STATEMENT OF

VICKI L. JOHNSON, PRESIDENT

NATIONAL COUNCIL OF DISABILITY DETERMINATION DIRECTORS

to the

SUBCOMMITTEE ON SOCIAL SECURITY

OF THE

COMMITTEE ON WAYS AND MEANS

UNITED STATES HOUSE OF REPRESENTATIVES

February 6, 2012

Chairman Johnson, Ranking Member Becerra, and Members of the Subcommittee:

Thank you for the opportunity to present a statement on behalf of the National Council of Disability Determination Directors (NCDDD). We appreciate the opportunity to comment on the specific concerns of the Committee, raised at the Second in a Hearing Series on Securing the Future of the Social Security Disability Insurance Program, which took place on January 24, 2012.

The National Council of Disability Determination Directors (NCDDD) is a professional association composed of the Directors and managers of the Disability Determination Services (DDS) agencies located in each state, the District of Columbia, and Puerto Rico. Collectively, members of the NCDDD are responsible for directing the activities of approximately 14,600 employees who processed nearly 4.8 million claims last fiscal year for disability benefits under the Social Security Act. NCDDD goals focus on establishing, maintaining and improving fair, accurate, timely, and cost-efficient decisions to persons applying for disability benefits. The mission of NCDDD is to provide the highest possible level of service to persons with disabilities, to promote the interests of the state operated DDSs and to represent DDS directors, their management teams and staff.

The DDSs work in partnership with the Social Security Administration (SSA) to provide public service to individuals applying for disability benefits and to help ensure the integrity of the disability program. The DDSs make complex medical determinations for the Social Security disability programs pursuant to Federal Regulations. The majority of DDS staffs are state employees subject to the individual state personnel rules, governor initiatives and state mandates, with the remainder of staff under state contract to provide services to the DDS. The DDSs adjudicate various disability claims including initial applications, reconsiderations, continuing disability reviews (CDRs), and disability hearings.

The DDSs' role in helping SSA curb improper payments includes processing CDRs (to ensure that only those individuals who continue to be medically eligible remain on benefits), identifying potential fraud in the disability application process, and contributing staff and expertise to SSA's Cooperative Disability Investigation

(CDI) Units. Other ways that DDSs prevent improper payments include their internal training and mentoring programs, quality assurance, the examiner-doctor adjudicative team, and proper supervisory/managerial oversight.

Impact of Funding/Staffing Shortfalls

SSA determines the DDSs' funding levels and workload targets. Funding the various workloads to provide good program service and stewardship is challenging at best, and even more so now, as we experience difficult economic times, with increasing disability applications and fewer resources. While staffing did increase in FY 2009 and 2010 in response to higher workloads, since early FY 2011, SSA has imposed a hiring freeze on all DDSs due to funding limitations. At the end of the first quarter of FY 2012, DDSs were only 3% above the staffing level at the end of FY 2008 (total full time equivalents including overtime), while total receipts from FY 2008 to 2011 increased by 32.5%.

DDS staffing is critical to the processing of all disability claims and CDRs. DDSs also contribute staff to the CDI units. Inability to replace staff losses over time will erode the DDSs' ability to process applications promptly, to complete sufficient numbers of CDRs in a timely manner, and to contribute to CDI unit fraud investigations.

Nationally, the DDS examiner attrition was 13.5% for FY 2011 (a loss of 1195 examiners) and continues at 13.3% (with an additional 266 in examiner losses) in the first quarter of FY 2012. Currently, the DDS is still managing to maintain high productivity, as the remaining staff does a short-term push to keep up with the workload, and some critical support resources are temporarily shifted to production. However, the DDSs cannot sustain these resource shifts for the long term without serious detriment to important program integrity areas, such as quality assurance, training, supervision, and consultative examination oversight.

Ultimately, the loss of examiner staff equates directly to fewer cases completed. For as long as it can, DDSs will do whatever it takes to keep the cases moving and meet workload targets. DDS staffs are extremely elastic and expand their work ethic to meet the need. However, continued attrition without replacement will eventually reach a tipping point with burgeoning backlogs and case processing delays.

The longer the time before DDSs can resume replacement hiring, the harder and longer the recovery will be. DDS examiners are not quickly replaceable cogs in a wheel. It takes time and resources to hire the right employees for the job and then several years and considerable training/mentoring before those employees have the knowledge and expertise to handle all case types independently at full production levels. DDSs need to keep a steady pipeline of trainees and a strong support infrastructure to keep the workload well managed while training the successors, not only for the examiners that have already left, but also for those that will leave in the next two years.

The DDSs continue to seek SSA support and funding for proactive, strategic replacement hiring as soon as possible, to mitigate the long-term negative effects of attrition. As each DDS gets closer to its tipping point, those negative effects include lessening capacity to process all types of cases including CDRs. As backlogs develop and worsen, the progress made over the past few years to reduce pending workloads, complete more CDRs, and staff up CDI units will be lost.

Since beneficiaries may continue to receive benefits during the appeal process, the full benefit of CDRs in the conservation of program dollars will not be realized as long as there are delays at any of the appeal levels. We appreciate that the Budget Control Act of 2011 directs SSA to increase the number of medical CDRs that the agency completes FY 2012. Although all the funding was not ultimately appropriated, we will still complete more CDRs this year than last. SSA determines the number of CDR cases to be worked by the DDSs each year. In preparation for the higher workload target, SSA began sending higher numbers of CDR cases to the DDSs at the beginning of the fiscal year.

