



Statement of

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Disability Appeals Process”**

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**Chairman Johnson, Ranking Member Larson, and Members of the Subcommittee:**

Thank you for inviting me to testify on the Social Security Administration's (SSA's) planned changes to the disability appeals process. My name is Will Morton, and I am an analyst in income security with the Congressional Research Service (CRS).

**SSA's Disability Programs**

SSA is responsible for administering two federal programs that provide income support to qualified individuals who have severe, long-term disabilities: Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI). SSDI is a work-related social insurance program that provides monthly cash benefits to nonelderly disabled workers who worked for a sufficient number of years in jobs covered by Social Security and to their eligible spouses and children.<sup>1</sup> In contrast, SSI is a needs-based public assistance program that provides monthly cash payments to aged, blind, or disabled individuals (including blind or disabled children) who have limited assets and little or no Social Security or other income.<sup>2</sup> Both programs use the same basic definition of disability to determine eligibility; however, by virtue of design, each program serves a somewhat different population. In 2017, SSDI and SSI combined paid an estimated \$199 billion in federally administered benefits to 14.5 million qualified disabled individuals and 1.5 million non-disabled dependents of disabled workers.<sup>3</sup>

**SSA's Disability Adjudication Process**

SSA's disability adjudication process generally consists of four levels: an initial determination process and a three-part administrative appeals process.<sup>4</sup>

**Initial Determination Process**

The initial determination process begins when a claimant files an application with SSA. Claims representatives at SSA's field offices screen claimants to verify that they meet the relevant non-medical entitlement factors for benefits. If the agency requires more information to process the application, it may contact the claimant by phone or arrange for an in-person interview at the local field office.

Claimants who meet the relevant non-medical entitlement factors have their application forwarded to the state Disability Determination Services (DDS) office in the area that has jurisdiction for the medical determination. DDSs, which are fully funded by the federal government, are state agencies tasked with reviewing the medical and vocational evidence and issuing the disability determination for SSA. The disability determination is made based on evidence gathered in the claimant's case record. Disability examiners—with the help of licensed medical professionals—typically use evidence collected from the claimant's own medical sources to evaluate the existence and severity of the claimant's impairment(s). However, if the evidence from the claimant's sources is insufficient to make a determination, the disability examiner may schedule a consultative examination for the claimant in order to obtain the necessary information. The initial disability determination generally does not involve a face-to-face

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<sup>1</sup> For more information, see CRS In Focus IF10506, *Social Security Disability Insurance (SSDI)*.

<sup>2</sup> For more information, see CRS In Focus IF10482, *Supplemental Security Income (SSI)*.

<sup>3</sup> Estimates calculated by the Congressional Research Service (CRS) based on a variety of data sources available on the Social Security Administration's (SSA's) website. For purposes of these estimates, the term *Social Security Disability Insurance (SSDI)* includes Social Security disability beneficiaries whose benefits are paid from the Old-Age and Survivors Insurance (OASI) trust fund. In addition, the term *qualified disabled individuals* excludes Supplemental Security Income (SSI)-only recipients aged 65 or older.

<sup>4</sup> For more information, see CRS Report R44948, *Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI): Eligibility, Benefits, and Financing*.

meeting between the claimant and the adjudicator, although the state DDS agency may contact the claimant by telephone or by mail in certain instances.

After considering all medical and other evidence, the state DDS agency issues a disability determination and returns the case to the SSA field office for appropriate action. If the claim is approved, then SSA sends the claimant an initial award notice and begins processing the claim. If the claim is denied, then SSA or the state DDS agency sends the claimant a denial notice explaining the rationale for the initial determination as well as the claimant's right to appeal it.

### Three-Part Administrative Appeals Process

Claimants who are dissatisfied with SSA's initial determination may request further review under the Social Security Act's administrative and judicial review standards.<sup>5</sup> The appeals process affords claimants the opportunity to present additional evidence or arguments to support their case as well as to appoint a representative to act on their behalf, such as an attorney or a qualified non-attorney. In general, the request for further review must be made within 60 days of the date the claimant received notice of the prior determination or decision.

