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**Social Security Disability Insurance:
Reform on the Path to 2052**

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INTRODUCTION

Social Security's Disability Insurance (DI) program is a social insurance program that provides partial replacement of a worker's earnings in the case of long-term severe health problems, physical or mental, preventing return to the labor force. DI is one of two major federal disability programs; this briefing paper will not focus on Supplemental Security Income (SSI), DI's counterpart for Americans without Social Security covered earnings. SSI is administered by the Social Security Administration (SSA), but is funded through US Treasury General Funds, not through the Social Security trust fund.

DI is on a far more stable short-term trajectory than it appeared in 2015, before Congress last took action, and the previously troubling growth in applicants and associated costs are projected to stabilize well into the future. The DI trust is projected to become insolvent in the medium- and long-term, and its complementary Old-Age & Survivors Insurance Trust Fund (OASI) and the combined Old-Age, Survivors and Disability Insurance (OASDI) fund are in even more severe fiscal imbalance than DI in the coming decades.

In 2019 the DI trust's reserves are projected to be depleted in 2052, 20 years later than forecasted in the 2018 OASDI Trustees' report. Despite the good news for the program in the short- and medium-term, DI continues to face insolvency in the long-term and an unforeseen deviation in the projected number of applicants could raise the program's costs—a 0.04 percentage point increase in disability rates would be sufficient to reverse the progress made between the 2018 and 2019 Trustees reports.¹ Thus, the time is still ripe for Social Security to begin new demonstrations within its authority and for Congress to consider broader proactive reforms to the nation's primary disability benefits program.

¹ The Good News on Social Security: We Have More Time to Improve Disability Insurance, Committee for a Responsible Federal Budget (2019), <http://www.crfb.org/blogs/good-news-social-security-we-have-more-time-improve-disability-insurance/>.

Section I of this paper provides a background of DI beneficiaries, how the program operates, frequency of awards, the program's solvency, and legal questions surrounding the medical-vocational grid and appeals. Section II then discusses the history of DI reforms, reforms underway, and the justifications of several proposed reforms.

I. FACTUAL BACKGROUND

A. Beneficiaries and Labor Participation

Over 155 million Americans are insured by DI in the event of disability.² In 2018 DI provided income assistance to 8.7 million disabled workers and 1.7 million spouses and children. Among the 21-64 year old American respondents in the 2010 census, 30 million self-reported as disabled and only around 8 million of those received DI benefits.³ DI beneficiaries have one of the highest poverty rates of the non-means-tested social insurance programs.⁴ Unlike other social insurance programs which primarily benefit the middle class, DI has a poverty alleviating function in addition to a broader social insurance function.

The growth of the DI program in the past half century appears to have reduced labor force participation only marginally. The Council of Economic Advisors found that since 1967 the DI program has reduced male labor force participation by 0.1 to 0.4 percentage points, with the lower bound being more likely.⁵ The subsequent earnings of marginal applicants that are

² "Estimated number a of workers insured in the event of disability, by age group and sex, on December 31, 1970-2018," Social Security Administration, <https://www.ssa.gov/OACT/STATS/table4c2DI.html>.

³ Statement of Carolyn W. Colvin, Acting Commissioner Social Security Administration Nominee for Commissioner Before the Senate Finance Committee July 31, 2014 Social Security Administration: Social Security Testimony Before Congress, https://www.ssa.gov/legislation/testimony_021115.html.

⁴ Ben-Shalom, Yonatan, Moffitt, Robert A. Scholz, John Karl.

"AN ASSESSMENT OF THE EFFECTIVENESS OF ANTI-POVERTY PROGRAMS IN THE UNITED STATES." NATIONAL BUREAU OF ECONOMIC RESEARCH.

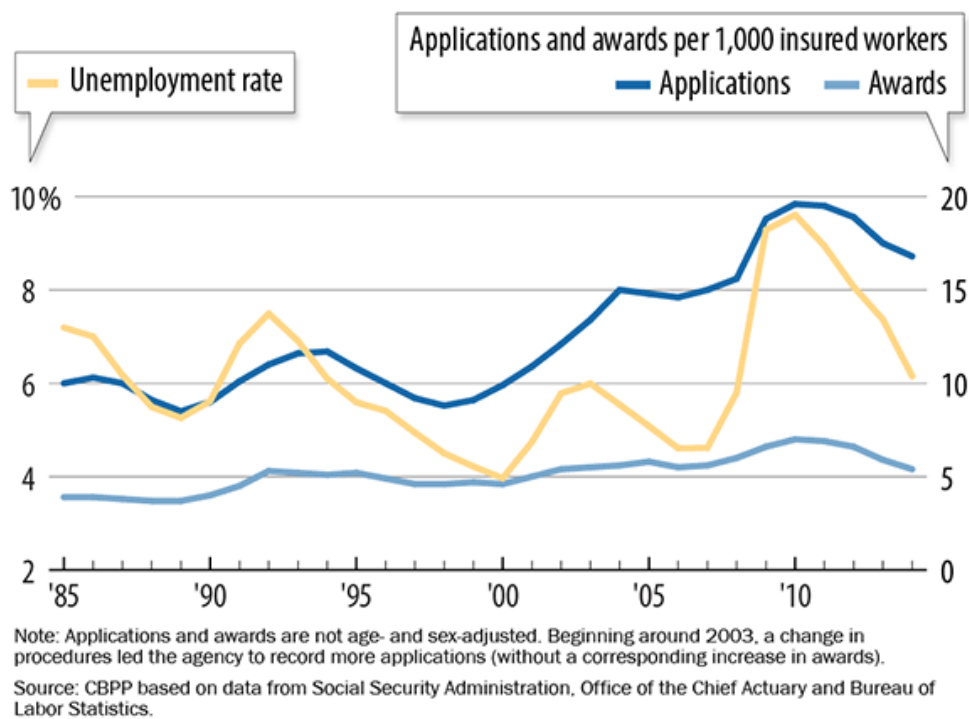
<https://www.nber.org/papers/w17042.pdf> Pg. 65

⁵ Council of Economic Advisers, The Long-Term Decline in Prime-Age Male Labor Force Participation (Executive Office of the President of the United States, 2016)

https://obamawhitehouse.archives.gov/sites/default/files/page/files/20160620_cea_primeage_male_lfp.pdf

denied is below \$20,000.⁶ Thus, tightening DI eligibility criteria would force individuals with physical or mental limitations back into the labor market who, without assistance, would add quite limited labor market value. An increase in DI applications and, to a lesser extent, awards can be measured during recessions as job opportunities change. This is partially an intended feature of DI, as vocational considerations and the broader job market are an inherent component of an individual’s determination, but beneficiaries largely tend to stay on DI permanently after joining.⁷ Beneficiaries that join during recessions generally still meet qualifications after the recovery.

