



**CONSORTIUM FOR CITIZENS  
WITH DISABILITIES**

November 25, 2014

*Via Email*

The Honorable Sam Johnson  
Chair, Subcommittee on Social Security  
Committee on Ways and Means  
U.S. House of Representatives  
B317 Rayburn House Office Building  
Washington, DC 20515

The Honorable Xavier Becerra  
Ranking Member, Subcommittee on Social Security  
Committee on Ways and Means  
U.S. House of Representatives  
B317 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Johnson and Ranking Member Becerra,

The undersigned members of the Consortium for Citizens with Disabilities Social Security Task Force write to thank you for your leadership regarding protecting the integrity of the Social Security disability programs. Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) provide vital but modest benefits to people with disabilities; ensuring that only eligible people get benefits in the right amount at the right time is essential to ensuring the economic security of people with disabilities.

We appreciate the leadership you both have shown by introducing legislation to protect this important system. This letter will outline our positions on the provisions in H.R. 4090, the Social Security Fraud and Error Prevention Act of 2014, and H.R. 5260, the Stop Disability Fraud Act of 2014.

We were encouraged to see a number of areas within the bills of bipartisan agreement on the approaches that should be taken. We urge your offices to work together to draft a bipartisan bill that builds on the areas of agreement.

**Adequate Resources for Program Integrity Activities**

The Social Security Administration (SSA) must have sufficient resources to meet the service needs of the public and ensure program integrity. SSA's administrative budget is only about 1.4 percent of benefits paid out each year. With the baby boomers entering retirement and their

disability-prone years, SSA is experiencing dramatic workload increases at a time of diminished funding and staff. Over Fiscal Years (FY) 2012-2013, Congress appropriated \$421 million less for SSA's program integrity efforts (such as medical and work Continuing Disability Reviews and Title XVI redeterminations) than the Budget Control Act of 2011 (BCA) authorized. Over the last three years, SSA has received nearly \$1 billion less for its Limitation on Administrative Expenses (LAE) than the President's request, and by the end of FY 2013 lost over 11,000 employees since FY 2011. The appropriation for FY 2014 allows SSA to increase Continuing Disability Reviews (CDRs), but significant backlogs will remain in CDRs as well as many other critical workloads.

Adequate LAE is essential to preventing service degradation and ensuring that SSA can provide timely and accurate payments and perform the necessary program integrity work that is outlined in both H.R. 4090 and H.R. 5260. Both of these bills greatly increase the amount of program integrity work that SSA will perform and it is necessary to increase the funding SSA receives by a commensurate amount in order to prevent further degradation of SSA's customer service due to trade-offs that would need to be made to accommodate a growing program integrity workload. We support the approach taken in H.R. 4090 in sections 2 and 9 to increase the funding available for program integrity and have significant concern about enacting the requirements in H.R. 5260 without providing SSA increased resources to complete those activities.

### **Cooperative Disability Investigation (CDI) Units**

SSA and the Office of the Inspector General (OIG) jointly established the CDI Program in 1998. Twenty-seven CDI units covering 23 states and Puerto Rico investigate individual disability applicants and beneficiaries, as well as potential third parties who facilitate disability fraud. SSA recently increased that number from 25, with the latest opening in Baltimore in September 2014, and has plans to open more. SSA or DDS personnel make referrals to a CDI unit for investigation, and CDI units also accept reports from the public via a toll-free telephone hotline and an online web form. Investigations uncovering fraud or attempted fraud can result in a denial, suspension, or termination of benefits, civil or criminal prosecution, and/or imposition of civil monetary penalties, and/or sanctions on claimant representatives for violation of SSA's ethical standards. Since the program's inception in FY 1998, CDI efforts have resulted in \$2.2 billion in projected savings to SSA's disability programs. We support the expansion of CDI units to all states as outlined in section 101 of H.R. 5260 and section 3 of H.R. 4090, provided due process protections for beneficiaries being investigated are maintained and funding is provided to support the establishment of the additional units. We are supportive of requiring their establishment by FY 2017, provided that it is logistically feasible and adequate resources are provided to do so in that timeframe.

