Statement of
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Social Security Advisory Board
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I am pleased to have the opportunity once again to join you for your National Educational Conference, to talk with you about the work of the Social Security Advisory Board, and to discuss the issues that are important to all of us. Attending these conferences also gives me a chance to hear from you and learn about your ideas and concerns. At all times, but especially at this time of unprecedented change, it is crucial for the Board to hear from the people like you who are directly involved in adjudicating claims and carrying out the work of the disability program.

The Social Security Advisory Board has, over the past several years, devoted much attention to carefully studying the disability programs. We have issued a number of reports calling attention to both procedural issues and the broader question of whether the definition of disability that the program has operated under for nearly a half-century is consistent with our society's basic disability policies.

On the procedural side, it has been clear for a long time that this is a program with major problems.

Some of these problems are a result of inadequate resources to deal with continually growing workloads. The Advisory Board is well aware of that issue. We have supported the Commissioner in her efforts to obtain the needed additional resources. Both last year and, again earlier this year, I wrote to the House and Senate Appropriations Committees urging adoption of the increased funding proposed by the Administration for the Social Security programs. While there was a significant increase last year, we are still awaiting the final outcome on this year's appropriation.

Increased resources are important and necessary. But the problems of the disability program go deeper than resources. The Advisory Board's reviews of the program led it to the firm conviction that there are many areas in which fundamental change is needed. There is clearly a need for reducing the time it takes to reach decisions. Many individuals do get through the system in a reasonable amount of time, but other claims drag on sometimes for years. There are great inconsistencies in outcomes at different levels of adjudication, different regions, and within similar impairment categories. Some of these inconsistencies may be justified by differing conditions, but the program lacks the informational tools to know what the causes are. There is no effective overall quality management system. The regulatory policy base needs to be stronger. Training is inadequate. And, the program has been operating with heavy

reliance on inefficient paper processes supported by obsolete systems that are not integrated from one level to the next.

It is clear that short-term initiatives, tinkering, or half-measures are not going to solve the difficult and intractable problems of the disability program. Fundamental change is needed.

And because the Board is convinced of the need for fundamental change, we have applauded the Commissioner's decision to make a bold effort to tackle the program's problems by implementing an integrated electronic system and by proposing a new approach for the processes of adjudicating claims.

I recognize that some parts of the plan are controversial. However, big problems will not be solved and major changes will never be implemented if leaders wait for the non-controversial, perfect plans that everyone agrees with. Inertia and the status quo are powerful forces that hinder progress in any organization. The Commissioner has done the right thing by making a bold proposal that attempts to restructure the entire disability process rather than simply tinkering with its individual parts. She has also done the right thing by setting an implementation schedule that is ambitious but allows adequate time to listen to all interested parties and make improvements based on the ideas of the people that are directly involved in the disability process. The Commissioner's recent testimony to the House Subcommittees on Social Security and Human Resources shows that she is listening and carefully considering ideas to improve the new approach.

I know that most of you in this room are primarily concerned with that part of the process in which you, as surrogates for the Commissioner, hear and decide appeals of decisions rendered at an earlier stage. As you know too well, the hearings step is the most heavily backlogged, the most expensive, and the most frustrating for all parties. It is where claims routinely sit for the better part of a year, and far too often sit for multiples of a year. But I would like to talk a bit about how the proposed changes earlier in the process have a great potential for improving the situation at your level.

One part of the Commissioner's proposal that really has not received as much attention as it deserves is the commitment to having the State Disability Determination Services fully document claims. A poorly developed claim at one stage in the adjudicative process not only affects the quality of the decision at that level, but also creates extra work for the process at the next level. A consultant study commissioned by the Board identified the quality of the case record as the key to fair and accurate disability determinations. Unfortunately, workload pressures at the State agency level sometimes lead to decisions being made based on a record that is less than complete, and the file that makes its way to the Office of Hearings and Appeals sometimes lacks needed evidence and has no clear rationale for the decision that was made. A high level of medical and vocational documentation can only help the hearing offices by reducing the time you spend developing medical evidence. A good rationale gives you the benefit of being able to see how and why the trained examiners in the State agency reached the conclusion they did.

