MEMORANDUM

To: Social Security Advisory Board
From: Claire Green
Subject: Overview Memo for January 8, 2015 Board Meeting
Date: January 5, 2015

Much of the January board meeting will focus on the Supplemental Security Income (SSI) program, with SSI program experts from both inside and outside SSA presenting on key aspects of the program. In both 2013 and 2014 the Boards Statements included in SSA's Annual Report on the SSI Program focused first on the history of the Children's Program and then on the unique issues that foster children face when receiving SSI benefits. The presentations will provide an opportunity for new board members to weigh in on the issues of the previous board publications as staff start to combine the 2013 and 2014 Statements into a single Issue Brief. Additionally, the Board's 2015 SSI Statement will be due in a few months and this will provide an opportunity to discuss the 2015 Statement.

Presentations

Andrew LaMont Eanes, will meet with the Board in the morning. Mr. Eanes is new to SSA, President Obama nominated him in July 2014 as SSA's Deputy Commissioner and is currently working as a Senior Advisor to the Acting Commissioner. Mr. Eanes has an extensive background in the telecommunications industry. In his current role as Senior Advisor, he is assisting the Acting Commissioner on cybersecurity, telecommunications and labor-management issues.

Next on the agenda is Nancy Berryhill, the Deputy Commissioner of Operations, the component responsible for the approximately 1300 field offices, the ten Regional Commissioners Office and headquarter component's that work on improving program and electronic supports to the field. Nancy will discuss her components responsibilities and the challenges it is currently facing. Additionally, she will provide an overview of the SSI program, its claim process and the administrative challenges in oversight.

At lunch, Kathleen Romig will join the board to discuss the Board's draft position paper on reforming the Government Pension Offset (GPO) Windfall Elimination Provision (WEP).

Next on the agenda is Professor Daniel L. Hatcher, from the University of Baltimore. Professor

Hatcher has worked on children's issues for several years and authored a law review article that analyzed the current process for foster children receiving SSI benefits and the states role as representative payee for these children.

The day will close with a meeting with David Wittenburg, Associate Director of Health Research, Mathematica Policy Research who will provide an overview of his research on the SSI program, and Manasi Deshpande, Ph.D. Candidate in Economics at Massachusetts Institute of Technology (MIT) and Pre-doctoral Fellow at the National Bureau of Economic Research (NBER). Manasi's dissertation focused on SSI children and she will present her findings to the board.

SOCIAL SECURITY ADVISORY BOARD

Agenda for Thursday, January 8, 2015

9:00 a.m. to 9:45 a.m. Board Business

9:45 a.m. to 10:30 a.m. **Andrew "LaMont" Eanes**, Senior Advisor to the Acting Commissioner and nominee for Principal Deputy Commissioner, SSA

As the Presidential nominee for Principle Deputy Commissioner, LaMont would like to introduce himself to the Board and provide information on his view of the agency. He will be fielding questions, as well as discussing his insights of SSA with the Board.

10:45 a.m. to 12:30 p.m. **Nancy Berryhill,** Deputy Commissioner, Operations

Ms. Berryhill will be providing an overview of Operations workloads, with emphasis on SSI and an overview of Medicare, and the challenges that Operations faces due to loss of staff and budget cuts.

12:30 p.m. to 12:45 p.m. Break, Board Business

12:45 p.m. to 1:45 p.m. Working lunch with **Kathleen Romig**, Senior Research Analyst at the Office of Retirement Policy

Kathleen will cover the current status of the Board's GPO/WEP report.

1:45 p.m. to 3:00 p.m. **Daniel L. Hatcher**, Professor of law University of Baltimore, Civil Advocacy Clinic

Professor Hatcher will address the conflicts between state agencies' revenue maximization strategies and the agencies' core missions to serve low-income children and families

3:00 p.m. to 3:15 p.m. Break, Board Business

3:15 p.m. to 4:30 p.m. **David Wittenburg**, Associate Director of Health Research, Mathematica Policy Research

Dr. Wittenburg will present his ideas for SSI reform.

Manasi Deshpande, Ph.D. Candidate in Economics at Massachusetts Institute of Technology (MIT) and Pre-doctoral Fellow at the National Bureau of Economic Research (NBER)

Ms. Deshpande will present the results of her doctoral research on SSI children.

4:30 p.m. to 5:00 p.m. Board Business

December 16 Board meeting at SSAB

Executive Session

Board meeting dates

The Board started the day in executive session and planned dates for upcoming Board meetings. The Board confirmed Board meeting dates for January 8 and February 23 with a half-day field trip on the morning of February 24. The Board tentatively agreed on March 23-25 for New York City. The Board agreed to have a board meeting on April 24. The only good date in May appeared to be on the first, but the Board agreed that would be too close to the April meeting. The Board discussed possibly skipping May since June 2-3 was open for everyone, but will revisit the subject in the future.

Jagadeesh plans

Jagadeesh announced that he has resigned Cato to join the Wharton School and is relocating to Philadelphia. His new schedule is working Monday through Thursday, so Friday is his new best day. Wharton knows he is on the Board and may accommodate. He will be managing a team of researchers so he may be busy.

The Disability Case Processing System (DCPS)

Next, the Board met with Terrie Gruber, chief program officer for the DCPS. The DCPS began in 2008 as a modernization project. There are 54 Disability Determination Service (DDS) offices throughout the United States and over the last 20-30 years, many have developed their own Case Processing Systems (CPSs). The two mains goals of the DCPS are to 1) sustain the outdated system and 2) streamline the 54 CPSs into one system.

In 2012, Lockheed Martin won the contract to create the DCPS. The DCPS launched in beta testing in three states: Idaho, Missouri, and Illinois. To date, only 1,008 cases have been entered into the system, with 700+ cases completed. The system has received negative feedback about functionality and has had problems with cost overruns, leading the agency to bring in McKinsey and Co. to do a top-down assessment of the project and its administration. The project is now in a reboot phase.

After discussing the risks and recommendations issued by McKinsey and Co., Ms. Gruber indicated that SSA was moving to an “agile” methodology for implementing the project reboot, which will involve input from all stakeholders in the project throughout the development and launch process. SSA is also testing other software including Guidewire, which is being tested in Maine and Washington, and Midas, which is an internal project. Both are being tested in an attempt to expedite the launch of DCPS.

Disability Policy Panel (DPP) Meeting

Next, the Board heard from DPP member, Ken Nibali, about the DPP's final report and the five recommendations included.

1) Provide CDR funding that is adequate, predictable, and sustained

Board members suggested emphasizing that current CDR funding is inadequate with a graph showing historical funding levels, in order to better demonstrate the funding problems.

2) Retain the Medical Improvement Review Standard (MIRS) and strengthen its implementation

3) Strengthen other payment integrity tools

Mr. Nibali highlighted that other program integrity tools might be more efficient than CDRs in making sure the agency gets the disability decision "right the first time." These include cooperative disability investigations (CDI) units at OIG, as well as quality reviews of DDS decisions and pre-effectuation reviews at the appeals council level of adjudication. The DPP also recommended expanding CDI units into all 50 states (currently less than half have these units).

4) Strengthen links between CDRs and support for return-to-work

The DPP recommended improving return-to-work programs for those with certain CDR diaries indicating potential for medical improvement. There is currently about a 0.5% return-to-work rate among disability beneficiaries nationwide. The DPP recommended extending Ticket to Work (TTW) eligibility for one extra year for those who are ceased from the program as a result of a CDR.

5) CDRs for SSI children and youth

The final recommendation in the report focused on special considerations for SSI kids and youth, and how earlier recommendations could be adapted for this large subset of beneficiaries.

Board sponsorship of the report

The Board discussed next steps with Mr. Nibali and agreed that it is not necessary for the Board to officially endorse the report, as some members might not agree with certain points. However, the Board agreed the report should be shared broadly with the help of SSAB, focusing specifically on the Hill, the Commissioner, and disability advocates. While the Board will not endorse it, they will still communicate that they believe the report is an important public service that warrants attention at the agency and with policymakers on the Hill.

Discussion of Board's Retirement Paper

Next, Kathleen Romig introduced the Retirement Security project she has been working on for the Board. She explained that the report summarizes options to improve retirement income from three different sources: Social Security, pensions, and earnings. She emphasized that it is simply a list of options with no endorsement from the Board at this point. She reminded the Board that she is leaving this week so somebody would have to take her place.

Addressing solvency

The Board debated whether the report should address solvency with mixed opinions on whether it was necessary. Some felt more could be added about the status of retirement security in the United States.

Adding or removing options

The Board discussed whether any options should be added or removed. Some members felt there were too many options increasing benefits without offering difficult options for promoting solvency. Some felt politically infeasible options could be removed such as across-the-board benefit increases, while others felt it was ok because the report was meant to lay out the debate. The Board discussed adding more options emphasizing personal responsibility. While the report is meant to be a descriptive list of options, the Board agreed that it would not be able to come to a consensus about which options to recommend.

Menu of options

Kathleen said the Retirement Security report and Sooner Rather Than Later report are supposed to act as two menus. It is not expected that people will pick from only one of the menus. Some options that cut benefits are expected to pair with options to strengthen benefits. This is all part of the bigger discussion of Social Security and retirement security. Kathleen mentioned that there are also a lot of options that try to encourage working more and saving more. Not all of them increase benefits. The Board agreed that the introduction should be expanded to address retirement issues for different cohorts. Joel agreed to do this.

Retirement Panel

Andrew Biggs, Resident Scholar, American Enterprise Institute (AEI)

Mr. Biggs discussed three issues with the Board: 1) replacement rates; 2) how replacement rates relate to retirement security; and 3) potential gaps in retirement security.

Replacement rates

Mr. Biggs noted that the often-cited figure that Social Security replaces 40% of a typical worker's earnings is based on hypothetical workers constructed by SSA's actuaries. It does not reflect how most people think about retirement—namely, as a replacement of their most recent earnings, rather than their career-average earnings. It also doesn't address the question of how much is enough to have a secure retirement.

Mr. Biggs went over the history of the development of SSA's replacement rate calculations. He described the development of the actuaries' scaled earnings profile. This profile, while more realistic than the steady profiles formerly used, did not align with the replacement rates SSA used in the past. As a result, the actuaries developed a new method for calculating replacement rates which wage-indexes earnings to age 65 and calibrates the replacement rates to match the earlier ones. He suggested that replacement rates should come from SSA's Office of Retirement Policy, using their MINT model. He said this model is based on better data, has more analytical capability, and uses households as a unit, which makes more sense.

Replacement rates and retirement security

On retirement income adequacy, Mr. Biggs said he agrees with John Karl Scholz's estimate that about 25-30% of people are undersaving. He said that overestimating the retirement security problem could make people overlook true pockets of vulnerability.

Gaps in retirement security

Mr. Biggs said one gap in retirement security is those who never qualify for Social Security. He noted that in the bottom quintile of income, people are much less likely to receive Social Security. One example is single non-working women. He said the people with the lowest returns from the system are those who never qualify—not top earners.

Mr. Biggs identified these options:

1. Lowering or eliminating the 10-year vesting period for Social Security
2. Strengthening Social Security's minimum benefit. For example, providing a guaranteed poverty-level benefit to all, with an earned benefit for those with work histories—a "double-decker" approach commonly used in other Anglophone nations.
3. Reducing payroll taxes for older workers. He noted studies (including one from SSA) find that people near retirement are tax sensitive.

Jack VanDerhei, Research Director at the Employee Benefit Research Institute

Mr. VanDerhei presented his projections for retirement security using the Retirement Security Projection Model. This model analyzes birth cohorts from 1936-1965 with results broken out by gender and family status. The model can analyze retirement income adequacy under baseline assumptions as well as various policy scenarios.

According to this model:

- Between 72 and 79 percent of Boomer and Gen-Xers will have sufficient income for retirement unless there is long-term health cost, which decreases the percentage to 57-59 percent.
- Once you control for income levels, one of the major threats to retirement security pre-retirement is whether an employee works for an employer who offers a retirement plan. If every employer who did not offer a plan started offering one, this would have a huge impact and would boost retirement adequacy.
- In defined contribution plans, the problem with leakage is important. Behavior is not affected by whether or not enrollment is automatic or voluntary – meaning decisions on cash outs are the same whether the employee is auto enrolled in the defined contribution plan or is a volunteer.

Virginia Reno, Vice President for Income Security at the National Academy of Social Insurance (NASI)

Ms. Reno discussed the benefits of Social Security and emphasized that it is the main source of income for low and middle-income seniors.

NASI did a 3-part study using 2 focus groups in partnership with Greenwald & Associates. It surveyed American attitudes about Social Security and preference for future changes. It was an interactive exercise (trade-off analysis) to learn what Social Security changes people want and are willing to pay for. According to NASI's study:

- Nearly 7 out of 10 respondents say that, without Social Security, they'd have to make significant sacrifices or wouldn't be able to afford food, clothing or housing in retirement.
- Americans say they don't mind paying for Social Security because they value it for themselves (73%), their families (73%), and for the security and stability it provides to millions of Americans (81%).
- Across party lines, Americans don't mind paying taxes for Social Security (81% total, 72% Republican, 87% Democrat, 81% Independent).

Ms. Reno stated that people are receptive to changes in program. She stated that people do not see paying more in FICA taxes as a tax – they see it as buying a product.

Board Business

Forecasting

The Board members discussed whether the Board should engage in trust fund forecasting and the majority felt that it should.

Presenting disability reform options to Congress

The Board discussed being ready to comment on multiple scenarios that could occur to address the disability trust fund: whether Congress acts and reallocates between the trust funds or if they engage in fundamental reform. The Board discussed the past practice of laying out what the options are rather than making concrete policy recommendations. The Board agreed that it should urge Congress to look at the options before legislating in haste and that a DI solvency report could be helpful to both sides. The Board agreed that to the extent it can, it should motivate Congress get something done. Board members discussed plans for laying out options and then determining how much the staff could take on.

Board trip

The Board discussed the March trip to New York City. Board members discussed places to visit and solicited suggestions.

MEMORANDUM

To: Social Security Advisory Board
Subject: Supplemental Security Income Program Background Memo
Date: January 8, 2015

SSI is a federal program that was enacted on October 30, 1972 and began payments in January 1974. It provides benefits to meet the basic needs of people with disabilities who have limited income. SSI is administered by Social Security; however, it is financed by the General Fund of the Treasury. SSI eligibility requires passing both a financial and disability test, meaning an individual's income and assets determine a recipient's monthly benefit amount. Only applicants with countable resources up to $2,000 for an individual and $3,000 for a couple may receive SSI. Countable resources in the SSI program include cash, bank accounts, vehicles, or anything that the individual owns that could be liquidated to cash and used for food or shelter. Some exceptions to countable resources include the home an individual lives in, household goods and personal effect, life insurance policies with a combined value of $1,500 or less, one vehicle regardless of value and grants or scholarships set aside to pay educational expenses nine months after receipt.[1]

SSI eligibility and benefit amount also depend on income. To determine SSI eligibility, SSA uses a formula based on the amount of earned, unearned, and deemed income received by the applicant. Earned income consists of wages and other net earnings. Unearned income is all income that is not earned such as Social Security benefits, pensions, State disability payments, and cash from friends and relatives. Deemed income is part of the income of the individual's spouse, parent(s) or sponsor with whom he or she lives.[2] However, some income is excluded such as the first $20 of unearned income, the first $65 earned from working, and half the amount earned over $65. Any income that exceeds these amounts are excluded from the benefit amount dollar-for-dollar. In general, the more countable income an individual has, the lower the individual's benefit.

Currently, the Federal benefit rate (FBR) is $733 for an individual and $1,100 for a couple.[3] SSI payment benefit rates differ for individuals and couples since couples are presumed to share expenses, resulting in a lower cost of living. In contrast, unmarried recipients living in the same household receive benefits equal to that of individuals despite the ability to share expenses. Benefit levels differ for individuals and couples living in the same household. Beneficiaries who

[1] Social Security Administration. *Understanding Supplemental Security Income SSI Resources*. 2014. Available at: http://www.ssa.gov/ssi/text-resources-ussi.htm
[2] Social Security Administration. *Understanding Supplemental Security Income SSI Income.* 2014. Available at: http://www.ssa.gov/ssi/text-income-ussi.htm
[3] Social Security Administration. *SSI Federal Payment Amounts for 2015.* Available at: http://www.ssa.gov/oact/cola/SSI.html

live in another person's household and receive in-kind support and maintenance, which is food or shelter that somebody provides for an individual, qualify for one-third less than the FBR.

The SSI program is extremely complicated, administratively burdensome and in need of simplification. The complexities of the SSI program stem from the extensive set of rules that address income, resources, living arrangements and a disability requirement for beneficiaries under the age of 65. The program's greatest complexity is the calculation of SSI payments.[4] The value of countable resources also affects an individual's eligibility for the program. The resource limit of $2000 for an individual and $3000 for couple have not changed since 1989. These rules require benefit payments to be adjusted to account for resource factors.

Also, SSI recipients are required to report any changes to their living arrangement and income that may occur. However, this process of reporting and adjusting of benefits can result in an underpayment or overpayment. Resources and in-kind support and maintenance are the major sources of overpayments and underpayments.

SSI also has a redeterminations process in which it re-examines a recipient's income, resources and disability to ensure eligibility.[5] Process of evaluating eligibility and payment levels on an on-going basis contributes to the complexity of the SSI program.

Over the years, several reform ideas have been proposed to improve the SSI program. These ideas include raising benefit levels to equal 100 percent of the poverty level which would increase the FBR for individuals from $721 to $973 and from $1082 to $1311 for couples. Another reform proposal includes updating the asset limits of $2000 for individuals and $3000 for couples, which could prevent many from being qualified. These asset thresholds were last updated in 1989. If these values had been indexed to inflation, these values could have possibly doubled. Much like the asset limit, the income exclusion could also be adjusted for inflation. The amount of income that is excluded when calculating SSI benefits, $20 general income exclusion and the $65 earned income exclusion, have not changed since the program launched in 1972.[6]

SSI's policy on in-kind support and maintenance requires that technicians ask detailed questions about household composition, expenses and contributions. These policies aim to target benefits to recipients with no in-kind support. Some believe that current SSI policies on In-Kind Support and Maintenance (ISM) are complex and invasive. There are two ways ISM is counted. One is the Value of the One-Third Reduction Rule (VTR) in which a recipient's income is reduced by one-third if the recipient lives in another person's household and receives food and shelter. The other is Presumed Maximum Value Rule (PMV) which applies to an individual who lives in another person's household but doesn't receive food and shelter from that household. The PMV caps the amount of ISM that SSA counts because it presumes the maximum value of food or shelter received. Although a small percentage of recipients receive ISM, SSA must determine the

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[4] Social Security. *Social Security Testimony Before Congress.* July 25, 2012. Available at: http://www.socialsecurity.gov/legislation/testimony_072512.html

[5] *Ibid*

[6] Center on Budget and Policy Priorities. *Introduction to the Supplemental Security Income (SSI) Program).* February 27, 2014. http://www.cbpp.org/cms/?fa=view&id=3367

living arrangements of all recipients. ISM and living arrangements are often the cause for payment inaccuracies. Although the goal is to provide equitable treatment among recipients by reducing benefits of individuals who receive support, equitable treatment is not always the result. These policies also create a disincentive for families and friends to provide food and shelter to SSI recipients.[7]

One of the reform proposals to simplify SSI includes eliminating ISM so that living arrangement determinations would only require verification of whether or not the recipient lives with another adult. From past estimates, this would save $70 million annually.[8] It would also improve program accuracy because SSA would no longer have to track changes in household contributions and expenses. In addition, it would incentivize in-kind support of any amounts because they would no longer be tracked down by administrators.[9]

SSI is a place of last resort for disabled, old-age, and blind people in need to meet the basic aspects in life. This program has rules detailing the necessary qualifications to be eligible for benefits. However, the rules that are provided have caused complexities in the program. Over the years, bills that include SSI simplification such as Supplemental Security Income Restoration Act have been proposed. However, none of these bills have been passed. Therefore, it is important to take the necessary steps to simplify this program to ensure that it serves its purpose.

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[7] Balkus R., Sears J., Wilschke S. & Wixon B. Social Security Administration's Office of Retirement and Disability Policy. *Simplifying the Supplemental Security Income Program: Options for Eliminating the Counting of In-Kind Support and Maintenance.* 2008. http://www.ssa.gov/policy/docs/ssb/v68n4/v68n4p15.html

[8] *Ibid*

[9] *Ibid*

Supplemental Security Income (SSI) Simplification – 2014**

**This is a legislative proposal SSA is drafting related to SSI simplification. It deals with simplification of in-kind support and maintenance policy and resources policy. Cost estimates are still being developed. This is the only simplification effort that is currently being worked on and Susan Wilschke, Deputy Associate Commissioner, ORDES, is leading this effort.

Background

The SSI program is the nation's largest needs-based cash assistance program, providing monthly benefits to aged, blind, and disabled individuals with limited income and resources. In FY 2012, we paid more than $52 billion to over 8 million SSI recipients.

The statutory framework of SSI makes the program difficult to administer. Eligibility and payment amount must be determined on a monthly basis, and program rules are complicated and time consuming to administer. The SSI program uses an extensive set of rules covering income, resources, living arrangements, and for beneficiaries under age 65, a disability requirement to determine eligibility. The complexity of the program results in payment errors and burdensome requirements on the public.

History of SSI Simplification Proposals

Simplification has been a goal since the beginning of the SSI program. The first major review of the program began in 1975. Since then, the complexity of the SSI program has continued to prompt frequent reviews and simplification efforts. Over the years, we have conducted major analyses of SSI policy areas that are frequently criticized for their complexity.

Our efforts have led to some SSI program simplification. For example, in recent years we published regulations simplifying the definition of in-kind support and maintenance (ISM), the automobile resource exclusion, and the household goods and personal effects resource exclusion. However, we have found it difficult to implement large-scale changes that would fundamentally simplify the SSI program and reduce improper payments without greatly increasing program costs or outlays.

In considering ways to simplify the SSI program, we must consider how policy alternatives would affect benefit adequacy, benefit equity, and program integrity. Tension exists between program simplification and these objectives. Any option to simplify the program will involve tradeoffs. For example, all major proposals require legislation and many would greatly increase program costs. Efforts to constrain those cost increases involve redistributing benefits among recipients, which results in making some recipients better off and others worse off. While there are various obstacles that hinder simplification efforts, the two primary obstacles are the difficulty in obtaining comprehensive legislative changes to the Social Security Act and the significant program costs that many simplification efforts require.

Proposals Not Considered in This Paper

We have considered some large scale proposals that we are not including in this paper. We are not including these proposals due to the considerable cost associated with the proposals or because we are pursuing the proposals via another avenue. These proposals include: strictly raising the resource limit, eliminating the twenty-dollar general income exclusion and eliminating ISM outright. All three of these proposals are very expensive. Another proposal that we are not considering in this paper is batch wage verification with private entities. The Agency is currently pursuing this proposal under a separate initiative.

SSI Simplification Proposals

We continue to review and analyze two of the most promising areas of simplification: resources and in-kind support and maintenance (ISM). We are focusing on these two areas because they are complex and because they are among the leading causes of overpayments. Specific proposals that would simplify our treatment of resources and ISM are outlined below. These proposals would simplify the program and provide additional opportunities to reduce improper payments. A final proposal would combine aspects of both for comprehensive, research-driven SSI reform.

RESOURCES

Resources are cash or other property that an individual may convert to cash and use for support and maintenance. Under current law, individuals are limited to $2,000 in countable resources and couples to $3,000. These limits have not changed since 1989. Generally, an individual (or couple) with countable resources in excess of the statutory limit is not eligible for SSI or Federally administered state supplementary payments.

Proposal 1 – Increase the resource limit and offset costs by eliminating certain end of life exclusions

This proposal increases the SSI resource limit while offsetting costs by repealing the life insurance and burial fund exclusions. Moreover, the proposal simplifies the SSI program, could increase program integrity by reducing improper payments, and may produce administrative savings by eliminating complicated end-of-life resource development. However, this proposal requires a legislative change to the Social Security Act. In addition, the burial fund exclusion has become a popular exclusion among Congress, advocates and the funeral directors lobby. Under this proposal, we would also need to consider horizontal equity as the Medicare Part D Prescription Drug low-income subsidy (LIS) provides a $1,500/$3,000 burial fund exclusion based on the SSI program exclusion. Although this proposal would make our resources policy easier for the public to understand, some individuals with excluded life insurance policies and burial funds could become ineligible for SSI due to excess resources and conditional benefits would likely not apply to those who become ineligible. This proposal could also affect the recipient's eligibility for Medicaid and other needs-based programs. Finally, additional analysis is needed to verify the extent to which elimination of these end-of-life exclusions would allow for an increased resource limit.

Proposal 2 – Maintain the current resource limits, but exclude pension funds held in IRS-recognized defined contribution retirement accounts from resource counting until age 65, or other age deemed appropriate
This proposal, while requiring legislative changes to the Social Security Act, offers some opportunity to improve benefit adequacy. Additionally, the proposal simplifies the program by bringing our policy for recipients' in-line with the policy for deemors. Generally, retirement funds are a countable resource and require administrative development to determine fund accessibility and value. Limiting the exclusions to IRS-recognized retirement accounts provides for inherent, accepted limits on contributions, penalties and the time to retain funds.

However, program costs are expected to increase as individuals who are currently ineligible for SSI benefits gain eligibility because of the expanded exclusion. Additionally, a new administrative workload would be required to ensure that all beneficiaries with excluded accounts are subject to redetermination. Using established IRS policy to determine the excludability of applicable retirement funds simplifies SSA implementation and execution of the proposed policy. However, limiting the scope of the exclusion to IRS defined funds has the mitigating effect of limiting the exclusion of retirement funds to those who are working, or have previously worked and contributed to an employment-based fund. Additionally, a firm, age-based breakpoint after which the exclusion does not apply may result in a required spend-down of resources prior to the account becoming a countable resource.

IN-KIND SUPPORT AND MAINTENANCE (ISM)

ISM is unearned income in the form of food or shelter, or both. We currently follow a complex body of policies and procedures to develop ISM for SSI applicants and recipients. ISM is a major source of improper payments, is confusing to recipients, and is expensive and difficult to administer. We reduce SSI benefits by one-third of the Federal benefit rate (FBR) for recipients who live in another person's household and receive ISM. Benefits are reduced up to one-third of the FBR plus $20 for recipients who live in their own household and receive ISM.

Proposal 3 – SSI Benefit Restructuring (ISM)
This proposal eliminates ISM, but introduces a concept called "benefit restructuring" to maintain the cost-neutrality of the proposal. Only individuals who live alone would get benefits based on the full FBR. SSI recipients (including children) who live with another adult would have their benefits reduced by seven percent (the lowest possible reduction that we believe would make this proposal cost-neutral). Those living in institutions, group homes, or foster care would be unaffected.

The proposal would provide significant simplification of the program and reduce improper payments. However, eliminating ISM requires legislative changes to the Social Security Act. Additionally, this proposal would reduce benefits for about three million SSI recipients, increase the number of recipients who fall below the Federal poverty level, and some current recipients would become ineligible for SSI. In terms of program costs, this proposal is cost neutral.

Proposal 4 – Flat Rate ISM
This proposal eliminates ISM, maintaining cost-neutrality. It also yields distributional/poverty effects that are fully consistent with program objectives, unlike Benefit Restructuring.[1] Under Flat-

[1] For a distributional analysis of Benefit Restructuring, see "Simplifying the Supplemental Security Income Program: Options for Eliminating the Counting of In-Kind Support and Maintenance" (Balkus, Sears, Wilschke, and Wixon, *Social Security Bulletin*, 2008)

Rate ISM, there would be two flat-rate percentage reductions in the FBR – a larger reduction when the recipient lives with family and a smaller reduction when the recipient lives with a roommate. Recipients living alone would have benefit increases and only such recipients would get benefits based on the full FBR (closing loopholes in current policy). Those living in institutions, group homes, or foster care would be unaffected.

Flat-Rate ISM is like Benefit Restructuring in several respects. (1) Flat-Rate ISM would greatly simplify current ISM policy, significantly reducing costs of: administering ISM, error payments, and recovering overpayments. (2) It would also close loopholes in current ISM policy. (3) It would require legislative changes. (4) It would reduce benefits for about three million recipients. However, under Flat-Rate ISM – unlike Benefit Restructuring – poverty would definitely be reduced for recipients living alone and may be reduced for SSI recipients overall.

COMPREHENSIVE REFORM

Proposal 5 – Combined Resources Reform
This proposal builds on the flat-rate proposal discussed above and adds sliding scale benefit reductions for multi-recipient households. Those recipients who live with nuclear family members (parents, adult children, adult siblings) are assumed to receive a higher level of support from within the household and so require lower SSI benefits. To account for economies of scale, with every additional SSI recipient in the household, the total SSI benefit received by the household would increase, but by a smaller amount for each additional recipient in the household. Preliminary estimates show that such multi-recipient reform will substantially reduce current program outlays. We propose to use most of the program savings to increase the resource limits. Depending on the savings from multi-recipient reform, we will comprehensively review the exclusions to countable resources and, when possible, eliminate them to simplify and streamline the resources test.

This proposal would greatly simplify current ISM policy, significantly reducing costs of: administering ISM, error payments, and recovering overpayments. Because family relationships are more stable and verifiable than the details of the household budget, the determination of benefit reductions will be simplified and error payments will be reduced and loopholes in current ISM policy would be closed. The proposal would increase equity by treating all closely related recipients the same when it comes to benefit calculations, whether married or not. It would increase benefit adequacy for those living alone, who are by far the poorest of the SSI population with poverty rates of 80-90%, and improve adequacy for all SSI beneficiaries by increasing the resources limit. However, the proposal would require legislative changes to the Social Security Act.

Recommendations and Conclusion

The agency has proposed a number of promising ideas over the years, but we have been unable to implement major simplification efforts because they require comprehensive legislation, tend to be very expensive, and because they frequently have adverse effects on some current recipients. Despite these obstacles, we feel that any of the four proposals in this paper are worthy of serious consideration, either individually or combined, as a means to simplify the SSI program. While these proposals require updated cost estimates and additional analysis, they would simplify the SSI program and reduce improper payments while potentially avoiding prohibitive increases in program costs.

SOCIAL SECURITY ADVISORY BOARD
STATEMENT ON THE SUPPLEMENTAL SECURITY INCOME PROGRAM

Public Law 104-193 requires that members of the Social Security Advisory Board (SSAB) be given an opportunity, either individually or jointly, to include their views in the Social Security Administration's annual report to the President and Congress on the Supplemental Security Income (SSI) program. We have asked the Social Security Administration (SSA) to include in this year's annual report the SSAB concerns regarding the SSI children's program and request SSA conduct a comprehensive review of the program as described in this statement before implementing any changes.

Over the last year the Board has reviewed and reported on the disability programs administered by SSA with particular emphasis on the adult programs and return to work efforts. The disability programs are by far the most complex and challenging workload for the agency and as such, two-thirds of its administrative budget is spent on issues related to these programs. While the retirement and survivor programs serve a greater number of people, their decision making process is relatively straight forward and constant. In contrast, the disability decision making process involves collecting a myriad of documentation including information from the claimant, medical records, functional evaluations and expert opinions, to assess whether the person meets the statutory definition of disability and then evaluate the likelihood that the claimant will continue to meet that definition.

There are two distinct disability programs administered by SSA. The Social Security Disability Insurance (SSDI) program, funded through payroll taxes paid by both employers and employees, and Supplemental Security Income (SSI), a means tested assistance program, funded through general revenues, for low income aged, blind and disabled individuals. Both the Social Security trustees and the Congressional Budget Office project that beginning in 2016 the Disability Insurance Trust Fund will only have enough to pay approximately eighty percent of disability insurance benefits. Congress will soon have to consider whether it should simply reallocate trust fund money as it has done in the past or tie any reallocation to programmatic changes in an effort to strengthen the program which has been criticized for its subjective decision making and long delays. Although the insolvency issues facing the SSDI program are not at issue for beneficiaries receiving SSI, as their benefits have no connection to the trust fund, policy changes to the SSDI program could affect beneficiaries in the SSI program.

Within the SSI program, there is a program for low income children with disabilities; this is the focus of this statement. We believe the issues and concerns pertaining to the children's program are unique and should be researched, evaluated and addressed separately from the SSDI program. Following is an historical overview of the SSI program including the important policy changes that have occurred in evaluating disability for low income children as well as some discussion about how to approach any proposed changes.

The History of the SSI Program

On October 30, 1972, Public Law 92-603, the Social Security Amendments of 1972, was signed into law. At the time it was probably the longest single piece of legislation that Congress had adopted. Medicare was expanded to cover individuals with disabilities who had been receiving benefits for two years, the waiting period for disability benefits was reduced, and the new Federal SSI program for the low income aged, blind and disabled adults and children was established.

The legislative journey of Public Law 92-603 began years earlier. In the original 1935 Social Security Act, programs were introduced for needy aged and blind individuals; in 1950, a program for low income individuals with disabilities was added. These three programs were collectively called the "adult categories" and were administered by State and local governments with partial Federal funding. Over the years, the State programs became increasingly complex and inconsistent. There were several different definitions of disability, as many as 1,350 administrative agencies were involved, and benefit levels varied by more than 300 percent from State to State. These discrepancies provoked calls for program reforms.

In August 1969, President Nixon outlined a Family Assistance Plan, which included a negative Federal income tax program which would provide an income floor to the families of the unemployed and working poor on the condition that they find work or enroll in job training. This represented a big departure from then existing welfare policies. Under the Nixon proposals, eligibility requirements would no longer be based solely on income and asset levels and the program would be run through the Federal tax system rather than administered by State and local governments.

The House of Representatives began a series of public hearings on the plan and on June 22, 1971, passed H.R. 1, a modified version of the President’s recommendations. The bill moved to the Senate for consideration but languished for more than a year. Finally in late September 1972, an amendment outlining the SSI program passed and H.R. 1 followed. In conference, all family welfare provisions were dropped and all existing public assistance programs were repealed and replaced with the newly established Federal SSI program. SSI authorized cash benefits for aged, blind, and disabled individuals and introduced a new assistance program for children under 18 years old who had a disability of comparable severity to adult recipients.

The Social Security Administration was chosen to administer the new program and convert over 3 million people from State welfare programs to the new Federal SSI program. SSA had an established reputation for successful administration of existing social insurance programs and with its network of field offices and experience in processing claims and maintaining records, it seemed the most reliable choice.

Implementation and Growth of the SSI Program for Children

The agency had a little over 14 months to prepare for the roll out of this brand new nationwide program. The SSI disability program for adults incorporated many of the features of the SSDI program but there was no parallel children's program and little in the legislative record to provide guidance on the purpose and goals of a program for children. In fact, there was fundamental disagreement about the basis for a children's program.

The 1972 House Committee on Ways and Means report which accompanied the legislation that established SSI stated:

> … disabled children who live in low-income households are certainly among the most disadvantaged of all Americans and they are deserving of special assistance in order to help them become self-supporting members of our society. Making it possible for disabled children to get benefits under this program, if it is to their advantage, rather than under the program for families with children, would be appropriate because their needs are often greater than those of non-disabled children. The bill accordingly, would include disabled children under the new program.

However, the Senate Committee on Finance did not agree with the House and noted in its report:

> The House justified its inclusion of disabled children under age 18 under aid to the disabled, if it is to their advantage, rather than under the program for families with children, on the grounds that their needs are often greater than those of non-disabled children. The needs of disabled children however, are generally greater only in the area of health care expenses. In all but the two States that do not have Medicaid programs, children now eligible for cash assistance are covered under existing State medical assistance programs. Disabled children's needs for food, clothing and shelter are usually no greater than the needs of non-disabled children.[1]

[1]The National Commission on Childhood Disability, Report to Congress, October 1995
http://www.ssa.gov/history/reports/SSI/ChildhoodDisabilityReport.html

A House/Senate conference ultimately reconciled the two versions of the bill. But among the hundreds of issues, the children's program received little attention and the 67-page conference report failed to explain how the issue was resolved or define disability for a child.[2]

For an adult, the definition of disability was the same under the SSI program as it was for SSDI: *[The] inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.*[3] For a child, an individual under age 18, eligibility was based on having a disability of *comparable severity* to that of an adult, defined as older than 18. While the evaluation for adults involved a 5 step sequential evaluation[4] which included an analysis of their functional ability, the evaluation stopped at step three for children, meaning if they did not have an impairment severe enough to meet a listing, they were not found to be disabled.

Subsequently, Congress directed the Secretary of Health and Human Services to create eligibility standards that would establish disabling impairments in children that were of "comparable severity" to a disabling impairment in an adult. The agency began working on a listing of medical impairments that were unique to children but by 1976 the listings had not been published. The agency was criticized by Congress for delays in publishing the impairments which were necessary regulatory guidance for the State agencies. During floor debate in the Senate in 1976,[5] one Senator noted:

> Of particular concern is the current status of children in this [SSI] program. It has been 4 years since the Congress enacted the SSI program, and there are still no adequate guidelines which would enable State agencies to determine how to apply the program to children. Individual States, receiving no direction from the Federal Government, have been adopting their own widely varying guidelines.[6]

Section 501(b) of Pub. L. 94–566 was added to the Unemployment Compensation Amendments which required SSA to publish criteria for childhood disability determinations within 120 days. The agency complied and a separate listing of impairments, designated as Part B of Appendix 1 following 20 C.F.R. § 416.985, was devised for use in determining a child's disability.

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[2] "Cost Soar for Children's Disability Program; How 26 Words Cost the Taxpayers Billions in New Entitlement Payments" Bob Woodward & Benjamin Weiser, *The Washington Post* 4 February1994, http://www.gpo.gov/fdsys/pkg/CREC-1994-02-08/html/CREC-1994-02-08-pt1-PgH42.htm

[3] The Social Security Act §223 (d)(1); 42 U.S.C. 423(d)(1)(A) http://www.ssa.gov/OP_Home/ssact/title02/0223.htm

[4] The Social Security Act §223 (d)(1); 42 U.S.C. 423(d)(1)(B) (2)(A) http://www.ssa.gov/OP_Home/ssact/title02/0223.htm (1) Is the individual engaging in substantial gainful activity? (2) Is the impairment severe and does it meet the duration requirement? (3) Does the impairment meet, or equal in severity, one of the medical listings? (4) Can the individual perform his or her past work? (5) Can the individual (considering his or her age, education, and prior work) perform any other work?

[5] Pub.L. 94-566 Title V Misc Provisions Sec. 501 (Oct. 20, 1976) http://www.gpo.gov/fdsys/pkg/STATUTE-90/pdf/STATUTE-90-Pg2667.pdf

[6] 122 Cong. Rec. 33301 (1976)

The Effects of Court Decisions

In the years that followed implementation of the SSI program, the evaluation of disability cases became the subject of litigation in the courts. In the *City of New York v. Heckler*,[7] the Second Court of Appeals upheld the district court finding that SSA used an improper standard in evaluating the impairments of young workers with mental illness. After a series of hearings Congress responded by requiring SSA to rewrite the listings of mental disorders within 120 days.[8] The House Report noted that serious questions had been raised about the old listings, observing that even "the Secretary has determined that a full scale re-evaluation of the Listings and current procedures is necessary. . ."[9] The agency complied and issued new listings for analyzing mental disorders in adults.[10] However, the children's listing for mental disorders remained the same for almost six years, despite the similarity in the analysis between the adult's and children's listings for mental disorders.

Finally, in December 1990, in accordance with the Disability Benefits Reform Act of 1984, the agency issued new regulations revising the medical listings to include new medical standards for assessing mental impairments in children. The regulations incorporated functional criteria into the children's listings and were intended to reflect medical advancements in the treatment of mental illness. Behavioral impairments such as Attention Deficit Hyperactivity Disorder, and learning disorders, were now included in the listings.

That same month, the Supreme Court issued its seminal decision in *Sullivan v. Zebley.*[11] The case challenged the comparable severity analysis used in children's claims. The court held that a disability analysis based solely on the medical listings was inconsistent with the statutory standard of comparable severity because there was no individualized functional analysis as contemplated by the statute and applied to the analysis in adult disability cases. The decision prompted new regulations, increased outreach efforts, and the review of thousands of prior decisions in children cases.

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[7] 742 F. 2d 729 (1984)

[8] Social Security Disability Benefits Reform Act of 1984, Pub. L. 98-460 §5(a), 98 Stat. 1801, 42 U.S.C. 5421 note; Amicus Brief of the American Academy of Child and Adolescent Psychiatry, on behalf of Brian Zebley http://old.povertylaw.org/poverty-law-library/case/43100/43127/43127c.pdf

[9] House Report No. 98-619, 98th Cong., 2d Sess. at 15, 1984

[10] 50 Fed. Reg. 35038 (Aug. 28, 1985)

[11] 493 U.S. 521 (1990)

Post Zebley

To comply with *Zebley*, SSA was required to reopen denials in children's SSI disability cases back to 1980. SSA estimated that the workload would include re-adjudicating about 550,000 claims, along with an ongoing workload of approximately 35,000 additional cases per year.[12]

Understanding that issuing new regulations would take time interim standards were established. SSA used the *Zebley* decision as an opportunity to consider other changes and invited childhood and pediatric experts to help develop the best criteria for evaluating disability in children. One of the recommendations was an Individualized Functional Assessment which focused on behavioral problems as a type of disorder.[13]

SSA published the revised final rules for determining disability in children in 1993; the new standards included:

- a new step to determine if a child's impairment had more than a minimal effect on his or her ability to function (equivalent to the severity step found in the adult rules),
- a new approach to satisfying the Listing of Impairments for children, called "functional equivalence," and
- an Individualized Functional Assessment for evaluating a child's impairment beyond the medical listings to parallel the vocational steps applied in adult cases and to satisfy the "comparable severity" criterion[14]

In the early 1990s, there was a spike in disability allowances for children. The review of claims denied prior to the *Zebley* decision certainly contributed to the increase, but other factors included the new listings on mental impairments, the rising number of children in poverty and SSA's outreach efforts.[15] There was particular concern directed at the children that were awarded benefits because of ADHD and other impairments seen as "behavior problems." The General Accounting Office (GAO) was asked to conduct a study concerning the growth in awards to children. They reviewed the disability decisions in the two years preceding the *Zebley*

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[12] Social Security Bulletin, Vol. 70 No. 3, 2010, by Carolyn Puckett, *Administering Social Security: Challenges yesterday and Today – 1990s, Complying with Sullivan v. Zebley* http://www.ssa.gov/policy/docs/ssb/v70n3/v70n3p27.html; noting that it took SSA a little over 3 years to process the readjudications.

