Policy Analysis

No. 733 August 6, 2013

The Rising Cost of Social Security Disability Insurance

by Tad DeHaven

Executive Summary

Social Security Disability Insurance (SSDI) is one of the largest federal programs, and it is one of the most troubled. The program's expenditures have doubled over the last decade, reaching an estimated $144 billion this year. Spending has risen so rapidly that SSDI's trust fund is projected to be depleted just three years from now.

SSDI was originally created as a modest safety net aimed at severely disabled workers who were close to retirement age. But Congress has expanded benefit levels over the decades, and eligibility standards have been greatly liberalized. The result is that people capable of working are instead opting for the disability rolls when confronted with employment challenges. Once on the disability rolls, experience shows that individuals are likely to remain there, which is bad for the individuals, taxpayers, and the economy.

The process for determining eligibility for disability insurance benefits has become a bureaucratic nightmare. Applicants often pursue a lengthy and litigious appeals process if their initial applications are denied. And there is a growing reliance on subjective considerations in evaluating claims, which has exacerbated the difficult task of determining whether an individual is truly "disabled." Specialty law firms working on a contingency fee basis have taken advantage of the complex system and its inconsistencies to reap a financial bonanza at taxpayer expense.

Instead of providing a wage-replacement backstop for the disabled workers who are permanently incapable of working, disability insurance has become more like permanent unemployment insurance or a general welfare program. SSDI has become financially unsustainable and economically damaging, and policymakers should pursue major spending cuts to the program. They should also explore the potential to transition responsibility for disability insurance from the government to the private sector.

Tad DeHaven is a budget analyst on federal and state budget issues for the Cato Institute.

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Introduction

The goal of the federal Social Security Disability Insurance (SSDI) program is to replace a portion of a worker's income in the event that he or she is unable to work as a result of a severe disability. The program is supposed to provide support to people who cannot work because they have a medical condition that is expected to last at least one year or result in death.

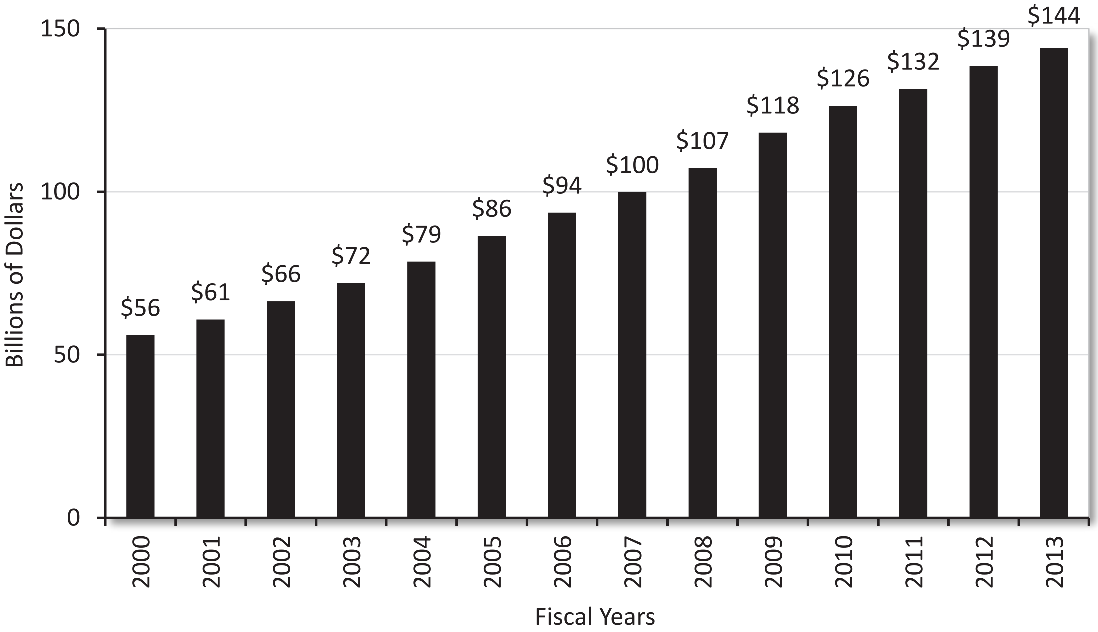
The number of people enrolled in SSDI has expanded rapidly in recent years, even as the share of the U.S. working-age population reporting a severe disability has remained stable.[1] In addition, medical advances have aided people with disabilities and fewer workers are engaged in hard physical labor. The number of SSDI beneficiaries jumped from 4.3 million in 1990, to 6.7 million in 2000, to 10.9 million in 2012.[2] The ratio of SSDI beneficiaries to all working-age people has doubled in the last two decades.

Accordingly, the taxpayer costs of SSDI have ballooned. Figure 1 shows that total spending will have doubled from $72 billion in 2003 to an estimated $144 billion in 2013.[3] In real (inflation-adjusted) dollars, SSDI expenditures will have roughly doubled since 2000. SSDI's benefits are funded by a 1.8 percent tax on workers' wages as part of the broader Social Security tax, but because benefit payments are outpacing tax revenues the system is running deficits and the SSDI trust fund will be exhausted by 2016.[4]

The growing numbers of people on disability is also increasing Medicare spending because SSDI recipients qualify for the federal health program. Medicare benefits for SSDI recipients cost the government about 80 percent as much as the SSDI benefits themselves, which translates to more than $100 billion a year in further taxpayer costs.[5]

Policymakers have liberalized eligibility standards for SSDI repeatedly over the decades, with the result that many people who are capable of working choose instead to remain idle and receive benefits. That is not only bad for taxpayers, but also for the broader economy because skilled and productive people are being lured into long-term government dependency.

