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Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074
FACSIMILE (202) 225-3974
MINORITY (202) 225-5051

<http://oversight.house.gov>

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STAFF DIRECTOR

April 8, 2014

The Honorable Carolyn W. Colvin
Acting Commissioner
Social Security Administration
6401 Security Boulevard
Baltimore, MD 21235

Dear Ms. Colvin:

The Committee on Oversight and Government Reform is continuing its oversight of the Social Security Administration's management of two large federal disability programs: the Social Security Disability Insurance program (SSDI)¹ and the Supplemental Security Insurance program (SSI).² On June 27, 2013, five current and former SSA employees including Deputy Commissioner of Disability Adjudication and Review, Glenn E. Sklar, testified at a Subcommittee on Energy Policy, Health Care and Entitlements hearing titled "Oversight of Rising Social Security Disability Claims and the Role of Administrative Law Judges."³ At the hearing and throughout the Committee's oversight efforts, a number of current and former SSA employees expressed concern about the agency's inability to limit program benefits to individuals who have a genuine disability that makes them unable to work.

Accurate disability determinations are crucial given that the lifetime value of federal benefits to disability program beneficiaries, including benefits in other programs linked to disability program participation, has been estimated at \$300,000.⁴ One of the primary problems identified by the Committee is the agency's motivation, authority, and oversight structure to address these concerns while a large number of SSA Administrative Law Judges (ALJs) appear to have rubber-stamped individuals onto disability programs over the last decade.

¹ SSDI is the federal disability program for adults aged 18 to 64 who are eligible for both old-age Social Security and SSDI because of their work history and payroll tax contributions.

² SSI is the federal disability program for both children under age 18 and adults aged 18 to 64 who lack significant work history and meet the income requirements.

³ *Oversight of Rising Social Security Disability Claims and the Role of Administrative Law Judges: Hearing before the Subcomm. on Energy Policy, Health Care, and Entitlements of the H. Comm. on Oversight and Gov't Reform*, 113th Cong. (2013).

⁴ DAVID H. AUTOR & MARK DUGGAN, SUPPORTING WORK: A PROPOSAL FOR MODERNIZING THE U.S. DISABILITY INSURANCE SYSTEM 8 n.10 (2010), available at <http://www.americanprogress.org/wp-content/uploads/issues/2010/12/pdf/autordugganpaper.pdf>.

Cases reach an ALJ after a state Disability Determination Services (DDS) review finds that the individual does not meet the requirements for receiving disability benefits. In 40 states, cases only reach an ALJ after two separate denials from the state DDS.

Despite the fact that cases typically reach ALJs after two separate DDS denials, hundreds of ALJs routinely reversed more than 80 percent of DDS denials each year, with dozens routinely reversing more than 90 percent of DDS denials each year.⁵ Between 2005 and 2009, nearly one-third of ALJs were reversing at least 80 percent of DDS denials.⁶

During a transcribed interview with the Committee staff on October 22, 2013, Jasper Bede, the Regional Chief ALJ (RCALJ) for Region 3,⁷ testified that when ALJs have a high allowance rate, which he defined as over “75 or 80 percent,” “it raises a red flag” about the quality of the decisions.⁸ The OIG has similarly identified similar ranges as outliers.⁹ The Committee calculated that 930,250 individuals were awarded federal disability benefits between 2005 and 2012 by ALJs who had annual allowance rates in excess of 80 percent.¹⁰ Of these 930,250 individuals, over 350,000 of them were awarded benefits by ALJs with annual allowance rates in excess of 90 percent.¹¹ In addition to ALJs with extremely high allowance rates, RCALJ Bede also testified that when an ALJ was deciding more over 700 cases “it brought into question whether or not the judge was properly handling cases.”¹²

According to OIG, 44 ALJs out of approximately 1,570 ALJs issued at least 700 dispositions a year while approving more than 85 percent of those cases for at least two years between 2007 and 2013.¹³ Between 2007 and 2013, these 44 ALJs allowed benefits to more than 180,000 individuals.¹⁴

Both the Social Security Board of Trustees¹⁵ and the Congressional Budget Office¹⁶ estimate that without reform, the SSDI trust fund will be depleted within the next two years. If

⁵ Social Security Administration Adjudication Data for Administrative Law Judges (FY2005-FY2009)..

