



Commemorating 40 Years
Of Disability Advocacy
1973-2013

To the Social Security Advisory Board:

As the Co-Chairs of the Social Security Task Force of the Consortium for Citizens with Disabilities, we are pleased to submit these comments regarding your March 8, 2013 forum, "Social Security Disability: Time for Reform." The Consortium for Citizens with Disabilities (CCD) is a working coalition of national consumer, advocacy, provider, and professional organizations working together with and on behalf of the 57 million children and adults with disabilities and their families living in the United States. 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.

I. **Our Social Security system provides vital support to millions of people with significant disabilities and their families.**

Millions of people with significant disabilities and their families rely on the Social Security Old-Age, Survivors, and Disability Insurance programs and SSI to meet their basic needs. It is vitally important to take steps to preserve and strengthen the Social Security system so that it can continue to provide the critical income support on which many of the most vulnerable members of our society depend.

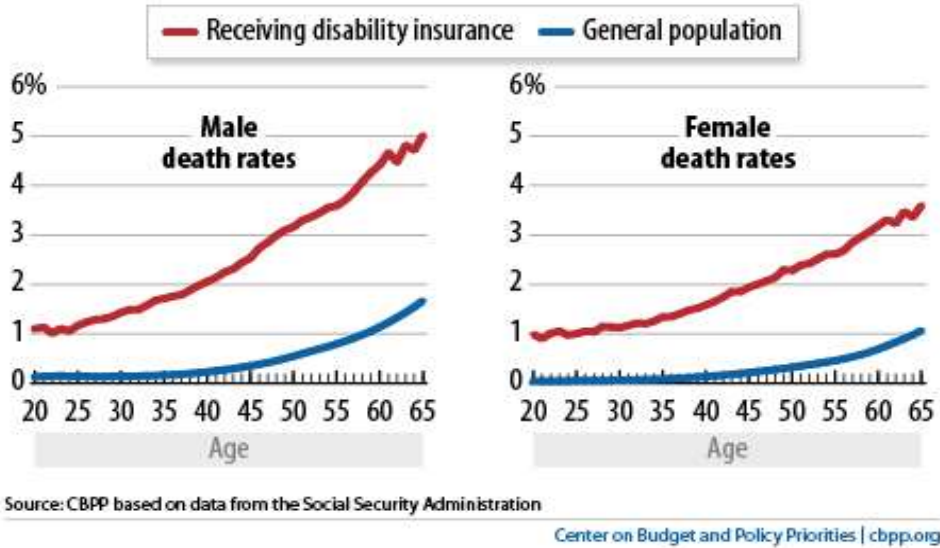
a. Social Security disability benefits are reserved for people with the most severe disabilities and health conditions.

About 57 million Americans, or 1 in 5, live with disabilities, and about 38 million or 1 in 10 have a severe disability.¹ The Social Security disability programs provide vital support to those with the most significant disabilities—about 14 million children and working-age adults, including nearly one million disabled adult children and about 250,000 disabled widow(er)s. Over 2 million minor children and spouses of disabled workers also receive Social Security benefits. Social Security Disability Insurance (DI) provides benefits to workers who have contributed enough via payroll taxes to be "covered" and who become significantly disabled before reaching full retirement age. SSI provides support to low-income children and adults with severe disabilities, as well as low-income seniors.

Most people who apply for disability benefits are denied, and only about 40 percent of applicants are awarded benefits under the strict Social Security definition of disability—even after all stages of appeal.² Beneficiaries have severe impairments and health conditions. Most report poor and worsening health, and many are terminally ill—one in five male, and nearly one in six female beneficiaries die within five years of receiving benefits.³ Disability beneficiaries are also three times as likely to die as other people their age. (See Figure 1).⁴

Figure 1

Death Rates Higher for Disability Insurance Recipients Than for General Population



As with adults, most child applicants are denied SSI,⁵ and only those with a medically documented impairment that results in "marked and severe functional limitations" qualify for benefits. Just 1.7 percent of U.S. children receive SSI—fewer than 1 in 4 U.S. children with disabilities.⁶

b. Benefits are modest but vital.

