# SOCIAL SECURITY ADMINISTRATION OVERSIGHT: EXAMINING THE INTEGRITY OF THE DISABILITY DETERMINATION APPEALS PROCESS, PART II

## HEARING

BEFORE THE

## COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

## HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRTEENTH CONGRESS

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# CONTENTS

# SOCIAL SECURITY ADMINISTRATION OVERSIGHT: EXAMINING THE INTEGRITY OF THE DISABILITY DETERMINATION APPEALS PROCESS, PART II

**Wednesday, June 11, 2014,**

HOUSE OF REPRESENTATIVES,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
WASHINGTON, D.C.

The committee met, pursuant to call, at 9:34 a.m., in Room 2154, Rayburn House Office Building, Hon. Darrell E. Issa [chairman of the committee] presiding.

Present: Representatives Issa, Mica, Duncan, Jordan, Chaffetz, Walberg, Lankford, Amash, Gosar, DesJarlais, Woodall, DeSantis, Cummings, Maloney, Tierney, Connolly, Speier, Cartwright, Lujan Grisham, and Kelly.

Staff Present: Melissa Beaumont, Majority Assistant Clerk; Brian Blase, Majority Senior Professional Staff Member; Molly Boyl, Majority Deputy General Counsel and Parliamentarian; David Brewer, Majority Senior Counsel; Caitlin Carroll, Majority Press Secretary; Sharon Casey, Majority Senior Assistant Clerk; John Cuaderes, Majority Deputy Staff Director; Adam P. Fromm, Majority Director of Member Services and Committee Operations; Linda Good, Majority Chief Clerk; Mark D. Marin, Majority Deputy Staff Director for Oversight; Emily Martin, Majority Counsel; Jessica Seale, Majority Digital Director; Andrew Shult, Majority Deputy Digital Director; Sharon Meredith Utz, Majority Professional Staff Member; Rebecca Watkins, Majority Communications Director; Jaron Bourke, Minority Director of Administration; Jennifer Hoffman, Minority Communications Director; Julia Krieger, Minority New Media Press Secretary; Juan McCullum, Minority Clerk; Suzanne Owen, Minority Senior Policy Advisor; and Brian Quinn, Minority Counsel.

Chairman ISSA. The committee will come to order.

This second hearing on the Social Security Administration Oversight: Examining the Integrity of the Disability Determination Appeals Process, Part II, will come to order.

The Oversight Committee mission statement is that we exist to secure two fundamental principles: first, Americans have a right to know that the money Washington takes from them is well spent and, second, Americans deserve an efficient, effective Government that works for them. Our duty on the Oversight and Government Reform Committee is to protect these rights. Our solemn responsibility is to hold Government accountable to taxpayers, because tax-

payers have a right to know what they get from their Government. It is our job to work tirelessly in partnership with citizen watchdogs to deliver the facts to the American people and bring genuine reform to the Federal bureaucracy.

The Social Security Disability Insurance Program and Supplemental Security Insurance Program have both seen explosive growth over the past decade. Through these programs, nearly 20 million people receive approximately $200 billion in annual cash payments.

Yesterday we heard testimony from four administrative law judges, normally called ALJs, who clearly rubber-stamped the cases brought before them. Rubber-stamping not because they agreed with the lower determinations to reject these claims, but rubber-stamping the lawyers who said my client is disabled, even though competent administrators beneath had not once, but twice in many cases, said no.

We heard from ALJs who created their own theories of disability; who awarded benefits to thousands of decisions without even holding hearings or considering the evidence; who failed to utilize medical or vocational experts during their hearings; who do not understand agency policy and repeatedly misapplied the rules of the Social Security Administration; and we heard about ALJs who fell asleep during hearings, who made inappropriate comments and gestures directed at female employees.

Every case that comes before ALJs has already been denied at least once, and sometimes twice. Yet ALJs overturned a shocking number of these denials. Over the last decade, 191 ALJs reversed at 85 percent or higher these decisions. These 191 ALJs awarded lifetime benefits in excess of $150 billion tax dollars.

While the ALJs that we featured yesterday do not represent the majority of judges, not by far, they do represent a sizeable number of ALJs, and even one incompetent ALJ can waste billions of taxpayers dollars over the course of his or her tenure by inappropriately placing individuals on disability for life.

Many of the ALJs who have demonstrated gross incompetence and profound misjudgment should be fired, yet action is rarely taken either by the Social Security Administration or Justice Department to stop misconduct or even illegal activity.

Today's hearing will address the Social Security Administration's role in this mess. For years the agency's barometer for ALJ performance was a quantity of cases that ALJs decided each year. Prior to 2011, the agency never investigated whether judges were engaging in proper decision-making. At multiple hearings now, including yesterday, ALJs told us and the committee that they felt pressured to meet a quota of decisions each year. Judges testified they received training from the agency to speed up their decision-making, including instructions to set an egg timer limiting reviews to no more than 20 minutes per case.

Simply put, in the past, the agency's emphasis on high volume decision-making directly contributed to ALJs likely awarding benefits to hundreds of thousands of people who simply were not disabled. Among its many responsibilities, the agency needs to deal with the ALJs who have lost, or should have lost, the public trust.

I think it is obvious that all four of the ALJs that appeared before us yesterday should no longer be trusted to spend your money in the Disability Trust Fund.

Today I want to know whether Ms. Colvin is going to take an aggressive approach in removing incompetent ALJs. Thus far, she has refused to heed my recommendation to take stronger action with ALJ Bridges, Taylor, even though both received multiple reviews showing gross incompetence and negligence.

In 2012, the agency did make a necessary reform and it did finally begin an assessment comparing all ALJs' volume of decisions and the quality of those decisions. The results of the study are clear. From the study, there is a "strong relationship between production levels and decision quality on allowances as ALJ production increased. The general trend for decision quality is to go down." Now, to say that less mangled, quantity reduces quality. While having a reasonable quantity level allows for at least those ALJs who want to do a better job to do that better job.

I appreciate the commissioner being here today and appearing before the committee. Key questions before us are: What do we do about the people who were wrongly awarded benefits by ALJs? And how do we fix a system going forward?

I trust the commissioner is, every day, thinking about this and is prepared to give us her thoughts today and to answer our questions.

I want to close by reminding all of us on both sides of the dais this was not a problem of this Administration; this was a problem that took a decade to grow. ALJs are not political appointees, per se, but they are people who spend American taxpayer dollars at a higher rate than virtually everyone else in Government.

So as we work to fix a problem not created by one administration, I want us all to show deference to the fact that the problem is here before us. The problem took a decade to grow and I look forward to working together to fix it.

I now recognize the ranking member.

Mr. CUMMINGS. I want to thank the chairman.

Let me thank the commissioner for being here. Commissioner Colvin, we know you have a very difficult job. You are the steward of the Disability Insurance Program, which is a critical lifeline for people who become disabled and can no longer work, and I don't want us to lose focus of that. American workers contribute to this program out of their paychecks, hardworking Americans. They need and deserve to have the Disability Insurance Program that gives them fair and timely hearings based on medical evidence if they become disabled and unable to work.

I know you are working hard to get it right. The majority of the Social Security Administration's 60,000 employees, including 1500 administrative law judges, are doing the same. Many of them are my constituents. And, by the way, the people who are serviced by Social Security are all of our constituents, and I don't ever want us to lose sight of that. They tell me themselves how hard they are working to provide the services that Americans count on. They also tell me that there have been instances now where one person is now doing the job that three people used to do. And the fact is your efforts are working.

Over the last decade, the Social Security Administration has significantly improved its efforts to collect and analyze data about judges' decisions; it has expanded training, improved performance, sharpened disciplinary procedures, and enhanced efforts to combat fraud. And the chairman is right, if there are things that you think we need to do to help you address this issue, you need to let us know, because it is one thing for us to be up here criticizing the Administration when we don't give you the resources you need and the backing that you need to accomplish what you have to accomplish.

Yesterday we heard from a handful of administrative law judges who fail to meet agency standards for conduct and professional judgment. No doubt about it. These judges are outliers who do not reflect the good work of the majority of administrative law judges. We had four here yesterday. I understand there are about 1500 in the Nation.

The evidence shows that the agency is committed to protecting the qualified decisional independence of the judge corps, and that is very, very significant. These judges act independently. We heard them yesterday talk about how much they guard their independence. So you are really walking a real thin line here. On the one hand you have to make sure they have independence, but like Chief Judge Rice said in a transcribed interview, you also, at the same time, have to make sure that you can't tell them they have to have a certain percentage going in favor and a certain percentage going the other way. So it is kind of difficult to do.

That commitment is fundamental to ensuring the integrity of the program and the rights of American citizens. We are talking about due process and equal protection under the law. But the evidence also shows that you are dealing with judges who go beyond judicial independence and ignore the policies established by the agencies. There is absolutely something wrong with that. In fact, you are now pursuing the removal of judges with the Merit Systems Protection Board, when such actions were unheard of a decade ago.

It is in all of our interest to get this right. We have a responsibility not just to highlight problems, but to correct them when they are identified; and that is why the spotlight should also shine on this body, us. Our investigation shows that Congress has failed to adequately fund program integrity efforts that would curb abuses. Congress has failed to provide the resources needed by the inspector general. And we all have a lot of respect for our inspectors general to combat fraud. And Congress has failed to provide the resources needed to provide timely access to disability hearings.

Mr. Chairman, I would like to enter into the record an article from the Baltimore Sun reporting that residents in my district are waiting for 17 months for hearings.

Chairman ISSA. Without objection, so ordered.

Mr. CUMMINGS. We heard testimony during our investigation that some people waited so long for their hearings that they died waiting. That they died waiting. That is an outrage and we are better than that. And that is one grave cost of austerity.

Mr. Chairman, it is time to put our money where our mouth is. Is the Congress going to invest in the integrity of the Disability Insurance Program? Is Congress going to adequately fund anti-fraud

units in all 50 States? Is Congress going to appropriate sufficient resources to eliminate these backlogs? In my opinion, that is what we have to do and that is what we must do, and I look forward to your testimony.

With that, I yield back.

Chairman ISSA. Thank you.

We now go to the gentlelady from California for a brief opening statement.

Ms. SPEIER. Mr. Chairman, thank you.

I would like to wholeheartedly endorse every word of my ranking member's statement. I think he put it extremely well.

I want to thank the chairman for holding this hearing today. It is the fifth oversight hearing that we have had on Social Security disability. The previous three were held in our Subcommittee on Energy Policy, Health Care and Entitlements, and again I would like to take note of the leadership of my colleague, Mr. Lankford, and his leadership on that committee.

During the course of the committee's oversight of Social Security, we have learned that there is room to do disability insurance better. We need to have more program integrity, more prevention of improper payments, and more commitment to improving quality.

While the agency has taken steps towards reform, it has become clear that some of the concerns can only be addressed by Congress with additional resources for quality assurance and program integrity efforts.

Yesterday's hearing focused on four outlier judges that had unusually higher allowance rates. In many respects it was a dismal hearing. It was embarrassing, I think, for many of us to listen to. They process an extraordinary number of cases, some without even ever seeing the claimant. In fact, in one case, I think it was Judge Taylor, of the 8,000 cases that he had, 6,000 of them were done on the record without ever seeing the claimant. And some cases substituted their own personal beliefs for expert medical advice.

I do not believe that the judges invited to testify yesterday were representative of the judge corps. Most of the ALJs are conscientious public servants and had an allowance rate of 57 percent last year.

Today I look forward to the testimony from Social Security officials on the efforts to enhance its ability to oversee ALJs to ensure consistent and quality decisions. I hope they will address the concerns raised yesterday and describe the tools Social Security has put in place to train, discipline, and, when appropriate, remove ALJs that violate agency policies.

Now, having said that, I think it is very, very difficult to remove someone, and we need to have a very candid conversation on what needs to be fixed in order to appropriately remove individuals who are just, frankly, not doing the job.

In April of this year, Chairman Lankford and I sent a bipartisan letter to Social Security that outlined several reforms and recommendations to improve the disability, adjudication, and review process to restore confidence in Federal disability programs. Earlier this week I sent a letter to the U.S. attorney for the Eastern District of Kentucky requesting an independent review for prosecution of the evidence Social Security had gathered with regard to the ad-

ministrative law judge and a claimant's representative who allegedly colluded with fraudulent medical evidence to obtain disability benefit awards for thousands of individuals.

The fact that Eric Kahn is still in a situation where he can represent claimants before Social Security in Huntington and in Charleston, and anywhere else, I guess, in the Country, because he has now opened offices in California, is a disgrace. It is an absolute disgrace.

The American people expect and deserve action. I am concerned that justice has been long delayed in this case. Administrative actions against the judge and the lawyer have bene put on hold pending a possible criminal prosecution. While the inspector general has conducted over 130 interviews, examined bank and phone records, reviewed decisions, and collected thousands of documents to build a case, we have heard nothing out of the U.S. attorney in West Virginia. It is long past time to prosecute this case and, frankly, it is long past time for the administration within Social Security to take action against these people. One of them has retired; one of them is still processing claims.

Social Security disability benefits are an important lifeline for millions of American taxpayers with disability. It is critical that this lifeline is preserved. Our investigation has focused on identifying improvements to ensure that only those who meet the eligibility guidelines receive benefits so that the truly disabled can access this important lifeline and the American public can have confidence in the disability determinations process.

Our investigation has also shown that Congress has not provided the funding the agency needs to fulfill its mandate to effectively monitor program integrity and save taxpayer dollars. We know continuing disability reviews, CDRs, as we refer to them, yield a return of $9.00 for every dollar spent. Common sense suggests to all of us that some people who are disabled get better, and there should be an active use of CDRs to make sure that those who do get better are not continued on the rolls.

Social Security and the OIG have also established the Cooperative Disability Investigations Program to coordinate and collaborate on efforts to prevent, detect, and investigate fraud in Federal disability programs. Those efforts pay for themselves many times over. Yet, for some reason, we here in Congress have refused to fully fund the inspector general and the agency to carry out its program integrity. If we want accountability,—I am going to use the same words that the ranking member did—then let's put our money where our mouths are and fully fund CDRs.

I look forward to hearing the testimony on improving the disability appeals process and how Congress can support and enhance these efforts. Thank you.

Mr. MICA. [Presiding.] I thank the gentlelady.

Mr. Lankford?

There are no further opening statements. Then we will go to recognizing our witness.

Members may have seven days to submit opening statements for the record. Without objection, so ordered.

Our sole witness today is the Honorable Carolyn Colvin. She is the Acting Commissioner for Social Security Administration.

Pursuant to the rules and procedures of our committee, Ms. Colvin, this is an investigative panel of Congress and we swear in all of our witnesses, so if you will stand and raise your right hand.

Do you solemnly swear or affirm that the testimony you are about to give before this committee of Congress is the whole truth and nothing but the truth?

[Witness responds in the affirmative.]

Mr. MICA. The witness has answered in the affirmative and I would like to welcome you.

Since we only have one witness, we won't hold exactly to the five minutes, but if you could try to summarize your opening statement and comments. And if you have additional information that you would like to be made part of the record, you can request through the chair.

With that, you are welcomed and recognized.

**STATEMENT OF THE HONORABLE CAROLYN W. COLVIN, ACTING COMMISSIONER, SOCIAL SECURITY ADMINISTRATION**

Ms. COLVIN. Good morning, Chairman Issa, Ranking Member Cummings, members of the committee. Thank you for inviting me to discuss the role of administrative law judges, or ALJs, in our disability appeals process. My name is Carolyn Colvin and I am the Acting Commissioner of the Social Security Administration.

We have nearly 75 years of experience in administering the hearings process. Since 1939, the law has required us to hold hearings to determine the rights of individuals to Social Security benefits. We currently employ just over 1400 full-and part-time ALJs who decide hundreds of thousands of disability claims each year. The vast majority of all ALJs are conscientious, hard-working, and take their responsibility seriously.

Getting the right decision to every person who applies for disability benefits is important to the agency, the claimants, Congress, and the taxpayer. Those who have earned Social Security coverage deserve a decision that is accurate, timely, and policy-compliant, whether the decision is an allowance or a denial. Toward this end, we have taken steps to comprehensively improve our national hearings and appeals process.

As our budget allowed, we made a large investment in modernizing the hearings process and utilized improvements in technology. We have developed new methods of capturing structured data which provides insight into policy compliance in hearing decisions. We have developed new tools that use the structured data to provide ALJs real-time access to their appeals council remand data and provide them individual feedback.

We collect and then analyze data to identify recurring issues in decision-making by performing pre-effectuation reviews on a random sample of allowances and post-effectuation focus reviews that look at specific issues. By performing these reviews as allowed by our regulations, we provide ALJs timely guidance on recurring issues in decision-making, consider improvements in policies and procedures, and identify training opportunities for ALJs and other agency employees. Our ability to perform these reviews, though, depends on the funding we receive from Congress.

Our continued focus on quality review initiatives allow us to improve the policy compliance of ALJ decisions to ensure that individuals who qualify for benefits receive them, and that those who do not qualify do not receive benefits.

Most ALJs who receive feedback welcome the opportunity to improve their skills. Let me emphasize that we do not have any set allowance or denial rates. We do not because our focus is always on producing quality policy-compliant decisions.

For our hearing process to operate fairly, efficiently, and effectively, our ALJs must treat members of the public and staff with dignity and respect, adhere to ethical standards and agency policy, be proficient at working electronically, and be able to handle a high volume workload while maintaining quality and issuing policy-compliant decisions. The vast majority of our ALJs take seriously their duty to the American public and perform their duties accordingly, and I commend and thank them for their service.

We manage our ALJ corps in accordance with the Administrative Procedures Act and we ensure the qualified decisional independence of our ALJs. The APA additionally provides that ALJs are exempt from performance appraisals and cannot receive awards based on performance. In compliance with the APA, we can and have taken steps to ensure that ALJs who refuse to do their jobs properly or who otherwise betray the public trust would be held accountable for their actions. Despite the good work of the vast majority of our ALJ corps, it has been necessary to seek removal or suspension of some ALJs. To do this, we have to complete a lengthy administrative process that lasts years and can consume significant amounts of taxpayer dollars.

Unlike disciplinary actions for other civil servants, the law requires that ALJs receive their full salary and benefits until the case is finally decided by the full Merit Systems Protection Board, even when the ALJ's conduct makes it impossible for the agency to allow the ALJ to continue deciding and hearing cases or to interact with the public.

We welcome your support in advancing our goal of providing every person who comes before our agency a timely, quality, and policy-compliant decision.

Again, thank you for the opportunity to appear before you today, and I will answer any questions you have.

[Prepared statement of Ms. Colvin follows:]

**TESTIMONY ON CAROLYN W. COLVIN, ACTING COMMISSIONER
SOCIAL SECURITY ADMINISTRATION
REGARDING OVERSIGHT OF FEDERAL DISABILITY PROGRAMS**

**BEFORE THE OVERSIGHT AND GOVERNMENT REFORM COMMITTEE
U.S. HOUSE OF REPRESENTATIVES**

**JUNE 11, 2014**

Chairman Issa, Ranking Member Cummings, and Members of the Committee:

Thank you for the opportunity to discuss the role of administrative law judges (ALJs) in the disability appeals process. My name is Carolyn Colvin, and I am the Acting Commissioner of the Social Security Administration (SSA). We are committed to effectively administering the Federal benefit programs for which we are responsible, so that they remain strong for those Americans who need them. Today, I will begin by briefly discussing the vital programs that we administer.

**Introduction**

We administer the Old-Age, Survivors, and Disability Insurance program, commonly referred to as "Social Security," which provides monthly benefits to insured workers and their families at age 62, death, and disability. Social Security provides a financial safety net for millions of Americans. Few programs touch as many lives. We also administer the Supplemental Security Income (SSI) program, funded by general revenues, which provides cash assistance to persons with very limited means who are aged, blind, and disabled, as defined in the Social Security context.

Accordingly, our responsibilities are immense. To illustrate, in fiscal year (FY) 2013 we performed the following activities for people who come to us for help: paid over $850 billion to more than 65 million beneficiaries, of whom about 15 million received approximately $187 billion in benefits under our disability programs (About 3 million of our beneficiaries receive benefits under more than one program); handled over 53 million transactions on our National 800 Number Network; received over 68 million calls to field offices nationwide; served more than 43 million visitors in over 1,200 field offices nationwide; completed nearly 8 million claims for benefits and nearly 794,000 hearing dispositions; and completed 429,000 full medical continuing disability reviews (CDR).

Handling all these responsibilities requires adequate and sustained funding. For the three years before FY 2014, we received an average of nearly a billion dollars less than what the President requested for our administrative budget. That level of underfunding has presented us with significant challenges in providing the public the level of service that it deserves. For example, while we made great strides from FY 2009 through FY 2012 in reducing the time people wait for

a hearing decision, since FY 2012 the average waiting time has increased from 353 days in FY 2012 to 411 days this fiscal year.

**The Disability Insurance Program**

I would also like to highlight a few aspects of the Disability Insurance (DI) program.

- First, based on the definition of disability that Congress established, an insured claimant is eligible only if he or she cannot engage in any substantial work because of a medically determinable physical or mental impairment that has lasted or is expected to last for at least one year or to result in death. The DI program does not provide short-term or partial disability benefits.

- A claimant cannot receive disability benefits simply by alleging the existence of pain or a severe impairment. We require objective medical evidence to show the claimant has a medical impairment that: (1) could reasonably be expected to produce the pain or other symptoms alleged, and (2) meets our disability requirements when considered with all other evidence.

- The DI program is a social insurance program, under which workers earn coverage for benefits by working and paying taxes on their earnings. Thus, DI benefits are earned benefits.

- This year, workers who have been found to be disabled in the Social Security context received, on average, a little less than $1,150 in DI benefits per month, which is not much above the current poverty income level for an individual of about $12,000 per year.

- Over the past 20 years, there has been significant growth in the DI program. Our Chief Actuary has explained that long-term DI program growth was predicted many years ago and is driven, primarily, by the aging of the baby boom generation and the fact that more women have joined the labor force and have become eligible for benefits.

**History of Our ALJ Corps**

We have nearly 75 years of experience in administering the hearings process. Since the passage of the Social Security Amendments of 1939, the Social Security Act (Act) has required us to hold hearings to determine the rights of individuals to old age and survivors' insurance benefits. Initially, "referees" under the direction of the Appeals Council held hearings and issued decisions. Later, after Congress passed the Administrative Procedure Act (APA) in 1946, these referees became known as "hearing examiners" and are now known as ALJs.

Over the years, the size of our ALJ corps has grown in correlation to our workloads. We employ just over 1,400 full and part-time ALJs. This year, we plan to hire additional ALJs; these new ALJs will bring our corps to almost 1,500. The improved process we have used to hire ALJs in recent years makes me confident that our new hires will be proficient in their jobs and will join the vast majority of their colleagues in meeting the highest professional and ethical standards.

**ALJ's Role during a Hearing**

Before describing the ALJs' role during a hearing, let me briefly describe the disability claims appeals process set forth in the Act or in our regulations. A claimant who disagrees with:

1. an *initial* determination may request *reconsideration* of the claim within 60 days of receiving the notice of the initial determination;

2. a *reconsideration* determination may request a hearing before an *ALJ* within 60 days of receiving the reconsideration notice;

3. an *ALJ's decision* may request review by our *Appeals Council* within 60 days of receiving the ALJ's hearing decision; or

4. our *final administrative decision* may appeal to the U.S. District Court.

