

CONTINUING OVERSIGHT OF THE SOCIAL
SECURITY ADMINISTRATION'S MISMANAGEMENT
OF FEDERAL DISABILITY PROGRAMS

HEARING

BEFORE THE
SUBCOMMITTEE ON ENERGY POLICY,
HEALTH CARE AND ENTITLEMENTS
OF THE
COMMITTEE ON OVERSIGHT
AND GOVERNMENT REFORM
HOUSE OF REPRESENTATIVES
ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

NOVEMBER 19, 2013

Serial No. 113-72

Printed for the use of the Committee on Oversight and Government Reform



Available via the World Wide Web: <http://www.fdsys.gov>
<http://www.house.gov/reform>

U.S. GOVERNMENT PRINTING OFFICE

86-479 PDF

WASHINGTON : 2014

For sale by the Superintendent of Documents, U.S. Government Printing Office
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CONTINUING OVERSIGHT OF THE SOCIAL SECURITY ADMINISTRATION'S MISMANAGEMENT OF FEDERAL DISABILITY PROGRAMS

Tuesday, November 19, 2013

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ENERGY POLICY, HEALTH CARE AND
ENTITLEMENTS,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Washington, D.C.

The subcommittee met, pursuant to call, at 10:10 a.m., in Room 2154, Rayburn House Office Building, Hon. James Lankford [chairman of the subcommittee] presiding.

Present: Representatives Lankford, Jordan, Walberg, Farenthold, Speier, Duckworth, Horsford and Lujan Grisham.

Staff Present: Ali Ahmad, Communications Advisor; Brian Blase, Senior Professional Staff Member; Molly Boyd, Parliamentarian; Lawrence J. Brady, Staff Director; Daniel Bucheli, Assistant Clerk; Sharon Casey, Senior Assistant Clerk; John Cuaderes, Deputy Staff Director; Adam P. Fromm, Director of Member Services and Committee Operations; Linda Good, Chief Clerk; Christopher Hixon, Deputy Chief Counsel, Oversight; Mark D. Marin, Director of Oversight; Emily Martin, Professional Staff Member; Laura L. Rush, Deputy Chief Clerk; Sharon Meredith Utz, Professional Staff Member; Jaron Bourke, Minority Director of Administration; Aryele Bradford, Minority Press Secretary; Adam Koshkin, Minority Research Assistant; Suzanne Owen, Minority Senior Policy Advisor; and Brian Quinn, Minority Counsel.

Mr. LANKFORD. The committee will come to order.

I want to begin this hearing by stating the oversight mission statement. We exist to secure two fundamental principles: First, Americans have the right to know the money Washington takes from them is well spent; and second, Americans deserve an efficient, effective government that works for them. Our duty on the Oversight and Government Reform Committee is to protect these rights. Our solemn responsibility is to hold government accountable to taxpayers because taxpayers have the right to know what they get from their government.

We will work tirelessly in partnership with citizen watchdogs to deliver the facts to the American people and bring genuine reform to the Federal bureaucracy. This is the mission of the Oversight and Government Reform Committee.

Social Security Administration oversees two large Federal disability programs, Social Security Disability Insurance Program and

the Supplemental Security Income Program, both of which have grown rapidly over the last 25 years. The growth in these programs is a significant threat to the truly disabled, who are often pushed to the back of the line, and who face large benefit cuts in the future if the program is not reformed and reformed quickly.

Rapid growth in these programs corresponds to a period of time when the typical job became less physically intensive, and the health of Americans nearing retirement improved. The consensus of expert academics and researchers from across the political spectrum attribute a large portion the growth of the program to a slower economy and a more subjective criteria for entry.

In June, this subcommittee held its first oversight hearing related to the Social Security Administration's management of these programs. At that hearing the committee heard testimony from two former and two current administrative law judges. The testimony revealed significant problems in the Social Security appeals process, an avenue by which more 300,000 applicants typically gain access to the program each year.

One overarching theme of the testimony was that the agency's push to reduce the backlog had an unintended consequence of judge putting too many people onto the program who are able to get back to work. In subsequent months committee staff received numerous briefings from agency officials and conducted three transcribed interviews with Social Security Administration law judges.

The committee has learned that some judges employ shortcuts and do not consider all the evidence available prior to reversing a previous decision. It is important to emphasize the disability cases typically only reach ALJs after applicants have been denied twice at the local disability determination level. Moreover, for all practical purposes, an ALJ decision to allow benefits is an irrevocable commitment of taxpayer funds since payroll decisions are not appealed, and less than 1 percent of disability beneficiaries ever return to the workforce.

The committee's most recent transcribed interview is with regional Chief Administrative Law Judge for Region III, Jasper Bede. Judge Bede testified that if a judge's reversal rate is anything over 75 percent to 80 percent, or the judge disposes of more than 700 cases a year, it raises a red flag that the judge may be issuing poor-quality decisions. Two other judges interviewed by the committee testified that judges who decide over 700 cases a year are not doing a thorough job in evaluating all the evidence.

The committee obtained Social Security adjudication data back to 2005. Some simple statistics indicate a substantial problem. For instance, between 2005 and 2012, more than 930,000 individuals were approved for benefits by a judge with an approval rate in excess of 80 percent. In fact, more than a third of the agency's judges have approved more than 80 percent of applicants in at least 1 year. Between 2005 and 2012, nearly 500,000 individuals were approved for benefits by a judge who disposed of more than 700 cases in a year.

During his interview Judge Bede singled out seven judges in Region III. His disposition data was indicative of a problem with their decisionmaking. But Judge Bede also testified that he was power-

less to do anything with these judges because the of agency policies and management.

These problems raise three important questions: Did the agency fail to stop red flag judges because the agency is focused on processing as many cases as possible? Who has been held responsible for allowing hundreds of judges to essentially rubber-stamp people on the program for years? Will the agency prioritize continuing disability reviews, CDRs, for individuals who have gained access to the program because of one of these judges?

In addition to prioritizing medical CDRs for individuals approved by red flag judges, the agency should immediately suspend several judges and conduct a review of the decisions and practices.

While some reforms to correct the broken disability determination process will need congressional action, there are many steps the agency can unilaterally take to better protect American tax dollars and those most in need. Unfortunately the agency is moving very slowly to adopt needed changes and to clarify perverse regulations.

The decision grid has not been significantly revised since the 1970s. Although hearings are nonadversarial, the agency has not required that claimants and their representatives submit all evidence, favorable and unfavorable, in advance. Moreover, it should not take the agency more than 4 months to reply to questions for the record to this committee as it did for this last hearing.

I hope today's hearing will provide the committee with some clarity about the agency's plan to move forward and, quite frankly, what we in Congress can do to help in the process.

Social Security Disability serves the most vulnerable in our Nation, and the individuals who are sitting in front of me have committed their life to protecting those individuals and helping in any way we can, and we are grateful for your service. And we are hopeful that this conversation today will be a conversation on how we can continue to protect those most vulnerable. But we cannot ignore glaring issues that are driving the program into insolvency. If we do not aggressively deal with the fraud, costly mistakes and legislative fixes required, we will see those in greatest need put in tremendous risk. I believe it is time to fix the system, and we intend to work with this administration in a bipartisan way to prioritize these solutions today.

Mr. LANKFORD. With that, I would like to recognize the very-not-feeling-good ranking member from California Mrs. Speier.

Ms. SPEIER. Mr. Chairman, thank you. Thank you for holding this hearing. I thank all the witnesses for participating. And I want to commend the chairman for not suffering from attention deficit disorder, which is typically what happens here when you take an issue on, you have one hearing, and you go away. You're sticking to it, I'm proud that you are, and as a partner want to make sure we fix this as well.

Having said that, disability insurance benefits are a lifeline, a true lifeline, for millions of Americans who can no longer work in any capacity because of a serious disability. This is a benefit that American employees pay for, and we need to remember that, through their FICA taxes. While the number of applicants and beneficiaries have increased over the past several years, this was

an increase that was projected more than 20 years ago as a result of my generation of baby boomers that have become more susceptible to disabilities as they have aged and the fact that there are an increasing number of women in the workforce.

Every program needs vigorous oversight and strong policies in place to prevent waste, fraud and abuse. Again, I commend the chairman for focusing on this issue. But it is also important to note that the Social Security Administration has initiated significant efforts to improve management, oversight and accountability for the disability adjudication and review process, particularly since we last met.

For instance, the agency is reviewing the quality of ALJ decisions to ensure their legal sufficiency, and Appeals Council reviews ALJ's decisions and provides useful feedback to individual ALJ's regarding the quality of their decisions and to the agency regarding its policy guidance.

The recently created Division of Quality conducts reviews of ALJ award decisions before the benefits go out and conducts discretionary reviews of denial decisions. These reviews help ensure the quality of ALJ decisions and allow the agency to do a focused review of specific issues related to the hearing process at a hearing office or with a specific ALJ.

In addition, SSA has initiated efforts to address concerns raised by ALJ's and others regarding some disability adjudication and review policies. For instance, the SSA has noticed a proposed rule-making that will require a claimant to submit all evidence that relates to their disability claim in a timely manner. This regulation will enhance the accuracy of disability determination and address the concerns that some claimants or their representatives are withholding evidence that may not be favorable to their claims.

The fact is that the national allowance rates have gone down since 2008 from 61 percent to 47 percent, its lowest rate since the 1990s. It's important to ensure that these determinations are done fairly and thoroughly, but it is equally important to ensure that ongoing benefits are proper.

And let me emphasize this: Continuing disability reviews, which are periodic reviews of disability awards to determine if the beneficiary continues to meet the disability criteria, are critical—and I underscore that—critical to the integrity of the system. Unfortunately there are too few of them. These reviews are highly effective means for reducing overpayments or identifying fraud.

We know that this system is at a tipping point. We do not want to see these benefits reduced for those who legitimately should be receiving Social Security Disability. So if we actually focus in on CDRs, we can save money and make sure that those who deserve these benefits receive it. In fact, for every dollar spent on CDRs yields \$9 of program savings. According to the IG, SSA could have avoided paying \$556 million in 2011 if they just performed medical CDRs in the backlog when they were due. So it is more than troubling to hear that there is 1.3 million backlog of scheduled CDRs this year.

It borders on outrageous to learn that these benefits are still being paid to some who have died or who have been incarcerated. Let's be clear: This is partly Congress' fault. Funding for the SSA

has fallen dramatically in the past 2 fiscal years. It is up to Congress to provide the funding the agency needs to fulfill its mandate to effectively monitor program integrity and save taxpayer dollars.

I hope my chair and colleagues would agree that given the clear cost-benefit analysis provided by the inspector general, we should ensure that the agency has sufficient funds to conduct all of its scheduled CDRs and continue other program improvements that have allowed it to reduce its backlog and increase efficiencies, while improving program integrity.

But even in the context of overall improvement, there clearly is still abuse of the system by some bad actors. A recent investigation conducted by the U.S. Senate Homeland Security and Government Affairs Committee and the Senate Permanent Subcommittee on Investigations identified evidence related to a scheme to defraud SSA in implicating a law firm, an ALJ in Huntington, West Virginia, and doctors. As Senator Tom Carper, chairman of the committee, stated, “While we don’t have any evidence that this is more than an isolated case, one example of inappropriate action of this nature is one too many.”

I look forward to hearing from our witnesses on how we can work together to continue this trend of improvement.

Mr. LANKFORD. Thank you.

Mr. LANKFORD. Committee members will have 7 days to submit open statements for the record.

Mr. LANKFORD. We will now recognize our panel today. Patrick O’Carroll, Jr. is the inspector general at the Social Security Administration. Thank you for being here.

Mr. Glenn Sklar is the Deputy Commissioner for Disability Adjudication and Review for the Social Security Administration. You have a return engagement for being here, so I appreciate you being here again.

Judge Jasper Bede is the Regional Chief Administrative Law Judge for Region III, Office of Disability Adjudication and Review, Social Security Administration. Thank you for being here.

Marianna LaCanfora—is that right—

Ms. LACANFORA. That’s right.

Mr. LANKFORD. —is the Acting Deputy Commissioner for Retirement and Disability Policy of the Social Security Administration. Ms. LaCanfora is not testifying today as far as an opening statement, but is open to doing questions. So pursuant to that, as far as answering questions as well, we swear in all witnesses according to committee rules. If you would please stand and raise your right hand.

Do you solemnly swear or affirm that the testimony you’re about to give will be the truth, the whole truth, and nothing but the truth so help you God?

Thank you. You may be seated.

Let the record reflect the witnesses have all answered in the affirmative.

In order to allow time for discussion, I’m going to ask you to limit your testimony to 5 minutes. You see a little clock in front of you. That will tick down from 5 to zero. You will a little red light that comes on when you get to zero. We would like to be as close as pos-

sible. We will have a little bit leniency, but we like to have plenty of opportunity for questions as we go through this.

With that, Mr. O'Carroll, we recognize you first for an opening statement.

STATEMENT OF PATRICK P. O'CARROLL, JR.

Mr. O'CARROLL. Good morning Chairman Lankford, Ranking Member Speier and members of the subcommittee.

This fiscal year SSA projects that it will pay about \$190 billion to 18 million disabled workers, their dependents and to disabled SSI recipients, and receive about 3 million new disability claims. Determining who's eligible for benefits and who continues to be eligible is an overwhelming task. My office has spent over 18 years conducting audits and investigations aimed at helping SSA perform this duty as quickly, carefully and as accurately as possible.

Looking first to those already receiving benefits, my office has long urged SSA to conduct more continuing disability reviews, or CDRs, and more SSI redeterminations. We consistently encourage Congress to fund these critical reviews. With the return on investment of 9 to 1, appropriations for these reviews are a sound fiscal policy.

After dedicated funding ended in 2002, CDRs and SSI redeterminations declined over 60 percent, creating a significant backlog. While SSA has been conducting more reviews since 2009, the backlog has nevertheless continued to grow. As a result, SSA continues to make payments that could be avoided.

For example, according to past audit work, about \$3.3 billion in SSI payments could have been avoided in just a 2-year period, and up to \$1.1 billion in disability benefits could have been avoided in 2011 alone.

The OIG doesn't merely focus on CDRs and redetermination; we provide sound reasons for funding and conducting them. For example, in a recent review we found that SSA hadn't conducted 79 percent of childhood CDRs and 10 percent of age 18 redeterminations within the timeframes required by law, with the cost over 4 years was \$1.4 billion.

Payments made because of delayed reviews of current beneficiaries are troubling because they are largely avoidable, but payments made to people who should never have been awarded benefits at all is equally troubling. We focus closely on the Office of Disability Adjudication and Review and administrative law judges in our audit work to help SSA ensure that undeserving applicants do not receive disability benefits.

For example, we recently issued a report on risk factors at hearing offices, and we found that while ODAR had created 19 separate ranking reports that measured hearing office performance using individual risk factors, it did not combine these risk factors to better identify problem areas. As a result of that, we are conducting an audit that does just that. We believe the new model that analyzes multiple risk factors will help to identify outlier offices as well as hearing offices with best practices that can be emulated.

My written statement identifies more audits planned for fiscal year 2004 and beyond, all aimed at helping ODAR continue to improve the timeliness and accuracy of its decisionmaking. I would be

remiss, however, if I did not point out that disability fraud is the issue my office confronts on a daily basis.

Individuals committing disability fraud is disturbing enough, but doctors, lawyers and other third parties who facilitate fraud for scores or hundreds of beneficiaries is intolerable. A recent operation in Puerto Rico illustrates how a handful of facilitators can put many ineligible people on the disability rolls, and our work in the Commonwealth isn't finished. Nor is our work elsewhere, as you might have seen in recent news headlines and stories. While I can't discuss these open cases, I can tell you they both remain very much active.

Moreover, in July, we launched a disability fraud pilot. Its sole mission is to identify, investigate and prosecute doctors, lawyers, interpreters and others who commit large-scale fraud. Meanwhile our long-standing and highly successful Cooperative Disability Investigations, or CDI units, continue to try and identify fraudulent applications before benefits are ever paid. Since the program was established in 1998, CDI worked nationwide and has resulted in projected savings of \$2.5 billion. I am happy to discuss the CDI program in more detail today if you have any questions.

Through our audit and investigative work, our disability fraud pilot and our CDI units, we will keep working with SSA and the subcommittee to improve the disability programs and to reduce fraud, waste and abuse. I thank you again for this opportunity to testify, and I'll be happy to answer any questions.

Mr. LANKFORD. Thank you.

[Prepared statement of Mr. O'Carroll follows:]

U.S. House of Representatives
Committee on Oversight and Government Reform
Subcommittee on Energy Policy, Health Care, and Entitlements



Statement for the Record

The Honorable Patrick P. O'Carroll, Jr.
Inspector General, Social Security Administration

November 19, 2013

Good morning, Chairman Lankford, Ranking Member Speier, and Members of the Subcommittee. I have appeared before Congress many times to discuss the Social Security Administration's (SSA) disability programs, and how my office helps improve the effectiveness and integrity of those programs. I thank you for the invitation to testify today about these issues of critical importance to American taxpayers.

Increasing levels of disability claims and beneficiaries in recent years have challenged SSA's ability to deliver world-class service, creating workloads that strain resources, causing delays and backlogs, and leaving the Agency vulnerable to fraud and abuse. SSA must find ways to balance service initiatives, such as processing new claims and appeals, against stewardship responsibilities, to ensure that accurate determinations are made at every level and that current beneficiaries remain medically eligible.

Moreover, some individuals will withhold, exaggerate, or fabricate medical information to collect benefits that they are not eligible to receive. Sometimes, individuals involved with the disability claims process assist these fraudulent actions. It is critical that SSA and its Office of the Inspector General (OIG) be able to identify and prevent individuals and groups from defrauding the Government and these critical programs for personal gain.

Today I would like to discuss the efforts of my office to address both of these challenges: audits we've conducted and recommendations we've made to improve the integrity and effectiveness of the claims and appeals process; and current investigative initiatives that target widespread fraud schemes and identify vulnerabilities in the claims process.

Reviews and Recommendations

For many years, we have identified full medical continuing disability reviews (CDRs) and Supplemental Security Income (SSI) redeterminations as highly effective guards against improper payments and disability program fraud. Full medical CDRs are effective in reducing overpayments in the Disability Insurance (DI) program. SSA estimates that every \$1 spent on medical CDRs yields about \$9 in savings to SSA programs as well as Medicare and Medicaid over 10 years.

In a [March 2010 report](#), we determined that SSA's number of completed full medical CDRs declined by 65 percent from Fiscal Year (FY) 2004 to 2008, resulting in a significant backlog. We estimated SSA would have avoided paying at least \$556 million during calendar year 2011 if SSA had conducted the medical CDRs in the backlog when they were due.

According to SSA, the Agency conducted 443,233 full medical CDRs in FY2012, up from 345,492 in FY2011. SSA's goal based on its FY2013 budget request was to conduct 650,000 full medical CDRs, but given the actual funding it received, the Agency has reported that it conducted 428,568. SSA expected a backlog of 1.3 million full medical CDRs to remain at the end of FY2013. This is an increase over the FY2012 year-end backlog of 1.2 million.

