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Office of Program Development and Research
Occupational Information Development Project
Social Security Administration
3-E-26 Operations Building
6401 Security Boulevard
Baltimore, MD 21235-6401

Submitted at www.regulations.gov

Re: Request for Comments on Occupational Information System, Docket No. SSA- 2010-0018

Dear SSA Occupational Information Development Project:

I am submitting these comments as an attorney who has represented claimants at the Social Security Administration and in District Courts since 1992. In addition to my law degree I have bachelor and master degrees in vocational rehabilitation. I am also the author of the *Social Security Disability Advocates Handbook*.¹ While it is obvious that continued reliance upon the *Dictionary of Occupational Titles* (DOT) and the related vocational taxonomy cannot be supported by reason or science, the proposed solutions of the OIDAP report should not be implemented to replace the DOT with a massive new bureaucracy. At pages eight and nine of my public comment I propose several alternative solutions. At this time of economic distress, where there is sharp debate in Congress over the extent of government spending versus the greatest deficit in history, the Commissioner should be concerned about the creation of a new federal bureaucracy. According to the OIDAP report, this ambitious new occupational system would:

. . . include: a) occupations aggregated at a level to support individualized disability assessment; b) a cross-walk to the Standard Occupational Classification; c) precise occupationally-specific data; d) core work activities; e) minimum levels of requirements needed to perform work; f) observable and deconstructed measures; g) a manageable number of data elements; h) sampling methodology capturing the full range of work; i) inter-rater agreement justifying data inference; j) data collection of high quality data; k) valid, accurate, and reproducible data; l) whether core work activities could be performed in alternative ways; and, m) terminology that is consistent with medical practice and human function.²

The OIDAP report assumes, without supporting scientific bases, that such goals could be reliably accomplished and that, when created, such a massive data collection and data management program

¹ Traver, D.F., *Social Security Advocate's Disability Handbook* (1998-2009, ed. 2009).

² OIDAP report 1.

would be helpful in the evaluation of disability claims. For example, the OIDAP report claims that it is possible to create " . . . a large database representative of all work in the national economy. . ." There is no reliable science in the report to show that such a feat is actually possible. That is, the bare assertion by the OIDAP group that it is possible to capture the civilian jobs ³ in its proposed database lacks a scientific foundation to justify the expenditure of millions of dollars in pursuit of the goal. Before embarking upon such a costly adventure to create a massive new occupational system, the Commissioner should first determine if the creation of such a system is actually feasible, whether the outcome would be reliable for litigation, whether the data and methodologies would indeed stand up to *Daubert* challenges of an the legal community, and if the final outcome would meet the program goals of the Agency.

Whether the eventual product of the proposed effort would be helpful to the Agency is not established by the report, despite the enthusiasm of the OIDAP team. For example, if the OIDAP's proposals, as recommended by the panel, were to come to fruition, there is no assurance that the database would support the denial of claims at the current rate. The detailed database generally described by the OIDAP report might well prove that few if any jobs exist for those who are described by the typical hypothetical questions presented to VEs in at hearings. The Agency might well find that it has to pay hundreds of thousands of new claims that it would have previously denied. Would the Agency then determine that the time has come to adjust the definition of disability to reduce the number of claims paid, or to revamp the entire medical-vocational framework to titrate the database down to a tolerable level of denials? Such issues are not confronted by the report, which presumes without mention that the proposed system would not only be possible, but that once put in place, it would conform to the present ratio of claims approval and denial by the Agency.

The report also assumes "facts" about the world of work that have not been confirmed by science. Intrinsic to the report is an unfounded belief that "occupations" exist that could be used to compartmentalize jobs into groups for the application of a common metric. The issue of what constitutes such an "occupation" plagued the creation of the *Dictionary of Occupational Titles*, and the OIDAP report is essentially silent in regard to that problem. Indeed, rather than address the question, the report makes numerous unsubstantiated claims about the world of work. For example, while the OIDAP report repeatedly promises that it is entirely possible to create a new "occupational" system, it has not established first that the concept of "occupations" in the evaluation of work can be reliably defined and applied across the 107 million jobs in the American economy.

