

April 2007

# DISABILITY PROGRAMS

SSA Has Taken Steps  
to Address Conflicting  
Court Decisions, but  
Needs to Manage Data  
Better on the  
Increasing Number of  
Court Remands



## DISABILITY PROGRAMS

# SSA Has Taken Steps to Address Conflicting Court Decisions, but Needs to Manage Data Better on the Increasing Number of Court Remands

### Why GAO Did This Study

The Social Security Administration's (SSA) Disability Insurance and Supplemental Security Income programs provided around \$128 billion to about 12.8 million persons with disabilities and their families in fiscal year 2005. Claimants who are denied benefits by SSA may appeal to federal courts. Through current initiatives, SSA is attempting to reduce the number of cases appealed to courts and remanded back to SSA for further review. In addition, there have been long-standing concerns about how SSA responds to court decisions that conflict with its policies.

GAO was asked to examine: (1) trends over the past decade in the number of appeals reviewed by the courts and their decisions, (2) reasons for court remands and factors contributing to them, and (3) SSA's process for responding to court decisions that conflict with agency policy. GAO reviewed SSA data and documents on court decisions, remands and SSA's processes and interviewed agency officials and stakeholders on data trends, reasons for remands, and SSA processes.

### What GAO Recommends

GAO recommends that the Commissioner of Social Security take steps to improve the reliability and collection of data on remands. SSA agreed with GAO's recommendations and outlined actions it plans to take to implement them.

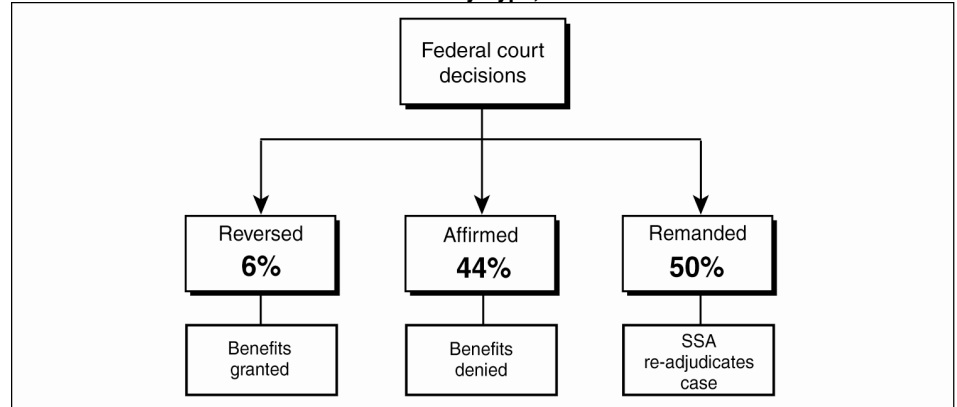
[www.gao.gov/cgi-bin/getrpt?GAO-07-331](http://www.gao.gov/cgi-bin/getrpt?GAO-07-331).

To view the full product, including the scope and methodology, click on the link above. For more information, contact Daniel Bertoni at (202) 512-7215 or [bertonid@gao.gov](mailto:bertonid@gao.gov).

### What GAO Found

Between fiscal years 1995 and 2005, the number of disability appeals reviewed by the federal district courts increased, along with the proportion of decisions that were remanded. More disability claims were remanded than affirmed, reversed, or dismissed over the period, and the proportion of total decisions that were remands ranged from 36 percent to 62 percent, with an average of 50 percent. Remanded cases often require SSA to re-adjudicate the claim, with the result that—along with the passage of time and new medical evidence—the majority of remanded cases result in allowances.

Percent of Federal District Court Decisions by Type, Fiscal Year 1995 to Fiscal Year 2005



Source: GAO analysis of SSA data.

According to SSA officials and outside observers, a range of errors prompted by heavy workloads is responsible for court remands of SSA's disability determinations, but data that would confirm or clarify the issue are incomplete and not well-managed. SSA has only recently begun collecting data on remands, and we found these data to be incomplete. Additionally, this information is collected by two different offices that have created somewhat different categories for the data, making some of the information inconsistent and possibly redundant. Meanwhile, SSA has acknowledged the need to reduce remands and, in 2006 along with other initiatives, introduced new decision-writing templates to improve efficiency and reduce errors.

SSA has a process in place for determining whether appellate court decisions conflict with the agency's interpretation of disability statutes or regulations and has taken steps in recent years to align its national policies with appellate court decisions. For example, officials and stakeholders attributed a downward trend in appellate court decisions that conflict with agency policy to significant policy changes instituted by SSA in the mid-1990s. In addition, for those cases where the agency acceded to conflicting appellate court decisions by issuing acquiescence rulings within the related circuits, we found that about half of the rulings issued were eventually replaced with national policy. Moreover, GAO found that the timeliness of acquiescence rulings had improved since 1998, when SSA established a timeliness goal of 120 days.

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## **Abbreviations**

ALJ	administrative law judge
CPMS	Case Processing and Management System
DI	Disability Insurance
DOJ	Department of Justice
DSI	Disability Service Improvement
FIT	Findings Integrated Template
NDMIS	National Docketing/Management Information System
ODAR	Office of Disability Adjudication and Review
OGC	Office of the General Counsel
SSA	Social Security Administration
SSI	Supplemental Security Income

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United States Government Accountability Office  
Washington, DC 20548

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April 5, 2007

The Honorable Charles B. Rangel  
Chairman  
The Honorable Jim McCrery  
Ranking Minority Member  
Committee on Ways and Means  
House of Representatives

The Honorable Michael R. McNulty  
Chairman  
The Honorable Sam Johnson  
Ranking Minority Member  
Subcommittee on Social Security  
Committee on Ways and Means  
House of Representatives

The Honorable Sander M. Levin  
House of Representatives

In fiscal year 2005, the Social Security Administration (SSA) provided approximately \$128 billion in cash benefits to about 12.8 million persons through the nation's two largest programs for persons with disabilities and their families—the Disability Insurance (DI) and the Supplemental Security Income (SSI) programs. In administering these programs over the past decade, SSA has faced challenges associated with lengthy decision-making processes and difficult disability determinations. In an effort to introduce more efficiency and fairness in its decision making, SSA has undertaken a “Disability Service Improvement Process,” about which we offered testimony in June of 2006. Among the problems this initiative is designed to address is the number of SSA disability decisions that are appealed to the federal courts and subsequently remanded or referred back to the agency for re-adjudication. Such appeals and remands can add several years to the time it takes disability claimants to receive final decisions on their applications. Most appealed cases are reviewed only by the district courts, the first level of court review. However, if a disability claim reaches the appellate court or Supreme Court, the decision may have implications for SSA policy. There has been a long-standing concern that SSA does not respond adequately to appellate court decisions that conflict with its own policies by taking timely and appropriate action to reconcile them.

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You asked that we examine: (1) the trends of the past decade in the number of appeals reviewed by the district courts and their decisions; (2) the reasons for court remands and factors that may contribute to the incidence of those remands; and (3) SSA's process for responding to appellate court decisions that conflict with agency policy and the agency's response in recent years.

To address the first research objective, we analyzed data from SSA on the number and types of decisions made by federal district courts for fiscal years 1995 to 2005. We also grouped and analyzed district court decisions by circuit for fiscal year 2005, the only year for which complete data by circuit were available. Furthermore, we analyzed agency data on the decisions SSA made after a case was remanded (i.e., allowances or denials of claims) for fiscal years 1995 to 2005. We also analyzed these remand data to identify trends over time and by circuit, a category that we created using SSA data on claimant state of residence. SSA officials were interviewed to gather information on potential reasons for any trends. To address the second objective, we obtained data on cited reasons for remands from two SSA databases that are maintained by two separate offices in SSA responsible for litigating claims in court and re-adjudicating remanded cases. We compared the data to determine how effectively SSA was capturing information on reasons for remands within the agency. In addition, we interviewed SSA officials and other stakeholder groups, including federal court judges and claimant representatives, on reasons for remands and factors that influenced them. For the third objective, we interviewed SSA officials and obtained available documents on how SSA determines whether a court of appeals decision conflicts with its policies and what option to pursue to address conflicting decisions, e.g., appeal or issue an acquiescence ruling whereby the agency agrees to abide by the court judgment in future cases, albeit only in that jurisdiction. We also obtained data on the number of acquiescence and other rulings that SSA issued since establishing its regulations on acquiescence in 1990. For acquiescence rulings, we further reviewed SSA's timeliness in issuing acquiescence rulings, as well as the number issued by circuit and how SSA replaced acquiescence rulings with nationwide policies. We were unable to independently determine how significantly any given court decision conflicted with SSA policy or whether SSA should have pursued one option over another. We also interviewed SSA officials and relevant stakeholders—including selected federal court judges and claimant representatives from the Seventh and Ninth circuits, which represent those with the lowest and highest numbers of SSA policy changes associated with acquiescence rulings—to obtain information on how court decisions and their related agency rulings have affected SSA's disability

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adjudication policy in recent years. After interviewing officials and reviewing related data reports and manuals, all quantitative data used in this report were assessed and, with the exception of the reason for remand data, were determined to be sufficiently reliable for the purposes of this report. Issues related to the reason for remand data are discussed further on pages 20 to 21. All work was conducted between February 2006 and January 2007 according to generally accepted government auditing standards. See appendix I for more information on our methods.

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## Results in Brief

Over the past decade, the number of disability appeals reviewed by the district courts and the proportion of remands increased, and SSA subsequently granted benefits to claimants in many of the remanded cases. Between 1995 and 2005, the number of cases reviewed by federal district courts grew by 20 percent—from about 10,300 to some 12,400—which roughly corresponds to workload increases at SSA during the same period. During this period, the courts upheld SSA’s decisions to deny benefits in 44 percent of cases on average and reversed 6 percent. However, the most frequently occurring decisions were remands back to the agency for further review (50 percent), essentially resulting in additional work for SSA. The proportion of reviewed cases that were remanded increased by 36 percent over this period, with 1998 being the pivotal year when the proportion of remands exceeded affirmations. According to some SSA officials, this notable increase may have been due to new national guidelines for SSA adjudicators—known as the process unification rulings—that may have also led to federal courts using more remands to ensure that the guidelines were followed. With regard to the disposition of cases by geographic jurisdiction or judicial circuit, there was substantial variation in 2005, the year for which detailed data were available. Federal district courts in the Second Circuit—which serves part of the Northeast—affirmed 19 percent and remanded 74 percent of cases, while district courts in the Sixth Circuit—which serves Michigan, Ohio, Kentucky, and Tennessee—affirmed 61 percent and remanded 35 percent. According to SSA officials, case outcomes may vary from circuit to circuit because of differences such as judges’ interpretations of laws and the volume of cases that circuits examine. We also found that once cases were remanded back to SSA for re-adjudication, the majority of claimants—66 percent—were awarded benefits. According to agency officials, the changing nature or severity of claimants’ disabilities over the often lengthy period of appeal may contribute to the extent of allowances for remanded cases.

While stakeholders suggested that remands result from a range of errors caused by heavy workloads, SSA data that would confirm and perhaps



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elaborate on these errors are incomplete and not well managed. Administrative law judges (ALJ), who adjudicate cases appealed within SSA; claimant representatives; and others whom we interviewed said district courts often remand cases back to the agency for re-adjudication due to errors associated with poor decision writing and improper use of evidence. For example, many stakeholders said SSA decision makers had failed to properly consider the opinions of treating physicians. Many agency officials as well as outside stakeholders attributed the errors resulting in remands to a heavy workload. For example, ALJs we spoke with expressed the view that their caseload—around 50 to 60 cases per month—undermined the quality of their written decisions. SSA introduced new decision-writing templates for ALJs and their staff in order to ensure more legally sufficient documentation of decisions and improve the efficiency of the administrative-hearings process. However, the agency's ability to identify trends in reasons for remands and take corrective actions to reduce remands is limited by the absence of reliable data. We found that SSA's data were incomplete and that the collection of these data, conducted by two separate offices, was inconsistent and inefficient. SSA officials acknowledged that improvements to these data and their management were needed, but currently lacks specific plans and timetables for addressing these problems.

SSA has a process in place for addressing appellate court decisions that conflict with agency interpretation of law or regulations and has taken steps since 1990 to align its policies nationally with appellate court decisions. Specifically, SSA's offices of General Counsel (OGC) and Disability Programs regularly review appeals court decisions for their policy implications. When SSA has determined that an adverse appellate court decision conflicts with its own interpretation of disability statutes or regulations, the agency then decides either to pursue further judicial review of the issue or accede to the court's decision only within the specific circuit. SSA accedes to appellate court rulings within the specific circuits by issuing acquiescence rulings, which are meant to be temporary guidance for program implementation until the agency can determine how to address court decisions in a way that minimizes regional variations. Since establishing regulations on acquiescence in 1990, SSA issued 45 acquiescence rulings in response to appellate court decisions, although there have been fewer such rulings in recent years. SSA officials said fewer acquiescence rulings have been needed because new guidelines for adjudicators, the process unification rulings of 1996, clarified SSA policy and filled gaps in policy that were previously open for the courts to fill, leading to a closer alignment of agency policy and court interpretations of disability law. Also, nearly half of the acquiescence rulings issued during

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the period of our study have been rescinded and eventually replaced with new laws and regulations to ensure consistency in program implementation. We also found that acquiescence rulings were issued significantly sooner, following the agency's establishment in 1998 of a new 120-day guideline.

To ensure the agency has accurate and well-managed information to use in identifying corrective actions for reducing remands, we recommended that the Commissioner of SSA: (1) take steps to ensure the reliability of data on the reasons for remands and (2) coordinate agency data collection on remands and ascertain how best to use this information to reduce the proportion of cases remanded by federal courts.

