CONSORTIUM FOR CITIZENS WITH DISABILITIES

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SUBMITTED VIA REGULATIONS.GOV

Office of Regulations and Reports Clearance
3100 West High Rise Building
6401 Security Blvd.
Baltimore, MD 21235

Re: Notice of Proposed Rulemaking on Ensuring Program Uniformity at the Hearing and Appeals Council Levels of the Administrative Review Process, 81 Fed. Reg. 45079 (July 12, 2016), Docket No. SSA-2014-0052

The undersigned members of the Consortium for Citizens with Disabilities (CCD) Social Security Task Force are pleased to submit the following comments regarding the Notice of Proposed Rulemaking (NPRM) published on July 12, 2016 (81 Fed. Reg. 45079, Docket No. SSA-2014-0052).

CCD is the largest coalition of national organizations working together to advocate for Federal public policy that ensures the self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society. The CCD Social Security Task Force (SSTF) focuses on disability policy issues in the Title II disability programs and the Title XVI Supplemental Security Income (SSI) program.

The SSTF supports having consistent and uniform rules across the nation for the submission of evidence and notice for hearings. While we support increasing notice nationwide, we urge the period to be 75 days, as is the current practice in Region I under 20 C.F.R. §405. However, we oppose closing the record prior to a hearing creating any deadline by which evidence must be submitted in order to be considered by an Administrative Law Judge (ALJ). Excluding evidence that is material to making a determination of disability hurts claimants, is administratively inefficient, will increase waiting times at the Appeals Council level, and increase the number of cases appealed to federal court. The SSTF therefore urges that the 5 business day rule for submitting written evidence not be expanded nationwide but rather repealed in Region I.

I. 20 C.F.R. §404.935 and §416.1435 Submitting written evidence to an administrative law judge.

We oppose the changes proposed in these sections for several reasons:

1. Creating an arbitrary deadline for the submission of evidence is inconsistent with the statutory and regulatory duties of the Commissioner to fully develop the record and inconsistent with the duties of claimants to submit all evidence as required in 20 C.F.R. §404.1512 and §416.912.
2. Excluding material evidence is administratively inefficient and will increase appeals to the Appeals Council and to federal court.
3. The proposed rule ignores the reality that testimony, and sometimes new evidence, is routinely introduced at or after ALJ hearings, and claimants and representatives need the opportunity to respond.
4. Serious problems and inconsistencies exist with the implementation of the 5 business day rule in Region I.

1. Creating an arbitrary deadline for the submission of evidence is inconsistent with the statutory and regulatory duties of the Commissioner to fully develop the record.

a. Statutory Conflict: The rules proposed in these sections are inconsistent with the statutory duties of the Commissioner to make eligibility decisions based on the evidence presented at the hearing. The Social Security Act requires the Commissioner to make decisions "…on the basis of evidence adduced at the hearing…"[1] This language clearly contemplates that new evidence will be introduced at the hearing and is inconsistent with creating an arbitrary deadline for the submission of evidence prior to the hearing.

When the Social Security Administration (SSA) attempted to expand the Region I pilot in 2005, the Congressional Research Service issued a memorandum.[2] It stated that the proposed rule "may be in conflict with Section 205(b)(1) of the Social Security Act." Specifically, "The legal issue here is whether the requirement that evidence be submitted 20 days before the ALJ hearing [the time limit in the proposed version of 20 C.F.R. § 405.311] is consistent with the requirement that the Commissioner (or an ALJ delegated by the Commissioner) make a decision 'on the basis of evidence adduced at the hearing.'"[3]

[1] 42 USC §405(b)(1). That section also specifies that "Evidence may be received at any hearing before the Commissioner of Social Security even though inadmissible under rules of evidence applicable to court procedure," providing further support for the fact that Congress envisioned that SSA would allow new evidence to be introduced at the hearing (unlike what can be done under Federal rules of court procedure related to discovery).
[2] The Proposed Changes to the Social Security Disability Determination and Appeals Process (CRS, Sept. 21, 2005), p. CRS-2
[3] Id. at 6.