Generally, the first time a claimant appears in person before a decision maker is at the hearing level. In addition, the evidence before the ALJ is likely more extensive, and claimants will have aged more than a year during which time their medical condition may have worsened or they may have developed new impairments. Sometimes, these changed factors allow the ALJ or attorney advisor to issue a favorable decision on the record. However, in the vast majority of cases, there is a hearing before an ALJ. At the hearing, the ALJ gathers additional evidence and calls vocational and medical experts, as needed. Claimants swear an oath to the ALJ that they will tell the truth.

Following the hearing, the ALJ may take additional steps to complete the record, such as ordering a consultative medical examination. The ALJ considers all of the evidence in the file, including evidence not available during the initial determination, as well as the hearing testimony when making a decision. The ALJ decides the case based on a preponderance of the evidence. The ALJ decides the case *de novo* and is not bound by the determinations made at the initial or reconsideration levels. If the claimant does not appeal, the ALJ's decision becomes the final decision of the agency. A claimant who disagrees with the ALJ's decision may request review of the decision by the Appeals Council (AC). The AC also retains the authority to review any ALJ decision on its own motion.

There is a common perception that most allowances for disability benefits occur at the ALJ level. This perception is untrue. For example, based on the longitudinal tracking of 2.6 million disability claims filed in calendar year 2008, approximately 76 percent of all allowances occurred at the initial or reconsideration levels.

**Quality Initiatives**

The quality of our decisions is a paramount concern for the agency, the claimants, Congress, and the taxpayer. It is our obligation to provide every person who comes before our agency—regardless of where they live or the judge they draw, a timely, legally-sound, policy-compliant decision. We took aggressive steps to institute a more balanced quality review in the hearings

and appeals process. Our first effort in this area was to develop more extensive data collection and management information for the Office of Disability Adjudication and Review (ODAR). Because the Office of Appellate Operations (OAO) handles the final level of administrative review, it has a unique vantage point to give feedback to decision and policy makers. OAO developed a technological approach to harness the wealth of information it collects, turning it into actionable data. These new tools permitted the OAO to capture a significant amount of structured data concerning the application of agency policy in hearing decisions.

Using these data, we provide feedback on decisional quality, giving adjudicators real-time access to their remand data. We are creating better tools to provide individual feedback for our adjudicators. One such feedback tool is "How MI Doing?" This resource not only gives ALJs information about their AC remands, including the reasons for remand, but also information on their performance in relation to other ALJs in their office, their region, and the nation. We have developed training modules related to the most common reasons for remand that are linked to the "How MI Doing?" tool. ALJs are able to receive immediate training at their desks that is targeted to the specific reasons for the remand. Data driven feedback informs business process changes that reduce inconsistencies and inefficiencies, and simplify rules.

In FY 2010, OAO created the Division of Quality (DQ) to focus specifically on improving the quality of our disability process. While AC remands provide a quality measure on ALJ denials, prior to the creation of DQ, we did not have the resources to look at ALI allowances. Since FY 2011, DQ has been conducting pre-effectuation reviews on a random sample of ALJ allowances. Federal regulations require that pre-effectuation reviews of ALJ decisions be selected at random or, if selective sampling is used, may not be based on the identity of any specific adjudicator or hearing office. Beginning next fiscal year, DQ will also have the capability to selectively sample decisions, which will allow us to prioritize our resources on the most error prone policy areas when selecting cases for pre-effectuation review.

DQ also performs post-effectuation focused reviews looking at specific issues. Subjects of a focused review may be hearing offices, ALJs, representatives, doctors, and other participants in the hearing process. The same regulatory requirements regarding random and selective sampling do not apply to post-effectuation focused reviews. Because these reviews occur after the 60-day period a claimant has to appeal the ALJ decision, they do not result in a change to the decision. However, if we determine after a focused review that there are issues relating to an ALJ's non-compliance with policy and that a beneficiary may not be disabled, we can request that such a beneficiary be subject to a CDR. Our ability to perform CDRs, however, is limited based on the funding we receive from Congress.

The data collected from these quality initiatives identify for us the most error-prone provisions of law and regulation, and we use this information to design and implement our ALJ training efforts. To ensure that all of our ALJs comply with law, regulations, and policies, we provide considerable training including both new and supplemental ALJ training.

Since instituting all of the enhanced quality review initiatives that I just outlined, we have observed that the number of judges with extremely high and low allowance rates has dropped. While we do not set target allowance rates for our judges and always emphasize that a judge's

allowance rate is not a proxy measurement of his or her policy compliance, we nonetheless believe that this phenomenon is a likely indicator of better, more standardized decision-making in our hearings process.

Timeliness is an element of quality. We have set an expectation that ALJs issue 500-700 decisions a year, a range that is consistent with the actual number of cases performed by a majority of judges. However, we have never required an ALJ to do 500-700 cases per year. Our ALJs know that, when they accept an appointment to serve the American public, they must provide timely and quality service, and the public has every right to expect them to work hard. At the same time, judges should not decide too many cases because quality could suffer as a result. Therefore, we limit the assignment of new cases to no more than 840 cases annually.

**Management Oversight**

As I mentioned above, most agency employees who receive feedback through tools like "How MI Doing?" welcome the opportunity to improve their skills. Very few of our ALJs underperform, do not apply the law fairly, or engage in misconduct. The vast majority of our ALJs are conscientious, hard-working, and take their responsibilities seriously.

We manage our ALJ corps in accordance with the APA, which contains provisions that ensure qualified decisional independence for our ALJs and places certain limits on the performance management of our ALJs. For example, ALJs are exempt from performance appraisals and cannot receive awards based on performance.

Nevertheless, we can, and have, taken steps to ensure that ALJs who refused to do their jobs properly or who otherwise betrayed the public trust would be held accountable for their performance and conduct. Generally and as appropriate, an informal feedback process works, but when it does not, management directs an ALJ to follow the law, regulations, and agency policies. ALJs rarely fail to comply with these directives. In those cases where the ALJ did not comply and where appropriate, we pursued appropriate corrective action.

In the past several years, it has been necessary to seek removal or suspension of a number of ALJs. The agency strives to ensure that our ALJs adhere to the high standards expected of them, recognizing at the same time that we cannot and would not attempt to influence a decision in any particular case. When it is necessary due to an ALJ's actions to seek the removal of an ALJ from service, the agency must complete a lengthy MSPB administrative process that lasts years and can consume over a million taxpayer dollars. Unlike disciplinary action for other civil servants, the law requires that ALJs receive their full salary and benefits until the case is finally decided by the full MSPB—even though the ALJ's conduct made it impossible for the agency to allow the ALJ to continue deciding and hearing cases or to interact with the public. We remain open to exploring options to address and improve these matters, while continuing to provide the best service to the American public.

**CDRs in the FY 2015 President's Budget**

Tight budgets have affected our ability to timely conduct vital program integrity work, which helps ensure only those persons eligible for benefits continue to receive them. There is a long-standing adage in our agency—the right check to the right person at the right time. Delivering on this statement means that we are demonstrating our stewardship and preserving the public's trust in our programs.

To this end, we perform medical CDRs and age 18 redeterminations to ensure only those beneficiaries who remain disabled continue to receive monthly benefits. Although we estimate that we save the Federal government on average $9 per dollar spent on CDRs in the first 10 years after doing medical CDRs, we have a backlog of 1.3 million CDRs because our funding levels have not allowed us to keep up with all scheduled CDRs. Despite our limited funding in the last few years, we have continued to increase the number of medical CDRs we conduct each year. In FY 2014, Congress appropriated the level of funding approved in the Budget Control Act of 2011 (BCA), which allows us to further expand our capacity to complete more of our cost-effective CDRs and begin to work down our backlog. We completed 429,000 full medical CDRs in FY 2013, and we plan to complete 510,000 full medical CDRs in FY 2014.We are aggressively hiring and training employees in FY 2014 so that we are able to complete substantially more full medical CDRs in FY 2015.

The President's Budget for FY 2015 once again requests the full BCA level of program integrity funding ($1.396 billion). With this funding, we plan to complete 888,000 full medical CDRs

Starting in FY 2016, the budget proposes to repeal the discretionary cap adjustments enacted in the Balanced Budget and Emergency Deficit Control Act of 1985, as amended by the BCA, for SSA and instead provide a dedicated, dependable source of mandatory funding for SSA to conduct CDRs, as well as SSI non-medical redeterminations. The proposal includes the creation of a new account called Program Integrity Administrative Expenses, which will reflect mandatory funding for SSA's program integrity activities. The mandatory funding will enable us to work substantially down a backlog of 1.3 million medical CDRs.

As a result of the discretionary funding in 2015 and the mandatory funding in 2016 through 2024, according to the President's FY 2015 Budget we will recoup a net Federal savings of nearly $35 billion in the 10-year window and additional savings in the out-years.[1] These savings include Medicare and Medicaid program effects.

**Conclusion**

Since 1957, Social Security disability benefits have become a part of the American fabric by providing a vital safety net for those Americans who make up the most vulnerable segment of society. DI beneficiaries are your neighbors, veterans, and perhaps even family members.

[1] Office of Management and Budget. "Analytical Perspectives, Budget of the United States Government, Fiscal Year 2015." Washington: Government Printing Office, 2014, p. 119.

Making disability decisions for Social Security programs is a challenging task. Our highly-trained disability adjudicators follow a complex process for determining disability according to the requirements of the law as designed by Congress. The vast majority of our adjudicators are dedicated public servants who strive to make the right decision and to be good stewards of the trust funds, and we are committed to helping them do their jobs effectively.

We thank you for your interest in our appeals process. We also ask for your support for the President's budget request, which will provide us with funding to continue to improve our hearings process, improve the integrity of our disability programs, and reduce improper payments.

Again, thank you for the opportunity to testify today. I will do my best to answer any questions you may have.

Mr. MICA. Thank you, Ms. Colvin. We will first recognize for the purpose of questioning Mr. Lankford.

Mr. LANKFORD. Ms. Colvin, thanks for being here as well. Ranking Member Speier and I sent a letter to your office about a month ago or two months ago. It had 11 specific recommendations or ideas about how to reform this. It has been part of this ongoing conversation now, our fifth hearing dealing with this issue. We continue to collect what are the ideas that actually solve this problem. We are all very aware of the problem. How do we actually solve this? We listed 11 specific ideas. The letter that we received back from your office said this, "Some recommendations could benefit from further discussion of our current business processes, the relative advantages and disadvantages of pursuing the suggested changes and significant legal considerations. We have to discuss these recommendations with your staff."

What we want to know is how do we actually start applying some of these. I would ask you again, of the 11 recommendations that we put forward, I would like to receive a response back to Ms. Speier and I that says of the 11, here are those that we are already implementing, here are those that we don't think is a good idea; rather than, hey, we will talk about this at some point if you want to be able to get together. I think it is a reasonable request.

Ms. COLVIN. I certainly can respond to you about each of the individual recommendations that you set forth. However, I did believe that some further conversation would help to clarify some of the recommendations. If you feel that you would rather not do that——

Mr. LANKFORD. No, we are fine with that. We have had offline conversations. We don't have to be in front of the cameras to be able to have this kind of conversation. What we want to see is how do we actually move these into solutions. What we have tried to clear up from the beginning in these hearings are what are statutory issues you need help with in the law. Where do we have a problem in the law that we need to fix? Where do you already have statutory authority that we just need to help provide a push and accountability to say how do we get this done?

So we have no issue to be able to talk through what is our part, what is your part, but we want to see us make progress on this.

Ms. COLVIN. We would be very happy to do that, Mr. Lankford. We appreciate the assistance of this committee and we look forward to working with you.

Mr. LANKFORD. Okay. We look forward to getting a chance to be able to get together on that.

Ms. COLVIN. All right.

Mr. LANKFORD. There are several issues that have come up during these conversations. Yesterday's hearing, as Ms. Speier mentioned before, was depressing in many ways. It is frustrating both to be able to see individuals that would claim judicial independence, but they are basically going to create their own way. For an ALJ to not have in the medical record in front of them that there is a back problem, but they ask someone in front of them do you have a limp and they said yes, and they give them disability when there is no medical evidence of that. Do you have a limp should not qualify for $300,000 of lifetime benefits to the taxpayer. And do you

have a limp does not also say to someone you are not eligible to work in any location in our economy, which is clearly within the vocational grid requirements.

When those issues come up, and come up in a focused review, our frustration is they are rare, and thankfully that they are rare. We have 191 ALJs that have this very high overturn rate, and what we are trying to consider is what do you need to help in the process to be able to help fix this so that you can bring both training that works—because what we heard a lot yesterday was, yes, we have training, but it is really training on writing better; it is not training on writing and on policy and on how to make decisions. All four of the judges agreed the training that they received is on writing better opinions rather than actually making better decisions on it. So that is one aspect of it.

The second one is when you find someone that needs to be removed, what do you need from Congress to be able to clarify the law. As you mentioned in your opening statement, the law doesn't allow for removal or holding pay or such.

Ms. COLVIN. Let me respond first by saying that we expect all of our judges to issue quality policy-compliant decisions.

Mr. LANKFORD. Well, we do too.

Ms. COLVIN. We respect their qualified judicial independence, but we also know that they are employees of the agency, and they are accountable to the agency and to the taxpayers. So when we identify that there is a problem through our focus reviews, we do in fact provide very timely real-time feedback; we provide additional training for those individuals; and then if they still do not comply with policy, we move forward with taking the appropriate action.

Mr. LANKFORD. When you have a focused review, is there any sense of setting this person aside to say they are not going to hear cases while they are undergoing a focused review that you saw problems with, do the training, or are they still taking cases at the same time?

Ms. COLVIN. We do not set them aside; we provide them with training and work with them to improve those decision-making——

Mr. LANKFORD. So they are still hearing cases though they are still going through training to say we saw problems in your focused review, but they are still adding more cases even during that time period?

Ms. COLVIN. We are not able to just remove a judge from hearing cases because they need additional training. Our responsibility is to provide that training first, provide them with an opportunity to improve, and then if they still are not policy-compliant, we take appropriate action.

Mr. LANKFORD. Does that appropriate action include not hearing cases at that point?

Ms. COLVIN. It could be. It depends upon what the situation is.

Mr. LANKFORD. Here is the ongoing problem that we have: you have someone that your group has identified to say there are some problems here in the way they are deciding cases; they don't seem to be following the basic flow of those five elements that need to be there. If there is a problem that rises to the top on that, they don't need to continue to hear more cases through that time period. We did not have them hear cases, make sure that they are trained

and ready to go so that the next time they start hearing cases again they are actually following proper procedure that has been outlined by the law and by regulations.

Ms. COLVIN. It is not that simple, Mr. Lankford. There is a process that we must go through. We do that. We take the responsibility of providing correct decisions very seriously and we take steps immediately to try to——

Mr. LANKFORD. So how long is that process?

Ms. COLVIN. Well, if you talk about the Merit Systems Review process, we make a referral because we believe that a judge has either improper conduct or is not policy-compliant, our experience has been it could be two, three years. It costs us a million dollars to remove just one judge. So the process is very lengthy and very costly.

Mr. LANKFORD. So we have a three-year process for someone that there is a very clear problem with.

Ms. COLVIN. It is not our process, Mr. Lankford. We have to follow——

Mr. LANKFORD. I understand. I am just asking the question how do we fix this? Because we have a three year process, someone is continuing to hear cases. Approximately $300,000 to the taxpayer of every single case that they hear if they choose to put them into the system. It continues to roll on the taxpayer and we still continue to have a judge that says do you have a limp? You qualify for Social Security disability.

Now, I understand that is an extreme case, but if that rises up to that level, which you have a few judges that are at that level, how do we protect the taxpayer and the integrity of the system so that if someone is coming for disability and an ALJ, they are consistent across judges? I know there are subjective decisions here, but if you come before one judge, it is a 15 percent approval rating; if you come before another one, it is a 99 percent approval rating.

Ms. COLVIN. Well, I think that you need to understand that we cannot look at one statistic, whether it is an allowance rate or a denial rate, to determine whether or not the decision was a right decision. There is much more——

Mr. LANKFORD. Yes, ma'am, I do understand that.

I am over time, Mr. Chairman. I apologize for that, but let me just say if you are a small community bank, when the regulator comes in, he looks at every other community bank and how they do loans, and if you are an outlier, you get extra attention, because that is the way they are overseeing from the FDIC and the OCC. Any outlier number that sits out there, you don't have a "quota," but if your numbers are odd compared to everybody else around you, you are going to get extra inspections. All we are asking is would that occur with Social Security in the disability process, that if you have an outlier, whether they are on the low side or the high side, someone is looking at that, saying why is this number so odd.

Ms. COLVIN. You are aware that we do focused reviews. We cannot single a judge out simply because of his allowance rate or his denial rate. But if we find that there are problematic policy decisions, we can work with that individual for further training and ultimately take action, if necessary.

Mr. LANKFORD. So is that the law, that you can't single them out because of high allowance rates?

Ms. COLVIN. That is the law.

Mr. LANKFORD. Okay, then we need to fix that for you, because that is trapping it. That is the kind of stuff we are talking about. We all see the problem. We need to know what is our responsibility and what is yours so we can fix that.

Ms. COLVIN. Mr. Lankford, I think it is important again to just emphasize that allowance rate or denial rate does not necessarily indicate that the decision that was made is an incorrect decision.

Mr. LANKFORD. I understand.

Ms. COLVIN. So there are other variables that we have to look at.

Mr. LANKFORD. By the way, we should probably pass it on to the FDIC as well, because they do that same treatment for banks and they have the exact same response.

With that, I yield back.

Chairman ISSA. [Presiding.] I just want to clarify, then we will go to the ranking member.

You are saying that it is the clear, four square of the law and you have no ability? You are not saying that it is your interpretation, etcetera? You are saying you have absolutely no authority under the law to do anything different, or these are rules and policies and interpretations of the Social Security Administration?

Ms. COLVIN. When you say to do anything different, law has been very clear that we have to respect the judicial independence, that we cannot look at a judge's allowance rate or denial rate as a factor in determining whether or not that judge is qualified to do the job that they are doing; that there are many other considerations. There is also a process involved if we determine that we are going to take action and that has to be——

Chairman ISSA. I appreciate that, but the subcommittee chairman has done a great job of reviewing this and the only thing he didn't hold you responsible for is if you can't consider the ALJ wrong and there is a 99 percent reversal, then are you looking at the people that were wrong 100 percent of the time in their—in other words, if there is a 99 percent reversal and there is a 57 percent average, then somebody is screwing up 30 percent below and you are not restricted from asking whether the previous rejecters 1 or 2 were right or wrong, are you?

Ms. COLVIN. If we do a focused review and we identify policy problems, we are able to determine whether or not that case needs to be placed in our CDR or moved ahead in our CDR workload. When we have the resources to do all of our CDRs, those cases will automatically be reviewed. But since we don't, if we do a focused review and we see that there is a policy problem in that area, and that individual may, in fact, have been determined to be disabled when, in fact, he was not, it was an error, then we could, in fact, move that forward for a CDR.

Chairman ISSA. Thank you.

The ranking member is recognized.

Mr. CUMMINGS. Let me ask this. I tell you, Commissioner Colvin, I am going to ask you some questions about the judges, but there are people in my district who are denied the two times. They keep

the two times denial and then they say they are overturned. And in the process they go broke; they have nothing to live on. And I am concerned about these four outlier judges, but I am also concerned about people like the man that had stage 4 prostate cancer that died before he could get disability. And I see it over and over again.

So I am going to ask you some questions about what happens in stage 1 and 2. In other words, you have two people, apparently, who make a judgment when a case first comes in, is that right? There are two stages, right?

Ms. COLVIN. Yes.

Mr. CUMMINGS. And I also know that a lot of people in minority communities don't have doctors; they don't have lawyers. So they come in, and as I understand it, and this is just based on talking to constituents, they come in. So what happens then? They say I am disabled. We are getting the impression that these are golden decisions, these first two tiers, and I am just wondering what happens there.

Ms. COLVIN. That is an erroneous assumption, and I am glad you raised that. When the decisions are made at the DDS level, they have not seen the individual. When they get to the ALJ level it is almost a new case. First of all, it is generally a year or longer before that ALJ hears that case. New evidence has developed; the person has the ability to testify about their condition, which does not happen at the first two stages; they have the ability to bring in expert witnesses to also substantiate their findings. In addition, you have additional deterioration. If the person has been waiting more than a year and has a disability, their medical condition is progressing during that time, so many times, by the time the case gets to the ALJ, there is new evidence and the person's condition is such that it would now make them eligible for disability, where a year or two years earlier it may not have. Remember that for a very long time we have had cases that are well over a year old by the time they get to the hearing level.

Mr. CUMMINGS. And those are the people, again, who had nothing and who continue to suffer with nothing. I know of people who had to go and live with relatives, trying to make it off of zero. So let me ask you another thing. The chairman talked about this issue of over the years people asking, that is, people in authority at the commission, telling judges to move the cases faster. I didn't hear this testimony, but I am sure he did, something about 20 minutes a case. I didn't hear that yesterday. I think I was here the whole hearing, but I am sure that is accurate. Tell me about that.

Ms. COLVIN. Well, I have no knowledge of that. That would not be sanctioned within this organization while I am here. We stress the fact that we expect a quality decision, that it has to be policy-compliant. Yes, we want a timely decision because, just as you mentioned, we have thousands of people waiting for benefits to which they have paid into the system and earned. But we don't want them to rush through making a decision and make the wrong decision. We do quality throughout our process. We do a number of reviews prior to pre-effectuation, prior to payment, which we had not done before. There has to be a sampling. And then, of course,

we can do the focused reviews that we talk about. So we are always focused on quality.

I am not going to speak to what happened five or ten years ago, but I will tell you that that is unlikely occurring in this organization at this time.

Mr. CUMMINGS. Now, several of the committee hearings have discussed continuing disability reviews, called CDRs, which are periodic re-evaluations to determine if beneficiaries are still disabled or have returned to work and are no longer eligible for benefits. These are mandated by law, is that correct?

Ms. COLVIN. That is correct.

Mr. CUMMINGS. We have learned that CDRs are very cost-effective, estimated to save the Federal Government on the average of $9.00 per CDR. Yet, there is a backlog of 1.3 million CDRs. What is that about?

Ms. COLVIN. It is about funding. Congress has been unwilling to fund the CDRs even though it has been demonstrated to be cost-effective. When I was here on my first tour of duty in 1994, Congress worked with us and gave us seven years of funding that we knew would be sustained and adequate, and we were able to totally eliminate the backlog. So if we really want to ensure that people are not on the rolls who are not supposed to be on the rolls, we need to be able to do the CDRs. But we can only do the number that we are funded for.

This year we are funded to do 510,000 and we will do those. Next year, in the President's request, we are expecting to be able to do 880,000. But, again, that doesn't count now for the ones that are coming due this year, so we will still have a backlog.

It has been demonstrated that when Congress funds us we deliver; we can tell you exactly what we can do for the dollars that you give us. But we have not been adequately funded for this program integrity work.

The other concern I have is that even though we got an increase in our budget this year, the increase is primarily program integrity. There was no focus on the direct services and the people that are still waiting to get the benefits that they deserve, it was only a focus on getting people off the rolls who should no longer be there. We need to balance that. We need to get people off the rolls who are no longer disabled, but we also need to have resources that will allow us to expedite these applications that are pending, where people are waiting to be served who have earned the benefit and will die before they get that benefit because we don't have the resources.

Mr. CUMMINGS. On this subject, yesterday Senator Coburn, who I have a phenomenal amount of respect for, said a number of things about the CDR situation, and I agree with him. The committee invited him and the ranking member of the Committee on Homeland Security and Governmental Affairs to provide testimony on the findings from his investigation into the Social Security Administration adjudication process and oversight of ALJs. Senator Coburn stated that he believed a lot of CDRs are just a postcard mailed to somebody that says are you still disabled. And Senator Coburn then suggested a reform, and I just want to know your reaction to this.

