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January 24, 2008

The Honorable Michael J. Astrue
Commissioner
U.S. Social Security Administration
6401 Security Boulevard
Baltimore, MD 21235

Dear Commissioner Astrue:

This letter provides comments on the Notice of Proposed Rulemaking (NPRM) entitled, "Amendments to the Administrative Law Judge (ALJ), Appeals Council, and Decision Review Board Appeals Levels," published in the *Federal Register* on October 29, 2007 (72 FR 61218).

The proposed changes in this NPRM raise many concerns. The Social Security Administration should undertake a more detailed discussion before taking any final actions on these proposed rules.

Changing the rules for medical and vocational evidence submission. This NPRM seems to restrict the ability of claimants and their representatives to submit critical evidence during the period from five days before the hearing to the issuance of the ALJ decision. While some efficiency is necessary, it seems inappropriate to enforce strict rules when claimants and their representatives do not necessarily have control over when and how evidence is made available. For example, we question whether claimants should be held accountable for the responsiveness of health care providers. The Social Security Act requires SSA to accept new evidence adduced at a hearing. It would exceed SSA's statutory authority systematically to disallow that evidence.

Formalizing the appeals process. We have concerns about increasing ALJs' opportunities to dismiss cases based on the claimants' ability to attend pre- or post-hearing meetings. The NPRM will leave the ALJ significant latitude on this issue, and this may compromise claimants' due process rights and their access to the appeals process.

Closing the record. While closing the record will simplify the legal procedures, it is at the expense of the affected claimant. This NPRM achieves its estimated \$1.5 billion cost savings from attrition; the denied claimant who would have been allowed benefits either chooses not to reapply or dies in the interim. This change may also cause evidence to be excluded from further consideration during a reapplication hearing. This is an unacceptable means of simplifying procedures. It is also less effective in decreasing backlogs. Those whose appeal to the ALJ fails will be encouraged to submit new applications, and even a streamlined reapplication process will

only increase the backlogs at the field office and disability determination services offices. Shifting a backlog is not an effective solution.

We look forward to further discussions regarding these and other issues prior to any final actions on this NPRM. We look forward to continuing to work with you to better serve the American public. Please contact Alan Cohen (202-224-6450) at the Finance Committee to schedule a meeting to explore these issues.

Sincerely,

My Bances Jay Raskyella

Debbie Esterson Jeff Z...

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