Figure 1: Unemployment rate, Applications, and Awards



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⁶ Liebman, Jeffrey B. “Understanding the Increase in Disability Insurance Benefit Receipt in the United States.” *Journal of Economic Perspectives*—Volume 29, Number 2. Pg. 145-146

⁷ Duggan, Mark G. Testimony before the Joint Economic Committee United States Congress November 4, 2015 https://www.jec.senate.gov/public/_cache/files/c5dd8a89-4589-4361-b483-dd6f3ec480b3/duggan-testimony-110315.pdf

B. Claims Process

A worker is insured under DI if she or he worked substantially for 5 of the last 10 years and can only reach fully insured status with 40 quarters (10 years) of work history. To receive DI benefits, applicants go through a process that seeks to evaluate an applicant's ability to conduct "substantial gainful activity" (SGA) due to "any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months,"⁸ a standard also employed for SSI eligibility. SGA is a level of labor market income, either actually earned or that which hypothetically could be earned each month. In 2019 SSA defined SGA as \$1,220 for standard applicants and as \$2,040 for statutorily blind applicants.⁹ SSA allows a 9-month trial work period in which a beneficiary may test her or his ability to engage in SGA without repercussion.¹⁰ Social Security's SGA definition of disability means the DI claims process is not directly diagnosis-driven, but rather seeks to evaluate a claimant's ability to perform work in the current labor market despite established medical impairments. As a result, the U.S. disability claims process includes the "most rigid reference to all jobs available in the labour market" of all OECD countries.¹¹

After SSA screens applicants for basic non-medical eligibility, like sufficient work history, their claims are sent to state-run Disability Determination Services (DDS) offices. The

⁸ SOC. SEC. ADMIN., OFFICE OF POLICY, SOC. SEC. BULL. NO. 66-03, A PRIMER: SOCIAL SECURITY ACT PROGRAMS TO ASSIST THE DISABLED 53 (2005/2006) 53–54

⁹ "Substantial Gainful Activity" Social Security Administration
<https://www.ssa.gov/oact/cola/sga.html>

¹⁰ GAO Congressional Testimony pg. 41
[UPDATE CITATION]

¹¹ Along with the analogous programs in Canada, Japan, and South Korea.

OECD. *Sickness, Disability and Work: Breaking the Barriers: A Synthesis of Findings across OECD Countries*. Paris: OECD Publishing; 2010.
https://read.oecd-ilibrary.org/social-issues-migration-health/sickness-disability-and-work-breaking-the-barriers_9789264088856-en#page91

DDS office will collect applicants' medical and vocational information and conduct the five step determination process:

Step One: “*Is the claimant working and earning more than SGA?*”

If yes, then the claimant is denied, if no then the claimant moves on to the following step.

Step Two: “*Does the claimant have a severe impairment that significantly limits his or her ability to do basic work activities and that also meets the duration requirements?*”

If no, then the claimant is denied, if yes then the claimant moves on to the following step.

Step Three: “*Does the condition meet SSA’s medical listings, or is the condition equal in severity to one found in the medical listings?*”

If yes then the claimant is awarded DI benefits, if no then the claimant moves on to the fourth step.

Step Four: “*Can the claimant perform any of his or her past work?*”

If yes, then the claimant is denied, if no then the claimant moves on to the following step.

Step Five: “*Can the claimant perform other work that exists in significant numbers in the national economy?*”

If yes, then the claimant is denied, if no then the claimant is awarded DI benefits.

Subjectivity enters the DI process in two primary places, in the medical-vocational grid and in adjudication after an applicant appeals a decision made at any of the five steps.

Occupational information and the Medical-Vocational Grid

Vocational considerations dictate a significant portion of the agency’s service delivery and financial outlays, as the largest percentage of benefits are awarded by a combination of medical *and* vocational considerations.¹² Both steps 4 and 5 use occupational information to determine eligibility for DI. SSA used such occupational information¹³ in around 80 percent of hearing decisions from 2013 to 2017.¹⁴ DDS offices apply a concept known as the *residual functional capacity*, or “the most he could still do despite his limitations.” Because so much of

¹² Annual Statistical Report on the Social Security Disability Insurance Program, 2017 (Released 2018) https://www.ssa.gov/policy/docs/statcomps/di_asr/2017/di_asr17.xlsx

¹³ See section on the Occupational Information System in “REFORMS” “*The Social Security Administration’s Efforts to Develop its Own Source of Occupational Information for Use in its Disability Programs.*” Office of Audit Report Summary. June 2018. <https://oig.ssa.gov/sites/default/files/audit/full/pdf/A-01-15-15035.pdf>

this process is comprised of determination about the current economic outlook for an individual, the DDS must employ a framework of what level and nature of ability (physical, experience, language, etc.) is employable for various jobs in the current labor market.

The SSA uses a system known as the medical-vocational grid¹⁵ (see Figure 3) to meet their evidentiary burden of demonstrating whether other work opportunities that “exist in significant numbers in the national economy” are available to a claimant. Until 1978, SSA used vocational experts to determine the availability of such jobs in the national labor market. The medical-vocational grid follows the bureaucratic rationality model of administrative justice, articulated by Yale Law Professor Jerry Mashaw,¹⁶ which prioritizes applying centrally formulated frameworks over employing a higher level of individualized assessment, potentially giving precedence to accuracy over notions of fairness.¹⁷

The medical-vocational grid is applied if an applicant reaches the 5th step of the determination process. An applicant’s ability to work is evaluated based on an aggregate of factors that may impede their ability to find a new line of work, such as age, education, vocational abilities, and language abilities, in addition to their medical limitations. The medical-vocational grid is designed to weigh the particular degree of employment opportunity available to applicants, accounting even for differences amongst applicants with similar health profiles.

Different factors, especially age, are dynamically weighted in the process. This process is designed to prevent people from falling through the cracks who, by any one factor alone would

¹⁵ Source: Warshawsky, Mark J. and Ross A. Marchand. 2015. “Modernizing the SSDI Eligibility Criteria: A Reform Proposal That Eliminates the Outdated Medical-Vocational Grid.” Mercatus Working Paper. Arlington, VA: Mercatus Center at George Mason University.

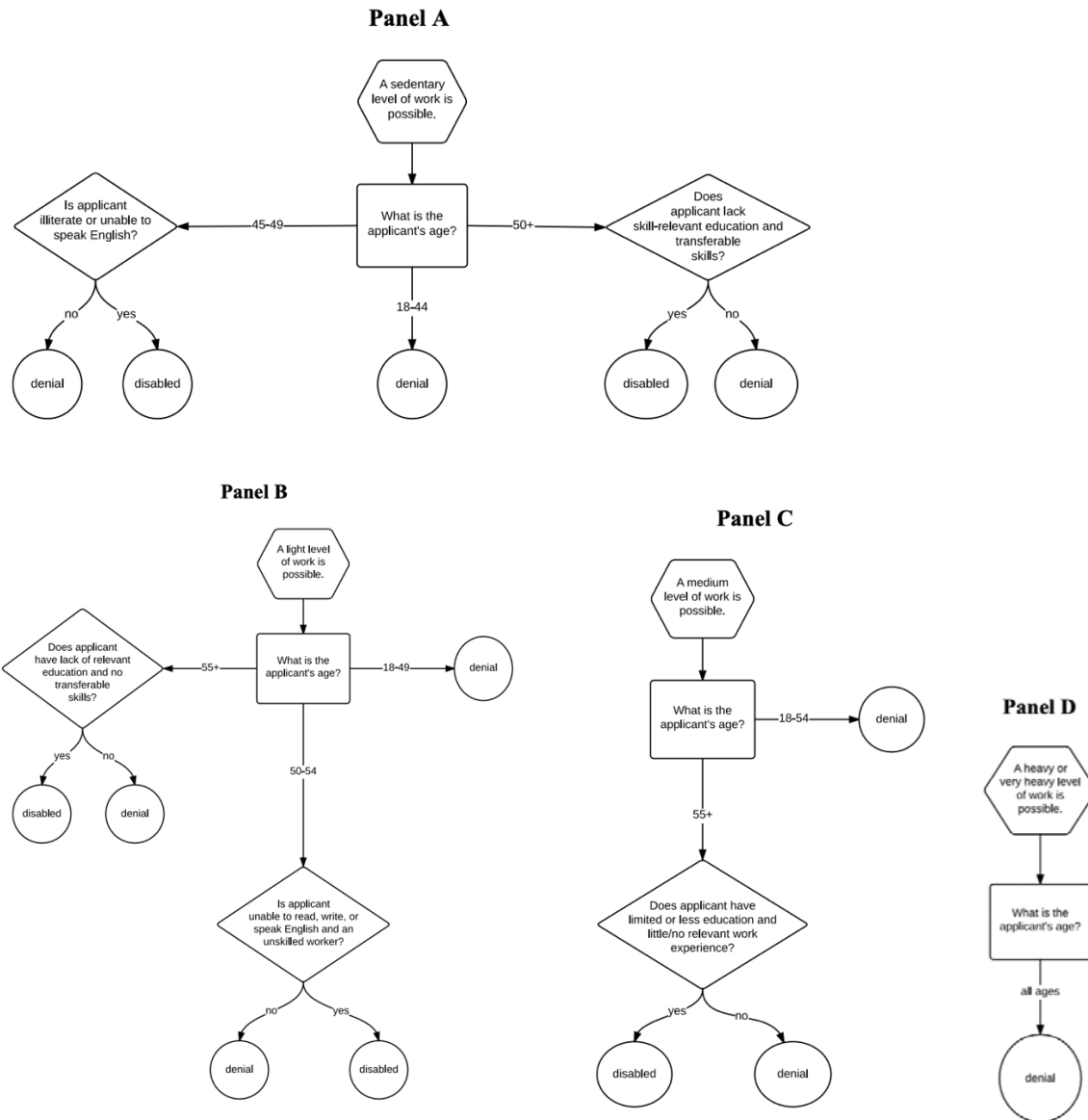
<https://www.mercatus.org/system/files/Warshawsky-SSDI-Eligibility-Criteria.pdf>

