payments that we paid under the OASDI and SSI programs.

SSA Anti-Fraud Coordination

We can all agree that fraud in any government program degrades the public's trust in their government and the integrity of the program. We have no tolerance for fraud. We face the ongoing challenge of protecting the agency's benefit programs from fraud. It is despicable that some people will try to take advantage of our programs, which serve the most vulnerable members of our society. Nevertheless, we are dedicated to improving our efforts to detect and prevent fraud, and to deter attempts to defraud the program. Our message to those who attempt to defraud Social Security is clear: We will find you; we will seek the maximum punishment under the law; and we will fight to restore the money you have stolen from the American people.

Traditionally, our front line employees have been the first line of defense against fraud in our programs. These employees are highly skilled and trained to spot anomalies indicative of

potential fraud, which they refer to the Office of the Inspector General (OIG) – the agency lead for combatting fraud – for further investigation. Through this fraud allegation process and other efforts, the agency has been able to detect a number of fraud schemes in recent years, and has provided critical support to OIG in its fraud investigations.

That said, we are working to rapidly increase our fraud prevention capabilities. When the agency testified before this Subcommittee in February 2014, we described our existing efforts and new initiatives to combat fraud. We take a risk-based approach to reducing fraud, focused first on mitigating the highest risk issues.

Since that time, we have made a number of organizational, program, and technology-driven changes to our processes that continue to strengthen our ability to detect attempts to defraud. Today I will give you an overview of how we have enhanced our anti-fraud efforts since that time, and our priorities going forward.

In close coordination with OIG, we use a variety of techniques that identify suspected fraud and help investigators analyze suspicious or questionable claims. We are using data analytics and employing technology to root out fraud. We have engaged in inter-agency information sharing. For example, we participated in the Department of Labor, Internal Revenue Service, Supplemental Nutrition Assistance Program, and Temporary Assistance for Needy Families workgroup to discuss collaborative solutions to combat fraud schemes that impact multiple programs. We would like to thank the Government Accountability Office (GAO) for recognizing the progress we have made and our efforts to establish an organizational culture and structure conducive to fraud risk management. As GAO notes, our efforts are still evolving. Yet, we are confident we will make substantial progress to address fraud risks and respond to emerging risks.

The Office of Anti-Fraud Programs

We have a strong commitment to uphold our responsibility to detect and prevent fraud in our programs. In 2014, we committed resources to bring renewed focus and prioritize our efforts to efficiently and effectively detect, deter, and mitigate fraud, waste, and abuse in our programs by establishing the Office of Anti-Fraud Programs (OAFP). OAFP provides centralized oversight and accountability for our anti-fraud program. OAFP leads our anti-fraud activities and works across organizational lines to ensure employees throughout the agency receive training designed to raise awareness about fraud and have the tools they need to combat fraud. For example, OAFP designs and implements mandatory national anti-fraud training for employees on a regular basis.

OAFP is an integral component in our efforts to implement the agency Anti-Fraud Strategic Plan. This plan supports a comprehensive approach to prevent fraud across all of the programs we administer, including the disability program, and aligns our anti-fraud efforts with the Agency Strategic Plan and the GAO report, *A Framework for Managing Fraud Risks in Federal Programs*. The GAO report identified leading practices for managing fraud risks and identified control activities to prevent, detect, and respond to fraud in Federal programs. Our agency Anti-

Fraud Strategic Plan describes how we are developing and implementing a comprehensive unified anti-fraud program to align with GAO's framework.

National Anti-Fraud Committee

We established the current National Anti-Fraud Committee (NAFC) in 2014 to provide a focal point for our national and regional anti-fraud efforts. The NAFC is a visible demonstration of our commitment to combating fraud in our programs, and consists of executive members from all of our Deputy Commissioner-level and agency-level components, as well as the OIG.

The NAFC provides an open forum for agency senior executives to communicate on efforts to address fraud challenges. The committee evaluates potential anti-fraud initiatives introduced by the Regional Anti-Fraud Committees, workgroups, and employee suggestions to determine whether regional projects can and should be expanded or enhanced for national adoption. As we continue to develop our agency anti-fraud strategy, the NAFC will measure and recommend necessary corrective action to ensure our initiatives achieve our stated objectives and goals. We will seek opportunities to prioritize those initiatives and activities through a risk based approach to mitigating the risk of program fraud. For example, as a result of the NAFC, we have expanded anti-fraud initiatives that have commenced in one region and expanded them to other locations. In short, the NAFC works to make sure our agency remains focused on improving our anti-fraud efforts, and communicates the importance of all employees reporting alleged fraud to OIG.

Fraud Risk Assessment

Recently, GAO issued an audit report titled *SSA Disability Benefits: Comprehensive Strategic Approach Needed to Enhance Anti-fraud Activities*. We agreed with GAO's recommendations and are moving forward to integrate those recommendations into our anti-fraud efforts.

GAO recommended that we complete a comprehensive fraud risk assessment of SSA's disability program that is consistent with leading practices, and develop a plan to regularly update the assessment. We will conduct fraud risk assessments on our programs, beginning with the disability program this fiscal year. For example, we will be reviewing the disability process from the initial claim through the end of the adjudication process to identify possible vulnerabilities and determine, through data analysis, whether existing controls mitigate fraud risk. Based on this assessment, we will develop a fraud risk management strategy for the disability program that is consistent with leading practices identified in the GAO report, *"A Framework for Managing Fraud Risks in Federal Programs."*

GAO recommended we develop, document and implement an anti-fraud strategy that is aligned with our assessed fraud risks. We will prioritize and align the agency's anti-fraud strategy to outcomes of the fraud risk assessment focusing on disability, and the other programs we administer. We will ensure our fraud risk assessments are consistent with leading practices and develop a plan for regularly updating the assessments. We will identify and assess risks for likelihood and impact, and prioritize to address first those risks that yield the highest impact.

GAO recommended we work with components responsible for implementing anti-fraud initiatives to develop outcome-oriented metrics, including baselines and goals, where appropriate, for antifraud activities. We are collaborating across all agency components, and with our OIG, to develop and implement outcome-oriented metrics, including baselines and goals, where appropriate, for anti-fraud activities. We have already requested input from our OIG on new metrics that would more effectively measure our progress identifying and reducing fraud.

GAO recommended we review progress toward meeting goals on a regular basis, and recommended that the NAFC make changes to control activities or take other corrective actions to any initiatives that are not meeting goals. As we identify new fraud risks, we will develop new anti-fraud activities to reduce and prevent fraud in the disability program. The NAFC will make changes to internal control activities or take other corrective actions to any initiatives that are not meeting goals.

We believe that integrating GAO's recommendations will further align our anti-fraud program with GAO's framework for managing fraud risks.

SSA Anti-Fraud Efforts

Fighting fraud is a multi-faceted effort, which is reflected in the tools we already use to fight fraud. Our anti-fraud efforts cover all Social Security programs, including disability, retirement and survivors, and enumeration. Below, I provide examples of our anti-fraud efforts relating to our disability programs.

<u>Employees on the Front Lines of Fighting Fraud</u>

In all of our anti-fraud efforts, our front-line employees remain an important line of defense in detecting and preventing fraud, and we remain committed to improving our anti-fraud training for these employees. Since 2014, we have required anti-fraud training for all agency and disability determination services (DDS) employees. The annual mandatory national anti-fraud training ensures employees remain informed on the current and proper means to support the agency's efforts to detect and prevent fraud. When our field office employees and State disability examiners uncover potential fraud, we instruct them to report all fraud allegations to the OIG Office of Investigations Field Division using the electronic referral form. Our employees prevent fraud by promptly referring allegations to OIG for investigation, and assisting OIG by developing case information for fraud investigations. On average, our employees refer around 20,000 allegations relating to disability to OIG each year, more than what the OIG receives from all other sources. We also provide ad hoc training related to handling claims associated with third party facilitator disability fraud (including fraud schemes involving claimants' representatives, physicians, or government employees). While detecting fraud is not new to the agency, this mandatory training provides an overview of SSA's anti-fraud fighting efforts and strategies for identifying and reporting potential fraud.

<u>Fraud Prevention Units</u>

As part of the agency's focus on anti-fraud initiatives, we established Fraud Prevention Units (FPU) in 2014. FPUs are specialized fraud units of disability examiners dedicated to evaluate and act on probable fraud cases perpetrated through third party facilitators. FPU examiners also compile data from the cases to help us further develop analytical tools to identify potential fraud.

Moreover, our employees in the FPUs serve a critical role in assisting OIG with its investigations and prosecutions of fraud cases. Our analysts conduct research, analyze, and evaluate information to support fraud investigations. They also develop recommendations for improving operational policy, procedures, and internal controls to prevent the recurrence of fraud. Through their review of medical documentation and evidence, we have identified a variety of different "potential fraud" scenarios. Examples include, but are not limited to, attorneys who rely on altered or fabricated medical opinions; psychiatrists who prepare template-style medical records, generic wording, exaggerated symptoms and limitations; and potentially fabricated medical records that clearly conflict with other medical sources in file.

<u>Special Assistant United States Attorneys Fraud Prosecution Project</u>

For more than a decade, in partnership with the Department of Justice (DOJ), we have placed a number of attorneys from our Office of the General Counsel in several United States Attorney's Offices around the country to bring Federal criminal charges against individuals who defraud Social Security programs. These Special Assistant United States Attorneys (SAUSAs) have a focus and commitment to seek the maximum punishment under the law for all persons who defraud Social Security. These attorneys are dedicated to Social Security fraud cases and have increased the number of prosecutions of violations of the Social Security Act. They obtain criminal sanctions, including imprisonment, and recover funds for the agency through criminal restitution and forfeiture. For example, SSA's fraud prosecutors in the U.S. Attorney's Office for the District of Puerto Rico were involved in prosecuting the case against third-party fraud facilitators involving a disability fraud scheme.

The fraud prosecution project produces good outcomes. Since FY 2003, our fraud prosecutors have secured over $60 million in restitution and more than 1,000 convictions. During the first half of FY 2017, our SAUSAs successfully obtained at least 119 guilty pleas and convictions. This led to over $10.3 million in restitution, including more than $6.3 million in restitution to SSA. We are committed to maintaining our prior level of commitment with the SAUSA program.

<u>Anti-Fraud Communications</u>

Our anti-fraud prevention efforts also involve communicating with the public about fraud, including communications with our beneficiaries and claimants. We are telling our customers, our employees, and the public at large, through multiple channels, that fraud is not tolerated and will be investigated and prosecuted. Since 2014, we have added language in millions of the notices we send to beneficiaries and claimants telling them to report any suspected fraud to our OIG and include the OIG fraud website and Fraud Hotline phone number. In addition, on our

applications, and our redetermination and continuing disability review forms, we inform individuals that they provided information to us under penalty of perjury and that they could be liable under law for providing false information.

Further, our anti-fraud communications go beyond these direct communications with beneficiaries and claimants. For example, on a regular basis, we publish Social Security blog posts informing the public about our anti-fraud efforts across our programs. Our public affairs specialists across the country regularly interact with groups, organizations, and individuals to promote our anti-fraud messaging and to provide such groups with SSA fact sheets, posters, and other information that promote our strong anti-fraud message. Our website also contains information on how to report suspected fraud and examples of what we are doing to combat fraud.

We also communicate regularly with our employees regarding their responsibility to refer all suspected fraud to the OIG for full investigation. At the national, regional and local levels, the OIG provides ongoing feedback to the agency on successful fraud prosecutions resulting from allegations referred by our employees.

Anti-Fraud Data Analytics

In addition to our commitment to engaging in fraud risk assessments, we continue to review national data for trends and fact patterns that suggest fraudulent activity. The use of data analytics enhances our fraud prevention and allows us to develop analytical tools to determine common characteristics and patterns of fraud. In addition to the fraud referrals initiated by our employees, we use these automated tools to help us uncover potential fraud or other suspicious behavior in the programs we administer. Since 2013, we have successfully applied data analytics to identify and prevent fraudulent activity in the electronic services business process. As we continue to expand our use of data analytics and technology to detect and prevent disability fraud, we are expanding on the use of predictive modeling to determine common characteristics and patterns of anomalous behavior based on known cases of fraud. We have completed proofs of concept using case characteristics identified in the New York and Puerto Rico conspiracies to help build new analytical models and to determine if those characteristics could identify potentially fraudulent transactions in other localities.

An important initiative in enhancing our analytic capabilities to prevent fraud is the Anti-Fraud Enterprise Solution (AFES). The AFES will allow the agency to more accurately identify and take action on more difficult-to-identify high-risk transactions across our programs and processes, including disability, electronic services, retirement, SSI, and internal employee systems. Notably, in disability cases, the AFES will help the agency to stop fraudulent transactions before payments are made. AFES will include five key features of anti-fraud management into our business process: 1) data analytics, 2) incident management, 3) workflow management, 4) systems communications, and 5) business intelligence. This integrated system will provide a uniform platform and infrastructure for advanced data analytics. It will also modernize our case management and workflow capabilities to allow OIG to conduct more efficient and timely inquiries and investigations of possible fraud incidents as we identify them. Ultimately, AFES will also enhance our ability to make data-driven anti-fraud decisions and

better inform stakeholders, such as this Subcommittee and the public, on the progress of our anti-fraud efforts.

As part of the AFES development strategy, in December 2016 we procured IBM's Counter Fraud Management software and have recently installed this software on our systems infrastructure. We will run the software in real-time as claims, including disability claims, are processed in order to prevent fraud by referring suspicious claims for OIG investigation before adjudication. AFES will assess all claims to identify situations that appear to be similar to known fraud schemes or are otherwise considered to be high-risk. Trained employees in centralized units will review claims that raise flags before we authorize payments. The software will become more effective over time; as we identify new suspicious or fraud trends, we will continuously improve the ability of the software to identify such trends when reviewing claims.

One of the first applications that will benefit from the AFES systems incident management, workflow management, and systems communications features is the redesign of the electronic form that employees use to refer potential program violations to OIG for further investigation. As described above, currently our employees use an online electronic referral form, to report fraud allegations to the OIG. Integrating the fraud referral form into AFES will enhance our ability to identify interrelated claims and high-risk transactions across our programs. It will also modernize our workflow capabilities and assist OIG in conducting more efficient and timely inquiries and investigations of possible fraud. Integrating the fraud referral form into AFES will provide data to enhance our models quickly and make data-driven anti-fraud decisions. Lastly, the redesign of the fraud referral form will better position SSA to comply with the *Fraud Reduction and Data Analytics Act of 2015*.

AFES is a multi-year, multi-phase effort that will replace and expand OAFP's current anti-fraud systems, processes, and models. The agency will use the outcome of the fraud risk assessment on disability to form our strategy to implement new analytical models to prevent fraud in the disability program. Future phases will follow in subsequent years to include all of the agency's service delivery processes.

SSA Anti-Fraud Efforts Strengthened by New Legislative Provisions

In addition to the steps we have taken to increase our anti-fraud capabilities, recently legislation has included provisions that enhanced and strengthened our on-going anti-fraud efforts.

Cooperative Disability Investigations Units

The Cooperative Disability Investigations (CDI) Program is a key anti-fraud initiative that plays a vital role in combating fraud and abuse within our disability programs. Chairman Johnson, and this Subcommittee, have long championed the CDI program, and we thank you for that support. Importantly, the CDI units prevent benefit payments from being made in cases involving fraud. CDI units consist of personnel from SSA, OIG, State DDSs, and state/local law enforcement, and they review initial disability claims and post-entitlement activities when our front-line employees suspect possible fraud. CDI units obtain evidence of material fact to resolve questions of fraud.

