Administrative Conference of the United States

APPENDIX TO SSA DISABILITY BENEFITS ADJUDICATION PROCESS: ASSESSING THE IMPACT OF THE REGION I PILOT PROGRAM

Final Appendix: December 23, 2013

This report was prepared by the Office of the Chairman of the Administrative Conference of the United States. The views expressed do not necessarily reflect those of the Council, the members of the Conference, or its committees.

CONTRIBUTORS

GRETCHEN JACOBS

RESEARCH DIRECTOR

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

FUNMI OLORUNNIPA

ATTORNEY ADVISOR

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

AMBER WILLIAMS

ATTORNEY ADVISOR

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

APPENDIX TABLE OF CONTENTS

LIST OF TABLES

LIST OF FIGURES

APPENDIX A: METHODOLOGY

Overall Research Methodology: In conducting research for this report, *SSA Disability Benefits Adjudication Process: Assessing the Impact of the Region I Pilot Program's Key Provisions*,[1] staff from the Administrative Conference of the United States ("Administrative Conference" or "Conference"),[2] through its Office of the Chairman: (1) reviewed statutes, regulations, and other publicly available information relating to the Social Security Administration ("SSA")'s disability benefits programs; (2) analyzed SSA-provided data to assess the impact of Region I's pilot program[3] at the administrative appellate level; (3) reviewed federal case law and law review articles addressing SSA's Region I pilot program; (4) performed legal research on limiting the evidentiary record in other administrative programs; and (5) conducted interviews and surveys of stakeholders both within and outside of the agency.

Data Methodology: To facilitate assessment of the pilot program in Region I, we elected to use a comparative approach that assessed data from Region I relative to two other SSA regions (Regions VII and VIII), as well as nationally across all SSA regions. While no comparison is perfect in such a large adjudication system, Regions I, VII, and VIII share several defining characteristics that make comparison useful. These regions each have a relatively similar number of hearing offices, administrative law judges ("ALJs"), and annual dispositions.[4] We compared these regions—along with national averages—across the same key variables relating to case processing times, record development, decisional quality (as measured by remand frequency percentages), timing and volume of evidentiary submissions, and time intervals between the issuance of hearing notices and hearing dates.

Survey Methodology: Administrative Conference staff designed four separate nationwide surveys and administered them through SurveyMonkey.com, an online survey tool. These four surveys were respectively directed to: Region I ALJs; Region I hearing office directors ("HODs"); ALJs in Regions II-X; and HODs in Regions II-X. Links to the online surveys were sent via email in May 2013 to SSA ALJs and HODs in each of the ten regions. Responses were anonymous unless the respondent elected to provide his or her contact information at the end of the survey form should there have been a need for follow-up questions by staff of the Administrative Conference. At the close of the survey period in June 2013, the respective survey populations, number of survey responses, and survey response rates for the four surveys were as follows:

---

[1] SSA DISABILITY BENEFITS ADJUDICATION PROCESS: ASSESSING THE IMPACT OF THE REGION I PILOT PROGRAM (Dec. 20, 2013) [hereinafter ASSESSING REGION I PILOT PROGRAM].

[2] While this appendix (along with the accompanying report) is issued by the Office of the Chairman of the Administrative Conference of the United States, for ease of reference, this Office is referred to herein as simply the "Administrative Conference" or "Conference." The analyses and views expressed in this appendix (and accompanying report) are those of the Chairman and staff of the Administrative Conference, and do not necessarily reflect those of the members of the Conference or its committees.

[3] The pilot program calls for closure of the evidentiary record five days before the hearing date subject to good cause exceptions (what we call "the five-day rule"), and issuance of hearing notices 75 days before the hearing date (what we refer to as "the 75-day notice requirement"). *See* ASSESSING REGION I PILOT PROGRAM, *supra* note 1 at 1.

[4] *Id.* at 25; *see also infra* p. A-10.

