

The National Council of Social Security Management Associations, Inc.
GREYSTONE GROUP WASHINGTON REPORT
Legislative Report 1-2012
January 30, 2012

Overview

On Tuesday, January 24, 2012, the U.S. House Committee on Ways and Means Subcommittee on Social Security held the second in a series of hearings on, "Securing the Future of the Social Security Disability Insurance (SSDI) Program." The hearing focused on combating disability waste, fraud and abuse.

Five witnesses, including NCSSMA President Steve Clifton, were asked to testify on a single panel. The written testimony of each of the witnesses can be viewed by holding down the "control key" and clicking on the respective links below:

Panel

Carolyn Colvin, Deputy Commissioner, Social Security Administration

http://waysandmeans.house.gov/UploadedFiles/Colvin_Testimony_124_ss.pdf

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

http://waysandmeans.house.gov/UploadedFiles/O-Carroll_Testimony_124ss.pdf

Thomas Brady, Special Agent, Office of the Inspector General, Social Security Administration, Kansas City Field Division, St. Louis, Missouri

Paul Neske, Detective, St. Louis County Police Department, St. Louis, Missouri

http://waysandmeans.house.gov/UploadedFiles/Brady_and_Neske_Testimony_124ss.pdf

Steve Clifton, President, National Council of Social Security Management Associations

http://waysandmeans.house.gov/UploadedFiles/Clifton_Testimony124ss.pdf

The following Members of Congress attended the hearing:

Chairman Sam Johnson (R-3rd-TX)

Representative Pat Tiberi (R-12th-OH)

Representative Rick Berg (R-At Large-ND)

Representative Adrian Smith (R-3rd-NE)

Representative Kenny Marchant (R-24th-TX)

Ranking Member Xavier Becerra (D-31st-CA)

Representative Fortney "Pete" Stark (D-13th-CA)

Hearing Background Provided by the Subcommittee

In December 2011, the Subcommittee began a hearing series focusing on the history of the Disability Insurance (DI) program, the income security it provides, and its financing challenges. DI benefits currently average \$1,111 per month for disabled workers. According to the Social

Security Administration (SSA), almost half of families receiving DI benefits rely on these benefits for the majority of their family income. On average, each disability benefit award is valued at \$250,000 in DI and Medicare benefits over a beneficiary's lifetime.

Over the past four decades DI program annual costs have climbed from \$18 billion to \$124 billion as the number of those receiving benefits has more than tripled from 2.7 to 9.7 million. Demographic changes also played an important role as during this same period the size of the overall workforce has grown, the large baby-boom generation has aged into its most disability-prone years, women have entered the workforce and become insured for benefits should they become severely disabled, and Congress has periodically reevaluated and revised eligibility guidelines. Wage levels, the basis for both the program's financing and its benefit levels, have also risen. In their 2011 Annual Report, the Social Security Trustees projected that the DI Trust Fund will become exhausted in 2018, at which point revenues will cover only 86 percent of benefits.

As DI program enrollment has increased, so too has the potential cost of error, waste, fraud, and abuse. The DI program has an overpayment rate of 1.5 percent, but in fiscal year (FY) 2010, each tenth of a percentage point in payment accuracy represents about \$706 million in retirement and disability program outlays, according to the SSA. DI medical and work-related overpayments detected by SSA have grown from about \$860 million in FY 2001 to about \$1.4 billion in FY 2010, according to the Government Accountability Office (GAO). While the agency collected or recovered \$839 million in overpayments in FY 2010, DI overpayment debt reached \$5.4 billion. The SSA has no agency-wide performance goals for debt collection.

One of SSA's FY 2012 Agency Performance Plan priority goals is to "ensure the effective stewardship of our programs by increasing our program integrity efforts." In the Plan, the agency pledged to "continue to demonstrate an unyielding commitment to sound program integrity efforts by minimizing improper payments and strengthening efforts to protect program dollars from waste, fraud, and abuse."

FY 2012 goals for SSA include completing 592,000 full medical continuing disability reviews (CDRs), an increase of 82 percent over FY 2010 (note – in the testimony presented by Deputy Commissioner Colvin she indicated that this goal is now 435,000 full medical CDRs as a result of Congress not fully funding the Budget Control Act of 2011 level of program integrity resources). CDRs are a valuable tool in ensuring that disability beneficiaries continue to be eligible for the benefits they receive. Every dollar spent on CDRs results in a least \$10 in lifetime program savings, including savings accruing to Medicare and Medicaid. At the beginning of FY 2011, there was a backlog of 1.4 million medical CDR cases. In the Budget Control Act of 2011, Congress authorized \$13 billion in additional funds above the discretionary budget caps over the next ten years exclusively for program integrity work. According to SSA, these funds will enable the agency to complete nearly 8 million full medical CDRs, eliminating the DI CDR backlog by 2016.

