

Restructuring Disability Insurance to Support Work Opportunities and Economic Self-Sufficiency

Labor Day 2011

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Dedicated to Fred Fay

In Memoriam

Frederick A. Fay, PhD
September 12, 1944 ~ August 20, 2011
Concord, Massachusetts
A Life Worth Living

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Summit Sponsors

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Executive Summary

Increased economic equity was a primary goal of the 1960s and 1970s civil rights era, driven by African Americans, other ethnic minorities, and women. While by no means complete, economic parity in these groups has improved. This is not true for Americans with disabilities, however, even after President George H.W. Bush signed the international gold standard for disability civil rights, the Americans with Disabilities Act (ADA) of 1990. Persons with disabilities, especially ethnic minorities and women living with long-term disabilities, remain among the largest groups of people living at or below the poverty line, often minimally sustained by disability benefits and meager earned income, if any.

The percentage of Americans ages 40 to 59 reporting a work-limiting health condition or disability has remained stable over a 20-year period beginning in 1988; yet “their employment rate fell by approximately 11.5 percentage points” during this period.¹ Persons with disabilities with work experience who want to work are underemployed for a variety of reasons or issues. Federally funded programs that provide benefits and services to these people typically lack coordination and are not synchronous with increasing work participation, and often discourage wage-earning. Federal disability insurance programs, *while addressing their essential goal of wage replacement for many who cannot work*, are not producing acceptable return to work results for those who can and want to work. The return to work provisions of the public insurance programs do not adequately allow for transition to employment and many critics say do not reflect the policy goals set out in the ADA. Solutions to increasing work participation of persons with disabilities are not a matter of increasing expenditures, but increasing the cost effectiveness and cost benefit of current expenditures for the benefits and services.

A bewildering array of public programs for civilians and veterans confounds the desires of people who experience disability to fully participate in our society. Major proposals from experts since the 1980s posit that restructuring disability programs and policies toward early interventions aimed at employment could lead to reasonable income levels and thus reduce growth in public spending on benefits.

On April 7 and 8, 2011, the World Institute on Disability, Mathematica Policy Research, and the National Council on Independent Living convened an invitational Employment Summit in the Great Recession at the Mathematica offices in Washington, D.C. Nearly 45 policy analysts, advocates, government and private sector researchers, insurance representatives, along with Congressional and Administration staff, accepted the invitation to participate in the Summit (see Appendix A). The Summit focused on plausible, concrete policy changes and resource realignment at the state and federal levels that would help workers with disabilities, or workers who first experience disability while working, remain in the labor force rather than enter the rolls of Social Security Disability Insurance (SSDI).

The structure of SSDI makes it ineffective in assisting work-capable individuals with disabilities to achieve re-employment and career development; and the precarious solvency of the Social

¹ Autor and Duggan, 2010.

Security Disability Insurance Trust Fund remains. One item on which there was consensus among Summit participants was the immediate sense of urgency in Washington for something to occur that “bends the cost curve” for SSDI. One way to do this is to reposition expenditures to avoid the need for SSDI by increasing work participation, using proven interventions to keep persons with disabilities at work or return them to work.

Participants identified policy options on which pivotal stakeholders could take lead; those being employers, the Administration, Congress, and other parties with authority to effect change.² The following actionable policy recommendations are consistent with the objectives of the Summit and, ultimately, those of many disability employment incentive programs. In sum they frame the post-integrationist view that Americans who experience disability are presumed active participants in social, cultural, political, faith based, and business activities.

Employers

- Support employees who leave work due to accident, injury, illness, surgery, and potential work disability through a new work policy that expands and promotes wellness, health and productivity, Disability Management, stay at work and return to work policy and practices in a context of workplace flexibility programs for all employees.

The White House and the Office of Management and Budget (OMB)

- Initiate a National Economic Imperative (NEI) to Hire and Retain Americans with Disabilities in the U.S. Workforce and take steps to implement policy options presented in this report by convening a White House Stakeholder Group.
- Conduct federally sponsored webinars and other forums by agencies who have studied relevant issues that include analysis of how to better integrate and eliminate duplicative programs; and realign program incentives resources and performance objectives to address NEI goals.
- The Office of Management and Budget (OMB) should take the lead to authorize, plan and fund test pilot projects in states that have state mandated short-term disability insurance programs (California, Hawaii, New Jersey, New York, and Rhode Island). The pilot projects would use those states’ established, short-term disability insurance infrastructures to test a variety of early intervention design elements.
- Conduct an analysis of the one million most recent SSDI awards on demographics, onset of disability, and the industries these individuals had worked in prior to applying for SSDI. Use the data in targeting industries to improve current practices with early intervention and stay at work or return to work programs. Identify the study as part of the proposed National Economic Imperative (NEI).
- Establish a working group to test various strategies and to conduct data analysis among employers.

² The authors make no claim to the following policy options nor imply that all Summit participants agreed to support these options in part, in whole, or in the order prioritized.

- Support accessible real-time information via collaborative IT services in federal benefits and employment support programs that ensure real-time and virtual information services are accessible to initial applicants and post-entitlement disability beneficiaries going to work.

Congress

- Convene Hearings by appropriate committees of jurisdiction to increase stakeholder dialogue and expand the features that could be included in Social Security's Work Incentive Simplification Proposal (WISP).
- Authorize asset building initiatives that change current law, such as the Achieving Better Life Experiences (ABLE) Act (S.493 and H.R. 1205 in the 111th Congress), and the SSI Savers Act (H.R. 2103), with amendments to include wounded warriors and veterans with disabilities.³ Be proactive in providing pretax investment vehicles for individuals with disabilities and their families to be able to save for education, employment, and independent living without jeopardizing access to needed public benefits.
- Increase funding for the Internal Revenue Service (IRS) to publicize and train individuals with disabilities on the use of the Earned Income Tax Credit (EITC), underutilized to date by Americans with disabilities as a means of providing fiscal incentives that make work pay.
- Develop a new work policy that expands and shares promising practices of wellness, health and productivity, stay at work and return to work policy and practice for those who leave work because of accident, injury, illness, surgery, and potential work disability.
- Conduct a thorough analysis of current state Medicaid Buy-Ins (MBIs) via the Government Accountability Office (GAO). The analysis should also include: a workgroup of diverse non-governmental stakeholders to develop specifications and policy options for a national Medicaid Buy-In (MBI) for U.S. workers with disabilities; analysis and policy options for a national MBI that improves or integrates Medicaid with provisions in the 2010 Affordable Care Act (ACA) to increase employment outcomes of Americans with disabilities; insights on how Medicaid and the ACA can provide necessary and appropriate wrap-around services and long-term supports as secondary payer to employer-sponsored health coverage in all states; and policy options to adjust the Medicaid Federal Medical Assistance Percentage (FMAP) to states that incentivize employment first and supported employment services using Medicaid-funded home and community based services.
- Bipartisan champions in Congress should request the GAO to assess what lessons can be learned from corporate Disability Management (DM) programs that could be included in any revisions to the SSDI program from such practices.
- Request SSA to convene a meeting of key representatives from Disability Management programs to meet with a select group of disability researchers, advocates, and Congressional staff for a one-day briefing on successful practices and potential applications to a post-integrationist policy of employment.

³ The Employment Summit policy option discussed was to improve asset building strategies; the SSI Savers Act (H.R. 2103) was introduced in the U.S. House of Representatives after the April Employment Summit took place.

Social Security Administration (SSA)

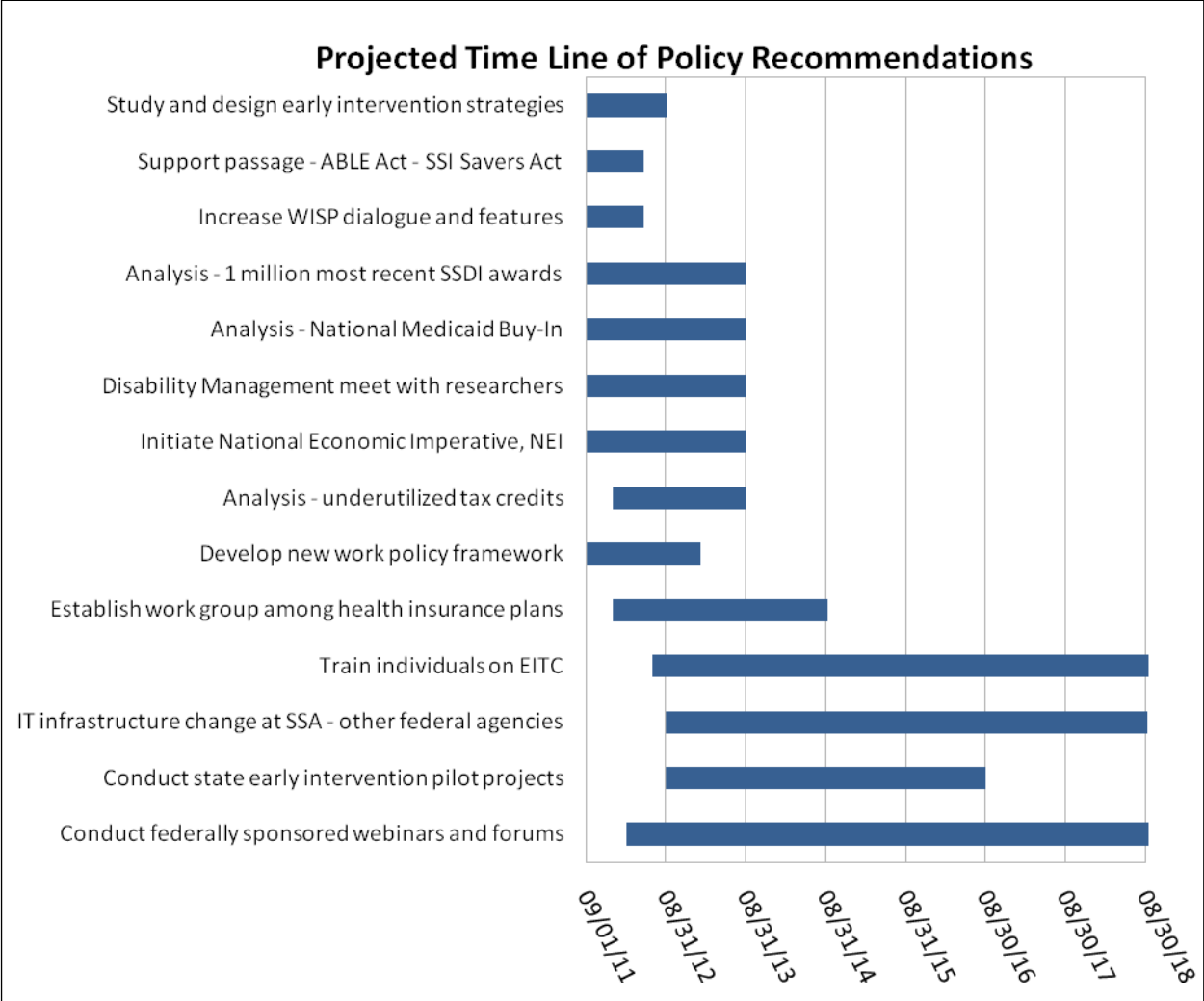
- Test work-centric early intervention strategies from among several of the states that have mandatory short-term disability insurance programs that provide partial income replacement support.