Ms. COLVIN. Again, I think——

Mr. CUMMINGS. Are you familiar with what he said?

Ms. COLVIN. I am very familiar. I don't agree with him.

Mr. CUMMINGS. Okay.

Ms. COLVIN. We are not able to do medical reviews for every single individual and, therefore, we have used a process that determines which ones we can mail to, and they answer five specific questions, and based on that we are able to determine whether or not they need a full medical review. But we validate that every year. We take a statistically valid sample, about 60,000, and we do the full medical review, and in every instance so far, over the years, it has proven that the model that we use is correct.

We have to use our resources wisely. It costs us $0.20 to do a mailer. I don't know what it costs to do a full medical review, but it is costly.

Mr. CUMMINGS. But let me just tell you what he said. He said what needs to happen—and I think you need to consider this—I believe is that people who we know are going to be permanently disabled and know that the medical science and the medical record would show there is not going to be a way for them to get into the workplace, those should never have a continuing disability review. Hear me now. And I agree with him on this. What we should do is re-categorize those who get disabilities; ones that should be a short-term, ones that have a chance, and then ones that have no chance, and then concentrate, but it needs to be a CDR. So, in other words, some——

Ms. COLVIN. I think our current model, though, is very similar to what Senator Coburn discussed, because we do diary them. Our regulations require that we do them every three years. But we look at the categories when we do our diary; those likely to improve, those not likely to improve. So we are certainly are focusing on those likely to improve, and the model is such that we are trying to look at those who are more likely to improve. And, as I said, normally, when we would be doing a CDR every three years if we had the resources anyway. We simply have to try to do those that are more likely to fall into the category where they are no longer disabled because we don't have resources to do every single one.

Mr. CUMMINGS. Madam Secretary, I have run out of time, almost at the same time the previous speaker had, but I just want to say this. We want to get this right.

Ms. COLVIN. We do too.

Mr. CUMMINGS. Yesterday I said something that my mother told us years ago. She only had a second grade education, but she said you can have motion, commotion, and emotion, and no results. The people who suffer are the people who are the constituents I talked about a little bit earlier. So we need to get this right. These judges, if they are not doing the right thing, we want to work with you to get it done. If they don't belong there, if they don't want to follow procedures—I talked to the chairman yesterday. I said, when these people come in, they apparently come in and say they are going to obey certain procedures. And if they are not going to do that, I think we have to address that. And, by the way, judges, with regard to Social Security, they are not the only bad judges. By the

way, we see them in State courts and other places, too. But, again, we are talking about the outliers.

Thank you, Mr. Chairman. I appreciate it.

Chairman ISSA. Most welcome.

I now ask unanimous consent the statement of Judge J.E. Sullivan, U.S. Administrative Law Judge, from June 27, 2013, be placed in the record. Without objection, so ordered.

Chairman ISSA. Administrator, this judge is the one who gave us the testimony under oath that, in fact, an egg timer was part of his training. I presume that you believe that what he said under oath is true. Her. I am sorry, that she said is true.

Ms. COLVIN. I don't have any reason to question it. I am just saying that that is not something that we would sanction.

Chairman ISSA. But you did sanction it. The judge was trained in and testified under oath. So I hope you will take back the assumption that, unless she lied, the testimony you should review and find out how it was sanctioned.

Ms. COLVIN. Did she indicate when that occurred?

Chairman ISSA. You will have a copy of the testimony.

Mr. CUMMINGS. Mr. Chairman, in fairness, I think she—how long have you been there?

Chairman ISSA. She has been there for decades.

Ms. COLVIN. I have been acting for 14 months.

Chairman ISSA. Ma'am, how long have you been part of Social Security?

Ms. COLVIN. I have been the acting commissioner for 14 months.

Chairman ISSA. How long have you been before that?

Ms. COLVIN. I was there under Mike Astrue for two years. But, remember, he was the commissioner and he determined——

Chairman ISSA. That is the entire time that you have been with Social Security?

Ms. COLVIN. Oh, I was there at Social Security back in 1994 to 2001.

Chairman ISSA. Okay. So you have been there during decades, and there was a relatively small——

Ms. COLVIN. Not decades. I was there six years prior——

Chairman ISSA. Six years, two years, and 14 months.

Ms. COLVIN. Yes.

Chairman ISSA. Okay, so for these 20 years from 1994 that are shown here, from 1994—if you put it up on the board—from 1995 or 1996 fiscal year, where the Congress provided $4 billion in funding, until let's say 2010, when they provided over $10 billion. You keep talking about resources. These are decisions Social Security made in disabilities. These CDRs, when Congress stopped giving you specific mandates and set-aside money, but the total amount of money was still going up, and, by the way, this was during the Bush Administration, in 2002, with approximately $5.5 billion, if I am reading the numbers right, there were 900,000 CDRs. As the amount rose in the coming years, this blue line there is, in fact, the money going up and the red is the CDRs going down. That is a choice. That is a choice. We did not restrict your ability. We did not deny you the ability to do CDRs.

So during the period of time in which you were there the first time, your CDRs were going up like crazy. You had earmarked

money, an order to do it. The money kept going up. When the earmark disappeared, it went down. And, by the way, I want to note that this was during the Clinton Administration that a great job was done. During the Bush Administration a crummy job appears to be done when it came to reviews.

Ms. COLVIN. I wasn't there.

Chairman ISSA. And during the Obama Administration it has been going back up.

The point, though, is that the money is going up. The resources are going up at times when it is going up and when it is going down. That is a chart that shows no correlation between money and your decision to do CDRs, wouldn't you agree?

Ms. COLVIN. No, I would not agree. First of all, I have not seen your data, and I would like my actuary to look at it.

Chairman ISSA. It is not my data, it is yours.

Ms. COLVIN. Well, I would like my actuary to look at it and see if his interpretation is the same. But, secondly, our CDRs and the numbers that we are allowed to do are clearly indicated in our budget each year. So when you say we have the flexibility to do how many we want, that is not accurate. We have identified very specifically how many we are expected to do.

Second——

Chairman ISSA. Okay, well, let's go through——

Ms. COLVIN.—you gave——

Chairman ISSA. Ma'am, this is not the Senate; you can't filibuster.

Ms. COLVIN. All right.

Chairman ISSA. The fact is that you are talking about hard it is to fire a judge, but what you are missing is a judge that rubberstamps 100 percent of the time, when good faith belief is that anything above about 57 percent is probably above average and above 85 percent should give you a caution, you can save money by putting them on administrative leave and paying them to do nothing versus the false positives they are giving.

Having said that, I am going to ask you just a couple quick questions, because I, like the ranking member, see a problem and see somebody telling me just give me more money. And I don't think you doubt that that blue line is more money that is coming in every year under Republicans and Democrats. Consistently that line goes up.

So the real question here is why were you giving awards to some of those four people that were in front of us today, awards for volume, and, in fact, not checking in any way, shape, or form whether or not they were out of the norm in the amount of approvals they were giving for disability?

Ms. COLVIN. We do not give awards to judges. I think the——

Chairman ISSA. Letters that effectively are awards.

Ms. COLVIN. They are letters that go to offices, but not to individual judges. Again, that is something that happened in the past; that is not something happening today. In fact, letters are going out to offices commending them for their quality decisions, not for the number of decisions that they make, so a lot has changed, and even Senator Coburn recognized that there have been many changes.

Chairman ISSA. Exactly. Once Senator Coburn and 60 Minutes made it clear that you were providing benefits to people that did not deserve it in large amounts, including, in some cases, people who were colluding with the lawyers bringing the cases, miraculously, your ALJs are now reversing, aren't they? They are, in fact, lowering the amount of claims they give. Are they denying people benefits that are entitled to them or are they, in fact, more accurate today than they were before light was shed on this problem?

Ms. COLVIN. I think it could be a combination of both. I am not going to——

Chairman ISSA. Ma'am, you were the commissioner. You have been the acting commissioner for 14 months. You have an obligation to give me a decision. Are we, in fact, denying claims that should be granted in great numbers as a result of this reduction?

Ms. COLVIN. I do not believe that we are denying claims in great numbers.

Chairman ISSA. Then, by definition, the reduction is a reduction to a truer number, and we were falsely giving people benefits that were not entitled to them, wouldn't you agree?

Ms. COLVIN. I would not agree.

Chairman ISSA. Ma'am, you know, it is amazing that you want to come in here with a problem that up and down the dais we all agree is a problem, that there are too many people who are getting claims too slowly. But one of the reasons that the people who deserve these things are getting them slowly is we are clogged with a lot of people who should not get them who know that the lottery will give them to them in high numbers.

Ms. COLVIN. I do not agree with that statement or that assumption at all.

Chairman ISSA. You know what is amazing? You don't agree with it, but you are running an organization that is costing us billions of dollars in benefits given to individuals who do not deserve it. You tell me you can't fire the ALJs; you tell me you can't do it; you tell me the law won't change it——

Ms. COLVIN. I never told you we couldn't fire ALJs.

Chairman ISSA. You said——

Ms. COLVIN. In fact, you know that we have taken action against a number of judges. We have had over 15 judges——

Chairman ISSA. We had four yesterday who said things like they could see pain.

Ms. COLVIN. You know that there are a lot of actions being taken right now. I am not going to discuss actions here that will jeopardize a case or litigation that might be occurring, but you know that there are a lot of actions right now——

Chairman ISSA. Okay, let me ask you just one last question.

Ms. COLVIN. Yes.

Chairman ISSA. And I appreciate the indulgence of the ranking member.

Do you believe that Congress needs to give greater authority, not greater money, greater authority, to fire, to reform, to review if you are, in fact, going to represent the American people's best interest of their tax dollars?

Ms. COLVIN. I am not prepared to answer that question. I think that I would have to look at what the Merit Systems Review Board

challenges are. I think that perhaps there could be some improvements there.

Chairman ISSA. Mine was a much broader question; it was actually a soft ball right over the plate. For example, do you believe that we should give you the ability to do de novo review of judges whose decisions are, in fact, above the norm?

Ms. COLVIN. I don't believe that an allowance rate or a denial rate is sufficient to make a decision in that respect.

Chairman ISSA. So, in other words, if somebody is giving 100 percent approval, you don't think it is reasonable to give you the authority to review the review?

Ms. COLVIN. We have the authority to do a review.

Chairman ISSA. You didn't do it.

Ms. COLVIN. We cannot single out a judge, a specific judge——

Chairman ISSA. Well, only one judge gets 100 percent. Why wouldn't you do it?

Ms. COLVIN. Mr. Issa, we are doing focused reviews on those cases where we have identified problems.

Chairman ISSA. I asked you about judges. I asked you about authority, and you won't give me an answer.

Ms. COLVIN. We don't have the authority to do that.

Chairman ISSA. You cannot think of one piece of authority that Congress could give you, one change that Congress could give you that would empower you to protect the taxpayer better?

Ms. COLVIN. I think that we need to respect the fact that there has to be qualified judicial independence, but we also have to identify ways to——

Chairman ISSA. Ma'am, I asked you a question and I just want the answer to the question. You cannot, here today, if I hear you correctly, identify one area of authority or flexibility—not money; authority or flexibility—that would enhance your ability to protect the American people's taxpayer dollars?

Ms. COLVIN. I would be very happy to give you a thoughtful response at a later time on that.

Chairman ISSA. Ma'am, I will look forward, I will keep the record open for days or weeks to get your thoughtful response on congressional action that would give you greater flexibility or authority that would help protect the American taxpayer.

Ms. COLVIN. I would be very happy to look at that, Mr. Issa.

Chairman ISSA. I thank the gentlelady.

We next go to Mr. Cartwright.

Mr. CARTWRIGHT. Thank you, Mr. Chairman.

I thank you, Acting Commissioner Colvin. Thank you for coming today and I certainly thank you for service in this hugely important work done by the Social Security Administration.

And I am concerned. I am concerned certainly about outliers and judges who act badly. I share the ranking member's statement that there are bad judges everywhere and in every court that we ought to worry about.

But I am mostly concerned this morning about making policy decisions based on statistics that may be skewed and perceptions that may be incorrectly made on anecdotes. I think it is a mistake to make policy decisions based on these things. Certainly, we heard from four judges who may very well fit in the category of bad ALJs.

We heard Mr. Lankford, who unfortunately is not here right now, talk about 191 ALJs out of 1,400 who are way above average in allowing claims.

And one thing I wanted to touch on there was, and you said this, that current law prohibits you from reviewing judges based on their allowance rates or their denial rates alone. That may make sense. But one thing I wonder is, what about the judges who are denying claims way too much? I hear this. I know lawyers that are advocates and non-lawyers who are advocates for Social Security disability claimants who say they are denying more than ever these days. People who with legitimate injuries, disabilities, are not getting their claims allowed.

And so there is anecdotal evidence on both sides of the ledger here. I wanted to ask you about that. First of all, do you agree that there are 191 ALJs out of 1,400 that are granting too many, allowing too many claims?

Ms. COLVIN. I don't have the exact number of the outliers, but I will acknowledge that we have had outliers. But if you notice, we have had a tremendous decrease in the number of outlier judges over the last several years.

Mr. CARTWRIGHT. So let's touch on the outliers that are granting too few appeals, who are denying claims. First of all, I think it is something we could all agree on, that in a universe of 1,400 ALJs and all of the thousands and thousands of disability claims that come in, that there are some legitimate disability claims that get denied. And those appeals are denied. Would I be correct in that?

Ms. COLVIN. You are correct. In SSA we really focus on the right decision, a quality decision. I don't focus much on whether it is a denial or an allowance, but is it the right decision. And certainly, if we have someone who we believe that their number of denials is too high, then that is going to be a situation that we are going to be as concerned about as if we thought that they were out of the norm for the number of allowances that were made. Because people have a right to know that they are going to get a decision that is a quality decision and that is policy-compliant and also timely.

Mr. CARTWRIGHT. So we know that there are going to be some judges out there that are just not being fair and are just not allowing claims that should be allowed, where we have legitimate claims where people have no money coming in because they can't work, they are disabled, and still they lose their case. And my question is, as much as we talk about trying to figure out ways to get rid of bad judges who grant too many claims, don't we also want to look at ways to get rid of judges who deny too many claims? Would that be a fair statement?

Ms. COLVIN. Sir, I think what you are saying is exactly what I said. We want to make sure we get it right, that we get the right decision. We have increased our data collection and our data analysis so that we can look at decisions to see where there are problematic policy decisions and we can provide timely feedback to the judges.

Mr. CARTWRIGHT. Commissioner Colvin, let me ask you this. You have been paying attention this week. How about those bad judges that have been denying too many claims? Were any of them invited

to testify in front of Congress this week? Who were denying people legitimate claims?

Ms. COLVIN. An interesting question, sir, no, they were not.

Mr. CARTWRIGHT. They were not invited?

Ms. COLVIN. They were not invited.

Mr. CARTWRIGHT. I yield back, Mr. Chairman.

Chairman ISSA. If the gentleman would take note, there was no minority witness. I certainly hope you considered inviting the administrative law judges, the one who was below 15 percent allowance. I guess not.

With that, we go to the gentleman from Florida, Mr. Mica.

Mr. MICA. Thank you, Mr. Chairman, Ms. Colvin.

So you have 1,400 of these administrative law judges. And you have 191, I guess, that fell into one of these categories. Pretty high overturn ratings. Then you have some that the other side has spoken to, I guess were a few that have gone the other way.

How many of these judges have been put on administrative leave since you have been there?

Ms. COLVIN. I don't have that exact number.

Mr. MICA. Two? Five? Ten? Twenty?

Ms. COLVIN. Are you saying in the last year?

Mr. MICA. Just the total, yes, the 13 months that you have been there.

Ms. COLVIN. I will give that to you shortly.

Mr. MICA. Will somebody from the back provide that information?

Ms. COLVIN. Yes. I will be able to give that to you before we leave here today.

But I will say that since I have been the Acting Commissioner, we have some 25 percent decrease, we had outliers that were 25 percent, we are down now to less than 3 percent.

Mr. MICA. I want to know how many we have put on administrative leave in the 13 months. The 13 months you have been acting kind of disturbs me, because it is a pretty important position. You have pretty important responsibilities. It is one of the biggest agencies in government. And certainly with the discretion in cases like this to grant disability claims.

What is the problem with your getting confirmed. Are you before the Senate, are you approved by the Senate?

Ms. COLVIN. No, sir.

Mr. MICA. Have you been submitted by the President to the Senate?

Ms. COLVIN. No.

Mr. MICA. So you are just sort of acting in limbo?

Ms. COLVIN. I am running the agency, sir.

Mr. MICA. That concerns me, because I have been in Congress a while. It is difficult enough when you have somebody who is confirmed, let alone someone who is in an acting position, to get things done. And that is to your detriment to administer one of the most important agencies in government.

These administrative law judges are appointed by whom?

Ms. COLVIN. They are selected through the civil service process. So the Deputy Commissioner, Glenn Sklar, who is over the ALJ operation, would be the selecting officer.

Mr. MICA. Does OMB participate?
Ms. COLVIN. No.
Mr. MICA. They do not.
Ms. COLVIN. No.
Mr. MICA. And then they are given lifetime tenure?
Ms. COLVIN. Yes that is not an SSA decision.
Mr. MICA. And that is set by law?
Ms. COLVIN. Yes.
Mr. MICA. I think that is something else we need to change.
I chaired the Civil Service for four years under this committee.
Ms. COLVIN. Mr. Mica, you had asked me about the number.
Mr. MICA. Yes, put on administrative leave.
Ms. COLVIN. We have had one removal and two suspensions in 2014. In this year, 2014, we have had one removal and two suspensions. We have had a total of 15 removals since 2007.
Mr. MICA. It is very difficult to get rid of someone.
Ms. COLVIN. Yes. It is very complex.
Mr. MICA. And as I started to say, I chaired Civil Service for four years. I found it is almost impossible to get rid of anyone. But they can be removed by you and put on administrative leave, is that correct?
Ms. COLVIN. And we have many actions pending.
Mr. MICA. How many actions pending do you have? Can you let the committee know on that?
Ms. COLVIN. Yes, I am going to do that.
Mr. MICA. Do you have a fraud division?
Ms. COLVIN. Yes, we have, well, not a fraud division, our Office of Inspector General is responsible for fraud investigations. Our front line employees, most of our referrals, last year we made over 20,000.
Mr. MICA. How many referrals?
Ms. COLVIN. Last year we made over 22,000 disability fraud referrals.
Mr. MICA. How many of those were pursued to a conviction or to denying disability?
Ms. COLVIN. I think there were only 500. That is one of our challenges.
Mr. MICA. So 500 out of 20,000 referrals?
Ms. COLVIN. Yes.
Mr. MICA. Doesn't sound like a very good batting average.
Do you need more resources?
Ms. COLVIN. Now, the Office of Inspector General is responsible for the fraud investigations. And of course, resources are always helpful. This year we increased.
Mr. MICA. How many people are in the Inspector General's office?
Ms. COLVIN. That is not under my authority, sir.
Mr. MICA. Could somebody answer that? Maybe we can get that in the record, too. We want to make certain that you have the resources to go after people. Twenty thousand and 500 successes doesn't sound like a good batting average to me.
Ms. COLVIN. Well, one of the things I would like to see increase would be the number of continuing disability investigation units that we have.

Mr. MICA. How many do you have now?

Ms. COLVIN. We have 25. I am increasing the number this year to 32. But again, it is based on funding.

Mr. MICA. After this hearing, do you think you could show leadership an attempt to end the factory-like appeals process that has been demonstrated here the last couple of days?

Ms. COLVIN. I think we have already ended it, Mr. Mica. I think that is something that was occurring, but I think if you look at the fact that we have reduced the number of cases that a judge can hear during the year, we have capped that. We have the reviews in place. We have the tool of how am I doing.

Mr. MICA. How about suspending agency production goals until the agency——

Ms. COLVIN. We don't have agency production goals.

Mr. MICA. Well, it appears that again, that system, even though you may not have a formal system, is in place.

Ms. COLVIN. Sir, we are a production agency, so yes, we look at our budget and we determine what we think we can do based on the budget.

Mr. MICA. Yes, you have target goals.

Ms. COLVIN. We have target goals in every aspect of what we do, yes.

Mr. MICA. Finally, who made the decision to allow, yesterday we had some of the judges, you don't have to be on the planet too long to know that what's his name, Judge Krasfur, shouldn't really be practicing. But you did a focused review in 2011, he was put on administrative leave and then put back on the job, is that correct? Are you familiar with that?

Ms. COLVIN. I don't know the details of his case.

Mr. MICA. Can you get us for the record who, again, overrode the decision on the administrative leave? Then he came back, now he is on administrative leave. Because somebody needs to be held accountable for allowing someone like that to continue to serve in an important position like administrative law judge.

Thank you. I yield back.

Chairman ISSA. Thank you. The gentlelady from Illinois is recognized.

Ms. KELLY. Thank you, Mr. Chair.

The Social Security Disability program has long been a safety net for Americans whose disability prevents them from maintaining their employment. The program is an earned benefit in that workers must meet eligibility requirements for both insured status and for impairment.

Would you explain what is required to attain insured status?

Ms. COLVIN. What is required?

Ms. KELLY. Yes.

Ms. COLVIN. Sufficient earnings for sufficient quarters to be able to apply to be eligible for the benefit. And so generally, if a person has, I think, what is the number, is it 10? Yes, 10 years of work, depending upon age, then they would be eligible for disability. It would be, as I said, 10 years of work experience, and then SSI is a means-tested program. So they also would have to meet the income requirements.

Ms. KELLY. If the applicant meets these standards, he or she must also provide evidence that a severe impairment prevents him from performing substantial work. Can you elaborate on the criteria for meeting this standard?

Ms. COLVIN. The process is very complex. It means that the individual is severely disabled, unable to perform prior work or any work within the job market. And so there are different variables that would go into that. I would be happy to have staff brief you on the details, because I think you need a little bit more information than I can give you right here.

Ms. KELLY. Okay. Our aim is to provide benefits to those in their period of need, with the ultimate goal of returning Americans to employment when and if circumstances allow. How does the agency evaluate the readiness of one to return to work and are there programs that encourage re-entry into the workforce?

Ms. COLVIN. Yes, we do the CDRs every three years, which are mandated. At that time, we determined whether or not the person has improved to the point that they now are able to return to work. We also have had a number of demonstration programs to identify what types of interventions might be necessary to help people to get back to work. You may recall that we have the Ticket to Work, which helps individuals to find work and provides some of the support services that they need in order to get back into the job market.

I will tell you, however, that by the time someone comes onto our rolls, the majority of them are severely disabled and they are not going to return to work, although we do have a small percentage that return to work.

Ms. KELLY. Yesterday our committee held a hearing with the four judges, as you know, who have approved thousands of benefits, thousands of benefits costing millions of dollars. And it makes me uncomfortable that we are not talking about people, instead, the decision is all about allowances and denials like they are widgets. Are these widgets, or are these people with unique stories, facts and circumstances that judges have to understand and apply to the law?

Ms. COLVIN. I will tell you that for me, every number is a real person, and that is the one thing I emphasize to staff. So I am as interested in a person who is denied who should not have been as I am in someone who was allowed who should not have been. So for me it is quality, quality, quality. I am always focused on, are we making the right decision. And I say that we will not sacrifice quality for quantity. So you will see that in many instances, our numbers are going up, our waiting times are going up, because we are giving the attention to the cases that I believe needs to be given.

Ms. KELLY. How many more judges would you feel you need so that the waiting time is better?

