
**OFFICE OF
THE INSPECTOR GENERAL**

SOCIAL SECURITY ADMINISTRATION

**AVAILABILITY AND USE OF
VOCATIONAL EXPERTS**

May 2012

A-12-11-11124

AUDIT REPORT



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SOCIAL SECURITY

MEMORANDUM

Date: May 30, 2012

Refer To:

To: The Commissioner

From: Inspector General

Subject: Availability and Use of Vocational Experts (A-12-11-11124)

OBJECTIVE

The objective of our review was to evaluate the availability and use of vocational experts (VE) at the Social Security Administration's (SSA) hearings offices.

BACKGROUND

Claimants who are denied disability benefits at the State disability determination services (DDS) can appeal the decision. A claimant has the right to appeal any decision SSA makes on whether they are entitled to Social Security benefits or are eligible for Supplemental Security Income (SSI) payments. SSA's Office of Disability Adjudication and Review (ODAR) administers SSA's hearings and appeals program.

ODAR's field structure has over 8,500 employees, including approximately 1,400 administrative law judges (ALJ) working in 10 regional offices, and over 160 hearing offices nationwide.¹ An ALJ generally conducts a hearing with the claimant at a hearing office or permanent remote site either in person or via video teleconferencing technology.

ALJs may request witnesses, such as VEs, to testify at hearings. The ALJ decides whether to receive the VE opinion at the hearing, by telephone, by videoconference, or in response to written interrogatories. While the *Social Security Act* does not specifically require that the ALJ obtain VE testimony, it requires consideration of matters within the VE's expertise, such as whether the claimant can engage in substantial gainful activity in the national economy.² As part of the disability process for adults, an ALJ may request a VE's opinion when determining a claimant's disability at Steps 4 and

¹ ODAR also operates five National Hearing Centers (NHC). See SSA OIG, *Role of the National Hearing Centers in Reducing the Hearings Backlog* (A-12-11-11147), April 2012.

² See 20 C.F.R. §§ 404.1560(b)(2) and 416.960(b)(2).

5 of SSA's 5-Step Sequential Evaluation Process.³ At Step 4, an ALJ assesses the claimant's ability to perform past relevant work. At Step 5, an ALJ assesses the claimant's ability to perform any other work.

To meet the objective of our review, we examined Case Processing and Management System (CPMS) reports to determine trends in VE use at the national, regional, and hearing office levels. We interviewed managers, ALJs, and staff at ODAR headquarters, the regions, and hearing offices to gain insights on the VE process. We also examined the findings and recommendations from a 2006 ODAR Steering Committee report on expert use and availability. Finally, we reviewed SSA's VE blanket purchase agreement (BPA)⁴ and contacted VEs performing services at hearing offices, as well as national VE associations, to gain greater perspective on VE services. See Appendix D for a further discussion of our scope and methodology.

RESULTS OF REVIEW

Approximately 76 percent of all SSA hearings in Fiscal Year (FY) 2010 involved VEs. However, we also found that regional and hearing office use of VE services varied widely. For instance, regional use of VE services ranged from 35 to 94 percent, while hearing office use varied from 4 to 99 percent. Some of this variance related to Federal Court decisions on remanded cases, which can cause hearing offices to use VE services at hearings to avoid remanded cases. Our analysis identified VE rotation problems at hearing offices, which the hearing office managers stated were related to availability of VEs and related scheduling difficulties. We also found that ODAR tracked VE contracts but not individual VEs, making it difficult to identify potential availability problems at hearing offices. Moreover, ODAR did not have a uniform national VE advertisement program to address potential shortages. Finally, while VE contract rates increased in 2009, ODAR had no process to ensure the VE rates were set at a level to avoid potential shortages and ensure sufficient quality of services. We also identified a number of payment processing issues that management should address to improve the accountability of the VE program.

³ See 20 C.F.R. §§ 404.1520(a)(4) and (e) and 416.920(a)(4) and (e). In addition, see Social Security Ruling (SSR) 83-12 and 85-15. Appendix B discusses SSA's 5-Step Sequential Evaluation Process.

⁴ A BPA is an agreement between the Government and a vendor that gives the Government the option to purchase goods or services from the vendor when needed at an on-call basis. The VE BPA terms of agreement are for 60 months from the date of the award. The BPA also contains prices and costs for services rendered by the VE, a complete description of the services, and other guidelines for fulfilling the contract. SSA, *Disability Vocational Expert Blanket Purchase Agreement Package*, Acquisition Guidance, Exhibit J—Insert SF1449, April 2009. See Appendix C for a description of the VE services provided to the ALJ.

TRENDS IN VOCATIONAL EXPERTS USE

We reviewed VE use at the national, regional, and hearing office level to identify variances nationwide. We found that regional and hearing office use of VE services varied widely.

Use of Vocational Experts – National Trends

In FY 2010, approximately 76 percent of all SSA hearings involved VEs (see Table 1). To calculate this rate, we identified dispositions that required a hearing and determined how many of those hearings involved VE services.⁵ While ODAR reported approximately 737,000 dispositions in FY 2010, we found that about 184,000 (25 percent) did not involve a hearing since the cases were decided on-the-record (OTR) or dismissed.⁶ Of the remaining dispositions with hearings, about 422,000 involved VE services.

**Table 1: VE Use at ODAR Hearings
(FYs 2008 to 2010)**

Categories	FY 2008	FY 2009	FY 2010
Dispositions Requiring a Hearing ¹	405,691	477,749	553,355
Dispositions with VE Testimony	292,717	353,371	421,624
VE Use Rates	72%	74%	76%

Note 1: Favorable OTR cases and dismissals do not usually require VE services.