### **Quality Reviews**

We support increasing the number of quality reviews of disability decisions as outlined in section 4 of H.R. 4090 and section 201 of H.R. 5250. Currently, Administrative Law Judge (ALJ) decisions are reviewed by SSA in a manner consistent with law. While ALJs have decisional independence, they must follow SSA law and policies. SSA has implemented a quality review process for ALJ decisions. In FY 2011, the SSA Office of Disability Adjudication and Review (ODAR) established a Quality Review (QR) initiative and opened four new Branches in the Office of Appellate Operations. The QR Branches review a computer-generated sample of

unappealed favorable ALJ decisions (almost 3700 in FY 2011) before they are effectuated. SSA has increased the number of reviews over the past several fiscal years. In FY 2013, SSA completed 6,167 pre-effectuation reviews. Cases selected in the sample are then referred to the Appeals Council for possible review. If the Appeals Council accepts review, it can remand or issue “corrective” decisions, which may involve changing the favorable ALJ decision to a “partially” favorable decision or to an unfavorable decision.

SSA also completes some post-effectuation review of ALJ decisions. While these ALJ decisions cannot be changed, post-effectuation review looks for policy compliance and can focus on cases where there is a recurring problem and on specific situations. Additional training and/or policy guidance can then be provided as is warranted. SSA has also increased the post-effectuation reviews it is completing. In FY 2013, SSA initiated 21 new reviews and 7 follow-up reviews of specific ALJs, 2 medical source reviews, and reviews of 2 claimants’ representatives

We support the review of more cases, provided that the qualified judicial independence of ALJs is maintained, the Agency is given additional and adequate resources to conduct these additional reviews, and the reviews are completed in a timely manner so as to not unduly delay the award of benefits to claimants who are ultimately awarded benefits. Overall, we prefer the language in H.R. 4090 regarding the approach to reviews and the fact that H.R. 4090 provides additional funding to support the increased workload.

### **Offenses and Penalties**

The undersigned organizations are supportive of the following provisions regarding upgrading offenses and penalties for individuals committing fraud against the Social Security disability programs:

- Upgrading the conspiracy to commit certain types of fraud to a felony (H.R. 4090 section 7, H.R. 5260 section 104)
- Adjusting civil monetary penalties for inflation (H.R. 4090 section 7, H.R. 5260 section 104)
- Explicitly extending penalties for unauthorized use of Social Security and Medicare names, symbols and emblems to electronic communication (H.R. 4090 section 7, H.R. 5260 section 104)
- Increased penalties for people who receive fees for services performed in connection with benefits determinations (H.R. 4090 section 7, H.R. 5260 section 104)
- Increased penalties for representatives who knowingly charge, demand, receive, or collect more in fees than allowed by SSA or a court. (H.R. 5260 section 104)<sup>1</sup>
- Increased penalties and fines for medical providers who commit certain types of fraud (H.R. 4090 section 7, H.R. 5260 section 104)

Support with a change:

- Immediate disqualification or suspension of representatives from representing claimants when representative is convicted of felonies or crimes of moral turpitude or is disbarred,

---

<sup>1</sup> Provided that this provision includes clarification that penalties would not apply if the overpayment is due to error or action by SSA, as that would not be knowingly on the part of a representative.

with due process protections pending an expedited hearing (H.R. 5260, section 103). Although we generally support this provision, we object to the inclusion of “crimes of moral turpitude.” We believe this phrase is overly broad, is not defined, and would disqualify representatives unjustly prior to receiving a due process hearing.

We do, however, have some concerns regarding other provisions that are related to increasing penalties or fines for certain individuals or the requirements for SSA to take certain actions regarding fraud prevention.

### **Provisions Related to Representatives:**

We cannot support the provision contained in H.R. 5260 section 104 that would require SSA to create rules about fines and sanctions for representatives who fail to follow the Commissioner’s rules and regulations because this requirement is overbroad and such rules and sanctions already exist.

Since 1998, SSA has had “Rules of conduct and standards of responsibility for representatives (“Rules of Conduct”).” These Rules of Conduct provide a process for violation of these rules, including exclusion or suspension from further representation of claimants before SSA. 20 C.F.R. §§ 404.1740 and 416.1540. Further, 42 U.S.C. § 1320a-8(a)(1)(A), enacted in 2004, permits imposition of a civil monetary penalty (CMP) or sanctions for individuals, including representatives. SSA recently revised the Rules of Conduct by adding to the list of “prohibited actions” violation of any section of the Social Security Act for which a criminal or civil monetary penalty is prescribed.

