

December 1, 2010

Annual Safety Net Report of the Commissioner

Colleen C. Gardner, Commissioner

Submitted pursuant to Section 35(4) of the Workers'
Compensation Law, Chapter 6 of the Laws of 2007



Executive Summary

The Workers' Compensation reforms, which were signed into law on March 13, 2007, included an increase in the weekly indemnity benefits paid to injured workers and a limit on the number of weeks that an injured worker with a Permanent Partial Disability Non-Scheduled Loss (PPD NSL) classification could receive indemnity benefits. The maximum number of weeks of benefits that an injured worker can collect once he or she is classified as PPD NSL is based on the worker's loss of wage earning capacity. The new law also added Workers' Compensation Law (WCL) § 35--the Safety Net and Return to Work provisions--to assure that workers categorized by the Workers' Compensation Board (Board) as permanently partially disabled return to gainful employment to the greatest extent practicable. The Commissioner of Labor (Commissioner) was given the responsibility for tracking claimants who have been awarded PPD status and issuing a "Safety Net Report" annually, in conjunction with the Board and the Superintendent of Insurance.

This year's Report indicates that there were 751 claimants who were classified as PPD NSL with accident dates between March 13, 2007 and June 30, 2009. The Department of Labor (Department) compared post-reform PPD NSL claimant data with its quarterly wage records through June 30, 2010. Of those cases, 606 claimants have had their degree of disability and duration cap established. No post-reform PPD NSL claimants have been recategorized as being totally industrially disabled (TID). No post-reform PPD NSL claimants have reached their duration limitations and, therefore, none have had their indemnity payments expire. 577 PPD NSL claimants had wages post injury.

The Department analyzed return to work rates for post-reform PPD NSL claimants for the four quarters following injury across the following categories:

- Duration Cap and Degree of Disability
- Gender and Age
- Industry at Time of Injury
- Nature of Injury/Illness
- Part of Body Affected
- Average Weekly Wage
- Insurance Carrier Type
- Status of Workers' Compensation Claim
- Return to Work with Same Employer or Any Employer by Section 32 Status
- Unemployment Insurance Claims after Accident Date
- Social Security Disability Insurance Claims after Accident Date

The tables for the first nine data sets illustrate general trends on how certain variables affect return to work rates. The final two data sets illustrate the extent to which PPD NSL claimants turn to other support systems for income. However, the Department cautions against drawing too many conclusions as the sample size is small.

Post-reform PPD NSL claimants continue to show low return to work rates similar to those of pre-reform PPD NSL claimants; most PPD NSL claimants are not employed four quarters post injury. The data analyzed by the Department over the past three years also indicated that both PPD NSL claimants and those claimants with settlements made pursuant to WCL § 32 have low

return to work rates. While none of the post-reform PPD NSL claimants have run out of their time-limited benefits, many of these claimants will need assistance to help them reenter the work force. Cost-effective and meaningful strategies for targeting reemployment assistance to those claimants most in need should be developed and implemented.

Legislative Charge

Chapter 6, Section 5 of the Laws of 2007, titled the 2007 New York Workers' Compensation Law Reform, amended the WCL by adding a new Section 35, which established several safety net provisions. The goal of Section 35 is to "assure that workers categorized by the board as permanently partially disabled return to gainful employment to the greatest extent practicable." The first part of Section 35 required the New York State Commissioner of Labor (Commissioner) to examine return to work programs and recommend policies, best practices, and procedures for implementation of return to work programs in New York State. Pursuant to Section 35(1), the Commissioner issued a Return to Work Report (RTW Report) in March 2008 and included an analysis of return to work data for New York's workers' compensation claimant population. The analysis affirmed that rates for injured workers classified as Permanently Partially Disabled with Non-Scheduled Losses (PPD NSL) were consistently and significantly lower than rates for those classified as Temporary Total Disability (TTD) or PPD with Scheduled Losses (PPD Sch) in all categories reviewed for the RTW Report. The RTW Report concluded that creating a return to work culture throughout the workers' compensation system will be the key to ensuring that all claimants, including those facing duration caps on their benefits, remain an active part of New York's economy.