ODAR conducted approximately 129,000 more hearings with VEs in FY 2010 than in FY 2008 (a 44-percent increase). Most of the increase in VE use was caused by a greater volume of hearings over this period, from about 406,000 in FY 2008 to about 553,000 in FY 2010 (see Table 1).⁷

Use of Vocational Experts – Regional Trends

In FY 2010, 6 of ODAR's 10 regions had VEs testifying at over 80 percent of the hearings (see Figure 1). The Denver Region had the highest VE use rate at 94 percent. ALJs in the NHCs used VEs at 93 percent of their hearings. The New York Region had the lowest use rate, with only 35 percent of the hearings using VE services.

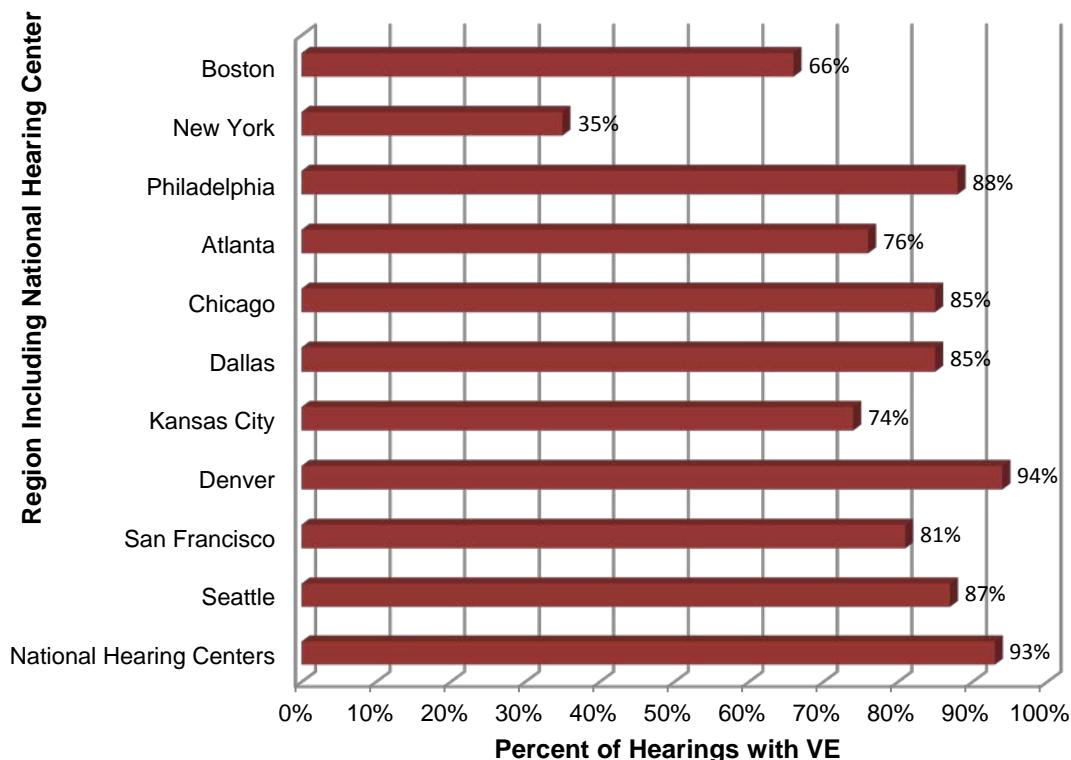
⁵ We did not exclude childhood cases, though VEs are not used at these hearings since the vocational steps (Steps 4 and 5 of SSA's 5-Step Sequential Evaluation Process) do not apply to children. Hence, one would not expect a 100-percent VE use rate under our methodology.

⁶ ALJs do not generally require VE services for OTRs or dismissals.

⁷ The percent of dispositions requiring a hearing also increased during this period, from about 71 percent in FY 2008 to about 75 percent in FY 2010.

The New York Region has a long history of low VE use rates. A January 2001 Social Security Advisory Board (SSAB) report noted that ALJ peer review data from 1997 and 1998 "...show that vocational experts were used in 9 percent of hearings in the New York region and in 75 percent in the Chicago region."⁸ We discuss the New York Region in greater detail in the next section.

Figure 1: Regional VE Use in FY 2010

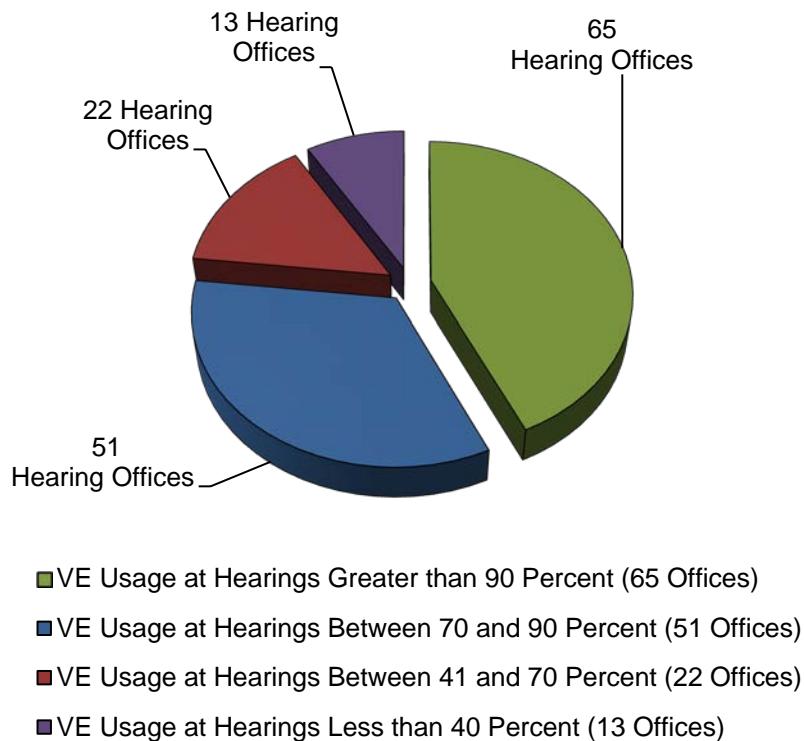


Use of Vocational Experts – Hearing Office Trends

In FY 2010, 65 hearing offices had VEs testifying at over 90 percent of their hearings, (see Figure 2). The Mayaguez, Puerto Rico, Hearing Office had the highest percentage at 99 percent of its hearings. Another 51 hearing offices had between 70 and 90 percent VE use at hearings, 22 offices had between 40 and 70 percent, and 13 offices had less than 40 percent. Of the 13 offices with the lowest VE use, 10 were in the New York Region.

