



# Drivers of SSDI Growth

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Our Generation is a membership-based nonprofit, nonpartisan advocacy organization founded in 2009 to research, educate and promote long-term free market solutions to today's public policy concerns.

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## Summary

Social Security Disability Insurance (SSDI), a federal entitlement program run by the Social Security Administration (SSA) and signed into law in 1956, is growing far too fast. Despite its humble beginnings as an insurance plan for long-tenured workers with the misfortune of becoming disabled before retirement, SSDI has ballooned into a \$135 billion behemoth threatening to collapse under its own weight, and to take a bite out of Medicare on the way down. Left unchecked, decades of loose standards and poor enforcement may soon culminate in thousands – if not millions – of deserving recipients being deprived their rightful benefits.

Compounding the crisis is the fact that the process of approving SSDI applicants, once run by SSA, has been foisted upon a system of appeals run by an overworked and under-regulated network of Administrative Law Judges (ALJs). In this system, a growing amount of applicants and their well-practiced attorneys have come to treat initial approval or denial of benefits as merely the first stop on the way to an appeal, where the odds of success are higher. Worse, these lawyers face badly orchestrated incentives that can cost taxpayers dearly.

How did things get so bad? While it is tempting to blame the aching knees and backs of an aging population, the truth is that American workers are healthier and fitter today than they were when SSDI was in better fiscal shape. SSDI has grown soft around the middle for three reasons: low standards, enticing benefits, and far too little control over its own screening process. This paper explores all three maladies and offers solutions to point the program in the right direction.

## Background

The Social Security Administration began to distribute monthly benefits to workers over the age of 65 in 1940. Sixteen years later, in 1956, Congress enacted Title II of the Social Security Act, and Social Security Disability Insurance (SSDI) was born.

The initial aim of the program was to create an insurance plan financed by able-bodied workers that could provide economic assistance to workers over the age of 50 whose injuries had left

them unable to work for “long-continued and indefinite” periods. <sup>1</sup> In short, SSDI was intended to protect workers near retirement until their Social Security benefits kicked in.

Today, a worker is eligible for full SSDI benefits if he or she is under the full retirement age (currently 66), has worked for 40 quarters (work credits), 20 of which have been earned in the 10 years prior to the disability (though workers below the age of 31 may become eligible with fewer than 40 work credits). Benefits, which include payments to a disabled worker’s dependents and access to Medicare coverage after a waiting period of 24 months, are indexed to inflation and based on each worker’s past monthly wages. In an effort to prioritize payments to the neediest workers, SSDI rules prohibit payments to workers capable of Substantial Gainful Activity (SGA), defined under current law as the ability to earn \$1,740 for blind workers and \$1,040 per month for non-blind workers. <sup>2</sup>

### Growing Pains

Due to population growth and an aging labor force, the raw number of SSDI beneficiaries was always expected to grow. However, SSDI has grown much faster than American demographics suggest it should. The number of disabled workers receiving SSDI benefits has multiplied more than six times since 1970, from 1.4 million to 8.9 million, and has doubled since 1995. Over that same period, annual inflation-adjusted SSDI benefit payments have risen more than 800 percent, climbing to an all-time high of \$135 billion in 2012. <sup>3</sup> In 1970, just 1.3 percent of adults between the ages of 20 and 64 were SSDI beneficiaries; today that number has risen to 4.6 percent. In 2010, SSDI payments were larger than interest payments on the national debt. <sup>4</sup>

Because SSDI is growing faster than the payroll tax revenues that fund it, the Congressional Budget Office predicts that the SSDI trust fund will be entirely depleted by 2016<sup>5</sup>. At that point, barring legislation to further fund SSDI, the program will be forced to begin paying smaller benefits, or Social Security’s Old-Age and Survivors Insurance (OASI) trust fund will be raided to cover the balance. SSDI benefits have already grown from 10 percent of Social Security benefits in 1970 to 18 percent today. <sup>6</sup> Left unchanged, SSDI could accelerate the depletion of OASI’s trust fund, which is projected to be exhausted in 2033.

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1. “The Social Security Definition of Disability.” Social Security Advisory Board. October 2003.

2. Morton, William R. “Social Security Disability Insurance (SSDI) Reform: An Overview of Proposals to Reduce the Growth in SSDI Rolls. Congressional Research Service. April 29, 2013.

3. “Annual Statistical Supplement to the Social Security Bulletin.” Social Security Administration. February, 2012.

4. Autor, David H. “The Unsustainable Rise of the Disability Rolls in the United States: Causes, Consequences, and Policy Options. NBER Working Paper No. 17697. December, 2011.