⁶ *Id.*

⁷ Region 3 consists of 18 hearing offices in Pennsylvania, Maryland, Delaware, Virginia, Maryland, West Virginia, and the District of Columbia..

⁸ Defined by Mr. Bede as “certainly anything over ... 75 or 80 percent. Several years ago, that might have been [defined as] 85 percent, when everyone, as a whole, nationally and regionally, were reversing cases in the 65 percent range.” Transcribed Interview with Jasper Bede, Regional Chief Administrative Law Judge, Social Security Administration, in Wash., D.C. at 75 (October 22, 2013).

⁹ SSA OIG Audit Report, “Oversight of Administrative Law Judge Workload Trends,” (February 2012), *available at* http://oig.ssa.gov/sites/default/files/audit/full/pdf/A-12-11-01138_0.pdf.

¹⁰ Social Security Administration data provided to the Committee. The data was provided in fiscal years.

¹¹ *Id.*

¹² Transcribed Interview with Jasper Bede, Regional Chief Administrative Law Judge, Social Security Administration, in Wash., D.C. at 18 (October 22, 2013).

¹³ Office of the Inspector General at the Social Security Administration, *Congressional Response Report: ALJs with both High Disposition Rates and High Allowance Rates*. As a point of comparison, 1,123 ALJs had at least 50 dispositions in FY 2007 and 1,508 ALJs had at least 50 dispositions in FY 2012.

¹⁴ *Id.*

¹⁵ Social Security Administration, “2012 Annual Report of the Board of Trustees of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds.”

this occurs, there will be large across-the-board cuts for all beneficiaries. Because we are committed to ensuring that the federal disability programs serve the truly disabled, we write to urge you to quickly adopt common-sense reforms that will likely reduce a significant amount of misspending within these programs.

In June 2013, the Administrative Conference of the United States (ACUS), a non-partisan, independent federal agency, issued recommendations for ways SSA can improve its disability adjudication system and save taxpayer dollars. The ACUS report states, “Consistency and accuracy ... have suffered under the strain of administering such a sprawling program. ... Bringing greater consistency and accuracy to the disability claims adjudication process will enhance the fairness and integrity of the program.”¹⁷

Necessary program reform must close loopholes that allow some attorneys and other representatives to submit biased and incomplete evidence in an attempt to game the disability determination system. In implementing program reform, however, we want the agency to ensure that its actions do not disadvantage claimants who lack representation.

Many of our recommendations are informed by the ACUS report, as well as academic literature, oversight hearings,¹⁸ and empirical analysis. Given the dire nature of the problem, we urge the agency without delay to overcome bureaucratic inertia and initiate these necessary administrative actions, many of which would significantly improve the integrity of the federal disability programs.

1. SSA needs to conduct timely CDRs and revise Medical Improvement Standard.

SSA is not in compliance with the law that requires SSA to conduct medical continuing disability reviews (CDRs) every three years, for persons other than those expected to be permanently disabled.¹⁹ CDRs are necessary to evaluate whether individuals receiving benefits continue to meet eligibility requirements. SSA is currently behind on CDRs for 1.3 million beneficiaries²⁰ including a backlog of 325,000 CDRs for SSDI and a backlog of nearly one million CDRs for SSI.²¹ For every \$1 SSA spends engaging in review of prior awards, the

¹⁶ The Congressional Budget Office, *2012 Long-Term Projections for Social Security: Additional Information*, October 2012.

¹⁷ Administrative Conference Recommendation 2013-1: Improving Consistency in Social Security Disability Adjudications (Adopted June 13, 2013).

¹⁸ *Oversight of Rising Social Security Disability Claims and the Role of Administrative Law Judges: Hearing before the Subcomm. on Energy Policy, Health Care, and Entitlements of the H. Comm. on Oversight and Gov't Reform*, 113th Cong. (2013) (statement of Glenn Sklar, Deputy Comm'r, Soc. Sec. Admin.) and *Continuing Oversight of the Social Security Administration's Mismanagement of Federal Disability Programs: Hearing before the Subcomm. on Energy Policy, Health Care, and Entitlements of the H. Comm. on Oversight and Gov't Reform*, 113th Cong. (2013).

¹⁹ 1980 Amendments to the Social Security Act (P.L. 96-265).

²⁰ SSA staff briefing (April 12, 2013).

