Claimant Representative Demonstration Technical Experts Panel Meeting

Final Report

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List of Acronyms

ALJ	Administrative Law Judge
CR	Claimant Representative
DCPS	Disability Case Processing System
DDS	Disability Determination Services
DE	Disability Examiner
ERE	Electronic Records Express
OMB	Office of Management and Budget
QDD	Quick Disability Determination
SGA	Substantial Gainful Activity
SOAR	SSI/SSDI Outreach, Access, and Recovery
SSA	Social Security Administration
SSDI	Social Security Disability Insurance
SSI	Supplemental Security Income
TEP	Technical Expert Panel

Executive Summary

Congress has granted the Social Security Administration (SSA) Commissioner authority to "develop and carry out experiments and demonstration projects designed to promote attachment to the labor force." This authority allows SSA to test the effects of changes to current Social Security Disability Insurance (SSDI) program rules.[1] To make the best use of its demonstration authority and avoid barriers to implementing new demonstrations, SSA is seeking objective review and independent recommendations from panels of technical experts. These Technical Expert Panels (TEPs) assist SSA to develop research questions, intervention specifications, implementation strategies, and evaluation designs to ensure that demonstrations generate the evidence SSA needs to inform policy decisions. The TEPs also provide SSA with objective review of potential demonstrations and independent recommendations regarding what SSA might study. This report summarizes the input from a TEP convened on April 12, 2019 to provide SSA with advice regarding the ***Claimant Representative Demonstration***.

SSA's proposed Claimant Representative Demonstration addresses the relatively large number of disability claims that are allowed at the Administrative Law Judge (ALJ) hearing level. In Fiscal Year 2018, 23 percent of allowed claims were made at the ALJ hearing level.[2] The average processing time for decisions at the ALJ hearing level was 595 days.[3] The long processing time subjects claimants to financial and emotional stress, and the large number of hearings imposes a substantial administrative burden upon SSA. Allowing more claims at the initial or reconsideration levels, rather than the ALJ level, would reduce burden on claimants and SSA.

Current research indicates that, generally, having a claimant representative during the disability appeals process is positively associated with the likelihood of allowance.[4] Experienced representatives understand the law and evidentiary requirements needed to establish disability. SSA's proposed demonstration seeks to increase the proportion of claimants with representation at the initial and reconsideration levels with the objective of shifting awards earlier in the disability determination process. The goal of the demonstration is not to change which claims are awarded or denied, but rather to arrive at a correct decision as soon as possible.

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1 This authority is granted under Section 234 of the Social Security Act. The current authority to initiate SSDI-related demonstrations ends on December 31, 2021, and the authority to carry out SSDI-related demonstrations ends on December 31, 2022. SSA also has authority, permanently granted under Section 1110 of the Social Security Act, to carry out demonstrations related to the Supplemental Security Income (SSI) program.

2 See SSA (2019, accessed May 22, 2019)

3 See SSA (2019, accessed May 22, 2019)

4 A GAO report finds that claimants with representatives at the ALJ level were allowed benefits at a rate nearly three times as high as those claimants without representatives during 2007 – 2015 (GAO 2017). A 2016 working paper finds that claimants with representatives at the initial level were allowed benefits at a higher, but declining, rate than those without representatives. Claimants with representatives were 3.9 percentage points more likely to be allowed benefits in 2010 and this association declined to 1.2 percentage points by 2014 (Hoynes, Maestas & Strand 2016).

Under current statute, SSA may authorize payment to representatives with a fee agreement in the amount of 25 percent of claimants' awarded back benefits, up to a $6,000 limit. This payment structure could create an incentive for representatives to work with beneficiaries later in the adjudication process. The proposed demonstration would test an alternative fee structure designed to encourage representation earlier in the process.

SSA contracted with Abt Associates to convene a panel of experts to discuss SSA's proposed plan for the Claimant Representative Demonstration. SSA asked the TEP to review background materials describing SSA's proposed intervention and asked the TEP to provide comments and suggestions on the following topics: 1) the current determination/decision and appeals processes; 2) the role of claimant representatives; 3) design of the intervention; 4) how SSA should implement the intervention; and 5) evaluation design.

The discussion at the TEP meeting identified several key points for SSA to consider:

- The TEP members said that the main way to improve the disability benefit application process is to make sure that cases are developed fully and completely earlier in the process. The TEP members noted the large amount of anecdotal evidence that incomplete development of cases is the most important cause of denials at the initial and reconsideration levels for claims that are ultimately allowed at the ALJ hearing level.
- The TEP members said that the claimant representative's main responsibility at the initial and reconsideration levels is to fully develop the case.
- Although the experts acknowledged that the fee structure creates a disincentive to representatives' early involvement with claimants, they also thought that simply changing the fee structure may not substantially increase representation early in the application process. This is because other factors make early representation frustrating and dissuade representatives from taking cases. Chief among these factors is the inability of the representative to access the electronic claim file at the early stages of the administrative process (i.e., initial and reconsideration levels) to view documents and other evidence.
- The experts recommended testing both a changed fee structure for claimant representatives and a technological intervention that would allow representatives to see the case file in real-time before reaching the ALJ level. The experts recommended an evaluation design that randomly assigned representatives to one of three treatment groups (new fee structure only, case file access only, new fee + case file access) or a current policy control group. The experts discussed several alternative fee structures but did not come to consensus on what a revised fee structure should be.
- The TEP members recommended that SSA should consider additional data when designing the intervention, including information on: reasons that claims are awarded upon appeal; the percentage of awarded claims that are represented; the percentage of represented awards that have a fee collected; and the average fee collected at each adjudication level. A TEP member also noted that outcome variables that correctly code the type of representative, the type of fee payment, and the amount paid to the representative have been difficult to obtain from existing administrative data.

1. Introduction

Congress has granted the Social Security Administration (SSA) Commissioner authority to "develop and carry out experiments and demonstration projects designed to promote attachment to the labor force." This authority allows SSA to test the effects of changes to current Social Security Disability Insurance (SSDI) program rules.[5] To make the best use of its demonstration authority and avoid barriers to implementing new demonstrations, SSA is seeking objective review and independent recommendations from panels of technical experts. These Technical Expert Panels (TEPs) assist SSA to develop research questions, intervention specifications, implementation strategies, and evaluation designs to ensure that demonstrations generate the evidence SSA needs to inform policy decisions. The TEPs also provide SSA with objective review of potential demonstrations and independent recommendations regarding policies SSA might study. This report summarizes the input from a TEP convened on April 12, 2019 to provide SSA with advice regarding the Claimant Representative Demonstration.

1.1 Claimant Representative Demonstration Overview

SSA's Claimant Representative Demonstration would test a change in the payment for claimant representatives designed to encourage greater representation earlier in the adjudication process. The goal of increased representation at earlier levels of the adjudication process would be to shift the timing of some awards from the Administrative Law Judge (ALJ) hearing level to the initial or reconsideration levels. This section describes the disability determination and appeals process, the role of claimant representatives in that process, and SSA's proposed demonstration concept.

1.1.1 The Current Appeals Process

When a claimant submits an initial application, it is evaluated by a Disability Examiner (DE) at a state Disability Determination Service (DDS) office. DEs assess the evidence submitted as part of the claim and determine whether the claimant has a severe impairment that makes him or her unable to earn the Substantial Gainful Activity (SGA) amount, and is expected to last at least a year or result in death.

If a disability claim is denied at the initial application level, the claimant may choose to appeal. Exhibit 1 illustrates SSA's disability adjudication appeals process. In most states, the appeal first goes to the reconsideration level.[6] At the reconsideration level, another DE examines the existing evidence and any additional evidence, and makes a new, independent decision. Claimants can submit additional information at reconsideration but are not required to do so. If the claim is denied again, the claimant may appeal again, and have his or her case heard by an ALJ. The ALJ level gives the claimant an opportunity to make his or her case in front of a judge and to introduce new evidence. The ALJ can award benefits or deny the

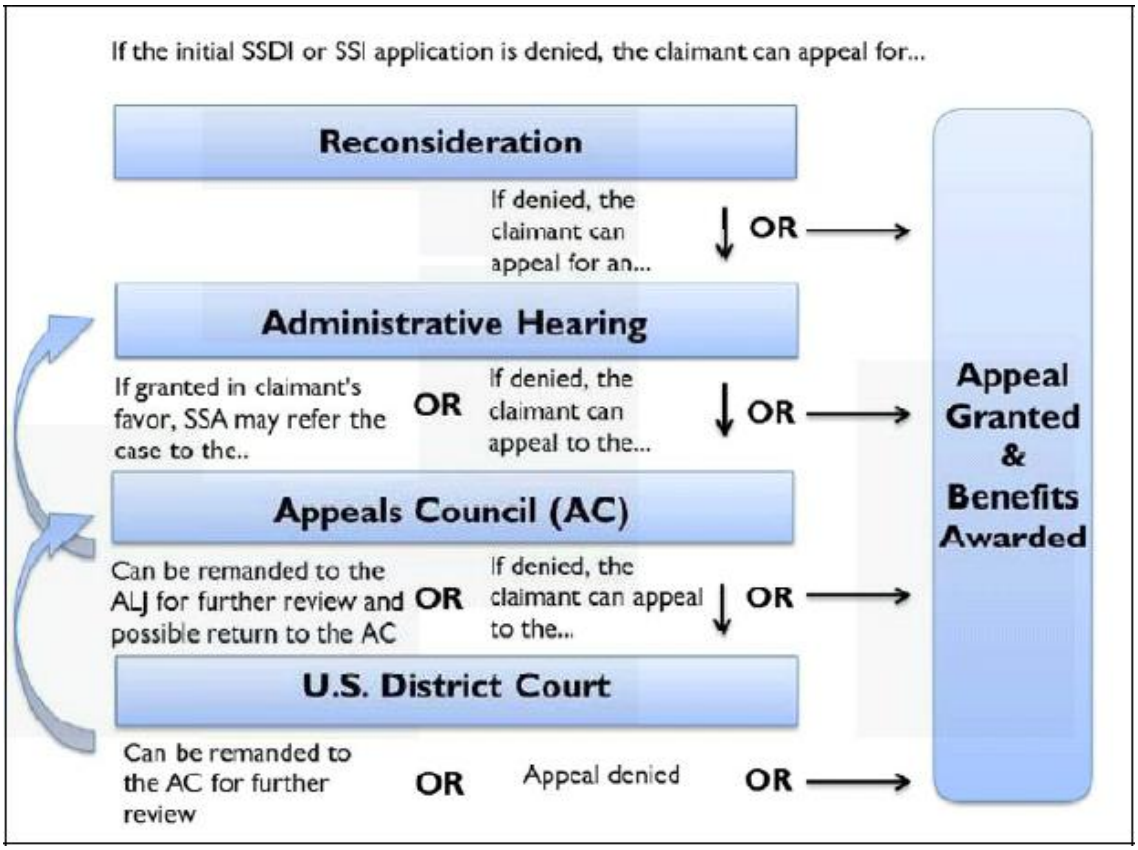
[5] This authority is granted under Section 234 of the Social Security Act. The current authority to initiate SSDI-related demonstrations ends on December 31, 2021, and the authority to carry out SSDI-related demonstrations ends on December 31, 2022. SSA also has authority, permanently granted under Section 1110 of the Social Security Act, to carry out demonstrations related to the Supplemental Security Income (SSI) program.

[6] SSA conducted a pilot beginning in 1999 that eliminated the reconsideration level in ten states. SSA began restoring the reconsideration level in half of these states in 2019. By the end of fiscal year 2020, all states will have restored the reconsideration level. See SSA (2019, accessed May 22, 2019)

claim. If the claim is denied, the claimant may appeal once again to SSA's Appeals Council, which can send the case back to the ALJ level, award benefits, or deny the claim. If the claim is again denied, the claimant may appeal further, to the U.S. District Court. At this level, benefits can be awarded, the claim can be denied, or the claim can be remanded back to the Appeals Council for further review.

SSA is currently introducing a common information system for all state DDS agencies called the Disability Case Processing System (DCPS). The DCPS will ultimately replace 52 independently-operated, legacy state DDS systems. Seventeen states currently use the DCPS as functionality of the system continues to be developed. DEs use the DCPS to examine claims and render decisions. SSA expects that full adoption of the DCPS will result in more efficient disability case processing, improved customer service, and reduced administrative costs.[7]

Exhibit 1. Disability Adjudication Appeals Process



Source: Morton 2014

Exhibit 2 shows the number of cases that SSA processed at each adjudication level during fiscal year 2018. It also shows the proportions of cases that were allowed, denied, dismissed, or remanded at each

[7] For additional information about the DCPS, see SSA (2018b, accessed May 15, 2019) and SSA (2019, accessed May 22, 2019).

level and the percentage of all allowances that were made at each level. Although allowance rates are somewhat higher at the ALJ level, more than 70 percent of allowances were made at the initial level. Only 6 percent of allowances were made at the reconsideration level.

Exhibit 2. Fiscal Year 2018 Disability Decision Data*[1,2]

Adjudication Level	Number of Cases	Percent Allowed	Percent Denied	Percent Dismissed	Percent Remanded	Estimated Percent of All Allowances
Initial[1]	2,231,974	35%	65%	N/A	N/A	71%
Reconsideration	530,365	13%	87%	N/A	N/A	6%
ALJ hearing	562,452	45%	35%	21%	N/A	23%
Appeals Council	106,575	1%	85%	4%	10%	<0.1%
Federal court decisions[2]	18,309	2%	42%	8%	48%	<0.1%

Notes: *Includes Title II, Title XVI, and concurrent initial disability determinations and appeals decisions issued in FY 2018, regardless of the year in which the initial claim was filed, and regardless of whether the claimant ever received benefits (in a small number of cases with a favorable disability decision, benefits are subsequently denied because the claimant does not meet other eligibility requirements.) Does not include claims where an eligibility determination was reached without a determination of disability. If a determination or appeals decision was made on Title II and Title XVI claims for the same person, the results are treated as one concurrent decision.

[1] About 22 percent of initial level denials are issued in States that use the Disability Prototype process, which eliminates the reconsideration step of the appeals process. The first level of appeal for these cases is a hearing before an Administrative Law Judge.

[2] Federal court data includes appeals of Continuing Disability Reviews.

Source: First six columns reproduced from SSA FY2020 Congressional Justification, Table 3.21. Estimated percent of allowances calculated from Number of Cases and Percent Allowed figures.

Exhibit 3 shows the average processing times of claims during fiscal year 2018. Average processing time at the initial and reconsideration levels were about 100 days, while the average processing time at the hearing level was nearly 600 days. As a result, a claim that is allowed at the reconsideration level rather than the initial level requires a claimant to wait about twice as long for a decision, but an average claim that is allowed at the hearing level rather than the reconsideration level requires a wait about four times as long. The much longer wait time at the hearing level also allows representatives substantial time to develop cases.

Exhibit 3. Disability Determination Processing Times in FY 2018

Adjudication Level	Average Processing Time (days)
Initial	111
Reconsideration	103
Hearings	595

Source: Reproduced from SSA FY2020 Congressional Justification, Table 3.19.

1.1.2 The Role of Claimant Representatives

Claimants may enter into agreements with claimant representatives for representation beginning at any level of the determination and appeals process. Representatives must adhere to SSA's Rules of Conduct

and Standards of Responsibilities for Representatives.[8] SSA informs claimants about the availability of representation with a short brochure if their initial claim is denied and has a policy of neither encouraging nor discouraging claimants from seeking representation. SSA's brochure is reproduced in Appendix A.

Some claimant representatives charge a fee to the claimant while others do not.[9] The current allowable fee for claimant representatives paid through fee agreements is 25 percent of claimants' awarded back benefits, up to a $6,000 limit. SSA raised this maximum amount from $4,000 to $5,300 in 2002 and from $5,300 to $6,000 in 2009.[10] Typically, claimants use SSA Form 1696 to inform SSA that they have appointed a claimant representative. The form specifies the particular fee arrangement that the claimant and representative have agreed upon. SSA must approve the appointment for the representative to act on behalf of the claimant during the disability determination and appeals process.[11] SSA must also determine whether the fee agreement complies with the statutory fee maximum. If SSA does not approve the fee agreement, the representative requesting a fee must file a fee petition to receive SSA's authorization. In 2013, representatives assisted with 20 percent of SSDI claims at the initial level. The proportion of SSI claims with a representative was smaller, at 14 percent (GAO 2014).[12] The rate of representation at the ALJ level is much higher, at 80 percent or more (Engel, Glendening & Wolfe 2016). No information on the rate of representation at the reconsideration level is publicly available.

1.1.3 Overview of the Demonstration Concept

SSA's proposed demonstration seeks to increase the proportion of claimants with representation before the ALJ level with the objective of shifting awards earlier in the disability determination process. The goal of the demonstration is not to change which claims are awarded or denied, but rather to arrive at a correct decision as soon as possible. SSA has proposed a demonstration that would test an incentive for representatives to work with claimants earlier in the disability appeals process. SSA would offer an increased, actuarially-fair payment option to claimant representatives being paid under fee agreements for awards at the initial and reconsideration levels. The claimant would continue to pay the representative up to 25 percent of their back payment amount or $6,000 as they would under current law. SSA would make up any difference between the claimant portion and the increased payment level.

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8 See SSA (n.d.-a, accessed May 20, 2019)

9 Those representatives that do not charge a fee to the claimant include, among others, social service organizations serving those with low incomes and/or specific impairments that make self-filing disability claims especially difficult; and for-profit enrollment/eligibility service companies that are typically hired by hospitals, insurers, employers, and state and local governments to assist individuals with their disability claims (SSAB 2012). See SSAB (2012) for further description of the types of claimant representatives.

10 See SSA (n.d.-b, accessed May 15, 2019)

11 See SSA (2009, accessed May 21, 2019)

12 Hoynes Maestas and Strand (2016) find a similar percentage (19 percent) for SSDI claims in 2014.

1.2 Technical Experts Panel (TEP) for Claimant Representative Demonstration

SSA contracted with Abt Associates to convene and facilitate the Claimant Representative Demonstration TEP. This section describes the composition of the TEP and the steps Abt conducted to secure their participation.

The TEP consisted of seven members, each representing one of the affiliation areas that SSA identified. Three members represented academic research institutions; one represented government or state agencies outside of SSA; two represented private non-profit policy advocacy and analysis organizations; and one is an independent consultant with experience in the federal government and a national advocacy organization. Exhibit 4 identifies each member's affiliation and relevant expertise.

Upon agreeing to participate in the TEP, members were asked to review a collection of preparatory materials in advance of the meeting. These materials included a meeting agenda, a description of the Claimant Representative Demonstration that SSA developed, a discussion guide with detailed questions, a copy of Section 234 of the Social Security Act (SSA's SSDI demonstration authority), disability decision statistics from the 1998 cohort of applications[13], and relevant information from SSA's website about the disability appeals process and claimant representation. Abt asked the TEP members to complete and submit written answers to the discussion guide prior to the meeting. TEP members attended a full-day meeting at SSA's headquarters in Baltimore, Maryland on April 12, 2019. The Abt project team facilitated a discussion covering each agenda item. Following the meeting, TEP members had the opportunity to revise and resubmit their completed discussion guides. Their final responses are included as an appendix to this report.

Exhibit 4. TEP Members for the Claimant Representative Demonstration

	Title/Affiliation	Relevant Expertise
Sharon Bland-Brady	National Association of Disability Examiners	Disability Adjudication Process and Rules
Frank Bloch	Vanderbilt Law School	Disability Adjudication Process and Rules; Disability Claimant Representation
Ron Drach	Drach Consulting	Disability Adjudication Process and Rules; Disability Claimant Representation
Lisa Ekman	National Organization of Social Security Claimants' Representatives	Disability Adjudication Process and Rules; Disability Claimant Representation
Jonah Gelbach	University of Pennsylvania Law School	Research Methods; Disability Adjudication Process and Rules; Evaluation Design; Statistics/Econometrics; Law and Economics
Nicole Maestas	Harvard Medical School	Research Methods; Disability Adjudication Process and Rules; Evaluation Design; SSDI Demonstrations; Statistics/ Econometrics
Yvonne Perret	Advocacy and Training Center	Disability Adjudication Process and Rules; Disability Claimant Representation

[13] The Abt project team chose the 1998 cohort because 1998 was the latest year when the reconsideration level was available in all states. The statistics for this cohort are shown in Appendix B.

