

NOMINATION OF MICHAEL J. ASTRUE

HEARING

BEFORE THE

COMMITTEE ON FINANCE UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

ON THE

NOMINATION OF

MICHAEL J. ASTRUE, TO BE COMMISSIONER OF SOCIAL SECURITY

JANUARY 24, 2007



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NOMINATION OF MICHAEL J. ASTRUE, TO BE COMMISSIONER OF SOCIAL SECURITY

WEDNESDAY, JANUARY 24, 2007

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, DC.

The hearing was convened, pursuant to notice, at 10:05 a.m., in room SD-215, Dirksen Senate Office Building, Hon. Max Baucus (chairman of the committee) presiding.

Present: Senators Kerry, Salazar, Grassley, Hatch, and Bunning.

OPENING STATEMENT OF HON. MAX BAUCUS, A U.S. SENATOR FROM MONTANA, CHAIRMAN, COMMITTEE ON FINANCE

The CHAIRMAN. The committee will come to order.

We meet today to consider the nomination of Michael Astrue to be the next Commissioner of Social Security. Social Security is important. If Social Security did not exist, about one-half of American senior citizens would today live in poverty.

Social Security's long-run finances face a challenge, but they are not in a crisis. According to the Congressional Budget Office, we can pay full Social Security benefits until 2046.

After that, payroll taxes will continue to flow in and that will allow us to pay 79 percent of full benefits. Making sure that Social Security can pay full benefits is a challenge that we can, and will, meet.

One thing that will not help us to meet that challenge is the President's privatization plan. Under that plan, a portion of Social Security payroll taxes are diverted into private savings accounts.

That would move up the date that Social Security would no longer be able to pay full benefits by 11 years, and that plan would force the Government to borrow about \$5 trillion in the next 20 years of its operation.

Finally, that plan would expose some bedrock Social Security benefits to the risks of the private financial markets. The President's privatization plan would also cause deep cuts in benefits for future middle-class retirees. For example, future retirees who earn the equivalent of \$59,000 a year today will have their benefits cut by 42 percent—simply unacceptable.

So I will ask the nominee what his position is on the President's privatization plan. I want to know what he thinks about diverting Social Security payroll taxes into private accounts, and I want to know what he thinks about deep benefit cuts for future middle-class retirees.

We ought to explore options that would fix Social Security's long-run financial challenge, but to begin with I want to explore proposals that do not cut benefits or raise taxes.

For example, we could reduce the tax gap for Social Security payroll taxes. Each year, about \$50 billion in Social Security payroll taxes are not collected. We have to do better.

The problems of running the Social Security Administration are enough to occupy the Social Security Commissioner, and the Commissioner will have no time for advocating changes to Social Security such as privatization. The last Commissioner did not do that and our nominee has told us that he would not do that either, and I respect that.

The Commissioner's term of office is 6 years. The Commissioner cannot be removed from office except for "neglect of duty or malfeasance." The nominee has indicated that he plans to serve his full 6 years.

That means that he could well be in office under a new President for 4 years, and that would be a President who did not appoint him, and that could be a President from a different party. We have not faced this situation ever before.

I plan to ask the nominee how much independence he thinks the law allows him, what would he do if he disagreed with the President, and how much independence might he actually use?

One problem that Social Security faces right now is that it can take as much as 4 years for applicants for disability benefits to get their benefits approved. During that time, these disabled workers cannot work so they may have no earnings.

Huge backlogs for pending claims are a key cause of these waiting times. Right now, for example, there is a backlog of more than 700,000 hearings. These backlogs have occurred because each year since 2003, the money requested in the President's budget has not been appropriated. This year will likely be no exception. This has to change. I want to know if this nominee is prepared to fight for adequate budgets to administer Social Security.

I also want to call attention to a great absurdity in our budget process. The Social Security Disability programs include something called "Continuing Disability Reviews," or CDRs. Many disability beneficiaries are supposed to be medically reexamined every few years to see if their medical condition has improved.

If their condition has improved enough so they can then work, then their benefits end. As a result, these reviews save the government \$10 in benefits for every \$1 the government spends administering them, and that is based on the Chief Actuary for the SSA.

Fully funding these reviews ought to be a no-brainer. But it is not that simple. When the money to run Social Security gets cut, the Social Security Commissioner faces a dilemma: what services should be cut?

Reasonably enough, the last Commissioner did not cut funding for handling applications for Social Security benefits or for other basic services to the public. Instead, she reduced funding for CDRs.

We could solve this problem by exempting these administrative costs from the caps on appropriations. This has been done before, so I will want to see if the nominee agrees that Congress ought to look at this.

The former Commissioner, Jo Anne Barnhart, did an excellent job running Social Security. She accomplished a great deal in her tenure, and the Nation owes her a debt of gratitude.

Mr. Astrue, you have some big shoes to fill, and the process of filling those shoes begins with our hearing today.

With your indulgence, Senator Grassley, I would like to now turn to Senator Kerry, who would like to introduce the witness; they are from the same State.

**OPENING STATEMENT OF HON. JOHN KERRY,
A U.S. SENATOR FROM MASSACHUSETTS**

Senator KERRY. I appreciate that, Mr. Chairman. Thank you, Senator Grassley, for your indulgence to do that.

I apologize, we are in a mark-up over the way on the Iraq resolution in the Foreign Relations Committee, and I need to run back to that.

But let me just say, Mr. Chairman, what a pleasure it is to welcome a nominee with the qualifications of Michael Astrue. It is quite remarkable, and we are lucky, I think, to get somebody with the quality of his life experience to come back to government and serve yet again after an enormously successful career, both in and outside government.

He is a resident of Belmont, MA, and we welcome his wife, Laura, here also. Thank you for being here.

He was educated at Yale University, where he graduated magna cum laude, with honors in English and philosophy, and then he sort of went backwards by going to Harvard Law School from there, and has taken graduate courses subsequently. He clerked for one of our Superior judges in Massachusetts. He subsequently went to one of the best law firms in the country, Robes & Gray.

Then he came back to public service here. In 1985, he served as Deputy Assistant Secretary for Legislation in Human Services, and subsequently as counselor to the Commissioner of Social Security. So, he comes with a lot of experience already in this field.

From 1985 to 1992, he served in that capacity at the Department of Health and Human Services, where he was the General Counsel and supervised over 500 lawyers in the FDA, HCFA, NIH, and other sub-agencies, and tried and argued major cases in that capacity.

He then went to yet another of our prestigious law firms, which I am proud to say my brother is a partner in, and I know they worked together, and he comes with his strong recommendation.

He then spent 10 years in the biotech and technology world, working at Biogen as vice president and general counsel, and subsequently senior vice president and general counsel.

He then was involved with two companies, one of which he helped bring out of trouble, turned it around, a failing biotech company, then subsequently engineered a merger for a company where he was the interim chief executive officer.

So this is a person who knows the private sector, knows the trials and tribulations of both the public sector and the workplace/private sector.

As I said in my opening comments, this is an important position, with baby boomers growing older, with the system obviously chal-

lenged in terms of its viability for the long term. Many of us here believe it does not take a lot of tweaking to actually fix it.

As the Chairman said, we have serious questions about the privatization plan, but we certainly look forward to your testimony today before the committee. We welcome you here, and we thank you for your willingness to come back and serve your country. We appreciate it.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Kerry, very, very much. I know you are very proud of a fellow resident from Massachusetts.

Mr. Astrue, I might also say that Senator Kennedy very much wanted to be here, too, to introduce you. He is very proud of you. He is now managing the minimum wage bill on the floor. It is tough. You have to make choices around here. You cannot be in two places at once. But he very much wanted to be here. He has a full statement on your behalf which we are going to enter into the record.

Mr. ASTRUE. Thank you.

The CHAIRMAN. Thank you.

[The prepared statement of Senator Kennedy appears in the appendix.]

The CHAIRMAN. Senator Grassley?

**OPENING STATEMENT OF HON. CHUCK GRASSLEY,
A U.S. SENATOR FROM IOWA**

Senator GRASSLEY. I wanted to congratulate you, obviously. I said that privately. I thank you for coming to my office when I asked for a private meeting with you. It was a worthwhile meeting to have.

As you know, you are going into a position as Commissioner that is an extremely important one, and it is one that is responsible for one of the most successful social programs that the U.S. Government is involved in. You are going to manage and oversee the retirement, survivors' and disability programs, programs that we all recognize are very vital to millions of Americans.

I do not think I can outdo what the Chairman has said about the very important challenges that you face as Commissioner, that your agency faces. In a sense, we all face them. You face them every day in administering the program to make sure it runs smoothly, but these long-term problems are something that Congress has to deal with, the financial solvency of it.

In the near term, you are going to face these increased workloads. If we do not get the budget turned around for this year, if we go with a continuing resolution, as we have discussed, that is going to have serious consequences for your agency meeting the needs of the people it has to serve.

I know the Chairman and his staff are working hard to help the Agency and our seniors and disabled people fill that gap that would be there if we end up with just a continuing resolution.

If we do not have them, as you and I discussed, you are going to have an agency-wide system of furloughs you are going to have to put in place to make up for some of that money.

In the longer term, we have to deal with the financing of it, but you have to deal with the day-to-day things that are coming with the biggest generational shift in our history, the 77 million baby boomers going into retirement. This will adversely affect the Agency's workforce, its workload, and ultimately financial solvency.

The Agency needs strong leadership to meet these challenges. It needs someone who is committed to the day-to-day operations of the Agency and the long-term viability of the program.

It seems to me that, as best said by Senator Kerry, you come here with those attributes to get the job done. You have had senior positions in government at the Department of Health and Human Services, at the White House, and at the Social Security Administration.

You have also held positions of leadership in the private sector, so you know what the cold, cruel world of the private sector is. Your previous experience demonstrates a commitment to public service. I think it demonstrates a vision of leadership. Your experience and vision will serve you well as you undertake this new assignment. Congratulations.

The CHAIRMAN. Thank you very much, Senator.

Mr. Astrue, this is probably a good time for you to introduce your family.

Mr. ASTRUE. Yes. Thank you, Mr. Chairman. And thank the entire committee for scheduling this hearing, and to Senator Kerry for his very kind remarks, and for Senator Kennedy's support throughout this process. I am really very grateful.

My wife, Laura, behind me, is an elementary school teacher. My daughter, Caitlin, is a freshman at Washington University.

The CHAIRMAN. Are any of them here?

Mr. ASTRUE. Not my children. Unfortunately, they both decided that their academic commitments had priority over today's hearing. For my son, this actually conflicts with his ROTC class, and he is taking that very, very seriously, and I think that is what we all would want.

The CHAIRMAN. All right.

Well, who is behind you?

Mr. ASTRUE. This is my wife, Laura.

The CHAIRMAN. Your wife. Would you please stand so we can recognize you? Congratulations.

[Applause.]

The CHAIRMAN. That is great.

Senator Hatch would like to say a few words first, if you do not mind, Mr. Astrue.

**OPENING STATEMENT OF HON. ORRIN G. HATCH,
A U.S. SENATOR FROM UTAH**

Senator HATCH. Mr. Astrue, I'd like to welcome you and your wife and family. I have known you for quite a while. I want to make sure that everybody knows how much confidence I place in you, your abilities, and your honesty, integrity, and decency. I am personally grateful that you are willing to take on this assignment as Commissioner of the Social Security Administration, and I want to publicly thank you for it.

I also want to publicly thank Mr. Astrue's predecessor, Commissioner Jo Anne Barnhart, who has ably served this Agency. And while Commissioner Barnhart will be missed, I am confident that President Bush made the correct choice in selecting Mr. Astrue for this job.

Over the years, my office and I have worked very closely with Mike in his capacity as a government official and an industry leader, and I am sure that many other Senators in this body have had a similar experience.

We have also, through these years, been impressed by your management style, your management ability, your forthright manner, your legislative skills and leadership skills, and above all, your intelligence.

So I know you will bring all those attributes to benefit the Social Security Administration and, of course, all of our people in this country who depend so much upon it.

I do not want to take very much time, but let me just say this. You are taking upon yourself one of the most formidable jobs in the government today. We all know that this is going to be a disaster if we do not do some things very effectively to augment and straighten out Social Security.

There are a number of very good ideas, but it is going to take great leadership to get not only those here in the Senate, but those in the whole Congress, to do what is right with regard to Social Security.

Frankly, we are going to have a doubling of people who are collecting Social Security within a reasonable period of time, and by 2042 we are going to be basically in a deficit, and I believe it will be long before then knowing how everything works around here.

So I just personally want to thank you for being willing to take this on. You are the type of person, and leader, that this Agency needs. Commissioner Barnhart really laid great groundwork for you to work on, and I believe that you will have a lot of support from this committee, and from the Senate as a whole.

Even though you may be serving another administration—could be a Democratic administration the next time—I know that you will do it in a bipartisan, decent, honorable way. I do not know what greater compliment I can throw your way, other than the ones I have said here today, although I would like to think of a few more that I could throw out your way.

I hope you have a very easy time getting through the Senate, getting confirmed, and getting on this job and really doing what will be beneficial to virtually every American.

Thank you, Mr. Chairman. I appreciate you letting me speak.

The CHAIRMAN. Thank you, Senator, very, very much for that good statement.

Mr. Astrue, it is your turn now to give a statement, say what you want to say, tell us what you want to tell us.

STATEMENT OF MICHAEL J. ASTRUE, NOMINATED TO BE COMMISSIONER, SOCIAL SECURITY ADMINISTRATION, BALTIMORE, MD

Mr. ASTRUE. Thank you, Mr. Chairman. I will try to be brief.

I started my career here in the Russell Building in 1978 in an entry-level job for Senator Richard Schweiker, then went on to work for the National Council of Senior Citizens after the Senator announced his retirement.

When I returned to Washington in 1985 to work primarily on Social Security issues, the system was an abstraction for me—an incredibly important one, but an abstraction nonetheless.

That changed radically 2 months later when my father, at the age of 52, suffered a severe cerebral hemorrhage, which we later learned was caused by a rare form of brain cancer. I handled all the paperwork for my father's SSDI and Medicare claims.

One of the things I learned from the frustrations of that experience is how well-meaning people in agencies, just like me at age 28, often do not understand what actually happens in practice in complex programs such as Social Security.

Accordingly, the following year, when I began working as Counselor to the Commissioner of Social Security, one of the first things I did was to visit DDSs in Pennsylvania, Maryland, Delaware, and Massachusetts to see how the disability determination process actually worked in those States.

The lessons learned from those trips were incredibly useful to me as we tried to improve the disability programs after many years of inflamed controversy. I am particularly proud of having led the effort to terminate the Agency's longstanding "nonacquiescence" policies, an achievement highlighted by Chairman Moynihan when I was last before you in 1989 during my confirmation hearing for General Counsel of HHS.

While I intend to duplicate those DDS trips, I expect to focus first on operations relating to Medicare Part D. Based on Commissioner Barnhart's public comments, she and I agree that there has been an unacceptable level of problems to date, and the Agency has even greater Medicare responsibilities this year.

I cannot tell from the publicly available materials and the briefing materials exactly where the operational issues are and how many of them are under SSA's direct control, but I want to assure you that I will be relentless at getting to the real issues, that I will focus on action and not blame, and that I will be proactive and candid with this committee if we need legislative clarification or additional support.

This task may be complicated, however, by budget constraints and the likelihood of furloughs that Commissioner Barnhart has raised repeatedly in recent months.

I cannot help but be exceptionally concerned about this outcome at a time when the Agency is already under significant operational stress. I very much need this committee's advice and guidance as to how to manage this situation, and how to avoid repetition of it in the future.

It will be difficult to advance this committee's interest in improving the disability determination process and the Agency's perform-

ance with regard to its Part D responsibilities if both senior and line employees are distracted and demoralized by furloughs.

With regard to the Commissioner's role on retirement policy, my goal is to be a good steward of the program for both current and future beneficiaries. For current beneficiaries, this role means setting high standards for management, performance, service, and committing to meeting those standards. It also means being scrupulous and painstaking and making sure the Agency adheres to the law and best demonstrated practices of accounting, efficiency, and compassion.

For future beneficiaries, good stewardship means engaging with others in the Agency and the executive branch, with members of this committee and other members of Congress, and with outside groups and experts to provide unbiased data about all the options for safeguarding the financial stability of the program.

It is part of our obligation to the American public that we must strive to continue the best possible support for older Americans, people with disabilities, and their families in the coming decades. I look forward to providing technical support for those in the legislative and executive branches engaged in this policy debate.

Let me conclude by noting that Commissioner Barnhart is someone who I like, admire, and respect from our two previous tours of duty together. I feel blessed to have been asked to follow this strong and principled leader in a position so vital to our success as a Nation.

If confirmed, the committee can count on me to do everything I can to live up to her record and be another good steward for the Social Security Administration. Thank you. I will be happy to answer any questions you may have.

[The prepared statement of Mr. Astrue appears in the appendix.]

The CHAIRMAN. Thank you, Mr. Astrue, very much.

Senator Grassley has a commitment he has to attend to, and I would like to turn to him to ask the first questions.

Senator GRASSLEY. I thank you for that courtesy. I am just going to take my 5 minutes, and if I have other questions that I do not get to, I would ask you to respond in writing.

We have already talked about a possible shortfall in funding and we have talked about furlough. I will give you two opportunities to speak to that, one, how you would handle it, and number two gives you an opportunity from a platform here to tell everybody in Congress the serious consequences.

Mr. ASTRUE. Right now, my understanding is that the Agency is looking at up to 10 days of furlough for all employees. No matter how you try to implement that, it will have a serious negative impact on service.

In terms of exactly how that would be implemented, I would obviously try to get input from senior staff, from the labor unions, and from others to try to figure out the best way to manage it for employees and for recipients.