Ms. COLVIN. I just authorized ODAR to hire 200 new judges this year. I don't have a figure on how many I would need to do all the backlog. But only a judge can hear a case, so if I don't have judges, I can't hear a case. I would be happy to try to provide information relative to what the ultimate quorum would need to be. But we are

trying to keep it around 1,500. Our attrition rate is high, because we have senior staff.

Ms. KELLY. Thank you. I yield back, Mr. Chairman.

Mr. CUMMINGS. I wish the Chairman was still here. He had said something about while you were at Social Security, that you promoted certain policy. I don't think you had the chance to answer that.

Ms. COLVIN. Well, I think he was in the wrong. He was inaccurate. I have never promoted the policy that we would just ramp out cases. Even when I was here before, we were very focused on the quality. The agency has made tremendous progress in being able to hold judges accountable. Because at one time they said we couldn't hold a judge accountable for even coming to work or on the number of cases that they were doing or the quality. So there has been tremendous progress made.

But when I was here, I was primarily involved in operations, which is our field office operations, from 1998 to 2001. Since I have returned, we have been focusing on quality throughout the agency, particularly with the disability cases.

Mr. CUMMINGS. Thank you.

Mr. GOSAR. [Presiding] I am going to recognize myself now for questions.

Could you identify your staff that is here with you today? Raise your hands.

Ms. COLVIN. Do you want them to introduce themselves?

Mr. GOSAR. No, I just want to see who is all here, I want to see them nice and high. Can I see them, please?

[Show of hands.]

Mr. GOSAR. Ms. Colvin, did you watch yesterday?

Ms. COLVIN. Yes, I did, some of it, but your streaming was not good.

Mr. GOSAR. How about staff? Did you watch that? Were you disturbed?

Ms. COLVIN. Absolutely.

Mr. GOSAR. I am from western Arizona. The people back home were seriously disturbed.

Ms. COLVIN. So were we.

Mr. GOSAR. So when we were talking about quality and you talked about outliers, do we have a problem? I need to hear you say that we have a problem.

Ms. COLVIN. We have had a problem. It is getting better. As I mentioned, we have had a 20 percent reduction in the number of outliers. We are now down to 3 percent of our judges who are outliers.

Mr. GOSAR. So I am going to interrupt you, I need to see something more.

Ms. COLVIN. What do you want?

Mr. GOSAR. What kind of time table are we dealing with? Are we talking to infinity and beyond, or do we have a two-year problem, looking at enough money to fulfill what we are looking at?

Ms. COLVIN. I am sorry, your question is not clear.

Mr. GOSAR. Trust fund, when does it run out.

Ms. COLVIN. In 2016, the trust fund will be depleted.

Mr. GOSAR. Mayday, mayday, right?

Ms. COLVIN. The reserves will have been depleted. We will still have funds coming in that will allow us to provide 75 percent of the benefit.

Mr. GOSAR. But 75 percent doesn't cut it for folks that actually need it.

Ms. COLVIN. Absolutely.

Mr. GOSAR. So to me it seems like a CEO is going to be talking about metrics, about timetables. I want to look at quality, too. I am a dentist impersonating a politician, so a lot of this means a lot to me in regards to that.

Talking about yesterday, we have to get back to building blocks before we can reconstruct stuff. So when I was listening yesterday, I was mortified that I actually saw judges claiming that they were doing bench reviews. You said that it is almost like a new case study by the time they get there.

So it would remand that there would be very few bench decisions. Would you agree with that?

Ms. COLVIN. And in fact, if you look at our data, you will see that there are very few being done any more. I can provide you with a chart.

Mr. GOSAR. I saw four right there that, boy, I tell you what, there needs to be a clean sweep right there. I saw four judges here that although they didn't have a medical license, they weren't using expert testimony.

Ms. COLVIN. There should still be some situations where you have on the case review, I mean, reviews without a hearing or decisions without a hearing, on the record reviews. But I am saying, the number that occur has significantly decreased.

Mr. GOSAR. I would like to see those numbers.

Ms. COLVIN. All right, we would be happy to provide them.

Mr. GOSAR. I like validation.

Ms. COLVIN. We have it, we will be happy to provide it.

Mr. GOSAR. I would love to see that validation.

Do you need more information from seeing those four judges yesterday to take action?

Ms. COLVIN. No, because most of what you presented yesterday were our documents that we provided to you. So what they provided is not a surprise.

Mr. GOSAR. So why aren't they all on suspension?

Ms. COLVIN. I don't know what their individual situations are. But as I have said to you, I am not going to interfere with any cases, whether it is a criminal action or whether it is an action that could then be affected because of my speaking out publicly. But we would be very happy to come to you and talk to you privately or the committee about all the things that we are doing in this area.

Mr. GOSAR. I think America needs to hear it. They don't need to hear it from just behind closed doors. I think they need to hear about it all the way across the board.

Ms. COLVIN. There are privacy issues, and we also do not want to jeopardize criminal investigations by giving information out in public. These are not going to be cases that are not going to be litigated.

Mr. GOSAR. Well, I think a good step is to admonish them by not allowing them to hear any cases. If you are talking, you talked ear-

lier about quality. Right there is a good faith exercise in making sure that we have quality instead of quantity, wouldn't you say? Putting them on administrative leave and do you not have that ability to do that?

Ms. COLVIN. I would be happy to talk to you later about individual cases.

Mr. GOSAR. Let me ask you a question. Do you not have the authority to put those individuals that we saw yesterday on immediate administrative leave? Yes or no?

Ms. COLVIN. I have the authority to put individuals on administrative leave, yes.

Mr. GOSAR. Have you put those four on administrative leave?

Ms. COLVIN. No, I have not.

Mr. GOSAR. Why not?

Ms. COLVIN. I think there has to be considerable thought and there are actions pending.

Mr. GOSAR. Oh, my goodness gracious. You didn't see that yesterday with those four individuals? We had a guy that was interpreting his own interpretation of what disability was. We had a gentleman that over here has a conflict of interest. We had gentlemen saying they knew more about medicine than a medical doctor. Come on, now.

Ms. COLVIN. You don't want to hear my responses, because you are not listening. Some of them are already out; those individuals that spoke action has already been taken.

Mr. GOSAR. So why not all of them? I mean, I think across the dais, we are all mortified by the four gentlemen who sat here yesterday.

Ms. COLVIN. We were too.

Mr. GOSAR. Then why aren't they all on administrative leave?

Ms. COLVIN. I have given you the answer I can give you, sir.

Mr. GOSAR. You said a few.

Ms. COLVIN. I have said that we——

Mr. GOSAR. You actually have the jurisdiction, you as the CEO for the Administration, the Social Security Administration, witnessed what we saw as despicable responses from four judges. And you have the ability, which is what you just told me, that you could put them on administrative leave. And yet all four of them are not on administrative leave?

Ms. COLVIN. My answer is the same. I am not going to discuss personnel actions here in this forum.

Mr. GOSAR. That is the problem we have here right now, is accountability and actually having a line item, a direction, a path of holding people accountable. That is what is wrong.

Ms. COLVIN. I would be happy to talk to you privately. I am not going to have that discussion here.

Mr. GOSAR. Well, if you can't tell America, that is a disgrace, especially after what they saw from those four judges yesterday.

Ms. COLVIN. I am not going to jeopardize the actions because you feel I have not handled things appropriately. That is your opinion.

Mr. GOSAR. I think America's gut opinion, what they saw yesterday from four judges was disgraceful, absolutely disgraceful. There is no reason one of those gentleman should be able to hear one case, whatsoever. And putting them on administrative leave does

not deter any judicial proceedings at all. That is the problem we have here.

We have less than two years, less than two years.

You had five minutes over time.

Mr. CUMMINGS. I had five minutes because the gentleman who spoke first——

Mr. GOSAR. So now everybody is taking five.

Mr. CUMMINGS. No, no, no, that is not true.

Mr. GOSAR. I have been sitting down there watching it.

Mr. CUMMINGS. The first questioner on your side had 10 minutes.

Mr. GOSAR. The gentleman is out of order. Reclaiming my time.

I would love to see what you are looking at, as far as an orchestrated plan to make sure this is solvent. Not only with the ALJs, but also I want to make sure we are reviewing the people who are on the first and second level aspects. Because those are coordinated aspects there.

I have one last question for you. Is there any reason why somebody wouldn't have the ability to work? I mean, when you look at a claim, for perpetuity, there would be very few cases, would you not agree, that somebody could actually benefit from doing an alternative job?

Ms. COLVIN. I have no idea what your question is designed to get at.

Mr. GOSAR. I am talking about permanent disability. Isn't there an opportunity or a job that somebody with a disability can actually do?

Ms. COLVIN. I am not a physician, but we apply the policy and it states very clearly that if the individual is not able to perform prior work or any work in the job market, then they are disabled.

Mr. GOSAR. Partially or full?

Ms. COLVIN. Full.

Mr. GOSAR. So it doesn't matter if you had a back injury and you are out chopping wood?

Ms. COLVIN. You have the law, you can take a look at it.

Mr. GOSAR. The Chairman actually asked, were there opportunities, I think Mr. Mica also said, are there opportunities that we can change in the law to make this more solvent and better for you to orchestrate a solvent plan.

So with that, who is the next person? Ms. Speier?

Ms. SPEIER. Mr. Chairman, thank you.

Mr. Chairman, let me just say for the record that it is very important for us to not jeopardize the disciplinary actions—he is not listening to me—the disciplinary actions that are ongoing within the Social Security Administration. And the Social Security Administration should not be in a situation where they are tipping their hand as to what strategy they are using relative to pursuing the actions against those judges. So I think that is very important, for us not to thwart their efforts in getting a just decision in the end. That may be why Ms. Colvin has not been willing to respond to your questions.

But having said that, I think that there are lots of areas that need to be fixed. And I don't think this will be a first visit here,

Ms. Colvin, or your last. I know it is maybe your first, but it won't be your last.

Let me ask a couple of questions as it relates to Huntington. I had a whistleblower in my office yesterday who described continued retaliation at the Huntington, West Virginia office. So my question to you is, what is the status of the managers who retaliated against whistleblowers by hiring private investigators?

Ms. COLVIN. You are aware that Huntington is an open case, but we removed the ALJ, Andrus I think his name was.

Ms. SPEIER. I know all about that. But there was also an investigator that was hired to watch one of your staff that was working one day at home, and trying to bring some action against this particular individual, because this individual had been a whistleblower.

Ms. COLVIN. May I get back to you?

Ms. SPEIER. You certainly can. I would appreciate that.

Ms. COLVIN. Okay.

Ms. SPEIER. So in Huntington, you have a claims representative who is clearly implicated in his relationship with Judge Daugherty and bank statements and documents are very persuasive. Now, the fact that the U.S. Attorney has not taken action yet does not preclude you from taking administrative action. Is that correct?

Ms. COLVIN. I am not sure of that, Ms. Speier, I would need to check that.

Ms. SPEIER. Well, that is pretty fundamental.

Ms. COLVIN. Normally when my General Counsel gets involved and it is a criminal investigation, I sort of take a back seat until we determine exactly what is going to happen there, so that we don't do anything that is going to interfere with that criminal investigation. So I wouldn't be prepared to tell you that now, but I would be very happy to come back and talk to you and bring the General Counsel.

Ms. SPEIER. All right. I think it is important, where you have a U.S. Attorney who appears not to be taking action, you have powers to take administrative action and administrative action should be taken.

Ms. COLVIN. We have not given up on expecting that we are going to get some criminal prosecutions there.

Mr. SPEIER. I want you to go back with your staff and determine whether or not, while there is still something pending, whether or not you can take administrative action. Eric Kahn should not be allowed to continue to represent claimants. And as I understand now, he has opened an office in California as well.

Ms. COLVIN. I hear you. I will take a look at that and I will get back to you on that, Ms. Speiers.

Ms. SPEIERS. All right. The issue of a lifetime term is one that I think really needs to be addressed. We have a workers compensation system in California, it has a very similar function to the Social Security disability process on the Federal level. These terms are not for life. And I don't know the history for giving these judges terms for life, but I think we have to look into it. I for one believe that we should look at giving them set terms. I think you are going to see greater accountability over a period of time.

My time is almost up, but I would like to just ask you one other question, if I could. Is there anything else that the agency can do about Eric Kahn separate from the criminal prosecution?

Ms. COLVIN. I would have to get back to you on that. Because as I said, I have been deferring any action that I would think necessary until such time as I know what is happening with the criminal action. I understand that we have begun to move forward with the administrative process.

Ms. SPEIER. All right, so you can act independently.

Ms. COLVIN. Yes.

Ms. SPEIER. This has been going on for how many years?

Ms. COLVIN. A while. I don't have the exact number of years, I am sorry.

Ms. SPEIER. It has been at least five years, correct?

Ms. COLVIN. I understand it has been three.

Ms. SPEIER. Three years.

Ms. COLVIN. Still, three years too long.

Ms. SPEIER. And he is still representing claimants. All right, my time is expired.

Mr. GOSAR. The gentleman from Tennessee, Mr. Duncan, is recognized.

Mr. DUNCAN. Thank you, Mr. Chairman.

Commissioner, on 60 Minutes last year the Vice President of the Association of Administrative Law Judges said this: "If the American public knew what was going on in our system, half would be outraged and the other half would apply for benefits." What is your response to that?

Ms. COLVIN. I don't know what they were referencing. We know that we have many well-deserving individuals who are on our rolls, that we take every effort to make sure that people who are not eligible did not get on the rolls. I am not sure what they were referencing, and they have never shared their thinking with me.

Mr. DUNCAN. Let me ask you this. What percentage, I know the rate of approvals has gone down in the last few years, since more attention is being called to this, but what percentage of cases are being decided without a hearing? Do you have that?

Ms. COLVIN. Yes, I can give you that number, not this second, but I can give that to you because I have a chart here.

Mr. DUNCAN. One of these judges yesterday had approved almost 7,000 without a hearing. I just wondered. And without asking you any specific names, have you referred any judges or lawyers to the Justice Department for possible criminal prosecution?

Ms. COLVIN. There are personnel actions that are being undertaken in some instances. As I said, I think it might be desirable to try to give this committee or those who are interested a private discussion of all the things we are doing, so you can see that we are trying to address this comprehensively.

Mr. DUNCAN. I know you are trying to do some things in the Social Security Administration. But are you also working with the Justice Department on this?

Ms. COLVIN. Absolutely.

Mr. DUNCAN. All right. And let me ask you this. You are reviewing and have reviewed the judges to determine the number of outliers. I remember several years ago seeing another report on 60

Minutes that told about a region or a section in Arkansas where children were being told that it was easy to get what they called crazy money from the Social Security Administration, and were being taught to fake mental illness and so forth.

Are you also looking at particular offices or regions that are having higher approval rates than other regions? Do you look at that also?

Ms. COLVIN. As we look at judges, we would have to look at offices. So yes, we know where the high approval rates are occurring.

Mr. DUNCAN. And are there any particular offices or regions that have extremely high approval ratings or disapproval ratings at this time?

Ms. COLVIN. I don't think that there is any office that is unique, where it is much greater than elsewhere. As I mentioned before, the number of outlier judges is now down by 20 percent to 3 percent of the entire ALJ corps. So we are still addressing that, still working on that.

Mr. DUNCAN. Where it says 19.4 million people are drawing benefits from your two major programs right now, is that correct?

Ms. COLVIN. You mean the current number of recipients?

Mr. DUNCAN. Right.

Ms. COLVIN. Well, we have 16 million beneficiaries. I don't know how many for disabled.

Mr. DUNCAN. This is in our committee information, it says 19.4 million.

Ms. COLVIN. It is 16 million.

Mr. DUNCAN. And it says that 3.4 million were approved between 2005 and 2013.

Ms. COLVIN. I don't have that data with me. I can certainly take a look at that. I don't have the data by year.

Mr. DUNCAN. What do you think, is there anything that you feel needs to be done that you don't feel you have the authority to do at this point that Congress can help you with?

Ms. COLVIN. I am taking a look at that now, Mr. Duncan. I have the letter that came from the committee with recommendations. I agreed to go back and look at that more thoroughly. I wanted to have further discussion with staff, and get some clarification. But I think we will go ahead and just respond, and then if we need more clarification later, we will do that.

But we do want to work with the committee. We want to try to identify the kinds of things that we think might be helpful to us.

The biggest challenge is the fact that with the qualified judicial independence, we have to be respectful of that. We cannot single judges out because of their allowance rate. So we have to try to get to those from another angle. And then the ability to remove a judge is very difficult and very complex. We have to work with the Merit Systems Review Board.

So as we work with those things, if we think there is anything where Congress might be helpful, we will come back and talk with you.

Mr. DUNCAN. Well, one last comment I will make is, I was a judge for seven and a half years before I came to Congress. The lifetime terms that Ms. Speier just mentioned, she didn't know what was behind that, those were started many years ago when

there were far fewer lawyers. And the judges were lower paid than they are now. What you have now, you have really too many lawyers and you have lawyers jumping at a chance to become administrative law judges or federal judges of any type. You just really don't need these lifetime terms any more. We should work on that and end the lifetime terms for all the judges we possibly can.

Thank you, Mr. Chairman.

Mr. GOSAR. I thank the gentleman.

The gentleman from Michigan, Mr. Walberg, is recognized.

Mr. WALBERG. Thank you, Mr. Chairman.

I am pleased to yield my time to the Chairman.

Mr. GOSAR. Thank you very much.

Ms. Colvin, do hearing offices have productivity goals?

Ms. COLVIN. I am not aware that we have specific productivity goals. We have overall national goals.

Mr. GOSAR. What are they based on?

Ms. COLVIN. Our budget and the number of cases we believe we can do with the budget that we are going to be allocated. And that is why we were able to hire, or had funding for the 200 judges that we are going to be hiring this year.

Mr. GOSAR. Are you aware that the law requires ALJs to consider the claimant's entire case record prior to rendering a decision?

Ms. COLVIN. Absolutely.

Mr. GOSAR. Isn't that an access point for determining that they can be put on administrative leave?

Ms. COLVIN. I don't believe so. I don't think that one thing would be the basis.

Mr. GOSAR. The requirement for law. Are you aware that until 2011, the requirement that ALJs consider the entire case record before reaching a decision was essentially meaningless before the agency did not even monitor, much less ensure that the decisions were policy compliant?

Ms. COLVIN. I can't speak to that. I am not aware of that statement.

Mr. GOSAR. Frank Cristaudo was the Chief ALJ from 2006 to 2010. During this time period, hundreds of ALJs were approving nearly all claimants of benefits. When asked in his transcribed interview whether he was ever concerned that one of his judges was allowing too many people onto the program, he said no. Given the data that the committee has presented, do you find that stunning?

Ms. COLVIN. Do I find what stunning?

Mr. GOSAR. That almost everybody was placed on the rolls.

Ms. COLVIN. I don't know how to answer that. Do I find it stunning that almost everybody was placed on the rolls?

Mr. GOSAR. Yes.

Ms. COLVIN. I don't know that I have any data to support that statement from—who was that, Judge Cristaudo?

Mr. GOSAR. Do you know who Judge Cristaudo was?

Ms. COLVIN. Of course I do, yes. I would have to see the data.

Mr. GOSAR. Are you stunned that he wasn't aware of any judges that weren't giving overwhelming approval ratings?

Ms. COLVIN. I don't have an opinion one way or the other on it.

Mr. GOSAR. If we gave you that data, could we get an answer?
Ms. COLVIN. I am sorry?
Mr. GOSAR. If we gave you that data, could we get an answer?
Ms. COLVIN. Get an answer to am I stunned?
Mr. GOSAR. Yes. Okay. Mr. Cristaudo testified that he was often very concerned about particular ALJs or hearing offices that were not processing cases quickly enough. Isn't that lack of a balance a major concern to you?
Ms. COLVIN. Well, I would think if he was the chief judge and he was concerned, he should have taken some action.
Mr. GOSAR. Okay. Knowing what we know now, was it a mistake for the agency to have no quality metrics to evaluate ALJ decisions as the agency encouraged ALJs to decide more cases?
Ms. COLVIN. Well, again, I am not going to focus on the past. But I certainly believe that you have to have quality metrics. I am very much into data and using that data for informed decisions. That is why we focus so much on quality.
Mr. GOSAR. So quality metrics is a determining factor that we would have to look at?
Ms. COLVIN. Well, quality is probably the sole factor that we should be looking at in determining whether or not, in fact, the decision is a quality decision, a legally, defensible decision, a policy compliant decision. We certainly want timeliness in the processing of cases. But we don't want timeliness to replace quality.
Mr. GOSAR. But if we don't look at the past, we are doomed to repeat it in the future, right?
Ms. COLVIN. Certainly. That is why we have made lots of improvements because we knew that the past was not where we wanted to be.
Mr. GOSAR. Since 2011, the agency conducted 30 focused reviews of all ALJs with allowance rates in excess of 75 percent. Every one of these reviews found significant problems with the way these ALJs consider evidence. Are you concerned by this?
Ms. COLVIN. I don't understand the focus of your question. All of the changes that we are making are designed to improve what we are doing. So your question about am I concerned about what we did five or ten years ago, I am not sure I understand the relevancy of it.
Mr. GOSAR. Well, all the judges that you are reviewing have these types of problems, would you agree?
Ms. COLVIN. Well, that is why we are doing focused reviews, that is why we are doing pre-effectuation reviews. I'm just not certain I understand what you are trying to get to.
Mr. GOSAR. Will you provide the committee with all the agency's actions taken as a result of the agency's focused reviews of ALJs?
Ms. COLVIN. Can we provide you with?
Mr. GOSAR. All the agency's actions taken as a result of the agency's focused reviews of ALJs?
Ms. COLVIN. We have your questions, we will take a look at what it is that we have available.
Mr. GOSAR. Starting in 2007, when Frank Cristaudo was chief ALJ, ALJs were instructed to issue between 500 and 700 decisions per year, correct?
Ms. COLVIN. That is my understanding.

Mr. GOSAR. Are you aware there are no underlying studies to justify the production targets?

Ms. COLVIN. That is what I am told.

Mr. GOSAR. Are you also aware that neither current chief ALJ Deborah Bice nor former chief ALJ Frank Cristaudo had no idea how long it takes an ALJ to decide a case when they are properly reviewing the evidence?

Ms. COLVIN. I am surprised to hear that, since they are both judges, that they would not know how long it takes.

Mr. GOSAR. You made the comment that each individual is an individual record, did you not?

Ms. COLVIN. Is an individual record?

Mr. GOSAR. Yes, it is exactly, very personal, I mean, the chart could be huge, the chart could be small.

Ms. COLVIN. Well, I haven't addressed that, you never asked me.

Mr. GOSAR. That it takes more time, I mean, the complexity of it, if it's a mental health issue, whether it is a complex medical issue. Wouldn't that kind of make it a personalized type of format?

Ms. COLVIN. I am certainly not a judge and I don't review cases, but I assume that there would be a variant, yes.

Mr. GOSAR. Do you think it is irresponsible to create a production goal without any analysis to back it up?

Ms. COLVIN. I don't have a production goal, so I can't respond to that.

Ms. GOSAR. I would acknowledge the gentleman from Virginia, Mr. Connolly.

Mr. CONNOLLY. I thank the Chair. Welcome, Ms. Colvin.

I think it is really important to note this is part two of this set of hearings. And clearly, there is a narrative my friends on the other side of the aisle want to try to establish. But they are doing it by, I think, cherry-picking witnesses who distort the reality. So we get several administrative law judges with high allowance rates, in some cases exceeding 90 percent, even though the national average allowance rate is nowhere near that, it is in fact, 57 percent, as of last year, the lowest rate since Jimmy Carter was in the White House in 1979.

