



Office of the Inspector General
SOCIAL SECURITY ADMINISTRATION

Congressional Response Report

The Social Security
Administration's Appeals Council
Workloads

A-12-20-50986 | June 2022



Office of the Inspector General
SOCIAL SECURITY ADMINISTRATION

June 30, 2022

The Honorable John B. Larson
Chair, Subcommittee on Social Security
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

Dear Chair Larson:

I am writing in response to the Subcommittee's December 21, 2020 letter requesting that we update our 2014 report, *Request for Review Workloads at the Appeals Council*. This report updates our review of Social Security Administration's Office of Appellate Operations' efforts to improve the timeliness and quality of Appeals Council decisions and assess the trends in reversal and remand rates from Federal courts.

If you have any questions concerning this matter, please call me or have your staff contact Tamara Schulman, Deputy Chief Strategy Officer at Tamara.Schulman@ssa.gov.

Sincerely,

Gail S. Ennis
Inspector General

Enclosure

cc:
Kilolo Kijakazi

The Social Security Administration's Appeals Council Workloads A-12-20-50986



June 2022

Office of Audit Report Summary

Objectives

To (1) update our 2014 report on request for review workloads at the Appeals Council and (2) describe the efforts the Social Security Administration's (SSA) Office of Appellate Operations is taking to improve the timeliness and quality of the Appeals Council's actions and address the reversal and remand rates from the Federal courts.

Background

The Appeals Council is the final level of administrative adjudicatory review for individuals who appeal hearing-level administrative law judge (ALJ) decisions under the Old-Age, Survivors and Disability Insurance and Supplemental Security Income programs.

A claimant can submit a request for review of an ALJ's denial or dismissal of his/her claim. Appeals Council adjudicators can deny or dismiss a request for review or grant review and issue a favorable, partially favorable, or unfavorable decision or remand the case to an ALJ for a new decision.

A claimant also has the right to file a civil action requesting judicial review ". . . after any final decision by the Commissioner of Social Security is made after a hearing." If the Agency defends the case, the court may dismiss the case or it may affirm, modify, reverse, or remand the SSA decision for further proceedings.

Every Fiscal Year (FY) from 2014 to 2020, the Appeals Council received over 125,000 requests for review and fewer than 20,000 court receipts.

Findings

Since our 2014 report, the Appeals Council has taken a number of steps to improve customer service by reducing pending levels and processing times of its request for review workload. The Appeals Council maintained a consistent number of adjudicators, provided employee training, and implemented business process improvements and system enhancements that enabled it to reduce pending levels to approximately 57,000 cases in FY 2020 (down 62 percent from 150,383 in FY 2014) and average processing time (APT) to less than 270 days (down 29 percent from 374 days).

Indicator	2014	2015	2016	2017	2018	2019	2020
Receipts	155,843	149,767	134,147	128,303	153,130	172,111	129,973
Disposition	162,280	150,673	154,402	160,776	155,959	144,193	191,734
Pending	150,383	149,147	128,585	94,471	91,400	119,185	57,327
APT	374	386	364	342	256	246	264

SSA's Office of Appellate Operations implemented our prior recommendations by formalizing parts of its existing quality review process to ensure relevant adjudicative actions in its request for review workloads were covered. The quality reviews now include adjudicator denials and remands as well as analysts' actions and recommendations.

From FYs 2014 to 2020, Federal court reversal rates averaged 2 percent; however, court-remand rates averaged 48 percent. The court-remand rate has remained around 50 percent for decades. Four remand reasons were among the top 5 reasons from FYs 2016 to 2020 and accounted for over 24 percent of the total remand reasons.

To address the court remand rate, SSA created a strategic initiative in FY 2022 to undertake an evidence-based analysis of court remands and identify actionable improvements in its policies and processes. SSA established a Steering Committee to oversee this process. The Committee includes staff from the Offices of Analytics, Review, and Oversight; General Counsel; Hearings Operations; and Retirement and Disability Policy.

TABLE OF CONTENTS

Objectives	1
Background.....	1
Office of Appellate Operations.....	1
Request for Review Workload	2
Federal Court Workload	5
Appeals Review Processing System	6
Previous Audit of the Appeals Council.....	7
Congressional Request	7
Scope and Methodology.....	7
Results of Review	7
Trends in Request for Review Workload	8
Factors that Affect Pending Levels and Processing Times	9
Consistent Adjudicator Levels	9
Employee Training.....	10
Business Process Improvements and System Enhancements	10
Adjudicator Workload Performance	11
Quality Reviews of Appeals Council Actions	13
Appeals Council Quality Review Program	13
Quality Reviews of Appeals Council Remands	14
Appeals Council Feedback Initiative	14
Technical Assistant Quality Reviews of Analysts' Actions and Recommendations	15
Federal Court Workload	15
Trends in New Court Case Workload.....	16
Reasons for Remands.....	19
Claimants Who Appealed to the Appeals Council or Federal Court Who Are Receiving Benefits	20
Conclusion	21
Agency Comments.....	21
Appendix A – Prior Report Recommendation Status.....	A-1
Appendix B – Congressional Request Letter.....	B-1
Appendix C – Scope and Methodology	C-1
Appendix D – Appeals Council Training	D-1
Appendix E – Federal Court Business Process.....	E-1
Appendix F – Sampling Methodology and Results.....	F-1
Appendix G – Agency Comments.....	G-1

ABBREVIATIONS

AAJ	Administrative Appeals Judge
ALJ	Administrative Law Judge
APT	Average Processing Time
ARPS	Appeals Review Processing System
C.F.R.	Code of Federal Regulations
FY	Fiscal Year
HALLEX	Hearings, Appeals and Litigation Law Manual
JIM	Job Information Metric
OASDI	Old-Age, Survivors and Disability Insurance
OIG	Office of the Inspector General
SSA	Social Security Administration
SSI	Supplemental Security Income
U.S.C.	United States Code

OBJECTIVES

Our objectives were to (1) update our 2014 report¹ on request for review workloads at the Appeals Council and (2) describe efforts the Social Security Administration's (SSA) Office of Appellate Operations was taking to improve the timeliness and quality of Appeals Council actions and address the reversal and remand rates from the Federal courts.

BACKGROUND

SSA administers the Old-Age, Survivors and Disability Insurance (OASDI) program to provide benefits to replace some of the earnings lost because a worker retires, becomes disabled, or dies.² SSA also administers the Supplemental Security Income (SSI) program to provide income for aged, blind, or disabled individuals with limited income and resources.³

If a claimant⁴ disagrees with the Agency's initial OASDI or SSI determination, he/she can file an appeal within 60 days of the date the claimant receives notice of the determination (presumed to be 5 days after the date on the notice, unless the claimant demonstrates otherwise). In most cases, there are four levels of possible appeal: (1) reconsideration by the disability determination services,⁵ (2) administrative law judge (ALJ) hearing, (3) Appeals Council review, and (4) Federal court review.⁶

Office of Appellate Operations

The Appeals Council operates within SSA's Office of Appellate Operations.⁷ The Appeals Council provides (a) claimants with appellate consideration of hearing level decisions and dismissals made by ALJs and (b) adjudicators and Agency policymakers with data-driven feedback on the disability adjudication process. The Office of Appellate Operations comprises several main divisions:

- **Division of Program Adjudication:** There are five divisions. Each considers appeals of ALJ hearing-level decisions and dismissals originating in a defined set of Federal judicial circuits.

¹ SSA, OIG, *Request for Review Workloads at the Appeals Council, A-12-13-13039* (March 2014).

² 42 U.S.C. §§ 401-402.

³ 42 U.S.C. § 1381; 20 C.F.R. § 416.110.

⁴ A claimant files an application for benefits for him/herself or the person for whom an application is filed; 20 C.F.R. §§ 404.602 and 416.302.

⁵ Disability determination services are in each of the 50 States plus the District of Columbia and Puerto Rico. In 1999, SSA eliminated the reconsideration level in Alabama, Alaska, California, Colorado, Louisiana, Michigan, Missouri, New Hampshire, New York, and Pennsylvania. In 2019, SSA began reinstating the reconsideration level in those States and, as of March 2020, completed reinstating the reconsideration level of appeal.

⁶ 20 C.F.R. §§ 404.900 and 416.1400.

⁷ As of October 1, 2017, the Office of Appellate Operations was moved from the Office of Disability Adjudication and Review to the newly formed Office of Analytics, Review, and Oversight.

- **Division of Civil Actions:** Employees prepare the administrative record for Federal court review; assist SSA's Office of General Council in aspects of litigation; review cases remanded by the Federal courts; and review ALJ decisions issued following remand by the Federal courts.
- **Division of Quality Review:** Employees (a) prepare own-motion⁸ reviews of unappealed hearing-level decisions and dismissals for possible further adjudicative action and (b) conduct additional post-effectuation quality reviews to gain insight into adjudication decision making.

Request for Review Workload

When a claimant asks the Appeals Council to review an ALJ's decision or dismissal, the Division of Program Adjudication processes the request. This is the Appeals Council's fundamental workload.

When the Appeals Council receives a request for review, staff screens the case, checks for any special requests, associates all pertinent documents with the case file, and prepares the case for the analyst to review. The analyst reviews the case file and independently formulates his/her recommendations. If the analyst recommends a denial, the case usually goes to an appeals officer for action. However, if a case needs additional review, the appeals officer can refer the case to an administrative appeals judge (AAJ). An AAJ may dismiss a request for review if (a) the request is not timely filed, and the time for filing has not been extended; (b) the party or parties to the hearing decision file a written request for dismissal; or (c) the party to the decision dies and the record clearly shows dismissal will not adversely affect any other person who wishes to continue the action; and (d) for SSI payments, there is no interim assistance reimbursement authorization⁹ in effect.¹⁰

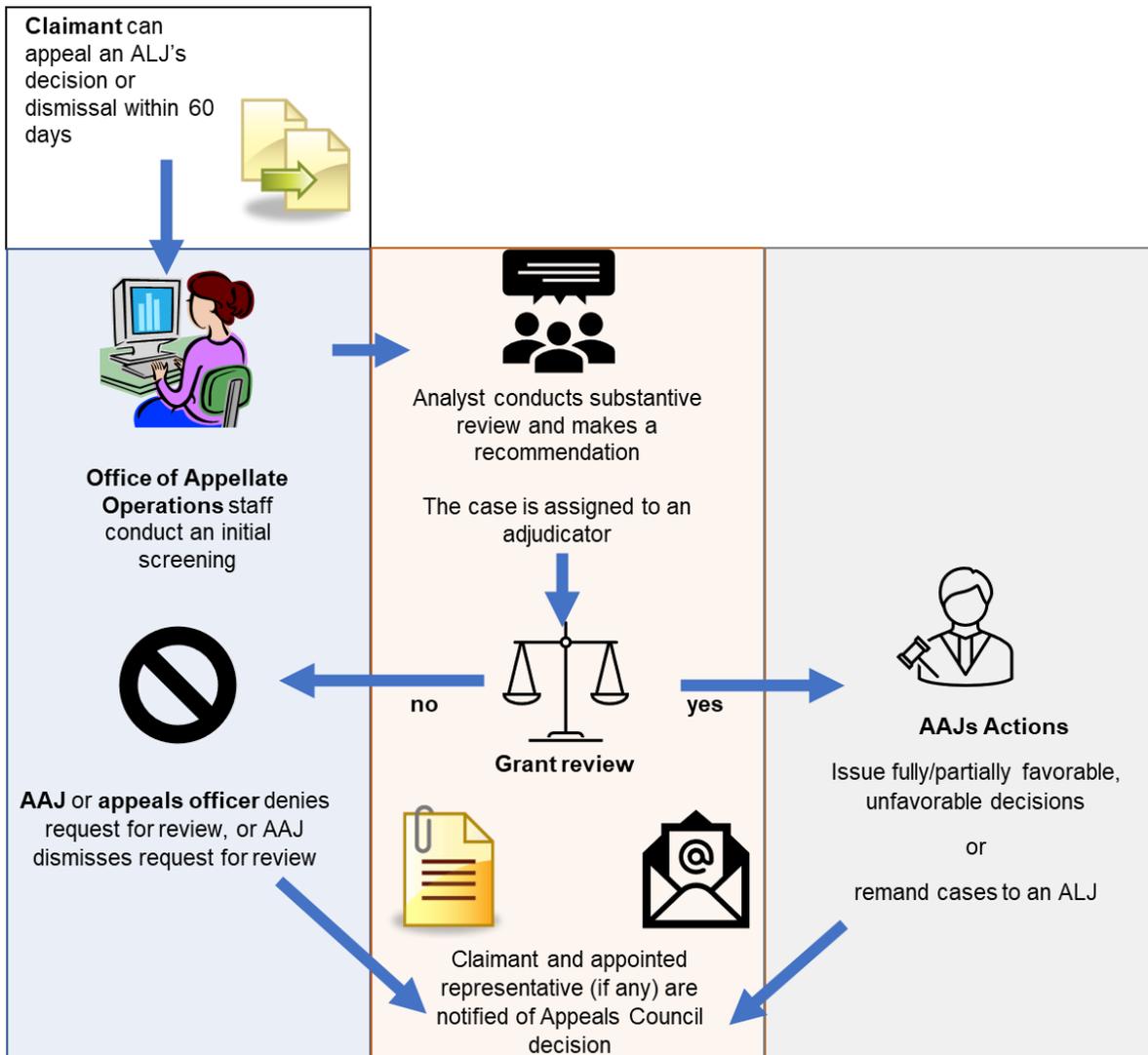
⁸ The Appeals Council may use this authority to consider a sample of unappealed OASDI and SSI decisions and dismissals. The Appeals Council may review both favorable and unfavorable decisions. The Appeals Council randomly selects closed hearing level cases based on a sample size that will yield statistically valid results at a regional level. The Appeals Council also selectively samples cases that exhibit issues or fact patterns that suggest an increase in the likelihood of error.