The current proposed rule is also inconsistent with Congressional intent regarding 42 U.S.C. § 405(b)(1). A bipartisan letter was sent in October 2005 response to SSA's previous NPRM; the authors were the Chairman and the Ranking Member of the House Ways and Means Subcommittee on Social Security at the time, Rep. Jim McCrery and Rep. Sander M. Levin, respectively. The letter expressed concern that the proposed rules "may negatively impact claimants' rights, may result in further processing delays, and could lead to unfair outcomes…. [I]nstituting strict new limitations on introduction of evidence may, in some instances, conflict with statute [sic], and ignores the well-documented difficulty in obtaining evidence timely that both the SSA and claimant representatives experience."[4]

When SSA issued a draft NPRM in 1988 including restrictions on submission of evidence similar to those in the proposed rules, the House Ways and Means Committee leadership at the time expressed concern. Committee Chair Dan Rostenkowski and Social Security Subcommittee Chair Andy Jacobs, Jr. sent a letter dated November 21, 1988, to the Secretary of Health and Human Services at the time, Otis R. Bowen. Referring to the provisions in 42 U.S.C. §405(b)(1), they stated that the proposed regulations restricting submission of evidence "ignore these explicit provisions of the law." The Committee then held a hearing on the draft NPRM on December 5, 1988. Following this Congressional criticism, the draft NPRM was not published.

b. Regulatory Conflict: The proposed rules contained in these sections are inconsistent with the letter and spirit of several regulations about appeals to ALJs. SSA's goal is to arrive at the right decision at the earliest point possible in the disability determination process. Having ALJs consider all evidence available prior to issuing decisions is essential to achieving that goal. Excluding material, and potentially dispositive evidence because it is not received at least 5 business days prior to a scheduled hearing is counterproductive, hurts applicants, and is administratively inefficient.

The requirement to submit all evidence at least 5 business days prior to a hearing would be inconsistent with the requirement for applicants to submit all evidence (20 C.F.R §404.1512(a) and §416.912(a)), which state "You must inform us about or submit all evidence known to you that relates to whether or not you are blind or disabled. This duty is ongoing and requires you to disclose any additional related evidence about which you become aware." It is also inconsistent with (20 C.F.R. §404.1512(c) and §416.912(c)), which say "You must inform us about or submit all evidence known to you that relates to whether or not you are blind or disabled." There is no time limit on the applicant's duty to inform about submit evidence until the decision is issued. The philosophical underpinnings of the rule in 20 C.F.R. §404.1512 and §416.912 is that ALJs must have all evidence that is available at the time of the hearing so they can reach the correct decision. This is in direct conflict with a rule that would exclude probative and material evidence because of an arbitrary deadline. It makes no sense to place a duty on the claimant to submit evidence when, at the same time, rules are created which allow an ALJ not to consider that very evidence.

[4] Letter from Reps McCrery and Levin (October 25, 2005).

The proposed rule also conflicts the requirement that the Commissioner fully develop the medical record: "Before we make a determination that you are not disabled, we will develop your complete medical history for at least the 12 months preceding the month in which you file your application…" (20 C.F.R. §404.1512(d) and §416.912(d)). Again, this regulation is founded in the concept that decisions are best made when they are based on all of the evidence. An ALJ must ensure that all the available evidence is in the claimant's file.

Evidence of the applicant's medical condition closest in time to the hearing can be essential to proving disability. Therefore, we believe uniformity should be achieved by replacing the current Region I rules with the procedures that are currently in place in the rest of the country.

2. Excluding material evidence is administratively inefficient and will increase appeals to the Appeals Council and ultimately to federal court.

