Social Security Practice: Present and Future

2:00 p.m.-3:30 p.m.

Presented By

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Wednesday, August 19, 2015
Social Security Practice: Present and Future

Stacy Cloyd, National Organization of Social Security Claimants’ Representatives
Eighth Circuit Social Security Disability Conference
August 19, 2015
Introduction

• What is NOSSCR?
  • Sounds great--How can I join?
• Who am I?

• What am I talking about?
  • Policy: what’s going on in Washington
  • Practice: changes that affect individual cases
  • Pictures: graphs of national and state (AR, IA, MN, MO, ND, NE, SD) trends
Policy
Trust fund rebalancing

• 2 trust funds: OAS and DI (SSI does not have a trust fund)
• Combined, they have sufficient funds for full benefits until 2034
• DI trust fund facing shortfall in last quarter of 2016
• Options:
  • Clean reallocation: Change distributions of taxes (currently, 5.3% to OAS and 0.9% to DI) and/or increase total tax rate—has happened 11 times in the past
    • But House rules now create point of order against legislation that “reduces the actuarial balance by at least .01 percent of the present value of future taxable payroll of” the OAS trust fund, unless it also extends the life span of the combined trust funds
  • Cut DI benefits by about 20%
  • Other—some good and some bad (interfund borrowing, change cap on taxed income, change eligibility rules, merge trust funds, etc.)
Trust fund rebalancing

Major causes of shortfall in DI Trust Fund:
- Population growth
- Baby Boomers in prime disability years
- Women worked and became insured
- Increased retirement age (6/15: 5.23% of disabled workers are 65)
- Increased income inequality

Demographics Explain Most of Growth in Social Security Disability Insurance Rolls

Recession Hammered Disability Insurance Income, But Affected Spending Only Modestly

Income and spending in billions of dollars

2008 projection | Actual

- Income
- Spending

Note: Disability insurance income excludes payroll taxes, income taxes on benefits, and interest on trust fund; spending includes benefits, administrative expenses, and small transfer to Railroad Retirement.

Source: Social Security Administration
Legislative interest/antipathy

• Nothing is moving quickly but may show up in reallocation package or as pay-fors
• Solvency: One Social Security Act (H.R. 3150), several that would raise/end the cap on taxable earnings, one that would raise full retirement age to 70. None likely to pass.
• Expansion: CPI-E, scrap the cap with PIA increases, Huntington’s, end GPO/WEP (Brown)
• The ghost of Coburn: introduced S.3003 in 2015 and some ideas may return: includes government reps; changes to EAJA, grids, adverse evidence and treating physician rules; review of “outlier” ALJs; closing the record; etc.
• Small savers: CUFF, SAIL, UI/DI, ordering SSA to revise grids
• Hearings: Predominantly House Ways and Means (chair: Paul Ryan, RM: Sander Levin) and Senate Finance (Hatch/Wyden). Topics included work incentives, work-related overpayments, and trust fund solvency.
Fiscal Year 2015 budget

• “CRomnibus”: Continuing Resolution for Dept. of Homeland Security, omnibus for everything else.
• Total SSA administrative budget is a little higher than FY14, but much of the increase goes to research and demonstrations and OIG
• Doesn’t make up for past years
• But it could have been worse
Fiscal Year 2016 budget

- President’s budget request released February 2. Initiatives include:
  - Change in OAS/DI tax rates for 5 years; prolongs solvency of DI trust fund to 2033
  - Increase in LAE
  - Dedicated CDR funding
  - Hiring more ALJS and forming working group to study/change hiring
  - UI/DI offset
- SSA provided estimates and other materials to Congressional appropriators the same day
- Budgeting is often unpredictable and messy
- An increase in SSA funding is unlikely
  - Labor-HHS allotment is not increasing, and commitment to more NIH $.
  - Steady funding will lead to a decrease in services as fixed costs are expected to increase by about $350 million next year.
## Administrative Budget FY08-15

