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Misplaced Priorities: How the Social Security Administration Sacrificed Quality for Quantity in the Disability Determination Process

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U.S. House of Representatives
Committee on Oversight and Government Reform
Darrell Issa (CA-49), Chairman



Misplaced Priorities: How the Social Security Administration Sacrificed
Quality for Quantity in the Disability Determination Process

STAFF REPORT
U.S. HOUSE OF REPRESENTATIVES
113TH CONGRESS
DECEMBER 18, 2014

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Social Security Administration

Michael J. Astrue

Commissioner

February 12, 2007 to January 19, 2013

Jasper Bede

Regional Chief ALJ (RCALJ) for Region 3

2006 to present

As RCALJ for Region 3, Mr. Bede supervises 17 hearing offices and roughly 180 ALJs. Mr. Bede has served the Social Security Administration in various capacities since 1975. The Committee conducted a transcribed interview with RCALJ Bede on October 22, 2013.

Debra Bice

Chief ALJ (CALJ)

January 2011 to Present

As CALJ, Ms. Bice supervises 162 hearing offices and approximately 10,000 employees, including about 1,500 ALJs. Prior to serving as CALJ, Ms. Bice was the Hearing Office Chief ALJ (HOCALJ) in Kansas City, MO, for two years. She has served the Social Security Administration in various capacities from 1976 to 1995 and from 2000 to the present. Between 1995 and 2000, Ms. Bice worked as a disability claimant attorney. The Committee conducted a transcribed interview with Ms. Bice on May 13, 2014.

Charles Bridges

ALJ, Harrisburg, PA Hearing Office

May 2004 to Present

Mr. Bridges has served as an ALJ for 15 years, serving as HOCALJ of the Harrisburg, PA, Hearing Office from May 2004 until June 4, 2010. RCALJ Bede removed Mr. Bridges as Harrisburg's HOCALJ for improper conduct. Prior to serving as HOCALJ in Harrisburg, Mr. Bridges served as HOCALJ in Hartford, CT.

Frank Cristaudo

Associate Chief ALJ

January 2011 to Present

Mr. Cristaudo was the CALJ between 2006 and 2010. Prior to serving as the CALJ, Mr. Cristaudo was the Regional CALJ for Region 3 between 1996 and 2006. He has served the Social Security Administration in various capacities for over twenty years. Prior to joining the Social Security Administration, Mr. Cristaudo worked as a disability claimant attorney. The Committee conducted a transcribed interview with Mr. Cristaudo on May 16, 2014.

Carolyn W. Colvin

Acting Commissioner

February 14, 2013 to Present

Ms. Colvin has served the Social Security Administration in various capacities from 1994 to 2001 and from 2010 to the present.

David Daugherty

ALJ, Huntington, WV Hearing Office

1990 to June 2011

Gerald A. Krafsur

ALJ, Kingsport, TN Hearing Office

1991 to Present

Glenn E. Sklar

Deputy Commissioner, Disability Adjudication and Review

January 2010 to Present

Harry Taylor

ALJ, Charleston, WV Hearing Office

1988 to Present

Private Sector

Eric C. Conn

Founder, The Conn Law Firm & Associates

Mr. Conn is a claimant representative in Stanville, Kentucky. Mr. Conn allegedly engaged in an inappropriate collusive effort with ALJ Daugherty to improperly award benefits to Mr. Conn's clients.

EXECUTIVE SUMMARY

The Social Security Administration (SSA) administers two large federal disability programs: the Social Security Disability Insurance program (SSDI) and the Supplemental Security Income program (SSI). Currently, around 19.4 million individuals receive roughly \$200 billion in benefits annually through these two programs.¹ In addition to the direct cash benefit, individuals enrolled in SSDI for two years are automatically enrolled in Medicare.² Medicare currently spends about \$80 billion on SSDI beneficiaries.³ Moreover, individuals enrolled in SSI are automatically eligible for Medicaid and thus add to both federal and state healthcare spending.

The average lifetime disability benefit, including the benefit from programs linked to enrollment in a disability program, is estimated at \$300,000.⁴ Therefore, any improper decisions that award benefits are incredibly costly for the program and for taxpayers. The Social Security Board of Trustees and the Congressional Budget Office estimate that, without reform, the SSDI trust fund will be depleted in 2016 resulting in disabled beneficiaries having their current benefits reduced by 19 percent indefinitely.⁵

The Committee has focused its oversight on problems within the disability appeals process, the part of the process during which Administrative Law Judges (ALJs) review appealed cases and decide whether or not to award benefits. A case only reaches an ALJ after previous agency disability experts found the claimant failed to meet the criteria for disability. In 40 states, the first level of appeal goes to a different expert in the state office. Therefore, in the vast majority of cases adjudicated by an ALJ, the claimant has already been denied benefits *twice*. The impact ALJ decisions have on federal spending is substantial and long-lasting. If an ALJ improperly awards disability benefits to just 100 people, they increase the present value of federal spending by \$30 million. Between 2005 and 2013, ALJs placed over 3.2 million people on federal disability programs at a total cost of nearly one trillion dollars. During this period, the ALJ allowance rate (the percentage of cases in which ALJs allowed benefits) was 66 percent and 191 ALJs had total allowance rates in excess of 85 percent.

Despite the high-cost impact of ALJ decisions, SSA made no effort to monitor whether its ALJs were issuing policy-compliant decisions prior to the first publication of ALJ disposition

¹ See Social Security Administration, Social Security Online Beneficiary Data, *available at* <http://www.socialsecurity.gov/cgi-bin/currentpay.cgi>, *see also* Social Security Administration Research, Statistics, & Policy Analysis, Monthly Statistical Snapshot, April, 2014 *available at* http://www.ssa.gov/policy/docs/quickfacts/stat_snapshot/#table2.

² Social Security Administration, “Disability Planner: Medicare Coverage If You’re Disabled.” *available at* <http://www.socialsecurity.gov/dibplan/dapproval4.htm>.

³ Congressional Budget Office: CBO Testifies on the Social Security Disability Insurance Program, *available at* <http://www.cbo.gov/publication/43996>.

⁴ DAVID H. AUTOR & MARK DUGGAN, SUPPORTING WORK: A PROPOSAL FOR MODERNIZING THE U.S. DISABILITY INSURANCE SYSTEM 8 n.10 (2010), *available at* <http://www.americanprogress.org/wp-content/uploads/issues/2010/12/pdf/autordugganpaper.pdf>. The authors state that this estimate likely significantly understates the true present value of disability benefits because it does not include the value of SSI benefits or of the associated Medicaid coverage for those receiving benefits from both SSDI and SSI.

⁵ Social Security Administration Office of the Inspector General Informational Report: Disability Insurance Trust Fund (A-15-15-15024, December 2014).

data in 2010 and critical reporting by the *Wall Street Journal* in 2011,⁶. Former Chief ALJ Frank Cristaudo testified that the only metric used by the agency to evaluate ALJs was the total number of cases processed by an ALJ in a given time period.⁷

Although the agency ignored ALJ allowance rates, the exceedingly high rates of some ALJs should have drawn SSA's scrutiny. Jasper Bede, a Regional Chief ALJ (RCALJ) for SSA, testified that allowance rates in excess of 75 percent or 80 percent raise a "red flag" about the quality of ALJ decisions.⁸ RCALJ Bede also testified that "it was generally felt that anything over 700 [dispositions] brought into question whether or not the judge was properly handling cases" and that "[i]f you're well over 700 [dispositions], you know, if you're doing 1,000, and I think that's almost *prima facie* evidence that you're not doing a good job and you should be looked at."⁹ A 2012 SSA internal analysis confirmed a "strong relationship between production levels and decision quality on allowances. As ALJ production increases, the general trend for decision quality is to go down."¹⁰ In fact, the analysis found that average ALJ accuracy declined after 600 annual dispositions. However, for many years, the agency allowed dozens of ALJs to issue over 1,000 dispositions per year.

In 2011, SSA began conducting "focused reviews" of a limited number of ALJs to assess the degree to which their decisions complied with disability law.¹¹ To date, the agency has completed focused reviews of about 50 of the agency's approximately 1,400 ALJs. A Committee analysis of the reviews reveals troubling patterns with the manner in which ALJs decide cases.¹² Every focused review found deficiencies in ALJ decision-making and compliance with federal disability law. Several problems permeate these reviews, including inadequate use of vocational experts, poor assessments of an individual's ability to work, improper evaluation of claimants with a history of drug and alcohol abuse, overreliance on claimant representatives' briefs for ALJ decisions, and inadequate hearings with claimants.

In theory, the "focused review" program is a good first step toward improving the quality of decisions and ensuring the integrity of the disability appeals process. In practice, the program is effectively meaningless. Rather than disciplining or removing an ALJ when overwhelming evidence of incompetence exists, the agency allows the ALJ to continue deciding a full caseload, hoping that the ALJ agrees to training and that ALJ performance improves. Unfortunately, ALJs who have received training generally fail to show improvement.

⁶ Damian Paletta, *Disability-Claim Judge Has Trouble Saying 'No'*, WALL ST. J., May 19, 2011 available at <http://online.wsj.com/news/articles/SB10001424052748704681904576319163605918524>.

⁷ Transcribed Interview of Frank Cristaudo at 9 (May 16, 2013) [hereinafter Cristaudo Tr.].

⁸ Transcribed Interview of RCALJ Jasper Bede at 75 (Oct. 22, 2013) [hereinafter Bede Tr.]. Defined by Mr. Bede as "certainly anything over ... 75 or 80 percent. Several years ago, that might have been [defined as] 85 percent, when everyone, as a whole, nationally and regionally, were reversing cases in the 65 percent range."

⁹ *Id.*

¹⁰ Social Security Administration Memo on Production Levels and Decision Quality (Sept. 7, 2012) [Request 4 – 00001-5].

¹¹ Transcribed Interview of CALJ Debra Bice at 114 (May 13, 2014) [hereinafter Bice Tr.].

¹² Committee staff analysis of focused reviews of ALJs provided by the Social Security Administration on Jan. 17, 2014 and May 9, 2014.

As documented in the Committee's June 2014 staff report and expanded upon in this report, the agency failed to properly oversee its ALJs because of the agency's singular focus on moving cases through the system as quickly as possible regardless of the quality of those decisions.¹³

In 2007, then-Chief ALJ Frank Cristaudo reinforced arbitrary disposition targets, directing each ALJ to decide between 500 and 700 cases per year. He instituted this policy without conducting any formal study of the amount of time it generally takes for an ALJ to move a case through different phases of the appeals process.¹⁴ The arbitrary targets became the cornerstone of the agency's management of disability programs. Agency pressure for Regional Hearing Offices to meet these arbitrary goals created what one ALJ called "a factory-type 'production' process."¹⁵

As a result of the agency's emphasis on high volume adjudications over quality decision-making, the credibility of the disability appeals process has been eroded, and needs large scale reform. Genuinely disabled individuals are harmed from the programs' explosive growth and face future benefit cuts as the SSDI trust fund is scheduled for bankruptcy within the next two years.¹⁶ Moreover, the tens of millions of Americans who pay taxes to finance federal disability programs have seen their hard-earned tax dollars squandered because of agency mismanagement that has led to hundreds of billions of dollars of improper benefit awards.

¹³ *Id.*

¹⁴ *See id.*; *see also* Cristaudo Tr., *supra* note 7, at 25; Bede Tr., *supra* note 8, at 176.

¹⁵ *Oversight of Rising Social Security Disability Claims and the Role of Administrative Law Judges: Hearing Before the Subcomm. on Energy Policy, Health Care and Entitlements of the H. Comm. on Oversight and Gov't Reform*, 113th Cong. (June 27, 2013) (testimony of ALJ J.E. Sullivan).

¹⁶ CONG. BUDGET OFFICE, 2012 LONG-TERM PROJECTIONS FOR SOCIAL SECURITY: ADDITIONAL INFORMATION 1 (Oct. 2012), *available at* <http://www.cbo.gov/sites/default/files/43648-SocialSecurity.pdf>.

FINDINGS

- SSA did not evaluate the quality of ALJs in any way prior to 2011. Numerous ALJs have testified that the agency evaluated ALJs with a single metric: the number of cases processed by the ALJ in a given period of time.
 - Former Chief ALJ Frank Cristaudo gave ALJs with extremely high allowance rates or high total numbers of dispositions the benefit of the doubt, testifying “I really think they were just more efficient in terms of looking at their files,” and “I assume[d] they were just reading faster.”
- In 2011, SSA began conducting “focused reviews” of a limited number of ALJs to assess the degree to which their decisions complied with disability law. To date, the agency has completed focused reviews of about 50 of the agency’s approximately 1,400 ALJs. The focused reviews show numerous deficiencies in ALJ decision-making and several disturbing patterns, such as inadequate use of vocational experts, poor assessments of an individual’s ability to work, improper evaluation of claimants with a history of drug and alcohol abuse, overreliance on claimant representatives’ briefs for ALJ decisions, and inadequate hearings with claimants.
- SSA continues to allow ALJs to decide cases even when they demonstrate gross incompetence or negligence in handling their responsibilities. In several cases, SSA did not inform the ALJ about the negative focused review for over eight months after the review was completed.
 - The Inspector General conducted a review of ALJ Gerald Krafur in 2005, which found that “[ALJ Krafur] couldn’t pay the case, based on its evidence/merit, so [he] use[d] a vocational expert to provide unsupported/uncontested expert testimony to alter the residual functional capacity and pay the case.” Despite this, and three additional reports that found serious judicial misconduct, SSA allowed ALJ Krafur to continue deciding cases until 2014, when the agency finally initiated removal actions.
- The agency was singularly focused on churning out a large volume of dispositions, which led to inappropriate benefit awards. It takes significantly less time for an ALJ to award benefits than to deny them, and decisions awarding benefits are not appealed.
- Starting in 2007, the agency directed ALJs to issue 500 to 700 legally sufficient decisions annually. The agency selected these targets without any empirical study of the amount of time it takes an ALJ to properly evaluate evidence, hold a hearing, and issue a decision.
 - Months before the agency implemented the plan, Mark Bailey, a Director in the SSA Office of the Inspector General’s Kansas City Audit Division, told agency officials that “400 cases per ALJ per year is a reasonable minimum level of production,” based on “the average and median number of cases processed by ALJs in 2006.”

- The only study by the agency reviewing a timeline for disability claims was conducted in 1994, and found that an ALJ could expect to spend anywhere from three to seven hours on each case. Using the midpoint of five hours per case translates into 1.6 decisions a day or 368 decisions a year (assuming 230 work days).
- In 2012, six years after SSA implemented the 500 to 700 decision target, SSA finally studied the correlation between ALJs with a high quantity of dispositions and the quality of those decisions. The study found “a strong relationship between production levels and decision quality on allowances,” and that “[a]s ALJ production increases, the general trend for decision quality is to go down.” Average ALJ decision quality declined after 616 dispositions per year.
- Despite the report’s findings that dispositions above about 616 cases per year led to decreased quality, Chief ALJ Bice *increased* her expectations for the number of annual dispositions that ALJs should issue, telling ALJs to schedule five additional cases per month regardless of their current number of monthly dispositions. She also indicated to senior management that she would tell ALJs that “500-700 [cases] does not mean 500.”
- The agency encouraged shortcuts such as on-the-record decisions, where benefits are favorably awarded without a hearing, and bench decisions, where benefits are favorably awarded without a written opinion, so that ALJs could decide more cases.
 - ALJ Harry Taylor, an ALJ who issued nearly 6,000 on-the-record decisions between 2005 and 2013, testified, “[t]he first two hearing office chief judges . . . approached me about whether I would be willing to take some cases off the docket, look at those cases to determine whether they could be done on the record in order to meet our office productivity goals. I indicated that I would do that.”
- Every level of agency management exerted considerable pressure on ALJs to meet disposition targets.
 - Chief ALJ Bice told ALJs that their teleworking privileges might be “restricted” if they failed to schedule “a reasonably attainable number of cases for hearing,” which she defined as 50 cases per month, amounting to 600 cases per year.
 - Regional management held monthly “bad office” conference calls with hearing offices that failed to meet disposition targets, evidenced by a Region III employee who asked, “[c]ould we please be removed from the ‘bad office’ conference call for the month?”
 - Regional management sent letters of commendation to ALJs with high disposition rates. For example, ALJ Taylor provided a list of sixteen awards that his hearing office received for “excellence” and “commitment to public service” evidenced by the office’s high number of dispositions. ALJ Charles Bridges, a high volume

ALJ profiled in the Committee's June 2014 staff report for his extremely poor work, also provided a "non-exhaustive" list of fifteen awards he and his hearing office received, despite multiple allegations of judicial misconduct against him, among other issues.

- The agency inappropriately transferred cases to the hearing offices and ALJs that routinely met or exceeded the arbitrary agency targets.

I. INTRODUCTION

When individuals apply for federal disability benefits, either through Social Security Disability Insurance (SSDI) or through Supplemental Security Income (SSI), their applications are first reviewed by examiners in a state Disability Determination Service (DDS) office. In 40 states, the first level of appeal goes to a different expert in the state office. Therefore, in the vast majority of cases adjudicated by an ALJ, the claimant has already been denied benefits not once but *twice* by the time the ALJ hears the claim. SSA policy requires ALJs to review all of the evidence in claimants' files and to resolve inconsistencies in the evidentiary record before arriving at their decision.¹⁷ When ALJs decide to award benefits, they do so with nearly unchecked authority, because decisions to award benefits are not appealed and are rarely reviewed. Since the average lifetime benefit, including the value of benefits in other programs linked to the receipt of disability benefits, is about \$300,000¹⁸ and most claimants who are awarded benefits never return to work,¹⁹ ALJs have an important responsibility to carefully weigh the evidence and correctly apply Social Security disability law. Recent research from the Center for American Progress estimates that the lifetime value of SSDI benefits may be even higher than previous estimates. The value of SSDI benefits for a hypothetical worker with median earnings who becomes disabled at age 30 would equal \$405,000 in cash payments and \$178,000 in Old-Age Social Security Insurance benefits, in addition to the value of benefits from other entitlement programs linked to SSDI (including automatic enrollment in Medicare after two years) and the insurance value of the benefits.²⁰

The complexity of federal disability law, combined with extensive medical records in the average case file and the increasing subjective nature of claimants' claims, create significant challenges in determining whether or not an individual is eligible for disability benefits. On June 10, 2014, the Committee released a Staff Report showing that over the last decade, a large number of ALJs rubber-stamped claimants onto federal disability programs without properly evaluating the evidence and correctly applying Social Security law.²¹ Jasper Bede, a Regional Chief Administrative Law Judge (RCALJ) for the agency, testified that when ALJs allow benefits at a high rate, which he defined as over "75 or 80 percent," "it raises a red flag" about

¹⁷ Social Security Act, §§ 205(b), 1631(c); 20 CFR §§ 404.944, 416.1444, 404.1512(b), 416.912(b).