Social Security benefits are incredibly modest. In May 2013, the average DI benefit for a disabled worker was about \$1,130—just over the federal poverty line—and the average SSI benefit was just \$527 per month—about half the federal poverty level for a single person, and just \$17.57 per day.

These benefits make up a significant portion of beneficiaries' income. Social Security disability benefits comprise more than 90 percent of total income for almost half of non-institutionalized disabled workers, and more than 75 percent of total income for the vast majority of disabled worker beneficiaries.⁷ Social Security benefits equal half or more of total family income for about half of disabled worker beneficiaries,⁸ and over 57% of SSI beneficiaries have no other source of income.⁹

Poverty among DI and SSI beneficiaries is often high, but would be even higher if not for these vital benefits. For example, poverty rates are substantially higher for people who report significant disabilities but are not receiving DI benefits than for people who have been receiving DI benefits for at least five years.¹⁰ Even with benefits from Social Security, about one-quarter of DI beneficiaries live in poverty, and most are low-income.¹¹ While the maximum SSI benefit is just three-fourths of the federal poverty level, SSI keeps millions of people from deep poverty and homelessness. Most disability benefits are used for basic necessities like food, clothing, medical care, and housing—making the alternatives unthinkable.

SSI also provides vital assistance to more than one million children with severe impairments and health conditions. Many parents of children with significant disabilities are unable to work full-time if at all due

to caregiving responsibilities.¹² In addition, for many families the expense of caring for a child with a disability can be overwhelming. Research on the costs of childhood disability finds that for children with severe disabilities (approximating the SSI disability standard), lost parental income and out-of-pocket medical costs average \$20,000 per year.¹³ By offsetting some of the additional expenses and lost income, SSI—together with Medicaid—makes it possible for many children to remain at home with their families instead of needing to be in an institution to receive their care. SSI also plays an important role in helping families access services and supports for children with significant disabilities, including services that support children’s education and development.

c. The Social Security disability programs reflect broader trends toward mental and musculoskeletal impairments.

According to the World Health Organization (WHO), in rich nations like the U.S. many people are living longer—but with more disability.¹⁴ As medicine has become more advanced and we have developed vaccines that have nearly eradicated polio and smallpox, for example, premature death has declined dramatically, and what ails an individual is no longer necessarily what kills him. The WHO reports that today, the leading causes of disability both in the U.S. and abroad are mental illness and musculoskeletal disorders¹⁵—a trend that is reflected in our nation’s Social Security disability programs. In light of the demographic makeup of the DI program—70 percent of disabled worker beneficiaries are over age 50, and 30 percent are over 60¹⁶—the prevalence of musculoskeletal impairments among DI beneficiaries is to be expected, as musculoskeletal impairments are likely to develop late in one’s working years, and especially among individuals with a strenuous work history.

d. How does the U.S. compare to other countries’ disability systems?

According to the Organisation for Economic Co-operation and Development (OECD), the U.S. has the most restrictive and least generous disability benefit system of all OECD member countries except Korea. The OECD describes the U.S. disability system, along with those of Korea, Japan, and Canada, as having “the most stringent eligibility criteria for a full disability benefit, including the most rigid reference to all jobs available in the labor market”.¹⁷ The OECD also reports that the U.S. spends less as a share of its economy on “incapacity-related benefits” than other nations. In 2009, U.S. expenditures on incapacity-related benefits amounted to just 1.5 percent of GDP, compared to an average of 2.4 percent for all OECD nations.¹⁸

II. Demographics are the main drivers of growth in Social Security Disability Insurance.

The Social Security disability programs have grown significantly since they were signed into law, as well as in recent years. According to Social Security’s Chief Actuary Stephen Goss, the growth in DI from 1980 to 2010 was expected and is mostly the result of the growth in the population age 20 to 64, the baby boomers entering their high-disability years, and women entering the workforce in large numbers in the 1970s and 1980s so that more are now “insured” for DI based on their own FICA contributions.¹⁹ Today, women have nearly achieved parity with men, in terms of insured status and incidence of disability receipt.²⁰

