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## **Social Security Advisory Board**

**400 Virginia Ave S.W., Suite 625  
Washington, D.C. 20024**

### **Agenda for Friday May 29, 2015**

- 9:00 a.m. to 10:30 a.m. Virginia Reno, Deputy Commissioner of the Office of Retirement and Disability Policy (ORDP)  
Elisa Walker, Special Assistant to the Deputy Commissioner for Retirement and Disability Policy  
Shirleeta Stanton, Associate Commissioner for Income Security Programs  
Eric Ice, Director, Office of Payment and Claimant Representation Policy  
John Jankowski, Senior Researcher, Office of Research, Evaluation, and Statistics  
Richard Chard, Senior Researcher, Office of Research, Evaluation, and Statistics
- 10:30 a.m. to 11:00 a.m. Board Business
- 11:00 a.m. to 12:00 p.m. Patricia Potrzebowski, Executive Director of the National Association of Public Health Statistics and Information Systems (NAPHSIS)
- 12:00 p.m. to 1:00 p.m. Board Business and Lunch
- 1:00 p.m. to 2:30 p.m. Michelle King, Acting Assistant Deputy Commissioner of the Office of Budget, Finance, Quality, and Management (BFQM)  
Patrick Perzan, Acting Deputy Associate Commissioner of the Office of Budget  
Jon Tortora, Acting Associate Commissioner of the Office of Anti-Fraud Programs
- 2:30 p.m. to 2:45 p.m. Break
- 2:45 p.m. to 5:00 p.m. Board Business

**Social Security Advisory Board  
April Board meeting  
April 24, 2015**

**Morning Executive Session**

**SSI asset limit.** The Board discussed the draft SSI asset paper for areas of agreement so that a position could be endorsed. Members discussed whether 401(k)'s should be exempt from the asset limit. Members discussed the competing principles of encouraging retirement savings vs. having the taxpayer provide monetary support at the last possible moment.

**401(k) withdrawal fee.** Members had previously discussed whether 401(k) holders should have to pay a fee to withdraw money and a member pointed out that there is a hardship exemption to the fee in place already. A member stated that few people with 401(k)'s would apply for SSI since most would qualify for other programs such as SSDI.

**Support for raising the asset limit.** One member stated that for compassionate reasons and administrative improvement, the asset limit in place should be higher. If SSI is to be regarded as available only when all other resources have been exhausted, the implication is that the asset limit should be zero. The member pointed out that the asset limit is not indexed for inflation and has been shrinking since the last adjustment in 1989. The member asked what the limit should be. Another member stated that SSI recipients should be able to save a little bit to pay for emergencies. For SSI recipients subsisting on benefits, expenses are not always flat, so a higher asset limit could increase preparedness.

**Opposition to raising the asset limit.** A member pointed out that indexing for inflation is often done to protect earned income such as Social Security benefits, but the principle should be different with SSI. The member stated that if recipients can save enough to meet the threshold, perhaps they should not qualify for SSI. That member stated that savings should be spent down first so that the taxpayer is not on the hook.

**Legislative history of SSI asset limit.** Members discussed why Congress has not acted on this issue. Some suggested inertia and the low priority of this type of spending. Others suggested it was a purposeful decision related to other programs such as the EITC being introduced to encourage work. One member pointed out that those programs target the working poor as opposed to SSI which targets those unable to work. One member asked for the legislative history of the SSI asset limit. Staff agreed to research and provide this history.

**What should the asset limit be?** The Board discussed what the asset limit should be, if it should be raised, whether it should be indexed, and whether some small agreement could be reached.

Four members supported raising the limit, one supported indexing if there was unanimity, another suggested possible support tied to work incentives, and another did not weigh in.

**Meeting with ACUS about ALJ hiring.** Two members met with ACUS about a working group of which ACUS is a member and co-chair, which is looking at OPM's role in hiring Administrative Law Judges (ALJs). ACUS is interested in partnering with SSAB but one member noted that he believes that ACUS is hoping that SSAB will fund some of the research. The members supported ACUS, but are not going to provide money or staff. Members discussed collaborating with ACUS on a letter or a position statement.

**Single Decision Maker (SDM).** SSA and the Board have been looking at the SDM issue. SDM is used in 20 states. The DDSs support SDM because it is faster and costs less administratively. The SDM leads to a faster decision with at least equal accuracy, defined in terms of future reversals, but leads to a slightly higher allowance rate. The Board has been considering supporting SDM expansion, but there is not enough analysis of the tool and Steve Goss believes it will increase costs.

**WEP/GPO.** Kathleen Romig described the WEP/GPO issue and proposed policy changes in the Board's report. The WEP/GPO arises because many state and local workers were exempt from Social Security and got public pensions in its place. Some of these workers also had earnings covered by Social Security. Because Social Security is progressive, they would receive a higher replacement relative to workers whose whole career was covered by Social Security since their non-covered earnings are not used in the benefit calculation. To offset this, Congress enacted the WEP/GPO to adjust benefits for people with both covered and uncovered earnings. The reduction overcorrected from some people and undercorrected for others. At the time of enactment, data was unavailable to perform a calculation that was proportionate to the earnings in covered and non-covered work. The data will become available in 2017 and the report proposes to apply proportionate formulas to new retirees instead of the approximations in the WEP/GPO. This would reduce administrative burdens and save money. A second proposal would affect beneficiaries subject to current WEP and GPO rules. The second proposal could uncover previously unknown pensions and reveal large overpayments which may be politically unpopular to enforce.

### **Meeting with Chief Actuary Steve Goss**

**Working with SSAB's technical panel.** SSA's actuaries (OCACT) will discuss projections with the technical panel. OCACT is particularly interested in the technical panel's analysis of two types of dispersion: income and mortality rate. They would like to get the panel's opinion on forecasting these variables.

**WEP.** OCACT has looked at proposals to change the WEP formulas. New formulas could raise or lower benefits for certain groups. Changes could be made to current beneficiaries or could be done prospectively based on eligibility. There are about two million people subject to WEP and a couple million who should be WEP'd. Currently, the onus is on the individual and employer to report receipt of a non-covered pension. Data will be available after 2017 to calculate the adjustments for non-covered work. Congressman Brady would like to make the adjustments retroactive. SSA will continue to use current WEP rules unless the beneficiary can get a statement verifying he or she is not entitled to a pension. Limiting the new formulas to prospective beneficiaries would be an administrative plus for SSA since no new resources would need to be expended.

**SDM.** Mr. Goss stated that the SDM leads to initial DDS allowances being 3.44 percentage points higher. For the additional cases allowed, many would have been allowed at a later stage. This higher approval rate would lead to about 1.1% higher costs for SDM. There is no evidence that accuracy is better or worse.

**Reversals.** Mr. Goss stated that although nobody knows the exact mix of reasons for cases being reversed, aging and deterioration explain a big part of why applicants are found disabled at a hearing but not at the initial determination. Twenty three percent of cases are marginal decisions that could subjectively be allowed or denied. Some examiners and states have higher allowance rates—leading to differing appeal rates.

**Reconsideration Level.** One member stated that absence of reconsiderations pushes more cases to appeals. Between 10-15% of reconsiderations are allowed. Some claimants who are denied at the initial and reconsideration level are discouraged from further appeal. For those who decide to appeal an initial determination, the queue is shorter when there is reconsideration. In order to reinstate the reconsideration level, SSA would need to allocate resources to the affected DDSs. In sum, reconsideration determinations are processed sooner than hearings and quicker decisions mean lower administrative costs. However, reinserting the reconsideration level creates further delay for the people who ultimately appeal to the hearings level.

### **Meeting with Acting Commissioner Carolyn Colvin**

**Vision 2025.** *Vision 2025* will be released on April 27. Ms. Colvin stated that the priority in *Vision 2025* is to provide a superior customer experience. She said that lengthy wait times have hurt service.

**Managing personnel.** Ms. Colvin talked about how she wants to focus on employees as they are the most important assets of SSA. She said that when she first arrived, employees were not getting enough training. She discussed how employees need knowledge and experience. She wants to keep employees enthusiastic.

**Enhancing leadership performance.** Ms. Colvin stated that she is pushing senior executives to show more leadership - they are not used to making decisions and they need to start coming to her with recommendations. She said that managers will become better if they learn how to lead people.

**Systems.** Ms. Colvin stated that Systems is important and another priority. She said that she will not talk in detail about Systems because it is not her expertise. She recommended that the Board invite Rob Klopp if they would like to discuss more. She said that online SSN replacement cards will start in 2015 or 2016. She questioned whether the card is needed at all. She said it might be sufficient to file and keep the letter. Ms. Colvin stated that other services will soon be added to *mySSA*.

**Disability evaluation process.** A board member stated that a disability evaluation process should have a decision within three to four months – the process should not spread over years. Ms. Colvin responded by saying that she knows that SSA cannot keep doing what it has been doing. Ms. Colvin added that it can take two years for a hearing. She said that SSA is one of the very few agencies that is required to have an ALJ review the case.

**Hiring senior executives.** Ms. Colvin stated that she does not have authority to permanently instate executives because she is only the *acting* commissioner. She asked the Board to help her find people who can work with her staff.

**Fraud.** Ms. Colvin stated that fraud is becoming more visible. SSA does prosecute it but she thinks there needs to be stronger sentencing such as jail time. SSA should not be in the prosecution business. She also stated that fraudsters should not be able to discharge debts to SSA through bankruptcy.

**Treasury Offset Program.** Ms. Colvin stated that SSA is required by law to collect overpayments via tax offset and she cannot stop the program without legislation from Congress. The concern is that individuals were not given due process since the overpayment notifications were often sent to the wrong addresses. While she has halted the offset, it does not mean that the overpayments are not due. She added that individuals should not be held accountable for benefit payments paid when the beneficiary was a minor. Although the collection efforts have been suspended and no one is coming after her, it would be a violation to suspend forever. Staff asked how SSA can show that the minor received the benefits payments. Ms. Colvin responded by saying that the child benefited by living in that household. Ms. Colvin explained how the repayment letter first gets sent to the oldest child, and if that child does not pay, the overpayment is attributed to the next oldest child. SSA now uses LexisNexis to find correct addresses. Ms. Colvin said that notice is sent to both representative payees and parents. A board member asked

if there is a limitation to say that children are not responsible. Ms. Colvin stated that changing the Social Security Act will probably be required. The actuaries estimate that relatively little money will be retrieved from this program. Staff then asked if this was because most of the overpayments would be waived. Ms. Colvin said that she was not really sure of the reason.

**Representative payees.** Ms. Colvin stated that SSA has 5 million unpaid representative payees. VA pays their payees but they do not have as many. Criminal offenses bar an applicant from becoming a representative payee.

**Closing thoughts.** Ms. Colvin said she welcomes the thoughts of the Board. She asked the Board to inform her of hot spot issues. She mentioned that the Board is going in a different direction than she is on the SDM and said that they should have a conversation. They should also discuss reconsideration with her.

### **Afternoon Executive Session**

**UI/DI offset proposals.** The Board discussed options for weighing in on the proposals to offset UI and DI benefits. One member suggested four positions the Board could take: 1) pro-Hatch, 2) pro-Administration, 3) status quo, and 4) a pros and cons paper. UI replaces 47 percent of income on average and generally lasts between 20 to 30 weeks. Staff agreed to create a table comparing the proposals.

**WEP/GPO.** Staff agreed to send out a draft of the WEP/GPO. Board members have until May 4 to respond with comments.

**SDM paper.** The Board decided to change the conclusion of its paper to “no clear conclusion.” The Board must figure out how to weigh the competing factors: processing time, accuracy, allowance rate, and having a unified process. Staff will contact Ms. Colvin to determine if she would like to discuss it further.

**Systems modernization.** The Board added systems modernization issues to the list of future board projects.

**Representative payee issues.** The Board discussed the difficulties of tracking representative payees who misuse funds. One board member said the agency needs to find a way to get more representative payees. She suggested that the nonprofit model with many payees may not be the best model. The board member agreed to come up with some ideas for improving the process.

**Treasury Offset Program (TOP).** The Board discussed Ms. Colvin’s strong position that the agency was obligated by law to collect payments. Although collection is suspended, SSA’s position is that they must proceed at some point. The Board discussed the class action case. SSA

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SUBJECT TO REVISION**

had been collecting payments without fulfilling due process notification requirements. SSA was using old databases for addresses, under policy that did not make sense, and ended up making the agency look bad. Staff will keep the Board apprised of the class action case against SSA's collection of old debts from children.

**Standardized procedures for DI appeals.** The Board discussed whether SSA should develop standardized procedures for representatives to follow. One board member suggested that representatives should have to meet deadlines to get paid. Staff pointed out that representatives may be unable to meet deadlines due to medical providers being unresponsive.

**Return-to-work efforts.** The Board discussed return-to-work efforts. One member stated that SSA should not have this role since it is not a social services agency. The Board discussed the topic as part of the solvency report since return-to-work reform efforts are often tied to disability legislation.

**SDM.** The Board discussed the SDM proposal and Ms. Colvin's opposition to it. The staff memo supported expansion, but there was agreement that there was not enough analysis or data about the program to form a strong opinion. The Board was hesitant to pick a fight with Ms. Colvin. The Board discussed laying out the pros and cons. The Board is going to discuss further and let Ms. Colvin know the SSAB position.

**Solvency Report.** The Board discussed creating a timeline for the solvency report. Staff will present a project plan to the Chair.

## MEMORANDUM

To: Social Security Advisory Board  
Subject: Supplemental Security Income (SSI) Asset Limit  
Date: May 19, 2015

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At the April board meeting a board member requested the legislative history of the Supplemental Security (SSI) asset limit. This memo provides an overview of the SSI asset limit, legislative history, and policy debate.

### Introduction

The Supplemental Security Income (SSI) program, authorized by Title XVI of the Social Security Act, is a means-tested income assistance program financed from general tax revenues and administered by the Social Security Administration (SSA). Under SSI, individuals that meet SSA's definition of disability or have attained age 65 and have low incomes and limited resources are eligible for a modest cash benefit regardless of their work histories. In January 2015, more than 8.3 million individuals received average monthly payments of \$541.46. The maximum allowable monthly payment is \$733 for an individual and \$1,100 for a couple.

### SSI asset limit

As a means tested program, SSI places a limit on the assets or resources of its recipients. Resources are defined by regulation as "cash or other liquid assets or any real or personal property that an individual (or spouse, if any) owns and could convert to cash to be used for his or her support and maintenance."<sup>1</sup> The countable resource limit for SSI eligibility is \$2,000 for individuals and \$3,000 for couples. These limits are set by law, are not indexed for inflation, and have been at their current levels since 1989. Unlike the asset limit, SSI benefit amounts are adjusted for inflation.

### Excluded resources

Not all resources are counted for determining SSI eligibility. Excluded resources include an individual's home, a car used for essential transportation (or, if not essential, up to \$4,500 of its current value), property essential to income-producing activity, household goods; personal effects totaling \$2,000 or less; life insurance policies with a combined face value of \$1,500 or less; and certain accounts exempt from benefit determinations (discussed in the next section).

### Asset limit legislation

Congress created SSI in 1972 to replace the patchwork system of federal grants to states for aid to the poor who are nearing retirement age or meet SSA's definition of disability. At the time,

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<sup>1</sup> 20 C.F.R. §416.1201

Congress set the cash asset limit at \$1,500 for an individual and \$2,250 for a couple. Since 1972, Congress has passed legislation increasing the asset limit one time. In 1984, as part of the Deficit Reduction Act of 1984, Congress phased in an increase to the asset limit. From 1985-1989, the asset limit increased \$100 a year for individuals and \$150 a year for couples. In 1989, the asset limit reached its current level of \$2,000 for an individual and \$3,000 for a couple.

<b>Asset limits in 1972</b>		
	1972 dollars	2015 dollars
Individual	\$1,500	\$8,423
Couple	\$2,250	\$12,635

<b>Asset limits in 1989</b>		
	1972 dollars	2015 dollars
Individual	\$2,000	\$3,786
Couple	\$3,000	\$5,679

While the asset limit has not changed since 1989, Congress has made changes regarding what is considered and countable as an asset or resource when determining SSI eligibility, including the following provisions:

- An effective change to the asset limit through “deeming” of household assets was included in the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996 (Public Law 104-193). While welfare reform did not alter the asset limit, it applied different deeming rules to immigrants in certain cases. The income and resources of an immigrant’s sponsor in the U.S. became part of the SSI eligibility determination.
- As above, the Foster Care Independence Act of 1999 (Public Law 106-169) included an indirect change that had the effect of altering the asset limit for SSI. Irrevocable trusts, previously excluded from asset calculation became countable as assets under SSI, although the statute did allow for the Commissioner to regulate a waiver authority. The same statute established penalties when assets are sold off for less than fair market value as part of an individual’s “spend down” to become eligible for SSI.
- The Economic Growth and Tax Reconciliation Act of 2001 (Public Law 107-73) gradually increased the child tax credit amounts and made it refundable for low-income workers. Finally, the credit is excluded from income or resources limits in SSI, and is also excluded as part of resources in the month of receipt and the following month.

- The Social Security Protection Act of 2003 (Public Law 108-203) extended from 6 to 9 months the length of time that an SSI underpayment could be excluded from SSI resource limits.
- The Heroes Earnings Assistance and Relief Tax Act of 2008 (Public Law 110-245) allowed the treatment of cash remuneration paid to a member of the uniformed services as earned income and certain housing payments to such members as in-kind support and maintenance for SSI program purposes. The law additionally excluded state annuity payments to blind, disabled, or aged veterans for purposes of SSI benefit determinations and excluded any cash or in-kind benefit paid to an AmeriCorps participant from SSI income eligibility requirements.
- The Improving Access to Clinical Trials Act of 2009 (Public Law 111-255) allowed the asset exclusion of up to \$2000 per year for clinical trial compensation.
- Perhaps one of the most sweeping protections of assets from SSI limits was the passage of the Achieving a Better Life Experience (ABLE) Act of 2014 (Public Law 113-295) which amends the Internal Revenue Code to establish tax-exempt account to assist individuals with disability(s) in building an account to pay for benefits. ABLE accounts are a subsection within Section 529 of the internal revenue code, which addresses Education Savings Plan. The annual contribution limit is \$14,000 with an asset limit of \$100,000. An ABLE account is meant to only fund qualified disability expenses such as, education, housing, transportation, employment training & support, assistive technology & personal support services, health, prevention & wellness, financial management and administrative services, legal fees, expenses for oversight and monitoring, funeral and burial expenses.

Members of Congress have offered legislation to raise the asset limit, but these bills have not become law. One example is the SSI Savers Act of 2011 – a Bipartisan bill which would (1) increase resource limits for aged, blind, or disabled individuals who do not have an eligible spouse; (2) requires an inflation adjustment for such individuals, regardless of whether a spouse is eligible; (3) provides a limited exclusion from resources of certain deferred compensation and education savings arrangements; (4) sets forth income rules imputing income from certain deferred compensation arrangements; and (5) eliminates the requirement that SSI recipients apply for periodic payments from certain deferred compensation arrangements.

(see <http://thomas.loc.gov/cgi-bin/bdquery/z?d112:HR02103:@@P>)

In addition, the Bipartisan Policy Center endorsed raising asset limits:

(see <http://bipartisanpolicy.org/blog/barriers-to-savings-asset-tests/>)

## Policy debate

Advocates for raising the asset limit argue that raising the asset limit will allow recipients to save for emergencies and reduce hardship:

“SSI's stingy asset limit keeps its recipients from saving for contingencies, such as fixing the roof or repairing the car. Moreover, SSI counts the entire value of 401(k) and other retirement accounts as assets -- even though those savings are meant to last for a lifetime, not consumed all at once.” – Center for Budget and Policy Priorities, 2013

“Savings can dramatically reduce material hardship. For many low-income families, even a small amount of savings—less than \$2,000—can protect against eviction, missed meals, or having utilities shut off during a financial setback. Having a slightly larger cushion—between \$2,000 and \$10,000—has an even broader effect. The presence of savings and assets may also reduce the length of time families need public assistance.” – Center for American Progress, 2014

Drawbacks of raising the asset limit include cost and possible work disincentives. Increasing the asset limit would mean that more people would qualify for benefits and reduce the monetary benefits of working. Interestingly, the Heritage Foundation recently declared the ABLE Act a major expansion of the welfare state, largely because of the interaction of the accounts with SSI eligibility.<sup>2</sup> Despite the fact that asset limits have not risen, it appears the practical effect of exclusions from the limits may give some policy experts pause.

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<sup>2</sup> <http://www.heritage.org/research/reports/2014/11/how-the-able-act-would-expand-the-welfare-state>

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<p><b>*** You last successfully logged in Employee Express on May 12, 2015 5:22PM ET. ***</b></p> <p>To view a summary of your current information, select <a href="#">View Summary of Information</a>.</p> <p>You may view or change the following payroll-personnel information using Employee Express.</p> <ul style="list-style-type: none"> <li><a href="#">Combined Federal Campaign</a></li> <li><a href="#">Direct Deposit</a></li> <li><a href="#">Disability Update</a></li> <li><a href="#">Discretionary Allotment</a></li> <li><a href="#">Ethnicity and Race Indicator</a></li> <li><a href="#">Federal Employee Health Benefits</a></li> <li><a href="#">Federal Tax</a></li> <li><a href="#">FEHB Premium Conversion</a></li> <li><a href="#">FEHB Qualifying Life Event</a></li> <li><a href="#">Financial Allotment</a></li> <li><a href="#">Health Savings Allotment</a></li> <li><a href="#">Home Address</a></li> <li><a href="#">State Tax</a></li> <li><a href="#">Thrift Savings Plan/Roth</a></li> <li><a href="#">W2 Hard Copy On/Off</a></li> </ul>	<p>Your leave and earnings information was last updated on: <b>May 2, 2015</b>.</p> <p>The employee is responsible for verifying the accuracy and correctness of the Earnings and Leave Statement and reporting any errors in a timely manner.</p> <p style="text-align: center;"><b>Gross Pay:</b></p> <p style="text-align: center;"><b>Net Pay:</b></p> <p style="text-align: center;"><b>Annual Balance:</b></p> <p style="text-align: center;"><b>Sick Balance:</b></p> <p style="text-align: center;"><b>Comp Balance:</b></p> <p>To view your earnings and leave statement, select <a href="#">Earnings and Leave</a>.</p> <div style="text-align: center;">  </div>
Miscellaneous	Related Sites
<ul style="list-style-type: none"> <li>View your <a href="#">W2 Information</a></li> <li><a href="#">Change Password</a></li> <li><a href="#">Change Login ID</a></li> <li><a href="#">EEX Notification Email</a></li> <li><a href="#">View Your History Personnel/Payroll actions</a></li> <li><a href="#">View Your Latest FEHB Confirmation Letter</a></li> </ul>	<ul style="list-style-type: none"> <li><a href="#">BENEFEDS - The Federal Government's new administrative system for enrolling in FEDVIP</a></li> <li><a href="#">CFC National Capital Area (NCA) Information</a></li> <li><a href="#">Federal Long Term Care Insurance</a></li> <li><a href="#">FEHB Plan Comparison Website - PlanSmartChoice</a></li> <li><a href="#">FSAFEDS - The Federal Government's Flexible Spending Account Program</a></li> <li><a href="#">IRS Payroll Estimator</a></li> <li><a href="#">OPM FEHB Plan Comparison Tool</a></li> <li><a href="#">The Work Number: Proof of Employment and Income</a></li> <li><a href="#">TSP Website</a></li> <li><a href="#">TSP Worksheet Calculator</a></li> </ul>

18. From the Main Menu, you may access your Earnings and Leave information as well as other personnel information.
19. By clicking on the links, you may update or change personnel information.

## Pay Day

When viewing Earnings and Leave, you may view pay stubs for every pay period of your employment. Earnings are deposited in your bank account on the first Friday following a pay period.

## Employee Express Help

**Sterling Laudon:** (202)475-7726, [sterling.laudon@ssab.gov](mailto:sterling.laudon@ssab.gov)

**Employee Express Help Desk:** (478)757-3030, [EEXHELP@OPM.GOV](mailto:EEXHELP@OPM.GOV)

# Board Pay Schedule

## 2015

January						
S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

February						
S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28

March						
S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

April						
S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

May						
S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

June						
S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

July						
S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

August						
S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

September						
S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

October						
S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

November						
S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

December						
S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

**ACTION ITEMS**

**Important Dates**

-  = Board sent request for compensation voucher
-  = Board compensation voucher sent to SSA HR
-  = Board receives pay via direct deposit
-  = Federal Holiday

## MEMORANDUM

To: Social Security Advisory Board  
Subject: Biography of Virginia Reno,  
Deputy Commissioner for Retirement and Disability Policy  
Date: May 19, 2015

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Virginia Reno is the Deputy Commissioner for Retirement and Disability Policy. As the Deputy Commissioner, she directs and manages the planning, development, and issuance of operational policy and instructions for the Retirement and Survivors Disability Insurance and Supplemental Security Income programs and initiatives to improve the economic well-being of beneficiaries. In addition, she is the principal advisor to the Commissioner of Social Security on major policy issues and activities in the areas of strategic policy planning, policy research and evaluation, statistical programs, and overall policy development and analysis.

Ms. Reno and her staff will be briefing the board on Representative Payee issues.

Prior to accepting her current role, Ms. Reno was a founding member and served as Vice President for Income Security at the National Academy of Social Insurance and led its work on retirement income, workers' compensation, disability insurance and related programs.

Before her work at the Academy, Reno held research and policy positions at SSA as staff director of the Policy Council that advised the Commissioner on legislative, regulatory and administrative issues. Before that, she served in SSA's office of research and statistics, where she directed the program analysis staff. She has worked for four major commissions on Social Security, including serving as a senior advisor to the 1983 Greenspan Commission.

Reno has published numerous research articles on Social Security, disability policy, private pensions, retirement policy, the income of the elderly, public opinion about Social Security, labor force participation of women, and the treatment of women and families in benefit and tax systems. She has testified frequently in Congressional committees, and twice received the SSA's Commissioner's Citation, including one from Robert M. Ball. Reno received her B.A. from the Honors College of the University of Oregon and served in the U.S. Peace Corps in Liberia.

# OFFICE OF RETIREMENT AND DISABILITY POLICY

## Office of the Deputy Commissioner for Retirement and Disability Policy



*Virginia Reno*  
Deputy Commissioner



*Marianna LaCanfora*  
Assistant Deputy  
Commissioner



*Ernestine Wise*  
Executive Officer

### Office of Data Exchange and Policy Publications



*Stephen  
Evangelista*  
Associate  
Commissioner



*Laura Haltzel*  
Deputy Associate  
Commissioner

### Office of International Programs



*Vance Teel*  
Associate  
Commissioner



*Richard Graham*  
Deputy Associate  
Commissioner

### Office of Income Security Programs



*Shirleeta  
Stanton*  
Associate  
Commissioner



*Samara Richardson*  
Acting Deputy  
Associate  
Commissioner



*Manuel de la  
Puente*  
Associate  
Commissioner



*Ted Horan*  
Deputy Associate  
Commissioner

### Office of Research, Evaluation, and Statistics

### Office of Disability Policy



*Gina Clemons*  
Associate  
Commissioner



*Melissa Spencer*  
Acting Deputy Associate  
Commissioner



*Vacant*  
Deputy Associate  
Commissioner

### Office of Retirement Policy



*Natalie Lu*  
Acting Associate  
Commissioner



*Vacant*  
Deputy Associate  
Commissioner

### Office of Research, Demonstration, and Employment Support



*David Weaver*  
Associate  
Commissioner



*Susan Wilschke*  
Deputy Associate  
Commissioner



*Robert Pfaff*  
Deputy Associate  
Commissioner

## MEMORANDUM

To: Social Security Advisory Board  
Subject: Background and Current Challenges Affecting SSA's  
Representative Payee Program  
Date: May 15, 2015

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At the May Board meeting, executives from SSA's Office of Retirement and Disability Policy (ORDP) will discuss SSA's representative payee program. A representative payee is a person, or organization appointed by SSA to act as the receiver of benefits for a beneficiary who is under the age of 18 or otherwise considered not fully capable of managing their own benefits. The law sets forth SSA's responsibilities in appointing, monitoring, and reviewing representative payees as well as investigating allegations of misuse and removal procedures.<sup>1</sup>

The SSA component in charge of setting agency policy is the Office of Retirement and Disability Policy (ORDP) headed by Virginia Reno. Executives from this component will discuss its current challenges in handling the workload, which advocacy groups and Congress have complained lacks adequate oversight. Specific criticism has targeted:

- SSA's antiquated data collection systems;
- its annual accounting process;
- its failure to ensure the appropriate representative payee is appointed;
- its lax approach to allegations of misuse, and
- the lack of information provided to beneficiaries on how to appeal the agency's determination that a payee is needed.

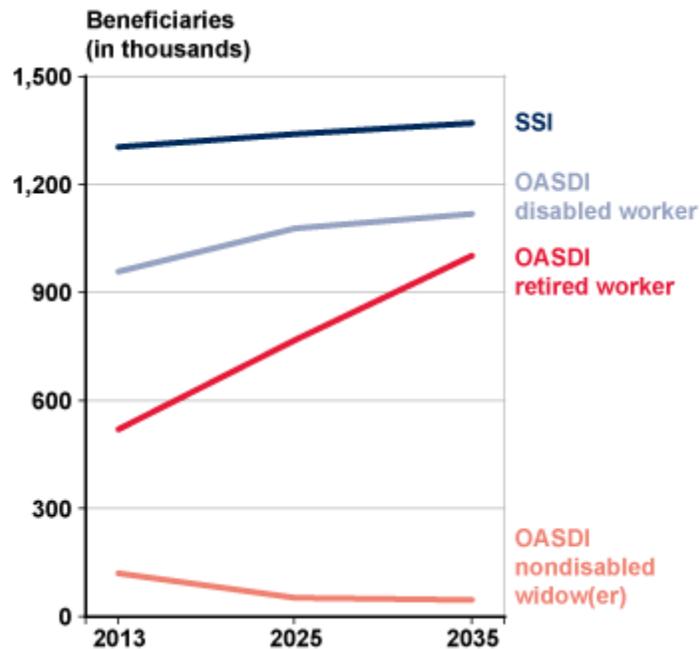
While SSA has been criticized for lackadaisical oversight, it has simultaneously had difficulty in finding individuals willing to become representative payees because the oversight and accounting requirements are often considered burdensome and intrusive.

### Program Growth – The Coming Tsunami

The oversight and management of the representative payee program needs immediate attention. As illustrated in the following chart projections show major demographic changes occurring over the next two decades as the number of retired worker beneficiaries rise, particularly those in the 85+ category. This demographic trend forecasts a need for more representative payees.

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<sup>1</sup> See 42 U.S. Code § 1007



Recent SSA research stated:

“We project that the number of program participants overall who need a payee will increase from 2.94 million in 2013 to 3.27 million by 2025... For OASDI beneficiaries, the group with the largest increase in the need of a representative payee by 2025 is retired workers. We project that the number of retired-worker beneficiaries with representative payees will increase from 519,780 to 768,474—a difference of 248,694 beneficiaries, or 47.8 percent...<sup>2</sup>

#### Selection Process and Responsibilities of a Representative Payee

When determining the appropriate payee, SSA considers a number of variables, such as the payee application itself, relationship to and/or custody of the beneficiary, past representative payee performance (if applicable), and any criminal history.<sup>3</sup> SSA gives preference to certain parties; for example, close family or friends are generally preferred to fee-based organizations.<sup>4</sup>

All representative payees, regardless of classification, are supposed to act strictly as the beneficiary’s *fiduciary*, ensuring the beneficiary’s day-to-day needs for food and shelter are met. Benefits may also be used for medical or dental care not covered by insurance and for personal needs, such as clothing and recreation. Any money left over after paying for these basic needs must be saved.

<sup>2</sup> Chris E. Anguelov, Gabriella Ravida, and Robert R. Weathers II, “Adult OASDI Beneficiaries and SSI Recipients Who Need Representative Payees: Projections for 2025 and 2035,” *Social Security Bulletin* Vol. 75 No. 2, 2015.

<sup>3</sup> SSA Program Operations Manual System (POMS) GN 00502.132 *Selecting a Qualified Representative Payee (RP)*: <https://secure.ssa.gov/poms.nsf/lnx/0200502132>

<sup>4</sup> SSA Program Operations Manual System (POMS) GN 00502.105, *Payee Preference Lists*: <https://secure.ssa.gov/poms.nsf/lnx/0200502105>

The majority of representative payees are family members; however, there are also fee for service organizations, smaller organizations (less than 50 representative payees), some non-profit organizations, states and individuals other than family. The following chart shows the breakdown. The majority of problem cases have arisen with the organizational representative payee and the non-family member. However, the annual accounting requirements are the same for all of the groups.

**Recipients of Social Security (OASDI), Supplemental Security Income (SSI), or Both**

**Persons with representative payees, by payee type and benefit type, December 2013**

Type of payee	Total	OASDI only	SSI only	Both OASDI and SSI
<i>Number</i>				
Total	8,735,903	5,372,458	2,526,588	836,857
Parent (natural, adoptive, step)	5,160,742	3,236,799	1,630,152	293,791
Spouse	278,301	223,954	38,926	15,421
Child (natural, adoptive, or stepchild)	342,356	226,072	76,827	39,457
Grandparent	265,483	145,523	104,740	15,220
Other relative	830,232	407,611	307,865	114,756
Nonmental institution	461,322	316,184	97,419	47,719
Mental institution	151,982	78,865	45,464	27,653
Financial organization	13,520	7,419	3,522	2,579
Social agency	230,567	99,952	81,399	49,216
Public official	31,143	15,516	10,115	5,512
Other	322,596	142,932	130,157	49,507
<i>Percent</i>				
Total	100.0	100.0	100.0	100.0
Parent (natural, adoptive, or stepparent)	59.1	60.2	64.5	35.1
Spouse	3.2	4.2	1.5	1.8
Child (natural, adoptive, or stepchild)	3.9	4.2	3.0	4.7
Grandparent	3.0	2.7	4.1	1.8
Other relative	9.5	7.6	12.2	13.7
Nonmental institution	5.3	5.9	3.9	5.7
Mental institution	1.7	1.5	1.8	3.3
Financial organization	0.2	0.1	0.1	0.3
Social agency	2.6	1.9	3.2	5.9
Public official	0.4	0.3	0.4	0.7
Other	3.7	2.7	5.2	5.9

SOURCES: Social Security Administration, Master Beneficiary Record and Supplemental Security Record, 100 percent data.

### Media Reports on the Lack of Oversight

In the last decade SSA's representative payee program has come under scrutiny, primarily due to media reports exposing instances of misuse and criminal negligence by various individual and organizational payees around the country. The most notorious case, and the one, which has prompted a review of the entire program, and additional oversight requirements is Henry's Turkey Farm. The following is a lengthier description of the case, as it is important to note the failure was not SSA's alone. Every oversight and reviewing body failed to follow up on multiple reports of abuse.

### Henry's Turkey Farm

Henry's Turkey Farm was an organizational payee and an employer to 30-60 men with intellectual disabilities. It opened its doors in the late sixties when Mr. Henry, a turkey insemination expert, partnered with T.H. Johnson a ranch owner. With the government's assent, and several contracts in states, Johnson began running a for-profit program that took young men from state institutions to train them in the agricultural process. Over the decades more than 1000 men were chosen for the program, one of which was located in Atalissa, Iowa. The men at Henry's Turkey Farm had been sent to work at Henry's turkey plant, but the plant wasn't just the men's employer, it was also the landlord, caregiver and representative payee for Social Security benefits.

The men were housed in a schoolhouse six miles from the turkey plant which was converted into a bunkhouse. While Henry's paid \$600 each month in rent for use of the tax-free bunkhouse, it charged a combined rent of as much as \$10,000 to the men.

The days started at 3:00 am when the men were driven to Henry's processing plant where stacks of turkey coops were trucked in. The 40 lbs. birds were grabbed from their cages swung upside down and hung on an overhead conveyer. The men killed, cleaned and (known as the least desired job) pulled out the turkey's windpipes. They averaged 20,000 turkeys a day. They worked the assembly line alongside men with no disabilities. However, their pay wasn't commensurate because of a 1938 law that allowed certified employers to pay workers with disabilities sub-minimum wages. After hundreds of dollars was deducted from their earnings and Social Security benefits to cover their room and board the men received about \$65.00 a month, which they spent a lot of at the Johnson family's roadside country store buying hamburgers, peanut brittle, and soda water.

(Note: \$65.00 is the allowable earnings amount under the Supplemental Security Income program. Earnings above \$65.00 would have resulted in an offset to the SSI benefit and eventually removal from the program. Henry's avoided this by reducing wages to earnings at about .41 an hour.)

Life inside the bunkhouse included punishments ranging from being sent to their rooms, or refusal of treats at a local market, to being denied bathroom breaks or being handcuffed to their beds. There were efforts to escape, one of which ended in a man freezing to death near the fenced in property line. There was no criminal investigation, just a note on the death certificate stating that the man had wandered away. There were some complaints; in 1979 an investigation by the Des Moines Register suggested that the men were being taken advantage of. A social worker at the state Department of Human Services complained that the schoolhouse's front door was padlocked – the padlock was removed but no further investigation was done. The U.S. Department of Labor cited Henry's Turkey Service for not properly compensating the men; the company promised to comply, but didn't. The state Department of Human Services received several complaints over the years, including similar allegations of abuse from a relative and a former worker. Nothing changed.

Long after Johnson had died and the caretakers were considering retirement, after over 30 years working on the assembly line, Henry's Turkey Service worked out a staggered separation with the processing plant for the remaining men living in the bunkhouse. They had been promised a retirement to a ranch in Texas – which didn't happen. Some were placed in nursing homes, which is when the sister of one of the men discovered that her brother had \$80.00 in savings after decades of working. She called the Iowa Department of Human Services and in 2009, a supervisor drove out to the bunkhouse and discovered 21 men living in the unheated structure. There were holes in the walls, the kitchen was infested with cockroaches, the mattresses were damp from ceiling leaks, one man thought he was suffering from hearing loss but it was actually because his ears had never been cleaned. Another man had dental wires protruding from his bleeding gums, there were missing fingernails, and forked hands from pulling out the turkey windpipes, and toenails that curved around toes and cut into the pads of feet. The Fire Marshall toured the building and declared that it was uninhabitable. The men were removed and have since been placed in nursing homes, group homes or with family members.

Along with numerous fines for federal and state law violations, an attorney at the U.S. Equal Employment Opportunity Commission (EEOC) brought action against Henry's Turkey Farm for emotional distress. After hearing what the men endured for decades, the jury awarded \$240 million dollars to 32 men. As there is a limit on awards against small organizational payees the award was reduced to the 1.6 million dollar cap. To date no money has been recovered or paid to the men.

The case did prompt media attention and since Henry's Turkey Farm case the number of reviews at the agency has increased. However, this increased oversight did not uncover the four malnourished adults found locked in a boiler room in a Philadelphia apartment building. In this case, investigations revealed that the representative payee, Linda Weston, had also been the representative payee for several other individuals, and had successfully collected about \$212,000 in Social Security payments over a ten-year timeframe. The victims, two of whom died when

under her care, were often drugged, and deprived of food and medical care. Weston avoided notice by moving from Texas to Florida, then Virginia and finally Pennsylvania. Under SSA's own policy, she never should have been appointed as she was on parole for locking a man in a closet and starving him to death, but SSA's Prisoner Update System only went back eight years and did not flag that she was a convicted murderer.

In 2014 a class action case was filed against SSA when misfeasance of funds by a large organizational payee was discovered in Oregon. The organization was shut down but when SSA did not have an alternate representative payee to pay it stopped paying the beneficiaries altogether. The action was settled when an alternative payee was found.

### **SSA Challenges**

At the November 2014 board meeting, Assistant Deputy Commissioner for the Office of Retirement and Disability Policy Marianna LaCanfora, described some of the challenges associated with the representative payee review process. Representative payees must submit an accounting form annually, which is essentially a financial statement reporting what was spent on the beneficiary over the year; the self-reporting allows a payee to report whatever he or she wants and has never resulted in a finding of misuse. At the same time, the method is labor intensive for SSA, requiring about 600 employees per year to mail out and process the forms. SSA has tried to halt this requirement legislatively, but Congress has determined that such forms are the only direct contact SSA has with all representative payees.

In addition to the accounting form, SSA conducts 1) mandatory periodic reviews<sup>5</sup> and 2) discretionary site reviews that are based on a predictive model developed by the Office of Quality Improvement (OQI). The model is intended to detect cases that contain a high likelihood of benefit misuse, but Ms. LaCanfora stated that such models are unsophisticated and that the sample sizes of cases with likely misuse are not statistically significant. Further, SSA cannot follow up and review many payees due to being understaffed and underfunded. In FY 2014, 2,377 representative payees were reviewed, 613 of which were organizational payees chosen based on the predictive model.<sup>6</sup> To put this number in perspective, last year there were approximately 6 million total representative payees registered with SSA.

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<sup>5</sup> Specifically, the Social Security Act requires SSA to review individual payees serving 15 or more beneficiaries, organizational payees serving 50 or more beneficiaries, Fee-for-Service (FFS) payees, and State mental hospitals who participate in SSA's on-site review program.

<sup>6</sup> SSA, *FY 2014 Annual Report on the Results of Periodic Representative Payee Site Reviews and Other Reviews*, January 27, 2015.

## Lack of Collaboration with Other Agencies

While SSA has traditionally been in charge of oversight responsibilities, beginning in FY 2010, the agency contracted with the National Disability Rights Network (NDRN)<sup>7</sup> to have its Protection and Advocacy (P&A) organizations conduct onsite reviews of organizational payees that represent fewer than 50 beneficiaries or individual payees who represent fewer than 15 beneficiaries. If the P&As detect a problem with the payee, they refer the payee to SSA for follow-up or further investigation.

In a 2012 report<sup>8</sup> on the progress of the first two years of the review project, the NDRN made several policy recommendations, such as using the P&A system to provide formal training to payees, authorizing the representative payee review project in federal statute, and using the P&A network to conduct monitoring reviews of other disability programs. Further research would be required to assess the feasibility and usefulness of each recommendation, but this raises an important question: should the responsibility of representative payee oversight belong solely to SSA?

Many other organizations (including the Advisory Board in a 2010 Issue Brief<sup>9</sup>), have recommended improved collaboration for payee oversight with other federal, state, or non-governmental agencies. As the SSAB issue brief noted, “the population of representative payees overlaps with populations that are monitored by other agencies, but there is little coordination of oversight, or sharing of information.”<sup>10</sup> A recent Government Accountability Office (GAO) report recommended that SSA develop relationships and enhance coordination with organizations such as: Adult Protective Service agencies, state courts, state protection and advocacy agencies, Area Agencies on Aging, Aging and Disability Resource Centers, and state foster care agencies.<sup>11</sup> Many of these same agencies were also suggested in the SSAB issue brief.

The ultimate goal of the improved collaboration would be to establish methods in which agencies can inform one another of problematic or potentially problematic rep payees. Further, it has the potential to provide relief to the workload and resource pressures facing SSA.

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<sup>7</sup> The P&A system is a federally funded entity that provides legal advocacy services to individuals with disabilities across the 50 U.S. states and its territories. NDRN is the nonprofit membership organization for the P&A Systems and the Client Assistance Programs (CAP) for individuals with disabilities.

<sup>8</sup> National Disability Rights Network, *Providing Payee Oversight: A Report on the First Two Years of the Social Security Administration Representative Payee Review Project*, June 2012.

<sup>9</sup> SSAB, “Disability Programs in the 21<sup>st</sup> Century: The Representative Payee Program,” *SSAB Issue Brief Series* Vol. 2 No. 1, September 2010.

<sup>10</sup> *Ibid.*, page 9

<sup>11</sup> GAO, *SSA Representative Payee Program: Addressing Long-Term Challenges Requires a More Strategic Approach*, May 2013, page 16.

## Representative Payee System Modernization

Like other SSA programs, the current IT infrastructure for the representative payee program lacks integration with other systems – another consequence of a piecemeal approach to systems planning and development at the agency. Information entered into a Title II/Title XVI payment system, for example, might not propagate seamlessly to the representative payee system.

One specific weakness on the systems front relates to the accounting forms – SSA has no method for evaluating and validating the information it receives on these annual forms. A 2007 National Research Council (NRC) study on representative payees concluded, “the data on the accounting form are not retrievable for statistical analyses and therefore, empirically-based policies and regulations cannot be formulated.”<sup>12</sup> The NRC recommended that SSA store data from the accounting forms in an electronic database suitable for analysis.

In October 2011, in response to the Linda Weston case in Philadelphia, the agency seemed to be making some progress when it created the electronic representative payee system (eRPS), which allows users to record misuse allegations, track them to final disposition, and guide SSA staff through the review process. SSA intended for the interface to help identify other beneficiaries served by a problematic payee and provide the misuse history if the payee applied to serve another beneficiary going forward. However, the efforts to interface the eRPS and other agency systems appears to have stalled. At a June 2014 Board meeting in Seattle, SSA employees expressed general frustration with the eRPS. There was serious concern among staff that eRPS was underdeveloped. Some claimed that the system was cumbersome and complicated to use and that the web-based systems are not in sync with one another. Because of these flaws, SSA employees noted having to manually input information, which can be quite time-consuming and makes data matching much harder.

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<sup>12</sup> National Research Council. *Improving the Social Security Representative Payee Program: Serving Beneficiaries and Minimizing Misuse*. Committee on Social Security Representative Payees, Division of Behavioral and Social Sciences and Education. Washington: The National Academies Press, 2007.

# Social Security Advisory Board Issue Brief Series

## ***DISABILITY PROGRAMS IN THE 21ST CENTURY*** **The Representative Payee Program**

Volume 2, Number 1  
September 2010

*The Social Security Disability Insurance program was enacted more than half a century ago, and the Supplemental Security Income program was enacted more than 35 years ago. Our economy and our society have changed in many ways since then, and the programs have not changed to keep pace with the world we now live in. We recommend that Congress re-examine these programs and what it wants to accomplish with the disability programs that SSA administers. To assist in this re-examination, the Social Security Advisory Board has begun a review of several aspects of these disability programs. This Issue Brief is one in a series on aspects of these programs.*

### **Executive Summary**

For more than 70 years, the Social Security Administration (SSA) has been issuing checks to representative payees who manage the money for beneficiaries who are deemed temporarily or permanently incapable of managing their own benefits. There is an inevitable risk that payees will use the benefits for their own purposes.

The representative payee program tends to get overlooked in the press of other business. From time to time there have been scandals in which payees have misused large amounts of money. In 2000 a story on a television newsmagazine about a payee who had misused \$213,000 from 146 beneficiaries led to Congressional hearings (House Ways and Means 2000, Senate Aging 2000). The scandal led to the *Social Security Protection Act of 2004*. Among other provisions, that act required periodic onsite reviews of certain groups of payees. It also required SSA to conduct a study of how payees were using benefit payments. That study was conducted from 2005 to 2007 by a committee of the National Research Council (NRC).<sup>1</sup>

While protecting the interests of its most vulnerable beneficiaries is a part of SSA's stewardship responsibilities, it is not possible for SSA to ensure that a representative payee will never take advantage of a beneficiary. The challenge for the agency is to protect beneficiaries as effectively as possible, while carrying out its primary mission of making timely and accurate benefit payments. The numbers involved illustrate the size of the challenge. More than five million Old-age, Survivors, and Disability Insurance beneficiaries and nearly three million Supplemental Security Income beneficiaries have payees (SSA, *Annual Statistical Supplements*).

Six years after the enactment of the *Social Security Protection Act*, and three years after the NRC report, this issue brief examines ways in which SSA can

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<sup>1</sup> The NRC is the principal operating agency of the National Academy of Sciences to advise the federal government. SSA has accepted most of the recommendations of the NRC report and has implemented or is working toward implementing them. A status report by SSA's Office of the Inspector General on the NRC's recommendations and SSA's response is available at: <http://www.ssa.gov/oig/ADOBEPDF/A-13-09-29141.pdf>

continue to focus its efforts to meet this challenge. We also have some additional recommendations to strengthen SSA's protection of beneficiaries. Specifically, we recommend that:

- SSA should expand its recent efforts to identify cases with the greatest risk of misuse by making greater use of available data, in order to target selection and monitoring activities in the most efficient way.
- SSA should establish criteria for data-driven selection and monitoring of representative payees. The agency is legally required to obtain from representative payees an annual accounting for benefit payments. It should develop a data-driven approach to obtain those accountings in a way that is tailored to different risk groups.
- SSA should increase its efforts to avoid selecting as payees people or organizations that have interests which conflict with the best interests of the vulnerable beneficiaries whom they would be serving.
- SSA should implement an annual quality review sample of its payee activities, including capability determinations, payee selections, and misuse determinations.
- SSA's Inspector General should annually review a sample of site visits to organizational payees to ensure that those visits are effective in preventing misuse and ensuring compliance with SSA policies.
- SSA's Inspector General should examine a sample of beneficiaries with fee-for-service payees to see how the payee's fee impacts meeting the beneficiaries' food, shelter, and personal needs.
- SSA should take steps to improve coordination and establish automated data exchanges with other agencies that also serve SSA's beneficiaries. There are numerous agencies that use payees or other fiduciaries or that provide protective services. The Veterans Administration, state courts, state Adult Protective Service agencies, Protection and Advocacy agencies for people with disabilities, and state foster care agencies all serve populations that include SSA beneficiaries. Improved coordination and data exchanges can better protect the people that each agency serves.

Given the size and vulnerability of the population of beneficiaries with representative payees, SSA should make implementing these recommendations and those of the NRC a priority.

## **I. Introduction**

This issue brief is one of a series that examines the Social Security disability programs and the ways in which they must be adapted to current conditions. While representative payment is not limited to beneficiaries with disabilities, they are some of the most vulnerable beneficiaries. The Social Security Disability Insurance program was enacted more than half a century ago, and the Supplemental Security Income program was enacted more than 35 years ago. Our economy and our society have changed in many ways since then, and the programs need to be updated to keep pace with the world we now live in.

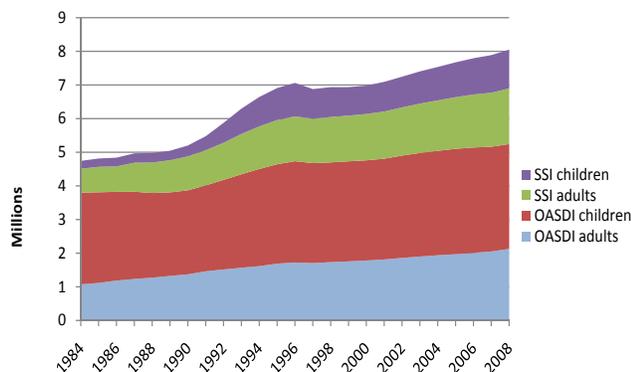
Representative payment began with the Social Security amendments of 1939, which authorized the Social Security Board (as it then was known), to certify payment "to a relative or some other person" for the "use and benefit" of an applicant, when it would serve the interest of an applicant for benefits. Until that time, only retired workers were eligible for benefits. The 1939 amendments added benefits for wives of retired workers and for widows and dependent children of deceased workers. In preparing for the first monthly benefit payments in 1940, the agency saw a need to establish a way to make payments for minor children and for mentally incompetent beneficiaries. It also acknowledged its responsibility for seeing that payees used the benefits properly (Federal Security Agency, 1940).

Beneficiaries who had representative payees have always been the most vulnerable groups of beneficiaries, children and individuals who were unable to manage their own funds. But the rules put in place in 1939 did not contemplate the complexities of today's world and the broader beneficiary population. The addition of the Disability Insurance and Supplemental Security Income programs added much larger groups of vulnerable beneficiaries. Changes in society, such as the deinstitutionalization of people with mental illness and developmental disabilities, have also changed the beneficiary population. Beneficiaries now include groups with a variety of special needs, and who may be homeless. As a

result, the role of the representative payee may cover a much wider range of responsibilities than originally intended. For example a payee, in addition to managing a beneficiary's funds, may also become involved in helping the beneficiary find shelter or obtain treatment, or assist with employment.