But any way you do it, it is going to be ugly, and the effects will be long-lasting in terms of morale on the employees and in terms of backups in workloads. One of the consequences of the decrease in funding in the last couple of years is that the time for processing

on most major actions of the Agency is starting to go back up. You have very little discretion as a Commissioner of Social Security.

Almost everything that you do is mandated by Congress. So, unlike a regulatory agency that can prioritize enforcement, or a grant-making agency that can just cut everything 3 percent across the board, you do not have that same flexibility as Commissioner of Social Security.

Really what has happened is exactly what the Chairman said, which is that Continuing Disability Reviews, which were about 1.2 million a year and are tremendously important for safeguarding the trust funds, started dwindling, and they are now down to the point of zero. We are now down to the point where the hiring freeze, the lack of overtime, and everything else is seriously affecting the backlogs in cases, and that is a very disturbing trend.

If the Agency shuts down for two-thirds of a million work days sometime this summer, it is going to be very hard. I know that every member of this committee whom I talked to is very concerned about service levels—I am, too. I would be misleading you though if I said anything other than, I have difficulty maintaining the status quo if we have that kind of funding crisis in the Agency.

Senator GRASSLEY. Thank you. Obviously this is something that everybody is going to have to be concerned about between now and February 16 when the continuing resolution runs out.

Your predecessor, Commissioner Barnhart, redesigned the disability determination process. This redesign, according to her schedule, was to be implemented throughout the country one region at a time.

How do you intend to monitor this implementation—do you intend to continue doing it the way she was—and determine whether or not it was achieving its intended results?

Mr. ASTRUE. That is a great question, Senator. I do intend to revisit one thing. The initiative is up in Region 1, the New England region, and I think there are some very good ideas there, some of which are fairly simple and common-sense and have been on my wish list for a long time.

I want to ask the question coming in whether we can take the least controversial and most cost-effective parts of that initiative and maybe roll them out more rapidly than Commissioner Barnhart had intended.

My sense of it is, there has been a plan, maybe perhaps once a year, spreading it into other regions. I think some of these good ideas may need to get to the rest of the country faster.

So, my intention is to ask that question. It may be that Commissioner Barnhart's original intention was exactly right, and that is the best way to do it, but I will not know until I go and ask the question. But I do want to see if there is any way we can take some of these things that might accelerate reviews and do them a little faster than what I understand the original plan was.

Senator GRASSLEY. All right.

My last question is a little on the periphery of your main job, but I want to ask you. The United States—and it is a concern of this committee as we deal with retirement, tax incentives, and all that—has such a poor savings rate, and obviously that affects the quality of life of people in retirement.

Are there any ways that you feel Social Security Commissioners—not just you, but Social Security Commissioners—can encourage people to save more beyond Social Security for retirement? Is it a role for the Commissioner, number one? If so, how would you handle it?

Mr. ASTRUE. Yes, I do think that is an appropriate role. I think this is largely through public education. I think there is often a misunderstanding among people that Social Security is intended to supply all their retirement income, and it is not.

Senator GRASSLEY. Amen! That is what too many people think.

Mr. ASTRUE. And I am, just on another level, concerned for the country as a whole that the savings rate has dropped so dramatically in the country. I remember, actually, 25 years ago writing a speech for a member of Congress where we were, I think, bemoaning that it had gone from 8 percent to 5 percent, and now it is far below that.

The CHAIRMAN. It is negative.

Mr. ASTRUE. It is negative now. I guess it is my New England background, but I am just sort of bothered by that, culturally and personally. So I do not want to do anything heavy-handed or inappropriate, but you do have a bully pulpit as Commissioner of Social Security.

One of the great things that my former boss, Commissioner Hardy, started 20 years ago was a pilot where there are annual statements that go out to individuals.

I think that the rationale for doing that at the time was to just make sure that people got their earnings records right. That was, at least, the OMB's accepted rationale for the cost benefit of it.

But I think part of her purpose, which has been served, is that notice has made more husbands and wives sit down and talk about retirement planning more than almost anything else that probably has happened in the country.

So you want to look at those ways that you communicate with the public, the annual statement, the website, all those types of things to see if you can remind people about what the role of Social Security is in their overall savings plan and try to encourage savings.

If you can provide them information that is totally neutral in terms of hard information about what happens, I think those are all good things. Specifically, exactly what we do, I am not at that place yet, but in terms of the goal, I think that is an important use of the bully pulpit for the Commissioner of Social Security.

Senator GRASSLEY. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Grassley.

I have three standard questions I would like to ask you, Mr. Astrue, before I ask more substantive questions.

First, is there anything that you are aware of in your background that might present a conflict of interest with the duties of the office to which you have been nominated?

Mr. ASTRUE. No, Mr. Chairman. I have divested of a number of stocks, even though I was not required to do so by OGE, and my intention actually is to put all my holdings into a blind trust just

so that there will not be any question about my financial holdings. I have not had any work or consulting relationships since July.

The CHAIRMAN. So there is no conflict that you can think of?

Mr. ASTRUE. There is no conflict.

The CHAIRMAN. Thank you.

Do you know of any reason, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated?

Mr. ASTRUE. No, Mr. Chairman.

The CHAIRMAN. Do you agree, without reservation, to respond to any reasonable summons to appear and testify before any duly constituted committee of Congress, if confirmed?

Mr. ASTRUE. Yes, I do.

The CHAIRMAN. Especially this committee.

Mr. ASTRUE. Especially this committee. [Laughter.]

The CHAIRMAN. Thank you.

We would like to address the long-term solvency of the Social Security trust fund. Clearly, the President has suggested private accounts. That did not really get very far, both here in the Congress and in the country.

Your thoughts on private accounts, personally? And before you answer that question, I am obviously interested in your personal views, but I just advise you that I think that is a non-starter in any serious discussion to find serious long-term solutions. This, after all, is a democracy. There are a couple of political parties. Some things are possible and some things are not possible. I would just like your thoughts on personal accounts and privatization accounts.

Second, the degree to which, if you do have some inclination to favor them, you would use your position as Commissioner to advocate for that proposal.

Mr. ASTRUE. When I first talked to the White House about this position, I think they seemed to be holding their breath when they indicated to me that this area would not be part of the Commissioner's responsibility, because they, I think, were concerned that I might not be interested if that were not part of the job.

But for me, I see the value in what I think is the consensus between the executive branch and the legislative branch in having a very politically neutral Commissioner that stays out of the highly partisan issues and is an honest broker and supplier of information about the very difficult choices that the Congress has to make.

So it is my intention, as I indicated also in the letter that I sent to you and the Majority Leader, to stay out of that debate, and I will honor that.

The CHAIRMAN. Now, is that both public and private? That is, it is one thing to publicly not make statements with respect to any component, but it is something else to privately talk to friends and so forth.

Mr. ASTRUE. This is something, to be honest—and I was, I think, candid when I went through the process. I mean, I have a general familiarity with this. I remember, we all, on the senior staff of Commissioner Hardy, got a briefing on this area in 1987 or 1988 because the Dupont plan had come up in the presidential campaign and it was the first time people were talking about privatization.

I remember being struck by the huge difficulties with the transition costs, that we were so rooted in the current pay-as-you-go system, that even with a very well-thought-out plan it was going to be very difficult to make that transition because of the transition costs.

Certainly it has been my observation, that is not where all the opposition has come. An awful lot of the opposition has come from things that you have to do because of the difficulty of the transition.

But I am not sitting on a secret, magic plan. I have been pretty busy outside the Social Security area for the last 10 years. So I will be honest with you, I have not mastered the subject. I see a wide array of things that might be a way out.

One of the things I said to the White House when we were talking about this is that it is very brave to have a full, cosmic plan, but I think everybody should be happy if there is significant progress. And maybe it is not everything that everybody wants, but the history of programs of this type is that they change incrementally.

It is difficult and it requires political consensus, but there do tend to be those magic moments when people come together. My sense is, that is what the President would like to achieve now in terms of opening up for conversation issues that would not have been opened last year. I do not know what Secretary Paulson is intending to propose, and that type of thing.

The CHAIRMAN. I am just curious in that regard. Do you see yourself more of a creature of the executive branch, or legislative, or independent?

Mr. ASTRUE. Well, I think the way the job has been defined, it is a unique animal. I have actually thought pretty seriously about separation of powers because I have actually worked in all three branches of the Federal Government.

The CHAIRMAN. And the statute is ambiguous, too.

Mr. ASTRUE. I think, ultimately, you are performing an executive branch function, but there have been restrictions and limitations and other special provisions put into the statute to respond to some of the unique considerations of the Agency.

And I do think that one of the things that you have to be careful about is a very fine line between independence and unaccountability. I have had a great concern, back home in Massachusetts, when we set up a lot of truly independent agencies with their own funding sources and no accountability to the legislature, and I think that is part of why we ended up with the Big Dig and such a horrible disaster.

So I do take my separation of powers—

The CHAIRMAN. Do not compare yourself with the Big Dig. [Laughter.]

Mr. ASTRUE. Well, no. But I think, when I say I take separation of powers seriously, it does not mean my prerogatives. I think it is very important to try to make sure that you are responding in an appropriate fashion to the legitimate interests of the judiciary, the legislature, and the executive branch, and hopefully you work in a style so that some of the theoretical issues that might be problematic never arise and you try to work in a collegial, open, candid

way, and you resolve problems in a way that some of the theoretical issues that might arise under the statute do not arise.

The CHAIRMAN. Yes. I have a good number more questions on this subject, but my time has expired.

I will turn to Senator Hatch.

Senator HATCH. Mr. Astrue, just a couple of questions here. Beyond the issues you identified in your opening statement, have you given any thought to any structural changes that you might bring to the Agency or you might recommend to this committee?

Mr. ASTRUE. I have thought about it. The structure of the Agency is actually, in most ways, pretty similar to what it was 20 years ago that I was familiar with. My philosophy on these things is a little bit influenced by my experience in the Agency the last time around, where most of the senior people were still complaining about a reorganization of 10 years before and the continuing effect on the Agency.

So I tend to be an incrementalist on these things. I think that would be my tendency, except perhaps in the immediate Office of the Commissioner, where I probably will organize it a little bit differently for my personal style. In terms of the organization more broadly, I would probably want to get in and spend at least 6 months familiarizing myself with the people, the structure, and how things are working, and then maybe consider some incremental changes. But, I think I am a highly unlikely candidate to do any kind of sweeping reorganization.

Senator HATCH. In a recent opinion piece in the *Wall Street Journal*, Robert Pozen suggested that a bipartisan compromise could be reached, given the new make-up of the Congress, and suggested that we should re-think progressive indexing of Social Security, and that that might be a possible solution, plus, his ideas on how you might be able to keep Social Security viable and active up through, at least, far beyond 2042.

I would like to ask unanimous consent that Mr. Pozen's article be placed in the record at this point.

The CHAIRMAN. Without objection.

[The article appears in the appendix on page 55.]

Senator HATCH. I would ask you if you have had a chance to look over the various reform proposals that we have discussed here in recent years, and if so, have you come to any conclusion on these approaches or do any of them appear to have viability with you, or is this too early?

Mr. ASTRUE. I think my reaction at this point is, that there are no good solutions, the question is the least bad solution. I am actually grateful that it is not going to be my choice, that it is going to be your choice. [Laughter.] I honestly do not know what I would do and what positions I would take if I were sitting in your chair.

Senator HATCH. Well, I guess I am asking, which is the least bad, in your opinion?

Mr. ASTRUE. Well, certainly if you can avoid cutting benefits, either through a direct benefit cut or changing eligibility, that certainly tends to be where my starting point is. Certainly, I think that things in the zone that the Chairman referred to in terms of trying to make the status quo run more efficiently.

There may be some ways we can do that and make the trust funds work better, more efficiently, just simply things like starting up the CDRs, as well. We are starting to lose billions in the Disability trust fund, in all likelihood.

First of all, I have pledged to stay out of this. The second thing is, even if I had not, I am not sitting on any very strongly-held set of views that it has to be this. I am just not a strong partisan on that.

Senator HATCH. Well, after you get out and get into the Agency and look it over and look at all the trouble spots—

Mr. ASTRUE. We will talk.

Senator HATCH. We expect to see a little bit of advice up here.

Mr. ASTRUE. All right.

Senator HATCH. Because we have a lot of ideas, but getting everybody to agree and getting that 60-vote margin in the Senate and convincing the House, those are very important things, but we all know something has to be done. We all know we cannot continue down this path.

You have kind of made clear what your role in policymaking is with regard to Social Security, and I just want to say, with your experience, I think you will be in a position where you can really help us up here.

I would hope that you might consider revamping your position a little bit to realize that you have to play a role, maybe, in helping to reform the Agency by helping us up here to do so in a bipartisan way.

If you can do that, you will do a tremendous job for our country and for all of those who hope there will be Social Security funds for them someday, and those who are currently on Social Security.

Mr. ASTRUE. Well, certainly if I can identify possible options that the committee and the Congress might want to consider and try to supply good data about that, certainly that is something that I know I ought to be doing, and will be looking for opportunities to try to do that.

Senator HATCH. We are counting on you, and I know you can do that. So, thank you.

Mr. ASTRUE. Thank you.

Senator HATCH. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Senator Bunning?

Senator BUNNING. Thank you, Mr. Chairman.

It seems like déjà vu all over. As a member of the Ways and Means Committee in 1992, I was put on the Social Security Subcommittee and became Ranking Member, and spent 4 years as Ranking Member.

Then in 1994, I became Chairman of the Social Security Subcommittee. The same problems we are talking about as far as disability, as far as backlog, as far as all the problems that you have brought forward, were the exact same problems that were going on.

We addressed legislation both in the House, and Senator Moynihan and myself had the same bill and conferenced the same bill, and we did something for the Social Security Administration and I do not think they have fully comprehended what we did for them: we made them an independent agency.

Now, of course there are some strings attached to that, and the Chairman and I have had some words about, how independent are they? But the fact of the matter is, they are an independent agency. They do submit their budget to the executive branch of the government, and it is still done through CBO and all that.

But you have the power as an independent agency to do your own thing and do your own thinking, particularly later on through a bill that I had put in the Senate the first year I was here, or the House the last year I was there, and then when I came to the Senate, Senator Kennedy and others passed that bill on CDRs and tried to accelerate the rate by which we did them.

The Agency has sat on its duff, absolutely sat on its duff in trying to accelerate the hearing process on CDRs, and it drives me crazy, watching it.

One other question I want to ask you, because it has been brought to my attention by anecdotal information and personal information. We have an immigration problem in this country and the Social Security Administration is part of that problem; whether they want to be or not, they are.

Employers send Social Security numbers to the Social Security Administration and somehow they do not react to the numbers immediately in finding out whether they are active numbers, or whether they are numbers that have been used, or they are currently held numbers.

I have had the experience of people coming to me and saying, "Jim, I just received a letter from the Social Security Administration and it is 2 years since I submitted these Social Security numbers to the Social Security Administration, and now they tell me that this person is using an illegal or already-used Social Security number."

I believe the Social Security Administration can do a much better job with that problem, and I think they can do it within 2 weeks, at least, instead of 2 years, in notifying an employer who gets a Social Security number that is in use or has been already used and is a duplicate number of somebody else's, and notifying the employer that you might have a problem with illegal immigration here, and do something about it quickly.

So I am tasking you, as the potential new Commissioner of Social Security, to do something about that. Your administration, the Social Security Administration, can do something quickly when they get notification of Social Security numbers and know that there are duplications or they are already in use, and notify that employer that they may have a problem.

Two years later is a joke—2 years later, to tell that employer, you might have a problem here, you might have somebody who is an illegal immigrant using an invalid Social Security number or one that is already in service.

I know that you know all the problems involved in Social Security, that in 2017 we are going to run into a sliding scale, and by 2040 or thereabouts, or a little after, that we are going to be paying 75 percent of the benefits if we do not do something dramatic.

I apologize for going 54 seconds past. Chairman Greenspan had a commission that patched the Social Security system for quite a while. He patched it because he was at a point where we could get

consensus because we were going to go belly-up. Now he has made the suggestion that it is not going to be very difficult to fix the Social Security system.

All you have to do is expand the 67 age group to 70, in the same manner that we have done with 65 to 67. I hope the Social Security system, and I hope the Congress, will take a look at some of these problems in not a complicated fashion, but a fashion that would ease your burden. You are going to have enough burdens as it is without looking at the solvency problem that is coming down the road in a big hurry.

Mr. ASTRUE. I agree with you, Senator, that one of the advantages of the structure that I think the President and the Congress agree on is that, to be involved in the solvency discussions, that is an enormous time-sucker if you do it right, and you really do not have the opportunity to focus on these host of other administrative challenges for the Agency.

My mandate is to go after those and to do the very best job that I can, and that is what I will try to do. And certainly, after confirmation, any information you give me about particular employers who are having issues in Kentucky, I would love to hear them.

Senator BUNNING. We have them in jail. We have some people in jail because of the fact. We have construction companies that are having all kinds of problems. We have horse farms where I know 80 percent of the employees on those horse farms are illegals.

Mr. ASTRUE. I would really welcome the opportunity to take a look at that and try to figure out what the source of the problem is.

The CHAIRMAN. Good. Thank you, Senator, very much.

Senator Salazar?

Senator SALAZAR. Thank you very much, Chairman Baucus.

Congratulations to you, Mr. Astrue, on your nomination. I look forward to working with you.

Three quick points. First, in terms of the approach that the administration took last year on the privatization concept on Social Security, I understand from your responses to my colleagues' questions that you will not be involved in those policy initiatives.

But I will tell you that, as you might be asked by the administration on what you do, my own view is that the approach that was taken by the administration was wrong. It was an approach that was "my way or the highway."