Another important tool in combatting fraud is the Cooperative Disability Investigation (CDI) program. SSA's FY 2012 Performance Plan identified a strategic goal to "preserve the public's trust in our programs" with the objective to "protect our programs from waste, fraud, and abuse," by expanding the CDI program as resources may permit. The CDI program was created in 1998 as a joint effort between the SSA and OIG, working with the State Disability Determination Services and State or local law enforcement, to pool resources for the purpose of preventing fraud in SSA's disability programs. Since the program's inception, the CDI program efforts nationwide have resulted in savings of \$1.9 billion in Social Security disability benefits and \$1.2 billion in programs such as Medicare and Medicaid, for a total savings of approximately \$3.1 billion.

In announcing the hearing, Social Security Subcommittee Chairman Sam Johnson (R-3rd-TX) said, **"Waste, fraud, and abuse in the disability insurance program cheat honest, hardworking American taxpayers. As we work to secure the future of this program, we need to protect the American taxpayer from con artists who are stealing from the system by making sure benefits are paid only to those who deserve them."**

Opening Statements

The opening statements of Chairman Johnson and Ranking Member Becerra can be accessed by holding down the "control key" and clicking on the respective links below:

Subcommittee on Social Security Chairman Sam Johnson (R-3rd-TX)

<http://waysandmeans.house.gov/News/DocumentSingle.aspx?DocumentID=275946>

Subcommittee on Social Security Ranking Member Xavier Becerra (D-31st-CA)

http://becerra.house.gov/index.php?option=com_content&view=article&id=859:opening-statement-of-social-security-subcommittee-ranking-member-xavier-becerra&catid=15:becerra-blog&Itemid=56

The oral testimony as delivered by NCSSMA President Steve Clifton is included below.

***Oral Testimony of Steve Clifton
House Hearing on Securing the Future of the SSDI Program
January 24, 2012***

Chairman Johnson, Ranking Member Becerra, and members of the Subcommittee, I am Steve Clifton, President of the National Council of Social Security Management Associations (NCSSMA) and the District Manager of the Social Security Office in Greeley, Colorado.

Thank you for the opportunity to speak on behalf of the 3,500 NCSSMA members across the country. We share your concern about the disability program and combating waste, fraud and abuse.

First, let me thank you for the FY 12 Appropriation SSA received, which included specific funding

for program integrity initiatives, such as medical continuing disability reviews. This funding is critical to process SSA core workloads and to improve payment accuracy.

NCSSMA considers it a top priority to deliver quality service to the American public and to be good stewards of the taxpayers' monies. SSA completed 1.4 million medical CDRs in FY 11, but a backlog of 1.3 million still exists. The FY 12 program integrity funding could allow SSA to complete 592,000 full medical CDRs—an 82% increase over FY 10. This is a program integrity workload that saves at least \$10 in lifetime program savings for every \$1 invested.

In addition to conducting program integrity workloads after benefits have been paid, we believe that it is equally critical to prevent improper payments before claims are processed.

While this hearing is taking place, the American public is calling or walking into Social Security Field Offices all across the country to discuss retirement, the loss of a loved one, or the onset of their disability—frequently with a sense of urgency or even desperation as they look to us for assistance.

Last fiscal year we assisted almost 45 million visitors. We also received 3.2 million initial disability claims and nearly 860,000 hearing requests—both were the highest volume in our history.

The same employees that process program integrity workloads, also answer public telephone calls, take initial applications for disability and retirement benefits and process claims—core workloads that are not program integrity funded but do ensure the accuracy of payments.

To this end, having adequate staffing levels in SSA Field Offices to process workloads, sufficient time to address complex issues, answer questions, and educate the public on their reporting responsibilities is essential to saving taxpayer dollars. SSA employees want to do quality work and prevent overpayments at all points of contact with the public. Adequate resources to conduct training and to perform quality reviews for claims accuracy are also imperative to discharging SSA's stewardship responsibilities.

Even with the FY 12 Appropriation enacted, SSA Field Offices have been operating for over 15 months under a continuing hiring freeze with very little overtime. Geographical staffing imbalances are occurring due to uneven attrition across the country. These all detract from the efficiency of operations and serve to compromise efforts to improve payment accuracy.

We also see areas to improve efficiency and to prevent improper payments by expanding electronic services available to the public, simplifying disability rules such as enacting WISP legislation, implementing federal wage reporting, and expanding data exchanges such as workers compensation information. This would allow SSA to address payment accuracy and ensure program integrity, both before and after claims are processed.

We ask that Congress give thoughtful consideration regarding the future of SSA to ensure the

preservation of this valued program. We sincerely appreciate the Subcommittee's interest in the vital services Social Security provides and your ongoing support. A strong Social Security program equates to a strong America and it must be maintained as such for future generations.