Selecting and overseeing representative payees is a substantial and challenging workload for SSA. More than 5 million Old Age Survivors and Disability Insurance beneficiaries, over 10 percent of the total, have payees. About 2.8 million Supplemental Security Income beneficiaries, or about 37 percent of the total, have payees (SSA, *Annual Statistical Supplement*, 2009). Over just the last quarter century, the number of beneficiaries with payees has risen by 56 percent, while the total of number of beneficiaries increased by 47 percent (SSA, *Annual Statistical Supplements*).

**Beneficiaries with Payees, 1984-2008**



The selection and monitoring of such a large number of payees is a daunting task. In FY 2009, SSA spent 1,900 workyears, nearly 3 percent of its total workyears, on representative payee activities, not including those involved in initial claims. That is more time than it spent on Medicare activities and nearly as much time as it spent on overpayments or continuing disability reviews (SSA Workload Trend Report, FY 2009).

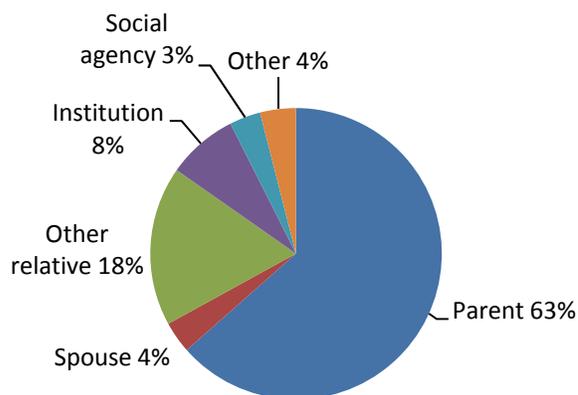
The task of managing another person's benefits can be a difficult one, especially if the beneficiary is not always cooperative. The duties of the payee include:

- using payments for the beneficiary's current needs,
- saving any unneeded benefits for future use,
- filing an accounting report on how the payments were used and making all supporting records available if requested by SSA,

- reimbursing the amount of any loss suffered by the beneficiary due to misuse by the payee, and
- notifying SSA in a timely manner of any events that may affect eligibility or benefit amount.

The great majority of payees receives no compensation for their services and deserves gratitude for volunteering their time and effort. As the following chart shows, most payees are relatives. But according to SSA it is difficult to even find individuals or organizations that are willing to serve as payees for some individuals and in some geographic areas (National Research Council). SSA tries to balance the need to find payees who are willing to take on this responsibility against the burdens that oversight puts on them. The agency tries to maintain an appropriate level of monitoring without requiring so much of payees that they will avoid taking on the responsibility.

**Types of Payees, 2008**



Finding that balance between adequate oversight and not overburdening payees makes monitoring difficult. A payee who is close to the beneficiary and uses the benefits in the beneficiary's interest may not have the ability to maintain records and report on them. In fact, only about two-thirds of the payees surveyed in a recent study indicated that they kept records of how the benefits they managed were spent (National Research Council). The accounting form used by SSA, as we will describe later, is simple – in fact it has been criticized for being too simple – but it is not understood by many payees who complete it. It is beyond the ability of some payees to complete properly (Kutner, 2007).

## II. Meeting the Challenge

### Identifying misuse

The NRC committee performed a valuable service in conducting its study of misuse of benefits, and pointing out new approaches to detect misuse in a more focused manner. The statute defines misuse in this way: “Misuse occurs in any case in which the representative payee receives payment under this title for the use and benefit of another person and converts such payment, or any part thereof, to a use other than for the use and benefit of such other person.”

SSA has stated in the past that misuse is extremely rare and has been found to be less than 0.01 percent (SSA testimony, September 9, 2003). The NRC committee’s in-depth study of misuse found that misusers were about 0.2 percent of individual payees, still a small percentage, but considerably higher than the SSA estimate. Despite the simplicity of the definition of misuse, it is sometimes difficult to determine it in practice. It is difficult to determine misuse in the absence of records, so the fact that the NRC committee also found that only about two-thirds of payees reported keeping records makes estimating the extent of misuse even more problematic.

SSA uses three major vehicles to detect misuse: reports from beneficiaries or third parties, small random samples conducted by SSA’s Office of the Inspector General, and the annual accounting form on which payees report how they used or saved benefits. The NRC committee concluded that none of these was effective in detecting misuse.

Before 1983, SSA created an accounting system on its own initiative, as it did not then have a mandate to conduct accountings of funds that payees received on behalf of beneficiaries. In 1983, however, the decision in a class action suit said that all payees should be required to give a full accounting of how they spend and save Title II and Title XVI benefits on behalf of beneficiaries. Subsequently, Congress required that all payees, except state mental institutions participating in the on-site review program, submit an accounting report annually.

The annual accounting form tells payees the amount of benefits paid during the year being accounted for and asks them to state the amount spent on various

categories and the amount saved. They are told not to submit receipts, but to retain them for two years. SSA accepts the figures submitted by the payee as long as the total amount spent and saved equals or exceeds 90 percent of the amount received. Sending, collecting, and reviewing this information is a large expenditure of effort that yields little useful result in detecting misuse.

The methods SSA is currently using are not effective in detecting misuse, and new approaches are needed. The NRC committee’s study used data elements from SSA’s records (for example, the payee is a non-relative, or the payee does not live with beneficiary) to identify payee characteristics that would help target potential misusers. That approach is similar to the profiling that SSA has used for redeterminations and continuing disability reviews to find cases in which erroneous payments were most likely. A study done by SSA’s Office of the Inspector General found that the characteristics identified by the NRC should be used to identify representative payees who have an increased risk of misuse. The study also found that the characteristics were reliable indicators of poor performance, other than misuse, by payees (SSA, Office of the Inspector General, *Characteristics*). SSA has used those characteristics to develop profiles for identifying representative payees with a higher probability of misusing benefits.

We urge SSA to continue its work along these lines and use its annual accounting form to obtain additional information on payee characteristics that would help evaluate risk factors and payee performance. As the NRC committee wrote, “No form, by itself, is going to detect program misuse. However, if a form can be used to obtain information on characteristics of interest, it could then be combined with a rigorous program of audits.” Other work on financial abuse has stressed the need to examine characteristics of the victims of abuse as well as the perpetrators in an effort to better understand risk factors (Rabiner et al., Hafemeister). We recommend that SSA commit research staff to ongoing work on representative payee issues, including examining characteristics of payees in combination with those of beneficiaries in order to target its selection and monitoring activities in the most efficient way.

SSA is working on improving its data systems for representative payees, and doing so will provide

more useable data for analysis. In response to a recent Inspector General report, SSA committed itself to pursue improving its internal data match with incarceration data in its own records (SSA, Office of the Inspector General, *Representative Payees Reporting Criminal Convictions*). It should also test the use of external data sources, such as data exchanges with other agencies, credit bureaus, and criminal justice records.

Once SSA has established criteria for data-driven selection and monitoring, it should carry out its annual accounting in a way that is tailored to different risk groups, monitoring high risk groups more carefully.

### Conflicts of interest

Recent reports of exploitation of a group of beneficiaries point out the need for paying special attention to cases in which payees have an interest that conflicts with the best interests of the beneficiary. In February 2009, inquiries by a sister of a beneficiary led to a series of inspections at a boarding facility in Iowa. The fire marshal ordered the facility closed, and the 21 residents were moved to a state-licensed care facility. The men's employer has become the focus of an investigation involving several state and federal agencies. That investigation has shown that for 34 years, a Texas company sent men with intellectual disabilities from Texas to Iowa to work in a poultry-processing plant. The men were working for about 40 cents an hour and lived in a century-old building that was leased to their employer for \$600 per month. Each of the men was reported to be receiving a Social Security disability benefit (SSI and/or SSDI), averaging about \$640 per month. These benefit payments were managed by their employer, who was also their payee and their landlord and "care" provider. The employer was reported to charge the men all but \$60 to \$70 of their total income for room, board and "kind care." The sister of one of the men stated that he had \$80 in the bank after working for 30 years (Kauffman February 8 and 10, 2009; Jones).

SSA's accounting forms are not designed to uncover this kind of abuse. As long as the figures on the accounting forms showed that the benefits were being used to meet the needs of the beneficiaries, and the figures added up, no further action would be

taken. To its credit, however, SSA has taken action to investigate whether there are other situations in which employers are also representative payees and beneficiaries are vulnerable to exploitation. SSA has compiled a database of payees who employ their beneficiaries. It reviewed 328 such employers in FY 2009 and referred two potential wage violations to the Department of Labor. It also entered into a contract with the National Disability Rights Network to pay for on-site reviews to be conducted by investigators for state Protection and Advocacy agencies. SSA's Inspector General plans to examine a sample of the reviews to determine whether they complied with SSA's policies and procedures (Kauffman, December 27, 2009; SSA, Briefing for the Social Security Advisory Board, January 12, 2010; SSA, Office of the Inspector General, Congressional Response Report, May 2010).

There are other situations that call for similar attention. The NRC report pointed out the conflict of interest when a representative payee was also the operator of a group home, foster care home or board and care home, providing food, shelter and, ostensibly, services to the beneficiary while controlling the person's benefit. Some states monitor and/or license some or all of these facilities and have rules for fiscal management of benefits. In other states, the payee is free to charge any amount and deduct it from the benefit payment. The committee found cases in which the payee charged beneficiaries receiving different benefit amounts the entire benefit amount for room and board. Some of these payees could provide records and were complying with reporting standards, although they may have been exploiting their beneficiaries. In addition they may not have been in compliance with Social Security regulations and policy that address the expectation that payees will also provide for a beneficiary's personal needs, and clothing, even if that means a facility gets paid a little less than is usual (CFR 20, 404.204, Use of benefit Payments, and POMS, GN00602.001, Use of Benefits, 2. Proper Use of Benefits).

A 2009 study by SSA's Office of the Inspector General underlined the need to pay greater attention to payees who have a creditor relationship because their beneficiaries reside in a group home that they operate. That study examined a sample of payees to determine if some of them operated as group homes. Since current law requires SSA to conduct periodic

reviews of individual payees serving 15 or more beneficiaries, OIG looked at payees who served 14 or fewer beneficiaries. To focus more closely on potential group homes, it further restricted its sample to payees with at least three beneficiaries who were not relatives. In a sample of 16 payees, it found three group homes, three beneficiaries whose clothing or shelter needs were not being met, and three payees charging unauthorized fees (SSA, OIG, *Individual Representative Payees Serving Multiple Beneficiaries and Organizational Representative Payee Serving as an Individual Representative Payee in Philadelphia*). Since in this small sample, the OIG study found a substantial percentage of group homes (and therefore creditor relationships that the agency had not been aware of) and violations of SSA policy, SSA should pursue further investigations along these lines.

SSA should increase its monitoring of individual payees, such as operators of group homes, who are also in a creditor relationship with the beneficiary, and develop performance and reporting standards specifically for this type of payee. Whenever possible, SSA should avoid putting beneficiaries in a position where their payees' interest conflicts with their own best interest. The agency may have difficulty identifying such payees, given the state of its data system, but it is updating that system. It should obtain the data it needs, develop performance and reporting standards, and move toward enforcing them to the best of its ability.

### Selection

Applicants who want to be selected as representative payees currently complete the application in a face-to-face interview in most cases. SSA's program instructions direct interviewers to use the interview to determine the applicant's qualifications and motive for filing to be a payee, to judge the applicant's ability to carry out the payee's responsibilities, and to explain the payee's duties, reporting responsibilities, and liability of non-compliance of reporting (SSA, Program Operations Manual System, GN 00502.113).

The program instructions also state: "SSA is legally required to verify identity and SSN information supplied by payee applicants. Verifying other allegations such as income and custody may also

help determine a payee applicant's suitability." The instructions also provide payee preference lists. For example, the preference list for minor children begins with a parent with custody, a legal guardian, a parent without custody but who shows strong concern, and goes on through five more categories. The instruction states that the lists are meant only as guidelines and that each payee application must be evaluated to determine the best payee (SSA, Program Operations Manual System, GN 00502.105, GN 00502.117).

Just as data on payee characteristics can help with misuse, as described above, they can also help in payee selection. SSA should use its data on payee characteristics to shape its policies on selection of payees. The data that it is developing, and should continue to develop, on payee characteristics that are linked to misuse should be built into its payee selection. SSA should also take advantage of other data that are available to it, such as credit reports, criminal records, and information from other public agencies. It should use data from these sources as it uses the information on payee characteristics from its own records and analyze it for potential links to payee misuse that can improve its selection and monitoring of payees.

SSA should also avoid giving control of beneficiaries' funds to someone who is not designated as a payee. SSA's Office of the Inspector General looked into the use of "in care of" addresses to gain control of benefit payments while avoiding representative payee reporting. It found that 216,000 beneficiaries had addresses "in care of" someone else. OIG auditors visited 21 nursing homes and other facilities. They found that at five of them, the staff acknowledged that the beneficiaries retained no control over, or had no access to, SSA payments. Once the "in care of" address changes were made, SSA would mail payments directly to the facility or electronically deposit funds into accounts controlled by the facility. This gave the facility control over the benefits without the responsibility that comes with being representative payee (SSA, OIG, *Beneficiary and Recipient Use of "In Care of" Addresses*).

### Oversight

Once they are selected, some payees will need support from SSA. The most common reasons for

payees to contact SSA for help have been to clarify the beneficiary's benefit amount, to understand the payee's responsibilities, and to request permission to allow the beneficiary to manage his or her own benefits. The NRC's survey found that, of those payees who did contact SSA with questions or concerns, nearly a quarter felt somewhat (9.3 percent) or very (14.5 percent) dissatisfied with the help they had received. Payees perform an important service, and many of them may have difficulty understanding or following the instructions they receive when they are appointed. Since the NRC report, SSA has done an assessment of payee needs, and it plans to evaluate its publications and enhance its website for payees. It has also made it possible for payees to file the annual accounting form online. It should continue to find out what kinds of help payees need and make sure they have the information and support that will help them fulfill their responsibilities to both beneficiaries and SSA.

SSA's field staff also needs additional support in fulfilling its responsibilities. The NRC committee reported that during its field visits, some field office staff said that they did not have adequate methods to judge whether a prospective new payee was more suitable than the current payee. Field office staff stated that they did not have means to verify information given by prospective payees. The Advisory Board has heard similar comments during its visits to SSA field offices. Since field offices no longer have field representatives who can visit beneficiaries, they are limited in their ability to determine whether benefits are being used to meet the beneficiaries' needs. SSA has recently conducted training for its field managers and staff on payee issues, and it plans to conduct additional training. SSA should also analyze the needs of its front-line employees in addition to training, and then provide them with the tools they need to do their job well.

The NRC committee's study of misuse found individual payees who were given fees by a beneficiary for their services, in violation of SSA policy (NRC, 2007). Only organizational payees are allowed to charge a fee. Other researchers have also found that individual payees charge the beneficiary fees (Gallmeier and Levy). Individual payees are not authorized to collect fees, and doing so is misuse. The current accounting form for individual payees does not ask about this. The next revision of the form should ask if the payee charges a fee.

At a Congressional hearing in 2000, SSA's Inspector General said of representative payee oversight, "This is a workload [at] Social Security, in the field, that gets deferred. It is not addressed because there are other priorities that interfere. We do not have a performance measure in our performance plan that deals with having this process as effective and having the best integrity that it possibly could. And in my opinion, where you do not have a performance measure, normally in life, you do not have much compliance or an incentive. So we think that is probably called for, also." Later, referring to a large case of representative payee fraud, he said, "[T]his particular situation happens when this focus, this stewardship, if you will, of this particular area was not important. What was more important was to get benefits out the door." (Huse, 2000). A letter from the National Council of Social Security Management Associations, which represents SSA's front-line management, indicated that payee activities were still backlogged in 2008 and explained, "Suffice it to say that some of these workloads are of low priority or end up backlogged simply because they are not being monitored as closely as others." (NCSSMA).

As an external advisory committee on representative payees recommended to SSA in 1996, a quality review sample should be implemented that would examine the quality of SSA determinations of beneficiaries' capability to handle benefits, payee selections, and misuse determinations. The quality review should also supplement payee self-reporting with collecting collateral evidence to support the payee's statements. Such a quality review would indicate to front-line staff that the agency considers representative payee issues an important workload. At the same time, it would collect data and identify trends that might suggest the need for further policy changes. There should also be continued management attention to agency performance of its duties related to representative payees.

#### Organizational payees

The fact that the NRC study was limited to individual payees serving fewer than 15 beneficiaries and non-fee-for-service organizational payees serving fewer than 50 beneficiaries does not mean that the broader organizational payee program is without problems.

The *Social Security Protection Act of 2004* required SSA to expand its monitoring of certain representative payees, including organizational payees representing 50 or more beneficiaries (known as volume payees) and all payees authorized to collect a fee for service. SSA's monitoring program includes reviews of all volume payees and fee-for-service payees and all state mental institutions at least once every three years. SSA also selects a random sample of payees not scheduled for a triennial site review in that year. In addition, SSA conducts targeted reviews as needed if events raise concerns about a payee's performance. Payee reviews include meetings with representatives from the organizations, assessments of the payees' recordkeeping, and interviews with beneficiaries.

In FY 2002, a consultant reviewed SSA's site review process for fee-for-service, large organizational payees serving over 100 beneficiaries, and individual payees serving over 20 beneficiaries. The site review focuses on communicating SSA's expectations of representative payees, and discussing what payees need from SSA to perform their functions. Site reviewers also examine documentation to check beneficiary resources and ensure that interest on conserved funds is credited to the beneficiary's account. They also check to ensure that accounting forms have been returned, that conserved funds have been returned if a new payee has been appointed, that any overpayments have been repaid, and that only appropriate fees have been charged. The consultant's report found that in general the site review process, was very effective, but it noted that the site reviews were not financial or accounting audits, and that even a financial audit could not ensure against fraud (Chesapeake Consulting).

More recently, an audit report by SSA's Office of the Inspector General showed one aspect of the potential for misuse by organizational payees. In 2007, SSA's Office of the Inspector General examined a sample of 139 organizational payees that received three or more benefit payments after the deaths of beneficiaries between January 2000 and May 2006. Of the 139 organizations in its sample, it found that 76 did not timely report the deaths of multiple beneficiaries and/or did not return funds that were incorrectly paid after death, despite SSA's efforts to recover the benefits. Projecting from its sample, OIG estimated that SSA paid about 2,780 organizational payees \$10

million in benefits after the deaths of beneficiaries (SSA, OIG, *Organizational Representative Payees*)

In the last ten years, SSA's Office of the Inspector General has issued audit reports on ten fee-for-service payees. Among the problems these audits uncovered were: holding large amounts of conserved funds in uninsured, non-interest bearing accounts; accepting incorrect payments after the death of beneficiaries; charging excessive fees; having only limited contact with their beneficiaries; not keeping adequate records showing how funds were spent; commingling other funds with benefit funds; and not returning conserved funds for beneficiaries no longer in the payee's care.

These OIG audit reports indicate that, while site reviews are effective as far as they go, they do not fulfill SSA's stewardship responsibility to manage benefit payments in a way that maintains the trust of the public it serves. The Office of the Inspector General should conduct annually a review of a sample of the site visits and provide feedback to SSA to ensure that future site visits are as effective as possible in preventing misuse and ensuring compliance with SSA policies. Attention should be directed to whether or not beneficiaries actually receive the personal needs money they are supposed to receive, and whether or not what representative payees report on paper about their management of beneficiary funds reflects actual practice.

The payment of fees is another issue that requires attention, especially for SSI beneficiaries. Legislation in 1990 first allowed qualified organizations to charge a fee. The fee is deducted from the beneficiary's payment and is used for expenses incurred by the organization in serving as payee. The maximum fee was originally set at \$25 and stayed at that amount through 1996. It was later indexed to the cost of living. Fee-for-service payees are now entitled to collect the lesser of \$37 or ten percent of the monthly benefit amount per month from each beneficiary whose benefits they manage. Payees for beneficiaries who have a medically determinable substance abuse disorder as a secondary diagnosis are entitled to a higher fee, the lesser of \$72 or ten percent of the monthly benefit amount per month from each beneficiary. Fee-for-service payees are last on SSA's preference list for selection of payees and are generally selected only when no other suitable payee can be found.

SSA currently has 1,201 fee-for-service payees providing services to 96,096 SSI beneficiaries, of whom 2,172 have a substance abuse disorder as a secondary diagnosis. If each of these payees received the maximum amount, the total of fees paid for a year would be \$44 million. In the context of a program that distributes \$40 billion per year in Federal benefits, that may not be considered a large amount. On the other hand, for a beneficiary with a Federal benefit rate of \$674 per month, a fee of \$37 or \$72 is a large amount. Since the SSI monthly benefit is below the poverty level to begin with and since it is not the beneficiaries' choice to have a fee-for-service payee, it seems unreasonable to require beneficiaries to pay the payee's fee. What we do not know, however, is the impact of the fee on beneficiaries who may be receiving other benefits to help pay the cost of food, shelter, and other necessities. We therefore recommend that OIG examine a sample of beneficiaries with fee-for-service payees to see how the payee's fee impacts meeting their food, shelter, and personal needs.

#### Coordination with other agencies

The population of representative payees overlaps with populations that are monitored by other agencies, but there is little coordination of oversight, or sharing of information. A 2006 report on guardianship by the Government Accountability Office said, "With few exceptions, courts and federal agencies don't systematically notify other courts or agencies when they identify someone who is incapacitated, nor do they notify them if they discover that a guardian or a representative payee is abusing the person. This lack of coordination may leave incapacitated people without the protection of responsible guardians and representative payees or, worse, with an identified abuser in charge of their benefit payments." (GAO, 2006).

In 2006, an AARP Roundtable on Representative Payees and Guardianship, with representatives from the Department of Veterans Affairs (VA) and SSA and state court judges, generated ideas for improving coordination (Karp and Wood):

- Require that SSA representative payees and fiduciaries for veterans benefits provide courts with copies of monitoring reports when there is a court-appointed guardian.
- In response to concerns that the Privacy Act prevents SSA from sharing information with

courts, legal barriers to information exchange between federal agencies and courts regarding individuals should be removed. This would enable SSA to inform courts whether an individual has a payee and when the payee misuses benefits or violates SSA policies.

- Establish a working group including SSA, VA, and other federal agencies with fiduciary programs; state court judges; and relevant national organizations. This group would be charged with developing national approaches to improve collaboration.
- Provide contacts at federal agencies to which courts can report about problematic guardians.
- Educate the judiciary on the representative payee and similar federal programs.

A recent audit report by SSA's Inspector General shows the potential for better use of existing information. When a child is placed in a state's foster care system, authorized state partners can use SSA's State Verification and Exchange System to find out whether the child is receiving benefits from SSA and can apply to become the child's representative payee. The Inspector General compared foster care records of the state of Maryland with SSA's beneficiary records and found that 952 children in Maryland's foster care programs were receiving SSA benefits for which they had representative payees. Of that number, 402 children had payees who were neither foster care agencies nor the children's foster care parents. SSA selected 50 of those 402 to assess the suitability of their representative payees. Of those 50, SSA determined that six representative payees had misused and four had possibly misused the children's benefits (SSA, Office of Inspector General, *Benefit Payments*).

The priority here should be to work with other agencies to establish a way that the agencies can inform one another of problematic payees. SSA should also develop working relationships on payee matters with state adult protective services, the state protection and advocacy agencies, the Area Agencies on Aging, the growing number of Aging and Disability Resource Centers, and state foster care agencies, to determine what information can be shared usefully. To the extent possible, information should be shared through automated data exchanges. All of these agencies have interests that overlap with SSA's, and exchanges of data would be mutually beneficial in

sharing information on payees who have misused benefits and in preventing misuse for the clients of all the organizations involved.

### **III. Conclusion**

SSA has been taking steps to improve its representative payee process. We encourage the agency to continue along these lines, using data to focus its efforts where they will be most useful. We also have some additional recommendations:

- SSA should continue examining characteristics of payees and beneficiaries to identify cases with the greatest risk of misuse in order to target its selection and monitoring activities in the most efficient way. It should expand its efforts to include data available from sources outside SSA.
- Once SSA has established data-driven selection and monitoring, it should carry out its process of conducting annual accountings with payees in a way that is tailored to different risk groups.
- SSA should increase its efforts to avoid selecting as payees people or organizations that have interests which conflict with the best interests of the vulnerable beneficiaries whom they would be serving.
- SSA should implement an annual quality review sample of its payee activities, including capability determinations, payee selections, and misuse determinations.
- SSA's Inspector General should annually review a sample of site visits to organizational payees to ensure that they are effective in preventing misuse and ensuring compliance with SSA policies.
- SSA's Inspector General should also examine a sample of beneficiaries with fee-for-service payees to see how the payee's fee impacts meeting the beneficiaries' food, shelter, and personal needs.
- SSA should take steps to improve coordination with other agencies, including the Veterans Administration, state courts, state Adult Protective Service agencies, Protection and Advocacy agencies for people with disabilities, and state foster care agencies.

These agencies all serve populations that overlap, and improved coordination can help them all better protect the people that each agency serves.

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## MEMORANDUM

To: Social Security Advisory Board  
Subject: Death Master File Issues Memo  
Date: May 20, 2015

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This memo provides an overview of the Death Master File (DMF) and the issues currently surrounding its use, accuracy and publication. The DMF was created in 1980 when SSA was required to make records of deceased Social Security number-holders available to the public under the Freedom of Information Act (FOIA.) SSA creates a “Numident” for each person issued a Social Security number which is marked with an indicator when Social Security Administration (SSA) is notified of an individual’s death. The DMF is created by extracting specific items on the Numident such as name, date of birth, social security number, place and date of death. Among its many uses some government agencies, banks, and financial firms use the DMF to match records and prevent fraud, medical researchers use it for tracking longevity in treating diseases, and genealogists rely on it for tracking ancestors.

The DMF contains more than 86 million records.<sup>1</sup> It includes both beneficiary and non-beneficiary records which entails verified and nonverified data. Ninety percent of the file includes reports from family members and funeral homes. These sources are believed to have first-hand knowledge of identity and reports are immediately added to the DMF. Five percent of the data includes reports from States and other Federal agencies. These reports for beneficiaries are verified before being added to the DMF while those for nonbeneficiaries are added without verification. Therefore, nonbeneficiary data is prone to error. The other five percent of the file comes from reports from postal authority and banking service. These reports are verified for SSDI beneficiaries while reports for SSI are included without verification. SSA doesn’t receive death information for all individuals; therefore, it doesn’t guarantee the completeness of the DMF.

The full file contains all death records extracted from the Numident including death date from the States and is only shared with certain Federal and State agencies. SSA provides the DMF to four Federal benefit-paying agencies – the Railroad Retirement Board, Department of Defense, Veterans Benefits Administration, and Office of Personnel Management. These agencies receive all death records including State records. The public file, contains the same death records with the exception of death date received from the States. This public file is provided to Department of Commerce’s National Technical Information Service (NTIS) which sells it to the public. SSA sells the DMF to NTIS who in turn sells it to private organizations such as banks and credit companies. SSA also sells the DMF to some Federal agencies including Centers for Medicare

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<sup>1</sup> Social Security Death Master File. Available at: <https://www.ssdmf.com/FolderID/1/SessionID/%7B20390058-EBDC-403F-AE51-9B19673C1CDA%7D/PageVars/Library/InfoManage/Guide.htm>

and Medicaid Services (CMS), Internal Revenue Service (IRS) and General Accountability Office (GAO) which receive all death records excluding State records with the exception of GAO which receive State records. SSA provides a disclaimer which states that SSA has not verified all of the death data included in the DMF.

The intentions of the DMF are to prevent identity fraud and verify death. The USA Patriot Act requires an effort be made to verify the identity of customers including procedures to verify the identity of customers and maintain records of information used to verify identity. The DMF allows financial communities, security firms, insurance companies and state and local government to identify and prevent fraud by running credit and financial information against the DMF. The electronic DMF provides weekly and monthly updates reducing the production time of the data.

In 2011, the Inspector General issued a follow-up to address recommendations made in 2008 regarding the exposure of personally identifiable information available to the public. The DMF database contains detailed information of more than 86 million number-holders. Erroneous data entry into the system can lead to benefit termination as well as result in the publication of personally identifiable information (PII) in the publicly sold DMF system. In these occasions, SSA deletes the erroneous data from the DMF however these individuals' PII are still available. In 2008, the Office of the Inspector General determined that SSA's publication of the DMF from 2004 through 2007 resulted in breach of PII of more than 20,000 living individuals erroneously listed as deceased.<sup>2</sup>

In a 2008 report, the OIG recommended implementing a delay in release of the DMF, limiting the amount of information on the DMF sold to the public, and providing appropriate breach notifications. Since this review, SSA took action in response to providing breach notifications but did not take any action in response to the other recommendations made by the OIG. SSA indicated that compared to the number of death reports it processes, the number of death reporting errors was insignificant. SSA's continued publication of the DMF from 2007 through 2010 resulted in breach of PII of as many as 36,000 additional individuals listed as deceased. Although SSA attempted deleting these individuals' information from the DMF, the OIG found that this did not remove individuals' PII from the public domain.<sup>3</sup>

The issue of accuracy of the DMF has been highlighted in the past few years, especially as identity theft has been on the rise, there have been several congressional hearings and some proposed legislation which limit access to the DMF. This has caused some controversy and concern from medical researchers and genealogists who may not be able to afford the additional access. CBS news program's "60 Minutes" segment titled "Dead or Alive" followed by a hearing titled "Examining Federal Improper Payments and Errors in Death Master File" by the U.S.

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<sup>2</sup> Office of the Inspector General. *Follow-up: Personally Identifiable Information Made Available to the Public Via the Death Master File*. March 2011.

<sup>3</sup> *Ibid*

Senate Committee on Homeland Security and Governmental Affairs both addressed the rising issue with the reliability and accuracy of the DMF. In both of these circumstances, the Inspector General Patrick O'Carroll discussed the recent OIG audits. A Recent OIG audit identified 6.5 million number-holders age 112 or older who did not have death information.<sup>4</sup> Most of these number-holders did not receive payments from SSA and were most likely deceased. However, their absence from the DMF leaves room for fraud.

In addition, the recent audit also showed that more than \$124 billion in improper payments have been made in FY 2014, a big spike from the \$105 billion reported in FY 2013.<sup>5</sup> According to SSA, there are fewer than 1000 cases each month in which a living individual is mistakenly added to the DMF.<sup>6</sup> The Inspector General also mentioned that one of the efforts made to minimize this error is that SSA reaches out to individuals 100 years old and older, and checks to see if an individual hasn't been on Medicare for three years.

The highlight of the piece titled "Dead or Alive" was the story of Judy Rivers who also testified at the Homeland Security and Government Affairs Committee hearing. Ms. Rivers was mistakenly reported as dead twice over the course of less than ten years. Due to this incorrect reporting, Ms. Rivers was declined from service by several agencies including being declined for her loans. Ms. Rivers contacted several agencies including SSA to retrieve her identity, yet none were able to help her. Ms. Rivers faced homelessness due to her loss of credibility, until she was finally able to get her name off the DMF by collecting information and contacting her bank. Ms. Rivers now always carries a letter from SSA that states her identity, that she had been mistakenly indicated as dead in the past but that she is indeed alive. Although her name is removed from the DMF, its effects follow her.

Stories such as that of Ms. Rivers are not emphasized enough. The "60 Minutes" piece also profiled a man who reported the death of his wife, but who SSA mistakenly reported him dead. There are several instances in which this type of error also takes place.

Inaccurate data due to data entry error or erroneous data reporting by the reporter also leads to improper payments by other agencies. According to Sean Brune, Senior Advisor to the Deputy Commission for Budget, Finance, Quality, and Management, Social Security Administration, there are less than 1000 cases each month in which living individuals are mistakenly included on the DMF. This can cause fraud and financial hardship. The Inspector General indicates that there are 1.4 million individuals indicated dead on one record and alive on another.<sup>7</sup> This opens a gap

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<sup>4</sup> Office of the Inspector General: Social Security Administration. *Examining Federal Improper Payments and Errors in the Death Master File*. Available at: <http://oig.ssa.gov/newsroom/congressional-testimony/march16-hsgac>

<sup>5</sup> *Ibid*

<sup>6</sup> *Ibid*

<sup>7</sup> US Senate Committee on Homeland Security & Governmental Affairs. *Examining Federal Improper Payments and Errors in the Death Master File*. March 16, 2015. Available at: <http://www.hsgac.senate.gov/hearings/examining-federal-improper-payments-and-errors-in-the-death-master-file>

allowing an individual to impersonate the dead person by using SSN to even receive Social Security benefits. The inaccuracy of the DMF has become an increasing issue.

The increasing issues of the DMF include the unreliability of the data. SSA does not have a death record for all individuals. This leads to the concern that the DMF can lead to improper payments by several government agencies that rely on the DMF. In addition, access to the DMF is available to the general public that can lead to identity theft and fraud.

The Limited Access DMF, available as an online search application is important for death verification. Medical researchers, and hospitals use this data to track former patients and study subjects. Federal, State and Local governments and other organizations responsible for sending payments to recipients need to know that payments are being sent to living individuals. Investigative firms also use this data to verify the death of persons during their investigation.<sup>8</sup>

The U.S. Department of Commerce has placed a new law addressing the abuse of the DMF, *Section 203 of Title II of the Bipartisan Budget Act of 2013*. This provision creates a restriction on access to information in the DMF for a three year period beginning on the date of the individual's death—except to those who have been certified by the Secretary of Commerce.<sup>9</sup> This rule establishes a temporary certification program for those who seek access to the DMF. A person is not certified under the program unless the person certifies that access to information in the file is appropriate because the person has the intention of preventing fraud, has procedures to maintain security of the information and agrees to satisfy the requirements as if it applied to oneself.<sup>10</sup> Congress estimates that limiting access to the death master file would save more than \$700 million over the next ten years. According to this ruling, only those who are certified will have access to the information. Genealogists and researchers are worried that they won't be able to find out the ending to individuals whom they have followed for several years.

In its most recent testimony, National Association for Public Health Statistics and Information Systems (NAPHSIS) explained the importance of securing and holding an accurate and complete birth and death record. NAPHSIS formed in 1933, is a nonprofit organization representing state vital records in the United States. Vital records are official records of birth, death, marriage and divorce collected by registrars in every state. Vital records offices record births and deaths and issue certified copies of birth and death certificates for legal and administrative purposes. NAPHSIS strives to provide national leadership for both vital records and related information systems to protect an individual's identity and improve population health.

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<sup>8</sup> Death Master File (DMF)

<sup>9</sup> Federal Register: A Daily Journal of the United States Government. *Temporary Certification Program for Access to the Death Master File*. Available at: <https://www.federalregister.gov/articles/2014/03/26/2014-06701/temporary-certification-program-for-access-to-the-death-master-file>

<sup>10</sup> One Hundred Thirteenth Congress of the United States of America. *Division A-Bipartisan Budget Agreement*. Available at: <http://www.gpo.gov/fdsys/pkg/BILLS-113hjres59enr/pdf/BILLS-113hjres59enr.pdf>

The federal government does not maintain a database that contains all of the vital records. However, the vital records jurisdictions which are governed under state laws have the authority to maintain these records. These vital records jurisdictions provide SSA with birth and death information in order to prevent erroneous payments by the agency to deceased beneficiaries. State vital records provide the most accurate death information about an individual. Besides these vital records, SSA also receives death information from family, friends and funeral directors making the DMF, which is compiled by the SSA, an unofficial record. Death records that are received from vital records jurisdictions are not released in the public file as they are state records.

Electronic Verification of Vital Events (EVVE) is a system operated by NAPHSIS that allows customers to efficiently verify and certify birth and death information. Electronic inquiries are matched against 250 million birth and death records owned by state and jurisdiction owned vital record databases.<sup>11</sup> EVVE provides a complete set of state and jurisdiction vital records. Currently, agencies including the Social Security Administration and Office of Personnel Management use this system to improve operations and prevent fraud.

NAPHSIS provided a written testimony to the US Senate Committee on Homeland Security & Governmental Affairs regarding electronic verification of deaths. NAPHSIS believes that manual certificate preparation slows registration delaying the availability of death data. According to a 1997 report, *Toward an Electronic Death Registration in the United States: Report of the Steering Committee to Reengineer the Death Registration Process*, prepared by National Center for Health Statistics, SSA, NAPHSIS and other professional organizations, it was concluded that automated registration processes in the states is the ultimate way to eliminate the historical problem with death registration. Electronic Death Registration Systems (EDRS) have been implanted in 44 out of the 57 vital records jurisdictions.<sup>12</sup>

EDRS ensure the accuracy and completeness of a death certificate before filing. It checks against SSA's data to ensure accuracy of SSN of a decedent before a death certificate is filled. EDRS allow for a timely reporting of death by different data providers including funeral homes and physicians. An EDRS also introduces more security by giving distinct username and password for each death data provider. In order for the EDRS to be effective, all data providers including funeral homes, hospitals, physician offices, and medical examiners must use the system.

In 2001, SSA provided NAPHSIS funding to implement the Electronic Verification of Vital Events (EVVE) system in order to verify benefit eligibility in a timely manner as to prevent

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<sup>11</sup> NAPHSIS: Protecting Personal Identity Promoting Public Health. *NAPHSIS Provides Written Testimony to the US Senate Committee on Homeland Security & Governmental Affairs Regarding Electronic Verification of Deaths*. Available at: <http://www.naphsis.org/Blog/post/12/NAPHSIS%20Provides%20Written%20Testimony%20to%20the%20US%20Senate%20Committee%20on%20Homeland%20Security%20&%20Governmental%20Affairs%20Regarding%20Electronic%20Verification%20of%20Deaths>

<sup>12</sup> *Ibid*

overpayments. EVVE is an online system that verifies birth and death information. EVVE indicates whether there is or is not a match with the records maintained by the state, city or territory. Today, many agencies including SSA, the Office of Personnel Management, and Department of Homeland Security U.S. Citizenship and Immigration Services use EVVE to verify identification. The EVVE system provides protection against use of identifying information for fraudulent activities through safeguarding confidentiality of birth and death data. The EVVE system allows for rapid access to verifiable data. As of March 2015, NAPHSIS has installed EVVE in 54 jurisdictions and is in the process of installing the system in the remaining three jurisdictions.<sup>13</sup> EVVE allows for a secure, reliable, and efficient identity verification by digitizing birth and death record and linking those records.

The accuracy and reliability of the DMF is an issue that questions its intention. This data containing identification information of individuals needs to be handled carefully and securely. It's important to take the necessary steps certifying information so that erroneous death reporting does not occur and that individuals' personally identifiable information is not exposed to the public.

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<sup>13</sup> NAPHSIS: Protecting Personal Identity Promoting Public Health. *NAPHSIS Provides Written Testimony to the US Senate Committee on Homeland Security & Governmental Affairs Regarding Electronic Verification of Deaths.*

Available at:

<http://www.naphsis.org/Blog/post/12/NAPHSIS%20Provides%20Written%20Testimony%20to%20the%20US%20Senate%20Committee%20on%20Homeland%20Security%20&%20Governmental%20Affairs%20Regarding%20Electronic%20Verification%20of%20Deaths>

## MEMORANDUM

To: Social Security Advisory Board  
Subject: Patricia W. Potrzebowski, Ph.D., Executive Director of the National Association for Public Health Statistics and Information Systems  
Date: May 20, 2015

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**Patricia W. Potrzebowski, Ph.D.** will be meeting with the board to discuss the death master file and whether SSA should be responsible for maintaining the information. Ms. Potrzebowski has been the Executive Director of the National Association for Public Health Statistics and Information Systems since January, 2011. Previously, Trish served as the Director, Bureau of Health Statistics and Research at the Pennsylvania Department of Health, where she worked for more than 35 years.

While there, Trish established the first designated State Center for Health Statistics in the nation, implemented an award winning statewide cancer incidence registry and immunization registry, and directed the state's vital statistics system. In 2001 she launched the Commonwealth Universal Research Enhancement (CURE) program with funds from the Tobacco Master Settlement Agreement to provide clinical, biomedical, and health services research grants each year to universities, hospitals, and other research organizations located in Pennsylvania.

Trish earned her Ph.D. in human genetics from the Department of Biostatistics of the Graduate School of Public Health, University of Pittsburgh. She is a former President of NAPHSIS and received the Halbert L. Dunn Award in 1991 for her contributions to national and state health statistics systems. Trish chaired the Panel to Evaluate the U.S. Standard Certificates that created the 2003 revised certificates, and was also a member of the 2011 Model Law Revision Work Group.

Statement for the Record

submitted by

Patricia W. Potrzebowski, Ph.D.

on behalf of

National Association for Public Health Statistics and  
Information Systems

for

U.S. Senate  
Committee on Homeland Security and  
Governmental Affairs

March 16, 2015

Mr. Chairman and Members of the Committee—

The National Association for Public Health Statistics and Information Systems (NAPHSIS) welcomes the opportunity to provide the Senate Committee on Homeland Security and Governmental Affairs this written statement for the record on vital records and specifically, the reporting and electronic verification of deaths. Established in 1933, NAPHSIS is a non-profit membership organization representing the 57 vital records jurisdictions that collect, process, and issue vital records in the United States, including the 50 states, New York City, the District of Columbia and the five territories. NAPHSIS coordinates and enhances the activities of the vital records jurisdictions by developing standards, promoting consistent policies, working with federal partners, and providing technical assistance.

### **Vital Records Serve Important Civil Registration Function**

Vital records are permanent legal records of life events, including live births, deaths, fetal deaths, marriages, and divorces. Their history in the United States dates back to the first American settlers in the mid-1600s, and in England as early as 1538.<sup>1</sup> More than 8 million vital events were recorded in the United State in 2009.<sup>2</sup>

Many organizations and millions of Americans use these records—or certified copies of them—for myriad legal, health, personal, and other purposes.

- Birth certificates provide proof of birth, age, parentage, birthplace, and citizenship, and are used extensively for employment purposes, school entrance, voter registration, and obtaining federal and state benefits (e.g., Social Security). Birth certificates are the cornerstone for proving identity, and as breeder documents are thus used to obtain other official identification documents, such as driver licenses, Social Security cards, and passports.
- Death certificates provide proof of date of death, date and place of internment, cause and manner of death, and are used to obtain insurance benefits and cease direct benefit payments, transfer property, and generally settle estates.

Data providers—for example, hospitals for birth information and funeral homes, physicians, and coroners for death information—submit birth and death data to the vital

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<sup>1</sup> *U.S. Vital Statistics System: Major Activities and Developments, 1950 – 1995*. Centers for Disease Control and Prevention, National Center for Health Statistics. Feb 1997. Available online at: <http://www.cdc.gov/nchs/data/misc/usvss.pdf>

<sup>2</sup> National Center for Health Statistics, Centers for Disease Control and Prevention. Available online at <http://www.cdc.gov/nchs/data/databriefs/db16.htm> and [http://www.cdc.gov/nchs/data/nvsr/nvsr58/nvsr58\\_25.pdf](http://www.cdc.gov/nchs/data/nvsr/nvsr58/nvsr58_25.pdf)

records jurisdictions so that the vital event can be reviewed, edited, processed and officially registered. The jurisdictions are then responsible for maintaining registries of such vital events and for issuing certified copies of birth and death records.

The federal government does not maintain a national database that contains all of this information. Consistent with the constitutional framework set forth by our founding fathers in 1785, states were assigned certain powers. The 57 vital records jurisdictions, not the federal government, have legal authority for the registration of these records, which are thus governed under state laws. The laws governing what information may be shared, with whom, and under what circumstances varies by jurisdiction. In most jurisdictions, access to death records is restricted to family members for personal or property rights, to government agencies in pursuit of their official duties, or for research purposes. In other jurisdictions, release of death record information may be subject to less restrictive limitations; and in a few states identifiable information from death certificates is publicly available.

In an example of effective federalism, the vital records jurisdictions provide the federal government with data collected through birth and death records to compile national health statistics, facilitate secure Social Security number (SSN) issuance to newborns through the Enumeration at Birth (EAB) Program, and report individual's deaths.<sup>3, 4</sup> For example, the National Center for Health Statistics obtains de-identified vital events data from the jurisdictions to compile national data on births, deaths, marriages, divorces, and fetal deaths. These data are used to monitor leading causes of death and our nation's overall health status, develop programs to improve public health, and evaluate the effectiveness of those interventions. In addition, the jurisdictions provide the Social Security Administration (SSA) with fact of death information—including the decedent's name, date of birth, date of death, and SSN as filed with the jurisdiction—for use in the administration of the programs established under the Social Security Act to reduce erroneous payments to deceased persons receiving Social Security benefits.

### ***State Vital Records are the Gold Standard***

Vital records collected and maintained by the 57 jurisdictions are the only original and official record of someone's death. They are the "gold standard," providing the most accurate, reliable, and complete information about death.

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<sup>3</sup> The National Center for Health Statistics, Centers for Disease Control and Prevention, Department of Health and Human Services purchases data from the vital records jurisdictions through the Vital Statistics Cooperative Program to produce national vital statistics and for research purposes as part of the National Death Index.

<sup>4</sup> The EAB program allows parents to complete applications for SSNs for their newborns as part of the hospital birth registration process. About 96 percent of SSNs for infants are assigned through the EAB process.

SSA also sometimes receives reports of deaths from family members and funeral directors separate from the official death records that come from the vital records jurisdictions. This unofficial and incomplete death information is then released to the public through the Death Master File (DMF). Once public, it's used by banks, benefit plans, credit agencies, and some federal agencies to clear various lists and stop payments for those believed dead. Unfortunately, this DMF does not include all deaths. And, sometimes important information like SSN and even the name of decedent is incorrect when family members and funeral directors unofficially report directly to SSA. The result is that some of the information in the DMF is right, but some of it is wrong and the file itself is definitely incomplete. When banks, benefit plans, federal agencies, and others use this incomplete and inaccurate file to terminate accounts, it can have severe consequences for people who are in fact, still alive. It also has serious implications for identity theft and fraud when individuals are in fact deceased but not represented in the DMF.

It is important to note that the death records that the vital records jurisdictions share with SSA are not released publicly in the DMF because—while an individual does not have a *federal* right to privacy after death—in many states individuals *do* maintain that right to privacy. Official death records are governed by state and not federal laws, thus these records cannot be released publicly by the federal government.

### **Electronic Systems Enhance Death Reporting Accuracy, Timeliness, and Security**

A death certificate contains both demographic (personal) information and medical (cause of death) information about the decedent. Over the last century in the United States, death certificate completion has mostly been the responsibility of funeral directors, with physicians, medical examiners, and coroners providing cause and manner of death information. Once the demographic data and medical data are complete, the death certificate is then filed with the vital records office. In some states, the death certificate is filed at the local vital records office, and then sent to the state office; in other states the death certificate is filed directly with the state office. The data are then reported to state and federal entities for public health and administrative purposes.

Manual certificate preparation, including the personal delivery of records to physicians for signature, extensive and costly travel by funeral director staff to file certificates, and labor-intensive processing of paper records locally and at the state vital records offices, all contribute to slowing registration and delaying the availability of death data.

Furthermore, even though each state has laws requiring the registration of death records within a specific time period, a significant number of certificates are not appropriately filed, may contain incorrect or inconsistent entries, or are not finalized until many weeks after the death occurred. In addition, incomplete death certificates and coroner cases may take weeks or even months to resolve. These late-filed and/or partially completed death certificates are not generally acceptable for use by family

members, nor do they meet federal administrative needs or satisfy the information demands of local, state and federal agencies.

In January 1997, the report, *Toward an Electronic Death Registration System in the United States: Report of the Steering Committee to Reengineer the Death Registration Process* was prepared by a task force of representatives from federal agencies—the National Center for Health Statistics and SSA—as well as NAPHSIS and other professional organizations representing funeral directors, physicians, medical examiners, coroners, hospitals, and medical records professionals. The Committee examined in detail the feasibility of developing electronic death registration in the United States. The conclusion of the report was that the introduction of automated registration processes in the states is a viable means to resolve several historical and continuing problems in the process of death registration.

The advent of technology has facilitated the automation of death registration and reporting, which is the key to addressing these long-standing issues related to accuracy, security, and timeliness of data. To date, 44 vital records jurisdictions have implemented electronic death registration systems (EDRS) to better meet the public health and administrative death information needs. There are thirteen jurisdictions (eight states and the five territories) without an operational EDRS, but four of the states are expected to be online in 2015. Three states have not started any planning, and one state has completed its planning phase but does not have adequate funds to proceed with development of an EDRS system (see Appendix 1).

For jurisdictions using an EDRS, death reporting is:

- More Accurate and Complete. An EDRS ensures that all required fields are completed before the death certificate is filed using built-in, real-time edits and crosschecks on the data entered. For example, it can ensure that the individual recording the data does not inadvertently indicate that a two-year old decedent has a college education. For purposes of SSA, an EDRS incorporates a real-time check of the decedent's SSN against the SSA data files to ensure accuracy of the SSN recorded before the death certificate is registered and filed.<sup>5</sup>
- More Timely. An EDRS allows different death data providers, e.g. the funeral director and physician, to complete the death record concurrently from their computers. It eliminates the need for a paper death certificate to be hand-delivered by funeral home staff to the physician's office for completion. Automatic reminders and workflow prompts are built into an EDRS so a physician is notified via e-mail when a death certificate is awaiting completion. Once the electronic death record is

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<sup>5</sup> Among the 44 vital records jurisdictions with EDRS, five states have not integrated the capability to verify SSN into their EDRS: Maine, Maryland, New York, Pennsylvania, and Wyoming. However, Maine and Wyoming are expected to have this capacity in 2015.

complete, state vital records offices may submit fact-of-death records to SSA daily (Monday-Friday).

- **More Secure.** An EDRS requires a distinct username and password for each death data provider to access the death records. An EDRS also has built-in audit trails to monitor the users' activity.

While vital records jurisdictions have made great strides in implementing EDRS, there is still much to be done. In most of the 44 vital records jurisdictions that have implemented EDRS, not all physicians and funeral directors submit death records electronically. Implementation of the EDRS in the vital records office is just one piece of the puzzle. To be effective, all data providers—funeral homes, hospitals, physician offices, nursing homes, hospices, coroners and medical examiners —also must use the system. These users must then adjust their workflow processes and make themselves available for training. From start to finish, the full rollout of an EDRS may take years and a significant financial commitment on the part of the state health departments and the death data providers themselves. The lack of adequate resources—both financial and human capital—are the biggest barriers to more widespread EDRS adoption. This is particularly true for death data providers who do not report a significant number of deaths each year, and therefore do not see the value of the required investments.

Between 2001 and 2006, SSA provided funding to many vital records jurisdictions to help support their EDRS implementation efforts. Based on a late-2008 survey of the vital records jurisdiction, NAPHSIS estimates that at least \$20 million is needed to complete EDRS implementation in all 57 vital records jurisdictions, to increase use of EDRS among death data providers, and to modernize the systems of early adopters that lack the resources to upgrade their systems to keep pace with new technology. Some additional funding may be required on an annual basis to facilitate death data provider training.

### **Preventing Fraud, Identity Theft through Electronic Verification of Vital Events (EVVE)**

Because vital records are essential legal documents linked to identity, and because criminals need new identities, vital records are sought out and used to commit fraud, identity theft, and even terrorist activities.<sup>6,7,8</sup> It is therefore essential that birth and death records be protected, and that federal and state agencies have the ability to verify

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<sup>6</sup> The 9/11 Commission Report, Final Report of the National Commission on Terrorist Attacks upon the United States, July 2004, p. 390.

<sup>7</sup> Department of Health and Human Services, Office of Inspector General, *Birth Certificate Fraud*, Sept. 2009 (OEI-07-99-00570).

<sup>8</sup> Government Accountability Office, *Department of State: Undercover Tests Reveal Significant Vulnerabilities in State's Passport Issuance Process*, Mar. 2009 (GAO-09-447) and *State Department: Undercover Tests Show Passport Issuance Process Remains Vulnerable to Fraud*, July 2010 (GAO-10-922T)

the source data contained therein. In addition, the ability to quickly catch and stop the fraudulent use of Social Security and other public benefits would reduce wasteful spending, and restore public trust in government.

