



**CONSORTIUM FOR CITIZENS  
WITH DISABILITIES**

September 1, 2015

The Honorable Orrin Hatch  
Chair, Committee on Finance  
U.S. Senate  
219 Dirksen Senate Office Building  
Washington, DC 20510

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 Paul Ryan  
Chair, Committee on Ways and Means  
U.S. House of Representatives  
1102 Longworth House Office Building  
Washington, DC 20515

Re: Recommendations to improve the Social Security Disability Insurance program

Dear Senator Hatch, Representative Ryan, and Representative Johnson:

These comments are submitted by the undersigned members of the Consortium for Citizens with Disabilities (CCD) Social Security Task Force. CCD is a consortium of national consumer, advocacy, provider and professional organizations headquartered in Washington, D.C. Since 1973, the CCD has advocated for federal public policy that ensures the self-determination, independence, empowerment, integration, and inclusion of the approximately 57 million children and adults with disabilities in all aspects of society. The CCD Social Security Task Force focuses on disability policy issues in the Title II disability programs and the Title XVI Supplemental Security Income (SSI) program.

You have requested input on three topics:

1. Ways to improve the financial outlook for the Disability Insurance (DI) Trust Fund;
2. Ways to make the Social Security Disability Insurance program work better for current and future beneficiaries; and

3. Ways to promote opportunities for those trying to return to work.

## **1. Congress Must Ensure the Financial Future of Social Security Benefits**

Our nation's Social Security system insures nearly all American workers and their families for retirement and in the event that a worker experiences a qualifying disability, or dies. As part of this system, Social Security Disability Insurance (SSDI) provides modest but vital financial assistance to approximately 11 million Americans. SSDI helps beneficiaries with disabilities and their families to meet their everyday needs -- keeping a roof over their heads, putting food on the table, paying for out-of-pocket medical and disability-related expenses, and paying for other basic living expenses.

The CCD Social Security Task Force strongly supports efforts to help beneficiaries to obtain and maintain employment to expand economic opportunity and promote self-determination, independence, empowerment, integration, and inclusion. Improving the SSDI program work incentives and providing better employment supports and services is an essential part of these efforts. Below, we provide highlights of the many recommendations for strengthening SSDI work incentives that the CCD Social Security Task Force has made over the last several decades.

With the impending depletion of the Disability Insurance (DI) Trust Fund, beneficiaries face a 20 percent across-the-board benefit cut in just over one year. Given the critical role that SSDI plays in the lives of beneficiaries and their families, our longtime position is that limiting coverage or eligibility or cutting benefits will harm beneficiaries and their families, and will not help anyone to work. ***What is needed is a guarantee that SSDI will be maintained through reallocation, without cutting coverage, eligibility, or benefits, to ensure continued benefits through 2034.***

Congress has known for nearly two decades that Social Security's DI Trust Fund will need to be replenished by 2016. The need for action now is no surprise, but stems from long-term demographic trends including an aging workforce now in its disability-prone years, and an increase in work by women that has led to an increase in women's eligibility for Social Security including SSDI based on their own work records.

Congress must act to ensure that SSDI is available to both current and future beneficiaries, including the 7 in 10 SSDI beneficiaries who are age 50 and older. SSDI benefits average just under \$40 per day for workers with disabilities. Benefits make up the majority of income for 4 out of 5 beneficiaries and provide the sole source of income for 1 in 3 beneficiaries. The impact of any reduction in benefits could be truly devastating.

Congress needs to act expeditiously, either to merge Social Security's DI and Old-Age and Survivors' Insurance (OASI) Trust Funds, or to reallocate a portion of payroll taxes as it has done many times in the past. A modest reallocation would enable both trust funds to pay full scheduled benefits through 2034 by temporarily raising the 1.8 percent DI Trust Fund share of the current 12.4 percent Social Security payroll contribution to 2.8 percent, and then gradually reducing it back to its current level of 1.8 percent. Congress has reallocated between Social Security's trust funds in this manner 11 times in the past, about equally in both directions, to keep the system on an even reserve ratio. Reallocation or merging the trust funds does not require any new taxes and would maintain the long-term solvency of the combined Social Security trust funds for approximately 18 years.

Merging Social Security's trust funds or reallocating payroll taxes to ensure solvency through 2034 – without any accompanying cuts to Social Security coverage, eligibility, or benefits – is the common sense, responsible solution that Congress should enact promptly. Such action by Congress is needed to keep Social Security's promise to the more than 165 million Americans who currently contribute to the system and the nearly 11 million Americans who currently receive SSDI benefits.

## **2. Making SSDI Work Better for Current and Future Beneficiaries**

Since CCD's founding in 1973, the Consortium and the CCD Social Security Task Force have developed numerous recommendations for strengthening SSDI for both current and future beneficiaries. We present highlights of our recommendations below.

The CCD Social Security Task Force believes that proposed changes to any program, including SSDI, must be developed and evaluated by looking beyond budgetary effects to understand the actual impact on people's daily lives now and in the future. For this reason, CCD has long recommended that Congress request a beneficiary impact statement for any proposed change to our Social Security system, including SSDI.

Furthermore, the Social Security Administration (SSA) must have sufficient resources to meet the service needs of the public and ensure program integrity. 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. SSA's overall administrative budget is less than 1.3 percent of benefits paid out each year.<sup>1</sup> For SSDI, administrative spending is at a near-historic low of 2.0 percent of benefits paid out in 2014 (up just one-tenth of one percent from a historic low of 1.9 percent in 2013).<sup>2</sup> Adequate administrative funding is essential to preventing service degradation and ensuring that SSA can provide timely and accurate payments, perform necessary program integrity work, and successfully implement initiatives to make SSDI work better for current and future beneficiaries.

The CCD Social Security Task Force has developed the following Reform Principles that guide the recommendations that we present below.

**Principle 1:** Preserve the basic structure of Social Security's disability programs, including the definition of disability.