The use of "occupations" within the DOT was never valid, nor has it been valid at the SSA since it adopted the DOT taxonomy. In 1980, the Committee on Occupational Classification and Analysis, National Research Council, concluded there was no way to resolve this question, as no principles existed for determining where one occupation ended and another began; the boundaries between occupations are not as distinct as presented by the DOT. This lack of distinction flowed from the ambiguous aggregation of numerous job analyses into seemingly distinct occupational definitions as published in the DOT. What constitutes an "occupation" is not at all clear, and the methodology used resulted in inconsistent occupational titles and occupational definitions. ⁴

3 The Bureau of Labor Statistics reports that there were 107,602,000 civilian jobs in the United States in May 2010. Bureau of Labor Statistics *Employment, Hours, and Earnings from the Current Employment Statistics survey (National)* Go to <http://www.bls.gov/data/#employment> Select "Employment, Hours, and Earnings - National, (top picks)," select "Total Private Employment." Select "Retrieve Data."

4 Committee on Occupational Classification and Analysis, National Research Council, *Work, jobs, and occupations: A*

The OIDAP panel made a common error, assuming that the idea of a "job" rationally implies statistically valid homogeneous features of "jobs." There is no reliable scientific basis for that assumption in the OIDAP report. While the OIDAP report addresses the problem of taxonomy and admits that no empirical work taxonomy has ever been developed to describe all of the work in the economy, the OIDAP report skips from that concern directly to recommendations, which assume that jobs in the economy can be seen as homogeneous and fungible. There is no good reason to believe that jobs are in fact reliably homogeneous or fungible. Likewise, there is no reliable scientific foundation for the highly optimistic recommendation that SSA would be able to select "the jobs most frequently: 1) held by at least 95% of SSA disability claimants; and, 2) identified by SSA as examples of work for those with specific residual functional capacities." ⁵

This error is amplified by the OIDAP report's desire to crosswalk an occupational framework to the Department of Labor's Standard Occupational Classification (SOC). The Department of Labor has specifically explained that the SOC must not be used for litigation purposes because to do so would exceed the limitations of the data as it now stands. ⁶

The SOC was designed solely for statistical purposes. Although it is likely that the SOC will also be used for various nonstatistical purposes (e.g., for administrative, regulatory, or taxation functions), the requirements of government agencies that choose to use the 2000 SOC for nonstatistical purposes have played no role in its development, nor will OMB modify the classification to meet the requirements of any nonstatistical program.

Consequently, as has been the case with the 1980 SOC (Statistical Policy Directive No. 10, Standard Occupational Classification), the SOC is not to be used in any administrative, regulatory, or tax program unless the head of the agency administering that program has first determined that the use of such occupational definitions is appropriate to the implementation of the program's objectives.

This problem is not addressed in the OIDAP report and there is no recommendation how the Social Security Administration would address the limitations of the SOC data. The implied homogeneity of occupations within SOC codes is a convenient fiction. Aware of the data limitations in its grouping of "occupations," the Department of Labor urges caution. The ODIAP report did not heed or mention that warning. Before embarking upon that path the Commissioner should carefully review the data limitations of the SOC itself, and recognize that the Census data tied to the SOC are estimates, based upon employer self-report in cursory census forms. ⁷

The use of such highly generalized Department of Labor SOC data for litigation purposes will not be resolved by the formulation of a new crosswalk, even though a "crosswalk" is proposed by the OIDAP report. Such crosswalks cannot add reliability or depth to existing Department of Labor data that were collected via self-report from employers who had no training in job analysis.

critical review of the Dictionary of Occupational Titles 191 & 194 (Miller, A. R., Treiman, et al. eds., 1980), [hereinafter "*Critical Review*."]

⁵ OIDAP report 43.