Section 35(2) reinforced that the new law does not derogate or impair claimants' rights to apply at any time to obtain the status of total industrial disability (TID) under existing case law. Section 35(3) allowed a claimant whose loss of wage-earning capacity is greater than 80% to request that the Workers' Compensation Board (Board) reclassify the claimant to a permanent total disability (PTD) or TID due to factors reflecting extreme hardship within the year prior to the scheduled exhaustion of indemnity benefits.

Section 35(4) directed the Commissioner, in conjunction with the Board and the Superintendent of Insurance, to track all claimants who have been awarded PPD status. This section required the Commissioner to issue an annual "Safety Net" report to the Governor and Legislature beginning on December 1, 2008, which documents the number of PPD claimants who:

- (1) have returned to gainful employment;
- (2) have been recategorized as TID;
- (3) remain subject to duration limitations on PPD benefits; and
- (4) have not returned to work, and whose indemnity payments have expired.

The statute directed the Commissioner to outline any additional steps necessary to minimize the number of workers who have not been able to return to work or who have not been recategorized from PPD.

Report Data and Research Methodology

This report analyzed an aggregate cross-match of claimant data provided by the Board with the Department's quarterly wage data. Records for these individuals were matched by social security number against the employer-reported wage data from the New York State Department of Taxation and Finance. Those claimants on the wage record file who received payments defined as wages from employers in their accident quarter were included; those with payments defined as pension were excluded. Claimant data was also cross-matched with Social Security data and unemployment insurance data to determine the extent to which claimants turned to other support systems for income.

For this Safety Net Report, the Department reviewed data on claimants with injuries and dates of disability on or after March 13, 2007, the effective date of the new law, through June 30, 2009. The Department compared this claimant data with the Department's quarterly wage data through June 30, 2010 to see what impact, if any, changes in the law and new duration caps would have on the outcomes of all claimants, particularly those classified as PPD NSL. Because the size of the PPD NSL claimant group is still relatively small, and the quarterly wage data were only available for four quarters following injury, analysis of return to work trends should be interpreted with caution. While the tables that follow show a high percentage of PPD NSL claimants with wages in the first and second quarters after injury, these wages may not indicate that the claimant actually returned to work. For instance, some claimants may receive wages such as sick pay and vacation pay to replace their wages in the first and second quarter following injury. The Department receives a report of total earnings for each claimant, but cannot tell if the wages are for work. Other claimants may attempt to return to work, but find that they are unable to remain in the workforce due to their workplace injury.

Post-Reform Claimants with PPD NSL Classification

According to the Board's records, 751 workers with injury dates on or after the date of reform have been classified with a non-scheduled permanent partial disability (PPD NSL) subject to duration caps. Of those, 606² have established degrees of disability and duration caps; 81 are in the final process of establishing the degree of disability and the number of weeks of benefits; 34¹ were resolved by Section 32 agreement² post classification; and 30 were classified as PPD NSL but the carrier was not directed to continue payments. Of the 606 workers' compensation claimants with degrees of disability and duration caps established, 577 had wages in the accident quarter.

The following tables show characteristics of post-reform PPD NSL claimants who have been classified with a degree of disability and had a duration cap established. Caution should be used in drawing conclusions about the post-reform claimants who are subject to duration caps, since this is currently a relatively small group of claimants.

Claimants with Degree of Disability and Duration Cap Established

The degree of disability among these 577 claimants ranges from 5% to 99.99%, with duration caps between 225 and 525 weeks. None of these claimants has reached the limit of their duration cap. The majority (52.7%) of claimants had a degree of disability between 51% and 75.99%, with a duration cap of 350 to 400 weeks. Another quarter (26.3%) of this group has a degree of disability between 41 and 50.99 %, with a duration cap of 300 weeks. As would be expected, those claimants with a lower degree of disability (and shorter duration cap) were more likely to be working in the quarters following their accident quarter than those with a higher degree of disability.

¹ Of the 606 claimants with degree of disability and duration cap established, 31 accepted a Section 32 settlement after their status had been determined. This would bring the Section 32 total to 65.