¹⁸ DAVID H. AUTOR & MARK DUGGAN, SUPPORTING WORK: A PROPOSAL FOR MODERNIZING THE U.S. DISABILITY INSURANCE SYSTEM 8 n.10 (2010), available at <http://www.americanprogress.org/wp-content/uploads/issues/2010/12/pdf/autordugganpaper.pdf>. The authors state that this estimate likely significantly understates the true present value of disability benefits because it does not include the value of SSI benefits or of the associated Medicaid coverage for those receiving benefits from both SSDI and SSI.

¹⁹ Chana Joffe-Walt, *Unfit for Work: The Startling Rise of Disability in America* (2013), available at <http://apps.npr.org/unfit-for-work/>.

²⁰ REBECCA VALLAS & SHAWN FREMSTAD, SOCIAL SECURITY DISABILITY INSURANCE: A BEDROCK OF SECURITY FOR AMERICAN WORKERS (July 8, 2014), available at <http://cdn.americanprogress.org/wp-content/uploads/2014/07/SSDIBrief.pdf>. Many experts estimate that the insurance value of SSDI is greater than the actuarial value because benefits are adjusted for inflation and cost-of-living, unlike the benefits paid out by most private plans. For a young worker with a spouse, two children, and average earnings, the value of the coverage that SSDI provides is equivalent to a \$580,000 insurance policy.

²¹ H. Comm. on Oversight and Gov't Reform, 113th Cong., *Systemic Waste and Abuse at the Social Security Administration: How Rubber-Stamping Disability Judges Cost Hundreds of Billions of Taxpayer Dollars* (June 10, 2014).

the quality of their decisions.²² Although cases only reach ALJs after they have been denied—in most instances twice—by state Disability Determination Service (DDS) examiners, the Committee found that between 2005 and 2013:

- ALJs decided nearly 4.9 million cases and awarded benefits in 3.2 million, or about 66 percent, of their cases.²³
- More than 1.3 million individuals were placed onto a federal disability program by an ALJ with an annual allowance rate in excess of 75 percent.²⁴
- 191 ALJs had total allowance rates in excess of 85 percent. Only one ALJ during this period had a total allowance rate below 15 percent.²⁵

The Committee Staff Report also detailed the failures of three high-allowance ALJs – Charles Bridges, David Daugherty, and Harry Taylor – and the agency’s failure to properly protect the truly disabled and taxpayers from their reckless actions.

Prior to 2011, SSA assessed its ALJs only by the number of dispositions ALJs issued each month and fiscal year. Former Chief ALJ (CALJ) Frank Cristaudo gave ALJs with extremely high allowance rates or high total numbers of dispositions the benefit of the doubt, testifying “I really think they were just more efficient in terms of looking at their files,” and “I assume[d] they were just reading faster.”²⁶ Finally, in 2011, after increased media and Congressional scrutiny of SSA’s disability adjudication process, SSA began conducting “focused reviews” of a limited number of ALJs to assess the degree to which their decisions complied with disability law.²⁷ During the focused review process, analysts selected by an oversight board within SSA’s Office of Appellate Operations examine a sample of an ALJ’s decisions to determine whether the ALJ complied with disability law and agency policy, whether the ALJ wrote legally sufficient decisions, and whether the ALJ properly evaluated the evidence in claimants’ files.

Although CALJ Bice testified that she envisions eventually conducting a focused review of every ALJ in the agency, to date, SSA has only completed focused reviews for about 50 of the agency’s approximately 1,400 ALJs. ALJs are prioritized for focused reviews based on input from CALJ Bice and her staff, RCALJs, Hearing Office Chief ALJs (HOCALJ), and other SSA employees.²⁸ In November 2013, SSA’s Office of the Inspector General (OIG) also requested that SSA conduct focused reviews of sixteen specific ALJs.²⁹ To date, SSA has only reviewed two of the ALJs on OIG’s list.³⁰

²² Transcribed Interview of RCALJ Jasper Bede at 75 (Oct. 22, 2013). Defined by Mr. Bede as “certainly anything over ... 75 or 80 percent. Several years ago, that might have been [defined as] 85 percent, when everyone, as a whole, nationally and regionally, were reversing cases in the 65 percent range.”

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ See Cristaudo Tr., *supra* note 7.

²⁷ Bice Tr., *supra* note 11.

²⁸ SSA briefing with OGR Committee staff (July 9, 2014).

²⁹ SSA OIG conference call with OGR Committee staff (May 28, 2014).

³⁰ SSA briefing with OGR Committee staff (July 9, 2014).

The Committee's June 10, 2014 Staff Report reviewed the poor judicial decision-making of three current ALJs who essentially rubber-stamped thousands of claimants onto disability programs for years. Since then, the Committee has obtained and analyzed all of the agency's focused reviews. Unfortunately, the three ALJs profiled in the June Staff Report are not outliers. In fact, every focused review found deficiencies in ALJ decision-making. Generally, the focused reviews show that the ALJ systematically failed to correctly apply the law. Moreover, although several ALJs resigned from the agency after their focused reviews, most of them are still deciding cases and awarding benefits.

Section II of this report will detail the most frequent ways that ALJs, particularly ALJs with allowance rates over 75 percent, failed to perform their basic duties. Section III shows how SSA failed to act when presented with proof of poor ALJ decision-making. Section IV examines the agency's development of arbitrary production goals that encouraged a production line mentality with the singular focus on moving cases quickly. Section V explores how third parties have influenced the agency's efforts to reform the troubled disability determination process. Section VI offers recommendations to improve program integrity and protect the nation's taxpayers and truly disabled from further waste, fraud and abuse.

II. FOCUSED REVIEWS INDICATE NUMEROUS ERRORS IN HIGH-ALLOWANCE ALJ DECISION-MAKING.

Every one of the 48 focused reviews received by the Committee showed numerous deficiencies in ALJ decision-making. In totality, the reviews show disturbing patterns, including inadequate use of vocational experts, poor assessments of an individual's ability to work, improper evaluation of claimants with a history of drug and alcohol abuse, overreliance on claimant representatives' briefs for ALJ decisions, and inadequate hearings with claimants. Thirty of those reviews examined decisions of ALJs with total allowance rates in excess of 75 percent for their decisions between 2005 and 2013.³¹ Of these 30 "red flag" ALJs, 27 of them have been deciding cases since at least 2005.

The consistent and widespread problems mean that many of the agency's ALJs, particularly high-allowance ALJs, are failing in their essential job functions – to properly evaluate evidence and correctly apply federal disability law. ALJs must proceed step-by-step through a five-step sequential evaluation process in order to make a disability determination. At step one, the agency evaluates whether the claimant is working and earning income.³² If a

³¹ The 30 ALJs with focused reviews who have total allowance rates of greater than 75 percent are ALJ John Barker, ALJ Christine P. Benagh, ALJ Ronald Bosch, ALJ Charles Bridges, ALJ Toby Buel, ALJ James Burke, ALJ David Carstetter, ALJ Paul Conger, ALJ David Daugherty, ALJ Donald Davis, ALJ Craig DeBernardis, ALJ Douglas Due, ALJ Robert Gill, ALJ Eric Glazer, ALJ Linda Halperin, ALJ Grenville Harrop, ALJ Gerald Krafur, ALJ Nicholas Kuzmack, ALJ W. Baldwin Ogden, ALJ Henry Oliver, ALJ James Quinlivan, ALJ Manny Smith, ALJ Harry Taylor, ALJ Timothy Trost, ALJ Robert Ward, ALJ Bradlee Welton, ALJ Major Williams, and ALJ Edward Zanatay.

³² Social Security Administration, SSA's SEQUENTIAL EVALUATION PROCESS FOR ASSESSING DISABILITY, *available at*

claimant is earning more than \$1,070 per month, the agency must find that he or she is not disabled.³³ If a claimant is earning less, the claimant moves to step two, where the agency determines whether a claimant's impairments are severe enough to interfere with basic work-related activities.³⁴ If the claimant's conditions are not found to be severe, the claim is denied.³⁵ If the impairments are severe, then the agency moves to step three to determine whether the claimant's impairments meet a list of medical criteria kept by SSA.³⁶ If the agency determines that the individual's medical impairments meet or equal a listing, the claimant will be found disabled.³⁷ If the impairments do not match a listing, the agency moves to step four.

At step four, the agency determines whether the claimant can return to past relevant work given his or her impairments.³⁸ If the claimant can return, the agency is supposed to deny the claim.³⁹ If, however, the claimant cannot return to past relevant work, then, as the fifth and final step, the agency evaluates whether there are any jobs in the *national economy* appropriate for the claimant given his or her impairments, education, past relevant work experience, and age.⁴⁰ If the agency concludes that there are no such jobs in the national economy, he or she will then be awarded benefits.⁴¹ If such jobs exist in the national economy, the claim is supposed to be denied.⁴²

In steps one through four, the claimant has the burden to prove that he or she is disabled. However, if the agency reaches step five of the sequential evaluation process the burden of proof shifts to "the Commissioner [who] has the burden of providing evidence about the existence of work in the national economy that the claimant can do."⁴³

A. MANY ALJS FAIL TO PROPERLY USE VOCATIONAL EXPERTS AT HEARINGS.

SSA contracts with vocational experts (VEs) to provide expert testimony about the type of work claimants, given their limitations, can perform.⁴⁴ VE testimony is so critical for an ALJ to make an accurate determination that at least one federal circuit court of appeals requires ALJs to obtain VE testimony if the ALJ reaches step five of the sequential evaluation process.⁴⁵ Of

<https://www.socialsecurity.gov/oidap/Documents/Social%20Security%20Administration.%20%20SSAs%20Sequential%20Evaluation.pdf> (last visited July, 31, 2014).

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ Social Security Administration, *Express Written Acknowledgement of the Limited Shifting of the Burden at the Last Step of the Sequential Evaluation Process*, available at http://ssa.gov/OP_Home/hallex/II-05/II-5-3-3.html.

⁴⁴ Social Security Administration, Hearings and Appeals, BECOMING A VOCATIONAL EXPERT, available at <http://www.socialsecurity.gov/appeals/ve.html#a0=1> (last visited July 31, 2014).

⁴⁵ *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., 2nd Sess. (statement of Harry C. Taylor II, Administrative Law Judge, Social Security Administration (June 10, 2014)).

the 48 focused reviews received by the Committee, 27 of them indicated that the ALJ had problems interacting with or using VEs.

For example, a focused review of ALJ Timothy Trost, found that 96 percent of his favorable decisions were decided at step five, requiring ALJ Trost to make a determination as to whether or not the claimant could work in any jobs in the national economy.⁴⁶ However, ALJ Trost did not acquire VE testimony in *a single* case, and reviewers indicated that there was a “lack of VE opinions where such opinion evidence was clearly indicated.”⁴⁷ Despite a lack of evidence, ALJ Trost reversed the previous agency denial and awarded benefits in nearly every decision. **Between 2005 and 2013, ALJ Trost had an overall allowance rate of 88 percent and awarded benefits to 2,284 claimants, for a total estimated lifetime cost to taxpayers of nearly \$700 million.**⁴⁸

ALJ David Carstetter also failed to properly use VEs to inform many of his decisions.⁴⁹ According to his focused review, “[v]ocational expert evidence was not obtained in a number of cases where it was needed to support a disability finding.”⁵⁰ ALJ Carstetter used a VE only once out of the 98 favorable cases reviewed by the agency.⁵¹ ALJ Carstetter only heard VE testimony once, after the Appeals Council remanded a case back to him ordering him to obtain supplemental evidence from a VE.⁵² **Between 2005 and 2013, ALJ Carstetter had an overall allowance rate of 94 percent and awarded benefits to 4,030 claimants, for a total estimated lifetime cost to taxpayers of \$1.2 billion.**⁵³

ALJ Eugene Bond also routinely failed to properly use VEs. Reviewers found that a VE was generally available at his hearings; however ALJ Bond only obtained testimony from the available VE in three out of 90 favorable decisions.⁵⁴ Similar to many other ALJs, SSA essentially paid a VE to be a passive participant in ALJ Bond’s hearings. Furthermore, ALJ Bond’s focused review notes that “[i]n several cases, the decision states that the disability finding is supported by vocational expert testimony, but [an] audit of the hearing[s] [shows that] there is no testimony from the expert nor is the expert sworn in.”⁵⁵ **Between 2005 and 2013, ALJ Bond had an overall allowance rate of 53 percent and awarded benefits to 1,710 claimants, for a total estimated lifetime cost to taxpayers of \$513 million.**⁵⁶

In just these three examples, ALJs who failed to utilize vocational experts awarded an estimated \$2.413 billion in overall lifetime benefits.

⁴⁶ Focused review of ALJ Timothy Trost (Nov. 2012) [14th Production – 000270].

⁴⁷ *Id.*

⁴⁸ Publicly available ALJ adjudication data as well as data provided to the Committee by the Social Security Administration.

⁴⁹ Focused review of ALJ David Carstetter (Oct. 2012) [14th Production – 000276].

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ Publicly available ALJ adjudication data as well as data provided to the Committee by the Social Security Administration.

⁵⁴ Focused review of ALJ Eugene Bond (Jan. 23, 2013) [14th Production – 000313].

⁵⁵ *Id.*

⁵⁶ Publicly available ALJ adjudication data as well as data provided to the Committee by the Social Security Administration.

B. MANY ALJS CONSISTENTLY FAIL TO PROPERLY ASSESS AN INDIVIDUAL'S ABILITY TO WORK.

The focused reviews also reveal that many ALJs, particularly high-allowance ALJs, fail to properly analyze one of the most critical aspects of disability determination: the claimant's ability to continue working. The Residual Functional Capacity (RFC) is defined as "the most [a claimant] can still do despite [his or her] limitations."⁵⁷ RFC evaluations are required at step four and step five of the sequential evaluation process so the ALJ can determine whether the claimant can return to "past relevant work" (step four) or whether the claimant can adjust to any other work in the national economy (step five).⁵⁸

In order to determine a claimant's potential productivity, despite his or her limitations, the ALJ must determine the claimant's ability to perform sustained work activities on a regular and continuing basis in an ordinary work setting. Furthermore, the ALJ must evaluate the maximum amount of each work-related activity the individual can perform based on the evidence available in the case record. If an ALJ finds that a claimant has a more restrictive RFC than is supported by the available medical evidence, the ALJ has underestimated the claimant's ability to work. A restrictive RFC determination likely results in awarding the claimant federal disability benefits in error. According to the focused reviews, at least 19 of the 30 "red flag" ALJs frequently made improper RFC evaluations.⁵⁹

For example, the agency's focused review of ALJ Toby Buel, Sr., found that his "RFC assessments often do not comply with SSA's rules and regulations which require a function-by-function assessment of the claimant's ability to perform work-related activities, the evaluation of opinion evidence, and the use of boilerplate language which is not supported by the evidence of record."⁶⁰ In one case, SSA reviewers found that the "RFC finding is based largely on the claimant's 'seemingly credible subjective testimony,' which is not corroborated by the medical evidence" and his "decision does not reference substantial evidence to support the finding of disability."⁶¹

⁵⁷ 20 C.F.R. § 416.945.

⁵⁸ *Id.*

⁵⁹ Committee staff analysis of focused reviews of ALJs provided by the Social Security Administration on Jan. 17, 2014 and May 9, 2014.

⁶⁰ Focused Review of ALJ Toby J. Buel, Sr. (Aug. 2, 2013) [Request 1 – 0000095].

⁶¹ *Id.*

The RFC finding is based largely on the claimant's "seemingly credible subjective testimony," which is not corroborated by medical evidence. To the contrary, a psychological CE performed in November 2011 found that the claimant's capacity to understand, remember, and carry out instructions toward performance of simple repetitive tasks is not affected; his ability to tolerate stress and pressure of day-to-day employment is moderately affected; his ability to sustain attention and concentration towards performance of simple, repetitive tasks is not affected; and his capacity to respond appropriately to supervision, co-workers, and work pressures in a work setting is moderately affected. The decision does not reference substantial evidence to support the finding of disability and appears to interpret and rely on the contradictory psychological CE's opinion to support his conclusion that the claimant is unable to perform full-time work activity on a regular and continuous basis.

Because ALJ Buel's award of benefits in this case was not based on substantial evidence, it is likely that the claimant in this case was improperly placed into a federal disability program. **Between 2005 and 2013, ALJ Buel had an overall allowance rate of 88 percent and awarded benefits to 4,070 claimants, for a total estimated lifetime cost to taxpayers of \$1.22 billion.**⁶²

Another ALJ who consistently failed to properly evaluate a claimant's RFC is ALJ Donald Davis. ALJ Davis's decisions routinely suffered from "insufficient analysis of residual functional capacity."⁶³ According to his focused review, "in most of the decisions reviewed, [ALJ Davis] did not provide a proper function-by-function assessment."⁶⁴ Reviewers found that ALJ Davis relied on a "claimant's mental impairments to support the disability determination" even though "the record provides little support for any mental impairment."⁶⁵ **Between 2005 and 2013, ALJ Davis had an overall allowance rate of 83 percent and awarded benefits to 3,624 claimants, for a total estimated lifetime cost to taxpayers of \$1.09 billion.**⁶⁶

ALJ W. Baldwin Ogden also improperly evaluated claimants' ability to work.⁶⁷ In the 60 favorable decisions reviewed by the agency, ALJ Ogden decided *all* of his adult disability cases at step five of the sequential evaluation process.⁶⁸ Reviewers found that in "a number of the cases reviewed, the RFCs in the decision are not supported."⁶⁹ For example, ALJ Ogden found that one claimant was limited to work that could accommodate his "inability to relate to coworkers, supervisors and the general public, and an inability to deal with workplace stress, use

⁶² Publicly available ALJ adjudication data as well as data provided to the Committee by the Social Security Administration.

⁶³ Focused Review of ALJ Donald Davis (Apr. 26, 2013) [Request 1 – Supp Prod 000239].

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ Publicly available ALJ adjudication data as well as data provided to the Committee by the Social Security Administration.

⁶⁷ Focused Review of ALJ W. Baldwin Ogden (Sept. 23, 2013) [Request 1 – Supp Prod 000417]. Some of the focused reviews indicated a sample size of cases, while others did not.