Figure 1
Social Security Disability Spending



Source: *Budget of the U.S. Government, Fiscal Year 2014*, Historical Tables, Table 13.1.

The liberal eligibility rules for SSDI, the expansion of benefits, and the system's permissive court rulings have made the program rife with abuses. Many individuals who could be gainfully employed are receiving government support and not working because the system is tilted in favor of providing benefits to new applicants. Indeed, the system has a multi-level appeals process that enables people with questionable claims to succeed in winning benefits if they are persistent.

This study describes the history of SSDI and the structure of the program today. It explains how the complex process of determining eligibility has become an administrative nightmare, and it discusses the evidence that many people capable of working are using SSDI as essentially a permanent unemployment or welfare program, which it was not intended to be.

With today's huge federal deficits, taxpayers simply can't afford the skyrocketing expenditures for this $144 billion federal program. In the short term, policymakers should pursue cuts to sharply reduce the program's high price tag. In the long run, policymakers should explore possible paths to phasing out the system and leaving the provision of long-term disability insurance to private markets.

A Brief History of SSDI

When the Social Security system was created in 1935, disability insurance was not included.[6] A federal program for disability benefits was considered in the 1930s, but many policymakers thought that it would be too expensive and that disability subsidies would create an incentive for people to drop out of the workforce.[7]

However, there was growing support among federal officials for a government disability program. The Social Security Board (renamed the Social Security Administration in 1946) actively advocated in favor of adding benefits for the disabled.[8] Supporters believed that a nationalized disability system would be more efficient than the existing private system. But private disability insurance providers at the time argued that the political system would lack the discipline to manage a federal program efficiently. Insurance executive M. Jarvis Farley said: "The profit motive provides that discipline in a private organization . . . but I know of no substitute in government administration. I believe that a government would fail to obey the moral hazard."[9] Sadly, Farley turned out to be right, as the exploding growth in SSDI has made clear.

In 1943 legislation was introduced to expand federal social insurance to include temporary and permanent disability benefits, as well as unemployment compensation and health insurance.[10] This legislation—the Wagner-Murray-Dingell bill—never made it out of committee.[11] After that, World War II put efforts to introduce federal disability insurance on hold. Also, a major obstacle to the creation of federal disability insurance was the American Medical Association, which opposed any steps that it believed would lead to nationalized health care.[12]

In 1948 a Social Security Advisory Council recommended to Congress a plan to extend benefits to the permanently disabled.[13] Based on the Council's recommendation, the House added disability coverage to pending Social Security legislation in 1949, but this plan was rejected by the Senate. Instead, the upper chamber supported federal grants to the states for assistance to the disabled, and this approach was signed into law in amendments to Social Security in 1950.[14] Once established, federal subsidies for the disabled increased steadily over the decades as policymakers thought of new ways to expand benefits. In 1954 policymakers created a "disability freeze" on Social Security benefits, which allowed workers to omit periods of disability from the calculation of their retirement benefits.[15]

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In 1956 SSDI was born when Social Security was amended to create a federal disability insurance program. Initially, the program

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was just for individuals between the ages of 50 and 65 who had a substantial work history. Children who were disabled before the age of 18 and who were dependents of a retired or deceased worker were also eligible.[16] The benefits were financed by a 0.5 percent payroll tax on the wages of workers in the Social Security system. President Dwight Eisenhower initially opposed the legislation, which was engineered by congressional Democrats and Social Security Administration (SSA) officials. In the end, however, Eisenhower signed the bill.[17]

Under SSDI, an individual's initial application for benefits was made at a local Social Security office. However, the determination as to whether an individual was severely disabled and "unable to engage in substantial gainful activity" was determined by a state government office.[18] State involvement in the new disability program was needed to allay concerns from doctors and others about the growing size and scope of the federal welfare state.[19]

Those concerns proved well founded as SSDI began to expand. In 1958 the program was broadened to include the dependents of the disabled. In 1960 age restrictions were removed and benefits were extended to people of all ages.[20] In 1965 the qualifying determination for disability was liberalized. Previously, an individual's disability had to be of "long-continued and indefinite duration." [21] But under the new rules, a worker became eligible for benefits if the disability was expected to last just 12 months or longer.

In 1967 Congress adopted a more precise definition of disability, partly in response to concerns about rising program costs.[22] But the new rules actually expanded eligibility in certain ways, and efforts to bring more rigor and uniformity to the disability definition were hindered by inconsistent administration by the states.

That same year SSDI was expanded again, this time by adding in benefits for disabled widows. In 1972 policymakers reduced the waiting period for SSDI benefits and expanded the definition of eligible disabled children. They also extended Medicare benefits to SSDI recipients.[23]

Also in 1972, policymakers created a sister program for SSDI called Supplemental Security Income (SSI). In general, SSDI provides benefits for individuals with work histories, while the new SSI program was designed to provide benefits for low-income elderly and disabled people without substantial work histories. In 2011, 16 percent of SSDI beneficiaries also received SSI benefits.[24] SSI is funded by general federal revenues.