[13] SSA Oral history collections: Interview with John Ritter Larry DeWitt. http://www.socialsecurity.gov/history/ritter6.html.

[14] Social Security Bulletin, Vol. 70 No. 3, 2010, by Carolyn Puckett, *Administering Social Security: Challenges yesterday and Today – 1990s, Complying with Sullivan v. Zebley* http://www.ssa.gov/policy/docs/ssb/v70n3/v70n3p27.html

[15] Social Security Bulletin, Vol. 70 No. 3, 2010, by Carolyn Puckett, *Administering Social Security: Challenges yesterday and Today – 1990s, Complying with Sullivan v. Zebley* - SSA worked with 150 national organizations to reach approximately 450,000 children whose claims might be affected by the court decision. The agency also placed more than 125,000 posters in English and Spanish in offices of State and local government agencies and nonprofit organizations that provided services to disabled children. http://www.ssa.gov/policy/docs/ssb/v70n3/v70n3p27.html

decision and the two years after the *Zebley* decision. GAO issued its report in September 1994, finding:

> While much of the attention has focused on the *Sullivan v. Zebley* Supreme Court decision as the cause of this growth, our analysis shows a more complicated picture. Although the new functional assessment process established by *Zebley* added 87,900 children to the disability rolls through 1992 who previously would have been denied benefits, this new process only accounts for about 30 percent of all awards made since it was implemented. In contrast, 70 percent of all awards went to children whose impairments were severe enough to qualify on the basis of SSA's medical standards alone, without the need for a functional assessment. Thus, most of the children who received new awards would have qualified for them even without the functional assessment process mandated by the *Zebley* decision.[16]

GAO did find that the revised and expanded medical standards for childhood mental impairments accounted for much of the growth in the program. Awards based on the mental impairments (primarily mental retardation) almost tripled while awards for children with physical impairments was nearly double during the same time period.[17]

During this period, there were numerous news reports, both in local and national press about children being coached by parents to misbehave in order to qualify for SSI.[18] ABC's Primetime Live aired an examination of the SSI program which featured a former SSA doctor who claimed that less than thirty percent of children on SSI really deserved benefits although no supporting evidence was provided for her claim.[19]

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[16] *"Rapid Rise in Children on SSI Disability Rolls Follows New Regulations"* Report to Congressional Requesters, Washington D.C.: U.S. Govt. Accountability Office, September 1994 http://www.gao.gov/assets/230/220229.pdf

[17] *"Rapid Rise in Children on SSI Disability Rolls Follows New Regulations"* Report to Congressional Requesters, Washington D.C.: U.S. Govt. Accountability Office, September 1994 http://www.gao.gov/assets/230/220229.pdf

[18] SSI: "The Black Hole of the Welfare State" Christopher Wright, *Cato Policy Analysis No. 224*, 27 April 1995 http://www.cato.org/publications/policy-analysis/ssi-black-hole-welfare-state describes "Gaming the childhood disability system has become an epidemic." "How Americans Game the $400 Billion-a-Year 'Disability-Industrial Complex'" Avik Roy, *Forbes,* 8 April 2013, http://www.forbes.com/sites/aroy/2013/04/08/how-americans-game-the-200-billion-a-year-disability-industrial-complex/ "Disability Dilemma, Court Decision Meant More Aid, Questions," Neil D. Rosenberg, *The Milwaukee Journal* 30 May 1993, http://news.google.com/newspapers?nid=1499&dat=19930530&id=mKIaAAAAIBAJ&sjid=xiwEAAAAIBAJ&pg=4766,4395105; "Cost Soar for Children's Disability Program; How 26 Words Cost the Taxpayers Billions in New Entitlement Payments" Bob Woodward & Benjamin Weiser, *The Washington Post* 4 February1994, http://www.gpo.gov/fdsys/pkg/CREC-1994-02-08/html/CREC-1994-02-08-pt1-PgH42.htm; "Lambert Wants Analysis of 'Crazy Checks" Jerry Dean, *Arkansas Democrat-Gazette*, 16 February 1994; "Disability Grants for Children Fuel Welfare Debate; Critics Say Vague Standards Lead to Soaring Cost, Widespread Abuse" Charles M. Sennott, *Boston Globe*, 12 May 1994;; "A Media Crusade Gone Haywire" Christopher M. Wright, *Forbes Media Critic*, September 1995, http://www.clsphila.org/files/Forbes%20Media%20Critic%201995%20A%20Media%20Crusade.pdf; *"Administering Social Security Challenges Yesterday and Today"* Social Security Bulletin 2010 Vol. 70 No. 3 http://www.ssa.gov/policy/docs/ssb/v70n3/v70n3p27.html**;** SSA Oral history collections: Interview with John Ritter Larry DeWitt. http://www.socialsecurity.gov/history/ritter6.html

[19] ABC's *PrimeTime Live* 13, October 1994, http://www.tvguide.com/detail/tvshow.aspx?tvobjectid=191723&more=ucepisodelist&episodeid=847498

In a March 1995 report GAO addressed the allegation of parental coaching in a Report to Congress and found:

> Because coaching is difficult to detect, the extent of coaching cannot be measured with much confidence. In recent studies, SSA and the HHS IG reviewed case files and identified scant evidence of coaching or malingering. In the rare instances where they found evidence of possible coaching or malingering, most of the claimants had been denied benefits anyway.[20]

In March 1996, GAO again considered the allegations of coaching by parents, and examined cases from two initiatives conducted by SSA to identify cases of possible parental coaching. GAO found[21]:

> Both of these initiatives identified few cases of suspected coaching and very few of the children involved received SSI benefits….The DDS initiative identified 1,232 cases in which coaching was suspected or alleged. Only 77 of these cases resulted in awards. Most cases were included because the child's performance during psychological tests or on a comprehensive examination raised questions about the child's impairment. The quality reviewers returned very few cases to the DDSs for additional evidence or for reversal of a DDS' decision to award or deny benefits.

In response to these reports, Congress once again considered how children's disability cases were being analyzed and in The *Personal Responsibility and Work Opportunity Reconciliation Act of 1996* (PRWORA),[22] Congress redefined the disability analysis in children's cases. The comparable severity standard was replaced by the standard that a child is considered disabled if he or she has a medically-determinable impairment which results in "marked and severe" functional limitations and which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. SSA was directed to eliminate references to maladaptive behavior in the domain of personal/behavioral function in the listing of impairments for children and to discontinue the use of Individualized Functional Assessments in evaluating a child's disability. SSA developed the final rules in 2000 with assistance from outside experts and advocates; the rules "delink" functional equivalence from

[20] *"SSA New Functional Assessments for Children Raise Eligibility Questions"* Report to Congressional Requesters. Washington D.C.: U.S. Govt. Accountability Office, March 1995, http://www.gao.gov/assets/230/220953.pdf

[21] *"SSA Initiatives to Identify Coaching"* Report to Congressional Requesters. Washington D.C.: U.S. Govt. Accountability Office, 5 March 1996, http://www.gao.gov/assets/90/85342.pdf;

[22] Summary of Welfare Reforms made by Pub.Law 104-193 The Personal Responsibility and Work Opportunity Reconciliation Act and Associated Legislation November 6, 1996, http://www.gpo.gov/fdsys/pkg/CPRT-104WPRT27305/html/CPRT-104WPRT27305.htm

specific listings and establish a new standard of listing-level severity based on "marked" or "extreme" limitation.

Further, the rules established a "whole child" approach to disability evaluation that considers how the child functions compared to other children of the same age without impairments, 24 hours a day, 7 days a week, "at home, at school, and in the community." They consider all indicia of a child's functioning and any limitations, including the level of assistance the child needs within age-appropriate expectations. In addition to evidence from medical examinations, examples of such evidence include special education placement and accommodations, medications, adaptive devices, therapies, one-to-one assistance, supportive/structured settings, and information from parents, teachers, and others who know the child.

To date this new definition has withstood court challenges. However, a similar round of media reports of abuse and families "gaming the system" has cropped up.[23] There has also been concern about the growth of the children's disability program,[24] and the increased number of children receiving SSI benefits due to mental impairments, which comprise a growing majority of all child beneficiaries.[25]

The Current Make Up of the Program

Given the attention to the program in media reports, congressional hearings, GAO studies and internal agency reviews, a review of the data regarding the SSI program for children may help clarify some of the issues. As the following chart shows, the percentage of children receiving SSI disability benefits is small in comparison to the total number of all beneficiaries paid by the programs administered by SSA.

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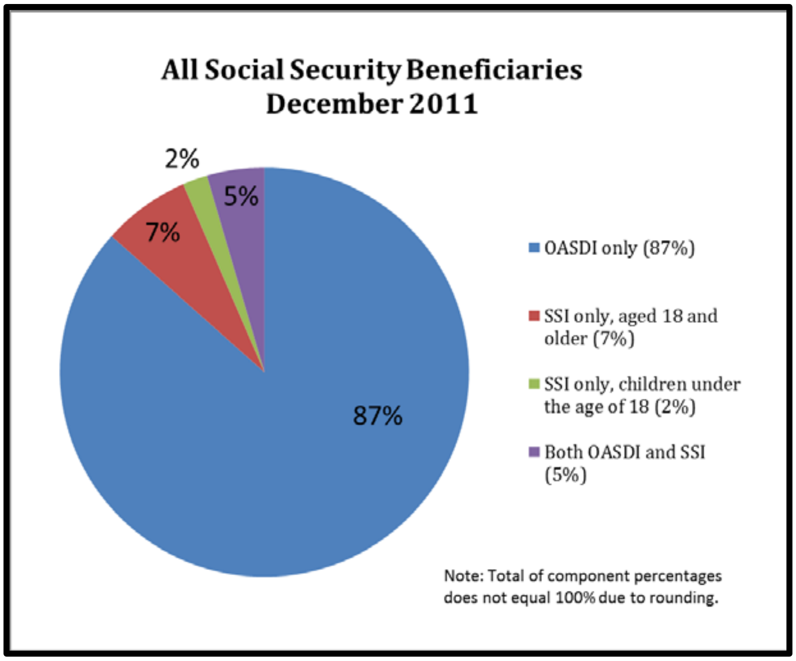
[23] "Profiting From a Childs Illiteracy" Nicholas D. Kristof, *The New York Times*, 7, December 2012, http://www.nytimes.com/2012/12/09/opinion/sunday/kristof-profiting-from-a-childs-illiteracy.html?pagewanted=all&_r=0; "A Legacy of Unintended Side Effects" Patricia Wen, *The Boston Globe*, (3 part series) 12-14 December 2010, http://www.boston.com/news/local/massachusetts/articles/2010/12/12/with_ssi_program_a_legacy_of_unintended_side_effects; "Unfit for Work, The Startling Rise of Disability in America" Chana Joffe-Walt, *NPR Planet Money*, 28 March 2013, http://apps.npr.org/unfit-for-work/; "The Declining Work and Welfare of People with Disabilities" Richard V. Burkhauser and Mary C. Daly, *American Enterprise Institute*, 2011; "The Future of Children" Ron Haskins, *Princeton-Brookings*, Spring 2012 *http://futureofchildren.org/futureofchildren/publications/docs/22_01_PolicyBrief.pdf*

[24] "Evaluating Growth in the Supplemental Security Income Program for Disabled Children" Richard V. Burkhauser, *Cornell University*, Mary C. Daly and Brian Lucking *Federal Reserve Bank of San Francisco*, http://www.frbsf.org/economics/economists/mdaly/Evaluating-SSI-Disabled-Children.pdf

[25] *"Supplemental Security Income Preliminary Observations on Children with Mental Impairments"* Report to Congressional Requesters, Washington D.C.: U.S. Govt. Accountability Office, October 2011 http://www.gao.gov/assets/590/585946.pdf; *"Supplemental Security Income – Growth and Change in Recipient Population Call for Reexamining Program"* Report to Congressional Requesters, Washington D.C.: U.S. Govt. Accountability Office July 1995, http://www.gao.gov/assets/230/221392.pdf



Source: Fast Facts & Figures About Social Security, 2012 http://www.ssa.gov/policy/docs/chartbooks/fast_facts/2012/fast_facts12.pdf
Over 56% of SSI recipients aged 65 or older received OASDI benefits. Over 56% of SSI recipients aged 65 or older received OASDI benefits, as did 31.3% of those aged 18-64 and 7.6% of those under age 18. (from Fast Facts & Figures About Social Security, 2012, page 30)

Several studies have documented the correlation between poverty and disability.[26] Children in low-income families that live in poor areas face heightened environmental risks. Those environments, including choices and constraints induced by poverty, may result in low birth weight due to poor nutrition during pregnancy and less access to health care which could result in the development of serious disabilities and consequently increased applications for SSI disability benefits.

According to the National Center for Children in Poverty (NCCP)[27] in 2011 the federal poverty level (FPL) for a family of four was $22,350, for a family of three it was $18,530, for a family of two it was $14,710.[28] In 2011 there were more than 72 million children under 18 years old in the United States. 22 percent or 16.1 million of them lived below the federal poverty level (FPL) and were categorized as poor. NCCP also noted the research suggesting that families actually need an income level of twice the federal poverty level to meet the family's basic needs and be considered a living wage.

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[26] "*Disentangling the Dynamics of Family Poverty and Child Disability: Does Disability Come First?*" Shirley L. Porterfield and Colleen Tracey Working Paper No. 03-01 – 25 March 2003, Center for Social Development, Washington University, http://csd.wustl.edu/Publications/Documents/WP03-01.pdf;

[27] National Center for Children in Poverty – Basic Fact About Low-Income Children January 2013 http://www.nccp.org/publications/pdf/text_1074.pdf

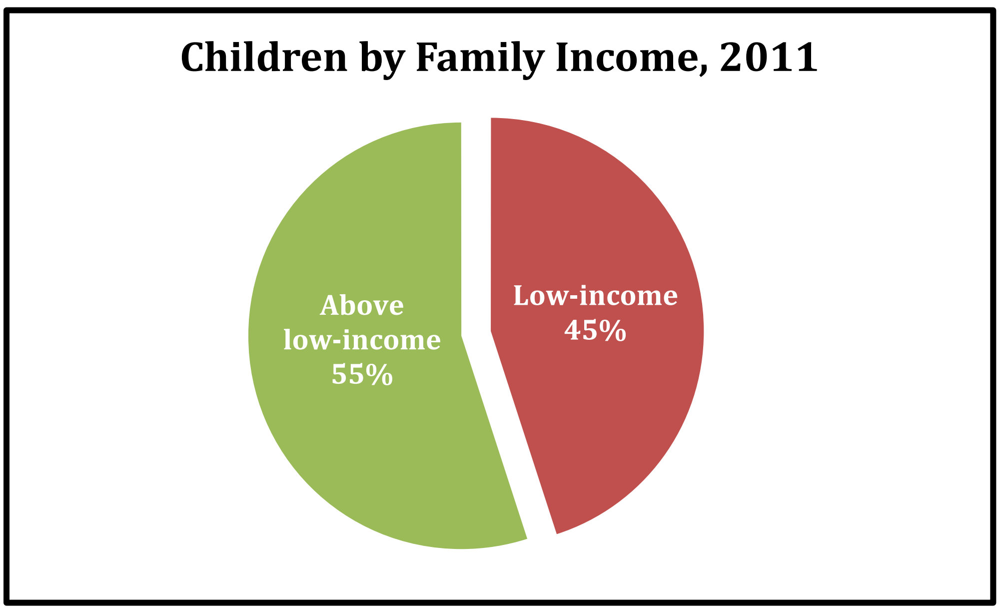
[28] National Center for Children in Poverty – Basic Fact About Low-Income Children January 2013 http://www.nccp.org/publications/pdf/text_1074.pdf

Therefore, families that earn up to 199% of the FPL are still not making a living wage and are categorized as low income. A living wage starts at an income equal to twice the FPL.

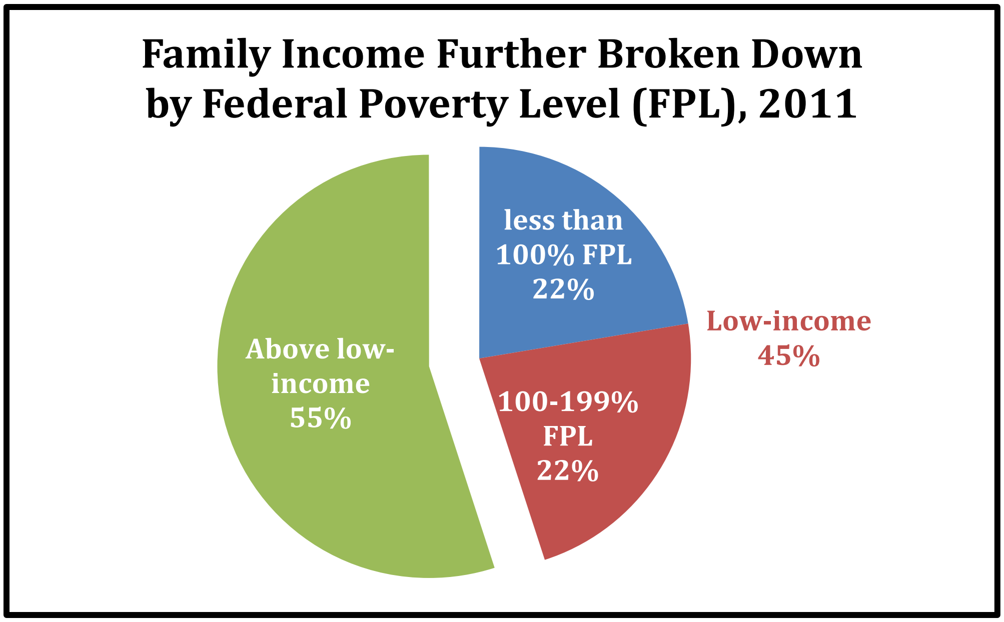
Family Size	**Federal Poverty Limit (FPL)**	**Living Wage** (200 percent of FPL)
Family of Four	$22,350	$44,700
Family of Three	$18,530	$37,060
Family of Two	$14,710	$29,420

Source: National Center for Children in Poverty http://www.nccp.org/publications/pdf/text_1074.pdf

The total percent of children that fell into the *Low Income* category in 2011 is about 45 percent of all the children living in the U.S.



Source: National Center for Children in Poverty http://www.nccp.org/publications/pdf/text_1074.pdf



Percentages may not add to 100 due to rounding.

Source: National Center for Children in Poverty http://www.nccp.org/publications/pdf/text_1074.pdf

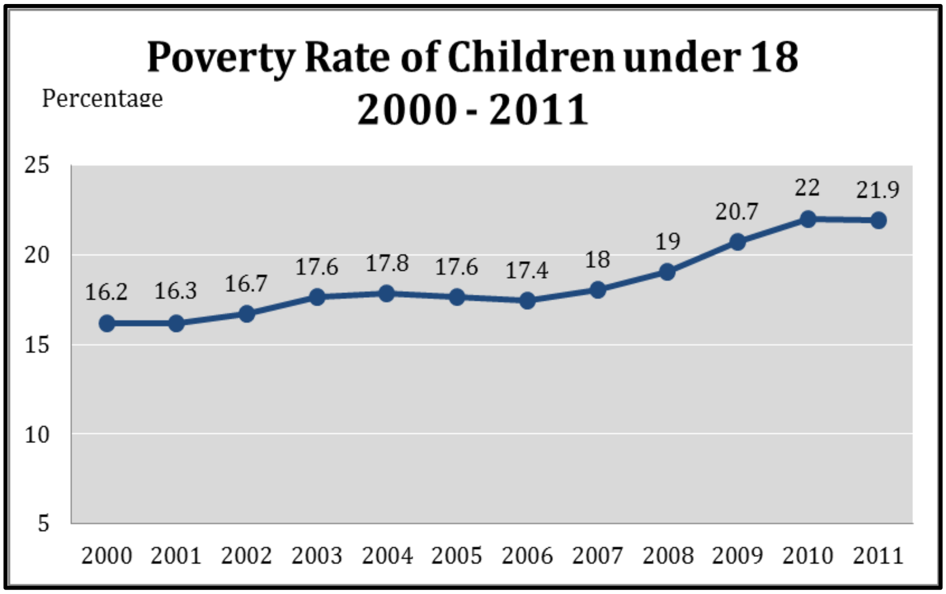
Furthermore, the number of children that live in either poor or low-income families has been increasing over time. From 2006 to 2011, the total number of children in the U.S. increased by less than 1 percent, but there was a 13 percent increase in the number of children in families falling into the low income category and a 23 percent increase in the number of children in families with income below the FPL.

Percentage change of children living in Low-income and Poor Families, 2006–2011

	2006	2011	Percent Change
Low Income (less than 200% of FPL)	28,530,186	32,379,884	13%
Poor (less than 100% of FPL)	13,078,106	16,105,863	23%

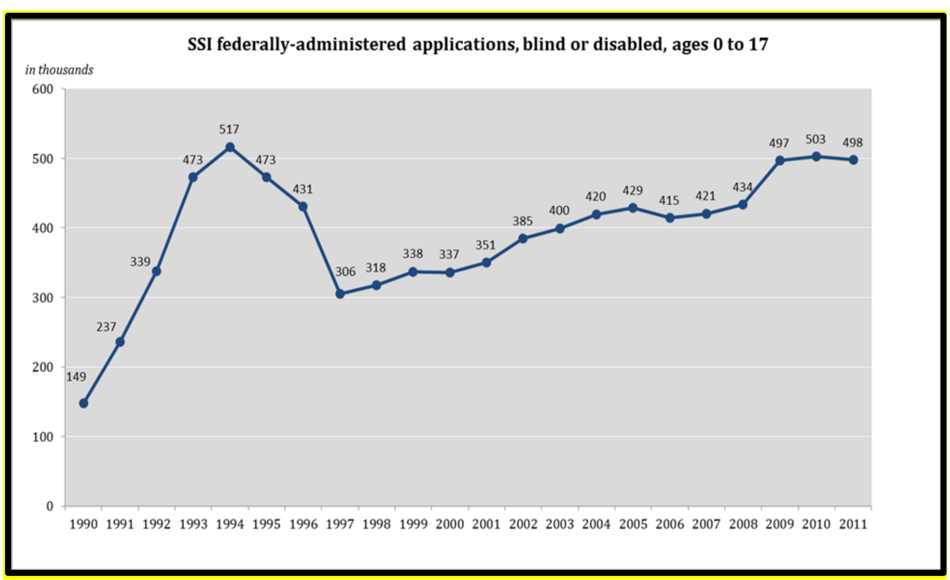
Source: National Center for Children in Poverty http://www.nccp.org/publications/pdf/text_1074.pdf

According to the Census Bureau the number of children in poverty has been increasing steadily from approximately 16.2 percent in 2000 to 19 percent in 2008, and approximately 22 percent in both 2010 and 2011.

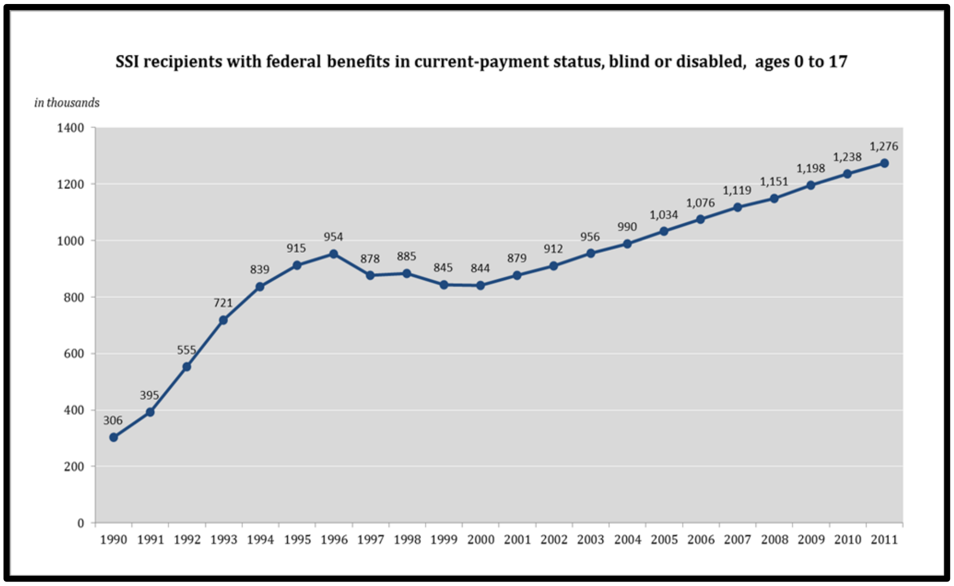


Source: United States Census Bureau www.census.gov/hhes/www/poverty/data/historical/hstpov3.xls

As the following charts indicate, the number of SSI applications for children for the same period has also increased substantially from 337,000 in 2000 to 498,000 in 2011. The number of total recipients has increased from 844,000 in 2000 to 1.276 million in 2011, but the overall allowance rate has declined slightly from 43.7 in 2000 to 41.6 in 2011.



Source: Annual Report of the Supplemental Security Income Program 2012 - Table IV.B1.2
http://www.ssa.gov/oact/ssir/SSI12/IV_B_Recipients.html#856912



Source: Annual Report of the Supplemental Security Income Program 2012 – Table IV.B6.
http://www.ssa.gov/oact/ssir/SSI12/IV_B_Recipients.html#819110

What's Next? Approaching Change in the SSI Children's Program

The historical record of the program suggests that changes in its laws and in the standards governing SSI disability adjudications were motivated by public opinion as reflected in media reports and court decisions in cases that challenged prior decisions. Much of the history of this program has been a reaction to news reports which often contain unsubstantiated anecdotes,[29] court decisions and congressional mandates. It is important that the decisions we make are factually based. Rather than simply developing streamlined processes for the efficient adjudication of the claims, we first need to define the mission for this particular program; a program that is supposed to serve children with disabilities, who live in poverty and are reliant on others to provide voice to their concerns and to care for their needs.

The following is a list of questions that we believe must be answered to identify the purpose and mission of the SSI children's program. The questions posed below are the discussion points to begin a dialogue and a comprehensive review of the program. They are not proposals or recommendations; rather, they are a starting place.

[29] See Footnote 15 for list of media reports; *"Better Management Oversight Needed for Children's Benefits"* Report to Congressional Requester, Washington D.C.: U.S. Govt. Accountability Office, June 2012 http://www.gao.gov/assets/600/591872.pdf; *"New Functional Assessments for Children Raise Eligibility Questions"* Report to Congressional Requesters, Washington D.C.: U.S. Govt. Accountability Office, March 1995 http://www.gao.gov/assets/230/220953.pdf

1. How should we decide the criteria and where should we draw the line in determining which children should be considered disabled and deserving of public support and how should we identify those children who should be served?

2. Is the SSI disability program adequately designed to make the nuanced determinations about all types of children's disabilities? Or should the SSI program in part or in its entirety be relocated to a different Federal agency that has more interaction and perhaps more understanding of the needs and issues related to the children's impairments and their functional impact? Should there be a cap on SSI benefits offered for families or for any group of beneficiaries living together?

3. What cash benefits and services should be provided to children with disabilities? Should a cash benefit be paid to a parent who stays home to care for the child? Should the benefits to the child cover only whatever medical services, equipment, transportation costs or tangible goods that are directly related to the child's disability be provided? Should SSA be responsible for determining those supports and services or should that determination be made by a different source?

4. How do we ensure that SSI children receive the services that will prepare them, if possible, for the workforce? What role if any, should SSA have in transitioning youth with disabilities to the world of work?

5. What's the best program for a child with a disability which will both assist them with basic necessities, and enable them to learn the skills necessary to meaningfully engage in the workforce in order to become self-sufficient and productive citizens?

As the Congress considers the status of the SSI program in general, we urge that special consideration be given to the part of the SSI program that serves children with disabilities. As one of the most vulnerable segments of our population, children should have access to a program that clearly meets their needs and offers them hope for the future.

Barbara B. Kennelly, Chair (A)

Bernadette Franks-Ongoy Jagadeesh Gokhale

Dorcas R. Hardy

SOCIAL SECURITY ADVISORY BOARD STATEMENT

ON THE SUPPLEMENTAL SECURITY INCOME PROGRAM

Public Law 104-193 requires that members of the Social Security Advisory Board (SSAB) be given an opportunity, either individually or jointly, to include their views in the Social Security Administration's annual report to the President and Congress on the Supplemental Security Income (SSI) program. We have asked the Social Security Administration (SSA) to include in this year's annual report the continuation of an issue we raised in last year's report, SSAB's concerns regarding the SSI children's program.

INTRODUCTION

In our report last year we noted that the historical record of the SSI program for children suggests that changes in its laws and in the standards governing SSI disability adjudications were motivated by public opinion as reflected in media reports, court decisions and congressional mandates. We asked the big policy questions, about defining disability and determining criteria for eligibility, about where the disability program for children should be housed, and what benefits should be provided. We recommended that SSA conduct a comprehensive review of the children's program. This year we underscore the importance of taking on this review by looking at children in the foster care system.

SSI AND FOSTER CARE PROGRAMS

Today, about 400,000 children receive foster care benefits in the United States.[1] There are about 1.3 million children receiving Supplemental Security Income (SSI) under the children's SSI disability program. The following briefly outlines the two programs and how they overlap.

SSI Program

Title XVI of the Social Security Act authorizes a Federal benefit that provides a monthly cash payment to low-income individuals, including children, who have a physical or mental impairment or combination of impairments that meet the Act's definition of disability, and its income and resource limitations.

Disability

Determining whether a child meets the definition of disability involves a 3 step analysis. The child must have a physical or mental impairment that results in "marked and severe functional limitations"; the child must have a condition that has lasted or is expected to last at least 12

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[1] Congressional Research Service. *Child Welfare: Social Security and Supplemental Security Income (SSI) Benefits for Children in Foster Care*. By Umar Moulta-Ali, Adrienne L. Fernandes-Alcantara, Emilie Stoltzfus. Report No 33855.September 2012. http://greenbook.waysandmeans.house.gov/sites/greenbook.waysandmeans.house.gov/files/2012/documents/RL33855_%20v3_gb.pdf Note, the definition of child may vary from state to state and vary in age up to 20 years old.

months or result in death; and the child must not earn more than the substantial gainful activity amount or not work.[2]

Income and Resource Limitations

In determining resource eligibility a child's income and assets must fall below program guidelines. Since children rarely have income or assets of their own, SSA uses a process called "deeming" to assign part of the value of the parent's income and assets to the child. For children in foster care, the income and assets of the family they are living with are not deemed to them in making the resource eligibility determination.

Overview of State/Federal Relationship in Foster Care System

Title IV Part-E of the Social Security Act authorizes a Federal-State foster care program which authorizes Federal funding for foster care to States, Territories and Tribal Organizations,[3] To participate, States must have a written case plan, reviewed annually by a judge. The plan details where each child in foster care is placed and outlines the services to be provided, with the ultimate objective of finding the child a permanent home, either through reunification with the child's own family, adoption or placement with a legal guardian. Children may wait in foster care for many years until this objective is met, and some end up aging out of the system.

Eligibility Requirements for Partial Reimbursement Under The Social Security Act Title IV-E

While a child is in foster care a State may seek partial reimbursement to cover the cost of the care if the child meets the income eligibility requirements under Title IV-E which is determined by looking at the family income of the home that the child has been removed from. If the child's family would have been eligible for benefits under Aid to Families with Dependent Children (AFDC) as it was in effect on July 16, 1996 then the child is eligible for benefits under Title IV-E.[4]

The timeframe for determining eligibility is based on either the month when a petition is filed in court to remove the child from his or her family home or the month a Voluntary Placement Agreement (VPA) is signed. From the date of the eligibility month:

- The child must have lived in the home of a specified relative within six months of the eligibility month.
- The child must be deprived of parental support.
- There must be a court order that finds: (1) continuation in his/her own home would be "contrary to the welfare of the child" and (2) reasonable efforts were made to prevent the removal of the child from his/her family or to facilitate the return of the child who has been removed.[5]

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[2] The definition of the phrase in quotation marks is given as: "… a level of severity that meets, medically equals, or functionally equals the listings." See http://www.socialsecurity.gov/OP_Home/cfr20/416/416-0902.htm.

[3] The Social Security Act, Title IV Part E *Federal Payments for Foster Care and Adoption Assistance* http://www.ssa.gov/OP_Home/ssact/title04/0400.htm

[4] AFDC rules as they existed on July 16, 1996 --- P.L. 106-169

[5] Child Welfare Policy Manual: 8.2B http://www.acf.hhs.gov/cwpm/programs/cb/laws_policies/laws/cwpm/policy_dsp.jsp?citID=32#653

It should be noted that without these requirements the current provision of Title IV-E federal financial support to the States on an open-ended entitlement basis may not be sustainable.

Other Federal Funding

Other Federal sources exist to provide funding for children's programs with fewer constraints but they target other objectives. Title IV-B, the Stephanie Tubbs Jones Child Welfare Services program, allows Federal funding to offset the administrative costs related to case management, child placement, personnel training, data collection and other administrative costs, but do not directly benefit children in foster care. The Social Service Block Grant (SSBG) and the Temporary Assistance to Needy Families (TANF) grant provide funding for child welfare benefits not covered under Title IV-E. However, Title IV-E remains the largest source of funding for State foster care agencies.

Under Title IV-E, there are three expenditures for which States may request federal reimbursements; maintenance, administration and training. The reimbursement funding formula is different for each.

1. Maintenance includes room and board payments that are made to licensed foster parents, group homes and residential child care facilities, clothing expenses, school supplies, a child's personal incidentals, liability insurance with respect to a child, reasonable travel to the child's home for visitation and reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement. The Federal government will reimburse the State for 50 percent to 83 percent of the costs. The State is responsible for the balance;

2. Administration includes those activities necessary for the proper and efficient administration of the Title IV-E State plan. Examples of reimbursable administrative activities include:

    a) Referral to services
    b) Determination of Title IV-E eligibility
    c) Preparation for and participation in judicial determinations
    d) Placement of the child
    e) Development of the case plan
    f) Case reviews
    g) Case management and supervision
    h) Recruitment and licensing of foster homes and institutions
    i) Rate setting
    j) Costs related to data collection and reporting
    k) Proportionate share of related agency overhead;

3. Training includes the cost of providing short and long term training at educational institutions as well as in-service training for personnel employed by or preparing for employment by the State (including a Tribal Organization) or a local public agency administering the Title IV-E State plan. It also includes training for staff in private child welfare agencies and court personnel. Training also includes the cost of short term

training for current or prospective foster, adoptive parents, and relative guardians and members of State (or tribal) licensed or approved child care institutions providing care to foster or adopted children.

Overlap of Title IV-E Benefits and SSI
If a child receives benefits under Title IV Part E of the Social Security Act, it will not affect the child's *eligibility* for SSI benefits, but it may affect the *amount* of the SSI benefit. SSI does not consider the Title IV-E benefit earned income (i.e., income earned in exchange for work) which would disqualify the child from SSI. Rather, the Title IV-E benefit is considered "income based on need"[6] which affects the SSI benefit *amount* with a dollar for dollar offset. Every Title IV-E dollar received on the child's behalf is offset from the SSI benefit. This includes the $20.00 exclusion of unearned income which SSI allows many other beneficiaries to keep.[7]

There is no Federal mandate for States to screen to see if the child is eligible for SSI. In many states if the child is eligible for SSI the state can use the SSI benefit to offset its cost of caring for the child. But the state cannot receive reimbursement from both Title IV-E and SSI for one child. As described below, information exchange problems in this regard may lead to improper SSI payments in some cases.[8]

Title IV-E Waivers and its Effect on SSI
To test innovation and encourage reform, Congress has allowed the Department of Health and Human Services (HHS) to approve a set number of proposed projects from States that want to test programs that might improve outcomes for children and families. On September 30, 2011, The Federal Child and Family Services Improvement and Innovation Act (P.L. 112-34), was signed into law. It reauthorized HHS to approve up to 10 waiver demonstration projects for fiscal years 2012-2014. The approval from HHS does not provide additional money to fund proposed projects but instead waives Title IV-E's strict funding constraints. This allows states some flexibility to utilize Title IV-E funds.

Approved projects must be designed to accomplish one or more of the following goals:

- Increase permanency for all infants, children, and youth by reducing the time in foster placements when possible and promote a successful transition to adulthood for older youth;
- Increase positive outcomes for infants, children, youth, and families in their homes and communities, including tribal communities, and improve safety and well-being;
- Prevent abuse, neglect, and re-entry of infants, children and youth into foster care.[9]

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[6] Income based on need, as defined by 20 C.F.R. §416.1124(c)(12), is assistance that is provided under a program which uses income as a factor of eligibility; and which is funded wholly or partially by the federal government or a non-governmental entity.
[7] 20 CFR Section 416.1124c(12) http://www.socialsecurity.gov/OP_Home/cfr20/416/416-1124.htm and SSA, POMS SI 00835.706.C.5 https://secure.ssa.gov/poms.nsf/lnx/0500835706
[8] SSA Office of the Inspector General. *Reduce Improper Payments and Increase Overpayment Recoveries* (*A-04-09-19091)*. May 26, 2009, http://oig.ssa.gov/sites/default/files/audit/full/pdf/A-04-09-19091_7.pdf
[9] U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau. *Summary of IV-E child welfare waiver demonstration*. https://cbexpress.acf.hhs.gov See also the National

However, at least some of the waivers may inadvertently result in improper SSI payments and States may be receiving Federal funds from two sources for the same purpose. This issue was discussed in a 2009 report by the SSA's Office of the Inspector General (OIG) which noted that when the Department of Health and Human Services (HHS) awarded a 5-year waiver to Florida in 2006, it exempted the detailed reporting requirements for Title IV-E expenditures.[10] This lack of detail made it difficult for SSA to determine if the State was receiving money under Title IV-E and, thus, whether the SSI payment to the child should be offset. The issue was resolved when SSA instructed field offices to verify the foster care funding source with the Florida Department of Children and Families (DCF). If Florida's DCF asserted that State funds reimbursed the child's foster care maintenance costs, rather than Title IV-E funds, then SSA would not consider the foster care benefits as income and SSI benefits would not be subject to offset. The OIG report noted that it did not believe that Florida's accounting system provided enough detail to confirm its assertion, and moreover, several other States, Indiana, Ohio, Oregon and California were also participating in the same waiver program.

THE CHILDREN IN FOSTER CARE

Health Issues of Children in Foster Care and Young Adults

SSI provides financial support to adults and children with disabilities who meet the definition and income and resource limitations. Some SSI program costs could be reduced through proactive measures. Redirecting federal non-SSI support payments to states toward "early intervention" initiatives – to prepare those who age out of government support programs for a self-sufficient and self-determined life style – would help to minimize federal SSI expenditures on young adults with physical and mental impairments while assisting them to transition successfully toward a fulfilling adult lifetime. A case in point is foster care children, especially those who, today, age out of the program without adequate preparation.

Children arriving into the foster care system are often in crisis. This population is especially disadvantaged – with a high likelihood of chronic physical, emotional, and developmental conditions because of cumulative adverse life events. Studies profiling the health of children after entering the foster care system show high prevalence of medical problems and behavioral health conditions that if not adequately treated are likely to continue during adulthood:

In congressional testimony before the Ways and Means committee, Dr. David Rubin, Assistant Professor of Pediatrics at the University of Pennsylvania, School of Medicine, testified;

- Several decades of research has firmly established that the health care needs of children in out-of-home care far exceed other children living in poverty. Nearly half of all children

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Conference of State Legislators http://www.ncsl.org/research/human-services/child-welfare-title-ive-waiver-2012-thru-2014.aspx

[10] SSA Office of the Inspector General. *Reduce Improper Payments and Increase Overpayment Recoveries* (*A-04-09-19091)*. May 26, 2009, http://oig.ssa.gov/sites/default/files/audit/full/pdf/A-04-09-19091_7.pdf

in foster care have chronic medical problems, and up to 80% have serious emotional problems."[11]

Many foster care children who are not placed in a permanent home, age out of the system and find themselves without any supports or life skills to succeed. The transition to adulthood and self-sufficiency is challenging for such individuals. They may have questions about renting their first apartment, purchasing a car, going to college, managing expenses, and navigating all the paperwork required for insurance or taxes but they do not have access to the support networks who can help them.

- A Northwest Foster Care Alumni Study noted that alumni from foster care were six times more likely to suffer post-traumatic stress disorder, four times more likely to turn to substance abuse, twice as likely to experience depression, and more than two-and-a-half times more likely to be diagnosed with an anxiety disorder.[12]

The key support that many young adults would benefit from is counseling on how they could adapt despite health impairments and strive to successfully exit from government supports.

To compound these problems, some foster care alumni discover that their social security number (SSN) has been wrongfully used and their credit ruined while they were in the foster care system.

- An OIG audit report found potential misuse of foster-care children's SSNs for work, credit or other purposes: Of the 96,000 children in the population studied the credit reporting agency estimated that over 4900 (5 percent) had credit files that contained evidence of misuse of SSNs.[13]

Repairing credit problems can be a complex, expensive, and time-consuming process and children exiting foster care need assistance getting negative items on their credit report removed.[14] Such problems can severely impede transition toward a normal and productive adulthood.

But in many cases, such problems may be preventable, and dependency on SSI and other welfare programs could be minimized if foster-care support systems target individuals for providing assistance in acquiring life- and job-skills, provide counseling, and ensure access to support networks to pro-actively minimize problems and prepare them for life after foster care. Thus, while additional discussion about how to improve SSI eligibility, financial constraints, and

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[11]Testimony of David Rubin, MD MSCE FAAP, House Ways and Means Subcommittee on Income Security and Family Support hearing Foster Children and the Health Care System, July, 2007, available at: http://stoneleighfoundation.org/content/foster-children-and-health-care-system.

[12] Pecora P, Kessler R, Williams J, et al. *Improving Family Foster Care: Finding from the Northwest Foster Care Alumni Study*. Seattle, WA: Casey Family Programs, 2005. Available at http://www.casey.org/media/AlumniStudies_NW_Report_FR.pdf

[13] See OIG report A-08-12-11253 Potential Misuse of Foster Children's Social Security Numbers, September 2013, see also *The Fleecing of Foster Children How We Confiscate Their Assets and Undermine Their Financial Security*, the Children's Advocacy Institute of the University of San Diego School of Law, (2011).

