



**COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL
AFFAIRS**

**SUBCOMMITTEE ON REGULATORY AFFAIRS AND FEDERAL
MANAGEMENT**

UNITED STATES SENATE

MAY 12, 2016

STATEMENT FOR THE RECORD

**THERESA GRUBER
DEPUTY COMMISSIONER
FOR DISABILITY ADJUDICATION AND REVIEW
SOCIAL SECURITY ADMINISTRATION**

Chairman Lankford, Ranking Member Heitkamp, and Members of the Subcommittee:

Thank you for this opportunity to testify on “Examining Due Process in Administrative Hearings.” My name is Theresa Gruber. I have been the Deputy Commissioner for Disability Adjudication and Review at the Social Security Administration (SSA) since July 2015.

Today, I will talk about the significant public service challenges that we face, with over 1.1 million individuals and their families awaiting a hearing decision; they are counting on us, with the support of Congress, to find a solution. These individuals are waiting an average of 17 months for an answer from us—and in some places, the wait is much longer.

I began my career in Social Security working in a field office in Minnesota. I have worked directly with the people we serve and for me and the men and women who work with me, these are not just shockingly large numbers. We see the faces and families behind each appeal. It is our duty as public servants to use every tool we have to address this crisis. I will briefly discuss why we are facing this crisis, and I will tell you about our multi-year plan to address it: the Compassionate and Responsive Service (CARES) plan, which I have attached, see Attachment A. The CARES plan recognizes that we can only address wait times through a comprehensive and multi-layered approach that includes strategies and tactical initiatives in a variety of areas such as business process improvements, information technology innovations, and investments in staffing and facilities. Those investments include a temporary measure to augment our adjudicative capacity by using the skills of our administrative appeals judges (AAJs) to help in our efforts.

Let me assure you at the outset that our decision to have AAJs on the Appeals Council hold hearings and issue decisions in certain cases comports with high standards of due process. Currently, AAJs have the authority to hold hearings. Since its inception in 1940, our hearings process – including hearings held by the Appeals Council – safeguards a claimant’s right to due process. Our hearings process provides, for example, a neutral decisionmaker; an opportunity to make an oral presentation to the decisionmaker; an opportunity to present evidence and witnesses; and opportunity to confront and cross-examine evidence and witnesses; the right to appoint a representative; and a decision based on the record with a statement of the reasons for the decision.

And, because AAJs on the Appeals Council will operate under the same standards and rules as the ALJ hearing process, they too will meet these requirements. When AAJs on the Appeals Council hold hearings and issue decisions, they will act as neutral decisionmakers, as do our ALJs. Moreover, our decision to have AAJs hold hearings and issue decisions is consistent with our longstanding regulations and is merely a temporary measure to augment our adjudicative capacity and address this unacceptable backlog that is delaying decisions for too many Americans.

The success of our efforts depends on two conditions: adequate and sustained funding from Congress and a sufficient and updated list of administrative law judge (ALJ) candidates from which to hire. The Fiscal Year (FY) 2017 President’s Budget would allow us to continue to fund

our increased hiring needs and complete more hearing decisions. But funding is not enough – we also need a sufficient pool of ALJ candidates to enable us to hire in a timely manner enough ALJs. Unfortunately, for a number of years, we have not been able to hire a sufficient pool of ALJ candidates meeting SSA’s unique needs, but as described below, we are collaborating with our Office of Personnel Management (OPM) colleagues to develop new solutions to this issue.

Introduction

The work we do matters for millions of our citizens – seniors, people with disabilities, children, widows, and widowers. We administer a number of programs, including the Old-Age, Survivors, and Disability Insurance (OASDI) program, commonly referred to as “Social Security.” Social Security is a social insurance program under which workers earn coverage for retirement, survivors, and disability benefits by working and paying Social Security taxes on their earnings. The DI portion of Social Security helps replace a portion of the lost earnings for workers who, due to their significant health problems, can no longer work to support themselves and their families. DI also ensures that workers who become disabled and their families are protected from the loss of future retirement benefits. The contributions that workers pay into Social Security also finance the share of our administrative budget used for processing Social Security claims and benefits, with the level of funding set by Congress each year.

We also administer the Supplemental Security Income (SSI) program, funded by general revenues, which provides cash assistance to aged, blind, and disabled persons with very limited income and resources. Between Social Security and SSI, we pay over \$930 billion per year to more than 65 million beneficiaries. As with the OASDI program, the level of funding provided to administer the SSI program is set by Congress each year.

The scope of our work is immense. Just to provide a few examples, in FY 2015, over 40 million people visited our 1,200 field offices nationwide; we handled approximately 37 million calls on our National 800 Number; and we completed over 8 million claims for benefits. SSA also completed 87 million online transactions. In addition, in FY 2015, we received around 746,000 hearing requests, and issued approximately 663,000 hearing dispositions through our network of 163 hearing offices. Nearly all of these hearing requests and dispositions involve claims for Social Security disability benefits or SSI payments. We perform all this work – and much more work – in an extremely efficient manner, with our discretionary administrative costs being only about 1.3 percent of our benefit payments.

A Plan for Compassionate and Responsive Service

Unfortunately, at present, and for the first time in our history, over 1.1 million people are waiting for a hearing decision. For a full description of our administrative process, see Attachment B. Almost all of the people waiting for a hearing decision are claimants seeking Social Security disability benefits or SSI disability payments whose claims have been denied at the State DDS level. The Act has a very stringent definition of disability—i.e., the inability to engage in

substantial gainful activity due to a medically determinable physical or mental impairment that has lasted or is expected to last at least one year or to result in death¹ and many individuals are initially denied benefits ultimately are found eligible. In many cases, the appeals process uncovers more detailed and complete medical evidence and sometimes individuals' medical conditions deteriorate, which can lead to successful applications upon appeal. Disability recipients have very serious health conditions - among those who start receiving disability benefits at the age of 55, one in five men and one in seven women die within five years of the onset of their disabilities.

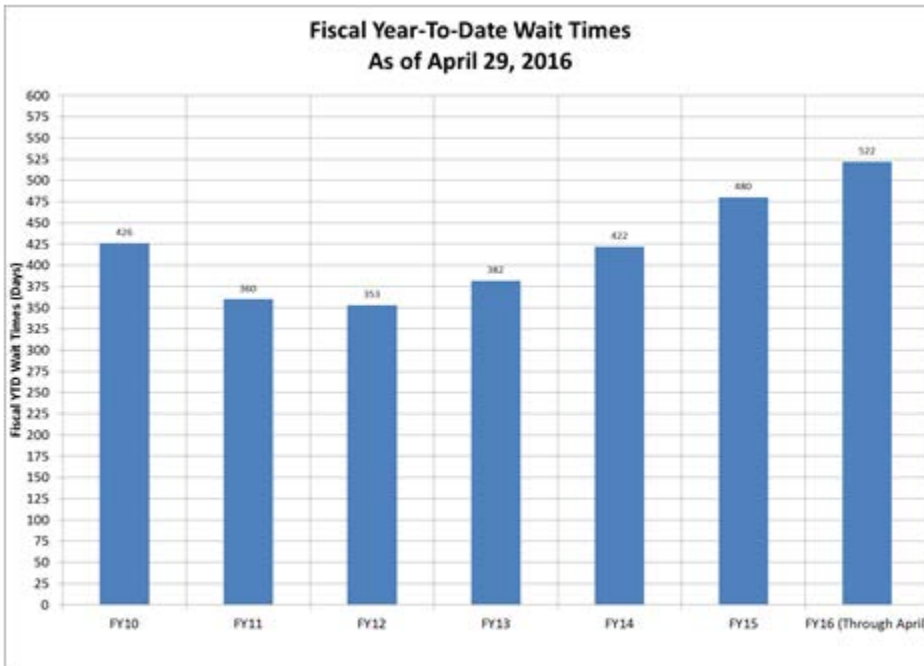
While claimants await a hearing, they may develop new or worsening conditions. Moreover, it is not uncommon for these claimants to endure severe financial difficulties because they are out of the workforce, often for extended periods. Therefore, hearing delays can intensify an already difficult and stressful situation. Wait times for a hearing decision are now approaching 17 months on average. The situation is urgent. Our employees have shared with us stories of individuals who became or were within days of becoming homeless because of the time it took to get a hearing. Our employees also have told us of individuals who, because they are unable to get necessary medical treatment, experience significant worsening in their conditions. Our judges have shared with us having to dismiss cases, or substitute a party, because claimants have died while waiting for a hearing and decision.

Although we made measurable progress through 2011 toward reducing the number of hearings pending, severe budget cuts adversely affected our progress. For three years in a row, in FYs 2011-2013, we received for each year nearly a billion dollars less than the President requested in his budget. During those years, we had to make deep reductions in our services to the public and in our stewardship efforts, while still striving to meet our mission and serve the public. For example, decreased budget allocations drove our difficult decision to curtail plans to open eight additional hearing offices that would have increased adjudicatory capacity. We also were unable to hire the numbers of ALJs necessary to maintain progress. While our budgets were more stable in FYs 2014 and 2015, we faced challenges in hiring a sufficient number of ALJs to meet SSA's needs to replace the ALJs lost to attrition.