⁸ *Disability Decision Making: Data and Materials*, SSAB, January 2001. It is not clear if the SSAB used the same methodology as we did in our report, but the SSAB report indicated the New York Region had the lowest VE use rate in the country.

Figure 2: VE Use at Hearing Offices in FY 2010



Note: In our analysis, we excluded 7 newly opened hearing offices that had fewer than 200 dispositions in FY 2010.

We identified the four hearing offices with low VE use rates in FY 2010 and contacted the hearing office chief administrative law judges (HOCALJ) to learn more about the low rate (see Table 2). The HOCALJs stated that ALJ preference was the reason for the low VE use in their offices. Furthermore, New York regional managers stated SSA regulations do not require VE testimony, and Federal courts in the Second Judicial Circuit ordinarily do not issue remand orders requiring that ALJs obtain VE testimony.

Table 2: Hearing Offices with Lowest VE Use Rates in FY 2010

Hearing Office	Region	VE Use	Judicial Circuit
Albany, NY	New York	4%	Second
Syracuse, NY	New York	6%	Second
New Haven, CT	Boston	12%	Second
Greensboro, NC	Atlanta	16%	Fourth

To understand the varying use of VE services at the regions and hearing offices, we asked ODAR if there had been any regulatory changes or Circuit Court rulings concerning the use of VEs. ODAR stated although the *Social Security Act* and SSA regulations allow the adjudicator complete discretion in determining whether to obtain evidence from a VE, some Circuit Courts have clearly stated that evidence from the VE is required under certain circumstances.

In a 2006 internal report to the Chief ALJ, ODAR's Medical and Vocational Expert Workgroup (Workgroup)⁹ concluded that Circuit Court rulings may impact VE rates.¹⁰ However, the Workgroup also concluded that *extreme variations* in the use of experts in disability hearings could not be explained by the legal requirements of the *Social Security Act*, regulations, policy issuances, or Circuit Court case law. The Workgroup recommended that ODAR establish a tracking system to better determine whether Court rulings impact the use of experts in the different Judicial Circuit Courts. To date, ODAR has not implemented the Workgroup's recommendation.

AVAILABILITY OF VOCATIONAL EXPERTS

To assess the availability of VEs, we analyzed VE rotation at hearing offices, reviewed the number of VEs contracting with SSA, and inquired about VE advertisement efforts.

Availability of VE Services at Hearing Offices

We identified possible VE availability issues at 23 hearing offices. Our data analysis indicated 29 ALJs in 23 hearing offices had the same VE or VE organization testifying at over 50 percent of their hearings. According to SSA policy,¹¹ the ALJ or designee must select a VE from the roster in rotation to the extent possible. SSA policy also states that when an ALJ selects a VE to provide expert opinion in a case, that VE will go to the bottom of the roster and will not be called again by that, or any other, ALJ in the hearing office until all other VEs on the roster are called.¹²

We visited 6 of the 23 hearing offices and discussed VE rotation issues with managers, ALJs, and staff (see Appendix E for our hearing office selection criteria). Managers in four of the hearing offices stated they experienced problems scheduling VEs from their local areas. As a result, the hearing offices used VEs from their regional roster, which entailed long distance travel or telephone testimony. Unfortunately, according to schedulers, VEs on the regional roster were not always available unless the hearing

⁹ SSA established the Workgroup to issue a one-time report on the discrepancy of medical/vocational expert use. The Workgroup examined practices related to expert use and recommended ways to ensure appropriate and consistent use of experts.

¹⁰ The Workgroup report explained a number of Court rulings that might have an effect on VE usage in some jurisdictions. In one example, the report explained, "Although all the Circuits are bound by the regulatory language in 20 C.F.R. 404.1560 and 416.960, in a 1987 ruling, *Smith v. Bowen*, the 4th Circuit Court precluded VE input at Step 4 of the 5-Step Disability process. Although the Circuit Court case law would not change the use of VEs at Step 5, it could result in ALJs in the 4th circuit obtaining less VE input overall because they have been precluded from using this evidence at Step 4."

¹¹ SSA policy indicates that each regional office maintains a roster of VEs who have agreed to provide impartial expert opinion pursuant to a BPA with ODAR. If a VE is not available on the regional office roster of the hearing office's region, the ALJ should look to other regional office rosters to obtain the services of a VE. SSA, Hearings, Appeals and Litigation Law Manual (HALLEX) I-2-5-52.D—*Selecting a Vocational Expert* (September 28, 2005).

¹² Id. On June 3, 2011, Chief ALJ Bice sent a memorandum to all HOALJs and hearing office directors (HOD) addressing a number of processing issues, including the need to rotate expert witnesses.

office could provide them with a full schedule of hearings for the day. As a complicating factor, some ALJs preferred in-person VE testimony and were unwilling to hear VE testimony over the telephone. We found that 17 of 18 ALJs we interviewed preferred the VE testify in person at the hearing. One ALJ we interviewed stated that SSA regulation¹³ does not specifically allow telephone testimony.