Department of Labor (DOL)

- Conduct a study to identify best and promising practices on a range of the states with Workers' Compensation programs that are most successful in returning employees to work via the Office of Disability Employment Policy (ODEP). Suggested states to consider include Washington and West Virginia.

Internal Revenue Service (IRS)

- Provide a current analysis of all disability-related employer tax credits. Current employer tax credits are underutilized. An analysis of these programs will assist in identifying industries and employers to target for outreach.



The Gantt chart above is a visual representation of the anticipated timeline for key policy recommendations in this report.

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Table of Contents

Executive Summary	- 1 -
Part One: A Sense of Urgency for New Policy Options.....	- 9 -
Employment Summit in the Great Recession	- 10 -
Contextual Overview of the Problem.....	- 11 -
Part Two: Highlights of Summit Activities	- 15 -
Day One Plenary Presentations: An Overview	- 15 -
The Problem, the Nature of the Solution, and a Note of Caution.....	- 15 -
Supporting Work: A Proposal for Modernizing the U.S. Disability Insurance System	- 16 -
Being American: the Way Out of Poverty, Employment Support Insurance.....	- 17 -
Declining Work and Welfare of People with Disabilities: What Went Wrong and a Strategy for Change	- 17 -
Tax Policy Options	- 18 -
Work Support and Health Policy.....	- 18 -
Day Two Work Group Discussions: An Overview.....	- 19 -
Part Three: Summit Discussions on Policy Options	- 21 -
Part Four: Next Steps in Developing a Post-Integrationist Employment Policy	- 31 -
Part Five: Conclusion	- 35 -
Bibliography and Reading Resources	- 37 -
Appendices.....	- 41 -
Appendix A. Summit Participant List.....	- 43 -
Appendix B. Historical Context of the Disability and Work Definition Problem	- 45 -
Appendix C. Key Values and Least Dangerous Assumptions	- 47 -
Appendix D. America’s Forgotten Workers: Staunching the Bleed to Reverse the Trend .	- 49 -

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Part One: A Sense of Urgency for New Policy Options

Living with a disability costs more money than living without a disability regardless of employment status.⁴ American taxpayers have demonstrated their commitment to people with disabilities through the extraordinary sums spent to support those with disabilities via a wide array of federal and state programs.⁵

U.S. Senator Tom Harkin shared publicly at the start of his Disability Community Employment Summit in September 2010 that the Americans with Disabilities Act (ADA) of 1990 has not met the challenge of stagnant, low employment rates of this population.

“...More than two thirds of Americans with disabilities are without a job, and adults with disabilities are leaving the labor force during this recession at more than 10 times the rate of adults without disabilities. According to [the U.S. Bureau of Labor Statistics] data, between March of 2009 and March of this year, the size of the disability workforce shrunk by 395,000 workers to about 4.9 million workers.

It is time again for the business community, the disability community, and bipartisan champions in Congress to make our communities stronger.

If we work together ... expanding the disability workforce by more than one million workers in four years is achievable if we get serious about making it happen.

It is time to reach for a goal that will shrink the disability benefit rolls and will take advantage of a large and diverse talent pool.

It is time to make it possible for more Americans with disabilities to experience the dignity that comes with a paycheck.

It is time to help over one million new workers with disabilities enter the labor force.”

**United States Senator Tom Harkin
Speech to the U.S. Chamber of Commerce, April 2011**

⁴ Fremstad, 2009.

⁵ Livermore, et al., 2011.

The U.S. government must continue to share in the costs of disability to both incentivize work-capable individuals to remain employed, or to reduce their needs for SSDI and return to the workforce. Ignore the costs of disability and new policy initiatives are certain to fail. The major policy puzzle is how and when to share the costs of disability between government, employers, insurance carriers, and the individual. The puzzle requires a 21st century policy solution.

Employment Summit in the Great Recession

On April 7 and 8, 2011, the World Institute on Disability, Mathematica Policy Research, and the National Council on Independent Living, convened an invitational summit at the Mathematica offices in Washington, D.C. Participants known to hold a wide range of policy perspectives were invited, including policy analysts, advocates, government and private sector researchers, insurance representatives, along with Congressional and Administration staff. Former and current senior Social Security Administration staff from the 1980s to the present joined the dialogue, as well as officials from the Centers for Medicare and Medicaid Services (CMS).

The goal of the Summit, as described in the event invitation, was to come to consensus on solutions for the low employment rates of Americans with disabilities in the context of the country's fiscal and deficit environments. Over the one and one-half day Summit, participants focused on policy changes and resource realignment that would help workers with disabilities, or workers who first experience disability while working, stay in the labor force rather than enter the Social Security Disability Insurance (SSDI) program.

Additionally, the Summit sought to develop policy options and identify concrete steps at the state and federal levels necessary to support workers with disabilities and workers who first experience disability while working without regard to the origins or the onset of the disabling condition. In fact, the dialogue sought to shape new policy options that would significantly decrease applications to the SSDI program of individuals with disabilities who can work.

The Summit was held in response to a myriad of long-term and recent discussions and issues, including the country's fiscal challenges; a recent rapid increase in enrollment in the SSDI program; new actuarial reports that the SSDI Trust Fund will become insolvent by 2017; the Disability Community Employment Summit sponsored by U.S. Senator Tom Harkin on Capitol Hill (September 2010); Bureau of Labor Statistics data (April 2011) that reflect the negative impact of the Great Recession on the employment of people with disabilities; the Hamilton Project publication *Supporting Work: A Proposal for Modernizing the U.S. Disability Insurance System*, by David Autor and Mark Duggan (December 2010); the upcoming publication of Richard Burkhauser and Mary C. Daly's *Declining Work and Welfare of People with Disabilities: What Went Wrong and a Strategy for Change*; and *Being American: the Way Out of Poverty*, by the World Institute on Disability (2006).

As highlighted by the Social Security Board of Trustees, "while unchanged from last year, [the Social Security Disability Insurance Trust Fund] will be exhausted in 2018⁶ and legislative action will be needed soon." They go on to state, "Our disability programs are complex, and

⁶ Recent Congressional estimates say the trust fund will become insolvent by 2017.

there is a long history of well intended ‘reforms’ causing unintended consequences. The President sent to Congress our Work Incentive Simplification Proposal, which would be a good start for bipartisan debate. [The Social Security Board of Trustees] urge[s] the House and Senate to review this proposed legislation carefully and schedule hearings this year.”⁷

Further, Bureau of Labor Statistics (BLS) data from April 2011 reflected the negative impact of the Great Recession on the employment of people with disabilities. BLS reports that “the percentage of individuals with disabilities over the age of 16 in the labor force decreased by 12.5% from 23.6% in September 2008 to 20.6% in April 2011. This change compares with the rate of participation of all members of the labor force over 16 years of age decreasing during the same time period by only 0.3% from 66.0% to 64.2%.”⁸

Contextual Overview of the Problem

The Social Security Disability Insurance program was amended into the Social Security Act in 1956 (P.L.84-880), for individuals 50 years of age and over, and who provide evidence of mental or physical impairments of a long lasting nature and with a severity sufficient to preclude them from engaging in any substantial gainful activity. Subsequent amendments broadened the scope of the program to include younger workers and to add benefits for disabled widows and for individuals who became disabled prior to age 22 whose working parent died or became eligible for Social Security benefits.

“The Social Security Disability Insurance program [provides financial assistance for those] who provide evidence of mental or physical impairments of a long lasting nature and with a severity sufficient to preclude them from engaging in any substantial gainful activity.”

This all-or-nothing definition of disability originated with the definition from the Aid to the Permanently and Totally Disabled program of public assistance (welfare) created in 1950.

Numerous amendments to “reform” the SSDI program have been enacted. Multiple studies have been conducted on work and benefits by the Government Accountability Office (GAO), one of which informed the initiative predating enactment of the Ticket to Work and Work Incentives

⁷ Astrue, May 2011.

⁸ ODEP Publishes Youth Employment Data: The Office of Disability Employment Policy at the Department of Labor has begun to publish monthly updates on the national employment rate of youth with disabilities. These data are available due to ODEP’s sponsorship of a set of disability questions added to the Current Population Survey (CPS) in 2006. The CPS is a monthly survey of households conducted by the U.S. Census Bureau for the Bureau of Labor Statistics (BLS). The disability employment data are not seasonally adjusted so the data are not adjusted for school closings such as summer break. During April 2011, the BLS reported the employment rate for youth with disabilities ages 16 to 19 to be 12.1% compared to 24.9% for same-aged youth with no disabilities. Youth with disabilities ages 20 to 24 had an employment rate of 29.4%. The employment rate for youth ages 20 to 24 with no disabilities was 61.3% for April 2011. The youth employment data are available at <http://www.dol.gov/odep/categories/youth/youthemployment.htm>

Improvement Act of 1999. Recent studies, including a report by the Social Security Advisory Board in 2006, and another by Mathematica Policy Research in 2008, sum a near universal consensus that the reforms have not netted marked employment outcome changes for SSDI beneficiaries.