Exacerbating the situation, over the same period, we received a record number of hearing requests, due primarily to the aging of the baby boomers as they entered their disability-prone years. We also received an increase in applications during the economic recession and its aftermath. During this time, our resources to address disability claims did not keep pace with the increase in applications and backlogs grew. Primarily for these reasons, wait times for a hearing and the number of pending hearings began to rise again. (See Figure 1.)

¹ See 42 U.S.C. § 423(d)(1) (2016).

Figure 1.



In light of these challenges, Acting Commissioner Colvin charged me with developing a comprehensive strategy to address our hearings wait times and the growing queue of people awaiting a hearing decision. We ultimately developed the CARES plan to help reduce wait times and the number of cases pending a hearing.

As noted earlier, the CARES plan recognizes that we can only address wait times through a comprehensive and multi-layered approach using the tools available to us today, while at the same time developing and implementing new tools for the future. Through our CARES plan, we expect in FY 2018 that we will begin to reduce the average wait for a hearing decision, which currently averages over 540 days. With adequate and sustained funding, we plan to achieve an average wait time of no more than 270 days in FY 2020. We also expect to reduce the number of pending cases by half in FY 2020.

The CARES plan combines a number of immediate, tactical, and strategic initiatives to increase hearings decisional capacity, improve ALJ support and staff efficiency, and strengthen personnel oversight, accountability, and policy compliance without sacrificing our commitment to quality. We consider the CARES plan a living document, which will change as we gain more experience with each initiative, begin new initiatives, and adapt to the changes in our operational environment. However, the success of our plan will require adequate and sustained funding for the various initiatives as well as a sufficient pool of ALJ candidates meeting SSA's unique needs.

People and Quality

Underlying our CARES plan are two interdependent components: people and quality—engaged, well-trained people providing quality service. Our employees have a long tradition of serving our customers and a firm understanding that who we serve is why we serve. We will continue to depend on employees who work hard every day knowing that their work makes a huge difference to a person or family. Inherent in this compassionate and responsive service is quality, and quality includes the timeliness of our actions. Service delayed is service denied.

We define high-quality decisions as policy-compliant and legally sufficient decisions. We have always had to operate in a high production environment, and the hearings process is no exception. Regardless of whether they ultimately receive benefits, the millions of people who apply for our benefits deserve timely and accurate decisions. Quick decisions without quality or quality decisions without timeliness are not acceptable.

While the CARES plan includes many different initiatives, I will start with the initiative that is the topic of this hearing. Hiring ALJs is always critically important, and I will describe our efforts to do this. With the help of Congress and our colleagues at OPM, we are working to develop both short and long-term solutions. However, we do not think it is viable to build our entire plan to address the current unacceptable backlog solely around strategies related to improving ALJ hiring – progress there will not come fast enough to address the critical need to increase adjudicative capacity quickly. Given the urgency of our the need to address the hearings backlog, it would be unacceptable not to take every reasonable action to reduce the amount of time people – your constituents, many of whom have contributed into Social Security and are insured for coverage – wait for a hearing decision.

With that in mind, we developed a short-term action that we can begin immediately, and incrementally, to augment our current adjudication capacity. We call this initiative our Adjudication Augmentation Strategy (augmentation strategy). The augmentation strategy is a short-term initiative to utilize AAJs to hold hearings and issue decisions in non-disability cases² and cases that are already before the Appeals Council and may have otherwise been remanded back to the ALJ.

Augmentation Strategy

The cases targeted for the augmentation strategy represent only 3.6 percent of our hearings pending and the non-disability cases often involve issues that ALJs do not typically encounter.

² A non-disability case is an appeal of an initial eligibility determination on non-disability issues such as, but not limited to the following: insured status; age; citizenship; income; living arrangement; resources (excess resources, workers compensation, other); relationship (marital, paternity, adoptions, other); retirement factors; nonpayment of benefits because of failure to furnish proof of an SSN; alleged misinformation deterring an applicant from filing for benefits; application of an offset (windfall elimination provision, government pension offset, public disability benefit, workers compensation, other); cessation based on work activity; and overpayments.

A small number of AAJs and staff will specialize in adjudicating the non-disability issues, thus freeing up critical ALJ resources to handle disability hearings. But I want to be clear. Although the augmentation strategy is consistent with the Act and our regulations, this is a temporary initiative aimed at addressing a current need – bringing wait times down to 270 days. It allows us to use highly qualified adjudicators, whom we have thoroughly vetted, as we continue with our extraordinary efforts to hire more ALJs. The augmentation strategy is not part of a plan to replace ALJs in our hearings process.

The augmentation strategy is based on longstanding agency regulations. Since the beginning of the Social Security hearings process in 1940, our regulations have authorized the members of the Appeals Council to hold hearings. Under our current regulations, the Appeals Council has the authority to remove a pending hearing request from an ALJ, hold the hearing, and issue the decision.³ Moreover, nothing in our existing regulations precludes the Appeals Council from holding a hearing in a case that is before it on request for review or on remand from a Federal court. (See Attachment C for a Summary of Our Legal Rationale for the augmentation strategy.)

As we planned this initiative, we were very deliberate about the cases the Appeals Council would handle. We selected non-disability cases because ALJs see far fewer of these cases and therefore often do not gain enough sufficient experience to handle this work efficiently. By contrast, the Appeals Council has AAJs who specialize in these cases, making them exceptionally suitable to handle this workload timely and accurately.

When a claimant is dissatisfied with an ALJ hearing decision, she can appeal to the Council. Thus the second set of cases are a subset of cases already before the Council – cases where the Council could have completed action on the appeal but have generally remanded back to the ALJ. Under the augmentation strategy, the Council will complete the action on the case and issue the final decision, thus preventing an additional workload from returning to the hearing offices and freeing ALJs to hold hearings on other cases. The sole objective of this strategy is to increase capacity to hold more hearings and issue decisions so that we can, collectively, reduce the time people and their families are waiting for a decision.

In developing the augmentation strategy, we were careful to ensure that we took all actions necessary to protect claimants' due process rights. Let me reassure you that when AAJs conduct hearings and issue decisions, they will function as neutral decision makers and will follow the same rules that govern hearings before ALJs.⁴ We safeguard the claimant's right to due process, regardless of whether an ALJ or an AAJ conducts the hearing and issues the decision.

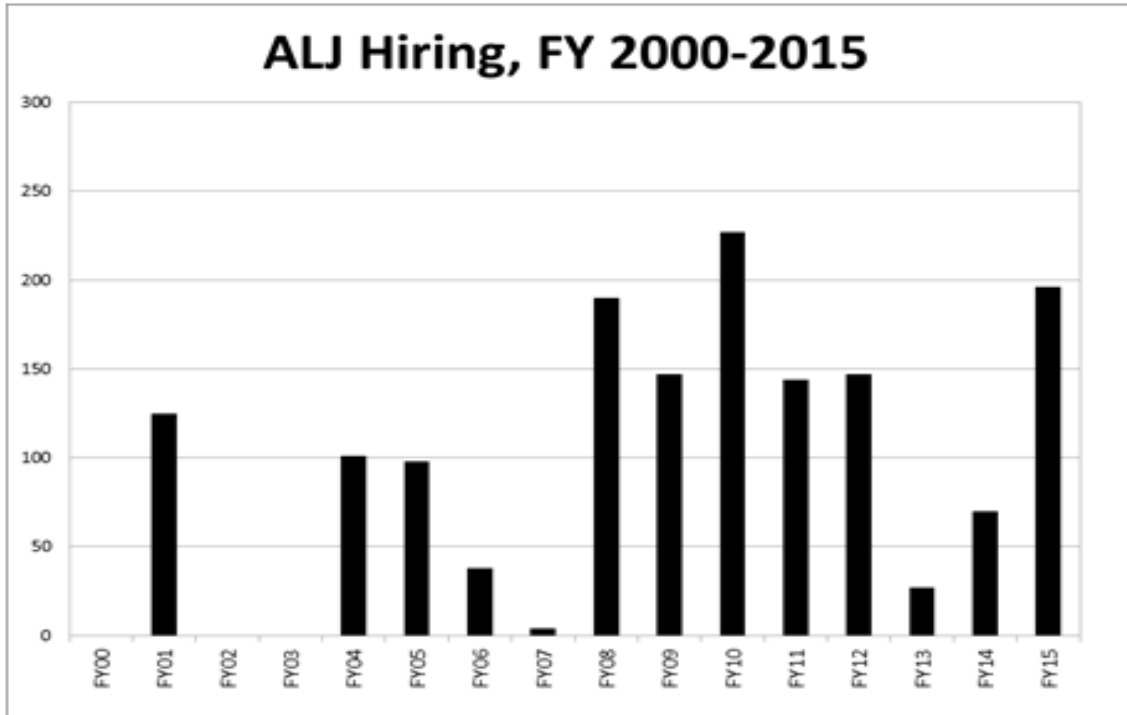
We did not decide to ask the Appeals Council to take on this work lightly. We strategically decided which cases make the most sense for the Appeals Council to handle, ensured that the Appeals Council has the authority to perform this work, and developed an implementation plan. Claimants who disagree with Appeals Council decisions will continue to be able to seek judicial

³ See 20 C.F.R §§ 404.956, 416.1456.