Recognizing the need to verify benefit eligibility in a timely and secure fashion, SSA awarded NAPHSIS funding in 2001 to develop and implement the Electronic Verification of Vital Events (EVVE) system. EVVE is an online system that verifies birth and death certificate information. It provides authorized users at participating agencies with a single interface to quickly, reliably, and securely validate birth and death information at any vital records jurisdiction in the country, circumventing the need for a national database of such information. In so doing, *no additional personal information is divulged* to the person verifying information—EVVE simply relays a message that there was, or was not a match, with the birth and death records maintained by the state, city, or territory. In addition, EVVE has the capability to provide an indication that an individual is deceased if the birth record has been flagged. This eliminates a key loophole whereby thieves use a valid birth certificate of a deceased individual to create a new identity.

Today, SSA uses EVVE to verify proof of age and place of birth as a program policy requirement before issuing Social Security benefits. Other federal and state agencies—Department of State Passport Fraud Managers and Diplomatic Security, the Office of Personnel Management (OPM), Federal Bureau of Investigation regional offices, Department of Homeland Security U.S. Citizenship and Immigration Services, and some state Medicaid offices and Departments of Motor Vehicles—are currently using EVVE to verify or certify identification and authenticity of birth certificates. These users are enthusiastic about the EVVE system, citing its ability to:

- Provide protection against the potential use of birth certificates for fraudulent activities.
- Improve customer service by facilitating rapid access to accurate and verifiable vital record data in real-time.<sup>9</sup>
- Safeguard the confidentiality of birth and death data.
- Offer a secure mechanism for communication between agencies and vital records offices via the Internet.

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<sup>9</sup> OPM conducted a pilot in parallel with their manual voucher process of requesting certification information from the vital records jurisdictions. The match rate for those same queries was 84 percent in both manual and EVVE mode. In addition, the response time was just 10 seconds using EVVE compared to 42 days using the manual process.

- Easily integrate with current legacy systems that the federal or state agencies may already be using, and for serving as a user-friendly interface for agencies that seek a stand-alone query system.

While EVVE is currently being used to verify deaths in only a few jurisdictions, NAPHSIS continues conversations with interested public and private sector users about their death information needs and the system's capability as a viable DMF alternative. NAPHSIS and the jurisdictions have made significant progress in enhancing EVVE to address these users' need for more accurate, reliable, timely, and complete death record information. Specifically, as of March 2015, EVVE is installed and ready to accept birth queries in 54 jurisdictions—a process that has taken nearly 15 years with support from both SSA and Department of Homeland Security. NAPHSIS is working to install EVVE in the remaining three jurisdictions, with one jurisdiction currently in progress.<sup>10</sup> Today, EVVE has been upgraded to accept death queries in 40 of these jurisdictions—a process that has taken only three years without any financial support for the jurisdictions or NAPHSIS from potential public or private sector users (see Appendix 1).

Despite EVVE's security, speed, and ease of use, the system is only as good as the underlying data infrastructure upon which it relies. Digitizing paper-based birth and death records, then cleaning and linking those records, will provide for secure, reliable, real-time identity verification using EVVE. For example, there are cases where an individual has assumed a false identity by obtaining a birth certificate of a person who has died. Therefore, it is important that all jurisdictions' death and birth records be linked to flag individuals who are deceased and identify fraudulent birth documentation.

The vital records jurisdictions' efforts to digitize, clean, and link vital records have been hindered by state budget shortfalls. In short, the jurisdictions need help to complete building a secure data infrastructure. Specifically, resources are needed to help vital records jurisdictions digitize their birth records back to 1945, include death records back to 2000, clean these data to support electronic queries, and link birth and death records. Additional resources would also significantly enhance the ability of NAPHSIS and the jurisdictions to expedite progress in the implementation of EVVE nationwide, and in building system capacity to accept death queries from public and private sector users.

NAPHSIS appreciates the opportunity to submit this statement for the record and looks forward to working with the Subcommittee. If you have questions about this statement, please do not hesitate to contact NAPHSIS Executive Director, Patricia Potrzebowski, Ph.D., at [ppotrzebowski@naphsis.org](mailto:ppotrzebowski@naphsis.org) or (301) 563-6001. You may also contact our Washington representative, Emily Holubowich, at [eholubowich@dc-crd.com](mailto:eholubowich@dc-crd.com) or (202) 484-1100.

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<sup>10</sup> Potential EVVE users interested in obtaining additional information about applying to become an approved EVVE user for either verification or certification of vital events should contact Rose Trasatti Heim via email at [rtrasatti@naphsis.org](mailto:rtrasatti@naphsis.org).

**Appendix 1: Status of Electronic Death Registration System (EDRS) and Electronic Verification of Vital Events (EVVE) System, by Vital Records Jurisdiction<sup>i</sup>**

<b>Jurisdiction</b>	<b>EDRS<sup>ii</sup></b>	<b>EVVE Births<sup>iii</sup></b>	<b>EVVE Deaths<sup>iv</sup></b>
Alabama	✓	✓	✓
Alaska	✓	✓	✓
American Samoa		✓	
Arizona	✓	✓	✓
Arkansas	✓	✓	✓
California	✓	✓	✓
Colorado		✓	
Connecticut		✓	
Delaware	✓	✓	✓
District of Columbia	✓	✓	✓
Florida	✓	✓	✓
Georgia	✓	✓	✓
Guam		✓	
Hawaii	✓	✓	✓
Idaho	✓	✓	✓
Illinois	✓	✓	✓
Indiana	✓	✓	✓
Iowa	✓	✓	✓
Kansas	✓	✓	✓
Kentucky	✓	✓	✓
Louisiana	✓	✓	✓
Maine	✓	✓	✓
Maryland	✓	✓	
Massachusetts		✓	
Michigan	✓	✓	
Minnesota	✓	✓	✓
Mississippi		✓	✓
Missouri	✓	✓	✓
Montana	✓	✓	✓
Nebraska	✓	✓	✓
Nevada	✓	✓	✓
New Hampshire	✓	✓	✓
New Jersey	✓	✓	✓
New Mexico	✓	✓	✓
New York City	✓	✓	✓
New York State	✓		
North Carolina		✓	✓
North Dakota	✓	✓	✓

<b>Jurisdiction</b>	<b>EDRS</b>	<b>EVVE Births</b>	<b>EVVE Deaths</b>
Northern Marianas		✓	
Ohio	✓	✓	✓
Oklahoma	✓	✓	✓
Oregon	✓	✓	✓
Pennsylvania	✓	✓	✓
Puerto Rico		✓	✓
Rhode Island		✓	
South Carolina	✓	✓	✓
South Dakota	✓	✓	✓
Tennessee		✓	✓
Texas	✓		
Utah	✓	✓	✓
Vermont	✓	✓	
Virgin Islands		✓	
Virginia	✓	✓	
Washington	✓		
Washington, DC	✓	✓	✓
West Virginia		✓	✓
Wisconsin	✓	✓	
Wyoming	✓	✓	✓
<b>Total</b>	<b>44</b>	<b>54</b>	<b>40</b>

<sup>i</sup> Implementation status as of March 1, 2015.

<sup>ii</sup> This column indicates in which jurisdictions the vital records office has adopted an EDRS. It does not indicate total penetrance of EDRS among death data providers in that jurisdiction. The implementation of EDRS is in progress in four states: Colorado, Massachusetts, Mississippi, and Tennessee. North Carolina has completed planning but has not yet begun the development phase. Planning or development has not yet begun in three states: Connecticut, Rhode Island, and West Virginia.

<sup>iii</sup> This column indicates in which jurisdictions the vital records office has implemented EVVE and is ready to accept birth record queries.

<sup>iv</sup> This column indicates in which jurisdictions the vital records office has implemented EVVE and is ready to accept death record queries. NAPHSIS continues to work with all jurisdictions that currently online with EVVE to ready their systems to accept death record queries.

## Death Data Quality - What problems are we trying to solve?

1. Use death data to ensure accurate social security payments	2. Minimize exposure of living individuals on the Death Master File	3. Ensure accurate records for our beneficiaries, even when payment is not a factor	4. Improve the accuracy of non-beneficiary records for the benefit of other entities
<p>Description:</p> <p>We receive 2.8M death reports annually and use them to prevent \$50M per month in improper payment. Our OASDI payment accuracy exceeds 99.8%.</p> <p>Overpayments due to death represent less than 1% of total overpayments</p>	<p>Description:</p> <p>Of 2.8 million annual death reports, we erroneously post a death for approximately 9,000 living individuals (less than one-half of one percent).</p>	<p>Description:</p> <p>As a result of 11 separate OIG audits since 2010, OIG identified several million records wherein SSA could add a date of death already established in our payment records to the Numident or align discrepant dates of deaths in our records for consistency.</p>	<p>Description:</p> <p>OIG identified 6.5M individuals over 112 years old, without a death on the record. OIG did <u>not</u> confirm any cases of death.</p> <p>We have been clear that while our death records have become increasingly accurate and over time, the DMF contains many unverified, inaccurate and incomplete records.</p>
<p>Actions:</p> <ul style="list-style-type: none"> <li>• As a result of OIG Audit, <a href="#">Payments to Individuals Whose Numident Record Contained a Death Entry</a>, (6/13) we send monthly alerts to technicians terminate benefits when a death entry is on the Numident. We completed approximately 96,500 cases.</li> <li>• We contact individuals over the age of 90 who have not used Medicare Part B for three or more</li> </ul>	<p>Actions:</p> <ul style="list-style-type: none"> <li>• We have a contractor monitor these records for potential signs of SSN misuse. Separately, we will to notify individuals when they are erroneously exposed on the DMF and offer credit monitoring.</li> <li>• Bipartisan Budget Act of 2013 delays the release of the public DMF for 3 years in most cases. This allows time to identify and make corrections before erroneous disclosure on the</li> </ul>	<p>Actions:</p> <ul style="list-style-type: none"> <li>• We continue exploring the feasibility of automating the posting of these death records. To date we have worked 200,000 records. These records include terminating benefits to individuals over 115 who have been in suspense for 7 years with <b>no date of death</b> on the record, and terminating benefits for individuals who had a date of death on Numident but were in suspense status.</li> </ul>	<p>Actions:</p> <ul style="list-style-type: none"> <li>• The President's FY 16 budget contains a proposal to share the full DMF with Treasury's Do Not Pay list.</li> <li>• Conducting an analysis of 6.5 million SSNs identified to determine if any cases are actionable in a fully automated way and to the extent we can correct the records in a cost effective way.</li> </ul>

<p>years, and SSI recipients 100 and older whose records have had no activity for 3 or more years. We processed more than 15,000 cases and 3,100 OIG referrals.</p> <p><b>EDR and death data redesign are applicable for 1 through 4 -</b></p> <ul style="list-style-type: none"> <li>• We are redesigning our systems to make the Numident the central repository. This will prevent discrepancies across SSA records. Next release by the end of CY15.</li> <li>• 37 States and 2 jurisdictions participate in Electronic Death Registration (EDR). We receive 65% of death records through this highly accurate process.</li> </ul>	<p>DMF.</p> <ul style="list-style-type: none"> <li>• Death data redesign</li> <li>• EDR - In FY14, of the almost 9,000 breaches, only 1 was an EDR record.</li> </ul>	<ul style="list-style-type: none"> <li>• Death data redesign</li> <li>• EDR</li> </ul>	<ul style="list-style-type: none"> <li>• Death Data Redesign</li> <li>• EDR</li> </ul>
<p>Challenges:</p> <p>States need funding to expand EDR. HHS/CDC is responsible for funding states.</p>	<p>Challenges:</p> <p>States need funding to expand EDR. HHS/CDC is responsible for funding states.</p>	<p>Challenges:</p> <p>Significant manual and labor intensive case review and analysis needed to identify potential automated solutions for various types of records.</p>	<p>Challenges:</p> <p>Our decades old birth and death records are not reliable enough to post death without verification. Electronic state records are not available for these old cases, so states would search paper records. Manual review for 6.5M records could cost between \$600M - \$3B.</p>

## The Economy Hub

With Michael Hiltzik

# '60 Minutes' bungles another hit piece on Social Security



**Michael Hiltzik**

LOS ANGELES TIMES

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MARCH 16, 2015, 12:26 PM

**"H**ow many of you have been declared dead by the federal government?" host Scott Pelley asked a panel of four taxpayers on Sunday night's "60 Minutes." All four raised their hands.

"All of you," Pelley simpered. "You're looking pretty well to me."

And so began the CBS news program's latest hit piece on the Social Security Administration, which maintains a Death Master File, or DMF, that is reported to be rife with errors--not only living people listed as deceased, but deceased people not listed as dead. The latter issue, "60 Minutes" asserted, "costs taxpayers billions of dollars in fraudulent payments to people standing in for the departed." But its main focus was on the first problem.

The "60 Minutes" report wasn't as inept as its last attack on Social Security, a 2013 segment in which it attacked the disability program without interviewing a single disabled person or disability advocate. But that's not saying much.

This time around, the subjects' stories were disturbing, even infuriating.

Clerical errors had landed them on the DMF, resulting in blocked bank accounts, credit denials, and in one case a grilling by police as an identity fraud suspect. But if you were hoping to hear a coherent explanation of how this happened or who was responsible, much less a rundown of the easy and obvious remedies, you were in the wrong place. "60 Minutes" didn't provide any of that.

The program implied that it had turned up this scandal through its own digging, so it didn't mention that finding errors in the DMF is a hardy journalistic perennial, like reports on how bad the traffic is in your town or sweeps-week TV pieces on gourmet restaurants flunking sanitary inspections.

Previous versions, some of them with almost identical statistics, appeared in the Washington Post in 2013, on CNN and in the Scripps Howard newspapers in 2011, and on MSNBC in 2008. You had to watch to the very end of the "60 Minutes" piece to discover that it was timed to coincide with a Senate Homeland Security and Governmental Affairs Committee hearing scheduled for Monday. One of the TV segment's star witnesses, Judy Rivers of Logan, Ala., was on the witness roster of the Senate hearing, and also was featured in the Scripps Howard series four years ago.

Of course, it's not a journalistic crime to plow previously farmed ground, especially when a problem hasn't yet been solved. But "60 Minutes" used to be famous for doing its own research, not taking Congressional handouts or reheating other reporters' chestnuts. (Its 2013 disability segment also relied on a Senate report, from then-Sen. Tom Coburn, R-Okla., a known enemy of Social Security.)

Most news reports on the DMF errors have a few things in common. They all seem to reflect the assumption that keeping an error-free master death list should be easy. And they blame the Social Security Administration for the flaws.

Wrote the Washington Post: "A task that requires near-perfection--maintaining the death records used by agencies across Washington--has fallen, by default, to an agency that does not believe perfection is its job." This was a gratuitous, and unwarranted, slap at an agency that has a well-deserved reputation for accuracy.

Most of the reports also disclosed that the percentage of erroneous death reports processed by Social Security is somewhere between one-third to one-half of 1%. Numerous studies by its own inspector general and the Government Accountability Office suggest that for the Social Security Administration to verify every report it receives of 2.8 million American deaths per year would be a Herculean job.

Why? Because those reports arrive from thousands of sources of varying reliability across the country--funeral directors, family members, banks, Medicare and Veterans Affairs offices, post offices. Social Security considers the most reliable source to be electronic death records from the states, but only 35 states submit these to the agency.

Verification can be extremely labor-intensive. So the agency attempts to verify the reports only where necessary, chiefly when they come from less reliable sources (post offices, Medicare and financial institutions) and when they refer to beneficiaries already receiving Social Security checks. This is proper, because the agency's main concern should be safeguarding its own resources.

Although the agency provides the full DMF to government agencies that pay out benefit checks and sells a limited version to private parties to help them fight identity fraud, it tells them explicitly that it "*does not guarantee the veracity of the file.*" (Emphasis added.)

"60 Minutes" wrung its hands over the nation's inability to compile totally accurate data on deaths. Pelley illustrated the issue by visiting Alabama's Vital Records Vault, "a place so secure that you need a key and a fingerprint to get inside....But once in here, the technology becomes pretty 19th century." He brandished a folder crammed with old papers. "These are death certificates from 1912, for example," he said in dismay.

Well, yes. That's how they did things in 1912. If "60 Minutes" has any notion of how much it would cost in time or money to convert a century's worth of old paper death certificates to electronic form, what errors might be incorporated permanently into the database via the conversion process, or why this would be even necessary, it didn't say.

Appearing on the segment, Social Security Inspector-General Patrick O'Carroll made clear that the DMF problem he's most concerned about--and

on which he issued a recent report--was not living people listed as dead, but some 6.5 million Social Security numbers listed as belonging to living people who in fact are deceased.

That raises the prospect of fraud, but O'Carroll's report has been widely misinterpreted in the press--including by the Associated Press, which cited the report in asserting that "nearly 67,000 of the Social Security numbers were used to report more than \$3 billion in wages, tips and self-employment income from 2006 to 2011."

That's only sort of true. What O'Carroll's report says in full is that we know about that \$3 billion in income reported to fraudulent numbers because the Social Security Administration *caught the fraud*. The \$3 billion in reported income has been placed in the agency's suspense file, meaning that it can't be used as credits for Social Security benefit payments.

Pelley did attempt to assign a figure to taxpayer losses from improper payments to deceased persons, but the result was a mishmash. He said the federal Office of Personnel Management, for example, paid deceased retirees "a little over a billion." If you looked quick, you might have spotted the image showing that those payments occurred over a period of nine years. And you wouldn't know that OPM's inspectors determined that the problem occurred not because Social Security's records were inaccurate, but because OPM wasn't bothering to check the DMF at all.

As it happens, testimony prepared for Monday's Senate committee hearing makes clear that for the most part, the problem if improper payments by government agencies has absolutely nothing to do with the Death Master List. Beryl H. Davis of the GAO testified that her agency identified \$124.7 billion in improper payments for fiscal 2014. Of that, the Social Security Administration accounted for \$3 billion.

The biggest chunk, nearly \$46 billion, was traced to Medicare and stemmed from insufficient documentation for health claims, not payments to deceased persons. The most error-prone program was the Earned Income Tax Credit, at 27.2% of outlay, mostly because of unverified income claims for low-income assistance. Social Security, which paid out more than \$800 billion in claims in 2014, had the lowest error rate of the 12 programs listed, at four-tenths of one percent. No other agency even came close.

The biggest hole in the "60 Minutes" segment was the absence of suggestions about what to do about what is plainly an enormous headache for people wrongly listed as deceased. But it's not rocket science. To begin with, although the DMF is public, Congress should outlaw its use by any financial institution to take action against an account holder without verifying the information independently.

Second, there should be a standardized process for people to rectify errors--a list of acceptable documentation to prove one's existence and a hard deadline, say no more than 30 days, for Social Security to respond and correct.

The tax policy and regulatory expert David Cay Johnston further suggests that any institution using the DMF to make consumer decisions be automatically informed if a customer files a protest with Social Security and be made responsible for updating the information once Social Security makes its ruling, with stiff fines for delay or inaction. Any consumers who run into problems with banks or card issuers should have an absolute right to inspect the institution's DMF file on them, at no cost.

That should solve the problem for the relatively small percentage of people caught in this net. "60 Minutes" could have performed a real service by asking its sources in the Senate why Congress hasn't taken these steps in the six or seven years since news organizations started reporting on it.

The news program also might have asked what it would cost the Social Security Administration to make the Death Master File rock-solid and error-free, and whether Congress would be willing to appropriate the money. Expecting the agency to maintain a perfect list, when the roll was never designed to become the raw material for bank and credit decisions, is ridiculous--especially in an era when Congressional cuts to the agency's administrative budget has forced it to close field offices that service tens of millions of benefit enrollees.

Yet that doesn't seem to have occurred to members of Congress, who have used the occasion of the inspector general's report to issue apoplectic statements about the Social Security Administration's shortcomings. "It is incredible that the Social Security Administration in 2015 does not have the technical sophistication to ensure that people they know to be deceased are actually noted as dead," fulminated Sen. Ron Johnson, R-Wisc., chairman of



the committee holding Monday's hearing.

Actually, Social Security said it's less a question of technology than of money. In the cases cited by the inspectors, the agency pointed out, benefits are not actually being paid, so "we do not have a business reason to expend resources to correct records," especially since "this expensive data validation effort for non-beneficiary records would divert resources away from mission critical work."

That's the right bottom line. Should Social Security continue to do its most important job of serving its beneficiaries, or should it respond to blather from Congress and inflated headlines from "60 Minutes"?

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### **Update**

1:37 p.m.: This post has been updated with testimony from the Senate hearing.



## MEMORANDUM

To: Social Security Advisory Board  
Subject: FY 2016 Budget Update  
Date: May 15, 2015

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SSA Executives Michelle King, Acting Assistant Deputy Commissioner—Office of Budget, Finance, Quality and Management, and Pat Perzan, Acting Deputy Associate Commissioner—Office of Budget, are scheduled to meet with the Board at our May meeting to brief us on the President’s Budget request for SSA for FY 2016. In light of this briefing from SSA, we are providing the following update.

### **The FY 2016 President’s Budget for SSA’s Administrative Expenses**

The total request for SSA’s administrative resources in FY 2016 is \$12.724 billion. Included in this request is \$12.513 billion for SSA’s ongoing administrative expenditures, an increase of \$707 million (or 6.0%) over the FY 2015 enacted funding level. The request for SSA research in 2016 is \$101 million, up from an estimated \$83 million in spending in 2015. In addition, the President’s Budget seeks \$110 million for the Office of the Inspector General (OIG), an increase of \$6 million, or 6.8%, over 2015 funding.

The base level request for program integrity funding in FY 2016 is \$273 million, essentially unchanged since 2015. The program integrity cap adjustment, however, is requested at \$1,166 million for 2016 – an increase of \$43 million from 2015 enacted levels. The “cap adjustment” fund is off-budget money that can be tapped by SSA once the base level of \$273 million has been spent.

### **Other Funding Issues**

The FY 2016 President’s Budget for SSA administrative expenses contains almost \$200 million in no-year IT funding. An additional \$6 million is requested for administration of the Part D low income subsidy, and \$20 million in Recovery Act funds is budgeted for the ongoing replacement of the National Computer Center (NCC) in Urbana, Maryland – \$36 million less than 2015 enacted levels. The table on the next page details SSA’s total administrative funding request.

### **The Commissioner’s Request to OMB**

The Commissioner’s request to OMB for FY 2016 was \$12.688 billion in total budgetary resources. Included in this request was \$12.537 billion for SSA’s administrative expenses – \$355 (1.2%) million more than was allowed by OMB. The Commissioner also requested \$105 million for the OIG and \$46 million for research purposes.

<b>SSA ADMINISTRATIVE BUDGET SUMMARY</b>				
<i>(\$ in millions)<sup>1</sup></i>				
<b>Budget Authority</b>	<b>FY 2014 Actual</b>	<b>FY 2015 Enacted</b>	<b>FY 2016 Estimate</b>	<b>Change FY 15/FY 16</b>
SSA Base Operations (LAE)	\$10,328	\$10,285	\$10,937	\$652
Program Integrity (PI) Base	\$273	\$273	\$273	\$0
<i>PI Cap Adjustment</i>	\$924	\$1,123	\$1,166	\$43
User Fees <sup>2</sup>	\$172	\$125	\$137	\$12
<b>Subtotal, LAE</b>	<b>\$11,697</b>	<b>\$11,806</b>	<b>\$12,513</b>	<b>\$707</b>
<i>Research</i>	\$47	\$83	\$101	\$18
Office of Inspector General	\$102	\$103	\$110	\$6
<b>Subtotal, Budget Authority</b>	<b>\$11,846</b>	<b>\$11,992</b>	<b>\$12,724</b>	<b>\$732</b>
Other Obligations:				
No-Year IT Funds	\$268	\$255	\$200	-\$55
Part D Subsidy	\$0	\$6	\$6	\$0
NCC Replacement	\$70	\$55	\$20	-\$36
<b>Subtotal, Other Obligations</b>	<b>\$388</b>	<b>\$318</b>	<b>\$226</b>	<b>-\$91</b>
<b>TOTAL RESOURCES</b>	<b>\$12,183</b>	<b>\$12,309</b>	<b>\$12,949</b>	<b>\$641</b>

<sup>1</sup> Totals may not add due to rounding.

<sup>2</sup> Includes SSI user fees and Social Security Protection Act user fees.

### **SSA Staffing and Hiring**

The FY 2016 President's Budget includes a total of 82,759 workyears for administration and oversight of SSA's programs. Included in this request is 67,446 workyears for SSA to manage agency programs. This level assumes an increase of 1,401 workyears over 2015 levels. Additionally, the President's Budget includes 14,750 workyears (+100) for the State Disability Determination Services (DDSs) and 560 workyears (+5) for the OIG in 2016. The chart that follows details the requested staffing levels.

<b>SSA FULL-TIME EQUIVALENTS (FTE) AND WORKYEARS (WY)</b>				
<b>Resources</b>	<b>FY 2014 Actual</b>	<b>FY 2015 Enacted</b>	<b>FY 2016 Estimate</b>	<b>Change FY 15/FY 16</b>
SSA FTE	60,338	63,698	64,844	1,146
Overtime/Lump Sum Leave	3,125	2,347	2,602	255
<b>Subtotal, SSA WYs</b>	<b>63,463</b>	<b>66,045</b>	<b>67,446</b>	<b>1,401</b>
DDS WYs	14,187	14,650	14,750	100
<b>Subtotal, SSA and DDS WYs</b>	<b>77,650</b>	<b>80,695</b>	<b>82,196</b>	<b>1,501</b>
OIG FTEs	539	555	560	5
Overtime/Lump Sum Leave	4	3	3	0
<b>Subtotal, OIG WYs</b>	<b>543</b>	<b>558</b>	<b>563</b>	<b>5</b>
<b>TOTAL SSA/DDS/OIG WYS</b>	<b>78,193</b>	<b>81,253</b>	<b>82,759</b>	<b>1,506</b>

SSA has lost over 12,000 employees over the past four years resulting in increased disability processing times, longer waits and more busy signals on the national 800 number, and increased waits in field office. In addition, fewer CDRs were completed than projected.

At the funding levels proposed for FY 2016, SSA says that it will:

- Improve access to online services by increasing the percentage of citizens who complete their business online by 10 percent over the previous year.
- Deliver a higher quality customer experience and expedited processing by expanding the use of video technology to hold hearings—by the end of FY 2015, 30% of hearings will be held using video technology.
- Provide the public with access to personalized information by increasing the number of established *MySSA* accounts by 15% over the FY 2015.
- Reduce the percentage of improper payments made under the SSI program—by the end of FY 2015, no more than 6.2% of all SSI payment made will be improper payments, i.e., overpayments or underpayments.
- By August 2016, transition of all IT services to the new National Computer Center will be complete.

### **Legislative Proposals Included in the President's Budget**

The FY 2016 President's Budget includes a number of legislative proposals affecting SSA's programs, including proposals that would:

- Address the depletion of DI trust fund reserves by authorizing a 5-year reallocation of 0.9% of payroll tax collections from the OASI trust fund to the DI trust fund beginning January 1, 2016 through December 31, 2020.
- repeal the discretionary cap adjustments for CDRs and SSI redeterminations enacted under the *Balanced Budget and Emergency Deficit Control Act*, as amended by the *Budget Control Act*, for SSA beginning in FY 2017 and instead provide a dedicated and dependable source of mandatory funding for these program integrity activities;
- amend the *Defense of Marriage Act* by requiring SSA (and any other agency that administers a program in which marital status is a factor) to consider an individual as married if the marriage is valid in the state where that marriage occurred;
- allow SSA to use commercial databases to verify wages in the SSI program to reduce improper payments and lessen recipients' reporting burden;
- increase the amount of death information available to Federal agencies for use in preventing improper payments by authorizing SSA to share all of the death information it maintains with Do Not Pay;
- establish Workers' Compensation (WC) information reporting by requiring states, local governments, and private insurers that administer WC and public disability benefits to provide this information to SSA and provide for the development and implementation of a system to collect such information from states, local governments and insurers.
- lower the electronic wage reporting threshold to five employees and move from annual to quarterly wage reporting;
- eliminate aggressive SSA benefit claiming strategies;

The entire list of legislative proposals included in the *FY 2016 Congressional Budget Justification* is attached to this memorandum.

Attachments:

- SSA's FY 2016 Key Budget Tables*
- History of SSA's Budget Requests and Appropriations*
- Legislative Proposals*

**SOCIAL SECURITY ADMINISTRATION**

**FY 2016 PRESIDENT'S BUDGET  
Key Tables**

**Table i.1 - Summary Table of SSA's Appropriation Request**

FY 2016	FTE	Amount
Payments to Social Security Trust Funds		\$ 20,400,000
Supplemental Security Income Program		
FY 2016 Request		\$ 46,422,000,000 <sup>1</sup>
FY 2017 First Quarter Advance		\$ 14,500,000,000
Limitation on Administrative Expenses	64,844	\$ 12,513,000,000 <sup>2</sup>
Office of the Inspector General	560	\$ 109,795,000

<sup>1</sup> Excludes \$19,200,000,000, previously appropriated as a first quarter advance for FY 2016.

<sup>2</sup> Includes \$136,000,000 for SSI State Supplementary user fees and up to \$1,000,000 for non-attorney user fees.

**Table i.2 – Administrative Budget Authority and Other Planned Obligations<sup>1</sup> (in millions)**

	<b>FY 2014 Actual</b>	<b>FY 2015 Enacted</b>	<b>FY 2016 Estimate</b>	<b>Change FY 15/FY 16</b>
<b><u>Budget Authority</u></b>				
Base Limitation on Administrative Expenses (LAE)	\$ 10,328	\$ 10,285	\$ 10,937	\$ 652
Program Integrity Base Level	\$ 273	\$ 273	\$ 273	\$ 0
Program Integrity Cap Adjustment	\$ 924	\$ 1,123	\$ 1,166	\$ 43
User Fees <sup>2</sup>	\$ 172	\$ 125	\$ 137	\$ 12
<b>Subtotal, LAE Appropriation</b>	<b>\$ 11,697</b>	<b>\$ 11,806</b>	<b>\$ 12,513</b>	<b>\$ 707</b>
Percent change from FY 2015				6.0%
Research	\$ 47	\$ 83	\$ 101	\$ 18
Office of the Inspector General (OIG)	\$ 102	\$ 103	\$ 110	\$ 6
<b>Subtotal, Budget Authority</b>	<b>\$ 11,846</b>	<b>\$ 11,992</b>	<b>\$ 12,724</b>	<b>\$ 732</b>
Percent change from FY 2015				6.1%
<b><u>Other Planned Obligations</u></b>				
No-year Information Technology	\$ 268	\$ 255	\$ 200	-\$ 55
MIPPA – Low-Income Subsidy (LIS)	\$ 0	\$ 6	\$ 6	\$ 0
Recovery Act <sup>3</sup>				
Workload Processing	\$ 0	\$ 0	\$ 0	\$ 0
Economic Recovery Payments – Admin	\$ 0	\$ 0	\$ 0	\$ 0
National Computer Center Replacement	\$ 70	\$ 55	\$ 20	-\$ 36
OIG Oversight	\$ 0	\$ 0	\$ 0	\$ 0
<b>Subtotal, Other Planned Obligations</b>	<b>\$ 338</b>	<b>\$ 316</b>	<b>\$ 226</b>	<b>-\$ 91</b>
<b>TOTAL BUDGET AUTHORITY AND PLANNED OBLIGATIONS</b>	<b>\$ 12,183</b>	<b>\$ 12,309</b>	<b>\$ 12,949</b>	<b>\$ 641</b>

<sup>1</sup> Totals may not equal sums of component parts due to rounding.

<sup>2</sup> Includes SSI user fees and Social Security Protection Act user fees.

<sup>3</sup> Funds provided in the American Recovery and Reinvestment Act of 2009 (Recovery Act) (P.L. 111-5).

**Table i.3 – SSA Full Time Equivalents and Workyears**

	<b>FY 2014 Actual</b>	<b>FY 2015 Estimate</b>	<b>FY 2016 Estimate</b>	<b>Change FY 15/FY 16</b>
SSA Full Time Equivalents	60,338	63,698	64,844	1,146
SSA Overtime/Lump Sum Leave	3,125	2,347	2,602	255
<b>Subtotal, SSA Workyears</b>	<b>63,463</b>	<b>66,045</b>	<b>67,446</b>	<b>1,401</b>
Disability Determination Services (DDS) Workyears	14,187	14,650	14,750	100
<b>Subtotal, SSA and DDS Workyears</b>	<b>77,650</b>	<b>80,695</b>	<b>82,196</b>	<b>1,501</b>
OIG Full Time Equivalents	539	555	560	5
OIG Overtime/Lump Sum Leave	4	3	3	0
<b>Subtotal, OIG Workyears</b>	<b>543</b>	<b>558</b>	<b>563</b>	<b>5</b>
<b>TOTAL SSA/DDS/OIG WORKYEARS</b>	<b>78,193</b>	<b>81,253</b>	<b>82,759</b>	<b>1,506</b>

**Table i.4 – SSA Outlays by Program (in millions)**

	<b>FY 2014 Actual</b>	<b>FY 2015 Estimate</b>	<b>FY 2016 Estimate</b>	<b>Change FY 15/FY 16</b>
<b><u>Trust Fund Programs</u></b>				
Old-Age and Survivors Insurance (OASI)	\$ 705,928	\$ 747,919	\$ 792,431 <sup>1</sup>	\$ 44,512
Disability Insurance (DI)	\$ 144,640	\$ 148,470	\$ 151,925	\$ 3,455
<b>Subtotal, Trust Fund Programs</b>	<b>\$ 850,568</b>	<b>\$ 896,389</b>	<b>\$ 944,356</b>	<b>\$ 47,967</b>
<b><u>Proposed OASDI Legislation:</u></b>				
Same Sex Marriage	\$ 0	\$ 1	\$ 5	\$ 4
Financial Account Verifications	\$ 0	\$ 0	-\$ 5	-\$ 5
<b>Subtotal, Proposed OASDI Legislation</b>	<b>\$ 0</b>	<b>\$ 1</b>	<b>\$ 0</b>	<b>-\$ 1</b>
<b><u>General Fund Programs</u></b>				
Supplemental Security Income (SSI)	\$ 57,860	\$ 60,151	\$ 65,903	\$ 5,752
Special Benefits for Certain World War II Veterans	\$ 4	\$ 5	\$ 4	-\$ 1
Recovery Act: National Support Center	\$ 141	\$ 67	\$ 43	-\$ 24
<b>Subtotal, General Fund Programs</b>	<b>\$ 58,005</b>	<b>\$ 60,223</b>	<b>\$ 65,950</b>	<b>\$ 5,727</b>
<b><u>Proposed General Fund Legislation:</u></b>				
SSI Refugee Extension	\$ 0	\$ 0	\$ 42	\$ 42
WEP/GPO Enforcement	\$ 0	\$ 0	\$ 70	\$ 70
W/C Enforcement	\$ 0	\$ 0	\$ 10	\$ 10
Federal Wage Reporting	\$ 0	\$ 0	\$ 140	\$ 140
FERS-DI	\$ 0	\$ 0	\$ 6	\$ 6
<b>Subtotal, Proposed General Fund Legislation</b>	<b>\$ 0</b>	<b>\$ 0</b>	<b>\$ 268</b>	<b>\$ 268</b>
<b>TOTAL SSA Outlays, Current Law</b>	<b>\$ 908,573</b>	<b>\$ 956,612</b>	<b>\$ 1,010,306</b>	<b>\$ 53,693</b>
Percent change from FY 2014				5.6%
<b>TOTAL SSA Outlays, Proposed Law</b>	<b>\$ 0</b>	<b>\$ 1</b>	<b>\$ 268</b>	<b>\$ 267</b>
<b>TOTAL SSA Outlays, Current &amp; Proposed Law</b>	<b>\$ 908,573</b>	<b>\$ 956,613</b>	<b>\$ 1,010,574</b>	<b>\$ 53,961</b>

<sup>1</sup> The appendix shows OASI FY 2016 Estimate as \$792,436M. The correct amount is \$792,431M.

**Table i.5 – Current Law- Old Age, Survivors and Disability Insurance Outlays and Income  
(in millions)**

	<b>FY 2014 Actual</b>	<b>FY 2015 Estimate</b>	<b>FY 2016 Estimate</b>	<b>Change FY 15/FY 16</b>
<b><u>Outlays</u></b>				
OASI Benefits	\$ 698,235	\$ 740,496	\$ 784,734	\$ 44,238
DI Benefits	\$ 141,291	\$ 144,972	\$ 148,244	\$ 3,272
Other <sup>1</sup>	\$11,042	\$ 10,921	\$ 11,378	\$ 457
<b>TOTAL OUTLAYS, Current Law</b>	<b>\$ 850,568</b>	<b>\$ 896,389</b>	<b>\$ 944,356</b>	<b>\$ 47,967</b>
<b><u>Income</u></b>				
OASI	\$ 763,339	\$ 791,408	\$ 820,144	\$ 28,736
DI	\$114,193	\$ 117,322	\$ 121,323	\$ 4,001
<b>TOTAL INCOME, Current Law</b>	<b>\$ 877,532</b>	<b>\$ 908,730</b>	<b>\$ 941,467</b>	<b>\$ 32,737</b>

<sup>1</sup> "Other" includes SSA & non-SSA administration expenses, beneficiary services, payment to the Railroad Retirement Board, and demonstration projects.

**Table i.6 – Current Law- OASDI Beneficiaries and Average Benefit Payments  
(Beneficiaries in thousands)**

	<b>FY 2014 Actual</b>	<b>FY 2015 Estimate</b>	<b>FY 2016 Estimate</b>	<b>Change FY 15/FY 16</b>
<b><u>Average Number of Beneficiaries</u></b>				
OASI	47,270	48,822	50,443	1,621
DI	10,969	11,020	11,068	48
<b>TOTAL BENEFICIARIES</b>	<b>58,239</b>	<b>59,842</b>	<b>61,511</b>	<b>1,669</b>
<b><u>Average Monthly Benefit</u></b>				
Retired Worker	\$ 1,292	\$ 1,327	\$ 1,358	\$ 31
Disabled Worker	\$ 1,141	\$ 1,161	\$ 1,179	\$ 18
Projected COLA Payable in January	1.5%	1.7%	1.3%	-0.4%

**Table i.7 – Current Law- Supplemental Security Income Outlays<sup>1</sup> (in millions)**

	FY 2014 Actual	FY 2015 Estimate	FY 2016 Estimate	Change FY 15/FY 16
Federal Benefits <sup>2</sup>	\$ 53,891	\$ 55,374	\$ 60,683	\$ 5,309
Other <sup>3</sup>	\$ 3,917	\$ 4,781	\$ 5,000	\$ 219
<b>Subtotal, Federal Outlays<sup>4</sup></b>	<b>\$ 57,808</b>	<b>\$ 60,155</b>	<b>\$ 65,683</b>	<b>\$ 5,528</b>
State Supplementary Benefits	\$ 3,280	\$ 2,705	\$ 2,975	\$ 270
State Supplementary Reimbursements	-\$ 3,227	-\$ 2,709	-\$ 2,755	-\$ 46
<b>Subtotal, Net State Supplementary Payments<sup>5</sup></b>	<b>\$ 53</b>	<b>-\$ 4</b>	<b>\$ 220</b>	<b>\$ 224</b>
<b>TOTAL OUTLAYS, Current Law</b>	<b>\$ 57,860</b>	<b>\$ 60,151</b>	<b>\$ 65,903</b>	<b>\$ 5,752</b>

<sup>1</sup> Totals may not equal sums of component parts due to rounding.

<sup>2</sup> There are 12 payments per year in FY 2014 and FY 2015. There are 13 payments in FY 2016.

<sup>3</sup> "Other" includes beneficiary services, research, and administrative costs.

<sup>4</sup> Subtotal, Federal Outlays includes \$3M for Special Immigrant Visa.

<sup>5</sup> States must reimburse SSA in advance for State Supplementary Payments. There will always be 12 state reimbursements in each fiscal year, but there can be 11, 12, or 13 benefit payments per fiscal year because a monthly payment is advanced into the end of the previous month anytime the due date falls on a weekend or holiday. Hence, the "Net State Supplementary Payment" numbers vary from year-to-year depending on the timing of the October benefit payments at the beginning and end of each fiscal year.

**Table i.8 – SSI Recipients and Benefit Payments<sup>1</sup> (Recipients in thousands)**

	FY 2014 Actual	FY 2015 Estimate	FY 2016 Estimate	Change FY 15/FY 16
<b><u>Average Number of SSI Recipients</u></b>				
Federal Recipients				
Aged	1,094	1,098	1,104	6
Blind or Disabled	7,076	7,121	7,132	11
<b>SUBTOTAL, FEDERAL RECIPIENTS</b>	<b>8,171</b>	<b>8,220</b>	<b>8,236</b>	<b>16</b>
State Supplement Recipients (with no Federal SSI payment)	217	178	181	3
<b>TOTAL SSI RECIPIENTS, Current Law</b>	<b>8,388</b>	<b>8,398</b>	<b>8,417</b>	<b>19</b>
<i>SSI Recipients Concurrently Receiving OASDI Benefits (included above)</i>				
	2,605	2,620	2,626	6
<b><u>Average Monthly Benefit</u></b>				
Aged	\$ 383	\$ 391	\$ 399	\$ 8
Blind and Disabled	\$ 568	\$ 580	\$ 590	\$ 10
<b>AVERAGE, All SSI Recipients</b>	<b>\$ 543</b>	<b>\$ 554</b>	<b>\$ 565</b>	<b>\$ 11</b>
Projected COLA Payable in January	1.5%	1.7%	1.3%	-0.4%

<sup>1</sup> Totals may not equal sums of component parts due to rounding.

**Table i.9 – Special Benefits for Certain WWII Veterans Overview  
(Outlays in millions)**

	FY 2014 Actual	FY 2015 Estimate	FY 2016 Estimate	Change FY 15/FY 16
Federal Benefits	\$ 4	\$ 4	\$ 3	-\$ 1
Administration	\$ 0 <sup>1</sup>	\$ 1	\$ 1	\$ 0
<b>TOTAL OUTLAYS</b>	<b>\$ 4</b>	<b>\$ 5</b>	<b>\$ 4</b>	<b>-\$ 1</b>
Average Number of Beneficiaries (in thousands)	1	1	1	0
Average Monthly Benefit	\$ 323	\$ 404	\$ 409	\$ 5

<sup>1</sup> Less than \$500,000.

**Table i.10 – Administrative Outlays as a Percent of  
Trust Fund Income and Benefit Payments - FY 2016**

	Percent of Income	Percent of Benefit Payments
OASI	0.3%	0.4%
DI	2.5%	2.1%
OASDI (combined)	0.6%	0.6%
SSI (Federal and State)	N/A	7.8%
<b>TOTAL SSA <sup>1</sup></b>		<b>1.3%</b>

<sup>1</sup> Includes Hospital Insurance (HI) and Supplemental Medical Insurance (SMI) administrative outlays. SSA's calculation of discretionary administrative expenses excludes Treasury Administrative expenses which are mandatory outlays."

**Table i.11 – Tax Rates, Wage Base and Economic Assumptions**

	CY 2014	CY 2015	CY 2016	Change CY 15/CY 16
<b><u>Employer/Employee Rates (each)</u></b>				
OASDI (Social Security)	6.20%	6.20%	6.20%	0.0%
Hospital Insurance (HI) (Medicare)	1.45%	1.45%	1.45%	0.0%
<b>EMPLOYEE TOTAL</b>	<b>7.65%</b>	<b>7.65%</b>	<b>7.65%</b>	<b>0.0%</b>
<b><u>Self-Employment Rates</u></b>				
OASDI (Social Security)	12.40%	12.40%	12.40%	0.0%
HI (Medicare)	2.90%	2.90%	2.90%	0.0%
<b>TOTAL</b>	<b>15.30%</b>	<b>15.30%</b>	<b>15.30%</b>	<b>0.0%</b>
<b><u>Cost of Living Adjustments (COLAs)</u></b>				
January	1.5%	1.7%	1.3% <sup>1</sup>	-0.4%
<b><u>Contribution and Benefit Base</u></b>				
OASDI	\$ 117,000	\$ 118,500	\$ 122,700 <sup>1</sup>	\$ 4,200
HI	(no cap)	(no cap)	(no cap)	
<b><u>Annual Retirement Test</u></b>				
Year Individual Reaches Full Retirement Age	\$ 41,400	\$ 41,880	\$ 43,320 <sup>1</sup>	\$1,440
Under Full Retirement Age	\$ 15,480	\$ 15,720	\$ 16,320 <sup>1</sup>	\$ 600
<b><u>Wages Required for a Quarter of Coverage</u></b>	<b>\$ 1,200</b>	<b>\$ 1,220</b>	<b>\$ 1,260<sup>1</sup></b>	<b>\$ 40</b>

<sup>1</sup> Estimate.

**Table i.12 – Selected Performance Measures**

	<b>FY 2014 Actual</b>	<b>FY 2015 Enacted</b>	<b>FY 2016 Request</b>
<b><u>Selected Workload Measures</u></b>			
Retirement and Survivors Claims Completed (thousands)	5,024	5,247	5,434
Initial Disability Claims Completed (thousands)	2,862	2,767	2,773
Disability Reconsiderations Completed (thousands)	757	739	719
Hearings Completed (thousands)	681	727	829
National 800 Number Calls Handled (millions) <sup>1</sup>	37	38	43
Average Speed of Answer (ASA) (seconds) <sup>2</sup>	1,323	700	545
Agent Busy Rate (ABR)	14%	8%	2%
Social Security Numbers Completed (millions)	16	16	16
Annual Earnings Items Completed (millions)	257	257	258
Social Security Statements Issued (millions) <sup>3</sup>	4	44	44
<b><u>Selected Outcome Measures</u></b>			
Initial Disability Claims Receipts (thousands)	2,805	2,755	2,780
Hearings Receipts (thousands)	811	805	813
Initial Disability Claims Pending (thousands)	633	621	628
Disability Reconsiderations Pending (thousands)	170	143	144
Hearings Pending (thousands)	978	1,056	1,039
Average Processing Time for Initial Disability Claims (days)	110	109	107
Average Processing Time for Disability Reconsiderations (days) <sup>4</sup>	108	TBD	TBD
Annual Average Processing Time for Hearings Decisions (days)	422	470	490
Disability Determination Services Production per Workyear	311	313	317
Office of Disability Adjudication and Review Production per Workyear	102	104	106
Other Work/Service in Support of the Public - Annual Growth of Backlog (workyears)	N/A	(100)	(200)
<b><u>Selected Program Integrity Performance Measures</u></b>			
Periodic Continuing Disability Reviews (CDRs) Completed (thousands)	1,675	1,890	2,008
Full Medical CDRs (included above, thousands)	526	790	908
Supplemental Security Income Non-Disability Redeterminations Completed (thousands)	2,628	2,255	2,622

<sup>1</sup> Beginning in FY 2014 under the new CARE 2020 network structure, performance is tracked using Calls Handled as opposed to Transactions Handled. The legacy network recorded transactions handled within the network, either by agents or through an automated process. In some instances, multiple transactions were completed within one call, making it appear as though we served a larger volume of callers. Calls Handled tracks the individual caller and is more in line with our other National 800 Number service performance metrics which track how long a single caller is on hold or how often they receive a busy signal.

<sup>2</sup> As of October 1, 2014, Scheduled Voice Callbacks (SVC) are included in the calculation for Average Speed of Answer (ASA). People who choose to receive a callback do not have to wait on hold for an agent. The system contacts the caller when it is their turn to speak with an agent. The new ASA calculation excludes the virtual wait time for SVC callers but will include the time callers wait to be connected to an agent. In most cases, people receiving a callback wait a very small amount of time to be connected to an agent.

<sup>3</sup> The Social Security Statements Issued measure includes paper statements only; does not include electronic statements issued.

<sup>4</sup> We developed management information for Average Processing Time for Disability Reconsiderations in FY 2013. FY 2014 is the first full fiscal year for which data are available for this measure. We will develop a performance target in FY 2016, after we have had the ability to analyze at least two years of actual data.

## History of SSA's Administrative Budget Requests

(\$ in millions)

Fiscal Year	Commissioner's Request	President's Budget Request	Difference (COSS/PB)	Appropriation	Difference (COSS/ Appropriation)	Difference (PB/ Appropriation)
FY 2000 .....	\$ 6,907.0	\$ 6,706.0	\$ 201.0	\$ 6,572.0	\$ 335.0	\$ 134.0
2000 Supplemental .....	-	35.0	(35.0)	35.0	(35.0)	-
2000 Recission .....	-	-	-	(24.8)	24.8	24.8
Total	\$ 6,907.0	\$ 6,741.0	\$ 166.0	\$ 6,582.2	\$ 324.8	\$ 158.8
FY 2001 .....	\$ 7,390.0	\$ 7,134.0	\$ 256.0	\$ 7,124.0	\$ 266.0	\$ 10.0
FY 2002 .....	\$ 7,982.0	\$ 7,574.0	\$ 408.0	\$ 7,568.0	\$ 414.0	\$ 6.0
2002 Emergency Sup ...	-	7.5	(7.5)	7.5	(7.5)	-
2002 Sup Recission .....	-	-	-	(5.9)	5.9	5.9
Total	\$ 7,982.0	\$ 7,581.5	\$ 400.5	\$ 7,569.6	\$ 412.4	\$ 11.9
FY 2003.....	\$ 7,974.0	\$ 7,937.0	\$ 37.0	\$ 7,936.0	\$ 38.0	\$ 1.0
2003 Recission .....	-	-	-	(50.9)	50.9	50.9
Total	\$ 7,974.0	\$ 7,937.0	\$ 37.0	\$ 7,885.1	\$ 88.9	\$ 51.9
FY 2004 .....	\$ 8,894.5	\$ 8,530.0	\$ 364.5	\$ 8,361.8	\$ 532.7	\$ 168.2
2004 Recission .....	-	-	-	(48.6)	48.6	48.6
Total	\$ 8,894.5	\$ 8,530.0	\$ 364.5	\$ 8,313.2	\$ 581.3	\$ 216.8
FY 2005 .....	\$ 9,310.0	\$ 8,878.0	\$ 432.0	\$ 8,801.9	\$ 508.1	\$ 76.1
2005 Recission .....	-	-	-	(69.4)	69.4	69.4
Total	\$ 9,310.0	\$ 8,878.0	\$ 432.0	\$ 8,732.5	\$ 577.5	\$ 145.5
FY 2006 .....	\$ 10,106.0	\$ 9,403.0	\$ 703.0	\$ 9,199.4	\$ 906.6	\$ 203.6
2006 Recission .....	-	-	-	(90.8)	90.8	90.8
2006 Hurricane Supp ...	-	-	-	38.0	(38.0)	(38.0)
Total	\$ 10,106.0	\$ 9,403.0	\$ 703.0	\$ 9,146.6	\$ 959.4	\$ 256.4
FY 2007 .....	\$ 10,230.0	\$ 9,496.0	\$ 734.0	\$ 9,297.6	\$ 932.4	\$ 198.4
FY 2008 .....	\$ 10,420.0	\$ 9,597.0	\$ 823.0	\$ 9,917.8	\$ 502.2	\$ (320.9)
2008 Recission .....	-	-	-	(173.3)	173.3	173.3
2008 Stimulus .....	-	-	-	31.0	(31.0)	(31.0)
Total	\$ 10,420.0	\$ 9,597.0	\$ 823.0	\$ 9,775.5	\$ 644.5	\$ (178.6)

## History of SSA's Administrative Budget Requests

(\$ in millions)

Fiscal Year	Commissioner's Request	President's Budget Request	Difference (COSS/PB)	Appropriation	Difference (COSS/ Appropriation)	Difference (PB/ Appropriation)
FY 2009 .....	\$ 10,427.0	\$ 10,327.0	\$ 100.0	\$ 10,453.5	\$ (26.5)	\$ (126.5)
2009 MIPPA Subsidy.....	-	-	-	24.8	(24.8)	(24.8)
2009 Stimulus .....	-	-	-	1,090.0	(1,090.0)	(1,090.0)
Total	\$ 10,427.0	\$ 10,327.0	\$ 100.0	\$ 11,568.3	\$ (1,141.3)	\$ (1,241.3)
FY 2010 .....	\$ 11,842.0	\$ 11,451.0	\$ 391.0	\$ 11,446.5	\$ 395.5	\$ 4.5
NCC Replacement .....	750.0	-	750.0	-	750.0	-
Recission .....	-	-	-	47.0	(47.0)	(47.0)
Total	\$ 11,842.0	\$ 11,451.0	\$ 391.0	\$ 11,399.5	\$ 1,098.5	\$ (42.5)
FY 2011 .....	\$ 13,143.0	\$ 12,378.9	\$ 764.1	\$ 11,446.5	\$ 1,696.5	\$ 932.4
Recission .....				22.9	(22.9)	(22.9)
				\$ 11,423.6	\$ 1,673.6	\$ 909.5
FY 2012 .....	\$ 12,983.0	\$ 12,522.0	\$ 461.0	\$ 11,475.0	\$ 1,508.0	\$ 1,047.0
Recission .....				21.7	(21.7)	(21.7)
				11,453.3	1,529.7	1,068.7
FY 2013 .....	\$ 12,513.0	\$ 11,760.0	\$ 753.0	\$ 11,453.3	\$ 1,059.7	\$ 306.7
Recission .....				21.4	(21.4)	(21.4)
Sequestration .....				386.3	(386.4)	(386.3)
				\$ 11,045.6	\$ 1,467.5	\$ 714.4
FY 2014 .....	\$ 12,228.0	\$ 12,296.8	\$ (68.8)	11,697.0	\$ 531.0	\$ 599.8
FY 2015 .....	\$ 12,537.0	\$ 12,024.0	\$ 513.0	\$ 11,806	\$ 731.1	\$ 218.1
FY 2016 .....	\$ 12,516.0	\$ 12,513.0	\$ 3.0	N/A	N/A	N/A

**Notes :**

*FY 2003 President's Budget amount has been adjusted downward by \$345.8 million to reflect a proposed, one-time accounting change that was not adopted.*

*FY 2006 Hurricane Supplemental includes money transferred from the Department of Homeland Security appropriation for hurricane-related costs.*

*Amounts in the Commissioner's Request column are adjusted for comparability with enacted funding totals and do not match amounts printed in the President's Budget Appendix.*

*The amounts displayed in this document do not include funding for the Office of Inspector General.*

*FY 2009 House and Senate amounts have been adjusted to remove OIG funding. This display assumes \$98 million to be consistent with the President's Budget.*

*The FY 2009 Stimulus amount includes \$1 billion for SSA's LAE account plus \$90 million to offset the cost of issuing stimulus payments to beneficiaries.*

*For FY 2010, funds provided to SSA in the Economic Stimulus Act is not reflected in President's Budget request (see below).*

*The Economic Stimulus Act also provided funds to process agency workloads and to administer economic recovery payments for beneficiaries (see below).*

*The FY 2013 Continuing Resolution (CR) continues funding at FY 2012 spending level of \$11,520,000,000 if annualized.*

## LEGISLATIVE PROPOSALS

### Benefit Improvements

1. **Social Security Benefits for Same-Sex Married Couples.** The Social Security Administration (SSA) is required by the Social Security Act to confer marriage-related benefits based on the law of the state in which the couple is domiciled. This prevents SSA from paying benefits to same-sex couples who were legally married in one state but are domiciled in another state that does not recognize same-sex marriage. This proposal amends the Defense of Marriage Act by requiring SSA (and any other agency that administers a program in which marital status is a factor) to consider an individual as married if the marriage is valid in the state where that marriage occurred.
2. **Extend SSI Time Limits for Qualified Refugees.** Refugees and certain other humanitarian immigrants who are disabled or elderly are potentially eligible for Supplemental Security Income (SSI) benefits for up to seven years from the date they attained their immigration status, and without time limit if they become naturalized. Congress acknowledged that humanitarian immigrants may be unable to attain citizenship within the seven-year period of SSI eligibility, even if they apply for naturalization as soon as they are eligible. Accordingly, Congress temporarily extended the time-limited SSI eligibility period from 7 years to 9 years for fiscal years (FY) 2009-2011. However, effective October 2011, the SSI eligibility period for refugees and other humanitarian immigrants reverted to seven years. This proposal would underscore the nation's commitment to refugees, asylees, and other humanitarian immigrants—who come to America with very little and frequently have nowhere else to go—by again extending the time limit from 7 to 9 years during FYs 2016 and 2017.

