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SOCIAL SECURITY ADMINISTRATION

Agency Is Positioning Itself to Implement Its New Disability Determination Process, but Key Facets Are Still in Development

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Highlights of [GAO-06-779T](#), a report to House Committee on Ways and Means Subcommittee on Social Security

Why GAO Did This Study

In March 2006, the Social Security Administration (SSA) published a rule that fundamentally alters the way claims for disability benefits are processed and considered. The rule establishes the Disability Service Improvement process (DSI)—intended to improve the accuracy, timeliness, consistency, and fairness of determinations. DSI's changes include an opportunity for an expedited decision during the initial determination process and the elimination of the Appeals Council, which had given claimants the right to appeal administrative law judge (ALJ) decisions before pursuing federal court review. DSI replaces the council with a Decision Review Board, which will selectively review ALJ decisions. However, dissatisfied claimants whose cases are not selected for board review must now appeal directly to the federal courts.

Based on its ongoing work, GAO was asked to testify on (1) public and stakeholder concerns about the elimination of the Appeals Council and its replacement by the Decision Review Board and SSA's response to these concerns, as well as (2) the steps that SSA has taken to help facilitate a smooth implementation of the DSI process.

www.gao.gov/cgi-bin/getrpt?GAO-06-779T.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Robert E. Robertson at (202) 512-7215 or robertsonr@gao.gov.

SOCIAL SECURITY ADMINISTRATION

Agency Is Positioning Itself to Implement Its New Disability Determination Process, but Key Facets Are Still in Development

What GAO Found

Concerns regarding the replacement of the Appeals Council with the Decision Review Board—raised by the public and stakeholder groups, such as claimant representatives—generally fall into two areas: (1) potential for increasing the workload of the federal courts and (2) anticipated hardship for claimants in terms of the loss of an administrative appeal level and difficulties associated with pursuing their claim in federal court. SSA's response to concerns regarding the federal court workload is that all changes associated with the new DSI process—taken together—should reduce the need for appeal to the federal courts; at the same time, SSA plans to implement this final step gradually and with additional safeguards to minimize impact on the courts. In response to concerns about the loss of appeal rights, SSA contends that DSI introduces enhanced levels of federal review earlier in the process and that claimants should experience a decline in the amount of time it takes to receive a final agency decision.

SSA has prepared in significant ways for the initial rollout of DSI in its Boston region, but the agency's timetable is ambitious and much work remains. The agency has moved forward in key areas that underpin the new system—human capital development, technical infrastructure, and quality assurance—taking actions consistent with past GAO recommendations for improving the disability determination process. For example, SSA has taken steps to ensure that key technical supports, particularly its electronic disability case processing system, are in place—even though it has allowed itself little time to address and resolve any glitches that may arise prior to implementation. SSA has also taken several steps to lay a foundation for quality assurance by centralizing its quality assurance reviews, establishing a Decision Review Board for reviewing decisions, and developing writing tools that should foster consistency and thorough documentation at all phases of the determination process. Further, we found that SSA's decision to implement DSI first in one small region prior to its introduction nationally is a good change management strategy that reflects our earlier recommendations. Additionally SSA has taken a proactive, collaborative approach to both the design and the implementation of the new determination process. Nevertheless, key facets of SSA's plan to monitor and evaluate the Boston rollout remain to be developed. For example, performance measures for assessing the execution of the rollout are still unclear to us, and mechanisms for delivering feedback to staff on the clarity and soundness of their decision writing have not yet been fully developed.

Mr. Chairman and Members of the Subcommittee:

Thank you for inviting me today to discuss stakeholder concerns about various aspects of the Social Security Administration's (SSA) new Disability Service Improvement process (DSI) and the steps that SSA has taken to address these concerns. SSA is preparing to implement its new process first in its Boston region for at least 1 year beginning in August 2006.

In July 2005, SSA issued a notice of proposed rule making to obtain public comment on DSI proposals that would fundamentally redesign the way claims for disability benefits are processed and considered, with the purpose of improving the accuracy, consistency and fairness of its disability decisions, and making correct decisions earlier in the process. After reviewing comments submitted in response to its notice, SSA issued its final rule in March 2006, codifying many of its proposed changes. One of the many changes envisioned under DSI is the elimination of the Appeals Council, which had afforded claimants the ability to appeal unfavorable decisions made by administrative law judges (ALJ) to SSA before filing suit with a federal court. Once DSI is fully implemented, decisions made by the ALJs become the final agency decision, unless they are selected for review by a new Decision Review Board. The cases selected for review will be those identified through use of a statistical model as claims that are complex or prone to erroneous decisions. As you know, many have expressed concern over the elimination of the Appeals Council as a forum that claimants could avail themselves of before resorting to a federal court.

The information I am providing today is based on work that we conducted between February 22, 2006, and June 2, 2006, as part of ongoing work in this area, in accordance with generally accepted government auditing standards. I will be discussing (1) concerns raised about the replacement of the Appeals Council with the Decision Review Board and how SSA has responded to them, and (2) steps SSA has taken to help facilitate a smooth implementation of the DSI process.

To conduct our work, we reviewed a large sample (252 in total) of the comment letters that were submitted by the public in response to SSA's notice of proposed rule making and that focused on the replacement of the Appeals Council with the Decision Review Board. In addition, we interviewed 10 stakeholder groups—such as claimant representatives, employee groups, and disability advocacy organizations that SSA has previously consulted with—to learn more about their perspectives on the

elimination of the Appeals Council as well as on the near-term rollout of the DSI process in the Boston region. In addition, we conducted extensive interviews with SSA officials and reviewed available agency documents to determine their position on and collect data relevant to eliminating the Appeals Council, as well as their efforts and plans related to DSI implementation. Further, we reviewed our past reports on improving SSA's disability process in a number of areas, including human capital; its electronic records system—known as eDib; quality assurance; and implementing change and managing for success. For a more detailed description of our methodology, please see appendix I.

In summary, we found that the public and stakeholders expressed two overriding concerns regarding the replacement of the Appeals Council with the Decision Review board—that the workload of the federal courts will rise if the council is eliminated and that this change will present additional hardship for claimants. In our review of the comment letters submitted to SSA that specifically addressed the elimination of the Appeals Council, we found that about half expressed concern that petitions to federal courts would rise, given the council's termination, and that claimants would lose an additional level of administrative review. About 40 percent of comments highlighted recent improvements in the Appeals Council's processes and noted that eliminating the council would not improve adjudication. Stakeholder groups we spoke with basically underscored these same two points—that eliminating the Appeals Council would result in an increase in disability claims cases that are appealed in federal district courts and that some claimants may drop meritorious claims rather than pursue a seemingly complicated and intimidating federal court appeal. Acknowledging these concerns, SSA contends that DSI will improve decision making earlier in the process, decrease the time it takes the agency to reach a final decision, and reduce the need for appeal. SSA also maintains that because DSI affords claimants the right to appeal their initially denied claims to reviewing officials who are now centrally managed, claimants will not experience an overall loss in administrative review at the federal level. At the same time, both stakeholders and SSA believe it will be important for the agency to closely monitor DSI in order to evaluate its impact on claimants and the courts.

