

**HIRING OF ADMINISTRATIVE LAW JUDGES
AT THE SOCIAL SECURITY ADMINISTRATION**

HEARING
BEFORE THE
SUBCOMMITTEE ON SOCIAL SECURITY
OF THE
COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
ONE HUNDRED TENTH CONGRESS

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**HIRING OF ADMINISTRATIVE LAW JUDGES
AT THE SOCIAL SECURITY ADMINISTRATION**

TUESDAY, MAY 1, 2007

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
SUBCOMMITTEE ON SOCIAL SECURITY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 11:04 a.m., in room B-318, Rayburn House Office Building, Hon. Michael McNulty (Chairman of the Subcommittee), presiding.
[The advisory announcing the hearing follows:]

ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON SOCIAL SECURITY

FOR IMMEDIATE RELEASE

CONTACT: (202) 225-9263

May 1, 2007

SS-2

Chairman McNulty Announces a Hearing on the Hiring of Administrative Law Judges at the Social Security Administration

Congressman Michael R. McNulty (D-NY), Chairman, Subcommittee on Social Security of the Committee on Ways and Means, today announced that the Subcommittee will hold a hearing to examine the Social Security Administration's (SSA's) ability to hire Administrative Law Judges (ALJs) to address the growing disability claims backlog. **The hearing will take place on May 1, 2007, in room B-318, Rayburn House Office Building, beginning at 10:00 a.m.**

In view of the limited time available to hear witnesses, oral testimony at this hearing will be from invited witnesses only. However, any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Subcommittee and for inclusion in the printed record of the hearing.

BACKGROUND:

Nationwide, more than 700,000 people are currently awaiting hearings on their Social Security and Supplemental Security Income disability claims appeals. Because of this large backlog, severely disabled individuals often must wait years to get the benefits they need for basic economic survival.

A significant contributor to this backlog is a shortage of SSA ALJs to conduct the hearings. According to the Social Security Advisory Board, from 1999 to 2005 the number of disability claims hearings pending nationwide more than doubled, while the number of ALJs on duty remained about the same.

A number of Federal agencies employ ALJs, but SSA is the largest employer. The Office of Personnel Management (OPM) is responsible for developing qualification standards for ALJs, conducting examinations for ALJ candidates, and developing a register of candidates from which agencies can hire.

The Social Security Administration's hiring of ALJs in recent years has been limited by several factors. First, administrative funding shortfalls have limited SSA's ability to hire across all positions, including ALJs. In addition, litigation filed in 1997 disrupted Federal hiring of ALJs for several years. In August 2003, OPM announced that it would develop a new examination for ALJ candidates. Until this examination was developed and a new register created, SSA and other Federal agencies could hire only from a register from the late 1990s. OPM issued new final regulations on the ALJ program in March 2007, but a new examination has not yet been announced. Therefore, a new and up-to-date ALJ register is not yet available for SSA to use in hiring.

FOCUS OF THE HEARING:

The hearing will focus on the importance of having an adequate number of ALJs to address the growing disability claims backlog; barriers to SSA's hiring of ALJs; and the steps that must be taken to remove these barriers. In particular, the Sub-

committee will explore the need to develop an updated register of ALJ candidates, the steps involved in this process, and the time frames in which it will occur.

In announcing the hearing, Chairman McNulty stated, **“The Social Security Administration needs Administrative Law Judges to help clear the backlog, so that persons applying for disability benefits can get the support they need as soon as possible. This Subcommittee is committed to ensuring that SSA has the resources to hire ALJs and that relevant government agencies move rapidly to eliminate other barriers to ALJ hiring.”**

DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:

Please Note: Any person(s) and/or organization(s) wishing to submit for the hearing record must follow the appropriate link on the hearing page of the Committee website and complete the informational forms. From the Committee homepage, <http://waysandmeans.house.gov>, select “110th Congress” from the menu entitled, “Committee Hearings” (<http://waysandmeans.house.gov/Hearings.asp?congress=118>). Select the hearing for which you would like to submit, and click on the link entitled, “Click here to provide a submission for the record.” Once you have followed the on-line instructions, completing all informational forms and clicking “submit” on the final page, an email will be sent to the address which you supply confirming your interest in providing a submission for the record. You **MUST REPLY** to the email and **ATTACH** your submission as a Word or WordPerfect document, in compliance with the formatting requirements listed below, by close of business **Tuesday, May 15, 2007. Finally**, please note that due to the change in House mail policy, the U.S. Capitol Police will refuse sealed-package deliveries to all House Office Buildings. For questions, or if you encounter technical problems, please call (202) 225-1721.

FORMATTING REQUIREMENTS:

The Committee relies on electronic submissions for printing the official hearing record. As always, submissions will be included in the record according to the discretion of the Committee. The Committee will not alter the content of your submission, but we reserve the right to format it according to our guidelines. Any submission provided to the Committee by a witness, any supplementary materials submitted for the printed record, and any written comments in response to a request for written comments must conform to the guidelines listed below. Any submission or supplementary item not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. All submissions and supplementary materials must be provided in Word or WordPerfect format and **MUST NOT** exceed a total of 10 pages, including attachments. Witnesses and submitters are advised that the Committee relies on electronic submissions for printing the official hearing record.

2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.

3. All submissions must include a list of all clients, persons, and/or organizations on whose behalf the witness appears. A supplemental sheet must accompany each submission listing the name, company, address, telephone and fax numbers of each witness.

Note: All Committee advisories and news releases are available on the World Wide Web at <http://waysandmeans.house.gov>.

The Committee seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202-225-1721 or 202-226-3411 TTD/TTY in advance of the event (four business days notice is requested). Questions with regard to special accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

[The revised advisory follows:]

ADVISORY

FROM THE COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON SOCIAL SECURITY

FOR IMMEDIATE RELEASE
May 1, 2007
SS-2R

CONTACT: (202) 225-9263

Change in Time for Hearing on the Hiring of Administrative Law Judges at the Social Security Administration

Congressman Michael R. McNulty (D-NY), Chairman, Subcommittee on Social Security of the Committee on Ways and Means, today announced that the Subcommittee hearing to examine the Social Security Administration's ability to hire Administrative Law Judges to address the growing disability claims backlog, previously scheduled for 10:00 a.m. on Tuesday, May 1, 2007, in room B-318, Rayburn House Office Building, **will now be held on Tuesday, May 1, 2007, at 11:00 a.m.**

All other details for the hearing remain the same. (See Social Security Advisory No. SS-2, dated April 24, 2007).

Chairman MCNULTY. The Committee will come to order. Welcome, everyone. Today's hearing focuses on the Social Security Administration's (SSA's) hiring of Administrative Law Judges, commonly referred to as ALJs.

ALJs play a critical role at SSA, conducting hearings on appeals filed by persons applying for disability benefits. A few months ago, this Subcommittee held a hearing on the large and growing disability claims backlog. Testimony at that hearing dramatically illustrated the tremendous human costs of the long delays so many applicants face.

For example, we heard from a woman from Troy, New York, someone in my own congressional district, who lost her home, was hospitalized, and even lost custody of her children, while she waits for her case to be resolved.

Testimony at that hearing also starkly pointed out the role of resource and staffing shortages in creating this unacceptable situation.

For the past several years, the President's request for SSA's administrative budget has been lower than the amount requested by the SSA Commissioner, and the amount actually appropriated has been lower still. As a result, SSA has been unable to hire all the staff needed to process disability claims and conduct hearings.

I worked with my friend, Ranking Member Sam Johnson, to urge the Budget Committee to address SSA's lack of resources. Many stakeholder organizations did the same, and I am very pleased to report that the House-passed Budget Resolution assumes additional funding for SSA—\$400 million beyond the President's request.

These funds would allow SSA to begin working down the disability claims backlog, and also perform critical program integrity activities. I will continue my efforts in this area throughout the appropriations process. I hope that the result will be significantly more funding for SSA next year that will enable SSA to hire more staff to address the backlogs.

What we don't want to face is another obstacle to hiring essential staff. Today's hearing will explore other barriers to SSA's hiring of ALJs, and in particular, the need to insure that an up-to-date register of ALJ candidates is available for SSA from which to hire. The existing register of ALJ candidates was developed by the Office of Personnel Management, OPM, in the 1990s. For several years, hiring from that register was disrupted, due to litigation. In the summer of 2003, the litigation was sufficiently resolved that OPM could reopen hiring from the register.

At that time, OPM announced that it would be developing a new examination for ALJ candidates, which would be used to put together a new register. Now, close to 4 years later, we still do not have this new register. The Subcommittee has raised concerns about this repeatedly over the past few years.

Following our last hearing, Mr. Johnson and I sent a letter to the directors of OPM and the Office of Management and Budget, requesting a time line for which the register would be completed, and urging OPM to expedite this process. I am pleased to note that we have seen some recent progress. OPM published a final regulation in March. In the last 2 weeks, the Agency has taken other measures to move this process forward, including issuing a new qualifications standard.

However, I am, frankly, concerned that the process has taken this long. We cannot afford a repeat of past delays.

I truly appreciate having both the SSA commissioner, Michael Astrue, and the OPM director, Linda Springer, here today to address this important topic. We would like to learn what SSA's needs are for ALJ hiring, and what barriers to hiring SSA faces. We would like to know the steps OPM needs to take to develop the new register, and OPM's time line for these steps. If there are any obstacles to getting this done, and done rapidly, we would like to know about them today.

[The prepared statement of Chairman Michael McNulty follows:]

**Opening Statement of Chairman Michael R. McNulty
Subcommittee on Social Security
Hearing on SSA's Hiring of Administrative Law Judges
May 1, 2007**

Today's hearing focuses on the Social Security Administration's hiring of administrative law judges, commonly referred to as ALJs. ALJs play a critical role at SSA, conducting hearings on appeals filed by persons applying for disability benefits.

A few months ago, this Subcommittee held a hearing on the large and growing disability claims backlogs. Testimony at that hearing dramatically illustrated the tremendous human costs of the long delays so many applicants face. For example, we heard of a woman from Troy, New York—someone from my own district—who has lost her home, been hospitalized, and even lost custody of her children while she waits for her case to be resolved.

Testimony at that hearing also starkly pointed out the role of resource and staffing shortages in creating this unacceptable situation. For the past several years, the President's request for SSA's administrative budget has been lower than the amount requested by the SSA Commissioner, and the amount actually appropriated has

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With that, I would like to yield to my friend, the distinguished Member from Texas, and the Ranking Member of the Subcommittee, Sam Johnson.

Mr. JOHNSON. Thank you, sir. Thank you for your comments.

You know, this hearing is about real people. In need of help and answers. With disabilities that deserve a decision as soon as possible. I'm going to stray from this, because you brought up a good point.

I mean, the fact of the matter is that since 2003, 4 years ago, your agency has defaulted on getting those judges to the Social Security Administration so they can get them. I think it's criminal—I will repeat that; it's criminal—that you're waiting until the end of this year to get it done now, after he and I have written you. I am sure my colleagues agree with me.

I would like to know—there ought to be an emergency process that you can convert judges, and give them the names they need immediately. Like right now. I would like to know why you can't do that. You know, we just don't have enough judges.

I mean, there was an article in the New York Times today on this very issue. Four years is too long. Another year is too much longer. So, I would like to hear your answers. I am going to close with that. Thank you, sir.

Chairman MCNULTY. Thank you, Mr. Johnson. I will remind other Members that, without objection, they will be able to submit statements for the record. With that, I would like to introduce our special guests, Commissioner Astrue, and Director Springer. We look forward to your testimony, and to possibly answering some questions for us.

We will begin with Mr. Astrue. I would remind you that your entire statements are submitted for the record. We would ask you to try to summarize the main points, so that we can get to the questioning as soon as possible. Commissioner?

**STATEMENT OF THE HONORABLE MICHAEL J. ASTRUE,
COMMISSIONER, SOCIAL SECURITY ADMINISTRATION**

Mr. ASTRUE. Thank you. Mr. Chairman and Members of the Subcommittee, I am pleased to be here today to discuss the Social Security Administration's (SSA's) disability determination process, and the importance of administrative law judges (ALJs) in that process.

Before I go any further, I want to thank you, Mr. Chairman, and all the Members of this Subcommittee, for your support. We fully understand how important that support has been, and we are grateful for it.

I would like to start with some strategic context. Since 2001, Congress has appropriated, on average each year, about \$150 million less than the President has requested. The dollar value of this differential is equivalent to processing an additional 177,000 initial claims, and 454,000 hearings.

The added money in March's continuing resolution allowed us to avert 6 to 10 days of furloughs, and to slow the rate of attrition. But it is important to remember that we will still end this year with substantially fewer employees than we had when we started the year.

During this same time period, our workloads have increased, both due to demographics and new statutory responsibilities. The baby boomers not only start retiring in January, they are increasingly filing for disability, as they age.

Moreover, Congress has asked SSA to engage in new responsibilities in Homeland Security, Immigration, Medicare part B, and Medicare Part D. With so many of the Agency's activities mandated by law, other activities have suffered disproportionately. We went from 790,000 medical continuing disability reviews (CDRs) in 2002 to 290,000 medical CDRs last year, a shift that makes a permanent negative impact on the trust fund. Field offices are harried. Hearing offices have lost support staff and productivity, and we have not hired sufficient administrative law judges to handle a caseload that has doubled in the past 5 years.

As you know, in 2006, SSA revised the disability determination process to increase accuracy, consistency, and timeliness. The new Disability Service Improvement, DSI, process was rolled out in the Boston region in August 2006, and builds upon SSA's electronic disability folder. In February and March, we engaged in an intensive review of DSI. We found mixed results.

Early accomplishments include the success of QDD, the Quick Disability Determination program. Using a computer model to

identify the cases most likely to be allowed, the States have decided 97 percent of these cases within the required 21 days, and they have a mean decision time of 11 days. About 85 percent of these cases have been allowed during the initial review, and more have been allowed with additional documentation. This is good news.

We plan to build on the success of the QDD tool by greatly improving our ability to make decisions, so that claimants with conditions such as a confirmed case of pancreatic cancer or ALS, Amyotrophic Lateral Sclerosis—Lou Gehrig’s Disease, are approved for disability within the 11 days that we have proven we can do. It is both efficient and compassionate for us to do this.

Another electronic program developed as part of DSI is a decision tool for use by ALJs called the Findings Integrated Template, commonly known as FIT. About 80 percent of the ALJs are now using it voluntarily, and the ALJs who use it have a significantly lower rate of remands from the Appeals Council. These remands cause significant costs and delays, and thus, we are in the process of requiring all ALJs to use this new tool by the end of this year. We expect that this change will bring good news.

We have also accelerated and expanded recent efforts to address the “aged” cases, those cases that involve waiting for 1,000 days or more for a hearing. This is America, and an American should not have to wait 3 or 4 years for his or her day in court. We have established as our goal the elimination of these cases to a negligible level by the end of this fiscal year.

I am pleased to report that this number has already dropped from 63,525 on October 1 of last year, to 17,966 as of last week, and we are on target toward our goal to eliminate this particularly embarrassing backlog. This is long overdue good news.

We have found areas of DSI that are not performing as expected, and have taken prompt action to make corrections. We found that two of the new electronic systems developed for the DDSs, Disability Determination Services, were not ready for real-world use, and were, in fact, causing considerable delays in processing case-loads. While one of these systems has great potential over the long run, both have been pulled for now and will be developed further before we try again in a pilot study, most probably in 2009.

We are focusing on refining our primary two systems for making us fully electronic, and have used an additional \$25 million over what was planned from our technology reserve fund to accomplish that goal this year.

Under the broader DSI review I mentioned earlier, we are evaluating the Federal Reviewing Official, or FedRO, and Medical and Vocational Expert System, MVES, for these components’ effects on processing time, the cost of handling a claim, and the program cost to the Social Security trust fund.

With regard to the Disability Review Board (DRB), we have limited actual experience to date, due to the time required for claims to reach this stage, but I am concerned about potential for confusion and reprocessing of cases if we have two different bodies issuing conflicting decisions on my behalf over the next 10 years. We are currently evaluating the DRB, consulting with OMB, Office of Management and Budget, with these concerns in mind.

