



State Furloughs of Disability Determination Services (DDS) Employees

Scott Szymendera
Analyst in Disability Policy

(name redacted)
Legislative Attorney

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Summary

Initial and continuing determinations of eligibility for the Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) programs are made by state Disability Determination Services (DDS). These DDS agencies are fully funded by the federal government. However, because DDS employees work for the states, rather than the federal government, they are subject to furloughs, hiring freezes, and other personnel actions taken by state governments.

As of October 15, 2009, 10 states had either furloughed or plan to furlough DDS employees, and 6 states have either implemented or plan to implement hiring freezes that would affect DDS agencies. Eleven states had implemented or planned to implement other personnel actions, such as limitations on overtime or reductions in pay, that would apply to DDS agencies and employees.

These furloughs, hiring freezes, and other personnel actions will reduce the capacity of the DDS to process initial SSDI and SSI applications as well as continuing disability reviews (CDRs). This reduced capacity may result in delays in moving people who qualify for SSDI or SSI onto the benefit rolls, which may also result in a greater reliance by these people on benefits funded or administered by the states.

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Social Security Disability Programs

The Social Security Administration (SSA) administers two programs that provide cash benefits to persons with disabilities. The Social Security Disability Insurance (SSDI) program provides cash benefits based on previous earnings to persons with disabilities who have met the program's insurance requirements through work covered by the Social Security system. The Supplemental Security Income (SSI) program provides cash benefits to aged, blind, and disabled persons, including children with disabilities, who also meet federal income and asset limitations.¹ The definition of disability, which is generally based on an inability to work, is the same for both programs.² Determinations of disability for both programs are made by state Disability Determination Services (DDS) in accordance with federal laws, regulations, and policies.

Roles of the Disability Determination Services

The state DDS play two roles in the SSDI and SSI programs. State DDS agencies make initial determinations of the disability status of program applicants and perform continuing disability reviews on program participants, including redeterminations of disability when children in the SSI program reach the age of 18. In FY2008, DDS agencies processed more than 3.6 million SSDI and SSI initial determinations and continuing disability reviews.³ Information on the number of cases processed by each state DDS is provided in **Table A-1** in the **Appendix**.

Initial Disability Determinations

When a person applies for SSDI or SSI benefits, his or her application is first processed by the SSA to determine if he or she meets the non-disability requirements of the programs, such as the insurance requirements for SSDI or the income and asset requirements for SSI. The application is then forwarded to the claimant's home-state DDS. The DDS determines whether the applicant meets the program definition of disability and when the period of disability began. In making this determination, the DDS is authorized to purchase additional medical and vocational evidence such as consultative examinations and medical tests.

¹ For additional information on the requirements for the SSDI and SSI programs, see CRS Report RL32279, *Primer on Disability Benefits: Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI)*, by Scott Szymendera. After a 24-month waiting period, SSDI beneficiaries are eligible for Medicare. Generally, all SSI recipients are eligible for Medicaid.

² The definition of disability for the SSDI program is provided at 42 U.S.C. § 423(d). The definition of blindness for the SSI program is provided at 42 U.S.C. § 1382c(a)(2). The SSI definition of disability for adults is provided at 42 U.S.C. § 1382c(a)(3)(A). The SSI definition of disability for children is not based on an ability to work, but rather on the presence of "marked and severe functional limitations," and is provided at 42 U.S.C. § 1383c(a)(3)(C).

³ Social Security Administration, Office of the Inspector General, *Impact of State Employee Furloughs on the Social Security Administration's Disability Programs*, A-01-09-29137, March 2009, pp. D 5-D 6. (Hereafter referred to as *Impact of State Employee Furloughs on the Social Security Administration's Disability Programs*.)

Reconsideration and Remand

If an applicant is denied SSDI or SSI benefits, he or she may, in most states, ask for a reconsideration of the initial disability decision.⁴ This reconsideration is made by the DDS. A case that is appealed to an SSA Administrative Law Judge (ALJ) may be subject to an informal remand in which the ALJ returns the case to the DDS for a review of its initial decision.

Continuing Disability Reviews

SSDI beneficiaries and SSI recipients are subject to continuing disability reviews (CDRs) to determine if they still meet the disability program requirements. Most CDRs, including all CDRs for children in the SSI program, and all cases in which there has been a report of medical improvement, are performed by the DDS. Children who receive SSI benefits are subject to redeterminations of their eligibility when they turn 18 and are subject to the adult definition of disability. These redeterminations are performed by the DDS.

