

# United States Senate

WASHINGTON, DC 20510

November 16, 2016

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

Dear Acting Commissioner Colvin:

I write today to offer feedback on the Social Security Administration's (SSA) notice of proposed rulemaking (NPRM) that would revise procedures used in SSA's administrative review of applications to the Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) programs. It is clear that changes must be made to the application process for these programs to improve the timeliness of determinations, so I appreciate the intent of the NPRM (SSA-2014-0052) to improve and standardize the operation of appeals hearings and Appeals Council reviews nationwide.

Maine has a particular interest in the NPRM, not only because it would mark a nationwide rollout of some of the procedures currently being tested in SSA's Region I—which encompasses New England—but also because of the substantial wait times that Maine SSDI applicants experience. Claimants with substantial disabilities should not be forced to wait months or years for a final determination of their eligibility. Many people spend the application period for disability benefits impoverished, at risk of failing health, and facing an uncertain future. Applicants in Maine wait an average of 15.5 months from the time they request an appeals hearing at the Portland SSA hearing office to the date that it takes place.<sup>1</sup> This delay can cause significant adversity for people who are waiting, as successful SSDI applicants have little to no earnings during the application process. Compounding this hardship is the fact that the hearing is only one part of a multi-stage determination process that can stretch for well over a year, if not longer.

Because of these lengthy application processing times and the high rate of SSDI receipt in Maine, last fall I held a roundtable in Maine to discuss improvements to the SSDI program and I subsequently released a whitepaper that proposes a set of policy changes, including some of those in the NPRM. One of the proposals common to the NPRM and the whitepaper is to increase the amount of advance notice provided to applicants about hearings before an Administrative Law Judge (ALJ), in an effort to provide applicants ample time to assemble medical evidence prior to their hearing. While I was glad to see this provision included in the NPRM, I hope that a final rule will include a 75-day advance notice, rather than the 60-day notice that SSA has proposed. Both the Bipartisan Policy Center's Disability Insurance Working Group<sup>2</sup> and ALJs and Hearing Office Directors surveyed by the Administrative Conference of

<sup>1</sup> Social Security Administration. 2016. *Average Wait Time Until Hearing Held Report*. September. Accessed October 25, 2016. [https://www.ssa.gov/appeals/DataSets/01\\_NetStat\\_Report.html](https://www.ssa.gov/appeals/DataSets/01_NetStat_Report.html).

<sup>2</sup> Disability Insurance Working Group. 2015. "Improve the SSDI Program and Address the Impending Trust Fund Depletion." *Bipartisan Policy Center*. August. Accessed October 25, 2016. <http://bipartisanpolicy.org/wp-content/uploads/2015/08/BPC-Economy-SSDI-Program.pdf>, 18.

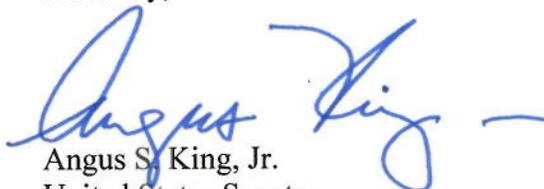
the United States<sup>3</sup> support adopting the 75-day notice policy that has been piloted in Region I, so I respectfully request that SSA consider this feedback and adopt a nationwide 75-day notice requirement in the final rule.

Another aspect of the NPRM that is largely in line with what I proposed in my whitepaper is the plan to encourage applicants' submission of evidence at least five business days prior to an appeals hearing. Applying this rule nationwide should, in tandem with the 75-day advance notice requirement discussed above, lead to evidentiary records that are more complete on the hearing date, thereby improving the fairness and efficiency of the adjudicative process. SSA must ensure, however, that the final version of this requirement is structured so that applicants who are unable to provide evidence in advance of the deadline due to reasons outside their control—e.g., status as an unrepresented claimant or delayed responses from medical providers to timely record requests—are not denied the chance to have the full slate of relevant evidence accounted for in the appeals process.

Additionally, given feedback provided both by ALJs<sup>4</sup> and claimant representatives<sup>5</sup> in Maine about uneven enforcement of the rule during the Region I pilot, both the general parameters of the five-day rule and the bounds of the good cause exception must be clearly defined in the final rule so that ALJs will apply them consistently within and across hearing offices and regions. This exception should also be included in the proposed five-day rule for written statements, as it is reportedly not uncommon for SSA to have yet to mark submitted evidence as exhibits in advance of the five-day deadline, which hinders representatives' ability to draft a constructive statement.<sup>6</sup> For the sake of consistency, it would be worthwhile to provide the exception for subpoena requests and objections as well. The five-day rule can, if it includes adequate exceptions and is evenly enforced, improve the efficiency of the adjudication process while protecting the rights of claimants.

I support your agency's efforts to promote a faster appeals process that improves administrative efficiency while remaining fair. Should SSA account for the concerns that I have outlined above, I believe that a final rule based on this NPRM will be a valuable step forward. I look forward to continuing to work with you to improve the disability review process so that people with work-limiting disabilities are treated fairly and their applications are handled efficiently. Should you have any questions about this letter, please direct your staff to contact Aisha Woodward or Will Woodworth in my office at 202-224-5344.

Sincerely,



Angus S. King, Jr.  
United States Senator

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<sup>3</sup> Office of the Chairman. 2013. "SSA Disability Benefits Adjudication Process." *Administrative Conference of the United States*. December 23. Accessed October 25, 2016. <https://www.acus.gov/report/assessing-impact-region-i-pilot-program>, 44-45.

<sup>4</sup> *Ibid*, 42.

<sup>5</sup> National Organization of Social Security Claimants' Representatives. 2016. "Re: Notice of Proposed Rulemaking on Ensuring Program Uniformity at the Hearing and Appeals Council Levels of the Administrative Review Process." August 9. Accessed October 25, 2016. <https://www.regulations.gov/document?D=SSA-2014-0052-0023>, 7.

<sup>6</sup> *Ibid*, 6.