⁶⁸ *Id.*

⁶⁹ *Id.*

judgment, behave in an emotionally stable manner, or relate predictably in social situations.” However, the focused review noted that “evidence does not support the severity of the mental limitations in the RFC,” and that in a recent psychological examination, claimant reported he “got along with people pretty well and enjoyed reading and fishing. . . . He was observed to interact appropriately with the examiner, he was oriented, his memory was intact, and his speech was clear and appropriate.”⁷⁰ The review found ALJ Ogden placed every single claimant’s RFC into the categories “Cannot Maintain Attendance or Failure to Sustain Work Activity.”⁷¹ **Between 2005 and 2013, ALJ Ogden had an overall allowance rate of 89 percent and awarded benefits to 4,225 claimants, for a total lifetime cost to taxpayers of \$1.27 billion.**⁷²

In these three examples alone, ALJs who failed to properly assess the work ability of individual claimants cost taxpayers an estimated \$3.58 billion in overall lifetime benefits that they awarded.

C. MANY ALJS CONSISTENTLY FAIL TO PROPERLY EVALUATE DRUG AND ALCOHOL ABUSE.

Many ALJs, particularly those with high allowance rates, improperly evaluate cases in which the claimant has a history of drug addiction or alcoholism (DAA). According to SSA policy, “if drug addiction or alcoholism is a contributing factor material to the determination of [a claimant’s] disability, [the ALJ] will not find [the claimant] disabled.”⁷³ CALJ Debra Bice testified that through focused reviews, the agency discovered numerous ALJs who were misapplying DAA policy in their decisions.⁷⁴ Of the 30 high-allowance ALJs who received a focused review, at least 11 of them improperly evaluated DAA, possibly in violation of disability law.

SSA policy states that if DAA is an issue in the determination of disability, an oral decision, also known as a bench decision, may not be issued.⁷⁵ A bench decision is a fully favorable decision in which the ALJ issues a decision orally at the hearing.⁷⁶ However, ALJ Linda Halperin repeatedly misapplied DAA policy by issuing bench decisions when DAA was at issue. In one instance during a hearing, “the claimant testified that she last drank two 40-ounce beers two days prior to the hearing and that she last used cocaine ‘about a month ago.’”⁷⁷ According to the agency focused review, “[g]iven that the [claimant’s] primary impairments were mental in nature and that there was evidence of ongoing DAA, a materiality assessment should have been conducted in a written decision.”⁷⁸

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² Publicly available ALJ adjudication data as well as data provided to the Committee by the Social Security Administration.

⁷³ See Social Security Administration, “Sample Language Which May Be Appropriate in the Notice of Hearing—Drug Addiction and Alcoholism at Issue, I-2-2-99,” available at http://ssa.gov/OP_Home/hallex/I-02/I-2-2-99.html; see also 42 U.S.C. 423, § 223(d)(2)(C).

⁷⁴ *Supra* note 11, at 76.

⁷⁵ HALLEX I-5-I-17(I)

⁷⁶ Social Security Administration, “Program Operations Manual System DI 42010.021 Administrative Law Judge Oral (Bench) Decisions,” available at <https://secure.ssa.gov/poms.nsf/lnx/0442010021>.

⁷⁷ Focused Review of ALJ Linda Halperin (May 5, 2014) [Request 1 – Supp Prod 000481].

⁷⁸ *Id.*

i. Taylor PII ██████████ FF, 1/18/13. The ALJ found the claimant disabled at step 3 (Listing 12.04). At the hearing, in his opening statement, the representative noted that DAA was an issue. The ALJ asked the claimant about her last drug and alcohol use, and the claimant testified that she last drank two 40-ounce beers two days prior to the hearing and that she last used cocaine “about a month ago” (Hearing at 9:14:27 through 9:16:06). After reading the bench decision into the record, the ALJ concluded by advising the claimant to work on weight reduction and to “get rid of the beer” (Hearing at 9:21:28 through 9:21:37). Given that the primary impairments were mental in nature and that there was evidence of ongoing DAA, a materiality assessment should have been conducted in a written decision.

However, ALJ Halperin issued a favorable bench decision, without addressing the drug and alcohol issues in a written decision and thereby violated agency policy. **Between 2005 and 2013, ALJ Halperin had an overall allowance rate of 79 percent and awarded benefits to 3,182 claimants, for a total estimated lifetime cost to taxpayers of \$954.6 million.**⁷⁹

ALJ Nicholas Kuzmack also inappropriately issued numerous bench decisions when the medical evidence indicated that a claimant had a history of DAA.⁸⁰ In at least six decisions reviewed by the agency, ALJ Kuzmack issued bench decisions when DAA was material in making a disability determination.⁸¹ In one instance, ALJ Kuzmack issued a bench decision even though the medical record indicated that the claimant had an extensive history of substance abuse and “there was no evidence of psychotic symptoms absent illicit drug use.”⁸² In this case, medical evidence from the claimant’s substance abuse therapist showed that his symptoms improved when he was not abusing drugs.⁸³ **Between 2005 and 2013, ALJ Kuzmack had an overall allowance rate of 96 percent and awarded benefits to 5,079 claimants, for a total estimated lifetime cost to taxpayers of \$1.52 billion.**⁸⁴

Similarly, the agency found that ALJ Major Williams improperly evaluated DAA in at least five of his allowances that were assessed during his focused review, including cases when “the medical evidence of record indicates a history of continued use of drugs and/or alcohol.”⁸⁵ His focused review noted that in cases when ALJ Williams granted an allowance and DAA

⁷⁹ Publicly available ALJ adjudication data as well as data provided to the Committee by the Social Security Administration.

⁸⁰ Focused Review of ALJ Nicholas Kuzmack (Mar. 26, 2013) [Request 1 – Supp Prod 000335].

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ Publicly available ALJ adjudication data as well as data provided to the Committee by the Social Security Administration.

⁸⁵ Focused Review of ALJ Major Williams, Jr. (Mar. 1, 2013) [Request 1 – Supp Prod 000350].

evidence existed, “the evidence [was] not addressed.”⁸⁶ The agency found that “63% of fully favorable surveyed cases involving a DAA issue did not contain adequate DAA analysis” by ALJ Williams.⁸⁷ In one case, ALJ Williams issued a favorable decision to a claimant who regularly abused cocaine and methamphetamine during the time period in which he alleged a mental disability.⁸⁸ ALJ Williams ignored the fact that this claimant was diagnosed with amphetamine abuse during a consultative examination, even though he ordered this examination to gather additional medical evidence.⁸⁹ **Between 2005 and 2013, ALJ Williams had an allowance rate of 90 percent and awarded disability benefits to 2,736 claimants, for a total estimated lifetime cost to taxpayers of \$820.8 million.**

In these three examples alone, ALJs who failed to account for DAA in their decisions cost taxpayers an estimated \$3.295 billion in overall lifetime benefits that they awarded.

D. MANY ALJS APPEAR TO RELY ON CLAIMANT-REPRESENTATIVE LANGUAGE IN DECISIONS.

Focused reviews identified ALJs who rely too heavily on claimant-representative briefs when writing their decisions, in some instances using identical language. Claimant representatives commonly write briefs for their clients, arguing that the claimant is entitled to social security disability benefits. Because these briefs include only facts and arguments that are favorable to the claimant, and often omit relevant facts, it is improper for an ALJ to rely solely on claimant briefs.

In ALJ Douglas Due’s focused review, the agency noted that ALJ Due relied on claimant-representative briefs in his written decisions.⁹⁰ During one hearing, ALJ Due told the claimant’s representative to “give me a brief on that... Two page brief... It’s obvious to me that this man is disabled.”⁹¹ The representative provided the brief one day after the hearing.⁹² According to ALJ Due’s focused review, “a number of decisions contained language that appeared to be substantially similar, if not identical, to language set forth in the representative briefs.”

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ Focused Review of ALJ Douglas Due (Apr. 2013) [Request 1 – Supp Prod 000355].

⁹¹ *Id.*

⁹² *Id.*

- **Decisional language that is identical, or nearly identical, to language in representative briefs.**
 - Washington (PII [REDACTED]) FF 12/07/12 – The decision contains five paragraphs that appear in the same form in the representative brief (see Appendix at page 12).
 - Gwinn (PII [REDACTED]) FF 03/26/13 – The hearing decision noted that, “[o]n [9/07/12], the claimant underwent inpatient psychiatric care for his chronic schizophrenia with delusions. He was treated for three weeks and discharged with a GAF of 20” (Decision, page 4). The representative’s brief noted that “[o]n [9/07/12], the Claimant underwent inpatient psychiatric care for his Chronic Schizophrenia with delusions. Id. The Claimant was treated for three weeks for his paranoid schizophrenia and was released with a GAF of 20” (Exhibit 11E, page 2). The representative’s brief contained citations, but these citations were to treatment notes from June 2010. The medical evidence of record reflects that the claimant was in inpatient care for only seven days, and that, on release, he was assessed with a GAF rating of 50 (Exhibit 19F, page 26).

As claimant representatives only receive compensation if they are able to get their client placed onto a federal disability program, it is alarming that ALJ Due relied so heavily on claimant-representative briefs in his decisions. **Between 2005 and 2013, ALJ Due had an overall allowance rate of 92 percent and awarded benefits to 4,300 claimants, for a total estimated lifetime cost to taxpayers of \$1.29 billion.**⁹³

The agency identified a similar trend in its 2014 focused review of ALJ Gerald Krafzur.⁹⁴ ALJ Krafzur stated in a hearing that he relies on the claimant representative to do “95% of the work” in developing the case record.⁹⁵ ALJ Krafzur’s reliance on biased claimant representatives to develop the case record is alarming, especially because both of his focused reviews from 2011⁹⁶ and 2014⁹⁷ indicated that he routinely failed to fully develop the record. **From 2006 to 2011, when ODAR finally completed a first focused review of ALJ Krafzur,**

⁹³ Publicly available ALJ adjudication data as well as data provided to the Committee by the Social Security Administration.

⁹⁴ Focused Review of ALJ Gerald Krafzur (Mar. 7, 2014) [Request 1 – Supp Prod 000447].

⁹⁵ *Id.*

⁹⁶ Focused Review of ALJ Gerald Krafzur (Nov. 22, 2011) [Request 1 – Supp Prod 000227].

⁹⁷ Focused Review of ALJ Gerald Krafzur (Mar. 7, 2014) [Request 1 – Supp Prod 000447].

he decided 4,783 cases and allowed benefits in 4,746, or more than 99.2 percent of them.⁹⁸ Just in this six-year period, he awarded lifetime benefits worth in excess of \$1.4 billion.

In these two examples alone, ALJs who routinely relied on claimant briefs to inform their decisions cost taxpayers an estimated 2.69 in overall lifetime benefits that they awarded.

E. MANY ALJS CONDUCT INADEQUATE AND MEANINGLESS HEARINGS.

SSA regulations require ALJs to conduct “full and fair hearings” in order to issue “legally sufficient and defensible decisions.”⁹⁹ The hearing is also an opportunity for ALJs to resolve discrepancies between statements made by a claimant with the record of evidence and expert testimony.¹⁰⁰ Deputy CALJ John Allen told the Committee that an average hearing generally lasts between 45 minutes and an hour.¹⁰¹ Of the 30 red flag ALJs with focused reviews, 19 either failed to hold adequate hearings or displayed improper conduct during hearings.

For example, the agency found that ALJ Ronald Bosch held *pro forma* hearings. In 56 cases reviewed by the agency in which ALJ Bosch held a hearing, 37 hearings lasted less than three minutes.¹⁰² In its review of ALJ Bosch, the agency found that “[n]o useful testimony was adduced at any hearing.”¹⁰³ All 37 hearings that lasted less than 3 minutes followed a pre-scripted format in which ALJ Bosch asked the claimant a series of yes or no questions, including “ask[ing] the claimant if they agree they are disabled.”¹⁰⁴ **Between 2005 and 2013 ALJ Bosch had an allowance rate of 84 percent and awarded disability benefits to 6,320 claimants, imposing a total estimated lifetime cost to taxpayers of \$1.87 billion.¹⁰⁵**

ALJ Robert Ward also conducted inadequate, *pro forma* hearings. ALJ Ward held hearings in 37 of the 40 cases reviewed by the agency, but the average hearing he conducted lasted less than seven minutes.¹⁰⁶ The cursory hearings consisted of “ALJ Ward asking superficial questions of the claimant, such as how the claimant was feeling, but did not include adequate questioning with regard to daily activities, treatment, and limitations.”¹⁰⁷ While medical experts (MEs) were generally available during his hearings, ALJ Ward did not comply with agency policy in his use of MEs.¹⁰⁸ According to the agency’s focused review of ALJ Ward, “many [of his] decisions are based on extremely underdeveloped medical records.”¹⁰⁹

⁹⁸ Publicly available ALJ adjudication data as well as data provided to the Committee by the Social Security Administration.

⁹⁹ Social Security Administration, HEARINGS, APPEALS, AND LITIGATION LAW MANUAL, “Section I-2-0-5 Hearing Office Chief Administrative Law Judge, Administrative Law Judge and Hearing Office Staff Responsibilities,” available at http://ssa.gov/OP_Home/hallex/I-02/I-2-0-5.html (last visited July 31, 2014).

¹⁰⁰ *Id.*

¹⁰¹ SSA Briefing with Oversight Committee staff (July 16, 2014).

¹⁰² Focused Review of ALJ Ronald Bosch (May 5, 2014) [Request 1 – Supp Prod 000203].

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ Publicly available ALJ adjudication data as well as data provided to the Committee by the Social Security Administration.

¹⁰⁶ Focused Review of ALJ Robert Ward (May 5, 2014) [Request 1 – Supp Prod 000206].

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

Between 2006 and 2011, ALJ Ward had an allowance rate of 95 percent and awarded disability benefits to 3,208 claimants, for a total estimated lifetime cost to taxpayers of \$962 million.¹¹⁰

As detailed in the Committee’s June Staff Report,¹¹¹ ALJ David Daugherty retired from the agency in June 2011 amid allegations of an inappropriate collusive effort with a claimant representative to award benefits to his clients. A focused review of 128 cases, conducted months after ALJ Daugherty had retired from the agency, found that ALJ Daugherty approved all 128 claimants for benefits, and approved 62 of those cases without holding a hearing.¹¹² Forty-nine hearings lasted two minutes or less, and another 16 hearings lasted between two and five minutes.¹¹³ Only one hearing lasted longer than five minutes.¹¹⁴ This review confirmed earlier allegations from colleagues that ALJ Daugherty had “[p]eople coming in and out of the hearing room in five minute intervals after being told that their case would be granted.”¹¹⁵

Unfortunately, ALJ Daugherty’s practice of holding sham hearings was only fully examined after he awarded disability benefits to 8,413 individuals from 2005 to his retirement in mid-2011, imposing approximately \$2.5 billion in lifetime federal benefits.¹¹⁶

While ALJ Ward, ALJ Bosch, and ALJ Daugherty held essentially meaningless hearings, other ALJs conducted hearings contrary to agency policy. For example, ALJ Bradlee Welton often inappropriately offered medical advice to claimants during hearings.¹¹⁷ In one case for a mental-only impairment, ALJ Welton asked the claimant about her weight and her dieting plan:¹¹⁸

The ALJ tells the claimant that she needs to do “physical therapy... its going to take you 6 months of physical therapy to get through this...you’re gonna have to work at it, you don’t want to be like this the rest of your life...maybe get some more botox injections to see if that will help... you need to lose weight, you need to do a number of very hard things if you want to get back to a point where you can start being productive and functional again” then the claimant started crying (Hearing Recording 9:43:00ff).

¹¹⁰ Publicly available ALJ adjudication data as well as data provided to the Committee by the Social Security Administration.

¹¹¹ H. Comm. on Oversight and Gov’t Reform, 113th Cong., *Systemic Waste and Abuse at the Social Security Administration: How Rubber-Stamping Disability Judges Cost Hundreds of Billions of Taxpayer Dollars* (June 10, 2014).

¹¹² See Draft: Report of the Division of Quality’s Review of Decisions Issued by the Huntington, WV Hearing Office (August 15, 2011) [Request 1 – 000073].

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ STAFF OF S. COMM. ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS, 113TH CONG., HOW SOME LEGAL, MEDICAL, AND JUDICIAL PROFESSIONALS ABUSED SOCIAL SECURITY DISABILITY PROGRAMS FOR THE COUNTRY’S MOST VULNERABLE: A CASE STUDY OF THE CONN LAW FIRM 108 (Oct. 7, 2013).

¹¹⁶ Publicly available ALJ adjudication data as well as data provided to the Committee by the Social Security Administration.

¹¹⁷ Focused Review of ALJ Bradlee Welton (Oct. 23, 2013) [Request 1- Supp Prod000430].

¹¹⁸ *Id.*

In other cases, ALJ Welton suggested specific medications for the claimant’s post-traumatic stress disorder, and on one occasion, recommended Botox injections.¹¹⁹

D. Crawford P|| ██████████ Favorable Decision 11/27/12: In a mental-only case, the ALJ asks claimant what she is doing to lose weight (Hearing Recording 9:59ff). The ALJ asked if she has lost weight in the last 6 months, if she controls her portions, and if she is dieting (Hearing Recording 10:00ff). Claimant stated Seroquel was causing her to gain weight (Hearing Recording 10:01ff). “Have you tried Welbutrin without the Seroquel onboard?” (Hearing Recording 10:01ff). Claimant responds she has not.

Between 2008 and 2013 ALJ Welton had an allowance rate of 80 percent and awarded disability benefits to 1,743 claimants, imposing a total estimated lifetime cost to taxpayers of \$517 million.¹²⁰ In these examples alone, judges who were found to conduct inadequate or meaningless hearings cost taxpayers an estimated \$4.89 billion in overall lifetime benefits awarded.

III. SSA ALLOWED INCOMPETENT AND NEGLIGENT ALJS TO CONTINUE DECIDING CASES, THEREBY FAILING TAXPAYERS AND THE TRULY DISABLED.

By allowing hundreds of ALJs over the past decade to award benefits in nearly every single one of their decisions, SSA failed in its obligation to safeguard the federal disability programs for the truly disabled. An extremely high allowance rate, as RCALJ Bede testified, certainly raises “red flags.” As discussed in length in the Committee’s June 2014 Staff Report, 191 ALJs awarded benefits in more than 85 percent of their decisions over the past decade, compared to only a single ALJ who awarded benefits in less than 15 percent of his decisions.¹²¹ Each of the focused reviews the Committee analyzed highlights deficiencies in ALJ decision-making and compliance with federal disability law.

As documented in the Committee’s June 2014 Staff Report, the agency’s failure to properly oversee its ALJ corps was due to the agency’s singular focus on moving cases through the system as quickly as possible regardless of the quality of those decisions.¹²² According to Frank Cristaudo, who served as Chief ALJ from 2006 to 2010, the agency did not evaluate the quality of ALJ decisions in any way prior to 2011.¹²³ Numerous ALJs have testified that the

¹¹⁹ *Id.*

¹²⁰ Publicly available ALJ adjudication data as well as data provided to the Committee by the Social Security Administration.