[14] Linda Foley, et al. *Identity Theft: The Aftermath 2009*, Identity Theft Resource Center. 2009. available at, http://www.idtheftcenter.org/images/surveys_studies/Aftermath2009.pdf

benefit structure is needed, the time seems ripe for broader conversations on "early intervention" initiatives in order to reduce the likelihood of entry into SSI by children aging out of government support systems such as foster care. This perspective of the Board is consistent with SSA's statutory role in ensuring public awareness about problems facing vulnerable populations under SSI.[15]

REPRESENTATIVE PAYEES

The Social Security Act[16] specifies that SSA may assign a representative payee to a beneficiary if the agency determines that the "interest of the individual" beneficiary would be served by such an assignment.[17]
In the majority of cases, SSA assigns a representative payee for children who receive SSI benefits. Generally the representative payee is the biological parent, adoptive parent, or court-appointed guardian. SSA has a list of preferred payees which can be used as a guide but SSA stresses that the best interest of the beneficiary should always remain the top priority when selecting a representative payee. Applicants to become a representative payee are required to be carefully screened to ensure that the beneficiary's best interest is served.

For minor children the order of preferred applicants are;

1. A natural or adoptive parent with custody;
2. A legal guardian;
3. A natural or adoptive parent without custody, but who shows strong concern;
4. A relative or stepparent with custody;
5. A close friend with custody who can provide for the child's needs;
6. A relative or close friend without custody, but who demonstrates strong concern;
7. An authorized social agency or custodial institution; or
8. Anyone not listed above who shows strong concern for the child, is qualified, and able to act as payee, and who is willing to do so. [18]

The rules governing the responsibilities of representative payees are extensive. The representative payee must ensure that benefits are spent for the current and future use of the child, and if not used for current needs, the benefits should be saved and invested. Representative payees are required to complete an annual report explaining how benefits were used during the preceding year, and they must keep records so that an accurate accounting of benefits can be provided. Certain large retroactive SSI payments covering more than six months of benefits must be paid into a "dedicated account" in a financial institution. No other funds may be combined

[15] Section 1635 of the Social Security Act (42 U.S.C. 1383d) http://www.socialsecurity.gov/OP_Home/ssact/title16b/1635.htm
[16] Section 1632(a)(2)(A)(I)
[17] The procedures and guidelines for appointing a representative payee are outlined in Social Security regulations and policy.20 CFR §416.621 Program Operations Manual System (POMS) See also SSA website for representative payees http://www.socialsecurity.gov/payee/faqrep.htm/NewGuide/faqrep.htm#a0=9
[18] 20 CFR Section 416.621, http://www.socialsecurity.gov/OP_Home/cfr20/416/416-0621.htm; and POMS GN 0502.105 Payee Preference Lists https://secure.ssa.gov/poms.nsf/lnx/0200502105

with benefits deposited in a dedicated account. Money in a dedicated account must be used for only certain allowable expenses for the benefit of the child:

- Medical treatment and education or job skills training
- Personal needs assistance, special equipment, housing modification, and therapy or rehabilitation
- Any other item or service related to the child's disability that SSA determines to be appropriate.

Representative payees must keep a log of all withdrawals from a dedicated account and keep receipts for all expenditures for a period of at least two years.

Some advocates for children in foster care argue that SSA does not always correctly follow the representative payee appointment process and allege that State foster care agencies become a foster child's representative payee as part of a revenue maximization strategy. Such systemic practice of converting foster children's Social Security benefits into a source of State funds.[19] This practice was challenged in a seminal Supreme Court case, involving a minor child in foster care whose benefits were being used to reimburse the State for the cost of foster care.[20]

The Keffeler Case
Danny Keffeler was orphaned when he was twelve years old. He was placed in foster care, but his grandmother, Wanda Pierce, was appointed representative payee when Danny was awarded Social Security benefits. Mrs. Pierce did not provide any of Danny's benefits to the State to pay for the cost of Danny's foster care, so SSA removed her as the representative payee and appointed the foster care State agency. The case eventually ended up before the United States Supreme Court.

The question before the United States Supreme Court was whether the practice of reimbursing State costs from a child's foster care benefits is a violation of § 207(a) of the Social Security Act, which states;

> The right of any person to any future payment under this title shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this title shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

Twenty-six States filed briefs supporting the position of the State agency noting that the practice had been approved by SSA and arguing that barring the reimbursement practice could leave the States in a position of economic peril. The United States Supreme Court overturned the Washington State Supreme Court decision, finding that neither the agency's actions to become a

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[19] The Fleecing of Foster Children How We Confiscate Their Assets and Undermine Their Financial Security, Melanie Delgado, Kriste Draper, Amy Harfeld, Christina Riehl, Elisa Weichel, 2011, http://www.caichildlaw.org/Misc/Fleecing_Report_Final_HR.pdf ;Cardozo Law Review, *Foster Children Paying for Foster Care,* Daniel L. Hatcher, 7 Daniel L. Hatcher, Foster Children Paying for Foster Care, 27 CARDOZO L. REV. (2006) http://cardozolawreview.com/Joomla1.5/content/27-4/HATCHER.WEBSITE.pdf

[20] Washington State Dept. of Social and Health Services v. Guardianship Estate of Keffeler. 537 U.S. 371. Supreme Court. 2003.

representative payee for the children, nor its use of the children's Social Security benefits to reimburse State costs is the equivalent of an "execution, levy, attachment, garnishment, or other legal process," prohibited under §207(a) of the Social Security Act.

The United States Supreme Court decision has not completely settled the issue. Child Welfare advocates who oppose States acting as a representative payee and reimbursing themselves for the cost of care note that the court did not address the question of whether the reimbursement practice serves the child's "best interests."[21] However, other child welfare advocates believe that the SSA funds are critical for child welfare agencies operating on tight budgets and that the use of these benefits to pay for the cost of current maintenance is consistent with the Federal purpose for providing those funds. Additionally, these advocates contend that by allowing the reimbursement, States will have a vested interest in implementing procedures to screen all children coming into foster care for possible eligibility for SSI which can then provide children vital services that they might not otherwise receive. Applying for SSI benefits can be a long and complicated process which States will not become involved in without some kind of incentive. In a National Survey of Child and Adolescent Well-Being, researchers estimate that there are more than 10 percent of children and youth in foster care who are eligible for SSI but do not receive it.[22] SSI can provide additional security and benefits such as:

- Diagnostic evaluations completed during the application process will improve the likelihood that the child or youth will receive timely and appropriate treatment.
- SSI benefits can increase the amount of funds available to meet a child's/youth's needs, although children with a foster care maintenance payment or adoption assistance subsidy above the benefit payment will see no immediate, practical effect in receiving SSI or Social Security benefits.
- SSI benefits follow a child or youth who is returned home to a lower income biological family.
- SSI benefits can be a critical source of cash assistance and Medicaid for a youth who ages out of care and cannot be self-supporting because of a severe disability.
- SSI benefits ensure eligibility for a Federal adoption assistance subsidy if a child or youth cannot be returned to biological parents.[23]

Advocates that oppose the practice of States being named the representative payee and then reimbursing itself for the cost of care argue that States taking on the role of the representative payee dilutes the fiduciary responsibility owed to the beneficiary and obfuscates an otherwise clear mandate from SSA that benefits belong to the beneficiary and are not the property of the

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[21] The decision did not affect Keffeler who had already reached the age of majority and used the benefits his grandmother had saved for him to pay for his college education http://www.spokesmanreview.com/news-story.asp?date=120402&ID=s1267147

[22] *Estimates of Supplemental Security Income Eligibility for Children in Out-of-home Placements*. Research Brief no. 12. : National Survey of Child and Adolescent Wellbeing, 2007. available at, http://www.acf.hhs.gov/sites/default/files/opre/est_suppl.pdf

[23] O'Connor, Michael A. *A Guide to SSI and Social Security Benefits for Children and Youth in Out-of-Home Care*. Rep. Seattle: Casey Family Programs, 2001. available at, http://www.ocfs.state.ny.us/main/publications/eligibility/29%20A%20Guide%20to%20SSI.pdf

payee."[24] These advocates also point to the potential Federal funding stream for States but note that the States are using the money to reduce State expenditures rather than as a resource to address the children's unmet needs. These advocates also note that State agencies remain at the bottom of the payee preference list but are often automatically appointed as the payees for foster children through a process called the "kiddie loop" which is an expedited way to name a representative payee for more than one beneficiary.[25]

In Re John G[26]

Advocates opposed to the State reimbursement practice point to another important case that had a different outcome than Keffeler, and note litigation strategies to differentiate future claims from the Keffeler decision.

John G. was abandoned by his parents when he was still a child. John's step father executed a will leaving his home purchased through Habitat for Humanity in trust to his son. After spending several years with other relatives, John G. eventually became a ward of the State.

The Department of Social Services became John's representative payee; instead of using his social security survivor's benefits to pay the mortgage on John's Habitat for Humanity home ($221.00) DSS applied the entire benefit ($538.00) towards defraying the cost of foster care (approximately $1300.00 per month). The Habitat home, valued at approximately $80,000 with a $27,000 outstanding mortgage went into foreclosure. John G's court appointed guardian representing John G's legal interests filed a motion to protect John's interest in his home. The court noted that John will need the Habitat home as a residence when he turns eighteen years old and ages out of the foster care system. The court ordered DSS to use a portion of John's Social Security benefits to pay the monthly mortgage on his home, the past-due mortgage and for some needed repairs. DSS appealed, asserting that using the social security benefits for John's current maintenance was a common and accepted practice post Keffeler. The attorney for DSS argued that the agency had no obligation to use the boy's money to pay his mortgage. "What if he had a $2,000 monthly mortgage? What if every kid (in foster care) wanted a car?" . . . . "It would be wonderful if all this court had to do was what's 'fair and decent.'"

The Appeals Court upheld the trial court's decision and the home that John G's stepfather left for him was protected. This case shows that Social Security benefits should be purposed toward the beneficiary's direct interest in each and every instance rather than used to offset expenses of the representative payee that may provide indirect or marginal benefits to the intended recipient. SSA should focus more attention on these issues when deciding who to appoint as representative payees and improve the clarity of rules regarding how benefits should be used.

[24] 3 Social Security Online, Frequently Asked Questions: What to Do When Someone is Unable to Handle Their Benefits (updated 12/28/2010), http://www.socialsecurity.gov/payee/faqrep.htm#a0=4
[25] POMS GN 00502.110 https://secure.ssa.gov/poms.nsf/lnx/0200502110
[26] 652 S.E. 2d 266 (2007)

RECOMMENDATIONS

The Board does not make specific recommendations on how to reform the program, because even though reviewing the history of the children's program reveals that there have been many changes, there has not been a comprehensive review followed by cohesive implementation of policy. In particular, the Board believes that the SSI program needs careful review with a clear objective of serving its child beneficiaries in the most effective way possible.

This report discusses several issues: The overlap between SSI and the Title IV-E foster care program; the potential for improper payments because of how these (and, potentially, other similar) programs interact with SSI; information gaps created by waivers for Federally funded but state-run (non-SSI) welfare programs such as the foster care program; the potential for repurposing non-SSI benefits to minimize Federal SSI expenditures in the long term; and the history of alternative and potentially conflicting perspectives on program implementation stemming from court cases - especially on how SSA benefits should be allocated. The discussion suggests the need for a broad-based review of the Federal SSI program within the context of complementary Federal welfare programs. SSA's provision of clear policy guidance and oversight to ensure that its programs are being properly and consistently administered could minimize the likelihood of disputes, delays, and especially the evolution of SSA policies through individual court decisions – a recipe for creating an uncoordinated patchwork of rules and procedures that may detract from the key objective of providing direct and meaningful support to the beneficiaries themselves. The broad review that we are recommending should seek clarity in setting rules and procedures, improved data collection, closer oversight, and a process of continuing policy reviews.

Barbara B. Kennelly, Chair (A)

Bernadette Franks-Ongoy　　　　Jagadeesh Gokhale

Dorcas R. Hardy

MEMORANDUM

To:	Social Security Advisory Board
Subject:	Biography of Andrew LaMont Eanes, Senior Advisor to the Acting Commissioner
Date:	January 8, 2015

Andrew "LaMont" Eanes was nominated by President Obama as the next Deputy Commissioner for the Social Security Administration in July 2014. Mr. Eanes has an extensive background in the telecommunications industry. He has been the Vice President of Agile Government Services Incorporated, since 2012. From 2011 to 2012, Mr. Eanes was the Chief Operating Officer of Dynis. Previously, he was Chief Operations Officer of BT Conferencing from 2006 to 2010 and was the Executive Vice President of IT/Services Operations with Premiere Global Services from 2004 to 2006. From 1995 to 2003, Mr. Eanes held various positions at Sprint, Inc., including Vice President and General Manager. Mr. Eanes was the Vice President and General Manager for Sprint/United Telephone Florida from 1992 to 1994 and the Director of Network and Facilities Operations for Sprint United Management Company from 1989 to 1992. Mr. Eanes received a B.A. from Ohio Northern University and an M.B.A. from Baldwin Wallace College.

Currently, Carolyn Colvin has appointed Mr. Eanes as Senior Advisor to the Acting Commissioner. His portfolio will include areas such as cybersecurity, telecommunications, mobile services, succession planning, and labor-management relations.

MEMORANDUM

To:	Social Security Advisory Board
Subject:	Biography of Nancy A. Berryhill, Deputy Commissioner for Operations
Date:	January 8, 2015

Nancy A. Berryhill became Deputy Commissioner for Operations in July 2013. Prior to that, Nancy was the Regional Commissioner for the Social Security Administration's Chicago Region since March 3, 2011, and the Regional Commissioner for the Social Security Administration's Denver Region since January 2006. While in the Denver Region, Nancy developed numerous innovative agency solutions such as video service delivery, use of webinars, and the first American Indian outreach guide.

Nancy began her career with the Social Security Administration as a student employee. Throughout her distinguished career with Social Security, she has held many positions including Service Representative, Claims Representative, Operations Supervisor, District Manager, Area Director for the State of Illinois and Deputy Regional Commissioner in Denver.

Nancy was selected to the Senior Executive Service Program in October 2002 and completed her program in October 2003 when she was appointed to the Senior Executive Service. As part of her SES assignments, Nancy worked for the Department of Homeland Security and in the Office of the Commissioner of the Social Security Administration.

A native of Chicago, Illinois, Nancy obtained her degree in Computer Science at the Control Data Institute in Chicago. Nancy is a graduate of the Kennedy School of Government at Harvard University.

Nancy has been the recipient of many agency awards including the Commissioner's Citation, the agency's highest and most distinguished award. In 2010, Nancy received the Presidential Rank Award of Meritorious Executive. Her work and achievements consistently demonstrate professional excellence, exceptional leadership, integrity, and commitment to public service.

MEMORANDUM

To:	Social Security Advisory Board
Subject:	Biography of Samuel R. Bagenstos, Professor of Law, University of Michigan
Date:	January 8, 2015

Samuel Bagenstos, the Frank G. Millard Professor of Law, specializes in constitutional and civil rights litigation. From 2009-2011, he was a political appointee in the U.S. Department of Justice, where he served as the principal deputy assistant attorney general for civil rights, the number-two official in the Civil Rights Division. His accomplishments included the promulgation of the 2010 Americans with Disabilities Act regulations—the first comprehensive update of those regulations since they were first promulgated in 1991—and the reinvigoration of the Civil Rights Division's enforcement of the U.S. Supreme Court's decision in *Olmstead v. L.C.*, which guarantees people with disabilities the right to live and receive services in the most integrated setting appropriate. He led the negotiations of significant*Olmstead* settlements with the states of Delaware and Georgia, which guarantee appropriate, community-based services to thousands of people with disabilities. He also personally argued major cases in federal district courts and courts of appeals.

As an academic, Prof. Bagenstos has published articles in journals such as the *Yale Law Journal*, the *Columbia Law Review*, the *California Law Review*, the *Virginia Law Review*, the *Georgetown Law Journal*, and many others. He also has published two books: *Law and the Contradictions of the Disability Rights Movement* (Yale University Press, 2009) and *Disability Rights Law: Cases and Materials* (Foundation Press, 2010). Prof. Bagenstos frequently consults with civil rights organizations and remains an active appellate and Supreme Court litigator in civil rights and federalism cases. In one of the most notable cases he has argued, *United States v. Georgia*, 546 U.S. 151 (2006), the U.S. Supreme Court upheld, as applied to his client's case, the constitutionality of Title II of the Americans with Disabilities Act. Prof. Bagenstos also has testified before Congress on several occasions, including in support of the Fair Pay Restoration Act, the ADA Amendments Act, the Employment Non-Discrimination Act, and the Convention on the Elimination of All Forms of Discrimination Against Women, as well as on the application of the ADA to advancing technology and the problem of mental illness in prisons.

Prior to joining the Michigan Law faculty, Prof. Bagenstos was a professor of law and, from 2007 to 2008, also associate dean for research and faculty development at Washington University School of Law. He has been on the faculty of Harvard Law School and was a visiting professor at UCLA School of Law. He clerked for the Hon. Stephen Reinhardt on the Ninth Circuit for one year, then joined the Civil Rights Division of the U.S. Department of Justice. Following that position, he served as a law clerk for Justice Ruth Bader Ginsburg of the U.S. Supreme Court. In 1993, Prof. Bagenstos earned his JD, *magna cum laude*, from Harvard, where he received the Fay Diploma and was articles office co-chair of the *Harvard Law Review*. He received his BA, with highest honors and highest distinction, from the University of North Carolina.

The Disability Cliff - Feature by Samuel R. Bagenstos

Posted on Monday Dec 8th at 8:00pm

We're pretty good about caring for our disabled citizens—as long as they're children. It's time to put equal thought into their adulthoods.

The "cliff" is something that all parents of teenagers with developmental disabilities worry about. The Census Bureau estimates that 1.7 million American children have intellectual or developmental disabilities. Unlike in past generations, these children often go to school alongside children without disabilities, taking classes that seek to prepare them for jobs in the competitive economy.

Yet once they age out of special education—usually at 22—many young adults with developmental disabilities find a reality that is very different from the one they had gotten used to. When they lose their federal entitlement to special education, they are thrown into an underfunded and uncoordinated system in which few services are available as a matter of right. They must now contend with services from a variety of providers, financed by a variety of agencies, most of which are not sufficiently funded to cover everyone, and many of which are far too bureaucratic and insufficiently focused on ensuring that their clients can spend meaningful days integrated in community life. They fall, in other words, off the cliff.

Young adults with intellectual disabilities for the most part now live in houses and apartments in the community, not in institutions as they did in years past—a measure of our progress. But far too many spend their days employed in sheltered workshops and activity centers that closely resemble the dayrooms of those old institutions. According to the Institute for Community Inclusion at the University of Massachusetts Boston, 80 percent of the 566,188 people served by state intellectual- and developmental-disabilities agencies in 2010 received services in sheltered workshops or segregated nonwork settings. Instead of productive, mainstream jobs with competitive wages, these individuals find that the only work options available to them are largely dead-end jobs that pay less—often far less—than the minimum wage. For some, the sheltered workshop is the best-case scenario—not because they lack the skills to do better, but because our disability policies leave them with nothing even minimally productive to do all day.

We have largely achieved the goals of integration in terms of *where* people with intellectual and developmental disabilities live. But we have fallen far short of those goals in terms of *how* they live. To truly achieve the objectives to which our disability laws are formally committed, we must focus our attention on the cliff.

A fundamental change begins with integrating the various streams of funding for adults with disabilities. Congress should provide a federal entitlement to "supported employment services"—which provide ongoing supports, ranging from job coaches to modifications to work environments, to enable a recipient to obtain and keep a job in the competitive workforce—for all young adults with intellectual and developmental disabilities. That entitlement can be administered by the same public school system that provided services through age 21. And it can be paid for by Medicaid, with its substantial federal financial contribution.

Recent changes in the law have moved policy in the right direction by providing financial incentives and legal mandates for school systems and vocational rehabilitation agencies to begin to integrate their services. But these changes have not moved nearly far or fast enough. Young adults with disabilities still must shuffle between multiple service systems, and they still often find that, at the precise moment they reach the age when they can benefit from supported employment services, those services stop being available. The costs—in lost human potential, in running expensive sheltered workshops, in dependency, and in the denial to people with disabilities of the opportunity to participate in meaningful, remunerative work—are enormous.

The Foundations of Disability Policy

Our current predicament is the legacy of three policy epochs: the aftermath of World War I; the Great Society of the mid-1960s; and the rights revolution of the 1970s. Each of those eras generated a particular set of laws and programs relating to disability. These laws and programs continue to play a central role in promoting—or failing to promote—employment opportunities for individuals with intellectual and developmental disabilities.

As medical knowledge has developed to enable more and more soldiers with serious injuries to survive their wounds, our nation's periodic wars have often served as catalysts for developments in disability policy. So it was with World War I. More than 200,000 American soldiers returned from that war with injuries. Congress responded by setting up the first national vocational rehabilitation program. That program aimed to prepare disabled veterans for gainful employment. Congress adopted a civilian counterpart to that program two years later to cover nonveterans disabled by industrial accidents.

The general vocational rehabilitation program continued to broaden its reach over the ensuing decades. During World War II, as the nation needed to mobilize new workers to staff war industries, vocational rehabilitation expanded to include individuals with developmental disabilities. And in the 1960s and '70s, the program expanded further. Today, vocational rehabilitation is an approximately $4 billion-a-year cooperative program between the federal Department of Education and state agencies, with the federal government paying just over three-quarters of the cost and the states kicking in the rest and administering the program. In 2012, the vocational rehabilitation program served roughly 1.4 million individuals with disabilities, of whom just over 160,000 achieved the goal of competitive employment.

The Great Society added another, perhaps unexpected, layer of policy response to disability. In 1965, Congress created Medicaid, a program in which the federal government pays most of the costs but that the states administer. Medicaid was designed to provide health insurance to poor Americans, and it still serves that role. But over time it has also become one of our nation's most significant disability programs. In fact, individuals with disabilities and elderly persons account for two-thirds of the more than $400 billion spent annually on Medicaid. More than nine million persons with disabilities receive Medicaid, and what they receive is not just medical care in the traditional sense. For example, the program has long required states to provide nursing-home and other institutional services to individuals who need them.

But by the 1980s, it had become clear that such institutions were often far more expensive—and far more restrictive of basic independence—than necessary for many individuals with disabilities. In 1981, Congress thus authorized states to obtain waivers from Medicaid rules to provide services to support individuals with disabilities in their own homes and communities. These waivers have provided a crucial alternative to institutionalization for individuals with developmental disabilities. States may provide a number of services under a Medicaid waiver, including prevocational services—providing general skills that contribute to employability—and supported employment services.

There's a catch. Medicaid, unlike vocational rehabilitation, is an entitlement program, meaning that every individual with a disability who meets the eligibility criteria is entitled to receive Medicaid services. Services provided under Medicaid waivers, however, are not entitlements. Thanks to Medicaid's institutional bias, an individual is entitled to be placed in a nursing home. But to receive waiver services, such as supported employment, that individual must wait until the state makes a slot available—and some of those waiting lists can be long.

Moreover, the employment services provided under these waivers are themselves tilted toward segregation. A state can provide both prevocational services and supported employment under a waiver. But prevocational services may be provided in a sheltered workshop or other segregated setting, and there is no time limit for them. As a result, individuals may spend their lives "preparing" for integrated jobs that they will never be presented with the opportunity to take—as is happening to hundreds of thousands of disabled adults now. And while current Medicaid policy prohibits providing supported employment services in a sheltered workshop—indisputably a good thing—it also disfavors using Medicaid to pay for supported employment where other federally funded programs might be available to pay for it.

The Rise of Disability Rights

The rights revolution of the 1970s brought the final layer of disability policy. In the past half-century, U.S. disability law has undergone a sea change. It has followed the path marked by the great constitutional scholar and disability-rights activist Jacobus tenBroek in a pair of 1966 articles in the *California Law Review*. In these articles, which created the field of disability law, tenBroek argued that laws covering disabled people had been marked, until very recently, by a policy of "custodialism." That policy was "typically expressed in policies of segregation and shelter, of special treatment and separate institutions." Children with significant disabilities received separate schooling, if they received schooling at all. As late as 1970, only a fifth of children with disabilities received public schooling; schools often simply excluded children with developmental disabilities as uneducable. As they grew to adulthood, individuals with developmental disabilities moved to state-run institutions that theoretically provided training and treatment, but in practice warehoused them.

But this system was already, by the mid-1960s, giving way to a policy of "integrationism," one that "focuses attention upon the needs of the disabled as those of normal and ordinary people caught at a physical and social disadvantage." Approving of that trend, tenBroek argued that disability law should be read as "entitling the disabled to full participation in the life of the community and encouraging and enabling them to do so."

The American disability-rights movement made integrationism its main goal, and policy-makers listened. Where disability once triggered responses of care, custodialism, and paternalism, our laws and policies now aim at providing people with disabilities the supports to live as full and equal members of the community. Laws like the 1973 Rehabilitation Act, which prohibited disability discrimination by entities that receive federal funds, the 1975 Education for All Handicapped Children Act (more on this below), and the 1990 Americans with Disabilities Act (ADA) together worked a revolution—one that is the envy of activists with disabilities worldwide. As an American professor who specializes in disability law, I often have the opportunity to work with highly talented young lawyers with disabilities from around the world. These young lawyers consistently speak of the United States as a sort of disability Eden—a place where our buildings, spaces, and institutions are far more accessible than in their home countries, and where people with disabilities are visibly full participants in the life of the community. Although our nation has not yet reached the state of full equality for people with disabilities, we are far ahead of the rest of the world.

Our disability-law revolution has been especially dramatic in the area of education. In the middle of the twentieth century, our nation's dominant approach to intellectual and developmental disabilities reflected a particularly virulent form of custodialism. Doctors typically advised parents to institutionalize children with these disabilities for life, beginning at a very young age. Parents who wished to reject that advice often found that they had no real alternative, because local school districts refused to allow their children even to attend school. And the institutions that the state made available often housed individuals in wretched conditions. New York City's notorious Willowbrook State School was one well-known example: After visiting Willowbrook in 1965, then-Senator Robert F. Kennedy described the facility as bordering on a "snakepit," and as "less comfortable and cheerful than the cages in which we put animals in a zoo."

But in 1975, a coalition of civil rights advocates, parents, teachers, and disability professionals pressed Congress to enact the Education for All Handicapped Children Act—now known as the Individuals with Disabilities Education Act (IDEA)—a landmark in disability policy. It guaranteed a free appropriate public education to each and every child with a disability from age five onward (and from age three onward in states that provide public preschool), in the "least restrictive environment," defined as an environment that permits an individual with a disability to be unrestrained, and to be integrated with the mainstream school population as much as possible. Children with intellectual and developmental disabilities—even very significant ones—now go to school in integrated settings. School districts may no longer reject disabled children as uneducable. Moreover, services under the statute, unlike under Medicaid waivers and vocational rehabilitation, are an entitlement.

Life after the Cliff

The IDEA has been, in the main, a dramatic success. For nearly 40 years, we have succeeded in preparing children with even the most severe disabilities for lives that are fully integrated in the community. But it's that very success that creates the cliff that haunts all parents of teenagers with intellectual and developmental disabilities.

IDEA services end at age 22. At that point, a young adult with a disability must turn to vocational rehabilitation or Medicaid waivers to obtain employment supports. But those services, unlike IDEA services, are not entitlements. And unlike IDEA services, they are not administered by the familiar public school system but instead by distinct state bureaucracies: the state Medicaid department (which often provides services through a separate state developmental-disabilities agency) and the state vocational rehabilitation service. Moreover, these state bureaucracies don't deliver the services directly. Rather, they contract with an array of service providers (which may be units of local government, nonprofit groups, or even for-profit corporations) to deliver them.

For example, until the school year in which he turns 21, a young man with an intellectual disability in New York City is entitled to receive services from the New York City Department of Education, an entity he and his parents have been dealing with for most of his life. But if he wants supported employment services when that school year ends, he will likely apply to the state vocational rehabilitation agency, known as ACCES-VR. When he applies to ACCES-VR, a counselor will conduct a comprehensive assessment of his rehabilitation needs. If the counselor determines that he has a "Most Significant Disability," and there is funding available, ACCES-VR will refer him to a supported employment provider. Because of the limited funds available for vocational rehabilitation services, federal law requires state vocational rehabilitation agencies to establish an order of priority for receiving services, under which individuals with the most significant disabilities receive services first. When an individual with a developmental disability scores too high on a test of social and behavioral skills, ACCES-VR will not refer that individual for supported employment—even if he needs supports to obtain and retain a job. If he is lucky enough to steer between the Scylla of being too significantly affected by a disability to benefit from supported employment and the Charybdis of being insufficiently affected to qualify for these services, our young man will be referred to a local provider, like the Queens Centers for Progress, a nonprofit organization in Jamaica, Queens. That provider will be the one that employs his job coach.

If our young man is denied ACCES-VR services, he may seek to receive supported employment through a Medicaid waiver. Although New York generally administers Medicaid through its Department of Health, it administers Medicaid services for people with developmental disabilities through the Office for People With Developmental Disabilities. To obtain Medicaid-financed services, our young man would have to contact his regional Developmental Disabilities Services Office, which would then refer him (perhaps after a wait) to its own contracted supported employment provider—which might, or might not, be the same nonprofit entity that would provide services under the ACCES-VR program.

The details will change in different states, though the overall story is the same across the nation. But our hypothetical New Yorker is one of the lucky ones—those who receive supported employment are a privileged few. Hundreds of thousands of individuals with developmental disabilities, if they get to work at all, must content themselves with a dead-end job in a sheltered workshop. Such workshops tend to be operated by state and local government entities and nonprofit agencies. But nonprofit doesn't mean nonlucrative. Disability-rights activists from the National Federation of the Blind and elsewhere have recently focused attention on Goodwill, which operates sheltered workshops across the country. Pursuant to a loophole in the Fair Labor Standards Act, the workers at these facilities often make well below minimum wage, but many of Goodwill's executives make hundreds of thousands of dollars a year. These workshops are financed by state Medicaid or vocational rehabilitation funds, as well as by the money they receive from selling goods they produce.

As a scholar and an advocate, I have toured today's sheltered workshops. Unlike in the case of the old institutions, nobody is likely to describe them as snakepits. But tenBroek's description from 1962 remains apt: "[A] vague combination of the workhouse, the almshouse, the factory, and the asylum, carefully segregated from normal competitive society and administered by a custodial staff armed with sweeping discretionary authority," sheltered workshops tend "to become terminal places of employment in which so-called unemployables may find a drudge's niche at the workbench."

As the National Disability Rights Network (NDRN) put it in 2011, sheltered workshops "purport to offer pre-employment and pre-vocational skills," but often simply "prepare people with disabilities for long term sheltered employment." Workshops often fail to employ state-of-the-art production techniques, so even those clients who excel in their jobs do not learn how to work in the outside marketplace. At a workshop I visited several months ago, men and women with developmental disabilities spent their days using a simple hand-operated lever to place half-inch rubber rings around pieces of metal that resembled chess pieces. Clients got paid a small amount for each ring they placed on a piece. Some looked almost like human machines, quickly placing the ring on the metal, pulling the lever, and putting the assembled piece in the box, one after another. But these clients were not learning skills that would enable them to do a production-and-assembly job outside of the workshop, which typically requires far more than pulling a single lever over and over.

As I talked to the clients, I found that a number had job-related skills that were readily evident even to the non-expert, including interpersonal, communication, and artistic talents. But the workshop was not helping them find a job that matched those skills. That is all too common. The NDRN's report described the case in another state of an autistic man named Andy. As of 2011, Andy had worked in a sheltered workshop for 15 years. Outside of the workshop, Andy handled much of life independently or with limited support from others. He had taught himself five languages and enjoyed building computers out of old parts. But the sheltered workshop did not put him in a job that fit any of these skills or interests. Instead, his job at the workshop was to feed paper into a shredder, over and over. "So Andy is only able to fulfill his potential in his free time," the NDRN report noted archly, "by putting computers together while reading a manual in Chinese." Although Andy's case is an extreme one, it illustrates the far more general problem highlighted by that report: "[Y]oung people with disabilities who want to transition into traditional work...instead wind up trapped in a sheltered workshop with little chance for something different."

The Beginnings of Reform

These problems are well known among disability-policy experts. And through the years policy-makers have made a number of efforts to address them. These efforts have helped at the margins, but they have not taken on the fundamental issues.

Over the decades, the federal government has substantially increased its investment in supported employment for individuals with developmental disabilities. Supported employment provides job coaches and other ongoing, individualized supports to enable them to work in productive, integrated jobs for competitive wages. As I have explained, Medicaid waiver programs sometimes pay for supported employment, as do vocational rehabilitation programs. A major study published in summer 2014 found that supported employment consistently leads to employment for at least half of young adults with intellectual and developmental disabilities who receive it—and that it substantially increases employment rates over alternative approaches. But it also found that large percentages of young adults with those disabilities—particularly high-school dropouts and those with cerebral palsy or traumatic brain injury—are never offered supported employment services. And the study's authors singled out the lack of "entitlement to services after age 21" as a particular problem: "For those with severe disabilities who require support after the 90-day closure period [for vocational rehabilitation services], it is often excessively difficult for them to obtain the long-term support they need." In short, although we know that supported employment works for large numbers of young adults with developmental disabilities, we have not succeeded in extending that policy to all of the individuals who could benefit from it.

Two major recent initiatives promise to provide supported employment opportunities to more young adults with intellectual and developmental disabilities. I played a role in the first of these initiatives when I served in the Justice Department in the first years of the Obama Administration. That was the effort by the department's Civil Rights Division to use the Americans with Disabilities Act to reorient states' disability-services systems toward integrationism. As interpreted in the Supreme Court's landmark 1999 decision in *Olmstead* v. *L.C.*, the ADA requires states to provide services to individuals with disabilities in the most integrated setting appropriate. The Justice Department has relied on *Olmstead* to negotiate settlements with eight states, requiring them to provide an array of services to enable individuals with, among other things, intellectual and developmental disabilities to live full lives in the community.

Much of the Justice Department's *Olmstead* enforcement has focused on questions of *where* people with disabilities have the opportunity to live—in institutions or in their own homes and apartments scattered throughout the community. But the department has also relied on *Olmstead* to press states to expand integrated opportunities for employment. Consent decrees with Rhode Island, Virginia, New Hampshire, and Delaware explicitly require those states to provide new supported employment slots for individuals with intellectual disabilities and/or mental illness. A landmark consent decree the Justice Department entered into with Rhode Island in April 2014 requires the state to provide supported employment services to 3,250 individuals with intellectual and developmental disabilities over ten years. And the department has joined a private *Olmstead* lawsuit against Oregon that challenges that state's heavy reliance on sheltered workshops to serve people with intellectual and developmental disabilities.

The Department of Justice's enforcement efforts are likely to accelerate the other major initiative that has helped to increase access to supported employment: the rapid spread of Employment First policies across the states. As the name implies, under an Employment First policy a state commits to making integrated, competitive employment its first option for individuals served by its disability system. Rather than sending individuals to sheltered workshops until they are deemed ready for competitive work—a result that often never arrives—an effective Employment First policy says that the state should match people with disabilities with competitive jobs, place them in those jobs, and give them the supports they need to succeed. Tennessee adopted the first statewide Employment First policy in 2003; today, less than a dozen years later, 32 states have adopted them. While largely abstract statements rather than concrete commitments, these policies serve as a guidepost that should promote efforts by states to expand supported employment services.

But these initiatives still do not directly address the problem of fragmented, uncoordinated service systems. Over the past 20 years, Congress has increasingly attended to that problem. The IDEA has long required that individual education plans (IEPs) for teenagers with disabilities describe the transition services those students will require as they prepare to leave the school system. When Congress reauthorized the IDEA in 2004, it directed that each IEP for a student age 16 and above must include particular transition goals tied to the student's strengths and interests, and that it must also describe the transition services that will help him or her achieve those goals. Since 1998, the Rehabilitation Act has required that state vocational rehabilitation agencies consult with state education agencies to facilitate successful transitions.

In summer 2014, in a rare break from the partisan polarization that has characterized that body, Congress strengthened these requirements. The Workforce Innovation and Opportunity Act, passed on a bipartisan basis and signed by President Obama in July, requires state vocational rehabilitation agencies to spend 15 percent of their funds on the school-to-work transition for young adults with disabilities.

All of these initiatives will help. But the cliff remains. When they turn 22, young adults with intellectual and developmental disabilities are thrown out of the one system that guarantees services and that has prepared them to live and work in an integrated environment. Expanded supported employment and better transition services can provide some of these young adults a parachute or a hang glider, but the cliff will remain a source of fear and peril for far too many. The only way to truly solve the problem is to eliminate the cliff—to give young adults with intellectual and developmental disabilities an entitlement to supported employment as they age out of IDEA services, and to administer that entitlement through the agencies that are already familiar to them.

Renewing Our Promise

The word "entitlement" sets off alarm bells in Washington. It calls forth images of uncontrollable costs and ballooning budgets. But it makes no sense to spend two decades preparing children with intellectual disabilities for independent, integrated lives in the community and then, just at the moment that they are in a position to begin those lives, take away from them the services that will make that outcome possible. And evidence suggests that concerns about the cost of supported employment are misplaced. Susan Stefan, a leading mental disability litigator and scholar, explains that “supported employment is cost-intensive at the front end: when the client is being interviewed as to his or her desires and preferences, the job is being located, and support is being initially provided” but that supports, and therefore costs, “decline over time as the client becomes familiar with the job.” According to Stefan’s analysis, supported employment programs “provide a net benefit to the taxpayer through the taxes paid by disabled individuals in competitive employment beginning in the fourth year of the supported employment program.” The costs of a sheltered workshop, by contrast, do not decline over time.

Increased tax revenues are not the only fiscal benefit to wider implementation of supported employment. Adults with disabilities who cannot work receive significant cash benefits through the Social Security system. For each individual who moves into competitive work through supported employment, the federal government will save thousands of dollars in Social Security Disability Insurance and Supplemental Security Income payments per year. And evidence shows that Medicaid costs decline—by up to $15,000 per person per year—when individuals with significant disabilities move into competitive work. Pundits and policy-makers are increasingly focused on the costs of Social Security’s disability programs and of Medicaid. A commitment to supported employment—even with its up-front price tag—can directly address these concerns.

But which of the many service systems should administer a new entitlement to supported employment? In principle, any of the existing systems—the educational agencies that administer the IDEA, vocational rehabilitation systems, or state Medicaid or developmental-disabilities departments—could be satisfactory. Any move to guarantee supported employment to young adults with developmental disabilities should allow for state experimentation. As a first principle, however, there is important value in continuity. Even when the law grants an entitlement to particular services, individuals risk falling through the administrative cracks when they must travel across multiple bureaucracies to receive what the law guarantees them.

For that reason, the new supported employment entitlement should be administered, at least as a default position, by the state educational agency that runs IDEA services. By the time they reach adulthood, individuals with disabilities (not to mention their parents) have been dealing with the state educational agency for nearly two decades. The state educational agency is familiar, and it is the part of the disability-services system that—notwithstanding real problems—tends to work the best at promoting the opportunity to live an independent, integrated life. Many recent policy initiatives focus on smoothing the handoff from the education agency to vocational rehabilitation. But a better policy would ensure that young adults with disabilities are not handed off at all.

State education agencies will likely resist a mandate that they provide supported employment services. Although some of the financial benefits of supported employment accrue to the state, few of those benefits will accrue directly to the state education agency. Rather, they will flow largely to the state Medicaid and vocational rehabilitation agencies, as well as the state’s general revenue stream. And many of the financial benefits (lower spending on Social Security disability programs, increased federal tax revenue from new workers) will go to the federal government. Accordingly, state education officials may feel that they are being forced to drain resources from valuable school programs in order to improve the finances of other state and federal accounts.

There is an obvious solution to this problem: Have the federal government reimburse (a large fraction of) the cost of the new supported employment mandate. Congress could make the mandate a part of the IDEA. But that would still likely undercompensate the states. The federal government pays less than 20 percent of the cost of services under the IDEA, with the states responsible for the rest. A better answer would be to pay for the mandate by making it an entitlement under Medicaid. Depending on the state, the federal government pays between 50 percent and 75 percent of the costs of Medicaid. And it is state Medicaid agencies that stand the most to gain from an expansion of supported employment. They are typically the ones paying today for sheltered workshops and other prevocational services that supported employment will supplant.

Under the new entitlement, a state education agency would be required to provide the supported employment services to each young adult client with a developmental disability. It would then bill the state Medicaid agency for the service, which would be paid for at the state's normal state-federal match rate. This is hardly the simplest administrative structure, but it is much simpler than what we have today. And it has the advantages of properly aligning agency incentives and of keeping the bureaucratic complexities in the back office, while presenting a simple service delivery face to young adults with disabilities and their families.

The cliff is a human tragedy and a fiscal drag. More importantly, it represents this nation's betrayal of its promise of integration. Children and young adults with intellectual disabilities spend the first two decades of their lives preparing to be full members of the community. We should not break that promise just as it is about to be achieved. A guarantee of supported employment services would help to keep that promise.

Samuel R. Bagenstos is the Frank G. Millard Professor of Law at the University of Michigan Law School. An expert in disability law, he served from 2009 to 2011 at the Justice Department, w here he was the Principal Deputy Assistant Attorney General for Civil Rights.

Social Security’s Windfall Elimination Provision & Government Pension Offset:

Congress Should Create More Equitable, Accurate & Efficient Rules

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EXECUTIVE SUMMARY

When workers have non-covered earnings, the Social Security Administration (SSA) may adjust their Social Security benefits using the Windfall Elimination Provision (WEP) and/or Government Pension Offset (GPO) rules. In establishing these rules, Congress intended to treat workers with non-covered earnings and workers whose entire careers were covered by Social Security comparably.

There were difficulties in creating these rules from the outset. Complete earnings histories are necessary to calculate Social Security's primary insurance amount (PIA) formula. However, when the WEP and GPO were established, SSA only had records of earnings from covered earnings, not non-covered earnings. As a result, Congress structured the WEP using an arbitrary adjustment to the PIA formula, which applied only to covered earnings, and based the GPO on self-reports of non-covered pensions.

The current WEP and GPO formulas are flawed. First, the WEP and GPO rules are arbitrary and do not mirror Social Security's rules for determining benefits. As a result, workers affected by the provisions are treated unequally: some receive higher benefits than they would if their entire careers had been covered by Social Security; others receive less. Second, SSA does not have the data it needs on non-covered pensions to implement the law accurately. Third, the WEP and GPO are difficult to administer and communicate.