SSA has made substantial preparation for DSI on all fronts related to successful implementation—human capital, technical infrastructure, and quality assurance. However, the timetable is ambitious and much work remains. While stakeholders have expressed concern that SSA will not be able to hire and sufficiently train staff in time for the new process to get under way, we found that the agency has, to date, posted hiring

announcements for new positions and developed training packages for onboard staff. SSA is also taking steps, as we had previously recommended, to ensure that key technical supports, particularly the electronic disability system known as eDib, are in place for Boston staff to adjudicate claims under the new process. At the same time, the agency has allowed itself very little time to identify and resolve any potential glitches that may arise before the Boston rollout in August. Regarding quality assurance, SSA has taken several steps to lay a foundation for a more cohesive program, as we had recommended in our earlier reports. For example, features of the new DSI process—including centralizing quality assurance reviews of initial state disability determination service (DDS) decisions, establishing a Decision Review Board for hearing decisions, and developing several tools to aid decision writing—may address problems with decisional consistency that we have identified in the past by allowing for a cohesive analysis of decisions. In addition, SSA officials plan to monitor and evaluate the execution of the Boston rollout, although some performance measures for this initiative, such as for assessing a new medical expert system that is part of DSI, are still unclear to us, and mechanisms for delivering feedback to staff on the clarity and soundness of their decision writing have not yet been fully developed. Finally, SSA is undertaking other, broad steps that we consider consistent with effective change management strategies that we have previously recommended. For example, the decision to implement the new system first on a small scale—that is, in one small region—before introducing it elsewhere should allow for careful integration of the new systems and staff and for working out problems before they become serious impediments to success. Additionally, SSA has employed a proactive, collaborative approach with the stakeholder community in both designing and implementing the new disability determination process.

Background

SSA operates the Disability Insurance (DI) and Supplemental Security Income (SSI) programs—the two largest federal programs providing cash benefits to people with disabilities. The law defines disability for both programs as the inability to engage in any substantial gainful activity by reason of a severe physical or mental impairment that is medically determinable and is expected to last at least 12 months or result in death. In fiscal year 2005, the agency made payments of approximately \$126 billion to about 12.8 million beneficiaries and their families. We have conducted a number of reviews of SSA's disability programs over the past decade, and the agency's management difficulties were a significant reason why we added modernizing federal disability programs to our high-risk list in 2003. In particular, SSA's challenges include the lengthy time

the agency takes to process disability applications and concerns regarding inconsistencies in disability decisions across adjudication levels and locations that raise questions about the fairness, integrity, and cost of these programs.

The process SSA uses to determine that a claimant meets eligibility criteria—the disability determination process—is complex, involving more than one office and often more than one decision maker. Under the current structure—that is, DSI notwithstanding—the process begins at an SSA field office, where an SSA representative determines whether a claimant meets the programs’ nonmedical eligibility criteria. Claims meeting these criteria are forwarded to a DDS to determine if a claimant meets the medical eligibility criteria. At the DDS, the disability examiner and the medical or psychological consultants work as a team to analyze a claimant’s documentation, gather additional evidence as appropriate, and approve or deny the claim. A denied claimant may ask the DDS to review the claim again—a step in the process known as reconsideration. If the denied claim is upheld, a claimant may pursue an appeal with an ALJ, who will review the case. At this step, the ALJ usually conducts a hearing in which the claimant and others may testify and present new evidence. In making the disability decision, the ALJ considers information from the hearing and from the DDS, including the findings of the DDS’s medical consultant. If the claimant is not satisfied with the ALJ decision, the claimant may request a review by SSA’s Appeals Council, which is the final administrative appeal within SSA. If denied again, the claimant may file suit in federal court.

In March 2006, SSA published a final rule to establish DSI, which is intended to improve the accuracy, consistency, and fairness of decision making and to make correct decisions as early in the process as possible. While DDSs will continue to make the initial determination, claims with a high potential for a fully favorable decision will be referred to a new Quick Disability Determination (QDD) process. If the claimant is dissatisfied with the DDS’s initial determination or QDD, the claimant may now request a review by a federal reviewing official—a new position to be staffed by centrally managed attorneys. The federal reviewing official replaces the reconsideration step at the DDS level, and creates a new level of federal review earlier in the process. The claimant’s right to request a hearing before an ALJ remains unchanged. However, the Appeals Council is eliminated under the new process, and as a result the ALJ’s decision becomes the final agency decision except in cases where the claim is referred to the new Decision Review Board. Claims with a high likelihood of error, or involving new areas of policy, rules, or procedures, are

candidates for board review.¹ If the board issues a new decision, it becomes the final agency decision. As before, claimants dissatisfied with the final agency decision may seek judicial review in federal court. DSI also includes the introduction of new decision-writing tools that will be used at each adjudication level, and are intended to streamline decision making and facilitate training and feedback to staff. In addition, SSA is creating a Medical and Vocational Expert System, staffed by a unit of nurse case managers who will oversee a national network of medical, psychological, and vocational experts, which are together responsible for assisting adjudicators in identifying and obtaining needed expertise. In its final rule, SSA indicated that DSI will further be supported by improvements, such as a new electronic disability system and an integrated, more comprehensive quality system. As noted, the changes introduced by DSI were codified in SSA's final rule on the subject. Table 1 highlights these new features and associated elements.

¹According to SSA, for the first year of implementation in the Boston region, the board will review all ALJ decisions.