²¹ *Id.*

agency recovered \$11 in benefits that otherwise would have been paid to undeserving individuals.²²

From 1980 to 1983, SSA reviewed a large number of prior awards, finding that 40 percent of program beneficiaries were not disabled.²³ The agency received additional funding in the FY 2014 appropriations for an increased number of CDRs; the Congress expects a significant increase in the number of CDRs performed this year because of this additional funding. However, an increase in CDRs must be coupled with a change to the “medical improvement” standard, because this standard does not allow the agency to remove claimants who were wrongfully awarded benefits in the first place.²⁴ Under the current standard, the claimant’s record must show that the claimant made significant medical improvement in order to end benefits; if the claimant was not disabled and wrongfully received benefits initially, this standard of review will not remove them.²⁵

2. SSA’s risk-based approach for conducting CDRs should take into account individuals awarded benefits by red flag ALJs.

We endorse the agency’s decision to use a risk-based approach for prioritizing CDRs. However, during a December 13, 2013, briefing, agency officials stated that the formula does not take into consideration the allowance rates of the ALJ who approved the recipient for benefits.²⁶ Because of the backlog of medical CDRs, SSA has not yet evaluated whether or not many of the 930,000 individuals placed on the program by a “red flag” judge between 2005 and 2012 continue to meet eligibility guidelines for the program. This could be a substantial problem since many of these individuals may not have met the eligibility guidelines at the time they were awarded benefits.

During his transcribed interview, RCALJ Bede testified that at least seven ALJs in Region 3 had skewed adjudication data that raises questions about the merit of their decisions. During his tenure as Region 3’s RCALJ, the two judges with the most troubling adjudication data were ALJ Charles Bridges and ALJ David Daugherty.

RCALJ Bede testified that he approached ALJ Bridges, a Harrisburg, Pennsylvania, ALJ, about the fact that ALJ Bridges was typically deciding more than 2,000 cases per year and awarding benefits to nearly all of the claimants before him.²⁷ RCALJ Bede alleged that ALJ Bridges was using inappropriate factors other than symptoms of disability, such as an individual’s economic circumstances, to make disability determinations.²⁸ RCALJ Bede testified

²² Richard J. Pierce, Jr., *What Should We Do About Social Security Disability Appeals?*, 34 REGULATION at 38 (CATO INSTITUTE, 2011), available at

<http://www.cato.org/sites/cato.org/files/serials/files/regulation/2011/9/regv34n3-3.pdf>.

²³ *Id.*

²⁴ 20 CFR 404.1594(b)(1)

²⁵ *Id.*

²⁶ SSA Briefing with Committee Staff, (December 11, 2013).

²⁷ Transcribed Interview with Jasper Bede, Regional Chief Administrative Law Judge, Social Security Administration, in Wash., D.C. at, 74, 77, 80-81 (October 22, 2013).

²⁸ *Id.*, at 89, 90, and 137.

that he had several discussions with ALJ Bridges to try to convince him to properly review cases prior to awarding benefits, but that his efforts largely failed.²⁹

The SSA OIG and the U.S. Attorney for the Southern District of West Virginia are currently investigating Judge Daugherty for his alleged role in a long-lasting criminal conspiracy to award benefits to thousands of individuals represented by one law firm.³⁰ From 2005 to his retirement in mid-2011, ALJ Daugherty had a 99.7 percent allowance rate and awarded disability benefits to 8,413 individuals, the equivalent of \$2.5 billion of in federal lifetime benefits.³¹

In light of RCALJ Bede's testimony that ALJ Bridges appears to have decided cases inappropriately and the evidence that ALJ Daugherty was apparently rubber-stamping individuals onto disability programs, we find it indefensible that the agency has seemingly done nothing out of the ordinary to review individuals who were awarded benefits by these two ALJs. According to SSA officials, there are currently no plans to prioritize medical CDRs for the thousands of individuals that ALJ Bridges, ALJ Daugherty, or other "red-flag" ALJs added to the program in order to determine whether or not they are or were ever eligible for the program.³² We understand that SSA is reviewing whether it has the authority to prioritize CDRs of individuals approved by "red-flag" ALJs. If SSA has the authority to do so, we urge SSA to take the common sense action of prioritizing medical CDRs for persons added to disability programs by Judge Bridges, Judge Daugherty, and other red-flag ALJs.