The ADA established four goals for each American with a disability: equality of opportunity; independent living; economic self-sufficiency; and full participation. The law specifically states: “Physical or mental disabilities in no way diminish a person’s right to fully participate in all aspects of society.”

Notwithstanding the enactment of the Americans with Disabilities Act, the Ticket to Work and Work Incentives Improvement Act, state Medicaid Buy-In (MBI) programs for workers with disabilities and a related Medicare extension, along with billions of dollars invested in a wide variety of employment and training programs, the percentage of Americans with disabilities in the workforce has not improved. The results of the American Community Survey of 2009

“The continuing existence of unfair and unnecessary discrimination and prejudice [of] people with disabilities...costs the United States billions of dollars in unnecessary expenses resulting from dependency and non-productivity.”

Congressional finding that led to the passage of the Americans with Disabilities Act (ADA) of 1990

reported that only 34.9% of people with disabilities participated in employment compared with 71.9% of individuals without disabilities.

In fact, the impact of the Great Recession that began in December 2007 has widened the gap between the employment rates of individuals with disabilities and individuals

without disabilities. The significant increase in enrollment of these workers in the SSDI program contributes to the approaching insolvency of the Social Security and Medicare trust funds.

After 55 years of the SSDI program and after the 21st anniversary of the ADA, it is clear that the current SSDI program has failed in its efforts to support individuals with work disabilities to be employed consistent with their preferences, strengths, expectations, desires, and civil rights. The present SSDI program is not sustainable from either a fiscal or policy perspective.

The ideal reform approach would create both SSDI Trust Fund solvency and address stagnant employment rates for people with disabilities by including new 21st century organizing principles. Unanimous consensus on the design of such programs is not politically realistic; yet, Summit participants with opposing ideological beliefs were brought together to find common ground from which a starting point may be drawn.

Many Summit participants supported a need for changing the fundamental organizing principles related to SSDI, from its all-or-nothing and separatist welfare approach to folding the program into a post-ADA/post-integrationist, work-centric policy framework. The structure of SSDI is such that it is ineffective in assisting work-capable individuals with disabilities to achieve employment and career development. The impending insolvency of the Social Security

Disability Insurance Trust Fund remains. One item on which there was consensus was the immediate sense of urgency in Washington for something to occur that “bends the cost curve” for SSDI.

For further background reading contextualizing the issues, see Appendices B, C, and D.

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Part Two: Highlights of Summit Activities

The first day of the Summit consisted of six summary presentations followed by lively question and answer dialogue between the participants and each of the presenters. Dialogue portions were facilitated by Becky Roberts of Catoctin Consulting, LLC.

On the morning of day two, participants moved to one of four workgroups and could choose to rotate their participation into as many as three of the four workgroups. Topics included:

- Public and Private Income and Work Supports
- Tax Policy
- Public and Private Health Coverage
- Related Programs and Policies (e.g., SSDI, Supplemental Security Income [SSI], workers' compensation, private long-term disability insurance, veterans benefits)

In the afternoon of day two, the workgroups reported on their policy points and options, which included plenary session discussions and assessment on areas of consensus or agreement.

Day One Plenary Presentations: An Overview

The Problem, the Nature of the Solution, and a Note of Caution

Presented by David C. Stapleton, Mathematica Policy Research

Opening his presentation by stating that “working age Americans with disabilities aspire to be productive members of society and to share in the fruits of the American economy, but instead they are falling further behind,” Stapleton set a tone with which few can argue. Quoting She and Livermore (2007), Stapleton further posited that “people with disabilities need more income than others to avoid material hardship.”

He began by presenting multiple data sets on labor force participation, poverty status, and people entering and leaving the SSDI roles, and its contribution to projected SSDI trust fund insolvency. Stapleton concluded that the current SSDI growth is not sustainable and that current SSDI federal policy provides a host of disincentives for the worker and employer to maintain employment.

Stapleton proposed that a well-designed work policy, based upon experience from workers' compensation, private disability insurance, the Centers for Medicare and Medicaid Services' Demonstration to Maintain Independence and Employment (DMIE), and recent workforce reform from the Netherlands, would provide for “incentives for employers to retain workers with disabilities; incentives for workers to continue working or return to work quickly after the onset of significant, long-term medical conditions; timely access to services for workers and employers; and, income and health benefits for those truly unable to work.”⁹

⁹ This report includes two short bios on Juan and Mary who were participants in the Texas DMIE.

Supporting Work: A Proposal for Modernizing the U.S. Disability Insurance System

Presented by David H. Autor, Massachusetts Institute of Technology, and Mark Duggan, University of Maryland

Autor provided an overview of the 55-year-old SSDI program with the conclusion that the net current effect is “too little dollars helping workers with disabilities to remain employed and too much money fostering unnecessary long-term dependency.” Further, Autor observed that the current SSDI award rate trending is unsustainable. He proposed a work policy model that would support workers while still working and that would provide incentives to employers to recognize the costs of disability. The proposal centerpiece is a universally mandated employer Private Disability Insurance (PDI) plan with an estimated annual cost of \$250 per worker.

The PDI would provide partial income replacement, vocational rehabilitation services and workplace accommodations. He suggested that this approach could be similar to and draw best practices from the “U.S. Workers’ Compensation system that has had no real cost increase in the last two decades, even as SSDI claims have grown rapidly.” The PDI focus is to keep the worker employed and not to sever the connection between the employee and the employer.

Figure 1.

Percentage of people reporting a work-limiting health condition or disability, ages 40-59

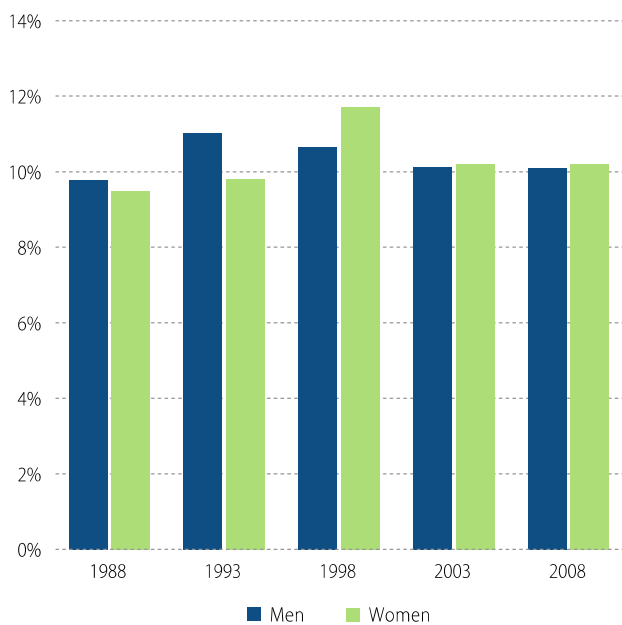


Figure 2.

Fraction of individuals receiving SSDI benefits, ages 40-59, 1988-2008

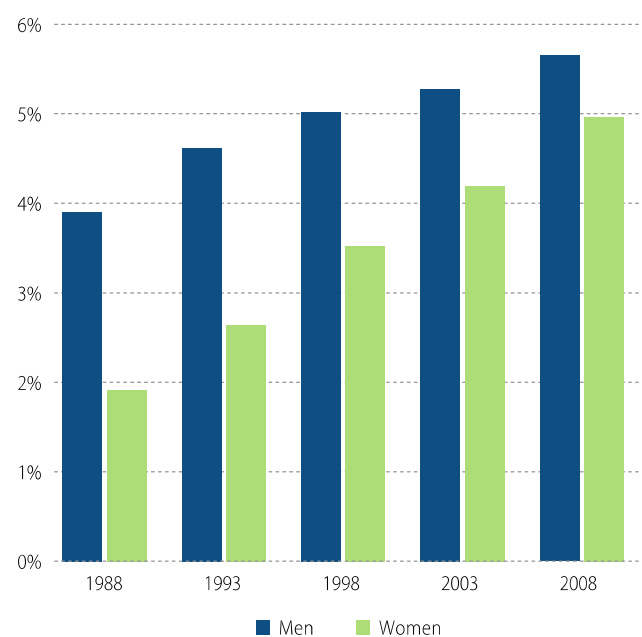


Figure 1 (above) demonstrates that the percentage incidence of men and women, ages 40 – 59, reporting a work-limiting health condition or disability starting 1988 through 2008, remains relatively steady around 10%. Comparatively, Figure 2 shows a steady rise in individuals receiving SSDI benefits among the same cohort over the same period of time.¹⁰ One conclusion

¹⁰ Autor and Duggan, 2010.

that can be drawn supports the observation that SSDI programs do not provide sufficient incentive to effectively support work-capable individuals with disabilities to remain in or return to the labor force.

Autor concluded that beneficiaries already in the SSDI program are at high risk to stay in the program since it constitutes a lifetime indexed annuity with health insurance, and that is why it is essential to enter the “return to work” process while the person is employed.

Being American: the Way Out of Poverty, Employment Support Insurance

Presented by Bryon R. MacDonald, World Institute on Disability 2006

MacDonald opened with the following quote from Tom Pomerantz: “When you change the way you see things, the things you see will change.”

Subject matter expert Summit participants have engaged in major SSDI employment-focused reform proposals since the 1980s. MacDonald posited the policy need for new organizing principles that move away from the traditional one-item focus on post-entitlement, means-tested programs and social insurance, and on to a post-integrationist approach that insures for employment commensurate with insuring for wage replacement (SSDI). He suggested that the traditional post-entitlement approach overemphasizes application for Supplemental Security Income (SSI) only, SSDI only, Long-Term Disability Insurance (LTD) only, and Short-Term Disability Insurance (STD) only. Separation from employment is the key prerequisite for receipt of benefits and case management. This post-integration approach contains: Medicaid Buy-In; employer Disability Management (DM) programs; work concurrent with benefits and supports; wage replacement insurance; informed decision making; and real-time information. The place of impairment origin or onset of condition is irrelevant for the provision of supports in a post-integrationist world.¹¹

Declining Work and Welfare of People with Disabilities: What Went Wrong and a Strategy for Change

Presented by Richard V. Burkhauser, Cornell University

Burkhauser defined the SSDI program as fundamentally flawed. Instead of being the “last resort” income transfer program after all cost-effective work alternatives had failed, for many workers their work alternatives are offered only after they have spent up to two or more years proving that they are unable to work.