In addition, we are also concerned about the proposed increase in CMPs for withholding facts or misrepresentation contained in H.R. 4070, section 7 and H.R. 5260 section 104. It is important to note that SSA recently published a proposed rule regarding a claimant’s and representative’s duties to submit evidence and the boundaries of the scope of those duties (published on February 20, 2014, at 79 Fed. Reg. 9663). A final rule has not yet been published. The penalties for the failure to do so should not be increased until it is clear what those duties are and the final rule has been promulgated.

The undersigned organizations oppose the provision that would require the SSA Office of the Inspector General to review the practices of a sample of the highest earning claimants’ representatives. We support investigations into representatives when there is evidence of wrongdoing. We do not believe, however, that having high earnings is evidence of wrongdoing. We are concerned that targeting high earning representatives could have a chilling effect on access to representation for disability claimants and could delay or deny access to benefits for people with disabilities.

### **Provisions Related to Medical Providers:**

It is important to ensure that the evidence considered in disability determinations is valid and authentic and that opinions of discredited doctors are not considered when disability determinations are made. However, it is also important to ensure that all existing valid evidence that is of probative value to disability decision makers is available to them as early in the disability determination process as possible. We must therefore draw a distinction between

opinion evidence provided by a medical professional and objective medical evidence that might come from a medical professional, as do 20 C.F.R. §§ 404.1503a and 416.903a.

Opinions of Medical Providers: We are fully supportive of prohibiting SSA from considering the opinion of medical professionals who have been barred from practice in any state, who have been penalized for submitting false evidence, who are not licensed (when a license is required), or who have been sanctioned. SSA should not consider the opinions of such medical professionals, such as allowing the submission of a residual functional capacity form from such a doctor or submission of a letter stating the doctor's opinion that the individual's limitations causes functional impairment to the level that the individual cannot work.

Objective Medical Evidence from Sanctioned or Convicted Medical Professionals: We do believe, however, that SSA should be able to consider objective medical evidence (e.g., x-rays, magnetic resonance imaging tests or MRIs, blood tests) from such medical professionals if the veracity of the evidence is not in doubt. For example, an individual who might have seen the doctor in question over a period of years might have a number of MRIs taken which document the progression of the individual's impairment over time. If there is no question that the MRIs belong to the individual and are valid tests, excluding the evidence would be detrimental to making an accurate disability determination in a timely manner. Excluding those test results would likely require the ordering of additional tests and or consultative examinations, resulting in delay and increased cost. In addition, no tests or exams ordered at the time of application will be able to replace the evidence of the progression of the impairment over time that the original tests could provide the ALJ or DDS examiner. Excluding medical evidence from a medical professional who would be excluded from providing opinion regarding an individual, when there is no question the objective test belongs to the individual and the test is valid, would be counterproductive, potentially increase delay, and might be expensive.

For the preceding reasons, we therefore oppose the provision in H.R. 5260 section 102. The provision in H.R. 4090, section 8, is preferable because it provides the Commissioner with the authority to allow consideration of such evidence if there is good cause to do so. However, we believe that SSA should be able to consider such objective medical evidence, even if it comes from a medical professional whose opinion ought to be excluded, unless SSA has good cause to question the veracity of the evidence.

### **Provisions Related to Reporting of Earnings:**

We have concerns regarding the provision in H.R. 5260 section 104 regarding concealing work activity during trial work months and including any resulting overpayments in the penalties imposed. Currently, many beneficiaries attempt to report their work and earnings and SSA fails to record the earnings or adjust the individual's benefits in a timely manner, if at all. We are concerned about adding the overpayment to the individual's penalties until such time as a better system is put in place to ensure that all earnings reports submitted to SSA are recorded and benefits are adjusted in a timely manner.

For more detailed information, see our recommendations regarding improving the integrity of the disability programs at:

<http://c-c-d.org/fichiers/CCD Program Integrity Recommendations Final10-3-13.pdf>

For the reasons expressed here and in the document we link to above, we support the provision in H.R. 4090 section 5 to require SSA to collect data and report back to Congress regarding work CDRs.