SSA's administrative appeals process is composed of three levels of review, which usually must be requested in the following order:

1. reconsideration of the case by a different adjudicator at the state DDS agency;
2. a hearing before an administrative law judge (ALJ); and
3. a request for review by SSA's Appeals Council.<sup>6</sup>

This three-part process is not specified in the Social Security Act but was established through agency regulations.<sup>7</sup> At each level of administrative review, the adjudicator bases his or her determination or decision on the provisions in the Social Security Act, SSA's regulations, and other agency guidance. If an individual is dissatisfied with the determination or decision, he or she may appeal to the next level. Once the individual has exhausted administrative review, the last determination or decision made by SSA becomes the agency's *final decision* on the matter. Only after SSA issues a final decision is an individual generally permitted to seek judicial review by filing a complaint against the agency in federal court.

### Data on the Four Levels of the Disability Adjudication Process

**Table 1** provides data on the disability adjudication process for FY2017. Although the data for a particular level of the process vary somewhat from year to year, the differences *between* the levels for a particular data measure (such as the allowance rate) have been fairly consistent over the last several years. During FY2017, the initial level of the disability adjudication process handled the largest number of claims, approving about a third of them. Claims at the reconsideration level were processed the fastest among the four levels and resulted in few allowances. On the other hand, claims at the hearing level took the longest to process and were more likely to result in an award. The Appeals Council approved the lowest percentage of claims among the four levels.

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<sup>5</sup> Sections 205(b), 205(d)-(h), and 1631(c) of the Social Security Act; 42 U.S.C. §§405(b), 405(d)-(h), and 1383(c).

<sup>6</sup> See 20 C.F.R. §§404.900 and 416.1400.

<sup>7</sup> Sections 205(b)(1) and 1631(c)(1)(A) of the Social Security Act (42 U.S.C. §§405[b][1] and 1383[c][1][A]) require the Commissioner of Social Security (Commissioner) "to make findings of fact, and decisions as to the rights of any individual applying for a payment" and to give dissatisfied individuals "reasonable notice and opportunity for a hearing." In addition, these sections provide the Commissioner with the authority "to hold such hearings and to conduct such investigations and other proceedings as the Commissioner may deem necessary or proper for the administration of this title." Sections 205(a), 702(a)(5), and 1631(d)(1) of the Social Security Act (42 U.S.C. §§405[a], 902[a][5], and 1383[d][1]) provide the Commissioner with the authority to make rules and regulations necessary to carry out SSA's administrative responsibilities.

**Table 1. Combined SSDI and SSI Disability Claims Data, by Adjudication Level, FY2017**

Measure	Initial Determination	Appeals		
		Reconsideration	Hearing	Appeals Council
Claims Received During the Year	2,442,592	582,935	620,164	128,113
Claims Processed During the Year	2,485,100	595,588	685,657	160,776
Pending Claims at the End of the Year	522,869	105,022	1,056,026	94,471
Average Processing Time (Days)	111	101	605	<sup>a</sup>
Allowance Rate <sup>b</sup>	34%	13%	47%	1%

**Source:** Congressional Research Service (CRS), based on data from the following sources: Social Security Administration (SSA), *Justification of Estimates for Appropriations Committees, Fiscal Year 2019*, February 12, 2018, <https://www.ssa.gov/budget/>; and SSA, "Hearings And Appeals: Appeals Council Requests for Review FY 2017," [https://www.ssa.gov/appeals/DataSets/archive/07\\_FY2017/07\\_September\\_AC\\_Requests\\_For\\_Review.html](https://www.ssa.gov/appeals/DataSets/archive/07_FY2017/07_September_AC_Requests_For_Review.html).

- a. Not available.
- b. Excludes claims where an eligibility determination was reached without a determination of disability because the claimant did not meet one or more non-medical entitlement factors.

## The Reconsideration Level

In general, reconsideration is the first mandatory step of the administrative appeals process that an individual must initiate in order to appeal an initial determination.<sup>8</sup> Reconsideration involves a thorough review of all evidence in the case record from the initial determination, along with any additional evidence submitted as part of the appeal. Reconsideration is effectively a new review of the case by the same state DDS office that conducted the initial determination except that it is performed by an adjudicator who did not participate in the initial determination.<sup>9</sup> If the adjudicator requires additional medical evidence to make a disability determination, he or she may contact the claimant's medical sources or arrange for the claimant to undergo a consultative examination at SSA's expense.