SSDI expanded rapidly during the 1970s. In constant 2012 dollars, the program's annual cost soared that decade from $14 billion to $38 billion. The SSA points to a combination of factors that fueled the cost increases during that period:

> [H]igh unemployment rates; changes in attitude toward disability; high benefit levels that encourage persons with impairments to stop working and apply for benefits; and various administrative factors, such as the massive nature of the disability determination process, tremendous pressures for timely processing of claims, disparity in adjudication among the States and at different levels of administrative review, and other factors.[25]

A federal official who was involved with defining disability noted that disability is "an elastic concept," which is the root of a lot of cost problems.[26] It isn't possible to determine with precision whether an applicant is truly unable to work, or whether the disability is temporary or permanent. This problem is illustrated by the wide variance in SSDI benefit claims in different regions of the country and under different administrative law judges (ALJs), as discussed below.

The problem is also illustrated by the rapid expansion of SSDI during periods of high unemployment, such as during the 1970s and recent years. More people don't actually become disabled during recessions, but many more decide to try to claim disability in order to receive federal benefits.

By the 1980s, SSDI was a freight train out of control. An official history says that the disability rolls were "substantially larger than had been anticipated" and that the "massive nature" of the program's complex administration was creating serious problems.[27] In 1978 President Jimmy Carter's secretary of health, education, and welfare, Joseph Califano, called SSDI a "caricature of bureaucratic complexity."[28] According to Califano, the program had "drifted into crisis" and was "in urgent need of fundamental reassessment and overhaul."

President Carter tried to solve some of those problems and signed reform legislation in 1980 that tightened benefits in various ways.[29] One provision required that state administrators reexamine "non-permanently" disabled beneficiaries once every three years to see if they were able to reenter the workforce. Prior to this requirement, little was done to remove able-bodied people from the SSDI rolls. The Government Accountability Office (GAO) estimated at the time that one in five recipients was no longer eligible for disability benefits.[30] The SSA estimated that the figure was one in four.[31]

Following the Carter administration's lead, the incoming Ronald Reagan administration initially focused on trimming SSDI costs. However, a political backlash erupted when newspapers began reporting "horror stories" about individuals who had their disability benefits terminated. Some members of Congress pounced on the stories and held dozens of hearings to highlight them.[32] Also, the attempted removals from SSDI led to a growing number of appeals to ALJs, and ultimately rising backlogs of cases. Soon state administrators of SSDI joined the rebellion against the Reagan administration's attempt to prune the rolls and many stopped reviewing beneficiary eligibility.[33]

The backlash led to the Social Security Disability Benefits Reform Act of 1984, which effectively reversed the 1980 reforms. The 1984 law required the SSA to develop new standards, which ultimately led to looser eligibility requirements. As one example, the new rules allowed people to gain SSDI benefits if they had numerous nonsevere disabilities that, combined, reduced their work capacity, rather than having a single "severe" impairment.[34] Economist David Autor noted of the 1984 changes, "A key consequence was that applicants with difficult-to-verify disorders such as muscle pain and mental disorders could more easily qualify for benefits."[35]

According to social insurance historian Edward Berkowitz:

> Although billed as a reform, therefore, the 1984 law stopped the longer-run reform process cold. Concern had shifted from containing the future costs of the system to protecting the present rights of the disabled. Where once policy highlighted the growth of the rolls, it now centered on protecting the rights of people already on the rolls . . . Where once reform sought to streamline disability determination, more bureaucracy was now added to the system through such measures as face-to-face reconsideration hearings.[36]

While SSDI enrollment and cost growth had slowed during the early 1980s, by the late-1980s enrollment and costs were rising again and have continued to rise rapidly and nonstop since then.

SSDI Basics

SSDI is administered by the SSA, which has over 65,000 employees and over 1,300 offices across the nation.[37] As previously noted, the program is financed by a 1.8 percent payroll tax on all covered workers in the Social Security system. That tax rate is more than triple the rate of 0.5 percent when SSDI was first established.[38] The tax is applied to earnings up to a certain level ($113,700 in 2013). Unlike unemployment insurance or workers'

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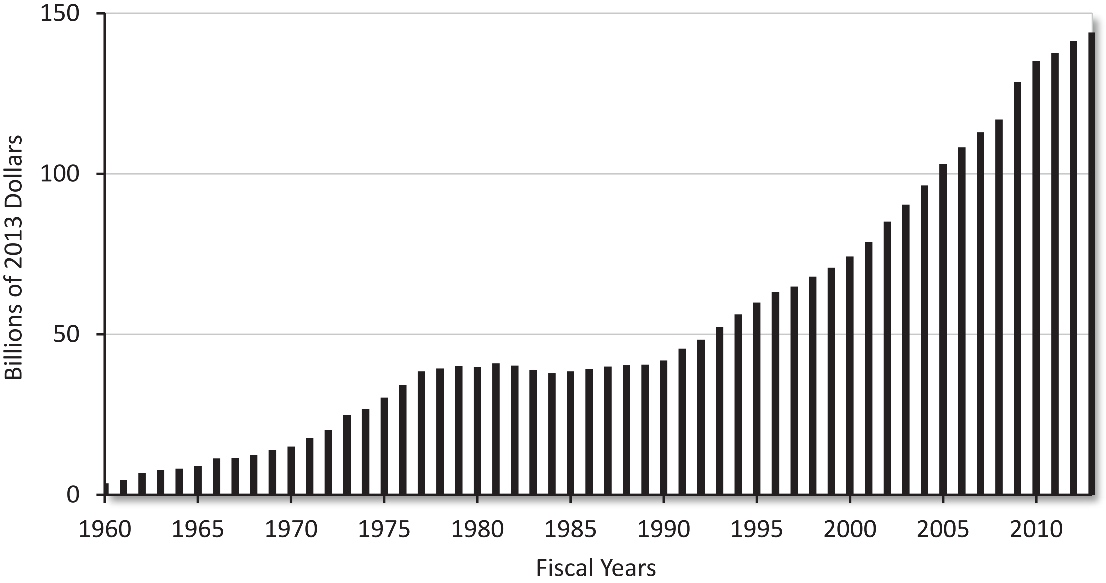
Figure 2
Social Security Disability Spending



Source: *Budget of the U.S. Government, Fiscal Year 2014*, Historical Tables, Table 13.1.

compensation, employers pay the same tax rate regardless of how much their employees utilize the system.