⁹ Interim assistance reimbursement is a payment SSA makes to reimburse a State that has provided an individual interim assistance in cash or through vendor payments for meeting basic needs. To participate in the Interim Assistance Reimbursement program, a State must have an Interim Assistance Reimbursement agreement with SSA and a written authorization from the individual that allows SSA to reimburse the State from the individual's SSI retroactive payment. SSA, POMS, SI 02003.001 (November 19, 2010).

¹⁰ SSA, HALLEX, vol. I, ch. I-3-4, sec. I-3-4-1 (February 7, 2014).

If the Appeals Council grants a review, AAJs will either (a) issue a fully favorable, partially favorable, or unfavorable decision or (b) remand the case to an ALJ.¹¹ The Appeals Council will notify all parties, including any appointed representative, of the result of their request for review and will advise all parties of the right to file a civil action.¹² See Figure 1 for the request for review workload flowchart.

Figure 1: Request for Review Workload Flowchart



¹¹ SSA, HALLEX, vol. I, ch. I-3-0, sec. I-3-0-10 (November 21, 2014); vol I, ch. I-3-8, sec. I-3-8-20 (September 10, 2021); and vol I, ch. I-3-7, sec. I-3-7-40 (September 10, 2021).

¹² SSA, HALLEX, vol. I, ch. I-3-5, sec. I-3-5-1 (October 27, 2016).

Appeals Council denial actions accounted for the majority of request for review dispositions issued from Fiscal Years (FY) 2014 to 2020. When the Appeals Council granted review, remands accounted for most of the actions, see Table 1.

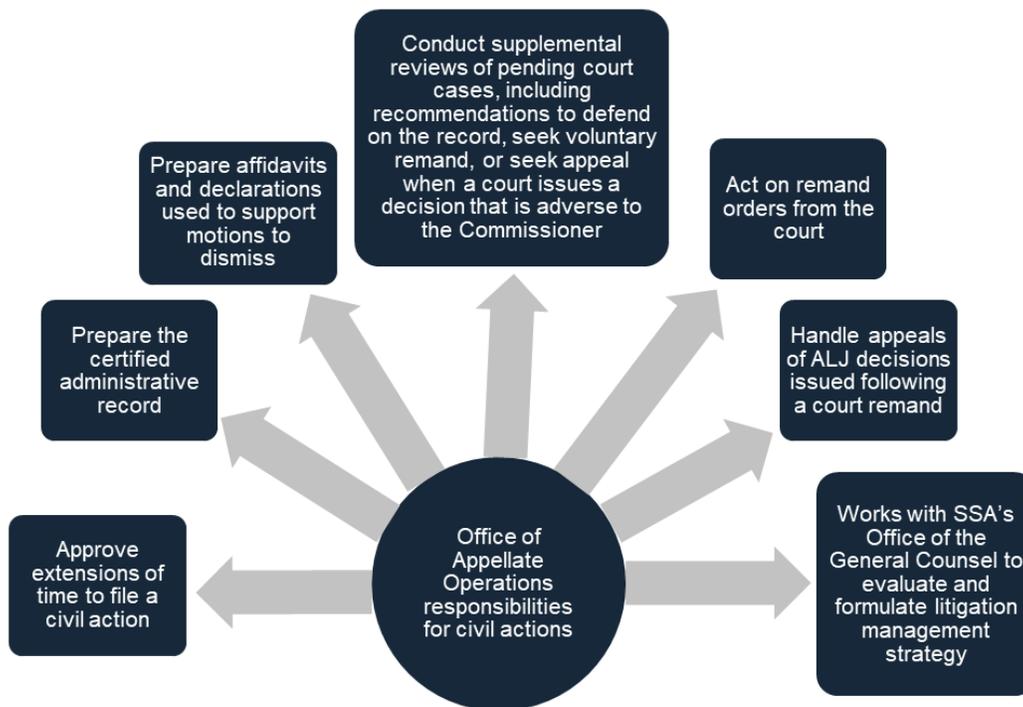
**Table 1: Rates for Request for Review Decision Types
FYs 2014 Through 2020**

FY	Request for Review Dispositions	Denial Rate	Dismissal Rate	Grant Review		
				Remand Rate	Favorable Rate	Unfavorable Rate
2014	162,280	80.06%	3.82%	14.33%	1.22%	0.57%
2015	150,673	80.92%	3.86%	13.58%	0.99%	0.65%
2016	154,402	82.70%	3.82%	12.03%	1.00%	0.45%
2017	160,776	84.35%	3.54%	10.41%	1.13%	0.57%
2018	155,959	81.87%	4.08%	11.83%	1.19%	1.03%
2019	144,193	78.68%	4.48%	14.56%	1.23%	1.05%
2020	191,734	81.07%	2.97%	14.59%	0.78%	0.59%

Federal Court Workload

A claimant (or other party to a hearing) has a right to file a civil action requesting judicial review after the Commissioner of Social Security makes a final decision.¹³ The claimant, either through his/her appointed representative or on his/her own behalf, commences a civil action by filing a complaint against the Commissioner in a Federal District Court. The Office of Appellate Operations is responsible for certain actions on civil cases, see Figure 2.

Figure 2: Civil Actions¹⁴



The Federal District Court reviews all evidence in the certified administrative record as well as the Commissioner's final decision. The Court has the power to affirm, modify, or reverse SSA's final decisions and may remand cases to SSA for further action, including a new decision. If the Federal District Court does not find in the claimant's favor, he/she can appeal to other Federal courts, including the appropriate U.S. Circuit Court of Appeals and the Supreme Court.

When a Federal Court remands a case to SSA for further consideration, the Appeals Council, acting on the Commissioner's behalf, may make a decision, dismiss the case, or remand the case to an ALJ with instructions to take action and issue a decision.¹⁵

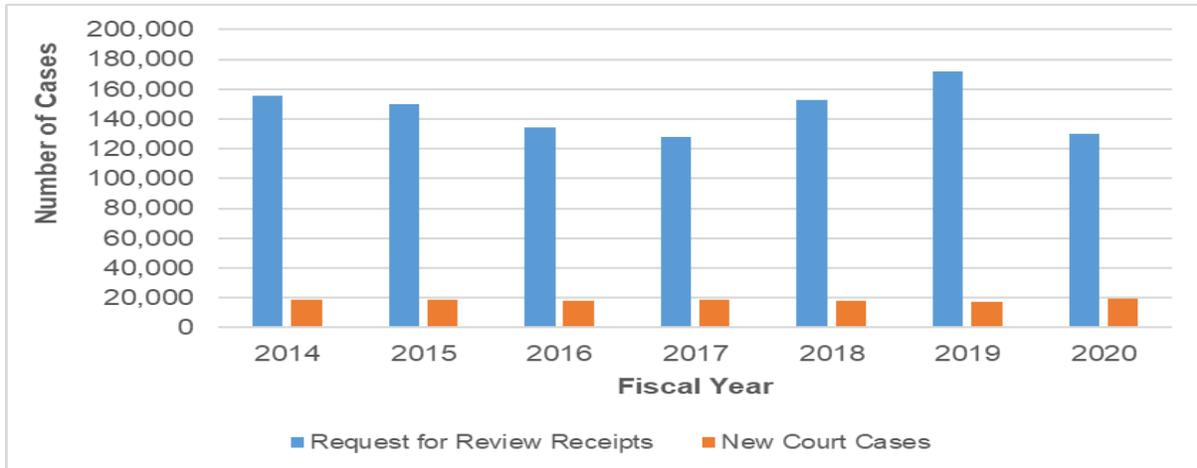
¹³ 42 U.S.C. § 405 (g).

¹⁴ SSA, *HALLEX*, vol I, ch. I-4-0, sec. I 4-0-2 (January 16, 2015).

¹⁵ 20 C.F.R. §§ 404.983 and 416.1483.

Appeals Council requests for review exceeded 125,000 cases from FYs 2014 through 2020, while new court cases numbered fewer than 20,000 cases every year, see Figure 3.

Figure 3: Appeals Council Receipts – Requests for Review Versus New Court Cases FYs 2014 Through 2020



Appeals Review Processing System

Appeals Council staff processing the request for review and Federal court workloads use SSA's Appeals Review Processing System (ARPS). This Web-based case-processing system (a) tracks the status of cases and information associated with them, (b) creates and stores case analysis information AAJs and appeals officers use to adjudicate cases, and (c) tracks and generates data related to decision making and case processing at all levels of the administrative review process. ARPS data allows SSA to:

- Identify rules and policies that need improvement, update, or clarification. ARPS data on decision making at the hearings and Appeals Council levels and in the Federal courts have driven regulatory changes.¹⁶
- Study the quality, accuracy, and consistency of decision making at the hearings and Appeals Council levels. These data are used to tailor training and feedback initiatives and direct them where they are needed most.
- Identify issues that affect the integrity of the programs it administers, such as significant quality or consistency issues, potential fraud, and due-process concerns.

¹⁶ Examples include: (1) *Ensuring Program Uniformity at the Hearing and Appeals Council Levels of the Administrative Review Process*, 81 Fed. Reg. 90987, 90987-90992 (December 16, 2016) and (2) *Social Security Ruling 16-3p Titles II And XVI: Evaluation of Symptoms in Disability Claims*, 82 Fed. Reg. 49462, 49462 through 49468 (October 25, 2017).

Previous Audit of the Appeals Council

In a March 2014 report,¹⁷ we concluded the Appeals Council struggled to keep up with the increasing number of request for review cases it received between FYs 2007 and 2013. By FY 2013, the Appeals Council's request for review pending cases had tripled, and processing times were approximately 60 percent higher than in FY 2007. Throughout this period, however, the Appeals Council continued increasing dispositions and productivity through hiring, training, and setting performance goals for analysts. Moreover, the Appeals Council's focus on the oldest cases benefited claimants waiting the longest for their cases to be decided. We made five recommendations to improve the Appeals Council's ability to measure and monitor key workloads. For information on our recommendations and SSA's actions, see Appendix A.

Congressional Request

In December 2020, the Chairman of the Committee on Ways and Means, Subcommittee on Social Security, requested we:

- update our 2014 report on request for review workloads at the Appeals Council and
- describe any efforts the Office of Appellate Operations is taking to improve the timeliness and quality of the Appeals Council's actions and address the consistently high reversal and remand rate from the Federal courts.

See Appendix B for a copy of the congressional letter.