Table 1: Key Aspects of DSI

New feature	Associated elements
Quick Disability Determinations	<p data-bbox="544 525 1055 556">Expedited processing for certain clear-cut cases.</p> <p data-bbox="544 567 1477 619">Use of a predictive model to screen for cases that have a greater likelihood of allowance and to act on those claims within 20 days.</p> <p data-bbox="544 630 1282 661">Nationally standardized training for examiners in DDS on this process.</p> <p data-bbox="544 672 1445 724">Medical or psychological experts must verify that the medical evidence is sufficient to determine that the impairment meets the standards.</p>
Medical and Vocational Expert System	<p data-bbox="544 735 1518 787">A national network of medical, psychological, and vocational experts who will be available to assist adjudicators throughout the agency.</p> <p data-bbox="544 798 1429 829">The national network will be overseen by a new Medical and Vocational Expert Unit.</p> <p data-bbox="544 840 1421 892">All experts affiliated with the network must meet qualifications, which are still under development.</p>
Federal reviewing officials	<p data-bbox="544 903 1518 1008">A cadre of federal reviewing officials—all attorneys—can affirm, reverse, or modify appealed DDS decisions. Federal reviewing officials cannot remand cases to the DDSs for further review, but they can ask that the DDSs provide clarification or additional information for the basis of their determination.</p> <p data-bbox="544 1018 1510 1071">Reviewing officials may obtain new evidence and claimants can submit additional evidence at this stage. If necessary, the reviewing official may issue subpoenas for documents.</p> <p data-bbox="544 1081 1518 1134">If a reviewing official disagrees with the DDS decision, or if new evidence is submitted, he or she must consult with an expert in the expert system.</p>
Decision Review Board	<p data-bbox="544 1144 1469 1228">The Decision Review Board will replace the Appeals Council. It will be composed of individuals selected by SSA's Commissioner, and each member will serve a designated term.</p> <p data-bbox="544 1239 1494 1291">The board will review both allowances and denials, and the board has the ability to affirm, modify, reverse, or remand ALJ decisions.</p> <p data-bbox="544 1302 1518 1386">A new sampling procedure—or predictive model—will identify ALJ decisions that are error-prone or complex for the board's review. The predictive model, which is still under development, is expected to select 10 to 20 percent of ALJ decisions for the board's review.</p> <p data-bbox="544 1396 1502 1480">The board has 90 days from the date the claimant receives notice of board review to make its final decision. If it fails to act within that period, the ALJ decision remains SSA's final decision.</p> <p data-bbox="544 1491 1518 1575">A claimant may submit a written statement to the board within 10 days of receiving notice that the board will review his or her case, explaining why he or she agrees or disagrees with the ALJ's decision. This statement may be no longer than 2,000 words.</p>

Source: GAO analysis.

Note: While DSI does not change the structure or scope of ALJ reviews, the new process has several elements that affect hearings at the ALJ level. Namely, SSA will notify claimants at least 75 days prior to the hearing of the date and time for which the hearing has been scheduled. Additionally, claimants have to submit evidence at least 5 business days before the hearing date itself.

Implementation of DSI will begin on August 1, 2006, in the Boston region, which includes the states of Connecticut, Massachusetts, Maine, New Hampshire, Rhode Island, and Vermont.² Therefore, only those claims filed with SSA in the Boston region on or after August 1 will be subject to the new process.³ All claims currently in process in the Boston region, and claims filed elsewhere, will continue to be handled under current procedural regulations until SSA takes further action.⁴ In addition, for cases filed in the Boston region during the first year of DSI implementation, all ALJ decisions—both allowances and disallowances—will be reviewed by a new Decision Review Board with authority to affirm, modify, reverse, or remand decisions to the ALJ.⁵ Since DSI will only affect new claims initiated in the Boston region, claimants whose cases were already in process before August—as well as those filing outside the Boston region—will still have access to the Appeals Council.

Concerns Include Fear of Increased Court and Claimant Hardship, while SSA Believes Its New Process Will Reduce the Need for Appeal

In their written comments to SSA and discussions with us, public and stakeholder groups, such as claimant representatives and disability advocacy groups, expressed two broad areas of concern regarding the replacement of the Appeals Council with the Decision Review Board: (1) potential for increasing the workload of the federal courts and (2) anticipated hardship for claimants in terms of loss of an administrative appeal level and difficulties associated with pursuing their claims in federal court. SSA's response to concerns regarding the federal court workload is that all changes associated with new DSI process—taken together—should reduce the need for appeal to the federal courts. At the same time, SSA plans to implement this final step gradually and with additional safeguards to minimize the impact on the courts. In response to concerns about the loss of appeal rights, SSA contends that under the new

²According to these regulations, SSA will publish a notice in the federal register when it decides to roll out DSI in another region, but this notice will not be subject to the formal rule-making process.

³If a claimant moves to another region from the Boston region, and initially filed the claim in the Boston region on or after August 1, 2006, the conditions of the DSI process will apply to that claimant no matter where he or she moves. If a claimant initially filed elsewhere and then moves to the Boston region, the DSI process will not apply to him or her.

⁴These procedures can be found in the Code of Federal Regulations, 20 CFR 404.900-404.999d and 416.1400-416.1499.

⁵According to SSA, the predictive model used to identify cases that are complex or error-prone will be tested against the board's review of all cases during the rollout in Boston. The model will be tested continually until it has been proven reliable.

DSI process, claimants will have a new level of federal review earlier in the process, and should experience a decline in the amount of time it takes to receive a final agency decision without being overly burdened by the Decision Review Board under the new process.

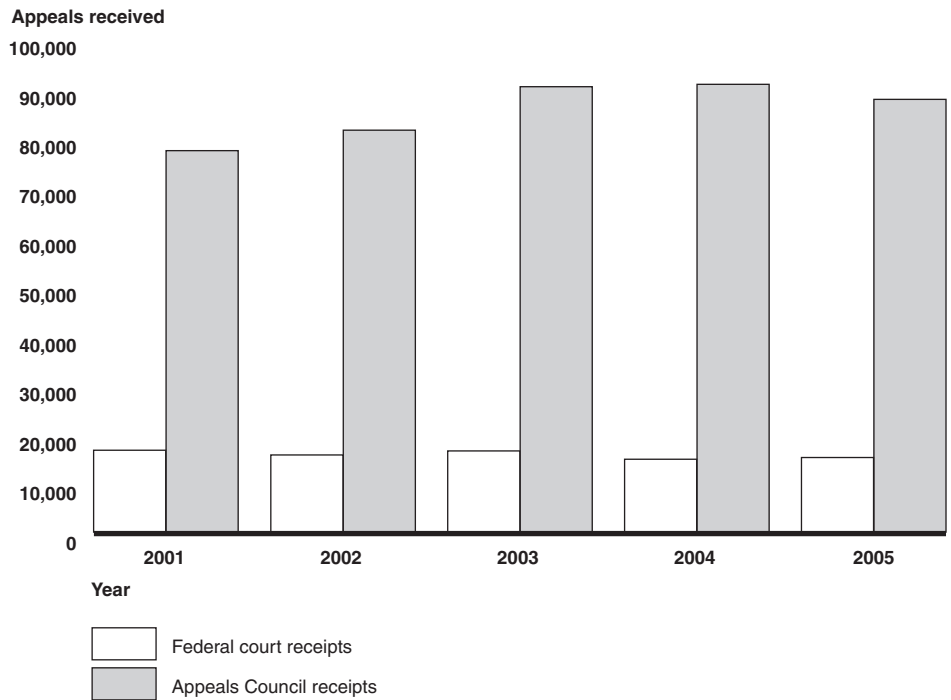
Public and Stakeholders Anticipate a Larger Caseload for Courts, while SSA Maintains That Better Decisions Earlier in the Process Will Reduce the Need for Appeal

Concerns expressed in comment letters to SSA and in our interviews revolved largely around the possibility that the replacement of the Appeals Council with the Decision Review Board would result in rising appeals to the federal courts. Specifically, more than half of the 252 comment letters we reviewed indicated that the Appeals Council provides an important screening function for the federal courts, and that its replacement with the Decision Review Board could result in rising caseloads at the federal court level. Stakeholder groups with whom we spoke reiterated this concern. With the imminent rollout in the Boston region, several stakeholders suggested that SSA closely monitor the effectiveness of the board and the impact of this change on the federal courts.