We also spoke to 18 of the VEs providing services to the 6 hearing offices to learn more about their hearing participation. We found that seven of the VEs preferred in-person testimony at hearings, seven VEs preferred participating by telephone or video conference, and the remaining four VEs had no clear preference. We also met with a representative from one of the VE associations who stated he met with ODAR staff to discuss the installation of video equipment at a VE's place of business under the Representative Video Project (RVP). Under RVP, claimant representatives install video equipment at their place of business to conduct hearings with ALJs located elsewhere.¹⁴

When we shared these VE rotation issues with ODAR managers and staff at ODAR headquarters, we were told they were aware of scheduling difficulties in some parts of the country. For instance, they explained that NHCs use VEs from the same area as the hearing offices they are assisting, which leads to scheduling problems. This may also happen if two hearing offices located near one another are vying for the same pool of VEs. ODAR managers stated they can create management information reports, as needed, to track VE usage at the national, regional, and hearing office levels to identify VE rotation problems. We requested an example of this management information report, but it was not available during our review.

Number of VE Contracts

Using ODAR's management information, we could not determine how many individual VEs were available to its hearing offices. As of August 2011, ODAR had 1,079 signed VE BPAs nationwide. However, ODAR did not maintain a centralized database for tracking VEs under these contracts, and CPMS did not contain complete and reliable information. In our review of FY 2010 CPMS data, we found the system recorded the name of the VE organization rather than the name of the individual VE. For instance, as part of our audit work at the Pittsburgh Hearing Office, we learned that one VE organization employed three VEs. To quantify the actual number of VEs working at the

¹³ 20 C.F.R. § 404.950(a) states that, "Any party to a hearing has a right to appear before the ALJ, either in person or, when the conditions in § 404.936(c) exist, by video teleconferencing, to present evidence and to state his or her position. A party may also make his or her appearance by means of a designated representative, who may make the appearance in person or by video teleconferencing." However, SSA's HALLEX provides that live testimony in person, by telephone, or by video teleconference with opportunity to question the VE is the preferred method for obtaining VE opinion, but written interrogatories may be used. HALLEX I-2-5-57.A—*Obtaining Vocational Expert Opinion Through Interrogatories* (November 3, 2010).

¹⁴ SSA OIG, *Representative Video Project* (A-05-09-19101), August 2011.

six hearing offices we visited, we reviewed the VE rosters to determine the number of BPAs and VEs at each location (see Table 3). We found that two of six hearing offices had more than one VE per BPA.

Table 3: FY 2011 Analysis of BPAs and Number of VEs

Hearing Office	Number of BPAs	Number of VEs
Chicago, IL	3	5
Creve Coeur, MO	3	3
Denver, CO	17	17
Little Rock, AK	10	10
New York City, NY	4	4
Pittsburgh, PA	4	6
Total BPAs	41	45

Outreach for VE services

ODAR did not have a unified national strategy to advertise for VE services. ODAR managers stated regions advertised for VE services mainly by word of mouth, and one region stated it used the Internet. In our interviews with 18 VEs working with 6 hearing offices, 15 VEs said they learned about VE opportunities through word-of-mouth. These VEs cited such various sources as (1) another VE, (2) an ALJ or attorney, and (3) professional VE conferences. None of the VEs was aware of dedicated SSA outreach or an advertising campaign for VE services.¹⁵ The lack of SSA outreach may lead to a more limited pool of qualified candidates and deprive potential candidates of an opportunity to participate in the program. In its 2006 report, the Workgroup also recommended that better advertising methods be devised for VEs. However, at the time of our audit, ODAR had not implemented this recommendation.

VE FEES AND AGENCY COSTS

VEs are paid a fee for each service provided, including studies, appearance at a hearing, and participation in discussions with ALJs and personnel in ODAR headquarters. For instance, a VE reviewing a claimant's file and testifying at a hearing in FY 2010 would have received \$121, \$44 for the study and \$77 for the appearance at the hearing.¹⁶

¹⁵ SSA posted a solicitation for VE services using FedConnect, a Federal acquisition, and grants Website. The solicitation was open from March 31 to December 31, 2011.

¹⁶ VEs would receive a smaller fee for subsequent hearings on the same day. See Appendix C for more on the fees.

SSA paid approximately \$50 million in VE fees in FY 2010,¹⁷ representing about 47 percent of ODAR's total fees paid to experts. Among the other experts, fees paid to hearing reporters were 30 percent of the FY 2010 fees, while the medical experts cost was 17 percent (see Table 4).

Table 4: FY 2010 Hearing Expert Costs at Hearings

Expert Type	Total Money Paid in Fiscal Year 2010	Percent
Vocational Expert	\$ 49,474,551	47
Hearing Reporter	\$ 31,724,647	30
Medical Expert	\$ 18,485,423	17
Interpreter	\$ 2,845,011	3
Contractor Travel	\$ 3,671,561	4
Totals	\$106,201,193	100

Note: Numbers do not add to 100 percent because of rounding.

Agency VE costs have increased for a number of reasons, including (1) an increase in the number of hearings,¹⁸ (2) a higher rate of VE testimony at hearings,¹⁹ and (3) an increase in the fee rates paid to VEs.²⁰

ODAR managers were unable to identify any studies or benchmarks developed by the Agency to determine whether the VEs' fees were reasonable or consistent with VE fees paid by other Government entities or their private sector equivalents. Moreover, determinations on hiring and necessary credentials were delegated to the regional level, with no central repository identifying the skills and credentials of VEs working for the Agency.²¹ As a result, it was unclear why the fees were set at this level and what level of expertise was required from the VEs.

