

**STATEMENT BY**

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AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AFL-CIO**

**BEFORE THE**

**HOUSE WAYS AND MEANS  
SUBCOMMITTEE ON SOCIAL SECURITY**

**ON**

**SOCIAL SECURITY DISABILITY SERVICE “IMPROVEMENT”**

**ON**

**JUNE 15, 2006**

# **CONGRESSIONAL TESTIMONY**

**House Committee on Ways and Means**

**Statement of Witold Skwierczynski, American Federation of Government  
Employees, Social Security General Committee, and National Council of Social  
Security Administration Field Operations Locals**

Chairman McCrery, Ranking Member Levin, and members of the Social Security Subcommittee, I respectfully submit this statement regarding Social Security's Disability Service Improvement (DSI). As a representative of AFGE Social Security General Committee and President of the National Council of SSA Field Operations Locals, I speak on behalf of approximately 50,000 Social Security Administration (SSA) employees in over 1500 facilities. These employees work in Field Offices, Offices of Hearings & Appeals, Program Service Centers, Teleservice Centers, Regional Offices of Quality Assurance, and other facilities throughout the country where retirement, survivor and disability benefit applications and appeal requests are received, processed, and reviewed by them.

SSA employees are dedicated to providing the highest quality of service to the public in a compassionate manner. AFGE represents employees who are committed to serving communities in the face of a significant increase of work and decrease of staff. However, the severe cuts in budget and staff have had a detrimental effect on employee morale and, also, the ability for SSA to fulfill **public service demands**.

Although SSA's workloads have increased by 12.6 percent over the last 5 years, and 2.7 percent in FY 05, Congress appropriated \$300 million less for SSA than proposed in the President's FY06 budget request. The result was a 2368 reduction in budgeted work years. While SSA's proposed budget requests have compared favorably compared to many other agencies, AFGE is concerned that the recent budget cuts may result in dangerous levels of inadequate service to the public and stewardship of the programs under SSA's jurisdiction.

In February 2006, SSA informed AFGE that the budget cuts would be absorbed in staffing resources. Since then, Commissioner Barnhart imposed a hiring reduction wherein the Agency will replace only **1 of 8** employees engaged in direct public service work in field offices who leave SSA. These are the employees who interview disability and disability appeals applicants.

**AFGE is very concerned that such staffing cuts will drastically affect SSA's ability to provide adequate public service to the disabled community. AFGE also raises a number of questions regarding the decisions to reduce direct service staffing. Why are such cuts necessary if SSA has the resources to implement Disability Services Improvement (DSI) which is a system that has never been tested and will cost billions of dollars to implement? If there are insufficient Claims Representatives and Technical Experts to take and process initial claims, all the DSI improvements in the world won't improve the system. The entire system requires sufficient staffing resources on the front end to enable the public to file applications for disability benefits that fully address the nature of their condition, their medical sources and how their disability impacts their ability to work and to perform routine tasks. There is currently insufficient staff to do this job. Commissioner Barnhart's staff replacement plan will further reduce the staff that processes disability claims. Flooding the appellate system with dollars while slicing the**

staff that takes applications makes no sense and is not an effective way of improving the system.

### **Commissioner Barnhart's Disability Service Improvement Plan**

AFGE continues to be very concerned about the Commissioner's plans to move forward with her disability initiative.

The record should be clarified with regards to Commissioner Barnhart's statement that she met with the organizations that represent SSA employees. She did. She held one meeting with all 6 SSA AFGE presidents for the purpose of introducing her plan. That was 3 years ago. Ms. Barnhart was not receptive to our constructive criticisms. The leadership of six bargaining councils has more than 150 years of specialized experience with SSA and represents 50,000 bargaining unit employees. She refused to include experienced bargaining unit employees in strategy sessions or workgroups that helped design the new plan. The Union rejected this plan and Ms. Barnhart has since refused to meet and/or discuss any subject matter with AFGE. The AFGE Local in the Boston Region has yet to be informed of any implementation plans of DSI. However, she has decided to meet with 2 minor unions that represent less than 10 % of SSA employees regarding her plan. They support it. AFGE doesn't. Her failure to meet with representatives of employees who process disability claims every day and, consequently, understand the disability process is foolish and dangerous and may lead to severe adverse repercussions for the entire disability claims system.