So let's not distort facts here. Let's not try to manufacturer a narrative that, in fact, is misleading if not false.

Commissioner Colvin, is it true that the disability insurance trust fund is forecast to become insolvent in 2016?

Ms. COLVIN. Not insolvent. In 2016, the reserves will be depleted. Income, or the resources that will be coming in will allow us to pay 75 percent of the benefit, yes.

Mr. CONNOLLY. Is that a serious thing? Could people be hurt?

Ms. COLVIN. Absolutely. People will be hurt. Congress has acted before to address that problem. It is not the first time that we have come to the situation where the reserves were depleted.

Mr. CONNOLLY. Right. Now again, the insidious nature of the undertone here in these two days of hearings is to allow the implication that, I am going to use the word insolvency, that the possibility of insolvency, impending insolvency, is because of mismanagement by the agency and administrative law judges running amok. Is it not true, however, that the trust fund was forecast to

be possibly insolvent 20 years ago by the chief actuary of the Social Security Administration?

Ms. COLVIN. Absolutely, and the trustees. So we have known and Congress has known for a very long time that we would have this problem in 2016. And the trustees reports reflect that.

Mr. CONNOLLY. In fact, we had Ms. LaCanfora, the Acting Deputy Commissioner of the Office of Retirement and Disability, before this committee in April, or the subcommittee. She stated, the policy and the process and the management of the agency is not the cause of the reserve depletion. The cause of the reserve depletion is demographics. Baby boomers aging, women entering the workforce.

Do you care to comment on that, Ms. Colvin?

Ms. COLVIN. Well, it has all been predicted. It is in our trustees reports, we have known that we would have the aging of the baby boomers and that they would be reaching the disability prone years, we knew more women were entering the workforce and they would have earnings on their own record. We knew that the poverty rate is going down, so we would have more children coming on to SSI rolls. I don't know why Congress expresses surprise. It is in writing in our trustees reports.

Mr. CONNOLLY. Yes. And well of course, if we really were determined to avoid a problem or do nothing about it creatively, we might try to pick on some tertiary issue that is really quite tangential to the heart and soul of what we are dealing with here, the reserve depletion.

Ms. COLVIN. I need to emphasize that our allowance rate is 44 percent. It is the lowest it has ever been in the last 40 years. In fact, I have many stakeholders who think it is too low. Of course, Congress thinks it is too high. But there has been a lot of effort to make sure that people who are on the rolls are people who deserve to be on the rolls. That is why we have the CDRs, because the CDRs will identify people who have improved and will go off the rolls.

So I don't see any valid data to tell me that we have huge numbers of people on the rolls who are not disabled. In fact, we have a lot of people waiting who should be on the rolls.

Mr. CONNOLLY. And even if there were too many people, that is hardly the solution to the issue of the depletion of the reserve, isn't that right?

Ms. COLVIN. Absolutely. Also, when Congress changed the retirement age, that meant that more people are going to be on disability until they reach the retirement age. So that also added to the number of people being on the rolls.

Mr. CONNOLLY. So actually, Congress has something to do with the nature of the depletion?

Ms. COLVIN. Yes.

Mr. CONNOLLY. It isn't just a handful of administrative law judges who may have excessive allowances, is that correct?

Ms. COLVIN. I haven't seen the data, but I cannot believe that that number that is quoted about the number of dollars that would result from the allowance rates, I just have not seen it.

Mr. CONNOLLY. In the past, has Congress intervened when we have seen us get to a certain level in terms of the depletion?

Ms. COLVIN. Several times.

Mr. CONNOLLY. In fact, Congress has reallocated payroll taxes between Social Security programs at least six times in the past, is that not correct?

Ms. COLVIN. Yes.

Mr. CONNOLLY. And a similar rebalancing would, in fact, extend the life of the trust fund, allowing for full payment of benefits through 2033, is that not correct?

Ms. COLVIN. That is correct.

Mr. CONNOLLY. So maybe we could spend our time more creatively here in Congress talking about trying to find a solution to your problem rather than trying to finger blame in a tangential way that really begs the question. I yield back.

Mr. GOSAR. Would the gentleman like to input why the minority didn't bring their own witness to this hearing the last two days?

Mr. CONNOLLY. I don't speak for the minority, Mr. Chairman.

Mr. GOSAR. But you are a very articulate member.

Mr. CONNOLLY. Well, I thank the chair.

Mr. GOSAR. And they had the opportunity to do so. And it is acknowledged no minority witness was chosen.

I would like to invite Ms. Lujan Grisham for her time at the dais.

Ms. LUJAN GRISHAM. Thank you, Mr. Chairman. I appreciate that, and appreciate that we are having what I consider sort of two bites at the apple to start to look at disability cases and the system that Social Security has in place to review those cases.

I would ask, Mr. Chairman, I have a statement that I would love to introduce into the record from an attorney in New Mexico who specializes in these cases and has been an effective advocate. He uses in his statement about some of the staffing shortages, information that comes right from the Social Security office's website.

Chairman ISSA. [Presiding] Without objection, that will be placed in the record.

Ms. LUJAN GRISHAM. Thank you very much, Mr. Chairman.

There are 164 ODAR offices around the Country. How does the Social Security Administration determine the number of ALJs, decision writers and other support staff in each office?

Ms. COLVIN. I don't think I can give you that. I would have to get back with you, I need to consult with the deputy for ODAR on that.

Mr. LUJAN GRISHAM. But, no sense that it is based off the number of cases that each office receives.

Ms. COLVIN. We anticipate that a judge can only carry certain workloads. Of course, we don't know how many individuals are going to come into an office who need our services. But that is why, with electronic services, we can move

Ms. LUJAN GRISHAM. I would disagree. I think you do know. In fact, the Albuquerque office currently has the fourth highest number of cases per administrative law judge in the country. In fact, I have raised that point in writing, and in communications with the social Security Administration and have yet to get what I think is a satisfactory response, and we will get there, to what we might do about that.

In fact, there are 822 cases per ALJ in the Albuquerque office. In the 16 other offices in the region, the average number of cases per ALJ is only 500. Does that sound correct to you?

Ms. COLVIN. I don't know that figure. But one of the things that we do is, we do move work around to help with understaffing. We are going to be hiring 200 new judges.

Ms. LUJAN GRISHAM. But certainly none in my region, which has the highest consistent cases, and identifying staff in other places, which I appreciate, given that we have 8,700 people in New Mexico who are currently waiting for a hearing on their case, which creates, as you noted earlier, and I really appreciate that very much, that you noted there are significant other policy issues that are affected by not getting these cases adjudicated timely and by the fact that Congress has made policy changes that create more of a demand for Social Security disability.

But when you outsource these cases, it is like putting a band-aid on a broken leg. If this is where you know you have significant issues, why aren't we making investments where we have the greatest backlogs?

Ms. COLVIN. Well, because we have them everywhere. We have the second longest waiting period in my own county of Baltimore, 17 months, before a case is actually heard. So I am trying to, with these new judges, look at how we redistribute cases but we just haven't had the resources.

Ms. LUJAN GRISHAM. And I understand that you do have that, and you have some offices around the Country with similar issues. But the Albuquerque office is an outlier among outliers, given the stats, the high disability cases, the 8,700 people waiting three years before we get anything adjudicated.

Do you think this severe, and let me just repeat that, the severe understaffing issues, like in Albuquerque, do you think they are acceptable?

Ms. COLVIN. No, I do not. Let me take a look at what is happening in Albuquerque, because it hasn't come to my direct attention.

Ms. LUJAN GRISHAM. I really appreciate that, and I know that these are tough issues and that they are going to take probably a range of options. But I do want to alert you that I have had very unsatisfactory, in terms of not getting the answer that I desire, but getting any suggestions or any answers about what do about this particular problem, in spite of reaching out locally, regionally, and nationally.

Given that, when do you think you might be able to reevaluate Albuquerque's staffing issues?

Ms. COLVIN. As I mentioned, we have just authorized hiring. It is going to take us time to recruit and to train, et cetera. So I don't want to give you a date that I can't meet. Let me talk to my staff and get back to you.

Ms. LUJAN GRISHAM. One last question in the limited remaining time. I mean no disrespect, but this is critical.

Ms. COLVIN. I understand.

Ms. LUJAN GRISHAM. I have not received satisfactory, timely, timely responses. I need you to get back to me.

Ms. COLVIN. I will commit to that.

Ms. LUJAN GRISHAM. Two weeks? A month?

Ms. COLVIN. Two weeks. I may not have a complete answer for you, but at least I will be able to get back to you and let you know what we are looking at.

Ms. LUJAN GRISHAM. I am very grateful and thank you for your attention to this particular problem. Thank you, and with that, Mr. Chairman, I yield back.

Chairman ISSA. Thank you.

Administrator, in 2011, some of the judges that were here yesterday got adverse reviews. Yet they are still on the bench and no action was taken.

Ms. COLVIN. When you say adverse reviews, what do you mean?

Chairman ISSA. They got negative focus reviews. The ranking member and I saw those judges, and we are not going to claim that we are medical experts. But it was pretty clear these four judges were not doing their job properly. Their incredibly high numbers are the result of their failure to do their job consistent with the norm of other judges. They are still on the bench.

Ms. COLVIN. Your question?

Chairman ISSA. Yes. Why are they still on the bench? Why have you not taken action against them that led to their dismissal in these three years?

Ms. COLVIN. I would need to look at their specific case and see what action is being taken.

Chairman ISSA. You came, you watched this hearing yesterday, you were brought here to answer our questions.

Ms. COLVIN. I didn't think you were going to ask personnel questions, so I didn't come prepared to answer them.

Chairman ISSA. We subpoenaed four bad judges, compelled three out of the four to come when they refused to come in any voluntary way.

Ms. COLVIN. I didn't know that.

Chairman ISSA. No one on your staff knew that?

Ms. COLVIN. I didn't ask. If they knew, I didn't see a reason to——

Chairman ISSA. Do you not take testimony before Congress seriously?

Ms. COLVIN. Absolutely I do.

Chairman ISSA. Then why didn't you prepare for today?

Ms. COLVIN. I think I am prepared.

Chairman ISSA. You haven't even been able to give me one answer to a question of what authority or flexibility would allow you to do your job better. And I appreciate that you want to give me a thoughtful response, but I have a near zero thoughtful response after people leave this hearing until the next time they come back. So although I hope for this not to be the case, it doesn't appear as though you prepared particularly well.

Ms. COLVIN. You gave me two days. You knew I was out of the country. You would not negotiate with my staff. I came in and immediately got ready for this hearing, so to suggest that I don't take it seriously; I had a death in the family, but because of the fact that you wanted this hearing today, I didn't even attend the funeral. So I am really annoyed that you would suggest that I don't take this seriously.

Chairman ISSA. Well, you didn't seem to come prepared to know about the judges we had yesterday. Are any of the people behind you able to answer that question?

Ms. COLVIN. No, they are not.

Chairman ISSA. Couldn't you turn around and look and see?

Ms. COLVIN. I am not going to have them discuss personnel issues here, Mr. Issa. I would be very happy after this meeting to stay here and answer them, or to give you a private meeting. But I am not going to discuss personnel actions here in open forum.

Chairman ISSA. I just asked why they were still on the job.

Ms. COLVIN. And I am saying, I don't know what the specific actions are that may or may not have been taken against these four judges. I would need to have a discussion——

Chairman ISSA. Okay, you said that there were no quotas, no performance. And yet, I am asking that this be placed in the record, because it cites specific quotes from Burke, Taylor, Beady and Cristaudo. These are judges who all testified there were. And they gave numbers.

But let me just, and hopefully that review will help your people understand that your judges think there are performance numbers.

And you said that you didn't see a correlation. But isn't it true that since the cap went down to 600 that, in fact, the approval rate, or the rubber stamp, as we like to call it from this side of the dais, has gone down, that, in fact, you are approving less?

Ms. COLVIN. Our approval rate today is 44 percent.

Chairman ISSA. That is the total approval rate. Your ALJs are not 44 percent, are they?

Ms. COLVIN. That is our overall.

Chairman ISSA. The ALJs overall reversal rate, I guess, technically, is 44 percent, you are saying today?

Ms. COLVIN. No, the average approval rate, the average national approval rate once you take out dismissals, is 44 percent.

Chairman ISSA. That is people who apply and find out they are not disabled under any definition and then abandon it, right? That is not at the point of, we are dealing with the administrative law judges. Are you saying it is 44 percent with administrative law judges?

Ms. COLVIN. No, that would be our overall rate. I would have to see what the specific number is. But I thought it was 44 percent. But I may be wrong, so I would need to confirm that.

Chairman ISSA. Let me ask you a question, you probably will have to give me a thoughtful answer over time. But you mentioned, and in our investigation, and in Senator Coburn's investigation, and quite frankly, in 60 Minutes' investigation in what was made very public, there was a practice that seemed to go like this. In that last few days or weeks before the ALJ looks at a case, the lawyers who specialize in getting approvals for their clients come in with new medical information, slip it into the file and get it in front of the judge, so the most recent information is usually something new to be considered. Are you aware of that?

Ms. COLVIN. No, I am not.

Chairman ISSA. Did do watch the 60 Minutes?

Ms. COLVIN. No, I did not.

Chairman ISSA. Did you look at anything that Senator Coburn put out over the last 14 months?

Ms. COLVIN. Yes, I have.

Chairman ISSA. He talks about that in his report, do you remember that?

Ms. COLVIN. I saw he did.

Chairman ISSA. So one question I have for you, and it is a very straight question, do you have the authority, if there is new information added, to seize a record, not have it go to the ALJ and throw it back through the process of review again at a lower level so that it not be presented to a judge when, in fact, it is not the same package that was previously rejected?

Ms. COLVIN. We are in the process of

Chairman ISSA. No, ma'am, I just asked if you had the authority.

Ms. COLVIN. Do I have the authority to?

Chairman ISSA. Do you have the authority to do that. Every time a lawyer at the last minute puts in additional information about his client, do you have the authority to have it go back through the review process and not go to the judge?

Ms. COLVIN. No.

Chairman ISSA. Would you like that authority?

Ms. COLVIN. No.

Chairman ISSA. Why not?

Ms. COLVIN. We have a pending regulation that will require all evidence be submitted in a timely way. If that moves forward, that will resolve our issue.

Chairman ISSA. So what you are saying is that no new information should go into the file even if, in fact, the patient is getting sicker during that last three, four, five months waiting for the ALJ?

Ms. COLVIN. I don't agree with that at all.

Chairman ISSA. Well, I am just asking you. You are the one that is talking about a proposed regulation.

Ms. COLVIN. No. No. My answer is no.

Chairman ISSA. No, what? No, you don't think——

Ms. COLVIN. I do not believe that if a person is getting sicker and new evidence is available that it should be precluded.

Chairman ISSA. So if it should be included, and you are telling me you are going to produce a regulation that says it has to be produced in a timely fashion, what you are saying is that you are still going to allow it and it is still going to go to the ALJ. Is that right? What does your regulating change?

Ms. COLVIN. We haven't developed that yet. We are just beginning to.

Chairman ISSA. Okay, so 14 months on the job, years into this process, 60 Minutes already made it clear that there was widespread fraud leading to taxpayers losing billions.

Ms. COLVIN. Do you believe everything that is on 60 Minutes?

Chairman ISSA. Ma'am, you are not going to gain anything from this side of the dais by telling there isn't widespread fraud that is the reason that there is a Congressional hearing that you have been asked to be at.

So making the assumption that there is widespread fraud, that your ALJs have overly approved in vast amounts, and it has cost

the taxpayers billions of dollars they will never get back, I would ask you a simple procedural question. That change is outside the jurisdiction of this committee, but we are a reform committee. I ask you if any kind of flexibility or changes in law would help you. You said you would get back to me. I now ask you about one specific one, which is, did you have the authority, when new evidence comes in, to send it back to a lower administrator and not to an ALJ, have it reviewed and then only have it go to the ALJ if it is, in fact, rejected again, that they can look at this information, so the information coming to an ALJ is exactly the information that has previously been rejected, rather than ALJs constantly looking at new information at the last minute.

I asked you if, in fact, you had that authority and you told me about a regulation that doesn't seem to have yet been finished.

Ms. COLVIN. I said no, we didn't have the authority.

Chairman ISSA. Would you like the authority?

Ms. COLVIN. No.

Chairman ISSA. Well, this committee recently gave the District of Columbia additional authority to change the height of buildings. But a little bit like the disappointment I had when I discovered that unanimously, the city council did not want the authority to make their buildings higher under any conditions, that they were afraid of having that authority, I am hearing here today that you can't come up with one piece of authority that would help you stop the widespread fraud that this committee, Mr. Cummings, Ms. Speier and others believe is part of it.

And by the way, I want to note for the record that at least one ALJ had an allowance record of 15 percent, meaning there was somebody, at least one on the other extreme, and there are others that are low. So I am just as concerned about too low as too high, and trying to help you have the tools to do a better job. And I am very disappointed you weren't ready here today. I suspect we will be having another hearing and we will invite you back, perhaps with more advance time.

Mr. Cummings, do you have closing remarks? The gentleman is recognized.

Mr. CUMMINGS. First of all, I want to express my sympathy for your loss.

Ms. COLVIN. Thank you.

Mr. CUMMINGS. I am sorry you were not able to make the funeral.

I want to make sure I understand what happens here. When there is, and Ms. Lujan Grisham a little earlier, I don't know if you heard the questions I asked, but I got them from you, in talking to you. You have a situation in those first two exchanges where you have people who make a decision. In many instances, people don't have lawyers, in some instances they depend on where they are, who they are, they may not have doctors, medical homes or whatever. So they are denied quite often the benefits.

Then they go, they basically appeal, to an administrative law judge, is that correct? Is that right?

Ms. COLVIN. Yes.

Mr. CUMMINGS. Now, let me say, the four people that testified yesterday, I don't think there were any accusations of fraud, there were issues of whether they followed policy and good conduct.

Ms. COLVIN. Right.

Mr. CUMMINGS. And by the way, there was testimony, if I recall correctly, that Judge Krasfur is on leave. That is my understanding.

Ms. COLVIN. That is correct.

Mr. CUMMINGS. All right. Now, one of the things that was said during that hearing, and I want to go to what the Chairman is getting to, because I really want to make sure I understand this, one of the things that they said was, one of the judges or maybe more, that there was a lot of times testimony or records that would come in later. And that they took that into consideration. And basically what they were saying is that the person's condition may have gotten worse, and then there was submittal of some kind of documents to show that.

So how does that work? When you say that the record is supposed to be in, in other words, I am not trying to put words in your mouth.

Ms. COLVIN. No, what I was trying to convey was that we would not want to not have that information provided to the ALJ. If the person has waited over a year, that is through no fault of their own. If additional new evidence comes in that indicates that that condition has deteriorated, that may now, in fact, make them eligible for a benefit, they are entitled to have that medical information presented.

So when I said that I would not want the authority to prevent that information from being presented to the ALJ, that is what I was speaking to. They should have that information to be able to make a decision about that case.

Mr. CUMMINGS. Okay, now if I understand the Chairman's question correctly, I think he was asking about, do you want the ability to send it back to one of the first few reviewers.

Ms. COLVIN. No, because you will start them all over again. The case is now with the judge, why not provide that additional documentation that will allow them to make a decision?

Mr. CUMMINGS. Yes.

Ms. COLVIN. Why start them all the way back to the beginning again.

Mr. CUMMINGS. I was thinking about the man in my district with prostate cancer who died waiting, and a number of others.

So that then, with regard to these folks that came in here yesterday, you said it several times, you were concerned about them, right?

Ms. COLVIN. Yes, I am concerned, because they're not making policy-they may not be making policy compliant decisions. But again, just because of their award rate, we can't make a determination just on the award. We have to do the reviews, determine if there are policy decisions that are not being-policies that are not being followed. One variable is not sufficient for removal of an ALJ.

Mr. CUMMINGS. I want to make a clarification here. I want to note that the majority had a staff report yesterday, and in most of the average lifetime benefit including the benefit from programs

linked to enrollment in a disability program is $300,000. But this also includes the cost of Medicare and benefits estimated to be $109,000.

While disability programs incur real costs and provide real benefits, I wanted to be clear on the cost of the benefits to the disability trust fund that is the focus of today's hearing. Ms. Colvin, the source document in the majority's estimate suggests that the present value of a disability alone is $163,000, is that right?

Ms. COLVIN. I think that is more likely.

Mr. CUMMINGS. Is this consistent with your understanding?

Ms. COLVIN. The average benefit is about $1,500 a month, I think. So I would have to look at the data.

Mr. CUMMINGS. Can you get that information back to me?

Ms. COLVIN. Yes.

Mr. CUMMINGS. Because I tell you, I just think about, I keep hearing this word, entitlement. And sometimes I have to, I think it is social insurance. Basically people pay into this.

Ms. COLVIN. It is an earned benefit.

Mr. CUMMINGS. I think about my father, for 45 years didn't miss a day, lifting drums, moving chemicals and paid into the system. I think about the many black men and white men who I worked with at Bethlehem Steel as a teenager who died, who died before they could get a penny. I think about folks who truly are suffering.

I know we use that word entitlement, but the implication is that people don't pay into the system. And they do. They do. And they pay over and over and over again. So I just don't want to lose sight.

And I want to make it very clear. I want us to deal with the outliers.

Ms. COLVIN. I do, too.

Mr. CUMMINGS. I want us to make sure that everybody has a fair side. I want to reduce the caseloads, I want to do all of that. And I want the system to work like it is supposed to work. That is what we are about here, we are supposed to be trying to make sure that government does what government is supposed to do. There are some who believe that maybe government shouldn't exist, but it does, and it must.

So I am just hoping that we can work with you to try to address some of these issues. And I thank you very much for being here.

Thank you, Mr. Chairman.

Chairman ISSA. Thank you.

Madam, a couple quick things. I have a letter I will ask unanimous consent to be placed into the record. Without objection, so ordered.

It is from May 27th, inviting you to this hearing on June 10th. Were you made aware of it?

Ms. COLVIN. I was out of the country for two weeks, and I know my staff negotiated with your staff. I came back to work on the 9th. And you agreed to have the hearing on the 10th, then it got moved to the 11th.

Chairman ISSA. Well, we moved it to the 11th to accommodate your request.

So were you doing official business out of the country

Ms. COLVIN. No, I was on leave.

Chairman ISSA. Okay, so you are on vacation, you find out you have two weeks before this event. We add an extra day on the request of your folks. So I am terribly sorry for your loss, but I just want to make sure the record shows, it wasn't three days notice. You had two weeks notice.

Ms. COLVIN. I was out of the country when the notice came in. I had already left to go out of the country.

Chairman ISSA. Was your BlackBerry turned on?

Ms. COLVIN. Absolutely.

Chairman ISSA. So you knew there was a hearing in two weeks, correct?

Ms. COLVIN. I knew that the hearing was scheduled for the 10th, yes.

Chairman ISSA. Okay, I just want to make sure that we understand that you did not have as much time to prep as you would like, because you were on vacation. And I understand that. That happens.

Ms. COLVIN. But I was not here in the country.

Chairman ISSA. I understand that you had less time to prep. I just want to make sure the record indicates it was two weeks advance notice of the hearing and we added an extra day.

Ms. COLVIN. Thank you for your consideration.

Chairman ISSA. You are very welcome.