⁶ Department of Labor, *SOC 2000 - SOC User Guide* <http://www.bls.gov/soc/2000/socguide.htm#Ques8>

⁷ Department of Labor, Bureau of Labor Statistics, *Occupational Information Statistics* http://www.bls.gov/oes/oes_ques.htm#Ques5

Overall, the OIDAP report implies with little support from the literature, that there have been great advances in vocational science since the Committee on Occupational Classification and Analysis, National Research Council, throughly panned the DOT in its 1980 report. The articles relied upon by the OIDAP report show, in general, that advances in vocational science have not occurred. Yes, it is possible to better use computers now, but the use of those devices will not lead to a reliable collection of data if the underlying assumptions about the world of work are not first established as true. I agree with the public comments of the Occupational Health Special Interest Group, "that a complete and unbiased review of the literature has not been conducted to identify research that supports the physical demand factors and other recommendations made by the OIDAP committee. " ⁸

The OIDAP report repeatedly suggests reliance upon "experts" without defining what constitutes an "expert." Vocational experts are used by the SSA for multiple purposes. At the hearing level, vocational experts testify regarding a claimant's past relevant work, answer hypothetical questions which contain specific exertional and non-exertional limitations propounded by the adjudicator and/or the representative by naming possible jobs and their DOT numbers, and provide job numbers for the occupations or jobs cited. Although the qualifications of each vocational expert may vary greatly, almost without exception, vocational experts do not have adequate training in statistical analysis and derivation or research and survey methods. According to the American Board of Vocational Experts, "[t]he certified vocational expert is expected to keep abreast of the effects of personal injury on earning capacity, labor market changes, hiring practices, and knowledge of occupational requirements, as well as the growth and decline patterns in local labor markets." ⁹ However, keeping "abreast of the effects" of labor market changes and growth and decline patterns is *not* the same as the ability to make accurate calculations derived from existing statistics or design, administer, and analyze accurate surveys to obtain their own statistics. An examination of educational programs in vocational rehabilitation also demonstrates a lack of background in these areas. For example, The George Washington University's M.A. in Rehabilitation Counseling requires only three credit hours of research design. It is only the Ph.D. program that requires four courses in quantitative analysis and research design. ¹⁰

This is not a critique of such programs themselves. To the contrary, the M.A. at The George Washington University ranks sixth in the nation by *U.S. News and World Report*. ¹¹ Instead, a review of the required coursework in vocational programs demonstrates that they have an obviously vocational focus. The programs do not have a research and quantitative analysis focus unless they are doctoral programs, which of course are supposed to be theoretical and analytical in nature. In addition, the background of each vocational expert varies greatly as to degree(s) obtained, the requirements of the programs completed, and any ongoing use or application of skills learned in the past. With this in mind, we return to the vocational expert as used by the SSA. Most vocational experts have not obtained a Ph.D. in vocational counseling, nor taken coursework to prepare them for statistical analysis and research design and implementation. Despite this, the SSA relies on vocational experts as the definitive sources of job numbers at the critical step-five determination, and as such relies on the vocational experts to meet the Commissioner's burden of proof. Thus, there is a substantial inherent disparity

8 Occupational Health Special Interest Group, *Comment from Wickstrom, Rick, Occupational Health SIG of APTA*, Document ID: SSA-2010-0018-0015.1 Regulations.gov <http://tinyurl.com/pf447c>

9 ABVE - The American Board of Vocational Experts, <http://www.abve.net/overview.htm>

10 George Washington University, *Master's Degree Program in Rehabilitation Counseling*, <http://www.gwu.edu/~chaos/rehab/mastersprog.htm>

11 US News and World Report *Rankings - Rehabilitation Counseling - Graduate Schools - Education* - <http://rankings.usnews.com/best-graduate-schools/top-rehabilitation-counseling-schools/rankings>

between a vocational expert's training and the evidence of job numbers the expert is expected to provide.¹²

The OPIDAP report recommends that the worker traits of the "DOT represent some of its best features, there is room to refine and expand the traits. . ." ¹³ There is little, if any, scientific basis to believe that the "worker traits" in the DOT were ever valid or the "best" means of assessing the physical demands of work, including the "person side." Conversely, the OIDAP report explains that the worker traits of the DOT were vague and ambiguously defined. ¹⁴ Thirty years ago, in 1980, the National Committee on Occupational Classification and Analysis, National Research Council, complained that worker trait and worker function scales were never shown to be valid in the DOT:

A second major drawback to the use of DOT data in research is the lack of reliability estimates for the worker trait and worker function scales. The development of these scales has been so poorly documented that researchers cannot be altogether confident about the validity of their results. Although a number of articles trace the history of the current DOT data (Fine, 1955, 1968b; Fine and Heinz, 1957, 1958; Scoville, 1965; Studdiford, 1951, 1953), they have been largely descriptive. Very little empirical evidence supporting the scales' reliability and validity is available. Social scientists have been quick to point out this deficiency (Desmond and Weiss, 1973; Pratzner and Stump, 1977; Scoville, 1966; Walther, 1960; Witt and Naherny, 1975), which has undoubtedly discouraged more extensive use of these scales. ^{15 16}

Additionally, the assessment of jobs while applying a worker trait structure is extremely problematic. While the OIDAP report references snippets of Harvey and Wilson's article, ¹⁷ which claimed that "objective reality" in job analysis was possible, the OIDAP report missed several key portions of the article that contradict the recommendations of the OIDAP. ¹⁸ The Harvey and Wilson article actually pointed to severe data limitations that are contrary to the entire program proposed by the OIDAP Panel:

There is simply no getting around the fact that the Type I, II, and IV methods of collecting JA [job analysis] data shown in Figure 2 involve – in our assessment – an unacceptably high degree of subjectivity and speculation on the part of the raters, no matter how well motivated or job- knowledgeable they may be. Such ratings cannot be “validated” via cross-judge agreement or “interrater reliability” due to their fundamentally speculative nature; instead, they must be empirically validated in the same fashion as any other speculative judgment. ¹⁹

The article continued:

¹² This is discussed along with other statical limitations of the SSA's vocational/adjudication system in chapter 20 of the *Social Security Disability Advocates Handbook*.

¹³ OIDAP report 38.

¹⁴ *Id.* at 21.

¹⁵ *Critical Review* 86.

¹⁶ *See, Social Security Advocate's Disability Handbook*, ch.14 (discussing the inherent data limitations of the DOT.)

¹⁷ Harvey, R. J., & Wilson, M. A. *Yes Virginia, there is an objective reality in job analysis* *Journal of Organizational Behavior*, 21(7) 829-854. Reprint available online at <http://harvey.psyc.vt.edu/Documents/Harvey-Wilson-2000-JOBpreprint.pdf> (2000). (Page numbers given are the pdf pagination, as the online version is not numbered.)

¹⁸ OIDAP report 44, n 56.

¹⁹ Harvey, R. J., & Wilson, M. A. *Yes Virginia, there is an objective reality in job analysis* 9.

Indeed, the effort to dramatically reduce the number of occupational titles recognized by the US Department of Labor as part of their project to replace the DOT with the online O*NET database of occupational information (e.g., Peterson et al., 1997) will tend to exacerbate the problem of cross-situational, within-title variability. That is, the byproduct of collapsing approximately 13,000 previous occupational titles into only a couple of thousand new titles will almost unavoidably be that the new occupational titles will have much higher levels of true within-title, cross-situational variability in work activities. Very little research attention has been paid to the issue of both cross and within-setting heterogeneity; particularly with respect to determining the degree to which this true cross-position variance moderates the validity of decisions based on those JA ratings (especially, in terms of AO-based job specifications or “competency” requirements). In our assessment, this topic – and not the search for “magic bullet” methods of JA or JS rating that will demonstrate “accuracy generalization” – should be our top research priority.²⁰

Harvey-Wilson further explained,

However, if the accuracy of the JA database cannot first be documented and verified, we see little point in continuing the process. In our view, both the legal defensibility as well as the bottom line effectiveness of personnel applications derived from JA data will unavoidably be a joint function of three major factors: (a) the accuracy of the JA database, (b) selecting the correct level of- specificity and type of JA data to drive each personnel function (see Figure 1), and (c) following an appropriate set of decision rules and empirical procedures to link the JA data to each subsequent personnel function. Failure at any of these three steps would likely doom the entire process to failure.²¹