¹²¹ STAFF OF H. COMM. ON OVERSIGHT AND GOVERNMENT REFORM, 113TH CONG., SYSTEMIC WASTE AN ABUSE AT THE SOCIAL SECURITY ADMINISTRATION: HOW RUBBER-STAMPING DISABILITY JUDGES COST HUNDREDS OF BILLIONS OF TAXPAYER DOLLARS 14 (June 10, 2014).

¹²² *Id.*

¹²³ *See* Cristaudo Tr., *supra* note 7.

agency evaluated ALJs with a single metric: the number of cases processed by the ALJ in a given period of time.¹²⁴

While he was CALJ, Mr. Cristaudo generally gave high-allowance or “productive” ALJs the benefit of the doubt, testifying “I really think they were just more efficient in terms of looking at their files,” and “I assume[d] they were just reading faster.”¹²⁵ The information obtained by the Committee and discussed in this report shows Mr. Cristaudo was gravely mistaken. For the most part, the agency decided not to remove incompetent ALJs who fail to evaluate evidence and fail to engage in reasoned decision-making, and the agency has been unsuccessful in ensuring training and compliance for those ALJs who demonstrate the capacity for improvement.

Although the agency is hesitant to remove ALJs who refuse to correctly apply federal disability law and policy, the Association of Administrative Law Judges (AALJ), the ALJ union, believes that the SSA has a right to discipline and remove ALJs for performance failings. According to an AALJ memo, “[i]t is well settled law that a[n] [ALJ] can be disciplined and removed because of performance, including performance during the course of an adjudicatory proceeding, and that a[n] [ALJ] is not immune from review for incompetence or other failings; indeed, the MSPB has upheld discipline and removal proceedings against SSA [ALJs].”¹²⁶

SSA’s focused review program utilizes post-effectuation reviews in order to assess an ALJ’s decision-making. Post-effectuation reviews, which “occur after the 60-day period within which the Appeals Council can take own motion review... ordinarily do not result in a change to the decision,” but merely “identify whether ALJs followed SSA’s policies and procedures.”¹²⁷ Further, post-effectuation reviews may be used to direct ALJs to follow SSA policy, and, if necessary, to initiate disciplinary action: “If SSA determines an ALJ failed to comply with the Agency’s policies and procedures, it can issue directives to the ALJ to comply. If the ALJ fails to comply with the directives, SSA can seek disciplinary actions against the ALJ.”¹²⁸ Post-effectuation reviews are therefore a vital tool of ALJ oversight.

The United States District Court for the District of Columbia has approved post-effectuation reviews used for ALJ oversight. In *Association of Administrative Law Judges, Inc., v. Heckler*, the court noted, “an agency may gather data and form an opinion of an ALJ’s performance.”¹²⁹ Subsequent to a post-effectuation review, SSA has the capability to “institute an adverse action against an ALJ” after “establish[ing] good cause... [and] an opportunity for a hearing before the MSPB.”¹³⁰ The court reasoned that “[a]ccordingly, the mere calculation and

¹²⁴ See *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).

¹²⁵ See Cristaudo interview, at 42.

¹²⁶ *The Real Issue ...*, Association of Administrative Law Judges (Dec. 2012), available at http://www.aalj.org/system/files/documents/the_real_issue_12_12.pdf.

¹²⁷ SOCIAL SECURITY ADMINISTRATION, CONG. RESPONSE RPT., A-07-12-21234, THE SOCIAL SECURITY ADMINISTRATION’S REVIEW OF ADMINISTRATIVE LAW JUDGES’ DECISIONS 3 (Mar. 2012).

¹²⁸ *Id.*

¹²⁹ *Assoc. of Admin. Law Judges, Inc., v. Heckler*, 594 F.Supp. 1132, 1140 (D.C.C. 1984).

¹³⁰ *Id.*

maintenance of own motion and grant-review data does not violate” federal performance appraisal law.¹³¹ SSA has the capability to initiate rigorous post-effectuation reviews against ALJs, and discipline ALJ for non-compliance, but has declined to do so. This failure of oversight has led to unchecked ALJ incompetence and gross negligence, at the expense of taxpayers and the legitimately disabled.

SSA has not effectively utilized post-effectuation reviews to ensure a competent ALJ workforce. Rather than remove ALJs when overwhelming evidence of their incompetence and gross negligence exists, the agency has allowed them to continue deciding cases, in hopes that training will improve their work product. Unfortunately, ALJs who have received targeted training generally fail to show improvement. One of the reasons appears to be that some ALJs find such reviews to be illegitimate. For example, ALJ James Burke received a focused review last year which showed many problems with his decisions, including failure to correctly apply DAA policy and incorrect issuance of bench decisions.¹³² ALJ Burke did not use his focused review as an opportunity to correct the problems with his decision-making. Rather, he testified, “To have either accepted or rejected the ‘focused review’ would give it a legitimacy I do not believe it has. . . . I am confident that my decisions are correct applications of the law and the facts as I found them. I have no reason to have changed my mind.”

A prominent example of an ALJ who failed to properly apply federal disability law and agency policy is ALJ Charles Bridges. The agency has conducted at least three reviews of ALJ Charles Bridges since 2008. (These reviews are discussed in depth in the Committee’s June 2014 Staff Report.) The most recent review, dated January 15, 2014, had findings consistent with the agency’s previous reviews in 2008 and 2011,¹³³ such as decisions with “unsupported residual functional capacity findings,” “unsupported Step 3 findings,” and “little to no testimony from represented claimants.”¹³⁴ An internal agency document shows that RCALJ Bede e-mailed senior agency officials on April 15, 2014, to report that, months after this latest focused review, ALJ Bridges “has not changed his behavior.” Other agency employees documented concerns about ALJ Bridges’s decisions including errors, as well.¹³⁵

On July 7, 2014, senior agency officials discussed RCALJ Bede’s allegations that ALJ Bridges had “continued policy non-compliance issues.”¹³⁶ It appears that SSA took no action following this call, except to plan to re-review ALJ Bridges in September 2014. In spite of his defiance of agency policies and his continued insubordination, ALJ Bridges remains on the bench, deciding a full load of cases. **From 2005 to 2013, ALJ Bridges had an overall allowance rate exceeding 95 percent, and he awarded benefits without holding a hearing nearly 7,000 times.¹³⁷ During this period, ALJ Bridges awarded benefits to 15,787**

¹³¹ *Id.* at 1140-41 (referencing 5 U.S.C. § 4301).

¹³² Focused Review of ALJ James A. Burke (Nov. 22, 2013) [Request 1 – SuppProd000435].

¹³³ Focused Review of ALJ Charles Bridges (Oct. 2011) [Request 1 – 000106].

¹³⁴ Focused Review of ALJ Charles Bridges (Jan. 15, 2014) [Request 1 – 000109].

¹³⁵ Status Update of Focused Reviews (July 2014) [July 1, 2014 – 001214].

¹³⁶ *Id.*

¹³⁷ Publicly available ALJ adjudication data as well as ALJ adjudication data provided by the Social Security Administration

individuals, imposing a total estimated lifetime cost to taxpayers of approximately \$4.5 billion.¹³⁸

The agency's management of ALJ Frederick McGrath provides another example of how the agency tends to look the other direction when given clear evidence that ALJs incorrectly apply disability law and policy. According to RCALJ Bede's testimony, ALJ McGrath's extremely high annual disposition totals were *prima facie*¹³⁹ evidence that he was failing as an ALJ. For example, in 2010 ALJ McGrath issued 3,620 dispositions, or about eight times the national average, and nearly twice the amount of the ALJ with the second highest number of dispositions – Charles Bridges.¹⁴⁰ For ALJ McGrath to decide that many cases, he would need to render about one-and-a-half decisions *per hour*. Although the agency knew about ALJ McGrath's outrageous number of dispositions, it allowed his behavior to continue for many years.

The agency finally conducted a focused review of ALJ McGrath in 2011.¹⁴¹ The reviewers found what was obvious by his excessive number of dispositions: "ALJ McGrath frequently did not perform any thorough review of the evidence in the record, and he did not appear to spend adequate time in hearings developing issues in the respective cases."¹⁴² Based on the documents produced by the agency, it does not appear that ALJ McGrath was assigned additional training or was even informed of the results of the focused review.

Knowing the troubling results of the focused review, the agency still failed to take any action, including a re-review, with respect to ALJ McGrath for more than three years. The agency only scheduled a re-review for ALJ McGrath after the Committee sent a letter to SSA on July 1, 2014, requesting documentation of steps the agency took after focused reviews were completed.¹⁴³ Rather than acting to protect the truly disabled and the nation's taxpayers, the agency allowed ALJ McGrath to continue hearing an enormous amount of cases, even after finding in 2011 that he "did not perform any thorough review of the evidence." **Between 2005 and 2013 ALJ McGrath awarded disability benefits to 9,590 claimants, imposing a lifetime cost to taxpayers approaching \$3 billion.**

The agency's handling of ALJ Grenville Harrop is another example of the agency's failure to take common-sense actions to protect the integrity of federal disability programs. The agency completed a second focused review of ALJ Grenville Harrop on April 18, 2014.¹⁴⁴ In the second review, the agency found that ALJ Harrop issued RFC assessments that were deficient

¹³⁸ Publicly available ALJ adjudication data as well as ALJ adjudication data provided by the Social Security Administration available at http://www.oregonlive.com/special/index.ssf/2008/12/social_security_database.html and http://www.socialsecurity.gov/appeals/DataSets/archive/archive_data_reports.html.

¹³⁹ Bede Tr., *supra* note 8.

¹⁴⁰ Publicly available ALJ adjudication data as well as ALJ adjudication data provided by the Social Security Administration

¹⁴¹ Focused Review of ALJ Frederick McGrath (July 25, 2011) [Request 1 – Supp Prod 000188].

¹⁴² Focused Review of ALJ Frederick McGrath (July 25, 2011) [Request 1 – Supp Prod 000188].

¹⁴³ Letter from Rep. Darrell Issa, Chairman, H. Comm. on Oversight and Government Reform, et al. to Carolyn Colvin, Acting Comm'r, Soc. Security Admin. (July 1, 2014).

¹⁴⁴ Second Focused Review of ALJ Grenville Harrop, (Apr. 18, 2014) [Request 1 – Supp Prod 000498].

because he did “not follow the regulatory or policy requirements.”¹⁴⁵ The reviewers also found that he did not properly use vocational experts, and in at least one case he found a claimant disabled when the basis of the decision was “not supported by the medical evidence.”¹⁴⁶ In the 15-month period between the focused reviews, the agency attempted to train ALJ Harrop in how to properly follow disability law and agency policy *while he continued deciding cases*. However, the second focused review showed that training made no difference, as ALJ Harrop continued to ignore the law and policy. Instead of moving forward with disciplinary actions for continued policy non-compliance, the agency has once again assigned additional training *while he continues to decide cases*. **Between 2005 and 2013 ALJ Harrop had an allowance rate of 92 percent and awarded disability benefits to 2,932 claimants, imposing a total estimated lifetime cost to taxpayers of nearly \$880 million.**¹⁴⁷

A. IN MANY CASES, SSA FAILED TO INFORM ALJs OF FOCUSED REVIEW RESULTS FOR NEARLY A YEAR.

At the bare minimum, SSA should inform ALJs of the findings in their focused reviews in a timely manner. However, the agency has often failed to do so. For example, the agency completed a focused review of ALJ Craig DeBernardis on June 12, 2013.¹⁴⁸ Yet, ALJ DeBernardis was not informed about the content of the focused review until April 23, 2014 – ten months later.¹⁴⁹ According to his focused review, ALJ DeBernardis failed to follow the sequential evaluation process correctly, and he failed to properly use VEs at his hearings.¹⁵⁰ ALJ DeBernardis decided 211 cases and awarded benefits in 203 of them between September 2013 and April 2014.¹⁵¹ **Between 2005 and 2013 ALJ DeBernardis had an overall allowance rate of 89 percent and awarded benefits to 3,112 claimants, imposing a total estimated lifetime cost to taxpayers of \$935 million.**¹⁵²

The agency also failed to promptly convey the results of ALJ John Barker’s focused review.¹⁵³ ALJ Barker was not informed of the results of the focused review until March 10, 2014 – eight months after the completion of the focused review on August 2, 2013. Between September 2013 and March 2014, ALJ Barker decided 164 cases and awarded benefits in 135 of them.¹⁵⁴ Agency reviewers found that ALJ Barker’s decisions contained “little or no rationale for RFC,” “mischaracterization of medical or opinion evidence,” and “mischaracterization of VE testimony.”¹⁵⁵ Despite these significant problems, the agency allowed ALJ Barker to continue deciding cases after his focused review. **Between 2005 and 2013 ALJ Barker had an overall**

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ Publicly available ALJ adjudication data as well as data provided to the Committee by the Social Security Administration.

¹⁴⁸ Focused Review of ALJ Craig DeBernardis (June 12, 2013) [Request 1 – 000047].

¹⁴⁹ ALJ spreadsheet

¹⁵⁰ Focused Review of ALJ Craig DeBernardis (June 12, 2013) [Request 1 – 000047].

¹⁵¹ http://www.ssa.gov/appeals/DataSets/archive/03_FY2014/03_April_ALJ_Disposition_Data.pdf

¹⁵² Publicly available ALJ adjudication data as well as data provided to the Committee by the Social Security Administration.

¹⁵³ Focused Review of ALJ John Barker (Aug. 2, 2013) [Request 1 – Supp Prod 000397].

¹⁵⁴ Publicly available ALJ adjudication data as well as data provided to the Committee by the Social Security Administration.

¹⁵⁵ Focused Review of ALJ John Barker (Aug. 2, 2013) [Request 1 – Supp Prod 000397].

allowance rate of 87 percent and awarded benefits to 4,233 claimants, imposing a total estimated lifetime cost to taxpayers of nearly \$1.27 billion.¹⁵⁶

SSA management also failed to inform ALJ Henry Oliver of the results of his focused review until April 23, 2013 – ten months after the agency completed his review on June 21, 2012.¹⁵⁷ Between September 2012 and June 2013, ALJ Oliver decided 348 cases and awarded benefits in 334 of them.¹⁵⁸ The focused review indicated that ALJ Oliver failed to obtain VE testimony and inadequately evaluated opinion evidence, among other things.¹⁵⁹ **Between 2005 and 2013 ALJ Oliver had an overall allowance rate of 94 percent and awarded benefits to 4,397 claimants, imposing a total estimated lifetime cost to taxpayers of nearly \$1.32 billion.¹⁶⁰**

ALJ Buel, who did not comply with the SSA’s RFC assessment policy, *supra* Section II.B, was not informed of the results of his focused review until February 25, 2014, seven months after his focused review was completed in July 2013.¹⁶¹ As stated earlier in this report, ALJ Buel’s focused review cited numerous areas of policy noncompliance, and included “improper RFC evaluation,” “improper use of VEs,” and “failure to follow AC remand directives.”¹⁶² From September 2013 to March 2014 ALJ Buel decided 182 cases and awarded benefits in 128 of them.¹⁶³ Since ALJ DeBernardis, ALJ Barker, ALJ Oliver, and ALJ Buel had extremely high allowance rates, the agency’s failure to promptly take action after learning of their numerous deficiencies likely resulted in many claimants being inappropriately placed onto disability, costing taxpayers of tens of millions of dollars.

B. SSA IGNORED ITS INSPECTOR GENERAL’S FINDINGS AND ALLOWED AN ALJ WHO DEVELOPED HIS OWN THEORY OF DISABILITY TO CONTINUE TO RUBBER-STAMP CLAIMANTS FOR A DECADE.

In 1996, the SSA OIG received its first complaint about ALJ Krafur and his proclivity to rubber-stamp claimants onto the program; however, no meaningful action was taken by SSA or the OIG for nearly 18 years.¹⁶⁴ The agency’s refusal to properly deal with ALJ Krafur exemplifies the agency’s willingness to turn a blind eye to questionable ALJ decision-making so long as the ALJ was satisfying the agency’s disposition targets.

¹⁵⁶ Publicly available ALJ adjudication data as well as data provided to the Committee by the Social Security Administration.

¹⁵⁷ Focused Review of ALJ Henry Oliver (June 21, 2013) [Request 1 – 000055].

¹⁵⁸ Publicly available ALJ adjudication data as well as data provided to the Committee by the Social Security Administration.

¹⁵⁹ Focused Review of ALJ Henry Oliver (June 21, 2013) [Request 1 – 000055].

¹⁶⁰ Publicly available ALJ adjudication data as well as data provided to the Committee by the Social Security Administration.

¹⁶¹ Focused Review of ALJ Toby J. Buel, Sr. (Aug. 2, 2013) [Request 1 – 000095].

¹⁶² *Id.*

¹⁶³ Publicly available ALJ adjudication data as well as data provided to the Committee by the Social Security Administration.

¹⁶⁴ Office of the Inspector General, Social Security Administration, Timeline of Actions Relative to ALJ Krafur (June 9, 2014).

In 2005, the SSA Office of the Inspector General conducted a thorough review of a sample of ALJ Gerald Krafur's decisions.¹⁶⁵ The OIG's findings showed that ALJ Krafur was unfit to be an ALJ, as his process for evaluating disability claims was riddled with serious errors. ALJ Krafur routinely misused VEs and dismissed relevant medical evidence from state DDS doctors.¹⁶⁶ He generally determined, without basis, that there were no jobs in the national economy which the claimant could perform.¹⁶⁷ The 2005 OIG report stated that "[ALJ Krafur] couldn't pay the case, based on its evidence/merit, so [he] use[d] a vocational expert to provide unsupported/uncontested expert testimony to alter the residual functional capacity and pay the case."¹⁶⁸ In a supplemental report, the OIG stated that "[i]t's obvious that [ALJ Krafur] knows the Vocational Rules very well and understands exactly how far he has to reduce the estimate of Residual Functional Capacity (RFC) in order for the rules to direct a finding of disabled."¹⁶⁹ The OIG review also observed that ALJ Krafur's decision-making process "[was] common within the ALJ community."¹⁷⁰ This practice affords an ALJ the opportunity to pay a case when the claimant's condition is not of the severity required by the [medical] listings."¹⁷¹

Despite the overwhelming evidence that ALJ Krafur disregarded the law and rubber-stamped claimants onto disability programs, SSA management refused to take action or cooperate with OIG's audit. In October 2005, the OIG auditor met with Ms. Grela S. Viera, then-Director of the Regional Office of Quality Assurance and Performance Assessment Disability Quality Branch, and Ms. Sandra Miller, then-Disability Quality Branch Chief, to inform them of his findings. He requested that they review ALJ Krafur's decisions and "critique them for compliance with existing rules and regulations."¹⁷²

Unfortunately, SSA ignored the OIG's finding that ALJ Krafur failed to correctly apply disability law and was instead rubber-stamping claimants onto disability. According to the OIG report, "[a]fter three weeks of consideration Ms. Viera refused to provide the requested assistance . . . [and] all attempts to solicit their support have been met with negative results."¹⁷³ The OIG auditor attempted to gain the support of additional employees, but his repeated phone calls and inquiries were not returned.¹⁷⁴ The OIG closed its case on February 28, 2006, because of a lack of "support from the Social Security Administration in pursuit of [an] Administrative Remedy."¹⁷⁵

The fact that SSA did nothing in response to the OIG's findings regarding ALJ Krafur and impeded the OIG's audit is indicative of the agency's obsession with the quantity of

¹⁶⁵ Office of the Inspector General, Social Security Administration, briefing materials, [Enclosure 16].