² Under Section 32 of the Workers' Compensation Law, the parties to a claim for workers' compensation may settle any and all issues by agreement. The claimant may waive his or her right to compensation by entering into a waiver agreement subject to approval by the Board. Section 32 agreements usually include lump sum settlements. In some cases, the parties may choose to sever the employer/employee relationship as part of the agreement.

Table 1. Duration Cap and Degree of Disability for PPD NSL Claimants
With Wages in the Accident Quarter and Percent Working in the Following 4 Quarters
(Accident Dates March 13, 2007 – June 30, 2009)

Duration Cap in Weeks	Degree of Disability	Claimants with Wage Records in Accident Qtr		Percent Working in Quarters Following Accident Quarter			
		Number	Percent of Total	1st	2nd	3rd	4th
225 to 250	5% to 30.99%	39	6.8%	79.5%	82.1%	71.8%	71.8%
275	31% to 40.99%	48	8.3%	72.9%	66.7%	58.3%	50.0%
300	41% to 50.99%	152	26.3%	74.3%	63.8%	49.3%	42.8%
350	51% to 60.99%	83	14.4%	69.9%	61.4%	55.4%	44.6%
375	61% to 70.99%	114	19.8%	74.6%	68.4%	45.6%	39.5%
400	71% to 75.99%	107	18.5%	72.0%	65.4%	48.6%	31.8%
425	76% to 80%	11	1.9%	63.6%	72.7%	27.3%	36.4%
450	81% to 85%	11	1.9%	81.8%	54.5%	36.4%	36.4%
475 to 525	86% to 99.99%	12	2.1%	75.0%	58.3%	25.0%	16.7%
Total Claimants		577	100.0%				

All post-reform PPD NSL claimants are subject to duration caps. These data indicate that the minimum number of ‘Maximum Benefit Weeks’ is 225. There are no post-reform PPD NSL claimants whose benefits have expired.

Gender and Age

The following table shows gender and age characteristics of the post-reform PPD NSL claimants with degree of disability and duration cap established. Slightly less than half of the group was female (46.8%) compared with 51.3% who were male. The gender for the remainder of this group was unknown (1.9%). Women were slightly more likely than men to be employed in the quarters following their accident quarter: by the 4th quarter following accident, 44.4 % of women were still employed, compared with 40.2% of men.

Just over a third (35.4%) of claimants were between the ages of 45 and 54, while the adjacent age groups, 35 - 44 years (18.9%) and 55 - 64 years (20.6%), each accounted for about one-fifth of the total.

Table 2. Gender and Age of PPD NSL Claimants
 (with Degree of Disability and Duration Cap Established)
 With Wages in the Accident Quarter and Percent Working in the Following 4 Quarters
 (Accident Dates March 13, 2007 – June 30, 2009)

Claimant Characteristic	Claimants with Wage Records in Accident Qtr		Percent Working in Quarters Following Accident Quarter			
	Number	Percent of Total	1st	2nd	3rd	4th
Gender						
Female	270	46.8%	75.6%	71.1%	50.4%	44.4%
Male	296	51.3%	71.6%	61.5%	50.7%	40.2%
Unknown	11	1.9%	72.7%	63.6%	45.5%	36.4%
Total	577	100.0%				
Age						
16-19	1	0.2%	100.0%	100.0%	100.0%	100.0%
20-24	15	2.6%	73.3%	60.0%	66.7%	53.3%
25-34	46	8.0%	69.6%	60.9%	41.3%	34.8%
35-44	109	18.9%	79.8%	67.9%	55.0%	42.2%
45-54	204	35.4%	73.0%	68.1%	47.5%	40.2%
55-64	119	20.6%	70.6%	65.5%	49.6%	45.4%
65+	27	4.7%	70.4%	59.3%	48.1%	37.0%
Unknown	56	9.7%	73.2%	64.3%	57.1%	46.4%
Total	577	100.0%				

Industry of Employment at Injury

Over a third (37.8%) of the post-reform PPD NSL claimants (with degree of disability and duration cap established) worked in government at the time of their accident, followed by healthcare and social assistance (14.0%) and retail trade (9.2%). Return-to-work rates varied widely by industry, with government workers more likely to return to work (86.6%) in the quarter following their accident quarter and remain at work in the fourth quarter (60.1%) than those employed in other industries. The higher return to work rate for public employees can be attributed to protections under Civil Service Law, which provides government employees with a one-year reinstatement right for work-related injuries, and a two-year reinstatement right for work-related assaults. Those employed in wholesale trade were least likely to be working in the quarter following their accident (47.6%) and their return-to-work rates continued to drop steeply thereafter, falling to 14.3% by the fourth quarter following the accident quarter.