I think, as Senator Bunning was saying earlier on, that in terms of dealing with the issues of Social Security, we are going to have to deal with these issues in a consensus-based approach.

So to the extent that you, as the Social Security administrator, will be having any input with respective administration officials on that issue, I hope you can keep in mind that the failed effort of "my way or the highway" simply did not go very far last year or 2 years ago, so it is just a comment to you, sir, as you sit before our committee.

Mr. ASTRUE. [Nods.]

Senator SALAZAR. The second question, and this is a question for you, I think for all of us 100 Senators and each of our States, one of the major issues that we deal with in our offices as we serve constituents is dealing with Social Security issues, whether it is collec-

tion of a Social Security check of an elderly person or somebody who is disabled.

Can you just generally, and very briefly, describe what your approach would be to the management of dealing with those kinds of conflicts and providing the service to those recipients of Social Security?

Mr. ASTRUE. Well, there are certainly at least a couple primary avenues of response. Certainly the front line are the Social Security offices. They are dealing with the struggle now that there is a hiring freeze in place. People are leaving. It does not fall equally across offices.

A number of the members of this committee have expressed deep concern about the impact of service on their constituents because of that contraction, and I am very worried about it. I think that is probably the most important thing we can do.

There has also been a branch, historically, within the legislative office, if I remember correctly, that responds very directly to inquiries from members of Congress about particular types of problems.

My understanding is, historically, they have done a pretty good job for the cases that have not gone the way that they should, trying to straighten that out. I mean, there is always room for improvement, I am sure. But those are at least the two main ways of dealing with those issues.

Senator SALAZAR. Given, Mr. Astrue, the reality that I think, from what I hear, there is very low staff morale now in the Social Security Administration with your staff and looking at what is happening with the cuts that have taken place, how do you, as the leader of this organization with, I do not know the exact numbers, but I am sure it is tens of thousands of employees, try to restore morale back into your agency?

Mr. ASTRUE. Having been through some extremely difficult corporate experiences, I have a somewhat different view than I think a lot of people. I think there is a tendency for executives to just try to be "rah-rah" and avoid the issues. I think that is implicitly a patronizing position.

What I find people respond to is respecting their intelligence and their commitment, telling them openly and candidly what the issues are, what you are trying to do to fix it, and what the prospects for success are.

I think if employees feel that you care, that you are doing everything that you know how to do and they know what that is, that this is the best you can do for morale in the short run. I think the pep rallies and the happy talk, people see through that. I think the most important thing is the candor and the information.

Senator SALAZAR. One other quick question. This is a follow-up on immigration. Do you have any sense of the number that is being paid into Social Security by undocumented workers in the United States today?

Mr. ASTRUE. I do not have that number at the tip of my fingers. I know it is a substantial number, but I do not know the precise number off the top of my head.

Senator SALAZAR. Would it surprise you if it was in the tens of millions of dollars?

Mr. ASTRUE. Not at all. As a matter of fact, I believe it is probably substantially higher than that.

Senator SALAZAR. Probably over \$100 million?

Mr. ASTRUE. Probably.

Senator SALAZAR. And I will ask you, once you are in a position to get me some information, about the amount of money that is flowing in. We currently have a surplus, obviously, this year and in prospective years in the Social Security trust fund.

There is a very significant amount of that surplus that I think is coming from undocumented workers paying into the system. There was some allegation made that there are some payments coming out on undocumented workers.

I would like to know what the data are, because at least studies that I have seen have indicated that a great part of the reason that we do have a surplus is that undocumented workers are putting money into the system and the money is not coming out.

Mr. ASTRUE. Right. I think, because of the nature of the question, there is always a larger error band around the data than there is on most of the data that you get from Social Security. But I think, certainly, we would be delighted to provide you with the very best numbers and estimates we have for all of that.

Senator SALAZAR. All right. Thank you, Mr. Astrue.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. Thank you, Senator.

Mr. Astrue, I would like to discuss with you ways, together, also working with this committee, we can work to reduce those backlogs by setting up some benchmarks. I am a firm believer in names, data, dates, and benchmarks.

Mr. ASTRUE. Yes.

The CHAIRMAN. Let us see how we are doing when we get there and see what adjustments we have to make to do better. Clearly, some of that depends upon resources.

Mr. ASTRUE. Right.

The CHAIRMAN. Clearly, we do not know what the President's budget is for the Social Security Administration. Maybe you do know, but I do not know.

Mr. ASTRUE. Actually, I do not know yet.

The CHAIRMAN. All right.

But certainly if you are confirmed, you will be in a position to influence the budget for the next fiscal year. So could you just give me your thoughts on how we, together, can set up some timetables here? I am trying to draw down that backlog, which can be as much as 4 years for disability claims.

Mr. ASTRUE. I am sympathetic to the request.

The CHAIRMAN. I might say, too, I was just astounded, in talking to my office in Montana to the main person who handles all this, just how long the backlogs are. In a country like the United States of America, that is an outrage.

Mr. ASTRUE. Yes.

The CHAIRMAN. We are supposed to be the leader here. These are people who need benefits because they are disabled.

Mr. ASTRUE. Yes.

The CHAIRMAN. I understand it is probably more complicated than it appears on the surface, but certainly we can do an awful

lot better than we are. We are being irresponsible, frankly—you, the Social Security Administration, and this committee—if it does not try to figure out a way to reduce those.

Mr. ASTRUE. It was one of my main interests in going out to the Agency in the first place, and it is a main interest in coming back again. It can be a very difficult experience for someone to go through. As I indicated in my remarks, I have been through it in a very unpleasant situation.

There are, I think, a number of things that one can do. I think that Commissioner Barnhart has tried to do some very thoughtful things to try to move it along. Those are somewhat on the margins. Ultimately, a lot of this is brute force in terms of people, unless there is some radical change in the system.

So I have had some dialogue with committee staff on this issue. I think once I have had a little time to get on top of things and I know what the amount of money is that we are looking at for this year, then I will be perfectly happy to sit down and try to work out an understanding on benchmarks.

I think my guess is that the budget people can even develop some pretty good models for you, that with this many people, this much cost, you ought to be able to reduce by such and such an amount.

I think that if we can develop a tool like that, that might be very helpful in making more members of Congress understand what I think all of you understand, that this is vitally important and that we need to get it done, and that it should have the support of the Congress.

The CHAIRMAN. All right.

You have some experience with the Agency, so what are the two or three major drivers here? Resources is one.

Mr. ASTRUE. Yes.

The CHAIRMAN. Senator Salazar referred to morale. You referred to just forcing it. What are the main components, maybe two, or three, or four?

Mr. ASTRUE. Well, one of the things that I am very interested in seeing is what the data actually say in Commissioner Barnhart's initiative—what the impact has been of eliminating the reconsideration step at the DDS level.

My historic view has been, most recipients who are denied at that level go on through the process anyway. It takes a fair amount of time. It just never seemed to me that it was worth the time, money, effort, and delay to do it.

This has actually been changed. I have not seen any data on the initiative yet, but that is pretty high on my priority.

The CHAIRMAN. So cutting out one level of review would be second.

In addition to resources, what else?

Mr. ASTRUE. Well, I think that it is not only the resources at the DDS level. I mean, I am very conscious—and I may be going back to the wrong label—the Office of Hearings and Appeals, that the backlogs there, too, have become very substantial. There, maintaining the appropriate level of administrative law judges has been a real issue.

So the problem is even worse, I think, than was outlined, in that you have a big problem with the DDSs and the delays there, but you are also facing increasing and, in my view, unacceptable levels of delay at the Office of Hearings and Appeals as well.

I need to understand. I am still not entirely clear, with the new initiatives, some of the changes of the Office of Hearings and Appeals and what the real implications of those are.

Historically, I have had some other ideas that I thought might move things along more at the Office of Hearings and Appeals, but I think I have to get back in and wallow in the data a little bit and talk to the people before I have a firm plan.

The CHAIRMAN. If this committee gave you a reasonable date, could you come back to this committee with some recommendations as to what it would take to get those numbers reduced by a certain amount?

Mr. ASTRUE. I think if we could have it triggered by when the final decision is made on the funding, I would hope within 60 days or so after that that we ought to be able to sit down.

The CHAIRMAN. So what would be a reasonable date for you?

Mr. ASTRUE. Can you tell me what date we will know about the funding? It is so tied together. I do not mean to be facetious, but it is so tied together that it is an abstract exercise until you really know.

The CHAIRMAN. I think we will have a continuing resolution, at least for 2007, not too far down the road. That expires at the end of September. Then we have another cycle. We should have that by the middle of February, the continuing resolution.

Mr. ASTRUE. All right. Assuming the continuing resolution comes in February, in middle February, and assuming I am in place so I can actually talk to people and wallow in the data, I would hope that I would be able to do it within about 60 days or so.

The CHAIRMAN. All right. Maybe 2 months afterwards.

Mr. ASTRUE. Yes.

The CHAIRMAN. That would be very helpful. I would like you to be pretty bold and aggressive here, that is, with ideas and what it would take to reduce the backlogs by, say, 50 percent, by what date, that kind of a thing, in the various categories.

Mr. ASTRUE. Right. I think that it is important to view this, also, too, not as a one-shot deal.

The CHAIRMAN. Exactly.

Mr. ASTRUE. This is a long-term struggle.

The CHAIRMAN. Absolutely.

Mr. ASTRUE. It ought to be an iterative process throughout the 6 years.

The CHAIRMAN. Absolutely.

Mr. ASTRUE. I am perfectly delighted to do that because I cannot do this without the help of this committee.

The CHAIRMAN. All right. Thank you.

Senator Bunning?

Senator BUNNING. This sounds like a hearing I had in 1994 and 1996, exactly. I mean, the same hearing, only the backlogs are longer. It was only a year and a half at that time. We had the same complaint about administrative law judges, that there were not

enough. Or we were going to eliminate the middle hearing, or the second hearing before the DDSs.

If my memory serves me right, we tried with dollars to fix that problem. The problem is an internal problem. It is within the Agency itself, so it is fixable inside the Agency.

What the Chairman has asked you to do is critical because we will know what the 2008 budget looks like for SSA, and we will know what you will have for the remainder of 2007 sometime in the middle of February, so you will have a fix on dollars. You are not going to be able to change them much.

But you are going to have to plan if you want to reduce these backlogs past the 4-year level, which, in my mind, in the United States of America, is outrageous. People die before they get their hearings. Absolutely die, the disability people. That does not sound like something we should have in the United States of America.

So your position is one that I think is the fourth or fifth hearing that I have been involved with with a new supposed head of the Agency or Commissioner of the Social Security system, and we all have talked about the same issues over and over and over, and we just keep adding to the backlogs in every category.

So it is something that is internal, and the bureaucracy does not seem to be able to handle it. We have tried legislatively to do it, and we are going to need a lot more cooperation out of the agency if we are going to handle what you suggest as a benchmark to do this. I am tired of it.

I am sick and tired of the Social Security Administration appearing before Congress and saying, well, we have this problem, we have this problem, we have this problem. Well, fix it. And do not tell me it is only the dollars that you need to fix it. I am not kidding.

I am going to, unfortunately or fortunately, be on the Social Security Subcommittee of this Finance Committee and I am going to be active in trying to get some things done again. This is the first time I will get a chance to do that on the Senate side. I tried, legislatively, twice on the House side. We succeeded both times and we still have the same problems.

So, we have to do more than just legislatively try to fix it. We need, internally, to fix it. I am not trying to put a hat on you or trying to push you. You are someone who is capable of running businesses.

What you have at the Social Security Administration is a very large agency, one of the largest—not the largest, but one of the largest—in the Federal Government. Whether it is your morale, whether it is your employees, whether it is the inability of action, we need your help to help guide us into a better situation. I hope that you are the right person for the job, because it is a big job.

Mr. ASTRUE. I am certainly going to give it my best shot. I have stopped everything else I am doing. We are moving back down here. It is not worth doing in a mediocre fashion.

Senator BUNNING. No, it is not, because it has been done. I am not blaming the Commissioners, but it has not gotten done. So, someone is responsible.

Thank you.

The CHAIRMAN. Thank you. Thanks for chiming in here. I appreciate that very much.

I talked to you earlier, Mr. Astrue, about benchmarks referring to initial disability claims. That is one category. In addition, there is a backlog of hearings before administrative law judges. Then, third, the number of Continuing Disability Reviews, CDRs, that category as well.

So in about mid-April, April 15, tax day—

Mr. ASTRUE. I will get an extension and work on it. [Laughter.]

The CHAIRMAN. Well, we do not know if they will give you an extension. [Laughter.] But it is roughly that date, so let us sit down. We owe it to the country.

Mr. ASTRUE. I welcome the question from staff. I think, in addition to having a specific plan that brings out value as time passes, I do actually think that it may be possible to do some very useful things in terms of modeling so that there is a tool that not only I have, but you have to look and consider options, choices, and measure performance.

The CHAIRMAN. It is a great opportunity, frankly, all the way around.

Mr. ASTRUE. Right.

The CHAIRMAN. I guess, frankly, it might even be a morale booster.

Mr. ASTRUE. Yes. Absolutely. It is a very proud agency. The history of the agency, particularly in the 1950s and 1960s, was that was where the best and brightest who wanted to be public administrators went. It was boot camp, then they went to other agencies.

That pattern does not occur now, but there is a hold-over there. It is a very proud agency. And they are not happy when things are not working well. They know that a lot of these things are not working well. So I think you are absolutely right, that improving performance is another element of improving morale.

The CHAIRMAN. Yes. I think everybody wants to do a good job. They can see a way to get from here to there.

Mr. ASTRUE. Yes.

The CHAIRMAN. I am sure most of the people in the agency would like to get that backlog reduced.

Mr. ASTRUE. Absolutely.

The CHAIRMAN. And figure out ways how to do that.

Mr. ASTRUE. I have never met anyone close to it that did not want to do it.

The CHAIRMAN. Yes. It is just not right, the way it works today.

A couple of other questions. Basically, the relationship between the administration and one of the unions representing agency employees, I am told, has not been good during the last few years.

If confirmed, would you move to establish a dialogue with each of the unions representing SSA employees for the purpose of sharing information, sharing concerns and ideas about administering the Agency? Because that gets to morale, too.

Mr. ASTRUE. Right. This is one of the issues where I do have a track record. During my time at HHS, I had 700 employees and had what I think they would tell you is a very good relationship with the union. We had an open door.

It was very civil. We did not always agree, and when we did not agree on things it was civil. In fact, the union representative is now on the management side and is the senior career person in the office. So, I think we had an air of good feeling.

However, I am familiar enough with Social Security to know that the bad feeling between management and the union has not been just the last few years, Mr. Chairman, it has been pretty chronic over a long period of time.

Certainly you would try to break that. I think, not just in government but in our culture broadly, it seems harder to maintain civil dialogues. If you are going to get things done, an exchange of information so everyone has the best information possible, is how you make the best decisions, so certainly you have to try.

I have some trepidation about it because I know that the history is not good, and it would be hard for me to believe that Commissioner Barnhart did not try her best as well, and I understand that that did not succeed with Commissioner Barnhart.

But sometimes there is an advantage to a new face just simply because someone is a new face. I would be happy to meet with the senior union representatives in the beginning. I intend to do a lot of the same sort of things with the advocates who are battling the Agency on lots of things. I want to get to know them again. I want to understand where they are coming from.

In general, I want people to feel that they can approach the Agency and express their concerns. I think, as long as there is that civility, I think they will find that they have relatively good access. When the civility breaks down, everybody is a human being and it is very hard to keep talking.

The CHAIRMAN. That is true. But so much of this is attitude, and you are the leader.

Mr. ASTRUE. Right.

The CHAIRMAN. If you have the right attitude—

Mr. ASTRUE. I will go first, Mr. Chairman.

The CHAIRMAN. Yes. And also, if somebody is giving you a hard time, somebody may appear to be irresponsible and so forth, you just have to deal with it. You do not dish it back. It just does not work.

Mr. ASTRUE. Right. I think I am a little bit thicker skinned than I used to be. I think there is some advantage to time passing.

The CHAIRMAN. Well, it is more than thick skin. Again, it is attitude. If you go in, my gosh, this is a great opportunity and we are going to solve this thing, and we are going to work together, if people perceive that attitude, that goes a long, long way.

Mr. ASTRUE. Well, it has certainly been my feeling, and I think I expressed this to staff, that if I get bad news on the continuing resolution and actually have to do furloughs, I think the impact from the unions on how you do that, how you actually manage that, I cannot imagine that you would actually want to go forward on something like that without hearing out everything that they wanted to say.

So, certainly in addition to an initial “get to know you” meeting, I certainly, as a contingency, had been thinking it was at least fairly likely that we would have to have that discussion, too.

The CHAIRMAN. One other question. Under current projections from the Congressional Budget Office, Social Security will have enough funds to pay full benefits, as I mentioned earlier, through 2046, then benefits will be at 79 percent because the surplus will be gone. Clearly, we need to fix this problem. But it is a problem, not a crisis. 2046 is not tomorrow.

Over the past year, some of the communications from the agency have had, I think, an excessive “gloom and doom” tone to them. Even though the facts were accurate, still the tone is doom and gloom.

If you are confirmed, will you make an effort to avoid using emotional terms like that? Because we are here to get the facts and here to solve problems.

Mr. ASTRUE. Right. I am not sure I have seen the specific language but, again, I have not looked comprehensively at these things.

I would be happy to take a look at any language that has given you concern. I think in general, consistent with the role of the Commissioner as it has been defined by the executive branch and the legislative branch, I think the sense of staying above the fray is important. I will certainly try to express the thoughts about the system so it is fair and it is accurate. But I do not have any desire to spread panic or anything like that.

