

**ONE MILLION CLAIMS AND
GROWING: IMPROVING SOCIAL SECURITY'S
DISABILITY ADJUDICATION PROCESS**

HEARING
BEFORE THE
SUBCOMMITTEE ON SOCIAL SECURITY
OF THE
COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES
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United States House Committee on
Ways & Means
CHAIRMAN JASON SMITH

FOR IMMEDIATE RELEASE
October 19, 2023
No. SS-04

CONTACT: 202-225-3625

**Chairman Smith and Social Security Subcommittee Chairman Ferguson
Announce Subcommittee Hearing on One Million Claims and Growing:
Improving Social Security's Disability Adjudication Process**

House Committee on Ways and Means Chairman Jason Smith (MO-08) and Social Security Subcommittee Chairman Drew Ferguson (GA-03) announced today that the Subcommittee on Social Security will hold a hearing to examine the Social Security Administration's disability claims backlog and to improve the timeliness and accuracy of disability decisions. The hearing will take place on **Thursday, October 26, 2023, at 9:00AM in the Sam Johnson Room located in 2020 Rayburn House Office Building.**

Members of the public may view the hearing via live webcast available at <https://waysandmeans.house.gov>. The webcast will not be available until the hearing starts.

In view of the limited time available to hear the witnesses, oral testimony at this hearing will be from invited witnesses only. However, any individual or organization not scheduled for an oral appearance 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 can do so here: WMSubmission@mail.house.gov.

Please ATTACH your submission as a Microsoft Word document in compliance with the formatting requirements listed below, **by the close of business on Thursday, November 9, 2023**. For questions, or if you encounter technical problems, please call (202) 225-3625.

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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 reserves the right to format it according to 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. Please indicate the title of the hearing as the subject line in your submission. 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.

ACCOMMODATIONS:

The Committee seeks to make its facilities accessible to persons with disabilities. If you require accommodations, please call 202-225-3625 or request via email to WMSubmission@mail.house.gov in advance of the event (four business days' notice is requested). Questions regarding 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 on the Committee website at <http://www.waysandmeans.house.gov/>.

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ONE MILLION CLAIMS AND GROWING: IMPROVING SOCIAL SECURITY'S DISABILITY ADJUDICATION PROCESS

THURSDAY, OCTOBER 26, 2023

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON SOCIAL SECURITY,
COMMITTEE ON WAYS AND MEANS,
Washington, DC.

The subcommittee met, pursuant to call, at 9:03 a.m. in Room 2020, Rayburn House Office Building, Hon. Drew Ferguson [chairman of the subcommittee] presiding.

Chairman FERGUSON. We will call this subcommittee hearing to order now.

I want to start with my opening statement. We will—hopefully, by the time we get through that, Mr. Pascrell will be here, we will move to him, and then go to each of you.

So good morning again. For the first time in history, more than one million people are waiting on Social Security Administration to process their initial disability claim. Let me say that again. That is one million people are now waiting. On average, claims are taking 220 days to be decided. That is more than 100 days longer than it was in 2019 and more than 150 days longer than the Social Security Administration—what it defines as a minimum level of performance.

The real-world consequences for these individuals who are unable to work and wait for their disability decision are devastating. Many of these families and many of these individuals really get hurt by these delays.

To help illustrate what the Social Security Administration's claim process looks like from a claimant's perspective, I would like to submit for the record a statement provided to us by a beneficiary who waited more than a year for a decision that should have taken months, if not weeks.

Without objection, I would like for this statement to be entered into the record.

Chairman FERGUSON. She has a very, very severe condition, and was unable to travel, and she was unable to be here to testify. But, in place of that, instead of me reading the words and using that, I would like to play a recording of her statement as part of this opening statement. So, with that, we will begin the recording.

Voice. It was a semi-typical day. I was leaning on the countertop in our hall bathroom, waiting for my two-year-old to finish going to the toilet. My husband was in the bedroom, sleeping off the pre-

vious night's third shift from his job, but had his phone on full blast in case I needed help. Suddenly, the muscles around my ribs cramped, and I could barely get air in. I pulled out my cell phone and called my husband and said one quiet word, "Help."

As I went to my knees, I thought to myself, I am going to die on the bathroom floor in front of my two-year-old. At that moment the Social Security Administration had denied my claim for disability, stating that I was capable of work. If my husband hadn't brought my rescue medication, I would have died that day.

Stiff person syndrome is an exceptionally rare—literally, one in a million—permanent and progressive autoimmune neurological condition that the primary symptom is severe muscle cramps and spasticity. The spasms in me have torn multiple ligaments, broken multiple ribs, given me multiple attacks where I cannot breathe, and have left me screaming in agony more times than I can attempt to count. It also affects my central nervous system, causing things like seizures and vision problems. I do my best to complete something productive each day and be a member of my small family, but most of my time is spent asleep, either because of sheer exhaustion or the many medications I have to take each day.

The two primary causes of death from stiff person syndrome are spontaneous apneic episodes and suicide. Let me repeat that. I am most likely to die from suffocation or suicide.

It took me weeks to complete the Social Security application, both because of the breadth of information required, as well as system errors that would cause entire pages to empty of data. I received many unclear letters in the mail. Each time this occurred, I had to call up to confirm that my application hadn't been lost and that I was still in the queue to be deemed disabled.

Stiff person syndrome is on the compassionate allowance list. These are supposed to be the cases where the illness is so severe that there doesn't need to be a wide assessment of the validity of disability. However, my case was not treated this way. My case was denied.

We were living on savings and a very small private disability insurance payment. Each month, we were calculating how much longer we had to live before the money ran out. I emptied my 401(k). We had to pay bills late. We had to delay some treatments for my autistic son.

Once my case was finally reassessed, my disability claim was approved and we reached back—we received back pay, but my lawyer wasn't paid, and now I have to figure out how to address that issue. I am still awaiting my first monthly payment, but it has taken 15 months.

This process can be made better for both employees of the Social Security Administration and claimants by simplifying it.

Chairman FERGUSON. Wow. Words say an awful lot.

I know I almost wish at this point that we had our district office staffs here to tell story after story after story about what they deal with.

And, while the Social Security Administration claims it is working to address the backlog, we are seeing things go in the wrong direction. We are spending \$100 million to fund outreach efforts

aimed at increasing initial disability claims and—while on their own, disability claims have been declining on their own.

Let me put this in plain English. If the Social Security Administration is unable to keep up with the claims that it has now but is spending hundreds of millions of dollars to get more claims, it doesn't make sense and it feels like—that those dollars should be going to address the issue that is at hand.

Over the past 12 years, the Social Security Administration has invested more than \$300 million to obtain an up-to-date occupational data and to determine whether a claimant can work a job in today's economy. And, although the SSA has acknowledged that this data is more useful and more accurate, they continue to rely on occupational data that is more than 30 years out of date.

These are just a couple of examples of how the SSA is making life harder for claimants and making more work for itself. There are many more that we will hear about today, and I hope that when we are finished with this, we will begin to be able to figure out better solutions so that we can help these claimants and help their families. That is what we should be doing.

Chairman FERGUSON. So, with that, I will yield to my good friend, the gentleman from New Jersey and ranking member for this hearing, Mr. Pascrell.

Sir, you are recognized.

Mr. PASCRELL. Thank you, Mr. Chairman. It is good to be back in the neighborhood.

I am going to say some things now that should not be misinterpreted as me not wanting to sit down and the rest of our group wanting to sit down to find solutions to problems. You will always find us there at your calling. But I think we have got to make some things clear here.

I look at this hearing as a kind of smokescreen, a cover-up for the majority's extremist agenda to gut Social Security. Chapter and verse. The other side, your side, voted over and over again—and you can't escape that, it either happened or it didn't happen—to cut the Social Security Administration's budget. These cuts only make disability delays far longer.

Social Security is one of America's greatest success stories. Forty percent of seniors, fifty percent of disabled beneficiaries will live in poverty without Social Security. Social Security still stands as a monument to decency, dignity, hardworking Americans after nearly 90 years. Yet, throughout its storied history it has been under attack. Going back to 1935, it has been the subject of scurrilous attacks and lies from day one. There is a history here which we all should appreciate.

Let's not forget a House Republican, Mr. Chairman, brought our nation to the brink of devastating default with the debt ceiling debacle. And we are going to go back to that not this time, but another time. We nearly saw millions of Americans cut off from Social Security for the first time in history, and we can't forget that. I am not going to forget it. I know you won't, either.

And the Republican Study Committee, which represents three quarters of all the House Republicans, proposed slashing Social Security benefits by \$718 billion over 10 years, which comes to \$70 billion, rather, every year. That is a lot of money.

Far from Social Security saviors, I think the majority insists on seeking its destruction because they have a better idea. And we are going to wait for this better idea like we waited for the peace treaty of Vietnam. Where is it? I can't ask the guy who talked about it because he is no longer here.

Our nation's retirement system is lurching toward insolvency. We have got to do something about it. We can do it. All of us. We can do this. No one party can do this, no one party. We have a sacred responsibility to address the actual challenges facing Social Security. Social Security cannot tackle delays without ensuring that customer service at the Social Security Administration is fully funded.

We must eliminate the mandatory five-month waiting period for disability benefits, as my friend John Larson's Social Security 2100 Act would do.

Enough dishonesty and misdirection. We either sit down, we either work this out, or Social Security will not be here. You can't save it. I can't save it. We got to do it together.

Mr. PASCARELL. Thank you, Mr. Chairman.

Chairman FERGUSON. I thank the ranking member. We will address many of those points throughout this hearing. But again, the purpose of this is to figure out just one small section of what the Social Security Administration does, which is to process disability claims, and how can we do that better, more cleanly, and help Americans who need this vital service.

So, with that, I will have the pleasure of introducing our witnesses.

Ms. Linda Kerr-Davis is the acting assistant deputy commissioner of operations for the Social Security Administration.

Thank you for being here.

Ms. Jacqueline Russell, president of the National Council of Disability Determination directors.

Mr. David Camp is the interim CEO for the National Organization of Social Security Claimants' Representatives.

Thank you for being here.

Ms. Jennifer Burdick is co-chair of the Consortium for Citizens with Disabilities Social Security Task Force.

And lastly, Mr. Mark Warshawsky, a senior fellow for the American Enterprise Institute.

Thank you all for joining us today. We look forward to your testimony. We look forward to the back-and-forth. We hope to learn an awful lot from you today.

With that, Ms. Kerr-Davis, you may begin when you are ready.

STATEMENT OF LINDA KERR-DAVIS, ACTING ASSISTANT DEPUTY COMMISSIONER OF OPERATIONS, SOCIAL SECURITY ADMINISTRATION

Ms. KERR-DAVIS. All right. Well, thank you, Committee Chair Ferguson, Representative Pascrell, and members of the subcommittee. Thank you for inviting me to discuss our disability adjudication process and our strategy to reduce wait times. We appreciate your partnership and—on this important topic.

I am Linda Kerr-Davis. I am the acting assistant deputy commissioner of operations at Social Security. Prior to joining SSA, I worked for the Kansas Disability Determination Services.

Currently, over 15 million people rely on disability benefits to provide for basic needs like food, shelter, and medical care. Meanwhile, pending levels and wait times for determinations on all initial disability claims and disability reconsiderations are at all-time highs. Pending initial disability claims have exceeded one million claims. Applicants are waiting, on average, seven months for a decision. This is simply not acceptable to you or to us.

The DDSs are experiencing record high employee attrition and difficulty hiring qualified examiners to replace them. They have also at times been challenged with reduced access to medical evidence, which began with the COVID-19 public health emergency and was compounded by a shortage of consultative examination providers. In response to this crisis, a team of SSA experts worked to identify root causes of the backlog, implement short-term improvements, while also developing a long-term strategy to resolve the backlog.

Working within the constraints of our current budget, the strategy involves improvements in four key areas: first, processing capacity; second, recruitment and retention; third, business processes and policies; and finally, information technology.

We are increasing our processing capacity by redirecting experienced personnel from across the agency to process cases for the DDSs, starting with claims for the individuals who have been waiting the longest. We established cadres of SSA experienced employees and rehired annuitants to help the DDSs process initial-level claims. Last fiscal year these cadres completed over 27,000 initial claims in addition to the claims processed by the DDSs.

We have engaged directly with many states to increase recruitment and retention of state employees who process claims. The acting commissioner has contacted governors, explaining how improved pay and other policies for these employees will help the citizens of their states, as well as SSA.

Last fiscal year, the DDSs made progress by hiring about 2,500 full-time staff and ended the year with over 700 additional full-time staff on duty compared to fiscal year 2022.

We are also working on improvements in business processes and policies. We continue to retrain field office staff to help make the disability determination easier for the DDSs by paying close attention to situations in which we can expedite disability payments.

We have also taken steps to improve our information technology. We implemented a national case processing system which replaced 52 independently operated DDS legacy systems. Today, all DDSs are using a uniform and modern system to process disability claims efficiently.

The steps we have taken are beginning to show positive results. In fiscal year 2023, we processed over 90,000 more initial disability claims than we did in fiscal year 2022. Our goal of returning to pre-pandemic processing timeframes, however, is going to take years and will require sufficient and sustained resources.

Our disability programs provide a vital safety net for your constituents. With the support of Congress, we have shown that we

can tackle and overcome significant operational challenges such as the hearings backlog crisis in 2016. We have a strategy to improve service and reduce the time your constituents must wait for a disability decision. Similar to our mutual success with reducing the hearing backlog, improving service for initial claims will require the support from Congress.

Thank you for your interest in our efforts to improve service for the American public, and I would be happy to answer any questions you may have.

[The statement of Ms. Kerr-Davis follows.]



**COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON SOCIAL SECURITY
UNITED STATES HOUSE OF REPRESENTATIVES**

OCTOBER 26, 2023

STATEMENT FOR THE RECORD

**LINDA KERR-DAVIS
ACTING DEPUTY COMMISSIONER
OFFICE OF OPERATIONS
SOCIAL SECURITY ADMINISTRATION**

Committee Chair Ferguson, Ranking Member Larson, and Members of the Subcommittee:

Thank you for inviting me to discuss the status of initial disability claims at the Social Security Administration (SSA). I am Linda Kerr-Davis, Acting Assistant Deputy Commissioner of Operations. My testimony today describes our plan to reduce the backlog and wait for a disability decision, and to improve the experience of those going through the process.

Background

Few government agencies directly affect the lives of as many people as we do. For more than 85 years, SSA has provided income security for retirees, individuals with disabilities, and families that lose a wage-earner. Almost 9 out of 10 people over the age of 65 receive Social Security benefits. In fiscal year (FY) 2023, we project that we paid more than \$1.4 trillion dollars in benefits to over 71 million Social Security beneficiaries and Supplemental Security Income (SSI) recipients. Of that amount, we paid approximately \$200 billion in disability-related benefits to over 15 million people. Although the total disability benefits are just 14 percent of our total benefits paid, administering disability-related programs accounts for over half of our administrative budget because of their complexity.

We administer two programs for people with disabling medical conditions: Social Security Disability Insurance (SSDI) and SSI. SSDI provides benefits to insured workers who meet the Social Security Act's definition of disability or blindness, and to their dependents. Workers become insured for SSDI based on contributions to the Social Security trust funds through taxes on wages and self-employment income.

The SSI program provides monthly payments to individuals and couples with limited income and resources who are aged, blind, or disabled, and whose earnings are too low to qualify for a significant SSDI benefit. Adults and children can receive payments based on disability or blindness. General tax revenues fund the SSI program.

Overview of the Initial Level of Disability Determination and Customer-focused Improvements Underway

To frame our conversation, I will briefly explain the steps in the disability process. People may apply for disability benefits online, by telephone, or in person at a Social Security field office. After we receive an application, we send the case to a State Disability Determination Service (DDS) office to make the initial determination of disability. There are 52 DDSs, covering every State, Puerto Rico, and the District of Columbia. A disability applicant, or claimant, can appeal a denial of their application through three levels of administrative review – reconsideration (also handled by the DDS), a hearing before an administrative law judge, and review by the Appeals Council. A claimant who is dissatisfied with the agency's final decision may appeal that decision in Federal district court. My testimony today focuses on initial claims.

At the DDS, disability examiners collect medical evidence and work with medical or psychological consultants to determine whether a claimant meets the statutory definition of

disability – if the person has a medically determinable impairment which prevents substantial, gainful work, and that is expected to last at least 12 continuous months or result in death. The disability examiner and medical or psychological consultant must consider all the evidence in the file, both medical and vocational, to make a disability determination. Once the DDS makes the medical determination, the case is returned to the local Social Security office to adjudicate the case based on the DDS’ medical determination and the non-medical eligibility criteria.

The relationship of the State agencies and SSA in the disability determination process results in unique roles. SSA provides 100 percent reimbursement to the States for the work they do to make disability determinations for our programs. The State DDSs follow their State policies to conduct all activities related to hiring the employees who will make the disability determinations on our claims.

Actions to Reduce Initial Disability Claim Backlogs

Currently, over 15 million people rely on disability benefits to provide for basic needs like food, shelter, and medical care. Whether they are applying for SSI or SSDI, most are in immediate need. Meanwhile, pending levels and wait times for determinations on initial disability claims and disability reconsiderations are at all-time highs. For the first time since the programs began, pending initial disability claims have exceeded 1 million. Applicants are waiting on average 7 months for a decision. This is simply not acceptable – to the public, to you, or to us.

These delays are due to several issues, ultimately tied to funding challenges. The DDSs are experiencing record high employee attrition, and difficulty hiring qualified examiners to replace them. They were also challenged with reduced access to medical evidence, which began with the COVID-19 public health emergency and was compounded by a shortage of consultative examination providers.

In response to this crisis, a team of experts worked to identify the issues that led to the backlog, take immediate steps to address the issue, and undertake longer-term actions to resolve it and to provide better service to our customers. We have been implementing both short- and long-term solutions, which will require adequate and sustained funding. As detailed further below we are working within our current resource levels to concentrate in four key areas: 1) increasing immediate processing capacity; 2) improving recruitment and retention; 3) changing business processes and policies; and 4) improving information technology.

Increasing Immediate Processing Capacity

To provide some immediate relief to the DDSs struggling with staffing shortages, we are redirecting experienced personnel from across the agency to process cases for the DDSs, starting with the claims for individuals who have been waiting the longest. For example, we established cadres of employees from our Office of Quality review, employees from our Office of Hearings Operations, and rehired annuitants to help the DDSs process initial level claims. Last fiscal year, these cadres completed over 27,000 initial claims, in addition to the

claims processed by the DDS.

Improving Recruitment and Retention

Processing disability claims requires a sufficient number of trained staff. Even though we can gain efficiency through information systems and process improvements, administering the program requires well-trained, thoughtful people to apply complex disability rules to individual situations. Sufficient staffing is crucial to providing timely and efficient service to the public.

In FY 2022, the DDSs could not meet their hiring goals. In FY 2023, they made progress by hiring about 2,500 full-time staff, and ended the year with over 700 additional full-time staff on duty compared to FY 2022. Even though the staffing increased last year, it takes two to three years of formal and on-the-job training for new examiners to become fully proficient in making disability determinations.

The DDSs have recruitment and retention challenges, as the complexity of the work for the pay has attracted fewer candidates in today's competitive job market. We have been working with the DDSs to increase recruitment and retention of these State employees who process Federal claims. Our Acting Commissioner has contacted many Governors asking them to examine pay and other policies for these employees to make the job more competitive to increase applicant pools.

State employees must pass the same background checks as Federal agency employees. To get new hires working as quickly as possible, we worked with the Office of Personnel Management to more efficiently conduct background checks. We have also supported DDS recruiting and hiring efforts, streamlined our training practices, and expanded mentoring opportunities.

Changing business processes and policies

In addition to addressing the immediate needs of the DDSs to increase capacity and add new hires, we are working on improvements in business processes and policies. I will touch upon a few of them here.

Disability claims start in our field offices before we transfer them to the DDSs, so we identified front-end efficiencies. For example, we re-trained field office staff to help make the disability determination easier for the DDSs by paying close attention to situations in which we can expedite disability payments. We have also reminded our field office staff to prioritize responding to requests from the DDSs so that they get the information they need to process a claim timely.

The DDS uses medical experts during the review process. The law requires that a medical or psychological consultant review the medical portion of each initial disability determination.

Historically, the DDSs each employ their own consultants either by direct hire or contract. As more cases await medical and psychological consultant review, we established a national contract for these consultants to supplement States' contracts. These national consultants began handling claims at the start of FY 2024 to help reduce the backlog of cases awaiting medical review. Our new contract will help the hardest hit areas by providing access to consultants from across the country.

If we do not have enough medical evidence to make a decision, we may send an applicant to a consultative exam to provide medical information. To reduce delays, we recruited new providers and, consistent with Department of Health and Human Services guidance, permitted telehealth for certain consultative exams to allow claimants flexibility to obtain necessary medical evidence.

We are implementing and standardizing customer experience practices, which ensures a sharp focus on the claimant's perspective to reduce obstacles they face. For example, claimants told us that they expect more communication from the agency after they submit their claim. As a result, we are exploring actions to address this expectation – including improvements to our online claims tracker.

While our disability decision process remains sound, we continually seek improvements to ensure our disability programs remain current and to ease the burden on our customers. As reflected in our regulatory agenda, we proposed to develop intermediate improvements to reduce the burden in our current disability adjudication process, as a step towards longer-term reforms to ensure our disability program remains current and supports equitable outcomes.

We are seeking comment on a proposed action to decrease the years of past work we consider when making a disability determination. We currently evaluate whether an applicant is able to work, by developing 15 years of work history, which is time-consuming for the both the claimant and the disability examiner. Potentially reducing the regulatory requirement for past relevant work would allow individuals to focus on the most current and relevant information about their past work, better reflect the current evidence base on changes over time in worker skill decay and job responsibilities, reduce processing time and improve customer service, and reduce burden on individuals.

We are exploring other sub-regulatory changes as well. Last spring, we updated guidance for our vocational experts and specialists to generally recommend citing occupations that are more common and reflect higher numbers when making recommendations. We are also working to clarify transferable skills analysis policy by providing guidance to our adjudicators about skills that commonly transfer and those that do not and expanding our national training resources while improving our examples and definitions.

Improving Information Technology

Technology helps make the decision-making process more efficient. It increases the collection of electronic medical evidence, improves communications with the public, expands our decision support tools, and quickly identifies claims with diseases and other medical conditions that, by definition, meet Social Security's standards for disability benefits for expedited processing.

We implemented a national case-processing system, which replaced 52 independently operated DDS legacy systems. Today, instead of devoting significant IT dollars to maintaining and updating multiple cumbersome systems, all DDSs are using a uniform and modern system to process disability claims timely and efficiently. This system also allows for the movement of cases between States, so we can better manage our workloads.

We are using Intelligent Medical Language Analysis Generation (IMAGEN), a decision-support tool, to ensure accuracy and improve efficiency with reviewing lengthy medical reports. In April 2023, we released an IMAGEN report tool, which identifies pending claims that contain evidence that shows a high probability of meeting or equaling a medical listing. This tool enables States to more quickly identify potential allowances or presumptive disability determinations, reducing wait times.

Outcomes

Our three short-term goals are to: 1) reduce the number of pending initial claims to under one million; 2) prioritize cases that begin the year pending at 180 days or older; and 3) make improvements to the disability claims system as described in the business processes section above.

We set ambitious targets in our 2022-2023 agency priority goal (APG) to improve the average processing times for initial claims and to work down older cases. While we did not achieve our plan to reduce the average wait time to 164 days for all initial claims, we are prioritizing these efforts. In FY 2023, we processed over 90,000 more initial disability claims than we did in FY 2022. In addition, we have completed about 97 percent of our cases that started FY 2023 pending 180 days or more, surpassing our APG target of 85 percent. Starting in FY 2024, as our new hires complete classroom training and become more proficient in processing claims, they will begin to help to reduce backlogs.

Ideally, we would be operating at pre-pandemic levels. In 2019 we achieved a national 120-day average processing time to receive a disability determination. However, reaching this service delivery level again would take years and timely, adequate, and sustained funding. Too many years of insufficient funding compounded by the pandemic has resulted in the current crisis.

Resources Challenges

Our budget directly drives the level of service we can deliver, including systems improvements and staffing to stay current with our workloads. Our dedicated employees are doing their part to restore and improve service while working within our current funding levels. Each day, our employees serve field office visitors, answer questions, take claims on the phone, hold hearings, pay benefits, and complete countless other workloads. Building the capacity to meet the public's expectations for timely customer service requires sustained funding and staffing levels.

Making disability decisions requires expert review of individual case circumstances and accurate application of complex policy. Fundamentally, we need sufficient trained and experienced staff. We simply do not have enough staff to complete our growing workloads and serve everyone who needs our help. The DDSs had their lowest on-board in over 20 years after facing consecutive years of high attrition in FYs 2021 and 2022. Attrition for disability examiners hit a record high of almost 20 percent in FY 2021, only to hit a new high of almost 25 percent in FY 2022. Attrition has lessened in FY 2023, and we anticipate ending the year with more staff on duty than we ended FY 2022. However, the level funding in FY 2024 would be detrimental to our efforts to build a sufficient DDS workforce. Meanwhile, the number of beneficiaries and recipients we serve has increased to over 71 million. That is an increase of over 8 million beneficiaries over the last decade, at the same time as our staffing level was declining.

Because resources are so critical to improving service and reducing the initial disability claims backlog, the Administration requested a \$727 million continuing resolution (CR) anomaly for FY 2024, bringing SSA to an annualized funding level of \$14.854 billion. The anomaly would avoid significant service degradation resulting from a hiring freeze. Under a level funding scenario, the average wait time for an initial disability decision would increase by at least one month to eight months (double the average wait time in FY 2019), and it would jeopardize our plan to eliminate the hearings backlog in FY 2024.

Conclusion

Our disability programs provide a vital safety net for your constituents. With the support of Congress, we have shown that we can tackle and overcome significant disability backlogs. For example, at the end of 2016, the number of claimants awaiting a hearing with an administrative law judge peaked at over 1.1 million, and the average processing time was around 600 days. We defined success in the hearing backlog reduction plan as achieving a waiting time of less than 270 days for an ALJ hearing. With targeted funding and a backlog plan, we cut the number of pending hearings by over two-thirds, and the hearing wait time goal is in our sights. Now, with the same level of focus, we are tackling the initial disability claim backlog. We share the goal of making more timely decisions and significantly reducing the disability backlog. Thank you for interest in our efforts to improve service for your constituents.

We appreciate your support and look forward to continued service to the American public.

Chairman FERGUSON. Thank you so much.
Ms. Russell, you are now recognized.

STATEMENT OF JACQUELINE RUSSELL, PRESIDENT, NATIONAL COUNCIL OF DISABILITY DETERMINATION DIRECTORS

Ms. RUSSELL. Good morning. Thank you, Chairman Ferguson, Ranking Member Pascrell, and committee members for this opportunity to share.

My name is Jacqueline Russell, I am the president of the National Council of Disability Determination Directors. We are thankful to have membership from every state, and we regularly seek input from our membership on needs and best practices.

I am proud also to be the director for the North Carolina Disability Determination Services, and I have submitted written testimony that has details and data and examples of what I am going to talk about today. I thank you for reading that.

I am starting our conversation with the strengths of disability determination agencies, which are in every state, processing these disability claims. Disability determination staff are innovative, we are adaptive. We have proven that through the pandemic, as we found new sources for paper and were adaptable. We also have re-allocated staff to process disability claims staff from our disability hearings unit, professional relations office. Everybody is pitching in, and we are making progress on reducing the backlog.

We have a long way to go, and we need your help with that. That leads me to just two focuses today that I want to talk about for areas of need. The first is a strong workforce.

Disability determination staff, we need to be able to hire on an as-needed basis, in particular when we have losses. At the Disability Determination Agency, our budget already includes those personnel costs for staff, and, when we have doctors or disability examiners that leave, we need to be able to have consistent, stable hiring authority every year for those losses. That will help us with our retention.

We also need to have consistent overtime access for all case types. We are thankful that this week we received overtime to support continuing disability review cases, and that is important. We also need consistent overtime for initial and reconsideration cases so that we maintain this progress that we have been making on the backlog.

Additionally, I want to share two efficiencies. The first one is communications. Currently, disability determination staff, we have two approaches to connect with claimants. The first is the U.S. Postal Service and the second is by phone. And, in this day and age, a lot of people don't like to pick up the phone when you call them. And so it makes it hard for us to reach our claimants to find out if they are willing to go to a consultative examination or remind them of the upcoming appointments or if we need to have information clearer from the forms that they have submitted.

And I appreciate that the Social Security Administration has indicated interest in that, and identified that as a need, as well. There are two barriers to that that I have heard: one is security of the personal identifiable information, and the second is funding.

With security, we know that the Veterans Administration is able to address that with their patients. My father receives a text message when he has a medical appointment from the Veterans Administration. So I feel like we can work together to figure out security.

The second barrier is funding, and I can appreciate that the Social Security Administration has priorities for funding, and Congress wants to make sure everyone is a good steward of their dollars. Disability determination staff and our claimants, we are in the middle of this, and we really need to focus on how we find common ground so that we can use our dollars well to support the people that we serve.

The second efficiency I want to talk about is a decisional authority. And I appreciated, Chairman Ferguson, what you shared with the claimant's message, because that is the exact type of decisional authority that we would like to see happen. A decisional authority would allow a trained disability examiner to make a decision on some case types without review from a medical consultant and psychological consultant. Those are—would often be a critical or terminal illness. And that allows us to get the decision to the claimant faster.

Now, we know this can be done with high quality, because the Office of Inspector General did a study on a past pilot that showed 97 percent accuracy with this, and so that was high quality and also an average of 11 days faster processing time. So we know that a decisional authority would support people applying for disability benefits to receive that.

North Carolina was a part of that pilot and in 2015 studied that impact. We were able to process 12.7 percent of our workload with that decisional efficiency and that was the equivalent of 12 medical consultants, our hardest to recruit and retain staff and our highest paid.