In our conversations, we found the 18 VEs providing services to the 6 hearing offices as well as representatives from 2 VE associations to be evenly divided on the whether SSA's VE fees were sufficient compensation for the services performed. We attempted to determine the average earnings of a VE at SSA but found it difficult to do with the existing management information.²² While we were able to obtain Calendar Year (CY)

¹⁷ For the 421,624 hearings in FY 2010 with VE testimony in Table 1, the average VE fee per hearing was approximately \$119.

¹⁸ See Table 1.

¹⁹ Id.

²⁰ In April 2009, SSA raised VE fees on a variety of services an average of 10 percent. At the same time, SSA reduced reimbursements for mileage and parking.

²¹ See Appendix C for information on expected VE knowledge.

²² SSA earnings may be part of a VE's annual compensation since a VE could be contracting with multiple organizations. For example, we found that some of the VEs we interviewed were providing services to a number of Government and private organizations.

2010 VE payments associated with the six hearing offices we visited,²³ we could not always determine an individual VE's annual earnings since some of the payments were related to VE organizations. For example, one SSA payment of about \$266,000 for CY 2010 appeared to relate to multiple VEs working for the same firm.

CONTROLS OVER VE PAYMENTS

During our hearing office visits, we found ODAR could strengthen controls related to the approval of, and payment for, VE services.

VE Call Orders

During our interviews at six hearing offices, we found that ALJs at two offices were signing the VE call orders before the hearing. A VE call order contains a list of all the hearings the VE has been contracted to perform with an ALJ for a particular day. By signing the call order after the hearing, the ALJ acknowledges the VE was present at the hearings and performed the required services. The BPA guidelines instruct the ALJ to sign the VE call order at the end of the hearing.

The presiding ALJ or Administrative Appeals Judge (AAJ) will perform inspection and acceptance of the hearings-related services at the time the services are rendered. The ALJ's/AAJ's signature as the "Receiving Official" on the original Call Order Form serves as documentation of acceptance. The ALJ/AAJ shall only sign as the receiving official after the contractor has signed the form.

When an ALJ signs the call order before the VE provides the services, the risk increases that the VE will be paid erroneously should the hearing be postponed or canceled. One management analyst²⁴ told us she had to rectify an overstated VE invoice because it did not account for a postponed hearing. In this case, the VE provided a copy of the call order the ALJ signed, even though the CPMS electronic record showed the hearing was postponed.

When we spoke to the ALJs about their signatures on the call orders before the hearing, they said they were unaware of any policy that prohibited them from doing so. While we could not determine how many call orders may have been incorrectly signed before the hearings, hearing offices postponed about 200,000 hearings nationwide between FYs 2009 and 2011. We notified the HODs in both hearing offices about this issue, and, as a result, the HODs issued memorandums to their ALJs reminding them to sign the call order after the hearing and after the VE had signed it. We believe such reminders as well as additional guidance in HALLEX may reduce the risk of improper payments to VEs.

²³ We reviewed the Internal Revenue Service 1099-MISC Forms SSA sends to the VEs at the end of the tax year.

²⁴ As part of the reconciliation process, management assistants in the hearing offices are responsible for verifying that VE invoices and VE call orders match the electronic record in CPMS.

Batch Editing of VE Call Orders

All six administrative assistants at the hearing offices we visited stated the VE call order verification process was too cumbersome because CPMS does not contain a batch edit function to process VE call orders efficiently.²⁵ One of the hearing office administrative assistant's tasks is to ensure the payments made to VEs are appropriate and supported by verifying the VE invoice against the VE call order in CPMS. After verifying every invoice, the administrative assistant must close out each record, one at a time. A batch edit button can save time by automating the repetitive task of closing each case individually.

Administrative assistants in five of the six hearing offices we visited estimated that 5 to 15 hours of staff time per month could be saved if a batch edit button were added to CPMS for VE call orders. CPMS already has a batch edit button for call orders related to hearing reporters, another set of contractors at the hearing offices. We shared our observation with ODAR headquarters managers, who stated ODAR is planning to include a batch editing function in a future CPMS release.

Timeliness of Payments

Both SSA managers and VE contractors expressed concerns about untimely VE payments. Five of the six HODs at the visited offices stated VEs complained of untimely payments in the last year. Moreover, the representative from a VE association as well as 13 of the 18 VEs we interviewed stated SSA was not timely reimbursing VEs for their services. SSA's BPA for VEs states, "The VE Contractor will be paid via Electronic Funds Transfer within 30 calendar days after submitting a proper invoice to the Agency."²⁶

The VE association and VEs we interviewed also noted the Agency was unresponsive to such matters. Four of the 18 VEs interviewed mentioned problems with the Agency's responsiveness regarding their payment inquiries, including the Agency's failure to respond to telephone calls, faxes, and emails regarding the status of their invoices. One VE specifically mentioned that the Agency was not effective in communicating the specific errors in the invoices, which further delayed the payment to the VE.

ODAR headquarters managers attributed the delayed payments to a number of issues, including invoices with coding errors and VEs who failed to update information in the Central Contractor Registration (CCR) database.²⁷ Under the *Prompt Payment Act*, SSA has 30 days from the date the designated SSA office receives the invoice to pay it

²⁵ A batch edit would allow multiple items to be processed at the same time rather than only one item.

²⁶ See section D-2 (Invoicing) of the BPA.

²⁷ Beginning on October 1, 2003, individuals, businesses and organizations were required to register in the CCR database (<http://www.ccr.gov>) to receive a contract, purchase order, or BPA from the Government. The CCR, managed by the Defense Information Systems Agency in the Department of Defense, is the primary vendor database for the Government.

if all the goods and services billed were received. However, ODAR managers noted that the 30 days start when the Agency receives a complete and accurate invoice, which they stated was not the case with some of the invoices. To address the payment problems, ODAR managers stated they provided additional training to the hearing office staff processing the invoices. In addition, SSA managers have discussed these problems with at least one VE association. For example, in August 2011, ODAR managers coordinated with a VE association to improve communication with its members and make them aware of these invoicing issues.