I, as I have said before, would tend to want, when discussing those things, to try to put them into context and urge people to think hard about their own private savings and retirement plans, and make sure that they understand the role of Social Security in their own personal future.

The CHAIRMAN. It is just amazing, Social Security. It is one of the few programs enacted by the Federal Government that has really worked well.

Mr. ASTRUE. Yes.

The CHAIRMAN. And it has given such confidence to so many. It is not perfect, but has given such confidence to so, so many people.

Mr. ASTRUE. Right.

The CHAIRMAN. As I mentioned in my opening remarks—you know the figure, too—without Social Security, half of our seniors would be in poverty today.

Mr. ASTRUE. No. It is a remarkable program. It is part of the fabric of the country. It is why you do not do other things and why you come to try to help it. I have friends who think it is very strange that this is what I want to do with my life.

The CHAIRMAN. I was going to ask you why you wanted to do it. [Laughter.]

Mr. ASTRUE. Yes, I know. But I have said to people, there is an enormous amount that goes on in the rulemaking and other decisions that never gets in the papers, never gets any attention. The people who work on it never get any credit.

But if you do it right, you make it a little bit better, the scale of the system is such that you can go home at night and say, I just made life this much better for 50 million people, and that is a great feeling.

The CHAIRMAN. That is right.

I know Senator Bunning has a question, but very briefly, Senator. If you see people doing a great job, let us know.

Mr. ASTRUE. All right.

The CHAIRMAN. We will put something in the *Congressional Record* or something. I think it is important to recognize people who do a really good job.

Mr. ASTRUE. I agree with that.

The CHAIRMAN. So if you see opportunities——

Mr. ASTRUE. I will do that. Thank you.

The CHAIRMAN. Senator?

Senator BUNNING. To get back to the gloom and doom——

The CHAIRMAN. Oh, no, do not! [Laughter.]

Senator BUNNING. But it is not the Social Security Administration that projects the gloom and doom, it is the advocacy of Social Security people. People who advocate for senior citizens seem to want to frighten them to solicit dollars to advance their lobbying efforts more than anything that I can see. I am not going to name the agencies or the representative groups that try to do that.

I think if you look at Social Security factually and when we would start having to use the interest on the bonds, as the Chairman has said, in 2046, I am afraid the Chairman and I will not have to worry about that time.

Mr. ASTRUE. Me neither.

The CHAIRMAN. You will, sir. You will be here.

Senator BUNNING. You mean, that is because I am so mean that I will live to an old age? [Laughter.]

The CHAIRMAN. You just have that spirit. You have that spirit.

Senator BUNNING. No. But the fact is, I think, generally speaking, the Social Security Administration does not spread doom and gloom, but the people who are soliciting for funds to advocate for the preservation of Social Security and making sure it is here for everybody long-term are the people who have more tendency to do that.

I sincerely believe I have never seen the Social Security Administration projecting gloom and doom. Only, I read their annual report that comes out from the trustees, and it has been more positive than negative in the last couple of years that I have read it. I think that is a big positive for the administration, especially for those who know what is really going on with the Social Security trust funds.

Mr. ASTRUE. I certainly agree. I think that you have to realize that an awful lot of people are listening to what you say and do, and you have to try to hit the right balanced tone. I mean, one of the things that I find distressing is the percentage of young people who believe there will not be anything for them, which I do not believe is true.

Now, you do not sugar-coat it. Is there some likelihood that it will not be quite as generous a system as for their parents? Well, yes, but it will be there in a substantial way. I think if more and more young people believe that, it starts undermining support for the system.

Senator BUNNING. My nine children are very happy to pay for their parents' retirement right now. I do not know if their children will be as happy to pay for their parents' retirement as they go on.

It gets a little more testy as you get to the middle of this century that we are in. I think we have ample time to solve the problem, but we have to get with it.

Mr. ASTRUE. Yes. I think to keep the consensus that has been remarkable for support of this program, I think everybody has to feel that they have a stake in it. Sometimes that has not happened. I think that would be important to try to address.

Senator BUNNING. Thank you very much.

The CHAIRMAN. Thank you, Senator.

I have no further questions. I just want to thank you very much, Mr. Astrue, for appearing and for agreeing to take the job.

Mr. ASTRUE. Thank you very much. I am looking forward to it.

The CHAIRMAN. You are to be soundly commended for taking all this on.

Mr. ASTRUE. Thank you.

The CHAIRMAN. It is a huge responsibility, obviously, and, as I mentioned, a huge opportunity.

Mr. ASTRUE. Yes.

The CHAIRMAN. We want to work with you, this committee.

Mr. ASTRUE. And I have been really pleased by the interaction so far with both the Majority and Minority staff. Between the two of them, again, I think civility and candor are how we solve our problems. It does not happen every place in the Congress, but it does seem that here on this committee there is a commitment to that, and I think it is going to make it easier for me.

The CHAIRMAN. Yes. Feel free to test it out just by calling us up.

Mr. ASTRUE. I will.

The CHAIRMAN. All right. Thank you very, very much. Good luck.

Mr. ASTRUE. Thank you.

The CHAIRMAN. Thank you.

Before I adjourn the hearing, I would like to say that there will probably be other questions. In addition to oral questions, members might have written questions. If you could have responses to those by the close of business tomorrow—

Mr. ASTRUE. Yes, I will.

The CHAIRMAN. I do not know how many you are going to have, but at least by then, so we can then move to, as you know, mark up and get you confirmed.

Now, before that, however, we have to have an organizing meeting. We have to organize the committee. That is just a technicality, and we will get that taken care of. My hope is that we can notice the mark-up Friday for next week, maybe around Wednesday. That is the thought.

Mr. ASTRUE. Certainly, we will get on it as fast as possible. I have Deputy Commissioner Wilson here, who I know has been working with staff.

The CHAIRMAN. All right.

Mr. ASTRUE. We will turn that around as quickly as possible.

The CHAIRMAN. All right. Thank you.

Again, good luck.

Mr. ASTRUE. Thank you.

The CHAIRMAN. The hearing is adjourned.

[Whereupon, at 11:30 a.m., the hearing was concluded.]

A P P E N D I X

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

STATEMENT OF MICHAEL J. ASTRUE

Mr. Chairman, Members of the Committee, thank you for scheduling this hearing. I am honored to be here.

Before I begin my remarks, I'd like to introduce my wife, Laura, a foreign language teacher. Our daughter, Caitlin, is a freshman at Washington University, and our son, James, is a sophomore on an Army ROTC scholarship at the Georgetown School of Foreign Service. Their academic commitments have prevented them from attending today.

I started my career here in 1978 in an entry-level job for Senator Richard Schweiker, and then went on to work for the National Council of Senior Citizens after the Senator announced his retirement. When I returned to Washington in 1985 to work primarily on Social Security issues, the system was an abstraction for me—an incredibly important one, but an abstraction nonetheless. That changed radically two months later when my father, at the age of 52, suffered a severe cerebral hemorrhage, which we soon learned was caused by a rare form of brain cancer. I handled all the paperwork for my father's SSDI and Medicare applications.

One thing I learned from the frustrations of that experience is how well-meaning people in agencies, just like me at age 28, often do not understand what actually happens in practice in complex programs such as Social Security. Accordingly, the following year, when I began working as Counselor to the Commissioner of Social Security, one of the first things I did was visit DDS's in Pennsylvania, Maryland, Delaware and Massachusetts to see how the disability determination process actually worked in those states.

The lessons learned from those trips were incredibly useful to me as we tried to improve the disability programs after many years of inflamed controversy. I am particularly proud of having led the effort to terminate the agency's longstanding "nonacquiescence" policies, an achievement

highlighted by Chairman Moynihan when I was last before you in 1989 during my confirmation hearing for General Counsel of HHS.

While I intend to duplicate those DDS trips, I expect to focus first on operations relating to Medicare Part D. Based on Commissioner Barnhart's public comments, she and I agree that there has been an unacceptable level of problems to date, and the agency has even greater Medicare responsibilities this year. I can't tell from the publicly available materials and the briefing materials exactly where the operational issues are, and how many of them are under SSA's direct control, but I want to assure you that I will be relentless in getting at the real issues, that I will focus on action and not blame, and that I will be proactive and candid with this Committee if we need legislative clarifications or additional support.

This task may be complicated, however, by budget constraints and the likelihood of furloughs that Commissioner Barnhart has repeatedly raised in recent months. I cannot help but be exceptionally concerned about this outcome at a time when the agency is already under significant operational stress. I very much need this Committee's advice and guidance as to how to manage this situation, and how to avoid repetition of it in the future. It will be difficult to advance this Committee's interest in improving the disability determination process and the agency's performance with regard to its Part D responsibilities if both senior and line employees are distracted and demoralized by furloughs.

With regard to the Commissioner's role on retirement policy, my goal is to be a good steward of the program for both current and future beneficiaries. For current beneficiaries, this role means setting high standards for management, performance and service—and committing to meeting those standards. It also means being scrupulous and painstaking in making sure the agency adheres to the law and to the best demonstrated practices of accounting, efficiency and compassion.

For future beneficiaries, good stewardship means engaging with others in the agency and the executive branch, with members of this Committee and other Members of Congress, and with outside groups and experts, to provide unbiased data about all the options for safeguarding the financial stability of the program. It is part of our obligation to the American public that we must strive to continue to offer the best possible support for older Americans and people with disabilities, and their families, in the

coming decades. I look forward to providing technical support for those in the legislative and executive branches engaged in this policy debate.

Let me conclude by noting that Commissioner Barnhart is someone whom I like, admire and respect from our two previous tours of duty together. I feel blessed to have been asked to follow this strong and principled leader in a position so vital to our success as a nation. If confirmed, this Committee can count on me to do everything I can to live up to her record and to be another good steward for the Social Security Administration.

Thank you, and I'll be happy to answer any questions you have.

Senate Finance Committee: Statement of Information
Requested of Nominee

A. BIOGRAPHICAL INFORMATION

- 1) Name: (Include any former name) Michael James Astrue
- 2) Position to which nominated: Commissioner, Social Security Administration
- 3) Date of nomination: September 15, 2006
- 4) Address (List current residence, office, and mailing addresses)
Home address:
- 5) Date and place of birth:
- 6) Marital status: (Include maiden name of wife or husband's name):
Married
- 7) Names and ages of children:
- 8) Education: (List secondary and higher education institutions, date attended, degree received, and date granted):

Roxbury Latin School, 1968-1974; graduated *magna cum laude* in 1974

Yale University, 1974-1978; B.A. *magna cum laude* in 1978 with honors in Philosophy and English;

Harvard Law School, 1980-1983; J.D. *cum laude* in 1983

Assorted undergraduate and graduate courses taken and audited at George Washington University, Tufts University and Harvard University Extension School

- 9) Employment record: (List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment):

Milton Academy, Milton, MA, Associate Teacher, 1974-1978, 1980

United States Senator Richard S. Schweiker, Washington DC,
Legislative Correspondent, 1978-1979

National Council of Senior Citizens, Washington DC, Research
Assistant/Data Analyst, 1979

National Social Science and Law Center, Washington DC, Research
Assistant, 1979-1980

Shipman & Goodwin, Hartford CT, Summer Associate, 1981

Harvard Law School, Cambridge MA, Research Assistant
(intermittently) for Professors Paul Bator and Arthur Miller, 1981-1983

BarBri Bar Review, Cambridge MA, ran projectors, 1983

Ropes & Gray, Boston, MA, Summer Associate/Associate 1982, 1984-
1985

The Honorable Walter J. Skinner, Boston MA, Law Clerk, 1983-1984

U.S. Department of Health & Human Services, Washington DC, Acting
Deputy Assistant Secretary for Legislation (Human Services), 1985-1986

U.S. Department of Health & Human Services, Baltimore MD, Counselor
to the Commissioner of Social Security, 1986-1988

The White House, Washington DC, Associate Counsel to the President,
1988-1989

U.S. Department of Health & Human Services, Washington DC, General Counsel, 1989-1992 (also concurrent appointments to U.S. Architectural and Transportation Barriers Compliance Board and Administrative Conference of the United States)

Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, Boston MA, Partner, 1992-1993

Biogen, Cambridge MA, Vice President & General Counsel, 1993-1999

Transkaryotic Therapies, Cambridge MA, Senior Vice President-Administration & General Counsel 2000-2003, President & Chief Executive Officer (and board member) 2003-2005

Boston University Law School, Boston, MA, Adjunct Instructor 2000-2003;

Emerson College, Boston, MA, Adjunct Instructor 2005

Epix Pharmaceuticals, Cambridge MA, Interim Chief Executive Officer, 2005-2006

10) Government experience: (List any advisory, consultative, honorary, or other part-time service positions with Federal, State or local governments, other than those listed above.):

Belmont Republican Town Committee, 1984-1985; 1994-2006

11) Business relationships: (List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, other business enterprise, or educational or other institution.)

Board memberships: HealthBanks (previously RSVP Information) (1998-2003); Tercica, Curagen, ArQule (2005-2006)

Consultancy: Bellevue Research (2000)

12) Memberships: (List all memberships and offices held in professional, fraternal, scholarly, civic, business, charitable and other organizations):

Board memberships: Massachusetts Biotechnology Council (1993-2002) (Chairman 2000-2002); Kenneth B. Schwartz Center (501(c)(3) subsidiary of Massachusetts General Hospital) (1999-2006); Massachusetts High Technology Council (2004-2006) (Vice Chairman, 2006); New England Healthcare Institute (2001-2004)

Advisory Boards: RSVP Information (1995-1998) Harvard University Extension School, Biotechnology Advisory Board (2001-2004); Board of Overseers, Deaconess Beth Israel Hospital (2002-2003); West Chester University, Iris N. Spencer Poetry Awards Advisory Committee (2005-2006)

Other roles: American Bar Association, Administrative Law Section, Bioethics Liaison (1993-1996), Chair of FDA Committee (1996-1998), Section Council (1998-2001); Federalist Society, Vice Chairman, Administrative Law Section (1997-2003); Hudson Institute, Adjunct Fellow (2003); Assistant Girl Scout Troop Leader (2002-2006)

Other memberships:

Oakley Country Club, Watertown, MA Associate member (1993-1995);

Nisi Prius, Boston MA (social club of Boston-area judges and lawyers, primarily litigators) (1997-2006)

New England Poetry Club and Poetry Society of Virginia (both intermittently over the past 12 years) and informal writing groups

13) Political affiliations and activities:

a) List all public offices for which you have been a candidate.

Belmont Republican Town Committee, 1984-1985, 1994-2006

b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

Massachusetts Lawyers for Dole (1995-1996); Cellucci Transition Committee (1998-1999); Romney Transition Committee (2002-2003); Healey Finance Committee (2005-2006)

c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$50 or more for the past 10 years.

1996: R. Blute \$250; W. Weld \$1000; E. Teague \$250; 1997: P. Torkildsen \$100; G. Bush (TX) \$100; A. Cellucci \$500; J. Smith \$100; 1998: P. Torkildsen \$50; M. Amorello \$200; D. Miller (VA) \$100; C. Morella (MD) \$100; Cellucci-Swift Inaugural Committee \$90; 1999: J. Swift \$500; A. Cellucci \$500; Middlesex Club \$65; Mass GOP \$5000; L. Faircloth (NC) \$250; G. Bush (TX) \$1000; W. Frist (TN) \$1000; Committee to Vote YES for Belmont \$50; 2000: W. Owens (CO) \$100; P. Abair \$500; D. McIntosh (IN) \$500; E. Teague \$500; 2001: R. Portman (OH) \$1000; J. Swift \$500; S. Collins (ME) \$1000; 2002: E. Slavitt \$100; M. Romney \$500, Massachusetts GOP \$6000; J. Swift \$500; O. Hatch (UT) \$500; VOLPAC \$5000; R. Burr (NC) \$1000; Bush-Cheney (DC) \$2000; E. Meyer (NC) \$4000; 2003: Healey \$500; E. Meyer (NC) \$4000; 2004 Mass GOP \$5000; R. Blute \$500; 2005: Mass GOP \$5000; K. Healey \$500; M. Romney \$500; 2006: Mass GOP \$10,000; K. Healey \$500; O. Hatch (UT) \$2000; Straight Talk America \$1000; R. Hillman \$200; S. Diaz \$500.

14) Honors and Awards: (list all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any special recognitions for outstanding service and achievement.)

Social Security Administration, Honorary Administrative Law Judge (1988); National Health Lawyers Association, Honorary Member (1989); HHS Inspector General's Special Award (1992); Howard Nemerov Sonnet Award (1995 & 2000); Richard Wilbur Award (2002); Father William Ralston Fellow, Sewanee Writers' Conference (2005)

15) Published writings: (List the titles, publishers, and dates of all books, articles, reports, or other published materials you have written.)

(with David Szabo) "Pharmaceutical Marketing and the Anti-Kickback Statutes," 10 *Food, Drug, Cosmetic and Medical Device Law Digest* No. 2 (April 1993)

"Pseudoscience and the Law: The Case of the Oregon Medicaid Rationing Experiment" *Issues in Law & Medicine*, Volume 9, Issue 4 (Spring 1994) pp. 375-386

"Healthcare Reform and the Constitutional Limits on Private Accreditation as an Alternative to Direct Government Regulation" *Law & Contemporary Problems*, Volume 57, Issue 4 (Autumn 1994) pp. 75-89

"Attacking the Kickback Violations of Competitors" *Healthspan*, Volume 10, Issue 2 pp. 3-9

"Disability Legislation and Litigation" in *Disability & Work* (Carolyn Weaver, ed.) (American Enterprise Institute 1991) pp. 83-84

"Health care providers, insurers and individual patients; the right to treatment; economic and policy issues" *Suffolk University Law Review*, Volume 23, issue 4 (Winter 1993) pp. 1499-1523

Under my literary pseudonym, I have published a book of Petrarch translations called *Longing for Laura* (Birch Brook Press 2001), a book of original poetry and translations called *The Secret Language of Women* (University of Evansville 2003), and my poetry has appeared in a number of anthologies. I have also published a few book reviews.