Data from SSA suggest that the Appeals Council is both screening out a number of cases that might otherwise have been pursued in the federal courts and identifying many claims that require additional agency analysis. Between 2001 and 2005, the number of disability cases appealed to SSA's Appeals Council rose 13 percent. At the same time, the number of disability cases filed with the federal courts (both DI and SSI) declined 9 percent.⁶ Figure 1 illustrates the volume of receipts at both the federal court and the Appeals Council levels during this period.

⁶According to data from the U.S. District Courts, claims from 15,416 disability insurance cases (both DI and SSI), or 6 percent of the court's total workload, were filed during the 12-month period ending March 31, 2005—down from 16,921 in 2001.

Figure 1: Federal Court and Appeals Council Receipts between 2001 and 2005

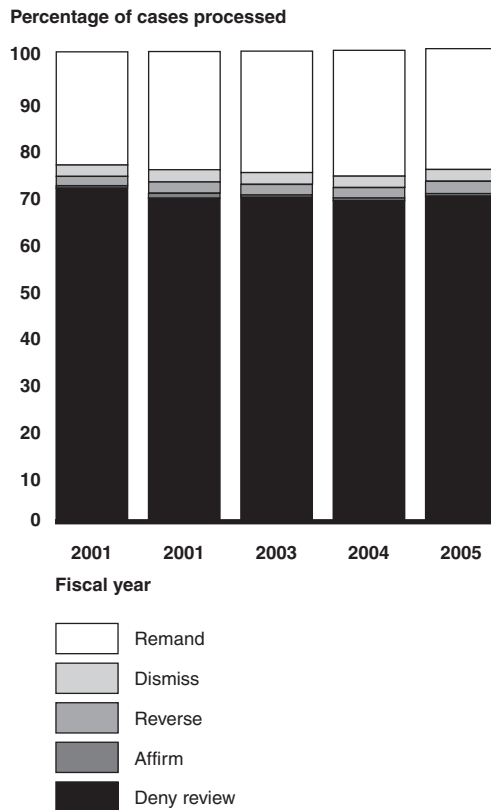


Sources: SSA and the Administrative Office of the U.S. Courts.

Note: Data on federal court cases are for the 12-month periods ending March 31 of the named year. Data on Appeals Council cases are collected on a fiscal year basis.

Further, the Appeals Council consistently remanded about 25 percent of the claims it reviewed between 2001 and 2005 for further adjudication by the administrative law judge—see figure 2—providing more evidence that the Appeals Council is identifying a significant number of claims that require additional agency review and modification.

Figure 2: Disposition of Appeals Council Cases, by Fiscal Year, 2001-2005



Source: SSA.

Note: The Appeals Council will deny review if cases do not meet the following criteria—there does not appear to be an abuse of discretion by the ALJ; there is no error of law; the actions, findings, or conclusions of the ALJ are supported by substantial evidence; or the case does not present a broad policy or procedural issue that may affect public interest. If the Appeals Council denies review, the ALJ decision stands as the final agency decision.

SSA believes that the implementation of DSI as an entire process will help it make the correct disability determination at the earliest adjudication stage possible and thereby reduce the need for appeal. According to SSA, several elements of the DSI process will contribute to improved decision making. These include the federal reviewing official position, which presents an enhanced opportunity for the agency to thoroughly review case records—with the assistance of medical and vocational experts—early in the process, as well as new online policy guidance and new tools to aid decision writing, which will be used at each adjudication level to facilitate consistency and help the agency identify and correct errors more quickly. Last, SSA believes that the number of requests for voluntary

remands that SSA makes to the federal courts is an indicator that the Appeals Council is not fully addressing errors in the case or otherwise reviewing the case effectively so as to prevent the federal courts from reviewing appeals that should have been handled administratively.⁷ SSA believes the Decision Review Board will more effectively screen cases from federal court review by focusing on error-prone claims identified through a predictive model.

SSA acknowledges that the agency cannot predict the likely impact on the federal courts' workload and cannot prevent denied claimants from filing suit with the federal courts.⁸ To reduce the likelihood of too many appeals reaching the federal court level, SSA stated in its final rule that it is pursuing a gradual rollout by implementing the DSI process in one small region—the Boston region—and plans to have the board initially review all of the ALJ decisions in that region. According to SSA officials, the board's review of all ALJ decisions will allow them to test the efficacy of the new predictive model, to help ensure that the model is identifying the most-error prone cases that might otherwise find their way to federal court. Further, SSA officials told us that they are working with the federal court system to develop a way to gauge changes in the court's caseload. Finally, SSA's internal counsel told us that the agency has begun a systematic data collection process to better understand the circumstances surrounding remands from the federal court. To date, SSA attorneys have analyzed the reasons for federal court remands in more than 1,600 cases, but they are still working on a quality control mechanism to ensure that their information has been entered properly and are therefore unwilling to report on the results of their analysis at this time.⁹

⁷According to SSA officials, request for voluntary remands occur when a claimant files an appeal with the federal court and SSA's Office of General Counsel determines that the case is not defensible.

⁸In the 1990s, SSA conducted a pilot—the Full Process Model—which included, among other changes, eliminating the Appeals Council. According to SSA officials, although they collected some data on the number of direct appeals from the ALJ level to the federal courts, the agency discontinued its pilot before collecting sufficient data for a complete assessment of the model's impact.

⁹SSA officials also indicated that they intend to develop a predictive model, to build on current efforts, that identifies error-prone cases among those denied by ALJs that are subsequently remanded by the federal courts back to SSA for further adjudication.

Public and Stakeholders Anticipate Increased Hardship for Claimants, but SSA Believes the New Federal Reviewing Official Position Will Improve Decision Making Earlier

In their comments on the proposed rule and in subsequent conversations with us, stakeholders expressed concern that eliminating the Appeals Council would cause claimants hardship both by eliminating the opportunity to appeal an ALJ decision to the Appeals Council and by increasing the cost and difficulty associated with pursuing cases in federal court.

In particular, 48 percent of the 252 comment letters we reviewed expressed concern that the replacement of the Appeals Council with the Decision Review Board would represent a loss in claimant appeal rights within SSA. These letters, as well as subsequent discussions with stakeholders, emphasized the concern that claimants will not have a say in which cases are reviewed by the board. Further, stakeholders were concerned that in the Boston region, claimants whose cases were allowed at the ALJ level could be overturned by the board, presenting additional hardship for claimants as they await a decision.