1.3 Structure of the Report

The balance of this report includes separate sections covering each of the three major topics discussed at the meeting. A final section summarizes the panel's concluding comments. ***Section 2*** discusses the TEP's input on which factors explain why many cases are not fully developed at the initial and reconsideration levels. ***Section 3*** discusses the TEP's input on designing the Claimant Representative Demonstration intervention, including recommendations about changing the fee structure and other intervention components. ***Section 4*** includes the panel's input on evaluation design, covering all aspects of design, such as approaches to causal identification, targeted outcomes, data requirements, and implementation considerations. ***Section 5*** summarizes the panel's concluding remarks.

2. Identifying the Problem

With the Claimant Representative Demonstration, SSA is seeking to test policies that are designed to reduce the relatively large number of disability claims that are awarded at the ALJ hearing level. Decisions at the ALJ hearing level occur on average more than two years[14] from the initial claim filing date, imposing financial and emotional stress on beneficiaries and an administrative burden on SSA. If SSA could make accurate award decisions earlier in the adjudicative process, it would reduce these burdens. SSA has identified increased representation of claimants as a possible mechanism to shift some awards from the ALJ-hearing level to the initial or reconsideration levels. SSA has also identified the current payment structure for claimant representation as a potential barrier to representation early in the process. SSA is considering an alternative actuarially-fair payment option that would increase payments to claimant representatives paid under fee agreements for awards at the reconsideration level and thereby encourage increased representation at that level. This chapter summarizes the input from the TEP about the factors that contribute to the current number of ALJ-level awards.

2.1 Fully Developing Cases Sooner is the Main Way to Achieve Earlier Awards

Most members of the TEP pointed out that fully developing cases as early as possible is the best way to shift some ALJ-level awards to the initial or reconsideration levels. The TEP members repeated this point several times. The TEP members stated:

- "...it was said earlier on that the goal is people who are entitled to benefits get the benefits, and they get them as soon as possible. And, it seems to me that the clearest way to make that possible is to get the record complete as soon as possible, and as early as possible."
- "...as we think about the process at the initial and reconsideration level, both from the claimant's perspective, and SSA's, moving someone through those stages with incomplete evidence doesn't serve anybody well. Because then you go to the hearing, where it's more expensive, and it takes a long time. So, how can we incentivize and facilitate making sure that those decisions at the initial and reconsideration level are made with as complete evidence as possible, is crucial to SSA's goal to potentially getting those awards that can happen earlier and not have to go to the ALJ level."

2.2 Factors that Prevent Full Development of the Case at the Initial and Reconsideration Levels

The TEP members discussed a myriad of factors that inhibit the full development of cases at the initial and reconsideration levels. The first of these factors was the relatively low rate of representation at the early levels. Other factors, including slow paperwork processing and barriers to coordination and communication, both inhibit the full development of cases and also depress the rate of representation at earlier stages because representation is perceived to be difficult and frustrating. This subsection describes

[14] The sum of average processing times for the initial, reconsideration, and ALJ levels is (111 days + 103 days + 595 days = 809 days).

the factors that TEP members identified as problematic for developing cases fully at the initial and reconsideration levels.

2.2.1 Many Claimants Do Not have a Representative at Early Levels

Most TEP members said that the main responsibility of claimant representatives is to assist SSA to fully develop the case. TEP members stated:

- "...from my experience as a claimant representative and administering the program, one of the things we brought to the table that was most important was, that the development of the evidence to support the disability."
- "The main role of [claimant representatives] – even by attorneys at the ALJ level – is to compile a persuasive record."

The most recently available statistics indicate that more than three-quarters of claimants do not have representatives at the initial application level (GAO 2014, Hoynes Maestas & Strand 2016). The TEP members agreed that a higher rate of representation would assist DDSs to fully develop cases sooner. However, the TEP members noted several potential reasons why representation is not higher than it is.

Fee structure may disincentivize representatives from taking the case at early levels

The TEP acknowledged that the current fee structure under the fee agreement for representatives creates an incentive to work with claimants later in the adjudication process. This fee structure pays 25 percent of a claimant's back benefits at the time of award, up to a maximum of $6,000. As the duration of the adjudication process increases, the amount of back benefits—and the representative's fee—increases. Several TEP members acknowledged that representatives consider the expected payment amounts when deciding whether to represent a claim. In general, SSDI awards are expected to have higher back payments than SSI awards. This is true because (i) SSDI benefits are higher on average than SSI benefits (ii) and SSDI back benefits may include up to 12 months prior to the filing date (unlike SSI back benefits which only include time since the filing date). One TEP member said that representatives try to balance low-paying cases with high paying cases. Representing a higher paying SSDI case can enable the representative to take some SSI cases, which have lower expected payments.

Fee structure may disincentivize the effort representatives apply at early levels

One TEP member noted that the current structure of fees under fee agreements not only disincentizes representation early in the adjudication process but also disincentizes effort from representatives at the initial and reconsideration levels. This TEP member cited some empirical research that found evidence consistent with low effort at the initial level.[15] Another TEP member acknowledged that some claimant representatives do not develop early cases sufficiently but thought that the vast majority of representatives work diligently as soon as they take a case. This TEP member noted that concern for reputation creates a motivation for effort.

[15] Hoynes, Maestas, Strand 2016.

Claimants don't seek out representatives

Three TEP members pointed out that the current rate of representation at the initial and reconsideration levels may also arise from actions of the claimant, rather than from insufficient incentive for the representative. The TEP members said that because claimants have not been working, they may be reluctant to agree to pay a quarter of their back payments to a representative. Also, the TEP suggested that claimants may not think they need help applying for benefits, or they may not understand how a representative could assist them in the determination process. One TEP member reported observing many claimants who assumed they could fill out forms on their own and perceived they only needed help at the ALJ level. Another TEP member had heard many anecdotal accounts of SSA field staff telling claimants that they did not need a representative until the hearing level. This TEP member acknowledged that these anecdotes were counter to official SSA policy of neither encouraging nor discouraging claimants to seek representation. SSA is required and provides written information about the right to representation and the availability of representation if an initial disability claim is denied and at each level of denial thereafter. Some TEP members recommended that SSA provide this information when the claim is first filed.

Particularly low representation for SSI claimants

Three TEP members noted that SSI claimants are particularly susceptible to having incomplete cases. SSI claims are expected to pay representatives less than SSDI claims (described above) and may entail more work on the part of the representative. SSI claimants are more likely to have had multiple medical providers and have less stable housing. Both of these factors make it difficult to develop the case.

2.2.2 Other System Incentives Besides Fee Payment

The TEP discussed other incentives in the disability determination process that inhibit early full development of cases. First, one TEP member noted that initial claim filings are sometimes rushed and incomplete because there is an incentive to "protect" the filing date. For SSDI claims, back benefits may include up to 12 months before the filing date. Once 17 months have passed since disability onset (the five-month waiting period plus 12 months of back benefits), SSDI benefits are maximized with the earliest possible filing date. For SSI claims, benefits are always maximized with the earliest possible filing date. SSA allows disability claimants to establish a protective filing date upon notification to SSA that a claim will be filed (SSA 2015). SSDI claim applications must be submitted within six months of the protective filing date to maintain the protective filing date. For SSI claims, the deadline for claim submission is two months after the protective filing date. For some claimants, the pressure to meet these deadlines and maintain the earliest possible filing date results in submitted claims that are not complete.

Another TEP member noted a second incentive leading to incomplete submissions. Some people who receive state public assistance are required to apply for SSI. This results in incomplete applications that are filed only so that claimants can keep their state public assistance. Finally, another TEP member noted that DDS operations are evaluated on timeliness and cost, without a direct requirement to make sure the medical record is complete before rendering a decision. While acknowledging that timeliness and cost were important considerations, this TEP member thought that SSA should give more weight to fully developing the case in assessing the performance of DDS examiners. The TEP member stated "...taking a little bit longer is not a bad outcome, if it gets you to the right outcome the first time, or the second time, instead of the third time."

2.2.3 Slow Paperwork Processing

The TEP members noted two important ways that slow processing of paperwork inhibits the development of the case. First, the TEP members noted that medical providers are typically slow to send claimants'

records to SSA. The TEP suggested that slow processing of medical record requests is perhaps the leading reason for incompletely developed cases. In some instances, claimants, representatives, or DDS examiners request the same records more than once before a medical provider sends the records. It can take many weeks or months for SSA to receive the required medical records. The TEP noted that this problem of slow processing has worsened with the advent of third-party scanning companies that provide medical records to requesters. Sometimes only the top layer of a multi-layered record is sent, when the entire record is needed. In other instances, scanning companies send more records than are requested. One TEP member noted that one DDS no longer has staff called "runners" who retrieved medical records from providers.

One TEP member noted a second example of slow processing in the disability determination process. A claimant and representative typically fill out a Form SSA-1696 to notify SSA that the representative has been appointed and to inform SSA of any fee arrangement. This form must be filled out on paper and sent to an SSA field office, where field office staff enter the information into SSA systems.[16] The TEP member described the common experience of delayed entry and having to submit this form more than once before staff entered it into the system.[17] Until this form is entered into the system, the representative is prohibited from acting on the behalf of the claimant. The TEP member recommended allowing representatives to submit the form to SSA electronically.

2.2.4 Barriers to Coordination and Communication

The TEP mentioned several barriers to coordination and communication that slow the development of the case. Chief among these is the lack of electronic access to the medical record for the claimant and claimant representative at the initial and reconsideration levels. If a denied claim is appealed to the ALJ level, representatives access the claimant file and submit evidence electronically through the Electronic Records Express (ERE) system. No such real-time access exists at the earlier levels. A representative may request a copy of the medical file on compact disc, but typically the record is two weeks out of date by the time the representative receives it. The lack of access compounds the challenge associated with obtaining records from medical providers. Representatives do not know whether SSA has received the records that medical providers were to have sent. This can add extra delay when representatives need to make additional requests for the same records. It can also lead to representatives unnecessarily sending the same document multiple times, creating a burden for the DDS.

In addition to the lack of real-time access, TEP members noted that representatives frequently have difficulty contacting SSA field offices and DDS examiners by phone or email. One TEP member said that the requirement to use secure email makes communication with field office staff difficult.

Another TEP member noted the difficulty that DDS examiners sometimes encounter in communicating with representatives and claimants. In some instances, representatives do not respond in a timely manner

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[16] A SSA representative clarified that it is also possible to upload the form through iAppeals or eView.

[17] Similar experiences of the representative appointment process were also noted in the 2012 Social Security Advisory Board report.

to DDS communications. In other instances, representatives refuse to let DDS examiners communicate directly with claimants. From the DDS perspective, this refusal creates unnecessary delay.

Finally, four TEP members mentioned the requirement to send all related claimant records to SSA. This requirement leads to medical files that are many hundreds of pages long. The files often have many pages of records that are not pertinent to the disability determination decision. The requirement leads to longer decision durations both because it takes more time to obtain records from providers and more time to review long files. However, no TEP member recommended changing this requirement within the current adjudication process.[18]

2.2.5 Other Factors

The TEP noted a few additional factors that inhibit the development of complete cases. First, the online application for disability benefits is not as helpful to claimants as it could be. The TEP members said that the website is difficult for some claimants and it allows for incomplete applications to be submitted. Second, a TEP member described how difficult it can be for some claimants to talk about the effect the disability has had on their life. This TEP member has observed that many claimants are not prepared to document and describe the effect their condition has had on their ability to engage in substantial gainful activity. These difficulties lead some claimants to give incomplete information to field office claims representatives. Third, one TEP member noted that in some instances claimants do not cooperate with consultative exams and in other instances the consultative examiners do not perform a sufficiently thorough exam. Both types of issues lead to incomplete information in the medical file. Finally, TEP members acknowledged that there are a few representatives who do not work diligently to compile a complete record and a few DDS examiners who do not review cases in an adequate manner. The TEP did not think that either of these problems were widespread.

Many of the factors that TEP members identified as inhibiting the early full development of cases could be addressed with policy changes. The next section describes a wide range of intervention ideas—both large and small—that the TEP members provided to speed the development of disability cases and shift awards earlier.

[18] One TEP member recommended changing the disability determination process to collaboratively determine necessary records on a case-by-case basis at the time of initial application. This proposal is described in Section 3.3.4.

3. Intervention Design

This section describes the TEP members' suggestions for how SSA might define the interventions to test in the demonstration. The TEP discussed several alternatives to the current fee structure, other potential intervention components, and overarching considerations and concerns.

3.1 Potential Fee Structures

SSA provided the TEP with a general idea for a demonstration aimed at improving the incentives for representatives to work with claimants early in the appeals process. SSA described the intervention as "an actuarially-fair payment option" based on the current fee agreement payment structure. The claimant would continue to pay the representative up to 25 percent of their back payment amount, as they would under current fee agreements. SSA would make up any difference between the claimant portion and the increased initial or reconsideration payment. SSA looked to the TEP for input on how SSA might structure an alternative payment to encourage more representation earlier in the adjudication process.

The TEP discussed several potential alternative fee structures. These included a minimum fee, a bonus for representation at early levels, a flat fee, actuarially fair fees, reverse time-dependent fees, and non-contingent fees.

3.1.1 Minimum Fee

For the demonstration intervention, the TEP discussed combining the current fee agreement structure with new features. One TEP member suggested that SSA consider a minimum fee, perhaps $3,000. If the representative would be entitled to a larger fee under the current fee formula, they would receive that larger fee. However any representative who would currently receive a fee less than the minimum fee would receive the minimum fee amount instead. The TEP member noted that this change would make taking cases with low expected payments under the current fee agreement system more attractive, while being simple, and thus easy to implement.

3.1.2 Bonus for Representation at Early Levels

Another TEP member identified an alternative feature that could be combined with the current fee structure. This member suggested that SSA pay representatives a bonus for allowed claims at the initial or reconsideration levels in addition to the current fee structure. The TEP member argued that this bonus would provide an incentive to both take cases early and attempt to achieve favorable decisions at the initial and reconsideration levels. The TEP member did not recommend an amount for the bonus.

3.1.3 Flat Fee

The TEP discussed the option of a flat fee that would be the same for all cases, regardless of case characteristics or time to decision. Such a fee would eliminate any incentives in the fee structure to take cases late in the appeals process or to delay cases, and would be simple to implement. One TEP member expressed concern that this might lead representatives to "cherry pick," electing to represent the cases expected to be easiest to allow. The TEP member stated that "the flat fee provides a strong incentive to find the easiest-to-represent cases at the expense of the hardest and most costly."

3.1.4 Actuarially Fair Fees

The TEP also discussed what it would mean for a payment system to be actuarially fair. Two TEP members considered a fee structure under which SSA would determine what a representative could expect to be paid on a given case, assuming that case went to the ALJ level, and offer the representative a similar

payment for an allowance at an earlier level. Under such a system, payments would not depend on the length of time that passed between disability onset and award, but could still vary by claimant.

A TEP member noted that a representative's work continues as long as a case is in progress, so that a long case requires more work than a short case. The TEP member observed that the current payment structure reflects this additional work, but a new payment structure in which fees are set to be actuarially fair might not. Another TEP member noted that payments that do not vary according to effort would create an incentive to avoid cases that the representative expected would take a long time to decide.

One TEP member attempted to put a lower bound on what the increased payment at the reconsideration level would need to be in order to be actuarially fair. This TEP member pointed to research that showed the median processing time for reconsideration decisions is 8.0 months from initial filing, while the median processing time for ALJ decisions is 28.8 months from initial filing (Autor et al. 2015). The TEP member performed a back-of-the-envelope calculation to show that the expected representative fee for an allowance at the reconsideration level might be about $2,000 if the initial filing was five months after disability onset. The TEP member pointed out that the increased fee at the reconsideration level would therefore need to be higher than $2,000 to induce representatives to represent more claimants at the reconsideration level—perhaps $3,000 or higher. The TEP member recommended that the increased fee at the reconsideration level be roughly equal to the expected payment for an allowance at the ALJ level. This TEP member cautioned that if SSA makes up the difference between the payment and 25 percent of back pay, the demonstration could be costly to implement.

3.1.5 Fees Dependent on Characteristics

The TEP discussed the option of fees that varied explicitly by claimant characteristics. One TEP member compared the question of how to vary fee with claimant characteristics with the problem of determining insurance premiums. In insurance markets with experience-rated premiums, regulations often control which characteristics insurers may take into account and sometimes limit the extent to which premiums may vary based on these characteristics. If SSA chose to design a payment system where fees varied based on claimant characteristics, it would similarly need to determine which characteristics to use and how much fees should be allowed to vary based on those characteristics. This TEP member argued that including at least some information that was predictive of the difficulty or amount of work a case would entail would be an improvement on a flat fee, as it would lessen the opportunity for representatives to cherry pick cases and provide more compensation for cases where more work was needed.

Two other TEP members recommended that SSA consider SSI eligibility as one claimant characteristic on which to base fees. They noted that claimants who are applying for SSI, or those with mental illness, are often more difficult to represent, as these claimants may have moved around more, seen multiple providers in different settings, or may have difficulty assisting the representative in assembling their case. These TEP members cautioned that SSI applicants in particular have very limited means, so higher fees that came out of their benefits could impose a substantial burden. A TEP member recommended that SSA consider subsidizing fees for SSI claimants in order to address the tension between wanting to pay representatives more for more work and wanting not to burden low-income claimants.

A TEP member recommended against a fee based on the complexity of a case, as processing such fees would result in a long delay in payment. A representative from the Office of Management and Budget (OMB) noted that there is currently a substantial backlog in fee petition payments. The same TEP member stated that many representatives who could receive more under a fee petition currently elect to use a fee agreement instead, in order to avoid the delay and uncertainty.

3.1.6 Fees Dependent on Location

The TEP discussed the option of fees that varied by location. One TEP member noted that, because the current fee agreement payment structure is based on back benefits and benefits are determined by claimants' past earnings, representatives who practice in areas with higher wage rates likely receive higher payments. An alternate payment system that paid a set dollar amount for a certain type of case would not make such adjustments for cost of living or prevailing wages. If the fee were instead actuarially fair for each individual case, it would reflect differences by geography. Another TEP member noted that adding a minimum payment to the current fee agreement payment structure (discussed above) would allow for variation in payments, but would be far simpler than a system that explicitly took location into account. This TEP member also noted that passing legislation that explicitly set different payment levels for different locations would be difficult.

3.1.7 Reverse Time-Dependent Fee

The TEP discussed the option of a reverse time-dependent payment, which would pay a higher fee for cases that are resolved earlier in the process. A TEP member noted that this would incentivize representatives to attempt to resolve cases quickly but would also make representatives hesitant to take cases that were expected to take a long time to resolve. This TEP member expressed uncertainty over whether such a payment structure would be a net improvement, and that this would depend in part on how successfully representatives could identify cases that were likely to take a long time to resolve. That is, if representatives had limited ability to select cases that were likely to be resolved quickly, the main effect of reverse time-dependence would be to incentivize effort early on. However, if representatives were able to effectively select the shortest cases, the main effect of such a policy might be to make it difficult for claimants with cases requiring more time to find representatives. Another TEP member noted that much of what makes a case take a long time is outside of the representative's control, and that some of these factors (e.g. gathering medical documentation) produce additional work for representatives. This TEP member saw a reverse time dependent payment as penalizing representatives for doing extra work, and cautioned against it.

3.1.8 Non-contingent Fees

The TEP discussed the possibility of changing the fee structure so that representatives would receive a payment even if the case was not allowed. A TEP member suggested that the bonus for early representation, noted above, could be paid regardless of the outcome of the case. The TEP member noted that it sometimes requires substantial work to determine whether claimants might be eligible for benefits. As a result, some claimants who would likely be allowed are unable to find representation, because the cost of determining their eligibility is so high. Another TEP member expressed concern that this would encourage representatives to take cases that they knew were unlikely to succeed, put little effort into them, and collect the bonus payment. This TEP member suggested that one way to address this concern would be to require representatives to complete a checklist documenting their work. This TEP member also raised the possibility of a fee that paid a given amount based on the level to which the case proceeds (e.g., $3,000 for cases with final decisions at the initial level, $4,000 at the reconsideration level, etc.). The representative would be paid regardless of the outcome of the case, but payment would instead be based on whether the DDS confirmed that the representative submitted all necessary records or whether the representative documented adequate effort to submit records. Another TEP member argued that this would not address many of the concerns with the current system.