### Preventing Improper Payments

3. **Program Integrity.** Current law provides for additional budget authority in appropriations dedicated for SSA's use in completing continuing disability reviews (CDRs) and SSI redeterminations through FY 2021. However, annual appropriations bills have not provided the full amount of funding for these activities. CDRs and SSI redeterminations are highly effective at detecting improper payments and provide an excellent return on the taxpayers' investment—specifically, CDRs conducted in FY 2016 will yield net Federal program savings over the next 10 years of roughly \$9 on average per \$1 budgeted for dedicated program integrity funding, including Old-Age, Survivors, and Disability Insurance (OASDI), SSI, Medicare and Medicaid program effects. SSI redeterminations conducted in FY 2016 will yield a ROI of about \$4 on average of net Federal program savings over ten years per \$1 budgeted for dedicated program integrity funding, including SSI and Medicaid program effects. This proposal would repeal the discretionary cap adjustments enacted in the Balanced Budget and Emergency Deficit Control Act, as amended by the Budget Control Act, for SSA beginning in FY 2017 and instead provide a dedicated and dependable source of mandatory funding for these program integrity activities.

4. **Allow SSA to Use Commercial Databases to Verify Wages in the SSI Program.** The SSI program is means-tested, and the correct benefit amount can vary monthly based on changes in a beneficiary's income, such as wages. SSI recipients are required to report changes in a timely manner, but some do not, which results in improper payments. This proposal would reduce improper payments and lessen the recipients' reporting burden by authorizing SSA to conduct data matches with private commercial databases and use that information to automatically increase or decrease benefits accordingly, after proper notification. New beneficiaries would be required to consent to allow SSA to access these databases as a condition of benefit receipt. All other current due process and appeal rights would be preserved.
5. **Expand Authority to Require Authorization to Verify Financial Information for Overpayment Waiver Requests.** SSA uses an automated process to verify the financial institution accounts of SSI recipients to improve payment accuracy. SSA has the authority to require applicants and beneficiaries to authorize the agency to get this information in connection with determining SSI eligibility. However, SSA cannot use this process for other determinations that involve consideration of financial institution account information. One such determination occurs when a beneficiary requests a waiver of recovery of an overpayment (whether an OASDI overpayment or an SSI one) or a change in the rate at which SSA withholds funds from a beneficiary's payment to collect a prior overpayment. Determining whether someone qualifies for a waiver or a different rate of recovery can involve determining whether the person has the financial means to repay. This proposal would require OASDI recipients seeking overpayment waivers to grant SSA authority to certify financial information and thereby improve the accuracy of waivers. Currently, there is no automated method for verifying financial assets for overpayment waiver claims.
6. **Hold Fraud Facilitators Liable for Overpayments.** In a few recent cases of fraud against SSA's disability programs, third parties, such as appointed representatives and doctors, facilitated fraudulent applications for benefits by submitting false statements or evidence purporting to show that the individuals were disabled, when in fact they were not disabled. Under current law, such facilitators may be subject to criminal prosecution and penalties, but they are not required to repay the benefits improperly paid to the person who was not eligible for them. This proposal would hold fraud facilitators liable for overpayments by allowing SSA to recover the overpayment from a third party with interest if the third party was responsible for making fraudulent statements or providing false evidence that allowed the beneficiary to receive payments that should not have been paid. Furthermore, a facilitator would be ineligible for a waiver of recovery of such an overpayment.
7. **Government-Wide Use of Customs and Border Patrol Entry and Exit Data to Prevent Improper Payments.** U.S. Customs and Border Protection (CBP) maintains data on when individuals enter and exit the United States. This entry and exit information may be useful in preventing improper payments in Federal programs that require U.S. residency in order to receive benefits. This proposal would provide for the use of CBP Entry/Exit data to prevent improper payments.

8. **Use the Death Master File to Prevent Federal Improper Payments.** SSA receives about 2.5 million reports of death each year from many sources, such as family members, funeral homes, financial institutions, and the states. SSA is authorized to share all of the death information it maintains with Federal and state agencies that administer federally-funded benefits, state agencies administering state-funded programs, and Federal and state agencies using the information for statistical and research activities. Currently, Do Not Pay instead receives a smaller file, which excludes state death information. This proposal would increase the amount of death information available to Federal agencies for use in preventing improper payments by authorizing SSA to share all of the death information it maintains with Do Not Pay.

### Improve Efficiency

9. **Improve Collection of Pension Information from States and Localities.** Current law requires SSA to reduce OASDI benefits when someone also receives a pension based on work that was not covered by Social Security. SSA currently has a matching agreement with the Office of Personnel Management (OPM) to obtain information on Federal government retirees who receive a pension from work not covered by Social Security. However, SSA generally lacks a way to receive similar information from state and local governments. As a result, many of these pensions go unreported, leading to improper payments. This proposal would require state and local government pension payers to report information on pensions paid for non-covered work to SSA through an automated data exchange.
10. **Establish Workers' Compensation Information Reporting.** Current law requires SSA to reduce an individual's Disability Insurance (DI) benefit if he or she receives workers' compensation (WC) or public disability benefits (PDB). SSA currently relies upon beneficiaries to report when they receive these benefits. This proposal would improve program integrity by requiring states, local governments, and private insurers that administer WC and PDB to provide this information to SSA. Furthermore, this proposal would provide for the development and implementation of a system to collect such information from states, local governments, and insurers.
11. **Lower Electronic Wage Reporting Threshold to Five Employees.** SSA processes W-2 forms for Treasury. Currently, Treasury requires businesses that file 250 or more W-2s per calendar year to file electronically. This proposal would modify the Internal Revenue Code so that Treasury can require businesses that employ five or more employees to file electronically. This change would be phased-in over three years and would increase the efficiency and accuracy of this process, because electronic returns are completed more rapidly and are generally more accurate than scanned or keyed returns.
12. **Move from Annual to Quarterly Wage Reporting.** Employers report wages annually to SSA. However, from 1939 through 1977, SSA received wage reports on a quarterly basis. Increasing the frequency of wage reporting could enhance tax administration. More frequent reporting would also facilitate implementation of automated enrollment of employees in existing workplace pensions and be the foundation for the creation of a

system of automatic workplace retirement accounts for workers who do not currently have access to a retirement plan. Furthermore, more frequent reporting may improve program integrity by providing timelier wage data for use by Federal, income-tested programs. This proposal would restructure the Federal wage reporting process by requiring employers to report wages on a quarterly<sup>1</sup> basis.

### Program Improvements

13. **Conform Treatment of State and Local Government Earned Income Tax Credits and Child Tax Credits for SSI.** When determining someone's eligibility for, and benefit amounts under, the SSI program, SSA excludes Federal earned income tax credits (EITC) and child tax credits (CTC). However, the law requires SSA to count state EITCs and CTCs for SSI purposes. This proposal would simplify administration of the SSI program by excluding state EITCs and CTCs, in the manner in which similar, Federal tax payments are excluded.
14. **Allow SSA to Electronically Certify Certain Railroad Retirement Board Payments.** For certain retired railroad workers, SSA computes the amount of SSA benefits the person should receive and sends that information to the Railroad Retirement Board (RRB), who actually pays the benefit. For most types of railroad workers and their family, SSA uses an automated process to certify electronically the payment amount to the RRB. However, SSA is not authorized to electronically certify certain categories of railroad workers, and must use a cumbersome manual process instead. This proposal would improve the efficiency and accuracy of the certification process by authorizing SSA to electronically certify the benefits of divorced spouses, to the RRB.
15. **Offset DI Benefits for Concurrent Receipt of Unemployment Insurance Benefits.** This proposal would eliminate dual benefit payments covering the same period a beneficiary is receiving state or Federal unemployment compensation, reducing duplicative spending in government programs.
16. **Reconcile Office of Personnel Management and Social Security Retroactive Disability Payments.** OPM must reduce disability payments made to Federal Employee Retirement System (FERS) annuitants who receive DI benefits. In many cases, OPM pays the FERS disability benefit before SSA decides whether the person is eligible for DI benefits. This results in FERS overpayments. This proposal would reduce these improper payments by further automating the coordination between SSA and OPM.
17. **Eliminate Aggressive SSA Benefits Claiming Strategies.** Individuals under full retirement age (FRA) who file for benefits on their own record or on the record of their spouse are deemed to file for either their own benefit or the spouse's benefit, as well. However, deemed filing does not apply to individuals over FRA (currently age 66) –

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<sup>1</sup> This proposal would have no effect on the reporting of self-employment income.

these individuals can choose to apply for benefits only as a spouse, thus allowing the person to earn delayed retirement credits (DRC) on their own record.

The Social Security Act includes another provision that allows a worker to opt to file for benefits based on his or her own work, then voluntarily suspend them, allowing the individual to accrue DRCs. In either case, DRCs can increase benefits by 8 percent for each year up to age 70. Some individuals—primarily those with higher incomes—manipulate these provisions to maximize DRCs by claiming and suspending benefits, or by filing for a lower benefit as a spouse, while allowing the higher benefit to increase due to DRCs. This proposal would eliminate such opportunities, resulting in equitable treatment of all individuals, regardless of income.

18. **Address Reserve Depletion of the DI Trust Fund.** To address reserve depletion of the DI Trust Fund, the Budget proposes a five-year reallocation of payroll taxes from the Old-Age and Survivors Insurance (OASI) trust fund to the DI trust fund. This policy would be in effect from January 1, 2016 through December 31, 2020, and will increase the payroll tax allocated to DI by 0.9 percentage points (with a corresponding decrease in OASI). At various points over the course of Social Security's history, Congress has passed reallocation legislation as the need arose for reallocating revenue from DI to OASI, and vice versa. This proposed reallocation will have no effect on the overall health of the OASI and DI trust funds on a combined basis.

#### Technical Changes

19. **Terminate Step Child Benefits in the Same Month as His or Her Parent.** A parent and stepchild may receive benefits on the record of a worker, but if the marriage terminates by divorce, they are no longer eligible for benefits. When a stepchild's parent is divorced, spousal benefits terminate in the month before the month of the final divorce. However, benefits for the stepchild terminate one month later, in the month of the final divorce. This proposal would fix this discrepancy by ending benefits for the stepchild in the same month as the parent, in the month before the final divorce.
20. **Clarify Penalties and Prohibitions for Misleading Internet Advertising.** Current law prohibits the use of certain words and symbols that, misleadingly, give the impression that SSA is connected to or has approved the communication. Violation of this prohibition is subject to certain penalties. However, it is unclear whether this prohibition applies to communications distributed or disseminated solely over the Internet. This proposal would clarify that such communication is prohibited, thereby protecting the public from misleading and potentially harmful communication.

## Administrative Improvements

21. **Reauthorize and Expand Demonstration Authority for DI and SSI.** There are many options under discussion around specific program change to amend SSA's disability programs. Moreover, in most cases, there is not enough evidence to determine whether a proposed program change would do more harm than good. Demonstration projects are the best vehicles for identifying promising program changes and measuring their effects on existing and potential disability beneficiaries. However, SSA's authority to initiate DI demonstration projects expired in December 2005, and the agency has not initiated any new DI projects since then. Early intervention measures, such as supportive employment services for individuals with mental impairments; targeted incentives for employers to help workers with disabilities remain on the job; and opportunities for states to better coordinate services—have the potential to achieve long-term gains in the employment and the quality of life of people with disabilities and gather evidence on which to base future program improvements. Our efforts for early intervention received bipartisan support of \$35 million in the Consolidated and Further Continuing Appropriations Act, 2015. This proposal would provide SSA and partner agencies \$50 million in discretionary funding for early intervention demonstrations in FY 2016, as well as \$350 million for mandatory funding in FYs 2017-2020, to test innovative strategies to help people with disabilities remain in the workforce.

## MEMORANDUM

To: Social Security Advisory Board  
Subject: Biography of Patrick Perzan  
Acting Deputy Associate Commissioner for Office of Budget  
Date: May 19, 2015

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Pat began his SSA career as a benefit authorizer in the Office of Disability Operations in 1983. He has served in various positions in the Office of Operations, including two tours as Acting Deputy Associate Commissioner in the Office of Public Service and Operations Support (OPSOS), several years as the Budget Director for Operations, and most recently as Senior Advisor to the Associate Commissioner for OPSOS. In February 2015, he assumed the role of Acting Deputy Associate Commissioner in the Office of Budget.

Pat received a Business Administration degree from the University of Baltimore in 1983. He and his wife Tracey reside in Forest Hill MD. They have two grown children, Alex and Erika.

## MEMORANDUM

To: Social Security Advisory Board  
Subject: Biography of Michelle King, Acting Assistant Deputy Commissioner for Budget, Finance, Quality, and Management (BFQM), SSA  
Date: May 15, 2015

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Michelle King became the Acting Assistant Deputy Commissioner for Budget, Finance, Quality, and Management (BFQM) in May 2015. In this role, Michelle shares responsibility with the Deputy Commissioner and Chief Financial Officer for providing executive leadership for the following agency programs and operations: acquisition and grants; anti-fraud programs; budget; financial policy and operations; facilities and supply management; media management; quality improvement; quality review; records management and audit liaison; and security and emergency preparedness. Michelle also shares accountability for an over \$940 billion program budget and an over \$11 billion administrative budget.

Prior to her current appointment, Michelle was the Acting Associate Commissioner for Anti-Fraud Programs. In this role, Michelle provided executive oversight and accountability for SSA's anti-fraud initiatives. Michelle was responsible for implementing the agency's anti-fraud framework, providing a comprehensive approach to agency fraud detection and prevention, and aligning agency efforts with industry standards.

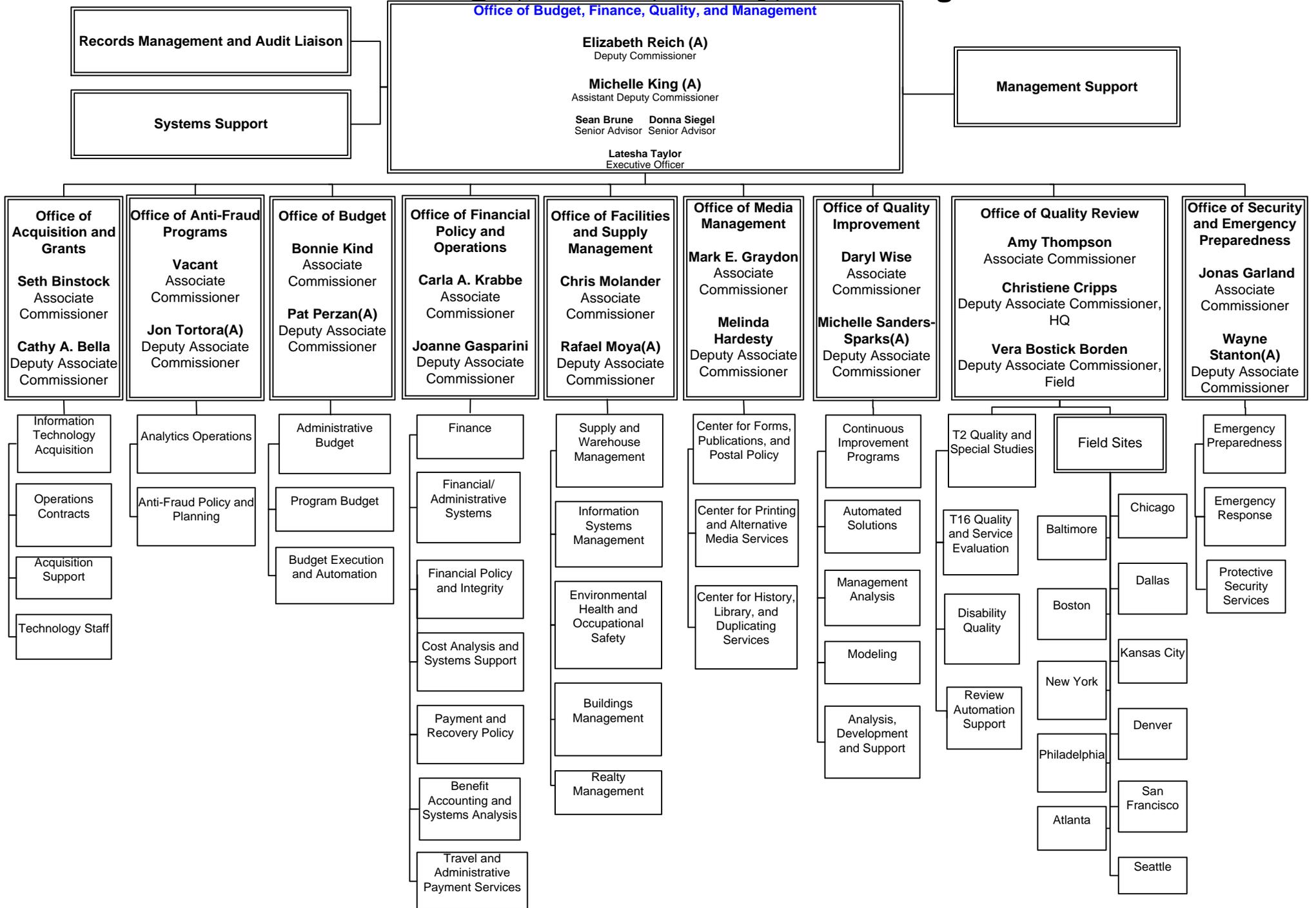
Michelle has held various leadership positions within the agency including Associate Commissioner for the Office of Income Security Programs in the Office of Retirement and Disability Policy and in the Office of Public Service and Operations Support in the Office of Operations; and Deputy Associate Commissioner for the Office of Budget in BFQM.

Michelle was hired by SSA as a bilingual Claims Representative in 1994 and worked in the Sterling, Illinois field office until 1998. She then served at SSA headquarters as a Program/Management Analyst formulating and executing Operations budgets, where she subsequently advanced to the positions of Supervisory Management Analyst, Senior Budget Advisor, and Director of the Division of Resource and Management Information in the Office of Operations. Michelle served on assignment as the Acting Deputy Associate Commissioner for Regional Operations (ARC-MOS) in the Kansas City Region. In 2007, Michelle was appointed to the Senior Executive Service as the Deputy Associate Commissioner of Public Service and Operations Support. Michelle was the lead Executive for the **Ready Retirement** initiative from 2007 – 2009 developing the agency's online retirement, disability, and Medicare application, iClaim. The **Ready Retirement** initiative also focused on educating the public about filing for benefits and policy simplification.

Michelle earned her Masters of Public Administration (MPA) from Northern Illinois University in 1997 with a concentration in Public Policy and Organizational Development. She graduated cum laude with a dual BA in Political Science and Public Administration from Augustana College in Rock Island, Illinois in 1993 and earned a minor in Speech Communications.

Michelle also has an Executive Leadership certificate from American University, and she is a graduate of the Federal Executive Institute's (FEI) Leadership in a Democratic Society program.

# Office of Budget, Finance, Quality, and Management



**CURRENT PROJECTS FOR FY 15 & FY 16  
PROJECTED DATES FOR BOARD REVIEW**

**FY 2015**

OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT
						SSI Stmtnt OUTLINE to Board	SSI Stmtnt Draft to Board			Retirement Security	SSI Children
						GPO/WEP	It's Broken Rep Fee Process			SSA History Celebration	
						Single Decision Maker	2014 Annual Rpt		Disability Solvency Paper Draft to the Board		

**FY 2016**

OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT
Service to the Public Project			History Rpt	2015 Annual Rpt							
Tech Panel Report											

CURRENT PROJECTS FOR FY 15 & FY 16  
PROJECTED DATES FOR BOARD REVIEW

FY 2017

OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUNE	JULY	AUG	SEPT

## CURRENT and PROPOSED BOARD PROJECTS

#	Project Name	Short Description of Current Project	Board Members	Status	Date for Board Action
<b>Immediate Action by Full Board Needed</b>					
1	GPO/WEP	A review of options to reform Social Security's WEP/GPO rules to offset benefits for people with noncovered pensions, with a possible policy recommendation from the Board	Alan Dorcas	In Draft - Need Board Review	May 2015
2	SSI Simplification	SSI is administratively burdensome, the program has not been updated since it was created, simplification of In-Kind, Maintenance and Support is needed.	Entire Board	Paper Drafted - Need Board to Review	May 2015 - Draft
3	Single Decision Maker	Topics on modernization and streamlining SSA's disability process: □	Henry	Draft Report	May 2015
4	It's Broken: SSA's Complicated Process of Paying Attorney Fees	Outlines the current fee agreement and fee petition payment process - how complicated and time consuming it can be		Draft Report	May 2015
5	2014 Annual Report	Summary of 2014 activities	Entire Board	Draft Report	May 2015
6	UI/DI	There is new legislation pending in Senate which includes more restrictions on the "no double dipping" legislation in the President's Budget.	Entire Board	Draft Report	May 2015
<b>Board Approved Projects Currently in Draft - With Staff</b>					
7	Retirement Security - Planning for an Unknown Future	A review of options to increase retirement income from Social Security, pensions & savings, and increased earnings	Dorcas Barbara	Draft Report	August 2015
8	SSI Children	Combine 2013 and 2014 SSI reports and add in more about California's efforts to help foster children, debt collection procedures, Able Act, and interagency cooperation.	Lanhee Bernie	Research and Rough Draft Started	September 2015
9	"We Can Work it Out" Solvency Options for the Disability Trust Fund	Review of Options to Address Solvency and to outline the importance of address the depletion of the DI trust fund reserves before 2016.	Jagadeesh Alan		September 2015
10	Service to the Public	Compilation of comments from employees (during site visits) and the general public.		Rpt or Ltr to Coss and Congress	October 2015

## CURRENT and PROPOSED BOARD PROJECTS

#	Project Name	Short Description of Current Project	Board Members	Status	Date for Board Action
11	Tech Panel	Independent Panel	Henry	Meetings	October 2015
12	History of the Board Report	History of the creation of SSAB and how the agency has evolved over the years	Entire Board		January 2016
13	2015 Annual Report	Summary of 2014 activities			Feb 2016
<b>Ongoing Projects</b>					
14	ChartBook	Update all of the charts in the Chartbook on the Website			
15	ALJ Hiring Process at OPM	Continue to work behind the scenes on changing how OPM hires ALJs - prepare background material for meetings with Hill Staff			
16	Chartbook Paper Update	Update the paper version of the Chartbook			
17	80th Birthday SSA	SSAB was asked to participate			
<b>Possible New Reports and Projects for Now or Sometime in the Future</b>			<b>Current Action</b>		
18	Old Debts	After several articles about the number of people that were having federal benefits intercepted for overpayment of social security benefits that were decades old the Commissioner stated that the agency would stop going after these benefits. However, according to a class action law suit the agency has continued its practice. The agency lost its summary judgment motion and the case is proceeding forward.			
19	Death Master File	In a briefing with Assistant Deputy Commissioner Marianna LaCanfora the history and complicated process of collecting, verifying and sharing information on the death master file was discussed. This is a topic where there seems to be a lot of misunderstanding. An issue brief outlining the issues and responsibilities might address some of the sensalism following some recent news reports and headlines could educate Congress about the important underlying issues involved.	Meeting with NAPHSIS - May Board Mtg		

## CURRENT and PROPOSED BOARD PROJECTS

#	Project Name	Short Description of Current Project	Board Members	Status	Date for Board Action
<b>Possible New Reports and Projects for Now or Sometime in the Future</b>			Current Action		
20	ALJ Model Rules	In a recent meeting with the ALJ Union they have indicated it would be helpful to them to have model rules of procedure. They drafted some in 2003 which we are waiting to receive.	Comparison of Proposed and Current Rules Prepared for Board Review		
21	Temporary Disability	Should there be something in between not being able to work at all and needing to take time off with an intention of returning to the workforce?	Meeting with Jason Fichtner scheduled for June 11		
22	Work Incentives	How can SSA improve the return to work programs?	This is being addressed in the Disability Solvency Paper		
23	Survivor Benefits	SSAB has never written a report on the survivors program.			
24	Systems Notices	The languages in SSA Notices can be confusing but currently systems generated notices can cause misunderstanding and hardship			

ALJ Proposed Rules (summarized)	Existing Rules and Regulations (summarized)	Differences / Notes
<p><b>Rule 3</b>  <b>Service and Filing of Documents</b></p> <p>Except as otherwise provided in this part, copies of all documents shall be served on all parties of record; should clearly designate <u>docket number</u>, name of party, and if a claimant last four digits of claimant's social security number. All documents shall be delivered or mailed to office of ALJ to whom proceeding is assigned for hearing. Each document shall be clear and legible.</p> <p>When an attorney or other person represents a party, service is made on attorney or other representative, unless presiding ALJ orders service upon party or by facsimile. Service of any document upon any party may be made by personal delivery or by mailing copy to last known address. Person serving document shall certify manner and date of service.</p> <p>Office of ALJ to whom proceeding has been assigned for hearing shall serve notices, orders, decisions and all other documents by regular mail to last known address.</p> <p>Documents, including proposed evidence, shall be filed in office of ALJ to whom proceeding has been assigned for hearing no later than five (5) days before date of scheduled hearing, absent a showing of good cause. Failure to comply with this requirement may result in a postponement of a hearing.</p> <p>Illegible documents of any sort will not be accepted.</p> <p><u>Efiling</u></p> <p>Filings by fax shall include cover sheet identifying sender, total number of pages transmitted, name of party, and last four digits of claimant's social security number, or docket number of case. <u>Identify source and date range</u> Documents filed by fax are presumed to be accurate reproductions of original document until proven otherwise. party proffering document shall retain original in event of a dispute over authenticity or accuracy of transmission. original document need not be submitted unless so ordered by presiding ALJ.</p>	<p><b>404.935 / 416.1435</b>  <a href="http://www.ssa.gov/OP_Home/cfr20/404/404-0935.htm">http://www.ssa.gov/OP_Home/cfr20/404/404-0935.htm</a>  <a href="http://www.ssa.gov/OP_Home/cfr20/416/416-1435.htm">http://www.ssa.gov/OP_Home/cfr20/416/416-1435.htm</a></p> <p>If possible, evidence or a summary of evidence should be submitted to ALJ with request for hearing or within 10 days after filing request. Make every effort to ensure all material evidence is received by ALJ or is available at time and place set for hearing.</p> <p><b>404.950 (c) / 416.1450 (c)</b>  <a href="http://www.ssa.gov/OP_Home/cfr20/404/404-0950.htm">http://www.ssa.gov/OP_Home/cfr20/404/404-0950.htm</a>  <a href="http://www.ssa.gov/OP_Home/cfr20/416/416-1450.htm">http://www.ssa.gov/OP_Home/cfr20/416/416-1450.htm</a></p> <p>ALJ may receive evidence at hearing even though evidence would not be admissible in court under rules of evidence used by court.</p> <p><b>HALLEX 1-2-6-58</b>  <a href="http://www.ssa.gov/OP_Home/hallex/1-02/I-2-6-58.html">http://www.ssa.gov/OP_Home/hallex/1-02/I-2-6-58.html</a></p> <p><b>Written Evidence Submitted at Hearing</b></p> <p><u>The ALJ may admit additional written evidence into record during hearing.</u> Before admitting any proposed exhibit into record during hearing, ALJ will identify it and offer claimant opportunity to inspect make objections or comments.</p> <p>If ALJ plans to admit additional written evidence into record after hearing, or if claimant submits evidence after hearing, see HALLEX <a href="#">1-2-7-20</a>, <a href="#">1-2-7-30</a>, and <a href="#">1-2-7-35</a>.</p> <p><b>E.Part 405- Closed Record Provision in Region 1</b></p> <p>In region 1, rules in Part 405 of regulations apply to submission of evidence. Under <a href="#">20 CFR 405.331</a>, claimant must submit any written evidence no later than 5 business days before date of scheduled hearing. An ALJ gives claimant notice of this requirement in notice of hearing. Filing within the 5 days requires showing of good cause, which includes having been misled by agency; claimant has physical, mental, educational, or linguistic limitation(s) that prevented him or her from submitting evidence earlier; other unusual, unexpected, or unavoidable circumstances beyond claimant's control prevented submitting evidence earlier.</p>	<p>-AALJ is proposing docket numbers to identify documents</p> <p>-AALJ is proposing that all documents must be in five days prior to hearing or else hearing will be postponed. Current regulations ask that <i>if possible</i> documents and evidence <i>should be</i> submitted with request for hearing of within 10 days of filing request.</p> <p>-Existing rules state that ALJ will allow new evidence at hearing.</p> <p>-There is an exception in OCALJ Region I, where claimant must submit any written evidence five days prior to hearing. ALJ will not review evidence unless there is good cause for late filing.</p> <p>-AALJ proposed rules contemplates closed record; inconsistent with current rules and regulations.</p>

ALJ Proposed Rules (summarized)	Existing Rules and Regulations (summarized)	Differences / Notes
	<p>If claimant wants to submit evidence after hearing but before hearing decision is issued, ALJ will not consider evidence unless claimant shows that there is a reasonable possibility that evidence, alone or when considered with other evidence of record, affects outcome of case and same good cause as for within 5 days prior to hearing.</p> <p>If claimant submits evidence after hearing decision is issued, ALJ will forward information to Appeals Council if a request for review of ALJ's decision was submitted. If claimant has not requested AC review, ALJ may either consider revising his or her decision if claimant shows a reasonable possibility that evidence, alone or when considered with other evidence of record, affects outcome of case (and was not submitted earlier for one of reasons previously noted); or return evidence to claimant noting in writing that record is closed but that claimant may request review from AC.</p>	
<p><b>Rule 4 Time computations.</b></p> <p>Time begins with day following act, event, or default, and includes last day of period, unless Saturday, Sunday or legal holiday observed by Federal Government, then time period includes next business day. When period is 7 days or less, intermediate Saturdays, Sundays, and holidays are excluded.</p> <p>Date of entry of an order is date order is mailed or otherwise served by Office of Hearings and Appeals [now ODAR].</p> <p>Documents are not deemed filed until received by assigned ALJ. Service is deemed effected at time of mailing. When party has right or is required to take an action within a prescribed period after service of a document and document is served by mail, add 5 days.</p> <p>Filing by facsimile (fax) is effective upon receipt of entire document by receiving facsimile machine. For purposes of filings by facsimile time printed on transmission by facsimile equipment constitutes date, except as prescribed by rule 3 (f) (5).</p>		

ALJ Proposed Rules (summarized)	Existing Rules and Regulations (summarized)	Differences / Notes
<p><b>Rule 20      Designation of Presiding ALJ</b></p> <p>Hearings are held before an ALJ appointed and assigned to Office of Hearings and Appeals [now ODAR], Social Security Administration. The <u>presiding judge are designated by Associate Commissioner for Hearings and Appeals [now ODAR, probably Chief ALJ]</u>.</p>	<p><a href="http://www.ssa.gov/OP_Home/hallex/I-02/I-2-1-55.html">I-2-1-55.Assignment of Service Area Cases to ALJs</a> <a href="http://www.ssa.gov/OP_Home/hallex/I-02/I-2-1-55.html">http://www.ssa.gov/OP_Home/hallex/I-02/I-2-1-55.html</a></p> <p>When HO receives valid request for hearing (RFH) or an Appeals Council (AC) remand and completes procedures set forth in Hearings, Appeals and Litigation Law (HALLEX) manual chapter I-2-0, Hearing Office Chief ALJ (HOCALJ), acting as Deputy Commissioner's "delegate," will assign case to an ALJ (ALJ).</p> <p>HOCALJ generally assigns cases on rotational basis, oldest first, unless there is a special situation. See HALLEX I-2-1-55 D below.</p> <p>The Regional Chief ALJ (RCALJ) determines which areas within an HO's service area are to be served from HO and which are to be served from remote hearing site(s), taking into consideration recommendations from HOCALJ. May modify based on case receipts and other service and cost factors.</p> <p>Generally, HOCALJ will rotate assignments requiring travel among all ALJs in HO consistent with objective of scheduling older cases first.</p> <p>ALJs generally accumulate a docket of cases to be heard at remote site to minimize administrative travel and related costs. If a remote site has video teleconferencing (VTC) availability, ALJs are encouraged to hold hearings by VTC.</p> <p>ALJ must obtain advance administrative approval of proposed travel.</p> <p>ALJ will raise any objections to a travel docket with his or her HOCALJ.</p>	<p>-In proposed rules Associate Commissioner for Hearings and Appeals will designate presiding judge whereas Hearing Office Chief ALJ will assign cases to ALJs.</p>
<p><b>Rule 21      Time and Place for Hearing</b></p> <p><b>ALJ sets time and place for hearing, judge may change time and place, if it is necessary.</b> After sending parties reasonable notice of proposed action, ALJ may adjourn or postpone hearing or reopen it to receive additional evidence any time before judge notifies parties of a hearing decision</p> <p>If a party objects to time or place of hearing, party must notify ALJ at as soon as possible before the hearing. Party must state reason for their objection and state time and place they want hearing to be held. If at all possible, request should be in writing. ALJ will change</p>	<p><b>HALLEX 1-2-3-10</b> <a href="http://www.ssa.gov/OP_Home/hallex/I-02/I-2-3-10.html">http://www.ssa.gov/OP_Home/hallex/I-02/I-2-3-10.html</a></p> <p>ALJ (ALJ) sets time and place for hearing. ALJ may change time and place, if necessary. Objective is to hold a hearing as soon as possible after request for hearing (RH) is filed, at a site convenient to claimant. Hearing office (HO) staff will generally contact hearing participants to ascertain availability before scheduling hearing.</p> <p><b>NOTE:</b> If a claimant threatens violence against general public or HO personnel, or has been banned from entering a Federal or Social Security facility, see instructions for scheduling a hearing in <a href="#">20 CFR 404.937</a> and <a href="#">416.1437</a> and in Chapter I-1-9-0 of Hearings, Appeals and Litigation Law (HALLEX)</p>	<p>-Proposed rules and existing rules and regulations are very similar and are often verbatim.</p>

ALJ Proposed Rules (summarized)	Existing Rules and Regulations (summarized)	Differences / Notes
<p>time or place of hearing if party has good cause.</p> <p>ALJ will find good cause for changing time or place of scheduled hearing, and will reschedule hearing if a party's reason is one of following circumstances and is supported by evidence:</p> <p>(1) party of their representative are unable to attend or to travel to scheduled hearing because of a serious physical or mental condition, incapacitating injury, or death in family; or</p> <p>(2) Severe weather conditions make it impossible to travel to hearing.</p> <p>Determining whether good cause exists in other circumstances. ALJ will consider a party's reason for requesting change, facts supporting it, and impact of proposed change on efficient administration hearing process. Factors affecting impact of change include, effect on processing of other scheduled hearings, delays in rescheduling hearing, and any prior changes were granted to party. Examples of such other circumstances, a party might give for requesting a change in time or place of hearing, include:</p> <p>(1) party has attempted to obtain a representative but needs additional time;</p> <p>(2) party's representative was appointed within 30 days of scheduled hearing and needs additional time to prepare for hearing;</p> <p>(3) party's representative has a prior commitment to be in court or at another administrative hearing on date scheduled for hearing;</p> <p>(4) witness who will testify to facts material to case would be unavailable to attend scheduled hearing and evidence cannot be otherwise obtained;</p> <p>(5) Transportation is not readily available for a party to travel to hearing;</p> <p>(6) party lives closer to another hearing site; or</p> <p>(7) party is unrepresented, and is unable to respond to</p>	<p>manual.</p> <p><b>A. Determining Time and Place for Hearing</b></p> <p>When an ALJ sets time and place for a hearing, ALJ will consider:</p> <p>The number and types of cases to be set for hearing,</p> <p>The proximity of hearing site to claimant's residence, and</p> <p>The availability of claimant, representative, and witnesses on proposed hearing date.</p> <p>To extent possible, location of hearing site will be within 75 miles of claimant's residence. ALJ will also consider scheduling hearing by video teleconferencing (VTC) or, in certain extraordinary circumstances, by telephone.</p> <p><b>404.936 / 416.1436</b></p> <p><a href="http://www.socialsecurity.gov/OP_Home/cfr20/416/416-1436.htm">http://www.socialsecurity.gov/OP_Home/cfr20/416/416-1436.htm</a></p> <p>We may set time and place for any hearing. We may change time and place, if it is necessary. After sending you reasonable notice of proposed action, ALJ may adjourn or postpone hearing or reopen it to receive additional evidence any time before he or she notifies you of a hearing decision.</p> <p>We hold hearings in 50 States, District of Columbia, and Northern Mariana Islands. "place" of hearing is hearing office or other site(s) at which you and any other parties to hearing are located when you make your appearance(s) before ALJ, whether in person or by video teleconferencing.</p> <p>If you object to time or place of your hearing, you must notify as soon as possible before the hearing. You must state reason for your objection and time and place you want hearing to be held. If at all possible, request should be in writing. We will change time or place of hearing if ALJ finds you have good cause.</p> <p>If you have been scheduled to appear for your hearing by video teleconferencing and you notify us that you object to appearing in that way, ALJ will find your wish not to appear by video teleconferencing to be a good reason for changing time or place of your scheduled hearing and reschedule your hearing for a time and place at which you make your appearance in person. ALJ will also find good cause for changing time or place of your scheduled hearing, and reschedule your hearing if your reason is one of following circumstances and is supported by evidence:</p>	

ALJ Proposed Rules (summarized)	Existing Rules and Regulations (summarized)	Differences / Notes
<p>notice of hearing because of any physical, mental, educational, or linguistic limitations (including any lack of facility with English language)</p>	<p>(1) You or your representative are unable to attend or to travel to scheduled hearing because of a serious physical or mental condition, incapacitating injury, or death in family; or</p> <p>(2) Severe weather conditions make it impossible to travel to hearing.</p> <p>In determining whether good cause exists in other circumstances ALJ will consider your reason for requesting change, facts supporting it, and impact of proposed change on efficient hearing process. Factors affecting impact of change include, effect on processing of other scheduled hearings, delays which might occur in rescheduling your hearing, and whether any prior changes were granted to you. Examples of such other circumstances, which you might give for requesting a change in time or place of hearing, include,</p> <p>(1) You have attempted to obtain a representative but need additional time;</p> <p>(2) Your representative was appointed within 30 days of scheduled hearing and needs additional time to prepare for hearing;</p> <p>(3) Your representative has a prior commitment to be in court or at another administrative hearing on date scheduled for hearing;</p> <p>(4) A witness who will testify to facts material to your case would be unavailable to attend scheduled hearing and evidence cannot be otherwise obtained;</p> <p>(5) Transportation is not readily available for you to travel to hearing;</p> <p>(6) You live closer to another hearing site; or</p> <p>(7) You are unrepresented, and you are unable to respond to notice of hearing because of any physical, mental, educational, or linguistic limitations (including any lack of facility with English language) which you may have.</p>	
<p><b>Rule 22 Notice of Hearing</b></p> <p>After ALJ sets time and place of hearing, notice of hearing will be mailed to parties at their last known addresses, or given by personal service. Notice will be mailed or served at least 20 days before hearing. Notice of hearing will contain statement of specific issues to be decided and tell parties that they may designate a person to represent them during proceedings. Notice will also contain an explanation of procedures for requesting a change in time or place of</p>	<p>HALLEX 1-2-3-15  <a href="http://www.ssa.gov/OP_Home/hallex/I-02/I-2-3-15.html">http://www.ssa.gov/OP_Home/hallex/I-02/I-2-3-15.html</a></p> <p>ALJ or hearing office (HO) staff must send notice of hearing to claimant and representative at least 20 days before hearing, unless claimant has waived right to advance notice. HO staff will also add a copy of notice of hearing to claim(s) file.</p> <p>• <b>HALLEX 1-2-3-20</b>  <a href="http://www.ssa.gov/OP_Home/hallex/I-02/I-2-3-20.html">http://www.ssa.gov/OP_Home/hallex/I-02/I-2-3-20.html</a></p> <p>• <b>Acknowledgment Form</b></p> <p>With each notice of hearing, hearing office (HO) staff will send a Form HA-</p>	<p>-Both will mail notice of hearing 20 days prior to hearing.</p> <p>-Proposed rules do not specify what information will be included with notice unlike detailed information existing rules and regulations currently provides.</p> <p>-if claimant does not respond</p>

ALJ Proposed Rules (summarized)	Existing Rules and Regulations (summarized)	Differences / Notes
<p><u>hearing, a reminder that if a party does not appear at their scheduled hearing without good cause ALJ may dismiss their hearing request, and other information about scheduling and conduct of hearing. If a party or their representative does not acknowledge receipt of notice of hearing, we will attempt to contact party for an explanation.</u> If party tells us that they did not receive notice of hearing, an amended notice will be sent to party by mail.</p>	<p>504 (Acknowledgment of Notice of Hearing) or Spanish version, HA-504-SP, to claimant and representative, if any.</p> <p><b>Acknowledgment Form Not Returned</b></p> <p><u>If acknowledgment form is not returned within 7 days, send a written Reminder to Return Acknowledgment Form, or telephone claimant or representative, if any, to ask whether he or she plans to attend hearing.</u></p> <p><b>405.316</b></p> <p><a href="http://www.ssa.gov/OP_Home/cfr20/405/405-0316.htm">http://www.ssa.gov/OP_Home/cfr20/405/405-0316.htm</a></p> <p>After ALJ sets time and place of hearing, mail notice of hearing at last known address, or give notice by personal service. Mail or serve notice at least 75 days before date of hearing, unless there is agreement to a shorter notice period.</p> <p><u>notice of hearing will tell you:</u></p> <p>(1) <u>specific issues to be decided,</u></p> <p>(2) <u>That you may designate a person to represent you during proceedings,</u></p> <p>(3) <u>How to request that we change time or place of your hearing,</u></p> <p>(4) <u>That your hearing request may be dismissed if you fail to appear at your scheduled hearing without good reason under § 405.20,</u></p> <p>(5) <u>Whether your or a witness's appearance will be by video teleconferencing, and</u></p> <p>(6) <u>That you must submit all evidence that you wish to have considered at hearing no later than five business days before date of scheduled hearing, unless you show that your circumstances meet conditions described in § 405.331 for missing deadline.</u></p> <p>In notice of hearing, return a form to inform of received notice. If receipt is not acknowledged of notice of hearing, attempt will be made to contact to see if it was received. If not received, an amended notice by certified mail will be sent.</p>	<p>within 7 days existing rules/regulations will telephone asking claimant if they will attend hearing. Proposed rules will attempt to contact party for an <b>explanation</b> as to why they have not responded.</p>
<p><b>Rule 23 Legal assistance</b></p> <p>The Office of Hearings and Appeals [now ODAR] does not have authority to appoint counsel, nor does it refer</p>	<p><b>HALLEX I-2-6-52</b></p> <p><a href="http://www.ssa.gov/OP_Home/hallex/I-02/I-2-6-52.html">http://www.ssa.gov/OP_Home/hallex/I-02/I-2-6-52.html</a></p>	<p>-Proposed rules say they do not have authority to appoint counsel or representatives, but does not mention if they will make sure claimants are</p>

ALJ Proposed Rules (summarized)	Existing Rules and Regulations (summarized)	Differences / Notes
<p>parties to individual attorneys or representatives.</p>	<p>If claimant is unrepresented, ALJ will ensure on record claimant has been properly advised of right to representation and claimant is capable of making an informed choice about representation.</p> <p>The ALJ is not required to recite specific questions regarding right to representation or claimant's capacity to make an informed choice about representation. However, below are examples of questions ALJ could ask an unrepresented claimant on record:</p> <p>Did you receive hearing acknowledgement letter and its enclosure(s)?</p> <p>Do you understand information contained in that letter, specifically concerning representation?</p> <p>If unrepresented claimant did not receive hearing acknowledgement letter and its enclosure(s), ALJ will provide claimant with a copy and opportunity to read letter. ALJ will enter into record acknowledgement letter and all enclosure(s) sent to unrepresented claimant or provided at hearing.</p> <p>ALJ will answer any questions claimant may have, including explaining claimant's options regarding representation, as outlined in acknowledgement letter.</p> <p>If claimant is illiterate, ALJ must ensure that claimant is aware of his or her options for representation. Specifically, ALJ will explain availability of both free legal services and contingency representation, and access to organizations that assist individuals in obtaining representation.</p> <p>Once ALJ has determined that claimant is capable of making an informed choice, ALJ will either secure on record claimant's decision concerning representation or obtain from claimant a written waiver of claimant's right to representation, which will be marked as an exhibit.</p>	<p>aware of their right to have representation and availability of free legal counsel.</p>
<p><b>Rule 24 Representation</b></p> <p>Any party shall have right to appear at a hearing in person, by counsel, or by other representative, to examine and cross-examine witnesses, and to introduce into record documentary or other relevant evidence. ALJ <u>may compel any party to attend hearing.</u></p> <p><u>(b)</u> Each attorney or other representative shall file a notice of appearance. Such notice shall indicate name of case or controversy, if representing a claimant, claimant's social security number, or docket number of</p>	<p><b>404.1705 / 416.1505</b></p> <p><a href="http://www.ssa.gov/OP_Home/cfr20/404/404-1705.htm">http://www.ssa.gov/OP_Home/cfr20/404/404-1705.htm</a></p> <p><a href="http://www.ssa.gov/OP_Home/cfr20/416/416-1505.htm">http://www.ssa.gov/OP_Home/cfr20/416/416-1505.htm</a></p> <p>(a) You may appoint as your representative in dealings with us, any attorney in good standing who—</p> <p>(1) Has right to practice law before a court of a State, Territory, District, or island possession of United States, or before Supreme Court or a lower Federal court of United States;</p> <p>(2) Is not disqualified or suspended from acting as a representative in dealings with us; and</p> <p>(3) Is not prohibited by any law from acting as a representative.</p>	<p>-Attorney qualifications are same for both proposed and existing rules.</p> <p>-Proposed rules do not include if you want to appoint someone who is not an attorney to be your representative.</p> <p>-Proposed rule 26 is similar about notifying a representative if they are not</p>

ALJ Proposed Rules (summarized)	Existing Rules and Regulations (summarized)	Differences / Notes
<p>case.</p> <p>Every party has right of timely notice and all other rights essential to a fair hearing, including rights to present evidence, to conduct such cross- examination as necessary for complete disclosure of facts, and to be heard by objection, motion, and argument.</p> <p>Every participant shall have right to make a written or oral statement of position. At discretion of ALJ, participants may file a proposed decision, proposed findings of fact, conclusions of law and a post hearing brief.</p> <p>Any person compelled to testify in a proceeding in response to a subpoena may be accompanied, represented, and advised by counsel or other representative.</p> <p><b>Rule 25            Qualifications of Representatives</b></p> <p>Any attorney in good standing who—</p> <p>(1) Has right to practice law before a court of a State, Territory, District, or island possession of United States, or before Supreme Court or a lower Federal court of United States;</p> <p>(2) Is not disqualified or suspended from acting as a representative in dealings with us; and</p> <p>(3) Is not prohibited by any law from acting as a representative.</p> <p><b>Rule 26            Authority for representation</b></p> <p>Any individual acting in a representative capacity in any adjudicative proceeding are required by ALJ to show his or her authority to act in such capacity</p>	<p><u>(b) You may appoint any person who is not an attorney to be your representative in dealings with us if person—</u></p> <p><u>(1) Is generally known to have a good character and reputation;</u></p> <p><u>(2) Is capable of giving valuable help to you in connection with your claim;</u></p> <p><u>(3) Is not disqualified or suspended from acting as a representative in dealings with us; and</u></p> <p><u>(4) Is not prohibited by any law from acting as a representative.</u></p> <p>(c) We may refuse to recognize person you choose to represent you if person does not meet requirements in this section. We will notify you and person you attempted to appoint as your representative if we do not recognize person as a representative.</p>	<p>qualified and having to show proof of their qualifications.</p>