	Total Population	# Survey Responses	Survey Response Rate
Region I ALJs	57	27	47.4%
Region I HODs	8	7	87.5%
Regions II-X ALJs	1,367	704	51.5%
Regions II-X HODs	157	123	78.3%

A complete set of survey questions and results (i.e., response counts, response percentages, weighted rating averages, and/or text responses in their native form exclusive of any personal identifying information provided by the respondent) is provided in Appendix E.

It should be noted that the statistical reliability of the respective survey results varies widely due to variations in survey populations and response rates. In sum, the large survey population, coupled with relatively high response rates, makes the respective surveys of ALJs and HODs in Regions II-X ALJs significantly more reliable from a statistical perspective.[5] The survey of Regions II-X ALJs has a confidence interval (margin of error) of 2.6% at the 95% confidence level. Similarly, the survey of Regions II-X HODs has a confidence interval of 4.1% at the 95% confidence level.

While the surveys of ALJs and HODs in Region I also had relatively high response rates, the small sample size makes their respective results significantly less reliable from a statistical perspective. The survey of Region I ALJs has a confidence interval (margin of error) of 13.8% at the 95% confidence level, and the companion survey of Region I HODs has a confidence interval of 14.0% at the 95% confidence level. This difference in confidence intervals is notable because survey responses are often used in the accompanying report to show variability between Region I and Regions II-X. Accordingly, depending on the particular set of survey responses at issue, some or all of any response differential may be due to this statistical variability.

Interview Methodology: With respect to interviews of SSA officials, Administrative Conference staff provided SSA with a list of individuals by job title (e.g., Hearing Office Chief ALJ, Appeals Council Officer, Case Technician) that they sought to interview for this study in Regions I, VII, and VII, as well as at the Appeals Council and the National Hearing Center ("NHC"). SSA then contacted individuals holding those positions to set up interviews in-person, by video teleconferencing, and/or phone. Interviews were primarily conducted in one sitting; however, a few interviews included multiple sessions to permit follow-up questions or clarification. All interviews were conducted by one or more Administrative Conference staff, and detailed notes were taken. While interviewees are not identified by name in the report, notes taken during the course of these interviews are on file with the Conference staff who authored this report. The bulk of the interviews with SSA ALJs and staff in Regions I, VII, and VIII were conducted between January 28 and February 14, 2013. (For background information, Conference staff also interviewed several current and former officials with SSA's Office of Appellate Operations.)

In sum, for this study, Conference staff interviewed 80 SSA employees working at the hearing and appellate levels. A list of these interviewees' respective assignments and job titles are noted below:

[5] *See, e.g.*, LESLIE KISH, SURVEY SAMPLING (1995) (discussing sampling techniques and calculation of confidence levels and intervals).

Appeals Council	
Administrative Chief Appeals Judge – 1	Appeals Council Judge – 6
Appeals Council Officer – 2	
Region I	
Regional Chief ALJ – 1	Hearing Office Chief ALJ – 3
ALJ – 6	HOD – 4
Attorney Advisor – 5	Decision Writer – 4
Case Technician – 8	
Regions VII & VIII	
Regional Chief ALJ – 2	Hearing Office Chief ALJ – 4
ALJ – 4	HOD – 4
Attorney Advisor – 3	Decision Writer – 6
Case Technician – 6	
National Hearing Center	
Chief ALJ – 1	Associate Chief ALJ – 1
ALJ – 4	Decision Writer – 5

With respect to perspectives from stakeholders outside SSA, written questionnaires were sent to, and follow-up interviews conducted with, representatives from the following private organizations in April and May 2013: the Association of Administrative Law Judges; the Federal Administrative Law Judges Conference; the National Organization of Social Security Claimants' Representatives; the National Association of Disability Representatives; and the American Bar Association.