Federal Requirements Applicable to State DDS Agencies

Under the Social Security Act, states can choose whether to operate DDS themselves or to allow the SSA to administer DDS for them. This authority is found in the Social Security Act at Section 221(a)(1)⁵ for SSDI applicants and Section 1633(a)⁶ for SSI applicants.⁷ The statutory language specifies that “the determination of whether or not ... [an individual] is under a disability ... and of the day such disability began, and the determination of the day on which such disability ceases, shall be made by a State agency, notwithstanding any other provision of law, in any State that notifies the Commissioner of Social Security in writing that it wishes to make such disability determinations.”⁸ Currently, all 50 states, the District of Columbia, and Puerto Rico administer their own DDS.⁹

The statute requires the Commissioner of Social Security to promulgate regulations that specify “performance standards and administrative requirements and procedures to be followed in performing the disability determination function in order to assure effective and uniform

⁴ Reconsideration of the initial decision of the DDS is not available in Alabama, Alaska, Colorado, Louisiana, Michigan, Missouri, New Hampshire, New York, Pennsylvania, and parts of California as part of the SSA’s Disability Redesign Prototype. In these states, claimants dissatisfied with the initial decision of the DDS may appeal directly to an SSA ALJ.

⁵ This section is codified at 42 U.S.C. § 421(a)(1).

⁶ This section is codified at 42 U.S.C. § 1383b(a).

⁷ Section 221(a)(1) was amended to the Social Security Act in 1956, and Section 1633(a) was amended to the Social Security Act in 1974.

⁸ 42 U.S.C. § 421(a)(1). This language is adopted by reference in 42 U.S.C. § 1383b(a). The statute also allows the Commissioner to find that a state agency is “failing to make disability determinations in a manner consistent with the Commissioner’s regulations and other written guidelines.” 42 U.S.C. § 421(b)(1). In the event of this finding, the Commissioner has the authority to make determinations itself rather than giving that authority to the state agencies. 42 U.S.C. § 421(b)(1); 42 U.S.C. § 421(a)(1).

⁹ *Impact of State Employee Furloughs on the Social Security Administration’s Disability Programs*, p. 1.

administration of the disability insurance program throughout the United States.”¹⁰ Regulations issued pursuant to this authority set forth the state’s administrative responsibilities and requirements,¹¹ but the regulations emphasize that the “State will provide the organizational structure, qualified personnel, medical consultant services, and a quality assurance function sufficient to ensure that disability determinations are made accurately and promptly.”¹² As a result, each state’s DDS is a state agency that is required to comply with all provisions in the Social Security Act, applicable federal regulations, and guidance from the SSA.

Status of DDS Employees

Because each DDS is a state agency, all DDS employees are state, rather than federal, employees. Each state is generally free to implement its own policies regarding DDS personnel for salaries, benefits, and other administrative matters. For example, a 2006 study by the Social Security Advisory Board found wide variance in the salaries paid to DDS employees, with initial disability examiners in Connecticut earning more than twice as much as examiners in South Dakota.¹³

Although the states do operate their own DDS agencies, some federal requirements that apply to all state DDS agencies are found in the Social Security Act and regulations. For example, the federal regulations provide some guidance for equal employment opportunity requirements, hiring and compensation issues, allowable travel, and restrictions on state personnel actions.¹⁴ The Social Security Act and the regulations contain no provisions that specifically prohibit states from implementing such personnel actions as furloughs, hiring freezes, or limitations on overtime with regard to DDS employees. However, the regulations do state that, “[subject] to appropriate Federal funding, the State will, to the best of its ability, facilitate the processing of disability claims by avoiding personnel freezes, restrictions against overtime work, or curtailment of facilities or activities.”¹⁵ Although this regulation clearly addresses some types of personnel actions, the language does not create a mandatory requirement for the states with regard to furloughs or other personnel actions. Therefore, as long as a state is acting within the scope of the applicable federal statutes, regulations, and SSA guidance, each state may administer its DDS as it wishes. This includes the ability to release DDS employees on furlough or to implement other personnel actions, such as hiring freezes or limitations on overtime.