If the proposed rule results in evidence that could be dispositive and result in an award of benefits being excluded from consideration by an ALJ, it is likely to result in increased appeals to the Appeals Council, and potentially federal court. This creates delays that are harmful for claimants, as the wait for Appeals Council review already exceeds a year,[5] and federal court appeals add additional time. Requiring claimants to appeal to the Appeals Council and federal court unnecessarily prolongs the time such claimants must wait for financial stability and medical insurance, and creates additional work for SSA's ODAR and OGC components. These outcomes could be avoided entirely if ALJs just consider all evidence available when making the hearings-level decisions.[6] SSA already has mechanisms to encourage the prompt submission of evidence.[7]

Furthermore, Social Security Ruling 11-1p requires most claimants to choose between appealing to the Appeals Council and filing a new application. Claimants who choose the Appeals Council route, but whose claims are denied, and then file new applications could lose months or years of retroactive benefits even if their new applications are approved. Claimants who reapply instead of requesting Appeals Council review will also lose retroactive benefits, and processing their cases will burden SSA field offices and state agencies.

[5] https://www.ssa.gov/appeals/appeals_process.html#&a0=6

[6] See for example, Howe v. Colvin, 147 F.Supp.3d 5 (D.R.I. 2015) where the ALJ refused to accept evidence submitted 4 days prior to the hearing. Almost three years later, a federal court remanded the case to the ALJ to consider the evidence.

[7] If an ALJ believes that a representative has acted contrary to the interests of the client/claimant, remedies other than closing the record exist to address the representative's actions. SSA's current Rules of Conduct already require representatives to submit evidence "as soon as practicable" and to act with "reasonable diligence and promptness" and establish a procedure for handling complaints. 20 C.F.R. §§ 404.1740 and 416.1540. If a representative withholds evidence, waiting to file it later, we believe that it is rare and unjustifiable. But SSA already has the tools to penalize a representative for this behavior without doing irreparable harm to claimants. However, this NPRM would punish the claimant rather than the representative.

3. The proposed rule ignores the reality that testimony, and sometimes new evidence, is routinely introduced at or after ALJ hearings, and claimants and representatives need the opportunity to respond.

ALJ hearings are by their nature fact-finding hearings. Claimants and other witnesses, including vocational and medical experts, are routinely asked to provide oral testimony. The expert testimony is not available to claimants or representatives prior to the hearing. Due process demands that applicants and their representatives are provided an opportunity to respond to such evidence, usually through the submission of a written post-hearing memorandum, but also, and sometimes more importantly, with evidence to refute assertions made at the hearing. The proposed regulations do not provide applicants with an opportunity to respond to new evidence introduced during the hearing, nor to provide additional evidence to address the issues that arose during testimony or cross-examination.

4. Serious Problems and Inconsistencies Exist with Implementation of the 5 business day rule in Region I.

The Region I rules governing the submission of evidence (20 CFR §405.331) give ALJs too much discretion, which results in denials of due process. There are discrepancies in determining precisely when the 5 business day deadline closes, interpreting the good cause exceptions, and in considering evidence submitted after the deadline regardless of whether it is adverse to or supportive of a finding of disability. Given these inconsistencies in implementation, SSA should not move forward with implementing this rule nationwide. As discussed above, excluding material evidence is harmful to claimants and inefficient. Instead, SSA should restore uniformity in evidence submission rules nationally by eliminating the Region I pilot and removing the 5 business day rule for the entire country.

Should SSA decide to finalize this rule, it should also do the following:

- Add clear language to 20 C.F.R. §§404.935 and 416.1435 indicating that it is SSA's duty to fully develop the medical record and the time limit is not meant to be punitive. The language should include a statement that it is the preference of SSA to have the ALJ decision made on the basis of the entire medical record.
- Require that each party make every <u>reasonable</u> effort to ensure that the ALJ receives all the evidence. The current proposed regulations 20 C.F.R. §§404.935(a) and 416.1435(a) requires "every effort" which is nonsensical.
- Allow automatic good cause exceptions for claimants who are found or have been found to have a severe mental impairment or an inability to read, write, or speak English, at any step in the adjudicatory process. People with these limitations are likely to have additional challenges in meeting the 5 business deadline, and will often have difficulty requesting good cause exceptions and explaining how their limitations interfered with their ability to timely procure evidence before the deadline. If there is already evidence in the record that the claimant has limitations that would impair their ability to get records and make such proofs, then the exception should automatically be triggered and any

evidence accepted after the five day deadline without the need for the claimant to raise and argue the issue.