5. “The Social Security Disability Insurance Program.” Joyce Manchester. Testimony Before the Subcommittee on Social Security Committee on Ways and Means. March 14, 2013.

6. *The New York Times*. “Social Security’s Financial Health Worsens.” Robert Pear. April 23, 2012.

Further, because SSDI recipients receive Medicare coverage, disabled workers have come to receive a significant portion of Medicare payments. In 2012, Medicare part D made payments of \$80 billion to SSDI recipients, roughly 17 percent of Medicare expenditures.<sup>7</sup> By 2023, that total is expected to rise to \$130 billion. Like Social Security, Medicare is among the largest causes of America's national debt, and has financial concerns of its own. For example, its Hospital Insurance (Part A) trust fund is expected to be exhausted by 2024.<sup>8</sup> Clearly, more than the fiscal outlook of SSDI itself is at stake.

### **Drivers of Growth**

- **Demographics – a Convenient Red Herring**

Defenders of the status quo routinely argue that SSDI growth can be explained away almost entirely by demographics. An August 2012 report from the Center on Budget Policy Priorities argued that “changes in the workforce explain most of the growth in the disability rolls,” and a widely-circulated 2013 letter by the Consortium for Citizens with Disabilities stated, “Demographics explain nearly all growth in Social Security disability programs.” While it is true that the age structure of American workers has begun to tilt toward older workers in recent decades, the shift has not been large enough to explain the entirety of SSDI growth.

According to a 2009 study by economists Mark Duggan and Scott Imberman, just 15.5 percent of the increase in the number of male SSDI recipients between 1984 and 2003 can be attributed to an aging population, along with just 3.6 percent of the increase in female recipients.<sup>9</sup> In those 19 years, the number of SSDI recipients climbed 96 percent.<sup>8</sup> Additionally, there is no evidence that today's population of workers, despite its higher concentration of workers over 50, is any less healthy now than it was during times of a more even age distribution. To the contrary, Duggan Imberman found that the number of males aged 50-64 with “Any activity limitation” dropped from 25.44 percent in 1985 to 18.52 in 2002.

### **The Real Causes**

Today's SSDI functions largely as a fallback for workers without employable skills. As proof, economists David Autor and Mark Duggan offer the example of a 1996 law prohibiting SSDI benefits to recipients for whom drug and alcohol addiction was their primary affliction. 130,000

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7. Kennedy, Jae, et al. “One Program, Two Populations: A Comparison of Beneficiaries under age 65 and Retirees in Medicare.” Health Policy & Administration, Washington State University. 2009.

8. 2012 Annual Report of the Boards of Trustees of the Federal Hospital Insurance and Federal Supplementary Medical Insurance Trust Funds.

9. Duggan, Mark and Imberman, Scott A. “Why Are the Disability Rolls Skyrocketing? The Contribution of Population Characteristics, Economic Conditions, and Program Generosity.” Chapter in NBER book Health at Older Ages: The Causes and Consequences of Declining Disability among the Elderly. p. 337-379. January, 2009.

beneficiaries were removed from the SSDI rolls as a result of the law, and fully two-thirds of them managed to reapply and be approved for benefits under another ailment.<sup>10</sup>

How did it get this way?

- **Eligibility Rules**

SSDI eligibility rules have ebbed and flowed since 1950, but the unmistakable trend has been for a larger and larger subset of the working age population to fall under the legislative definition of disability. The most important such shift occurred in 1984 with the passage of the Disability Benefits Reform Act, under which workers could receive SSDI benefits if they had multiple medical conditions that together made up a disability, even if no particular condition were severe enough to justify benefits on its own. Conditions of mental pain and illness also qualified for consideration.<sup>2</sup> Since then, the number of SSDI beneficiaries with afflictions that must inherently be judged by subjectively, rather than by strict medical criteria, has exploded.

From 1986 to 2003, the number of beneficiaries with musculoskeletal (such as back pain) or mental conditions grew by 323 percent, and the share of SSDI worker awards for mental, psychoneurotic, & personality disorders has more than doubled since 1980. As a result, the share of SSDI beneficiaries with diseases like cancer or heart disease, which typically afflict older workers, has necessarily fallen, and the share exiting the program each year for retirement has dropped.