In comments to our draft report, SSA agreed with both of our recommendations for improving data on remands and outlined actions it plans to take to improve the reliability and collection of remand data. See appendix VI for a copy of SSA's comments. SSA also provided a number of technical comments, which we generally incorporated where appropriate.

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## Background

### Disability Determination and Administrative Appeals

In fiscal year 2005, the Social Security Administration (SSA) paid approximately \$128 billion in cash benefits to about 12.8 million beneficiaries through the two largest federal programs available to persons with disabilities and their families: the Disability Insurance (DI) program and the Supplemental Security Income (SSI) program. Both programs serve those who are medically determined to be unable to engage in any substantial gainful activity due to a severe physical or mental impairment that is expected to last at least 12 months or result in death.<sup>1</sup>

Claimants must apply to SSA to receive disability benefits from these programs and if awarded benefits, claimants may also have to requalify for support through what are known as continuing disability reviews.<sup>2</sup> In most

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<sup>1</sup> For a child to be considered disabled and therefore eligible for SSI, the child must have a physical or mental condition, or a combination of conditions, that results in marked and severe functional limitations. The child's condition or conditions must have lasted, or be expected to last, at least 12 months or be expected to result in death.

<sup>2</sup> Children who receive SSI are also subject to a re-determination of their eligibility at age 18.

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of the country currently, claimants who are denied initial or continuing benefits by SSA may appeal their denials administratively up to three times, each time for review by a different adjudicatory entity.<sup>3</sup> These entities are 1) the state disability determination service that performs the initial review of disability claims and, in most states, a reconsideration determination, 2) an administrative law judge (ALJ) in SSA's Office of Disability Adjudication and Review, and 3) a group of appellate reviewing officials within SSA known as the Appeals Council. The number of claims or appeals reviewed at each level in 2005 were: over 2.6 million by state agencies, almost 520,000 by ALJs, and over 94,000 by the Appeals Council.

Disability determinations at all of these levels are often complex and necessarily involve some degree of subjectivity by adjudicators, and the nature of these decisions have contributed to long-standing concerns about the extent to which adjudicators across the agency consistently interpret and implement SSA's national disability policy. To help achieve more consistent application of policy between the state disability determination service level and the ALJ level, in 1996, SSA established the process unification rulings, a set of nine Social Security rulings for all SSA disability adjudicators to follow in matters involving difficult judgments, such as the weight to be given to opinions of claimants' treating physicians versus medical opinions from other sources, and the evaluation of pain and other subjective symptoms. See appendix II for more details on process unification rulings.

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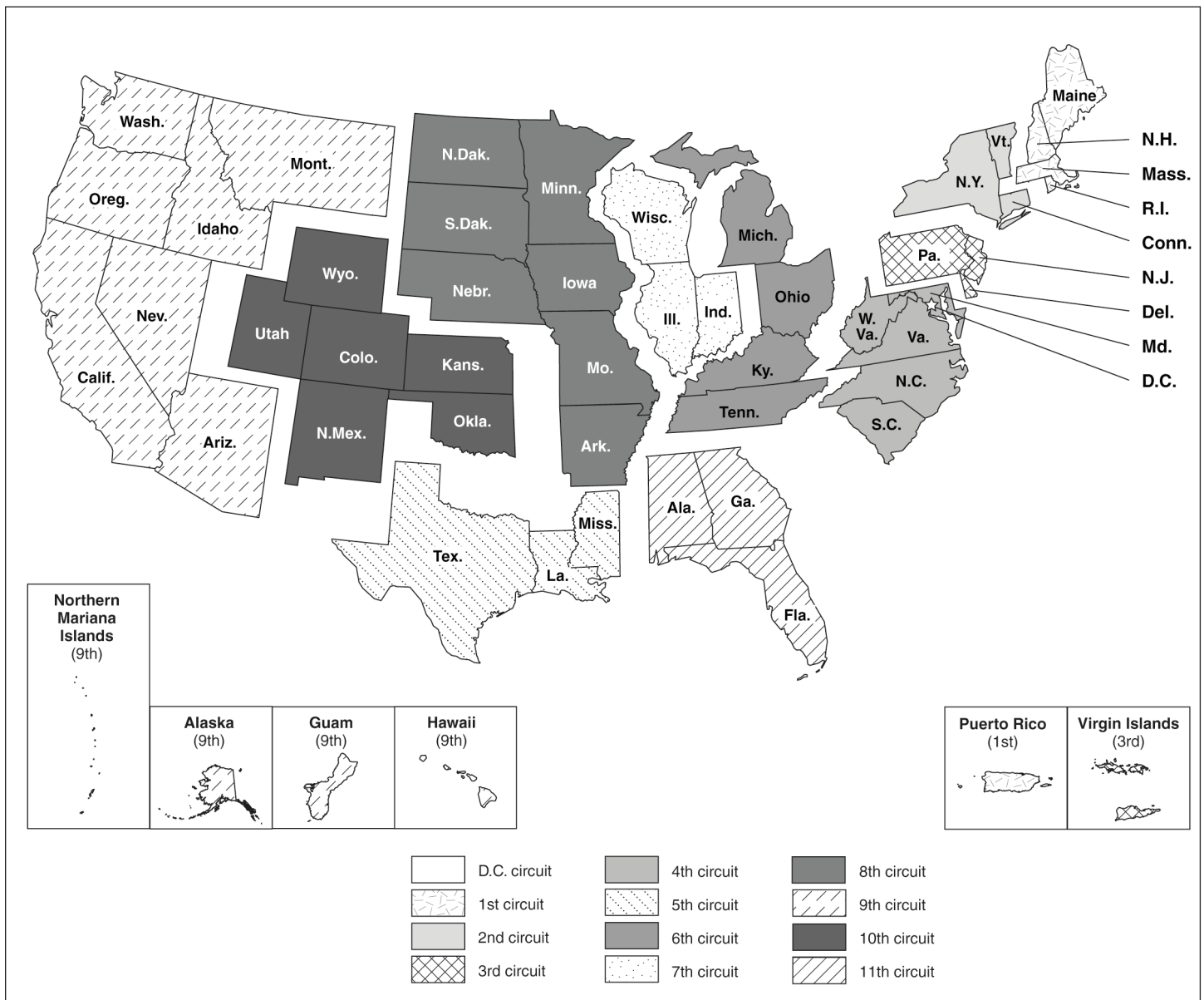
<sup>3</sup> As a part of the Disability Service Improvement process, SSA is gradually implementing changes to the appeals process, starting with the Boston regional office in August 2006.

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## Cases in Federal Court

After claimants exhaust all administrative review options within SSA, they may then appeal their claims outside the agency to federal court. A claimant must first file an appeal with a federal district court within one of 12 federal judicial regions, known as judicial circuits. Figure 1 provides information on which states and territories are included in these circuits.

**Figure 1: Map of Federal Judicial Circuits**



Source: Administrative Office of U.S. Courts (data), map, Map Resources (presentation).

Note: There is a thirteenth federal judicial circuit, known as the Federal Circuit, which does not hear SSA disability cases.

In deciding the case, a district court judge or magistrate usually either affirms an agency decision, reverses the decision (essentially affirming the

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claimant's case), or remands it back to SSA for further review.<sup>4</sup> According to SSA officials, remanded cases are generally reviewed by the ALJ who made the original decision.<sup>5</sup> Judges can also dismiss a case if its scope is outside the court's legal jurisdiction. Furthermore, if SSA prefers not to defend a case that has been filed, usually because of an error it has identified, the agency may request that the judge remand the case back for the agency's review.<sup>6</sup>

Court remands have implications for SSA's workload, the types of decisions SSA adjudicators make on remanded cases, and the time claimants must wait for decisions on their cases. Generally, when cases are remanded, ALJs must perform new hearings, which could involve new evidence presented at the time of court reviews. These remanded cases add to the already high workloads that ALJs have in reviewing denials by the agency's disability determination service offices. The load may also affect ALJ decisions: In its September 2006 report, the Social Security Advisory Board found a small correlation between increased ALJ workload and increased allowances.<sup>7</sup> Furthermore, although remanded cases are given priority in the line of cases that must be reviewed by ALJs, a substantial amount of time may pass before new decisions can be made at this administrative level, and the ALJ's decision may undergo another review by the Appeals Council. In fiscal year 2006, it took SSA nearly a year on average to process court remanded cases from the district courts.

After a district court decision, both the claimant and SSA may appeal the case to a circuit court of appeals (also called an appellate court) and, beyond this, to the Supreme Court. However, few cases reach these appellate court levels and most disability cases are resolved in the district courts. According to SSA, no more than 20 district court cases have been

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<sup>4</sup> The court may also modify SSA's decision. According to SSA officials, modified decisions are generally remanded to the agency and are therefore classified as remands.

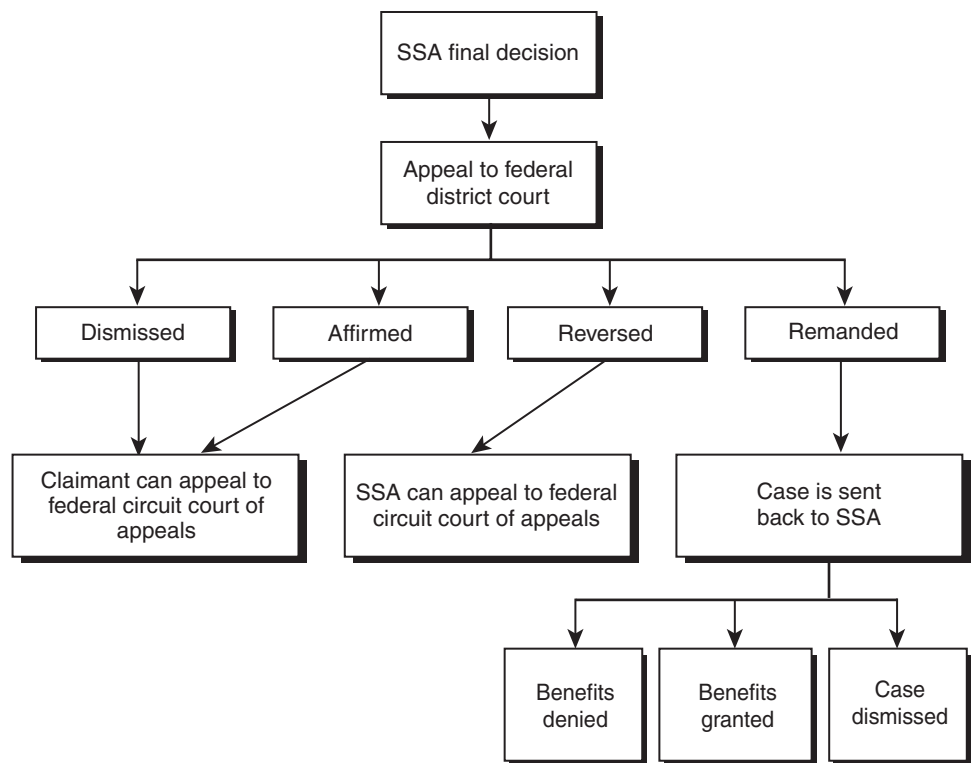
<sup>5</sup> Court remanded cases are generally re-adjudicated by ALJs but may also be reviewed by the Appeals Council.

<sup>6</sup> When a case reaches the federal courts, SSA is generally represented by U.S. Attorneys working for the Department of Justice (DOJ).

<sup>7</sup> The Social Security Advisory Board is a bipartisan board that provides advice to the President, Congress, and the Commissioner of Social Security on matters related to Social Security and SSI. For more information about the Board's report, see Daub, Hal et al., *Improving the Social Security Administration's Hearing Process*, (Washington, D.C.: September 2006).

appealed by the agency to the appellate courts each year since 2000. The Supreme Court has only reviewed four cases involving disability claims since 1991. See figure 2 for an overview of the disability appeals process.

**Figure 2: Disability Process after SSA Final Decision**



Source: GAO analysis.

Note: This figure depicts the typical appeals process. Circuit court decisions can be appealed to the Supreme Court. SSA decisions on remanded cases can be appealed back to the federal courts. For court remands involving continuing disability reviews, SSA decides to cease or continue, rather than deny or grant benefits.

## How Federal Court Decisions May Affect SSA Policy

SSA is not obligated to follow a district court decision that conflicts with agency policies beyond that specific case.<sup>8</sup> However, the agency is required to follow appellate court decisions for cases within that circuit, unless the agency seeks further judicial review. If the Supreme Court

<sup>8</sup> An exception is district court decisions involving class action lawsuits, since these decisions apply to multiple individuals that may reside in other circuits.

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issues a decision, SSA is bound to follow the decision nationally. Several district, appellate, and Supreme Court decisions have affected disability policy in the past two decades. Appendix III outlines some cases that have resulted in such changes.

SSA implemented its current policy of acquiescence in 1990 in response to the concerns of external stakeholders, including claimant representatives, that SSA had failed in the 1980s to offer timely and appropriate responses to appellate court decisions.<sup>9</sup> With the acquiescence ruling, SSA agrees to follow the appellate court's holding on new cases only when they fall within the jurisdiction of that appellate court. SSA rescinds an acquiescence ruling if one of the following occurs: 1) the Supreme Court overrules or limits the relevant appellate court decision; (2) an appellate court overrules or limits itself on the relevant issue; (3) Congress enacts a law that obviates the acquiescence ruling; or (4) SSA clarifies, modifies, or revokes the regulation or ruling that was the subject of the pertinent appellate court decision.