⁴ See 20 C.F.R §§ 404.956, 416.1456 (“If the Appeals Council holds a hearing, it shall conduct the hearing according to the rules for hearings before an administrative law judge.”).

review in Federal court. We will continue to run robust quality reviews on both ALJ and AAJ hearing decisions.

Despite any best efforts, there are far more hearing requests pending than our ALJ corps can currently handle, and our first priority must be to help the more than one million people who are waiting for an answer. We are working to hire new ALJs as quickly as we can and are working jointly with OPM on those efforts.



Administrative Law Judge Hiring

Ideally, our goal is to recruit and retain enough ALJs to process our hearings workload in a timely manner. While we have committed agency funding, we have been unsuccessful in obtaining and retaining enough ALJ candidates who meet SSA’s needs. We currently have 1,506 full time permanent ALJs on duty, but we lose 100 or more ALJs each year through retirement or for other reasons, such as a reassignment to another agency. For example, last year 112 ALJs left the agency. We hoped to hire 250 ALJs to maintain our ALJ corps, but had sufficient candidates to hire only 196 for SSA positions – a large improvement over previous years. We have hired 52 ALJs in FY 2016 and plan to hire a total of 225.

We continue to work in close collaboration with our OPM colleagues, our partners in hiring qualified ALJs. We appreciate the leadership and efforts made in this regard by OPM Acting Director Beth Cobert.

In addition, we thank Congress for recognizing the importance of this issue by enacting section 846 of the *Bipartisan Budget Act of 2015*, which requires OPM, upon our request, to “expeditiously administer a sufficient number of competitive examinations, as determined by the Commissioner, for the purpose of identifying an adequate number of candidates to be appointed as Administrative Law Judges.” To that end, I am pleased to report that OPM recently opened an examination announcement so that the current ALJ register of eligible candidates can be replenished with additional qualified applicants. OPM also refreshed the ALJ register with new candidates from the 2013 Examination this fiscal year.

While we will not begin receiving lists of potential candidates from this exam until sometime in 2017, it is a critical part of our strategy to ensure adequate ALJ hiring into the future; and in the near-term, SSA is reviewing ALJ candidates from prior exams and is working with OPM to reach the FY 2016 ALJ hiring goal. An ALJ register with a sufficient number of candidates over the next several years will be critical to our ability to hire the number of ALJs we need to deal with this public service crisis. With aggressive hiring and partnership with OPM, we plan to bring the ALJ corps to over 1,900 by the end of FY 2018. In support of our ongoing hiring efforts and the new April examination, we worked with OPM, management associations, for our judges, advocacy groups, and national, state, and local bar associations to launch a massive recruiting effort designed to attract a broad and diverse ALJ applicant pool.

Hiring a sufficient number of ALJs is critical to improving our service delivery. But it takes time to recruit, hire, and train new judges, and it requires adequate funding for our agency. In the meantime, in the absence of our CARES plan and the augmentation strategy, the number of pending hearing requests would continue to grow and individuals and their families would wait longer for decisions.

Business Process Improvements

We are aggressively hiring ALJs. But as history has taught us, while hiring a sufficient number of ALJs is a critical component of reducing the wait time for a hearing decision, it cannot be our only plan. That is why our CARES plan includes a number of initiatives that provide additional decisional capacity.

We have undertaken a number of pre-hearing triage initiatives aimed at increasing disposition capacity. These initiatives will allow us to better prepare a case for hearing and allow certain functions to be handled by staff or technology, thus freeing judges to do the work only they can do. We are also using technology to provide virtual support.

One of our initiatives to triage cases is our Pre-Hearing Conference program. We currently lose over 12 percent of scheduled hearings because claimants do not show up or unrepresented claimants seek postponements of the hearing to allow them to obtain representation. We are piloting our Pre-Hearing Conference program for unrepresented claimants. The objectives of this program are to (1) advise claimants of their right to representation, (2) begin developing the case file well before the hearing, and (3) remove roadblocks to a successful hearing, such as the need for an interpreter. So far, we have implemented this program in 36 of our 163 hearing

offices to improve the hearings process for unrepresented claimants, and we will continue to pilot this program in additional offices and to evaluate whether it effectively improves the number of hearings held for non-represented claimants.

Another triage initiative is the 1000+ Page Case Initiative. As of November 2015, data indicated that nearly five percent of all cases have over 1,000 pages of medical evidence. With the 1000+ Page Case Review, Senior Attorneys conduct pre-hearing reviews of cases with large medical files, summarize the information, and provide an analysis for the ALJ. This initiative focuses on case readiness – how we can prepare the case better for the ALJ to review. The team conducting this pilot has tested a summary for ALJs in the first phase, and has provided important feedback that will help us continue to improve our processes. In the second phase of the pilot – beginning in June 2016 – the team will collect data to determine the time saved by ALJs and decision writers from this case review. After that, we will determine whether and how to roll out the initiative nationally.

We also implemented the National Adjudication Team (NAT) with senior attorney advisors, who have the authority to issue decisions in certain cases. The NAT screens, develops, and adjudicates cases where the evidence supports a fully favorable decision, removing these cases from the pending hearings workload. We select cases based on characteristics most likely to lead to a fully favorable decision, such as alleged impairments and the claimant's age. If the NAT cannot issue a fully favorable decision after gathering medical evidence, it prepares a case summary to assist the ALJ who will hear the case. We conduct an in-line review of a sample of NAT decisions to ensure quality in the process.

Information Technology Innovations

Technology also helps us be more efficient. Video hearings have proved to be a convenient and effective alternative that allows us to conduct more timely hearings and alleviate pressure on our hearing offices with longer wait times. Increasing our use of video hearings is a key strategy in our ability to address service imbalances across the country by matching available ALJs where the need is greatest. We are just beginning to provide medical and vocational experts and claimant representatives with online electronic folder access, which will eliminate the manual work and time staff currently spend on producing compact disc copies of the record. We also are pursuing an automated appeals process for claims filed with the Appeals Council.

Facilities

We are certainly aware of and support the government's actions to reduce its physical footprint. Video hearings help with that, but we will still need sufficient space to hold hearings so that we can schedule them timely. We have a multipronged approach to better utilize our space, including repurposing vacant space for the hearings operation that is already Federally owned or leased, using existing space more efficiently, and sharing services. While we need enough appropriate space to hold hearings, we also need enough ALJs to timely hold hearings.

We are committed to working collaboratively with our unions and we have had several discussions with them about how to improve service. We remain open to all ideas. However, the status quo is not acceptable to the one million people waiting in line.

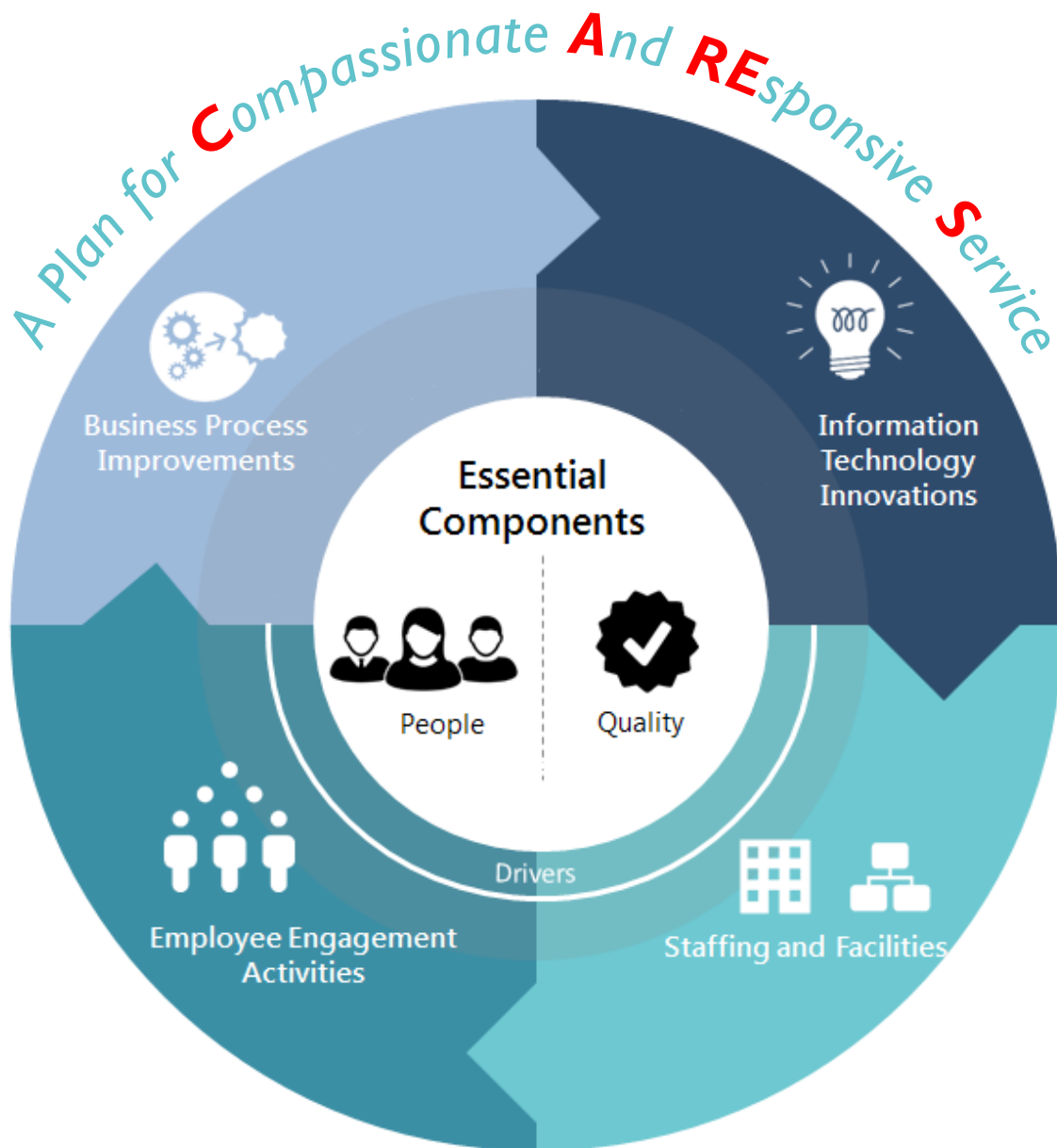
Many of us here today have a close relative or friend who has needed our programs. That is true of me, too. It is important to me both as a government leader and on a personal level that our programs work as intended. I would not use the Appeals Council's longstanding authority to hear and decide cases, or any of the other CARES initiatives, if I thought they would harm the public or interfere with due process.