Table 3. Industry at Time of Injury of PPD NSL Claimants
(with Degree of Disability and Duration Cap Established)
With Wages in the Accident Quarter and Percent Working in the Following 4 Quarters
(Accident Dates March 13, 2007 – June 30, 2009)

Industry	Claimants with Wage Records in Accident Qtr		Percent Working in Quarters Following Accident Quarter			
	Number	Percent of Total	1st	2nd	3rd	4th
Public Administration (primarily government)	238	37.8%	86.6%	77.3%	65.5%	60.1%
Health Care and Social Assistance	88	14.0%	64.8%	58.0%	37.5%	26.1%
Retail Trade	58	9.2%	63.8%	50.0%	44.8%	37.9%
Construction	49	7.8%	71.4%	38.8%	16.3%	28.6%
Manufacturing	44	7.0%	68.2%	68.2%	56.8%	40.9%
Accommodation and Food Services	23	3.7%	60.9%	52.2%	43.5%	34.8%
Administrative and Waste Services	23	3.7%	47.8%	65.2%	34.8%	17.4%
Wholesale Trade	21	3.3%	47.6%	38.1%	19.0%	14.3%
Transportation and Warehousing	18	2.9%	61.1%	66.7%	55.6%	38.9%
All Other Industries	68	10.8%	75.0%	72.1%	50.0%	33.8%
Total*	630	100.0%				

*A claimant may be employed in more than one industry in the accident quarter, therefore the total by industry (630) does not equal the unduplicated count of claimants with degree of disability and duration cap established (577) with wages in the accident quarter.

Nature of Injury/Illness and Part of Body Affected

Traumatic injuries to muscles, tendons, ligaments, joints, etc. (40.4%) and traumatic injury to the bones, nerves, and spinal cord (39.0%) each accounted for about 40% of the nature of the injuries/illnesses of the post-reform PPD NSL group of claimants with degree of disability and duration cap established. Return-to-work rates in the four calendar quarters following the accident quarter were similar for both injury groups (see Table 4).

The back, including the spine or spinal cord, was the body part most frequently injured (41.6%), followed by multiple body parts (22.0%). Among those with back injuries, 41.7% were still employed in the 4th quarter following their accident quarter, as shown in Table 5.

Table 4. Nature of Injury/Illness of PPD NSL Claimants
(with Degree of Disability and Duration Cap Established)
With Wages in the Accident Quarter and Percent Working in the Following 4 Quarters
(Accident Dates March 13, 2007 – June 30, 2009)

Nature of Injury or Illness	Claimants with Wage Records in Accident Qtr		Percent Working in Quarters Following Accident Quarter			
	Number	Percent of Total	1st	2nd	3rd	4th
Traumatic injuries to muscles, tendons, ligaments, joints, etc.	233	40.4%	75.5%	66.1%	51.9%	39.5%
Traumatic injuries to bones, nerves, spinal cord	225	39.0%	72.0%	65.3%	50.2%	44.4%
Multiple traumatic injuries and disorders	33	5.7%	72.7%	75.8%	48.5%	57.6%
Other traumatic injuries and disorders	20	3.5%	70.0%	75.0%	40.0%	40.0%
Surface wounds and bruises	14	2.4%	64.3%	50.0%	64.3%	14.3%
All other injury/illness	52	9.0%	75.0%	63.5%	46.2%	42.3%
Total	577	100.0%				

Table 5. Part of Body Affected for PPD NSL Claimants
(with Degree of Disability and Duration Cap Established)
With Wages in the Accident Quarter and Percent Working in the Following 4 Quarters
(Accident Dates March 13, 2007 – June 30, 2009)