I want to go back through just one last closing point, and I am not going to ask it as a question, but if you care to respond to that, I will let you. This is not an adversarial relationship, when somebody goes up before an ALJ. It is all one-sided. The judge is very powerful. He or she has to evaluate what is being brought. Normally in front of the ALJ, the moving party, disabled or presumed disabled person is represented by a counsel who is being paid a commission on successful accomplishment, most often. And they have a motivation to get the job done, to get something for their client

So you have an advocate for the client who has resources, who has medical professionals, if you will, doctors, that prepare and help the person make their case. Late in the case, after they have been turned down once or twice, and the ranking member is right, sometimes they are not represented by counsel at that time, sometimes they are. After they have been turned down twice, they come in with new information in the eleventh hour.

There is nobody from the government who says, hold it, we want time to cross-examine that information, we want to consider it, we want to send this patient to an independent doctor, we want to make sure that this decision is good.

So this documentation comes before a judge, and sometimes a judge who approves 90 some percent of the time, with new information not considered by the people who also work for you, the people who have already evaluated the earlier information.

Now, there is a reason not every case goes directly to the ALJs. And you know the reason, which is, you have good, hard-working professionals who are trying to find out whether or not to grant or not grant disability. Those people, when last minute information comes in and it goes to the ALJ, they are denied the best information. They are denied the opportunity to make a good decision.

Now, procedurally, it happens all the time in courts all over America. Last minute information comes in, it is sent back to the lower decision, give us an update. We will low-number it back, you won't be prejudiced other than the time it takes for this new information to be properly evaluated. You won't be prejudiced and you will be low-numbered right back to the judge.

That technique, if we give it to you, if you are not empowered to use it, and you never answered the question of, are you empowered to do it, but let's assume that you are not, if we give you that ability. That technique means your ALJs are not looking at cases that could be approved by lower individuals as far as the rest of your staff that would love to have had the full information, love to have made the decision and might have said yes.

That is what I was saying. Of course, I don't want people to wait, in what we used to call in program, a do-loop. I don't want them to, every time their condition gets worse and they submit something to automatically wait another year. But there is no reason it couldn't go back to somebody whose job it is to make that first review. They make the first review. If they approve it, they are off to the races. If they disapprove it, they come back low-numbered to the judge.

So when you go home over the next days and weeks before we likely call another hearing to this committee or another committee of Congress, I want you to really think, and I want you really to come back with the reforms, flexibility, changes that Congress could give you, or that you have that you haven't been using. Because I think that people on this committee, on a bipartisan basis, do believe that at least in some cases, the process is failing a person by their waiting too long to get a determination, waiting too long.

And part of the reason is that the process is broken and too many people are getting in front of ALJs. If you have a 50 percent reversal rate, that is too high. If you have a 99 percent reversal rate, that is too high. The difference is what we want, and I believe the injured person or disabled person needs, is they need to get the right decision as early as possible at as low a level as possible. If there is a rejection, they have to understand that unless there is new information, that rejection will probably stand.

Today that is not the case. The numbers speak for themselves. So we didn't bring you here to just say we are mad at you. We are not mad at you. You have only been on the job 14 months and many things have improved during those 14 months. But I am disappointed that you weren't here with more proactive ways that we could continue doing a better job for those people who shouldn't get disability and for those people who should and aren't getting them or aren't getting them in a timely fashion. That is the goal of us, this is an entitlement, this is something that was earned, something that people are looking forward to as a safety net.

And we are failing them. We are failing them in the time to adjudication and in some cases we are failing to protect the American taxpayer against lawyers who are smarter at proving a disability, or at least giving the image of a disability than we are at detecting it. On both sides of that, we want to get it right.

If the dollars spent are exactly the same, will we get it right? Then Mr. Cummings and Mr. Issa and everyone else on this dais is happy. And if we get it wrong or people wait too long for this the way they have at the VA, then we have failed people who desperately need our help.

That wasn't heard by any one person here today, but hopefully I have summarized what people on the left and the right want you to do.

Mr. Cummings?

Mr. CUMMINGS. I don't have anything more, thank you, Mr. Chairman.

Chairman ISSA. Thank you. At that point, we stand adjourned.

[Whereupon, at 11:53 a.m., the committee was adjourned.]

# APPENDIX

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MATERIAL SUBMITTED FOR THE HEARING RECORD

www.baltimoresun.com/news/maryland/bs-md-ssa-delay-20140602,0,2640969.story

# baltimoresun.com

## Social Security disability backlog in Md. among highest in nation

### Ruppersberger demands change to address longstanding issue

By John Fritze, The Baltimore Sun

7:20 PM EDT, June 2, 2014

The Social Security Administration office that reviews disability claims for Central Maryland has the third-longest processing delay in the nation — a backlog that prompted a member of the state's congressional delegation on Monday to call for action.



Disability claimants with appeals at the Baltimore office wait an average of 17 months for a hearing, agency data show. That's longer than in New York, Philadelphia, Los Angeles and more than 150 other offices.

In Chicago, by comparison, the average wait time is one year. Only the offices in Miami and Fort Myers, Fla., have longer waits.

"That's unacceptable," said Rep. C.A. Dutch Ruppersberger. The Baltimore County Democrat demanded Monday that the agency draw up a plan to address the delays.

"Some have had to file for bankruptcy, some have lost their homes, some have even died before getting a penny of the benefits they were entitled to," he said.

The disability claims backlog, a long-standing problem for the Woodlawn-based agency, has been the subject of several hearings on Capitol Hill. The agency has taken some steps to address the issue, but officials say budget cuts imposed by Congress have exacerbated the problem.

Ruppersberger drew a comparison to the developing scandal at Department of Veterans Affairs health facilities. VA Secretary Eric Shinseki stepped down from that agency last week amid outrage over the long waits for medical care experienced by some veterans.

Ruppersberger said it was "way too soon" to call for similar changes in leadership at Social Security.

A spokeswoman for the Social Security Administration said the agency reduced wait times across the system significantly from 2007 to 2011, dropping the average delay in Baltimore to just over a year.

"Over the past three years, though, we received an average of nearly a billion dollars less each year than what the president requested for our administrative budget," spokeswoman LaVenia J. LaVelle said in a statement.

Consequently, she said, the average waiting time increased.

"Nonetheless, we continue to seek ways to ensure the public served by the Baltimore hearing office waits no longer than necessary," she added. "We have enlisted the assistance of other offices to hear and decide thousands of Baltimore cases over the past year."

Agency data show there are 11,530 cases pending in the Baltimore office, up 26 percent from 9,110 two years ago. That represents the fifth-largest backlog in the country.

Three years ago, the Social Security Administration anticipated it would reduce the national disability backlog to 525,000 by the current fiscal year. But the agency's inspector general reported in April that the goal was unrealistic. The inspector general estimated the agency might be able to reduce the number of pending claims to 668,127.

Brian Landsman is one of those caught up in the backlog. The 35-year-old Reisterstown man was diagnosed in 2010 with epilepsy, which he says caused severe seizures that interrupted his work in sales. After repeated attempts to work through his condition were unsuccessful, he says, he applied for disability in January 2013. He is waiting for a hearing.

Landsman and his wife have a 15-month-old son. She is working as a hairstylist and at a day care. Landsman is now filing for bankruptcy.

"It's beyond frustrating," he said. "It's just been impossible for me to hold a job."

More than 12 million disabled workers, spouses and children received the benefits in 2012, up from 7.5 million in 2000. The average monthly benefit is $1,130.

Social Security, which serves nearly 57 million beneficiaries in all, has been operating without a confirmed commissioner since Michael J. Astrue left early last year and the White House has declined to say when — or whether — President Barack Obama will nominate a replacement.

Acting Commissioner Carolyn W. Colvin, a former Maryland state official, has received praise for leading the agency through a period of cuts ordered by Congress, but some observers say the agency would be better served by a permanent leader confirmed by the Senate.

An individual claiming a disability goes through an initial review process that can take six months to a year. During the past decade, the number awarded benefits after that process has averaged less than 30 percent.

Those in Central Maryland who are denied then wait an average of 17 months for a hearing — the delay that Ruppersberger called unacceptable.

Claimants who are denied disability after the hearing may seek a review of the decision from the agency's Appeals Council — a process that can take another year.

Ruppersberger said he understands the budget constraints that have forced agencies across the federal government to make do with less. But he said he wants to know why Baltimore has fallen behind the national average.

The lawmaker said he sent Colvin a letter late last month on the issue. He was joined at a news conference Monday by several constituents who said they were dealing with delays.

Matthew Backus also suffered from seizures and then had a stroke about three years ago. The 49-year-old said one seizure caused him to lose control of his van in 2011 and plow into a dump truck at 70 miles per hour.

The Brooklyn man, a former security worker, said he has filed for bankruptcy and now is getting by on welfare and food stamps. He said his sister has taken money from her retirement savings to pay his doctors' bills.

Backus said he was denied disability benefits because the Social Security Administration found that he was capable of working. He said he applied for an emergency hearing last June.

He said he expects to receive one today.

"It's been a very, very long road," Backus said. "I've lost everything that I've worked my whole life for."

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**Social Security hearing delays**

Wait times for disability hearings at the Social Security Administration:

•Fort Myers, Fla.:19 months

•Miami: 18 months

**•Baltimore: 17 months**

•Tupelo, Miss.: 17 months

•Atlanta:16 months*

* Several offices wait times of 16 months

Source: Social Security Administration

**Opening Statement**
**Rep. Elijah E. Cummings, Ranking Member**

**Hearing on "Social Security Administration Oversight:**
**Examining the Integrity of the Disability Determination Appeals Process, Part II"**
**June 11, 2014**

Ms. Colvin, thank you for being here today. You have a difficult job. As the Acting Commissioner of Social Security, you are the steward of the disability insurance program, which is a critical lifeline for people who become disabled and can no longer work.

American workers contribute to this program out of their paychecks. They need and deserve to have a disability insurance program that gives them fair and timely hearings based on medical evidence if they become disabled and unable to work.

I know you are working hard to get it right. The majority of the Social Security Administration's 60,000 employees—including 1,500 administrative law judges—are doing the same. Many of them are my constituents. They tell me themselves how hard they are working to provide the services that Americans count on.

And the fact is your efforts are working. Over the last decade, the Social Security Administration has significantly improved its efforts to collect and analyze data about judges' decisions. It has expanded training, improved performance, sharpened disciplinary procedures, and enhanced efforts to combat fraud.

Yesterday, we heard from a handful of administrative law judges who fail to meet agency standards for conduct and professional judgment. These judges are outliers who do not reflect the good work of the majority of administrative law judges.

The evidence shows that the agency is committed to protecting the qualified decisional independence of the judge corps. That commitment is fundamental to ensuring the integrity of the program and the rights of American citizens.

But the evidence also shows that you are dealing with judges who go beyond judicial independence and ignore the policies established by the agency.

In fact, you are now pursuing the removal of judges with the Merit Systems Protection Board when such actions were unheard of a decade ago.

It is in all of our interests to get this right. We have a responsibility not just to highlight problems, but to correct them when they are identified. And that is why the spotlight should also shine on this body.

Our investigation shows that Congress failed to adequately fund program integrity efforts that would curb abuses. Congress failed to provide the resources needed by the Inspector General to combat fraud. And Congress failed to provide the resources needed to provide timely access to disability hearings.

Mr. Chairman, I would like to enter into the record an article from the *Baltimore Sun* reporting that residents in my district are waiting up to 17 months for hearings.

We heard testimony during our investigation that some people waited so long for their hearings that they died waiting. That is an outrage. And that is one grave cost of austerity.

Mr. Chairman, it's time to put our money where our mouth is. Is Congress going to invest in the integrity of the disability insurance program? Is Congress going to adequately fund anti-fraud units in all 50 states? Is Congress going to appropriate sufficient resources to eliminate these backlogs?

In my opinion, that is what we have to do, and that is what we must do.

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Contact: Jennifer Hoffman, Communications Director, (202) 226-5181.

SOCIAL SECURITY
The Commissioner

July 9, 2014

The Honorable Darrell Issa
Chairman, Committee on Oversight
and Government Reform
House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Thank you for the opportunity to discuss the role of administrative law judges in the disability appeal process at the June 11, 2014 hearing. During the hearing, I committed to providing specific responses to recommendations raised by Representatives Lankford and Speier in their letter of April 8, 2014. Please find enclosed our agency's responses to those recommendations.

If I can be of further assistance, please do not hesitate to contact me or have your staff contact Scott Frey, our Deputy Commissioner for Legislation and Congressional Affairs, at (202) 358-6030.

Sincerely,

Carolyn W. Colvin
Acting Commissioner

Enclosure

cc:
The Honorable Elijah Cummings, Ranking Minority Member
The Honorable James Lankford, Chairman
Subcommittee on Energy Policy, Health Care and Entitlements
The Honorable Jackie Speier, Ranking Minority Member
Subcommittee on Energy Policy, Health Care and Entitlements

**SSA Response to the April 8, 2014 Recommendations of Mr. Lankford and Ms. Speier**

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

We agree that SSA needs to conduct timely continuing disability reviews (CDR). Our ability to conduct timely CDRs, though, depends greatly upon the funding we receive – we must have adequate and sustained funding to address our annual CDR workload. When we are not funded adequately to conduct all of the CDRs due in a given year, we must prioritize the order in which we are able to conduct them based on workload and State disability determination services staffing levels. We received additional funding in fiscal year (FY) 2014, which will allow us to conduct a greater number of CDRs than we have in the past two fiscal years. As the number of people filing claims for Social Security benefits increases, all of our agency's workloads increase. Furthermore, we must have a sufficient number of employees to handle the work because the same employees who handle initial claims and reconsideration requests also conduct medical CDRs.

The Budget Control Act of 2011 (BCA) allows increases to the Federal Government's annual spending caps through FY 2021 for program integrity purposes. If Congress appropriates funds for our program integrity work, the discretionary spending limit may increase by a corresponding amount up to a specified level. In FY 2015, the BCA allows a maximum cap adjustment of $1,123 million for program integrity funding above a $273 million base. With a $1,396 million total appropriation for program integrity, we would conduct 888,000 full medical CDRs and 2,622,000 Supplemental Security Income (SSI) redeterminations in FY 2015. At these volumes, we would complete 459,000 more medical CDRs compared to FY 2013.

Program integrity reviews save taxpayers billions of dollars, but without adequate funding, these savings will not be realized. We estimate that our FY 2015 program integrity fund will save on average $9 in net program savings for each dollar spent on CDRs, including Medicare and Medicaid program effects, and on average over $4 in savings for each dollar spent for SSI redeterminations, including Medicaid program effects.

Consequently, the FY 2015 President's Budget includes a proposal to repeal the discretionary cap adjustments enacted in the BCA, beginning in FY 2016 for our agency, and instead provide a dedicated, dependable source of mandatory funding for us to conduct CDRs and SSI redeterminations. The proposal includes the creation of a new limitation account entitled Program Integrity Administrative Expenses, which will reflect mandatory funding for our program integrity activities in addition to amounts provided to our agency through the Limitation on Administration Expenses account.

With regard to the medical improvement standard, Congress established the standard in 1984 (Social Security Disability Benefits Reform Act of 1984, Pub. L. No. 98-460). Unless that standard is changed, we appropriately expect our employees to act in accordance with law, regulation, and policy.

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

We are committed to thoroughly examining any information suggesting non-compliance with policy and taking appropriate action. We are incorporating the findings of our focused reviews into the process we use to determine when to conduct a CDR. For example, if during such a focused review we identify potential errors or other issues in a case that call into question a beneficiary's continuing disability, we may perform an early CDR as appropriate. While the law prohibits us from performing CDRs solely on the basis of a particular administrative law judge's (ALJ) allowance rate, we believe that our process likely will more accurately identify those cases that warrant review.

As discussed above, if we received full funding for CDRs, we would be able to increase substantially the number of CDRs that we conduct.

Recommendation 3: SSA should expand the use of focus reviews.

We agree that reviews of hearing decisions – both pre-effectuation through "own motion" reviews and post-effectuation through quality-focused reviews – are very useful. We are working on ways to increase the number and depth of both types of review. For example, we have allocated additional hiring authority to the Office of Appellate Operations, which conducts these reviews. However, our ability to conduct more reviews depends in large part on receiving adequate and sustained funding.

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

On February 20, 2014, we issued a Notice of Proposed Rulemaking that would require a claimant to inform us about or submit all evidence known to the claimant that relates to a disability claim, subject to two exceptions for certain privileged communications. *See* Submission of Evidence in Disability Claims, 79 Fed. Reg. 9663 (Feb. 20, 2014). The proposed rule would include the duty to submit all evidence obtained from any source in its entirety, unless subject to one of these exceptions. The proposed rule also would require a claimant's representative to help the claimant obtain the information or evidence that we would require a claimant to submit under our regulations.

The comment period on the proposed regulation has closed, and we evaluated the public comments that we received. We are drafting the Final Rule.

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

We are evaluating whether revisions are appropriate to regulations concerning the evidentiary weight of a medical source. Our current regulations describe how much weight we give to the opinion of a medical source, including a treating source. Generally, we give more weight to opinions from treating sources since these sources are likely to be the medical professionals most able to provide a detailed, longitudinal picture of a claimant's medical impairment(s). For

example, if we find that a treating source's opinion on the issue(s) of the nature and severity of a claimant's impairment is well supported by medically acceptable diagnostic techniques and is not inconsistent with the other substantial evidence in the case record, we typically will give it controlling weight.

However, controlling weight to an opinion by a treating source is not automatic. Under appropriate circumstances, an ALJ may afford a lesser weight. If we do not give the treating source's opinion controlling weight, we will give the opinion appropriate weight based on the following factors: (1) length of treatment relationship and the frequency of examination; (2) nature and extent of the treatment relationship; (3) supportability (i.e., the extent to which a medical source presents relevant evidence to support an opinion, particularly medical signs and laboratory findings); (4) consistency (i.e., the extent to which the opinion is consistent with the record as a whole); and (5) specialization (i.e., we will generally give more weight to the opinion of a specialist about medical issues related to his or her area of specialty).

To aid our efforts in evaluating this issue, we commissioned the assistance of the Administrative Conference of the United States (ACUS). We are currently evaluating ACUS's recommendations and are considering a regulatory proposal.

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

We are currently considering available options to close the administrative record. As your letter mentioned, our hearing offices in the Boston Region provide claimants notice of a hearing 75 days in advance and require claimants to submit all evidence 5 days before the hearing, subject to good cause exceptions.

As with other similar matters, we have sought assistance from industry experts. In particular, we commissioned ACUS to examine the adjudication process in our Boston Region and our stakeholders' respective views of this process. We are evaluating ACUS's report and our continuing experience with the process in the Boston Region. Specifically, we are considering whether a regulatory change is needed based on a number of considerations, including its effect on the timeliness, integrity, and fairness of our hearing process.

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

Social media can be a useful tool in fraud investigations led by law enforcement professionals in the Office of the Inspector General (OIG), who have the tools and skills to investigate and corroborate their findings. On the other hand, having individual adjudicators act as investigators, without the corresponding ability to corroborate information, could be found to violate a claimant's due process rights. Information found on the Internet is not verified and could easily be manufactured. For example, in August 2012 Cable News Network reported there were over 83 million fake Facebook accounts. Photos can be easily altered, and information can be outdated without the knowledge of the viewer. Making decisions based in part on "snapshot"

comments or photographs from social media sites could lead to unsubstantiated or incorrect decisions that deny or delay benefits to qualified individuals. Moreover, significant privacy concerns exist around using the internet to search for Social Security numbers or other personally identifiable information, leading to potential breaches. Further, we must protect our systems network. Social media sites are prone to viruses and other malware that pose an unnecessary security risk to our system.

With those concerns in mind, we make use of social media by working closely with our partners in the OIG and the law enforcement community. Our employees and OIG investigate cases, in collaboration with local law enforcement, through the Cooperative Disability Investigation Unit program. During these reviews, investigators use tools, including social media, to develop evidence in their cases. They are able to corroborate or refute what they find on social media by using surveillance and other law enforcement techniques.

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

The law requires that we consider age, education, and work experience in determining a person's ability to work despite their impairment. The vocational grids are guidelines for adjudicators regarding how to apply this aspect of the law. While some believe that the vocational grids should be modified or even eliminated, many others believe that they should remain intact in their current form. Based on our prior attempt to regulate in this area, we know that any effort to make changes must be supported by research and built upon a strong evidence base.

We requested and have received some preliminary input from the Disability Research Consortium[1] regarding the medical-vocational guidelines. We are currently assembling a group of Federal partners and medical, aging, and employment experts to further explore this area. We are also seeking input from the Institute of Medicine.[2]

Your letter also mentioned that the grid categorizes the inability to communicate in English as a disability. The Social Security Act requires that we consider education, not inability to communicate in English, when making disability determinations at Step 5 of the sequential evaluation process. As a regulatory requirement, illiteracy and the inability to communicate in English come into play in a few of the 82 vocational grid rules when considering education. Moreover, we estimate that inability to communicate in English is a factor in less than 1 percent of all allowances. Despite this minimal impact, we are looking at the relevance of this factor in our review of the medical-vocational guidelines.

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[1] The Disability Research Consortium consists of two cooperatively funded research centers: Mathematica Policy Research's Center for Studying Disability Policy and the National Bureau of Economic Research's Disability Research Center. We fund the centers through five-year cooperative agreements running from FY 2012 through FY 2017.

[2] The grids are based on occupational information found in the Dictionary of Occupational Titles (DOT). Because the DOT has not been updated since 1991, we are developing a new Occupational Information System (OIS) to replace the DOT and ensure that we continue to make reliable disability decisions. To avoid unnecessarily duplicating our efforts to change the grids, we must carefully coordinate any potential changes with our current effort to build the OIS.

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

We agree that "own motion" reviews performed by the Appeals Council are important. As we mention in our response to recommendation 3, we are working on ways to increase these reviews. Beginning next fiscal year, the Division of Quality in the Appeals Council will have the capability to selectively sample decisions, which will allow us to prioritize our resources on the most error prone policy areas when selecting cases for pre-effectuation review. However, full implementation of this initiative is dependent on adequate funding as the Appeals Council must also continue fulfilling its other responsibilities, including the request for review workload and other quality assurance initiatives.

Recommendation 10: SSA should increase the number of video hearings.

We conduct over 150,000 video hearings annually. They are a key component of our ability to more efficiently handle the significant increase in requests for hearings. They enable us to hold hearings at our permanent remote sites, facilitate workload transfers, minimize the need for extensive travel by our ALJs and by claimants, and significantly broaden the pool of experts available for hearings. ACUS has cited our video hearings process as a best practice for other Federal agencies.

Knowing the value of video hearings, we plan to increase our ability to hold them. Currently, we have video equipment in over 40 percent of our hearing rooms. We are currently working on an aggressive deployment that will eventually equip most of our hearing rooms with video capability. However, we need adequate and sustained funding to reach this goal.

We also recently published final regulations that include requiring claimants who elect to opt out of a video hearing to do so within 30 days after we acknowledge their request for a hearing. These changes will increase the number of video hearings, increase integrity by reducing the ability to "forum shop," and improve efficiency in our program.

Recommendation 11: SSA should expand the Cooperative Disability Investigations program.

We agree. With the FY 2014 appropriations we received, we are adding 7 additional units (for a total of 32 units) and adding additional investigative support to the existing units. We anticipate these 7 units will be fully operational in FY 2015. If we receive the President's Budget for FY 2015, we will do even more in this area.

Insert for the Record

It costs about $30 to process a mailer CDR. By contrast, it costs about $1,000 to process a full medical CDR.