- **More Attractive Benefits**

Over time, due to SSDI's wage indexing system, rising health care costs, and slow wage growth for low income earners, SSDI benefits have become more appealing than their available alternatives. Adjusted for inflation, the average payment to SSDI beneficiaries has risen from approximately \$560 per month in 1960 to \$1,129 in March 2013, an increase of 98 percent. The federal minimum wage, conversely, has fallen in terms of real purchasing power over the same period.<sup>11</sup>

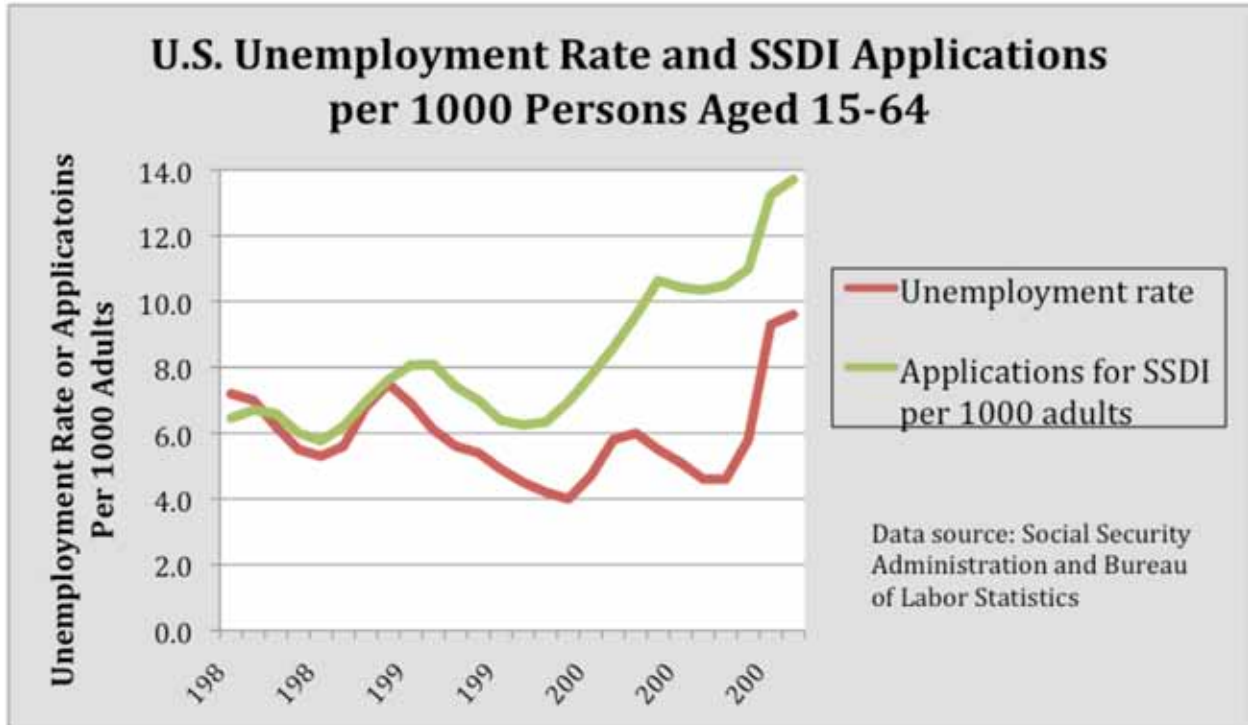
SSA's system for adjusting disability benefits to keep up with wage growth in the economy as a whole has allowed low-wage workers to earn a growing percentage of their former wages under SSDI. Rising health care costs have made Medicare coverage, which amounts to a compensation increase of 80 percent for the average SSDI beneficiary, have also made the program more appealing. Finally, because SSDI applications are positively correlated with the business cycle, economic downturns tend to cause spikes in enrollment. When unemployment rises, SSDI applications do the same (see chart). Perhaps worse, spikes in SSDI applications are highly

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<sup>10</sup>. Autor, David and Duggan, Mark. "The Growth in the Social Security Disability Rolls: a Fiscal Crisis Unfolding." NBER Working Paper 12436. August, 2006.

<sup>11</sup>. Elwell, Craig K. and Levine, Linda. "Inflation and the Real Minimum Wage: A Fact Sheet." Congressional Research Service. February 26, 2013.

correlated with the expiration of unemployment benefits, and unlike unemployment recipients, SSDI beneficiaries almost always leave the labor force for life.



- **Gumming up the Works**

Another contributor to SSDI growth has been the deterioration of SSA's applicant screening process. As the definition of disability has grown increasingly subjective, SSA has been forced to evaluate a vague and varied assortment of ailments. Along the way, SSA appears to be losing control of its own application process. The precise extent to which this problem has contributed to SSDI growth is difficult to nail down, but it is undoubtedly large.

