April 1, 2020

The Honorable Andrew Saul
Commissioner
Social Securty Administration
6401 Security Boulevard
Baltimore, MD 21235

Dear Commissioner Saul:

We are writing to urge you to withdraw your proposal to change the structure of the administrative appeals process at the Social Security Administration (SSA).[1] Your proposal is contrary to the Administrative Procedures Act, creates due process concerns, and would generate new backlogs in the administrative appeals process.

Under the Act, administrative law judges (ALJs) have statutory protections affording them independence from their agencies. This reduces agency pressure and influence on ALJ decision making. At the Social Security Administration, ALJs have exclusive authority and the independence to adjudicate disability claims appeals from individuals whose initial application was denied.[2]

The rule proposed by your agency in December 2019 would authorize Administrative Appeals Judges (AAJs), in addition to ALJs, to adjudicate SSA disability claims appeals. But AAJ's have neither the independence nor the claims adjudication experience that ALJs have, and AAJs do not share the same statutory independence as ALJs under the Act. For example, ALJs may not be suspended without a finding of good cause by an independent board[3] and are paid based on a pay-rate system, which does not consider agency performance ratings.[4] In contrast, AAJs are regular employees of the SSA without protections to ensure impartial decision-making.[5]

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[1] *See* Notice of Proposed Rulemaking, *Hearings Held by Administrative Appeals Judges of the Appeals Council* (RIN 0960-AI25), 84 Fed. Reg. 70080 (Dec. 20, 2019) (online at www.govinfo.gov/content/pkg/FR-2019-12-20/pdf/2019-27019.pdf).

[2] 5 U.S.C. § 556.

[3] 5 U.S.C. § 7521.

[4] 5 U.S.C. § 5372.

[5] *See* 5 U.S.C. § 4301(2)(D) (excluding ALJs from the definition of "employee").

Furthermore, AAJs are not qualified to fill the role of ALJs. An AAJ is "a management official responsible for formulating, determining, or influencing the policies of the agency." In this capacity, AAJs take actions related to the appeals process following an ALJ decision. This is different from the role of ALJs, who preside over *de novo* hearings and therefore require special knowledge and abilities that are not similarly required of AAJs.[6]

The Trump Administration claims that the proposed rule will reduce the backlog of Social Security Disability claims. But, by the end of fiscal year 2019, the staff of more than 1,300 Social Security ALJs reduced the pending number of cases to its lowest point in 15 years.[7] We should build on that good work rather than undermine it by diluting the qualifications necessary to administer decisions that are sometimes life and death matters for applicants.

In addition, the proposed rule does not explain the impact that the change will have on access to the Appeals Council, which is composed of AAJs who review ALJs decisions.[8] If AAJs are removed from their principal assignment of reviewing appeals, it is unclear how the Social Security Administration will avoid creating long delays for Appeals Council review. The Appeals Council is already experiencing backlogs, with an average wait of 250 days for a request to be processed for review in 2019.[9]

The Administration's proposed rule also limits claimants' appeals rights by making abuse of discretion an insufficient standard for appeal. Instead, the Appeals Council would review a case only if it was reasonably probable that an "error, abuse of discretion, defect, or omission … changed the outcome of the case or the amount of benefits owed to any party." This change to a higher standard of review creates acute due process concerns.[10]

To maintain the independence of adjudications and the rights of individuals engaged in the adjudications process, it is essential that this proposed rule be withdrawn.

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[6] Letter from Chairman Richard E. Neal, Committee on Ways and Means, et al., to Commissioner Andrew Saul, Social Security Administration (Feb. 18, 2020) (online at https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/AAJ%20NPRM%20Comment%20Letter.pdf).

[7] Social Security Office of Retirement and Disability Policy, *Program Provisions and SSA Administrative Data* (accessed Mar. 9, 2020) (online at www.ssa.gov/policy/docs/statcomps/supplement/2017/2f8-2f11.html); Association of Administrative Law Judges, *AALJ Comment to Notice of Proposed Rule Making for Re-Naming Attorney-Examiners from the Appeals Council as Administrative Appeals Judges and Allowing them to Conduct Initial Disability Hearings* (accessed Mar. 10 2020*)* (online at https://d2fwhheo3hasol.cloudfront.net/wp-content/uploads/bsk-pdf-manager/2020/01/AALJ-Comment-1-27-2020-2.pdf).

[8] Social Security Administration, *Hearings and Appeals* (accessed Mar. 27, 2020) (online at www.ssa.gov/appeals/about_ac.html).

[9] Letter from Chairman Richard E. Neal, Committee on Ways and Means, et al., to Commissioner Andrew Saul, Social Security Administration 5 (Feb. 18, 2020) (online at https://waysandmeans.house.gov/sites/democrats.waysandmeans.house.gov/files/documents/AAJ%20NPRM%20Comment%20Letter.pdf).

[10] *See* Notice of Proposed Rulemaking, *Hearings Held by Administrative Appeals Judges of the Appeals Council* (RIN 0960-AI25), 84 Fed. Reg. 70080 (Dec. 20, 2019) (online at www.govinfo.gov/content/pkg/FR-2019-12-20/pdf/2019-27019.pdf).

The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X. If you have any questions regarding this request, please contact Committee staff at (202) 225-5051.

Sincerely,

Carolyn B. Maloney
Chairwoman
Committee on Oversight and Reform

Gerald E. Connolly
Chairman
Subcommittee on Government Operations