3.2 General Considerations on Fees

The TEP also discussed several considerations that cut across fee designs. These include the effects of fees on representative behavior, the effects of fees on ultimate allowance rates, fee structures that encourage representatives to work with particular groups of claimants, and the overall level and source of fees.

3.2.1 Effects of Fee Structure on Representative Behavior

The TEP discussed the possibility that changes to the payment system could alter which cases representatives take, how representatives pursue cases once they have taken them, or both.

A TEP member noted that, depending on the changes adopted, selection could be either adverse or beneficial. That is, a change in fee could result in either representatives being more likely to represent claimants with especially strong need, such as those currently served by the SSI/SSDI Outreach, Access, and Recovery (SOAR) program[19], or representatives targeting the claimants with the easiest cases and least need. Which groups would find it easier to find a representative would depend on the structure of the payment system. The degree to which representatives select claimants would depend on how well representatives are able to determine expected levels of effort and expected payments when deciding whether to take a case. The TEP revisited the issue of selection in the evaluation design discussion.

A TEP member argued that changes to the payment system would have little effect on the effort the representatives would give to cases once they have accepted them, because representatives already do their best to advocate for their claimants and would continue to do so under alternative fee structures. The TEP member noted that to do otherwise would be inconsistent with the representatives' code of conduct.

One TEP member predicted that large for-profit representative firms might be particularly likely to take advantage of an increased fee at the initial and reconsideration levels by expanding their advertising to claimants at the initial or reconsideration levels but putting minimal effort into cases at these levels. This would result in a windfall to these firms, as they would receive substantial payments for any of these early cases that had benefits awarded at the initial or reconsideration levels without expending any additional effort. The TEP member was concerned that this additional payment would not benefit claimants in any way.

3.2.2 Effects of Fee Structure on Ultimate Allowances

The TEP also discussed possible implications of a change to the payment structure. In particular, the Abt facilitators asked the TEP to consider whether a change in fee structure that increases representation at earlier levels would be likely to alter the timing of allowances or the total number of allowances relative to the current situation.

A TEP member noted that changes to the payment system could alter who is awarded benefits, in addition to when those awards are made. Claimants who currently do not appeal denials at the initial or

[19] The SOAR program helps adults and children who are experiencing or at risk of homelessness access benefits from SSI and/or SSDI. For more information, see https://soarworks.prainc.com/.

reconsideration phase might be more likely to receive awards at those levels if they had well-developed claims. Another TEP member agreed, noting that an increase in initial awards to those who would not appeal if denied at the initial level would increase ultimate allowances. While a change in awards would add to SSA's costs, the TEP member argued that such a change should be seen as an improvement on the current situation. A TEP member noted that it would also be possible that some claimants who currently appeal denials would not do so, if they felt that their case had already been presented as completely and accurately as possible. The TEP was unsure what the net effect of a new payment system on ultimate award rates might be.

3.2.3 Fees that Target Groups of Claimants

In addition to payment structures that pay representatives more for cases that are expected to require more work, the TEP discussed other groups for which SSA might consider paying higher fees.

One TEP member noted that it might be beneficial for SSA to subsidize increased fees for claims for which the needed effort was high relative to the expected payment. The TEP discussed the idea of intentionally designing the payment system so that it incentivized representation for cases in which SSA thought representation was particularly necessary. One example might be SSI claimants, who might have especially high need in addition to complicated cases and the limited means to pay discussed earlier.

Another TEP member noted the possibility of determining which kinds of cases are most likely to be allowed at the ALJ level and constructing incentives for representatives to represent those cases, so as to address the issue of the large number of cases allowed at the ALJ level after previously being denied.

3.2.4 Magnitude and Source of Fees

The TEP also offered thoughts and suggestions about how SSA might determine the modified fee amount.

A TEP member recommended that SSA determine the expected savings in administrative costs that would accrue from shifting allowances from the ALJ level to the reconsideration level. The TEP member recommended that SSA could use that information to inform how much SSA should increase fees paid at earlier levels.

A TEP member recommended that payments be made from, and based on, a beneficiary's ongoing payments rather than back payments. This structure would detach the fee from the processing time for the case, eliminating any incentive for representatives to delay decisions in order to receive larger fees. The amount of the fee would still be indexed to benefit amounts. Two other TEP members objected to this idea, because of concerns for hardship to beneficiaries who need monthly benefits for living expenses, and suggested that this would be particularly harmful to SSI claimants.

A TEP member recommended that SSA adjust the $6,000 cap on fees through fee agreements on an annual basis, arguing that many representatives use high-fee cases to offset low-fee cases. The TEP member stated that a cap that does not keep pace with inflation limits representatives' ability to take on cases at the initial or reconsideration level. Another TEP member noted that while raising the cap could enable representatives to take on more cases early in the appeal process, it might also increase incentives to extend the time until a decision was made. This TEP member noted that it would be impossible to tell in advance whether either or both reactions would occur.

3.3 Other Intervention Components

The TEP also discussed several other ideas that could be tested as part of an intervention. While TEP members advocated implementing these changes in tandem with payment system changes, they also noted that testing several components in combination makes it extremely difficult to disentangle the effects of each individual component. TEP members recommended limiting the number of components tested for this reason.

3.3.1 Information to Claimants

TEP members had previously discussed the fact that claimants often do not know about their right to representation, and are not provided with information on why they might want a representative until after an initial denial. This discussion is summarized in section 2.2.1.

Two TEP members recommended that, as one part of the intervention, claimants be told of their right to representation at the time of initial claim. One noted that "claimants don't know what questions to ask or how to ask them. If we want to get more representation, it needs to be proactively done." Another TEP member noted that any such notification would need to be carefully crafted so that it would be clear that SSA was neither encouraging nor discouraging representation, but simply informing claimants about their options. A TEP member recommended that field office personnel be directed to provide SSA materials on representatives whenever claimants asked about representation.[20]

3.3.2 Addressing Barriers to Claim Development

Earlier in the meeting, TEP members had discussed the barriers to representation posed by the systems and processes used for claim development. This discussion appears in sections 2.2.3 and 2.2.4. The TEP discussed interventions that would address these barriers.

A TEP member recommended that SSA give representatives electronic access to case files at the initial and reconsideration levels. This TEP member suggested that lack of access may be a "threshold issue" that could prevent representatives from taking cases before the ALJ level regardless of the payment system adopted. The difficulty and frustration of representing clients without being able to access this information was identified by the TEP as a major reason that representatives do not take on cases earlier, or are unable to be more effective at earlier levels, and is discussed in Section 2.2.4.

A TEP member recommended giving representatives the option to request more time to develop the case before the DDS renders a decision. This TEP member suggested that extra time might be especially important if representatives were expected to take cases at the reconsideration level, when there is relatively little time to develop the case, and expressed a concern that representatives might otherwise struggle to represent cases taken at the reconsideration level. Another TEP member suggested that the DDS's medical hold process could be a template for case development holds.

[20] A SSA representatiave clarified that this is current practice.

TEP members discussed ways in which SSA could help representatives assemble medical evidence. These might include forming partnerships with major medical providers, offering bonus payments for medical records, or SSA or the DDS taking responsibility for acquiring much of the medical information.

3.3.3 Introducing a Checklist

The TEP discussed establishing a checklist for representatives, which would list all necessary steps in compiling a complete claim. The checklist might be modelled on that used by the SOAR program.

One TEP member argued that such a checklist would provide documentation that representatives are doing the required steps to assemble a complete file for the claimant. One TEP member recommended that the checklist be combined with a non-contingent fee, so that representatives be paid if they thoroughly develop a case, regardless of the outcome. Another TEP member recommended that the checklist be required of representatives who want to take advantage of a higher payment offered under the demonstration, to ensure that representatives who received the higher payments were providing high-quality representation.

Two TEP members argued that a checklist would also produce useful data. One stated that the checklist would produce data on how long it takes for representatives to assemble a case. The other stated that more information on what activities representatives and DDS examiners undertake would be useful, but did not specify what it would be useful for.

Another TEP member expressed concerns that introducing a checklist could decrease representatives' willingness to take on cases, because it would impose an additional administrative burden. This TEP member stated that a checklist is not necessary to ensure that representatives are developing cases fully, as SSA is already able to pursue disciplinary action against representatives that are not abiding by the claimant representative code of conduct. A TEP member argued that the burden would be minimal for any representatives who are already doing a thorough job, as they could just check boxes. Two TEP members discussed whether such a checklist would actually change behavior. The TEP then discussed the possibility of having the DDS examiner complete parts of the checklist, in order to reduce the burden for the representative and ensure that the checklist had been accurately completed.

3.3.4 Other Changes

Two TEP members noted that vocational experts[21] are often important in ALJ decisions, and recommended that they be engaged earlier in the process in order to improve decisions at the initial and reconsideration levels. These TEP members believed that, for a substantial number of claims that were allowed at the ALJ level, the testimony from the vocational expert was an important reason why the previously-denied claim was allowed. Another TEP member disagreed, arguing that doing so would overly complicate the demonstration, suggesting that many cases in which they are involved could be decided based on medical impairment alone if cases were properly developed.

[21] Vocational experts provide input on how a claimant's residual functional capacity affects their ability to engage in different kinds of work.

A TEP member recommended that rules regarding reopening prior files be relaxed, allowing representatives to make use of information that has been submitted in the past.

A TEP member recommended finding a way to speed up payments to representatives as part of the demonstration, in order to encourage representation. The TEP was generally in agreement with this idea. One TEP member suggested that this not be included in the demonstration if it were not something that SSA could operationalize after the demonstration.

One TEP member suggested reimbursing representatives for the cost of obtaining medical records, in addition to the fee, as a way to partially offset the cost of representing complicated cases. Under current regulations, representatives pay the costs of obtaining medical records from their fee when paid through fee agreements.

Finally, one TEP member recommended, apart from the demonstration, that SSA consider a large-scale change to the disability determination process. This change would involve incorporating a non-adversarial SSA representative who would work collaboratively with claimants and claimant representatives to determine and collect the most important information that a particular case would need. Limiting the development of the case to only germane records would avoid the effort that currently goes into collecting records that are essentially irrelevant to the disability determination. The TEP member thought that providing assistance to claimants to collect the key medical records would result in better DDS decisions.

3.4 Level of the Appeal Process

The TEP discussed whether the intervention should target representation at both the initial and reconsideration levels, or only at the reconsideration level.

One TEP member noted that a majority of allowances are made at the initial level and argued that increased representation for cases currently allowed at the initial level would benefit neither claimants nor SSA.[22] The TEP member described such a policy as "buying the base," because SSA and claimants would be spending more to incentivize what already happens in the status quo. This TEP member expressed a concern that this might be so expensive that such an intervention would not be cost effective, even if it were successful at shifting some allowances to earlier levels.

Two TEP members noted the relatively short amount of time available to representatives who take on cases at the reconsideration level, as discussed in Section 2. These TEP members recommended that the demonstration should focus on both initial and reconsideration levels in order to provide representatives with more time to develop cases.

3.5 Information to Inform the Intervention

The TEP discussed data that SSA could use to inform the exact design of the demonstration. This information included:

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[22] Calculations on the percentage of allowances made at each level are based on the 1998 cohort of SSDI applicants. See SSA (2018c, accessed May 23, 2019)

- The amount of current fees that SSA pays to representatives
- Average fees by level of decision
- The expense of an ALJ decision
- The current rate of representation at each level
- Outcomes for claimants who are and are not represented at each level.

4. Evaluation Design and Implementation

This section describes the TEP's input on various aspects of the design and implementation of the evaluation. The TEP discussed possible ways to design the experiment and settled on one main design, in which representatives are randomly assigned to one of four groups. The TEP then discussed the implementation challenges, sample, outcomes, and data collection associated with this design.

4.1 Experimental Design

4.1.1 Unit of Randomization

The TEP was generally in favor of using random assignment to create intervention and comparison groups. Using random assignment would provide SSA with evidence on the causal effect of the intervention. One TEP member recommended randomizing representatives, rather than claimants. The TEP member argued that representatives are in a better position to understand and react to news of their randomization, as they are already well-versed in the claimant representative system. Another TEP member recommended randomizing by location, so that each state currently using DCPS is assigned to either a control or intervention group. The TEP member argued that implementing technological innovations would be easier and less expensive if done for a handful of states, and that such randomization would make procedures clearer for DDS staff. The TEP recommended focusing on states that are already using DCPS, if possible, so that results could inform what could be expected once DCPS is in place nationally.

4.1.2 The Experiment

One TEP member recommended a 4-arm demonstration, testing the effect of a new payment structure, improvements to processes, or both, against a control group. The TEP member noted that many of the issues discussed earlier in the day might pose barriers to representation early in the process that would be unlikely to be overcome by payment system changes alone, but that payments might matter if those barriers were addressed. Using a 4-arm demonstration would allow SSA to test the effect of a new payment system once processes were improved, and also to determine to what extent these effects were caused by the change to the payment system. The rest of the TEP was in general agreement.

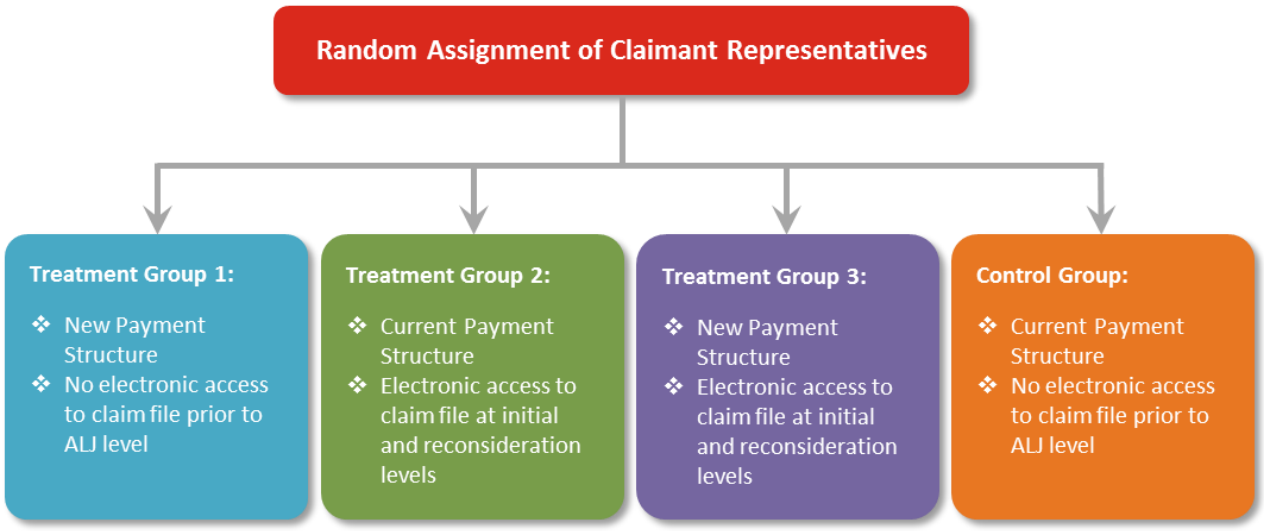
TEP members suggested process improvements that could be included, such as adding a checklist, speeding up fee payment[23], or adding a hold at the DDS to allow representatives to gather evidence. These potential changes had been discussed earlier, and this discussion is summarized in section 3.3. A TEP member noted that if multiple components are combined in the demonstration it may be impossible to disentangle the effect of any one component, and recommended being selective when choosing components to test.

For the rest of the discussion, the TEP focused primarily on a version of this 4-arm demonstration, illustrated in Exhibit 5. If there is a sufficient sample, representatives who work in one of the states that has implemented the DCPS system could be randomly assigned to one of four groups. One group would

[23] One TEP member noted that payment of fees to representatives after a claim is allowed occurs only after some delay.

receive a new payment system, a second group would receive electronic access to the claimant's file, a third group would receive both the new payment system and electronic access, and a control group would receive neither the new payment system nor electronic access. The TEP noted that electronic access was a particularly large barrier to representation at early levels that did not exist at later levels. The TEP suggested focusing on states that had implemented the DCPS system both because this system might provide a platform for electronic access, and so that the intervention would be as similar to a potential future policy as possible.

Exhibit 5. Four-Way Random Assignment Design Recommended by TEP Members



4.2 Implementation

The TEP discussed how to address several implementation issues associated with a demonstration like the four-arm option discussed at the meeting.

4.2.1 Providing Electronic Access to the Case

The TEP discussed how electronic access to the claimant's case could be provided. While it may be possible to build such functionality into the DCPS in the future, it was agreed that this was unlikely to be in place in time to be used for the demonstration. A TEP member recommended using the Electronic Record Express (ERE) system currently used at the ALJ level. A TEP member stated a need to give representatives less than full access to whatever system is used, so that they can see the documents uploaded but not the notes made by DDS examiners. The TEP member was concerned that examiners would otherwise be resistant to the demonstration, fearing calls from representatives seeking explanations for their notes. A representative from OMB suggested that ALJs may be resistant to opening their existing system to other uses. A representative from SSA also noted that there are both legal and system barriers to expanding access to SSA's systems that might preclude giving representatives access to existing systems. A representative from OMB argued that there may be some ability to build or alter systems, provided the demo provides funding for the new changes and is advocated by key individuals.

4.2.2 Providing Information to Claimants

A TEP member recommended that SSA make claimants aware of the availability of representation at the time of the initial claim, cautioning that a major reason more cases aren't represented at early levels now

is that claimants do not seek out representatives because they do not know enough about them. This TEP member suggested that getting representatives involved at the time of initial claim would be a way to give representatives more time to develop cases than would be available if they took up a case at the reconsideration level.

4.2.3 Notification and Consent

The TEP discussed human subject protections in light of the demonstration authority requirement to test all new policies with volunteers. The choice of whether to randomize representatives or claimants may have implications for how to implement informed consent and human subjects protections. The TEP discussed whether claimants would need to consent if the demonstration randomizes representatives. One TEP member likened the situation to one where a family member agrees to participate in a clinical trial – although the individual might be affected by the family member's participation, the individual's consent would not be required. Another TEP member noted that claimants would know the rules under which their representatives were paid, because they would be specified in any payment agreement signed. The TEP also discussed whether the need for consent would depend on the possibility of claimants being harmed by the study, which the TEP argued was unlikely. A TEP member noted that, depending on whether representatives were randomized across or within locations, and depending on how many agreed to participate in the demonstration, claimants might have more or less choice over whether to participate in the demonstration if they wanted a representative. The TEP noted that the study would require IRB review to address this issue.

4.2.4 Partnerships

The TEP identified two roles for partners. The TEP recommended that SSA continue to contact advocacy organizations and subject matter experts to obtain input on the demonstration as it takes shape and inform its implementation as challenges arise. The TEP also stated that organizations that represent stakeholders could assist SSA in communicating effectively with groups that would be affected by the demonstration. Specifically, a TEP member recommended that SSA partner with organizations that could help it communicate with representatives, including the National Organization of Social Security Claimants' Representatives and SOAR's technical assistance provider. Another TEP member suggested partnering with DDS examiners, to ensure that examiners were also aware of the demonstration.

4.3 Sample

4.3.1 Sample Size

The TEP discussed the information that would be needed to determine the sample size necessary to detect meaningful effects on key outcomes such as representation rates, award rates, or time to decision. One TEP member laid out two ways of determining what a meaningful effect size would be. The first would be based on an estimate of how many claimants who have meritorious claims do not receive benefits under the current system because their cases are not fully developed. The other would start with a calculation of how many cases need to be decided at the reconsideration rather than ALJ level to make the demonstration cost effective.

4.3.2 Location and Geographic Scope

A TEP member recommended that the intervention not be tested in especially small areas, as actions by the representatives assigned to the treatment group(s) could alter the landscape for others not in those groups. This TEP member also recommended that the demonstration select "areas with variation in initial

denial rates, reconsideration-level award rates, and post-reconsideration award rates," in order to generate results that are generalizable.

Another TEP member recommended limiting the demonstration to states that have implemented DCPS by the time the demonstration begins, if possible, so that results are more applicable to the setting where DCPS has been adopted. This would also make it possible to use DCPS as the platform through which representatives access claimants' file.

A third TEP member recommended identifying the states with the highest rates of reconsideration to include in the demonstration. Targeting states with high rates of reconsideration would increase the intervention's scope to change outcomes.