CONCLUSION AND RECOMMENDATIONS

We found that regional and hearing office use of VE services varied widely, with some of this variance potentially related to outside factors beyond the control of the ALJ conducting the hearing. Some hearing offices noted they had problems scheduling VEs for hearings, and ALJ preference for in-person VE testimony may have further complicated such scheduling. The lack of VE service contracting detail made it difficult to identify potential availability problems at hearing offices. Nonetheless, it is possible that improved advertising for VEs could increase the pool of available VEs at hearing offices. We also found that ODAR had no process to ensure the VE rates were set at a level to avoid potential shortages and ensure sufficient quality of services. Finally, we identified a number of payment processing issues that management will need to address to improve the accountability of the VE program. This includes more attention to payment timeliness and communication with VEs, which could further enhance the program and make it more attractive to potential candidates.

To ensure a more effective VE program, we recommend SSA:

1. Modify the regulations to allow VE telephone testimony at hearings.
2. Improve advertising for VE services, which could include assisting regions or developing a national campaign.
3. Periodically determine whether VE fees are appropriate to obtain the required level of VE services, which could include benchmark studies with VE fees paid in the national economy or VE fees paid by other Government entities.
4. Remind ALJs about the proper procedures for approving VE call orders.
5. Ensure future upgrades to CPMS include batch editing for processing VE invoices.
6. Communicate with VEs about invoicing issues that may delay payments, which may include a Website, mailings, or similar outreach efforts. The outreach efforts should also clearly identify SSA points of contact to timely address and resolve future payment issues.

AGENCY COMMENTS

SSA agreed with the recommendations (see Appendix F). The Agency also provided technical comments, which we incorporated, as appropriate.

A handwritten signature in black ink, appearing to read "Patrick P. O'Carroll, Jr."

Patrick P. O'Carroll, Jr.

Appendices

[APPENDIX A](#) – Acronyms

[APPENDIX B](#) – Process for Evaluating Disability in Adults

[APPENDIX C](#) – Vocational Expert Services

[APPENDIX D](#) – Scope and Methodology

[APPENDIX E](#) – Hearing Office Selection Criteria

[APPENDIX F](#) – Agency Comments

[APPENDIX F](#) – OIG Contacts and Staff Acknowledgments

Appendix A

Acronyms

Act	<i>Social Security Act</i>
AAJ	Administrative Appeals Judge
ALJ	Administrative Law Judge
CCR	Central Contractor Registration
BPA	Blanket Purchase Agreement
C.F.R.	Code of Federal Regulations
CPMS	Case Processing and Management System
FY	Fiscal Year
HALLEX	Hearings, Appeals and Litigation Law Manual
HOCALJ	Hearing Office Chief Administrative Law Judge
HOD	Hearing Office Director
ODAR	Office of Disability Adjudication and Review
OIG	Office of the Inspector General
OTR	On-the-Record
POMS	Program Operations Manual System
RFC	Residual Functional Capacity
SGA	Substantial Gainful Activity
SSA	Social Security Administration
SSAB	Social Security Advisory Board
SSN	Social Security Number
U.S.C.	United States Code
VE	Vocational Expert

Process for Evaluating Disability in Adults

Under the *Social Security Act* (Act), an adult is considered disabled if he or she is unable to engage in substantial gainful activity (SGA)¹ by reason of a medically determinable physical or mental impairment. Such impairment must last, or be expected to last, for a continuous period of not less than 12 months or result in death.²

The Social Security Administration (SSA) has a 5-Step sequential process for evaluating disability for adults that follows the definition of disability in the Act.³ The Steps are followed in order. If a decision about disability can be made at a step, the analysis stops, and a decision is made. If a decision about disability cannot be made, the adjudicator proceeds to the next step.

At Step 1, SSA generally considers whether the claimant is performing SGA. If the claimant is performing SGA, SSA finds that he/she is not disabled, regardless of the severity of his/her impairment(s). If the claimant is not performing SGA, the claim is sent for a determination of whether the claimant is disabled at a later step in the process. When the claim is initially developed, the adjudicator generally requests all evidence needed for consideration at Steps 2 through 5 of the sequential evaluation process. The adjudication process stops when a decision regarding disability can be made at any step.⁴ At Step 2, SSA determines whether the claimant's impairment—or combination of impairments—is severe.⁵ If the claimant does not have a severe medically determinable impairment(s) that meets the duration requirement, the claim is denied. If the claimant has a severe medically determinable physical or mental

¹ SGA means work that involves doing significant and productive physical or mental duties that is done for pay or profit. 20 C.F.R. §§ 404.1510 and 416.910. Also see 20 C.F.R. §§ 404.1572, and 416.972. In Calendar Year 2011, "countable earnings" of employees indicate SGA and "countable income" of self-employed individuals are "substantial" if the amount averages more than \$1,000 per month for non-blind individuals or \$1,640 for blind individuals. See also SSA, POMS, DI 10501.001—*Meaning of SGA and Scope of Subchapter* and 10501.015 B and C—*Table of SGA Earnings Guidelines and Effective Dates Based on Year of Work Activity*.

² The Act §§ 216(i)(1)(A) and 223(d)(1)(A), 42 U.S.C. §§ 416(i)(1)(A) and 423(d)(1)(A), and § 1614(a)(3)(A), 42 U.S.C. § 1382c(a)(3)(A). See also 20 C.F.R. §§ 404.1505 and 416.905.

³ 20 C.F.R. §§ 404.1520 and 416.920.

