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Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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July 1, 2014

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

Dear Ms. Colvin:

The Committee on Oversight and Government Reform continues its oversight of the Social Security Administration's management of federal disability programs. On June 10, 2014, the Committee Republicans released a staff report entitled *Systemic Waste and Abuse at the Social Security Administration: How Rubber-Stamping Disability Judges Cost Hundreds of Billions of Taxpayer Dollars*. This report presented strong evidence that hundreds of SSA Administrative Law Judges (ALJs) have improperly placed applicants on disability over the last decade.[1] The report showed that reducing the ALJ hearing backlog was the agency's singular focus, and this focus produced a factory-like production process in which many ALJs were allowed, and often encouraged, to award benefits quickly regardless of the accuracy of the determination.[2]

The day the Committee released its report, the Committee held a hearing with four current SSA ALJs who have rubber-stamped claimants onto disability programs for years.[3] Since 2005, these four ALJs – Charles Bridges, James Burke, Gerald Krafsur, and Harry Taylor III – have collectively awarded approximately $11 billion in lifetime benefits.[4] Their troubling testimony provided additional evidence that SSA abdicated its responsibility to protect the truly disabled and taxpayers from out-of-control ALJs who refuse to follow the law.

Your testimony at a subsequent Committee hearing on the same topic on June 11, 2014, raised serious questions about the agency's willingness to confront the problems of rapidly rising disability rolls.[5] Although at the hearing you indicated that you would rather not focus on the past, it is important that the agency understand the full scope of the problem.[6] In particular, since

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[1] *See* STAFF OF H. COMM. ON OVERSIGHT AND GOV'T REFORM, 113TH CONG., SYSTEMATIC WASTE AND ABUSE AT THE SOCIAL SECURITY ADMINISTRATION: HOW RUBBER-STAMPING DISABILITY JUDGES COST HUNDREDS OF BILLIONS OF TAXPAYER DOLLARS (June 10, 2014) [hereinafter *Staff Report*].
[2] *Id.*
[3] *See Social Security Administration Oversight: Examining the Integrity of the Disability Determination Appeals Process: Hearing Before the H. Comm. on Oversight & Gov't Reform*, 113th Cong. (2014) [hereinafter *Hearing*].
[4] *See Staff Report, supra* note 1 at 47-52.
[5] *See Social Security Administration Oversight: Examining the Integrity of the Disability Determination Appeals Process – Part II: Hearing Before the H. Comm. on Oversight & Gov't Reform*, 113th Cong. (2014) [hereinafter *Hearing Pt. II*] (Statement of Hon. Carolyn W. Colvin, Acting Comm'r of Social Security).
[6] *Id.*

the agency allowed hundreds of ALJs to rubber-stamp applicants onto disability programs over the past decade, the nation now has an enormous number of people who are inappropriately on disability programs. We are concerned that your testimony indicated a lack of appreciation of the substantial problem created when ALJs essentially approve every claimant before them, regardless of whether they are disabled or unable to work, and that you lack the commitment to fundamental program reform.

SSA Has Failed to Properly Deal With Rubber-Stamping ALJs

As detailed in the Committee's staff report, the agency made no attempt to evaluate the quality and policy compliance of ALJ decisions prior to 2011.[7] It was only after a series of embarrassing news stories that the agency started reviewing the policy compliance of ALJ decisions in 2011. While these reviews provide essential information, your testimony as well as the testimony of Chief ALJ Debra Bice suggests that the agency failed to take meaningful action after these reviews were completed.[8] The Committee has reviewed 48 of these so-called focused reviews, and the reviews show that many of the agency's ALJs do not follow the law when issuing decisions. However, at the hearing, you were unable to state any meaningful consequences that result from negative reviews.[9]

SSA currently allows ALJs to decide a full load of cases *after* a focused review shows that their decisions systemically disregard SSA policy. The decision to allow ALJs to continue deciding cases after a problematic review is an abdication of your duty to uphold the agency and protect program funding for the truly disabled.

ALJs that refuse to follow the law and essentially rubber stamp claimants onto the federal disability rolls have abused the public trust, harmed the nation's truly disabled and therefore should be fired. It is unacceptable that SSA refused to take disciplinary action after focused reviews conducted in 2011 for ALJ Krafsur, ALJ Bridges, and ALJ Taylor revealed gross errors and incompetence in applying the law. In some cases, these ALJs created their own rules and standards for deciding cases and allowing benefits.[10] The agency conducted follow-up focused reviews on each of these ALJs within the past year and all three reviews found the same significant problems with the ALJs' decisions. For example, ALJ Bridges' 2014 review found that 60 percent of a sample of his decisions was not substantiated by evidence.[11] The agency's senior management is directly responsible for allowing these ALJs to erroneously award benefits after their first focused review and is, therefore, also directly responsible for these three rubber-stamping ALJs placing more than 4,300 additional people onto federal disability programs between October 1, 2011 and May 30, 2014.[12]