4.3.3 Subgroups

A TEP member recommended examining outcomes separately for representatives who currently represent cases during the reconsideration and/or initial levels and those who do not. The TEP member argued that these groups of representatives might react to the intervention in different ways.

TEP members recommended that the evaluation track outcomes for key subgroups, including SSI, SSDI, and Concurrent claimants. TEP members expressed a desire to monitor the experiences of SSI-only and Concurrent claimants, to ensure that they were not being harmed or differently affected by the demonstration.

4.3.4 Recruitment

The TEP recommended recruiting participants from a list of current representatives, who would be identified from recent fee agreements. This would allow SSA to easily contact a large population that is already engaged in representation and thus relatively likely to participate and to respond to the intervention.

One TEP member recommended limiting the demonstration to non-profit representatives to prevent large for-profit representative firms from "capturing the recon windfall." This TEP member was concerned that large for-profit firms would react to increased fees at the initial and reconsideration levels by seeking out many claimants to represent, but not put in much effort until the ALJ phase. Depending on the exact structure of the fee, these firms might be able to increase their revenue with very little increase in expense and while providing very little in services to claimants. This issue is discussed in more detail in Section 3.2.1.

4.4 Outcomes and Data

TEP members discussed the outcomes that SSA should track and considerations for accessing or collecting data on these outcomes.

4.4.1 Outcomes

TEP members discussed outcomes that an evaluation should measure to evaluate the impacts of the tested policy. TEP members recommended the following outcomes:

- Approval rates at each level
- Time to approval at each level
- Percent represented at the initial and reconsideration levels

- Benefits awarded at each level, as a way of measuring compositional changes in who is allowed when
- Overall allowance rates for cohorts
- A measure of whether representation effectively developed claims. This might be based on the number of medical records submitted, DDS examiner's evaluations of the completeness of files, a Quick Disability Determination (QDD) score[24], or denials for insufficient evidence or failure to appear.
- Changes in individual representatives' mix of SSI-only vs. SSDI/concurrent cases

These outcomes were recommended because they would allow SSA to monitor whether and how the intervention affects both the intended outcomes – the level at which eventual allowances are allowed – and possible unintended consequences discussed during the meeting. These unintended consequences included decreasing representation for some type of claimants or changing who is ultimately awarded in ways that do not reflect case merits.

Additionally, TEP members recommended that these measures account for those who reapply.

4.4.2 Data Sources and Data Collection

TEP members recommended using a combination of administrative data and qualitative data to evaluate the demonstration. The outcomes listed above are quantitative and would mostly be pulled from existing administrative data. However, a TEP member noted that, using SSA's existing administrative data, it is very difficult to identify the type of representative, whether they were paid through a fee agreement or fee petition, and how much they were paid.

The TEP discussed qualitative data that SSA might want to collect to complement administrative data. One TEP member suggested a combination of a broad survey of representatives and longer targeted interviews, in order to gather both broad information and deeper insights. Two TEP members suggested targeted interviews with representatives and DDS examiners to better understand their experiences under the intervention.

4.4.3 Length of Follow-up

The TEP noted that it was important to follow a cohort or cohorts of claimants for several years, to determine how changes early in the claim process altered eventual outcomes. One TEP member suggested that five years might be an appropriate amount of time. Another TEP member suggested that three years might be sufficient.

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[24] The Quick Disability Determination process uses a predictive model to identify cases that are particularly likely to be allowed, and where the allowance can be made quickly. These claims go through expedited processing, and bypass review by medical professionals. QDD scores, generated by the model, reflect factors including the claimant's condition(s), how complete the application is, and how quickly the DDS would be able to process the application. (SSA n.d.-c, accessed May 23, 2019)

4.5 Analysis

The TEP discussed two challenges for the analysis. First, a TEP member noted that the intervention might have countervailing effects on several outcomes. Appeal rates might go down, if more cases are allowed at early levels. They might also go up, if claimants who currently do not appeal are encouraged to do so by a representative. Administrative costs might go either up or down, for similar reasons. It would also be possible for the processing times at each level to go up, but for the number of cases that proceed to each level to decrease. The TEP member suggested that such offsetting trends might make it difficult to determine the effects of the demonstration.

Second, the TEP discussed the requirement in SSA's demonstration authority that all participants be allowed to opt out at any time. A TEP member noted that the analysis would be simpler if that were not the case, but that the evaluation could be conducted with an instrumental variable analysis, using assignment to a given treatment as a source of variation in the likelihood that the representative operated under that treatment.

5. Summary of Key TEP Recommendations

In the discussion at the TEP meeting and in their responses to discussion guide questions, the TEP members provided several key points for SSA to consider:

- The TEP members said that the main way to improve the disability benefit application process is to make sure that cases are developed fully and completely earlier in the process. The TEP members noted the large amount of anecdotal evidence that incomplete development of cases is the most important cause of denials at the initial and reconsideration levels for claims that are ultimately allowed at the ALJ hearing level. One TEP member recommended that SSA analyze internal data to confirm that incomplete development of cases is the main cause of early denials of claims that are allowed at the ALJ level.
- The TEP members said that the claimant representative's main responsibility at the initial and reconsideration levels is to fully develop the case.
- One TEP member described the desired rate of representation: "I don't think there is an ideal rate of representation. I think that if we are living in a situation where every claimant is aware of the availability of representation and are able to seek out a representative and that we have policy compliant decisions made on fully developed records, I think that's the ideal situation."
- Although the experts acknowledged that the fee agreement fee structure creates a disincentive to early involvement with claimants, they also thought that simply changing that fee structure may not substantially increase representation early in the application process. This is because other factors make early representation frustrating and dissuade representatives from taking cases early in the process. Chief among these factors is the inability of the claimant and the representative to see which documents are currently included in the case file. One TEP member stated "… I think if all you do is change the money, you're not going to really impact what the incentives are for representatives. Also, the impact that you can have on administrative costs and efficiency at those levels will be very limited if you don't also address those other things."
- The experts recommended testing both a changed fee structure for claimant representatives and a technological intervention that would allow representatives to see the case file in real-time before reaching the ALJ level. The experts recommended an evaluation design that randomly assigned representatives to one of three treatment groups (new fee structure only, case file access only, new fee + case file access) or a current policy control group. The experts discussed several alternative fee structures but did not come to consensus on what a revised fee structure should be.
- The TEP members recommended that SSA should consider additional data when designing the intervention, including information on: why claims are awarded upon appeal; what percentage of awarded claims are represented; what percentage of represented awards have a fee collected; and the average fee collected at each adjudication level. A TEP member also noted that outcome variables that correctly code the type of representative, the type of fee agreement, and the amount paid to the representative have been difficult to obtain from existing administrative data.

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Appendix A. Claimant Right to Representation

https://www.ssa.gov/pubs/EN-05-10075.pdf

Your Right to Representation

You can have a representative, such as an attorney or non-attorney, help you when you do business with Social Security. We will work with your representative, just as we have with you.

For your protection, in most situations, your representative can't charge or collect a fee from you without first getting written approval from us. However, your representative may accept money from you in advance as long as they hold it in a trust or escrow account.

Both you and your representative are responsible for providing us with accurate information. It is illegal to provide false information knowingly or willfully. If you do, you may face criminal prosecution.

What a representative can do

Once you appoint a representative, he or she can act on your behalf before Social Security by:

- Getting information from your Social Security file;
- Helping you get medical records or information to support your claim;
- Coming with you, or for you, to any interview, conference, or hearing you have with us;
- Requesting a reconsideration, hearing, or Appeals Council review; and
- Helping you and your witnesses prepare for a hearing and questioning any witnesses.

Your representative will also receive a copy of the decision(s) we make on your claim(s).

Choosing a representative

You can choose an attorney or other qualified individual to represent you. You can also have more than one representative. However, you can't have someone who, by law, can't act as a representative, or someone the Social Security Administration has suspended or disqualified from representing others.

Some organizations can help you find a representative or give you free legal services, if you qualify. Some representatives don't charge unless you receive benefits. Your Social Security office has a list of organizations that can help you find a representative.

You can appoint one or more people in a firm, corporation, or other organization as your representatives, but you can't appoint the firm, corporation, or organization.

After you choose a representative, you must tell us **in writing** as soon as possible. To do this, you must use Form SSA-1696-U4, *Appointment of Representative*, which is available from our website at ***www.socialsecurity.gov*** or at any Social Security office.

You must give the name of the individual you are appointing and sign your name. If the individual isn't an attorney, he or she must also sign the form.

What your representative may charge you

To charge you a fee for services, your representative first must file either a fee agreement or a fee petition with us.

Your representative **can't** charge you more than the amount we approve. If you or your representative disagree with the fee we approve, either of you can ask us to look at it again.

If a representative charges or collects a fee without our approval, or charges or collects more than we approve, we may suspend or disqualify them from representing anyone before the Social Security Administration.

Filing a fee agreement

If you and your representative have a written fee agreement, your representative may ask us to approve it any time before we decide your claim. Usually, we'll approve the agreement and tell you in writing how much your representative may charge as long as:

- You filed the fee agreement before we decide your case;
- You both signed the agreement;
- We approved your claim and you're getting past-due benefits; and
- The fee you agreed on with your representative isn't more than 25 percent of past-due benefits or $6,000, whichever is less.

If we don't approve the fee agreement, we will notify you and your representative in writing.

SocialSecurity.gov

(over)

Your Right to Representation

Filing a fee petition

Your representative may give us a fee petition after completing the work on your claim(s). This written request should describe in detail the amount of time spent on each service your representative provided. Your representative must give you a copy of the fee petition and each attachment. If you disagree with the fee or the information shown, contact us within 20 days. We'll consider the reasonable value of the representative's services and tell you, in writing, the amount of the fee we approve. If you disagree with the fee we approve, you must tell us in writing within 30 days from the date we authorize it.

How much you pay

The fee we decide your representative may charge is the most you owe for his or her services, even if you agreed to pay your representative more. However, your representative can charge you for out-of-pocket expenses, such as costs for medical reports, without our approval.

If an attorney or non-attorney whom Social Security has found eligible for direct payment represents you, we withhold up to 25 percent of your past-due benefits to pay toward the fee. We pay all or part of the representative's fee from this money and send you any money left over.

Sometimes you must pay your representative directly:

- You must pay the rest you owe if the approved amount is more than the money we withheld and paid your representative.
- You must pay the entire fee if:
  - —Your representative isn't eligible for direct payment;
  - —Your case did not result in any past-due benefits;
  - —We didn't withhold 25 percent from your past-due Social Security or Supplemental Security Income benefits, or both; or
  - —Your representative made a timely request for a fee and we sent you the money we should have withheld.

You must pay for out-of-pocket expenses your representative incurs or expect(s) to incur (for example, the cost of getting your doctor's or hospital records).

If someone else pays your representative

We must approve the fee, even when someone else will pay it for you (for example, a friend or relative), unless:

- It is a business, a for-profit, or a nonprofit organization or federal, state, county or city agency that'll pay the fee and any expenses from its own funds; and
- You and any auxiliary beneficiaries are free of direct or indirect liability to pay the fee or expenses, in whole or in part, to a representative or someone else; and
- Your representative gives us a written statement that you won't have to pay any fee or expenses.

If you appeal your claim to the federal court

The court can allow a reasonable fee for your attorney. We don't need to approve that fee. The fee won't exceed 25 percent of all past-due benefits that result from the court's decision. Your attorney can't charge any extra fee for services before the court.

Contacting Social Security

The most convenient way to contact us anytime, anywhere is to visit ***www.socialsecurity.gov***. There, you can: apply for benefits; open a *my* Social Security account, which you can use to review your *Social Security Statement*, verify your earnings, print a benefit verification letter, change your direct deposit information, request a replacement Medicare card, and get a replacement 1099/1042S; obtain valuable information; find publications; get answers to frequently asked questions; and much more.

If you don't have access to the internet, we offer many automated services by telephone, 24 hours a day, 7 days a week. Call us toll-free at **1-800-772-1213** or at our TTY number, **1-800-325-0778**, if you're deaf or hard of hearing.

If you need to speak to a person, we can answer your calls from 7 a.m. to 7 p.m., Monday through Friday. We ask for your patience during busy periods since you may experience a higher than usual rate of busy signals and longer hold times to speak to us. We look forward to serving you.

Securing today and tomorrow

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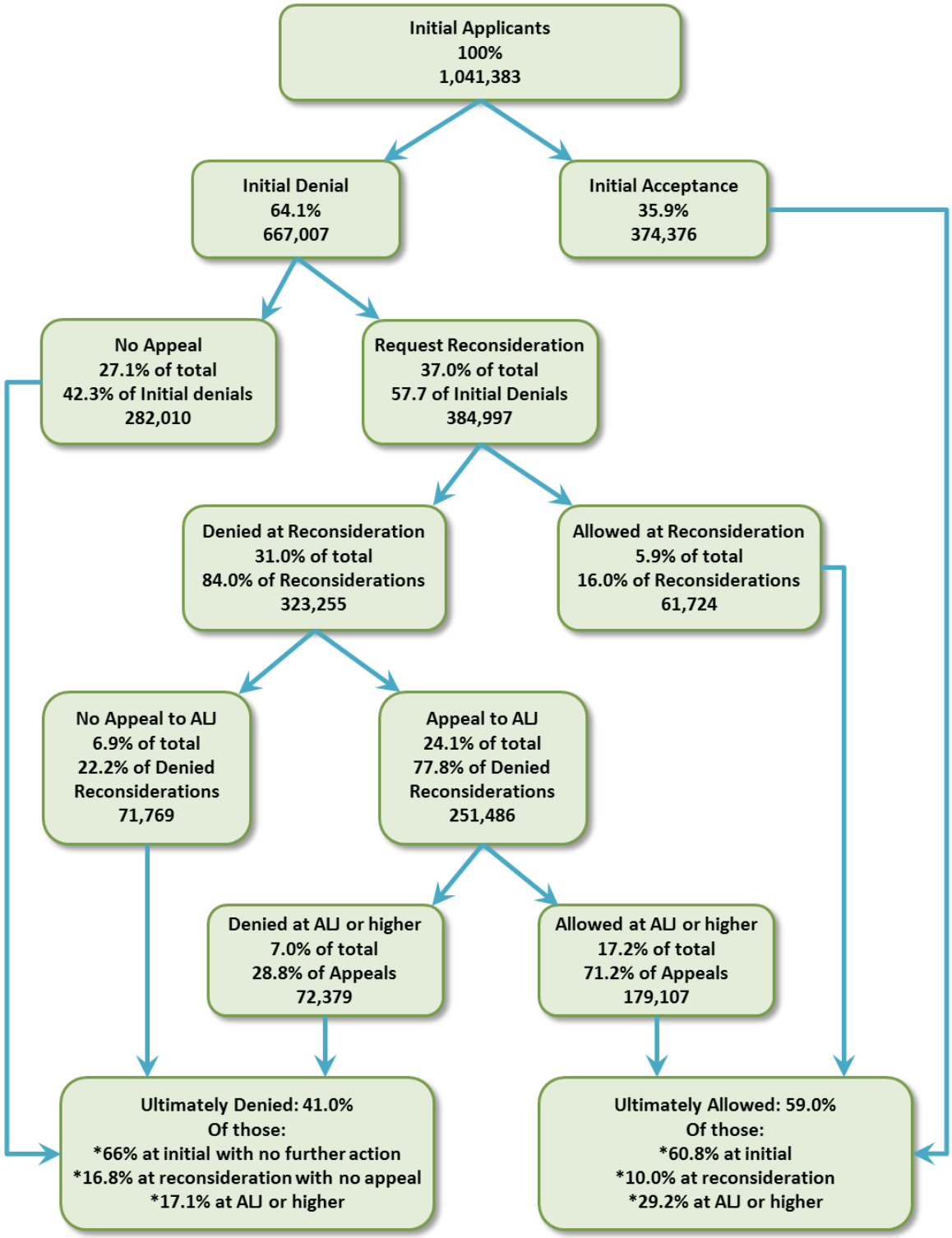
Appendix B. Disability Decision Statistics

Paths taken from initial application to final decision, SSDI disabled worker applicants with initial applications in 1998



Source: Social Security Administration. (2018). Annual Statistical Report on the Social Security Disability Program, 2017. Tables 60-63. Totals and percentages reflect national data for disabled workers with an initial application in 1998.

Appendix C. Discussion Guide Response

Social Security Administration
Claimant Representative Demonstration TEP
Member Discussion Guide

Topic 1: The Current Determination and Appeals Processes and the Role of Claimant Representatives

The discussion will begin with a presentation on the SSA determination and appeals processes, and the role of CRs. We will focus on the mechanics of processes, the percent of applicants who take each possible path to an ultimate award or denial, and the prevalence and role of claimant representatives. Background information on these topics can be found in the attached documents.

The panel will discuss reactions to the material and offer reflections based on their own experience and/or research. Based on your review of the materials, experience and/or research, do you have any general comments on the current determination and appeals process?

I really do not have any reactions to this information, but it appears from the data that was given to me, is that ultimately, 59% was allowed and ultimately 41% was denied overall. There were more claims allowed at the initial level (60.8%) then at the ALJ Level or reconsideration level. There were more claims allowed at the ALJ Level (29.2%) then at the reconsideration level (10%), now this is interesting. This information was based on a Cohort of disabled workers who filed an initial application. (The paths taken from initial application, appeals process to final decision, SSDI disabled worker applicants with initial applications in 1998). Waterfall Diagram

Outcome Variation in the Social Security Disability Insurance Program: The Role of Primary Diagnoses
https://www.ssa.gov/policy/docs/ssb/v73n2/v73n2p39.html

Topic 2: Identifying the Problem

SSA has identified the relatively low prevalence of claimant representatives at the reconsideration stage as one reason that applications that are ultimately allowed at the ALJ level are not allowed sooner. What role do CRs play in the reconsideration process? How does their role there differ from their role at the ALJ level?

Yes, I think that the CR's should be involved at the earliest stages of the claim as possible (initial level, reconsideration level and ALJ Level). In my opinion, I think most of the problems that we see in the DDS from time to time, is that most CR's know that the possibility of their claimants, claim being approved will be at the ALJ level. Therefore, they just go through the process of the initial level and reconsideration level. Some of the Claimants and their CR's barely cooperate, so they can get to the ALJ level. This is what I have heard from examiners over the years. This is not all cases that have CR's involved. An example: Is that the CR will indicate on the application, "please do not contact my claimant, everything must go through the CR," and sometimes the CR does not respond to the request from the examiners or the examiners phone calls. This may result in a failure to cooperate or insufficient evidence.

What role could CRs play in the reconsideration process? How would this differ from their current role in reconsideration?

CR's can get involved in the reconsideration process, making sure claimants updated medical information is in the file, communicating with the examiner in the beginning of the

process, being cooperative with the examiner, allowing the examiner to talk to the claimant and as well as the CR and complete all reconsideration forms timely and accurately (don't leave the forms blank). The CR and Claimant should respond timely to examiners request and stay actively involved in the case from the beginning to the end of the case process. This is different from the current role, since all CR's are not actively involved with the case development process.

Based on your knowledge of other similar processes, to what extent do the roles played by attorneys and other representatives differ during the initial application phase verses the appeal phase? Are there missed opportunities for attorneys or other representatives to improve the completeness or quality of initial applications?

I think that attorneys and representatives differ during the initial process than the ALJ, because they may not feel the claimant may be allowed at the initial level, but they know if the claimant goes to the ALJ level, the likelihood of them being allowed is much higher than on the initial level. Which means that they will be paid for helping the claimant. Especially, if in the payment agreement that the attorney rep or CR will only be paid if the claimant is an allowance.

What does current research say about the role and effect of CRs in the determination process? What does current research say about the role and effect of attorneys in other similar settings?

The current process with CR's in the determination process is that SSA have CR's complete a fee agreement SSA form 1693 with all parties' signatures. The fee agreement, you will pay an amount up to 25% up to $6000.00 of the total past-due benefits or an amount set by SSA, whichever is less. The fee agreement must be submitted by the time the SSA make a favorable decision.

***Contrast**: The current research in the link below indicates that SSA should not have anything to do with the personal private legal affairs of claimants and Claimant Representatives. SSA should give disabled individuals their full back-pay benefits. In addition, do not transfer the claimants first back paychecks to their attorneys and non-attorney representatives. The research say the same thing about the role of the attorneys for determination process. However, in private industry, the claimant goes into an agreement with his or her attorney's and pay directly out his or her pockets, there is no middleman.*

Middleman Research:
https://www.heritage.org/budget-and-spending/report/time-cut-out-the-ssa-middleman-ssdi-representation

What research or datasets would help us better understand these issues?