Funding of the DDS

The SSA reimburses the DDS for 100% of all expenditures related to the processing of initial disability determinations and CDRs. This reimbursement includes itemized costs as well as non-itemized and administrative expenses. State governments do not contribute in any way to the cost of the DDS and see no financial savings if DDS operations are curtailed. In FY2008, DDS

¹⁰ 42 U.S.C. § 421(a)(2).

¹¹ 20 C.F.R. §§ 404.1620-1633.

¹² 20 C.F.R. § 404.1620(a).

¹³ Social Security Advisory Board, *Disability Decision Making: Data and Materials*, March 2006, p. 70.

¹⁴ 20 C.F.R. § 404.1621.

¹⁵ 20 C.F.R. § 404.1621(d); *see also* 20 C.F.R. § 416.1021(d).

agencies were reimbursed for more than \$1.8 billion in expenses.¹⁶ Information on DDS expenses for each state is provided in **Table A-1** in the **Appendix**.

Each state enters into an agreement with the Department of the Treasury for the reimbursement of its DDS expenses. These intergovernmental agreements are governed by the provisions of the Cash Management Improvement Act of 1990,¹⁷ applicable federal regulations,¹⁸ and Office of Management and Budget Circular A-87.¹⁹ The states receive funds from SSA, either in advance or by reimbursement, for the cost of their DDS expenditures,²⁰ and they may not “incur or make expenditures for items of cost not approved by ... [SSA] or in excess of the amount ... [made] available” to them.²¹

Furloughs and Personnel Actions Taken Against DDS Employees

As state employees, DDS disability examiners and other workers may be subject to several types of personnel actions generally intended to reduce costs. A state may furlough some or all of its employees by requiring them to take time off without pay, or may implement a reduction in force (RIF) in which certain employees are terminated or in which certain positions are eliminated. States may also subject their agencies to hiring freezes or other personnel actions such as pay and overtime reductions.

States generally claim that it would be unfair to exempt one specific group of workers, such as DDS employees, from statewide furloughs or personnel actions. In addition, because some state positions are funded partially through external sources, identifying which employees should or should not be furloughed could present administrative difficulties and costs. States may also feel that they must include all employees in furloughs or personnel actions because they may be responsible, at least initially and until reimbursed by the federal government, for these employees' benefits and pension contributions. In some states, collective bargaining agreements and civil service rules require that DDS employees be subject to same personnel actions as other state workers.

Table A-2, in the **Appendix**, summarizes the personnel actions taken or planned by the states that apply to DDS agencies and employees.

Furloughs and RIFs

As of October 15, 2009, statewide furloughs had been implemented or announced by 13 states. Of these 13 states, three—Colorado, Illinois, and Maryland—exempt all DDS employees from the furloughs. In two states, Maine and Nevada, some DDS employees are subject to the furloughs,

¹⁶ *Impact of State Employee Furloughs on the Social Security Administration's Disability Programs*, pp. D 5-D 6.

¹⁷ 31 U.S.C. §§ 3335, 6501, and 6503.

¹⁸ 31 C.F.R. § 205.1 *et seq.*

¹⁹ Office of Management and Budget, *Cost Principles for State, Local, and Indian Tribal Governments*, Circular A-87.

²⁰ 20 C.F.R. § 404.1626.

²¹ 20 C.F.R. § 404.1626(d).

whereas others are exempt. In the remaining eight states—California, Connecticut, Hawaii, New Jersey, Ohio, Oregon, Virginia, and Wisconsin—all DDS employees are subject to the furloughs.

Two states, California and Hawaii, have announced RIFs. However, DDS employees in California are exempt from the RIF and DDS employees in Hawaii are not among those scheduled to be laid off. However, under Hawaii’s civil service rules, it may be possible for an employee subject to the RIF from another state agency to displace a DDS employee with limited seniority.

Hiring Freezes

State hiring freezes can have the effect of reducing overall DDS capacity if states are not able to replace DDS employees who retire or separate from service. Nationally in FY2008, the attrition rate for DDS disability examiners was 12.5%, and the SSA Office of the Inspector General (OIG) projected a disability examiner attrition rate of 9.8% for FY2009.²² As of October 15, 2009, 25 states had implemented or were planning to implement freezes on the hiring of new state employees. Of these 25 hiring freezes, 19 exempt DDS agencies whereas 6 do not. **Table 1** lists states that have implemented or are planning to implement hiring freezes.