I am overdue on the main subject of this hearing, ALJs. Let me make two brief points. First, we need to use our ALJs in a smarter, more efficient way. Posting all our ALJs in our 141 hearing offices does not give us enough flexibility to address the worst backlogs.

Electronic hearings have been a successful method to address backlogs on an ad hoc basis, and it is time that we reserve a percentage of the ALJs in a central office and use them exclusively to address the worst backlogs through electronic hearings.

Second, we need more ALJs, and we're aiming at a net increase of about 150 ALJs. With support staff, that means we're looking at about 750 to 850 FTEs, full-time equivalents, a significant reallocation of our discretionary FTEs. With rising numbers of appeals being filed, we simply cannot reduce the backlog with fewer ALJs than we had in 1997. Last year, our ALJs made a record number of decisions, almost 559,000, and we still fell behind.

Let me conclude by saying that I very much appreciated the bipartisan support that we have received from both Members and the staff of this Committee, and I am looking forward to continuing our regular candid discussions until we have a system in which we can all take pride. Thank you.

[The prepared statement of Mr. Astrue follows:]

Statement of The Honorable Michael J. Astrue, Commissioner, Social Security Administration

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss the Social Security Administration's (SSA) management of the disability determination process for the Disability Insurance and Supplemental Security Income programs, and the importance of Administrative Law Judges (ALJs) in that process.

Before I go any further, I want to thank you, Mr. Chairman, and the Members of this Subcommittee for your support. I fully understand how important that support has been, and I am grateful for it. In addition, I want to recognize the hard work and service of the employees of SSA and the State Disability Determination Services (DDSs). They understand the importance of our programs and provide the best service they can.

We recently passed an important milestone; for the last 50 years, the Disability Insurance program has helped disabled workers and their dependents cope with the loss of income due to severe disability. Along with SSA's stewardship of the Supplemental Security Income program, SSA employees work every day to provide vital service to disabled Americans. While the accomplishments in SSA's disability programs are many, today I would like to discuss several areas of concern and our planned solutions.

I'd like to start with some strategic context. Since 2001, Congress has appropriated on average about \$180 million less than the President has requested. The dollar value of this differential is equivalent to processing an additional 177,000 initial claims and 454,000 hearings. The added money in March's continuing resolution allowed us to avert 6-10 days of furloughs and to slow the rate of attrition, but it is important to remember that we will still end the year with substantially fewer employees than we had when we started the year.

During this same time period our workloads have increased both due to demographics and new statutory responsibilities. The baby boomers not only start retiring in January, they are increasingly filing for disability as they age. Moreover, Congress has asked SSA to engage in new responsibilities in homeland security, immigration, Medicare Part B and Medicare Part D.

With so many of the agency's activities mandated by law, other activities have suffered disproportionately. We went from 790,000 medical Continuing Disability Reviews (CDRs) in 2002 to 290,000 medical CDRs last year, a shift that makes a permanent negative impact on the trust fund. Field offices are harried. Hearing offices have lost support staff and productivity, and we have not hired sufficient ALJs to handle a caseload that has doubled in the past 5 years.

The Members of this Committee have been great about making our case with others in Congress, and I ask you not only to continue your efforts, but to expand them. We need your help.

Timely passage of the President's requested appropriation for SSA is a key first step towards addressing our disability caseload backlog. However, I want to acknowledge that we have not addressed the backlog problem as quickly as we need to, and that we are moving as fast as we can toward providing more efficient and compassionate service to the public.

As you know, in 2006 SSA revised the disability determination process to increase accuracy, consistency, and timeliness. The new Disability Service Improvement (DSI) process was rolled out in the Boston region in August 2006, and builds upon SSA's electronic disability folder.

DSI was implemented in a way to allow us to monitor the effects that the changes are having in the Boston region, on our entire disability process, and the Federal courts. The lessons that we learn in the early stages of implementation will help SSA as we continue to evaluate changes needed to improve the disability determination process.

In February and March, we engaged in an intensive review of DSI. We found mixed results.

Early accomplishments include perhaps the best news so far out of DSI, the success of QDD—the Quick Disability Determination program. Using a computer model to identify the cases most likely to be allowed, the states have decided 97 percent of these cases within the required 21 days and they have a mean decision time of 11 days. About 85 percent of these cases have been allowed during the initial review, and more have been allowed with additional documentation. We plan to build on the success of the QDD tool by greatly improving our ability to make decisions so that claimants with conditions such as a confirmed case of pancreatic cancer or ALS are approved for disability within the 11 days we have proved we can do. It is both efficient and compassionate for us to do this.

Another electronic program developed as part of DSI is a decision-tool for use by ALJs called the Findings Integrated Template (FIT). About 80 percent of the ALJs use it now voluntarily, and ALJs who use it have a significantly lower rate of remands from the Appeals Council. These remands cause significant costs and delays. We are in the process of requiring that all ALJs use this new tool by the end of this year.

We also found areas of DSI that are not performing as expected, and have taken early steps to make course corrections.

I am committed to making the changes internal to SSA and in SSA's policies that are needed to continue our dedicated service to disabled Americans. We are going to reorganize the Office of Disability and Income Support Programs to better align our organizational structure with this mission, and we have already received some helpful advice from the Inspector General, who, at my request, has completed a first draft of an organizational audit.

We found that two of the new electronic systems developed for DDSs were not ready for real-world use, and were in fact causing considerable delays in processing caseloads. While these systems have great potential over the long-term, they have been pulled until they are more developed. We are focusing on refining our primary two systems for making us fully electronic, and have used an additional \$25 million from our technology reserve fund to accomplish that goal.

We have also accelerated and expanded recent efforts to address the "aged" cases—those cases that involve waiting for 1000 days or more for a hearing. This is America, and an American should not have to wait 3 or 4 years for his or her day in court. We have established as our goal the elimination of these cases to a negligible level by the end of this fiscal year, and I am pleased to report that this number has already dropped from 63,525 on October 1 of last year to 17,966 as of last week.

Under the broader DSI continuous-monitoring implementation strategy I mentioned earlier, we are evaluating the Federal Reviewing Official, or FedRO, and Medical and Vocational Expert System (MVES) for these components' effects on processing time, and accuracy, and the costs of handling a claim, and the program costs to the Social Security Trust Funds.

With regard to the Disability Review Board, we have limited actual experience to date due to the time required for claims to reach this stage, but I am concerned about potential for confusion and reprocessing of cases if we have two different bodies issuing conflicting decisions on my behalf over the next 10 years. We are evaluating the DRB, and its counterpart—the Appeals Council—under the current process, with these concerns in mind.

I am overdue on the subject of this hearing—ALJs. Let me make two brief points. First, we need to use our ALJs in a smarter, more efficient way. Posting all our ALJs in our 141 hearing offices does not give us enough flexibility to address the worst backlogs. Electronic hearings have been a successful method to address backlogs on an ad hoc basis, and it is time that we reserve a percentage of the ALJs in a central office and use them exclusively to address the worst backlogs through electronic hearings.

Second, we need more ALJs, and we're aiming at a net increase of about 150 ALJs. With support staff, we're looking at about 750–850 FTEs, a significant re-allocation of our discretionary FTEs. With rising numbers of appeals being filed, we simply cannot reduce the backlog with fewer ALJs than we had in 1997. Last year, our ALJs made a record number of decisions—almost 559,000—and we still fell further behind with a total number of 730,659 cases pending as of March 30 of this year. This kind of commitment, however, means we need to evaluate the costs of other changes in the disability determination process.

Let me conclude by saying that I have very much appreciated the bipartisan support we have received from both Members and the staff of this Committee, and I am looking forward to continuing to have our regular candid discussions until we have a system in which we can all take real pride.

Chairman MCNULTY. Thank you, Commissioner.
Director Springer?

**STATEMENT OF THE HONORABLE LINDA M. SPRINGER,
DIRECTOR, U.S. OFFICE OF PERSONNEL MANAGEMENT**

Ms. SPRINGER. Thank you, Mr. Chairman. I am pleased to have the opportunity to appear before you this morning to discuss the role of the Office of Personnel Management, with respect to the hiring of ALJs, and our most recent activity with respect to this issue.

I do want to begin with an assurance to everyone here that OPM is committed to working with both the Social Security Administration and our other Federal partners to be sure that we have a full register of ALJs.

I want to begin by describing how we got to this point. Consistent with our civil service law, the Veterans Preference Act, and the APA requirements, OPM is responsible for establishing ALJ qualifications, for administering the examination, and for maintaining a register of qualified ALJ candidates. By law, OPM cannot delegate that examination to any other agency.

In 1999, that register was suspended, following an adverse ruling in litigation before the MSPB, referred to as the Azdell litigation. Azdell had brought suit in 1997, arguing that the candidate evaluation process gave unfair advantage to veterans. OPM disagreed with that, and petitioned for review by the U.S. Court of Appeals for the Federal circuit. OPM ultimately prevailed.

As a result, in July 2003—6 years of time from when the suit was first brought—the Federal circuit mandate was issued, implementing the court's decision in our favor. Immediately, in August of 2003, OPM refreshed the register by verifying that candidates on the existing register were still actively interested in ALJ positions. We removed those that were not, or were not reachable.

Between 2003 and 2007, OPM also added over 100 new applicants: eligible veterans, and other persons who had completed applications pending during the litigation. When the reconstituted register was made available for Agency use in 2003, there were

1,730 ALJs on the list. Subsequently, we resumed work on a new regulation and examination.

It's important for you to understand that agencies have been hiring ALJs, both during and after the Azdell litigation. Because OPM was particularly sensitive to Social Security's needs for ALJs, in 2001, during this stay, we litigated a motion to lift the stay, just for Social Security, so that they could continue to hire off the register.

As you can see from the chart, Social Security received ALJ hiring certificates from OPM in 2001, in 2004, and in 2006, leading to hires of 126, 200, and 37 ALJs, respectively, for a total of over 560 between 1997 and 2007 ALJ Social Security hires.

At the end of 2005, OPM published a proposed rule to streamline existing ALJ regulations. We received a large number of comments with extensive recommendations. We undertook a careful review of all those comments, and subsequently published the final rule in the Federal Register on March 20th of this year. The rule took effect on April 19th.

During this same period, we also revamped the qualifications standard. Concurrent with publishing the new rule, we posted draft a qualifications statement on OPM's website. We received comments on that, took them into account, and posted the final version of the qualifications standard on April 20th. Throughout this process, the register never had fewer than 1,000 candidates.

As you can see on our next chart, we expect the ALJ vacancy announcement to be open on our usajobs.gov website, and this addresses the timeframe that we are now under for refreshing the registry. New ALJ candidates will need to submit their accomplishment records, which OPM will review and score, followed by written demonstrations that are also part of the process. We will have structured interviews with ALJ candidates.

My expectation is that we will be able to complete the process and proceed to final scoring and a new register by this fall. So, it is not a year. We're talking months, not a year to have the register refreshed by this fall.

Mr. Chairman, I will continue to work closely with your Subcommittee. I appreciate your interest. I will also work closely with our Federal partners, and very specifically, SSA, as the new register is established during the balance of this period.

I would be happy to address any questions that you have.

[The prepared statement of Ms. Springer follows:]

Statement of The Honorable Linda M. Springer, Director, U.S. Office of Personnel Management

Mr. Chairman and Members of the Subcommittee:

I am pleased to have the opportunity to appear before you this morning to discuss the role of the Office of Personnel Management (OPM) with respect to the hiring of Administrative Law Judges (ALJs), and our most recent activity with respect to this issue. Let me begin with an assurance to everyone here that I am committed to working very closely with the Commissioner of the Social Security Administration (SSA) and our other Federal partners to ensure the Government has an effective Federal civilian workforce, which includes ALJs. I certainly recognize and appreciate the importance of the work ALJs need to do with respect to Social Security disability cases.

Background

By way of background, the ALJ position, originally referred to as “hearing examiner” was first authorized by Congress in the Administrative Procedure Act (APA) more than 60 years ago. The APA was designed to ensure fairness and due process in Federal agency rulemaking, and the hearing examiner positions were established to provide aggrieved parties an opportunity to have their concerns heard on the record through a hearing. The APA also provides statutory protections to ensure that ALJs have decisional independence from undue agency influence. Some of these protections included making the positions independent of the employing agencies with respect to appointment, tenure, and compensation.

The most recent data available to OPM show there are over 1,400 ALJs serving in the Federal Government, 1,100 of whom work at SSA with the remainder primarily at the Department of Health and Human Services, the Department of Labor, and the National Labor Relations Board. The data show that most ALJs tend to remain in their positions longer than most Federal employees—ALJs retire on average with 32 years of service at age 70—this is in contrast to other employees who, on average, retire with 28 years at age 59.

Role of OPM

Consistent with civil service law, the Veterans Preference Act, and APA requirements, OPM is responsible for establishing ALJ qualifications, for administering the ALJ examination, and for maintaining a listing of qualified candidates for ALJ employment by Federal agencies. By law, OPM cannot delegate the ALJ examination to any other agency.

In 1999, the current register was suspended following an adverse ruling in litigation before the Merit Systems Protection Board, then referred to as the *Azdell* litigation (now referred to as *Meeker v. OPM*). OPM petitioned for review by the United States Court of Appeals for the Federal Circuit, and ultimately prevailed. After the Federal Circuit mandate was issued, in July 2003, OPM refreshed the ALJ register by verifying that candidates on the existing register were still actively interested in ALJ positions (removing those who were not interested or were not reachable). Between 2003 and 2007, OPM also added over 100 new applicants (these applicants included veterans who were 10-point preference eligibles, and other persons who had completed applications pending during the litigation).

After the conclusion of the *Azdell* litigation in 2003, we closed the ALJ examination to new applicants, (with the exception that we continued to accept applications from 10-point preference eligibles as allowed by law), reconstituted the ALJ register, and made that register available for agency use. At that time, there were 1,730 ALJs on the register. Subsequently, we resumed work on the examination, which as you may know, is a complex multi-step examination process.

A Look at ALJ Hiring

It is important for you to understand that agencies have in fact been hiring ALJs both during and after the *Azdell* litigation. In the case of the Social Security Administration, 562 ALJs have been hired since 1997. Because OPM was sensitive to the Social Security Administration’s need for ALJs, we litigated a motion to lift the stay expressly for the purpose of allowing SSA to hire off of the register. As a result, SSA hired 126 ALJs in 2001. After the *Azdell* litigation concluded, from 2003–2005, OPM issued 7 certificates of eligibles to SSA in the 2003–2005 period, and as a result, SSA hired another 200 ALJs. More recently, in 2006, SSA hired an additional 37 ALJs.

The New ALJ Examination/Assessment Process

At the end of 2005, OPM published a proposed rule to streamline existing ALJ regulations by removing redundant procedures and outdated information, clarifying bar membership requirements, and ensuring that the ALJ examination process operates in a manner similar to other OPM competitive examinations. As a result, we received a large number of comments from a variety of sources with extensive recommendations. We undertook a careful review of all comments received. Subsequently, we published the final rule in the Federal Register on March 20, 2007. The rule took effect on April 19, 2007. During this same time period, we revamped the qualifications standard. Concurrent with the publication of the proposed ALJ rule, we posted a draft qualifications statement on OPM’s website. We received comments on the draft qualifications and took them into account in drafting the final version, which was posted on OPM’s website on April 20, 2007. Throughout this process, the register never had fewer than 1,000 candidates.

OPM has also now published its new qualification standards for ALJs, and we expect to open the ALJ vacancy announcement on our USAJOBS.gov website within

the next few days with the goal of completing our initial reviews early this month. New ALJ candidates will need to submit their accomplishment records which OPM will review and score, followed by written demonstrations, which are also part of the scoring process. Structured interviews with ALJ candidates will then be scheduled and my expectation is that we can complete that interview process and proceed to final scoring and establishment of a new ALJ register by late fall. This sequence of events is presented in the attachment to my statement.

Conclusion

Mr. Chairman, I will continue to work closely with your Subcommittee and with Commissioner Astrue to ensure we meet the needs of SSA and our other Federal partners—through the existing ALJ register and the new register being established this year. I would be happy to further address any questions the Subcommittee may have.