A recent legislative provision now requires the agency to expand the CDI program to cover all States and Territories no later than October 1, 2022, subject to the availability of funding and participation of local law enforcement agencies. Currently, the CDI Program consists of 39 units that cover 33 states, the Commonwealth of Puerto Rico, and the District of Columbia. With available agency funding and participation from local law enforcement, we will expand the number of CDI units needed to cover the 17 remaining States (and remaining Territories). We are currently slated to open one CDI unit in FY 2017, and will target implementation of two to four units per year thereafter until nationwide coverage is complete.

During FY 2016, the CDI program reported approximately $268 million in projected savings to SSA's disability programs and approximately $323 million to non-SSA programs, such as Medicare, Medicaid, housing assistance, and nutrition assistance programs. Moreover, since the program launched in FY 1998 through September 2016, CDI efforts contributed to approximately $3.5 billion in projected savings to SSA's programs, and approximately $2.4 billion in projected savings to non-SSA programs.

Exclusion of Certain Medical Sources of Evidence

In addition, we appreciate the leadership of Chairman Johnson, and this Subcommittee, in bringing greater focus on excluding tainted medical evidence. Chairman Johnson introduced a provision – now law – that provides that unless we find good cause to do so under our rules, we will not consider evidence furnished by medical sources convicted of certain felonies, excluded from participation in Federal health care programs, or assessed with a CMP, assessment, or both, for submitting false evidence.[1] It ensures that we continue to make our disability determination decisions based on the best available evidence from trustworthy medical sources.

To implement this provision, we published a final rule that was effective November 2, 2016 that requires excluded medical sources of evidence to inform us in writing of their exclusion(s) each time they submit evidence to us that relates to a claim for Social Security disability benefits or payments. For those sources who do not inform us of their excluded status, where appropriate, we will refer them to our OIG for any action it deems appropriate, including investigation and CMP pursuit. Moreover, prior to effectuating an allowance where a disability examiner has evaluated evidence under recent legislation, the case must first be sent to our quality component to ensure proper application of such legislation. We are also working to add automated matching to identify these sources and their evidence.

New and Stronger Civil Monetary Penalties

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[1] GAO had previously recommended that "[t]o address the potential risks associated with medical evidence submitted by sanctioned physicians, SSA should evaluate the threat posed by this information and, if warranted, consider changes to its policies and procedures." See GAO-15-19, SSA Disability Benefits: Enhanced Policies and Management Focus Needed to Address Potential Physician-Assisted Fraud (Nov. 2015). We would note that section 812 of the Bipartisan Budget Act of 2015, which generally prohibits consideration of evidence by sanctioned medical providers, addresses the GAO recommendation.

People, including third party facilitators, who commit fraud against our programs may be assessed civil monetary penalties for their actions, as well. Recent legislation also increased the penalty for conspiracy to commit Social Security fraud and certain offenses committed by people who violate positions of trust, such as doctors and lawyers submitting false medical evidence, and current and former Social Security employees.

Conclusion

As good stewards of our resources and the Social Security Trust Funds, and SSI program dollars, it is our duty to work aggressively to prevent and detect fraud and recover the overpayments from the fraud. We have a comprehensive and integrated anti-fraud program. We are working to increase prevention through advanced predictive analytics. We will continue to measure our progress.

We appreciate this Subcommittee's assistance in these efforts and stand ready to work with Congress to maintain the public's trust and confidence in our very important social insurance programs. We also appreciate GAO's comprehensive review and analysis of our work in this area, and look forward to implementing GAO's helpful recommendations as we embark on a fraud risk assessment analysis of our disability programs.

As a critical reminder, everyone can play a key role in protecting his or her investment in Social Security. When members of the public suspect fraud, we ask that they report it to OIG. OIG evaluates every allegation of fraud and, for those cases where it determines fraud has occurred, aggressively pursues the case. It is easy to report fraud online by visiting OIG's *Fraud, Waste, and Abuse* page at http://oig.ssa.gov/report, or by telephone through OIG's Social Security Fraud Hotline at 1-800-269-0271.

Chairman Johnson. Have you seen any decrease in it lately?

Mr. Brune. Decrease in fraud? I think our efforts are positioned to mitigate the evolving fraud risk.

Chairman Johnson. Good.

Mr. Bagdoyan, you are recognized.

STATEMENT OF SETO J. BAGDOYAN, DIRECTOR, FORENSIC AUDITS AND INVESTIGATIVE SERVICE, GOVERNMENT ACCOUNTABILITY OFFICE

Mr. Bagdoyan. Thank you, Mr. Chairman. Chairman Johnson, Ranking Member Larson, and members of the subcommittee, I am pleased to appear before you this morning to discuss GAO's new report on SSA's antifraud activities in its disability insurance programs, whose expenditures total over $200 billion a year to about 19 million recipients.

Given their scope and scale, these programs are inherently risky and vulnerable to fraud, and recent cases, like the ones you mentioned, Mr. Chairman, highlight schemes through which individuals fraudulently obtained hundreds of millions of dollars in disability benefits.

Today I will highlight three key takeaways from this report. First, SSA has taken some steps to establish an organizational culture and structure conducive to fraud risk management in its disability programs. Specifically, SSA instituted mandatory antifraud training, established a centralized antifraud office to coordinate and oversee the agency's fraud risk management activities, and communicated the importance of such efforts.

These actions are generally consistent with GAO's fraud risk framework, a copy of which is right by my side here, a set of leading practices intended to guide Federal program managers when developing antifraud activities in a strategic way. However, SSA's antifraud office, the Office on Antifraud Programs, or OAFP, faces challenges establishing itself as the coordinating body for the agency's antifraud initiatives. For example, the OAFP has had multiple acting leaders, though SSA recently appointed a permanent leader to provide accountability for the agency's antifraud activities.

Second, SSA has taken initial steps to identify and address fraud risks in its disability programs, but has as yet to comprehensively assess these risks or develop a strategic approach to help ensure its antifraud activities effectively mitigate these risks. Over the last year, SSA gathered information about fraud risks, but these efforts generally have not been systematic and did not assess the significance, likelihood, or impact of all risks that were identified.

SSA also has several prevention and detection activities in place to address known fraud risks in its disability programs, such as fraud examination units, which review disability

claims to help detect fraud perpetrated by third parties. Further, SSA has not developed and documented an overall antifraud strategy that aligns its antifraud activities to its fraud risks. Leading practices call for Federal program managers to conduct periodic fraud risk assessments and develop a strategy to address identified fraud risks.

Without conducting a fraud risk assessment that aligns with leading practices and developing an antifraud strategy, SSA's disability programs likely remain vulnerable to new fraud schemes, and the agency will not be able to effectively prioritize its risks and related antifraud activities.

Third, SSA monitors its antifraud activities through the OAFP and its advisory body, the National Antifraud Committee, but the agency does not have effective performance metrics to evaluate the impact of such activities. The OAFP has responsibility for establishing performance and outcome-oriented goals for them. It collects metrics to inform reports about its antifraud initiatives, and the NAFC receives regular updates about antifraud initiatives.

However, the comprehensiveness and relevance of the metrics varies across initiatives, and some initiatives do not have any metrics. Of the 17 initiatives listed in SSA's 2015 antifraud report, ten had metrics that did not focus on outcomes and four did not have any metrics. For example, SSA lacks a metric to help monitor the effectiveness of its fraud examination units. Leading practices in fraud risk management call for managers to monitor and evaluate antifraud initiatives, with a focus on measuring outcomes.

Without outcome-oriented performance metrics, SSA may not be able to evaluate its antifraud activities, review progress, and determine whether changes are necessary.

In closing, I would underscore that it is essential for SSA to place a high policy priority on deploying effective preventative processes and controls to help narrow the window of opportunity for fraudulent activity in its disability insurance programs and safeguard the government's substantial investment in these programs. Fully and timely implementing the four recommendations in our report would be essential in this regard.

Chairman Johnson, that concludes my remarks. I look forward to the subcommittee's questions.

Testimony

Before the Subcommittee on Social Security, Committee on Ways and Means, House of Representatives

SSA DISABILITY BENEFITS

Antifraud Efforts Need a Comprehensive Strategic Approach

Statement of Seto J. Bagdoyan, Director
Forensic Audits and Investigative Service

Chairman Johnson, Ranking Member Larson,
and Members of the Subcommittee:

I am pleased to be here today to discuss the Social Security
Administration's (SSA) approach to managing fraud risks in its disability
programs. SSA provides cash benefits through two main programs to
millions of Americans with disabilities who are unable to work: Disability
Insurance (DI) and Supplemental Security Income (SSI). Collectively,
payments from these programs were about $200 billion in fiscal year
2015. Although the extent of fraud in these programs is unknown, high-
profile cases have highlighted instances in which individuals fraudulently
obtained benefits. For example, according to a report from SSA's Office
of the Inspector General (OIG), over 70 individuals in New York pled
guilty in 2014 to participating in a conspiracy to obtain at least $14 million
in fraudulent SSA disability benefits. DI and SSI are on the Office of
Management and Budget's list of programs designated as high risk for
improper payments, which include, but are not limited to, payments made
as a result of fraud.

Today, we are publicly releasing a report that addresses SSA's actions to
manage fraud risk in its disability programs and the extent to which these
actions align with leading practices.[1] My statement highlights the key
findings and recommendations from that report. Specifically, my
statement discusses SSA's actions for managing fraud risks in its
disability programs and the extent to which these actions align with
leading practices for (1) establishing an organizational culture and
structure conducive to fraud risk management, (2) identifying, assessing,
and addressing fraud risks in its disability programs, and (3) monitoring
and evaluating its fraud risk management activities.

To identify and examine SSA's actions, we reviewed SSA documents
including annual antifraud reports, operational guidance, and prior SSA
OIG and GAO reports. We also interviewed SSA officials from across the
agency's headquarters including those in the Office of Anti-Fraud
Programs (OAFP). In addition, we interviewed staff in all three of SSA's
fraud examination units.[2] To assess SSA's actions, we compared them
with leading practices identified in our July 2015 *A Framework for*

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[1]GAO, *SSA Disability Benefits: Comprehensive Strategic Approach Needed to Enhance
Antifraud Activities*, GAO-17-228 (Washington, D.C.: April 17, 2017).

[2]SSA refers to these units as fraud prevention units.

Managing Fraud Risks in Federal Programs (Fraud Risk Framework).[3] In addition, we assessed SSA's actions against federal internal control standards such as those related to managing fraud risks.[4] The report being released today includes further details about our methodology. Our work was performed in accordance with generally accepted government auditing standards.

With respect to the first set of leading practices, we found that SSA has taken steps to establish an organizational culture and structure that are conducive to managing fraud risks in its disability programs, but some efforts are relatively recent. The agency has demonstrated a senior-level commitment to combating fraud in its disability programs and has worked to involve all levels of the agency in setting an antifraud tone. For example, in April 2014, SSA reestablished the National Anti-Fraud Committee (NAFC) to provide support for national and regional antifraud activities.[5] The NAFC is composed of deputy commissioners from across the agency and other SSA executives who meet at least quarterly, which helps to demonstrate a senior-level commitment to combating fraud—one of the Fraud Risk Framework's leading practices.[6] The NAFC invites regional staff to its regular meetings and to an annual conference to report on the progress of SSA's antifraud initiatives, which helps involve multiple levels of the agency in setting an antifraud tone. SSA also demonstrated a commitment to combating fraud at all levels of the agency when it implemented the first annual mandatory antifraud training in 2014 for all SSA and Disability Determination Services (DDS) staff. According to SSA officials, 97 percent of SSA employees and all DDS employees except for those on extended leave completed the annual antifraud training in 2016.

SSA further demonstrated a commitment to antifraud efforts when it established the OAFP in November 2014. The OAFP is responsible for coordinating antifraud efforts, developing antifraud policies, and creating and implementing fraud mitigation plans across SSA, among other things.

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[3]GAO, *A Framework for Managing Fraud Risks in Federal Programs*, GAO-15-593SP (Washington, D.C.: July 2015).

[4]GAO, *Standards for Internal Control in the Federal Government*, GAO-14-704G (Washington, D.C.: September 2014).

[5]The NAFC was formed in 1996 but met on an ad hoc basis from September 2003 to March 2014.

[6]In fiscal year 2016, for example, the NAFC met seven times.

These responsibilities are consistent with leading practices. According to the Fraud Risk Framework, agency managers can show commitment to combating fraud by creating a structure with a dedicated entity to lead fraud risk management activities and coordinate antifraud initiatives across the agency. In addition, leading practices call for the designated antifraud entity to, among other things, serve as the repository of knowledge on fraud risks and controls and lead or assist with trainings and other fraud-awareness activities. Since the OAFP was established, the office has performed several of these activities. For example, the OAFP has taken steps to coordinate antifraud initiatives across SSA by gathering information about progress on the initiatives, and has helped create antifraud training materials for the agency.

Although these and other actions are generally consistent with leading practices in fraud risk management, the OAFP faced challenges during its first 2 years to fully establish itself within the agency. Specifically, the OAFP faced challenges related to a lack of consistent leadership and established institutional relationships. However, recent actions, if sustained, may help to address these challenges:

• *Lack of consistent leadership:* Until recently, the OAFP had not had a permanent leader who provided accountability for the agency's antifraud initiatives. When the OAFP was established, SSA designated the OAFP associate commissioner as the agency's chief fraud prevention officer. According to SSA officials, from the summer of 2015 until September 2016, two Senior Executive Service (SES) candidates served successive 6-month periods as the OAFP's acting associate commissioner. In September 2016, a third SES candidate was appointed as the acting associate commissioner of the OAFP. Upon confirmation as a member of the SES, he became the OAFP's permanent associate commissioner and assumed the role of SSA's chief fraud prevention officer in October 2016, according to SSA officials.

• *Lack of established institutional relationships:* The OAFP is a relatively new, small office that is still building relationships and establishing its role across the agency for which it is charged with overseeing fraud risk management efforts. According to SSA officials, the process of building relationships across the agency will likely require additional time to become more fully implemented. The OAFP is relatively small compared with the size and complexity of SSA's 11 components. In fiscal year 2016, the OAFP had approximately 60 full-time equivalent staff, who were in charge of coordinating antifraud initiatives, among other tasks, across SSA, which employs over 60,000 full-time

equivalent staff, excluding DDS staff. The OAFP is also in the process of overcoming perceptions of mission overlap. For example, according to SSA officials, there were initial concerns about the OAFP's role in identifying potential fraud overlapping with the OIG's role in investigating potential fraud. In August 2015, the Acting Commissioner of SSA approved a memo to components across the agency including the OIG that clarified the function and responsibilities of the OAFP.

With respect to the leading practices for identifying, assessing, and addressing fraud risks—the second area we addressed in our report—we found that SSA has undertaken efforts over the last year to identify fraud risks in its disability programs but has not comprehensively assessed the identified risks. For example, in spring 2016, SSA engaged a contractor to develop a fraud risk assessment methodology that could be refined and updated over time and to conduct a pilot study of fraud risks in SSA's disability programs by applying the risk assessment method. However, this effort was not intended to be a comprehensive fraud risk assessment, according to SSA officials. Leading practices in fraud risk management call for the agency's designated antifraud entity to lead fraud risk assessments and plan to conduct updated assessments on a regular basis. In planning the fraud risk assessment, leading practices call for managers to tailor the fraud risk assessment to the program by, among other things, identifying appropriate tools, methods, and sources for gathering information about fraud risks and involving relevant stakeholders in the assessment process. Fraud risk assessments that align with leading practices involve (1) identifying inherent fraud risks affecting the program, (2) assessing the likelihood and impact of those fraud risks, (3) determining fraud risk tolerance, (4) examining the suitability of existing fraud controls and prioritizing residual fraud risks, and (5) documenting the results.[7]

SSA plans to assess fraud risks, but it is unclear when or how an assessment of its disability programs will occur and whether it will follow leading practices.[8] SSA's antifraud plans for 2016 to 2018 include an objective to conduct regular fraud risk assessments but do not specify

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[7]GAO-15-593SP.