On behalf of NCSSMA members nationwide, thank you for the opportunity to present our testimony.

Also of note during the oral testimony presented by the panel of witnesses was the inclusion of video clips from CDI unit investigations of claimants appearing to be healthier than they purported to be. It was interesting to observe the various reactions in the hearing room to the clips.

Question and Answer

Following the oral statements by the panel of witnesses there was the question and answer session between members of the Subcommittee and the witnesses. The following section details some of the key exchanges of this session.

As expected, during the hearing, there was considerable focus on fraud and the work of the Office of Inspector General and the CDI units. Even given this focus, NCSSMA President Steve Clifton was able to address members of the Subcommittee on a number of points and provided some very detailed responses regarding Field Offices workloads and responsibilities in general, and fraud, overpayments, and CDRs in more depth. It should be noted that during this session, the importance of resources for the field was stressed by the panel of witnesses and all members of the Subcommittee acknowledged the hard work of SSA's employees and their appreciation of those efforts. The field was specifically acknowledged on a number of occasions.

Chairman Johnson directed his first remarks to Inspector General O'Carroll relative to the cases they saw in the Dallas CDI unit during a visit last year by Chairman Johnson. The exchange included a video of an individual displaying inconsistencies in their level of disability. Johnson directed his next inquiry to Deputy Commissioner Colvin and noted SSA's failure to collect \$5.4 billion in overpayments and whether or not this was a priority for SSA. Colvin indicated that yes, it is a priority and SSA collected \$3.2 billion last year. Colvin provided additional details including that it is easier to collect overpayments when individuals are still on the rolls, SSA has a number of tools for collection, and that collection remains a high priority. Colvin did emphasize that overpayment recipients are often very vulnerable and even destitute. Colvin closed by noting that she believes SSA has a strong process in place but this must be balanced with other responsibilities and resources.

Chairman Johnson directed the remainder of his time to address Special Agent Brady and Detective Neske. There was discussion of the tools that the CDI units use in their investigations to identify some of the activities they see frequently, including "malingering" and "exaggeration." They also indicated that there are detailed documents in existence that provide step-by-step instructions on how to get on disability.

Ranking Member Becerra was the next member of the Subcommittee to address questions to the witnesses. Becerra began by asking Special Agent Brady to discuss the most frequent sources of information in their investigations. Brady indicated that they receive information from the DDSs, SSA personnel, ODAR, and the general public. Ranking Member Becerra noted that the public should be encouraged to get information to them (CDI units).

Ranking Member Becerra next asked Brady to provide details on the typical punishment that people receive who are convicted. Brady indicated that someone who has been collecting benefits and is found guilty may receive probation or be sentenced to prison. Following this information, Ranking Member Becerra asked Brady whether he thought the current penalties were severe enough. Brady voiced that in his personal opinion the penalties need to be more severe. Detective Neske also responded to Becerra's question and indicated that while a lot of what they see is done out of desperation and he can be sympathetic, that still doesn't make it right. Ranking Member Becerra closed out this line of questions by stating that perhaps in the clear cases of wrong-doing we should "descend on them" and that the penalties need to be more severe in order to send a strong message.

Ranking Member Becerra directed his next question to Inspector General O'Carroll in response to O'Carroll's reference to reducing the CDR backlog and whether that would reduce overpayments. O'Carroll responded that the quick answer was "yes," but there are other issues to consider. Ranking Member Becerra made a point of mentioning that Steve (Clifton) could confirm that doing more CDRs pulls staff away from other things. Steve provided this confirmation.

Rep. Adrian Smith (R-3rd-NE) asked Inspector General O'Carroll to elaborate on some of the penalties and tools involved in these cases. O'Carroll indicated that while they have various tools they can use, the amount of fraud involved is often less than other crimes, for example bank robberies, and may be difficult to pursue prosecution. O'Carroll indicated that often they will go after resources that individuals have if prosecution is not possible. Rep. Smith next asked O'Carroll to elaborate on the cost/benefit analysis of their work. O'Carroll provided information that there is an estimated \$90,000 savings for every person who doesn't get benefits.

Representative Fortney "Pete" Stark (D-13th-CA) was next to address the panel and made a special point of congratulating SSA on the "excellent record the agency has had under Deputy Commissioner Colvin's tenure." Representative Stark then engaged Colvin and asked, "Isn't it correct that most of the improper payments are mistakes – not fraud?" Colvin responded that this was indeed correct and then listed a number of causes of improper payments. She also made a point of emphasizing that underpayments are also improper payments and that SSA takes improper payments very seriously, and that the agency does not want to see the program jeopardized. Rep. Stark then pointed out for the other members of the Subcommittee that most of the casework in his office (and probably theirs as well) has to do with questions related to SSA. Rep. Stark also utilized some of his time to acknowledge Steve Clifton, our members,

and specifically the San Jose SSA field office. He then thanked the entire panel and all who are working to make the system work. He emphasized that, “the public needs to know it is on the level.” Rep. Stark made note of the fact that SSA has not been able to replace 4,000 employees.