Table 1. States That Have Implemented or Are Planning to Implement Hiring Freezes
(as of October 15, 2009)

State	Hiring Freeze Exempts DDS Agency	Hiring Freeze Includes DDS Agency	State	Hiring Freeze Exempts DDS Agency	Hiring Freeze Includes DDS Agency
Arizona	X		New York	X	
California	X		Ohio	X	
Colorado	X		Oregon	X	
Connecticut	X		Pennsylvania	X	
Delaware	X		Puerto Rico	X	
Hawaii		X	Rhode Island		X
Idaho	X		South Dakota		X
Iowa	X		Tennessee	X	
Louisiana		X	Virginia	X	
Maine	X		Washington	X	
Nevada	X		West Virginia	X	
New Hampshire	X		Wyoming		X
New Jersey		X			

Source: Congressional Research Service (CRS) table. Data provided by SSA Office of Disability Determination.

Note: States not listed in table have not implemented or are not planning hiring freezes.

²² *Impact of State Employee Furloughs on the Social Security Administration’s Disability Programs*, p. 7. The overall attrition rates for all DDS employees, including examiners and support staff, was 10% in FY2008 and projected to be 8.3% in FY2009.

Other Personnel Actions

In addition to furloughs, RIFs, and hiring freezes, a number of states have implemented or are planning to implement other personnel actions that, if applied to DDS agencies, could reduce the capacity of the DDS to process new SSDI and SSI applications and continuing disability reviews. The SSA Office of Disability Determination has identified 20 states that have implemented or are planning to implement personnel actions such as limitations on hiring, overtime, and travel; pay freezes and reductions; and early retirement incentives. In nine of these states, DDS agencies and employees are exempt from these personnel actions. **Table 2** provides information on the 11 states with personnel actions that could impact the DDS.

Table 2. Other State Personnel Actions that Apply to DDS Agencies and Employees
(as of October 15, 2009)

State	Personnel Actions
California	Agencies must first consider displaced state employees when hiring.
Connecticut	One-year wage freeze.
Delaware	Reduction of state employee salaries by 2.5%.
Hawaii	Overtime not permitted.
Kansas	Limitations on travel.
Maryland	Temporary pay reduction based on salary level.
New Hampshire	Cap on number of employees.
Ohio	Wages frozen for bargaining unit employees and cut for management. No employees will accrue personal leave.
Pennsylvania	Out of state travel not permitted. Reduced employee pay until budget signed into law. ^a
South Dakota	Cap on number of employees.
Vermont	Cabinet-level approval required for all hiring. Early retirement incentive.

Source: Congressional Research Service (CRS) table. Data provided by SSA Office of Disability Determination.

Notes: States not listed in table were not identified as having implemented or planning to implement other personnel actions that would apply to DDS agencies or employees.

a. Pennsylvania's budget was signed into law on October 9, 2009.

Potential Impacts of Furloughs or Other Personnel Actions Taken Against DDS Employees

Because all expenses associated with the DDS, including non-itemized and administrative expenses, are paid by the SSA, states will see no cost savings as a result of furloughs of DDS employees or other personnel actions such as hiring freezes or limitations on overtime. However, such furloughs and personnel actions would likely have a negative impact on the SSDI and SSI programs as well as on the states themselves. These potential negative impacts on the programs and the states were cited by Commissioner of Social Security Michael Astrue and Vice President Joseph Biden in letters sent in 2009 to Edward Rendell, governor of Pennsylvania and chair of the

National Governors Association, urging him to ask state governors not to furlough DDS employees or take other personnel actions that might limit DDS capacity.²³

Potential Impacts on the SSDI and SSI Programs

DDS agencies process nearly all initial disability determinations and most CDRs. Any furloughs or other personnel actions that would limit the total number of cases that could be processed by the DDS would likely have a negative impact on the SSDI and SSI programs. This potential reduced capacity of the DDS to process initial disability applications comes at a time of significant growth in the number of SSDI and SSI applications. The SSA projects that 2.85 million SSDI and SSI applications will need to be processed in FY2010, an 8.1% increase from the number of applications processed in FY2009 and a 12.7% increase since FY2007.²⁴