Social Security's disability programs are critical to people with disabilities and their families. Their basic structure is effective and should be preserved. Any efforts to change the Social Security disability programs must protect and expand the effectiveness of these income support programs, as well as protect access to the corresponding health coverage provided through Medicare and Medicaid. Additionally, because the intent of the Social Security disability programs is to provide income support for individuals who do not have the capacity to work, the existing definition of disability is appropriate. The current definition is strict, providing benefits only to individuals with the most significant impairments. The current structure also provides

---

<sup>1</sup> See p. 7, <http://ssa.gov/budget/FY16Files/2016BO.pdf>.

<sup>2</sup> <http://www.ssa.gov/oact/STATS/admin.html>.

sufficient flexibility to allow for policies that promote employment for beneficiaries who are able to do some work.

**Principle 2:** Efforts should be made to increase employment opportunities and improve employment outcomes for Social Security disability beneficiaries, but those efforts should not be achieved through any tightening of eligibility criteria for cash benefits and/or narrowing of health care benefits.

CCD supports new legislative and regulatory proposals that could increase employment opportunities for individuals with disabilities who receive Social Security disability benefits. However, new initiatives should be funded outside of the Social Security disability benefit structure and should not come at the expense of existing Social Security disability benefits. A top priority for CCD is to retain current eligibility criteria for income support and associated health care benefits while also promoting ways to improve employment outcomes for individuals with disabilities who have the capacity for work.

Programs designed to allow flexibility for people with disabilities to return to work, including programs authorized under the Ticket to Work and Work Incentives Improvement Act (TWWIA), should be supported in order to provide Social Security disability beneficiaries with the flexibility they need to return to work. These programs offer people with disabilities the options to try different work opportunities without the risk of losing their benefits should a return to work be unsuccessful. Providing individuals with disabilities the opportunities to work up to their capacity without risking the vital income support and health care coverage allows them the chance to increase their independence and self-sufficiency.

**Principle 3:** Given that Social Security disability program beneficiaries have already been found unable to perform substantial gainful activity, participation in work or activities to prepare for work should remain voluntary.

While it is critical that high-quality employment services be made readily available to all beneficiaries, the person with a disability is in the best position to evaluate his or her own health condition and ability to participate in such activities. Because many people with disabilities face great challenges in returning to work, and because of the significant diversity of disabilities represented within the Social Security disability programs, receipt of Social Security disability benefits should not be conditional on participation in work or work preparation activities. CCD therefore opposes any type of work requirements in the Social Security disability programs, including any requirements that beneficiaries participate in community service, volunteer work, vocational rehabilitation, training, or other pre-employment activities as a condition of receiving benefits or to avoid sanctions.

**Principle 4:** Eligibility and cash benefits should not be subject to time limits.

In our experience, even those beneficiaries who eventually attain self-supporting employment may take a long time to do so. Placing arbitrary time limits on benefits could be counterproductive and exacerbate physical or mental health problems. It is also impossible to predict who might be able to work at a self-sustaining level as the course a disability or illness may take is unpredictable and definitely is not known ahead of time. For those who are not able to attain a significant level of employment, or not able to do so within the prescribed time

frames, a time-limited program would greatly increase the need for repeated applications and adjudications, causing great stress for beneficiaries as well as increased administrative costs for the Social Security Administration. The current policy of conducting continuing disability reviews avoids these problems and additional costs, while ensuring that individuals who no longer qualify for the program have their benefits terminated.

### **Improvements to the SSDI Application Process**

Improving Social Security's disability determination process at the initial levels can go a long way towards reducing the disability claims backlog, making the process more efficient for both claimants and SSA, and enhancing accuracy in decisions and payments. In many cases, SSA can implement improvements without the need for statutory changes. However, as noted above, regardless of whether statutory revisions are required, Congress must provide adequate administrative funding to ensure proper implementation.

Needed improvements include:

***Expand existing tools for expediting disability determinations.*** SSA already has in place several successful methods of expediting disability determinations for claimants whose conditions are so severe that they clearly meet the Social Security disability standard. These include the Quick Disability Determinations (QDDs), Compassionate Allowances, and terminal illness ("TERI") cases. Compassionate Allowances allows SSA to quickly identify claimants with severe, often terminal conditions such as certain advanced cancers and life-threatening neurological disorders, for which there is broad agreement that the severity of the impairment without question meets the Social Security disability standard. QDDs use a computer-based predictive model to identify cases where a medical eligibility is highly likely and medical evidence is readily available, enabling the state Disability Determination Services (DDSs) to expedite case processing. Initiatives such as QDD and Compassionate Allowances allow SSA to review cases more efficiently, while expediting approval for claimants with the most severe conditions and illnesses.

***Support expedited screening initiatives.*** The Senior Attorney Program allows senior staff attorneys in hearing offices to issue fully favorable decisions in cases that can be decided without a hearing (i.e. "on the record"). In recent years, the number of fully favorable decisions issued by senior attorneys has dropped significantly and as a result, has contributed to the record number of cases pending at the hearing level and the significant increase in processing times. SSA should provide the training and oversight necessary to ensure program integrity within these initiatives, while allowing senior attorneys to review and issue fully favorable decisions on cases where awards of benefits are clearly indicated.

***Provide more training and guidance to adjudicators.*** This training and guidance should focus on policies that are frequently misapplied. Examples include standards for weighing medical evidence, and the role of non-physician evidence.

***Expand the list of "acceptable medical sources" to include nurse practitioners, physician assistants, and licensed clinical social workers.*** Delays in the disability claims process often arise when SSA requires a consultative examination (CE) to confirm the diagnosis made by a nurse practitioner, physician assistant, or licensed clinical social worker. Millions of Americans

rely on these licensed practitioners as their primary providers of physical and mental health care. Based on current trends, these health professionals will become an increasing part of the nation's healthcare workforce – a role that the federal government is committed to promoting. Because these professionals are licensed by states, expanding the list of acceptable medical sources to include them protects the integrity of the disability programs. Most importantly, it will streamline the process, ensuring that eligible individuals access benefits in a timely manner.