As with the initial level, the reconsideration level generally does not involve a face-to-face meeting between the claimant and the adjudicator. However, if the individual contests a determination to terminate benefits based on a finding that his or her condition is no longer disabling, then the individual may request a *disability hearing*, which is a face-to-face meeting at the reconsideration level between the individual and a disability hearing officer to review the medical cessation determination.<sup>10</sup> (Disability hearings at the reconsideration level are distinct and separate from hearings before an ALJ.) In either case, once the review has been completed, the adjudicator makes a determination based on the preponderance of evidence in the case record. The individual is later notified of the decision in writing.

## Purpose

Since its creation, the reconsideration level has been inextricably linked to the hearing level, serving as a tool for SSA to reduce the number of hearings that it adjudicates.<sup>11</sup> One way in which the reconsideration

<sup>8</sup> 20 C.F.R. §§404.907-404.922 and 416.1407-416.1422.

<sup>9</sup> In general, state DDS agencies review medical issues, while SSA's field offices, processing centers, and other support offices review all other issues.

<sup>10</sup> 20 C.F.R. §§404.914-404.918 and 416.1414-416.1418.

<sup>11</sup> For a more extensive discussion of the reconsideration level and its purpose, see CRS congressional distribution memorandum, *The Reconsideration Level of the Social Security Administration's Appeals Process: Overview, Historical Development, and*

level may achieve this reduction is by processing some awards earlier in the disability adjudication process, which reduces the need for hearings. A second way in which the reconsideration level may achieve this reduction is by increasing the acceptance among claimants that the state DDS agency has sufficiently adjudicated their claim, such that some who would otherwise appeal to the hearing level elect not to do so.

Historically, SSA's motivation behind the reconsideration level has stemmed, in part, from the fact that it costs the agency considerably more to process hearings than it does reconsiderations.<sup>12</sup> For example, in FY2012, the unit cost for SSA to process a case was \$1,036 at the initial level, \$666 at the reconsideration level, \$2,771 at the hearing level, and \$1,181 at the Appeals Council level.<sup>13</sup> In addition to cost, hearings are a more time-intensive undertaking for SSA, requiring hundreds of more days to complete, on average, than reconsiderations (**Table 1**). Consequently, hearings are prone to the development of backlogs. By reducing the number of appeals that reach the hearing level, the reconsideration level may also serve to ease the hearings backlog.

## History

The origin of the reconsideration level dates back to 1940 with the creation of the administrative appeals process for Social Security retirement and survivors' claims.<sup>14</sup> At that time, SSDI and SSI did not exist. The reconsideration level, which was initially optional, was envisioned as an intermediate step that would sufficiently address most contested matters related to retirement and survivors' claims (e.g., earnings records, marital status).<sup>15</sup> As such, reconsideration was not designed with disability in mind.

With the establishment of SSDI in 1956,<sup>16</sup> SSA extended its existing administrative appeals process to disability claims. Shortly thereafter, SSA experienced a marked rise in the total number of appeals submitted to its offices, a large portion of which stemmed from disability claims.<sup>17</sup> In an effort to slow the growth in appeals to the hearing level, SSA issued regulations in 1959 making reconsideration a prerequisite before being granted a hearing.<sup>18</sup> In other words, SSA made reconsideration mandatory.

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*Demonstration Projects*, July 17, 2018.

<sup>12</sup> See, for example, memorandum from division of field operations No. 73 (28059) (A), to all regional representatives, OASI and district managers, *Bureau emphasis on request for reconsideration prior to request for hearing—review on the record—other means of improving service to dissatisfied claimants*, April 20, 1959, in U.S. Congress, House Committee on Ways and Means, Subcommittee on the Administration of the Social Security Laws, *Administration of Social Security Disability Insurance Program*, 86<sup>th</sup> Cong., 1<sup>st</sup> sess., November 4, 5, 6, 9, 10, 12, 13, and December 7, 1959 (Washington: GPO, 1960), pp. 685-687, <https://hdl.handle.net/2027/mdp.39015078169961>.

<sup>13</sup> SSA's answers to questions from Rep. Sam Johnson, in U.S. Congress, House Committee on Ways and Means, Subcommittee on Social Security, *Social Security Disability Fraud Conspiracy In Puerto Rico*, 113<sup>th</sup> Cong., 1<sup>st</sup> sess., September 13, 2013, H.Hrg. 113-SS8 (Washington: GPO, 2016), p. 52, <https://www.govinfo.gov/content/pkg/CHRG-113hhr89581/pdf/CHRG-113hhr89581.pdf>.

