

## Via Email

On behalf of Joseph D. O'Connor, chair of the Commission on Law and Aging, I am forwarding to the Judicial Division, the National Conference of Administrative Law Judiciary, and the Administrative Law Section a proposed resolution and report urging Congress to appropriate additional funding above the President's FY 2009 Budget for the Social Security Administration. We ask for your entity's expedited co-sponsorship of the resolution which will be considered by the Board of Governors at its upcoming April 2008 meeting. The resolution urges Congress to enact a level of administrative funding for the Social Security Administration (SSA) that permits the SSA to address both the unprecedented level of unprocessed disability claims and cuts in day-to-day operations that severely hinder the agency's ability to carry out its mandated responsibilities.

Work on the FY 2009 appropriations bills begins no later than mid-May, 2009. The ABA will not be able to meaningfully participate in these critical budget discussions if adoption of the resolution is deferred until August. In addition, SSA Commissioner Michael Astrue has agreed to meet with ABA representatives on April 24, 2008, and having policy in place will allow us to discuss adequate administrative budget levels.

Please notify me by COB Monday, April 14, 2008, if you can join us in supporting the resolution. I will then forward to Policy Administration the names of the ABA entities that will join our request. And of course, please contact me or Holly Robinson (202-662-8694 or [RobinsonH@staff.abanet.org](mailto:RobinsonH@staff.abanet.org)) if you have any questions or would like additional information.

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Attachments: <<SSA Policy Final Submitted to BOG.doc>> <<BOG SSA Memo 3-25-08.doc>>

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**MEMORANDUM**

**TO:** Board of Governors

**FROM:** Joseph D. O'Connor, Chair  
Commission on Law and Aging

**DATE:** March 25, 2008

**RE:** Proposed Resolution Urging Congress to Appropriate  
Additional Funding for Social Security Administration

The Commission on Law and Aging is asking the Board of Governors to adopt the proposed resolution urging Congress to enact a level of administrative funding for the Social Security Administration (SSA) that permits the SSA to address both the unprecedented level of unprocessed disability claims and cuts in day-to-day operations that severely hinder the agency's ability to carry out its mandated responsibilities. We are asking the Board to act now instead of waiting until the House of Delegates meeting in August because of the timing of the federal appropriations process and the urgency of the situation.

The amount of administrative funding the Social Security Administration has received through the appropriations process in recent years has been significantly below the level necessary to keep up with the agency's workload. The resulting crisis has harmed individuals that the system was designed to protect. The FY 2009 Budget Resolutions have passed the House and Senate and will soon be heard in conference committee. Work on the FY 2009 appropriations bills begins no later than May 15, 2009. The ABA will not be able to meaningfully participate in these critical budget discussions if adoption of the resolution is deferred until August.

That it is a legal cliché makes it no less true: Justice delayed is justice denied. The ABA can play a vital role in pursuing justice for each of the 757,000 individuals who, as of February 2008, are awaiting a hearing on an appealed claim, and each member of the public who receives a busy signal when calling the SSA, by working now, and on a continuing basis, to secure support from Congress for a level of funding that permits the SSA to meet its mandated responsibilities in a fair and timely manner.

AMERICAN BAR ASSOCIATION  
COMMISSION ON LAW AND AGING

RECOMMENDATION

1 RESOLVED, That the American Bar Association urges Congress to enact a level of  
2 administrative funding for the Social Security Administration that permits the Social Security  
3 Administration to provide its mandated services in a timely manner, promptly and fairly  
4 adjudicate applications for disability insurance and supplemental security income benefits,  
5 overcome significant disability claims processing times and backlogs, and build the  
6 infrastructure necessary to manage the expanding workload challenges presented by serving the  
7 aging baby boomers filing disability and retirement claims.  
8

## REPORT

The Social Security Administration (SSA) administers one of the country's largest entitlement programs, the Old-Age, Survivors, and Disability Insurance (OASDI) program, commonly referred to as Social Security. Monthly cash benefits are financed through payroll taxes paid by workers through their employers and by self-employed workers. Monthly benefit payments under the OASDI programs are based on an individual's taxable earnings during the individual's lifetime. SSA also administers the Supplemental Security Income program which is designed to provide or supplement the income of aged, blind or disabled adults and children with limited income and resources. SSI payments are financed by general tax revenues. Over 54 million people, one sixth of the total population, receive monthly Social Security or SSI benefit payments. During the last ten years, the number of Old-Age and Survivors Insurance beneficiaries has grown by eight percent, disability insurance beneficiaries by 40 percent and SSI recipients by 11 percent.<sup>1</sup> And over the next ten years, SSA's traditional workload is expected to increase substantially – retirement claims by over 40 percent and initial disability claims by nearly 10 percent.<sup>2</sup> In addition, the agency must address new non-traditional workload requirements, such as evaluating Medicare beneficiaries' income in order to determine whether they need to pay increased Part B premiums, implementing a low-income subsidy program to help individuals obtain Medicare Part D prescription drug coverage, and implementing homeland security and immigrant legislation.

Between FY 2000 and 2007, Congress appropriated significantly less than both the Commissioner of Social Security and the President requested, resulting in a total administrative budget shortfall of more than \$4 billion. Staffing cuts have reduced staffing levels to their lowest levels since 1974, despite a significant increase in workload.