APPENDIX B: EXCERPTS OF REGULATIONS RELATING TO REGION I'S PILOT PROGRAM

This appendix shows how the regulations in the 2005 NPRM compare to the current regulations governing the Region I pilot program. Text that has been struck through was part of the 2005 NPRM iteration, but does not exist today. Text in blue and underlined was added by the 2006 Final Rule and exists today. There is no difference between the 2006 Final Rule and the regulations in their current form.[6]

Relevant section: Notice of a hearing before an administrative law judge. (20 C.F.R. § 405.316)
(a) *Issuing the notice.* After the administrative law judge sets the time and place of the hearing, we will mail notice of the hearing to you at your last known address, or give the notice to you by personal service. We will mail or serve the notice at least ~~45~~ 75 days before the date of the hearing, unless you agree to a shorter notice period. (b) *Notice information.* The notice of hearing will tell you: (1) The specific issues to be decided, (2) That you may designate a person to represent you during the proceedings, (3) How to request that we change the time or place of your hearing, (4) That your hearing request may be dismissed if you fail to appear at your scheduled hearing without good ~~cause~~ reason under § 405.20, ~~and~~ (5) Whether you or a witness's appearance will be by video teleconferencing~~.~~, and (6) That you must submit all evidence that you wish to have considered at the hearing no later than five business days before the date of the scheduled hearing, unless you show that your circumstances meet the conditions described in § 405.331 for missing the deadline.

[6] The only exception was a change made to paragraph (b) of 20 C.F.R. § 405.601, which corrected a typo by updating "416.989(a)(1)" to "416.1489(a)(1)." *See* Soc. Sec. Admin., Administrative Review Process for Adjudicating Initial Disability Claims, Correction, 71 Fed. Reg. 17,990 (Apr. 10, 2006) (to be codified at 20 C.F.R. pt. 405).

Relevant section: Submitting evidence to an administrative law judge. (20 C.F.R. § 405.331)
(a) You ~~must~~ should submit with your request for hearing any evidence that you have available to you. ~~You must submit all~~ Any written evidence that you wish to ~~have~~ be considered at the hearing must be submitted no later than ~~20~~ five business days before the date of the scheduled hearing.~~, unless you show that you have good cause under 405.20(a) for submitting the evidence after this 20-day period, or you show that the late submitted evidence relates to a material change in your condition between the date set for submitting all evidence and the date of the hearing. Your failure to~~ If you do not comply with this requirement, ~~may result in the evidence not being considered by~~ the administrative law judge~~.~~ may decline to consider the evidence unless the circumstances described in paragraphs (b) or (c) of this section apply. (b) If you miss the deadline described in paragraph (a) of this section and you wish to submit evidence during the five business days before the hearing or at the hearing, the administrative law judge will accept the evidence if you show that: (1) Our action misled you; (2) You had a physical, mental, educational, or linguist limitation(s) that prevented you from submitting the evidence earlier; or (3) Some other unusual, unexpected, or unavoidable circumstance beyond your control prevented you from submitting the evidence earlier. (c) If you miss the deadline described in paragraph (a) of this section and you wish to submit evidence after the hearing and before the hearing decision is issued, the administrative law judge will accept the evidence if you show that there is a reasonable possibility that the evidence, alone, or when considered with the other evidence of record, would affect the outcome of your claim, and: (1) Our action misled you; (2) You had a physical, mental, educational, or linguistic limitation(s) that prevented you from submitting the evidence earlier; or (3) Some other unusual, unexpected, or unavoidable circumstance beyond your control prevented you from submitting the evidence earlier.

Relevant section: Reopening and revising determinations and decisions. (20 C.F.R. § 405.601)
(a) ~~*General.* If you are dissatisfied with a determination or a decision made in the administrative review process, but do not request further review within the stated time period, you lose your right to further review, and that determination or decision becomes final. However, we may reopen and revise a determination or a decision made in your claim which is otherwise final and binding.~~ Subject to paragraph (b), the reopening procedures of §§ 404.987 through 404.996 of this chapter apply to title II claims and the procedures of §§ 416.1487 through 416.1494 of this chapter apply to title XVI claims. (b) ~~*Procedure for reopening and revision.* We may, or you make [sic] ask us to, reopen a final determination or decision on your claim. If we reopen a determination or decision, we may revise it.~~ When we have issued a final decision after a hearing on a claim that you seek to have reopened, for purposes of this part, the time frames for good cause under §§ 404.988(b) and 416.1488(b) of this chapter are six months from the date of the final decision and we will not find that "new and material evidence" under §§ 404.989(a)(1) and 416.1489(a)(1) of this chapter is a basis for good cause.