A reduced capacity to process initial disability determinations because of a furlough or other personnel action would increase the time claimants would have to wait for an initial decision on their benefit applications, and for applicants ultimately determined to be disabled, would result in benefits being delayed. Although benefits would ultimately be paid on a retroactive basis to the established date of program eligibility, SSI recipients could be forced to wait up to a year beyond the date of their eligibility decisions to receive all of their retroactive benefits.²⁵

The SSA OIG estimates that a two-day furlough in California would result in 2,375 initial disability determinations and reconsiderations not being performed in the month of the furlough. As a result of these cases not being processed, the SSA OIG estimates that more than \$648,000 in SSDI and SSI benefits to 776 approved claimants in California would be delayed because of a two-day furlough in any given month.²⁶

A furlough or other personnel action affecting DDS employees would have a specific impact on SSDI and SSI applicants with the most severe illnesses and disabilities. Under the SSA's Compassionate Allowance program, SSDI and SSI applications are pre-screened and the applications of claimants with the most severe illnesses and disabilities are processed in an expedited manner to ensure that these claimants receive benefits as soon as possible. A reduced capacity to process initial determinations resulting from a furlough or other personnel action would delay the processing of these expedited cases and the payment of benefits to this population.

The processing of CDRs by DDS employees would also be affected by a furlough or other personnel action. Increased processing times for CDRs would result in some SSDI beneficiaries and SSI recipients waiting longer for decisions on their active CDRs and others seeing delays in the commencement of their CDRs. In addition to adding to the current backlog of CDRs, these

²³ A copy of the letter sent by Commissioner of Social Security Michael Astrue is available at http://www.ssa.gov/pressoffice/pr/NGA_letter.pdf. A copy of the letter sent by Vice President Joseph Biden is available at http://www.ssa.gov/pressoffice/pr/090701_VP_Gov_Rendell.pdf.

²⁴ Social Security Administration, *Annual Performance Plan for Fiscal Year 2010 and Revised Final Annual Performance Plan for Fiscal Year 2009*, May 2009, p. 14.

²⁵ 42 U.S.C. § 1383(a)(10). If the total amount of retroactive benefits due to an SSI recipient exceeds three times the federal benefit rate for that year, then these benefits are paid in three installments at six-month intervals.

²⁶ *Impact of State Employee Furloughs on the Social Security Administration's Disability Programs*, p. F 1.

delays could result in the payment of benefits to SSDI beneficiaries and SSI recipients who no longer meet the statutory definition of disability.

Potential Impacts on the States

States will see no cost savings from implementing furloughs or other personnel actions on DDS employees. Rather, states with reduced processing of DDS workloads may lose portions of their federally funded non-itemized and administrative DDS expenses.

Any delays in the payment of SSDI and SSI benefits because of a furlough or other personnel action will result in a state's economy losing the purchasing power of these monthly benefits. In addition, SSDI and SSI applicants waiting for benefit payments may rely on other social programs, such as Temporary Assistance for Needy Families (TANF), Supplemental Nutrition Assistance Program (SNAP), or Unemployment Insurance (UI) that are partially funded or administered by the states. Benefit delays could also result in an increased reliance on Medicaid by program applicants.²⁷ DDS employees out of work because of a RIF would also likely file for UI benefits until they are able to find replacement work, and the states would lose the tax revenue from their salaries and the purchases they would make.

²⁷ A delay in processing SSI applications could also result in a reduction of Medicaid beneficiaries as generally, SSI eligibility is accompanied by Medicaid eligibility.

Appendix. Additional Data Tables

Table A-I. Disability Determination Services (DDS) Cases Processed and Total Expenses in FY2008, by State