<sup>14</sup> Social Security Board (SSB), 5 *Federal Register* 4169, October 22, 1940, <https://cdn.loc.gov/service/ll/fedreg/fr005/fr005206/fr005206.pdf>.

<sup>15</sup> Federal Security Agency (FSA), SSB, *Basic Provisions Adopted by the Social Security Board for the Hearing and Review of Old-Age and Survivors Insurance Claims with a Discussion of Certain Administrative and Legal Considerations*, January 1940, p. i, <https://babel.hathitrust.org/cgi/pt?id=umn.31951d00462291g;view=1up;seq=159>.

<sup>16</sup> P.L. 84-880.

<sup>17</sup> *Disability Insurance Fact Book: A Summary of the Legislative and Administrative Development of the Disability Provisions in Title II of the Social Security Act*, prepared by the staff of the Subcommittee on the Administration of the Social Security Laws for the use of the Committee on Ways and Means (Washington: GPO, 1959), Table A, pp. 74-75, <https://hdl.handle.net/2027/mdp.39015022406915>.

<sup>18</sup> Department of Health, Education, and Welfare (HEW), SSA, Bureau of Old-Age and Survivors Insurance (BOASI), "Formal Reconsideration of Determination by Bureau of Old-Age and Survivors Insurance as Condition Precedent to Hearing," 24

In 1972, lawmakers established the SSI program in the 50 states and D.C., effective January 1974.<sup>19</sup> SSA was tasked with administering SSI because of its experience with SSDI as well as its generally positive reputation for customer service.<sup>20</sup> The agency made reconsideration the first mandatory step of the administrative appeals process for most SSI claims, except for those in which the recipient contests a determination to terminate benefits due to a finding that his or her condition is no longer disabling (i.e., *medical cessation cases*), which were sent directly to the hearing level.

In 1983, lawmakers required SSA to provide SSDI beneficiaries who received a medical cessation determination with the opportunity for a face-to-face meeting at the reconsideration level.<sup>21</sup> Congress hoped that the establishment of disability hearings at the reconsideration level might “enhance claimant acceptance of the denial at the State agency level and reduce the number of appeals” heard by ALJs at the hearing level.<sup>22</sup> Using its regulatory authority, SSA extended disability hearings to SSI medical cessation cases in order to improve uniformity between the two programs.<sup>23</sup>

### Arguments For and Against

Arguments for the reconsideration level generally center on its intended purpose of reducing appeals at the hearing level. By processing some awards at a relatively lower cost and by reducing the number of “unnecessary appeals” at the hearing level, proponents argue that the reconsideration level serves to reduce both administrative cost and the hearings backlog.<sup>24</sup> In addition, advocates point to the fact that the reconsideration level results in some claimants being approved sooner than they otherwise would be.<sup>25</sup>

Arguments against the reconsideration level typically focus on its relatively low allowance rate (13% in FY2017), which opponents say proves that reconsideration is simply a “rubber stamp” of SSA’s initial determination.<sup>26</sup> Opponents often portray reconsideration as an unnecessary impediment that adds several months to the process for those claimants who go on to be approved at the hearing level.<sup>27</sup>

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*Federal Register* 6869, August 25, 1959, <https://cdn.loc.gov/service/ll/fedreg/fr024/fr024166/fr024166.pdf>.

<sup>19</sup> P.L. 92-603.

<sup>20</sup> Edward D. Berkowitz and Larry W. DeWitt, *The Other Welfare: Supplemental Security Income and U.S. Social Policy* (Cornell University Press, 2013), p. 8.

<sup>21</sup> P.L. 97-455.

<sup>22</sup> U.S. Congress, House Committee on Ways and Means, Subcommittee on Social Security, *Disability Amendments of 1982*, to accompany H.R. 6181, 97<sup>th</sup> Cong., 2<sup>nd</sup> sess., May 26, 1982, H.Rept. 97-588, p. 13, <https://hdl.handle.net/2027/coo.31924000089254>.