He recommended introducing experience rating of the employer FICA contributions to SSDI, based upon the number of post-employment awards of SSDI benefits. He posited that experience rating employer contributions to SSDI will produce the following employer behaviors:

- Improve safety in the workplace

¹¹ Susan Prokop of Paralyzed Veterans of America (PVA) noted an important place-of-origin exception in current law for active duty U.S. Service Members injured in the line of duty.

- Increase use of healthy living programs
- Greater concern with maintaining employee health
- Increase use of Disability Management agents at the time of onset of a work-limiting impairment
- Greater use of accommodation and rehabilitation
- Less interest in moving their workers onto SSDI
- Greater care in hiring practices

Burkhauser proposed to address potential discrimination in hiring by exempting workers with known disabilities from being in the experience rating pool.

Tax Policy Options

Presented by Michael Morris, Burton Blatt Institute and National Disability Institute

Morris opened by stating four general principles:

1. Promote work and savings
2. Reduce and eliminate disincentives
3. Encourage economic security and mobility
4. Reduce stakeholder risks and increase benefits to stakeholder

He proposed individual financial benefits by: enacting the ABLE Act; establishing ABLE Accounts and expansion of the Earned Income Tax Credit (EITC); establishing employer benefits through reduced payroll tax; and expanded and simplified coverage of accommodation costs and barrier removal beyond the current ADA credit. (The latter policy option is similar to the reasonable accommodation tax credit proposed by WID in 2006.)

Morris provided an in-depth overview of the ABLE Account legislation as a means of savings and acquiring assets without jeopardizing public benefits. He provided compelling data on the use and non-use of the EITC, including facts that over 1 million low-income workers with disabilities eligible for EITC do not file; Real Economic Impact (REI) Tour assisted 360,000 persons with disabilities to receive \$350 million in tax refunds in 2010 and expect to reach \$1 billion in 2011; and tax payers with disabilities receive an average of \$800 less in EITC than their nondisabled counterparts.

Work Support and Health Policy

Presented by Allan I. Bergman, HIGH IMPACT Mission-based Consulting & Training

Bergman stated: “Few groups of adult Americans have higher rates of unemployment or lower rates of participation in the labor force than persons with disabilities. While barriers to employment exist in a number of areas, protecting access to health care has historically been a significant barrier that prevented persons with disabilities from seeking employment. The program rules for Medicaid and Medicare with regard to work are complex.”

He reviewed the private market insurance reforms within the Patient Protection and Affordable Care Act (ACA) that are now in force as well as those that will be phased in by January 1, 2014. The ACA reforms will impact access to affordable health care coverage for many individuals with disabilities either working or entering the workforce. He reported that nine (9) states have chosen not to adopt the Medicaid Buy-In (MBI) and that MBI rules' variation on asset accumulation and retention vary greatly across states. Bergman reported that only 32 states have chosen to adopt the Medicaid Personal Care option, a community support critical to the employment of many individuals with disabilities. He reviewed ACA provisions available to states under Medicaid to enhance care coordination and community long-term services and supports, including Medicaid Health Homes, the Community First Choice Attendant Care Provisions (1915 k) and the Home and Community Based Services State Plan Amendment (1915 I), Money Follows the Person and Long-Term Care Rebalancing, all of which can support employment of individuals with disabilities.

“Protecting access to health care has historically been a significant barrier that prevented persons with disabilities from seeking employment,” quotes Bergman. Access to health care remains a considerable barrier.

Bergman concluded with a major policy objective to make work pay: “Individuals with disabilities require seamless access to affordable health insurance and long-term supports to meet their unique and often disproportionately high-cost needs to be able to obtain and retain employment, to engage in career development and to pursue the American Dream.”

Day Two Work Group Discussions: An Overview

The in-depth conversations during the Summit reflected a range of substantive, sometimes conflicting policy options and strategies to explore, refine, test, and implement in the short-term and mid-term. For any major reform(s), there was recognition that time is limited (six to seven years) for comprehensive research, study, and demonstration(s) as fiscal issues compound. Several participants urged caution to not offer policy options with unintended consequences; others urged that it was time for bold, new ideas.

“Individuals with disabilities require seamless access to affordable health insurance and long-term supports to meet their unique and often disproportionately high-cost needs to be able to obtain and retain employment, to engage in career development and to pursue the American Dream.”

Discussion returned repeatedly to the increasing national debt and parallel social insurance solvency issues. The discussion was intensified by the introduction of the House Budget Resolution for FY'12 two days prior to the Summit. *There was consensus that policy makers need to be informed to “stop the harm” of major unintended consequences of blunt-edged cuts to entitlement programs.* A majority of the participants strongly advocated for a second step, that of proposing strategies to policy makers that would be viewed positively in the context of solving

fiscal issues and reducing rates of unemployment. Those who did not support proposing significant policy changes were concerned about the possible harm to people currently receiving benefits.

A majority of participants believed that financing under current law will not support current SSDI benefit application and award rates, and that redesign or reform in some form is inevitable.

Most participants agreed that the SSDI program is an appropriate and critically needed mechanism that provides an economic safety net for income replacement and protections when individuals are unable to work, seek appropriate rehabilitation, treatment and accommodations, or are on a rapid course of a progressive and terminal disease. Recent research from Mathematica complements existing data citing that 44% of current beneficiaries, less than half, are in fact work oriented, working at very low wages or making plans to work.¹²

The SSDI program contains lengthy application procedures requiring legal disclosure on what the applicant cannot do to demonstrate with evidence that the applicant cannot work. The one-size-fits-all process is a disservice to several million individuals with work impairments who, with access to timely and appropriate incentives and supports, can work and desire to work.

Bob Williams, the Associate Commissioner of Social Security's Office of Employment Support Programs (OESP), shared a relevant list with Summit participants of ten reasonable assumptions for what makes employment work for Americans with significant disabilities (see Appendix C). The key theme of the list is that employment must be seen as a means and not as end unto itself.

“A particular job must enhance, rather than undermine the individual’s economic well-being, independence and health security. Moreover, that job must enable the individual to have a household income that is substantially greater (nearly two or three times greater) than what SSDI or SSI would provide. Facts on the ground confirm that people with disabilities with household income equal to three times the poverty threshold experience as much material hardship as those whose income hovers at the poverty threshold.”

As the list iterates, having a particular job must enhance, rather than undermine the individual’s economic well-being, independence and health security. Moreover, that job must enable the individual to have a household income that is substantially greater (nearly two or three times greater) than what SSDI or SSI would provide. Facts on the ground confirm that people with disabilities with household income equal to three times the poverty threshold experience as much material hardship as those whose income hovers at the poverty threshold.¹³

¹² Livermore and Stapleton, 2010.

¹³ Fremstad, 2009.

Part Three: Summit Discussions on Policy Options

Summit participants in and out of government viewed a number of actionable, prioritized policy options as important to explore further. Participants agreed that a wide range of individuals with disabilities should actively engage at the policy table with researchers, advocates, and policy makers to shape and move selected policy options forward. A new work-policy design should be sure to include contributions by civilians, wounded warriors and other veterans that include people with traumatic brain injury, Post-Traumatic Stress Disorder (PTSD), mental health and other cognitive conditions.

The following section contains a summary of key discussions during the six presentations, the breakout workgroups and the afternoon plenary session on the second day.

1. **Early Intervention.** There was wide consensus that early intervention needs to be a key focus of public and private systems in order to increase employment retention, deploy or expand existing strategies for staying at work and returning to work, and using current Disability Management programs collaboratively with new policy options.
 - A. New or revised organizing principles should contain a presumption of employability. Except for a known and sizable cohort of individuals with rapidly progressive, terminal conditions who apply for and need SSDI as income replacement insurance and Medicare for health insurance coverage, many individuals receiving SSDI can and want to work in some capacity.
 - B. The nature of disability and the world of work have changed dramatically during the 55 years since the 1956 inception of the SSDI program. As a result of medical, technological, behavioral and other interventions, individuals with the most significant disabilities can and should be working in competitive, integrated employment at prevailing wages. Expectations for working and independent living should begin with infants and toddlers and for students throughout their years of K-12 education.
 - C. A new work support policy should expand and share promising practices of wellness, health and productivity, stay at work and return to work policy and practice for those who leave work because of accident, injury, illness, surgery, and potential work disability. Workplace flexibility for all employees¹⁴ and current employer Disability Management programs, within operational mechanisms such as workers' compensation and private disability insurance, received a great deal of discussion time during the Summit. Expanding and improving integration of these programs and policies could prevent some work limitations from needlessly ending careers, and increase the number of employers able to retain valuable human capital. Current insurance system protocols drive the employee to separate from or quit work, swear one cannot work, prove to government agencies and their representatives that one cannot work in a series of short- and long-

¹⁴ Workplace Flexibility 2010 Project, http://scholarship.law.georgetown.edu/pub_rep/3


term disability insurance procedures, and then receive a “Ticket to Work” in the mail after award of public disability benefits. The process is viewed by many participants as dissonant and demeaning public policy.

D. Existing evidence from workers’ compensation and private disability insurance shows that incentives and early access to services yield success at job retention. Since these are employer-based proprietary programs that provide employers with a competitive advantage, it may prove difficult to obtain some of the best current practices; employers may need incentives to share their programs and best practices. Dialogue with employers who are recognized as having the best Disability Management and health and productivity programs was suggested as a near-term priority.