Ms. Barnhart does not have the support or the buy-in of SSA workers. In fact, SSA employees overwhelmingly oppose this disability plan.

Currently 55 million Americans have a disability, of which 8.3 million Americans and their families receive Social Security Disability Insurance (SSDI) (17.1% of all Social Security benefits are paid to disabled beneficiaries and their families.) Some disabilities are long term (e.g., broken back) while others are permanent (e.g., blindness, quadriplegia).

Processing time for hearings appeals has dramatically increased. Prior administrations attempted to develop different methods to streamline the disability determination process. Some pilot projects, such as the Disability Claims Manager, were considered to be successful (i.e., resulted in applicants receiving benefits twice as fast) and were overwhelmingly supported by the public. However, Commissioner Barnhart refused to implement those pilots and instead developed a new, untested approach to alter the process. It is the Union's belief that the Commissioner's approach will do little to get benefits to the disabled applicant faster or improve service. The commissioner's plan eliminates one appeal step and implements new legal barriers to obtaining benefits:

- The rules provide for the establishment of a Quick Claims Unit for claims filed by individuals who have obvious disabilities. Claims that are sent to this unit are

required to have a completed disability decision within 20 days. The union favors the establishment of such a unit. The union opposes placement of the unit in the State Disability Determination Service (DDS). This is an unnecessary handoff. Employees who work in SSA field offices are entirely capable of being trained to make such disability determinations. The DCM pilot proved that fact. SSA public surveys indicate that there is an overwhelming desire from the public that disability decisions should be made by the person who interviews them. The Quick Decision Units provide the Agency with an opportunity to streamline the process by eliminating a handoff and, at the same time, satisfy the public desire for a caseworker to be empowered to decide both the disability and non-disability portions of their claim. Allowing federal employees in field offices to make disability decisions would require Congress to change the exclusivity portions of the law that currently reserve such decisions to the state. It is time for Congress to enact such a change in the law and improve public service. Sending these obvious disability approval cases to DDS units who will be staffed by the best DDS Disability Examiners will also adversely affect the rest of the disability workload. Assigning less experience personnel to process the toughest cases where the decisions are not clear cut is a recipe for disaster. The best employees should work the most difficult cases - not the easiest.

- In place of the current Reconsideration process, attorneys (Federal Reviewing Officials) will review cases and write a "legal decision" that will serve as the SSA's legal position on the case. In spite of the Commissioner's hiring freeze for direct service positions and her claim of budget shortages, an army of attorneys are being hired as this statement is written. The trust fund (SSA) and general revenue (SSI) impact of eliminating reconsiderations currently processed in the DDS and replacing them with a reviewing official attorney is unknown. Failure to pilot this change is risky and reckless. Substantial deviation from the current disability approval rates could lead to unwarranted expenditures or, conversely, more stringent policy decisions regarding the definition of a disability. In addition, it appears that the substitution of attorneys for State DDS Disability Examiners will result in substantially more administration expenses. Congress should be careful to ask SSA for projected costs of this change both on administrative expenses and benefit outlays.

Although the regulations were silent on the issue of cost analysis, it would be crucial for Congress to request that SSA track the costs associated with the Federal Reviewing Official, including the costs associated with clarification and developmental requests to State DDSs and medical providers as well as the processing time, accuracy, case costs, allowance rates, and appeal rates.

It is also unclear as to the rules that the Federal Reviewing Official would be utilizing in making his/her decision (i.e. listings, case law, judgment, etc.). This would have to be identified in any comparison if the Federal Reviewing Officials utilize different rules than that of the State DDSs.

- The Administrative Law Judge (ALJ) will now be limited in what he/she can consider as evidence from the claimant as all medical evidence must be presented five days prior to the hearing. The ALJ is limited in what he/she can consider good cause for late medical evidence notwithstanding its relevance. Prior to the Commissioner's

new approach, the ALJ was allowed total discretion to accept and evaluate evidence. Under the new rules the ALJ's written decision must explain in detail why he/she agrees or disagrees with the substantive findings and overall rationale of the Federal Reviewing Official's legal decision. The ALJ must rebut SSA's legal decision if benefits are to be awarded to a claimant. One can anticipate that hearing reversal rates will decrease due to the pressure on the ALJ to uphold the Reviewing Official decision. Claimants that currently are approved for legitimate disabling conditions will be denied under Commissioner Barnhart's system because of the premature closing of the record. Does Congress actually want a system where their constituents are denied disability benefits on a technicality?