The program's finances are accounted for in the federal budget's SSDI trust fund. The accounts of the trust fund show that the program's expenditures are expected to be $144 billion in 2013, of which about $141 billion is for the payment of benefits and $3 billion for administrative expenses.[39] As Figure 2 shows, the real, or inflation-adjusted, costs of SSDI have exploded over the last two decades.

In 2013 the SSDI trust fund is expected to take in $111 billion in revenue, and thus the fund would have a deficit of $33 billion.[40] Deficits are financed by redeeming nonmarketable government securities that were accumulated over the years when the program had a surplus. The government spent the surpluses on other government programs and credited the fund with the securities. Because the securities are simply IOUs (meaning they are not invested in assets that will produce future financial returns), they have to be redeemed with the use of general federal revenues when a program deficit occurs. The trust fund has been running annual deficits since 2009. Those deficits are projected to persist and the trust fund is scheduled to be exhausted in 2016.[41] In present value, the SSDI trust fund has an unfunded liability of $1.2 trillion over a 75-year horizon.[42]

The real, or inflation-adjusted, costs of SSDI have exploded over the last two decades.

There are currently 10.9 million Americans collecting SSDI benefits.[43] Of that total, 8.8 million are disabled workers and 2.1 million are spouses and children. The average monthly benefit, which depends on a worker's earnings history, for a disabled worker is $1,130.[44] To be considered "disabled," a worker must possess the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months."[45] As will be discussed, however, this definition is often subjectively applied.

Soaring Expenditures

The growing number of people on SSDI has led to an explosion in expenditures since the late 1980s. That increase has occurred even though the share of the U.S. working-age population reporting a severe disability has remained stable over the years.[46] Furthermore, the share of the working-age population that reports having a work-limiting health condition has remained steady over time.[47] In addition, medical advances have enhanced the ability of people with disabilities to function in many workplaces, and the economy has become less reliant on labor-intensive blue-collar jobs.

With this good news about Americans' health, one would think the ratio of SSDI recipients to working-age population would have remained stable or fallen over time. Instead, as Figure 3 shows, there has been a large increase in the ratio of SSDI recipients to active workers. This ratio has doubled since the early 1990s, which is a remarkable development.

If Americans are not becoming less able to work because of health problems, why are the disability rolls increasing? Economists David Autor and Mark Duggan note that "the rapid growth of Disability Insurance does not appear to be explained by a true rise in the incidence of disabling illness, but rather by policies that increased the subjectivity and permeability of the disability screening process."[48] Similarly, economist Richard Burkhauser calls the explosion in the number of people gaining federal disability benefits a "policy-driven epidemic" caused by rule changes that "have made it far easier to gain entry to these benefit rolls."[49]

Evidence of this stems from the fact that there have been large increases in SSDI applications when the economy is poor, as has been the case in recent years. As Figure 4 shows, when unemployment is rising, applications for SSDI tend to increase, while a strong economy coincides with fewer SSDI applications. Marginally disabled people who could perform work may decide to try for disability benefits when employment conditions deteriorate. Indeed, a recent study on the work disincentive effects of SSDI found that "employment of the marginal program entrant would be on average 28 percentage points greater in the absence of SSDI benefit receipt two years after the initial determination."[50]

The inability to define disability precisely has thus resulted in a program that partly acts like permanent unemployment insur-

