

## **WHY ASTRUE MUST GO**

### **SOCIAL SECURITY UNDER ASSAULT; AGENCY MOVING IN WRONG DIRECTION**

**OVERVIEW:** The American Federation of Government Employees (AFGE), with the support of the AFL-CIO, is calling on President Obama to fire Michael J. Astrue, the Commissioner of the Social Security Administration (SSA).

- Astrue was appointed by former President George W. Bush for a six-year term in 2007. In just two years, he has downgraded SSA, one of the nation's most responsive and best-run public agencies, into a troubled organization that no longer serves the best interests of retired and disabled Americans and their families.
- Since its founding in 1935 during the New Deal, Social Security has been widely known and respected for the personal services it provides to America's retirees, disabled workers and their dependents and survivors. But under Astrue, the agency has moved away from its historic legacy, and its beneficiaries are being denied money and services they otherwise should receive.
- Astrue's policies have included a directive for SSA employees to aggressively steer applicants – despite their age or disability – to use computers and the Internet to file their claims, and a gag rule that prevents SSA workers from guiding citizens as they apply for benefits. This radical change in agency policy prevents SSA staff from assisting the public they are sworn to serve.
- Astrue has proposed regulations that would make it harder for beneficiaries to appeal a denied disability claim and is pressing for anti-privacy legislation that would eliminate requirements for SSA to obtain consent before obtaining an individual's private medical records.
- SSA employee dissatisfaction is at an all-time high. In March 2009, a neutral arbitrator condemned Astrue's attempt to circumvent the union representing SSA Administrative Law Judges and argued that Astrue's temperament made him unstable as an administrator. In January 2009, the Government Accountability Office (GAO) reported that 65 percent of SSA employees interviewed at 21 offices experience "great" or "very great" stress in their jobs. The GAO concluded that Astrue's SSA has no comprehensive strategy to deliver quality customers service.
- The Obama administration – and the American people – deserve better. The only way the situation can be reversed is through a change at the top: Astrue's replacement by a public servant committed to the values and services for which Social Security has always stood for.

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**BACKGROUND:** The Social Security Administration is an independent agency of the federal government headquartered in Woodlawn, Maryland, on the outskirts of Baltimore. It employs about 62,000 people at 10 regional offices, eight processing centers, approximately 1,300 field offices and 35 TeleService Centers. SSA's Commissioner, Michael J. Astrue, was sworn in on February 12, 2007, for a six-year term that expires on January 19, 2013. Unlike most previous commissioners, Astrue came to Social Security straight from the business world, where he was a senior executive in Boston's biotechnology industry. Previously, he served as an adviser to Presidents Ronald Reagan and George H.W. Bush and as general counsel of the Department of Health and Human Services. In 2001, President George W. Bush was poised to appoint Astrue to head the Food and Drug Administration. But Senate Democrats blocked his nomination, arguing that it would be a conflict of interest for a pharmaceutical executive to head an agency that regulated the drug industry. His actions since rejoining the government in 2007 have proven that he is equally unfit to run the Social Security Administration.

### **THE CASE AGAINST ASTRUE**

**THE ICLAIMS DISASTER.** Staffing levels at SSA are at their lowest level since 1972, and have caused serious deterioration to the agency's ability to serve the American public. Current problems include an unprecedented backlog of more than 1.3 million claims for disability benefits and a 765,000 case backlog of disability hearing appeals – more than double the number in 2000. The SSA now has a 20 percent busy rate for its "800" telephone number, while the average wait time for a disability hearing is nearly 500 days. Meanwhile, 45 percent of people calling an SSA field office either can't reach an SSA employee or are told to call back due to the lack of available staff to handle their calls.

Unfortunately, Astrue's response to the crisis has only made the situation worse. In 2008, SSA concluded that its Internet claims system had not been well received by the public or by the Agency's own staff. Its Internet claims system was so difficult to use that more than half the time applicants abandoned the electronic application. As a result, SSA decided to redesign the Internet claims system and make it "cleaner and simpler." People applying for Social Security benefits, whether elderly or disabled, are now strongly encouraged to use Internet self-service as much as possible rather than file with the help of a trained SSA employee. But in the process of simplifying the system, many benefit application questions, including some that can directly affect entitlement determinations and payments, were omitted. The new – and ill-conceived – automated system is called iClaims.