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## Disability Service Improvement Process

With new regulations issued in March 2006, SSA began implementing the Disability Service Improvement (DSI) process in August 2006 on a limited basis—i.e., in states in the Boston Region—and plans to gradually roll out the initiative to other regions. The regulations include changes to the appeals process within the agency that could potentially affect the number and types of cases that will go to federal courts in the future. Among these changes is the gradual replacement of the Appeals Council with a Decision Review Board, designed to ensure the accuracy of SSA decisions and reduce remands from federal courts. The Board would only review select cases based on whether they are considered likely to have contained errors or involved new policies, rules, and procedures. Under the DSI process, claimants who are unhappy with ALJ decisions, therefore, could no longer turn to the Appeals Council, but rather must appeal directly to the federal courts. In our June 2006 testimony, we reported that the public and stakeholders were concerned that replacing the Appeals Council with a Decision Review Board may increase the number of cases appealed to, and thus the workloads of, the federal courts.<sup>10</sup> In its response to these

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<sup>9</sup> The agency adopted the policy in 1985, but established regulations explaining how it would implement this policy in 1990.

<sup>10</sup> See GAO, *Social Security Administration: Agency Is Positioning Itself to Implement Its New Disability Determination Process, but Key Facets Are Still in Development*, [GAO-06-779T](#) (Washington, D.C.: June 15, 2006).



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concerns, SSA officials maintained that DSI improvements will ultimately reduce the need for court appeals and also reduce remands. As part of its DSI initiative, the agency is making a systematic effort to collect and analyze data on court decisions in the course of training staff and keeping ALJs current. Such monitoring and data collection are consistent with the Office of Management and Budget's and GAO's internal control standards for all federal agencies.<sup>11</sup>

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## Court Reviews and Remands Have Increased in Recent Years with Remands Often Resulting in SSA's Subsequently Awarding Benefits

Between fiscal years 1995 and 2005, the number of disability appeals reviewed by the courts and decisions to remand these cases increased, and in the majority of remanded cases, claimants were subsequently granted benefits by SSA. In 2005, the year for which disaggregated data were available, GAO found the proportion of remands by district courts varied significantly by circuit. However, GAO did not find substantial variation by judicial circuit in SSA decisions on court remanded cases.

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## Cases Reviewed by District Courts Increased over the Past Decade, as Did the Proportion Remanded Back to the Agency

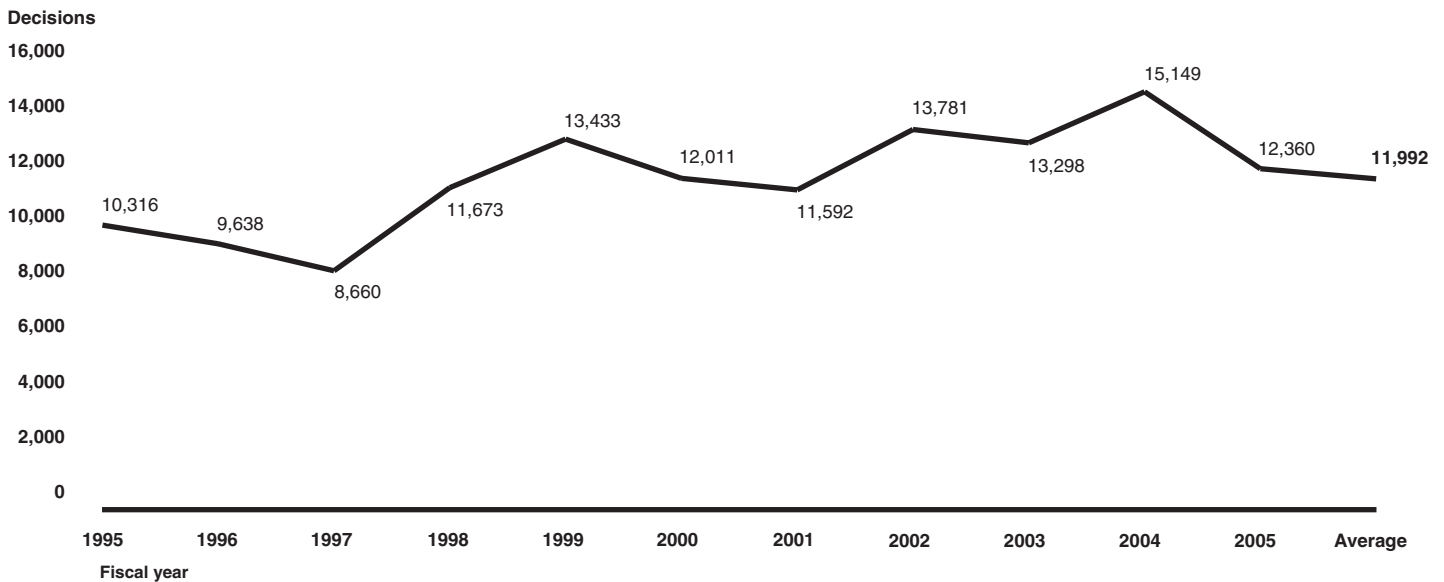
We found that federal district courts reviewed an increasing number of disability cases over the past decade, which corresponded with the increasing number of cases processed by SSA. Although the number of cases reviewed by federal district courts fluctuated over time, they generally increased by 20 percent from about 10,300 in fiscal year 1995 to about 12,400 by fiscal year 2005. (See fig. 3.) According to SSA officials, the increase in the number of claims reviewed by the courts may be a result of the increase in the number of claims that passed through the Appeals Council, SSA's final decision-making body, over the same time period.<sup>12</sup>

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<sup>11</sup> For more information on internal control standards, see GAO, *Standards for Internal Control in the Federal Government*, [GAO/AIMD-00-21.3.1](#) (Washington: D.C.: November 1999) and Office of Management and Budget, Circular No. A-123, *Management's Responsibility for Internal Control* (Washington: D.C.: Dec. 21, 2004).

<sup>12</sup> GAO found that the number of claims that were denied by the Appeals Council and eligible for appeal to the courts increased from fiscal years 1994 to 2004 by about 36 percent. (See app. IV, fig.12.) We are providing information on Appeals Council decisions over a slightly earlier period than district court data to account for the time lag between Appeals Council and district court decisions.

**Figure 3: Federal District Court Decisions on Disability Claims, Fiscal Year 1995 to Fiscal Year 2005**

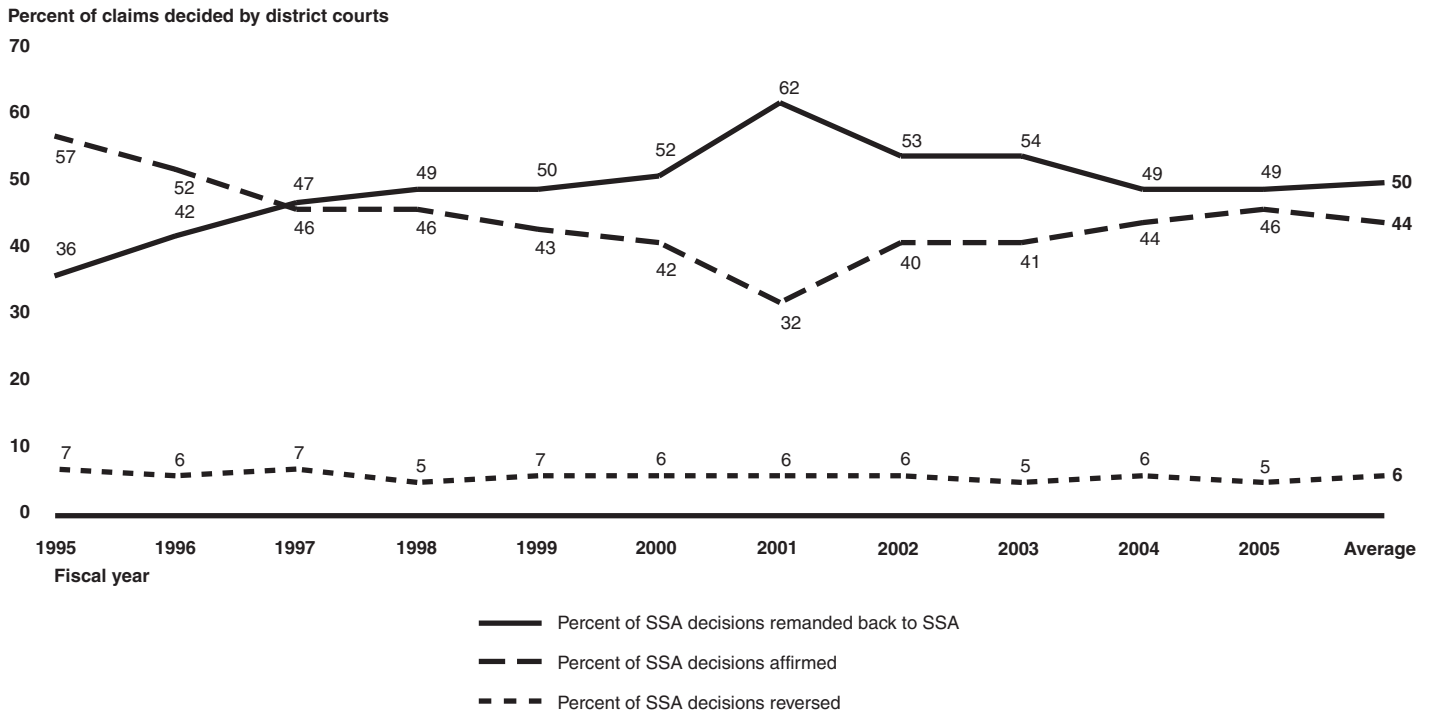


Source: GAO analysis of SSA data.

Over the same period, remands were generally the most common district court decision, and their proportion increased by 36 percent from 1995 to 2005. Of those SSA cases decided by the district courts on the merits and not dismissed, 50 percent were remanded, 44 percent were affirmed, and 6 percent were reversed on average.<sup>13</sup> (See fig. 4.) Notably, the proportion of remands reached its peak in 2001. Although a range of factors may affect the extent of court remands, some SSA officials suggested that the Appeals Council, having reviewed a record number of ALJ decisions in 2000, may have made mistakes in a greater share of cases that were subsequently appealed to, then remanded by, the district courts.

<sup>13</sup> The courts reviewed approximately 132,000 claims over this period, and of these claims, about 7 percent were dismissed.

**Figure 4: District Court Decisions on Disability Claims**



Source: GAO analysis of SSA data.

Note: This figure excludes cases that were dismissed.

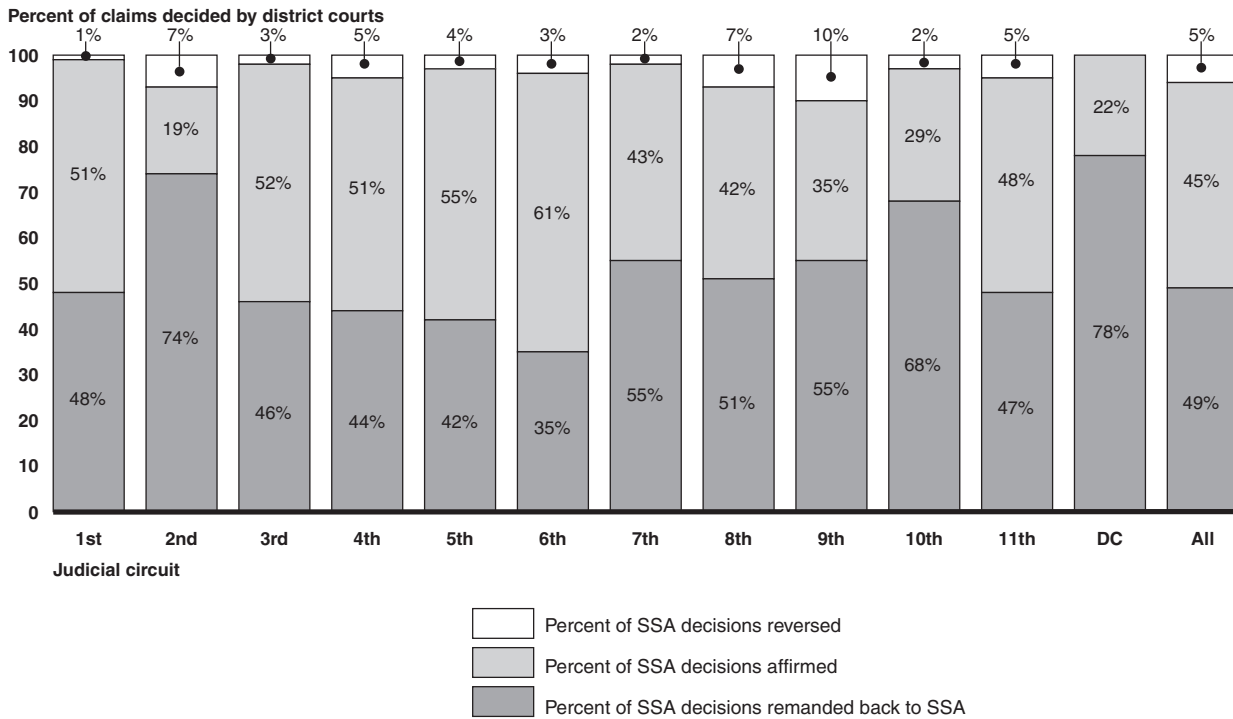
The proportion of remands exceeded the proportion of affirmances in 1997 and continued to increase until 2001. Specifically, in 1995 only 36 percent of SSA decisions were remanded by the courts while 57 percent were upheld or affirmed. However, by 1998, the proportion of remands increased to 49 percent, while the proportion of affirmances declined to 46 percent. When we showed SSA officials these trends, they generally attributed the shift to the process unification rulings, which the agency had established in 1996. According to SSA officials, the increased remands reflected district court efforts to assure that SSA adjudicators were following the agency’s new procedures.