In closing, I want to share that we are all here to serve the public, and I ask that disability determination agencies receive your support in realizing solutions to these challenges. I am thankful for the teamwork from associate—from Acting Commissioner Kijakazi and Associate Commissioner John Owen, who have listened to our concerns and are taking some action steps around that.

And I ask for your support, as well, in finding a solution, obtaining a solution for consistent hiring authority over time; a decisional efficiency, a decisional authority for disability examiners; and communications that meet claimants' needs.

I look forward to any questions that you have and our teamwork to serve the public. Thank you.

[The statement of Ms. Russell follows:]

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Chairman Ferguson, Ranking Member Larson and Members of the House Ways and Means Social Security Subcommittee:

Thank you for the invitation to dialogue about the Disability Determination Service agencies across the nation who provide service to people seeking Social Security disability benefits. I am Jacqueline Russell, the President of the National Council of Disability Determination Directors also known as NCDDD ("NC Triple D"). I am also the Director of North Carolina's Disability Determination Services. Each state has Disability Examiners who review disability benefit applications received from the Social Security Administration (SSA) field offices. These Disability Examiners collect relevant evidence, both medical and vocational, and follow a sequential evaluation process to determine medical eligibility for Title 2 (SSDI) and Title 16 (SSI) disability benefits. These state employees are led by Disability Determination Directors, whose membership makes up the core of the National Council of Disability Determination Directors (NCDDD). Our members are active and our membership includes leadership from the District of Columbia and every state in the nation. These state agencies are often referred to as the state Disability Determination Services or DDS. Each state's DDS works as a partner with the Social Security Administration to provide public service to people applying for disability benefits. I am sharing with you today both strengths of the DDS as well as areas that delay the DDS to provide timely and accurate decisions along with proposed solutions to improve. As President of NCDDD, I have regularly obtained input and facilitated dialogue with our membership and in our North Carolina Disability Determination state agency. NCDDD has deliberated the areas of need I share with you today through ongoing surveys, conversations, and at our membership meeting this past July. I am representing a well-considered position with the stated areas of strength and need.

Strengths of the Disability Determination Services (DDS)

I want to start by sharing strengths of the DDSs. The DDSs demonstrated exceptional resilience, focus, flexibility and stewardship through the last several years. In 2020 we identified a path to move about 15,000 staff to telework with desktop computers. For many DDSs, within days we obtained network cables to hook desktop computers to Wi-Fi systems, taught those 15,000 staff how to follow security procedures each day and transport those desktop computers safely and securely to the home. DDSs did not stop in their pursuit and focus to support people seeking disability benefits. We have regular communication with claimants and we know every hour counts as we process the disability applications. DDSs have proven our ability to pivot quickly time and time again as we balance processing for the different case types. We use the resources we have to provide the best work outcomes we can for people. There are many strengths and the most important one is that DDS staff care deeply about their work.

Areas of Need for Disability Determination Services (DDS)

While DDSs are working extremely hard there are many challenges we face to provide appropriate customer service to people applying for disability benefits. Currently, there is a historically high backlog of more than one million, initial-level pending disability benefit applications, soaring case processing times and the highest national attrition rate in 20 years of staff at the state Disability Determination Service offices. This is widely surfaced in the media and SSA has acknowledged the challenges of these unprecedented barriers we face in serving the public. The job of the Disability Examiner has become untenable and that is a strong contributing factor to both the length of time a person waits for a decision and Disability Determination Services staff attrition. DDSs need your support for consistent and appropriate funding so that DDSs can utilize consistent hiring authority, overtime and efficiencies to equip us with the tools needed to attack and conquer the challenges with the soaring pending cases. Examples of more efficient ways to work include communications in the claimant's preferred manner, faster turnaround for updates/changes to vocational policies, needed enhancements with the case processing system, and a Decisional Authority for specific case types for trained Disability Examiners. We ask for your support for these areas of need because without them, people applying for

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disability benefits and Disability Determination Services staff experience a tremendous administrative burden which significantly slows down the disability decision process.

DDS staff find ourselves in an unsustainable situation, and we need the help of all our partners--Congress and SSA-- to improve customer service. I am here today to share three key areas we must have change and support in: Strong Workforce, Efficiencies for Case Processing, and Policy/Process.

Strong Workforce

NCDDD's leaders direct the work of almost 15,000 employees. While for many years NCDDD shared information with this Committee each year, the last opportunity NCDDD had to share information was 2017. I'm grateful to have this time to talk with you about the Disability Program as the DDSs are closest to this work and we feel it's important for you to hear from us. I know you field many questions and requests for help from your constituents and you want to know how it is going. DDSs are in a tough space. We have no control over the policies, we cannot on our own put efficiencies in place for case processing and we cannot consistently maintain a strong workforce because we have no control or authority over how many hires, if any, we are allowed to bring on in a given year. There are many years that DDSs lose staff due to retirements, moving out of state or due to the job not being a good fit for the person. The DDS may have lost 90 staff, but only 18 hires are provided from SSA to replace all those losses. DDSs were at an all-time low for staffing when the pandemic started and although SSA authorized hires during the pandemic, that was a hard time to bring on new staff due in part to the pandemic.

As I prepared for today I looked at the trend data of DDS employees as well as the volume of cases processed nationally since 2017, the last time a President of NCDDD was invited to speak with your committee. The trend reflects that as the pandemic and change to a new case processing system began, DDS attrition and subsequently, processing time increased. The number of disability applications able to be processed from 2018 to 2022 decreased by more than one million cases, as you would expect when you have less people. This also supports why there are now more than a million cases in the backlog nationally.

There are many contributing factors that have led to the decline each year in the number of DDS cases processed. Every organization, public and private came out of the pandemic wobbly. During the pandemic DDSs were put in a position to innovate like never before. I know at times in North Carolina my leadership team and I personally felt like Tony Stark in a cave making an Iron Man suit when we were searching high and low for envelopes, paper, cleaning supplies and developing workarounds to keep case processing moving forward in this time of change because there were none to be had. At the same time, we were innovating new approaches to hire and bring staff in and out of the building to support the business needs and staff health needs. With the onset of the pandemic, transition into a new case processing system, and a job that has become too hard, DDS staff have left and therefore, less cases are processed.

Two hiring practices from SSA negatively impacting the DDS are a total freeze on hires being provided to DDSs and at times a requirement to not bring on hires until the third or fourth quarter of a year. It has been a standard practice from SSA to freeze hires and not provide hiring authority to DDSs for the year or provide nominal hires for a DDS for the year. For example, each year a DDS will experience standard attrition due to retirements, resignations from a person moving away or to another job, DDS staff hired by federal agencies, etc. Within the 2015 – 2018 timeframe DDSs were provided zero hires or few hires for those vacant positions. At the North Carolina DDS in FY15 there were 51 hires and 84 losses, in FY16 there were 131 hires and 98 losses, in FY17 there were 0 hires and 98 losses, in FY18 there were 18 hires and 53 losses. In that four-year timeframe that is a total of 200 hires for 333 losses in North Carolina. This inconsistent hiring practice has had a significant negative impact on DDSs and the work DDSs are able to move forward for claimants. This puts an additional burden on the remaining staff, who leave the DDS due to the workload placed on the shoulders of remaining

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staff. This has resulted in DDSs having lost a high number of experienced DDS staff and we know that it takes many years to learn how to process all case types and fully understand the complexity of compliant adjudication. This feast or famine approach to hires also drains resources working to train multiple Disability Examiner training classes. The inability to not have a reasonable number of positions for hiring to replace losses as well as inconsistent timeframes to bring hires on have contributed to the national disability crisis. There are some states that only allow the DDS to bring on hires at the first of the month. In the years where SSA only allows DDSs to bring hires on the last two quarters, that effectively gives six opportunities out of six months to bring on hires to those states.

The pattern of SSA providing very low or no hiring for several years, then a large number of hires, and then swinging back to very low or no hires for DDSs for many years is challenging. DDSs do not bounce back from these large gaps in ability to hire. It takes about two years for a Disability Examiner to be fully trained and without consistent hiring, in those gap years of few or no hiring DDSs lose more staff and the cycle continues. DDSs often have over 50% of our staff that are not fully trained due to attrition. DDSs must receive sufficient funding for overtime and hiring to gain stability in the DDS to process the disability claims submitted by people. Without this critical funding DDSs are not getting traction to decrease the backlog which is detrimental to the Disability Program and most importantly a detriment to the person who is waiting for that decision for their disability benefit application. DDSs have cases that are sitting for months with no action and that can change with your support of funding for SSA so that DDSs can have hires and overtime on a consistent year to year basis.

Many DDSs are shifting resources to juggle the impact of their staffing losses which means people who supported critical needs for training, mentoring, supervision etc. are taken away from that work and processing cases or supporting extensive hiring efforts. It takes time and resources to support hiring processes and when we continue the cycle of no or nominal hiring allowed, followed by larger amounts of hiring and then back to nominal, that is no way to run a business. That will not support retention. DDS Disability Examiners are not easily or quickly replaced. The training is extensive and there has to be time in the position to gain the needed skills and knowledge to adjudicate all case types independently. This is a competitive job market and there are far more jobs with more pay and less responsibility. DDSs must have stable hiring authority, be allowed to hire to a certain number and replace losses in a given year. In addition to stable hiring practices, DDSs must have consistent access to overtime as we work out of the dire state of more than one million cases in the backlog. This is in the best interest of service delivery to people applying for disability benefits.

Like Coach Deion Sanders and the University of Colorado, the DDSs too are in a rebuild. DDSs are working with SSA to remain focused and bring about change in the areas I have mentioned. At the same time, DDS Directors across the nation have a laser like focus in the recruitment, hiring and retention of staff and it's hard work. DDSs are providing strong quality in their decision-making, and the return on your investment is strong. This is happening despite the insufficient staffing, lack of efficiencies and loss of experienced staff. I started out this conversation today sharing the strengths of DDS staff and that we are good stewards of the resources we are provided. If Congress will support the DDSs and help address these areas of need, DDS staff will stay and that will result in the backlog going down.

I appreciate that this is not an Appropriation Committee, it is an Authorizing Committee. SSA is asking for more than flat funding. Congress has concerns and is placing SSA in a position to reconsider the way SSA is using funding. The Disability Determination agency staff are caught in the middle. I recognize some of the needs I share today, your Committee can directly support with action. I also recognize other areas of need - I am asking you, on behalf of all the Disability Determination agencies across the nation, to use your power and influence

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with your Congressional partners to find common ground on a budget that will allow DDSs to have hiring authority by the end of November 2023.

Efficiencies for Case Processing

DDSs are required to be available to claimants for questions and responses to calls for more information, productive in their case processing each day, meet processing time targets, control costs, produce case decisions with high accuracy, retain staff, as well as maintain security and integrity of the Disability Program processes. At the same time, DDSs do not have control over the cadence of changes and we are not able to deploy many needed innovations on our own.

Faster Enhancement Rollout to the Disability Case Processing System

SSA rolled out a new case processing during the pandemic. NCDDD recognizes that we are nationally now using one case processing system and there are inherent benefits to this. It makes sense for the DDSs to all be in one case processing system. While it is possible to process cases in the new case processing system, it takes longer due to workarounds required. There have been significant delays and shortages to funding for IT improvements. This results in inefficient service to the public and we have to do better. To provide strong customer service, SSA must commit to increased funding of this tool across the next three years. We must address the need for these enhancements to roll out faster and with a focus on time saving actions for case processing. These time saving actions must include development to address the volume of medical records that are received by the DDS. There are many unnecessary records to read. There have been developments from SSA to obtain medical records faster, however that has also resulted in volumes of records received which are not relevant to the disability determination process. There is too much unnecessary and duplicative data to read. SSA recognizes the volume of medical records has doubled since 2017. A research study conducted in 2021 with a focus on the file size increase for the Office of Hearing Operations reflected that the average file size in 2014 was 559 pages and the average file size in 2020 was 940 pages. Last week I was in conversation with a Disability Supervisor and discussed a case with over 3,000 pages of medical records. SSA has the ability to leverage technology to focus on medical records received that are material to the decision making process and we must speed up the enhancement process to support these needs.

Modernized Technology

DDS staff are only able to communicate with claimants by phone or the US Postal Service. DDS staff have to contact claimants to receive updated information, help claimants complete detailed forms, obtain information about daily activities, and schedule examination appointments, etc. Many times claimants have moved or have different phone numbers. This leads to multiple calls and attempts to reach people. Most DDS staff currently utilize cell phones with limits on the number of voicemail messages that the phone can hold. Claimants are hesitant to answer our calls and speak with DDS staff due to phone scams and we must obtain additional methods to contact claimants in their preferred manner. The Veteran's Administration can text my father about his medical appointments and that too is a federal agency handling sensitive data. SSA needs to support a path for DDSs to contact claimants efficiently by phone, email and texting to quickly obtain and share needed information to process the disability claim. Establishing communication options to improve the customer experience and offer communications (e.g. text, email, etc) in the claimant's preferred mode will help DDSs obtain the required information for processing the disability application and returning a decision expeditiously.

Decisional Authority for Some Case Types by Trained Disability Examiners

For twenty years Disability Examiners in many states utilized a Decisional Authority through a long-term pilot that allowed trained Disability Examiners to make decisions on a limited set of case types without a Medical Consultant or Psychological Consultant. These were well trained and experienced DDS staff and were able to work independently which is why processing times were faster and the decisions retained high quality without

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medical or psychological consultation for these specific claim types. Examples of these case types include claims for terminal and catastrophic illnesses which provided decisions much faster to the person applying for the needed disability benefits. The integrity of this process and quality were studied by the Office of the Inspector General and the Social Security Advisory Board. Findings of these studies included consistent high quality of decisions at a rate of 97% or higher, an average decrease in processing time by at least 11 days, and high morale of staff (which contributes to stronger retention). These studies also noted that the pilot sites reported improved service to the public through faster processing time and decreased administrative costs to process disability cases since Medical Consultants and Psychological Consultants were not involved in all claims. This pilot was phased out in 2018 through language included in the Bipartisan Budget Act of 2015. The Bipartisan Budget Act of 2015 included language that does not allow any Decisional Authority outside of a Medical or Psychological Consultant's review and that included ceasing Decisional Authority for terminal and catastrophic illness claims. We know that good decisions can be made for some case types with Decisional Authority and we need your support in working with SSA to establish a Decisional Authority.

If a Decisional Authority were to be in place today for specific initial case types, this case would be adjudicated by a Disability Examiner. If the claim was denied and appealed by the claimant that claim would then move to the Reconsideration claim process and would then have review by a different Disability Examiner and review by a Medical or Psychological Consultant. This means if the Reconsideration case were later appealed and heard by a Judge in the Office of Hearings Operation, a Medical or Psychological Consultant would have reviewed the case.

That is responsive to past concerns for a Decisional Authority for Disability Examiners to be supported by Congress. The Social Security Administration has a draft policy with input by DDS staff but has not yet moved this forward. If a Decisional Authority for Disability Examiners were established, consultation with Medical or Psychological Consultants can still occur if needed. NCDDD believes in most cases likely to be included in a Decisional Authority such as Compassionate Allowance and Quick Disability Determination cases (often terminal and catastrophic cases) additional consultation is not required. A Decisional Authority would give Disability Examiners at the DDS, people who really understand the policies, the power for these limited case types.

The North Carolina DDS was part of this pilot and also studied the impact of our use of this Decisional Authority. In FFY1415 North Carolina closed 12.7% of our cases with this Decisional Authority. This was a workload equivalent of 12 Medical Consultants. In the 2013 research conducted by OIG North Carolina was identified with 97.6% Accuracy Rates on cases closed with this Decisional Authority. DDSs now have a critical shortage of Medical Consultants (often the highest paid DDS staff members) and Psychological Consultants. DDSs have Disability Examiner and Consultant vacancies that remain unfilled nationally and a Decisional Authority would be a strong support for improved customer service to claimants. Support of a Disability Examiner Decisional Authority would be a strong support to claimants and a tool to provide fast and accurate decisions.

DDSs need every support we can obtain to apply in our work to decrease this startlingly large backlog. The people in our communities and states applying for disability benefits needs DDSs to have every innovation and efficiency in our toolbox to apply in DDS adjudication. Use of a Decisional Authority will support a streamlined and cost-effective use of Medical and Psychological Consultant time and expertise. At a recent DDS Administrator meeting held by NCDDD 97% of DDS Directors stated they believe if a Decisional Authority were in place, it would not lead to poor outcomes for claimants. We ask that this Committee partner with NCDDD and SSA in support of a Decisional Authority policy that will provide a streamlined process for some case types.

We know that the older a case is, the more it costs to process. Having Decisional Authority for some case types will result in cost savings for taxpayers because those cases will be processed faster. Less aged cases mean less costs for case processing. This also addresses the hiring shortage for Medical Consultants.

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We can be assured these efficiencies will support strong outcomes to claimants as they will streamline processes for the claimant and the DDS staff in processing disability claims. The foundation for these efficiencies includes cutting red tape and decreasing the administrative burden.

Dictionary of Occupational Titles (DOT)

In making decisions for disability determination, DDSs currently are mandated to use the Dictionary of Occupational Titles (DOT). The DOT contains an index of jobs that must be considered by the Disability Examiner to determine if the skills the claimant has identified in their 15-year work history are able to be used in a job in the DOT. The DOT was created more than 40 years ago and last updated around 1977. At that time the economy and job types were more heavily in the blue-collar and manufacturing industry and as you know, there have been a lot of changes to the types of jobs in the economy in the last 10 years let alone the changes in the job market since 1977. Many jobs that existed in 1977 no longer exist and jobs that exist now are not in the DOT. It is a flawed structure that Disability Examiners are required to use and NCDDD supports development of a new system to replace the DOT. NCDDD recognizes there is work on a new tool, however, it is not available now and there is no timeline for when it will be available. This is very challenging for Disability Examiners who spend hours looking through the DOT and wading through vocational challenges in case adjudication due to this outdated system. At a recent DDS Administrator meeting held by NCDDD 100% of DDS Directors stated if the Dictionary of Occupational Titles (DOT) were updated they believe the impact would be very positive and/or significantly helpful.

These efficiencies are within our reach. Establishing a new tool to replace the DOT or changing the mandatory process will take longer than a year, however every other efficiency mentioned here today can be realized in the next 12 months if we work together. These tools are necessary for DDSs to appropriately serve the public and we ask for your support for DDSs to receive these essential tools.

Policy/Process Change

The SSA policies that are used by DDSs to make disability determinations were established for a consistent and appropriate application of standards used by DDS staff to make decisions on who does and does not meet the requirements for disability benefits. The processes, policies, and procedures used from the application phase to the decision phase have been used for decades, many were written and have not been updated for more than 30 years. DDSs use a continuous improvement process in our work that includes, "When we know better, we do better". NCDDD is optimistic about SSA's work to publish for public comment the proposed policy, "Intermediate Improvement to the Disability Adjudication Process: Including How We Consider Past Work". One foundational policy change needed is to decrease the time period Disability Examiners must examine for each claimant's work history. The current policy requires an exhaustive review of a 15-year history of work from the claimant.

These regulations require Disability Examiners to gather extensive details from people applying for disability benefits on any jobs the person held within 15 years. The current vocational regulations state that skills learned in any job within the last 15 years must be considered when determining whether a person can perform either past work or other work in the national economy. It must be noted, the job market has changed drastically in the last 15 years and many previous jobs now require different skills or are now obsolete.

We believe that modernization of vocational regulations is critical to the Disability Program. Specifically, the relevant work timeframe used in disability determinations needs to be reduced from 15 years to 5 years. The vocational regulations utilized to make disability decisions were written more than 30 years ago. At that time, individuals did not change jobs as often and the rate of change in almost all industries was much slower. Jobs did not change as quickly, and skills learned on the job were relevant for 15 or more years. These same assumptions

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do not hold true in our modern economy. Change has accelerated rapidly, and skills learned in employment are no longer relevant for 15 years. If allowed to use a reasonable time period, the information would not be as subjective and would be reliable for decision making in these life altering decisions regarding disability benefits. Aligning the regulations with the current realities of the labor market, economy and medicine is essential to create a fair and realistic decision process. In addition, changes will assist Disability Determination Services staff in making more efficient and timely determinations for the people we serve by reducing the intensive administrative burdens these regulations currently require.

In today's economy it is a significant burden to ask a person for 15 years of detailed and complex information about every job they held in the last 15 years and people are regularly unable to remember information. People change jobs more frequently now than they have in the past, and people are regularly unable to remember detailed information we are required to obtain – such as how much a specific part weighs, how many minutes a day they had to stoop, the specific month(s) they worked a job, etc. – regarding work they may have briefly performed over a decade ago. To gather the detailed information necessary to make an accurate vocational determination, people must engage in lengthy interviews with Disability Examiners. The information reported within these interviews is typically sparse and inaccurate, as people cannot remember the details necessary to make policy-compliant determinations. These interviews routinely make material differences in the decision for the disability benefit application for the person. If the person cannot remember the specific details of all jobs within the last 15 years, policy directs the Disability Examiner to contact third parties or even previous employers. These attempts at contact are largely futile. Previous employers often don't remember the person and third parties don't know what the person did in their previous jobs and are unable to answer questions such as, "How much did the person lift?" or "How many minutes a day did the person stoop at this job?" At a recent DDS Administrator meeting held by NCDDD 94% of DDS Directors stated from their experience and knowledge, attempts to contact third parties for work history information on jobs 6-15 years ago for a claimant led to sparse, futile or inaccurate information. Often, the Disability Examiner must close the case as a denial due to insufficient evidence which is unfair to the person applying for benefits. These issues are prevalent in all claims, but they are especially problematic for people with memory problems, such as individuals who have had strokes, traumatic brain injuries, or those who have other neurocognitive conditions.

There is a lot of agreement between SSA and NCDDD on the vocational regulation changes necessary to modernize the vocational evaluation process. NCDDD has advocated to SSA the need for changes with vocational regulations, for example the form used to collect the work history information. NCDDD has a long history of advocacy for policy simplification. Determining whether someone can or cannot work is complex. The analysis of age, education, and work experience, in combination with the individual's residual functional capacity in evaluating the individual's ability to engage in substantial gainful activity in work other than his or her vocationally relevant past work is a broad area of potential for modernization and simplification.

The primary vocational regulation change requested by NCDDD is to shorten the work history timeframe from 15 years to 5 years. With this change, we will decrease unnecessary contacts with claimants/representatives, decrease backlog and processing times, improve attrition rates, and significantly alleviate the administrative burden on people applying for disability benefits. The process required to make policy-compliant vocational determinations is intensive and unfair to claimants and it needs to be changed. When the DDS is unable to obtain the information from claimants as required, SSA policy requires that the decision be a denial and often is identified as "Failure to Cooperate" which doesn't feel right to the DDS staff. Without help from Congress, we fear the change process will stall to the detriment of the Disability Program and the people we serve. For these reasons NCDDD requests support of 5 years as opposed to higher than 5 years for the work history timeframe. DDS staff are closest to the work and the claimant's who are applying for disability benefits. We make this

**Jacqueline Russell, President of the National Council of Disability Determination Directors
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request for support based on our direct, first-hand experience and the examples/reasoning provided in this testimony.

There are other policy and process changes needed as well. There is a lot that is right about people being able to submit online applications for disability benefits. There are also process and form changes that are needed so that applications received include the necessary information for considering the disability claim and reduce the large number of phone calls from Disability Examiners due to missing information. The Application form that claimants use has not had a thorough update for many years. The Application for disability benefits is now able to be completed and submitted online. However, the current version needs to be updated with DDS staff input to include upfront what the claimant will need to complete the application. This would reduce the multiple contacts for missing information that DDS staff must make to clarify medical sources/dates of treatment, secondary contacts, education and vocational histories. There are many benefits to the online application process, however there are many instances in which the application is not as complete as it once was when provided in person at the SSA field office. The Work History form used by people to list their work history information is also long overdue for changes and these changes have to come about now. Currently, if a claimant has filled out the Work History form but there is mention in another record of a job not listed, the Disability Examiner has to call the claimant back to clear up the discrepancy. If not, then in a quality review of the case it would be sent back to the DDS for follow up action and count as an error for the DDS. This happens regularly, even when there is not a decisional difference that occurs with the information left out by the claimant. These policies and processes mentioned have to change in order to improve customer service to our claimants, and lessen the burden for both claimants and Disability Examiners. With more than one million cases in the backlog DDSs and SSA have to consider and take bold action on policy change.

In North Carolina, a survey of over 200 Disability Determination staff resulted in the data collected below:

- 97% believe the work history time period needs to be shorter.
- 73% believe the work history time period should be 5 years.
 - Over 90% of DDS staff that responded to our internal survey included extensive narrative explanations on how the 15-year work history is a burden on the claimants and staff.
- 97% agree or strongly agree the current 15-year work history time period is an administrative burden on the claimant to recall/obtain information.
- Survey results for the top three responses for the question, "If the work history time period were shortened to five years, the time savings per case estimated would be:" by DDS staff:
 - 37% estimate 1-2 hours per case
 - 25% estimate 3-4 hours per case
 - 17% estimate up to 1 hour per case
- Survey results for the top three responses for the question, "If the Dictionary of Occupational Titles data were updated, the time savings per case estimated would be:" by DDS staff:
 - 35% estimate up to one hour per case
 - 34% estimate 1-2 hours per case
 - 16% estimate 3-4 hours per case

Imagine what can be done to address the backlog of cases with that time savings.

**Jacqueline Russell, President of the National Council of Disability Determination Directors
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Conclusion

The work of our staff is complex and feels unsustainable. NCDDD has been working closely with SSA over the years to educate and seek action. NCDDD is thankful to Acting Commissioner Kijakazi who met with NCDDD Leadership in August 2022 when we shared the following priorities identified as critical and requiring bold action:

- 1) Needed policy change for a Disability Examiner Decisional Authority. A past pilot, which prior to elimination supported trained Disability Examiners to make decisions on some case types without requiring review by an MC or PC resulted in a very high average quality rating of 97% and decreased processing time an average of 11 days.
- 2) DDS Staff at the table as equal team members with input to revise Vocational Policies, including shortening the work history from 15 years to 5 years.
- 3) Establish an expedited process change for security clearance reviews for potential DDS hires.
- 4) Establish communication options to improve the customer experience and offer communications in the claimant's preferred mode.

With Acting Commissioner Kijakazi and Associate Commissioner John Owen's support and work, we've made meaningful progress in priorities 2, 3, and 4 and we must keep the pedal on the gas pressed down to achieve completion of these priorities so that the DDSs can achieve their goal of producing a decision that is fast and right. The consequence of not supporting these three areas of need for DDSs further challenges the DDS to recruit and retain good staff to support people applying for disability benefits. Disability Examiners have left and continue to leave because the job is too hard. It has become too complex and nonsensical with regard to requirements to follow policies that no longer make sense.

SSA and DDSs will continue to work closely together and do our best to provide high quality and productive outcomes for claimants. There is much more to do work to be done that requires this Authorizing Committee's support in the matters of legal authority and Congress' support for fiscal and organizational resources for SSA.

NCDDD asks for your support for policy/process changes, appropriate funding to support resources for hiring, overtime, and putting efficiencies to support case processing in place. People across the nation are negatively impacted, please help us make it more efficient. This is a government program and we all want the same thing. We want to do this thoughtfully and spend the taxpayer's money efficiently. We want the person applying for disability benefits to get a decision back timely and accurate. The people applying for disability benefits are mothers, fathers, children, and other people with disabilities and it is life changing when they receive these benefits. If they are not determined eligible, receiving an accurate and timely decision is also critical as it helps them identify their next step. A favorable decision for people applying for disability benefits means access to healthcare, housing, and medicine. We have all heard stories from people across the country applying for disability benefits and waiting months for a decision. For some of these stories, people have had to wait a year or more and sadly, others have died before a decision was ever made on their claims. We need stronger partnership and support for funding and resources for these improvements.

It is essential for SSA to have and use a budget to support these three key areas I have shared: a Strong Workforce, Efficiencies to Support Case Processing, and Policy/Process Changes. We will spend more money if we don't deal with this now. Support for these needs will allow DDSs to provide a decision for the claimant that is timely and accurate. That is what we all want.

Ranking Member Larson, at a recent hearing from this Committee on improper payments you shared that morality demands this Committee and Congress act and NCDDD agrees with your statement that day and believe it is applicable to Disability Determination needs too.

**Jacqueline Russell, President of the National Council of Disability Determination Directors
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Chairman Ferguson, at this same hearing on improper payments you discussed that we need to identify more proactive ways to work and the efficiencies I have shared today are responsive to the need for proactive ways to work. I appreciated your comments about the tremendous burden on constituents completing the forms as they are long and confusing to many constituents. The policy/process changes and efficiencies shared here today are examples of ways we can work smarter with resources and are better ways of doing this work.

I want to take a moment to thank the thousands of DDS staff working hard for the people in their state. They are exhausted and need your help. I want to thank our SSA partners and you, each of you on this committee for considering these comments and identifying steps and timelines to support the public who are applying for disability benefits. Together, we are helping people at some of the worst moments of their lives. I take that seriously and I know you do too.

Chairman Ferguson, I'm grateful for the opportunity to share the strengths and needs of the Disability Determination Services with you and your Committee. You receive a lot of input from stakeholders. My hope is that it has been a valuable use of Committee time to hear from someone representing the DDSs, those closest to the work with people seeking disability benefits. I am optimistic the Committee will invite NCDD back yearly to share comments on the state of the Disability Program from the DDS perspective. I look forward to any questions you may have and our continued teamwork to serve the public.

With deep appreciation,

Jacqueline Russell

Jacqueline Russell
President, National Council of Disability Determination Directors

Chairman FERGUSON. Thank you, Ms. Russell.
Mr. Camp, you are now recognized.

STATEMENT OF DAVID CAMP, INTERIM CEO, NATIONAL ORGANIZATION OF SOCIAL SECURITY CLAIMANTS' REPRESENTATIVES

Mr. CAMP. Thank you, Chairman Ferguson, Ranking Member Pascrell, members of the subcommittee. I am David Camp, CEO of NOSSCR, and we are the specialized bar association for those who represent the Social Security claimants.

