

STRENGTHEN SOCIAL SECURITY

...don't cut it.

February 18, 2020

Commissioner Andrew Saul
Social Security Administration
6401 Security Boulevard
Baltimore, MD 21235-6401

Submitted via www.regulations.gov

Re: Notice of Proposed Rulemaking on Hearings Held by Administrative Appeals Judges, 84 Fed. Reg. 70080 (December 20, 2019), Docket No. SSA-2017-0073

Dear Commissioner Saul:

These comments are submitted on behalf of the Strengthen Social Security Coalition (SSSC), which consists of over 350 national and state organizations, representing over 50 million Americans, including seniors, women, people with disabilities, workers, people of color, veterans, and others. SSSC has many concerns about the proposed rule regarding the type of hearings held by Administrative Appeals Judges (AAJs).

It is crucial that the determination of whether Americans qualify for disability benefits is made impartially, based on evidence, and free of political influence and bias. All claimants for Social Security benefits have the right to a hearing before a fair, neutral, and impartial adjudicator in Social Security claims. That is why the Administrative Procedure Act (APA) requires the use of Administrative Law Judges (ALJs) in appeals of administrative decisions to ensure that the individual adjudicating that appeal is independent of the agency political appointees and is not subject influence regarding the outcome of the appeal.

In stark contrast, Administrative Appeals Judges, despite their title, are regular employees of the Social Security Administration, whose job performances, promotions, and even monetary performance awards are subject to the judgment and control of political appointees. Consequently, unlike ALJs, AAJs have an unavoidable appearance of an improper conflict of interest and may even have an actual conflict of interest.

Moreover, SSA fails to justify the need for this rule. The failure to justify the need is compounded by how extremely vague the rule is. The rule provides no information whatsoever on when AAJs will be assigned a claim, hold a hearing, and issue a decision. Additionally, SSA provides no details about when and how often it will expect to exercise the authority. Given the lack of details regarding what the proposed changes would mean if finalized, it is impossible to meaningfully comment on the proposal and SSA should rescind it as a result.

One rationale for the proposed changes contained in this NPRM includes the agency needing additional adjudicative flexibility to lower wait times for decisions. In reality the number of

pending claims at the hearing level has been cut in half from a high of 1.122 million in Fiscal Year 2016 to 540,537 in November 2019. The average processing time has also fallen from a high of 605 days in Fiscal Year 2016 to 414 days as of November 2019.

Given the dramatic drop off in disability claims, it is projected that the still too-long waits will continue to decline. SSA has failed to demonstrate the need for this proposed change – a change that will, at the least, result in an appearance of a conflict of interest.

SSA asserts that AAJs are as qualified and experienced and receive the same training as ALJs. Just because SSA asserts this does not make it true and the Commissioner fails to provide any evidence or information to allow the public to evaluate that statement. All current SSA ALJs were hired through the competitive service hiring process overseen by the Office of Personnel Management (OPM). The OPM screening process was extensive including an exam and rigorous interview process. Candidates for ALJ positions at SSA also had to have significant experience in hearings, assessing witness credibility, questioning claimants and witnesses, and overseeing a fair proceeding prior to being hired through the OPM screening process.

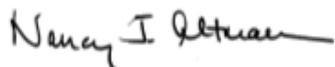
Presiding over a hearing requires skills and abilities distinct and separate from knowledge about the Social Security disability programs' regulations and policy. An AAJ who has never presided over a hearing emphatically does not have the same experience as a sitting ALJ who presides over hundreds of hearings a year.

If SSA believes that there is no difference between the skills and experience of ALJs and AAJs, one must ask why SSA even has two different positions to begin with? Does SSA seek to eventually eliminate the position of ALJs, or AAJs, entirely? Is this the first step toward combining the ALJ and Appeals Council levels of review? SSA's failure to provide the public with the information necessary to evaluate whether AAJs possess the same experience and knowledge as ALJs, such as position descriptions, makes it impossible for the public to evaluate a basic assertion on which these proposed changes are based.

We believe this rule should be rescinded. SSA should be working to increase the due process of the American people, not undermine it, as this rule would do.

Thank you for the opportunity to respond to this proposed rule.

Sincerely,



Nancy J. Altman, Chair
Strengthen Social Security Coalition