[8]In April 2015, SSA's OIG recommended that SSA conduct a fraud risk assessment. Specifically, the OIG recommended that SSA take a risk-based approach to combating fraud, weighing the qualitative and quantitative impacts of various fraud risks on the organization's reputation, finances, and operations. SSA agreed but, as of January 2017, had not yet addressed the recommendation.

which programs will be included. In addition, it is uncertain when or how SSA will conduct these assessments because the plans do not describe interim steps or specific time frames. Further, it is not clear which agency stakeholders will be involved in the process or what specific tools, methods, and sources SSA will use to gather information about fraud risks. SSA's plans state that it will use information produced by its data-analytics system to assist with its risk assessments but this data-analytics system is in the early stages of development and it may be years before the system produces information on disability fraud schemes and trends that could be incorporated into a fraud risk assessment.[9] According to a senior OAFP official, the risk-assessment effort is on hold because the OAFP is focusing its staff resources on developing its data-analytics system. However, information on the relative likelihood and impact of fraud risks identified through a fraud risk assessment can help ensure that the data-analytics system is appropriately targeted and that the OAFP's resources are focused on SSA's most significant fraud risks.

Moreover, although SSA has several control activities that seek to prevent, detect, and respond to fraud in its disability programs, it has not developed and documented an antifraud strategy to guide its design and implementation of these activities and help ensure it has sufficient and appropriate controls in place to mitigate its most significant fraud risks, as called for in leading practices. SSA's antifraud activities include, among other things, specialized units that investigate potential disability fraud and antifraud communications to the public. In addition, after large-scale fraud schemes in SSA's New York region highlighted the possibility that third parties could facilitate fraud against SSA, the agency established fraud examination units in 2014 to help detect these types of fraud schemes in the future. SSA has other program integrity activities that can help detect potential fraud in its disability programs, although these activities were not designed for this specific purpose. For example, SSA performs analytics to prevent and detect suspicious online transactions, such as unusual direct deposit requests.[10] According to SSA officials, in fiscal year 2016, SSA reviewed over 29,000 suspicious online transactions and referred 1,460 of those transactions to the OIG. Some of

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[9]As noted in our Fraud Risk Framework, managers can use data on fraud schemes and trends from monitoring and detection activities—such as data-analytics systems—to help identify fraud risks. Managers may also conduct interviews, hold brainstorming sessions, or use surveys to gather information on fraud risks. GAO-15-593SP.

[10]Individuals receiving certain SSA benefits—including retirement and DI—can use SSA's online services to start or change direct deposit of their benefits, among other things.

these transactions may involve disability benefits. SSA has reported on the status of its antifraud initiatives and has a plan that includes high-level goals and objectives for managing fraud risks. However, it is unclear if SSA's antifraud initiatives are targeting the most significant fraud risks in SSA's disability programs because SSA has not developed or documented an antifraud strategy that aligns antifraud activities to its most significant fraud risks.

With respect to the leading practices for monitoring and evaluating activities—the third area we addressed in our report—we found that SSA monitors its antifraud activities for its disability and other programs through the OAFP and NAFC, but the metrics SSA uses do not enable effective monitoring and evaluation. According to SSA documents, the OAFP is responsible for monitoring SSA's antifraud activities and establishing performance and outcome-oriented goals for them. The OAFP receives updates from the components that are responsible for each antifraud initiative and has shared these updates with the NAFC through periodic meetings and with Congress through reports about SSA's antifraud initiatives. However, we found that SSA does not track most of its antifraud initiatives via outcome-oriented metrics to help the agency regularly measure progress in achieving targets. Of the 17 ongoing initiatives listed in SSA's 2015 antifraud initiatives report, we found that 10 had metrics that were not outcome-oriented, and 4 did not have any metrics. For example, the percentage of staff trained in fraud detection and prevention methods (an output) is listed as a metric of the antifraud training initiative, but SSA does not evaluate the outcomes associated with those trainings such as the change in particular behaviors following the trainings (e.g., the number of referrals to the OIG about schemes covered during the trainings). In addition, the 2015 report lists the fraud examination units and fraud case reviews as initiatives but does not include metrics for either. Further, the majority of antifraud initiatives do not provide targets against which to measure performance and track progress relative to a baseline.

SSA recognizes the importance of monitoring, but it is unclear how it plans to evaluate its antifraud activities and adapt them if necessary. We have previously reported that agencies may face challenges measuring outcomes of fraud risk management activities in a reliable way. These challenges include the difficulty of measuring the extent of deterred fraud, isolating potential fraud from legitimate activity or other forms of improper

payments, and determining the amount of undetected fraud.[11] However, as described in the Fraud Risk Framework, managers can gather additional information on the short-term or intermediate outcomes of some antifraud initiatives, which may be more readily measured than ultimate benefits. For example, although SSA does not have a metric to monitor the fraud examination units or to evaluate their effect on fraud, it is possible for SSA to identify more immediate outcomes such as the number of potential fraud patterns that the units uncover while reviewing disability claims that may involve third-party fraud.[12] Although SSA's antifraud strategic plan for 2016 to 2018 highlights the importance of monitoring to help strengthen fraud risk management activities, it does not include specific steps for monitoring its antifraud initiatives. Identifying performance metrics, including baselines and targets as appropriate, and requiring additional information from the responsible components on progress made would help the OAFP and NAFC better monitor whether SSA is achieving its antifraud goals. Without this information, the OAFP and NAFC may not be able to determine whether SSA's antifraud activities are operating effectively or determine whether changes are necessary.

In conclusion, although many of SSA's actions are consistent with leading practices and demonstrate a commitment to managing fraud risks, gaps exist in the agency's fraud risk assessment, corresponding strategy design, and monitoring of antifraud activities. Despite some foundational efforts such as piloting a method for conducting future assessments, until it conducts a thorough, systematic assessment of its fraud risks, SSA will lack robust information on the risks that may most affect the integrity of its disability programs. As a result, SSA may be using its resources to combat fraud schemes that are unlikely to materialize or that have a relatively minimal effect on SSA's finances or reputation. Although SSA plans to assess fraud risks, it is unclear when an assessment of its disability programs will occur and whether it will reflect leading practices. Absent a comprehensive fraud risk assessment that aligns with leading practices and is regularly updated, SSA will not be equipped to address the fraud schemes that are considered to be the most significant before they occur. Similarly, without developing, documenting, and implementing

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[11]GAO-15-593SP.

[12]In addition to reviewing disability claims to help uncover potential fraud schemes, the fraud examination units reevaluate disability claim decisions that could have been tainted by known fraud schemes.

a comprehensive antifraud strategy that builds on a comprehensive risk assessment, as called for by leading practices, SSA cannot ensure that its antifraud control activities are targeted to its fraud risks, and therefore may be using its resources for program integrity efforts inefficiently. Further, without establishing outcome-oriented metrics and then regularly reviewing progress toward meeting these goals, the OAFP will not be able to determine whether the agency's antifraud control activities are working as intended.

In the report that we publicly released today, we make several recommendations to address gaps in SSA's management of fraud risks. Specifically, we recommend that the Acting Commissioner of SSA direct the OAFP to take the following four actions for its disability programs:

- lead a comprehensive fraud risk assessment that is consistent with leading practices, and develop a plan for regularly updating the assessment;

- develop, document, and implement an antifraud strategy that is aligned to its assessed fraud risks;

- work with components responsible for implementing antifraud initiatives to develop outcome-oriented metrics, including baselines and goals, where appropriate for antifraud activities; and

- review progress toward meeting goals on a regular basis, and recommend that the NAFC make changes to control activities or take other corrective actions on any initiatives that are not meeting goals.

In reviewing a draft of the report, SSA agreed with our recommendations and emphasized its commitment to preventing and detecting fraud.

Chairman Johnson, Ranking Member Larson, and Members of the Subcommittee, this concludes my prepared remarks. I would be happy to answer any questions that you may have at this time.

GAO Contact and Staff Acknowledgments

For further information regarding this testimony, please contact Seto J. Bagdoyan, (202) 512-6722 or bagdoyans@gao.gov. In addition, contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. Individuals who made key contributions to this testimony are Cindy Brown Barnes (Director), Tonita Gillich (Assistant Director), Holly Dye, Erin Godtland, Joel Green, and Erin McLaughlin.

Chairman Johnson. Thank you, sir. I appreciate that.

As is customary, for each round of questions, I will limit my time to 5 minutes and will ask my colleagues to also limit their questioning time to 5 minutes as well.

Mr. Brune, a longstanding frustration of mine is how hard it has been for Social Security to get some of its fraud cases prosecuted. What is Social Security doing to make sure that the cases get prosecuted and what role do Social Security Special Assistant U.S. Attorneys play?

Mr. Brune. Chairman Johnson, thank you for the question. For over a decade, in partnership with the Department of Justice, we have placed dozens of our attorneys from the Office of General Counsel in several United States Attorney's Offices around the country to bring Federal criminal charges against individuals who defraud Social Security.

These Special Assistant U.S. Attorneys(SAUSAs) are dedicated to Social Security fraud cases, and they have increased the number of prosecutions. During fiscal year 2017 in the first 6 months of the fiscal year, our SAUSAs, as was in my written statement, obtained at least 119 guilty pleas, leading to over $10.3 million in restitution. I believe those are the outcome-oriented metrics that Mr. Bagdoyan is encouraging us to employ. We look to advance more outcome-oriented metrics. We agree with the GAO recommendation.

In addition to the SAUSA program, Special Assistant U.S. Attorney, our Office of Inspector General refers fraud cases to the U.S. Attorney's Office, even in jurisdictions without fraud prosecutors, and is able to obtain convictions in those jurisdictions when the cases meet the office's criteria for prosecution.

Chairman Johnson. It is up to the U.S. Attorney if they want to have a Special Assistant U.S. Attorney, and it sounds like you are offering up free labor to U.S. Attorneys. Why don't all of them take you up on it?

Mr. Brune. Well, I would defer to the Department of Justice on that question. We believe the partnership has been very successful. We are committed to continuing the Special Fraud Prosecution Project.

Chairman Johnson. Thank you. Mr. Brune, it sounds like your new antifraud software should quickly identify fraud so we don't have more of these multimillion dollar fraud schemes, and that is a good thing, but when the time comes to get DOJ to prosecute, is it going to be harder to get them to take on a case when the dollars aren't as big? In my view, even $1 of fraud is a dollar too much.

Mr. Brune. Chairman Johnson, we agree. One dollar of fraud is a dollar too much. Our stated position for a long time has been we have a zero tolerance for fraud.

Relative to your question, we believe that fraud prosecution is important. It occurs after the fact. Our efforts are interested in continuing the prosecution of folks who defraud the program, but to increase our preventative activities. In that regard, in my written statement I mentioned the Anti-fraud Enterprise Solution. This tool will help us to focus our limited resources on the cases that have the highest risk, that are, in fact, those third-party facilitator cases, and hopefully we will be able to identify them both quicker and take more prompt action because of the analytics that we run.

Chairman Johnson. Is there anything you need from the Congress to make sure DOJ is prosecuting fraud cases that you identify?

Mr. Brune. At this point, I think we have an excellent ongoing rapport with the Department of Justice. We are committed to maintaining our program and making sure that the Special Assistant U.S. Attorneys are positioned to prosecute the cases.

Chairman Johnson. Thank you.

Mr. Larson, you are recognized.

Mr. Larson. Thank you, Mr. Chairman.

Mr. Brune, the Social Security Administration has about 61,700 employees right now, which is down from over 67,000 in 2010. That is approaching a 10 percent loss. Is that correct?

Mr. Brune. Approximately, yes.

Mr. Larson. Social Security has many more beneficiaries today than it did in 2010. Right now there are about 61 million people receiving their earned benefits, roughly 7 million more than in 2010. That is about a 13 percent increase. Would you agree with that?

Mr. Brune. With my quick math, yes, that is about accurate.

Mr. Larson. Yeah. My quick math and yours are about the same, so, yes.

Mr. Brune. The numbers are the numbers.

Mr. Larson. And at the same time, the Social Security Administration's basic operating budget has fallen by 10 percent since 2010 after adjusting for inflation. So you have less money, but have to serve more people. Is that a fair statement?

Mr. Brune. Our beneficiary rolls have grown, yes.

Mr. Larson. So, Mr. Chairman, I would like to submit for the record this analysis of SSA's budget numbers by the Center on Budget and Policy Priorities, with the chairman's permission.

Chairman Johnson. Without objection.

<u>**Center on Budget and Policy Priorities**</u>
Budget Cuts Squeeze Social Security Administration Even as Workloads Reach Record Highs
Kathleen Romig
June 3, 2016

The Social Security Administration's (SSA) core operating budget has shrunk by 10 percent since 2010 after adjusting for inflation, even as the demands on SSA have reached all-time highs as the baby boomers have aged into their peak years for retirement and disability. Budget cutting — due mostly to the 2011 Budget Control Act's (BCA) tight appropriations caps, as further reduced by sequestration — has lowered SSA's operating budget from an already low 0.9 percent of overall Social Security spending to just 0.7 percent, forcing the agency to do more with significantly less (see Figure 1).[2] The cuts have hampered SSA's ability to perform its essential services, such as determining eligibility in a timely manner for retirement, survivor, and disability benefits, paying benefits accurately and on time, responding to questions from the public, and updating benefits promptly when circumstances change.
FIGURE 1

Social Security Administration Faces Increased Workload with Fewer Resources

Percent change since 2010

12%

2%

-5%

-10%

SSA core operating budget

SSA staff

Disability decisions appealed

Social Security beneficiaries
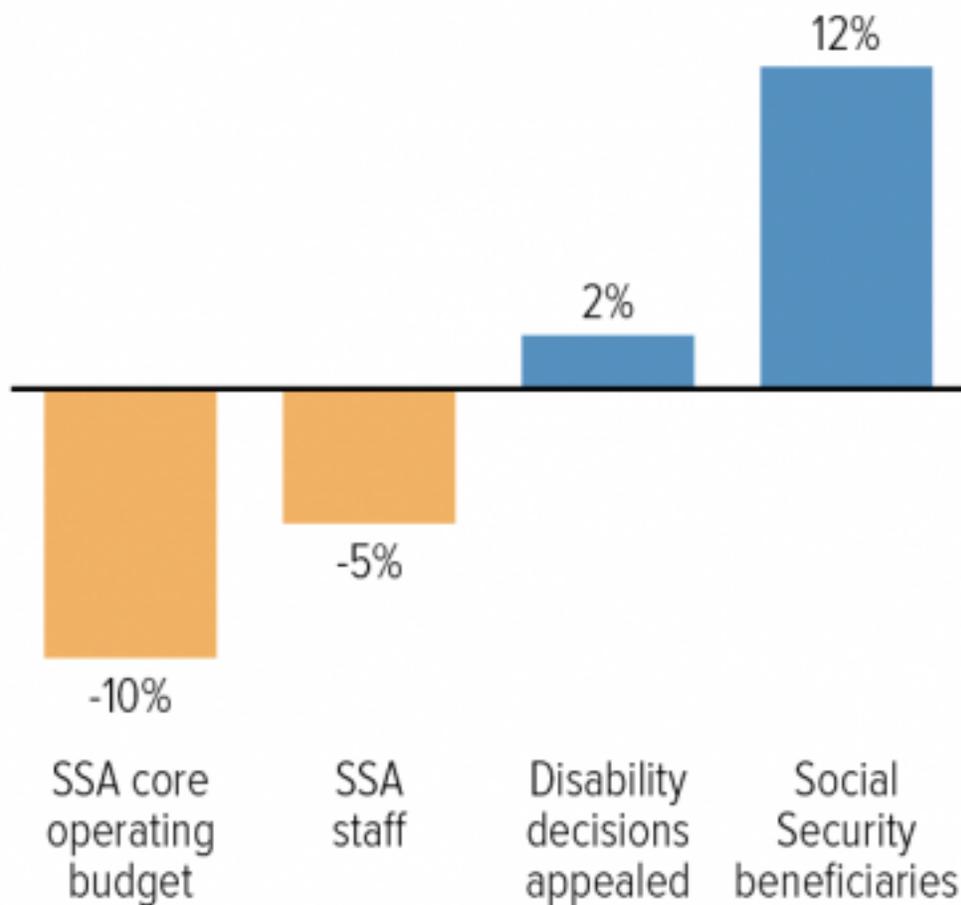
Note: Figures compare 2010 to latest available (2016 for operating budget, 2015 for everything else)

Source: Social Security Administration

As a result, SSA's track record of exemplary customer service has suffered:

- Budget cuts forced SSA to impose a hiring freeze in 2011, which led to a deterioration in SSA phone service that the agency has only partially reversed. In 2016, the average caller to SSA's

800 number can expect to spend over 15 minutes on hold, and nearly 10 percent of callers will receive busy signals.