APPENDIX C: HISTORY OF AGENCY EFFORTS REGARDING NOTICE OF HEARING & SUBMISSION OF EVIDENCE

This appendix provides a history of agency initiatives regarding notice of hearing and submission of evidence predating its initiatives in the 2000s.

1. 1988 Draft Notice of Proposed Rulemaking: Procedural Changes Contemplated

In 1988, SSA drafted a NPRM proposing to modify and restructure the hearing process by changing the procedures involving submission of evidence, before, during, and after the hearing.[7] Among other things, the draft proposed to require claimants and/or their representatives to submit all evidence seven days prior to the ALJ hearing.[8] If the claimant and/or representative failed to do so and did not meet certain good cause exceptions, the ALJ would not consider the evidence.[9] Moreover, if the additional evidence would result in a postponement or continuance of the hearing and the claimant and/or representative did not withdraw the evidence, the ALJ had the authority to dismiss the request for hearing.[10] The record would be closed after the hearing; no new evidence would be permitted unless the claimant and/or representative demonstrated that either (1) the new and material evidence "was not readily available before the hearing,"[11] or (2) "new issues have arisen which warrant the taking of additional evidence."[12]

The only circumstance under which the Appeals Council could consider evidence that had not been previously submitted at the ALJ level would be to determine whether the ALJ

---

[7] *See* Soc. Sec. Admin., Federal Old-Age, Survivors, and Disability Insurance Benefits, Black Lung Benefits, and Supplemental Security Income for the Aged, Blind, and Disabled, Regulations for Determining Claimant Rights, Proposed Rule Draft, at 14 (1988) (unpublished) (on file with authors) (citing 48 Fed. Reg. 21967-70 (May 16, 1983)). The draft also proposed changes to reopening procedures. In 1983, SSA proposed regulations that would have barred the Appeals Council from considering any additional evidence after the ALJ's hearing decision was issued. *See id.* The regulations limiting the submission of evidence applied only to the Appeals Council.

[8] *See id.* at 16, 73. Seven days was chosen "because it represent[ed] the shortest period that would afford the ALJ a realistic chance to make the adjustments the additional evidence may necessitate to go forward with the scheduled hearing, or, if that [wa]s not possible, to move another hearing into the vacated time slot." *Id.* It was unclear whether "days" referred to business days or calendar days; the word was undefined. *See id.* at 51-53. In the draft NPRM, SSA provided its rationale for proposing time limits for the submission of evidence:

> The regulations seek to ensure that the hearing is used as a forum for receiving testimony and testing the evidence, not as a forum for initially presenting new documentary evidence. The hearing process cannot function well or efficiently if additional evidence is submitted so late that the ALJ is unable to assess it as necessary to inquire fully into the issues at the hearing. Additional evidence may be too voluminous and complex to be assessed quickly. It may present new issues or require that other additional evidence be obtained.

Id. at 9.

[9] The good cause exceptions were broadly defined, but became stricter as a claimant moved through the administrative process. *See id.* at 10, 38-39, 123. "[S]ubmitting evidence shortly before or at the hearing may require postponement or continuance of the hearing if the ALJ [was] unable to assess the additional evidence as necessary for a full inquiry into the facts and issues at the hearing." *Id.* at 6-7.

[10] *See id.* at 7, 73, 78-80; *see also id.* at 9, 18. When requesting a hearing, the draft regulations encouraged claimants to include "[a] statement of additional evidence [he or she] intend[ed] to submit and the date [he or she would] submit it." *Id.* at 67.

[11] *Id.* at 7; *see also id.* at 73.

