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The Honorable Jim McCrery
Chair, Subcommittee on Social Security
Committee on Ways and Means
U.S. House of Representative
Washington, DC 20515

Dear Mr. Chairman:

On behalf of the American Bar Association (ABA) and its more than 400,000 members nationwide, I write to you in connection with the hearing your Subcommittee will hold on June 15, 2006, on the Social Security Administration's improved disability determination process. I ask that this letter be made a part of the record of those hearings.

The ABA has had a long-standing interest in the Social Security Administration's disability benefits decision-making process, and we have worked actively for over two decades to promote increased efficiency and fairness in this system. As the 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--claimant 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 and the Commission on Law and Aging have worked to develop our ABA recommendations, which encourage clarity in communications with claimants, procedural due process protections, and application of appropriate, consistent legal standards at all stages of the adjudication process.

Over the past several years, representatives of the ABA have testified at Congressional hearings and submitted statements for the record of Congressional hearings. We participated in meetings with members of the Social Security Advisory Board. We also participated in meetings with Commissioner Barnhart and with Deputy Commissioner Gerry as they worked tirelessly to revise the regulations with a goal of improving the timeliness, accuracy and consistency of the agency's disability decisions. The ABA commends the Commissioner and the Deputy Commissioner for their efforts to improve the process and to advance communications among all participants as the revised regulations were being developed. The ABA and the representatives of the ABA who attended those

meetings have been most impressed with the dedication of the Commissioner and her staff in working toward improving the operation of the Social Security disability program. The ABA also submitted comments on the proposed regulations in September 2005.

Clearly, something needed to be done to improve the operation of the program. Specifically, there is a need to alleviate backlogs in the system and reduce the delays that are so detrimental to the lives of disabled claimants who desperately need the benefits. In March 2006, SSA promulgated new regulations for the disability benefits appeals system.* These new regulations are among the most far reaching changes in decades. To monitor their implementation and impact, it is critical that SSA gather the requisite data to show if the regulatory changes have achieved their purpose. To that end, SSA should also assess the successes and failures of the changes in the new regulations. We would be glad to provide the Commissioner and your Subcommittee with input on the performance of the new regulations in the coming months and years.

There is much in the new regulations with which the ABA is pleased. We have for many years expressed our support for a quick disability process for those who are obviously disabled. In past years, many eligible individuals have waited and are waiting far too long to receive their benefits--benefits that may be their only source of income and access to medical care. We support the concept of a quick disability determination (“QDD”) process to identify, expedite, and resolve the claims of those who clearly are disabled. We look forward to seeing how well the proposed “predictive model screening software tool” works to identify those claims. One of our long-standing recommendations has been to provide claimants with a face-to-face interview with a decision-maker before the claim is denied to explain why they were not found disabled and to provide them an opportunity to submit further evidence. We continue to recommend such interviews for individuals whose claims are not resolved by the QDD unit.

For many years, we have expressed our support for the elimination of the reconsideration level of appeal. Reconsideration has not contributed to high-quality decision making and has been a significant cause of delay in the system. An individual whose claim has been denied at the initial level could be well served by replacing reconsideration with review by a Reviewing Official (RO) whose job is to develop the evidence, consult with the Federal Expert Unit under certain circumstances, assemble the file, prepare a report on the claim, and issue allowances when claims are clear. Requiring the RO to provide specific reasons for agreeing or disagreeing with the initial decision could help to ensure that the review is substantive. We do not support requiring claimants to file a separate request for a hearing if the claim was disallowed by the RO, as that appears to add a new layer to the process.

* “Administrative Review Process for Adjudicating Initial Disability Claims; Final Rule” Federal Register: March 31, 2006 (Volume 71, Number 62), Rules and Regulations, Pages 16423-16462; “Administrative Review Process for Adjudicating Initial Disability Claims; Correction” Federal Register: April 10, 2006 (Volume 71, Number 68), Rules and Regulations, Page 17990.

Long-standing ABA policy calls for due process, on-the-record hearings presided over by Administrative Law Judges (ALJs) appointed pursuant to §3105 of the Administrative Procedure Act (APA), Title 5 U.S.C., and applying standards consistent with the law and with published regulations. We strongly commend the Commissioner for retaining in the new regulations the non-adversarial, *de novo* hearings before an ALJ appointed under the APA which allow the ALJ to develop the record. ALJs in these cases are fact-finders, and they should continue to assert authority for developing the record.

The ABA has not taken a position on whether the new regulations should retain or eliminate the Appeals Council, or whether it should be replaced with another form of review panel. However, we have in the past expressed concern about serious delays at this level and also have cautioned against using own-motion review by the Appeals Council to control the rates at which ALJs allow claims (e.g., the Bellmon Reviews). The regulations would gradually eliminate the existing Appeals Council and replace it with the Decision Review Board (DRB). We believe it is positive to use this pilot approach to eliminate the Appeals Council so the true impact of such a change can be observed. During this first year, the DRB will review all decisions made by an ALJ. They will also develop the screening tools for selecting cases for the DRB to review in the future when claimants will no longer have the right to an administrative appeal of an ALJ decision and would be required to seek judicial review in federal court. We believe it is important for SSA to develop indicators to show if the DRB is working and to demonstrate if it has added value during that first year of operation. Of course, the same type of indicators should be developed to see how the new position of the RO is operating. We also think it is important in future years to study the impact on the federal courts of eliminating the Appeals Council and replacing it with the DRB.

We commend the Subcommittee for holding hearings on these important issues, and appreciate the opportunity to submit these views to you.

Sincerely,

A handwritten signature in cursive script that reads "Robert D. Evans".

Robert D. Evans