Part of Body	Claimants with Wage Records in Accident Qtr		Percent Working in Quarters Following Accident Quarter			
	Number	Percent of Total	1st	2nd	3rd	4th
Back, including spine, spinal cord	240	41.6%	72.5%	63.3%	52.5%	41.7%
Multiple body parts	127	22.0%	74.8%	66.1%	46.5%	45.7%
Neck, except internal location of disease and disorders	40	6.9%	67.5%	70.0%	60.0%	47.5%
Leg(s)	34	5.9%	79.4%	73.5%	38.2%	29.4%
Shoulder, including clavicle, scapula	31	5.4%	77.4%	67.7%	64.5%	45.2%
Multiple trunk locations	15	2.6%	66.7%	73.3%	53.3%	46.7%
Wrist(s)	15	2.6%	60.0%	80.0%	46.7%	46.7%
Arm(s)	11	1.9%	81.8%	54.5%	63.6%	27.3%
Multiple upper extremities locations	10	1.7%	80.0%	70.0%	10.0%	20.0%
All other body parts	54	9.4%	75.9%	64.8%	48.1%	42.6%
Total	577	100.0%				

Average Weekly Wage

The following table shows average weekly wages at the time of injury for PPD NSL claimants (with degree of disability and duration cap established). The largest portion (18.5%) earned \$1,000 or more weekly, followed by \$600 - 699 (17.2%) and \$400 to \$499 (13.3%).

More than 80% of these PPD NSL claimants earned less than the 2009 statewide average weekly wage of \$1,109.75. Claimants with higher earnings tended to have higher return-to-work rates,

and were more likely to still be working into the fourth quarter following their accident quarter, than those claimants with low earnings, as shown in Table 6.

Table 6. Average Weekly Wage for PPD NSL Claimants
(with Degree of Disability and Duration Cap Established)
With Wages in the Accident Quarter and Percent Working in the Following 4 Quarters
(Accident Dates March 13, 2007 – June 30, 2009)

Average Weekly Wage	Claimants with Wage Records in Accident Qtr		Percent Working in Quarters Following Accident Quarter			
	Number	Percent of Total	1st	2nd	3rd	4th
Less than \$200	12	2.1%	58.3%	41.7%	50.0%	8.3%
\$200-\$299	32	5.5%	53.1%	56.3%	28.1%	15.6%
\$300-\$399	55	9.5%	61.8%	61.8%	30.9%	27.3%
\$400-\$499	77	13.3%	67.5%	63.6%	45.5%	35.1%
\$500-\$599	70	12.1%	80.0%	52.9%	51.4%	35.7%
\$600-\$699	99	17.2%	79.8%	67.7%	51.5%	43.4%
\$700-\$799	58	10.1%	81.0%	63.8%	55.2%	48.3%
\$800-\$899	38	6.6%	71.1%	60.5%	55.3%	50.0%
\$900-\$999	26	4.5%	65.4%	88.5%	65.4%	46.2%
\$1000+	107	18.5%	79.4%	79.4%	60.7%	60.7%
UNKNOWN	3	0.5%	100.0%	100.0%	66.7%	100.0%
Total	577	100.0%				

Insurance Carrier Type

As shown in Table 7, nearly 45 percent of the PPD NSL claimants (with degree of disability and duration cap established) worked for employers whose workers' compensation insurance carrier was the State Insurance Fund (SIF). This is expected because SIF is the insurer of last resort for employers whose accident risk is high, which prevents them from securing coverage in the private market. PPD NSL claimants whose insurance carrier was defined as "self-insured public," were more likely to return to work following their accident, and remain at work through the fourth quarter following their accident quarter, than those with other types of insurance.