¹⁶ JERRY L. MASHAW, BUREAUCRATIC JUSTICE: MANAGING SOCIAL SECURITY DISABILITY CLAIMS 117 (1983)

¹⁷ Dubin, Jon C., Overcoming Gridlock: Campbell after a Quarter-Century and Bureaucratically Rational Gap-Filling in Mass Justice Adjudication in the Social Security Administration's Disability Programs (January 2, 2011). *Administrative Law Review*, Vol. 62, p. 937, 2010 ; Rutgers School of Law-Newark Research Paper No. 090. Available at SSRN: <https://ssrn.com/abstract=1734126>

not warrant DI coverage, but by a confluence of factors they are in good-faith unable to find productive work in the economy. For example, a 60-year-old applicant who can only perform sedentary work, has limited skills that could be applied to another industry, and only has a GED, would be determined to be disabled. On the other hand, a 45-year old limited to sedentary work, who has a bachelor's degree and some transferable skills would not be determined to be disabled.

Figure 2: The Medical-Vocational Grid



Source: Warshawsky, Mark J. and Ross A. Marchand. 2015. "Modernizing the SSDI Eligibility Criteria: A Reform Proposal That Eliminates the Outdated Medical-Vocational Grid." Mercatus Working Paper. Arlington, VA: Mercatus Center at George Mason University.

In the Supreme Court’s 1983 *Heckler v. Campbell*¹⁸ decision, Justice Powell praised the medical-vocational grid as a crucial device in establishing consistency in SSA’s labor market determinations of DI eligibility.¹⁹ In *Campbell*, the Court sustained SSA’s use of the medical-vocational grid. The Court held that even though, statutorily, disability hearings are described as individualized determinations, certain agencies like the SSA may, for a certain class of issues, “rely on its rulemaking authority to determine issues that do not require case-by-case consideration,” as a contrary holding would force an agency to “relitigate issues that may be established fairly and efficiently in a single rulemaking proceeding.”²⁰ The medical-vocational grid was not found to conflict with SSA’s requirement for individualized consideration of a claimant’s condition²¹ nor the requirement that decisions be based on evidence from a hearing²² because claimants are able to introduce evidence to support whether their particular circumstances fall into a particular medical-vocational grid category.²³

There are components of determinations in the medical-vocational grid that are subjective and cause significant problems in maintaining a uniform standard, however, especially in evaluation of non-exertional ailments and when a claimant falls between two residual functional capacity categories. ALJs differ among themselves about how to apply the medical-vocational grid framework to these gaps in the framework and in cases when additional labor market evidence is introduced.²⁴

¹⁸ 461 U.S. 458 (1983).

¹⁹ *Heckler v. Campbell*, 461 U.S. at 461

²⁰ *Campbell*, 461 U.S. at 467

²¹ 42 U.S.C. § 423(d)(2)(A)

²² 42 U.S.C. § 405(b)

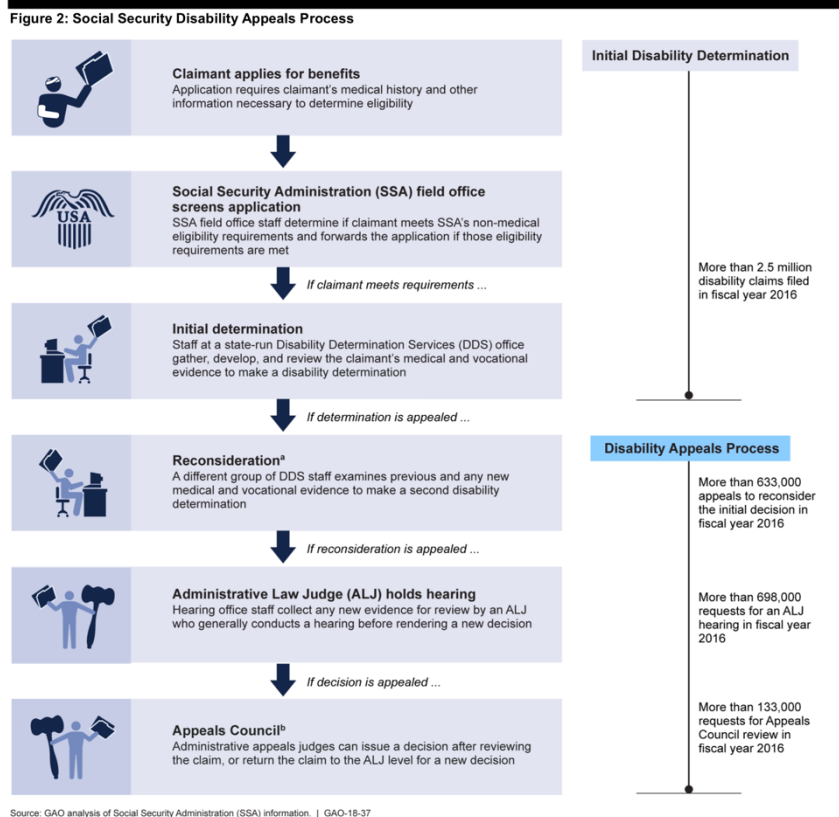
²³ *Campbell*, 461 U.S. at 467–68

²⁴ Dubin, Jon C., *Overcoming Gridlock: Campbell after a Quarter-Century and Bureaucratically Rational Gap-Filling in Mass Justice Adjudication in the Social Security Administration's Disability Programs* (January 2, 2011). *Administrative Law Review*, Vol. 62, p. 937, 2010 ; Rutgers School of Law-Newark Research Paper No. 090. Available at SSRN: <https://ssrn.com/abstract=1734126>

Appeals

Applicants who disagree with a DI decision can go through three levels of appeals. In all but 9 states, and parts of California, the applicant may go through Reconsideration, in which a new DDS employee completes a second full review. If denied again, the individual can appeal further to have a non-adversarial hearing before an administrative law judge (ALJ), who reviews the case de novo.²⁵ At the hearing level along, more than 600,000 cases each year are adjudicated by almost 1,600 ALJs.²⁶ If denied once again by the ALJ, then the applicant may request that the Appeals Council review the decision; if the Council declines to review the case or the applicant disagrees with the Council’s decision, then the individual may finally file a civil case in a Federal district court.