***Improve development of evidence earlier in the process.*** Improvements at the initial levels facilitate thorough development of claims and enable SSA to make the correct decision early on in the process. Inadequate case development at the DDS level can result in inappropriate denials and increased workload at ODAR, due to more appeals as well as more cases requiring additional development, leading to longer wait times at the hearing level. Recommendations include:

- Provide more assistance to claimants at the application level regarding necessary and important evidence so that all impairments and sources of information are identified, including non-physician and other professional sources. This is especially important for claimants with mental impairments and limited English proficiency.
- Ensure that questionnaires and forms are understandable to claimants and as free of jargon as possible, as well as appropriately tailored to specific types of impairments and probative of information that addresses the disability standard as implemented by SSA. This “language” barrier can lead to incomplete applications missing key details needed for full development of the claim.
- As with paper records, electronic records need to be adapted to meet the needs of the SSA disability determination process. Many providers submit evidence electronically; these records are based on the providers’ needs but often do not address the SSA disability criteria.
- Provide better explanations to medical providers. SSA and DDS forms and questionnaires should provide better explanations to all providers, in particular to physician and non-physician treating sources, about the disability standard and should ask questions that are probative of evidence and information relevant to the standard. Unclear, hard to understand forms can result in incomplete responses as well as delays in obtaining medical evidence, even from supportive and well-meaning doctors.
- Improve the quality of consultative examinations. Steps should be taken to improve the quality of the CE process. There are many reports of inappropriate referrals (e.g., to providers with the wrong specialty given the claimant’s condition(s)), short perfunctory examinations, and failure to provide an interpreter during the exam. In addition, there should be more effort to have the treating physician conduct the consultative examination, as authorized by SSA’s regulations.
- Increase reimbursement rates for providers. To improve provider response to requests for records, appropriate reimbursement rates for medical records and reports need to be established. Appropriate rates should also be paid for CEs and for medical experts who testify at hearings, to ensure availability of qualified medical professionals. Appropriate reimbursement rates would also increase the frequency with which treating physicians agree to conduct CEs at SSA’s request, enabling adjudicators to obtain additional medical evidence from a treating source already familiar with the claimant’s condition(s) and medical history.

***Help claimants obtain representation earlier in the process to assist with development.***

Representatives play an important role in obtaining medical and other information to support their clients' disability claims and helping SSA to streamline the disability determination process. They routinely explain the process and procedures to their clients with more specificity than SSA. They obtain evidence from medical sources, other treating professionals, school systems, previous employers, and others who can shed light on the claimant's entitlement to disability benefits. Given the importance of representation, the Social Security Act requires SSA to provide information on options for seeking legal representation, whenever the agency issues a notice of any "adverse determination." This statutorily required information is typically provided only once the claimant has requested a hearing before an ALJ. SSA should provide claimants with more information on options for representation before and during the initial application process.

***Abolish reconsideration.*** SSA has tested the elimination of reconsideration in the ten "prototype" states since 2000: Alabama, Alaska, California (Los Angeles), Colorado, Louisiana, Michigan, Missouri, New Hampshire, New York (Albany and New York City), and Pennsylvania. In states where it still exists, many representatives and claimants view the reconsideration level as a "rubber stamp" step that must be endured before moving on to a hearing before an ALJ. Until recent years, the reconsideration processing time was 60 to 90 days; however, in FY 2014 the average processing time for a disability reconsideration was 107 days and there were 170,000 cases pending reconsideration.<sup>3</sup> The Task Force has long been on record as supporting elimination of reconsideration and providing more time and effort to better develop disability claims at the initial level. In response to SSA's 1994 "reengineering" proposal,<sup>4</sup> the Task Force submitted comments in favor of eliminating reconsideration, while urging SSA to "collect the correct information at the earliest possible time in the process to ensure that correct decisions are made the first time. SSA must improve the collection of medical and nonmedical evidence by explaining what is needed and asking the correct questions, with appropriate variations for different sources."<sup>5</sup>

***Increase the advance notice of the hearing date from 20 days to 75 days.*** More notice will allow claimants and representatives more time to obtain medical evidence before the hearing and make it far more likely that the record will be complete when the ALJ reviews the file before the hearing. The 75-day time period has been in effect in SSA's Region I states since August 2006 and, based on reports from representatives, has worked well.

***Support technological improvements, so long as they do not infringe on claimants' rights.*** SSA has implemented a number of significant technological improvements that have helped claimants and their representatives and made the process more efficient for SSA. These include Electronic Records Express, which allows registered claimants' representatives to submit evidence electronically; online access to claimants' electronic folders; electronic filing of appeals; and the use of video hearings for claimants who agree to them.

---

<sup>3</sup> <http://www.ssa.gov/budget/FY16Files/2016BO.pdf> p. 9

<sup>4</sup> 59 Fed. Reg. 18188 (Apr. 15, 1994).

<sup>5</sup> See [http://www.c-c-d.org/fichiers/CCD\\_House\\_W&M\\_Jt\\_Subcomm4-27-10\\_FINAL.pdf](http://www.c-c-d.org/fichiers/CCD_House_W&M_Jt_Subcomm4-27-10_FINAL.pdf), p.8, citing to CCD comments in 1994.

## **Improvements Post-Eligibility**

***Abolish the five-month wait for SSDI benefits.*** Individuals and their families should not have to face such an extended period of ineligibility during which they must exhaust their limited savings or face possible bankruptcy.