- The disability application or "record" will be closed effective with the ALJ's decision, prohibiting U.S. District Courts from accepting or considering relevant and material evidence that might prove that the claimant is disabled. This likely will result in thousands of new disability claims each year in the form of reapplications. This subtle bureaucratic change realistically could result in the loss of significant retroactive benefits for those who refile with evidence of disability with an onset date within the scope of the previous application. There is no reason to close the record at any time other than to reduce the ability of claimants to present relevant evidence to support their claim. This will surely lead to decisions to deny benefits to claimants who are disabled under the law. Some of the adverse affects of this new closing of the record regulations are:
  - Loss of complete or partial coverage for Social Security Disability Insurance
  - Loss of coverage for Medicare benefits entirely
  - Loss of retroactive Medicaid and Medicare coverage for a period of time covered by current rules (from the date the claim was initially filed to the date of the subsequent application).

Such uncertainty regarding a key element of this change in the appellate process causes the Union to strongly suggest piloting any of these changes. Commissioner Barnhart has rejected pilots. Besides piloting the Reviewing Official step replacing the reconsideration, the Union feels that the Agency should pilot the decision to require that the reviewing official be an attorney. This decision ignores the fact that there are many highly qualified non-attorney employees in both SSA and the DDS's who are fully capable of deciding disability appeals and writing logical decisions. The Commissioner both insults the current workforce and creates difficult legal barriers for claimants to overcome in appeals. In an attorney dominated process (i.e., Reviewing Official and ALJ) claimants will almost be required to hire an attorney to manage their appeals at the earliest level. This adds an element of litigation that does not currently exist in the reconsideration appeal.

The Commissioner will replace the Appeals Council Review with a Decision Review Board (DRB). The DRB will be appointed by the Commissioner to review and correct ALJ decisions including approved claims. The DRB will not review decisions by state officials (DDSs) or federal Reviewing Officials (FRO). This will prevent processing

payment of an approved claim and will render the ALJs decision as not final. The process by which cases will be selected for review will be entirely at the DRB discretion and will provide the DRB with carte blanche authority to pick cases in a non-random manner. Such unregulated authority is an invitation for abuse

The Appeals Council currently either reverses or remands 30% of claims that they review.

Eliminating an appeal where such a large number of cases are either reversed or where all the evidence was not properly assessed insures that many claimants will be denied benefits that would be approved under the current system. Is this the desire of Congress? Does Congress really want to scale back the SSA disability program so that claimants approved under the current system are now denied benefits?

- A claimant's last appeal, U.S. District Court, requires legal representation. This will severely disadvantage claimants who lack the financial resources to either hire an attorney or travel to District Court. Additionally, the U.S. District Court system which is already overwhelmed is not prepared to absorb this influx of additional cases.

Commissioner Barnhart's new approach fails to address the problems and inadequacies of the State Disability Determination Services (DDS), which is responsible for the initial disability decision in all claims. AFGE strongly believes that if the initial claims level were addressed, the need for such drastic changes to the appeal levels would be unnecessary. But most of all, it would insure disabled claimants were paid much sooner.

There is no consistency in State DDS disability determinations. The taxpayer's chances of being approved for disability benefits continue to depend more on where they live and their income.

For example, State Agency Operations records indicate that those who can obtain medical attention early and often have a better chance of being approved for benefits than those who have a limited income or resources. (See Chart Below) Nationwide, those applying for Social Security disability have a much greater chance of being approved than those who may only apply for the Supplement Security Income (SSI) program. State Agency records clearly expose the inconsistencies of the State DDS decisions.

More than 66 percent of Social Security disability claims for benefits are approved in the Washington DC DDS, while only less than 28 percent of those who file for benefits are approved in the South Carolina DDS. Of those who applied for SSI benefits, the State of New Hampshire leads with more than a 59 percent allowance rate. However, residents from the States of Michigan, Ohio, Iowa and Georgia are approved less than 35 % of the time by their respective DDS. The concurrent disability process shows inexplicable variable allowance rates depending on the state of residence. Allowance rates are low in every state. The states of New Hampshire, Arizona and the District of Columbia approve more than 43 percent of the concurrent claims. Less than 18 percent of those filing concurrent disability claims are approved in Iowa, Missouri, and South Carolina.

