Congress of the United States
Washington, DC 20515

January 30, 2020

The Honorable Andrew Saul
Commissioner
Social Security Administration
6401 Security Boulevard
Baltimore, MD 21235

Dear Commissioner Saul:

We urge you to immediately withdraw the Social Security Administration's harmful and unjustified proposed rule to subject Social Security and Supplemental Security Income (SSI) disability beneficiaries to more frequent continuing disability reviews (CDRs). This unwarranted proposal would deprive many people with disabilities of the Social Security, SSI, Medicare, and Medicaid benefits that they are eligible for and rely on for survival. The Social Security Administration (SSA) should instead use its limited resources to restore strong customer service to the American people, reversing the long waiting times, backlogs, and other service problems that have become common across the agency in recent years.

Social Security's disability programs provide a basic income for people who, because of severe and long-lasting medical impairments, are unable to work at a substantial level. The Social Security Act's eligibility standards are extremely stringent. To qualify, applicants provide extensive medical evidence and undergo a rigorous eligibility determination process. Many applicants must appeal an initial denial in order to be found eligible – and often endure delays of a year or more due to backlogs in SSA's hearing offices. SSA finds fewer than 4 out of every 10 applicants eligible, after all levels of appeal.

People who have been found eligible for Social Security or SSI on the basis of a long-term disability typically rely on these benefits to meet their everyday needs and could not withstand the wrongful loss of benefits. Given the severity of impairments needed to qualify, it is unsurprising that beneficiaries overwhelmingly see their medical conditions worsen over time or lead to death.

Nevertheless, SSA conducts approximately 2 million CDRs each year to identify Social Security and SSI disability beneficiaries who have experienced medical improvement. The agency terminates benefits when a medical CDR finds that a beneficiary's impairments have improved in a way that would allow the individual to work and earn at a substantial level – a small proportion of cases. CDRs are necessary for program integrity but can be extremely complex and difficult for beneficiaries to navigate. In addition, the CDR process often causes severe stress as beneficiaries fear they will lose their main or only source of income, even though their impairments have not improved and they remain unable to support themselves through work.

With these concerns in mind, Congress has provided direction for SSA to conduct CDRs in ways that reflect a commitment not only to stewardship, but also to fair and humane treatment of beneficiaries. This guidance is expressed in longstanding statutory requirements surrounding CDRs as well as in annual appropriations language establishing specific funding amounts for program integrity workloads, including CDRs.

Currently, SSA performs periodic medical CDRs most often for beneficiaries who are considered to have the greatest chance of medical improvement. Even with this prioritization, only about two percent of adult Social Security and SSI beneficiaries selected for a periodic medical CDR see their benefits terminated as a result of medical improvement, after all levels of appeal. In 2018, six times as many adult disability beneficiaries died as had their benefits terminated for medical improvement.

The proposed rule would substantially increase the number of medical CDRs, by 2.6 million from Fiscal Years 2020 to 2029. The rule achieves this increase in multiple ways, including by: reviewing some beneficiaries every 18 months (or sooner) instead of less often; reviewing a significant number of beneficiaries every 2 years instead of every 3 years or longer; shortening the time between reviews from every 7 years to every 6 years for beneficiaries who are not expected to medically improve; and requiring reviews of children at ages 6 and 12.

We strongly oppose the changes under the proposed rule and urge you to withdraw the rule, for the following reasons.

The proposed rule would harm Social Security and SSI beneficiaries.

Social Security and SSI beneficiaries who qualify on the basis of a disability by definition have severe impairments, and many are older: the average age of former workers receiving Social Security because of their disability is 55, and nearly 4 in 10 are age 60 or older. In addition, the overwhelming majority of Social Security and SSI beneficiaries live in or near poverty, and benefits are often their sole source of income.

SSA's initial decision to cease benefits as a result of a medical CDR is frequently incorrect and is often reversed on appeal. Among adult Social Security and SSI disability beneficiaries, over half of initial cessations are later reversed.

CDRs are complex and can impose a significant burden on Social Security and SSI beneficiaries. Full medical CDRs require beneficiaries to complete a 15-page form detailing their current medical conditions and all medical history from the last 12 months – including appointments, tests, and treatments. Beneficiaries must respond in a timely manner to inquiries from SSA and in many cases procure records from their medical professionals directly, often at substantial time and cost. Individuals who are notified by SSA that their benefits will be terminated following a CDR are given just 10 days to appeal if they wish to continue to receive benefits while their appeal is pending. The CDR appeals procedures are complex and SSA's Inspector General has repeatedly noted problems with the process, including delays.