In recent years, SSA increased the number of full medical CDRs conducted, but does not have a formal plan to eliminate the backlog. In FY2014, SSA would like to conduct 1,047,000 full medical CDRs if it receives timely and sustained funding as outlined in the legislative proposal for a Program Integrity Administrative Expenses account, which would provide mandatory program integrity funding. We support this legislative proposal or any other mandatory funding for integrity activities.

Even when a CDR *is* conducted and the State Disability Determination Services (DDS) determines medical improvement, it does not always mean that SSA terminates benefits timely, or at all. In a [November 2012 report](#), we identified DI beneficiaries and their auxiliaries and SSI recipients who improperly received payments after their medical cessation determinations, for a projected total of about \$83.6 million in improper payments. We recommended that SSA enhance its systems to perform automated terminations following medical cessation decisions. Although SSA has not yet implemented this change, it has agreed to do so.

Also, we are currently assessing SSA's adherence to the medical improvement review standard (MIRS), and its impact on the beneficiary rolls. During a CDR, SSA follows MIRS – mandated by the Social Security Disability Amendments of 1984 – to determine if a beneficiary's impairment has *improved* since his/her most recent favorable determination and can perform work activities. However, if SSA mistakenly placed the individual on disability in the first place—if they were not disabled when the favorable determination was made—MIRS makes it difficult for SSA to take the person *off* disability, because under current law, there is *no medical improvement*. Based on our sample, it appears that some individuals would not be disabled under SSA's rules were MIRS not in place. Our report is still ongoing; we expect to issue it later this year.

In the SSI program, SSA conducts periodic redeterminations to determine whether recipients are still eligible for payments, and receiving the correct payment amount. In July 2009, we [reported](#) that the number of SSI redeterminations conducted by SSA had substantially decreased even though the number of SSI recipients had increased. Between FYs 2003 and 2008, redeterminations decreased by more than 60 percent. We estimated SSA could have saved an additional \$3.3 billion during FYs 2008 and 2009 by conducting redeterminations at the same level it did in FY2003.

Following our report, SSA significantly increased the number of redeterminations completed. Specifically, redeterminations increased approximately 252 percent since the low in FY2007 of 692,000 to almost 2.44 million in FY2013. SSA plans to conduct 2.6 million redeterminations in FY2014, which the Agency estimates will result in savings of \$5 for every \$1 spent on conducting them.

In our September 2013 review, [SSI High-error Profile Redeterminations](#), however, we found that SSA was not completing all of the redeterminations identified as having the highest risk of likely overpayment. Each year, SSA identifies the number of high-error profile redeterminations it will complete based on the dedicated program integrity funding it expects to receive in its budget appropriation. Since SSA is uncertain of this amount at the beginning of the year, SSA intentionally selects more high-error profile redeterminations than it plans to complete. SSA's method for assigning redeterminations as high-error is based on the anticipated dedicated program integrity funding and the amount SSA allocates to redeterminations. Therefore, when actual dedicated program integrity funding is at or lower than expected, some high-error profile redeterminations selected are not completed.

For example, in FY2011, the dedicated program integrity funding SSA received resulted in the Agency not completing up to 201,000 high-error profile redeterminations selected. If SSA had completed all these redeterminations, we estimate that it would have identified at least \$228.5 million in additional improper payments, both overpayments and underpayments. We recommended that SSA continue to increase the number of the high-error profile redeterminations conducted as resources allow, and SSA agreed to do so.

In September 2011, we issued a follow-up report, *Childhood Continuing Disability Reviews and Age-18 Redeterminations*, in which we found that SSA had not completed 79 percent of childhood CDRs and 10 percent of age-18 SSI redeterminations, within the timeframes specified in the *Social Security Act*. SSA requested and received special funding for FY2009 to FY2012, but while the number of age-18 redeterminations increased, the number of childhood CDRs conducted declined.

We estimated that SSA paid about \$1.4 billion in SSI payments to approximately 513,300 recipients under 18 that it should not have paid; and that SSA would continue paying about \$461 million annually until reviews are completed. We recommended that SSA conduct all childhood CDRs and age-18 redeterminations within legally required timeframes, and SSA agreed to do so to the extent that its budget and other priority workloads allowed.

For many years, we have also focused considerable audit resources on challenges SSA faces at the hearings level of the claims process. A number of years ago, we issued a review, *Administrative Law Judge Caseload Performance*, in which we analyzed existing case disposition statistics across the entire ALJ corps, and evaluated the effect of these production levels on the Office of Disability Adjudication and Review's (ODAR) ability to process incoming hearing requests and reduce the backlog of cases within five years. Without recommending any specific production level, we presented options to SSA and recommended that the Agency develop a performance accountability process that does not infringe on ALJ qualified decisional independence but allows ALJ performance to be addressed when it falls below an acceptable level.

We have continued to focus on ODAR and ALJ performance in our recent audit work as well. In February 2012, we issued a Congressional Response Report, *Oversight of Administrative Law Judge Workload Trends*, in which we focused on the productivity of 24 ALJs—the 12 with the highest allowance rates, and the 12 with the lowest allowance rates. Most SSA staff we interviewed attributed the variance in allowance rates to ALJ decisional independence and discretion when interpreting the law, as well as the demographics of the hearing office service area population. In this report, we also found that SSA management teams at the hearing offices and regions monitored ALJ productivity but did not monitor allowance rates.

Most recently, in a January 2013 report, *Identifying and Monitoring Risk Factors at Hearing Offices*, we found that although ODAR had created 19 ranking reports that measured hearing office performance using individual risk factors, the Agency had not established a process to rank performance using a combination of risk factors. Therefore, in an ongoing audit (currently in draft and with SSA for comment), *Analysis of Hearing Offices Using Key Risk Factors*, we have developed a model that measures variances among multiple risk factors. The model analyzes performance and outcome data among ALJs in the same office and uses five ALJ-related risk factors: (1) allowance rates, (2) dispositions, (3) rate of on-the-record (OTR) decisions, (4) dismissal rates, and (5) average processing time.

Though the Agency's current monitoring process identifies some potential workload problems, such as ALJ-specific issues, our model offers a way to evaluate the performance of individual hearing offices. Using our model and FY2012 workload data, we are identifying hearing offices with the highest and lowest variance scores. We believe outlier hearing offices provide ODAR managers with indications of potential processing issues (high variance) as well as potential best practices (low variance). We plan to recommend that SSA:

- determine if our methodology would assist in monitoring hearing office performance, understanding that the number and nature of the risk factors can be adjusted to meet Agency needs; and
- ensure that ODAR's early monitoring system combines existing information on ALJ OTR decisions and case rotation to identify any ALJ who issues a high percentage of OTR decisions with the same claimant representative.

In FY2014, we are continuing our audit focus on reducing improper payments in SSA's disability programs; in fact, nearly half of our planned reviews address disability program integrity in some way. Among those reviews, we will assess whether SSA:

- could use Medicare information to identify beneficiaries who are receiving disability benefits but may be deceased or not truly disabled;
- is collecting prior overpayments on an individual's record when that person becomes re-entitled to benefits at some point in the future; and
- is appropriately addressing wages earned by disabled beneficiaries *after* their alleged disability onset date but *before* a favorable hearing decision. Such earnings may be an indication that an individual does not, in fact, meet the guidelines for benefit eligibility.

Going forward, we are also conducting or will conduct multiple reviews focused on improving SSA's hearings process:

- We are currently conducting an audit, *Trends Associated with Cases Decided by High-Denial Outlier ALJs*, in which we are analyzing subsequent actions on high-denial ALJ decisions, as well as subsequent actions on denials made by other ALJs in the high-denial ALJ's hearing office.
- *Quality Review of On-the-Record Decisions*: OTR decisions—where no hearing was necessary because the documentary evidence alone supported a fully favorable decision—accounted for about 1 of every 5 allowances in FY2012. We will assess the reasons OTR cases were decided upon receipt at the hearing office but not approved earlier at the DDS level.
- *Relationships Between Medical Providers and Represented Claimants*: We will look at trends in medical source information provided by claimants and their representatives at the hearing level to identify any questionable relationships that may merit additional Agency attention.

Puerto Rico Disability Conspiracy

Of course, our audits and evaluations of SSA's disability programs are only one side of the integrity coin. We also conduct thousands of criminal investigations per year of potential disability fraud, resulting in hundreds of criminal convictions as well as benefit terminations and court-ordered restitution. As you may be aware, during August 21-23, we conducted an extensive arrest operation in Puerto Rico, as part of a complex disability fraud investigation. Working with the FBI and the Puerto Rico Police Department, we arrested 75 individuals, including medical providers, beneficiaries, and a non-attorney claimant representative—who is also a former SSA employee.

These arrests came as the result of a thorough and far-reaching investigation, involving surveillance and undercover operations. We also worked closely with SSA's New York Regional Office to review disability claim files. Our investigation found evidence that individuals were submitting nearly identical medical reports for claimants who shared a common employment history with a company that was experiencing significant downsizing. As this matter is still an active criminal investigation, and the judicial process is ongoing, I am limited in the details that I can share publicly. However, one implicated beneficiary recently pled guilty, and faces up to five years in prison. Also, we continue to receive calls to a special telephone hotline we established to receive tips and other information connected to the investigation; and we anticipate that some of these calls will generate new investigative leads.

OIG's Integrity Initiatives

We have long placed a high priority on allegations of so-called "third-party facilitator" fraud, where doctors, interpreters, social workers, attorneys, or even judges, conspire to submit or approve fraudulent disability claims. As a result of the Puerto Rico operation and other cases, we have undertaken a review of all facilitator-fraud allegations received from SSA or DDS personnel in the last five years. This review is one facet of the work being undertaken by the OIG's Disability Fraud Pilot, which commenced in July. The pilot consists of an SSA Associate Chief Administrative Law Judge, a Deputy Assistant Inspector General for Investigations, and additional OIG investigative and audit personnel, all working to identify and develop allegations of facilitator fraud throughout the country.

Through a variety of means, including data mining, the pilot seeks to identify high-dollar, high-impact cases involving third-party facilitators conspiring with claimants to defraud SSA. The pilot team will explore ways to compile and analyze data that could give us insight as to how to proactively identify those disability claims that might be fraudulent or might involve a corrupt facilitator or even an employee. We are working with ODAR to analyze management information already available to that office, to identify irregularities in administrative law judge performance, claimant representative fees paid, or any other factor that could indicate potential fraud or misconduct.

The pilot is scheduled to run through September 2014, and we will consider expanding the initiative after that, based on the success of investigations conducted during the pilot and an evaluation of the effect the pilot has on the disability process. The pilot is operating as an extension of our Cooperative Disability Investigations (CDI) program, which has for over 15 years been successful in preventing fraud at all levels of the disability claims process. SSA and OIG jointly established the CDI Program in FY1998, working with State DDSs and State or local law enforcement agencies, to pool resources and expertise to investigate suspicious disability claims.

Each CDI Unit comprises

- an OIG special agent who serves as the Team Leader,
- employee(s) from that State's DDS and SSA, who act as programmatic experts, and
- State or local law enforcement officers.

Tapping the skills and expertise of each member, the CDI Units receive claims identified as suspicious by the DDS and, where appropriate, investigate these claims using traditional investigative techniques. The CDI program's primary mission is to obtain evidence that can resolve questions of fraud *before* benefits are ever paid; however, they also evaluate and investigate in-pay beneficiaries, often referred by SSA or a DDS to a CDI Unit during or as the result of a CDR.

CDI currently consists of 25 Units in 21 States and, as of August 2013, the Commonwealth of Puerto Rico. In FY2013, the CDI program reported \$340.2 million in projected savings to SSA's disability programs and \$246.4 million in projected savings to non-SSA programs such as Medicare and Medicaid. Since the program was established, CDI efforts have resulted in \$2.5 billion in projected savings to SSA's disability programs and \$1.6 billion in projected savings to non-SSA programs. Following are recent examples of CDI successes:

- The Oklahoma City CDI Unit investigated a 56-year-old woman who applied for disability benefits claiming an injured wrist, elbow, and shoulder. In her claim, she alleged weakness and pain on the left side of her body, and a limited ability to walk. She also claimed she was required to use a walker and needed help with personal care. During a consultative examination, the woman exhibited no mobility in her left leg and decreased mobility of her back. She was using a walker and wearing a soft neck collar. The woman could not move her neck, and refused to remove the neck collar.

When CDI investigators interviewed the woman at her residence, however, she was not wearing a neck collar or using an assistive device to walk. She was able to sit, stand, and walk without the use of a walker. She told investigators she was working about 20 hours a week as the manager of a donut shop. The woman complained about her left shoulder hurting, but she appeared to move her shoulder and arm freely. Investigators later observed the woman while she worked at the donut shop, and as she ran errands throughout the city. Her last stop of the day was a gym, where she swam and used the whirlpool. At no point did she use a walker or wear visible braces on her arms or neck, and she walked with a normal gait. The Oklahoma DDS denied the woman's claim.

- The Salem, Oregon CDI Unit investigated a 51-year-old woman who applied for disability benefits alleging ADHD and headaches. Though born in the United States, she claimed not to speak English when dealing with SSA. After undergoing multiple evaluations, it was determined that she met a disability listing of Mild Mental Retardation. The claim was submitted as a proposed allowance, but was reviewed by a quality assurance branch. The reviewer noted inconsistencies between the claimant's reported functioning, her 25-year employment history, and other medical records. The claim was sent back to the Oregon DDS for review, and the DDS referred the case to the CDI Unit.

CDI investigators discovered that the claimant owned and managed several rental homes, and was a well-known businesswoman in her small town, having operated a second-hand store and a taco truck before starting her current restaurant business, a walk-up Mexican food stand located a few blocks from an SSA office. CDI investigators located over a dozen witnesses in the local community who had both professional and personal dealings with the woman, who they considered to be a fluent English speaker. In addition, she had filed numerous eviction orders—in English—related to her rental properties.

The Oregon DDS denied the woman's claim, and our Office of Counsel assessed a civil monetary penalty of \$3,000 against her for the false statements she made in connection with her claim.

The CDI program has enjoyed great support from SSA as well as from your colleagues in Congress. We continue to look for opportunities to expand CDI across the country, given available resources and ability to secure law enforcement partners in specific locations.

It is also important to highlight our Civil Monetary Penalty (CMP) Program. My Office of Counsel has the delegated authority to enforce section 1129 of the *Social Security Act*, which authorizes a CMP

against anyone who makes false statements, representations, or omissions in connection with obtaining or retaining benefits, among other offenses. After consultation with the Department of Justice, we are authorized to impose penalties of up to \$5,000 for each false statement, representation, conversion, or omission. A person may also be subject to an assessment, in lieu of damages, of up to twice the amount of any resulting overpayment.

We are committed to increasing the number of such cases successfully resolved each year to punish wrongdoing in cases where criminal prosecution has been declined and to deter Social Security-related fraud. In FY2013, we successfully resolved 280 cases and imposed more than \$15 million in CMPs.

For example, in one recent case, a woman, who was the representative payee for her disabled daughter, conspired with her own mother to fraudulently obtain SSI. When the woman started a lucrative job that would have rendered her daughter ineligible for SSI, the woman's mother (the child's grandmother) told SSA that the disabled child had moved in with her, when in fact, the child resided with her own mother. The woman and her mother then shared the significant amount of money in SSI that they wrongfully received. We imposed a total CMP of \$78,980 against the grandmother and imposed a CMP of \$81,000 against the mother, who masterminded the scheme.

Finally, my office continues to pursue the establishment of a self-supporting program integrity fund for the integrity activities I've discussed here, including CDRs, redeterminations, and CDI investigations. An existing legislative proposal would provide for indefinite appropriations to make available to SSA 25 percent, and to OIG 5 percent, of actual overpayments collected. These funds would be available until spent for stewardship activities. Given the substantial return on investment of these activities, we believe this would be a highly effective use of limited resources.

SSA faces many challenges to its efforts to maintain the integrity and effectiveness of its disability programs. It is critical that the Agency, even in this fiscal environment, allocate sufficient resources to ensure that only individuals eligible to receive benefits are able to do so. My office is committed to working closely with SSA and your Subcommittee to help the Agency achieve this goal. Thank you again for the invitation to testify today, and I'd be happy to answer any questions.

Mr. LANKFORD. Mr. Sklar.

STATEMENT OF GLENN E. SKLAR

Mr. SKLAR. Chairman Lankford, Ranking Member Speier, members of the subcommittee, my name is Glenn Sklar, and I'm the Deputy Commissioner for the Office of Disability Adjudication and Review. In this capacity I oversee SSA's hearings and appeals operations. It has been my honor to serve for over 22 years in an agency where our mission affects nearly every American.

From my start at Social Security as one of the founding members of Social Security's Office of Inspector General to my time working as a top executive with the quality component, to my current role leading the hearings and appeals operation, I have done my best to balance the demands of delivering high-quality work in a high-volume, public service environment.

With me today is Jasper Bede, the Regional Chief Administrative Law Judge in the Philadelphia region, as well as Marianna LaCanfora, Acting Deputy Commissioner for the Office of Retirement and Disability Policy.

When I came to the hearings and appeals operation in 2010, I found an organization that was in transition. In 2007, Congress made it abundantly clear that we were morally responsible for getting timely answers to Americans whose lives hung in the balance. Some claimants were waiting as long as 1,400 days for an answer.

Our hearing operation has made and continues to make significant and substantial progress in addressing the quality, accountability and timeliness of our hearing decisions. We have steadily reduced the average wait time for a hearing decision from a high of 512 days in fiscal year 2007 to just 375 days in fiscal year 2013. This progress was made while handling a staggering 800,000 requests for a hearing annually.

My repeated message for employees is that we're accountable for providing quality decisions, meaning timely, policy-compliant, legally sufficient, and factually accurate decisions. To help our employees to meet that expectation, we've improved our hiring processes, updated how we train, developed tools to give judges policy feedback, established a Division of Quality, and begun collecting and analyzing data, mountains of data, to truly measure how we were doing.

We have capped the number of cases an ALJ may be assigned to clearly signal that more than speed matters. Data, not supposition, show that we have closed loopholes and improved feedback and consistency. For denial decisions we have seen increasing concordance between ALJ decisions and the Appeals Council. We have increasing amounts of data to detect areas of noncompliance on allowances. We're using that data to provide better feedback to our decisionmakers.

Our ALJs have qualified decisional independence to enhance public confidence in the fairness of our process, and to ensure that ALJs reach their decisions free from pressure to reach a particular result. ALJs must, however be consistent with the law and agency policy. In addition, we successfully tested our authority to manage ALJs and hold them accountable in cases brought to the Merit Systems Protection Board.

Fortunately, most ALJs want feedback and information that will help them accomplish the dual responsibilities of timeliness and quality. To help our ALJs, we are taking a number of steps such as emphasizing the need for policy compliance, providing quarterly training on difficult topics and annual training for a significant percentage of ALJs, giving ALJs access to realtime data that highlight where they might be making mistakes and encouraging them to self-correct, in standardizing the electronic business process and developing an electronic bench book to help judges work electronically.