From 2010 to 2022, Social Security disability claims declined by 37 percent, and SSI claims are down 49 percent. With the claims workload cut by more than a third, almost half, budget and staffing strains alone cannot explain this growing backlog. The problem is Social Security's policies.

National average processing times are now more than 250 days for each step in Georgia, more than 300 days each in Florida. Social Security has a minimum acceptable standard of under 60 days, a standard never met in 40 years. Forty years.

Reconsideration is optional, and Social Security has been telling this committee about possibly eliminating it since 1984. Social Security recently tested eliminating it in 10 states for 20 years. But this committee has never been provided with the results, data for or against eliminating it in some states, everywhere, or nowhere. If there is a data-driven reason for reconsideration, show us.

To explain the problem from our perspective, here is an example. A lawyer in Alabama contacted me last week with this timeline for a case. The claimant filed his claim in July 2021. He was denied initially and again on reconsideration. This took 645 days, 547 of which were reconsideration. The reconsideration findings were identical. More than 90 percent of findings of reconsideration are exact duplicates of those at initial, often word for word. Word for word, hundreds of days later.

He filed a request for hearing by a judge this May. He was scheduled for hearing after his claim had been pending for 832 days. His hearing should have been last week, but there was no point. He died earlier this month, on day 825 of his claim.

He died from the conditions that he applied with that went untreated. He sought help from Social Security with 825 days to live, and Social Security wasted more than 500 days at reconsideration. He could not live long enough to outlast Social Security's capacity to delay.

In addition to reconsideration, there are other policies that require immediate attention, corrections that would add efficiency and savings right now.

In August, Social Security suddenly stopped accepting faxed applications. We would like to see Social Security modernized, so we were shocked that they would leap that far backward. There is no reason not to honor a faxed application. Now claimants and representatives fax to mark the date, then mail what we have faxed, then mail it again until Social Security acknowledges the mail. This adds an absurd delay to claims, and it must be corrected.

The front line of communication with claimants is the representative's office. Yet when we call and manage to get through, we are

only allowed to get an update on one case at a time. We want to help Social Security manage communications with claimants, and our role is to speed up the process, but Social Security imposes barriers. Social Security should allow representatives to verify entry on a claim electronically and stop capping our attempts to check online status at 10 cases.

A recent rule change introduced a new problem and a new slow-down for veterans. Social Security now ignores VA decisions. A 100 percent disabled veteran is now less likely to be found disabled in Social Security's process than someone who hasn't served. This must be stopped immediately.

Electronic signatures are safe and secure, and it is unnecessary to call to verify them. When Social Security gets an electronic signature, they make the staff call claimants to verify. This means personnel are calling out when they could be handling calls coming in or doing something else productive, and it slows the process.

Social Security should provide us with the same data available to claimants in their My Social Security accounts. We are ready to help a claimant speed up the process and provide what is needed but often can't at the early stages.

Finally, Social Security must stop using the DOT. Pneumatic tube operators have been replaced by email. Addressers have been replaced by the printer. Recently, claimants in Savannah, Wichita, and Flint have all been turned down, citing these long-gone jobs. This happens every day in every district. The Department of Labor already has a working version of a paid-for replacement. Social Security must switch to using current data and finally end the embarrassment of the DOT.

Thank you, and NOSSCR looks forward to continuing to work with the committee and with Social Security.

[The statement of Mr. Camp follows:]



HEARING

“One Million Claims and Growing:
Improving Social Security’s Disability Adjudication Process”

October 26, 2023

U.S. House of Representatives
Committee on Ways and Means
Subcommittee on Social Security

Written Statement of David Camp
On Behalf of the National Organization of Social Security Claimants’ Representatives
(NOSSCR)

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

Thank you for inviting me to discuss the disability claim delays at the Social Security Administration (SSA). These delays have led to an extreme and growing backlog at the initial and reconsideration levels of review, dramatically impacting the lives of many of your constituents. This backlog can be corrected if SSA acts now to implement the policy options outlined in this statement.

I am David Camp, Interim CEO of the National Organization of Social Security Claimants’ Representatives (NOSSCR). NOSSCR is a specialized bar association for attorneys and advocates who represent Social Security disability claimants nationwide throughout the adjudicative process. Given our dedicated practice area, we are uniquely positioned to report on cumbersome SSA procedures. As I will detail, many correctable policies currently contribute to delays and result in claimants waiting far longer than necessary for decisions.

Despite a significant decrease in the overall volume of Social Security disability claims,¹ the average initial-stages processing time has increased substantially.² From 2010 to 2022, Disability Insurance claims sent for review to a state Disability Determination Services (DDS) declined by 37%.³ In the same period Supplemental Security Income (SSI) disability claims dropped by 49%.⁴ This historic decline in workload far outpaced changes in SSA staffing, SSA appropriations, DDS staffing, and DDS costs—and yet claimants are now faced with the million-claim growing backlog that is the subject of this hearing.

SSA regulations provide for disability claim adjudication “standards of performance” at the initial stages where SSA engages with state DDS agencies.⁵ SSA’s “threshold level”—the

¹ <https://www.ssa.gov/open/data/program-service-centers.html>;

<https://www.ssa.gov/oact/STATS/dibStat.html>

² <https://www.ssa.gov/open/data/Combined-Disability-Processing-Time.html>

³ <https://www.ssa.gov/oact/STATS/dibGraphs.html>

⁴ <https://www.ssa.gov/OACT/ssir/SSI23/index.html>

⁵ 20 C.F.R. § 404.1641

“minimum acceptable level of performance”—is 49.5 days for SSDI claims and 57.9 days for SSI claims.⁶ These regulations provide steps SSA can take to address poor-performing DDS agencies. Since 1981, when these standards were first established, the threshold level of days has *never* been met, and yet SSA has *never* used its statutory authority to take over for a “substantially failing” DDS.⁷ From 2013 through 2018, the average time from initial claim filing to determination was consistently around 110 days. SSA added another ten days to this process in both 2019 and 2020. Then, in 2021, the average processing time jumped to 165 days, then 184 days in 2022, followed by 217 days in 2023. While field offices closed in the early days of the pandemic, the processing delays were already on the rise in 2019 and have continued to increase dramatically since SSA reopened in April 2022.⁸

Following are straightforward policy improvements that SSA could implement today—using existing authority, appropriations, and staffing. These changes do not require further study, commissions, or reviews. They are based on data and lessons learned from SSA’s failure to prevent this problem over the last 42 years. These policy changes would dramatically accelerate the processing time of initial claims and eliminate the backlog while enhancing decisional accuracy.

I. Eliminate reconsideration

Half of the processing time at the initial (DDS) stages is consumed by the optional second step—“reconsideration.” For almost 40 years, Congress and experts have urged SSA to consider eliminating reconsideration, and SSA has formally questioned the efficacy and efficiency of continuing the reconsideration stage.⁹ SSA has piloted alterations and eliminations of reconsideration several times since 1984. In 1994, SSA planned to eliminate reconsideration by 1998, but it did not do so.¹⁰ SSA announced in 1999 a pilot program eliminating reconsideration in 10 states—covering 20% of applicants—and successfully did so for nearly 20 years.¹¹ SSA’s rationale for elimination of reconsideration still applies: “better determinations at the initial level ... claimants were able to receive benefits months sooner ... the quality of our determinations improved ... permitted the State agencies to redirect their resources so that the individuals who formerly worked on reconsideration claims could work on initial claims ... permitted increased contact with the claimants and improved documentation...”¹²

All these efforts point to the same conclusion—eliminating reconsideration would make the initial stage more meaningful, promoting greater decisional fairness, consistency, efficiency,

⁶ 20 C.F.R. § 404.1642

⁷ <https://www.ssab.gov/research/social-security-and-state-dds-agencies-partnership-in-need-of-attention/>

⁸ <https://blog.ssa.gov/social-security-administration-to-resume-in-person-services-at-local-social-security-offices/>

⁹ See, e.g., 58 F.R. 54533 (Oct. 22, 1993), discussing 1984 study requirements unmet (<https://www.federalregister.gov/citation/58-FR-54533>).

¹⁰ *Process Re-engineering Program, Disability Reengineering Project Plan*, 59 F.R. 47887 (Sep. 14, 1994).

¹¹ *Modifications to the Disability Determination Process; Disability Claims Process Redesign Prototype*, 64 F.R. 47218, 47219 (Aug. 20, 1999).

¹² *New Disability Claims Process*, 66 F.R. 5494, 5495 (Jan. 19, 2001).

and integrity while conserving costs and staff time.¹³ NOSSCR members know reconsideration is merely a “rubber stamp,” adding months to the process and resulting in identical findings on more than 90% of claims. Reconsideration findings—despite having been provided by a different paid consultant—normally mirror initial findings word-for-word over several pages. As SSAB recently observed, “stakeholders report that reconsideration does not typically involve more new [medical evidence] or new impairments and leads to a relatively small percentage of claims being allowed...”¹⁴

With SSA’s minimum acceptable number of days processing time at under 60, current data shows that the Georgia DDS takes 267 days to process a claim at the initial stage. Reconsideration adds another 271 days. In Florida, reconsideration adds 323 days to the 300 days at the initial stage. South Carolinians suffer the longest waits—330 days at initial and 374 more unnecessary days for reconsideration.¹⁵

As a starting point, SSA must immediately eliminate reconsideration and thereby cut the initial claims timing in half while upgrading quality and allowing for reallocation of existing resources.

II. Restore the treating physician rule

In recent years, SSA has increased the complexity of disability analysis regulations and removed clear methods for saving time, like refusing to trust the expert opinions of treating physicians—slowing DDS decisionmakers and reducing accuracy.¹⁶ Until 2017, adjudicators were permitted to give weight to opinions provided by a claimant’s treating physician—honoring expertise, the benefits of repeated examinations, longitudinal history, and specialization.¹⁷ Now, those opinions are largely disregarded—SSA will “not defer or give any specific evidentiary weight” to opinions from treating physicians.¹⁸ Restoring the treating physician rule would help DDS adjudicators quickly identify meritorious claims and rule on them while considering the most reliable evidence.

The same rule change (concerning treating physician evidence) has created a bias against veterans in the SSA disability claims process. SSA no longer requires adjudicators to

¹³ Jon C. Dubin, “[Social Security Disability Adjudicative Reform: Ending the Reconsideration Stage of SSDI Adjudication after Sixteen Years of Testing and Enhancing Initial Stage Record Development.](#)” *SSDI Solutions*, Committee for a Responsible Federal Budget, 2016, 3-4: “the reconsideration stage lacks meaningful or sound public policy justification. It mandates devotion of agency resources for an entire additional adjudicative stage with attendant personnel and administrative costs for three quarter of a million annual reconsideration decisions, imposes significant delays in adjudicative results for a vast majority of claims initially denied, and produces limited tangible adjudicative benefits.”

¹⁴ <https://www.ssab.gov/research/medical-evidence-collection-in-adult-social-security-disability-claims/>

¹⁵ <https://www.ssa.gov/foia/readingroom.html>, Initial and Reconsideration Processing Times Data as of 02-24-23.

¹⁶ <https://www.ssab.gov/research/social-security-and-state-dds-agencies-partnership-in-need-of-attention/> at 17, *citing* “a survey of DDS directors” confirming “greater adjudicative complexity through regulatory revisions” cause “strain on the system.”

¹⁷ [20 C.F.R. § 404.1527](#)

¹⁸ [20 C.F.R. § 404.1520c](#)

consider the findings of other agencies—particularly the Department of Veterans Affairs (VA). Adjudicators are no longer required to provide analysis of VA findings, and the VA’s decisions are declared “neither valuable nor persuasive.”¹⁹ This has caused veterans—including those already found 100% disabled by the VA—to be denied at higher rates than non-veterans. NOSSCR has provided data from advocates confirming that having served in our nation’s armed forces, including having been found 100% disabled by the VA, causes SSA to be more likely to deny the claim. This is fundamentally offensive and must be remedied immediately.

III. Prioritize obtaining existing evidence before spending on consultants

Regulations require DDS to request and receive medical records from all of a claimant’s medical providers.²⁰ Most records are requested using a medical release form (SSA-827)²¹ and sending the request by postal mail or fax.²² Per the regulations, DDS will make “every reasonable effort” to obtain treating source evidence. They will submit an initial request for records, and “at any time between 10 and 20 calendar days after the initial request, if the evidence has not been received, [DDS] will make one follow-up request to obtain the medical evidence necessary to make a determination.”²³ Thereafter, the source will have a minimum of ten days from the date of the follow-up request to reply.

According to HIPAA, healthcare providers can take up to 30 days to deliver records—longer with extensions.²⁴ But per the SSA regulations it is possible the DDS examiner is only waiting 20 days for the records without attempts to verify that the requests were received.²⁵ When medical records are not received within this timeline, DDS will often send the claimant to a paid consultant for examination.²⁶ The agency’s guidelines indicate that the “claimant’s own medical source(s) is generally the preferred [examination] source,”²⁷ however, it is NOSSCR’s practical experience that this is not DDS practice. Informal surveys of our members confirm that we have never seen it done. DDS always opts to use a paid contractor without asking the treating physician first.

Consultative examiners have no treating relationship with the claimant and often review no other evidence. In contrast, treating physicians are more familiar with the claimant’s medical history, longitudinal treatment, and prognosis.

SSA’s Limitation on Administrative Expenses (LAE) confirms SSA is not tracking whether exams are conducted by treating providers. Purchasing consultative examinations cost more than \$300,000,000 in 2021.²⁸ In practice, SSA could first ask treating providers to perform examinations to determine functional limitations.

¹⁹ [20 C.F.R. § 404.1520b\(c\)](#)

²⁰ [20 C.F.R. § 404.1512\(b\)](#)

²¹ <https://www.ssa.gov/forms/ssa-827.pdf>

²² <https://secure.ssa.gov/poms.nsf/lnx/0422505006>

²³ [20 C.F.R. § 404.1512\(b\)\(i\)](#)

²⁴ <https://www.healthit.gov/how-to-get-your-health-record/get-it/>

²⁵ [20 C.F.R. § 404.1512\(b\)\(i\)](#)

²⁶ [POMS DI 22510.005](#)

²⁷ [POMS DI 22510.010](#)

²⁸ <https://www.ssa.gov/budget/assets/materials/2023/2023LAE.pdf>

This practical change could improve the integrity of the information DDS receives and reviews in evaluating claims, resulting in greater decisional accuracy. Ongoing litigation and complaints filed against doctors and other entities performing contracted examinations suggest that SSA is not adequately monitoring its contractors. Midwest CES, a contractor in the Kansas City region, repeated word-for-word important paragraphs in reports for hundreds of claimants. A lawsuit describes that Midwest CES reported that claimants could use their hands and fingers to button and unbutton a shirt and turn a doorknob, for claimants in t-shirts and in an office without a doorknob. Midwest CES was paid over \$900,000 in 2022.²⁹

Relying on examinations done by treating physicians would help DDS make faster, more accurate medical determinations.

IV. Maximize the use of Health Information Technology (HIT)

SSA's use of HIT is a partial success. As of May 2023, SSA had at least one HIT exchange in each state and counted 229 health systems and 35,996 participating providers.³⁰ Use of HIT has a clear effect on processing time. "SSA systems automatically compare treating/medical sources listed in a claimant's application to identify HITMER providers upon receipt. Participating sources are then queried for records once a patient-provider match is confirmed, and the claimant's medical authorization is accepted. [Medical evidence] then populates the electronic claim folder, sometimes even before the claim transfers from the SSA field office to the DDS."³¹ The success of properly utilizing HIT in claims processing is illustrated in Iowa where two of the largest health systems in the nation, plus the Mayo Clinic in neighboring Minnesota, all share records via HIT. Iowa's initial stage processing times are far below average: 139 for initial and 118 for reconsideration.³² This matches prior reports from SSA that claims with some HIT evidence were processed 10% faster than claims without any such evidence.³³

However, a 2022 OIG analysis revealed SSA "reduced the number of staff and contractors involved in health IT outreach and did not fully fund projects to increase electronic medical evidence."³⁴ SSA agreed with OIG's recommendation to reverse that decision, and NOSSCR hopes this Committee will follow up. SSA's use of HIT saves time and money.

²⁹ <https://www.kansascity.com/news/local/article264793779.html>

³⁰ <https://www.ssa.gov/hit/materials/pdfs/HealthITPartnerOrganizations.pdf>

³¹ <https://www.ssab.gov/research/medical-evidence-collection-in-adult-social-security-disability-claims/> at 8.

³² <https://www.ssa.gov/foia/readingroom.html>, Initial and Reconsideration Processing Times Data as of 2/24/2023.

³³ House Subcommittee on Social Security, "[Post-Hearing Questions for the Record Submitted to Patricia Jonas Deputy Commissioner Office of Analytics, Review, and Oversight SSA From Representative John B. Larson](#)," *Hearing on Examining Changes to Social Security's Disability Appeals Process*, July 25, 2018, 4.

³⁴ <https://oig.ssa.gov/assets/uploads/a-01-18-50342.pdf>

V. Accept signed faxed applications

For many years, SSA accepted signed applications that were submitted via fax. While faxing is becoming less popular, claimants dealing with SSA consider faxing a positively modern step. In August 2023, SSA announced that they would no longer be accepting signed faxed applications. SSA cited no rationale other than the end of the pandemic, although using fax machines to file applications predated the pandemic. Faxing applications, particularly for SSI benefits, is a reliable point of access for our most vulnerable claimants. While these claimants may not have reliable permanent addresses or means to visit and wait at local SSA offices, they can typically access a fax machine at a shelter, church, or public library.

As with the electronic signature verification process, SSA implemented unnecessary and costly steps to a system that could work efficiently. Accepting faxed applications saves agency time since claimants are less reliant on making in-person appointments or spending more than an hour on the phone to complete applications. Since SSA's announcement that faxed applications will not be accepted, representatives have had to resort to faxing (to mark the date) then mailing the application with the fax confirmation sheet, and then repeating that cycle until SSA finally acknowledges the submission. This adds weeks or months to a process that was already functional, and NOSSCR demands an immediate correction.

VI. Revise the “all evidence” rule

Since 2015, claimants must provide “all evidence” that “relates” to the claim. This is more evidence than the prior standard requiring “relevant” evidence. While seemingly a minor change in one word—the difference between “relates” and “relevant” evidence is hundreds and sometimes thousands of pages. A claimant may have an irrelevant need for eyeglasses, and yet this evidence must be purchased and submitted because it “relates” despite being irrelevant to disability. SSA's rules do not clarify what constitutes a duplicate, causing cautious advocates to submit additional pages. The Social Security Advisory Board (SSAB) recently found some “stakeholders report that the volume of evidence in claim files has increased in part due to duplicative or irrelevant submissions to assure compliance....”³⁵

The “all evidence” rule adds hundreds of irrelevant pages to claim files without increasing accuracy. Revising and clarifying this rule would control file sizes and reduce processing time.

VII. Improve phone call assistance

SSA publishes its average hold time for its 1-800 number. In 2022, the average hold time was 32.7 minutes.³⁶ For 2023 to date, the average hold time is 36.3 minutes. In 2023 SSA has received 42,733,577 calls and 8.7% of calls resulted in a busy signal.³⁷ When a representative has successfully connected with SSA staff after this wait, the representative

³⁵ <https://www.ssab.gov/research/medical-evidence-collection-in-adult-social-security-disability-claims/> at 7.

³⁶ <https://www.ssa.gov/open/data/800-number-average-speed-to-answer.html>

³⁷ <https://www.ssa.gov/open/data/FO-Answer-Busy-Rate.html>

can inquire about only a single claimant. To inquire about more than one claimant requires the representative to end the call, call SSA again, hold for another 30+ minutes, and connect with another (or the same) SSA staff person. If representatives could inquire about more claimants per call, it would significantly reduce the total call volume.

As a standard practice, SSA should provide representatives with the phone number and extension for the SSA staff person managing a claimant's file. This would allow representatives to more efficiently provide or receive updates or communicate other important information to SSA.

VIII. Improve electronic verification of representation

When a representative files an application on behalf of a claimant or is hired to assist a claimant on an existing application, the representative must wait for SSA to process the representative paperwork (SSA-1696)³⁸ and attach it to the claimant's file before the representative can access any information about the claim electronically. According to SSA's "Tips and Best Practices for Appointed Representatives," after submitting this paperwork, a representative must "wait 30 days before contacting by phone your client's servicing SSA field office or workload support unit (WSU) to follow up on a submitted SSA-1696, unless you have an urgent need."³⁹ Unfortunately, after 30 days, many representatives find that their paperwork still has not been processed, resulting in important missed notices and deadlines.

Moreover, the mechanism to determine if the representative has been attached to the claimant's file is inherently flawed, resulting in hours of extra work for the agency, the representative, and additional costly delays for the claimant.

To determine if the representative paperwork has been processed, the representative has two options. The first option requires the already overburdened telephone system.⁴⁰ The representative can regularly call each field office to verbally verify whether they have been attached to each claim. As you are aware, SSA struggles to answer the phones,⁴¹ making this a burdensome option. Typically, after an extensive hold time, if a representative connects with an SSA staff member without their call being dropped (and no hangup), the staff person only allows for one case inquiry per call. This creates a time-consuming process of calling, waiting, and repeating. With thousands of claimants applying for benefits yearly, the administrative burden on both SSA and the representatives is too high.

The second option that most representatives employ is to attempt to electronically access the claimant's file. This process requires a representative to log in to SSA's Appointed Representative Services⁴² system using a unique representative identification provided by SSA (after a verification process) and a unique (and frequently changing) password. After

³⁸ [Form SSA-1696](#)

³⁹ <https://www.ssa.gov/representation/documents/Best%20Practices%20and%20Tips.pdf>

⁴⁰ SSA's data recorded average telephone wait times over 2,000 seconds for every month in 2023,

<https://www.ssa.gov/open/data/800-number-average-speed-to-answer.html>

⁴¹ <https://waysandmeans.house.gov/wp-content/uploads/2022/05/WAMR-Ltr-to-Neal-SSA-Hearing-Request-04072243.pdf>

⁴² <https://www.ssa.gov/ar/>

login, the representative must receive a code as part of a dual-factor authentication process before they can attempt to access the claimant's eFolder by inputting the claimant's Social Security number. If the representative paperwork has not been processed, the representative cannot access the claim, and there is a "strike" against their login. A representative can only have ten "strikes" against their login in a twenty-four-hour period before they are locked out of their account. The remedy to being locked out is for the representative to call SSA's Help Desk to unlock the account.

No rule, regulation, or sub-regulatory guidance mandates a representative's login be locked after ten "strikes." There is no security or other rationale. If SSA increased the number of strikes on a representative's account, even to just twenty, representatives could more efficiently review and submit evidence without the need for additional phone calls to SSA to confirm representation or to unlock accounts.

IX. Provide representatives with status updates at the initial and reconsideration levels via the existing platform

Currently, when a claim is at the hearings or Appeals Council levels, an appointed representative can log in and check the status of each claim for which they are appointed. The representative can also run a report of all claim statuses. These efficiencies give appointed representatives the information they need without calling SSA.

However, this status report is not available at the initial or reconsideration levels. This results in repeated calls to SSA, limited to one claim per call, simply to assess the status of the claim. This represents hundreds of hours of calls for local SSA field offices.

SSA already has the platform and capacity to make a status report available at the initial and reconsideration levels. It is already functioning well at later stages. Including such a status report at the first stages would reduce status-update calls to SSA, saving hundreds of hours of agency time per office.

X. Define *mySocialSecurity* status updates and provide representatives with the same claim status information as claimants

Even though SSA does not currently provide electronic status updates for representatives at the early stages, claimants with *mySocialSecurity*⁴³ accounts can view the progress of their applications. This information is provided in both a percentage complete and an estimated number of days it will take to complete review. Unfortunately, SSA has not published a guideline explaining what these percentages mean. For example, if an application is 40% complete, does it mean that SSA has collected all of the required medical evidence, the evidence from 40% of the providers, or something else entirely?

Without real definitions, claimants are left with more questions than answers. To get these answers, they call SSA or, if represented, their representative to get more information. As representatives, we want to guide our claimants through the process, ultimately reducing the burden on the agency. However, in addition to failing to define these status percentages, SSA does not make the same status information available to representatives.

⁴³ <https://www.ssa.gov/myaccount/>

Thus, when claimants call their representatives with questions about their status, representatives cannot provide meaningful information and the needed clarity a claimant deserves. As a result, the representative again calls SSA to clarify the claimant's status update, using more staff time and causing more delay.

Additionally, many of the most vulnerable claimants cannot perform basic tasks online because SSA's *mySocialSecurity* platform requires verification of a physical address. Individuals who are homeless could readily make use of SSA's online services (at public libraries, churches, shelters, etc.) if SSA would verify identity another way.

XI. Accept electronic signatures without requiring a subsequent verification call

Pursuant to SSA EM-20022 REV 3,⁴⁴ SSA accepts electronic signatures on multiple forms, including applications and representative appointment forms.

Despite this leap forward, which NOSSCR hopes will become permanent, SSA uses staff to call claimants to verify their electronic signatures. This is an extraordinary waste of resources, particularly since electronic signatures are verified by the electronic signature platform that includes information like the signer's name, email address, phone number, and IP address. This impedes the processing of valid documents since many claimants don't answer the call or don't have reliable access to a phone.

Removing the requirement that electronic signatures be verified by phone would immediately save staff resources and speed up claims processing.

XII. Recognize firms as representatives

SSA currently only recognizes individuals as appointed representatives⁴⁵ rather than entities such as law firms.⁴⁶ Most law firms employ several representatives who may work on any given claim. Because SSA fails to recognize the practical reality of how firms operate, each time one of the employee-representatives from within the firm must enter an appearance on the claim, that representative must execute and submit new appointment of representative paperwork, which includes getting another signature from the claimant. SSA must process each of these forms, creating more administrative burden.

Recognition of firms as representatives would significantly reduce the administrative burden on SSA.

XIII. Rely on modern vocational data

In determining whether claimants can return to their past work or perform other work in the national economy, SSA relies on the *Dictionary of Occupational Titles* (DOT), which was last updated in 1991.⁴⁷ Changes to occupations in the last thirty-two years cannot be found

⁴⁴ <https://secure.ssa.gov/apps10/reference.nsf/links/11122021125633PM>

⁴⁵ [20 C.F.R. § 404.1705](https://www.ecfr.gov/current/title-20/chapter-I/subchapter-B/part-404/subpart-1705)

⁴⁶ [20 C.F.R. § 404.1703](https://www.ecfr.gov/current/title-20/chapter-I/subchapter-B/part-404/subpart-1703)

⁴⁷ <https://www.dol.gov/agencies/oalj/topics/libraries/LIBDOT>

in the DOT. To put this into perspective, the last time the DOT was updated, George H. W. Bush was President. In 1991, less than 50% of Americans used a computer at home or work.⁴⁸ NOSSCR is told that there are no remaining copies of the DOT in the Department of Labor's offices, and they no longer support using it.⁴⁹

A replacement for the DOT has already been paid for and produced for SSA's use by the Department of Labor—the Occupational Information System (OIS).⁵⁰ NOSSCR's members use it to question vocational witnesses. However, despite having spent more than \$239 million⁵¹ on the project thus far, SSA has still not told adjudicators to use it.

Instead, SSA relies on occupational data from generations ago to get decisions wrong. Many of the DOT occupations are obsolete. For example, a tube operator (DOT 239.687-014) “[r]eceives and routes messages through pneumatic-tube system.” This occupation was replaced by email, and yet SSA routinely cites it to claimants. Often SSA cites “addresser” (DOT 209.587-010). An addresser “[a]ddresses by hand or typewriter, envelopes, cards, advertising literature, packages and similar items for mailing.” Courts agree that this isn't done in modern computerized times. In *Hardine v. Comm'r of Soc. Sec.*, the district court found: “Why the vocational experts continue to rely on this particular [obsolete] job rather than so many others provided in the enormous DOT is a puzzle, but the Court will not accept it any more than it would accept the job of lamplighter.”⁵²

SSA must switch to the OIS immediately, allowing for reliable decisions and resulting in fewer appeals. NOSSCR expects SSA's use of modern vocational data will produce greater confidence in SSA's findings, fewer appeals, and conserve SSA's resources.

Thank you for the opportunity to testify. NOSSCR looks forward to continuing to work with the Committee to protect SSA's vital mission.

Sincerely,



David Camp
Interim Chief Executive Officer
National Organization of Social Security Claimants' Representatives

⁴⁸ <https://www.pewresearch.org/internet/2014/02/27/part-1-how-the-internet-has-woven-itself-into-american-life/>

⁴⁹ <https://www.dol.gov/agencies/oalj/topics/libraries/LIBDOT>

⁵⁰ <https://www.bls.gov/ors/>

⁵¹ <https://www.ssa.gov/disabilityresearch/documents/Fact%20Sheet%20-%20Occupational%20Information%20System%20Project.pdf>

⁵² No. 4:19-cv-147-DAS, 2021 WL 1098483, at *1 (N.D. Miss. Feb. 26, 2021).

Chairman FERGUSON. Thank you, Mr. Camp.
Ms. Burdick, you are now recognized.

**STATEMENT OF JENNIFER BURDICK, CO-CHAIR, CONSORTIUM
FOR CONSTITUENTS WITH DISABILITIES SOCIAL SECURITY
TASK FORCE**

Ms. BURDICK. Chairman Ferguson, Ranking Member Pascrell, and members of the Social Security Subcommittee, thank you for inviting me to speak today. I am here on behalf of the Consortium for Constituents with Disabilities, the largest coalition of national organizations on behalf of people with disabilities. I have also been a Social Security disability attorney for the last 10 years.

Now, make no mistake, SSDI is vital to the people who receive it. And I appreciate, Chairman Ferguson, you centering the claimant's story at the beginning. But I want to spend some time highlighting how critical this is by sharing a few more of my clients' stories.