16) Speeches: (List all formal speeches you have delivered during the past five years which are on topics relevant to the position for which you have been nominated. Provide the Committee with *two* copies of each formal speech.)

None

17) Qualifications: (State what, in your opinion, qualifies you to serve in the position to which you have been nominated.)

I believe that I am qualified to serve as Commissioner of Social Security because: a) I have work experience in, and a passion for, the agency; b) I have substantial experience in administrative law and policy; c) I have substantial work experience in many aspects of both aging and disability; d) I have substantial private sector and public sector management experience; and e) I have a strong commitment to public service.

B. FUTURE EMPLOYMENT RELATIONSHIPS

- 1) Will you sever all connections with your present employers, business firms, associations, or organizations if you are confirmed by the Senate? If not, provide details.

Yes

- 2) Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, provide details.

No

- 3) Has any person or entity made a commitment or agreement to employ your services in any capacity after you leave government service? If so, provide details.

No

- 4) If you are confirmed by the Senate, do you expect to serve out your full term or until the next Presidential election, whichever is applicable? If not, explain.

I aspire to serve the full term.

C. POTENTIAL CONFLICTS OF INTEREST

- 1) Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

None. I have been selling my publicly traded stock in anticipation of a return to public service, and I have been making arrangements to put the bulk of my assets into a blind trust upon confirmation even though the Office of Government Ethics is not requiring me to do so.

- 2) Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

I think it is highly unlikely that any of my recent employers, charities or trade associations will have business before the agency, but I will be careful to recuse myself if they do. I would also anticipate recusing myself from matters involving the law firm of Wilmer Hale since my intention is to have this firm manage my blind trust.

3) Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy. Activities performed as an employee of the Federal government need not be listed.

As a member of the board of the Massachusetts Biotechnology Council I was involved in supporting the legislative agenda of the Council, which generally included opposition to pharmaceutical price controls, support for public education and reform of state taxation provisions that treated biotech research investment less favorably than comparable investments by other industries. As a member of the board of the Massachusetts High Technology Council, I have supported the legislative agenda of the Council, which primarily involved advocating against the closure of Hanscom Air Force Base, but also included opposition to tax policies that discourage economic development, support for public education and opposition to pharmaceutical price controls.

4) Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items. (Provide the Committee with *two* copies of any trusts or agreements.)

To avoid any possible appearance of impropriety, I intend to place all my stock holdings in a blind trust. In addition, I will be careful to recuse myself when dealing with organizations that I have been associated with in the recent past. I do not intend, however, to recuse myself from dealings with employers of more than a decade ago such as the Legal Services Corporation, the parent of the National Social Science and Law Center, or the successor organization to the National Council of Senior Citizens.

I have had some difficulty disentangling myself from a directorship and shares in a nominal defunct Argentinian subsidiary of Transkaryotic Therapies now owned by Shire, but I have retained Argentinian counsel to assist me with that effort and I am cautiously optimistic that I will have severed this relationship before confirmation.

5) *Two* copies of written opinions should be provided directly to the Committee by the designated agency ethics officer of the agency to which you have been nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position.

I have asked the agency's designated ethics official and the Office of Government Ethics to forward those materials directly to you.

6) N/A

D. LEGAL AND OTHER MATTERS

- 1) Have you ever been the subject of a complaint or been investigated, disciplined, or otherwise cited for a breach of ethics for unprofessional conduct before any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

No

- 2) Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority for a violation of any Federal, State, county or municipal law, regulation, or ordinance, other than a minor traffic offense? If so, provide details.

No

- 3) Have you ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

No

- 4) Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense?

No

- 5) Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

I have no additional information to offer that I believe the Committee would consider important.

E. TESTIFYING BEFORE CONGRESS

- 1) If you are confirmed by the Senate, are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so.

Yes

- 2) If you are confirmed by the Senate, are you willing to provide such information as is requested by such committees?

Yes

**Questions for the Record
Nomination Hearing for Michael Astrue to be Commissioner of Social Security
January 24, 2007**

Questions from Senator Baucus

1. As I mentioned in my opening statement, Continuing Disability Reviews or CDRs, are an important tool for ensuring the integrity of the Social Security program. Moreover they reduce the Federal budget deficit, not increase it: every \$1 spent on CDRs saves \$10. Recently, SSA has not conducted as many CDRs as they should because of lack of funds. I understand that. I also know that we avoid this problem if we change the budget process so that funds for CDRs do not count against our overall discretionary spending caps. The rationale is clear: this spending actually saves money. We have done that in the past with the budgetary treatment of funds for CDRs. Do you agree that counting money for CDRs outside of the spending caps is a useful tool and that we should attempt that strategy again?

I understand that the Administration has made proposals of this type in recent years, which Congress has rejected in favor of giving the Commissioner more budget flexibility. It appears to me that the current budgetary treatment for CDR's may have had the unintended effect of making it too easy to overlook the uniquely cost-effective nature of the CDR function as well as its importance to prevention of waste and abuse. Having been away from Washington and these types of discussions for fifteen years, I would like to ask a few experts in the executive branch and Congress for their opinions before I make a commitment on this proposal, but is fair to say that I am favorably inclined, that I will seek the advice I need as quickly as possible, and that I will respond to you in more detail promptly after confirmation.

2. I understand that you believe more should be done to improve the return earned by the investment of surplus Social Security funds. Can you tell me more about your thoughts on this topic?

You have already raised the issue that is my highest priority in this area with your question about CDR's. I believe that billions of trust fund dollars are irretrievably lost when we do not periodically review the status of beneficiaries for changes in medical status, evidence of unreported work and other factors. I also believe that public support for this program could diminish substantially if the public begins to question its integrity to any substantial degree.

I do want to assure you, however, that I am mindful of the cost of overzealous or insensitive implementation of CDR's and would do my best to avoid mistakes of the past. I also want to consider the possibility that the agency's communications to beneficiaries during the CDR process may also be a low-cost opportunity for providing information to beneficiaries of the array of work incentive programs that are available to them.

I also share your enthusiasm for improving collection of unpaid Social Security taxes. While I suspect that most of the possible initiatives would fall within the jurisdiction of the Treasury Department, it does seem to me that, at a minimum, the agency should be considering whether it can do more to encourage people with knowledge of unpaid Social Security taxes to make reports to the proper authorities.

With regard to long-term financing, I will stand by my pledge to stay out of partisan debate and stick to being primarily an honest messenger of data and analysis of those data, so I am not endorsing or opposing any specific proposal relating to long-term financing.

3. Bills have been introduced that would require the Social Security statements sent annually to each worker (called Personal Earnings and Benefit Estimate Statement, or PEBES) to include verbiage that advocates a particular view point about Social Security or fixing Social Security's finances. I think this is a terrible idea. Can you assure me, that as Commissioner, you would not administratively make any changes to the Social Security Statements with the intention of advocating for financial reform of one kind or another?

Yes.

4. Your predecessor said last year in a hearing before this Committee that creating a "hardened," i.e. counterfeit resistant, Social Security Card would require an additional \$9 billion and force a doubling of the more than 60,000 person Social Security Administration staff. Is this estimate still accurate and what are your views on this proposal?

Commissioner Barnhart's estimate is consistent with my understanding of the magnitude of the impact of such proposals on the agency, though I'm not in a position to verify those numbers. While some of the cost estimates may decrease with improvements in technology, the bulk of the cost comes from the enormous amount of time and effort required by verifications consistent with the goals of a hard card initiative. Given the agency's current budget stresses, it is highly likely that I would oppose any short-term initiatives in this area, and that I will be reluctant to support any new responsibilities until we have the disability and Part D programs performing at acceptable levels.

5. Policymakers and the American people need access to unbiased information and analysis free of political interference. The Social Security Administration has a strong tradition of maintaining the independence of the Office of the Chief Actuary. As you no doubt remember, the Chief Actuary of the Medicare program was told he would be fired if he gave Congress information we requested. Will you pledge now that as Commissioner, you will maintain the independence of Social Security's Chief Actuary?

Yes.

6. What funding resources are you anticipating the Social Security Administration will require for FY 2008? What are your plans related to staffing, systems support and other areas? Also, please address your plans to meet the challenge of the baby boom retirement workload that will begin in 2008 and continue for 20 years into the future. What actions will you take throughout your term at SSA to obtain the necessary funding resources to deliver quality service to the public?

Out of respect to Commissioner Barnhart and the Senate, I have been careful about not prematurely involving myself in the agency's operations, so I have not been involved in the agency's budget preparations, and I don't have the independent capacity to make thoughtful statements about FY 2008 budget proposals. However, I am eager to get started and to do my best to avoid repetition of the current uncertain situation.

Based on my previous experience as HHS' legislative advocate for Social Security, welfare and social service programs, I believe that there is no substitute for the hard work of making your case in a detailed and thoughtful way to as many Members of Congress as often as you can. Your point about the rising baby boom workloads is an important one, and it applies to the disability program as well. I believe that the Congress as a whole may not appreciate, as you do, that the agency's workloads will be increasing at a rate well above the rate of inflation for the coming decades, and the effects those increased workloads will have upon the agency's operations. I will do my best to make those points often.

7. The former Commissioner of SSA had indicated that employee furloughs would be necessary if SSA does not receive at least the level of appropriated funding recommended by the House Appropriations Committee. Do you agree with that assessment? If so, how do you plan to address the furlough issue?

The Social Security Administration's main expense is employee salaries, and almost every action undertaken by the agency is mandated by Congress. For this reason, the agency has less ability to cope with a substantially reduced budget than most other agencies. Unlike many other agencies, SSA cannot significantly reduce expenses by limiting or reducing grant awards, prioritizing enforcement, or reducing optional activities. The former

Commissioner is undoubtedly correct in her judgment that, if SSA does not receive funding adequate to cover these mandatory increases in agency costs, the agency will have no choice but to reduce those costs through a furlough.

I am hopeful that Congress will approve funding for this fiscal year at a level that will be adequate to avoid this painful step, and encouraged that so many members of the Finance Committee are taking a leadership role on this issue. However, if furloughs should become necessary, as Commissioner I would be honest and open with all SSA employees about the necessity for this step and provide as much advance notice and detail as possible. I would also be sure to consult with union representatives about details of any implementation while remaining focused on minimizing the impact of furloughs on the people we serve.

I will also keep this Committee fully informed of these activities should this unfortunate situation arise.

8. If SSA receives the funding level recommended by the House Appropriations Committee, SSA would still face a hiring freeze in 2007 and would lose half of its overtime. As you are probably aware, last year SSA only filled one out of every three positions lost. How do you see this hiring freeze impacting SSA's ability to provide service?

I am extremely concerned about the impact of a hiring freeze and constraints on the amount of overtime available to the agency. Both measures would mean a substantial reduction in the level of staff resources needed to fulfill SSA's responsibilities in administering its programs. A continued hiring freeze would also place a heavier burden on some offices than on others, based on the number of employees who leave SSA—generally through retirement. I am deeply concerned about the inevitable negative effect of hiring freezes on the Agency's ability to serve the public, and the effect of reduced staffing on staff morale. Restrictions on overtime are also particularly painful when there is a bulge in work, as with Part D enrollments last year, or there is an unexpected event, such as Hurricane Katrina.

9. SSA continues to have huge backlogs in hearings. It takes, on average 500 days, for a hearing to be held and for that hearing to be processed. Most would agree that the Disability Service Improvement Project has not addressed this problem in the short term. What is your opinion of the Disability Service Improvement Project? What steps can be taken to improve the Agency's disability and hearings process?

While I have not had an opportunity to be fully briefed on all aspects of the Disability Service Initiative, I believe that elements of the initiative may be a partial answer. I understand that the disability backlogs in the hearings area

have been aggravated by the inability of the agency to hire sufficient Administrative Law Judges (ALJs) and associated support staff. The agency was unable to hire ALJs from the late 1990's through the early 2000's because of the *Azdell* litigation (SSA was able to hire 120 ALJs in September 2001 under a waiver). In addition, funding constraints over the last several years have made it difficult to significantly increase ALJ staffing. The funding constraints may be far worse for 2007. If confirmed, one of my first actions will be to assess the disability workloads, in light of funding available for the remainder of this fiscal year and to determine what can be done to improve performance.

10. Former Commissioner Barnhart spent a good deal of her term analyzing the process for determining disability and reducing the delays for the Supplemental Security Income and Social Security Disability programs and the impediments to accurate and efficient decision-making. The results of SSA's efforts were published as a final regulation on the Disability Service Improvement (DSI) Process on March 31, 2006, with an effective date of August 1, 2006 in Region I, the New England states. Congressional Committees have closely followed the progress of SSA's work on these issues and will remain vitally interested in the implementation of the new DSI regulations and the gradual roll-out in to the other regions to ensure that the process is fair and consistent, evidence collection is improving, claims are receiving full consideration, and the right decisions are made earlier in the process. As Commissioner of SSA, will you continue to place a high priority on the successful implementation of these rules? In addition, will you remain flexible during the nationwide roll-out and respond quickly to problems that arise so that they may be repaired immediately, including those issues raised by disability advocates?

As I said above, I have not had an opportunity to be fully briefed on the details of the DSI. However, improving the disability program will be one of my highest priorities. I look forward to seeing the results from the initial phase of the DSI in the Boston Region, assessing what adjustments may need to be made and determining how to move forward with this important initiative. I will certainly be considering, based on the data, whether each element of the initiative has succeeded, failed, or requires more analysis while seeking advice and guidance from individuals and organizations expert on these matters.

Questions from Senator Thomas

I understand that the Social Security Administration has in recent years been asked to take on more and more responsibility, yet the agency budget has been slated for significant reduction. I have supported restoring this funding to allow you to do your job

and to avoid furloughing of employees. My question is related but not entirely synonymous with the funding issue.

My home state of Wyoming, as you know, is a very rural state with very large land area and very low population density. Consequently, Wyomingites often have to travel significant distance to get to a Social Security office, which will generally be staffed by only one or two people. I understand from our state director that a very large percentage of the experienced staff are due to retire within the next few years. This presents a very serious challenge to our citizens and I would like to know what your recommendations are for improving service to rural communities, both regarding funding and any other appropriate changes.

Your question makes the very important point that hiring freezes tend to have a disproportionately negative impact upon smaller offices, which tend to be in rural areas. I will have no realistic hope of even maintaining current service levels unless the Congress approves appropriations at a level adequate to support all the activities it currently mandates. Assuming that we can attain that goal, we have to keep looking at options for additional on-line service and better on-line information, which can be more efficient for both the public and the agency.

Questions from Senator Conrad

1. Mr. Astrue, since its inception, the Social Security Administration (SSA) has had a tradition of community-based service. With 1,300 Field Offices nationwide, SSA maintains an extensive and expensive network of offices. There is an ongoing tension between the desire to save money and the need to have a physical presence in communities across the nation, so that we can serve our most vulnerable populations effectively. What is your service delivery vision for SSA? Please outline your top priorities for the Social Security Administration during your tenure. What do you envision as your service priorities for SSA in the near-term and over the long-term?

SSA has a long tradition of excellent service to the public. If confirmed, my goal would be to build on that tradition and to improve performance in those areas where service levels are not acceptable. Major challenges include streamlining the disability claims process and ensuring that the Agency is successfully positioned to serve the baby boom generation as it moves toward retirement.

2. At present, only about half of SSA's personnel are assigned to the Agency's network of Field Offices and Teleservice Centers, the front lines of service. What plans do you have for ensuring that adequate personnel resources are assigned to Field Offices and Teleservice Centers? Do you envision an expansion or consolidation of SSA's community-based Field Offices? Are you committed to

continuing to offer service in the ways that individuals would like to receive service, whether by telephone, internet or in-person contact? How do you expect to accomplish delivery of service with limited personnel?

I understand that SSA provides service through a variety of means, including by telephone and through the Internet, in addition to in-person visits to the local SSA field office. The most popular means of contacting SSA is by telephone. Although SSA has expanded telephone and internet services, some activities must be conducted in a field office and some individuals will also prefer that setting. At the current level of appropriation, I can't assure you that service will not deteriorate in the coming year despite the best efforts of the agency's dedicated employees.

I have not seen data yet that would allow me to prioritize functions for an expansion or contraction of services based on the agency's appropriations, but I am eager to see those data.

3. SSA has one of the largest computer systems in the world. I understand that only about one out of five much-needed improvements in SSA's computer system can be funded. I also understand that much of SSA's programming code was written in COBOL and needs to be rewritten. In addition, I understand that SSA is operating with a number of legacy computer systems that need to be upgraded. Finally, I am aware that SSA experienced many days last year with computer problems which resulted in the Agency's network of Field Offices being unable to function for many hours. How do you see SSA's funding issues impacting the need to address these problems?

I have not been fully briefed on the status of SSA's computer systems, but there is no question that the viability of SSA's computer systems is critical to the ability to deliver service to the public. It is impossible to imagine the delivery of 50 million payments a month without a robust systems infrastructure. Ensuring that sufficient funding is available to not only maintain SSA's systems but to also improve them, will be a priority if I am confirmed. Moreover, I believe periodic evaluation by unbiased outside experts is an important management approach in this area given that contractors have every incentive to build things in a way that makes it hard to use competitors' technology in the future.

Questions from Senator Kerry

1. Your predecessor said last year in a hearing before this Committee that creating a "hardened," *i.e.* counterfeit resistant Social Security Card would require an additional \$9 billion and force a doubling of the more than 60,000 person Social Security Administration staff. Is there any reason to believe that any new card will

be counterfeit proof given that computer and printing technologies have advanced substantially?