<sup>23</sup> Department of Health and Human Services (HHS), SSA, “Federal Old-Age, Survivors, and Disability Insurance and Supplemental Security Income for the Aged, Blind, and Disabled; Disability Hearings at the Reconsideration Level,” 51 *Federal Register* 288, January 3, 1986, <https://cdn.loc.gov/service/ll/fedreg/fr051/fr051002/fr051002.pdf>.

<sup>24</sup> See footnote 12.

<sup>25</sup> SSA, *Full Justification of Estimates for Appropriations Committees, Fiscal Year 2011*, February 1, 2010, p. 177, <https://www.ssa.gov/budget/hist/FY2011/2011FullJustification.pdf> (hereinafter “SSA FY2011 Budget Justification”).

<sup>26</sup> Testimony of Nancy G. Shor, Consortium for Citizens with Disabilities (CCD), in U.S. Congress, House Committee on Ways and Means, Subcommittees on Social Security and Income Security and Family Support, *Social Security Disability Claims Backlogs*, 111<sup>th</sup> Cong., 2<sup>nd</sup> sess., April 27, 2010, p. 5, [http://www.c-c-d.org/fichiers/CCD\\_House\\_W&M\\_Jt\\_Subcomm4-27-10\\_FINAL.pdf](http://www.c-c-d.org/fichiers/CCD_House_W&M_Jt_Subcomm4-27-10_FINAL.pdf).

<sup>27</sup> *Ibid.*

## The Prototype Demonstration Project and the Elimination of the Reconsideration Level

In October 1999, SSA initiated the Disability Redesign Prototype Model, which was one of several demonstration projects designed to test modifications to the disability adjudication process. The Prototype was designed to test multiple individual models in combination with each other, one of which involved the elimination of the reconsideration level.<sup>28</sup> At present, the Prototype applies to the following 10 states: Alabama, Alaska, California (Los Angeles North and West branches only), Colorado, Louisiana, Michigan, Missouri, New Hampshire, New York, and Pennsylvania.<sup>29</sup> Claimants who appeal an unfavorable initial determination in these states skip the reconsideration level and proceed directly to the hearing level.

The goal of the Prototype was to make various improvements to the initial level of the disability adjudication process that would “afford the same benefits” of the reconsideration level without the need for an additional level of administrative review.<sup>30</sup> Initially, the Prototype included a pre-decision interview model (later known as *claimant conferences*), which provided claimants with the opportunity for a conference with an adjudicator at the initial level. The reconsideration elimination and pre-decision interview models were designed to work in tandem, with the resources saved from eliminating the reconsideration level redirected towards establishing and conducting conferences at the initial level. However, SSA discontinued the conferences in 2002 because they increased case processing times.

Although the Prototype was originally scheduled to conclude on or about December 31, 2001, SSA has extended the project 13 times. The last such extension was issued on August 25, 2016, and extends the project until no later than December 28, 2018.<sup>31</sup>

### History

In the 1990s, SSA developed the Disability Process Redesign, which was a comprehensive reform plan to fundamentally reengineer the disability adjudication process.<sup>32</sup> Among the plan’s many initiatives were the reconsideration elimination model and the pre-decision interview model. The original Disability Process Redesign plan was made up of a total of 83 individual initiatives, 38 of which were to be completed or to be in the testing stage by September 30, 1996.<sup>33</sup> In September 1996, the General Accounting Office (GAO, now the Government Accountability Office) testified before this subcommittee

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<sup>28</sup> 20 C.F.R. §§404.906 and 416.1406. The Prototype also includes a Single Decision-Maker (SDM) model, which provides qualified disability examiners with the authority to issue certain disability determinations without the sign-off of a medical or psychological consultant. Section 832 of the Bipartisan Budget Act of 2015 (P.L. 114-74) effectively requires SSA to end its testing of the SDM model.

<sup>29</sup> SSA, Program Operations Manual System (POMS), “DI 12015.100 Disability Redesign Prototype Model,” January 16, 2014, <http://policy.ssa.gov/poms.nsf/lnx/0412015100>.

<sup>30</sup> Testimony of Kenneth Apfel, Commissioner, SSA, in U.S. Congress, House Committee on Ways and Means, Subcommittees on Social Security and Human Resources, *Management of Disability Cases*, 106<sup>th</sup> Cong., 1<sup>st</sup> sess., October 21, 1999, H.Hrg. 106-59 (Washington: GPO, 2000), p. 15, <https://www.govinfo.gov/content/pkg/CHRG-106hrg66024/pdf/CHRG-106hrg66024.pdf>.