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ OFFICE OF INVESTIGATIONS, OFFICE OF THE INSPECTOR GENERAL, SOCIAL SECURITY ADMINISTRATION, REPORT OF INVESTIGATION, REPORT OF INVESTIGATION, ATC-05-00159-L (Feb. 28, 2006) [Enclosure 18].

¹⁷⁰ Office of the Inspector General, Social Security Administration, briefing materials, [Enclosure 16].

¹⁷¹ Office of the Inspector General, Social Security Administration, briefing materials, [Enclosure 16] [emphasis added].

¹⁷² OFFICE OF INVESTIGATIONS, OFFICE OF THE INSPECTOR GENERAL, SOCIAL SECURITY ADMINISTRATION, REPORT OF INVESTIGATION, REPORT OF INVESTIGATION, ATC-05-00159-L (Feb. 28, 2006) [Enclosure 18].

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

decisions issued and the near total lack of regard for the quality of those decisions. From 2006 to 2011, when ODAR finally completed its first focused review of ALJ Krafzur, he decided 4,783 cases and allowed benefits in 4,746, or 99.2 percent, of them. Just in this six-year period, he awarded lifetime benefits in excess of \$1.4 billion.

Unsurprisingly, the agency's 2011 focused review found numerous deficiencies with ALJ Krafzur's decision-making, including the fact that ALJ Krafzur used his own theory of disability, which he branded "cause and effect."¹⁷⁶ The 2011 focused review showed that he would often invent a claimant's disabling condition.¹⁷⁷ For example, the focused review revealed that he believed that all women who were Certified Nurses Assistants (CNAs) had been abused at some point in their life and thus they all automatically qualified for disability.¹⁷⁸ The agency's 2011 focused review of him showed that ALJ Krafzur invented a head injury for a claimant after a bizarre set of questioning:¹⁷⁹

A: Ever knocked unconscious?
C: No sir.
A: Ever had any type of accident that might have hit your head, got knocked unconscious?
C: No sir.
A: Did anybody ever hit you in the head?
C: No sir.
A: As a child did you ever fall down and get hurt?
C: Not to my knowledge.
A: Were you a pretty active kid?
C: Pretty much.
A: Were you involved in athletics as a child? [...] Do you have any memory of being carried to your house by anybody?
C: No sir.
[...]
A: Did you ever skate when you were a kid?
C: No sir.
A: [aside] **See I, I'm convinced she fell and hit her head at one point in time, doesn't remember.**

Despite the 2011 focused review of ALJ Krafzur in which he demonstrated total incompetence in executing his duties, the agency allowed him to continue deciding cases. Between 2012 and the present, ALJ Krafzur decided 668 cases, awarding benefits in 664, or 99.4 percent of them. After two and a half years, the agency finally conducted a second focused

¹⁷⁶ Follow-up Focused Review of ALJ Gerald Krafzur (Mar. 7, 2014) [Request 1 – Supp Prod 000447].

¹⁷⁷ Focused Review of ALJ Gerald I. Krafzur (Nov. 22, 2011) [Request 1 – Supp Prod 000227].

¹⁷⁸ *Id.*

¹⁷⁹ Focused Review of ALJ Gerald Krafzur (Nov. 22, 2011) [Request 1 – Supp Prod 000227].

review of ALJ Krafzur in March 2014.¹⁸⁰ The second focused review showed that ALJ Krafzur continued to ignore evidence and that he continued to fabricate evidence.¹⁸¹ The second focused review stated that “the current review did not find any significant change in the ALJ’s approach or in the quality, supportability, or policy compliance of either the ALJ’s decisions or hearing conduct.”¹⁸² The agency highlighted additional deficiencies not present in the first review, such as giving legal advice to a claimant on non-SSA disability related issues.¹⁸³

Between 2005 and 2014, ALJ Krafzur’s allowance rate exceeded 99 percent and he awarded benefits to 6,116 claimants, for a total estimated lifetime cost to taxpayers of nearly \$2 billion.¹⁸⁴ The Committee is unable to estimate the cost ALJ Krafzur imposed on taxpayers prior to 2005 because the agency claims to lack ALJ allowance data from prior to 2005; however, given the findings in the 2005 OIG report, the total damage the agency inflicted on the truly disabled and the nation’s taxpayers by allowing ALJ Krafzur to decide cases for decades is considerably higher. In May 2014, the agency finally decided to initiate removal actions against ALJ Krafzur; unfortunately, for taxpayers and the truly disabled, this action occurred at least a decade too late.

IV. SSA DEVELOPED ARBITRARY DISPOSITION TARGETS AND MADE THEM THE CORNERSTONE OF THE AGENCY’S DISABILITY POLICY.

For at least a decade and possibly much longer, SSA measured ALJs’ performance only by the number of dispositions they issued within a certain period of time.¹⁸⁵ ALJs’ performance was evaluated in comparison to disposition targets established by the agency. While the agency has placed an increased emphasis on meeting disposition targets in the past decade, agency disposition targets are not new. In fact, RCALJ Jasper Bede testified, “I started with the agency in 1975. There were production goals in 1975.”¹⁸⁶ Bede clarified that these early disposition targets came from the agency director, and that ALJs were expected to issue a minimum of 20 decisions per month, translating to 240 cases a year.¹⁸⁷

Thirty years later, SSA leadership confronted a large backlog of cases at the hearings level and assessed different ways that ALJs could process cases more quickly to help reduce the backlog. In late 2005, the agency set national targets for the number of dispositions ALJs should issue within a 180-day time frame.¹⁸⁸ SSA Philadelphia Operations Officer Grant Belgrave, who

¹⁸⁰ Publicly available ALJ adjudication data as well as data provided to the Committee by the Social Security Administration.

¹⁸¹ Follow-up Focused Review of ALJ Gerald Krafzur (Mar. 7, 2014) [Request 1 – Supp Prod 000447].

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ Publicly available ALJ adjudication data as well as data provided to the Committee by the Social Security Administration.

¹⁸⁵ Dispositions include both decisions to award and deny benefits, and also cases that are dismissed before a decision is issued.

¹⁸⁶ Bede Tr., *supra* note 8.

¹⁸⁷ *Id.*

¹⁸⁸ See e-mail from Operations Officer Grant Belgrave to former CALJ Cristaudo, et al. (Nov. 29, 2005) [Request 3 – 001052].

instituted this new target, noted that “[t]his will be a fixed number, however, and other adjustments will not be made barring unusual circumstances.”¹⁸⁹

With the implementation of inflexible targets came increased pressure on ALJs to process cases more quickly. In a November 2005 email to Richmond, Virginia Hearing Office Chief ALJ (HOCALJ) Timothy Pace, CALJ Cristaudo expressed concern about ALJs who failed to meet what he called “Benchmark Goals,” noting how he wished he could “compel” judges to hold a certain number of hearings and make a certain amount of dispositions.¹⁹⁰ Regarding these ALJs, Cristaudo said: “If they fail to meet our expectations, expressing our concerns . . . often helps to increase their performance. Most judges do not seem to like the negative attention and suggestion that they are not performing well.”¹⁹¹

Accordingly, agency leadership began to evaluate performance in terms of meeting disposition targets and increasingly pressured ALJs who were not meeting these targets by issuing informal reprimands. For example, SSA employee Gladys Santiago sent one message to ALJ Linda Bernstein in the Philadelphia, Pennsylvania hearing office, who had low disposition numbers, and her Hearing Office Manager Joan Nemeth, warning that “much interest is raised at national and regional levels when production falls significantly below certain indices,” and noting that the current disposition target for Region 3 was a minimum of 2.00 dispositions per day, per ALJ.¹⁹² She also requested a phone call with ALJ Bernstein and Ms. Nemeth to discuss ALJ Bernstein’s problems with meeting disposition targets.¹⁹³

Later in 2006, SSA began to grapple with the administrative issues these disposition targets presented. Operations Officer Belgrave noted that the figures used to calculate disposition targets were unclear and somewhat arbitrary, and that his Hearing Office’s numbers did not add up when compared with those provided by SSA Headquarters.¹⁹⁴ However, he added that “we should be able to use this to our advantage. If . . . a H[earing] O[ffice] just misses the goal as shown, we could argue the goal is inflated.”¹⁹⁵ In spite of such problems with poorly defined disposition targets, CALJ Cristaudo continued to outline a plan to reduce the backlog of cases in April of 2007, writing “[w]e need to discuss in more detail the data we need to support our projections.”¹⁹⁶

That same month, CALJ Cristaudo issued a memorandum to Regional Chief ALJs establishing timeframes for the different phases of a case as it moves through the Disability Determination Services (DDS) process.¹⁹⁷ These “Benchmarks for Quality Case Processing”

¹⁸⁹ *Id.*

¹⁹⁰ See e-mail from former CALJ Frank Cristaudo to HOCALJ Timothy Pace, et al. (Nov. 30, 2005) [Request 3 – 001054].

¹⁹¹ *Id.*

¹⁹² E-mail from Gladys Santiago to Joan Nemeth, et al. (Mar. 6, 2006) [Request 3 – 001206].

¹⁹³ *Id.*

¹⁹⁴ See e-mail from Operations Officer Grant Belgrave to former CALJ Cristaudo, et al. (Apr. 13, 2006) [Request 3 – 001379].

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ Memorandum from Former CALJ Frank Cristaudo to Regional Chief Judges (Apr. 18, 2007) (on file with author).

were based on his experience and feedback from select agency employees, without any formal study of the amount of time it generally takes for an ALJ to move a case through different phases of the appeals process.¹⁹⁸

CALJ Cristaudo received glowing feedback from higher-ups at the agency in response to his memorandum. Then-Deputy Commissioner of the Office of Disability Adjudication and Review (ODAR) Lisa DeSoto lauded Cristaudo's efforts to reduce the backlog in a memorandum to then-SSA Commissioner Michael Astrue, calling his plan "excellent" and suggesting that "if the proposals are adopted, the backlog could be eliminated during your term as Commissioner which would be a major accomplishment."¹⁹⁹

In keeping with this emphasis on moving cases through the DDS process, yearly disposition targets began to crystallize in May of 2007. Then-Commissioner Astrue testified before Congress on May 23, 2007, announcing his plan to eliminate the hearings backlog: "We project 360 cases per judge as the ideal pending to maximize service to disability claimants without compromising our mission of providing both timely and legally sufficient hearings and decisions."²⁰⁰ A week later, Mark Bailey, a Director of the SSA OIG's Kansas City Audit Division, confirmed to CALJ Cristaudo that a target of "400 cases per ALJ per year is a reasonable minimum level of production."²⁰¹ Bailey noted that this figure was based on "the average and median number of cases processed by ALJs in 2006."²⁰²

On October 31, 2007, CALJ Cristaudo formally issued the agency's comprehensive plan to eliminate the hearing backlog and prevent a reoccurrence of the backlog.²⁰³ The Cristaudo plan, implemented by the agency, directed ALJs to issue 500 to 700 legally sufficient decisions annually, targets substantially higher than Astrue's projection or OIG's estimates from six months earlier. When asked to explain the development of the 500-case minimum, CALJ Cristaudo said that he thought that number was achievable even though there was not any empirical basis for the range.²⁰⁴

The 500 to 700 annual disposition targets have been in place since 2007. In October 2013, CALJ Debra Bice implemented daily, rather than monthly or yearly, disposition targets ranging between 2.0 to 2.8 decisions per ALJ.²⁰⁵ However, Bice admitted that "if you do the math, 2.0 to 2.8 is 500 to 700."²⁰⁶ Despite CALJ Bice's efforts to create the appearance of

¹⁹⁸ See *id.*; see also Transcribed Interview with former CALJ Frank Cristaudo at 25 (May 16, 2014), Bede interview at 176.

¹⁹⁹ Memorandum from Deputy Comm'r of Office of Disability Adjudication and Review Lisa de Soto to Former SSA Comm'r Michael J. Astrue [Request 5 – 004486].

²⁰⁰ *Funding Social Security's Administrative Costs: Will the Budget Meet the Mission?: Hearing Before the S. Comm. on Finance*, 110th Cong. (2007) (testimony of SSA Commissioner Michael Astrue), available at http://www.ssa.gov/legislation/testimony_052307_addendum.html.

²⁰¹ E-mail from Mark Bailey, Director of Kansas City Audit Division, to former CALJ Frank Cristaudo, et al. (May 30, 2007) [Request 5 – 004792].

²⁰² *Id.*

²⁰³ See Letter from former CALJ Frank Cristaudo to SSA Colleagues (Oct. 31, 2007) (on file with author).

²⁰⁴ Cristaudo Tr., *supra* note 7, at 21.

²⁰⁵ Bice Tr., *supra* note 11, at 84.

²⁰⁶ *Id.*

change, the same aggressive disposition targets instituted by CALJ Cristaudo remain in effect today.

Importantly, SSA implemented these targets without first conducting a study to determine what a reasonable number of decisions per ALJ per month might be. The agency's only study reviewing a timeline for disability claims was conducted in 1994, and found that an ALJ could expect to spend anywhere from three to seven hours on each case, from the prehearing phase to the final disposition.²⁰⁷ Using the mid-point of five hours, an ALJ would be able to issue 1.6 decisions a day or about 368 decisions a year (assuming 230 work days). Therefore, the only available empirical evidence, though two decades old, suggests that the 500 to 700 disposition targets are unreasonably high. Also, numerous ALJs have informed the Committee that since the agency adopted an electronic filing system, it is easier for claimants and claimant representatives to submit evidence so the volume of evidence per file is much larger than when the agency used a paper filing system. Thus, it is likely that the estimates in the 1994 study about the average amount of time needed to review the evidence are outdated and no longer apply.

A. SSA LEADERSHIP PRESSURED HEARING OFFICES AND ALJS TO MEET ARBITRARY DISPOSITION TARGETS.

The disposition targets were enforced by officials from SSA's central office in Baltimore, Maryland, and ODAR's national headquarters in Falls Church, Virginia, who exerted pressure on regional and local hearing offices to ensure that ALJs were deciding the target number of cases. This pressure often took the form of either an informal reprimand for not meeting the targets, or a congratulatory note acknowledging that the ALJ or hearing office met or exceeded the agency's arbitrary targets. In 2005, Associate Commissioner A. Jacy Thurmond began sending out monthly "Performance Recognition" memoranda to hearing offices that were successful in achieving disposition targets.²⁰⁸ He also encouraged hearing offices to "remain focused on [the] goals" while "remain[ing] diligent."²⁰⁹

In addition to informal reprimands, SSA management has threatened to take away certain privileges, such as telework privileges, for ALJs who do not meet the target goals. Multiple current and former ALJs have informed the Committee that ALJs who do not meet monthly production goals are shunned by their colleagues and others have privileges restricted, such as parking spots being reassigned. In contrast, ALJs who regularly meet the goals are treated preferentially in relation to leave requests and requests for reassignments to hearing offices in more desirable locations. In addition, if one ALJ in a hearing office fails to meet the goals, the other ALJs and the HOCALJ must each dispose of more cases that month, by any means possible, to avoid repercussions for the hearing office not meeting its goal.

The agency repeatedly made clear to its employees that its singular focus was on the quantity of cases processed. In 2009, then-Deputy Commissioner of ODAR David Foster told

²⁰⁷ See Ron Bernoski, AALJ Newsletter and President's Report (Feb. 11, 2008) [Request 3 – 001770].

²⁰⁸ See, e.g., Memorandum from A. Jacy Thurmond, Associate Comm'r, to HOCALJ Joseph Davidson (June 17, 2005) [Request 3 – 000868].

²⁰⁹ *Id.*

CALJ Cristaudo and other agency administrators that “[o]ur focus should be entirely on working down the backlog – not doing the work of other components that do not relate to the disability backlog.”²¹⁰ To this end, the agency established the “Senior Attorney Adjudicator Program” expanding the number of Senior Attorney Adjudicators (SAAs) to screen for and issue on the record decisions without the claimants ever going before an ALJ.²¹¹

While the pressure to meet disposition targets resulted in ALJs processing more cases, the backlog remained large as record numbers of people – perhaps motivated by the high rates of ALJ allowances – applied for benefits. ODAR Deputy Commissioner Glenn Sklar congratulated ODAR managers for a job well done in fiscal year 2011, but expressed his concern that “DDS started pumping out a record number of cases.”²¹² In response to growing receipts, the agency moved toward a national model for screening cases for potential on the record decisions.²¹³ Mr. Sklar noted that “lots of eyeballs [will be] on ODAR to reach out and meet the DISPOSITION target,” reiterating the importance of moving cases quickly through the DDS process.²¹⁴

In 2012, CALJ Bice called for an increased focus on pumping out cases, stating: “[t]he influx of receipts threatens to undo some of the progress we have made in working down the backlog and decreasing average production time.”²¹⁵ Despite the fact that no studies justified the 500 to 700 production range as appropriate, CALJ Bice doubled down and *increased* her expectations for the number of annual dispositions that ALJs should issue. In January 2012, CALJ Bice told senior ALJ management that she intended to instruct ALJs, regardless of how many dispositions they were currently issuing per month, to ramp up their efforts by scheduling five additional cases per month, without providing a rationale for why this increase was attainable.²¹⁶ She testified that she based this increase on her “own personal beliefs.”²¹⁷ She also indicated to senior management that she would tell ALJs that “500-700 [cases] does not mean 500.”²¹⁸

CALJ Bice still exerts considerable pressure on ALJs to quickly process cases. On February 14, 2014, Bice issued a memorandum tying teleworking privileges, which enable ALJs to work remotely on occasion, to the agency’s arbitrary disposition targets.²¹⁹ ALJs were told that their teleworking privileges might be “restricted” if they failed to schedule “a reasonably attainable number of cases for hearing.”²²⁰ CALJ Bice clarified that while there was no established number of required scheduled hearings, 50 cases per month, amounting to 600 cases per year, would “generally signify a reasonably attainable number.”²²¹ This new expectation exceeds the formal minimum disposition target by 100 cases. According to CALJ Bice’s

²¹⁰ E-mail from David Foster, ODAR Deputy Comm’r, to Eileen McDaniel, et al. (Feb. 7, 2009) [Request 5 – 006625].