### The Proportion of Remanded Cases Varied by Circuit

GAO found substantial variation in the proportion of cases remanded by judicial circuit in fiscal 2005, the only year for which data by circuit were available. (See fig. 5.) Although remands and affirmances were the most frequently occurring types of decision in each circuit, the proportion of

each varied considerably among the circuits. Specifically, the percent of remands ranged from a low of 35 percent to high of 78 percent, while affirmances ranged from 22 percent to 61 percent.

**Figure 5: District Court Decisions by Circuit (Fiscal Year 2005)**



Source: GAO analysis of SSA data.

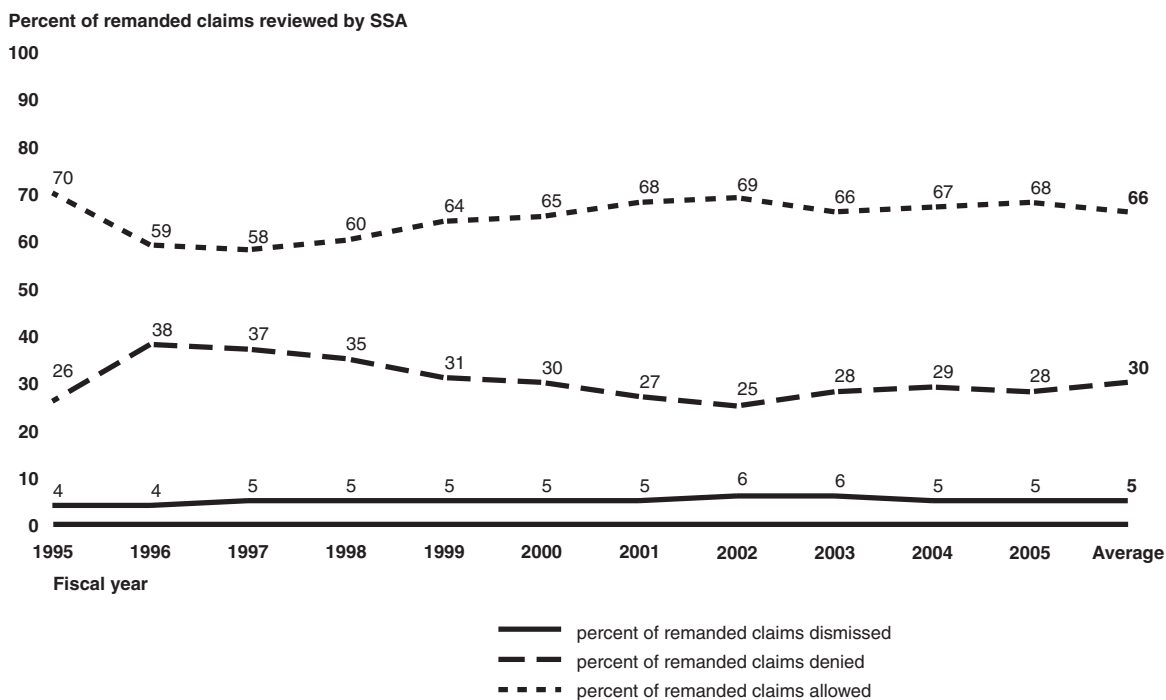
Note: This figure excludes cases that were dismissed.

SSA officials were not in agreement about why there might be differences in the types of decisions across judicial circuits. According to some, differences might be due to judges in different circuits interpreting disability laws differently. Others told us that disparities in the number of claims appealed to district courts across circuits may contribute to these differences. (See app. IV, fig. 14 for more information on the number of cases reviewed by circuit for fiscal year 2005.) Currently, SSA does not have sufficient data that would allow them to determine why these decisions vary by circuit but plans to obtain this information as part of the DSI process implementation.

## In the Majority of Remanded Cases, Claimants Were Awarded Benefits

Of the 57,000 cases remanded by the district courts between 1995 and 2005, SSA awarded benefits to the majority of claimants—about 66 percent—upon re-adjudication, with the remainder being denied (about 30 percent) or dismissed (5 percent). (See fig. 6.) Agency officials said the large percentage of awards in remanded cases were due, in part, to the fact that the lengthy period of the appeals process increased the likelihood that the nature or severity of claimants’ disabilities would change. The officials also attributed the awards to information in the court’s written judgments that made it possible for ALJs, in reviewing cases anew, to make more accurate decisions. The proportion of allowances in court-remanded cases after re-adjudication is just below the average allowance rate of 70 percent for all ALJ decisions.

**Figure 6: SSA Decisions on Remanded Disability Claims, Fiscal Year 1995 to Fiscal Year 2005**



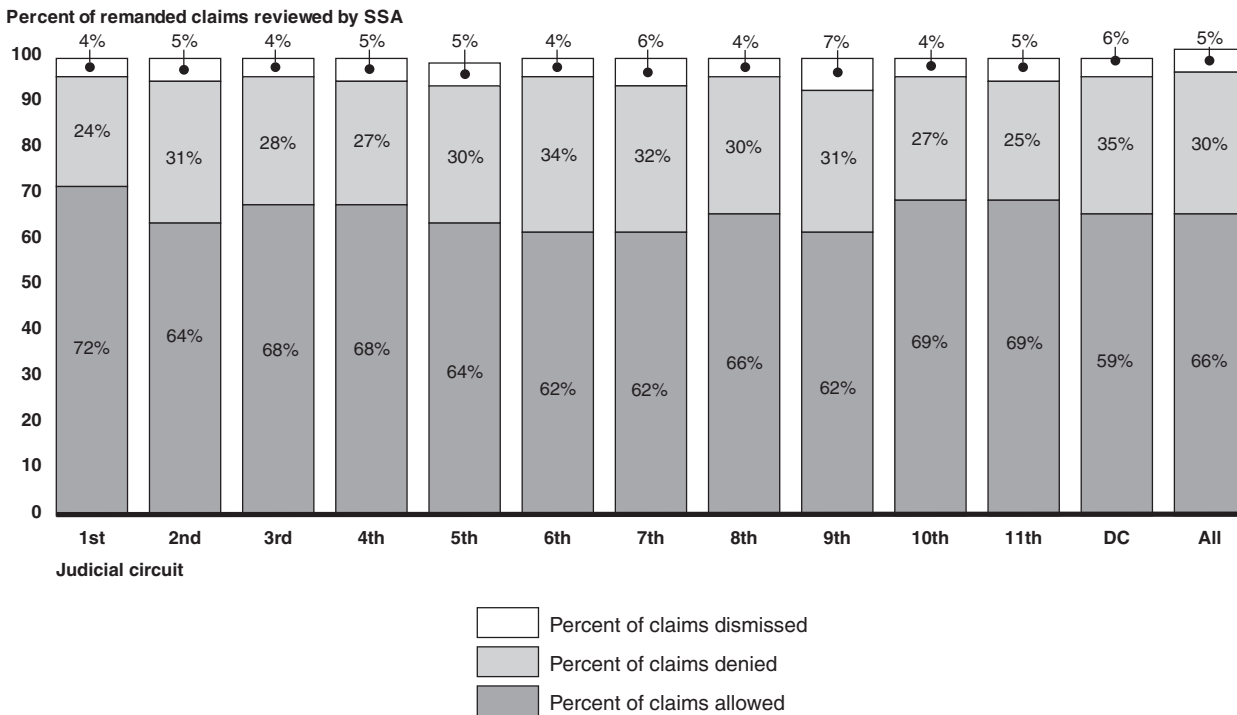
Source: GAO analysis of SSA data.

Note: Some percentages may exceed 100 due to rounding. Because cases can be appealed and remanded more than once, GAO included in its analysis only claims that SSA determined had never before been remanded to the agency from the courts. Such cases made up about 92 percent of the sample of remands re-decided by SSA between 1995 and 2005. See appendix III, figure 13 for information on the number of cases re-decided by SSA over this period.

We did not find substantial variation in SSA decisions on court-remanded claims across judicial circuits. As shown in figure 7, the proportion of

allowances for remanded cases ranged from 62 percent to 72 percent by circuit—relative to a national average of 66 percent.

**Figure 7: SSA Decisions on Disability Claims Following Court Remands by Judicial Circuit, Fiscal Year 1995 to Fiscal Year 2005**



Source: GAO analysis of SSA data.

Note: GAO used the claimants' state of residence reported by SSA to determine judicial circuit.

## Remands Have Been Attributed to a Range of Errors Caused by Heavy Workloads, but SSA Data That Could Shed More Light on the Problem Are Inadequate

According to agency officials and stakeholders, a range of errors precipitated by heavy workloads is responsible for court remands of SSA's disability determinations, but SSA data that would confirm or clarify reasons for remands are incomplete and not well managed. SSA has acknowledged the need to reduce remands and in 2006, along with other initiatives, introduced a new writing tool for ALJs in order to improve efficiency and better document decisions. However, agency data that would inform the problem and help address remands are incomplete and not well managed.

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## Stakeholders Attribute Various Reasons for Remands to High SSA Workloads

Stakeholders commonly cited two reasons for remands: written explanations that did not support the decisions and inadequate documentation of consideration given to medical evidence. They expressed the view, however, that errors made with respect to documenting decisions were due, in large part, to heavy SSA adjudicator workloads. Poor decision writing by ALJs and their staff was cited by all groups of stakeholders we interviewed, including SSA officials, district court judges, claimant representatives, and other stakeholders. Specifically, district court judges said they did not always believe that SSA's decisions were wrong, but that the written explanations did not always support those decisions. Some claimant representatives said that poorly written decisions may be symptomatic of improper consideration of evidence and procedures by ALJs.

With regard to the inadequate documentation of consideration given to medical evidence as a reason for remands, district court judges and claimant representatives we interviewed said ALJs either do not document how they weighed treating physicians' opinions and assessed claimant statements about pain and other symptoms, or they do not consider them as required by the process unification rulings. ALJs we interviewed responded that addressing such evidence is sometimes very difficult and cited cases in which the treating physician appeared to be simply repeating claimants' opinions about their inability to work, rather than offering substantive information about the conditions that would prevent work. Some district judges agreed that considering and incorporating medical evidence into a decision can be difficult, but stressed the importance of articulated and well-documented opinions in order for district court judges to make a decision other than to remand.

Stakeholders we interviewed varied in their opinions regarding whether requirements of the process unification rulings were overly cumbersome and, therefore, resulted in remands. Members of the Appeals Council and the Social Security Advisory Board staff we spoke with believe that the process unification rulings provide important guidance, but have also made procedures for making decisions and decision-writing more cumbersome. On the other hand, representatives of the Association of Administrative Law Judges told us that they have not heard such complaints and, while acknowledging that decision-making involved more work, believe the rules did not make decision-writing overly cumbersome.

At the same time, many of those we interviewed, including ALJs and district court judges, said the heavy ALJ workload was behind the apparent errors in documenting agency determinations that lead to

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remands. Some ALJs asserted that the frequency of court remands has not been unreasonable considering the number of cases that they must review.<sup>14</sup> These ALJs also said their workload expectations of 50 to 60 hearings a month affected the time and attention they could give to each case.<sup>15</sup> They asserted that they would need to write significantly fewer decisions in a month in order to assure that the work would withstand scrutiny by the federal courts. They noted that other ALJs who are able to write decisions that the courts uphold produce as few as five a month. Because the time needed to review cases and write decisions varied, however, representatives of the Association of Administrative Law Judges were unable to suggest an ideal number of cases that would be reasonable for ALJs to process. Specifically, these representatives said that decisions to deny benefits take substantially longer to document than those involving allowances. These representatives also stated that the number and quality of staff that ALJs have available to help process and write decisions vary.<sup>16</sup>

Finally, stakeholders also suggested that a variety of other factors contribute to remands, such as: ALJs' providing poor instructions to decision writers, SSA's not providing adequate feedback to ALJs on reasons for remands, and federal courts' having bias against ALJs' decisions. Some stakeholders further stated that federal court bias may be rooted in concerns over how well decisions are generally written, expectations about how determinations should be made, and concerns with the amount of time and attention given to cases under the current workload.

Acknowledging the need to address remands from the federal court, SSA is taking steps to mitigate common documentation errors. One step has been to promote the use of a decision-writing tool known as the Findings Integrated Templates (FIT). This tool contains more than 1,600 templates for presenting analysis of evidence and ensuring that required statutes and regulations are followed. These templates are also designed to prevent common mistakes, such as failure to establish an appropriate date for the

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<sup>14</sup> For example, in fiscal year 2005, ALJs issued 524,362 decisions.

<sup>15</sup> However, because claimants may not appear as scheduled at hearings and SSA officials may not always be able to schedule this many cases, ALJs on average reviewed about 35 cases per month in fiscal year 2006.

<sup>16</sup> Disability decisions are typically written by SSA decision-writers, who follow ALJ instructions on supporting the conclusion and citing pertinent evidence or testimony.



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onset of disability benefits. SSA officials also said this tool is intended to help manage workloads by reducing the potential for miscommunication between ALJs and their staff and the time spent writing decisions. According to SSA officials, SSA plans to monitor the extent to which decisions written with this tool are remanded from the federal courts. Appeals Council judges we interviewed have reviewed some decisions written with FIT and have found them to be better articulated than decisions that did not rely on this tool. However, both Appeals Council judges and ALJ association representatives mentioned that the tool will not replace the need for additional, competent decision-writing staff.

Additionally, SSA is pursuing a broader set of initiatives under its Disability Services Improvement (DSI) initiative that it hopes will result in more accurate decisions earlier in the process and, thereby, ultimately reduce workloads at the ALJ level. For example, as a part of DSI, SSA is implementing an expedited determination process for clear-cut cases, which it calls its Quick Disability Determinations. The agency also plans to add a level of reviewing attorneys, known as federal reviewing officials, who can affirm, reverse, or modify appealed agency decisions prior to their reaching ALJs. However, DSI is currently underway only in the Boston Region, and SSA has yet to evaluate the effectiveness of this initiative.