I have the deepest regard for what Social Security means to Americans and for our employees who work hard to ensure we deliver quality service. We will continue to collaborate with Congress, our employees, advocates, and our Federal partners like OPM to find innovative solutions to hearing wait times. I am pleased to say that we are on target this year to reduce the wait time for those who have been waiting the longest. We have issued decisions on 99 percent of cases that began the fiscal year at 430 days old or older (our 252,000 oldest cases). That said, reducing wait times across the board must be our priority. The FY 2017 President's Budget request, which fully funds the CARES plan, gives us the best chance to stay on track and fulfill our duty as public servants. Sustained, adequate funding is critical to implementing our multi-year CARES plan to reduce the wait time for a hearing decision.

To us 1.1 million is not just a number; it is a line of people and their families—many of whom are in desperate circumstances. For many of them, long wait times can mean catastrophic consequences, such as losing a home or making agonizing choices between other basic needs. When the status quo stops working, we need to rethink what we are doing. To address the urgency of over one million people waiting for a hearing decision, we are committed to improving our process. We believe our plan, including a growing and sustained ALJ corps, numerous initiatives to more fully support the ALJ corps and appeals processes, and augmenting our ability to meet the urgent need of the public come together as a set of short and long term measures that will help us reduce the average wait time for a decision.

I thank you for your interest in discussing these important issues. I hope that this Subcommittee will work with us to improve service to our fellow Americans and your constituents. I would be happy to answer any questions.

Leading the Hearings and Appeals Process into the Future



Leading the Hearings and Appeals Process into the Future: A Plan for **C**ompassionate **A**nd **RE**sponsive **S**ervice (CARES)

Executive Summary

The Social Security Administration (SSA) is facing a significant public service crisis in our hearings and appeals process. At present, and for the first time in our history, more than one million people are waiting for a hearing decision. The situation is urgent. Our ability to decrease the number of hearings pending, reduce the average wait time for a hearing, and significantly improve our service to these claimants requires adequate and sustained funding. In addition to the necessary funding, we are committed to continue to use data analysis, to listen to our employees and partners, and most importantly, to remain dedicated to providing a high quality, modern and timely disability appeals process now and into the future.

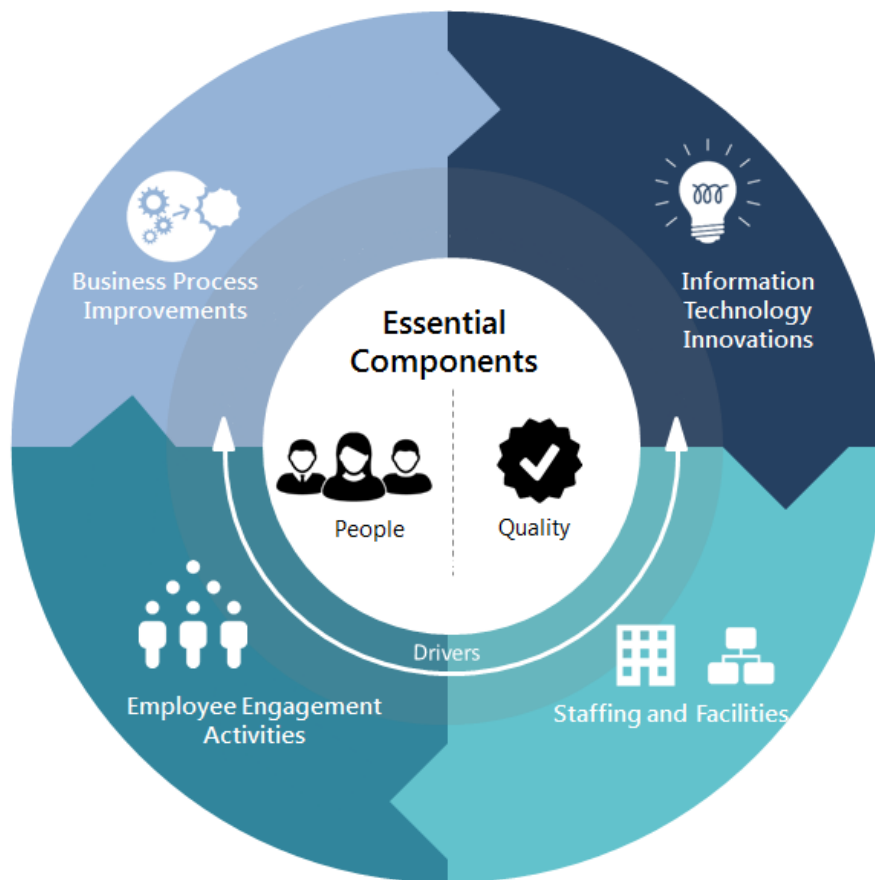
These challenges require both immediate tactical initiatives to address the over one million cases pending a hearing, and initiatives to ensure the hearings and appeals process is efficient, effective, and sustainable. The CARES plan outlines our current comprehensive and multi-layered approach to deal with the immediate crisis of the growing number of hearings pending and increasing wait times. It will also help to serve as a foundation to explore potential future initiatives, as we continue our efforts to identify ways in which we can better serve our customers.

We have built our plan on two essential components: **people and quality**—engaged, well-trained people providing quality service. We have also identified several broad categories of drivers that will help our employees provide quality service to the people who need us most. These drivers include:

- ▶ [Business Process Improvements](#);
- ▶ [Information Technology Innovations](#);
- ▶ [Staffing and Facilities](#); and
- ▶ [Employee Engagement Activities](#).

We are pursuing a number of innovations, new or enhanced practices, and quality initiatives to address our critical priority. We believe that we can combine our current plans with potential future initiatives to transform our hearings and appeals process, so we are well positioned to better serve the American public for years to come.

We have outlined a myriad of tactically important steps we can take, right now, to address our service crisis. However, we need adequate and sustained funding to execute the CARES plan. We also commit to an ongoing search for the ways in which we can serve our customers better. We will continue to use data analysis to inform, listen to our employees and partners, and most importantly, remain vigilant in our goal to serve. In our pursuit to meet the needs of the more than one million people waiting, we must consider every constructive avenue for change.



A History of Hearing Pending Levels and Wait Times

Our disability programs are complex, resource-intensive, and require robust administration. Disability claims and appeals require our employees to understand our rules and regulations, analyze the merits of each case, and make difficult decisions. While we automate where we can, the disability programs we administer require a sufficient number of well-trained, engaged employees to assist the American public with their disability appeals.

Over the history of our disability programs, there have been many initiatives to reform or improve the hearings and appeals process. However, despite any streamlining we have achieved, we have been continuously affected by external influences that slowed our hearings process. These external influences have been instrumental in increasing the number of hearings pending as well as a rise in wait times for our customers.

Administrative Law Judges (ALJs) are our primary decision makers in the hearings process. From 1999 through 2008, the Office of Personnel Management’s (OPM) ALJ registry was not updated because of an adverse ruling in litigation commonly referred to as the Azdell litigation. However, due to severe staffing shortfalls in the early 2000s, SSA received temporary authority to hire an additional 126 ALJs from the old register. While we hired this limited number of judges, it unfortunately did not keep pace with the growing number of pending cases and the attrition of approximately 100 ALJs each year, who leave primarily to retirement. The inability to hire ALJs, the number of retiring ALJs, and several years of insufficient funding caused pending levels and wait times to rise dramatically. As we

look at resolving the current crisis of over one million Americans waiting for their hearing, it is imperative that we not only replace ALJ attrition losses, but also increase the number of ALJs to reduce the number of hearings pending.