As an illustration, following is a compilation of the allowance rates in a sample of states:

	T2 Initial		T16 Initial		Concurrent Initial	
	Allow	Deny	Allow	Deny	Allow	Deny
<b>NATIONAL AVERAGE</b>	44.2	55.8	36.4	63.6	25.3	74.7
<b>BOSTON Region</b>	53.7	46.3	43.6	56.4	33	68
Boston, MA	56.9	43.1	48.7	51.3	36.6	63.4
New Hampshire	63.8	36.2	59.2	40.8	48.2	51.8
Connecticut	47.3	52.7	34.3	66.7	23.5	76.5
<b>New York Region</b>	51.4	48.6	42.8	57.2	33	67
Buffalo, NY	47	53	33.8	66.2	23	77
Newark, NJ	60.8	39.6	42.1	57.9	34.9	65.1
Puerto Rico	34.2	65.8	-	-	-	-
<b>Philadelphia Region</b>	51.7	48.3	40.3	59.7	28.9	71.1
Maryland	49.9	50.1	35.4	64.6	24.9	75.1
PA	53.3	46.7	41.8	58.2	28.1	71.9
WA, DC	66.1	33.9	54.8	45.2	45.5	54.5
<b>Atlanta Region</b>	34.9	65.1	30.1	69.9	21.2	78.8
Georgia	30.3	69.7	27.1	72.9	19.1	80.9
Kentucky	39.4	60.6	33.3	66.7	21.1	78.9
Birmingham	38.4	61.6	27.5	72.5	20.7	79.3
Florida	38.5	61.5	35.5	64.5	26.4	73.6
Miami	43.7	56.3	44.8	55.2	35.6	64.4
S. Carolina	28.2	71.8	26	74	17.7	82.3
<b>Chicago Region</b>	41.9	58.1	30.8	69.2	21.4	78.6
Illinois	43.8	56.2	30.4	69.6	23.9	76.1
Michigan	39.3	60.7	29.9	70.1	19.7	80.3
Detroit	32	68	26.4	73.6	16.5	83.5
Ohio	39.4	60.6	27.1	72.9	19.1	80.9
Wisconsin	46.9	53.1	34	66	21.4	78.6
<b>Dallas Region</b>	44.2	55.8	39.2	60.8	28.2	71.8
Texas	42.7	57.3	41.6	58.4	28.6	71.4
New Mexico	47	53	44.8	55.2	31.2	68.8
Oklahoma	43.1	56.7	36.8	63.2	24.4	75.6
Shreveport	53.8	46.2	37.3	62.7	35.3	64.7
<b>Kansas City Region</b>	43.6	56.4	30.5	69.5	17.9	82.1
Missouri	42.9	57.1	29.8	70.2	17.4	82.6
Iowa	45.5	54.5	32.3	67.7	16.4	83.6
<b>Denver</b>	38.5	61.5	39.1	60.9	21.5	78.5

<b>Region</b>						
Colorado	35	65	38.6	61.4	20.5	79.5
N. Dakota	51.2	48.8	39.6	60.4	28.1	71.9
S. Dakota	45.4	54.6	34.9	65.1	18.9	81.1
<b>San Francisco Region</b>	50.9	49.1	44.4	55.6	32.4	67.4
Arizona	59.3	40.7	51.8	48.2	43.3	56.7
California	50.8	49.2	43.9	56.1	31.8	68.2
Bay Area	60.6	39.4	52.5	47.5	36.6	63.4
L. A. East	49.4	50.6	49.8	50.2	37.4	92.5
L. A. West	54.4	45.6	49.6	50.4	34.5	65.5
Central Valley	48.1	51.9	39.3	60.7	28.2	71.8
Sacramento	54	46	38	62	29.7	70.3
<b>Seattle Region</b>	43.1	56.9	41.3	58.7	24.3	75.7
Oregon	35.4	64.6	34.7	65.3	18.8	81.2
Seattle	45.4	54.6	45.4	54.6	27.1	72.9

In a system where everyone is taxed equally, this is difficult to explain or justify. Claimants are entitled to quality consistent decisions notwithstanding their state of residence or whether they are filing for Social Security or SSI disability benefits.