### **Changes to the Disability Determination Process**

#### **Uniform Qualifications for Decision Makers (H.R. 5060 section 201):**

We support ensuring that decision makers and medical or vocational advisors are equipped to achieve high quality standards. However, given significant existing state variation in qualification requirements, we are concerned that establishing uniform standard qualifications is a complex undertaking with potential unintended consequences including costs and impact on existing staffing. We recommend instead that SSA be required to study the pros and cons of establishing uniform standard qualifications for state and federal decision makers and medical or vocational advisors and issue a report to Congress by no later than one year after enactment.

#### **Updating the Vocational Grids as Soon as Possible (H.R. 5260 section 301):**

SSA already has activities underway to update the Medical-Vocational Guidelines. We support an evidence-based approach and do not see a need for Congress to provide additional legislative direction in this area.

The Medical-Vocational Guidelines,<sup>2</sup> when issued in 1980, were supported by the Dictionary of Occupational Titles (DOT). The DOT is used by the state Disability Determination Services and Administrative Law Judges to identify jobs that claimants might be able to perform in light of their functional limitations and vocational characteristics.

We agree that the DOT needs to be updated. SSA has signed an interagency agreement with the U.S. Department of Labor's Bureau of Labor Statistics (BLS). More detailed information about the agreement is available at [http://www.ssa.gov/disabilityresearch/occupational\\_info\\_systems.html](http://www.ssa.gov/disabilityresearch/occupational_info_systems.html). We support SSA's efforts to develop a new Occupational Information System (OIS) to update and/or replace the DOT by working in conjunction the BLS.

Initially, SSA worked on creating a new OIS on its own. However, for some years, we believed that SSA should collaborate with other agencies that have established expertise and we support the Agency's current plan to work with the Department of Labor in the interest of efficient use of government resources. The SSA-BLS partnership has been successful to date and we believe that it will result in a more up-to-date and well-supported occupational information system for SSA.

We understand that SSA, through its Disability Research Consortium, is conducting a review of recent literature, reports, studies, and other materials that could impact the factors used in the Medical-Vocational Guidelines. SSA will then be able to use this information to decide whether changes are needed to the Guidelines. We support this evidence-based approach.

---

<sup>2</sup> 20 C.F.R., Pt. 404, Subpt. P, App. 2 (2012).

We do not support an increase in the age categories. Critics of the current age categories<sup>3</sup> argue that since there is evidence that the average health of older workers has improved and many older persons are working, the age categories in the Medical-Vocational Guidelines should be adjusted upward. However, these trends have little to do with the work capacity of persons with severe health problems or disabilities who are not working and have applied for disability benefits. That is, the average health of a population reveals little about the individuals who apply for disability benefits, who by definition are not enjoying the average health of the population at large.

Not all segments of the population have benefited from improvements in health and working conditions. In particular, individuals with lower incomes and less education might be especially disadvantaged by changes to the Guidelines, since these groups have benefited the least from overall improvements in the health of the general population.<sup>4</sup> These persons who are found disabled under the Guidelines have the most adverse vocational characteristics – low education, lack of work skills, and limited residual functional capacity. When these factors are combined, the Guidelines recognize that the occupational opportunities are so restricted that a finding of “disabled” is warranted. These are the very individuals who would be harmed by increasing the age categories of the Medical-Vocational Guidelines.

We support SSA’s approach to thoroughly research and assess how age, education, and work experience impact the ability to work in current jobs that exist in significant numbers in our economy.

#### **Demonstrations: Tests to Evaluate Function (H.R. 5260 section 302):**

The current definition of disability in the Social Security Act requires an individualized assessment of ability to perform substantial gainful activity by considering the individual’s physical and mental functional limitations in light of his/her age, education, and work experience. The interplay between these statutory factors must be included in SSA’s disability determination process.

The current methodology provides the individualized assessment envisioned by the statute through the use of the Medical-Vocational Guidelines (“the grids”), which consider an individual’s physical functional limitations in light of his or her age, education, and prior work experience. The process also allows individual consideration of nonexertional limitations, such as pain and fatigue, and those caused by mental and cognitive impairments.