- The cuts also affected SSA field offices, where people can apply for benefits, replace lost Social Security cards, or report name changes (due to a marriage or divorce, for example). SSA has closed 64 field offices and 533 mobile offices since 2010 and reduced hours at remaining offices. Before the budget cuts, more than 90 percent of applicants could schedule an appointment within three weeks; by 2015, fewer than half could.

- During the Great Recession, the number of Disability Insurance (DI) applications — and rejections — rose dramatically, yet SSA lacked the resources to keep up with appeals from rejected applicants. The average wait for a hearing rose from 360 to 540 days between 2011 and 2016. The number of applicants awaiting a hearing has risen to over 1 million, an all-time high.

- Lack of adequate staff forced SSA to delay critical behind-the-scenes work necessary to pay benefits accurately and on time, such as awarding widows' benefits when their spouses die and adjusting benefits for early retirees and disabled workers with earnings. Beneficiaries wait an average of four months for SSA to complete these tasks.

One of the nation's most popular and effective programs, Social Security provides a foundation of income on which workers can build for their retirement, as well as valuable social insurance protection both to workers who become disabled and to families whose breadwinner dies. Beneficiaries earn their Social Security benefits by working and paying Social Security payroll-tax contributions. Over 59 million retirees, disabled workers, survivors, and their families receive these benefits each year — a number that has grown by 6 million in just the past five years.[3]

Nearly every American comes to SSA at some point — either in person, on the phone, or through its expanding online services — and they do so at the best and worst moments of their lives. They use SSA services when they have a baby, get married, or start a new job. They depend on SSA staff to help them when they face a life-altering disability, the death of a spouse or parent, or decisions about financing their retirement years. They expect excellent service and — importantly — they have paid for it. The money used to administer Social Security comes from workers' contributions to Social Security, but only to the extent that Congress allows SSA to spend it.[4]

Throughout most of its history, SSA has had a reputation, both within and outside the agency, for administrative excellence.

Social Security Advisory Board, 1999

Failing to invest in customer service is penny-wise and pound-foolish. As then-Social Security Commissioner Michael Astrue, appointed by President George W. Bush, told the Senate in 2012, "At some point, we will have to handle every claim that comes to us, every change of

address, every direct deposit change, every workers' compensation change, every request for new or replacement Social Security cards. The longer it takes us to get to this work, the more it costs to do."

SSA's administrative budget is one of many important priorities covered by the appropriation bill for the Departments of Labor, Health and Human Services (HHS), and Education, which has faced large cuts since 2010. [5]   Congress should provide sufficient funding for all of the essential work in that bill — not just SSA's essential services, but also urgent new initiatives such as responding to the Zika outbreak and the opioid epidemic.

Amid Hiring Freeze, SSA's Phone Service Deteriorated

SSA's national toll-free telephone number serves as the gateway to the agency's services, fielding 37 million calls in 2015. [6] Trained agents at 27 teleservice centers provide services such as answering questions about SSA's programs, taking claims for retirement benefits, and setting up appointments. Callers can also access automated services on the 800 number 24 hours a day.

When the teleservice centers are adequately funded and staffed, SSA's 800 number performs well. However, starting in 2011, budget cuts forced SSA to freeze hiring, and the teleservice centers lost many agents through attrition. In just three years, SSA lost more than 15 percent of its 800 number staff.[7] Wait times and busy rates spiked (see Figure 2). [8] In 2014, wait times peaked at over 22 minutes and busy rates at 13 percent. After a small funding increase in 2014 enabled SSA to replace some of the agents lost during the hiring freeze, service began to rebound — though it remains well below previous levels.[9]

When SSA's 800 number doesn't work well, problems surface elsewhere. Callers unable to reach agents quickly are more likely to call or visit field offices, which is more time-consuming for the beneficiary and costlier for the agency. This inefficiency doesn't serve beneficiaries, the agency, or taxpayers well.

FIGURE 2

Funding Cuts Undermined Social Security Administration Phone Service

Average wait time on SSA's 800 number

Year	minutes
2010	~3.5
2011	~3
2012	~5
2013	~10.5
2014	~22
2015	~10.5
2016*	~16
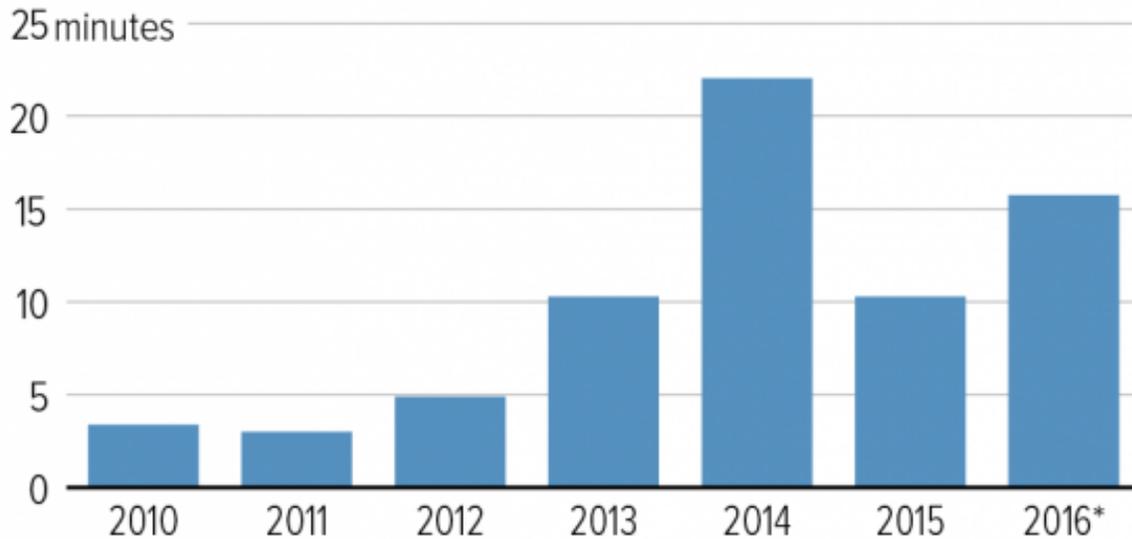
Percent of calls receiving busy message when requesting agent service

Year	%
2010	~5
2011	~3
2012	~5
2013	~12
2014	~13.5
2015	~7.5
2016*	~9.5
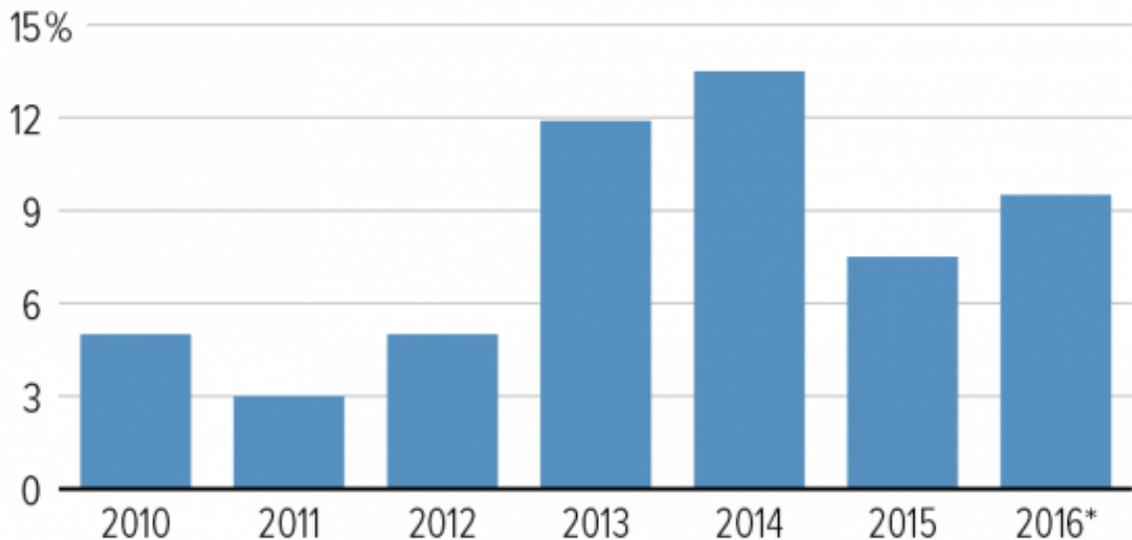
*Estimate

Source: Social Security Administration

Cuts in Staff and Hours Force Field Office Clients to Wait

The public can conduct business at SSA field offices in almost every community in America. Social Security field staff assisted 41 million visitors in 2015.[10] People visit field offices for many reasons, including to apply for benefits, report changes in their names, or replace lost Social Security cards. In addition to serving clients face to face, field offices received 28 million calls in 2015.[11]

The same employees who maintain our stewardship responsibilities must also handle applications for benefits, so without sufficient resources and trained staff we cannot keep up with both service improvements and our important program integrity work.

<div align="right">Social Security Commissioner Michael Astrue, 2012</div>

While SSA has introduced many online services, including applying for retirement or disability benefits and for replacement Social Security cards, these cannot replace in-person service. Even as the number of online applications more than doubled from 2010 to 2015, the number of visits to field offices stayed fairly steady.[12] In addition, many online applications, especially those for disability benefits, require follow-up work by staff.

Budget cuts, however, have forced SSA to cut staff and hours in the field. Between 2010 and 2015, SSA lost about 2,000 field office staff.[13] SSA also had to cut field office hours to 31 hours a week.[14] And SSA has closed 64 field offices since 2010, along with 533 mobile offices.[15]

SSA's field offices have long been lauded for their excellent service, but rising caseloads combined with budget cuts have driven up wait times. Field offices must serve nearly the same number of visitors in fewer hours and with fewer staff, which has forced applicants to wait weeks for appointments. [16] Before the budget cuts, more than 90 percent of applicants could schedule an appointment within three weeks; by 2015, fewer than half could (see Figure 3).[17]

SSA will always need to provide high quality service in the field. Many cases require it: though straightforward requests can be handled online or by phone, more complex cases often require face-to-face help. SSA primarily serves Americans who are elderly or disabled, often at traumatic moments in their lives such as the onset of a disability or the death of a spouse. Its clients are diverse and include people suffering from severe mental impairments and people with limited ability to speak English. Its staff provide critical guidance to workers making complex, life-altering decisions. Providing prompt and thorough service in the field reduces errors that SSA staff must otherwise untangle later.

FIGURE 3

Cuts Force Most Social Security Applicants to Wait Over Three Weeks for Appointments

Percent of appointments scheduled within 21 days
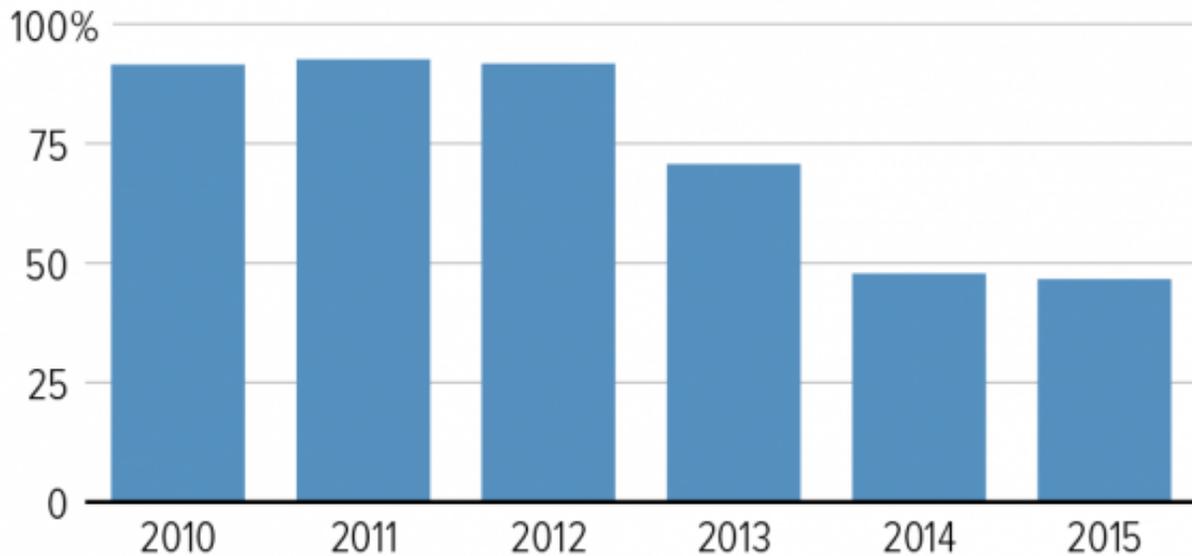
Source: Social Security Administration

Funding Cuts, Rising Appeals Caused Large Backlog in Disability Hearings

SSA pays disability benefits through the Social Security Disability Insurance (DI) and Supplemental Security Income (SSI) programs to workers with impairments severe enough that they can't support themselves and their families.[18] The average processing time for an initial disability claim has held fairly steady in recent years at three to four months. However, denied applicants who appeal must typically wait at least another year before an administrative law judge (ALJ) decides their case.

During the Great Recession, DI applications soared due to high unemployment — and SSA denied most of them, causing the number of rejected applicants to spike.[19] In 2011, SSA denied 2.2 million initial DI applicants, significantly expanding the pool of rejected applicants over pre-Great Recession levels.[20] Many of these rejected applicants appealed their decisions, causing the number of hearing requests to rise nearly 50 percent.[21] But Congress, instead of providing additional resources for these record-high hearing requests, *cut* SSA's operating budget.