Congress now has the ability to achieve its original intention of treating beneficiaries with non-covered work the same way as covered workers, and to address the flaws of the current law formulas. SSA began to collect data on non-covered earnings in 1978, when Congress removed the cap on the Medicare payroll tax. It has complete non-covered earnings data starting in 1982. In order to calculate a PIA, SSA needs at least 35 years of earnings data. SSA will have at least 35 years of earnings data--covered and non-covered--for all Americans in 2017.

The Board recommends that Congress replace the WEP and GPO with proportional formulas to calculate offsets for beneficiaries with non-covered work who become eligible in 2017 or later. All Social Security benefits would be calculated using the same PIA formula, regardless of whether a person's work was covered, non-covered, or a combination. Then the portion attributable to non-covered work would be subtracted. This provision is included in the bipartisan Equal Treatment of Public Servants Act of 2014.

The Board also recommends that Congress give the IRS the authority to collect data from non-covered pension administrators and share it with SSA. Combining the two approaches is necessary, because the new proportional formulas would only affect new beneficiaries. Current beneficiaries would continue to be subject to the current law WEP and GPO. Without better data collection, the WEP and GPO would continue to be a source of improper payments. The Government Accountability Office (GAO) has long recommended collecting the necessary data through IRS forms.

BACKGROUND

Nearly all American workers are covered by Social Security—in other words, they pay Social Security payroll taxes and receive benefits based on their earnings.[1] However, 4% of all workers and about a quarter of government employees are not covered. These workers are mostly state and local government employees whose jurisdictions have alternative retirement plans that take the place of Social Security. Similarly, some federal workers hired before 1984 are covered by the Civil Service Retirement System instead of Social Security.[2]

Almost all non-covered workers become eligible for Social Security, either based on their own or their spouses' covered work.[3] The Social Security Administration (SSA) may adjust these workers' Social Security benefits using the Windfall Elimination Provision (WEP) and/or Government Pension Offset (GPO) rules. In establishing these rules, Congress intended to treat workers with non-covered earnings and workers whose entire careers were covered by Social Security comparably.[4]

How the WEP & GPO Work

Windfall Elimination Provision (WEP)

Social Security benefits are based on covered earnings, indexed to wage growth, and averaged over a lifetime. The Social Security benefit formula is progressive—that is, the Social Security benefits of lower earners replace a greater proportion of their lifetime earnings than those of higher earners. The basic Social Security benefit formula only counts earnings from jobs covered by Social Security. Therefore, workers with many years of non-covered work may appear to be lifetime low earners, even if they earned high wages outside the system. As a result, the basic Social Security formula would replace a greater proportion of their earnings than is warranted. This is the "windfall" to which the Windfall Elimination Provision refers.

The typical Social Security beneficiary's basic benefit amount is calculated using the Primary Insurance Amount (PIA) formula, which is part of the Social Security Act. The PIA formula, as noted above, ensures that Social Security benefits are progressive, replacing a higher proportion of taxable earnings for low-wage workers than high-wage workers. It is based on a worker's average indexed monthly earnings (AIME). The AIME is calculated by indexing a worker's annual covered earnings to wage growth, taking the highest 35 years of those earnings, and then averaging them and dividing by 12. To calculate the PIA, the AIME is split into three dollar amounts, or PIA bend points, as shown in Table 1. In 2014, the first bend point includes the first $826 of AIME, the second includes the amount between $826 and $4,980 of AIME, and the third includes the amount over

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[1] All Members of Congress and the President are covered by Social Security. http://www.ssa.gov/OACT/FACTS/

[2] See CRS Report RL30631, *Retirement Benefits for Members of Congress,* by Katelin P. Isaacs.

[3] Government Accountability Office, *Social Security: Issues Regarding the Coverage of Public Employees*, GAO 08-248T, November 6, 2007.

[4] National Commission on Social Security Reform Recommendations, *Hearing before the Subcommittee on Social Security and Income Maintenance Programs*, S361-31, Part 1 of 3, February 15 and 16 1983.

$4,980 of AIME. (These dollar values are indexed to wage growth.) The PIA equals the sum of 90% of earnings under the first bend point, 32% of earnings between the first and second bend points, and 15% of earnings between the second and third bend points. The WEP formula is the same as the PIA formula, with one major exception. Rather than multiplying the first portion of earnings by 90%, the WEP formula multiplies it by 40%, as shown in Table 1.

Table 1. PIA and WEP formulas for 2014

PIA factor	WEP factor	Average Indexed Monthly Earnings (AIME) of
90%	40%	up to $826 +
32%	32%	over $816 up to $4,980 +
15%	15%	over $4,980

The WEP is designed to provide roughly equal replacement rates[5] to all workers, whether or not their work was covered by Social Security. However, SSA did not have the non-covered earnings data necessary to do that. As a result, Congress adopted a rough rule of thumb in the WEP formula, replacing the 90% bend point factor with a 40% bend point factor.

There are two limitations on the WEP. First, the WEP adjustment cannot exceed half the amount of a beneficiary's non-covered pension. For example, if a worker's non-covered pension is $300 per month, the WEP reduction is limited to $150 per month. This provision reduces the size of the WEP for many beneficiaries and prevents the WEP from disproportionately affecting the lowest earners.[6]

Second, the WEP phases out based on years of "substantial earnings" covered by Social Security. In 2014, substantial earnings are defined as covered earnings of at least $21,750.[7] The WEP applies fully if the worker has fewer than 20 years of substantial earnings. For workers with 20 to 30 years of substantial earnings, the WEP offset is smaller: the replacement rate under the first bend point gradually rises from 40% to 90% of AIME. If a worker pays Social Security tax on 30 years of substantial earnings, he or she is not affected by the WEP at all.

To understand how the WEP formula works, consider the three illustrative workers in Table 2. Amy works for 35 years in jobs covered by Social Security. Her wages average $44,000 per year, making her a typical wage earner. Beth, similarly, works for 35 years in covered employment, but earns much less—only $19,000 per year. Amy's Social Security benefit ($1,647) is larger than Beth's ($980), which reflects her greater earnings. However, Beth's replacement rate (62%) is larger than Amy's (45%), as a result of Social Security's progressive benefit formula.

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[5] For the purposes of this report, "replacement rate" can be defined as the percentage of a worker's average pre-retirement lifetime earnings that is paid out by Social Security upon retirement.

[6] Alan L. Gustman, Thomas L. Steinmeier, and Nahid Tabatabai, SSA Office of Retirement Policy, *The Social Security Windfall Elimination and Government Pension Offset Provisions for Public Employees in the Health and Retirement Study.* November 3, 2013. http://www.ssa.gov/policy/docs/ssb/v74n3/v74n3p55.html

[7] As part of the 1977 Amendments, Congress defined "substantial earnings" as 25% of the old-law wage base (i.e., what the annual taxable maximum would have been had the 1977 Amendments not been enacted). The old-law wage base is indexed to wage growth. For more information, see: http://www.ssa.gov/oact/cola/oldcbb.html.

Now consider a third worker, Carol, who has worked in both covered and non-covered employment. Carol's average lifetime earnings—including 15 years of covered employment and 20 years of non-covered employment—are equal to Amy's, $44,000. Averaged over 35 years, Carol's *covered* earnings only amount to about $19,000. Therefore, based on her covered earnings alone, she appears to be a lifetime low earner, like Beth. Before the WEP is applied, she would receive the same replacement rate as Beth, despite total lifetime earnings that were more than twice as high. This artificially high replacement rate is what is known as the "windfall." After the WEP is applied, she would receive a substantially smaller benefit ($568) and replacement rate (36%). However, Carol's replacement rate is significantly lower than it would have been if, like Amy, she had spent her entire career in covered work. (Amy's replacement rate is 45%, compared to Carol's 36%.) In this case, the WEP reduction is too large.

Table 2. Illustrations of Windfall Elimination Provision

	Amy	Beth	Carol	
			before WEP	*after WEP*
Total Average Earnings	**$44,000**	**$19,000**	**$44,000**	**$44,000**
Average Social Security-Covered Earnings	$44,000	$19,000	$19,000	$19,000
Years of Covered Employment	35	35	15	15
Years of Non-covered Employment	0	0	20	20
AIME	$3,670	$1,580	$1,580	$1,580
Social Security benefit	$1,650	$980	$980	$570
Replacement Rate	**45%**	**62%**	**62%**	**36%**

Note: Some figures rounded for simplicity.

Though some workers subject to the WEP receive lower benefits than they would have if all their earnings had been covered by Social Security, other workers receive higher benefits. Consider the illustration shown in Table 3. Doug and Earl, like Amy and Beth, spent their entire careers in covered employment. Doug and Earl earned $100,000 and $43,000, respectively. Frank, like Carol, spent 15 years of his career in covered employment and another 20 years in non-covered employment. His total lifetime earnings average $100,000, like Doug. But his covered earnings alone average $43,000, like Earl.

Before the WEP is applied, Frank would receive the same benefit—and the same replacement rate—as Earl, despite total lifetime earnings that were more than twice as high. After the WEP is applied, he would receive a substantially smaller benefit and replacement rate. However, his replacement rate (34%) is still larger than it would have been if his entire career, like Doug's, were covered by Social Security. (Doug receives a 31% replacement rate.) In this case, the WEP reduction is too small.

Table 3. Further Illustrations of Windfall Elimination Provision

	Doug	Earl	Frank	
			before WEP	*after WEP*
Total Average Earnings	**$100,000**	**$43,000**	**$100,000**	**$100,000**
Average Social Security-Covered Earnings	$100,000	$43,000	$43,000	$43,000
Years of Covered Employment	35	35	15	15
Years of Non-covered Employment	0	0	20	20
AIME	$8,333	$3,583	$3,571	$3,571
Social Security benefit	$2,559	$1,620	$1,620	$1,208
Replacement Rate	**31%**	**45%**	**45%**	**34%**

Note: Some figures rounded for simplicity.

The WEP formula is inherently imprecise: it can only roughly approximate the PIA formula applied to all other workers. In some cases, beneficiaries subject to the WEP have higher Social Security replacement rates than people with similar lifetime earnings (like Frank, above); in other cases (like Carol, above), beneficiaries have lower replacement rates.

Legislative History

When Social Security was enacted in 1935, government employees were not covered. Typically, these workers were covered by employer programs. Congress also had Constitutional concerns about the federal government's right to tax state governments. In the 1950s, Congress allowed state and local governments to opt into Social Security. Eventually, most state and local government employees became covered by Social Security, though there are at least some non-covered workers in every state.

Congress enacted the WEP as part of the 1983 Amendments to the Social Security Act, which also made major changes to Social Security coverage, financing, taxes, and benefits. Congress intended the WEP to remove the unfair advantage that people with many years of non-covered work receive from the regular PIA formula, as discussed above. However, it lacked the data to apply the PIA formula properly to all workers. As a result, the WEP formula only approximates the PIA formula very roughly.

The WEP formula established in the 1983 Amendments, which is still used today, was the result of a compromise between the House and Senate. A House bill would have substituted a 61% factor for the 90% bend point factor in the PIA formula, while a Senate proposal would have substituted a 32% factor. A compromise between the two chambers led to the 40% factor.

Government Pension Offset (GPO)

In addition to the WEP, workers with non-covered pensions may be subject to the Government Pension Offset (GPO). The WEP applies to a beneficiary's Social Security *worker* benefit, which is the benefit based on a worker's own earnings. The GPO applies to the beneficiary's *spousal* or *survivor* benefit, which is the benefit based on his or her spouse's earnings. Spousal benefits are equal to one-half of the worker's benefit. Aged survivor benefits are equal to 100% of the worker's benefit. For workers who have earned their own worker benefits, their spousal or survivor benefits are limited by the dual entitlement rule which prevents what some refer to as "double-dipping" (when each spouse would claim both a spouse's own worker benefit and a spousal benefit). The dual entitlement rule essentially limits a beneficiary's total Social Security benefit to the greater of the spouse's own worker benefit or the spousal or survivor benefit.[8] If the beneficiary's own worker benefit exceeds his or her spousal or survivor benefit, the beneficiary receives only the worker benefit.

For beneficiaries subject to the GPO because of their non-covered pensions, spousal and survivor benefits are offset by 2/3 of the value of their non-covered pension. The GPO is similar to the dual entitlement rule. Before the GPO was enacted, a person working only in non-covered employment would be entitled to both a full non-covered pension and a full Social Security spousal benefit.

This 2/3 offset is smaller than the dollar-for-dollar offset that applies to dually entitled beneficiaries. It should be noted that non-covered pensions take the place of both Social Security benefits and traditional employer-sponsored pensions for these workers. (In contrast, *covered* state and local government employees typically receive both Social Security and an employer-sponsored pension.) In essence, the GPO rule treats the non-covered pension as if 2/3 of it replaces Social Security.

Legislative History

Congress first established the GPO as part of the 1977 Amendments to the Social Security Act. It mirrored the dual entitlement rule, in which every dollar of a beneficiary's Social Security worker benefit is subtracted from his or her spousal or survivor benefit. However, unlike the dual entitlement rule, which determines the offset amount using the beneficiary's worker benefit, the GPO used the beneficiary's non-covered pension amount.

In the 1983 Social Security amendments, the House proposed to change the GPO offset to one-third of the non-covered pension and the Senate proposed no changes to the law (in effect maintaining the 100% offset). Congress compromised to establish a 2/3 offset, the formula that remains to this day.

EQUITY, ACCURACY & EFFICIENCY CONCERNS

As discussed in more detail below, the current WEP and GPO formulas are flawed. First, workers affected by the WEP and GPO may be treated unequally: some receive higher benefits than they would if their entire careers had been covered by Social Security; others receive less. Second, SSA does not have the data it needs on non-covered pensions to implement the law accurately. Third, the WEP and GPO are difficult to administer and communicate.

Unequal Treatment

Both the WEP and the GPO treat workers unequally, compared to workers whose entire careers are spent in non-covered work.

[8]Beneficiaries always receive their entire worker benefit. If they also qualify for a spousal benefit, that spousal benefit is reduced dollar for dollar by the amount of the worker benefit.

Windfall Elimination Provision

The WEP is calculated using different rules than Social Security's benefit formula. Though Congress intended to treat workers with non-covered earnings and workers whose entire careers were covered by Social Security comparably,[9] beneficiaries subject to the WEP receive bigger or smaller benefits than they would have if all of their work had been covered by Social Security.

In addition, the WEP tends to be regressive[10], reducing the benefits of people with lower lifetime earnings more than those with higher lifetime earnings. As shown in Tables 2 and 3, the WEP reduction tends to be too small for higher earners and too large for lower earners, compared to what these workers would receive if all their work had been covered by Social Security. The reduction in the WEP formula only applies to earnings below the first bend point of the PIA formula, so the adjustment is relatively larger for people with lower earnings. Lower earners lose a higher percentage of their benefits than higher earners do. The more earnings a worker has earned above the first bend point amount, the less he or she is affected by the WEP.[11]

The WEP phase-out for people with over 20 years of earnings above the threshold is also regressive. People who earn less than the threshold are less likely to qualify for the phase-out because years of non-covered work below the threshold do not count. As a result, small changes in covered earnings can lead to large changes in Social Security replacement rates.[12]

Government Pension Offset

The GPO often results in higher benefits than the Social Security formula would, according to a 2007 Congressional Research Service memorandum.[13] This comprehensive analysis compares the outcomes of Social Security rules and pension rules in the states with the greatest number of workers affected by the GPO. It examines workers with various earnings levels and work histories. The analysis concludes that many individuals affected by the GPO have much higher Social Security benefits than they would have received if all their work had been covered. The GPO offset would need to be increased by up to 900% to replicate ordinary Social Security rules. Other beneficiaries affected by the GPO receive somewhat smaller benefits than they would have if all their work had been covered. The GPO offset would need to be decreased by up to 50% to replicate ordinary Social Security rules in these cases.

One of the main reasons for this disparity in outcomes is that the GPO is based on the amount of a worker's non-covered *pension*, while the dual entitlement offset is based on his or her own *Social Security worker benefit*. Pension rules and Social Security rules are very different. Pension amounts depend on the specifics of a worker's non-covered employment: how long it was, when it occurred, how much the worker earned, and the rules of the pension system. Each of these variables can

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[9] CRS Report 98-35, *Social Security: The Windfall Elimination Provision (WEP)*, by Alison M. Shelton.
[10] Verify with SSA data
[11] The WEP formula's regressive effect is mitigated somewhat by the rule that limits the size of the offset to half the value of a worker's non-covered pension.
[12] Jeffrey R. Brown and Scott Weisbenner. *The Distributional Effects of the Social Security Windfall Elimination Provision*, National Bureau of Economic Research. 2012.
[13] Cite memo, and note that this section draws heavily from its analysis.

affect the size of a worker's pension dramatically—and as a result, can significantly change the size of his or her GPO adjustment. For example, beneficiaries whose non-covered work comes later in their careers have bigger pensions—and bigger GPO reductions—than beneficiaries with the same number of years at the same wages earlier in their careers. Social Security's PIA formula has no such distortion, as all earnings are indexed to wages. As a result, later years of earnings are not valued more than earlier years, all else equal. Similarly, higher earners have bigger non-covered pensions—and bigger GPO offsets—than lower earners, all else equal. Social Security's PIA formula is progressive and limited by the cap on taxable wages; non-covered pensions are not. As a result, higher earnings would have a bigger impact on a person's non-covered pension amount (and thus GPO amount) than on his or her Social Security benefit amount. Using non-covered pension amounts as the basis for the GPO is an apples-to-oranges comparison that leads to highly distorted outcomes.

Incomplete Data

Complete earnings histories are necessary to calculate Social Security's primary insurance amount (PIA) formula. However, when the WEP and GPO were established, SSA only had records of earnings from covered earnings, not non-covered earnings. As a result, Congress structured the WEP using an arbitrary adjustment to the PIA formula, which applied only to covered earnings, and based the GPO on self-reports of non-covered pensions.

Implementing the WEP and GPO requires complete data on non-covered pensions. However, SSA does not have access to this data. To identify beneficiaries who may be subject to WEP and GPO, SSA asks beneficiaries to report their non-covered pensions. (One notable exception to self-reporting is retired federal employees. SSA has received data on their non-covered pensions directly from the Office of Personnel Management since 2000.) SSA has no way to verify the accuracy of beneficiary's self-reports for non-covered state or local government pensions. Beneficiaries sometimes fail to report their non-covered pensions. As a result, the WEP and GPO are a source of improper payments in Social Security. SSA's Inspector General estimates that if SSA does not confirm beneficiaries' pension receipt and apply the WEP and/or GPO appropriately, it will overpay $869.9 million over the beneficiaries' lifetimes.[14]

Difficult Implementation

The WEP and GPO are difficult to administer. The rules are complex and have many possible exceptions, such as the phase-out for substantial covered earnings. As a result, the policies are labor-intensive and prone to error. SSA makes errors calculating the complex rules, particularly for beneficiaries who are dually entitled to both a worker benefit and a spousal or survivor benefit. In a 2008 audit, SSA's Inspector General estimated that SSA overpays $53.2 million annually to dually entitled beneficiaries subject to the WEP and GPO.[15] A 2011 audit on the same population found

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[14] OIG Report, *Old-Age, Survivors and Disability Insurance Benefits Affected by State or Local Government Pensions (A-13-10-10143)* November 9, 2011. http://oig.ssa.gov/sites/default/files/audit/full/pdf/A-13-10-10143.pdf

[15] OIG Report, *Dually Entitled Beneficiaries who are Subject to Government Pension Offset and the Windfall Elimination Provision (A-09-07-27010)* September 10, 2008. http://www.retirementsecurity.org/SSA-AuditReport-2008.pdf

that SSA did not correct the errors OIG had identified in 2008, and that other errors resulted in another $12.7 million each year in overpayments.[16]

The WEP and GPO rules are also difficult to convey to beneficiaries, and SSA and non-covered employers have not always communicated them clearly. Many affected beneficiaries do not understand the rules until they apply for Social Security benefits at retirement. The Social Security Protection Act of 2004 required both SSA and state and local governments to notify potentially affected beneficiaries about the WEP and GPO.[17] Starting in 2007, SSA added sections on the WEP and GPO to the Statement.

Communication problems remain. The Statement continues to provide Social Security benefit estimates based only on covered employment, with no offset for WEP or GPO. SSA cannot provide accurate estimates of WEP and GPO without information from workers about whether they are eligible for non-covered pensions, if they are married, and other factors. Potentially affected workers can use SSA's online benefit calculators to create their own estimates of WEP and GPO's effects, but many do not.

In addition, SSA's communication about the WEP and GPO could exacerbate its unpopularity. SSA's publications consistently characterize the WEP and GPO as benefit *reductions*, rather than corrections or adjustments. Research shows that framing something as a loss can influence attitudes and behaviors.[18]

BOARD RECOMMENDATIONS

Options to reform the WEP and GPO fall into two major categories.[19] The first set of changes would change the current-law rules for future beneficiaries with non-covered earnings. In this category, the Board believes the most promising approach is to replace the WEP and the GPO with proportional formulas. The second set of changes would improve data collection for current beneficiaries, who would continue to be to subject to the current law WEP and GPO. In this category, the Board believes the most promising approach is to give the IRS the authority to collect data on non-covered pensions and share it with SSA.

Proportional Formulas for Beneficiaries with Non-Covered Work

The Board recommends that Congress replace the WEP and GPO with proportional formulas to calculate offsets for beneficiaries with non-covered work who become eligible in 2017 or later. All Social Security benefits would be calculated using the same PIA formula, regardless of whether a

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[16] OIG Report, *Dually Entitled Beneficiaries Who Are Subject to the Windfall Elimination Provision and Government Pension Offset (A-09-12-11210)* January 31, 2013. http://oig.ssa.gov/sites/default/files/audit/full/pdf/A-09-12-11210.pdf

[17] Barbara A. Smith and Kenneth A. Couch, SSA Office of Retirement Policy, *The Social Security Statement: Background, Implementation, and Recent Developments*, November 2, 2014. http://www.ssa.gov/policy/docs/ssb/v74n2/v74n2p1.html#mt22

[18] Jeffrey R. Brown and Scott Weisbenner. *The Distributional Effects of the Social Security Windfall Elimination Provision*, National Bureau of Economic Research. 2012.

[19] For more information about other alternatives—mandatory Social Security coverage for state and government employees and repealing the WEP and GPO entirely—see GAO 08-248T

person's work was covered, non-covered, or a combination. Then the portion attributable to non-covered work would be subtracted.

It is now possible for SSA to implement such a proportional approach. SSA began to collect data on non-covered earnings in 1978, when Congress removed the cap on the Medicare payroll tax. It has complete non-covered earnings data starting in 1982. In order to calculate a PIA, SSA needs at least 35 years of earnings data. In 2017, SSA will have at least 35 years of earnings data--covered and non-covered--for all Americans.

Proportional Formula to Replace WEP

The Equal Treatment of Public Servants Act of 2014 has proposed replacing the WEP with such a proportional approach, which the bill terms the "public servant fairness formula."[20] First, SSA would apply the current-law PIA formula to all of the worker's earnings, in both covered and non-covered employment. Second, SSA would multiply this amount by the ratio of the worker's covered earnings to total earnings. This PIA would represent the benefit the worker had earned in covered employment, and would be the new basis for the worker's Social Security benefit. For example, if a third of a person's lifetime earnings came from covered employment, and two-thirds from non-covered employment, then he or she would receive a third of the PIA calculated with all of his or her earnings.

SSA's actuaries project that, combined with two other provisions (which together are cost neutral), using this new formula will save $2.7 billion total over 10 years and improve Social Security's 75-year solvency by 0.02% of payroll.

The proportional rules would increase benefits for some workers and reduce benefits for others. Importantly, the bill would remove two exemptions from the current-law WEP rules: workers with 30 or more years of covered earnings and workers with non-covered earnings who never vest in a non-covered pension. These workers would be subject to the new rules. The actuarial memo on the bill projects "small benefit reductions from the [new formula] for a relatively large number of workers who would not be reduced by the WEP."

The proportional approach would be equitable, using the same formula for all workers, whether in covered or non-covered employment. It would simplify a complex set of rules and allow SSA to stop relying on self-reported pension data, and instead use the non-covered earnings data that it already possesses. This would reduce overpayments and administrative complexity. The proportional approach would also be easier to communicate to beneficiaries. SSA could include accurate estimates of Social Security benefits in the Statements of workers in non-covered employment.

As noted above, the current law WEP does not affect workers who never receive a non-covered pension, but under a pure proportional approach, these workers' Social Security benefits would be reduced. On the one hand, this would be consistent with Social Security's rules for other beneficiaries: pensions are not considered as part of the formula. On the other hand, these workers' years in non-covered employment count toward neither Social Security nor a non-covered pension that was designed to replace Social Security. These workers could fall through the cracks of the retirement system. Therefore, it might be more equitable to exclude those years from the formula. An increasing number of non-covered workers fall into this category. State and local governments

[20] The bill also includes two other provisions not covered in this report.

are gradually lengthening vesting periods: employees typically must wait 5 years to vest in their pensions; about a quarter of plans require a vesting period of at least 10 years.[21]

Proportional Formula to Replace GPO

The GPO could also be replaced with a formula that uses the same rules that apply to covered workers. As in the proportional formula that could replace WEP, a worker's covered and non-covered earnings could be included in the current law PIA formula. This amount would be equivalent to the Social Security retired worker benefit the worker would have received had all of his or her work been in covered employment. As under the current law dual entitlement rule, the amount of this worker benefit (based on both covered and non-covered earnings) would be subtracted dollar for dollar from his or her Social Security spousal benefit. However, this new formula would be based solely on a worker's *earnings*, and would not consider the size of his or her non-covered *pension*, significantly simplifying and rationalizing the rules. It would not require any approximation of what proportion of the non-covered pension is intended to replace Social Security (as the current-law two-thirds offset does implicitly).

As with the proportional WEP formula, this approach would be more equitable, simpler, and easier to communicate. It would reduce some workers' benefits, compared to current law.

Improving Data to Implement the Current Law WEP and GPO

The new proportional formulas would only affect new beneficiaries, for whom SSA has complete earnings histories. Current beneficiaries would continue to be subject to the current law WEP and GPO. Without better data collection, the WEP and GPO would continue to be a source of improper payments. For example, a beneficiary retiring today who fails to report a non-covered pension could receive overpayments for decades to come.

SSA already receives data on federal workers' non-covered pension from OPM, but lacks data on state and local government workers' non-covered pensions. However, it would be impractical for SSA to gather this data from the thousands of non-covered pension systems across the country.[22] There are also potential legal challenges to SSA's use of this data to administer its programs.

The Board recommends that Congress give the IRS the authority to collect data from non-covered pension administrators and share it with SSA. The Government Accountability Office (GAO) has long recommended such an approach, which OMB estimates will save almost $3 billion over ten years.[23]

This approach has many advantages.[24] The data would be provided by the state and local pension systems, which have up-to-date, accurate, and detailed information about non-covered pensions.

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[21] Alicia H. Munnell, Jean-Pierre Aubry, Joshua Hurwitz, and Laura Quinby. *The Impact of Long Vesting Periods on State and Local Workers,* Center for Retirement Research at Boston College, November 2012. http://crr.bc.edu/briefs/the-impact-of-long-vesting-periods-on-state-and-local-workers/

[22] This approach is proposed in the President's Budget. However, GAO has found that it would be difficult to implement. GAO 98-76 Report*, Social Security: Better Payment Controls for Benefit Reduction Provisions Could Save Millions*, April 1998, http://www.gao.gov/assets/230/225406.pdf

[23] GAO estimates $2.4-$2.9 billion savings within 10 years. GAO-11-318SP Report*, Opportunities to Reduce Potential Duplication in Government Programs, Save Tax Dollars, and Enhance Revenue*, March 2011, http://www.gao.gov/assets/320/315920.pdf

[24] GAO 98-76 Report*, Social Security: Better Payment Controls for Benefit Reduction Provisions Could Save Millions*, April 1998, http://www.gao.gov/assets/230/225406.pdf

This information would be reported uniformly to SSA from a single source, the IRS, rather than the thousands of non-covered pension systems across the country. Collecting the data would require only a small change to a single form, IRS Form 1099R. IRS officials told GAO that such a change would minimally affect their processing costs. Similarly, pension managers said that reporting the information would require only minor programming changes. Finally, SSA is already permitted to access 1099R records for program administration, eliminating a possible legal hurdle.

Giving SSA access to more information on non-covered pensions would reduce improper payments and simplify administration. However, it would not address the equity and complexity concerns raised by the WEP and GPO's arbitrary formulas. Only the proportional formulas endorsed by the Board could do that, but these formulas can be applied only to those who retire starting in 2017.

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MEMORANDUM

To:	Social Security Advisory Board
Subject:	Daniel Hatcher's *Foster Children Paying for Foster Care*
Date:	December 11, 2014

The Board is writing a report on the SSI program for children with a special emphasis on children in foster care. The January Board meeting will focus on the SSI program and related topics. Daniel Hatcher, a professor at the University of Baltimore, will attend the meeting to discuss issues and recommendations related to the SSI program for children in foster care.

In Daniel Hatcher's law review *Foster Children Paying for Foster Care*, he examines the state's use of foster children's Social Security benefits to fund foster care agencies. He explains that private companies such as MAXIMUS, Inc. have developed revenue maximization strategies for states to use foster care children's SSI and survivor benefits as a state funding source. MAXIMUS helps foster care agencies apply to be representative payees for children who are eligible to receive SSI in order to access the children's Social Security benefits for state funding. States have saved $12 million from the practice and MAXIMUS takes a 12.5% cut for its services.

SSA is required to find suitable representative payees, usually a parent or guardian, for children receiving SSI. According to SSA rules, state agencies are the least preferred representative payee for Social Security recipients. When one applicant files to be the representative payee for multiple beneficiaries, SSA uses a computer programming shortcut function called the "kiddie loop" to process applications faster and virtually automatically. Hatcher argues that the "kiddie loop" allows state agencies to easily become representative payees for large groups of foster children without further review for more suitable options.

The Supreme Court decision *Washington State Department of Social and Health Services v. Guardianship Estate of Keffeler* upheld the state's use of foster children's Social Security benefits to reimburse state costs. The Supreme Court argued that state agencies would have less of an incentive to act as representative payees for children in foster care if they could not reimburse themselves. Hatcher counters that many state agencies fulfill the role as representative payee for disabled adults without the financial incentive of obtaining their benefits. Non-profit organizations that volunteer to be representative payees for adults could assist children as well. Regardless, it is Social Security's responsibility to find a representative payee for the children even if a state agency declines to do so.

The Supreme Court also argued that foster children's Social Security benefits provide a much needed source of revenue to foster care agencies. If the states could not use foster children's Social Security benefits for funding, all foster care children may be harmed. Hatcher argues that individual foster children should not be responsible for funding the foster care system as a whole. He continues to criticize the Supreme Court's decision throughout the law review and believes that using foster children's Social Security benefits to reimburse the state is unlawful and does not fulfill the best interests of the children as SSA rules require. Rather than reimbursing the state, foster care children could use their Social Security benefits to provide more specialized assistance or prepare for independent living. Hatcher recommends restricting state agencies from reimbursing state costs with children's Social Security benefits and also suggests providing services to help children who receive SSI transition more easily into independence.

TO:	Social Security Advisory Board
FROM:	Daniel L. Hatcher, University of Baltimore
DATE:	January 5, 2014
RE:	Foster Children's Social Security Benefits

This information is provided as additional background for my presentation/discussion before the Social Security Advisory Board on January 8, 2014. Thank you for this opportunity to discuss the important issue of how state agencies are using foster children's Social Security benefits. *As this document contains research conducted by the author not yet made public, please do not distribute without permission from the author*.

INTRO

Although representative payees for foster children are fiduciaries, many foster care agencies that act as payees are sidestepping their fiduciary responsibilities. The crux of the fiduciary role is not complicated: payees should exercise discretion to determine how to use benefits in a way that best serves their beneficiaries' individualized needs. The applicable guide is always the best interests of the beneficiaries. And payees are never supposed to prioritize their interests over the interests of their beneficiaries.

Despite the obligations, foster care agencies developed a work-around. To help clarify how a payee might serve a beneficiary's best interests, a regulation explains that "current maintenance" needs (costs "incurred in obtaining food, shelter, clothing, medical care, and personal comfort items.") can meet the requirement. If a child has unmet needs for food or housing or other basic needs, common sense would dictate that using the child's money to meet those needs is surely in the child's best interests. The agencies have relied on the "current maintenance" clause to pursue large-scale revenue maximization strategies, using children's Social Security benefits to pay for foster care costs that the states are already obligated to pay. And the agencies increasingly rely on revenue maximization consultants to turn children into a revenue source.

The agencies' reliance on the "current maintenance" clause ignores the over aching intent that the children's funds are supposed to be used for the children's unmet needs. Representative payees are supposed to exercise discretion to decide what is best for each individual child, not employ statewide automatic processes to use the children's money for the benefit of the state. The following sections provide a window into the activities of revenue consultants, provides brief analysis regarding policy concerns regarding the use of foster children's funds, and addresses unanswered legal concerns.

REVENUE MAXIMIZATION STRATEGIES

Foster care agencies increasingly hire private contractors to help obtain children's Social Security benefits. I sent several state freedom of information act requests seeking information regarding such contracts, and the resulting information shows how children are being used. Below is a small sampling of the information obtained:

1. Kentucky

- *Contractors fight to help Kentucky use foster children as revenue.* In proposals to the Kentucky human services agency in 2008, F.M. Blake, A Division of Public Consulting Group, had the initial contract and described its success: "this project is hugely successful for the State, with annual federal revenue exceeding $6,391,980…"[i] In its competing proposal, McDowell, Stromatt & Associates argued: "The numbers provided in the RFP, that there are 855 children in the care of the Cabinet resulting in nearly 6.4 million in revenue… you may be missing out on an additional 277 claims providing SSI benefits resulting in an additional $1.7 million annually in revenue to the State."[ii] Kentucky changed contractors in 2008 to McDowell. Then in 2010, F.M. Blake/PCG fought to take the contract back—explaining how it's all about the money:

  > In 2007… while we were serving as the vendor, the number of foster children receiving SSI totaled 855…. as of April 2010 there were only 642 children receiving SSI, a decrease of 25% or 213 children. In 2007 the amount of revenue received by Kentucky for children eligible for SSI totaled $6,390,000 annually as a result of PCG's efforts. By 2010 this revenue stream had dropped to $5,143,968, a 19% decrease for an annual loss of $1,246,032.[iii]

- *"Insider's view"* The proposal by F.M. Blake/PCG explains how the company division specializing in obtaining children's social security benefits was "[f]ounded by former SSA district manager Fred Blake…"[iv] Further, the proposal notes that: "Many of our key staff are former Social Security employees who have hundreds of years of combined experience working within SSA . . . Our "insider's" view of the Social Security process, coupled with our comprehensive knowledge of the Social Security rules and regulations, allows us to work closely with all levels of SSA."[v]

- *"Special operating procedure."* F.M. Blake/PCG explained that the company arranged its own special procedures with the Social Security Administration in order to obtain children's funds in a faster time frame: "Our experience and relationship with them has permitted us to establish special operating procedures that win more cases in the shortest possible time frames."[vi]

- *Data analytics, algorithms, prioritization, and dissection.* F.M. Blake/PCG sets out a complex strategy to maximize state revenue via disabled foster children: "We use predictive analytics – statistical/mathematical methods and data mining techniques to uncover interesting patterns and relationships within data – to help us identify foster children who are likely to be eligible for SSI."[vii] In a description of "Data Acquisition and Mining" PCG explains it "administers a dimensional database architecture to ensure optimal performance for users… PCG's [sic] uses this platform to conduct a proprietary analysis that employs a complex set of algorithms and predictive models to target foster children with a high probability for SSI entitlement."[viii] Then, the company describes its system of "Identification and Prioritization of Likely Eligibles" in terms of dissecting the foster care population:

> PCG prioritizes members for outreach on the bases of probability of entitlement and expediency of enrollment . . . Based on the data analysis, PCG will assign each identified foster child with a risk score, a key facet of prioritizing the targeted applicants… Implementation of the data analytics involves an initial dissection of the foster care population according to disabling condition. We categorize each member in terms of likelihood of enrollment (High, Moderate, Low) based on the output of the predictive modeling analysis.[ix]

2. Iowa

- *Children as "units."* A cost proposal was submitted by MAXIMUS to the Iowa Department of Human Services regarding a proposal to help the state obtain more foster children's Social Security benefits. The pricing structure treats children as "units" with associated unit costs to be charged by MAXIMUS for services rendered in helping Iowa obtain the children's resources.[x]

- *Converting foster children's assets into $16.2 million in state revenue.* The opening letter of the technical proposal from MAXIMUS explains how in the prior 4 years of the MAXIMUS contract to obtain foster children's Social Security benefits, "approximately 16.2 million has been generated for the State of Iowa."[xi]

3. Maryland

- *Goal to increase percentage of disabled children from 2% to up to 20% and obtain up to $6 million of the children's funds.* The Maryland human services agency hired MAXIMUS to do an assessment of how to increase efforts to obtain foster children's social security benefits: "designed to promote the identification of and subsequent acquisition of all SSI/SSDI benefits for all qualifying foster care children."[xii] The MAXIMUS assessment indicates a suggested goal to increase the number of Maryland foster children determined disabled for Social Security benefits from the current 2% to 15-20%, and plans to obtain up to $6 million or more annually in resulting children's benefits for the state.[xiii]

- *Foster children as "revenue generating mechanism."* In a section titled "Current and Potential Revenue Acquisition," the report describes foster children as a "revenue generating mechanism."[xiv]

POLICY ISSUES

1. Cash-Strapped Agencies/States Taking Funds from Their Beneficiaries

Foster care agencies are underfunded. States are also cash-strapped, and foster children's Social Security benefits are often used to save state revenue.

On September 11th, 2012, the Executive Director of the Maryland Social Services Administration wrote a memo asking leaders of the state's local foster care agencies to work with MAXIMUS and explaining how the revenue strategy is particularly important when children are ineligible for federal IV-E foster funds and thus are a greater drain on the state general fund. By taking foster children's federally funded SSI benefits, less state general fund dollars are required:

> Maximum attainment of SSI funds is important, particularly, for children who are determined to be ineligible for Title IV-E funding. The services provided to ineligible IV-E children are currently being paid for from the state general fund. Our state general funds, as is the situation in most other states, are experiencing great pressure to fund all of the services our clients require. Therefore, it is critical that we do everything we can to ensure we are appropriately maximizing every federal dollar possible.[xv]

2. *Taking Resources from Foster Children to Help Foster Children?*

States and their agencies argue that because they are cash-strapped it is beneficial for all foster children to take Social Security benefits from those who are eligible. Although individual children are deprived of their resources, the states argue that more resources are available for all foster children if children's benefits are used to reimburse foster care costs.

However, the fact that foster care agencies are underfunded does not support a policy of taking Social Security benefits belonging to foster children to increase foster care agency revenue. First, the revenue strategy often does not result in more revenue for foster care agencies but rather in savings or revenue to the states. The children's benefits are often routed directly to state (or county) general coffers, or to agency general revenue while state funding is simultaneously reduced for the agency.

Further, when foster care agencies take children's funds, they are forcing children to pay for their own foster care costs when states are already legally obligated to pay those costs. For example, a 2008 contract in Kentucky for a company to help obtain foster children's Social Security benefits first explains how the state law requires the agency "to provide safety, permanency and well being to abused/neglected children."[xvi] However, because "[t]he cost of services to support these efforts is extraordinary," the state takes funds from the foster children to pay for the cost of care: "To control the cost to the State, the Cabinet seeks every opportunity to offset the use of state general dollars by drawing federal monies" including the contract's purpose to obtain foster children's Social Security benefits.[xvii]

Also, even if the Social Security benefits were actually used to increase foster care agency revenue, foster children as a class would receive little benefit. The Social Security benefits taken from foster children amount to less than one percent of the total funds reported by states for foster care agency costs, and much of the money would simply be absorbed and lost into agency administrative costs. And while foster children as a class would receive little benefit, individual foster children are severely harmed when their Social Security benefits are diverted from their use. Countless uses for the funds exist that could provide significant benefit to these children, whether current specialized unmet needs while in foster care (and not already required to be paid for by the state) or in plans to strategically conserve and use the funds as the children age out of foster care and struggle for economic independence.

3. Representative Payee of Last Resort?

Foster care agencies have made an inappropriate argument that if they can no longer apply children's Social Security benefits to pay state costs, then the loss of financial incentive will cause them to stop serving as representative payees. Stated otherwise, the agencies will not take on the duty of protecting the children's money if the agencies are not allowed to take the children's money.

The reasoning is nonsensical, concerning, and also entirely inaccurate because foster care agencies are not the representative payee of last resort. The Social Security Administration is required to conduct an investigation to find the most preferred person or organization as representative payee. State agencies are the least preferred. However, the agencies are chosen as the payees for foster children by an almost automatic process.

Many agencies ask their revenue contractors to help the agency become representative payee for every child in foster care. For example, documents from Iowa explain that the agency "workers need to inform MAXIMUS of a payee change for every youth receiving SSI or SSDI Benefits when they enter care so we can make DHS the payee."[xviii] Similarly, a Public Consulting Group assessment report in Georgia explained "DFCS should be made rep payee for any child in custody who is eligible to receive SSI/SSDI benefits."[xix] On a list of action items, the company notes that the agency is not yet the representative payee for all foster children. The corrective action suggested is to "[c]orrect rep payee status for all [foster children] for whom DFCS should be receiving SSI payments."[xx] And despite state agencies being the least preferred choice, PCG describes the "Implementation Difficulty" of its task of ensuring the agency as representative payee for all foster children as "low."[xxi]

Then in Nebraska, MAXIMUS proposed automating the process for the state agency to become representative payee to an extent that the foster care agency was not even part of the process. In an internal email, a Unit Administrator at the Nebraska Department of Health and Human Services (DHHS) explains:

> I am getting information from Travis [at the Social Security Administration] about what has to happen so that Social Security will accept the rep payee applications directly from Maximus, without them coming to DHHS. Maximus will send us a list, so we can monitor if we need to, but we don't need the step of our signing… When Maximus has had a question on why an application remained pending, [Maximus] has had to contact DHHS… who then looked on SDX for information or contacted Social Security. Maximus would welcome being able to talk directly to with Social Security to get these questions answered, contacting

us only when there are issues.[xxii]

Further, as the agencies seek to become the representative payee for all foster children, the Social Security Administration is also not meeting its requirement to conduct an investigation to look for more suitable payees. Instead of individualized investigations, the SSA created a computer programing tool it calls the "kiddie loop" in order to process agency applications to become the children's representative payees in batches.[xxiii]

Rather than only serving as payee for children when no other choice exists, foster care agencies push to the head of the line. In most cases, there are likely more preferred choices that already exist at the time of application, and more options that could easily be developed to better serve the children's best interests. Federal regulations explain that the list of possible representative payees is flexible and that the primary concern is "to select the payee who will best serve the beneficiary's interest."[xxiv] The Social Security Administration's internal guidelines (POMS) suggest that the Administration should consider other possible payees not explicitly listed in the regulation preferences. Several other possibilities exist. Some government agencies and non-profit organizations have already created volunteer representative payee programs, recruiting volunteers to serve as representative payees for adult beneficiaries. Such volunteer programs could also be created for foster children, such as encouraging retired individuals to serve as representative payees for the children—thereby providing a needed service to help children manage and benefit from their own money, and to establish mentoring relationships between the elderly individuals and foster children. Similarly, accountants and lawyers might be interested in providing the service as a way of providing pro bono help to vulnerable children. Also, many organizations already provide representative payee services for a small fee.