A significant additional factor is that Social Security’s full retirement age rose from 65 to 66. When disabled workers reach full retirement age, they begin receiving Social Security retirement benefits rather than DI. The increase in the retirement age has delayed that conversion. In December 2012, more than 450,000 people between 65 and 66—over 5 percent of all DI beneficiaries—collected disabled-worker benefits;²¹ under the rules in place a decade ago, they would have been receiving Social Security

retirement benefits instead.

Economists caution that the role of the recent economic downturn in the growth of DI should not be overstated.²² Indeed, the SSA Chief Actuary estimates that the Great Recession of 2008-2010 increased DI disabled workers only about 5 percent, compared to the expectation of a strong economy as had been experienced prior to 1980.²³ Applications for Social Security disability benefits tend to rise during economic downturns, and the recent economic recession was no exception. However, research finds that while economic downturns significantly boost applications for benefits, they have a much smaller effect on awards.²⁴ In fact, available data indicate that the percentage of applicants awarded benefits has actually declined during the recent economic recession, suggesting that individuals who did not meet Social Security's strict disability standard were screened out.²⁵

Importantly, as the baby boomers age into retirement, growth in DI has already begun to level off and is projected to decline further in the coming years.²⁶ Although one might think that the drivers of growth in DI are not really that important, the "why" does matter for both policy and political reasons. Alternative theories suggesting that growth is due to perceived problems with the definition of disability, the disability determination process, or the poor economy have been proffered to argue that the recent level of growth will continue and that radical or drastic changes to the program are needed to stem that growth. If, however, the growth in the number of people receiving benefits is explained largely by demographic factors and the planned increase in the normal retirement age has already occurred, and is projected to level off (as SSA's Chief Actuary has stated), the argument for radical overhaul of the program loses its underpinning. The trends in DI reflect a social insurance income replacement program working as it has been designed. In the current political climate, manufacturing a crisis that does not exist holds very real risks for a vulnerable population, as it risks creating an environment in which draconian cuts and other radical changes could be considered necessary to save the program. Many people with significant disabilities, for whom DI is nothing short of a vital lifeline, could be hurt as a result.

III. The Disability Benefits Reform Act of 1984.

A number of panelists at the March 8th forum made reference to the Social Security Disability Benefits Reform Act (DBRA) of 1984. Unfortunately, misconceptions regarding DBRA and its impact are very common. DBRA was passed by a unanimous, bipartisan vote in both the House of Representatives (402-0) and the Senate (99-0) in September 1984.²⁷ Upon signing DBRA into law, President Reagan stated:

"This legislation, which has been formulated with the support of the administration and passed by unanimous vote in both Houses of Congress, should restore order, uniformity, and consensus in the disability program. It maintains our commitment to treat disabled American citizens fairly and humanely while fulfilling our obligation to the Congress and the American taxpayers to administer the disability program effectively."²⁸

The legislation did not change the statutory definition of disability. It did require SSA to issue new listings of impairments for mental disorders and develop new procedures for evaluating residual functional capacity for individuals with mental disorders whose impairments did not meet the listings.

Before DBRA, SSA relied upon outdated concepts of mental impairment and terminology that did not reflect current medical practice. There was no individualized, realistic evaluation of ability to work for people with mental impairments. DBRA led to the issuance of new mental impairment listings that were more closely tailored to follow the edition of the American Psychiatric Association's Diagnostic and

Statistical Manual current at that time. DBRA also required SSA to consider the combined effects of multiple impairments in evaluating disability, in recognition of the fact that many people suffer from multiple medical conditions, each of which is not on its own severe enough to prohibit someone from working, but which in combination meet the statutory definition of disability.