Figure 3: Appeals Process



Source: GAO. “SOCIAL SECURITY DISABILITY: Additional Measures and Evaluation Needed to Enhance Accuracy and Consistency of Hearings Decisions” Dec 7, 2017

²⁵ SOC. SEC. ADMIN., PUB. NO. 05-10041, THE APPEALS PROCESS 1 (2015), <https://www.ssa.gov/pubs/EN-05-10041.pdf>.

²⁶ SOCIAL SECURITY DISABILITY: Additional Measures and Evaluation Needed to Enhance Accuracy and Consistency of Hearings Decisions. GAO-18-37: Published: Dec 7, 2017. Publicly Released: Jan 8, 2018

GAO has found significant variation across ALJ allowance rates, the rate at which ALJs awarded benefits after appeal.²⁷ Controlling for other possible explanations, they found that the allowance rate could vary up to 46 percentage points based on the judge that reviewed a typical claim. The average allowance rate declined from 71 percent to 54 percent between 2005 to 2015,²⁸ and the allowance rate variation has fallen 5 percentage points between FY2007 and FY2015; SSA attributes this to training for judges and improved quality assurance. Several features appear correlated with higher allowance rates, particularly claimants with representation (3 times higher)²⁹ and decision volume.³⁰ Perhaps less surprisingly (for general DI applications over 70% of differences between states can be explained by demographic, health, and employment characteristics³¹), ALJ allowance rates are strongly affected by unemployment rates in their district³² as well as disability prevalence in their district. As such, ALJ decision bias naturally follows the “disability belt” in parts of the South and Appalachia.³³

C. Solvency

In 2015 Congress reallocated funds to DI,³⁴ which at the time pushed back the projected depletion date from 2016 to 2022, a forecast which was soon adjusted to 2032 giving further short-term relief. The 2019 OASDI Trustees report further pushed back the depletion date until

²⁷ SOCIAL SECURITY DISABILITY: Additional Measures and Evaluation Needed to Enhance Accuracy and Consistency of Hearings Decisions. GAO-18-37: Published: Dec 7, 2017. Publicly Released: Jan 8, 2018

²⁸ Reforming the System of Review by Administrative Law Judges in Disability Insurance
Mark J. Warshawsky and Ross A. Marchand
September 2015
MERCATUS WORKING PAPER

²⁹ Ibid.

³⁰ Nakosteen, Robert and Michael Zimmer, “Approval of Social Security Disability Appeals: Analysis of Judges’ Decisions,” *Applied Economics* 46, no. 23 (2014): 2783–91.

³¹ Coe, Norma B., Kelly Haverstick, Alicia H. Munnell, and Anthony Webb. 2011. What explains state variation in SSDI application rates? Working Paper no. 2011- 23, Center for Retirement Research at Boston College.
http://crr.bc.edu/wp-content/uploads/2011/11/wp_2011-23-508.pdf

³² SSA Office of the Inspector General, “Oversight of Administrative Law Judge Workload Trends,” February 2012, A-12-11-01138.

³³ Schmulowitz, Jacob, 1928-, and Henry David Lynn. Insured And Disabled Workers Under the Social Security Disability Program: Characteristics And Benefit Payments 1957 1963. [Washington]: U. S. Dept. of Health, Education, and Welfare, Social Security Administration, Office of Research and Statistics, 1966.
<https://catalog.hathitrust.org/Record/001341119>

³⁴ Social Security Administration, “Congress Passes H.R. 1314, the Bipartisan Budget Act of 2015,” Social Security Legislative Bulletin No. 114-8, November 3, 2015, https://www.ssa.gov/legislation/legis_bulletin_110315.html.

2052, representing a two-thirds improvement in the solvency gap forecasted in 2015.³⁵ The dramatic change in depletion date is due to application rates that have continued to decrease since 2010, lower incidence rates in 2018, and the fact that DI income and costs were forecast to be quite close for years after the previously projected 2032 depletion date. In 2052, continued revenues to the DI fund after depletion of the reserves are projected be enough to continue paying out 91 percent of its benefits.³⁶ The long-term picture of DI looks similar to as before 2015, and it is still ultimately default-bound, though there have been quite encouraging beneficiary trends.

Given Congress's ability to reallocate between the two funds in, it is difficult to break out the long-term solvency of just the DI trust. SSA's 2019 Trustees Report projects that to make OASDI solvent through a 75-year period, however, payroll taxes would have to increase 2.70 percentage points, or all benefits would have to be reduced by 17 percent (or 20 percent if the reductions were only applied only to beneficiaries becoming eligible after 2019), or some combination of the two.³⁷ Establishing 75-year solvency beginning in 2034, the date of OASDI projected depletion, would require adopting a 3.87 percentage point payroll tax rate increase, or a 23 percent reduction in all DI benefits, or some combination of the two.

Beyond simply meeting benefit payment obligations in the future, SSA's administrative funding is declining in real terms. Though SSA's administrative funding also comes from workers' FICA taxes, Congress determines a limit on SSA's operations spending in annual

³⁵ THE 2019 ANNUAL REPORT OF THE BOARD OF TRUSTEES OF THE FEDERAL OLD-AGE AND SURVIVORS INSURANCE AND FEDERAL DISABILITY INSURANCE TRUST FUNDS, Social Security Administration (2019), <https://www.ssa.gov/OACT/TR/2019/tr2019.pdf>.

³⁶ THE 2019 ANNUAL REPORT OF THE BOARD OF TRUSTEES OF THE FEDERAL OLD-AGE AND SURVIVORS INSURANCE AND FEDERAL DISABILITY INSURANCE TRUST FUNDS, Social Security Administration (2019), <https://www.ssa.gov/OACT/TR/2019/tr2019.pdf>.

³⁷ THE 2019 ANNUAL REPORT OF THE BOARD OF TRUSTEES OF THE FEDERAL OLD-AGE AND SURVIVORS INSURANCE AND FEDERAL DISABILITY INSURANCE TRUST FUNDS, Social Security Administration (2019), <https://www.ssa.gov/OACT/TR/2019/tr2019.pdf>.

appropriations via the Limitation on Administrative Expenses (LAE).³⁸ The operations spending that Congress determines for SSA count against the funding limits set by the Budget Control Act (BCA) discretionary spending caps. This may need to be addressed in order to stem growing application wait times and delays in updating a beneficiary's benefit level when circumstances change.³⁹

D. Award Frequency

The United States DI program has the strictest eligibility requirements in the OECD,⁴⁰ and U.S. disability benefit payments make up 1.3 percent of GDP, among the lowest in the OECD where the average is 1.9 percent of GDP.⁴¹ The increase in applications and benefits between 1985 and 2014 has since begun to stabilize. Most of the program's overall expansion during that period can be attributed to the demographic expansion of the labor force—namely increased female labor force, the progression of baby boomers into peak disability years (50 to Full Retirement Age),⁴² and somewhat due to the previously mentioned effect of recessions. Much of the drastic increase in *relative* award frequency during that period was policy driven. The Social Security Disability Amendments of 1980 required the SSA to substantially increase Continuing Disability Reviews (CDR), reviews of existing beneficiaries' eligibility, leading to the termination of 490,000 people's benefits.⁴³ This in turn brought about a powerful political backlash, which set

³⁸ <https://www.ssa.gov/budget/FY19Files/2019LAE.pdf>

³⁹ CBPP. More Cuts to Social Security Administration Funding Would Further Degrade Service By Kathleen Romig Updated October 6, 2017

<https://www.cbpp.org/sites/default/files/atoms/files/3-14-17ss.pdf>

⁴⁰ Along with the analogous programs in Canada, Japan, and South Korea.