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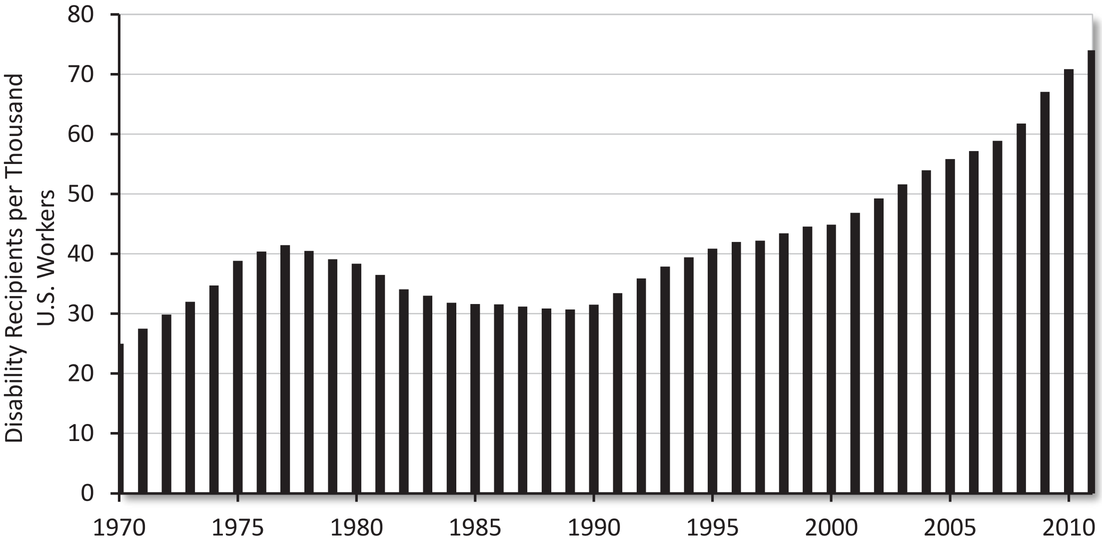
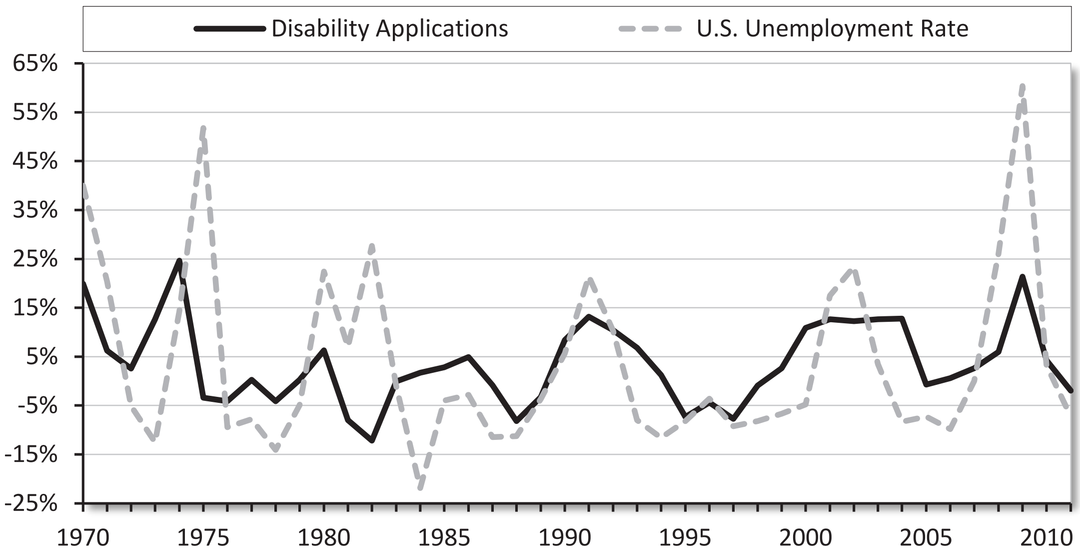
Figure 3
Disability Recipients per Thousand U.S. Workers



Source: Social Security Administration and Bureau of Labor Statistics.

Figure 4
Percent Change in Disability Applications and in U.S. Unemployment Rate



Source: Social Security Administration and Bureau of Labor Statistics.

ance or welfare. One problem with that is the longer an individual remains out of work on SSDI, the more difficulty that person will experience in finding employment later on.[51] Unlike unemployment benefits, which are fixed in duration, a person who goes on the disability rolls can stay there indefinitely. Indeed, that is typically the case. The Congressional Budget Office projects that "as a result of the most recent recession, the number of disability insurance beneficiaries will continue to rise over the next few years by more than otherwise would have occurred, contributing to the long-term trend of rising enrollment already under way."[52]

Policymakers have fueled rising enrollment by embracing ever more liberal eligibility standards for SSDI. Originally, the idea was that people would only be eligible for SSDI if they could not work at all, but today the standards for ability to work are much looser. For example, after Congress relaxed eligibility standards in 1984, awards based on "nonexertional restrictions"—a mental condition such as depression or physical pain stemming from a musculoskeletal condition—jumped 323 percent in the subsequent 20 years.[53] Today, the majority of applicants who are awarded benefits by an ALJ are determined to possess a "nonexertional restriction."[54]

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Law professor Richard Pierce explains that it is practically impossible to prove that these conditions constitute a complete inability to work:

> There are no objective diagnostic criteria that can be used to verify or refute a claim that an individual has a nonexertional restriction. Moreover, all such restrictions are matters of degree. The Social Security Act renders an individual eligible for disability benefits only if he has an impairment "of such severity that he . . . cannot . . . engage in any . . . kind of substantial gainful work which exists in the national economy." Yet, there are no objective diagnostic criteria that can be used to measure the degree of an applicant's anxiety, depression, or pain. Finally, nonexertional restrictions are ubiquitous. The National Institute of Medicine has found that 116,000,000 Americans

> suffer from chronic pain, while the National Institute of Mental Health has found that 61,000,000 Americans suffer from mental disease. It is a rare person who reaches my age (68) without having experienced anxiety, depression, and/or pain over some significant periods of time. Thus, at some point in his life, almost every person can make a plausible claim of eligibility for permanent disability benefits based on nonexertional restrictions.[55]

Pierce blames ALJs for helping to push up the costs of the SSDI system.[56] A single judge in Pennsylvania, for example, overruled the SSA on 2,285 benefit applications in a four-year period—applications that the SSA had declined. That single judge's actions have cost taxpayers more than $2 billion.[57] Another SSDI expert, James Taylor, thinks that another problem is the deep institutional bias within the SSA that encourages favorable determinations at every level of the process.[58] For one thing, SSA benefit awards are generally not open to public scrutiny, so officials are likely biased to be generous to applicants out of sympathy, rather than feeling accountable to taxpayers. The result of all this is that SSDI is more and more like a general welfare program, not a last-resort safety net for the small group of people completely unable to earn a living because of a medical disability.