We also established a Division of Quality that reviews a statistically valid sample of favorable determinations for accuracy and policy compliance before the money goes out the door. We've reduced the maximum number of cases that we assign to our ALJs each year to 840 cases per ALJ. And we started collecting and analyzing data to determine how we can make the hearings and appeals process better.

Making disability decisions for Social Security is a challenging and complex task. I am proud of our ALJs to rise to the challenge every day. Thank you for inviting me here today, and I stand ready to answer any questions you might have.

Mr. LANKFORD. Thank you.

[Prepared statement of Mr. Sklar follows:]



HEARING BEFORE

THE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

SUBCOMMITTEE ON ENERGY POLICY, HEALTH CARE AND ENTITLEMENTS

UNITED STATES HOUSE OF REPRESENTATIVES

NOVEMBER 19, 2013

STATEMENT

OF

GLENN SKLAR

DEPUTY COMMISSIONER

OFFICE OF DISABILITY ADJUDICATION AND REVIEW

Chairman Lankford, Ranking Member Speier, and Members of the Subcommittee:

I appreciate the opportunity to discuss our management of the disability appeals process. Today, I will share with you our important progress in modernizing the process and improving the quality of our hearing decisions and how we are addressing some of our challenges. Before doing so, I will briefly discuss the vital programs that the Social Security Administration (SSA) administers.

Introduction

We administer the Old-Age, Survivors, and Disability Insurance program, commonly referred to as "Social Security," which protects against loss of earnings due to retirement, death, and disability. Social Security provides a financial safety net for millions of Americans—few programs touch as many Americans. We also administer the Supplemental Security Income (SSI) program, funded by general revenues, which provides cash assistance to persons who are aged, blind, and disabled, as defined in the Social Security context, with very limited means.

We also handle lesser-known but critical services that bring millions of people to our field offices or prompt them to call us each year. For example, we issue replacement Medicare cards and help administer the Medicare low-income subsidy program.

Accordingly, the responsibilities with which we have been entrusted are immense in scope. To illustrate, in fiscal year (FY) 2012 we:

- Paid over \$800 billion to almost 65 million beneficiaries;
- Handled over 56 million transactions on our National 800 Number Network;
- Received over 65 million calls to field offices nationwide;
- Served about 45 million visitors in over 1,200 field offices nationwide;
- Completed over 8 million claims for benefits and 820,000 hearing dispositions;
- Handled almost 25 million changes to beneficiary records;
- Issued about 17 million new and replacement Social Security cards;
- Posted over 245 million wage reports;
- Handled over 15,000 disability cases in Federal District Courts;
- Completed over 443,000 full medical continuing disability reviews (CDR); and
- Completed over 2.6 million non-medical redeterminations of SSI eligibility.

When the American people turn to us for any of these vital services, they expect us to deliver a quality product. Our employees take pride in delivering caring, effective service. The aging of the baby boomers, the economic downturns, additional workloads like the growing demand for verifications for other programs, and tight budgets increase our challenges to deliver.

Program Integrity Work

Further, while outside my direct scope in the Office of Disability Adjudication and Review, as Acting Commissioner Carolyn Colvin has explained, budgets have also affected our ability to conduct vital program integrity work, which helps ensure that only those persons eligible for benefits continue to receive them. There is a long-standing adage in our agency—the right check to the right person at the right time. Delivering on this statement is our goal because we know that when we accomplish it we are demonstrating our stewardship and preserving the public’s trust in our programs. Although we estimate that we save the Federal government \$9 per dollar spent on continuing disability reviews (CDRs), we have a backlog of 1.3 million CDRs because we have not received annual appropriations that would allow us to conduct all of our scheduled CDRs.

The FY 2014 President’s Budget includes a legislative proposal that would provide a dependable source of mandatory funding to significantly ramp up our program integrity work.¹ In FY 2014, the proposal would provide \$1.227 billion, allowing us to process hundreds of thousands more CDRs.²

The Disability Insurance (DI) program

Before discussing the improvements we have made to the disability appeals process, I would like to highlight a few aspects of the Disability Insurance (DI) program.

- First, Congress established a strict standard of disability for our disability programs. For example, the DI program does not provide short-term or partial disability benefits. Instead, an insured claimant is eligible only if he or she cannot engage in any substantial work because of a medically determinable physical or mental impairment that has lasted or is expected to last at least one year or to result in death.

A claimant cannot receive disability benefits simply by alleging the existence of pain or a severe impairment. We require objective medical evidence and laboratory findings that show the claimant has a medical impairment that:

- 1) could reasonably be expected to produce the pain or other symptoms alleged,
- and 2) meets our disability requirements when considered with all other evidence.

¹ These mandatory funds would replace the discretionary cap adjustments authorized by the Balanced Budget and Emergency Deficit Control Act of 1985, as amended by the Budget Control Act. These funds would be reflected in a new account, the Program Integrity Administrative Expenses account, which would be separate, and in addition to, our Limitation on Administrative Expenses (LAE) account. Under the proposal, the funds would be available for two years, providing us with the flexibility to aggressively hire and train staff to support the processing of more program integrity work.

² With this increased level of funding, the associated volume of medical CDRs is 1.047 million, although it may take us some time to reach that level. For comparison, we conducted about 430,000 CDRs in FY 2013.

- In December 2012, a worker who was found to be disabled in the Social Security context received, on average, a little over \$1,100 in SSDI benefits per month, barely above the current poverty income level of \$13,000 per year.
- Recently, there has been some growth in the DI program. Our Chief Actuary has explained that long-term DI program growth was predicted many years ago and is driven, for example, by the aging of the baby boom generation and the fact that more women have joined the labor force and have become eligible for benefits.

Improving Public Service: Quality, Timeliness, and Oversight

Had we had this conversation about the hearings operation in 2007, the topic would likely have been, as it was at the time, the unconscionable service we were delivering to your constituents. The average wait for a person to receive a hearing decision was over 500 days. Over 63,000 people waited over 1,000 days for a hearing. Some people waited as long as 1,400 days. Congress made it clear that addressing untimely hearing decisions must be our top priority.

In developing efficient and effective solutions to the hearing delays, we implemented a comprehensive operational plan to better manage our unprecedented workload. This plan addressed the many issues we must balance in the hearing process – quality, accountability, and timeliness. We made dozens of significant changes, including increasing the number of ALJs and support staff, increasing the number of hearing offices, establishing national hearing centers, expanding video conferencing to conduct hearings, improving information technology, and standardizing business processes, to name just a few. Congress provided additional resources, which were critical to supporting our improvements.

Today, the results are clear that our plan has worked. We have significantly improved the quality and timeliness of our hearing decisions. We steadily reduced the wait for a hearing decision from a high of 512 days in fiscal year (FY) 2007, to 375 days in FY 2013. While this number is still too high and is increasing under budget cuts, it is still a dramatic improvement from 2007.

We have made tremendous improvement in our service to the public by focusing on our most aged cases. We have decided nearly a million aged cases since FY 2007, and today we have virtually no hearing requests over 700 days old, with the vast majority of our cases falling between 100 to 400 days old.

Our improvements include modernizing our information technology infrastructure in the hearing operation. Not that long ago, we were an entirely paper-based organization. We lost precious time and flexibility mailing huge paper cases through each step of our disability process. Now, we are nearly entirely electronic, allowing us to more efficiently help Americans. We conduct over 150,000 video hearings annually, and the Administrative Conference of the United States (ACUS) has cited SSA's video hearings

process as a best practice for all Federal agencies. Going electronic means that we have data available that we have never had before and we are using these data to inform our policies and improve quality. Not only do we work in a fully electronic processing environment, but many claimants and third parties interact with us electronically as well.

We have improved the training we provide to our ALJs to help ensure that our hearings and decisions are consistent with the law, regulations, rulings, and agency policy. Since FY 2007, our new ALJs have undergone rigorous selection and have participated in a two-week orientation, four-week in-person training, formal mentoring, and supplemental in-person training. We provide ALJs with easy access to information on the reasons for their Appeals Council remands and other data through an electronic tool. Because we can now gather and analyze common adjudication errors, we provide quarterly continuing education training to all adjudicators that targets these common errors. In addition, we have continued our training program that provides in-person technical training for 350 of our ALJs each year.

As a result, quality is improving. This improvement is not happenstance but the result of these deliberate changes we have made in the way we hire, to the way we train, to the way we give feedback. For denial decisions, we have seen ever-increasing concordance between ALJ decisions and the Appeals Council. We now have increasing amounts of data to detect areas of policy non-compliance on allowances, and we are using that data to provide better feedback to adjudicators to improve policy compliance.

This improved quality means that the Appeals Council is remanding fewer cases to our ALJs for possible corrective action. The percentage of cases appealed to Federal court is also decreasing. While management is providing the support for adjudicators that leads to these results, it is the adjudicators themselves who have responded positively to the feedback. Perhaps for the first time, we have a feedback loop that allows adjudicators to actively participate in improving their work and in telling us about disagreements or problematic areas.

We could not have realized these improvements without the dedication of our ALJ corps and all of our employees. I thank them for their hard work.

Despite the tremendous advancement we have made, I am concerned that our improvements will erode. The number of hearing requests we receive each year remains high, and we are losing many ALJs and support staff due to attrition, whom we are unable to replace. We are doing what we can to hold steady on our progress despite the loss of employees. However, our progress has slowed in the last year, and we were unable to open eight new hearing offices planned for Alabama, California, Indiana, Michigan, Minnesota, Montana, New York, and Texas.

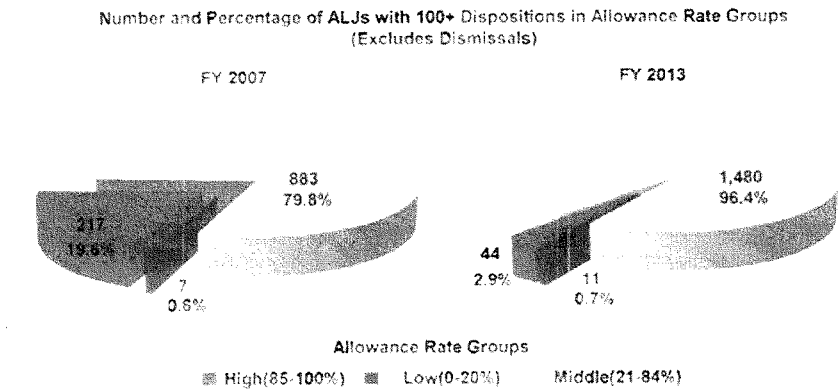
Ensuring High Quality, Policy Compliant, and Legally Sufficient Decisions

Over the past several decades, we have been accused of sacrificing quality by reflexively denying too many disability claims or by granting them too readily. These reports ignore

the reality that we are making quicker, higher quality disability decisions. Over the past six years, the allowance and denial rates have become more consistent throughout the ALJ corps, reflecting an emphasis on quality decision making. There are now significantly fewer ALJs who allow more than 85 percent of their cases than there were in FY 2007. Meanwhile, there is less than one percent of the ALJ corps that pays fewer than 20 percent of their cases.

Let me categorically state that we have no targets or goals regarding these rates. We are focused on delivering policy compliant decisions. In that regard, an ALJ with a very high or a very low allowance rate may raise a quality red flag. However, we have to look behind the data to see the cause. With our automation efforts, we now have a process and the data to do so.

Figure 1: ALJ Allowance Rate Groups



The quality of our benefit decisions is a paramount concern for the agency. We took aggressive steps to institute a more balanced quality review in the hearings process. Our first effort in this area was to develop serious data collection and management information for the Office of Disability Adjudication and Review (ODAR). We then revived development of an electronic policy-compliance system for the Appeals Council (AC). Because the Office of Appellate Operations (OAO) handles the final level of administrative review, it has a unique vantage point to give feedback to decision and policy makers. OAO developed a technological approach to harness the wealth of information the AC collects, turning it into actionable data. These new tools permitted the OAO to capture a significant amount of structured data concerning the application of agency policy in hearing decisions.

Using these data sets, we provide feedback on decisional quality, giving adjudicators real-time access to their remand data. We are creating better tools to provide individual feedback for our adjudicators. One such feedback tool is “How MI Doing?” This resource not only gives ALJs information about their AC remands, including the reasons for remand, but also information on their performance in relation to other ALJs in their office, their region, and the nation. Currently, we are developing training modules related to each of the 170 identified reasons for remand that we will link to the “How MI Doing?” tool. ALJs will be able to receive immediate training at their desks that is targeted to the specific reasons for the remand. We develop and deliver specific training that focuses on the most error-prone issues that our judges must address in their decisions. Data driven feedback informs business process changes that reduce inconsistencies and inefficiencies, and simplify rules.

In FY 2010, OAO created the Division of Quality (DQ) to focus specifically on improving the quality of our disability process. While AC remands provide a quality measure on ALJ denials, prior to the creation of DQ, we did not have the resources to look at ALJ allowances. Since FY 2011, DQ has been conducting pre-effectuation reviews on a random sample of ALJ allowances. Federal regulations require that pre-effectuation reviews of ALJ decisions must be selected at random or, if selective sampling is used, may not be based on the identity of any specific adjudicator or hearing office. Currently, DQ reviews a statistically valid sample of un-appealed favorable ALJ hearing decisions.

DQ also performs post-effectuation focused reviews looking at specific issues. Subjects of a focused review may be hearing offices, ALJs, representatives, doctors, and other participants in the hearing process. The same regulatory requirements regarding random and selective sampling do not apply to post-effectuation focused reviews. Because these reviews occur after the 60-day period a claimant has to appeal the ALJ decision, they do not result in a change to the decision.

The data collected from these quality initiatives identify for us the most error-prone provisions of law and regulation, and we use this information to design and implement our ALJ training efforts. To ensure that all of our ALJs comply with law, regulations, and policies, we provide considerable training including both new and supplemental ALJ training. We train our ALJs on the agency’s rules and policies, and that training is vetted thoroughly by various components, including the component that is responsible for disability policy. For the past several years, our new ALJ training also has included a session that explains the scope and limits of an ALJ’s authority in the hearing process, including the ALJ’s obligation to follow the agency’s rules and policies. We also have implemented the ALJ Mentor Program, which pairs a new ALJ with an experienced ALJ, who provides advice, coaching, and expertise. Additionally, we provide regular guidance to ALJs through Chief Judge Memoranda and bulletins, Interactive Video Teletraining sessions, and in responses to specific queries from the field.

Additional efforts to promote policy compliance include a pilot of the Electronic Bench Book (eBB) for our adjudicators. The eBB is a policy-compliant web-based tool that aids

in documenting, analyzing, and adjudicating a disability case in accordance with our regulations. We designed this electronic tool to improve accuracy and consistency in the disability evaluation process.

These efforts are testing some longstanding traditions within ODAR. We are moving from training based primarily on anecdotal information as to our most significant problems to a data-driven identification of training, guidance, and policy gaps. We now develop training materials and automated tools designed to improve both the adjudicator's efficiency and accuracy in case adjudication. We are transparent with the information that we are collecting so that the ALJs can more readily make use of the information.

In addition, the data collected by DQ provide us with a tremendous tool to identify trends. We review our electronic records for anomalies; when we find them, we look to identify whether such anomalies can be explained or whether administrative action is appropriate. When we suspect fraud or other suspicious behavior, we refer the matter to our Office of Inspector General.

These new quality initiatives have given us a new opportunity to improve our policy guidance. We are using these data to help us identify and pursue regulatory and policy changes to improve our disability process. However, there are many stakeholders on both sides of any policy that affects our disability programs. To objectively address concerns about changes to various aspects of our disability programs, we have contracted with the ACUS to review several issues for us. ACUS has looked at challenging and potentially controversial issues that affect the hearings process, including the submission of evidence and duty of candor, the treating source rule, closing the record, and video hearings. We are moving forward on many of these issues, but gathering objective evidence and considering input from all stakeholders takes time.

Ensuring Timely Decisions

Timeliness is one aspect of quality from a claimant's perspective. No claimant would say that waiting 1,400 days or 1,000 days or even 400 days to know the outcome of their claim is quality service.

As part of our efforts to ensure hearing decisions are legally sufficient and timely, we have given ALJs a range of 500-700 decisions a year as a reasonable expectation based on what many ALJs were already doing. We have never required an ALJ to do 500-700 cases per year. These judges receive lifetime appointments. They know when accepting the job that we will expect them to be able to deliver a policy compliant decision in a production environment. The public has every right to expect them to work hard, and most judges meet that expectation. We are responsible for providing them with the framework for success. For example, each ALJ has between four and five staff members who directly contribute to a disposition.

Our previous Chief ALJ established this expectation after consulting with a number of

managers and ALJs about the reasonableness of the expectation. The range of 500 to 700 dispositions was consistent with a prior goal set in 1981. At that time, the agency asked ALJs to complete 45 dispositions a month or 540 a year. With significant advances in technology over the last 26 years and increasing the number of support staff for ALJs, it was not surprising that when the agency articulated the 500-700 expectation, almost 50 percent of ALJs were issuing at least 500 dispositions a year. From the start, the 500 to 700 expectation was not a quota and was not a mandate. In FY 2012, approximately 78 percent of our ALJs met the expectation.

I want to be very clear that I expect all dispositions to be not just timely but legally sufficient, and we are demonstrating that we are serious about quality with our investments.

Moreover, in a survey conducted last year by the Association of Administrative Law Judges, nearly three out of four respondents found it “not difficult at all” or only “somewhat difficult” to meet the expectation. When given an opportunity to explain why they had not met the agency’s expectation, many respondents cited their status as new ALJs. In fact, we account for the learning curve for new ALJs. We reiterate the importance of making the right decision and we do not ask our newly-hired ALJs to meet the full workload expectation during their first year learning the job.

When an ALJ has workflow issues, we work with the ALJ on an informal basis to resolve those issues and to assist the ALJ.

If issues cannot be remedied informally, then we take affirmative, and typically progressive, steps to address problems, including counseling, training, mentoring and, as a last resort, adverse action pursuant to 5 U.S.C. 7521. With the promulgation of our “time and place” regulation, we have eliminated ambiguities regarding our authority to manage scheduling, and we have taken steps to ensure that ALJs are deciding neither too few nor too many cases. By management instruction, we are limiting assignment of new cases to no more than 840 cases annually.

ALJ Management Oversight

ALJs have qualified decisional independence. That qualified decisional independence allows ALJs to issue decisions consistent with the law and agency policy, rather than decisions influenced by pressure to reach a particular result. The primary purpose of an ALJ’s qualified decisional independence is to enhance public confidence in the essential fairness of an agency’s adjudicatory process. We fully support Congress’ intent to ensure the integrity of the hearings process, and we note that the Supreme Court has recognized that Congress modeled the Administrative Procedure Act after our hearings process.