²¹¹ See Deputy Commissioner Broadcast: Senior Attorney Program (July 24, 2009) [Request 5 – 006868].

²¹² ODAR Managers conference call (Jan. 26, 2012) [Request 3 – 002915].

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ E-mail from CALJ Debra Bice to Glenn Sklar, et al. (Jan. 10, 2012) [Request 5 – 000294].

²¹⁶ See *id.*

²¹⁷ Bice Tr., *supra* note 11, at 197.

²¹⁸ *Id.*

²¹⁹ Memorandum from CALJ Debra Bice to All Administrative Law Judges (Feb. 18, 2014) (on file with the author).

²²⁰ *Id.*

²²¹ *Id.*

memorandum, ALJs were expected to schedule 50 or more hearings per month by October 2015, demonstrating the agency's plans to keep the arbitrary disposition targets in place into the future.²²²

On July 1, 2014, Committee Chairman Darrell Issa, Subcommittee on Energy Policy, Healthcare and Entitlements Chairman James Lankford, and Subcommittee on Economic Growth, Job Creation and Regulatory Affairs Chairman Jim Jordan wrote Acting Commissioner Colvin a letter asking for the immediate suspension of disposition targets until the agency conducted "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."²²³ In reaction, CALJ Bice e-mailed a statement to ALJs encouraging them to be proud of the agency's efforts to reduce the backlog, stating: "What should you do? Just what you have been doing"²²⁴ After Committee staff reiterated this request in a briefing on July 16, 2014, the agency stated on October 2, 2014, that "[w]e have no current plans to conduct the type of study suggested. . . . Additionally, we do not intend to 'immediately suspend production goals.'"²²⁵

Pressure to comply with the arbitrary disposition targets was transmitted to the regional offices, which in turn pressured local hearing offices to comply with the targets. In 2007, Grant Belgrave, Operations Officer at the Office of the Regional Chief Judge in Philadelphia, highlighted the importance of "[o]ffer[ing] encouragement from the top to all line ALJs to do bench decisions," and noted that many ALJs had previously rejected this request.²²⁶ Mr. Belgrave stated his expectation that "productivity would go up due to the pressure exerted by management."²²⁷

In June 2010, Regional Management Officer for Region Three, Sandy Shultis, forwarded an email from of the Office of the Chief ALJ, urging ALJs to "scour further for any other dispos that could possibly go out the door this month."²²⁸

²²² *Id.*

²²³ Letter from Rep. Darrell Issa, et al. to the Hon. Carolyn W. Colvin, Acting Comm'r, Soc. Security Admin. (July 1, 2014) (on file with author).

²²⁴ E-mail from CALJ Debra Bice to ODAR All ALJs, (July 7, 2014) (on file with author).

²²⁵ E-mail from SSA staff to Oversight Committee Staff (Oct. 2, 2014) (on file with author).

²²⁶ E-mail from Operations Officer Grant Belgrave to Lawrence E. Shearer, et al. (July 6, 2006) [Request 3 – 001445].

²²⁷ E-mail from Operations Officer Grant Belgrave to Jasper Bede, et al. (Mar. 15, 2007) [Request 3 – 001601]. The emphasis on disposition targets certainly caused bickering within the agency. One ALJ, Judge Charlie Andrus, wrote regarding increased monthly targets: "We really strained to meet the goal . . . I wish someone would have told us this before. It may make you look better in December, but we are going to look like hell in January." E-mail from ALJ Charlie Andrus to Gladys Santiago, et al. (Jan. 3, 2007) [Request 3 – 004790]. HOCALJ Frances Kuperman of the Baltimore Hearing Office also complained that increased targets were "very disruptive and negatively impacted everyone's workload." E-mail from HOCALJ Frances Kuperman to RCALJ Jasper Bede (Feb. 11, 2008) [Request 3 – 004822]. Years later, Hearing Office Director Patricia Marciniac expressed discontent at the ongoing monthly disposition targets, stating: "[t]he stretch goal is not realistic. I do not plan to share with the staff." E-mail from Hearing Office Director Patricia Marciniac to ALJ Wayne Stanley, et al. (Sept. 11, 2012) [Request 3 – 003447].

²²⁸ Email from Regional Management Officer Sandy Shultis to #ODAR R3 Field Management (June 25, 2010).

From: Shultis, Sandy
Sent: Friday, June 25, 2010 1:18 PM
To: #ODAR R3 Field Management
Cc: #ODAR R3 RO Mgmt Analysts; #ODAR R3 RO Mgmt Team
Subject: FW: Dispositions Needed - Action Required
Importance: High

All,

Please see the below plea from OCJ. As you know, the last 17 months, ODAR nationally has reduced our pending workload. This month, receipts are significantly up nationally. In order to continue our reduction of pending nationally, additional dispos are needed.

We know that you always do your utmost to ensure that the claimants in Region 3 receive the best possible service. I wanted to share this plea from OCJ to encourage you to scour further for any other dispos that could possibly go out the door this month.

Thank you for all your efforts, leadership, and outstanding public service.

Sandy Shultis
Regional Management Officer
SSA/ODAR/Region III/Philadelphia

From: Goforth, Kathie
Sent: Friday, June 25, 2010 11:44 AM
To: Undisclosed recipients
Subject: Dispositions Needed - Action Required

Hello to All,

We are watching the numbers closely and you are doing a fantastic job but we are making a plea for every disposition possible. We need to exceed our monthly goal by about 3,350 to decrease our pending again this month. That means we need about 7,825 dispos today. I know that we can do it and I know that I count on you to encourage your offices to give us all they can today. Thanks so much for all you do every day.

Agency managers often compared disposition targets to sports contests to motivate hearing offices and ALJs. A 2009 presentation from ODAR Region III administrators featured images of workers in suits running on a track, captioned "Finish the Race."²²⁹ The presentation included disposition target statistics, congratulated certain hearing offices for good performance (measured solely by the number of dispositions issued), and included encouraging phrases such as "[o]ne more lap to go . . ." and "[w]e're on pace to win the gold medal."²³⁰

Hearing office managers would ramp up the pressure near the end of the month by sending multiple emails each day, counting down the hours until the end of the goal month. For example, from February 25-26, 2010, HOCALJ George Mills of the Morgantown, West Virginia, Hearing Office sent six emails, pressuring the ALJs in his office to "make goal."²³¹

²²⁹ See ODAR Region 3 presentation [Request 3 – 002134].

²³⁰ *Id.*

²³¹ See, e.g., e-mail from HOCALJ George Mills to #PH WV ODAR MTWN All (June 25, 2010) (on file with author).

From: Mills III, George A.
From: Thursday, February 25, 2010 6:40 AM
Subject: #PH WV ODAR MTWN All
Status Update: Morgantown ODAR 221 vs. Region 3 Target Goalies 267 (Two workdays remaining)

From: Mills III, George A.
From: Thursday, February 25, 2010 12:43 PM
Subject: #PH WV ODAR MTWN All
Status Update: Morgantown ODAR 234 vs. Region 3 Target Goalies 267 (Still Silver Medal Only)

From: Mills III, George A.
From: Thursday, February 25, 2010 3:33 PM
Subject: #PH WV ODAR MTWN All
Status Update: Morgantown ODAR 242 vs. Region 3 Target Goalies 267 (15 hours remaining for 25 dispositions)

From: Mills III, George A.
From: Friday, February 26, 2010 6:42 AM
Subject: #PH WV ODAR MTWN All
Status Update: Morgantown ODAR 247 vs. Region 3 Target Goalies 267 (20 to tie)

There are 12 hours remaining in the counting period. There will be no more updates until we make our goal. Your efforts in helping to make our Target Goal is appreciated especially by the claimants we serve. It takes a team. Enjoy the weekend and stay warm and safe. Thanks

From: Mills III, George A.
From: Friday, February 26, 2010 2:52 PM
Subject: #PH WV ODAR MTWN All
Need two more

From: Mills III, George A.
From: Friday, February 26, 2010 4:05 PM
Subject: #PH WV ODAR MTWN All
Status Update Morgantown ODAR 269 vs Region 3 Target Goalies 267

Well you did it again. We have the "Gold" medal. Your efforts were outstanding. Now we welcome "March Madness" with 20 workdays and no holidays, but lots of basketball, daylight saving time and the first day of Spring!!!! What a month. Thanks for a job well done.

HOCALJ Mills would occasionally copy national and regional management so they could also closely monitor ALJ productivity. HOCALJ Mills also routinely employed sports metaphors to encourage ALJs to meet targets.²³² He grouped ALJs, senior attorney advisors and other hearing offices into teams and pitted them against each other, describing their dispositions in terms of goals scored.²³³ In one message, he stated: "[t]he 'Goalies' have indicated that 151 target

²³² See, e.g., e-mail from HOCALJ George Mills to #PH WV ODAR MTWN All (Aug. 25, 2010) (on file with author); see also e-mail from HOCALJ George Mills to #PH WV ODAR MTWN All (Aug. 24, 2010) (on file with author), e-mail from HOCALJ George Mills to #PH WV ODAR MTWN All (Aug. 13, 2010) (on file with author).

²³³ See *id.*

dispositions need to be from ALJ's and 39 target dispositions from SAA's. (Attempt to 'ice' the Motown ODAR's) [*sic*].²³⁴

Regional Offices also sent out warnings and congratulatory notes disguised as weather reports. For underperforming offices, the agency sent out notices reading "CURRENT CONDITIONS . . . *Brrrrr!* Icy temperatures abound! Let's stoke the fire with dispositions to heat things up!"²³⁵ High-performing offices were sent notes reading "*Sunny dispositions ahead!*"²³⁶

Hearing offices that met disposition targets were held in high esteem by agency higher-ups, receiving commendation letters from regional offices. In October 2005, former RCALJ Cristaudo sent a letter to all ALJs from the Philadelphia region thanking them "for the outstanding service you provided to the American people . . . [t]he region has a record of hearing and deciding cases in a timely, efficient, and professional manner You also took up the challenge of handling thousands of cases for claimants in other regions, while still handling your own sizeable workloads in a timely manner. This is the clearest expression of commitment to public service."²³⁷ It is noteworthy that the Philadelphia region had several high disposition ALJs who were merely rubber-stamping claimants, including ALJ Bridges, ALJ Daugherty, and ALJ Taylor. By congratulating the performance of the Philadelphia region, the agency was sending the signal that such behavior was not merely acceptable but it was the way to win accolades from agency leadership.

RCALJ Jasper Bede continued to send nearly identical letters to Philadelphia ALJs in October of 2006 and 2009, and sent a personalized letter to ALJ Harry Taylor in 2007.²³⁸ ALJ Taylor also issued a disproportionate number of OTRs to help his hearing office make disposition targets. He testified, "[t]he first two hearing office chief judges . . . approached me about whether I would be willing to take some cases off the docket, look at those cases to determine whether they could be done on the record in order to meet our office productivity goals. I indicated that I would do that."²³⁹ From 2005 to 2013, ALJ Taylor had an overall allowance rate of nearly 94 percent and issued 68 percent of his decisions without holding hearings.²⁴⁰ His focused reviews, detailed in the June 2014 Majority Staff Report, have

²³⁴ See, e.g., e-mail from HOCALJ George Mills to #PH WV ODAR MTWN All (Sept. 22, 2010) (on file with author). Motown is a nickname for the Morgantown, West Virginia, Hearing Office.

²³⁵ See, e.g., Email from ODAR R3 Philadelphia RO to #ODAR R3 Charlottesville HO Management (Sept. 12, 2011) [Request 3 – 002765].

²³⁶ See, e.g., Email from ODAR R3 Philadelphia RO to #PH PA ODAR EP All et al., (Sept. 16, 2011) [Request 3 – 002785].

²³⁷ Letter from former RCALJ Frank Cristaudo to Judges of the Philadelphia Region (Oct. 2005) (on file with author).

²³⁸ See Letter from RCALJ Jasper Bede to Judges of the Philadelphia Region (Oct. 2006) (on file with author); see also Letter from RCALJ Jasper Bede to Judge Harry C. Taylor (Oct. 2007) (on file with author), Letter from RCALJ Jasper Bede to Judges of the Philadelphia Region (Oct. 2009) (on file with author).

²³⁹ *Social Security Administration Oversight: Examining the Integrity of the Disability Determination Appeals Process: Hearing Before the H. Comm. on Oversight and Gov't Reform*, 113th Cong. 93 (2014) (testimony of ALJ Harry C. Taylor).

²⁴⁰ Publicly available ALJ adjudication data as well as ALJ adjudication data provided by the Social Security Administration available at http://www.oregonlive.com/special/index.ssf/2008/12/social_security_database.html and http://www.socialsecurity.gov/appeals/DataSets/archive/archive_data_reports.html.

demonstrated his lack of compliance with both disability law and agency policy.²⁴¹ ALJ Taylor has also been accused of multiple counts of personal misconduct, and was caught sleeping at work and during hearings on many occasions.²⁴²

ALJ Taylor provided a list of sixteen additional awards that his hearing office received for “excellence” and “commitment to public service” evidenced by the office’s high number of dispositions.²⁴³ ALJ Charles Bridges also provided a “non-exhaustive” list of fifteen awards he and his hearing office have received,²⁴⁴ despite multiple allegations of judicial misconduct against him, among other issues.²⁴⁵ Notably, RCALJ Bede later testified that ALJ Taylor and ALJ Bridges do “rather sloppy work.”²⁴⁶

Regional officials further ensured compliance with disposition targets by requesting that HOCALJs have “informal discussion[s]” with ALJs falling below the arbitrary minimum target of 500 yearly dispositions “to determine the cause and the expected resolution of any problems.”²⁴⁷ Hearing offices were also required to submit their plans to meet monthly disposition targets to regional management.²⁴⁸

In response, HOCALJ Frances Kuperman of the Baltimore hearing office observed that one ALJ was failing to meet disposition targets because he had a very low reversal rate, meaning that “it takes him longer than it would if he had a high reversal rate.”²⁴⁹ By admitting that low reversal rates correlate with lower disposition numbers, HOCALJ Kuperman revealed the likely result of the increased emphasis on the arbitrary disposition targets: an increased amount of claimants rubber-stamped onto disability. Marilyn Zahm, Vice-President of the AALJ, noted that for reversals, which award benefits, “not as much rationale is needed, because the cases are not appealed, because the decision is quick, because the drafting of the decision is quick, it’s just a whole lot easier [to issue approvals than denials].”²⁵⁰

B. THE AGENCY ENCOURAGED SHORTCUTS SO ALJS COULD DECIDE MORE CASES.

To meet the 500 to 700 disposition target, then-Chief ALJ Frank Cristaudo suggested tactics such as “the use of bench decisions and OTRs [on-the-record decisions] whenever

²⁴¹ See Fiscal Focused Review of ALJ Harry Taylor (May 15, 2013) [Request 1 – 000033].

²⁴² Memorandum from HOCALJ Theodore Burock to ALJ Harry Taylor (Aug. 2008) [Request 4 – 001568].

²⁴³ See Judge Harry C. Taylor II Responses to Member Questions (July 10, 2014) (on file with author).

²⁴⁴ See Responses to Questions for Mr. Charles Bridges (July 10, 2014) (on file with author).

²⁴⁵ See, e.g., E-mail from former HOCALJ Reana Sweeney to Pat O’Carroll, Inspector General, SSA, et al. (Aug. 24, 2007) [Request 4 – 021667], e-mail from former HOCALJ Reana Sweeney to RCALJ Jasper Bede (Aug. 14, 2007) [Request 4 – 006080].

²⁴⁶ Transcribed interview with RCALJ Jasper Bede at 133 (Oct. 22, 2013).

²⁴⁷ See, e.g., Memorandum from RCALJ Jasper Bede to HOCALJ Donald Graffius (Oct. 8, 2013) [Request 3 – 002421]; see also Memorandum from RCALJ Jasper Bede to HOCALJ Linda Bernstein (Jan. 20, 2011) [Request 3 – 000286].

²⁴⁸ See e-mail from Frank Gavio to #ODAR R3 Field Management et al., (Aug. 3, 2012) [Request 3 – 003377].

²⁴⁹ See Memorandum from HOCALJ Frances Kuperman to RCALJ Jasper Bede (Mar. 20, 2008) [Request 3 – 001817].

²⁵⁰ *Easier to approve a disability case than deny it?*, Interview with Marilyn Zahm, CBS NEWS (Oct. 6, 2013), available at <http://www.cbsnews.com/videos/easier-to-approve-a-disability-case-than-deny-it/>.

feasible.”²⁵¹ (Bench decisions are fully favorable oral decisions issued at hearings, while OTR decisions are made before a claimant ever gets to the hearing stage.) The pressure to meet disposition targets led Hearing Offices to encourage ALJs to issue more OTR and bench decisions. The increased use of OTRs and bench decisions is troubling and indicative of fewer quality decisions, as both are shortcuts used by ALJs to issue a decision more quickly. Bench decisions and OTRs should only be made in rare circumstances where the decision is so clear-cut that no additional evidence is necessary at the ALJ level to reverse the DDS and award benefits. Moreover, the agency blindly encouraged the use of bench decisions and OTRs without monitoring whether they were being used appropriately.