From the view of foster children, any other person or organization would likely be preferable to foster care agencies. The agencies are taking the children's funds whereas non-agency representative payees cannot be forced to spend the money to repay the foster care costs. Even having no payee would be better for foster children. The Social Security Administration is obligated to find suitable representative payees, and that duty does not end if a state agency declines the responsibility.[xxv] Even if there is no other representative payee available, the child's eligibility does not end. Rather, the Social Security payments would be conserved and then paid out once a suitable representative payee is chosen—or to the child directly once the child reaches adulthood.

Finally, even if foster care agencies were the representative payee of last resort, should we really conclude that agencies should take children's resources because such financial incentive encourages them to take on the role of managing the children's resources—that if bribery works, it must be ok? In addition to obvious concerns with such a conclusion, the reasoning would lead to nonsensical results: that in order to protect against the concern that children may not receive any social security benefits, we should let foster care agencies take all of the children's Social Security benefits. The reasoning ignores the fiduciary responsibilities of foster care agencies inherent and their reason for existence—to help and protect the best interests of foster children.

4. Maximizing Children Determined Disabled to Increase State Revenue

Applying children's disability benefits to state revenue is a strong incentive for foster care agencies to maximize the number of children determined disabled. Agencies have indicated that if they can no longer take the children's SSI benefits then the agencies will not care about helping the children become eligible for SSI in the first place.

Again, the financial incentive does not lead to the conclusion that taking assets from foster children is good public policy. Without the incentive, multiple federal laws already require health screening and treatment services for foster children.

Rather than helping foster children receive disability benefits in order to best meet the foster children's needs, foster care agencies are trying to maximize the number of foster children determined disabled in order to maximize agency and state revenue. The children, regardless of age, are not even informed about the application or how the money is used. Children are literally processed and ranked based on how much money they can bring in to the state, rather than on the disabilities and needs of the children. Even if a foster child is the most disabled and in need of services, the child will not be prioritized to seek disability benefits if doing so does not bring in more state revenue.

For example, when a child is not eligible for federal IV-E funds, states must use more state funds to pay the foster care costs. Revenue maximization contractors therefore suggest ranking foster children to seek disability benefits, first targeting children who are not IV-E eligible. Moreover, SSI benefits and IV-E benefits count each other—meaning if a state elects to receive Title IV-E benefits in the name of a particular child, the child's SSI benefits (if eligible) will be reduced dollar for dollar. So states and their private revenue contractors develop detailed strategies to determine which funding stream to pick when children are eligible for both programs.

In a proposal obtained from the Maryland public records request, MAXIMUS explains how every decision should be about what brings in more government revenue—and suggests the following ranking of foster children:

> The MAXIMUS strategy is simple [sic] maximize revenue to the Department by identifying the greatest stream in each case… To ensure the Department gets the greatest positive financial impact from the SSI advocacy operations, the MAXIMUS team evaluates all foster children who are ineligible for Title IV-E benefits first…. After reviewing children who are ineligible for Title IV-E benefits, children who are eligible for Title IV-E benefits are reviewed… Again, to maximize revenue gain, children are reviewed in order of receiving the least Title IV-E revenue to the greatest… [xxvi]

The MAXIMUS strategy is alarming because disabled foster children may be passed over in having their disabilities recognized simply because they do not bring in more money to the state.

5. Children's Resource Limit

Another policy argument made by states is that foster children have a $2,000 asset limit for SSI eligibility, meaning that if more than $2,000 is conserved then their eligibility for benefits could end. However, numerous options exist to address the limitation while still using the children's money as intended—to help the children. In fact, this is exactly why a representative payee is appointed, to manage the children's funds in a fiduciary manner, including keeping an eye on resource limitations and making decisions in the children's best interests.

If a representative payee exercises true fiduciary discretion, an unending list of uses for the money could provide real benefit to the disabled foster children. In addition to spending the funds on current unmet needs of the children, several exceptions exist to the resource limitation. For example, exceptions to the resource limitation include a special needs trust, ownership interest in a home, purchasing an automobile, and buying household items and personal effects. Further, the Social Security Administration even has a specific program called the Plan for Achieving Self Support (PASS) in which the funds can be conserved under a plan that is exempted from the resource limitations. The PASS program could be used as a wonderful planning and resource tool, using the children's benefit payments to develop a resource savings plan that includes participation from the children—and thus could also help encourage financial literacy and inspire the children to be engaged in the process of planning for their future.

LEGAL CONCERNS

The revenue strategy of agencies taking foster children's Social Security benefits also raises many legal concerns. When children are placed in foster care, states pay a monthly rate to the foster care providers. States are legally obligated to pay this cost of foster care, and the Supreme Court recognized that children are not obligated to pay for their own care—that the foster care payments are made "without strings attached," in that children do not owe a debt to repay the state.[xxvii] Nonetheless, a rationale used by states to take children's social security benefits, as described above, is that the state should be able to pay itself back for its costs of providing foster care to the children.

The issue of a foster care agency taking a child's Social Security benefits was addressed by the U.S. Supreme Court in 2003 in *Washington State Dep't of Social & Health Services v. Guardianship Estate of Keffeler*. However, the Court only addressed whether a federal law that prohibits creditors from attaching benefits (the anti-attachment provision of the Social Security Act) applied the practice used by foster care agencies. The Court ruled that the provision did not apply to the agencies because they were not creditors of foster children, because no law "provides that [children] are liable to repay the department for the costs of their care…"[xxviii] The Supreme Court also recognized that the several other legal questions regarding the practice remained undecided, including the issues discussed below.

1. Foster Care Agencies Subverting the Constitutional Rights of Children

Several constitutional concerns arise when foster care agencies use foster children's funds for the benefit of the state rather than for the children, including equal protection violations and unconstitutional takings of a children's property. Perhaps the most striking constitutional concern stems from states disavowing foster children's due process rights.

Agencies hire private contractors to help develop statewide efforts to obtain foster children's funds. The children are plugged into strategies of data analytics, algorithms, prioritization, and dissection—as described above—and then those children who are ranked as the best chance of providing income to the state are used to apply for social security benefits. No one tells the children or their advocates. The foster care agencies use the same private contractors to facilitate a process of becoming representative payee for every foster child, arranging a virtually automatic process although the agencies are supposed to be the least preferred choice. Again, no one tells the children, so they are denied the ability to suggest someone else to manage their money. Then, month after month the agencies apply the children's benefits into state coffers.

Agencies have argued the children do not deserve due process rights. In Maryland litigation, the Maryland foster care agency argued the child was not entitled to due process rights, and also argued his lawsuit was time-barred. Although the boy had no notice whatsoever of the agencies actions, the agency argued he had to file his claim within one year of when the agency became his representative payee and started taking his funds—while still a child in foster care.

In fact, federal law does require notice to be sent from the Social Security Administration when someone applies to become representative payee for an individual's benefits, so the individual has an opportunity to object or suggest someone else. However, for notices regarding state foster care agencies applying to become representative payees for children, the notices of the agencies applications are sent back to the agencies themselves since they are the children's legal guardians.

One state court has acted to protect children's due process rights as foster care agencies seek to obtain their social security funds. In the *In re Ryan* case in Maryland, the Maryland Court of Appeals concluded that the foster care agency violated the boy's due process rights. The court ruled that the agency must begin providing notice to foster children and their lawyers when the agencies apply to become payee and they must provide regular accountings to the children and their lawyers of how the money is used.[xxix]

Hopefully, other state courts will follow the lead of the Maryland Court of Appeals. But foster care agencies will likely continue to fight foster children's rights because the denial of children's due process rights lies at the foundation of the states' revenue strategies. Agencies depend on the automatic process established with their revenue maximization contractors of establishing the foster care agencies as representative payees, so they can apply the children's money to state costs. The recognition of children's constitutional rights could thus throw a wrench into the process states have established with their private contractors.

2. Foster Care Agencies Shirking their Duty to Pay

States make a simple argument to obtain children's resources: the agencies should be able to use the foster children's social security benefits to repay the "current maintenance" costs of children's care. However, the argument ignores the equally simple legal and moral fact that states—not foster care children—are obligated to provide and pay for foster care. Every state in the U.S. participates in the Title IV-E federal foster care assistance program, which provides federal matching grants to improve states' ability to provide foster care services. A state's matching share of the costs of children's care must be paid using state funds, and the state payments cannot be made up of other federal funds, such as social security benefits.

More specifically, federal law requires that states participating under Title IV-E "shall make foster care maintenance payments on behalf of each child."[xxx] And the foster care maintenance payments must include "payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation . . ."[xxxi] Thus, states are legally required to pay the current maintenance costs that they claim children must pay. In fact, courts have even ruled that foster children—as the beneficiaries of this federal mandate—have privately enforceable rights to force states to pay the foster care maintenance payments on their behalf.[xxxii] If foster children have rights to force states to pay their foster care maintenance payments, it would be nonsensical for the state to have the countervailing ability to force children to repay those same costs of care.

The Social Security Administration's Office of Inspector General (OIG) explained how states receiving federal Title IV-E foster care payments are prohibited from applying children's social security benefits to the cost of foster care. The Title IV-E payments are intended to match states' own spending on children's foster care, so states cannot use other federal funds like social security survivor benefits to pay or repay the state share of costs. An audit by the OIG of the Hawaii foster care agency explains:

> Contrary to Federal regulations, HI-DHS [Hawaii Department of Human Services] used OASDI benefits to partially reimburse it-self for the foster care payments it disbursed to the children's providers. HI-DHS was unaware that it could not reimburse itself for the State's share of Title IV-E costs from a child's OASDI benefits . . . . Federal regulations prohibit HI-DHS from using a child's OASDI benefits to reimburse itself for the State's share of Title IV-E costs. To receive Federal Title IV-E benefits, HI-DHS must pay its share of the foster care costs with State funds. *Therefore, the OASDI benefits for a child who also receives Title IV-E benefits must be saved or used for a child's other needs.*[xxxiii]

But despite the mandate, states continue to require children to reimburse foster care costs that states are obligated to pay. And unfortunately, courts have thus far failed to address the fact that foster care agencies have a legal obligation to pay foster care costs, and children do not.

3. Foster Care Agencies Breaching Their Fiduciary Obligations

It is striking that child welfare agencies are engaged in this revenue strategy. These agencies are guardians of our nation's most vulnerable children. But rather than using their guardianship power to best serve each child's individualized needs, the agencies are hiring revenue maximization consultants to sort out the children by revenue potential, maximizing the number of children determined disabled in order to obtain their disability benefits, and taking the last remaining assets left to children from their deceased parents. The practices conflict with two different types of fiduciary obligations the foster care agencies owe to children, under federal law and state law.

First, foster care agencies are created under state laws to protect the interests of abused and neglected children. This duty creates a fiduciary obligation owed by state foster care agencies to the children. As a fiduciary, an agency must act in the children's best interests and cannot use its fiduciary power to serve itself over the children. Thus, when a foster care agency takes a child's property for a self-serving purpose, the agency's fiduciary obligation under state law is violated.

Second, when foster care agencies become representative payee for children's Social Security benefits, the agencies take on an additional fiduciary obligation under federal law. The Social Security Act requires representative payees to use Social Security benefits in a manner that they determine is in the beneficiary's best interest.

The agencies rely on a federal regulation that indicates using a beneficiaries funds for current maintenance needs can be in the beneficiaries best interests:

> We will consider that payments we certify to a representative payee have been used for the use and benefit of the beneficiary if they are used for the beneficiary's current maintenance. Current maintenance includes cost incurred in obtaining food, shelter, clothing, medical care, and personal comfort items.[xxxiv]

Foster care agencies have argued that because this regulation recognizes the use of Social Security benefits for current maintenance needs, the agencies should be able to take foster children's benefits to pay back the costs of foster care. However, this argument ignores the fact that states are already legally required to provide and pay for those current maintenance costs for foster children, as discussed above. Also, other federal regulation clarifies that if the current maintenance needs are already met, the children's Social Security benefits should be conserved.

The agencies' argument ignores the core concept of fiduciary discretion. When promulgating the federal regulations relied on by the foster care agencies, the Social Security Administration (SSA) recognized: "[a]lthough we provide guidelines as to what is in the beneficiary's best interests, there is a considerable amount of discretion provided to the payee."[xxxv] Thus, additional SSA guidance encourages representative payees to consider both "current needs and reasonably foreseeable needs," and to specifically consider conserving the benefits for children who may need assistance with the transition to independence.[xxxvi] The SSA also directs its staff to ensure that "the payee understands the fiduciary nature of the relationship, and that benefits belong to the beneficiary and are not the property of the payee."[xxxvii]

Further, the SSA also explains that organizational representative payees (like foster care agencies) serving as fiduciaries for multiple beneficiaries must consider the best interests of each individual beneficiary. An SSA training manual for organizational representative payees directs that "[t]he most important duty of all payees is to know the needs of each beneficiary and to use the benefits in the best interest of the beneficiary."[xxxviii] The guidance directs that organizational representative payees should collaborate with each beneficiary to decide how to best use the beneficiary's funds. The guidance even provides examples of how a payee should involve each beneficiary in making individualized decisions:

- Meet regularly with the beneficiary (preferably face-to-face);

- Establish a budget, discuss it with the beneficiary, and involve him/her as much as possible in financial decisions;

- Explain Social Security and/or SSI [Supplemental Security Income] payments and the beneficiary's expenses to him or her. . . [xxxix]

In addition to the direction from the Social Security Administration, the federal Consumer Financial Protection Bureau (CFPB) also provides common sense direction to representative payees. Using a hypothetical individual named Roberto receiving Social Security benefits but needing a representative payee, the guidance explains:

> Since you have been named to manage money or property for someone else, you are a fiduciary. The law requires you to manage Roberto's money for HIS benefit, not yours.[xl]

Further, the CFPB guidance also explains how the first duty of Roberto's representative payees is to act only in Roberto's best interests: "Because you are dealing with Roberto's money, your duty is to make decisions that are best for him. This means you must ignore your own interests and needs . . ."[xli]

The many possibilities for how to best use a child's benefits and the changing circumstances of foster children are precisely why a representative payee is appointed, to weigh all the options and make individualized decisions to best meet the child's evolving needs. Managing Social Security benefits for the individualized best interests of abused and neglected children is difficult, but such difficulty is precisely why a fiduciary is appointed. As the SSA explains:

> Organizations really do make a difference when they act as payees . . . because they provide a critical service to one of the most vulnerable segments of our population. Being a representative payee can be very demanding, but it can also be very rewarding. Representative payees can make a difference.[xlii]

However, contrary to the federal guidance, foster care agencies suggest a representative payee system that amounts to automatic cost reimbursement—where the agencies do not apply fiduciary discretion but automatically apply the children's funds to repay the costs of their own care. In such a system, appointing a payee would be meaningless and a waste of administrative costs – because the funds could rather just be sent straight to the state coffers. Such is not what is intended for representative payees.

[i] F.M. Blake, A Division of Public Consulting Group, Inc., Cost Proposal, FY09 & FY10 SSI Screening and Determinations for Children, Commonwealth of Kentucky, April 28, 2008, 3 (on file with author).

[ii] McDowell, Stromatt & Associates, Technical Proposal, FY09 & FY10 DCBS-SSI Eligibility for Children, May 3, 2008, 8 (on file with author).

[iii] Public Consulting Group, Technical Proposal, SSI Eligibility Determination, Kentucky Dept. for Community Based Services, May 26, 2010, 31 (on file with author).

[iv] F.M. Blake, A Division of Public Consulting Group, Inc., Technical Proposal, FY09 & FY10 SSI Screening and Determinations for Children, Commonwealth of Kentucky, April 28, 2008, 11 (on file with author).

[v] Ibid., 15.

[vi] Ibid., 16.

[vii] Ibid., Technical Proposal, 83 - 84.

[viii] Ibid., 84.

[ix] Ibid.

[x] MAXIMUS, Inc., Bid Proposal for Iowa Department of human Services SSI Advocacy Project, § K Cost Proposal, Feb. 12, 2009, 3 (on file with author).

[xi] MAXIMUS, Inc., Bid Proposal for Iowa Department of human Services SSI Advocacy Project, Letter Accompanying Technical Proposal, Feb. 12, 2009, 2 (on file with author).

[xii] MAXIMUS, SSI/SSDI Assessment Report, Maryland Dept. of Human Resources, Feb. 22, 2013, 3 (on file with author).

[xiii] Ibid., 5.

[xiv] Maryland Department of Human Resources, *MAXIMUS Benefits & Eligibility Advocacy Services,* SSI/SSDI Assessment Report, February 2013 (on file with author).

[xv] Memorandum from Carnitra D. White, Executive Director, Maryland Social Services Administration, to directors of local offices, regarding Supplemental Security Income (SSI) Project, Sept. 11, 2012 (on file with author).

[xvi] Commonwealth of Kentucky, Contract with McDowell, Stromatt & Associates, SSI Eligibility Determinations for Children, June 24, 2008, 9 (on file with author)

[xvii] Ibid.

[xviii] MAXIMUS, Inc., MAXIMUS SSI Advocacy, Important Facts for Youth in Foster Care (on file with the author).

[xix] Public Consulting Group, SSI/SSDI Assessment Report, Division of Family and Children's Services, Georgia Department of Human Services, Nov. 3, 2009 at 13 (on file with author).

[xx] Public Consulting Group, GA DFCS SSI Assessment – Site Visit Summary, Thursday, Sept. 24, 2009 (on file with author).

[xxi] Ibid.

[xxii] Margaret Bitz, Unit Administrator, Nebraska Department of Health and Human Services, internal email regarding SSI, October 11, 2012 (on file with author).

[xxiii] Program Operations Manual System (POMS), "GN 00502.110 Taking Applications in the RPS, TN 35 (07-08): B3," Social Security Administration, http://policy.ssa.gov/poms.nsf/ lnx/0200502110 (accessed October 23, 2014) (hereinafter

"POMS").

[xxiv] Ibid. §§ 404.2021(c), 416.621(c).

[xxv] What happens to your monthly benefits while we are finding a suitable representative payee for you?, *Code of Federal Regulations*, title 20, sec. 404.2011 (2005).

[xxvi] MAXIMUS, Technical Proposal in response to Maryland Department of Human Resources, Social Services Administration, Small Procurement Solicitation for Consultation Services, DHR Agency Control No. SSA/CS 13-001 S, June 22, 2012, 5 (on file with author).

[xxvii] *Wash. State Dep't of Soc. & Health Servs. v. Guardianship Estate of Keffeler*, 537 U.S. 371, 378, 382 (2003).

[xxviii] *Washington State Dep't of Social & Health Services v. Guardianship Estate of Keffeler,* 537 U.S. 371 (2003).

[xxix] *In Re Ryan W*., 434 Md. 577 (2013) (The author of this book was co-counsel for amici supporting the foster child's appeal).

[xxx] *Social Security Act, U.S. Code* 42 (2006), § 672(a)(1).

[xxxi] *Social Security Act, U.S. Code* 42 (2006), § 675(4)(A).

[xxxii] *Connor B. v. Patrick*, 771 F. Supp. 2d 142 (D. Mass. 2011).

[xxxiii] Soc. Sec. Admin., Office of the Inspector General, *Hawaii De'.t Of Human Services—An Organicational Representative Payee For The Social Security Administration*, A-09-08-28045 (2008), 5, (emphasis added) (citing *Code of Federal Regulations*, title 45, sec. 92.24 (2012)), http://oig.ssa.gov/sites/default/files/audit/full/html/A-09-08-28045.html (accessed October 23, 2014).

[xxxiv] Use of Benefit Payments, *Code of Federal Regulations*, title 20, sec. 404.2040(a) (2012).

[xxxv] 47 Fed. Reg. 30,468, 30,470 (July 14, 1982).

[xxxvi] Social Security Program Operation Manual System (POMS) GN 00602.030.

[xxxvii] Program Operations Manual System (POMS), "§GN 00602.001 Use of Benefits," Social Security Administration, https://secure.ssa.gov/apps10/poms.nsf/lnx/0200602001 (site now discontinued).

[xxxviii] Social Security Administration, Training Organizational Representative Payees, Unit 4, http://www.ssa.gov/payee/LessonPlan-2005-2.htm (accessed November 29, 2014)

[xxxix] Ibid. Unit 4.

[xl] Consumer Financial Protection Bureau, Managing Someone Else's Money: Help For Representative Payees and VA Fiduciaries, Oct. 2013, http://files.consumerfinance.gov/f/201310_cfpb_lay_fiduciary_guides_representative.pdf (accessed November 29, 2014).

[xli] Ibid.

[xlii] Social Security Administration, Representative Payee Program Fact Sheet, http://www.ssa.gov/payee/factsheetengl.htm (accessed November 29, 2014).

MEMORANDUM

To:	Social Security Advisory Board
Subject:	Biography of Daniel L. Hatcher, Professor of Law, University of Baltimore, Civil Advocacy Clinic
Date:	January 8, 2015

Daniel L. Hatcher is a professor of law in the University of Baltimore's Civil Advocacy Clinic. Before joining the faculty in 2004, Hatcher was in a statewide position with the Maryland Legal Aid Bureau, serving as the assistant director of advocacy for public benefits and economic stability. He previously worked as a staff attorney for Legal Aid in the Baltimore Child Advocacy Unit representing abused and neglected children, and in the Metropolitan Maryland office representing clients in public benefits, housing, consumer and family law issues. He was also a senior staff attorney with the Children's Defense Fund in Washington, D.C., where he worked on policy development and legislative advocacy in areas affecting child and family poverty. Hatcher has testified before Congress, the Maryland General Assembly and in other governmental proceedings regarding several issues affecting children and low-income individuals and families.

Hatcher's recent scholarship has addressed the conflicts between state agencies' revenue maximization strategies and the agencies' core missions to serve low-income children and families – including the practice of state foster care agencies converting foster children's Social Security benefits into state revenue, welfare cost recovery policies in the TANF program, and foster care cost recovery through child support enforcement. His scholarship has attracted national attention, including significant press coverage, congressional testimony, citation in multiple Congressional Research Service reports, requests to draft legislation, and continued participation in national policy reform efforts.

SSI/SSDI Assessment Report

Maryland Department of Human Resources

MAXIMUS Benefits & Eligibility Advocacy Services

2/22/2013

Assessment, findings, and recommendations for enhancement of the SSI/SSDI advocacy process for children in foster care with the Maryland Department of Human Resources.

Contents

Executive Summary

In August, 2012, MAXIMUS Human Services, Inc. (MAXIMUS), through a competitive bidding process, was awarded a small procurement contract to assess and offer recommendations to improve the Maryland Department of Human Resources' (the Department or DHR) ability to identify and collect Supplemental Security Income (SSI) and/or Social Security Disability Insurance (SSDI) benefits on behalf of eligible children within the Department's foster care program. After engaging in a robust assessment of departmental policy and implemented procedures identified via telephone and in-person interviews with key department stakeholders in both the Department's Central Office and the Local Department Social Services (LDSS) in four of the five counties with the highest concentration of foster care children in Maryland (Anne Arundel County, Baltimore City, Baltimore County, Montgomery County and Prince George's County), as well as a comprehensive review of all available and relevant departmental documentation, MAXIMUS has identified substantial operational fragmentation, insufficient policy and operational guidance, and widespread deviation from established best practices resulting in a staggering loss of potential annual revenue. Current practices, both in the Department's Central Office and LDSS offices, have resulted in a multimillion dollar annual loss of potential revenue that could be secured through the implementation of policy and protocol recommendations and established best practices designed to enhance the identification, evaluation, application process, and benefits maintenance practices for SSI and SSDI for children within the Department's foster care program.

Supplemental Security Income and Social Security Disability Insurance benefits both provide federal funding to state child welfare agencies on behalf of eligibility foster care children that can be utilized to offset the cost of foster care and maintenance. A child welfare agency can leverage over $8,000 in federal funds (with no state match) for every child that is eligible for SSI benefits. A child welfare agency should expect to have approximately 15 to 20 percent of their foster care population enrolled onto SSI benefits and approximately three to six percent of their foster care children enrolled onto SSDI benefits upon the implementation of an extensive and comprehensive SSI/SSDI initiative.

The recommendations detailed herein serve to address the programmatic and revenue enhancement goals promulgated by the Department. They are designed to promote the identification of and subsequent acquisition of all SSI/SSDI benefits for all qualifying foster care children, at a minimum reaching the national norm of 15-20%. We detail industry best practices and recommendations to address identified deficiencies to transform the current process to one that:

- Identifies and acquires all possible SSI/SSDI revenue on behalf of eligible children within the DHR foster care program
- Maximizes receipt of Federal revenue: SSI vs. IV-E; Audit Proof Procedures; Client Trust Accounting
- Serves the best interest of the foster care population: Medicaid eligibility; Revenue for transition into independence
- Increases efficiency and decreases caseworker responsibilities

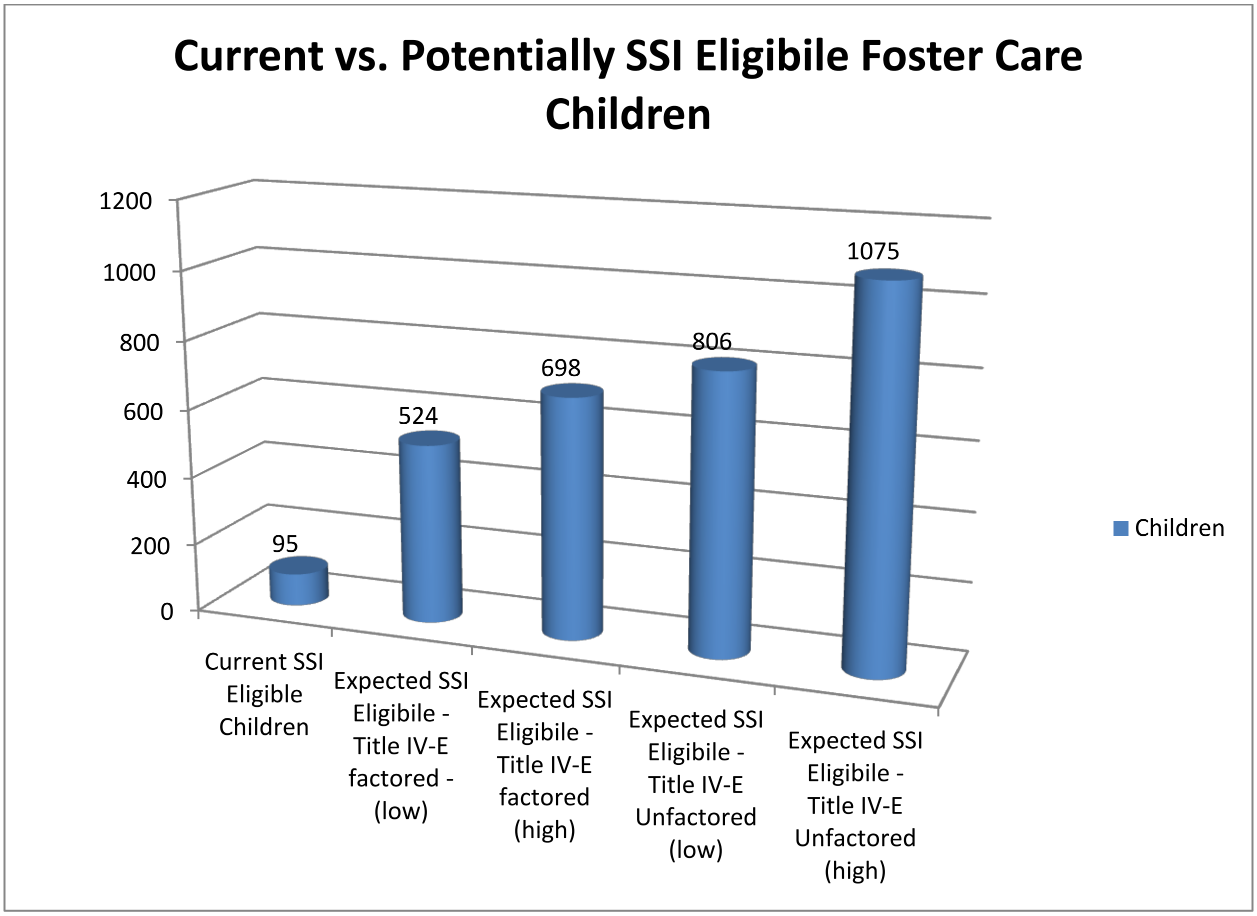
There are numerous programmatic and financial benefits for enhancing the Department's SSI/SSDI advocacy program to enroll foster children into SSI/SSDI at significantly greater rates:

- Enhanced Federal Revenue: SSI and SSDI are Federal funds that can be used by the Department to offset the cost of care and maintenance. DHR can leverage over $8,300 per child annually in Federal funds (with no state match) for every eligible child that is enrolled onto SSI benefits. DHR can expect to enroll nearly 700 foster care children onto SSI benefits and over 70 foster care children onto SSDI benefits upon the implementation of a comprehensive SSI/SSDI Advocacy program. This should result in over $5.8 million in annual Federal benefits.
- Medicaid Eligibility: SSI eligibility provides categorical federal Medicaid eligibility, a benefit that follows children when they leave the custody of the child welfare agency. Medicaid eligibility insures that these children possess the necessary coverage to receive any medical services they may require.
- Adoption Assistance: State agencies, adoptive families, and children all reap benefits when a child is determined to be SSI-eligible while in foster care because the child's SSI eligibility as a foster child entitles the child to automatic Title IV-E eligibility as an adoptee. The state agency may then assist the adoptive family in determining whether or not continuing SSI benefits or switching to a Title IV-E adoption subsidy is more appropriate. If the family does not meet the SSI income criteria for the adopted child, then the State may share adoption subsidy costs with the Federal government vs. a totally state supported subsidy.
- Disability Income Upon Discharge: Unlike other federal funds such as Title IV-E and TANF, SSI/SSDI benefits follow children when they leave the care of the child welfare agency. This is extremely beneficial for children aging out of foster care and also for permanency planning purposes.
- TANF Diversion Strategy: An estimated 20,000 youth "age out" of the U.S. foster care system annually. Many are only 18 years old and still need support and services. A national study of these youth by the Chapin Hall Center for Children found that:
    - 51% were unemployed
    - 30% had no health insurance
    - 25% had been homeless
    - 30% were receiving public assistance

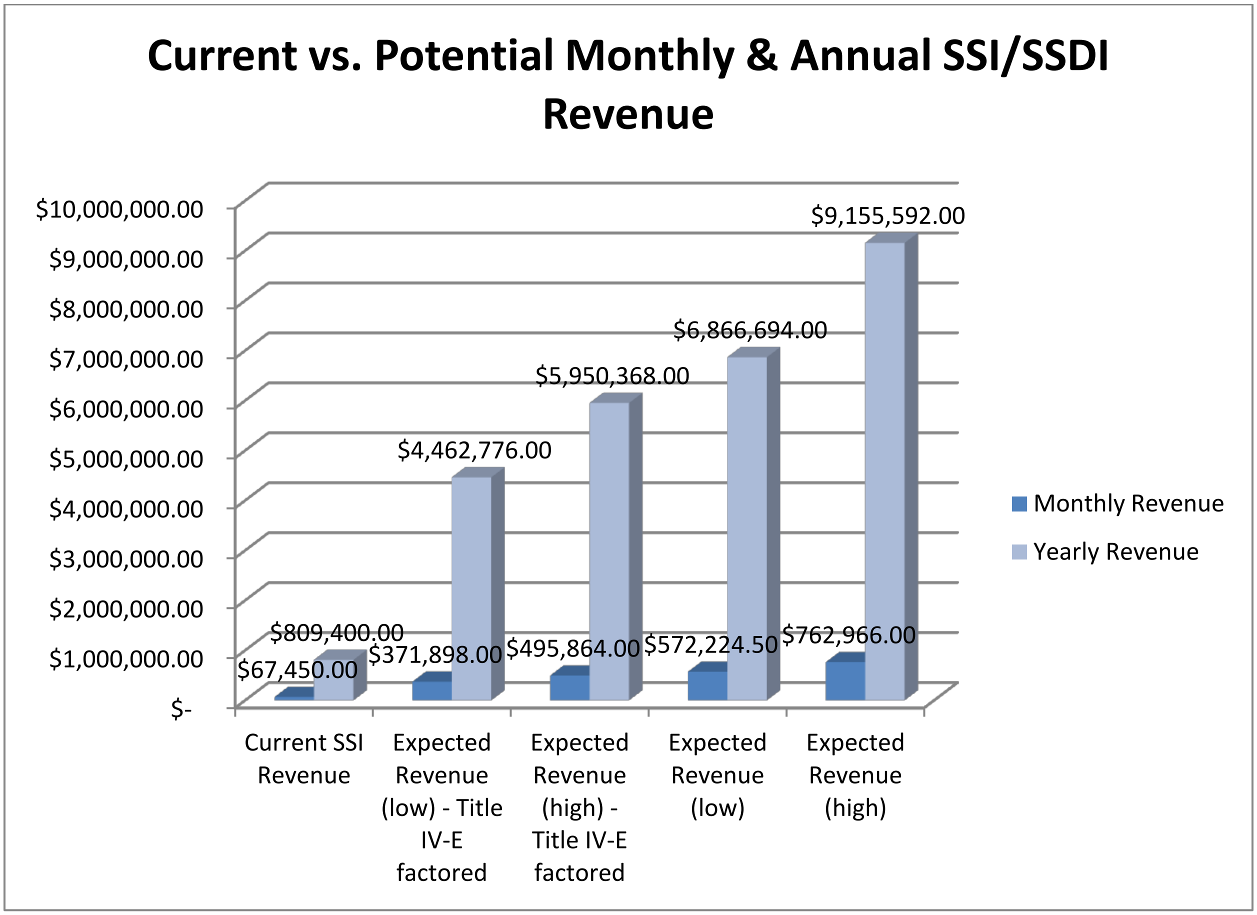
Enrolling children in SSI/SSDI benefits provides the disabled foster child aging out of the system with a source of income and categorical Medicaid eligibility. Furthermore, as TANF funds are limited and the number of individuals requiring assistance continues to grow, acquiring SSI/SSDI benefits for children aging out of care can serve to free up limited TANF revenue for other individuals – stretching all available Federal funding to its max to address as many needs as possible.

Current and Potential Revenue Acquisition – A Snapshot

Based upon the findings in this assessment, the number of children identified as eligible for SSI/SSDI benefits is significantly below the 15%-20% national norms. As further explained in this report, a state agency cannot concurrently collect Title IV-E benefits and SSI/SSDI benefits on behalf of a dually eligible foster care child. As such, our assessment of the number of potentially SSI/SSDI eligible foster care children accounts for the total number of children expected to be eligible for SSI/SSDI benefits throughout the Maryland foster care population as well as those children who, as a revenue generating mechanism, the Department would seek to forego SSI/SSDI payments in favor of a more substantial Title IV-E subsidy:



As further elaborated upon in this report, the current monthly and annual revenue gains to the Department from SSI/SSDI identification and acquisition fall significantly below national trends and targets. The Department is realizing approximately $800,000 in annual revenue from SSI/SSDI benefits when, if a robust SSI Advocacy initiative were to be implemented, it could be realizing closer to $6,000,000 annually or more:



The figures offered within this revenue snapshot will be explained in further detail later in this report.

Current Department Approach to SSI/SSDI Collection

In assessing the Department's current approach to the identification and collection of SSI and SSDI benefits for children in its foster care program, we examined the implemented procedures in the three specific categories that are most germane to a program that maximizes and balances revenue intake with programmatic efficiency: revenue identification and collection, department policy pronouncements and adherence, and operational efficiency. Examination of these areas, individually and in aggregate, demonstrate in the most pronounced manner, areas of weakness, strength, and the potential impact resulting from implementation of recommendations. We took a bilateral approach to examining these three areas, identifying and reviewing policy and operations in the Department's Central Office and reviewing the same in the county based Local Department of Social Services. We conducted our information gathering from data produced by Department officials (both from the Central Office and the LDSS offices) as well as interviews of key personnel (both in person and telephone; Central Office and LDSS offices). MAXIMUS was successful in acquiring statistical data from Central Office, detailing the status of SSI/SSDI benefits statewide. Interoffice communication difficulties between Central Office and the LDSS offices resulted, however, in only four of the five requested interviews with LDSS offices. As indicated within the recommendations section of this report, establishment of key metrics, policies, and a clear and consistent communication protocol are key to ensuring the success of the SSI/SSDI advocacy program and realizing the full revenue potential of the program.

Overview of Current Approach

A significant concern for DHR is the complete absence of any meaningful organized statewide process geared toward standardizing the SSI/SSDI advocacy process. No guidance or mandate currently exists to screen and assess all children who may be eligible for SSI or SSDI benefits. While some LDSS offices, as a part of the Title IV-E process, assess children who enter the foster care system to determine if they are current SSI/SSDI benefit recipients, there is no formalized policy requiring such screening and adherence thereto is far from uniform. Typically if a child does not have SSI/SSDI benefits established when entering DHR custody, that child's services are funded either with Federal Title IV-E, IV-B, and/or state/county general funds dollars. Given Maryland's low Title IV-E penetration rate of about 35%, the majority of children in DHR foster care today are state funded. DHR will continue to fund the majority of its foster children's services using state funds without a better process in place to conduct initial SSI/SSDI eligibility screenings.

Revenue Identification and Collection

Our review of available data detailing both the quantity and quality of revenue acquisition and management of SSI benefits confirmed DHR management's initial assumption that the current SSI/SSDI advocacy process is fragmented and does not operate consistently or effectively throughout the state, resulting in a staggering annual loss of potential Federal funding. Although the results of this analysis will have application throughout the entire Department, this inquiry focused on the activities of the five largest Local Department of Social Service (LDSS): Baltimore City, Baltimore County, Prince George's County, Montgomery County, and Anne Arundel County. As of August 31th, together those counties comprised 75.21% of Maryland's foster care population:

County	Foster Care Population	State Percentage
Baltimore City	2,433	45.28%
Baltimore County	555	10.33%
Prince George's County	530	9.86%
Montgomery County	383	7.13%
Anne Arundel	140	2.61%
TOTAL	4041	75.21%
State Total	5373	100%

Research shows that between 15% and 20% of a social service agency's foster care population tends to suffer from a disability that would qualify them for SSI benefits.[1] According to the data furnished by the Department, a total of 94 foster children state wide currently receive SSI benefits, comprising 1.74% of

[1] National Survey of Child and Adolescent Well Being (NSCAW), 1997 – 2010. No. 12: Estimates of Supplemental Security Income and Eligibility for Children in Out-of-home Placements. Research Brief.

the state's foster care population. The maximum revenue acquisition to the Department based upon its current levels is $67,450 per month and $809,400 annually, assuming every child consistently maintains the maximum benefit level of $710 per month – an assumption known to be untrue since data furnished by the Department indicates that many foster care children are not receiving the maximum monthly benefit. An effective SSI advocacy initiative in Maryland, in keeping with national trends and averages, would yield revenue and eligibility rates as follows:

Population Percentage	Monthly Revenue	Annual Revenue
15%	$572,224	$6,866,694
20%	$762,966	$9,155,592

At the lowest anticipated threshold, based upon the Department's current SSI benefit levels, the Department is **realizing a minimum annual loss of $6,057,294 in potential, unrealized Federal revenue**.

Incidental to any SSI revenue analysis is the impact and interplay of Title IV-E revenue and eligibility. According to Social Security Administration's Program Operations Manual System, Section SI 00830.410, "Foster care payments made under Title IV-E (both the Federal amount and State amount) are considered income based on need (IBON) to the individual in care. This income is not subject to the $20 general exclusion and is not ISM."[2] In general, Title IV-E benefit payments will exceed SSI benefit payments thereby making it exceedingly more advantageous financially for the Department to identify and accept the Title IV-E payments. To obtain the most accurate SSI revenue depiction for the Department, we examined, too, the status of its Title IV-E eligibility rates. As of August 31, 2012, DHR's Title IV-E penetration rate was approximately 34.41% statewide.

County	Title IV-E Ineligible	Penetration Rate
Baltimore City	1,702	30.04%
Baltimore County	391	29.54%
Prince George's County	357	32.64%
Montgomery County	191	50.13%
Anne Arundel	96	31.42%
TOTAL	2737	32.27%
State Total	3524	34.41%

The revenue estimates derived from the pool of potentially eligible foster care children must, therefore, be offset by the Title IV-E penetration rate to determine an accurate revenue projection picture. As of August, 2012, there are 5,373 foster care children in placement with DHR. Sixty-five percent of those children – 3,492 – are not receiving *any* Title IV-E subsidy. At 15-20% eligibility rates (a range of 523-698 children), in keeping with national trends – ***Maryland's annual SSI revenue should be over $5.8 million.*** This figure does not include Title IV-E eligible children in low cost placements where the Department would benefit financially from leveraging SSI funds instead to Title IV-E.

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[2] Social Security Administration. (7/31/2003). SSA Program Operations Manual System. In *SI 00830.410 Foster Care Payments*. Retrieved October 18, 2012, from https://secure.ssa.gov/apps10/poms.nsf/lnx/0500830410.

Without the implementation of an effective SSI/SSDI advocacy solution, Maryland will continue to forgo millions of dollars each year in Federal revenue that could have be used to support to health, welfare, and safety of its foster care population.

Departmental Policy Pronouncements and Adherence Thereto

Structurally, DHR administration and leadership operates from its Central Office located in Baltimore, MD. The Central Office is charged with promulgating policy for implementation in the LDSS offices across the state and monitoring adherence thereto. The LDSS offices, individually, create operational standards and guidelines to ensure local adherence to state policy and desired outcomes. Minute variations in local operational procedure are, therefore, expected, however goals and outcomes, by state design, should be nearly uniform.