Pull data to indicate how many attorney reps and CR's are involved in the claims process, and how many CR's and attorney reps petition payment? Probably along with demographics of the claimants.

Topic 3: Designing an Intervention

Under the current payment rules, SSA generally awards payments to CRs in the amount of 25 percent of the claimants' awarded back benefits, up to a $6,000 limit. These rules create an incentive for CRs to work with beneficiaries later in the adjudication process. SSA has proposed offering CRs an actuarially fair payment for awards made at the reconsideration level to encourage CRs to be involved earlier in the process. Allowed applicants would still pay the representative 25 percent of their back benefits, and SSA would make up the difference.

How large a change, or what kind of change, do you think would be needed to increase representation at the reconsideration level?

Really, they should be involved at every level in the process and a $3000.00 payment should be paid after reconsideration level is approved.

How would you expect the proposed intervention to affect which cases CRs seek out or accept?

Yes, this would affect a great deal, because some of the CRs are going to seek out the cases that makes them the most money.

How would you expect the proposed intervention to affect how CRs work with an applicant once they have accepted a particular case?

I hope that they will be working diligently with the applicant once they accept the particular case. I hope that we can put some type of checks and balances in place to ensure that applicants are getting the services that they need from their CR's. Maybe a checklist or something like that (adopt the checklist that the SOAR group uses with the homeless claimants), and the CR would have to submit to SSA with claimant's signature. Maybe this could be accomplished once Disability Case Processing System DCPS is rolled out in every state.
Public information on DCPS:
https://oig.ssa.gov/sites/default/files/audit/full/pdf/A-14-17-50291.pdf

Is there an ideal rate of representation at the reconsideration level that SSA should aim to achieve?

$3000.00 after approval of the reconsideration process

Are there other changes to the CR payment structure or other regulations that SSA should consider including as part of the demonstration?

Maybe some research on similar organizations that do these types of payment structures. To back up their rationale for the changes.

Are there models from other international or domestic benefit programs that might inform the demonstration?

> *Not sure what you looking for, but I thought I would share some of these private disability programs. Who might be taking or helping [clients] and employees from the SSA/DDS program; Human Arc is a CR advocate Disability Program: http://www.humanarc.com/hospital-solutions/ssissdi/; NCCDD North Carolina Private Disability Program https://www.nccdd.org/disability-benefits-counseling.html.*
> *Amerihealth Caritas https://www.amerihealthcaritas.com/*
> *The best disability insurance companies: https://termlife2go.com/best-disability-insurance-companies/*
> *(Just to name a few)*

How would earlier CR involvement affect the current differences between the DDS and ALJ processes and policies?

> *I hope that we have more allowances at the initial level and reconsideration level, so cases do not have to go to the ALJ Level. The ALJ level is more time consuming and more money. The current differences is that if case go to the ALJ, that it will probably end up being an allowance, based on their rules, regulations and vocational experts. We should all be following the same rules, regulations and vocational expert rules.*

How might these changes to CR payments or policies affect current award rates?

> *Award rates are going to be higher, but I would imagine that it could significantly affect the current award rates; it probably depends on what budget the money is going into and what budget the money is coming from.*

What other effects might the proposed intervention have? For example, what might the effect be on appeal rates, program costs, or on other factors?

> *It might affect the Trust Fund (maybe increase), the appeals process and program cost. I hope that the appeal rates will go down, because more people will be allowed at the reconsideration level. Program cost will go up or down, depending on if there is a decrease or increase in appeals rates.*

How might these changes to CR payments or policies change the process for other actors (e.g. DDP examiners, field office staff, applicants)?

> *Well, hopefully it will be a positive change, because more CR's will be involved earlier in the process and be able to help examiners to be more efficient and accurate on closing out the claimants cases. Claimants will have more help with their Activity of Daily Living forms (ADL's), help with obtaining medical records, and meeting the deadlines for filing for their reconsideration process.*

Topic 4: How Should SSA Implement the Intervention?

How might SSA implement a change to the CR payment? What steps would SSA need to take to make this change?

> *SSA will need to re-write policy and send an e-mail communication, post it on the SSA website and let all of the CR's know, regarding the payment changes, or maybe have a meeting regarding these changes, with key stakeholders.*

What agencies, organizations, etc. should SSA consider partnering with for the study?

> *National Association for Disability Examiners (NADE), NCDDD, SSA Managers Board, SSA Advisory Board, and Claimant Representative Groups and Disability Advocate Groups. This probably should take place after project has been approved, or you could ask their opinion before the project approval. This needs to be done at some point in the process.*

How could SSA communicate changes in the payment process to CRs? To applicants? To potential CRs or future applicants?

> *By e-mail, face to face meeting, teleconference, video conferencing, post on SSA website, and skype*

Currently, CRs can either enter into fee agreements with their clients and SSA before a favorable decision is made, or petition for a fee after the case has ended.

Would the proposed intervention affect the process for paying CRs? If so, how could SSA adapt current processes?

> *If, SSA and CR's agree that the amount should be paid at the time of reconsideration process then they can receive that payment after the reconsideration process is completed. SSA would have to adapt their current process and maybe have a second agreement contract drawn up to address the new policy. Just an ideal.*

What impact does the proposed intervention have on other parts of the determination and appeals processes?

> *I hope that it will have a positive effect on the appeals process, because it should be a cost savings.*

Should SSA consider measures to mitigate these impacts?

> *Yes, definitely consider taking measures to mitigate these impacts.*

Would the proposed intervention have unintended effects on particular groups of applicants?

> *Maybe*

Should SSA consider measures to mitigate these impacts?

> *Yes, definitely*

What implementation challenges might occur and how could SSA address them? What barriers might SSA encounter in changing payments for CRs?

External and internal stakeholders, constituents might have a problem with this implementation process. The barriers, such as possible trust fund issues, GOA, SSA Advisory board, constituents, other stakeholders.

Topic 5: Evaluation Design and Implementation

How could SSA could feasibly test this intervention? Previous changes to the determination processes have been investigated by choosing a region or set of states to pilot a new policy, while other SSA demonstrations have randomly assigned individual volunteers to different treatment conditions.

Definitely need a statistician, program evaluator and project manager to evaluate and implement a design or some PH.D. Student to do a study for SSA on this ideal or initiative. Do a Pilot see if it works with a small group, control and experimental group and subgroups?

If random assignment is used, should it be individual or site level? How would random assignment be carried out?

Maybe site levels of states who are participating in DCPS? Randomly select every other person or fourth person in the site area and assign him or her to the pilot group. (Maybe volunteers and then do random selection). Possibly use a convenience sampling pool. See research information in blue. https://web.csulb.edu/~msaintg/ppa696/696sampl.htm

If individual recruitment of applicants would be required, how could applicants be identified and recruited?

Well, you can inform claimants by mail or e-mail that this pilot project will be going on and they could volunteer for the project. However, it will be a random selection from the people who volunteered. You could send them a form to fill-out with a number on the form maybe associated with the name on a master sheet, so when they are randomly selected you will know who to contact if they are chosen or it can stay anonymous with just a number.

What are the implications for the choice of design on both internal and external validity?

You will need to decide on the design and have a statisticians help with the reliability and validity of the study. The sample size will need to be large enough to be valid and reliable.

What specific variations would be the most informative to test as study arms?

Some variations between the denial and allowance rates at the recon level and the ALJ level rates. Whether or not the case progressed (how many cases) to the ALJ level if the CR was involved at the Reconsideration level.
https://effectivehealthcare.ahrq.gov/sites/default/files/pdf/single-group-studies_white-paper.pdfck

Something similar to this study with the "Outcome Variation in the Social Security Disability Insurance Program: The Role of Primary Diagnosis"
https://www.ssa.gov/policy/docs/ssb/v73n2/v73n2p39.html
However, the specific variations will be based on the outcomes of how well the CR policy helps the claimants allowance rate and or denial rate.

Which outcomes are most important to measure?

Whether or not the new process works for the claimant and the outcomes that we wanted can be measured.

What are meaningful effect sizes for the key outcomes?

Research on Effect size is calculated using Cohen's d, which is found using the following formula:
https://www.physport.org/recommendations/Entry.cfm?ID=93385

How much time is necessary to produce meaningful results?

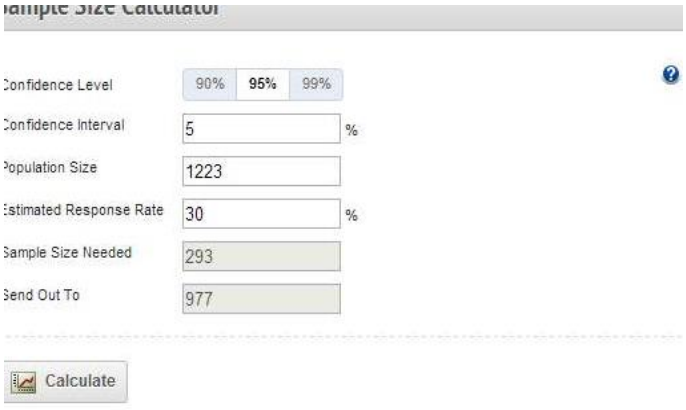
3-6 months, or possibly to a year https://www.hhs.gov/ash/oah/sites/default/files/pilot-testing-508.pdf

Should subgroups be targeted? If so, what are the appropriate subgroups?

Yes, Research information on Pilot Testing:
https://tobaccoeval.ucdavis.edu/documents/PilotTesting2.pdf

How many individuals must be included in the study? What research would be helpful in determining target sample sizes?

We would have to look at the research below on how many individuals must be included in the study for it be valid and reliable. Below is a target sample sizes calculator to determine the sample size. Please, see research below in blue: You will need to determine how many claimants are in the States that have DCPS and use that number to determine what the sample size should be with the sample size calculator: see example below. You would also have to look at your budget to see how much money you have to fund this project and the time factors that might be involved for the project scope.



https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4148275/
https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2876926/

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Should the demonstration be national or would more limited geographic representation be sufficient?

States that have DCPS involvement.

What data collection would be necessary to support the evaluation?

Surveys and other research that is similar to what we are trying to accomplish. You will probably need to do Quantative and Qualitative Research. Do face-to-face interviews with some claimants and CR's to see how the process went for them? You will also need to do electronically and/or paper survey's to Claimants and CR's to see how the process went for them.

Which administrative data sources can be leveraged and what are their advantages?

Denial and Allowance rates for Reconsideration and ALJ rates

Will survey data be needed?

Certainly, I would think so.

Topic 6: Concluding Comments

Are there other professionals with whom we should consult?

Yes, Claimant Advocate Programs, NADE, NCDDD, CR's, Attorney Reps, SSA Advisory Board. Communication at some point in this process. Do not know exactly when.

Are there any key topics not covered that you think are important to discuss?

No, not at this time.

Do you have any other comments?

If, this project will benefit the claimants, decrease the time and cost at ALJ level, then it is worth doing.

Social Security Administration
Claimant Representative Demonstration TEP
Member Discussion Guide

Topic 1: The Current Determination and Appeals Processes and the Role of Claimant Representatives

The discussion will begin with a presentation on the SSA determination and appeals processes, and the role of CRs. We will focus on the mechanics of processes, the percent of applicants who take each possible path to an ultimate award or denial, and the prevalence and role of claimant representatives. Background information on these topics can be found in the attached documents.

The panel will discuss reactions to the material and offer reflections based on their own experience and/or research. Based on your review of the materials, experience and/or research, do you have any general comments on the current determination and appeals process?

> *The key needs to be the development of a full and complete record, which often takes too long and is achieved – if ever – too late in the process.*

Topic 2: Identifying the Problem

SSA has identified the relatively low prevalence of claimant representatives at the reconsideration stage as one reason that applications that are ultimately allowed at the ALJ level are not allowed sooner. What role do CRs play in the reconsideration process? How does their role there differ from their role at the ALJ level?

> *The main role of CRs – even by attorneys at the ALJ level – is to compile a persuasive record. In this respect, the role is much the same at both levels.*

What role could CRs play in the reconsideration process? How would this differ from their current role in reconsideration?

> *CRs could play a more effective role at reconsideration is SSA encouraged – and assisted in – the full development of the record already at reconsideration.*

Based on your knowledge of other similar processes, to what extent do the roles played by attorneys and other representatives differ during the initial application phase verses the appeal phase? Are there missed opportunities for attorneys or other representatives to improve the completeness or quality of initial applications?

> *In many other administrative processes (for example zoning or licensing) attorneys are retained specifically to prepare initial applications. Rightly or wrongly, SSA's initial application process isn't taken seriously by professionals.*

What does current research say about the role and effect of CRs in the determination process? What does current research say about the role and effect of attorneys in other similar settings?

CRs are seen as an important element reaching a successful outcome, with their most important contribution being the compilation of a full and complete record.

What research or datasets would help us better understand these issues?

Topic 3: Designing an Intervention

Under the current payment rules, SSA generally awards payments to CRs in the amount of 25 percent of the claimants' awarded back benefits, up to a $6,000 limit. These rules create an incentive for CRs to work with beneficiaries later in the adjudication process. SSA has proposed offering CRs an actuarially fair payment for awards made at the reconsideration level to encourage CRs to be involved earlier in the process. Allowed applicants would still pay the representative 25 percent of their back benefits, and SSA would make up the difference.

How large a change, or what kind of change, do you think would be needed to increase representation at the reconsideration level?

It is not just a question of fee incentive. There is a "hassle" and "frustration" aspect as well that keeps CRs from participating at reconsideration. SSA should invest also in making the record development process easier and more collaborative.

How would you expect the proposed intervention to affect which cases CRs seek out or accept?

It will help, but may not be sufficient (see above)

How would you expect the proposed intervention to affect how CRs work with an applicant once they have accepted a particular case?

They would have a greater incentive to get the information necessary to complete the record earlier.

Is there an ideal rate of representation at the reconsideration level that SSA should aim to achieve?

Are there other changes to the CR payment structure or other regulations that SSA should consider including as part of the demonstration?

Adding staff to assist CRs in obtaining information needed to complete the record – and to instruct and train the staff to act in a neutral, non-adversarial manner (that is, with the sole goal of obtaining the best information to inform a fair and correct result).

Are there models from other international or domestic benefit programs that might inform the demonstration?

Cannot be specific, but there must be administrative offices where the job of the staff at the initial stage is to help the applicant present the most full and complete application possible.

How would earlier CR involvement affect the current differences between the DDS and ALJ processes and policies?

It would likely make the ALJ hearing more "legal" because less cases would turn on the quality of the record and instead would focus more on applying the law to an already full and complete record.

How might these changes to CR payments or policies affect current award rates?

What other effects might the proposed intervention have? For example, what might the effect be on appeal rates, program costs, or on other factors?

How might these changes to CR payments or policies change the process for other actors (e.g. DDP examiners, field office staff, applicants)?

SSA staff should be expected to contribute more to neutral development of records, including development helpful to claimants.

Topic 4: How Should SSA Implement the Intervention?

How might SSA implement a change to the CR payment? What steps would SSA need to take to make this change?

What agencies, organizations, etc. should SSA consider partnering with for the study?

Those associated with the key actors, especially claimant representative organizations. Perhaps also the National Academy of Social Insurance.

How could SSA communicate changes in the payment process to CRs? To applicants? To potential CRs or future applicants?

On relevant forms to applicants; through professional organizations and lists for CRs.

Currently, CRs can either enter into fee agreements with their clients and SSA before a favorable decision is made, or petition for a fee after the case has ended.

Would the proposed intervention affect the process for paying CRs? If so, how could SSA adapt current processes?

What impact does the proposed intervention have on other parts of the determination and appeals processes?

Would be good if it also had an effect at the initial filing stage, so that an improved record development process can begin as early as possible. As noted earlier, would likely make the ALJ hearing more "legal" in nature.

Should SSA consider measures to mitigate these impacts?

Would the proposed intervention have unintended effects on particular groups of applicants?

Do not see why it would.

Should SSA consider measures to mitigate these impacts?

What implementation challenges might occur and how could SSA address them? What barriers might SSA encounter in changing payments for CRs?

Depending on how the process is changed to make record development easier (or not), could have resistance form SSA staff and/or CRs.

Topic 5: Evaluation Design and Implementation

How could SSA could feasibly test this intervention? Previous changes to the determination processes have been investigated by choosing a region or set of states to pilot a new policy, while other SSA demonstrations have randomly assigned individual volunteers to different treatment conditions.

I think a pilot in a few selected areas (including identified SSA, DDS and ALJ offices) would be the more effective way to evaluate the results. ***Following up on the discussion at the April 12 meeting****, I agree with those who pointed out that the design should take into account the fact that areas where the most up-to-date IT systems are in place – as opposed to those still operating with the older system – could have an effect CR participation rates and on the results. That is because CRs participating in the demonstration from the up-to-date areas will have the type of access to records that is as close as currently possible to what will be available in the future.*

If random assignment is used, should it be individual or site level? How would random assignment be carried out?

If individual recruitment of applicants would be required, how could applicants be identified and recruited?

What are the implications for the choice of design on both internal and external validity?

The design must be such that the participants are representative and the results will be seen as generalizable

What specific variations would be the most informative to test as study arms?

Which outcomes are most important to measure?

Comparative approvals and denials; percentage of ALJ appeals; CR participation (both attorney and non-attorney).

What are meaningful effect sizes for the key outcomes?

How much time is necessary to produce meaningful results?

Should subgroups be targeted? If so, what are the appropriate subgroups?

How many individuals must be included in the study? What research would be helpful in determining target sample sizes?

Should the demonstration be national or would more limited geographic representation be sufficient?

Need not be national, but should include diverse regions.

What data collection would be necessary to support the evaluation?

Rate of approval/denials/appeals; numbers of CRs (both attorney and non-attorney)

Which administrative data sources can be leveraged and what are their advantages?

Will survey data be needed?

Probably, at least to fill out narrative description of hard data.

Topic 6: Concluding Comments

Are there other professionals with whom we should consult?

Are there any key topics not covered that you think are important to discuss?

Do you have any other comments?

***Following up on the discussion at the April 12 meeting**, it became clear that there are serious deficiencies in current SSA practice with respect to the development of a full and complete record, and that this has served as a disincentive for CRs to enter the process at the reconsideration stage (as well as at the initial application stage). As a result, financial incentives alone are unlikely to achieve the goal of bringing substantial numbers of CRs into reconsideration. Accordingly, the demonstration should be designed to take this into account and not focus only on various forms of financial incentives.*

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The panel will discuss reactions to the material and offer reflections based on their own experience and/or research. Based on your review of the materials, experience and/or research, do you have any general comments on the current determination and appeals process?

From my experience there was always a high turnover rate at the ALJ level. One reason was the ALJ made an independent de novo decision and the ALJ could accept new and material evidence. There was also the physical appearance of the claimant who could testify as to how the disability(ies) affected him/her. It also allowed the CR to summarize the evidence and if well schooled in disability could deliver an informed summation. It was also well known but not really proven that States denied at the recon level uniformly. This appears to be substantiated in the report provided.

Topic 2: Identifying the Problem

SSA has identified the relatively low prevalence of claimant representatives at the reconsideration stage as one reason that applications that are ultimately allowed at the ALJ level are not allowed sooner. What role do CRs play in the reconsideration process? How does their role there differ from their role at the ALJ level?

All too often the claimant is not aware of the right to a representative and if they do they aren't aware of where to find one. There is also the issue of paying a representative which some claimants don't want to do and decide to try on their own. When they get denied at recon they start to think about looking for a representative. There are representatives who intentionally suggest the claimant wait for the ALJ level because of the de novo process and the common knowledge that a high percentage of claims are denied at recon. It also allows the CR to obtain additional medial evidence and lay statements.

What role could CRs play in the reconsideration process? How would this differ from their current role in reconsideration?

Not sure about their current role which is pretty low participation. Like all levels new evidence can be presented and a good CR will gather as much medical evidence and lay statements and present at the recon level

Based on your knowledge of other similar processes, to what extent do the roles played by attorneys and other representatives differ during the initial application phase verses the appeal phase? Are there missed opportunities for attorneys or other representatives to improve the completeness or quality of initial applications?