ALJ Proposed Rules (summarized)	Existing Rules and Regulations (summarized)	Differences / Notes
<p><b>Rule 28 Subpoenas</b></p> <p>(a) When it is necessary for full presentation of a case, an ALJ may issue subpoenas for appearance and testimony of witnesses and for production of books, records, correspondence, papers, or other documents that are material to an issue at hearing.</p> <p>(b) Parties to a hearing who wish to subpoena documents or witnesses must file a written request for issuance of a subpoena with ALJ at least 5 days before hearing date. Written request must give names of witnesses or documents to be produced; describe address or location of witnesses or documents; state important facts that witness or document is expected to prove; and indicate why these facts could not be proven without issuing a subpoena.</p> <p>(c) A subpoena may be served by certified mail or by any person who is not less than 18 years of age. Subpoenaed witnesses will be paid same fees and mileage they would receive if a Federal district court had subpoenaed them.</p> <p>Within 10 days of receipt of a subpoena but no later than date of hearing, person against whom it is directed may file a motion to quash or limit subpoena, giving reasons why subpoena should be withdrawn or why it should be limited in scope. Any such motion shall be answered within 10 days of service, and shall be ruled on immediately thereafter. Order shall specify date, for compliance with specifications of subpoena.</p> <p>Upon failure of any person to comply with an order to testify or a subpoena, ALJ may, where authorized by statute or by law, apply to appropriate district court for enforcement of order or subpoena.</p>	<p><b>404.950 / 416.1450</b></p> <p><a href="http://www.ssa.gov/OP_Home/cfr20/404/404-0950.htm">http://www.ssa.gov/OP_Home/cfr20/404/404-0950.htm</a>  <a href="http://www.ssa.gov/OP_Home/cfr20/416/416-1450.htm">http://www.ssa.gov/OP_Home/cfr20/416/416-1450.htm</a></p> <p>(1) When it is necessary for full presentation of a case, an ALJ or a member of Appeals Council may, issue subpoenas for appearance and testimony of witnesses and for production of books, records, correspondence, papers, or other documents that are material to an issue at hearing.</p> <p>(2) Parties to a hearing who wish to subpoena documents or witnesses must file a written request for issuance of a subpoena with ALJ or at one of our offices at least 5 days before hearing date. Written request must give names of witnesses or documents to be produced; describe address or location of witnesses or documents; state important facts that witness or document is expected to prove; and indicate why these facts could not be proven without issuing a subpoena.</p> <p>(3) <u>We will pay cost of issuing subpoena.</u></p> <p>(4) We will pay subpoenaed witnesses same fees and mileage they would receive if they had been subpoenaed by a Federal district court.</p> <p><a href="http://www.ssa.gov/OP_Home/hallex/I-02/I-2-5-78.html">http://www.ssa.gov/OP_Home/hallex/I-02/I-2-5-78.html</a>  <b>HALLEX I-2-5-78. Use of Subpoenas — General</b></p> <p>A claimant has a right to request issuance of a subpoena, but regulations state that he or she must make request at least 5 days before hearing date. ALJ is authorized by law and regulation to issue subpoenas to require production of documentary evidence or testimony when reasonably necessary for full presentation of case. Issuance of a subpoena may be necessary when a person having knowledge of a material fact or possession of documentary evidence is reluctant or unwilling to testify or provide evidence. ALJ may issue a subpoena on his or her own motion or at request of a claimant.</p> <p><b>A. Issuing a Subpoena on Own Motion</b></p> <p>ALJ must issue a subpoena when an individual has evidence or can offer testimony that ALJ determines is reasonably necessary for full presentation of case, and ALJ has exhausted other means of obtaining this evidence or testimony.</p> <p><b>B. Issuing a Subpoena at Request of a Claimant</b></p> <p>ALJ must issue a subpoena on a claimant's timely request if claimant shows that an individual has evidence or can offer testimony that claimant cannot</p>	<p>-Verbatim except for part about certified mail vs. paying cost of serving subpoena.</p> <p>-Proposed rules continues on about quashing subpoena and failure to comply which existing rules do not mention.</p>

ALJ Proposed Rules (summarized)	Existing Rules and Regulations (summarized)	Differences / Notes
	<p>obtain without subpoena, ALJ determines that evidence or testimony is necessary for full presentation of case, and ALJ has exhausted other means of obtaining this evidence or testimony. Claimant seeking a subpoena must file a written request. request must provide:</p> <p>the names of witnesses or documents to be provided;</p> <p>the address or location of witnesses or documents with sufficient detail to find them;</p> <p>a statement of important facts that witness or document is expected to prove; and</p> <p>the reason why these facts cannot be proven without issuing a subpoena.</p>	
<p><b>Rule 29 Waiver of Right to Appear</b></p> <p><u>If all parties waive their right to appear before ALJ or to present evidence or argument personally or by representative, it is not necessary for ALJ to give notice of and conduct an oral hearing. A waiver of right to appear and present evidence and allegations as to facts and law shall be made in writing and filed with ALJ assigned to hear case.</u> Where such a waiver has been filed by all parties and they do not appear before ALJ personally or by representative, ALJ shall make a record of relevant written evidence submitted by parties, together with any pleadings they may submit with respect to issues in case. <u>Such documents shall be considered as all of evidence in case, and decision shall be based on them.</u></p>	<p><b>404.950 / 416.1450</b></p> <p><a href="http://www.ssa.gov/OP_Home/cfr20/404/404-0950.htm">http://www.ssa.gov/OP_Home/cfr20/404/404-0950.htm</a>  <a href="http://www.ssa.gov/OP_Home/cfr20/416/416-1450.htm">http://www.ssa.gov/OP_Home/cfr20/416/416-1450.htm</a></p> <p>You may send ALJ a waiver or a written statement indicating that you do not wish to appear at hearing. <u>You may withdraw this waiver any time before a notice of hearing decision is mailed to you. Even if all of parties waive their right to appear at a hearing, we may notify them of a time and a place for an oral hearing,</u> if ALJ believes that a personal appearance and testimony by you or any other party is necessary to decide case.</p> <p><b>404.948 / 416.1448</b></p> <p><a href="http://www.socialsecurity.gov/OP_Home/cfr20/404/404-0948.htm">http://www.socialsecurity.gov/OP_Home/cfr20/404/404-0948.htm</a>  <a href="http://www.ssa.gov/OP_Home/cfr20/416/416-1448.htm">http://www.ssa.gov/OP_Home/cfr20/416/416-1448.htm</a></p> <p>When an oral hearing is not held, ALJ shall make a record of material evidence. Record will include applications, written statements, certificates, reports, affidavits, and other documents that were used in making determination and any additional evidence you or any other party to hearing present in writing. Decision of ALJ must be based on this record.</p> <p>HALLEX I-2-1-45.  <a href="http://www.ssa.gov/OP_Home/hallex/I-02/I-2-1-45.html">http://www.ssa.gov/OP_Home/hallex/I-02/I-2-1-45.html</a></p>	<p>-Both proposed rules and existing rules and regulations state that claimant has right to not appear at hearing. ALJ will then make their decision based on record.</p> <p>-Proposed rules state that if all parties waive their right to appear “it shall not be necessary for ALJ to give notice of and conduct an oral hearing”</p> <p>-Existing rules and regulations state that claimant can withdraw waiver at any time before a notice of hearing decision has been mailed. It also says “even if all parties waive their right to appear at a hearing, we <b>may</b> notify them of a time and a place for an oral hearing” if they believe that appearance is necessary to make a decision.</p>

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	<p><b>E Waiver of Right To Appear at Hearing</b></p> <p>A claimant may waive right to appear at an oral hearing and request that ALJ decide case on evidence of record. <u>Regulations also provide that ALJ may schedule a hearing notwithstanding waiver if he or she believes a personal appearance and testimony from claimant are necessary to properly decide case.</u></p> <p>1.Receipt of Waiver</p> <p>If a claimant states in request for hearing that he or she waives right to appear at a hearing, or otherwise notifies HO that he or she waives right to appear, ALJ or HO staff will take following actions:</p> <p>If claimant is unrepresented, advise claimant of right to representation.</p> <p>Advise claimant of advantages of appearing at a hearing; ensure that claimant is fully advised of possible consequences of his or her waiver; and explain that even though he or she has waived right to appear, ALJ may schedule and conduct a hearing if ALJ deems it necessary.</p>	
<p><b>Rule 30 Dismissals</b></p> <p>(a) A request for hearing may be dismissed by its abandonment or by motion of party or parties who filed it. A party shall be deemed to have abandoned a request for hearing, or requested a dismissal, as case may be, if:</p> <p>(1) <u>The party fails to appear at time of scheduled hearing, without good cause, even if party's representative appears;</u></p> <p>(2) <u>At any time before notice of hearing decision is mailed, party or parties that have requested hearing ask to withdraw that request. This request may be submitted in writing to ALJ or made orally at hearing</u></p> <p>(3) <u>person must be in case record. Also, party and representative must have been notified that request for hearing may be dismissed without further notice if party did not appear at time and place of hearing and good cause has not been found by ALJ for failure to appear. If there is no prima facie proof that notice of hearing was received by party, and in lieu of an "Order to Show</u></p>	<p><b>404.957/ 416.1457</b></p> <p><a href="http://ssa.gov/OP_Home/cfr20/404/404-0957.htm">http://ssa.gov/OP_Home/cfr20/404/404-0957.htm</a></p> <p><a href="http://www.ssa.gov/OP_Home/cfr20/416/416-1457.htm">http://www.ssa.gov/OP_Home/cfr20/416/416-1457.htm</a></p> <p><b>Dismissal of a request for a hearing before an ALJ.</b></p> <p>An ALJ may dismiss a request for a hearing under any of following conditions:</p> <p>(a) At any time before notice of hearing decision is mailed, you or party or parties that requested hearing ask to withdraw request. This request may be submitted in writing to ALJ or made orally at hearing.</p> <p>(b)(1)(i) Neither you nor person you designate to act as your representative appears at time and place set for hearing and you have been notified before time set for hearing that your request for hearing may be dismissed without further notice if you did not appear at time and place of hearing, and good cause has not been found by ALJ for your failure to appear; or</p> <p>(ii) Neither you nor person you designate to act as your representative appears at time and place set for hearing and <u>within 10 days after ALJ mails you a notice asking why you did not appear, you do not give a good reason for failure to appear.</u></p>	<p>-In proposed rules both representative and claimant need to show up to hearing. In existing rules, if only representative shows up that is sufficient.</p> <p>-Current regulations state that they will mail a notice asking why a claimant did not appear at hearing. Proposed rules, they "may" contact a claimant.</p> <p>-HALLEX provides a list of what constitutes "good cause" for failure to appear, proposed rules do not.</p>

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<p><i>Cause" ALJ may:</i></p> <p>(i) <u>Attempt to contact party by telephone</u>, at their last known phone number, which results in no contact being made,</p> <p>(ii) <u>Attempt to ascertain party's last known address and compare it to notice of hearing and, if it is not same as on notice of hearing a new hearing must be scheduled, and,</u></p> <p>(iii) Attempt to contact District Office in order to determine if party's address is correct and, if it is not correct, a new hearing must be scheduled.</p> <p>(iv) <u>If, after doing (i) through (iii) above, party's whereabouts are still not known, and there is no other information upon which to base a conclusion of good cause, then, in such case, request for hearing may be dismissed without necessity of sending an Order to Show Cause.</u></p> <p>(4) Good cause may be established:</p> <p>(i) <u>by sending party and representative, if any, an Order to Show Cause requiring party, within 10 days of service of said Order, to state written reasons establishing good cause for his failure to appear, and ALJ finds, based upon such response, that good cause exists; or</u></p> <p>(ii) <u>by ALJ determining, based on information obtained by any other means, that good cause existed for failure to appear. In determining good cause, an ALJ will consider any physical, mental, educational, or linguistic limitations, including any lack of facility with English language, that a party may have.</u></p> <p>(a) Additional Bases For Dismissal. ALJ also may decide that there is cause to dismiss a hearing request or may refuse to consider any one or more of issues for any of following reasons:</p> <p><u>(1) doctrine of res judicata applies in that there exists a previous determination or decision under this subpart of Regulations about a party's rights on same facts and</u></p>	<p>(2) In determining good cause or good reason under this paragraph, we will consider any physical, mental, educational, or linguistic limitations (including any lack of facility with English language) which you may have.</p> <p>(c) ALJ decides that there is cause to dismiss a hearing request entirely or to refuse to consider any one or more of issues because—</p> <p>(1) doctrine of <i>res judicata</i> applies in that we have made a previous determination or decision under this subpart about your rights on same facts and on same issue or issues, and this previous determination or decision has become final by either administrative or judicial action;</p> <p>(2) person requesting a hearing has no right to it under § 404.930;</p> <p>(3) You did not request a hearing within stated time period and we have not extended time for requesting a hearing under § 404.933(c); or</p> <p>(4) You die, there are no other parties, and we have no information to show that another person may be adversely affected by determination that was to be reviewed at hearing. However, dismissal of hearing request will be vacated if, within 60 days after date of dismissal, another person submits a written request for a hearing on claim and shows that he or she may be adversely affected by determination that was to be reviewed at hearing.</p> <p><a href="http://ssa.gov/OP_Home/hallex/1-02/1-2-4-25.html">1-2-4-25.Dismissal Due to Claimant's Failure to Appear</a>  <a href="http://ssa.gov/OP_Home/hallex/1-02/1-2-4-25.html">http://ssa.gov/OP_Home/hallex/1-02/1-2-4-25.html</a></p> <p><b>A.Failure to Appear — Introduction</b></p> <p>An ALJ (ALJ) may generally dismiss a request for hearing (RH) based on failure to appear in following circumstances, <u>except when a parent or guardian appears at hearing on behalf of a claimant who is a minor.</u> An ALJ's attempts to develop good cause, and any responses received, must be associated in B section of claim(s) folder.</p> <p>1.Neither Claimant Nor Representative Appears</p> <p>An ALJ may dismiss an RH when neither claimant nor appointed representative, if any, appears at time and place of a scheduled hearing and neither shows good cause for absence. Except in circumstances set forth in this provision, an ALJ will develop whether there is good cause for failure to appear.</p> <p>2.Neither Claimant Nor Representative Appears on Time</p> <p>An ALJ may also dismiss an RH on basis of failure to appear when an unrepresented claimant, or claimant and his or her representative, fails to appear on time for hearing. However, ALJ must first develop whether there is good cause for tardiness.</p>	

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<p><i>on same issue or issues, and this previous determination or decision has become final by either administrative or judicial action;</i></p> <p><i>(2) person requesting a hearing has no right to it under applicable authority;</i></p> <p><i>(3) party did not request a hearing within stated time period and Social Security Administration has not extended time for requesting a hearing; or</i></p> <p><i>(4) A party dies, there are no other parties, and we have no information to show that another person may be adversely affected by determination that was to be reviewed at hearing. However, dismissal of hearing request will be vacated if, within 60 days after date of dismissal, another person submits a written request for a hearing on claim and shows that he or she may be adversely affected by determination that was to be reviewed at hearing.</i></p>	<p>3.Third Party Appears on Behalf of Minor or Age 18 Claimant</p> <p>Occasionally, a claimant may fail to appear at hearing, but a parent or guardian who has not been appointed as a representative will appear at hearing on claimant's behalf. If an appointed representative is present, ALJ will proceed as noted in HALLEX I-2-4-25 D below.</p> <p>The ALJ will not proceed with hearing if:</p> <p>The claimant is age 18 or older, and</p> <p>The claim is an initial application for adult disability benefits or based on continuation thereof.</p> <p>If hearing cannot proceed, next appropriate action depends on whether claimant returned acknowledgement of hearing form. See HALLEX I-2-3-20 C. If claimant responded and indicated he or she would appear at hearing, ALJ may dismiss request for hearing. If claimant was not person who responded to acknowledgement of hearing form, or acknowledgement form was not returned, see procedures noted in I-2-4-25 C below.</p> <p>The term “good cause” refers to a reasonable explanation for failing to comply with a requirement. When determining whether good cause exists for failure to appear, ALJ must base decision on circumstances of each individual case. In doing so, ALJ must consider any physical, mental, educational, or linguistic limitations that may have prevented claimant from appearing at scheduled time and place of hearing, akin to requirements for consideration of good cause for late filing in 20 CFR 404.911, 416.1411, 405.20, and Social Security Ruling 91-5p.</p> <p>1.Circumstances That Generally Establish Good Cause</p> <p>There are no set criteria for determining what constitutes good cause for failure to appear at time and place of a scheduled hearing. However, good cause generally exists in any one of following three circumstances.</p> <p>Good cause for failure to appear at scheduled time and place of hearing generally exists <u>when claimant did not receive proper notification of scheduled hearing.</u></p> <p>Before dismissing an RH for failure to appear, ALJ must determine whether there is evidence in record that shows claimant was properly notified of time and place set for hearing, as described in HALLEX I-2-3-20 C. ALJ will consider following:</p> <p>If claimant has an appointed representative, notification to representative is sufficient to establish notification to claimant.</p>	

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	<p>If follow up contact was made by telephone, ALJ must ensure proper documentation is in file, as noted in HALLEX I-2-3-20 C.</p> <p>If claimant alleges he or she reported a new address to another agency component such as field office or teleservice center but notice of hearing was sent to an outdated address, ALJ will review queries noted in HALLEX I-2-3-15 B and carefully consider allegation.</p> <p>If record does not show there was proper notification of scheduled hearing, ALJ must reschedule hearing and provide proper notification of rescheduled hearing.</p> <p>If claimant or appointed representative received proper notification and neither appears at time of scheduled hearing,</p> <p>Good cause for failing to appear at scheduled time and place of hearing generally exists when an <u>unforeseeable event occurred that did not provide claimant or appointed representative enough time to notify ALJ and request a postponement before scheduled hearing.</u></p> <p>Good cause for failure to appear at scheduled time and place of hearing generally exists when appointed representative:  <u>Withdrew representation shortly before scheduled hearing (approximately a week or less before scheduled hearing), or appeared at hearing and withdrew as representative, and</u>  <u>There is no indication in record that claimant was aware representative would not be appearing at hearing on his or her behalf.</u>  In this circumstance, ALJ must develop for good cause.</p> <p>To develop good cause, HO will:</p> <p>Send a Form HA-L90, Request To Show Cause For Failure To Appear, to claimant and appointed representative, if any;</p> <p>Give claimant and appointed representative 10 days from date of Form HA-L90 to respond; and</p> <p>Provide an additional 5 days for mailing time before proceeding.</p> <p>If neither claimant nor appointed representative, if any, appears at scheduled hearing, ALJ may dismiss RH without developing good cause in following</p>	

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	<p>circumstances.</p> <p><u>The ALJ need not develop good cause if record shows that claimant received Notice of Hearing and claimant does not have a physical, mental, educational, or linguistic limitation that may affect his or her ability to understand Notice of Hearing. If those criteria are met, ALJ can generally presume claimant fully understands possible consequences of his or her failure to appear at time and place of a scheduled hearing. Notice of Hearing notifies a claimant that RH may be dismissed without further notice if neither claimant nor appointed representative, if any, appears at scheduled hearing.</u></p> <p><u>It is unnecessary to develop good cause when:</u></p> <p><u>the claimant did not return acknowledgment form sent with Notice of Hearing.</u></p> <p>Any documentation generated to comply with regulatory procedures must be associated in B section of claim(s) folder and exhibited if ALJ issues a dismissal. Documentation may include copies of letters sent to claimant, reports of contact documenting telephone calls, and re-mailed copies of Notice of Hearing and acknowledgement form.</p> <p>If Notice of Hearing is returned to HO as undeliverable, all attempts to contact claimant by other means are unsuccessful, and it is concluded that claimant's whereabouts are unknown, ALJ may dismiss RH after:</p> <p>Verifying that address used on Notice of Hearing and any other contact correspondence is most recent address in CPMS and on PCOM system queries.</p> <p>Ensuring that all attempts to contact claimant are clearly documented in B section of claim(s) folder and documentation is exhibited. For example, any envelopes returned by post office as undeliverable must be associated with claim(s) folder, as well as any statements made by individuals regarding absence or disappearance of claimant.</p> <p>An ALJ may not dismiss RH until after time scheduled for hearing because claimant may learn of scheduled hearing in another way and appear. If claimant does not appear at scheduled hearing, ALJ may dismiss RH but must describe all efforts to contact claimant in dismissal order.</p>	

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	<p><u>In some cases, an appointed representative will appear at time and place of scheduled hearing but will withdraw as representative if claimant does not appear. If claimant did not appear at hearing but notified HO that he or she is aware representative was going to withdraw, ALJ may dismiss RH.</u> However, if HO did not receive notification from claimant indicating he or she was aware representative was going to withdraw at hearing, ALJ must develop good cause for failure to appear.</p> <p>If claimant alleges he or she did not appear at hearing because claimant believed representative was appearing on his or her behalf, or claimant otherwise indicates he or she wants to proceed with hearing, ALJ will generally find good cause for failure to appear, and ALJ will reschedule hearing. However, if claimant does not respond to Form HA-L90, ALJ may dismiss RH.</p> <p><u>If an appointed representative appears at scheduled hearing without claimant and continues to represent claimant during hearing, dismissal is never appropriate.</u> However, ALJ may determine that claimant has constructively waived right to appear at hearing if:</p> <p>The representative is unable to locate claimant;</p> <p>The Notice of Hearing was mailed to claimant's last known address; and</p> <p>If ALJ finds that claimant has constructively waived right to appear at hearing, ALJ need not proceed with hearing and may choose to issue a decision on record. However, if medical expert or vocational expert testimony is needed to resolve case, ALJ may choose to proceed with hearing, accepting testimony of witness(es) and allowing appointed representative to question witness(es) and make arguments on claimant's behalf.</p> <p>In any event, ALJ will advise appointed representative, either on record during hearing or in writing thereafter, that he or she will not send a Request to Show Cause for Failure to Appear to claimant because claimant has constructively waived right to appear at hearing. When done in writing, ALJ must associate writing with record.</p> <p>If ALJ finds that claimant has not constructively waived right to appear at hearing, ALJ may choose to proceed with hearing, accepting testimony of witness(es) and allowing appointed representative to question witness(es) and make arguments on claimant's behalf. ALJ will advise appointed</p>	

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	<p>representative that a Request to Show Cause for Failure to Appear will be sent to claimant to ask why he or she did not appear at scheduled hearing and whether a supplemental hearing should be held. After 10-day comment period expires (with an additional five days for mailing time), ALJ will either:</p> <p>Determine that claimant has constructively waived his or her right to appear for a hearing (if claimant fails to respond to Request to Show Cause for Failure to Appear or fails to show good cause for failure to appear at scheduled hearing), and issue a decision based on evidence of record; or</p> <p>Offer claimant a supplemental hearing to provide testimony if claimant establishes good cause for failure to appear at scheduled hearing.</p>	
<p><b>Rule 31 Continuances</b></p> <p><u>Continuances will only be granted in cases of prior judicial commitments or undue hardship, or a showing of other good cause.</u></p> <p><u>Except for good cause shown, requests for continuances must be filed within seven (7) days prior to date set for hearing.</u></p> <p><u>Motions for continuances are in writing. ALJ–Copies shall be served on all parties.</u> Any motions for continuances made within 7 days of date of scheduled proceeding shall, in addition to written request, be telephonically conveyed to ALJ or a member of his or her staff and to all other parties.</p> <p>Time permitting, ALJ shall issue a written order in advance of scheduled proceeding date, which either allows or denies request. Otherwise ruling may be made orally by telephonic communication to party requesting it.</p>	<p><a href="http://www.ssa.gov/OP_Home/hallex/I-02/I-2-6-80.html">I-2-6-80.Continued or Supplemental Hearing</a> <a href="http://www.ssa.gov/OP_Home/hallex/I-02/I-2-6-80.html">http://www.ssa.gov/OP_Home/hallex/I-02/I-2-6-80.html</a></p> <p><u>Circumstances may require an ALJ to adjourn a hearing in progress and continue it at a later date, conduct a supplemental hearing, or reopen record to receive additional evidence.</u> If testimony at a hearing leaves unanswered questions, ALJ may supplement hearing record with additional oral testimony, a deposition, or additional documentary evidence.</p> <p>A continuance or supplemental hearing is appropriate when:</p> <p><u>certain testimony or a document adduced at hearing has taken claimant by surprise, is adverse to claimant's interest, and presents evidence that claimant could not reasonably have anticipated and to which claimant is not prepared to respond;</u></p> <p><u>ALJ believes additional testimony regarding a new issue is appropriate;</u></p> <p><u>ALJ discovers during hearing that testimony of a person, who is absent, is needed and person may be available at a later date;</u></p> <p><u>the claimant or ALJ wishes to present evidence, but cannot present it by document, affidavit, or deposition without diminishing its probative value because of absence of opportunity for detailed examination or cross-examination of witness;</u></p> <p><u>an order of remand directs ALJ to hold a supplemental hearing</u></p> <p><u>a request is made to cross-examination of author or provider of post-hearing evidence is requested.</u></p> <p>If ALJ decides during course of a hearing to continue hearing and hold a</p>	<p>-Proposed rules and existing rules seem to have a different idea what “continuances” are. In proposed rules it seems to just mean to change date of a hearing. In existing HALLEX regulations it means supplemental hearing.</p> <p>-Comparing existing regulations on changing date of a hearing to proposed rule 31 on continuances, differences are: proposed rule is a hard rule of “must be” filed 7 days prior to hearing date. In existing rules it is “earliest possible opportunity”</p> <p>-Proposed rules says that motion for continuances “shall be” in writing whereas in existing rules request “if at all possible” be in writing.</p> <p>-Proposed rules says that copies of motion will be served to all parties, whereas</p>

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	<p>supplemental hearing at a later date, ALJ may set date for supplemental hearing at that time or state that he or she will notify claimant later of date of supplemental hearing. Rules governing conduct of initial hearing apply to continued or supplemental hearing. If an ALJ decides to conduct a supplemental hearing, he or she must reopen record.</p> <p><b>404.936 / 416.1436</b>  <a href="http://www.socialsecurity.gov/OP_Home/cfr20/404/404-0936.htm">http://www.socialsecurity.gov/OP_Home/cfr20/404/404-0936.htm</a>  <a href="http://ssa.gov/OP_Home/cfr20/416/416-1436.htm">http://ssa.gov/OP_Home/cfr20/416/416-1436.htm</a></p> <p>If you object to time or place of your hearing, <u>you must notify us at earliest possible opportunity before time set for hearing. You must state reason for your objection and state time and place you want hearing to be held. <b>If at all possible</b>, request should be in writing.</u> We will change time or place of hearing if ALJ finds you have good cause.</p>	<p>existing rules do not mention this.</p>
<p><b>Rule 32 Prehearing conferences</b></p> <p>Upon motion of a party or upon ALJ's own motion, <u>judge may direct parties or their counsel to participate in a conference at any reasonable time, prior to or during course of hearing</u>, when ALJ finds that proceeding would <u>be expedited by a prehearing conference</u>. Such conferences normally shall be conducted by conference telephonic communication unless, in opinion of ALJ, such method would be impractical, or when such conferences can be conducted in a more expeditious or effective manner by correspondence or personal appearance. Reasonable notice of time, place and manner of conference shall be given.</p> <p><u>(2) At conference, following matters shall be considered: (i) simplification or amendment of issues; (ii) possibility of obtaining stipulations of facts and of authenticity and accuracy of documents which will avoid unnecessary proof; (iii) limitation of number of expert or other witnesses; (iv) submit copies of proposed exhibits; (v) identification of documents or matters of which official notice may be requested; (vi) A schedule to be followed by party or parties for</u></p>	<p><b>§ 404.961 / 416.1461</b>  <a href="http://www.socialsecurity.gov/OP_Home/cfr20/404/404-0961.htm">http://www.socialsecurity.gov/OP_Home/cfr20/404/404-0961.htm</a>  <a href="http://www.ssa.gov/OP_Home/cfr20/416/416-1461.htm">http://www.ssa.gov/OP_Home/cfr20/416/416-1461.htm</a></p> <p><b>ehearing and posthearing conferences.</b></p> <p>The ALJ may decide on his or her own, or at request of any party to hearing, to hold a prehearing or posthearing conference to facilitate hearing or hearing decision. <u>ALJ shall tell parties of time, place and purpose of conference at least seven days before conference date</u>, unless parties have indicated in writing that they do not wish to receive a written notice of conference. At conference, ALJ may consider matters in addition to those stated in notice, if parties consent in writing. <u>A record of conference will be made. ALJ shall issue an order stating all agreements and actions resulting from conference. If parties do not object, agreements and actions become part of hearing record and are binding on all parties.</u></p> <p>404.941 / 416.1441  <a href="http://www.socialsecurity.gov/OP_Home/cfr20/404/404-0941.htm">http://www.socialsecurity.gov/OP_Home/cfr20/404/404-0941.htm</a>  <a href="http://www.ssa.gov/OP_Home/cfr20/416/416-1441.htm">http://www.ssa.gov/OP_Home/cfr20/416/416-1441.htm</a></p> <p>After a hearing is requested but before it is held, we may, for purposes of a prehearing case review, forward case to component of our office (including</p>	<p>-Very different.</p> <p>-Proposed rules are saying if proceeding would be "expedited" by a prehearing conference he or she will motion for one.</p> <p>-Existing rules say that record of conference will be made whereas proposed rules say "IF directed by ALJ a record of prehearing conference shall be made".</p> <p>-Proposed rule also says that following matters will be considered including "the possibility of obtaining stipulations of facts". Current regulations don't allow stipulating.</p> <p>-The existing rules gives a very specific amount of time</p>

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<p><u>completion of actions decided at conference; and (vii) Such other matters as may expedite and aid in disposition of proceeding.</u></p> <p><u>If directed by ALJ a record of prehearing conference shall be made.</u></p> <p><u>Actions taken as a result of conference shall be reduced to a written order, unless ALJ elects to make a statement on record at hearing summarizing actions taken.</u></p> <p><u>If, after written notice given to a party at last address of record, party fails, without good cause, to appear, in addition to any order contemplated by subparagraph (c) above, ALJ may dismiss request for hearing.</u></p>	<p>a State agency) that issued determination being reviewed. That component will decide whether it should revise determination based on preponderance of evidence. A revised determination may be fully or partially favorable to you. A prehearing case review will not delay scheduling of a hearing unless you agree to continue review and delay hearing. If prehearing case review is not completed before date of hearing, case will be sent to ALJ unless a favorable revised determination is in process or you and other parties to hearing agree in writing to delay hearing until review is completed.</p> <p><u>We may conduct a prehearing case review if—</u></p> <p><u>(1) Additional evidence is submitted;</u></p> <p><u>(2) There is an indication that additional evidence is available;</u></p> <p><u>(3) There is a change in law or regulation; or</u></p> <p><u>(4) There is an error in file or some other indication that prior determination may be revised.</u></p> <p><u>I-2-1-75.Prehearing Conference</u>  <a href="http://www.socialsecurity.gov/OP_Home/hallex/I-02/I-2-1-75.html">http://www.socialsecurity.gov/OP_Home/hallex/I-02/I-2-1-75.html</a></p> <p><u>An ALJ may decide on his or her own authority, or at request of any party to hearing (see Hearings, Appeals and Litigation Law (HALLEX) manual I-2-1-45), to hold a prehearing conference (PHC) to facilitate hearing or hearing decision.</u></p> <p>If a case has not yet been assigned to an ALJ, Hearing Office Chief ALJ (HOCALJ) will select an authorized designee to conduct PHC. If HOCALJ assigns an authorized designee to conduct PHCs, hearing office management will assign cases to authorized designees in rotation as much as possible, similar to rotational assignment of cases to ALJs.</p> <p>If a case has already been assigned to an ALJ, ALJ may either conduct PHC or ask HOCALJ to assign next in rotation authorized designee to conduct PHC. If an ALJ asks for assistance of an authorized designee, ALJ must provide authorized designee with specific instructions regarding purpose of PHC.</p> <p><u>Generally, there is no authority for an ALJ to dismiss a request for hearing based solely on a claimant's failure to attend a PHC.</u> However, an ALJ may dismiss request for hearing if ALJ schedules a PHC where he or she will conduct proceeding and:</p> <p>The ALJ notified claimant and appointed representative (if any) in PHC notice that he or she may dismiss request for hearing if neither claimant nor appointed representative appears at PHC and neither claimant nor</p>	<p>of at least 7 days before conference date there will be a notice. proposed rule just states “the judge may direct parties or their counsel to participate in a conference at any reasonable time prior to or during course of hearing”</p>

ALJ Proposed Rules (summarized)	Existing Rules and Regulations (summarized)	Differences / Notes
	<p>appointed representative (if any) appears at PHC; or</p> <p>Neither claimant nor appointed representative (if any) appears at PHC, ALJ requests in writing that claimant show a good reason for failing to appear, and within 10 days of notice, claimant does not give a good reason for failing to appear.</p> <p><b>B.Purpose</b></p> <p>The purpose of a PHC is generally to:</p> <p><u>Advise an unrepresented claimant of his or her right to representation;</u></p> <p><u>Explain hearing process to claimant;</u></p> <p><u>Develop case record; or</u></p> <p><u>Obtain information necessary to determine next appropriate action or to come to agreement on an issue.</u></p> <p><b>C.Scheduling PHC</b></p> <p>Depending on circumstances involved, and after consulting with hearing office management, ALJ or authorized designee will decide whether to conduct PHC in person, by video teleconferencing, or by telephone. Using appropriate templates in Document Generation System, ALJ or authorized designee <u>will notify claimant of time, place, and purpose of PHC in writing at least 7 days before PHC date</u>, unless all parties have indicated in writing that they waive right to written notice of PHC. ALJ or authorized designee will ensure this writing is associated with record, and will note date and time of PHC in a Remark in Case Processing and Management System (CPMS).</p> <p>Depending on purpose of PHC, ALJ or authorized designee will send all necessary forms and information to claimant with PHC notice. Generally, when claimant is not scheduled to appear at PHC in person and claimant is unrepresented, necessary forms and information will include following:</p> <p>An encrypted compact disc (CD) of claim(s) file and instructions on opening CD;</p> <p>The “Your Right to Representation” pamphlet (SSA Publication No. 05-10075);</p> <p>A list of representative referral services and legal service organizations;</p> <p>Form HA-4631, Claimant's Recent Medical Treatment;</p> <p>Form HA-4632, Claimant's Medications;</p> <p>Form HA-4633, Claimant's Work Background;</p>	

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	<p>Form SSA-1696, Appointment of Representative; and</p> <p>Form SSA-827, Authorization to Disclose Information to Social Security Administration (if needed, i.e., previously obtained SSA-827s are or soon will be more than 12 month old).</p> <p><b>D.Conducting PHC</b></p> <p><u>Each PHC must be recorded using Digital Recording Acquisition Project equipment, and ALJ or authorized designee must ensure recording becomes part of record.</u></p> <p>If an authorized designee who is not assigned to adjudicate case conducts a PHC, authorized designee must not discuss merits of claimant's case, likelihood of benefits being awarded or denied, or strength of claimant's case. authorized designee must neither encourage nor discourage representation, pursuant to Social Security Administration (SSA)</p> <p>Generally, a PHC will begin with an opening statement that provides following information:</p> <p>An introduction by ALJ or authorized designee;</p> <p>An explanation that PHC will be recorded (and why);</p> <p>Verification of claimant's contact information;</p> <p>A brief statement explaining how PHC will be conducted, objectives of PHC, and what will be discussed; and</p> <p>If claimant appears to be unrepresented, verification that claimant is unrepresented and an explanation of right to representation.</p> <p>Depending on purpose of PHC, ALJ or authorized designee may need to provide or obtain following information during PHC:</p> <p><u>A brief discussion of hearing process, what to expect at a hearing, and what happens next;</u></p> <p><u>A brief explanation of what is needed for a finding of disability;</u></p> <p><u>A discussion of claim(s) file and need to update claimant's medical treatment records, which may include obtaining a new HA-4631, HA-4632, or SSA-827. (See HALLEX I-2-5-14 A for more information about obtaining an SSA-827);</u></p> <p><u>A discussion of any recent work or school activity, importance of notifying SSA if claimant works or returns to school, and need to complete an HA-4633 to record any new work activity; or</u></p>	

ALJ Proposed Rules (summarized)	Existing Rules and Regulations (summarized)	Differences / Notes
	<p><u>A discussion of particular issue for which ALJ requested a PHC.</u></p> <p>The ALJ or authorized designee will provide claimant an opportunity to ask any questions he or she may have, but will avoid answering any questions that are outside scope of PHC. Unless a party to hearing objects, an ALJ who conducts a PHC may issue an order on record during PHC, reiterating all agreements and actions resulting from PHC. If an ALJ conducted PHC and ALJ agreed to take certain actions or issue an order after PHC, ALJ must explain that he or she will exhibit any orders or agreements after PHC and make information a part of record. Following PHC, ALJ will follow procedures. Any agreed to issues or actions are binding on all parties.</p> <p><b>E.After PHC</b></p> <p>After PHC, ALJ or authorized designee will complete a form SSA-5002, Report of Contact, to document claimant's name and PHC date, and to summarize actions taken at PHC. If an ALJ conducted PHC and ALJ agreed to take certain actions or issue an order, <u>ALJ must summarize actions to be taken in writing and proffer writing to claimant and representative, if any. Any agreed to issues or actions are binding on all parties.</u></p> <p>The ALJ or authorized designee will also add a Remark in CPMS documenting PHC and whether claimant attended PHC.</p>	
<p><b>Rule 50 Authority of ALJ</b></p> <p>(a) General powers. In any proceeding under this part, <u>ALJ shall have all powers necessary to conduct of fair and impartial hearings</u>, including, following: (1) Conduct formal hearings in accordance with provisions of this part; (2) Administer oaths and examine witnesses; (3) <u>Compel production of documents and appearance of witnesses in control of parties</u>; (4) Compel appearance of witnesses by issuance of subpoenas as authorized by statute or law; (5) Issue decisions and orders; (6) Take any action authorized by Administrative Procedure Act; (7) Exercise, for purpose of hearing and in regulating conduct of proceeding, such powers vested in Commissioner of Social Security Administration as are necessary and appropriate therefor; (8) Where applicable, take any appropriate action authorized by Rules of Civil Procedure for United States District Courts, issued from time to time and amended pursuant to 28 U.S.C.</p>	<p><b>404.944 / 416.1444</b></p> <p><a href="http://www.ssa.gov/OP_Home/cfr20/404/404-0944.htm">http://www.ssa.gov/OP_Home/cfr20/404/404-0944.htm</a>  <a href="http://www.ssa.gov/OP_Home/cfr20/416/416-1444.htm">http://www.ssa.gov/OP_Home/cfr20/416/416-1444.htm</a></p> <p><u>A hearing is open to parties and to other persons ALJ considers necessary and proper. At hearing, ALJ looks fully into issues, questions you and other witnesses, and accepts as evidence any documents that are material to issues. ALJ may stop hearing temporarily and continue it at a later date if he or she believes that there is material evidence missing at hearing.</u> ALJ may also reopen hearing at any time before he or she mails a notice of decision in order to receive new and material evidence. ALJ may decide when evidence will be presented and when issues will be discussed.</p> <p><b>404.937 / 416.147</b></p> <p><a href="http://www.socialsecurity.gov/OP_Home/cfr20/404/404-0937.htm">http://www.socialsecurity.gov/OP_Home/cfr20/404/404-0937.htm</a>  <a href="http://www.ssa.gov/OP_Home/cfr20/416/416-1437.htm">http://www.ssa.gov/OP_Home/cfr20/416/416-1437.htm</a></p>	

ALJ Proposed Rules (summarized)	Existing Rules and Regulations (summarized)	Differences / Notes
<p>2072; and (9) Do all other things necessary to enable him or her to discharge duties of office.</p> <p>(b) Enforcement. <u>If any person in proceedings before an ALJ disobeys or resists any lawful order or process, or misbehaves during a hearing or so near place thereof</u> as to obstruct same, or neglects to produce, after having been ordered to do so, any pertinent book, paper or document, or refuses to appear after having been subpoenaed, or upon appearing refuses to take oath as a witness, or after having taken oath refuses to be examined according to law, ALJ responsible for adjudication, where authorized by statute or law, may certify facts to Federal District Court having jurisdiction in place in which he or she is sitting to request appropriate remedies.</p>	<p>(b)(1) At request of any hearing office employee, <u>Hearing Office Chief ALJ will determine, after consultation with presiding ALJ, whether a claimant or other individual poses a reasonable threat to safety of our employees or other participants in hearing.</u> Hearing Office Chief ALJ will find that a claimant or other individual poses a threat to safety of our employees or other participants in hearing when he or she determines that individual has made a threat and there is a reasonable likelihood that claimant or other individual could act on threat or when evidence suggests that a claimant or other individual poses a threat. In making a finding under this paragraph, Hearing Office Chief ALJ will consider all relevant evidence, including any information we have in claimant's record and any information we have regarding claimant's or other individual's past conduct.</p> <p>(2) If Hearing Office Chief ALJ determines that claimant or other individual poses a reasonable threat to safety of our employees or other participants in hearing, Hearing Office Chief ALJ will either:</p> <ul style="list-style-type: none"> <li>(i) Require presence of a security guard at hearing; or</li> <li>(ii) Require that hearing be conducted by video teleconference or by telephone.</li> </ul> <p>(c) If we have banned a claimant from any of our facilities, we will provide claimant with opportunity for a hearing that will be conducted by telephone.</p> <p>(d) actions of Hearing Office Chief ALJ taken under this section are final and not subject to further review.</p> <p><a href="http://ssa.gov/OP_Home/hallex/1-02/1-2-0-5.html">I-2-0-5.Hearing Office Chief ALJ, ALJ and Hearing Office Staff Responsibilities</a></p> <p><b>A.Hearing Office Chief ALJ (HOCALJ) Responsibilities</b></p> <p>In addition to hearing and deciding cases, Hearing Office Chief ALJ (HOCALJ), under delegation from Chief ALJ, has authority to assign cases to ALJs. HOCALJ has administrative and managerial responsibility for all personnel in hearing office (HO) and provides overall guidance and direction regarding adherence to time and attendance procedures; staffing, space, equipment and expert witness needs; rotational assignment of cases and review of work products; application of performance standards and appraisals; and approval of travel vouchers, itineraries and expenditures. HOCALJ provides advice and guidance to ALJs regarding interpretation of applicable law, regulations, rulings and judicial precedents. HOCALJ participates in investigations, in coordination with Regional Chief ALJ, into</p>	

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	<p>allegations of misconduct on part of any employee, including ALJs, ensures compliance with principles of equal employment opportunity and OHA's Affirmative Employment Plan, and conducts labor management functions consistent with collective bargaining agreements. HOCALJ ensures timely and accurate response to public and congressional inquiries; performs liaison functions between HO and various federal and local government agencies, including bar associations, medical and vocational rehabilitation associations; and conducts periodic training.</p> <p><b>B.ALJ (ALJ) Responsibilities</b></p> <p>When a case is assigned to an ALJ for a hearing and decision, ALJ is responsible for all actions necessary to process case. ALJ's principal responsibilities are to hold a full and fair hearing and issue a legally sufficient and defensible decision.</p>	
<p><b>Rule 52 Disqualification</b></p> <p>(a) When an ALJ deems himself or herself disqualified to preside in a particular proceeding, such judge shall withdraw therefrom by notice on record directed to Chief ALJ.</p> <p><b>(b)</b> Whenever any party shall deem ALJ for any reason to be disqualified to preside, or to continue to preside, in a particular proceeding, that party shall file with ALJ a motion to recuse. <u>motion shall be supported by an affidavit setting forth alleged grounds for disqualification. ALJ shall rule upon motion.</u></p> <p>(c) In event of disqualification or recusal of an ALJ as provided in paragraph (a) or (b) of this section, <u>Chief ALJ shall refer matter to another ALJ for further proceedings.</u></p>	<p><b>404.940 / 416.1440</b></p> <p><a href="http://www.socialsecurity.gov/OP_Home/cfr20/404/404-0940.htm">http://www.socialsecurity.gov/OP_Home/cfr20/404/404-0940.htm</a>  <a href="http://www.ssa.gov/OP_Home/cfr20/416/416-1440.htm">http://www.ssa.gov/OP_Home/cfr20/416/416-1440.htm</a></p> <p>An ALJ shall not conduct a hearing if he or she is prejudiced or partial with respect to any party or has any interest in matter pending for decision. If you object to ALJ who will conduct hearing, you must notify ALJ at your earliest opportunity. ALJ shall consider your objections and shall decide whether to proceed with hearing or withdraw. If he or she withdraws, Associate Commissioner for Hearings and Appeals, or his or her delegate, will appoint another ALJ to conduct hearing. If ALJ does not withdraw, you may, after hearing, present your objections to Appeals Council as reasons why hearing decision should be revised or a new hearing held before another ALJ.</p> <p><b>1-2-1-60.Disqualification of an ALJ Assigned to a Case</b></p> <p>An ALJ must disqualify or recuse himself or herself from adjudicating a case if ALJ is prejudiced or partial with respect to any party or has any interest in matter pending for decision.</p> <p>However, disqualification is not a matter of personal preference or reluctance to handle a particular case. An ALJ must have reasonable and proper grounds for disqualifying himself or herself. For example, an ALJ may withdraw from case if:</p>	<p>-In existing rules a claimant only needs to just notify ALJ. For proposed rules, a claimant will need to get a affidavit.</p> <p>-In both cases ALJ will make decision to step down from case.</p> <p>-In existing rules Associate Commissioner for Hearings and Appeals will appoint another ALJ. In proposed rules Chief ALJ will refer matter to another ALJ.</p> <p>-HALLEX has very specific regulations on steps after an ALJ has removed himself from a case – such as notices to claimant etc as opposed to proposed rules.</p>

ALJ Proposed Rules (summarized)	Existing Rules and Regulations (summarized)	Differences / Notes
	<p>The ALJ shares an acquaintance with, but does not know, claimant or any other party;</p> <p>The ALJ has particular knowledge about claimant or any other party from an extrajudicial source; or</p> <p>The ALJ believes his or her participation in case would give an appearance of impropriety.</p> <p><b>B.ALJ Voluntarily Disqualified</b></p> <p>1.If ALJ disqualifies himself or herself from a case on his or her own initiative, and hearing office has not sent notice of hearing to claimant, ALJ need not send notice of disqualification to claimant.</p> <p>2.If hearing office has sent notice of hearing to claimant and ALJ is later disqualified, claimant must be notified of disqualification. This notice requirement applies regardless of whether disqualification is before, during, or after a hearing. ALJ is not required to provide claimant with specific reason(s) for disqualification, but may voluntarily choose to do so.</p> <p>If ALJ knows before hearing of a reason for disqualification, ALJ must disqualify himself or herself before date of hearing. If ALJ disqualifies himself or herself either as a result of an objection received from a claimant, or on his or her own initiative after notice of hearing is sent to claimant, ALJ must notify claimant of disqualification in writing, informing claimant that:</p> <p>The date set for hearing has been cancelled (if cancellation is necessary); and</p> <p>The claimant will receive an amended notice of hearing when another ALJ is assigned to conduct hearing.</p> <p>Under some circumstances, an ALJ may not be aware of need to disqualify himself or herself until time of hearing.</p> <p>If ALJ needs to disqualify himself or herself at hearing, ALJ's oral statement on record is sufficient notice to claimant. After verbal notice of disqualification, ALJ will inform claimant that another ALJ will be assigned to case and hearing will be rescheduled.</p> <p>If reason for disqualification comes to ALJ's attention after a hearing, ALJ will notify claimant of disqualification in writing and associate writing with record. writing must inform claimant that:</p>	

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	<p>The ALJ is disqualifying himself or herself;            Another ALJ will be assigned to decide case;            The newly assigned ALJ will determine whether a supplemental hearing is necessary and will provide notice to claimant if another hearing is needed;            and            The newly assigned ALJ will issue decision in case.</p> <p>If a claimant objects to ALJ assigned to his or her case, he or she must do so at earliest opportunity. ALJ will consider objection and determine whether to proceed or withdraw.</p> <p>If ALJ decides disqualification is appropriate, procedures in Hearings, Appeals and Litigation Law (HALLEX) manual I-2-1-60 B above apply.</p> <p>If ALJ decides before hearing that claimant's reasons for objecting do not warrant disqualification, ALJ will set forth reasons in writing and reiterate his or her decision in opening statement at hearing.</p> <p>If claimant objects at hearing, and ALJ refuses at hearing to disqualify himself or herself, ALJ will set forth reasons for his or her decision on record during hearing.</p> <p>If claimant objects after hearing, and ALJ decides that claimant's reasons for objecting do not warrant disqualification, ALJ will set forth reasons for his or her decision in jurisdiction and procedural history section of decision.</p>	
<p><b>Rule 55 Official notice</b>            Official notice may be taken of any material fact, not appearing in evidence in record, which is among traditional matters of judicial notice: Provided, however, that parties shall be given adequate notice, at hearing or by reference in ALJ's decision, of matters so noticed, and shall be given adequate opportunity to show contrary.</p>		
<p><b>Rule 56 In camera orders and limitation of evidence</b>            Upon application of any party ALJ <u>may limit introduction of evidence or issue such protective or other orders as in his or her judgment may be</u></p>	<p><b>HALLEX I-2-5-28</b>            If an ALJ receives new evidence before hearing from a source other than claimant or representative, if any, and ALJ proposes to enter evidence into record as an exhibit, ALJ must give claimant or representative an opportunity</p>	<p>-Proposed rules gives power to ALJ to limit evidence when they want.            -Existing rules there is no</p>

ALJ Proposed Rules (summarized)	Existing Rules and Regulations (summarized)	Differences / Notes
<p><u>consistent</u> with objective of protecting privileged communications, or to prevent undue and unreasonable annoyance, embarrassment, or oppression</p>	<p>to review evidence before hearing.</p> <p><u>If new evidence indicates that claimant has a serious illness of which claimant and treating source may not be aware, ALJ will exercise appropriate discretion to avoid adversely affecting claimant's medical situation</u>, while proceeding with actions necessary to protect claimant's right to due process.</p> <p><u>If an ALJ receives new evidence after hearing from a source other than claimant or representative, if any, and ALJ proposes to enter evidence into record as an exhibit, ALJ will follow procedures</u></p>	<p>limiting.</p>
<p><b>Rule 57 Exhibits</b></p> <p>All exhibits offered in evidence shall be consecutively numbered, lettered, or both.</p> <p>Each exhibit shall concern only one source or medical provider. Pages of each exhibit shall be consecutively numbered. If exhibit is duplicated, it shall be properly authenticated and legible. <u>If exhibit is in handwriting, it shall be legible or shall be typewritten so that it is legible.</u> If it is a medical exhibit, it shall be clear from exhibit which medical provider prepared it, and it shall be clearly identified as pertaining to a treating physician, if that is case.</p> <p>(c) Substitution of copies for original exhibits. ALJ may permit a party to withdraw original documents offered in evidence and substitute true copies in lieu thereof.</p> <p><b>Rule 59 Designation of parts of documents</b> such document is in such bulk or extent as would necessarily encumber record, such document will not be received in evidence, but may be marked for identification, and if properly authenticated, relevant and material parts thereof may be read into record, or if ALJ so directs, a true copy of such matter in proper form shall be received in evidence as an exhibit.</p>	<p><b>HALLEX I-2-5-22</b></p> <p>Prepare a medical exhibits folder for each consultative examiner as follows: Use a letter-size folder. On front of folder, write or type claimant's name and Social Security number, and type of CE requested.</p> <p>Make legible copies of material and relevant evidence identified by ALJ as related to type of examination ordered along with most recently completed disability report form. Material that is not relevant to type of examination ordered should not be included.</p> <p>(d)(2) By "complete medical history," we mean records of your medical source(s) covering at least 12 months preceding month in which you file your application. If you say that your disability began less than 12 months before you filed your application, we will develop your complete medical history beginning with month you say your disability began unless we have reason to believe your disability began earlier. If applicable, we will develop your complete medical history for 12-month period prior to (1) month you were last insured for disability insurance benefits (see § 404.130), (2) month ending 7-year period you may have to establish your disability and you are applying for widow's or widower's benefits based on disability or (3) month you attain age 22 and you are applying for child's benefits based on disability</p>	<p>-Both HALLEX and proposed rules ask that material that is relevant but included in a packet of material that is irrelevant to case can be separated and turned in as evidence.</p> <p>Proposed rules specifies that if exhibit is handwritten it needs to be legible or typewritten so it becomes legible. Is this feasible with things such as doctor's notes?</p>