DHR Central Office has developed little policy guidance to mandate the identification, application, and maintenance of SSI/SSDI benefits for children in foster care. In the absence state policy direction, LDSS offices have either not engaged in any effort, be it official or ad hoc, to acquire and maintain SSI/SSDI benefits for children in foster care or have implemented procedures in a “word or mouth” fashion, pointing to common practices that should take place but in absence of a formally executed written LDSS policy and accompanying accountability and quality standards. We have identified policies and protocols in place to manage SSI benefits once identified – financial and accounting safeguards were well in place from Central Office down to LDSS offices. Operational policies and procedures – the basis of the acquisition of the benefits – were significantly lacking and is the basis of the significantly low SSI/SSDI penetration rate. In sum, offices have regulations to manage SSI/SSDI funds once acquired but have little to no policies for which to acquire them.

Operational Efficiency

Our assessment of the Department’s current approach consisted of telephone interviews and in-person meetings with DHR Central Office staff and relevant LDSS office staff in four of the five counties most populous with foster care children. Our interviews yielded evidence of a previously outsourced, centralized process commenced some 15 years ago that has been since discontinued, leaving the present status of little statewide policy guidance and significant variation in LDSS process engagement and quality.

In 1998, Maryland DHR was under contract with Health Management Associates, Inc. (HMA) to manage and execute the Department’s Disability Entitlement Advocacy Program (DEAP). Until 1998, DEAP was a statewide initiative focused on acquiring federal disability benefits for qualifying adults. In 1998, the program was expanded to include SSI advocacy for children in foster care in Maryland. HMA/DEAP implemented a process of screening and applying for SSI benefits for foster care children:

> HMA/DEAP’s involvement in this initiative should reduce the workload for local foster care and federal funding staff. However, coordination of SSI applications and appeals will require local staff involvement. Potentially eligible foster children will be identified from the Foster Care and Adoptions Child Tracking System (FACTS). HMA/DEAP will send a referral request to local department federal funding staff for completion. Upon receipt of the completed referral, HMA/DEAP will schedule an initial application interview at the Social Security Field Office. A

local department staff person will need to accompany the child for this interview. HMA/DEAP will track the foster child's claim and advocate for the child through the application and appeals process, including representation before an Administrative Law Judge or Federal Court. HMA/DEAP will work with local departments to improve this process, if necessary. Your staff will be notified when SSI/SSDI for foster children training is scheduled. HMA/DEAP plans to begin training in July.[3]

Data was not available as to the success of the program or when and why it was discontinued. There appears to be no remaining vestiges of the program or any of its policy to govern the identification and collection of SSI/SSDI benefits for children in foster care. Staff turnover has resulted in little present knowledge of the program, its model, or its outcomes.

Presently, DHR's SSI/SSDI advocacy process is localized with little policy articulation from Central Office. We have identified significant variations in every aspect of the SSI/SSDI advocacy process among the LDSS offices interviewed. While most LDSS offices had a process in place to manage revenue acquired from SSI/SSDI benefits, only one county has a documented process identifying protocols for screening children for potential eligibility and executing applications when appropriate. In all cases, caseworkers were exclusively responsible for the SSI application process with no training or guidance on how to effectively execute and manage those functions.

Screening for Current SSI/SSDI Recipients

All LDSS counties interviewed had a process in place to identify children coming into care having already been determined eligible for SSI or SSDI benefits. There was some variation in each county's process, however. In two instances, the Title IV-E eligibility staff was responsible for screening children for the presence of benefits; in two other instances, a fiscal office staff held that responsibility. In two instances, after identification of the existence of SSI/SSDI benefits, the responsibility fell to caseworkers to request to Social Security to change the payee from the child's removal guardian to the Department. One county relied on the fiscal unit to manage that process. If a child was identified as an SSI or SSDI recipient, it was noted in CHESSIE, Maryland's Statewide Automated Child Welfare Information System (SACWIS). There appears to be no quality control process in place to ensure that every child is effectively screened at the time of entering state care.

Screening for Potential Eligibility for SSI/SSDI Recipients

A critical function to enhancing revenue through SSI/SSDI advocacy is screening existing and incoming children for potential eligibility for benefits. Screenings in the LDSS offices were assigned exclusively to caseworkers with no protocol for verification that screening activities have taken place. Caseworkers were responsible for, without any training or any written policy guidance, identifying disabilities and conditions that meet Federal regulations for SSI/SSDI and completing applications and compiling all necessary documentation, medical information, etc. to support the application. As a result, applications are rarely executed which points to the significantly low SSI and SSDI penetration rates throughout the Department.

[3] Ellard, Linda D. "SSI Streamlining Project Expansion: Inclusion of Foster Children in DEAP. June

Executed Application Follow Up

Common throughout our interviews with the LDSS offices was the propensity, if and when an application for SSI and/or SSDI benefits was executed, for the application to stand on its merit without any effort to follow up with the Social Security Administration to ensure that no additional, supporting documentation was required to acquire a favorable determination. While data was not readily available on approval rates, this scenario likely results in dismal approval rates for initial SSI and SSDI benefit applications.

Reconsideration and Appeals Process

LDSS offices varied in their treatment of denials of initial applications for SSI and SSDI benefits. Two LDSS offices, Montgomery and Prince George's Counties, proffered a written policy to forward denial letters to local attorney/counsel for review and consideration for execution of appeal. The remaining LDSS offices utilize caseworker staff and supervisors to review the circumstances of the child's file to determine whether to execute a request for reconsideration. No data was available to substantiate the success of either method.

Change of Placement Identification and Notification

When a foster care child is placed in a medical treatment facility, the representative payee must notify the Social Security Administration. SSA will, in turn, decrease the child's SSI benefits to a maximum of $30 per month (for personal expenses) while the child remains in that facility.

> Residents of public institutions are ineligible for Supplemental Security Income (SSI). However, section 11611(e)(1)(B) of the Social Security Act (Act) provides an exception to that rule. Residents of medical treatment facilities that receive substantial Medicaid payments on the recipient's behalf can be eligible for a reduced Federal SSI monthly benefit of no more than $30. A medical treatment facility is an institution…approved by a Federal, State, or local government to provide inpatient medical care and services.[4]

When a child's residential placement changes from a Medicaid paid facility to any other type of facility within DHR custody, SSA must again be notified so the SSI benefit amount can be adjusted back to the maximum $710 per month.

[redacted]

[4] Social Security Administration. (07/14/2011). SI 00520.011 Determination of Applicability of $30 Payment Limit. In Social Security Program Operations Manual System. Retrieved 10/22/2012, from https://secure.ssa.gov/apps10/poms.nsf/lnx/0500520011.

Fiscal Management

While all counties interviewed identified a solid process for accounting for and applying SSI revenue to individual foster care child maintenance costs, few were able to identify sufficient protocols to avoid double dipping.

Title IV-E

As previously mentioned, the Department cannot collect Title IV-E and SSI revenue on behalf a child simultaneously. [redacted]

Child Support

There is no protocol in place to identify if the child is a recipient of child support payments from a parent. Child support payments must be listed on an SSI disability application as monthly revenue. Failure to do so exposes the Department to substantial risk of audit.

BEST PRACTICES

On any given day, roughly half a million children are in foster care due to incidents of abuse, neglect, or other reasons that prevent them from remaining with their parents. Of these youths, an estimated 30,000 received Supplemental Security Income (SSI) or other Social Security benefits under Title II or Title XVI of the Social Security Act. The Social Security Administration (SSA) may designate a government entity as the representative payee of a foster child if that child's custodial or non-custodial parents, guardians, relatives, stepparents, or close friends are not available to serve in that role. As the representative payee, the state (like any other representative payee) is required to manage the child's benefits and to use the benefits for the current maintenance (food, clothing, shelter, medical care, and personal comfort items) of the child.

A vast majority of state social service agencies utilize SSI and SSDI benefits to assist in meeting costs associated with maintaining a child in foster care. The legality of the practice has been upheld unanimously by the United States Supreme Court and has been held as consistent with a social service agency's charge to act in the best interest of the child.[5] Benefits from SSI/SSDI advocacy programs national wide totaled $95 million among the 31 states that were able to report on their use of these benefits in state fiscal year 2002. The use of these benefits supported the continuation of foster care programs for states.

As SSI/SSDI advocacy initiatives, both in-sourced and outsourced, have become a vital, continuous, and reliable funding source for social service agencies across the nation, the development of best practices that promote revenue enhancement, regulatory compliance, and operational efficiency have been

[5] *Keffeler v. State*, 537 U.S. at 390

developed and implemented as the result of decades of trial and error. Experience has taught us exactly what this process should look like, what gains should be obtained and resources are necessary for maximum revenue impact. We detail herein programmatic best practices focused upon deficiencies identified in our review of Maryland's SSI/SSDI advocacy program.

Best Practice Program Characteristics

Our experience shows that states and counties with the best financial return on investment from the SSI/SSDI advocacy programs incorporate many or all of the following program characteristics:

1. **Staff whose sole job responsibility is the effective management and execution of the SSI/SSDI advocacy process**

Programs where specific SSI/SSDI eligibility specialists are dedicated to SSI advocacy as their primary job responsibility are likely to maximize SSI/SSDI revenue. Maryland DHR should consider the implementation of a centralized unit, based in the Central Office, whose sole responsibility is the acquisition of SSI/SSDI benefits for foster care children statewide. When child welfare case managers are tasked with having to initiate and manage the SSI/SSDI process in addition to their regular casework, the process typically results in inconsistent identification of potential eligibility, high denial rates stemming from unskilled application execution, high caseloads and the accompanying juggling of multiple urgent priorities. Placing these responsibilities with a dedicated SSI/SSDI advocacy team ensures a more effective process and also allows case managers to focus on providing direct services to the children and families they serve.

2. **Application process that emphasizes complete and accurate application submissions the first time – every time**

Many states and counties overlook the early stages of the initial application and appeals process, waiting for what they believe are the inevitable denials at the initial application and reconsideration levels. They do not dedicate the time up-front to fully develop the theory of the case at the initial stages. This can cause the loss of valuable time and revenue as application decision terms are often between three and six months and can exceed 24 months if a case is appealed to a formal hearing. An industry best practice is to complete the application with all available information (i.e. medical and psychological records, education records, function reports, and case manager interviews) as soon as possible to achieve the highest degree of success.

3. **Excellent working relationship and communication with local Social Security Administration, Maryland Disability Determination Services field offices and other state agencies**

Very often delays in the application process are caused by the lack of a pre-established, effective working relationship with SSA or DDS. Having to spend hours tracking down the right SSA or DDS staff person for questions or data exchange can result in unnecessary delays or, at worst, benefit denials. Communication with SSA and DDS through the determination process to monitor the status of the application is beneficial because it allows for quick responses to issues that may arise during the determination process. States and counties can avoid delays by being proactive and aggressive in reaching out to SSA and DDS in anticipation of their claims adjudication needs, meeting all SSA and DDS deadlines, and responding promptly to all requests for information.

4. **Effective benefits management programs that follow all SSA Representative Payee Regulations**

States need to ensure that all benefits are managed in accordance with SSA regulations upon becoming SSA representative payee on behalf of a foster child. An effective benefits management program ensures that all benefits are used in the best interest of the child and that state/county operations are compliant, accurate, and efficient:

- Perform SSA representative payee functions, including annual and semi-annual reporting requirements;
- Perform monthly benefits management functions such as maintaining records of all income and expenses in each child's account;
- Set up and maintain interest-bearing Client Trust and Dedicated Accounts
- Maintain a secure and compliant benefits disbursement process for the child's needs
- Maintain SSI eligibility for the child as well as categorical Medicaid eligibility, and transition children from foster care with benefits in plan
- Serve as liaison with SSA
- Track and complete redeterminations and continuing disability reviews; and
- Provide comprehensive training for agency employees

5. **Policies that promote revenue capture and benefits acquisition**

SSI/SSDI advocacy is not just beneficial for the state – it's a benefit to the child as well. Unlike Title IV-E benefits, SSI and SSDI benefits can "follow" the child – when a child transitions from care, he or she may maintain their eligibility for SSI/SSDI benefits. Since social service agencies maintain the responsibility of promoting the health and welfare of its foster care population, it makes sense to promote policies that require every child in the state's care be screen for potential eligibility for SSI and SSDI. Staff conducting screenings, as a policy, should be trained and knowledgeable in eligibility criteria. For every child identified as potentially eligible for benefits, policies should promote a vigorous pursuit of a positive determination, including execution of advocacy style applications, application follow up and continuous interface for SSA and DDS, mandatory review of denials and, where appropriate, aggressive pursuit of reconsideration requests and appeals before administrative law judges.

Assessment Findings and Recommendations

Our review has determined that the SSI /SSDI Advocacy services for foster children are currently being provided in a disjointed, ineffective, and inconsistent manner. Little to no policy guidance has been developed and implemented from DHR Central Office resulting in significant variations in the quality and effectiveness of the implemented procedures, if any, in the LDSS offices. The Department is greatly underperforming and, therefore, failing to realize the programmatic and financial benefits that can be derived from developing a comprehensive SSI/SSDI Advocacy program that implements recognized nationwide best practices.

MAXIMUS believes DHR can improve its SSI/SSDI Advocacy program and significantly enhance the revenue it collects therein by implementing the aforementioned best practices and the following recommendations:

1. **Implement a centralized unit dedicated to the aggressive pursuit of SSI/SSDI benefits**
2. **Develop standard policies and protocols on SSI/SSDI Advocacy throughout the department**
3. **Improve communication between Central Office and LDSS on SSI/SSDI advocacy issues**
4. **Improve communication and partnership with the Social Security Administration (SSA) and Disability Determination Services (DDS)**
5. **Conduct a comprehensive review of the current benefit management accounting procedures**

Implementation of the recommendations, with emphasis on the creation of a comprehensive, dedicated SSI/SSDI advocacy unit, will result in a significant increase in the number of children enrolled into SSI and/or SSDI. We conservatively estimate that Maryland could see between 15% - 20% of the DHR foster care population enrolled onto SSI benefits. Additionally, up to 7% of the foster care population (the national average) may be eligible to receive SSDI benefits. The financial impact if achieving these goals would be between $5.8 million to $9 million annual in SSI benefits and significant revenue in SSDI benefits.

1. Implement a centralized unit dedicated to the aggressive pursuit of SSI/SSDI benefits

The Department currently operates an ineffective, decentralized SSI/SSDI application process that has resulted in the identification of approximately 1%-2% of foster children receiving SSI benefits. The crux to implementing an aggressive pursuit of SSI and SSDI benefits for foster children is to develop a dedicated and trained SSI/SSDI Advocacy team. Our review demonstrated that the current approach is disjointed, inconsistent, and ad hoc. Staff members who are currently involved in the process were not trained on SSI/SSDI subject matter and there appears to be no effort to offer training throughout the agency. In a LDSS where a single staff person was dedicated to the SSI/SSDI effort, sudden staff attrition resulted in a complete loss of institutional knowledge of all processes and procedures. Even in that instance, the staff's focus was on the financial accounting process, completely forsaking the operational benefit acquisition process. MAXIMUS was unable to identify a SSI/SSDI subject matter expert in either the Central Office or any of the LDSS offices. Responsibility for completing the SSA applications currently falls exclusively to case managers as an ad hoc function. This time consuming administrative function, on the limited occasions that it actually occurs, places an added burden on the case manager resulting in a poorly executed application and distraction from the case manager's primary responsibility of ensuring the safety and well being of children and their families.

MAXIMUS, therefore, recommends that DHR develop a single SSI/SSDI Advocacy Team, dedicated to the evaluation, application, and benefits maintenance for SSI/SSDI benefits for children in foster care statewide. The team will provide comprehensive, full service representation throughout the process, including actively seeking out the necessary medical, vocational, and functional documentation, allowing the agency to build the strongest possible case for approval of the claim. A team focused exclusively on SSI/SSDI will enable DHR to achieve the highest rate of success in the shortest timeframe, significantly enhancing revenue that is currently unrealized.

Centralizing the screening functions within one team will ensure that every foster child in DHR is evaluated for potential eligibility.

- Upon establishing a dedicated team, every DHR foster child in care should be evaluated to ascertain whether they are an existing benefits recipient unknown to the Department; immediate action should thereby be taken to make the Department the child's representative payee
- Upon establishing a dedicated team, every DHR foster child in care should be evaluated to ascertain whether they have they meet the minimum criteria to qualify for SSI benefits
- Every child entering DHR custody should be screened for the presence of SSI/SSDI benefits and evaluated for potential eligibility for either program

2. Develop standard policies and protocols on SSI/SSDI Advocacy throughout the department

DHR Central Office must develop policies to mandate the screening of an application for potentially eligible foster care children statewide. Policies should be promulgated to address the following areas:

- Screening for potential eligibility for SSI and SSDI benefits for all children entering into the DHR foster care program within 30 days entry
- Execution of applications of all children identified as potentially eligibility for either SSI or SSDI within 30 days of identification
- Notification to the appropriate fiscal staff of all SSI/SSDI awards
- Financial protocols to ensure to appropriate use of SSI/SSDI revenue
- Appropriate disbursement of any remaining revenue upon a child's department from DHR care, including notification to SSA to discontinue DHR as representative payee
- Identification of any SSI recipient changing placements either to or from a Medicaid paid placement and the appropriate notification to SSA to prevent over or under payments of benefits
- Timely execution of Continuing Disability Revenue and non-medical reviews to ensure ongoing benefits eligibility
- Appropriate, audit proof use of revenue from client trust accounts and dedicated accounts

As previously mentioned, detailed policy and procedures documentation to address SSI/SSDI assessment and enrollment activities do not currently exist for case managers, Title IV-E staff, or finance staff in the Central Office and in most LDSS offices. It is critical that DHR develop and implement standardized policy and procedure documentation should DHR decide to build an internal centralized SSI/SSDI Unit. Policy and procedures should capture, at a minimum, the following processes:

- Communication planning (internal and external stakeholders)
- SSI and SSDI identification
- SSI and SSDI application
- Training guides

Communication planning should address procedures surrounding internal DHR staff and working with the centralized team as well as procedures to address communication with SSA, DDS, and the Medicaid Agency. Communication planning should also identify roles and responsibilities within the centralized team and address how that team will collaborate with others. Role identification is essential for ensuring quality control measures throughout each step of the process.

In developing its policies and procedures manual, DHR should detail specific timeframes associated with various critical steps in the application process: conducting SSI/SSDI screenings upon intake, executing applications within 30 days of identification of potential eligibility, assessing for Title IV-E eligibility and the its impact on SSI benefits, etc. DHR should integrate guidance surrounding what tools will be used to track SSI/SSDI benefit screenings and applications into this section of the Policy and Procedures Manual, accompanied step-by-step instructions. When developing policy and procedures documentation, it is important to ensure that all materials are in compliance with Federal and State rules, regulations, and laws. Links to the Social Security Program Operations Manual System (POMS), Social Security's website, the Code of Federal Regulations (CFR), and other appropriate regulations should be linked to the manual.

Finally, DHR should develop and include a training curriculum in the Policy and Procedures Manual along with a training schedule identifying the frequency of training.

Program implementation is only as effective as the policies and procedures that guide it. Developing and maintaining the above documentation alongside a new program is critical to the program's success.

3. Improve communication between Central Office and LDSS on SSI/SSDI advocacy issues

As with any matter related to the fiscal integrity of the Department and/or the health, welfare, and safety of the children the Department serves, communication and responsiveness is critical to ensuring the right people have the right message at the right time. There must be an entity that can be a resource both programmatically and for information related SSI/SSDI in the Central Office that is available for reference to LDSS offices. Conversely, the appointment of a designated point of contact in each office for SSI/SSDI matters would promote transparency and increase efficient information flow between offices.

4. Improve communication and partnership with the Social Security Administration (SSA) and Disability Determination Services (DDS)

DHR needs to develop a solid communication plan and working relationship with the Social Security Administration (SSA) and Disability Determination Services (DDS). The SSA Disability application process for SSI/SSDI is a complex process that requires the completion of an extensive application. This process involves various decision levels and multiple stakeholders. To improve these results, the DHR needs to view these two important stakeholders as partners in the process.

At all levels of the Department there is inconsistent communication with SSA and DDS. Issues caused by the lack of solid and clear communication and partnership with SSA and DDS were a consistent theme throughout our conversation with DHR. The Department should take the following steps to improve steps to improve its working relationships with SSA and DDS:

- Consistent Communication: Arrange monthly or quarterly meetings with SSA and DDS to discuss process and current caseload.
- Centralize Application Process: DHR should work with SSA to develop a centralized SSA unit to process all statewide DHR SSI and SSDI applications. This will also allow the Department to centralize the process with DDS, a practice which has proven very successful in other states.

5. Conduct a comprehensive review of the current benefit management accounting procedures

MAXIMUS recommends that DHR reviews its current benefit management accounting functions. Accounting for and management of client trust accounts and dedicated accounts, ideally, should be managed centrally instead of individually by LDSS offices. Centralizing the SSI/SSDI accounting functions would enhance both the effectiveness and efficiency of both a centralized SSI/SSDI advocacy team within DHR and a dedicated DHR application unit within SSA.

Better Data, Incentives, and Coordination: Policy Options for Transition-Age Child SSI Recipients

Presentation to the Social Security Advisory Board:
"Improving outcomes for children in the Supplemental Security Income program"

January 8, 2014

David Wittenburg, Ph.D.
Senior Researcher

Overview

- **Address themes identified in earlier sessions**

- **Align outcomes with current policy initiatives/demonstrations**
- **Rapid implementation and assessment**

Option 1: Data. Using Administrative Data to Transition Age Youth

- **Problems**
  - **Key outcomes (e.g., employment) are not tracked/emphasized**
  - **Very limited information on transition age youth (age 16+)**
  - **Difficult to assess progress toward policy goals**

- **Option**
  - **Use SSA and Vocational Rehabilitation (VR) administrative data to track outcomes**
    - Under 18: Employment, average earnings, and VR participation
    - Age 18 and over: SSI, SSDI, and employment

- **Implementation**
  - **Add tables to annual SSA reports**
    - Caveat: add other data (for example, CMS and New Hires)

Option 2: Incentives.
Align Incentives to Promote Work

- **Problems**
  - **Youth: Rules create potential fears of working**
    - 2,229 recipients had countable earnings in 2013 (SSI Annual Report, Table 23)
    - Often requires support from benefits counselor
  - **SSA: Rules are administratively burdensome**

- **Option**
  - **Younger than age 18: Waive rules for reporting youth earnings to SSA/eliminate implicit benefit tax**
    - o Could be expanded to older ages
- **Implementation**
  - **Change rules for reporting, *or***
  - **Pilot as a waiver in a few areas/states**

Option 3: Coordination. Transition Planning for Recipients

- **Problems**
  - **Changing needs: Youth's needs change as they age**
  - **No planning: No transition plans for age 18 redetermination**
  - **Lack of integration with school and other programs**

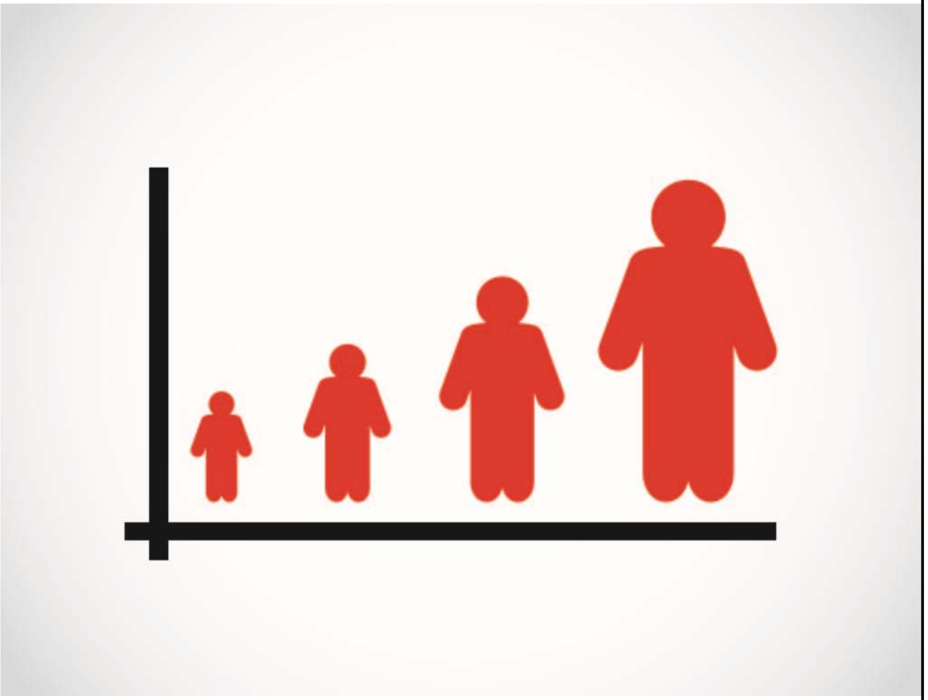
- **Option**
  - **Supports to connect child SSI recipients to other services (for example, VR)**

Option 3 (cont'd.): Transition Planning for Teen SSI Recipients

- **Implementation options**
  - **Voluntary**
    - Use SSA Work Incentives Planning and Assistance (WIPA) to proactively reach out to youth (for example, age 14) to develop/plan/connect to other state services
  - **Mandatory**
    - For those able, require child SSI recipients to meet with counselor to set up plan/meet requirements (for example, school, work or training) for ongoing participation
  - **Hybrid option with new redetermination/review process**
    - Conduct earlier redetermination (for example, age 14 or 16) assessment as a Continuing Disability Review (CDR) to establish adult (post-age 18) eligibility. Could integrate voluntary or mandatory option.

Summary

- **Summary of options**
  - **Making better use of administrative data to track outcomes**
  - **Aligning SSI work incentives to promote employment**
  - **Transition planning for teenage (age 14+) child SSI recipients**



- **Unifying themes**
  - **Better data, incentives, and coordination**

MATHEMATICA Policy Research

Acknowledgements

Photos are from the Boston Globe series, “SSI: The Other Welfare” and from the TransCen YES model program experience in Vermont.

MATHEMATICA Policy Research

MEMORANDUM

To:	Social Security Advisory Board
Subject:	Biography of David Wittenburg, Associate Director of Health Research, Mathematica Policy Research
Date:	January 8, 2015

David Wittenburg is an expert in interventions to promote employment for people with disabilities. His expertise includes substantial experience analyzing disability statistics and evaluating return to work initiatives.

Wittenburg, who joined Mathematica in 2005, is currently a principal investigator for a random assignment study of the Accelerated Benefits Demonstration for the Social Security Administration. This demonstration is examining whether short-term investments in medical benefits for certain Social Security Disability Insurance beneficiaries improve their health and increase their likelihood of returning to work. He is also working on several other evaluations for the Social Security Administration, including the Benefit Offset National Demonstration, the Youth Transition Demonstration, and the Consultative Examinations project.

Wittenburg publishes widely and has authored chapters in *The Decline in Employment of People with Disabilities: A Policy Puzzle* and *Paying for Results in Vocational Rehabilitation: Will Provider Incentives Work for Ticket to Work?* He served as an expert reviewer for the National Institute on Disability and Rehabilitation Research and publishes in journals such as the*Social Services Review*, *Journal of Vocational Rehabilitation*, *Journal of Disability Policy Studies*,*Journal of Labor Economics*, and others. He is a member of the National Academy of Social Insurance and was formerly a senior associate at the Urban Institute and the Lewin Group. He has a Ph.D. in economics from Syracuse University.

MEMORANDUM

To:	Social Security Advisory Board
Subject:	Biography & Background of Manasi Deshpande
Date:	January 8, 2015

Manasi Deshpande is a Ph.D. candidate in economics at the Massachusetts Institute of Technology and a pre-doctoral fellow at the National Bureau of Economic Research. Her research interests include the interaction between social insurance and labor markets and the effects of social insurance on consumption, health, and well-being. Prior to graduate school, she was a policy advisor at the White House National Economic Council and a research assistant at The Hamilton Project at Brookings. She is a Harry S. Truman Scholar and holds a B.A. with highest honors in economics, mathematics, and the Plan II Honors Program (humanities) from The University of Texas at Austin.

Manasi carried out much of her dissertation work at SSA's Office of Research, Evaluation and Statistics (ORES) last summer. While at SSA, she conducted research on SSI children, focusing on the effects of the SSI program on earnings among children with disabilities and their parents. Specifically, Manasi looked at earnings responses among SSI children and their parents following the child's removal from the SSI program through a redetermination at age 18 or a continuing disability review (CDR). She found that SSI children experience limited earnings increases following removal from SSI, along with greater income variability. The earnings increase is not large enough to offset the lost SSI payment. Parents experience a more substantial increase in earnings following their child's removal from SSI, enough to fully offset the lost SSI payment. Manasi's research provides a partial framework for assessing the longer-term implications of the SSI program for children with disabilities and their families, and suggests that the SSI program provides an important source of income stabilization.

Manasi also served as a member of the SSAB's first Disability Policy Panel in 2014, which focused on the topic of CDRs. Her previous work and experience on CDRs and SSI policy, particularly with respect to SSI children, proved invaluable in the formulation of the Panel's final report to the Board.

Abstracts from Manasi's recent and upcoming research can be found on the following pages, and also at this link: http://economics.mit.edu/grad/manasi/research

Research Papers

"Does Welfare Inhibit Success? The Long-Term Effects of Removing Low-Income Youth from Disability Insurance" (Job Market Paper) [UPDATED December 2014]

Abstract: I estimate the long-term effects of removing low-income youth with disabilities from Supplemental Security Income (SSI) on the level and variance of their earnings and income in adulthood. Using administrative data from the Social Security Administration, I implement a regression discontinuity design based on a change in the probability of SSI removal at age 18 created by the welfare reform law of 1996. I find that SSI youth who are removed earn on average $4,000 per year, an increase of just $2,600 relative to those who remain on SSI. This increase in earnings covers only one-third of the $7,700 they lose in annual SSI income, and they lose an additional 10% each year in other transfer income. As a result, removed SSI youth experience a present discounted income loss of $73,000, or 80% of the original SSI income loss, over the 16 years following removal. In addition to the large drop in income levels, the within-person variance of income quadruples as a result of the SSI loss. Based on back-of-the-envelope calculations assuming risk aversion and limited intertemporal consumption smoothing, I find that up to one-quarter of the recipient's welfare loss from SSI removal is attributable to the increase in income volatility rather than to the fall in income levels. This result suggests that ignoring the income stabilization effects of welfare and disability programs could substantially underestimate their value to recipients. (Online Appendix)

"The Effect of Disability Payments on Household Earnings and Income: Evidence from the Supplemental Security Income Children's Program"

Abstract: I estimate the effect of removing children with disabilities from the Supplemental Security Income (SSI) program on parental earnings and household income. Using administrative data from the Social Security Administration, I implement both a regression discontinuity design and a difference-in-differences design based on changes in the budget for medical reviews, which increase the likelihood of removal from SSI. I find that a loss of $1,000 in the child's SSI payment increases parental earnings—exclusively on the intensive margin—by $700-$1,400, indicating that parents fully offset the SSI loss with increased earnings. The loss of the child's SSI payment also discourages parents and siblings from applying for disability insurance. In addition, I find evidence that family members often apply for disability insurance at the same time, which suggests the importance of household-level shocks in the decision to apply. Using the unique institutional context of the SSI program, I provide suggestive evidence that the large response in parental earnings is driven mostly by an income effect rather than a substitution effect.

Research in Progress

"Testing the Coase Theorem in the Context of the Sulfur Dioxide Market: Does the Initial Allocation of Permits Affect Firms' Pollution Decisions?"

Abstract: I test whether the initial allocation of permits in the U.S. Acid Rain Program had an effect on the emissions decisions of covered firms. The initial allocation could affect subsequent sulfur dioxide emissions if firms face market uncertainty, transaction costs, or liquidity constraints, or if they exhibit behavioral biases. To address potential endogeneity of unobserved marginal abatement costs, I use variation in temperature across counties in 1985-1987 as an instrument for the number of permits allocated to a plant. The formula for the initial allocation was based on a plant's heat input during this time period, and higher temperatures lead to greater electricity demand. I find that the initial allocation of permits has a large effect on firms' pollution decisions. Increasing a plant's permits by one ton raises the firm's emissions on average by two tons. I propose and find evidence consistent with a lumpy abatement hypothesis in which firms that receive fewer permits are more likely to invest in high-fixed-cost technologies that reduce emissions in discrete amounts.

"Does the Timing of Removal from Disability Insurance Affect Children's Long-Term Outcomes? Evidence from the Supplemental Security Income Children's Program"

Abstract: The effect of removing children from disability insurance on their long-term outcomes may depend on whether families have time to adjust education and human capital investment decisions. I estimate the effect of removing low-income children with disabilities from the Supplemental Security Income (SSI) program during childhood, before education decisions are complete, on their long-term outcomes in adulthood, including earnings, income, health care utilization, and criminal activity. To identify these effects, I will use both a regression discontinuity design and a difference-in-differences design based on changes in the budget for medical reviews, which increase the likelihood of removal from SSI. I will use administrative data from the Social Security Administration linked to administrative data on health care utilization and criminal outcomes from states. I will compare the estimates from this paper to previous estimates of the effect of removing children at the age of 18, when education decisions for these low-income children are largely complete.

SOCIAL SECURITY ADVISORY BOARD

Retirement Security Report

Rough Draft

Contents

Introduction

In the legislation that established the Social Security Advisory Board, the first of the Board's nine functions is to analyze the Nation's retirement and disability systems and make recommendations with respect to how the Social Security and the SSI programs, supported by other public and private systems, can most effectively assure economic security.[1]

Over the years, this Board has worked hard to recommend ways to strengthen the Social Security retirement and disability programs, because Social Security is the foundation of retirement security for most Americans. And for too many workers and their families it is the only source of economic security.

But our relatively modest Social Security system is not and was never designed to be the only source of economic support in retirement. Our system assumes that workers will also be able to save for their own needs, and that we have a healthy pension system for public and private sector workers. So the Board has issued reports over the years assessing the broader challenges in achieving retirement security and looking at ways to support those who want to work longer, and reducing the threat of ever rising health care costs.

Today too many workers live paycheck to paycheck, and the possibility of being able to set aside savings for retirement seems far-fetched. Half of workers have no workplace pension plan, and those who do are finding that the many of the rules are changing underneath their feet. The retirement of the Baby Boom generation has already begun and the aging of America is upon us. The Great Recession has shaken up many of our assumptions about how financial and labor markets will work to the benefit of ordinary Americans in the future.

Once again the Board is turning its attention to how to most effectively assure economic security for all Americans. Over the past year, the Advisory Board has met with experts in retirement security. We have examined Social Security, SSI, pensions, savings, and labor force participation. In this report, we present some of the ideas that we have learned.

Background

The Board's 2005 report, *Retirement Security: The Unfolding of a Predictable Surprise*, described a number of challenges to retirement security: longer life spans; additional stresses on the Social Security system; a private pension system that requires more active involvement for contributions and investments; health care costs outpacing incomes and the economy as a whole; and fundamental changes to the employer-employee relationship. All of these challenges remain.

[1] Source. (see p. i of Retirement Security)

In the decade since the Board's last comprehensive retirement security report, the Great Recession has exacerbated these problems and created new ones. Increased unemployment poses a double threat to retirement savings—not only do workers stop contributing to their private pensions or retirement accounts during periods of unemployment, some draw down assets in these accounts due to current economic hardship, jeopardizing economic security in retirement. The recession also highlighted the risk of low or negative returns on assets held for retirement, including equity in housing.

Previous Board reports have described the challenges and threats to economic security in retirement. These reports have also made recommendations for public policy to address these challenges. For instance, the 2008 report, *Working for Retirement Security,* advised that "Policy makers should consider ways to remove barriers to continued work at older ages with the objective of improving the economic security of American workers in their retirement years." Policy makers and researchers have in fact devised a number of policies aimed at encouraging longer working lives, increasing savings, or strengthening the safety net for the most vulnerable. This report provides explanations of a number of potential policy options and their likely or intended effects.

The three primary sources of retirement income include Social Security, pensions and savings, and earnings. This report provides updated information on each of these sources of income and outlines some possible options to improve them. Implementing these options would require action from lawmakers, the financial services industry, employers, and workers themselves.

The retirement security options in this report have been proposed by policy makers and researchers to increase retirement income from various sources. We emphasize that inclusion on this list of policy options **is not in any way an endorsement** by the Advisory Board for adopting any specific proposal. Furthermore, this list is **not exhaustive**. It is meant to represent some of the major ideas in improving retirement security. Some of the options comprise of variations of the same idea.

Only provisions that **increase retirement income**, particularly for vulnerable groups, are included here. Readers should be aware that there are many policy reforms designed to address other objectives. Importantly, this report does **not** include options intended to improve Social Security's solvency. Restoring Social Security solvency could improve retirement security for all beneficiaries. Readers can find a list of options to improve solvency in the Advisory Board's 2010 report, *Social Security: Why Action Should Be Taken Soon*.

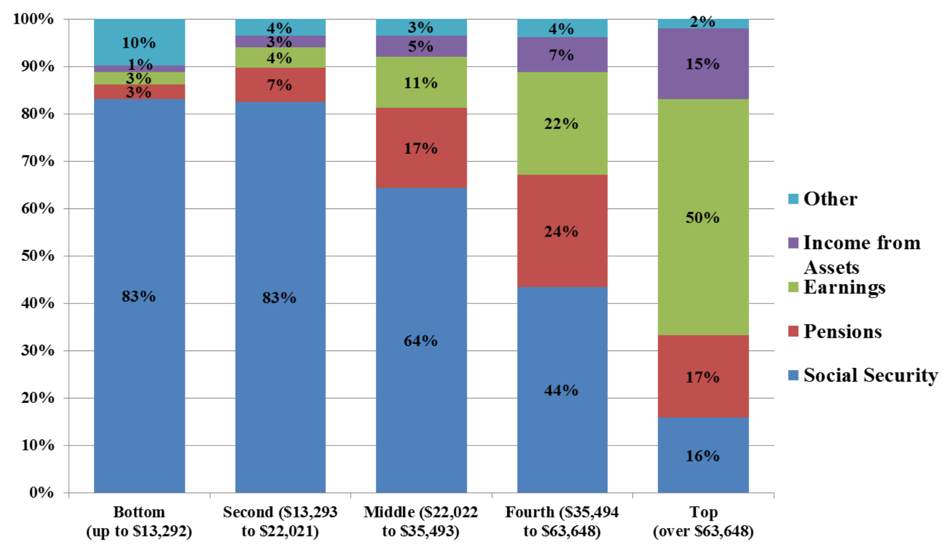
For each option, the report provides background information on why the option has been proposed, an explanation of the option, discussion of its impact on retirees, and its cost (with estimates where available), possible pros and cons, a list of proposals that feature this or a similar option, and suggestions for further reading.

Social Security and SSI Section

Introduction

Social Security is the largest single source of income for most elderly Americans. For a significant number of older Americans—particularly the most vulnerable—it provides the substantial majority of retirement income. Though the program establishes a financial base for many retirees, benefits remain modest. As shown in Chart 1, lower- and middle-income elderly Americans rely on Social Security for the majority of their income. For the higher-income elderly, earnings, pensions, and assets play a larger role.

Sources of Total Income for Households 65+ by Income Quintile, 2012



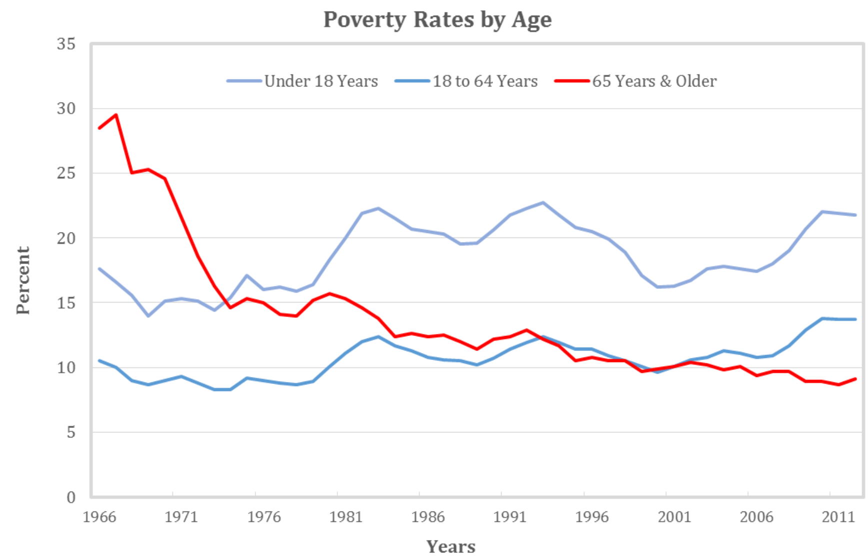
Source: Social Security Administration, *Income of the Population 55 or Older, 2012*, (April 2014), table 10.5.

http://www.ssa.gov/policy/docs/statcomps/income_pop55/2012/sect02.pdf

Thanks in large part to Social Security, elderly poverty has declined dramatically over the years. Nearly 30% of the elderly were poor in the mid-1960s, declining to less than 10% today. Graph 1 shows this trend in comparison to working-age and child poverty. Though Social Security has greatly contributed to the decline in elderly poverty, its main function is to replace lost earnings when a worker retires, dies, or becomes disabled.

The National Academy of Sciences (NAS) developed another way of measuring poverty that incorporates data on people's expenditures, in-kind transfer payments (such as food stamps and subsidized housing), geographic variations, and mandatory expenses (such as medical costs). Using the NAS measure, a much larger proportion of the elderly live in poverty and there is less difference in the poverty rates of different age groups.[2]

Graph 1. Elderly Poverty over Time



Source: US Census Bureau, Current Population Survey, Annual Social and Economic Supplements

In addition to Social Security, the Supplemental Security Income (SSI) program provides modest benefits to aged Americans with very limited income and assets, many of whom do not qualify for Social Security.

Though Social Security and SSI provide a safety net for older Americans, vulnerabilities remain. Minorities and people with low levels of education are much more likely to be poor in old age than other groups, as shown in Graph 2. Marital status also plays a key role: Divorced, never married, and widowed individuals are 2 to 3 times more likely to be poor than married individuals. In addition, elderly Americans who do not qualify for Social Security are much more likely to be poor (not shown in graph). Any plan to strengthen Social Security should consider the well-being of the most vulnerable elderly.