FIGURE 4

Cuts Worsen Backlog for Social Security Disability Hearing Decisions

Average processing time for hearing decisions

Year	Days
2010	~425
2011	~360
2012	~350
2013	~380
2014	~420
2015	~460
2016*	~525

Hearing cases pending at end of year

Year	Cases
2010	~705,000
2011	~770,000
2012	~815,000
2013	~845,000
2014	~975,000
2015	~1,055,000
2016*	~1,085,000
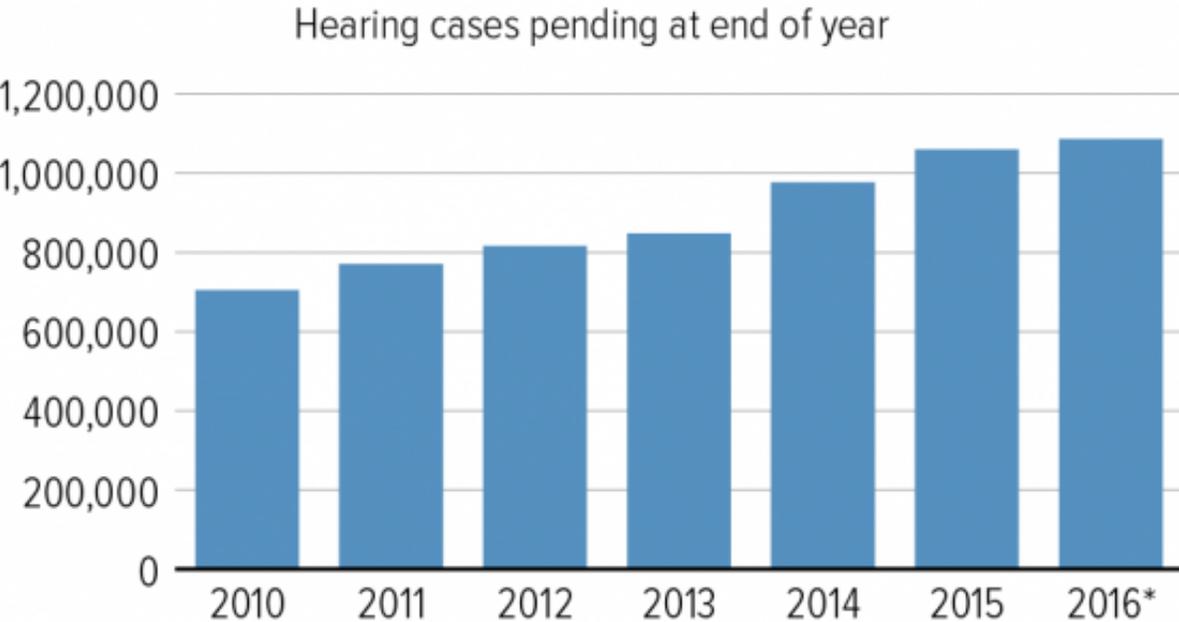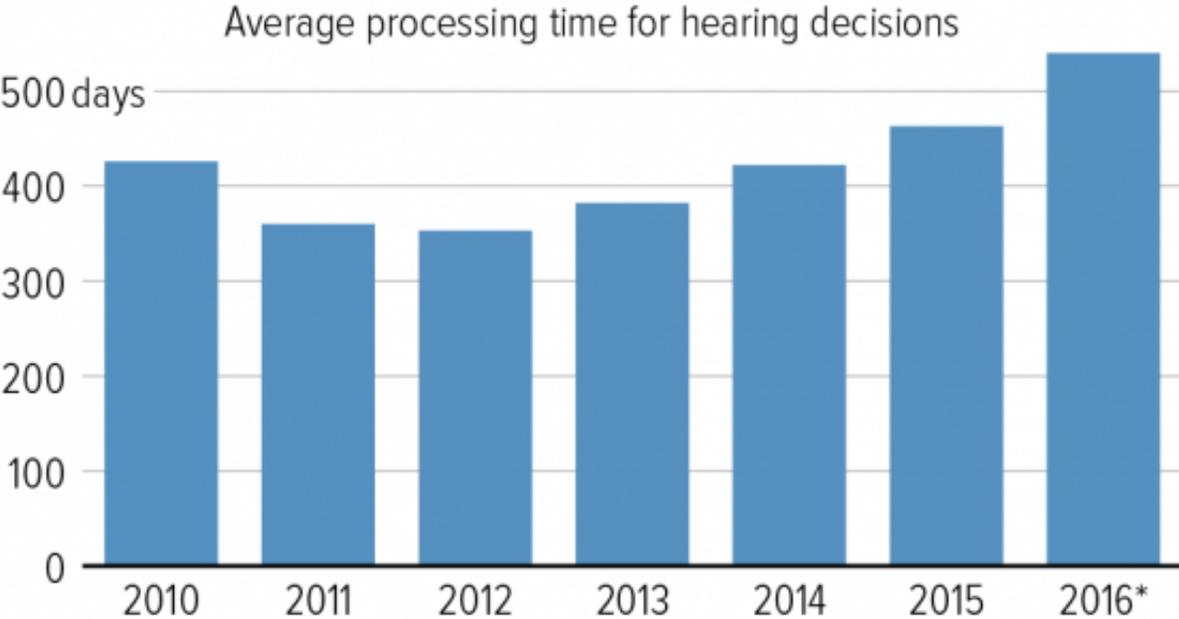
*Estimate

Source: Social Security Administration

Rising workloads, combined with funding cuts, caused the hearings backlogs to mount. [22] Even as the annual number of beneficiaries appealing their decisions is returning to pre-recession levels, huge backlogs from those peak years remain. The backlog of pending cases, which was shrinking before the funding cuts, has grown by over 50 percent since 2010, topping 1 million in 2015 (see Figure 4).[23] Meanwhile, the average wait for a hearing decision rose from 360 to 540 days between 2011 and 2016.

The hearings backlog has a high human cost. Waiting a year and a half for a final decision, as a typical appellant does, causes financial and medical hardship. Some applicants lose their homes or must declare bankruptcy while awaiting a hearing. Their health often worsens; some even die.[24] The longer that applicants wait for a final decision from SSA, the weaker their attachment to the labor force becomes — which makes it harder to find work when they finally get an answer, whether or not they ultimately receive benefits.

Cuts Impede SSA's Behind-the-Scenes Work, Hurting Beneficiaries

In addition to front-line service, SSA does a large amount of behind-the-scenes work to pay benefits accurately and on time. SSA's payment service centers handle tasks such as awarding widows' benefits when their spouses die, issuing back payments for DI beneficiaries who had to wait a year or more for a hearing, resolving complex claims issues, reinstating benefits or Medicare coverage when appropriate, and adjusting benefits for early retirees and disabled workers with earnings.

Because of budget cuts, beneficiaries wait far too long — four months, on average[25] — for SSA to complete these tasks, which are necessary to receive accurate and timely benefit payments.[26] This backlog creates unnecessary hardship for beneficiaries. For example, a retired widow must wait months after her husband dies to begin receiving her survivor's benefit. A disabled worker who promptly reports his earnings when he returns to work may receive overpayments for months, then have to repay them.

These backlogs cost the program as well. Though SSA aggressively pursues overpayments, for example, it takes additional work to do so, and some overpayments are never recovered despite SSA's best efforts.[27] In addition, many beneficiaries visit SSA field offices to ask about cases held up for long periods in SSA's payment service centers, which drives up traffic and wait times.

Mr. Larson. Does the Social Security Administration or the actuaries have projections about how the number of beneficiaries will grow in the next few years and in the decades facing the large number of baby boomers coming through the process?

Mr. Brune. Yes, Congressman Larson. The actuary updates those projections regularly.

Mr. Larson. And so it is only going to continue to grow.

My point here is that I think that the chairman needs to be applauded, as does the committee, for addressing the whole issue of fraud, but we can't continue, and I don't think we give enough credit to the frontline people, and I am going to ask Mr. Bagdoyan questions about the culture that has been established there, but I don't think we give them enough credit, and we can't continue to shrink them and see our waiting lists go up while we face this large number of baby boomers, like Mr. Pascrell, that are coming through the process. So I just wanted to make sure that we had those items for the -- that data for the record.

And, Mr. Bagdoyan, you talked at length about the culture of antifraud. Could you describe that more, about how -- when you did your findings that this was embedded within the Social Security Administration? And you mentioned different metrics that they are not performing up to. And my question would be, would they be performing them better if they had the staff and the capability and the technology to do so?

Mr. Bagdoyan. Well, sure, I would be happy to respond, Mr. Larson.

The culture, we did notice that there are multiple efforts underway. Training is one, 97 percent of staff had received antifraud training, for example, for fiscal year 2016, so that is an important number to hit.

The establishment of the OAFP as the central unit for antifraud activities is also a step in the right direction, and it also permeates a cultural shift, if you will.

And in terms of the resourcing question, that would be driven by strategy, which we referred to in our report and also I made a couple of remarks about. You have to have a strategy that will dictate to you what you exactly need, where, and when, and how to deploy it, in order to have a sense of the dollars and numbers and technology that you would need.

Mr. Larson. Even with this built-in culture, with the growth rate of Social Security, there are over 61 million beneficiaries now, and the projections are up to 10 years it will increase by 28 percent to over 78 million.

Do you think that that is going to require better staffing and an increase in staffing or do you think that we can continue at the current rates that we are at?

Mr. Bagdoyan. Well, again, the level of staffing will be dictated by what needs to be done. Right now I think OAFP has approximately 60 or so staff to oversee a rather enormous portfolio of benefits that are paid out, so that will have to be looked at as part of the strategic planning effort, but I can't really give you a number or even a guess as to how many people they would need.

You would also have to add processes and procedures as well as technology, coordination with stakeholders, and other factors to arrive at a whole.

Mr. Larson. Acting Social Security Commissioner Carolyn Colvin testified to Congress in 2012 about what was happening with the error rate and accounts of both overpayments and underpayments to beneficiaries. It was well below 1 percent, but she noted that back then, it was at 0.36 percent. What she observed then is that if Congress wished to reduce errors, the error rate further, it needed to stop squeezing the budget of the Social Security Administration. Would you agree with that?

Mr. Bagdoyan. Well, that was outside the scope of my work, but clearly resourcing would have to be looked at going forward.

Mr. Larson. Thank you.

Chairman Johnson. Mr. Kelly, you are recognized.

Mr. Kelly. Thank you, Chairman.

I know both of you come from a lot of experience in the private sector. And I think we are all concerned with funding and how things get funded, but in the private sector, we have seen pretty much the same evolution; as technology has developed, we have found out that we can do actually more sometimes with less and we have seen people pivoting to different ways of making a living.

What I am trying to understand, in 1990, there was fewer than two and a half percent of working age Americans were actually on the check. By 2015, the number stood at 5.2 percent. How did that change -- with all the technology, with all the changes, with all the things that we look at in lifestyles, what is driving that number? I mean, do either of you have an answer to that?

And then going through your private sector experience, what happens in the private sector when you experience these type of things, increasing money is usually the first thing people say, but then after that, you say, well, wait a minute, how much money can we continue to throw at a problem with the technology we have today, the ability we have today to cross-reference and data collection and analyzation? That does bring a degree of effectiveness and efficiency that you have to have in the private sector in order to stay in business.

So just from the perspective that you are both in in the private sector, not the government, where people actually have to pay for things out of their own pocket and actually make a dollar stretch farther by being more effective and more efficient, what do you see that is taking place right now?

Quite frankly, I don't mind spending money as long as it is a positive return on the investment for taxpayers. Spending money for the sake of spending money is saying the answer is we have to have a bigger government with more people involved and spend more money. To me, that is not the answer. It doesn't work in the private sector.

So if you can just give me your experience in the private sector and what you would see differently about what you are doing right now as opposed to what you did before?

Mr. Brune. Thank you, Congressman Kelly. I think that the efforts that we are undertaking right now align well with the GAO's framework, which is, I believe, inclusive of both Federal risk management as well as private sector risk management best practices.

Our interest is to move more of our analytical resources earlier in the process so that we are preventing rather than chasing after, the fraud has been perpetrated. It is important to continue prosecutions. The convictions and restitution orders serve as is a good deterrent for folks who think they may want to rip off the American public. However, the best action, we believe, is prevention upfront. Our employees do that through identifying anomalies or suspect transactions.

Technology is going to aid us substantially. The amount of data that an individual can review and analyze is much less than what our software can analyze. The package we procured has 12 distinct technology capabilities, helping us analyze, report, manage those cases better so that we identify earlier and take quicker actions.

Mr. Kelly. Okay. If you can, any explanation for the growth, because a lot of the work that people do today is less stressing on them physically because of the development that we have seen on on-the-job actual work that has really relieved a lot of the stress on people physically. How did it grow? How did it double from 1990? How in 20 some years, 27 years did we see this growth that should have been -- I think we should see it going down in working age people, not going up.

Mr. Brune. Right. Our actuary has reported that growth in the program number of beneficiaries is largely attributable to demographic factors, the aging of the baby boomers, as well as the growth of participation in the workforce by women.

Indeed, some of the nature of work has changed, and that has allowed folks to both enter and exit the workforce more readily as well as stay in the workforce longer, but the primary factor is the aging of the baby boomers.

Mr. Kelly. Mr. Bagdoyan, we are almost out of time.

Mr. Bagdoyan. Yes, Mr. Kelly. I would echo much of what Commissioner Brune just mentioned. This document is all about prevention. You have to front load your controls, predictive data analytics, which are widespread in the private sector.

I know from one of my credit card companies always flags me for things that look out of the ordinary with a quick phone call to say, is this you making this rather large purchase. So they have ways of flagging these things that really don't look quite right, and that is definitely one of the items in the toolbox for Social Security Administration that is absolutely needed.

But I will also go back to my original point about an overall strategy driving all these things, so that is important to get upfront and get it right.

Mr. Kelly. I appreciate you both coming, but it is hard in 5 minutes to get to some of these things. I think we are all concerned that Social Security stay solvent, but participation in the workforce, we all know where the revenue comes from, but I am still concerned. I don't know how things would have doubled. With the advancements we have had for on the job people, why they would be experiencing these trends, it doesn't make sense to me. But thank you both for being here.

Thank you, Chairman.

Chairman Johnson. Mr. Pascrell, you are recognized.

Mr. Pascrell. Thank you, Mr. Chairman. And thank you to our panelists. Both of you have terrific backgrounds, and we are honored to have you before the committee.

I would like to start by asking a question to Mr. Bagdoyan?

Mr. Bagdoyan. Yes.

Mr. Pascrell. Can you describe further, I know you started to do this before, what it means to have an antifraud culture at any agency, particularly the one we are talking about now, and how the GAO found this to be embodied in the Social Security Administration? Could you be as brief as possible, but direct as possible?

Mr. Bagdoyan. Yes. Absolutely. Well, the culture is the sense of importance that would permeate the agency to take this issue very seriously. It comes tone at the top and it is embedded throughout the organization at its multiple levels.

Mr. Pascrell. So your estimation, in other words, is that the SSA does have this as a priority? No question in your mind about that?

Mr. Bagdoyan. I think they have taken a lot of significant steps in that direction. It is going to take a long-term effort to sustain that, which is as important, if not more important. Absolutely.

Mr. Pascrell. Thank you. I want to reiterate the statements made by my colleagues, on both sides of the aisle, that the integrity of Social Security, that program, is crucial. I mean, somehow folks got the idea that if we stop fraud, which is critical, that we will be able to sustain Social Security. No one is saying that here today. We know, however, it is an intricate part of what we are doing and a very important part. So maintaining vigilance is the responsible way to govern and the right thing to do for our constituents.

I am proud of the enhanced funding that we have been able to secure to combat fraud, but as a new subcommittee member here on this committee, I know a trend over the years. This is the eighth hearing on fraud since 2012. We need oversight, to be sure, but I want to make sure we are keeping the entirety of the Social Security program in perspective.

We need to continue to push to ensure that the Social Security program is strengthened for years to come, which is why I am proud to support Congressman Larson's efforts in the Social Security 2100 Act. It is the only in depth proposal that has really been made about Social Security.

The SSA's mission is not just to make sure that the wrong people don't get benefits, but that the right people get their benefits, and this is why we need to keep an eye on the budget. And you have heard some things today that are pretty alarming to me in terms of the increase in population that you serve.

Do you have a dollar amount, Mr. Brune, in your mind of estimate of fraud in the general program we call Social Security?

