United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510–6250

September 7, 2016

The Honorable Carolyn W. Colvin
Acting Commissioner
Social Security Administration
6401 Security Blvd., West High Rise
Baltimore, MD 21235

Dear Ms. Colvin:

We write to express our escalating concern for your lack of a substantive response to the outstanding request for the documents furnished by the Office of General Counsel which supply the legal analysis and authority supporting the transfer of significant volumes of cases from ALJs to non-APA employees under the "Adjudication Augmentation Strategy" (AAS) section of the Social Security Administration's (SSA) Compassionate and Responsive Services (CARES) initiative. As you know, a satisfactory response would include an unredacted copy of the "relevant memorandum" you identified in your May 5, 2016 correspondence and all documents, including drafts or prior versions, responsive to question "2" of the April 5, 2016 letter from Senator Lankford. This correspondence marks the seventh request from members of Congress or their staff for this document(s).[1]

We want to be helpful and seek to understand your apprehension with respect to producing the memoranda and all drafts or prior versions of the document(s). The claim that attorney-client privilege protects these documents from being produced to Congress is patently without merit. The Supreme Court has consistently held that the Constitution clearly intended for Congress to possess broad oversight authority through its implied investigatory powers.[2]

Given the substantial time that has passed since the initial inquiry and the quantity of specific Congressional requests pertaining to this issue that have gone unanswered, we have reason to believe you may be intent on protracted noncooperation. Hopefully that is not the case. As stated, we seek to proceed together through this oversight process. To that end we hope to

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[1] The prior requests have occurred as follows: Letter from Senator Lankford to Acting Commissioner Colvin (April 5, 2016); SSA staff briefing of RAFM staff (May 6, 2016); RAFM Hearing (May 12, 2016); RAFM staff email to SSA Congressional Affairs (May 17, 2016); RAFM Joint Request Letter to Acting Commissioner Colvin (June 2, 2016); and Letter from Senator Lankford to Acting Commissioner Colvin (June 13, 2016).
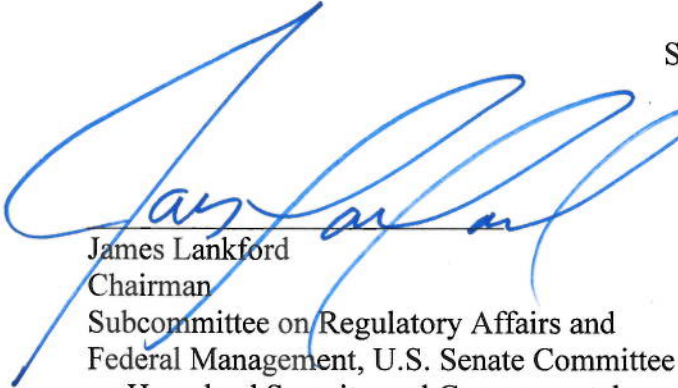
[2] McGrain v. Daugherty, 272 U.S. 135, 177 (1927); Watkins v. United States, 354 U.S. 178, 187 (1957); Barenblatt v. United States, 360 U.S. 109, 111 (1959); Eastland v. United States Servicemen's Fund, 421 U.S. 491, 504 n.15 (1975).
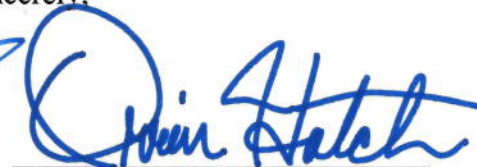
avoid resorting to compulsory processes to obtain these documents, and we look forward to your production of the relevant information.

If you have any questions about this correspondence, please contact James Mann with Senator Lankford's staff at (202) 224-3823 or Jeff Wrase with Senator Hatch's staff at (202) 224-3476. We prefer to receive all documents in electronic format. Thank you for your prompt attention to this important matter.

Sincerely,

James Lankford
Chairman
Subcommittee on Regulatory Affairs and
Federal Management, U.S. Senate Committee
on Homeland Security and Governmental
Affairs

Orrin G. Hatch
Chairman
U.S. Senate Committee on Finance

Enclosure

cc: The Honorable Heidi Heitkamp, Ranking Member
        Subcommittee on Regulatory Affairs and Federal Management, U.S. Senate Committee
        on Homeland Security and Governmental Affairs

        The Honorable Ron Wyden, Ranking Member
        U.S. Senate Committee on Finance