The aforementioned article foreshadows the pitfalls in the overly optimistic, risky, and unscientific approach that permeates the OIDAP Panel's report. For example, at page 36, the OIDAP report presents a 16-step process in a chart form to move towards implementation of the project. As discussed above, Harvey and Wilson explain that failure to establish validity of the methods at any link in such a chain would crash the scheme. Yet, the OIDAP report has provided no alternatives as to what the Commissioner should do if it is discovered, months or years from now, that it is not possible develop valid measurement properties that have "usability" and *Daubert* reliability. What will the Agency do if the project hits that wall? The OIDAP report does not say because it idealistically presumes that such a wall will never exist.

Along this line, the OIDAP report recommends the use of "deconstructed measures."²² The OIDAP report recommends "deconstructed measures" over a "holistic ratings" based entirely on the Harvey-Wilson report.²³ Other literature shows that neither the holistic nor the reconstructed methods of job analysis are particularly reliable. That is, each has its limitations, and interrater agreements largely depended upon who performed the evaluations, their prior familiarity with the jobs, and whether the jobs evaluated were substantially similar (homogeneous). "Overall, none of the interrater agreement indices obtained were exceptionally strong nor confidence inspiring if one hopes to utilize job analysis

20 Harvey, R. J., & Wilson, M. A. *Yes Virginia, there is an objective reality in job analysis* 18.

21 *Id.* at 20.

22 OIDAP report 12, 50, 57, and 63.

23 OIDAP report 44.

information for important personnel functions." ²⁴ For the O*NET system, Professor Harvey found that there was reason to doubt the construct validity of the O*NET assessment surveys. ²⁵ Professor Harvey speculated that:

Although the goal of developing more cost-effective job analysis methods remains valid, it is increasingly clear that alternatives to holistic ratings must be found. In our assessment, a much more defensible and practical approach can be found in the worker-oriented logic advanced by McCormick: (a) use a decomposed strategy to rate jobs on a common metric of moderate-specificity items (the more behaviorally detailed, observable, and verifiable the items and rating scales used, the better), then (b) use a mechanical algorithm to combine these item-level ratings to form GWB scores. Using a standardized instrument to collect the ratings from which the GWB scores are derived has several advantages, including (a) reducing the cost of the job analysis, relative to constructing customized inventories; (b) eliminating the need to make holistic ratings of abstract, unobservable job characteristics; and (c) allowing the individual job analysis ratings to be independently verified for accuracy (which is simply not possible when behaviorally vague constructs are rated using holistic methods). If properly constructed, general worker-oriented inventories can balance the goals of retaining enough behavioral specificity and verifiability to avoid placing incumbents in a holistic-type rating task, yet still reducing the expense of collecting accurate and defensible job analysis data. Of course, alternative strategies for reducing the costliness of the job analysis process need to be found for situations in which task-level data must be collected (e.g., developing highly detailed training programs). ²⁶

This speculative language is very similar to the recommendation of the OIDAP panel, which provided its recommendation as if the aforementioned decomposed strategy and methodology for the creation of the proposed database was settled in the literature as reliable. It is not. If the Commissioner were to proceed with the OIDAP recommendations, he would in effect, be conducting one of the largest and most expensive scientific experiments to date, to be the first to test the validity of this approach in a complex litigation setting. The literature suggests that what the Commissioner will get cannot stand up to a *Daubert* challenge. That is, it may not be possible to conduct and compile reliable job analysis at the depth and volume proposed by the OIDAP report, for use by lay persons, and have the resultant data be consistently proved reliable for litigation purposes.

