

A Proposal to Support Employment for Maine People with Disabilities

Senator Angus S. King, Jr.

November 13, 2015

Despite the landmark passage of the Americans with Disabilities Act in 1990, the employment rate among people with disabilities in the United States remains troublingly low. This is a significant challenge facing our country, for employment not only improves the economic prospects of individuals with disabilities, it also improves their emotional well-being and connection to their communities. However, this challenge also presents an opportunity for employers – particularly those in Maine, who will need to tap into a larger pool of workers as the baby-boom generation ages out of the workforce.

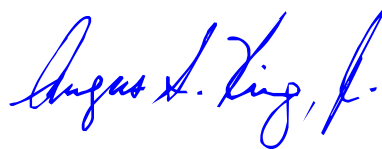
Fortunately, many stakeholders in Maine – including advocates for people with disabilities, business leaders, and state agencies – have begun work to seize this opportunity. Working together, the state is recognizing the importance of integrating Mainers with disabilities into the workforce and ensuring that we are not discounting anyone from the chance to engage in work and improve their economic prospects.

However, more can be done – and the federal government can be a partner to states in this important effort. To that end, this white paper presents several proposals for increasing work activity among Mainers with disabilities as well as ways to improve relevant federal programming, including:

- Developing early interventions and supports;
- Expanding evidence-based return-to-work programs;
- Exploring the integration of private disability insurance;
- Improving the SSDI determination process; and
- Strengthening the integrity and solvency of the SSDI program.

Taken together, these proposals can contribute to better employment opportunities for individuals with disabilities and a stronger, more inclusive workforce in Maine and across the country. While these proposals are in no way intended to be exhaustive, I hope they help to accelerate the conversation already happening in Maine. I look forward to receiving feedback in the coming weeks and months as I work with all of you and my colleagues in the Senate to increase opportunities for people with disabilities to access and maintain employment.

Sincerely,

A handwritten signature in blue ink that reads "Angus S. King, Jr." with a stylized flourish at the end.

Angus S. King, Jr.
United States Senator

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INTRODUCTION

Maine lags behind a majority of states in workforce participation among its citizens with disabilities. In 2013, only 31 percent of the state's working-age adults with disabilities were in the workforce.¹ For that same year, the Social Security Administration (SSA) reports that 7.7 percent of working-age adults in Maine received Social Security Disability Insurance (SSDI) benefits – the sixth highest rate of receipt in the country.² In several Maine counties, that figure increases to over nine percent.³ Thousands of Mainers with disabilities also receive income support from a separate SSA program, Supplemental Security Income (SSI).

While the SSDI program provides critical earned benefits to millions of Americans with disabilities each year, the program has a dismal record of supporting beneficiaries in their efforts to return to the workforce. Even long-term studies of SSDI beneficiaries show that less than four percent of beneficiaries leave the program for work.⁴ Many program recipients report confusion over how work activity will impact their benefits and access to healthcare, while others lack access to the kind of training and accommodations that could improve their ability to stay in the workforce. A significant portion of program participants could have benefited from targeted intervention delivered months – and in some cases years – before their disabling condition caused them to leave the workforce.

While this is a national challenge, it is especially acute in Maine. Given looming demographic and economic shifts, Maine cannot afford to ignore the thousands of individuals with disabilities who could increase their contribution to the state's economy. As the state's population collectively ages, the size of Maine's workforce is predicted to slightly decline through 2022, after growing for the last five decades. At the same time, a number of industry sectors, including Health Care and Social Assistance and Educational Services, are expected to grow substantially between 2012 and 2022.⁵ This growth will create particular challenges for these two industries, as they will need to simultaneously contend with the retirement of large portions of their workforce. Given the low workforce participation rate of Maine people with disabilities, it is critically important to provide adequate support and incentives for individuals with disabilities who could fill these openings.

Congress recently passed the Bipartisan Budget Act (BBA) of 2015, which forestalls a funding shortfall in the SSDI trust fund and includes sensible program improvements, including increasing program integrity activity at the SSA, simplifying the process through which beneficiaries report earnings, and restoring the agency's authority to conduct demonstration projects to test the effectiveness of work incentives. However, this legislation was only a starting point – much more should be done to support employment among individuals with disabilities. To that end, this white paper lays out five sets of proposals to increase workforce participation among people with disabilities and to provide more timely supports and services to individuals applying to and receiving benefits from federal disability programs.