The first is my client, Ms. C. When I met her, she had just been terminated for her job as a scheduler from a large hospital where she had worked for 20 years. The thing is, in her twenties she was the victim of a very violent crime that triggered mental health symptoms. With the help of a psychiatrist and a therapist, she was able to continue working for many years. But then her mental health declined. And, despite medical leaves with more extensive treatment, she eventually was terminated.

Now, fortunately, she learned that while working for almost 20 years, she had paid into the Social Security system, earning insurance not only for retirement but also in case of severe, work-limiting disabilities. So she applied. But, like 62 percent of claimants, she was denied when she first applied, and, like 85 percent of people, she was denied a reconsideration review, which I know we have heard a lot about today. She eventually was approved, and received \$1,400 a month, which is very close to the average but modest SSDI benefit of 1,483 a month. But it was enough to keep her in her home.

Another client, Ms. G, was a long-time hospice nurse, but she was born with a heart defect which, despite two surgical repairs, eventually gave her a debilitating heart disease. And, at 47, she could no longer work and needed a home health aide, going from being the nurse to being the patient. Like Ms. C, she applied for SSDI and was eventually approved for \$934 a month, which was a safety net to ensure that she was able to stay housed and provide food. But like Ms. C, this took a while, it took 18 months for her to get benefits. The whole time, she had no income and relied on the help of family.

Now, my first two clients, it took a while for them to get benefits. But they weren't caught up in the DDS backlog, like one of my most recent clients, Ms. P. She applied in March 2021. It took her 239 days for the DDS to issue a decision on her initial application, which is 7 months and 25 days. And then it took 300 days for her to get a decision on reconsideration. So she had been waiting for more than 17 months when we were able to even request a hearing before a judge, which is frustrating because that is where most people are approved.

And this delay had a serious—is having serious consequences for her right now. She has no income and, unlike some of my other clients, she doesn't have family who can help. So she has been living in shelter in Philadelphia. And because some of the shelters don't allow her to stay with her children, she has had to live separately from her children from time to time, which is adding additional distress.

Now, I highlight these stories because I think they really showcase the importance of this disability benefit. It does lift more people out of poverty than any others, but also the impact of these delays.

Now, SSA is not going to be able to address this backlog without adequate funding. I know you have heard from the speakers before that, due to chronic disinvestment, SSI has been seriously down-staffed, and that has hit DDSs particularly hard. And this—these staffing losses have come at the same time that there are new Social Security rules like the all evidence rule that are making claims bigger than they ever were before, meaning that there just needs to be more bodies to work these claims. And this won't happen unless Congress provides SSA with meaningful, sustained funding consistent with the President's fiscal year 2024 budget request.

Now, in my written testimony, I have also highlighted a number of process recommendations that would also assist with this backlog at the margins, but the one I really want to highlight and that would have the most significant impact is eliminating reconsideration review. I know Mr. Camp just talked about this as well, but this level of review is largely seen as a rubber stamp.

You know, I am from Pennsylvania. I was one of the states where we didn't have it for 20 years, and I can't say that it has helped the process for any of my claimants. And, by eliminating it, DDS staff could immediately be freed up to focus on the initial claims and work on this backlog.

Now, I will be very happy to answer questions about this or other recommendations from CCD. Thank you very much for having me here today.

[The statement of Ms. Burdick follows:]



Committee on Ways and Means
Subcommittee on Social Security
United States House of Representatives

One Million Claims and Growing: Improving Social Security's Disability Adjudication Process
October 26, 2023

Testimony of Jennifer Burdick
Divisional Supervising Attorney of the SSI Unit
Community Legal Services of Philadelphia
On behalf of
Consortium for Constituents with Disabilities
Social Security Task Force

Chairman Ferguson, Ranking Member Larson, and members of the Social Security Subcommittee, thank you for inviting me to testify today about improving the Social Security Administration's disability adjudication process. My name is Jennifer Burdick and I am the Divisional Supervising Attorney for the SSI Unit at Community Legal Services of Philadelphia, a non-profit that provides free civil legal services to low-income Philadelphians. For nearly sixty years, CLS has assisted clients at every stage of the Social Security disability application process, from initial applications and reconsideration appeals before Pennsylvania's Disability Determination Service (DDS), to appeals at the Social Security Office of Hearing Operations and federal court. Additionally, I convene a workgroup of Social Security disability attorneys from legal aid organizations across Pennsylvania who meet quarterly with Pennsylvania's DDS to talk about systemic issues and trends we see in initial and reconsideration appeals.

I am testifying today on behalf of the Consortium for Constituents with Disabilities (CCD) Social Security Task Force (SSTF), for which I serve as a co-chair. CCD is the largest coalition of national organizations working together to advocate for Federal public policy that ensures the self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society free from racism, ableism, sexism, and xenophobia, as well as LGBTQ+ based discrimination and religious intolerance. Our Social Security Task Force focuses on disability policy issues in the Title II Social Security Disability Income (SSDI) program and the Title XVI Supplemental Security Income (SSI) program. The SSI and Title II income supports, along with the related Medicaid and Medicare benefits, are the means of survival for millions of people with severe disabilities. They rely on SSA to adjudicate their applications promptly and fairly for disability benefits and to handle many other government functions that are critical to their well-being.

I. Social Security Disability Programs Provide Vital Benefits

For millions of people with disabilities, Social Security disability programs provide critical income support in times of need. Workers contribute to the Social Security trust fund and then qualify for SSDI if they can no longer support themselves through work due to long-term disabilities. Similarly, the SSI program ensures that people with significant disabilities that limit their ability to work can receive a small but lifesaving income benefit that helps them to stay housed. Social Security lifts more people above the poverty line than any other single benefits program.¹

For example, when I met my client T.C. she was in her mid-forties and had just been terminated from her job as a scheduler for a large hospital, where she had worked for almost 20 years. Ms. C. was a victim of a violent crime in her twenties. This event triggered mental health symptoms related to depression and post-traumatic stress. For a long time, with treatment by a psychiatrist and therapist, she was able to work. But over time her mental health declined. She first tried to address her symptoms with intensive treatment on a medical leave, but eventually she was terminated. Ms. C. went from working full-time to fearing that she couldn't pay her rent or put food on the table for her family.

Fortunately, Ms. C. learned that while she had been working for almost 20 years, she had also been paying into Social Security and earning insurance not only for retirement but also in the event of a severe, work-limiting disability. She applied for SSDI, but the road to qualifying for benefits was long. Like two-thirds of disability applicants, Ms. C. was denied when she first applied, and she was also denied at the first-level reconsideration review stage, before an administrative law judge found her eligible.

Once she qualified, she began receiving approximately \$1,400 a month. While her disability benefits were modest— they are approximately the average SSDI benefit for disabled workers of \$1,483 a month (\$17,800 annually)² – that modest income allowed Ms. C. to remain in her home.

Stories like Ms. C.'s highlight how important Social Security benefits are for disabled workers. Unfortunately, her story also shows that benefits can be hard to access, even for people who unquestionably qualify.

II. Chronic Disinvestment in SSA's Administrative Budget has Undermined the Agency's Ability to Issue Timely Disability Determinations, and it has Degraded Customer Service at the Agency

Right now, one of the biggest crises that SSA is facing is the historically high and growing backlog of cases pending at SSA's Disability Determination Services (DDS).² As of the end of August 2023, there were more than a million initial applications pending at the DDSs nationwide, and almost 300,000 reconsideration claims pending.³

¹ Kathleen Romig, *Social Security Lifts More People Above the Poverty Line Than Any Other Program*, Ctr. on Budget and Pol'y Priorities, June 2, 2023, <https://www.cbpp.org/research/social-security/social-security-lifts-more-people-above-the-poverty-line-than-any-other>.

² *National Council of Disability Directors (NCDDD) Position Paper: Vocational Regulation Reform*, July 3, 2023, at 1, https://www.ncddd.org/_files/ugd/bb958b_a93f8531dbb34a3c87ec80497f7edff6.pdf.

³ SSA State Agency Monthly Workload Data, <https://www.ssa.gov/disability/data/ssa-sa-mowl.htm>.

As discussed below, SSA will not be able to adequately address the DDS backlog until the agency is fully funded. Since 2010, while SSA's operating budget has fallen 17 percent, with similar decreases in staffing, SSA's workloads have expanded dramatically. The number of Social Security beneficiaries has grown by 11 million or 22 percent since 2010 as the Baby Boom generation has aged. Additionally, new rules, like SSA's all evidence rule (*see* Social Security Ruling 17-4p), cause each disability case file to be larger and more complicated to process. Put simply, DDSs need more bodies and resources to do this work.

III. DDSs Play a Critical Role in Social Security Disability Programs

State DDSs -- and their role in the initial disability application and first-level appeals processes that they oversee -- are a lesser-known component at SSA. SSA contracts in each state with a state agency, typically called Disability Determination Services or DDS, to review applications for disability benefits, and to administer the first level of appeal of disability denials, called reconsideration. Although DDSs must follow SSA's federal rules regarding the disability criteria, DDSs have considerable oversight in how they operate, meaning that DDS policies and protocols can vary from state to state.⁴

When someone applies to SSA for disability benefits, they usually submit extensive paperwork and most people⁵ have an interview with someone at their local SSA Field Office. SSA staff first determine whether the applicant meets the financial criteria for SSDI or SSI benefits. Then, the case is sent to the DDS to determine if the applicant meets SSA's stringent disability criteria. Extensive medical records are necessary to prove the severity of conditions and symptoms to qualify. This body of evidence is required because disability benefits are awarded only when a person's limitations prevent them from meeting the mental and physical demands of full-time work.

When the DDS gets the case, the case is assigned to a DDS examiner. The examiner will attempt to gather the relevant evidence by requesting medical records from any medical providers the applicant disclosed in their disability application. Additionally, the DDS examiner will ask the applicant to complete and return two ten-page forms, one asking about their work history and the other asking about how they function on a daily basis. Applicants often struggle with these long forms because they are very detailed and are required even if the applicant has medical issues (like a stroke) that has caused cognitive issues that make filling out forms difficult.

Almost always, the DDS examiner needs more information than what the applicant is able to provide on their own. At that point, the DDS may send a request, including for a medical assessment, to the applicant's treating doctor to ask for more information. Unfortunately, that

⁴More information about the complicated SSA/DDS relationship can be found in the Social Security Advisory Board's recent report. See *Social Security and State Disability Determination Services Agencies: A Partnership in Need of Attention*, Social Security Advisory Board, Apr. 6, 2023, <https://www.ssab.gov/research/social-security-and-state-dds-agencies-partnership-in-need-of-attention/>

⁵ While some individuals with long-work histories can apply for disability benefits online, most people are unable to apply completely online and are required to have an interview with a claims representative to complete their application. SSA has proposed expanding access to online applications, which the Task Force readily endorses. See Consortium for Constituents with Disabilities, Letter to SSA, Oct. 2, 2023, <https://www.c-c-d.org/fichiers/2023-10-02-CCD-Comments-iSSI.pdf>.

request is not typically sent in a way that elicits a response because it is sent to the medical records department and not directly to the doctor, or to the claimant to take to their next scheduled appointment with the doctor. Rather than pursue the applicant's medical records further, the DDS will often ask the applicant to travel to an SSA contractor with a medical or other health care degree, called a consultative examiner (CE). This is not a small ask: the appointment can be as far as 75 miles away and the claimant needs to pay up front for the costs for travel, even though SSA may eventually reimburse. Applicants report the doctors and other contractors they see usually do not specialize in their conditions. During the exams, the CEs often ask questions irrelevant to applicants' primary impairments and spend only a few minutes doing perfunctory examinations. After the DDS examiner receives the CE report, they will send the entire case to another doctor—called a medical consultant (MC)—whom the applicant never meets at all—to offer an opinion on the case. When the examiner gets the MC's assessment, they will recommend either approving or denying the case.

If the application is denied, as it is in 62% of cases, the applicant can ask for an appeal. During this "reconsideration appeal" another DDS examiner will look at the file, and sometimes request more medical records, before it is sent to a second MC. Then a decision on the reconsideration request is made.

While claims are at the DDS, the applicant will not get a hearing⁶ or any opportunity to explain their case to a person, which can feel dissatisfying. The main rationale for evaluating applications with so little interaction has historically been that it makes the evaluation relatively quick and sometimes inexpensive—in the past, it typically took only three months. The rationale is certainly not accuracy: while nearly two-thirds of initial applications are denied, and 85 percent of applications are denied on reconsideration review, forty percent of applicants who go on to appeal their denials to an administrative law judge (ALJ) are later found eligible. Of course, many applicants drop out of the appeals process altogether because they get discouraged or overwhelmed by red tape, and some even die, before they finally get a hearing before an ALJ.

Because of the growing backlog at DDSs nationally, even the expediency argument no longer holds water. As of the end of August 2023, there were more than a million initial applications pending at the DDSs nationwide, and almost 300,000 reconsideration claims pending.⁷

This backlog is causing serious delays. At Community Legal Services in Philadelphia, it takes our clients an average of 356 days (nearly a year) to get a decision on both their initial applications and reconsideration reviews, and that wait time has been growing. Nationally, regardless of the applicant's condition, as of April 2023, applicants had to wait 223 days (7 months and 13 days) to get a decision on an initial application, and 183 days on reconsideration (which is over a year overall).⁷ This is a huge increase from the average wait time that people experienced in February 2020, and SSA itself acknowledged that this wait time is "unacceptable."⁸

IV. DDS Delays Have a High Human Cost for Disabled Applicants

⁶ DDS's do conduct hearings in benefit cessation cases, however, not when people are applying for the first time.

⁷ *Wait times to receive Social Security disability benefit decisions reach new high*, USAFacts, Jan. 12, 2023, <https://usafacts.org/data-projects/disability-benefit-wait-time>.

⁸ *Id.*

Most applicants have no income while they are awaiting decisions on their application and appeals. During that one year delay to receive a decision on their applications and reconsiderations, people endure real hardship and devastating consequences. The need to appeal denials adds to the delays. For example, I want to highlight the experience of two claimants represented by Community Legal Services.

S.G. sought disability benefits on August 16, 2021 when she was 48 years old. She had medical impairments including atrial septal defect lymphedema, causing her to have shortness of breath and swelling in her legs. Ms. G. had worked as a hospice nurse but had to stop working when her symptoms, including shortness of breath, dizziness causing falls, and chest pains caused her to miss too much work. It took 189 days (6 months and 5 days) for her to receive a denial on her initial application, and an additional 149 days (4 months and 29 days) for the DDS to deny her request for reconsideration. While she waited, Ms. G. had no income and she was forced to rely on the generosity of her family to pay her bills. Finally, at long last, an administrative law judge acknowledged that the DDS got the case wrong, approving disability benefits back to the date of application at a hearing on December 1, 2022. Thus, she went a year and a half with no income.

One of my current clients, C.G., applied for disability benefits on March 3, 2021. It took the DDS 239 days (7 months and 25 days) to issue a denial on her initial application. C.G. was unhoused when the DDS issued the denial, and so she did not receive the denial timely and was delayed in filing an appeal until November 1, 2022. After appealing, she did not get a decision on her reconsideration claim until September 7, 2023, after waiting for 300 days (10 months and 6 days). She waited a total of seventeen months and 31 days for the DDS to address her claims, while precariously housed in shelters without income. Now she is waiting for a hearing before an administrative law judge.

V. SSA Needs Adequate Funding to Address the DDS Backlog

SSA will not be able to adequately address the DDS backlog until the agency is fully funded. Since 2010, SSA's operating budget has fallen 17 percent, with an associated drop in staffing of 16 percent.⁹ As a result, in 2022, SSA's staffing numbers hit a 25-year low.¹⁰

DDSs have been hit particularly hard by SSA's staffing crisis. As with SSA overall, on average DDSs lost roughly 16% of their staff nationwide between 2010 and 2021.¹¹ But some states, including Georgia, Illinois, Kansas, Montana, South Carolina, Tennessee, Texas and West Virginia, have lost 30 percent of their DDS staff. During the same time, SSA's workloads have expanded dramatically. The number of Social Security beneficiaries has grown by 11 million or

⁹ Kathleen Romig, *Long Overdue Boost to SSA Funding would Begin to Improve Service*, Ctr. On Budget and Pol'y Priorities, Mar. 30, 2023, <https://www.cbpp.org/blog/long-overdue-boost-to-ssa-funding-would-begin-to-improve-service>

¹⁰ Jeff Stein, Lisa Rein, and Erin Cox, *Biden picks Martin O'Malley to lead Social Security Administration*, July 26, 2023, <https://www.washingtonpost.com/business/2023/07/26/biden-picks-martin-omalley-lead-social-security-administration/>

¹¹ Kathleen Romig, *Social Security Administration Cuts Hurt Every State*, Ctr. on Budget and Pol'y Priorities, May 26, 2022, <https://www.cbpp.org/research/social-security/social-security-administration-cuts-hurt-every-state>.

22 percent since 2010 as the Baby Boom generation has aged.¹² Case files have gotten larger because new rules, like the all evidence rule, have caused each file to contain more evidence.

Adequate and sustained funding is particularly important at the DDSs where staff recruitment can be challenging due to the nature of the SSA/state partnerships. It is critical that Congress fully fund SSA to allow it to have the tools to meaningfully address this backlog. CCD supports the President's request for SSA to receive \$15.5 billion for FY 2024 – a much-needed increase that will allow the agency to improve customer service and reduce the DDS backlog.¹³

VI. With Funding, SSA Can Streamline Disability Processes To Reduce the DDS Backlog

Alongside sufficient funding for SSA, the CCD Social Security Task Force has identified the following modest improvements to the DDS examination processes that would help reduce the backlog.

A. Eliminate the reconsideration level of review.

The CCD Social Security Task Force believes that DDSs should only review a claim one time. In other words, the current second-level review by DDSs, or reconsideration, should be eliminated.¹⁶ Reconsideration, in which DDSs approve only ten to fifteen percent of cases, is widely viewed as an inefficient “rubber stamp” of the first denial. A Congressional Research Service report documented fifty years of SSA's efforts testing ways to improve the reconsideration; among its key findings, the report documented a twenty-year SSA pilot, which was ended by the Trump Administration, in which reconsideration was eliminated in certain states. The report did not find any negative implications for SSA's operations or accuracy in evaluating claims in states that did not have reconsideration review.¹⁴

Forcing applicants to go through reconsideration significantly lengthens how long they wait for a decision, and gobbles up DDS resources, including DDS staff time and attention. Considering the significant understaffing issues at DDSs across the country, eliminating this rightly criticized second level of review would free up DDS staff, and allow DDS to focus its resources on promptly and accurately evaluating initial applications.

B. Recommit to gathering and prioritizing evidence of disability from applicants' treating doctors instead of relying on exams by SSA contractors.

¹² Consortium for Citizens with Disabilities, *FY 2024 Funding for the SSA*, Mar. 28, 2023, <https://www.c-c-d.org/fichiers/CCD-FY2024-Ltr-to-Appropriators.pdf>; See also Testimony of Jessica LaPointe at Senate Field Hearing at 4, Oct. 16, 2023, https://www.aging.senate.gov/imo/media/doc/58708447-f30d-45f9-cbfc-2d749b6f0f5f/Testimony_LaPointe%2010.16.2023.pdf.

¹³ Consortium for Citizens with Disabilities, *FY 2024 Funding for the SSA*, Mar. 28, 2023, *Disabilities*, <https://www.c-c-d.org/fichiers/CCD-FY2024-Ltr-to-Appropriators.pdf>.

¹⁴ Cong. Research Serv., *The Reconsideration Level of Social Security's Administration Appeals' Process: Overview, Historical Development, and Demonstration Projects* (RL 7-9453), Prepared by William Morton, July 15, 2018. (“Most reconsiderations of initial application determinations are subject to a *case review* only, which involves a review of all the evidence in the claims file by an examiner who was not part of the initial determination. Case review does not involve a face-to-face meeting between the claimant and the adjudicator”); (emphasis added);

It's common sense that a person's treating doctor is in the best position to accurately assess whether someone is experiencing physical or mental limitations that would make it difficult to work. Treating doctors have the best grasp of their patients' medical history and have often seen patients multiple times. All too often, instead of reviewing treating-source evidence, DDS adjudicators overly rely on reports SSA consultative examiners (CE) to determine disability, even when more probative treating-source evidence might be available.

The problem is that, although SSA policy instructs DDSs to prioritize getting treating source evidence and opinions, SSA's own regulations are not well-calibrated to do that. The regulations specify that the DDS examiner will make two attempts to obtain medical records, by sending two letters to medical providers twenty days apart. They send the request for the treating doctor to provide SSA with a medical assessment form to the medical records department, so most doctors never even see it. The regulations allow the DDS examiner to proceed to make a decision without the records if those records are not received following those attempts. Absent treating provider information, DDS examiners often ask claimants to see a CE for a perfunctory examination, even in circumstances where treating evidence would be available if more effort is made to retrieve it.

Over reliance on CE examinations is bad policy. CE reports are an inefficient way to get the evidence necessary to make an accurate decision as early as possible, because they are time limited and decontextualized from the applicants' full medical history. When DDS examiners rely on this poor-quality evidence in their decisions, they make mistakes, which lead to unnecessary requests for reconsideration and subsequent appeals, as well as reapplications. These errors create more downstream work that adds to the DDS backlog. Focusing instead on treating source opinions from appropriate specialists would allow DDS examiners to get to the right conclusion sooner. Treating source opinions could be more easily obtained if DDSs would send the medical assessment forms directly to the treating source and to claimants to take to their providers, as opposed to the medical records department.

Referring claimants for unnecessary CE examinations is also contributing to the DDS backlog. Due to many of the same hiring constraints affecting SSA's staffing, there are also serious CE scheduling backlogs in many states so CEs can delay timely evaluation of applicants' claims. CE examinations are also expensive—SSA paid \$333,111,377 nationally on consultative exams in 2022.⁶

The Task Force believes that DDSs' evaluation of disability applications would be more efficient if DDSs more effectively collect medical records from treating providers at the earliest point possible, ideally when the claim first arrives at the DDS, which would reduce the overreliance on CEs. The Task Force recommends that SSA should ensure that the DDSs do a better job of case development. As noted above, sending two letters to the medical records department at treating providers is inadequate to consistently get treating source evidence. Indeed, many claimants' representatives have hired staff whose job is dedicated entirely to getting records.

The Task Force also recommends that SSA make it easier for DDSs to get treating source opinions by sending applicants forms to take to their medical providers. While many treating providers express disinterest at serving as CEs or MCs for DDSs, many have indicated they would be willing to complete assessments as part of routine medical appointments. If DDS

examiners sent assessments *directly* to applicants, the applicants could take them to their upcoming appointments and ask their medical providers to complete them.

DDS should also consider creating impairment-specific evaluations and forms that applicants can provide to their physicians or other treating sources. The forms should summarize what information is most helpful to SSA in evaluating the applicants' claims, including what types of tests would help establish eligibility under one of SSA's listings of impairments.¹⁵ Additionally, DDS should be more proactive about following up with treating sources where there is a limited clarification needed to make a disability finding instead of sending the claimant for a CE. One phone call directly to a doctor can often provide the needed information and does not require the wait time or financial output needed for a CE evaluation.

C. The Task Force recommends that SSA restore the treating physician rule.

In March 2017, SSA issued a final rule that eliminated a directive to give special weight to treating-source evidence. Evidence from a treating medical source is generally more persuasive because treating providers are specialists in their fields and often have ongoing relationships with their patients, unlike CEs. The treating physician rule helped DDS examiners adjudicate claims more efficiently and effectively by guiding examiners to focus on this probative evidence, helping them get the right result faster. Right now, DDS examiners can rely on CE reports in lieu of treating-source evidence, which leads to mistakes and appeals.

The Task Force supports restoring the treating physician rule. We believe it would decrease the DDS backlog by requiring DDS examiners to focus claim development on the most probative evidence.

D. SSA should revise its regulations to streamline applicant reporting requirements about past work experience.

The Task Force applauds SSA for proposing to revise the definition of past relevant work by reducing the time period considered from fifteen to five years. For thirty years, the federal regulations have required SSA to use an applicant's fifteen-year work history to assess their ability to return to work.¹⁶ Although CCD¹⁷ and CLS take the position that past work experience is useful evidence to determine whether someone can work, we also believe that such a long "lookback" period is unnecessary and creates a significant administrative burden that contributes to delayed evaluation of claims. Claimants frequently have a hard time recalling the details of such remote jobs, and the work-world has changed so significantly that their ability to do these jobs from the remote past is not often very relevant. We encourage SSA to swiftly implement this proposal, which will help streamline claims at the DDS level.

E. SSA should take additional administrative steps to address the DDS backlog.

¹⁵ Consortium for Citizens with Disabilities, *Improving Decision Making at the Disability Determination Services*, <https://www.c-c-d.org/fichiers/CCD-Improving-Decision-Making-at-the-DDS-.pdf>

¹⁶ 20 C.F.R. §§ 404.1560, 416.960.

¹⁷ Consortium for Citizens with Disabilities, *Letter to the SSA, Dec. 14, 2015*, <https://www.c-c-d.org/fichiers/CCD-SSTF-Comments-ANPRM-on-vocational-factors-final-12-14.pdf>

There are other urgently needed improvements that SSA could make to further reduce the DDS backlog, including:

- Ensure performance metrics encourage making decisions on the most complete files possible. The Task Force is aware that SSA must balance a number of interests in determining when and how to evaluate the performance of DDSs. It is our understanding that two primary outcomes are evaluated when determining the performance of DDS adjudicators: the time and cost it takes to issue a decision. Although these considerations are important, the completeness of the file should be factored into the performance metrics. The metrics should also discourage reliance on CE reports when the claimant has treating providers.
- Improving and streamlining all notices to lessen the burden on applicants. These notices should also be available in plain language and commonly used languages in addition to English to ensure accessibility. Particular attention should be paid to the SSA-3373-BK (function report) and SSA-3369-BK (work history report), which are frequently used at the DDS level.
- Broaden the ways to communicate with applicants to include secure text and email, consistent with other government agencies that provide safety net benefits.
- Recruit pediatricians to review children's SSI cases, to increase efficiency and accuracy in the adjudication of children's SSI claims. We applaud SSA's recent commitment to work with local chapters of the American Academy of Pediatrics (AAP) to recruit more pediatricians and think additional steps towards pediatric recruitment should be taken.
- Encourage state DDSs to actively engage with disability advocacy groups in advisory roles, to get input on the experiences of applicants on the ground.
- Improve the feedback loop regarding CEs. SSA has surprisingly little oversight over the consulting doctors who examine claimants at DDSs' behest because they are secured by DDSs via third-party contracts. As a result, SSA often does not know if a particular CE provider or agency is performing well. SSA should create a feedback loop to identify issues with CEs, perhaps by publicizing a 1-800 number for applicants who are scheduled for CEs, to solicit feedback on CE quality and other issues that goes directly to SSA.
- Improve the feedback loop between DDS and claimants. When a claimant submits an application for benefits, there is often very little feedback from the DDS regarding the content or status of the applications. DDS's role is to accurately determine whether the individual meets the statutory definition of disability and should ensure that it has the information necessary to make that decision. It should inform a claimant if there is a test needed for a claimant to be found eligible under a certain listing, if that test is not in the claimant's file.
- The Task Force supports SSA's efforts to update the occupational information it uses to make disability determinations to reflect jobs as they exist in the current economy.

- Increased target denial reviews. SSA should review more denials of initial claims. TDRs allow SSA's Office of Quality Review (OQR) to examine unfavorable decisions of disability claims issued by state agencies. SSA reviews far fewer denials than allowances. Doing more TDRs will increase the efficiency and accuracy of the disability programs, if TDR outcomes are used to improve SSA policy and training for DDS adjudicators by using the data to identify impairments that are being inappropriately denied.
- Fund third-party assistors in disability claims. Unlike the Internal Revenue Service, and the Department of Veterans' Affairs, SSA does not have a navigator or assistor program for people with barriers navigating the disability application process. Assistors can partner with DDS to gather medical evidence from treating providers and ensure that forms are returned timely and accurately, speeding up the evaluation process.

VII. Conclusion

More than one million people are waiting for decisions on their Social Security disability applications pending at DDSs around the country. This long wait is unacceptable. Applicants often experience incredible hardship while they are waiting to have their claims decided, and that hardship can include homelessness, bankruptcy, and even death.

SSA needs additional funding, quickly, to be able to serve all its customers in a timely manner. CCD's Social Security Task Force also urges SSA to take additional steps to ensure that eligible claims are awarded as early in the process as possible, by making some common-sense reforms to the case development process.

Thank you again for the opportunity to testify. CCD SSTF looks forward to continuing to work with the Subcommittee to protect and improve SSA's programs for people with disabilities.

Chairman FERGUSON. Thank you, Ms. Burdick.
Mr. Warshawsky, you are now recognized.

**STATEMENT OF MARK WARSHAWSKY, SENIOR FELLOW,
AMERICAN ENTERPRISE INSTITUTE**

Mr. WARSHAWSKY. Thank you. Chairman Ferguson, Ranking Member Pascrell, and members of the subcommittee, I am Mark Warshawsky, a senior fellow at the American Enterprise Institute.

From July 2017 through January 2021, I was deputy commissioner for retirement and disability policy at Social Security, where I led the development of a revamp of the medical-vocational rules for eligibility for disability benefits.

I understand now it is a very difficult time at the agency. No doubt there are many causes for this sudden and sharp deterioration in service and employee morale, and that these causes are both short-term and long-term in nature. But I want to focus today on a very important, long-term solution to the service and resource problems at the agency.

The currently needlessly complex and outdated rules and data that both claimants and the agency use to determine eligibility for disability benefits have to be simplified, modernized, and automated. And actually, a fully specified disability eligibility simplification and modernization proposal currently exists at the agency waiting to be published. And really, the question is, where is it?

But first let me give you just a bit of background to determine eligibility for disability benefits. SSA uses a five-step evaluation process. Those last two steps constitute the medical-vocational rules, and they have not changed since 1978. They largely rely on job requirements data from the Dictionary of Occupational Titles, the DOT, which was created during the Great Depression and last partially updated by the Department of Labor in 1991, and not since.