Demonstrating the impact of pressure placed on hearing offices to meet the arbitrary targets, Region III staff member Gladys Santiago requested that Hearing Office Group Supervisor Frederick Timm provide an explanation as to why the Philadelphia hearing office failed to meet its target of more than 2.00 dispositions per day.²⁵² In response, Mr. Timm attributed the failure to ALJs on leave, and assured Ms. Santiago that his office was “aggressively pursuing . . . on-the-record screening.”²⁵³

Ms. Santiago also sent the same e-mails to employees in other hearing offices, generating similar responses. Joseph Scruton of the Roanoke, Virginia hearing office assured Ms. Santiago that his office’s new HOCALJ, Geraldine Page, was issuing bench decisions, and stated that “[i]f her example is followed by other ALJs, this will improve productivity as well.”²⁵⁴ Ms. Santiago also held monthly “bad office” conference calls with hearing offices that failed to meet disposition targets, evidenced by a Region III employee who asked, “[c]ould we please be removed from the ‘bad office’ conference call for the month?”²⁵⁵

Facing increased strain, hearing office administrators took creative measures to meet disposition targets. HOCALJ Charlie Andrus of the Huntington, West Virginia, Hearing Office outlined a plan to improve “productivity” by enlisting the help of now disgraced claimant representative Eric Conn.²⁵⁶ Since ALJ Gitlow “could not handle increasing his hearings by the five to six hearings a month,” HOCALJ Andrus looked for “an alternative solution” to help ALJ Gitlow meet his production targets. According to HOCALJ Andrus, “Eric Conn . . . has agreed to submit proposed fully favorable decisions . . . for Judge Gitlow’s approval.”²⁵⁷ At the time HOCALJ Andrus involved Mr. Conn, evidence suggests that Mr. Conn was conspiring with ALJ David Daugherty and perhaps other ALJs to ensure that all of his clients were awarded

²⁵¹ E-mail from Regional Director of Operations Barbara Bracchi to Andrew Emerson, et al. (July 19, 2005) [Request 3 – 000887]. Bench decisions are abbreviated wholly favorable decisions that are entered into the record of the hearing proceedings. The bench decision provides an alternative procedure for the ALJ to use when issuing the written decision. On the record (OTR) decisions are made by the ALJ without a claimant hearing.

²⁵² E-mail from Gladys Santiago to Group Supervisor Frederick Timm (Sept. 6, 2007) [Request 3- 001740].

²⁵³ E-mail from Group Supervisor Frederick Timm to Gladys Santiago (Sept. 6, 2007) [Request 3- 001740].

²⁵⁴ E-mail from Joseph Scruton to Gladys Santiago (Sept. 6, 2007) [Request 3 – 001741].

²⁵⁵ See e-mail from Laura Gantz to Gladys Santiago, et al. (Feb. 2, 2007) [Request 3 – 001582].

²⁵⁶ See e-mail from ALJ Charlie Andrus to RCALJ Jasper Bede, et al. (Oct. 24, 2008) [Request 3 – 004887]. Mr. Conn has been accused of conspiring with ALJ Daugherty to rubber stamp his clients onto disability programs, and it currently under investigation by multiple law enforcement entities.

²⁵⁷ *Id.*

benefits.²⁵⁸ HOCALJ Andrus also reported to RCALJ Bede that there was another “rather active” claimant representative that had agreed to submit OTR requests for ALJ Gitlow so that he could increase his productivity.²⁵⁹

C. THE AGENCY’S RECKLESS EMPHASIS ON DISPOSITION TARGETS HAS HAD A NEGATIVE EFFECT ON THE QUALITY OF DECISIONS ISSUED.

SSA’s singular focus on ALJs and Hearing Offices meeting their arbitrary disposition targets lessened the integrity of the disability appeals process while also failing to reduce the hearings backlog.²⁶⁰ Although the agency created the 500 to 700 disposition target in 2006, the agency failed to study how production levels affect quality of decision-making until six years later. Former Chief ALJ Cristuado testified that after he announced the disposition target, there were discussions about whether or not the increased targets would result in low-quality decision-making. Mr. Cristuado stated that he did not think it would result in low quality decisions because he had “faith in the judges I think they have integrity. They’ll make the decision they think is the right decision.”²⁶¹ However, when the agency finally conducted a study in 2012, it found “a strong relationship between production levels and decision quality on allowances,” and that “[a]s ALJ production increases, the general trend for decision quality is to go down.”²⁶²

Since the agency created the disposition targets, many ALJs have complained that it was impossible to meet disposition targets while maintaining a high standard of decision quality. One ALJ who was confronted by HOCALJ Timothy Pace of the Richmond, Virginia hearing office about low production numbers responded, “I do not feel I can devote adequate attention to the claimants if I spend less time on the case.”²⁶³ HOCALJ Pace requested help with this issue from RCALJ Jasper Bede, stating: “I am formally asking for your intervention in this matter . . . because my powers of persuasion have not worked so far. In this judge’s defense, he has been observed working either in the office or in the hearings, the entire day, so that is not the problem. He is putting in the time.”²⁶⁴

Many other ALJs cited the impossibility of meeting disposition targets. In 2009, Ronald Bernoski, then-president of the AALJ, expressed concern to former CALJ Cristuado regarding the basis of the 500 to 700 annual disposition targets.²⁶⁵ Mr. Bernoski noted that SSA was not

²⁵⁸ STAFF OF H. COMM. ON OVERSIGHT & 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 at 23-25 (June 10, 2014) [hereinafter *Staff Report*].

²⁵⁹ See *supra* note 257.

²⁶⁰ See *Age Distribution of Pending Hearings (FY2008 to FYTD 2014)*, available at http://socialsecurity.gov/appeals/charts/Age_Distribution_Pending_Hearings_FY2008-FY2014_3rd_Qtr.pdf. While the backlog of cases pending longer than 270 days has decreased, the backlog of cases pending 270 or less has significantly increased during this time period.

²⁶¹ See transcribed interview with former CALJ Frank Cristuado (May 16, 2014).

²⁶² Ben Gurga, Production Levels and Decision Quality (Sept. 7, 2012) [Follow-up Request – 000001].

²⁶³ E-mail from HOCALJ Timothy Pace to RCALJ Jasper Bede, et al. (Mar. 19, 2007) [Request 3 – 001611].

²⁶⁴ *Id.*

²⁶⁵ Letter from Ronald Bernoski, President of the Ass’n of Administrative Law Judges, to former CALJ Frank Cristuado (Mar. 6, 2009) [Request 5 – 006651].

being transparent with the ALJs as CALJ Cristaudo had refused to comply with his organization's request for the historical ALJ adjudication data and judicial input that CALJ Cristaudo cited as the basis for SSA's disposition targets.²⁶⁶ He also chided the agency for "[b]row-beating, criticizing, and intimidating ALJs" who struggled to meet disposition targets.²⁶⁷

ALJ J.E. Sullivan testified that the agency operated a "factory-type production process" and noted that SSA management placed a "mistaken emphasis on . . . [the] speed of production within the adjudication offices."²⁶⁸ Illustrating this factory-like process, ALJ Sullivan testified that she was trained to set an egg timer to limit her review to 20 minutes for normal cases and one hour for complicated cases.²⁶⁹ She stated, "the SSA management's prism lens of management, which is 'making goal,' is incompatible with a judge's meaningful adjudication work."²⁷⁰ ALJ Sullivan also testified that she was threatened by senior management for not meeting targets, and that she was told "all the time" that judges who failed to meet disposition target quotas were lazy.²⁷¹

ALJ Sullivan's supervisor, HOCALJ George Mills, had high disposition rates, topping 900 dispositions in FY 2010.²⁷² HOCALJ Mills claimed that he issued this many dispositions by "doing the dismissals, the rocket dockets."²⁷³ According to HOCALJ Mills, these "rocket dockets" involved quickly bringing claimants in and "ask[ing] them if they want to be represented, and so forth."²⁷⁴ Notably, when HOCALJ Mills increased his number of annual dispositions, his overall allowance rate, or percentage of benefits awarded, increased significantly so he could issue decisions by the deadline and "make goal."²⁷⁵

When asked about his unusually high number of dispositions, Mr. Mills responded, "[w]hen you have target dispositions in a month and there are some of your staff . . . that don't accept contributions to target dispositions, sometimes the HOCALJ has to adjudicate more and do more."²⁷⁶ Tellingly, no one from SSA management approached HOCALJ Mills regarding his high disposition rate which was well in excess of 700 cases per year. The agency's failure to approach ALJs who issued more than 700 dispositions is consistent with RCALJ Bede's testimony that the agency paid much more attention to ALJs with less than 500 annual dispositions than ALJs with over 700 annual dispositions.²⁷⁷

²⁶⁶ *Id.*

²⁶⁷ *Id.*

²⁶⁸ *Oversight of Rising Social Security Disability Claims and the Role of Administrative Law Judges: Hearing Before the Subcomm. on Energy Policy, Health Care & Entitlements of the H. Comm. on Oversight and Gov't Reform*, 113th Cong. 75 (2013) (testimony of SSA Administrative Law Judge J.E. Sullivan).

²⁶⁹ *Id.* at 137.

²⁷⁰ *Id.* at 76.

²⁷¹ *Id.* at 138.

²⁷² See Transcribed Interview of HOCALJ George Mills, at 163[hereinafter Mills Tr.] (Sep. 30, 2014).

²⁷³ *Id.*

²⁷⁴ *Id.*

²⁷⁵ Publicly available ALJ adjudication data as well as data provided to the Committee by the Social Security Administration.

²⁷⁶ *Id.* at 164.

²⁷⁷ See Bede Tr., *supra* note 8, at 101.

D. THE AGENCY INAPPROPRIATELY TRANSFERRED CASES TO HEARING OFFICES AND ALJS WHO ROUTINELY MET ARBITRARY DISPOSITION TARGETS.

In an effort to process cases as quickly as possible, the agency inappropriately transferred cases to the hearing offices that routinely met the arbitrary agency targets. In several instances, the case transfers produced problematic results. For example, between 2006 and 2011, SSA officials transferred nearly 1,200 cases to the Huntington, West Virginia hearing office.²⁷⁸ As detailed in the Committee's June 2014 Staff Report, former ALJ David Daugherty, who allegedly colluded with attorney Eric Conn to award half a billion dollars in disability benefits to Mr. Conn's clients, was one of the most "productive" ALJs in the nation largely due to his approving benefits in virtually all of his cases, including more than half without holding a hearing. Over 1,000 cases from the Morgantown, West Virginia hearing office were transferred at the same time. The Huntington, West Virginia office screened these transfers for cases to pay without holding a hearing, and, for the remaining transfers, scheduled "rocket dockets" with up to twenty hearings per day. Using these questionable methods, the office managed to process nearly all of the transferred cases within a year while maintaining previous production levels.²⁷⁹

SSA shipped thousands of cases from all over the country to ALJ Howard O'Bryan in the Oklahoma City, Oklahoma hearing office. A 2012 Senate staff report found that ALJ O'Bryan was reprimanded both verbally and in writing by agency officials for producing poor quality decisions and using boilerplate language, yet he received no disciplinary action and SSA continued to send cases to him after these reprimands.²⁸⁰ To date, SSA has refused to hold anyone accountable for choosing to ship the cases to ALJ O'Bryan even though deficiencies in his decisions were well known within the agency. ALJ O'Bryan awarded benefits in many of these cases without holding a hearing, and often was the only employee at the ALJ level to ever review the file since he mostly considered "raw" cases that had not previously been developed by a staff member.²⁸¹ Both former and current ALJs informed the Committee that in order to move cases quickly through the system, ALJ O'Bryan also wrote nearly all of his decisions by himself rather than seeking assistance from skilled decision-writers.

Agency officials also transferred cases from an office in southern New Jersey to San Juan, Puerto Rico, even *after* the *Wall Street Journal* detailed widespread corruption and fraud in the disability process on the island.²⁸² The southern New Jersey office was to "send San Juan 80 cases per month for permanent transfer hearings . . ." in the first quarter of fiscal year 2012.²⁸³

²⁷⁸ STAFF OF S. COMM. ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS, 113TH CONG., HOW SOME LEGAL, MEDICAL, AND JUDICIAL PROFESSIONALS ABUSED SOCIAL SECURITY DISABILITY PROGRAMS FOR THE COUNTRY'S MOST VULNERABLE: A CASE STUDY OF THE CONN LAW FIRM 22 (Oct. 7, 2013).

²⁷⁹ *Id.*

²⁸⁰ MINORITY STAFF OF S. PERMANENT SUBCOMM. ON INVESTIGATIONS, 112TH CONG., SOCIAL SECURITY DISABILITY PROGRAMS: IMPROVING THE QUALITY OF BENEFIT AWARD DECISIONS 72 (Sept. 13, 2012).

²⁸¹ *Id.*

²⁸² See e-mail from Region II RD Robert O'Connor to Grant Belgrave, et al. (Oct. 4, 2011) [Request 3 – 002804]. See also Paletta, *Disability-Claim Judge Has Trouble Saying 'No'*, WALL ST. J., May 19, 2011, <http://online.wsj.com/news/articles/SB10001424052748704681904576319163605918524>; Damian Paletta, *Puerto Rico Disability Claims Probed*, WALL ST. J., Sep. 12, 2011, <http://online.wsj.com/news/articles/SB10001424053111903532804576564543481258206>.

²⁸³ See e-mail from Region II RD Robert O'Connor to Grant Belgrave, et al. (Oct. 4, 2011) [Request 3 – 002804].

E. THE AGENCY'S SINGULAR FOCUS ON ARBITRARY DISPOSITION TARGETS RUN AFOUL OF THE HECKLER DECISION.

The 2007 Cristaudo plan, directing ALJs to issue 500 to 700 legally sufficient decisions per year, may likely violate the spirit, if not the letter of the APA, according to *Association of Administrative Law Judges, Inc., v. Heckler*.²⁸⁴ In *Heckler*, AALJ brought suit against the Department of Health and Human Services, alleging that pre-effectuation reviews completed pursuant to the Bellmon Amendment²⁸⁵ compromised ALJ decisional independence. The *Heckler* court agreed with the Association that “the injudicious use of phrases such as ‘targeting,’ ‘goals,’ and ‘behavior modification’ could... tend[] to corrupt the ability of administrative law judges to exercise” decisional independence.²⁸⁶

Although the *Heckler* case focused on pre-effectuation reviews analyzing allowance rates and motion rates,²⁸⁷ the SSA’s current “targeted” policies that strongly encourage ALJs to issue at least 500 to 700 cases per year similarly focus on “targeting” and “goals.” Even worse, as discussed *supra* Section IV.A, the targets are arbitrary and fail to take into account the time needed for an ALJ to properly consider the evidence and issue a decision compliant with federal disability law. In *Heckler* language, the SSA’s “unremitting focus on” policies that could “reasonably... pressure” ALJs to deviate from a thoughtful dispositional process were held to “create an untenable atmosphere of tension and unfairness which violate[s] the spirit of the APA, if no specific provision thereof.”²⁸⁸ The SSA’s arbitrary disposition targets create similar “untenable” pressures, and therefore likely violate the APA.

The Committee’s recommendations, discussed *infra* Section VI, seek to remedy the harmful effect that the SSA’s arbitrary disposition targeting has on ALJ decisional independence. Despite any empirical evidence supporting the feasibility of this fast-paced docket, the Cristaudo 500-700 goal is singularly focused. To meet these goals, ALJs must sacrifice essential deliberation, thus eroding their decisional independence. The Committee seeks to rectify this *Heckler* violation by giving ALJs latitude to fully review the case record and decide the case on its merits.

Additionally, SSA has used the *Heckler* decision to justify the agency’s refusal to review outlier ALJs such as those with extremely high-allowance rates or disposition numbers. However, the *Heckler* decision only discusses pre-effectuation reviews, which are conducted within sixty days of the decision and before benefits are finalized. *Heckler* cautions that singling out ALJs’ decisions before benefits are awarded pressures ALJs and quashes decisional independence. The Court does not comment on post-effectuation reviews which occur after benefits are finalized and when the award generally cannot be reversed. Post-effectuation reviews do not impede decisional independence because no pressure exists to change the

²⁸⁴ 594 F.Supp. 1132 (D.D.C. 1984).

²⁸⁵ Pub.L. No. 96-265 (1980).

²⁸⁶ 594 F.Supp. at 1143.

²⁸⁷ *Id.* at 1134.

²⁸⁸ *Id.* at 1142-43.

outcome of the case; therefore, the Committee urges SSA to conduct post-effectuation reviews of outlier ALJs.

V. DISABILITY LAWYERS WHO CASH IN ON SSA'S CURRENT PROGRAM STRUCTURE CREATE OBSTACLES TO REFORM.

Disability hearings are non-adversarial, so there are no advocates present that can argue on behalf of the federal government or the American taxpayers. Claimants, on the other hand, have representation at an ALJ proceeding. Claimant representatives are compensated *only if* their clients are approved for disability benefits. These representatives earn up to \$6,000 for each claimant they successfully place on disability assistance programs.²⁸⁹ Disability claimant representation is now an extremely profitable industry as “all fees paid by SSA to claimant representatives increased by 48 percent between 2007 and 2010 with SSA paying \$1.74 billion in fees [largely from the DI trust fund] by 2010.”²⁹⁰

The National Organization of Social Security Claimants' Representatives (NOSSCR), an association of attorneys, non-attorney representatives, and paralegals who represent disability claimants, actively lobbies against common sense reform of the disability system due to its vested interest in ensuring that more people are placed on disability rolls. For example, the Administrative Conference of the United States, an independent government agency, noted that, in 2006, when SSA last revised regulations regarding evidence submission, NOSSCR was successful in lobbying SSA to issue a final regulation that did not require claimants to submit evidence adverse to their claims.²⁹¹ As a result, ALJs often make decisions based on incomplete and biased information.

Furthermore, agency policy to reduce the backlog has benefited NOSSCR and its members in several ways. First, the agency's singular focus on quantity of dispositions meant that more people overall were placed onto disability programs. Second, the agency's refusal to properly deal with rubber-stamping ALJs meant that NOSSCR could count on hundreds of ALJs to award benefits with near certainty. Third, SSA's disposition targets caused many ALJs to award benefits inappropriately, since issuing a denial, unlike awarding benefits, is more time-consuming and often appealed. Fourth, the immense pressure to meet agency disposition targets led many ALJs to fail to consider all evidence when deciding cases so they could issue decisions more quickly, thereby reducing claimants' burden of proof. Finally, as a result of pressure from SSA leadership to dispose of as many cases as possible, ALJs resorted to techniques like OTR decisions and bench decisions which made it easier to award benefits more quickly and at reduced cost to the claimant representative's time.

²⁸⁹ See SOCIAL SECURITY ADVISORY BOARD, FILING FOR SOCIAL SECURITY DISABILITY BENEFITS: WHAT IMPACT DOES PROFESSIONAL REPRESENTATION HAVE ON THE PROCESS AT THE INITIAL APPLICATION LEVEL? at 13 (Sept. 2012) (on file with author).

²⁹⁰ *Id.* at 14.

²⁹¹ ADMIN. CONFERENCE OF THE UNITED STATES, SSA DISABILITY BENEFITS PROGRAMS: THE DUTY OF CANDOR AND SUBMISSION OF ALL EVIDENCE: FINAL REPORT, (October 15, 2012), *available at* http://www.acus.gov/sites/default/files/documents/ACUS_Final_Report_SSA_Duty_of_Candor.pdf.