Chairman MCNULTY. Thank you to all of our witnesses. Commissioner Astrue, let me just start with you. I just—I want to spend more time with Director Springer, but I just want to get one set of facts on the table at the very beginning. Will you just remind us? How many ALJs does the Agency currently employ right now?

Mr. ASTRUE. Yes.

Chairman MCNULTY. What's the number?

Mr. ASTRUE. The number of judges we have today in active status, meaning those judges who are on duty and processing cases, is 1,082. We have, between disability—the chief administrative judges, who have primarily an administrative role, do not count—my understanding is if you add disability, those who have been detailed, those who are in management positions, we're at 1,108. So, depending on how you choose to define it, it's between 1,082 and 1,108.

Chairman MCNULTY. How many do you feel as though you need to adequately address the backlog?

Mr. ASTRUE. For the next fiscal year, we are targeting at about 1,250. It may be that after that we are going to need additional judges, but that's a lot of judges for us to absorb in a short period of time.

That is fairly consistent with all of Commissioner Barnhart's testimony in recent years. She generally cited numbers between 1,200 and 1,300.

Chairman MCNULTY. Thank you. Director Springer, let me just say that it's really difficult to accept the proposition that everything is okay with the old list. The list is outdated. I am glad that you are moving now, with all deliberate speed, to try to get a new list out there. But I am concerned about past performance, that it took the Agency more than 3½ years, since the Register was reopened in 2003, to issue the final regulation.

How can this Subcommittee have confidence that we won't have a repeat of the past delays?

Ms. SPRINGER. I think that the Subcommittee is right to hold us to a high standard of timeliness, and it's certainly one that I concur with. In my tenure here, which is less than 2 years, I have tried to speed this up. So, I share your concern about getting this back on the right track.

I think that what caused the—the very deliberate, methodical process that took so much time in constituting the new regulation was probably driven by the fact that there were so many on the

list, and it was never below 1,000, 1,300, 1,200 during that time-frame, prior to—or subsequent to 2003, when the list was last updated in a remedial way, if you will.

I don't think that's a good reason, but—to have been that deliberate in all those comments—but I think you can have confidence going forward, because we have a very definitive time line. The steps are happening quickly. You have—can see that the ones have already taken place in closing this comment period down, getting the new standards out.

In a matter of just days, we will begin the process. So, you will be able to see. We're not giving you a promise, I'm giving you a set of steps that you will be able to see, very transparently, that we are taking to get this done.

Chairman MCNULTY. Okay. Within the Agency, have you actually established a work plan, staffing levels, work hours, and so on, on this project to make sure that we stay on schedule for October?

Ms. SPRINGER. Yes. Yes, I have. As a matter of fact, after I got the call—after the last hearing of the Subcommittee—from Congressman Pomeroy, I immediately, when I hung up the phone, got our leaders together and told them I wanted to see the time line very definitively. I shortened it, so it would get to the fall, because I knew it was a concern you have.

So, that actually was—without you realizing it—helped me to get this moved along faster.

Chairman MCNULTY. Okay. I will just make one final question. Just to make sure that we keep on track, and that the congress is fully informed, I would like you to commit to having your staff brief the staff of this Subcommittee on a monthly basis, starting now, to make sure that we keep this on track. Can you make that commitment to us?

Ms. SPRINGER. Absolutely.

Chairman MCNULTY. Okay, thank you. Mr. Johnson?

Mr. JOHNSON. Thank you, Mr. Chairman. I would like to ask permission to enter my full opening statement into the record.

Chairman MCNULTY. Without objection.

[The prepared statement of Rep. Sam Johnson follows:]

**Statement of Rep. Sam Johnson
Subcommittee on Social Security
Hearing on the Hiring of Administrative Law Judges
at the Social Security Administration
May 1, 2007**

(Remarks as Prepared)

Thank you, Chairman McNulty, for holding this hearing on the hiring of administrative law judges at the Social Security Administration.

This hearing is about real people in need of help and answers. Those with disabilities deserve a decision on their appealed claim as soon as possible.

Over the past 7 years, the backlog of disability appeals has more than doubled in size. Something must be done now.

One answer is having enough judges to do the job. Today, the agency has about 1085 judges, just five less than in 1999. Then the number of pending claims per judge was 286. Today, it's 673, an increase of over 230 percent.

Yet, when it comes to hiring, Social Security has been forced to use a register of judge candidates that has not been substantially updated since the late 1990s. Those relying on disability benefits deserve better!

It's the job of the Office of Personnel Management, also known as "OPM," to assemble this register, and they have been slow to act before now. In fact, it's taken

close to 4 years for OPM and the Office of Management and Budget to publish a final regulation updating their administrative law judge program.

OPM has now promised to move quickly and has taken steps to begin the recruitment process. However, because of the expected volume of candidates, a new register is unlikely to be available until late fall.

Of course hiring more judges is only one answer to fixing the backlog. Social Security has already implemented a number of changes, including electronic claims folders, the use of video-conferencing, and disability case processing reforms.

Commissioner Astrue should, and is, reviewing the effectiveness of these initiatives to determine whether further improvements are needed, and we look forward to hearing about his work to address the backlog.

Sufficient funding for Social Security to effectively serve the public is another important answer which this Subcommittee continues to support and pursue.

Other answers lie in the amount of support staff who assist the judges in preparing their decisions, continuously improving the way work is processed and how offices are managed, and finding new policies to increase program effectiveness.

I look forward to hearing from our witnesses on all these issues today.

Mr. JOHNSON. Thank you. It seemed to me, in your comments, Ms. Springer, that you were accusing the Social Security Administration of not taking advantage of a list that is huge, in your estimation. Is that what you were doing?

Ms. SPRINGER. I would say that I was trying to point out that over 560 hires were, in fact, made off of that list since—in relatively recent times, so that the list which has been characterized as stale actually was being used, and hires were being made in significant numbers by SSA.

Mr. JOHNSON. Well, wasn't it true that most of those names on the list were added in the 90s, and not viable?

Ms. SPRINGER. The—no, I would not say it was true that they were not viable, because, first of all, they had to be reinterviewed when they were taken off of the list by the hiring agency, so that the 560 would have had to have met a certain acceptable standard before they were hired, and that is in relatively recent time.

Additionally, the people on this list are practicing professionals. They need to meet certain standards, certain professional requirements. They are not just sitting there since the original exam was given, doing nothing.

So—but ultimately, the hiring agency has to reinterview them before they take them on. And 560 were hired, over 560.

Mr. JOHNSON. Do you agree with that statement?

Mr. ASTRUE. Substantially, yes. If you look at the recent history, I think that the fiscal considerations have been the biggest barrier on hiring. As the list has aged, we have expressed concerns about the list, but we have continued to hire.

It is easier to do the hiring and find candidates that meet our standards in the bigger metropolitan areas. As the list ages, it gets harder in some of the more remote areas, because some of the people don't want to relocate. It's not that we fell off the cliff, and not that there weren't any qualified candidates on the list. We have hired 27 this year. That was early in the year.

So, the biggest constraint for us has been fiscal, as I understand it from the history. Certainly for me, on my watch, since I have been here we haven't had the luxury of hiring ALJs, because we were worried about being in a furlough situation. So, we weren't in a position to do that.

But, I am very pleased that the list is going to be reopened. I have spoken directly to Director Springer. We have offered anything that she wants, in terms of our staffing resources, to help design the test, grade the test, and anything else that she needs to move this along. She has responded, I think, very positively to that offer.

Mr. JOHNSON. Well, I think we are going to try to fix the funding operation, aren't we?

Chairman MCNULTY. Yes, we are. We were in the budget process, we had success there.

Mr. JOHNSON. You didn't answer the question, though. What are you doing to speed up the process in the Agency?

Ms. SPRINGER. Well, to speed up the process, what we did was—

Mr. JOHNSON. You have given us an outline and, you know, a schedule. But can you speed it up more?

Ms. SPRINGER. I think that October, the October date, is as fast as we can go, reasonably, with all of the steps, because you need to give applicants enough time where the announcement is open, you need to give them time to submit their applications, to have interviews, to have written review, to have scoring. Between now, beginning of May, and October, is only a few months. I think we will need all of that time.

Mr. JOHNSON. But you claim there is a large number on the list already. Is that true or false?

Ms. SPRINGER. There is. There are currently over 1,100 on the list.

Mr. JOHNSON. Okay. Well, what are you doing to try to, you know, pick them off?

Mr. ASTRUE. We would prefer at this point, given Office of Personnel Management's assurance that the list is going to be open this fall, in terms of the permanent commitments, to hire off the new list.

The average length of tenure right now for our ALJs is 20 years. Getting the absolute best and most dedicated to public service is really important.

So, while we did hire off this list earlier in this fiscal year, in the shorter run, we have been looking at the senior judge list as a stop-gap, to the extent that we have a little bit of resources that we can squeeze out, to hold on until we get the reinforcements. Right now, our preference has been to look at the retired judges, bring some of them back, and do our best to hold on until we get to the list in October.

Mr. JOHNSON. Now, you didn't convince me the other day that your judges are working a full day. Are they?

Mr. ASTRUE. There is a report that came out last Friday from our Advisory Board that looked hard at this and some other issues. Since it came out last Friday, we haven't had a chance to fully go over that. I went over some of those numbers with the Chairman, though, when I last met with the Board about 10 days ago.

Some of the numbers on productivity are disturbing. Most of the ALJs are working hard and putting in a solid effort. There clearly is a group of outliers, where you look at the statistics and you have to be very concerned about the level of productivity.

Mr. JOHNSON. What are you doing about them?

Mr. ASTRUE. Well, we are taking a look at that, Mr. Johnson. We have some constraints. These are civil service appointees. We also have the independence of the ALJs layered on top of that.

But we are looking at that and trying to see if there is anything new and different we can do to try to make sure that people are not performing the way someone in a lifetime entitlement position should be expected to perform. We're looking really hard to see if there is anything new and different that we can—

Mr. JOHNSON. Do you write performance reports on all of them?

Mr. ASTRUE. No, I don't. You mean, me, personally?

Mr. JOHNSON. No, but your people.

Mr. ASTRUE. I don't believe that we are allowed to. I will check for the record.

[The information follows:]

Federal personnel law prohibits SSA from rating ALJ performance or granting ALJs any award or incentive.

Mr. JOHNSON. All right.

Mr. ASTRUE. My understanding is, certainly when it comes to anything related to the decisionmaking itself, we're not allowed to do performance reviews. With regard to productivity and personal conduct issues, I believe that we are.

We have been doing counseling in some of those cases. In some of the behavior cases, we have taken ALJs to the Merit Systems Protection Board, and I believe some brief suspensions have been withheld. I am not fluent with all the details on that. We will provide that for the record.

[The information follows:]

Unlike other Federal employees, adverse actions against ALJs must be evaluated and decided by the U.S. Merit Systems Protection Board (MSPB or the Board). An agency may remove, suspend, reduce in grade, reduce in pay, or furlough an ALJ for 30 days or less only when the MSPB has established and determined on the record after a hearing that there is good cause. Therefore, in order to take any of these adverse actions against an ALJ, SSA must file a formal complaint with the MSPB and prove, at a full due process adversarial hearing, that there is good cause for taking the action. The MSPB determines the action the Agency can take, and only after the MSPB has issued a final decision may the Agency take the action.

The Board has found that various types of ALJ misconduct constitute good cause, and in many cases has authorized an adverse action against ALJs. For example, the Board has authorized removing ALJs for misconduct that includes the following: long-term tardiness (120 absent without leave charges) that led to hearing delays; harassing the Acting Chief ALJ and disrupting office mailing operations; retaliating against representatives who filed recusal motions; using profane language and making demeaning remarks to employees; and refusing to comply with supervisory instructions. The Board has sustained 30- to 150-day suspensions for conduct including: refusing to hear cases on travel dockets; falsifying an employment application; refusing to comply with case processing procedures; and making derogatory remarks to co-workers. The Board has sustained 1- to 20-day suspensions for time and attendance abuse and leave violations.

Regarding ALJ performance, the Board has found that there was good cause to take action against an ALJ who disregarded Appeals Council rulings. As for productivity, the Board has not specifically authorized taking an adverse action against ALJs for poor productivity, but it has determined that agencies may bring such actions.

The Agency, without obtaining Board approval, also may issue formal reprimands to ALJs. Recently, the Chief Judge reprimanded an ALJ for his continued failure to follow the Agency's time and attendance policies and procedures. Further, the

Agency has addressed misconduct issues by orally counseling ALJs or issuing written counseling letters to the ALJ.

SSA has taken six ALJ conduct cases to the MSPB since 2002. Four of these cases are final, and have resulted in sanctions. The MSPB authorized SSA to remove one ALJ from his position and suspend three ALJs, as follows:

- 60-day suspension
- 14-day suspension
- 1-day suspension

Two cases still are pending at the MSPB on charges filed in fiscal year 2007.

Mr. JOHNSON. Thank you. Thank you, Mr. Chairman.

Chairman MCNULTY. I thank the Ranking Member. Mr. Pomeroy may inquire.

Mr. POMEROY. Thank you, Mr. Chairman. Commissioner Astrue, has the number of pending claims ever been higher?

Mr. ASTRUE. No.

Mr. POMEROY. Director Springer, how old is the present list today?

Ms. SPRINGER. There are people who are on the list that date back into the 1990s. There are others that have been added subsequently, in 2003, in the period where we were able to start to add. So, some are a few years old. We have been able to add—

Mr. POMEROY. But this is 1,000. So, the ones you added were the ones that came on because of the veterans preference issues. The others, how many of the 1,000 do you estimate came on this decade?

Ms. SPRINGER. I would say that probably about—I'm going to guess somewhere around 10 to 15 percent.

Mr. POMEROY. So, most of them go back to the 1990s.

Ms. SPRINGER. There are many that probably—most probably do go back to the 1990s, the later 1990s.

Mr. POMEROY. Some as early as 1993.

Ms. SPRINGER. I believe that's possible, yes.

Mr. POMEROY. So, basically, this would be a candidate pool for employment that submitted their application for a job somewhere in the years 1993 through 1999. Although you indicate, "Well, we got some this decade," that's probably less than 10 percent.

So, as a potential employer, Social Security is looking at a job pool where the application came in 10 years ago.

Ms. SPRINGER. With the one understanding that in 2003, every one of the ALJs who were on that registry at that time were contacted. If we couldn't contact them, they were taken off. When we did contact them, we wanted to be sure that they still wanted to be on the list. We didn't readminister a test, but there was some refreshment of the list at that time.

Mr. POMEROY. You refreshed—

Ms. SPRINGER. But there was no full—

Mr. POMEROY. You mean you called people whose job application had been pending for several years and said, "Do you still want to be considered," and they said, "Yes"?

Ms. SPRINGER. I believe that's essentially correct, yes.

Mr. POMEROY. Why we are so concerned—I wish I had this in a larger fashion—but we think that this chart, which documents pending Social Security claims, shows a very stark correlation be-

tween the number of ALJs processing claims and the extent of the backlog.

What we had happen in the 1990s, we had a rapidly accelerating backlog. Among strategies brought to bear on reducing this backlog were hiring a higher number of ALJs. The backlog decreased dramatically, as you can see. Hiring stops and the number soars to, where the commissioner says, the highest ever.

So, we think that there is a direct relationship between the number of ALJs and the backlog. We are mightily frustrated that the process of getting a candidate pool for ALJs more recent than 10 years old has been such an insurmountable task for the OPM.

Let me just go through some hearing testimony that this Committee has received over the last several years, as we have tracked this with great interest. In each instance, I will be quoting from former Commissioner Barnhart, and I will submit this to the record. It's just excerpts of a review of the record.

On July 24, 2003, almost 4 years ago, the commissioner was testifying that that day, the case had been ruled in favor of OPM. I quote, "We should be able to begin hiring administrative law judges within 6 months, at the outside. That's very important. We have been frozen for over 2 years, almost 3 years."

By the way, I should tell you that I have the highest regard for Commissioner Barnhart, so I don't submit her quotes in any way as indicative of bad information she is bringing the Committee. It is, indeed, the information that we have that has brought us to this high frustration that the list has been closed.