Among its 14,000 occupations—and I liked Mr. Camp's example; I have a few others—which are deemed to exist in significant numbers in the economy, the DOT has a “phonograph cartridge assembler” and a “web press operator print.” It does not have a web designer. Furthermore, it has never included the mental requirements of work, an increasingly important factor in the modern work environment, as we have heard today.

The regulation adopted in 1978 included a fairly prescriptive vocational grid for step five, which is outdated and largely inadequate. It is now used only in about 10 percent of step 5 cases. For the rest, the rules are a framework, but they rely on a detailed and often very semi-informed analysis of job requirements and numbers of available jobs in the economy by SSA vocational specialists and vocational experts, paid for by SSA. This adds time, and it adds expense.

These rules also dictate a difficult, expensive, and often inconsistent and arbitrary assessment of the ability to adjust or transition to new work at older ages. This also takes time, and it is very, very inefficient.

The grid or the framework—it produces arbitrary and inequitable results, often related to age, and in my testimony I give some examples. There are particularly noticeable jumps in awards at age

50, which the regulations call “closely approaching advanced age”—age 55, advanced age—and age 60 demarcations in the current regulations giving considerable and increasing leniencies in eligibility standards. The natural increase in disability awards, according to objective definitions of disability, would be much more gradual with age without those rules.

And there have been many changes in the American labor force since the 1970s that really do add weight to the case for reform. People are working longer, older people are working longer. There are a lot of new technologies and changes in the economy that have reduced the physical aspects of jobs. There is a lot more part-time work than—with substantial pay than there was in the past. This is not reflected at all in the current regulations.

A modernized vocational database should replace the woefully out-of-date data currently in use. As we have heard, the Bureau of Labor Statistics and its team of nearly 200 field economists produced in 2019 and 2020 a complete first wave of detailed occupational requirements, ORS information. Thus far, ORS has cost the SSA about \$300 million, now roughly \$42 million a year, to run the survey, and we have not seen its use yet.

With this new, nationally representative data on work requirements, policymakers can make sensible policy changes to the programs. For example, if only entry level work is considered as step five, the complex and time-consuming transferability of skills analysis performed at older ages can be omitted entirely, a significant simplification.

Similarly, the—all this data would be housed in a public platform called the Vocational Informational Tool, the VIT, that, combined with the streamlined new regulations, would simplify and automate the vast majority of claims. When I left the agency in January 2021, this rule was ready to be published.

It is—we know that under current rules, some claimants are being inappropriately denied benefits and others are inappropriately being awarded benefits. This should not continue.

Thank you for your invitation to speak, and I am glad to answer your questions.

[The statement of Mr. Warshawsky follows:]



Statement before the House Committee on Ways and Means
Subcommittee on Social Security
One Million Claims and Growing: Improving Social Security's Disability Adjudication
Process

Simplifying and Modernizing the Disability Adjudication Process

Mark J. Warshawsky, PhD
Senior Fellow, American Enterprise Institute

October 26, 2023

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Chairman Ferguson, Ranking Member Larson, and Members of the Subcommittee,

I am Mark Warshawsky, a Senior Fellow at the American Enterprise Institute, where I conduct research on Social Security, retirement and pensions, long-term care, disability, and the federal budget. From July 2017 through January 2021, I was Deputy Commissioner for Retirement and Disability Policy at the Social Security Administration, where I was in charge of research, data sharing, international agreements, and the development of many regulatory and legislative proposals for the agency, especially including a revamp of the medical-vocational rules for eligibility to disability benefits. I was a member of the Social Security Advisory Board, from 2006 to 2012, a time of intense problems with the disability adjudicative process at SSA.

I understand that now is also a difficult time at the agency. Wait times for calls to the "800 number" have increased from 20 to 30 minutes, while drop-call rates have also risen. The average time from application to initial decision on disability claims has nearly doubled from about 120 days before the pandemic to over 220 days currently. Similarly, wait times for the second stage of adjudication, the first level of appeal, reconsideration, have risen from 110 days before the pandemic to 183 days in 2022. Unlike in the 2006 to 2012 period when the deterioration was mainly in the later, hearings, level of appeals at SSA, where backlogs have occurred in the past, the current severe service problems are now occurring at the initial and reconsideration levels of adjudication at the state adjudication agency DDSs, which have traditionally been quite stable. And unlike in the 2006 to 2012 period, when the number of disability claims was exploding, now the number of disability claims is falling over several years, including during the pandemic, the large loads of continuing disability reviews and other work was paused during and following the pandemic, field offices were finally re-opened last April, and the agency received large increases in its budget. And, according to the Federal Employment Viewpoint Survey scores, employee morale at SSA has collapsed from 2020 to 2022.

No doubt there are many causes for this sharp deterioration, both short-term and long-term in nature. As part of your oversight work, the subcommittee should explore management and labor problems at the agency, including the use of telework, chaotic conditions at urban field offices, the overriding priority given at the agency to diversity and equity, and scheduling appointments. Also, the reintroduction of the reconsideration step in the disability adjudication process in ten prototype states in 2019 and 2020 should be carefully reviewed, with data from the agency, to see if the added work load at the DDSs is causing some of the current problem. And, consider whether it is worthwhile, in terms of changes in ultimate allowance rates through the hearings and appeals levels of adjudication, total wait times for claimants, agency costs, and so on, to have a reconsideration step at all.

But I want to focus my testimony today on two longer-term solutions to the service and resource problems at the agency. First, disability claimants, particularly from poor backgrounds, especially for SSI, should be supported early in their claim process by external assistance, to ease the agency burden and improve overall efficiency. And, second and more significantly, the current needlessly complex and outdated rules that both claimants and the agency use to determine eligibility for disability benefits have to be simplified, modernized, and automated.

With respect to the first proposal, we need to recall that claimant representatives, mainly attorneys, are compensated based on past due benefits. Therefore these representatives have an incentive to delay the process or to only take cases in later levels of stages of adjudication. SSA research and operations officials therefore should field a demonstration project to test whether more fully compensated

attorney representation during the initial stage of adjudication at the DDSs — where such representation is now relatively uncommon — could speed up the overall process without a loss of accuracy or change in ultimate award rates. Some econometric evidence suggests that this change could indeed be useful because, as hypothesized, in order to be paid their contingent fee, the claimant representatives work diligently to win the case by collecting relevant medical and vocational evidence and knowing the agency eligibility and administrative rules. The demonstration project should test the hypothesis by paying more for attorney representation of a randomly selected set of SSI applicants beyond the current low fees that their representatives would now be paid for a successful but quick award at the initial level — a bump-up closer to average fees at the hearings level. The project could be jointly funded by SSA research and external resources from foundations, like the Rockefeller, MacArthur, Smith-Richardson, or Arnold.

There is much more to say about the second proposal, disability eligibility simplification and modernization, because a fully specified version already currently exists at the agency, waiting to be published! But first some background. To determine eligibility for disability benefits, SSA uses a five-step evaluation. First, the agency determines whether the claimant had sufficient years of coverage to be insured for DI, or if not and is poor, eligible for SSI, whether she is still working, and is earning above the substantial gainful-activity level. Second, it determines whether the claimant's disability is of sufficient significance and duration (actual or expected) to be considered further. Third, the SSA determines whether a pure medical determination can be made as to whether the disability is sufficiently severe to meet the agency's body-system listings. If not, it determines whether the claimant can still perform his previous work despite the disability (step four), or if other work is reasonably available in the economy in significant numbers for him to perform (step five), given the person's residual functional capacity (RFC) and taking into account his age, education, and work experience.

The latter two steps constitute the medical-vocational rules, and they have not changed since 1978. They rely largely on job-requirements data from the Dictionary of Occupational Titles (DOT), which was created during the Great Depression and last (partially) updated by the Department of Labor in 1991. Given how dated they are, it shouldn't come as a surprise that the rules refer to occupations long extinct and omit newer ones: Among its 14,000 occupations, which are deemed to exist in significant numbers in the economy, the DOT has a phonograph-cartridge assembler and web-press operator (print), but no web designer.

Further, it has never included the mental requirements of work — an increasingly important factor in the modern work environment. And the regulation adopted in 1978 includes a fairly prescriptive medical-vocational grid for step five, which is both outdated and largely inadequate. It presumes a workforce with low levels of education which is largely involved in physical labor, works long hours, has little flexibility in work schedules, low adaptability, little access to assistive technology, never works from home, and retires early fairly often.

The grid used in carrying out the medical-vocational inquiry is made up of four charts — one each for sedentary, light, medium, and heavy work — which are plotted against age, education, and skill level. The grid was designed to allow officials to determine, without further analysis, whether an individual is vocationally disabled, and thereby making claim adjudication simpler and more consistent among different agency actors and across levels of adjudication (initial, reconsideration, and administrative-law judge). However, it is now used directly in only about 10 percent of step-five cases. For the rest, it serves

as a guide that requires detailed but often semi-informed analysis of job requirements and numbers of available jobs in the labor market by SSA vocational specialists or vocational experts paid by SSA, given the individual's RFC. If a claim involves any assertion of mental impairment or a non-exertional factor (like pain or fatigue) in any aspect of work — and even if these assertions are combined with physical impairments — the case goes off the grid and into an often subjective judgment of how many fewer jobs are available due to the additional impairments. As a result, the extensive need for vocational experts and administrative law hearings — which add expense and months and sometimes years to the benefit-application process — has risen significantly. The rules also dictate a difficult, expensive and often inconsistent and arbitrary assessment of the ability to adjust or transition to new work at older ages. There are also three outdated allowance profiles now rarely used.

In cases where the grid is applied or used as a framework, it can produce arbitrary and inequitable results, often related to age. For example, a 32-year-old veteran with a consistent work record who has a traumatic brain injury but can work at a sedentary job would be deemed not disabled, but a 51-year-old with no past relevant work experience and a relatively minor musculoskeletal impairment would be found disabled.

Additionally, a 49-year-old with a consistent record of heavy work who suffers a neurological injury and can only do unskilled sedentary work would be judged not disabled, but a similarly situated 50-year-old would be found disabled. In fact, at the initial level of adjudication, those age 55 and older are three times more likely to be awarded disability benefits than those age 49 and younger. There are particularly noticeable jumps in awards at the 50- (“closely approaching advanced age”), 55- (“advanced age”), and 60-year demarcations in the current regulations giving considerable and increasing leniencies in eligibility standards. The natural increase in disability awards, according to objective definitions of disability, would be much more gradual with age without those rules.

Changes in American labor-force trends since the 1970s only add weight to the case for reform. The current rules presume that people ages 50, 55, and 60 warrant determination of vocational disability in many circumstances due to presumed age-related job discrimination, social difficulty, or employer expectations. But for many years already before the Covid-19 pandemic, the labor-force participation rates were actually rising among older people. Advances in technology and changes in the economy have reduced the physical aspect of many jobs, including some that were considered “heavy effort” long ago. Light or sedentary work is more common now, even for those with less education or limited experience. Workers are also more educated, many with post-high-school training. Work hours and conditions have become more flexible for many jobs, even before the pandemic-induced work-from-home revolution. Substantial part-time work, paying above the level of substantial gainful employment, is more common in many occupations. Research indicates that more individuals at higher ages have the mental and, for some, the physical capacity to adjust to new work. At the same time, studies by labor economists show that the extent of physical work associated with routine manual tasks has declined dramatically in the economy, while work associated with abstract, non-routine cognitive tasks has increased. Current rules do not reflect this reality. Among disabled people, the labor force participation rate has increased and the unemployment rate has dropped. This is particularly so in “teleworkable” occupations. Policymakers should seek out opportunities to update the disability rules in light of these changes.

A modernized vocational database should also replace the woefully out of date data currently in use. After consultations with experts, public meetings, six years of preparation, testing, internal study, and surveying of a statistically representative sample of employers based on the National Compensation Survey, the Bureau of Labor Statistics and its team of nearly 200 field economists, in conjunction with the SSA, produced in 2019 and 2020 a complete first wave of detailed occupational requirements survey (ORS) information. This new data set includes requirements related to exertional elements (e.g., climbing stairs), additional physical elements (e.g., fine manipulation), sensory elements (e.g., hearing), and environmental elements (e.g., extreme cold). Because the ORS categorizes occupations according to about 900 standard occupational classifications (SOCs) — the same classification system that the federal government uses for myriad other statistical and administrative purposes — data from ORS can be matched with other federal survey data like task and training features (O*NET), and number of workers (OES). The data can be sorted by or restricted based on education, skill, strength, work schedule, prior work experience, or training requirements as dictated by law or policy. Any missing elements in the data should be interpreted in the claimant's favor, although this will likely be less necessary over time as second and subsequent waves of data collection fill in the blanks.

Though the first wave of ORS did not successfully include mental requirements (memory, adapting, etc.), these data are available through a validated Delphi study that Abt Associates conducted for the SSA in 2019 and 2020. ORS's second wave includes these requirements, and it will be interesting to see how the Abt results compare.

The first wave of ORS was completed in 2019 and analyzed in 2020; the second wave — which uses a larger sample of survey respondents, is supposed to rely more extensively on new statistical techniques to overcome disclosure restrictions, and includes the Covid-19 experience — will be available in 2024. Thus far, ORS has cost the SSA about \$300 million, now roughly \$40 million a year to run the survey.

By way of illustration, look at Figure 1, which shows some recent ORS work requirement data in the aggregate, for work strength levels, education levels, and other elements. Or consider Figure 2, which shows for a particular occupation, library assistant, the characteristics and requirements of the occupation.

Figure 1. ORS Work Requirements, 2022 (% of Civilian Workers)

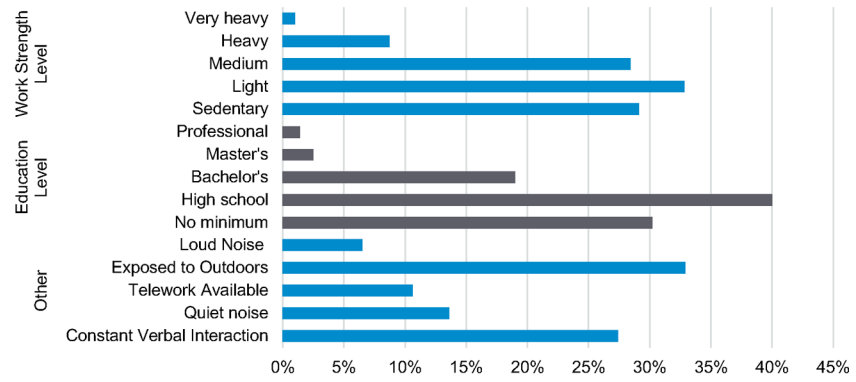
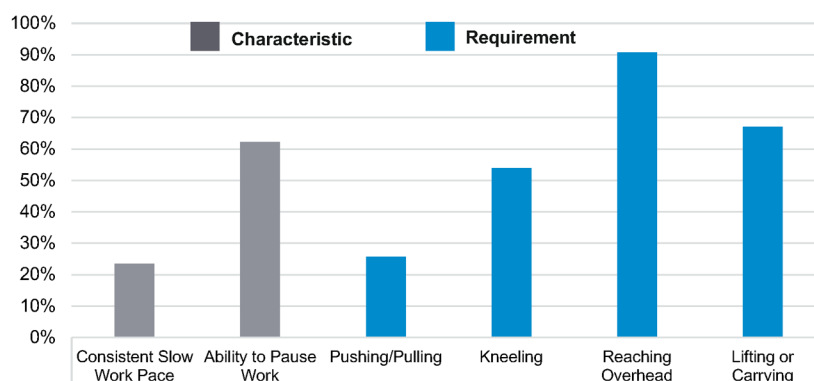


Figure 2. Occupational Requirements for Library Assistants, 2022 (% of Library Assistants)

With this new, nationally representative data on work requirements, policymakers can make sensible policy changes to existing disability programs. For instance, if only entry-level work is considered at step five, the complex and time-consuming transferability-of-skills analysis performed at older ages can be omitted entirely — a significant simplification. The educational levels can also be simplified and extended to those that are vocationally relevant. To the extent that ORS data are sufficiently “thick” at the SOC level, or that some SOCs can be combined, college education should be added as a factor, as even sedentary work at this educational level may differ from that of jobs requiring only a high-school education.

Finally, vocational and economic research indicates that age 60 is now a natural break point for disability policy, as individuals over that age are more prone to injury and take longer to heal. The rules, therefore, should not take heavy work into consideration for these older workers as possible alternative employment at step five. Aging-related impairments should indeed be considered, but in the individual’s RFC assessment, and not double-counted in the rules. Disability decisions should be based on individual capabilities and modern job requirements, not outdated arbitrary rules, with little foundation in either law or evidence.

It should be noted that the ORS data would be the main source of information in the new Occupational Information System (OIS), but other sources, such as job requirements from the military services and Department of Labor’s Occupational Information Network (O*NET), would also be used. All of this data would be housed in a public platform called the Vocational Information Tool (VIT), that combined with the streamlined new regulations, would simplify and automate the vast majority of claims. The use of the OIS will allow for more individualized assessments, given RFC, than the current grid, for the vast majority of cases. The agency has spent about \$10 million on the VIT to date, but has frozen its development.

When I left the SSA in January 2021, the Notice of Proposed Rule-Making on Vocational Regulations Modernization (VRM) was ready to publish. The agency had then been working hard on the new disability-eligibility regulation for the last 10 years. Within the federal government, there were extensive

policy discussions and analyses, data investigations, literature reviews, field and administrative-law judge consultations, legal consultations, actuarial- and economic-impact estimates, distributional analyses, cost estimates, automation-software preparation, and thorough documentation. My rough guess of the additional manpower and resource cost for this effort is \$100 million, resulting in a total cost to the taxpayer for VRM of at least \$400 million.

Of course, any change is difficult, and some advocates will try to misrepresent, cherry-pick data or studies, and define the relevant population down to almost a tautology in order to show people experiencing losses. But we know that under current rules that some claimants are being inappropriately denied benefits while others are inappropriately being awarded benefits. Studies show that the current disability program is inappropriately sensitive to economic considerations and this is especially concerning at a time when labor shortages are projected with the aging of the population. Another study of public disability insurance reform in Austria found the gradual removal of generous eligibility standards for older workers increases employment among the affected almost one-for-one with the denial of benefits, with no harm to earnings or health.

The SSA, as a non-political agency, should rise to the continual need for prudent stewardship of the program as well as the recent emergent need for more simplicity, efficiency and automation in the adjudication process, and publish the proposed disability-reform regulation now, based on all the work that has been done. It was always planned that the eligibility standards would be automatically updated when the second wave of ORS data is available in 2024, on the five-year cycle, and that plan can continue to be followed.

Before I conclude, allow me to comment briefly on a recently proposed SSA regulation to reduce from 15 to five the number of years used to define past relevant (PRW) in steps four and five of the adjudicative process. This so-called "intermediate improvement" (intermediate to what is not stated) would increase disability benefits by \$27 billion over ten years. This proposal is clearly a violation of the bipartisan budget agreement signed this past summer by President Biden, forbidding the issuance of regulations significantly increasing the budget deficit that have no immediate necessity. Moreover, the NPRM document is largely incomplete, containing no regulatory impact analysis of alternatives considered or distributional and federalism impact, and missing the budget consequences of large increases in Medicare, Medicaid, and other federal and state welfare program spending. Also, the evidence used in the NPRM is misleading and incomplete. At best the evidence cited supports a more modest change that we in the last Administration were going to propose as part of the larger package – to reduce the PRW period from 15 to ten years, fixed at the initial filing date or at the first level of a continuing disability review, at much lower cost in the context of our other proposed changes, while still reducing the claimant and agency administrative burden.

Thank you for your invitation to speak and I am glad to answer your questions.

Chairman FERGUSON. Thank you sir, and I appreciate it. And now we will move to the question-and-answer session.

I am—you know, every now and then my dear friend from New Jersey and I both agree on something. There are a lot of times I just simply want to look at him and go, “Bless your heart.” [Laughter.]

Chairman FERGUSON. But we have found a—something that is common here, and I am—I was going to jump on it, I am going to ask my friend to, when it is his turn for questioning, to address it, and that was, Mr. Camp, your description of the difference between when a claimant is 100 percent disabled by the VA and they are not by the Social Security Administration. We are going to dive into that a little bit later.

But a couple of things that stood out to me in the testimony. Ms. Davis, just an observation. You went through a list of things that, you know, that you were looking to do to improve, and you said, “And finally, IT,” or finally, technology. I certainly don’t mean to sound like I am preaching to you, but I would start with IT and not make it the final thing that you have got to go to.

We have heard time and time again from the Administration that it is all about personnel and increased money for that personnel. I certainly understand that it takes—it does take people, but I think there has to be a renewed interest—not a renewed interest, there has to be laser focus on the implementation of proper technology. I just think that you cannot—no business in America, no government agency can solve the problems that they have with processing if they don’t use proper technology.

Mr. PASCARELL. Ditto.

Chairman FERGUSON. We found it again, twice in one hearing. Oh, I don’t know what that means. [Laughter.]

Chairman FERGUSON. Yes, exactly. It does have me worried. But I do—I just make that observation on there.

As I get into my questions here, Ms. Russell, you made a comment. You said that if you have consistent hiring authority, you said that would help with retention. I am confused because you got to hire somebody to fill an open slot. How does that action help with retention?

You see? I mean, it just looks like you are saying, all right, we just need to hire more folks so it helps with retention. Why are they leaving to begin with? Hiring somebody doesn’t seem to address the problem of why they are leaving.

Ms. RUSSELL. Thank you, Chairman Ferguson, for that question, and it is a great question.

The way that that helps disability determination agencies is if we have consistent hiring authority to replace our losses, then we have consistent staff there to process those claims. When staff leave, their caseloads have to be reallocated to other staff. So that means we have staff with increased workloads, which leads to burnout, and then that leads to attrition because people can only work the amount of hours that they have in a day. And, when they have a higher workload, then that leads to pressure for them, which leads for them to leave.

And the disability determination agency staff, they care so deeply about this work. I was struck by that when I first arrived at the

DDS. They care so deeply, and they take this home with them, and they wear this. And so, when they are not able to turn a decision around in a reasonable timeframe, they have a lot of guilt associated with that that they are carrying.

Chairman FERGUSON. All right, thanks for the clarification on that.

You know, one of the things that I look at, you know, we have seen, is that, you know—and Mr. Camp, I am going to address this to you. If we are having trouble meeting the current caseload, and then you are going to spend hundreds of millions of dollars trying to go scoop up more people to bring them into a program that is naturally declining in its initial applicants, does that seem like a good resource, a good use of resources?

Mr. CAMP. There are certainly improvements in what we already are using that need to be taken today. There are changes that need to be made now with already-paid-for new programs as to the DOT replacement and processes that are obviously just available with a policy change.

If you have 90 percent of findings at reconsideration, not involving any additional effort or work or findings, word for word the same as they were 300 days earlier in the process, that should represent an opportunity for some savings, for some 9 out of 10, perhaps, savings at that stage. It is not hard to find activity at initial and reconsideration that isn't necessary and that is slowing things down.

There are opportunities for the use of the current staffing and the current budgetary authority that also involve those of us on the outside of the program that speak for the claimants, that speak to the claimants, and that advocate on their behalf. We will get it done. If you give us the information online, let us see what is happening on a case. We will get it done. We will answer the claimants' questions, we will go get that evidence. We will speed up their process if they let us do it. And we will do it without an appropriation.

Chairman FERGUSON. Okay. When we talk about updating the job roles, Mr. Warshawsky, I think you touched on—you talked about this in your testimony. In your opinion, is there a good explanation why this has not been done?

Mr. WARSHAWSKY. Chairman, I don't have an explanation. The agency has been aware of this problem with the out-of-date DOT for already 20 years. They tried various other data sources, and they decided already almost 15 years ago to go to the Bureau of Labor Statistics to sponsor a survey. It took some time to get that organized, but the data is in, and it was validated, and it has been published. So it is a mystery to me why it has not been used.

Chairman FERGUSON. Well, let's go back down to the other end here. Ms. Davis, since you are in the middle of it—

Ms. KERR-DAVIS. Sure.

Chairman FERGUSON [continuing]. Help us solve this mystery.

Ms. KERR-DAVIS. All right. Well, thank you for the question.

Chairman FERGUSON. I mean, because—I mean, 20 years is—I mean, we heard from a group last week talking about—when we were looking at, you know, dealing with trying to trying to speed up claims on the beneficiary side, we have got programs that are—

that were authorized eight years ago that still haven't been implemented.

So same thing. You got great technology. Explain to us why you all can't get this done.

Ms. KERR-DAVIS. Okay. Thank you, first of all, for the question.

So, while I have not been directly involved in any of these policy discussions, I understand that this is a complex, multi-year plan that we need to move through.

Chairman FERGUSON. Twenty years ain't long enough?

Ms. KERR-DAVIS. Well, that is long enough, yes. We have been making progress, and we have met our goals for reviewing and updating the medical criteria and also the occupational data. And—

Chairman FERGUSON. Ms. Davis, again, I don't—I am not—I promise I am not trying to be combative.

Ms. KERR-DAVIS. Yes, sure.

Chairman FERGUSON. I am just trying to understand.

So you have met your goals, okay, yet we are 20 years from implementation. You have met your reviews. Why is there so—I mean, are those goals published? Can you provide a copy of those stated goals and how many steps it will take to get this implemented so that some, you know, some poor individual is not sitting in front of Congress in 5 more years going, "Why is it 25 years instead of 20 years?"

Ms. KERR-DAVIS. Yes.

Chairman FERGUSON. Can you provide us those goals, and we can see the steps of how you all are trying to implement something that seems like it could be done very quickly?

Ms. KERR-DAVIS. Sure, sure. We are happy to submit that for the record.

Chairman FERGUSON. Thank you.

Ms. KERR-DAVIS. You know, any changes to our policies have to be well supported by the evidence and designed to achieve decisional accuracy. So, while 20 years is a long time, there have been steps, things going on behind the scenes.

But let me provide a written response for the record so that you can understand the steps that we have gone through.

[The information follows:]

Chairman FERGUSON. Thank you.

Ms. KERR-DAVIS. Yes.

Chairman FERGUSON. Thank you so much, because 20 years is an awfully long time—

Ms. KERR-DAVIS. I agree.

Chairman FERGUSON [continuing]. Particularly when you have someone like Mr. Camp described that simply could not outlast Social Security to receive a benefit, a very sad story.

Mr. Camp, a quick question and then I will move on to let others have this. And this is some data that we have on disability decisions. At the initial level, 38 percent are allowed, 62 percent are not allowed.

And Ms. Burdick, I am going—I think you touched on this, as well, so I am going to let you all address this.

When you go into the reconsiderations, 15 percent were allowed, 85 percent were disallowed, okay? So you have got a huge chunk over here that are not being allowed. Then, when it gets to the ad-

ministrative law judge hearing, it is almost like this thing flips and goes the other direction, where you have 51 percent that are allowed at that process, 39 percent denied. So we are going from 85 to 39 at this point. Who is right and who is wrong? Is the judge right or is Social Security right?

Mr. Camp, I will start with you.

Mr. CAMP. If you compare the attention paid to the claim at the early stages, to the attention paid to the claim by a judge with a lawyer in the room, with witnesses called, with all of the evidence updated, it is 15 minutes to hours. Hours is better. Fifteen minutes is not enough time to read thousands of pages of medical records and get anything right.

And some of the time at reconsideration it is not the 15 minutes. If the consultant physician comes in and there is no new evidence, which is often the case, they are given an agree button to click. Three hundred, five hundred days later, come in, you don't even need to spend the full 15 minutes, just click a button and walk back out. That is not an adjudication process at all. That is just days waiting, and it is not service to the claimants.

At the ALJ stage, that does not occur. There are hearings. The judge looks at the file for hours, has clerks assisting. The attorneys can do their work. We see all of the exhibits. We see the statuses change. We see the expert that has been called to testify. We prepare. We can help the agency get it right at the ALJ stage. And we are blocked at initial and reconsideration.

Chairman FERGUSON. Yes, Ms. Burdick, can you—could you address this—what appears to be a sort of major problem at the beginning of the process? Could you offer suggestions on how to improve that for the folks that you represent?

Ms. BURDICK. Absolutely. Well, at the initial claim, you know, the claim goes—it is a paper claim that goes to the DDS to adjudicate, and the initial—and as you said, 38 percent of people are—

Chairman FERGUSON. And now you can't even use faxes, right?

Ms. BURDICK. You can't use faxes.

Chairman FERGUSON. Okay.

Ms. BURDICK. Though you can sometimes be on electronically. So, if people come to us early, you know, we are helping to get the evidence, submitting it to the initial adjudicator who is looking at it.

But there is only so much you can do on a claim when you are just looking at paper. So the difference between when the case is at DDS and when it moves on to administrative law judge is you have a human in the room, and you have—the claimant has an opportunity to go before that judge and explain how their combinations of impairments really meet the standard, right?

A lot of people are not just one—don't have just one problem that makes them disabled. Frequently, you have a lot of things that come together, right?

And so what is problematic about having this secondary level of review is, if they can't see it on the paper at the initial claim, why is another person—another person going to be able to do that same thing? What you really need is that different format, where there is a conversation.

But, to help people at the earlier level, having—one of the things that we think is most important is rejiggering the current rules to make sure those initial adjudicators are getting more treating source evidence. It makes common sense that people's treating providers know the most about them. They have a history with you, they have talked to you most of the time.

But frequently we find that, even where people have those providers, the DDSs aren't doing a good-enough job getting that evidence. And it is not their fault; the rules aren't well calibrated. They send two letters, then they rely on these consultative exams that we discussed or that earlier people discussed, where a one-time Social Security doctor might talk to someone for 10 minutes. It just—you know, really focused on getting treating source data—

Chairman FERGUSON. Okay.

Ms. BURDICK [continuing]. And looking at that would improve things.

Chairman FERGUSON. All right. Thank you so much for that.

Mr. Pascrell, you are now recognized.

Thank you—let me say this—thank you all for those thoughtful answers.

Mr. PASCRELL. Thank you, Mr. Chairman, and I want to continue your last line of questioning. I associate myself with what you were saying and what you are implying here, because this is not simply going to be solved by putting more resources and money.