E. In a post-integrationist environment, the active involvement of the employer, including small business employers, is essential and strategic. A new work policy should include addressing the small business employer fears of costs and litigation, and potential lack of experience with Disability Management programs. Participants referenced two large groups with current incentives to apply for SSDI rather than focus on staying employed. One group has better paying jobs with private disability insurance benefits that often induce workers to precipitously separate from the job to be able to receive short-term or long-term income and health coverage supports that address their new impairment or financial needs. A second large group discussed is the low- to very low-wage earners whose employment does not combine with any benefits package. SSDI can appear to be or in fact be more attractive as a financial outcome compared with struggling to stay employed in low-wage work with no career path, benefits, or access to health coverage. Both groups were considered at risk for application to SSDI.

F. Early intervention services should be person-centered (recognizing age, education, cultural, and geographic differences) and should provide individually tailored services and supports based upon best practices, including benefits planning services. Early intervention should recognize that an individual’s work support needs can change over time. Lessons on early intervention can be learned from the four states (Hawaii, Kansas, Minnesota, and Texas) that participated in the federally funded

JUAN



Juan was at risk of losing his delivery job. Before receiving support from a local community based organization, he had poorly controlled diabetes, which led to painful foot ulcers that made walking difficult. The CBO case manager obtained orthopedic shoes for him which allowed him to work full-time. The case manager also worked with Juan to develop a diabetic diet and individual exercise plan. Juan was also linked to a psychiatrist who prescribed medication for his bipolar disorder. He subsequently received a raise for exceptional performance.

Demonstrations to Maintain

Independence and Employment (DMIE) projects. DMIE had some success diverting working individuals from an early path to apply for SSDI by providing Medicaid services to those with less severe impairments than allowed with the current Medicaid and Social Security application rules.¹⁵ In addition to medical benefits, DMIE also provided employment supports and person-centered case management.

- G. Although in a very different country, culture, and tax base, in recent years the Netherlands continues to implement major reforms that are dramatically slowing enrollment into their public disability insurance systems. There may be lessons to learn from its implementation to include in U.S. pilot projects.¹⁶
- H. Analysis of the Federal Employment Compensation Act's best practices and implementation may yield data supporting early intervention and return to work outcomes.
- I. The Uniformed Services Employment and Reemployment Rights Act (USERRA), administered by the Department of Labor, obligates employers to hold jobs open for someone serving in the military and to provide accommodations as needed upon return. Recent trending with veterans, veterans activists, and the Department of Veterans Affairs was viewed as deploying a post-integrationist model. While the number is still small, 45 amputees wounded in combat are back in active military service today, largely due to the self-advocacy efforts of veterans.

2. Removing Disincentives and Uncertainty. A post-entitlement work policy for SSDI beneficiaries removes disincentives and uncertainty, reducing fears of going to work.

- A. The Social Security Work Incentives Simplification Proposal (WISP) for SSDI beneficiaries, as included in the Obama Administration's 2012 budget proposal, is a major policy direction to explore and build from that could include SSI and reporting procedures reform. A key provision of the WISP is that SSDI post-entitlement earned income would have no future effect on eligibility status for SSDI and its attendant Medicare health insurance coverage. An important discussion concern about designing a WISP project addressed the family benefits available to SSDI beneficiaries when a current SSDI beneficiary returns to work.¹⁷
- B. Recent longitudinal data analysis funded by the Social Security Administration (SSA) on work, SSDI and SSI has been published in the last two years. About 12 million Americans receive Social Security disability benefits. A four-year longitudinal review presented findings that a large subset of this cohort is in an active state of work-focused activities. In tracking existing earnings data from 2004 to 2007 and relating it to National

¹⁵ Mathematica Policy Research, June 2011.

¹⁶ Bockting, May 2007.

¹⁷ The SSA WISP policy initiative aligns with U.S. Department of Veterans Affairs (VA) policy: the *eligibility status* for current veterans service-connected compensation and related benefits is not jeopardized by earnings after an award of VA compensation benefits. The VA benefits recognize that the veteran will live with the disability, and its related costs, on and off a job, at home, etc. The veteran retains eligibility for the compensation cash benefits system and access to the VA health care system, even after he/she goes to work.

Beneficiary Survey (NBS) data, Mathematica has produced findings that 40% of current SSA disability beneficiaries (about 4.4 million individuals) are work-oriented. Their survey and research data find that this work-oriented subset has goals of getting a job, moving up in a job or learning new job skills. Individuals in the subset see themselves in paid work in the next one to five years. Most significantly, 45% of the subset of 4.4 million Social Security disability beneficiaries had earnings in at least one year of the period 2004 to 2007. Twenty-one percent (21%) had earnings in all four years. While the earned income amounts are not high, this group with earned income in all four years represents 890,000 current SSDI beneficiaries.¹⁸

- C. Merging the SSDI and the SSI programs would eliminate the welfare component within SSI. Recent trending shows that these programs have increasing numbers who are “concurrent beneficiaries,” eligible for both SSI and SSDI at the same time. (The Centers for Medicare and Medicaid Services [CMS] refer to this cohort as dual eligibles.) After award of benefits, SSI and SSDI embrace the same work-policy principles as complementary services under the terms of the Individuals with Disabilities Education Act (IDEA) as well as the Rehabilitation and Workforce Investment Acts. This is especially true for youth with disabilities in transition from school to work during their early adult years.
- D. In partnerships with private insurance, universities, and nonprofit community based services, the Social Security Administration will need to become the federal government’s information technology leader, insuring real-time and virtual information services are accessible to applicants and post-entitlement beneficiaries going to work.
- E. Incentives that increase earnings, savings and asset building should be upgraded and enhanced to provide incentives for SSA disability beneficiaries (SSDI and SSI) to “make work pay” and for them to be able to plan financially for the unexpected layoff or economic downturn.
- F. Some of the current costs of long-term and lifelong SSDI cash payments should become realigned to pay for upfront early intervention costs.

3. Tax Credits. The Tax Code incentivizes employers and workers with disabilities.

- A. The underutilized Earned Income Tax Credit (EITC), which provides direct fiscal incentives to make work pay, should become more widely publicized and made available to more low-income workers with disabilities.
- B. Employer tax credits should incentivize employers regarding the costs of early intervention services beyond the provision of reasonable accommodations.
- C. Various employer tax credit models should be developed and made available, including replacing all disability-related existing employer tax credits with one dollar-for-dollar-spent employer Reasonable Accommodation Tax Credit. Any employer reasonable

¹⁸ Livermore, May 2010 Presentation.

accommodation expense would be considered “eligible access expenditures” without a dollar limit, and the credit would be refundable, not limited to the amount of a taxpayer’s tax liability. Employers are reimbursed, dollar for dollar, for any reasonable accommodation expense required under the ADA, irrespective of the amount of the business’ tax liability. “Accordingly, the redesigned tax provision shifts all employer costs of accommodation required under Title I of the ADA from private businesses and disabled people to society.”¹⁹

- D. Improved employer tax deductions or credits would increase the hiring, retention, and advancement of employees with disabilities. Fear of employee disclosure of invisible disabilities during the hiring process was raised yet not resolved.
 - E. Employers should be able to (optionally) either reduce or eliminate their share of the FICA premium match when hiring and retaining SSDI or SSI beneficiaries, based upon savings to the federal government. Fear of employee disclosure of invisible disabilities during the hiring process was raised yet not resolved.
 - F. The enactment of the pending Achieving Better Life Experiences (ABLE) Act provides a pretax investment vehicle for individuals with disabilities and their families to accumulate savings for education, employment, and independent living without jeopardizing access to public benefits. The pending ABLE Act should be amended to include low-income veterans.
- 4. Public Insurance.** Employment support insurance and early return to work services should be evaluated through pilot projects, and research and demonstration activities, taking into account the impact of employer liabilities and accountability.
- A. Employer FICA premiums should be experience rated based on the number of employees who become SSDI beneficiaries post-employment.²⁰ This financial shift is expected to provide employer incentives leading to improved safety in the workplace, increased employer use of Disability Management, and healthy living and wellness/lifestyle programs. Workers with known disabilities would be exempt from inclusion in the experience rating pool. In spite of this caveat, participants expressed concerns about civil rights violations with the model resulting in increased discrimination in recruiting and hiring, prompting new needs for job applicant disclosure when it is not necessary at the time of hire. Related concerns addressed people with identifiable disabilities, individuals who are aging, and individuals at risk of disability due to obesity, smoking, and the presence of chronic health conditions. Operational concerns discussed included the potential impact of experience rating individuals who are self-employed and individuals who acquire their disability outside of the place of employment.
 - B. A Georgetown University Workplace 2010²¹ report lays out a new social insurance income replacement program (through a payroll tax) based on the nearly universal needs

¹⁹ Lipman, December 2003.

²⁰ Burkhauser, forthcoming.

²¹ Workplace Flexibility 2010 Project, http://scholarship.law.georgetown.edu/pub_rep/3

among American workers for time off from work to address personal illness, to care for a new child, or to care for a family member with a serious illness. An earlier, impairment specific version of this construct was developed by the World Institute on Disability (2006) with their model called Employment Support Insurance (ESI). ESI would include access to and support for health coverage, benefits planning for those looking for work or changing jobs, and referrals to existing vocational rehabilitation, One-Stop Career Centers, and other employment services. This approach may or may not induce employers to provide timely accommodations. ESI is seen as public social insurance that becomes well coordinated with private short-term and long-term disability and state disability insurance programs.

- C. Today, five states (California, Hawaii, New Jersey, New York, and Rhode Island) and the commonwealth of Puerto Rico administer or mandate a short-term disability insurance program that provides partial income replacement support. Participants discussed with great interest that some or all of these states have a ready-made infrastructure to serve as potential sites for testing work policy with early intervention insurance strategies. A related discussion encouraged linking state pilot early intervention demonstrations with existing employer-sponsored Disability Management programs. Strategic negatives discussed are the fiscal deficit situation nationally and statewide, and the need for urgency in policy approaches to the SSDI program. Of note, there are not any financial incentives for states to reduce the growth of the SSDI rolls since the financing of SSDI and Medicare is federal. In many state agencies, there are widely recognized incentives for their clients to be enrolled in SSI and not in state welfare systems.
- D. All 50 states have established Workers' Compensation programs, each of which is operationalized with state rules. Workers' Compensation (WC) premiums have a long history of being experience rated. Seeking out best WC practices is a priority, with noted attention to the states of Washington and West Virginia. Also noted, there are no financial penalties to the employer or state government if the employee moves on to the SSDI rolls. There should be no requirement from employer long-term disability insurance policies that a person must file for SSDI in order to receive benefits under the policy.