The Social Security Administration now takes an "its better than nothing" approach to the DOT. Without the DOT, the vocational framework used in adjudication fails. ²⁷ The projected proposed by the OIDAP report is, in effect, a newer and fancier "better than nothing" approach with little likelihood of actually generating reliable vocational data. To be more specific, the OIDAP report fails to show that the proposed project will provide reliable data, suitable for federal court litigation, that will withstand a

²⁴ Gibson, S.G, *Holistic versus Decomposed Rating of O*NET Dimensions* 8 (2002) (presented at the Annual Conference of the Society for Industrial and Organizational Psychology, Toronto.) Available at <http://harvey.psyc.vt.edu/JobAnalysis/resources.html>

²⁵ Harvey, R.J, Wilson, M.A. *Discriminant Validity Concerns with the O*NET Holistic Rating Scales* 4-5 (2010). Available at <http://harvey.psyc.vt.edu/JobAnalysis/resources.html>

²⁶ Harvey, R.J, Wilson, M.A., Blunt, J.H., *Rational/Holistic versus Empirical/Decomposed Methods of Rating General Work Behaviors* (1994) Available at <http://harvey.psyc.vt.edu/JobAnalysis/resources.html>

²⁷ Nathaniel O. Hubley, *THE UNTOUCHABLES: WHY A VOCATIONAL EXPERT'S TESTIMONY IN SOCIAL SECURITY DISABILITY HEARINGS CANNOT BE TOUCHED*, 43 Val. U. L. Rev. 353-405 (Fall 2008).

Daubert challenge.²⁸

Professors Harvey *et al.* pointed to the fact that the success of a project, such as the massive one proposed by the OIDAP report, is speculative, and a big gamble that plays with billions of dollars:

. . . For example, consider the SSA, an organization that continues to rely heavily on DOT-centric descriptions of work to defend its determinations regarding worker disability status in court. For SSA, a change of only a few percentage points with respect to the ratio of disability-status cases that it wins versus loses in court could translate into billions of dollars of yearly bottom-line impact. With stakes of this magnitude, even the costs associated with maintaining the print-based DOT look like a bargain; given the significant advances in technology (see below) that have occurred since the last major revision of the DOT, it is likely that significant efficiencies can be achieved with respect to that cost baseline.²⁹

This raises the serious specter of harmful conflict of interest. To have the Agency design, develop, and run the data base that it uses to adjudicate claims, presents an inherent conflict that does not inspire confidence in the data, invites data or methodology manipulation, and welcomes attack in litigation. The literature regarding the DOT, going back to 1980 and earlier demonstrates that the Agency has a long history of wearing blinders when it comes to the data limitations of vocational information. The literature also shows that at best, the OIDAP plan has a shaky scientific foundation at nearly every conceptual level, and its authors failed to acknowledge the limitations of the OIDAP proposal. The current processes at SSA, which still blindly rely upon the DOT long after it has been universally recognized as unreliable and out of date, underscores a fear of letting the fox run the hen house. If this massive new OIDAP plan hits a wall during development or implementation, or if SSA learns along the way that this program will not produce reliable data, would the Agency announce the problem, stop the program, and admit defeat? Will it candidly publish to the American public and the community of litigators that it has serious concerns about data limitations that underpin its entire adjudication framework? Has it done so for the last four decades with DOT-related data? It has not.

Recommendations: I have several recommendations to address these problems. As the OIDAP report makes clear, the current DOT standards and data are not reliable. It is clear from the 1980 report of the National Committee on Occupational Classification and Analysis, National Research Council, that they were never valid and never reliable. After all, the DOT was never intended to be used for any judicial or legislative standards.³⁰ As the Commissioner mulls the OIDAP report and perhaps implements it, years will pass with tens of thousands of cases adjudicated under the old and unreliable DOT framework.

This problem is not addressed by the recommendations in the OIDAP report. In addition to, or as a complete replacement for the OIDAP Panel's recommendations, something is needed *now* to assure accuracy and good science in the assessment of current claims. A solution to this problem exists that will cost little to implement. In his law review note, then J.D. candidate Nathaniel O. Hubley,

28 See e.g. *Zenith Elecs. Corp. v. WH-TV Broad. Corp.*, 395 F.3d 416 (7th Cir. 2005) (discussing in detail the high degree of scientific and statistical reliability required in federal litigation.)