Yes! I am very familiar with the VA process and know the CR can provide an important service mainly by providing a comprehensive review of and military and civilian medical records. The CR can play an important role in interviewing the claimant to be sure all the facts are revealed as well as all medical records/treatment are made available. I also have very limited experience with workers compensation cases and the same holds true with the addition of identifying potential witnesses who saw the work related injury.

What does current research say about the role and effect of CRs in the determination process? What does current research say about the role and effect of attorneys in other similar settings?

I am not familiar with the current research

What research or datasets would help us better understand these issues?

Not sure but hopefully during this upcoming process we will learn more

Topic 3: Designing an Intervention

Under the current payment rules, SSA generally awards payments to CRs in the amount of 25 percent of the claimants' awarded back benefits, up to a $6,000 limit. These rules create an incentive for CRs to work with beneficiaries later in the adjudication process. SSA has proposed offering CRs an actuarially fair payment for awards made at the reconsideration level to encourage CRs to be involved earlier in the process. Allowed applicants would still pay the representative 25 percent of their back benefits, and SSA would make up the difference.

How large a change, or what kind of change, do you think would be needed to increase representation at the reconsideration level?

I am not sure if this will have a significant impact. I think CRs like the ALJ level because of the physical appearance before an ALJ. I also believe rightly or wrongly that CRs believe there is little chance of "winning" at the recon level because of the reputation of the states. I do believe the recon level should be retained and we should discuss how to improve the recon process

How would you expect the proposed intervention to affect which cases CRs seek out or accept?

I am not sure. See previous comment above

How would you expect the proposed intervention to affect how CRs work with an applicant once they have accepted a particular case?

Not sure

Is there an ideal rate of representation at the reconsideration level that SSA should aim to achieve?

Given the high rate of allowances at the ALJ level it is important that SSA and perhaps more importantly the State Agency be proactive in educating the claimant on the importance and availability of CRs. Do State Agencies maintain a list of CRs?

Are there other changes to the CR payment structure or other regulations that SSA should consider including as part of the demonstration?

I think this is a subject for discussion on April 12. I don't have any strong thoughts at the moment

Are there models from other international or domestic benefit programs that might inform the demonstration?

Not aware of any

How would earlier CR involvement affect the current differences between the DDS and ALJ processes and policies?

If the CR got involved earlier and did a good job of developing medical and other evidence it would probably result in more allowances at the DDS level. However, if there is a written or unwritten policy at the DDS level to deny that has to change before any improvement is seen. I believe there is a mind set out there that the DDS denies claims and that needs to change or evidence needs to be provided that disabuses that thinking

How might these changes to CR payments or policies affect current award rates?

Not sure but the CR payment process must be time sensitive and easy. We need to discuss this

What other effects might the proposed intervention have? For example, what might the effect be on appeal rates, program costs, or on other factors?

How might these changes to CR payments or policies change the process for other actors (e.g. DDP examiners, field office staff, applicants)?

I believe there is a "culture" out there among the States that needs to be changed

Topic 4: How Should SSA Implement the Intervention?

How might SSA implement a change to the CR payment? What steps would SSA need to take to make this change?

> *I am not sure and wonder if there has been any studies done to hear from the CRs. What are their issues? I think we need to know more about what if any issues there are but I suspect timeliness is one of them*

What agencies, organizations, etc. should SSA consider partnering with for the study?

> *National Association of Social Security Representatives. Not sure this is the correct title. There is a lot of organizations representing people with disabilities and SSA needs to do a "deep dive" into what they do for their constituents and the Social Security Disability claims process. I am sure there are some SMEs out there also. The Consortium for Citizens with Disabilities has a lot of members who can be helpful*

How could SSA communicate changes in the payment process to CRs? To applicants? To potential CRs or future applicants?

> *Not sure who they have in their data base but reaching out to the ABA and disability organizations would be helpful*

Currently, CRs can either enter into fee agreements with their clients and SSA before a favorable decision is made, or petition for a fee after the case has ended.

Would the proposed intervention affect the process for paying CRs? If so, how could SSA adapt current processes?

> *Need to be discussed in more detail on April 12*

What impact does the proposed intervention have on other parts of the determination and appeals processes?

> *Needs further discussion*

Should SSA consider measures to mitigate these impacts?

> *YES*

Would the proposed intervention have unintended effects on particular groups of applicants?

> *Not sure but we need to discuss*

Should SSA consider measures to mitigate these impacts?

> *YES*

What implementation challenges might occur and how could SSA address them? What barriers might SSA encounter in changing payments for CRs?

Need further discussion

Topic 5: Evaluation Design and Implementation

How could SSA could feasibly test this intervention? Previous changes to the determination processes have been investigated by choosing a region or set of states to pilot a new policy, while other SSA demonstrations have randomly assigned individual volunteers to different treatment conditions.

I believe a combination of the above would be useful. Suggest reaching out to the organizations that provide representation/advocacy to Social Security disability claimants

If random assignment is used, should it be individual or site level? How would random assignment be carried out?

Not sure

If individual recruitment of applicants would be required, how could applicants be identified and recruited?

Not sure but probably randomly

What are the implications for the choice of design on both internal and external validity?

Not sure

What specific variations would be the most informative to test as study arms?

Not sure

Which outcomes are most important to measure?

Not sure but all would be important to consider then a determination of which are most important

What are meaningful effect sizes for the key outcomes?

Not sure. Need to get input from the experts

How much time is necessary to produce meaningful results?

Not sure

Should subgroups be targeted? If so, what are the appropriate subgroups?

Not sure. Someone with expertise in study design is better suited to answer this

How many individuals must be included in the study? What research would be helpful in determining target sample sizes?

Researchers need to respond to this

Should the demonstration be national or would more limited geographic representation be sufficient?

Nationally or some level of geographic locations with involvement from the various geographic locations, i.e. North, East, South, West and sub locations geographically

What data collection would be necessary to support the evaluation?

Need the social scientists to determine that

Which administrative data sources can be leveraged and what are their advantages?

Not sure

Will survey data be needed?

I would think so

Topic 6: Concluding Comments

Are there other professionals with whom we should consult?

Here is a link to the CCD Social Security Task Force. I also know and have been in contact with a few Social Security retirees who may be interested. http://c-c-d.org/rubiques.php?rub=taskforce.php&id_task=12 *Can't think of any right now*

Are there any key topics not covered that you think are important to discuss?

Can't think of any right now

Do you have any other comments?

I look forward to this meeting/discussion next week

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The panel will discuss reactions to the material and offer reflections based on their own experience and/or research. Based on your review of the materials, experience and/or research, do you have any general comments on the current determination and appeals process?

> Getting to the right decision as early as possible in the Social Security disability application and appeal process is in everyone's best interest. SSA should provide information about the availability of representation to claimants when an individual submits her initial application.

Topic 2: Identifying the Problem

SSA has identified the relatively low prevalence of claimant representatives at the reconsideration stage as one reason that applications that are ultimately allowed at the ALJ level are not allowed sooner. What role do CRs play in the reconsideration process? How does their role there differ from their role at the ALJ level?

> Claimants' representatives should play the same role at reconsideration that they play at the ALJ level (and the initial application level). CRs inform claimants about the program rules, answers claimants' questions, assist them with obtaining and submitting evidence, and assist claimants with understanding and navigating through the disability application and appeals process.

What role could CRs play in the reconsideration process? How would this differ from their current role in reconsideration?

> A major difference between the initial application and reconsideration level and representation at the ALJ hearing level is the fact that representatives can submit evidence electronically and access the claimant file through Electronic Records Express or ERE at the hearing level. A major barrier to CRs representing more claimants at the initial level is technological: CRs cannot see what evidence has been submitted already, when documents have been processed, and what else is in the claimant's file in real time at the initial and reconsideration level.
>
> The inability to submit the SSA-1696 (appointment of representation form) electronically and have it processed timely also create large problems for representatives and field office personnel (CRs report having to fax in 1696s repeatedly when field office staff say they can't locate the paper form) and can't tell if it has been processed. **Lack of access to claimants' files could be a barrier to representation when the claim is with the DDS irrespective of payment available. This may be a threshold issue preventing representation at the initial application and reconsideration levels.**

In addition, we hear frequent anecdotal reports of claimants being told by SSA field office personnel that they do not need representation unless they reach the ALJ hearing level of appeal. Although it is not SSA policy to encourage or discourage representation, the practice is often to discourage representation. Additional training that includes the requirement to provide SSA materials (including the brochure on representation, and a reminder that most CR are paid on a contingent basis) anytime this question is asked could prevent this practice from differing from SSA policy in many cases.

Having said that, the role that CRs would play at reconsideration should not be any different than the role the CR plays at the ALJ hearing level, which is outlined in my answer to the previous question.

Based on your knowledge of other similar processes, to what extent do the roles played by attorneys and other representatives differ during the initial application phase verses the appeal phase? Are there missed opportunities for attorneys or other representatives to improve the completeness or quality of initial applications?

I am not familiar with other similar processes. Many times people might not hire a representative because they don't know that they could get one and that the fees are contingent on receipt of back benefits only (meaning they don't have to pay up front, or if the claim is unsuccessful). Claimants might not understand the complexity of SSA's disability programs and the application process and may not understand the value representation can provide. Giving claimants information about the availability of representation with the notice of receipt of application would ensure that all claimants are aware they can hire a representative and don't have to pay upfront/out of pocket. In addition, it is very important that field office staff do not discourage people from hiring a representative when asked (see above). SSA field office staff should be trained to provide information about the availability of representation without discouraging (or encouraging) a claimant from doing so.

What does current research say about the role and effect of CRs in the determination process? What does current research say about the role and effect of attorneys in other similar settings?

Current research shows that CRs decrease the number of postponements and delays in hearings (*https://oig.ssa.gov/sites/default/files/audit/full/pdf/A-05-17-50268.pdf)* and increase the percentage of people with successful claims vs those who are unrepresented (*https://www.gao.gov/assets/690/689209.pdf*).

What research or datasets would help us better understand these issues?

SSA does not release data regarding how many/what percentages of people are represented at the initial and reconsideration levels. SSA's basic data regarding representation lacks specificity (at least its publicly available data)– for example, because SSA often makes a distinguish only between those being paid or not being paid, the data they collect make it difficult to differentiate between a legal services attorney who is not taking a fee and a neighbor helping a person apply and a representative who is being paid by a third party such as a private disability insurance company. SSA might need to collect additional information to disaggregate the data regarding representation in a way to make it more meaningful in designing an application.

Another dataset that would be helpful is analysis around the reasons why cases are awarded at reconsideration that had been denied initially, and correspondingly the reasons that cases denied at both reconsideration and initial application are awarded at the hearing level. This data could help inform how representation could be most effective with the DDS at both the initial and reconsideration levels.

Topic 3: Designing an Intervention

Under the current payment rules, SSA generally awards payments to CRs in the amount of 25 percent of the claimants' awarded back benefits, up to a $6,000 limit. These rules create an incentive for CRs to work with beneficiaries later in the adjudication process. SSA has proposed offering CRs an actuarially fair payment for awards made at the reconsideration level to encourage CRs to be involved earlier in the process. Allowed applicants would still pay the representative 25 percent of their back benefits, and SSA would make up the difference.

How large a change, or what kind of change, do you think would be needed to increase representation at the reconsideration level?

Getting electronic access to the file (through ERE or DCPS) should be the first step toward increasing representation at the DDS level. Although the level of potential fees can be a factor in determining whether to represent a claimant at the initial level for some CRs, the lack of access to the electronic file can create a lot of extra work and frustration for the CR. Providing access to the electronic file (through ERE or through DCPS in the states that already have it) should be part of any demonstration or pilot.

There are several way fees could be structured at the initial and reconsideration levels to increase representation:

- Annually adjust the $6000 cap on fees under the fee agreement process. Although on its face this might not seem to impact the willingness of CRs to represent people at the DDS level, it does. CRs often use their higher fee cases to allow them to represent people for whom they will receive a smaller/close to no fee. CRs and firms must make a profit and therefore must screen cases and accept a balance of those with larger fees and those with smaller fees. Representatives want to assist people who they think have meritorious claims but will only have a small fee available if the claimant is awarded benefits but cannot do so from a business perspective unless they have cases that pay much higher fees. In SSDI claims where a full 12 months of retroactive benefits are available (the five-month waiting period having been

completed before the 12 months), back benefits can be much larger than $24,000 (meaning that 25% of back benefits exceeds $6000) at the initial or reconsideration level. Raising the cap on fees under the fee agreement process would allow CRs to take more cases at the initial and reconsideration level.

- Establish a minimum fee (e.g. $3000) for representation at the initial level and reconsideration level. If back benefits are sufficient that the fee would be higher under the normal fee agreement process, then the fee should be paid according to the fee agreement.
- Offer a flat non-contingent fee. Very complicated cases (such as for homeless individuals with multiple providers and spotty treatment records) can be daunting for representatives to take. It can take hours of work just to determine whether an individual might be eligible for benefits. It might be hard to incentivize representation in those cases because so much work goes into them before even knowing if there is the possibility of receiving compensation for those efforts.

How would you expect the proposed intervention to affect which cases CRs seek out or accept?

These interventions would increase the types of cases CRs would take and the effect would depend on which of these interventions was included. For example, a flat non-contingent fee might encourage CRs to take on more complicated cases to ensure some compensation for the large amount of work a CR might have to do in a complicated case. Raising the fee cap might allow a CR to take a case they wouldn't now because the higher fee cap on other successful cases would allow the CR to accept a case with no or little back benefits.

How would you expect the proposed intervention to affect how CRs work with an applicant once they have accepted a particular case?

I do not believe that there would be any effect on how a CR works with a claimant in the vast majority of claims. The vast majority of CRs work with their clients from the day they are appointed to interview the claimant, ensure they are aware of all medical and other relevant providers, develop the case and secure medical evidence to support the disability claim. Given that, I do not anticipate that providing an incentive payment that increases the available fee at the initial or reconsideration level will impact how CRs work with their clients in a particular case.

Is there an ideal rate of representation at the reconsideration level that SSA should aim to achieve?

There is no ideal rate of representation based on a percentage or number. The ideal rate of representation would occur when every claimant knows that representation is available and is able to hire a representative when desired, and every claimant receives a policy-compliant decision based on complete medical evidence.

Are there other changes to the CR payment structure or other regulations that SSA should consider including as part of the demonstration?

- Provide access to the electronic file at the initial and reconsideration level as discussed above
- Relax the rules regarding reopening of prior files
- Reimburse representatives for medical evidence costs at the initial level in combination with some changes to the fee structure as outlined above
- Pilot dedicated personnel at the field office and DDS to communicate with representatives
- Expedite payment of fees: For example, guarantee that within 60 days of favorable decision (and all necessary information regarding potential offsets have been submitted) fees under the fee agreements will be paid

Are there models from other international or domestic benefit programs that might inform the demonstration?

Not that I am aware of

How would earlier CR involvement affect the current differences between the DDS and ALJ processes and policies?

It should not have any effect.

How might these changes to CR payments or policies affect current award rates?

Increased representation earlier in the process is likely to result in awards earlier in the process in some cases. If getting representation earlier in the process results in a higher percentage of claimants being represented overall, it is likely to increase the overall award rate because represented clients tend to be awarded benefits at higher rates. There is the possibility that some claimants who are not currently represented but might be awarded benefits if represented would have dropped their claims and not appealed. In that case, the intervention might increase overall award rates by a modest amount because claimants either be awarded earlier or decide to appeal based on a recommendation from a CR and would not have appealed if not represented.

What other effects might the proposed intervention have? For example, what might the effect be on appeal rates, program costs, or on other factors?

The intervention is likely to have conflicting impacts on many of these items. Appeal rates might decrease due to the fact that more claimants are awarded benefits earlier in the process because their claims were fully developed. However, more claimants denied at the initial or reconsideration level who currently choose not to appeal and drop their claim might appeal based on conversations with their CRs. Program costs for benefits might also go up due to fewer claimants dropping out of the process. Administrative costs for the program might go down if more awards are made earlier in the process by eliminating the need for expensive ALJ hearings. At the same time, if more claimants who otherwise would have dropped their claims appeal denials at the initial and recon level due to representation, it could increase

administrative costs. These potential countervailing impacts make it difficult to estimate the effect on these trends.

How might these changes to CR payments or policies change the process for other actors (e.g. DDP examiners, field office staff, applicants)?

The changes to the payments or policies recommended should not have a direct effect on the process for other actors who are not involved in the demonstrations. It will be important, however, to ensure that field office and PSC staff are trained on and follow these policies when answering questions or paying representatives.

Topic 4: How Should SSA Implement the Intervention?

SSA will need to make CRs aware of the change in payment to encourage CRs to participate. CRs must also be educated about any other changes in the process (such as access to the electronic file) included in the demonstration.

SSA must also make claimants aware of the availability of representation and, for the purposes of this demonstration, ensure that field office personnel are not discouraging people from obtaining representation. Claimants should be made aware of the availability of representation when their initial application is received and information (brochure about representation) about representation should be including in the notice of application receipt. It is important to keep in mind that it can take individual's some time to decide whether or not to hire a representative and time for the representative to develop the evidentiary record. Notification and information about representation should be provided as early in the process as possible – even if the goal is to encourage representation at reconsideration and not at the initial level (as was argued by some experts on the panel). Given the amount of time it can take to identify past providers and collect medical evidence, providing information about representation as early as possible is very important.

What agencies, organizations, etc. should SSA consider partnering with for the study?

SSA should consider partnering with organizations made up of individuals who provide representation, such as the National Organization of Social Security Claimants' Representatives and SOAR's technical assistance provider *https://soarworks.prainc.com/*.

How could SSA communicate changes in the payment process to CRs? To applicants? To potential CRs or future applicants?

Partnerships with organizations made of representatives, such as the National Organization of Social Security Claimants' Representatives, to help make CRs aware of the demonstration and to recruit CRs to participate. As discussed before, SSA should make claimants aware of the availability of representation as soon as it receives the individual's application. SSA should do this for all claimants and provide claimants that have been selected to participate in the demonstration with those materials. Information can be provided to claimants to share with potential CRs explaining the change in the payment process.

Currently, CRs can either enter into fee agreements with their clients and SSA before a favorable decision is made, or petition for a fee after the case has ended.

Would the proposed intervention affect the process for paying CRs? If so, how could SSA adapt current processes?

The preferred intervention would involve allowing representatives to use a modified fee agreement which would indicate that the claimant would pay 25% of back benefits up to a maximum of $6000 but a minimum of $3000 for a fully favorable successful claim at the reconsideration (or initial and reconsideration if SSA chose to test incentivizing representation at both levels) level. There should be no effect on the use of agreements or petitions at the ALJ hearing level or beyond.

What impact does the proposed intervention have on other parts of the determination and appeals processes?

The proposed intervention should not have an impact on the other parts of the determination or appeals process.

Should SSA consider measures to mitigate these impacts?

N/A

Would the proposed intervention have unintended effects on particular groups of applicants?

The lack of publicly available data regarding who is currently represented and at what level makes it difficult to estimate the impact on different groups. For example, given the availability of up to 12 months of retroactive benefits for SSDI claimants and no retroactive benefits for SSI claimants, one might conclude that the intervention will have the effect of increasing representation for SSI claimants more than SSDI claimants. It is hard to make any estimates about different impacts on different groups of claimants given the lack of available data.

Should SSA consider measures to mitigate these impacts?

N/A

What implementation challenges might occur and how could SSA address them? What barriers might SSA encounter in changing payments for CRs?

One implementation challenge is the short time frame that SSA has to design, implement, and evaluate the intervention given the expiration of the SSDI demonstration authority. As discussed before, the lack of access to the electronic file and other inefficiencies in the process at the initial and reconsideration levels currently deter many CRs from representing claimants at these levels of the process. Addressing those inefficiencies will take time and an investment of resources to address. Testing enhanced payments in states that already have DCPS and building the capacity for CRs to access the electronic files for claims being processed at the DDS, like CRs have at the ALJ appeal level (and in some states that do not have DCPS with or without the additional functionality) is necessary to determine the true extent that an enhanced payment will incentivize representation but being able to do so (and with several experimental designs) will be extremely challenging in the limited timeframe available for these demonstrations.

Topic 5: Evaluation Design and Implementation

How could SSA could feasibly test this intervention? Previous changes to the determination processes have been investigated by choosing a region or set of states to pilot a new policy, while other SSA demonstrations have randomly assigned individual volunteers to different treatment conditions.