The largest disability firm in the country is Binder and Binder. The *Wall Street Journal* documented Binder & Binder's practice of withholding evidence from the SSA, stating that "[f]ive former Binder employees said in interviews that staffers routinely withheld from government submissions medical records that they believed to be potentially damaging to their client claims."²⁹² Binder & Binder founder Charles Binder is a "Sustaining Member" of NOSSCR.²⁹³ Nancy Shor, Mr. Binder's spouse, served as NOSSCR's executive director from its founding in 1979 to mid-2013 and currently serves NOSSCR as a senior policy adviser.²⁹⁴

Despite NOSSCR's antipathy for program reform, SSA leadership maintains a close relationship with NOSSCR. Senior members of SSA's management team frequently give presentations at NOSSCR conferences. For example, in 2007, then-SSA Commissioner Michael Astrue and Deputy Commissioner Lisa De Soto attended a NOSSCR conference and shared new strategies SSA was implementing to reduce the backlog of cases.²⁹⁵

Additionally, former CALJ Frank Cristaudo spoke at the 2008 NOSSCR conference in Los Angeles, expressing his support for NOSSCR.²⁹⁶ He reminded attendees that he was "a very active claimants' attorney for 12 years before [his] appointment as an ALJ," and praised NOSSCR members for their "extremely valuable service to both claimants and the Agency."²⁹⁷ In his draft application to become a Regional Commissioner of the agency, Mr. Cristaudo noted that he was "one of the more prominent members of NOSSCR, conducting training programs at most national NOSSCR conferences," and claimed to have been "the leading Social Security Attorney in New Jersey" prior to working as an ALJ.²⁹⁸ While former-CALJ Cristaudo also testified that he met regularly with NOSSCR representatives during his tenure as CALJ, he stated that he never met with taxpayer groups during his tenure.²⁹⁹

Prior to becoming CALJ, Debra Bice also worked as a claimant representative.³⁰⁰ ALJ Thomas Snook testified that CALJ Bice's close relationship with NOSSCR harmed the ability of ALJs to gain cooperation from disability attorneys during the appeals process:

They complained to her that line judges were issuing prehearing orders that contained mandatory requirements or sanctions. She immediately issued a memorandum to 'all judges' as a 'reminder' that such orders were 'inconsistent with Agency law and policy.' This is our boss letting the

²⁹² Damian Paletta and Dionne Searcey, *Two Lawyers Strike Gold In U.S. Disability System*, WALL ST. J., Dec. 22, 2011 available at <http://online.wsj.com/news/articles/SB10001424052970203518404577096632862007046>.

²⁹³ National Organization of Social Security Claimants' Representatives, Sustaining Member Webpages, available at <http://www.nosscr.org/sustaining-member-webpages> (last visited July 29, 2014).

²⁹⁴ National Organization of Social Security Claimants' Representatives Staff, available at <http://www.nosscr.org/staff>.

²⁹⁵ See AALJ Newsletter and President's Report (Oct. 29, 2007) [Request 5 – 005932].

²⁹⁶ See e-mail from former CALJ Frank Cristaudo to Lisa deSoto, et al. (Oct. 21, 2008) [Request 5 – 006422-006428].

²⁹⁷ *Id.* at 1.

²⁹⁸ See e-mail from former CALJ Frank Cristaudo to Karen Ames, Aug. 12, 2010 [Request 5 – 007587].

²⁹⁹ See Cristaudo Tr., *supra* note 5, at 207.

³⁰⁰ See Bice Tr., *supra* note 11, at 7-8.

attorneys who appear before us know that we [the agency's ALJs] have been warned not to order them to do anything.³⁰¹

This close relationship between NOSSCR and agency officials in charge of the hearing process raises questions about whether SSA leadership serves the public's interest or special interest groups.

VI. RECOMMENDATIONS

ALJs have enormous spending authority, since every decision to award benefits carries a \$300,000³⁰² average price tag in future government benefits. The focused reviews show that many high allowance ALJs do not properly evaluate the evidence in a claimants' file or correctly apply the five-step sequential process for determining eligibility for disability benefits. Undoubtedly, many of these failings are attributable to the agency's development of a factory-like production process that ignores the quality of ALJ decisions. While some ALJs shunned agency pressure, many ALJs were complicit with the agency's focus and rubber-stamped claimants onto disability, collectively wasting hundreds of billions of dollars. Given the failings of these ALJs, the agency should consider the following recommendations for reform.

1. CAP THE NUMBER OF ANNUAL ALJ DISPOSITIONS AT 600.

In response to increased scrutiny of ALJs who dispose an outrageously large number of cases per year and award benefits in nearly every decision, SSA leadership instituted caps on the number of cases assigned to an ALJ annually. The cap was initially set at 1,200 for fiscal year 2012, but CALJ Bice reduced the cap to 960 cases per year for fiscal year 2013, and to 840 cases per year for fiscal year 2014.³⁰³ CALJ Bice testified that she decided on 960 cases per year after the results of an internal agency review:

There was some evidence that ... when you got around 900 cases, there was a decline in quality, not across the board, but there seemed to be a decline in the agree rate if you went over like a thousand cases. So we thought, "Okay. Let's drop it down to around a thousand cases." And I wanted an even number per month, which was 80, just to make the math easy.³⁰⁴

³⁰¹ *Oversight of Rising Social Security Disability Claims and the Role of Administrative Law Judges: Hearing Before the Subcomm. on Energy Policy, Health Care and Entitlements of the H. Comm. on Oversight and Gov't Reform*, 113th Cong. (June 27, 2013) (testimony of ALJ Thomas W. Snook). CALJ Bice issued a memorandum to all SSA ALJs on April 16, 2012 entitled "Use of Prehearing Orders – REMINDER," in which she told ALJs of a "recent meeting with the [NOSSCR]" that brought to her attention the fact that "several recent examples of prehearing orders . . . contained mandatory requirements or sanctions . . . such orders are inconsistent with agency law and policy, and should not be used." She listed "[m]andatory timeframes for submission of evidence" and "[s]anctions for failure to comply with the terms of the prehearing order" as examples of improper hearing orders, noting that [t]he nature of the administrative review process is non-adversarial." Memorandum from CALJ Debra Bice to All Administrative Law Judges (Apr. 16, 2012) (on file with author).

³⁰² *Supra* note 4.

³⁰³ SSA briefing with Committee staff (Sept. 4, 2013).

³⁰⁴ Bice Tr., *supra* note 11.

CALJ Bice testified that after discussions with Glenn Sklar, Deputy Commissioner for the Office of Disability Adjudication and Review (ODAR); Jim Borland, Assistant Deputy Commissioner for ODAR; and Deputy Chief ALJ John Allen, the agency decided to further reduce the cap to 840 cases per year:

We thought it was more appropriate to come down to a little bit lower. It gives us a cushion. You know, if a thousand is where the quality is, let's drop it down a little bit and given judges more time on their cases.³⁰⁵

The Committee has obtained the analysis referenced by CALJ Bice in the above testimony. The analysis suggests both the 960 and 840 caps established by SSA leadership are still too high.³⁰⁶ SSA's analysis uses the "agree rate" to determine the quality of an ALJ's decisions. The agree rate is essentially the percentage at which the SSA Appeals Council agrees with an ALJ's decision. According to the analysis, ALJs who issued between 355 and 435 dispositions per year had the highest average agree rate for allowances, at 87 percent. This means that ALJs who decided between 355 and 435 dispositions per year made the highest quality allowance decisions. In contrast, ALJs who issued more than 617 dispositions a year had an average agree rate for allowances of only 78 percent, the lowest average agree rates on allowances per ALJ disposition grouping. In other words, ALJs who issued over 617 dispositions made the lowest quality allowance decisions.

While CALJ Bice was correct that higher average disposition rates are associated with lower average agree rates,³⁰⁷ she was incorrect about when the decline occurs. The 2012 analysis shows the decline occurs at 617, not one thousand as CALJ Bice testified. While it is impossible to know whether during her testimony CALJ Bice intentionally mischaracterized the agency's study, or whether she simply misremembered its details, using her own logic, the agency should cap the number of annual ALJ dispositions at 600. Since the agency found nearly one quarter of the decisions of ALJs who decide more than 617 cases are in error, high disposition ALJs are inappropriately awarding billions of dollars in disability benefits per year. By capping annual dispositions at 600, the agency would act in a consistent manner with its findings and would better serve the truly disabled and taxpayers.

³⁰⁵ *Id.*

³⁰⁶ Social Security Administration Memo on Production Levels and Decision Quality (Sept. 7, 2012) [Request 4 – 00001-5].

³⁰⁷ See Bice Tr., *supra* note 11, at 43-44. "The agree rate is -- we take all of the cases that go to the Appeals Council on a request for review, plus those cases that come in on the sample of fully favorables, and we exclude -- we look at the cases where the Appeals Council has granted review, and they grant review and they either remand or reverse the case. That doesn't mean that the cases that they denied review were perfect, but they decided that there was not a basis for granting review. And when they grant review and remand or reverse -- or when they remand, it doesn't mean that necessarily the decision was wrong. It means that there was non-policy-compliance, some policy was not complied with, or there was an error of law. And so they're remanding it for further development.

We also exclude from the agree rate four categories that are really beyond the ALJ's control. One is when new evidence comes to the Appeals Council, because the judge couldn't have considered it. Another one is when there is an inaudible recording, one where there's a lost file, or when there is a subsequent application. Because those are all beyond the ALJ's control. So they get that data, and that's a 13-month rolling average of the agree rate."

2. CONDUCT AN INDEPENDENT STUDY OF THE AMOUNT OF TIME IT TAKES ALJs TO PROPERLY REVIEW EVIDENCE, HOLD HEARINGS, ISSUE DECISION INSTRUCTIONS, AND REVIEW AND SIGN A DECISION.

Over the past two decades, the agency has failed to study the average amount of time it takes an ALJ to properly review evidence, hold a hearing, issue decision instructions to a decision writer, and review and sign decisions. As discussed in Section II, SSA conducted its last empirical study two decades ago and the results of this study suggest that the agency's 500 to 700 production goals are set entirely too high. Moreover, as discussed in Section II, when the SSA OIG analyzed ALJ disposition data in order to analyze the appropriate number of ALJ dispositions, it believed that 400 annual dispositions was a reasonable minimum number. To date, the agency has refused to commit to conducting an independent study even though such a study would better inform agency policy moving forward.

3. IMMEDIATELY SUSPEND ALL DISPOSITION TARGETS UNTIL SUCH A STUDY IS COMPLETED.

Since the production goals have no legitimate basis and, as discussed in Section II of this report, there is evidence that the disposition targets incentivize negligent behavior, the agency should immediately suspend them until the agency determines a more appropriate range that is actually supported by evidence. On July 1, 2014, Committee Chairman Darrell Issa, Subcommittee on Energy Policy, Healthcare and Entitlements Chairman James Lankford, and Subcommittee on Economic Growth, Job Creation and Regulatory Affairs Chairman Jim Jordan asked Acting Commissioner Colvin for the immediate suspension of disposition targets until the agency conducted "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."³⁰⁸ As per the agency's October 2, 2014, response to the Committee³⁰⁹, Acting Commissioner Carolyn Colvin has not only refused to suspend the disposition targets, but also refused to conduct a study about how long it should take an ALJ to decide a case, on average.

4. REMOVE ALJs WHO DO NOT CORRECTLY APPLY FEDERAL DISABILITY LAW AND POLICY.

When the agency finds overwhelming evidence that one of its ALJs is failing to correctly apply federal disability law and is overruling previous agency denials with no legitimate basis, it has a responsibility to the truly disabled and the nation's taxpayers to remove that ALJ from active decision-making. The evidence of extremely high allowance rates should have been enough to necessitate further agency investigation into ALJ decision-making, but as the Committee has extensively documented, the agency lacked any interest in the quality of ALJ decisions, even as ALJs, in the aggregate, were overturning 70 percent of previous agency denials for most of the last decade. Even when conclusive evidence exists that particular ALJs

³⁰⁸ Letter from Darrell Issa, et al. to the Hon. Carolyn W. Colvin, Acting Comm'r, Social Security Administration (July 1, 2014) (on file with author).

³⁰⁹ E-mail from Social Security Administration staff to House Oversight Committee staff (Oct. 2, 2014) (on file with author).

were disregarding the law and refusing to engage in reasoned decision-making, the agency has failed to take appropriate actions when confronted with such evidence.

The current agency policy to allow ALJs to continue deciding cases after the agency has evidence that the ALJ is either incompetent or grossly negligent must end immediately. By allowing ALJs, such as ALJ Bridges, ALJ Krafur, ALJ Taylor, ALJ McGrath as well as others profiled in this report to continue their careers of rubber-stamping claimants onto disability programs, SSA betrays taxpayers and the truly disabled.

For ALJs with problems in their decision-making that do not border on incompetence or gross negligence, the agency should institute trial periods for the ALJs to show that they can correctly apply disability law. The agency should remove the ALJ from deciding cases while the ALJ learns how to correctly apply disability law. After the ALJ receives this training, he or she should then be assigned a few sample cases to test their ability to properly evaluate the evidence and correctly apply the five step evaluation process. The ALJ should only be reinstated when the ALJ demonstrates his or her ability to decide cases in compliance with the law.

5. DEVOTE SIGNIFICANTLY MORE RESOURCES TO QUALITY REVIEW OF ALJS.

The agency should halt its plan to hire 200 new ALJs until it develops a strategy to evaluate the quality of its existing ALJs. For a decade, the agency's top focus has been on reducing the backlog at the hearing level *at any cost*. As the Committee's June 2014 Staff Report discussed, this focus had large negative consequences and resulted in hundreds of thousands, if not millions, of people being inappropriately placed onto federal disability with a large cost to the truly disabled and the nation's taxpayers. The focused reviews of ALJs indicate that the agency confronts a large scale problem with ALJs who misunderstand and misapply disability law.

Now is the time for the agency to reverse course and prioritize the quality of ALJ decision-making. Currently, the agency only conducts focus reviews of two ALJs per month. Given that the agency has 1,400 ALJs, it would take nearly 60 years for the agency to review whether its ALJs are correctly following disability law. This is unacceptable. The agency should commit to increasing the number of ALJ reviews to at least ten per month. A June 2014 memorandum from the Minority staff of this Committee recommended that SSA "expand quality improvement efforts for ALJs, including at least 20 focused reviews per month of decisions made by ALJs."³¹⁰

VII. CONCLUSION

The Committee has found that SSA ALJ decision-making is rife with errors, from improperly assessing relevant evidence and expert testimony, to improperly relying on claimant-representative briefs, to refusing to hold meaningful hearings, and purposely deviating from established disability law. Many of the ALJs with poor focused reviews feel that they are "above

³¹⁰ Memorandum from Democratic Staff to Democratic Members of the Committee on Oversight and Government Reform (June 9, 2014) (on file with author).

the law” and defiantly reject the agency’s targeted training efforts intended to improve the ALJ’s ability to correctly apply the law and comply with agency policies. SSA has abdicated their responsibility to award benefits to the truly disabled and to protect taxpayer dollars from waste and abuse. Moreover, by allowing ALJs to rubber-stamp claimants on to disability programs, they deny legitimately disabled claimants access to SSA resources, and threaten the stability of the SSDI trust fund. SSA needs to address its insufficient oversight to ensure that ALJs render decisions compliant with the law and to ensure fairness for claimants and taxpayers.

On October 31, 2007, without any studies or research as a basis,³¹¹ then-SSA Chief ALJ Frank Cristaudo initiated a new policy for SSA ALJs – a target goal of 500 to 700 annual dispositions as a way to address the backlog of cases at the appeals level.³¹² According to former chief ALJ Frank Cristaudo, he intended 700 dispositions to be an upper limit for the number of cases each ALJ would dispose per year.³¹³ Despite the widespread recognition in the agency that ALJs who dispose of over 700 cases per year are probably not reviewing all of the evidence as thoroughly as the claimant and taxpayers deserve, the agency routinely allowed over one hundred ALJs to dispose of 700 or more cases each year.³¹⁴ Chief ALJ Debra Bice has kept the disposition targets in place even after an internal agency study found that quality of an ALJ’s decisions significantly decreases when the quantity of decisions increases and every level of management (national, regional, and local) have continued to press ALJs to meet individual and hearing office disposition targets at any cost even threatening the loss of privileges. The pressure on ALJs, either directly or indirectly, to meet the agency’s disposition goals resulted in many ALJs approving individuals for disability benefits who did not meet the legal requirements to receive benefits. On July 1, 2014, Committee Chairman Darrell Issa, Subcommittee on Energy Policy, Healthcare and Entitlements Chairman James Lankford, and Subcommittee on Economic Growth, Job Creation and Regulatory Affairs Chairman Jim Jordan asked Acting Commissioner Colvin for the immediate suspension of disposition targets until the agency conducted “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.”³¹⁵ As per the agency’s October 2, 2014, response to the Committee, Acting Commissioner Carolyn Colvin has not only refused to suspend the disposition targets, but also refused to conduct a study about how long it should take an ALJ to decide a case, on average. Rather, the agency appears to have doubled down on its disastrous approach. After the Committee’s June staff report and hearings, CALJ Bice issued a statement to ALJs encouraging them to be proud of the agency’s efforts to reduce the backlog, stating: “What should you do? Just what you have been doing”³¹⁶

As a result of the agency’s emphasis on high volume adjudications over quality decision-making, the credibility of the disability appeals process has been eroded, and needs large scale reform. Genuinely disabled individuals are harmed from the programs’ explosive growth and

³¹¹ SSA briefing with Committee staff (September 4, 2013).

³¹² Memo from Frank A. Cristaudo, Chief Administrative Law Judge, Social Security Administration to Administrative Law Judges, Social Security Administration (October 31, 2007).

³¹³ SSA briefing with Committee staff (September 4, 2013).

³¹⁴ Publicly available ALJ adjudication data as well as ALJ adjudication data provided by the Social Security Administration.

³¹⁵ Letter from Darrell Issa, et al. to the Hon. Carolyn W. Colvin, Acting Comm’r, Social Security Administration (July 1, 2014) (on file with author).

³¹⁶ E-mail from CALJ Debra Bice to ODAR All ALJs (July 7, 2014) (on file with author).

face future benefit cuts as the SSDI trust fund is scheduled for bankruptcy within the next two years.³¹⁷ Moreover, the tens of millions of Americans who pay taxes to finance federal disability programs have seen their hard-earned tax dollars squandered because of agency mismanagement that has led to hundreds of billions of dollars of improper benefit awards.

³¹⁷ CONG. BUDGET OFFICE, 2012 LONG-TERM PROJECTIONS FOR SOCIAL SECURITY: ADDITIONAL INFORMATION 1 (Oct. 2012), *available at* <http://www.cbo.gov/sites/default/files/43648-SocialSecurity.pdf>.