5. Private Disability Insurance (PDI). A PDI option provides employer Disability Management services to maintain employment and return to work supports for persons with disabilities before an application for SSDI.

- A. An employer-based universal Private Disability Insurance (PDI) model is estimated to cost about \$250 per year in premiums. As an employer mandate,²² PDI will assist work-capable individuals with work-limiting disabilities to remain in their current jobs, transition to more suitable jobs, and/or assist employers to accommodate their employees' disability needs. PDI diverts individuals from the SSDI program by assisting them to continue working. A compare-and-contrast discussion of this mandatory employer model presented itself as the mandatory path for employees prior to being allowed to apply for SSDI, in contrast with an optional benefit that the worker would

²² Autor and Duggan, 2010.

choose in the WID 2006 “Being American” model (also referred to as the “two plan” social insurance model).

B. The Autor/Duggan PDI proposal does not provide the type of financial benefits to the person’s family as are provided by the current SSDI.

C. The Autor/Duggan PDI proposal presumes that workers with or without impairments have (or will have) adequate health insurance for their needs as a result of the 2010 Affordable Care Act (ACA).

D. There is a lack of evidence that PDI would be effective at diverting workers with significant disabilities from the SSDI roles. The model exempts a large category of impairments covered today by SSA in its list of Compassionate Allowance awards. Perceptions that the PDI model bifurcates employees into groups of individuals who it presumes can and cannot work exist. A demonstration project may help to answer these important questions.

E. A new, national employer mandate in the current economic climate is questionable.

6. Access to Health Care. People with disabilities enter into and retain employment and access health care coverage and Long-Term Services and Supports (LTSS). Too many individuals with a disability still must choose between working and having affordable health care, as they struggle through complexities of the state and federal program decision-making process. Individuals who need personal care, consumable supplies, and other services not funded by private insurance should not be forced to live in poverty without capacity to save and accumulate assets because their needs for services and supports are only available via Medicaid.

A. A new work policy should end the current 24-month wait for Medicare after start of SSDI cash benefits. Social Security should establish a presumptive eligibility for Medicare (for the estimated 20% of applicants who have no insurance) upon filing for disability benefits. Medicare should establish a parallel program to Medicaid’s Health Insurance Premium Payment (HIPP) program to pay the SSDI

MARY



Some of Mary’s health issues included bipolar disorder, adrenal adenoma and back pain. She could also not use her right hand due to an old industrial accident which resulted in nerve damage. She was feeling increasingly hopeless, isolated and overwhelmed. She slept most of the day. Mary had previously applied for disability benefits because of her physical limitations and planned to apply again, due to the disabling nature of her severe mental illnesses.

A local case manager provided Mary with vocational counseling. Mary entered a job training program and was prepared for an occupation that better accommodated her physical limitations. She regained her self-esteem and began working 30 hours per week. Mary currently is studying for her GED and plans to obtain an associate's degree.

applicant's employee or COBRA health insurance premium/COBRA premium when available and determined to be cost effective.

- B. SSDI beneficiaries who are receiving Medicare should participate in the annual Medicare wellness and prevention visit authorized in the ACA in order to maintain health and function and prevent secondary and tertiary conditions. This visit has no deductibles or co-pays.
 - C. SSA, CMS, and key non-governmental stakeholders should be consulted to assess best operational designs for one national Medicaid Buy-In (MBI) for workers with disabilities. Current state-by-state MBI plans for workers with disabilities are complex, vary widely and are hard to find inside strapped county welfare office systems. MBIs can provide necessary and appropriate wrap-around services and long-term supports as secondary payer to employer-sponsored health coverage. A national MBI should consider use of an enhanced Federal Medical Assistance Percentage (FMAP) to states that increase enrollment of wage earners in current MBIs as a transition to a new national model.
 - D. A new work policy should establish an aggregate cap on an individual's total out-of-pocket expenses for health and Long-Term Services and Supports (LTSS) and/or pay the premium for a Medicare type "F" supplement plan that provides no co-pays or deductibles for covered services for the beneficiary. The applicant also should remain eligible to purchase a Medicare Part D Prescription Drug Plan.
 - E. The Affordable Care Act (ACA) creates a mandatory Medicaid expansion to single adults with no children with incomes up to 133% FPL. Stakeholders should assure that the definitions of the essential health benefits in benchmark plans and expanded Medicaid (to be promulgated by the Secretary of Health and Human Services for all commercial health plans to be offered after January 1, 2014) encompass an appropriate range of primary, acute, and prevention of secondary/tertiary disability services to maintain and enhance function and, in effect, employability and productivity.
 - F. A new emphasis and reliance on health and productivity programs should guard against potential discrimination issues as these programs relate to genetic or other disability-related issues for people with disabilities.
 - G. The CLASS Act should become a progressive, widely used insurance model for LTSS versus the current weighted emphasis on means-tested programs, such as Medicaid, as the main source of LTSS.
7. **Resource Realignment.** Policy options improve current complexities and overlap among and between federal and state programs, and align resources for greater efficiency and effectiveness.
- A. A new work policy involving SSDI should include objectives to improve program interactions with worker's compensation, veterans service connected disability compensation, veterans pensions, Medicaid, and Section 8 Housing Certificates. A new

work policy should recognize that some existing employment support programs began as means-tested poverty programs. In time, 21st century organizing principles will work to promote and support work first over a far wider range of program interactions that reduce needs for means-tested programming.

- B. Congress should establish a non-governmental or quasi-governmental entity that develops post-integrationist performance measures, benchmarks, and data for agencies that administer federal programs for persons with disabilities.
- C. Congress should conduct biennial oversight hearings in the House and Senate to assess cross-agency performance for individuals with disabilities and continue to realign tax, finance, education, health care, and workforce policies to achieve outcomes consistent with post-integrationist organizing principles and performance measures stated above.
- D. The priority for employment and incentives for employment should be addressed in the reauthorizations of the Workforce Investment Act (WIA), the Vocational Rehabilitation Act, and the Elementary and Secondary Education Act. The WIA should incentivize the employment of individuals with disabilities for substantive work and not just an earnings benchmark of \$600 per quarter.

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Part Four: Next Steps in Developing a Post-Integrationist Employment Policy

Summit workgroup discussions, as outlined in Part Three of this report, led to identifying necessary next steps and action items. The recommended actionable next steps encompass employers, the Administration, Congress, and other parties with authority to effect change. A lead responsible party is identified in italicized brackets immediately following each recommendation.

The prioritized policy options below represent sound, actionable common sense approaches that cut across federal agencies and the private sector. These options conceptualize and describe frameworks to implement policy points and priorities discussed over the one and a half days at the Employment Summit in April 2011. The options are interconnected.

1. Initiate a National Economic Imperative (NEI) to Hire and Retain Americans with Disabilities in the U.S. Workforce and take steps to implement policy options presented in this report by convening a White House Stakeholder Group. A wide range of individuals with disabilities should actively engage at the policy table to shape and refine policy options with Congressional, Administration, and research stakeholders. A new work policy should include input from civilians and veterans with traumatic brain injury, mental health and other cognitive conditions. *[White House]*
 - A. The World Institute on Disability (WID) will produce an Employment and Economic Equity Convening on October 28, 2011, that includes a report-out from the April Employment Summit. *[WID]*
 - B. Disability-led organizations develop strategies for teleconferences and webinars to disseminate the findings and recommendations and to solicit feedback to develop grassroots support for key recommendations requiring federal legislation. *[Community Based Organizations (CBOs)]*
 - C. Support employees who leave work due to accident, injury, illness, surgery, and potential work disability through a new work policy that expands and promotes wellness, health and productivity, Disability Management, stay at work and return to work policy and practices in a context of workplace flexibility programs for all employees.²³ *[Employers]*
2. Increase stakeholder dialogue to improve on and keep the Work Incentive Simplification Proposal (WISP) in the Obama Administration's 2012 budget. Congress should convene Hearings by appropriate committees of jurisdiction to expand the features that could be included in WISP. *[Congress]*

²³ Workplace Flexibility 2010 Project, http://scholarship.law.georgetown.edu/pub_rep/3

3. Produce early intervention services state pilot programs using a WWII Marshall Plan approach to comingle existing public and private resources and test proposal design elements from Autor/Dugan, the Burkhauser/Daly and/or WID “Being American: the Way out of Poverty” proposals, or some combination thereof. Existing resources should be redirected towards immediate pilot projects. [*White House - Office of Management and Budget (OMB)*]
 - A. SSA demonstration authority should include testing the efficacy of policies that would intervene early with employers and workers in order to reduce the application rates of workers onto the SSDI rolls. [*SSA*]
 - B. Secure funding to test work-centric early intervention strategies from among several of the states that have mandatory short-term disability insurance programs that provide partial income replacement support. Public resources for analysis and testing strategies should be sought through the National Institute on Disability Rehabilitation and Research (NIDRR) and the National Center for Medical Rehabilitation Research (NCMRR). [*White House - OMB*]
 - C. Five states (California, Hawaii, New Jersey, New York, and Rhode Island) and the Commonwealth of Puerto Rico have current infrastructures built that manage short-term State Disability Insurance (SDI) systems.²⁴ Pilot programs can be more quickly implemented in one or more of the five states with existing infrastructure. The Obama Administration (OMB) or champions in Congress should fund test pilot projects in the states with SDI to test design elements from presenter proposals that would combine for an effective early intervention (employment support) insurance program, to determine if the intervention reduces applications to SSDI. [*White House - OMB*]
4. Identify bipartisan champions in Congress who request the Government Accountability Office (GAO) to assess what lessons can be learned from corporate Disability Management (DM) programs that could be included in any revisions to the SSDI program from such practices. Moreover, request that SSA convene a meeting of key representatives from DM programs to meet with a select group of disability researchers, advocates, and Congressional staff for a one-day briefing on successful practices and potential applications to a post-integrationist policy of employment. [*Congress*]
5. Conduct federally sponsored webinars and other forums by agencies that have studied relevant issues that include analysis of how to better integrate and eliminate duplicative programs; and realign program incentives resources and performance objectives. See GAO report March 1, 2011 (GAO-11-3185P). [*White House*]