The mission of our hearing operation is to provide timely and legally sufficient hearings and decisions. For our hearing process to operate efficiently and effectively, we need ALJs to treat members of the public and staff with dignity and respect, to be proficient at working electronically, and to be able to handle a high-volume workload in order to make

swift and sound decisions in a non-adversarial adjudication setting. Let me emphasize that the vast majority of the ALJs hearing Social Security appeals do an admirable job. They handle the complex cases in a timely manner, while conforming to the highest standards of conduct and quality.

The law has guided our path to holding our judges accountable. In 2006, the agency began to seriously examine the scope of decisional independence and test our management authority. Since FY 2007, we have been working diligently to improve management oversight of our ALJs to ensure that they adhere to policies, regulations, and laws, while maintaining the ALJs' qualified decisional independence. We expect our ALJs to adhere to the high standards expected of them, recognizing at the same time that we cannot and would not influence their decision in any particular case. Through the actions the agency brought to the Merit Systems Protection Board (MSPB), we confirmed, among other issues, that when management addresses case processing, including discipline for purposeful failure to follow policy, it does not interfere with an ALJ's qualified decisional independence. We also confirmed that ALJs must adhere to the same standards of conduct as other federal employees. Over 20 ALJs have separated from the agency through final MSPB decisions or resolution agreements. Nearly all of these cases have involved serious conduct issues.

Disciplinary Action

Again, I must emphasize that the vast majority of our ALJs are conscientious and hard-working employees who take their responsibility to the public very seriously. For these ALJs, we can rely on current agency measures including training to address any problems they may have. Generally, the informal process works, but when it does not, management has the authority to order an ALJ to take a certain case processing action or explain why he or she cannot take such case processing actions. ALJs rarely fail to comply with these orders. In those rare cases where the ALJ does not comply and where appropriate, we pursue disciplinary action.

However, when ALJ performance or conduct issues arise, agencies such as SSA are more limited in the manner in which they can attempt to correct the issues. For example, agency managers may take certain corrective measures, such as informal counseling or issuing a disciplinary reprimand. However, the agency cannot take stronger disciplinary measures against an ALJ, such as removal or suspension, reduction in grade or pay, or furlough for 30 days or less, unless the MSPB finds that good cause exists.

The current system makes it challenging to address the tiny fraction of ALJs who hear or decide only a handful of cases, fail to decide cases in a legally sufficient manner, allow cases under their control to languish, or otherwise engage in misconduct. A few years ago, we had an ALJ who failed to inform us, as required, that he was also working full-time for the Department of Defense. Another ALJ was arrested for committing a serious domestic assault. More recently, an ALJ failed to follow his managers' orders to process his cases. We removed these ALJs, but only after completing the lengthy MSPB disciplinary process that lasts several years and can consume over a million dollars of

taxpayer resources. In each of these cases, unlike disciplinary action against all other civil servants, the law required that ALJs receive their full salary and benefits until the case was finally decided by the full MSPB—even though the agency could not allow them in good conscience to continue deciding and hearing cases. We remain open to exploring different options to address this matter, while ensuring the qualified decisional independence of ALJs.

Conclusion

Over fifty years ago, Congress created the disability program to help some of our most vulnerable citizens. The vast majority of our adjudicators care very much about making the right decision and being good stewards of the trust funds, and we are committed to helping them do their jobs effectively.

We thank you for your interest in helping us improve our service and ensure ongoing confidence in our programs. We also ask for your support for the President's budget request, which will provide us with funding to continue to improve our hearings process, to improve the integrity of our disability programs, and to reduce improper payments. With past support from Congress, we have made progress in both the administrative and program integrity arenas and we all benefit if that progress is not lost.

Again, thank you for the opportunity to testify today. I will do my best to answer any questions you may have.

Mr. LANKFORD. Mr. Bede.

STATEMENT OF JASPER J. BEDE

Judge BEDE. Chairman Lankford, Ranking Member Speier and members of the subcommittee—

Mr. LANKFORD. Sorry to interrupt you. Could you pull your microphone a little closer to you there?

Judge BEDE. Is that better?

Okay. Again, Chairman Lankford, Ranking Member Speier and members of the subcommittee, my name is Jasper J. Bede. I serve as the Chief Administrative Law Judge for Region III, the Philadelphia region. I have been in this position with the Social Security Administration since April of 2006. Prior to that I served as a hearing office Chief Administrative Law Judge in the Wilkes Barre, Pennsylvania, hearing office from 2002 to 2006. I was appointed to the position of Administrative Law Judge in 1999 after working in the Social Security Administration as an appeals officer, supervisory attorney advisor, and an attorney advisor. Prior to my service with the Social Security Administration, I served as an officer in the United States Army.

Region III includes Delaware, the District of Columbia, Maryland, Pennsylvania, Virginia and West Virginia. The population we serve in Region III is a reflection of the wider population of the United States. We serve clients from farm laborers and coal miners to medical researchers and software designers. Many of the claimants who appear before our judges have unskilled work backgrounds and less than a high school education; however, we also see claimants who have achieved the highest level of education and worked in the most skilled professions.

Region III has 18 hearing offices, 150 administrative law judges, and approximately currently 742 support staff. Our pending caseload is now over 99,000 cases, and in fiscal year 2013, we closed 80,753 cases with an average processing time of 407 days.

Region III ranks as first in the Nation in quality measures, with an average 87.7 percent Appeals Council agree rate, and we also have the first- and second-ranked hearing offices in the Nation in our Johnstown, Pennsylvania, and Seven Fields, Pennsylvania, hearing office.

As the Chief ALJ Region III, my job is to make our offices best serve the claimants and contribute to ODAR's mission of providing timely and quality service to the public. I frequently visit hearing offices in my region, and I emphasize our goals of providing timely, policy-compliant decisions. I set up one-on-one meetings with our new ALJs, any new ALJs in my region, and I make myself available to all staff.

With regard to the ALJs, if I learn of an issue, I work with the hearing office Chief Administrative Law Judge to discuss the issues and assist the affected administrative law judge. If informal discussions with the ALJ do not correct the problem, I may counsel the ALJ or issue a formal reprimand. For more serious issues I can request that the Chief ALJ initiate proceedings with the Merit Systems Protection Board.

Thank you for the opportunity to be here today, and I would be happy to answer any questions that you may have.

Mr. LANKFORD. Thank you.
[Prepared statement of Judge Bede follows:]



HEARING BEFORE

THE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

SUBCOMMITTEE ON ENERGY POLICY, HEALTH CARE AND ENTITLEMENTS

UNITED STATES HOUSE OF REPRESENTATIVES

NOVEMBER 19, 2013

STATEMENT

OF

JUDGE JASPER J. BEDE

REGIONAL CHIEF ADMINISTRATIVE LAW JUDGE
OFFICE OF DISABILITY ADJUDICATION AND REVIEW

Mr. Chairman, Ranking Member Speier, and Members of the Subcommittee:

My name is Jasper J. Bede, and I serve as the Chief Administrative Law Judge (ALJ) for Region III (Philadelphia). I have held this position with the Social Security Administration (SSA) since April 2006. I was the Hearing Office Chief ALJ (HOCALJ) in the Wilkes-Barre, Pennsylvania Hearing Office from 2002 to 2006. I was appointed to the position of ALJ in 1991, after working at SSA as an Appeals Officer, Supervisory Attorney Advisor and Attorney Advisor. Prior to my employment with SSA, I was an Officer in the United States Army.

Region III includes Delaware, the District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia. The population we serve is a reflection of the wider population of the United States from farm laborers and coalminers to medical researchers and software designers. Many of the claimants who appear before our judges have unskilled work backgrounds and less than a high school education, but we also see claimants who have achieved the highest levels of education and worked in the most skilled professions.

Region III has 18 Hearing Offices, 150 ALJs, and approximately 742 support staff. Currently, Region III has 98,213 cases pending, and in fiscal year 2013, we closed 80,753 cases with an average processing time of 407 days. Region III ranks first in the nation in quality measures with an 87.7 percent Appeals Council agree rate. We also have the first and second ranked Hearing Offices in the nation (Johnstown and Seven Fields).

As the Chief ALJ in Region III, my job is to make sure our offices best serve our claimants and contribute to ODAR's mission of providing timely and quality service to the public. I frequently visit the hearing offices in my region and emphasize our goals of providing timely, policy-compliant decisions. I set up one-on-one meetings with all of the new ALJs in my region, and I make myself available to all staff. With regard to ALJs, if I learn of an issue, I work with the Hearing Office Chief ALJ to discuss the issue and to assist the ALJ. If informal discussions with the ALJ do not correct the problem, I may counsel the ALJ or issue a formal reprimand. For more serious issues, I can request that the Chief ALJ initiate proceedings with the Merit Systems Protection Board.

Thank you for the opportunity to be here today. I would be happy to answer any questions that you may have.

Mr. LANKFORD. We're going to do several rounds of questioning today. So our goal is that everyone will have about 5 minutes to be able to jump in a round of questions, and after that's concluded, we'll open it up to a broader conversation for all of us.

Mr. Sklar, there is no question you walked into a situation; your leadership, we're grateful for your background, your experience. I've spoken to several people in multiple different regions across SSA, and they all have great respect for you. That's a good word. So I'm grateful that you're there and in that position, but you're in this position to be a leader for this system, and we need a leader for the system. You see it full well. You've already taken actions for some of these things.

So the push that we're going to go have today is not personal to you at all. This predates you and your leadership by far, and there are issues that we need to deal with on this.

We have several things that are all coming down on us. One is we've had a bottleneck of getting into the system, which is a flood of people that have applied through both a generational shift and I would say also an openness that it appears it's easy to get on, and so even more people are trying to jump into the system to test it and find out how easy it is to be able to get on. And the second part of this is the CDR reviews, those reviews coming in. So we've got two bottlenecks on either side of this, and we're getting an awful lot of people into the middle of it, and we have to be able to process this.

I want to talk a couple of these things on it. Judge Bede, you had several high-performing, let's say, judges that are in—that were in your district on it. Judge Bridges, who, when we run the numbers on it—we just looked at the testimony that you gave to us—75 to 80 percent. If they are doing a reversal rate that high, that should raise some sort of a red flag, do you agree with that, if you got an 80 percent reversal rate as a judge, of reversing the two previous decisions?

Judge BEDE. Well, without being specific to Judge Bridges or any other administrative law judge, if we have reversal rates that high currently, that would raise some questions. It would be an indicator, but it wouldn't necessarily indicate, establish that the decisions being made are wrong. Each case has to be looked at individually. And it is possible to sit on the bench and find 45 people in a row are disabled and 2 weeks later find 25 people in a row are not disabled.

Mr. LANKFORD. Right.

Judge BEDE. It's each individual case.

But a very high production rate with a very high reversal rate or a very low reversal rate does raise some questions.

Mr. LANKFORD. Our observation, obviously, is they've already been denied twice. We've had two folks that have gone through their files, that have looked through, that are on the State level trying to evaluate it. And they go through this third process, and if they are reversing 80 percent of the time previous, there is either a problem on the previous side, or there's a problem on the judge's side, but that seems like a very high percentage.

Judge BEDE. Since you chose a Pennsylvania judge—

Mr. LANKFORD. I can—

Judge BEDE. No, I want to indicate——

Mr. LANKFORD. Let me just say this——

Judge BEDE. Because in Pennsylvania they would only be denied once.

Mr. LANKFORD. Okay. That's good to know actually. But on several of these, when I go through it, we ran just from 2005 on, a typical case, once they're approved, is about \$300,000 in lifetime benefits. And so we just tried to run through the actual cost of this. This is not a scientific number, this is a ballpark number.

So Judge Bridges basically since 2005 has approved about \$4.5 billion in benefits; Judge Daughtry, 2005 to 2011, I see \$2.5 billion; Judge Taylor, \$2.5 billion. So we are dealing with very serious dollars on it. Not all of those are incorrect, I'm not trying to accuse that, but there are significant amounts. If we looked at all judges nationwide that did an 80 percent approval rating or higher, if we just took maybe even the 10 or 15, almost 20 percent for some that are above 80 percent, there's still about \$100 billion that we have questions on to say this is a very high approval rating. And so a lot of our questions are just going to process through how is this happening either early in the process that they're being denied when they shouldn't be, and so it's become more difficult for someone who is truly disabled to get into the system, or how is it there's such a high reversal of that?

Mr. Sklar, do you want to jump in on that at all just for perspective?

Mr. SKLAR. Just to add a little bit of perspective, I would draw your attention to my written testimony, and there is a chart there, and I think you've seen that chart before. It may look a little bit different in that there's even fewer outliers on that chart than the last time I was before this committee. I think it is a fairly dramatic retrenchment——

Mr. LANKFORD. But there has been a significant change in the last couple of years, and we're grateful for that, just the attention to be paid to it.

Mr. SKLAR. I think so. If you look at the global level, some of the practices we put in place are really starting to have an impact. Even looking at this eye chart, you notice the case cap coming into effect and biting down. It's about a 50 percent reduction on the number of cases that at one particular ALJ was handling.

It's tough. It's a very large system. It has variability built in it; it's meant to. Judges have qualified decisional independence drawing off a congressional statute, the Administrative Procedures Act. So you do the best you can with the system you have and try to put in rational ideas in light of some of the constraints we have.

Mr. LANKFORD. Okay. Yield to the ranking member.

Ms. SPEIER. Thank you, Mr. Chairman.

Along the same lines let me ask you, Mr. O'Carroll, do these appear to alarm you when you have those kinds of approval rates or reversals of decisions made in the States? And if they do, what steps should be taken to determine whether or not the quality of the decision has been accurate?

Mr. O'CARROLL. Ranking Member Speier, on those, again, probably where we started down the road with these was in 2008 we did an audit where we took a look at the hearing offices and the

rates of the different offices on it. At that time there we were taking pretty much a look at the bell curve of it and where the vast majority of, you know, decisions were being made, the numbers that were being done on it. And, again, we were trying to give management information to ODAR that they could use in terms of what are the outliers on it. And, again, when you're starting to take a look at the outliers that are doing a lot of approvals or a lot of denials, in both cases we wanted the quality reviews for ODAR to be taking a look at them for a couple of reasons.

Ms. SPEIER. I have limited time, and I've a lot of questions to ask you. What should the quality review encompass?

Mr. O'CARROLL. Well, that should be taking a look at the encompassing on it. They can't target, that's the other issue, because of judicial independence. You can't just say that we're going to take a look at every one of the hearings of this judge because they're at that level.

What they can be doing is they can be taking a look at trends, they can be taking a look at high numbers or whatever and giving advice back. And we've asked them do it, and they are doing it now. There's a quality review section that we work with at times to be—again, to find more information on the outliers.

Ms. SPEIER. All right. So you approve of the quality review that's going on right now?

Mr. O'CARROLL. Yes, I do.

Ms. SPEIER. Anything more that should be happening in that regard?

Mr. O'CARROLL. Yes. We're telling them that there's about 19 things that they take a look at on terms of decisions, and what we're saying to them is that they ought to narrow it down to maybe 4 or 5 major ones on it and then be taking a look at that as, again, to help on picking out outliers, because as it is now, it is like a large scoreboard. We're telling them to take a fewer number of them and take a look at those specific things.

Ms. SPEIER. Would you provide that to the committee?

Mr. O'CARROLL. Yes, I will.

Ms. SPEIER. All right. You referenced Puerto Rico. How did that come into focus for you? Was there a whistleblower, or was it just something you just at some point decided to review?

Mr. O'CARROLL. I think Puerto Rico is a good example of, you know, government at its finest. What happened was with Puerto Rico—two things happened really. One was that noted in the DDS in Puerto Rico, the disability determination center there started noticing that they were getting the same type of diagnoses coming in on all the different people applying for benefits at the time coming from this one specific doctor. They brought it to our attention, we started taking a look at it, and pretty much at the same time period the press was taking a look at which offices were doing very high—which States were coming up with very high allowances of disability, and that resulted in some media attention that was going on at the same time.

Ms. SPEIER. So let me ask you this: When there has been, as you pointed out, billions of dollars of payments made inappropriately, when we then go back to try and get repayment or refund, what percentage of those individuals are in a capacity to refund, and do

we put liens on their property? What do we do to get the money back that they had received inappropriately?

Mr. O'CARROLL. Well, there's a number of ways on it. One is that if it's criminal, we'll make it a decision of the court to pay it back. If it's civil, and we go in civil monetary penalties, if the person has resources, we'll fine them, and we'll be asking for fines on top of whatever was paid incorrectly. SSA will then establish an overpayment on it, and that overpayment will be paid back if they have the resources on it, or if they don't have the resources on it, if they ever get any benefits in the future, it will be taken away from any future benefits on it. As you can probably tell, Congresswoman, a lot of the resources on these people here—

Ms. SPEIER. Is limited, right?

Mr. O'CARROLL. It is limited.

Ms. SPEIER. So the likelihood of getting repayment is not very good. So I guess I'm trying to look at ways of discouraging the fraudulent applicant from even coming forward.

Mr. O'CARROLL. We agree.

Ms. SPEIER. Whether it is a notice to them on the application that if, in fact, it is found that you are fraudulent in your actions here, that these are the kinds of things that you will be subject to, something to kind of scare them into not moving forward. And I'd love your thoughts on that at a later point.

Mr. O'CARROLL. Okay, because we believe, as with Puerto Rico, it's a good deterrent on it, and also our belief is to stop it before they go out in terms of what we have at the CDI units that I'll talk about later to stop it before benefits—

Ms. SPEIER. So the CDR, there's this huge backlog. How much money would we have to set aside so that these CDRs could be appropriately handled and save us \$9 for every \$1 we spend?

Mr. O'CARROLL. I'd have to get back to you on the exact amount that what it is. What we're asking for is them to be doing more than 500,000 CDRs a year. We would like that to be doubled, and that would then have a better effect.

Ms. SPEIER. Maybe in an subsequent conversation we can ask Mr. Sklar.

Mr. LANKFORD. I will just do that right now, if that's okay with you.

Mr. Sklar, do you know the number on that.

Ms. LACANFORA. If I might respond?

Mr. LANKFORD. We've brought a technical expert with you. Thank you.

Ms. LACANFORA. So in the fiscal year 2014 President's budget, we have a request. We call it the Program Integrity Administrative Expense Proposal, and we are asking for \$1.2 billion. If we were to get that money, we would be able to do just over 1 million medical CDRs.

Ms. SPEIER. And you project what kind of savings from that?

Ms. LACANFORA. Oh, that I don't have off the top of my head, but I can get you that.

Ms. SPEIER. Well, if it's \$9 for every \$1, we can basically make that case.

Ms. LACANFORA. Yes.

Mr. O'CARROLL. It could be even be more than that.

Mr. LANKFORD. Your recommendation on this is 500,000; you-all's request is a million.

Mr. O'CARROLL. No, I had said double.

Mr. LANKFORD. Okay.

Ms. LACANFORA. So this year we did almost 500,000, so—

Mr. LANKFORD. Okay, got it. So it's an additional 500,000 then.

Mr. O'CARROLL. Yes, Mr. Chairman.

Mr. LANKFORD. Thank you.

I yield to Mr. Farenthold.