When workers apply for disability, their determination process begins with state disability agencies called Disability Determination Services (DDC). If the applicant is denied, he or she may appeal the case to an Administrative Law Judge, where the odds of success are significantly higher. Historically, ALJ award rates range from 60 to 75 percent, whereas DDC award rates fluctuate between 31 and 43 percent.<sup>12</sup> Consequently, applicants have begun to appeal much more frequently. In 1986, just 54 percent of applicants denied at the initial state level took their cases to ALJs for appeal; today, roughly 85 percent do.<sup>13</sup>

12. "SSA Must Hold Itself Accountable for Continued Improvement in Decision-making." United States General Accounting Office. August, 1997.

13. Trib Total Media. "Disability appeals a \$1.4 billion business for lawyers." Adam Smeltz. August 11, 2012.

At the same time, the process of appealing a DDS decision has morphed from a medical procedure to determine an applicant's ability to work to an adversarial process in which professional representatives plead their clients' case. In the last few decades, the portion of appeal cases before an ALJ for which the applicant was represented by an attorney climbed from just 37 percent in 1977 to 81 percent in 2007. The fraction of cases for which applicants hired a medical expert more than quadrupled over the same time frame, from 4.2 percent to 17.6 percent, and the frequency with which a vocational expert was present rose from 38 percent to 69.8 percent. Applicants who hire an attorney are as much as three times more likely than their unrepresented counterparts to win an appeal case.

Autor and Duggan also point out that lawyers have a strong incentive to push cases to appeal: SSA awards attorneys 25 percent of the retroactive disability benefits earned by the client between the DDS decision and the ALJ's decision to overturn it. Unlike a court of law, SSA's appeals process allows for new evidence to be introduced at any level. As a result, many attorneys withhold evidence from initial hearings in order to garner a lengthier approval process and, therefore, a larger fee. In 2012, disability lawyers collected \$1.4 billion in fees from the federal government, up from \$500 million in 2006, and the number of attorneys registered to receive payments from SSA nearly doubled, from less than 10,000 to almost 20,000, between 2007 and 2010.<sup>14</sup>

The mushrooming appeals process not only poses a problem for taxpayers, who pay millions in fees to lawyers each year, but also to legitimately disabled applicants who must wait for their payments due to a bottlenecked appeals system. In a system for which the average wait time for an initial hearing is 117.5 days, streamlining the appeals process is more important than ever.<sup>15</sup> Long delays reduce the odds that applicants who are eventually denied will ever re-enter the workforce, since the success of their case depends on their inability to work in the interim.

The influx of appeals seems to be taking its toll. In April, 2013, the Association of Administrative Law Judges filed a lawsuit against SSA in an effort to get ALJs' caseloads reduced. In a press release, the Association stated that its judges have become overworked to the point that "many administrative law judges find themselves pressured to grant more claims than they otherwise would, because a decision awarding benefits is less complex and time-consuming than a decision which denies benefits."<sup>16</sup>