Remember the IRS debates that we had? We know the cuts that existed over administrations that were both red and blue. As I always say, no party is privilege to virtue that I know of.

But, Mr. Camp, your testimony is very interesting when you talked about veterans. I am almost numb when I talk about veterans. And I think, in the area which you covered, eliminating reconsideration, I am even more concerned about a vet going to get some help from Social Security, SSI, disability.

And I know from listening to many people that—nothing is simple, but just having an increase in resources, more money to do the solution, is not enough. Because if we don't have the right policies, then we are defeating ourselves by simply duplicating if we think that just more folks are going to solve the problem. I want to make that very, very, very clear.

And, you know, you could simply, you know, slide it away by saying just throwing money at the problem. You have heard that millions of times. But there is a problem. Money is part of the solution, but policies probably are a greater part of the solution. Would you agree?

Mr. CAMP. Yes.

Mr. PASCRELL. I had to get that point across. Besides, your illustrations are the best.

Mr. CAMP. The actual experiences of real claimants have to drive this policy. See it from the perspective of a veteran that went through the VA's disability process already. Lots of expense, lots of time, lots of filling out forms, going to see their doctor. They see all of their evidence. Now that same person with that same evidence and those same conditions goes to another Federal Govern-

ment agency and has to repeat the entire process, and has that second agency say, “We will not pay attention to the VA’s findings.” See it from that veteran’s perspective.

Mr. PASCARELL. Right.

Mr. CAMP. That drives the policy decision then, which is that all adjudicators at Social Security should pay careful attention and discuss how they have considered the findings of the VA.

Mr. PASCARELL. I think that is a good model example for a lot of Federal agencies. These are replicated in most of the agencies that were mentioned this morning. But I think it is something we need to dig into. You must have modern technology. You have got to update your data. It is pretty elemental. I don’t think this is—we are discovering something here. It is there, and we need to take a look at it.

And I want to ask Linda, Ms. Davis, there was under-funding for years.

Ms. KERR-DAVIS. Right.

Mr. PASCARELL. I mean, you look at the numbers and you see the cuts that were made. And that seriously eroded the service that you can provide to people. I understand that, we all do. I think, though, that the suggestions of cutting, making more cuts would simply make it worse. So what would happen to Social Security’s customers, customer service and disability application backlogs, if your budget was slashed by 30 percent?

Ms. KERR-DAVIS. So, first of all, thank you very much for the question.

I do have to tell you I am not an expert on budget issues, but I have been around the program for a long time. You know—

Mr. PASCARELL. Neither is the Congress. [Laughter.]

Ms. KERR-DAVIS. Yes, true. But a 30 percent cut would be completely devastating to SSA. So people who apply for disability, they would wait at least two months longer than what they are currently waiting. It would likely impact the office hours for our field offices.

Even with level funding, level funding from last year, from fiscal year 2023, it is going to be detrimental to SSA. It is not sufficient for us to continue to build our DDS workforce or even maintain it, for that matter. With only level funding we would expect average wait time for an initial disability claim to go up, like I said, by two months, and actually double the average wait time from what they had experienced in 2019, pre-pandemic.

Mr. PASCARELL. I think what we are looking for—

Chairman FERGUSON. The gentleman’s—

Mr. PASCARELL. I am sorry?

Chairman FERGUSON. Timewise, right there. I love listening to you talk, but we are over by about a minute.

Mr. PASCARELL. You know, I know what the cuts mean. But I want you to know how we feel.

Ms. KERR-DAVIS. Okay.

Mr. PASCARELL. How I feel, and that is that, even if we eliminate—even if we can avoid those cuts, we need a lot of changes in the policy of delivering service.

Ms. KERR-DAVIS. Okay.

Mr. PASCRELL. And that is the point. I think we can sit down and compromise and get to some final solution, if you would call it, and I think that is important for us, I really do.

And thank you for your patience.

Chairman FERGUSON. Thank you. I now yield to the gentleman from the great state of Ohio, Mr. Carey.

Mr. CAREY. I want to thank my friend, Chairman Ferguson, and Ranking Member Pascrell for once again hosting a hearing to discuss the issues that our constituents are facing as it relates to the Social Security Administration.

As somebody who first read "Future Shock" when I was probably 13 years old, and then "The Third Wave," it just—I find it very troubling that we are still talking about phone calls and faxes, and the fact that we don't have government agencies that are able to communicate with one another.

So I really wish that—and we just can't do it in this body, but I really wish we could have our constituent aides sitting up here with us that are dealing with you every single day, because the calls that we get are just remarkable. So—and again, faxes, to me, are basically like trying to find an eight track tape player. So I just kind of think it is a little outdated.

Listen, I know my office is not alone in hearing from our constituents over and over again about how hard it is to actually get a hold of Social Security Administration. I know my dear friends have talked about the cuts to staffing. Wait times for the 1-800 number continue to increase, and have reached upwards of, many times, 30 minutes. Some people get kicked off, I have heard that several times. They have called, and they call and they call and they call.

The thing it reminds me of—you know, I just—when you go for a home loan application and you call any one of the national—you can get a call right back right away, or you—the wait time is pretty, you know, pretty easy. And then you get an email, which seems pretty standard nowadays, right?

It is concerning to me that SSA has done little to act on the backlog and at times made the problem worse. And I am glad we are working today to get to the root cause of these issues and talk through solutions that SSA can implement to process claims in a timely manner and provide Americans more accurate decisions.

Really, Mr. Camp, that story about the person waiting, what was it, 825 days, and then died of the disease or the affliction that could have been resolved, possibly, if they would have just had gotten what they needed 500 days before, I think it is a terrible story.

So my question—boy, and I am running out of time here—when SSA evaluates the work history of a disability insurance applicant, the SSA reviewers reviews whether the claimant can still have any substantial gainful work performed over the last 15 years, known as a lookback period. SSA recently published a proposed rule to reduce the lookback period from 15 years to 5 years, right?

Dr. Warshawsky, what are the effects of reducing this level of scrutiny as it applied to a claimant's work history?

Mr. WARSHAWSKY. Thank you for your question.

You know, very simply, in the proposed regulation the immediate result is an additional \$27 billion in disability benefits, but that is

not related at all to, you know, an assessment of the person's ability to work, because basically you have chopped off 10 years of a work history.

And so there really is no justification provided in the proposed regulation. The data that—and studies that have been cited in the proposed regulation are misleading and incomplete. They misrepresent results. And then furthermore, the budget implications are actually severely under-estimated because it does not mention the additional cost to Medicare, Medicaid, and other Federal and state welfare program spending.

And finally, it really—you know, they justify it by saying that work conditions have changed over time, which they certainly have, and that is the whole point of getting new data. But yet they don't cite the data. So it is a very perplexing and disappointing proposal, really unjustified. I believe it should be removed.

Mr. CAREY. So when you were at Social Security Administration, were you considering changes to the look period before?

Mr. WARSHAWSKY. Yes, in the context of a total reform of the program. And we did consider reducing it from 15 years to 10, which was justified by the data and by the evidence. But that is only in context of a much larger reform that modernized and automated the program. And when—in the context of the larger change, it was a very small expense, as opposed to \$27 billion.

Mr. CAREY. I want to thank you all. And again, I want to appreciate the chairman and the ranking member for having this important hearing, and just know that we all do appreciate you. I know you probably spent many, many hours preparing for this hearing, and I appreciate all your comments. Thank you very much.

And Mr. Chairman, I yield back.

Chairman FERGUSON. Thank you, Mr. Carey. Next we go to the gentlelady from California, Ms. Sánchez.

Ms. SANCHEZ. Thank you, Mr. Chairman and to our ranking member.

Last week, this subcommittee met to discuss SSA overpayments, and my Democratic colleagues and I spoke about the delays in customer service, the lengthy phone wait times, and the catastrophic effects of proposed Republican cuts to Social Security.

Yesterday, my Republican colleagues elected speaker Mike Johnson, the chair of the Republican Study Committee and the author of the budget proposal cutting and privatizing Social Security. In addition to his terrible record on issues like same sex marriage and abortion, Speaker Johnson has advocated for a reduction in benefits and a 30 percent cut to SSA funding. And, apparently, my Republican colleagues see that as a positive attribute. But we know that this isn't the case. Social Security is a vital program that grants almost nine million Americans disability benefits.

Although the process for approving disability payments may be flawed, the solution to the issue is, from what I am hearing today, not cutting costs. What I have heard today is that we need some policy changes, and we also need some important investments in the program.

Ms. Burdick, I heard from several of the witnesses on the panel today that the hiring and retaining of staff is one of the biggest challenges to cutting the backlog. In fact, I heard things like, you

know, we need a consistent and stable workforce to reduce the backlog, we need to hire authority to prevent burnout and attrition. Those were just some of the things that were—that I heard today from out of the mouths of witnesses. Can you tell us how cuts to SSA's customer service budget impact American people's ability to access their hard-earned Social Security benefits, including their Social Security disability benefits?

Ms. BURDICK. Cuts to customer service would be extremely harmful to people trying to access the system. As you have already heard, it is very hard to access Social Security right now. It is hard to get through on the 1-800 number. It can be challenging to apply for Social Security disability benefits. Many people who are applying for disability benefits are not even able to apply online yet. Even if there is a partial online application, there has to be an interview with the field office. And, by cutting funding for customer service, that is going to be even more challenging.

But I want to talk about, like, on the ground. For claimants who are trying to apply for benefits, this can mean multiple appointments, multiple phone calls, and we see lots and lots of people get overwhelmed and drop out of the system because the thing they are applying for may be a disability that makes, you know, participating in this kind of process challenging in the first place, whether it is anxiety or cognitive limitation or—so I think it would be very harmful if the customer service were to degrade even further than it is now.

Ms. SANCHEZ. Thank you, and I want to thank you for your testimony that focused really on the hardships that people with disabilities face in trying to apply for and receive those benefits. And, clearly, those hardships and delays could potentially be reduced by increasing the resources that SSA instead of cutting them.

You mentioned that you supported President Biden's request in the budget. President Biden has requested a \$1.4 billion increase for SSA's operating budget in 2024. However, some of my colleagues on the other side of the aisle have the opposite idea. The House Republican Study Committee, a committee that I will note that every Republican on this subcommittee sits on and which is chaired by our new speaker, has proposed a \$718 billion cut to Social Security over the next 10 years. This plan is going to cut the funds that most disability insurance beneficiaries receive and, in some cases, stop those benefits altogether.

Ms. Burdick, why are Social Security Disability insurance benefits so important to people with disabilities?

And what would happen to disabled Americans if their benefits were reduced or even cut off entirely?

Ms. BURDICK. So just to be clear that people who receive these benefits—as we have talked about, it is not only a long process, it is a hard process. You need to have a severe impairment that will last at least a year or be terminal, as some of the claimants we have talked about.

So everyone who are—who is relying on these benefits has a severe disability that is making it hard for them to work. They rely on these benefits for housing. They rely on them to pay for food. And, if they are cut at all, that would be super harmful because right now the max benefit is already extremely modest. For SSDI,

it is \$1,400 a month, for Social Security, it is in the \$700s. This is already a benefit level that makes it challenging for people to live in single family homes. Often, they are double upping.

You know, there is—I frequently talk to claimants who cannot actually pay for all their bills and have very complicated practices—“If I pay this much to this one and this much to this one”—so any cuts would be extremely harmful.

Ms. SANCHEZ. Thank you for your testimony.

I yield back.

Chairman FERGUSON. I thank the gentlelady. Next, we will go to the gentleman from Kansas, Mr. Estes.

Mr. ESTES. Well, thank you, Mr. Chairman, and thank you to all of our witnesses for being here today.

You know, today’s hearing reasserts a basic principle of American life, that government should work for the people. And that is why we have programs like Social Security Disability Insurance and SSI to help citizens when they need it most. And as representatives of the American people, we have been sent to the nation’s capital to ensure that government does serve the people efficiently and effectively, mindful that it is the people that fund these government services.

So it is disappointing and frustrating to hear some of the numbers being shared today. I mean, the Social Security Administration’s failure to deliver these services is—I mean, almost you could say it is unconscionable. You know, when I looked at—as I was preparing for this hearing and I looked up—and basically, I would have to say that the Social Security Administration is failing in its mission to “deliver Social Security services that meet the changing needs of the public.”

And how is it that over the past two decades there has been a decrease in disability claims—applicants, anyway—yet in recent years the times have been increasing? And, you know, as we talked about before, since 2009, wait times for initial claim decisions have increased by 83 percent to 220 days. I view it as a travesty that American citizens can’t get the Federal Government to process a valid claim without them having to jump through hoops or paying an attorney to force the issue—no offense to the attorneys that are here—that help solve that problem.

However, instead of focusing on these issues, how do we make sure the program works better? The SSA, under the direction of the Biden Administration, has instead prioritized improving optics on equity initiatives. I say “optics” because how does it help any claimant, no matter their race or background, to wait longer to receive the benefits they have applied for?

So already \$100 million have been spent on these efforts in the last 3 years, and this year’s SSA budget request allocates another \$60 million to continue to boost these so-called equity efforts without accounting for the necessary process improvements and modernizations needed to actually service the wider base of claimants they are hoping to reach. And that is just one example of how SSA is falling short. We live in a dynamic and rapidly changing world, and SSA has failed to keep pace with this change in the workplace.

Ms. Russell, in the past 40 years, we have seen significant improvements to access and care of these individuals with disabilities.

However, it has been pointed out earlier that SSA is still using a dictionary of occupational titles from 1977 that was last partially updated over 30 years ago. How does that outdated data affect an examiner's ability to efficiently process a claim?

And would you say it takes longer and delays some of the processing of those claims?

Ms. RUSSELL. Thank you for the question, Congressman Estes.

Yes, it does impact the processing time because the skills that we are looking to match a claimant to see if they can return to work in their relevant work history, we are not—it is hard to find that in the Dictionary of Occupational Titles. So it does take longer to process. And the jobs that we have today are not in the Dictionary of Occupational Titles.

You know, we have heard about the jobs that are in the Dictionary of Occupational Titles, and those skills just don't translate. So it does make the job harder for our disability examiners, and we look forward to when that is updated.

Mr. ESTES. Yes. So what do you do in a case of, like, a job title like a web developer? Obviously, that wasn't here in 1977. I mean, what are your steps that you do, and how do you sort through addressing their claim or their issue?

Ms. RUSSELL. Well, in brief, the approach is to look at the job skills that the person had in their position. That is why the information on the work history is so important. And that is also why the information needs to be relevant and recent in the work history, because the job that a person did 15 years ago, they may not be able to do that job anymore.

But, for example, with your example, web design, we are looking at the skills that are described for that work, and then we are looking at skills that are in alignment with that for other jobs that are in the Dictionary of Occupational Titles.

Mr. ESTES. All right. Well, thank you. And I was glad to hear in your remarks you talked about you have the funding to pay the personnel, you just need to be able to get them hired so that they can actually be there to do the processing, which, obviously, is an issue across the country now with our workforce shortages.

And, Mr. Camp, your story really, I guess, is heart-rending, to go through that in terms of the issues that—your individual that you referenced went through. I mean, how does something like the outdated DOT affect applicants and their process to go through to get their claims?

Mr. CAMP. To wait hundreds of days only to be told that you are denied because you should go do a job that even the claimant knows obviously does not exist is discouraging, deeply bothersome.

The claimants often stop the process. They leave the claims process. From initial to reconsideration there is a drop-off. From reconsideration to the judge stage there is a drop-off of legitimate claims that may have been approved. Because to be told after hundreds of days that this agency isn't really there for you and, frankly, is not taking it seriously, causes claimants to come out of the process. And that is something that is not measured but should be.

It is remedied already by Department of Labor. And that would improve the process, that would make their—the claimants' experience more reliable, more accurate, better for all of us.

We want the correct outcome on the cases. If you are disabled, you should be approved. If you are not disabled, you should be denied. But it should be something you can rely upon. And, some of the time, you might want to know what you should go try to do next. Perhaps there is a job out there where Social Security could help you get a suggestion—

Mr. ESTES. Right.

Mr. CAMP [continuing]. And then put you in voc rehab and go do it.

Mr. ESTES. Thank you, and I yield back.

Mr. CAREY [presiding]. I want to thank the gentleman. I do want to remind all of you we do have a five-minute time limit. So, if you do see that, I want to make sure that everybody has the right amount of time.

So the chair now recognizes from the great state of New York, Mr. Higgins.

Mr. HIGGINS. Thank you, Mr. Chairman.

Well, what is clear here is Social Security has a severe customer service problem. It is not only inefficient, it is awful, and it is inhumane. And, truthfully, it is not Social Security that is not fulfilling its mission; it is Congress that is not fulfilling its mission to Social Security beneficiaries.

Ten thousand Americans turn sixty-five every single day. That is 303,650,000 each and every year. The United States is thirtieth of 39 countries in how much we pay Social Security benefits. Mexico pays more Social Security benefits to their people, Finland pays more Social Security benefits to their people, and Latvia spends—pays more Social Security benefits to their people.

Ten thousand Americans die every year waiting for a disability claim. Every office here, Democrat and Republican, you have to explain to people that call our office about the Social Security disability process, and you have to, with a straight face, tell them that you apply, you go through this lengthy process—good thing these people are retired in most cases, because otherwise they wouldn't have time to navigate through the Social Security bureaucracy—so you have to tell them to apply for Social Security disability benefits and, by the way, you are going to be denied, so that is a complete waste of time. And then that begins another lengthy process.

From 2010 to 2023, the Social Security customer service budget was reduced by 17 percent. Social Security Administration staff has been reduced in that same 13-year period by 16 percent. Social Security beneficiaries increased during that same period of time by 22 percent. Wait times for disability decisions are at a record time of seven months, followed by a lengthy appeal process. Hold times, people that call the 800 number just seeking some kind of direction and help in a customer service context, are at an all-time high: 40 minutes and 90 minutes at peak times. Hold times for people calling the 800 number was 14 minutes in 2021, it is now 40 minutes today. We are not moving forward, we are going backwards.

So, Ms. Kerr-Davis, I mean, you people are just too polite. You people are too nice. You know, you should be indignant about what Congress has done to this budget that really serves our people. Sixty-six million Americans, about one in five collected Social Security in February of this year.

So the Biden Administration asked Congress for more than 100— or \$15 billion, \$15 billion for Social Security Administration operating budget for 2024. And as my colleague, Ms. Sánchez, said, that is a \$1.4 billion increase from 2023. How much did the Social Security Administration ask the Biden Administration for?

Ms. KERR-DAVIS. I am sorry, I didn't hear the second part—

Mr. HIGGINS. How much did the Social Security Administration ask the Biden Administration for?

Ms. KERR-DAVIS. So the amount that we need for this fiscal year to continue to make the progress that we were—had put in place in fiscal year 2023 is \$15.5 billion.

Mr. HIGGINS. Fifteen point five?

Ms. KERR-DAVIS. Mm-hmm.

Mr. HIGGINS. So that is what Social Security submitted to the Biden Administration's budget director to say, "This is what we need."

Ms. KERR-DAVIS. I will need to verify that was the amount that we—but I know that is what is in the President's budget.

Mr. HIGGINS. So it is \$500 million short.

Ms. KERR-DAVIS. Correct.

Mr. HIGGINS. Okay. So you are asking Congress today to, when it does its work on the budget, if it ever gets around to that, that you actually need to address all of these problems that everybody here is concerned with, Democrat and Republicans, you need \$500 million more.

Ms. KERR-DAVIS. Correct. So for us to continue to make the progress that we have made—so one thing you need to recognize is that we serve more beneficiaries than ever before. While agency and state staffing have been at all-time lows, people continue to go on to the retirement rolls, and they continue to apply for disability.

So we urge you to support the President's \$15.5 billion so that we can continue to make the progress that we need. We realize we are not delivering the service that any of us want.

Mr. HIGGINS. You missed my point. He asked for 15 billion from Congress for the total Social Security Administration operating budget in 2024. That is \$500 million less than what you reported to the Administration relative to what you need to address these problems that we have all cited.

Okay, so you would ask Congress to approve \$500 million more than what the President requested of Congress to get you to where we all seemingly want you to be.

Ms. KERR-DAVIS. Okay. [Laughter.]

Ms. KERR-DAVIS. So, yes, I see your point. I see your point.

Mr. HIGGINS. You are way too nice.

Ms. KERR-DAVIS. I—

Mr. HIGGINS. Look, I get it.

Ms. KERR-DAVIS. I am going to need to confirm that, and we will submit something for the record.

Mr. HIGGINS. Yes, there is—

Ms. KERR-DAVIS. But—yes.

Mr. HIGGINS. Look, there is no more—look, the American economy is—we are 25 percent of the world's economy. We are five percent of the world's population. Our \$25 trillion economy is 70 percent consumption. And, if you have 66, \$70 [sic] million Social Se-

curity beneficiaries in America today, and that goes up by 10,000 a day offset by deaths, I presume, then these individuals, they are not saving that money. They are spending the money that they already saved throughout their entire lives. So not only is it good for the good that it does for these individuals, but it is also good for the economy of America.

Mr. CAREY. Mr. Higgins, thank you. I need to move on.

And, Mr. Chairman, I apologize. I have gone over the last two people about four minutes. So I just wanted to say—

Chairman FERGUSON. You are fired.

Mr. CAREY. I know. [Laughter.]

Mr. CAREY. I am moving on.

Chairman FERGUSON [presiding]. All right, thank you. I next recognize the gentleman from the great State of Iowa, Mr. Feenstra.

Mr. FEENSTRA. Thank you, Chairman Ferguson, and thank you, Ranking Member.

Obviously, I don't need to relitigate what everybody is saying, that we have a growing backlog of Social Security claims and disability decisions. We have a situation, you know, that is just incredible of backlogs. We rolled back a lot of things that created efficiencies during the pandemic, and now we are going back to manual processes.

My question to Ms. Kerr-Davis: What are your solutions? I mean, where do we go?

I mean, you are hearing from everybody we got problems.

Ms. KERR-DAVIS. Yes.

Mr. FEENSTRA. Give me two minutes, give me a minute here. What are you going to do about it?

Ms. KERR-DAVIS. Okay, well, we have a plan. We are working on a plan.

So we didn't get here overnight, right? This is a convergence of factors that—increased wait times for both initial and reconsideration claims. So what we saw, recruitment and retention challenges, Jackie talked about that, changes in the labor market for disability examiners—attrition rate rose to a record high of 19.4 percent in fiscal year 2021.

Mr. FEENSTRA. Okay, I want to hear what you are doing about it.

Ms. KERR-DAVIS. Okay.

Mr. FEENSTRA. I get all the stats. And let me give you a stat. Initial claim receipts are the lowest they have ever been since 2002, so we have a dramatically lower claims process—or receipts than we ever had. So, to me, that is the indicator, right, of how many people are claiming. And yet that is dramatically down.

So I am asking—the system is broken, all right? What are you going to do about it?

Ms. KERR-DAVIS. Okay, so we do. We have some short-term and long-term steps that we are planning to take.

So, in the short term, we have established cadres. And these are folks who work at SSA that have prior disability experience. They are Federal employees where we have taken them, retrained them if needed, gave them refresher training, and we have diverted them to focus on the disability workloads, on the backlogs.

We are also looking at the DDS hiring practices. As I mentioned in my testimony, the commissioner reached out to governors about, you know, what they could do to help us with the recruitment and retention.

We also have longer-range plans that are more customer-focused on communication policies. Again, you know, people don't want to be contacted by phone.

Mr. FEENSTRA. Right.

Ms. KERR-DAVIS. We also are improving technology and then looking at the vocational aspects or the lookback period—

Mr. FEENSTRA. Sure.

Ms. KERR-DAVIS [continuing]. Of what it takes to adjudicate a disability claim.

Mr. FEENSTRA. Yes.

Ms. KERR-DAVIS. So it is—there is not a silver bullet here. It is going to be a lot of different factors, but we have short-term plans, we have longer-term plans.

Mr. FEENSTRA. Right.

Ms. KERR-DAVIS. But to do that we are going to need sufficient and sustained resources.

Mr. FEENSTRA. Okay. And you have got the resources. I mean, I look at what—all the money that has come in. And this is my biggest issue that no one is saying, all right? You had just had an additional \$60 million come in. There is a lot of money out there.

And here is the problem. If you look over the last decade, all the money that has gone in to help this out, and we are still in this problem. And this isn't just today's problem. This was a 5-years-ago problem, this was a 10-years-ago problem that we have been talking about this. We are still doing manual processes. SSA is still using occupational data from 30-plus years ago.

So I hear what you are saying, but it does not resonate with me because of the long wait times that are happening. And it is from administrative law, right? I mean, being an administrative law judge—not myself, but—you have to wait a long time before you get there, and then you have to wait another 60 days or more for the review decision. I mean, the process is broken.

Ms. KERR-DAVIS. Mm-hmm.

Mr. FEENSTRA. So, Mr. Warshawsky, I mean, help me out here. Has the appeals counsel process—has that ever been discussed of how long these wait times are?

Mr. WARSHAWSKY. Well, Congressman, I agree with the gist of your approach, as this is not a budget problem. This deterioration is very sudden and very severe. And it has come basically in the last two to three years. We really never saw such long wait times at the initial stages before. And really, there has to be—there is not a budget problem. There is a management and labor—and maybe it relates to the reintroduction of the reconsideration there. There is a more immediate problem here, and it is not related to long-term—

Mr. FEENSTRA. And I agree with you. I mean, I just look at it, the massive bureaucracy that is out there and that we are paying for, and yet we are not getting the results. And this is—the bottom line is why aren't we getting the results?

This is what I am trying to—I mean, in private-sector business we would figure this out real soon. But here, obviously, Federal bureaucracy, we just can't get it done.

Thank you, and I yield back.

Chairman FERGUSON. I thank the gentleman. Your line of questioning and your answer reminded me of something.

Mr. Camp, I believe it was you that pointed out that the—what is considered an ideal wait time is 60 days, and that has not been met in 40 years.

Mr. CAMP. Not ever.

Chairman FERGUSON. Thank you. Next, we will go to the gentleman from Florida.

Mr. Steube, you are now recognized.

Mr. STEUBE. Thank you, Mr. Chairman.

The Social Security disability program is broken. It is broken in its finances, it is broken in its process, it is broken in its modernization. The solution to these problems is not a dollar amount. As we have seen far too often, the Federal Government throwing money at a problem does not fix the process. Congress has already given hundreds of millions of dollars to the Social Security Administration to modernize its claims process. And, if we here—have heard here today, SSA has failed completely.

The Dictionary of Occupational Titles, the SSA's list of jobs, was created more than 40 years ago and last updated in 1977. I wasn't even born the last time it was updated. Some applicants have been denied disability because Social Security told them they could perform such jobs as egg processor, dowel pin inspector, or nut sorter. Yes, I said nut sorter. I mean, that is probably a good title for leadership in Congress these days, given what is going on, but—though I know some folks in the Social Security Administration are denying claims based off of obscure and antiquated jobs that may not even be available.

I have a gentleman who I know through my men's group who I have gotten to be very close with who has type 1 diabetes, is losing sight. He is now, like, medically blind. He has had one surgery in one eye, can't see in the other eye. He is an Amazon driver part-time. He obviously can't drive a vehicle because he is now blind. I encouraged him to go to Social Security disability because that is why it was created, to help people in his circumstance, people that were working, now not working for a medical disability. And just to get the appointment was, like, 60 days out just to get to the appointment to be able to then start the process, which then, you know, we are talking about how long that takes.

We are here today because of the historically high backlog of cases. Today, over 1 million Americans are waiting an average of 220 days for the Administration to decide their initial claim, a more than 83 percent increase since 2019. The Administration publishes its average hold time for its 1-800 number. Its own data shows that last year the average time someone waited on hold was 32 minutes. So far this year, it is up to 36 minutes. It is unacceptable.

The American people simply deserve better customer service from the government that they fund. Receiving Social Security benefits should not be an overnight process. There should be a clear

vetting and examination process of claims and not every claim will be or should be approved. But a timely process to examine cases is absolutely necessary, and these decisions need to reach transparent conclusions for the American people to take the next necessary steps.

In one case earlier this year, Northern California District Judge Susan Illston wrote that a disability claim denied by Social Security that ignored key physician records was “so vague as to be essentially unreviewable.” The decision was reversed by the judge, and ordered SSA to pay benefits to the claimant, a woman suffering with schizophrenia, depressive disorder, and delusions.

Mr. Camp, according to your testimony, half of the processing time at the initial stages of the application is consumed by the optional second step reconsideration. You note that the Social Security Administration’s minimum acceptable number of days processing is 60. However,—and you just stated it to the question of the chairman—current data shows that, in my state of Florida, reconsideration adds 323 days to the 300 days at the initial stage. It takes 623 days for someone in Florida to get a disability.

Can you explain why my state of Florida specifically has such long wait times?

Mr. CAMP. There are several factors that cause the states to vary. One is that they are administered by separate state DDS programs with different staff, different management, different functionality.

Another interesting factor is the extent to which the successful programs have been implemented in that state. One is health information technology, modern acquisition of the records: immediate, affordable, doesn’t need to be staffed. That is a success in Iowa, say, where the processing times are very, very low because there are two large hospital chains in Iowa, and that provides hit access for the records, shaves off many, many days. In Florida, not so much. So there is less use of technology in Florida, and that slows it down.

Mr. STEUBE. When I have—my district alone is the most elderly district in the country. So obviously that is also part of the challenges, too.

If the Social Security Administration eliminates the reconsideration phase, how do they ensure fraud is not occurring?

And, furthermore, exactly where would available resources be re-allocated?

Mr. CAMP. If you focus on what is actually done at reconsideration, you would see that it is not going to catch anything. If you don’t do any work at a step, there is no need for more than one day for that. If you are merely clicking a box that says “agree,” you haven’t read the file, you haven’t caught anything. You haven’t caught false statements, you haven’t caught reliable medical opinions. It isn’t of any value to do the same thing again hundreds of days later, 9 times out of 10. It is just not helpful.