Money alone is not sufficient to ensure that the DDSs can process these cases accurately and timely. CDR case processing requires experienced examiners with the capacity for expert judgment in comparing medical findings and function over different periods of time and determining medical improvement following complex legal guidelines. Appeals of CDR cessations require hearings with disability hearing officers, the highest level of DDS adjudicator, requiring many years experience and specialized training in holding administrative hearings and deciding legal findings of fact and conclusions of law. The DDSs also need to use these experienced examiner resources for other aspects of program stewardship, including ensuring the quality of adjudication and providing casework guidance for less experienced examiners. As veteran DDS staff continues to leave, while the pipeline of new examiners remains dry, we foresee increasing difficulty with processing CDRs and their appeals this year and beyond.

The DDSs also face the challenge of managing the initial (and reconsideration) workloads with insufficient funding. Many states consider the adjudication of initial claims (including the associated eligibility for health care benefits) a top priority, as these claimants have not had the "first bite of the apple." While stewardship through completion of a large number of CDRs is important, it is unlikely that all states will be willing to keep prioritizing them over the initial/reconsideration workloads if those workloads start to develop serious delays. Delays are now even more likely to occur, as SSA has decided to redeploy its federal case processing units, which have been assisting with DDS case backlogs, to assistance work for the Office of Disability Adjudication and Review (ODAR). While we appreciate the additional funding for program integrity work and are eager to eliminate the delays in CDR reviews by 2016, lack of sufficient funding for all workloads results in insufficient replacement hiring, which will have the unintended consequence of impeding DDSs' ability to do the CDR workload, even with the additional funding.

Cooperative Disability Investigation Units

The Cooperative Disability Investigation (CDI) program is a promising initiative for fraud prevention. In the states with CDI units, the DDSs contribute experienced adjudicative staff (usually senior examiners or hearing officers) to help assess fraud referrals and investigations. The DDSs that work with CDI units are pleased with the results and find the investigation reports very helpful.

The CDI unit's very presence, if publicized, can be a deterrent to fraud. We recommend a standard process for communicating to claimants and beneficiaries the potential repercussions of committing fraud. We also recommend additional funding and staffing so that all appropriate referrals can be investigated and the investigations completed in a timely manner.

Expansion of the CDI units must be done strategically. Some large states need more units for adequate state-wide coverage. Some states, on the other hand, are too small to warrant a dedicated CDI unit. Currently, DDSs in states without CDI units make fraud referrals to the Office of Inspector General (OIG) or to CDI units in neighboring states. However, many of the CDI (and OIG) units need to be better staffed and funded to enable them to investigate all appropriate referrals and to provide reports in a timely manner.

With initial claims, a timely investigation that proves fraud prevents incorrect benefit payments. Without such a report, the DDS is left to make a judgment about the claimant's credibility and the appropriate weight to give the available evidence. Even if a denial determination results, this decision is more easily reversed on appeal than is a decision based on a clear report of fraudulent behavior. Even when there is no prosecution, the fraud investigation itself may serve as a deterrent to appeal. In the alternate scenario where an investigation disproves fraud, a timely report enables the DDS and SSA to make an accurate determination and grant benefits to the eligible claimant quickly.

Investigation of fraud referrals on CDR cases is also recommended, with appropriate funding and staffing. Determining medical improvement is a very complex process often involving difficult judgments about the person's ability to function, and taking away a person's benefits must clear a high bar of assurance that the person is no longer disabled. Even when beneficiaries are found no longer disabled, they may continue receiving benefits throughout the appeal process, greatly increasing the overpayment SSA will attempt to collect if the final decision is unchanged. Appropriate fraud referrals accepted and expeditiously investigated would be a significant help in determining continued eligibility and limiting overpayments.

Conclusion

In summary, the stewardship initiatives that the DDS is primarily involved in – CDR case processing and CDI unit referral and staffing – are critical for insuring appropriate payments and eliminating fraud in the disability program. Neither has yet reached its full potential because of underfunding and understaffing. Both are labor-intensive but ultimately cost-effective in achieving their goals, based on SSA's reports of the program savings in relation to administrative costs. To achieve the best cost benefit ratio, the approach to both CDR processing and CDI unit expansion should be strategic. It is shortsighted not to invest the necessary funds and staffing for the expansion of these initiatives. Inadequate funding results, as we have seen, in priorities and resources bouncing back and forth between initial cases and CDRs, between DDSs and ODAR, between service workloads and integrity workloads. Ultimately, for the investment to be successful there must also be commitment to a long range strategic plan that supplies all areas of the disability program with sufficient resources and deploys them in a carefully balanced, steady manner, so that both program integrity and high quality service to people with disabilities can be realized.

Mr. Chairman, on behalf of NCDDD, I thank you again for the opportunity to provide this statement. NCDDD has a long record of accomplishment working with SSA to provide the highest level of service and careful

program stewardship. I hope that this information is helpful to the Subcommittee. NCDDD is willing to provide any additional assistance you may need and answer any questions you may have.