In 2007, our pending level rose to 750,000 hearings, nearly triple the number pending in 2000. The average processing time almost doubled to 500 days between 2000 and 2007. As a result, we developed an aggressive plan to reduce the growing hearings backlog by 2013. At the same time, the economy entered a recession, which contributed to a significant increase in disability applications. This increase in applications exacerbated the number of hearings pending and wait times. We worked diligently to address the growing backlog by shifting funding from our other priorities to the hearings and appeals workloads and successfully implementing many important initiatives to improve service, including:

- Completing implementation of the electronic folder eliminating our paper-intensive disability process;
- Hiring additional ALJs;
- Expanding our national video-conferencing network, allowing us to hold more hearings via video;
- Establishing National Hearing Centers, which use video technology to hold hearings to assist backlogged offices;
- Opening National Case Assistance Centers to help offices prepare cases and write hearing decisions;
- Creating a national standardized electronic business process;
- Adopting the aged case initiative and enforcing the first-in/first-out approach to reduce the number of aged cases; and
- Providing program training to ALJs and other hearing office staff through easily accessible computer systems on a large range of topics.

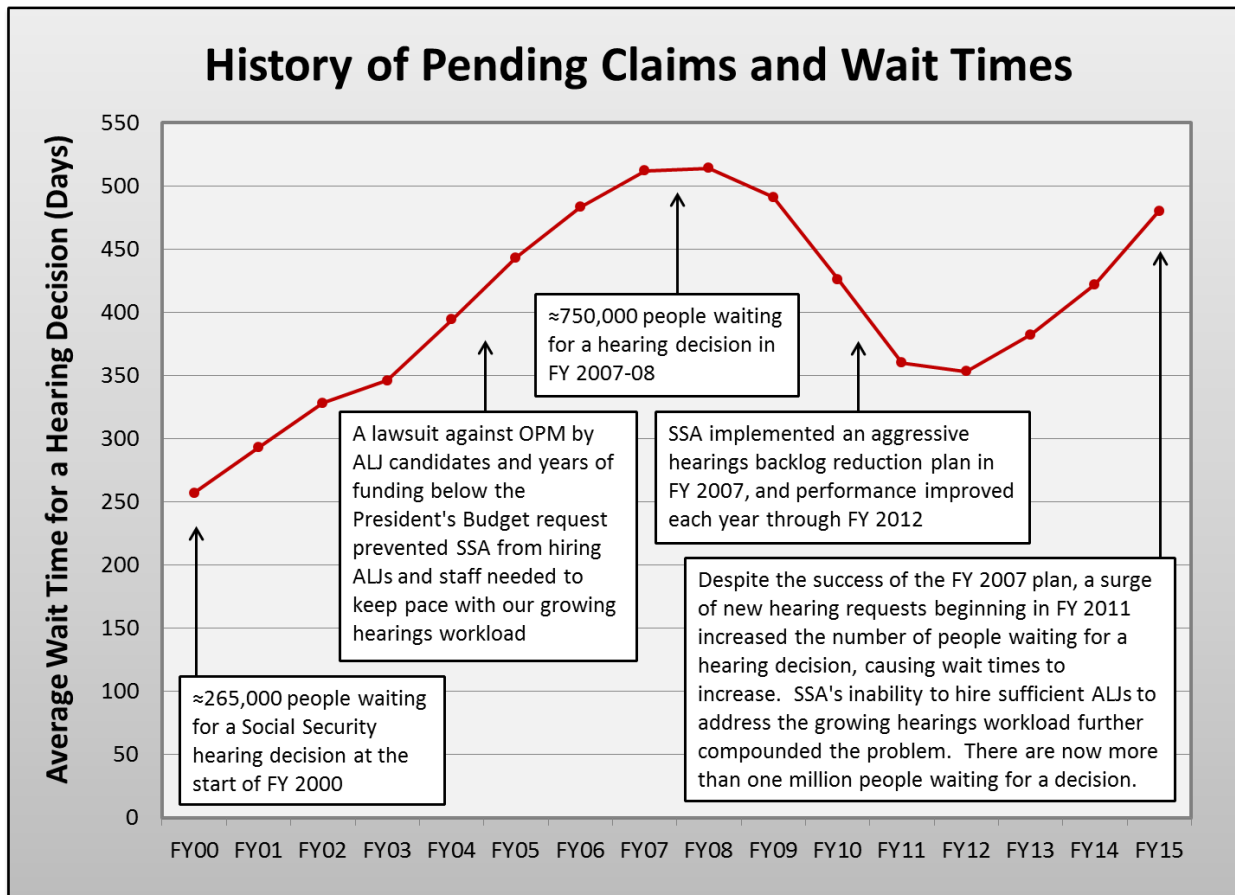
Although we made measurable progress through 2011 toward eliminating the hearings backlog, severe budget cuts adversely affected our progress. Decreased budget allocations drove our difficult decision to curtail plans to open additional new hearing offices that would have increased adjudicatory capacity. We also continued to face difficulty in hiring a sufficient number of qualified ALJs. As a result, wait times for a disability hearing and the number of pending hearings began to rise again. Now, we are mindful of these lessons learned and the ongoing impact of changes in our operational landscape.

Defining the Numbers: Cases Pending and Wait Times

Although the terms ‘pending’ and ‘backlog’ have often been used interchangeably to describe our appeals crisis, they are not the same. We can express the ‘backlog’ as a mathematical equation. The backlog, which constitutes only a part of the total pending, is the extent to which the number of pending cases prevents us from meeting our timeliness expectations. We define the hearings backlog as the number of pending cases that push the average wait time over 270 days. Currently, we have over one million people awaiting a hearing, which is about twice as many as our business process and staffing levels allow us to handle.

We base our 270-day timeframe on our statutory and regulatory timeframes for our hearings process, and the amount of time necessary for our employees to complete each stage of the process. We believe

that we will be successful in providing timely, quality hearing decisions and we will consider that we have been successful with our plan once we have met our average national processing time of 270 days.



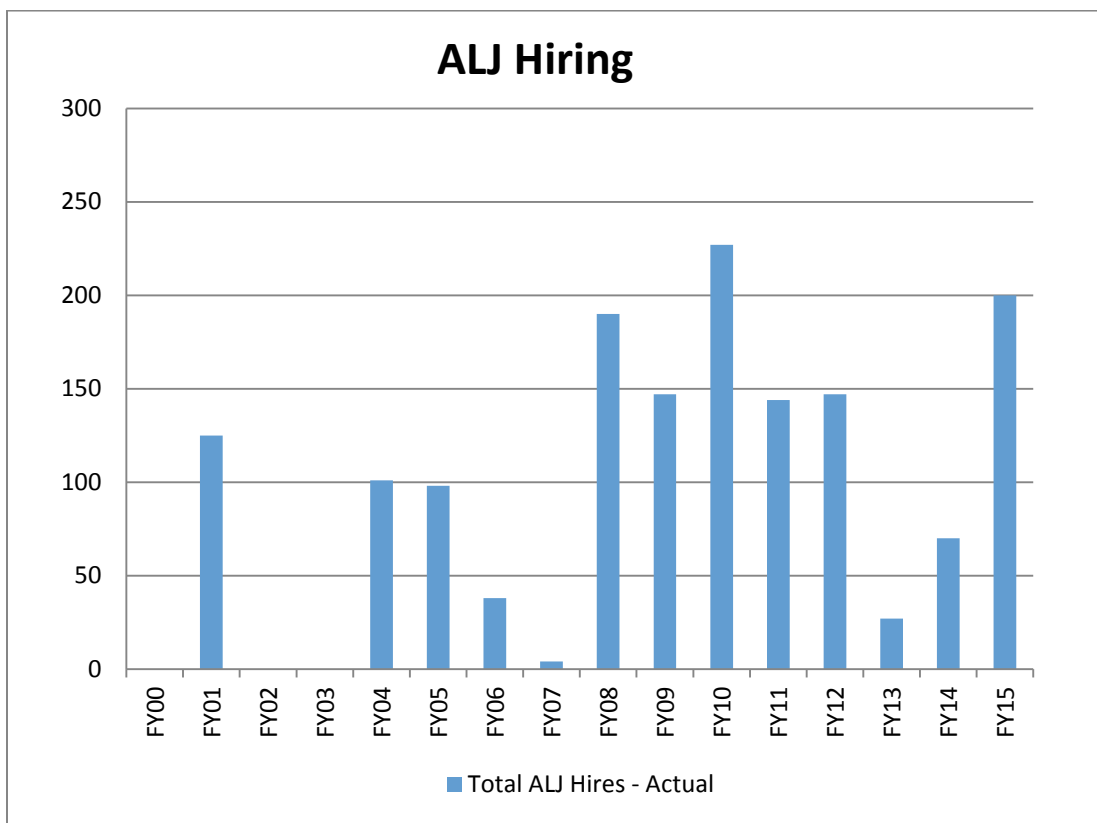
In the past, we provided the number of pending cases to inform decision makers and the public as to how efficiently the program was working. However, this measure is not necessarily meaningful to our claimants who are likely more concerned about how long they will wait for a hearing than how many people are waiting. Using average wait time, also referred to as processing time, is a better, meaningful service metric that will help us more readily define success by providing a tangible measure for our customers. A similar analogy to this expectation is individuals waiting in line at a store with building checkout lines. People begin to get upset if there are not enough cashiers on the registers. The real concern is not how many other people are waiting but how quickly the line is moving and how long it will take to be served.

Definition of Success

When the national average waiting time for a hearing decision is 270 days, we will consider the portion of our pending hearings that are considered a ‘backlog’ eliminated. We plan to achieve this goal by the end of fiscal year (FY) 2020, but the success of this plan will require adequate and sustained funding as well as OPM’s ability to provide enough qualified ALJs timely.