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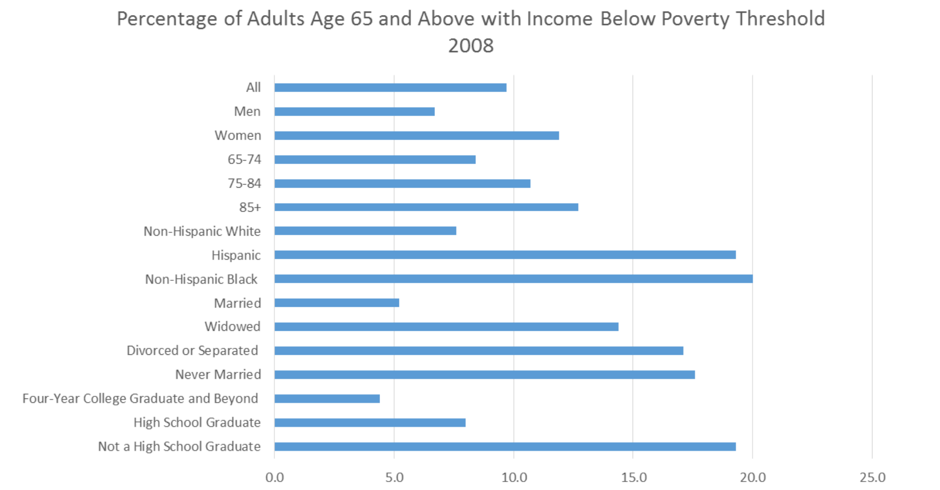
[2] http://www.nap.edu/openbook.php?record_id=4759&page=R1

Graph 2. Percent of Elderly Americans in Poverty, 2008



Source: Current Population Survey, 2009 Annual Social and Economic Supplement

It is crucial to note that Social Security faces a long-term solvency gap. Because the large Baby Boom generation is reaching retirement age, the payroll tax on current workers cannot cover the full cost of promised Social Security benefits over the long term. The Board of Trustees projects that in 2033 the Social Security trust fund will only be able to pay 75% of promised benefits, unless policymakers address the issue by raising revenues and/or cutting benefits. If Social Security's solvency is not addressed, retirement security for all beneficiaries will be threatened. In the Board's *Social Security: Why Action Should Be Taken Soon* report (last published in 2010), the Board identified a large number of proposals that, in some combination, could be used to restore program solvency. As the Board pointed out in that report and elsewhere, by acting sooner rather than later, Congress will be able to choose among more options that are less disruptive to the public.

Solvency remains the most urgent policy issue facing Social Security. However, some proposals to improve Social Security's solvency could exacerbate problems for Social Security's most vulnerable populations. Benefit reductions or tax increases could affect the retirement security of some groups more than others. Therefore, policymakers should carefully examine each proposal's effect on beneficiaries and identify ways to lessen their impact. In addition, Social Security must also evolve to meet the demands of the time. Demographic and economic shifts have made some parts of the program outdated.

This section outlines some of the possible ways to improve Social Security's adequacy and equity, to modernize the program, to mitigate any harm caused by restoring Social Security solvency, or to “sweeten” a solvency deal. It also describes some options in increase SSI income for the poorest seniors.

Oldest Old Benefit Enhancements

Background

Many reform plans designed to return the Social Security program to long-term solvency include a benefit increase targeted toward older beneficiaries, sometimes called enhancements for the oldest old, or longevity insurance. Policymakers use two rationales for such targeted increases. First, they could help meet the needs of Social Security’s oldest beneficiaries, who in many cases have outlived their spouses and their savings.[3] As a result, both poverty and reliance on Social Security increase with age.[4] Second, certain benefit reductions (such as using the chained CPI to calculate cost-of-living adjustments) can compound over time, affecting Social Security’s oldest beneficiaries most.[5] Including a benefit increase for older retirees in a larger reform plan could ameliorate those reductions.

Options in brief

Generally, oldest old options provide slightly larger monthly benefits starting at around age 85, but they can vary along multiple lines. Here we look at three general approaches, all phased up over 5 years:

a. A 5% benefit increase at age 85, based on the individual’s own Social Security benefit;
b. A 5% benefit increase at age 85, based on the average benefit for all retired workers;
c. A 5% benefit increase 24 years after becoming eligible for Social Security benefits (including DI or survivors benefits), based on the Social Security benefit of an average earner.

Retiree impact

Nearly all beneficiaries who reach age 85 would have a higher benefit under all three variants, regardless of income. Option 1c would also increase the benefits of long-time disability beneficiaries. A disproportionate number of higher-earning beneficiaries would be affected by these options, because higher earners tend to live longer than lower earners.[6]

[3] More than 64% of beneficiaries who reach age 85 in 2030 are projected to be widow(er)s (SSA 2013).
[4] For example, over three-quarters of beneficiary households age 80 or older rely on Social Security for more than half their income, compared to about half of households age 65-69. (Social Security Administration, Income of the Population 55 or Older, Table 9.A1, http://www.ssa.gov/policy/docs/statcomps/income_pop55/2012/index.html.)
[5] Olsen, Anya. "Distributional Effects of Reducing the Cost-of-Living Adjustments." Social Security Administration Policy Brief No. 2008-03, November 2008. http://www.ssa.gov/policy/docs/policybriefs/pb2008-03.html.
[6] Beneficiaries who live to age 85 are more than twice as likely to be in the highest shared lifetime earnings quintile than in the lowest quintile, according to projections (SSA 2013).

- Option 1a: People with larger benefits would get larger benefit increases, and vice versa. This version is projected to reduce elderly beneficiary poverty by about one-fifth.[7]
- Option 1b: Option 1b is more progressive than Option 1a, because it provides a flat benefit increase to all beneficiaries, regardless of their base benefit amount. This version is projected to reduce elderly beneficiary poverty by about one-quarter.[8]
- Option 1c: Option 1c is based on years of eligibility, rather than age, and so it would increase benefits for long-time disability beneficiaries as well as older retirees.[9] No poverty projections are available for this version.

Cost

Oldest old benefit enhancements would worsen system solvency by increasing scheduled benefits. (However, the chained CPI COLA would more than offset the cost, if the two options were paired.[10]) The actuarial balance is the amount that the Social Security payroll tax would have to be increased today to eliminate the 75-year funding shortfall. The 2013 Trustees Report estimated that Social Security's 75-year funding gap is -2.72 percent of payroll.[11]

- Option 1a would decrease actuarial balance by -0.11 percent of payroll.[12]
- Option 1b would decrease actuarial balance by -0.10 percent of payroll.[13]
- Option 1c would decrease actuarial balance by -0.15 percent of payroll.[14]

Pros & cons

Increasing benefits for Social Security's oldest beneficiaries would provide additional income for beneficiaries who are more likely to be poor, widowed, and reliant on Social Security than younger retirees. It would also help to offset the effects of a potential cut to the COLA, which would compound over time and reduce the benefits of the oldest beneficiaries most. On the other hand, the oldest beneficiaries are more likely to have had higher lifetime earnings than those who died sooner.[15]

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[7] Whitman, Kevin and Dave Shoffner. 2013. "The Projected Effects of Social Security Benefit Increase Options for Older Beneficiaries." SSA Policy Brief No. 2013-01. http://www.ssa.gov/policy/docs/policybriefs/pb2013-01.html.
[8] Ibid.
[9] Poverty projections are not available for Option 1c.
[10] SSA's actuaries estimate that the chained CPI COLA would improve actuarial balance by 0.55 percent of payroll (OACT A3).
[11] The 2013 Annual Report of the Board of Trustees of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds (2013 Trustees Report), http://www.ssa.gov/OACT/tr/2013/index.html
[12]OACT B6.1 (Note: Most of the policy options in this chapter are scored and described in more detail on the website of the Social Security Administration's Office of the Chief Actuary. The letter and number combination reference the equivalent provision on the Actuary's website. See http://www.ssa.gov/oact/solvency/provisions/index.html.)
[13] OACT B6.2
[14] OACT B6.4
[15] Waldron, Hilary. 2013. "Mortality Differentials by Lifetime Earnings Decile: Implications for Evaluations of Proposed Social Security Law Changes." Social Security Bulletin, vol. 73, no. 1. http://www.socialsecurity.gov/policy/docs/ssb/v73n1/v73n1p1.html

Proposals that include these options

- [National Academy of Social Insurance] ([Adequate Benefits, Adequate Financing])
- [Senate Aging Committee] ([Social Security Modernization: Options to Address Solvency and Benefit Adequacy])
- [Rep. Jason Chaffetz's plan]
- [Rep. Gwen Moore's plan]
- [Bipartisan Policy Center's Debt Reduction Task Force]
- [National Commission on Fiscal Responsibility and Reform]
- The President's FY14 Budget

Further reading

- The Projected Effects of Social Security Benefit Increase Options for Older Beneficiaries, by Kevin Whitman & Dave Shoffner, Social Security Administration, Policy Brief 2013-01, October 2013
- Longevity Insurance: Strengthening Social Security at Advanced Ages, by John A. Turner, Pension Policy Center, November 2008

75% survivor benefit

These options would increase Social Security benefits for surviving spouses. A survivor would receive 75% of the combined couple's benefit, rather than the higher of the survivor's own worker benefit or that of his or her deceased spouse. So, for example, if each member of a couple has a $1,000 Social Security benefit, the survivor would receive $1,500 (75% of $2,000), rather than $1,000 (the higher of the two benefits). This option is intended to protect widows, who have higher than average poverty rates, and would raise benefits for dual-earning couples.

Increase COLA with CPI-E

Background

Cost-of-living adjustments (COLAs) are annual increases in Social Security benefits that ensure their purchasing power is not eroded by inflation. The Bureau of Labor and Statistics (BLS) produces a Consumer Price Index (CPI) which measures the change in prices over time for a fixed market basket. Since 1975, the Social Security Administration (SSA) has calculated a COLA for Social Security beneficiaries using the CPI-W.[16] In 1988 the BLS launched an experimental index called the CPI-E, which targets older Americans. The CPI-E is intended to measure the spending patterns of Social Security beneficiaries. The BLS found that the experimental CPI-E increased more

[16] The CPI-W samples urban wage earners and clerical workers, representing 32% of the population. (United States Bureau of Labor and Statistics. *Experimental Consumer Price Index for Americans 62 Years of Age and Older, 1998-2009*. Available at: http://www.bls.gov/cpi/cpieart2009.pdf)

quickly than the CPI-W, suggesting that seniors face higher inflation rates than the rest of the population. SSA's Office of the Chief Actuary estimates using the CPI-E to calculate the COLAs would increase the annual COLA by about 0.2 percentage point, on average.[17] Some policymakers believe that using the CPI-E will allow Social Security retirement benefits to keep pace with inflation in the kinds of goods that seniors purchase.

Option in brief

Use the CPI-E instead of the CPI-W to compute the COLA. This would increase annual benefits compared to the current scheduled benefits.

Retiree impact

Computing the COLA using the CPI-E would result in slightly higher benefits for nearly all Social Security beneficiaries. Older retirees would have greater benefit increases than younger retirees. If the CPI-E were to increase at the projected rate, a retiree would receive a 6% higher monthly benefit if he or she reached age 92 than under current law.[18] Lower-income individuals are more likely to have an increase in benefits compared to higher income earners. The CPI-E is projected to decrease poverty among elderly beneficiaries by about 0.1 percentage point.[19]

Cost

Using the CPI-E to calculate the COLA increases Social Security's scheduled benefits, so the provision would worsen system solvency. The Office of the Actuaries estimates that an increase of 2.88 percent of taxable payroll would eliminate the 75-year funding shortfall.[20] The CPI-E computation would increase the shortfall by 0.38% of taxable payroll, making the solvency gap 12% larger.[21]

Pros & Cons

Since seniors tend to spend more on medical care, and health care prices have a higher inflation rate than prices for other goods and services, the CPI-E tends to grow faster than the CPI-W. Therefore, the CPI-E arguably reflects the kinds of goods and services purchased by older workers better than the CPI-W.[22] In addition, because non-OASDI benefits are rarely indexed to inflation, the more generous CPI-E might equalize total retirement income over time.

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[17] Social Security Administration's Office of the Chief Actuary. 2013. *Summary Measures and Graphs Category of Change: Cost-of-Living Adjustment.* http://www.ssa.gov/oact/solvency/provisions/charts/chart_run289.pdf

[18] Benjamin W. Veghte, Virginia P. Reno, Thomas N. Bethell, and Elisa A. Walker. April 2011. "Should Social Security's Cost-of-Living Adjustment Be Changed?" Available at: http://www.nasi.org/sites/default/files/research/SS%20Fact%20Sheet%20No.02_Should%20Social%20Security%27s%20Cost-of-%20Living%20Adjustment%20Be%20Changed.pdf

[19] Social Security Administration's Office of Retirement Policy. 2014. *Policy Option Projections- Increase the Cost of Living Adjustments.* Available at: http://www.ssa.gov/retirementpolicy/projections/colas/CPI-E-2070.html

[20] http://www.ssa.gov/oact/solvency/provisions/charts/chart_run289.pdf

[21] Ibid.

[22] Ibid. See Footnote 3

However, the CPI-E calculation is fairly new and should be evaluated with caution. It includes a small sample size and does not account for the differences in outlets and discounts that seniors use. Also, the inflation rate for health care prices may change and eventually make the CPI-E grow slower than the current CPI-W, which would decrease benefits. The BLS cites various limitations to the CPI-E, suggesting it may not accurately measure the COLA for Social Security beneficiaries.[23] In 2020 the sample size of the CPI-E will equal the sample size of the CPI-W, which might strengthen its validity.
In addition, a different CPI for the elderly introduces the potential for other specialized indices, such as location. Using different price indices for different groups could over-complicate the program.

Alternative Option(s)

A chained CPI has also been proposed as a more accurate alternative. The chained CPI assumes that when prices go up, people buy cheaper substitutes, which would decrease the COLA and annual benefits. A chained CPI-E may offset the costs of the CPI-E benefit increases.

Proposals that include these options

- Senator Tom Harkin's Plan
- Rep. Xavier Becerra's Plan
- Rep. Ted Deutch's Plan
- Rep. John Larson's Plan

Further Reading

- National Academy of Social Insurance (Should Social Security's Cost-of-Living Adjustment Be Changed?) by Benjamin W. Veghte, Virginia P. Reno, Thomas N. Bethell, and Elisa A. Walker, April 2011.

Minimum benefit

These options would increase benefits for long-term low earners, who typically rely on Social Security for most or all of their retirement income. For example, for people with at least 30 years of coverage, the minimum Social Security benefit would be 125% of the poverty line. Under current law, long-term low earners often live in poverty. The current law special minimum benefit has become obsolete.

Making benefit formula more redistributive

[23] Limitations include the expenditure weights, areas and outlets priced, items priced, and prices collected http://www.bls.gov/cpi/cpieart2009.pdf

Background

The Social Security Primary Insurance Amount (PIA) formula ensures that Social Security benefits are progressive, replacing a higher proportion of earnings for low-wage workers than high-wage workers.[24] The PIA is the basic benefit amount for a retiree and is based on a worker's average indexed monthly earnings (AIME). The AIME is a retiree's highest 35 years of earnings, indexed to wage inflation, and averaged. To calculate the PIA, the AIME is split into three dollar amounts called PIA bend points. In 2014, the first bend point includes the first $826 of AIME, the second includes the amount between $826 and $4,980 of AIME, and the third includes the amount over $4,980 of AIME. The PIA equals the sum of 90% of earnings under the first bend point, 32% of earnings between the first and second bend points, and 15% of earnings between the second and third bend points.

Option in Brief

This option would make the PIA formula more progressive than the current system. Beginning with retirees newly eligible for benefits in 2021, the dollar value of first PIA bend point would increase gradually every year so that it is 15 percent higher for retirees newly eligible in 2035 and later.[25] Any additional earnings under the new bend point would be replaced at 90%, rather than 32% as under current law.

Retiree Impact

The Office of Retirement Policy projects that this option would increase benefits for most beneficiaries.[26] On average, low earners receive a greater increase than higher earners under this option, because a greater proportion of their lifetime earnings or AIME would be under the first bend point. Retirees with a household income in the lowest quintile would receive about 5% higher monthly benefits under this option in 2070. Less-educated individuals would likely receive a higher increase in benefits than more educated individuals. This proposal is projected to decrease the poverty rate by about 0.1%.

Cost

The Office of the Chief Actuary estimates that an increase of 2.88 percent of taxable payroll would eliminate the 75-year funding shortfall. This option is projected to increase the shortfall by 0.37% of taxable payroll, making the funding gap about 11% larger.[27]

Pros and Cons

Social Security was designed to provide adequate income for the elderly and avoid elderly poverty. The OASI progressive benefit formula redistributes income from higher earners to lower earners,

[24] http://www.ssa.gov/oact/cola/piaformula.html

[25] http://www.ssa.gov/oact/solvency/THarkin_20130318.pdf

[26] SA's Office of Retirement Policy, using MINT 6/TR11 Assumptions/SSMBA 4.

[27] http://www.ssa.gov/oact/solvency/provisions/charts/chart_run132.pdf

who are more susceptible to elderly poverty. This proposal targets low-wage retirees who usually depend on Social Security for most or all of their retirement income. Though a flat benefit increase affects all beneficiaries, this option targets vulnerable populations and helps to address the growing income disparities between populations.

Social Security attempts to balance adequacy and equity. This proposal would shift the formula away from benefits based on earnings, which arguably offsets program equity. The proposal also worsens system solvency.

Proposals that include this option

- U.S. Senator Harkin's proposal

Further Reading

- http://www.harkin.senate.gov/documents/pdf/5011b69191eb4.pdf
- http://www.urban.org/publications/311016.html

Caregiving credits

Background

When parents take time off from work or leave the labor force to care for their children, their retirement security can suffer. Not only will they have less earnings and savings, but they may have difficulty reaching the 35 years of earnings used to calculate their Social Security benefit. Years spent caring for children, rather than working, could decrease retirement benefits. Social Security Caregiver Credits would include years of child caregiving into the benefit formula to replace some of the lost years of earnings. A parent of a young child who has years with little or no earnings would receive an increase in Social Security benefits.

Option in Brief

Give earnings credits for up to five years to parents with a child under 6 years old. The earnings credited for a childcare year equals one half of the SSA average wage index (about $21,858 in 2012) if greater than actual earnings. The credits would be available to newly eligible retired-worker and disabled-worker beneficiaries starting in 2014 and would apply for past years of caregiving.[28]

[28] http://www.ssa.gov/oact/solvency/provisions/benefitlevel.html#B7

Retiree impact

The SSA's Office of Retirement Policy projects that giving caregiver credits will increase benefits for 22% of retirees.[29] Women are more likely to experience an increase in benefits than men, because women are more likely to take time off of work in order to care for their children.[30] About 27% of women and 16% of men beneficiaries will receive higher benefits in 2030 under this proposal.[31] Spousal benefits increase Social Security benefits for many caregivers, but minorities and people with lower income and education are less likely to qualify for spousal benefits. Therefore, caregiver credits would help increase the benefits for people who do not qualify for auxiliary benefits. Blacks and Hispanics are more likely to experience benefit increases than whites under this proposal. Less-educated and lower-income individuals are also likely to have an increase in benefits. A higher proportion of immigrants will experience higher benefits. This proposal is projected to decrease poverty by about 0.04%.[32] A higher proportion of women, minorities, and individuals who never married are projected to come out of poverty under this option.[33] Individuals who would not otherwise qualify for spousal benefits, such as dual earnings couples with similar earnings or people who divorce after fewer than ten years, are more likely to experience higher benefits.

Cost

Because caregiver credits generally increase benefits, the proposal would worsen system solvency. The Office of the Actuary estimates that an increase of 2.88 percent of taxable payroll would eliminate the 75-year funding shortfall.[34] This proposal is estimated to increase the shortfall by 0.26% of taxable payroll, making the solvency gap 8% larger.[35]

Pros and Cons

Howard Iams argues that most women, who leave the workforce to care for their children, rely on spousal benefits, so childcare credits placed on their own earnings record would ultimately not affect their benefits.[36] His study shows that benefit increases appear small on average and are more likely to help women from more privileged socioeconomic groups, making childcare credits merely a subsidy for women who can already afford to leave the workforce.[37]

However, a Pew Research study shows that 34% of stay-at-home mothers live in poverty, compared to 12% of working mothers.[38] Despite educational and labor force gains, the amount of stay-at-home mothers living in poverty has more than doubled since 1970.[39] The decline in marriage rates

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[29] http://www.ssa.gov/retirementpolicy/projections/benefit-formula/credit-for-caregivers-2030.html
[30] http://www.pewresearch.org/fact-tank/2013/09/17/more-men-on-the-daddy-track/
[31] http://www.ssa.gov/retirementpolicy/projections/benefit-formula/credit-for-caregivers-2030.html
[32] http://www.ssa.gov/retirementpolicy/projections/benefit-formula/credit-for-caregivers-2030.html
[33] Idib.
[34] http://www.ssa.gov/oact/solvency/provisions/charts/chart_run226.pdf
[35] http://www.ssa.gov/oact/solvency/provisions/charts/chart_run226.pdf
[36] http://www.ssa.gov/policy/docs/ssb/v57n4/v57n4p10.pdf
[37] http://www.ssa.gov/policy/docs/ssb/v57n4/v57n4p10.pdf
[38] http://www.pewsocialtrends.org/2014/04/08/after-decades-of-decline-a-rise-in-stay-at-home-mothers/
[39] Idib.

over time has made it less likely for stay-at-home mothers to have a working husband. About 20% of stay-at-home mothers were single in 2012, compared with 8% in 1970.[40] These findings suggest that some mothers stay at home because they cannot find work or it makes more economic sense to stay home with their children than work.

In addition, Iams simulated childcare rewards that increased dropout years for caregiving, which reduces the number of work years in the AIME calculation for people who have little to no earnings because of caregiving. This disproportionately helps higher-earning caregivers, whose remaining work years are higher than others. More current proposals, like this option, give earning credits for childcare years, which rewards all caregivers equally.

Another study by Melissa M. Favreault and C. Eugene Steuerle shows that caregiver credits would reduce more poverty and redistribute benefits to lower income groups better than current spousal benefits.[41] Though benefit gains are modest, it reaches more people than other proposed options like the minimum benefit. The Office of Retirement policy projections show that caregiver credits are more likely to improve benefits for more vulnerable populations.[42] This proposal would allow parents to have more flexibility with their children's care without lowering their Social Security benefits.

Alternative Option(s)

It is important to recognize the interaction between different policy options. Caregiver credits are often paired with cuts to spousal benefits. Some argue that caregiver credits target vulnerable populations better than spousal benefits. Caregiver credits also tend to be more equitable among race and income groups than current spousal benefits. When combined, they reduce more poverty and redistribute benefits to lower income groups more effectively.
Caregiver credits are also often paired with minimum benefits.[43] However, these proposals usually require years of caregiving to count toward the years of coverage required to receive a minimum benefit.

Proposals that include these or similar options

- NASI proposal
- Parents' Tax Relief Act 2007

Further Reading

- http://cdn.americanprogress.org/wp-content/uploads/issues/2012/04/pdf/gender_equity.pdf
- http://www.urban.org/UploadedPDF/311436_Social_Security.pdf

[40] Idib.
[41] http://www.urban.org/UploadedPDF/311436_Social_Security.pdf
[42] http://www.pewresearch.org/fact-tank/2013/09/17/more-men-on-the-daddy-track/
[43] http://www.ssa.gov/oact/solvency/provisions/benefitlevel.html#B5 Options B5.3, B5.5, B5.6, B5.7

- http://www.ssa.gov/policy/docs/ssb/v57n4/v57n4p10.pdf
- http://crr.bc.edu/wp-content/uploads/2007/02/wp_2007-71.pdf

Reducing length-of-marriage requirement for divorced spouses

Background

Social Security spouse's benefits are paid to qualifying spouses of retired or disabled workers, if the spouse's own benefit is one-half or less than the worker's benefit. Similarly, survivor's benefits are paid to qualifying widow(er)s, if the survivor's own benefit is less than the worker's benefit. Under current law, a divorced individual is only eligible for a divorced spouse's benefit or divorced survivor's benefit if the marriage lasted at least 10 years. This proposal would extend partial Social Security benefits to divorced spouses and divorced surviving spouses married between 5 and 9 years.

Option in Brief

Allow divorced spouses and divorced surviving spouses married 5 to 9 years to receive benefits under a former spouse's earnings. These auxiliary beneficiaries would receive 50% of the current law benefit for divorced and divorced surviving spouses if married 5 years, 60% of the current law benefit if married 6 years, and so on.[44]

Retiree impact

Though unmarried women tend to generate lower lifetime earnings than married women, auxiliary benefits allow married women to pay significantly lower net tax rates than unmarried women or women married less than 10 years, revealing the drastic effect of spousal benefits on women retirees.[45]

Since women typically have lower lifetime earnings than their spouses, they are more likely to qualify for spouse's benefits. Therefore, this proposal will likely affect more women than men. The Office of Retirement Policy projects that 2% of women and 1% of men beneficiaries will receive higher benefits from this proposal.[46] A higher proportion of black beneficiaries would receive higher benefits under this proposal than any other race. Lower-income groups, especially those in poverty, are likely to benefit from this option as well.[47] About 7% of beneficiaries currently in poverty would experience an increase in benefits.[48]

[44] http://www.ssa.gov/oact/solvency/provisions/familyMembers.html
[45] http://crr.bc.edu/wp-content/uploads/2010/11/wp2010_18-508.pdf
[46] ORP tables
[47] http://www.ssa.gov/oact/solvency/provisions/charts/chart_run617.pdf
[48] ORP tables

The change in marital patterns over time has made it less likely for ex-spouses to qualify for spouse's benefits, especially in certain subgroups.[49] Black women are the least likely to meet the 10 years of marriage criteria in all age groups of women.[50] Therefore, divorced black women, who remain vulnerable to poverty in old age, are likely to benefit from this proposal.

Cost

Because this option increases benefits, the proposal worsens system solvency. The Office of the Actuary estimates that an increase of 2.88 percent of taxable payroll would eliminate the 75-year funding shortfall. This proposal is estimated to increase the shortfall by 0.02% of taxable payroll, making the solvency gap 1% larger.[51]

Pros and Cons

This proposal affectively targets financially vulnerable elderly populations. Divorced black women are especially susceptible to retirement insecurity, and this proposal would extend their eligibility for spousal benefits.[52] This proposal is projected to alleviate elderly poverty.[53]

Because this proposal offers lifetime benefits for 5 year marriages, it has a weak policy rationale.

Proposals that include these or similar options

- Begich and Murray Plan

Further Reading

- http://www.budget.senate.gov/democratic/public/index.cfm/blog?ID=0d0209df-8a1b-414d-aa2c-4492caf067fa
- http://waysandmeans.house.gov/uploadedfiles/steuerletestimony7811.pdf
- http://www.urban.org/uploadedpdf/412170-low-benefits.pdf
- http://crr.bc.edu/wp-content/uploads/2007/02/wp_2007-71.pdf

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[49] http://www.ssa.gov/policy/docs/ssb/v72n1/v72n1p11.html
[50] http://www.ssa.gov/policy/docs/ssb/v72n2/v72n2p23.html
[51] http://www.ssa.gov/oact/solvency/provisions/charts/chart_run617.pdf
[52] http://www.ssa.gov/policy/docs/ssb/v72n2/v72n2p23.html
[53] ORP tables

Across-the-board benefit increase

Background

Social Security benefits are based on a worker's average lifetime earnings and adjusted for wage growth. This option would increase each individual's Social Security benefit by 5% across-the board.

Option in Brief

Increase benefits by 5 percent for all beneficiaries as of the beginning of 2014 and for those newly eligible for benefits after the beginning of 2014.[54]

Retiree Impact

This proposal would increase benefits by 5 percent across-the-board. If applied today, the average annual Social Security benefit for a retired worker would increase from $15,528 to $16,304. This proposal is projected to decrease scheduled poverty by 0.3% in 2030 and 1.2% in 2070.[55]

Cost

Increasing benefits by 5 percent for all beneficiaries will worsen system solvency. The Office of the Actuaries estimates that that an increase of 2.88 percent of taxable payroll would eliminate the 75-year funding shortfall. This proposal is estimated to increase the shortfall by 0.78% of taxable payroll, making the solvency gap 21% larger.[56]

Pros and Cons

This proposal reaches all Social Security beneficiaries and follows the social insurance model that the program was based upon. It is also fairly easy to administer.

This proposal focuses more on equity of benefits rather than adequacy. Disparities remain in the current system and a 5% benefit increase for everyone does not address the variation in replacement rates. Though only some subpopulations are vulnerable to retirement insecurity, this proposal increases retirement income for everyone, even for higher earners who rely more on earnings than Social Security. A flat benefit rate would be more progressive than a 5% benefit increase for everyone. Also, across-the-board benefit increases create greater costs for the Social Security Trust Fund and worsen system solvency. Benefit increases that target vulnerable populations, who rely more on Social Security for retirement income than others, could prove to be more efficient and cost effective than an across-the-board benefit increase.

Proposals that include these or similar options

NASI

Further Reading

http://www.nasi.org/sites/default/files/research/Fixing_Social_Security.pdf

[54] As written in OACT projections.
[55] ORP projections
[56] http://www.ssa.gov/oact/solvency/provisions/charts/chart_run178.pdf

Better communication from SSA*

These options seek to better educate the public, based on the lessons of behavioral economics, to encourage people to delay claiming and work longer. For example, a web-based tutorial on Social Security rules has been shown to affect work and claiming decisions, particularly for women. Reframing age 62, the early retirement age, as the age at which a person receives the "minimum benefit" and age 70 as the age at which a person receives the "maximum benefit" had similar effects. Better education on how a worker's claiming age affects his or her survivor's benefits and how work affects benefits (before and after claiming) could also improve beneficiaries' decisions.

Raise SSI Asset Limits*

Currently an individual is not eligible for SSI if he or she has assets exceeding $2000. This option would raise the SSI asset limit to allow more individuals to qualify for benefits and encourage savings among low-income beneficiaries. Some argue that the asset limit currently discourages beneficiaries from saving. One variation of this proposal would be to adjust SSI rules to inflation, which would raise the asset limit to $6,700 today.

Increase SSI Federal Benefit Rate*

The current SSI federal benefit rate (FBR) for an individual is $721 per month. A beneficiary's countable monthly income cannot exceed the FBR to qualify for SSI. This option would raise the FBR, which would increase benefits as well as make the program more inclusive. Since SSI is a means-tested program, intended to lift the aged, blind and disabled out of poverty, one variation of this proposal would be to raise the benefit level to equal 100 percent of the poverty level. This would increase the SSI FBR to $973 per month for an individual.

Increase SSI General and Earned Income Exclusions*

General or unearned income, which includes Social Security benefits, exceeding $20 per month is deducted dollar-for-dollar from an individual's SSI FBR. The rule in part is meant to ensure that SSI beneficiaries with longer work histories, who also qualify for Social Security benefits, will receive a higher total benefit than SSI beneficiaries with less significant work histories. This option would increase the general income exclusion. One variation of this proposal would be to increase it to $89 to reflect inflation.

Earned income exceeding $65 is also deducted dollar-for-dollar from and an individual's FBR. This rule is meant in part to encourage SSI recipients to return to work. This option would increase the earned income exclusion.

Pensions & Savings Section

Introduction

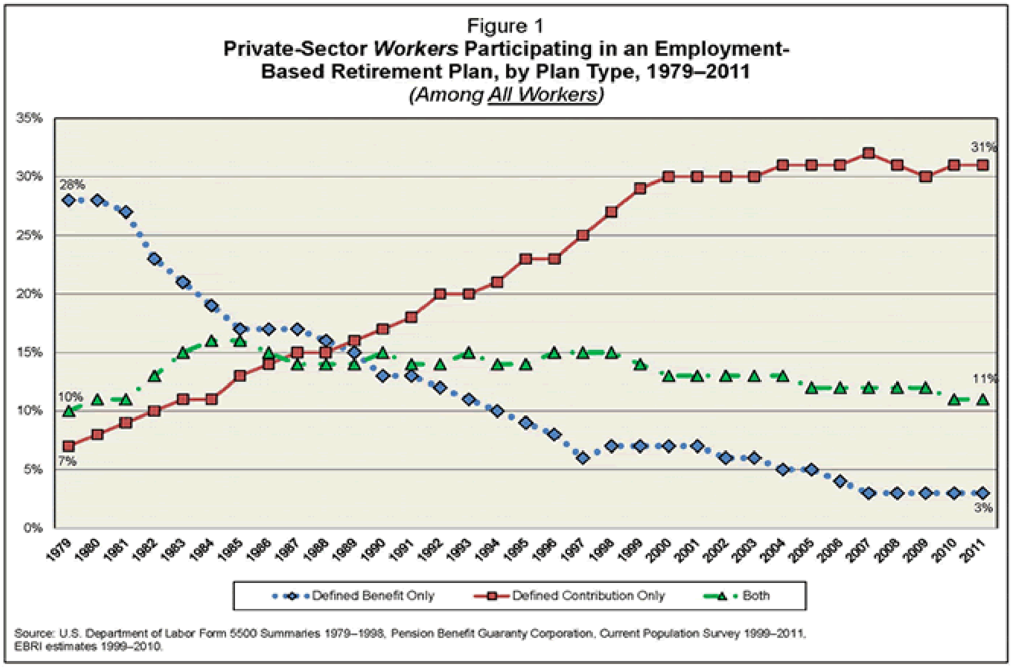
Pensions and savings are another critical part of retirement security. This category includes defined benefit pensions, defined contribution pensions, and personal savings. Access is far from universal. Many workers do not have access to a pension or savings program at work. Others have accumulated very large nest eggs. As shown in Chart 1, above, pensions and savings are a more significant source of income for higher-income groups.

Nearly all of workers' pensions and retirement savings come from workplace programs that are sponsored—though not necessarily funded—by employers. Defined benefit pensions (also known as traditional pensions) are typically funded by the employer. They provide a fixed annuity at retirement based on factors such as age at retirement, salary level, and length of service. Defined contribution pensions (or workplace savings programs, such as 401(k)s) are funded through regular deductions from employees' wages, often with an employer match. Contributions are typically pre-tax. They earn interest over time and are usually paid out—after taxes—as a lump sum to the worker. Personal retirement savings, such as individual retirement accounts (IRAs), are typically not sponsored by employers directly. However, the overwhelming majority of IRA assets come from rollovers from employer-sponsored plans, not from new contributions.[57]

Employers have shifted away from defined benefit pension and toward defined contributions pensions, as shown in Graph 3. There are a number of reasons why this shift has taken place. Defined contribution plans can lessen employer costs and administrative burdens. They are also more portable for an increasingly mobile workforce. The shift to defined contribution pensions has placed more of the risks and responsibilities of retirement saving onto workers.

Graph 3. Defined Benefit & Defined Contribution Pension Participation Over Time

[57] http://www.ebri.org/publications/ib/index.cfm?fa=ibDisp&content_id=5214

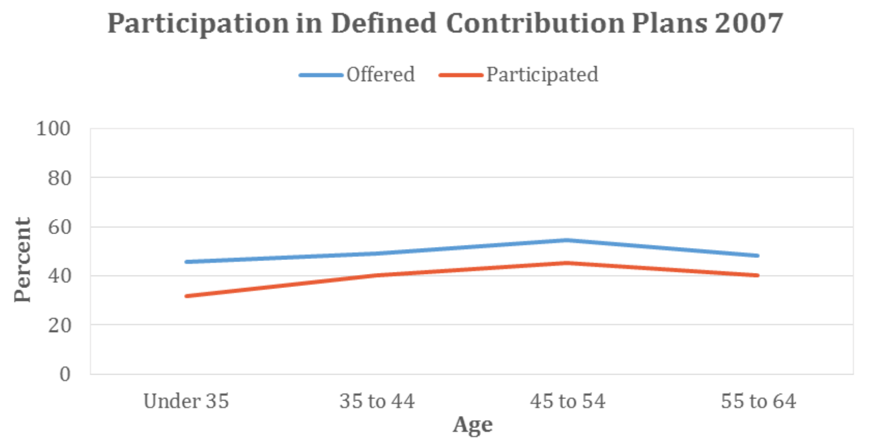


http://www.ebri.org/publications/benfaq/index.cfm?fa=retfaq14

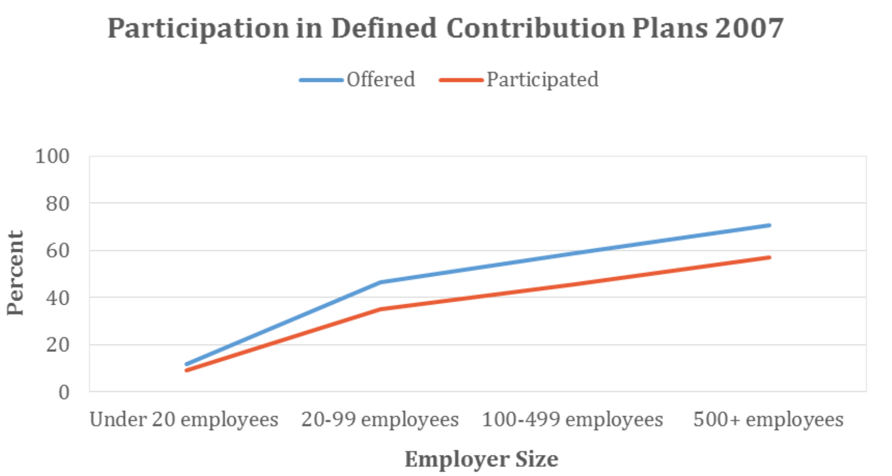
As workers shoulder more of the burden of saving for their own retirements, several major policy issues have emerged. The first is access to employer-sponsored retirement plans, which are much more likely to be offered to higher income workers, those who work for larger employers, and older workers, as shown in Graph 4. Without access to pensions in the workplace, very few workers save on their own.

Graph 4. Participation in DC Plans, by Household Income, Etc.

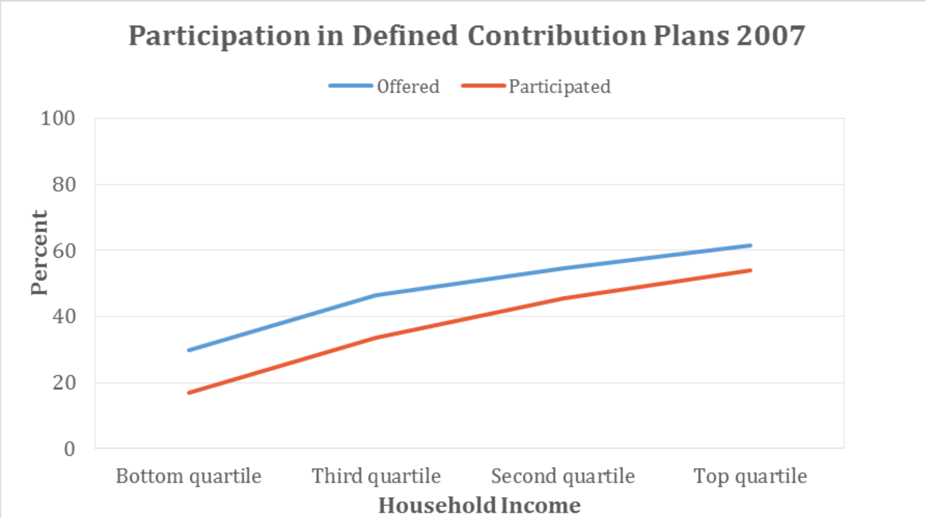
(Note: We plan to display these graphs side by side for comparison)



Source: CRS analysis of the Federal Reserve Board's 2007
Survey of Consumer Finances
http://assets.opencrs.com/rpts/R40707_20110107.pdf



Source: CRS analysis of the Federal Reserve Board's 2007
Survey of Consumer Finances
http://assets.opencrs.com/rpts/R40707_20110107.pdf



Source: CRS analysis of the Federal Reserve Board's 2007 Survey of Consumer Finances

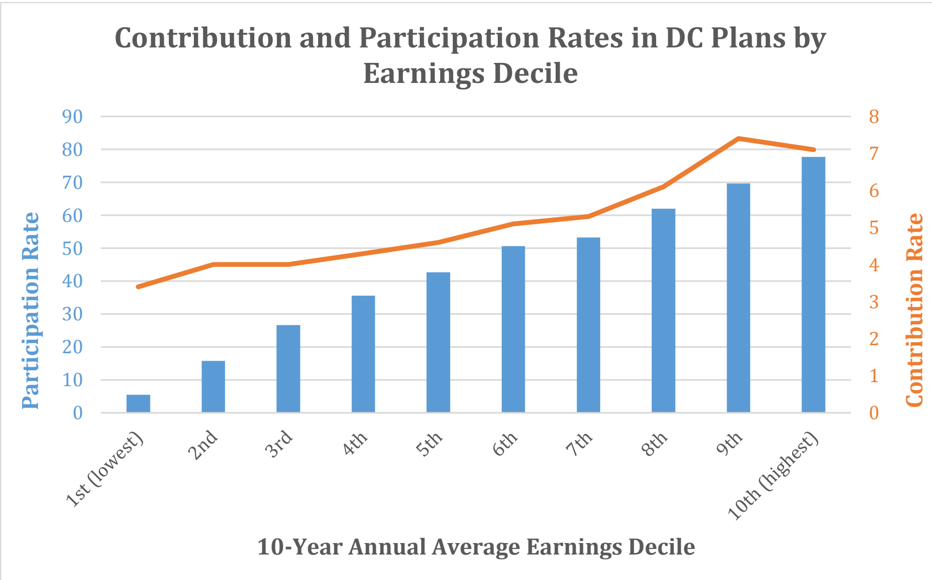
Once workers gain access, they must make several critical decisions: whether to participate, how much to contribute, and how to invest their contributions. Many workers save little or nothing at all—particularly low-income workers, as shown in Graph 5.[58] Others invest their assets in overly risky or conservative investments, or see their savings eaten up by fees. [Many] Workers are permitted to take withdrawals and loans, which often leads to leakage from their retirement savings. Finally, workers must decide how to spend down their assets. They face many risks in retirement, including investment losses, inflation, living longer than expected, and large medical expenses. Many people are simply not financially savvy enough to control or even understand their own pension plans, and ultimately avoid them altogether.