Mr. Brune. Congressman Pascrell, thank you for the question. I do not have a dollar amount of the general amount of fraud. As GAO has recommended, we are looking to be data driven. What we are doing is assessing the program for risk. We are going to make that risk assessment with our disability prevention units, our disability examiners that actually adjudicate claims that involve fraud. They are our agency experts. We are going to base our actions on their experience, what they have seen in actuality both as far as frequency and types of incidents.

Mr. Pascrell. You do have data for the last 10 years, obviously, and you looked at that data. You certainly can begin to extrapolate some things as to where we are going. Is it worse than we thought in that direction too, so that it helps you in prospective budgets in the future, I would think.

Mr. Brune. Well, Congressman Pascrell, as I said, any amount of fraud is too much, and --

Mr. Pascrell. Well, of course.

Mr. Brune. Yes. And we are take --

Mr. Pascrell. I am not trying to minimize fraud. What I am tying to do is -- are we doing what we are supposed to be doing to help you do your job, because we do not know the massiveness of the fraud. I had no idea.

Mr. Brune. This Subcommittee has been extremely helpful in providing new tools to the agency, the stiffer penalties, the updating of the civil monetary penalty amounts, the expansion of the CDI program, all in recent legislation have provided us tools that we need to ensure that the program is safe from fraudulent activity.

Mr. Pascrell. Which part of Social Security has most of the problems of fraud, disability, SSI, general programs, children?

Chairman Johnson. Your time has expired.

Mr. Pascrell. I am sorry?

Chairman Johnson. Your time has expired, sir.

Mr. Pascrell. Can I get that one question in, sir?

Chairman Johnson. All right.

Mr. Pascrell. Thank you.

Mr. Brune. Our strategy covers all of our programs, retirement, survivors, and disability insurance.

Mr. Pascrell. I know that, but which one is the worst?

Mr. Brune. We are vigilant on all programs because we have found issues in each type of program.

Mr. Pascrell. Thank you, Mr. Brune.

Thank you, Mr. Chairman.

Chairman Johnson. You bet.

Mr. Renacci, you are recognized.

Mr. Renacci. Thank you, Mr. Chairman.

I want to thank the witnesses for their participation in today's hearing.

Additionally, I want to thank Chairman Johnson for holding this hearing. Hearings have become somewhat novel these days, but it is a great way for us to listen and hear from witnesses.

I am encouraged to hear that in recent years the SSA has been proactive in taking steps to reduce fraud, I am pleased to see the collaborative efforts that have been implemented through the National Antifraud Committee, and the recent installation the IBM counter-fraud management software. These are positive steps in the right direction. However, I think that more can be done, and that we owe it to our constituents to continue working to stay ahead of criminals and further reduce fraud. As I have already heard already, $1 of fraud is $1 too much, so I appreciate your efforts.

Throughout my business career, I found that my employees and I were most successful when we set achievable goals and identified the appropriate steps to accomplish our goals. That ensured that every member of our team knew the desired outcome and could be held accountable when target goals were not met.

Mr. Brune, I found it interesting that the GAO report had found that the SSA does not track many of its antifraud initiatives through outcome-oriented metrics. It was on page 6 of the GAO testimony. Can you discuss the steps that the SSA is taking to evaluate the effectiveness of the antifraud initiatives that are being led by the SSA?

Mr. Brune. Thank you. Yes, Congressman. The GAO report did also note that we do have some metrics. We just need to improve them, and we are working hard to do so. You are correct, and we agree, we have more important work to do, as the chairman said.

Part of what we are doing is in the software that you mentioned, the counter-fraud management tool, that tool will improve our reporting capability. It has inherent case management and reporting functionality, which is an improvement over what we use right now, which is largely manual counts and special runs from our databases, special queries into our databases.

In addition, we have already consulted with our Office of Inspector General to get their input on which outcome-oriented metrics that they believe would be most helpful for us. We have started the process of doing the fraud risk assessment of the disability program as GAO recommended. That, as I said in my statement, will be complete by the end of the year.

That will inform our efforts. I want to underline this point in response to a question Mr. Pascrell raised, we are taking a risk-based approach; we are going to devote our attention first to the highest risk wherever those risks lie, at the initial claim level, at the reconsideration level, or at the appellate level. We are taking an entire focus on the program and focusing on the biggest problems first.

Mr. Renacci. I appreciate that. And, again, that gets back to the business model Mr. Kelly talked about. I mean, I was in business as well. And as I travel my district, I continue to hear about businesses who are doing more with less, and they are using more analytical tools to do more of the job that needs to be done, so I appreciate that we are looking toward that, because I think that is important. We need to use those tools. And it is just not about throwing more money or more staff; it is about using the tools we have. So I appreciate your work in moving in that direction.

Mr. Brune, in your testimony, I think you accurately described the employees who work in the field offices around our country as the front line in protecting against potential fraud and abuse. I think that is important too. You have to get it in the beginning. It is a lot more costly at the end.

You mentioned that starting in 2004 there was now annual training for all agency and DDS employees on antifraud measures. What has been the result of that increased training?

Mr. Brune. I think this gets to the question of relative importance of the priority. It has increased at all levels of the organization, the awareness that our anti-fraud responsibilities are a significant responsibility, that every one of us plays a role in identifying an issue, reporting it, and making sure that the inspector general has the information they need to properly investigate the allegation.

We also support our employees throughout the country, not only in our fraud prevention units, but in addition to our field offices and hearing offices. We support the investigation process by providing the inspector general information that they think would be valuable for them as investigative leads.

So as they are investigating cases, we help them develop that information.

Mr. Renacci. One last question, I know I am running out of time. There are bad guys in every one of these agencies. There are bad lawyers working with every one of these agencies. Are we working with the other agencies so if they know the bad attorneys that are causing some of these issues so we can cross-reference them? What are we doing with that?

Mr. Brune. That is a great question, and the answer is yes. We are part of an interagency working group with Federal benefit-paying agencies. We use that working group to share information about proven practices as well as to explore data sets that would be of high value interest to us. The more data we have to look at, the more our software tool can identify these anomalies, and so we are working with all Federal-benefit-paying agencies to coordinate our efforts.

Mr. Renacci. Thank you.

I wasn't picking on my attorney colleagues or friends, but I yield back.

Chairman Johnson. Thank you.

Mr. Schweikert, you are recognized.

Mr. Schweikert. Thank you, Mr. Chairman.

Forgive me, is it Bagdoyan?

Mr. Bagdoyan. Yes, Bagdoyan, Mr. Schweikert.

Mr. Schweikert. Can you walk me through just a couple things. I am sure it is in here somewhere, I just haven't been able to find it. First off, in bad acts, fraud, how many are being found in the requests for benefits and what is being found when someone is already receiving benefits? What have you found differently?

Mr. Bagdoyan. Well, for me, it is a hard question to answer because that was not in our scope of work. I think from what I have seen, it is distributed fairly evenly.

Mr. Schweikert. Okay.

Mr. Bagdoyan. The risk assessment that we are talking about is what would get to those kinds of things, whether you are talking about the bread and butter type of fraud schemes versus the big black swans, you know, low probability but high consequence type of things that I think the chairman alluded to in his examples.

So it is -- where the paperwork comes in, it is evaluated, it is signed off by a physician, for example, adjudicated by an administrative judge, that is a continuum. So where it starts is obviously with the bad paperwork that, as part of the conspiracy in this case, runs throughout the process of benefit.

Mr. Schweikert. But you could appreciate the elegance of finding that there is a bad act in the initial part of the process and not, you know, a year or two into payments being received?

Mr. Bagdoyan. Correct.

Mr. Schweikert. Can I walk you through -- and I was trying to make notes to myself to try to find an elegant way to say this, but --

Mr. Bagdoyan. Sure.

Mr. Schweikert. -- there is a difference between an algorith- --

Mr. Bagdoyan. Algorithmic.

Mr. Schweikert. Algorithmic mechanism that says, hey, these attributes tie into these attributes, these attributes this person goes up on the risk profile, and a data capture model. And my fear is building algorithms is wonderful except for there is a small problem: in some ways it is a couple decades out of date in the way we find fraud.

The fact of the matter is you used your credit card example, the credit card example is capturing a data capture at that second. That second says, hey, he is buying sky diving equipment, except we --

Mr. Bagdoyan. He doesn't skydive.

Mr. Schweikert. -- we have never seen him being a really big outdoors person. And in today's world, particularly -- let's say I come and make an application. There are the commercial databases, but the ability to even touch, say, green light, red light on my income model, how much was passive, how much is active, you know, I mean, these databases now know what type of ice cream I eat, how many of us all here use a Safeway shopping card or that type and -- you know, when we are buying something, and the levels of data even down to the value of my home, the value of my income, the value of my activities, the analysis of what I have been buying on my credit card.

Do we see any movement to use data capture to immediately say, hey, there is something here that does not line up with the types of application, instead of saying, let's build an algorithm and look for outliers?

Mr. Bagdoyan. Right. Yeah, I think the system that Commissioner Brune mentioned, which came into being after our audit work was completed, so I don't have much insight into it, but it sounds like, if you would care to explain that a little bit more --

Mr. Schweikert. And so the simple question is are you reaching out and tagging, capturing data from commercial and private databases?

Mr. Brune. That is in our plan, Congressman. As I said in my statement, we wish to have an integrated, multi-faceted, realtime approach, and I think that is what you are describing.

Integrated meaning multiple data sources, including the information that our employees observe and that they enter into the system.

Multi-faceted meaning, internal, external data sets possibly. And realtime meaning when the data is entered into the system.

Mr. Schweikert. And forgive my instinct, and maybe I am excessively data-centric, I believe you are doing it backwards, absolutely backwards.

Has there been a calculation done on what the cost per prosecution, you know, successful prosecution has been --

Mr. Bagdoyan. I am not aware of it at GAO.

Mr. Schweikert. -- where you can do the all-in costs of the cost of staff, the cost of office, the cost of -- you know, everything that has gone into that, and saying we have had these many prosecutions that are successful? I am just very curious right now in the model that is being used, because it sounds very human centered in a world of data. I am just curious, what is our cost per bad actor caught?

Mr. Bagdoyan. Yeah. I would -- I would not know, and I don't think GAO has looked into that, sir.

Mr. Schweikert. Any?

Mr. Brune. Congressman, as I stated in response to a prior question, we are very interested in moving from a pay and chase into a prevention model. And I believe our expansion of the cooperative disability investigation units, which this subcommittee has supported --

Mr. Schweikert. Do you know your cost per prosecution right now, successful prosecutions, your all-in cost?

Mr. Brune. I would defer to our Office of General Counsel, but I think we could provide you that --

Mr. Schweikert. Could you make a note --

Mr. Brune. We could provide you an answer for the record.

Mr. Schweikert. -- and find that for me?

And with that Mr. Chairman, I yield back.

Chairman Johnson. Mr. Rice, you are recognized.

Mr. Rice. Thank you, Mr. Chairman. And very interesting hearing. I always learn a lot at these hearings.

Mr. Brune, you said earlier that, and it goes really to what Mr. Schweikert was just asking you about, in 2015, I may be quoting the numbers wrong, 113 convictions and you recovered $14 million. And you said you were putting people in the U.S. Attorneys Offices around the country. What kind of people? Are these are lawyers you are putting in the U.S. Attorneys Offices?

Mr. Brune. Yes, sir. They are fraud prosecutors, they are general counsel employees who are on loan to the Department of Justice, U.S. Attorneys Office.

Mr. Rice. Have you found that -- you know, in South Carolina, I was a tax lawyer for 25 years, and for the first 10 years of my practice, the local solicitors, local district attorneys were the people who were responsible for prosecuting tax fraud, and they weren't interested in doing that, so it was hard to get somebody to pursue it, so the State appointed a special attorney general that oversaw tax fraud, and all of a sudden, the prosecution of these cases mushroomed.

Is that the same kind of thing with U.S. attorneys? Are they hesitant to pursue these Social Security fraud cases? Is that why you are putting people in their offices?

Mr. Brune. We have a successful partnership with the Department of Justice. They have, you know, vast responsibilities, but there are prosecutorial thresholds in different jurisdictions, and that is one of the reasons why we have partnered with them for the fraud prosecution project.

Mr. Rice. How many lawyers -- these people are lawyers? How many people are you putting in -- how many have you --

Mr. Brune. A couple dozen.

Mr. Rice. A couple of dozen? So you have got 24, less say, 25, and they have got 113 convictions in 2015 and they recovered $14 million. So that kind of gives you a little cost-benefit analysis right there.

Do you know, these people who are getting these convictions, I am sure a lot of them are guilty pleas, are they going to jail? I mean, are they suffering real consequences from this?

Mr. Brune. Real consequences, yes. I would say there are cases which have included imprisonment. Restitution is significant in most of these convictions, or plea agreements.

Mr. Rice. Now, I know that, you know, a lot of these are just individuals who are defrauding the government, but in some of these cases, there are massive conspiracies that involve government employees. And what really, really just bothers the heck out of me, it is like this thing with the veterans in Phoenix, you know, these government employees lie on these forms and kill people, yet they remain government employees, because the Federal employees unions are so strong and they have so many protections, that we can't fire them, and they still get their pensions even though they are killing people.

So what I am curious about, these two massive frauds that are listed in our materials here, the thing in New York where there were 134 indictments, $14 million recovered, is that judge, is he still a judge, is he still getting paid, is he still --

Mr. Brune. The judge was involved in the West Virginia case.

Mr. Rice. Okay.

Mr. Brune. And, no, he is no longer a judge.

Mr. Rice. You know, I read in these materials anecdotally that he lives in Myrtle Beach, South Carolina, now, which is where I live. That is my district. That is the city I live in. Interesting. I need to look this guy up, David Daugherty, said that there were 1,700 claimants, and that -- the attorney now has pled guilty, but apparently this fellow, he is out fine, living in Myrtle Beach. I wonder if he has an oceanfront house.

Is he still drawing a Federal pension?

Mr. Brune. Congressman, as you rightly observed, we do not have, under current statute, the authority to revoke his pension. However, if a Federal employee is involved in a fraud conspiracy as you just described, a court order could require restitution, and so, therefore, the pension would be offset until Social Security is restored.

Mr. Rice. Let me ask you, if we put forth a legislative fix for that, I mean, would that be something that you would support, that people who are found guilty of these massive fraud type things, they would lose their Federal benefits, all of them?

Mr. Brune. We would be happy to talk to you about that.

Mr. Rice. I yield back my time.

Chairman Johnson. Thank you. And Mr. Larson, you are recognized for 1 minute.

Mr. Larson. Thank you again, Mr. Chairman.

I just wanted to point out a couple of things. Number one, I agree with my colleagues you learn an awful lot just by sitting and listening to the questions that your colleagues have.

I too was in the private sector, I ran a business myself and know what it is like to meet a payroll, and really do appreciate the fact that you can oftentimes do more with less, especially, you know, if you have the right tools than if you have the right technology available to you.

But I just note here for the record, Mr. Chairman, that I believe as of 2016 the Social Security Administration has already instituted its own hiring freeze. Is that correct?

Mr. Brune. Yes, sir.

Mr. Larson. It is not replacing employees due to loses, due to attrition has, severely restricted overtime, closed offices and reduced the hours that remaining offices are open

to the public, cannot fulfill the statutory mandate to mail Social Security statements to taxpayers and has cut back substantially on other expenditures, most notably for example, IT spending, which is 30 percent lower than it was in fiscal year 2015.

Now, as any good businessman would understand in the face of this, and especially if you are in a service oriented business, which I happened to be when I had my small business, that you have got to make adjustments.

And this culture that Mr. Bagdoyan was talking about, and I think the points that my colleagues made about what we need to do in terms of conviction, in terms of the actual penalties and actually in fact poster child for that if you abuse this system, what are the consequences, what are the results? And for any Federal, any employee or any conspiracy that exists, they deserve the maximum amount of punishment. And we should do everything we can to make an example out of that.