A design with a control group and three treatment groups is recommended. SSA should test this intervention in all 19 states where DCPS is up and running. The control group will have no intervention, one treatment group would have electronic access to the file and other technological enhancements, one treatment group would have enhanced payments, and the final treatment group would have both electronic access and enhanced payments. Assignment should be random based on locations.

If random assignment is used, should it be individual or site level? How would random assignment be carried out?

Assignment should be random based on site. Some states should be the control group and then other states should be randomly assigned between the three treatment groups. This is preferable to individual-level randomization because adding technological enhancements will be less costly if it is done in a few states to begin with, and once they exist in those states they should be available to all claimants in that state. Randomizing by state means that DDS staff only need to understand the rules of their state, not apply different rules to different claimants based on the claimant's assigned group.

If individual recruitment of applicants would be required, how could applicants be identified and recruited?

Providing information about the availability of representation when the initial application is received and providing information about the demonstration at that time would be a good way to recruit potential claimants.

What are the implications for the choice of design on both internal and external validity?

Assignment by state means that other differences between states (health insurance, availability of representatives, different starting award rates, frequency and quality of consultative examinations, prevalence of different impairments, age of claimants, etc.) may be harder to exclude. However, the study could use a difference-in-difference analysis to consider a state's representation and award rates both before and after the state joined a treatment group.

What specific variations would be the most informative to test as study arms?

Previous answers detail what treatments ought to be tested.

Which outcomes are most important to measure?

Number of represented claimants, types of represented claimants (SSI, SSDI, concurrent), award rates at each level of application and appeal, changes in percentages of claims that require a hearing in each treatment location, processing times for claims at each level, percentage of claimants that choose not appeal denials at each level. It is important to remember that increases in award rates at a particular level or increased processing time at a particular level is not a negative outcome. If it takes a little longer to get to the right decision at an earlier level and a costly appeal (both in terms of SSA funds and time for the claimant) is avoided, the delay in processing time at the earlier level is actually a good outcome. It takes time to collect medical evidence and having a more complete evidentiary record might take longer but lead to the right decision earlier in the process.

What are meaningful effect sizes for the key outcomes?

Not my area of expertise.

How much time is necessary to produce meaningful results?

This is a difficult question to answer. The demonstration must last long enough that CRs are aware of it and can adjust their client recruitment efforts. This might be challenging given the limited amount of time available for the design and implementation of the intervention, and the fact that some claimants might be hesitant to hire representatives if they believe they will easily be awarded benefits; some claimants do not seek representation until they have been denied.

Should subgroups be targeted? If so, what are the appropriate subgroups?

SSI-only claims, SSDI-only claims, concurrent SSI/SSDI claims

How many individuals must be included in the study? What research would be helpful in determining target sample sizes?

Should the demonstration be national or would more limited geographic representation be sufficient?

A national demonstration is probably not necessary - more limited geographic representation would probably be sufficient and focusing in on the states that already have DCPS rolled out makes sense.

What data collection would be necessary to support the evaluation?

The following data would be necessary: current level of representation at every application stage, outcomes for represented and not represented claimants, changes in appeal rates, changes in award rates, changes in rates of representation, percentages of people appealing denials at each level and percentages withdrawing their claims. Data from each CR participating in a treatment group regarding representation at the initial/reconsideration level prior to the demonstration and during the demonstration. Qualitative data from CRs

regarding whether they increased representation based on the intervention and why or why not. From the treatment group that has both the technological enhancements and incentive payments, data regarding which of the interventions had a larger impact on their representation decisions. It would be useful to include information about primary and secondary impairments and whether the claimant meets or equals a listing. It is possible that representation is especially important for claimants with certain impairments, or types of impairments.

Which administrative data sources can be leveraged and what are their advantages?

SSA has significant amounts of data regarding representatives that is not available to the public so it is difficult to answer this question. SSA data about CRs should be able to ascertain the extent to which individual representatives changed when they represented clients in the process based on the intervention and to what extent the changes affected claim selection (e.g. SSI vs SSDI claimants).

Will survey data be needed?

Survey data of CRs who participate in the interventions can be helpful in determining whether other interventions could provide better incentives for increasing representation earlier in the process.

Topic 6: Concluding Comments

Are there other professionals with whom we should consult?

Are there any key topics not covered that you think are important to discuss?

Do you have any other comments?

Social Security Administration
Claimant Representative Demonstration TEP
Member Discussion Guide

Topic 1: The Current Determination and Appeals Processes and the Role of Claimant Representatives

The discussion will begin with a presentation on the SSA determination and appeals processes, and the role of CRs. We will focus on the mechanics of processes, the percent of applicants who take each possible path to an ultimate award or denial, and the prevalence and role of claimant representatives. Background information on these topics can be found in the attached documents.

The panel will discuss reactions to the material and offer reflections based on their own experience and/or research. Based on your review of the materials, experience and/or research, do you have any general comments on the current determination and appeals process?

Topic 2: Identifying the Problem

SSA has identified the relatively low prevalence of claimant representatives at the reconsideration stage as one reason that applications that are ultimately allowed at the ALJ level are not allowed sooner. What role do CRs play in the reconsideration process? How does their role there differ from their role at the ALJ level?

What role could CRs play in the reconsideration process? How would this differ from their current role in reconsideration?

It seems like CRs could help speed along the appeals process for a lot of claimants whose applications are ultimately allowed. My sense from the TEP meeting was that some of the problem there is financial incentives, but not all of it. Some of the problem seems to be that CRs have limited access to file information. And some seems to be about difficulty of getting DDS personnel to respond (in other cases the opposite problem seems to exist—DDS having trouble getting CRs to respond, but that shouldn't be a factor in explaining why CRs play so little role in the recon process now).

Based on your knowledge of other similar processes, to what extent do the roles played by attorneys and other representatives differ during the initial application phase verses the appeal phase? Are there missed opportunities for attorneys or other representatives to improve the completeness or quality of initial applications?

Sounds like if CRs had more access to the electronic file, they could help complete it more expeditiously.

What does current research say about the role and effect of CRs in the determination process? What does current research say about the role and effect of attorneys in other similar settings?

What research or datasets would help us better understand these issues?

Topic 3: Designing an Intervention

Under the current payment rules, SSA generally awards payments to CRs in the amount of 25 percent of the claimants' awarded back benefits, up to a $6,000 limit. These rules create an incentive for CRs to work with beneficiaries later in the adjudication process. SSA has proposed offering CRs an actuarially fair payment for awards made at the reconsideration level to encourage CRs to be involved earlier in the process. Allowed applicants would still pay the representative 25 percent of their back benefits, and SSA would make up the difference.

How large a change, or what kind of change, do you think would be needed to increase representation at the reconsideration level?

DK

How would you expect the proposed intervention to affect which cases CRs seek out or accept?

I'd expect them to be more willing to take cases at the reconsideration level for the obvious reasons—with both expected front benefits and back benefits serving as the basis for the fee, the disincentive to represent claimants at reconsideration is reduced. Whether it would be eliminated (or even reversed) would depend on how the SSA measured "actuarial fair", and the extent to which CRs understand that measurement and how it applies to claimants who contact them at the reconsideration level.

How would you expect the proposed intervention to affect how CRs work with an applicant once they have accepted a particular case?

There would be no incentive to delay while the clock ticks and back benefits mount, by comparison to the present system.

Is there an ideal rate of representation at the reconsideration level that SSA should aim to achieve?

I am sure that for any objective function one writes down and any set of assumptions about the waterfall with and w/out CRs, there is an ideal rate of representation. But I am at a loss to figure out what it would be without such info.

Are there other changes to the CR payment structure or other regulations that SSA should consider including as part of the demonstration?

Capping at $6,000 creates disincentives to represent claimants in especially complex cases. On the other hand it also ensures that CRs have limited incentives to run the clock on claimants. I'm not sure whether this is the proper limit, or whether a hard limit is even the right way to balance these concerns. Perhaps a gradual reduction in the fee share would be better. But I would not add additional features to a demonstration, at least if it's done via RCT, because then all you learn is the net effect of all features.

Are there models from other international or domestic benefit programs that might inform the demonstration?

DK

How would earlier CR involvement affect the current differences between the DDS and ALJ processes and policies?

DK

How might these changes to CR payments or policies affect current award rates?

I assume that you mean ultimate award rates. If so, a lot depends on whether review processes at the reconsideration and ALJ levels – and CRs' impact on the results – are functionally equivalent. If they are, then it is possible that only timing would be affected. But if not, then it's possible that additional representation at the reconsideration level would lead to a net increase in award rates by causing some claims to be granted at the reconsideration level that otherwise would be denied and not appealed. But perhaps I have misunderstood the question.

What other effects might the proposed intervention have? For example, what might the effect be on appeal rates, program costs, or on other factors?

I assume that there are no claims that would be awarded at reconsideration under the current system but denied at that level under the proposed intervention. With this assumption in hand, there are several channels through which program costs could be expected to change.

First, how many claims would be (i) awarded at the reconsideration level with the proposed intervention but (ii) denied and not appealed under the current system, and what is the average dollar amount paid in such claims. Further, what is the average fee payment that SSA would have to make in such cases. Call these variables N1, X1, and Y1.

Second, how many claims would be (i) awarded at the reconsideration level under the proposed intervention but (ii) denied and appealed past the reconsideration level under the current system, and what is the average dollar cost to SSA of conducting these post-reconsideration appeals under the current system. Further, what is the average fee payment that SSA would have to make in such cases. Call these variables N2, X2, and Y2.

Assuming I haven't neglected anything, the total cost to SSA of the change would be

$$SSA\_TC = N1*(X1+Y1) + N2*(X2+Y2).$$

*A third cost is presumably borne by the DDS office rather than SSA: how many additional claims would have CRs at the reconsideration level under the proposed intervention but would not under the current system, and what is the average cost to the DDS office of reconsidering those claims. Calling these variables N3 and X3, the additional cost to the states' DDS offices of the proposed intervention would be N3*X3 (it is possible this is negative, i.e., the DDS offices would save money, if CRs do a sufficiently better job of packaging reconsideration requests than do claimants themselves).*

*A final point is that although benefits awarded to claimants via the N1*X1 channel increase SSA's program costs, presumably they do so because of increases in benefit determination accuracy. I would categorize payments to those eligible claimants who otherwise would wrongly be denied as a benefit rather than a cost of the intervention, even though it would increase total dollars spent by SSA.*

How might these changes to CR payments or policies change the process for other actors (e.g. DDP examiners, field office staff, applicants)?

DK

Topic 4: How Should SSA Implement the Intervention?

How might SSA implement a change to the CR payment? What steps would SSA need to take to make this change?

DK

What agencies, organizations, etc. should SSA consider partnering with for the study?

CR organizations and DDS representatives seem like obvious partners.

How could SSA communicate changes in the payment process to CRs? To applicants? To potential CRs or future applicants?

DK

Currently, CRs can either enter into fee agreements with their clients and SSA before a favorable decision is made, or petition for a fee after the case has ended.

Would the proposed intervention affect the process for paying CRs? If so, how could SSA adapt current processes?

See above.

What impact does the proposed intervention have on other parts of the determination and appeals processes?

See above.

Should SSA consider measures to mitigate these impacts?

DK

Would the proposed intervention have unintended effects on particular groups of applicants?

DK

Should SSA consider measures to mitigate these impacts?

DK

What implementation challenges might occur and how could SSA address them? What barriers might SSA encounter in changing payments for CRs?

DK

Topic 5: Evaluation Design and Implementation

How could SSA could feasibly test this intervention? Previous changes to the determination processes have been investigated by choosing a region or set of states to pilot a new policy, while other SSA demonstrations have randomly assigned individual volunteers to different treatment conditions.

I would randomly assign CRs to the intervention. They are presumably better informed than claimants – and presumably often much better informed – so that changes in their behavior are likely to be the key factor in determining the magnitudes of the variables I described in the penultimate question in Topic 3 above. Also, my sense is that many claimants are bewildered by the complexity of the process as it already exists. Asking them to understand the more complicated system under the proposed intervention will increase the cognitive burden on them. By contrast, CRs already are used to the complexity of the existing system, and this intervention is unlikely to burden them greatly. *Whether to test nationwide or in particular places depends on the budget for the demonstration. My preference would be nationwide, but if that is rejected I think it would be important to pick areas with variation in initial denial rates, reconsideration-level award rates, and post-reconsideration award rates.* *Note that especially low-population areas are probably not a good match for such an experiment in that there might be internal validity issues, because there are likely to be so few CRs that they might affect each others' behavior in ways that wouldn't be the case if the policy intervention ultimately were adopted.*

If random assignment is used, should it be individual or site level? How would random assignment be carried out?

See above—I suggest randomly assigning CRs rather than claimants. I'd carry it out by notifying CRs that they are now covered by a new, more generous system. Ideally they wouldn't be given a choice of whether to accept the intervention's terms. If they must be given such a choice, then it likely will still be possible to estimate the key variables' values using instrumental variables techniques (intended assignment is random and therefore a valid instrument).

If individual recruitment of applicants would be required, how could applicants be identified and recruited?

See above. I would not recruit or you will have all sorts of issues related to distinguishing effects of treatment on the treated from population average treatment effects.

What are the implications for the choice of design on both internal and external validity?

See above.

What specific variations would be the most informative to test as study arms?

Based on the TEP discussion, I think it would make sense to randomly assign 4 different statuses — the cross-product of the proposed policy (changing CR payment rules) and another dimension of intervention that would randomly assign some CRs to have greater access to the electronic file for the claimants they represent as part of the study. This would allow you to determine how much impact the payment changes and better information access separately have, and how much of an impact their combination provides as well.

Which outcomes are most important to measure?

See answer to penultimate question in Topic 3 above.

What are meaningful effect sizes for the key outcomes?

This is hard for me to answer – seems like a question the SSA should decide.

How much time is necessary to produce meaningful results?

A full measurement of program cost effects would require following a cohort of cases from the initial DDS decision all the way through the time necessary to appeal to the federal District Court. This is roughly 3 years, although if one is willing to truncate the analysis after the ALJ hearing, then I think 18 months would be sufficient. I emphasize that these figures are for a single cohort of cases, and ideally one would collect data on more than just one cohort. So I'd say a minimum of 18 months, 3 years is better, and 6 would be even better (enough time for consideration of two full years' worth of initially filed claims). It should be possible to construct interim evaluations along the way. I understand there may be statutory and/or funding limits to SSA's ability to do things here, and the above numbers are just my best estimates with limited knowledge.

Should subgroups be targeted? If so, what are the appropriate subgroups?

This depends on what SSA wants to know. There's of course a tradeoff in power/precision versus more targeted information. I don't have a sense of what subgroups are especially important to the agency.

How many individuals must be included in the study? What research would be helpful in determining target sample sizes?

This depends on what the agency thinks is a meaningful effect size. With that in hand one can calculate sample sizes necessary to detect such an effect to a desired level of precision.

Should the demonstration be national or would more limited geographic representation be sufficient?

See above (I vote for national, unless the agency has special concern about particular areas).

What data collection would be necessary to support the evaluation?

I think the administrative data already collected should be sufficient to determine the impacts on numbers and dollar values of claims for the variables I defined in the answer to the penultimate question of Topic 3.

I imagine the agency would benefit as well from some sort of survey that allows claimants and CRs to describe their satisfaction/experience. I would design and administer such a survey so that it could be sent to both the experimental treatment and control groups.

Which administrative data sources can be leveraged and what are their advantages?

See above.

Will survey data be needed?

See above.

Topic 6: Concluding Comments

Are there other professionals with whom we should consult?

Certainly survey design specialists and CRs. No doubt many others, though I assume you are already doing that.

Are there any key topics not covered that you think are important to discuss?

Nothing jumps to mind.

Do you have any other comments?

I was really impressed with both Abt's and SSA's degree of engagement at the TEP event.

Social Security Administration
Claimant Representative Demonstration TEP
Member Discussion Guide

Topic 1: The Current Determination and Appeals Processes and the Role of Claimant Representatives

The discussion will begin with a presentation on the SSA determination and appeals processes, and the role of CRs. We will focus on the mechanics of processes, the percent of applicants who take each possible path to an ultimate award or denial, and the prevalence and role of claimant representatives. Background information on these topics can be found in the attached documents.

The panel will discuss reactions to the material and offer reflections based on their own experience and/or research. Based on your review of the materials, experience and/or research, do you have any general comments on the current determination and appeals process?

Topic 2: Identifying the Problem

SSA has identified the relatively low prevalence of claimant representatives at the reconsideration stage as one reason that applications that are ultimately allowed at the ALJ level are not allowed sooner. What role do CRs play in the reconsideration process? How does their role there differ from their role at the ALJ level?

At the recon stage representatives help prepare the application. At the ALJ level, they help prepare the application and also represent the applicant at a hearing. It does not necessarily follow that the reason why ALJ-allowed cases aren't allowed earlier is because representatives are not involved at recon. Research has not conclusively established that representatives add value to cases prior to the appellate level. Hoynes, Maestas and Strand (2016), hereafter referred to as HMS, examine representation at the initial level, and find evidence of mixed performance: On one hand, representation was associated with an increase in the initial allowance rate of 1.2% in 2014 (declining from 3.9% in 2010). On the other hand, represented cases were more likely to be associated with adverse case outcomes, like denial for insufficient evidence, a surprising outcome for a represented case.

What role could CRs play in the reconsideration process? How would this differ from their current role in reconsideration?

Ideally, their role should be to add value by increasing completeness and quality of a case. This should be their role now. However, because they are currently compensated only if they win, and only if processing time is long enough to generate sufficient back pay, the current fee structure dis-incentivizes representatives from doing anything at recon that might result in a quick allowance. If the claimant has a reasonable chance of allowance, the CR always earns more compensation if the case proceeds to the hearing level (because of the accrual of back pay over a longer processing time).

Based on your knowledge of other similar processes, to what extent do the roles played by attorneys and other representatives differ during the initial application phase verses the appeal phase? Are there missed opportunities for attorneys or other representatives to improve the completeness or quality of initial applications?

There are almost certainly missed opportunities. As noted above, HMS (2016) present evidence that in recent years, initial applications with representation are in fact less complete and lower quality than applications without representation--they are associated with longer processing times at both the field office and the DDS, and they are more likely to be denied for "insufficient evidence" or "failure/refusal of medical exam." These are perverse outcomes that suggest the current fee structure may be incentivizing lack of effort by some CRs early in the process.

What does current research say about the role and effect of CRs in the determination process? What does current research say about the role and effect of attorneys in other similar settings?

As noted above, HMS show that representation has a small effect on the probability of allowance at the initial level, although this effect size has declined in recent years. More worrisome, representation is increasingly associated with adverse outcomes—longer processing times, a 28% increase in the rate of denial for "insufficient evidence" in 2014 (up from a 5% increase in 2010), and an 11% increase in the rate of denial for failure/refusal of medical exam in 2014 (up from 3% in 2012). In current research, we are testing the hypothesis that the reduction in the hearing allowance rate since 2011 has caused for-profit CRs to expand into "new markets" by engaging with claimants at the initial level.

What research or datasets would help us better understand these issues?

In my current research, we are using SSA's administrative data, but it has been exceptionally difficult to obtain variables that correctly code the type of representative, the type of fee agreement, or the amount paid to the attorney.

Topic 3: Designing an Intervention

Under the current payment rules, SSA generally awards payments to CRs in the amount of 25 percent of the claimants' awarded back benefits, up to a $6,000 limit. These rules create an incentive for CRs to work with beneficiaries later in the adjudication process. SSA has proposed offering CRs an actuarially fair payment for awards made at the reconsideration level to encourage CRs to be involved earlier in the process. Allowed applicants would still pay the representative 25 percent of their back benefits, and SSA would make up the difference.

How large a change, or what kind of change, do you think would be needed to increase representation at the reconsideration level?