Pressuring disabled and elderly Social Security applicants to use the Internet to apply for benefits is a radical departure from SSA's traditional policy which allowed customers the absolute right to determine how they did their business with the government. In the past, the public had the option of communicating with SSA by phone, meet face-to-face with SSA employees, or use computers and on-line services. The agency also assured the public that it would carry out its mission with a "human touch." iClaims changed all that by eliminating much of the advice and assistance that SSA employees have provided to the public and reducing the need for employee involvement in the claims process. For example:

- With iClaims, anyone with personal information about a potential claimant, such as an ex-spouse or an assistant, can file for that claimant's benefits without their knowledge. There is no authentication of the applicant's identity.
- The iClaims system limits questions regarding previous marriages and divorces. In the past, such information provided SSA with leads for potential information needed to determine that subsequent marriages were valid, and that entitlement to benefits as a spouse or survivor could be properly established.
- With iClaims-related policy changes, SSA no longer verifies age or citizenship if applicants claim the same date and place of birth shown when they obtained a Social Security Number (SSN). Individuals who claimed to be older than they really were when initially applying for an SSN, in order to get their first job or for another reason, will slip through the system and become inappropriately entitled to benefits if they allege the same date of birth when they file.
- Internal SSA polling illustrates why iClaims is a problem. In one survey of over 1,000 SSA employees who review Internet claims, 71% of the respondents said they had to recontact at least 90% of their claimants due to errors or omissions on their electronic applications.

Astrue wants the final phase of the new iClaims policy to be in place by February 2010, if SSA can "authenticate" the identity of the applicant by then, something that is not done now when someone files over the Internet. Under his plan, applications would be processed without any SSA employee involvement at all, meaning that there would be no reviews done to make sure that errors are corrected. That would create opportunities for massive fraud and theft.

But the most serious policy change related to iClaims is a gag order on SSA employees. Under Astrue's policies, an SSA employee trained in the complex Agency programs no longer explains applicant rights or reporting responsibilities to those who use Internet self-service, in spite of the fact that the Agency's own Office of General Counsel advised SSA and AFGE in 1996 that personal contact

by SSA with each applicant for that purpose is a requirement of the Social Security Act.

**ASTRUE'S GAG ORDER.** In 2008, as part of his iClaims initiative, Commissioner Astrue issued new instructions to SSA employees. From now on, he said, Social Security workers must stop assisting claimants as they had in the past. As of November 2008, claims representatives must follow these instructions, lifted directly from SSA manuals:

- Do not suggest a month of election for the claimant.
- Do not advise the claimant about the best time to start receiving Social Security retirement benefits.
- Do not calculate or discuss breakeven points and the 8 and 20 year rules to determine if a claimant is making an advantageous or disadvantageous decision on his/her month of election.
- Do not attempt to persuade the claimant about benefit decisions.

These instructions amount to a gag order on employees that prohibits them from providing useful assistance to the American public they are sworn to serve. As a result of this gag order, social security employees now fear that claimants are being denied essential information at the most critical stage in the benefit application process.

In addition, many disabled persons could decide not to file for benefits that they are legally entitled to as a result of the gag order, because the iClaims question about disability is worded in a way that suggests that benefits are only payable if an individual can do no work at all. And as the baby boomer generation begins to retire in large numbers, Commissioner Astrue's instructions to refrain from providing service and information undermine the very mission of the Social Security Administration at a critical time. Many beneficiaries will become frustrated and make incorrect applications that will cost them benefits to which they are legally entitled. Clearly, Commissioner Astrue's policies are not in keeping with the mission of SSA.

**IMPACT ON RETIREES.** The iClaims system and the gag order are causing permanent harm to claimants who are unable to understand and navigate the Internet claims system. That problem is exacerbated by computer illiteracy: according to a recent Gallup Poll, only 14 percent of senior citizens (i.e., people 65 years old and above) have gone online to a government website in the last six months. Moreover, SSA customers often interact with the agency in moments of great stress – after the death of a loved one, for example, or in the midst of a serious disability – and need a human touch to assist them in conducting their business. Without the option of human contact with an SSA employee, they lose

that precious right. In addition to undermining the mission of SSA, these policies are hurting morale among SSA employees.

SSA began its initial rollout of iClaims in December 2008, with 12 field offices taking part. The initial pilot period lasted two weeks, and after that the system was implemented nationally. At that time, an AFGE survey of SSA employees assigned to reviewing iClaims revealed the following:

- Nearly half, or 44%, believed that SSA claimants have felt pressure to file their claims through the Internet rather than being interviewed directly or by telephone.
- Only 11% were confident that applicants could actually file a claim by themselves on the Internet.
- Only 22% were confident that benefits would not be lost due to the inability of claimants to complete the online applications.
- Only 17% were confident that the applicant had a full understanding of all the benefits for which he or she was eligible.
- Only 14% found that the applicant chose the most advantageous month of election on their own, without help from a Social Security employee.

The survey underscores the conclusions of the Government Accountability Office (GAO), the investigatory arm of Congress, which recently issued a scathing report on Astrue's Social Security Administration. It begins as follows: "Staffing constraints are having adverse effects on [SSA] field offices." The report describes an agency adrift and without clear leadership.

**GAO: SSA IS AN AGENCY WITHOUT A PLAN.** Commissioner Astrue's management of SSA was the subject of a GAO report issued in January 2009. The report notes that, in fiscal year 2008, SSA's approximately 1,300 field offices provided service to about 44 million customers. But over the last several years, GAO noted, "staffing reductions have challenged field offices' ability to manage work while continuing to deliver quality customer service." The GAO report makes the following points:

- **Problematic staff reductions.** Cuts to staff have made it difficult for the agency to provide proper services to American retirees and disabled workers. Between 2005 and 2008, GAO said, the number of staff in field offices dropped 4.4 percent. As a result, during that time, there was a three percent drop in SSA's overall customer satisfaction rating, from 84 percent to 81 percent. Moreover, the staffing declines have "resulted in customers waiting longer to be served and difficulties for field offices in answering calls from customers."