Scope and Methodology

To meet our objectives, we reviewed previously issued Office of the Inspector General, Government Accountability Office, and Administrative Conference of the United States reports. We obtained ARPS reports to analyze trends in key request for review and Federal court workload indicators for FYs 2014 through 2020, including the number of (1) receipts, (2) dispositions, (3) pending, and (4) average processing time (APT). We also interviewed Office of Appellate Operations executives and AAJ managers. For more information on our scope and methodology, see Appendix C.

RESULTS OF REVIEW

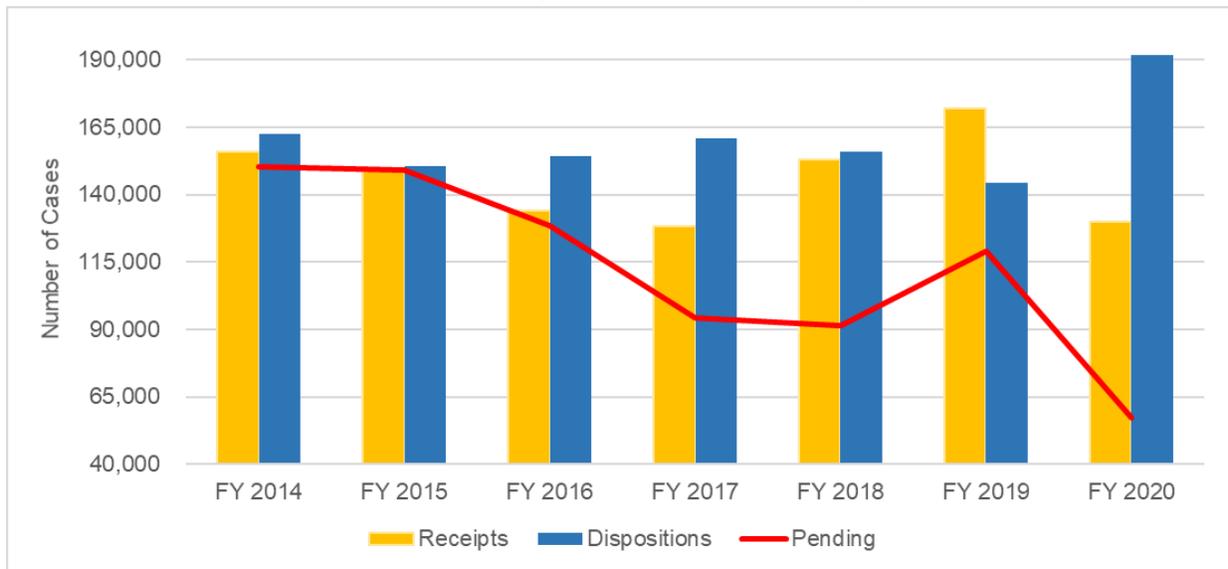
The Appeals Council lowered its request for review pending levels and reduced APT by combining a consistent number of adjudicators with employee training, business process improvements, and system enhancements. The Office of Appellate Operations implemented our previous recommendations by improving its quality review process to ensure relevant adjudicative actions in its request for review workloads were covered. Additionally, in FY 2022, SSA created a strategic initiative to undertake an evidence-based analysis of court remands and identify actionable improvements in its policies and processes.

¹⁷ SSA, OIG, *Request for Review Workloads at the Appeals Council*, A-12-13-13039 (March 2014).

Trends in Request for Review Workload

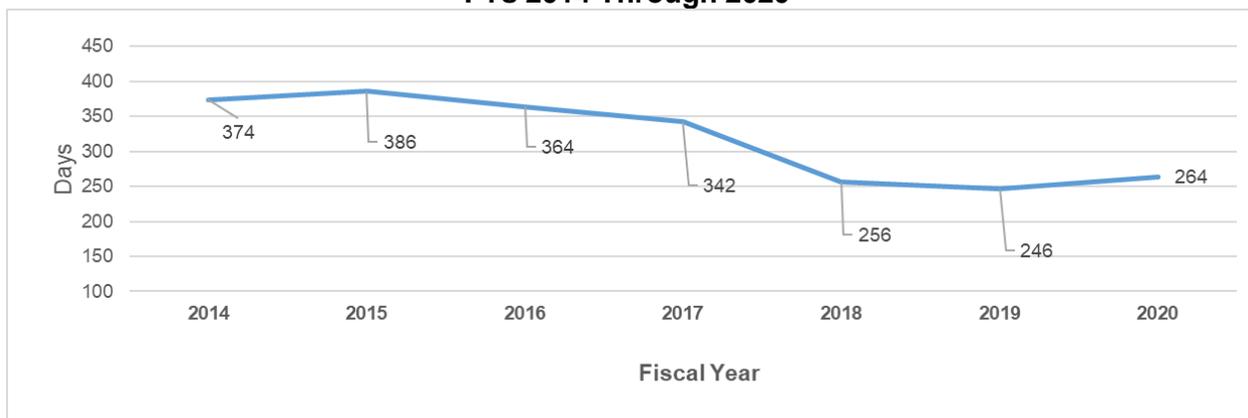
Except for FY 2019, Appeals Council dispositions exceeded receipts every year, which resulted in a 62-percent decrease in pending cases from 150,383 in FY 2014 to 57,327 in FY 2020. Dispositions exceeded 140,000 cases every year since FY 2014 and peaked at over 191,000 cases in FY 2020, see Figure 4.

Figure 4: 7-Year Trend in Appeals Council Request for Review Receipts, Dispositions, and Pending from FYs 2014 Through 2020



APT decreased to 264 days in FY 2020, down from 374 days in FY 2014 (29-percent decrease), see Figure 5. There was a slight increase in APT in FY 2020, but it was still 110 days below the FY 2014 level.

Figure 5: Trends in Appeals Council Request for Review Timeliness FYs 2014 Through 2020



According to SSA, it plans to monitor APT by:

- evaluating its business processes and technology for additional improvement opportunities;
- analyzing anticipated workloads and staffing levels;
- using multiple management information reports¹⁸ that re-calculate APTs every day;
- re-distributing work between work processing units to maintain a low overall APT; and
- considering allocating additional staff for certain workload(s) to ensure a low APT, if indicated by projected receipt numbers.

Factors that Affect Pending Levels and Processing Times

Consistent Adjudicator Levels

The Office of Appellate Operations maintained a consistent number of adjudicators from FYs 2014 to 2019. When the number of adjudicators decreased by 21 in FY 2019, the Office of Appellate Operations hired 19 adjudicators in FY 2020 (see Table 2). In FY 2019, when receipts exceeded dispositions and pending cases rose, SSA added staff and adjudicators to process the rising number of pending cases. SSA added 84 analysts, 20 appeals officers, and 17 AAJs and internally transferred 30 analysts temporarily from other workloads to process requests for review. The Office of Appellate Operations employed over 1,000 employees from FYs 2014 through 2016; however, the number of employees decreased into the 900s from FYs 2017 to 2020, see Table 2.

**Table 2: Office of Appellate Operations Employee Levels
FYs 2014 Through 2020**

FY	Number of Adjudicators	Number of Staff	Total Employees ¹⁹
2014	146	1,020	1,166
2015	148	1,015	1,163
2016	142	910	1,052
2017	142	781	923
2018	140	828	968
2019	119	872	991
2020	138	793	931

¹⁸ These reports show overall APT for Office of Appellate Operations as well as individual APTs corresponding to individual work processing units engaging in the same workloads.

¹⁹ Total employees include all Office of Appellate Operations full-time permanent staff.

Employee Training

While SSA's Office of Appellate Operations previously relied on individual divisions to identify and address training needs specific to their division,²⁰ it moved to a unified training program to ensure all employees receive the same training and policy is consistently communicated. According to SSA, in FY 2020, the Office of Appellate Operations launched the Supplemental Training Exchange to provide a forum to highlight and share training initiatives developed within the divisions with the wider Office of Appellate Operations audience and leverage the talents and skills of employees across locations. Training topics are employee-driven and focus on a wide range of program and procedural issues to encourage efficiency, engagement, and consistency. One division chief AAJ noted the training received helped identify best practices and improve work productivity.

Business Process Improvements and System Enhancements

According to SSA, business process improvements and system enhancements assisted the Office of Appellate Operations efforts in improving timeliness.

- In FY 2017, the Office of Appellate Operations implemented the *Job Information Metrics* (JIM) application. JIM tracks overall productivity down to the employee level. AAJs, appeals officers, technical assistants, and analysts use JIM to check and track their individual case processing and productivity. JIM assigns case credit based on when analysts and adjudicators actually perform the work. JIM allows managers to track work performance every day and provide immediate feedback.
- SSA's implementation of iAppeals²¹ and *my Social Security* accounts has streamlined and automated the processes for filing requests for review and communicating with claimants.
- Desktop faxing allowed for material faxed by claimants and representatives to be converted into portable document format files that are then routed to employee email boxes. Before this technology enhancement, staff was required to manually obtain documents from fax machines and scan them into the electronic folder,²² which delayed the association of pertinent materials with the claims file. Desktop faxing created a process for uploading other paper documents to the electronic folder, which saved support staff time.
- The use of electronic signatures expanded adjudicators' ability to electronically sign Appeals Council notices, which sped up processing and further decreased use of paper.
- The conversion of the Appeals Council to electronic processes to obtain medical expert opinions, complete translations, and prepare hearing transcripts increased efficiency and allowed for more actions to be completed via telework. The Appeals Council has also employed a process to convert its remaining paper cases to electronic format and expanded its use of central printing of its notices.

²⁰ For a list of training offered to Appeals Council employees, see Appendix D.

²¹ iAppeals is a Social Security Online Service that allows authorized representatives and applicants to electronically file requests for reconsideration, ALJ hearing, or Appeals Council review. SSA, *POMS*, GN 03101.125 (January 25, 2019) and SI 04005.035 (October 4, 2021).

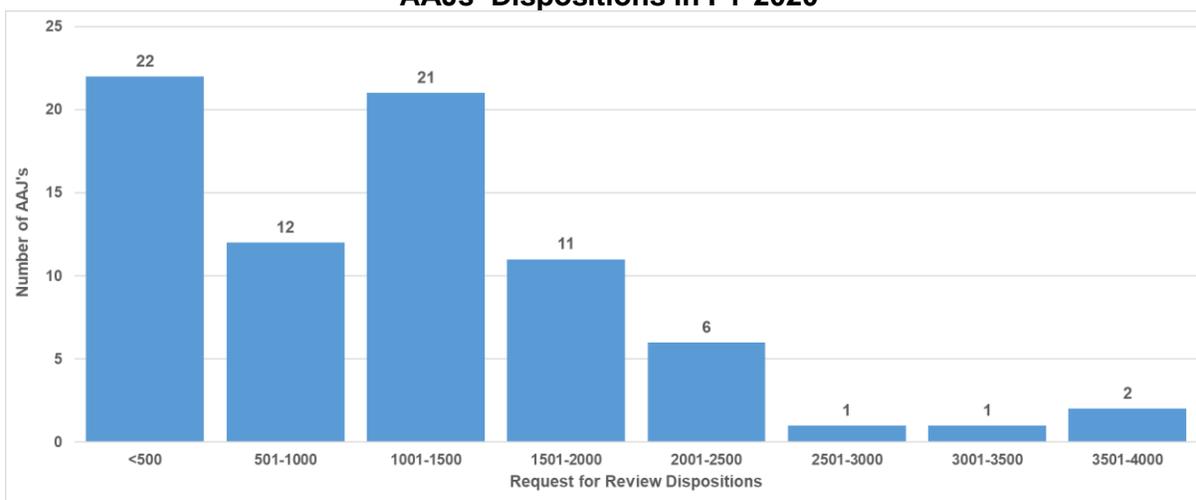
²² SSA's electronic folder contains a claimants' disability information. SSA, *POMS*, DI 81001.005, B (September 11, 2020).

Adjudicator Workload Performance

An organization's ability to track progress toward its goals ensures everyone is equally contributing and helps determine whether a different level of productivity is possible. In response to recommendations in our previous review, the Office of Appellate Operations established productivity goals²³ for adjudicators.

In FY 2020, 76 AAJs issued approximately 85,000 total dispositions. While 22 AAJs issued fewer than 500 dispositions, 4 issued more than 2,500, see Figure 6. The number of dispositions per AAJ ranged from 3 to 3,731, and the median number was 1,064 dispositions.