A couple of months later, September 25, 2003, asking about the ALJs, she says, "Well, I wish I could give you a better report. It's true the issue has been resolved, but now the Office of Personnel Management has to develop another register, a new administrative law judge register, and go through the whole process. I was advised just this week it probably looks like the entire process is going to take a year." So, she is frustrated in 2003. It could take as far as a year, into 2004.

Well, a year later, almost a year later to the day, September 30, 2004, "We have been advised by OPM that they need to redo to the examination, they need to pilot it. Therefore, we cannot expect a brandnew register until the end of calendar year 2005."

So, apparently nothing has been done in the year between her testimony, because it's the same old list of things that OPM has to do that haven't been begun yet.

Later—another year passes. So, it's September 27, 2005. Commissioner Barnhart states, "We are, in think, about 100 to 150 short. The Office of Personnel Management now has to recast the entire test, and the factors for eligibility. They have not developed a test. Once they develop the test, they have to test it, pre-test it."

In May of 2006, she indicated that the Office of Personnel Management did publish a notice of proposed rule in December. "They tell us regulation will be final in about 3 months."

Well, then, of course, in February of this year, we learn that after all the years you took to get a rule out there, you left the rule open for well over a year. It's published in December of 2005, and it's—we find out on Valentine's Day of this year that that rule is still open. So, we are deeply concerned that years have passed be-

fore the rule is published, and then the rule is just left to sit out there forever.

In the meantime, the claims mount. This is the bottom line on our concern.

Ms. SPRINGER. Right.

Mr. POMEROY. This isn't like we can fly speck every agency's performance for competence—I wish we could, with the oversight dimensions of congress, but we don't have enough resources to do that.

So, what really has attracted us to this fatal flow of OPM's management is that the case—the backlog is skyrocketing. In 1998, we had 1,153 ALJs. We had a backlog of 334,524. Today, we have, as the Commissioner indicated, 1,082?

Mr. ASTRUE. 1,082.

Mr. POMEROY. Maybe 1,100, maybe 1,108 ALJs, in the 1,100 range. So, we have fewer number today than we had in 1998, and our backlog is 716,000 and rising.

What I fear has happened is that you have got people that—history shows 65 percent are going to be found to be entitled to disability benefits when the ALJ stage of the appeal is completed, 65 percent. Yet, they are forced to wait. They can't work, that's why they have applied for disability. So, they are waiting without income, in despair and in deep poverty, and they can't get their cases settled. That's the reality on the ground.

A reality downtown is the Office of Personnel Management is fiddling around, years go by before they can even get around to all the things they have to get around to, and then they put a rule out and it sits for a year, and you still can't hire an ALJ today.

So, I think that this is a deeply disturbing record by the Administration, the Office of Personnel Management, in particular. It goes back to your predecessor, but it also includes your 2 years there. The bottom line is, in my view, people are being hurt, some of the most vulnerable people in this country are being hurt every day because of bureaucratic bungling at OPM that has not given Social Security a qualified list of applicants to adjudicate these Social Security appeals.

Mr. Chairman, my time has long since expired. I would be happy to have the director's response to what I have said, but I want to commend you and the Ranking Member, Mr. Johnson, for holding this hearing, so that we can bring this situation to light. I hope something is done very quickly.

Chairman MCNULTY. We have time. The director may reply.

Ms. SPRINGER. Thank you, Mr. Chairman. There are a few things.

Certainly we, along with the commissioner and the Members of the Subcommittee, hope to see that number go down. To the extent that we participate in that directly, it is with respect to ALJs, as you say. The other aspects of the adjudication process and the review process that are other than ALJ, I can't speak to.

But with respect to the ALJ, there is no question that I think everyone at OPM—certainly me, coming in and inheriting this—would have wanted to see a compressed, a faster process, to getting to that updated list, as Commissioner Barnhart expected when she

testified. That certainly would have been my expectation, and a reasonable expectation.

That is why, after I got your call, I shortened the timeframe for the balance of the steps that needed to be taken, which is the only thing I can do. I can't go back and change what happened. But what I can do is fix, going forward, and make sure that that happens with all due haste.

Now, the only thing I can say about this interim period from 2003 until now, with respect to the quality of ALJs, and ALJs available to Social Security and the other Federal agencies, is that I know the numbers speak for themselves, that over 560 were hired by SSA.

Now, in many cases, people were not hired. Sometimes that's because of geographic constraint. If you need the ALJ in a certain geographic area, they may not be willing to relocate for that. So, if the numbers had shown that only 5 were hired, or 10 were hired, I would have said, "Oh, shame on OPM, particularly, for not having paid attention to that."

But the fact that 560 were hired leads me to think that OPM felt they could take a more deliberate process in reconstituting the exam and the regulation. I don't think that's a good reason, but I would imagine that that was what they took comfort in. But 560 were, in fact, hired. So, I think they felt that the current list, even as old as it was, was servicing the community.

That doesn't mean it should have taken that long, and that's why, going forward, we're on a much faster path.

Mr. POMEROY. If I might respond, Mr. Chairman?

Of course, that would assume that—your testimony would assume that we are holding the existing pool steady. People retire every week. So the number is dropping. So, in replacing 500 and hiring 500, you're replacing some significant number. Your contribution to the system, in terms of total number of ALJs, is not nearly an addition of 500.

Additionally, if the people working in OPM are only looking at how many names are on a 10-year-old list, and paying no attention to the information brought to them by Social Security on a skyrocketing backlog, we have really got people working in silos, and not aware of a broader picture, because we've got a—since 2000, we have got a spiraling number of disability claims pending, taking us to the highest point ever.

A final point I would make, in terms of where we go from here. I appreciate the commissioner's thoughts of hiring some 150 more. That would bring us to 1,263. That—but I want you to think more aggressively than that.

In her September 30, 2004 testimony, the commissioner is quoted as saying, "I believe we need to have around 1,300." You would bring it to 1,263, if I've got my math right. I would just say that right now, the case log, the pending backlog, is 21 percent higher than it was in 2004, when the commissioner wanted to bring it to 1,300.

Mr. ASTRUE. Right.

Mr. POMEROY. So, if she needed 1,300 in 2004, you need a higher amount to deal with the greatest backlog ever in this disability adjudication.

Mr. ASTRUE. Yes. Mr. Pomeroy, let me respond. Before I do, I would like to ask the Chairman for permission to correct the record. In the pressure of the moment, I confused my fiscal year and my calendar year in an earlier response.

So, we have, in fact, not hired any ALJs this fiscal year. We hired 38 in fiscal year 2006. So, I feel better, having corrected the record.

Mr. Pomeroy, I agree that we probably are going to need more in the subsequent years. I think one of the important things is to use them effectively, and smarter than we have before. I want to make sure that we don't rush. This is going to be a big group, in terms of systems, training, and placement. There is some limit on our system, in terms of how many we can absorb in any 1 year. I am not suggesting that the 1,250 is a cap for even the year after.

To get to that 1,250, we are going to need to hit the President's budget, plus we're going through a zero-based budgeting exercise to try to free up FTEs, because we're going to need roughly 800 FTEs when you add in the support staff. That's a lot for us, in our situation. When we see what the budget situation is, when we have got this next group of ALJs trained, it is probable that we will come back the following year and ask for more.

One of the things I think we want to test and see what we do in subsequent years is how effective is a centralized group of ALJs doing electronic hearings, set up primarily to deal with the backlog. We have got some systems and procedures work we need to do to get a slightly different system in place. That may be part of the answer, over the long run. So, I would like to pilot that well, not rush it.

We have a history of rushing some of our best ideas, and not implementing them well. Unfortunately, I think that is part of the issue with DSI we're seeing right now. So, if an idea is a good one, it is good enough to do it right.

So, what I would like to say is, it may very well be that the trend in outyears is we have fewer ALJs in the hearing offices and more in the central office. We want to test that concept, make sure we've got it right, make sure claimants are happy, make sure you're happy, before we go out and unroll that in a much bigger way.

I think there is a reasonable chance that we will come back to you in the subsequent year's budget, and ask for more ALJs, based on the success of that experiment. I want to make sure that it's a success before we go forward.

Chairman MCNULTY. Ms. Tubbs Jones may inquire.

Ms. TUBBS JONES. Thank you, Mr. Chairman. Commissioner, Madam Director, I, unfortunately did not hear all of the questions from my colleagues. I have actually, however, read both of your statements.

You know, my constituents out there in Cleveland. They don't really want to hear all this craziness you all are talking—I hate to call it craziness, I should call it government mumbo-jumbo—about why their cases are not being heard. You know, it sounds like, “In the outyears, we're going to do this, and we're going to examine whether or not the administrative judges are being used appropriately.”

How old is your—how old is the Agency?

Mr. ASTRUE. The Agency—

Ms. TUBBS JONES. Yes, the Social Security Administration.

Mr. ASTRUE. Was founded in 1935.

Ms. TUBBS JONES. How long have you been using administrative law judges?

Mr. ASTRUE. I would have to go back. A long time. Decades.

Ms. TUBBS JONES. Turn around. Maybe one of your staff can answer. How long—

Mr. ASTRUE. Let me say, first of all—

Ms. TUBBS JONES. No, no, no.

Mr. ASTRUE. No—

Ms. TUBBS JONES. You're not going to take up my time. I'm going to ask questions, and you're going to answer my questions. How long—how many administrative—how long have you been using administrative law judges?

Mr. ASTRUE. We will submit that answer for the record.

Ms. TUBBS JONES. I would—I think your staff can tell me the answer right now, sir. What's the problem?

Mr. ASTRUE. Well, if you would hold on, and let me consult—

Ms. TUBBS JONES. No, I don't want to hold on. I want to know how long you have been using administrative law judges. It's a simple question.

Mr. ASTRUE. If you want to give me a moment to consult with my staff, to make sure that the answer—

Ms. TUBBS JONES. That's what I asked you to do, sir, turn around and talk to them.

Mr. ASTRUE. Then that's fine. Then I will do that.

Ms. TUBBS JONES. Thank you.

Mr. ASTRUE. There is some question of definition. We have been using what we would call hearing examiners since 1940. Since some time in the early 1970s—and we will provide the exact date for the record—we started using what the government would call ALJs.

[The information follows:]

SSA has employed administrative law judges (ALJs) and their predecessors, hearing examiners and referees, since creating the hearing process in 1940. The Civil Service Commission began using the term ALJ in 1972, and the term was statutorily adopted by Congress in 1978.

Ms. TUBBS JONES. Great. This is your second time here, and we seem to have some complication in dealing. But the reality is that I am happy that you have the opportunity to be the head, the commissioner of this agency. But more importantly, I want my constituents to be happy that they are getting what they are entitled to, as recipients of disability.

But the point we are trying to make here, sir, is at this point, this agency, after all these years, ought to have it right. They ought to be able to process claims, and deal with these workers who are losing their houses, going bankrupt, being—because we can't manage to get through the disability process in a timely fashion.

What all of us are looking for, as Members of this Committee, both the Republicans and the Democrats, is a means by which we have administrative law judges who are processing cases quickly—

or maybe I shouldn't say quickly—they are processing them in a fashion that allows the disability claimants to get a fair, impartial hearing in a timely manner.

I want to talk to Ms. Springer for a moment. This—where is this? It's on the end of your statement. This chart represents what you are going to do to help us get to a larger number of ALJs to process our claims, right?

Ms. SPRINGER. Yes, ma'am.

Ms. TUBBS JONES. Early May. Late May to mid-July. Mid-July to early September. Mid-July to mid-October, late October. There is so much uncertainty in those early/late/mid, that the people out in America, who are waiting on their claims probably would like a little more certainty. Can you give me an explanation of what early May means for "announcement open and minimum qualifications review"?

Ms. SPRINGER. Early May means—

Ms. TUBBS JONES. Today is May 1.

Ms. SPRINGER. Yes.

Ms. TUBBS JONES. That is early May, right?

Ms. SPRINGER. In the next few days. I will be glad to get back to you, and I committed to the Chairman that each month we will give you a very specific update on exactly what we're doing. But that first one is in a few days.

Ms. TUBBS JONES. But—and all the preparatory work that you have need to do, you have already taken care of?

Ms. SPRINGER. Yes, ma'am.

Ms. TUBBS JONES. In terms of we're through questioning whether or not you can hire. We're through the case that kept you from hiring. We're through the processing and the publication of regulations, and all that kind of stuff?

Ms. SPRINGER. Yes, ma'am.

Ms. TUBBS JONES. So, it's all left to your department, or your agency, for us to make sure that we get ALJs coming up.

Ms. SPRINGER. Yes, ma'am.

Ms. TUBBS JONES. So, when we're back here in late October, and we want to find out how many judges you have hired, and what the process is in, you will be able to give it to us with some certainty?

Ms. SPRINGER. That is my goal, and I don't want to wait until then, I want to give you updates each month on—as we finish each of these steps, so that you know that we're on track, and we're entirely transparent.

Ms. TUBBS JONES. How much input does the commissioner have in your process?

Ms. SPRINGER. I discussed the time line with the director, to make sure that this—that he is aware of it, number one, and also to request that he could help us to provide some support for the judging process, and he has agreed to do that.

Ms. TUBBS JONES. Commissioner, you were with Social Security previously. Is that correct, sir?

Mr. ASTRUE. Yes, that's true.

Ms. TUBBS JONES. How long ago was that?

Mr. ASTRUE. Decades ago, from 1986 to 1988.

Ms. TUBBS JONES. 1986? What were you doing then? I'm out of time, okay. Can I get just—what were you—what did you do, 1986 to 1988?

Mr. ASTRUE. I was Counselor to the Commissioner.

Ms. TUBBS JONES. Okay, great. Thank you.

Chairman MCNULTY. The gentleman from Michigan, Mr. Levin, who is a long-time Member of this Subcommittee and the former Ranking Member, may now inquire.

Mr. LEVIN. Thank you, Mr. Chairman, and I will be very brief, because while I had to do something else for a few minutes, I did hear some of it, and I heard both your opening statement and Mr. Johnson's equally eloquent opening statement.

So, let me just say, you know, when we have cases like this in our district offices, it is hard to live with this. It is hard to tell people that—who are disabled, and in the majority of cases would be adjudicated disabled, who are without resources, we tell them that the U.S. Government has months, years before we're going to get to their case.

For them, this is like Katrina. I think there has been a combination of incompetence and insensitivity in this—in the government. These last years, Congress did not act. To the benefit of this congress, we decided to do something.

I will close with this. I don't know how you people can continue doing your work with these results. I don't know how you live with yourselves. If you met—what is it—700,000 people, they came into your offices all at once, and you looked, and two-thirds of them were going to get benefits, that's more or less—and now they have nothing?

Mr. ASTRUE. Let me try to answer that, because I think that is directed more at me than at Director Springer. I am as unhappy as any of you with the situation and the disability backlog process. This is why I came back to Washington. There is really not much else that's high profile happening at the Agency right now. This is a longstanding historic interest of mine; it's a professional interest, and it's a personal interest. I took my father through this process in 1985.

Mr. LEVIN. So, are you going to speak out when there is inadequate money?

Mr. ASTRUE. I already have. That's part of my testimony, it's been part of every single visit I've taken to the Hill. I made three visits last week to Members of the Appropriations Committee. I've got one this afternoon. I am doing everything I know how to do to move this along.

I spent 60 percent of my time in the first 6 weeks on this disability review. We start every single weekly senior staff meeting with a report from Jim Winn, my Associate General Counsel, on proposed regulatory and legislative changes.

At the end of the 6 weeks, we had specs. We have had the drafting begin. We are sending things over to OMB. We're not trying to package things together for Public Relations purposes, the way these things are often done. At every single meeting, we ask the question, "Is there anything we can do to move this along faster?"

I've only been back a couple of months. I am doing everything I know to move this along.

Mr. LEVIN. You are going to meet with the staff every month, is that—

Chairman MCNULTY. Director Springer has committed to monthly staff updates between her staff and the staff of the Subcommittee, and we are going to keep on schedule with that.

Mr. LEVIN. I think it is a tribute to what you are doing. I think you can expect full fury from these two gentlemen. They're good at it. They will have the back-up of all of us.