***Eliminate the 24-month waiting period for Medicare.*** We do not limit this recommendation only to individuals facing a terminal illness because we do not support making distinctions within the disability program based on individuals' diagnosis or condition. The 24-month waiting period for Medicare imposes significant hardships on SSDI beneficiaries, who have limited or no earnings and very serious health problems and who are likely to need medical coverage. In fact, an estimated 13 percent of entrants die before they complete the Medicare waiting period.<sup>6</sup> The waiting period creates a situation where individuals must find resources to cover their medical care at a time when their future ability to earn and replenish those resources is most in question. Many go without care that might have stabilized or even reversed their medical condition as a result of not having immediate access to Medicare. Nearly 1 in 4 SSDI beneficiaries went without any health insurance during the first year of the Medicare waiting period when the issue was last examined in 2009.<sup>7</sup> Although some of those individuals might now be able to get affordable access to health insurance coverage during the waiting period because of the Affordable Care Act, it is very likely that a significant percentage of SSDI beneficiaries still lack any health insurance during the waiting period.<sup>8</sup>

Federal costs of eliminating the waiting period will be mitigated by the fact that Medicaid is picking up much of the new costs that Medicare would incur for health care to SSDI beneficiaries during the waiting period. . Thus, eliminating the waiting period would also benefit states because their Medicaid costs would decline as Medicare covered some of the costs states now incur. Stabilizing one's health requires consistent access to health care. Good health is key to a successful return to work. Failure to have access to health coverage undermines the person's ability to stabilize his or her condition and to later attempt a return to work when that is appropriate.

***Improve earnings and other report processing, establish a time limit for notices about overpayments and, absent fraud, hold beneficiaries harmless after that time period.*** SSDI beneficiaries can end up owing SSA substantial sums as a result of overpayments for which they were not at fault. This occurs when an individual contacts SSA to report earnings or other life changes but SSA fails to input the information into its computer system or to make the needed adjustments in the person's benefits. Months or even years later, SSA determines that the person was overpaid and sends a notice to this effect. Recovering the overpayment may result in a complete loss of cash benefits. This is a disincentive to work and a major financial hardship, and it also can affect the person's health care coverage. SSA should help promote work efforts and beneficiaries' financial stability by reducing the risk of overpayments. SSA should establish a

---

<sup>6</sup> Livermore, Stapleton & Claypool (2009), "Costs and Benefits of Eliminating the Medicare Waiting Period for SSDI Beneficiaries." Washington, DC: Mathematica. <http://www.mathematica-mpr.com/publications/PDFs/disability/medicarewaitperiodbr09-02.pdf>.

<sup>7</sup> Id.

<sup>8</sup> Individuals might fall through the coverage cracks in the Affordable Care Act if they live in a state that did not expand Medicaid and coverage through the exchange might be too expensive despite the potential availability of subsidies given their very limited income.

time limit for notices about overpayments and, absent fraud, hold beneficiaries harmless after that time limit. It is unfair to punish beneficiaries for SSA's inability to establish and maintain an accurate tracking mechanism and, ultimately, counterproductive to a national goal of promoting employment and income security among persons with disabilities.

SSA should ensure that beneficiaries who follow the rules are not penalized. SSA should adopt an "estoppel" provision that gives SSA four months to adjust benefits and notify beneficiaries of existing overpayments. For beneficiaries who have followed the law by properly reporting their earnings, if SSA fails to act within the four months to adjust benefits and notify the beneficiary, SSA would be prohibited from collecting back overpayments. Further, SSA field office staff should have the same incentives to process earnings reports as they do to complete other work. These changes would result in a system that is fairer to beneficiaries and would likely save taxpayer dollars.

***Eliminate marriage penalties.*** Penalties may apply when DI beneficiaries receiving disabled adult child (DAC) benefits marry. SSI recipients also face penalties when they marry, including undergo deeming of income from a non-eligible spouse. People with disabilities who receive Social Security or SSI benefits should be able to enjoy the same social, financial, and emotional benefits that marriage offers all other Americans.

***Exempt DAC beneficiaries from the family maximum if they live outside the family home.*** When a Disabled Adult Child (DAC) beneficiary draws benefits, the retired worker's spouse's benefits are adjusted for the family maximum. If three or more beneficiaries live in the same household, expenses and income can be shared as a family. However, people with disabilities are increasingly receiving support to live more independently and often individuals who qualify for DAC benefits do not live with their parents. Even though they do not share expenses with their adult child, the retiree and spouse receive a reduced monthly income. It is possible to resolve the situation by following the precedent established by treatment of a divorced spouse: even though the divorced spouse draws from the retiree's record, the divorced spouse's benefit does not affect the family maximum or the benefits of other family members.

***Revise benefit levels for disabled widows/widowers.*** Under current law, a widow(er) gets a 33 to 50 percent lower benefit than that previously received by the married couple. Although a single person can afford to live on a somewhat lower monthly check than a married couple, these reductions are too large and force many widow(er)s into poverty. A sensible reform would ensure that lower-income widow(er)s get 75 percent of the couple's benefit.

***Repeal seven-year time limit for disabled widow(er)s.*** We recommend modifying or eliminating restrictions that only allow a disabled widow(er) to collect benefits if he or she is at least age 50 and the disability began either: (1) within seven years of the spouse worker's death; or (2) from the last time the widow(er) received Social Security mother's/father's benefits on the spouse worker's record while caring for the worker's minor children after the worker's death. If a person stayed home to care for the couple's children (during the marriage and/or after the worker's death), it is likely that the benefit she could receive as a disabled worker would be low due to many "zero" years in the work record. If she does have a substantial work record, then it is much more likely that she would receive Title II disabled worker's benefits on her own record, rather than a benefit on her deceased spouse's record, unless she is unable to meet the recency of work test. We believe that the cost to improve the rules for qualifying for disabled widow(er)'s

benefits would be modest. As a practical matter, more women now have work records of their own and are likely to receive payment on their own accounts. It also would have no effect in most households in which the couple had fairly equal earnings. Meanwhile, for those who do not have a significant work record of their own — most likely as a result of caring for children or inability to work as a result of the disability which is the basis for the application (or both), improving the rules would provide them with much-needed cash assistance and access to Medicare (which they would not otherwise have until they turn 65).