Mr. FARENTHOLD. Thank you very much. And I would like to follow up on the CDRs for a second as well. You said there's a huge backlog. Did I miss the number? Do we have the number that we need to be doing?

Mr. O'CARROLL. Yes, Congressman, 1.3 million is what the backlog is right now.

Mr. FARENTHOLD. I just want to make sure I copied that correctly.

Now, Mr. O'Carroll, let me ask you this: So as you go through the CDRs, you're finding folks who have either gotten better—but, I mean, how many of these are fraudulent claims to begin with that you're looking at? I mean, is the money better spent looking at it after the fact, or is the money better spent kicking up the initial evaluation?

Mr. O'CARROLL. Very good question. What we feel is that, one, once they get on, it's very difficult to know whether they were disabled at the time that they got on, with the idea of the CDRs is to catch—not catch, but to identify them if they have improved.

Mr. FARENTHOLD. I'm good with "catch," because if you're filing a fraudulent claim, you're ripping off the American people. I'm okay with "catch."

Mr. O'CARROLL. Okay, good.

The other one, I guess, is it's easier—rather than letting the animal or the horses out of the barn and trying to catch them, our thought is to keep them in the barn or to keep people from getting the benefits in the beginning if they are not entitled. And that's one of the reasons why we try to have our cooperative disability units where if a person comes in reporting to have a disability on it, and the disability examiners find that this doesn't really, you know, track correctly on it, they refer it to this unit, and then this unit will be taking a look at either—a couple of things. One is the different types of records out there. So, for example, if a person is coming in saying they are extremely sight impaired, and we take a look and run information on motor vehicles and find out they have a commercial driver's license, I guess that's what we'd call a clue.

Mr. FARENTHOLD. Right.

Mr. O'CARROLL. Other ones that we look at is results—it's sort of interesting. We are now going to social media where a person comes in and says that they're incapable of walking or being in crowds. And we take a look at their Facebook page, and it shows them in a band or a social group that's out there working all the time where we have pictures of them, you know, doing other things.

Mr. FARENTHOLD. Let's get back to the fraud in general. We talked about going and getting the money paid back and getting fines. Are the penalties a sufficient deterrent, or do we need to be looking at kicking up the penalties as well?

Mr. O'CARROLL. Congressman, I would say that the penalties that are out there now for people committing fraud against the government are good. They are a good deterrent on it. The problem with it is getting the prosecutions for it. In our cases what we're finding is it's very difficult to be able to show that much of a loss to government that a U.S. attorney's office would be interested in putting into all the resources to take a person to trial.

Mr. FARENTHOLD. What about penalties for enablers; that would be doctors or lawyers that continue to prosecute or authorize or document these claims?

Mr. O'CARROLL. The penalties are there. They're strict. I've got to tell you on one good example that we're having, which has gotten a lot of publicity, is within Puerto Rico where we had a bunch of doctors and others, nonattorney reps and reps that were bringing people on. The U.S. Attorney's Office there—I was down there and met with the U.S. attorney on it. She assures us that, one, the penalties will be strict, that they're going to be enforced, and that there should be jail time involved. So I think that we're going to have a very good signal that is sent on that when they use the laws to enforce it.

Mr. FARENTHOLD. Again, some disabilities are temporary in nature can improve with medical treatment or technology, improve to where that disability is not as disabling, I guess, if you will. Do you think there are adequate incentives within the system for a person to work whatever programs, say, their physical therapist gives them, or to continue treatment for whatever mental disorder, or is there a sense, well, I'm on this for good, I'm just going to—I don't have to work, I'm getting a check in the mail?

Mr. O'CARROLL. Well, let's put it this way: I would prefer the latter not be the word that's out there on the street. And what we're hoping to do is to send a signal that if you have improved, you shouldn't be getting the benefit, and what we're trying to do with that.

By the same token—and I got to say as we monitor that, the SSA takes a look at what are the risks—not the risks, what are the success rates of different types of illnesses, et cetera, and then those are the ones that we're saying should be brought in for the CDRs.

Mr. FARENTHOLD. Listen, I don't think any of us here want to deny benefits to somebody who needs benefits. We need to make sure that there's adequate resources to provide benefits for everyone who needs it, while still encouraging people to live a good and fulfilling life. I find that I'm a whole lot happier when I'm actually out doing something and not sitting at home.

I yield back. Thank you.

Mr. LANKFORD. Ms. Duckworth.

Ms. DUCKWORTH. Thank you, Mr. Chairman.

The Social Security Disability Insurance and Security Income program provide a critical lifeline that allows nearly 12 million severely disabled Americans the opportunity to live dignified lives. The benefits that they earn through this program are very modest,

about \$1,000, \$1,100 a month, barely above the—at the poverty level. And they generally represent the majority of the income for the recipient.

But knowing this, I want to make sure that people who don't deserve it are not getting it. So, Mr. O'Connor—Mr. O'Carroll, I'm sorry, in your audit your office identified some issues regarding the termination of disability benefits following a CDS cessation determination. So even for the 500,000 that are being conducted and decisions are being made, if the decision is that—to remove the person from the—to terminate the benefits, I'd like to talk about how we go about doing that. And if you could talk a little bit about your recommendation for enhancing the ability of the processing system to perform automated terminations and the like. Since we do have a backlog, and we're not doing quite enough, and when we finally do have a determination, are we actually following through?

Mr. O'CARROLL. What we're finding on that, Congresswoman Duckworth, is about—in our audit we found about 30 percent of the time that a person was identified as having improved and should have been ceased in terms of getting their benefits, that they weren't enacted. And we found I think it was about half of that, 16 percent, in the SSI side of the house.

We made recommendations to SSA to automate that so they could get the word out immediately. And one of the things that we found when we did the audit at that time was that many times once the disability review was done, it was put on a piece of paper, put on the front of the folder for that individual on it, and then when it got refiled or whatever it was, the termination notice slipped off, was not found or whatever, and it never was enacted. As a result of that, we told SSA that it would make much more sense to automate this so that when the person is turned off when the record is pulled up, that it'll show that they were declined, and that it would be done much more quickly. That we recommended to SSA, it was part of our—they agreed with us on it, and they said that they'll implement it with resources allowing.

Ms. DUCKWORTH. It hasn't been implemented?

Mr. O'CARROLL. I think I'll turn to SSA on that one.

Mr. LANKFORD. I'm going to ask you to turn your microphone on.

Ms. LACANFORA. My apologies.

There's a two-part process that we've undertaken, and we appreciate the work that the inspector general did. It was very helpful for us. And the first part of our process is that although the termination of a continuing disability review is not automated, we are doing what we call runs. So in other words, we go into the system annually, and we look for those cases in the same way that the IG did when they identified the ones that weren't getting terminated. So we have been doing that now for a couple of years, and we will continue to do that to make sure that there are none slipping through the cracks. So that's part one.

Part two, which is our longer-term plan, is to fully automate the process. It's a little bit more complicated than meets the eye, but we do intend to do that. In the meantime we will do the annual run or the sweep to make sure we don't have cases falling through the cracks.

Ms. DUCKWORTH. So if we're looking at about 16 percent are not actually being carried through, roughly, Mr. O'Carroll, is that 16 percent of the 500,000?

Mr. O'CARROLL. That's 16 percent of SSI.

Ms. DUCKWORTH. Of SSI.

Mr. O'CARROLL. And DI, the disability side, is a much higher percent. It's almost 30 percent weren't. And that was also, too—I got to say not at all, and I guess a delayed one, about 3 months at least.

Ms. DUCKWORTH. Okay. Ms. LaCanfora, how much—when you're going through manually and doing this review, are you catching the 16 percent on SSI and the 30 percent on the disability? The IG is saying that that's what they're seeing.

Ms. LACANFORA. Yes. We didn't corroborate their numbers, because their numbers obviously were a sample that they took, and then they projected those numbers against the entire universe. We are not, you know, tracking the percentages per se, but we are making sure that we capture them. So we're using sampling criteria to look at any case where the DDS has or the ALJ has decided that that person is no longer disabled and making sure that that decision is carried all the way through to our payment records in every case.

Ms. DUCKWORTH. What's your projection for stage 2? How long is that going to take to implement, to go fully automated?

Ms. LACANFORA. I'm very encouraged by the discussions that we've been having in the agency and our ability to do that, so while I don't have a timeline, I'm hopeful that it will not be far off.

Ms. DUCKWORTH. Five years, two years, ten years?

Ms. LACANFORA. Two or less.

Ms. DUCKWORTH. Thank you.

Mr. O'Carroll, in your testimony you said that the IG's has long placed a high priority on allegations of third-party facilitator fraud. What other initiatives are taking place to root out third-party facilitator fraud?

Mr. O'CARROLL. Congresswoman, that's sort of—one of our thoughts when we came up with Puerto Rico and some other places on it where it looked like outsiders were facilitating people getting onto the rolls, what we decided to do was take sort of a hybrid of what we use with our CDI units where we have local law enforcement as well as our agents involved, and what we've started to do was to start using automated records going through trying to look for any type of association, looking for the boilerplate diagnoses, other issues on it.

We've got pilots going in the California region and the Chicago region right now, and what we're doing with it is that we're identifying anybody who's bringing large amounts of people onto the rolls and making sure that all of their ways of doing it is legal, and that it's not bending the rules or whatever on it. So we've got a team which we have an administrative law judge that's assigned from ODAR working with our investigators on it, and we're trying to look for any anomalies in terms of people coming on. Like I say, we've been doing that pilot for about 8 months now, and we've got about four different major investigations going because of it.

Ms. DUCKWORTH. Thank you, Mr. Chairman.

Mr. LANKFORD. Thank you.

Mr. Horsford, before I recognize you on that, just to let you know, when Mr. Horsford concludes, I'm going to open this up for colloquy for all of us to be able to engage in a conversation with our witnesses. So we're going to shift from a 5-minute time period to just an open colloquy. So if you want to participate in that, you're obviously welcome to do that as well.

Mr. Horsford, you are recognized for 5 minutes.

Mr. HORSFORD. Thank you, Mr. Chairman. I would like to thank you for your opening comments to Mr. Sklar that this is in no way personal, and actually, in fact, under his leadership, there have been major improvements on the administration side of the aisle, improvements that we need to keep making progress towards.

But unfortunately, there also seems to be some misrepresentation of some of the facts that are being presented today. And so I want to kind of just allow the opportunity for some of our witnesses to bring forward all of the information that the committee should consider.

Mr. Sklar and Judge—is it Bede?

Judge BEDE. Bede. Close enough.

Mr. HORSFORD. Apologize for that.

Does the allowance rate of the judges the majority identifies today say anything conclusive about whether or not the judges correctly applied the law and agency guidance to the applications for disability benefits that came before them?

Mr. O'CARROLL. I'll take it first, and then I'll let Judge Bede jump in.

I will say the allowance rate right now is probably at a 40-year historic low, so that's just an observation, and we've been very consistent in pushing the policy compliance message. I believe the judges are really responding well not just to training, but to automated tools, to feedback. They've shown a willingness to listen, and I'm really impressed.

So, Judge Bede, other thoughts?

Judge BEDE. No, I would agree with that and also indicate that the mere fact that a case has been seen twice by the State agencies and yet is reversed by the administrative law judge does not mean that either one of them was wrong. At the time the DDS, the Disability Determinations Service, ruled on the case, it may clearly have been that the claimant was not disabled. By the time it gets to an administrative law judge, time has passed, the record has been augmented, the claimant's condition may have deteriorated. And so what was once a clear affirmation that the claimant was not disabled becomes a clear reversal that the claimant is now disabled. So the figures themselves may lead you to feel that you have to look behind the facts, but they don't establish any correctness or incorrectness.

Mr. HORSFORD. So the allowance rate alone doesn't say anything about the quality of the decisions?

Judge BEDE. Absolutely.

Mr. LANKFORD. Would the gentleman yield for one moment? Would that include a judge that approves 99.4 percent of all cases, because we have some judges like that as well? Should that raise a red flag?

Judge BEDE. Well, it should raise a red flag, but it does not mean that any particular case was wrongly decided.

Mr. LANKFORD. I do understand that on that, but there is some signal with that as well to say there may be an issue here at some point.

Judge BEDE. Absolutely.

Mr. LANKFORD. I yield back. I apologize.

Mr. HORSFORD. I think the issue, Mr. Chairman, becomes the fact that we're not providing all of the cases, and it's my understanding that the Appeals Council's job is to actually perform the reviews of judges' decisions and collect information on the quality of those decisions; is that correct, Mr. Sklar?

Mr. O'CARROLL. Yes, that's correct. And just to provide a little bit of perspective, I know we spent a lot a time talking about fraud and antifraud measures this morning, but for perspective it is important to recognize that the fraud incidence rate in this program is really quite low, typically less than 1 percent, and our overhead cost runs about 2 percent.

So it is a well-run program. I know in any system you can always do better, and that's why we're here. We're glad the committee is having this hearing, and we welcome the feedback.

Mr. HORSFORD. Mr. Sklar, in the presentation of the charts earlier, did the majority ever ask you for statistics on the quality of judges—the decisions before they put up the chart on the allowance rate of certain judges?

Mr. SKLAR. I'm not aware of that particular request, no.

Mr. HORSFORD. And so how is it, then, that we were able to then just see a certain select few decisions by judges rather than taking into account the decisions of a larger percentage that reflect all the work of the administration?

Mr. SKLAR. I think it's a fair point. Again, it's a very large corps. There are over 1,500 judges, and I'm sure there are judges on the low end of the spectrum as well we could have put up on the screen with allowance rates around 10 percent.

Mr. HORSFORD. So can you provide that information to the committee?

Mr. HORSFORD. And, Mr. Chairman, can we have as a part of this conversation—I know this is the second hearing that you've held on this issue, but I think it will be worthwhile for the committee to see both the high and the low range and the full scope rather than just highlighting, you know, 142, which represent about 10 percent of all the judges' decisions rather than, you know, the full scope and the range.

Mr. LANKFORD. I would have no issue trying to provide that to both sides, and we try to be very fair to be able to provide everybody all the data on it. Our issue on it is, there are truly disabled people, that we're about 2-1/2 years away from insolvency in this program, that can be hurt on this if we don't find a way to be able to resolve this issue soon. And I do not want the truly disabled to be hurt in this process while some people, whatever small number that may be that we are aware of we're not catching.

And in the ALJ process, if we're not able to do reviews, if there is a judge that's out there that is not held to account and there's not a good process to hold someone to account in that, we need to

find a way to do that. All of us have accountability, all of us, and so there should be clear lines of accountability that when there's a problem we address it whether it's low or high, either way.

Ms. SPEIER. Could I just ask a follow-up question? You referenced, Mr. Sklar, that the actual fraud rate is very low, less than actually the administrative costs, which is important to keep in mind. But is that fraud rate low in part because we don't have the resources to do the CDRs? And that's a question really to you and to Mr. O'Carroll.

Mr. O'CARROLL. I guess the first one, the only thing, that I always get put in the position on this one, the agency says that it's less than 1 percent for the amount of fraud, is our concern on it is, is when you have billions of dollars going out every day, 1 percent is a very high number, and to any taxpayer any dollar that's misspent is a high number to it.

So our feeling on it is, is that, yes, we're taking a look at—when you take a look at improper payments and you go across the board for improper payments, the improper payment level for SSA is less than 1 percent. That's improper payments, and that's ones that shouldn't go out. And of that, a portion of it or a large portion of it is fraudulent, which is what we're taking a look at. And our feeling on it is, is any antifraud methods that you can be doing to discourage fraud or good CDRs, as you brought up, is one.

If we did more CDRs on it, it would have two effects. One, we would identify people that are being put on—or that are getting on the rolls that shouldn't be put on the rolls, which would identify the fraud, and the other part of the CDRs is as a deterrent, just so that you know that when you are getting better, if it's a 50/50 whether you're going to come in and say that you're better and ask to be removed from it, it lets everybody know that the agency is going to be checking back to see if you got better. And I think that's something that we all hope for is, is that we give you benefits and that you get better.

Mr. LANKFORD. Just to clarify before I move to Ms. Lujan Grisham, we are going to recognize you for 5 as well, the 1 percent number, that is improper payments, in other words we sent a payment to someone that they either shouldn't have received that or they're deceased now or whatever it may be. That's not a statement of we have 1 percent of people that if we were to go out and test in the field with CDRs, we only have 1 percent of the folks that are receiving disability that shouldn't receive disability. Is that clear?

Mr. O'CARROLL. Correct, Chairman.

Mr. LANKFORD. Okay.

Ms. SPEIER. So it could be higher?

Mr. O'CARROLL. Yes.

Mr. LANKFORD. Ms. Lujan Grisham.

Ms. LUJAN GRISHAM. Mr. Chairman, thank you very much.

And, panelists, thank you very much for being here today.

We all agree, we want a zero percent, if that would ever be a realistic number, we want there to be no bad actors and we don't want any mistakes. We don't want constituents who are trying to receive disability benefits who don't qualify, and we don't want folks in the administration making mistakes. And anything that we

do in this committee, anything that you do that improves the opportunity for these programs is meaningful. And I appreciate the chairman's statement that, you know, we want to make sure that we do everything we can to have a benefits program that's available for future and current folks who are waiting for these disability benefits.

But I would point out a couple of things, and one is that folks on disability, you know, can be stabilized, we hope, and some things improve, but they're permanently disabled, they don't get better. It's kind of like the Medicaid program for persons with developmental disabilities, and across the country we require a level of care review every year, and as far as I know, you cannot cure Down Syndrome. So you have that every year unless there was a pretty significant misdiagnosis early on.

People live longer. These programs are going to be more and more expensive. And it is something that we are going to have to think about as future policymakers, about what we spend, clearly, and how we do that, and what we can do to prevent disabilities and maybe get beyond a growth rate that we see in this country. And coming from a State where we have some of the highest disability populations, and just disabilities due to accidents from alcohol, significant issues that we could certainly as a State work harder to do a better job. And of course, you know, I worry as much as anyone about the fact that not only do you take a long time—thank you for improving that to a year. In my poverty law days it took 3 years to get somebody's disability application approved, and then I would have to explain to them how they didn't get any health care benefits for 2 years but had been deemed disabled and sick.

So it's still a tough, since the Medicare benefit is 24 months later after the disability determination, it's a program that's got some interesting—you get sicker before you get better, but then we're worried about how much money we're spending and what the efficacy is. And I could spend 3 more minutes before you ever get to anything about what you're doing currently about a program that we just don't do these programs right. We're still learning how to make them fair and judicious, effective, and keep out fraud on all ends for these programs.

So I just wanted to say I appreciate those efforts. I think they're important. And like everybody here, I expect government programs to work, and I want to ferret out folks who are taking advantage at any level, both providers, judges, and the administration, and constituents, and however they're taking advantage.

Given that you have had lots of questions about the judges' actions and what you're doing in your quality review process, I'm going to talk a little bit more about the error rate, and I don't think given what I've heard today or read that the approval rates don't demonstrate whether the benefits are correctly or incorrectly denied.

So it's my understanding, then, Mr. Sklar, that the Division of Quality reviews a random sample then of the ALJ decisions to award benefits. Am I correct about that, that it's all random?