Any type of stand-alone standardized functional assessment criteria and instruments must be able to identify or capture the individual differences and diverse, yet significant, limitations of people with disabilities who legitimately merit a finding of “disabled.” Given the variety and complexity of disabilities and the limitations they impose, it is difficult to see how a limited number of stand-alone, abbreviated, functional activity measures can adequately or accurately measure total function. Heavy reliance on the notion that SSA can assess the impact of functional limitations in an abbreviated, standardized form disregards sound clinical thinking that most impairments impact persons in an individualized, personal way. It also fails to recognize

---

<sup>3</sup> See 20 C.F.R. §§ 404.1563 and 416.963 (2012).

<sup>4</sup> See, for example, <http://www.nih.gov/news/pr/aug2006/nia-16.htm>.

the nature of many impairments, including multiple sclerosis and mental illnesses, the symptoms of which often wax and wane unpredictably over time. A snapshot in time does not capture the dynamic nature of such impairments and the resulting functional limitations. Any test developed must be viewed as one tool to help assess function, rather than the assessment for functional capacity and work ability.

SSA is currently working with the National Institutes of Health on the development of such a test to use as a tool in completing a functional assessment. We do not believe that there is any need for statutory provisions to ensure the completion of this test. SSA should be allowed to complete development of the test before any legislative provisions should be enacted related to tests for functional capacity.

These are additional concerns we have regarding reliance on standardized tests to evaluate function:

**Assessment of the mental/cognitive limitations of an individual claimant requires an individualized assessment.** The professionals who treat a person's cognitive or mental conditions are in the best position to evaluate that person's functional abilities and limitations over time.

Any type of rating or matrix system to determine disability raises serious concerns. We strongly oppose a rating system that would provide a "bright line" to determine who is and is not disabled. Previous efforts to use a rating system were found to be unlawful and were abandoned by SSA.

Current SSA policy recognizes that an individual's response to stress is critical in evaluating an individual's mental residual functional capacity (RFC) and ability to work. Current SSA policy recognizes that the reaction to the demands of work is highly individualized. See Social Security Ruling (SSR) 85-15. We caution against any approach that attempts to discount the highly individualized response to work for individuals with mental/cognitive limitations. As noted in SSR 85-15: "Any impairment-related limitations created by an individual's response to demands of work ... must be reflected in the RFC assessment."

SSR 85-15 provides crucial guidance in the evaluation of mental residual functional capacity, stating that the mental RFC finding requires "careful consideration." SSR 85-15 describes the basic mental demands of competitive, remunerative, unskilled work:

- The ability (on a sustained basis) to understand, carry out, and remember simple instructions;
- The ability to respond appropriately to supervision, coworkers, and usual work situations; and
- The ability to deal with changes in a routine work setting.

The SSR states that:

"A substantial loss of ability to meet any of these basic work-related activities would severely limit the potential occupational base. This, in turn, would justify a finding of

disability because even favorable age, education, or work experience will not offset such a severely limited occupational base.”

We believe that the policy guidance regarding the basic mental demands of work in SSR 85-15 must be retained.

**Evaluation of stress.** SSR 85-15 goes on to discuss stress in a way that is illustrative of the impact of individualized evaluations. A particular job is not, in and of itself, stressful. It is the individual’s response to stress that is critical in evaluating mental RFC. SSR 85-15 provides excellent guidance addressing how stress should be assessed and emphasizing “the importance of thoroughness in evaluation on an individualized basis.” SSR 85-15 cautions against creating any type of presumption in evaluating stress regarding a specific individual:

The reaction to the demands of work (stress) is highly individualized, and mental illness is characterized by adverse responses to seemingly trivial circumstances. The mentally impaired may cease to function effectively when facing such demands as getting to work regularly, having their performance supervised, and remaining in the workplace for a full day. A person may become panicked and develop palpitations, shortness of breath, or feel faint while riding in an elevator; another may experience terror and begin to hallucinate when approached by a stranger asking a question. Thus, the mentally impaired may have difficulty meeting the requirement of even so-called “low stress” jobs.

Because response to the demands of work is highly individualized, the skill level of a position is not necessarily related to the difficulty an individual will have in meeting the demands of the job. A claimant’s condition may make performance of an unskilled job as difficult as an objectively more demanding job; for example, a busboy need only clear dishes from tables. But an individual with a severe mental disorder may find unmanageable the demand of making sure that he removes all the dishes, does not drop them, and gets the table cleared promptly for the waiter or waitress. Similarly, an individual who cannot tolerate being supervised may be not able to work even in the absence of close supervision; the knowledge that one’s work is being judged and evaluated, even when the supervision is remote or indirect, can be intolerable for some mentally impaired persons. Any impairment-related limitations created by an individual’s response to demands of work, however, must be reflected in the RFC assessment.