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[7] *See Staff Report, supra* note 1.
[8] Transcribed Interview with Chief Administrative Law Judge Debra Bice (May 13, 2014).
[9] Chief ALJ Bice testified that ALJs receive agency training after negative focused reviews; however, ALJ testimony suggests that some of the post-review training never took place and repeat focused reviews for many ALJs show that the training does not result in better decision-making.
[10] ALJ Krafsur's 2014 Focused Review found that ALJ Krafsur developed his own "cause and effect" theory to decide cases. An October 28, 2013 memo from Hearing Office Chief ALJ Theodore Burock to Regional Chief ALJ Jasper Bede details how ALJ Bridges manipulated vocational experts' testimony to find claimants disabled.
[11] *See* Follow-up Focused Review of A.L.J. Gerald Krafsur (Mar. 2014); Fiscal Year 2013 Focused Review of A.L.J. Charles Bridges (Jan. 2014); Focused Review of A.L.J. Harry Taylor (May 2013).
[12] SSA Public Data Files, ALJ Disposition Data (June 24, 2014).

Before the Committee obtained any SSA supplied focused reviews, we wrote you on December 19, 2013,[13] after finding other evidence that ALJ Bridges and ALJ Taylor were violating SSA policies, misusing taxpayer funds, and indiscriminately approving essentially all claimants before them for disability.[14] We recommended that you immediately place them on administrative leave so that SSA could investigate the serious deficiencies in their decision-making.

You testified that you have the authority to place both ALJ Bridges and ALJ Taylor on administrative leave. When asked why you have not placed them on administrative leave, you stated that "I think there has to be considerable thought and there are actions pending."[15] Yet, three years after ALJ Bridges' and ALJ Taylor's first focused reviews and six months after their second focused reviews, you have taken no meaningful action to remove these ALJs. Your failure to take action in these clear-cut cases raises serious questions about your willingness to take necessary steps to reduce the rampant mismanagement, waste and misspending on federal disability programs. Moreover, the small number of cases that you have filed with the Merit Systems Protection Board about problematic ALJs raises serious questions about the agency's commitment to hold blatantly, failing employees accountable.

As Ranking Member Elijah Cummings' stated, the four ALJs who testified at the June 10, 2014, hearing are "failing to meet agency standards for conduct and professional judgment."[16] We reiterate our December 19, 2013, recommendation that you remove ALJ Bridges and ALJ Taylor and we urge you to also remove ALJ Burke, ALJ Krafsur, and any other ALJ who refuses to follow policy and has a history of rubber-stamping claimants onto the federal disability rolls. Although the agency has failed to protect taxpayers and the truly disabled from these four reckless ALJs for years, you, at a minimum, have the ability to take immediate action to remove all of them.

You Failed to Demonstrate an Understanding of ALJ Production Goals

In 2007, the agency instituted goals for the annual number of dispositions that ALJs should issue in a given year. The 500 to 700 production goal, instituted by SSA to help reduce the backlog of cases waiting to be heard by an ALJ,[17] has led the agency's regional offices and local hearing offices to focus on quantity of decisions over quality as ALJs cut corners to meet the arbitrary goals. When the annual goals were initiated in 2007, 56 percent of ALJs were deciding less than 500 cases per year.[18] Moreover, the agency failed to conduct any study about the proper length of time it takes for ALJs to thoroughly review and decide cases prior to creating the 500 to 700 production goals.[19]

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[13] Letter from Hon. Darrell Issa et al. to Hon. Carolyn W. Colvin (December 19, 2013).
[14] Between fiscal year 2005 and fiscal year 2013, ALJ Bridges and ALJ Taylor, respectively, placed more than 15,000 and 8,000 people onto disability. They had respective allowance rates during this period of 95 percent and 94 percent.[14]
[15] *Hearing Pt. II, supra* note 3 (Statement of Hon. Carolyn W. Colvin, Acting Comm'r of Social Security).
[16] *Hearing Pt. II, supra* note 3 (Statement of Hon. Carolyn W. Colvin, Acting Comm'r of Social Security).
[17] Memo from Frank A. Cristaduo, Chief Administrative Law Judge, Social Security Administration to Administrative Law Judges, Social Security Administration (Oct. 31, 2007).
[18] Office of the Inspector General, Social Security Administration, Administrative Law Judges' Caseload Performance Audit Report (February 2008).
[19] Transcribed interview with former Chief Administrative Law Judge Frank Cristaudo (May 16, 2013).