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### Agency Remand Data Are Incomplete and Not Well Managed

While SSA collects data on reasons for remands, we found that the data are not well managed, incomplete, and therefore not reliable. Two separate SSA offices recently began collecting data on remanded cases to identify and track the reasons for remands in order to help train ALJs and their staff on how to reduce the number of remands. Nevertheless, while the two offices were collecting and using the data for the same purpose—training—they told us that they were not collaborating. When the two offices—the Office of Disability Adjudication and Review (ODAR) and the OGC—developed lists of categories to group reasons for remands, the offices did not consult with each other. As a result, the lists of categories used by these offices are not the same, and SSA officials told us that the offices may well classify similar remands differently. Moreover, some remand categories in the two data systems may be duplicative, resulting in an inefficient use of agency resources. SSA officials acknowledged that better data reliability and collaboration between the two offices are needed and that, while the agency plans to develop a common vocabulary for remand reasons, it has yet to develop specific plans and timetables for addressing these issues.

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Through our conversations with SSA officials and reviews of reports, we also found that these data were not consistently entered into the agency's databases. Within both systems, at least one reason should be entered per remanded case, but this did not always occur; instead, we found the extent to which this information was entered varied by database and SSA regional office. For the OGC reports, we found that the number of reasons recorded exceeded the number of cases, as would be expected; however officials were not confident that the data on remands reasons were accurate or complete because the officials have not been able to assess the quality of the data. Within the ODAR reports for fiscal years 2005 and 2006, on the other hand, there were substantially fewer reasons reported than cases.<sup>17</sup> Regional reports showed that SSA's Seattle and New York offices have been collecting the most information on remands. Notably, the agency's Boston office—which is the first to implement the structural changes of DSI—and the Philadelphia office have collected the least amount of information. SSA officials told us that they were aware that remand data were not entered into ODAR's system consistently in early fiscal year 2005, and said they subsequently reiterated the importance of collecting this information to staff. SSA officials also mentioned that they are considering making remand reasons a mandatory field in the ODAR database to improve collection.

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## SSA Has Taken Several Steps Since 1990 to Align Its Policies Nationally with Court Decisions

SSA officials have a process in place for determining whether appellate court decisions conflict with the agency's interpretation of disability statutes or regulations, and the agency has taken steps in recent years to align its policies nationally with appellate court decisions. In those cases where the agency acceded to certain appellate court rulings by issuing acquiescence rulings, we found that about half of the rulings were eventually replaced with national policy. Also, we found that the number of acquiescence rulings has declined in more recent years, a decline that SSA officials mainly attributed to the agency's implementation of its process unification rulings of 1996, which officials believe created less room for differences of opinion between the courts and the agency regarding broader policies. Moreover, we found that the timeliness of acquiescence rulings had improved since 1998, when SSA established a timeliness goal of 120 days.

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<sup>17</sup> Specifically in fiscal year 2005, ODAR data listed 7,244 cases as being remanded but 4,668 reasons for remands. In fiscal year 2006, the data listed 6,290 cases as being remanded and 5,434 reasons for remands.

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## SSA Has a Process in Place for Reviewing and Addressing Appellate Court Decisions that Conflict with the Agency's Interpretation of Law or Regulations

When an appellate court decision is rendered, SSA officials review the decision to determine whether it conflicts with agency interpretation of law or regulations. The primary office responsible for this evaluation is the OGC, SSA's office responsible for legal matters. For disability issues, OGC works in conjunction with the Office of Disability Programs, SSA's office responsible for policy matters.<sup>18</sup> These offices may consult with the Office of Disability Adjudication and Review, which rendered the agency's final decision prior to its being appealed to federal court, as well as the Department of Justice (DOJ), the entity generally responsible for representing SSA in federal court.

If SSA determines that the appellate court decision conflicts with its policy, then it decides whether to appeal the case to the Supreme Court or to modify its policy to conform with that decision.<sup>19</sup> According to officials, SSA rarely challenges appellate court decisions, and decisions to appeal are ultimately the prerogative of DOJ, because DOJ represents SSA in court. Some of the situations in which SSA would consider appealing to the Supreme Court are: a conflict between circuits; an issue of exceptional importance involving high visibility or significant funds; a statute or regulation held by the courts to be unconstitutional; or an important regulation held to be invalid.

If SSA decides to follow the appellate court decision, it issues an acquiescence ruling that applies only within that circuit. However, because these rulings result in inconsistent policies throughout the country, the agency has added a clarification in the preamble to its 1998 regulations that acquiescence rulings are generally temporary policies that are not intended to remain in effect permanently. Therefore, after issuing an acquiescence ruling, SSA attempts to pursue a uniform national policy through various means, such as modifying regulations or rules, issuing new regulations or policy interpretations, seeking legislative changes, or

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<sup>18</sup> For nondisability issues, OGC works in conjunction with the appropriate component, such as the Office of Income Security Policy.

<sup>19</sup> SSA may also ask the original panel of circuit court judges to rehear an issue, or ask the entire U.S. Court of Appeals to rehear an issue(s) en banc.

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re-litigating the issue within the same circuit.<sup>20</sup> When SSA successfully incorporates the acquiescence ruling into national policy, it rescinds the acquiescence ruling.<sup>21</sup>

When SSA finds it necessary to issue an acquiescence ruling, it has procedures in place for informing adjudicators of these departures from national policy. According to officials, SSA communicates these and other rulings to SSA officials who make claims determinations, such as ALJs, through a variety of sources including: the Federal Register, SSA's internal operations manual, the agency's Web site, and e-mails. In some instances, officials learn about these rulings through training sessions. However, because most acquiescence rulings since the 1990s concerned narrow issues, SSA officials said the rulings have not warranted special training for adjudicators.

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### SSA Has Taken Steps to Align Its Policies with Court Decisions by Issuing Acquiescence Rulings More Quickly and Following with Changes in National Policy

SSA has taken steps to align its policies with the court decisions by issuing acquiescence rulings in a timely manner and following up with changes to its national policies. Since the implementation of its current acquiescence policy, SSA has issued 45 acquiescence rulings, the majority of which relate to determining whether a claimant is eligible for disability benefits. (Fig. 8 shows the number of rulings issued each year from 1990 to 2006, and app. V provides synopses of court holdings concerning disability determinations that led to acquiescence rulings.) Most of these rulings were issued between 1990 and 2000, when SSA published an average of four acquiescence rulings per year. In contrast, during the 6-year period from 2001 to 2006, the agency issued only five such rulings. SSA officials attributed the decline in acquiescence rulings to implementation of its process unification rulings, which they believe created less room for differences of opinion between the courts and the agency regarding

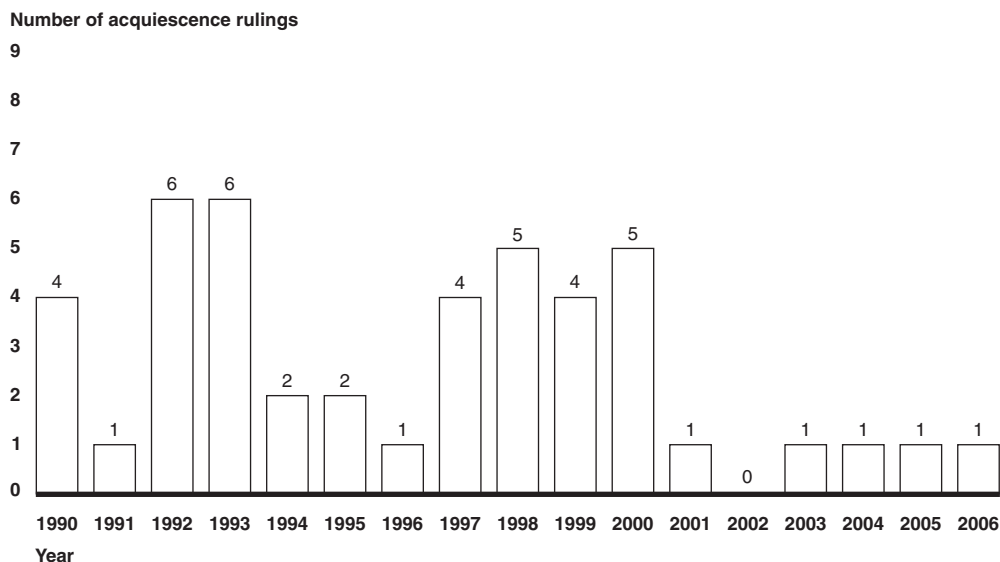
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<sup>20</sup> One way SSA interprets policies is to issue Social Security Rulings, which may be based on case decisions made at all administrative levels of adjudication, federal court decisions, Commissioner's decisions, opinions of OGC, and other policy interpretations of the law and regulations. Our analysis showed that of SSA's 68 Social Security Rulings issued since 1990, 24 percent were based on court decisions. About half of these rulings are related to disability issues.

<sup>21</sup> Other circumstances leading to rescission of an acquiescence ruling include a Supreme Court decision overruling or limiting a circuit court holding that is the basis of an acquiescence ruling; a circuit court overruling or limiting itself on an issue that was the basis of an acquiescence ruling; or enactment of a federal law that removes the basis for the holding in a decision of a circuit court that was the subject of an acquiescence ruling. See 20 CFR 404.985 (e).

broader policies. Specifically, officials commented that the process unification rulings clarified SSA policy as well as filled gaps in policy that were previously open for the courts to fill, and noted that, while the courts are not bound by these and other Social Security Rulings, the courts have frequently deferred to SSA's rulings.<sup>22</sup> As a result, SSA has seen a decline in the number of significant court cases involving disability law over time. (See app. III for a listing of key court cases.)

**Figure 8: Number of Acquiescence Rulings Issued, 1990 to 2006**



Source: GAO analysis of SSA data.

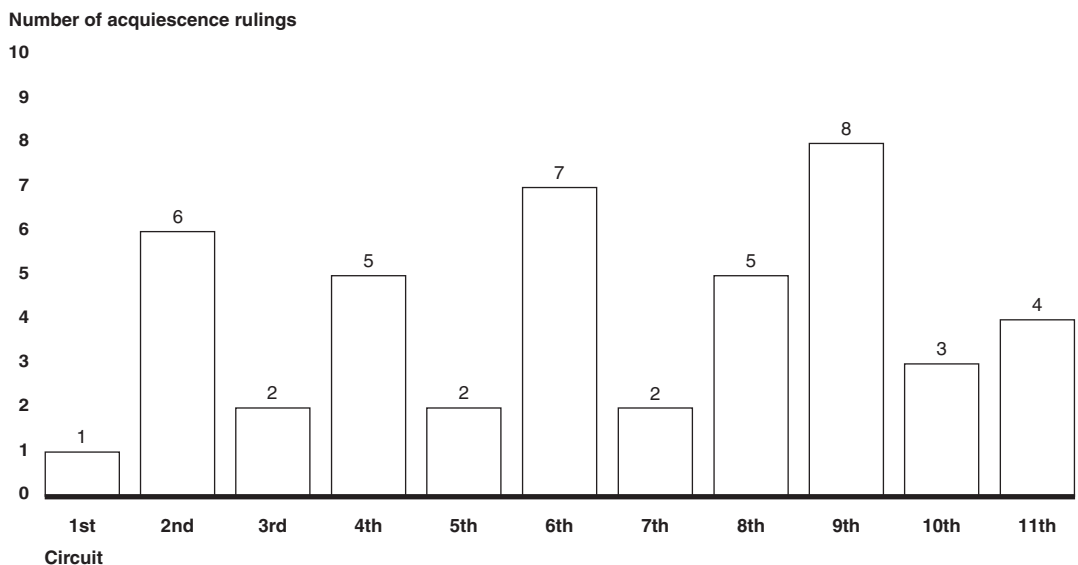
We found that the number of acquiescence rulings issued by SSA varied by circuit during our study period (1990 to 2006), ranging from one in the First Circuit to eight in the Ninth Circuit. (See fig. 9.) SSA officials pointed out that the number of acquiescence rulings the agency issues in a given circuit is a function of the number and types of decisions issued by the appellate court within that circuit. For example, officials said that the Ninth Circuit has the largest disability caseload, and therefore, one would expect it to have the highest number of acquiescence rulings.<sup>23</sup> Also, because the Ninth Circuit's decisions largely concerned technical issues,

<sup>22</sup> Although Social Security Rulings do not have the force and effect of law or regulations, they are binding on all components of SSA.

<sup>23</sup> See appendix IV, figure 14 for more information on caseloads by circuit.

SSA officials said they were less amenable to Supreme Court Review. This official added that the Ninth as well as Eighth Circuits have had precedent-setting decisions.