ALJ Proposed Rules (summarized)	Existing Rules and Regulations (summarized)	Differences / Notes
<p>Copies shall be delivered by participant offering same to other parties or their representatives appearing at hearing, who shall be afforded an opportunity to examine entire document and to offer in evidence in like manner other material and relevant portions thereof.</p>		
<p><b>Rule 60 Stipulations and Representations</b>  Parties, or their representatives on their behalf, may by stipulation, or representation, in writing at any stage of proceeding, or orally made at hearing, agree upon any pertinent facts in proceeding. It is desirable that facts be thus agreed upon so far as and whenever practicable. Stipulations, or representations may be received in evidence at a hearing or prior thereto, and when received in evidence, shall be binding on parties thereto. Motions to amend onset dates, closed periods or other changes to allegations contained in original application(s) and any other representation made by claimant or designated representative on behalf of claimant, shall be binding on claimant.</p>		<p>-There is no "stipulations" in current regulations.</p>
<p><b>Rule 61 Hearings, Access by Public</b>  Hearings shall be open to public. However, in unusual circumstances, ALJ may order a hearing or any part thereof closed, where to do so would be in best interests of parties, a witness, public or other affected persons. Any order closing hearing shall set forth reasons for decision. Any objections thereto shall be made a part of record.</p>		<p>-There is no current public access to disability hearings.</p>
<p><b>Rule 81 Closing Proceeding</b>  (a) When there is a hearing, record shall be closed at conclusion of hearing unless ALJ directs otherwise. Before conclusion of hearing any party may petition ALJ for permission to submit evidence after closing of record. Such evidence shall be admitted into record in</p>		

ALJ Proposed Rules (summarized)	Existing Rules and Regulations (summarized)	Differences / Notes
<p>discretion of ALJ upon a showing that such evidence is new and material and could not have been reasonably submitted at or before conclusion of hearing.</p>		
<p><b>Rule 82 Reopening Proceeding</b>  <u>After a decision has been issued, a party may submit additional evidence only by filing a petition to reopen a decision pursuant to [Title 20] sections 404.987 and 416.1587 and following sections.</u></p>	<p><b>404.987 / 416.1587</b>  <a href="http://www.ssa.gov/OP_Home/cfr20/404/404-0987.htm">http://www.ssa.gov/OP_Home/cfr20/404/404-0987.htm</a>  <a href="http://ssa.gov/OP_Home/cfr20/416/416-1487.htm">http://ssa.gov/OP_Home/cfr20/416/416-1487.htm</a></p> <p>Generally, if you are dissatisfied with a determination or decision made in administrative review process, but do not request further review within stated time period, you lose your right to further review and that determination or decision becomes final. However, a determination or a decision made in your case which is otherwise final and binding may be reopened and revised by us.</p> <p>We may reopen a final determination or decision on our own initiative, or you may ask that a final determination or a decision to which you were a party be reopened. In either instance, if we reopen determination or decision, we may revise that determination or decision. Conditions under which we may reopen a previous determination or decision, either on our own initiative or at your request.</p> <p><b>§ 404.989. / 416.1489</b>  <a href="http://www.socialsecurity.gov/OP_Home/cfr20/404/404-0989.htm">http://www.socialsecurity.gov/OP_Home/cfr20/404/404-0989.htm</a></p> <p><a href="http://www.ssa.gov/OP_Home/cfr20/416/416-1489.htm">http://www.ssa.gov/OP_Home/cfr20/416/416-1489.htm</a>  <b>Good cause for reopening.</b></p> <p>(a) <u>We will find that there is good cause to reopen a determination or decision if—</u></p> <p>(1) <u>New and material evidence is furnished;</u>  (2) A clerical error in computation or recomputation of benefits was made;  or  (3) evidence that was considered in making determination or decision clearly shows on its face that an error was made.</p> <p>(b) We will not find good cause to reopen your case if only reason for reopening is a change of legal interpretation or administrative ruling upon which determination or decision was made.</p>	<p>-The difference between two is that with proposed rule a claimant needs to file a petition, with existing regulation a claimant is only responsible for turning in new and material evidence.</p> <p>-HALLEX goes in to detail on jurisdiction of ALJ on reopening a proceeding.</p>

ALJ Proposed Rules (summarized)	Existing Rules and Regulations (summarized)	Differences / Notes
	<p>I-2-9-10.ALJ's Jurisdiction to Reopen and Revise a Determination or Decision</p> <p><a href="http://www.ssa.gov/OP_Home/hallex/I-02/I-2-9-10.html">http://www.ssa.gov/OP_Home/hallex/I-02/I-2-9-10.html</a></p> <p>An ALJ, on his or her own initiative, has jurisdiction to consider issue of reopening and revising any prior final determination or ALJ decision under any of following circumstances:</p> <ul style="list-style-type: none"> <li>• The claimant did not file a request for review by Appeals Council;</li> <li>• The Appeals Council did not review prior ALJ decision and issue an Appeals Council decision either on its own motion or after granting claimant's request for review;</li> <li>• The claimant filed a request for review and Appeals Council dismissed request for a reason other than death of claimant; or</li> <li>• The claimant filed a request for review, Appeals Council denied request, and 60-day period for filing a civil action has expired.</li> </ul> <p>If additional evidence is received in connection with a request for reopening, and Appeals Council has jurisdiction to consider reopening issue, forward evidence to:</p> <p>Office of Appellate Operations  Disability Program Branch _____ [enter branch number] (or Retirement, Survivors Insurance and SSI Branch)  5107 Leesburg Pike  Falls Church, VA 22041-3255</p> <p>If additional evidence is received in connection with a request for reopening, and neither ALJ nor Appeals Council have jurisdiction because a civil action is pending before a court, forward evidence to:</p> <p>Office of Appellate Operations  Court Case Preparation and Review Branch ____ [enter branch number]  5107 Leesburg Pike  Falls Church, VA 22041-3200</p> <ul style="list-style-type: none"> <li>• The current case before ALJ does not involve an application for benefits but involves some other issue, such as a post-entitlement or post-eligibility issue.</li> <li>• The Appeals Council or another Social Security Administration component refers a final ALJ decision to an ALJ for consideration of issue of reopening and revision of an ALJ decision.</li> </ul>	

ALJ Proposed Rules (summarized)	Existing Rules and Regulations (summarized)	Differences / Notes
	<p>An ALJ does not have jurisdiction to reopen an Appeals Council decision. Therefore, if an ALJ believes that evidence submitted in connection with a current application establishes that claimant was under a disability during a period previously adjudicated by an Appeals Council decision on a prior application, ALJ must take following actions:</p> <p>If time limit on reopening has expired and reopening is no longer possible: Issue a decision finding claimant disabled as of whatever date evidence establishes, but find entitlement based only on current application.</p> <p>If claimant explicitly requested reopening, explain in decision why reopening is not possible. If claimant did not explicitly request reopening, reopening by Appeals Council is barred by regulations and no useful purpose would be served by addressing reopening issue in decision on current claim.</p> <p>If time limit on reopening has not expired: Issue a decision finding claimant disabled as of day after date of Appeals Council decision, and find entitlement based on current application only. State in decision that Appeals Council decision on prior application is final and binding.</p> <p>On transmittal to effectuating component, state that Appeals Council has jurisdiction to consider issue of reopening its decision on prior application, and ask effectuating component to forward claim file to Appeals Council when they complete their action.</p> <p>Send a memorandum to Executive Director, OAO, Suite 1400, Skyline Tower, 5107 Leesburg Pike, Falls Church, VA 22041 requesting Appeals Council to consider issue of reopening its decision on prior application. Attach copies of ALJ decision and transmittal.</p>	
<p><b>Rule 84 Decision of ALJ</b> The decision of ALJ shall be based upon whole record of proceeding. It shall be supported by reliable and probative evidence. Such decision shall be in accordance with regulations and rulings of statute or regulation conferring jurisdiction.</p>	<p><b>404.953 / 416.153</b> <a href="http://www.socialsecurity.gov/OP_Home/cfr20/404/404-0953.htm">http://www.socialsecurity.gov/OP_Home/cfr20/404/404-0953.htm</a> <a href="http://www.ssa.gov/OP_Home/cfr20/416/416-1453.htm">http://www.ssa.gov/OP_Home/cfr20/416/416-1453.htm</a></p> <p>ALJ shall issue a written decision that gives findings of fact and reasons for decision. ALJ must base decision on preponderance of evidence offered at hearing or otherwise included in record. ALJ shall mail a copy of decision to all parties at their last known address. Appeals Council may also receive a copy of decision.</p> <p>ALJ may enter a fully favorable oral decision based on preponderance of</p>	<p>-Established regulations are much more comprehensive</p>

ALJ Proposed Rules (summarized)	Existing Rules and Regulations (summarized)	Differences / Notes
	<p>evidence into record of hearing proceedings. If ALJ enters a fully favorable oral decision into record of hearing proceedings, ALJ may issue a written decision that incorporates oral decision by reference. ALJ may use this procedure only in those categories of cases that we identify in advance. ALJ may only use this procedure in those cases where ALJ determines that no changes are required in findings of fact or reasons for decision as stated at hearing. If a fully favorable decision is entered into record at hearing, ALJ will also include in record, as an exhibit entered into record at hearing, a document that sets forth key data, findings of fact, and narrative rationale for decision. If decision incorporates by reference findings and reasons stated in an oral decision at hearing, parties shall also be provided, upon written request, a record of oral decision.</p> <p>Although an ALJ will usually make a decision, ALJ may send case to Appeals Council with a recommended decision based on a preponderance of evidence when appropriate. ALJ will mail a copy of recommended decision to parties at their last known addresses and send recommended decision to Appeals Council.</p>	
<p><b>Rule 85 Appeals</b></p> <p>The procedures for appeals shall be as provided by statute or regulation under which hearing jurisdiction is conferred. If no provision is made therefor, decision of ALJ shall become final administrative decision of Commissioner.</p>	<p>Hallex 1-2-9-1 <a href="#">20 CFR §§ 404.987- 404.989 and 416.1487- 416.1489</a></p> <p><a href="http://www.ssa.gov/OP_Home/hallex/I-02/I-2-9-1.html">http://www.ssa.gov/OP_Home/hallex/I-02/I-2-9-1.html</a></p> <p>“Claimant,” as used herein, refers to party to initial, reconsidered, or revised determination who has requested a hearing before an ALJ, and any other party to determination, or person whose rights may be adversely affected by a hearing decision.</p> <p>A determination or decision made at any step of administrative review process becomes final and binding if claimant does not appeal timely <i>and</i>, in case of an ALJ decision, Appeals Council does not decide to review decision on its own motion under section <a href="#">404.969</a> or <a href="#">416.1469</a>. If a claimant timely appeals an ALJ decision (i.e., requests review by Appeals Council), ALJ decision will become final and binding if Appeals Council denies request for review and:</p> <ul style="list-style-type: none"> <li>the claimant does not timely file a civil action, or</li> <li>the claimant timely files a civil action and a court affirms ALJ decision.</li> </ul> <p>Generally, if Appeals Council grants a claimant's request for review of an ALJ decision, or reviews an ALJ decision on its own motion, Appeals Council will vacate ALJ decision and either remand case to an ALJ for further action, including a new hearing and decision, or issue an Appeals Council decision.</p>	<p>-HALLEX regulations are more detailed than proposed rules on appeals.</p>

ALJ Proposed Rules (summarized)	Existing Rules and Regulations (summarized)	Differences / Notes
	<p>Appeals Council's decision will become final and binding if:  the claimant does not timely file a civil action, or  the claimant timely files a civil action and a court affirms Appeals Council's decision.</p> <p><u>A claimant may explicitly request an ALJ to reopen and revise a final determination or ALJ decision, or may submit additional evidence or information which implies that claimant is requesting reopening and revision of such determination or decision.</u> An ALJ may grant or deny a claimant's request to reopen and revise a final determination or ALJ decision. ALJ may also decide on his or her own motion to reopen and revise a prior determination or decision.</p> <p>If an ALJ has jurisdiction to reopen and revise a determination or decision and conditions for reopening are met, ALJ must reopen determination or decision.</p>	

## **NEW SUMMER ASSOCIATES, STAFF AND DETIALEES**

### **Carlie Augustin - Summer Associate 2015**



Carlie Augustin was born in Cap-Haitien, Haiti. At a young age, she moved to Gaithersburg, Maryland with her mother Anne Augustin, who was very supportive and encouraging. She is a student at Trinity Washington University, referred to the board from her professor, Barbara Kennelly.

Carlie is a Political Science major with a minor in Philosophy, with an expected graduation date of December 2015. She would like to pursue a career in Law keeping in mind that her long-term goal is to become a judge. She first realized she wished to study law while reading a newspaper on her way to school, when it suddenly appeared to her that every article was somehow related to the law.

Carlie interned for John F Settles' campaign, he was running for DC Council At-Large. She attended the DC Leadership Development Council in 2014, it's a leadership program that prepare ethical, knowledgeable citizens who may be interested in civic affairs and who want to learn more about the operation of the DC government and its laws and policies She is interested in working on retirement benefits solutions during her time at SSAB. There are many things she would like to gain out of her experience here at SSAB, such as testing the skills she developed in college to see how they work in the real world, networking opportunities, and mentorship.

Carlie will be working on ALJ Hiring research and assisting with turning our paper filing system into an electronic system.

### **Teron Gorham – SSA Detailee 2015**



Teron Gorham joined the Advisory Board in May 2015 for a four-month detail from SSA. Teron has been with SSA since 2006. She was hired as a Development Support Examiner in the Office of Disability Operations, a component of Operation, Office of Central Operations (OCO), where she performed a variety of technical and clerical duties related to Title II and TXVI inquiries, such as overpayment/underpayment accounting, work notices, disability cessations, and annual reporting. She was promoted to Management Analyst in the Center for Human Resources, OCO, where she processed payroll,

personnel actions, and prepared travel orders. Teron also worked as Staff Assistant to several Associate Commissioners, OCO, where she gained extensive knowledge of Operations' structure and procedures. She is currently in the Office of International Operations, OCO, where she serves as a Division Analyst in the Office of Earnings and International Operations. In this position, she coordinates employee training and assists front office staff with various projects.

During her detail with SSAB, Teron will be providing administrative support to the Board staff and assisting with administrative projects and employee training.

### **Tony Marealle - Summer Associate 2015**



Tony Marealle attended Northern Virginia Community College, majoring in Marketing, with a minor in Business Administration. Obtaining interest in networking, technology and the broad effects of social media in today's society, has given him the ability to set goal on building and creating toward the future.

Before working with the Social Security Advisory Board, Tony has volunteered with programs such as the Janice M. Scott 9/11 Memorial Foundation, the Capitol REACH Program and other programs focused on direct help to others.

Entering SSAB with very little knowledge on how social security works, as well as how it impacts everyday people, presented unique challenges. Given the opportunity at hand with such great people and growing opportunities over at SSAB, Tony is set to embark on what is ahead.

Tony is assisting with administrative workloads and preparing information folders about SSAB projects for Congressional Outreach.

### **Caitlyn Tateishi - Policy Analyst 2015**



Caitlyn Tateishi joined SSAB in late April 2015. She is from Hawaii and graduated from Pacific University in Forest Grove, Oregon with a bachelor's degree in History. After graduation, she spent three years teaching English in Fukuoka, Japan to Elementary and Junior High School students with the Japan Exchange and Teaching (JET) Program. Upon completing her JET Program contract, Caitlyn moved to Zambia to become

a Rural Education Development volunteer with the Peace Corps. Her service focused on HIV/AIDS education, girl empowerment and teaching English at her local school.

Caitlyn moved to D.C. in November and first worked at the Embassy of Japan processing applications for the JET Program and then as a temporary Program Assistant for the Hispanic Association of Colleges and Universities National Internship Program. She is excited for the opportunity to research, write and learn more about Social Security issues and to assist the SSAB office in any way.

Caitlyn will be working on the SSAB History paper, international issues with Social Security and administrative support to the Staff Director.

**March 2015**  
**Agency Tracking Report**  
*(50.0% through FY 2015, 4 Week Operating Month)*

*FYTD Status	Performance Measures	Month of March 2015	FYTD 2015	**FY 2015 Target	Percent of Target	Charts and Sparklines by Month for Rolling 13 Months
<b>AGENCY PRIORITY GOALS</b>						
	<b>Online Services - Total Online Transactions</b> Baseline: 70,768,624 as of FY 2014, Target = 10% Increase	7,401,626	44,965,845	77,845,486	57.8%	<p style="text-align: center;"><b>Online Transactions by Month</b> Average Monthly Target of 6,487,124 for FY15</p>
	<b>Video Hearings Held</b> This is a portion of the Hearings - Hearings Held total. The Fiscal Year Target percentage is calculated in relationship to the Hearings Held.	12,289	75,844	30%		<p style="text-align: center;"><b>Video Hearings Held as a Percent of Hearings Held</b> Average Monthly Target of 30% for FY15</p>
		26.44%	27.24%			<p style="text-align: center;"><b>my Social Security Accounts Established by Month</b> Average Monthly Target of 588,242 for FY15</p>
	<b>my Social Security Accounts Established</b> Baseline: 6,138,178 as of FY 2014, Target = 15% Increase	613,889	3,548,374	7,058,905	50.3%	
	<b>SSI Improper Payments Combined Error Rate</b> FY 14 Overpayment Accuracy = 93.0%	8.5% (as of FY 2014)	N/A	≤ 6.2%	N/A	Sparkline Not Applicable
	<b>FY 14 Underpayment Accuracy = 98.5%</b>	7.0% (as of FY 2014)				
		1.5% (as of FY 2014)				

*FYTD Status	Performance Measures	Month of March 2015	FYTD 2015	**FY 2015 Target	Percent of Target	Charts and Sparklines by Month for Rolling 13 Months
<b>ONLINE SERVICES</b>						
	<b>Claims Filed Online</b>	292,665 53.6%	1,854,162 55.4%			
	<b>Retirement - Online Claims</b> % Online to Total	111,568 52.5%	728,105 54.3%			
	<b>Disability - Online Claims</b> % Online to Total	103,498 50.7%	654,953 53.1%			
	<b>Spouses - Online Claims</b> % Online to Total	11,659 27.7%	59,758 25.8%			
	<b>Medicare - Online Claims</b> % Online to Total	65,940 75.0%	411,346 76.6%			
	<b>Customer Satisfaction with Our Online Services</b>	84% (Oct 14-Dec 14)	84% (through Dec 14)	80%	N/A	
	Expand services under <i>my Social Security</i> with <b>SS# Replacement Card Application</b>	Complete development and begin testing of the online SS# Replacement Card Application				Milestone
<b>PROGRAM INTEGRITY</b>						
	<b>OASDI Improper Payments</b> Combined Error Rate	99.4% (for FY 2014)				Sparkline Not Applicable
	FY 14 <b>Overpayment</b> Accuracy = 99.5%	99.5% (for FY 2014)	N/A	≥ 99.8%	N/A	
	FY 14 <b>Underpayment</b> Accuracy = 99.9%	99.9% (for FY 2014)	N/A	≥ 99.8%	N/A	
	<b>SSI Non-Medical Redeterminations Completed</b> [Counts Include Scheduled, Unscheduled and Targeted (Limited Issue) Redets]	215,315	1,326,487	2,255,000	59%	
	<b>Full Medical CDRs Completed</b>	71,495	416,469	790,000	53%	
	<b>Periodic CDRs Completed</b>	138,293	887,724	1,890,000	47%	
	<b>Redesign Our Earnings System to Improve the Accuracy and Timeliness of Earnings Data Used to Calculate Benefits</b>	Implement the Redesigned Functionality to Process Forms W-2 within the Annual Wage Reporting System by 9/30/2015				Milestone
	<b>Enhance Our Security Features and Business Processes to Prevent and Detect Fraud</b> Baseline: FY13	Increase <i>my Social Security</i> Potential Fraud Referrals through Public Facing Integrity Review System to the Office of Operations by 10%				Milestone

*FYTD Status	Performance Measures	Month of March 2015	FYTD 2015	**FY 2015 Target	Percent of Target	Charts and Sparklines by Month for Rolling 13 Months
<b>FIELD OFFICE</b>						
	Initial DIB Claims <b>Receipts</b>	380,699	2,253,239			
	Initial DIB Claims <b>Completed</b>	360,714	2,273,453			
	Initial DIB Claims <b>Pending</b>	1,039,230	1,039,230			
	<b>Retirement, Survivors, and Medicare Claims Completed</b>	460,854	2,631,341	5,247,000	50.1%	
	<b>Social Security Numbers Completed</b>	1,313,965	7,935,507	16,000,000	49.6%	
	<b>Annual Earnings Items Completed</b>	124,684,765	179,672,963	257,000,000	69.9%	
	<b>Social Security Statements Issued</b> Target = Total of Public Requested and SSA Initiated Statements	3,626,006	19,563,563	44,000,000	44%	
		(Feb 15)	(thru Feb 15)			
	Minimize Average Response Time to <b>Deliver Medical Evidence to Dept. of Veterans Affairs (VA)</b>	Deliver Medical Evidence within an Average of 5 Business Days				Milestone
<b>DDS LEVEL</b>						
	Initial DIB Claims <b>Receipts</b>	222,721	1,330,810	2,755,000	48.3%	
	Initial DIB Claims <b>Completed</b>	208,691	1,306,728	2,767,000	47.2%	
	Initial DIB Claims <b>Pending</b>	646,227	646,227	621,000		
	<b>Average Processing Time</b> for Initial Disability Claims (Days)	119	115	109		
	Initial Disability Cases Identified as a <b>QDD/CAL</b>	7.1%	6.9%			
		15,228	87,333			
	Initial Level Disability Cases with <b>Health Information Technology Medical Evidence (HIT MER)</b>	12,536	69,350	6%	88.7%	
	Initial DIB <b>Net Allowance Accuracy</b> (Rolling Quarter)	99%	99%			
		(thru Dec)	(thru Dec)			
	Initial DIB <b>Net Denial Accuracy</b> (Rolling Quarter)	97%	97%			
		(thru Dec)	(thru Dec)			
	Initial DIB <b>Net Accuracy Rate</b> (Combined Allowances and Denials - Rolling Quarter)	97%	97%	97%	N/A	
		(thru Dec)	(thru Dec)			
	<b>Disability Determinations Production per Workyear (PPWY)</b>	320	295	313		
	Disability Determinations Reconsiderations <b>Receipts</b>	54,526	353,995			

*FYTD Status	Performance Measures	Month of March 2015	FYTD 2015	**FY 2015 Target	Percent of Target	Charts and Sparklines by Month for Rolling 13 Months
	Disability Determinations Reconsiderations <b>Completed</b>	60,739	358,054	739,000	48.5%	
	Disability Determinations Reconsiderations <b>Pending</b>	158,332	158,332	143,000		
	Reconsiderations <b>Processing Time</b>	85.7	85.1			
<b>HEARINGS</b>						
	<b>Receipts</b>	60,570	374,983	805,000	46.6%	
	<b>Completed</b>	55,571	321,820	727,000	44.3%	
	<b>Pending</b>	1,030,899	1,030,899	1,056,000		
	<b>ODAR Production per Workyear (PPWY) (Days)</b>	100	97	104		
	<b>Annual Growth of Backlog (Workyears)</b>			TBD		Milestone
	<b>Hearings Requests Pending over 270 Days</b>	49%	49%			
		501,203	501,203			
	<b>Annual Average Processing Time for Hearing Decisions (Days)</b>	477	454	470		
	<b>Hearings Held</b>	46,479	278,464			
	<b>Randomly Reviewed Cases Using an Inline Review Process</b> (The % is the # of QA reviews completed/decisions.)	2.7%	2.6%			
<b>APPEALS COUNCIL</b>						
	<b>Receipts</b>	12,893	70,221			
	<b>Completed</b>	13,424	74,244			
	<b>Pending</b>	146,360	146,360			
	<b>Case Production per Workyear (PPWY)</b>	266	247			
	<b>Review Appeals Council Requests Pending 365 Days or Older</b> (The % and # are cases pending less than 365 days.)	83%	83%	80%		
		121,880	121,880			
	<b>Average Processing Time for Appeals Council Requests for Review</b>	385	387			

*FYTD Status	Performance Measures	Month of March 2015	FYTD 2015	**FY 2015 Target	Percent of Target	Charts and Sparklines by Month for Rolling 13 Months
<b>800 NUMBER</b>						
	<b>Speed in Answering</b> National 800 Number Calls (in Minutes:Seconds)	08:34	12:20	11:40		
	<b>Busy Rate</b> for National 800 Number Calls	2.5%	12.4%	8%		
	800 Number <b>Calls Handled</b> (Agent + Self-service as per OTS as of FY2014 - Previously 800 Number Transactions)	3,413,496	18,140,851	38,000,000	48%	
<b>STAFFING</b>						
	<b>Teleworking Employees</b> *Indicates the change in the number of employees who telework. **Indicates the total number of employees who teleworked this month.	-7 *	9,288 **	16,400	57%	
	<b>New Hire - Veterans</b>	50.75%	45.52%	25.00%	N/A	
	<b>New Hire - Disabled Veterans</b>	26.12%	21.70%	17.50%	124.00%	
	<b>Workforce Population - Targeted Disabilities</b>		2.03%	2%	101.5%	
	<b>Improve Talent Management</b> to Strengthen the Competence of Our Workforce	Increase the Talent Management Index Score to 60%				Milestone
	Maintain Status as <b>One of the Top 10 Best Places to Work</b> among the Large Agencies in the Federal Government	Achieve a Top 10 Ranking				Milestone
	<b>Achieve Target Number of Human Capital Metrics</b> to Ensure Progress toward Building a Model Workforce	Achieve 75% of the Human Capital Metrics				Milestone

*FYTD Status	Performance Measures	Month of March 2015	FYTD 2015	**FY 2015 Target	Percent of Target	Charts and Sparklines by Month for Rolling 13 Months
<b>INFORMATION TECHNOLOGY SERVICES</b>						
	<b>Availability to Our Systems</b> During Scheduled Times of Operation	99.98%	99.98%	99.5%	100.5%	
	Upgrade the <b>Telecommunications Infrastructure</b>	Refresh 50% of Our Network Connection Devices by September 30, 2015				Milestone
	<b>Implement Innovative Systems Accessibility and Performance Capabilities</b>	Reduce Open Systems Infrastructure Size from 1,500 Servers to 1,000 Servers by September 2015				Milestone
	<b>Establish a Testing Lab</b> to Promote Research and Development of Innovative Technology Solutions	Conduct Three New Research Projects in Emerging Technologies by September 30, 2015				Milestone
	<b>Improve Cyber Security Performance</b>	Meet the Performance Requirements of the Dept. of Homeland Security's Federal Network Security Compliance and Assurance Program and the Cyber Security Cross-Agency Priority Goals				Milestone
<b>OTHER PERFORMANCE MEASURES</b>						
	Achieve the Targeted Number of <b>Disability Insurance and Supplemental Security Income Disability Beneficiaries with Tickets Assigned and in Use</b> , who Work above a Certain Level	N/A	N/A	50,000	N/A	Sparkline Not Available
	<b>Evaluate Our Physical Footprint</b>	Reduce Our Physical Footprint from Our FY 2012 Level by 1.86 Million Usable Square Feet				Milestone
<p>* A blue box in the FYTD Status column indicates the measure is a Key Budgeted Workload Measure.  ** FY 2015 Performance Measures shown.</p>						

# 2015

January 2015						
S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

February 2015						
S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28

March 2015						
S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

April 2015						
S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

May 2015						
S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

June 2015						
S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

July 2015						
S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

August 2015						
S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

September 2015						
S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

October 2015						
S	M	T	W	T	F	S
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

November 2015						
S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30					

December 2015						
S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

## Board Meeting Dates

January 8
February 23
April 24
May 29
June 19 - Tech Panel Meeting
June 23
July 28
August - Conference Call
September 25 - meeting with Tech Panel Presentation
October 23
November 20
December 11

## Board Trips

March 23-25 New York

## Notes:

February 24 - Field Trip to DDS

- Board Meeting Dates
- Board Trips
- Tech Panel Meeting
- Holiday

# **Single Decision Maker Authority - Needs a Decision**

**Social Security Advisory Board**

**Note:** A Microsoft word version of the document has been emailed to you, please leave the tracked changes and comments in the word document.

Social Security Advisory Board  
400 Virginia Avenue, SW Suite 625.  
Washington, D.C. 20024

## MEMORANDUM

To: Social Security Advisory Board  
Subject: Overview of the SSI Statement (SSI Simplification)  
Date: May 21, 2015

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The SSI Statement this year addresses the topic of simplification once again. This time, we have taken a more comprehensive, “holistic” approach to laying out the issues and possible solutions. We think that this is a way to ask the agency and Congress to take a broader view of the costs and benefits (and implications) of possible changes.

This is obviously a very lengthy document at this point. Here’s why:

- In part, that is because we included as footnotes all of the reference material, so that Board and staff reviewers will be able to go to the primary sources as needed. We will cull the citations for the final document. The same is true of background information on program rules.
- There are several areas with respect to which we can include a discussion and recommendation. In this draft, we included a wide range of issues that may be raised, so that the Board can make recommendations as to where you collectively want to focus the final document. The areas include the following:
  - Update asset limits and index for inflation
  - Update exclusions and index for inflation, or eliminate exclusions because they no longer serve their intended purpose
  - Eliminate In-Kind Support and Maintenance (ISM)
  - Change ISM rules [eliminate the Value of the One-Third Reduction (VTR) and Presumed Market Value (PMV) and use only one rule; eliminate some categories such as earmarked sharing and separate purchase and consumption]
  - Change the way married couples are treated and eliminate “holding out”
  - Change the way households are treated [e.g., do a pro rata reduction for each household member, married or not]
  - Change the way retirement plans are treated
  - Change the earned income offset to a different ratio than 2:1

After you have had an opportunity to review and discuss this paper, please let us know how you want us to proceed.

**SOCIAL SECURITY ADVISORY BOARD**  
**STATEMENT ON THE SUPPLEMENTAL**  
**SECURITY INCOME PROGRAM**

Public Law 104-193 requires that members of the Social Security Advisory Board be given an opportunity, either individually or jointly, to include their views in the Social Security Administration's annual report to the President and the Congress on the Supplemental Security Income (SSI) program.

We appreciate the opportunity to present our views on this important program, and we have asked the Social Security Administration to include the following statement of views in this year's annual report.

**VIEWS OF THE BOARD REGARDING THE SSI PROGRAM**

In presenting our views this year, we would like to comment on several aspects of the need for simplification of SSI's income and resources rules, particularly the rules pertaining to in-kind support and maintenance and to living arrangements. We have commented on this subject before, but the need for a comprehensive solution to the major problems presented by current policy remain, and so the topic merits revisiting.

Supplemental Security Income (SSI) is a federal program that replaces three previous means-tested financial support programs: Old Age Assistance, Aid to the Blind, and Aid to the Permanently and Totally Disabled.<sup>1</sup> Although these programs were federally subsidized, they were essentially state programs. Eligibility requirements and payment standards varied from state to state and while some States had very generous benefits, some did not. It became apparent that there was a need to standardize the economic assistance and economic security provided across the country. For this reason, the SSI program was created in 1972,<sup>2</sup> and became operational in January 1974. The new federal program, codified under title XVI of the Social Security Act,<sup>3</sup> was designed to provide a minimum level of financial support for those who are blind, disabled, or over 65 years of age and who demonstrate financial eligibility that is not met by other resources or programs.<sup>4</sup>

SSI is intended to be a fair, economical and efficient method of providing basic financial support for aged, blind or disabled individuals whose income and resources fall below certain levels and is intended as a last resort for these individuals when other resources are unavailable. The SSI program is intended to have eligibility requirements and payment standards that are uniform and based on objective criteria.<sup>5</sup>

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<sup>1</sup> 42 USC 1381-1383.

<sup>2</sup> See S.Rep. No. 92-1230, 92d Cong., 2d Sess., 383, 387 (1972).

<sup>3</sup> Title XVI of the Social Security Act, Public Law 92-603.

<sup>4</sup> 42 USC 1382(a).

<sup>5</sup> 2014 Annual Report of the SSI Program, [http://www.ssa.gov/oact/ssir/SSI14/III\\_ProgramDescription.html](http://www.ssa.gov/oact/ssir/SSI14/III_ProgramDescription.html).

At its inception, the SSI program established national eligibility criteria for resources: individuals were limited to less than \$1,500 in countable resources, and couples had to have less than \$2,250. Those amounts were increased gradually between 1985 and 1989 to \$2,000 for an individual and \$3,000 for a couple; they have not changed since 1989. Individuals whose resources exceed the limit by any amount generally are ineligible for benefits.

In 2015, the basic maximum monthly SSI payment (federal benefit rate or FBR) is \$733 for an individual and \$1100 for a couple.<sup>6</sup> SSA generally adjusts the individual and couple FBRs annually for inflation. Because SSI is intended to be a program of last resort, monthly payments are reduced if an eligible individual or couple has income or receives “in-kind support and maintenance” (ISM).<sup>7</sup> SSA has two rules for valuing ISM.<sup>8</sup> The Value of the One-Third Reduction (VTR) rule reduces the FBR by one-third if the individual is living in the household of a person who provides both food and shelter.<sup>9</sup> The Presumed Maximum Value (PMV) rule applies in all other situations in which the individual is receiving countable ISM.<sup>10</sup>

In addition, in determining an individual’s SSI eligibility and benefits amount, SSA exempts the first \$20 of unearned income (the “general income exclusion”) as well as the first \$65 of earnings (the “earned income exclusion”). Above those thresholds, each dollar of *unearned* income reduces the SSI monthly payment by one dollar; each dollar of *earned* income reduces the SSI monthly payment by 50 cents.<sup>11</sup> If there is no earned income, the total exclusion (\$85) is applied to unearned income.

SSI eligibility requirements seem as though they would be fairly straightforward: To qualify for SSI, a person must be blind, disabled, or at least 65 years old and must meet the income and resource eligibility requirements.<sup>12</sup> The determination of initial and continuing eligibility is not, however, a simple endeavor.

Two basic exclusions of income from “countable” income for SSI

Under the general income exclusion, the first \$20 per month of any income does not count against the monthly benefit. Under the earned income exclusion, the first \$65 of earnings in a month and half of the amount above \$65 does not count against the monthly benefit. These amounts were in the original legislation 35 years ago and have never been increased. If they had been indexed to inflation since the program began, the general exclusion would now be approximately \$87 and the earned income exclusion would be approximately \$284. If they had been indexed to reflect the increase in wages, using the Average Wage Index that Social Security uses in calculating initial retirement and disability insurance benefits, the general exclusion would now be about \$105, and the earned income exclusion would now be about \$342 (Social Security Advisory Board, 2008 Statement on the Supplemental Security Income Program).

<sup>6</sup> <http://www.ssa.gov/oact/cola/SSI.html>. In addition to the federal SSI payment, some states provide supplemental benefits to their residents. SSA, Annual Report of the Supplemental Security Income Program, Washington, DC: SSA (2014).

<sup>7</sup> 42 USC 1382a(a)(2)(A).

<sup>8</sup> ISM includes food, shelter, or anything someone can use to obtain them. 20 CFR 416.1102.

<sup>9</sup> The VTR is in lieu of determining the actual value of the support and maintenance. 20 CFR 416.1130(c).

<sup>10</sup> *Id.*; see also section 1612(a)(2)(A) of the Social Security Act.

<sup>11</sup> For children under 18 years of age, the financial eligibility requirements generally pertain to the parents, whose income from sources other than public assistance is partially deemed to the child. Before income is deemed to the child, certain exclusions are applied to account for needs of other family members.

<sup>12</sup> 20 CFR 416.1100.

The complexity of administering eligibility for SSI programs stems in part from the need to effectively, fairly and accurately determine an individual's "income" under current policy,<sup>13</sup> verify and document the income, and do this on an ongoing basis.<sup>14</sup> The same is true for initially determining - and then staying current with any changes in - an individual's resources and applicable exclusions from countable resources; the agency is required to evaluate an individual's income and assets in some detail.<sup>15</sup> To accurately determine the correct payment amount for a recipient of SSI, SSA claims representatives and service representatives attempt to determine income, resources and living arrangements as of the very first moment of each and every month, month-by-month and recipient-by-recipient.

While these policies are well-intentioned as a method to distribute means-tested benefits to those with the fewest resources, there is a consensus among policymakers and program administrators that current ISM policies are complex, intrusive, burdensome, sometimes inequitable, and create unintended and undesirable disincentives as well as being a major source of payment error year after year.<sup>16</sup> No other federal program counts in-kind support in determining benefit eligibility.<sup>17</sup>

When SSI was in its nascent stages as an alternative to the state-run welfare programs, President Nixon described that existing welfare system as a system that "breaks up homes," penalizes work," and "robs recipients of dignity."<sup>18</sup> As we will discuss, similar comments may be made to some extent with respect to SSI today. While it is clear that the program provides some income support for those who are in need and who meet the program's requirements, it is not so clear that the program meets its objectives of providing basic economic support fairly, equitably, effectively and efficiently. Thus, we again advocate that changes be made to update and

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<sup>13</sup> Income for SSI purposes (including ISM) generally includes anything an individual receives that can be used to obtain food or shelter. Shelter is broadly defined to include room, rent, mortgage payments, real property taxes, heating fuel, gas, electricity, water, sewer, and garbage collection services. Specifically, SSA counts these types of income: Money earned as a result of performing work ("earned income")(20 CFR 416.1110 - 416.1112); payments from sources such as Social Security, veterans benefits, a pension, alimony, or child support ("unearned income")(20 CFR 416.1120 - 416.1124); any type of no-cost or reduced-cost shelter or food benefits from a nongovernmental source ("in-kind" income)(20 CFR 416.1130 - 416.1157); part of the income earned by other people in the individual's household, a portion of which is assumed will benefit an individual or contribute to the individual's maintenance and care ("deemed" income)(20 CFR 416.1160 - 416.1169).

<sup>14</sup> 20 CFR 416.1102, *et seq.* While the general rule is to charge ISM to an individual when he or she receives it, there are many exceptions. Some exceptions result from statutory and regulatory exclusions; other exceptions result from situations in which the food or shelter received is not "income" according to SSA regulations.

<sup>15</sup> Social Security Act, section 1631(e), 42 USC 1383(e), 20 CFR 416.701, 416.708.

<sup>16</sup>See, e.g., Government Accountability Office, *Supplemental Security Income: Progress Made in Detecting and Recovering Overpayments, but Management Attention Should Continue*, Report No. GAO-02-849 (September 2002), <http://www.gao.gov/products/GAO-02-849>; Social Security Administration, *Simplifying the Supplemental Security Income Program: Challenges and Opportunities*, SSA Pub. No. 13-005, Office of Policy (2000); Richard Balkus, James Sears, Susan Wilschke, and Bernard Wixon, "Simplifying the Supplemental Security Income Program: Options for Eliminating the Counting of In-kind Support and Maintenance," *Social Security Bulletin*, Vol. 68, no. 4, 2008, 15-39. <http://www.ssa.gov/policy/docs/ssb/v68n4/v68n4p15.pdf>.

<sup>17</sup> Social Security Administration, *Income of the Aged Chartbook, 1998*. Washington, D.C.: SSA, Office of Research, Evaluation, and Statistics (2000), [http://www.ssa.gov/policy/docs/chartbooks/income\\_aged/2012/iac12.pdf](http://www.ssa.gov/policy/docs/chartbooks/income_aged/2012/iac12.pdf).

<sup>18</sup> Edward D. Berkowitz and Larry DeWitt, *The Other Welfare: Supplemental Security Income and U.S. Social Policy*, Cornell University Press, 2013, at p. 15.

simplify SSI income and resources policy. We recommend a comprehensive consideration of current SSI policy and options for simplification, together with the likely overall impact rather than piecemeal cost and benefit assessment.

## 1 CURRENT INCOME AND RESOURCE POLICIES TEND TO KEEP PEOPLE POOR

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By definition, those eligible for SSI payments are of limited means. However, the program's policies have the effect of considerably limiting any hope of stepping outside the bounds of poverty or eventually exiting the program and becoming economically self-sufficient. In addition, many experts in this field believe that certain ISM policies place some SSI recipients at an economic advantage, while other ISM policies may discourage families from assisting low-income relatives on SSI because such contributions can result in dollar-for-dollar reductions in recipient payment amounts.<sup>19</sup>

SSI began paying monthly benefits in 1974. In 1975, the FBR was \$157.70 for an individual and \$236.60 for a couple.<sup>20</sup> For 2015, the FBR is \$733 for an individual and \$1,100 for a couple,<sup>21</sup> with annual cost of living increases the same as for Social Security's Old-Age, Survivors, and Disability Insurance (OASDI) program.<sup>22</sup> Because the FBR is indexed, the benefit remains constant in real terms.<sup>23</sup> However, the asset limits and various income exclusions were fixed in nominal terms and hence declined in real terms by 25 percent from 1993 through 2002, and continue to do so. This increasingly stringent standard has presumably reduced the likelihood of finding an individual eligible to receive SSI and, for those who do qualify, created an increasingly lower likelihood of weathering a financial emergency or successfully transitioning to the work place.

Furthermore, those who receive SSI payments remain poor. In 2007, the FBR was 73 percent of the poverty threshold for an individual (i.e., 27% below the poverty threshold<sup>24</sup>) and 82 percent

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<sup>19</sup> Richard Balkus, James Sears, Susan Wilschke, and Bernard Wixon, "Simplifying the Supplemental Security Income Program: Options for Eliminating the Counting of In-kind Support and Maintenance," *Social Security Bulletin*, Vol. 68, no. 4, 2008, 15-39. <http://www.ssa.gov/policy/docs/ssb/v68n4/v68n4p15.pdf>.

<sup>20</sup> <http://www.ssa.gov/oact/cola/SSlamts.html>.

<sup>21</sup> <http://www.ssa.gov/oact/cola/SSI.html>

<sup>22</sup> <http://www.ssa.gov/oact/cola/SSlamts.html>.

<sup>23</sup> To the extent that the Consumer Price Index is biased upward, indexation has led to slight growth in the real value of the SSI payment. See Robert J. Gordon, "The Boskin Commission Report: A Retrospective One Decade Later," Working Paper No. 12311, Cambridge, MA: National Bureau of Economic Research, 2006, available at <http://www.nber.org/papers/w12311>. However, when compared with wage growth, SSI payments are losing economic ground.

<sup>24</sup> The United States uses an income-based poverty threshold that was devised in the early 1960s using data that set the poverty level at three times the annual cost of a basic food budget. The items in this basic-needs composite have remained essentially unchanged for more than 25 years, although the measure is adjusted annually for inflation. Howard Glennerster, *United States poverty studies and poverty measurement: The past twenty-five years*; (CASEpaper 42) Centre for Analysis of Social Exclusion, London School of Economics (2002), [http://eprints.lse.ac.uk/3907/1/US\\_poverty\\_studies\\_and\\_poverty\\_measurement.pdf](http://eprints.lse.ac.uk/3907/1/US_poverty_studies_and_poverty_measurement.pdf). The underlying assumption was that families spent one-third of their total budget on food. The federal poverty level is controversial in part because the formula for calculating the threshold has not changed despite the fact that housing, child care, and

of the poverty threshold for a couple (i.e., 18% below the poverty threshold);<sup>25</sup> for 2015, those percentages remain essentially unchanged.<sup>26</sup> However, most individuals and couples do not receive the maximum FBR due to various types of income offsets, including ISM.

According to SSA's 2014 SSI Annual Report,<sup>27</sup> in January 2014, 8.15 million individuals received monthly Federal SSI payments averaging \$516, although the FBR was \$721 in 2014; the average monthly payment was less than three-fourths of the ceiling. Census Bureau poverty thresholds in 2014 were \$12,316 for individuals under age 65 and \$11,354 for those 65 years of age and older. In comparison, the January 2014 SSI average payment figure would yield an annual amount of \$6,192 if the amount remained constant for the year. An otherwise eligible individual who received \$8,652 in countable unearned income (which includes ISM) in 2014 would become ineligible for SSI, yet would still be well below the poverty threshold.

More than two-fifths of SSI recipients live in families with incomes below the poverty threshold, even taking their benefits into account.<sup>28</sup> One analysis of the 2006 National Beneficiary Survey (NBS) contained an estimate that 70 percent of SSI recipients lived in poverty.<sup>29</sup> A more recent NBS-based study estimated that about 75 percent of those receiving SSI live in households

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health-care costs in the United States have far outpaced food-cost inflation. Today's families spend a smaller proportion of income on food and a greater proportion on housing, health care, and other necessities. Constance F. Citro & Robert T. Michael, eds., *Measuring poverty: A new approach*, National Research Council, Washington, DC: National Academy Press (1995); Kathryn Porter, Center on Budget and Policy Priorities, Proposed changes in the official measure of poverty (1999), <http://www.cbpp.org/archives/11-15-99wel.htm>. Further, the official poverty measure does not account for geographical differences and assumes that older Americans require less income than younger Americans, not accounting for out-of-pocket medical expenses, taxes, and work-related transportation and child care. The Supplemental Poverty Measure developed by the Census Bureau does account for these factors. Kathleen Short, U.S. Census Bureau, *The Research Supplemental Poverty Measure: 2012* (November 2013), <http://www.census.gov/prod/2013pubs/p60-247.pdf>. Poverty thresholds and poverty guidelines are available and are explained on the U.S. Census Bureau website at <http://www.census.gov/hhes/www/poverty/index.html>. Many agencies use a different measure of poverty, the Department of Health and Human Services Guidelines, <http://aspe.hhs.gov/poverty/index.cfm>.

<sup>25</sup> The Retirement Security Project, "Removing Barriers to Retirement Saving in Medicaid and Supplemental Security Income," No. 2008-3, September 2008, [http://www.brookings.edu/~media/Projects/retirementsecurity/10\\_removing\\_barriers.PDF](http://www.brookings.edu/~media/Projects/retirementsecurity/10_removing_barriers.PDF).

<sup>26</sup> Poverty thresholds, based on U.S. Department of Health and Human Services Guidelines for 2015 are \$11,770 for an individual and \$15,930 for two persons.

<sup>27</sup> Available at <http://www.ssa.gov/oact/ssir/SSI14/ssi2014.pdf>.

<sup>28</sup> See Eileen P. Sweeney and Shawn Fremstad, *Supplemental Security Income: Supporting People with Disabilities and the Elderly Poor*, Center on Budget and Policy Priorities, August 17, 2005, <http://www.cbpp.org/files/7-19-05imm.pdf>. See also, Michelle Stegman Bailey and Jeffrey Hemmeter, *Characteristics of Noninstitutionalized DI and SSI Program Participants, 2010 Update*, Social Security Administration Office of Retirement and Disability Policy, Research and Statistics Note 2014-02, February 2014, Table 13, <http://www.ssa.gov/policy/docs/rsnotes/rsn2014-02.html>.

<sup>29</sup> Gina Livermore, David Stapleton and Allison Roche, *Work Activity and Use of Employment Supports Under the Original Ticket to Work Regulations: Characteristics, Employment, and Sources of Support Among Working-Age SSI and DI Beneficiaries* (report submitted by Mathematica Policy Research, Inc. to the Social Security Administration, April 2009) [http://www.ssa.gov/disabilityresearch/documents/TTW5\\_2\\_BeneChar.pdf](http://www.ssa.gov/disabilityresearch/documents/TTW5_2_BeneChar.pdf).

below the federal poverty threshold.<sup>30</sup> Why do SSI recipients remain so poor? We will use the following two especially vulnerable groups to illustrate.

### 1.1 WOMEN ON SSI ARE PARTICULARLY CAUGHT BETWEEN POLICY AND REALITY.

Release of the Census Bureau's official poverty figures for 2012 and 2013, revealed that poverty rates for women remained historically high - and substantially above poverty rates for men.<sup>31</sup> For both of these years, more than one of every seven women, 14.5 percent, lived in poverty.<sup>32</sup> The poverty rate for women age 65 and older increased from 11.0 percent in 2012 to 11.6 percent in 2013, a statistically significant change. Poor families with a female householder (\$9,742) experienced a larger average income deficit than did married-couple families (\$8,660).<sup>33</sup>

What about women in the work force – isn't that making a difference? Since the 1960s, women have increasingly participated in the labor market, and have received higher earnings than in the past. However, those increases have stagnated. Women's labor force participation peaked in 1999, leveled off, then declined in the wake of the recession.<sup>34</sup> The gender wage gap narrowed during the years after 1963 - and then stopped.<sup>35</sup> In 2014, the typical woman working full-time, year-round, earned 77 cents for every dollar earned by her male counterpart – about the same as a decade ago.<sup>36</sup> Full-time, year-round work at the federal minimum wage leaves a family of three well below the poverty line, and women are two-thirds of minimum-wage workers.<sup>37</sup>

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<sup>30</sup> Gina Livermore and Maura Bardos, Mathematica Policy Research, "Why Are Some SSDI-Only Beneficiaries Poor? Insights From the National Beneficiary Survey, paper presented at the 2<sup>nd</sup> Annual Meeting of the Disability Policy Research Consortium, Washington, DC, October 30-31, 2014, <http://www.nber.org/aging/drc/10312014drcmeeting/5.3summary.pdf>.

<sup>31</sup> For adult men in 2013, the rate was 11.0 percent. National Women's Law Center, *NWLC Analysis of 2013 Poverty Data*, <http://www.nwlc.org/print/nwlc-analysis-2013-censis-poverty-data>. For men in 2012, the rate was 6.6 percent. "Income Security and The Elderly: Securing Gains Made in the War on Poverty," Testimony of Joan Entmacher, Vice President for Family Economic Security, National Women's Law Center, Before the Senate Special Committee on Aging, March 5, 2014, [http://www.aging.senate.gov/hearings/income-security-and-the-elderly\\_securing-gains-made-in-the-war-on-poverty](http://www.aging.senate.gov/hearings/income-security-and-the-elderly_securing-gains-made-in-the-war-on-poverty). See also, National Women's Law Center, *Insecure and Unequal: Poverty among Women and Families 2000-2012* (September 2013), [http://www.nwlc.org/sites/default/files/pdfs/final\\_2013\\_nwlc\\_poverty\\_report.pdf](http://www.nwlc.org/sites/default/files/pdfs/final_2013_nwlc_poverty_report.pdf).

<sup>32</sup> Lauren Frolich, National Women's Law Center, *5 Public Programs that Lift Millions of Women and Children Out of Poverty*, published on the National Women's Law Center website at <http://www.nwlc.org>; *NWLC Analysis of 2013 Poverty Data*, *supra*, Note 30.

<sup>33</sup> The average income deficit of families with a male householder was not statistically different from the average income deficit for all families and from the average income deficit for married-couple families. citation

<sup>34</sup> U. S. Bureau of Labor Statistics, BLS Reports, *Women in the Labor Force: A Databook* (February 2013), <http://www.bls.gov/cps/wlf-databook-2012.pdf>.

<sup>35</sup> National Women's Law Center, *50 Years and Counting: The Unfinished Business of Achieving Fair Pay 1-2* (June 2013), [http://www.nwlc.org/sites/default/files/pdfs/final\\_nwlc\\_equal\\_pay\\_report.pdf](http://www.nwlc.org/sites/default/files/pdfs/final_nwlc_equal_pay_report.pdf).

<sup>36</sup> National Women's Law Center, *The Wage Gap is Stagnant in the Last Decade* (September 2013), [http://www.nwlc.org/sites/default/files/pdfs/wage\\_gap\\_is\\_stagnant\\_2013\\_2.pdf](http://www.nwlc.org/sites/default/files/pdfs/wage_gap_is_stagnant_2013_2.pdf). See also Katherine Gallagher Robbins and Julie Vogtman, *Cutting Programs for Low-Income People Especially Hurts Women and Their Families* (2015), [http://www.nwlc.org/sites/default/files/pdfs/lowincomefact\\_sheet\\_february2015.pdf](http://www.nwlc.org/sites/default/files/pdfs/lowincomefact_sheet_february2015.pdf).

<sup>37</sup> Julie Vogtman and Katherine Gallagher Robbins, National Women's Law Center, *Fair Pay for Women Requires Raising the Minimum Wage and the Tipped Minimum Wage* (2014), [http://www.nwlc.org/sites/default/files/pdfs/fair\\_pay\\_for\\_women\\_requires\\_increasing\\_the\\_minimum\\_wage\\_and\\_tipped\\_minimum\\_wage\\_october\\_2014.pdf](http://www.nwlc.org/sites/default/files/pdfs/fair_pay_for_women_requires_increasing_the_minimum_wage_and_tipped_minimum_wage_october_2014.pdf).