Table 7. Insurance Carrier Type for PPD NSL Claimants
(with Degree of Disability and Duration Cap Established)
With Wages in the Accident Quarter and Percent Working in the Following 4 Quarters
(Accident Dates March 13, 2007 – June 30, 2009)

Carrier Type	Claimants with Wage Records in Accident Qtr		Percent Working in Quarters Following Accident Quarter			
	Number	Percent of Total	1st	2nd	3rd	4th
Private	86	14.9%	68.6%	68.6%	47.7%	34.9%
Self Insured - Private	87	15.1%	69.0%	62.1%	54.0%	32.2%
Self Insured - Public	146	25.3%	87.7%	76.0%	60.3%	59.6%
State Insurance Fund	258	44.7%	68.6%	60.9%	44.6%	38.0%
Total	577	100.0%				

Status of Post-Reform PPD NSL Claimants

PPD NSL claimants with degree of disability and duration cap established were more likely to return to work in the first quarter following accident quarter, and remain at work through the fourth quarter than those PPD NSL claimants who were still in the process of establishing degree and cap, as well as those PPD NSL claimants whose claims were resolved by a Section 32 agreement.

Table 8. Status of PPD NSL Claimants
(with Degree of Disability and Duration Cap Established)
with Wages in the Accident Quarter and Percent Working in the Following 4 Quarters
(Accident Dates March 13, 2007 – June 30, 2009)

Status	Claimants with Wage Records in Accident Qtr		Percent Working in Quarters Following Accident Quarter			
	Number	Percent of Total	1st	2nd	3rd	4th
Degree of Disability and Duration Cap Established*	549	77.2%	75.4%	67.0%	51.9%	43.2%
In Process of Establishing Degree and Cap	77	10.8%	74.0%	76.6%	45.5%	39.0%
Resolved by Section 32 Agreement Post-classification	58	8.2%	70.7%	63.8%	39.7%	39.7%
PPD Classification but Carrier Not Directed to Continue Payments	27	3.8%	88.9%	85.2%	81.5%	77.8%
Total	711	100.0%				

*The number of PPD NSL claimants (549) with degree of disability and duration cap established (and wage record in the accident quarter) in this table does not match the figure (577) in previous tables because 28 of these claimants subsequently chose a Section 32 agreement, and are included in the “Resolved by Section 32 Agreement Post-classification” group on this table.

Return to Work with Same Employer/Any Employer

Table 9 presents data on the PPD NSL claimants (with degree of disability and duration cap established) who have returned to work with any employer or the same employer as in the accident quarter. The data is also provided for PPD NSL claimants who have received a Section 32 settlement.

Around three-quarters (74.0%) of non-Section 32 PPD NSL claimants returned to work in the first quarter following accident quarter, and nearly all of those returned to their same employer (72.9% of total). The return to work experience of Section 32 PPD NSL claimants was very different: less than two-thirds (64.3%) returned to work with any employer in the first quarter following their accident quarter, and only 57.1% returned to work with the same employer as in their accident quarter.

By the fourth quarter following the accident quarter, 42.6% of the non-Section 32 PPD NSL claimants were still employed; just under 40% were working for the same employer as in their

accident quarter. Less than one-third (32.1%) of the Section 32 PPD NSL were employed in the fourth quarter, and only 17.9% were working for the same employer as in their accident quarter.

Table 9. Return to Work with Same Employer or Any Employer for PPD NSL Claimants (with Degree of Disability and Duration Cap Established) by Section 32 Status With Wages in the Accident Quarter and Percent Working in the Following 4 Quarters (Accident Dates March 13, 2007 – June 30, 2009)

Section 32 Status	Claimants with Wage Records in Accident Qtr		Percent Working in Quarters Following Accident Quarter			
	Number	Percent of Total	1st	2nd	3rd	4th
			Return to Work with Any Employer			
PPD NSL with no Section 32	549	95.1%	74.0%	66.1%	51.0%	42.6%
PPD NSL with Section 32 Indicator	28	4.9%	64.3%	64.3%	39.3%	32.1%
Total	577	100.0%	73.5%	66.0%	50.4%	42.1%
			Return to Work with Same Employer			
PPD NSL with no Section 32	549	95.1%	72.9%	64.8%	48.5%	39.9%
PPD NSL with Section 32 Indicator	28	4.9%	57.1%	60.7%	35.7%	17.9%
Total	577	100.0%	72.1%	64.6%	47.8%	38.8%

Claims for Unemployment Insurance Benefits

Workers' compensation claimants may collect unemployment insurance (UI) if they are available and physically able to return to work but a job is not available. Under limited circumstances, a claimant may continue to receive workers' compensation benefits along with unemployment insurance benefits, but the weekly unemployment benefit payment may be reduced. The total weekly amount of the claimant's workers' compensation and unemployment insurance benefits cannot exceed the claimant's average weekly wage in the base period.