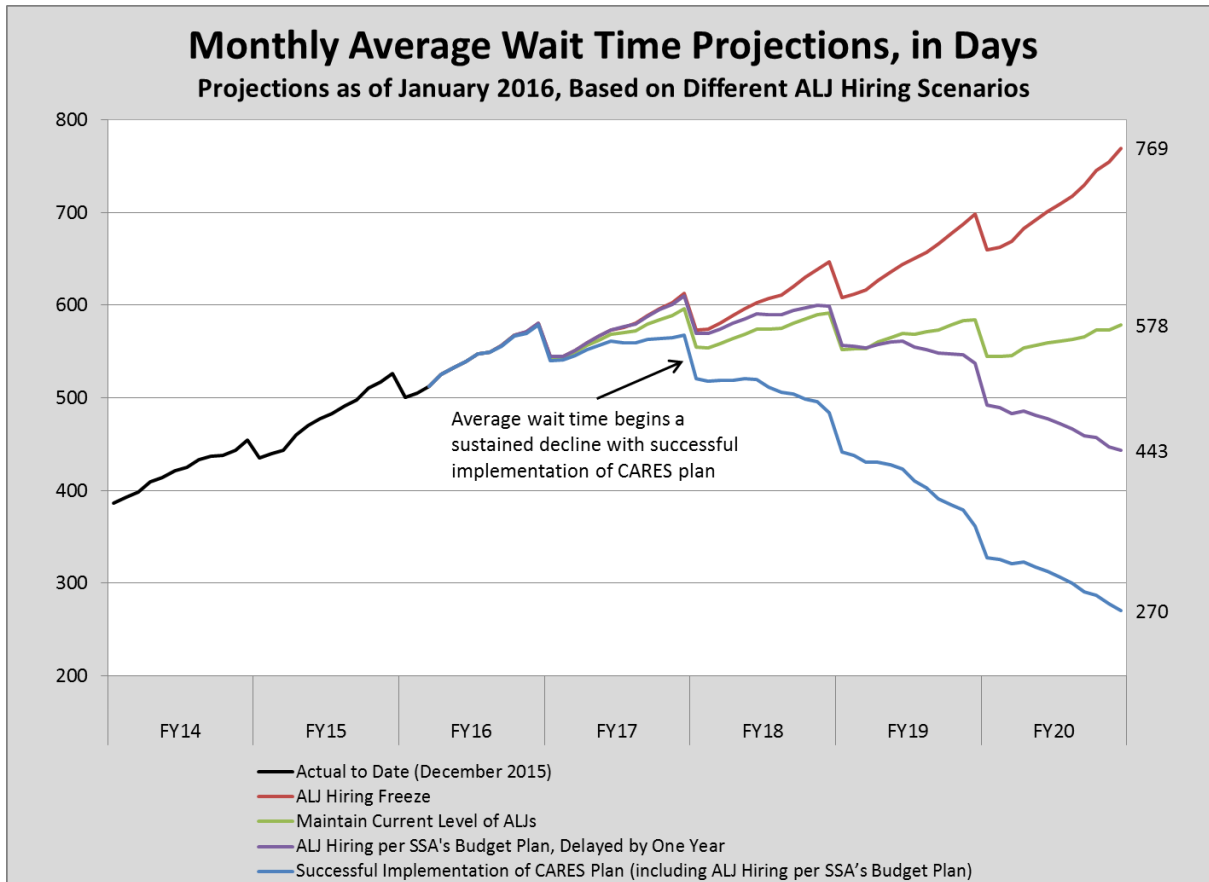
Our plan requires sustained, adequate funding in the future to expand the number of ALJs and increase the number of hearings we complete. In order to meet our hiring goals, we are working in close collaboration with OPM to provide a larger and continuously refreshed register of qualified ALJ candidates. We also need an immediate re-announcement of the ALJ examination. If we meet our hiring goals, we will increase our hearing decisions in FY 2017 to approximately 784,100, nearly 18 percent more than our FY 2015 levels. If we are successful with these hiring plans, we believe that by FY 2018, our ALJ corps will be at the appropriate levels to address the continued growth in pending hearings and wait times for a hearing.

Our projections show that we will need to hire at least 250 new ALJs in FY 2016, FY 2017 and FY 2018 to reach an average wait time of 270 days by FY 2020. This need to hire ALJs also requires hiring support staff for each ALJ. Currently, we have approximately 4.5 support staff for every ALJ. We have been committed to increasing the number of qualified ALJs for the past several years, but with limited and sporadic success, as illustrated in the chart below.



We believe the Bipartisan Budget Act of 2015 will help to address certain delays we have experienced when seeking a new register of ALJ candidates, but we will continue to review and study additional ways to augment our capacity and our efficiency.

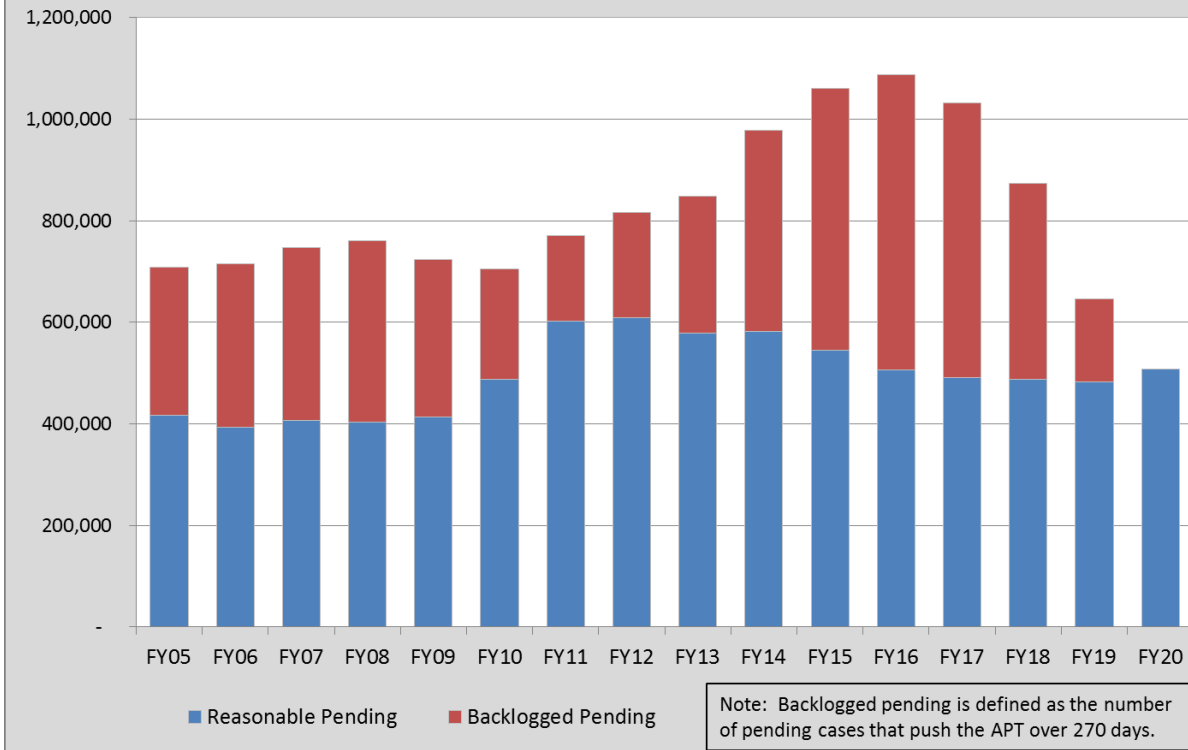
As shown below, having sufficient ALJs has a direct impact on the time claimants wait for a hearing decision. Sustained funding and the ability to hire sufficient ALJs and support staff will allow us to achieve an average wait time of 270 days by the end of FY 2020.



We have learned from our history of pending hearings and wait times that sufficient case processing is directly dependent on having a sufficient number of qualified ALJs. However, as we think broadly about the future of our programs and our customers, we know that we cannot base a sustainable plan to reduce the number of pending hearings and wait times solely upon ALJ hiring ability. Through our CARES plan, and with sustained and adequate funding and support from OPM, we expect to begin to eliminate the backlog in FY 2017 and to eliminate it by FY 2020. We also expect that we will reduce the average wait time for a decision from the over 500 days currently to no more than 270 days in FY 2020, and we expect to cut the number of pending cases in half.

Successful CARES Plan Implementation

Projections as of January 2016



Definition of Success for the Appeals Council

Our CARES plan is a comprehensive look at ODAR workloads including the Appeals Council (AC) in the Office of Appellate Operations (OAO), which among other activities is responsible for the final level of administrative review. The AC reviews ALJ decisions and dismissals and handles certain Federal court actions. There is a direct correlation between the number of cases handled and types of action taken by the hearing offices and AC workload levels. OAO anticipates a significant rise in the number of requests for review it receives from the hearing level as more ALJs are hired, trained, and issue dispositions.

The longer-term goal is to process requests for review in an average of 180 days. Staffing is the single factor that most strongly affects OAO's success in delivering timely service and continuing its important quality work. However, as we implement this plan, we are incorporating other measures we can take to assist in reducing wait times and number of pending cases at the hearings and the appeals levels.