Many low-wage workers can find only part-time work, and many have children for whom child care expenses consume a large part of the working parent’s earnings. Since the 1970s, the percentage of family with children headed by a single mother has increased, and the burden of being both caregiver and breadwinner on a woman’s smaller paycheck leaves single mothers not only currently poor, but also with little ability to save. Divorce, single parenthood, and widowhood all have a particularly detrimental impact on women’s economic security, including eligibility for and amount of Social Security Old Age, Survivors, and Disability Insurance (OASDI).<sup>38</sup> For example, the percentage of women who have never married or who are divorced is increasing. Consequently, a smaller share of women in the future will be eligible for inheritance, pension, or OASDI benefits as a spouse or widow, losing this additional means of augmenting a woman’s lower worker benefits.<sup>39</sup> Thus, women disproportionately rely on public programs, including SSI, to help with child care, health care, and meeting basic needs.<sup>40</sup>

To the extent that women receive support from any source other than SSI, the SSI rules require that most of that support will decrease the monthly SSI payment. The ISM rules mean that any food, shelter, utility payments, or financial assistance received by a woman on SSI would reduce her monthly SSI payment (and thus the support not only for herself, but for any children in the household) dollar-for-dollar. However, depending on the source or nature of the support, the financial outcome for an SSI recipient can change significantly.

To give an example of the problems the ISM rules create, consider two single mothers, each living in her own household:

<p>If one mother receives meals from a neighbor or private charity, those meals would be considered ISM and their value (above the applicable exclusion) must be determined and deducted from the mother’s SSI payment.</p>	<p>If the second mother received food stamps from a government agency, her SSI payment would not be reduced. Foods stamps do not reduce SSI payments, but food does.</p>
<p>If the first mother - regularly or sporadically - received help paying utility bills from a friend or family member, that assistance would be ISM that would reduce her SSI payment.</p>	<p>If the second mother received reimbursement from a social services agency for food or utilities payments, that reimbursement is not counted.<sup>41</sup></p>

<sup>38</sup> National Economic Council Interagency Working Group on Social Security, *Women and Retirement Security*, Social Security Administration, <http://www.ssa.gov/history/reports/women.html> (women have lower lifetime earnings).

<sup>39</sup> U.S. Government Accountability Office, GAO-14-33, *Retirement Security: Trends in Marriage and Work Patterns May Increase Economic Vulnerability for Some Retirees* (January 2014), <http://www.gao.gov/products/GAO-14-33>.

<sup>40</sup> Katherine Gallagher Robbins and Julie Vogtman, *supra*, Note 35.

<sup>41</sup> 42 USC 1382a(a), (b). For example, in addition to the earned and unearned income exclusions of \$65 and \$20, respectively, SSA does not count one-half of monthly wages (earned income) over \$65 (20 CFR 416.1124, 416.1112); impairment-related work expenses for the disabled or blind (20 CFR 416.976, 416.1112); the first \$30 of infrequent or irregularly received earned income and the first \$60 of infrequent or irregularly received unearned income per quarter (20 CFR 416.1112, 416.1124); medical care (20 CFR 416.1103); reimbursement of expenses from a social services agency (20 CFR 416.1103); food stamps (20 CFR 416.1124); housing or home energy assistance (20 CFR 416.1124, 416.1142, 416.1157); income specifically excluded from consideration by Federal law,

If the first mother received a discount on rent below fair market value, her SSI payment would be reduced.	If the second mother received temporary housing because her former home was damaged, that would not be counted.
RESULT: Multiple reductions	RESULT: No reductions
If either mother received diapers or clothing, that would not be considered ISM and would not impact the SSI payment.	

Women also are disproportionately affected by changes in retirement savings plans and related SSI eligibility rules. The replacement of defined benefit pensions with defined contribution plans and IRAs not only affects the retirement security of all workers, it disproportionately affects women. While defined benefit pensions generally provide spouses to a right of survivorship annuity under the Retirement Equity Act of 1984, few spousal rights apply to defined contribution plans or IRAs.<sup>42</sup> In addition, SSI's asset test treats individuals differently depending on the form of their retirement savings.<sup>43</sup>

Elderly women are particularly at risk.<sup>44</sup> More than two out of three of elderly poor individuals are women<sup>45</sup> and over two-thirds of SSI recipients aged 65 and older are women.<sup>46</sup> Factors contributing to higher poverty among elderly women include lower lifetime earnings,<sup>47</sup> the

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(20 CFR 416.1124, 416.1150); food or shelter during a temporary absence (20 CFR 416.1129); replacement of a lost, damaged or stolen resource, including temporary housing( 20 CFR 416.1151); receipts from a credit life or credit disability policy (20 CFR 416.1103). There are several dozen additional specific exclusions.

<sup>42</sup> Joan Entmacher and Amy Matsui, *Addressing the Challenges Women Face in Retirement: Improving Social Security, Pensions, and SSI*, 46 John Marshall Law Review 749, 781-783 (2013), <http://repository.jmls.edu/cgi/viewcontent.cgi?article=1216&context=lawreview>.

<sup>43</sup> An individual may qualify for SSI if their source of income is Social Security or an annuity, but may not qualify if the income source is an IRA, a savings account, or an investment that can produce an equivalent income stream. This could be a more and more common barrier to SSI participation as defined-contribution plans grow in popularity and under Social Security reform scenarios that involve mandatory individual accounts. See, e.g., Kilolo Kijakazi and Wendell Primus, "Options for reducing poverty among elderly women by improving Supplemental Security Income," Paper presented at the National Academy of Science 12th Annual Conference, Washington, DC (January 2000), <http://www.cbpp.org/archives/1-27-00socsec.htm>.

<sup>44</sup> Kalman Rupp, Alexander Strand, and Paul S. Davies, Poverty Among Elderly Women: Assessing SSI Options to Strengthen Social Security Reform, Social Security Administration, Office of Policy, Office of Research, Evaluation, and Statistics, Washington, DC., *Journal of Gerontology: SOCIAL SCIENCES In the Public Domain* 2003, Vol. 58B, No. 6, S359–S368, <http://psychogerontology.oxfordjournals.org/>. See also, Joyce Nicholas and Michael Wiseman, Elderly Poverty and Supplemental Security Income, *Social Security Bulletin*, Vol. 69 No. 1, 2009, <http://www.ssa.gov/policy/docs/ssb/v69n1/v69n1p45.html>.

<sup>45</sup> *NWLC Analysis of 2013 Poverty Data, supra*, Note 30.

<sup>46</sup> Social Security Administration, *SSI Annual Statistical Report, 2012*, Federally Administered Payments, Table 5, (July 2013), <http://www.ssa.gov/policy/docs/statcomps/ssiasr/2012/sect02.html>.

<sup>47</sup> In 1998, the median earnings of full-time, full-year working women was \$25,862, compared with \$35,345 for men. Between 1960 and 1980, women earned about 60 percent of what men earned. From 1981 through 1998, women's earnings as a percentage of men's gradually rose to 73 percent. Although the difference between women's and men's earnings is expected to continue narrowing, it is not expected to disappear.

breakdown of the nuclear family, fewer years spent in the labor force,<sup>48</sup> relatively long life expectancy,<sup>49</sup> lower likelihood of receiving pension income, and lower financial net worth. In addition, elderly women are less likely to be married than elderly men and more likely to be widowed or divorced.<sup>50</sup> The death of a husband is followed by a decline in living standards and substantial reductions in wealth.<sup>51</sup> Further, because the current SSI asset test provides a strong incentive to spend down assets,<sup>52</sup> it thereby eliminates the ability of recipients to preserve a fund for emergencies and reduces their ability to “bounce back” from a financial crisis.

## 1.2 THE DISABLED FACE ADDITIONAL ECONOMIC CHALLENGES AND HAVE FEW PATHS OUT OF POVERTY UNDER CURRENT SSI POLICY

In December 2013, there were 7.2 million blind or disabled recipients of federally administered SSI payments. These fall into three groups:

- The largest of these groups consists of disabled adults (ages 18 to 64), who accounted for 59 percent of SSI recipients in 2012 and received 62 percent of the program’s total payments. Adults meet the definition of blindness or disability for individuals age 18 or older<sup>53</sup> as well as SSI income and resource limits. When blind or disabled adult recipients reach age 65, SSA generally continues to classify them as blind or disabled adults (rather than aged). In December 2013, 5.9 million blind or disabled individuals age 18 or older received federally administered SSI payments, including 950 thousand disabled or blind recipients age 65 or older.
- About 16 percent of SSI recipients in 2012 were disabled children (under age 18), who received 19 percent of the program’s payments. Children meet the definition of blindness or disability for individuals under age 18.<sup>54</sup> At age 18 these individuals continue to be

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<sup>48</sup> Women are more likely to take time out of the workforce to care for children or elderly relatives. Of retired-worker beneficiaries aged 62 in 1998 the median number of years of covered employment was 38 for men and 29 for women. That gap is projected to narrow in the future, but women are expected to continue spending fewer years in the workforce than men.

<sup>49</sup> For example, in 2000, a woman 65 years of age could expect to live 19.1 additional years; a man an additional 15.8 years. Because a woman’s life expectancy is greater than a man’s, they are more likely to outlive their resources and slip into poverty.

<sup>50</sup> Social Security Administration, *Income of the Aged Chartbook, 1998*, Washington, D.C.: SSA, Office of Research, Evaluation, and Statistics (2000) [http://www.ssa.gov/policy/docs/chartbooks/income\\_aged/2012/iac12.pdf](http://www.ssa.gov/policy/docs/chartbooks/income_aged/2012/iac12.pdf).

<sup>51</sup> Michael D. Hurd and David A. Wise, *The wealth and poverty of widows: Assets before and after the husband’s death* (NBER Working Paper No. 2325), Cambridge, MA: NBER (1987), <http://www.nber.org/papers/w2325>.

<sup>52</sup> David Neumark & Elizabeth Powers, *The effect of means-tested income support for the elderly on pre-retirement saving: Evidence from the SSI program in the U.S.*, National Bureau of Economic Research (December 1997), <http://www.nber.org/papers/w6303>.

<sup>53</sup> To meet SSA’s definition of disability, an individual must not be able to engage in any substantial gainful activity because of a medically-determinable physical or mental impairment(s) that is expected to result in death, or that has lasted or is expected to last for a continuous period of at least 12 months. 20 CFR 404.1545, 416.945.

<sup>54</sup> A child under age 18 will be considered disabled if he or she has a medically determinable physical or mental impairment or combination of impairments that causes marked and severe functional limitations, and that can be expected to cause death or that has lasted or can be expected to last for a continuous period of not less than 12 months. 20 CFR 416.906.

eligible for SSI if they meet the definition of blindness or disability for adults as well as other eligibility criteria. In December 2013, 1.3 million blind or disabled individuals under age 18 received federally administered SSI payments.<sup>55</sup> >>recalculate for 2014<<

Individuals with a disability are overrepresented among the poor. Census Bureau findings show that the median monthly income for individuals and families with no disability (\$2,774 and \$4,771, respectively) are much higher than for those with a “severe” disability (\$1,577 and \$2,376 for individuals and families, respectively).<sup>56</sup> Between 2009 and 2010, the poverty rate for people aged 18 to 64 with a disability rose from 25.0 percent to 27.9 percent. Among people aged 18 to 64 without a disability, 12.5 percent were in poverty in 2010, up from 12.0 percent in 2009. People aged 18 to 64 with a disability represented 15.9 percent of people aged 18 to 64 in poverty compared to 7.8 percent of all people aged 18 to 64.<sup>57</sup> The disparity continues to rise. Census Bureau data put the poverty rate for working-age people with disabilities at 28.4 percent in 2013, compared to 12.4 percent for those without disabilities.<sup>58</sup> In the United States, children with disabilities are significantly more likely to live in families that are considered to be poor. One 2000 study found that 28% of U.S. children with disabilities lived below the federal poverty threshold, as contrasted with 16% of children without disabilities.<sup>59</sup>

Why are disabled individuals overrepresented among the poor? Individuals with a disability are likely to have limited opportunities to earn income and often have increased medical expenses. Although the Americans with Disabilities Act assures equal opportunities in education and employment for people with and without disabilities and prohibits discrimination on the basis of disability, people with disabilities remain overrepresented among America’s poor and undereducated.<sup>60</sup>

Disability is both a fundamental cause and consequence of income poverty. Disability can result in job loss and reduced earnings, barriers to education and skills development, and a myriad of other challenges that can, in turn, lead to economic deprivation and hardship. Income poverty can limit access to health care and preventative services, and increase the likelihood that one lives and works in an environment that may negatively impact health. As a result, it comes as no surprise

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<sup>55</sup> Congressional Budget Office, *Supplemental Security Income: An Overview*, December 2012, <https://www.cbo.gov/publication/43759>.

<sup>56</sup> U.S. Census Bureau, Survey of Income and Program Participation, 2008 Panel, Wave 6 Adult , Functional Limitations Topical Module, “Median Monthly Earnings and Family Income by Disability Status”, CSPAN slide at [https://www.census.gov/newsroom/cspan/disability/20120726\\_cspan\\_disability\\_slides\\_15.pdf](https://www.census.gov/newsroom/cspan/disability/20120726_cspan_disability_slides_15.pdf).

<sup>57</sup> citation

<sup>58</sup> <http://www.census.gov/content/dam/Census/library/publications/2014/demo/p60-249.pdf>.

<sup>59</sup> Glenn T. Fujiura, & Kiyoshi Yamaki, Trends in demography of childhood poverty and disability, *Exceptional Children*, 66, (2000), 187–199 (available digitally from Amazon.com).

<sup>60</sup> Disparities in education have been ongoing for generations. In a large study of individuals 65 years and older, 20.9 percent without a disability failed to complete high school, compared to 25.1 and 38.6 percent of individuals with a non-severe or severe disability, respectively, who failed to complete high school. Erika Steinmetz, (2006). *Americans with disabilities: 2002*, U.S. Census Bureau (May 2006), <http://www.census.gov/prod/2006pubs/p70-107.pdf>.

that the income-poverty rate for persons with disabilities is between two to three times the rate for persons without disabilities.<sup>61</sup>

Findings based on the National Beneficiary Survey<sup>62</sup> data indicated a high prevalence of factors among SSI and Social Security Disability Insurance (DI) beneficiaries that were unfavorable for employment - on top of the severe impairments that qualified these individuals for disability benefits. Recent data indicate that about half of working-age SSI recipients in 2006 had not graduated from high school or received a GED certificate. About 40 percent were age 55 and older. Many reported having poor (43 percent) or deteriorating (42 percent) health and experienced difficulty performing activities essential to most forms of employment, such as getting around outside the home (47 percent), concentrating (58 percent), and coping with stress (61 percent).<sup>63</sup> >check 2010 NBS & update<

Other recent research in the United States focused specifically on the additional health costs associated with living with a disability and found that from 1996-2004 people with disabilities had substantially higher total health expenditures and out-of-pocket health expenditures than the non-disabled.<sup>64</sup>

When compared to families of children without disabilities, families of children with disabilities face additional financial burdens, such as increased medical costs, specialized day care, and adapting the home environment.<sup>65</sup> These families also have problems with work absences due to the child's needs.<sup>66</sup> In the United States, families of children who have increased personal care, medical, and therapeutic-service needs were found to have increased financial concerns as well as problems with work and stress.<sup>67</sup> One study found that, in the United States, families of children

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<sup>61</sup> Shawn Fremstad, "Half in Ten: Why Taking Disability into Account is Essential to Reducing Income Poverty and Expanding Economic Inclusion," Center for Economic and Policy Research (September 2009), <http://www.cepr.net/documents/publications/poverty-disability-2009-09.pdf>.

<sup>62</sup> The National Beneficiary Survey (NBS), is conducted by Mathematica Policy Research and is sponsored by the Social Security Administration's (SSA) Office of Retirement and Disability Policy. The NBS collects data on the employment-related activities of working-age DI and SSI beneficiaries. For more information on the NBS, see <http://www.mathematica-mpr.com/our-publications-and-findings/projects/national-beneficiary-survey>.

<sup>63</sup> Gina Livermore, David Stapleton, and Allison Roche, "Characteristics, Employment, and Sources of Support among Working-Age SSI and DI Beneficiaries." Report No. 2 in *Work Activity and Use of Employment Supports Under the Original Ticket to Work Regulations*. Washington, DC: Mathematica Policy Research, April 2009, [http://www.ssa.gov/disabilityresearch/documents/TTW5\\_2\\_BeneChar.pdf](http://www.ssa.gov/disabilityresearch/documents/TTW5_2_BeneChar.pdf).

<sup>64</sup> Sophie Mitra, Patricia A. Findley, and Usha Sambamoorthi, *Healthcare Expenditures of Living with a Disability: Total Expenditures, Out of Pocket Expenses and Burden, 1996-2004*, Discussion Paper No: 2008-18, September 2008 (Updated: February 2009), Fordham University, Department of Economics, [http://www.researchgate.net/profile/Sophie\\_Mitra/publication/23529893\\_Healthcare\\_Expenditures\\_of\\_Living\\_with\\_a\\_Disability\\_Total\\_Expenditures\\_Out\\_of\\_Pocket\\_Expenses\\_and\\_Burden\\_1996-2004/links/00b7d524c4fe261a7c000000.pdf](http://www.researchgate.net/profile/Sophie_Mitra/publication/23529893_Healthcare_Expenditures_of_Living_with_a_Disability_Total_Expenditures_Out_of_Pocket_Expenses_and_Burden_1996-2004/links/00b7d524c4fe261a7c000000.pdf).

<sup>65</sup> Paul W. Newacheck and Sue E. Kim, A national profile of health care utilization and expenditures for children with special health care needs, *Archives of Pediatrics and Adolescent Medicine*, 159, (2005), 10-18, <http://www.fvncfpp.org/files/3714/1509/9931/Newacheck-Kim.pdf>.

<sup>66</sup> Eric Emerson, Poverty and people with intellectual disabilities, *Mental Retardation/Developmental Disabilities Research Review*, 13, (2007), 107-113, available through Wiley Online Library.

<sup>67</sup> See, e.g., Susan S. Neely-Barnes and David A. Dia, *Families of Children with Disabilities: A Review of*

with disabilities had out-of-pocket health-care expenditures that were twice that of other families (\$352 versus \$174).<sup>68</sup> In addition, there is consistent evidence that U.S. public health insurance and other social-services programs (e.g., Medicaid, State Children's Health Insurance Program) do not cover all of the families' impairment-related expenses.<sup>69</sup> Families headed by single mothers compose half of all poor U.S. households despite representing only one-fifth of total U.S. families,<sup>70</sup> and children with disabilities are less likely to live in a home comprised of two married parents than are other children.<sup>71</sup> Frequently, mothers reduce the number of hours they work or quit work altogether to stay at home and provide care for their children with disabilities.<sup>72</sup>

A 2012 New York Times article described the dilemma faced by disabled SSI recipients.

The very program that is supposed to be their safety net is actually the source of the problem, experts say. SSI traps many disabled people by limiting their income to levels just above the poverty line, and taking away their cash benefits if they achieve any level of security.

At 16, Mr. [Brad] Crelia was given a diagnosis of porphyria, an incurable hereditary blood disorder. His symptoms — seizures, paralysis, blackouts, nausea and extreme pain — became more and more severe, preventing him from finishing college and landing him in the hospital for days or weeks at a time. In addition, in 2009, he learned he had H.I.V. That has not affected his ability to work. But his porphyria has made maintaining a traditional full-time job nearly impossible.

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*Literature and Recommendations for Interventions*, Journal of Early and Intensive Behavior Intervention, Vol. 5, No. 3,, undated manuscript available at <http://files.eric.ed.gov/fulltext/EJ847482.pdf>; Susan S. Neely-Barnes and Marcenko, M., Predicting impact of childhood disability on families: Results from the 1995 National Health Interview Survey Disability Supplement, *Mental Retardation*, 42, (2004), 284–293, available on a pay-per-view basis from <http://aaidjournals.org/doi/abs/10.1352/0047-6765%282004%2942%3C284%3APIOCDO%3E2.0.CO%3B2>.

<sup>68</sup> Newacheck & Kim, *supra*, Note 65.

<sup>69</sup> General Accounting Office, *SSI children: Multiple factors affect families' costs of disability-related services* (GAO/HEHS-99-99), Washington, DC (June 1999), <http://www.gao.gov/assets/160/156618.pdf>; General Accounting Office, *Medicaid managed care: Challenges in implementing safeguards for children with special needs* (GAO/HEHS-00-37), Washington, DC (March 2000), <http://www.gao.gov/assets/230/228936.pdf>.

<sup>70</sup> Susan L. Parish, Roderick A. Rose, Michal Grinstein-Weiss, Erica Richman and Megan E. Andrews, *Material Hardship in U.S. Families Raising Children with Disabilities*, *Exceptional Children*, 75(1), 71-92 (2008), [http://ssw.unc.edu/files/web/pdf/ExceptChildrenMaterial\\_Hardship.pdf](http://ssw.unc.edu/files/web/pdf/ExceptChildrenMaterial_Hardship.pdf).

<sup>71</sup> Lynda L. Anderson, Sheryl A. Larson, K. Charlie Lakin and Nohoon Kwak, *Children with disabilities: Social roles and family impacts in the NHIS-DD Data Brief*, 4(1), Minneapolis: University of Minnesota, Institute on Community Integration (2002); Dennis P. Hogan, Michelle L. Rogers and Michael E. Msall, Functional limitations and key indicators of well-being in children with disability, *Archives of Pediatrics and Adolescent Medicine*, 154, (2000), 1042–1048, <http://archpedi.jamanetwork.com/article.aspx?articleid=351806>.

<sup>72</sup> Eric Emerson, Poverty and children with intellectual disabilities in the world's richer countries, *Journal of Intellectual and Developmental Disability*, 29(4), (2004), 319–338; Susan L. Parish, Marsha Mailick Seltzer, Jan S. Greenberg, and Frank Floyd, Economic implications of caregiving at midlife: Comparing parents with and without children who have developmental disabilities, *Mental Retardation*, 42, 413–426 (2004), [http://www.waisman.wisc.edu/family/pubs/PopStudies/2004%20economic\\_implications.Pdf](http://www.waisman.wisc.edu/family/pubs/PopStudies/2004%20economic_implications.Pdf); Shirley L. Porterfield, Work choices of mothers in families with children with disabilities. *Journal of Marriage and Family*, 64, 972–981 (2002), available through Wiley Online Library.

... The only way for Mr. Crelia to qualify for cash assistance was to sign up for SSI — and demonstrate that he was unable to “engage in substantial gainful activity” because of his physical impairment.

He now receives a monthly check for \$506 through the SSI program, and he is allowed to earn \$85 more. (He also receives some assistance toward his rent and food expenses.) Once he surpasses the \$85, his benefit check will be reduced by \$1 for every \$2 he earns. And if his income reaches \$1,097 a month, he will no longer be eligible for any cash SSI benefits at all. So he must be poor or he must give up all government support. Mr. Crelia is never permitted to have more than \$2,000 in the bank, a restriction that places the trappings of a middle-class life — a car, a modest home, a family — far out of reach.

...

“Instead of helping people achieve their full potential,” David Stapleton, who directs the Mathematica Center for Studying Disability Policy, testified before Congress last month, “the current disability support system has created a poverty trap.” The employment rate for people with disabilities, he said, is just 21 percent of the rate for people without disabilities, down from 32 percent in 1981. The problems stem from the Social Security Administration’s failure in 1974 to structure a program that motivates work. It is relatively easy to accept cash benefits but very hard to get into the workplace. ...<sup>73</sup>

Individuals with disabilities are also nearly twice as likely to lack even modest precautionary savings in case of an unexpected expense. One study found that 70 percent of individuals with disabilities responded that they “certainly” or “probably” could not come up with \$2,000 to meet an unexpected expense, compared to 37 percent of individuals without disabilities.<sup>74</sup> As one woman put it in response to a Senate Committee on Health, Education, Labor and Pensions inquiry: “The requirements of SSI make it difficult to save money, such as for medical emergencies, internship experiences, or purchasing expensive equipment.”

There are data suggesting causal relationships between low socioeconomic status and the development of disability.<sup>75</sup> For example, a history of poor health can limit attainment of

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<sup>73</sup> Julie Turkewitz and Juliet Linderman, “The Disability Trap,” *New York Times*, October 20, 2013, [http://www.nytimes.com/2012/10/21/sunday-review/the-trap-of-supplemental-security-income.html?\\_r=0](http://www.nytimes.com/2012/10/21/sunday-review/the-trap-of-supplemental-security-income.html?_r=0).

<sup>74</sup> Nicole E. Conroy, Katherine E. McDonald, Michael Morris, and Elizabeth Jennings, *Financial Capability of Adults with Disabilities: Findings from the FINRA Investor Education Foundation 2012 National Financial Capability Study*, National Disability Institute (July 2014), [http://www.realeconomicimpact.org/data/files/reports/NDI\\_financial\\_capability\\_report\\_july\\_2014.pdf](http://www.realeconomicimpact.org/data/files/reports/NDI_financial_capability_report_july_2014.pdf).

<sup>75</sup> Richard A. Meich, Avshalom Caspi, Terrie E. Moffitt, Bradley E. Wright, and Phil A. Silva, *Low Socioeconomic Status and Mental Disorders: A Longitudinal Study of Selection and Causation During Young Adulthood*, Center for Demography and Ecology, University of Wisconsin, undated manuscript, <https://www.ssc.wisc.edu/cde/cdewp/98-05.pdf>; Laura Plantinga, Kirsten L. Johansen, Dean Schillinger, and Neil R. Powe, *Lower Socioeconomic Status and Disability Among U.S. Adults with Chronic Kidney Disease 1999-2008*, *Preventing Chronic Disease* (2012); 9: E 12, <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3277376/>; Daniel C. Lustig and David R. Strauser, *Causal*

educational and employment goals; current poor health can interfere with the ability to work. Long-term poverty also can cause or worsen health conditions because of its impact on the availability of adequate living conditions, nutrition, and access to health care.<sup>76</sup> Policy (such as frozen asset limits and complex ISM rules) that limits the ability of the disabled to acquire training or employment without abruptly losing their SSI benefits keeps the disabled trapped in a cycle of poverty and poorer health.

## 2 INCOME AND RESOURCES RULES CREATE CONFLICT WITH FUNDAMENTAL PUBLIC POLICY CONCERNS

SSI income and asset rules, including treatment of living arrangements, ISM, income exclusions, and asset limits have had unintended and unwelcome consequences. These consequences are inconsistent with the SSI program’s stated objectives and with American public policy principles generally. For example, SSI policy with respect to married couples is intrusive and cumbersome; the ability of policy to respond to legal or social change is difficult or impossible, and the policy creates fundamental unfairness in its application. In addition, the same policy creates a disincentive to work, encouraging recipients to take steps to remain on the SSI rolls.

### 2.1 SSI CONTAINS A “MARRIAGE DISINCENTIVE”

The Social Security Act contains the rules for determining marital status for SSI recipients.<sup>77</sup> The Act references state law in determining whether a couple are married, unless they already have been determined to be married for purposes of Social Security Title II benefits – in that case, they are considered married for SSI purposes, as well.<sup>78</sup> A married couple living

Relationships Between Poverty and Disability, *Rehabilitation*  
[http://glmw.info/soc-dis/files/Poverty\\_Disability.pdf](http://glmw.info/soc-dis/files/Poverty_Disability.pdf).

<sup>76</sup>Research on suggests that individuals with a disability experience of accessibility concerns, such as transportation, problems adherence for disabled Medicare beneficiaries illustrates that disabled beneficiaries, 29 percent skipped medication, reduced medication’s cost. See Gina Livermore and Maura Bardos, “the National Beneficiary Survey,” DRC Brief Number: 2014-2014, <http://www.mathematica-mpr.com/~media/publications>

<sup>77</sup> See 42 U.S.C. § 1382c(d). Under the Act, marital status is determined that the law of the state of domicile at the time of application in the state where the couple lives, the couple will nevertheless inherit personal property from the other under the state’s law.

<sup>78</sup> The 1996 Defense of Marriage Act (DOMA) (P.L. 104-199) defines marriage in federal programs as “only a legal union between one man and one woman who have voluntarily entered into a relationship that the administration announced it would no longer defend the law.” In No. 12-307 (2013), the U.S. Supreme Court declared Section

#### **SSI After Windsor**

After the Supreme Court overturned the Defense of Marriage Act in *United States v. Windsor*, SSA updated program procedures to address same-sex married couples who receive Social Security benefits. SSA now recognizes the marriage of same-sex couples in states where same-sex marriage is legal. However, SSA decided not to determine whether same-sex couples were “holding out”, even though the agency continues to do so for opposite-sex couples. Ultimately, SSA’s “holding out” procedure does not treat opposite-sex couples and same-sex couples equally.

Determining whether a couple is “holding out” is an invasive process. For example, if SSA suspects that two SSI recipients are holding themselves out as married, the agency is authorized to gather mortgage policies, bank account information, TANF documents, magazine prescriptions, personal mail, and statements from relatives, friends, and neighbors in order to make a determination on the relationship of the recipients. Gathering this evidence to determine the relationship of SSI recipients who live together also places an administrative burden on the agency.

SSA should consider eliminating “holding out” policies from their procedures to ensure equal treatment of couples and reduce program complexity, with its associated costs.

together where both spouses are at least age 65 or meet the Social Security Act disability standard must apply for SSI as a couple. Being recognized as married generally makes it more difficult for someone to qualify for SSI when the couple is living together, because of the way the income and asset rules are structured.

The Act also requires that if a couple are “holding out” (presenting themselves to the public as married), they should be considered married for purposes of SSI.<sup>79</sup> This may be the case, for example, if a couple is not legally married, but consider themselves to be in a common-law marriage. If a member of the couple denies holding out, but there is evidence to the contrary, then both individuals must complete a questionnaire that gathers information about housing arrangements, bills, installment contracts, mail, and how the couple introduces one another to other people.<sup>80</sup> Some consider this investigation to be administratively burdensome and as an infringement on personal privacy, leading to recommendations to eliminate the concept of “holding out” and treat only those who are legally married as spouses.<sup>81</sup>

From the inception of the SSI program, the Federal Benefit Rate (FBR) for an SSI eligible couple has been 150% of the FBR for two eligible individuals; a married eligible couple thus receives significantly lower SSI benefits per eligible person than two unmarried individuals who live together. Benefits for a married couple - if both receive SSI and have no other income - are 25% lower than the total they would receive if they were living together but not as a married couple.<sup>82</sup> The rationale behind this couples limit is based on the assumption that two SSI recipients living together are generally assumed to be better off financially than two SSI recipients each living alone because of the economies of scale derived from sharing living expenses. However, this reasoning is only applied to married couples. Eligible couples who live together without marrying or holding themselves out as married is guaranteed an income level equal to 100 percent of the FBR per person.

Because the rules for excluding income and resources treat the eligible couple as a unit, two eligible individuals who are married or represent themselves as married also lose the benefit of having two separate exclusions. The most common exclusion is the general income exclusion. A married eligible couple is entitled to exclusion of the first \$20 of unearned income without regard for whether one or both have income; two unmarried eligible individuals who are living together and not holding themselves out as married are each entitled to exclusion of the first \$20 of unearned income. The second most common exclusion is the earned income exclusion, which allows the exclusion of the first \$65 of earned income, plus one-half of the remainder of income. As for the unearned income exclusion, a married couple is entitled to only one \$65 exclusion per month. The second spouse’s income is subject only to the second part of the exclusion - disregarding one-half of the couple’s combined earnings above \$65 per month. The third most common exclusion is the irregular and infrequent income exclusion. This exclusion also treats a

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<sup>79</sup> 42 U.S.C. 1382c(d)(2).

<sup>80</sup> Form SSA-4178, Marital Relationship Questionnaire.

<sup>81</sup> See, e.g., Social Security Administration, *Supplemental Security Income Modernization Project: Final Report of the Experts*, Washington, DC, August 1992.

<sup>82</sup> The federal benefit rate for a couple is equal to 1.5 times the federal benefit rate for an individual.

married couple as a unit with one maximum regardless of whether one or both members of the couple have infrequent or irregular income.

If the couple has one ineligible member, the rules require that the income and resources of the ineligible spouse be taken into consideration in determining the other spouse's eligibility and monthly payment amount ("deemed" income or resources).

If an individual lives with another person and they are neither married nor holding out as married, the other person's income and resources are not considered in determining eligibility or monthly payment amount of the SSI applicant or recipient. Thus, two single adult SSI beneficiaries who live together are each eligible for a full individual benefit, while each member of an eligible married couple is eligible for three-fourths of the full benefit amount.<sup>83</sup>

About 30 percent of all SSI recipients who do not live in an institution or in a care facility live in a multi-recipient household.<sup>84</sup> Of these, married couples accounted for only about 9 percent of all recipients and 21 percent were non-couple multi-recipient households.<sup>85</sup>

People may cope with challenging economic circumstances by combining households with other families or individuals. The number and percentage of doubled-up households<sup>86</sup> and adults sharing households in the United States increased over the course of the recession that began in December 2007. In spring 2007, doubled-up households totaled 19.7 million. By spring 2011, the number of doubled-up households had increased to 21.8 million, and the percent of households doubled-up had increased from 17.0 percent to 18.3 percent. Among adults, 61.7 million (27.7 percent) were doubled-up in 2007, while 69.2 million (30.0 percent) lived in doubled-up households in 2011. The adult population increased by 3.8 percent between 2007 and 2011, but the number of doubled-up adults increased by 12.2 percent.

The different treatment of unmarried individuals who live together from a married couple who live together an issue of fundamental fairness with respect to how married couples are treated when compared to other households in which multiple SSI recipients reside. One research study concluded that SSI program rules concerning the federal income guarantee for married couples contributes to higher poverty rates among married couple recipients than among non-couple recipients living in the same household.<sup>87</sup> The statistics year-to-year bear this out. For example,

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<sup>83</sup> To determine the amount of benefits a couple is eligible to receive, the couple's combined countable income is deducted from the federal benefit rate for a couple. The result is then divided equally between the two and the respective share is paid separately to each member of the couple. The total amount is reduced by one-third if it is determined that the couple is living in someone else's household and receiving in-kind support and maintenance.

<sup>84</sup> Social Security Administration, *How Many SSI Recipients Live with Other Recipients?* Policy Brief No. 2004-03, Washington, DC, June 2004, <http://www.ssa.gov/policy/docs/policybriefs/pb2004-03.pdf>.

<sup>85</sup> *Id.*

<sup>86</sup> Doubled-up households are defined as households that include at least one "additional" adult, a person aged 18 or older who is not enrolled in school and is not the householder, spouse, or cohabiting partner of the householder.

<sup>87</sup> Koenig, Melissa L., and Kalman Rupp, "SSI Recipients in Households and Families with Multiple Recipients: Prevalence and Poverty Outcomes," *Social Security Bulletin*, 65(2), (2003/2004), <http://www.ssa.gov/policy/docs/ssb/v65n2/v65n2p14.html>.

in 2002, the poverty rate for a married couple receiving SSI was 45.1 percent, compared with 9.8 percent for two SSI recipients who lived together but were not a married couple.<sup>88</sup>

It has been said that the way the SSI program policies treat married couples gives beneficiaries an incentive not to marry or to represent themselves as unmarried. Marriage is, in fact, less common among SSI beneficiaries than among the general population. Among SSI beneficiaries age 18 to 64, 21 percent are married, compared to 58 percent of the total U.S. population in that age group. Among SSI beneficiaries age 65 or older, 32 percent are married, compared to 55 percent of the total U.S. population in that age group. In 2001, only 24 percent of SSI recipients age 18 or older were married, compared with 57 percent of all adults in the United States. About 38 percent of married recipients are members of eligible couples (both spouses are eligible for SSI); the remainder have ineligible spouses. The proportion of married couples has remained about the same for more than 25 years.<sup>89</sup>

Married couples make up only about 30 percent of households that include more than one SSI recipient. Thus, most multi-recipient households are not subject to the same benefit reductions as married couples. As a witness told a Ways and Means subcommittee in 2001, “Economies of scale...apply to almost all sharing arrangements—dormitories, retirement homes, cohabitation, and so on. Yet marital vows of allegiance are the only type of arrangement that is taxed.”<sup>90</sup>

## 2.2 CURRENT INCOME AND RESOURCES RULES CREATE A DISINCENTIVE TO WORK

The employment rate for people with disabilities is just 21 percent of the rate for people without disabilities, down from 32 percent in 1981. The vast majority of beneficiaries who did work had extremely low earnings—just 2.9 percent earned more than \$10,000 during the year. Substantial numbers encountered work-related obstacles, such as inaccessible workplaces, and discouragement from work, either by others or through their own experiences.<sup>91</sup> Other common reasons for not working reported by about 30 percent or more of those seeking employment related to fear of losing benefits (46 percent), lack of reliable transportation (34 percent), and dissatisfaction with particular job features, such as an inflexible schedule (34 percent), no offer of health insurance (32 percent), and inadequate pay (29 percent).<sup>92</sup>

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<sup>88</sup> Koenig, Melissa L., and Kalman Rupp. "The Poverty Status of Different Types of Multirecipient Households: Is SSI Fair to Married Couples?" (2002), available from researchgate.net.

<sup>89</sup> Social Security Administration, *Treatment of Married Couples in the SSI Program*, Issue Paper No. 2003-01, Washington, DC, December 2003.

<sup>90</sup> reference

<sup>91</sup> Livermore, Gina, Debra Wright, Allison Roche, and Eric Grau. "2006 National Beneficiary Survey: Background and Statistical Tables." Report No. 4 in *Work Activity and Use of Employment Supports Under the Original Ticket to Work Regulations*. Washington, DC: Mathematica Policy Research, October 2009, available at [http://www.mathematica-mpr.com/~media/publications/pdfs/disability/ttw\\_2006\\_nbs.pdf](http://www.mathematica-mpr.com/~media/publications/pdfs/disability/ttw_2006_nbs.pdf).

<sup>92</sup> *Id.*

When asked whether specific supports would help them to work or earn more, recently employed beneficiaries most frequently mentioned better job skills (35 percent), help finding a better job (32 percent), a flexible work schedule (21 percent), and reliable transportation (18 percent).<sup>93</sup>

Many working beneficiaries could not - or chose not to - earn enough to leave SSA cash benefits completely. The reasons for this included the effects of incentives to keep earnings below the level that would reduce their benefits to zero. Findings from a multivariate analysis of the likelihood of leaving the disability rolls due to work suggest that the structure of the DI program might have provided incentives to keep earnings below that level. Findings suggest that, with respect to leaving the rolls, the structure of the disability programs (in terms of their treatment of earnings) and benefit levels might have been more important factors than age.<sup>94</sup> It is likely the same results would obtain for SSI recipients, as the work disincentives are even more salient under the income and asset criteria for SSI.

Other study findings suggest that some working disability beneficiaries purposefully restrained their earnings to remain on the rolls, and many feared losing benefits. About one-fourth (23 percent) of all recently employed beneficiaries said they worked fewer hours or earned less than they were able. This was reported among recently employed DI-only (28 percent) and concurrent (23 percent) beneficiaries as well as SSI-only beneficiaries (15 percent). Wanting to retain cash and health care benefits were the most common reasons for not working up to their capabilities, reported by 40 percent or more of those who reported working less than they were able.<sup>95</sup>

Fear of losing benefits was also reported as a reason for not working by a small share (15 percent) of unemployed beneficiaries. By far, respondents were most concerned about losing SSA disability benefits, followed by public health insurance (Medicare and Medicaid). SSI-only beneficiaries were significantly more likely to report fear of losing other state disability benefits (such as state supplements to SSI) and food stamps. Among recently employed beneficiaries who experienced a benefit reduction, SSI-only (22 percent) and concurrent (17 percent) beneficiaries were more likely than DI-only beneficiaries (7 percent) to report such reductions. Being required to repay a benefit overpayment might also have provided a negative work incentive. Recently employed SSI-only (27 percent) and concurrent (22 percent) beneficiaries were much more likely than DI-only beneficiaries (4 percent) to report experiencing an SSA benefit overpayment due to earnings.<sup>96</sup>

Under current work incentive provisions, SSI beneficiaries who are able to sustain work above the program's income limit can generally do so without risk of losing the health insurance that they receive through Medicaid. Moreover, if their condition worsens and they no longer have earnings above SSI's income limit, they can have benefits reinstated without having to go

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<sup>93</sup> *Id.*

<sup>94</sup> Livermore, Gina, Allison Roche, and Sarah Prenovitz. "SSI and DI Beneficiaries with Work-Related Goals and Expectations." Report No. 5 in *Work Activity and Use of Employment Supports Under the Original Ticket to Work Regulations*. Washington, DC: Mathematica Policy Research, 2009.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

through the initial disability application and determination process again. These incentives are helpful for beneficiaries who are able to do some work or whose conditions improve.

Consideration should be given to further enhancing these incentives, supports, and protections. For example, allowing SSI recipients who work to keep more of their earnings by reducing benefits by \$1 for every \$3 of earnings rather than the current reduction of \$1 for every \$2 of earnings would provide enhanced support and less disincentive for beneficiaries who are able to do some work. Raising the asset limit and improving the ratio of earned income offset are both changes that would reduce the economic disincentive to pursue work.

Currently, when beneficiaries report earnings, it can take the Social Security Administration several months—and sometimes even years—to adjust benefits based on the report. This late adjustment often results in beneficiaries being told that they have been overpaid benefits in past months, which they may then be required to repay. Many individuals are wary of attempting work for fear of incurring this kind of overpayment.<sup>97</sup> Simplifying SSI’s ISM and living arrangement rules would reduce the administrative lag time in discovering and making adjustments.

### 3 ISM AND LIVING ARRANGEMENT POLICIES PRESENT SIGNIFICANT ADMINISTRATIVE DIFFICULTIES

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In addition to the issues created for applicants and recipients, SSI program policies create issues for the agency. The process of evaluating eligibility and payment levels on an ongoing basis and addressing the accuracy of payments both contribute to the complexity of administering the SSI program. Program rules regarding income and resources determinations are difficult to administer, are a leading cause of incorrect payments, raise questions of equity, and make the program more vulnerable to fraud and abuse.<sup>98</sup>

The complex and administratively burdensome process of evaluating financial eligibility and determining payment levels on an ongoing basis present issues of longstanding concern. As early as April 1975, the Department of Health Education and Welfare, under which the Social Security programs were then subsumed, commissioned a panel of experts to evaluate the “complexities in applying federal eligibility and benefit criteria” in the SSI program.<sup>99</sup>

#### 3.1 ISM AND LIVING ARRANGEMENTS RULES ARE DIFFICULT AND TIME-CONSUMING TO APPLY

Current policy on ISM requires individuals to answer detailed questions about household composition, household expenses, contributions toward household expenses both from within the

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<sup>97</sup> Shawn Fremstad and Rebecca Vallas, *The Facts on Social Security Disability Insurance and Supplemental Security Income for Workers with Disabilities*, Center for American Progress, May 30, 2013, <https://www.americanprogress.org/issues/poverty/report/2013/05/30/64681/the-facts-on-social-security-disability-insurance-and-supplemental-security-income-for-workers-with-disabilities/>.

<sup>98</sup> *Id.*

<sup>99</sup> Report to Congress by the Comptroller General of the United States, “Problems in Administering Supplemental Security Income for the Aged, Blind, and Disabled, June 11, 1976, <http://www.gao.gov/assets/120/113885.pdf>.

household and from sources outside the household, and how members of the household divide household expenses. SSA collects ISM-related information from recipients during their initial application interview and after a change of address, household composition, or household expenses. This information is collected for most recipients, but much of it is unverifiable.

How SSA views ISM and how it affects monthly SSI payments depends upon the individual's living arrangement. SSA follows a prescribed sequence in developing information about an individual's living arrangement to ensure that the correct ISM valuation rule is used and that possible sources of ISM are not overlooked or developed unnecessarily. SSA begins this process by collecting evidence about the individual's living situation and deciding whether the person resides in a "household" or "non-household", for which SSA has specific definitions. A non-household situation exists if the recipient is either a transient<sup>100</sup> or a resident of an institution;<sup>101</sup> when the individual is not a transient or a resident of an institution, the individual is considered to be "living in a household."

The SSI program defines "household" differently than the physical location in which the individual resides. For SSI, living within someone else's household means the other person is taking financial responsibility for the SSI individual. Living in one's own household means that the individual has financial responsibility for his or her own food and shelter; it does not necessarily mean living alone. For purposes of living arrangement determinations and ISM, members of a household do not have to be related by blood or marriage. "Household living arrangements" include non-institutional care,<sup>102</sup> home ownership, rental liability, public assistance households (those in which every member receives some kind of public income maintenance payments), separate consumption,<sup>103</sup> separate purchase of food,<sup>104</sup> sharing,<sup>105</sup> and earmarked sharing.<sup>106</sup>

SSA gathers the information necessary to make living arrangement determinations by interviewing the individual and/or the individual's representative payee or legal guardian. SSA may conduct independent research to verify things such as household operating expenses; the

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<sup>100</sup> A transient is someone with no permanent living arrangement, or no fixed place of residence, which can include a homeless individual or someone who stays with a succession of friends or relatives and has no permanent place.

<sup>101</sup> Residents of public institutions generally are ineligible for SSI. Residents of medical facilities (public or private) may be eligible, but are limited to a maximum federal payment of \$30 a month. There are many exceptions.

<sup>102</sup> Non-institutional care exists when an individual is placed in a private dwelling by a public or private agency under a specific protective placement program and the dwelling is licensed or otherwise approved by the State to provide foster or family care; the individual, the placing agency, or some other third party must pay for the food, shelter, and protective supervision provided. See POMS SI 00835.790.

<sup>103</sup> The individual takes all meals outside of the household and is not reimbursed by the householder.

<sup>104</sup> The individual shops for his or her own food or gives instructions and money to someone to buy the food; the individual shops for his or her own food but does not use his or her own money; or an eligible spouse or a person whose income may be deemed to the individual buys food on the individual's behalf. See POMS SI 00835.150.

<sup>105</sup> The individual's contribution equals or exceeds his or her "pro rata" share of household operating expenses, provided the household expenses include both food and shelter. If the individual pays his or her pro rata share, he or she is not considered to be receiving ISM from within the household. See POMS SI 00835.160

<sup>106</sup> An individual (or at least one member of an eligible couple) designates part or all of his or her contribution toward household operating expenses for food or for shelter and the contribution equals or exceeds the pro rata share of household expenses for food or for shelter.

individual's contribution to household operating expenses, separate consumption, separate purchase of food, or earmarked contributions. The living arrangement decision is important because it determines which rule SSA uses to calculate the value of the ISM,<sup>107</sup> which in turn affects the monthly SSI payment amount.

Two phases comprise the ISM evaluation process. During the first phase, claims representatives identify in which of the four (A, B, C, or D) federal living arrangement (FLA) categories the recipient falls.

The second phase of the ISM evaluation process involves one of two ISM counting methods. SSA applies the "value of the one-third reduction" (VTR) rule to recipients who live in another person's household (FLA-B) throughout a month and receive *both* food and shelter from within the household.<sup>108</sup> The one-third reduction applies in full or not at all. When the VTR rule applies, SSA does not apply any income exclusions to the reduction amount and does not count any other ISM the individual receives.<sup>109</sup> However, SSA does apply appropriate exclusions to any other earned or unearned income.<sup>110</sup> The VTR is used because appraisal of the current market value of food or shelter can seldom be calculated precisely, and it acts as a base rate reduction, not as a form of unearned income subject to the \$20 general income exclusion. Although the regulations presume the value to be one-third of the basic entitlement, this presumption may be rebutted by evidence of actual market value.<sup>111</sup>

Individuals who are not living in a "household" as defined by SSA are not subject to the VTR, but would have any ISM valued under the Presumed Maximum Value (PMV) rule. Instead of determining the actual dollar value of any food or shelter the individual receives, SSA presumes that it is worth a maximum value. The PMV is equal to one-third of the FBR plus \$20 (the general income exclusion) and caps the amount of ISM that SSA counts.<sup>112</sup> If an individual chooses not to question the use of the presumed value, or if the presumed value is less than the actual value of the food or shelter an individual receives, SSA uses the presumed value to figure the individual's unearned income. If an individual shows that the presumed value is higher than the actual value of the food or shelter the individual receives, SSA uses the lesser amount to figure the individual's unearned income.<sup>113</sup>

For most SSI cases, SSA claims representatives use the Modernized SSI Claims System (MSSICS) to gather, record, and update SSI claims information and to support SSI administrative determinations. During the initial interview, claims representatives navigate through several MSSICS computer screens, while recording information provided by applicants or third parties. Not all screens apply to every applicant or recipient. The system does not

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<sup>107</sup> The value of in-kind support and maintenance is calculated by reference to current market value. 20 CFR 416.1125(a).

<sup>108</sup> 42 USC 1382a(a)(2)(a).

<sup>109</sup> 20 CFR 416.1131.

<sup>110</sup> **Citation.** If he or she has an eligible spouse SSA applies the rules described in 20 CFR 416.1147.

<sup>111</sup> 20 CFR 416.1125(d).

<sup>112</sup> See 416.1124(c)(12).

<sup>113</sup> 20 CFR 416.1140.

record uniform information among SSI recipients with ISM because of the different MSSICS screens or paths applicable to different groups. The data are unverified and largely based on the anecdotal evidence supplied by recipients or third parties.<sup>114</sup>

The MSSICS confirms eligibility and calculates an applicant's or a recipient's benefit rate after the claims representative records sufficient information about the claim to make a determination or enter information about a post-eligibility event, such as a change in address, household composition, or household expenses.<sup>115</sup>

Claims representatives first use the MSSICS to determine a recipient's FLA. (Thirteen MSSICS screens directly support the determination of an individual's living arrangement.) Claims representatives then use the MSSICS to gather the information needed to determine the amount of chargeable ISM. For FLA-A and FLA-C group members, claims representatives use the MSSICS to determine the specific amount or type of ISM (that is—food, shelter, or both) received by those recipients along with their contribution to household expenses. SSA needs this information to determine the individual's pro rata share of household food and shelter expenses and whether the individual's FBR should be reduced by the PMV or a lesser amount.<sup>116</sup>

Even with these tools, the amount of time determining and monitoring income and resource issues is burdensome and intrusive for SSA employees and for the public. In a previous statement, SSAB noted its findings from a review of the procedural guidance for employees who must administer the program at the initial level. In part, the SSAB noted that “The SSA operating manual has the equivalent of 250 single-spaced typed pages of instructions on living arrangements and in-kind support . . . .” In addition, the SSAB noted a 2001 evaluation report from SSA's Office of the Inspector General (OIG), which stated, “Procedures for determining an individual's [living arrangements] and the value of [in-kind support] are difficult to administer and can result in SSI claims being improperly developed. These difficulties result from complex and difficult to verify eligibility requirements.”

Answers to a questionnaire, which the OIG sent to a sample of field offices soliciting their opinions on living-arrangements and in-kind support, supported the OIG's conclusions: “The rules are complicated and difficult for [claims representatives] to agree on, let alone for an applicant with limited education and/or faculties to understand.” The OIG determined that SSA “has no effective method to verify such key factors as household size and composition, rental liability and marital status. As a result, SSI applicants may qualify for benefits or cause payment errors by providing incorrect [living arrangements and in-kind support] information.”

There are a number of forms that the claims representative must complete with the applicant, either through MISSICS or separately. Some forms apply in all cases, such as the *Application for Supplemental Security Income* (Form SSA-8001-BK), which SSA uses to determine an

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<sup>114</sup> *Id.*

<sup>115</sup> Joyce Nicholas, Source, Form, and Amount of In-kind Support and Maintenance Received by Supplemental Security Income Applicants and Recipients, SSA, Social Security Bulletin, Vol. 74 No. 3, 2014, <http://www.ssa.gov/policy/docs/ssb/v74n3/v74n3p39.html>.

<sup>116</sup> *Id.*

applicant's eligibility for SSI and SSI payment amounts. An agency report published in the Federal Register reflects that each SSI application completed either via the MSSICS system or via a non MSSICS paper application requires an average of 20 minutes per application. The *Statement of Living Arrangements, In-Kind Support, and Maintenance* (SSA Form 8006-F4) is used to determine if in-kind support and maintenance exists for SSI applicants and recipients and, if so, the income value of the ISM. This form requires an average of seven minutes to complete. The *Statement of Household Expenses and Living Arrangements* (SSA Form 8011-F3) will take about 15 minutes to complete, according to information on the form. If the information cannot be documented using the MISSICS system, there are other forms that must be used to document this information.