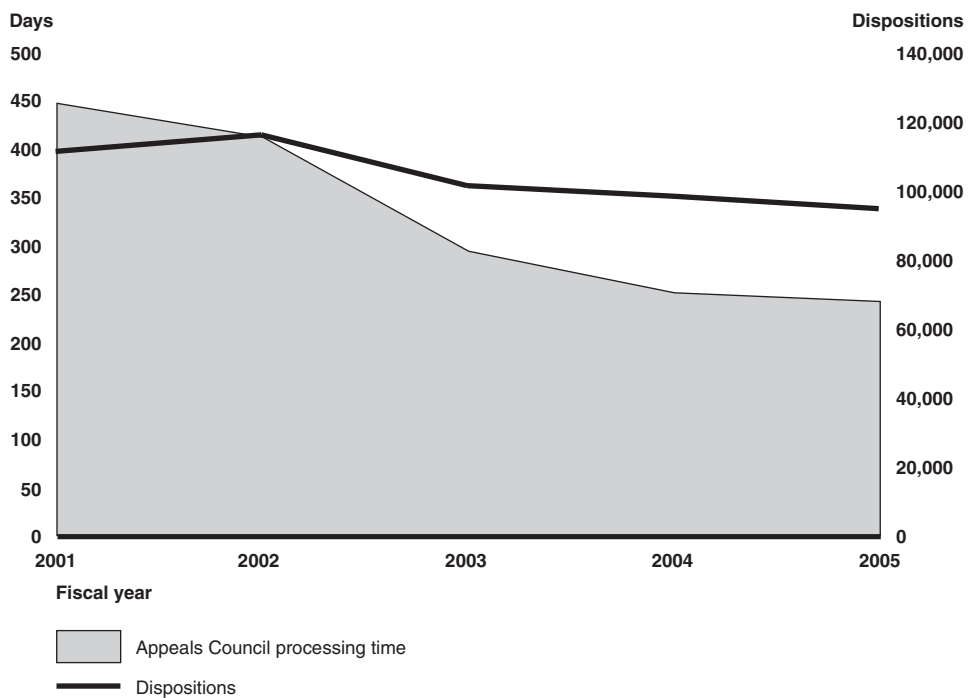
In addition, claimant representatives and disability advocacy organizations are concerned that appealing at the federal court rather than Appeals Council level would be costlier and more intimidating for claimants. For example, there is a filing fee associated with the federal courts, and stakeholders commenting on SSA's final rule said that the filing procedure is more complicated than that required for an appeal before the Appeals Council.¹⁰ In addition, claimants seeking representation must find attorneys who, among other requirements, have membership in the district court bar in which the case is to be filed. As a result of these hardships, claimant representatives and disability advocacy organizations, in particular, were concerned that claimants would drop meritorious claims rather than pursue a seemingly complicated and intimidating federal court appeal.

About 40 percent of the comment letters asserted that the amount of time the Appeals Council spent adjudicating cases—also referred to as its processing time—has improved recently, and letter writers did not believe that terminating the Appeals Council would improve the adjudicative process. Although SSA has contended that the Appeals Council has

¹⁰To appeal to the Appeals Council, applicants need only complete a one-page form and return it to SSA. For the federal courts, there is a \$250 filing fee. Although this fee can be waived (based on need), claimant representatives and disability advocates assert that the fee may be cost-prohibitive for some claimants, and representing oneself at the federal court level is challenging.

historically taken too much time without providing claimants relief, stakeholders' claims that the Appeals Council processing time has decreased significantly in recent years was confirmed by SSA data—see figure 3. In light of these concerns, many stakeholder groups we spoke with suggested that SSA should roll out the Decision Review Board carefully and closely evaluate outcomes from claimants' perspectives.

Figure 3: Appeals Council Processing Time and Volume of Dispositions, by Fiscal Year, 2001-2005



Source: SSA.

Note: SSA does not track how many of the cases remanded by the Appeals Council result in denials that are appealed again to the council.

In their final rule and in conversations with us, SSA officials stated that the new process still affords claimants comparable appeal rights along with the promise of a faster agency decision. Specifically, SSA stated that DSI includes two federal levels of thorough case development and administrative review—one by the new federal reviewing official and another by an ALJ at the hearings level. SSA contends that the new federal reviewing official position is a marked departure from the reconsideration step, in that the position will be managed centrally and staffed by attorneys specifically charged with enhancing the development of a case

and working with a new cadre of medical and vocational experts to make decisions. SSA believes that this new position, along with other changes in the new process, will result in many more cases being correctly adjudicated earlier in the process, resulting in fewer decisions appealed and reviewed by ALJs at the hearings level.

SSA also argues—recent improvements in processing time notwithstanding—that the elimination of the Appeals Council step will reduce the length of time it takes the agency to reach a final decision on behalf of the claimant. Further, SSA maintains that the replacement of the Appeals Council with the board will not be prejudicial to or complicated for the claimant. SSA indicated that claimants will have an opportunity to submit written statements to the Decision Review Board, thus providing another chance to assert their circumstances. SSA maintains that aside from the written statement, further action is not required on the part of the claimant until the board issues its decision.

SSA has told us that it plans to monitor stakeholder concerns in several ways. For example, SSA plans to track the length of time it takes to reach final decisions as well as the allowance rate. SSA also plans to review written statements submitted by claimants to help assess the validity of the board's predictive model.¹¹

SSA Has Taken Constructive Steps to Implement the New DSI Process, but Its Schedule Is Ambitious and Many Details Are Not Yet Finalized

SSA has prepared in significant ways for DSI, but the agency's timetable is ambitious and substantive work remains. SSA has moved forward in key areas that should underpin the new system—human capital development, technical infrastructure, and quality assurance. However, some essential measures remain under development, particularly for quality assurance. Nevertheless, on balance, the agency has begun to employ a number of change management strategies we recommended earlier for successful transitioning.

¹¹Specifically, SSA plans to compare the contents of these statements to the results of the predictive model. If SSA determines that using claimant statements will improve the model, SSA would consider revising the model to incorporate information from these documents.

SSA Has Moved to Hire and Train Staff, but It Faces Short Timetables

While stakeholders have expressed concern that SSA will not be able to hire and sufficiently train staff in time for the new process, we found that the agency has taken a number of steps in this area. With respect to hiring for new positions, the agency has already developed position descriptions and posted hiring announcements for nurse case managers, who will work in the new Medical and Vocational Expert Unit, as well as for federal reviewing officials. To date, SSA officials have begun assessing more than 100 eligible applicants for the reviewing official slots, and expect to hire 70 by late June and another 43 in early 2007. SSA officials also said they posted announcements to hire nurse case managers, and that they expect to hire as many as 90 before the end of the rollout's first year in the Boston region.

SSA officials also said that the agency has posted announcements to hire support staff for both the reviewing officials and nurse case managers, but the exact number SSA is seeking to hire has not been decided. Several stakeholders we spoke with were particularly concerned that SSA will need to hire or otherwise provide adequate support staff for reviewing officials to ensure their effectiveness. Specifically, several of the ALJs we interviewed told us that at the hearings level, judges and their staff currently spend significant time developing case files. They noted that if the reviewing official position is designed to focus on case development, then attorneys in this role will need support staff to help them with this time-consuming work.