Mr. SKLAR. Yes.

Ms. LUJAN GRISHAM. And then based on that random review, how often do we identify that the benefits are incorrectly awarded?

Mr. SKLAR. Again, I could supply that information for the record. It's pretty technical, and I don't want to take you down the wrong path. But we are using that data to inform future policies and to give feedback to the judges. We give it to them in real time, and we're seeing significant behavioral changes on behalf of the judges.

Ms. LUJAN GRISHAM. I would really be interested if it's all right with the committee and the chairman that we continue to get that information because then it really goes to, as you do those random reviews, you're seeing a change of behavior, I would be interested in what that indicates, what we think that indicates so that as we're looking at resources for the CDR and related programs that there's a partnership about what really makes a difference. Because as you then go to the appeals portion, how often then does the appeals council reverse those judges' decisions? Do we have that data?

Mr. SKLAR. So just one quick comment. There also is a second type of review done by the Division of Quality. We also do focused reviews. Those are after the money has gone out. They're closed case reviews. But in that instance you actually can be a little bit more targeted, you can look at individual ALJs, you can look at individual hearing offices or representatives or a combination of representatives and judges working together. Whatever you want to look at you can look at, and we do pick areas where we think it will be productive.

Ms. LUJAN GRISHAM. That would be great. So, again, with the committee's approval, I would love more information about the focused reviews, and instead of asking—and this has been helpful. I also believe that there's a certain number of people who don't know that they should appeal, poor advocacy advice, poor legal advice, disability prevents them, particularly if it's a mental health disability, can't get it done. Is there a process to take a look at how many people should have been approved those disability benefits but are never in a position to actually do the appeal?

Mr. SKLAR. From time to time we do take a look at unappealed cases. We can try to get you whatever data we have. That actually might fall more under the purview of our policy folks as well, but we'll put together what we can on appeal cases.

Ms. LUJAN GRISHAM. I would love that. I would love, frankly,—I've only got a couple—I think I'm over—as much information about what we could do and how we could do this better so that folks get those benefits when they need them. We're spending less then on the care and services that they need, but that income gives them an opportunity to access the healthcare system and related supports, including housing as an example, and that this whole process is streamlined and effective so that we're making the best decisions about preserving it for future beneficiaries.

Thank you, Mr. Chairman.

Mr. LANKFORD. Thank you.

Ms. LUJAN GRISHAM. I yield back.

Mr. LANKFORD. We will get into some of those conversations right after I recognize Mr. Walberg.

Mr. WALBERG. Thank you, Mr. Chairman.

And thanks to the panel for being here. Sorry I missed much of it being in another committee hearing. But I did have some questions, especially flowing from our last opportunity on this issue.

Mr. O'CARROLL, what are the actual savings, I would be interested to know, associated with CDRs or redeterminations?

Mr. O'CARROLL. Congressman, what we found with CDRs, it's about a 9-1 return on investment, and with the SSI or the redeterminations it's about a 5-1. However, last year when we went back and—

Mr. WALBERG. For each dollar spent, there's \$9 gained.

Mr. O'CARROLL. Yeah.

Mr. WALBERG. Or \$5 gained in the case of—

Mr. O'CARROLL. Yes, Congressman. We figure it's about \$1,000 to do a CDR, and then when you start taking a look at for every CDR that a person is turned down or is off the rolls, it's a significant savings on it. So that's where we're figuring the 9-1.

However, we went back, and that's over a long period of time. Last year, I guess in 20—yeah, last year, we took a look at it again, just to see in a 1-year period what the return on investment of it was, and at that time it went up to 13-1. So it's a very, very, you know, cost-effective way of doing it, these CDRs, it's a good investment.

Mr. WALBERG. What recommendations then have been made and what has SSA done to address the CDR backlog?

Mr. O'CARROLL. Well, recommendations—and I'll let SSA answer what they've done on it—our recommendation was to do more of them to reduce the backlog because when you figure for every year that the backlog remains where it's at, it's over a billion dollars that could have been saved by reducing the backlog on it. So we're telling SSA, one, to stay current, which would be not to increase the backlog on it. And they've been doing a fairly good job of staying current on it. So the backlog hasn't been growing. In fact, it was staying flat. Last year it went up a little bit. It went up about 100,000 last year on it. So our recommendation to SSA is to put more resources towards CDRs so that, one, they're staying current, and, two, they reduce the backlog on it.

Mr. WALBERG. Do you feel they've been doing that, putting more resources to it?

Mr. O'CARROLL. I think they have been doing more on it. I don't know whether they've done—I think, to my liking, they should be doing more. But I've got to say is over the last few years that their, you know, integrity work that they have been doing is increasing. It's staying, as I said, current, which is very good, so the backlog hasn't grown.

So, one, I guess the best thing I can say is we encourage them to do more. We're asking probably also, too, is we're in agreement with them, if money is earmarked or designated in the appropriation to be done on the CDRs, they will do it. And whenever they are given extra money to do CDRs, they are done.

So I guess the thing that I could take away from this is, is that we encourage an integrity fund be established that forces them to do CDRs, and that way any other competing resource issues that they have won't reflect on it, and they will do the CDRs and do it.

Mr. WALBERG. Okay. Before I go to Mr. Sklar, how many taxpayer dollars would be saved per year if SSA performed CDRs on time?

Mr. O'CARROLL. What we're saying right now is, is between 1 to 2 billion dollars is saved every year by reducing the CDRs and doing them all on time.

Ms. LACANFORA. May I offer a number as well that might help to answer your question? And this was an answer to a question that Ranking Member Speier posed earlier in terms of the return on investment. So Mr. O'Carroll said that the return on investment is \$9 saved for every \$1 spent. And another number that you may find handy is that in this fiscal year, fiscal year 2012, we're asking for \$1.2 billion to be able to do CDRs, and if we get that money we could do just over 1 million CDRs. And if you include the amount of Medicare and Medicaid savings that we would get if we spent that money, it would amount to \$40 billion over 10 years in savings.

Mr. WALBERG. Okay, thank you.

Mr. Sklar, will the agency prioritize erasing the 1.3 million backlog of CDRs.

Mr. SKLAR. Actually I'll defer to my counterpart.

Ms. LACANFORA. We share your interest in getting current with CDRs. We think it's one of the most critical responsibilities that we have.

Mr. WALBERG. With those type of dollars, I would hope so.

Ms. LACANFORA. That's right. And we have shifted resources. To your question earlier about have we committed and have we made progress, in every year since 2007, with one small exception, we have increased both the number of medical CDRs and SSI nonmedical redeterminations. Right now we're at an all-time high, over a million SSI nondisability redeterminations performed in the last fiscal year.

So what we're asking for from the Congress is the adequate funding to be able to continue along those lines. And in terms of shifting resources, we have done that. I think this committee knows that we close our field offices to the public 8 hours a week. We close at noon on Wednesdays, we close an hour earlier every day than we used to. And we did that specifically so that we could focus more attention on program integrity work instead of dealing directly with the public, taking claims.

Mr. WALBERG. Thank you.

Mr. LANKFORD. For those that are here on the dais that have not been in one of these conversations before, what I'm going to do is I am just going to open it up to open conversation, not do a limited 5-minute time period. We are going to try to run through a bunch of questions, and that allows interaction both here on the dais and with the witnesses as well. We have a lot of issues that I want to make sure that we get covered. It's sometimes difficult to do in a structured 5-minute time period.

And what we have talked about briefly as we started this hearing, and what I spoke with you about before the hearing started as well is it's one thing to talk about the problems, we've got to talk about solutions. And so what I would like to do is run through some of the things that have been proposed, either the IG has pro-

posed or we have heard from Senate committees or other House committees here, or, Mr. Sklar, you actually laid some of these things out in the past, and to be able to run through what are the ideas of how do we fix this, where do we go.

And so I would like to just start kind of peppering through this, and we're able to interact at a new level. If you have another statement that you want to jump in on, we'll jump in as we go.

Let me ask the first question on it. As far as the limited dollars, more dollars should be invested in the CDR side of it or the CDI side of it or is it just at both ends? Which one gets us a greater bang for the buck, actually doing more investigation before they get in at the beginning or more investigations once they're actually in the system?

Mr. O'CARROLL. Boy, that's a tough question. I've got to say on both of them, what we've asked for with the integrity fund is considering both of them, because also the other issue, what gets it a little more complicated is, is when CDIs are done, and if as a result of doing—I'm sorry, when a CDR is done, if as a result of it there's something either questionable, suspicious, or anything that needs some follow-up investigation on it, that's where the CDI units come in handy. And we found by working with judges and ODAR, if there's a question that comes up in an appeal, the CDI units are equipped to be able to go out and be able to validate or find more information on it. So I've got to say they're both linked very closely together, and if there was anything in terms of guidance from an integrity fund I would like them both to be considered.

Mr. LANKFORD. Is it the assumption, if you're talking about the \$1.2 billion, is the assumption that it's for both or is that just CDRs?

Ms. LACANFORA. That's strictly medical CDRs.

Ms. SPEIER. So what's a CDI then?

Mr. O'CARROLL. A CDI unit is basically what we're taking a look on. The bottom line is it's about \$100,000 per CDI unit, and that's—

Mr. LANKFORD. And they'll do how many cases with that?

Mr. O'CARROLL. And of that we have 26 CDI units in 21 States at the moment on it. We would like to expand it into all the States. And what happens with that on it is, is the IG supports the investigator in it, SSA supports the location as well as the local investigators on it, the DDS employees, and the MSS or Social Security employees. So most of the expense goes to SSA.

Mr. SKLAR. If I could just jump in on this, too, I'm a bit of a compromised witness on this one in that I helped set these up about 15 years ago. I think they're a tremendous value. They're front-end fraud detection. We've had a lot of discussions on the podium about how much to get back after the money has gone out the door, and we all know not that much.

Mr. LANKFORD. Right.

Mr. SKLAR. We do the best we can. We have collection tools. But ultimately you're getting pennies back on the dollar. You have to catch it at the front end. And it's the type of cases, the complex fraud conspiracies that Mr. O'Carroll's office has been working on and we try to support that you can use a CDI unit to get at the

front. So I would be a strong advocate. I've never understood why we don't have a CDI unit in every State.

Mr. LANKFORD. How do we fix that? Give me just a for instance here. When you've got a Judge Daugherty who is 99 percent approval, all the issues that come up, you've got to look at the focused review of the judge and how do we even get into this process, but a CDI should have caught this early on or some kind of process to say we have a problem here. So it's either a focused review of the judges or it's some kind of investigation at the beginning of it to determine same doctors, same judge, same process, all run out of a few trailers in West Virginia, maybe there's a problem here; yes, there is. And obviously the IG is able to identify that and start working through the process. That's part of what my question is, how do we get it on the front end?

Mr. SKLAR. This is actually the infrastructure to get in on the front end. I've always been confused why we haven't been funded to have one in every State. I think it's very important.

Ms. SPEIER. Okay, but to that point, Mr. Bede, you're in charge in West Virginia, correct?

Judge BEDE. I am not currently involved in the operation of the Huntington, West Virginia, office.

Ms. SPEIER. But you were?

Judge BEDE. I was, until the Wall Street Journal article.

Ms. SPEIER. Okay. So in hindsight now, do you feel that there should be some role for a person like you in each office to review the work of judges to see if there is any kind of collaboration going on? Did you miss that?

Judge BEDE. Well, I'm not in West Virginia, and in the local office there could be, if it becomes clear to other people—in this office apparently one judge was doing this, and it was not, at least at first, clear to other people in the office. So if he isn't going to report it—

Ms. SPEIER. Well, he's clearly not going to report it, right?

Judge BEDE. Right.

Ms. SPEIER. I mean, He's part of the cabal?

Judge BEDE. It makes it very difficult.

Ms. SPEIER. So I guess I'm trying to understand, is everyone so autonomous that there's no oversight of any of these judges?

Judge BEDE. Well, no, that's not the case. There is certainly oversight. But what we're saying is that we cannot tell a judge how to decide a case.

Ms. SPEIER. No, but we're not asking that.

Judge BEDE. Right. No, I recognize that. But once it's decided, it falls into the purview of the Office of Appellate Operations. I don't have the staff or—well, I just don't have the staff to look at every judge's decision every day.

Mr. LANKFORD. Do you have the authority to step in, though? If you have a suspicion that that there's a problem, who has the authority to step in?

Judge BEDE. Yes, if I have a suspicion or if a suspicion is raised that there are unsavory activities, then we would look at that, and we would probably refer it to the Inspector General's office, and obviously keep our—the Chief Judge's office and the Deputy Commissioner's office in the loop as well.

And that's what we have done in other cases, and none of them as significant as this, but there have been other doctors who no longer have licenses, reports—

Ms. SPEIER. Some of those things are really obvious.

Judge BEDE. —medical reports that are the same for—

Ms. SPEIER. I mean, if someone's dead or someone doesn't have the ability to practice medicine anymore, those are gimmes. This is where there's a concerted effort, a cabal to, you know, rig the system.

So, Mr. O'Carroll, you have a comment to make here?

Mr. O'CARROLL. Thanks. One of the comments that I made amongst our own Office of Inspector General is, is I don't want to have to be reading about another hearing office or anything else in the newspaper on it. I would rather us identify it in advance. And so as a result of that, we have a group working with Glenn Sklar's office on it on trying to look for outliers or try to find, again, somebody, any type of connections between lawyers and judges or anything elsewhere where we're taking a look at doctor providers that are all doing this thing.

So, anyway, I've got to assure you is, is that we're doing everything we can to be working with the office of ODAR to identify any anomalies out there and try to stop them before they happen. And I've got to say Huntington got by us in regard to—there's a lot of issues on it that came out at the last hearing on it and different things about it is, is that we're trying to find what—I guess what went wrong and what we can use to identify it. That's why we have our pilot right now on disability fraud.

Mr. LANKFORD. All right. Go ahead.

Mr. SKLAR. I'm sorry, if I may. Just one comment. One thing that is really quite different. We have a very well developed electronic recordkeeping system now. We're collecting reams and reams of data. And in many ways I would call it big data at this point where we're going in and looking for patterns and anomalies and really leveraging modern technologies. We have experienced programmatic people, economists, statisticians plowing through the data to try to find the next problem.

So I think if you look back, Puerto Rico is a good example of where we caught it, 4-1/2 years ago the employees in the Puerto Rico DDS found it and they turned it over to Mr. O'Carroll's office.

Ms. SPEIER. Four years ago, though.

Mr. SKLAR. Well, it does take a really long time to put together a complex conspiracy case, and they had surveillance, and they needed to—there was a lot of work that needed to be done. We actually supported them many steps of the way. But Huntington was a little bit different.

Ms. SPEIER. Well, how long has your big data been operational?

Mr. SKLAR. I would say for the last 2 or 3 years, and quite frankly—

Ms. SPEIER. So you should have found Huntington. I guess I'm trying to—

Mr. SKLAR. Yeah.

Ms. SPEIER. I'm not trying to—

Mr. SKLAR. Yeah.

Ms. SPEIER. No one is trying to beat anyone up here. We are trying to find out what we have to do to make sure that there aren't more Huntingtons in our future. And we do know one thing: If there is a void, people find a way to fill it. If there's a void in terms of finding the Huntingtons, there are going to be Huntingtons all over this country, because there just happen to be folks out there that are going to try to rip off the system. It's just the reality.

And, Mr. Chairman, I just asked my staff to research this, and I think this is very helpful to this discussion. When the Affordable Care Act passed one of the things that was included in it was money for Medicare fraud over 10 years, \$350 million over 10 years, so it's \$35 million a year. In the 3 years that it's been operational, so a total of \$100 million that has been spent, they have already recovered \$10.7 billion in fraud. So we know that those folks are out there, and they're going to prey on the Medicare system, they will prey on the social security disability system. They will prey on any worker's comp systems.

They are professional rip-off artists, and it's our job to shut them down and be smarter than them in terms of shutting the door before they even get to open it. So you've got to provide us more kind of help in what we need to craft so that you can get your job done and so that we don't ever have to beat you up.

Mr. LANKFORD. I fully agree on that.

Let me walk through a couple of things as well, and other members should feel free to be able to jump in on issues here. On the claimant representatives, the duty of candor, issue to clear regulations requiring claimant representatives to submit all relevant evidence in advance. Are we in agreement? I know you mentioned before on this, Mr. Sklar, that this is a pilot in some areas. How is that moving? Where do we go from here?

Mr. SKLAR. Things are moving pretty rapidly. We had a wonderful study done by the Administrative Conference of the United States. We took that study very seriously, we have had serious discussions back at Social Security. And I can't say very much about it, but let's just say something has moved from Social Security to the Office of Management and Budget in that regard.

Mr. LANKFORD. Okay. Is that something we can talk about more off line?

Mr. SKLAR. Yes.

Mr. LANKFORD. Okay.

Mr. WALBERG. Could I just jump in on that same issue, the duty of candor? Who represents the taxpayer in the hearing process? As I understand it, both sides aren't represented? Who represents the taxpayer?

Judge BEDE. Well, as an administrative law judge, there is a duty to represent, to protect the taxpayer as well as to ensure that the claimant gets a fair hearing, and all of our administrative law judges are aware of that and take it very seriously, possibly with the exception of a few judges who allow all of their cases. But it is part of the job of the administrative law judge to ensure that benefits are not awarded frivolously and that the government is—the trust fund is protected.

Mr. WALBERG. But it seems to me, advise me if I'm off base, but if the hearings are nonadversarial, why does only one side have

representation? Are we missing something, especially when we're talking about the load, the backlog, and all the rest that goes on, are we missing something in not having direct representation for both sides?

Judge BEDE. I personally don't think that having the government represented would add a whole lot to the process. I don't know if Commissioner Sklar—

Mr. SKLAR. If I could just chime in really quickly on the history. This was set up, this program was set up quite some time ago as a nonadversarial program, and it has been enshrined in Supreme Court case law as such. We did try a brief array in the 1980s with a government rep project and were ultimately shut down by a combination of the Federal courts and outrage in Congress.

Since that time we have made a lot of changes. We've actually beefed up the staffing behind the judges. For example, we do have clerks that marshal the evidence and exhibit the file and get everything ready, we do have decision writers behind the ALJs, we have senior attorneys they can turn to if they have a tough policy decision and they want to work up the file. So it's not just the ALJ by himself or herself anymore. There's literally four or five people standing behind every administrative law judge.

Mr. LANKFORD. Can I ask you a question on that specifically? Are those, all those support folks around there, are they assigned to a specific judge or they're still working with the pool? Because part of the conversation we had with the judges was they didn't know which technical person was going to be assigned to them. Just that relationship between the judge and their assistant doesn't seem to actually happen in this particular setting. I know there are some issues we talked about before, them being union and supervising and all those kind of dynamics, but is there a need to get decision writers and technicians assigned to specific ALJs, that they form that rhythm and know what's going on, or is it your opinion that should not happen, they should continue to be a pool?

Mr. SKLAR. Actually it's somewhat interesting. We have both models running right now.