**Figure 6: Appeals Council Requests for Review
AAJs' Dispositions in FY 2020**



Note: We excluded two AAJs from our count since one no longer worked at the Office of Appellate Operations, and the other moved to an executive position.

SSA listed a number of factors for the range in AAJ dispositions. For example, some AAJs:

- work only on Appeals Council cases, while others assist with training and policy development;
- issue decisions, remands, dismissals, own-motion actions, effectuation actions; and act on bureau protests, requests for voluntary remand, requests for extensions of time, court remands, and final decisions after court remand—all vary in complexity and in how long it takes a typical AAJ to adjudicate them;
- have a great deal of Agency experience with disability policy and procedures, not only at the Appeals Council but from working at other SSA offices;
- send the cases back to the appeals officers and analysts if errors are found, instead of correcting the errors themselves;

²³ Productivity goals for Appeals Council adjudicators are the volume of work considered to equal a fair share of the workload between 70 and 120 percent based on the scale of weighted actions and the component production rate calculation. Productivity metrics are not based on an expected number of cases but rather how long an average adjudicator would take to produce the work, as compared to how long the individual spent in producing that work.

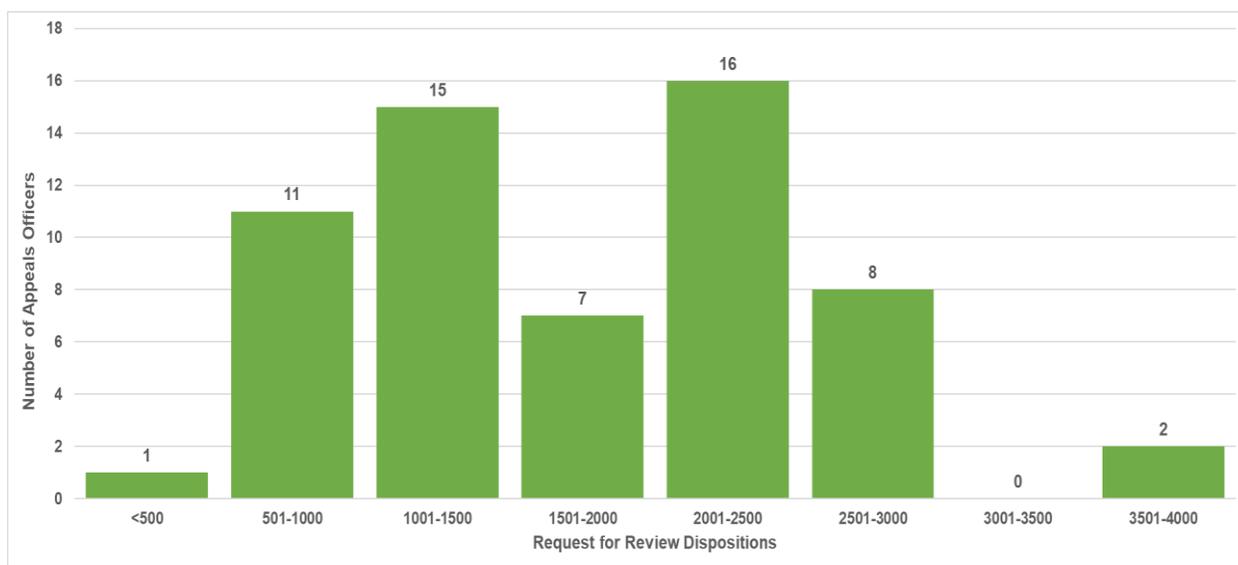
- effectively triage cases by keeping cases moving in various statuses; and
- have effective formal and informal communication abilities to resolve case efficiently.

We also found a range in dispositions issued by appeals officers in FY 2020:

- 60 appeals officers issued over 105,000 total dispositions in FY 2020;
- 12 appeals officers issued 1,000 dispositions or fewer;
- 10 issued over 2,500 dispositions, see Figure 7.

The number of dispositions per appeals officers ranged from 429 to 3,979. The median number was 1,849 dispositions.

Figure 7: Appeals Council Requests for Review



Appeals Officers' Dispositions in FY 2020

SSA listed a number of factors for the range in appeals officer dispositions. For example, some appeals officers:

- have experience working at the Agency;
- use overtime and credit hours to increase productivity levels;
- return errors for analysts to correct;
- triage cases—what cases have to move today—this comes with experience;
- have good communication skills; and
- spend varying amounts of time on cases sent to them for review rather than adjudication—examples include when they disagree with an analyst recommendation, or when an AAJ sends them a case for research, additional analysis, or editing assistance.

Quality Reviews of Appeals Council Actions

The Office of Appellate Operations implemented our previous recommendations by formalizing parts of its existing quality review process to ensure all relevant adjudicative actions in its request for review workloads were covered. The quality reviews included AAJ and appeals officer denials of request for review, AAJ remands, and analysts' actions and recommendations.

Appeals Council Quality Review Program

In 2019, the Office of Appellate Operations instituted the Appeals Council quality review program. This initiative is managed by a cadre of AAJs. The quality reviews involve randomly selecting and reviewing Appeals Council actions (before sending notice of the Appeals Council action to the claimant) for technical and substantive accuracy. As part of the Appeals Council quality reviews, the AAJs determine the substantive accuracy of Appeals Council denial actions under a "reasonableness" standard. Under this standard, the reviewer must determine whether the original Appeals Council adjudicator's action was reasonable based on consideration of relevant factors and supported by the record. If the record reveals the adjudicator failed to consider an important aspect of the case or has explained the action that runs counter to the evidence before it, the action is not reasonable.

The AAJs also review the technical accuracy of adjudicator actions. This includes, but is not limited to:

- addressing accuracy; grammar and formatting issues; accuracy of party name(s), relevant claim dates, and claim titles; required language such as protective filing date, ALJ routing, or interim benefits; and exhibiting issues and
- the requirements found in statutory and regulatory guidance as well as sub-regulatory guidance including SSA's policies and procedures and guidance memorandums.

According to the Office of Appellate Operations, it completed 1,537 quality reviews in FY 2020. Of those, 233 had identified mistakes or deficiencies:

- 100 were referred for different action (7-percent referral rate);
- 94 were referred for technical correction (6-percent referral rate); and
- 39 were identified by the reviewer as reasonable, but the reviewer indicated he/she would have taken different action (3-percent disagreement rate).

Quality reviewers referred cases with identified mistakes or deficiencies to supervisors for review and action.

SSA stated it conducted 58 quality reviews on cases decided by the 4 AAJs who issued over 2,500 dispositions in FY 2020: 55 had no errors and 3 had technical referrals. SSA did not identify any substantive outcome referrals.

In addition, SSA conducted 279 quality reviews on cases decided by the 10 appeals officers who issued over 2,500 dispositions in FY 2020. Of the 279 cases, 245 had no errors; 23 had technical referrals; 11 had substantive/outcome referrals; and 3 had combined referrals (representing actions in which both types of issues were identified).

Quality Reviews of Appeals Council Remands

The Appeals Council two-member AAJ approval process occurs on every remand.²⁴ If two AAJ members disagree on whether to remand the case to an ALJ, a division chief AAJ or deputy division chief AAJ, generally from another division, is assigned to resolve the issue. By assigning chiefs/deputies from all divisions to review such cases, the Appeals Council promoted consistency by allowing each division chief AAJ and deputy to see remand referrals from across all of the Office of Appellate Operations and identify, and communicate, differences in application of disability policies or other issues.

Appeals Council Feedback Initiative

According to SSA, the Appeals Council Feedback Initiative,

. . . was created to provide an avenue for ALJs to provide feedback to [the Office of Appellate Operations'] remand orders. [ALJ feedback] facilitate discussion among representatives from [Office of Hearings Operations] and [the Office of Appellate Operations'] about specific issues, including perceived inconsistent application of [SSA] policy or potential training needs at both the Appeals Council and at the hearing level.

We measure the success of the initiative by participation level and by impact of training initiatives that have resulted from referrals. In [FY] 2020, the [Appeals Council Feedback Initiative] received 22 ++referrals and feedback from [Office of Hearings Operations] indicating that ALJs did not feel as though referrals received meaningful review or response. In 2021, after renovation of the program, we have seen a great increase in participation. As of September, [Appeals Council Feedback Initiative] had received 110 referrals for consideration in FY 2021. [Appeals Council Feedback Initiative] also created ... training modules regarding [Appeals Council Feedback Initiative] findings and recommendations that have been viewed by both [the Office of Appellate Operation's] and [Office of Hearings Operation's] adjudicators; the most recent training module received 90 [percent] positive ratings by viewers.²⁵

²⁴ When the Appeals Council grants a request for review or reviews a case on its own motion, it may remand the case to an ALJ for further proceedings. In most cases, the Appeals Council will vacate an ALJ's decision in its entirety when it remands a case. This action requires that an ALJ issue a new decision in the case. When remanding a case, the Appeals Council may also direct an ALJ to take certain actions, such as developing additional evidence or holding a supplemental hearing. SSA, *HALLEX*, vol I, ch. I-3-7, sec. I-3-7-1 (April 26, 2016).

²⁵ More information on the Appeals Council Feedback Initiative is found in SSA, *HALLEX* vol. I, ch. I- 2-1, sec. I-2-1-88 (March 2, 2015).

Technical Assistant Quality Reviews of Analysts' Actions and Recommendations

Since FY 2015, technical assistants²⁶ have performed a 1-percent, in-line (before final decision) quality review of cases. Technical assistants review the quality of case analysis and recommendations completed by analysts and paralegal support technicians. The Office of Appellate Operations' review system automatically collects data for reporting purposes. According to SSA, "Data for the [quality review] is collected from...[all of the Office of Appellate Operation's workloads]. [Quality review] data is used for training, clarification of procedures, and Appeals Council consistency issues."

Federal Court Workload

The Office of Appellate Operations is responsible for certain actions on cases in which a claimant has filed a civil action.²⁷ When SSA's Office of the General Counsel receives the court order from the U.S. Attorney's office or the Federal Judiciary, it assists the Office of Appellate Operations by evaluating and formulating litigation strategy to:

- guide adjudicators with respect to case law;
- implement an effective appeals strategy; and
- identify and recommend developing or clarify policies and regulations or seek clarifying legislation.²⁸

After the court makes a decision, SSA's Office of the General Counsel further assists the Office of Appellate Operations by:

- screening and identifying the nature of the court order (for example, affirm, remand, reverse, deny);
- recording receipt of the order in the Legal Automated Workflow System;
- forwarding orders to the SSA component responsible for effectuation; and
- identifying court orders that may warrant further appeal.²⁹

²⁶ The primary function of the technical assistant position is to review a sample of analysts' final action documents and recommendations. This ensures the quality, timeliness, and consistency of the Appeals Council's work products and the legal sufficiency of final products prepared for release by the Appeals Council.

²⁷ See Appendix E for a flowchart of the Federal court business process.

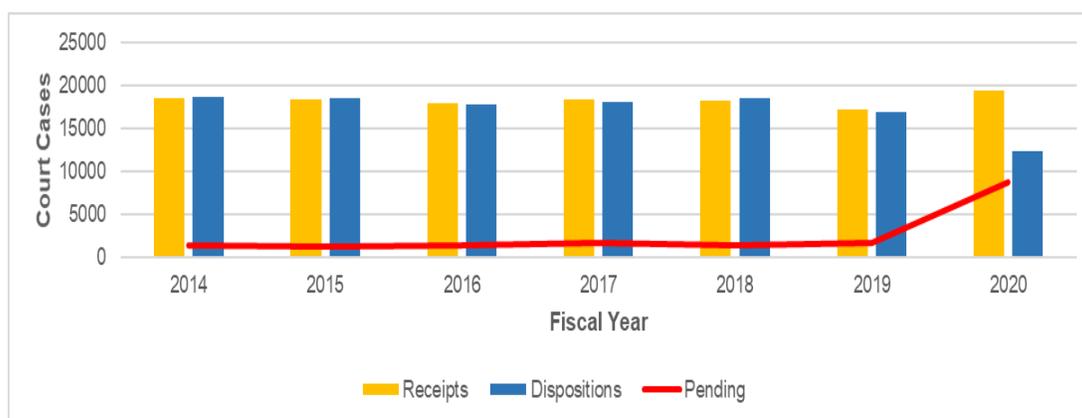
²⁸ SSA, *HALLEX*, vol. I, ch. I-4-0, sec. I-4-0-2 (January 16, 2015).