Nearly a quarter (24.4%) of PPD NSL claimants (with degree of disability and duration cap established) have filed at least one unemployment insurance claim since their accident date. Among Section 32 claimants, the percentage is higher: 41.4% have filed an unemployment insurance claim (see Table 10).

Table 10. PPD NSL Claimants
 (with Degree of Disability and Duration Cap Established)
 With at Least One Unemployment Insurance Claim after Accident Date
 Accident Dates after March 12, 2007

Type	Total Claimants	With UI Claim after Accident Date	
		Number	Percent of Total
Degree of Disability and Duration Cap Established*	549	134	24.4%
In Process of Establishing Degree and Cap	77	18	23.4%
Resolved by Section 32 Agreement Post-classification	58	24	41.4%
PPD Classification but Carrier Not Directed to Continue Payments	27	11	40.7%
Total	711	187	26.3%

*The number of PPD NSL claimants (549) with degree of disability and duration cap established (and wage record in the accident quarter) in this table does not match the figure (577) in previous tables because 28 of these claimants subsequently chose a Section 32 agreement, and are included in the “Resolved by Section 32 Agreement Post-classification” group on this table.

Exhaustion of Unemployment Insurance Benefits

Among the 751 PPD NSL claimants with accident dates after March 12, 2007, a total of 35 who were UI claimants have exhausted their unemployment insurance benefits.³ For the 577 PPD NSL claimants with degree of disability and duration cap established who were UI claimants, 27 have exhausted their benefits.

Use of Social Security

A worker who becomes seriously disabled, either permanently or for a continuous period of not less than 12 months, may be entitled to the payment of monthly Social Security benefits through the Social Security Disability Insurance (SSDI) program. If the worker receives workers’ compensation or other public disability benefits and Social Security disability benefits, the total amount of these benefits cannot exceed 80% of his or her average current earnings before becoming disabled. If the total amount of these benefits exceeds 80% of average current earnings, the excess amount is deducted from the Social Security benefit. The Social Security Administration (SSA) will reduce monthly Social Security disability benefits, including benefits payable to family members, until the month the disabled worker reaches age 65 or the month the workers’ compensation benefits stop, whichever comes first.

³ UI exhaustees included regular UI program and any extensions for which they might have been eligible (post accident date).

To analyze the extent to which post-reform workers' compensation claimants classified as PPD NSL participate in the SSDI program, post-reform PPD NSL claimant data⁴ were matched with beneficiary data from the Social Security Administration (SSA) through November 4, 2010. The match revealed that a large percentage of the post-reform PPD NSL claimant group have used the SSDI program. Table 11 shows that about two-thirds (67.7%) of the post-reform PPD NSL group has ever received SSDI, and nearly half (48.3%) are currently in payment status. Another 20% of the post reform PPD NSL group has never applied for social security benefits, and an additional 11.8% have withdrawn from the workforce and have claimed regular retirement Social Security benefits.

Fewer than half (28 out of 61) of the post-reform Section 32 claimants have used the SSDI program. Around a quarter (26.2%) of the Section 32 group are currently in payment status. Among the 35 post-reform PPD NSL claimants who had exhausted their unemployment insurance benefits, 24 have used the SSDI program; 12 of these are currently in payment status. An additional 2 UI exhaustees are collecting regular retirement Social Security benefits.

Table 11. Post-Reform PPD NSL Claimants Subject to Duration Caps with SSDI Claims by SSDI Claim Status Accident Dates after March 12, 2007

SSDI Benefit Status	PPD NSL	Resolved by Section 32 agreement post-classification	UI Exhaustee
Disability Trust Fund	500	28	24
In Payment status	357	16	12
Terminated/Suspended	143	12	12
Retirement Trust Fund	87	7	2
No Record*	148	24	9
Bad SSN**	4	2	0
Total***	739	61	35

*No Record indicates that the SSN is valid, but there is no record of a claim filed on the Social Security number.