By the same token, the very thing we are trying to create this culture within, which would save us money by making sure that we are dropping, you know, by having the frontline members who are actually carrying out these functions, it just seems to me that, you know, doing more with less is great, unless you are overwhelmed by the numbers and it just seems apparent that with the large number of baby boomers coming in, I don't know if there has any been any metrics that say, Mr. Bagdoyan, how we are going to be able to deal with this large increase given both the attrition, and the hiring freeze, and everything that is currently going on.

Mr. Rise. Would the gentleman yield?

Mr. Larson. Sure.

Mr. Rice. If there were 24 of these special prosecutors and they recovered $14 million that is what about half a million dollars a piece? I will tell you what, they pay for themselves.

Chairman Johnson. I want to thank my colleagues for being here. And we all agree that disability fraud is a serious issue and we need to make sure that fraudsters don't continue to benefit at the expense of hardworking taxpayers.

While Social Security has taken important steps to prevent fraud, there is still work to be done. And I am committed to working with Social Security and all of my colleagues to make sure the agency has all the tools it needs to stop fraud.

I want to thank our witnesses for their testimony and thank you also to our members for being here. With that the committee stands adjourned.

[Whereupon, at 11:04 a.m., the subcommittee was adjourned.]

MEMBER QUESTIONS FOR THE RECORD

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The average cost per Social Security Special Assistant U.S. Attorney (SAUSA) is about $167,000. This includes payroll and benefits costs. In FY 2016, the projected total was $4 million.

Thank you Mr. Chairman, and thank you to the witnesses for being here with us today.

I agree with the sentiments of many of my colleagues: fraud is never okay. Not only does fraud waste taxpayer dollars, it jeopardizes the program for those who truly need it. Those who have worked a majority of their lives paying in to Social Security, and now need some support due to a tragic accident, or a life altering illness. Disability Insurance, like Social Security Old Age Insurance, is an earned benefit. And it is vital to protect the program from fraud and abuse so those who truly need it are able to access their earned benefits.

While there have been some recent examples of elaborate schemes of crooked judges and dishonest lawyers filing fraudulent claims, Social Security disability fraud is rare. In 2016, disability insurance had a combined overpayment and fraud rate of just .36 percent.

More often than not, it is Social Security's front line employees who are the ones uncovering schemes, or denying claims they believe to be fraudulent. We don't hear about most of these claims, because Social Security employees are doing their jobs well.

Congress has not been inattentive to the limitations of the Social Security Administration in combatting fraud. The 2015 Bipartisan Budget Agreement provided some much needed funding to help fight fraud, it tightened penalties for violating the public trust, and created stricter guidelines for filing claims.

And Social Security has made significant improvements too, establishing an agency wide anti-fraud team, setting up special units to focus on uncovering fraud, and expanding the use of data analytics to detect patterns of fraud.

These initiatives will help Social Security's front line employees identify fraud. However, it is also these very employees that are the most effected by the budget constraints imposed by Congress. The number of Americans filing for Social Security Disability Insurance is expected to grow year after year.

At the end of 2015, 8.9 million disabled Americans received disability insurance. By 2020, that number is projected to increase to 9.3 million and to 9.8 million by 2025.

That's nearly 1 million new recipients over the next 8 years, and many more cases than that to be reviewed. However, despite this ever increasing work load, Social Security has been flat funded since 2010. We keep expecting Social Security to do more and more with less and less.

If we are serious about eliminating disability insurance fraud at Social Security, we need to provide employees with the resources they need to be successful.

Questions:

Mr. Brune, on average, how many cases do each of the front-line employees see per year, and how does that compare to 2010?

Do you expect the number of cases assigned to each employee to increase over the next five or ten years?

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May 25, 2017

Mr. Sean Brune
Assistant Deputy Commissioner,
Office of Budget, Finance, Quality, and Management
Social Security Administration
6401 Security Boulevard
Woodlawn, MD 21207

Dear Mr. Brune:

Thank you for your testimony before the Committee on Ways and Means at the April 26, 2017 Social Security Subcommittee hearing entitled "Stopping Disability Fraud: Risk, Prevention, and Detection." In order to complete our hearing record, I would appreciate your responses to the following:

1. One of the key findings of the Government Accountability Office's (GAO's) review of the SSA's anti-fraud initiatives was that, of the 17 SSA anti-fraud initiatives reviewed, 10 didn't have outcome-oriented metrics, and four didn't have any metrics at all. How is the SSA improving its metrics to become more outcome oriented?

2. Please provide a detailed plan of how you will conduct the fraud risk assessment recommended in the GAO report, and include timelines and milestones.

3. The SSA isn't the only federal agency with an appeals process that allows attorneys to represent claimants. The SSA has a process to ban lawyers from continuing to represent Social Security claimants. If a lawyer has been banned from another agency, CMS or the VA for instance, is this information automatically shared? If so, what is the process and how often is it shared? If not, what is stopping you and other agencies from working together to identify bad actors?

4. How many cases per year has the SSA presented to US Attorneys over the past ten years? Of those cases, how many were forwarded for prosecution, and how many were forwarded for civil action?

a. Of those cases forwarded for prosecution, how many were prosecuted and how many were declined? Of those prosecuted, how many resulted in a conviction?
b. Of those forwarded for civil action, how many were accepted and how many were declined? Of those accepted how many were found in favor of the US Government?
c. Of those declined for criminal or civil action, how many have resulted in civil monetary penalties or sanctions?

5. The SSA recently awarded a contract to IBM to provide anti-fraud software. What do you expect to be able to do with this product that you can't do now and how soon will it take to integrate into the SSA's systems? Please provide a timeline and milestones for this project.

I would appreciate your responses to these questions by **June 8, 2017**. Please send your response to the attention of Amy Shuart, Staff Director, Subcommittee on Social Security, Committee on Ways and Means, U.S. House of Representatives, 2018 Rayburn House Office Building, Washington, DC 20515. In addition to a hard copy, please submit an electronic copy of your response in Microsoft Word format to mm.russell@mail.house.gov.

Thank you for taking the time to answer these questions for the record. If you have any questions concerning this request, you may reach Amy at (202) 225-9263.

Sincerely,

Sam Johnson
Chairman
Subcommittee on Social Security

PUBLIC SUBMISSIONS FOR THE RECORD

Committee on Ways and Means Subcommittee on Social Security
U.S. House of Representatives
Hearing on "Stopping Disability Fraud: Risk, Prevention, and Detection"
Hearing date: April 26, 2017

Statement of Shannon Benton, Executive Director
The Senior Citizens League
909 N. Washington Street, Suite 300, Alexandria, VA 22314
http://www.seniorsleague.org / (703) 548-5568

**THE SENIOR CITIZENS LEAGUE STATEMENT ON THE
SOCIAL SECURITY DISABILITY INSURANCE PROGRAM**

Mr. Chairman and Members of the House Ways and Means Committee's Subcommittee on Social Security, my name is Shannon Benton. After serving for 14 years in the United States Army, I have been on staff with The Senior Citizens League, which also is known as TSCL, since 1999, and now serve as its Executive Director. Both TSCL and I share your deep concern about senior citizens, including the need to protect the Social Security programs on which this nation's senior citizens rely. It is a pleasure to submit this statement on behalf of TSCL on this very important issue.

Founded in 1995, the Senior Citizens League ("TSCL") is one of the largest nonpartisan seniors groups in the United States, with over 1 million members and supporters. TSCL's members consist of vocally active senior citizens concerned about the protection of their Social Security, Medicare, and veteran/military retiree benefits. TSCL's mission is to promote and assist members and supporters, to educate and alert senior citizens about their rights and freedoms as United States citizens, and to protect and defend the benefits senior citizens have earned and for which they have paid. TSCL has led the way on fighting threats to retirees, such as that posed by providing benefits to illegal aliens under the proposed U.S.-Mexico Social Security Totalization Agreement. TSCL also has exposed the manipulation of the Consumer Price Index by the Bureau of Labor Statistics, which has the effect of reducing the Social Security COLA.

In 2015, TSCL conducted a survey of its members and provided a report to Congress evaluating and proposing specific ways in which the financial hemorrhaging of the Social Security Trust Funds can be brought to an end, with the financial stability of both Trust Funds protected, through Congressional adoption of meaningful reforms. Also, in August 2015, TSCL submitted a statement to the Senate Finance Committee and the House Ways and Means Committee on "Strengthening SSDI: Ideas and Priorities from The Senior Citizens League." On January 20, 2017, TSCL issued a White Paper on "Curtailing Waste, Fraud, and Abuse in the Social Security Disability Insurance Program." TSCL is continuing to work on other ideas for reform of the DI Program, using the Freedom of Information Act to obtain never-before released information as to the specific problems in the system, and will then use that information to craft legislative proposals for common-sense reform in the program.

EXECUTIVE SUMMARY

The Social Security Administration ("SSA") administers not only the nation's Social Security Old-Age Insurance Program ("OASI") providing earned retirement benefits, but also the Disability Insurance ("DI") program. Together known as the "Old-Age Survivors and Disability Insurance Trust Fund" ("OASDI Trust Fund"), the program is funded by a payroll tax of 6.2 percent each from employers and employees (for a total of 12.4 percent) on wages, up to a limit of $127,200. Prior to 2015, 81 percent of revenue went to the OASI Fund, and 19 percent was deposited into the DI Fund. Based on those figures, the 2015 Annual Report of the Trust Funds Trustees projected that the OASI Trust Fund would be sufficient to cover program expenses until **2033**, but that the DI Trust Fund would be depleted by **late 2016**.[1]

Of the two funds, it is the DI Trust Fund that has been under the greater pressure, being required to pay benefits far in excess of anything Congress previously anticipated, due to the fact that the DI program has serious problems. This threatens the financial integrity of not only the DI program, but also the Social Security retirement benefit program, which has been tapped repeatedly by Congress to cover losses in the DI program. Although it began in 1956 as a small program, the DI program has increased dramatically in size in recent years to where, in 2015, **its total annual cost was approximately $140 billion**, and there were almost **11 million** persons receiving DI benefits. The average lifetime benefit for a DI recipient is approximately $300,000.[2]

Rather than address problems inherent in the DI program, in October 2015, Congress chose to do what many members previously had promised not to do — transfer income from the OASI Trust Fund to the DI Trust Fund to "kick the can down the road." In the Bipartisan Budget Act of 2015, P.L. No. 114-74, **Congress allocated 0.57 additional percentage points of the OASI tax to the DI Fund for the years 2016, 2017, and 2018.** This reallocation of the payroll tax to the DI Trust Fund is projected to extend the date of depletion of the DI Trust Fund reserves from the end of **2016 until the end of 2022**. However, it also has the effect of leaving less money in the OASI Trust Fund available to pay retirement benefits to retirees, and hastening the date of depletion of the OASI Trust Fund.

The Social Security Administration has already admitted several flaws in the DI program in testimony to Congress. For example, many DI applicants have been shown to have exaggerated the extent and length of their injuries to collect disability payments, and once receiving DI benefits, have no desire to return to work even if physically able to do so.

In this statement, TSCL explores the history of the DI Fund, its original function, its current poor administration, and why payments from the fund have grown exponentially. We

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[1] If allowed to become depleted, under current law, benefits paid from the DI Trust Fund automatically would be reduced to correspond to the Fund's current income levels. *See* https://www.ssa.gov/oact/tr/2015/tr2015.pdf.

[2] *See* CBS News 60 Minutes, "Disability, USA," http://www.cbsnews.com/ news/disability-usa/.

also review and make proposals to modify its operation. If Congress intends to save the OAS and DI programs from collapse, the time to act is now, before it is too late.

ANALYSIS

The federal DI Program is hemorrhaging money. In 2015, the DI Trust Fund had total receipts of $118.6 billion, but had $146.6 billion in total expenditures, resulting in a decrease in trust fund assets of $28.0 billion for that one year. At the end of 2015, the total DI Trust Fund balance was only $32.3 billion,[3] with the certainty it would be unable to pay all claims before the end of FY 2016. As a result, in late 2015, Congress rearranged payroll taxes to shift billions of dollars from the retirement trust fund to the disability trust fund during 2016, 2017, and 2018. The abusive nature of this stop-gap measure illustrates why every person who receives Social Security retirement benefits (or expects to receive them in the future)[4] should be concerned as to how this problem occurred and how to fix it.

When the OAS program was created, it provided benefits to certain retired workers and their dependent family members, and to survivors of deceased workers. In 1956,[5] Congress created the DI Program to provide benefits to certain disabled workers, their spouses and widows/widowers, and children. SSA administers these programs together, managing them with two separate trust funds, the OASI Fund and the DI Fund.

As is the case with most government programs, since the enactment of the **Social Security Act** ("the Act") in 1935, the **OASI program** has been expanded numerous times, almost always increasing the number of persons receiving benefits, increasing the amount of the benefits paid, and expanding the purposes for which benefits are paid — often without providing the additional revenues to pay those benefits. In 1939, the Act was amended to provide dependents benefits and survivors benefits, and has been further amended numerous times since then in ways beyond the scope of this statement.

Since its inception in 1965, the federal **DI program** has provided for cash benefits to disabled workers age 50-64, and to certain adult disabled children of retired, disabled, or deceased workers. In 1958, DI was broadened to provide benefits to dependents; in 1960, to permit those under age 50 to receive benefits; and in 1967 to provide benefits for disabled spouses. In 1972, the waiting period was reduced from six months to five months, and the age before which a "childhood disability" must have begun was increased from 18 to 22. Also, Medicare coverage was extended to persons receiving disability benefits for 24 consecutive months.

The singular federal effort to bring restraint to DI spending occurred in 1980, after Congress witnessed unexpected growth in the program, and faced the stark reality that few

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[3] https://www.ssa.gov/OACT/STATS/table4a2.html

[4] In fact, 94 percent of "millennials" seem to understand what Congress apparently does not — that the Social Security system is failing — and thus they do not expect to receive benefits when they retire. https://www.fool.com/retirement/2016/08/06/94-of-millennials-believe-this-is-the- fate-of-soci.aspx.

[5] *See* Social Security Act Amendments of 1956.

persons receiving disability benefits ever returned to work. The 1980 legislation limited disability benefit levels, established a periodic review of continuing disability requirements, enhanced rehabilitation and work incentive provisions, and withheld payment of benefits to incarcerated felons. Since 1980, however, Congress has done nothing to reign in the OASDI programs.

In 1982, Congress was back to expanding the DI program, passing legislation ensuring that benefits could continue during an appeal of a decision to cease benefits, and giving claimants the right to a face-to-face evidentiary hearing at the reconsideration level of appeal. The Social Security Act Amendments of 1983 (which raised the age to qualify for full Social Security retirement benefits) allowed disabled workers and widows/widowers to remain on the DI rolls for up to an additional two years before "converting" to age-based benefits.

In 2014, the average annual payment to Disabled Workers of $13,985 exceeded the poverty level that year, which was $11,670. Additionally, many beneficiaries also receive DI benefits for their spouses and/or their children. Moreover, the average annual payments does not include the multitude of public and private benefits which the disabled **workers** and their families receive. The result of these continual program expansions, uncoupled with any corresponding way to pay for them, has resulted in a **75-year unfunded obligation** of the OASDI Trust Funds which now has reached **$14.2 trillion**.[6] That's trillion — with a "t."

The problem of inadequacies in the DI Trust Fund is nothing new. As The Senior Citizens League has reported,[7] on 11 occasions before 2015, Congress reacted to DI Trust Fund insolvency problems with short-term solutions, by **"borrowing" funds from** the **OASI Fund**.[8] This short-term rebalancing or reallocation of funds has been decried by many for years as an unsatisfactory method of avoiding the urgency of the DI Trust Fund solvency problem, and as Congress refusing to face up to the need for an actual legislative solution to protect the solvency of the DI Trust Fund. In other words, it is like rearranging the deck chairs on the Titanic.