You have raised a subtle and important point. I first dealt with this issue in 1986, and all the cost estimates I have ever seen have assumed a one-time up-front bulge in work and then far smaller, although still substantial, ongoing operational costs. You are exactly right, however, that there is a substantial probability that counterfeiting—in addition to new programs demands, new technologies or other factors—will almost certainly require regular reissuance of hard cards with all the attached cost and operational demands.

At some point candor requires us to admit that what people are debating is a national identification card designed primarily for reasons unrelated to the Social Security system. If Congress determines that is in the national interest to have such a card for reasons related to national security or immigration, my view is likely to be that the responsibility for such a card would be more appropriate for a subagency of DHS that has general responsibility in those areas.

2. Has there been an audit of the accuracy of the data supporting the No Match Database? If so, what percentage of files was inaccurate and how does that reduce the capability of SSA databases to perform non-Social Security earnings work?

I'm not down to that level of detail yet, although I understand its importance, and I will ask Deputy Commissioner for Legislation Wilson to supply that information to you.

3. Some people have proposed using the Social Security Administration staff and databases to attempt to verify the work eligibility of everyone in America. How many more staff positions would you need to create to do secondary verifications for those workers who your system erroneously claims are ineligible to work? How much more money would SSA need for salaries for those new positions?

It is my understanding that SSA's records were not set up to verify current work eligibility status. I know that the agency does play an important role in verifying Social Security numbers of workers through its own verification systems for employers and through the Basic Pilot, which is operated by the Department of Homeland Security (DHS). In the Basic Pilot, DHS verifies work authorization for noncitizens. SSA verifies Social Security Numbers and U.S. citizenship. SSA also helps individuals resolve problems associated with out-of-date or inaccurate information in SSA's records that may prevent the agency from verifying his or her Social Security number. This is an important activity, but highly labor-intensive.

I should note too that, in my opinion, critics of the agency often overestimate the amount of data it has in certain systems. For instance, it is my

understanding that data from W-2's come in once a year, not on an ongoing basis, and that they simply report amounts and sources of income. Without further investigation, which is highly labor-intensive, the agency can't tell if two people are using the same card or if one person worked at two places in the year or held two jobs.

The cost of such an initiative would undoubtedly be staggering, but I don't have adequate information to make cost estimates, and the cost may vary widely depending on the details of the initiative.

4. Some people have called upon us to break down the privacy protections for Americans for their Social Security information so that it can be shared with other agencies in the government. Why is it important to protect that information?

It is my understanding that the information in question comes to the agency in the W-2 forms it processes for the Internal Revenue Service, which it then uses to credit wages to the workers who earn them. As such, I understand the data in those forms is considered tax return information, and disclosure of those data is forbidden by the Internal Revenue Code.

I know that, while experts and Members of Congress disagree about the best approach in this area, a reason for the current law is the belief that confidentiality is not only that it is viewed as a privacy right, but also a significant factor in compliance with our legal obligations to pay taxes. Accordingly, many people believe that any change could cause a substantial drop in federal tax revenue, so I would expect to defer to the Treasury Department on that issue but will, of course, promptly implement any changes Congress adopts in this area.

5. A 2002 joint report by Temple University-Westat Institute reported that more than 3% of the time, SSA could not definitively confirm whether a person was work-eligible after multiple attempts including having the would-be worker submit additional documents. I understand that a new report has just been completed. Have you seen the report and will you make it public? I assume there has been some improvement in that 3% figure, but I believe that even an inaccuracy rate of 0.5% when applied to the 140 million person + work force would lead to tremendous complications.

I am not familiar with this report, but, if confirmed, will look into it and provide you with an update.

Questions from Senator Rockefeller

1. Over the past several months, thousands of Medicare recipients have had problems related to the withholding of Part C and D premium payments from their social security checks. The most recent problem occurred in December when nearly 50,000 beneficiaries had their premium withholding erroneously terminated. Can you provide the Members of this Committee with an update on the steps SSA is taking to address this ongoing issue?

It is my understanding that the agency and CMS worked hard to correct the problems that occurred during the initial enrollment period. Based on comments from the agency and the diminished public outcry, it appears that substantial progress has been made, but I won't be able to tell for sure until I have a chance to engage in detail with the responsible individuals after confirmation.

2. What will it take to find a comprehensive solution to the data exchange problems between SSA and CMS?

I don't have the information to make that judgment and won't until after confirmation, but I intend to find out promptly.

3. Do you believe SSA needs additional resources or greater statutory authority in order to get a better handle on the Medicare premium withholding problems?

With this responsibility not a separate line item in the budget, I think the answer has to be that this function and many others have been, at least to some extent, hamstrung by the staffing cuts and overtime limitations required by the possibility of an appropriation \$400 million below the President's request, although I'm not saying that the funding problem is the sole cause of the problems. I'm not sure the agency needs *greater* statutory authority, but I think it is likely that process simplifications will require technical amendments or clarifications and I am pleased that you are interested in helping with this effort.

**Statement for Senator Bunning
Astrue Nomination Hearing
January 24, 2007**

Thank you, Mr. Chairman, for holding this nomination hearing today.

I am very concerned about the state of the Social Security system. Although the program is currently generating a tax surplus, that will change by 2017, when Social Security will begin running a cash flow deficit and will have to begin drawing down the trust fund.

Social Security trustees estimate that the trust funds will be depleted by 2040. At that point, the program will only be able to pay 74% of promised benefits.

Congress must act quickly to find solutions to meet Social Security's looming financial crisis. Simply cutting benefits or hiking taxes on our children and grandchildren is irresponsible of us.

I hope we can work together this year to find some solutions to this problem.

Another area that we need to look at is the use of Social Security numbers by illegal immigrants and what employers can do to ensure that the numbers being used are legitimate.

It appears that Social Security has several free systems to help verify information, and that employers can get the information about authenticity fairly quickly.

For example, the Social Security Number Verification System can provide immediate verification to employers on an employee's name and Social Security number. Employers can also call the Social Security Administration to verify up to 5 numbers at a time.

Employers have a responsibility to ensure that the people working for them are using the correct Social Security numbers. I hope we can work together to find ways to make these verification systems more widely used by employers.

I look forward to hearing from Mr. Astrue today and hearing his thoughts on these issues.

OPINION

PIN Money

By Robert C. Pozen

Democrats have consistently refused to discuss any Social Security reform requiring a carve-out account: where workers can invest a portion of the 12.4% of their payroll taxes. Recently, Treasury Secretary Hank Paulson has shown a readiness to explore bipartisan approaches to Social Security reform without any prerequisites. A bipartisan plan for reform can be built on a modified version of progressive indexing, without carve-out accounts in Social Security but with enhancements of existing retirement accounts.

Progressive indexing (PIN) preserves the current schedule of Social Security benefits for the lowest 30% of wage earners, as well as for already retired workers and those who will retire before 2012. By contrast, PIN slows the growth of initial Social Security benefits for the top wage earners to the annual increase in consumer prices (price indexing), as opposed to the annual increase in wages (wage indexing). For all those workers in between, PIN provides for lower benefits than the current schedule, but benefits that grow faster than increases in consumer prices through a blend of price and wage indexing. In total, PIN reduces the present value of the 75-year deficit of Social Security by 70%, close to \$4 trillion to approximately \$1.2 trillion.

A progressive approach to Social Security is justified because federal taxes forgone from 401(k)s and IRAs exceed \$50 billion per year—which primarily benefit high and middle earners. Yet PIN should be modified to deal with four major criticisms. First, because Social Security benefits are growing faster for lower-wage workers than middle- and higher-wage workers, the benefits for all workers would become roughly the same at some date in the next century. This criticism can easily

be rebutted by stopping PIN after 75 years, when there will still be substantial benefit differences between wage groups.

Second, while wages have historically grown over 1% faster per year than prices, critics have pointed out this relationship could possibly reverse at some point over the next 75 years. In this unlikely event, the initial Social Security benefits for high earners would grow faster than those of low earners under PIN as originally designed. To avoid this anomaly, initial Social Security benefits should be indexed to wage growth for all workers if, during the 30 years prior to their retirement, prices rose faster than wages.

Third, the original form of PIN did not address the complex issues involved with Social Security benefits for the disabled. Additional savings to hold harmless the disabled could be generated by combining PIN with longevity indexing after 2027. Under longevity indexing, the benefit schedule at normal retirement age (NRA) would be adjusted to keep constant (relative to the average wage level) the estimated lifetime benefits from Social Security in response to increasing life expectancy—without changing the NRA itself. For example, if life expectancy rises to 88 from 87 between 2027 and 2039, the benefit schedule for Social Security under longevity indexing would be the same (in wage-indexed dollars) for a worker retiring at age 68 in 2039, as for someone retiring at age 67 in 2027 (with the same average career earning). This combination would generate enough savings not only to preserve current Social Security benefits for the disabled, but also to improve

the benefit schedule for median wage workers under PIN—thus, dealing with the fourth major criticism of PIN.

Since a combination of PIN and longevity indexing would not include a carve-out account, this would present a political challenge to Republicans. One response could be an expansion of other types of private accounts for retirement. Most workers earning more than \$120,000 per year do not meet the eligibility requirements for the Roth Individual Retirement Account (IRA)—which allows investment earnings from after-tax contributions to be excluded permanently from federal income taxes. If all income limits were taken off the Roth IRA, higher wage workers would be eligible for its tax advantages. This would promote retirement savings by these higher earners, whose Social Security benefits would be growing at the slowest rate under PIN.

Congress could also expand the existing savers credit for retirement plan contributions by low-income households. That nonrefundable credit is limited to joint filers with adjusted gross annual income of \$50,000 or less. However, the credit is poorly designed because most families below that income level do not pay income taxes. Congress could make the credit partially refundable to help those low-wage workers whose Social Security benefits will grow a little slower under PIN—between \$35,000 and \$50,000 in annual earnings.

Some Democrats would support the combination of PIN and longevity indexing because it substantially improves the solvency and fairness of Social Security without raising taxes. Nevertheless, other Democrats may object to this combination because it relies too heavily on benefit changes rather than revenue increases. Although President Bush has rejected any increase in the 12.4% rate for the Social Security tax, he has reserved judgment on increasing the maximum wages (not income) subject to Social Security taxes.



in 2012, when most Social Security reforms start to be implemented, this maximum would be approximately \$113,000 per year. For these reasons, some commentators have proposed raising the maximum wage base subject to the Social Security tax to \$150,000 or \$170,000 per year. However, this would be an unfair and huge tax increase for those with annual earnings in the \$170,000 range. They would be subject to an additional 12.4% tax on all or almost all of the earnings; by contrast, those earning \$2 million or more annually would be subject to the 12.4% tax on a tenth or less of their earnings.

A better approach would be a 2% surcharge, 1% from the employee and 1% from the employer, on all earnings above the maximum wage base (like the Medicare tax). In 2012, for example, that would mean 12.4% on the first \$113,000 in earnings and 2% on all earnings above that amount. Such a 2% surcharge would close approximately 18% of the current long-term deficit of Social Security if no incremental benefits were associated with the surtax. The revenues from the surcharge could be applied to improve the benefit schedule for median-wage workers under PIN. However, a 2% surcharge on high-wage workers without any incremental benefits would violate the fundamental principle of Social Security as a social insurance program. In the long run, this could undermine political support among high earners for the program—a major concern among Democrats. One alternative would be to provide a modest stream of benefits for every \$1,000 in surcharge paid by the employee. But even a modest stream will result in a very large and unseemly annual benefit from Social Security for multimillionaires.

A better alternative would be to devote the 1% from the employer to restore the solvency of Social Security and to allow all of the 1% from the employee to be contributed to a Roth IRA (or half of the 1% over \$1 million per year). This alternative would link the surcharge to additional retirement benefits and permit a further improvement in PIN's benefit schedule for median workers. It would also make the surcharge more palatable to Republicans.

In short, there are a number of workable plans to reform Social Security with enhanced retirement accounts if both political parties are willing to compromise.

Mr. Pozen is chairman of MFS Investment Management.

**Statement of Senator Edward Kennedy on the Nomination of Michael Astrue
To Be Commissioner of Social Security
January 24, 2007**

I had hoped to be present to introduce Michael Astrue, a distinguished son of Massachusetts, to the members of the Finance Committee. President Bush has nominated him to be Commissioner of Social Security, an extremely important position of national trust. Unfortunately, my presence is required on the Senate floor this morning to manage the Minimum Wage bill so I cannot attend the hearing. I want the Committee to know that in Michael Astrue, the President has found a highly capable individual dedicated to public service.

He grew up in Massachusetts attending the prestigious Roxbury Latin School. He graduated from Yale University magna cum laude in 1978 and from Harvard Law School cum laude in 1983. He then served as a law clerk to the Honorable Walter Skinner, a very highly regarded Massachusetts' jurist.

After a brief period in private law practice, Mr. Astrue began his governmental career. In 1985, he was appointed Acting Deputy Assistant Secretary for Legislation in the Department of Health & Human Services. From 1986 to 1988, he served as Counselor to the Commissioner of Social Security. It was in this position that he gained first hand experience with the Social Security system. In 1988, he joined the White House staff as Associate Counsel to the President. In 1989, he returned to the Department of Health & Human Services, where he served as General Counsel through 1992. These were positions of great responsibility, and by all accounts, he performed impressively.

I first came to know Michael Astrue when he returned to Massachusetts after leaving HHS. He became a leader in the rapidly growing biotechnology industry, serving as Vice President & General Counsel of Biogen for six years. In 2000, he moved to Transkaryotic Therapies, first as Senior Vice President and General Counsel, and then as President and Chief Executive Officer. In 2005, he accepted a position as interim Chief Executive Officer of Epix Pharmaceuticals.

He became a key voice on behalf of the biotech community. He was a Board member of the Massachusetts Biotechnology Council for over a decade, culminating in two years as its Chairman. He is now serving as Vice Chairman of our state's High Technology Council.

I have been impressed by his grasp of complex economic issues affecting not only the biotech industry, but all the citizens of Massachusetts. He has been a forceful

advocate for education and training initiatives that will prepare our people for 21st century career opportunities. He is highly intelligent and has a deep understanding of the workings of government.

As I noted earlier, the Commissioner of Social Security is a position of enormous importance. No government program reflects the values of the American people better than Social Security. We are a community that takes care of our most vulnerable members: the elderly, the disabled, and children whose parents have died prematurely. Two out of every three retirees receive over one-half of their income from Social Security. Without that guaranteed monthly benefit check, most of them would be living in poverty. Social Security does much more than provide retirement income for seniors. It also provides lifetime disability insurance protecting those who become seriously injured or ill. When a worker becomes disabled before reaching retirement age, Social Security is there to help him and his family. And when a worker dies leaving minor children, Social Security provides financial support for those children until they reach adulthood. This extraordinary program places a secure foundation beneath the feet of all Americans, helping them to pursue their dreams with confidence that there is a safety net in place if they need support in a crisis or in old age.

The Commissioner has a six year term to distance the management of the government's largest program from partisan political pressure. This nominee, if confirmed, will be in office long after the President who appointed him has left office. The Commissioner's responsibility is to manage the Social Security Administration consistent with current law, not to promote the philosophical agenda of the President who appointed him. It appears from the nominee's letter of November 3, 2006 to Senators Reid and Baucus that Mr. Astrue understands the nature of the Commissioner' role and will adhere to it. I take him at his word.

Should he be confirmed, Michael Astrue will have an enormous responsibility to the American people – to preserve and protect this truly extraordinary program that touches so many lives. I wish him well.

COMMUNICATIONS

STATEMENT FOR THE RECORD Of The NATIONAL ASSOCIATION OF DISABILITY EXAMINERS

Chuck Schimmels, President

Senate Finance Confirmation Hearing for Michael Astrue

January 24, 2007

Chairman and members of the Committee, as you move forward in confirming a new Commissioner for the Social Security Administration, the National Association of Disability Examiners (NADE) wishes to present our views on the challenges facing the new Commissioner.

NADE is a professional association whose purpose is to promote the art and science of disability evaluation. The majority of our members work in the state Disability Determination Service (DDS) agencies adjudicating claims for Social Security and/or Supplemental Security Income (SSI) disability benefits. In addition, our membership also includes SSA Central Office personnel, attorneys, physicians, and claimant advocates. It is the diversity of our membership, combined with our extensive program knowledge and "hands on" experience, which enables NADE to offer a perspective on disability issues that, is both unique and which reflects a programmatic realism.

NADE members, whether in the state DDSs, the SSA Regional Office, SSA Headquarters, OHA offices or in the private sector, are deeply concerned about the integrity and efficiency of both the Social Security and the SSI disability programs. Simply stated, we believe that those who are entitled to disability benefits under the law should receive them; those who are not, should not. We also believe decisions should be reached in a timely, efficient and equitable manner.

The challenges facing the Social Security Administration involve all of the various programs administered by the agency. Our comments are focused strictly on those challenges as they relate to the disability program. Significant challenges facing SSA in the disability program include the management of the Continuing Disability Review (CDR) program, implementation of the Disability Service Improvement (DSI) regulations, on-going management of the implementation of the electronic disability process (eDib), expanding Cooperative Disability Investigation (CDI) Units, and the continuing hardships imposed on disability beneficiaries by the Five Month Waiting Period and the 24 month Medicare Waiting Period.

Continuing Disability Reviews (CDRs)

Limited resources have forced SSA to reduce the number of CDRs performed over the past couple years. Of utmost concern to NADE is the past history of these types of actions and the resultant impact as the agency falls behind in these critical reviews. When we experienced a backlog of CDRs previously it took a great deal of effort by all components of SSA to reach a point where CDR reviews were being conducted as scheduled. It took a significant number of years of dedicated funding solely for the purpose of conducting CDRs before SSA was current with CDR reviews. With decreasing the number of CDR reviews of the past couple of years, there is now a real danger that we will once again find ourselves in the position of having backlogs of overdue CDRs.