During your testimony, you made several conflicting statements about the agency's production goals. In response to Representative John Mica's suggestion that you suspend agency production goals, you testified that "we don't have agency production goals."[20] However, later in the hearing, you testified that "we have target goals in every aspect of what we do."[21] You also gave contradictory testimony when questioned by Representative Paul Gosar:

> Rep. 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.
>
> Rep. Gosar: **Are you aware there are no underlying studies to justify the production targets?**
>
> Ms. Colvin: **That is what I am told.**
>
> Rep. 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.[22] [emphasis added]

If your testimony is that ALJs do not have production goals, then your testimony has been contradicted by the testimony of multiple other SSA employees as well as documents the agency has produced to the Committee. For example, Regional Chief ALJ Jasper Bede testified that he understands the production goal to mean that "a fully functioning, experienced administrative law judge ... should be able to do 500 dispositions a year, and that some judges could do up to 700 dispositions a year."[23] ALJ Therese Hardiman also testified that the 500 to 700 production goal is an "expectation" from the agency, and further stated that "I don't think that there's ever been any, especially any new, ALJs that have been hired that are under the delusion that this is not a high-volume adjudicative process. It is."[24]

Since the production goals have no legitimate basis and there is evidence that the goals incentivize negligent behavior,[25] you should immediately suspend the production goals. Although the production goals were created before you became Acting Commissioner, it is your responsibility, given their negative consequences, to end them, at least until the agency conducts a scientific study of the amount of time it takes an ALJ to properly and thoroughly review evidence, hold a hearing, and issue a policy compliant decision.

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[20] *Hearing Pt. II, supra* note 3 (Statement of Hon. Carolyn W. Colvin, Acting Comm'r of Social Security).
[21] *Id.*
[22] *Id.*
[23] Transcribed Interview with Regional Chief ALJ Jasper Bede at 18 (Oct. 22, 2013).
[24] Transcribed Interview with ALJ Therese Hardiman at 71 (Sept. 20, 2013).
[25] *Oversight of Rising Social Security Disability Claims and the Role of Administrative Law Judges Before the Subcomm. on Energy Policy, Health Care and Entitlements of the H. Comm. on Oversight and Government Reform*, 113th Cong. (June 27, 2013) (testimony of ALJ J.E. Sullivan)

A Raid on Social Security's Retirement Program is Not an Answer to Reform of the Program

Faced with evidence of widespread waste, mismanagement and abuse by ALJs in the disability determination and appeals process, you were unable to name one area of increased authority or flexibility that would help you protect taxpayer dollars:

> Chairman Issa: 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: 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.[26]

Instead of recommending reforms to the broken and wasteful disability appeals process, your only suggestion was to express support for the recommendation of Rep. Gerald Connolly that Congress reallocate the payroll tax in order to fund the disability trust fund after 2016, when it will be bankrupt. A bailout of the disability fund after at least a decade of serious agency mismanagement and at the expense of the SSA retirement program, without meaningful reforms to a broken appeals process and disability re-evaluation process, is not a responsible solution.

We were troubled by your admission that you have not watched the *60 Minutes* story from last fall on significant problems with federal disability programs.[27] We expect that all government officials in leadership positions are kept fully informed about key problems, particularly when that agency is charged with management of multi-billion dollar disability programs for our nation's most vulnerable citizens. Moreover, it is surprising about your lack of awareness of the national ALJ allowance rate and that you stated the wrong number of Americans receiving benefits from SSA's two disability programs.[28] Despite having over two weeks' notice for your appearance before the Committee, and a postponement of your appearance to accommodate your personal vacation, we were troubled by your level of

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[26] *Hearing Pt. II, supra* note 3 (Statement of Hon. Carolyn W. Colvin, Acting Comm'r of Social Security).
[27] *Id.*
[28] *Hearing Pt. II, supra* note 3 (Statement of Hon. Carolyn W. Colvin, Acting Comm'r of Social Security).

preparation to engage in a thoughtful discussion about the serious challenges with your agency's management of federal disability programs and its ALJs.

In order to assist the Committee with its continued oversight, the Committee requests that SSA produce all documents and communications referring or relating to actions taken in response to the focused reviews the agency has conducted since they were initiated in 2011. We appreciate that your staff is working with Committee staff on a series of additional briefings related to the agency's management of federal disability programs.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X.

When producing documents to the Committee, please deliver production sets to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. The Committee prefers, if possible, to receive all documents in electronic format.

If you have any questions about this request, please contact Emily Martin or Brian Blase of the Committee Staff at 202-225-5074. Thank you for your attention to this matter.

Sincerely,

Darrell Issa
Chairman

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

Jim Jordan
Chairman
Subcommittee on Economic Growth, Job Creation, and Regulatory Affairs

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

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

The Honorable Matt Cartwright, Ranking Minority Member
Subcommittee on Economic Growth, Job Creation, and Regulatory Affairs