The quality can go up at initial if you take the existing resources, the existing staff, and give them more capacity to take a look, a more careful look at initial. All of Social Security’s studies—now, they would need to report more on what happens with these pilots and all these studies that they have been doing about the claims

process, but all of it reveals that if you have a DDS only doing initial, they do higher quality work, they pay more attention, they have more time.

Mr. STEUBE. I just want to—my time is expired, but I want to thank all the witnesses for being here today.

Chairman FERGUSON. I thank the gentleman from Florida. Next, we will call on my dear friend, Mr. Kildee from Michigan.

Sir, you are now recognized.

Mr. KILDEE. Thank you, Mr. Chairman, and to you and the ranking member for holding this really important hearing.

You know, Mr. Chairman, you said something at the outset of the hearing that I think was precisely on point. This hearing would be well informed if we had our district staff sitting at this table testifying, because they have had to become quite expert in these matters.

I have talked to my district director I can't tell you how many times, and I still remember the first time when I was questioning him about a case that had come to my attention, where there was an initial denial of a disability application. And he told me—and this is something Mr. Higgins referenced—he told me, “Well, everybody gets denied at the first step.”

Now, you know, that sounds kind of glib. And, like, oh, that is just step one is your denial. That is completely unacceptable, and I think we all agree with that. That is completely unacceptable because the folks—and, Mr. Camp, you made this point with the case you raised—these are not cases to be processed. These are individual human beings who are going through the worst experience in their lives and have paid into a system that denies them without really any substantive review and then puts them through a process that makes it really difficult for them to get something that is due to them, that is a promise that we made to them.

Now, where I think we may find some disagreement is how we fix the problem. The one thing I will acknowledge is that simply providing more money without using those resources to make the system work better doesn't solve the problem. But there is another thing I know absolutely. Punishing the Social Security Administration with deep cuts because we are unhappy with customer service only exacerbates the problem. It doesn't solve the problem; it exacerbates the problem. In either case, we have got to do a better job.

And, to the issue of technology that you raised, I don't think that we are going to get, you know, significant technological improvements through donations. We are going to have to acquire. And that is going to mean spending some money.

So I could repeat a lot of the arguments that have been made, but I do have a particular issue that is tangentially related to this that has become a bit of a cause for me. And it is a small matter, but it is a big question for individuals that I represent. It has to do with a case that came to my attention, an individual in a nursing home who is dependent on supplemental income and also quite dependent on the personal needs allowance.

And, Ms. Burdick, based on your experience, if you could, help us understand how the fact that what was once a \$30 allowance is still a \$30 allowance going back to 1987—which is worth about \$12 right now—for people who are living on very modest means

and want to buy a birthday card for their grandchildren or replace a sweater because the one they have got is worn out. We have got to do something about this. Congress needs to act to do something about it. I wonder if you just might comment on what it is like for a person who is living on such modest means to have such little support for the basic elements of a decent life.

Ms. BURDICK. Thank you for the question, Congressman.

I mean, personal needs allowances, as you said, have not been updated for decades. They are supposed to give people who are living on benefits and in institutions the money they need for personal items: toiletries, birthday cards, as you mentioned. Thirty dollars just doesn't cut it anymore. I think we all know that. I mean, I think I saw in the train station today deodorant is \$5. It just—it isn't enough, and it needs to be updated. People really are struggling to get just the bare essentials.

Mr. KILDEE. I appreciate that, and I don't know if any of the other panelists would like to comment.

I would ask, you know, Ms. Kerr-Davis, what the effect of a dramatic cut would be on the reform efforts that you are initiating right now in terms of the disability process.

Ms. KERR-DAVIS. So, as I mentioned earlier, it would be devastating.

We made tremendous progress. I know it probably doesn't feel like it or sound like it, but we did 90,000 more initial claims in fiscal year 2023 than we did in fiscal year 2022.

And, you know, one thing that I think we all need to be cognizant is the impact that the pandemic had on the agency. It disturbed our normal operational flow, it impacted the labor market. And so, you know, we are seeing the outcome of that and trying to recover.

But, you know, I feel like the money that is requested in the President's budget, that \$15.5 million, we would put to good use—make good use of it and continue to make the progress so that we can return to pre-pandemic pendings and pre-pandemic processing times.

Mr. KILDEE. I appreciate that.

And thank you so much, Mr. Chairman, for holding this hearing. I will just finish with this one point.

Additional resources without a plan won't solve the problem. Additional resources to fund a plan give us a shot. But I know for certain deep cuts to the program will not make it better for the people that we serve, no matter what our circumstances might be back home.

Thank you, Mr. Chairman.

Chairman FERGUSON. I thank the gentleman. And, let me just say, I—you know, we all agree that this is—you know, we need action on this.

But I also think it is important, when we talk about the funding that is there, okay,—and really, I just want to think about this for one second. SSA has a \$2 billion-a-year IT budget. That is a massive amount of spending. I mean, that is like—I would probably want to find out, on the number of customers you serve, or people that you serve on a per capita basis, how is that \$2 billion spent

compared to, say, something in the private sector? I mean, that is a massive—now, let me—that is a massive budget.

And then also, I think it is important to recognize that the Administration got a \$784 billion bump above fiscal year 2022 spending. And, at the same time, the case levels are going down, as was highlighted by the gentleman from Florida. So I am—until SSA can provide some clarity on where they are spending their money, how they are spending their money—and the fact I am flat over-hearing that the problem during the pandemic is still hanging on, we have to move past that.

That can no longer be an excuse for any part of this Federal Government. We have got to find a way to be innovative and get past it. We do it in our private businesses. We can no longer use that as an excuse. The world has moved on from that. I understand that it had an impact, but I will tell you this. I think—and I am not trying to beat up on you, because you—as you have said, this—some of these budgeting items are way above your head. But, when you got a \$2 billion budget, and we are several years past the pandemic, and you have got a declining caseload, and ultimately there is a massive failure to implement new technology, I just think before you come ask for a bunch more money you got to be held accountable.

We just need answers on how this massive budget is being spent and why it is not being spent efficiently. Because, again, if we can have a plan, and we can know how to do this, then we can probably come to an agreement on how we best spend that money. But we can't just keep wasting money.

With that—sorry, I will get—I will climb down off of my soapbox now, and I will now yield time to the gentleman from Tennessee, Mr. Kustoff.

Mr. KUSTOFF. Thank you, Mr. Chairman, and thank you to the ranking member. Thank you to the witnesses for appearing today.

Mr. Camp and Ms. Burdick, to both of you, we have talked about reconsideration. You all have talked about that in your comments—Ms. Burdick, you, as a practitioner.

So, Mr. Camp, thinking things through, let's assume that—let's assume it is just eliminated. And obviously, that takes care of the additional time. So then what?

What process, if any, or what procedure or what next step would you suggest, or would it just end there after the decision?

Mr. CAMP. Social Security ran a pilot for 20 years in 10 states to see what that would look like and then ended it a few years ago. And, gradually, in state by state, there is now new data for what it looks like to add reconsideration back in. The results of that pilot, the state-by-state assessment, what happened to the number of days, what happened to the other parts of the process, we don't have it. They haven't shown us the data. We don't have an answer after a 20-year pilot for this idea that Social Security has floated since 1984 and that we are discussing today.

There must be data and an answer, and then your question is addressed.

Mr. KUSTOFF. Right. And you don't have the data. The data doesn't exist.

So, Ms. Burdick, from the practitioner—and you gave some real-world examples in your opening testimony—you recommend the elimination of it.

Ms. BURDICK. Absolutely. And the Social Security Task Force does, as well.

Mr. KUSTOFF. The people that you represent that come before an ALJ, what have you—do you think you could explain to them that that process is eliminated, and that is for their betterment?

Ms. BURDICK. Absolutely. Well, first of all, I was from a prototype state, so I had to explain to them after years and years that, no, please appeal two times before we see a judge, which is a lot. But I think for most people what makes sense, what is intuitive is I do one paper application and then, if I am denied, then I go to a judge. Having two doesn't really make sense, and it is easier for practitioners to get involved. I am one of a minority of attorneys that get involved at the initial and recon level because there isn't a hearing, there isn't an opportunity to advocate, you are just sending in paper. So I think it will improve the system.

But, to your other question, there are other process recommendations that—I know I put them in my testimony—I think some other people—that could also be implemented at the initial level that would additionally, I think, help with the wait time and make things more efficient.

Mr. KUSTOFF. I probably shouldn't ask this, but I will. As a practitioner, what is your opinion of the ALJs that you appear before?

Ms. BURDICK. As a practitioner, I think many of the ALJs I appear before are fair. They—I mean, obviously, everything varies, but many of them spend hours reviewing claims. Often, when I show up, they are familiar with the issues at hand and have good questions for the claimants about how these things affect their daily lives.

Mr. KUSTOFF. Okay, thank you very—I appreciate the answer.

If I could, to the acting deputy commissioner—and I want to follow up on something Chairman Ferguson talked about in terms of the money that has been appropriated for IT, Chairman Ferguson gave the figure of \$2 billion. That is an accurate figure, isn't it, as far as you know?

Ms. KERR-DAVIS. As far as I know. I would have to confirm that though.

Mr. KUSTOFF. And, over the last 10 years, according to data that I have got, the Social Security Administration has spent over \$18 billion on IT. Do you know, is that number correct?

Ms. KERR-DAVIS. I do not know, off the top of my head.

Mr. KUSTOFF. I mean, as a layman, \$18 billion over 10 years for IT seems like a lot, even for an agency of your size. And we still have these issues.

I do want to go to your written testimony when you talked about the challenges that you have and the DDSs have in terms of hiring and retention. And I do not want to sound insensitive, but I bet almost every employer in my district in the private sector, small, medium, and large, talks to me about the same issues. They are offering good jobs, they can't get people to come in to apply, or they

don't have the number of applicants that they would have pre-pandemic or five years ago.

I guess what I am saying is to suggest to you your agency is no different from any other employer. Everybody has got these challenges. And I think that, in terms of hiring and retention—respectfully to you, to any employer—we have got to think in different ways and think outside the box about how we attract applicants and how we retain them.

Ms. KERR-DAVIS. Yes.

Mr. KUSTOFF. Thank you. I yield back.

Chairman FERGUSON. I thank the gentleman. Next, my colleague and friend, Mr. Evans, from the great state of Pennsylvania. You are recognized.

Mr. EVANS. Thank you, Mr. Chairman and Ranking Member.

This opportunity to discuss one of the nation's most effective anti-poverty programs, Social Security. I want to be clear. Social Security is earned. If the insurance people pay for every paid day, it is the bedrock of retirement security guaranteed for nearly all seniors.

As a result of that question I want to go to Ms. Burdick.

In your testimony, you highlight the story of a client who had difficulty qualifying for Social Security disabled [sic], unfortunately, is common for many Americans. Can you speak to the barriers individuals face when trying to access Social Security disability benefits, and how Congress can help remove these benefits [sic]?

Ms. BURDICK. Thank you for the question.

There are a number of barriers, and I think—and, you know, one of them is, while applying, some—you know, a lot of people get their health insurance through the acquisition of these SSDI benefits.

So just from the beginning, you know, it is like with my first example, with a woman who was terminated before she applied, she has an additional barrier of not being able to access health insurance during the application process, which makes it harder to establish that you have the disability.

But because of, you know, chronic disinvestment, there have been customer service problems at SSA which make it harder to access the agency. Some of the recommendations that we have had, which I know SSA is working on, and I think will go farther with more funding, is making sure more of the applications are online, making sure things are more accessible, that there are people to call to get help.

It is a very complicated system. And, although some people get representatives and—in order to help them, there aren't enough. And I think making sure there are enough claims representatives to help people navigate, to understand the problems is really, really important.

But finally, having this additional effort to make sure that DDSs get it right the first time by really taking extra steps to make sure they are getting treating source evidence will help everyone access their benefits more quickly, because treating doctors are the ones that really know.

Mr. EVANS. In your comments that you just made and what Mr. Higgins questioned Ms. Davis, and specifically about Congress, I

am not talking about Social Security, our responsibility is what I am most interested in hearing you talk about, our responsibility.

Ms. BURDICK. Well, thank you for the clarification, and you are right.

So one of the things that Congress can do is they can help rework the statute and the regs to make sure Social Security is focusing on treating source evidence. There was a rule that used to prioritize treating source evidence called the treating physician rule that was eliminated. And that should come back. Because, if everyone is focusing on the treating doctor, we will get to the right decision, or Social Security will get to the right decision earlier, which will really impact things.

But the other thing that Congress can do is funding. Make sure not only it is one time, but sustained funding so Social Security can do the work they need to do to make customer service better and make it easier to access these benefits.

Mr. EVANS. I thank you for your clarity, and I say that to you because I just joked with Mr. Higgins, and he is from the great state of New York and Baltimore, he is a Baltimore Buffalo fan. So he and I have a constant running discussion. So from his clarity I wanted to make sure we make this connection. So—and I appreciate it.

Thank you, Mr. Chairman, I yield back.

Chairman FERGUSON. Thank you. Next, we will go to the gentleman from Utah.

Mr. Moore, you are now recognized.

Mr. MOORE of Utah. Thank you, Chairman. Thank you, Ranking Member. I appreciate the discussion today.

So I recently had to go to the DMV in Utah, and I am here to tell you it was the single best experience I have had. Utah has—I don't know how long it had been since I had been there, but I had waited a ton before. I pre-made an appointment. I filled out the electronic information, I showed up, I was processed within like seven minutes. Over time, you know, the bad rap that places like that get have embraced technology and have used it to dramatically improve customer service.

And that is the essence of my question here, and it is because sometimes the pandemic, in a lot of ways, forced us to change a little bit. And so my question first—is for you, Ms. Kerr-Davis.

It is my understanding that faxed application, signed faxed applications, were accepted during that period and now they are not being accepted. Is that correct?

Ms. KERR-DAVIS. That is correct.

Mr. MOORE of Utah. Could you just share a little bit of context on, like, why that is the case?

What are you doing to embrace as much technology as possible to help alleviate some of the wait times, the burden, the showing up when you really arbitrarily don't need to always show up for something?

Just kind of give me some context on that.

Ms. KERR-DAVIS. Of course. Thank you for that question.

So, during the pandemic, we did put in place a number of flexibilities so that we could continue to serve the public. And, in some cases, we have ended these flexibilities for a variety of reasons.

But I want to be clear that we do accept fax applications as leads, and then we will contact the claimant, schedule an appointment or complete the application over the phone, and then have them attest to their signature.

I do want to go back to your comment about the DMV. So I had a similar experience in Kansas at our DMV, did everything—you know, went online, got a text, a reminder, went in, everything, and very quickly. We are in the process of moving in that direction at SSA. But as you know, we have a lot of security issues that we have to consider.

Mr. MOORE of Utah. I share a building in my district with your team, and I totally get the differences that do exist.

Ms. KERR-DAVIS. Yes, yes. So—but that is where part of that \$2 billion went, is modernizing our system and moving in that direction. It is just going to take us some time to get there.

Mr. MOORE of Utah. So I appreciate that context. And just to reiterate, like, there is—it is out there. And I represent a huge IRS processing facility in Ogden, Utah, as well. And that is the number-one thing I hear from constituents and from the folks that I serve that work at that facility is there is a desire and a need to embrace as much technology as possible because it is out there, and, you know, we are seeing it working.

And take for—whatever good examples that can come from, you know, more bite-size approaches like you can from a state-level DMV, and I just encourage you to continue to do that. It is huge. We cannot get into a position of just we got to throw more money at things. We have to innovate as we are approaching this.

And that is what I appreciate in Mr. Camp and Mr. Warshawsky's testimony, particularly—and I will quote this—"Social Security could improve the decision process for claimants that would utilize"—and again, quote—"existing authority appropriations and staffing." So it kind of gets to my point. There are opportunities out here with what already exists. Let's improve that as much as we possibly can, build on that, and then reassess what we need with regards to workforce and everything to solve the—to fit the needs.

Can—you like to share anything else that you would do to help modernize this process as we think about the next 5 to 10 years and the crucial time for Social Security? Because I do, I think the next 5 to 10 years is the most important time of this organization.

Mr. WARSHAWSKY. Well, Mr. Moore, I don't know if you addressed your question to me—

Mr. MOORE of Utah. Yes.

Mr. WARSHAWSKY [continuing]. But I will say that the vocational tool, the VIT, which the agency spent \$10 million on that was part of the IT budget, they are not using. And it depends on the new data, but the data exists. So it is really a real question, really, as to why this has not been implemented.

And it would reduce times significantly because it would automate the process. It would be an application of technology as well as new data that would certainly speed the process, the adjudication process, significantly.

I will also sort of note that not only are disability claims declining, but, during the pandemic, the agency didn't do a lot of work.

So it is really a mystery. And, really, I think the agency needs to explain why this problem has developed, given that their workload declined so much and it continues to get worse.

Mr. MOORE of Utah. Mr. Camp, anything to add?

Mr. CAMP. They already have the fax machines in every office. They already turn them on in the morning. Count it. Let us actually fax something, and let us save those weeks. Easy.

Mr. MOORE of Utah. Yes. And I would argue that we would be moving past fax machines, too. So, if it is there, let's take advantage of it, and let's continue to embrace whatever we can. I think it is the best tool that we have to continue this, and I think that is something that has to go across the board.

So, Chairman, I am done with my time. Thank you.

Chairman FERGUSON. Thank you, Mr. Moore. I do think it is just a sad state of affairs when we are talking about whether or not we should cut on a fax machine. We might as well strap these notes onto carrier pigeons and send them, as well.

With that we will move to the gentleman from the Commonwealth of Virginia.

Mr. Beyer, you are now recognized.

Mr. BEYER. Mr. Chairman, thank you very much and thank you to the ranking member for holding this. As all the Members of Congress, I hear lots and lots of negative feedback on our constituent service. It is a really consistent thing, and I share our frustration.

I am a huge fan of process management. Rather than just throwing money at things, taking the pieces apart and trying to look at each section of it. So an obvious question—and not to be repetitive, but I would love to get the answer—as best you can, Ms. Kerr-Davis, why haven't we eliminated reconsideration?

We have 20-year projects, all the groups think this is the right thing to do. Why do we cling to it?

Ms. KERR-DAVIS. So we did test it, as you know, we—someone on the panel mentioned here.

There are thousands of people who receive benefits—are allowed at the reconsideration level. It is—actually streamlines the process. It is—costs less money to process a claim at the reconsideration level. But certainly, if that is something you are interested in exploring, we are happy to work with you on the technical aspects of that.

Mr. BEYER. Are you aware of any legislative attempt at the congressional level to eliminate reconsideration?

Ms. KERR-DAVIS. No, I am not, not currently.

Mr. BEYER. Okay, Ms. Burdick, same line of thought on process management. The treating physician rule. Again, I would love to know why did they get away from that?

Is there a sense that you can't trust the physicians that are treating these people because they are their friends and they are from their communities?

Is there a really valid reason why the treating physician rule shouldn't be in place?

Ms. BURDICK. The task force would endorse getting—restoring the treating physician rule. And I will say when they eliminated it none of the reasons that were put forth we found were very compelling. I mean, because when it comes down to it, it just—there

doesn't seem to be any reason why you wouldn't try, first and foremost, to get the treating provider to weigh in on a person's claim.

Mr. BEYER. They are the ones who know them best.

Ms. BURDICK. They do.

Mr. BEYER. Their health.

Ms. BURDICK. And without that, there is this reliance on Social Security consultative examinations, which are there for a reason, but this is a one-time doctor, usually doesn't have any of the specialties of the person who is talking to them. It just isn't—the evidence created isn't as persuasive, it takes time, it costs money, and it would just be so much more efficient to go to the source in every case.

Mr. BEYER. Thank you.

Mr. Camp, Dr. Warshawsky suggested that because the attorneys get paid on the total amount due there is an incentive to postpone it as long as possible. How do you react to that, as an attorney representing these folks?

Mr. CAMP. It isn't our real world. We get hired to obtain the appropriate outcome, but as fast as possible. Every client that retains an attorney is expecting us to make the agency perform better services—to go faster, primarily. We are the ones on the phone with the clients every day. We are the ones that are frustrated in being blocked in speeding up the cases. It is our job to make the claim go faster, and that is—would be an unacceptable failure to serve your client, which is not something professionals do if they expect to last.

Mr. BEYER. Okay, thank you.

Dr. Warshawsky, to roll up, let me quote you: “The currently needlessly complex and outdated rules that both claimants and agency use to determine eligibility for disability benefits have to be simplified, modernized, and automated.” Is there anyone charged with doing this? Who owns that charge?

Mr. WARSHAWSKY. When I was at Social Security, I was in charge, and the regulation was written. In fact, it was ready to go literally days before the change of administration.

So it is there, and it was an agency-wide—in fact, even a government-wide effort. So it involved people from the Office of Management and Budget, they were extensively involved. The entire agency, people in operations, people in the actuaries office, people in the hearings office, the budget office, it was a total agency effort.

My very rough estimate is that it cost \$100 million in terms of people time to do that, in addition to the expenditure of \$300 million for the data. And it stopped. It is sort of inexplicable.

Mr. BEYER. And what would the savings be if implemented?

Mr. WARSHAWSKY. Well, I can't speak to that in terms of—it would be—it would definitely speed things up because it would be automated. And that is really—and it would be relying on current data. So that would provide much more accuracy at the initial level and in the claims. I think it would be a vast improvement.

Mr. BEYER. Thank you.

Mr. Chairman, I yield back just with the question that once again there may be a window for legislative initiative here, too.

Chairman FERGUSON. I thank the gentleman, wholeheartedly agree with you.

I am going to ask for unanimous consent to enter into the record the fiscal year 2022 disability decision data. This came from SSA's budget document. The ranking member and I have been looking at this.

The reason I think this is so important is it speaks to the reconsideration process, and how many initial-level claims then get bumped to that, and then how many are stuck in that regulatory purgatory that then ultimately go to the administrative law judge and get corrected. I think this document highlights very much a very, very broken system.

So without objection, I would like this submitted.

[The information follows:]



Office of the Inspector General
SOCIAL SECURITY ADMINISTRATION

October 26, 2023

The Honorable Drew Ferguson
Chairman
Subcommittee on Social Security
Committee on Ways and Means
United States House of Representatives
1139 Longworth House Office Building
Washington, D.C. 20515

Dear Chairman Ferguson:

In anticipation of the Subcommittee's hearing on *One Million Claims and Growing: Improving Social Security's Disability Adjudication Process*, I would like to inform the Subcommittee of the work my office has been conducting on the Social Security Administration's (SSA) administration of its disability programs. Federal Inspectors General are required to summarize and assess the most serious management and performance challenges facing their agencies and the agencies' progress in addressing those challenges.¹ Since Fiscal Year 2002, my office has considered SSA's administration of its disability programs to be one of the major challenges facing the Agency.

We recently completed three reviews² that I believe should be brought to the Subcommittee's attention. First, in a September 2023 review, we determined whether the Office of Hearing Operations' (OHO) Compassionate And REsponsive Service (CARES) Plan initiatives had reduced the hearings backlog and average processing times.

In January 2016, SSA issued its CARES Plan to reduce its pending hearings backlog. At that time, more than 1 million people were awaiting hearings decisions, and the average processing time was 543 days. SSA updated its CARES Plan in 2017, when the average processing time peaked at 605 days, and updated it again in 2019. Three CARES Plans contained 45 total initiatives.

While the hearings backlog and average processing times generally decreased between Fiscal Years 2016 and 2022, we could not determine whether the CARES Plan initiatives reduced the hearings backlog and average processing times. Of the 45 CARES Plan initiatives, 42 lacked sufficient measurements or metrics to support their correlation to reducing the hearings backlog or average processing times.

¹ The Reports Consolidation Act of 2000 (Pub. L. No. 106-531).

² SSA OIG, [The Social Security Administration's Hearings Backlog and Average Processing Times \(A-05-22-51159\)](#), September 2023, [The COVID-19 Pandemic's Effect on Disability Determination Services' Processing of Disability Claims \(A-01-20-50963\)](#), June 2023, and [Comparing the Social Security Administration's Disability Determination Services' Workload Statistics During the COVID-19 Pandemic to Prior Years \(A-01-21-51038\)](#), December 2021.

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October 26, 2023

SSA could not provide documentation showing a direct link on how each initiative helped reduce the backlog or average processing times. This occurred because SSA did not establish formal measurements to help determine how each initiative affected the hearing process. OHO believed the initiatives could not always be measured using traditional metrics.

OHO leadership set general expectations of timelines and metrics needed for each initiative. The project lead meetings were oral with no documentation. As a result, neither OIG auditors nor SSA could determine whether the CARES initiatives—or a reduction in reconsideration determinations—were the reasons the hearing backlog and average processing times decreased from Fiscal Years 2016 to 2022. Since claims denied after the requests for reconsideration are the source of claims that may be appealed to the hearings level, fewer claims would potentially flow to OHO.

In addition to our review of OHO, we also analyzed disability determination services (DDS) data. In December 2021, we reported that, although receipts for initial disability claims, reconsiderations, and continuing disability reviews (CDR) decreased, processing times and the number of pending cases for these workloads increased.³ This indicates claimants were waiting longer for state disability determination services (DDS) to make medical determinations because the DDSs could not keep pace with the workloads received.

Then in June 2023 we determined how the COVID-19 pandemic affected DDS' processing of disability claims.⁴ On March 11, 2020, the World Health Organization declared COVID-19 a pandemic. On March 17, 2020, SSA closed its offices to the public and suspended or canceled all in-person consultative examinations (CE). On May 29, 2020, SSA informed the DDSs they could resume in-person CEs—prioritizing scheduling CEs for claims pending at either the initial or reconsideration level. SSA left it up to each DDS to manage how it reinstated CEs.

While SSA received fewer initial claims during the pandemic, it took the DDSs longer to process them than the year before. Before the pandemic, DDS' average processing time for an initial claim was 95.5 days. This increased to 139.4 days and 135.5 days, respectively, during the first and second years of the pandemic. Numerous factors contributed to this, including CEs, DDS staffing and training, telework and communication with claimants, and policies and procedures.

The number of CEs performed during the pandemic decreased as SSA suspended in-person CEs for a period of time. About 4,000 DDS employees resigned or retired and, although the DDSs hired new staff, a newly hired disability examiner takes an average of 2 years to become proficient at processing most initial claim workloads. Most DDS employees teleworked during the pandemic, so the DDSs needed to adjust to how they processed certain workloads. SSA provided the DDSs with basic cellular telephones to communicate with claimants, but claimants were wary of answering the calls as the telephones' caller identification did not show the incoming call was from a state agency. Finally, during the pandemic, SSA updated policies and procedures on how the DDS should operate. The updates included combined instructions with the field office, which confused some DDS employees about what pertained

³ SSA, OIG [Comparing the Social Security Administration's Disability Determination Services' Workload Statistics During the COVID-19 Pandemic to Prior Year \(A-01-21-51038\)](#), December 2021.

⁴ SSA OIG, [The COVID-19 Pandemic's Effect on Disability Determination Services' Processing of Disability Claims \(A-01-20-50963\)](#), June 2023.

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specifically to DDS processes. DDSs will continue various best practices they implemented during the pandemic, including scheduling tele-health CEs, when possible; telework; and holding video meetings.

To address this long-term challenge, SSA needs to maintain its focus on reducing and eliminating the initial disability claims, reconsideration, and medical continuing disability review backlogs, along with other important steps, including continuing to partner with DDSs to address staffing shortages caused by attrition and hiring challenges. SSA also needs to encourage all DDSs to share best practices to improve disability operations nationwide.

Please contact me if you would like any additional information.

Sincerely,



Gail S. Ennis
Inspector General

Mr. PASCARELL. Chairman, I want to just mention one thing. We are so anxious to move into an automation world. For the last 60 years we have been so anxious to do that. And yet the process of tracing a gun, the numbers, we still don't automate it. So that is what takes so long to trace a weapon and to find out about a perpetrator. So when we talk about automation, we are talking also, obviously, about the heart of policy, whether we want to do it and find the reasons to, or not to do it and keep our heads in the sand. So I just wanted to add that. Automation is very important to modern living.

And I would suggest, Mr. Chairman, since the subject came up, we don't know the result of the pandemic, particularly with our own children. That is for another day. Thank you.

Chairman FERGUSON. Thank you, and I appreciate your embrace of technology.

This comes from a good friend who every now and then will whip out his flip phone next to me. [Laughter.]

Chairman FERGUSON. So, with that, again, I would like to thank the witnesses for being here today. Thank you for your time, your candid answers.

Please be advised that members have two weeks to submit written questions to be answered later in writing. Those questions and your answers will be made part of the formal hearing record.

With that, the subcommittee stands adjourned.

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

MEMBER QUESTIONS FOR THE RECORD

**Questions for the Record
House Committee on Ways and Means
Subcommittee on Social Security**

**"One Million Claims and Growing: Improving Social Security's Disability
Adjudication Process"
October 26, 2023**

Questions from Representative Ferguson

- 1. Your written testimony stated that the SSA deployed "cadres" of employees from the Office of Quality Review and the Office of Hearings Operations to process initial disability claims. According to the testimony, these employees completed over 27,000 initial claims last fiscal year.**

- a. How many employees were reassigned to process disability claims?**

At the beginning of FY 2023, we assigned our first cadre of SSA employees to assist processing initial disability claims. As of the end of March 2024, there were 353 SSA employees with disability claim adjudication experience assisting the Disability Determination Services (DDS) agencies with processing initial claims full-time. In addition to these specialized cadres, we are continuing to use existing Federal Disability Processing Branches and Disability Processing Units to increase DDS case processing.

- b. How does the productivity of these reassigned workers compare to workers that were already processing disability claims at the DDS level?**

It is difficult to compare these two groups as the workloads are different, and the types of workloads significantly impact productivity. For example, the cadres are primarily handling adult-only initial claims, whereas the State DDSs are handling all types of claims, including child claims. Additionally, cadre members from certain components are more familiar with the case processing systems and current business processes than other cadre members.