OECD. *Sickness, Disability and Work: Breaking the Barriers: A Synthesis of Findings across OECD Countries*. Paris: OECD Publishing; 2010.

https://read.oecd-ilibrary.org/social-issues-migration-health/sickness-disability-and-work-breaking-the-barriers_9789264088856-en#page91

⁴¹ OECD (2019), Public spending on incapacity (indicator). doi: 10.1787/f35b71ed-en

<https://data.oecd.org/social-exp/public-spending-on-incapacity.htm>

⁴² Liebman, Jeffrey B. "Understanding the Increase in Disability Insurance Benefit Receipt in the United States." *Journal of Economic Perspectives*—Volume 29, Number 2. Pg. 123-124

⁴³ Liebman, Jeffrey B. "Understanding the Increase in Disability Insurance Benefit Receipt in the United States." *Journal of Economic Perspectives*—Volume 29, Number 2. Pg. 127

the stage for the 1984 Amendments which introduced new standards ensuring claimants with severe musculoskeletal and psychological disorders would receive DI. Thus, 1980 and 1984 Amendments created a drop and then rise, respectively, in enrollment. These bills make the oft-referenced rise in awards between 1985 and 2014 more dramatic than when taken in wider context, as we can see most clearly in Awards per 1000 Insured (Figure 9).

Figure 4: Award per 1000 insured

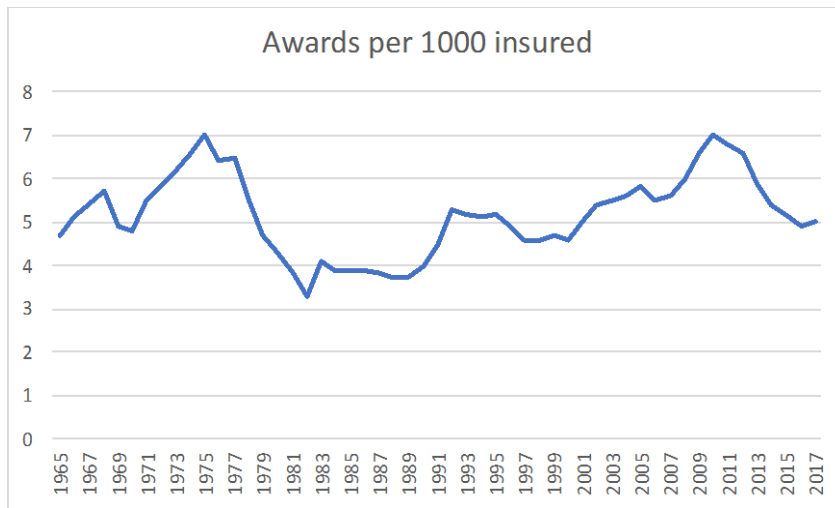
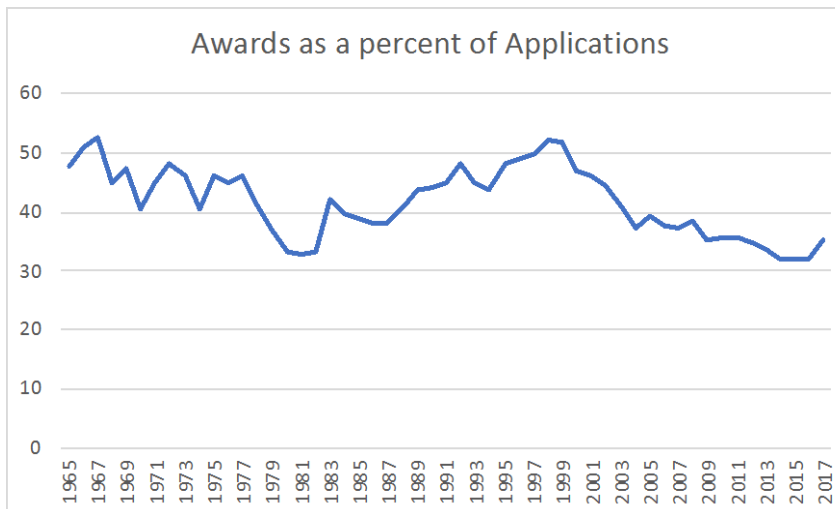


Figure 5: Award per application



Source: Data from Annual Statistical Report on the Social Security Disability Insurance Program, 2017 (released October 2018)

While the magnitude of the DI program has expanded, the relative frequency of awards (see Figures 9 and 10) has not. The surge in beneficiaries has, as predicted by CBO and OASDI Board of Trustees, fallen as a share of GDP. Even in the midst of the baby boomer surge in enrollment, DI spending did not increase as dramatically as enrollment rates had.⁴⁴ Other indicators have trended favorably since the mid-2010s surge. Average benefit levels for disabled-workers were lower in 2017 than expected and are projected to reduce further going forward.⁴⁵ Finally, the aggregate number of beneficiaries in “current payment” has been trending down since 2014.⁴⁶

Improper over- and under-payments of benefits have continued to play a small, but not insignificant, role in the picture of DI outlays. From FY2011 to FY2015 these improper payments were responsible for 0.99 percent (over-payments) and 0.22 percent (under-payments) of total disability outlays.⁴⁷

Frequently concern for DI is driven by a notion that loosening of benefit determinations to include less severe disabilities may be driving increased enrollment rates. The 1984 reforms expanded benefit receipt to those with mental health and musculoskeletal disabilities, which now make up the largest portion of adult disabled workers.⁴⁸ Concerns are driven by the notion that poor job market prospects for low-skilled workers created a perverse incentive to take advantage of this system.⁴⁹ Despite the change in disabilities considered, the actual data do not show any

⁴⁴ Ibid. Pg. 129

⁴⁵ OASDI Trustees (2018). “The 2018 Annual Report of the Board of Trustees of the Federal OldAge and Survivors Insurance and Federal Disability Insurance Trust Funds,” <https://www.ssa.gov/oact/TR/2018/tr2018.pdf>

⁴⁶ Ibid.

⁴⁷ “Improper Payments Information Detailed Report” <https://www.ssa.gov/finance/2016/Improper%20Payments.pdf>

⁴⁸ Annual Statistical Report on the Social Security Disability Insurance Program, 2017 (released October 2018) https://www.ssa.gov/policy/docs/statcomps/di_asr/ Pg. 16

⁴⁹ “When SSDI was implemented in the late 1950s, it was intended to provide benefits to those who were too disabled to work but weren’t yet eligible for Social Security benefits. However, eligibility standard changes implemented in 1984 shifted screening rules from a list of specific impairments to a process that put more weight on an applicant’s reported pain or discomfort, even in the absence of a clear medical diagnosis.”

De Rugy, Veronique. The National Review. “It’s Time to Reform Our Bankrupt Disability Insurance”

generalized loosening of the DI awards process, as seen in awards per 1000 insured. Economist Jeffrey Liebman conducted a study⁵⁰ isolating and considering how various factors may have effected determination standards and finds no loosening of standards. If anything, this study suggests indication of possibly tighter standards post-1990. Liebman notes that hypothetical increased benefits due to low-skilled laborer’s reduced economic prospects could actually be socially optimal, though there is no empirical evidence of this effect occurring to begin with.