3. SSA should expand the use of focus reviews.

Despite having the authority to review ALJ decisions through a process called "focus (or focused) reviews," SSA has failed to adequately review or discipline ALJs with extremely high reversal rates or those who had decided an inappropriately large number of cases.

RCALJ Bede testified that several ALJs in his region had inappropriately high reversal rates, but his ability to properly manage these ALJs was limited.³³ He testified that more focus reviews are needed to determine whether or not ALJs are producing quality decisions.³⁴ RCALJ Bede testified that "it's most likely that if you don't look at the decisions . . . you can't really get an idea" about whether or not an ALJ is issuing legally sufficient decisions.³⁵ RCALJ Bede

²⁹ *Id.* at 30, 74, 91, 144-147.

³⁰ E-mail between SSA OIG staff to Committee staff (October 29, 2013).

³¹ The present value of federal benefits from gaining eligibility in SSDI, which includes benefits from other programs that an individual has been made eligible for because of enrollment in SSDI, has been calculated at \$300,000.

³² Individuals are generally only removed from federal disability programs if they show medical improvement. This is a concern since many individuals put on the program initially, particularly those put on the program by "red flag" ALJs, did not originally have a disabling condition that met eligibility requirements. There is, however, an error exception to the medical improvement standard in which an individual can be removed if their initial award was in error.

³³ Transcribed Interview with Jasper Bede, Regional Chief Administrative Law Judge, Social Security Administration, in Wash., D.C. at 27, 57, 97, 103 (October 22, 2013).

³⁴ *Id.* at 131.

³⁵ *Id.* at 124.

testified that one option available to SSA—the focus review program—is a “good first step.”³⁶ However, according to RCALJ Bede, RCALJs do not have the authority to order focus reviews of ALJs they supervise; only the Chief ALJ or her supervisor, the Deputy Commissioner of Disability Adjudication and Review, can authorize these reviews.³⁷

We recommend that the agency conduct additional focus reviews so that the problems emanating from red-flag judges can be reduced. In order to prevent additional benefits from being wrongly awarded while SSA conducts reviews of ALJs who are suspected of gross misconduct, we recommend that the agency place ALJs on administrative leave until the reviews are completed.

4. SSA should require claimants and their representatives to submit all evidence.

Since an SSA administrative law hearing is non-adversarial,³⁸ the ALJ has a responsibility to represent taxpayer interests. However, the agency does not currently require claimants to submit all medical evidence.

When SSA last revised regulations in this area in 2006, the agency required that claimants submit evidence, such as medical documents, without redaction. However, due to complaints from claimant representatives’ trade associations, in the final regulation, the agency did not require claimants to submit evidence adverse to their claims.³⁹ As a result, ALJs often make decisions based on incomplete and biased information.

During a transcribed interview on September 30, 2013, George Mills, hearing office chief ALJ in Morgantown, West Virginia, testified that some claimants’ representatives “will not give you everything” and he only finds out about the missing evidence if the case is later remanded by the courts.⁴⁰ Several other ALJs have informed the Committee that this is a significant problem as they try to accurately and fairly develop the record.

During the Subcommittee’s June hearing, Mr. Sklar testified that “the regulations right now are ambiguous and I think they need to be fixed, and we will be moving to fix them. We haven’t decided precisely which route we are going to take, we are discussing them back at Social Security with my boss, the acting commissioner of Social Security, and you can be sure we are going to take [ACUS’s] recommendation very seriously.”⁴¹ In 2012, ACUS recommended several options for revising the current regulations that are modeled after other

³⁶ *Id.*, at 131.

³⁷ *Id.*, at 140-141.

³⁸ In SSA hearings, claimants may retain legal representation to argue on their behalf, but the government does not have a representative.

³⁹ SSA Disability Benefits Programs: The Duty of Candor and Submission of All Evidence, Administrative Conference of the United States (Final Report: October 15, 2012).

⁴⁰ Transcribed Interview with George Mills, Morgantown Hearing Office Chief Administrative Law Judge, Social Security Administration, in Wash., D.C. at 34 (September 30, 2013).

⁴¹ *Oversight of Rising Social Security Disability Claims and the Role of Administrative Law Judges: Hearing before the Subcomm. on Energy Policy, Health Care, and Entitlements of the H. Comm. on Oversight and Gov’t Reform, 113th Cong. (2013) (statement of Glenn Sklar, Deputy Comm’r, Soc. Sec. Admin.).*

agencies that have processes similar to SSA's non-adversarial system- -such as the Patent and Trademark Office and the Department of Veterans Affairs.⁴² The agency should act quickly to remedy this problem.