<sup>31</sup> SSA, “Modifications to the Disability Determination Procedures; Extension of Testing of Some Disability Redesign Features,” 81 *Federal Register* 58544, August 25, 2016, <https://www.gpo.gov/fdsys/pkg/FR-2016-08-25/pdf/2016-20253.pdf>.

<sup>32</sup> HHS, SSA, “Process Reengineering Program; Disability Reengineering Project Plan,” 59 *Federal Register* 47887, September 19, 1994, <https://www.gpo.gov/fdsys/pkg/FR-1994-09-19/content-detail.html>.

<sup>33</sup> U.S. General Accounting Office (GAO, now the Government Accountability Office), *SSA Disability Reengineering: Project Magnitude and Complexity Impede Implementation*, T-HEHS-96-211, September 12, 1996, p. 3, <https://www.gao.gov/products/T-HEHS-96-211>.

that SSA's reform plan was overly ambitious and complex.<sup>34</sup> GAO recommended that SSA "select those initiatives most crucial to producing significant, measurable reductions in claims-processing time and administrative costs" and to "combine those initiatives into an integrated process, test that process at a few sites, and evaluate the results—before proceeding with full-scale implementation."<sup>35</sup>

Following GAO's recommendations, SSA revised its Disability Process Redesign plan in February 1997 and developed the Full Process Model (FPM), which was an integrated model designed to test several features, including the elimination of the reconsideration level and the establishment of pre-decision interviews at the initial level.<sup>36</sup> In testing the FPM, "SSA evaluated whether, and to what degree, the FPM improved the disability determination process by assessing the impact of the FPM on allowance rates, appeal rates, accuracy, administrative costs, processing time, program costs, and employee and customer satisfaction."<sup>37</sup> According to SSA, the data gathered from testing the FPM led the agency to conclude that eliminating the reconsideration level and conducting interviews at the initial level were generally sound approaches.<sup>38</sup>

In March 1999, SSA revised its Disability Process Redesign plan again<sup>39</sup> to include an initiative that "incorporates the results of the various pilots we conducted over the last two years in looking at how to improve the processing of the more than 2 million new disability claims per year."<sup>40</sup> In August 1999, SSA issued a notice in the *Federal Register* that it would combine certain ongoing modifications to the disability adjudication process (including the reconsideration elimination and pre-decision interview models) under a new Prototype model, which would be conducted in 10 states.<sup>41</sup> According to the agency, the intent of the Prototype was to "refine the process and learn more about potential operational impacts before moving to national implementation."<sup>42</sup> The Prototype went into effect in October 1999.

On January 19, 2001, which was the last full day of the Clinton Administration, SSA issued a Notice of Proposed Rulemaking (NPRM) to implement the principal elements of the Prototype on a nation-wide basis.<sup>43</sup> In its evaluation of the potential effects of the proposal, SSA said that it did not expect the

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<sup>34</sup> Testimony of Diana S. Eisenstat, Associate Director, Income Security Issues, GAO, in U.S. Congress, House Committee on Ways and Means, Subcommittee on Social Security, *Recommendations to Improve the Performance of the Social Security Administration as an Independent Agency*, 104<sup>th</sup> Cong., 2<sup>nd</sup> sess., September 12, 1996, H.Hrg. 104-94 (Washington: GPO, 1998), <https://www.gpo.gov/fdsys/pkg/CHRG-104hrg45808/pdf/CHRG-104hrg45808.pdf>.

<sup>35</sup> GAO, *SSA Disability Redesign: Focus Needed on Initiatives Most Crucial to Reducing Costs and Time*, HEHS-97-20, December 20, 1996, p.5, <https://www.gao.gov/products/HEHS-97-20>.

<sup>36</sup> The Full Process Model (FPM) was one of several demonstration projects conducted by SSA as part of the second iteration of its Disability Process Redesign plan.

<sup>37</sup> SSA, "History of SSA 1993-2000," Chapter 4: Program Changes, <https://www.ssa.gov/history/ssa/ssa2000history.html>.

<sup>38</sup> *Ibid.*

<sup>39</sup> See SSA, *Social Security and Supplemental Security Income Disability Programs: Managing for Today Planning for Tomorrow*, March 11, 1999.