The second proposed change that should help expedite the hearing process is the creation of a reviewing official position. The RO should be able to identify many claims that would ultimately be allowed at a hearing. This can help to reduce the inflow to the hearings process. Even more importantly, the RO step should be one which assures that all claims appealed from the initial level are fully documented and well organized and that they have a rationale that clearly identifies the issues and shows the basis for the decision.

By improving these earlier stages in the adjudicative process, it should be possible:

- to get quicker decisions for many claimants,
- to reduce the size of the workload that enters the hearing stage, and
- to make the hearing stage quicker and more efficient by assuring that the claims it does see are well developed and well organized.

While the reviewing official is an important innovation that has great potential for significantly improving the process, it must be properly implemented or its potential will not be achieved. The ROs must be carefully selected, and they must be very well trained. Expectations of the new ROs should be well defined and reasonable to ensure that they have enough time to do a thorough job. And if they are selected from other parts of the agency, it will become important to backfill those positions.

As proposed by the Commissioner, the reviewing official position would be filled by an attorney. I know that this is one of those elements that have aroused some controversy. The Board has not taken a position on this, but I personally agree with that proposal. Once a claim is past the State agency level, it is on a track that may ultimately wind up in the courts. It is important that it be handled in a way that addresses all the due process concerns and does not require substantial reworking at the later levels of appeal. While reviewing officials must have a strong grounding in program policy, I believe their training as attorneys will enable them to better assure that those cases that go on to the hearing level are well prepared for an expeditious hearing.

These changes in the earlier stages of the adjudication process are important. They can help to relieve the pressures on the hearing process. But the hearing process itself needs attention. To begin with, it is going to be some time before the process changes at the DDS and reviewing official levels become fully effective, but the backlogs at the hearings level now are at historic highs and still growing. The benefits of a better early part of the process will be seriously undermined if they feed into a hearings process that remains choked with backlogs. And beyond the issue of backlogs, there are improvements that can and should be made to improve the efficiency and effectiveness of the hearings system.

There is a need to implement rules of procedure that prevent unnecessary delays, hold representatives accountable, and make the process more orderly and efficient.

Better training is essential. I certainly congratulate those of you who are here participating voluntarily in a national training conference. But the agency needs to improve the training given to new administrative law judges and to establish a regular system of on-going training that is required of all administrative law judges. This is a very complex program operating in a world where medical and vocational knowledge is continually evolving. Keeping up to date with those changes should not be optional.

Hand-in-hand with the need for training is the need to reexamine program policies to make sure that they are as clear and objective and up-to-date and understandable as possible. At certain levels, the application of disability policy to individual circumstances will often have a large element of subjectivity and uncertainty. That problem is greatly magnified if policies are subject to varying interpretations or based on outdated information.

There is also a need for improved management practices. In carrying out its oversight responsibilities, the Advisory Board has visited hearing offices throughout the country. We have talked with staff at all levels including ALJs and Chief ALJs, administrative management and decision writers and case technicians. As is true throughout the Social Security Administration, these employees work hard and are dedicated to seeing that applicants have their claims fairly adjudicated. But good will and dedication are not the same as good management. We find at all levels a sense that there is a need for improved tools and methods for managing the hearings process and assuring high levels of performance.

In proposing changes to the disability process, the Commissioner intentionally limited her proposal to those changes which she could implement administratively. Given the urgency of improving that process, that is certainly an understandable and reasonable decision. However, that does not mean that legislative improvements are impossible or necessarily undesirable. A few weeks ago, when I testified before the Social Security and Human Resources Subcommittees, I urged them to continue to look for ways in which change in law might help make this a better process. I pointed out, for example, that the Advisory Board has recommended that Congress should consider the possibility of establishing a Social Security Court. The Social Security program is national in scope and individuals throughout the country deserve to have its rules applied uniformly. In practice, however, courts frequently issue decisions concerning disability that vary from district to district and from circuit to circuit, resulting in the application of different disability policy in different parts of the country. The Board has questioned whether the existing arrangements for judicial review represent the best public policy. This question deserves careful study.