¹ Institute on Disability, [Annual Disability Statistics Compendium](#), University of New Hampshire, 2014.

² See table 8 of the [Annual Statistical Report on the Social Security Disability Insurance Program, 2013](#), December 2014.

³ Stephan Linder, "[Why are disability rates so different across small areas?](#)" Urban Institute, April 2014.

⁴ Su Liu and David Stapleton, "[Longitudinal Statistics on Work Activity and Use of Employment Supports for New Social Security Disability Insurance Beneficiaries](#)," Social Security Bulletin, Vol. 71 No. 3, 2011.

⁵ Maine Department of Labor, "[Maine Workforce Outlook 2012 to 2022](#)."

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PROPOSAL 1: DEVELOPING EARLY INTERVENTION AND SUPPORTS

While much can be done to better support work among SSDI beneficiaries, some of the greatest potential to reconnect individuals with disabilities to jobs or strengthen their workforce attachment lies in connecting people with supports and services long before they ever apply to the SSDI program. By the time individuals are approved for SSDI benefits, they may have spent months, if not years, out of the workforce, during which time their skills may have atrophied and their health conditions worsened.

States and the federal government should partner and recognize that early intervention strategies hold promise for increasing employment among individuals with disabilities and stemming the growth in long-term costs to the SSDI, SSI, Medicaid, and Medicare programs. While strategies will require upfront investment and greater coordination between state and federal agencies, they could also reap substantial benefits for people with disabilities and ultimately improve program solvency.

There are many ways to pursue early intervention strategies, such as:

- **Facilitating state-designed solutions.** Congress should authorize pilot funding for states to fund coordinated state-designed strategies to support individuals receiving or deemed likely to receive SSDI or SSI benefits but who also have work capacity that could be harnessed for new or modified employment.⁶ Funding would support a time-limited transitional cash benefit to individuals with disabilities that would be coupled with services and training to enable them to stay in the workforce and compete for available jobs. Funding would also support the administration and coordination of state-based services. Pilots would be subject to rigorous oversight and evaluation in order to ensure that the results could inform broader policy changes.
- **Developing a regional database on disability and employment.** The Department of Labor (DOL) and SSA should analyze existing data to develop regional information regarding the labor market for people with disabilities, with a particular focus on developing predictive modeling related to individuals likely to apply to the SSDI program. Such data should include an identification of medical conditions, industries, job functions, and other factors that increase the likelihood of the development of a disabling health condition. States would be able to access this data and use it to develop targeted early intervention strategies to focus on individuals still employed but at risk of leaving the workforce.
- **Exploring new ways to deliver SSDI benefits.** SSA should use its renewed demonstration authority to pilot a transitional benefit model for recently-awarded SSDI beneficiaries who, through the determination process, are designated as likely to medically improve. SSA would ensure that these beneficiaries have enhanced access to responsive and customized services to help them transition into full employment and waive any program rules related to limitations on earnings during the transition period. If unable to successfully transition, individuals would retain attachment to the SSDI program and be subject to all existing program rules.⁷

⁶ For an example of this proposal, see Jeffrey Liebman and Jack Smalligan, "[An Evidence-Based Path to Disability Insurance Reform](#)," The Hamilton Project, February 2013.

⁷ This idea was proposed and is continuing to be developed by Kim Hildred, Pamela Mazerski, Harold J. Krent, and Jennifer Christian through the Committee for a Responsible Federal Budget's McCreery-Pomeroy [SSDI Solutions Initiative](#). For more information on this specific proposal, see the author's presentation [here](#).

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- **Promoting better coordination between relevant federal agencies.** Officials from SSA, DOL, Department of Education (ED), and Department of Health and Human Services (DHHS) should form an interagency task force that develops a coordinated strategy between federal agencies and existing funding streams in order to better support individuals with disabilities who seek to increase their work activity.