<sup>40</sup> Testimony of John R. Dyer, Principal Deputy Commissioner, SSA, in U.S. Congress, House Committee on Appropriations, Subcommittee on Labor, Health and Human Services, and Education, *Departments of Labor, Health and Human Services, Education, and Related Agencies Appropriations for 2000*, 106<sup>th</sup> Cong., 1<sup>st</sup> sess., March 23, 1999 (Washington: GPO, 1999), p. 455, [https://www.ssa.gov/legislation/testimony\\_032399.html](https://www.ssa.gov/legislation/testimony_032399.html).

<sup>41</sup> SSA, "Modifications to the Disability Determination Procedures; Disability Claims Process Redesign Prototype," 64 *Federal Register* 47218, August 30, 1999, <https://www.gpo.gov/fdsys/pkg/FR-1999-08-30/pdf/99-22421.pdf>.

<sup>42</sup> *Ibid.* The Prototype Model was one of several demonstration projects conducted by SSA as part of the third iteration of its Disability Process Redesign plan. For more information, see SSA, Office of the Inspector General (OIG), *Status of the Social Security Administration's Disability Process Improvement Initiatives*, A-07-00-10055, June 18, 2002, <https://oig.ssa.gov/status-social-security-administrations-disability-process-improvement-initiatives>.

<sup>43</sup> SSA, "New Disability Claims Process," 66 *Federal Register* 5494, January 19, 2001, <https://www.gpo.gov/fdsys/pkg/FR-2001-01-19/pdf/01-1442.pdf>.

Prototype to produce any administrative or program savings.<sup>44</sup> Instead, the agency projected that the model would increase federal and state program outlays by \$41.5 billion from FY2001 through FY2010.<sup>45</sup> In justifying the proposed changes, SSA stated,

Based on the Full Process Model test and our experience with the prototype so far, we found that the proposed new process results in better determinations at the initial level, with more allowances of claims that should be allowed. Many claims that would have been allowed only after appeal under the old process, were allowed at the initial step of the new process. Eliminating the reconsideration step enables claimants who appeal to reach the hearing level sooner than under the old process, and the resources previously used at the reconsideration step can be used to ensure a more complete determination process at the initial level. These positive results support implementation of the redesigned claim process.<sup>46</sup>

However, in May 2001 (during the George W. Bush Administration), SSA's Office of Disability announced in a letter to state DDS administrators that the agency's plan to implement the Prototype nationally had been put on hold. The letter stated,

SSA's original timeline for [the] Prototype called for a final implementation regulation by this September and then the first phase of States to start the new process in April 2002. This was based on results from full process model tests showing that more people who should be paid are paid at the DDS level, that the numbers of appeals to OHA [Office of Hearings and Appeals] after dropping reconsiderations are about the same as before, and people who do want to appeal get to OHA faster.

However, preliminary data from the Prototypes presented last year have raised questions about the program costs of national implementation. Therefore, final decisions about rollout will be reserved until more complete data are available.<sup>47</sup>

## Initial Results and Further Developments

In February 2002, GAO issued a report on the progress of SSA's disability redesign efforts.<sup>48</sup> GAO found SSA's initial data on the Prototype to be "promising," noting,

Preliminary results indicate that the Prototype is moving in the direction of meeting its objective of ensuring that legitimate claims are awarded as early in the process as possible. Compared with their non-Prototype counterparts, the DDSs operating under the Prototype are awarding a higher percentage of claims at the initial decision level, while the overall accuracy of their decisions is comparable with the accuracy of decisions made under the traditional process. In addition, when DDSs operating under the Prototype deny claims, appeals reach a hearing office about 70 days faster than under the traditional process because the Prototype eliminates the reconsideration step in the appeals process.<sup>49</sup>

However, GAO cautioned that the Prototype could lead to higher spending and greater workloads, noting,

Although the rate of awards at the ALJ level is lower under the Prototype than under the traditional process, SSA estimates that about 100,000 more denied claimants would appeal to the ALJ level under the Prototype. Because of this, additional claimants would wait significantly longer for final

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<sup>44</sup> Ibid., p. 5500.

<sup>45</sup> Ibid., pp. 5500-5501. The estimate includes related Medicare and Medicaid costs.