5. SSA should revise the "treating source" rule to allow ALJs to consider all relevant medical opinions.

Opinions from credible medical experts should carry substantial weight with SSA disability determination decision-makers. SSA regulations currently require that adjudicators give controlling weight to the opinion of the claimant's treating physician even though other medical professionals with differing opinions may have examined the claimant more recently or more frequently.

According to Richard Pierce, Jr., a professor of law at George Washington University, attorneys and other professional advocates manipulate the current treating physician rule to win benefits for clients who are not truly disabled.⁴³ According to Professor Pierce, attorneys and advocates identify physicians who are known to be sympathetic to subjective claims such as mental illness or chronic pain.⁴⁴ Then, disability advocates "often urge their clients to seek 'treatment' from such a physician in order to obtain an opinion of a treating physician that an SSA Administrative Law Judge must give powerful effect through application of the treating physician rule."⁴⁵ Professor Pierce states that this abusive practice "force[s] ALJs to grant benefits in cases in which they would not do so in the absence of the treating physician rule."⁴⁶

According to the ACUS report, "[d]ramatic changes in the American health care system over the past twenty years also call into question the ongoing efficacy of the special deference afforded to the opinions of treating sources. Individuals typically visit multiple medical professionals in a variety of settings for their health care needs and less frequently develop a sustained relationship with one physician."⁴⁷ ACUS recommended that SSA revise its regulations and policies so that other medical professionals such as nurse practitioners, physician assistants, and licensed clinical social workers can be considered acceptable medical sources. Based upon what we have heard from disability experts, we believe that revising the treating physician rule is an important reform that the agency can make unilaterally to reduce the manipulation and abuse within the program.⁴⁸ The agency should act quickly to remedy this problem.

⁴² SSA Disability Benefits Programs: The Duty of Candor and Submission of All Evidence, Administrative Conference of the United States (Final Report: October 15, 2012).

⁴³ Richard J. Pierce, Jr., "What Should We Do About Administrative Law Judge Disability Decisionmaking?" *GW Law Faculty Publications & Other Works*. Paper 851. (2011), available at, http://scholarship.law.gwu.edu/faculty_publications/851.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Administrative Conference Recommendation 2013-1: Improving Consistency in Social Security Disability Adjudications (Adopted June 13, 2013).

⁴⁸ *Id.*

6. Hearings should be properly noticed and the evidentiary record should be closed a suitable amount of time prior to the hearing.

In SSA hearings, the case record remains open so that the claimant may present any information to support his or her case at any time prior to the ALJ's decision.⁴⁹ This is incompatible with an ALJ's proper review of the individual's case file. This policy allows claimants and their representatives to submit evidence after their hearings, which hampers ALJ's ability to consider the evidence and prevents questioning of the claimant about the evidence while the claimant appears in court. Several ALJs have informed the Committee that claimants and their representatives frequently take advantage of this SSA rule by submitting substantial medical evidence either the morning of a hearing or after the hearing.

SSA is running a pilot program in Region I that requires ALJs to give claimants a 75 day notice before the hearing and requires claimants to submit all evidence five days before the hearing subject to good cause exception (also known as "soft" closing of the record).⁵⁰ ALJs in other regions are required to give claimants notice at least 20 days before the hearing.⁵¹ This additional notice of the hearing allows claimants and their representatives more time to gather and submit evidence and gives the ALJ at least five days to examine it prior to the hearing.

According to agency regulations, ALJs must consider all of the evidence and use the entire case record along with statements made at the hearing to determine whether to award disability benefits. Thus, it is imperative that they have time to consider all the evidence before the hearing. Mr. Sklar testified in June that the pilot "appears to be working reasonably well"⁵² and other SSA officials told Committee staff that they agree with Mr. Sklar's assessment of the program.⁵³ If the pilot program is successful, we recommend SSA expand the program to the other regions of the country so that all ALJs have adequate time to consider all the evidence before issuing decisions.

7. SSA should review each applicant's social media accounts prior to awarding benefits. SSA should require that all CDRs incorporate a review of beneficiaries' social media accounts.