DBRA also led to clarifications about consideration of pain in assessing disability. Specifically, for pain to contribute to a finding of disability, an individual must first establish, through medical evidence, the presence of a medically determinable physical or mental impairment that could reasonably be expected to produce the pain or other symptoms alleged. Once such an impairment is established, allegations about the intensity and persistence of pain or other symptoms must be considered in addition to medical evidence in evaluating the extent to which the impairment may affect the individual's capacity for work. Allegations of pain, on their own, are not sufficient to establish disability.

IV. CCD Social Security Task Force Reform Principles.

Panelists presented a number of proposals at the March 8th SSAB forum. Most of these proposals aim to divert people with disabilities and health conditions away from the Social Security disability programs. There was also some discussion of proposals that would impact people already receiving benefits. Before addressing specific proposals discussed at the forum, we offer the following principles, which the CCD Social Security Task Force has adopted to guide efforts to strengthen the Social Security Title II and Title XVI programs:²⁹

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 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 (TWWIIA), 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 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 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.

V. Reform Proposals Presented at the SSAB Forum

The CCD Social Security Task Force strongly supports increasing efforts to help people with significant disabilities to work to their fullest potential. As noted above, the basic structure of the Social Security Title II and Title XVI disability programs is sound and should be preserved, but much more can be done to increase economic security and employment among current and future beneficiaries. 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 DI and SSI beneficiaries, may need to return to work. Some of our major recommendations for modernizing the Social Security disability program work incentives are presented in Section VI 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.

However, as noted by the CCD Employment and Training Task Force, when policymakers consider the employment of people with disabilities, all too often, “the focus is too narrowly placed on a smaller subset of people with disabilities—those on Social Security disability benefits.”³⁰ Indeed, as noted by the National Council on Disability, what is often forgotten is that:

receipt of Social Security disability benefits is merely the last stop on a long journey that many people with disabilities make from the point of disability onset to the moment at which disability is so severe that work is, at least temporarily, not possible. All along this journey, individuals encounter the policies and practices of the other systems involved in disability and employment issues. When these systems fail to stem the progression of disability or work at cross-purposes with one another to prevent successful employment retention or return to work, it is often the Social Security disability system that bears the eventual brunt of this failure.³¹

Given this reality, it is unsurprising that early intervention proposals emerged as a major topic at the SSAB forum. Such proposals generally seek to offer employment services and supports to workers soon after the onset of disability or worsening health, with the goal of helping them stay at work. Early intervention offers real promise and should be explored.

However, such proposals would likely serve many people who would never apply or qualify for DI or SSI benefits – and should not be conceived of as a substitute for Social Security disability benefits. Additionally, early intervention services should be administered separately from (but in coordination with) the Social Security disability programs and outside the Social Security Administration, which lacks the relevant capacity and expertise. Other agencies, such as the Department of Labor (DOL), possess demonstrated expertise in job training and vocational rehabilitation as well as greater access to the early intervention target population (workers with disabilities who are several years away from considering applying for DI or SSI). The DOL already administers several programs that provide short-term income support benefits to people wishing to maintain attachment to the workforce (e.g. workers compensation and unemployment insurance) as well as retraining and other services to workers adjusting to changes in the economy or their own circumstances (e.g. the workforce investment system which includes the vocational rehabilitation program administered by the Department of Education).

Development of any system to enhance work among DI and SSI beneficiaries must start with the needs of beneficiaries and be designed to meet those needs. If cost saving becomes the major driver of Social Security disability program reform, the unintended consequences for current and potential beneficiaries could be severe.

The possibility of even modest cost savings to DI or SSI from early intervention programs remains untested, and to date, research has not demonstrated that efforts to assist current DI or SSI beneficiaries return to work will result in significant cost savings from large numbers of people leaving the disability rolls due to earnings over substantial gainful activity (SGA). Additionally, as discussed in more detail below, certain proposals—such as experience rating—could have the unintended consequence of actually making it *more* difficult for people with disabilities to obtain employment.