Testimony before the Committee on Oversight and Government Reform
Subcommittee on Energy Policy, Healthcare and Entitlements
June 27, 2013 Congressional Hearing

Statement of Judge J. E. Sullivan
U.S. Administrative Law Judge

Chairman Langford, Minority Member Speier, and Members of the Committee: thank you for holding this hearing and for the opportunity to testify before you. I appreciate your interest in federal administrative judicial work and with the problems occurring in the Social Security Administration's (SSA) disability adjudication program.

From April 2008 to June 2011 I served as a U.S. Administrative Law Judge in the SSA disability adjudication program. I currently sit as a U.S. Administrative Law Judge with the U.S. Department of Transportation, where I preside over formal litigation involving transportation regulatory hearings. My testimony today is in my individual capacity, and not as a representative of the U.S. Department of Transportation.

In my testimony today, I want to focus on the SSA management's mistaken emphasis on "production goals" within the adjudication offices.

"Production" is the code word for when a Judge signs a disability decision. Speedy and high volume "production" by a Judge in a short period of time (e.g., "making goal") is the prism lens through which all SSA management decisions regarding adjudication are made.

A Judge's "production" or "making goal is SSA management's singular and exclusive focus in its administration and oversight of SSA's disability appeals adjudication program. For SSA management, "making goal" is more important than the adjudicatory process, the quality of work, and any considerations in decision-making.

Instead of engaging in responsible stewardship and management of a meaningful federal adjudication program, SSA management has substituted a factory-type "production" process. This mistaken approach has allowed SSA management to present Congress and the American public with some impressive "production" statistics. But these statistics have been achieved by causing incalculable damage to a meaningful adjudication system.

But in reality, SSA management is failing in its adjudication stewardship. That failure is costing all of us American citizens millions of dollars in the issuance of poorly considered and

rushed decisions granting disability benefits. It also creates terrible individual consequences because of poorly considered and rushed decisions denying disability benefits.

You'll be hearing today and in the future from a wide variety of individuals who will be giving you statistics, formulas, mathematical calculations and citing to all manner of caselaw and studies.

My testimony is primarily based on two things: 1) my personal experiences working for 3 years as a U.S. Administrative Law Judge for SSA and interacting with local, regional, and national SSA management regarding the adjudication and issuance of disability decisions, and 2) my 24 years of state and federal service as a trial and hearings Judge.

A brief summary of my own legal background has been filed with this statement. In brief, when I joined SSA in April 2008, I had already served as a Judge for 19 years in Washington State. I had substantial judicial experience presiding over high-volume, complex litigation. I had served for 10 years part time as a Judge and Commissioner on the state trial court of general jurisdiction, and 9 years as an Industrial Insurance Appeals Judge (in which I held formal hearings equivalent to the trial court of general jurisdiction). I also had 5 years of experience serving as a criminal defense trial lawyer and as a deputy prosecuting attorney.

In April 2008 I began working as a U.S. Administrative Law Judge in the SSA disability adjudication program. From April 2008 through June 2011 I served in two different SSA disability offices (West Virginia and Oregon), under the management of two different SSA regional offices (Region 3 and Region 10). When I was located in West Virginia, I presided over disability cases in a four state area (West Virginia, Maryland, Pennsylvania, and Ohio) for almost 2 years (April 2008 - January 2010). In February 2010 I was assigned to work full-time as 1of 8 SSA Judges representing all the SSA Judges during the Association of Administrative Law Judges' (AALJ) collective bargaining negotiations with national SSA management.

In providing this testimony today, it is not my intent to personally disparage or publicly shame any SSA manager. There are many SSA managers and Judges who truly believe that their participation in "production" and "making goal" means that they are pursuing the will of Congress and "protecting" the claimants who file for disability benefits. I strongly disagree with this perception. Nevertheless, I don't need to name an individual SSA manager to explain what is happening. As a result, in my testimony I refer to individual managers by their title, and to Judges and other individuals by their initials.

**SEVEN (7) PRIMARY POINTS IN TESTIMONY**

These are seven (7) primary points I wish to make in my testimony today:

1. SSA Management measures the adjudication program solely by a Judge's speedy issuance of a high number of disability decisions (i.e., "production" or "making goal").

2. The SSA's high volume and speedy production goals result in SSA management perceiving the Judge's final decision as the only valuable and necessary part of a Judge's work.

3. In reality, meaningful adjudication (i.e., the totality of a Judge's work) takes time and involves complex work processes.

4. SSA management's high volume and speedy production goals are incompatible with a Judge's meaningful adjudication work.

5. The SSA management's high volume and speedy production goals agenda result in SSA management pressuring Judges to stop engaging in meaningful adjudication.

6. The SSA management's high volume and speedy production goals result in the "production" of a large number of disability decisions that have not been properly reviewed, analyzed, and decided.

7. SSA management's "production" mandate, and pressure for high volume and speedy disability decisions, results in high rates of error in Judges' decisions. In turn, this results in the loss of billions of dollars incorrectly expended from the Trust Fund, and in hardship for countless American citizens throughout the country.

In my statement today, I will be briefly reviewing some of the examples contained in my written statement that support these points.

1. **SSA Management measures the adjudication program solely by a Judge's speedy issuance of a high number of disability decisions (i.e., "production" or "making goal")**

   a) SSA's "production" goal is linked solely to the Judge, and is a mathematical calculation.

      (i) The "goal" per year: SSA management has set a minimum of 500-700 decisions issued per Judge per calendar year as the production "goal".

      - The goal per month: The production "goal" assigned to each Judge is always a minimum of 50 decisions per month, but often will be higher, depending on the regional office.
      - Goal compliance tracking: SSA management closely tracks (e.g., daily, weekly, monthly, yearly) each Judge's "production" and encourages and supports any Judge willing to "produce" even more than 700 decisions per year.

      (ii) The goal calculation:

      - In a 4 week month, a Judge must "produce" 2.45 case decisions per day x 20 work days = 49 decisions per month.
      - In a 5 week month, a Judge must "produce" 2.45 case decisions per day x 25 workdays = 61.25 decisions per month.

   b) The SSA's "production" goal focuses exclusively on the existence and speed of a Judge's final work product, and ignores the totality of a Judge's adjudication work.

      (i) Goal Ignores Actual Judicial Work: SSA management's calculation of the "production goals" ignores all the factors inherent in a Judge's workload that precede the issuance of a final decision (e.g., reading and analyzing evidence in the file, researching and reading the law, creating work product notes, ordering development on a case, holding a hearing, communicating with staff and other Judges about the case, writing instructions for a decision-writer, editing the decision, etc).

      (ii) Goal Ignores Judicial Experience and SSA Study: The production goal is also contrary to actual judicial experience regarding meaningful adjudication work, and contrary to an SSA study of judicial work.[1]

[1] *See, e.g.*, The 1994 study in SSA's *Plan for a New Disability Claim Process*. This study, performed by SSA management at a time when disability claim applications were not as complex, showed an average disability case could take 3 to 7 hours of judicial time. A Judge presiding over 24 hearings per month was within the average bell curve.

(iii) Goal Ignores Judge's Actual Available Work Hours: The SSA regional management "production" calculation does not give any consideration for a Judge's actual available time. Judges are not machines, charged and operating for 24 hours each day. Like everyone else, Judges have the right to go home at night, take a day of sick leave, or go on vacation with family. Judges also have professional obligations that are separate from managing a case from start to finish. The SSA management "production" number does not consider any of these factors. As a result, even if you believe that SSA's imposition of production goals for a Judge's work is acceptable, SSA management's current "production" required from Judges is presumptively unreasonable.

c) The SSA "production" goals demonstrate SSA management's failure to understand, support, and manage a meaningful adjudication program

**2. The SSA's high volume and speedy "production" goals result in SSA management perceiving the Judge's final decision as the only valuable and necessary part of a Judge's work**

For SSA management, speedy production of decisions is everything. Thus, SSA management works very hard to pressure Judges into accepting SSA's vision that the only judicial work that matters is "making goal." Here are some examples:

2008 SSA New Judge Mentor Guide: In the SSA's 2008 New Judge Mentor Guide, SSA management recommended to SSA mentors that every new Judge schedule a minimum of 20 cases the first month of work. Each month thereafter, the SSA mentor was to "encourage" a new Judge to add at least 5 cases every month to his hearing docket. Thus, within eight (8) months of hire, the new Judge would be scheduling and hearing "a minimum" of 50 cases a month. The Guide repeatedly referred to this plan as "achiev[ing] full productivity."

New Judge Training: During my initial nine month SSA "judicial training" period (April 2008-December 2008), the Hearing Office Chief Administrative Law Judge ("HOCALJ") was my designated "judicial mentor." He "mentored" me by referring me to an attorney in the office for any disability adjudication questions I might have. He then monitored how many cases I was scheduling per month for hearing and "producing" as final decisions. He repeatedly urged me to keep adding cases to my hearing docket, so that I could "get up to speed" and "start making goal." Every new Judge I met while at SSA experienced the same monitoring and pressure for case production from their local SSA management.

Making Goal is Everything: Half-way through my nine-month SSA "judicial training" period, I asked the HOCALJ if he would give me a few words of feedback and encouragement about my SSA judicial work. In response, the HOCALJ told me that he had nothing positive to say, since I wasn't "making goal." According to the HOCALJ, the only thing that mattered was whether or not I was going to produce "the numbers" the office needed to "make goal." He told me that my adjudication work was meaningless if I wasn't going to help the office "make the numbers." The HOCALJ and other SSA managers maintained this perception and approach to my judicial work (as well as every other Judge's work) throughout the time I worked in the West Virginia disability adjudication office.

RCALJ Pressures For Production: In October 2009, when I met the Regional Chief Administrative Law Judge ("RCALJ") for the first time, he repeated that message. During a private meeting with the RCALJ in my office, he told me he was "very concerned" about my low "production." He wanted me to increase my hearing caseload. It was very important. He wanted me to "produce" more case decisions per month.

All Other Adjudication Work Irrelevant: Neither the HOCALJ nor the RCALJ expressed any interest in the time I spent working, the quality of my adjudication work, or the analysis that I provided to support my decision-making. It was irrelevant that I diligently spent hours each day reading and analyzing complex medical records. It was irrelevant that I was fully developing and preparing cases, and holding meaningful hearings. It was irrelevant that the denial decisions I issued were repeatedly affirmed by the SSA Appeals Council and the U.S. District Courts. The only thing that mattered to SSA management was my monthly "production" numbers.

No Work Value If You're Not Making Goal: In approximately July 2010 I accepted a transfer from the WV hearing office to an Oregon hearing office. After accepting the transfer, I telephoned the HOCALJ at the Oregon hearing office to introduce myself. I explained that I was currently off caseload, because I was on the national collective bargaining assignment. The HOCALJ expressed dismay about my joining the office at a time when I wasn't producing decisions. In his opinion, I had no value if I wasn't helping the office "make goal."

That same day, I also telephoned the RCALJ for SSA's northwestern region to introduce myself. He too, expressed dismay about my transfer. He told me that it was wasted space if I occupied an Oregon Judge's office when I wasn't producing cases.

"Making Goal" is the Job: National representatives of SSA management repeatedly expressed these same beliefs while we Judges were negotiating with them at the collective bargaining table. "Making goal" was very important. It was easy if you "worked hard." Anyone who "cared" about the backlog would have "no trouble" issuing at least 500 decisions per year, if not more, for the agency.

**3. In reality, meaningful adjudication (i.e., the totality of a Judge's work) takes time and involves complex work processes**

The work of a Judge providing meaningful adjudication is complex, difficult, and time-consuming. On occasion a Judge may be assigned an "easy" case (e.g. a dismissal), but that is the exception. This a brief description of what meaningful adjudication work encompasses, and why it takes time.

A claimant seeking approval of disability payments (i.e., payment from the Trust Fund) must prove that his inability to work (i.e., inability to sustain continuous gainful employment for 1 year or more) is related to one or more physical or mental medical conditions.

Disability cases are Not Easy: By the time most disability cases reach the SSA adjudication division, they have been through two levels of SSA medical review and been denied twice. Most of these cases are not "easy."

Multiple and Complex Medical Conditions: Most claimants filing disability applications will allege multiple medical conditions in support of their request for disability payments. (Exhibit A, page 2). These medical conditions are often complex. As a result, most claimants will also file multiple medical records to support their allegation of an alleged disabling condition. (Exhibit B).

Multiple Medical Experts = Multiple and Voluminous Medical Records: This means that the test records and notes of multiple medical experts (e.g., physicians, psychiatrists, therapists, etc.) need to be requested and added to the file (either by the Judge or the claimant). It is not unusual for a file to contain 30-50 exhibits, with each exhibit containing multiple medical records. (Exhibit B). Just one medical exhibit may contain up to 4000 pages of medical records.

Reading the Evidence and Learning and Applying Facts and Law: Part of a Judge's adjudicatory work is reading these medical records, and learning about all kinds of different medical conditions. (Exhibit C). A Judge must learn how medical conditions are expressed in symptomology and how those conditions might be treated. The Judge must know the law about disability. (Exhibit A, page 1-2). The Judge must then apply that knowledge to analyzing the facts in each case.

Testing and/or Resolution of Conflicting Evidence: When an American citizen seeks disbursement from the Trust Fund on the grounds of disability, there must be a proper review of the evidence, as well as a testing of evidence to ensure that if payment from the Trust Fund is authorized, such payment is necessary. The Judge must resolve any conflicts and/or inconsistencies in the evidentiary record, as well as determine if the citizen is credible in alleging medical disability. (Exhibit D). Medical disability, and the time span of such disability, must be proved by the evidence.

Difficult Issues are Complex and Time Consuming: Many disability cases involve a combination of medical conditions (physical or mental or both), drug and alcohol abuse, and non-compliance with treatment. (Exhibits B and C). In meaningful adjudication on the question of disability, these applications are particularly time-consuming and difficult to analyze.

Every Disability Applicant Needs Help: Every single American citizen who files a disability application needs help. A Judge who is engaged in meaningful adjudication must seek the truth behind the disability application and determine whether authorizing disability payments is the correct answer to that cry for help. Oftentimes, no matter how heart wrenching the problems, the Judge must deny the claimant's application because the citizen's need for help is for reasons other than medical disability (Exhibit D).

List of Basic Meaningful Adjudication Tasks (not exclusive): A Judge who is performing meaningful adjudication of disability appeals will engage in these basic tasks:

a) Reading Evidence Takes Time
b) Identify poverty cluster issues
c) Analyze any secondary gain motivations
d) Learn about the medical conditions and symptoms
e) Take time to read and apply the law and regulations
f) Hold meaningful hearings (Exhibit E)
    i) Be prepared
    ii) Rule on motions
    iii) Allow a claimant to present his evidence
    iv) Allow a claimant representative to ask questions
    v) Ask the claimant about evidentiary inconsistencies
    vi) Call and examine any needed experts
g) Grant continuances when needed
h) Read and edit draft decisions before signing
i) Issue a disability decision on the case

Disability applications aren't just about medical conditions: As part of my litigation experience, I learned to work with the full panoply of issues that are related to poverty (e.g., scarce resources, lack of education, homelessness, etc.), as well as mental illness, mental limitations, and/or drug/alcohol addiction (much of which also occurs within the poverty cluster). If one is educated to that complex cluster of poverty problems, then one can identify them, and also potentially separate such issues from the issue of work disability.

Many Claimants Have "Poverty Cluster" Problems: In my caseload at SSA, the majority of claimants had problems with poverty, mental illness, and/or addiction. But that didn't mean this same claimant was functionally disabled from working. Indeed, in my years of litigation experience, virtually every person for whom I advocated, every person I prosecuted, and every

person over whom I presided in litigation had one or more of these poverty problems to deal with in their lives. But that didn't mean they couldn't work. (Exhibit D).

SSA Management Ignores Poverty Cluster and Need for Education If an individual hired by SSA to be a Judge (or attorney reviewer) doesn't have the knowledge, education, and experience to identify and understand these clusters of human problems, such a decision-maker can easily fall into the trap of perceiving an individual who suffers from any of these problems as "disabled." And of course, a decision to pay someone is not only easy, but it is a "feel-good" decision impacting someone "in need" (e.g., "I've helped someone have a better life today"). Far too many claimants are getting paid, in part because there is a lack of SSA institutional support for understanding and identifying these "cluster" issues as potentially separate from work function and capacity.

Unfortunately, SSA management actively discourages SSA Judges from discussing poverty cluster problems with claimants. There is absolutely no SSA training on it.

Secondary Gain Motivations are not Relevant: According to SSA management, the only relevant material any Judge should be considering was medical information. It was "inappropriate" to ask a claimant about secondary gain motivations (e.g., outstanding debts, a missing spouse, a dependent parent, lack of child care options, lack of a driver's license, etc.). Any factual inquiry beyond the claimant's medical complaints and allegations was "irrelevant."

This SSA management blindness to the realities of American poverty, and failure to encourage Judges to learn about it and address it, helps to explain the high pay rate (i.e., 60% of all appeals) in the SSA adjudication system.

**4. SSA management's high volume and speedy production goals are incompatible with a Judge's meaningful adjudication work.**

According to SSA management, speedy and high volume production is everything. Thus, SSA management persistently seeks to reduce or eliminate any adjudication work process that involves time. SSA management trains Judges to stop meaningful adjudication. In pursuit of "making goal," SSA management pressures Judges to engage in a superficial "guessing" process to decide disability cases. Here are the steps SSA management recommends (not exclusive):

a) Don't develop the case before hearing
b) Stop reading the evidence – Most of it is irrelevant
c) Decide the issues before reading the evidence
d) Poverty cluster issues are irrelevant
e) Secondary gain motivations are irrelevant
f) Use an Egg Timer - Limit evidence review to 20-60 minutes
g) Use 50 Thumbnails to skim
h) Guess about the evidence
i) Find a reason to pay a case
j) Stop holding meaningful hearings
    i) Don't test the evidence
k) Don't grant continuances - Speedy production is more important
l) Don't bother reading and editing decisions
m) Issue a disability decision on the case

The best example of SSA management's abandonment of meaningful adjudication is a special "training" session that the RCALJ set up for me and my judicial colleagues in January 2010, to teach us how "efficiently" review files so we could "increase" our monthly production. This training covered a majority of the SSA management work practices listed above. This is a summary of the SSA management "training:"

Meeting with RCALJ: In October, 2009 the RCALJ came to our office. As part of that visit, the RCALJ met privately with me, and said he wanted me to "produce" more case decisions per month. I told him I was working more than full-time, and I asked how I could add to what I was doing.

The RCALJ offered me computer training. In response, I told him I was competent on the computer. I also used Dragon Speak. My caseload production wasn't an issue that could be fixed with a computer program. I was working more than full-time hours, and doing the very best I could. The issue, in my opinion, was that I was reading the evidence, which took time. I knew that some Judges had opted not to read evidence, but I was not willing to do that.

I asked the RCALJ what he thought I could do differently to produce more case decisions per month, and yet still ethically do my job, which included reviewing the evidence?

The RCALJ said he really did not know. He recalled that when he was a hearings Judge, he had chosen not read all the Veteran's Administration (VA) records. Instead, he just would read the VA admission/discharge hospital summaries. [I did not respond to his choice not to read evidence].

I explained to the RCALJ that this issue involved more than just VA records. We had lots of medical evidence filed in our cases. I was already taking shortcuts. Even then, there were still hundreds of pages often filed in every case. It was not unusual to have 25 - 50 new medical exhibits filed in just one case after the last state agency denial. The medical issues and medical evidence involved difficult, complex material. It simply took time to read and analyze.

The RCALJ replied he did not personally have any other suggestions. He did know, however, several Judges who seemed to be able to read the evidence more quickly, and produce large decision numbers. The RCALJ then offered to put me "in touch" with 1 or 2 Judges that he knew who produced large numbers, who might be able to help me. I accepted the offer.

RCALJ Arranges Special "Production" Training

The next month, in November 2009, I received an e-mail from Judge H----, who served as a "Special Assistant" to the RCALJ. Judge H--- did not conduct hearings full-time, in part because she was a designated SSA management trainer, traveling to different offices each month to train Judges on how to use SSA's new eBP (electronic business process) computer program. Judge H--- offered to meet by video with me and other Judges in my office to show us how to read evidence more quickly.[2]

In January 2010, Judge H--- appeared by live video to explain her method of file review. I attended with two other Judges from my office. Judge H---- did not ask us any questions about

[2] In my first email, I specifically noted:

"We are primarily interested to know if you have a technique or style in which to read new medical material. We typically have 100s of pages of new Exhibits filed after the DDS reconsideration. We know some Judges who have just stopped reading material, or who choose to only read 1 page out of every 50, but that is not our goal. So we would be most interested in your techniques. Thank you in advance."

Judge H--- responded: "I have a hearing scheduled for Thurs. that has 4134 pages in the F section alone. There are strategies and approaches. I will be glad to share with you."

our backgrounds, our work, or what we were interested in discussing. Judge H--- had a specific presentation about file review, and provided it in a lecture format for approximately 1.5 hours. We occasionally interrupted her during the 1.5 hours to ask a question.

a) SSA Management Training: Don't Develop the Case Before Hearing

At the beginning of the January 2010 video presentation, Judge H--- stated that when she read a case file, she only worked on and reviewed "un-pulled" cases. That meant none of the evidentiary documents had been sorted or exhibited or worked up. Judge H--- also did not look at the file until 24 hours before the hearing.

(Comment: Judge H--- limited her work load, because she did not review the file in time to develop any medical evidence for the record before the hearing. By working with unmarked evidence, she "helped" SSA management by agreeing to hear the case without any pre-hearing file assembly. The witnesses at the hearing would not be able to refer to exhibits if there was a challenge to the evidence at the hearing or on appeal).

b) Stop Reading The Evidence – Most Of It Is Irrelevant

Judge H---- began her January 2010 presentation by stating that she didn't know any Judge who spent more than one (1) hour reading evidentiary material and reviewing exhibits. She explained that "Judges don't read all the exhibits. They just pick and choose." Judge H---- acknowledged that "some" Judges read every document in the evidentiary file, but asked us, "Who has the time?" She said: "Don't be afraid" to stop reading the evidence.

c) Decide the Issues before Reading Evidence

Judge H--- repeatedly urged us to stop reading all the evidence in the file, since much of it was "irrelevant." Judge H--- emphasized for an "efficient" file review, we simply needed to know what we were looking at. She advised us that it was essential for us first to decide what the issues were. Once we decided what the issues were, we only needed to look for information on those issues. If we used this method, we could pick and choose what to read, and even ignore PCP (primary care physician) notes.

Judge H--- gave us multiple examples of evidence that she did not read or consider. For example, Judge H--- didn't read anything in the E-section of the file (e.g., claimant lay reports, etc). She did, however, quickly glance at the E-section, to make sure that she knew about any third-party report, since failing to mention it in a denial decision could result in a reversal. Judge H--- did not read physical therapy notes or chiropractic notes. She did skim them, however, to make sure there weren't any MS statements in them. She did not read most of the hospital records. She read only the hospital admission/discharge reports and the laboratory reports. She did not read most of the VA records. We were "reading way too much" if we were reading all of the VA records.

d) Use An Egg Timer - Limit Evidence Review To 20-60 Minutes:

Judge H--- repeatedly told us: "Most Judges use no more than one hour to review a file." Judge H--- gave herself very strict time limits to review any case. She only spent 15-20 minutes reviewing "regular" cases. At the very most, she would only spend one hour reviewing any case, including "a bear" of a case (e.g. her case involving 4000 pages in one exhibit). Like "most Judges," she never spent more than one hour preparing any case.