In the current fiscal year, SSA estimates that the average processing time for disability claims at the hearing level will be 535 days, nearly twice as long as in 2000 when the average time was 274 days.<sup>3</sup> In a recent report, the Government Accountability Office noted that the hearing level backlog was "almost eliminated" from FY 1997 to FY 1999, but then grew "unabated" by FY 2006.<sup>4</sup> The number of pending cases at the hearing level reached a low in FY 1999 at 311,958 cases. The numbers have increased dramatically since 1999, reaching 752,000 in FY 2008.<sup>5</sup> In FY 1998, there were 1087 administrative law judges (ALJs) available to conduct hearings. This number dropped to 1018 in FY 2006, and the ratio of support staff to ALJ's fell to 4.12 compared to a recommended level of 5.25, while the number of pending cases more than doubled.<sup>6</sup>

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<sup>1</sup> SSA FY 2007 Performance and Accountability Report, [http://www.ssa.gov/finance/2007/Overview\\_of\\_SSA.pdf](http://www.ssa.gov/finance/2007/Overview_of_SSA.pdf).

<sup>2</sup> Testimony of Commissioner Michael Astrue before the Subcommittee on Labor, HHS, Education and Related Agencies, House Committee on Appropriations, February 28, 2008.

<sup>3</sup> *Social Security Administration: Fiscal 2009 Justification of Estimates for Appropriations Committees*, (SSA FY 09 Budget Justification), p. 6.

<sup>4</sup> *Social Security Disability: Better Planning, Management, and Evaluation Could Help Address Backlogs*, GAO-08-4- (Dec. 2007 (GAO Report), p. 22.

<sup>5</sup> *SSA FY 09 Budget Justification*, p. 6.

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

The agency's ability to provide timely, accurate, and responsive service to the public has also suffered as a result of the agency's limited resources. The agency has lost 4,000 workers in the last two years alone. An average of 51 percent of all calls to local SSA offices gets a busy signal. And there can be long waits at field offices to meet personally with staff. At the same time, baby boomer retirements promise to deplete the already understaffed SSA as well.<sup>7</sup>

The President's Budget Request of \$10.327 billion for funding the Social Security Administration for FY 2009, and the additional funds received for 2008, will begin the process of reducing the backlogs and improving services to the public but the proposed funding level is inadequate to provide mandated services in a timely manner, and to promptly and fairly adjudicate applications for disability insurance and supplemental security income benefits. SSA requires a minimum increase of \$400 million each year just to keep up with increases in fixed costs such as rent, employee salaries and benefits, and guard services.<sup>8</sup> The President's Budget is insufficient to maintain an adequate number of administrative law judges and support staff and continue reducing the backlog, and does not address the inadequate levels of service to the public in SSA field offices and customer service centers.

In the short term, providing SSA with the amount of administrative funding greater than that requested by the President for FY 2009 will help to reduce the enormous backlog of disability cases, shorten waiting times for disability benefits applicants, and begin to restore the agency's ability to carry out its mandated services by decreasing the long waiting times for walk-in customers and the increasing the public's ability to reach a customer service representative by telephone.

However, restoring the agency's ability to meet its mandated responsibilities, significantly reduce the backlog, keep local offices open, provide adequate telephone services and maintain the integrity of its programs by performing more continuing disability reviews and SSI determinations will require a multi-year rebuilding of the agency's resources.

The ABA and our Commission on Law and Aging has had a long-standing interest in improving the Social Security Administration's disability determination process, and we have worked actively for over two decades to promote increased efficiency and fairness in this system. As an umbrella organization representing the legal profession in the United States, the ABA has been able to draw upon the considerable expertise of our diverse membership- claimants' representatives, administrative law judges, academicians and agency staff - to develop a wide-ranging body of recommendations on the disability adjudication process. The Section of Administrative Law, the Judicial Division, the National Conference of Administrative Law Judiciary of the Judicial Division, and the Commission on Law and Aging have worked to develop ABA recommendations, the goals of which are to improve the quality of decision-making, increase fairness and efficiency for claimants, help alleviate the backload, encourage clarity in communications with claimants, promote procedural due process protections, and seek the application of appropriate, consistent legal standards at all states of the adjudication process.

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<sup>7</sup> *The Line Starts Here: Service may be Social Security's No. 1 Problem*; AARP Bulletin, October 2007, [http://www.aarp.org/bulletin/socialsec/the\\_line\\_starts\\_here.html](http://www.aarp.org/bulletin/socialsec/the_line_starts_here.html).

<sup>8</sup> Testimony of Commissioner Michael Astrue before the Subcommittee on Labor, HHS, Education and Related Agencies, House Committee on Appropriations, February 28, 2008.

Congress is currently working on a budget for SSA for FY 2009. It is important for the Board to adopt policy urging Congress now and in future years to provide SSA with sufficient administrative funding to begin to reduce the significant backlog of initial claims and appeals of disability cases and to reverse crippling cuts in services to the public, and to provide a sustained level of administrative funding that permits the agency to provide its mandated services in a timely manner, promptly and fairly adjudicate applications for disability insurance and supplemental security income benefits, overcome significant disability claims processing times and backlogs, and build the infrastructure necessary to manage the significant workload challenges presented by serving the aging baby boomers filing disability and retirement claims.

Respectfully submitted,

Joseph D. O'Connor, Chair, Commission on Law and Aging