As a general matter, we have serious concerns that people with disabilities could be hurt by implementation of untested proposals. We urge thoughtful consideration and testing prior to endorsing

or implementing any changes to the Social Security disability programs. In addition, we urge caution in considering changes that could cause vulnerable individuals to lose access to DI or SSI benefits.

One final point before turning to specific reform proposals: we urge extreme caution in looking to other countries as models for the United States for a number of reasons. To begin with, the Americans with Disabilities Act (ADA) provides strong civil rights protections to Americans with disabilities in employment and other areas of public life. It might be necessary in countries lacking such strong civil rights protections to try to accomplish some of the goals of the ADA through reforms associated with disability income support programs, such as the requirement to provide reasonable accommodations and the ability to enforce those rights in court, through alternate means.

Second, it is very important to make apples to apples comparisons when looking to another country's disability system as a potential model for reform. As discussed above, the U.S. already has a disability income support system with one of the least generous benefit structures and strictest definitions of disability in the developed world. It would be inadvisable to try to duplicate reforms implemented in a country with much more generous benefits and a broader definition of disability, or a disability benefit system with several tiers of benefits and eligibility. Such countries' reform experiences have very limited comparability to a system that is already far stricter and has much less generous benefit levels in comparison. The same is true for a country that lacks a statute or other framework of legal protections similar to the ADA.

Third, additional aspects of other countries' social insurance systems further limit useful comparisons to the U.S. Countries such as the United Kingdom, the Netherlands, and Germany have much higher levels of expenditures on social assistance generally, and more regulated labor markets than the U.S. People with significant disabilities often require a number of different services and supports (e.g. health care, long-term services and supports including personal attendant care, transportation, and housing) to obtain and maintain employment. It would be a mistake to assume that policies that have worked in other countries with universal health care and generous pension structures, as well as significantly more robust programs that provide these services and supports, would also work in the U.S., which lacks such complementary policies and programs—and potentially could be catastrophic for people with disabilities.

Finally, consideration of reforms in other countries must be informed by data on whether those reforms are producing the intended outcomes; in some cases, evidence suggests limited effectiveness. For example, recent research on Finland has found “no evidence of the significant effects of experience rating on the disability inflow.”³² In the United Kingdom, reforms that sought to assist one in six beneficiaries with illness or disabilities to work for at least three months have only achieved the desired result with about one in twenty beneficiaries, two years after implementation of the reforms.³³

a. Experience rating employers' FICA taxes based on the number of workers who receive disability benefits

Although the purported goal of experience rating DI FICA taxes is to increase employment and retention of people with disabilities, we believe that this proposal is most likely to have the opposite effect—making it *less* likely that people with disabilities or chronic conditions would be hired in the first place due to employer perception that they would be more likely to qualify for SSDI in the future. This would most likely be the case for people with disabilities that tend to worsen over time, like Multiple Sclerosis, or diabetes, as well as for people with episodic conditions, who are likely to go on and off benefits over time.

Although prohibited by law, discrimination against people with disabilities in hiring can be difficult if not impossible to prove. To prove disability discrimination in hiring, a job applicant must produce explicit evidence (such as an overt verbal or written statement or a witness) establishing that the employer did not hire the applicant because they have a disability. This burden can be extremely difficult for individuals to meet, as such evidence is rarely available to anyone but the employer. Additionally, in today's economy, where there are often hundreds, if not thousands, of applicants for every job, it has become even harder to prove that disability is the reason a person was not hired.

Many employers already have concerns as to whether it will be more costly to hire a person with a disability than his or her non-disabled peer. This misplaced fear is based on the perceived cost of complying with the ADA's requirement to provide reasonable accommodations and it often puts potential employees with disabilities at a competitive disadvantage relative to applicants without a disability. In reality, most employers who have provided reasonable accommodations report no cost or very low one-time costs averaging about \$500.³⁴ In addition, the federal government offers tax credits to offset the costs of hiring workers with disabilities.³⁵ Nonetheless, misperceptions and fears persist among many employers. Particularly in today's hyper-competitive job market, we are very concerned that adding another potential risk or financial disincentive to the costs employers already fear when considering hiring a person with a disability, could have a dramatic chilling effect on hiring of people with disabilities and chronic conditions.