²⁹ SSA, *POMS*, GN 03106.050, A.1 (August 29, 2003).

Trends in New Court Case Workload

From FYs 2014 to 2019, new court case dispositions closely matched receipts with a small variation in FY 2020 pending new court cases. However, the number of pending cases increased to 8,734 cases because the Appeals Council received over 2,000 more receipts in FY 2020 than in 2019, along with dispositions decreasing by over 4,000, see Figure 8.

Figure 8: Trends in Federal New Court Case Key Workload Indicators



APT of the Appeals Council's new court case workloads fluctuated between 28 and 40 days from FYs 2014 to 2019 but rose to 60 days in FY 2020.

The court has the power to enter a judgment that affirms, modifies, or reverses the decision of the Commissioner of Social Security, with or without remanding the cause for a rehearing. The court may also remand the case to the Commissioner of Social Security for further action.³⁰ Over the 7-year period (FYs 2014 through 2020), 48 percent of court decisions on claimant appeals of SSA decisions were remands, 42 percent were affirmations, 8 percent were dismissals and 2 percent were reversals for payment of benefits, see Table 3.

Table 3: Trends in Court Decisions of Claimant Appeals of SSA Decisions³¹

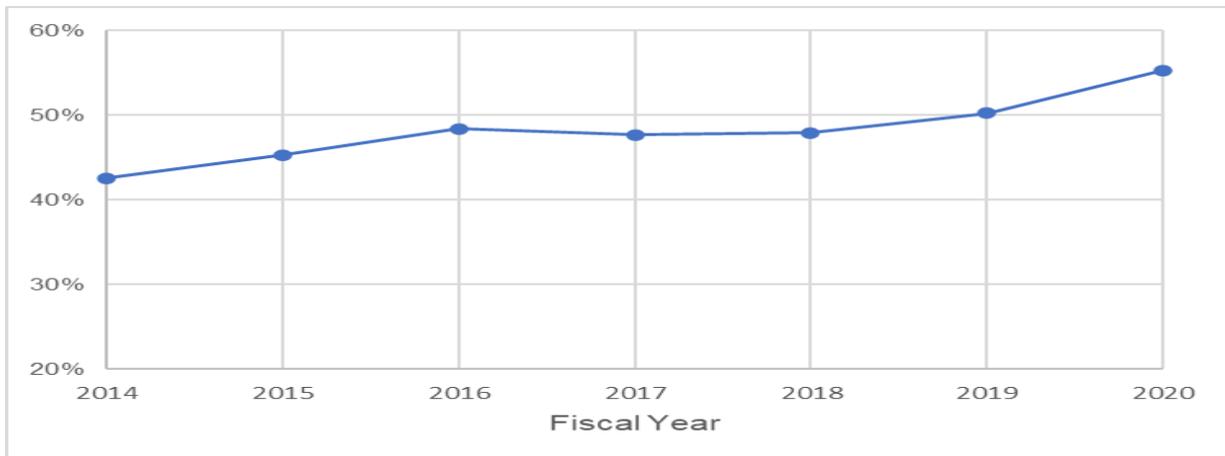
FY	Affirmations	Reversals	Dismissals	Remands	Decisions
2014	8,557	381	1,533	7,763	18,234
2015	8,200	373	1,496	8,343	18,412
2016	7,643	333	1,456	8,852	18,284
2017	7,768	294	1,509	8,722	18,293
2018	7,751	340	1,463	8,795	18,349
2019	7,437	375	1,227	9,128	18,167
2020	6,092	311	1,147	9,340	16,890
Total	53,448	2,407	9,831	60,943	126,629
Percent of Total	42%	2%	8%	48%	52%

³⁰ 42 U.S.C. § 405(g).

³¹ Source for data in table is Office of the General Counsel's Legal Automated Workflow System.

The Court remand rate ranged from 43 percent in FY 2014 to 55 percent in FY 2020, see Figure 9.

Figure 9: Court Remand Rate³²



Two reports have concluded that the court remand rate has been consistently high for decades.

1. The Administrative Conference of the United States found the 50-percent court remand rate is high and has been consistent for decades.³³
2. A Government Accountability Office report found that, between FYs 1995 and 2005, the number of disability appeals the Federal district courts reviewed increased, along with the proportion of decisions that were remanded. More disability claims were remanded than affirmed, reversed, or dismissed over the period, and the proportion of total decisions that were remands ranged from 36 to 62 percent, with an average of 50 percent.³⁴

³² Court remand rate is calculated by dividing the number of new court case receipts by the number of court remand actions. Source for figure is SSA's Office of the General Counsel's Legal Automated Workflow System.

³³ Administrative Conference of the United States, *Achieving Greater Consistency in Social Security Disability Adjudication: An Empirical Study and Suggested Reforms*, p. 58 (April 3, 2013).

³⁴ Government Accountability Office, *SSA Has Taken Steps to Address Conflicting Court Decisions, but Needs to Manage Data Better on the Increasing Number of Court Remands*, GAO-07-331 (April 2007).

Furthermore, a July 2016 report by the Administrative Conference of the United States concluded “Even if both institutions are performing adequately . . . federal courts will continue to rule against SSA in a large number of cases.”³⁵ According to the report:

- The Federal courts may have unrealistic expectations for decisional quality and that many claimant wins result from an unavoidable clash between these two institutions.
- The Agency and the Federal courts have conflicting goals, resources, priorities, and legal commitments. Even if both institutions are performing adequately, Federal courts will continue to rule against the Agency in a large number of cases.
- District and magistrate judges tend to march in lockstep within districts. Districts with one judge who remands a lot of cases to the Agency tend to have other judges who do so as well. Very few individual judges have decision patterns that depart significantly from what their district colleagues produce.
- Circuit boundaries are associated with a good deal of district-level variation. For example, the fact that the Eastern District of New York remands more cases than the Southern District of Florida seems to be significantly related to the fact that, over all, districts in the Second Circuit remand a greater share of cases than do districts in the Eleventh Circuit.
- A number of factors – judicial ideology, the degree of a district’s urbanization, the assignment of cases to district versus magistrate judges,³⁶ ALJ caseloads, and others – have little association with case outcomes.
- District courts would review Agency actions infrequently but for their social security docket. From interviews conducted with Federal judges, many do not relish their Social Security docket. Conversely, Federal judges have earned persistent criticism for their role in the disability claims process, going back to the very start of the current system for claims adjudication.³⁷

³⁵ Administrative Conference of the United States, *A Study of Social Security Litigation in the Federal Courts*, p. 6 (July 2016).

³⁶ Office of Appellate Operations has not conducted any studies comparing the remand rate of magistrate decisions versus Federal judge decisions.

³⁷The bulleted items are located on pages 6, 7, 10, and 11 in the report of the Administrative Conference of the United States, *A Study of Social Security Litigation in the Federal Courts* (July 2016).

Reasons for Remands

Three court remand reasons³⁸ appeared among the top five every year from FYs 2014 to 2020, and one other remand reason appeared in the top five every year from FYs 2016 to 2020; see Table 4. These four remand reasons accounted for over 24 percent of the total remands.

Table 4: Court Remand Reasons as a Percent of Total Court Remands During FYs 2014 Through 2020

Remand Reason	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
The ALJ did not adequately explain why he/she disagreed with the treating source's opinion on the claimant's limitations in being able to perform work-related activities that resulted from the impairments.	16%	15%	15%	17%	15%	16%	13%
The ALJ did not adequately explain how he/she used the treating source's opinion on the claimant's limitations in being able to perform work-related activities that resulted from the impairments.	4%	6%	7%	7%	7%	7%	7%
The ALJ did not adequately evaluate the claimant's limitations in being able to perform work-related activities that resulted from mental impairments.	4%	5%	6%	4%	7%	7%	6%
Inadequate Rationale for Symptom Evaluation ³⁹			10%	10%	10%	11%	10%
Total	24%	26%	38%	38%	39%	41%	36%

According to SSA, "Over the past decade, the agency has engaged in several activities that potentially impact the Federal court remand rate... [the Office of Appellate Operations], in conjunction with [Office of the General Counsel], regularly attends federal judicial conferences and Bench and Bar conferences, presenting our data and perspectives on how policy is applied. [Office of the General Counsel] also works with [Department of Justice] to perform local outreach to the Federal courts on specific issues."

One of the Office of the General Counsel's efforts to reduce Federal court-remand rates included the Program Litigation Steering Committee, which is charged with identifying, implementing, and overseeing national initiatives aimed at improving court results, with a particular focus on district court litigation. As of FY 2022, the steering committee had three major initiatives in progress:

1. *Jurisdictional Coordinator Workgroup*: In partnership with the Department of Justice, the Office of the General Counsel litigates in 94 district court jurisdictions. Each jurisdiction has at least one judicial coordinator. Judicial coordinators nationwide have standardized expectations aimed at optimizing favorable court results. Judicial coordinators review court decisions and analyze statistical data from the Office of the General Counsel's management information system to create a variety of jurisdiction-specific resources,

³⁸ SSA stated there were 256 reasons for court remands.

³⁹ This reason did not appear in the top 10 remand reasons for FY 2014 or 2015 in ssa.gov data.

including research guides and model language. Judicial coordinators' initiatives are coordinated at a national level by an oversight board comprised of program litigation supervisors and executives.

2. *Program Litigation Steering Hub*: The Hub oversees a virtual repository of litigation related materials, including model arguments that support national litigation efforts.
3. *Legal Writing Training*: SSA holds three national trainings each year that focus on effective legal writing. This effort supplements individual efforts, including trainings on emerging legal issues that regularly occur at the national and local level.

SSA's Office of Analytics, Review, and Oversight's *Fiscal Year 2022-2023 Strategic Work Plan*⁴⁰ contains a strategic initiative to *Partner with Office of the General Counsel to undertake an evidence-based analysis of court remands and identify actionable improvements in its policies and processes*. To address this initiative, the Office of Analytics, Review, and Oversight, the Office of the General Counsel, the Office of Hearings Operations, and the Office of Retirement and Disability Policy formed a steering committee to answer the following two questions:

1. What factors contribute to Federal court remands of disability decisions?
2. What are or will be the effects of modifying such factors on the percentage of final decisions that are affirmed upon judicial review?

In FY 2022, the steering committee satisfied bargaining obligations related to the composition of sub-workgroups and will initiate action at the sub-workgroup level.

Claimants Who Appealed to the Appeals Council or Federal Court Who Are Receiving Benefits

We identified 620,119 claimants who were denied OASDI or SSI benefits or whose benefits ceased and appealed these decisions to the Appeals Council or Federal court between FYs 2014 and 2020. Based on our sample, as of November 2021, we estimated 146,574 received DI benefits and/or SSI payments based on their appeal. For example, one claimant filed an initial claim for DI benefits in December 2011 with alleged impairments that included back problems but was denied benefits in April 2012. After the initial denial, the claimant appealed to the ALJ level in April 2012 but was denied in September 2014. In November 2014, the claimant appealed the ALJ denial to the Appeals Council, which made a favorable decision in March 2016. The Appeals Council determined the claimant's primary disability impairment was a back disorder, and the disability began in October 2010. In April 2016, the claimant began receiving a \$1,856 monthly disability. Additionally, in April 2016, for the period April 2011 through March 2016, SSA paid a retroactive disability benefit payment of \$91,696.

⁴⁰ SSA, Office of Analytics, Review and Oversight, *Fiscal Years 2022-2023, Strategic Work Plan*, p.35. (2022)

Based on our sample analysis, we estimated:

- 209,713 received benefits because they were allowed on a subsequent new claim;
- 83,434 were allowed on a prior claim (that is, the Appeals Council or Federal Court decisions were for a continuing disability review);⁴¹
- 56,374 elected to receive other non-disability benefits (that is, widows or retirement benefits); and
- 29,315 were allowed before the Appeals Council or Federal court decision (that is, the ALJ made a partially favorable decision, but the claimant appealed to the Appeals Council or Federal court and the claim was denied or dismissed). See Appendix F for more information on the sample.