State	Cases Processed	Total Expenses
Alabama	75,641	\$41,596,075
Alaska	4,831	\$3,858,083
Arizona	62,330	\$29,136,899
Arkansas	64,658	\$22,902,043
California	357,556	\$198,593,617
Colorado	32,609	\$18,580,491
Connecticut	28,633	\$17,616,286
Delaware	9,183	\$5,988,105
District of Columbia	8,531	\$5,987,299
Florida	230,003	\$100,169,044
Georgia	128,131	\$52,448,208
Hawaii	9,007	\$5,692,256
Idaho	16,615	\$6,896,280
Illinois	144,975	\$68,138,817
Indiana	87,124	\$38,199,876
Iowa	29,552	\$18,670,523
Kansas	31,613	\$14,674,611
Kentucky	94,093	\$39,280,761
Louisiana	65,180	\$31,999,862
Maine	15,172	\$7,528,838
Maryland	58,763	\$27,957,577
Massachusetts	63,449	\$40,453,622
Michigan	123,252	\$72,179,008
Minnesota	50,220	\$22,329,232
Mississippi	76,320	\$25,907,947
Missouri	73,447	\$29,070,791
Montana	9,945	\$4,918,848
Nebraska	17,334	\$9,222,641
Nevada	24,140	\$11,625,528
New Hampshire	10,269	\$5,274,467
New Jersey	79,019	\$50,830,026
New Mexico	26,783	\$12,059,628
New York	187,645	\$143,994,254

State Furloughs of Disability Determination Services (DDS) Employees

State	Cases Processed	Total Expenses
North Carolina	125,476	\$48,387,556
North Dakota	5,563	\$2,502,789
Ohio	176,252	\$75,610,439
Oklahoma	54,185	\$23,187,209
Oregon	39,328	\$23,077,980
Pennsylvania	142,130	\$88,139,201
Puerto Rico ^a	27,735	\$14,612,254
Rhode Island	12,387	\$7,014,615
South Carolina	68,481	\$31,425,550
South Dakota	7,477	\$3,126,011
Tennessee	104,992	\$47,283,932
Texas	284,578	\$122,628,215
Utah	16,429	\$9,611,617
Vermont	5,982	\$3,554,829
Virginia	76,973	\$36,908,443
Washington	66,300	\$33,329,700
West Virginia	40,835	\$18,106,038
Wisconsin	59,799	\$28,344,924
Wyoming	3,889	\$2,650,167
<i>Total</i>	<i>3,614,794</i>	<i>\$1,803,283,012</i>

Source: Social Security Administration, Office of the Inspector General, *Impact of State Employee Furloughs on the Social Security Administration's Disability Programs*, A-01-09-29137, Washington, DC, March 2009, Table D-3.

- a. The SSI program does not operate in Puerto Rico.

**Table A-2. Furloughs, Hiring Freezes, and Other Personnel Actions that Apply to
DDS Agencies and Employees, by State**
(as of October 15, 2009)

State	Furlough	Hiring Freeze	Other Personnel Action ^a
Alabama			
Alaska			
Arizona			
Arkansas			
California	X		X
Colorado			
Connecticut	X		X
Delaware			X
District of Columbia			
Florida			
Georgia			
Hawaii	X	X	X
Idaho			
Illinois			
Indiana			
Iowa			
Kansas			X
Kentucky			
Louisiana		X	
Maine ^b	X		
Maryland			X
Massachusetts			
Michigan			
Minnesota			
Mississippi			
Missouri			
Montana			
Nebraska			
Nevada ^c	X		
New Hampshire			X
New Jersey	X	X	
New Mexico			

State Furloughs of Disability Determination Services (DDS) Employees

State	Furlough	Hiring Freeze	Other Personnel Action ^a
New York			
North Carolina			
North Dakota			
Ohio	X		X
Oklahoma			
Oregon	X		
Pennsylvania			X
Puerto Rico			
Rhode Island		X	
South Carolina			
South Dakota		X	X
Tennessee			
Texas			
Utah			
Vermont			X
Virginia	X		
Washington			
West Virginia			
Wisconsin	X		
Wyoming		X	
<i>Total Number of States</i>	<i>10</i>	<i>6</i>	<i>11</i>

Source: Congressional Research Service (CRS) table. Data provided by SSA Office of Disability Determination.

Notes: Table does not include state furloughs, hiring freezes, or other personnel actions that exempt DDS agencies or employees.

- a. For specific types of personnel actions, see **Table 2**.
- b. The furlough in Maine only applies to approximately one-third of DDS staff.
- c. The furlough in Nevada only applies to non-adjudicatory staff.

Author Contact Information

Scott Szymendera
Analyst in Disability Policy
[redacted]@crs.loc.gov, 7-....

(name redacted)
Legislative Attorney
[redacted]@crs.loc.gov, 7-....

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