### **3. Helping SSDI Beneficiaries Work**

The CCD Social Security Task Force strongly supports increasing efforts to help people with significant disabilities to work to their fullest potential. The CCD Social Security Task Force has written extensively and testified before Congress on numerous occasions, regarding the multi-faceted approaches needed to modernize the Social Security disability programs to increase opportunities for beneficiaries to work, to provide support to help people with disabilities remain attached to the labor force, and to deliver the training, services and supports that people with disabilities, including SSDI and SSI beneficiaries, may need to return to work.

Some of our major recommendations for modernizing the Social Security disability program work incentives are discussed below. We believe that these kinds of reforms should be the first line of exploration when considering options for strengthening the Title II and Title XVI disability programs, and have the best chance of increasing employment while ensuring that people with the most significant disabilities do not risk the loss of vital income support.

As noted above, development of any system to enhance work among SSDI and SSI beneficiaries must start with the needs of beneficiaries and be designed to meet those needs. Although we believe reforms are urgently needed to maximize opportunities for SSDI and SSI beneficiaries to work, we do not expect significant cost savings from these reforms. If cost saving becomes the major driver of Social Security disability program reform, the unintended consequences for current and potential beneficiaries could be severe.

As a general matter, we have serious concerns that people with disabilities could be hurt by implementation of untested proposals. Additionally, certain proposals could have the unintended consequence of actually making it *more* difficult for people with disabilities to obtain employment. We urge thoughtful consideration and testing prior to endorsing or implementing changes to the Social Security disability programs. In addition, we urge caution in considering changes that could cause individuals to lose access to SSDI or SSI benefits.

Further, we believe that modernizing the Social Security disability programs to improve employment outcomes must occur in close coordination with enhancement of a range of other vital supports and services to ensure that workers with disabilities have a fair shot at success with employment. In our experience working with people with disabilities, a myriad of factors contribute to the high rate of unemployment among beneficiaries with disabilities. These include the systemic lack of access to post-secondary education, employment services, health insurance, long-term supports and services, and paid leave and sick days, as well as the need for easily accessible, reliable transportation and affordable, accessible housing. All of these factors can conspire to trap people with disabilities in a cycle of poverty, and must be considered and

addressed in constructing a system to assist beneficiaries with disabilities to achieve greater economic self-sufficiency.

The following represent some of our key recommendations over the years, but are by no means comprehensive.

### **Renew SSA's Title II demonstration authority**

DI beneficiaries face a complex set of rules regarding earnings, and, in the case of concurrent beneficiaries who receive DI and SSI, regarding assets as well. Demonstrations allow SSA to test additional ways to help beneficiaries navigate the system and can provide important information about effective strategies for assisting beneficiaries in attempting to work or return to work. Currently, SSA has demonstration authority for its Title XVI programs, but demonstration authority for the Title II programs expired in 2005. Congress should extend SSA's Title II demonstration authority and should include the same protections for beneficiaries included in the Title XVI demonstration authority. The CCD Social Security Task Force has principles for Title II demonstrations, available at:

[http://c-c-d.org/fichiers/CCD\\_SS-Disability\\_Demonstration\\_Principles-Final-1-14.pdf](http://c-c-d.org/fichiers/CCD_SS-Disability_Demonstration_Principles-Final-1-14.pdf).

### **Decouple access to supports and services from Social Security disability programs**

As attitudes and expectations regarding people with disabilities have evolved over time, so has our nation's system of programs designed to support people with disabilities to live independently. Though the purpose of the Social Security disability programs is partial wage replacement for people experiencing limited earnings capacity, these programs became the "gateway" for accessing other needed supports and services. Many other important programs use eligibility for Social Security disability benefits to determine eligibility for the other benefits. For example, receiving a disability determination from Social Security and receiving SSI automatically entitles a person to receive Medicaid in most states; similarly, SSDI eligibility confers eligibility for Medicare, after a 24-month waiting period as noted above.

While access to healthcare via Medicare and Medicaid should not be jeopardized in any way for SSDI and SSI beneficiaries, we believe there should be pathways to accessing public health insurance for all individuals with disabilities, without needing to apply and be found eligible for income support benefits (whether needed or not) as a prerequisite to accessing the services and supports they need.

### **Keep work participation voluntary**

As noted above, given that SSDI beneficiaries have already been found unable to perform substantial gainful activity, participation in work or activities to prepare for work should remain voluntary. While it is critical that high-quality employment services be made readily available to all beneficiaries, the person with a disability is in the best position to evaluate his or her own health condition and ability to participate in such activities. Because many people with disabilities face great challenges in returning to work, and because of the significant diversity of disabilities represented within the Social Security disability programs, receipt of Social Security disability benefits should not be conditional on participation in work or work preparation activities. The CCD Social Security Task Force therefore opposes any type of work requirements in the Social Security disability programs, including any requirements that beneficiaries

participate in community service, volunteer work, vocational rehabilitation, training, or other pre-employment activities as a condition of receiving benefits or to avoid sanctions.

**Ensure continuation of the Work Incentive Planning and Assistance (WIPA) and Protection and Advocacy for Beneficiaries of Social Security (PABSS) programs**

WIPA and PABSS, established in 1999, provide critically important employment services that help beneficiaries of Social Security's SSDI and SSI disability programs attain greater economic self-sufficiency. WIPA grants go to local non-profits and other agencies to support outreach, education, and benefits planning services for SSI and SSDI beneficiaries about work incentives and services for finding, maintaining, and advancing in employment. WIPA grantees inform beneficiaries about the impact that employment will have on their disability income and medical coverage, and address many of the real fears that individuals have about going to work at the risk of losing health coverage. PABSS provides a wide range of services to SSI and DI beneficiaries. This includes information and advice about obtaining vocational rehabilitation and employment services, information and referral services on work incentives, and advocacy or other legal services that a beneficiary needs to secure, maintain, or regain gainful employment. The WIPA and PABSS programs should be permanently authorized and fully funded to prevent service interruptions and loss of well-trained and skilled employees.