CONCLUSION

Compared to FY 2014, the Office of Appellate Operations improved public service by lowering its request for review pending levels by 62 percent and reducing APT by 29 percent. The Office of Appellate Operations achieved these results by maintaining a consistent number of adjudicators, providing employee training, enhancing its business processes, and expanding system enhancements. By implementing our previous recommendations, SSA's Office of Appellate Operations formalized parts of its existing quality review process to ensure relevant adjudicative actions in its request for review workloads were covered. In FY 2022, SSA created a strategic initiative and steering committee to undertake an evidence-based analysis of court remands and identify actionable improvements in its policies and processes to try to lower court remand rates.

AGENCY COMMENTS

SSA did not have any comments; see Appendix G.

⁴¹ SSA conducts a continuing disability review to determine whether an individual entitled to disability benefits continues to be disabled. SSA, *POMS*, DI 28001.001 (May 5, 2015).

APPENDICES

Appendix A – PRIOR REPORT RECOMMENDATION STATUS

Table A–1 shows the status of the recommendations from our March 2014 report on the Appeals Council.¹

Table A–1: Prior Report Recommendation Status

Recommendation	Status/Results as of March 2022
<p>Revisit the appellate-level performance goals shared with the public to ensure they provide sufficient information about the Appeals Council’s performance processing request for review workloads.</p>	<p>In its Fiscal Year (FY) 2014, 2015, 2016, and 2017 <i>Annual Performance Reports</i>, the Social Security Administration (SSA) published an Appeals Council goal: <i>Increase our ability to provide timely decisions by reducing the percentage of pending Appeals Council requests for review 365 days or older</i>. However, SSA has not published any Appeals Council performance goals in its FYs 2018, 2019, or 2020 <i>Annual Performance Reports</i>.</p>
<p>Consider establishing uniform individual productivity goals and caps for Appeals Council adjudicators for the time they spend processing request for review cases.</p>	<p>SSA’s Office of Appellate Operations developed productivity and timeliness metrics for adjudicators in FY 2021 but has not established productivity caps. Without caps in place, we found wide variations in the number of dispositions issued by Appeals Council adjudicators in FY 2020. For example, 76 administrative appeals judges (AAJ) issued about 85,000 request for review dispositions; however, the number of dispositions per AAJ ranged from 3 to 3,731. We also found a wide range in request for review dispositions issued by appeals officers. While the 60 appeals officers issued 105,504 dispositions, the number of dispositions per appeals officers ranged from 429 to 3,979.</p>
<p>Improve communication of Appeals Council quarterly and annual performance goals with adjudicators, managers, and staff to instill a greater understanding of organizational goals.</p>	<p>SSA improved communication with Appeals Council adjudicators, managers, and staff.</p> <p>The Office of Appellate Operations published a periodic newsletter that included information on how it formulates goals for request for review dispositions. Each newsletter lists the status of Office of Appellate Operations internal performance goals.² Also, SSA executives informed us that they discuss performance goals with managers at weekly workload meetings.</p>

¹ SSA, OIG, *Request for Review Workloads at the Appeals Council*, A-12-13-23039, p. G-1 (March 2014).

² Office of Appellate Operations issued a newsletter twice each month from FYs 2014 through 2019. In FY 2020, Office of Appellate Operations issued it twice each month from October 2019 through January 2020, then began to issue it once each month.

Recommendation	Status/Results as of March 2022
<p>Review and formalize successful parts of the existing quality review process for request for review workload, and monitor trends to demonstrate improvement as well as areas that need greater attention.</p>	<p>SSA improved its quality review over Appeals Council decisions.</p> <p>The Office of Appellate Operations revised its appeals officer peer review process in FY 2014, and in 2019, it was renamed to the Appeals Council Quality Review and expanded to include quality reviews of decisions issued by AAJs. The quality review involves randomly selecting and reviewing decisions for technical and substantive accuracy.</p> <p>The two-member AAJ approval process is a quality review mechanism that occurs on every remand. Should two AAJ members disagree on whether to remand the case to an administrative law judge (ALJ), a division chief AAJ from another division is assigned to resolve the issue.³ By assigning a division chief from a different division to review the case, the Appeals Council promoted consistency by giving each division chief AAJ an opportunity to see remand referrals from across all of the Office of Appellate Operations, and to alert other division chief AAJs to differences in application of disability policies or other issues.</p>
<p>Explore additional methods for conducting quality reviews of the Appeals Council request for review workload to ensure all relevant adjudicative actions are covered.</p>	<p>SSA developed additional methods for conducting quality reviews.</p> <p>The Office of Appellate Operations improved its Appeals Council feedback initiative, a program that allows ALJs to question Appeals Council remand decisions with the intent to improve case accuracy.</p> <p>Since FY 2015, technical assistants⁴ perform a 1-percent in-line (before to final decision) quality review of cases. Technical Assistants review the quality of case analysis and recommendations completed by analysts and paralegal support technicians. The Office of Appellate Operations review system automatically collects data for reporting purposes. According to SSA, “Data for the [quality review] is collected from...[all of the Office of Appellate Operation’s workloads]. [Quality review] data is used for training, clarification of procedures, and Appeals Council consistency issues.”</p>

³ When the Appeals Council grants a request for review or reviews a case on its own motion, it may remand the case to an ALJ for further proceedings. In most cases, the Appeals Council will vacate an ALJ’s decision in its entirety when it remands a case. This action requires an ALJ issue a new decision in the case. When remanding a case, the Appeals Council may also direct an ALJ to take certain actions, such as developing additional evidence or holding a supplemental hearing. See *HALLEX*, vol I, ch. I-3-7, sec. I-3-7-1 (April 26, 2016)

⁴ The primary function of the technical assistant position is to review a sample of analysts’ final action documents and recommendations. This is to ensure the quality, timeliness, and consistency of the Appeals Council’s work products, and the legal sufficiency of final products prepared for release by the Appeals Council.

Appendix B – CONGRESSIONAL REQUEST LETTER

JOHN B. LARSON
CONNECTICUT,
CHAIRMAN

BILL PASCRELL JR., NEW JERSEY
LINDA T. SANCHEZ, CALIFORNIA
DAN KILDEE, MICHIGAN
BRENDAN BOYLE, PENNSYLVANIA
BRAD SCHNEIDER, ILLINOIS
BRIAN HIGGINS, NEW YORK

KATHRYN OLSON,
STAFF DIRECTOR

Congress of the United States

U.S. House of Representatives

COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON SOCIAL SECURITY

1102 LONGWORTH HOUSE OFFICE BUILDING
(202) 225-3625

Washington, D.C. 20515-0348

<http://waysandmeans.house.gov>

TOM REED
NEW YORK,
RANKING MEMBER

JOEY ARRINGTON, TEXAS
DREW FERGUSON, GEORGIA
RON ESTES, KANSAS

AMY SHUART,
STAFF DIRECTOR

December 21, 2020

The Honorable Gail S. Ennis
Inspector General
Social Security Administration
6401 Security Boulevard
Baltimore, MD 21235

Dear Inspector General Ennis:

I write to request your review of matters related to the issuance of timely, high quality disability decisions by the Appeals Council of the Social Security Administration (SSA).

The Appeals Council provides a final level of administrative review for individuals applying for Social Security and Supplemental Security Income (SSI) or appealing a denial of benefits. The Appeals Council reviews decisions and orders of dismissal made by independent and impartial Administrative Law Judges (ALJs), either at the individual's request or on the Appeals Council's own motion. When the Appeals Council conducts a review, it may render a final decision on behalf of the Commissioner to allow or deny benefits, issue an order of dismissal, or remand the case back to an ALJ for further proceedings.

This month, the Trump Administration is finalizing a rule to change SSA's appeals process by permitting agency lawyers who review cases at the Appeals Council (known as Administrative Appeals Judges, or AAJs) to hold ALJ hearings. I and many others have raised strong objections to this rule, which is contrary to congressional intent for impartial SSA hearings and will erode due process for individuals who are appealing a denial of Social Security or SSI benefits.

In addition, I have been very concerned about the impact of this rule on the ability of claimants and beneficiaries who are appealing a denial of benefits to access a timely review by the Appeals Council. In your March 2014 report, *Request for Review Workloads at the Appeals Council*, you concluded that, since Fiscal Year (FY) 2007, the Appeals Council struggled to keep up with the increasing number of "request for review" cases it received. As a result, by FY 2013, the Appeals Council's "request for review" backlog had tripled and related processing times were about 60 percent higher than FY 2007. More recently, data provided by SSA to the Social Security Subcommittee shows that the Appeals Council saw an increase in requests for review from FY 2017 through FY 2019.

Letter to Inspector General Ennis
December 21, 2020
Page 2

I ask that you provide an update of your 2014 report on “request for review” workloads at the Appeals Council. In addition to updating the information from this earlier report, please describe any efforts SSA’s Office of Appellate Operations is taking to improve the timeliness and quality of the Appeals Council’s decisions and address the consistently high reversal and remand rate from the Federal Courts.

Thank you for your attention to this matter. I look forward to seeing your response.

Sincerely,



John B. Larson
Chairman

Appendix C – SCOPE AND METHODOLOGY

To accomplish our objectives, we:

- Reviewed applicable laws of the *Social Security Act* and Social Security Administration (SSA) policies and procedures, including the Office of Hearings Operations' Hearings, Appeals, and Litigation Law Manual.
- Reviewed Office of the Inspector General, Government Accountability Office, and Administrative Conference of the United States reports relating to hearings, appeals, and Federal court remands.
- Analyzed actions SSA took to implement recommendations from our March 2014 report, *Request for Review Workloads at the Appeals Council, A-12-13-23039*.
- Interviewed Office of Appellate Operations executives, and Appeals Council division chief administrative appeals judges, and deputy division chief administrative appeals judges.
- Obtained and analyzed Appeals Council request for review key workload indicators and Federal court key workload indicators (dispositions, receipts, pending, and average processing time) from the Appeals Review Processing System (ARPS) for Fiscal Years (FY) 2014 through 2020.
- Conducted reliability testing of the ARPS and Case Processing Management System data as well as consistency testing between the ARPS data and data SSA published on ssa.gov.
- Obtained and analyzed Master Beneficiary and Supplemental Security Records for claimants who appealed to the Appeals Council or Federal court in FYs 2014 through 2020 to determine whether they received benefits. (See Appendix F for more information.)
- Created flowcharts of the Appeals Council request for review and Federal court business processes.
- Interviewed Office of Appellate Operations subject matter expert to learn about ARPS and the Job Information Metrics tool.

We assessed the significance of internal controls necessary to satisfy the audit objective. This included an assessment of the five internal control components, including control environment, risk assessment, control activities, information and communication, and monitoring. In addition, we reviewed the principles of internal controls associated with the audit objective. We identified the following components and principle as significant to the audit objective.

- Component 4: Information and Communication
 - Principle 13: Use Quality Information
 - Principle 14: Communicate Internally
 - Principle 15: Communicate Externally
- Component 5: Monitoring
 - Principle 17: Remediate Deficiencies

The entity audited was SSA’s Office of Appellate Operations under the Office of the Deputy Commissioner of the Office of Analytics, Review, and Oversight. We determined the ARPS, Master Beneficiary, and Supplemental Security Record data were sufficiently reliable to meet our objective. We conducted our review between April 2021 and March 2022 in Boston, Massachusetts, and Arlington and Falls Church, Virginia. We conducted this performance audit 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 findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

To address our objectives, we conducted an electronic survey of Appeals Council managers, adjudicators, and staff. The survey results are shown in Table C-1. We were unable to make plausible generalizations since the response rate was less than 75 percent¹ (a goal used by most practitioners) for each group of respondents. We sent the survey to 88 adjudicators, 70 managers, and 666 staff.