There are additional forms, depending on the circumstances. For example, SSA uses Forms SSA-2854 (*Statement of Funds You Provided to Another*) and SSA-2855 (*Statement of Funds You Received*) to gather information to verify if a loan is bona fide for Supplemental Security Income (SSI) recipients.<sup>117</sup> Form SSA-2854 asks the lender for details on the transaction, and Form SSA-2855 asks the borrower the same basic questions independently. Agency personnel then compare the two statements, gather evidence if needed, and make a decision on the validity of the bona fide status of the loan. SSA collects this information at the time of initial application for SSI or at any point when an individual alleges being party to an informal loan while receiving SSI. Each of these forms requires an average of 10 minutes just to complete the form.

For all of this effort, about nine percent of SSI recipients have their benefits rates reduced because of ISM during any given year.<sup>118</sup>

Elimination of the ISM form (SSA Form 8006-F4) alone would result in significant savings in work hours, which would be available for employees to perform other valuable duties. According to SSA's 2014 annual SSI report, 2.1 million individuals applied for SSI benefits in 2013 based on blindness or disability and an additional 148 thousand individuals applied for SSI benefits based on age. Multiplying the estimated seven minutes required to complete the ISM form by the number of SSI applicants yields a significant number of work hours (over a quarter of a million) that could be saved for other tasks, including program integrity work. Even if this form is not completed in every case, it is completed in most of them, and there are additional hours devoted to this workload beyond completion of the SSA ISM form. The program cost of eliminating ISM should be weighed against projected estimates of savings in staff time and estimates of dollars saved or recaptured by using all or part of this available time for program integrity work.

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<sup>117</sup> For SSI purposes, we consider a loan bona fide if it meets these requirements (1) Must be between a borrower and lender with the understanding that the borrower has an obligation to repay the money; (2) Must be in effect at the time the cash goes to the borrower, that is, the agreement cannot come after the cash is paid; and (3) Must be enforceable under State law, often there are additional requirements from the State.

<sup>118</sup> Joyce Nicholas, supra, Note 116.

### 3.2 ISM AND LIVING ARRANGEMENT POLICIES ARE A LEADING CAUSE OF SSI IMPROPER PAYMENTS

A recent report on SSI payment accuracy shows that in-kind support ranked third as a factor in overpayments, accounting for \$187 million. In-kind support and living arrangements also ranked second and third as factors in underpayments, accounting for \$93.5 million and \$82.5 million, respectively. In fact, the Government Accountability Office (GAO) and SSA's Office of the Inspector General (OIG) have repeatedly identified ISM policy as a leading cause of SSI payment errors.<sup>119</sup> Overpayments to SSI recipients are generally recovered by withholding from the monthly benefit an amount equal to 10 percent of the individual's countable monthly income. For many recipients whose only income is SSI, this means that 10 percent of their monthly SSI payment is withheld. As we previously noted, average (or even maximum) SSI payments are very low. Recovery of an incorrect payment to an SSI recipient can take a very long time.

The agency's program integrity work supplements recipients' own reports of changing circumstances, helping ensure that only those persons eligible for benefits continue to receive them, a major agency goal. Program integrity efforts include SSI redeterminations and continuing disability reviews (CDRs).

One of SSA's most valuable program integrity tools is the SSI redetermination process. During the redetermination, SSA reviews all the nonmedical criteria for eligibility, including living arrangements, and income and asset levels. The FY 1999 SSI Management Report called redeterminations "the most powerful tool available to SSA for improving the accuracy of SSI payments." Redeterminations are reviews of the non-disability factors (income, resources, and living arrangements) that affect eligibility and payment amounts. The law requires SSA to conduct redeterminations but gives the agency the authority to determine the frequency and manner of conducting them.

SSA's analysis shows the importance of redeterminations in preventing ISM-related overpayments. For overpayments due to in-kind support and maintenance, 46 percent of the overpaid dollars resulted from a change in circumstances after the most recent redetermination or related limited issue, and 31 percent resulted from a change between the time the initial claim was completed and a redetermination or related limited issue was completed. The FY 1999 SSI Management Report noted that redeterminations were very cost-effective, and recent enhancements in its profiling had made them even more effective. At that time, SSA's spending on redeterminations yielded savings (in the form of collected and prevented overpayments) of \$8 for each \$1 spent.

However, increasingly limited resources have correspondingly limited the agency's ability to perform program integrity work. The number of field office redeterminations fell every year from 2004 through 2007, and in 2008 was only 56 percent of what it had been in 1999. An SSA Deputy Commissioner testified in 2008, "We have had to reduce some of our stewardship

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<sup>119</sup> (GAO citations; SSA citations); Joyce Nicholas, *supra*, Note 116.

activities in order to devote necessary resources to service delivery, and our payment accuracy has suffered as a result.”<sup>120</sup>

In a 2009 evaluation, SSA’s Office of the Inspector General found that the number of SSI redeterminations conducted by SSA between fiscal years 2003 and 2008 decreased by more than 60 percent, while the number of recipients had increased. SSA reported that it was unable to conduct as many redeterminations as necessary because of budget limitations and increases in SSA’s core workloads. The OIG estimated SSA could have saved an additional \$3.3 billion during fiscal years 2008 and 2009 by conducting redeterminations at the same level it did in fiscal year 2003.<sup>121</sup>

A second program integrity tool is the continuing disability review (CDR) process. Years ago, when SSA issued its 1999 SSI Management Report, it was in the early stages of working through a seven-year plan to become current in its CDR workload. Its goal was to be current in conducting CDRs by FY 2002. It was current with OASDI CDRs by FY 2000 and with all CDRs by FY 2002. Beginning with 2003, however, backlogs have grown again. About 1.6 million CDRs are due every year. Because of budgetary constraints, SSA has consistently been unable to process the number that come due. Of the total 1.4 million backlogged CDRs at the end of FY 08, more than 500,000 were SSI children, and more than 400,000 were SSI adults.

The administrative cost of conducting CDRs results in much greater savings of program costs. For the period 1996 through 2006, CDRs yielded savings-to-cost ratios averaging \$10.4 to \$1. For FY 2007, the ratio was estimated at \$11.7 to \$1. Looking specifically at SSI, CDRs conducted in FY 2007 will result in an estimated reduction in Federal benefit payments of \$1.2 billion over a 10-year period, and a reduction in the Federal share of Medicaid payments of \$715 million over the same period.<sup>122</sup> >>need to update statistics<<

Staffing constraints are having adverse effects on service. The number of staff in field offices dropped 4.4 percent between 2005 and 2008. The agency will have approximately the same number of employees in FY 2013 as it did in FY 2007, even though workloads have increased dramatically over the past two years, with retirement and survivor claims up 11 percent, and disability claims up 27 percent. As a result of greater efficiencies, field office work produced fell only 1.3 percent during the same period. To manage the reduced staffing, SSA deferred work that the agency deemed as a lower priority, such as conducting reviews of beneficiaries’ continuing eligibility. However, deferring these reviews means that beneficiaries who no longer qualify for benefits may still receive payments erroneously.<sup>123</sup>

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<sup>120</sup> Testimony of David A. Rust, Acting Deputy Commissioner for Disability and Income Security Programs before the Federal Financial Management, Government Information, Federal Services, and International Security Subcommittee of the Committee on Homeland Security and Governmental Affairs, United States Senate, January 13, 2008, [http://www.ssa.gov/legislation/testimony\\_013108.htm](http://www.ssa.gov/legislation/testimony_013108.htm)

<sup>121</sup> Office of the Inspector General, SSA, “Supplemental Security Income Redeterminations” (No. A-07-09-29146), July 2009.

<sup>122</sup> SSA, *Annual Report of Continuing Disability Reviews*, Fiscal Year 2007.

<sup>123</sup> “Social Security Administration: Service Delivery Plan Needed to Address Baby Boom Retirement Challenges,” GAO Report to the Committee on Finance, U.S. Senate, January 2009, <http://gao.gov/assets/290/284778.pdf>.

Elimination of the ISM workload, which has a material impact on 9 percent of SSI recipients, but accounts for many work hours, would free sorely needed resources for redetermination and CDR cases. As the U.S. Supreme Court noted in *Mathews v. Eldridge*, the government’s interest, and, hence, that of the public, in “conserving scarce fiscal and administrative resources is a factor that must be weighed.”<sup>124</sup>

### 3.3 ISM AND LIVING ARRANGEMENTS INFORMATION EFFECTIVELY PRECLUDES USE OF SYSTEMS EFFICIENCIES

The agency relies on new technology to support its initial determination and program integrity efforts, such as the Access to Financial Institutions (AFI) initiative, which the agency uses to identify excess resources in bank accounts of SSI applicants and recipients by electronically checking for known and potentially unreported accounts directly with the financial institution. AFI is an alternative to the traditional SSI asset verification practices of beneficiary self-reporting and direct contact with financial institutions. The agency also uses the SSI Telephone Wage Reporting System (SSITWR), an automated, toll-free telephone number that allows individuals whose income and resources are considered in determining SSI eligibility and payment amount to report wages by telephone. The SSITWR system automatically enters wage data into the SSI system, eliminating the need to enter a manual report. These telephone reports generally are accurate and require no additional evidence, which saves time in the field offices and reduces wage-related errors.

Unfortunately, because of the very situation-specific nature and great complexity of the ISM evaluation process, the agency cannot make use of online applications for SSI and it cannot make use of automated resources such as AFI and SSITWR to identify, determine and apply ISM. Each and every ISM determination - for each and every individual, for every application and many updates and redeterminations, for each and every month - must be done mostly manually and generally must involve an agency representative to assist. This program policy effectively prevents the agency from moving forward completely with its system modernization plans.

## 4 PAST PROPOSALS FOR CHANGE

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Past proposals for SSI reform typically look at one or two areas for change, such as raising the asset limit or changing (or eliminating) the use of ISM. We feel that it is most appropriate to take a holistic view of program policy changes. No single policy provision operates in a vacuum, and probably no single policy change will solve a significant number of the issues that should be addressed in order to bring the SSI program more in line with its stated goals and purposes, and to bring the program more fully in line with agency strategic goals and overall American public policy preferences.

In December 2000 SSA published *Simplifying the Supplemental Security Income Program: Challenges and Opportunities*, which examined living arrangements and in-kind support, among

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<sup>124</sup> *Mathews v. Eldridge*, 424 U.S. 319, 347-48 (1976); see also *Sullivan v. Everhart*, 494 U.S. 83, 95 (1990).

other aspects of the SSI program. The report outlined six potential methods to simplify the SSI program. All of the methods examined had advantages and disadvantages. One option would eliminate the current rules for living arrangements and in-kind support and would simply reduce benefits by a fixed percentage for adult SSI beneficiaries living with another adult. It would be possible to develop a cost-neutral option for such reductions.

Several other SSA documents discuss past attempts made by the agency's managers, researchers, and legislative workgroups to develop, study, and propose new approaches for simplifying ISM policy.<sup>125</sup> GAO repeatedly has reported limited progress on simplifying ISM complexities and addressing the persistence of ISM-related challenges. Various articles and reports highlight the agency's numerous attempts to reduce the administrative burden and errors spurred by counting ISM. For example, the agency presents several ISM options and acknowledges that implementing alternative ISM policy might simplify the SSI program, but could create other dilemmas.<sup>126</sup> Several other SSA documents discuss past attempts made by the agency's managers, researchers, and legislative workgroups to develop, study, and propose new approaches for simplifying ISM policy.<sup>127</sup>

The following elements of SSI program change have been discussed by previous authors:

#### 4.1 ISM

The primary focus of this statement has been the ISM rules. These rules are complex, must be applied in virtually every case and on an ongoing basis, but have an impact on only about 9 percent of cases. In addition, ISM and related issues are a leading cause of improper payments, and overpayments are notoriously challenging to recover. The policy tends to keep SSI recipients from being able to accept help from others, although the impact of that assistance can vary significantly, depending on what type of assistance and from what source. While SSI applicants and recipients are expected by law to report any income, it is a tremendous burden to ask most ordinary citizens to understand what ISM to report and how to describe it so that it will be treated most accurately. Even SSA employees charged with processing this information, who should be the experts in the matter, describe ISM rules as complicated and confusing.

There have been quite a number of proposals to change ISM policy, ranging from eliminating ISM to redesigning the rules to simplify them and to streamline the information collection necessary to process ISM evaluations.

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<sup>125</sup> Richard Balkus, James Sears, Susan Wilschke, and Bernard Wixon, "Simplifying the Supplemental Security Income Program: Options for Eliminating the Counting of In-kind Support and Maintenance," *Social Security Bulletin*, Vol. 68, no. 4, 2008, 15-39. <http://www.ssa.gov/policy/docs/ssb/v68n4/v68n4p15.pdf>.

<sup>126</sup> **Need citation for 2000 SSA report**

<sup>127</sup> Richard Balkus, James Sears, Susan Wilschke, and Bernard Wixon, "Simplifying the Supplemental Security Income Program: Options for Eliminating the Counting of In-kind Support and Maintenance," *Social Security Bulletin*, Vol. 68, no. 4, 2008, 15-39. <http://www.ssa.gov/policy/docs/ssb/v68n4/v68n4p15.pdf>.

#### 4.1.1 Eliminate ISM

The most recent published discussion is an article on options for eliminating ISM.<sup>128</sup> The article points out that since the SSI program began 35 years ago, at least 10 workgroups, studies, and reports have examined ways to simplify the program, and most of them have looked at the issue of in-kind support and maintenance, with only limited progress at simplifying these rules. The article illustrates the difficulty of simplifying this aspect of SSI policy in a way that is budget neutral. Eliminating the counting of in-kind support and maintenance is estimated to save about \$70 million per year in administrative costs, but at an estimated program cost of \$1.2 billion per year.

To maintain budget neutrality, the proposal suggests recouping costs by reducing the benefits of beneficiaries who share housing. As the article points out, the redistribution seems disproportionate to the administrative savings, and there are distributional concerns about how the costs would be recouped, with some groups of beneficiaries gaining and others losing.

An SSA policy office examined a proposal to repeal the VTR provision and eliminate all ISM counting. They note that this would provide the most comprehensive simplification. SSA would no longer need to collect detailed information about recipients' living arrangements and would not replace ISM counting with a new process that would have the potential to eventually become just as complex. SSI payment errors would be reduced substantially because we would no longer determine SSI benefit amounts based on living arrangements which are subject to frequent, unexpected, and unreported changes.

SSA estimated that eliminating ISM counting would increase SSI benefits for about 500,000 current recipients, which would increase SSI program costs by at least \$1 billion per year. In addition, it was estimated that the anticipated administrative savings from eliminating ISM would be more than offset by the cost of servicing newly eligible beneficiaries.

#### 4.1.2 Benefit Restructuring

Benefit restructuring is an economies of scale proposal that has been given serious consideration by SSA several times over the years. This would replace ISM evaluation with a policy based on the notion of economies of scale. Under benefit restructuring, the one-third reduction provision would be repealed and ISM counting would stop. SSI beneficiaries living in households would be paid based on whether they live alone or with others. An SSI beneficiary who lives alone, or only with minor children, would be paid benefits based on the full FBR. An SSI beneficiary who lives with another adult would be paid a reduced SSI benefit.

The basic concept has been suggested in many forms, including different reduction percentages, payment protection for current beneficiaries, and reductions or no reductions for eligible children. Because some variations could save substantial program dollars, the proposal has been packaged with other program improvement proposals such as an across-the-board FBR increase.

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<sup>128</sup> Richard Balkus, James Sears, Susan Wilschke, and Bernard Wixon, "Simplifying the Supplemental Security Income Program: Options for Eliminating the Counting of In-kind Support and Maintenance," *Social Security Bulletin*, Vol. 68, no. 4, 2008, 15-39. <http://www.ssa.gov/policy/docs/ssb/v68n4/v68n4p15.pdf>.

In the past, benefit structuring has had considerable support in SSA. Supporters point to simpler rules for determining benefit reductions and the notion that it would be easier to determine whether an individual lives alone than to determine ISM. On the other side are those who point out that benefit reduction under this restructuring would tend to be arbitrary. Household expenses and the financial means of a beneficiary's roommates would not be considered, and there is concern that new complexity, manipulation, and possibly litigation would result from trying to define who "lives alone." Additionally, a significant number of current beneficiaries would become ineligible for SSI. Payment protection could be included in benefit restructuring, but to provide this would reduce the cost savings and add back a significant level of complexity.

It is not apparent whether this proposal would significantly improve the rate of improper payments, in part for the reasons noted above with respect to complexity and possible temptation to hide or manipulate living arrangements.

The agency estimated that benefit restructuring would result in benefit reductions for about 3.6 million current beneficiaries who live with others, and between 300,000 and 580,000 current beneficiaries could become ineligible for SSI.

With benefit restructuring, a percentage reduction could be chosen so as to reduce program costs or make the proposal cost-neutral. However, estimates indicate a substantial increase in administrative costs related to the implementation of this proposal. Fundamentally, it does not significantly reduce intrusiveness or complexity compared to current policy.

#### 4.1.3 Redesign the Rules for Determining ISM

This could entail anything from making some relatively minor changes to a complete redesign of ISM rules. Some options are:

- Eliminate the VTR rule and PMV rules and use only one rule to determine ISM;
- Eliminate earmarked sharing, separate purchase and consumption of food, home ownership, and rental liability as types of living arrangements;
- Reducing the number of household expenses used to determine ISM;
- Streamline current ISM documentation and verification requirements.

It is reasonable to assume that such redesign of ISM would make reporting by recipients somewhat easier and could reduce complexity-related errors by SSA staff. However, the likelihood of ISM-related payment errors could still occur because SSA would still be counting ISM.

It is likely that a redesign of ISM rules could be developed that would not result in a substantial increase in program or administrative costs, or have a significant negative impact on current recipients.

The Board recognizes that changing one aspect of program policy has implications and ramifications for other policy and - beyond policy - for pragmatic, public service, and political aspects of SSI program administration. It seems most appropriate to take a more inclusive

approach to analyzing possible programmatic change. For that reason, we also take a look at recent proposals addressing other SSI policy.

## 4.2 ASSET TEST

The asset limit of \$2,000 for individuals and \$3,000 for couples may prevent many elderly and disabled persons who are truly in need from qualifying for SSI. These asset thresholds were last updated in 1989. Moreover, that increase only partially captured the effects of inflation.<sup>129</sup> If the asset limits had been indexed to inflation since 1989, they would be almost twice as high as they are today; if they had been indexed since the program's 1974 launch, they' would be almost four times as high.<sup>130</sup>

SSI's asset limits are justified on the grounds that SSI provides a safety net of last resort; people with assets should spend them before turning to public assistance. Nevertheless, people with no or limited income may be ineligible if their countable assets exceed the thresholds. A 2003 SSA study noted that the SSI asset test has been criticized on several grounds. The current SSI asset test provides a strong incentive to spend down assets<sup>131</sup> and eliminates the ability of recipients to preserve a fund for emergencies. In addition, it treats individuals differently depending on the form of their retirement savings.<sup>132</sup>

A number of past proposals have discussed changes in the asset test. For example, a number of authors propose increasing the asset threshold, but keeping the couple asset threshold equal to 150 percent of the individual asset threshold. This would not change the benefits or income of people who presently qualify for SSI, but would allow those with low income and modest assets to qualify for SSI. This intervention might substantially increase the income of some of the poorest elderly and would provide more of a "cushion" to meet financial crises, but would not eliminate the "marriage penalty". Another approach would be to simply increase the asset threshold and give the full asset limit to married couples living together as for two individuals. Neither approach, however, would eliminate the threshold cliff or address the income-producing potential of assets.

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<sup>129</sup> Robert M. Ball, "Social Security Amendments of 1972: Summary and Legislative History," *Social Security Bulletin*, March 1973, <http://www.ssa.gov/history/1972amend.html>.

<sup>130</sup> Kathy Ruffing, "Rich Man, Poor Man: Lawmakers Should Raise and Index the SSI Asset Limits," Off the Charts Blog, Center on Budget and Policy Priorities, January 17, 2013, <http://www.offthechartsblog.org/rich-man-poor-man-lawmakers-should-raise-and-index-the-ssi-asset-limits/>.

<sup>131</sup> Neumark, D., & Powers, E. (1998). The effect of means-tested income support for the elderly on pre-retirement saving: Evidence from the SSI program in the U.S. *Journal of Public Economics*, 68(2), 181–206.

<sup>132</sup> For example, an individual might qualify for SSI if their source of income is Social Security or an annuity, but might not qualify if the income source is an individual retirement account, a savings account, or an investment that can produce an equivalent income stream. This could be an increasingly frequent barrier to SSI participation as defined-contribution plans grow in popularity and under Social Security reform scenarios that involve mandatory individual accounts. See, Kijakazi, K., & Primus, W. (2000, January). Options for reducing poverty among elderly women by improving Supplemental Security Income. Paper presented at the National Academy of Science 12th Annual Conference, Washington, DC, <http://www.cbpp.org/archives/1-27-00socsec.htm>.

Another option would move the asset test into part of the SSI income determination process, based on the concept that assets can be seen as equivalent to the income they are capable of producing. While formally eliminating the asset test, this would create an income debit that charges a certain percentage of countable assets against the income test. This approach essentially would “tax” certain assets by converting those asset values to an imputed income stream that is counted against the FBR, while eliminating the threshold requirement. This eliminates the “cliff” from some benefits to zero benefits associated with the asset threshold and allows people with higher asset levels to qualify for SSI.<sup>133</sup> On a cost-equivalent basis, the second approach tends to be slightly better in reducing poverty among some groups, particularly elderly women. It also has appealing incentive properties. Indeed, asset test reform would simultaneously improve targeting and reduce incentives to “spend down” assets.

A 2003 SSA study found that, on a cost-equivalent basis, simulations involving changing the asset test gave relatively impressive results.<sup>134</sup>

#### 4.3 PER CAPITA REDUCTION IN FBR FOR ALL MULTI-OCCUPANT HOUSEHOLDS

Michael Stern, one of the panel of experts who studied the SSI program as part of the Supplemental Security Income Modernization Project in 1992<sup>135</sup> suggested eliminating ISM and establishing a payment level for any SSI recipient living with another adult at the rate of 75 percent of the payment for an individual living alone. (This would be the same as for each member of an SSI couple, although other percentages could be considered.) Current beneficiaries could have their benefit levels protected. The original Stern proposal would use the savings (then estimated at \$5 billion over five years) to increase staffing levels and to increase the overall level of SSI benefits toward the Federal poverty threshold.

Establishing a benefit cap for multi-recipient households would reduce program costs, would eliminate the “marriage penalty,” and would address concerns about excessive benefit levels in multi-recipient households, but it would add a significant degree of complexity to the SSI program and in essence would not eliminate the counting of ISM. In addition, nearly half of all recipients would be subject to a reduction in benefits, and those recipients whose countable income, such as Social Security benefits, is close to the SSI limit would become ineligible under a 10% reduction.

#### 4.4 EXCLUSIONS

Like the asset limit, the general income exclusion and earned income inclusion are in desperate need of adjustments for inflation. The amount of income that SSA disregards when calculating

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<sup>133</sup> Kalman Rupp, Alexander Strand, and Paul S. Davies, *Poverty Among Elderly Women: Assessing SSI Options to Strengthen Social Security Reform*, Social Security Administration, Office of Policy, Office of Research, Evaluation, and Statistics, Washington, DC., *Journal of Gerontology: SOCIAL SCIENCES* In the public domain 2003, Vol. 58B, No. 6, S359–S368, available at <http://psychogerontology.oxfordjournals.org/>.

<sup>134</sup> *Id.*

<sup>135</sup> Social Security Administration, “Supplemental Security Income Modernization Project: Final Report of the Experts,” August 1992.

SSI benefits has not changed since 1972. Over time, this failure has increasingly eroded SSI benefits for people on Social Security or those who work. For example, the \$20 general income exclusion was intended in part to ensure that SSI recipients with a significant work history, and who therefore receive Social Security benefits, would have higher total incomes than SSI recipients who had little or no work history. Yet because the exclusion has remained frozen for four decades, the difference in combined SSI and Social Security benefits between recipients with and without significant work history has largely disappeared. Likewise, the \$65 exclusion for earned income is so low that its work incentive has greatly diminished.

Another type of modification is to change the unearned, or general, income exclusion, which applies to the first \$20 of income. Without other changes, one study concluded, increasing this exclusion would not affect the SSI benefits of elderly individuals with no countable income, the poorest segment of SSI's target population. It would increase the benefits of current elderly SSI beneficiaries with income above the general income exclusion limit, and it would make some people eligible who are currently ineligible because of high income. This study also evaluated modifications of the earned income exclusion. The earned income exclusion provides for the exclusion of an additional \$65 of earned income, along with half of any remaining earned income. Because labor force participation among the elderly population tends to be low, changes such as increasing the \$65 earned income exclusion or reducing the 50 percent earned income tax rate were expected to have only modest effects on this population, but would help remove the disincentive to work for those of working age.<sup>136</sup>

If the general income exclusion were increased, in theory more individuals would apply for (and receive) SSI. An internal SSA study suggests, however, that raising the general income exclusion to \$80 would not entail a large increase in participation.<sup>137</sup> Although the study's results indicated that liberalizing the earned income exclusion is an ineffective tool of reducing poverty among the elderly population, it would undoubtedly increase work incentives.

A 2002 SSA study simulated how selected SSI program changes would affect program participation and poverty status among the elderly. SSA found that the most effective -- though also the most expensive -- reform was increasing the income exclusion levels, which raised participation by 20 percent and decreased the aggregate poverty gap among the elderly by 8 percent.<sup>138</sup>

#### 4.5 MODERNIZE TREATMENT OF RETIREMENT PLANS

From an antipoverty standpoint, the current SSI asset test has two major weaknesses. First, rather than gradually phasing out SSI benefits as asset levels increase, there is a cliff at the threshold, a threshold that is very low relative to the SSI income guarantee. Second, there is no consideration given to the income-producing potential of financial assets other than passbook savings and

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<sup>136</sup> Id.

<sup>137</sup> Need citation

<sup>138</sup> Paul S. Davies, *et al.*, "Modeling SSI Financial Eligibility and Simulating the Effect of Policy Options," *Social Security Bulletin*, 64(2), 2002, <http://www.ssa.gov/policy/docs/ssb/v64n2/v64n2p16.pdf>.

dividend-producing assets. Thus eligibility for SSI benefits depends not only on the value but also the form of financial assets.

Furthermore, the decline of defined-benefit pension plans and the spread of defined-contribution and similar arrangements has created a pressing need to modernize the treatment of retirement savings in the SSI program.<sup>139</sup> One recommendation the Board previously considered would exclude a certain amount of savings in tax-sheltered savings accounts from assets to which the asset test is applied. This would be coupled with an increase in the asset limit to adjust for inflation. As we previously noted, studies indicate that the large effects associated with changing the asset test are remarkable.<sup>140</sup> On a cost-equivalent basis, simulations involving changing the asset test display comparatively impressive results. Adding to this the change in treatment of retirement savings accounts would further improve the incentives to work and to save, and would especially improve the living conditions for some of the most needy – the elderly and particularly elderly women.

**4.6 PERMIT SUPPLEMENTAL SECURITY BENEFICIARIES WHO WORK TO KEEP MORE OF THEIR EARNINGS**  
By reducing benefits by \$1 for every \$3 of earnings, rather than the current reduction of \$1 for every \$2 of earnings, would provide enhanced support and encouragement for beneficiaries who are able to do some work.<sup>141</sup>

## 5 THE CHALLENGE OF DOING WHAT NEEDS TO BE DONE.

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- Should take a holistic approach to analyzing the combined impact of increasing asset limits, eliminating ISM, creating consistent treatment of retirement plans, eliminating the “marriage penalty”, changing rules that discourage saving for retirement<sup>142</sup> and increasing ability to perform CDRs/redeterminations and to perform them more timely.
- We continue to pursue simplification because of its potential for improving the SSI program. Simplifying living arrangements policy would make the SSI program easier to understand and implement for the beneficiaries and SSA staff. Instituting simpler rules would alleviate the current labor-intensive process for determining in-kind support and maintenance and free resources for other work. Simplification would eliminate one of the biggest causes of payment errors and increase resources available for timely review of

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<sup>139</sup> Zoe Neuberger and Robert Greenstein, "Changing Medicaid and SSI Rules to Encourage Retirement Saving," Retirement Security Project Policy Brief, September 2008, [changing rules](#) .

<sup>140</sup> For example, eliminating the asset test has the smallest poverty gap reduction of any of the changes simulated by McGarry, K. (2002). Guaranteed income: SSI and the well-being of the elderly poor. In M. Feldstein & B. Liebman (Eds.), The distributional aspects of Social Security and Social Security reform. Chicago: University of Chicago Press.

<sup>141</sup> Shawn Fremstad and Rebecca Vallas, The Facts on Social Security Disability Insurance and Supplemental Security Income for Workers with Disabilities, Center for American Progress, May 30, 2013, available at <https://www.americanprogress.org/issues/poverty/report/2013/05/30/64681/the-facts-on-social-security-disability-insurance-and-supplemental-security-income-for-workers-with-disabilities/>

<sup>142</sup> Kathy Ruffing, SSI: Helping the Poorest Elderly and Disabled Americans, Center on Budget and Policy Priorities, April 16, 2013, <http://www.cbpp.org/blog/ssi-helping-the-poorest-elderly-and-disabled-americans>.

recipients' cases. Simplification also allows the agency to take action to bring this part of program policy in line with agency objectives and plans, and with overarching concerns of fair and equitable treatment.

- Replacing current rules with an approach that is much simpler would enhance payment accuracy, improve program integrity, increase equity among beneficiaries, reduce administrative burdens, and make the program easier for beneficiaries to understand.

The rules for making initial determinations and redeterminations continue to be lengthy and complex. In addition, it is not clear that the current rules allow the program to meet its goals. It is important to consider that any change does not occur in a vacuum. We urge a comprehensive reevaluation of both income and resource rules so that administration of the SSI program is more efficient, more accurate, more consistent, and less opaque.

DRAFT

# **Single Decision Maker Authority - Needs a Decision**

**Social Security Advisory Board**

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Social Security Advisory Board  
400 Virginia Avenue, SW Suite 625.  
Washington, D.C. 20024

# Single Decision Maker Authority - Needs a Decision

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## Executive Summary

Two disability programs, administered by the Social Security Administration (SSA), provide cash benefits to workers who can no longer engage in substantial gainful activity because of a disabling condition that is expected to last more than one year. Adjudicators aim to make these determinations both quickly and accurately, where accuracy means that claimants meet SSA's definition of disability. Normally, after a case has been developed by a lay adjudicator, a medical consultant (MC)—a physician or psychologist—must 'sign off' on each case. Starting in 1999, SSA authorized this lay adjudicator to be a Single Decision Maker (SDM): to make determinations in some cases without MC review. The objective was to accelerate the determination process, without degrading accuracy. Twenty sites have had SDM authority for the past 16 years.

SSA is now considering whether to extend SDM authority nationally, to return the pilot states to the original practice of requiring sign-off by an MC, or to continue the status quo of different processes depending upon the state. Some data have been generated as to cost, accuracy, and speed of determination. Unfortunately, the quality of the data is deficient in many ways. To have generated high-quality data would have been extremely difficult as disability determinations are carried out by state agencies whose practices differ in myriad ways. To do so would have required a well-considered research design and data-collection plan with tight administration over the past sixteen years. We find little indication of effort by SSA to establish a research design or data collection plan that could have promised the data necessary to make a fact-based recommendation.

Accordingly, the SSAB is unable to recommend to whether the Single Decision Maker model should be extended, maintained, or terminated. We say this with regret, as administrative pilots offer a promising way both to hold down administrative costs and improve citizen's satisfaction with the program. Such experiments are vitally important and should continue, but none should move forward without a clear research design, a plan for collection of data in a form that will lend itself to analysis, and assignment of managers with the clear authority to manage the project.

## Introduction

SSA administers two disability programs: Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI). Through its nationwide network of field offices, SSA processes disability applications in conjunction with state agencies known as Disability Determination Services (DDSs). The DDSs, which are fully funded by the federal government, develop medical records and determine whether claimants are disabled or blind under SSA guidelines. SSA field offices help the public with submitting claims and adjudicate non-medical aspects of the claim. SSA strives for three main objectives in disability determinations: consistency, timeliness, and correctness.

## Implementation

In the early 1990's, demographic shifts and legislative changes led to a rapid expansion of workloads that began to overwhelm SSA's ability to process disability claims. Responding to these pressures, SSA proposed the Disability Redesign in 1994 – 83 changes to improve the disability decision-making process. One proposal was the Single Decision Maker (SDM) -- giving authority to DDS examiners to make initial disability determinations without requiring a medical consultant's (MC) signature.<sup>1</sup> The SDM enabled earlier decisions and freed MCs to concentrate on more difficult cases.

After receiving and addressing public comments on the SDM proposal, SSA finalized rules for the new model in 1995. From 1996 to 1999, SSA tested the SDM model at select sites and determined the model to be effective. In 1999, the agency started the SDM pilot at 10 DDS sites—referred to as the SDM prototype. Later that year, SSA expanded the pilot to an additional 10 DDS sites<sup>2</sup>—referred to as SDM II<sup>3</sup>. These 20 DDSs continue to operate with SDM authority.<sup>4</sup>

## Measurements

To determine efficacy of the SDM model, the Board has spoken with current and former SSA executives, DDS administrators, Center for Disability Directors, and disability examiners. The Board has reviewed published reports by SSA from the Office of Quality Review and the Office

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<sup>1</sup> For some claims, such as mental impairment denials, policy requires a MC's signature.

<sup>2</sup> Florida, Guam, Kansas, Kentucky, Maine, Nevada, North Carolina, Vermont, Washington, and West Virginia

<sup>3</sup> Alabama, Alaska, California (LA North and LA West only), Colorado, New York, Louisiana, Michigan, Missouri, New Hampshire, and Pennsylvania

<sup>4</sup> The Disability Examiner Authority (DEA), also known as “new authority SDM” allows disability examiners in all sites to make fully favorable allowance without the approval of a State agency medical or psychological consultation on Quick Disability Determination (QDD) and Compassionate Allowance (CAL) cases – this authority has been extended to 11/13/2015. <https://federalregister.gov/a/2014-20535>.

of the Inspector General. From our conversations and research, we have determined there are three areas that should be examined in order to understand the advantages and disadvantages of the SDM model: processing time, accuracy, and allowance rates.

### Processing Time

In our discussions with SSA disability practitioners over the past year, we heard unanimous support for expanding SDM authority nationwide. DDS directors and examiners told us that the authority allowed them to move cases to a decision faster since they do not need to wait for a medical consultant in cases where their input is not required. While DDSs using the SDM still use medical consultants, these services are allocated to only more complex cases.

A recent OQP study<sup>5</sup> analyzed the potential impact of nationwide SDM authority. The analysis predicts that nationwide implementation of SDM authority would reduce overall processing time by an approximately 11 days.<sup>6</sup>

<b>SDM change in processing time</b>			
	<b>Overall</b>	<b>SSDI</b>	<b>SSI</b>
<b>Days</b>	-11	-11	-13

A decrease in processing time would provide better service to the public as well as administrative savings when staff is able to process cases more efficiently.

Prior to the release of OQP’s updated study, the SSA Office of the Inspector General (OIG) conducted its own study of SDM. The OIG study examined cases involving two impairments: back disorders and genito-urinary disorders.<sup>7</sup> In their sample, cases were processed, on average, sooner at SDM sites than at non-SDM sites.<sup>8</sup>

<b>SDM change in processing time</b>		
	<b>Back disorder</b>	<b>Genito-urinary cases</b>
<b>Days, SDM to non-SDM</b>	-26	-11

<sup>5</sup> SSA, Office of Quality Performance. *Estimating the Effects of National Implementation of Single Decision Maker*, August 2013.

<sup>6</sup> OQP had released an earlier version of this report (2010) but reported that this update used a more reliable indicator of which cases were processed using SDM authority.

<sup>7</sup> The OIG study examined a representative sample of cases from calendar year 2011. The OIG chose back impairments because it was the most frequent impairment in their data file and genito-urinary cases based on SSA staff input.

<sup>8</sup> SSA, Office of the Inspector General. *Single Decisionmaker Model – Authority to Make Certain Disability Determinations Without a Medical Consultant’s Signature*, August 2013.

<b>Days, SDM (without MC signature) to non-SDM (with MC signature)<sup>9</sup></b>	-38	-22
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## Accuracy

The term ‘accuracy,’ as used by SSA, means determinations that are compliant with SSA’s disability policy requirements. SSA’s office of Quality Assurance is responsible for reviewing samples of cases processed at state DDSs for accuracy. Using data from these samples, the 2013 OQP study found statistically significant differences between SDM and non-SDM sites: “Cases for which SDM was used were associated with lower decision errors and lower rates of case deficiencies.”

The Board urges caution in relying on SSA’s definition of DDS performance accuracy. Overall performance accuracy rates between 2007 and 2014 range from a low of 93.7% to a high of 99.6%. States cannot fall below the performance accuracy threshold of 90.6% for more than two consecutive quarters without consequences. Cases are not counted as inaccurate if the reviewer disagreed with the rationale or basis for the determination of the initial examiner if the inaccuracy would not have changed the decisional outcome.

In our discussions with Appeals Council representatives, however, we learned that while OQP was reporting similarly high accuracy rates in reviewing ALJ decisions, the AC Division of Quality was remanding or issuing a corrective decision in approximately 20 to 25% of favorable cases.

## Allowance Rate

OQP estimates that extending SDM nationwide would slightly increase the allowance rate.<sup>10</sup> As a result, expanding SDM nationwide would increase the number of awards and benefit payments from the DI trust fund. The estimate takes into account an estimate for the percentage of cases that would ultimately be allowed on appeal to ODAR, based on historical appeal rate data.

OQP’s 2013 study predicts that extending the SDM nationwide would increase the number of disability awards.

<b>Allowance change for original authority SDM</b>		
	<b>SSDI</b>	<b>SSI</b>
<b>Rate increase estimate</b>	+0.89%	+0.87%
<b>Case increase estimate</b>	~14,000	~4,000

<sup>9</sup> Cases processed at an SDM site may still require review by a medical consultant. This particular comparison specifically compares cases that were processed by the single decision maker (under the DDS examiner signature) to those cases processed without the benefit of the single decision maker process (under the MC signature).

<sup>10</sup> SSA OQP, March 2013.

In contrast to the OQP study, the OIG analysis of their sample of two impairments reported that SDM II sites have lower final allowance rates than non-SDM sites.<sup>11</sup>

<b>Overall allowance rates through Appeals Council</b>		
	<b>SDM II</b>	<b>Non-SDM</b>
<b>Back disorder</b>	52%	57%
<b>Genito-urinary</b>	74%	78%

In addition, the OIG reported that their finding of lower initial allowance rates for SDM II sites were echoed by initial allowance rates nationwide (including all impairments and all claims).<sup>12</sup>

<b>CY 2011 initial allowance rates at DDS sites nationwide</b>	
<b>SDM II</b>	28.8%
<b>Non-SDM</b>	33.3%

The OIG findings for its sample of two impairments are neither in line with the OQP study nor with the nationwide allowance rate pattern cited in the OIG report. However, the OQP used a more statistically sophisticated method of analysis that was designed to control for systematic differences by impairment and DDS site.

## **Nationwide implementation of SDM for Quick Disability Decision (QDD) and Compassionate Allowance Cases (CAL)<sup>13</sup>**

The Disability Examiner Authority (DEA) is a new authority (November 2010) that enables disability examiners in all sites to make fully favorable allowance without the approval of a State agency medical or psychological consultation on QDD<sup>14</sup> and CAL cases.

### **Processing Time – SDM for QDD/CAL**

The 2013 OQP study also analyzed the current impact of the new DEA. The study found that the new nationwide SDM authority for QDD/CAL cases reduced case processing by approximately

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<sup>11</sup> The OIG report included a comparison to Prototype states but the removal on the reconsideration step of appeals prevents a clear comparison to these sites.

<sup>12</sup> SSA OIG, August 2013.

<sup>13</sup> This new authority has been extended to 11/13/2015. <https://federalregister.gov/a/2014-20535>

<sup>14</sup> Both quick disability determination (QDD) and compassionate allowance (CAL) cases use technology to identify claimants with the most severe disabilities to enable expeditious decision-making.

three days. For cases where the goal is to make the decision within days, a three-day reduction in processing time is significant.

### Accuracy – SDM for QDD/CAL

Due to the small number of cases, OQP was unable to do a similar statistical analysis on the new SDM authority, but an analysis of a simple comparison table revealed no statistically significant difference in accuracy when compared to non-SDM cases.

### Allowance Rate – SDM for QDD/CAL

Using post-implementation data (April 2011 to December 2011), OQP found that the new SDM authority for QDD/CAL cases was associated with a small increase in allowance rates resulting in a relatively small number of new allowances.

<b>Allowance change for SDM with QDD/CAL cases</b>	
<b>all disability cases</b>	
<b>Rate increase estimate</b>	+0.21%
<b>Case increase estimate</b>	~250

The results of a national rollout of a limited SDM authority demonstrated a decrease in processing time, no change in accuracy, and a small increase in allowances. Since cases flagged for quick processing are categorically different from other cases, it is unclear how these results will compare to a national rollout of SDM for most cases.

### Further Analysis Needed

While the OQP study included many variables, it is not conclusive. We do know that there is large variation among the DDSs in the number of cases that are processed using SDM authority. Each DDS uses its own protocol for deciding which cases are processed by SDM. In order for an evaluation to be useful, SSA needs to control the implementation of the SDM by imposing uniform policy of SDM assignment. Although many variables were controlled for in the OQP model, they were unable to control for all relevant factors, such as adjudicator tenure.

ODAR has also noted that the evidentiary value of the initial determination systematically differs for SDM cases that are appealed. While an initial determination that carries a medical consultant’s signature is considered a State agency medical opinion that must be weighed as evidence, an SDM determination is considered an administrative finding that, by definition, receives no evidentiary weight. SSA will need to address this concern. Any change that results in consistent policy nationwide should eliminate this systematic evidentiary imbalance between SDM and non-SDM cases.

In our interviews with SDM offices, the Board learned that an SDM might discuss a case with a medical consultant even though the case is not formally placed in line for MC review and signature. ODAR noted that there would not be any way, on appeal, to identify when a case received this informal MC input. Although use of the electronic Claims Analysis Tool in DDSs with SDM provides more detailed information about the SDM's decision making process, it does not require a notation by the SDM that the case was discussed with an MC.

Since the higher predicted allowance rate would translate to a higher cost to the trust fund, SSA should evaluate more fully the factors that may underlie the higher allowance rate before making a policy decision regarding expansion or discontinuance of the SDM. This evaluation would enable the agency to determine whether the higher allowance rate is an artifact of preselection of cases due to the criteria offices employ in assigning cases to SDM authority or to an MC. SSA should conduct an independent analysis of the accuracy of the decisions. For example, SSA could examine the reversal rate on appeal to ODAR for systematic variation between SDM and non-SDM cases. If the cases are properly allowed, and are allowed at the earliest appropriate time, the SDM authority is in line with agency goals of providing accurate and timely public service.

If in fact, the allowances are policy compliant, SSA should analyze the reason for the difference. Once the processes are understood, SSA can assess how to replicate the improved decision-making. The improved processes could then be incorporated into the non-SDM cases while keeping the medical consultant step that can be helpful on appeal

If SSA does rescind the SDM authority, the decision will also impact case management, processing time, and employee morale. Careful change management should precede actual implementation of the decision. Specifically, SSA should discuss the evaluation of the SDM program with affected employees prior to announcing any change, should make sure that managers of those employees are "on board" with the agency's decision, and should provide clear and consistent communication to employees and managers throughout the process.

## **Conclusion**

The SDM authority remains in limbo, leaving the nation without a uniform disability policy. The SDM model streamlined the disability determination process without lowering existing quality measures. The OQP study does predict slightly higher allowance rates, but the reasons are unclear. SSA needs to specify the criteria for determining what counts as success. We believe that if higher allowances are both faster and compliant with agency policy, the added costs would be justified. Before any conclusion can be reached, however, SSA needs to conduct a more detailed analysis of the allowance rate differential.

SSA and the states agree that a nationally uniform system is desirable. For more than 15 years, SSA has run two different decision-making processes. Meanwhile, SSA has spent considerable time, effort, and money to create a consistent disability policy, creating the electronic Claims Analysis tool for initial decisions, the electronic Bench Book for hearings, and using data analytics as well as randomly selected and focused quality reviews. In 2010, SSA took a first step in restoring unity to the decision-making process by rolling out the SDM for QDD/CAL cases nationwide. In keeping with the goal of a nationally consistent program, SSA should complete the analysis needed and then decide: either expand the SDM authority or rescind it from all sites.

# **The Potential Impacts of Legislative Proposals Preventing Individuals from Concurrent Receipt of Social Security Disability and Unemployment Benefits**

**Social Security Advisory Board**

**Note:** A Microsoft word version of the document has been emailed to you, please leave the tracked changes and comments in the word document.

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# The Potential Impacts of Legislative Proposals Preventing Individuals from Concurrent Receipt of Social Security Disability and Unemployment Benefits

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The Social Security Act authorizes two programs designed to provide a measure of economic security to individuals who are not working. Unemployment insurance (UI), established in the 1935 legislation, assists workers who become unemployed because of economic or employer-driven factors. Social Security Disability Insurance (SSDI) was added to the law in 1956. It provides benefits to people with severe disabilities expected to last one year or more or result in death who can no longer sustain regular full-time work. Each State administers UI within Federal guidelines. It provides temporary cash assistance to involuntarily unemployed workers who meet state eligibility requirements. The SSDI program is funded through federal payroll taxes and provides a monthly cash benefit to workers and their dependents if the worker meets program requirements and SSA's definition of disability.

Generally, the two programs serve separate populations. UI serves people who are temporarily not working but actively seeking a job and are able to return to the workforce. SSDI serves people with disabilities who attest in their application for disability benefits that on a specific date their condition(s) became severe enough to keep them from working. However, the term “*working*” has different meanings in the two programs. State laws determine benefit amounts and the length of time people must have worked before they are eligible for UI benefits. SSDI beneficiaries are permitted, indeed, encouraged, to return to work and may earn modest amounts without impairing their eligibility for SSDI benefits. For SSDI purposes, people are considered to be engaged in substantial gainful activity (SGA)—the SSDI meaning of ‘working’ and thus ineligible for SSDI only if they engage in “work activity that involves significant physical or mental activities performed for pay or profit.”<sup>1</sup> The SGA allowable earnings amount depends on the nature of a person's disability. In 2015 for statutorily blind individuals, the monthly SGA amount is earnings over \$1820 and for non-blind individuals it is earnings over \$1090.<sup>2</sup> Therefore, the beneficiary retains full eligibility for SSDI benefits if their earnings are below the relevant SGA limits. Thus, some overlap of coverage of UI and SSDI is to be expected, given the eligibility conditions for the two programs.

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<sup>1</sup> 20 CFR Section 404.1510 and 404.1572.

<sup>2</sup> SGA amounts are adjusted annually with changes in the national average wage index. SGA limits, disability type and year are on the SSA website at <https://www.socialsecurity.gov/OACT/COLA/sga.html>

## *Government Accountability Office (GAO) Study and Proposals in Response*

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In July 2012 GAO issued a report in response to a congressional request that asked GAO to determine the extent to which individuals concurrently received both SSDI and UI benefits. GAO noted that even though the UI and the SSDI programs targeted different populations and generally provided separate services, the existing rules and definitions in the two programs overlap and that people can legitimately qualify for benefits under both programs.

The number of people with such overlapping eligibility is small. GAO found that 117,000 individuals (less than 1 percent of both programs) concurrently received benefits from both the SSDI and the UI programs in [year]. GAO reviewed a small portion of these dual entitled beneficiaries. It concluded that some concurrent payments were valid, and some were not. Because some payments could be improper and because of the current fiscal sustainability challenges in both programs, there was a need to examine opportunities for potential cost savings. It pointed out that people who are not *able and available* for work, an eligibility requirement for UI, should not be receiving UI benefits, even if they have the earnings to support the benefit. Similarly, people receiving SSDI benefits who engage in SGA are no longer eligible to receive SSDI benefits. GAO acknowledged that the results of its study could not be projected to the whole population of concurrent SSDI and UI recipients and stated that its findings were not “generalizable”

### *The Response to the GAO Report*

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Since publication of the GAO report, there have been several proposals to terminate concurrent receipt of UI/SSDI benefits. Senator Orrin Hatch and Rep. Sam Johnson have advanced on proposal [referred to below as ‘proposal 1’] and the Obama administration has advanced another [referred to below as ‘proposal 2’].

#### ***Proposal 1***

On February 12, 2015, Senator Orrin Hatch (R-UT) and Congressman Sam Johnson (R-TX) introduced, “*The Social Security Disability Insurance and Unemployment Benefits Double Dip Elimination Act of 2015*” (S.499 and H.R. 918) in both the Senate and House. The legislation bars payment of both SSDI and UI concurrently even when people are eligible under both laws.

Current law encourages SSDI beneficiaries to return to work by allowing them a trial work period of up to nine months in a 5-year period, where earnings above SGA. Such earnings do not jeopardize their SSDI eligibility. Under proposal 1, any month during which current SSDI beneficiaries receive a UI benefit – no matter the amount of the UI benefit - will be counted as a trial work month in the SSDI program. If a SSDI beneficiary also receives UI for nine months, at the tenth month the SSDI beneficiary will be removed from the SSDI rolls.

### *The 5-Month Waiting Period*

When a person is awarded disability benefits SSA determines the date of onset of the disability. The individual is entitled to receive SSDI benefits five consecutive full calendar months after the disability onset date, This 5-month waiting period applies to nearly all disability applications<sup>3</sup>. Under Proposal 1, if an individual receives a UI benefit during the 5-month waiting period, the month in which benefits are received will not count as a waiting period month.

For example, if Maria learns she is eligible for SSDI benefits on January 15, calculating her 5-month waiting period she should expect to receive her first disability check from SSA in July. However, if she received one week of UI benefits in February her waiting period will begin in March and she will not receive SSDI until August. If Maria receives any UI benefits in each of the 5-month waiting period, she will no longer be eligible for SSDI and must start the entire disability application process anew.

The Social Security Actuary reviewed the House and Senate bills, and assuming the provisions become effective January 1, 2016, estimated that it would reduce Old Age, Survivors, and Disability Insurance (OASDI) benefit payments by \$5.7 billion in total for years 2015<sup>4</sup> through 2024 and would reduce the actuarial deficit by about 0.01 percent of taxable payroll. Because UI payments are often less than SSDI benefits, the actuary estimated that individuals would forgo UI payments in order to maintain receipt of disability benefits. Assuming implementation on January 1, 2016, the actuary estimated that national UI payments would be reduced in years 2015 through 2024 by a total of \$1.2 billion.

### ***Proposal 2***

The President's 2016 Budget proposed offsetting UI and SSDI benefits to prohibit overlapping income streams. Under this proposal, any UI benefits received would be subtracted from the SSDI benefits.

For the small group of SSDI beneficiaries who have supplemented their SSDI benefit by working part time and received earnings under SGA limits, under current law, if they are laid off from their position and are actively seeking other work they may be eligible for UI benefits. Proposal 2 would alter the current law and preclude receipt of both benefits.

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<sup>3</sup> There is no 5-month waiting period for individuals previously entitled to a period of disability who became disabled within five years.

<sup>4</sup> Although the law will go into effect in 2016 it could affect benefits from 2015.

## *Conclusion and Options*

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Both proposals would prevent simultaneous receipt of benefits under both programs. Denying people access to unemployment benefits may somewhat discourage efforts by SSDI beneficiaries to return to work by reducing the total compensation people receive for returning to work—direct earnings plus future contingent rights to UI benefits. Furthermore, such limits would conflict with the Americans with Disabilities Act and would likely be challenged in court. The savings are small as are the number of beneficiaries that are dually entitled. But the economic impact on those affected could be serious.

The goals of the SSDI program encompass not only assistance to those who are unable to work, but also encouragement to return to work by those who can. Consequently some overlap between the two programs should be expected and perhaps even desired. Both proposals, but especially proposal 1, may discourage efforts to return to work.

We applaud efforts to strengthen both the UI and the SSDI programs, but believe that neither of the proposals herein will do that.