In response to this concern, proponents of experience rating have suggested reducing disability discrimination in hiring by requiring workers to self-identify as "disabled" on the front end of the hiring process, so that they can be exempted from the experience rating pool. This sort of approach is very likely unconstitutional and in direct contravention of the ADA. Employers are prohibited from asking an applicant or an employee to disclose their disability status. How could a certain class of employees be exempted from the experience rating process without running afoul of this Constitutional prohibition? Such an approach is misguided and will unavoidably run roughshod over the Constitutional rights of people with disabilities.

In addition, proponents of such a system also fail to grasp the reality of today's employment landscape. Many important questions remain unresolved, such as:

- How would the system apply to part-time workers, to workers who experience disability onset in between jobs while not currently connected to an employer, or to workers with two or more employers?
- How would the system operate for workers with terminal illnesses or other conditions that make remaining on the job impossible? Suppose an employer does everything in their power to keep a worker and, due to the worker's significant disabling condition, the worker applies for and receives DI benefits despite the employer's efforts? Would that employer still be penalized by having their FICA taxes go up? If so, how is that providing the proper incentives for employers? (The employer in that scenario exhibited the exact behavior this proposal purports to encourage, but the employer would not benefit from those efforts. Such a policy could thus have the absurd result of encouraging employers to "triage" workers and not try to prevent people with more significant impairments from leaving their jobs—figuring that they will have their FICA taxes go up regardless of their efforts, so why spend the time and money trying to keep the employee? This result would be perverse because the same employer might have undertaken significant efforts to keep that employee absent the experience rating system being in place.)

- Would there be an appeals process for employers to contest an increase in FICA taxes and if so, how would it operate, and who would administer it?
- Would there be an appeals process for workers with disabilities to contest an employer's requirement to remain on the job, who are unable to do so? If so, how would it operate, and who would administer it?

b. Requiring Employers to Buy Private Disability Insurance Policies

Another proposal presented at the SSAB forum would require employers to purchase private disability insurance policies. While this would likely be a tremendous boon for the private disability insurance industry, we do not believe that it is likely to significantly reduce the number of people receiving Social Security disability benefits. Although private disability insurance policies and the associated disability management programs can be effective in keeping the attachment of some workers to the labor force, available data suggest that most DI beneficiaries are dissimilar from most workers covered by private disability insurance in several key respects.

Approximately 1 in 3 workers in the U.S. are currently covered by private disability insurance.³⁶ In general, these workers tend to be in higher-paying full-time managerial or professional jobs (that generally require higher educational levels).³⁷ On the other hand, most DI beneficiaries have a high school diploma or less (approximately 42% did not complete high school and another 35% have only a high school diploma or equivalent), and tend to have worked in low-wage, low-skilled jobs such as in the service industry or jobs that require physical labor.³⁸

In comparison, disability management programs and other efforts to assist employees who develop disabling conditions or whose existing impairments worsen have generally specialized in helping white collar workers retain their positions. The likely success of these programs with a coal miner, window washer, or bank teller is relatively untested and unknown. As a result, the potential success of associated disability management programs with typical DI beneficiaries is likely to be limited, and remains relatively untested. For example, in a Government Accountability Office survey of 3 of the nation's largest disability insurers, the insurers reported that only "between 2 and 3 percent of their long-term disability beneficiaries who also received DI benefits either returned to work or were terminated from the private sector disability benefit rolls because they were assessed as having the capacity to work."³⁹ We urge caution in adopting a private disability insurance strategy without thoroughly examining the characteristics of the two populations and determining if the strategies that work for highly skilled workers with impairments that have been determined to be less likely to pose a barrier to work would be effective for the more typical DI beneficiary.