II. REFORMS

A. Congressional Reform: History and 2015

Figure 11: Brief History of Congressional reforms

Legislation	Year Affected	Trust Fund Benefited	Description
Social Security Amendments of 1967	1968	DI	The bill increased benefits, partially offset by an increase in contributions and benefit base with remainder covered by OASI surplus. Reallocation from OASI to DI covering part of costs of increased benefits in DI.
Tax Reform Act of 1969	1970	DI	Major tax bill with a provision increasing Social Security benefits by 15%. Reallocation aimed at covering costs of benefit increase for DI; OASI’s increased benefits covered by fund’s prior surplus.
Social Security Amendments of 1977	1978	DI	Major Social Security reform intended to reduce Social Security shortfalls. DI and OASI were both facing shortfalls, though DI’s deficit was larger as a percent of payroll tax (47%, compared to OASI’s 17%).
	1979	OASI	
	1982	SI	
Allocation of Social Security Tax Receipts of 1980	1980	OASI	Temporary reallocation to avoid depletion of OASI and provide time to enact reforms. Enacted 4 months after legislation reforming DI to achieve savings.
Social Security Amendments of 1983	1983	OASI	Major Social Security reform improving Social Security solvency.
	1984	OASI	
Social Security Domestic Employment Reform Act of 1994	1994	DI	Bill reallocating taxes from OASI to DI to avoid depletion of DI trust fund and restore short term adequacy of DI trust fund. Accompanied by a request for a study to understand the growth in SSDI rolls.
	1997	OASI	
	2000	DI	

Source: Testimony of Ed Lorenzen, CFRB (Feb. 25, 2014). House Ways & Means Subcommittee on Social Security

September 10, 2015 3:53 PM

<https://www.nationalreview.com/corner/disability-insurance-bankrupt-reform/>

⁵⁰ Liebman, Jeffrey B. “Understanding the Increase in Disability Insurance Benefit Receipt in the United States.” Journal of Economic Perspectives—Volume 29, Number 2.

The 2016 depletion of the DI fund was first projected, accurately, during the 1994 congressional reallocation. In 2015 Congress acted just in time, reallocating funds from the OASI trust to the DI trust. This reallocation was offset by generating roughly comparable savings within the retirement trust program, removing OASI beneficiaries' ability to use the "file-and-suspend" filing strategy to increase benefits. The move by Congress made improved the overall OASDI finances, thus satisfying Section 3(q) of the 114th Congress's H.Res. 5,⁵¹ known as the "Johnson rule." The Johnson rule prohibits the transferring of funds⁵² out of the OASI trust fund except in the case of legislation that improves the long-term actuarial balance of the OASDI combined trust fund.

The 2015 reallocation was not a new tactic. Congress has reallocated tax revenue between the two parts of the OASDI trust 9 times since DI's founding.⁵³ However, the 2015 reforms diverged from previous reallocations in one crucial way; in 2015 the OASI trust faced a greater long-term shortfall than the DI trust, and DI was already receiving a higher proportion of revenue from the OASDI payroll tax than OASI.⁵⁴

⁵¹ H.Res.5 - 114th Congress (2015-2016): Adopting rules for the One Hundred Fourteenth Congress. Congress.gov (2015), <https://www.congress.gov/bill/114th-congress/house-resolution/5> (last visited May 11, 2019).

⁵² "legislation that would reduce the actuarial balance of the OASI trust fund by at least 0.01% of the present value of projected future taxable payroll over the 75-year period used in the most recent Social Security trustees report."

The Social Security Disability Insurance (DI) Trust Fund: Background and Current Status, Congressional Research Service (2016), <https://crsreports.congress.gov/product/pdf/R/R43318>.

⁵³ Ibid. Pg. 20

⁵⁴ DI was responsible for 13 percent of OASDI spending and was receiving 14 percent of OASDI revenues.

Testimony of Ed Lorenzen, CFRB (Feb. 25, 2014)
House Ways & Means Subcommittee on Social Security
<http://www.crfb.org/document/ed-lorenzen-testimony-disability-insurance-solvency-subcommittee-social-security>

Ultimately the 2015 reallocation further delayed the inevitable; more comprehensive structural reform by Congress is necessary, even if no longer as time-sensitive with a 2052 forecasted depletion data. Thus, a series of reforms have circulated or are already underway.

B. Reform Underway

Occupational Information System

DI's information on the current U.S. job market, namely consideration of ability and transferable employment opportunities in the current economy, are in dire need of modernization. A bipartisan process of developing SSA's own vocational tool has been underway in conjunction with the BLS since the Obama administration.⁵⁵

DI typically can't make determinations solely based on one's physical disability, they have to make it within the context of (a.) past relevant work they've performed and (b.) all the other possible work they could do in the national economy. Since the 1960s, the DI process has referred to the Department of Labor's Dictionary of Occupational Titles (DOT) for its vocational information. This system, however, hasn't been updated in nearly 30 years, so the system still includes occupations that no longer practically exist, like an elevator operator, and it excludes extremely prominent jobs in our current economy, such as web designers. So beginning in 2008, the SSA began working with BLS to develop its own system, the Occupational Information System (OIS). This system should be implemented in FY 2020 and by itself may solve many of the determination quality issues that critics of the medical-vocational grid point to.

⁵⁵ Proposed Rule: "*Vocational Factors of Age, Education, and Work Experience in the Adult Disability Determination Process*" <https://www.regulations.gov/document?D=SSA-2014-0081-0001>

Consistency in Adjudication

As of 2019, SSA has agreed in a memorandum⁵⁶ to follow a set of GAO recommendations regarding ALJ oversight. GAO recommended that SSA treats public performance measures on a number of ALJ DI decision factors, including timeliness, consistency, and accuracy.⁵⁷ GAO also advised that the SSA Commissioner assess the quality assurance reviews' efficacy and reduce redundant overlap between systems of review.

C. Further Reforms

The current period, preceding the depletion of DI reserves in 2052, is a fiscal runway SSA can use for innovation and implementation of ideas to help bring long-term income and outlays into line. There are a wealth of ideas for DI renovation that pose the opportunity for 10s of billions of dollars in potential savings over the next decades.⁵⁸

*Redefining the SGA Definition of Disability*⁵⁹

Defining disability as inability to work arguably drives much of the burdensome, extended, and inconsistent nature of the DI determination process. The strict SGA notion of disability hurts the labor participation of rejected applicants due to prolonged separation from the labor market.⁶⁰ It

⁵⁶ Appendix II: Comments from the Social Security Administration.

SOCIAL SECURITY DISABILITY: Additional Measures and Evaluation Needed to Enhance Accuracy and Consistency of Hearings Decisions. GAO-18-37: Published: Dec 7, 2017. Publicly Released: Jan 8, 2018

⁵⁷ SOCIAL SECURITY DISABILITY: Additional Measures and Evaluation Needed to Enhance Accuracy and Consistency of Hearings Decisions

GAO-18-37: Published: Dec 7, 2017. Publicly Released: Jan 8, 2018

⁵⁸ Liebman, Jeffrey B., and Jack A. Smalligan. 2013. "An Evidence-Based Path to Disability Insurance Reform." The Hamilton Project, Brookings Institution

http://www.hamiltonproject.org/assets/legacy/files/downloads_and_links/THP_15WaysFedBudget_Prop4.pdf

⁵⁹ Jacobson, Neil, Barbara Butz, Anita Aaron, and Aya Aghabi. 2015. "Exploring an Alternative Social Security Definition of Disability." SSDI Solutions, McCrery-Pomeroy SSDI Solutions Initiative.