In light of their medical conditions, age, and limited financial resources, many beneficiaries require significant assistance to successfully complete the CDR process. This includes filling out extensive paperwork, complying with deadlines, responding to inquiries from SSA field offices and Disability Determination Services (DDS) agencies, and pursuing their appeals rights. Unfortunately, help navigating CDRs can be extremely difficult for beneficiaries to secure. Long waiting times at SSA field offices and call centers create major hurdles for beneficiaries trying to get help from SSA, and very few beneficiaries have access to knowledgeable independent assistance. For example, in 2019 roughly two-thirds of people filing an application to begin receiving benefits had an attorney or non-attorney representative assisting them with an appeal at the DDS, compared to fewer than five percent of beneficiaries appealing a CDR cessation at the DDS. Similarly, in 2019, over 70 percent of applicants appealing to an Administrative Law Judge (ALJ) had a representative at their ALJ hearing, compared to fewer than 20 percent of beneficiaries appealing a CDR cessation at an ALJ hearing.

The proposed rule would cause individuals who meet eligibility criteria to lose benefits because they could not comply with paperwork requirements.

Given the complexity of SSA's CDR process and the significant gaps in assistance for beneficiaries, under the proposed rule many individuals subject to more frequent reviews would be simply unable to navigate the process. They would not be able to complete all the paperwork, obtain evidence from their providers, meet tight deadlines, and comply with other procedural requirements. As a result, individuals with severe disabilities would lose their Social Security and SSI benefits even though there is no medical improvement and they remain unable to work. By SSA's estimate, the proposed rule would cut benefits by $2.6 billion from Fiscal Years 2020 to 2029.

The proposed rule is unjustified and unsupported by evidence.

Throughout the Notice of Proposed Rulemaking (NPRM), SSA fails to present evidence to justify either the massive proposed increase in CDRs or the specific proposed changes to SSA's CDR categories, CDR schedules, and the criteria used to determine when each beneficiary will be reviewed.

For example, the NPRM provides no evidence regarding the medical prognosis of 12 specific impairments listed in the supplementary document "Impairment Placements in CDR Categories," or the time frame for potential changes in those impairments, to justify a proposed review period of 18 months or less for beneficiaries with those medical conditions. The NPRM similarly provides no information to indicate why a two-year review period would be appropriate for 25 other medical conditions listed in that same document. Indeed, at SSA's recent National Disability Forum on "What Impairments Have a Likelihood to Improve?," clinical medical researchers who presented on new treatments under development repeatedly noted that these emerging practices are not available to patients under current standards of care. Furthermore, the

Forum revealed that the current body of research does not indicate whether the emerging treatments, if widely available, would result in medical improvement for Social Security and SSI beneficiaries.

Moreover, the NPRM provides no evidence to justify a two-year review period for beneficiaries who were originally found eligible for benefits at the final step of SSA's five-step disability evaluation process. The NPRM provides no evidence to justify ages 6 and 12 as specific milestones for when a child should be reviewed for medical improvement, regardless of impairment. The NPRM provides no evidence to justify shortening the time between reviews for individuals who are not expected to medically improve from 7 years to 6 years. The NPRM provides no evidence to establish that SSA lacks sufficient flexibility under its current rules or that more flexibility is necessary.

The rulemaking cites only four research studies, and the research findings are insufficient to support the NPRM's core assertions and sweeping proposed changes. Only two of the four studies are specific to Social Security or SSI disability beneficiaries who have undergone medical CDRs. None of the studies evaluate SSA's current use of CDRs or offer any insight into whether more frequent CDRs would be appropriate for any beneficiaries.

Fundamentally, the NPRM fails to share SSA's underlying analysis or even basic information necessary to permit the public and Congress to evaluate and comment on the proposed rule. For example, the NPRM fails to identify how many beneficiaries would see a change in their periodic medical CDR schedule, how many beneficiaries would be affected by each of SSA's proposed procedural changes, or how many beneficiaries would see their Social Security or SSI benefits cut off. The proposed rule references the predictive model that SSA uses to attempt to identify beneficiaries who are more likely to medically improve, but lacks any substantive information about the model and does not indicate whether the model or SSA's use of it would change under the NPRM. The NPRM makes vague assertions about "positive employment effects" while noting that the agency "cannot currently quantify them." In fact, prior studies show that the majority of those who lose benefits under the current medical CDR process do not return to consistent self-sustaining work; moreover, between one-third and one-quarter return to the rolls after filing a new application. The NPRM also fails to offer any information about the potential effects on beneficiaries' financial security, health, mortality, or other aspects of well-being.