⁴ If the claimant disagrees with the Agency's initial disability determination, he or she can file an appeal within 60 days from the date of notice of the determination. In most cases, there are three levels of administrative review (1) reconsideration by the disability determination services, (2) hearing by an administrative law judge, and (3) request for review by the Appeals Council. If a claimant is still dissatisfied after exhausting administrative remedies, he or she can appeal to the Federal courts.

⁵ An impairment or combination of impairments is not severe if it does not significantly limit an individual's physical or mental ability to do basic work activities. 20 C.F.R. §§ 404.1520(c), 404.1521, 416.920(c) and 416.921. See also Social Security Ruling 85-28.

impairment(s) that meets the duration requirement, the Agency goes to Step 3 and looks to the *Listing of Impairments*. If the severity of the impairment meets or medically equals a specific listing and meets the duration requirement, the individual is determined to be disabled.

If the individual's impairment does not meet or medically equal a listing, the Agency goes to Step 4, and, if necessary, Step 5. At Step 4, the Agency determines whether the claimant can perform any past relevant work, considering his or her residual functional capacity (RFC)⁶ and the physical and mental demands of the work he or she did. If the claimant can perform past relevant work, the claim is denied. If the claimant cannot perform past relevant work, SSA goes to Step 5. At this Step, SSA determines whether the claimant can perform any other work that exists in the national economy, considering his or her RFC, age, education, and past work experience. If the claimant can perform any other work, SSA finds him or her not disabled; if the claimant cannot perform any other work, SSA finds him or her disabled.⁷

⁶ An individual's impairment(s), and any related symptoms, such as pain, may cause physical and mental limitations that affect what he or she can do in a work setting. The RFC is the most the individual can still do despite these limitations. SSA assesses RFC based on all relevant evidence in the case record. 20 C.F.R. §§ 404.1545 and 416.945.

⁷ SSA has another sequential process for evaluating whether a disabled beneficiary's disability continues. 20 C.F.R. §§ 404.1594(f) and 416.994(b)(5). This process generally requires a showing of medical improvement related to the ability to work, but also includes steps like the ones in the initial sequential evaluation process.

Vocational Expert Services

According to the Social Security Administration's (SSA) *Vocational Expert Handbook*,¹ a vocational expert (VE) is a vocational professional who provides impartial expert opinion that an administrative law judge (ALJ) considers when making a decision about disability. VEs will usually testify in person at a hearing, although they may be asked to testify by video teleconferencing technology or by telephone, and sometimes they may provide opinions in writing by answering written questions called interrogatories.

VE RESPONSIBILITIES

ALJs use VEs in many cases in which they must determine whether a claimant can do his or her previous work or other work. A VE provides both factual and expert opinion evidence based on knowledge of

- the skill level and physical and mental demands of occupations;
- the characteristics of work settings;
- the existence and incidence of jobs within occupations; and
- transferrable skills analysis and SSA regulatory requirements for transferability of work skills.

EXPECTED VE KNOWLEDGE

- Up-to-date knowledge of, and experience with, industrial and occupational trends and local labor market conditions.
- An understanding of how SSA determines whether a claimant is disabled, especially at Steps 4 and 5 of SSA's *5-Step Sequential Evaluation Process*.
- Current and extensive experience in counseling and job placement of people with disabilities.
- Knowledge of, and experience using, vocational reference sources, including
 - the *Dictionary of Occupational Titles* and the *Selected Characteristics of Occupations Defined in the Revised Dictionary of Occupational Titles*;

¹ See *Vocational Expert Handbook*, Office of Disability Adjudication and Review, Office of the Chief Administrative Law Judge, SSA, June 2011.

- *County Business Patterns* published by the Bureau of the Census;
- the *Occupational Outlook Handbook* published by the Bureau of Labor Statistics; and
- any occupational surveys of occupations prepared for SSA by various State employment agencies.

VE SERVICES AND FEES

ALJ may request a variety of services from VEs as part of a hearing. These fees are provided in Table C-1.

**Table C-1: VE Services and Associated Fees
(Approved Fees as of April 2009)**

Services	Fees
Study	\$44.00
Remand Study	\$66.00
Written Interrogatory	\$39.00
Evaluation of Additional Evidence	\$33.00
First Hearing Appearance of the Day	\$77.00
Other Hearing Appearance of the Day	\$39.00
Participation in Discussions with ALJ as well as Regional and Headquarters Offices	\$55.00
Travel Expense - Per diem Government regulations, greater than 50 miles one way	Varies

Scope and Methodology

To accomplish our objective, we:

- Reviewed applicable Federal laws and regulations, including the Office of Disability Adjudication and Review (ODAR) Hearings, Appeals and Litigation Law manual.
- Reviewed the Social Security Administration's (SSA) *5-Step Sequential Evaluation Process* for determining whether a claimant is disabled. See Appendix B for more information on the Process.
- Reviewed previous Office of the Inspector General reports as well as relevant internal and external reviews of the vocational expert (VE) program.
- Interviewed managers and staff at ODAR's headquarters and regional managers to gain a better understanding of the role of VEs in the hearing process, the use and availability of VE services, and Agency controls over the program.
- Examined ODAR management information reports as well as closed claims data from the Case Processing and Management Systems (CPMS) for Fiscal Years 2008, 2009, and 2010 to determine VE usage and VE rotation at the national, regional, hearing office, and ALJ levels.
- Identified hearing offices with potential VE rotation problems and visited six of these hearing offices to interview administrative law judges, managers and staff to assess the VE scheduling process and availability of VE services. See Appendix E for our hearing office selection methodology. During these visits, we also examined hearing office controls related to VE invoicing, approval, and payment.
- Obtained a copy of the VE Blanket Purchase Agreement to determine the legal and educational requirements of VEs as well as the fees SSA pays for VE services.
- Interviewed 18 VEs, 3 from each of the 6 hearing offices we visited, to learn about their experiences with SSA's VE program.
- Interviewed representatives at the American Board of Vocational Experts and International Association of Rehabilitation Professionals, both of which advocate for VE interests, to learn more about VE issues and VE experiences with SSA.