PROPOSAL 2: EXPANDING EVIDENCE-BASED RETURN-TO-WORK PROGRAMS

The SSDI application process requires disabled workers to demonstrate that they are experiencing an impairment that renders them unable to perform substantial work. Given this requirement, and the length of the determination process—which averages more than 600 days for applicants who progress through the initial, reconsideration, and appeals hearing stages⁸—disabled workers entering the program spend a substantial period outside the workforce and their impairments have often worsened in the interim. This creates tremendous challenges for beneficiaries seeking to re-enter the workforce. Even among beneficiaries who experience medical improvement and leave the program, about 20 percent return to SSDI within eight years, further underscoring the difficulty of returning to work.⁹

There are two broad approaches to improving return-to-work outcomes. The first is to optimize use of the existing work incentive structure by improving beneficiary knowledge of how work will impact their benefits and by fostering better collaboration among the agencies that assist individuals with disabilities. The second is to create new incentives that simplify the interaction of work with benefit amounts and better target the needs of people with impairments that are episodic in nature. The BBA includes changes in both of these categories, including creating an electronic earnings reporting system for SSDI, harmonizing the definition of “earnings” between SSDI and SSI, creating automated earnings verification via data exchanges with payroll providers, and creating a new benefit offset pilot.

Further reform options within these approaches include:

- **Reauthorizing SSA’s Work Incentives Planning and Assistance (WIPA) program.** WIPA counseling gives beneficiaries the confidence to try to return to work and the ability to navigate the overlapping work incentive structures of SSDI and any needs-based programs for which they qualify. This program has assisted Maine Medical Center in funding six positions to counsel Maine’s SSDI beneficiaries about their options for returning to work and how work activity impacts their benefits, though the majority of funding has come from state-based sources. Reauthorization should allow for increased funding for the program to ensure that benefits counselors have more manageable caseloads, as well as add clarity to program goals and performance measures.
- **Providing transitional services to individuals who leave federal disability programs.** SSA and related state and federal agencies should develop a coordinated handoff to support individuals whose SSDI or SSI benefits are terminated. Even in cases of medical improvement,

⁸ See Performance Table on page 9 of the SSA [FY16 Budget Overview](#).

⁹ Jeffrey Hemmeter and Michelle Stegman, “[Subsequent Program Participation of Former Social Security Disability Insurance Beneficiaries and Supplemental Security Income Recipients Whose Eligibility Ceased Because of Medical Improvement](#).” Social Security Bulletin, Vol.73, No. 3, 2011.

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these individuals may still require assistive technology, retraining, or other supports in order to rejoin the workforce. Cross-agency coordination could improve the share of former beneficiaries who are able to successfully transition into permanent employment and reverse the current trend in which many former beneficiaries return to federal disability benefits within a few years.

- **Broadening and publicizing tax incentives to hire and retain people with disabilities.** Federal law already permits certain tax benefits for hiring and retaining workers with disabilities, such as the Work Opportunity Tax Credit (WOTC) and Section 44 of the Internal Revenue Code. These credits could be expanded to apply to more individuals with disabilities, and the WOTC credit could be reauthorized for a longer period of time to provide policymakers a greater chance to test its efficacy. States should consider building upon these credits to increase employer incentives.
- **Directing SSA to examine alternative work incentive structures.** The current work incentive structure is both intimidating to SSDI beneficiaries and poorly tailored for individuals with episodic impairments. SSA could test the effectiveness of an annual, rather than monthly, earnings test for individuals with certain types of disabilities—such as particular episodic mental impairments—that may allow for substantial work activity within a given week or month, but which preclude full-time, year-round employment. An annual earnings test could reduce confusion and allow individuals to test their capacity to periodically do substantial work.
- **Piloting and evaluating additional options for eliminating the “cash cliff.”** Currently, SSDI beneficiaries who work see their benefit amount drop to \$0 if monthly earnings reach the program’s substantial gainful activity (SGA) level of \$1,090,¹⁰ but receive a full benefit if they earn a dollar less. This cliff means that beneficiaries who earn at or slightly above SGA are considerably worse off than if they worked at a low level. The BBA authorizes a benefit offset pilot to test the efficacy of a \$2 for \$1 offset to address this challenge. This and any alternative proposals must be properly designed and implemented to give policymakers a clear picture of how eliminating the cliff affects work activity.

PROPOSAL 3: EXPLORING THE INTEGRATION OF PRIVATE DISABILITY INSURANCE

Private disability insurance can play a meaningful role in enabling more individuals with disabilities to stay in the workforce. Rather than requiring what can be a years-long process to receive SSDI benefits, private disability insurance provides a more responsive set of services and wage replacement to ensure that workers can remain in their current jobs or transition to more suitable positions without experiencing the long interruption in work attachment that so often occurs for SSDI beneficiaries.