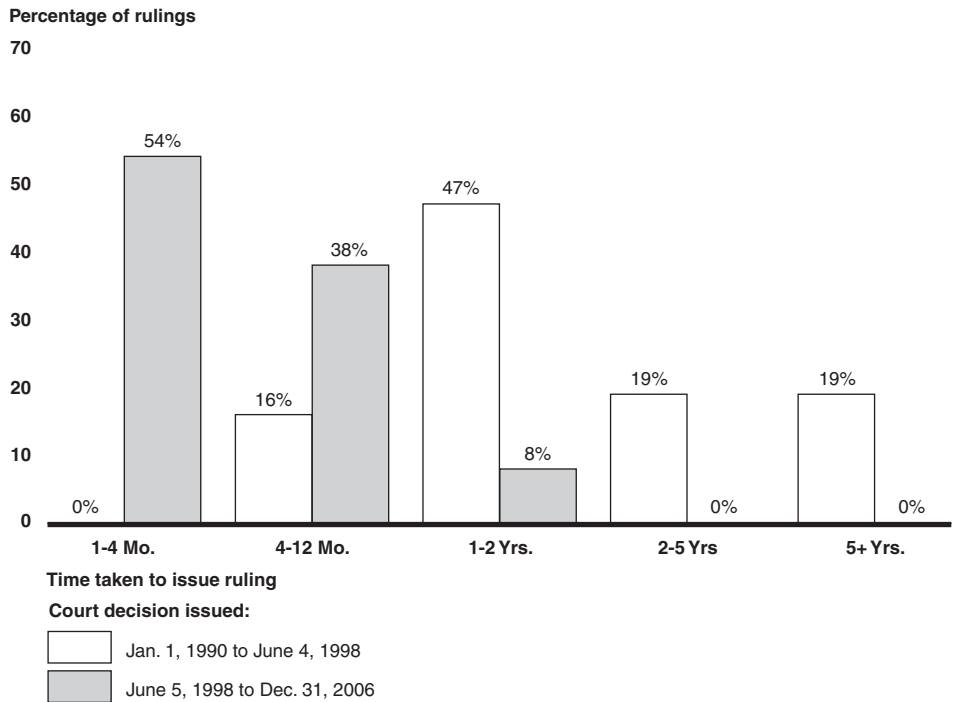
**Figure 9: Number of Acquiescence Rulings by Circuit, 1990 to 2006**



Source: GAO analysis of SSA data.

Since SSA established a regulation in 1998 that included a timeliness goal for issuing acquiescence rulings, the promptness of issuances has improved. (Fig. 10 depicts the timeliness of acquiescence rulings issued from 1990 to 2006.) Prior to establishing the regulation, SSA took more than a year to issue over 80 percent of the rulings. Since then, 54 percent of acquiescence rulings were issued within the guideline of 120 days (or 4 months). For those rulings that were not issued within 120 days, in most instances the timeliness goal did not apply because SSA either sought further judicial review or needed to coordinate with DOJ or other federal agencies.

**Figure 10: Timeliness of Acquiescence Rulings, 1990 to 2006**



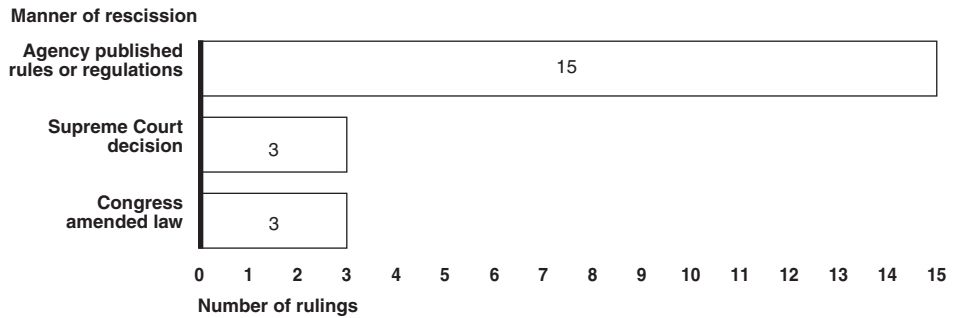
Source: GAO analysis of SSA data.

Note: Percentages do not add up to 100 due to rounding.

Once SSA has issued acquiescence rulings, the agency has frequently succeeded in replacing them with uniform national policies. We found that since 1990, nearly half of all acquiescence rulings (21 of 45) were rescinded and replaced by more permanent guidance.<sup>24</sup> Further, most of these rescissions resulted from the agency’s issuing or modifying rulings or regulations. (Fig. 11 shows how acquiescence rulings were rescinded.) According to officials, acquiescence rulings are most commonly rescinded when the agency revises, publishes, or revokes rules and regulations—actions that are fully within the agency’s control. Six other rescissions occurred through other means: three from Supreme Court rulings upholding SSA’s policies and three from changes in law made by Congress.

<sup>24</sup> According to our analysis, 27 of the 45 rulings relate directly to determining whether a claimant is eligible for disability benefits. As indicated in appendix V, more than half (15 of 27) of these acquiescence rulings were rescinded.

**Figure 11: How Acquiescence Rulings Were Rescinded, 1990 to 2006**



Source: GAO analysis of SSA data.

However, according to SSA, some issues brought about by federal court decisions, such as those involving the Constitution or federal law, have led to acquiescence rulings that have not been rescinded by the agency. For example, acquiescence ruling 91-1(5), which involves a claimant’s right to cross-examine an examining physician, remains in effect because SSA officials believe the only option for rescinding the ruling would require re-litigating the case.<sup>25</sup> However, according to SSA officials, the relevant circuit appellate court and the Supreme Court have declined to review this ruling. Other reasons that acquiescence rulings may remain in effect include a lack of practical implications of the acquiescence ruling for other circuits or the fact that an acquiescence ruling was only recently issued. Replacing the acquiescence ruling with nationwide policy typically takes a significant period of time—in one case, 16 years.

## Conclusions

On the whole, SSA has taken many steps to align its policies with court decisions and establish uniform national standards. The fact that the agency made some substantial changes to its policies in the mid-1990’s

<sup>25</sup> SSA may re-litigate the case within the same circuit when the General Counsel of SSA, in consultation with DOJ, concurs that re-litigation of an issue is appropriate and SSA has published a notice in the *Federal Register* of its intent to re-litigate an acquiescence ruling issue. In addition, SSA may re-litigate a case when one of the following events occurs: an action by both Houses of Congress indicates that an appellate court decision was decided inconsistently with congressional intent, a statement in a majority opinion of the same circuit indicates that a court might no longer follow its previous decision, subsequent appellate court precedent in other circuits supports SSA’s interpretation of the Social Security Act or regulations, or a subsequent Supreme Court decision presents a reasonable legal basis for questioning the appellate court decision.



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may account for the reduced incidence of acquiescence rulings in the past 5 years.

On the other hand, the high proportion of remanded and awarded claims for the past decade has likely cost SSA additional time and resources to process, and may have impeded the timely award of benefits to eligible individuals. While the DSI improvement initiative is designed to ameliorate this problem, the lack of reliably collected and well-managed data on court remands is likely to inhibit that effort. Although SSA plans, through the implementation of DSI, to gradually address the heavy workload that has been cited by many for contributing to errors that lead to remands, the agency cannot pinpoint specific reasons for remands and take corrective action without more reliable data. To the degree that the agency does collect some data, the fact that collection is carried out by two different offices risks inconsistency and divergent interpretations. This lack of complete and consistent information ultimately undermines the agency's ability to serve people with disabilities and their families.

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## Recommendations

To ensure the agency has accurate and well-managed information to use in identifying corrective actions for reducing remands, we recommended that the Commissioner of SSA implement the following two measures:

- take steps to ensure the reliability of data on reasons for remands, and
- coordinate agency data collection on remands and ascertain how best to use this information to reduce the proportion of cases remanded by federal courts.

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## Agency Comments

SSA provided us with comments on a draft of this report, which we have reprinted in appendix VI. In its comments, SSA agreed with both of our recommendations for improving data on remands and outlined actions it plans to take to enhance data reliability and collection. Specifically, in an upcoming update to the Case Processing Management System, SSA plans to make the reasons for remands a mandatory data input field. In addition, SSA plans to establish an intercomponent work group to address issues related to remand data, and analyze data on the use of the Findings Integrated Templates and court decisions.

SSA also provided technical comments which generally improved the accuracy of the report, and we have incorporated them as appropriate.

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Copies of this report are being sent to the Commissioner of SSA, appropriate congressional committees, and other interested parties. The report is also available at no charge on GAO's Web site at <http://www.gao.gov>.

Please contact me on (202) 512-7215 if you or your staff has any questions concerning this report. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Other major contributors to this report are listed in appendix VII.

A handwritten signature in cursive script that reads "Daniel Bertoni".

Daniel Bertoni  
Director,  
Education, Workforce, and Income Security Issues

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# Appendix I: Objective, Scope, and Methodology

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We designed our study to obtain information on (1) the trends of the past decade in the number of appeals reviewed by the district courts and their decisions; (2) the reasons for court remands and factors that may contribute to the incidence of those remands; and (3) SSA's process for responding to appellate court decisions that conflict with agency policy and the agency's response in recent years. To obtain information on these issues, we collected relevant quantitative and qualitative data from SSA; interviewed SSA officials and stakeholders within and outside the agency, such as district court judges, claimant representatives and experts; and reviewed agency policies and regulations that address appellate court rulings that conflict with SSA disability program policies. To determine the completeness and accuracy of data we obtained, we took steps, described below, and determined that these data, with the exception of reasons for remand, were sufficiently reliable for use in this report. We conducted this work between February 2006 and January 2007 according to generally accepted government auditing standards.

To address the first research objective, we obtained national data from SSA on the number and decisions of cases reviewed by federal district courts—the first level of federal court review—for fiscal years 1995 to 2005 and analyzed these data for trends over time. Our analysis excluded cases that were dismissed because dismissals are generally decided on technical and procedural grounds rather than on the merits of the claim. For fiscal year 2005, the only year for which complete data were available, we obtained information from SSA on court decisions by state. We then categorized and analyzed these data by circuit. Furthermore, we obtained and analyzed agency data on the decisions SSA made on disability cases after they were remanded (i.e., allowances or denials of claims) for fiscal years 1995 to 2005. We also categorized and analyzed these data by circuit using information on the claimant's state of residence. SSA officials were interviewed to gather information on potential reasons for any trends. In addition, we interviewed SSA officials and reviewed previously issued agency reports and data manuals to assess the reliability of these data.

To address the second objective, we also obtained data on cited reasons for remands from two SSA databases, the Case Processing and Management System (CPMS), and the National Docketing/Management Information System (NDMIS), which are maintained by two separate offices in SSA responsible for re-adjudicating remanded cases and litigating claims in court. We compared the data to determine how and what SSA is reporting on reasons for remands within the agency. After interviewing agency officials and reviewing reports, we determined that these data were not sufficiently reliable for providing detailed information

on reasons for remands, although some information was used to illustrate what SSA currently collects. In addition, we interviewed SSA officials and other stakeholder groups, including federal court judges and claimant representatives from the Seventh and Ninth circuits and experts, on reason for remands and factors that influenced them. Stakeholders from these two circuits were selected because these jurisdictions represent those with the lowest and highest numbers of SSA policy changes resulting from acquiescence rulings. Information from these interviews is not generalizable to all circuits or stakeholders.

For the third objective, we interviewed SSA officials and obtained available documents on how SSA determines whether a court of appeals decision conflicts with its policies and what option to pursue to address conflicting decisions, e.g., appeal or issue an acquiescence ruling whereby the agency agrees to abide by the court judgment in future cases, albeit only in that jurisdiction. We also obtained data on the number of acquiescence and other rulings that SSA issued since establishing its policy of acquiescence in 1990. For acquiescence rulings, we further reviewed SSA's timeliness in issuing acquiescence rulings as well as the number issued by circuit and how SSA replaced acquiescence rulings with nationwide policies. We were unable to independently determine the extent to which court decisions conflicted with SSA policy or whether SSA should have pursued one option over another. We also interviewed SSA officials and relevant stakeholders, including selected federal court judges and claimant representatives, to obtain information on how court decisions and their related agency rulings have affected SSA disability adjudication policy in recent years.

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# Appendix II: Summary of Process Unification Rulings

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- SSR 96-1p: “Application by the Social Security Administration of Federal Circuit Court and District Court Decisions.” Policy interpretation stating that SSA decision-makers will be bound by SSA’s nationwide policy until an acquiescence ruling is issued and that SSA does not acquiesce to federal district courts within a circuit.
- SSR 96-2p: “Giving Controlling Weight to Treating Source Medical Opinions.” Policy guidance for applying the regulatory provision that requires the adoption of a treating source’s medical opinion on the nature and severity of an impairment when the opinion is not inconsistent with other substantial evidence in the claimant’s file and the opinion is supported by medically acceptable diagnostic techniques.
- SSR 96-3p: “Considering Allegations of Pain and Other Symptoms in Determining Whether a Medically Determinable Impairment is Severe.” Policy interpretation on the consideration of symptoms in determining whether an impairment is “severe” at step 2 of the sequential evaluation process.
- SSR 96-4p: “Symptoms, Medically Determinable Physical and Mental Impairments, and Exertional and Nonexertional Limitations.” Policy interpretation explaining, among other things, that symptoms are not medically determinable impairments; that limitations, not impairments, are categorized as “exertional” or “nonexertional”; and that symptoms may result in nonexertional or exertional limitations.
- SSR 96-5p: “Medical Source Opinions on Issues Reserved to the Commissioner.” Policy interpretation on evaluating medical source opinions on issues such as whether an individual’s impairment(s) meets or is equivalent in severity to the requirements of a listing in SSA’s Listing of Impairments; what an individual’s residual functional capacity is; whether an individual’s residual functional capacity prevents him from doing past relevant work; and how the vocational factors of age, education, and work experience apply.
- SSR 96-6p: “Consideration of Administrative Findings of Fact by State Agency Medical and Psychological Consultants and Other Program Physicians and Psychologists at the ALJ and Appeals Council Levels of Administrative Review; Medical Equivalence.” Policy interpretation regarding weight given to Disability Determination Services level medical and psychological consultant findings at the ALJ and Appeals Council levels. Explanation of requirements for ALJs and the Appeals Council to obtain the opinion of a physician or psychologist designated

by the Commissioner in making a determination about equivalence to the listings.