We found that FY 2010 CPMS data were sufficiently reliable to meet our objective. The entity audited was the Office of the Deputy Commissioner for Disability Adjudication and Review. We conducted this audit from January through November 2011 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Appendix E

Hearing Office Selection Criteria

We examined the Office of Disability Adjudication and Review's (ODAR) management information reports as well as closed claims data from the Case Processing and Management Systems for Fiscal Years 2008, 2009, and 2010 to determine vocational expert (VE) use and VE rotation at the national, regional, hearing office, and administrative law judge (ALJ) levels.

We identified possible VE availability issues at 23 hearing offices. Our data analysis indicated 29 ALJs in 23 hearing offices had the same VE or VE organization testifying at over 50 percent of their hearings. From these 23 hearing offices, we identified at least 1 hearing office in each region where an ALJ had over 50 percent of his/her total dispositions with the same VE.

We also selected hearing offices based on their use of VE services. We calculated the VE use rates by dividing the number of hearings including VE testimony by the number of hearings held at a hearing office.¹ We then stratified hearing offices using the following criteria.

- High VE use (greater than 70 percent).
- Medium VE use (greater than or equal to 40 percent and less than 70 percent).
- Low use (less than 40 percent).

HEARING OFFICES SELECTED FOR THIS REVIEW

Using the criteria above, we selected six hearing offices for further review. All of the hearing offices we selected had rotation issues. Furthermore, we selected two hearing offices with low VE usage, two with medium VE usage and two with high VE usage (see Table E-1), ensuring we selected only one hearing office per region.

Table E-1: Hearing Offices Selected based on ALJ-VE Use

Hearing Office	Region	Hearing Office VE Use
Chicago, IL	Chicago	Low
New York, NY	New York	Low
Pittsburgh, PA	Philadelphia	Medium
Creve Coeur, MO	Kansas City	Medium
Denver, CO	Denver	High
Little Rock, AR	Dallas	High

¹ Only hearing offices with at least 200 dispositions with a VE present were included in the analysis.

Appendix F

Agency Comments



SOCIAL SECURITY

MEMORANDUM

Date: May 7, 2012

Refer To: S1J-3

To: Patrick P. O'Carroll, Jr.
Inspector General

From: Dean S. Landis /s/
Deputy Chief of Staff

Subject: Office of the Inspector General Draft Report, "Availability and Use of Vocational Experts"
(A-12-11-11124)—INFORMATION

Thank you for the opportunity to review the draft report. Please see our attached comments.

Please let me know if we can be of further assistance. You may direct staff inquiries to Amy Thompson at (410) 966-0569.

Attachment

**COMMENTS ON THE OFFICE OF THE INSPECTOR GENERAL DRAFT REPORT,
“AVAILABILITY AND USE OF VOCATIONAL EXPERTS (VE)” (A-12-11-11124)**

Recommendation 1

Modify the regulations to allow VE telephone testimony at hearings.

Response

We will explore proposing amendments to our rules that would allow telephonic testimony at hearings.

Recommendation 2

Improve advertising for VE services, which could include assisting regions with recruiting or developing a national recruiting campaign.

Response

We agree. We are currently developing an outreach effort targeted to expert associations and organizations.

Recommendation 3

Periodically determine whether VE fees are appropriate to obtain the required level of VE services, which could include benchmark studies with VE fees paid in the national economy or VE fees paid by other Government entities.

Response

We agree. In April 2009, we raised the rates for VEs by 10 percent. Once our current blanket purchase agreement for VEs expires, we will conduct the necessary research to ensure the VE fees are appropriate.

Recommendation 4

Remind administrative law judges about the proper procedure for approving VE call orders.

Response

We agree.

Recommendation 5

Ensure future upgrades to the Case Processing and Management System (CPMS) include batch editing for processing VE invoices.

Response

As resources allow, we will upgrade the CPMS to provide for more efficient processing of VE invoices.

Recommendation 6

Communicate with VEs about invoicing issues that may delay payments, which may include a Website, mailings, or similar outreach efforts. The outreach efforts should also clearly identify SSA points of contact to timely address and resolve future payment issues.

Response

We agree.

Appendix G

OIG Contacts and Staff Acknowledgments

OIG Contacts

Walter Bayer, Director, Chicago Audit Division

Nicholas Milanek, Audit Manager, Crystal City Audit Office

Acknowledgments

In addition to those named above:

Asad Isfahani, Auditor-in-Charge

For additional copies of this report, please visit our Website at <http://oig.ssa.gov/> or contact the Office of the Inspector General's Public Affairs Staff at (410) 965-4518. Refer to Common Identification Number A-12-11-11124.

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The Office of the Inspector General (OIG) is comprised of an Office of Audit (OA), Office of Investigations (OI), Office of the Counsel to the Inspector General (OCIG), Office of External Relations (OER), and Office of Technology and Resource Management (OTRM). To ensure compliance with policies and procedures, internal controls, and professional standards, the OIG also has a comprehensive Professional Responsibility and Quality Assurance program.

Office of Audit

OA conducts financial and performance audits of the Social Security Administration's (SSA) programs and operations and makes recommendations to ensure program objectives are achieved effectively and efficiently. Financial audits assess whether SSA's financial statements fairly present SSA's financial position, results of operations, and cash flow. Performance audits review the economy, efficiency, and effectiveness of SSA's programs and operations. OA also conducts short-term management reviews and program evaluations on issues of concern to SSA, Congress, and the general public.

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