According to GAO,<sup>1</sup> a majority of DDSs do not conduct long-term, comprehensive workforce planning, which should include key strategies for recruiting, retaining, training and otherwise developing a workforce capable of meeting long term goals. The State DDS' lack uniform minimum qualifications for Disability Examiners (DE's) have high turnover rates for employees and do not provide ongoing training for DE's. This seems to be mostly attributed to low State employee pay and benefit scales and budget constraints.

AFGE is convinced that SSA is not able or willing to correct these problems. AFGE has expressed these very concerns to the Subcommittee for several years and has seen little improvement with the State DDS situation. The State DDSs are required to use different rules that those at the hearing levels. This too has not changed with the Commissioner new plan. This is a key problem that must be reconciled in order to reform the disability system. AFGE strongly believes that the only way to resolve the problems that plague the State DDSs is to federalize them. This will bring consistency to the initial claims decisions in the same way it resolved the Supplemental Security Income problems in 1974.

AFGE has recently become aware of the preliminary Systems Impact Assessment of SSA program modifications needed to accommodate the new disability determination process. The modifications considered necessary will be massive, leaving few programs untouched. Some of the systems changes may or may not require outside contractors; the changes will involve modifications to State DDS systems, which will have to be

<sup>1</sup> GAO-04-121

coordinated; SSA firewalls will require safeguarding; all software written for such modifications will require approval and such approval from the Architectural Review Board is not certain; and programs should require extensive testing before use.

AFGE finds the extent of these required modifications to be alarming. Is it reasonable, to begin implementation in the Boston Region before such systems changes can be made? SSA's budgets for FY06 and FY07 do not provide the money that will be needed to accomplish the systems changes necessary. Where do the resources come from to make these changes? If SSA devotes all or most of its systems budget and manpower to the Commissioner's disability initiative, won't that adversely impact on the Agency's other systems requirements?

With staffing cuts and heavy workloads that continue to rise, is it reasonable to use resources for an untested, unpiloted theory, rather than to provide staffing on the front lines to improve public service? AFGE believes the answer is clearly NO.

Commissioner Barnhart's approach fails to implement new communication or adjudicative techniques that either improve service to the disabled claimant or result in a more accurate or expeditious decision. More importantly, these changes will not protect the rights and interests of people with disabilities.

### **In Conclusion**

AFGE strongly believes the full costs of implementing this initiative should be determined and submitted to Congress before implementation. Once costs can be determined, approved and appropriated, the DSI should be piloted. The effectiveness of this initiative should be thoroughly tracked and reviewed by SSA and Congress before any further implementation should take place. Piloting should include not only the DSI plan but also other proposed solutions to the disability benefits problem such as the DCM and AO initiatives. After appropriate pilots the Agency and Congress will be more equipped to select the best solution to the problem.

Additionally, AFGE strongly urges Congress to direct SSA to take corrective action with regards to the State DDS system and enact legislation which permits federal employees to make disability decisions without requiring the approval of the States.

Secondly, there will always be budget priorities. However, both workers and employers contribute to the Social Security system and are entitled to receive high quality service. It is entirely appropriate that spending for the administration of SSA programs be set at a level that fits the needs of Social Security's contributors and beneficiaries, rather than an arbitrary level that fits within the current political process.

In 2000, then Chairman Shaw and Rep. Benjamin Cardin reintroduced the Social Security Preparedness Act of 2000 (formerly H.R.5447), a bipartisan bill to prepare Social Security for the retiring baby boomers. AFGE strongly encourages this Subcommittee to reconsider introducing legislation that will provide SSA with the appropriate funding level to process all claims and all post-entitlement workloads timely.

Taking SSA's administrative expenses "off-budget" has vast support, not only from AFGE and SSA workers, but from senior and disability advocacy organizations. This would include AARP, the National Committee to Preserve Social Security and Medicare,

the Alliance for Retired Americans, the Consortium for Citizens with Disabilities, and the Social Security Disability Coalition, just to name a few.

AFGE believes that by taking these costs OFF-BUDGET with the rest of the Social Security program, Social Security funds will be protected for the future and allow for new legislation, such as the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 and the Intelligence Reform and Terrorism Prevention Act of 2004 to be implemented without comprising public service integrity. We believe this can be accomplished with strict congressional oversight to ensure the administrative resources are being spent efficiently.

AFGE is committed to serve, as we always have in the past, as not only the employees' advocate, but also as a watchdog for clients, for taxpayers, and for their elected representatives.