- SSR 96-7p: “Evaluation of Symptoms in Disability Claims: Assessing the Credibility of an Individual’s Statements.” Policy interpretation on when the evaluation of symptoms, including pain, requires a finding about the credibility of an individual’s statements about pain and symptoms, and the factors to be considered in assessing the credibility of such statements.
- SSR 96-8p: “Assessing Residual Functional Capacity in Initial Claims.” Policy clarification of the term residual functional capacity and discussion of the elements considered in assessing residual functional capacity.
- SSR 96-9p: “Determining Capability to Do Other Work—Implications of a Residual Functional Capacity for Less Than a Full Range of Sedentary Work.” Policy interpretation on the impact of a residual functional capacity assessment for less than a full range of sedentary work on an individual’s ability to do other work.

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# Appendix III: Key Federal Court Rulings on Social Security Administration Disability Adjudication

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1983	<p><i>Heckler v. Campbell</i>, 461 U.S. 458 (1983) The U.S. Supreme Court upheld SSA's use of its vocational grid regulations.</p>
1984	<p><i>Hyatt v. Heckler</i>, 579 F.Supp. 985 (W.D.N.C. 1984) In a class action, the U.S. District Court for the Western District of North Carolina found SSA's policy on pain contrary to Fourth Circuit law. This ruling enjoined SSA from refusing to follow the law of the circuit.</p> <p><i>Lopez v. Heckler</i>, 725 F.2d 1489 (9th Cir. 1984) The Ninth Circuit Court of Appeals enjoined SSA to uphold prior decisions requiring SSA to apply a medical improvement standard before terminating benefits.</p>
1985	<p><i>Stieberger v. Heckler</i>, 615 F.Supp. 315 (S.D.N.Y. 1985) In a class action, the U.S. District Court for the Southern District of New York ruled that SSA had violated the rights of claimants by not following circuit court law on the weight to give treating physician evidence. After this decision SSA introduced its policy of Acquiescence Rulings when the agency is not willing to implement an appellate decision nationwide. Acquiescence rulings explain how SSA applies decisions of Courts of Appeals in the circuit in which the decision was rendered.</p>
1986	<p><i>Schisler v. Heckler</i>, 787 F.2d 76 (2nd Cir. 1986) The Second Circuit Court of Appeals found that a treating physician's opinion on the subject of medical disability is binding unless contradicted by substantial evidence.</p>
1989	<p><i>Hyatt v. Heckler</i>, 711 F.Supp. 837 (W.D.N.C. 1989) On remand, the U.S. District Court for the Western District of North Carolina found SSA's policies on pain did not conform to circuit law. The court ordered these policies to be cancelled and drafted a new ruling on pain for North Carolina adjudicators.</p>

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**Appendix III: Key Federal Court Rulings on  
Social Security Administration Disability  
Adjudication**

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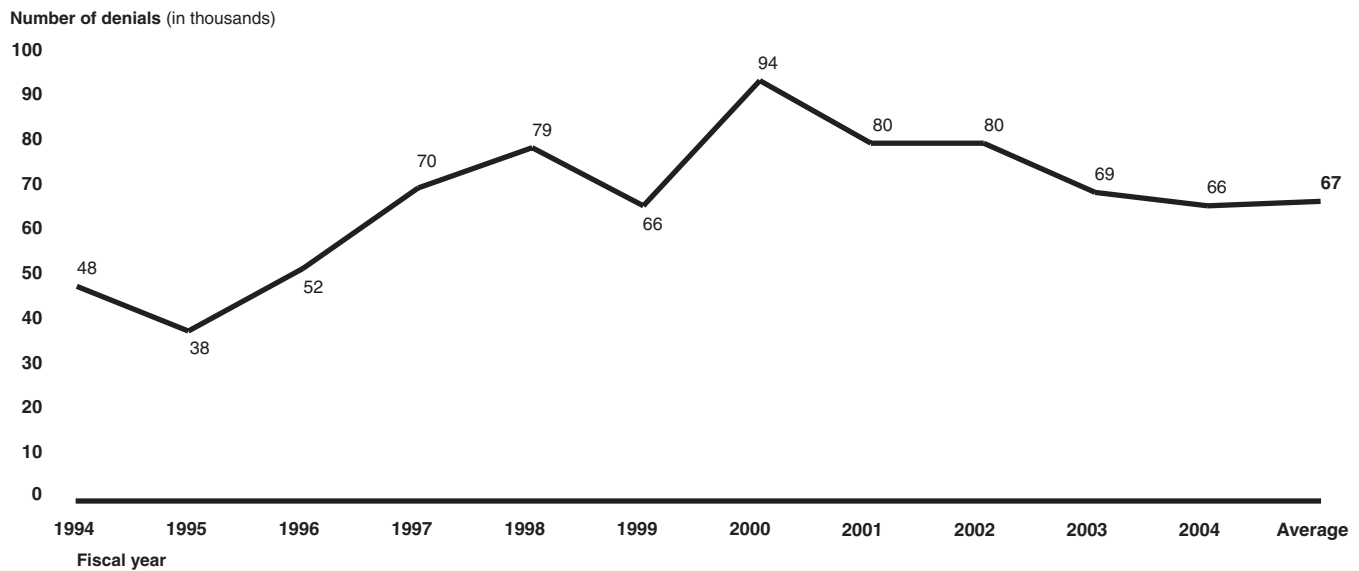
1990	<p><i>Sullivan v. Zebley</i>, 493 U.S. 521 (1990) The U.S. Supreme Court struck down SSA's regulations for determining whether a child is disabled because the regulations denied benefits to children whose impairments did not meet or equal the listing of impairments and did not allow the child to qualify for benefits based on an individualized functional assessment.</p>
1993	<p><i>Schister v. Sullivan</i>, 3 F.3d. 563 (2nd Cir. 1993) The Second Circuit Court of Appeals upheld SSA's 1991 regulations on the opinions of treating physicians as a valid use of SSA's regulatory power.</p>
1994	<p><i>Hyatt class action settlement</i> SSA agreed to re-adjudicate 77,000 cases under the 1991 regulations on the evaluation of pain and other symptoms.</p>
2002	<p><i>Barnhart v. Walton</i>, 535 U.S. 212 (2002) The U.S. Supreme Court upheld SSA's interpretation that the claimant's inability to work last, or be expected to last, 12 months. The court also upheld SSA's regulation precluding a finding of disability when the claimant returns to work within a 12-month period.</p>
2003	<p><i>Barnhart v. Thomas</i>, 540 U.S. 20 (2003) The U.S. Supreme Court upheld denial of benefits to a claimant who was still able to do her previous work without determining whether that type of work continued to be available in the national economy.</p>



# Appendix IV: Additional Information on Disability Appeals

Appeals Council denials of Social Security disability claims increased by about 36 percent from about 48,300 in Fiscal Year 1994 to about 65,800 in Fiscal Year 2004.

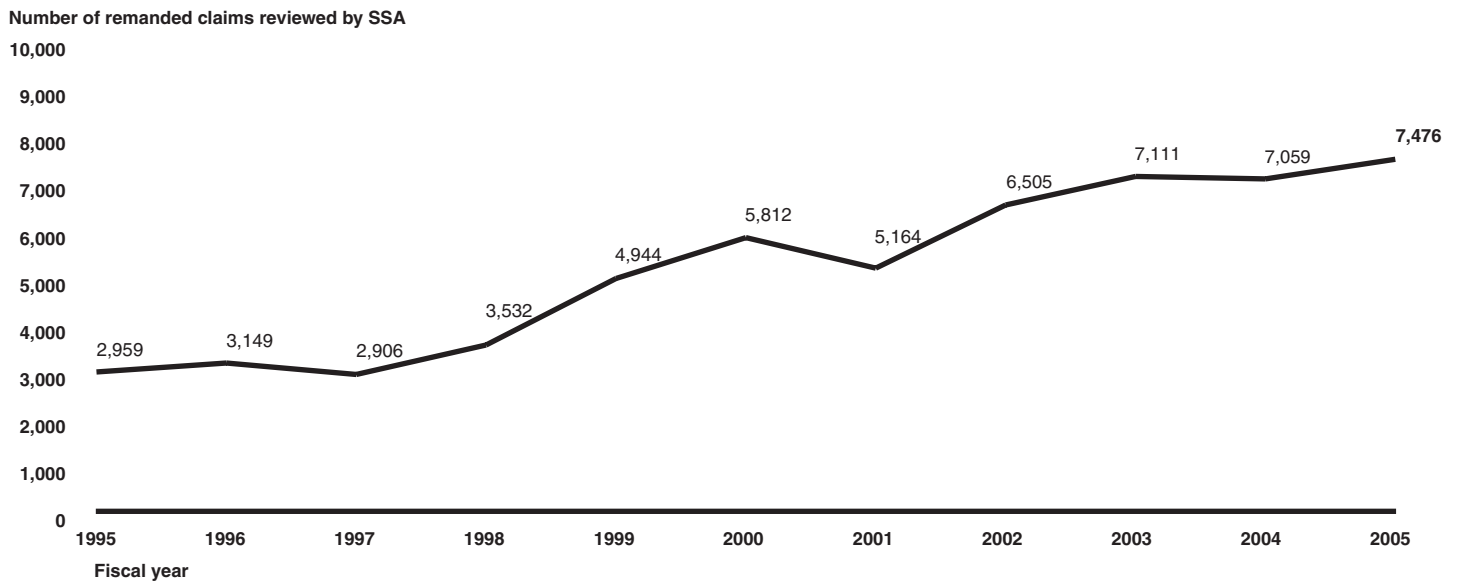
**Figure 12: Appeals Council Denials of Social Security Claims, Fiscal Year 1994 to Fiscal Year 2004**



Source: GAO analysis of SSA data.

SSA decisions on disability claims following remands from federal district courts increased from about 3,000 in Fiscal Year 1995 to almost 7,500 in Fiscal Year 2005.

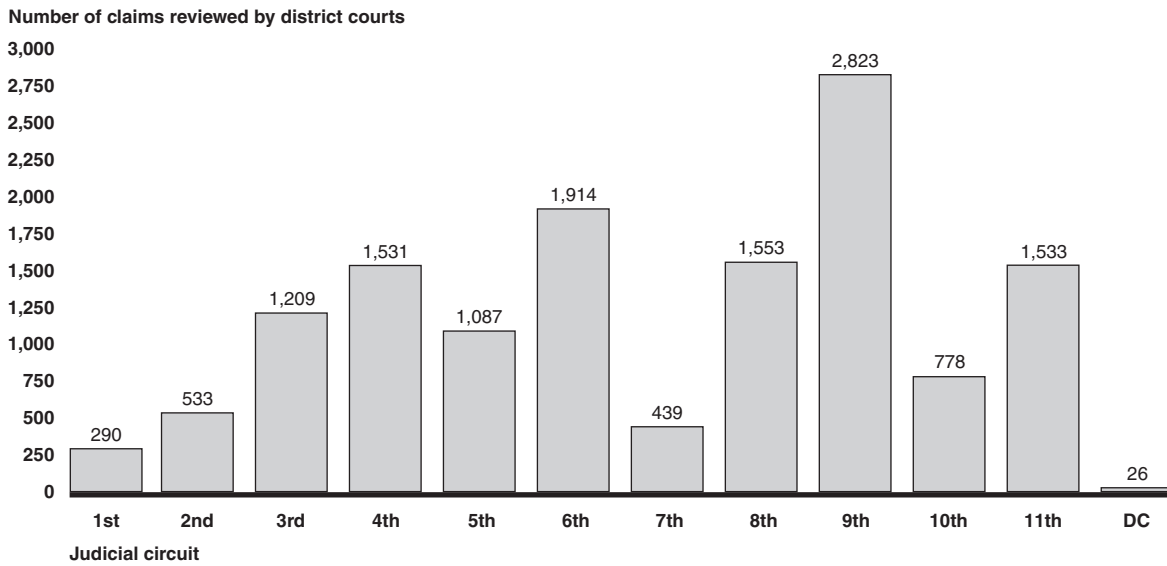
**Figure 13: SSA Decisions on Disability Claims Following Court Remands**



Source: GAO analysis of SSA data.

The twelve judicial circuits with district courts that review Social Security disability claims varied in the number of claims they reviewed in Fiscal Year 2005. For example, the District of Columbia District Court reviewed less than 100 claims, while the district courts in the Ninth Circuit reviewed almost 3,000.

Figure 14: Social Security Claims Reviewed in Federal District Courts in Fiscal Year 2005 by Judicial Circuit



Source: GAO analysis of SSA data.

# Appendix V: Summary of Court Holdings for Acquiescence Rulings Related to Disability Determinations

Acquiescence ruling number and circuit	Rescinded?	Court holding
AR 90-3 (4th Circuit)	X	The court held that social security regulations allow the use of a vocational expert only at step five of the sequential evaluation process; and therefore, reliance on a vocational expert is improper in making the step four determination as to whether a claimant can return to past relevant work.
AR 90-4 (4th Circuit)		The court held that SSA can re-open an otherwise final administrative determination at any time when a claimant, who had no individual legally responsible for prosecuting the claim at the time of the prior determination, established a prima facie case that mental incompetence prevented him from understanding the procedure to request administrative review, unless SSA holds a hearing and determines that mental incompetence did not prevent the claimant from filing a timely appeal.
AR 91-1 (5th Circuit)		The court held that entitlement to a subpoena for cross-examination purposes of an examining physician is automatic and must be granted.
AR 92-2 (6th Circuit)		The court held that in deciding the appeal of a determination that an individual's disability has medically ceased, the adjudicator must consider the issue of the individual's disability through the date of the Secretary of Health and Human Services' final decision, rather than only through the date of the initial cessation determination.
AR 92-4 (11th Circuit)	X	The court held that an Appeals Council dismissal of a request for review of an ALJ decision for reasons of untimeliness is a "final decision" and subject to judicial review.
AR 92-6 (10th Circuit)	X	The court held that a person's return to substantial gainful activity within 12 months of the onset date of his or her disability, and prior to an award of benefits, does not preclude an award of benefits and entitlement to a trial work period.
AR 92-7 (9th Circuit)		The court held that an initial determination in the Social Security or SSI programs must be reopened when the notice of the initial determination did not explicitly state that the failure to seek reconsideration results in a final determination, and the claimant did not pursue a timely appeal.
AR 93-1 (4th Circuit)	X	The court held that a claimant for disability or SSI benefits who has an IQ score in the range covered by listing 12.05C and who cannot perform his or her past relevant work because of a physical or other mental impairment has per se established the additional and significant work-related limitation of function requirement.
AR 93-2 (2nd Circuit)	X	The court held that, in making a determination following an individual's re-entitlement period that an individual with a disabling impairment has engaged in substantial gainful activity, the Secretary of Health and Human Services may not consider work and earnings by the individual in a single month rather than an average of work and earnings over a period of months.
AR 94-2 (4th Circuit)	X	The court held that, in making a disability determination on a subsequent disability claim with respect to an un-adjudicated period, an adjudicator must adopt a finding regarding a claimant's residual functional capacity, made in a final decision on a prior disability claim arising under the same title of the Social Security Act unless there is new and material evidence.
AR 95-1 (6th Circuit)	X	The court held that, in order to find that the skills of a claimant who is close to retirement age are "highly marketable" within the meaning of the Secretary of Health and Human Services' regulations, SSA must first establish that the claimant's skills are sufficiently specialized and coveted by employers as to make the claimant's age irrelevant in the hiring process and enable the claimant to obtain employment with little difficulty.