A Complex and Slanted Process

The SSDI application process begins when workers submit paperwork to a local SSA office. The office determines if the applicant has worked long enough to be considered "insured" under SSDI and is not currently earning above the "substantial gainful activity" limit ($1,011 a month in 2012). If the applicant meets those requirements, a state Disability Determination Service (DDS) then follows a step-by-step process to determine whether the worker's medical condition warrants disability benefits. At any step, the applicant can be denied benefits.

The DDS first decides whether the disability is severe enough to limit basic life activities. If the answer is yes, a determination is made as to whether the disability meets or is the equivalent of a condition in the SSA's "Listings of Impairments." If the answer is yes, the applicant qualifies for benefits. If the answer is no, the applicant may still qualify for benefits after some additional steps: First, the DDS determines whether the applicant can perform work from any previous occupations. If the answer is no, the DDS determines whether the applicant can perform other work that exists in the national economy. If the answer is no again, the applicant qualifies for benefits.

The SSA first introduced Listings of Impairments in 1968 in order to expedite the claims process. There are 14 categories organized by major body systems. When subcategories are included, the list of impairments exceeds 100.[59] However, the share of initial claims allowed based on the listings has dropped from 93 percent in the early years to around 50 in the past decade.[60] Nowadays, the Medical-Vocational Guidelines, used in the final evaluative step, are four times more likely to determine eligibility.[61] The SSA has developed a grid containing more than 80 options that take into consideration factors such as age, education, and the ability to perform some level of work. "The Grids" allow for more subjective considerations when determining eligibility, which has resulted in people being declared "disabled" who are actually capable of performing work or who have a disabling condition that has a good chance of being temporary.[62]

Applicants who are approved become eligible to receive benefits five months from the time the disability began.[63] In addition, successful SSDI applicants can also start receiving Medicare health coverage after 24 months. The Congressional Budget Office says that Medicare benefits "cost the federal

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government on average more than 80 percent as much as their [disability insurance] benefits," which translates to more than $100 billion in 2012.[64] Disability benefits continue until the individual reaches normal Social Security retirement age, at which point he is covered by regular Social Security, or the individual is able to resume work.

The SSA conducts periodic reviews to determine if a beneficiary is still disabled. The frequency of the reviews depends on how long an individual's condition is expected to last. In 2011, only 3.6 percent of workers on SSDI had their benefits terminated because of medical improvement. Almost 90 percent of people had their benefits stopped because they either died or reached retirement age.[65] The data thus indicate that once workers get on the disability rolls, they rarely leave and go back to work.

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Applicants who are denied benefits can appeal. Indeed, the appeals process has four levels, and at each level the individual receives another chance to convince a government official or judge to grant benefits. Thus, individuals with questionable claims of disability have up to five tries at receiving benefits and they just have to succeed once.

The process can be very cumbersome and costly. A rejected applicant can first ask the SSA for a "reconsideration" of his or her claim from a different group of SSA officials. If rejected again, the applicant can request a hearing before an ALJ. These hearings do not include a government representative to question the claim on behalf of taxpayers.[66] Meanwhile, the SSDI applicant in the great majority of cases uses the services of lawyers working on a contingency fee basis.[67] It is a process slanted in favor of program expansion and higher spending.

If the ALJ denies the claim, the quest for federal benefits is still not over. The SSDI applicant can request a review from the Social Security Appeals Council. If the council either denies the claim or decides against reviewing it, the applicant can then file a lawsuit in a federal district court. In 2011 over 14,000 new civil actions were filed.[68]

In 2010 there were 2.9 million total applications for SSDI benefits. Only 35 percent were awarded benefits.[69] However, that figure includes applicants who were denied for technical reasons or where a final decision was still pending. The overall allowance rate based on medical decisions was 55 percent.[70] For medical decisions made at the hearings level or higher, the allowance rate was 76 percent.[71]

Administrative Nightmare

The federal government faces huge and growing problems in administering SSDI because of the program's size and inherent complexity. In particular, there is a massive backlog of disability claims at the hearings level. Since 1977 the number of appeals to the ALJ level has tripled.[72] Claims awaiting a hearing before one of 1,400 ALJs grew from 12,000 cases in 1999 to 817,000 cases in 2012.[73] The Social Security Administration has effectively instituted quotas on judges to reduce the backlog. However, the Association of Administrative Law Judges says that because of the quotas, "many administrative law judges are pressured to grant more claims than they otherwise would, as it simply is faster and easier to grant claims than to deny them."[74]

The backlog for continuing disability reviews (CDRs), which are conducted to make sure an individual collecting SSDI benefits is still eligible, is another problem. At the end of 2010, the SSA had a backlog of almost 1.5 million CDRs. The SSA's inspector general estimates that between $1.3 billion and $2.6 billion in unnecessary disability payments could have been avoided in recent years had CDRs been conducted on time.[75] The GAO notes that between 2004 and 2008, the number of CDRs conducted annually decreased by almost 65 percent.[76] In 2009 only 1.3 percent of SSDI recipients received a review.[77] The SSA notes that a full review costs $1,000 per case and in most cases the agency simply ascertains continuing eligibility by mailing the recipient a questionnaire.[78] Less than 1 percent of recipients who are reviewed have their benefits terminated.[79]

The inability to sufficiently monitor whether individuals are still entitled to benefits has contributed to a large volume of unjustified benefit payments and great deals of fraud and abuse. The SSA inspector general's office says that "fraud is an inherent risk in SSA's disability programs."[80] While the SSA does not generally release information on particular SSDI awards, voluminous examples of waste and fraud can be found from document releases in court cases. An editor of a disabilities legal publication, James M. Taylor, dug through court documents in disability cases and found many appalling examples of the SSA awarding benefits when individuals clearly were not too disabled to gain employment.[81]