I don't—there aren't very many people more vulnerable that we have treated more shabbily. You have been here a few years, doing this.

Ms. SPRINGER. If I may? Congressman, for my part, I want to acknowledge that the call that I got from this Committee after the last hearing helped me to push the OPM process faster. That has resulted in our faster time table for getting new ALJs. So, our contribution to fixing that backlog, the—just specifically, the ALJ piece—will go much faster, as a result of the oversight of this Subcommittee.

So, I appreciate that, and you have got my commitment, not only to making the date, but to keeping you updated each step, as we go along.

Mr. LEVIN. Well, good luck. There will be more on your case.

Ms. SPRINGER. That's fine.

Mr. LEVIN. Congratulations on this hearing.

Chairman MCNULTY. I thank the gentleman. With the agreement of the Ranking Member, we would like to invite distinguished—

Ms. TUBBS JONES. Thank you.

Chairman MCNULTY [continuing]. Member Stephanie Tubbs Jones to continue to inquire.

Ms. TUBBS JONES. Commissioner, you said the reason you came back to Washington is to deal with the disability problem?

Mr. ASTRUE. Yes, that's correct.

Ms. TUBBS JONES. Where were you? You said you came back to Washington. Where were you?

Mr. ASTRUE. I was in Boston, which is—

Ms. TUBBS JONES. What were you doing in Boston?

Mr. ASTRUE. For 14 years, I was working with biotech companies, mostly working in the orphan drug area.

Ms. TUBBS JONES. Okay. So, now, let me hear what you're going to do.

Mr. ASTRUE. Again, I'm somewhat constrained here, because we have got a package of things that we either have sent to OMB, or are in the process of sending to OMB. Therefore, I am not free to discuss those packages.

You can see some of the directions in which we are heading from the testimony. You can see that we have made significant systems changes, which I discussed in my testimony. We have made changes to promote the productivity of ALJs by the use of the FIT template that I have discussed.

We have done what we can do extremely quickly, and administratively, there is precious little that I am allowed to do. So, I am working the process as fast and as hard as I can, to the extent that we have administrative things that we are doing.

We have accomplishments. We have made a target of reducing those “aged” cases. If you had been here during the testimony, you would have heard that—

Ms. TUBBS JONES. I read your testimony.

Mr. ASTRUE. Okay—

Ms. TUBBS JONES. I didn’t have to hear it.

Mr. ASTRUE. All right. So, we were up at 63,000—

Ms. TUBBS JONES. Don’t challenge me about whether I was here or not, okay?

Mr. ASTRUE. We were up at 63,000 “aged” cases as of October 1. We are on track to get rid of that by the end of the year. In fact, we are ahead of that pace. We are doing what we can, administratively, as fast as we can. To the extent that my hands are tied until I go through procedures and processes, that is what I am doing, and I am moving as hard and—

Ms. TUBBS JONES. Well, what can we do to help untie your hands?

Mr. ASTRUE. Well—

Ms. TUBBS JONES. What can we do—since you say you’re so constrained, tell us what we, as Members of Congress, can do to help untie your hands, sir.

Mr. ASTRUE. Sure. The most important thing that you can do is make sure that we come in at least at the President’s budget. That hasn’t happened in 5 years.

There is some joint responsibility for this problem. If Congress had appropriated the money requested in the past 5 years, we would be in a much better situation. We would have been able to hire administrative law judges, and make other changes. Also, when we go through—

Ms. TUBBS JONES. Well, you know, in response to that, there are a lot of issues that we can talk about, why there is no money to appropriate. But I accept that.

Mr. ASTRUE. If I could—

Ms. TUBBS JONES. We could appropriate a lot of money.

Mr. ASTRUE. If I could—

Ms. TUBBS JONES. What else can I do?

Mr. ASTRUE. Okay. When we’re going through the DSI process, it is a very complicated set of proposals. Everyone has things they like, and things they don’t like.

One of the concerns that I have going through it is that some of the things that are popular in the Congress require an awful lot of FTEs. If I have to keep spending those FTEs on aspects of DSI that have very little connection with reducing the backlog, that is going to tie my hands in doing the things that I need to do to reduce the backlog, the most important thing being getting a significant number of additional ALJs online and using them better and smarter than we have before.

Ms. TUBBS JONES. So, are you suggesting that DSI is not a good idea?

Mr. ASTRUE. No, that’s not what I said. What I have said many times before is that it is a complicated package of ideas. Some of them are terrifically good ideas. Some of them are good ideas that need modification. Some of them appear to me that they are not as good as they thought they were, and some of them may actually

harm the backlog problem, if we were to roll them out nationally—

Ms. TUBBS JONES. Are you suggesting, then, that we need to set aside some of the DSI proposals in order to hire administrative judges?

Mr. ASTRUE. We may need to do that. Again, we are working very hard to come up with the numbers to try to come up with the consensus to do this. I have briefed—

Ms. TUBBS JONES. So what have you got to say that I—

Mr. ASTRUE. If I could finish? We have briefed your staff, the Committee's staff, on a bipartisan basis about this, as this is a work in progress. OMB came up and did a 3-day site visit, so that we could try to come up with numbers, so that we could come up with solid, agreed-upon costs for some of these things so that we could have a conversation, not only internally, but with the Committee staff and the Members about what's most important, what is the priority, going forward.

Unfortunately, this was set up as an "initiative," not as a demonstration project. It has been harder, therefore, to pull numbers out of this that everybody can rely on, than if it had been done differently. That's too bad. I am stuck with it. We are doing the best we can, as fast as we can. We have been as transparent as possible, with staff both on this Committee and the Finance Committee about where we are, what we are doing, and how we are trying to move quickly to fix this.

Ms. TUBBS JONES. I am so happy that you are working so hard in order—in your new job. But I am confident that you are not working any harder than I work every day. So, you don't get sympathy about the work hard.

But let me say this to you, Mr. Commissioner. I would like to invite you to Cleveland, Ohio, to talk to my constituents who are claimants, who are waiting in line. I invited Commissioner Barnhart to Cleveland, she came to Cleveland. She had a chance to speak to the staff from your own agency and then hear from the people.

Because we all work hard. All of our goal is to make sure that the people of America get what they pay for, meaning the money that they put into the process. I look forward to having a relationship with you, Commissioner, and having the opportunity to work on behalf of the people of America.

But understand, unfortunately, you took this job in the situation that it is in, and you've got to wear it, just like all of us wear whatever else happens in the job. So, you know, get some thick skin and come on and hang with us. We're ready to make a difference.

Mr. ASTRUE. With all due respect, if I didn't have a thick skin, I wouldn't be here. I responded to the implication that we weren't doing enough, and I wasn't doing enough, because that's not true.

If the suggestion is that we don't get it, and that we're not focused on what the priorities are, that is simply wrong. That's not true.

Ms. TUBBS JONES. Well, you know, Commissioner, in life—I know your mother probably told you this—"Don't say it, show it."

Mr. ASTRUE. With all due respect, this is an extraordinarily complicated process. It takes time to change some things. We have

changed what we can in the short run. We have listed that for you. We have gone through with the staff in detail about what we're thinking of, what we're trying to do, and how we're going through the process. You know, I don't have unilateral—

Ms. TUBBS JONES. That sounds good.

Mr. ASTRUE [continuing]. Power, you haven't given it to me. You haven't—

Ms. TUBBS JONES. It sound good. Show me.

Mr. ASTRUE. Fine. We are going to show you.

Ms. TUBBS JONES. Thank you.

Chairman MCNULTY. The Ranking Member may inquire.

Mr. JOHNSON. Thank you, Mr. Chairman. You know, both of you, Social Security employs over 80 percent of all Federal administrative law judges. Yet, Social Security has almost no say in how those judges are recruited, or under what standards.

I wonder how your agencies work together in drafting a new regulation.

Ms. SPRINGER. If I may, sir?

Mr. JOHNSON. Sure.

Ms. SPRINGER. Yes. Social Security gave us comments along the way several times, and we—when the proposed regs were out, when they were becoming final, when they were being drafted. We also gave them additional opportunity to comment beyond what the typical community would be allowed to have.

So, we have worked very closely, not only on the regulations, but also on the qualifications standards, because, as you say, they are the biggest customer we have in this whole process.

Mr. JOHNSON. Do you have a separate register for Social Security?

Ms. SPRINGER. No, we don't. We don't. It's all one register, because the qualifications are designed to be a—meet a threshold that should apply to all agencies. We want all ALJs to be at a certain level of qualification. So, the same test, the same exam, and the same register is available for all agencies, whether they are a large customer or a small customer.

Mr. JOHNSON. You feel like your ideas have been included in the process?

Mr. ASTRUE. Yes. I think that while Director Springer and I are just getting to know each other, we have talked by telephone on these issues, and our staffs do talk with some regularity on all of these issues. As I said, I think that the working relationship on most issues at the staff level is fine.

As I said, we are planning on sending a whole slew of our people over there to work to try to move this process along. From everything I can see, at the staff level, things are working just fine.

Mr. JOHNSON. Thank you both for being here. Thank you, Mr. Chairman.

Chairman MCNULTY. Thank the Ranking Member. Mr. Becerra may inquire.

Mr. BECERRA. Thank you, Mr. Chairman. Thank you for being here. I apologize for having gotten here a little late.

I know you have been asked a number of questions about where we are going, and I appreciate some of your responses, in terms of trying to bring on the staff that are needed to address the backlogs.

Do you have a level of confidence that you are going to receive the dollars from the Administration, through their budget request, that you need? I know you have said that you have—if you get what the President has requested in his budget, that you would be happy with that. But getting what the President has requested in his budget, is that enough to get you where you need to go to try to markedly reduce this backlog?

Mr. ASTRUE. I think so. I think it will make a significant downpayment. I am holding open the question of what we might need in the outyears, and whether we need to make some adjustment. We're not there yet.

I think that getting that budget, though, is important. I am trying to make a personal commitment. We are trying to visit as many Members of the Appropriations Committees as possible. I think perhaps we have been guilty of relying too much on all of you and your colleagues over at the Finance Committee, and I don't want to make that mistake.

So, I'm going on a regular basis to plead my case more broadly and am doing it again this afternoon.

Mr. BECERRA. Now, do you believe—give us a sense, in a year—May 1, 2008.

Mr. ASTRUE. Yes.

Mr. BECERRA. What will you have accomplished, if you get the moneys that you—that the President requested?

Mr. ASTRUE. I know people are impatient, and I sympathize with that. But it is going to take a little time to turn this around.

Assuming that we get the President's budget, and we can hire ALJs on schedule, and there isn't a sudden turn in the economy that changes the number of applications in disability filers. We don't have precise numbers now—but, in general, we think what we're looking to, essentially, hold the line about where we are now until early next year.

We think with the regulatory and legislative proposals we've got that hopefully will be out, with further progress on the system side, with additional ALJs, we will actually start to drive those down some time early next year. I can't give you a precise date.

Our hope is that we can get it going down almost as fast as it went up. That's our goal. We think that if we can squeeze out of our budget room for the FTEs and the ALJs, and we get the budget, we can hire on time, we think that's an attainable goal.

Mr. BECERRA. There were a lot of "ifs" in what you said.

Mr. ASTRUE. There are a lot of "ifs" there, that's right.

Mr. BECERRA. Okay. Is one of the "ifs" that, even if you get the money, you may not be able to hire the ALJs that you need?

Mr. ASTRUE. I am assuming that that's going to go forward. There is pending litigation, and I think my main concern is the pending litigation might somehow interfere with our hiring of the ALJs. I am hopeful that that won't happen.

Mr. BECERRA. You're hoping to at least not have the backlog increase.

Mr. ASTRUE. Yes, that's right. We have actually taken some risk here. I had some concern—I was very clear with Deputy Commissioner deSoto when I came on, that I wanted to make reducing the "aged" cases a top priority. I understood, because those typi-

cally take, I believe, an average of 17 hours to clear up, that that might have a negative impact on the caseload, overall.

Fortunately, we have been able to bring down those aged cases without too bad of an effect on the caseload, overall. When we have gotten rid of those “aged” cases, hopefully, it will be that much easier to keep it approximately level until the cavalry comes over the hill.

Mr. BECERRA. So, do you think you’re going to reduce the days that it takes to get these cases in and out the door?

Mr. ASTRUE. Absolutely. I don’t think we can do it any other way. That’s the goal.

Mr. BECERRA. Okay. But so, what—how many days will you reduce the wait, or the time it takes to process a case? What are some numbers?

Mr. ASTRUE. Yes—

Mr. BECERRA. Next year, May 1, 2008. Tell us, what will disability applicants find in a year?

Mr. ASTRUE. What we are focused on, in terms of the metrics right now, is the overall numbers of dispositions, the overall number of cases pending, and the number of “aged” cases pending—

Mr. BECERRA. You have had to have projected out—

Mr. ASTRUE. Yes.

Mr. BECERRA [continuing]. What the dollars will give you. If—again, there are lots of ifs—but if things fall in place, you hire the ALJs, you don’t have problems with the litigation—

Mr. ASTRUE. I don’t want to misspeak. We have metrics for translating caseload data into average time. I don’t think I can do that on the top of my head, and I don’t want to get it wrong. So, if I could, I would submit that for the record.

[The information follows:]

The FY 2008 President’s budget assumes hearing receipts in FY 2008 will exceed the number processed in that year, resulting in increases to the number of hearings pending and average processing time. In FY 2008, with full funding of the President’s budget, SSA expects to process 548,000 hearings. The number of hearings pending is expected to increase from 738,000 in FY 2007 to 768,000 in FY 2008. The President’s budget assumes that the average processing time for hearing decisions will increase to 541 days in FY 2008, from an estimated 524 days in FY 2007, and an actual level of 483 days in FY 2006.

Mr. BECERRA. If you could, please submit it for the record. It would be nice to know, for the money that you get, what the American public gets. I think it’s important, because of the dire situation that you are in, and because of the growing caseload that you have, what could be expected.

It could be that what the President has requested doesn’t do us enough good, and that we have to go beyond that. If you don’t tell us that—

Mr. ASTRUE. Yes.

Mr. BECERRA. If you’re just going to stay stagnant at where you were before, that doesn’t help all those applicants who are waiting hundreds and hundreds of days.

Mr. ASTRUE. You will know, because as you undoubtedly recall, under the independent agency statute, the Congress and the public get to see my request, not just the President’s request. I haven’t had a chance to make that first budget request yet.

So, you will be able to see, for this next one and the years after, what we are requesting, and presumably have an understanding of why. If there is a difference, then you will be able to have a dialog with me and the Administration.

Mr. BECERRA. Thank you. Thank you, Mr. Chairman.

Chairman MCNULTY. I want to thank all of the Members for their inquiries. We are deeply appreciative to both the commissioner and the director, for coming here personally.

I just wanted to make a final comment. Any time that I am interacting with someone to try to address a serious problem, I try to put myself in their position. I have tried to put myself in your position, in assessing how difficult and complicated this particular problem is.

I also ask, as we move forward, that you try to put yourself in our position, as representatives of the people, and what it's like for us when someone comes in to our office with what appears to be a very legitimate case for their application for a Federal program like this program. They say to us, "Representative, how long is it going to take to get an answer?" We have to tell them, "Maybe a couple of years."

This must stop. This is unacceptable. It is a national embarrassment. I want to thank you for committing to what you have committed to today. As I see it, there are a number of parts to the puzzle.

But the two major ones are the funding issue, where I think, with the help of some of these Members, and with your help, we have made significant progress. In the House budget resolution, we are \$400 million over the President's request. I think we are going to get a similar number in the Senate. So, we are making progress on that.

I thank the Members, and I thank you for what you are doing with regard to the appropriations process. That is the next step. That is what we are working now, to make sure that we have a good outcome, as far as the resources are concerned. I think we are going to do that.

The other major part of the puzzle is getting this new register. That is why I am thankful, Director Springer, for your commitment to stick with this schedule, to give us monthly reports, so that we make sure that we're on track.

If we do those two things this year, we have a reasonable chance to do what the commissioner just referred to, and that's reversing this trend on the backlog, getting it going in the downward direction, and getting the people, the resources, that they need and deserve. The hearing is concluded.