⁶⁰ Autor, David, Nicole Maestas, Kathleen Mullen and Alexander Strand (2013). Does Delay Cause Decay? The Effect of Administrative Decision Time on the Labor Force Participation and Earnings of Disability Applicants, Working Paper

also negatively impacts the labor participation prospects of accepted applicants, by presuming they are disconnected from the labor market. The program does not meaningfully incentivize return to work for beneficiaries, who are by definition deemed unable to work. If a claimant or beneficiary attempts to work it can put their determination or benefits at risk, income that is necessary to manage the high costs of being disabled. Being disabled by itself is a significant burden to employment and causes significant additional costs beyond just lower earnings.⁶¹ A modification to the federal definition could take example from definitions used by disability programs' in states like New York and California,⁶² modifying the federal standard from "inability to work" to having "major impediments to work"—impediments that can be addressed with financial support and employment services.

A common argument is that disability insurance is supposed to support only the most extreme cases of disability. However, there is a broader value to incentivizing beneficiaries to work and a 40 percent of beneficiaries would like to try working again.⁶³ Under a new definition, and by raising the earnings limit to several times the federal poverty level, extreme cases would still receive permanent benefits, but current beneficiaries would see incentive to return to work.

SSA has made a number of unsuccessful attempts to incentivize work for claimants and beneficiaries under the current SGA framework. These have shown limited increases in earnings

⁶¹ Stapleton, David, Ali Protik, and Christal Stone. 2008. "Review of International Evidence on the Cost of Disability." Report no. 542. Norwich: Department for Work and Pensions. Available at http://www.mathematicampr.com/~media/publications/PDFs/disability/international_evidence_cost.pdf

⁶² Jacobson, Neil, Barbara Butz, Anita Aaron, and Aya Aghabi. 2015. "Exploring an Alternative Social Security Definition of Disability." SSDI Solutions, McCrery-Pomeroy SSDI Solutions Initiative.

⁶³ Livermore, Gina. 2010. "Longitudinal Employment Outcomes for Social Security Disability Beneficiaries with Work Goals and Expectations." Speech, Center for Studying Disability Policy Research Forum, Washington, DC May 19. Available at http://www.mathematicampr.com/~media/publications/pdfs/disability/csdp_may2010_forum_livermore.pdf.

and no change to long term receipt of benefits.⁶⁴ Such programs may be unsuccessful for the simple reason for an American dealing with the high-costs of being disabled, the risk of attempting return to work and losing benefits simply outweighs any benefits.

Redefinition of disability is not a fiscal case for closing the solvency gap, but there is reason to believe that reorganizing disability programs around lifting work impediments will provide a long-term fiscal boon. The major costs to the DI trust are from permanent recipients, so a higher degree of re-employment may lead to a favorable benefit-cost outcome over the long-term that outweighs the higher level of shorter-term support.⁶⁵

Medical-Vocational grid

Vocational grid proposals have attracted recent reform attention, and some form is expected to be proposed by the administration in 2019. Reform proposals focus limiting or replacing the medical-vocational grid's weighing of and preference given to older age, language limitations, and physical limitations.⁶⁶ Reform proposals favor eliminating age and language considerations in ability to work, as well as factoring the ability to work given assistive technologies for

⁶⁴ Kornfeld, Robert & Rupp, Kalman. (2000). The Net Effects of the Project Network Return-to-Work Case Management Experiment on Participant Earnings, Benefit Receipt, and Other Outcomes. Social security bulletin. 63. 12-33.

https://www.researchgate.net/publication/12368664_The_Net_Effects_of_the_Project_Network_Return-to-Work_Case_Management_Experiment_on_Participant_Earnings_Benefit_Receipt_and_Other_Outcomes

⁶⁵ "Almost any policy that results in more retention/re-employment is going to pass benefit-cost test."

Hollenbeck, Kevin. 2015. "Job Retention/Re-employment for Workers Who Experience Productivity Loss." Lecture, SAW/RTW Policy Collaborative Webinar, W.E. Upjohn Institute for Employment Research, May 20. Available at https://econsys.adobeconnect.com/_a968322745/p1qsoe82kzk/?launcher=false&fcsContent=true&pbMode=normal

⁶⁶ Liebman, Jeffrey B., and Jack A. Smalligan. 2013. "An Evidence-Based Path to Disability Insurance Reform." The Hamilton Project, Brookings Institution http://www.hamiltonproject.org/assets/legacy/files/downloads_and_links/THP_15WaysFedBudget_Prop4.pdf

conditions such as blindness,⁶⁷ in favor of defaulting to determinations of residual functional capacity.

There is inconsistency present in the medical-vocational grid that should be addressed, and the OIS reforms will go a long way to make these determinations more precise and consistent with the contemporary U.S. labor market. Using reforms to this grid as a way to tighten eligibility altogether would be a more drastic move by Congress, however. The last time that DI eligibility was tightened was in the 1970s, largely because of increased incentive to apply due to mistakes in tying benefits to inflation rates during high inflation years. There are no similar economic factors present today that would encourage tightening eligibility. Any sizable costs savings from returning disabled workers to the labor force by stripping down the medical-vocational grid system would come at a cost of broader welfare losses.

Streamline Adjudication

The adjudication process is extremely convoluted. Studies have found that the process is so lengthy that even applicants who are ultimately denied have statistical reductions in labor force participation.⁶⁸ Data on the distribution of award outcomes suggests that there has been some progress made in reducing the proportion of claimants that terminate at the hearing level,⁶⁹ but

⁶⁷ “With older working ages, healthier living, less physically stressful jobs, and a workforce that is more open and less segregated by education level and language skills, the grid is no longer fair, necessary, or reflective of current conditions. Rather, the fourth and fifth steps should change to a sole focus on residual functional capacity, combined with an evaluation of jobs available in the national economy and suitable to the claimant, without loosened standards for older, less educated, and foreign-language-speaking workers. Moreover, there should be a more modern and realistic consideration of the physical effort needed to hold most jobs in today’s economy, given the changes in the nature of work and the availability of assistive technologies, even for conditions that now receive automatic benefits, such as blindness.”

Ibid. Pg. 33

⁶⁸ Autor, David, Nicole Maestas, Kathleen Mullen and Alexander Strand (2013). Does Delay Cause Decay? The Effect of Administrative Decision Time on the Labor Force Participation and Earnings of Disability Applicants, Working Paper

⁶⁹ Annual Statistical Report on the Social Security Disability Insurance Program, 2017 (Released 2018)
https://www.ssa.gov/policy/docs/statcomps/di_asr/2017/di_asr17.xlsx

there has also been a pending hearings backlog that has scarcely changed in 50 years.⁷⁰ Possible driving forces are an outdated system and extremely vague denial letters that may cause more claimants to appeal when they do not feel they have received convincing rationale.

*Curtailling Representative Reimbursement*⁷¹

The DI program includes reimbursements for attorney and non-lawyer representatives, which is essentially a public subsidy. At least 80% of claimants are represented; these representatives are eligible for travel expenses, including ambulance services, meals, and attendant services.

Representative reimbursement is also an inefficiency problem, as out of state representatives often only meet with their clients the day of the hearing. These representative subsidies are wasteful, incentivize inefficiencies in the process, and are poor uses of scarce resources.