Comment [BK1]: Not all employers allow withdrawals from their plans

Comment [BK2]: Even those employees who participate in their employer's plans are often not maximizing their savings potential by investing poorly.

[58] Note that there are economic explanations for lower participation by low earnings.

Graph 5. Participation and Contribution Rates by Income



If people saved more and withdrew less, they could have more secure retirement years. However, there are many obstacles to saving and many reasons for withdrawing funds. Some of these obstacles could be addressed through better pension policies, such as increasing access to workplace retirement savings, strengthening rules against early withdrawal, reducing investment fees, or increasing financial education. Other obstacles to saving—such as persistent unemployment, stagnant wages, and global economic trends—are arguably more important, but beyond the scope of this report.

Automatic Enrollment

Background

Automatic enrollment (or "auto-enrollment") in workplace defined contribution (DC) pensions was created under the Pension Protection Act of 2006 (PPA). It is one tool that employers can use to increase the retirement savings of employees.

Option in brief

Under auto-enrollment, the employer (or "sponsor") decides on both a default contribution rate and default investment option for eligible employees. While auto-enrollment is most commonly found in 401(k) plans, 403(b) and 457(b) plans are also eligible. Sponsors have a choice of enrolling *all* eligible employees, or only those newly hired or newly eligible. Employees may choose to opt out of 401(k) plan participation, as opposed to choosing to opt in under the traditional model. Mandating automatic enrollment for employers who offer DC-style pensions is one option that can be taken to improve the retirement security of many working Americans.

Retiree impact

This distinction between choosing to opt in versus choosing to opt out is what many believe to be an inherent advantage in automatic enrollment plans when it comes to increasing participation. Indeed, empirical studies have suggested that switching to an automatic enrollment system has a significant positive impact on 401(k) plan participation and that a sizable portion of 401(k) participants hired under automatic enrollment retain both the default contribution rate and default investment allocation.[59] This is at least partially because most plan participants tend to be "passive savers"—that is, they tend to stick with the default contribution – an effect often referred to as *inertia*.[60]

Cost

Since an auto-enrollment policy is expected to increase participation rates, an employer's costs are also expected to increase under such a policy. The extent of the costs, however, would vary depending on a number of variables such as firm size, number of employees, and employer match rate, if any.

Pros & cons

Since auto-enrollment tends to have a positive effect on participation rates, those likely to benefit the most from this policy are eligible workers who otherwise would not have elected to enroll. Further, mandating auto-enrollment would not interfere with existing laws and regulations governing pensions, such as safe harbor and non-discrimination 401(k) rules for example. However, there are certain disadvantages associated with automatic enrollment and the inertia that can result from such a policy. Participants may not be contributing *enough* to their 401(k) due to low default rates,[61] or the default contribution rates and investment scheme might not be appropriate for certain workers – particularly those at lower incomes.

Another possible disadvantage is that employer match rates could decrease, due at least in part to the higher cost to the employer of providing auto-enrollment plans. One study that analyzed a sample of 826 plans from 532 employers concluded that, even after controlling for firm characteristics, companies with auto-enrollment had employer match rates that were roughly 7

[59] For example, see Madrian, Brigitte and Dennis Shea, "The Power of Suggestion: Inertia in 401(k) Participation and Savings Behavior," *Quarterly Journal of Economics* 116, no. 4 (November 2001): 1149-87; and Choi, James et al, "Defined Contribution Pensions: Plan Rules, Participant Decisions, and the Path of Least Resistance," *Tax Policy and the Economy*, Vol. 16, (MIT Press, 2002), pp. 67-113.

[60] Brigitte Magrian and Dennis Shea (2001).

[61] U.S. Government Accountability Office (GAO), "Automatic Enrollment Shows Promise for Some Workers, but Proposals to Broaden Retirement Savings for Other Workers Could Face Challenges," October 2009.

percentage points lower than those without an auto-enrollment plan.[62] Lastly, requiring auto-enrollment might deter certain firms, especially smaller ones, from offering any DC plan in the first place.

Further reading

- Madrian, Brigitte and Dennis Shea, "The Power of Suggestion: Inertia in 401(k) Participation and Savings Behavior," Quarterly Journal of Economics 116, no. 4 (November 2001): 1149-87; http://www.retirementmadesimpler.org/Library/The%20Power%20of%20Suggestion-%20Inertia%20in%20401(k).pdf
- Choi, James et al, "Defined Contribution Pensions: Plan Rules, Participant Decisions, and the Path of Least Resistance," Tax Policy and the Economy, Vol. 16, (MIT Press, 2002), pp. 67-113, http://www.nber.org/chapters/c10863.pdf
- U.S. Government Accountability Office (GAO), "Automatic Enrollment Shows Promise for Some Workers, but Proposals to Broaden Retirement Savings for Other Workers Could Face Challenges," October 2009, http://www.gao.gov/assets/300/297061.pdf
- Soto, Mauricio and Barbara A. Butrica. "Will Automatic Enrollment Reduce Employer Contributions to 401(k) Plans?" The Urban Institute Program on Retirement Policy, Discussion Paper 09-04, December 2009, http://www.urban.org/uploadedpdf/411995_employer_contributions_paper.pdf

Comment [BK3]: You go straight from changes to existing DC plan designs to new designs – no mention of improvements to existing DB designs such as increasing PBGC minimum guarantees so retirees don't end up in poverty if their plan is terminated.

Shared Risk Pensions*

This type of defined benefit pension, developed in the Netherlands and adopted in 2012 in New Brunswick, Canada, would try to ensure a distributed burden of risk between the employer and employee. The plan design separates benefits into guaranteed "base" benefits and moderately secure "ancillary" benefits. To keep benefits on track, pre-determined requirements adjust to changes in the financial condition of a pension plan. Because of the pension plan supervision and guaranteed benefits, this proposal has garnered union support.

DB(k)s*

This option was established in the Pension Protection Act. It combines elements of DB and DC pensions. For example, an employee would earn a DB pension plan with a guaranteed lifetime payment equal to 1% of his or her final average compensation per year of service, up to 20 years, with vesting after three years of employment. In addition, an employee would be automatically enrolled in a 401(k) plan that defers 4% of salary, plus a 50% employer match, with immediate vesting.

[62] Soto, Mauricio and Barbara A. Butrica. "Will Automatic Enrollment Reduce Employer Contributions to 401(k) Plans?" *The Urban Institute Program on Retirement Policy*, Discussion Paper 09-04, December 2009.

Guaranteed Retirement Accounts*

This option, developed by Teresa Ghilarducci, an economist at the New School for Social Research, would create a national retirement savings program called Guaranteed Retirement Accounts (GRAs). GRAs would be similar to cash balance accounts—an existing type of defined benefit pension that incorporates some features of defined contribution plans. Under such a plan, workers and/or their employers would contribute 3-5% of earnings into a pooled fund invested in low-risk securities. Workers would maintain ownership of the accounts as they changed jobs, and would be guaranteed a return of 3%, plus inflation.

Auto-escalation

Background

One policy that could potentially address the challenges associated with auto-enrollment is automatic escalation. Like auto-enrollment, auto-escalation came about as a result of the PPA in 2006.

Option in brief

Similar to auto-enrollment, auto-escalation involves the employer setting a default contribution rate, but differs in that the rate is increased gradually over time. The rate is usually increased in the event of a raise or promotion, for example. Like auto-enrollment, the participant always has the option to opt-out.

Retiree Impact

There is no "one-size-fits-all" approach for each contribution threshold under an auto-escalation model, and every employer and retirement system is different. However, survey research suggests that auto-escalation can result in a substantial increase in employees' 401(k) accounts, especially for lower-income workers. In fact, findings from the 2007 Retirement Confidence Survey (RCS) suggest that an auto-escalation system could increase overall 401(k) accumulations from between 11 to 28 percent for participants in the lowest income quartile alone.[63]

Cost

Similar to auto-enrollment, increased participation and contribution rates are expected to increase costs for employers overall, and the exact costs would vary from firm to firm. Further, marginal costs would increase over time as a result of the incremental increases in contribution and match rates. Naturally, costs would also increase for employees as they contribute more to their 401(k)s over time; however, this should be seen as a net benefit, since they would likely be saving more for retirement than they would have without auto-escalation.

[63] VanDerhei, Jack L., "The Expected Impact of Automatic Escalation of 401(k) Contributions on Retirement Income," *EBRI Notes*, Vol. 28, No.9 (Employee Benefit Research Institute, September 2007) pp. 2-8. EBRI calculations based on 2007 RCS results.

Comment [BK4]: Also, shouldn't the proposed Harkin USA Account structure be mentioned? Senator Sherrod Brown is adopting the Harkin bill now that he is retiring.

Comment [BK5]: I would move the auto-escalation section to follow the auto-enrollment since they are typically linked together.

Comment [KR6]: Is this right? Auto-enrollment predates the PPA, though the PPA created safe harbor for it. You could modify to say that auto-escalation is encouraged by the PPA or look up the history of it (e.g., Thaler's work).

Comment [KR7]: Do we know that it would increase employer costs for sure? Is there research on this? I can see why higher participation rates would increase employer costs (which may be offset by lower match rates), but why would higher contribution rates change employer costs?

Comment [BK8]: I suspect any impact would be limited to plans with employer matches.

Pros & cons

There are at least two major benefits of having an auto-escalation policy in place. One is that, as mentioned previously, it seems to be more effective at increasing 401(k) accumulations for lower-income workers than having an auto-enrollment plan without auto-escalation. Second, auto-escalation could help guarantee that inertia does not keep certain employees at a default contribution rate lower than the rate they would have otherwise chosen without the default. One potential downside is that there is no "universal" contribution and escalation rate that would apply to every employer or employee for that matter. Employers would probably need to do their own research into what the optimal rates might be for that particular firm.

Further reading

- VanDerhei, Jack L., "The Expected Impact of Automatic Escalation of 401(k) Contributions on Retirement Income," *EBRI Notes*, Vol. 28, No.9 (Employee Benefit Research Institute, September 2007) pp. 2-8, http://www.ebri.org/pdf/notespdf/EBRI_Notes_09a-20071.pdf
- VanDerhei, Jack L., "The Impact of Auto-enrollment and Automatic Contribution Escalation on Retirement Income Adequacy," *EBRI Issue Brief*, No. 349 (Employee Benefit Research Institute, November 2010), http://www.ebri.org/pdf/briefspdf/EBRI_IB_011-2010_No349_EBRI-DCIIA.pdf
- Benartzi, Shlomo and Richard H. Thaler. "Behavioral Economics and the Retirement Savings Crisis," *Science Magazine*, Vol. 339, March 2013, http://www.sco.ca.gov/Files-EO/2013_sco_flac_benartzi_behavioural_econ_and_savings_crises.pdf

Simplify investment options*

Simplify investment options for DC plans. For example, encourage the use of target date or lifecycle funds. Use index funds (rather than actively managed funds) as defaults. Limit the number of investment options for employees.

Financial education*

Financial literacy is critically important for ensuring a secure retirement, particularly as workers rely increasingly on DC plans. However, many Americans are financially illiterate. Most employers offer some form of financial education to employees. The Pension Protection Act has made it even easier for employers to offer training. However, studies indicate that the tools employers use are not typically effective. Some interventions have been proven to be better than others. For example, workplace seminars can increase both participation and contribution rates. If employers offered more evidence-based financial education, employees could be better off.

Better information from plan providers*

These options to improve communication with plan participants are based on field experiments. For example, providing hypothetical savings scenarios or goal setting cues in regular statements may improve employees' financial literacy and retirement saving plans.[64] Communication interventions like mailed brochures are a low-cost way to enhance retirement security.

Universal pensions*

About half of workers do not have access to an employer-sponsored savings plan. One variation of this proposal, first developed by David John and Mark Iwry, would allow employers who do not offer retirement savings plans to automatically enroll all employees into a payroll-deduction IRA. The employers would receive a tax deduction, and the funds would be invested in private financial institutions of the employer's choosing. The employee would be able to opt out of the IRA. President Barack Obama included the automatic IRA approach in his 2015 Budget Proposal.[65]

Comment [BK9]: There are also numerous States looking at similar structures eg California, Mass, CT – some reference to State efforts should probably be mentioned.

Refundable saver's credit

Background

There are several government-based policy options available that seek to reform the private retirement system by making retirement saving easier and more rewarding financially. One such policy option involves the Retirement Savings Contribution Credit, or "saver's credit." The saver's credit, established by the Economic Growth and Tax Relief Reconciliation Act of 2001, enables low- and moderate-income tax filers to reduce their federal income tax liability by making regular contributions to a savings or retirement plan.[66] The amount of the credit is 10%, 20% or 50% of your retirement plan or IRA contributions up to $2,000 ($4,000 if married and filing jointly), dependent upon your adjusted gross income. However, while it lowers your tax liability, the credit under current law is not refundable, and the credit rate falls sharply with income. It is underused: http://www.cbo.gov/publication/42731

Comment [BK10]: In addition to making the credit refundable, most Saver's credit reform bills also increase the phase-out limits and smooth out the credit rates

Option in brief

To make this tax credit more rewarding, one popular reform proposal over the past decade involves changing the credit to a flat-rate, refundable credit that phases out more gradually with income.[67] Such a credit could also be made into a *matching contribution*, in that it would be deposited directly into an individual's retirement account as opposed to a lower tax liability or refund.

Retiree Impact

It is estimated that at least half of all taxpayers eligible for the saver's credit would benefit from making it refundable.[68] Making the Saver's Credit refundable has the potential to reinforce retirement saving incentives as well as outcomes for low-income families.

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[64] http://www.nber.org/bah/2012no2/w17927.html
[65] http://www.whitehouse.gov/omb/budget
[66] Southworth. Lisa and John Gist, "The Saver's Credit: What Does it Do For Saving?," *AARP Public Policy Institute*, February 2008.
[67] Gale, William G., David C. John, and Spencer Smith. "New Ways to Promote Retirement Saving," *AARP Public Policy Institute*, October 2012.
[68] Brady, Peter and Warren B. Hrung. "Assessing the Effectiveness of the Saver's Credit: Preliminary Evidence from the First Year," Working paper, August 2005.

Cost
Expanding the saver's credit would reduce revenues by $29.8 billion over 11 years http://www.taxpolicycenter.org/taxtopics/2011_savers_credit.cfm

Pros & cons
One benefit of making the Saver's Credit refundable is that it would provide a greater incentive for Americans to save for retirement, especially for low-income families. Further, depositing the credit directly into an individual's retirement savings account would make it much more likely to be saved than it would as a retirement deduction or credit. One major potential disadvantage is that if matching contributions to 401(k) plans are already provided by the government, some firms might be less willing to match contributions themselves.

Proposals that include this option
- Obama Budget
- CAP http://www.americanprogress.org/issues/tax-reform/report/2012/01/10/10872/a-small-change-to-the-savers-credit-can-go-a-long-way/ (variation on Obama proposal)
- Brookings (Karen Dynan): http://crfb.org/blogs/brookings-rethinkstax-expenditures
- New America: http://assets.newamerica.net/sites/newamerica.net/files/policydocs/Personal%20Savings%20and%20Tax%20Reform%207-19-13-formatted.pdf (similar)

Further reading
- The Saver's Credit: Issues & Options, http://www.urban.org/UploadedPDF/1000642_TaxBreak_050304.pdf

Flattening tax incentives for retirement savings*
Tax incentives for retirement savings are often characterized as "upside down"—that is, the larger the household's income, the larger its retirement tax benefit. Higher income households are also more likely to have access to workplace retirement savings programs and to have discretionary income to save. One alternative is to replace the current structure of tax incentives, which totaled about $128 billion in 2013, with a 25 percent refundable credit for retirement savings.[69] Such a change would benefit some taxpayers—mainly low- and middle-income taxpayers—while raising taxes and reducing retirement assets for others—primarily those at the top of the income distribution. Studies suggest that the current retirement savings incentives have little effect on the amount people save.[70] However, tax incentives for retirement savings are politically popular, particularly among the high-income people who benefit from them most.

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[69] http://www.brookings.edu/~/media/research/files/reports/2014/07/01%20flattening%20tax%20incentives%20for%20retirement%20saving/flattening_tax_incentives_for_retirement_saving.pdf

[70] http://www.nber.org/papers/w18565

Expand employer tax credit

Background

Just like employees are responsible for saving for their own retirement, employers also have a clear, critical role to play in advancing the retirement security of their employees. Many firms, however, do not offer adequate retirement services since doing so can be quite costly – especially for smaller firms. Today, employers that sponsor a new 401(k) plan receive a $500 tax credit for up to three years, and proposals have been made to include a similar credit (for two years) of $250 for employers who offer automatic IRAs.[71]

Option in brief

Increasing the employer tax credit for new retirement plans might incentivize employers to add employees to an existing plan or to start a new one. An example of one such proposal would be to increase the tax credit for new 401(k) plans to $1,500 per year (for three years) and new auto IRA plans to $1,000 per year (for two years).[72] In addition, the proposal would create an additional, permanent tax credit of $25 per year (for two years) for each new employee enrolled in any type of 401(k)-style plan.

Retiree Impact

An expansion of the employer tax credit like this one could help employers – especially small ones – manage the cost of establishing new accounts, managing payroll deductions, and providing important retirement-related information to employees.

Cost

- requiring automatic enrollment in IRAs and doubling the retirement plan startup credit for small businesses would cost $10.4 billion http://www.taxpolicycenter.org/taxtopics/2011_savers_credit.cfm

- Taking steps to ensure that more workers are covered by some type of retirement savings plan by increasing the small employer pension startup tax credit and establishing an automatic IRA program *(Saves $3 billion-$6 billion). http://crfb.org/blogs/brookings-rethinkstax-expenditures*

Pros & cons

By creating greater financial incentives such as a higher tax credit, employers (especially small ones) would be much more likely to provide 401(k)-style plans or automatic IRAs to their

[71] For example, see Iwry and John, "Pursuing Universal Retirement Security Through Automatic IRAs," *Retirement Security Project*, The Brookings Institution 2009; and similarly, legislation proposed by Rep. Neal (D-MA), *Automatic IRA Act* (http://neal.house.gov/images/pdf/summary_auto_ira_act_2010.pdf)
[72] Gale et al, 2012.

employees. Not only would the number of plans increase, but there would likely be a domino effect – with more cash on hand, employers might be better suited to expand existing 401(k) plans, such as increasing their matching contribution rates for example. ***Just missing "cons" here***

Proposals that include this option

- Obama budget
- Brookings (Karen Dynan): http://crfb.org/blogs/brookings-rethinkstax-expenditures

Further reading*

Reduced fees for 401(k)s*

Workers increasingly rely on 401(k)s and other defined benefit contributions. The fees on these accounts vary substantially. A recent study showed that counting all fees, an employee at the 10th percentile paid about 0.28% of assets in fees, compared to 1.38% of assets at the 90th percentile.[73] The median worker pays 0.78%. High fees can cut retirement savings dramatically. For example, the Department of Labor estimated that a one percentage point difference in fees could reduce a retiree's account balance by 28%.74 ERISA, the law that governs pensions, requires employers to ensure that investment fees and expenses are reasonable. Stricter rules on reasonableness could result in higher investment returns for workers. (Could use QDIA rules for automatic enrollment instead of a % limit.)

Fee disclosure*

Fees are one of the most important criteria for choosing an investment for retirement savings. The fee structure for 401(k) plans is very complex and difficult for beneficiaries to understand, or to compare across plans. A set of 2012 regulations to ERISA, the law governing private pensions, required plan providers to disclose fees. The Department of Labor has proposed a new rule to further clarify communications, by providing a more consumer-friendly summary of all of a plan's fees.[75] An "all-in" disclosure of fees could be even simpler for plan participants to understand.[76] However, there is some debate about whether plan participants understand and act upon information about fees. (Stoplight graphic.)

Comment [BK11]: In addition to disclosure and reduced fees, a related hot issue right now is an update of the fiduciary duty definition. This is especially important for IRAs where most 401k money is rolled-over – fiduciary rules do not apply to most investment advisers outside the employer plan context.

Rollover requirement*

This option would require employers to roll over retirement assets for departing employees. Employees are permitted to cash out their 401(k)s when they switch jobs. Otherwise, workers are

[73] http://www.ici.org/pdf/rpt_11_dc_401k_fee_study.pdf

[74] http://www.dol.gov/ebsa/publications/401k_employee.html

[75] http://www.shrm.org/hrdisciplines/benefits/articles/pages/dol-enhanced-401k-fee-disclosure.aspx

[76] http://www.ici.org/pdf/rpt_11_dc_401k_fee_study.pdf

only permitted to tap into their retirement savings at age 59 ½, to take a loan for qualified reasons, or to take a hardship withdrawal. Distributions when switching jobs are responsible for about 2/3 of all leakage from 401(k)s.[77] Under current law, if an employee's account balance is less than $1,000, the employer may cash it out (less taxes and fees); if it is between $1,000 and $5,000, the employer must roll it into an IRA, unless otherwise specified by the employee; if it is more than $5,000, the employer must keep it, unless otherwise specified by the employee. If employees were no longer able to tap into their retirement accounts when they switched jobs—except in cases of hardship—retirement savings leakage would be substantially reduced.

Encourage annuitization*

This proposal would encourage workers to purchase annuities with their retirement savings. Annuities are financial products that pay a consistent stream of benefits over time. Life annuities pay benefits periodically until death and can be purchased individually or through a pension plan to strengthen retirement security. Some examples of this policy include reframing annuitization to make it more appealing than a lump-sum distribution. Other proposals suggest automatically enrolling workers into a deferred annuity or mandating federal annuity insurance to reduce default risk.

Comment [BK12]: Other major issues are designing lower-cost annuities – currently those with low account balances can lose a lot of money through fees. Also, for annuities outside the employer plan context, advocates have pushed for the use of gender-neutral mortality tables – making annuities less expensive for women.

Changing Medicaid/SSI rules to encourage retirement saving*

This proposal would change Medicaid and SSI program rules to encourage retirement savings among lower-income groups. Medicaid and SSI currently have asset limits that discourage savings for some individuals who need more immediate financial assistance. An individual's assets, which include retirement savings, can either disqualify an individual from the program or reduce his or her benefits. Policymakers could change the benefit formula to exclude retirement savings when determining eligibility or allow more generous asset limits for current recipients, as opposed to those applying for benefits.

Earnings Section

Introduction

Earnings are the final major source of elderly income. While some older Americans have substantial earnings, particularly in their 60s, it is important to note that nearly three-quarters of elderly households receive no earnings at all.[78] Earnings are typically the most significant source of retirement income for the high income elderly, while those with lower incomes rely much more on Social Security.

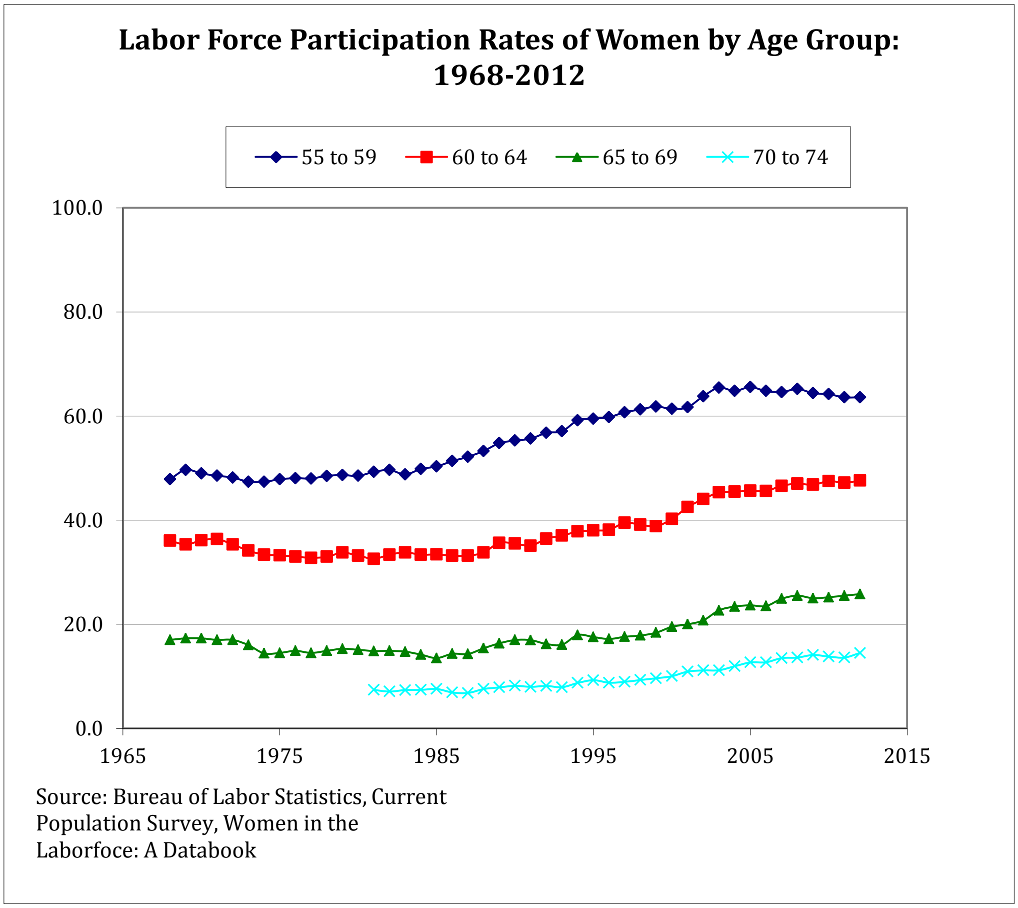
On average, people are living healthier and longer lives, potentially giving them the opportunity to continue work and delay retirement. If people worked longer, they could have more secure retirements. In addition to having additional earnings, people who work longer have more

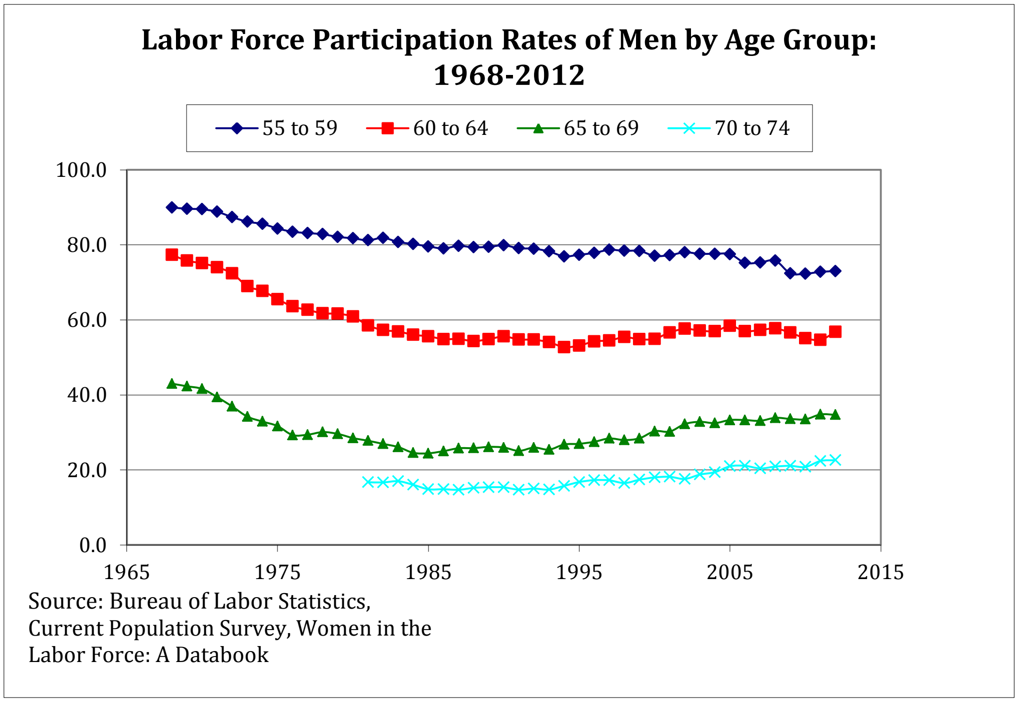
[77] http://www.ebri.org/pdf/FF.290.Leakage.17July14.pdf
[78] Income of the Aged Chartbook, 2012

opportunities to save, can start drawing down their retirement savings later, and could earn a higher monthly Social Security benefit, particularly if they delay claiming.

It is important to remember that longevity gains are not shared equally and some workers simply cannot work longer. Therefore, some proposals to encourage delayed retirement will not affect their choices and could even disproportionately hurt them. When reviewing incentive options, policymakers should also consider the demand for older workers. Employers may not be willing or able to afford to take on older workers, whose salaries and benefits can be more costly than younger workers. In addition, older workers may experience a declining demand for their skills..

The labor force participation rate among elderly workers—particularly women—has increased in the past few decades, as shown in the charts below. This increase is due to several possible factors. The increase in elderly women's labor force participation is consistent with increases in women's increased work across the age spectrum. Social Security policy changes, such as the increase in Social Security's full retirement age, may also be encouraging older workers to delay retirement and receive increased benefits. Since the Great Recession, retirees might also have trouble accumulating income from other sources, such as pensions and savings. The stock market decline and change in employer-sponsored retirement plans may persuade older workers to rely more on earnings and savings for their retirement income. All of these factors may be contributing to the increase in labor force participation rate among older workers.


Labor Force Participation Rates of Women by Age Group: 1968-2012
55 to 59
60 to 64
65 to 69
70 to 74
100.0
80.0
60.0
40.0
20.0
0.0
1965
1975
1985
1995
2005
2015
Source: Bureau of Labor Statistics, Current Population Survey, Women in the Laborfoce: A Databook



Lump-Sum Delayed Retirement Credits

Background

Policymakers have made incentives, such as delayed retirement credits (DRC), to encourage working longer and claiming later. Currently, if a retiree delays claiming Social Security benefits past the full retirement age, he or she receives delayed retirement credits that increase monthly benefits. This proposal would offer a lump-sum option that would give a one-time payment to the beneficiary who delayed claiming, rather than increasing monthly benefits. Workers may find a lump-sum option more appealing, and as a result, become more likely to delay claiming. Variations of this proposal should be reviewed, because they can affect retirees in different ways. For example, a voluntary lump-sum option introduces different cost and administrative implications than a mandatory lump sum.

Option in brief

Introduce a lump-sum option to replace the monthly increase for beneficiaries who delay claiming past the full retirement age. Lump-sum payments would be calculated using the average life expectancy of the beneficiary population to find the the expected present value of the DRCs.[79]

Comment [KR13]: Do you think we should just stick with the mandatory lump sum, then discuss the voluntary option in the pro/con section? Might make things clearer. I got the impression Henry favored that approach.

Retiree impact

Beneficiaries with shorter life spans are expected to benefit more from a lump-sum option than beneficiaries with longer life spans.[80] Since lower income individuals tend to have shorter life spans, the proposal could be viewed as progressive. Men and minorities also tend to have shorter life spans and may benefit more from a lump-sum option rather than an increased annuity.

Depending on retiree behavior, the lump-sum option can affect elderly poverty in two very different ways.[81] First, the proposal may persuade some individuals, who find a lump sum appealing, to retire later than they would have under the current program, which would increase their earnings and possibly savings. This in turn could reduce poverty. Second, a lump sum could be consumed quickly rather than saved, which could potentially raise poverty rates, especially among the financially illiterate.[82]

Cost

The Office of the Chief Actuary estimates that an increase of 2.88 percent of taxable payroll would eliminate the 75-year funding shortfall. Though the OACT has not publically scored this option, a lump-sum DRC could marginally affect solvency, depending on whether the option is mandatory or voluntary. Individuals persuaded to work longer, whether the lump sum is optional or not, will continue to add revenue to the Social Security Trust Funds through the income tax, decreasing the shortfall. An optional lump-sum DRC raises the possibility of adverse selection. Individuals who expect to have a shorter life span will likely choose the lump sum and individuals who expect to have a longer life span will likely choose monthly benefits, creating a greater cost for the Trust Fund. An optional lump-sum also introduces more administrative work for SSA employees. A mandatory lump sum ensures progressive benefits and is theoretically cost neutral. Though the net cost of this option is unknown, both channels are expected to marginally affect system solvency.

Pros & Cons

Currently, most workers claim benefits earlier than the full retirement age, even though working longer increases a worker's monthly retirement benefit. Research shows that a lump-sum DRC option may induce some workers to delay claiming, which would likely strengthen individual retirement security.[83] Also, an incentive to delay retirement may appear more politically attractive than some of the proposed benefit cuts.

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[79] http://crr.bc.edu/wp-content/uploads/2001/04/ib_6.pdf

[80] Beneficiaries with shorter life spans on average will receive a more than actuarially fair lump-sum than beneficiaries with longer life spans.

[81] http://crr.bc.edu/wp-content/uploads/2001/04/ib_6.pdf

[82] http://crr.bc.edu/wp-content/uploads/2001/04/ib_6.pdf

[83] http://www.mrrc.isr.umich.edu/publications/papers/pdf/wp266.pdf

On the other hand, a lump sum may have a negative impact on individuals who have limited financial knowledge.[84] For example, an individual may underestimate his or her lifespan and consume a lump sum quickly rather than save it. An increase to monthly benefits reduces this risk by distributing benefits gradually over time to ensure end of life funds. The cost effects are uncertain and variations of this proposal can affect retirees in different ways.

Comment [BK14]: Could this option also result in pressure on Congress to make the entire SS payment lump-sum?

Further Reading

[Should a Lump-Sum Payment Replace Social Security's Delayed Retirement Credit by Peter R. Orszag]

Ending payroll tax contributions for older workers

Background

Policymakers often look for ways to increase the labor force participation rate among older workers to improve retirement income. This proposal would end the OASDI payroll tax for senior workers to encourage working longer by increasing their take-home pay. If they work longer, they could potentially spend less of their savings, save more, and claim Social Security benefits later. The proposal would also eliminate the payroll tax for employers, which might encourage them to hire and retain older workers.

Option in Brief

Eliminate the OASDI payroll tax contributions for workers 62 and older. The OASDI tax on their employers' would also be eliminated.

Retiree Impact

This proposal would increase earnings and potentially savings for individuals who decide or are able to work longer. One study found that eliminating the OASDI payroll tax for employees after they reach age 65 would decrease the percentage of workers leaving the labor force by 6-7%.[85] Expected Social Security benefits would not change unless people delay claiming.

Cost

The Office of the Chief Actuary has not publically scored this option, but the proposal is expected to worsen system solvency. Though workers at age 62 or older will not contribute to the Trust Fund, their projected benefits will not change, which would ultimately increase costs. The cost could

[84] These individuals tend to have lower income on average
[85] http://www.rand.org/content/dam/rand/pubs/working_papers/WR900/WR987-1/RAND_WR987-1.pdf

potentially be offset by using a similar mechanism to the recent "payroll tax holiday" to reimburse the OASDI Trust Funds from General Revenue.

Pros and Cons

This proposal may encourage some older workers to work longer, which would increase their take-home pay and potentially savings. The proposal may also help workers delay Social Security benefits. Including employers in the payroll tax break gives them an incentive to hire and retain older workers who may face age discrimination. On the other hand, older workers have the lowest unemployment rates, so the incentive for employers to keep them in the workforce may not be needed. Since older workers and their employers would not contribute to the Trust Fund, system solvency is expected to worsen. Employers could also reduce wages for older workers, so seniors may not experience the increase in take-home pay, which would distort the labor market to favor older workers.

Alternative Option(s)

Alternatives to this proposal could address the age to qualify and whether the employer tax should be eliminated. A policy brief by The Office of Retirement and Disability Policy analyzed an option that ended the payroll tax starting at age 60 for employees only.[86] The study found fairly consistent increases in marginal returns across gender and earnings dimensions. This alternative covers more workers for a longer period of time, which could strengthen the incentive to work longer. However, ending the payroll tax at an earlier age creates more costs for the Trust Fund. Excluding employers from the payroll tax break could offset some of the cost, but also eliminates the incentive for employers to hire and retain older workers.

Another alternative would identify older workers by the length of OASDI covered employment rather than age, which would reward individuals with longer work histories. However, people with minimal work histories may become discouraged and would have little incentive to work longer under this proposal. In addition, people with longer work histories are likely to have more secure retirement incomes and may not need an incentive to work even longer.

Proposals that include these or similar options

- Marco Rubio's Plan

Further Reading

- http://www.ssa.gov/policy/docs/issuepapers/ip2009-02.html
- http://www.rand.org/content/dam/rand/pubs/working_papers/WR900/WR987-1/RAND_WR987-1.pdf
- http://www.ssa.gov/policy/docs/workingpapers/wp53.pdf
- http://www.heritage.org/research/reports/2010/11/time-to-raise-social-securitys-retirement-age

[86] http://www.ssa.gov/policy/docs/issuepapers/ip2009-02.html

Retirement earnings test (RET) repeal*

Social Security's retirement earnings test (RET) affects many beneficiaries who claim benefits and continue to work before reaching their full retirement ages. SSA withholds the benefits of those who earn more than the RET threshold, and then credits them back once the beneficiaries reach full retirement age. However, most beneficiaries understand the RET to be a cap or a tax, and thus it discourages work. This option would eliminate the RET. Repealing the RET is likely to encourage work at older ages and also to cause beneficiaries to claim earlier.[87]

Strengthening anti-discrimination laws*

This proposal would strengthen anti-discrimination laws on a state and/or national level. Some evidence suggests that states with stronger age discrimination protections help to lengthen the working lives of older individuals.[88] These protections may help boost employers' demand for older workers, allowing individuals to work longer. Consequently older workers may become more responsive to Social Security policy changes, such as increases in the normal retirement age.

Bridge jobs*

This proposal would encourage bridge job opportunities and flexible working hours for older individuals. Bridge jobs, which are part-time or full-time positions taken after a long-term career, could help increase working years for older individuals to have a more secure retirement plan. Most Americans gradually transition into retirement rather than leave the labor force all at once. Hours flexibility could decrease turnover rates and delay retirement, which could simultaneously benefit the employer and employee.

Phased retirement*

This proposal would allow long-term employees to begin receiving retirement benefits while working part-time. These experienced employees could have the opportunity to mentor newer employees, while transitioning into retirement. The federal government and some higher education facilities have adopted this proposal.

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[87] http://www.ssa.gov/policy/docs/ssb/v73n1/v73n1p39.html

[88]

http://www.mrrc.isr.umich.edu/transmit/rrc2013/summaries/3B_NeumarkButtonAgeDiscriminProtectionsSummary.pdf

http://www.mrrc.isr.umich.edu/publications/conference/pdf/UM11-15A0811C.pdf

Framing of retirement age*

Studies show that the presentation of retirement information can influence retirement behavior.[89] This proposal recommends that SSA change the language they use when discussing retirement security to encourage responsible saving practices. For example, today SSA uses the terms "early," "normal," and "late" when describing retirement claiming, which stresses the ages of retirement rather than the benefits. Employing language like "reduced benefits," "unreduced benefits," and "increased benefits" evokes more positive feelings about later retirement and may encourage delayed claiming.

[89] http://www.rand.org/content/dam/rand/pubs/working_papers/2011/RAND_WR854.pdf

-----Original Message-----
From: Lanhee J. Chen [mailto:lanhee@stanford.edu]
Sent: Friday, December 19, 2014 12:27 PM
To: Jackie Chapin
Cc: Alan Cohen; bbk; Bernie Franks-Ongoy; Dorcas Hardy; Henry Aaron; Jagadeesh Gokhale; Claire Green; David Warner; Joel Feinleib; Sterling Laudon
Subject: Re: Action items from December Board meeting

Here are the consolidated topics for the DPP that Bernie and I agreed on:

- A panel focused on SGA and the questions surrounding that issue. I think SGA deserves its own panel because that is an item that is actively part of the policy discussion now and the controversy is substantial enough that there would be enough there to facilitate good discussion. I'd recommend we actually start here.

- A panel focusing on impairment and related issues, which would include questions surrounding: (1) impairment severity; (2) residual functional capacity; (3) listing of impairments and (4) vocational assessment. All of these issues strike me as being related and therefore ought to be the subject of a single, interrelated inquiry.

- A panel looking at procedural issues around the initial disability determination. This would over field office issues, external experts, and single decision maker.

- A panel looking at quality reviews and hearing procedures, since again I think there is a relationship here.

- Finally, a panel that looks at appointed representatives on its own.

Bernie and I also discussed a panel focused on SSI/children but figure that may be beyond the scope of the DPP's work.

Thanks.
Lanhee

SSA 2015 Payroll Calendar

January 2015

PP#	LP#	Sun	Mon	Tue	Wed	Thu	Fri	Sat
2	26					**1**	2	3
		4	5	**6**	7	8	9	10
3	1	11	**12**	13	14	15	16	17
		18	**19**	**20**	21	22	23	24
4	2	25	**26**	27	28	29	30	31

February 2015

		Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1	2	**3**	4	5	6	7
5	3	8	**9**	10	11	12	13	14
		15	**16**	**17**	18	19	20	21
6	4	22	**23**	24	25	26	27	28

March 2015

		Sun	Mon	Tue	Wed	Thu	Fri	Sat
		1	2	**3**	4	5	6	7
7	5	8	**9**	10	11	12	13	14
		15	16	**17**	18	19	20	21
8	6	22	**23**	24	25	26	27	28
		29	30	**31**				

April 2015

		Sun	Mon	Tue	Wed	Thu	Fri	Sat
					1	2	3	4
9	7	5	**6**	7	8	9	10	11
		12	13	**14**	15	16	17	18
10	8	19	**20**	21	22	23	24	25
		26	27	**28**	29	30		

May 2015

		Sun	Mon	Tue	Wed	Thu	Fri	Sat
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		10	11	**12**	13	14	15	16
12	10	17	**18**	19	20	21	22	23
		24	**25**	**26**	27	28	29	30
13	11	31						

June 2015

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July 2015

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15	13				1	2	**3**	4
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17	15	26	**27**	28	29	30	31	

August 2015

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		30	31					

September 2015

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20	18	6	**7**	8	9	10	11	12
		13	14	**15**	16	17	18	19
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October 2015

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November 2015

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26	24	29	**30**					

December 2015

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January 2016

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- Holiday
- Payday
- Closeout

2015

January 2015

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February 2015

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March 2015

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April 2015

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May 2015

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June 2015

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July 2015

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August 2015

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September 2015

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October 2015

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November 2015

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December 2015

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20	21	22	23	24	25	26
27	28	29	30	31		

Board Meeting Dates

- January 8
- February 23
- April 24
- June 2-3 (tentative Board Meeting)

Board Trips

- March 23-25 New York

Notes:

February 24 – Field Trip to DDS

Board Meeting Dates

Board Trips

Holiday