The guidance provided in SSR 85-15 remains relevant and valid today and should be part of any new occupational information system.

**Demonstration or Study: More Fully Consider Assistive Devices and Accommodations (H.R. 5260 section 302):**

We are unclear exactly what such a demonstration or study would involve. The provision would require SSA to complete a study on more fully considering the availability of assistive devices and workplace accommodations in the disability determination process. We are unclear what “more fully” is designed to mean here. Assistive devices and workplace accommodations are already considered in the disability determination process to the extent that it is warranted. We are very concerned that any requirements to “more fully” consider these items will lead to people

being denied benefits based on some hypothetical device or accommodation that would not actually be available or provided. Some important things to keep in mind:

- Not all employers are covered by the Americans with Disabilities Act (ADA) and therefore many small employers are not required to provide accommodations.
- Not all assistive devices are available to workers – just because an assistive device might exist that would hypothetically help a person with a certain condition to be able to work, does not mean that an individual would have access to that device.
- Not all accommodations have to be provided under the ADA – even if an accommodation or assistive device is theoretically available, it might not be available to a worker in a hypothetical job because doing so might not be deemed reasonable. If providing the accommodation would present an undue hardship for an employer, because it is too expensive for example, the accommodation would not be provided – even though it theoretically exists. Taking such a theoretical accommodation, that would never be provided, into account would actually make the disability determination less accurate rather than more.

In addition, SSA has had clear policy for many years that the “reasonable accommodations” provision in the Americans with Disabilities Act (ADA) should not be a factor in determining whether an individual claimant is able to perform a specific job in the SSA disability process. There is no “reasonable accommodation” requirement in the Social Security Act. The Social Security disability process addresses the issue of available jobs that exist in significant numbers on a hypothetical basis. Trying to determine reasonable accommodations by a hypothetical class of employers for hypothetical jobs is antithetical to the purpose of the ADA, which looks at evidence about how an individual will function in a particular employment situation.

Over the years, there are some who have attempted to merge the purposes of the ADA and the Social Security and SSI disability programs. However, the distinction between the two programs was recognized by SSA as long ago as 1993 when the former SSA Associate Commissioner for the Office of Hearings and Appeals addressed the issue when it first arose in some Administrative Law Judge (ALJ) hearings. He noted:

“Whether or how an employer might be willing (or required) to alter job duties to suit the limitations of a specific individual would not be relevant because our assessment must be based on broad vocational patterns ... rather than on any individual employer’s practices. He concluded that “the ADA and the disability provisions of the Social Security Act have different purposes and have no direct application to one another.”

The United States Supreme Court also has recognized that the two programs were designed for different purposes. In *Cleveland v. Policy Management Systems Corp.*, the U.S. Supreme Court noted that the Social Security Act provides cash benefits to individuals under a “disability” as defined in the Act, while the ADA “seeks to eliminate unwarranted discrimination against disabled individuals.” The Supreme Court found that “there are too many situations in which an SSDI claim and an ADA claim can comfortably exist side by side” and thus held it would not apply a negative presumption that an individual who applies for or receives SSDI cannot pursue an ADA claim. The Supreme Court provided specific examples how the ADA and SSDI programs “can comfortably exist side by side.”

Injecting the ADA requirement of “reasonable accommodations” into the SSA disability process misreads the intent of the ADA. The ADA is a civil rights law protecting, among others, employees and job applicants with disabilities. The SSA is not charged with enforcement over employers under the ADA. Establishing criteria in the OIS and SSA disability process that assumes reasonable accommodations by the employer may potentially establish barriers for the individual by shifting the employer’s burden of compliance with the ADA onto potential employees, i.e., claimants.

The inclusion of ADA criteria in the SSA disability determination process will confuse and hinder accurate disability determinations. For example, if the OIS includes accommodations, what happens if an individual with severe disabilities who was denied employment is determined to be “not disabled” by SSA if the adjudicator finds that, under the new OIS, a reasonable accommodation could have been made because that occurred for a worker with “similar” limitations? Could SSA conclude, without conducting an individualized assessment, that a claimant is “not disabled” because an incumbent worker with the “same” impairments and limitations is able to perform substantial gainful activity because of a reasonable accommodation?