- Add language to the good cause exceptions (20 C.F.R. § 404.935(b) and § 416.1435(b)) to minimize ALJ discretion in whether to accept evidence. For example, what does "actively and diligently" mean? This language should reiterate the administration's duty to ensure a complete record, and should be clarified in both in the final regulation and through clear instructions to ALJs in the HALLEX.
- Provide additional training to ALJs regarding the duty to fully develop the record, the preference for inclusion of all material evidence in the record on which the decision is based, the requirement to include evidence in the record if the ALJ is informed about the evidence prior to the 5 business day deadline as long as the evidence is received prior to issuing the decision, and the parameters of the good cause exceptions. We note that the language "…must inform us about or submit any written evidence…" is an improvement over the process currently in place for Region I. We are concerned that, absent strong regulatory provisions, sub-regulatory guidance, and training to ALJs, improvement over current rules governing Region I will not be implemented consistently, if at all. We urge SSA to make it clear that the proposed rule requires that if an applicant or her representative informs an ALJ prior to the 5 business day deadline about evidence that is material, the ALJ must consider that evidence when reaching a decision on the case irrespective of whether any of the good cause exceptions are met. It is important that SSA make it clear in the final regulation and in the appropriate sub-regulatory guidance including the HALLEX and a Social Security Ruling if necessary that there is no ALJ discretion regarding whether to accept and consider it.
- Clarify precisely when the 5 business day deadline occurs. Is the deadline at the time the hearing is set, the time the hearing office closes, or 11:59 pm local time on the date five business days before a hearing, or some other time? Are days "business days" if the hearing office is closed because of weather, government shutdown, or other event? Ensure that claimants and representatives understand the deadline by including the day, date and time for meeting the requirement in the hearing notice and in a follow up notice reminding applicants of the deadline not more than 3 weeks and not less than 10 days before the hearing.
- Provide the same good cause requirements as is proposed for the submission of evidence to the submission of objections, subpoena requests, and written statements. The proposed rule does not allow ALJs flexibility in permitting such submissions after their respective deadlines, even for the most compelling of circumstances.

We appreciate the NPRM's additional specificity regarding the good cause exceptions in 20 CFR §404.935(b)(3) and §416.1435(b)(3). Should SSA move forward with finalizing this rule, we fully support the inclusion of all the additional good cause language, but especially 20 CFR §404.935(b)(3)(iv) and §416.1435(b)(3)(iv), because they recognize the reality of obtaining medical evidence. Should SSA choose to move forward with finalizing this part of the proposed rule, which we oppose, we strongly recommend retaining the inclusion of the increased specificity regarding the good cause exceptions

and more guidance to ALJs regarding the application of them. SSA should retain the one contained in proposed 20 C.F.R. §404.935(b)(3)(iv) and §416.1450(b)(3)(iv) which recognize the realities described above. It is our contention, however, that with this exception there is no practical reason for the rule.

Despite their diligence, representatives often face numerous obstacles and lengthy delays to obtaining medical evidence. Claimants appearing pro se before an ALJ have even more challenges.

For example, many medical providers do not see fulfilling record requests as a high priority. They may require that medical debt be satisfied before records are provided. The cost of medical records may be prohibitive, or records may be so voluminous they are difficult or expensive to scan, fax, or ship. Some hospitals and medical offices have closed or changed ownership, making it difficult to locate records. Hospitals frequently will not release records of inpatient hospitalizations until the attending physician signs the chart, which may take weeks or even months after discharge. Mental health outpatient treatment centers often erroneously claim that HIPAA prohibits them from releasing psychotherapy notes. Claimants are not always able to recall all of their treatment sources or the names they used when they received treatment, and may have difficulty completing medical record releases.