Furthermore, as the Congressional Research Service (CRS) has noted, most providers of long-term private disability insurance require beneficiaries to apply for DI after the onset of disability, to offset the risk associated with long-term disability plans.⁴⁰ Providers then deduct any eventual DI income from a beneficiary's long-term disability benefit, reducing their payout and overall exposure to loss. It is unclear and untested whether private disability insurance plans would be financially viable, if stripped of the ability to require beneficiaries to apply for DI.⁴¹

c. Imposing time limits on Social Security disability benefits

Although not explicitly discussed at the SSAB forum, we are aware that some have proposed establishing a temporary disability program, within the Social Security disability system, that would impose time

limits on DI and SSI beneficiaries. We strongly oppose the establishment of such a program within the Social Security system and have several concerns, including:

- **How individuals would be identified for placement in the temporary program, vs. the existing disability benefit programs.**

It is extremely difficult to predict which individuals with disabilities will be able to remain at work / return to work and which will not. There is no known method for accurately predicting who, based solely on their underlying condition or impairment, will be capable of working at a self-supporting level. Although extensive research has been conducted on this subject, it has not produced reliable predictors of the effects of various disabilities on an individual's ability to work at a self-supporting level. To institute a system of time-limited benefits on the basis of the underlying condition or impairment would, therefore, be arbitrary and unduly harsh. Numerous questions and obstacles to this approach present themselves:

- What criteria would be used to establish the time-limited conditions, and who would develop such criteria?
- Who would make the decision?
- Would the decision be appealable?
- What impact would appeals have on the federal court system?
- How could individual variances be factored in? and
- On what medical, vocational, and/or scientific basis would this whole system rest?

- **Whether the intensive services and supports and health care coverage needed to help people in a temporary program obtain or maintain employment would be sufficiently funded and meaningfully available to individuals with disabilities.**

The ideas we have heard discussed for a temporary disability program include providing enrollees with quick access to health care coverage and vocational and other services and supports to assist them in obtaining and keeping a job. We are concerned about the very real possibility that adequate funding for those services and supports might not be provided and that the required services and supports would not be available as a result. People with disabilities would then be in a horrible position—they would be watching a clock expire on their benefits without receiving the assistance needed to assist them in becoming self-supporting. It is hard to imagine that sufficient funding would be appropriated to the program to provide adequate services and supports given the current pro-austerity / deficit-reduction climate. Additionally, such an approach would almost certainly require a significant upfront investment at a time when existing programs are facing deeper and deeper cuts.

- **Whether the Social Security Administration is the appropriate agency to administer such a program, and the impact on Social Security Trust Fund solvency.**

As discussed above, the CCD Social Security Task Force strongly supports the goals of improving employment opportunities and outcomes for people with disabilities. While we support providing more extensive supports and services—including immediate access to health care—to people with disabilities to help them maintain their attachment to the labor force, SSA is not the appropriate agency to administer such an effort, nor should Trust Fund dollars be used to pay for it.

One way to achieve these goals might be to establish a new program targeting workers with disabilities who are still attached to the labor force or who recently left work and hope to return to work but need

support to do so, and who are not yet receiving Social Security disability benefits. We are interested discussing such a proposal, provided it were not housed in or administered by SSA, for the reasons stated above.

We also do not support time-limiting existing benefits or redirecting Social Security Trust Fund dollars to finance a new temporary disability program. This type of program would more appropriately be financed in the same way as other programs that support workers with short-term income support payments—with general federal revenues.

VI. Recommendations for Modernizing the Social Security Disability Programs to Improve Employment Opportunities and Outcomes for People with Disabilities.

We are pleased to offer the following recommendations for modernizing the Social Security disability programs to improve employment outcomes and opportunities for people with disabilities. However, we reiterate that although we believe these reforms are urgently needed to maximize opportunities for current DI or SSI beneficiaries to work, we do not expect significant cost savings from these reforms. For example, research indicates that the average earning potential of beneficiaries with "work capacity" is just a few thousand dollars per year—hardly enough to support oneself.⁴² Additionally, as noted earlier, we do not believe that savings should be the driving factor behind providing supports and services to people with disabilities.