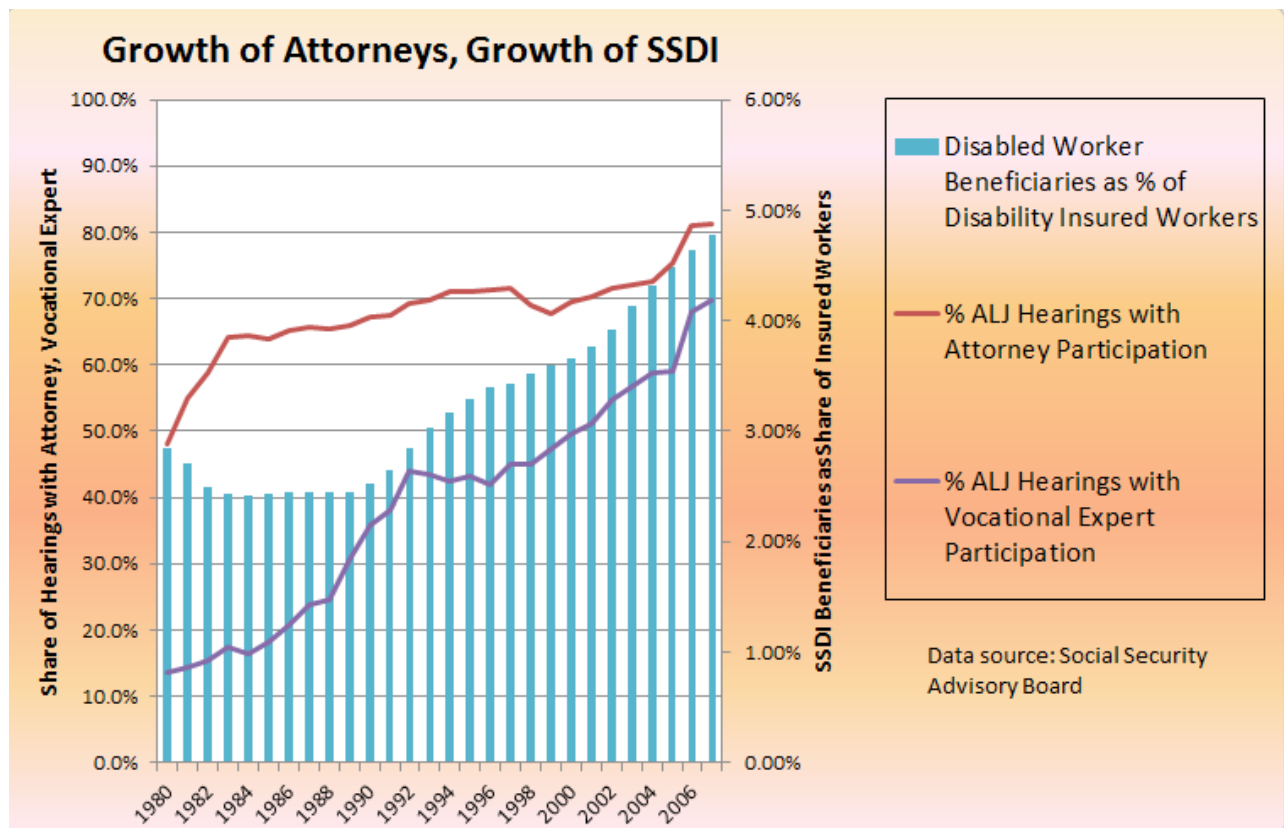
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14. "Filing for Social Security Disability Benefits: What Impact Does Professional Representation Have on the Process at the Initial Application Level?" Social Security Advisory Board. September, 2012.

15. Data download for charts included in "Aspects of Disability Decision Making." Social Security Advisory Board. July, 2012.

16. News Release. Administration of Administrative Law Judges. April 19, 2013.





### Solutions

Solutions to SSDI's problems of sagging eligibility requirements and rising relative benefit payments are legion and run the gamut of the American political spectrum. They include altering incentives for disabled employees to work, creating disincentives for employers to dismiss disabled workers, forcing employers to pay for private disability insurance, and returning to the stricter eligibility requirements of the pre-1984 era, among others. However, any reforms to SSDI that make the receipt of benefits more difficult is certain to encounter political roadblocks.

Perhaps the best, most common-sense place to begin SSDI reform involves untangling the program's outdated application and appeal system. First, SSA should require that a government representative be present at ALJ hearings.<sup>17</sup> This solution is particularly attractive for its potential to create uniformity across ALJs. For instance, it is difficult to imagine Judge David B. Daugherty approving 729 consecutive appeals, as he did during the first six months of fiscal year 2011, had an SSA representative been in the room.<sup>18</sup> According to the Government Accountability Office, SSA performed a study in 1985 which indicated that allowing legal representation for SSA during the appeals process could cut down successful appeals by 50 percent, but Congress ignored the recommendation.

17. Social Security Advisory Board. "Charting the Future of Social Security's Disability Programs: the Need for Fundamental Change."

18. *The Wall Street Journal*. "Disability-Claim Judge Has Trouble Saying 'No.'" Damian Paletta. May 19, 2011.

Another partial solution would be to prevent what law professors and SSDI experts Paul Verkuil and Jeff Lubbers describe as “the prevalence of incomplete and ever-changing evidentiary records” by closing the evidentiary record at ALJ hearings on a fixed timeline. Doing so could reduce attorneys’ incentive to delay cases while leveling the playing field between applicants and case reviewers.

### **Conclusion**

Grappling with the problems posed by a rapidly expanding SSDI system would be simpler if it were the case that the working age population had simply gotten older and less able to earn a living. Instead, the principal drivers of SSDI growth are a loosening of eligibility requirements, increasingly attractive benefits, and an applications process that has become incapable of distinguishing between truly disabled workers and those who should be rejected. Together, these three effects have combined to create a modern SSDI very different from the one envisioned by its architects. Going forward, it is essential that Congress take significant steps to rein in SSDI’s growth. To do nothing – to continue to prioritize the able-bodied over the truly infirm – is far worse.