Table C–1: Survey Responses - Appeals Council Employees

Survey Question	Adjudicators 48 respondents (54.5%)	Managers 29 respondents (41.4%)	Staff 174 respondents (26.1%)
How well do you understand the use of the Job Information Metric (JIM) tool ² in tracking performance?	22.9% – Very Well 41.7% – Somewhat Well 22.9% – Neither Well, Nor Poorly 8.3% – Somewhat Poorly 2.1% – Very Poorly 2.1% – Not Applicable	58.6% – Very Well 41.4% – Somewhat Well 0.0% – Neither Well, Nor Poorly 0.0% – Somewhat Poorly 0.0% – Very Poorly 0.0% – Not Applicable	22.9% – Very Well 33.9% – Somewhat Well 16.7% – Neither Well, Nor Poorly 1.1% – Somewhat Poorly 0.6% – Very Poorly 17.8% – Not Applicable
Is there anything about the JIM tool that you would like to see changed?	77.1% – Yes 20.8% – No 2.1% – Not Applicable	65.5% – Yes 27.6% – No 6.9% – Not Applicable	33.9% – Yes 41.4% – No 24.7% – Not Applicable
How often does your manager(s) discuss the division’s quarterly performance goals?	4.2% – Weekly 39.6% – Monthly 22.9% – Quarterly 16.7% – My manager does not discuss the quarterly performance goals 16.7% – Other	48.3% – Weekly 17.2% – Monthly 10.3% – Quarterly 13.8% – My manager does not discuss the quarterly performance goals 10.3% – Other	6.3% – Weekly 36.8% – Monthly 27.0% – Quarterly 25.3% – My manager does not discuss the quarterly performance goals 4.6% – Other

¹ Government Accountability Office, *Developing and Using Questionnaires*, GAO/PEMD.10.1.7, p. 185 (1993).

² The JIM application allows Office of Appellate Operations to track overall productivity down to the employee level. Administrative appeals judges (AAJ), appeals officers, technical assistants, and analysts use JIM to check and track their individual case processing and productivity. Managers use JIM to monitor the work and productivity of employees in their units.

Survey Question	Adjudicators 48 respondents (54.5%)	Managers 29 respondents (41.4%)	Staff 174 respondents (26.1%)
How well do you understand how the Office of Appellate Operations formulates the division's performance goals?	8.3% – Very Well 31.3% – Somewhat Well 29.2% – Neither Well, Nor Poorly 18.8% – Somewhat Poorly 12.5% – Very Poorly	24.1% – Very Well 41.4% – Somewhat Well 20.7% – Neither Well Nor Poorly 10.3% – Somewhat Poorly 3.4% – Very Poorly	8.0% – Very Well 27.6% – Somewhat Well 32.8% – Neither Well, Nor Poorly 13.2% – Somewhat Poorly 18.4% – Very Poorly
What sources do you access to keep informed about the Office of Appellate Operations' annual performance goals? (select all that apply)	33.3% – Office of Analytics, Review, and Oversight Strategic Plan 68.8% – Office of Appellate Operations Newsletter 25.0% – Office of Appellate Operations website 47.9% – Other	37.9% – Office of Analytics, Review, and Oversight Strategic Plan 58.6% – Office of Appellate Operations Newsletter 34.5% – Office of Appellate Operations website 62.1% – Other	23.0% – Office of Analytics, Review, and Oversight Strategic Plan 69.0% – Office of Appellate Operations Newsletter 30.5% – Office of Appellate Operations website 25.3% – Other

Survey Question	Adjudicators 48 respondents (54.5%)	Managers 29 respondents (41.4%)	Staff 174 respondents (26.1%)
Which of the following have been successful at improving the quality of Appeals Council decisions? (select all that apply)	40.4% – Appeals Council Quality Review Process 31.9% – Appeals officer Peer Review Process 2.1% – JIM tool 55.3% – Appeals Council Feedback Initiative 36.2% – Technical Assistant Inline Quality Review Process 10.6% – How MI Doing tool ³ 10.6% – C-member Selection Process ⁴ 63.8% – Administrative appeal judge Two-signature Review Process 42.6% – Other	42.9% – Appeals Council Quality Review Process 50.0% – Appeals officer Peer Review Process 25.0% – JIM tool 35.7% – Appeals Council Feedback Initiative 75.0% – Technical Assistant Inline Quality Review Process 10.7% – How MI Doing tool 14.3% – C-member Selection Process 75.0% – Administrative appeal judge Two-signature Review Process 25.0% – Other	47.7% – Appeals Council Quality Review Process 22.6% – Appeals officer Peer Review Process 11.0% – JIM tool 27.7% – Appeals Council Feedback Initiative 41.9% – Technical Assistant Inline Quality Review Process 1.9% – How MI Doing tool 3.9% – C-member Selection Process 46.5% – Administrative appeal judge Two-signature Review Process 20.0% – Other
Which of the following have been successful at improving the efficiency and effectiveness of Appeals Council operations? (select all that apply)	66.7% – iAppeals ⁵ 20.8% – my Social Security accounts 14.6% – JIM tool 22.9% – How MI Doing tool 35.4% – Other	93.1% – iAppeals 44.8% – my Social Security accounts 79.3% – JIM tool 20.7% – How MI Doing tool 31.0% – Other	71.8% – iAppeals 28.2% – my Social Security accounts 29.3% – JIM tool 4.6% – How MI Doing tool 21.8% – Other

³ SSA's *How MI Doing* tool is used by adjudicators, to track average processing time (in the request for review workload), pending cases (in all workloads), and dispositions (in the request for review workload).

⁴ The two-member approval process is a quality review mechanism that occurs in every remand. Should two members disagree, a third member (c-member) is involved to resolve the issue.

⁵ iAppeals is a Social Security online service that allows authorized representatives and applicants to electronically file a reconsideration or an administrative law judge hearing request for Supplemental Security Income and Social Security Disability Insurance.

Survey Question	Adjudicators 48 respondents (54.5%)	Managers 29 respondents (41.4%)	Staff 174 respondents (26.1%)
Which of the following electronic processes have been successful at improving the efficiency and effectiveness of Appeals Council operations? (select all that apply)	25.0% – Desktop faxing	96.6% – Desktop faxing	48.3% – Desktop faxing
	70.8% – Electronic Non-Medical application	86.2% – Electronic Non-Medical application	44.3% – Electronic Non-Medical application
	83.3% – Expansion of the ability to centrally print notices	100.0% – Expansion of the ability to centrally print notices	74.1% – Expansion of the ability to centrally print notices
	68.8% – Streamlined process for uploading of paper documents to e-folder	82.8% – Streamlined process for uploading of paper documents to e-folder	68.4% – Streamlined process for uploading of paper documents to e-folder
	85.4% – Expansion of the ability to electronically sign Appeals Council notices	100.0% – Expansion of the ability to electronically sign Appeals Council notices	79.9% – Expansion of the ability to electronically sign Appeals Council notices
	52.1% – Electronic process for obtaining medical expert opinions	86.2% – Electronic process for obtaining medical expert opinions	45.4% – Electronic process for obtaining medical expert opinions
	41.7% – Electronic process for completing translations	75.9% – Electronic process for completing translations	36.2% – Electronic process for completing translations
	39.6% – Electronic process for preparing hearing transcripts	79.3% – Electronic process for preparing hearing transcripts	37.9% – Electronic process for preparing hearing transcripts
	75.0% – Electronic completion of certain interim notices	100.0% – Electronic completion of certain interim notices	68.4% – Electronic completion of certain interim notices
	64.6% – Electronic completion of decisions	100.0% – Electronic completion of decisions	71.8% – Electronic completion of decisions
	50.0% – Electronic completion of fee determinations	96.6% – Electronic completion of fee determinations	44.8% – Electronic completion of fee determinations
	16.7% – Other	10.3% – Other	7.5% – Other

Survey Question	Adjudicators 48 respondents (54.5%)	Managers 29 respondents (41.4%)	Staff 174 respondents (26.1%)
Which of the following FY 2021 business process updates have been successful at improving the efficiency and effectiveness of Appeals Council operations? (select all that apply)	27.1% – FY 2021 business process update on screening cases	48.3% – FY 2021 business process update on screening cases	52.9% – FY 2021 business process update on screening cases
	39.6% – FY 2021 business process update on working untimely requests for review	55.2% – FY 2021 business process update on working untimely requests for review	47.1% – FY 2021 business process update on working untimely requests for review
	37.5% – FY 2021 business process update on handling cases when a claimant is entitled to benefit continuation	48.3% – FY 2021 business process update on handling cases when a claimant is entitled to benefit continuation	36.2% – FY 2021 business process update on handling cases when a claimant is entitled to benefit continuation
	22.9% – FY 2021 business process update on handling cases in which the claimant dies while the case is pending at the Appeals Council	41.4% – FY 2021 business process update on handling cases in which the claimant dies while the case is pending at the Appeals Council	21.8% – FY 2021 business process update on handling cases in which the claimant dies while the case is pending at the Appeals Council
	37.5% – Other	17.2% – Other	17.2% – Other
How satisfied are you with the training you have received in your current position?	22.9% – Very satisfied 60.4% – Satisfied 8.3% – Neutral 8.3% – Dissatisfied 0.0% – Very Dissatisfied	27.6% – Very satisfied 41.4% – Satisfied 27.6% – Neutral 3.4% – Dissatisfied 0.0% – Very Dissatisfied	20.7% – Very satisfied 47.1% – Satisfied 20.7% – Neutral 9.2% – Dissatisfied 2.3% – Very Dissatisfied

Survey Question	Adjudicators 48 respondents (54.5%)	Managers 29 respondents (41.4%)	Staff 174 respondents (26.1%)
If you could, what would you change about the training you have received? (select all that apply)	35.4% – Timing of training could be better aligned to operational needs and/or professional development 35.4% – Breadth of content because not all my training needs are covered 37.5% – Course offerings could be more targeted to match operational needs 27.1% – Quality of training content/materials 20.8% – Quality of instructors 22.9% – Other	51.7% – Timing of training could be better aligned to operational needs and/or professional development 24.1% – Breadth of content because not all my training needs are covered 44.8% – Course offerings could be more targeted to match operational needs 20.7% – Quality of training content/materials 24.1% – Quality of instructors 27.6% – Other	41.4% – Timing of training could be better aligned to operational needs and/or professional development 31.0% – Breadth of content because not all my training needs are covered 47.1% – Course offerings could be more targeted to match operational needs 20.7% – Quality of training content/materials 17.2% – Quality of instructors 21.8% – Other
Do you think your division has adequate staffing?	37.5% – Yes 62.5% – No	37.9% – Yes 62.1% – No	51.7% – Yes 48.3% – No
If you answered no, what staffing resources does your division need? (select all that apply)	50.0% – Administrative appeal judges 9.4% – Appeals officers 25.0% – Technical Assistants 62.5% – Analysts 15.6% – Legal Assistants 21.9% – Support staff 21.9% – Other	36.8% – Administrative appeal judges 10.5% – Appeals officers 31.6% – Technical Assistants 52.6% – Analysts 36.8% – Legal Assistants 52.6% – Support staff 21.1% – Other	26.5% – Administrative appeal judges 33.3% – Appeals officers 29.4% – Technical Assistants 44.1% – Analysts 49.0% – Legal Assistants 57.8% – Support staff 14.7% – Other

Appendix D – APPEALS COUNCIL TRAINING

According to SSA, the Office of Appellate Operations conducted training for its Division of Program Adjudication employees from 2014 through 2020. See Table D–1.

**Table D–1: Division of Program Adjudication Employee Training
2015 Through 2020**

Name of Training	Division 1	Division 2	Division 3 ¹	Division 4	Division 5	Division 6
Refresher Training	As requested	As requested	As requested	As requested	As requested	As requested
National Uniformity Training	2018	2018		2018	2018	2018
iAppeals Training for Legal Assistants, Supervisory Legal Assistants, and Branch Chiefs	2018	2018		2018	2018	2018
Corrective Decision Training	2017	2017		2017	2017	2017
Policy Update Training	2016	2016	2016	2016	2016	2016
Denial Notice Training for all Adjudicative Officers	2016	2016	2016	2016	2016	2016
Continuing Disability Review Training	2015	2015	2015	2015	2015	2015
Representative Fee Training	2014	2014	2014	2014	2014	2014
How to work cases effectively/efficiently	2019	2019		2020	2016	2016
2018–2020 new rules refresher	2020	2020			2020	2020
Waiver and representation	2019	2019			2019	2019
Listing 12.05 ²		2019		2019	2019	2019
Recession and adoption of Social Security Rulings	2019	2019		2019	2019	2019
Increasing efficiency and ensuring quality	2019	2019		2019	2019	2019
Writing, proofreading, and editing Appeals Council documents		2019		2019	2019	2019

¹ The Office of Appellate Operations stated that Division 3 merged with Division 4 in Fiscal Year 2016.