As SSA recognizes, success depends on the actuarial amount. By my calculations, over 50% of hearing cases result in the maximum CR payment of $6,000. Here's why:

Recon cases are processed far more quickly than hearing cases. According to Autor et al., 2016, the median processing time for recon decisions is 8.0 months from initial filing; the 90th percentile processing time for recon decisions is 13.8 months. By comparison, the median time to an ALJ decision is 28.8 months from initial filing, and the 90th percentile is 63.9 months. This represents more than a 3-fold difference in the amount of available backpay at the median, and a more than 4-fold difference at the 90th percentile of processing time. The current incentives work as follows: Suppose the person with the median recon processing time received 8 months of backpay (i.e., their onset date was exactly 5 months

*prior to filing, so they've satisfied the waiting period at the time they file). If their benefit payment was the average benefit amount, approximately $1,000 per month, then the payment owed the rep is $2,000 (0.25*8*$1,000), whereas the median hearing applicant generates a capped, $6,000 payment. If the median recon applicant received only 3 months of backpay (i.e., they hadn't satisfied the waiting period), then the CR receives only $750 for the recon allowance but $5,950 for an ALJ allowance.*

These figures tell us that for at least half the applicants, an actuarial value of $2,000 is not be enough to induce CR's to actually try to win cases; they'll certainly sign up for recon cases since they face less risk if they happen to get a quick recon win, but they won't necessarily put efforts into winning cases any earlier as long as letting the case proceed to hearing results in a better expected payoff. The right actuarial value might be closer to $3,000 (50%$6,000) or even higher. This could be modeled using SSA's data.*

How would you expect the proposed intervention to affect which cases CRs seek out or accept?

If the actuarially fair payment is higher than the current expected value of a recon case, that will be enough to induce CRs to take on recon cases.

How would you expect the proposed intervention to affect how CRs work with an applicant once they have accepted a particular case?

If the actuarially fair payment is set equivalent to or greater than the expected hearing level payment, then the incentives are aligned for the CR to not only take the case, but to try to win the case.

Is there an ideal rate of representation at the reconsideration level that SSA should aim to achieve?

Are there other changes to the CR payment structure or other regulations that SSA should consider including as part of the demonstration?

Under the demonstration, SSA will make up the difference between the actuarial payment and 25% of backpay. As explained above, 50% of recon cases are decided in less than 8 months. After deducting 5 months for the waiting period, 25% of backpay could amount to just a few hundred dollars. This mean SSA's share could be rather large, driving up program costs. What about moving away from a backpay basis, and instead compensating representatives for an actuarially fair amount that is paid monthly from the applicants benefit payment?

Are there models from other international or domestic benefit programs that might inform the demonstration?

How would earlier CR involvement affect the current differences between the DDS and ALJ processes and policies?

I wouldn't look to CRs to solve that problem. The policy compliance initiative at the ALJ level has revealed that a much larger issue has been inconsistency across decision-makers in how they evaluate cases. [Other research] has shown that there is a substantial amount of variation in decision outcomes across DDS examiners within the same office for the same type of case—better performance by CRs might help, but wouldn't be enough to address this magnitude of inconsistency.

How might these changes to CR payments or policies affect current award rates?

Probably no effect on award rates, just earlier decisions in some cases. One thing to note is that vocational experts play a prominent role at the hearing level, but not the initial/recon levels—the word on the street is that the opinion of the voc expert drives the case outcome at the hearing. If that's the case, then there might be no systematic increase in decision time, but higher program costs for SSA (due to making up the difference between 25% of backpay and the actuarial payment).

What other effects might the proposed intervention have? For example, what might the effect be on appeal rates, program costs, or on other factors?

Lower processing costs with fewer cases proceeding to appeal, less human capital decay among applicants who get a quicker, higher-quality decision.

How might these changes to CR payments or policies change the process for other actors (e.g. DDP examiners, field office staff, applicants)?

Topic 4: How Should SSA Implement the Intervention?

How might SSA implement a change to the CR payment? What steps would SSA need to take to make this change?

What agencies, organizations, etc. should SSA consider partnering with for the study?

How could SSA communicate changes in the payment process to CRs? To applicants? To potential CRs or future applicants?

Currently, CRs can either enter into fee agreements with their clients and SSA before a favorable decision is made, or petition for a fee after the case has ended.

Would the proposed intervention affect the process for paying CRs? If so, how could SSA adapt current processes?

I suggest looking at a payment scheme whereby the payment is made not out of the backpay (which hinges all costs on processing times), but out of monthly benefit payments.

What impact does the proposed intervention have on other parts of the determination and appeals processes?

Should SSA consider measures to mitigate these impacts?

Would the proposed intervention have unintended effects on particular groups of applicants?

It is worth recognizing that there are two broad types of CRs—those who operate under a for-profit business model, and those who operate on a non-profit basis. At the risk of overgeneralizing, the non-profit CRs care more about helping claimants (while covering expenses), while the for-profit firms care about making profits. For both types of CRs, this demonstration will be a windfall; without changing their effort level, CRs will now get the actuarial payment for a recon win instead of $750-$2,000. This will encourage them to sign up for recon cases, but not necessarily try to win them unless the actuarial payment is greater than the expected hearing payment. Among the large, for-profit firms, I would expect to see a spike in advertising as these firms compete to attract initial claimants, but no improvement in case outcomes at the initial or recon level, unless they are explicitly incentivized to win earlier. Although the non-profit CRs will also benefit, I would expect less concerted recruitment of potential applicants to try to capture the windfall, and more focus on passing some of the windfall on to claimants in the form of additional services and effort.

Should SSA consider measures to mitigate these impacts?

I'm concerned about the behavioral response of the large, for-profit CR firms. As appellate award rates have declined, they've utilized widespread advertising in local markets to try to capture claimants at the initial level. That apparatus is already in place. I don't see anything in the proposed demonstration that will guarantee the for-profit CR firms will put greater effort into recon cases in order to pass on some of the recon windfall to claimants.

What implementation challenges might occur and how could SSA address them? What barriers might SSA encounter in changing payments for CRs?

Topic 5: Evaluation Design and Implementation

How could SSA could feasibly test this intervention? Previous changes to the determination processes have been investigated by choosing a region or set of states to pilot a new policy, while other SSA demonstrations have randomly assigned individual volunteers to different treatment conditions.

To answer these questions, it is necessary to understand how CRs market their services to potential clients. It may be desirable to limit the demonstration to non-profit CRs in order to prevent the big firms from using their marketing apparatus to try to capture the recon windfall. This would reduce external validity, but would also prevent the demonstration dollars from being captured. An even better option would be to set the actuarial payment for a recon win above the expected hearing payment to create an explicit incentive for all CRs, even the big firms, to win the case earlier.

If random assignment is used, should it be individual or site level? How would random assignment be carried out?

If individual recruitment of applicants would be required, how could applicants be identified and recruited?

What are the implications for the choice of design on both internal and external validity?

What specific variations would be the most informative to test as study arms?

Which outcomes are most important to measure?

Case completeness at filing (can be measured using part of the QDD score), processing time, adverse case outcomes like denials for insufficient evidence or failure to appear, and allowance rates.

What are meaningful effect sizes for the key outcomes?

How much time is necessary to produce meaningful results?

Should subgroups be targeted? If so, what are the appropriate subgroups?

How many individuals must be included in the study? What research would be helpful in determining target sample sizes?

Should the demonstration be national or would more limited geographic representation be sufficient?

Geographic would be sufficient, but it is worth noting that the big attorney firms have a national reach.

What data collection would be necessary to support the evaluation?

Which administrative data sources can be leveraged and what are their advantages?

Will survey data be needed?

Topic 6: Concluding Comments

Are there other professionals with whom we should consult?

Are there any key topics not covered that you think are important to discuss?

Do you have any other comments?

Social Security Administration
Claimant Representative Demonstration TEP
Member Discussion Guide

Topic 1: The Current Determination and Appeals Processes and the Role of Claimant Representatives

The discussion will begin with a presentation on the SSA determination and appeals processes, and the role of CRs. We will focus on the mechanics of processes, the percent of applicants who take each possible path to an ultimate award or denial, and the prevalence and role of claimant representatives. Background information on these topics can be found in the attached documents.

The panel will discuss reactions to the material and offer reflections based on their own experience and/or research. Based on your review of the materials, experience and/or research, do you have any general comments on the current determination and appeals process?

Topic 2: Identifying the Problem

SSA has identified the relatively low prevalence of claimant representatives at the reconsideration stage as one reason that applications that are ultimately allowed at the ALJ level are not allowed sooner. What role do CRs play in the reconsideration process? How does their role there differ from their role at the ALJ level?

I think, at the reconsideration stage, often the issues are more clinical ones than legal ones. People don't have solid medical documentation—especially those who are homeless and/or who have serious mental illness. Being able to do additional clinical development at this stage can make a significant difference. At the hearing level, often more technical, legal issues arise.

What role could CRs play in the reconsideration process? How would this differ from their current role in reconsideration?

I often do representation at the reconsideration stage for a number of reasons—serving people with mental illness, often their initial claims are poorly done and may not mention all their illnesses. Catching them at reconsideration can help a lot. I think, at the hearing, legal representation is generally more necessary.

Based on your knowledge of other similar processes, to what extent do the roles played by attorneys and other representatives differ during the initial application phase verses the appeal phase? Are there missed opportunities for attorneys or other representatives to improve the completeness or quality of initial applications?

> *At the initial phase, for anyone who has significant cognitive or processing issues, more assistance is needed to complete the forms accurately and ensure that all medical problems are listed. People with mental illness, the population I serve, often either deny their illness or don't understand it as an illness. In addition, stigma creates resistance regarding mentioning their illness. All of these can be addressed with sensitive, experienced interviewing. I once trained SSA FO staff in recognizing mental illness. I think more training such as this could be helpful.*

What does current research say about the role and effect of CRs in the determination process? What does current research say about the role and effect of attorneys in other similar settings?

> *[I am not a researcher.] But I believe research unveils the complexity of the SSA disability determination process and the need for representation, partly to translate the process into layperson's language and to understand and ensure the accuracy of answers to questions that are asked. Without such representation, people often make mistakes. At the initial and reconsideration stages, I don't think attorneys are essential, but representation is*

What research or datasets would help us better understand these issues?

> *Datasets that distinguish claims and their rates of approval by diagnosis(es) would be useful to determine more fully what happens with claims. I would especially focus on those with mental illness, developmental disability, head trauma.*

Topic 3: Designing an Intervention

Under the current payment rules, SSA generally awards payments to CRs in the amount of 25 percent of the claimants' awarded back benefits, up to a $6,000 limit. These rules create an incentive for CRs to work with beneficiaries later in the adjudication process. SSA has proposed offering CRs an actuarially fair payment for awards made at the reconsideration level to encourage CRs to be involved earlier in the process. Allowed applicants would still pay the representative 25 percent of their back benefits, and SSA would make up the difference.

How large a change, or what kind of change, do you think would be needed to increase representation at the reconsideration level?

> *I believe the introduction to this topic is accurate, i.e., there is no fiscal incentive for paid representatives to do so earlier in the adjudication process. Another issue is that some representatives don't do a very good job representing, frankly, and may not even meet with an individual prior to the hearing. A random survey of paid representatives would be a useful way to elicit more information on the changes needed at recon.*

How would you expect the proposed intervention to affect which cases CRs seek out or accept?

> *Currently, some, though not all, representatives only accept claims that they're significantly confident they will win. This leaves out individuals who need additional clinical development. It could be useful to identify claims (if this is possible to do categorically) that have poor records, lack of submission of records, etc. to ensure that all relevant medical information is available and to partner with clinical settings to do evaluations prior to the need for a CE. In this way more claims might be accepted for representation earlier on.*

How would you expect the proposed intervention to affect how CRs work with an applicant once they have accepted a particular case?

> *Some paid CRs do a very fine job representing already; some don't. In several instances, representatives have staff who are essentially evaluating the claims, collecting records, etc., and these don't receive careful review until the hearing date. This, to me, is not solid representation. Perhaps paying more would help. What would also help is figuring out how to assess if representation is adequate or not.*

Is there an ideal rate of representation at the reconsideration level that SSA should aim to achieve?

> *At reconsideration, I would consider a 60-75% rate of representation ideal, especially for certain claims that involve cognitive issues. As the waterfall table shows, few people appeal. More could be done to encourage appealing at this earlier level.*

Are there other changes to the CR payment structure or other regulations that SSA should consider including as part of the demonstration?

> *It might be interesting to pilot a case rate, without the calculation of back benefits, etc. I'm not sure of the amount, but it would have to be adequate for the work that's done. This could then discourage not representing someone until a later phase in the process.*

Are there models from other international or domestic benefit programs that might inform the demonstration?

> *I don't know about this.*

How would earlier CR involvement affect the current differences between the DDS and ALJ processes and policies?

> *Having a representative at the earlier stage would enable the DDS to have more effective communication with the claimant/rep, share information re: records still needed, and perhaps provide more accurate determinations earlier on. Many issues arise: Providers not sending records; DDS's adjudicators not having a full and accurate picture of the claimant's impairments; adjudicators being too quick to deny for failure to cooperate; CE providers not spending enough time with the claimant, etc. Having a representative could help address some of these.*

TEP Member #7

How might these changes to CR payments or policies affect current award rates?

Hard to predict exactly though, in my experience, having representation at the initial or reconsideration stages frequently eliminates the need for CEs and can significantly increase award rates, especially for claimants who have difficulty following the process and providing information.

What other effects might the proposed intervention have? For example, what might the effect be on appeal rates, program costs, or on other factors?

Solid representation earlier on, I believe, could reduce the cost for CEs, for repeat applications (another data set that would be interesting to review), repeat costs for medical records, and the cost for hearings. Though the allowance rates might increase at earlier stages, the cost savings for continuing the process as it is now could be significant.

How might these changes to CR payments or policies change the process for other actors (e.g. DDP examiners, field office staff, applicants)?

Clearly, for applicants, approval at an earlier stage can be, literally, life-saving. For FO staff, additional training on completing applications in the sense of identifying illnesses that applicants are not forthcoming about could be very helpful. For examiners, better developed claims would mean quicker and more accurate determinations. One big problem is that, in many instances, SSA does not provide phone numbers for FO staff to applicants/ representatives. This is a big obstacle. Using the 1-800 number just doesn't work.

Topic 4: How Should SSA Implement the Intervention?

How might SSA implement a change to the CR payment? What steps would SSA need to take to make this change?

Consolidate the forms to 1-2 to make it easier to file for payment. Ensure that the SSA systems are in sync so that communication is facilitated. Make sure that all the representative forms are entered into the system.

What agencies, organizations, etc. should SSA consider partnering with for the study?

NOSSCR, SOAR, researches such as Mathematica who have involved in studies that consider SSA practices.

How could SSA communicate changes in the payment process to CRs? To applicants? To potential CRs or future applicants?

Include in on-line application link information about representation so that applicants would know about it. Consider notification of all registered CRs regarding changes. Utilize organizations such as NOSSCR to spread the word. Have at the FOs, for anyone who comes in to apply, notices about CRs and how to access one. Provide a list of competent CRs to applicants.

Currently, CRs can either enter into fee agreements with their clients and SSA before a favorable decision is made, or petition for a fee after the case has ended.

Would the proposed intervention affect the process for paying CRs? If so, how could SSA adapt current processes?

I'm not sure how these processes would be affected.

What impact does the proposed intervention have on other parts of the determination and appeals processes?

The most challenging part of applying for SSA disability benefits is all the technicalities, the steps that require follow-up, the communication only by mail (with people frequently moving), and the language that many applicants don't understand in the letter that are sent. Another challenge is the use of technology. Anything that shortens the process time and facilitates more rapid communication with applicants and CRs is useful to the whole process.

Should SSA consider measures to mitigate these impacts?

Not sure what this question is asking. The process simply takes too long for all the factors that affect an earlier favorable decision. I think FO staff need more extensive training in helping to complete applications. For subpopulation, e.g., people with mental illness, those with developmental disabilities, head trauma—particular accommodations are needed.

Would the proposed intervention have unintended effects on particular groups of applicants?

If applicants had solid, competent representation earlier on in the process, people with cognitive difficulties would have a much better chance. For applicants who are able to navigate the process, this is not as critical but representation is still needed.

Should SSA consider measures to mitigate these impacts?

I think SSA should look at the issues in all steps of the process, including representation, and how these can be mitigated. Clearly, having solid, competent representation as early as possible, facilitates more accurate decision making earlier on and saves funds expended on the ongoing process itself and uses them for benefits rather than the process. This is very important for applicants who are in desperate need of these benefits.

What implementation challenges might occur and how could SSA address them? What barriers might SSA encounter in changing payments for CRs?

Communication with current and potential future CRs is a challenge but not unsurmountable. The current proposal regarding payment seems challenging in terms of calculation for SSA. That's why I'm suggesting a case rate rather than the calculation formula being proposed.

Topic 5: Evaluation Design and Implementation

How could SSA could feasibly test this intervention? Previous changes to the determination processes have been investigated by choosing a region or set of states to pilot a new policy, while other SSA demonstrations have randomly assigned individual volunteers to different treatment conditions.

If possible, look at the data on SSA regions where representation seems the highest and utilize a random sample of states within those regions to pilot the policy.

If random assignment is used, should it be individual or site level? How would random assignment be carried out?

SSA could consider piloting this in the states that just began implementing reconsideration. That would give SSA 10 states and also help SSA to determine other issues that arise in the new implementation of the reconsideration phase. It would be state level, perhaps selecting representative FOs, e.g., rural, urban, to pilot the study.

If individual recruitment of applicants would be required, how could applicants be identified and recruited?

SSA could recruit applicants by categories of those who are difficult to serve well, e.g., youth aging out of foster care, people who are homeless, those with histories of head injury/trauma, people with diagnoses of serious mental illness. SSA could partner with medical providers who could help identify such applicants.

What are the implications for the choice of design on both internal and external validity?

Clearly, researchers (I am not) are needed to help with the design for internal validity. It seems to me that external validity could be generalized with fair accuracy if SSA selects applicants who historically aren't successful with applications, especially without representation.

What specific variations would be the most informative to test as study arms?

I am not sure. This is a better question for the researchers than I.

Which outcomes are most important to measure?

Changes in rates of approval at the reconsideration level; cost assessment compared to those who have to access hearings or appeals beyond hearings; time it takes to process claims once representation is provided; geographic differences and why; barriers to obtaining representation at reconsideration level.

What are meaningful effect sizes for the key outcomes?

From what I understand, an effect size closer to 0.8 is important to assess the outcomes.

How much time is necessary to produce meaningful results?

24-36 months at least.

Should subgroups be targeted? If so, what are the appropriate subgroups?

Subgroups are an effective way to pilot and should include those groups in which particularly low approval rates occur as compared to the ALJ hearing outcomes rates. If SSA can access such data, these would be important subgroups to target. I would suggest the populations I mentioned above.

How many individuals must be included in the study? What research would be helpful in determining target sample sizes?

The waterfall chart states that 84% of reconsiderations are denied, roughly 323,255 people. Importantly, only about 58% of those denied even appeal at initial denial. So, it seems the sample size would need to address not only representation at reconsideration but also addressing the low rate of appeal to reconsideration from initial denial. Research articles suggest how to determine sample size. Much of this would depend on whether or not subpopulations/target populations are part of the consideration or applicants in general are used.

Should the demonstration be national or would more limited geographic representation be sufficient?

More limited geographic representation is sufficient if the areas selected have some comparability in outcomes currently. The difference in approval rates at all levels across the country pose challenges, it seems to me, re: comparability.

What data collection would be necessary to support the evaluation?

Rates of representation at reconsideration, type of representation (paid private, other funded reps, unpaid reps), processing time with representation at reconsideration as opposed to those with lack of representation, approval rates (same comparison), cost assessment.

Which administrative data sources can be leveraged and what are their advantages?

I'm not sure if this is what is being asked but: internet/FO reconsideration appeals filed w/rep and w/out rep; consideration of number of pending claims waiting for hearing before and after pilot in those areas piloted; processing time for claims; diagnostic links re: types of medical issues; # of concurrent claims vs. Title II only;

Will survey data be needed?

Not that I can see, but I'm not sure.

Topic 6: Concluding Comments

Are there other professionals with whom we should consult?

Non-attorney representatives; FO line staff; state agencies that provide public assistance and are requiring people to apply to continue to receive state benefits;

Are there any key topics not covered that you think are important to discuss?

The question throughout is quality of representation and how to assess/determine it. As I mentioned, I have worked with passionate, wonderful representatives and some that are operating a representative mill of sorts, representing more applicants than can be done effectively given the resources and who, therefore, do an inadequate job. Is there a way to assess this?

Do you have any other comments?

I think representation is critically important. This is a complex, technical process. I'm wondering about why this would be limited to DI claimants rather than also including SSI applicants, especially given many concurrent applications. Thank you!