[Whereupon, at 12:22 p.m., the hearing was adjourned.]

[Submissions for the Record follow:]

Statement of Association of Administrative Law Judges

Thank you for the opportunity to provide this statement regarding the backlog of disability cases at the Social Security Administration, Office of Disability Adjudication and Review. My name is Ronald G. Bernoski. I am an administrative law judge who has been hearing Social Security Disability cases in Milwaukee, Wisconsin, for over 25 years.

I also serve as President of the Association of Administrative Law Judges (AALJ), a position I have held for over a decade. Our organization represents the administrative law judges employed at the Social Security Administration and the Depart-

ment of Health and Human Services. One of the stated purposes of the AALJ is to promote and preserve full due process hearings in compliance with the Administrative Procedure Act for those individuals who seek adjudication of program entitlement disputes within the SSA. The AALJ represents about 1100 of the approximately 1400 administrative law judges in the entire Federal Government.

In 1946 the Congress passed the Administrative Procedure Act to reform the administrative hearing process and procedure in the Federal Government. The 1930's had seen a rapid growth of administrative law with hearings being conducted by hearing examiners appointed by the agencies. The tenure and status of these hearing examiners were governed by the Classification Act of 1923, as amended. Under this Act, the classification of these hearing examiners was determined by ratings given to them by the agency and their compensation and promotion depended upon their classification. This placed them in a dependent status. Many complaints were voiced against this system with allegations raised that the hearing examiners were "mere tools of the agency" and subservient to the agency heads in their proposed findings of fact and recommendations.

With the adoption of the Administrative Procedure Act, Congress provided that hearing examiners (now administrative law judges) be given independence and tenure within the existing Civil Service system. By making this change, Congress made hearing examiners "a special class of semi-independent subordinate hearing officers" by vesting control of their compensation, promotion and tenure in the Civil Service Commission (now U.S. Office of Personnel Management) to a much greater extent than in the case of other Federal employees. This change removed hearing examiners from strict compliance with the Classification Act and transferred some of the agency controlled functions (pay, promotion and tenure) to the Civil Service Commission to protect the American public by giving administrative law judges decisional independence. Congress also gave the Civil Service Commission oversight authority for the hearings system provided under the Administrative Procedure Act, which included providing an annual report to Congress and appointing needed advisory committees. [See *Ramspeck v. Federal Trial Examiners Conference*, 345 U.S. 128 (1953).]

Before discussing OPM's management of the ALJ program, I would like to note that Commissioner Astrue, immediately after his appointment, invited us to meet with him to discuss important issues he would be facing as the new Commissioner. We did meet with him during the first week of April. The principal issue we discussed was the backlog. During this discussion we both agreed that in order to reduce the backlog it would be necessary to hire additional best qualified applicant judges as soon as possible. We mutually agreed to work closely together toward this important goal.

We believe OPM has defaulted on its responsibility to regulate the Federal administrative law judge program. It has failed to maintain a current register for the agencies to use for hiring new administrative law judges (ALJ), and the current register has been closed to most new applicants since 1999. It has also abolished the OPM Office of Administrative Law Judges leaving no single office or person in charge of overseeing this function.

OPM is solely responsible for the current crisis with the administrative law judge register and the hiring process for the various agencies, including the Social Security Administration. Director Springer, in her written testimony, conceded the current ALJ hiring register at OPM has been closed since an adverse ruling by the Merit Systems Protection Board in 1999. In that case the plaintiffs had challenged the legal sufficiency of the ALJ examination. An appeal of the case was taken to the United States Court of Appeals for the Federal Circuit and OPM prevailed in a decision issued by the court in 2003. At that time, OPM had a register found to be legally valid by a court and it could have immediately started to receive and process all new applications for the ALJ position. This would have allowed OPM to provide the agencies with all the new judges needed to meet the existing demand, while it worked on developing a new examination process for placing names of applicants on a new register. OPM instead created the current problem by not resuming the processing of applications after the litigation had ended. In fact, OPM has acted as if it had lost the lawsuit and not like a party that had prevailed in the litigation. According to the data submitted at the hearing by OPM, it has provided only 363 new administrative law judges for SSA since 1999 when the register closed. That is only 45 judges per year, no more than enough to keep up with normal attrition.

OPM is now attempting to establish a new ALJ hiring register, and according to its written and oral testimony at the hearing the process will not be completed until late October 2007. We fully anticipate that the "time-line" for the new register will not be strictly adhered to and the register will not be completed until January 2008. Social Security will then need to request a "certificate" of applicants for a new judge

class. After receiving the certificate, Social Security will need to complete its hiring process which consists of interviewing, selecting and placing the new judges in hearing offices. This process will be followed by a five week "new judge training course." We anticipate that this hiring process will delay the starting date for these new judges and they will not be hearing cases until June 2008, which is over a year from the date of this hearing. We believe that this time period could have been shortened by OPM processing new applications for the existing register and thereby providing new ALJs to SSA in a more timely manner. This approach would provide OPM with ample time to establish a new ALJ examination and register, while continuing to meet the needs of agencies with new judges.

We anticipate additional litigation which may cause more delay. There are several grounds. Since applicants on the existing register will be required to qualify under the new ALJ exam, an individual harmed by the transition to the new register may challenge the fairness of the new procedure. Subsequent to the hearing OPM announced, on May 4, 2007, that it was only opening the new register for the first 1250 applicants or until May 18, 2007, whichever occurred first. We feel applicant 1251 may protest. We have just learned that OPM closed the new register at midnight May 8, 2007. This means that after being closed since 1999, the new register was opened for just 4 days. We believe that this short time period has denied many best qualified applicants the opportunity to complete for a position on the ALJ hiring register.

We believe OPM, by abolishing its Office of Administrative Law Judges, directly led to this crisis. This office had been in existence in OPM for many years and at one time was headed by an administrative law judge. It was through this office that OPM administered the ALJ program in the Federal Government, including maintaining the hiring register. Several years ago, OPM abolished this office and dispersed its responsibilities throughout the agency on a functional basis. There is now no office or person in OPM that we know of who is responsible for oversight of the ALJ function in the Federal Government. This is of great importance, because the Administrative Procedure Act gave OPM an oversight and regulatory responsibility over ALJs that it does not have for other Federal employees. With this office now abolished, there is no effective system in OPM to carry out this vital function. This responsibility was entrusted to OPM by the Congress to protect the American public by ensuring the decisional independence of administrative law judges. Congress in enacting the APA was determined to provide a full and fair hearing for the American people that was free from undue agency influence over the decision maker judge. OPM has breached this trust. At one time OPM was required to file an annual report with Congress on the state of the ALJ function in the Federal Government. We feel Congress should reinstitute this reporting requirement.

We agree with the statement provided for this hearing by the Social Security Advisory Board (SSAB), that "the fact that a new ALJ register has not yet been established in and of itself raises questions about whether the ALJ recruitment process, as currently constituted, serves the best interests of the Social Security program and the public who look to the program for adjudication that is both impartial and efficient." To paraphrase another SSAB conclusion, OPM has shown that it is incapable of providing the American public with the "best qualified" administrative law judges. We recommend that this program be reformed and that the functions formerly performed by the OPM Office of Administrative Law Judges be removed from OPM and placed in a separate "Administrative Law Judge Conference of the United States" modeled after the Judicial Conference of the United States which administers the U.S. Federal courts. Legislation providing for this change was introduced in the 106th Congress (H.R. 5177). The Administrative Law Judge Conference was to be headed by a Chief Administrative Law Judge who would administer and oversee the administrative law judge function in the Federal Government. Therefore, we respectfully ask the Chair of this Subcommittee to request the Chair of the House Judiciary Committee to investigate the need for this reform and for the need for legislation, such as that introduced in the 106th Congress, to establish an "Administrative Law Judge Conference."

Statement of Consortium for Citizens with Disabilities

The Consortium for Citizens with Disabilities (CCD) is a working coalition of national organizations working together to advocate for national public policy that ensures the self-determination, independence, empowerment, integration and inclusion of the 54 million children and adults with disabilities in all aspects of society. The

CCD Social Security Task Force focuses on disability policy issues in the Title II disability programs and the Title XVI Supplemental Security Income (SSI) program.

People with severe disabilities who apply for Social Security disability benefits or SSI disability benefits must wait months for an initial decision. And, if it is necessary to appeal an unfavorable decision, they may wait years to get benefits to which they are entitled. As revealed in the recent hearing held by this Subcommittee on February 14, 2007, some people lose their homes and families while they wait for decisions. Others deplete their resources and cannot afford critical medications and treatments, resulting in increased disability and even death.

The current processing time to get a decision after filing an application averages about 3 months. A first level appeal adds, on average, 2 more months. If an appeal is filed for a hearing, the average wait to get a decision is now an additional 545 days, or more than 1½ years. In some places, the average wait is 900 days or almost 2½ more years. And, there are thousands of cases that are approaching the 3-year mark. The average processing times for hearings have increased dramatically since 2000, when the average waiting time was 274 days. The President's budget proposal for fiscal year 2008 indicates that average waiting times will continue to grow.

Reducing the backlog and processing times must be a high priority. We urge commitment of necessary resources and personnel to the Social Security Administration (SSA) in order to reduce delays so that the process is more responsive to claimants and their families. This includes hiring additional Administrative Law Judges (ALJs) and the staff needed to support them.

Supplemental Security Income (SSI) and Title II disability program cash benefits, along with the related Medicaid and Medicare benefits, are the means of survival for millions of individuals with severe disabilities. Under the current budget situation, people with severe disabilities have experienced long delays in accessing these critical benefits.

We have long-supported the critical role played by the ALJ in the disability claims process. A claimant's right to a hearing before an ALJ is central to the fairness of the adjudication process. This is the right to a full and fair *de novo* administrative hearing by an independent decision maker who provides impartial fact-finding and adjudication. For claimants, a fundamental principle of this right is the opportunity to present new evidence in person to the ALJ, and to receive a decision from the ALJ that is based on all available evidence.

The need to hire additional ALJs is beyond dispute. As noted at the May 1, 2007 hearing, there are two main reasons why additional ALJs have not been hired: (1) inadequate funding for SSA's administrative budget; and (2) the failure of the Office of Personnel Management (OPM) to develop a new examination for ALJ candidates. We are optimistic that both issues will be addressed in the near future. Both the House and Senate Budget Resolutions recommend funding for SSA's fiscal year 2008 administrative budget that exceeds the President' request. And, only a few days after the May 1 hearing, OPM issued a new ALJ vacancy announcement.

At the May 1, 2007 Subcommittee hearing, SSA Commissioner Astrue referred to a recent report on ALJs, issued by the Social Security Advisory Board (SSAB). *Recruiting SSA Administrative Law Judges: Need for review of OPM role and performance* (Apr. 2007) (available online at: www.ssab.gov/documents/ALJ_Issue_Brief_3.pdf). This issue brief discusses OPM's role in the SSA ALJ selection process and finds that SSA has unique ALJ needs that differ from other Federal agencies. These factors include the ability to handle higher caseloads, the responsibility to develop the record, and protecting the interests of the parties, since the SSA process is not adversarial. As a result, the SSAB concludes that "[c]onducting Social Security hearings therefore requires certain skills that go beyond those needed by government ALJs generally." SSAB Issue Brief, p. 5.

The SSAB recommends that Congress consider three options that would give SSA a larger role in the ALJ selection process and would make "the demonstrated ability to manage a large docket" a selection factor. SSAB Issue Brief, p. 5. The three options recommended by the SSAB are:

- (1) A separate OPM register that would use characteristics derived from identifying characteristics of current ALJs "with high quantity and quality of work";
- (2) A single register with supplemental qualifications data, which would include the "candidates' demonstrated ability to manage a large docket . . ."; and
- (3) Transfer management of the selection process to SSA. Under this option, SSA would be allowed to "conduct its own selection process" so that it could "establish criteria that give credit for experience with its particular workloads."

We urge Congress to proceed with extreme caution on these options. The ability to manage a large docket should not necessarily become a prime characteristic for selection of an ALJ.

Further, in order to maintain the critical importance of ALJ independence, the selection process should not be transferred to SSA. The SSAB recognizes that “the public . . . has an interest in a hearing process that is demonstrably fair.” We believe that the independence of the ALJ system must be preserved. While OPM’s recent history in the ALJ selection process has not been optimal, continued oversight by SSA and Congress should ensure that OPM will be able to maintain a current ALJ register that meets the needs of SSA and the other Federal agencies that employ ALJs.

Thank you for this opportunity to submit this statement for the record on the important issue of hiring Administrative Law Judges for the Social Security Administration.

Edgardo M. Rodriguez, Esq.
San Juan, Puerto Rico 00902–2287
May 15, 2007

Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

Honorable Chairman Michael McNulty and Members of the Subcommittee on Social Security:

I am a failed applicant for the 2007 Administrative Law Judge Examination, who could not submit the application within the exaggerated time constraints imposed by the Office of Personnel Management (“OPM”).

After almost 8 years of being closed, the announcement for the ALJ Examination which is administered by OPM reopened under Vacancy Announcement Number 2007ALJ–134575. This announcement was issued on May 4, 2007 and would close on May 18, 2007 or until the day on which 1,250 completed applications were submitted, whichever came first. Despite the complexity of the ALJ application, OPM closed the announcement because it allegedly received 1,250 applications and closed the announcement on May 9, 2007.

In my case, on the same day that the announcement opened, May 4, 2007, I opened an OPM account to work with my ALJ application on-line. It took me a lot of time and effort to complete the quality, neat responses that OPM was expecting of all applicants. During the week following the reopening of the Examination, I met with and secured the endorsement of four United States District Judges. I did my best effort during the limited time constraints imposed by OPM. As a matter of professionalism and respect for the position for which I wanted to be considered, I put in a lot of hours in my application process. As I tried to complete my application, I also had to deal with my work demands. By the time that I completed my application, the examination announcement was closed, making it impossible for me to submit my application. Four or five days was not enough time to complete the ALJ application if OPM wanted to create a new register with highly qualified candidates. State and Federal judges have to fill out applications that take no less than a month to complete.

I wrote a letter to OPM Director Linda M. Springer to suggest a summary remedy in the form of an extension of time to those applicants, who, like myself, invested substantial resources to complete the application and who were suddenly left out without the possibility of submitting our completed applications. But, on second thoughts, I have to conclude, however, that I cannot look up to this process as a serious thing, and that, with all due respect and fairness, the process lacked any legitimacy. For instance, on Friday, May 4, 2007, OPM made the announcement only in its USAJobs’ website. Some potential candidates may have been gone for the weekend without learning of the announcement; some potential candidates may have been out of the country; some may have been hospitalized; some could have been in the middle of an intense litigation, etc. Others may have been gathering information not at-hand, such as the required e-mail addresses from verifiers and references, etc. I also can imagine that, since the on-line application process was an innovative feature, many applicants under pressure could have submitted their application by mistake, or could have made any other type of mistake in the application process, thus foreclosing possibilities for other qualified applicants. Perhaps, all applicants would have received the lacking due process had OPM provided a specific closing date rather than a speculative, uncertain event to close the examination. Unfortunately, I think that the whole process was vitiated and that if OPM does not

set aside its ill-attempt to reopen the Register or if Congress does not intervene to provide the leadership needed, this wrong can only be remedied through legal action, which will further delay the ALJ needs of many agencies. I trust that Congress can assist to solve this troubled situation.

Sincerely,

Edgardo M. Rodriguez

Statement of Margo A. Yhap, Rodeo, New Mexico

I am submitting this testimony on behalf of Margo A. Yhap, just one of a reported 700,000–1 million American citizens waiting for a hearing/appeal for adjudication of their disability claim, which in fact, is no different than filing a claim for benefits afforded under a health care or car insurance policy which the claimant paid money out of pocket for said insurance policy.

Ms. Yhap's claim was originally filed on 05/27/04, with reconsideration denied 07/11/05. The hearing request was noted by SSA and notification was postmarked on 9/08/05. No hearing as yet.