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<tbody>
<tr>
<td><strong>Limitation on Administrative Expenses (LAE)</strong></td>
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<td></td>
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<td>12,513</td>
<td>11,818</td>
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<td>Fiscal Year</td>
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<td>10,454</td>
<td>11,447</td>
<td>11,424</td>
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<td>11,697</td>
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<td>Office of the Inspector General</td>
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<td>102</td>
<td>103</td>
<td>110</td>
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Program integrity

- A topic of much discussion in Congress, media, and at SSA
- Continuing Disability Reviews
  - 1 million backlog, but more $ for CDRs in FY15—consider issues of benefits pending
- Overpayments ≠ fraud!
  - Hearing, forthcoming GAO report about overpayments caused by delays in processing earnings reports
  - OIG report: 44.5% of sample overpaid at some point in decade. But largely not fraud, about 1/4 are really benefits pending CDR appeal, about half is recovered and the rest waived or pending repayment.
- October 1, 2014 – March 31, 2015 [http://oig.ssa.gov/sites/default/files/SARC%20SPRING%20%20F%20FINAL.pdf](http://oig.ssa.gov/sites/default/files/SARC%20SPRING%20%20F%20FINAL.pdf)
  - 65,927 allegations received by OIG
  - 4067 investigations opened and 3892 closed
  - 286 arrests, 620 convictions
- Cooperative Disability Units
  - Currently 28 covering 24 states + PR; Kansas City and St. Louis only ones in 8th Circuit.
- Civil monetary penalties—rare but possible. 141 civil actions/CMPs in OIG report.
Colvin nomination stalled

She is still the Acting Commissioner. Glenn Sklar just moved to OGC and Terrie Gruber is replacing him at ODAR.
CRFB and BPC reports

• Packages of proposals for Social Security reform
  • CRFB: Former Reps. Jim McCrery (R-LA) and Earl Pomeroy (D-ND), SSDI only
  • BPC: Goal was to release it this summer but consensus is hard to find

• Likely topics
  • Cost-cutting more than revenue-raising
  • Work incentives

• May receive significant attention from members of Congress, media
Institute of Medicine reports

- Released in April 2015
  - Symptom validity and psychometric testing (discussed in Coburn bill)
    - "psychological tests, including validity tests, are valuable and may increase the accuracy and consistency of SSA’s disability determinations...However, validity tests should only be given in the context of broader psychological testing and should only be used to interpret information from the testing in question. The committee stresses that validity tests do not provide information about whether or not an individual is disabled."

- Ongoing projects where consensus reports will likely be released in 2015
  - Two responses to 2010 GAO report about child SSI
    - Speech/language disorders; mental impairments, especially autism & ADHD
    - Trends in diagnosis and prevalence in general and SSI populations
    - Current standards for diagnosis and treatment

- Project in the beginning phases
  - Capability determination—How can you tell who needs a payee?

- Standing Committee of Medical Experts to Assist Security on Disability Issues
  - On retainer for issues that require quicker, shorter responses
  - One possibility is study of effects of trauma, beginning in March
Practice

😊 You would make a good lawyer. 😊
39 44 38 25 1 22
New Rules about Evidence

• Old rule
  • Disclose material facts and “provide evidence, without redaction, showing how your impairments affects your functioning during the time you say that you are disabled.” 20 CFR 404.1512 and 416.912.

• Notice of Proposed Rulemaking February 20, 2014
  • “Inform us about or submit all evidence known to you that relates to your disability claim...in its entirety”

• NOSSCR comments April 21, 2014
  • Proposal could conflict with state ethics rules on zealous representation
  • DDSs and ALJs could have to decide what evidence was “known” to a claimant or rep and if it’s “related”
  • Longer files could burden ALJs and other decisionmakers.
  • How much must representative do to help claimant obtain evidence? Records are often expensive.