With respect to training, the agency has been creating a variety of training materials for new and current staff, with plans to deliver training at different times, in different ways. SSA officials reported working on development of a uniform training package for all staff with some flexible components for more specialized needs. Specifically, about 80 percent of the package is common content for all employees, and 20 percent will be adaptable to train disability examiners, medical experts, ALJs, and others involved in the adjudication process. SSA officials said they developed the package with the federal reviewing officials in mind, but also with an eye toward a centralized training content that could apply to current and new staff down the line. SSA plans to provide the full training package, which constitutes about 8 weeks of course work and 13 modules, to reviewing officials in late June, once all attorneys for that position are hired. Among the sessions included are the basics of the disability determination process, eDib and its use, medical listings and their application, and decision writing.

Given that the rule was finalized in March and rollout is set for August, agency timetables for hiring, training, and deploying more than 100 new staff—as well as for training existing examiners—in the six states in the Boston region are extremely short. SSA officials have acknowledged the tight time frame, but hope to deliver training by using more than one medium—in person, online, or by video. SSA still expects to accomplish all hiring and training for the Boston region staff in time for an August 1 launch of the new process.

SSA Has Readied eDib for the Boston Region, but Time for Resolving Last-Minute Glitches before Rollout Will Be Limited

SSA has also taken steps, as we had previously recommended, to ensure that key technical supports, particularly an electronic disability case recording and tracking system known as eDib, are in place in time for Boston staff to adjudicate claims under DSI electronically. The agency has made a variety of efforts to familiarize employees with the system and facilitate their ability to use it as early as possible. First, SSA positioned the Boston region for a fast transition to eDib by reducing the region's paper case backlog. According to a Boston region ALJ, pending case records are being converted now to familiarize judges and decision writers with the eDib system so they will be comfortable with it when new cases reach that level after August 1. Then SSA worked with Boston region staff to certify that the region's DDS offices were ready for full eDib implementation.

According to claimant representatives, SSA has also worked to facilitate their transition to eDib, and according to SSA officials, the agency has developed a system called Electronic Records Express to facilitate medical providers' submission of records to SSA. A stakeholder group of claimant representatives told us that SSA has offered them training and that they have met regularly with agency staff to smooth out eDib issues, such as difficulties associated with the use of electronic folders—electronic storage devices that replace paper folders as the official record of evidence in a claimant's case file. This stakeholders group also reported that its members have voluntarily coordinated with SSA to test new techniques that might further facilitate eDib implementation.

SSA has also been developing electronic templates to streamline decision writing. ALJs have already received some training on theirs, which is known as the Findings Integrated Template. According to SSA officials, this template is now used, voluntarily, by ALJs nationwide, after months of extensive testing and refinement. For DDS-level decisions, SSA is designing a template—called the Electronic Case Analysis Tool (E-CAT)—which it expects to be partially operational by July and fully implemented

by November. DDS examiners in the Boston region will receive training on the tool in July and will also receive training prior to then on the elements of sound decision making. A similar tool is in development for the reviewing officials.

While SSA officials expressed confidence in having technical supports sufficiently in place in time for implementation of DSI in August, unanticipated problems associated with new technology may challenge their ability to do so. In addition to eDib and E-CAT, SSA is implementing other new software systems to support the rollout (such as the predictive models and electronic medical records transmission)—any one of which may involve unexpected problems. For example, in 2005 we reported that a number of DDSs were experiencing operational slowdowns and system glitches associated with the new eDib system.¹² It remains to be seen whether the Boston region experiences similar problems with eDib, or problems with other new systems, and whether SSA will be able to resolve technical issues that may arise before implementation begins in August.

SSA Is Improving Its Quality Assurance System as Part of DSI Rollout, although Key Elements Have Yet to Be Revealed

SSA is taking steps to improve its quality assurance system that have potential for improving the accuracy and consistency of decisions among and between levels of review, in a manner that is consistent with our past recommendations. As early as 1999, GAO recommended that in order to improve the likelihood of making improvements to its disability claims process, SSA should focus resources on initiatives such as process unification and quality assurance, and ensure that quality assurance processes are in place that both monitor and promote the quality of disability decisions.¹³ Consistent with these recommendations, many of SSA's current efforts involve adding steps and tools to the decision-making process that promote quality and consistency of decisions and provide for additional monitoring and feedback. While these developments are promising, many important details of SSA's quality assurance system have yet to be finalized or revealed to us.

¹²GAO, *Electronic Disability Claims Processing: SSA Is Proceeding with Its Accelerated Systems Initiative but Needs to Address Operational Issues*, [GAO-05-97](#) (Washington, D.C.: Sept. 23, 2005).

¹³GAO, *SSA Disability Redesign: Actions Needed to Enhance Future Progress*, [GAO/HEHS-99-25](#) (Washington, D.C.: Mar. 12, 1999).

SSA has recently elevated responsibility for its quality assurance system to a new deputy-level position and office—the Office of Quality Performance. This office is responsible for quality assurance across all levels of adjudication. Listed below are new aspects of the quality assurance system that this office oversees and that hold promise for promoting quality and consistency of decisions.

- SSA will continue to provide accuracy rates for DDS decisions, but these accuracy rates will be generated by a centralized quality assurance review, replacing the agency’s older system of regionally based quality review boards and thereby eliminating the potential differences among regional reviews that were a cause for inconsistent decisions among DDSs.
- As part of the DSI rollout, SSA plans to incorporate new electronic tools for decision writing to be used by disability examiners, federal reviewing officials, and ALJs. The tools are intended to promote quality in two ways. First, the tools will require decision makers to document the rationale behind decisions in a consistent manner while specifically addressing areas that have contributed to errors in the past, such as failing to list a medical expert’s credentials or inaccurately characterizing medical evidence. Second, the tools will help provide a feedback loop, by which adjudicators and decision writers can learn why and under what circumstances their decisions were remanded or reversed. SSA officials told us that once the tools are in full use, the Office of Quality Performance will collect and analyze their content to identify errors or areas lacking clarity. They also plan to provide monthly reports to regional managers in order to help them better guide staff on how to improve the soundness of their decisions and the quality of their writing.¹⁴
- The establishment of the Decision Review Board, with responsibility for reviewing ALJ decisions, is intended to promote quality and consistency of decisions in two ways. First, once DSI is rolled out nationwide, the board will be tasked to review error-prone ALJ decisions with the intent of further ensuring the correctness of these decisions before they are finalized. Second, during the initial rollout phase, SSA plans to have the board review all ALJ decisions to verify that the predictive model used to select error-prone cases is doing so as

¹⁴The purpose of this tool is consistent with GAO’s prior recommendations that SSA develop a more focused and effective strategy for ensuring uniform application of SSA’s guidance and to improve consistency of decisions. GAO, *Social Security Administration: More Effort Needed to Assess Consistency of Disability Decisions*, [GAO-04-656](#) (Washington, D.C.: July 2, 2004).

intended. Importantly, both the tools and the board's assessment are consistent with our prior recommendations that SSA engage in more sophisticated analysis to identify inconsistencies across its levels of adjudication and improve decision making once the causes of inconsistency among them have been identified.¹⁵

In addition to these actions, SSA told us it plans to measure outcomes related to how DSI is affecting claimants, such as allowance rates and processing times at each adjudication stage, and the proportion of cases remanded from the federal courts and the rationales for these remands. Further, officials told us they will work with the federal courts to track changes in their workload. SSA officials also told us they are working to monitor changes in costs associated with the new DSI process, in terms of both the administrative costs of the process, as well as its overall effect on benefit payments. Officials also said that SSA will track the length of time it takes the agency to reach a final decision from the claimant's perspective, which we have recommended in the past.¹⁶ Although SSA officials told us that ALJ accuracy rates will be generated from the board's review of all ALJ decisions, they said they were not yet certain how they will measure these rates once DSI is rolled out nationwide and the board is no longer reviewing all ALJ decisions.