Mr. LANKFORD. Okay.

Mr. SKLAR. In the traditional hearing office model it is a pool model, and for various reasons you've mentioned previously they don't directly supervise the staff. On the other hand, we have the national hearing centers, there are five of them nationally, they are all video units, they do only video cases, and they supervise their law clerks. And quite frankly, the judges love the model and the law clerks really seem to like the model a lot.

Mr. LANKFORD. Is that something that could be multiplied out that you're finding efficiency in or just preference?

Mr. SKLAR. Again, it's something that certainly could be expanded, and we've looked at it. But we do run into labor issues with that as well.

Ms. DUCKWORTH. Mr. Chairman, I wanted to add on to this. I'm a little confused because I want to make sure that we understood, I have a better understanding, on what resources you need. Some of these things seems like these are models and pilots you're putting into place so that you have the capability to do it, and then there are some issues that have to do with funding as a resource,

which is the 2014 budget looking at the money so that you can do the CDRs, over 1.2 million CDRs.

Are there other things that you need from us to help you? For example, Mr. O'Carroll, you talked about the MIRS, the Medical Improvement Review Standards, and how someone who is incorrectly put onto, has been determined as being disabled, actually SSA has a hard time taking them off the rolls because those standards are there. Is that fix a legislative fix or is that an SSA fix?

Mr. O'CARROLL. That one would be, I guess, a little bit of both. One is, is that by law, once they've been found, you know, as disabled on it, it's impossible to go back and review it again, which is the whole issue of the improvement on it. If you're incorrectly diagnosed, there's no way you're going to be able to show improvement. So that's a little bit, one, by law, they're entitled to it, and two is by SSA, you know, instructions. But the agency—

Ms. DUCKWORTH. So if one of these doctors that's collaborating says that this person is disabled but they're not disabled and they're put on to the rolls, we don't have a way to take them off or MIRS makes it that much more difficult to take them off?

Mr. O'CARROLL. We can take them off. The exception on it is fraud, and if we can show there was fraud in the fact that they were put on it, yes, we can take them off. Good example on that was in Puerto Rico we have identified 71 people that doctors have put on erroneously on it. We can take them off and did take them off immediately because it was fraud involved.

Ms. DUCKWORTH. But incompetence is not an excuse?

Mr. O'CARROLL. No.

Ms. DUCKWORTH. Okay.

Ms. LaCanfora.

Mr. O'CARROLL. And the other one, though, again, I guess on this one here what we're talking is, is that you were asking what resources are necessary. I just want to go on record here is, is that, one, we talked about the CDI units and how effective they are and the return on investment on it, and I agree, and that's very, very important.

Another one that I've got to say is, is that, you know, in our case here we've got, you know, our auditors, as we saw with all this information that we've been able to give you in terms of the medical improvements and the CDRs, et cetera, is because of our audit work, and then in terms of trying to prevent anything as an example of, you know, Puerto Rico or any places where there's a systemic attack against SSA, our investigators are there doing whatever they can.

But I've got to tell you, our resources are very limited. Over the last few years we've had about a 10 percent reduction in staff, simply because we've stayed at level funding on it. As every cost goes up, 90 percent of my costs are really just on salary and, you know, and office, brick and mortar. So all I can do really is just keep subtracting staff in order to make our bills.

So, anyway, when you're asking what you can do to help us is, one of those things is for us to be able to get a set budget where we can, you know, be able to at least go back up to our allotment of investigators and auditors to be able to look into stuff like this.

Ms. DUCKWORTH. Ms. LaCanfora, you wanted to say something.

Ms. LACANFORA. I just want to take a very quick opportunity to attempt also to answer the question about what you can do for us, because I think it's twofold. One is adequate and sustained funding, not just the program integrity funding to do the CDRs, but adequate and sustained funding for the entire administrative budget. We have been operating for the past 3 years a billion dollars below the President's budget request. Since 2010 we have lost 12,000 employees across the Social Security Administration, making it increasingly difficult for us to just do the basic work that we're tasked to do, let alone trying to solve some of the more systemic problems.

And number two, I would just like to encourage the committee to continue highlighting the issues you've been highlighting because I can speak from a policy standpoint, we have a lot of irons in the fire, so to speak, we have a lot of areas in the policy realm where we're looking to improve upon current processes, and we can talk about some of those. But I think it's, you know, to the credit of the committee that you've prompted us to continue to think about these things and work hard to, you know, fill gaps where they exist.

Ms. SPEIER. What about the appeal of a decision by the ALJ? The only appeal right now is an automatic appeal if it's denied. What happens—on the one hand Mr. Bede says, well, the ALJ is representing the taxpayer and the injured worker or the injured individual, but I don't think you can represent both sides adequately, frankly. I think that's a mischaracterization of what an ALJ can really do. So there is no appeal process. The question is, should there be on behalf of the taxpayer?

Mr. SKLAR. So just to clarify, with the new Division of Quality we do look at roughly five to seven thousand unappealed fully favorable cases each year, and that's new, and that adds some balance. We were looking at hundreds of thousands of denials. They were appeals from people who lost. But on the cases that were paid, nobody was looking at those cases in any systematic way in a large number.

So now we're doing that. It's a statistically valid sample that can help us drive policy changes. We also feed back the data to the individual judges. But to be clear, it's still only five to seven thousand cases when we're running an operation that's moving 800,000 cases annually. So—

Ms. SPEIER. And just by doing that doesn't mean that that individual doesn't get the benefits either.

Mr. SKLAR. Well, actually, sometimes their lawyers are very upset because, yes, you would, indeed, intercept the benefits in those live cases.

Ms. SPEIER. You do?

Mr. SKLAR. Yes. So that authority exists, but we're only funded to do a certain number of these items or we can only afford to do a certain number of these cases.

Ms. SPEIER. So of the five to seven thousand cases that you have intercepted, so to speak, how many of them were the benefits actually not provided in the end?

Mr. SKLAR. I can supply that for the record for sure. We have that data.

Mr. LANKFORD. Okay. Can I ask how you picked that five to seven thousand? Was it just a random sampling or were you targeting certain—

Mr. SKLAR. So that's a really good question, because under a 1998 regulation we are not allowed to target, we are not allowed to target judges, we are not allowed to target hearing offices.

Mr. LANKFORD. So let me review. Huntington, West Virginia, when that's happening and you see these very high numbers, you're not allowed to go back in, in targeted review on that?

Mr. SKLAR. That's exactly right, not on live cases.

Mr. LANKFORD. We've got to fix that.

Mr. SKLAR. And to be clear, we did sample some of those cases, but it was a relatively small sample, and they began to ask the right questions. If they were looking at dozens of these cases, I'm pretty confident they would have gotten to the right place.

Ms. SPEIER. So your hands are actually tied?

Mr. SKLAR. To a certain extent. I just want to be abundantly clear, though, we can look at closed cases anytime we want, but then the money's gone. So you can look at closed cases for any reason, you can target cases where a judge has paid at exorbitantly high levels, low levels, where they have put out huge numbers of dispositions, tiny numbers of dispositions, you can target for any number of factors, but you cannot do it on live cases pursuant to a regulation that's been in place since the late 1990s.

Ms. SPEIER. To that point, if you're doing all this data collection now that's much more sophisticated and you can see trends, then to not be able then to drill down is counterintuitive.

Mr. SKLAR. I just want to be precise, though. We can drill down on cases where the money has gone out the door, closed cases. We cannot drill down on live cases before the money goes out.

Mr. LANKFORD. Well, what about targeted reviews of an ALJ or of a group of ALJs or questions on that? What can be done on that and what is being done on that?

Mr. SKLAR. We do do focused reviews. Again, they're on closed cases where the money has gone out the door already, but that is helpful at times, you can see what's happening. And we will typically feed that back to the line managers if there's a problem, and they will have those conversations.

Mr. LANKFORD. And is there a way to be able to discipline a judge or to be able to confront them and say this is it? Or it has the appearance at least of several years ago that when judges were high producing, they were sent more cases. They would seem to affirm them to say, okay, you're reversing a lot of cases, you're dealing with a lot of cases, let's send you more. That's not true anymore, it appears?

Mr. SKLAR. Correct.

Mr. LANKFORD. And grateful for that. But how do we handle this as far as when we see there is an issue, some sort of discipline so that there is the accountability that's built into it?

Mr. SKLAR. Yeah. First, we're going to try with voluntary compliance, we are going to give them a chance to get better, and most do, and most are very agreeable. They're surprised. They've been doing this for 20 years and nobody has given them feedback. So we're happy to give them that feedback. We actually set up a tool

called How Am I Doing? It's an electronic tool. They can actually look at their remands coming back. So we think that is helping to change behavior.

But in instances where folks refuse to comply, and occasionally you'll actually have an ALJ who says, I refuse to follow the policy, then you're into a whole nother realm. And there are procedures for conduct and performance violations, and we do use those procedures.

Mr. LANKFORD. How often?

Mr. SKLAR. They do take a long time.

Mr. LANKFORD. How often?

Mr. SKLAR. In my written testimony I've talked about 20 cases where a judge has either been terminated or left voluntarily.

Mr. LANKFORD. We mentioned before as well that the CDR review, in going through the process of that, there's a term that I discovered I was not familiar with, but the more that I read and the more people I talked to in different parts of the country in DDS offices and such I heard this term for CDRs that was used behind the scenes of, not then, not now. I don't know if you've heard that before, but it's the perception of they weren't disabled before, they're still not disabled now, but there's nothing we can do about it because we can't show that they've had medical improvement because they really shouldn't have been disabled in the first place, and now we're stuck.

It seems that there's a standard to get on disability that they can't have any involvement in any vocation in the United States right now, that they can't significantly function in our economy. If they somehow get past that, then there's a different standard, if they have medical improvement or not. Am I reading that correctly, that once you're in it, it's medical improvement, not whether you can engage in the economy, but going into it there's a standard that you have to be able to engage in the economy?

Ms. LACANFORA. You have summarized that pretty well. And so this is one of the issues that we're looking at really closely, because the law does require that a person show medical improvement in order for us to terminate benefits. There is, though, one exception to that, the exception that Mr. O'Carroll mentioned—

Mr. LANKFORD. Right, fraud.

Ms. LACANFORA. —if it's clearly fraud. But in addition to that there's what we call the error exception, which is if we believe that an error was made initially, not necessarily fraudulent behavior, but it was just a bad decision, we do have the legal authority to go back and revisit that decision and terminate benefits.

Now, what you're hearing when you go around the country is the fact that adjudicators are not really doing that often.

Mr. LANKFORD. Right.

Ms. LACANFORA. It's a very infrequently used provision. And what we're doing now is we're taking a sample of cases and we're doing a comprehensive review to try to understand why it's not being used. Is it a training issue? Is it a clarity of policy issue? Do we need to amend the regulations so that they give more teeth, let's say, to the process?

We're not entirely sure how to make better use of that error exception, but we think we do need to do that. So the comprehensive

case review we have underway now will help us to—help to inform our next steps in terms of whether we need to go the rulemaking process, the training route, or a combination of those.

Mr. LANKFORD. But you have the authority right now to do that as far as the error possibility, to say we believe there was an error made in a previous case. You already have that authority? That's not something you need from us?

Ms. LACANFORA. We do, but understand that it's quite complicated, and we can't, for example, substitute judgments, okay? The regulations are very clear on that. So you can't say, oh, gee, I just think Judge Bede did a bad job and I'm going to substitute my judgment for his. So one of the reasons I think that adjudicators are reluctant to use it is because it's a very complicated rubric that you have to go through in order to use the error exception.

Ms. SPEIER. So what would you recommend then?

Ms. LACANFORA. So, again, we're doing a comprehensive case review because we want to look at real cases and figure out where we should have used this exception, why we didn't, and then we're going to move toward probably a multipronged approach, but we may need to amend our regulations to make them more clear so that adjudicators can use them more readily.

Ms. SPEIER. I guess what I'm asking, though, it sounds like the error exception is not being used. You're going to review that and see why it's not being used. But the truth is it's not being used. So if that's the case, then we need to provide you with a tool that allows you to more simply and easily address cases where they should never have received the benefit in the first place.

Ms. LACANFORA. I'm not saying that at this point we need legislative change. I think we may be able to make better use of the error exception through our regulatory process.

Ms. SPEIER. Okay.

Mr. SKLAR. If I could bring a little bit of light on something we're trying to do at both the DDS level and at the hearings level, we are trying to get our adjudicators to better rationalize, memorialize, and explain why they allowed somebody, and that's really, really important, because without a really good rationale it becomes almost impossible when a CDR comes up to take that person off the rolls if, indeed, they've shown medical improvement, because you're going against nothing. You have to show medical improvement from a certain baseline.

So we've done a couple things in this regard. We've introduced an electronic tool, the Electronic Case Analysis Tool, at the DDS level, the State agency level, where they actually have to memorialize and rationalize their decisions. And quite frankly I think it's been exceptionally helpful both in the CDR realm and even more helpful for the judges, because now the judges know why the case was denied at the lower level.

So if you ask me, one of the reasons why the allowance rate is going down at the hearings level, I think they're actually looking at why the DDS denied the case. There's now a rationale and pretty thoughtfully done. We're actually trying to get the judges a similar type of tool, an Electronic Bench Book, so that they have a policy-compliant electronic tool to rationalize, memorialize their case as well. Of course they have decision writers, but we think it's real-

ly nice if they can get some of the work and some of the policy-compliant instructions to the writers in this tool.

Ms. SPEIER. In the West Virginia case, without, you know, harming the actual case itself, was the bench in that West Virginia city, Huntington, I guess it is, did any of them come forward? I mean, do judges know about the work of other judges?

Mr. O'CARROLL. That's a tough one that I've got to be really cautious on because it's an open investigation. So I can't really talk in terms of the witnesses on it. But I've got to say, there was a culture in that office that became pretty apparent in terms of a number of, you know, people in it raised concerns over time, and a lot of alarm bells, you know, had gone off and just weren't addressed.

Ms. SPEIER. So why didn't any of them become whistleblowers? Or, I mean, is there a bounty hunting opportunity for people that come forward in a situation like that? I mean, it sounds like there were people that recognized there was a problem, and then the management declined. And those are my words, not yours, so I'm not putting them in your mouth. I'm a big believer in allowing whistleblowers protection and compensation when they come forward.

Mr. O'CARROLL. We agree completely on that. In fact, one of my jobs as the Inspector General is, is the protection of whistleblowers, to encourage them to come forward, to protect them after they do come forward, and if there is any form of retaliation to, you know, to prosecute management for doing it.

So, yes, we send a signal out there, you know, for whistleblowers to come forward, we will protect them, and there has been examples of it. You know, as becomes apparent with any of these situations on it is, is that in retrospect when you're looking back on it, you're seeing a lot of, you know, signals that should have been addressed where people came forward with issues. I've got to say when we look back on it, they're not always—even though you're a whistleblower and you're complaining, it may not be as specific as we want it. And what we found is a lot of times there's inter-office issues that are going on with their time and attendance and it's not necessarily fraud or some issue like that. So that's where they get overlooked. And that's why we're trying now to, you know, to, one, send the signal out there, is if there is an issue on it, bring it forward, and we will investigate it.

Mr. SKLAR. Just one quick comment, too. My personal opinion, the best line of defense is your front line, and we've really spent an inordinate amount of time trying to reaffirm the need to speak up. And having spent 8 years in the Inspector General's office before taking this job, I've really been very active in that regard, and we've seen our referrals to Mr. O'Carroll's office shoot up quite, quite dramatically.

So I do think a lot of it is messaging. I do think a lot of it is making it safe for your employees to come forward, they feel like they won't get in trouble, they won't get second guessed. And we have really put a premium on making sure that if any hint of retaliation or reprisal, that's not okay.

Ms. SPEIER. Are they eligible for the award system that exists in the Federal Government when you call attention to a cost or a savings?

Mr. O'CARROLL. Yes, they are.

Mr. LANKFORD. Let me ask Mr. Sklar something that's not politically challenging or difficult, let's do something simple like revising the grid.

So the grid, my understanding was, several years ago tried to go through revision, and Members of Congress and multiple outside special interest groups screamed so loud about it that the whole thing was scuttled. And we're still stuck with a grid from the 1970s where it talks about elevator operators and such as, you know, meaningful jobs that are out there, and more sedentary jobs like computers that is the top area for the jobs now are not listed on there because it just wasn't a major job during that time period. Age issues, everything else becomes a big issue. How do we do this? We talked about it a little bit before about getting a study on this and getting going. How do we get this fixed?

Ms. LACANFORA. Okay. So a great question and a fair characterization of the situation. We have two separate work efforts related underway. One is that we are updating right now the Dictionary of Occupational Titles, which is that book with the 12,000 jobs in it that you referenced. It hasn't been updated for decades. We have a contract right now with the Bureau of Labor Statistics, an inter-agency agreement, and we have a great relationship with them. It's been in place since 2010. We've already done three phases of data collection out across the country using field economists that go into real businesses and collect data about how jobs are done across the country. That process is moving along. It's a multi year initiative because it's very complicated.

Mr. LANKFORD. Right.

Ms. LACANFORA. The book that we end up with has to be legally defensible.

Mr. LANKFORD. Done when? When's your target date for completion?

Ms. LACANFORA. 2016 is our hope.

Mr. LANKFORD. Just in time for a new President to scuttle it, but that's a whole different issue.

Ms. LACANFORA. But understand, for the undertaking the time-frame is very quick.

Mr. LANKFORD. It's huge.

Ms. LACANFORA. It really is, and that's a target.

Mr. LANKFORD. But then it has still got to go through all the rulemaking and all the fight and everything else or you're seeing it complete by then?

Ms. LACANFORA. We are hoping for something usable. It might be a phased rollout, a phased implementation. But we are not even sure we are going to need to modify regulations. I mean, I can't make any promises, but we're trying to update it in a way that it doesn't require dramatic redesign of program rules.

Mr. LANKFORD. Okay, so that's one aspect of the employment side, but we've still got age, we've still got everything else.

Ms. LACANFORA. Okay. So the other stuff, which really falls into the category of the grid, okay, which is, you know, I look at it as a chart that you use where you incorporate the factors that we're statutorily required to consider—age, education, residual functional capacity, which is the ability to do work. We take those factors into

consideration, and the interplay of those factors are considered. And then we basically use this grid or this chart to determine, then, what your finding of disability is, disabled or not.

And you're right that we haven't updated that in a long time. Right now we're taking a very careful look at that because the reason we were unsuccessful in the past is because the changes that we made were not evidence based. And that's what we learned from that experience, that in order to make a change to the disability programs which are going to have rippling effects for millions of people's lives and potentially have, you know, billions of dollars of implications one way or another, it's got to be evidence based, it's got to be sound.

So what we're doing now is we're revisiting the grid issue and working with the Disability Research Consortium, and this is a group of highly skilled economists around the country that are working with us to look at those factors that we have to statutorily consider—age, education, work experience—and how other disability systems use those factors in the government and outside of the government, and they're going to give us some sort of an environmental scan and some advice on how we might want to change our rules. So by getting that evidence base or that research base beneath us, we think we will be in much better position to make sound changes in the grid rules.