As the recently published New York Times article dated 5/01/07 elucidates, the backlog in processing claims hearings and appeals on denials take an average of 515 days, Ms. Yhap has now exhausted her life savings, and now is forced to turn to the State of New Mexico General Assistance and food stamps, slipping into poverty with no health insurance or income since her last date of employment on 3/31/03, waiting approximately 1095 days, almost doubling the national backlog average, with no hearing in sight. Her paperwork was "lost" between Nevada and New Mexico after an address change was filed but not noted. . . . SSA admitted that error in 2005.

Considering that it is reported that slightly more than one-quarter of all approved claims are awarded after an appeal hearing, and nearly two-thirds of the people who appeal ultimately prevail, for this claimant, should she ultimately prevail, the suffering and further loss of health and stability would be particularly egregious. The prospect of an appeal is at this point, traumatic.

I think I have an idea how bureaucracy works and many of the issues. I was in health care administration and the health insurance business for 15 years prior to my own disability in 1991, which thankfully was won on reconsideration with no attorney. I know that if we had habitually treated customers like this, likely the insurance commission or some such regulatory agency would have been available for recourse or redress. It sure was in my case!

It appears if this editorial is correct, it is incumbent upon our Congress to remedy this unconscionable situation for your constituents, who paid into this involuntary system, yet fairly and in good faith.

In this regard, I believe all state residents should be outraged that their own state budgets are stretched, covering what the Federal program is intended to, but way scaled back. New Mexico does not offer Medicaid to persons involved in adjudication with SSA for disability, thus depriving worthy applicants of any ability to state their case. The treating physician that actually spends some time with the client is allowed to have heavier weight than an IME paid interview. But how does one pay for it?

How fair is this? Sick people, most of whom are found eligible years later, if they live, are eking it out on \$263.00 general assistance and food stamps. . . . Grateful? Yes.

That does not mean in any way it is acceptable. It's classic "Catch 22."

At least accused criminals are assigned public defenders when forced to defend their rights or innocence and have rights to a speedy trial. All we did was get sick and try to access our disability program, let alone maintain medical stability and care with no income or medical insurance. Then we pay our own attorneys for the privilege of accessing our paid insurance policy after starving for years—some homeless, some always on the verge.

Surely, there are priority problems here. What is mirrored back to those endlessly mired in this morass is that now that we are unable to contribute to the GNP, we are low priority and perhaps disposable.

Her attorney has no answers . . . the SSA office recently informs her that the backlog is due to "Katrina" and that to appear she now needs to travel across the state to Roswell, but she is disinclined to do that, losing her opportunity to be heard in person, as her health would not allow such a trip now, and it took her almost 1 year to be reimbursed (calling 13 times) for travel to the IME, required by SSA

well over 2 years ago, making any IME examination pretty irrelevant at this point, and as one of her providers who have now written to New Mexico Senators, she has worsened as a result of the stress of this protracted ordeal.

Mostly we become so exhausted and find ourselves “fenced out” of political process—the cost of self-defense too high. For instance, though previously perfectly capable of writing this letter, she is not able to participate in her “defense” of her rights, and to effectively express outrage of the systemic neglect we are suffering. I took over a week to form this, and a difficult task, but we believe the only government worth having is participative, and thus a responsibility.

Her treating psychologist is a Senior Disability Analyst, and the treating physician a certified medical examiner. What more could you want? At 3 dollars a gallon for fuel, she cannot even afford the trip or the wait for travel reimbursement, and will have a telephonic hearing. . . . Whenever. Maybe, could someone just look at the file?

I would appeal to you to provide an appropriate good faith effort to Ms. Yhap, and the others like her, many as she is, without spousal or family support “to carry her through.” Perhaps you are unable to conceptualize this, or are not tied to this system, but I can hope you would never want to see your friend or loved ones treated in such a manner. Please remedy this by hiring enough ALJs to do the job for the system we have put our trust in. Many of our lives depend on you.

Statement of National Organization of Social Security Claimants’ Representatives, Englewood Cliffs, New Jersey

Founded in 1979, NOSSCR is a professional association of attorneys and other advocates who represent individuals seeking Social Security disability and Supplemental Security Income (SSI) disability benefits. NOSSCR members represent these individuals with disabilities in proceedings at all SSA administrative levels, but primarily at the hearing level, and also in Federal court. NOSSCR is a national organization with a current membership of nearly 3,900 members from the private and public sectors and is committed to the highest quality legal representation for claimants.

The Subcommittee’s focus on issues related to the disability claims backlog is extremely important to people with disabilities. Title II and SSI cash benefits, along with the related Medicaid and Medicare benefits, are the means of survival for millions of individuals with severe disabilities. They rely on the Social Security Administration (SSA) to promptly and fairly adjudicate their applications for disability benefits.

As revealed in the Subcommittee’s February 14, 2007 hearing and news articles, people with severe disabilities have experienced increasingly long delays and decreased service in accessing these critical benefits. Processing times have continued to grow, especially at the hearing level where the delays have reached intolerable levels. In some hearing offices, our members report that claimants wait more than 2 years just to receive a hearing, which does not count the time for a decision to be issued. And, according to SSA Commissioner Michael Astrue, thousands of cases are approaching the 3-year mark.

It is undisputed that SSA needs more ALJs if there is any hope of reducing the disability claims backlog at the hearing level, which is now as high as it has ever been. Current statistics demonstrate this need:

- The current average processing time at the hearing level is nearly twice as long as it was in 2000.
- The number of pending cases is more than two-and-one-half times the number in 2000, despite increased productivity by ALJs.
- About the same number of ALJs is currently hearing cases as heard cases in 1999, even though there are more than twice the number of pending cases.

We are encouraged that the situation regarding SSA’s ability to hire additional ALJs will improve over the next year. First, we are optimistic, based on the House Budget Resolution, that SSA will receive funding for its administrative expenses that more accurately reflects its service delivery needs. We applaud the Subcommittee for its efforts to increase SSA’s Limitation on Administrative Expenses (LAE). These efforts have had a very positive impact to date—The House Budget Resolution recommends that SSA receive almost \$500 million more than the President requested.

In addition, on May 4, 2007, just 3 days after the Subcommittee hearing, OPM issued its new ALJ vacancy announcement. The job announcement was open for 2

weeks or until 1250 applications were received, whichever occurred first. According to the OPM website, the job announcement closed on May 10, 2007, after the requisite number of applications was received. Despite OPM's delay over the past 4 years in making this announcement, we are encouraged that ongoing oversight by SSA and Congress will prevent a similar situation from recurring.

At the May 1, 2007 Subcommittee hearing, the issue of ALJ productivity was raised. Commissioner Astrue referred to a recent report on ALJs issued by the Social Security Advisory Board (SSAB). *Recruiting SSA Administrative Law Judges: Need for review of OPM role and performance* (Apr. 2007) ("Issue Brief") [available at: www.ssab.gov/documents/ALJ_Issue_Brief_3.pdf].

This April 2007 SSAB Issue Brief discusses OPM's role in the ALJ selection process and finds that SSA has unique ALJ needs that differ from other Federal agencies. Specifically, the SSAB focuses on the fact that "SSA ALJs handle many more cases and make many more decisions each year than ALJs in regulatory agencies." SSAB Issue Brief, p. 5. As a result, the SSAB concludes that a "demonstrated ability to manage a large docket" should be a selection factor. We believe that this emphasis on productivity is misplaced.

Over the past 5 years, the backlog has continued to grow as receipts have exceeded dispositions, despite a significant increase in ALJ productivity. Factors other than productivity, such as an increase in applications filed and reduced SSA funding for its administrative budget, have contributed to the increased backlog. Nevertheless, dispositions by ALJs have continued to grow.

In a September 2006 report, *Improving the Social Security Administration's Hearing Process* (Sept. 2006) ("SSAB report") [available at: www.ssab.gov/documents/HearingProcess.pdf], the SSAB examined the productivity of ALJs from fiscal year 2002 to fiscal year 2005. While noting that there was some variation in productivity, as with any group of workers, the SSAB "appreciate[d] the strides that SSA has made in increasing production." SSAB Report, p. 13. And the numbers bear this out. The SSAB's review of the data from 2002 to 2005 shows:

- The productivity of the middle 50 percent of ALJs (those between the 25th and 75th percentile) increased:
 - 2002: The middle 50 percent issued between 254 and 444 decisions.
 - 2005: The middle 50 percent issued between 291 and 478 decisions.
- The productivity of the 10 percent of ALJs with the lowest number of decisions increased:
 - 2002: ALJs in this category issued fewer than 185 decisions.
 - 2005: ALJs in this category issued fewer than 206 decisions.
- The productivity of the 10 percent of ALJs with the highest number of decisions increased:
 - 2002: ALJs in this category issued 537 or more decisions.
 - 2005: ALJs in this category issued 579 or more decisions.
- The median ALJ productivity increased:
 - 2002: The median ALJ produced 350 decisions.
 - 2005: The median ALJ produced 383 decisions.

SSAB Report, p. 13. The report makes several other notable points about factors that may affect the number of dispositions. First, dispositions may be low for some ALJs because, during that period, they concentrated on handling Medicare claims, which have now been transferred to HHS. Also, some ALJs may have fewer dispositions because of other assignments or details, e.g., management or union duties. However, overall, the SSAB finds it "striking" that fewer ALJs had low production numbers and more had high numbers in 2005, compared with 2002.

Increased productivity is not, in and of itself, the panacea for reducing the backlog. Pressure to dispose of cases may affect the quality of decisions, which, in turn, can lead to more appeals to the Appeals Council and to the courts. And, the SSAB also was concerned that "there is a small correlation between production levels and allowance rates" that requires monitoring by SSA. SSAB Report, p. 13.

In addition, low production numbers may not be totally within the control of the ALJs. In a point that is directly related to SSA's budget concerns and staffing issues, the SSAB recognizes that productivity depends not only on the number of ALJs, but also on the number of support staff. In 2005, the median office had 4 to 4.5 staff members per ALJ. This represents a significant decrease from the 5.4 staff per ALJ in 2001, at a time when the caseload was much lower.

Finally, the September 2006 SSAB Report addresses the fiscal reality of the current backlog situation, as it relates to productivity. Even if the bottom 25 percent of ALJs had increased their production to that of the "median ALJ," receipts still would have exceeded dispositions. "It is not reasonable to expect to reduce backlogs

without adding resources, reducing the influx of hearings, or using technology to increase productivity.” SSAB Report, p. 13.

Despite the increased production of ALJs over the past few years, the SSAB recommends, in the April 2007 Issue Brief, that Congress consider three options that would give SSA a larger role in the ALJ selection process and would make “the demonstrated ability to manage a large docket” a selection factor. SSAB Issue Brief, p. 5. We have serious concerns about these options.

The three options recommended by the SSAB are:

(1) A separate OPM register that would use characteristics derived from identifying characteristics of current ALJs “with high quantity and quality of work”;

(2) A single register with supplemental qualifications data, which would include the “candidates’ demonstrated ability to manage a large docket. . . .”; and

(3) Transfer management of the selection process to SSA. Under this option, SSA would be allowed to “conduct its own selection process” so that it could “establish criteria that give credit for experience with its particular workloads.”

We urge Congress to proceed with extreme caution on all three of these options.

The first two options elevate the ability to manage a large docket as one of the prime characteristics for selection of an ALJ. The SSAB suggests that data could be obtained from current ALJs to “identify characteristics of judges with high quantity” of work and that these characteristics could be made part of the SSA ALJ selection criteria. Whether such information can be ascertained is uncertain, at best. Would such criteria lead to many capable applicants failing to make the ALJ register? And, as noted in the September 2006 SSAB Report, the majority of ALJs, hired under the current process using a single ALJ register, have met or exceeded productivity goals.

The third option would transfer much of the ALJ selection process to SSA. We believe that this option poses the most danger to infringing, or being perceived as infringing, ALJ independence and impairing the fairness of the process. ALJs play a critical role in the disability claims process. A claimant’s right to a hearing before an ALJ is central to the fairness of the adjudication process. We strongly support efforts to reduce unnecessary delays for claimants and to make the process more efficient, so long as they do not affect the fairness of the process to determine a claimant’s entitlement to benefits. We believe that this option would affect the fairness of the process.

In the April 2007 SSAB Issue Brief, the SSAB recognizes that “the public . . . has an interest in a hearing process that is demonstrably fair.” SSAB Issue Brief, p. 6. We believe that retaining OPM’s current role in the selection process best satisfies this goal. While OPM’s recent history in the ALJ selection process has not been optimal, we are optimistic that, with continued oversight by SSA and Congress, OPM will be able to maintain a current ALJ register that meets the needs of SSA and the other Federal agencies that employ ALJs.

Conclusion

We appreciate this opportunity to comment on this issue of importance to claimants. The delays caused by the disability claims backlogs have reached intolerable levels for claimants. One of the reasons the backlog has increased so dramatically in recent years is the need to hire more ALJs. With the prospect of an improved administrative budget situation for SSA in fiscal year 2008 and of a new ALJ register, we are encouraged that the dire circumstances faced by so many claimants with disabilities who are waiting for decisions will improve in the upcoming months.

Office of Disability Adjudication and Review
Knoxville, Tennessee 37929
May 1, 2007

Subcommittee on Social Security
Committee on Ways and Means

Dear Committee Members:

The Office of Personnel Management (OPM) recently announced it will begin replacing its current register of Administrative Law Judge candidates. In light of this fact and the recent history, I ask you to encourage the Commissioner of the Social Security Administration to request a large certificate of candidates from the current register immediately. There are several compelling reasons to take this action now.

First and foremost, the Social Security Administration needs many more Administrative Law Judges and support staff *now* if it seriously intends to begin reducing

the disability backlog. If we wait to select from the promised “new” register, the wait is more likely to be measured in years rather than months. OPM has been promising this new examination and register for over 5 years. Is it reasonable to think they will have a new register ready any time in the immediate future? I find it very difficult to believe that it will. I do not claim to have any inside information regarding the inner workings of OPM, but it appears they were still contacting people to obtain basic data and asking permission to employ retired ALJ’s to serve as additional staffing in grading portions of the “new” examination. Even if they finally begin this new process at the end of the month, it is very likely it will take many months to prepare the new register. OPM, like SSA, is short staffed and would have to pull personnel from other projects and/or bring in new people on a large scale to handle thousands of applications. Organizing this team would likely not be complete before the end of summer. Then they would need a period of time for training. OPM has not processed large numbers of new applications since the 1990’s. I suspect their new workgroup will take time to get up to speed. All these factors lead me to believe that the best case scenario for expecting a “new” register is closer to the end of 2008 rather than 2007.

I am not confident the “best case” will come to pass. I suspect there is a high likelihood of delays within OPM due to their own staffing problems that could easily run into many more months. Even more critical may be the specter of litigation that could postpone implementation of the new examination. Given the length and bitterness of the *Azdell/Meeker* litigation, I suspect that some litigation-related delays are more likely than not.

Next, contrary to suggestions occasionally made by Commissioner Barnhart, the candidates on the current register are generally as qualified as the majority of selectees since 1996. Compare the scores of those selectees, subtracting the veterans’ points they received from their total scores, to those of the top 500–600 candidates on the current register. The scores are generally in the same range! It is also important to note that this top group of current candidates includes a much higher percentage of candidates that actually have significant experience in Social Security disability law than any of the last several certificates. Therefore, it is perhaps the best opportunity SSA has had to hire candidates with such experience at a rate higher than the handfuls hired over the past 15 years. I believe the records will show that less than 10 percent of Administrative Law Judges selected since 1990 had any significant experience in Social Security disability law before being hired by SSA. I do not impugn the abilities of those judges. They eventually learn the system and become productive, but there is no denying that they had a significant learning curve. Hiring more candidates who are already “up to speed” on Social Security law, would undoubtedly result in a more immediate impact on the backlog.