In addition, on many important questions the NPRM is so unclear or even silent that the proposed changes can neither be understood nor evaluated. For example, the NPRM fails to indicate how SSA would schedule CDRs for beneficiaries with multiple impairments – a striking omission, given that approximately two-thirds of Social Security and SSI disability beneficiaries have two or more medical conditions. In another example, the supplementary document "Impairment Placements in CDR Categories" states that beneficiaries who had their benefits continued at the final step of SSA's 8-step medical CDR process would be scheduled for a review in two years – but this change is neither mentioned nor explained in the NPRM itself.

The proposed rule fails to provide an adequate cost-benefit analysis.

The NPRM estimates that SSA would require an additional $1.8 billion for Fiscal Years 2020 to 2029 to implement the changes under the proposed rule. The NPRM notes that the proposed rule meets the criteria for a significant regulatory action under Executive Orders 12866 and 13563 but fails to present a detailed cost-benefit analysis as required under the Executive Orders. The NPRM's cost estimates are incomplete and the proposed rule does not share the underlying assumptions and analyses that produced these estimates.

As a result, it is impossible to determine whether SSA has accounted for all potential costs to the agency and beneficiaries or properly weighed the costs and benefits. For example, the NPRM includes no analysis of how the proposed changes would impact workloads and existing service delays at Social Security field offices, teleservice centers, Program Service Centers, state DDS agencies, and disability hearings offices. The NPRM provides no indication that SSA has, as required under Executive Order 12866, assessed the effects of the proposed changes on state, local, and tribal governments or has sought to minimize burdens that might significantly affect such entities when residents or tribal members who receive Social Security and SSI see their benefits ceased.

Conclusion.

The proposed rule is an affront to longstanding, bipartisan Congressional direction for SSA to balance program integrity under CDRs with fair and humane treatment of beneficiaries. Social Security's continuing disability reviews are a sensitive topic with a long and troubled history. In the early 1980s, the Reagan Administration implemented multiple initiatives to reduce the number of people receiving Social Security and SSI disability benefits – including aggressive use of CDRs.

The harsh, harmful effects of SSA's CDR actions in the early 1980s led to widespread concerns from the public, the states, Federal Courts, and Congress. A number of former beneficiaries committed suicide; dozens of class action lawsuits were filed; 18 states stopped processing CDR terminations; and Congress held 27 hearings on the harm being inflicted. In the wake of this terrible situation, Congress enacted bipartisan legislation in 1982 and 1984 to provide guidance on the proper manner for SSA to conduct CDRs. Until now, Congress and SSA have taken a measured approach to updating CDR policies, such as the bipartisan Ticket to Work and Work Incentives Improvement Act of 1999, which exempted from CDRs certain beneficiaries who are attempting to work, and the Bipartisan Budget Act of 2015, which updated annual appropriations targets for CDR spending and refined other program integrity workloads.

With the proposed rule, SSA is pushing sweeping changes to its CDR process not only in the absence of a solid evidence base, but also without providing fundamental information about the proposed changes and the impact on beneficiaries.

We urge you to immediately withdraw this harmful, unjustified, and arbitrary proposed rule. We submit this letter for the record of SSA's Notice of Proposed Rulemaking, "Rules Regarding the Frequency and Notice of Continuing Disability Reviews" (84 Fed. Reg. 63588, November 18, 2019).

Sincerely,

Richard E. Neal
Chairman
Committee on Ways and Means
U.S. House of Representatives

Ron Wyden
Ranking Member
Committee on Finance
U.S. Senate

John B. Larson
Chairman
Subcommittee on Social Security
Committee on Ways and Means
U.S. House of Representatives

Sherrod Brown
Ranking Member
Subcommittee on Social Security, Pensions, and Family Policy
Committee on Finance
U.S. Senate

Danny K. Davis
Chairman
Subcommittee on Worker and Family Support
Committee on Ways and Means
U.S. House of Representatives

Robert P. Casey, Jr.
Ranking Member
Special Committee on Aging
U.S. Senate