Chairman Johnson then raised the issue of the timing of CDRs and Deputy Commissioner Colvin provided some background regarding the different timelines for CDRs and the profiling tool utilized by SSA.

Representative Kenny Marchant (R-24th-TX) was next to query the witnesses and he asked for a clarification regarding CDI units and CDRs and whether or not they involve overpayments. Deputy Commissioner Colvin responded that the purpose of the CDI units is to prevent more people from coming onto the rolls. If the concern is related to someone who is already on the rolls then SSA refers the case to the OIG. Rep. Marchant responded that “mistakes” (overpayments) are not referred to the CDI units and Deputy Commissioner Colvin confirmed that he was correct. Steve took this opportunity to provide additional clarification that sometimes when working a CDR SSA may turn up something that appears fraudulent and that may also be referred to the OIG.

Rep. Marchant’s next line of inquiry was related to lump sum payments and attorneys’ fees. He outlined a scenario of investigation of fraud “later down the road” and whether if when an individual was found guilty of fraud was there recourse to penalize others – including lawyers. Inspector General O’Carroll responded and indicated that this was the first time that question has come up. He did indicate that the CDI units are trying to identify third party facilitators and perhaps this might fall under that area.

Representative Pat Tiberi (R-12th-OH) was the next member of the Subcommittee to speak. The majority of his allotted time was utilized to detail for the Record information related to SSA’s recent appropriations funding levels. Of particular note from his comments:

- For FY 2012 SSA received \$22 million more than the FY 2011 enacted level
- SSA continues to receive an increase in appropriations while there is a decrease in overall discretionary (spending) caps
- SSA’s staffing increased by 3269 in FY 2009
- SSA’s staffing increased by 3246 in FY 2010
- SSA continued to hire in FY 2011
- Current levels are 2824 over FY 2009
- A recent Commissioner’s Broadcast indicated that SSA will be able to hire replacements this year

While we will not dispute Representative Tiberi’s information, we can probably all agree that the funding and staffing levels outlined above are just one part of the “big picture” and need to be evaluated as such.

Representative Tiberi next raised a question related to one of his constituents and notification of a \$100,000 overpayment. Steve offered to address the issue and provided a very thorough (and understandable) explanation indicating that without having the specifics this was probably a case involving a work CDR; SSA probably discovered earnings on the individual's record; and that the individual probably should have been removed from the rolls. Representative Tiberi appeared to be appreciative of Steve's response. Inspector General O'Carroll seized the opportunity to mention the backlog of work CDRs and the need to reduce this backlog. Chairman Johnson then inquired as to what the work CDR backlog is and Deputy Commissioner Colvin offered an explanation that it is a "rolling" backlog. Deputy Commissioner Colvin was also able to indicate SSA's support for WISP and the agency's workers compensation proposal. Colvin also emphasized that this really is a resource issue for SSA and the agency really needs to have adequate and sustained funding. She also emphasized that program integrity work is done by the same people who are responsible for many other workloads.

Rep. Rick Berg (R-At Large- ND) asked if there was a way to reduce the complexity of the program. Inspector General O'Carroll indicated that there are so many different steps now and that Deputy Commissioner Colvin and Steve Clifton could probably address this issue. Steve addressed this first and indicated that it's a very complicated workload which the public often has difficulty understanding and that people are scared to work for fear of an overpayment. Steve also explained that simplifying the program would go a long way toward the public understanding it and also help SSA in processing the workloads.

As the hearing began to come to a close, Ranking Member Becerra made a special point of again thanking the witnesses and the people they were representing for the work that is being done. Becerra indicated that they (Subcommittee) would work to provide the tools needed to do this work better. Chairman Johnson also thanked the witnesses, and reiterated the need to secure the future of the program.

In conclusion, the hearing provided a good platform early in the year for a discussion of some of the challenges facing SSA. It provided an excellent opportunity for NCSSMA's voice to be heard and we received valuable feedback on our testimony and a number of compliments regarding Steve's contributions to the panel.

There should be a video of this hearing in its entirety posted in the near future. When it is available we will provide a link for distribution to NCSSMA membership.

Greystone Group LLC
418 C Street, NE
Washington, DC 20002
202-547-8530/FAX 202-547-8532
Contact: Rachel Emmons or Aaron Hunter
E-mail: rachele@greystone-group.com or aaronh@greystone-group.com