While there are increased administrative costs (including the purchase of medical evidence, claimant transportation costs and increased utilization of contract medical consultants) with the performance of CDRs, there is a potential for significant savings in program costs with the elimination of benefits paid to beneficiaries who are found to be no longer eligible for disability benefits due to no longer meeting the SSA Disability program requirements. The estimate is that for every \$1 in administrative cost spent on conducting CDRs, \$10 of program funds is saved. While NADE agrees that it was necessary to decrease the number of CDRs done over the last couple of years given the current budget situation, this decision has repeatedly been described by many, including the former SSA commissioner and members of this committee, as “penny-wise and pound-foolish”. We agree. It is essential to program integrity that CDR reviews be conducted in a timely manner to ensure that only those who continue to be eligible are receiving disability benefits. Experience has shown that with budget cuts, one of the first items to be cut is CDR reviews. NADE’s experience has been that the only way to ensure that necessary funds for CDRs don’t get transferred to process other SSA workloads is for Congress to provide “dedicated funding” for CDRs. Dedicated funding has shown to be the best means of getting “current” with the CDR backlog and NADE encourages this committee to recommend appropriating dedicated funding for CDRs to ensure that this workload gets the attention it deserves.

Disability Service Improvement (DSI)

NADE believes that one of the most important challenges facing SSA is the need for an effective and affordable disability claims process. We have some ongoing concerns about DSI and how it is being implemented. SSA over the past decade has attempted to redesign the disability claims process in an effort to create a new process that will result in more timely and accurate disability decisions. Results of numerous tests undertaken by SSA to improve the disability process have not produced the results expected.

We feel that SSA should take heed of the lessons learned from a previous redesign effort, the Prototype experience. Elimination of the reconsideration step in Prototype states did not produce the necessary funds to fully implement this design initiative. It has also not

been proven that the elimination of the reconsideration step in DSI will provide sufficient funding for all the elements of the DSI regulations

However, one effective and efficient aspect of the Prototype initiative was the Single Decision Maker in which well trained and experienced disability examiners make independent disability decisions utilizing the limited resources of the state agency Medical Consultants in those more complex and complicated cases where their input is needed. The Single Decision Maker (SDM) has shown that quality, efficiency and productivity are equal to if not better than the normal disability process. SDM is still being used in 10 states and NADE recommends that this process be put into the regulations to be used nationally.

NADE believes that the Quick Disability Determinations (QDD) process of DSI has proven to be successful, with earlier numbers showing the state DDSs making decision in an average processing time of less than 10 days with a 98.5 percent accuracy rate. We support national implementation of the QDD process.

Another cost associated with DSI that we feel can be substantially reduced is those incurred with the use of attorneys as Federal Reviewing Officials as the interim step between the DDS decision and the ALJ. NADE agrees with an interim review step between the DDS decision and the ALJ, but believes that a review at this interim step can be conducted by a medically and programmatically trained individual such as a disability hearing officer (DHO). The DHO has received additional training in conducting administrative and evidentiary hearings, decision writing, and making findings of fact, along with detailed case analysis and program information. The salary cost alone of not having to employ attorneys as Federal Reviewing Officials would seemingly provide a significant savings in the DSI implementation process.

Electronic Disability Process (eDib)

eDib is still a work in progress and requires ongoing refinements, upgrades and improvements frequently needed to make the system work as efficiently and effectively as possible. The impact on the system as a whole when these changes are made is unpredictable, and currently results in a slowing or shutting down of the system, or parts thereof.

Since Disability Determination Services (DDSs) process over 2.5 million cases on an annual basis, any shut down or slow down of the case processing system equates to a significant loss of production capacity.

NADE does not believe it is appropriate to make widespread changes in the adjudicative process, such as DSI, until full implementation and necessary refinements of eDib have been made. Continued attention to eDib is needed to insure that the proper financial support is given to make it successful. eDib at its full implementation may result in a significant reduction in processing time at all levels of adjudication without the need for significant changes to the adjudicative process.

Cooperative Disability Investigation (CDI) Units

Members of the National Association of Disability Examiners strongly support expansion of the Social Security Administration Office of the Inspector General's (OIG) Cooperative Disability Investigation (CDI) Units.

While the vast majority of claimants for Social Security and/or Supplemental Security Income (SSI) disability benefits are not out to defraud the program, every individual who adjudicates these claims is aware of at least some level of questionable activity on the part of some claimants and/or their representatives. CDI Units utilize the combined skills and specialized knowledge of OIG special agents, personnel from SSA's Office of Operations, the state Disability Determination Service (DDS) agencies and state or local law enforcement agencies to:

- Provide the DDS with investigative evidence so it can make timely and accurate disability eligibility determinations
- Seek criminal and/or civil prosecution of applicants and beneficiaries and refer cases for consideration of civil monetary penalties and administrative sanctions as appropriate; and
- Identify, investigate and seek prosecution of doctors, lawyers, interpreters, and other third parties who facilitate disability fraud.

CDI units are cost effective and provide a visible and effective front-line defense against fraud, waste and abuse in the SSA and SSI disability programs; they also provide valuable protection to the Social Security Trust Fund, to the American taxpayer and to the victims of those who are attempting to defraud the program.

5 Month Cash Benefit Waiting Period and 24 Month Medicare Waiting Period

It is important to note that in Title II disability claims, persons found disabled under the Social Security Disability program must complete a full five month waiting period before they can receive cash benefits. So, a disability allowance decision, no matter how quickly it is processed (such as QDD), will not solve the problem of having to wait five full calendar months before the claimant will be able to receive any cash benefits. NADE believes that requiring some individuals (Title II claimants) to serve a waiting period before becoming eligible to receive disability cash benefits while not requiring others (Title XVI claimants) to serve the same waiting period is a gross inequity to American citizens with disabilities.

We are also deeply concerned about the hardship the 24 month Medicare waiting period creates for these disabled individuals, and their families, at one of the most vulnerable periods of their lives. Most Social Security disability beneficiaries have serious health problems, low incomes and limited access to health insurance. Many cannot afford private health insurance due to the high cost secondary to their pre-existing health conditions.

It has been proven time and time again that earlier medical intervention could help disabled individuals return to the work force. Therefore, NADE supports the elimination or, at the very least a reduction, of the Five Month Cash Benefits and 24 Month Medicare Waiting Periods.

Summary

- Dedicated funding is necessary in order to avoid the costly possibility of again having a backlog of overdue CDRs.
- Any national rollout of DSI must be closely monitored and the process must be adjusted to accommodate the “real world” application of the regulation.
- Single Decision Maker authority should be continued, at least for QDD cases.
- The Disability Hearing Officer should be utilized in the current infrastructure as an interim appeals step. It is not necessary that Federal Reviewing Official positions be filled by an attorney.
- Resources should not be diverted from eDib to implement disability service improvement changes until the eDib system is fully operational. It is critical that necessary refinements be made to the system in order for it to produce the anticipated and desired efficiencies.
- Cooperative Disability Investigation (CDI) Units should be expanded to deter fraud, waste and abuse in the disability program.
- The five month cash benefit and 24 month Medicare waiting periods for Social Security disability beneficiaries should be eliminated or reduced.

NADE appreciated the openness and willingness of former Commissioners of Social Security, Jo Anne B. Barnhart and Kenneth S. Apfel, to meet with and discuss NADE's points of view on various issues relevant to disability adjudication. NADE looks forward to working cooperatively with and offering our assistance to the new Commissioner of Social Security once he is confirmed.

Chuck Schimmels
Chuck Schimmels
NADE President

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Statement of Joseph Fried, Director
Public Program Testing Organization

Nomination Hearing on Michael J. Astrue
Commissioner of Social Security
January 24, 2007

The Public Program Testing Organization is a nonprofit entity that is dedicated to exposing and eliminating waste in government and nonprofit sectors. While we believe that the long-term issues of Social Security must be addressed, we share the concerns of Senator Baucus regarding the need to diligently address current operational problems.

An operational problem of enormous magnitude and urgency was recently identified by the Office of Inspector General (OIG Audit Report A-09-06-26086, released in January, 2007). After a year-long audit, OIG concluded that questionable hiring programs, conducted by 7 school districts in Texas, could result in the payment of \$2.2 billion to ineligible Social Security beneficiaries. OIG urged the Agency to review the hiring programs, and the eligibility of the individual beneficiaries associated with them.


For several reasons, we believe that the findings of this particular OIG audit will pose a serious challenge to the new Commissioner of Social Security:

- The potential losses are of historic proportions. \$2.2 billion is more than all OIG findings for the last 2 years - combined.
- The OIG recommendations necessitate quick action by the Agency; otherwise, the trust fund could lose hundreds of millions of dollars. Because of statutory time limits, the reviews of many beneficiary files must commence by April 15, 2007.
- The case involves more than 19,000 current and potential beneficiaries, each of whom is entitled to a fair, objective, and thorough review.
- The specific practices alleged by OIG are so outrageous that public confidence in SSA could be shaken by anything less than a comprehensive and just response.

Mr. Astrue has impressive credentials and a large amount of experience in the sectors of law, government, and business. We believe that he is well-qualified to be Commissioner and, if confirmed, we hope he will work conscientiously to address the operational challenges confronting the Agency. We urge him to start by meeting with the Inspector General to review OIG findings related to its audit of Texas school districts.

Thank you for your consideration of this matter.

Sincerely,


Joseph Fried, Director

enclosure: OIG audit report A-09-06-26086, minus appendices



SOCIAL SECURITY

MEMORANDUM

Date: January 8, 2007 Refer To:

To: The Commissioner

From: Inspector General

Subject: Government Pension Offset Exemption for Texas School Districts' Employees
(A-09-06-26086)

OBJECTIVE

Our objective was to determine whether beneficiaries who were previously employed by certain Texas school districts were exempt from Government Pension Offset (GPO).

BACKGROUND

Under section 218 of the *Social Security Act*,¹ individuals employed by State and local governments are not covered by Social Security unless the government entity has entered into a voluntary agreement with SSA. These agreements include the provisions, definitions, and conditions required for Social Security coverage. In addition, Social Security benefits for a spouse or surviving spouse are generally reduced for individuals who receive a monthly pension from a State or local government agency. However, this offset did not apply if an individual's last day of employment was in a position that was covered by both Social Security and a State or local government pension plan. The offset exemption applies only to those individuals whose last day of employment was before July 1, 2004.² *The Social Security Protection Act of 2004*³ subsequently amended the GPO provisions to require that State and local government employees be covered by Social Security throughout their last 60 months (5 years) of employment to be exempt from GPO.

¹ *The Social Security Act* § 218 (a)(1), 42 U.S.C. § 418 (a)(1).

² SSA, Program Operations Manual System (POMS), GN 02608.102.

³ Pub. L. No. 108-203 § 418.

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In October 2005, we received an allegation that approximately 22,000 individuals who retired from 15 Texas independent school districts before July 1, 2004 may have been improperly exempted from GPO because they did not meet the last day of employment provision. Specifically, the allegation stated the 22,000 individuals paid the school districts fees to work for 1 day as a non-professional employee. According to the allegation, the improper exemptions granted to these individuals will cost the Social Security Trust Fund \$2.1 billion.

Although the allegation identified 15 school districts, we limited our review to the 7 school districts that hired the largest numbers of 1-day workers: West, Hudson, Lindale, Premont, Coleman, Sweeny and Kilgore. According to the allegation, these 7 school districts hired approximately 19,000 (86 percent) of the 22,000 1-day workers (see Appendix B for a discussion of our Scope and Methodology).

RESULTS OF REVIEW

We found that individuals employed as 1-day workers by the seven Texas school districts did not appear to meet the requirements to receive a GPO exemption. This occurred because of the questionable nature of these individuals' employment. We also found that five of the school districts did not have the authority to provide these individuals Social Security coverage.

We identified 20,248 individuals who were employed as 1-day workers by the 7 school districts. Based on our review of a random sample of 665 of these individuals, we determined that 629⁴ should not have been exempt from GPO. Projecting our sample results to the population, we estimate that 19,212 individuals will receive \$110 million in spousal benefits annually to which they may not be entitled. Over their lifetimes, they will potentially receive about \$2.2 billion in spousal benefits (see Appendix C).

QUESTIONABLE EMPLOYMENT

Our review disclosed that the seven school districts hired 1-day workers primarily to generate revenue for their districts. Specifically, officials at six of the school districts stated they would not have hired all the 1-day workers if they had not collected fees. In addition, we found the number of individuals hired was primarily based on the number of applications received rather than an actual need for their services.

Although the individuals hired as 1-day workers were generally paid minimum wage, they paid fees to the school districts ranging from \$100 to \$750 each. We found that the seven school districts collected approximately \$7.4 million in fees from their 1-day workers, while only paying them about \$900,000. The following chart summarizes the total fees collected and the wages paid by the seven school districts.

⁴ Of the 665 individuals, 36 were not employed as 1-day workers. These 36 cases, included, but were not limited to, individuals hired through the school districts' normal hiring, individuals employed as substitute teachers or student workers, and individuals who withdrew their applications for employment as 1-day workers.

Fees Collected and Wages Paid by Seven Texas School Districts			
School District	Number of 1-Day Workers	Total Fees Paid to School Districts	Total Wages Paid to 1-Day Workers
West	1,860	\$1,069,478	\$62,273
Hudson	1,887	493,100	77,744
Lindale	4,313	1,335,205	177,696
Premont	2,186	1,052,035	87,440
Coleman	3,642	699,498	218,520
Sweeny	2,958	1,428,703	121,870
Kilgore	3,402	1,289,215	140,162
TOTAL	20,248	\$7,367,234	\$885,705

According to school district officials, they used the revenue generated by their 1-day worker programs to pay the wages of the individuals hired, finance capital improvements, and pay general expenses. The capital improvements included resurfacing parking lots; constructing a new nurse's station; building and installing new seating and lighting for auditoriums; building a distance-learning center; and improving the school board's conference room.

Significance of GPO Exemption on Spousal Benefits

The GPO provisions only affect Social Security benefits paid to spousal beneficiaries. Specifically, SSA must reduce spousal benefits for individuals who receive a pension from a Federal, State or local government based on work where Social Security taxes were not paid. The spousal benefits are generally reduced by two-thirds of the government pension amount. The value of a GPO exemption is illustrated by the following three examples we randomly selected from our sample cases.

Example 1 – An individual who was previously employed by another school district paid a \$250 fee to work on June 18, 2002 in the Kilgore school district. The individual was paid \$41.20, from which \$2.55 in Social Security taxes was withheld. The individual filed for spousal benefits on September 1, 2005, became entitled to benefits at age 62, and is receiving full spousal benefits of \$288.80 with no offset for their monthly government pension of \$2,177.50. The \$250 fee the individual paid was recovered by the value of the GPO exemption for 1 month of spousal benefits. Had SSA imposed GPO, the monthly spousal benefit payable would have been reduced to zero.

Example 2 – An individual who was previously employed by another school district paid a \$200 fee to work on June 11, 2002 in the Coleman school district. The individual was paid \$60.00, from which \$3.72 in Social Security taxes was withheld. The individual filed for spousal benefits on January 15, 2002, became entitled to benefits at age 64, and is receiving full spousal benefits of \$623.60 with no offset for their monthly government pension of \$330.68. The \$200 fee the individual paid was recovered by the

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value of the GPO exemption for 1 month of spousal benefits. Had SSA imposed GPO, the monthly spousal benefit payable would have been reduced to \$403.10.

Example 3 – An individual who was previously employed by another school district paid a \$500 fee to work on June 3, 2004 in the Sweeny school district. The individual was paid \$41.20, from which \$2.55 in Social Security taxes was withheld. The individual filed for spousal benefits on September 27, 2004, became entitled to benefits at age 64, and is receiving full spousal benefits of \$235.00 with no offset for their monthly government pension of \$1,052.93. The \$500 fee the individual paid was recovered by the value of the GPO exemption for less than 3 months of spousal benefits. Had SSA imposed GPO, the monthly spousal benefit payable would have been reduced to zero.

FIVE SCHOOL DISTRICTS DID NOT HAVE AUTHORITY TO PROVIDE SOCIAL SECURITY COVERAGE TO 1-DAY WORKERS

We found that five⁵ of the seven school districts did not have the authority to provide their 1-day workers Social Security coverage. These five school districts had agreements with SSA, pursuant to section 218 of the *Social Security Act*, that precluded them from providing Social Security coverage to part-time employees.⁶ Although school district officials stated they hired the 1-day workers for full-time positions, we found there was no intent or expectation by either party that the employment would last longer than 1 day.

The application packages provided to individuals interested in the 1-day worker programs at three of the five school districts included letters stating, "In response to your request, this packet is being mailed to you in order for you to work your final day in the Texas Teacher Retirement System under the (insert school district name) as a non-professional...." The fourth school district required that applicants submit a resignation letter before their scheduled day of work. The fifth school district called its 1-day worker program the "...one day offset program for Social Security."

Our review of 475 employees from these 5 school districts disclosed that 450 were hired as 1-day workers. None of these 450 workers worked longer than 1 day. Since these individuals did not intend to work more than 1 day and, in fact, did not work more than 1 day, they were not in positions covered by Social Security on their last day of employment. Therefore, they should not be exempt from GPO.

⁵ West, Hudson, Lindale, Premont and Coleman.

⁶ *The Social Security Act* § 218 (a)(1), 42 U.S.C. § 418 (a)(1).