**Appendix V: Summary of Court Holdings for  
Acquiescence Rulings Related to Disability  
Determinations**

<b>Acquiescence ruling number and circuit</b>	<b>Rescinded?</b>	<b>Court holding</b>
AR 97-2 (9th Circuit)	X	The court held that a claimant for Disability Insurance or SSI benefits based on disability who has an amputation of a lower extremity and cannot afford the cost of a prosthesis has an impairment that meets the listings.
AR 97-4 (9th Circuit)		The court held that, in making a disability determination on a subsequent disability claim with respect to an un-adjudicated period, where the claim arises under the same title of the Social Security Act as a prior claim on which there has been a final decision by an ALJ or the Appeals Council that the claimant is not disabled, SSA must: (1) apply a presumption of continuing nondisability and, if the presumption is not rebutted by the claimant, determine that the claimant is not disabled; and (2) if the presumption is rebutted, adopt certain findings required under the applicable sequential evaluation process for determining disability, made in the final decision by the ALJ or the Appeals Council on the prior disability claim.
AR 98-1 (8th Circuit)	X	The court held that a person's return to substantial gainful activity within 12 months of the onset date of his or her disability, and prior to an award of benefits, does not preclude an award of benefits and entitlement to a trial work period.
AR 98-2 (8th Circuit)	X	The court held that a claimant for Disability Insurance benefits or SSI benefits based on disability who has mental retardation or autism with a valid IQ score in the range covered by Listing 12.05C and who cannot perform his or her past relevant work because of a physical or other mental impairment has per se established the additional and significant work-related limitation of function requirement of the regulations.
AR 98-3 (6th Circuit)		The court held that, in making a disability determination or decision on a subsequent disability claim with respect to an un-adjudicated period, where the claim arises under the same title of the Social Security Act as a prior claim on which there has been a final decision by an ALJ or the Appeals Council, SSA must adopt the finding of the demands of a claimant's past relevant work made in the prior decision unless new and material evidence or changed circumstances provide a basis for a different finding.
AR 98-4 (6th Circuit)		The court held that in making a disability determination or decision on a subsequent disability claim with respect to an un-adjudicated period, where the claim arises under the same title of the Social Security Act as a prior claim on which there has been a final decision by an ALJ or the Appeals Council, SSA must adopt the finding of a claimant's residual functional capacity made in the final decision by the ALJ or the Appeals Council on the prior disability claim unless new or additional evidence or changed circumstances provide a basis for a different finding.
AR 99-2 (8th Circuit)	X	The court held that SSA is required to find that a claimant close to retirement age and limited to sedentary or light work has "highly marketable" skills before determining that the claimant has transferable skills and, therefore, is not disabled.
AR 99-3 (5th Circuit)	X	The court held that SSA is required to find that a claimant close to retirement age and limited to sedentary or light work has "highly marketable" skills before determining that the claimant has transferable skills and, therefore, is not disabled.
AR 99-4 (11th Circuit)		The court held that an Appeals Council dismissal of a request for review of an ALJ decision for reasons of untimeliness is a "final decision" and subject to judicial review.
AR 00-1 (4th Circuit)		The court held that, in making a disability determination on a subsequent disability claim with respect to an un-adjudicated period, SSA must consider a finding of a claimant's residual functional capacity made in a final decision by an ALJ or the Appeals Council on the prior disability claim as evidence and give it appropriate weight in light of all relevant facts and circumstances but that SSA does not have to adopt the finding.
AR 00-2 (7th Circuit)	X	The court held that a determination of medical equivalence under the regulations must be based solely on evidence from medical sources.

**Appendix V: Summary of Court Holdings for  
Acquiescence Rulings Related to Disability  
Determinations**

<b>Acquiescence ruling number and circuit</b>	<b>Rescinded?</b>	<b>Court holding</b>
AR 00-3 (10th Circuit)	X	The court held that an ALJ, when receiving evidence from a vocational expert must ask the expert how the testimony or information corresponds to information provided in the Dictionary of Occupational Titles and must ask the expert to explain the difference if the testimony or evidence differs from the Dictionary.
AR 00-4 (2nd Circuit)	X	The court held that SSA has the burden of proving at step five of the sequential evaluation process that the claimant has the residual functional capacity to perform other work which exists in the national economy.
AR 00-5 (6th Circuit)		The court held that a claimant's return to substantial gainful activity within 12 months of the alleged onset date of his or her disability, and prior to an award of benefits, does not preclude an award of benefits and entitlement to a trial work period.
AR 01-1 (3rd Circuit)		The court held that SSA may not apply the Medical-Vocational Guidelines (grid rules) as a frame work to deny disability benefits at step 5 of the sequential evaluation process when a claimant has a nonexertional limitation without either: (1) taking or producing vocational evidence; or (2) providing notice of the agency's intention to take official notice of the fact that the particular nonexertional limitation does not significantly erode the occupational job base.
AR 03-1 (7th )		The court held that for cases concerning Listings 12.05 or 112.05 decided by ALJs or the Appeals Council before September 20, 2000, which have been remanded by the courts to SSA, the ALJ should apply the pre-September 20, 2000 version of the Listing as interpreted by the Seventh Circuit.
AR 04-1 (9th Circuit)		The court held that for certain applicants under age 18, ALJs and Administrative Appeals Judges must make reasonable efforts to ensure that a qualified pediatrician or other specialist evaluates the case.

Source: Applicable appellate court decisions and GAO analysis.

# Appendix VI: Comments from the Agency



## SOCIAL SECURITY

The Commissioner

March 13, 2007

Mr. Dan Bertoni,  
Director, Education, Workforce, and  
Income Security Issues  
U.S. Government Accountability Office  
441 G Street, NW  
Washington, D.C. 20548

Dear Mr. Bertoni:

Thank you for the opportunity to review and comment on the Government Accountability Office (GAO) draft report, "Disability Programs: SSA Needs to Manage Data Better on Court Cases Requiring Re-adjudication" (GAO-07-331). The attached comments provide specific responses to the recommendations and identify technical corrections that should be made to enhance the accuracy of the report.

If you have any questions, please contact Ms. Candace Skurnik, Director, Audit Management and Liaison Staff, at (410) 965-4636.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael J. Astrue".

Michael J. Astrue

Enclosure

*We are in the process of reevaluating DSI and looking at more direct ways to reduce backlogs. Your analysis will be helpful to that effort - thanks!*

SOCIAL SECURITY ADMINISTRATION BALTIMORE MD 21235-0001

**COMMENTS ON THE GOVERNMENT ACCOUNTABILITY OFFICE (GAO)  
DRAFT REPORT, "DISABILITY PROGRAMS: SSA NEEDS TO MANAGE DATA  
BETTER ON COURT CASES REQUIRING RE-ADJUDICATION" (GAO-07-331)**

Thank you for the opportunity to review and comment on the draft report. Generally we agree with the report's findings and recommendations. We appreciate your acknowledgement that, over the years, the Social Security Administration (SSA) has collected reliable data that identified the number of cases being processed by the Agency, including the number of cases being processed after remand. It also correctly concludes that, until recently, we did not systematically collect information regarding the specific reasons that cases were remanded by the Federal courts.

Regarding the differences in remand data provided by the Office of Disability Adjudication and Review (ODAR) and the Office of the General Counsel (OGC), we offer the following explanation:

In March 2005, ODAR implemented the new Case Processing Management System (CPMS). CPMS is a web-based, user-friendly system that provides significant case processing and workload management enhancements for ODAR. Among other things, the new system features interactive screens, a secure and centralized repository of data, improvements in hearing scheduling capabilities, and hyperlinks to reference material, as well as interfaces with other SSA systems. While the system contains a "reason for remand" data field, the current release does not require a remand field entry. As indicated in our response to recommendation number 1 below, the CPMS update, scheduled for June 2007, will require a mandatory input of the remand reason codes on all pending Appeals Council and court remands. This will provide more complete data for analysis as to why cases are remanded from this system.

In March 2006, OGC began collecting more explanatory data about remand reasons. The system allows for the collection of multiple reasons, which explains why GAO found that the number of reasons exceeded the number of remand cases. OGC has been using the information collected in that system for a number of purposes, including working with individual hearing offices (HO) under ODAR to alert them to some of the issues being raised by the courts, providing training at the national level to new Administrative Law Judges (ALJ), and augmenting the arguments we make in our briefs to address the courts' concerns. Since the OGC system is so new, a standardized procedure for validating the data on a regular basis is not currently in place.

In summary, we recognize the need to establish an accurate and consistent management information system to manage our remand case workloads and we fully support GAO's recommendations. Below you will find a description of the actions we plan to take to address the specific recommendations. We are also providing some technical comments that we believe will enhance the accuracy of the report.



**Recommendation 1**

The Commissioner of Social Security should take steps to ensure the reliability of data on reasons for remands.

Response

We agree. An update of the CPMS, scheduled for June 2007, will require a mandatory input of the "remand reason" codes on all pending Appeals Council and court remands. This will provide more complete data for analysis as to why cases are remanded. In addition we will continue to enhance CPMS to collect data on the Disability Service Improvement (DSI) workload, including Decision Review Board remands processed in the HO.

We are also forming an intercomponent workgroup, which will include ODAR and OGC, to outline a plan to ensure the reliability of remand data, to coordinate the collection of remand data, and to improve the legal sufficiency of hearing decisions to reduce the proportion of cases remanded by the courts.

**Recommendation 2**

The Commissioner of Social Security should coordinate data collection on remands and ascertain how to best use the data.

Response

We agree. As noted above, the intercomponent workgroup will coordinate an Agency plan for data collection and use of the data to reduce the proportion of cases remanded by the courts.

In an effort to further enhance the consistency of our decisions and minimize the number of remands, we have implemented the Findings Integrated Templates (FIT). Preliminary data from the Appeals Council for February 2006 through December 2006, relative to the implementation of FIT for drafting ALJ decisions, suggests a direct correlation between the increased usage of FIT and the improvement in quality and legal sufficiency of ALJ decisions. We have just begun to receive court decisions involving FIT opinions and it is too early in the process to make any definitive determinations concerning remand rates at that level. We will continue to monitor the FIT/non-FIT remand rates at the Appeals Council and in the courts. Additionally, it should be noted that the system release, scheduled for June 2007, will provide enhancements to the FIT program including a user option to retrieve Acquiescence Rulings (AR) for a particular Federal court circuit.

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# Appendix VII: GAO Contact and Staff Acknowledgments

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## GAO Contact

Daniel Bertoni, (202) 512-7215, bertonid@gao.gov

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## Staff Acknowledgments

Robert E. Robertson (Director), Michele Grgich (Assistant Director), Danielle Giese (Analyst-in-Charge), Susan Bernstein, Candace Carpenter, Joy Gambino, Suneeti Shah, Albert Sim, Ellen Soltow and Rick Wilson made significant contributions to this report. Luann Moy, Vanessa Taylor, and Walter Vance provided assistance with research methodology and data analysis. Daniel Schwimer provided legal counsel.

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# Related GAO Reports

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*Social Security Administration: Agency Is Positioning Itself to Implement Its New Disability Determination Process, but Key Facets Are Still in Development.* [GAO-06-779T](#). Washington, D.C.: June 15, 2006.

*Social Security Administration: Administrative Review Process for Adjudicating Initial Disability Claims.* [GAO-06-640R](#). Washington, D.C.: May 16, 2006.

*High-Risk Series: An Update.* [GAO-05-207](#). Washington, D.C.: January 2005.

*SSA's Disability Programs: Improvements Could Increase the Usefulness of Electronic Data for Program Oversight.* [GAO-05-100R](#). Washington, D.C.: December 10, 2004.

*Social Security Administration: More Effort Needed to Assess Consistency of Disability Decisions.* [GAO-04-656](#). Washington, D.C.: July 2, 2004.

*Social Security Administration: Strategic Workforce Planning Needed to Address Human Capital Challenges Facing the Disability Determination Services.* [GAO-04-121](#). Washington, D.C.: January 27, 2004.

*Social Security Disability: Disappointing Results from SSA's Efforts to Improve the Disability Claims Process Warrant Immediate Attention.* [GAO-02-322](#). Washington, D.C.: February 27, 2002.

*Standards for Internal Control in the Federal Government.* [GAO/AIMD-00-21.3.1](#) Washington, D.C.: November 1999.

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