Additionally, we believe that these modernizations must occur in close coordination with a range of other vital services and supports. Indeed, a national survey released by the Bureau of Labor Statistics (BLS) in 2013 found that while fear of losing benefits exists, it ranked *last* among potential reasons that people with disabilities do not work.⁴³ 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 factors that are specific to each individual (e.g. the person's strengths, abilities, supports and resources as well as the impact of the person's disability on his or her work capacity) as well as broad, structural barriers (e.g., the systemic lack of health care coverage and easily accessible, reliable and affordable housing and public transportation). 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.

a. Decoupling access to services and supports from Social Security disability

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 work incapacity, they became the "gateway" for accessing other needed services and supports. Many other important programs used 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, DI eligibility confers eligibility for Medicare, after a 24-month wait. While access to healthcare via Medicare and Medicaid should not be jeopardized in any way for DI 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.

b. Strengthening the Social Security work incentives

The CCD Social Security Task Force highlights the following recommendations to provide greater support to allow beneficiaries to work to their fullest capacity. Additional discussion of CCD's recommendations for Social Security work incentives is available in September, 2011 testimony delivered by Cheryl Bates-Harris in her capacity as a Co-Chair of the CCD Employment and Training Task Force, available at <http://waysandmeans.house.gov/UploadedFiles/TTWWIIATest.pdf>.

- **Renew SSA's Title II demonstration authority.**

SSDI 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.

- **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 SSDI 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.

- **Improve program navigation and remove barriers to work.**

Over the years, the CCD Social Security Task Force has developed a number of proposals to make it easier for beneficiaries to navigate the SSDI system, particularly when attempting work. As we have noted in prior testimony before Congress, the Task Force generally supports efforts to improve the disability claims process, including through the use of technology, so long as the changes do not infringe on claimants' rights. SSA has already implemented a number of significant technological improvements that have helped claimants and their representatives and have made the process more efficient for SSA employees.

We strongly recommend that SSA develop a better wage reporting and recording system and ensure prompt adjustment of benefit payments to minimize overpayments. Some individuals with disabilities are wary of attempting a return to work out of fear that this may give rise to an overpayment if their earnings are not properly recorded and monthly benefits are not properly and promptly adjusted.

- **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). We recommend establishing a \$1 for \$2 earnings offset in SSDI to parallel the provision in the SSI program. An earnings offset would eliminate the "cash cliff" for beneficiaries who are able to work, and would help ensure that individuals are financially better off by earning wages than by not earning. This long-overdue proposal is currently being tested. Many in the disability community have advocated this change for decades.

- **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 be employed 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.

- **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.

- **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.
- ✓ ***Increase the SGA level for all beneficiaries to be the same as the SGA level for beneficiaries who are blind,*** and maintain annual indexing of the SGA to adjust for inflation and cost of living increases.
- **SSA must receive sufficient administrative funding in order to process earnings reports timely and adjust benefits as appropriate.**

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 Acting Commissioner of Social Security Carolyn Colvin in testimony delivered to Congress in January 2012, SSA has allocated additional resources to work CDRs, targeting cases with the oldest earnings reports—those more than a year old—but that the agency still has a significant backlog of medical CDRs.⁴⁴ Acting Commissioner Colvin further testified that it takes more than 270 days on average for SSA to complete a work CDR.⁴⁵ 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 work if they are able. The problems arise when reported earnings are not properly recorded and monthly overpayments 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.

VII. Conclusion

Thank you for the opportunity to submit comments regarding the March 8th forum on the disability programs. The Social Security disability programs are a vital part of our nation's Social Security system, and provide nothing short of a lifeline to people with significant disabilities. We look forward to working with you in the future as you consider options for strengthening these vital programs for current and future beneficiaries.

Sincerely,

CCD Social Security Task Force Co-Chairs:

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T.J. Sutcliffe, The Arc of the United States

Rebecca Vallas, Community Legal Services

Ethel Zelenske, National Organization of Social Security Claimants' Representatives

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