Mr. LANKFORD. And what's your timing on that part of it?

Ms. LACANFORA. The Disability Research Consortium work should be finished in the middle of fiscal year 2014, July, June or July of fiscal year 2014, and then depending on what they come back with we will be shaping our next steps.

Mr. LANKFORD. So we're talking about the middle of next year we'll have some sort of proposal that's out there, and then it's a matter of a couple years to get it out or you've got data in from them by middle of next year and then it's to start putting the proposal together?

Ms. LACANFORA. So we have data, but we are simultaneously—you know, we know where the vulnerabilities are, so we're trying to simultaneously work with the Disability Research Consortium and in house to be prepared to do what I think will end up being rulemaking, hopefully in fiscal year 2014.

Mr. LANKFORD. Under 18 and over 18 at the same time or just all adult focused?

Ms. LACANFORA. We're right now focused on adults.

Mr. LANKFORD. Okay.

Ms. SPEIER. Can we talk about the under 18 group, because I've never seen them actually defined that way before. And I would just like to understand it better. Why are persons under the age of 18 eligible for disability benefits when they probably haven't worked 40 quarters for starters, right?

Ms. LACANFORA. So we're talking about the two different programs that you mentioned in some of the opening remarks. The Social Security Disability Insurance program is the insurance program for those people who have worked and earned sufficient quarters of coverage to get benefits. The program under which disabled children become entitled is the SSI or the Supplemental Security

Income program, which is a needs-based program for disabled children and doesn't require any work having been done.

Ms. SPEIER. Are there any problems in that program?

Mr. LANKFORD. Yes.

Ms. LACANFORA. Well, let me just say, we think that there's always room for improvement for sure. And we have a partnership right now with the Institute of Medicine, and they're looking very carefully at our childhood disability program. We actually have a consensus committee that they have put together with medical experts that are going to help us take a really close look at the SSI childhood program and identify ways for improvement.

Ms. SPEIER. Mr. O'Carroll?

Mr. O'CARROLL. Yeah, one of the things, in fact I was thinking about it before when we were talking about overpayments and I was talking about the overpayment being in the 1 percent range, that was in relation to the disability side of SSA. In relation to the SSI side, just as the chairman just echoed, in terms of the issues with SSI are much higher. That's in about the 6 percent range on it. And a lot of that's because it's self-reported income on the people that are benefits for it.

As Ms. LaCanfora just explained is, is that it's a needs-based program, and a lot of times, you know, it's based on what a person says what their income is, is whether or not they're eligible for the program. And what we're finding now along those lines is, and I applaud SSA for doing it, is there's a lot of electronic financial information out there that can be used to run people against to see when they're claiming that they're indigent to see if they do have resources. And SSA has been making great strides in terms of using financial intelligence to be able to identify people on it. But the SSI program does have a much higher overpayment rate.

Ms. SPEIER. But for the disabled children, is there—

Mr. O'CARROLL. And the children part of it is, is one of those, because what happens with the children is oftentimes with children they do improve, you know, in terms of their own medical information on it. And we're asking SSA to do more continue or redeterminations on children. And then again at age 18, that's before they get into the adult portion of it, they're mandated to be doing redeterminations on those to decide before they become an adult whether they're going to be on the benefits for the rest of their life, and that's an important one, and that's oftentimes neglected.

Mr. LANKFORD. This is my big issue with when we have anything that smacks towards an error or fraud in SSI. We have a child 10, 11 years old that is labeled as disabled. If the redetermination process doesn't go well, they carry over into adulthood, all the potential of that kid is sapped away. They are told from when they're 10 years old, you are disabled, you cannot, and are set aside.

I ran into a young man about 2 years ago in his early twenties that had Social Security questions for me, and I asked him why he's asking me that. It was very unusual for someone in their twenties to ask me about Social Security, and I just asked him flat out if he was on SSDI. And he hesitated and said yes. And I said, may I ask what for? Because I had this great conversation, we're in this large event, he had been socializing with those people, and he said, well, I'm ADHD.

And my first thought was, and I said to him, we need to help you get a job, because we're losing you. We're losing all that you could produce and all that you could do.

So the questions that I have on this is when I went and pulled the under 18 numbers, and I see the rise in two different areas, number one being ADHD, number two being speech language pathology and speech language delay as far as the top two reasons that are rising for those, both of those, there are a lot of issues and questions about how long. For instance, ADHD, is that they qualify without medication or they qualify with? Because if someone has medication on it and they meet these different markers without, but they go on medication, obviously often they're very functional in a social environment and are very engaged, but if they're off that medication they're not. Do we know how that is done?

Ms. SPEIER. Mr. Chairman, I have personal experience with ADHD with a child, and I think that this would be ripe for a hearing on just looking at children under the age of 18 who are eligible for SSI because of ADHD. And let's really drill down on this. I'm stunned to hear this, really stunned.

Mr. LANKFORD. Can you give us just an answer whether it's before or after medication for that?

Ms. LACANFORA. Sure. So we require that anybody, whether it's ADHD or any other course, so any other disabling impairment, that the individual comply with the course of treatment that the physician is prescribing. If they are not complying with a course of treatment and therefore the condition is deteriorating, then that's grounds for us to deny the claim.

I would also add—

Mr. LANKFORD. But I'm saying do they meet the standard and the criteria that's being set after medication or before medication?

Ms. LACANFORA. After compliance with the course of treatment.

Ms. SPEIER. So sometimes it's behavioral, sometimes it's pharmaceutical drugs that are prescribed.

Judge BEDE. In these cases there's also the issue of obviously SSI people are low income, and there may be no treatment because there's none available to the child.

Ms. SPEIER. Well, there should be now under the Affordable Care Act.

Judge BEDE. Yes, under the Affordable Care Act there is now. But in the past they would be put on benefits and would then be entitled to Medicaid. They would get treatment, and they would improve, and leave the rolls.

Mr. LANKFORD. Then what?

Judge BEDE. They would lose their medical care and would deteriorate. And we would see that on not a lot, but we would see that occasionally.

Mr. LANKFORD. Same thing for speech delay, because when you get into speech delay or articulation issues, that becomes a socialization issue on it. But to have a child that has a difficult time with articulation or a delay in articulation, that's a completely different issue. To see the rise of the speech—now, language is a different issue, that's mental processing, but the speech side was very surprising to me.

Judge BEDE. And it also very often responds to speech therapy.

But personally I have not seen a lot of those cases. I take your word that if they show up in the statistics. And I don't know whether that's been allowed at the State agency level or at the hearing level, but I have not noticed a significant problem with allowing children with developmental delays.

Ms. SPEIER. Mr. O'Carroll, have you looked at this issue, and is it more prevalent in some States than others?

Mr. O'CARROLL. I'll tell you, we haven't done work on it. It's on our work plan to be looking at it. Amongst other things there were a large, I guess, regional concern on it in, I think, the Massachusetts, where it got a lot of media attention and everything else within the last year. So it's on our radar screen as—you know, as an issue to be taking a look at, but we haven't done any work.

Ms. LACANFORA. May I just also add, I just want to reiterate very briefly we are right now under contract with the Institute of Medicine, the National Academies of Science. They are the premier authority in this area, and they are looking very specifically at the childhood program and some of these issues. And that is under way as we speak and will be done in 1 year.

Mr. LANKFORD. So we're 1 year away from that one. Is that 1 year away from data or from a proposal?

Ms. LACANFORA. From their recommendations to us.

Mr. LANKFORD. Okay. I know we're hitting the noon hour here, and I'm very aware of everyone's stomach and that you all have been seated for 2 hours. I'm very aware of that and want to be able to honor it.

What I'd like to do on it—do you have any additional questions or comments? What I'd like to be able to do is follow up with Mr. Sklar if we can. Maybe Mr. O'Carroll can join us on this, we'll have to just see on the timing on it, and whoever you'd like to invite to be able to join in.

I have a long list of all the reforms that have been laid out and the ideas that are out there. What I'd like to do is try to figure out what are the things that you all are already working on? As I've already mentioned, this is already in process. What's our time period for completion on these? What is the legislative need that the ranking member and I need to work on; to say where do we need to push on this, whether that be funding, whether that be a change in the law or the statute? What is it that is needed from you to be able to make progress on this? And what of it is management-related, quite frankly; to say where is it you need greater oversight or a push; to say if there's an anomaly out there, how do we deal with that?

So if there's an obvious, you look after the fact to Huntington, West Virginia, and to say, okay, it's obvious once you look at it after the fact, how do we get some of those things to ping up earlier and get some of the review process to be able to come through?

As Mr. O'Carroll has already said, we never want it to happen again, but we're going to have people that are going to try to run the system on it. It did not take us but a moment to sit down at the computer and just to type in Social Security Disability, and what came up first was an ocean of law firms telling you how to game the system; if you'll use this term, this is what you need to submit into it, that becomes the first thing that you get when you

search on Social Security Disability. You have people after you that are trying to game the system. That is their bread and butter to do it.

We need to protect in any way that we can to help guard the taxpayer and individuals and, most importantly in this process, those vulnerable disabled individuals that will take a hit 2-1/2 years from now and will have even more instability in their life if we don't do something for this.

So I appreciate your work on it. I'd like to have some offline conversations on some of these to see if we can't form a list of to-dos, what we can do, what you can do; is that fair?

Other questions or comments?

Ms. SPEIER. Mr. Chairman, let me just say this has been, I think, one of our best hearings, and we can really work together to make the system work better, and that's really our charge to do that. And I think it's very clear that unless we have more money to do the CDRs and to fund Mr. O'Carroll's operation, we're not going to succeed.

So it's really important for us to do the responsible thing here, and I will work hand in glove with you to make it accountable, but also to give them the resources so they can make sure the right people are getting these benefits.

Thank you.

Mr. LANKFORD. Thank you for your time and for being here today. We'll follow up and continue on through the process.

This hearing is adjourned.

[Whereupon, at 12:10 p.m., the subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

Mr. Lankford Opening Statement

The Social Security Administration oversees two large federal disability programs - the Social Security Disability Insurance program and the Supplemental Security Income program, both of which have grown rapidly over the past 25 years. The growth in these programs is a significant threat to the truly disabled who are often pushed to the back of the line and who face large benefit cuts in the future if the program is not reformed quickly.

The rapid growth in these programs corresponds to a period of time when the typical job became less physically intensive and the health of Americans nearing retirement improved. The consensus of expert academics and researchers from across the political spectrum attributes a large part of the growth of the program to a slower economy and more subjective criteria for entry.

In June, my Subcommittee held its first oversight hearing related to the Social Security Administration's management of these programs. At that hearing, the Committee heard testimony from 2 former and 2 current Social Security Administrative Law Judges. Their testimony revealed significant problems in the Social Security appeals process, an avenue by which more than 300,000 applicants typically gain access to the program each year. One overarching theme of the testimony was that the agency's push to reduce the backlog had the unintended consequence of judges putting too many people onto the program who are able to work.

In subsequent months, Committee staff received numerous briefings from agency officials and conducted three transcribed interviews with Social Security Administration Administrative Law Judges. The Committee has learned that some judges employ shortcuts and do not consider all the evidence available prior to reversing a previous decision.

It is important to emphasize that disability cases typically only reach ALJs after applicants have been denied twice at the local disability determination level. Moreover, for all practical purposes, an ALJ decision to allow benefits is an irrevocable commitment of taxpayer funds since favorable decisions are not appealed and less than one percent of disability beneficiaries ever return to the work force.

The Committee's most recent transcribed interview was with Regional Chief Administrative Law Judge for Region 3, Jasper Bede. Mr. Bede testified that if a judge's reversal rate is anything over 75% to 80%, or the judge disposes of more than 700 cases in a year, it raises a red-flag that the judge may be issuing poor quality decisions. Two other judges interviewed by the Committee testified that judges who decide over 700 cases a year are not doing a thorough job in evaluating all the evidence. The Committee obtained Social Security adjudication data back to 2005. Some simple statistics indicate a substantial problem. For example:

• Between 2005 and 2012, more than 930,000 individuals were approved for benefits by a judge with an approval rate in excess of 80%. In fact, more than a

third of the agency's judges have approved more than 80% of applicants in at least one year.

· Between 2005 and 2012, nearly 500,000 individuals were approved for benefits by a judge who disposed of more than 700 cases in a year.

During his interview, Judge Bede singled out seven judges in region 3 whose disposition data was indicative of a problem with their decision making. But, Judge Bede testified that he was powerless to do anything with these judges because of agency policies and management. These problems raise three important questions:

· Did the agency fail to stop red flag judges because of the agency's focus with processing as many cases as possible?

· Who has been held responsible for allowing hundreds of judges to essentially rubber stamp people on the program for years?

· Will the agency prioritize continuing disability reviews for individuals who have gained access to the program because of one of these judges?

In addition to prioritizing medical CDRs for individuals approved by red flag judges, the agency should immediately suspend several judges and conduct a review of their decisions and practices.

While some reforms to correct the broken disability determination process will need Congressional action, there are many steps the agency can unilaterally take to better protect American tax dollars and those most in need. Unfortunately, the agency is moving very slowly to adopt needed changes and to clarify perverse regulations.

The decision Grid has not been significantly revised since the 1970's. Although hearings are non-adversarial, the agency has not required that claimants and their representatives submit all evidence, favorable and unfavorable, in advance. Moreover, it should not take the agency more than 4 months to reply to questions for the record as it did from the last hearing. I hope today's hearing will provide the Committee with some clarity about the agency's plan moving forward.

Social Security Disability serves the most vulnerable in our nation; we cannot ignore the glaring issues that are driving this program into insolvency. If we do not aggressively deal with the fraud, costly mistakes and legislative fixes required; we will see those in greatest need put in tremendous risk.

It is time to fix this system and we intend to work with this administration to prioritize the solutions today.

Opening Statement
Rep. Jackie Speier, Subcommittee Ranking Member
Subcommittee on Energy Policy, Health Care and
Entitlements
Hearing on “Continuing Oversight of the Social Security
Administration’s Mismanagement of Federal Disability
Programs”

November 19, 2013

Thank you, Mr. Chairman for holding this important hearing,
and thank you to our witnesses for being here.

Disability insurance benefits are a lifeline for millions of
Americans who can no longer work in any capacity because of a
serious disability. This is a benefit that American employees
pay for through their FICA taxes. While the number of
applicants and beneficiaries has increased over the past several
years, this is an increase that was projected more than 20 years
ago as a result of demographics, the aging of the baby boom
generation and the increasing number of women in the
workforce.

Every program needs vigorous oversight and strong policies in place to prevent waste, fraud and abuse. The Social Security Administration has initiated significant efforts to improve management oversight and accountability for the disability adjudication and review process.

For instance, the agency is reviewing the quality of ALJ decisions to ensure their legal sufficiency, and the Appeals Council reviews ALJ decisions and provides useful feedback to individual ALJs regarding the quality of their decisions and to the agency regarding its policy guidance.

The recently created Division of Quality conducts reviews of ALJ award decisions before the benefits go out, and conducts discretionary reviews of denial decisions. These reviews help ensure the quality of ALJ decisions and allow the agency to do a focused review of specific issues related to the hearing process at a hearing office or with a specific ALJ.

In addition, SSA has initiated efforts to address concerns raised by ALJs and others regarding some disability adjudication and review policies. For instance, the SSA has noticed a proposed rulemaking that requires a claimant to submit all evidence that relates to their disability claim, and in a timely manner. This regulation will enhance the accuracy of disability determinations and address the concerns that some claimants or their representatives are withholding evidence that may not be favorable to their claim.

The fact is that national allowance rates have gone down since 2008 from 61% to 47%, its lowest rate since the 1990s.

It is important to ensure that these determinations are done fairly and thoroughly. But it is equally important to ensure that ongoing benefits are proper. Continuing Disability Reviews, which are periodic reviews of disability awards to determine if the beneficiary continues to meet the disability criteria, are critical to the integrity of the system. Unfortunately there are too few of them. These reviews are a highly effective means for reducing overpayments or identifying fraud. In fact every \$1

spent on CDRs yields \$9 in program savings. According to the IG, SSA could have avoided paying \$556 million in 2011 if they had just performed medical CDRs in the backlog when they were due. So it is troubling to hear that there is a 1.3 million backlog of scheduled CDRs this year. It is also troubling to learn that benefits are still being paid to some who have died, or who have been incarcerated.

Let's be clear—this is partly Congress' fault. Funding for the SSA has fallen dramatically in the past two fiscal years. It is up to Congress to provide the funding the agency needs to fulfill its mandate to effectively monitor program integrity and save taxpayer dollars. I hope all of my colleagues would agree that given the clear cost-benefit analysis provided by the Inspector General, we should ensure that the agency has sufficient funds to conduct all of its scheduled CDRs and continue other program improvements that have allowed it to reduce its backlogs and increase efficiencies while improving program integrity.

But even in the context of overall improvement, there clearly is still abuse of the system by some bad actors. A recent

investigation conducted by the U.S. Senate Homeland Security and Governmental Affairs Committee and Senate Permanent Subcommittee on Investigations identified evidence related to a scheme to defraud SSA implicating a law firm, an ALJ in Huntington, West Virginia and doctors.

As Senator Tom Carper, Chairman of that Committee, stated: “While we don't have any evidence that this is more than an isolated case, one example of inappropriate actions of this nature is one too many.”

I look forward to hearing from our witnesses how we can work together to continue this trend toward an improved disability system.

Insert for Page 54

Initial Disability Determinations Denied But Not Appealed 2002 - 2010

	2002	2003	2004	2005	2006	2007	2008	2009	2010
Determinations	2,358,909	2,462,566	2,542,898	2,421,652	2,426,468	2,437,810	2,571,828	2,984,605	3,094,713
Allowances	903,623	918,098	936,951	890,061	869,046	889,458	971,392	1,116,428	1,100,822
Allowance Rate (%)	38.3	37.3	36.8	36.8	35.8	36.5	37.8	37.4	35.6
Denials	1,455,286	1,544,468	1,605,947	1,531,591	1,557,422	1,548,352	1,600,436	1,868,177	1,993,891
% of Denials Appealed	47.6	47.4	46.1	45.1	44.7	45.7	47.6	48.3	49.1
Denials Not Appealed	762,522	811,822	865,893	841,002	861,401	841,235	838,841	965,489	1,015,150

Source: Disability Research File Reporting System - Detail Waterfall Report - 11/27/2013

We do not know how many of the denied claims would have been allowed upon appeal.

Insert for Page 74

For fiscal years 2011 and 2012, the Appeals Council, through its Division of Quality (DQ), considered a random sample of 10,699 cases for possible own motion review. The DQ sent approximately 75 percent of the cases for effectuation of benefits. The DQ took own motion review on about 25 percent of the cases. The Appeals Council remanded many of the “own motion” cases for a new ALJ decision. Of the cases that have now been decided either by the Appeals Council or by an ALJ after remand, the decision was changed to a less favorable decision in approximately 7 percent of the cases.