Under the proposed rule, claimants would be at the mercy of ALJs to find that an exception to "late" submission of evidence has been met. Some ALJs in Region I do so. But, as discussed throughout these comments, other ALJs rigidly enforce the 5 business day deadline, refuse to consider any medical evidence submitted after that time limit, and then deny the claim based on an incomplete medical record. If ALJs abuse their discretion – which happens – claimants have limited recourse within the agency, and in many cases need to file suit in federal court where a district court judge will be asked to decide not whether the evidence proves disability, but whether the ALJ was wrong to refuse to consider the evidence. These results are not only unfair to claimants but also are administratively inefficient and thus do not advance the Agency's goals.

We are very concerned about the impact the proposed rule could have on unrepresented applicants, especially those with intellectual, cognitive, or mental health impairments. Unrepresented claimants are unlikely to be aware of these obligations and unable in some cases to meet them due to their disability. Therefore, SSA must provide due process and access to justice for all claimants in relation to this rule. Should SSA move forward with finalizing this part of the rule, we urge SSA to:

- Ensure that every unrepresented claimant has a pre-hearing conference at least 45 days before the hearing (due to the reality of obtaining medical records described above) in which the applicant's obligations are clearly spelled out.
- Ensure that the hearing notice (and the additional notice that we recommend above) are clear and easy to understand detailing the requirements, including that the claimant should inform SSA about any outstanding evidence before the deadline in order to have the evidence included in the record.

- Devote additional staff resources to obtaining medical records they are informed about by claimants at pre-hearing conferences, and otherwise developing the records of unrepresented claimants.

These proposed rules also ignore the reality that disability is adjudicated through a decision date. Disability adjudications happen while everything is still in motion and therefore require the ongoing submission of evidence of a continually changing impairment.

Finally, although ALJs have the nominal power to issue subpoenas at 20 C.F.R. §404.1450 and §416.950, they do not have the power to enforce subpoenas with which providers fail to voluntarily comply, and the United States Attorneys' offices which have such power do not have the resources to devote to such activities.

II. 20 C.F.R. § 404.938 and § 416.1438 Notice of a hearing before an administrative law judge

We support increasing the time by which notice is given to claimants prior to the hearing, but believe the length of time should be increased to 75 days and not the 60 days in the proposed rule. 75 days' notice is necessary to give applicants and their representatives sufficient time to gather relevant medical evidence, make additional medical appointments if necessary, and to be fully prepared for the hearing.
We believe that the rationale for 60 days' notice, as described in footnotes 21-23 of the NPRM, is inaccurate. Additional postponements in Region I could be caused by the 5 business day rule, weather-related closures in New England, and hearing offices that have stopped calling claimants and representatives to schedule hearings. There is no indication that the variance is statistically significant or that it is caused by an extra 15 days' notice.

Shortening the time for notification in Region I may lead to additional requests postponements or difficulty in obtaining evidence in a timely fashion. This is especially true for claimants who hire representatives once they receive the notice of hearing.

Furthermore, as explained above, we urge that "every effort" at 20 C.F.R. § 404.938(b)(6) and § 416.1438(b)(6) be changed to "every reasonable effort."

III. 20 C.F.R. § 404.939 and § 416.1439 Objections to the issues.

We strongly oppose this provision. In general, hearing notices do not provide detailed information regarding the topics that will be discussed by ALJs, vocational experts, or medical experts who might testify at the hearing, and even when included, claimants generally do not understand the notices. It is also a common occurrence for ALJs to point out for the first time at hearing issues which were not reasonably apparent beforehand. That is because the notice of issues section in ALJ hearing notices are typically boilerplate, not specific, and the issues noticed do not reflect specific review of the medical evidence of record. As a result, no pre-hearing notice is provided to

claimants on many specific issues raised by that evidence. When that happens, the claimant or representative has no benefit of pre-hearing notice of such issues, and in a five-day rule situation, would have no realistic notice or chance to address such issues with additional evidence prior to the hearing.