- **Astrue has no strategy.** SSA, said the GAO, “does not currently have a detailed plan to address future service delivery needs.” While noting that Astrue has discussed his “strategic plan” with the GAO, the agency commented: “While the plan includes the goal of significantly expanding the use of electronic services, it is not clear how this will mitigate SSA’s increasing workload.” As a result, GAO recommended that SSA “develop a service delivery plan that describes how it will deliver quality service in the future while managing growing work demands and constrained resources.” That plan, it said, must establish standards for field office waiting times and phone service that don’t exist now. In his response to the GAO, Astrue refused to accept this recommendation.
- **Drastically reduced services.** In 17 of the 21 field offices visited by GAO, managers and staff said that long waiting times were among the top customer complaints. One recent survey of field offices found that 51 percent of customers that called 48 randomly selected offices had one or more calls that had gone unanswered. But according to GAO, “because SSA based its results only on customers who were ultimately able to get through to the field offices, the actual percentage of customers that had unanswered calls was likely even higher.”
- **More stress for SSA employees, to the detriment of retirees.** As a result of the changes at SSA, staff at some offices visited by GAO said they have less time to spend with customers, “potentially leading to mistakes and also limiting the ability of staff to ensure that customers fully understand their options and benefits.” That, in turn, has increased the stress on SSA employees. GAO asked 153 SSA employees at 21 offices to rate their stress levels they experienced trying to complete their work in a “timely manner,” and 65 percent reported feeling stress to a “great” or “very great” degree. The stress, GAO said, was felt most acutely by office managers, 74 percent of whom described high levels of stress. Moreover, the workload pressures have “led to cutbacks in the amount of time allocated for training and mentoring new staff,” while SSA has reduced the number of continuing disability reviews and SSI redeterminations that are conducted to ensure that disability beneficiaries are paid the correct amounts.

**ASTRUE’S OWN PRESCRIPTIONS ARE MORE BAD NEWS.** If Astrue had his way, the situation would be even worse. According to SSA staff and congressional sources, the Commissioner Astrue has made several policy proposals that would make SSA even less responsive to the public. For example, he has recycled a Reagan-era proposal for regulations that would increase the bureaucratic hurdles to appealing disability claims, thus making it harder for citizens to appeal when they are denied claims for benefits. Astrue has also asked for anti-privacy legislation that would eliminate requirements for the SSA to obtain an individual’s consent before obtaining access to their private medical records. He has tried to reduce the hours SSA field offices are open to the public

and closed a record number of field offices in 2007. These actions raise serious questions about Astrue's ability to carry out President Obama's mandates to improve SSA's ability to serve the public through significant new investments in the agency.

**ASTRUE REBUKED BY ARBITRATOR.** In one of his most contentious actions, Astrue tried to increase control over SSA's Administrative Law Judges in a manner that would have undermined their independence from the agency and weakened their ability to provide fair hearings to disability applicants. He did this by attempting to create National Hearing Centers to sidestep the administrative judges' union. On March 29, 2009, in response to a grievance filed by the Association of Administration Law Judges (AALJ), Arbitrator Michael Murphy issued a stinging rebuke of Astrue's conduct, saying that his proposal to create hearing centers outside of the AALJ-negotiated system marked "a sea change" in how the agency operates and was intended to "severely undermine the union's authority and permanently deny numerous employees...their right of representation." In his meetings with the judges, the arbitrator wrote, Astrue acted "in an abrupt, abusive and hostile manner." One of the judges, a former deputy general counsel of the National Labor Relations Board, testified after his meeting with Astrue that he "had never been treated in such a discourteous manner" and "fully appreciated" from Astrue's actions "how threatened a union member could feel." Members of a Senate Subcommittee on Social Security were so concerned about the strained relations reported by the arbitrator that they contacted Astrue's Chief of Staff to request additional meetings between the Commissioner and the AALJ, but no new meetings have been scheduled.

**LABOR SAYS NO TO ASTRUE'S POLICIES.** For all these reasons, including a failure by Astrue's administration to address concerns with SSA workers in a productive manner, the employees of SSA represented by AFGE have taken the unprecedented step of voting "no confidence" in Michael Astrue as Commissioner of the Social Security Administration. In March, the AFL-CIO added its voice to the fight with a call from the labor federation's executive council for Astrue to step down. "Out of respect for the country's decisive vote last fall against the Bush [administration's] policies and for restoring government to its rightful focus on the people's interests instead of the monied interests, Astrue should resign," the AFL-CIO said. "If he continues to try to hold onto his job, the Obama administration should seek his ouster."