SSA prohibits ALJs from using social media to develop the case record. Many ALJs told the Committee that access to social media sources would be extremely useful in determining credibility of a claimant's statements. Currently, an ALJ must report any allegations of fraud to the OIG for further investigation, but it is extremely rare for an ALJ to discover evidence of alleged fraud during normal case review without access to social media.

⁴⁹ 20 C.F.R. §§ 404.900(b), 416.1400(b) (2012).

⁵⁰ Administrative Conference of the United States, "Assessing SSA's Region I Pilot Program" (December 23, 2013), available at: <http://www.acus.gov/research-projects/assessing-ssas-region-i-pilot-program>.

⁵¹ §§ 404.938, 416.1438 (2012).

⁵² *Oversight of Rising Social Security Disability Claims and the Role of Administrative Law Judges: Hearing before the Subcomm. on Energy Policy, Health Care, and Entitlements of the H. Comm. on Oversight and Gov't Reform, 113th Cong. (2013) (statement of Glenn Sklar, Deputy Comm'r, Soc. Sec. Admin.).*

⁵³ SSA Briefing with Committee Staff (September 4, 2013).

ALJs and SSA Office of Disability Adjudication and Review staff only reported 411 total allegations of fraud between FY2010 to FY2012 to the OIG for further investigation.⁵⁴ The 411 allegations reported represent only 0.0048 percent of the 8.636 million claims of disability during that period.⁵⁵ To increase efficiency and reduce the number of erroneous disability determinations, SSA personnel should be allowed to review each applicant's social media accounts prior to the decision to award benefits. Additionally, we suggest that SSA require that all CDRs incorporate a review of the beneficiary's social media accounts.

8. SSA needs to modernize its medical-vocational guidelines.

The agency currently uses outdated rules to determine whether or not a claimant meets SSA's definition of disability. In 1978, SSA implemented medical-vocational guidelines ("the grid") consisting of four factors – physical ability, age, education, and work experience – to determine whether or not an individual can work. The age categories of the grid have not been updated to reflect that Americans live longer, work longer, and collect Social Security benefits later in life and for a longer period of time.⁵⁶

The grid is also problematic in that it categorizes the inability to communicate in English as a disability, whether or not a claimant is able to perform work that does not require communicating in English. This provision is applied in all U.S. states and territories, including Puerto Rico. While SSA officials have indicated that they are currently undertaking an update of the vocational grid, the complete update of the occupational grid is not expected to be completed until 2016,⁵⁷ after the SSDI trust fund is projected to be insolvent. We urge you to explore ways to update the grid more quickly, and in the interim, issue alternative guidance to assist ALJs when they assess an individual's ability to work in the modern job market.

9. SSA should expand the Appeals Council's use of "own motion" review.

SSA's Appeals Council has the authority to grant an additional review to a claimant who has been denied benefits by an ALJ. If a claimant appeals a denial, the Appeals Council will remand the case back to an ALJ or deciding the case itself. The Appeals Council also has the ability to review un-appealed decisions through a process known as "own motion" review.⁵⁸ However, the Appeals Council has declined to use selective sampling as a method of quality control, and only conducts own motion reviews through random selection. ACUS recommends that the Appeals Council "use announced, neutral, and objective criteria, including statistical assessments, to identify problematic issues or fact patterns that increase the likelihood of error and, thereby, warrant focused review."⁵⁹ We support these ACUS recommendations so that

⁵⁴ E-mail from SSA OIG staff to Committee staff (January 31, 2014).

⁵⁵ SSA data, see <http://www.socialsecurity.gov/OACT/STATS/table6c7.html> and http://www.socialsecurity.gov/oact/ssir/SSI13/V_C_AllowanceData.html (tables V.C1. and V.C2.).

⁵⁶ Hon. Judge Drew A. Swank, *Money for Nothing: Five Small Steps to Begin the Long Journey of Restoring Integrity to the Social Security Administration's Disability Programs*, 41 Hofstra L. Rev. 155, 179.

⁵⁷ SSA Briefing with Committee Staff and Members (December 11, 2013).

⁵⁸ 20 C.F.R. §§ 404.969(b)(1), 416.1469(b)(1) (2012)

⁵⁹ *Id.*

more decisions are systemically reviewed to identify errors before payments begin.