The proposed rule, if implemented, could force representatives to develop a standard notice of possible objections that they would submit in every case in an effort to ensure the ability to object if necessary. Unrepresented applicants would likely lose the ability to object, however. This provision would create an additional burden on representatives but without accomplishing anything in terms of administrative efficiency or improving the hearing process, and would disadvantage unrepresented claimants. Furthermore, there is no good cause exception proposed for objections. We therefore urge SSA not to include this provision in any final rule.

IV. 20 C.F.R. § 404.944 and § 416.1444 Administrative law judge hearing procedures - general.

The standard set out in 20 C.F.R. § 404.944(a)(1) and § 416.1444(a)(1) conflicts with 20 CFR § 404.1512 and § 416.912. These proposed rules require an ALJ to "accept as evidence any documents that are material to the issues," while the standard in 20 C.F.R. § 404.1512 and § 416.912 is evidence that "relates to whether or not you are blind or disabled". Requirements on submitting evidence should be consistent throughout the regulations to avoid unnecessary confusion.

V. 20 C.F.R. § 404.949 and § 416.1449 Time limit on presenting written statements and oral arguments.

We oppose the proposed rule that would require claimants and representatives to submit written statements related to the case at least 5 business days in advance of the hearing. A written statement should be able to include reference to all material evidence. As discussed extensively above, it is often not possible, through no fault of the applicant or representative, to have all evidence more than 5 business days ahead of the hearing. In addition, evidence is often not assigned exhibit numbers 5 business days prior to hearing, even when it was submitted far earlier. It is difficult to write effective pre-hearing briefs without the ability to cite to specific exhibits. Applicants should not be denied due process by the failure of the ALJ and hearing office staff to timely process evidence when it is submitted.

Should SSA move forward with implementing this provision, which we strongly urge it not to, it should include good cause exceptions that track the good cause exception for late submission of evidence. In addition, the language should be changed to "must inform us about or provide a copy of your written statements no later than 5 business days before the date set for the hearing." Representatives and claimants should be able to inform the ALJ that they may be submitting a written summary or statement of the case after all evidence and testimony is received. The words "for each party" should be omitted because it creates an additional challenge for claimants, who may not have contact information for other parties (for example, a wage-earner's surviving spouse

may not be aware of the wage earner's children from prior relationships or know how to contact them).

In addition, there cannot be a prohibition to submitting a post-hearing written brief. Many ALJs prefer only perfunctory oral argument at hearing and a substantial post-hearing brief including written arguments. Proposed 20 C.F.R. § 404.949 and § 416.1449 violate 5 U.S.C. § 556(d), which gives the claimant a right to comment on and rebut any agency-presented evidence and any evidence presented at the hearing, including the claimant's own testimony.

VI. 20 C.F.R. § 404.950 and § 416.1450 Presenting evidence at a hearing before an administrative law judge.

We oppose the requirement to request subpoenas at least 10 business days in advance of a scheduled hearing contained in proposed 20 C.F.R. § 404.950(d)(2) and § 416.1450(d)(2). It is unrealistic to expect a representative or an applicant to know that far in advance that a document will not be received and that a subpoena is required; this proposed rule would result in unnecessary subpoena requests. Many records come in toward the end of the 75-day period. Such a rule would require claimants and their representatives to request completely unneeded subpoenas, leading to entirely wasted administrative time at ODAR. There may also be post-hearing evidence, such as a VE or ME's response to post-hearing interrogatories, which could not be subpoenaed under the proposed rule. The chances of reaching the right decision at the hearing are increased by having all material evidence considered and putting this deadline on the request for subpoenas is antithetical to reaching that goal.