Many ideas exist to increase access to private disability insurance – including a proposal to allow employers to automatically enroll employees in such programs. While private disability insurance may not be suitable for everyone, and federal disability programs must remain an essential part of our social safety net, these proposals merit further discussion and exploration. Lessons can be learned from the

¹⁰ The \$1,090 “cash cliff” level is equivalent to the substantial gainful activity (SGA) threshold in a given year and applies specifically to non-blind beneficiaries in 2015 who have exhausted their 9-month Trial Work Period. More details on the SSDI earnings threshold are available [here](#).

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success of the private disability insurance market, and the industry's strategies could inform the public sector's efforts to better coordinate and deliver timely, customized services.

Possible proposals include:

- **Permitting automatic enrollment in private disability insurance.** Some companies, such as Unum, have proposed federal legislation – similar to the Pension Protection Act of 2006, which allows employers to opt employees into 401(k) plans – that would permit employers to enroll employees in private disability insurance, provided they are given advance notice and a clear right to opt out.¹¹ Congress should debate this proposal and ensure that any new enrollment models work well for various categories of industries and employees. Congress should also consider whether minimum coverage requirements and consumer protections should be included in such legislation.¹²
- **Piloting a “front-end” to the SSDI system that leverages private disability insurance.** Some researchers have proposed a pilot to allow or require employers to contract with private disability insurers to provide coverage and early intervention services to workers as a mandatory step before receiving SSDI. Such a policy would support workers for a period of several months to around two years and allow individuals who are unable to engage in SGA by the end of the intervention to transition into the SSDI system. Testing out the integration of this kind of effort with SSA – as well as with existing state and federal programs and services – could provide valuable information on its effectiveness.¹³
- **Establishing a national effort to provide income protection information to workers and employers.** The Department of Labor, in coordination with other agencies, could establish a national clearinghouse to provide print and online information to workers and employers with objective information about public and private income protection insurance and the services and supports available to workers who develop a work-limiting illness or injury.¹⁴

PROPOSAL 4: IMPROVING THE SSDI DETERMINATION PROCESS

While it is important that SSDI applicants are thoroughly vetted to determine the extent of their work capacity, the current application process creates substantial hardships for many people who are SSDI-eligible. During fiscal year 2014, the initial determination stage lasted an average of 110 days, the reconsideration stage lasted an average of 108 days, and the appeals hearing stage lasted an average of 422 days.¹⁵ Tragically, the combination of long processing times and the poor health of applicants means that thousands of applicants die each year while waiting for a benefit decision.¹⁶

¹¹ See Unum, “[We are not the only ones who think America needs a new safety net.](#)”

¹² For further analysis of how to ensure an automatic opt-in proposal can be designed to provide greatest value to consumers, see Lisa Eckman, “[Automatic Enrollment in Private Disability Insurance: Protections and Benefit Requirements Necessary to Ensure Value for Workers.](#)” Center for Budget and Policy Priorities, October 2015.

¹³ See David H. Autor and Mark Duggan, “[Supporting Work: A Proposal for Modernizing the U.S. Disability Insurance System.](#)” Center for American Progress and The Hamilton Project, December 2010.

¹⁴ See draft legislation on Unum’s [website](#).

¹⁵ See Performance Table on page 9 of the SSA [FY16 Budget Overview](#).

¹⁶ Damian Paletta and Dionne Searcey, “[Growing Case Backlog Leaves the Terminally Ill Waiting.](#)” *Wall Street Journal*, December 28, 2011.

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The challenge is to maintain a high level of decisional accuracy while reducing avoidable delays for applicants who often have limited financial resources with which to support themselves while they wait for a determination. Some models to address these goals include reforms related to evidence submission that are already being piloted in Maine and reforms in the BBA, such as provisions to expedite the hiring process for SSA administrative law judges (ALJs), but further work remains to be done.

There are a number of additional approaches to reconciling these two goals, including:

- **Eliminating the reconsideration stage of the determination process.** This stage duplicates the procedures used at the initial level, and during fiscal year 2014 lasted an average of 108 days, but resulted in different outcomes in only 11 percent of cases.¹⁷ Resources used for this stage could be better directed to fully developing cases at the initial level or for speeding appeals hearings.
- **Directing SSA to standardize the process and forms related to evidence submission.** This could include changes to forms and instructions directed to both applicants and their medical providers, including providing greater clarity on the types of evidence required to demonstrate SSDI eligibility, and guidance that incomplete files are grounds for rejection at the initial level. These changes could increase the share of positive determinations that can be made prior to the appeals hearing level, reducing chronic hearing backlogs and reducing unnecessary waiting time for qualified applicants.
- **Increasing ALJ hearing notice from 20 to 75 days.** In SSA's Region I, which includes Maine, applicants receive notice of their appeals hearing 75 days in advance, rather than receiving 20 days' notice, as in the rest of the country. Expanding this advance notice policy nationwide will give applicants more time to gather evidence from their medical providers in advance of their hearing, which should improve the quality of decisions.
- **Recommending evidence submission five days prior to hearing.** SSA administrative law judges responsible for adjudicating SSDI appeals often analyze hundreds of pages of evidence before they reach a decision. In order to make appeals hearings most productive, applicants should be encouraged to submit their evidence well in advance of the hearing date, so that the ALJ has sufficient time to review it.
- **Increasing the number of ALJs.** The demand for hearings is outpacing the capacity of SSA's hearing offices, creating significant delays for applicants. For instance, as of April 24, 2015, there were more than 701 cases pending per ALJ in the Portland, Maine hearing office, leading to an average appeal processing time of well over 400 days, a period that is in line with national trends.¹⁸ Increasing funding levels for SSA's Office of Disability Adjudication and Review could allow appeals to be processed more quickly.

PROPOSAL 5: STRENGTHENING SSDI PROGRAM INTEGRITY AND SOLVENCY

In order for federal programs to remain viable, public support must be rooted in the assurance that the programs are run efficiently and with integrity. The recent passage of the BBA takes steps to strengthen the solvency of the Social Security trust funds by giving SSA increased resources to conduct additional

¹⁷ See Performance Table in SSA [FY16 Budget Overview](#) and Table 3.27 in SSA [FY16 Congressional Justification](#).

¹⁸ Statistics provided to Senator King by the Portland, Maine SSA hearing office in May 2015.

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program integrity activities, such as Continuing Disability Reviews, as well as an expansion of the agency's efforts to better identify and eliminate instances of improper payments.

SSA must build upon this action and continue to make efforts to completely eliminate fraud within the program, which serves to undermine public support and divert scarce resources from individuals in need. The SSDI program must continue to be modernized so that it reflects the twenty-first century labor market and the agency must not back down on its obligation to ensure that beneficiaries are reviewed in a timely fashion. Congress needs to also do its job and ensure that both the SSDI and retirement trust funds remain solvent for decades to come.

To achieve these goals, the following approaches deserve consideration:

- **Improving the accuracy of work reports.** SSA should send more frequent reminders to SSDI beneficiaries about requirements to report earnings. These reminders should direct interested beneficiaries to further resources on the details of the reporting requirements, how reported earnings interact with SSDI's work incentives, and the new avenues (authorized via the BBA) through which beneficiaries can report their earnings. In addition, SSA should ensure that earnings reported by concurrently-eligible beneficiaries are reflected in both the SSDI and SSI systems.¹⁹ This will reduce the frequency of overpayments, which have accounted for \$11 billion in misdirected SSDI trust fund resources over the past nine years.
- **Evaluating the medical-vocational guidelines.** SSA should work with DOL to update its medical-vocational guidelines, which are used in the SSDI determination process to ascertain a person's eligibility for the program, based on a combination of age, education, and work experience. Officials should examine whether or not this grid of factors is sufficient in determining an individual's capacity to work and provide suggestions on ways to update the guidelines to reflect advances in employment options and medical technologies and treatments.
- **Communicating contingent nature of SSDI benefits and ensuring timely reviews.** SSA should more clearly inform new beneficiaries that SSDI benefits are contingent upon continued medical impairment. SSA should provide assurance to beneficiaries that timely Continuing Disability Reviews will be conducted to determine whether or not medical improvement has occurred.²⁰
- **Ensuring long-term program solvency.** While Congress recently avoided what would have been a devastating cut to SSDI beneficiaries by improving the program's fiscal footing for the near term, the SSDI trust fund is again expected to be depleted in 2022, and the retirement trust fund is expected to be depleted in 2035. Congress must take action to enact sensible changes to the Social Security programs to ensure that both the disability and retirement programs uphold their obligations to future generations.

¹⁹ See recommendations by GAO in "[Disability Insurance: SSA Could Do More to Prevent Overpayments or Incorrect Waivers to Beneficiaries](#)," October 2015.

²⁰ See recommendation on p. 9 of the Bipartisan Policy Center's report, "[Improve the SSDI Program and Address the Impending Trust Fund Depletion](#)," August 2015.