- 2. Ms. Russell's written statement explains that case files have doubled in size since 2017. Has the SSA analyzed the effects of case file size on the speed of processing disability claims?**

While file sizes vary for every claim, we agree that there has been a significant increase in records and duplicate records. This has required disability examiners to review and consider additional pages and ultimately led to increases in disability processing times. Unfortunately, we are unable to isolate and compare the precise effect that case file size increase (since 2017) has had on either the time it takes to get medical evidence, or the time it takes to process that evidence, because our legacy systems did not provide that

information

We note that SSA has developed tools to assist our DDS staff in screening the voluminous case files. One such tool is Intelligent Medical Language Analysis Generation (IMAGEN). IMAGEN transforms evidence in real-time into machine-readable text that enables enhanced search capabilities and intelligent analysis of medical record content. The medical evidence is analyzed to identify key clinical findings using a robust clinical vocabulary specialized for SSA's disability adjudication needs. This enables the identification of severe medical impairments which are then mapped directly to SSA's established diagnosis codes and SSA's Disability Listings.

- 3. The SSA's Office of Hearings Operations currently tracks the volume of work received and then processed by administrative law judges. Can the SSA provide a similar report on disability claims received and processed per state and per DDS examiner (state by state) over the last five years?**

Please see attachment A. The metrics are based on total receipts and clearances for initial disability claims.

- 4. For the final five years of the reconsideration prototype pilot, what was the total final rate of award, agency cost, and time to final decision (award or denial) between prototype and non-prototype states? How did these metrics change in years after reconsideration was reintroduced in prototype states?**

Please see attachment B for the requested allowance rate information.

From FY 2016 to FY 2020, the agency's cost to process all initial claims, reconsiderations, and hearings increased by 2.6% from \$6.1 billion to \$6.2 billion.

From FY 2016 to FY 2020, in non-prototype States, costs increased 2.3% from \$4.4 billion to \$4.5 billion. Costs in prototype states which covered initial claims and hearings increased 3.2% from \$1.6 billion to \$1.7 billion.

In accordance with statutory authorization to provide a reconsideration level of appeal, the agency reinstated reconsideration in all States in FY 2020. From FY 2020 to FY 2023, the agency's cost to process all initial claims, reconsiderations, and hearings increased 7.1% from \$6.2 billion to \$6.7 billion.

Unfortunately, we are unable to be as responsive to this question as we would like. Given the multitude of possible variables that impact processing times, we are unable to determine this statistic with guaranteed certainty. For instance, during this time, the states used different case processing systems and certain states had more highly developed and efficient systems than others. Furthermore, such a comparison does not account for other time spent in the entire disability process. The prototype states did not have reconsideration-level processing, resulting in more receipts and longer processing

times at the hearing office level.

We do have data confirming that from FY 2019 to FY 2023, 66,000 applicants from the prototype states were allowed at the reconsideration level, and a total of 350,000 applicants nationally were allowed. Without the reconsideration level appeal, these individuals would all have waited an average of 500 days for a hearing decision.

5. The SSA operates an online tracker through mySSA intended to provide claimants with information regarding the status of their disability claim.

a. At what point in the claims process does the SSA provide updates through the tracker?

The Claims Status Tracker (Tracker) provides five status updates after an initial disability application is submitted. These updates correspond with where the application is in the process when the claimant accesses the Tracker: application submission, initial review, medical review, non-medical requirements review, and decision.

b. Has the SSA assessed the timeliness and accuracy of the tracker?

The Tracker displays an overall processing time estimate for the disability claim as a whole and the estimated time to reach the next status update. Estimates are based on the monthly average processing times in an individual's State of residence and are updated at the end of each month. We evaluate customer reports of issues with the accuracy of the information and take necessary corrective action.

c. Has the SSA examined claimants' response to the tracker and are claimants contacting the SSA at a lower or greater frequency because of the tracker?

In FY 2023, claimants accessed the Tracker approximately 61.9 million times—more than double the number in FY 2021. While the public is using the Tracker more frequently, we do not collect data specific to claimants' response to the tracker.

We can report that, currently, approximately 5.5 percent of calls to our National 800 Number relate to claims status. Unfortunately, we did not previously track this information and, therefore, cannot provide accurate data about any reduction in the frequency of claimants contacting SSA about claims status since the tracker was implemented.

Questions from Representative Estes:

- 1. Given the significant decrease in appeal rates and processing times with the assistance of an authorized representative, why does SSA continue making the process of filing a disability application with a representative so burdensome to the**

applicant by requiring a “wet signature” sent through the mail as opposed to widely accepted electronic signature?

Agency regulations explicitly prevent representatives from signing disability applications (see 404.1710, 416.1510) unless they are permitted to do so in a separate capacity (see 404.612, 416.315).

We generally do not require wet signatures on applications for disability benefits. Although claimants have the option to apply for benefits using a wet signature on paper forms, we also offer other means for individuals to apply for benefits and sign necessary documents, including various online and telephone processes that eliminate the need for wet signatures. Claimants can file disability applications online using our iClaim process, available on our website. Claimants can also sign and submit an application for supplemental security income via our new Upload Documents portal. Our telephone process uses a signature method known as attestation, which involves an SSA technician confirming the claimant’s intent to file and sign the form or document inside of our system.

For internet claims, we allow a third party to initiate an internet application on the claimant’s behalf, which establishes a protective filing date for the claimant. Once we receive the third party-initiated claim, we send it to the claimant to verify their intent to file, review the information for accuracy, and sign the application. To expedite this process, we instruct our technicians to call the claimant to verify the information provided and complete the signature by phone using our attestation process.

Our employees are experienced in serving people facing barriers of all types, and they make every effort to reach the claimant by phone to attest the application. If we cannot reach them, we must mail the internet claim summary to confirm the information and obtain the claimant’s signature necessary for a valid application, per our regulatory requirements.

2. What is SSA doing to simplify, not complicate the use of an authorized representative at the initial level when it’s clear they are effective in compiling good claims and reducing the appeals backlog?

We strongly support a claimant’s right to representation. We have made the following changes to simplify and improve the process of obtaining and appointing a representative:

- In March 2021, we launched the [e1696 portal](#) where representatives and their claimants can complete, sign, and submit the Notice of Appointment (Form SSA-1696) electronically.
- In November 2022, the former Acting Commissioner increased the maximum fee payable under the fee agreement process to help increase availability of representatives. See [Federal Register: Maximum Dollar Limit in the Fee Agreement Process](#).

- In August 2023, we proposed a [new rule](#), *Changes to the Administrative Rules for Claimant Representation and Provisions for Direct Payment to Entities*, which would allow us to further standardize the representative registration and appointment processes. The final rule is in progress.
- In September 2023, we updated [Your Right to Representation](#), the publication we use to share information with individuals about their right to representation. This document has been available for a number of years, and we update it from time to time based on feedback. The update in September 2023 revised language about how to revoke a representative's appointment and added language about how to report concerns about a representative's conduct.
- In March 2024, we announced our plan to raise the fee cap from \$7,200 to \$9,200. The fee cap increase is scheduled to take effect this Fall.
- We continue to modernize our online services for appointed representatives, which will increase the functionality and information that representatives can access online.
- In FY24, the Appeals and Appointed Representative Processing Services (AARPS) that includes two online portals will be available for appointed representatives and the claimants they represent.
 - Appointed representatives will have the ability to view a list of claimants they represent, fee payment history, claim status, and business information.
 - Claimants will have the ability to view their representative information.

Questions from Representative Higgins

1. **Does SSA believe the Dictionary of Occupational Titles to be satisfactory in assessing claimants' ability to return to work in the national economy? What steps must be taken for the SSA to use an updated Dictionary of Occupational Titles?**

Our disability adjudication process delivers decisions consistent with statute and regulations.

SSA has been working with the Bureau of Labor Statistics (BLS) on developing, testing, and administering the Occupational Requirements Survey (ORS), which includes updated requirements of work in the national economy which we use in steps 4 and 5 of the disability determination process. We recently received and are analyzing the second complete set of data from BLS and are considering next steps for its use. Given the time and taxpayer dollars already invested in this important endeavor, the Commissioner wants to work with stakeholders, including BLS, and subject matter experts to review the approach and timeframe for ending use of the Dictionary of Occupational Titles.

2. **Kelly Page, a constituent who applied for SSD on January 30, 2018, has been battling with the Social Security Administration since filing. An article from the Buffalo News published July 16, 2023 titled "Disability nightmare: Applying for**

benefits can be long, difficult road for some ailing Americans”, summarizes her experience.

2.1. Did SSA determine specific jobs our constituent was able to perform? If so, what specific jobs did SSA deem our constituent qualified for?

We would need to discuss specific cases with you in a private forum. However, we can provide you with a general discussion of the process.

We use a five-step process to evaluate disability claims. Prior to steps four and five of the disability determination process, we assess what a claimant can still do despite their physical and mental impairments – i.e., we assess their residual functional capacity (RFC). At step four, we consider whether the claimant’s RFC prevents them from performing any past relevant work. If the claimant can perform their past relevant work, we will find that they are not eligible for SSDI. If they cannot perform their past relevant work, we determine whether they can do any other work that exists in the national economy, given their RFC, age, education, and work experience. In order to find them able to do other work, we must identify three occupations they could potentially do, given their RFC, age, education, and work experience. If they cannot perform any other work, we will find them eligible for SSDI.

2.2. What deference was given to our constituent's team of local doctors, as opposed to the doctor in Houston TX that the judge used to determine her eligible to work?

Under our regulations, we do not automatically give any specific evidentiary weight, including controlling weight, to specific medical opinions or prior administrative medical findings, including those from a claimant’s regular team of doctors. The most important factors we consider when evaluating the persuasiveness of medical opinions or prior medical findings are supportability and consistency. That is, we prioritize the relevancy of objective evidence and supporting explanations to a medical source’s opinions, and the consistency of their opinions and findings with evidence from other sources in the claim.

Question from Representative Kildee:

- 1. When does the Social Security Administration (SSA) require a “wet signature” on applications or other forms related to the disability process (e.g., on the form through which an applicant appoints an authorized representative, on an application (whether filed by the individual or their authorized representative) or on any other forms required as part of the application and adjudication process)? What is SSA’s rationale for requiring a wet signature? Is SSA taking steps to reevaluate this requirement and accept e-signatures in lieu of wet signatures? What is the status of this reevaluation?**

With respect to applications for disability benefits and related forms, including the form for appointing representatives, we generally do not require wet signatures. Although claimants have the option to apply for benefits using a wet signature on paper forms, we also offer other means for individuals to apply for benefits and sign necessary documents, including various online and telephone processes that eliminate the need for wet signatures. Claimants can file disability applications online using our iClaim process, available on our website. Claimants can also sign and submit an application for supplemental security income via our new Upload Documents portal. Our telephone process uses a signature method known as attestation, which involves an SSA technician confirming the claimant's intent to file and sign the form or document inside of our system.

As noted above, while individuals have the option to apply for benefits using a wet signature on paper forms, we also offer other means for individuals to apply for benefits and sign forms related to the disability process, including various online and telephone processes that eliminate the need for wet signatures. Established online processes include iClaim and AdobeSign portals, both available on our website. Our telephone process uses the attestation signature method described in our answer to the first question. For certain forms, the agency also currently accepts signatures applied with third party, commercially available software that is then printed and submitted to the agency, and is subject to attestation signature procedures. *See* EM-20022 REV 3

Additionally, in July 2023, we launched an Upload Documents initiative for an efficient, secure, and accessible customer experience. We recently expanded this initiative nationwide. The Upload Documents initiative provides customers a secure online service option to complete transactions electronically, including submission of several forms related to the disability process. This online service option enables us to request information from our customers via email and gives our customers the ability to respond electronically, reducing the need for in-office visits and paper mail submissions. This initiative also includes an ongoing evaluation of our current signature requirements on agency forms, moving to electronic signature where possible, and eliminating signatures where they are not needed.

FY 2019- 2023 Disability Claims Received and Processed per State and per DDS Examiner Report										
	FY 2019		FY 2020		FY 2021		FY 2022		FY 2023	
	Average Receipts per Examiner	Average Clearances per Examiner	Average Receipts per Examiner	Average Clearances per Examiner	Average Receipts per Examiner	Average Clearances per Examiner	Average Receipts per Examiner	Average Clearances per Examiner	Average Receipts per Examiner	Average Clearances per Examiner
DDS TOTAL	544	540	487	462	434	424	493	436	505	447
BOS	567	567	502	500	495	467	505	450	469	465
CT	573	563	525	511	481	485	504	491	458	465
ME	558	526	558	567	530	452	430	400	543	501
MA	595	605	531	544	554	503	562	449	492	478
NH	586	598	439	345	433	424	521	431	440	446
RI	463	451	395	431	408	401	434	458	401	457
VT	517	538	400	406	378	381	374	407	369	358
NYC	430	422	382	362	406	424	416	415	458	390
NJ	446	457	394	381	339	337	385	368	346	373
NY	430	413	382	351	453	483	440	449	532	409
PR	373	384	342	408	300	302	350	329	301	307
PHL	518	497	461	448	399	381	467	428	435	419
DE	432	351	399	352	307	264	604	462	570	570
DC	709	710	608	520	520	587	473	480	403	405
MD	522	525	549	510	580	475	746	541	543	377
PA	523	494	449	439	424	456	506	466	497	524
VA	520	493	475	474	386	297	418	416	300	297
WV	450	439	417	379	417	385	420	397	400	385
VA EST	556	566	353	435	120	149	69	98	416	329
ATL	567	570	521	488	474	425	573	465	583	478
AL	427	434	400	362	441	401	505	441	448	447
FL	582	587	570	491	454	435	687	458	666	500
GA	529	518	447	469	497	379	646	515	822	497
KY	588	599	609	588	556	538	525	516	468	508
MS	551	536	506	506	439	370	518	454	615	443
NC	593	603	509	519	421	380	408	397	449	401
SC	615	612	588	555	677	560	822	575	758	652
TN	684	687	530	473	470	424	501	471	554	469
CHI	541	541	466	442	424	430	468	435	487	453
IL	699	666	533	500	527	595	741	623	762	627
IN	640	669	595	544	528	548	567	563	608	546
MI	389	387	352	324	360	351	341	333	368	360
MN	578	577	511	525	396	406	402	390	380	379
OH	582	585	480	476	399	406	460	430	464	474
WI	430	443	454	419	408	348	447	377	504	390
DAL	623	629	564	538	450	451	570	468	602	534
AR	482	515	430	430	453	389	351	331	300	318
LA	704	667	603	601	606	537	959	519	717	485
NM	510	507	564	430	344	280	556	377	477	413
OK	657	647	602	569	404	457	499	503	562	576
TX	661	671	622	593	554	591	929	668	926	766
AR EST	544	554	367	355	199	165	47	251	426	366
OK EST	688	684	584	524	351	434	1	167	1	457
KCM	402	400	408	386	386	384	389	372	411	361
IA	420	426	417	408	354	355	306	310	304	295
KS	455	473	741	541	566	446	701	376	1022	390
MO	389	382	382	368	385	400	388	401	402	387
NE	397	392	384	370	369	339	395	390	383	410
DEN	530	467	438	398	444	426	472	430	506	444
CO	523	431	378	343	366	357	371	317	382	336
MT	581	466	569	567	477	471	861	569	907	751
ND	450	470	387	400	617	498	566	540	636	558
SD	532	456	415	418	434	416	469	487	474	441
UT	520	538	536	434	544	508	540	553	702	617
WY	642	503	584	545	555	618	856	780	818	695
SFO	578	572	513	484	436	443	460	427	496	441
AZ	476	498	470	436	444	354	323	283	389	320
CA	603	592	517	490	437	463	486	456	528	476
HI	553	538	543	561	426	437	514	450	519	469
NV	511	514	561	513	403	410	487	440	436	384
SEA	591	575	490	456	330	348	409	362	423	353
AK	548	486	297	319	135	186	251	194	381	292
ID	618	607	604	528	478	473	496	524	431	364
OR	625	587	469	469	325	364	427	295	381	303
WA	570	567	493	446	318	328	390	376	453	388

FY 2013 - FY 2021 Final Rate of Awards between Prototype and Non-Prototype States

Calendar Year of Disability Filing	Allowance Rate Through Final Decision: Prototype States	Allowance Rate Through Final Decision: Non-Prototype States	Notes
2013	46.80%	45.40%	
2014	46.50%	45.40%	
2015	45.80%	44.70%	
2016	46.10%	45.20%	
2017	46.70%	45.20%	
2018	48.50%	46.40%	
2019	50.70%	47.70%	New Hampshire, New York, Louisiana, Colorado, California reinstate reconsideration in January, Pennsylvania in April, Alabama and Michigan in October
2020	50.40%	47.30%	Missouri reinstates reconsideration in January, Alaska in March
2021	50.00%	45.50%	Some cases at higher adjudicative levels still pending
2022	Data is currently unavailable due to the number of pending cases		

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**Hearing before the
U.S. House of Representatives, Ways and Means Committee
Subcommittee on Social Security
October 26, 2023**

**One Million Claims and Growing:
Improving Social Security's Disability Adjudication Process**

**Written Testimony of
Emilia Sicilia, Managing Attorney, Empire Justice Center
Jennifer Karr, Senior Attorney, Empire Justice Center
Ann Biddle, Urban Justice Center**

Submitted November 9, 2023

Chairman Ferguson, Ranking Member Larson, and members of the Social Security Subcommittee, thank you for this opportunity to submit written testimony about improving the Social Security Administration's disability adjudication process.

The Empire Justice Center (Empire Justice) is a statewide not-for-profit law firm. Our mission is to protect and strengthen the legal rights of poor, disabled, or disenfranchised people in New York through systems change advocacy, training, and support to other advocates and organizations, and high quality direct civil representation. As part of our mission, we represent numerous low-income individuals with disabilities before the Social Security Administration (SSA) under our Disability Advocacy Program (DAP).

The Mental Health Project (MHP) started in 1994 as a foundational project of the Urban Justice Center (UJC) and our mission today is to disrupt and dismantle the cycle of hospitalization, homelessness and incarceration that traps low-income individuals with mental health concerns in New York City. We provide a range of services to low-income individuals with mental health concerns, including representation before SSA.

As statewide Co-coordinators of New York's DAP, Empire Justice and UJC work with advocates throughout the State who provide similar services, in particular advocates who are funded by the State of New York under a DAP grant to represent over 4,000 low-income disabled New Yorkers each year who have been denied disability benefits.

Empire Justice and UJC endorse all the recommendations made in the testimony submitted by Jennifer Burdick of Community Legal Services (CLS), submitted on behalf of the Consortium of Citizens with Disabilities, and that of David Camp of the National Organization of Social Security Claimants Representatives (NOSSCR). We submit this written testimony to offer our perspective on the topic of reconsideration. We join CCD and NOSSCR in their recommendation to eliminate the reconsideration stage for initial disability denials and devote the resources currently expended at that level to making much-needed improvements to the initial determination stage.

Towards the end of the hearing held on October 26, 2023, Linda Kerr-Davis of SSA was asked about legislative proposals to address the issues at reconsideration. We want to clarify that reconsideration is a process of SSA's own creation, and that it does not require legislation to address its failures. The Social Security Act (the Act) does not require reconsideration.¹

The reconsideration process was created by SSA by regulation and can be undone the same way.² Congress should hold SSA to account for reconsideration's apparent failures and urge the agency to eliminate the step and devote the same funding and resources to where they are needed – in making meaningful improvements to the determinations at the initial stage. Congress should begin by requesting from SSA the full scope of data and findings obtained by the agency during and after its prototype.

From 1999 to 2019, SSA tested the elimination of reconsideration in 10 prototype states.³ There was plenty of reason to do so: for decades, the process has been criticized as an inefficient layer of bureaucracy that caused undue delay for disabled individual claimants navigating the system.⁴

As attorney advocates in New York State, we represented disabled claimants during the period in which the state was one of 10 "prototype" states in which SSA tested elimination of the reconsideration stage for initial disability appeals. If an individual applied for benefits and was denied medically, they could proceed directly to an administrative law judge (ALJ) hearing. The difference in the quality of review and type of outcomes between reconsideration and ALJ are jarring. In FY2022, only 15% of claims were approved at the reconsideration level. Advancing to the ALJ level increased a person's chance of being approved to 51%. These statistics underscore the injustice of requiring a claimant to undergo delay and additional hurdles at the reconsideration stage, when relatively few claimants benefit, and the determinations made at that level are frequently incorrect.

When SSA ended its trial and reinstated reconsideration in the prototype states in 2019, advocates expressed serious concerns about the detrimental impact reinstatement would have on our clients and about the lack of basis to make the change. In 2018, our organization submitted testimony to this Subcommittee expressing our strong opposition to its reintroduction.⁵ To justify its decision, SSA stated that reconsideration would provide uniformity, and that "[h]aving a uniform administrative review process will reduce the number of claims waiting for an [administrative law judge (ALJ)] decision."⁶

Over the past four years, our concerns about this change have been confirmed in New York: the reconsideration stage remains inefficient, yielding a benefit to a small number of claimants while exacerbating processing delays for most. With the return of this review in New York we

saw no improvement to procedures or policies at reinstatement, including any training and/or specialization for disability examiners that would make reconsideration meaningful. National statistics are consistent with the view of reconsideration as inefficient and yielding minimal results for claimants: although a small but not insignificant percentage of people nationwide are awarded benefits at the reconsideration level, this process adds yet another procedural hurdle to an already lengthy and daunting process. This additional obstacle leads to many claimants abandoning their appeals despite the fact they meet the statutory definition of disability. Often, claimants do not realize they need to appeal a second time, and subsequently miss the deadline for requesting an ALJ hearing.

As advocates we also find that the reconsideration level is the most opaque appeal process to navigate. In New York, advocates face challenges in communicating with analysts at the state agency. The uniformity achieved by eliminating reconsideration is in form only, because in substance, and in practice, the stage is subject to great variation by virtue of SSA's limited oversight over the individual state agencies.

There was no research or data offered to support the reinstatement for reconsideration when the decision was made by SSA. In 2020, the Social Security Advisory Board (SSAB) noted that SSA's Disability Service Improvement (DSI) initiative produced cohort data regarding the prototype but that it was never released or shared publicly.⁷ The current backlog in claims processing has made it all the more crucial that this data is analyzed and made available so that the impact of reinstatement can be fully understood. As urged by the SSAB, further analysis of reinstatement is warranted, and should expand on the data gathered during the redesign.

In comments submitted earlier this year to SSA,⁸ we urged the agency to revise its Learning Agenda to include a study of the impact of the reinstatement of reconsideration, including:

- the percentage of claimants who were awarded benefits at reconsideration;
- the additional waiting time experienced by those who were awarded benefits at the ALJ or subsequent stages;
- how many claimants abandon their claims after the initial and reconsideration stages, and how this compares to the number who abandoned following an initial denial in a prototype state;
- how often, and after how long, do those who do not appeal re-apply;
- the characteristics and potential factors, such as limited English proficiency or other barriers, that may relate to the decision to appeal or re-apply;
- a study examining a sampling of cases for the amount of evidence obtained and development achieved compared to the initial application and ALJ stages;⁹
- the costs incurred at reconsideration, spent on both SSA and DDS staff, for the change in outcome, and compared to costs and outcome for the prototype states; and
- the extent reinstating reconsideration has contributed to the current DDS backlog.

Congress should call on SSA to address the inefficiency of reconsideration and the undue burden it places on individual claimants. Congress should begin by asking SSA the questions above.

While SSA has offered no formal release of its findings or explanation to justify its commitment to reconsideration, the agency had, in 2001, initially reported several positive outcomes from

the prototype, and it issued a Notice of Proposed Rulemaking (NPRM) to eliminate reconsideration nationally. The NPRM stated that “Although the prototype is continuing and we continue to gather information and gain operational experience, we believe that we now have sufficient information to propose changes to our regulations.”¹⁰ The proposal was withdrawn by Commissioner Michael Astrue in 2009.

As described by experts,¹¹ SSA’s decision to retain reconsideration appears to have hinged on cost savings and the reduction of the ALJ backlog. Those cost savings, however, cannot justify the burden placed on claimants. And if it eliminated reconsideration now, SSA is better positioned to handle a rise in the number of ALJ hearings because of the new modalities and other tools developed by the agency to handle its hearing workflow with significantly greater flexibility since the pandemic.

Ultimately, it is apparent that reconsideration in its current form is a failed process that “lacks meaningful or sound public policy justification.”¹² Given the crisis-level understaffing at SSA, and the issues of burn-out and retention identified by the agency, the resources that are devoted to the reconsideration process are simply not warranted by the output. SSA should eliminate the reconsideration stage nationwide for initial disability appeals and reinvest the resources currently expended at reconsideration so that that staff properly carry out their obligations in developing and processing claims at the initial level.

Thank you for the opportunity to offer these comments.

Contact:
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¹ Under the Act, the Commissioner must provide reasonable notice and opportunity of hearing and the Commissioner decides what proceedings and investigations she deems necessary. 42 U.S.C. §§ 405(b)(2)(C), 1383(c)(1)(A). The Act does not mandate any specific procedures before reaching the ALJ hearing level. In its current form, reconsideration functions only to hinder an individual claimant's right to a hearing.

² 20 C.F.R. §§ 404.907, 416.1407.

³ SSA, *Process Re-engineering Program; Disability Reengineering Project Plan*, 59 Fed. Reg. 47,887 (Sept. 14, 1994); SSA, *Modifications to the Disability Determination Procedures; Disability Claims Process Redesign Prototype*, 64 Fed. Reg. 47,218, 47,219 (Aug. 20, 1999); SSA, *New Disability Claims Process*, 66 Fed. Reg. 5494 (Jan. 19, 2001).

⁴ Dubin, Jon C. 2016. *Social Security Disability Adjudicative Reform: Ending the Reconsideration Stage of SSDI Adjudication after Sixteen Years of Testing and Enhancing Initial Stage Record Development* in SSDI Solutions (The McCrery-Pomeroy SSDI Solutions Initiative). West Conshohocken: Infinity Publishing.

⁵ Testimony of Catherine M. Callery and Louise M. Tarantino. *Hearing on Examining Changes to Social Security's Disability Appeals Process: US House of Representatives Committee on Ways and Means*, 115th Congress. (July 25, 2018).

⁶ SSA, Justification of Estimates for Appropriations Committees, Fiscal Year 2019, Feb. 12, 2018, <https://www.ssa.gov/budget/>.

⁷ SSAB, *Examination of Social Security's Reinstatement of Reconsideration*, (April 2020), available at <https://www.ssab.gov/wp-content/uploads/2020/05/2020-Reconsideration-Reinstatement-Brief.pdf>.

⁸ Comments by Empire Justice Center, Docket SSA-2022-0065-0020, Mar. 3, 2023, <https://www.regulations.gov/comment/SSA-2022-0065-0020>.

⁹ OIG conducted a similar study in 2014. SSA, OIG, *Completeness of the Social Security Administration's Disability Claims Files*, OIG A-01-13-23082 July 2014, available at https://oig-files.ssa.gov/audits/full/A-01-13-23082_0.pdf. Such an analysis could help inform a broader assessment of whether the outcomes achieved at reconsideration are outweighed by the considerable expense and delay that is incurred at that stage.

¹⁰ 66 Fed. Reg. 5494.

¹¹ See Dubin; SSAB; OIG; Cong. Research Serv., William Morton, *The Reconsideration Level of Social Security's Administration Appeals' Process: Overview, Historical Development, and Demonstration Projects* (RL 7-9453), (July 15, 2018) available at <https://waysandmeans.house.gov/wp-content/uploads/2018/07/Morton-Testimony.pdf>.

¹² Dubin, *Social Security Disability Adjudicative Reform*, 18.



October 26, 2023

The Honorable Drew Ferguson
 Chairman
 Subcommittee on Social Security
 Ways & Means Committee
 U.S. House of Representatives
 1139 Longworth House Office Building
 Washington, DC 20515

The Honorable John Larson
 Ranking Member
 Subcommittee on Social Security
 Ways & Means Committee
 U.S. House of Representatives
 1129 Longworth House Office Building
 Washington, DC 20515

Dear Chairman Ferguson and Ranking Member Larson:

AARP, which advocates for the more than 100 million Americans age 50 and older, thanks you for holding today's important hearing on *One Million Claims and Growing: Improving Social Security's Disability Adjudication Process*. We appreciate your attention to this critical issue and your leadership in improving the customer service provided by the Social Security Administration (SSA), especially to those with disabilities.

AARP continues to be concerned about extraordinary delays within the Social Security disability process. Each year, around 2 million Americans apply for disability benefits, with many waiting far too long for a decision from the agency on their claim. The latest available data show that Americans who file for disability assistance now wait about 221 days for an initial decision; if denied, they could wait another 455 days for a decision on appeal to an Administrative Law Judge. In some areas of the country, the wait is even longer, up to nearly 2 years. These delays can have potentially devastating effects on both applicants and their families. Even more troubling, over 10,000 Americans die every year waiting for Social Security to resolve their disability claims.

SSA needs to do better and should continue to prioritize the reduction of disability wait times as a key objective of the agency. In order to help SSA make improvements to the disability process, it is imperative that Congress provide the agency with the funding it needs. Social Security has a responsibility and a duty to provide timely and quality service to the public, and Congress has an obligation to ensure the agency has the resources, staffing and oversight necessary to fulfill its mission. For too long, Congress has underfunded SSA, leading to increased customer service deficiencies that have become far too common.

AARP continues to urge Congress to approve \$15.5 billion for SSA administrative expenses for FY 2024. With this additional funding, we expect SSA to address staffing shortages and make long-overdue improvements in service to meet the needs of the American public. We further urge Congress to provide \$1.870 billion for program integrity, which is essential to help maintain public confidence in SSA's ability to prudently administer their vital programs.

Once again, thank you for holding today's important hearing. We look forward to working with you to better ensure millions of older Americans and their families receive the high-quality service they deserve and expect from Social Security. If you have any questions, please feel free to contact me, or have your staff contact Tom Nicholls on our Government Affairs staff at tnicholls@aarp.org or (202) 434-3765.

Sincerely,



Bill Sweeney
Senior Vice President
Government Affairs