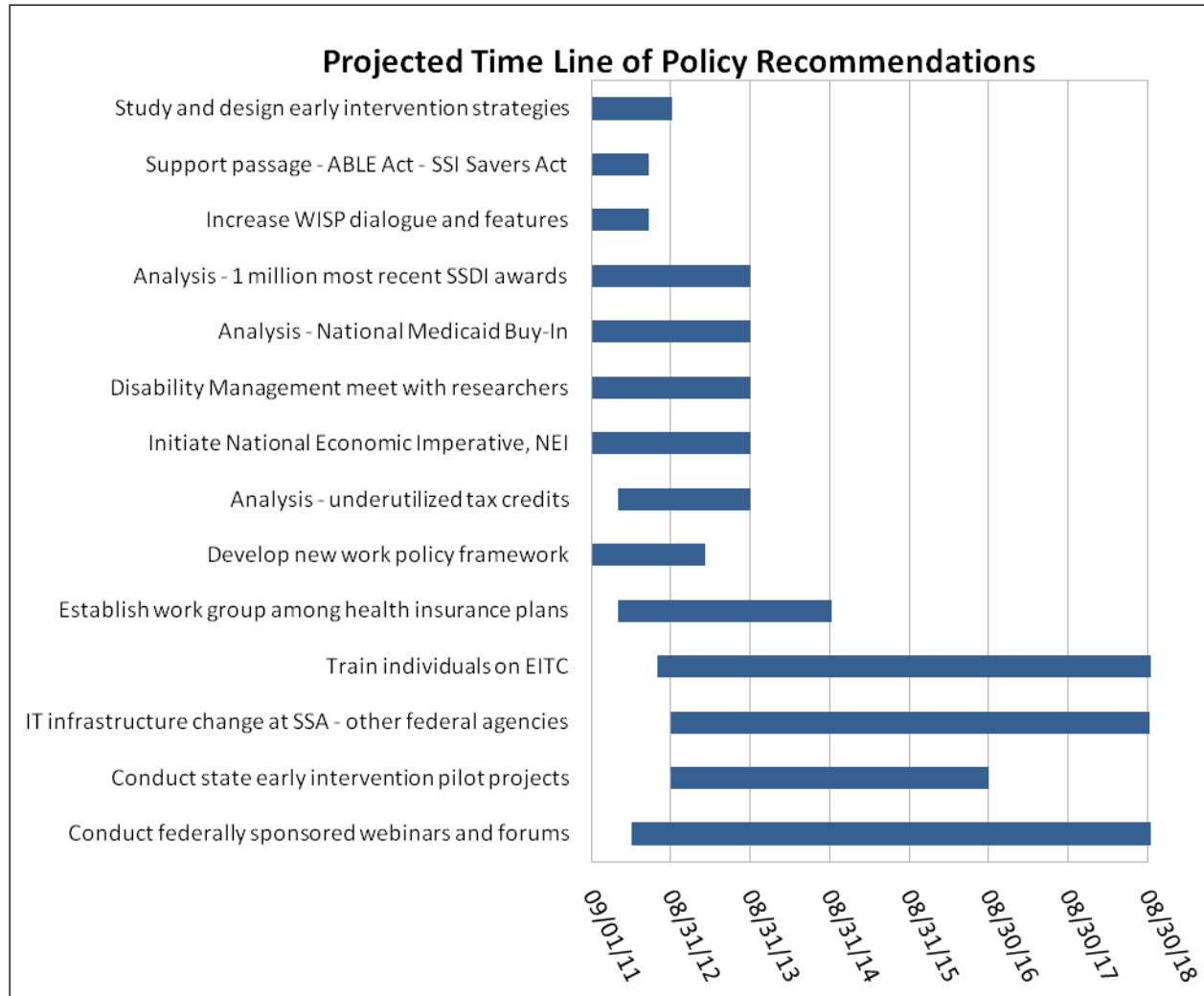
²⁴ At this writing, only the five states listed above and the Commonwealth of Puerto Rico provide or require employers to provide short-term disability insurance benefits. Each state disability insurance program is named as follows: California State Disability Insurance (SDI); Hawaii Temporary Disability Insurance (TDI); New Jersey Temporary Disability Insurance (TDI); New York Disability Benefits; and Rhode Island Temporary Disability Insurance (TDI).

6. As part of the NEI, conduct an analysis of the one million newest SSDI awards to determine demographic information and what industries these individuals had worked in prior to applying for SSDI. Use this data to target industries for further study in current best practices with early intervention and outcomes for stay at work and return to work programs. *[White House - OMB]*
7. Establish a workgroup of diverse government and non-governmental stakeholders to develop specifications and feasibility for legislation that will establish a national Medicaid Buy-In (MBI) for workers with disabilities (via the Centers for Medicare and Medicaid Services [CMS] as the lead agency, and in partnership with SSA and the Office of Disability Employment Policy [ODEP] within the Department of Labor). The proposed national MBI would provide necessary and appropriate wrap-around services and long-term supports as secondary payer to employer-sponsored health coverage in all states. *[Government Accountability Office (GAO)]*
8. Establish a working group to test various strategies and to conduct data analysis among employers. *[White House]*
9. Conduct a study of the most successful Workers' Compensation plans that return workers to employment via the Office of Disability Employment Policy (ODEP). Suggested states to consider are Washington and West Virginia. The study should evaluate the fact that there is no financial penalty to the employer or state government if the employee moves to the SSDI roles. *[Department of Labor (DOL)]*
10. Fund the Internal Revenue Service (IRS) to more widely publicize and train individuals with disabilities on the use of the Earned Income Tax Credit (EITC), currently underutilized as a means of providing direct fiscal incentives that make work pay. *[Congress]*
11. Provide a current analysis of all underutilized disability-related employer tax credits now available. *[IRS]*
12. Report and make recommendations to Congress on the feasibility of replacing all disability-related, existing employer tax credits with one dollar-for-dollar-spent employer Reasonable Accommodation Tax Credit. *[GAO]*
13. Support passage of the ABLE Act, with amendments to include veterans, providing a pretax investment vehicle for individuals with disabilities and their families to accumulate savings for education, employment, and independent living without jeopardizing access to public benefits. *[Congress]*
14. Support the Social Security Administration to become the federal government's information technology leader, insuring real-time and virtual information services are accessible to applicants and post-entitlement beneficiaries going to work, in partnerships

with private insurance, universities, and nonprofit community based services. *[White House or Congress]*

15. Develop a new work policy that expands and shares promising practices of wellness, health and productivity, stay at work and return to work policy and practice for those who leave work because of accident, injury, illness, surgery, and potential work disability. Workplace flexibility for all employees²⁵ and current employer Disability Management programs received a lot of discussion, within operational mechanisms such as workers' compensation and private disability insurance. Expanding and improving integration of these programs and policies could prevent some work limitations from needlessly ending careers, and increase the number of employers able to retain valuable human capital. Current insurance system protocols drive the employee to separate from or quit work, swear one cannot work, prove to strangers one cannot work in a series of short- and long-term disability insurance procedures, and then at the end get a "Ticket to Work" in the mail after award of public disability benefits. *[Congress]*

Chart 1 below represents the projected timeline of completion for key policy recommendations:



²⁵ Workplace Flexibility 2010 Project, http://scholarship.law.georgetown.edu/pub_rep/3

Part Five: Conclusion

The Employment Summit in the Great Recession identified actions with potential for addressing some of the most vexing issues in increasing employment. The intent of the Summit was to identify actions that could be taken by those in a position to champion key issues. The overall goal is to stimulate action on the part of those who can effect change.

A major consensus reached at the Summit focused attention on the costs of a disability policy that continues to foster dependence and separation from the workforce. In addition, the Great Recession has exacerbated concerns about the continued solvency of the Social Security Trust Fund. The Trust Fund pays Social Security Disability Insurance and other family benefits when wage earners separate from the workforce. Consensus included:

- Current disability policies are expensive and foster dependence and separation from the workforce. However, current programs provide necessary supports, including health care for many people with disabilities, which must be sustained.

“A new disability system must incorporate elements that embrace change and: provide assistance and support to individuals and strive to maximize employment outcomes to the extent of each individual’s capabilities; facilitate a cultural shift within society to establish the expectation that individuals with disabilities can and should work to the extent of their capabilities and that society should assist individuals with disabilities in that endeavor; recognize and accommodate the dynamic nature of disability and its sometimes cyclical impact on work capacity; and facilitate rehabilitation and employment by coordinating and integrating the various sources of assistance and support that are now inconsistently provided by multiple uncoordinated programs.”

A Disability System for the 21st Century
Social Security Advisory Board, September 2006

- The low employment rates for people with disabilities are both detrimental to people with disabilities and cost the nation a great deal of money in public benefits.
- All people with disabilities, including individuals with the most significant disabilities, should have the opportunity and access to appropriate supports to enable them to work in integrated employment with prevailing wages and benefits.
- Reform proposals and national attitudes should focus on what people with disabilities can do rather than what they cannot do. Today people with disabilities are a vastly underutilized national resource.

- There is a need for a short-term, early intervention mechanism to assist people with onset of disabilities to return to work rather than becoming dependent upon public benefits.
- The need for policy reform is urgent given the current budget situation and the projected insolvency of the Social Security Trust Fund. Development of well-thought-out evidence-based reforms will take time.
- A national policy of employment first, with resource alignment to support it, will make a great difference in the employment rate of people with disabilities.