**Establish a single substantial gainful activity (SGA) level**

The SGA level for people who are disabled in 2015 is \$1090/month versus \$1,820/month for people who are blind. We believe that there is no justification to distinguish the level of work effort between these two groups. We do not support a reduction in the SGA level for people who are blind, but instead recommend raising the substantial gainful activity level for people who are disabled to the level used by people who are blind. Annual indexing of the SGA level should continue to adjust for inflation and cost of living increases.

**Clarify work subsidy issues as they impact determinations of SGA**

Another work disincentive for disabled beneficiaries arises because of the current interpretation of how to value a worker's work effort, i.e., does it exceed SGA. The approach is different for people in supported employment depending upon whether they are supported directly by an employer or by services from an outside source (e.g., a state-funded supported employment agency). As a result, an individual's work effort may exceed SGA when there is third party support while that same work effort may be found not to exceed SGA when there is employer support. This is an arbitrary distinction for the individual, but the result could be critical if, for instance, the individual is found not to qualify for DAC benefits because his or her earnings exceeded SGA level in the past. There may also be additional complications regarding the nature and scope of support provided when determining SGA. For instance, the individual may perform the actual task (bagging groceries, assembling a package, etc.), but may be unable to do so without a job coach who ensures that the individual arrives at work on time properly attired, that he/she interacts appropriately with customers and co-workers, and that he/she remains focused on the assigned job tasks, among other things. SSA appears to distinguish subsidies/non-subsidies depending on whether the job coach does actual "hands-on" work or coaches from the side. We recommend clarifying this issue to help beneficiaries fully utilize Title II work incentives.

### **Improve the rules for impairment-related work expenses (IRWE)**

Under current program rules, beneficiaries can deduct from earned income the costs of IRWEs for SGA determinations. The IRWE deduction can be a significant work incentive by allowing individuals with disabilities to obtain services, medical items, and other assistance that allow them to engage in work activity. CCD proposals for revising IRWE include:

- Apply the current SSI blindness rule to SSDI disability claimants and beneficiaries to allow the consideration of all work expenses, not only those that are “impairment-related.” Currently, for Title II and SSI disability claimants and beneficiaries, only those work expenses that are “impairment-related” are considered. However, the SSI income-counting rules for individuals who qualify based on statutory blindness are more liberal because all work expenses can be deducted, not only those that are “impairment-related.” There is no public policy basis for this continued disparate treatment of people with different significant disabilities.
- Allow beneficiaries to include their health insurance premiums as IRWEs. This would recognize the higher costs incurred by workers with disabilities who must pay premiums for the Medicaid Buy-In or for continued Medicare after the termination of free Part A benefits.

### **Continue benefits pending appeal for those who lose benefits due to earnings above SGA level**

This protection would encourage individuals to attempt work, knowing that if they lose benefits based on their earnings, they can request continued payment while they await a hearing before an ALJ. While the Ticket to Work and Work Incentives Improvement Act of 1999 included some new protections from continuing disability reviews (CDRs) for individuals who work, the 1999 legislation did not include extension of the benefits pending appeal provision in 42 U.S.C. § 423(g) to terminations based on earnings where earnings are above the SGA level, after the trial work period and extended period of eligibility have been met.<sup>9</sup> Considering SSA’s complicated rules for subsidized work, IRWEs, and other work incentives, appeal rights are critical and benefits pending appeal are an important work incentive protection. A person with a disability who may want to attempt to work will be assured that, should SSA determine that s/he is no longer eligible for benefits, continuation of benefits can be requested.

### **Ensure that past work above SGA level does not create work disincentives for people who would otherwise qualify as Disabled Adult Child (DAC) beneficiaries**

We recommend amending the statute to protect young people with severe disabilities, whose conditions began prior to age 22, who might attempt SGA but fear losing future eligibility to receive DAC benefits when their parents retire, die, or become disabled. Individuals who earn above the SGA level at any time before applying for DAC benefits will not be eligible for them. This is a significant work disincentive for people who are severely disabled during childhood and who may need the benefits earned for them by their parents. Existing law allows re-entitlement to DAC benefits after a 7-year re-entitlement period if the beneficiary’s previous entitlement had terminated because of earnings above the SGA level. This same principle could apply to individuals whose parents have not yet retired, died or become disabled. If an individual would receive a DAC benefit, except that his/her parents have not yet retired, died or become disabled,

---

<sup>9</sup> A beneficiary can request benefits pending appeal through the ALJ decision for termination of benefits in a medical CDR. 42 U.S.C. § 423(g).

then the individual should not lose DAC eligibility due to earnings above SGA. A clear statement in the statute could establish that individuals otherwise eligible for DAC benefits (i.e. when their parent dies, retires or becomes disabled) will qualify for those benefits even if they performed work at SGA level at any time during their life. To implement this recommendation, SSA could allow families to secure “protective filing status” for their eligible children. Families would provide SSA with evidence that their children have disabling conditions prior to age 22 and receive a statement from SSA that, should the person ever need DAC (also known as Childhood Disability Benefits (CDB)) because of their inability to work, they will qualify. The use of electronic files now facilitates this process and can ensure the availability of records in future years when needed.

### **Establish an earnings offset in the SSDI program**

One of the most difficult and enduring barriers to work for SSDI beneficiaries is the sudden termination of cash benefits when someone crosses the substantial gainful activity (SGA) threshold after the trial work period. This affects both the individual’s benefits as well as those of any dependent(s). The CCD Social Security Task Force has long been on record supporting the creation of a benefit offset in SSDI to eliminate the work disincentive created by the “cash cliff” and create a “ramp” off of benefits to better support return to work for beneficiaries. There is nearly 30 years of experience regarding the effects of an offset on beneficiaries from the SSI program under the Section 1619 program, which Congress made permanent in 1987 following a demonstration period of 7 years. Combined with the results of the 4 state pilots undertaken in the early 2000s in SSDI, there is ample evidence that Congress should enact a benefit offset in SSDI.