### **Referral to Vocational Rehabilitation for Denied Applicants**

We support providing the Commissioner with the authority to refer denied applicants to the State Vocational Rehabilitation Agencies (SVRA) for vocational services and to other appropriate entities as contained in H.R. 5260 section 303. It is important to note that the resources currently available to SVRAs is not sufficient to serve the people already interested in receiving services and many states are in an order of selection and have waiting lists for services. We would support increased funding to SVRAs to assist them in providing services to more eligible individuals.

### **Required Reports**

The undersigned organizations support requiring SSA to provide additional reports to Congress. We support the following provisions:

- Assessment of the past year’s fraud and error prevention activities (H.R. 4090 section 2)
- Number of cases that received quality reviews (H.R. 5260 section 201)
- Report on work CDRs (H.R. 4090 section 5)
- Statement of assets to include value of real property (H.R. 5260 section 401(c))

We support but have some concerns regarding the other reports required in the bills.

Although we generally agree with section 203 of H.R. 5260 reporting requirements on “Increased Transparency,” we believe it omitted some very important data, such as that required by section 5 of H.R. 4090 (“Report on Work-Related Continuing Disability Reviews”). We support efforts to make more comprehensive program information publically available. We also encourage the inclusion of additional post-eligibility aspects of both the SSDI and SSI disability programs to the information called for in section 203 of H.R. 5260, such as the number of earnings reports received by Social Security and the work-related CDRs identified in section 5 of H.R. 4090.

However, while we support the examination of this information in order to guide accuracy and consistency in decision making, we expect that this information would not be used in any way that would impair Social Security's ability to continue the protection of the right for each applicant, recipient or beneficiary to receive an individualized assessment of their case.

Finally, we support the requirement for SSA to report on any demonstrations or pilots conducted under 42 U.S.C. § 1110 contained in H.R. 5260 section 302. However, we are concerned that this provision not prevent SSA from initiating demonstrations or be required to get explicit Congressional authorization to initiate pilots or demonstrations.

### **Technology and Data**

**Interagency work group:** We fully support maximizing the use of data exchanges to help ensure the accuracy of Social Security disability payments as is outlined in H.R. 5260 section 204. However, we also realize that entering into data exchange agreements can take a significant amount of time, as well as resources, especially when interacting with 50 different state data systems. Although we have no concerns regarding SSA participating on an interagency workgroup, we are concerned that any plans they come up with have realistic timelines for establishing data sharing agreements, as well as funding with which to do so. SSA's own data systems are not fully interoperable at this time and establishing additional data exchanges might only exacerbate current problems, especially if additional funding is not provided to address data system compatibility issues.

**Online Tools for Earnings Information:** We support ensuring that beneficiaries have access to accurate information regarding how earnings will affect their eligibility for benefits. We do, however, have significant concerns regarding requiring SSA to create essentially 50 different benefit and work calculator pages. We believe this would be expensive to develop and would require consistent updating and funding to ensure accuracy, especially regarding state level benefits. Rather than creating new online tools, additional funding could be provided to the Work Incentives Planning and Assistance and Protection and Advocacy for Beneficiaries of Social Security programs.

### **Conclusion**

Thank you for the opportunity to share our views on the provisions in H.R. 4090, the Social Security Fraud and Error Prevention Act of 2014, and H.R. 5260, the Stop Disability Fraud Act of 2014. If you have any questions please contact the CCD Social Security Task Force by emailing Lisa Ekman at [lekman@hdadvocates.org](mailto:lekman@hdadvocates.org) and T.J. Sutcliffe at [sutcliffe@thearc.org](mailto:sutcliffe@thearc.org).

Sincerely,

Goodwill Industries International  
Health & Disability Advocates  
Lutheran Services in America Disability Network  
National Academy of Elder Law Attorneys  
National Alliance on Mental Illness  
National Association of Disability Representatives  
National Committee to Preserve Social Security and Medicare

National Disability Rights Network  
National Organization of Social Security Claimants' Representatives  
Paralyzed Veterans of America  
SourceAmerica  
Special Needs Alliance  
The Arc of the United States  
United Spinal Association