Indeed, a casual Internet search reveals many articles about SSDI fraud. Not only are individuals bombarding the system with bogus claims for benefits, but shady health care professionals are helping them. For example, a San Diego psychologist recently pled guilty to falsely certifying dozens of individuals as being disabled, resulting in the government paying out over $1.5 million in unwarranted benefits. The doctor "admitted that approximately 33 percent of his patient files contained fabrications, false statements, and false certifications of disability."[82]

When individuals convicted of committing fraud are caught, the SSA does not do a good job of recouping ill-gotten benefits. An SSA inspector general audit examined 272 beneficiaries who had been convicted of defrauding the SSA and found that 96 of those individuals were still collecting benefits. The audit noted that often "the payment terms agreed to by SSA are so unfavorable that SSA will never fully recover the amounts owed from these individuals."[83]

The GAO has found that the SSA too often overpays benefits. In 2010 SSDI benefit overpayments were $1.4 billion, and the GAO says that the figure "could be even larger than SSA's data detect."[84] The GAO has been critical of the SSA's efforts to recover overpayments and notes that although debt collections have increased, the overall debt has gone from $2.5 billion in 2001 to $5.4 billion in 2010. That excludes $4 billion in overpayment debt that the SSA wrote off.[85]

Given the subjective and convoluted nature of determining SSDI eligibility, it's likely that erroneous and unjustified payments are far larger in volume than just outright fraud. The huge, complex, and difficult-to-audit system is a perfect breeding ground for awarding and continuing benefits to people who shouldn't be on the disability rolls.

According to the GAO, the list of impairments used to determine if an applicant has an eligible disability is outdated and the SSA has been slow to revise it.[86] Mental disorders, for example, have grown to become the second-largest impairment cited for awarding disability benefits (19 percent), behind musculoskeletal system and connective tissue (34 percent).[87] In terms of initial and reconsidered claims allowed based on the SSA's medical listings, mental disorders are by far the largest category.[88] However, the GAO reports that "it has been at least 27 years since SSA finalized comprehensive revisions for . . . mental and neurological disorders."[89]

The SSA's concept of "disability" is also outdated. Workplace accommodations and assistive devices can enable many of today's disabled people to function in a job, but the SSA "does not always consider them in its assessment of disability."[90] For example, the SSA says that assistive devices are incorporated into the medical listings once they become "standard in the medical community." But when asked if wheelchairs are considered standard in the medical community, and whether consideration is given to how individuals with wheelchairs might function in today's more white-collar economy, SSA officials gave the GAO "conflicting information."[91]

Because of the subjectivity and complexity involved in determining if a medical condition warrants disability benefits, outcomes at the appeals level show a high de-

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The complicated process for seeking disability benefits has become a boon to legal firms that specialize in disability claims.

gree of variation. When the SSA inspector general (IG) examined the four impairments that are most frequently accepted for review at the appeals level, it found that the variation could be large even within the same city. The IG noted that "one hearing office in the Chicago Region had an allowance rate of 83 percent for cases with Disorders of Back, but another hearing office in the Chicago Region had an allowance rate of 45 percent for cases with the same impairment."[92]

The differences are even larger for cases reviewed by an ALJ. The IG cited an example where one judge approved 97 percent of his cases that involved back disorders, while another judge only allowed 15 percent of his cases with that health problem.[93] Judges are largely independent and possess broad discretion to award or deny benefits. They are also hard to fire, which means an appointment can amount to a lifetime position.

A recent Senate oversight committee investigation reviewed 300 cases from a county in three different states. The investigation found that benefit award decisions made at the ALJ level were "fraught" with problems:

> These problems ranged from basing decisions on evidence of questionable value, to citing insufficient evidence to support the decision made, misusing expert testimony, and holding perfunctory hearings. The result was a large number of poor quality decisions, raising questions about whether they were decided correctly.[94]

Other findings from the investigation included:

- Some judges awarded benefits even though the claimant was able to work.[95]
- The SSA discourages the introduction of evidence in support of a claim less than 10 days before a hearing. In one region, it is mandatory not to admit evidence that isn't received five days in advance. However, in some cases evidence was allowed by an ALJ as late as a few hours before the hearing.[96]
- When contradictory evidence was provided by different sources, both DDS officials and ALJs were more likely to cite the evidence more favorable to the claimant.[97]

Judges who spoke to investigators pointed to the heavy workload and the fact that rules used to determine eligibility have become so complex. One result of judges trying to expeditiously complete case loads is high approval rates of about 60 percent on average.[98] In 2011, 130 ALJs awarded benefits in 85 percent or more of the cases heard.[99] A judge in West Virginia awarded benefits in all but four of the 1,284 cases he tried in 2010.[100] Overall, the *Wall Street Journal* found that in 2011, 1,334 judges made more awards than denials, while only 439 judges had the ratio the other way around.[101]

The SSA has started performing "focused quality reviews" on random samples of decisions made by ALJs. A 2011 report found that more than one in five decisions contained errors.[102] Although an error does not automatically mean that disability benefits were incorrectly awarded, 82 percent of the decisions were remanded to the originating hearing office for further review because "the record was not sufficient to render a decision."[103]

The complicated process for seeking disability benefits has become a boon to legal firms that specialize in disability claims. The vast majority of applicants who appeal a denial of benefits to the ALJ level have legal representation.[104] For some impairments—back disorders, for example—representation can exceed 90 percent.[105] These lawyers typically work on a contingency fee basis, which means a large amount of taxpayer money ends up in the pockets of thousands of disability lawyers.