What's more, Congress' 2015 reallocation of OASDI funds was in direct conflict with a rule that had been adopted by the House of Representatives at the outset of the 114th Congress, on January 6, 2015, designed to prevent consideration by the House of any bill that would permit such a reallocation of the payroll tax.[9] That rule was designed to prohibit legislation authorizing the transfer of funds from the OASI Trust Fund to the DI Trust Fund, unless Congress first enacted legislation to address and improve the program's long-term finances.[10]

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[6] *See* R. Boccia & R. Greszler, "Social Security Programs Face Depletion in Near Future," The Daily Signal (June 28, 2016); *see also* 2016 Trustees Report at 75, Table IV.B6.

[7] *See* "Are Social Security Benefit Cuts More Likely?", The Social Security and Medicare ADVISOR, March 2015, http://seniorsleague.org/social-security- benefit-cuts-likely/.

[8] http://www.ssa.gov/OACT/ProgData/describeoasi.html.

[9] The rule, H. Res. 5, was introduced by Congressman Kevin McCarthy (R-CA-23). The provision governing Trust Funds was supported by Chairman of the Subcommittee on Social Security Sam Johnson (R-TX-3).

[10] *See* https://www.congress.gov/bill/114th-congress/house-resolution/5, Section 3(q) of House Resolution 5.

Both Congress and the SSA are now treating the DI Trust Fund solvency problem as having been cured — until the end of 2022 — but that is not the case.[11] Unfortunately, without public pressure from those who rely on Social Security retirement benefits, Congress can be expected to avoid the next crisis in the DI Trust Fund in the same way — by robbing Peter to pay Paul.

A.   PROCEDURES FOR OBTAINING DISABILITY BENEFITS.

The procedures for determining eligibility for disability benefits and the amount of those benefits for eligible persons ("the DI claim procedure") are complicated, and certain of those procedural steps may be in need of amendment to help arrive at a fairer and more adequately functioning system. The steps involved in the DI claim procedure[12] include the Initial Claim Procedure, a solely document-based approach where a claimant files a claim with the SSA. According to SSA, a team (consisting of a State disability examiner and a State agency medical or psychological consultant) usually makes an initial determination at the first level,[13] and then transmits that application to the Disability Determination Services ("DDS") office in the applicant's State. It is the State agency that makes the final initial disability determination in each case.

In the case of the approximately 65 percent of applications which are initially denied, a claimant may either refile at a later date, or appeal. If the claimant wishes to contest the SSA denial of benefits, there are **four levels of appeal**[14]: (i) reconsideration by a different examiner (with a 10-15 percent success rate); (ii) hearing (before an ALJ, and with a lawyer); (iii) Appeals Council review; and (iv) filing suit in federal district court.

Importantly, at hearings in front of an ALJ, **the government is not represented by a lawyer**. There are over 750,000 such hearings annually, and between 45 and 66 percent of claimants who request a hearing before an ALJ are awarded benefits.[15] Even though the claimant has counsel, **there is no attorney representing SSA at the hearing to ask questions** or contest the award of benefits.

On the small chance that neither the ALJ nor the Appeals Council awards benefits, a claimant may file **a civil action** in U.S. district court, seeking reversal of the administrative denial and a disability award. This is considered the fourth level of appeal. Reportedly, very few disability claimants (less than 1 percent) avail themselves of this option, and most such suits

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[11] *See, e.g.*, www.ssab.gov/Facts-and-Figures/Did-You-Know-Charts/ Disability-Trust- Fund-Solvency.

[12] *See* https://faq.ssa.gov/link/portal/34011/34019/Article/3718/How-do-I- apply-for-Social-Security-disability-benefits.

[13] *See* Statement of Michael J. Astrue, Commissioner, Social Security Administration, before the Committee on Ways and Means, Subcommittee on Social Security (June 27, 2012). https://www.ssa.gov/legislation/testimony_062712.html.

[14] *See* SSA Publication 05-10058. *See also* Statement of Michael J. Astrue, Commissioner, Social Security Administration, before the Committee on Ways and Means, Subcommittee on Social Security (June 27, 2012), https://www.ssa.gov/ legislation/testimony_062712.html.

[15] *See* www.allsup.com; www.invisibledisabilities.org; http://www.ssdrc.com/10-3.html (Social Security Resource Center).

(70 percent or more) are unsuccessful. **Only at this stage of review, in federal court, is the government represented by legal counsel.**

B.   PROPOSALS TO REFORM THE DI PROGRAM.

Over the years, many groups have submitted proposals to reform the DI program, including government agencies like the **Congressional Budget Office**, the **Social Security Administration** itself, the **Government Accountability Office**, and the **Social Security Advisory Board**, an independent government agency. In March of 2013, the Advisory Board held a forum and received presentations on fiscal reforms from a variety of non-governmental contributors. In addition, individuals and groups such as professors, nonprofit organizations, think tanks, members of Congress, government officials, etc have submitted plans for reform. For example, in 2014 (113th Congress) Senator Tom Coburn (R-OK) (now retired) introduced a bill to comprehensively reform DI insurance with the Protecting Social Security Disability Act of 2014, S. 3003 (113th Cong.). In the recently-ended 114th Congress, **Senator Orrin Hatch (R-UT)**, Chairman of the Senate Finance Committee, introduced three bills on August 4, 2015 related to SSDI.

C. PERVERSE INCENTIVES

What began as a modest federal program designed to help a small number of disabled workers in 1956 has today become a vast federal program, where benefits paid far outstrip employment taxes paid. Yet, for many years Congress has been impervious to making any meaningful changes in the program — whether by way of tightening eligibility, tempering benefits, or increasing payroll taxes. Instead, each time the program is in danger of running in the red, Congress takes the easy way out, reallocating payroll taxes from retirement benefits to disability benefits. Although every current and future recipient of federal retirement benefits should be concerned about this Congressional "sleight of hand," Congress has had insufficient "push back" from seniors. Indeed, in the past, other than seniors who have learned about this problem from TSCL and a few other sources, very few seniors even have been aware of the problem — but the tide on public awareness has been turning, with increasing press coverage.

On March 22, 2013, National Public Radio broadcast and published a story[16] that explains that the growth in the number of persons on disability has "skyrocketed ... even as medical advances have allowed many more people to remain on the job, and new laws have banned workplace discrimination against the disabled." Just one of the interesting revelations in the report was that, **in 1961, only 8.3 percent of newly disabled workers alleged back problems (difficult-to-verify or disprove), but now the number exceeds one-third of all DI recipients**. **Morever, NPR reported that states were hiring private companies** to help them transition workers from state welfare programs to the two federal disability programs — DI and SSI.[17] An October 2013 investigation into the DI program by CBS News' 60 Minutes show exposed that an increasing amount of benefits are paid not to disabled persons, but rather **paid to attorneys** representing claimants who manipulate the system to the advantage of their clients, and themselves.[18] The DI program was well summarized by one of the 1,500 Administrative Law Judges who helps administer the program, Marilyn Zahm: "If the American public knew what was going on in our system, half would be outraged and the other half would apply for benefits."[19] This broken DI system did not occur by accident. Rather, there are politically powerful forces which benefit from the continuation of a system which grants disabled status to those who are not truly disabled, and which allows large fee awards to lawyers. What few understand is that both federal and state governments are, in large part, to blame.

1. **Incumbent federal office holders look better when large numbers of unemployed persons are re-classified as disabled.** Persons receiving DI benefits are not counted among those who are unemployed — unless they actively have been seeking employment, which is extremely rare. Generally then, the more persons classified as disabled, the fewer unemployed

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[16] C. Jodffe-Walt, "Unfit for Work," National Public Radio, All Things Considered and This American Life, http://apps.npr.org/unfit-for-work/.

[17] *See* C. Joffe-Walt, "Unfit for Work: The startling rise of disability in America," *supra*.

[18] S. Kroft, "Disability, USA," 60 Minutes (October 10, 2013) http://www.cbs news.com/news/disability-usa/.

[19] *See* http://www.cbsnews.com/news/disability-usa/.

persons are actually counted as unemployed, resulting in an understatement of the true rate of unemployment, and giving the false appearance that the economy is healthier than it truly is.[20]

2. **State governments would prefer for residents to be re-classified as disabled than to remain on state welfare.** Persons receiving federal DI benefits do not receive benefits on state welfare rolls. States do not appear to care that the federal government must pay disability benefits which are not deserved, so long as state budgets are balanced.[21]

3. **Individuals prefer to receive DI benefits over state unemployment welfare benefits.** There is a time limit imposed by each state for receiving unemployment benefits, but there is no such limit for DI benefits. And, after two years on DI, individuals qualify for Medicare. Although disability benefits may not seem like a great amount of money, consider that $14,500 is the amount that an individual would earn working 50 weeks (2,000 hours) at a job at the current federal minimum wage of $7.25 per hour.[22] Compare that $14,500 to the alternative of receiving approximately $13,000 annually in DI benefits (which can add up to an average of $300,000 in lifetime benefits), and Medicare benefits that could be worth many thousands more annually, plus the various other non-cash benefits that may be available. The actual net earnings of working versus receiving only DI benefits is about $1,500 — or 75 cents per hour.

4. **Lawyers who represent claimants are a well funded lobby for the current system.** The current system works beautifully for the lawyers of claimants. Lawyers for claimants have no attorney opposition. Some law firms make scores of millions of dollars annually for assisting disability claimants in presenting claims before SSA.[23]

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[20] *See, e.g.*, http://money.cnn.com/2011/06/01/news/economy/ disabled_workers/.
[21] *See, e.g.*, http://cagw.org/media/wastewatcher/disability-new-welfare.
[22] However, those who live in states where welfare benefits are extremely liberal may view the matter differently, such as Hawaii, the District of Columbia, and Massachusetts. *See, e.g.,* "Welfare Payouts top $20 per hour in eight states." Downtrend.com (Jan. 9, 2014), reporting on a study by the CATO Institute, http://downtrend.com/ robertgehl/welfare-payouts-top-20-per-hour-in-eight-states.
[23] *See, e.g.*, http://www.wsj.com/articles/SB10001424052970203518404577096632862007046 (two attorneys in Binder law firm earned $88 million in fees during 2010).

RECOMMENDATIONS

TSCL has urged seniors to make their views known to Congress. TSCL recommends that reform of the DI program should begin with the following four reforms.

1. **Aggressively Move against DI Fraud.** SSA regularly claims that it is aggressively moving against DI fraud. For example, it reports that:

> One of our most effective measures to guard against fraud is the **Cooperative Disability Investigations** program. Under the program, we **investigate suspicious disability claims** early, before making a decision to award benefits. In effect, we proactively stop fraud before it happens. **In fiscal year 2012**, with the help of state and local law enforcement, the program reported nearly **$340 million in projected savings** to the disability programs. This resulted in a **return on investment of $17 for each $1 spent**. [Emphasis added.][24]

The annual savings of $340 million from the DI program, presumably calculated as occurring over multiple years, must be compared against the total benefit payments of the program of about $143 billion in calendar year 2015. The fraud being caught is only the tip of the iceberg. Prosecutions for fraud should be brought, as necessary.[25] If SSA's numbers are correct, that there is a **$17 savings for each $1 spent**, then SSA should be required to dramatically increase spending on programs such as the Cooperative Disability Investigations program. SSA should be required to expand its fraud programs at least until its current ratio of 17:1 drops to near 1:1. Therefore TSCL Supports SSA's testimony in this hearing promising to increase significantly its anti-fraud efforts.

2. **Restructure DI Adjudicatory Process**. It was reported by SSA that, in mid-2016, there were over 1 million cases currently awaiting a hearing.[26] Part of the reason for this backlog is that the process is unduly complex, with too many types of appeals. The SSA has reacted to this backlog in exactly the wrong way. SSA Deputy Commissioner Gruber was criticized in a Congressional hearing for choosing not to use appropriated funds to hire sufficient numbers of ALJs to hear and resolve the rising backlog of cases, but rather moving many thousands of pending cases from ALJs to attorney examiners, who are SSA employees, lacking "requisite decisional independence." The subcommittee chair reasonably asked whether such a delegation to attorney examiners violates the Administrative Procedure Act, and whether it could have other

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[24] SSA Disability Facts, https://www.ssa.gov/disabilityfacts/facts.html.
[25] *See*, *e.g*., Social Security Disability Insurance Fraud Scheme in New York, Office of the Inspector General, SSA, (Jan 16, 2014). https://oig.ssa.gov/newsroom/ congressional-testimony/jan16; Social Security Disability Insurance Fraud Conspiracy in Puerto Rico, Office of the Inspector General, SSA (Sept. 18, 2013). https://oig.ssa.gov/newsroom/congressional-testimony/sept19
[26] *See* Testimony of Theresa L. Gruber, Deputy Commissioner, Disability Adjudication and Review, U.S. Social Security Administration, before the Subcommittee on Regulatory Affairs and Federal Management, U.S. Senate Committee on Homeland Security & Governmental Affairs, p. 1 (May 12, 2016). http://www.hsgac.senate.gov/ hearings/examining-due-process-in-administrative- hearings

adverse legal consequences. *See id.*, Opening Remarks of Senator James Lankford, p. 2. SSA should entrust the authority to hear appeals of DI claims only to ALJs.

3. **Eliminate the "Reconsideration" Step, with All Determinations Reviewed by ALJs for Compliance with Federal Law**. This proposal is consistent with legislation introduced by Senator Tom Coburn. Four levels of appeal for disability benefits make no sense — federal constitutional litigation has only two. An initial decision by an examiner is subject to review by an ALJ, and should not be subject to being overturned by another examiner. Moreover, no decision of an examiner should commit the agency until it has been reviewed by an ALJ for compliance with the law. In this way, erroneous initial decisions to grant benefits can be stopped before they occur. No one SSA employee should have the unreviewable power to grant benefits which can last a lifetime.

4. **Require SSA to Be Represented by Counsel at DI Hearings.** A paper was presented at the 2015 SSDI Solutions Initiative Conference entitled "Social Security: Restructuring Disability Adjudication."[27] A key component of the suggested restructuring process would transform the role of SSA from that of an "uninvolved non-party in the hearings and appeals process," to that of a party, "directly represented [by counsel] and engaged in individual disability hearings before ALJs." *Id*. at 1. Arguing that involvement of SSA "adversary" counsel at the hearing stage would promote administrative justice for all parties in a disability hearing, the authors pointed out that the presence of a SSA legal representative would benefit the claimant, "enabling a range of activities designed to expedite hearings and appeals; and, where possible, to reach early decisions in substantial numbers of cases, leaving only those claims where there is a significant question, for hearing." *Id*. at 9. This paper also proposed a number of rules, including a revision of the attorney fee standards set forth in 20 C.F.R. Part 404. Pointing out that the current system inherently rewards delay — "the longer a case is pending, the greater the attorney's fee [*id*. at 14]" — such a circumstance contravenes not only widespread concern over the case backlog, but also a claimant's need for financial assistance. TSCL supports both of these recommendations.

5. **Increase Usage of Continuing Disability Reviews.** TSCL supports the March 14, 2016, recommendations made by the U.S. Government Accountability Office to improve efforts to increase savings through its Continuing Disability Reviews ("CDRs").[28] By modifying its case selection priorities, these CDRs can become a source of important savings for the DI Program.

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[27] *See* http://ssdisolutions.org/sites/default/files/engelglendeningwolfe_0.pdf.
[28] *See* https://www.gao.gov/products/GAO-16-250.