The CARES Plan

We built our CARES plan around two interdependent components: **people and quality**—engaged, well-trained people providing quality service. We consider the CARES plan a living document, which we will change as we gain more experience with each initiative, begin new initiatives, and adapt to the changes in our operational environment.

People

Our employees have a strong commitment to public service. They understand that when they took the oath to become Federal employees, they accepted the responsibility to serve the American public. Our employees have a long tradition of serving our customers and a firm understanding that *who we serve is why we serve*. As we work to address the million people waiting for a hearing decision, it is important to note that our plan requires an emphasis on the people – our employees – who provide that service every day. Thus, our plan also includes initiatives that will help empower and engage our employees, provide them with improved tools to do their jobs, and foster an environment where they are best equipped to provide compassionate and responsive service.

Who we serve is why we serve.

Quality

We are part of a rich organization whose “signature” is one of compassion and dignity in responsive service. Inherent in compassionate and responsive service to the American people is quality. We define high-quality decisions as policy-compliant and legally sufficient decisions. We have always had to operate in a high production environment, and the hearings process is no exception. Regardless of whether they ultimately receive benefits, the millions of people who apply for our benefits deserve timely decisions that are high quality. Quick decisions without quality or quality decisions without timeliness are not compassionate or responsive service.

The Importance of Investing in Quality

Quality requires an investment, but that investment pays off. Employees who do quality assurance work can prevent additional work by limiting appeals and remands – allowing SSA to process the case once, not multiple times. ODAR quality reviews identify trends that may require policy clarifications or targeted training and feedback.

For example, beginning in 2011, we limited the number of cases that could be assigned to an ALJ. That limit helps ensure that ALJs take the time to follow SSA policy and procedures in their decisions. In addition, we provide desktop training and feedback tools to ODAR employees and ALJs, such as the *How MI Doing* tool. While there are administrative costs for expanded quality measures, many of our employees appreciate the convenience of this added assistance.

Tactical and Strategic Initiatives

Our plan includes several broad categories of drivers that will propel our efforts to address the service crisis at the hearings and appeals levels. These include:

- ▶ [Business Process Improvements](#);
- ▶ [Information Technology Innovations](#);
- ▶ [Staffing and Facilities](#); and
- ▶ [Employee Engagement Activities](#).

Business Process Improvements

We continue to look for opportunities to make the hearings and appeals process more efficient while ensuring quality decisions. Part of our strategy for moving forward includes frequent benchmarking with other agencies to both share information about our strategies and to learn about successful strategies they have used. We are also looking at ways to streamline our processes, eliminate duplication, and efficiently utilize our limited resources to provide better and faster service to the public.

In this section, we provide brief descriptions of our tactical initiatives and actionable strategies. Please note that this list of initiatives is not exhaustive – potential new initiatives may be added, and existing initiatives may be modified or removed depending on their success.

Pre-Hearing Triage Initiatives: This set of initiatives aims to increase overall hearings adjudication and disposition capacity through new and innovative techniques and providing additional adjudication resources. Under this category, we plan to:

- ✓ Increase our use of Senior Attorneys where appropriate;
- ✓ Expand the use of pre-hearing conferences that explain the hearings process to and better prepare unrepresented claimants for their hearing;
- ✓ Test the use of predictive modeling in both hearing offices and the AC levels;
- ✓ Test the use of screening and data analytics tools (e.g. SmartMands); and
- ✓ Provide additional staff time and assistance to heavily impacted or backlogged hearings offices.

Case Readiness Initiatives: Through this set of initiatives, we will improve the support provided to ALJs in case development and preparation. One key effort is our **1,000 Plus Page Initiative**, in which staff will review and prepare cases with 1,000 pages or more of evidence prior to the ALJ review and hearing.

Optimized Hearing Office and Case Assistance Center Models: Under this strategy, we will address support staff efficiency by strengthening and streamlining hearing office and centralized case assistance business process models. Through these efforts, we plan to enhance information sharing among our hearing offices, national hearing centers, and our centralized case assistance centers. For example, in FY 2016, we will build and foster a more collaborative virtual working environment to support interaction between ALJs and geographically dispersed support staff. We will pilot the use of collaborative technologies to facilitate a virtual team model through a concept called the **Virtual Hallway**.

Proactive Quality: In addition to the pre-effectuation and post-effectuation quality reviews that the AC conducts, we are testing an inline quality review process at the hearing level that promotes consistency and continuous improvement in case processing by ensuring: (1) case files are properly prepared; (2) cases are properly scheduled; (3) the record is adequately developed; and (4) a legally sufficient draft decision is prepared. Most importantly, our inline quality review initiative is designed to correct identified errors before a final decision is issued.

Natural Language Processing Capabilities: Currently, the AC uses natural language processing (NLP) in its data analytics studies. NLP offers a way to extract select information from electronic disability records, converts unstructured information in text into structured or numerical data, and facilitates robust data analysis. The AC is testing the use of NLP to scan ALJ decisions for language that suggests a higher likelihood of an error so we can select and identify those cases for a pre-effectuation quality review. SSA is conducting a study with NIH researchers to explore automated ways to extract meaningful information from scanned images of medical records and identify duplicate documents.

Information Technology Innovations

We designed our technology investments to provide faster, streamlined, and more efficient IT tools for our employees, external stakeholders, and the public. Specifically, any IT improvements we make must help to remove inefficiencies in our case processing systems, drive policy-compliance and consistency across offices, and/or provide self-service options that allow us to provide customer choice and redirect staff away from manual workloads. We will measure the success of any IT investment we make in the hearings and appeals process by the extent to which that investment helps to reduce the wait time for our customers and eliminate the number of backlogged cases.

Under this category of improvements, we plan to:

- ✓ Expand the use of video hearings in order to balance workloads and eliminate service inequity across the country;
- ✓ Provide online electronic folder access for medical and vocational expert contractors (MEs and VEs) to eliminate staff time to produce CD copies of case folders;
- ✓ Reduce the number of hearings level cases that turn into paper; and
- ✓ Develop an online Appeals Council (AC) Request for Review (iAppeals for Appeals Council) that will eliminate paper requests for review, reduce the potential for lost cases, and improve the efficiency of the AC's business process.

Staffing and Facilities

Staffing

We are aggressively pursuing opportunities to increase our decision-making capacity. It is important to note that our plan depends on sufficient funding so we can hire a sufficient number of ALJs and support staff. As emphasized earlier, any significant setbacks in ALJ hiring will pose a serious challenge to reducing the number of pending hearings and wait times. We hope that with the recent passage of the Bipartisan Budget Act of 2015 and our close collaboration with OPM (our partner in the ALJ hiring process) we will have a sufficient quantity of qualified ALJ applicants across the country. We are also exploring ways to attract and recruit a greater number of prospective ALJ candidates

especially for harder-to-fill geographic locations. However, to make continual progress, we need a larger and continually updated list of qualified ALJ candidates and sufficient, sustained funding from Congress.

Concurrently, we are actively pursuing ways other organizations across SSA can help augment our adjudicative and non-adjudicative capacities to help with our growing appeals workloads. We realize that when we make the difficult decision to move work from one part of the agency to another, other important workloads are affected. To help address our current public service crisis, we plan to temporarily augment capacity by:

- ✓ Collaborating with the Office of Quality Review (OQR) who will assist ODAR in critical case processing activities; and
- ✓ Utilizing Appeals Council (AC) Administrative Appeals Judges (AAJs) to hold hearings and issue decisions on a subset of cases.

In the OAO that runs the AC, we will also focus on hiring appropriate staff and Administrative Appeals Judges (AAJs) to address the growing post-hearing appeals workloads and to reallocate current staff as necessary to help address the increased number of cases that will result from the increased decisions at the hearing level.

In addition to our focus on staffing, we are working to streamline the structure of work where it makes sense. For example, we recently realigned the Limited Income Subsidy Appeals Unit (SAU) from ODAR to the Office of Operations because of closer alignment with other Office of Operations workloads.

Facilities

We have a multipronged approach to better utilize our space, ensuring that we maintain focus on incorporating the staff we need into the space we currently have available. By increasing space options, we will provide greater access to hearings for claimants and reduce wait times.

We plan to:

- ✓ Repurpose vacant space that is already federally-owned or leased for the hearings operation;
- ✓ Make more efficient use of existing ODAR space; and
- ✓ Co-locate our hearing offices with field offices and continue to add “shared services” rooms in our field offices allowing claimants to participate in an ALJ hearing from the convenience of the local field office.

Employee Engagement Activities

Increasing meaningful employee engagement is critical to our ability to serve the public and meet the demands of our growing workloads. A highly engaged workforce will increase innovation, quality, productivity, and performance.

We are using the results of the 2014 and 2015 Federal Employee Viewpoint Survey (FEVS) for ODAR employees and creating a plan of action to improve employee engagement.

Specifically, we plan to:

- ✓ Enhance communication and help build a shared set of goals across ODAR;
- ✓ Implement an internal ODAR development program, covering all positions and grade levels, in order to attract, retain, and develop employees for technical, management, and leadership positions; and
- ✓ Increase availability for telework under current collective bargaining agreements.

I am always inspired by what our employees do every day – the amount of work that you do, the quality and accuracy of your work, and the compassion in which you deliver services. That is what makes our organization one of the best in government.