10. SSA should increase the number of video hearings.

Most ALJs reside in the vicinity of the hearing office they are assigned to and thus they often must decide whether or not their neighbors are entitled to disability benefits. In a small community, an ALJ may feel pressure to grant appeals.⁶⁰ Increasing the number of video hearings with ALJs that have no ties to the local hearing office would reduce the potential conflict of hometown bias. Opting for video hearings often results in more efficiency, faster scheduling, and more convenience for the claimant.⁶¹

11. SSA should expand the Cooperative Disability Investigations program.

SSA and OIG jointly established the Cooperative Disability Investigations (CDI) program in Fiscal Year 1998 to pool resources and expertise among federal, state, and local law enforcement agencies to investigate suspicious disability claims.⁶² Each unit is comprised of an OIG special agent, employees from the state DDS and SSA offices, and state and local law enforcement officers.⁶³ CDI units investigate questionable claims before benefits are paid, but can also investigate fraud allegations for current beneficiaries.⁶⁴ The CDI program currently consists of 26 units in 21 different states and Puerto Rico.⁶⁵ In FY 2013, the CDI program reported \$340.2 million in projected savings to SSA disability programs as well as an additional \$246.4 million in projected savings to other entitlement programs, such as Medicare and Medicaid. During the lifetime of the program, CDI efforts have resulted in \$2.5 billion in projected savings to the SSA disability programs and an additional \$1.6 billion in projected savings to other entitlement programs.⁶⁶ We urge SSA to immediately begin working collaboratively with the OIG to expand the CDI program nationwide.

⁶⁰ Richard J. Pierce, Jr., "What Should We Do About Administrative Law Judge Disability Decisionmaking?" *GW Law Faculty Publications & Other Works*. Paper 851. (2011), available at, http://scholarship.law.gwu.edu/faculty_publications/851.

⁶¹ Administrative Conference Recommendation 2013-1: Improving Consistency in Social Security Disability Adjudications (Adopted June 13, 2013).

⁶² *Continuing Oversight of the Social Security Administration's Mismanagement of Federal Disability Programs: Hearing before the Subcomm. on Energy Policy, Health Care, and Entitlements of the H. Comm. on Oversight and Gov't Reform*, 113th Cong. (2013) (statement of Patrick P. O'Carroll, Jr., Inspector General, Social Security Administration).

⁶³ *Id.*

⁶⁴ These allegations are often referred to a CDI unit by SSA or DDS as a result of a medical CDR.

⁶⁵ *Continuing Oversight of the Social Security Administration's Mismanagement of Federal Disability Programs: Hearing before the Subcomm. on Energy Policy, Health Care, and Entitlements of the H. Comm. on Oversight and Gov't Reform*, 113th Cong. (2013) (statement of Patrick P. O'Carroll, Jr., Inspector General, Social Security Administration).


⁶⁶ *Continuing Oversight of the Social Security Administration's Mismanagement of Federal Disability Programs: Hearing before the Subcomm. on Energy Policy, Health Care, and Entitlements of the H. Comm. on Oversight and Gov't Reform*, 113th Cong. (2013) (statement of Patrick P. O'Carroll, Jr., Inspector General, Social Security Administration).

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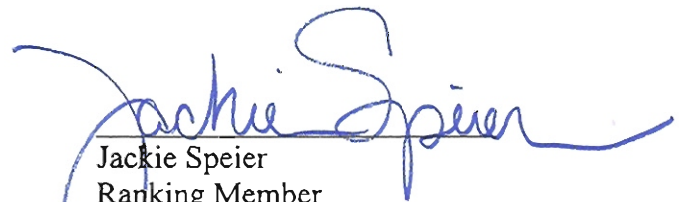
With the SSDI trust fund rapidly approaching insolvency, we urge the agency to make common sense reforms sooner rather than later so that the truly disabled will not suffer because of the agency's inability to properly oversee the federal disability programs. In addition to these recommendations, we ask that you continue to meet and work together with union representatives, other stakeholders, and Congress about additional cost saving measures.

If you have any questions about this request, please contact Sharon Utz or Brian Blase of the Committee staff at 202-225-5074 or Mandy Smithberger in Ranking Member Speier's office at 202-225-3531. Thank you for your attention to this matter.

Sincerely,



James Lankford
Chairman
Subcommittee on Energy Policy,
Health Care and Entitlements



Jackie Speier
Ranking Member
Subcommittee on Energy Policy,
Health Care and Entitlements