- Use Egg Timer and Just Move On

  We asked Judge H--- how could she limit her review to one hour, especially when she had just had a case that had 4000 pages in just one exhibit? Judge H--- explained that she would often use an egg timer at her desk to ensure that she kept to her time limits. When the timer bell rang, she would stop reading and go on to the next case. She encouraged us to set similar time limits, and to use an egg timer at our desks. This would help "force" us to move on (i.e., stop all case review when the egg timer bell rang).

e) Use 50 Thumbnails to Skim

Judge H--- explained that for her file review, she skimmed the exhibits electronically to look only for certain things. She did that by using the computer's "thumbnail" feature in the E-file. This allowed her to look at up to 50 Exhibit pages on one page. The thumbnails were obviously too tiny to actually read any of the material on the page, but she had learned to know what certain medical records looked like.

(Comment: a "thumbnail" is a miniature reproduction of an 8.5" x 11" document page on the computer screen. It is reduced to the size of a 1" x 1" postage stamp.)

f) Guess about the Evidence

Based on the 50 page thumbnail feature, Judge H--- stated that she could accurately guess what the Exhibit was about, and then choose which pages she would then enlarge and skim. She also used a double-page feature on the computer, so that she could quickly compare a lab result or test result with a medical treatment note, to see if it was consistent.

g) Stop Holding Meaningful Hearings:

Given her case preparation, we asked Judge H--- to describe her hearings. She told us that she scheduled hearings every 30 minutes. Despite that schedule, sometimes her hearings actually took 45 minutes (except for when she paid a case, at which point the hearing lasted no more than 10 minutes). She did not allow the attorney or representative to ask questions until after she was finished with her inquiry. She had a list of boilerplate questions and she asked those same boilerplate questions to every claimant. If needed, she would ask a question about inconsistencies in the file.

This type of 30 minute hearing is typical for Judges who set 50 hearings or more per month on their calendar. In 2008, when I sat and watched the HOCALJ do several hearings, this was the process he used to conduct hearings.

This type of "speedy" hearing process eliminates all meaningful discussion and testing of the evidence, and does not provide a genuine forum for the claimant and his witnesses to present testimony. In contrast, I have provided a sample of a very short hearing (1 hour 16 minutes) that involve the testimony of the claimant, and one expert witness. (Exhibit A).

SSA management's attacks on meaningful adjudication are also demonstrated by the attempts to pressure Judges to hold hearings without the medical evidence, and to stop granting continuances in cases.

Continuances Are A Part Meaningful Adjudication: Judges and lawyers with litigation experience know that a hearing may need to be continued (i.e., postponed) for many different reasons. People are not machines, and many events or problems may occur during the dispute process that support the need for a brief postponement of a scheduled hearing. Continuances are part of meaningful adjudication, which is a process that allows flexibility in each individual case.

A Continuance Takes Time: A continuance, by its nature, requires time. As a result, such a common legal process during litigation is antithetical to SSA management's speedy "production" mandate.

The examples here demonstrate SSA management's attempts to control and limit a Judge's responsibilities to provide meaningful adjudication. The first 3 examples show that SSA management is willing to engage in inappropriate advocacy on behalf of claimants, as well as to encourage the Judges to abandon their duty to be prepared for a case (i.e., obtain and read medical evidence before taking testimony at the hearing). SSA management is also encouraging unethical behavior, because the RCALJ is pressuring the Judges to pre-decide continuances in favor of one litigant (e.g. the claimant) over another (e.g. the American public).

The fourth and last example shows that the real reason behind the SSA management's lobbying against continuances is because continuances take time, and thereby interfere with their speedy production agenda.

1. The Claimant Shouldn't Have to Wait:

When the RCALJ visited our office in October 2009, he specifically told us Judges that continuing cases was "not preferred" by SSA management, no matter what the reason. The RCALJ explained it was not "good practice" for any Judge to continue a case, even if an attorney or litigant filed lots of new medical evidence at the last minute or had failed to file evidence. It did not matter what the medical evidence was, or the amount of evidence that was filed or that was promised to be filed in the future (after the hearing). It also did not matter if the attorney had

been newly retained, and asserted he had not had time to prepare. The claimant had a right to a hearing, and shouldn't have to wait. Continuances were unfair to the claimant.

2. Hold the Hearing without Evidence: The RCALJ explained that the "preferred practice" was to hold the hearing without the evidence, read the evidence if it was submitted later, and then decide if a supplemental hearing needed to be scheduled.

3. Don't Believe the Claimant's Attorney: If an attorney had been retained even 2 weeks prior to the hearing, then Judges should presume, regardless of what the attorney said, that the attorney had had adequate time to file all needed documents, and could appear and adequately represent the claimant at the hearing. If the attorney asserted, prior to the hearing, that he had a conflict on his/her schedule, Judges should not presumptively believe the attorney.

The RCALJ did not explain how any Judge could competently question the claimant or any other witnesses at the hearing, while remaining completely ignorant about the missing or late-filed medical evidence. The RCALJ also did not explain why an attorney, who is an officer of the court, should be presumptively disbelieved when asserting a need for more time, or a calendar change. (Comment: It is noteworthy that the RCALJ advocated for the claimant only to the extent that a continuance should not be granted. Obviously, if SSA managers were truly concerned about the claimant, they would be advocating for the claimant's attorney to have time to be prepared, and be able to attend the hearing.

4. It's Really about SSA Management's Scheduled-To-Heard Production Ratio:

Two weeks later, during the November 9, 2009 meeting with the HOCALJ and the HOD, the HOCALJ stated that it was simply "not acceptable" cases for Judges to continue cases. He explained that the office was given a "schedule-to-heard" ratio set by regional management. Scheduled cases had to be heard in order to meet monthly and yearly regional goals of production. The national level for case continuances was approximately 20%. Any Judge who continued more than 20% of his/her cases was continuing cases above the national average. That was unacceptable.

The HOCALJ told us that cases should not be continued unless it involved a pro se claimant needing to get an attorney. Any Judge who granted continuances beyond the 20% national average, or for reasons other than for a pro se claimant, would be watched very carefully. Postponing cases resulted in fewer case decisions being issued, which meant that the office might not meet the regional production goals. In addition, the HOCALJ stated that any Judge who did grant a continuance might be required to add additional hearings to his/her dockets so that the office could retain the ability to meet its monthly production goals.

**5. The SSA management's high volume and speedy production goals agenda result in management pressuring Judges to stop engaging in meaningful adjudication**

SSA management utilizes all kinds of different pressures to "push" Judges to issue decisions. "Making goal" is the beginning, middle, and end of all discussions with management about adjudication work. Here are just a few examples, which I personally experienced.

a) A Judge who can't "make goal" is a problem

For me, the pressure to produce volume decisions began before I even started work. In February 2008 I accepted a position with SSA, with a start date of Sunday, April 13, 2008 in a West Virginia (WV) office. Before driving across the country, I telephoned the Hearing Office Chief Administrative Law Judge (HOCALJ) of the WV office to introduce myself. The HOCALJ knew that I had been hired. He expressed dismay and disappointment about my hiring. He was not interested in hearing about my legal background. He explained that I was an "outside" hire with no specific SSA experience. My hire created a problem for the office. He explained that each SSA disability office had monthly "production goals" to meet. There was a backlog of disability cases, and the SSA Commissioner wanted each Judge to produce a minimum of 500 case decisions a year. Because I did not have an SSA background, I would not able to immediately help the office "meet the numbers." The HOCALJ would have to "allow" me a nine-month learning curve before expecting me to reach "full production." The HOCALJ hoped I would be able to "get up to speed" as soon as possible.

b) The "goals" are actually a quota

On Monday, April 14, 2008 I started my first day of work. The HOCALJ met with me to discuss my judicial work. He focused exclusively on how I was supposed to help the office meet its mandatory monthly production quota (Note: The HOCALJ repeatedly used the word "quota" during this meeting). This production quota had to be met by the last Friday of each month.

The HOCALJ provided me with the following judicial quota formula: In a four-week month I was required to produce 2.45 case decisions per day x 20 work days. This meant I needed to produce 49 case decisions per month. In a five-week month the formula changed to 2.45 case decisions per 25 workdays. This equaled 61.25 case decisions I needed to produce each month. If any month had a federal holiday, I would be allowed to subtract that one day from the quota formula.

The HOCALJ did not explain how I was supposed to conduct meaningful adjudication and still meet these production numbers. We didn't discuss adjudication at all.

c) Make the goal so you can get back home:

On my first day, the HOCALJ also warned me that if I didn't "make the numbers" I would likely never get a transfer back to my home state. You had to "make goal" to get back

home. He advised me to try and schedule 72 cases each month, so that I could "always make goal."

d) You are "lazy", "uncaring," and not a "team player" if you don't "make goal"

On my first day in the office, the HOCALJ explained to me how to "make goal." He then warned me to avoid two of the Judges in the office. The HOCALJ described these two Judges as "lazy" Judges, who "failed to help" the office reach its production requirements. They were "low producers" who were "not team players." They "did not care" about the office numbers.

The HOCALJ was correct that these two Judges did not "make goal." But in all other aspects, he was profoundly mistaken. Both of these Judges were dedicated, hard-working, public servants. They were ethical professionals who cared deeply about their work, and who spent hours and hours of time poring over medical records and holding hearings, trying to analyze and correctly decide cases.

Nevertheless, SSA management has reduced the value of all judicial adjudication work to a monthly production number. A Judge must "produce" the monthly number. Thus, according to SSA management, only the SSA Judges who "make goal" are "hard-working" and "care" about the American people. Any SSA Judge who fails to "make goal" is automatically defined by SSA management in a variety of negative ways (e.g., "inefficient," "nonproductive," "wasting time," "lazy," "malcontent," "uncaring," "disruptive," etc).

In October 2009, the Regional Chief Administrative Law Judge (RCALJ) made a rare visit to our office to re-emphasize that "production" was absolutely imperative. During an all staff meeting, the RCALJ gave a PowerPoint presentation in which he asserted that 80% of SSA Judges throughout the country were "producing" 500 or more decisions per year. The RCALJ explained to the staff, in front of us Judges, that any "hard-working" SSA Judge could produce at least 500 or more decisions per year. He then excused the clerical staff from the meeting, and met solely with the Judges to expand on that message.

The following month, in November 2009, I was trying to persuade the HOCALJ to meet with Judge J--- and me so we could discuss certain concerns the Judges had about management directives. The HOCALJ repeatedly refused. He said he knew the difference between his caseload and mine. He knew that he, at least, worked hard. He was concerned about the backlog. Unlike me, he didn't have time for meetings. When I showed the HOCALJ that his calendar for the next week was exactly the same as mine, he expressed shock. He then agreed to meet with Judge J--- and me for 20 minutes.

The following week, Judge J--- and I met with the HOCALJ about multiple judicial concerns on behalf of all the Judges in my office. During this meeting, the HOCALJ personally attacked me for failing to "make goal." He accused me of not working "full-time", and not meeting my case "obligations." I reminded the HOCALJ that I and all the other Judges in the

office all worked full-time. In fact, all of us were routinely working at least 55-60+ hours per week, and more. I pointed out that Judge A---, who was supposed to be on vacation all month, had actually been in the office next door, working "off the clock" for most of the week (including while we were meeting), in order to prepare cases before he "officially" returned from vacation. (Comment: In essence, Judge A--- had failed to take his vacation because of the relentless pressure by management on Judges in the office). The HOCALJ replied that Judge A--- obviously "cared" about his job, and was willing to put in the hours that "were needed."

This disparagement and shaming of Judges who do not "make goal" or who challenge the SSA management "goal" agenda is pervasive on all levels (i.e., locally, regionally, and nationally). As a member of the AALJ's national bargaining team, I repeatedly heard SSA management representatives talk about how any "hard-working" Judge could easily "make" the 500 per year production goal. Any Judge who was not "producing" was negatively labeled. Although this type of shaming tactic should be beneath any adult in the workplace, it is pervasively utilized by SSA management to pressure Judges into production compliance.

e) It's easy to issue decisions with a "pay" decision form

When I began work in April 2008, the HOCALJ gave me his SSA Mentor Guide ("Guide") to use. This Guide instructed SSA mentors to encourage new Judges to write fully favorable decisions ("pay" decisions), in order to expose them to the use of bench decisions as well as the help them learn how to use electronic "FIT" fully favorable ("pay") decision tool. It was noteworthy that SSA provided no electronic boilerplate forms for issuing "denial" decisions. SSA management repeatedly discussed this "FIT" pay form with Judges at every judicial training session I attended.

f) It's Just a Game – Play Along

One of the ways that the HOCALJ in my office tried to "encourage" us Judges to produce more cases decisions per month was to characterize our judicial work as a competitive sport. We received constant emails throughout the week (sometimes up to 3 emails in one day), in which the HOCALJ gave us an updated report on our "production" numbers. In these e-mails, the HOCALJ would characterize the Judges as a sports "team" playing against the attorney-reviewer sports "team" to "make "goal" for the office. At the end of each month the HOCALJ would send an email reporting on whether the office had made or exceeded "goal," and congratulating the sports "team" that had won the completion (i.e., had produced the most decisions to "make goal"). Not surprisingly, many of the clerical staff began to refer to the Judges by last name only, as if we all football players (e.g., "How many has Sullivan signed this week?).

g) We Must Help the RCALJ to Win

On November 9, 2009 the HOCALJ and the Hearing Office Director ("HOD") convened a meeting with 3 of the 6 judges in my office. During this meeting the HOCALJ mandated that all Judges in the office were to start traveling more, as well as increase the number of hearings set and heard per day at the remote travel site. We questioned the need for this mandate,

especially without any objective justification, or without any input from us about our cases or our personal schedules.

The HOCALJ and the HOD admitted that our office was well ahead of the national average for hearing and deciding older cases. However, they explained that our RCALJ had just issued a new "regional" production goal for issuing more case decisions (i.e. "production"). The RCALJ's new regional goal exceeded the nationally mandated target goal, because our RCALJ wanted to make sure that his region was the "Number 1" region in the country in "making goal." The HOCALJ and HOD needed to make sure that our office met the RCALJ's new "regional goal." As a result, the HOCALJ was mandating us Judges to travel more, set more hearings during travel, and produce more decisions per month on all travel cases.

h) Help "make goal" by paying some cases

In November 2009 the HOCALJ reminded me (as he often reminded all of us Judges) that when SSA manager R--- was in the office, R--- always went through the master docket before the end of the month, and then paid enough cases OTR (on the record) so that the office always made its monthly goal. The HOCALJ stated that if I was so concerned about the backlog, and the cases in the office, he would be happy to give me the master docket, and let me start looking through so I could pay cases OTR the way SSA manager R--- used to. That way I could help the office continue to make the monthly goal. I advised the HOCALJ that even if he gave me the master docket for review, it was unlikely that I would authorize cases to be paid OTR the way R--- had done.

i) The RCALJ's regional goals are mandatory

At the November 9, 2009 meeting with the HOCALJ and the HOD, the HOCALJ stated that meeting the RCALJ's regional "target goals" was mandatory. As a result, all Judges (except himself) would be required to travel for one full week every month. All travel dockets had to be set during the first 3 weeks of the month, so that every Judge would be physically in the office during last week of the month, in order to sign and issue as many decisions as possible so that the office could "make goal."

j) Scheduling travel is easy if you "make goal"

At the same November 9, 2009 meeting, the HOCALJ agreed that scheduling travel dockets was difficult enough (especially in December and other holiday months) without such a 3 week limitation. He emphasized, however, that "making goal" was paramount. If a Judge was helping to meet Regional goals, both as an individual and for the office, then the HOCALJ would allow that Judge flexibility in scheduling travel. But, any Judge who failed to "make goal" would be denied the ability to set any travel docket during the last week of any month. Judges who were not complying with the goals would not be allowed flexibility in setting travel dates.

h) Stop reading your decisions to help make goal: The HOCALJ also told us that he would allow a Judge to travel during the last week of the "goal" month only that Judge gave up editing and signing his pending decisions for that month. The Judge would be required to authorize the HOCALJ to "edit" and sign the Judge's pending decisions while the Judge traveled, so that the office production levels were met. The HOCALJ also warned us that he would be closely watching the production of each Judge in the office.

k) It's not a quota – but "making goal" is mandatory

In late November 2009 Judge J--- and I again met with the HOCALJ about multiple concerns the office Judges were raising. One of those concerns was that the HOCALJ was mandating that the Judges travel to a remote hearing site with no E-file (electronic file) access, and hear a minimum of 24 hearings in 5 days or less.

During this meeting, the HOCALJ denied he was mandating judicial caseload quotas. He admitted, however, that he had certain monthly "target goals" set by the RCALJ that he had to meet. As a result of these management "goals," the HOCALJ insisted he could force Judges in the office to hear a minimum of 5 hearings per day, and travel for at least one week at a time, regardless of each Judge's personal commitments, the complexities of the cases on each Judge's docket, or the physical inadequacies of the travel site location.

Judge J--- and I asked the HOCALJ to explain to us what the difference was between a "target goal" on a hearing docket and a case "quota." The HOCALJ explained that the difference was that he wasn't calling it a "quota." He would never call it a "quota." He was simply stating that he had an obligation to meet regional "target goals" of production. As a result, he had the authority to require that Judges meet "target goals" on travel dockets. He refused to explain how this was any different from setting a caseload quota, other than to say that he would never call his requirements a "quota." If we Judges did not set our schedules as he mandated, so that we met the office "target goals," then he would refuse the travel docket on the grounds that it was not cost-effective. The HOCALJ said that he would not be authorizing Agency expenditures so that we Judges could be "on vacation" when we traveled. The HOCALJ refused to describe what he meant. He simply repeated that he had regional "target goals" that our office had to meet. Any Judge's travel docket that did not set a minimum of 24 hearings per week at the travel site, in order to meet "the goals," was not "cost-effective" and would not be approved.

**6. The SSA management's high volume and speedy production goals result in the "production" of a large number of disability decisions that have not been properly reviewed, analyzed, and decided**

It is impossible to measure the number of SSA disability applications that have been issued based on poorly adjudicated and rushed decisional output. But the inescapable reality is that a large number of disability decisions are being produced in the absence of any meaningful judicial adjudication, based on SSA management's mandate for production. For SSA management, "making goal" has replaced all meaningful adjudicatory process.

As part of my testimony, I am including two examples of real SSA disability cases that were reviewed by two different SSA Judges. (Exhibit F).

In both of the two examples, the first Judge reviewed the case under a meaningful adjudication standard. The second Judge reviewed the case under SSA management's "making goal" standard.

Both cases were removed from the first Judge after she had spent time reviewing the records, ordering development, and holding a hearing. The cases were removed from the first Judge on the grounds the cases were "aged" (e.g., an SSA management time calculation that includes the amount of time SSA had the case before assigning it to a Judge) and needed to be "processed."

The second Judge issued a "pay" decision on each case a few days after the cases were reassigned to him. Each "pay" decision helped the office "make goal" for the month.

In addition, I am providing an example of SSA's management's secret, unilateral re-assignment of the same case to three Judges in my office. It demonstrates SSA management's lack of understanding and support for meaningful adjudication. (Exhibit G).

7. **SSA management's "production" mandate, and pressure for high volume and speedy disability decisions, results in high rates of error in Judges' decisions. In turn, this results in the loss of billions of dollars incorrectly expended from the Trust Fund, and in hardship for countless American citizens throughout the country**

For SSA management, "making goal" trumps the adjudicatory process, the quality of work, and the correctness in decision-making.

Instead of engaging in responsible stewardship and management of a meaningful federal adjudication program, SSA management has substituted a factory-type "production" factory production agenda. This mistaken approach has allowed SSA management to present Congress and the American public with some short-term "production" statistics. But these statistics have been achieved by causing incalculable damage to a meaningful adjudication system.

In reality, SSA management is failing in its adjudication stewardship. That failure is costing all of us American citizens millions of dollars in the issuance of poorly considered and rushed decisions granting disability benefits. It also creates terrible individual consequences because of poorly considered and rushed decisions denying disability benefits.

Insert for the Record

We have 25 cooperative disability units. With the FY 2014 appropriations we received, we are adding 7 additional units (for a total of 32 units) and adding additional investigative support to the existing units. We anticipate these 7 units will be fully operational in FY 2015. If we receive the President's Budget for FY 2015, we will do even more in this area.

Insert for the Record

**On-The-Record Hearing Decisions**
**Fiscal Years 2011 to 2014**
**(as of May 30, 2014)**

| Fiscal Year | Total |
|---|---|
| 2011 | 103,950 |
| 2012 | 75,470 |
| 2013 | 51,437 |
| 2014 | 17,710 |

Insert for the Record

In May 2014, there were 11,004,507 Social Security Disability Insurance beneficiaries in current pay status.

Insert for the Record

**National ALJ Allowance Rates**
**Fiscal Years 2011 to 2014**
**(as of May 30, 2014)**

| Fiscal Year | Dispositional Allowance Rate[1] | Decisional Allowance Rate[2] |
|---|---|---|
| 2011 | 53% | 62% |
| 2012 | 48% | 58% |
| 2013 | 46% | 56% |
| 2014 | 44% | 54% |

[1]Dispositional allowance rate includes dismissals in its calculations.

[2]Decisional allowance rate excludes dismissals in its calculations.

SOCIAL SECURITY
The Commissioner

June 24, 2014

The Honorable Darrell Issa
Chairman, Committee on Oversight
and Government Reform
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for the opportunity to testify about our administrative law judges (ALJs) at the June 11, 2014 hearing. During the hearing, you asked the following question:

> Do you have the authority, if there's new information added, to seize the record, not have it go to the ALJ, and go back – get back through the process of review again at a lower level so that it not be presented to a judge when, in fact, it's not the same package that was previously rejected?[1]

I would like to elaborate on my original answer for the record. Our regulations permit a prehearing case review, or what we call an informal remand, if additional evidence is submitted. 20 C.F.R. §§ 404.941; 416.1441. Specifically, after the claimant requests a hearing but before it is held, the ALJ may send the case back to the disability determination services (DDS), the State agency that issued the last determination on the claim. If the ALJ sends the case back, the DDS then decides whether it should revise the determination based on the preponderance of the evidence. The DDS can make either a fully or partially favorable revised determination. If the DDS makes a fully favorable revised determination, the ALJ will dismiss the hearing request. If the DDS makes a partially favorable revised determination, the case will go back to an ALJ. If the DDS does not complete the prehearing case review by the time of the scheduled hearing, the case also will go back to the ALJ (unless the claimant agrees to keep the case at the DDS).

It is not uncommon for claimants to submit additional evidence at the hearing level because the prospective life of a disability application usually does not end until the ALJ issues a hearing decision. Our business process ensures that an informal remand does not affect the time a claimant waits for a hearing. However, ALJs do not routinely send cases back for prehearing case reviews because it usually is more efficient for the ALJ to issue a *de novo* decision based on all the evidence. If the informal remand process were used anytime a claimant provides new evidence just before the hearing, claimants who appealed would ultimately wait longer and we would add administrative cost to our disability appeal process for these re-reviews.

[1] Source: Federal News Service, Unofficial Transcript for the June 11, 2014 Hearing before the House Oversight and Government Reform Committee

I hope you find this information helpful. During the June 11 hearing, I also agreed to provide additional information to the Committee. I will be providing my response under a separate cover. In the meantime, if I can be of further assistance, please do not hesitate to contact me, or have you staff contact Scott Frey, our Deputy Commissioner for Legislation and Congressional Affairs, at (202) 358-6030.

Sincerely,

Carolyn W. Colvin

Carolyn W. Colvin
Acting Commissioner

cc:
The Honorable Elijah Cummings
Ranking Member, Committee on Government Oversight and Reform

Insert for the Record

Our Chief Actuary estimates that the present value of expected net benefit cost for the DI Trust Fund for an average disabled worker award in 2013 is about $150,000.