~ Acting Commissioner Carolyn Colvin

Other Long-Term Plans

We will continue to evaluate options and initiatives to improve service to our customers, as well as flexibilities or improvements in rulemaking. For example, in the past year we instituted new rules related to scheduling and appearing at hearings and the submission of evidence. We will continue to examine ways in which we can improve our service to provide a high quality, modern and timely disability appeals process.

We're committed to new ways of doing business.

Conclusion

We have built our CARES plan around a set of two interdependent components—**people and quality**—and integrated those two components with a complementary set of tactical initiatives. Our plan builds on successful initiatives from past efforts and renews our commitment to finding new strategies to dramatically reduce wait times for the public and reduce the number of pending cases. However, this plan will not have a significant impact on the more than one million people waiting for a disability hearing decision without adequate and sustained funding – this is critical.

This plan offers a blueprint for steps we will take in the short-term but also lays out the path for evaluating potential future changes. With the unprecedented challenge of more than one million people waiting for a hearing decision, we cannot maintain the status quo.

Attachment B

Definition of Disability

The Social Security Act (Act) generally defines disability, for purposes of programs authorized under the Act, as the inability to engage in any substantial gainful activity (SGA) due to a physical or mental impairment that has lasted or is expected to last at least 1 year or to result in death. SGA is defined as significant work, normally done for pay or profit. Under this very strict standard, a person is disabled only if he or she cannot perform a significant number of jobs that exist in the national economy, due to a medically determinable impairment. Even a person with a severe impairment cannot receive disability benefits if he or she can engage in any SGA. Moreover, the Act does not provide short-term or partial disability benefits.

Our process for determining disability is designed to meet the strict requirements of the law as enacted by Congress. Due to strict program requirements, disability beneficiaries comprise a significantly smaller subset of the total number of Americans who report living with disabilities, including severe disabilities.

Overview of Administrative Process

When we receive a claim for disability benefits, we strive to make the correct decision as early in the process as possible so that a person who qualifies for benefits receives them in a timely manner. In most cases, we decide claims for benefits using an administrative review process that consists of four levels: (1) initial determination; (2) reconsidered determination; (3) hearing; and (4) Appeals Council (AC) review. At each level, the decisionmaker bases his or her decisions on the Act and our regulations and policies.

In most States, a team consisting of a State disability examiner and a State agency medical or psychological expert makes an initial determination at the first level of review. The Act requires this initial determination. (Field office and other Social Security employees issue initial determinations in claims for other types of benefits.) A claimant who is dissatisfied with the initial determination may request reconsideration, which is performed by another State agency team.

A claimant who is dissatisfied with the reconsidered determination may request a hearing. The Act requires us to give a claimant “reasonable notice and opportunity for a hearing with respect to such decision.” Under our regulations, an administrative law judge (ALJ) conducts a *de novo* hearing unless the claimant waives the right to appear, or the ALJ can issue a fully favorable decision without a hearing; in these cases, the ALJ issues a decision based solely on the written record. If the claimant is dissatisfied with the ALJ’s decision, he or she may request AC review. The Act does not require administrative review of an ALJ’s decision. If the AC decides not to review the ALJ’s decision, the ALJ’s decision becomes our final decision. If the AC issues a decision, the AC’s decision becomes our final decision. A claimant may request judicial review of our final decision in Federal district court.

Attachment C

Summary of Legal Authority for Agency Augmentation Strategy

As one strategy to reduce the overall number of pending hearing requests, the Social Security Administration (SSA) plans to have administrative appeals judges (AAJ) on the Appeals Council conduct hearings and issue decisions in two categories of cases: (1) non-disability cases when a request for hearing is pending before an administrative law judge (ALJ); and (2) cases that are pending before the Appeals Council on a request for review, on own motion review, or on remand from Federal court that require a supplemental hearing. This plan comports with the Social Security Act (Act), the agency's existing regulations, and due process.

Sections 205(b)(1) and 1631(c)(1)(A) of the Act define SSA's administrative hearing process. These sections of the Act require the agency to give an individual "reasonable notice and opportunity for a hearing." Section 205(b)(1) also broadly authorizes the Commissioner "to hold such hearings . . . and other proceedings as the Commissioner may deem necessary or proper for the administration of this title." Section 1631(c)(1)(A) contains substantially the same language. The Supreme Court has long recognized that the Act grants the agency "the power by regulation to establish hearing procedures . . . so long as the procedures are fundamentally fair."¹

Since the beginning of SSA's hearings process in 1940, SSA's regulations have authorized members of the Appeals Council to hold hearings and issue decisions.² This authority predates the Administrative Procedure Act, which was enacted in 1946 and is modeled on the Social Security Act.³ The regulations that authorize the Appeals Council to remove a pending hearing request from an ALJ, hold the hearing, and issue the decision, 20 C.F.R. §§ 404.956, 416.1456, do not limit the type or the total number of cases that the Appeals Council can hear and decide, nor has the agency limited the Appeals Council's authority on the issue in any other way. Consequently, the Appeals Council has authority under the existing regulations to remove *any* hearing request that is pending before an ALJ, hold the hearing, and issue the decision.⁴

Sections 404.956 and 416.1456 do not directly apply when the Appeals Council conducts a supplemental hearing in a case that is pending before it on a request for review, on own motion review, or on remand from Federal Court. Nevertheless, sections 404.956 and 416.1456 express the agency's longstanding view that members of the Appeals Council are suitable presiding officials at administrative hearings, and that it is beneficial for Appeals Council members to hear and decide some cases.

When a case is before the Appeals Council because the claimant requested review or the Appeals Council decided to exercise own motion review, neither the Act nor the regulations prohibit the Appeals Council from holding a supplemental hearing. Similarly, when a case is pending before the Appeals Council on remand from a Federal court, the regulations provide that

¹ *Richardson v. Perales*, 402 U.S. 389, 400–01 (1971).

² 5 *Fed. Reg.* 4169, 4172 (codified at 20 C.F.R. § 403.709(d) (1938-1943 Cum. Supp.)).

³ *Richardson v. Perales*, *supra*, at 409.

⁴ *Mullen v. Bowen*, 800 F.2d 535, 540 n.5 (6th Cir. 1986) (noting that, "under both the APA and [SSA's] regulations, the agency itself, or the Appeals Council, may decide to assume the responsibility for conducting a hearing.").

the Appeals Council “may make a decision, or it may remand the case to an administrative law judge with instructions to take action and issue a decision or return the case to the Appeals Council with a recommended decision.”⁵ If the Appeals Council decides to make a decision under the authority in these regulations, nothing in the regulations prohibits the Appeals Council from holding a supplemental hearing.

When a claimant requests Appeals Council review, the regulations permit the Appeals Council to deny or dismiss the request, or grant the request and either issue a decision or remand the case to an ALJ.⁶ Once a case is before the Appeals Council on review, the claimant may ask to appear before the Appeals Council and present oral argument.⁷ If the claimant does not request to appear and present oral argument, the regulations do not preclude the Appeals Council from scheduling an oral argument or another hearing proceeding on its own initiative.⁸

The regulations that govern decisions by the Appeals Council also do not prohibit the Appeals Council from conducting hearing proceedings. These regulations provide only that the Appeals Council may issue a decision after reviewing all the evidence in the ALJ hearing record and any additional evidence received, subject to the limitations on the Appeals Council’s consideration of additional evidence.⁹ And, 20 C.F.R. § 404.976 specifically states that if additional evidence is needed, the Appeals Council may remand the case to an administrative law judge to receive evidence and issue a new decision. However, if the Appeals Council decides that it can obtain the evidence more quickly, it may do so. This allowable activity will reduce the wait times for claimants.

The proposal to have administrative appeals judges on the Appeals Council hold hearings and issue decisions in certain cases also comports with due process. There is no due process violation inherent in a hearing system that relies on adjudicators other than ALJs.¹⁰ With respect to the issue of who may be a decisionmaker in an adjudicatory proceeding, the fundamental requirement of due process is that the decisionmaker be fair and impartial.¹¹ Because the members of the Appeals Council will function as neutral decisionmakers and follow the same rules as ALJs, allowing members of the Appeals Council to conduct supplemental hearings in certain categories of cases would comport with due process.

⁵ 20 C.F.R. §§ 404.983, 416.1483.

⁶ 20 C.F.R. §§ 404.967, 416.1467.

⁷ 20 C.F.R. §§ 404.976(c), 416.1476(c)..

⁸ 20 C.F.R. §§ 404.976(b)(2), 416.1476(b)(3) (providing that, on review, if the Appeals Council needs additional evidence and can obtain the evidence more quickly than an ALJ, it may do so, unless it will adversely affect the claimant’s rights.)

⁹ 20 C.F.R. §§ 404.970(b), 404.976(b), 416.1470(b), 416.1476(b), 404.979, 416.1479.

¹⁰ See, e.g., *Schweiker v. McClure*, 456 U.S. 188, 195 (1982); Jerry L. Mashaw, et al., *Final Report: Study of the Social Security Administration Hearing System* 66 (1977).

¹¹ See, e.g., *Schweiker v. McClure*, *supra*, at 195; Henry J. Friendly, “*Some Kind of Hearing*,” 123 U. Pa. L. Rev. 1267, 1279-80 (1975).