In any manner that employers, the Administration and Congress choose to move forward, one thing remains true: disability insurance and supportive work measures must garner the necessary attention to proactively resolve the present disincentives issues and inevitable insolvency crisis, else continue down a path of deteriorating economic conditions.

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Appendices

- A. Summit Participant List
- B. Historical Context of the Disability and Work Definition Problem
- C. Key Values and Least Dangerous Assumptions
- D. America's Forgotten Workers: Staunching the Bleed to Reverse the Trend

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Appendix A. Summit Participant List

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Appendix B.

Historical Context of the Disability and Work Definition Problem

From the 1930s to the 1950s, Congress hotly debated the inclusion of a disability program in Social Security. The all-or-nothing definition of disability originated with the definition from the Aid to the Permanently and Totally Disabled program of public assistance (welfare) from 1950. This definition was incorporated into the first Social Security Disability Insurance (SSDI) legislation and later retained in the 1972 legislation establishing the Supplemental Security Income (SSI) program.

The SSDI program was amended into the Social Security Act in 1956 (P.L.84-880), for individuals 50 years of age and over who had mental or physical impairments of a long lasting nature and with a *severity sufficient to preclude them from engaging in any substantial gainful activity*. Subsequent amendments broadened the scope of the program to include younger workers and to add benefits for disabled widows and for individuals who became disabled prior to age 22 whose working parent died or became eligible for Social Security benefits.

The original requirement for the disability to be long lasting and of indefinite duration was modified to allow benefits for impairments that are expected to last 12 months or longer. Health insurance under Medicare became an added SSDI benefit for those receiving SSDI cash benefits for at least two years.

The Government Accountability Office (GAO) 1996 report “*SSA Disability: Return-to-work Strategies from Other Systems May Improve Federal Programs*” (GAO/HEHS-96-133) recommended that the Social Security Administration (SSA) place more emphasis on return to work efforts. The principle findings of the report are:

- Intervene early to return to work
- Identify and provide necessary return to work services and case management
- Provide incentives for the employee to engage in return to work efforts

A major result of this GAO report, along with a string of other reports and grassroots activity at the time, was the enactment of the Ticket to Work and Work Incentive Improvement Act (Ticket Act) of 1999, P.L. 106-170. The purposes of the law are: “1. To provide health care and employment preparation and placement services to individuals with disabilities that will enable these individuals to reduce their dependency on cash benefits programs. 2. To encourage States to adopt the option of allowing individuals with disabilities to purchase Medicaid coverage that is necessary to enable such individuals to maintain employment. 3. To provide individuals with disabilities the option of maintaining Medicare while working. 4. To establish a return to work ticket program that will allow individuals with disabilities to seek the services necessary to obtain and retain employment and reduce their dependency on cash benefit programs.”

In 2000, the GAO provided testimony that made the following key points:

- SSA does not integrate efforts to return individuals to work into either its initial or continuing eligibility assessment process

- The Social Security Act’s definition of disability – where the person must be unable to engage in any substantial work in society – is a very restrictive definition
- The “all-or-nothing” definition and work rules within the SSDI program are strong disincentives to test or demonstrate capacity to work

The 2006 Social Security Advisory Board report “*A Disability System for the 21st Century*” stated, in response to programs such as SSDI being viewed as “programs of last resort”:

The first alternative to be explored must be how to enable persons with work incapacities to avoid, postpone, or minimize their need for dependence on the programs of last resort...

The first question should be, “*What type of assistance do you need in order to achieve your maximum possible contribution to your own well being and to the good of the community?*” If we do not find a way to make that the first question, we will be endorsing and fostering a culture of pessimism and dependency.

A 2008 evaluation of the Ticket to Work program by David Stapleton, Mathematica Policy Research, “*Ticket to Work at the Crossroads: A Solid Foundation with an Uncertain Future*,” concluded that although the program did increase beneficiary use of employment services in 2002 and 2003, the increase did not produce a corresponding increase in earnings or reduction in benefits as had been expected from the 1996 GAO report.

In May 2010, Jody Schimmel of Mathematica reported out that Social Security disability beneficiaries using their Ticket to Work did retain employment longer than those who did not. She reported that Ticket to Work (TTW) participants are more likely to leave the rolls because of work than nonparticipants. Schimmel reports that the numbers of SSA disability beneficiaries finding work by using the Ticket to Work program remains small. “... In 2006, TTW participants represented less than one-half of one percent of all SSA disability beneficiaries.”²⁶

²⁶ Schimmel, May 2010

Appendix C. Key Values and Least Dangerous Assumptions

Created by Bob Williams, April 10, 2010.

Employment support policies and programs should reward, measurably increase and sustain the competitive employment, economic security and financial independence of young people and working age adults with significant disabilities regardless of whether they are currently receiving SSDI/SSI or not -- by maximizing such individuals':

- Opportunity and ability to make well informed, viable choices that have a real chance of improving their lives and those of their families;
- Health and community living security;
- Educational, employment and career advancement opportunities, and,
- Financial independence and security.

Reasonable assumptions on what makes employment work for Americans with significant disabilities:

Youth and working age adults with significant disabilities are most likely to obtain and sustain ongoing competitive employment, become financially independent and advance in a career when:

- The person has valid reasons to be confident that having a particular job enhances, rather than undermines their and their family's economic well being, independence and health security.
- Those that the individual trusts most – their family, friends and mentors – share the same confidence.
- The person knows or knows of positive examples and role models of others who have similar disabilities, share similar challenges and barriers and are nonetheless successfully employed.
- There is a goodness of fit between the skills, abilities, interests and future aims of the worker with the bottom line needs and interests of the employer.
- The worker is employed in a high growth sector that offers good pay and benefits.
- Their job enables them to have a household income that is substantially greater (i.e., two or three times greater) than what SSDI or SSI would provide.
- Working adds to their personal and household income, savings and assets.
- The person can easily access the supports they need to stay employed at home, at their workplace and everywhere else in their community.
- The job is more than a job, it is part of a career that is rewarding and offers real opportunities to advance.
- Working becomes a central part of their life and future.

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Appendix D. America's Forgotten Workers: Staunching the Bleed to Reverse the Trend

Bob Williams, August 4, 2010, via Facebook.

I read, “Recession deals a double blow to those both disabled and unemployed”⁽ⁱ⁾ in the Metro Section of the July 25th Washington Post with tears of anger and immense pride. The piece, which ran one day before the 20th anniversary of the enacted into law of the Americans with Disabilities Act, provides a distressed but quite accurate snapshot of workers with disabilities like Alex Malty, a 33-year-old low vision man who until being laid off recently worked as a teacher aide with kids who have autism. Malty is like 748 thousand other Americans with disabilities ages 16 to 64 who according to the U.S. Bureau of Labor Statistics were unemployed and actively seeking another job as of this June⁽ⁱⁱ⁾. The source of my anger as well as pride is the same. Malty is not looking for a hand out or even necessarily a hand up. He is just looking to do what he does best – work with kids with autism and to make a living and perhaps a career out of it. For this, I am immensely proud of Alex Maltby and others like him. However, I am angered beyond words by their predicament and near complete invisibility.

Americans with disabilities who are unemployed or still employed but barely making it are the forgotten workers of our day. Most often they make meager wages, do not receive disability benefits and have a thread bear safety net at best below them.

According to Stephen Kaye, a researcher at the University of California at San Francisco, over a 12 month period in 2008 and 2009 “the number of employed workers with disabilities declined at a rate more than three times that of workers without disabilities, and the unemployment rate rose dramatically to levels far exceeding that of other workers.” Kaye asserts when such workers are let go from their jobs in this Great Recession, they remain jobless and looking for work longer than most others do. There is evidence as well that unlike during previous economic downturns, laid off workers with disabilities maybe trying to postpone going on the SSDI rolls in hopes of finding a job instead.⁽ⁱⁱⁱ⁾ It is not clear, however, how much longer they will be able to hold out.

What is equally damning is that the interests and concerns of these mostly low to moderate wage workers rarely make it on to the radar much less get seriously addressed by policy makers, the public, the press, opinion leaders or, if we are honest, the disability movement. For nearly a century now, the policy aim around employment and Americans with disabilities has been simple and singular – to get more people jobs. This is understandable given that at least ever since I was a teenager in the 1970's I recall that the percentage of adults with disabilities who are not part of the U.S. labor force – i.e., those that are nor employed nor actively looking for a job – has hovered at 70 percent. Obviously, it is vital to the Nation's interest that we continue to support and invest in new ways of enabling persons on SSDI and SSI to go to work, earn a decent living and remain employed and off the rolls for as long as possible.

As necessary and vital as it is to do all of this, however, the singular focus is no longer sufficient. We also need to invest a comparable amount of time, resources and energy in developing a range of public policies and approaches that will:

- 1) Staunch the bleed in the number of American workers with disabilities who are losing their jobs, staying unemployed longer and at high risk of going onto SSDI and/or SSI as a result.
- 2) Better enable those that are able to leave the rolls to remain employed, healthy and independent.
- 3) Reward all such workers by assuring that they have the equal opportunity and needed supports to weather tough times, stay employed and prosper in good times.

NOTES:

(i) Donna St. George, "Recession deals a double blow to those both disabled and unemployed". The Washington Post Metro Section, July 25, 2010. http://www.washingtonpost.com/wp-dyn/content/article/2010/07/24/AR2010072401676.html?wpisrc=nl_headline.

(ii) U.S. Department of Labor/Bureau of Labor Statistics, "Employment Situation – June 2010", Table A-6. <http://www.bls.gov/news.release/pdf/empst.pdf>. May 2011.

(iii) H. Stephen Kaye, "The Disproportionate Impact of the Great Recession on Workers with Disabilities." 2010. <http://www.disabilityfunders.org/node/208>

(iv) Compare the U.S. Department of Labor/Bureau of Labor Statistics, "The Employment Situation for October and November 2008." Table A-6. http://www.bls.gov/cps/cpsdisability_112008.htm. with that for June 2010 cited above.

(v) Ibid.