While these developments are promising, aspects of these changes and of SSA's plans to monitor the DSI implementation have either not been finalized or not been revealed to us. For example, SSA has not yet revealed the types of reports it will be able to provide decision makers based on the decision-writing tools. In addition, while SSA plans to measure the effectiveness of the new process, its timeline for doing so and the performance measures it plans to use have not been finalized. According to SSA officials, potential measures include how well the predictive models have targeted cases for quick decisions at the initial DDS level or error-prone cases for the board, and whether feedback loops are providing information that actually improves the way adjudicators and decision writers perform their work.

¹⁵GAO-04-656.

¹⁶GAO, *Observations on the Social Security Administration's Fiscal Year 1999 Performance Report and Fiscal Year 2001 Performance Plan*, GAO/HEHS-00-126R (Washington, D.C.: June 30, 2000).

SSA Has Employed Other Change Management Practices to Implement DSI

SSA's efforts and plans show commitment to implementing DSI gradually, using tested concepts, involving top-level management, and communicating frequently with key stakeholders—practices that adhere closely to our prior recommendations on effective change management practices.

With regard to gradual implementation, we had previously suggested that SSA test promising concepts in a few sites to allow for careful integration of the new processes in a cost-effective manner before changes are implemented on a larger scale.¹⁷ SSA's decision to implement DSI in one small region is consistent with this recommendation. SSA officials told us they selected Boston because it represents the smallest share of cases reviewed at the hearings level and because it is geographically close to SSA's headquarters to facilitate close monitoring. While SSA officials acknowledged that unanticipated problems and issues are likely to arise with implementation, they assert that they will be able to identify major issues in the first 60 to 90 days. SSA officials believe this will give them plenty of time to make changes before rollout begins in a second region. SSA has also indicated that it plans to roll DSI out next in another relatively small region.

Also consistent with our past recommendations, SSA officials noted that some new elements of DSI have been tested prior to integration. For example, the ALJ tool for decision writing has been tested extensively during development, and they anticipate having fewer challenges when similar tools are used more widely. In addition, SSA has said that it has rigorously tested its model related to the Quick Disability Determination System and that it will continue to check the selection of cases and monitor the length of time it takes for quick decisions to be rendered.

SSA's efforts and plans are also consistent with effective change management practices in that they ensure the commitment and involvement of top management.¹⁸ Specifically, SSA's Commissioner first proposed DSI-related changes in September 2003, and the agency began

¹⁷GAO, *SSA Disability Redesign: Actions Needed to Enhance Future Progress*, [GAO/HEHS-99-25](#) (Washington, D.C.: March 12, 1999) and GAO, Correspondence to Jo Anne Barnhart, Commissioner of the Social Security Administration. (Washington, D.C.: Dec. 19, 2003).

¹⁸GAO, *Business Process Reengineering Assessment Guide*, [GAO/AIMD-10.1.15](#) (Washington, D.C.: May 1997).

restructuring itself soon after the rule was finalized. In addition, SSA created a deputy-level post for its new Office of Quality Performance and appointed a new Deputy Commissioner in its newly created Office of Disability Adjudication and Review, which oversees the hearing and appeals processes.

We have also encouraged top managers to work actively to promote and facilitate change, and SSA appears to be adhering to these principles as well.¹⁹ For example, SSA officials told us that the Deputy Commissioners from SSA's offices of Personnel and Human Capital have collaborated with their counterparts in policy units to develop position descriptions and competencies for nurse case managers and federal reviewing officials. According to SSA officials, these leaders are also collaborating to develop interview questions for eligible candidates. Further, SSA officials told us their new human capital plan will be released sometime in July and that it will emphasize the goals of DSI, as well as the personnel changes that will accompany it.

Finally, SSA's communication efforts with stakeholders align with change management principles in several respects. For example, SSA has employed a proactive, collaborative approach to engaging the stakeholder community both during DSI's design and in its planning for implementation in order to explain why change is necessary, workable, and beneficial. Even before the notice of proposed rule making on DSI was published, SSA began to meet with stakeholder groups to develop the proposal that would eventually shape the new structure. Then, once the proposed rule was issued, SSA officials told us they formed a team to read and analyze the hundreds of comment letters that stakeholders submitted. In addition, they conducted a number of meetings with external stakeholders to help the agency identify common areas of concern and develop an approach to resolving the issues stakeholders raised before rollout began. According to SSA officials responsible for these meetings, the Commissioner attended more than 100 meetings to hear stakeholder concerns directly. Further, SSA recently scheduled a meeting for early July with claimant representatives to discuss that group's particular concerns about how the new process will affect their work and their disability clients. SSA officials told us that senior-level staff will lead the

¹⁹GAO/AIMD-10.1.15 and GAO, *Results-Oriented Cultures: Implementation Steps to Assist with Mergers and Organizational Transformations*, GAO-03-669 (Washington, D.C.: July 2, 2003).

meeting and that about 100 claimant representatives from the Boston region will attend.

In addition, SSA officials have also worked to ensure that there are open lines of communication with its internal stakeholders, thereby ensuring that disability examiners and staff in the Boston region are knowledgeable about DSI-related changes. For example, SSA solicited comments and questions from the Boston region's staff about the specifics of the rollout and held a day-long meeting in the region, led by Deputy Commissioners, to respond to these concerns.

Concluding Observations

For some time, SSA has been striving to address long-standing problems in its disability claims process. From our perspective, it appears that SSA is implementing the new claims process by drawing upon many lessons learned from past redesign efforts and acting on, or at least aligning its actions with, our past recommendations. For example, significant aspects of the DSI rollout are consistent with our recommendations to focus resources on what is critical to improving the disability claims process, such as quality assurance and computer support. SSA's incremental approach to implementing DSI—taking a year to monitor the process and testing new decision-writing tools, for example—is also consistent with our recommendation to explore options before committing significant resources to their adoption. Thus, the agency is positioning itself to make necessary modifications before implementing the new process in subsequent locations. Finally, and fundamental to all of this, SSA's top leadership has shown a commitment to informing affected stakeholders and listening to their advice and concerns with respect to the development and implementation of this process.