*Disability reviews budget*⁷²

The process of following up to evaluate if beneficiaries should continue to stay eligible, known as CDRs, is a discretionary process. Every year SSA employs a model that gives scores to beneficiaries based on their probability of medical improvement, and SSA selectively reviews these high-likelihood beneficiaries' eligibility.⁷³ The less Congress funds these follow-ups, the more it costs the overall Federal government. In 2015 SSA estimated that FY2016 CDRs would yield average return on investment of \$9 in net Federal program savings per \$1 allocated to

⁷⁰ Autor, David, Nicole Maestas, Kathleen Mullen and Alexander Strand (2013). Does Delay Cause Decay? The Effect of Administrative Decision Time on the Labor Force Participation and Earnings of Disability Applicants, Working Paper pg 231

⁷¹ Engel, David W., Dale Glendening and Jeffrey S. Wolfe. "Social Security: Restructuring Disability Adjudication"

⁷² Ibid.

⁷³ "Earnings after DI: evidence from full medical continuing disability reviews"

J Hemmeter, MS Bailey - IZA Journal of Labor Policy, 2016
<https://link.springer.com/article/10.1186/s40173-016-0066-9>

“dedicated program integrity funding.”⁷⁴ CDR funding should be shifted to the mandatory side similar to the reviews for SNAP, TANF, and Medicaid.

Demonstrations

SSA currently has demonstration authority,⁷⁵ the ability to test changes to the DI program, which is periodically renewed by Congress. This allows SSA to experiment and collect evidence on various programs that, if successful, can be broadly implemented to improve DI’s solvency and its outcomes for claimants and beneficiaries. These authorizations are temporary and often expire without renewal, causing SSA to pause or cancel ongoing experiments and implementations;⁷⁶ the current authority, renewed in 2015, is set to terminate at the end of 2022. Perhaps partially due to the erratic nature of this authority and the unrealistic project timeframes it requires, SSA has not yet used this extensive authority to implement many substantive changes to the DI program. While there have been numerous demonstration projects conducted, they play a limited role in the SSA policies that are ultimately changed by Congress.⁷⁷

Alternative interventions that can take the place of DI for some portion of potential claimants are of special demonstration interest. Demonstrations to give DI beneficiaries incentive to return to work have shown only limited results.⁷⁸ However, some policymakers suggest SSA

⁷⁴ This includes OASDI, SSI, Medicare, and Medicaid program effects

Carolyn W. Colvin, Acting SSA Commissioner Testimony
Senate Hearing (Feb. 11, 2015) Pg. 11

⁷⁵ DEMONSTRATION PROJECT AUTHORITY (Effective Nov. 2, 2015)
https://www.ssa.gov/OP_Home/ssact/title02/0234.htm

⁷⁶ Congressional Research Service. Scott D. Szymendera, William R. Morton. Security Social Security Disability Insurance (SSDI) Demonstration Projects. April 10, 2014

<https://greenbook-waysandmeans.house.gov/sites/greenbook.waysandmeans.house.gov/files/RL33585.pdf>

⁷⁷ “Improving Social Security Disability Insurance: Building a Culture of Innovation and Experimentation to Identify Future Reforms”

Hart, Nicholas; Fichtner, Jason; Smalligan, Jack. *Benefits Quarterly*; Brookfield Vol. 35, Iss. 1, (First Quarter 2019)
<https://search.proquest.com/openview/214acc015a367595efd4a20f806998e4/1?pq-origsite=gscholar&cbl=4616>

⁷⁸ Romig, Kathleen. 2016. “Demonstrations to Promote Work among Disability Beneficiaries Likely to Produce Limited Results.” Center of Budget and Policy Priorities. <https://www.cbpp.org/research/social-security/demonstrations-to-promote-work-amongdisability-beneficiaries-likely-to->

may find more fruitful results in the intermediate period after workers become incapacitated and before applying or receiving benefits. Such reforms can be broadly organized into 1. Immediate intervention and intermediary programs and 2. Incentive issues for states and employers.

Immediate intervention⁷⁹ and intermediary programs

This entails programs or resources that would provide immediate response after work disruption events and be an intermediary between leaving work and filing for DI, or for claimants early in the DI application. This can help workers find ways to get back into employment before they fall into a state of permanent employment. Examples include the community-focused Health and Work Service proposal⁸⁰ and the Employment/Eligibility Service⁸¹ concept that, if possible, provides “work test” opportunities, which lead to DI enrollment if good-faith attempts fail.

NetWork, a similar program targeted at SSI applicants in 1991 (as well as DI beneficiaries, but not applicants) only showed limited earnings increases and no change to benefit receipt; the increased tax receipts did not sufficiently outweigh the cost of the program itself.⁸²

Address incentive problems with states and employers⁸³

⁷⁹ Ekman, Lisa D. “Discussion of Early Intervention Proposals” SSDI Solutions Conference on August 4, 2015
<http://www.crfb.org/sites/default/files/ekman.pdf>

⁸⁰ Christian, Jennifer, Thomas Wickizer, and A. Kim Burton. A Community-Focused Health & Work Service (HWS) SSDI Solutions Conference on August 4, 2015
<http://www.crfb.org/sites/default/files/christianwickizerburton.pdf>

⁸¹ Stapleton, David, Yonatan Ben-Shalom, and David Mann. The Employment/Eligibility Service System: A New Gateway for Employment Supports and Social Security Disability Benefits. SSDI Solutions Conference on August 4, 2015
<http://www.crfb.org/sites/default/files/stapletonbenshalommann.pdf>

⁸² Kornfeld, Robert & Rupp, Kalman. (2000). The Net Effects of the Project Network Return-to-Work Case Management Experiment on Participant Earnings, Benefit Receipt, and Other Outcomes. Social security bulletin. 63. 12-33.
https://www.researchgate.net/publication/12368664_The_Net_Effects_of_the_Project_Network_Return-to-Work_Case_Management_Experiment_on_Participant_Earnings_Benefit_Receipt_and_Other_Outcomes

⁸³ Liebman, Jeffrey B., and Jack A. Smalligan. 2013. “An Evidence-Based Path to Disability Insurance Reform.” The Hamilton Project, Brookings Institution
http://www.hamiltonproject.org/assets/legacy/files/downloads_and_links/THP_15WaysFedBudget_Prop4.pdf

There are currently perverse incentives for states to encourage incapacitated workers to take federal funding from DI instead of their state programs. A similar perverse incentive exists with firms nudging employees toward DI rather than thinking of ways to find a new role or rework their existing role at the firm. We should pilot programs that give states and firms incentives to engage more with this population. For example, the disability system in the Netherlands requires that employers partially fund the benefit costs for the initial years.⁸⁴ A consequence of this, however, could be simply incentivizing employers to context their previous employee's claims in an ALJ proceeding.⁸⁵

⁸⁴ Organization of Economic Cooperation and Development, *Sickness and Disability Schemes in the Netherlands*, (November 2007), <http://www.oecd.org/dataoecd/35/30/41429917.pdf>

⁸⁵ Richard Pierce, "What Should We Do about Administrative Law Judge Disability Decision Making?" (Public Law and Legal Theory Paper 573, George Washington University Law School, Washington, DC, 2011).

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<http://www.crfb.org/project/ssdi-solutions-initiative>

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[https://www.budget.senate.gov/imo/media/doc/Kate Lang 021115-Budget-written-testimony-FINAL.pdf](https://www.budget.senate.gov/imo/media/doc/Kate%20Lang%20021115-Budget-written-testimony-FINAL.pdf).

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<https://oig.ssa.gov/sites/default/files/audit/full/pdf/A-01-15-15035.pdf>

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