<sup>46</sup> Ibid., p. 5501.

<sup>47</sup> Letter from Kenneth D. Nibali, to Disability Determination Services Administrators, *Status of Planning for the New Disability Process (Prototype)—Information*, No. 566, May 1, 2001, p. 1.

<sup>48</sup> GAO, *Social Security Disability: Disappointing Results from SSA's Efforts to Improve the Disability Claims Process Warrant Immediate Attention*, GAO-02-322, February 4, 2002, <https://www.gao.gov/products/GAO-02-322>.

<sup>49</sup> Ibid., p. 3.

agency decisions on their claims. This would further increase workload pressures on SSA hearings offices, which are already experiencing considerable case backlogs. The additional appeals are also expected to result in more awards from ALJs and overall under the Prototype than under the traditional process.<sup>50</sup>

In June 2002, SSA issued a notice in the *Federal Register* that the agency would extend most of the Prototype's features (including the reconsideration elimination model) until no later than December 30, 2002, but would discontinue claimant conferences.<sup>51</sup> In justifying the decision to end conferences at the initial level, Commissioner Jo Anne Barnhart later remarked,

The end-of-line conference added processing time (approximately 15 to 20 days in less than fully favorable cases), and was not as effective as we had hoped in helping claimants understand claims issues. Most States that had been doing the prototype found that early and ongoing contact with the claimant was more effective. Contacting the claimant early in the process helps to reduce processing time by clarifying information as early as possible, and assists the claimant in understanding the disability process up-front instead of waiting until the end of the process.<sup>52</sup>

In February 2010, the Obama Administration included a proposal in its FY2011 budget to reinstate the reconsideration level in the state of Michigan in order to reduce the number of appeals at the hearing level.<sup>53</sup> In April 2010, Commissioner Michael Astrue stated,

We expected that eliminating the reconsideration step in the Prototype States would result in earlier decisions and reduced waiting times for claimants; however, we have found the opposite is true. In 1998, prior to the start of the Prototype test, the proportion of initial decisions that ended up at the hearings level was 1.4 percentage points higher in the Prototype States than in the non-Prototype States. By 2007, that difference between Prototype and non-Prototype States had grown to 7.5 percentage points. The 10 Prototype States generate approximately 25 percent of the disability applications nationwide, yet appeals from these States account for more than 31 percent of the decisions made at the hearings level.

In Michigan, an economically hard-hit State, we have concluded that too many cases are needlessly going to the hearings level from the DDSs. Therefore, we plan to reinstate reconsideration in Michigan next fiscal year.

Of all the Prototype States, Michigan has the highest percentage of hearing requests, not to mention some of the most backlogged hearing offices in the country. Reinstating reconsideration would allow a significant number of cases to be allowed at reconsideration, resulting in earlier payment to those claimants and a reduction in the number of hearing requests. Moreover, those cases that do go to hearing would be more thoroughly developed, having already been through the reconsideration step.<sup>54</sup>

Ultimately, the proposal to reinstate the reconsideration level in Michigan was never implemented.

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<sup>50</sup> Ibid., p. 19.

<sup>51</sup> SSA, "Modifications to the Disability Determination Procedures; Extension of Testing of Some Disability Redesign Features," 67 *Federal Register* 42594, June 24, 2002, <https://www.gpo.gov/fdsys/pkg/FR-2002-06-24/pdf/02-15844.pdf>.

<sup>52</sup> U.S. Congress, House Committee on Appropriations, Subcommittee on the Departments of Labor, Health and Human Services, Education, and Related Agencies, *Departments of Labor, Health and Human Services, Education, and Related Agencies Appropriations for 2004*, 108<sup>th</sup> Cong., 2<sup>nd</sup> sess., March 4, 2003, (Washington: GPO, 2003), p. 76, <https://hdl.handle.net/2027/mdp.39015090414247>.

<sup>53</sup> SSA FY2011 Budget Justification, p. 177.

<sup>54</sup> U.S. Congress, House Committee on Ways and Means, Subcommittees on Social Security and Income Security and Family Support, *Social Security Disability Claims Backlogs*, 111<sup>th</sup> Cong., 2<sup>nd</sup> sess., April 27, 2010, [https://www.ssa.gov/legislation/testimony\\_042710.html](https://www.ssa.gov/legislation/testimony_042710.html).