While SSA's steps and plans look promising, we want to stress the importance of diligence and follow-through in two key areas. The first is quality assurance, which entails both effective monitoring and evaluation. A solid monitoring plan is key to helping SSA quickly identify and correct problems that surface in the Boston rollout, because any failure to correct problems could put the entire process at risk. An evaluation plan is critical for ensuring that processes are working as intended and that SSA is achieving its overarching goals of making accurate, consistent decisions as early in the process as possible. The second key area is communication. It is important for SSA's top leadership to support open lines of communication throughout implementation if the agency is to facilitate a successful transition. Failure to, for example, provide useful feedback to staff—many of whom will be new to the agency or at least to the new

tools—could significantly jeopardize opportunities for improvement. Just as important, SSA’s top management needs to ensure that the concerns and questions of stakeholders affected by the new process are heard, and that concerned parties are kept apprised of how SSA intends to respond.

The eventual elimination of the Appeals Council and its replacement with the Decision Review Board with a very different purpose has been a great cause of concern for a number of stakeholders. SSA appropriately has plans to assess its impact by tracking decisions resulting from each stage of the new process, as well as the effect of the process on the federal courts’ caseloads and claimants at large. To its credit, SSA plans to reduce any immediate impact on the courts by requiring that the board initially review all ALJ decisions in the Boston region. However, given that the agency plans to rely heavily on new positions, such as the federal reviewing official, and on new technology, SSA will need to ensure that staff are well trained, and that each adjudicator has the support staff needed to work effectively. Focusing on one small region will, it is hoped, allow the agency to ensure that training, technology, and other resources are well developed to achieve expected goals before DSI is expanded to other parts of the country.

Mr. Chairman, this concludes my prepared remarks. I would be happy to answer any questions that you or other members of the subcommittee may have.

GAO Contact

For future contacts regarding this testimony, please contact me at (202) 512-7215 or RobertsonR@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this testimony.

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Appendix I: Objectives, Scope, and Methodology

To learn more about the public's and stakeholders' views with regard to the Appeals Council and the Decision Review Board, we reviewed and analyzed a large sample of comment letters they submitted to the Social Security Administration (SSA) in response to its July 2005 notice of proposed rule making on the Disability Service Improvement process (DSI) that were related to these topics. We also interviewed a number of key stakeholder groups to solicit their opinions once the rule had been finalized.

Reviewing and Analyzing Comment Letters

To review and analyze the comment letters, we first downloaded all 1,143 comments that SSA had received and posted to its public Web site. In order to focus our review on only those letters that related to the Appeals Council and the Decision Review Board, we then applied a word search to restrict our analysis to the responses that used the terms "Decision Review Board," "DRB," and "Council."²⁰ Applying these search terms reduced the number of comment letters for review to 683. We discarded 43 of these 683 letters over the course of our review because they were duplicates of letters by the same authors or did not contain relevant comments. As a result, our final analysis was based on the remaining 640 letters.

To classify the nature of the comments contained in these 640 letters, we coded the opinions as related to one of more of the following concerns:

- The Appeals Council is improving, and its termination will not improve the disability determinations process.
- There is a risk that the Decision Review Board may not select the most appropriate cases for review.
- There is a risk that Decision Review Board could unfairly evaluate or influence administrative law judge decisions.
- In the absence of an Appeals Council, the claimant no longer has the right to initiate subsequent case review.
- There is no opportunity for the claimant or his or her representative to argue before the Decision Review Board.
- A claimant's benefit might be protracted or delayed during Decision Review Board assessment.

²⁰It is possible that statements could have been made about the Appeals Council and Decision Review Board that did not use these terms, and that we could have missed. If so, the number of responses related to these two entities could be greater than we are reporting.

- Petitions to the federal court are likely to increase.
- Appeals to the federal court are costly or intimidating, and claimants may not have the wherewithal to pursue the claim at this level.

Of the 640 letters in our review, we initially identified 388 as form letters, or letters containing identical comments, even though they had different authors. To simplify our review, we coded these form letters separately from the other letters. For the 252 letters that we did not initially identify as form letters, one analyst reviewed and coded each letter, while a second analyst verified that he or she had coded the statements appropriately. If the first and second analysts did not come to an agreement, a third analyst reviewed the comment and made the final decision for how the content should be classified. Table 2 below indicates the percentage of the 252 letters citing one or more of the above concerns.

Table 2: Share of Comment Letters Including Each of the Concern Categories Included in This Study

Concern category	Percentage of comment letters expressing concern (n = 252)
Petitions to the federal court are likely to increase.	53
In the absence of an Appeals Council, the claimant no longer has the right to initiate subsequent case review.	48
The Appeals Council is improving, and its termination will not improve the disability determinations process.	38
Appeals to the federal court are costly or intimidating, and claimants may not have the wherewithal to pursue the claim at this level.	37
There is no opportunity for the claimant or his or her representative to argue before the Decision Review Board.	28
There is a risk that the Decision Review Board may not select the most appropriate cases for review.	25
There is a risk that Decision Review Board could unfairly evaluate or influence administrative law judge decisions.	22
A claimant's benefit might be protracted or delayed during Decision Review Board assessment.	18

Source: GAO analysis

For the 388 form letters, we coded one letter according to the process described above. Because the text of the form letters was identical for

each, we then applied the same codes to each of the other form letters. All 388 form letters expressed each of the concerns above.

Identifying and Interviewing Stakeholders

To identify key stakeholders, we first referenced the list of organizations that SSA included in its notice of proposed rule making as having met with the agency during its development of the final rule. We then narrowed this list by obtaining suggestions from SSA officials about organizations that are the most active and cover a broad spectrum of disability issues. In total, we spoke with representatives from 10 groups:

- Administrative Office of the U.S. Courts' Judicial Conference Committee on Federal-State Jurisdiction,
- Association of Administrative Law Judges (AALJ),
- Consortium for Citizens with Disabilities' Social Security Task Force (CCD),
- National Association of Councils on Developmental Disabilities (NACDD),
- National Association of Disability Examiners (NADE),
- National Association of Disability Representatives (NADR),
- National Council of Disability Determination Directors (NCDDD),
- National Council of Social Security Management Associations (NCSSMA),
- National Organization of Social Security Claimants' Representatives (NOSCCR), and
- Social Security Advisory Board.

Related GAO Products

Social Security Administration: Administrative Review Process for Adjudicating Initial Disability Claims. [GAO-06-640R](#). Washington, D.C.: May 16, 2006

Electronic Disability Claims Processing: SSA Is Proceeding with Its Accelerated Systems Initiative but Needs to Address Operational Issues. [GAO-05-97](#). Washington, D.C.: September 23, 2005

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SSA Disability Redesign: More Testing Needed to Assess Feasibility of New Claim Manager Position. [GAO/HEHS-96-170](#). Washington, D.C.: September 27, 1996

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