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DETAILS OF THE SEVEN SCHOOL DISTRICTS' 1-DAY WORKER PROGRAMS

Our review disclosed that the 1-day worker programs at each of the seven school districts shared many of the same procedures and characteristics. Below is a general description of how the programs worked.

- The interested applicants, usually teachers planning to retire from other school districts, contacted the hiring school districts and requested application packages.
- The hiring school district sent out application packages requesting the applicants to return their completed packages along with the application/processing fees.
- The hiring school districts sent out confirmation packages, including a letter stating that the purpose of the employment was for the applicants to work their "final day in the Texas Teacher Retirement System."
- The retiring teachers worked 1 day (usually between 6.5 and 8 hours) at the hiring school district in non-professional positions, usually as janitors or office clerks.
- The individuals were paid between \$33 and \$60 for their 1 day of employment.
- The school districts provided the individuals letters stating they were employed by the school district in a position covered by Social Security.
- The individuals presented these letters to SSA as evidence that they should be exempt from GPO.

The 1-day worker program at each of the seven school districts is described below.

West Independent School District

We found that West's employment of its 1-day workers was questionable. In addition, we found that West did not have the authority to provide Social Security coverage to the individuals it employed as 1-day workers because its section 218 agreement precluded it from providing coverage to part-time employees.

Questionable Employment – West required that applicants pay fees ranging from \$500 to \$750 to participate in its 1-day worker program. Whereas, all other individuals West hired did not pay fees. According to West, it determined the fee amounts based on what other school districts were charging. In addition, our audit disclosed that the number of 1-day workers West hired was generally based on the number of interested applicants rather than an actual need for their services. Finally, West stated it would not have hired the 1-day workers without collecting application fees.

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In total, West collected \$1,069,478 in fees from its 1,860 1-day workers. West deposited the fees into the district's general fund, which it used to pay the 1-day workers, cover the cost of processing the applications, and offset shortfalls in the school district's finances. West paid the 1,860 1-day workers approximately \$62,000. From our sample of 95 individuals, West had hired 91 as 1-day workers. All 91 of these individuals paid fees ranging from \$500 to \$750. They were paid \$33 for 1 day of employment.

Lack of Authority to Grant Social Security Coverage - Although West stated it hired 1-day workers for full-time positions, we found there was no intent or expectation by either party the employment would last longer than 1 day. In fact, all 91 individuals hired under the program actually worked only 1 day. West's section 218 agreement states that part-time positions (defined as 30 hours per week or less) are excluded from Social Security coverage. Our review disclosed that each of the 91 individuals hired under West's 1-day program worked less than the required 30 hours per week.

Hudson Independent School District

Our review disclosed that Hudson's employment of its 1-day workers was questionable. In addition, we found that Hudson did not have the authority to provide Social Security coverage to the individuals it employed as 1-day workers because its section 218 agreement precluded it from providing coverage to part-time employees.

Questionable Employment – Hudson required that applicants pay between \$300 and \$500 to participate in its 1-day worker program. None of the other individuals Hudson hired paid fees. In addition, our audit disclosed that the number of 1-day workers Hudson hired was generally based on the number of interested applicants rather than an actual need for their services. According to Hudson, the number of individuals hired was only limited by the number it could adequately supervise. We found that Hudson had as many as 210 workers on the same day. Finally, Hudson stated that, if it had not collected application fees, the school district would only have hired between 15 and 20 individuals.

In total, Hudson collected approximately \$493,000 in fees from its 1,887 1-day workers. Hudson deposited the fees into the district's general fund, which it used to pay the wages of the 1-day workers and a consultant who was responsible for and completed all necessary personnel actions for hiring the 1-day workers. According to Hudson, the administrative expense of its 1-day worker program was \$82,475. Hudson used the surplus for capital improvements, such as resurfacing parking lots and purchasing a modular nurse's station. The total wages paid to the 1,887 1-day workers was approximately \$78,000. From our sample of 95 individuals, Hudson had hired 85 as 1-day workers. All 85 of these individuals paid between \$300 and \$500. They were paid \$41 for 1 day of employment.

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Lack of Authority to Grant Social Security Coverage - Although Hudson stated it hired 1-day workers for full-time positions, we found there was no intent or expectation by either party the employment would last longer than 1 day. In fact, all 85 individuals hired under the program only worked 1 day. Hudson's section 218 agreement states that part-time positions (defined as 20 hours per week or less) are excluded from Social Security coverage. Our review disclosed that each of the 85 individuals hired under Hudson's 1-day worker program worked less than the required 20 hours per week.

Lindale Independent School District

Our review disclosed that Lindale's employment of its 1-day workers was questionable. In addition, we found that Lindale did not have the authority to provide Social Security coverage to the individuals it employed as 1-day workers because its section 218 agreement precluded it from providing coverage to part-time employees.

Questionable Employment – Lindale required that applicants pay between \$100 and \$500 to participate in its 1-day worker program. None of the other individuals Lindale hired paid fees. In addition, our audit disclosed that the number of 1-day workers Lindale hired was generally based on the number of interested applicants rather than an actual need for their services. According to Lindale, the number of individuals hired was only limited by the number it could reasonably supervise. Finally, Lindale stated that, if it had not collected application fees, the school district would only have hired three or four individuals.

Lindale collected \$1,335,205 in fees from its 4,313 1-day workers. Lindale deposited the fees into the district's general fund, which it used to pay the wages of the 1-day workers and cover the administrative expense of hiring these individuals. Lindale officials stated it used the surplus to "improve fund balance" and pay for other general expenditures. The 4,313 1-day workers were paid approximately \$178,000. From our sample of 95 individuals, Lindale had hired 90 as 1-day workers. All these individuals paid fees ranging from \$100 to \$500. They were all paid \$41 for 1 day of employment.

Lack of Authority to Grant Social Security Coverage - Although Lindale stated it hired 1-day workers to fill full-time positions, we found there was no intent or expectation by either party that the employment would last longer than 1 day. In fact, all 90 individuals hired under the program actually worked only 1 day. Lindale's section 218 agreement states that part-time positions are excluded from Social Security coverage. Our review disclosed that each of the 90 individuals hired under the school district's 1-day worker program worked 8 hours or less.

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Premont Independent School District

We found that Premont's employment of its 1-day workers was questionable. In addition, we found that Premont did not have the authority to provide Social Security coverage to the individuals it employed as 1-day workers because its section 218 agreement precluded it from providing coverage to part-time employees.

Questionable Employment – Premont required that applicants pay \$500 to participate in its 1-day worker program. None of the other individuals Premont hired paid fees. In addition, we found the number of 1-day workers Premont hired was generally based on the number of interested applicants rather than an actual need for their services. We found that Premont had as many as 502 workers on the same day. Finally, Premont stated that, if it had not collected application fees, the school district would not have hired any 1-day workers because they did not have the funds to pay their wages.

In total, Premont collected \$1,052,035 in fees from its 2,186 1-day workers. Premont deposited the fees into the district's general fund, which it used to pay the wages of the 1-day workers and cover the administrative expense of hiring them. Premont officials stated it used the surplus to fund capital improvements in the district. For example, Premont used the surplus to refurbish the seating and lighting in an auditorium, remodel a storage building into a distance-learning center, and upgrade air conditioning systems. The 2,186 1-day workers were paid approximately \$87,000. From our sample of 95 individuals, Premont had hired 90 as 1-day workers, who paid fees of \$500 each. They were all paid \$40 for 1 day of employment.

Lack of Authority to Grant Social Security Coverage - Although Premont stated it hired 1-day workers to fill full-time positions, we found there was no intent or expectation by either party the employment would last longer than 1 day. In fact, all 90 individuals hired under the program actually worked only 1 day. Premont's section 218 agreement states that part-time positions (defined as 20 hours or less per week) are excluded from Social Security coverage. We found that each of the 90 individuals hired under Premont's 1-day worker program worked less than the required 20 hours per week.

Coleman Independent School District

We found that Coleman's employment of its 1-day workers was questionable. In addition, we found that Coleman did not have the authority to provide Social Security coverage to the individuals it employed as 1-day workers because its section 218 agreement precluded it from providing coverage to part-time employees.

Questionable Employment – Coleman required that applicants pay between \$100 and \$300 in fees to participate in its 1-day worker program. Although the school district required that all new employees pay fees, Coleman held the checks and

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returned them to the individuals who worked more than 30 days. However, Coleman immediately deposited the checks from its 1-day workers into its general fund. In total, Coleman collected \$699,498 in fees from its 3,642 1-day workers. Coleman deposited the fees into the district's general fund, which was used to pay its operating expenses, including the wages paid to its 1-day workers. The 3,642 1-day workers were paid approximately \$218,000. From our sample of 95 individuals, Coleman had hired 94 as 1-day workers. All 94 of these individuals paid between \$100 and \$300 in fees. They were all paid \$60 for their 1 day of employment.

Lack of Authority to Grant Social Security Coverage - Although Coleman stated it hired its 1-day workers to fill full-time positions, we found there was no intent or expectation by either party the employment would last longer than 1 day. In fact, all 94 individuals hired under the program actually worked only 1 day. Coleman's section 218 agreement states that part-time positions are excluded from Social Security coverage. Our review disclosed that each of the individuals hired under Coleman's 1-day worker program worked 8 hours or less.

Sweeny Independent School District

Our review disclosed that the employment between Sweeny and its 1-day workers was questionable. Sweeny required that 1-day worker applicants "donate" \$500 to the Sweeny Education Foundation (Foundation). The Foundation is a nonprofit organization that transfers funds into Sweeny's general fund as needed. In addition to the \$500 "donation," the 1-day worker applicants paid a consultant \$200 to process their applications. Other individuals Sweeny hired neither donated to the Foundation nor paid a consultant \$200 to process their applications. We also found the number of 1-day workers Sweeny hired was generally based on the number of interested applicants rather than an actual need for their services. We found that Sweeny had as many as 374 workers on the same day. Finally, Sweeny stated that, if it had not collected the \$500 "donation," the school district would have only hired between 10 and 15 individuals.

In total, Sweeny collected \$1,428,703 in fees from its 2,958 1-day workers. These 1-day workers were paid approximately \$122,000. From our sample of 95 individuals, Sweeny had hired 92 as 1-day workers. All 92 of these individuals made a "donation" of \$500 to the Foundation. They were all paid \$41 for their 1 day of employment.

Kilgore Independent School District

We found that Kilgore's employment of its 1-day workers was questionable. Kilgore required that applicants pay between \$250 and \$500 in fees to participate in its 1-day worker program. None of the other individuals Kilgore hired paid fees. In addition, we found the number of 1-day workers Kilgore hired was generally based on the number of interested applicants rather than an actual need for their services. According to Kilgore, the number of individuals hired was only limited by the number it could reasonably supervise. We found that Kilgore had as many as 97 workers on the same day. Finally,

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Kilgore stated if it had not collected application fees, the school district would not have hired any 1-day workers.

In total, Kilgore collected \$1,289,215 in fees from its 3,402 1-day workers. Kilgore deposited the fees into its general fund, which it used to pay the wages of the 1-day workers and cover the administrative expense of hiring these individuals. These 1-day workers were paid approximately \$140,000. From our sample of 95 individuals, Kilgore hired 87 as 1-day workers. We found that 86 of these individuals paid between \$250 and \$500 in fees (1 of the 87 individuals was not required to pay a fee because she was a Kilgore employee). All 87 individuals were paid \$41 for their 1 day of employment.

SSA MAY HAVE IMPROPERLY GRANTED GPO EXEMPTIONS TO 1-DAY WORKERS

SSA needs to revise its policies and procedures concerning acceptable proof and evidence for the last day of employment exemption for GPO. Specifically, we found that, of the 665⁷ individuals in our sample, 170 were receiving spousal benefits. SSA exempted 168 of them from GPO. Generally, this occurred because SSA relied solely on documentation provided by the 1-day workers to determine whether they should be exempt from GPO. This documentation included pay stubs and letters addressed to SSA from the school districts stating the individual was employed in a position covered by both the Texas Teachers Retirement System and Social Security on their final day of employment. According to SSA policy,⁸ this documentation is considered acceptable evidence that a GPO exemption applies. However, our review of the practices at the seven Texas Independent School Districts found that relying solely on this documentation does not provide SSA sufficient information to determine whether it should exempt an individual from GPO. To determine whether an individual should be exempt from GPO, SSA needs to examine the terms and conditions of the employment and the school district's section 218 agreement.

ADDITIONAL 1-DAY WORKER PROGRAMS

The allegation we received in October 2005 identified 8 other Texas school districts⁹ that hired approximately 3,285 1-day workers. If the same conditions we found at the 7 school districts we reviewed occurred in these 8 school districts, about 3,107 of these individuals should not be exempt from GPO. Furthermore, we estimate these 3,107 individuals will receive approximately \$17.8 million in spousal benefits annually to

⁷ Of the 665, 350 had not attained age 62 and therefore were not yet eligible for spousal benefits.

⁸ SSA, POMS, GN 02608.102 B1.

⁹ Hidalgo, Yoakum, Iraan-Sheffield, Hunt, Ft. Davis, Anahuac, Port Arthur and Somerville.

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which they may not be entitled. Over their lifetimes, they could receive about \$353 million in spousal benefits.¹⁰

Our audit disclosed that the 1-day worker programs were generally limited to State and local government entities in Texas. To determine the extent to which this could be occurring in other States, we reviewed SSA's payment records. This review identified all spousal beneficiaries for whom SSA noted the State of the pension payments and who were exempt from GPO based on the last day of employment provision. According to SSA's Master Beneficiary Record, 1,303 spouses are exempt from GPO based on the last day of employment provision. Of these 1,303 individuals, 1,276 (98 percent) had been employed by a State or local government entity in Texas. We estimate 995¹¹ of the 1,276 individuals were from the 15 Texas school districts (see Appendix C).

CONCLUSIONS AND RECOMMENDATIONS

We found the employment agreements between the seven Texas school districts and their 1-day workers were questionable. In addition, five of the school districts did not have the authority to provide these individuals Social Security coverage. Our review disclosed that the school districts hired the 1-day workers primarily to generate revenue. The individuals hired as 1-day workers paid fees far in excess of any wages received. However, we believe these individuals paid these fees based on an expectation that they would be provided an exemption from GPO. On average, the GPO exemption is valued at approximately \$113,000 per person over the average life expectancy of an individual receiving spousal benefits.

Unless SSA changes its policies and procedures for evaluating individuals who are eligible for GPO exemptions, we estimate 19,212 individuals will receive \$110 million in spousal benefits annually to which they may not be entitled. Over their lifetimes, these individuals could cost the Social Security Trust Funds about \$2.2 billion. In addition, we estimate 3,107 individuals at 8 other Texas schools districts could improperly receive \$17.8 million in spousal benefits. Over their lifetimes, they could receive \$353 million in spousal benefits.

We recommend that SSA:

1. Develop policies and procedures to ensure individuals employed as 1-day workers only receive GPO exemptions if appropriate. For example, SSA should obtain documentation to evaluate whether the terms and conditions of the employment are valid and whether the school district's Social Security coverage complies with its section 218 agreement.

¹⁰ See Appendix C for a description of our estimation methodology.

¹¹ This will significantly increase in the next few years given the number of individuals who participated in the 1-day worker programs at these school districts.

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2. Reexamine the decisions to grant an exemption from GPO for the 168 spouses in our sample.
3. Identify and reexamine any decisions to grant exemptions from GPO for spouses in the population of 20,248 1-day workers employed by the 7 school districts.
4. Review the 1-day worker programs at the other eight Texas independent school districts identified in the allegation to determine whether their 1-day workers programs would result in inappropriate GPO exemptions.

AGENCY COMMENTS

SSA agreed, in part, with our recommendations. Specifically, SSA stated it would ensure that appropriate section 218 agreements are in force for the school districts and take appropriate action if it identified any problems.

Regarding the questionable employment, SSA stated the payment of a fee does not affect the validity of the wages unless the fee is considered a reimbursement of wages paid to the worker. SSA further stated it has no evidence these fees were considered a reimbursement of wages, nor does the draft OIG report state this is the case.

Regarding Social Security coverage for part-time employees, SSA agreed that many part-time positions are not covered under section 218 agreements. However, SSA stated it generally looks to the employers to determine whether the position is full- or part-time. SSA stated that, in all our cases, the school districts paid the Social Security taxes, which demonstrated that the school districts determined the positions were full-time and, therefore, covered under the section 218 agreements.

See Appendix D for the full text of SSA's comments.

OIG RESPONSE

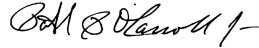
We are pleased that SSA agreed, in part, with our recommendations. However, we have the following observations.

- With respect to the employment questioned in our report, we found substantial evidence that SSA needs to review the employment relationship for the very reasons SSA cited. Most notable, the fees were, in substance, a return or reimbursement of the wages paid. We noted in several instances in our report that the school districts did not have the funds to pay the wages or would not have hired these individuals without charging a fee. As such, we believe the fees were a reimbursement of wages paid.
- With respect to the Social Security coverage for part-time employees, we believe SSA should not rely on these school districts to determine whether the positions were covered by Social Security simply because they paid Social Security taxes.

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Rather, SSA should examine the facts and circumstances of the employment at each school district as we outlined in our report, to determine whether the employment is full- or part-time and covered under the section 218 agreements.

We also believe SSA's review needs to consider that these employment practices primarily occurred in these 15 school districts. As we noted, we estimate 995 of the 1,303 individuals nationwide who are exempt from GPO under the last day of employment provision were from these 15 school districts. These school districts almost exclusively hired individuals from other school districts rather than individuals from their own school district. Of the 665 individuals in our sample, 649 (97.6 percent) had not been previously employed by the hiring school district.


Patrick P. O'Carroll, Jr.

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