Last year, in response to a request by Majority staff of the House Ways and Means Social Security Subcommittee, the Task Force developed a unified SSDI benefit offset proposal. We have shared and discussed our proposal with both the Majority and Minority Subcommittee staffs. Our proposal includes the following features:

1. Benefit offset level: \$1 benefit offset for every \$2 of earnings over the earning disregard threshold.
2. Earning disregard threshold: Initial earning disregard should be set no lower than the current Trial Work Level (TWL) period earning threshold of \$780 for 2015 (if adopted in 2016 or after should begin with scheduled TWL earning threshold for that year). The earning disregard threshold for SSDI should be indexed in the same manner that TWL is currently indexed annually.
3. The earned income disregard in the Supplemental Security Income (SSI) program should also be increased to the level it would be at if it had been indexed since its inception. The earned income disregard in the SSI program should be indexed after it is increased. For example, the CCD Social Security Task Force is supportive of the approach taken by the Supplemental Security Income Restoration Act (HR 2442, S 1387; \$112 general income disregard, \$364 earned income disregard).
4. Eliminate the Trial Work Period and Extended Period of Eligibility. Rather, earnings should never cause a SSDI beneficiary’s eligibility to be terminated. Instead, benefit eligibility should be put in suspension in any month that a beneficiary’s earnings rise to the level that no benefit is payable. A SSDI beneficiary’s eligibility should only be terminated if the individual has medically improved and no longer has a disabling impairment according to the Title II definition of disability.

The proposal includes other administrative and work incentives proposals. Our full proposal is available at: [http://www.c-c-d.org/fichiers/CCD\\_Final\\_Benefit\\_Offset\\_Proposal.pdf](http://www.c-c-d.org/fichiers/CCD_Final_Benefit_Offset_Proposal.pdf).

The structure and features of SSDI benefit offset proposals matter greatly. The Task Force proposal came out of extensive research and discussion about what elements must be present to promote work while also ensuring the adequacy of SSDI benefits which have been paid for by workers with disabilities. Our proposal is a unified design, not a menu of options. Proposals that lack key elements – such as continued attachment to SSDI and Medicare – or that set the earnings disregard threshold lower than the TWL could erode the financial security of SSDI beneficiaries and their families, create new work disincentives in the SSDI program, and increase overpayment rates.

### **Provide a “continued attachment” to SSDI and Medicare, for as long as a beneficiary’s impairments last**

Beneficiaries who are sometimes able and other times unable to work should have continued attachment to cash and medical benefits that can be activated with a simple and expedited procedure that is as “seamless” as possible. For example, SSA has proposed the Work Incentives Simplification Pilot (WISP). Under the WISP, work would no longer be a reason for terminating SSDI benefits. SSA would continue to pay cash benefits for any month in which earnings were below the established threshold, but would suspend benefits for any month in which earnings were above the threshold. SSA would evaluate whether this pilot simplification reduces the number of improper payments due to work, and allows the agency to redirect those administrative resources to other areas. As noted above, “continued attachment” is also an essential feature of the Task Force benefit offset proposal.

### **Modify “deemed” SSI eligibility to protect Medicaid for certain working people who transition to Title II**

The deeming of SSI eligibility is important to avoid creating an unintended disincentive to work, especially for younger individuals who receive DAC benefits. Currently, the statute creates a constraint against attempting to work because it only provides protection when the sole reason the person’s income exceeds the SSI level is the Title II benefit increase (i.e., “Pickle People”). Thus, working and having any earnings will automatically make the person ineligible for the deemed SSI status that protects his or her Medicaid. This is especially ironic, because if s/he had been solely an SSI recipient, the person would be able to benefit from the 1619(a) and (b) work incentives. This can be fixed by providing that SSI deemed status will continue so long as the person’s only other reason for ineligibility is earnings from work.

### **Preserve and strengthen programs designed to allow flexibility for people with disabilities to return to work, including programs authorized under the Ticket to Work and Work Incentives Improvement Act (TWWIIA)**

These programs offer people with disabilities the option to try different work opportunities without risk of losing their benefits should a return to work be unsuccessful. Providing individuals with disabilities opportunities to work up to their capacity without risking vital income support and health care coverage promotes their independence and self-sufficiency. As highlighted in testimony by the CCD Employment and Training Task Force (<http://waysandmeans.house.gov/UploadedFiles/TTWWIIATest.pdf>), several statutory problems with TWWIIA have yet to be addressed by Congress. Among these are the law’s disconnect between its eligibility standard and Social Security’s full retirement age; the inability of those

working past age 65 to participate in a Medicaid buy-in; prohibitions against Ticket holders receiving more than one Ticket; and the requirement that a beneficiary wait 24 months after reinstatement to the benefit rolls before he or she can use the work incentives again.<sup>10</sup>

Additionally, the existing expedited reinstatement program could be improved by making the following changes:

- Eliminate the 60-month time limit;
- Provide provisional cash and medical benefits until SSA processes the request for reinstatement (current rules limit provisional benefits to 6 months);
- Ensure that SSA promptly reinstates both cash and medical benefits once the agency has approved the reinstatement;
- Explicitly recognize that people may use expedited reinstatement repeatedly; and
- Provide that beneficiaries are eligible for expedited reinstatement if they are unable to engage in SGA when they are no longer working.

### **Provide administrative funding sufficient to timely process earnings reports and adjust benefits**

When a disability beneficiary goes to work, she is required to report her earnings to SSA so that benefits can be adjusted and a work CDR performed as appropriate. If the earnings report is processed in a timely manner, benefits are adjusted and no overpayment results. However, if SSA lacks the staff capacity required to process earnings reports in a timely manner, beneficiaries who have earnings from work are likely to receive overpayments despite reporting their earnings timely to SSA. The longer the delay in processing, the larger the overpayment will be. According to testimony by Acting Commissioner of Social Security Carolyn Colvin in January 2012 delivered to the House Ways and Means Social Security Subcommittee, SSA has allocated additional resources to work CDRs, targeting cases with the oldest earnings reports – those more than a year old. Acting Commissioner Colvin further testified at that hearing that it takes more than 270 days on average for SSA to complete a work CDR.