It has been very difficult for SSA to hire candidates with subject matter expertise because so few made it on to “certificates” for selection. A certificate is a list of the top scoring candidates with the number determined by multiplying the number of ALJ vacancies by at least three. Thus, a certificate for 50 vacancies would have at least 150 candidates and likely a few more. As a group, attorneys with extensive Social Security disability experience have received lower scores than those with experience in many other areas. In spite of the fact that Administrative Law Judges are supposed to be “experts” in their field of *administrative* law, the “old/current” OPM examination generally gave higher scores for litigation rather than administrative law experience. Subject matter expertise was irrelevant to the scoring process.¹

¹ OPM’s avowed argument for ignoring subject matter expertise and grading litigation experience higher than administrative experience is that agencies, other than SSA, have adversarial hearings. This argument might sound valid, but only if the following critical facts are ignored.

1. SSA hires over 80% of all ALJ’s. SSA’s needs should weigh more. It hires 25–200 ALJ’s at a time. “Other agencies” typically only hire one or two at a time.

2. When the “other agencies” select ALJ’s administrative subject matter expertise outweighs general litigation experience. The NRC will not hire an ALJ who has no experience in nuclear regulation. FLRB does not hire neophytes in labor law as an ALJ.

3. It is my understanding the “other agencies” typically request and receive “selective registers” of candidates with subject matter experience, or they hire incumbent ALJ’s from other agencies in order to avoid hiring off the register. Justice (then Professor) Antonin Scalia commended agencies that sought “selective registers” of candidates with specialized experience. (*The ALJ Fiasco—A Reprise*, 47 University of Chicago Law Review 57 (1979)). He explained in some depth how subject matter expertise should be the overriding factor in selecting ALJ’s.

Thus, OPM’s argument should carry no weight. Their initial premise that litigation experience is critical to ALJ performance is suspect. Even assuming it had some validity, the policy is irrelevant to the “other agencies” that would allegedly benefit from it. They do not select candidates from the standard register.

The second major factor that pushed most candidates with subject matter expertise lower on the register was the impact of OPM's 1996 change in the application of the veteran's preference. The Association of Attorney-Advisors and I fully support our veterans and do not oppose its application as it was intended. It was intended to provide veterans with a 5-10% boost in their scores, giving them "a leg up," but not a "near lock" on a job. A comparison of the scoring systems makes the real impact of the change clear. Assume the following hypothetical candidates:

- A. A non-veteran with 75 base points.
- B. A non-veteran with 73 base points.
- C. A non-veteran with 71 base points.
- D. A 5-point veteran A with a base score of 71.
- E. A 5-point veteran A with a base score of 67.
- F. A 5-point veteran A with a base score of 61.
- G. A 10-point veteran A with a base score of 66.
- H. A 10-point veteran A with a base score of 61.
- I. A 10-point veteran A with a base score of 55.

Under the pre-1996 system the final scores added 10.9 points and then added 5 or 10 veterans' points. The final scores, from highest to lowest, would be D and G tied at—86.9; A—85.9; B—83.9; E—82.9; H and C tied at—81.9; F—76.9; and I—75.9. OPM's 1996 change in the scoring system markedly increased the impact of those veterans' points. Under the 1996 formula, the base score is multiplied by .3 and 70 points are added. The final scores of those same candidates, from highest to lowest, would be G—99.8; H—98.3; I—96.5; D—96.3; E—95.1; F—93.3; A—92.5; B—91.9; and C—91.3.

The decision in the *Azdell/Meeker* litigation ruled that OPM had the authority to implement the 1996 policy. I do not question OPM's authority to implement it. I ask whether shifting the impact of the preference from a 5-10% boost to almost a 15-30% boost is appropriate in selecting ALJ's. It has had the practical effect of making veteran's status by far the most important single selection criteria. Veterans deserve good treatment and should receive an advantage on re-entering the civilian workforce, but the preference was not really aimed at senior positions in government. It was certainly not intended as a near guarantee of selection.

If the "new" process follows this pattern with an extraordinarily heavy emphasis of veterans' points and no "extra credit" for subject matter expertise it will probably be a surprise if more than a handful of new Administrative Law Judges have any Social Security experience. There will be hundreds if not thousands of new candidates without significant Social Security experience with higher scores than those of the vast majority of candidates with Social Security experience.

Common sense suggests that OPM should change its policies, at the very least to give subject matter experience the equivalent of bonus points to provide such candidates a reasonable opportunity for selection.

Sincerely,

James R. Hitchcock
Senior Attorney-Advisor
President
Association of Attorney-Advisors

Statement of Social Security Administration Office of Disability Adjudication and Review

I am an attorney with the Social Security Administration Office of Disability Adjudication and Review in Kingsport, Tennessee. I am on the current ALJ register. I have over 22 years experience working as an attorney with this agency. I wish to encourage the Committee to direct Mr. Michael Astrue to proceed with immediate hiring of candidates from the current register and not to wait until a new register is available.

As the Committee is aware the need to hire new judges and to get them into hearing offices is immediate. **There need be no concern regarding the qualifications and competence of candidates on the current register.** Many of us would have been hired years ago were it not for the lack of veteran's preference points. I believe all of us can agree that being a veteran does not address the issues of qualifications and competence but is a means of recognizing the contribution of these individuals to our country during a time of need.

I understand the reason that only 37 judges were hired in 2006 and that none have been hired in 2007 is based on lack of funding and not on the desire to await a new ALJ register. To that end, I encourage the Congress to provide adequate funding to hire at least 100 judges in this fiscal year. I don't think U.S. taxpayers understand why the Congress has billions of dollars for Iraq and Afghanistan and not a few hundred million to employ judges and staff to process disability claims in the Social Security Administration.

Statement of The Federal Managers Association

Chairman McNulty, Ranking Member Johnson and Members of the House Ways and Means Subcommittee on Social Security:

On behalf of the Federal Managers Association and the nearly 1,000 managers in the Social Security Administration's Office of Disability Adjudication and Review (ODAR), please allow me to take a moment and thank you for this opportunity to present our views before the Subcommittee. As Federal managers, we are committed to carrying out the mission of our agency in the most efficient and cost effective manner while providing those necessary services to millions of Americans.

Established in 1913, the Federal Managers Association is the largest and oldest association of managers and supervisors in the Federal Government. FMA was originally organized to represent the interests of civil service managers and supervisors in the Department of Defense and has since branched out to include some 35 different Federal departments and agencies including many managers and supervisors within the Social Security Administration (SSA). We are a non-profit professional membership-based organization dedicated to advocating excellence in public service and committed to ensuring an efficient and effective Federal Government. FMA members and their colleagues in the SSA Office of Disability Adjudication and Review are responsible for ensuring the success of the administration of Social Security's disability determination process and in providing needed services to American customers.

As you are keenly aware, the Social Security Administration plays a vital role in serving over 160 million American workers and their families. Each month, SSA pays out benefits to 48 million beneficiaries. Over 7 million low-income Americans depend on the agency's Supplemental Security Income (SSI) program to stay afloat in a cost-inflating world, and nearly 7.2 million disabled Americans receive benefit payments through Social Security Disability Insurance (SSDI). In her May 11, 2006 message to the House Committee on Ways and Means Subcommittee on Social Security, former-SSA Commissioner Barnhart testified that SSA's productivity has increased 12.6 percent since 2001. Considering the magnitude of its mission, the Social Security Administration does a remarkable job administering critical programs.

In the Office of Disability Adjudication and Review, however, there currently exists a backlog of over 737,910 requests for a hearing, an increase of over 20,000 since the start of the calendar year. In the last 3 months alone (February, March and April), ODAR received 161,722 new cases, while disposing of 140,469 cases, translating into a growing backlog of 7,000 new cases a month. By the end of the current fiscal year, this would mean an increase of 35,000 cases added to the backlog. It already takes over 500 work days to process a typical request for hearing and these delays tarnish SSA's otherwise strong record of service to the American public. At the beginning of 2002, SSA had 468,262 pending hearing requests. In 5 years, that number increased to almost 738,000, despite the fact that dispositions are at record levels. Unless something is done to reverse this trend, the backlog could realistically reach 1 million by 2010 with the aging Baby Boom generation.

As managers and supervisors within ODAR, we are acutely aware of the backlogs and the impact these backlogs are having on our ability to deliver the level of service the American public deserves. We are here to confirm what you've heard several times before—that the ongoing lack of adequate staffing levels and resources have contributed to these backlogs. If these inadequacies continue, clearing the backlogs will be impossible and service delivery will continue to deteriorate. In September 2004, we appeared before this Subcommittee to testify on the challenges and opportunities facing implementation of a new electronic disability process at SSA. At that time, we testified that the backlog will not decrease until staffing levels are increased and stated a desperate need for additional staffing, a warning which went unheeded. We returned in February of this year with the staffing situation unchanged and the backlogs significantly larger.

We at FMA appreciate the attention the Subcommittee has placed on examining the reasons for the backlog and addressing remedies to the problem. Several Mem-

bers of the Subcommittee expressed their concerns with the list of available Administrative Law Judges (ALJs) for hire at SSA at a hearing on May 1, 2007. The Social Security Administration employs over 80% of the available ALJs for hire and like you, we find it unconscionable that the Office of Personnel Management has not updated the registry of ALJs available for hire since 2003. However, we would be remiss if we did not express our concerns that the backlog cannot be addressed by ALJs alone. Without adequate support staff to prepare cases for the judges, both existing and new, we will not achieve an increase in hearing dispositions—the only solution to reducing the backlog.

ODAR began fiscal year 2007 with 419,972 pending cases awaiting preparation for a hearing. In all likelihood, those cases will realistically wait at least 1 year before any action is even initiated to prepare the case for review and hearing in front of an Administrative Law Judge. Although clericals in hearing offices prepared 477,816 cases in FY06, claimants submitted almost 558,000 new requests during the same period. As such, the backlog of files simply awaiting preparation for review by an ALJ at the close of January 2007 totaled 413,260 cases; an increase of 19,088 cases since the beginning of fiscal year 2006. ODAR's processing time at the end of January was an embarrassing 499 days. The American public deserves better service.

Within ODAR, production is measured by the number of dispositions completed per day by an Administrative Law Judge. In FY05 and FY06, this record-level figure was 2.2 dispositions per day per ALJ. A work year is approximately 250 work days, yielding a reasonable expectation that an ALJ can produce an estimated average of 550 dispositions a year given the current staffing level limitations. At the end of January, SSA employed 1,088 ALJs, resulting in a best case scenario of 557,150 dispositions for FY07, which is about the same number of new cases filed in a given year.

Commissioner Astrue said in his testimony on May 1st that he would like to add 150 ALJs in fiscal year 2008. That could translate into an additional 82,500 dispositions, but only if adequate staff is available to prepare the cases for review. While this is certainly a step in the right direction, Administrative Law Judges alone will not solve the problem. Without additional staffing, the current level of prepared work would be distributed among more judges, essentially resulting in the same dispositional outcome. We were encouraged by the Commissioner's plan to increase full time equivalents (FTEs) by 750–850.

Undoubtedly, adequate clerical support is necessary to prepare cases for hearing. As it stands, hearing offices do not even have the staff to accommodate the current judges, let alone enough staff to process the new 46,500 cases the Office of Disability Adjudication and Review receives each month. If receipts remained flat, the backlog will remain at over 700,000 cases, almost one-third of which are over 365 days old. At the beginning of FY07, ODAR had over 63,000 cases which were over 1,000 days old; a number which is both unacceptable to the agency as well as the American people it serves. Commissioner Astrue identified these cases as ODAR's number one priority and the backlog has since been reduced to just over 14,500. The Commissioner is committed to reducing this critical workload to a negligible level by the end of the fiscal year. FMA applauds the Commissioner for his efforts and we are committed to working with him to achieve this goal.

With the aging Baby Boom population, it is reasonable to assume that receipts will continue to out-pace dispositions. As the requests for hearings continue to rise, more is demanded from ODAR staff on all levels. The *bottom line* is that the hearing offices lack sufficient staff to process the work on hand much less even begin to work on new cases. It should be evident that under the best case scenario, the current staffing levels in ODAR barely maintain the status quo. That means that the backlog stays the same and processing times continue at an estimated 515 days.

The existing staff must make room for the new cases as they attempt to address the backlog. In recent years, however, budgetary constraints have forced the agency to hire additional Administrative Law Judges without providing adequate support staff to prepare the cases for hearing. Last year, then-Commissioner Barnhart repeatedly stated that she hoped SSA would hire 100 ALJs in FY07, but funding shortages only allowed for less than 40 new hires. We recognize that the Commissioner was trying to address the backlog by adding these judges; however, additional ALJs without the supporting clerical staff to prepare cases in a timely manner will not solve the problem. By following in his predecessor's footsteps, Commissioner Astrue will encounter the same problems—no matter how many new judges come on board, without clerical staff to prepare cases for them, the backlog cannot be addressed.

As you know, there is currently insufficient support staff to ensure optimal ALJ productivity and to handle the backlog. The accepted staff to ALJ ratio has been

four-and-one-half production staff per ALJ. However, this only ensures productivity necessary to handle *incoming* work, not the backlog. For offices with heavy backlogs, the four-and-one-half to one standard is inadequate. Management and administrative employees should not be included in these figures, as they are not the employees performing the production work on hearing requests. And, of course, staffing shortfalls cannot be remedied without adequate funding.

The solutions to the backlog problem are simply adequate staffing levels and timely budgets which will allow us to address the pending cases. As of last month, the backlog was at 737,910 requests for a hearing. As noted earlier, a trained, productive ALJ, with adequate support staff, should be able to produce about 550 dispositions in a given year. Approximately 1,000 additional ALJs and 5,000 additional support staff would allow ODAR to work down the backlog in 1 year while providing timely processing of new cases as they arrive. We at FMA recognize that these numbers present a large funding challenge for Congress. As such, we support the Commissioner's initial request of adequate funding to support 750–850 FTEs in the coming year.

To enable SSA to meet the goals set forth in the previous Commissioner's service delivery plan, Congress must approve a sufficient level of funding for the agency. The Continuing Resolution (CR) which was signed into law earlier this year was severely inadequate to address both the staffing and backlog problem at SSA for fiscal year 2007 despite the meager increase SSA received above the fiscal year 2006 appropriation. As the Commissioner stated in his testimony, since 2001, Congress has appropriated on average \$180 million less than the President has requested. The dollar value of this differential is equivalent to processing an additional 177,000 initial claims and 454,000 hearings. Without a doubt, this has had a devastating effect on the services provided to the American public, as evidenced by the situation we are in today.

The President requested \$9.494 billion in FY07; an amount which Commissioner Barnhart repeatedly stated was vital to sustain the agency. Even if the agency had received full funding, SSA would have faced a loss of 2,000 positions, a number which will now be far greater due to the CR. The amount approved in the CR will undoubtedly cause a profound disruption of service to the American public, including significant increases in waiting times at field offices and added delays in the processing of appeals.

To remedy this unfortunate situation, Congress should begin by passing the President's 2008 budget request of \$9.597 billion for SSA's Limitation on Administrative Expenses account. Commissioner Barnhart felt the agency was in even greater need and before her term expired, she had asked the President to request \$10.44 billion for SSA in FY08. In addition to having an immediate impact on the current backlog, inadequately funding the Social Security Administration for an eighth straight year will negatively impact every service area of the agency.

While the President's budget request for FY08 is a start, it is certainly not a cure all solution. Throwing money at the problem will not fully solve it without a well-trained, dedicated staff of Federal employees willing to avert a crisis in the coming years. I believe this is the workforce we have now, strengthened under the leadership of Commissioner Barnhart in the last 6 years. As Commissioner Astrue stated in his testimony, we must ensure any new influx of staff is qualified and properly trained so the agency can continue to provide an exceptional level of service to the American people. By fully funding the President's request, we can continue this tradition.

In this era of shrinking budgets, SSA has attempted to maximize its use of scarce resources to provide the best possible service to the American public. The challenges faced by the managers and supervisors are not short term; they are a demographic reality. The same citizens putting stress on the Social Security trust fund because they are approaching retirement are also entering their most disability-prone years. ODAR is struggling to handle the current workload and will be hard pressed to manage the anticipated increase in hearing requests without additional staff.

We are the men and women who work with disabled Americans every day. We see people of all ages come in and out of our offices seeking the services they depend on for survival from the Social Security Administration. We are committed to serving a community of Americans in need, but we need you to provide us with the necessary resources to help them. Thank you for your time and consideration of our views.