2.1 Commission on Law and Aging Request for Adoption of Resolution to Appropriate Additional Funding for the Social Security Administration

Governor Larry McDevitt, Board Liaison to the Commission on Law and Aging, presented the Commission's request for adoption of a resolution to appropriate additional funding for the Social Security Administration (SSA). The Commission requests that the Board act in April 2008 rather than waiting until the House of Delegates (House) meeting in August because of the timing of the federal appropriations process and the urgency of the situation. Mr. McDevitt informed the Board that the Commission was recently invited to participate in a meeting with the Commissioner of the SSA to discuss adequate funding for the SSA. The meeting is scheduled for April 24, 2008. Because the Association does not presently have specific policy regarding adequate funding for the SSA, it is necessary for the Board to adopt the Commission's resolution at the April 2008 Board meeting to permit the Commission to participate in the April 24, 2008, meeting with the SSA Commissioner.

In response to questions from certain Board members, President Neukom clarified that the Board is permitted to adopt resolutions in between meetings of the House. If the Board adopts a resolution in this manner, the resolution becomes ABA policy.

After further discussion, and

UPON MOTION DULY MADE, SECONDED AND CARRIED:

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

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\(^2\) Testimony of Commissioner Michael Astrue before the Subcommittee on Labor, HHS, Education and Related Agencies, House Committee on Appropriations, February 28, 2008.


\(^5\) SSA FY 09 Budget Justification, p. 6.

\(^6\) 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.7

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.8 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 Judges 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 backlog, 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.

8 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,

[Signature]

Joseph D. O’Connor, Chair, Commission on Law and Aging
April 10, 2008

Charlie Sabatino, Director
ABA Commission on Law and Aging
740 Fifteenth St., NW
Washington, DC 20005

Dear Charlie,

As Chair of the ABA Judicial Division, I am pleased to report we have voted to support the Social Security Resolution in name only.

If you have any questions, please contact Aimee Skrzekut, Judicial Division Director, at (800) 238-2667 ext. 5687.

Best,

[Signature]

James A. Wynia
Chair, ABA Judicial Division.

cc: Marilyn Barmash
April 15, 2008

Charlie Sabatino
Director
ABA Commission on Law and Aging
740 15th Street NW
Washington, DC 20005

Dear Charlie:

This letter is to confirm that the Council of the Section of Administrative Law and Regulatory Practice has voted to co-sponsor the Commission's emergency resolution on Social Security Administration funding. The Council voted on the matter at our meeting on April 12, 2008.

Very truly yours,

Michael Asimow
Section Chair

cc: Marilyn Barmash, ABA Policy Administration Division