29 Fine, A.F, Harvey, R.J., Cronshaw, S.F. *FJA Strategies for Addressing O*NET Limitations in a Post-DOT Environment* 3-4 (2004). Available at <http://harvey.psyc.vt.edu/JobAnalysis/resources.html>

30 See e.g. Department of Labor, *Dictionary of Occupational Titles, Special Notice*, xii (rev 4th ed. 1991).

reviewed the issue of the unreliability of VE testimony in the current adjudication system.³¹ He proposed rule making solutions that the Commissioner should implement now.

The Commissioner should immediately publish a ruling that mandates and implements *Daubert*-type standards for vocational experts that would hold vocational evidence to a high scientific standard and reject the "better than nothing" mentality that pervades the current adjudication framework at the SSA. First, Hubley suggests establishing and scrutinizing the qualifications of vocational experts. Second, guidelines should be established concerning acceptable methodologies for the VEs and decision makers to rely upon when making vocational conclusions. Third, Hubley recommends mandating the use of current occupational data.

To assist the Commissioner, Hubley drafted a proposed Ruling on point that focused not on particular data sources, but on the scientific qualifications of the VE and upon the reliability, currency, and completeness of the VE's data.³²

Hubley's solution has several advantages for the Agency. It provides an immediate solution to the problems faced now, rather than a speculative solution based upon millions of dollars of development as a giant new bureaucracy is moved into place. It creates market-based incentives for qualified social scientists and statisticians to develop, on their own, reliable data solutions that are generated within the scientific community, rather than the government. By removing the data solution and data collection to firms and individuals outside of the government, the inherent conflict of having a government Agency collect and maintain the very data it will use to deny claims is resolved. Finally, by moving the solution to this problem outside the government, it will save the government hundreds of millions of dollars, and preclude the invention of another layer of government bureaucracy.

In the alternative, I generally agree with the recommendation of Nancy Shor and the National Organization of Social Security Claimant's representativeness that the SSA and Department of Labor should work together to adapt the O*NET to meet SSA's needs as set for the in the report of the National Research Counsel.³³ However, as with the ODIAP report's proposed solution, a O*NET/SSA hybrid would take years to develop, and problems abound. For example, Professor Harvey's literature makes clear the O*NET has serious limitations that suggest it is not defensible for adjudication purposes.

Finally, I suggest that the Commissioner seriously reconsider the long-held and tacit presumption within SSA, that adjudication is the best way (and perhaps the only way) to allocate scarce resources to the disabled and disadvantaged. I recommend that the Commissioner conduct a study to assess alternatives to this allocation problem that do not involve hundreds of judges, thousands of support staff, hundreds of ODAR offices, thousands of attorneys, tens of thousands of District Court decisions, and hundreds of millions of dollars of adjudication costs. It may well be, that with a compassionate eye

31 Nathaniel O. Hubley, *THE UNTOUCHABLES: WHY A VOCATIONAL EXPERT'S TESTIMONY IN SOCIAL SECURITY DISABILITY HEARINGS CANNOT BE TOUCHED*, 43 Val. U. L. Rev. 400-405 (Fall 2008).

32 The Commissioner presently relies upon SSR 00-4p to address such problem in part. However, that Ruling is insufficient because it assumes, amazingly at this late date, that the DOT is valid, it puts no demands upon VEs to demonstrate reliable methodologies to support the data that they present as vocational facts, and it does not require proof of real expertise in occupational information or substantive related education to testify as a VE for the SSA.

33 Panel to Review the Occupational Information O*NETwork (O*NET); National Research Council *A Database for a Changing Economy: Review of the Occupational Information O*NETwork (O*NET)* (Tippins, N.T., & Hilton, M. L., eds. 2010). Available at <http://www.nap.edu/catalog/12814.html>

towards the needs of the disabled, non-adjudicative methods for dispensing life-sustaining support and assistance to the disabled can be found that will eliminate the need for the proposed bureaucratic expansion and the endless growth of the adjudication framework at SSA. Such models exist in the world of vocational rehabilitation and welfare reform. It is time for the Social Security Administration to take a serious look at alternative models before embarking on the massive project proposed by the Occupational Information and Development Advisory Panel.

Sincerely,

s/ David F. Traver

David F. Traver