• New rules very similar to proposed rules. Went into effect April 20, 2015.
  • NOSSCR planning online survey about experience with new rules.
Video hearings

- HA-55
  - Currently no option to upload through ERE
  - Considerations when claimant moves or when claimant gets rep after hearing acknowledgment sent
- FY 2015 to 5/29/15 had 505,691 hearing requests and 353,866 VH opt-outs, though many were for older requests.
  - Looking at stats with 2 month lag, 30-40% are opting out.
  - Blanket refusals? Conscientious claimants signing everything?
- ACUS report and recommendations on best practices
  - NOSSCR comments on right to opt out of video hearings
## Favorable Decision Rates at NHCs

<table>
<thead>
<tr>
<th>Office</th>
<th>FY 2013</th>
<th>FY 2014</th>
<th>FY 2015 to 2/27/15</th>
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<tbody>
<tr>
<td>Not NHC</td>
<td>47%</td>
<td>44%</td>
<td>44%</td>
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<tr>
<td>NHC Albuquerque</td>
<td>44%</td>
<td>36%</td>
<td>34%</td>
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<tr>
<td>NHC Baltimore</td>
<td>44%</td>
<td>42%</td>
<td>45%</td>
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<tr>
<td>NHC Chicago</td>
<td>33%</td>
<td>28%</td>
<td>26%</td>
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<tr>
<td>NHC Falls Church</td>
<td>41%</td>
<td>37%</td>
<td>35%</td>
</tr>
<tr>
<td>NHC St. Louis</td>
<td>40%</td>
<td>42%</td>
<td>38%</td>
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Source:
Some dismissals reversed

• 19,000 claimants who notified SSA of new address, had notice of hearing sent to an old address, and did not attend hearing
• About 90% were unrepresented, 49% SSI only, about 60% had a mental impairment
• Notices were supposed to go out in November 2014
• Claimants are allowed a new hearing
  • But may have won on a new claim, died, moved, aged, etc.
Windsor and Obergefell

- http://policy.ssa.gov/poms.nsf/lnx/0200210000
- State of domicile vs. celebration should no longer matter
- Policies are still being written
- Date marriages were recognized may differ from when they were performed: see GN 00210.003.
  - Example: POMS table says Iowa began recognizing out of state marriages 4/30/09 but began celebrating them 4/20/09
- SSI overpayments? Contact Justice in Aging (NSCLC) or GLAD
Online Dos and Don’ts

• Online submission of documents via iAppeals began 3/26/15
  • 1696 signatures are required, so reps must print, sign, scan, & upload
  • Just for medical denials at reconsideration and hearing request stages.
  • Not processed until Disability Report—Appeals also completed.

• Tips for Appeals Council
  • Don’t use your hearing office barcode! Request extension of time instead.
Pictures
Decreases

2008-14: 4 points decrease for initial, 3 for reconsideration, and 18 for hearings

Initial application peak: FY11

Sources: waterfall charts

Sources: 2014 waterfall chart, 2008-13
Initial Approval Rates: MO

Initial Approval Rates: MN

Initial Approval Rates: IA

Source data: http://catalog.data.gov/dataset/ssa-state-agency-workload-data

SSDI   SSI   Concurrent   Child SSI
Initial Approval Rates: AR

Increases

- Long waits for processing earnings reports, requests for waiver/recons on overpayments, etc.
- Over one million hearing requests are currently pending
- National average processing time (as of 6/26/15) for hearings: 498 days (up 56 days in 6 months)
- National average processing times (average for year unless noted):

<table>
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<tr>
<th>Year</th>
<th>Days</th>
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<td>2008</td>
<td>509 (September only)</td>
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<tr>
<td>2009</td>
<td>491</td>
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<tr>
<td>2010</td>
<td>426</td>
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<td>2012</td>
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<td>396 (September only)</td>
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<td>2014</td>
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<table>
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<tr>
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<th>Cases Pending</th>
<th>Processing Time FY15 YTD</th>
<th>June ‘15 Processing Time</th>
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<tr>
<td>COLUMBIA MO</td>
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<td>FARGO</td>
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<td>WEST DES MOINES</td>
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YTD/pending source: http://www.ssa.gov/appeals/DataSets/02_HO_Workload_Data.html (as of 6/26/15)
DDS Backlogs

Source data: http://catalog.data.gov/dataset/ssa-state-agency-workload-data
Questions?

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