The Board also suggested that Congress take another look at whether there should be a government representative at hearings. One reason frequently cited for the backlogs in the appeals process is that the administrative law judge is required to assume responsibility not only for decision making but also for perfecting both the agency's and the claimant's cases. Having an agency representative participate in hearings could help clarify issues and introduce greater consistency.

Looking at the question of disability even more widely, the Advisory Board also believes that the time has come to consider whether the definition of disability in the Social Security Act is consistent with our national goals for the disabled. We issued a report on this subject a year ago and hosted a forum on the definition of disability in April. In June, during a visit to California, we met with participants in one of the demonstration projects aimed at making the program better support the efforts of the disabled to attain maximum self-sufficiency. At our regular Board meeting this month, we invited representatives of some disability advocacy organizations and some policy experts to help us explore this issue further, and we plan to continue to look for ways to achieve fundamental improvements.

Much has changed in the half-century since the disability program began. Medical and rehabilitative knowledge and technology have made great strides. The nature of work has changed. The workforce has changed. Attitudes about disability and work have also changed. But the definition of disability has not changed, and we increasingly hear concerns that it undermines the desire of many impaired individuals to participate fully in the economy and attain their maximum potential.

I would now like to focus particularly on an issue that has been and remains a great concern of the Board – the inconsistency of disability decisions. There is simply no question that there is a lack of consistency among States, within OHA, and between the DDSs and OHA. And the consistency issue that gets the most attention is the differences between the DDSs and OHA. The commonly quoted reversal rate at the hearings level is 60%, but, if you look just at cases involving a substantive disability decision, the reversal rate is over 70%.

We are all aware of the litany of reasons for this reversal rate – worsening of impairments, representation at the hearing level, better documentation, and the use of vocational experts. No doubt, all of these contribute to the reversal rate. But we don't know how much they contribute. Given that high a reversal rate, it is difficult to believe that a fundamental difference in decision-making is not also a significant factor. A GAO report issued this July notes concerns "*that the high rate of claims allowed at the hearing level may indicate that decision makers at the two levels are interpreting and applying SSA's criteria differently."*

This issue of consistency is not a new issue for the Social Security Advisory Board.

In 1998 the Board released a report that pointed out that variations in decision-making had existed for years, remained largely unexplained, and undermined public confidence in the disability programs. In 2000, we again raised this issue, pointing out that it was inappropriate for a program intended to operate uniformly throughout the nation. In our 2001 report on the need for fundamental change, we said that *"as long as variations in decision making remain unexplained, the integrity and fairness of the*

disability programs are open to question. These programs are too valuable and important to the American public for this issue not to be addressed."

The changes to the disability process that will be implemented over the next few years offer an important opportunity to get workloads under control and reduce the inordinately long time that many claimants now have to wait for a decision. But they also offer an opportunity to address this long-standing issue of consistency. One key element, which the Board has recommended and which is included in the Commissioner's new approach, is a greatly strengthened quality management system. The Board has also advocated improving the policy development infrastructure, giving a single presentation of policy to all adjudicators, and creating clear policy that addresses most important adjudicative issues. As we move from a general approach to detailed implementation, it is essential that we give attention to improving consistency. For example, the new reviewing official position has great potential to be an important policy bridge that can strengthen consistency between the State agencies and the hearings offices. It must not become yet another locus of inconsistency.

I hope you share the Board's concerns about the effect that policy has on the consistency of decision-making. You are in a unique position to identify issues that can cause inconsistency. I hope you will make your views known about how policies can be made clearer and less subjective.

On behalf of the Board I would like to thank you for the work that you do serving the disabled of this country. I know you have a difficult and complex job and are facing historically high and growing backlogs. Unfortunately, for a while, things are going to get more complicated as you implement eDib and the changes in the disability process. But, when these changes are fully in place, increased automation and an improved process will mean faster and better service for the American public. It will take patience and perseverance, but I am confident that you and your colleagues in the Social Security Administration and the State agencies will successfully implement these major changes. During difficult times it is especially important that everyone involved in the disability process work together to meet the needs of the public and to find ways to improve this program.

I thank you for inviting me to talk with you today and I would be happy to take any questions you may have.