An applicant whose appeal is successful is awarded payments dating back to the onset of the disability. The lawyer typically receives 25 percent or up to $6,000 of this "back pay."

While that amount may not be enticing to general law firms, firms specializing in disability claims can make millions of dollars based on a high volume of cases and knowing how to work the system. According to SSA data obtained by the *Wall Street Journal*, fees paid to lawyers and other representatives of SSDI applicants went from $425 million in 2001 to $1.4 billion in 2011.[106] Legal firms are aware of which judges are more likely to award benefits and try to steer their clients accordingly.

The *Wall Street Journal* profiled the nation's largest "disability advocate," the firm Binder and Binder.[107] The rise of the firm stems from a 2004 federal law that made it easier for non-lawyers to represent applicants. The motivation for this legal change was to nurture advocacy organizations that would help move applicants through the complicated process and thus reduce the backlog of claims. Binder and Binder quickly moved to hire cheaper nonlawyers and started advertising nationally. According to one former Binder case manager, the firm is "like a warehouse" whose employees' objective is to see "how much money they can make."[108] In 2010 the SSA paid Binder $88 million in fees. Binder and Binder has a reputation for withholding information that could damage a client's case, but the SSA's commissioner says that "we are not so much in the business of, quote unquote, monitoring law firms."[109]

Law firms are not the only private interest making money off of the SSDI system. In a special report on federal disability programs, National Public Radio recently highlighted the firm Public Consulting Group (PCG), which provides consulting services to state governments.[110] One of the services PCG provides is helping states move people from cash welfare, which is partly funded with state money, to SSDI, which the federal government fully pays for. For example, a recent contract with the state of Missouri will pay PCG $2,300 for every person it helps obtain SSDI benefits. With that kind of money to be made, PCG goes to great effort to get people on the disability rolls:

> The PCG agents help the potentially disabled fill out the Social Security disability application over the phone. And by help, I mean the agents actually do the filling out. When the potentially disabled don't have the right medical documentation to prove a disability, the agents at PCG help them get it. They call doctors' offices; they get records faxed. If the right medical records do not exist, PCG sets up doctors' appointments and calls applicants the day before to remind them of those appointments.
>
> PCG also works very, very hard to make the people who work at the Social Security Administration happy. Whenever the company wins a new contract, Coakley [a PCG employee] will personally introduce himself at the local Social Security Administration office, and see how he can make things as easy as possible for the administrators there.
>
> "We go through even to the point, frankly, of do you like things to be stapled or paper-clipped?" he told me. "Paper clips wins out a lot of times because they need to make photocopies and they don't want to be taking staples out."[111]

The NPR reporter aptly refers to the collaboration between the public and private sectors to expand the disability rolls as the "Disability-Industrial Complex." And she accurately notes that "It has just one goal: push more people onto disability."[112]

The NPR reporter aptly refers to the collaboration between the public and private sectors to expand the disability rolls as the "Disability-Industrial Complex."

Conclusion

With massive and ongoing federal deficits, policymakers need to pursue spending cuts in every area of the budget. The Social Security Disability Insurance program's soaring expenditures desperately need to be tackled. SSDI's trust fund is expected to be exhausted in just a few years. While some policymakers might favor higher SSDI taxes to bolster the trust fund, that would further punish workers and damage the economy in order to prop up a structurally flawed program that is collapsing under its own weight.

SSDI spending should be cut sharply. That can be achieved by cutting SSDI's average benefit levels and instituting stricter eligibility standards to discourage claims from people who could be working. Other changes might include imposing a longer delay for the initial receipt of benefits to discourage frivolous applications, and reducing the large number of appeal opportunities for people who are denied benefits. Steps could also be taken to ensure greater quality control and consistency of decisions by SSA officials and judges. The administrative law process should include a role for a "taxpayer advocate" to challenge any dubious claims made by applicants and their lawyers.

Continuous disability reviews of people receiving benefits should be vigorously applied. During 1980 and 1983 when the SSA reexamined large numbers of SSDI recipients, it found that 40 percent were not sufficiently disabled to be receiving benefits.[113] It would not be surprising if that share is higher today. The experience of the 1980s shows that SSDI spending can be cut when policymakers focus on saving taxpayer money. It is also true, however, that SSDI spending bounced back with a vengeance after the 1980s as politicians reverted to their spendthrift ways.

Today, reforms are needed more than ever.[114] Reining in SSDI would not only save taxpayer money, it would also give marginally disabled people who have valuable skills an incentive to reenter the workforce.[115] Once people get on SSDI, they rarely leave the program and go back to work, even if their health improves. Indeed, only 3.6 percent of workers on SSDI had their benefits terminated in 2011 because of medical improvement.[116] With the U.S. workforce shrinking because of the retirement of droves of baby boomers, the economy cannot afford policies—such as excessively generous SSDI—that suppress work incentives.

SSDI is a classic example of a well-intentioned effort to provide modest support to truly needy people that has exploded into a massive entitlement that is driving up the federal deficit.

In sum, SSDI is a classic example of a well-intentioned effort to provide modest support to truly needy people that has exploded into a massive entitlement that is driving up the federal deficit. Federal policymakers should pursue major cost-cutting reforms to SSDI, but they should also begin considering ways of moving the provision of long-term disability coverage to the private sector.

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