Every month that passes from the time that a beneficiary reports earnings before a work CDR is completed increases the likelihood of a large, preventable overpayment. This delay in processing of earnings reports can have a significant detrimental impact on people with disabilities. When beneficiaries faithfully notify SSA of earnings or other changes that may reduce their benefit payment amounts, as noted above, it may be months or years before SSA sends an overpayment notice to the beneficiary, demanding repayment of sometimes tens of thousands of dollars of accrued overpayments. It can be shocking and anxiety-provoking to receive such a notice, particularly when the beneficiary reasonably assumed that SSA had processed the information they submitted.

Moreover, it can be challenging, if not impossible, for someone subsisting on benefits alone to repay an overpayment of even a few thousand dollars, let alone tens of thousands of dollars or more. Some individuals with disabilities are wary of attempting a return to work out of fear that this may give rise to an overpayment, jeopardizing their economic stability. SSA needs to develop a better reporting and recording system and ensure prompt adjustment of benefit payments to minimize overpayments due to reported earnings. It is important to note that, in and of themselves, overpayments do not indicate fraud or abuse as beneficiaries are encouraged to

---

<sup>10</sup> See <http://www.c-c-d.org/fichiers/CCD-Principles-and-Recom-29-08.pdf>, pp.7-8.

work if they are able. The problems arise when reported earnings are not properly recorded and monthly payments are not properly adjusted. SSA must have adequate resources and staffing to allow the agency to reduce both the backlog and processing time of earnings reports.

### **Reject proposals to create new work disincentives**

The Task Force strongly opposes any proposals that would create new work disincentives in the SSDI or SSI programs, including proposals to eliminate or reduce concurrent SSDI and Unemployment Insurance (UI) benefits, such as the “Social Security Disability Insurance and Unemployment Benefits Double Dip Elimination Act of 2015” (S. 499; H.R. 918) and the “Reducing Overlapping Payments Act of 2015” (S. 343). As noted in a letter signed by 75 national organizations, including members of CCD, the Coalition on Human Needs, and the Strengthen Social Security Coalition, SSDI and UI are vital insurance systems, paid for by workers and their employers, and established for different purposes. Receiving UI and SSDI concurrently is legal and appropriate. Proposed cuts to concurrent SSDI and UI benefits run counter to decades of bipartisan federal policy seeking to open up employment opportunities for SSDI beneficiaries. These proposed cuts single out SSDI beneficiaries, treating them differently from other workers insured under the UI program, and penalize SSDI beneficiaries who have attempted to work by cutting or putting at risk their SSDI benefits. Our full letter is available at:

<http://c-c-d.org/fichiers/CCD-Letter-DI-UI-03-17-15FINAL.pdf>

### **Raise the SSI asset limit and income disregards and index annually for inflation**

Approximately 1.6 million SSDI beneficiaries are concurrently eligible for SSI. Therefore, helpful changes to SSI can also improve outcomes for SSDI beneficiaries. The SSI unearned income disregard has remained at \$20 since the inception of the SSI program in 1974 and is now worth about \$3 in 1974 dollars. Raising the asset limit and income disregards will provide working beneficiaries the opportunity to save for home ownership, education or retirement and will protect Medicaid. We recommend raising both the asset limit and income disregards to the amounts that they would have been if indexed since their inception.

## **CONCLUSION**

In addition to the proposals described above, there are many other actions Congress could take to improve work outcomes and overall quality of life for Americans with disabilities. These could include improvements to early interventions; education, including postsecondary education, employment training, and employment supports and accommodations; greater availability of accessible, affordable transportation and housing; and use of the tax code to help workers with disabilities, just to name a few proposals from CCD’s twenty-plus task forces and ad hoc committees.<sup>11</sup> These improvements would help many SSDI beneficiaries, but they are outside of SSA’s purview. SSA does not and should not bear sole or even primary responsibility for helping people with disabilities enter or stay in the workforce. It is only by working together – across Congressional committees, political parties, federal and state agencies, and with nongovernmental entities and individuals – that Americans with disabilities can maximize their financial stability and personal satisfaction.

---

<sup>11</sup> <http://www.c-c-d.org/rubriques.php?rub=taskforce.php>.

Furthermore, the policy suggestions above are not designed to increase the DI Trust Fund's solvency. As noted earlier, while they are the right thing to do to help SSDI work better for claimants and beneficiaries, many will have a cost.

While refinement and enactment of policy proposals will take careful review and deliberation, there is no reason for Congress to delay in securing SSDI's financial future. Any further delays will only increase the alarm of SSDI beneficiaries, who have worked and paid into Social Security for an average of 22 years. SSDI beneficiaries should not be forced to live with the fear of benefit cuts hanging over their heads, and should be able to count on their full SSDI benefits being available for themselves and their families.

Congress should promptly merge Social Security's trust funds or reallocate payroll taxes to ensure solvency through 2034 – without any accompanying cuts to Social Security coverage, eligibility, or benefits. Such common sense, responsible action is needed to keep Social Security's promise to the more than 165 million Americans who currently contribute to the system and the nearly 11 million Americans who currently receive SSDI benefits.

**ON BEHALF OF:**

American Council of the Blind  
American Foundation for the Blind  
Autism Society  
Goodwill Industries International  
Health and Disability Advocates  
Justice in Aging  
Lupus Foundation of America  
Lutheran Services in America Disability Network  
National Alliance on Mental Illness  
National Association of Disability Representatives  
National Committee to Preserve Social Security and Medicare  
National Disability Institute  
National Disability Rights Network  
National Multiple Sclerosis Society  
National Organization of Social Security Claimants' Representatives  
Paralyzed Veterans of America  
Special Needs Alliance  
The Arc of the United States  
The Jewish Federations of North America  
United Spinal Association