² Listing 12.05 contains guidance on evaluating intellectual disorders.

Name of Training	Division 1	Division 2	Division 3 ¹	Division 4	Division 5	Division 6
Administrative law judge and Appeals Council dismissal cases	2016 2019	2019	2015	2021	2018	2018
Submission of evidence	2020	2019		2018	2018	2018
Reading queries	2017 2018 2019 2020	2019		2018 2019	2018	2018
New medical opinion evidence regulations (82 FR 5844)	2018 2019	2020		2018 2020	2018	2018
Trial work periods		2019		2018	2018	2018
Policy related to drug and alcohol addiction		2018		2018	2018	2018
SSA-45 workshop	2018	2018		2018	2016 2018	2016 2018
Strategies for Success				2019 2020		
Symptom Evaluation				2019		
Mentoring Training				2019		
Ninth Circuit Case Processing Training				2018		
Analysis Writing & Training Workshop				2018		
Tech tools and Tips for New and Experienced Analysts				2017		
Fee Agreement Workaround Training				2017		
Hearing Procedures Training				2015		
World of Analysts Training				2015		
Death of Claimant Training			2015			
Continuing Disability Review Training			2015			

Appendix E – FEDERAL COURT BUSINESS PROCESS

A claimant commences a civil action by filing a complaint against the Social Security Administration's (SSA) Commissioner in a Federal district court. SSA's Office of the General Counsel will notify the Appeals Council about any civil actions it receives. See Figure E-1 for the court workload flowchart.

The Appeals Council's Division of Civil Actions enters case information into the Appeals Review Processing System (ARPS)¹ and prepares the Certified Administrative Record.²

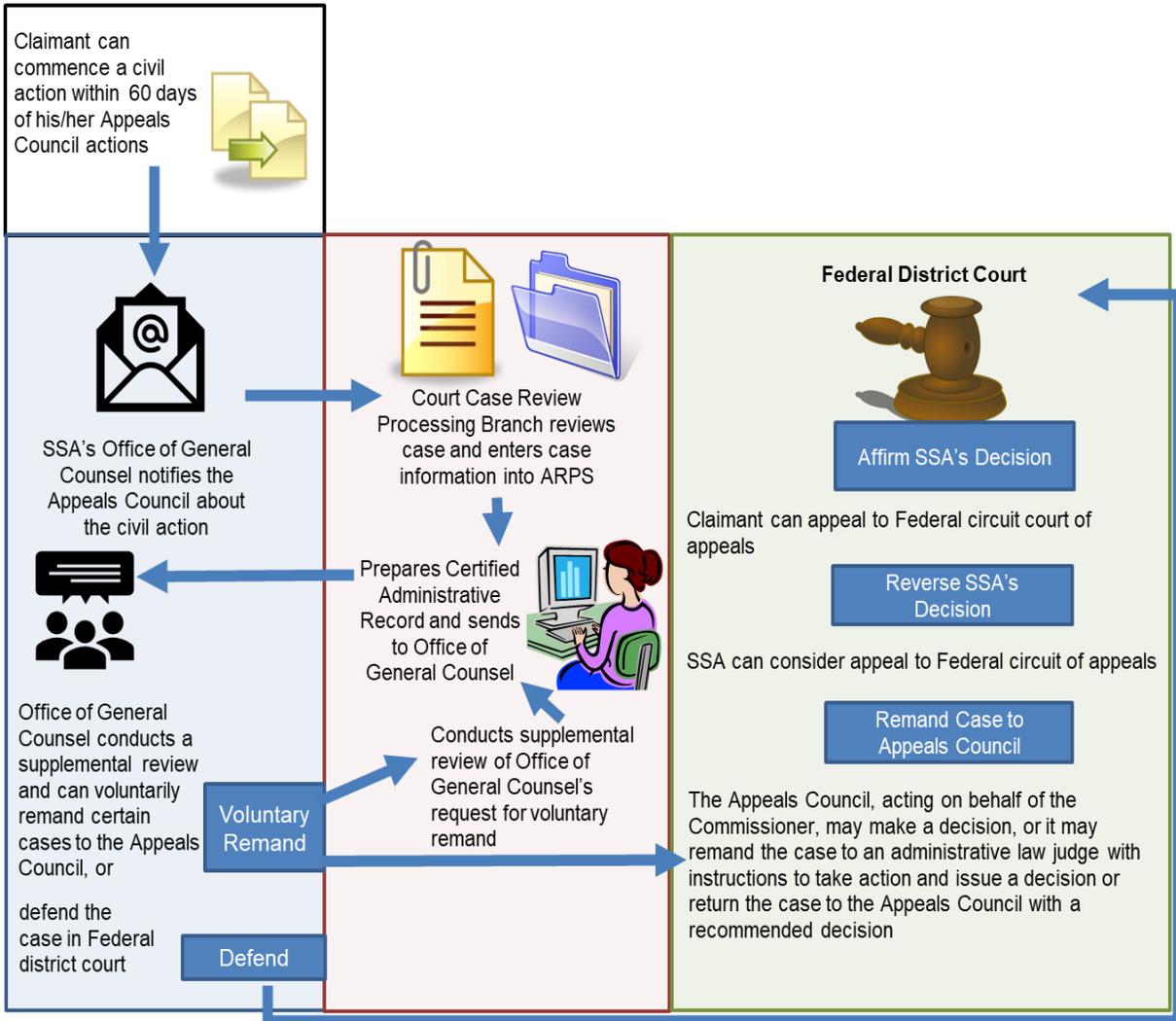
The Office of the General Counsel reviews the Certified Administrative Record, and can either voluntarily remand the case to the Appeals Council or defend the case in Federal district court. The Appeals Council may perform a supplemental review based on (a) receipt of new information or new evidence, (b) new pertinent legal argument, or (c) an Office of the General Counsel request. When the Appeals Council decides to process a voluntary remand, it may either make a decision or remand the case to an administrative law judge.

If the Office of the General Counsel decides to defend the case, it will file a motion for summary judgment and an accompanying brief. In some jurisdictions, the Office of the General Counsel sends its finished brief to the appropriate U.S. Attorney's Office for filing with the court. In other jurisdictions, Office of the General Counsel attorneys serve as Special Assistant United States Attorneys and file their own briefs. Although most district courts decide SSA cases solely based on the Certified Administrative Record, motions, and briefs, some judges and magistrate judges also hold oral arguments. In these districts, the U.S. Attorney (or one of his/her assistants) or an attorney from SSA's Office of the General Counsel will present oral argument for the Commissioner. The court will either affirm, reverse or remand the case. The claimant can appeal dismissal and affirmation decisions to the Federal circuit court of appeals, while SSA can appeal court remands and reversals. The court can also remand the case to SSA's Appeals Council. For court remands, the Appeals Council can make a new decision or remand the case to an administrative law judge.

¹ ARPS is a Web-based case processing system is used for (a) tracking the status of cases and the information associated with them, (b) creating and storing case analysis information used by administrative appeals judges and administrative officers to adjudicate cases, and (c) tracking and generating data related to decision making and case processing at all levels of the administrative review process.

² Exhibits in the Certified Administrative Record can include but are not limited to the (a) Appeals Council decision, (b) request for review of hearing decision, (c) hearing decision, (d) appointment of representative (e) transcript of oral hearing.

Figure E-1: Court Workload Flowchart



Appendix F—SAMPLING METHODOLOGY AND RESULTS

To determine whether claimants' appeals to the Appeals Council and/or Federal Court led to the claimants receiving Disability Insurance (DI) benefits and/or Supplemental Security Income (SSI) payments, we:

- Identified a population of 620,119 claimants who (1) had a decision that took place at the Appeals Council and/or Federal court in Fiscal Years (FY) 2014 through 2020; and (2) appeared to receive DI benefits and/or SSI payments in FY 2014 or later.
- Randomly selected and reviewed a sample of 275 cases from our population of 620,119 claimants to determine whether the decision at the Appeals Council and/or Federal court level in FYs 2014 through 2020 led to the claimants receiving DI benefits and/or SSI payments.

To conduct this review, we used a simple random sample statistical approach. This is a standard statistical approach used for creating a sample from a population completely at random. As a result, each sample item had an equal chance of being selected throughout the sampling process, and the selection of one item had no impact on the selection of other items. Therefore, we were guaranteed to choose a sample that represented the population, absent human biases, and ensured statistically valid conclusions of, and projections to, the entire population under review. Our sampling approach for this review ensures that our reported projections are statistically sound and defensible.

Sample Results

Based on our review of the 275 sample cases, we determined:

- 233 claimants received benefit payments in FY 2014 or later; and
- 42 claimants did not receive benefit payments in FY 2014 or later.

For the 233 claimants, we determined:

- 65 claimants had a decision at the Appeals Council and/or Federal court level that led to the claimants receiving DI benefits and/or SSI payments;
- 93 claimants filed a new subsequent claim that led to the claimants receiving DI benefits and/or SSI payments;
- 37 claimants were allowed on a claim before the Appeals Council and/or Federal court decision (that is, the Appeals Council or Federal court decisions were for continuing disability reviews);¹

¹ SSA conducts a continuing disability review to determine whether an individual entitled to disability benefits continues to be disabled. The purpose of the review is to determine whether an individual's impairment(s) has improved since the most recent favorable determination. SSA, *POMS*, DI 28001.001 (May 15, 2015).

- 25 claimants elected to receive non-disability benefits;² and
- 13 claimants were allowed before the Appeals Council or Federal court decision (that is, the administrative law judge made a partially favorable decision, but the claimant appealed to the Appeals Council or Federal court and the claim was denied or dismissed).

Table F–1: Appeals Council or Federal Court Review

Descriptions	Number of Claimants
Sample Results	65
Point Estimate	146,574
Projection Lower Limit	120,731
Projection Upper Limit	175,082

Note: All projections were calculated at the 90-percent confidence level.

Table F–2: Subsequent Claim

Descriptions	Number of Claimants
Sample Results	93
Point Estimate	209,713
Projection Lower Limit	180,407
Projection Upper Limit	240,646

Note: All projections were calculated at the 90-percent confidence level.

Table F–3: Prior Claim

Descriptions	Number of Claimants
Sample Results	37
Point Estimate	83,434
Projection Lower Limit	63,227
Projection Upper Limit	107,382

Note: All projections were calculated at the 90-percent confidence level.

² Of the 25 claimants: 22 elected to receive early retirement benefits; 2 elected to receive full retirement benefits; and 1 elected to receive a widow's benefit.

Table F-4: Elected Other Benefits

Descriptions	Number of Claimants
Sample Results	25
Point Estimate	56,374
Projection Lower Limit	39,688
Projection Upper Limit	77,296

Note: All projections were calculated at the 90-percent confidence level.

Table F-5: Allowed on Prior Decision

Descriptions	Number of Claimants
Sample Results	13
Point Estimate	29,315
Projection Lower Limit	17,481
Projection Upper Limit	45,952

Note: All projections were calculated at the 90-percent confidence level.

Appendix G – AGENCY COMMENTS



SOCIAL SECURITY

MEMORANDUM

Date: June 22, 2022

Refer To: TQA-1

To: Gail S. Ennis
Inspector General

From: Scott Frey 
Chief of Staff

Subject: Office of the Inspector General Draft Congressional Response Report “The Social Security Administration’s Appeals Council Workloads” (A-12-20-50986) - INFORMATION

Thank you for the opportunity to review the draft report. We have no comments.

Please let me know if I can be of further assistance. You may direct staff inquiries to Trae Sommer at (410) 965-9102.



Mission:

The Social Security Office of the Inspector General (OIG) serves the public through independent oversight of SSA's programs and operations.

Report:

Social Security-related scams and Social Security fraud, waste, abuse, and mismanagement, at oig.ssa.gov/report.

Connect:

[OIG.SSA.GOV](https://oig.ssa.gov)

Visit our website to read about our audits, investigations, fraud alerts, news releases, whistleblower protection information, and more.

Follow us on social media via these external links:



Twitter: @TheSSAOIG



Facebook: OIGSSA



YouTube: TheSSAOIG



Subscribe to email updates on our website.