** Bad SSN indicates that this is not a valid Social Security number.

A comparison between The SSDI beneficiary numbers for this post-reform PPD NSL group (accident date after March 12, 2007) with the results for claimants classified as PPD NSL (accident dates 2000-2008) in an earlier analysis shows consistent results:

⁴ Of the 751 PPD NSL claimants with post reform accident dates provided to NYSDOL by the Workers' Compensation Board, 9 did not have social security numbers listed on their records, and 3 had duplicate social security numbers. As a result, a total of 739 records were included in the match with Social Security data.

Table 12. Percent of Post-Reform PPD NSL Claimants and PPD NSL Claimants with Accident Dates 2000 – 2008 With SSDI Claims by SSDI Claim Status

SSDI Benefit Status	Percent of PPD NSL Total	
	Post Reform (Accident date after 3/12/2007)	Accident Dates 2000-2008
Disability Trust Fund	67.7%	68.6%
In Payment status	48.3%	51.9%
Terminated/Suspended	19.4%	16.7%
Retirement Trust Fund	11.8%	16.1%
No Record*	20.0%	15.0%
Bad SSN**	0.5%	0.2%
Total	739	38,815

*No Record indicates that the SSN is valid, but there is no record of a claim filed on the Social Security number.

** Bad SSN indicates that this is not a valid Social Security number.

Reclassification to TID or PTD

According to the Board’s records, no post-reform PPD NSL claimants were reclassified from PPD NSL to TID or PTD. The Board is in the process of enhancing its data collection for these classifications.

Appendix

Section 35 of the Workers' Compensation Law Safety Net

1. Return to work.

(a) The commissioner of labor will issue a report to the governor, the speaker of the assembly, the majority leader of the senate, and the chairs of the labor, ways and means and finance committees of the assembly and senate on or before December first, two thousand seven, making recommendations as to how to assure that workers categorized by the board as permanently partially disabled return to gainful employment to the greatest extent practicable. Such commissioner will consider administrative and legislative remedies, and shall include estimates of cost in the report. The report shall examine best practices and the laws of other jurisdictions, as well as any relevant programs authorized by New York law. The report shall additionally examine return to work practices as implemented by carriers, the state insurance fund, employers, and the board. It shall also examine the relationship of vocational rehabilitation to ultimate return to work.

(b) The commissioner of labor will be assisted by an advisory council constituted of six persons appointed by the governor as follows:

- (i) a representative of organized labor appointed upon recommendation of the New York State American Federation of Labor-Congress of Industrial Organizations;
- (ii) a representative of the business community appointed upon recommendation of the Business Council of New York State, Incorporated;
- (iii) one person upon recommendation of the majority leader of the senate;
- (iv) one person upon recommendation of the speaker of the assembly; and
- (v) two other persons in the governor's discretion.

2. Total industrial disability. No provision of this article shall in any way be read to derogate or impair current or future claimants' existing rights to apply at any time to obtain the status of total industrial disability under current case law.

3. Extreme hardship redetermination. In cases where the loss of wage-earning capacity is greater than eighty percent, a claimant may request, within the year prior to the scheduled exhaustion of indemnity benefits under paragraph w of subdivision three of section fifteen of this article, that the board reclassify the claimant to permanent total disability or total industrial disability due to factors reflecting extreme hardship.

4. Annual safety net reporting. The commissioner of labor, in conjunction with the board and the superintendent of insurance, shall track all claimants who have been awarded permanent partial disability status and report annually on December first, beginning in two thousand eight, to the governor, the speaker of the assembly, the majority leader of the senate, and the chairs of the labor, ways and means and finance committees of the assembly and senate:

- (i) The number of said claimants who have:
 - (1) returned to gainful employment;
 - (2) been recategorized as being totally industrially disabled;
 - (3) remain subject to duration limitations set forth in paragraph w of subdivision three of section fifteen of this article; and

- (4) not returned to work, and whose indemnity payments have expired.
- (ii) The additional steps the commissioner contemplates are necessary to minimize the number of workers who have neither returned to work nor been recategorized from permanent partial disability.