Furthermore, there is no good cause exemption for the 10 business day deadline. Claimants who could not read or did not receive the hearing notice, who were hospitalized or incarcerated, who lacked a telephone or were faced with a busy signal when attempting to contact the hearing office to request subpoenas, who underwent medical treatment immediately before the hearing and thus generated more records, who hired a representative fewer than 10 business days before the hearing, or who had other good cause reasons for a later request for a subpoena are completely without recourse under the proposed rule.

VII. 20 C.F.R. § 404.970 and § 416.1470 Cases the Appeals Council will review

1. 20 C.F.R. § 404.970(a)(5) and § 416.1470(a)(5)

We oppose the proposed limit on submission of evidence to the Appeals Council. The current rule, found at 404.970(b) and 416.1470(b), requires the Appeals Council to consider new and material evidence where it relates to the period on or before the date of the ALJ decision. The proposed rule would add an unnecessary burden, requiring also that the evidence "would change the outcome of the decision." A claimant must already show that the evidence is new (not part of the record as of the date of the ALJ decision) and material (relates to the period before the ALJ decision). A claimant may be unable to determine whether or not the evidence would have changed the outcome, but deserves to have new and material evidence considered by the Appeals Council.

2. 20 C.F.R. § 404.970(b) and § 416.1470(b)

We reiterate our opposition to imposing a deadline on submission of additional evidence to the Appeals Council.

3. 20 C.F.R. § 404.970(c) and § 416.1470(c)

We support the proposed rule at 20 C.F.R. § 404.970(c) and § 416.1470(c) because it clarifies the rules about creating a protective filing date for a new application on the date that unaccepted evidence was submitted to the Appeals Council.

4. 20 C.F.R. § 404.970(d) and § 416.1470(d)

We are concerned about the Appeals Council conducting hearings to obtain additional evidence rather than remanding the case for a full and fair, APA-governed hearing conducted by an ALJ. SSA's proposed CARES plan would allow Administrative Appeals Judges (AAJs) to conduct hearings for a discrete subset of cases (remands and non-disability issues). Despite concerns about AAJ hearings raised by Congress during a May 12, 2016 Senate Committee on Homeland Security and Government Affairs Subcommittee on Regulatory Affairs and Government Management hearing on "Examining Due Process in Administrative Hearings," the proposed rule sets no limit on the types or numbers of cases where the Appeals Council would conduct supplemental hearings.

VIII. Conclusion

We oppose the creation of deadlines that exclude material, and possibly dispositive, evidence. This is because reaching the right decision at the ALJ hearing level is most likely when all material evidence is considered at the time the decision is made. Instead, we urge SSA to end the 5 business day rule in Region I and restore uniform procedures across the nation in that manner. Should SSA move forward with implementing the rule nationwide, we urge SSA to also put in place the procedures, sub-regulatory policy, and training suggested above to limit ALJ discretion regarding its application and ensure consistent implementation to protect the due process rights of applicants.

We support increasing the required amount of hearing notice nationwide to 75 days. There is no evidence to support a 60-day notice, as proposed in 20 C.F.R. § 404.938 and § 416.1438, as opposed to a 75-day notice. Allowing 60 days' notice will not be sufficient to submit evidence at least 5 business days before a hearing.

Submitted on behalf of the undersigned members of the CCD Social Security Task Force:

Autistic Self Advocacy Network

Community Legal Services of Philadelphia

Easterseals

Epilepsy Foundation

Justice in Aging

Lutheran Services in America Disability Services

National Alliance on Mental Illness

National Association of Disability Representatives

National Committee to Preserve Social Security and Medicare

National Council on Independent Living

National Disability Institute

National Disability Rights Network

National Organization of Social Security Claimants' Representatives (NOSSCR)

Special Needs Alliance

The Arc of the United States

United Spinal Association