[12] *Id.* at 7; *see also id.* at 73.

abused his or her discretion.[13] In all other circumstances, the Appeals Council would return the evidence to the claimant.[14] It was only the ALJ who would have authority to modify a decision based on post-decisional evidence—evidence that he or she had discretion to admit into the record.[15] Notice of hearing was required only 20 days before the hearing date.[16]

A couple of key members of Congress had grave concerns regarding the draft proposal. Andy Jacobs, Jr., Chairman of the Subcommittee on Social Security and Dan Rostenkowski, Chairman of the Committee on Ways and Means co-authored a letter, expressing their concern to Otis Bowen, Secretary of the Department of Health and Human Services.[17] They feared that this and other changes would: (1) make the appeals process more adversarial; (2) increase the need for claimants to obtain representation; and (3) result in more appeals to the federal courts.[18] They also believed that such provisions would "expressly violate" the statute, which both allowed for the admission of evidence that would be barred in a court proceeding and stated that the agency's decision was based on "'evidence adduced at the hearing.'"[19] They believed that closing the record would make it impossible to have decision based on all of the available evidence. They closed the letter by emphasizing the importance of a "simple and accessible process."[20] The draft NPRM was never published.

2. 1998 Final Rule: Revisions to Conduct Standards Do Not Close the Record

A decade later, SSA issued a rule regarding the standards of conduct for claimant representatives.[21] The NPRM that preceded the final rule unintentionally generated apprehension about closing the record.[22] One of the rules had proposed to require representatives to "'[p]romptly obtain all information and evidence which the claimant want[ed] to submit in support of the claim and forward the same for consideration as soon as practicable, but no later than the due date designated by the Agency, except for good cause shown.'"[23] SSA had received several comments expressing concern that such requirement would, in effect and "in contravention of current law," close the evidentiary record.[24] Commenters also noted that good cause would have to exist as a matter of law between the evidence submission due date and the date of decision.[25] Without the exception, they

---

[13] *See id.* at 7-8, 28. The draft regulations proposed altering the Appeals Council and making it an "Appeals Board." *Id.* at 20-31. Because this was a draft proposal and the Appeals Council exists today, we retain the Appeals Council name in this appendix.
[14] *See id.* at 101.
[15] *See id.* at 8; *see also id.* at 19, 84, 87-88.
[16] *See id.* at 82. Requirements regarding record submission and the agency's record closure policy were to be included in the notice of hearing. *See id.*
[17] At this time, SSA was part of the Department of Health and Human Services. It did not become an independent agency in the executive branch until 1994. *See* 42 U.S.C. § 901 (1994).
[18] *See* Letter from Andy Jacobs, Jr., Chairman, Subcomm. on Soc. Sec. of the H. Comm. on Ways & Means, & Dan Rostenkowski, Chairman, H. Comm. on Ways & Means, to Otis R. Bowen, Secretary, U.S. Dept. of Health & Human Svcs. (Nov. 21, 1988) (on file with authors).
[19] *Id.*
[20] *Id.*
[21] *See* Soc. Sec. Admin., Federal Old-Age, Survivors, and Disability Insurance and Supplemental Security Income for the Aged, Blind, and Disabled, Standards of Conduct for Claimant Representatives, 63 Fed. Reg. 41,404 (Aug. 4, 1998) (to be codified at 20 C.F.R. pts. 404, 416).
[22] *See id.* at 41,404-18.
[23] *Id.* at 41,411.
[24] *Id.*
[25] *See id.*

believed that the record would unlawfully close prior to the date of determination.[26] Others thought that "good cause" was too ambiguous a term and asked that it be defined.[27] SSA responded by stating that it had no intention of closing the record and removed the due date requirement.[28] Although it acknowledged the challenges that claimants and representatives faced when trying to obtain evidence, SSA simultaneously affirmed its expectation that representatives assist claimants to submit evidence timely.[29]

[26] *See id.*
[27] *See id.*
[28] *See id.* at 41,411-12.
[29] *See id.*

APPENDIX D: ANALYSIS OF SSA DATA RELATING TO CLOSING THE RECORD

One of the methods used to assess the impact of Region I's pilot program included analysis of SSA-provided data. In conducting data analysis, we aimed to empirically evaluate whether the pilot program has advanced the goals set forth by SSA when implementing the program—namely, improving the efficiency, accuracy, and timeliness of the Social Security disability benefits adjudication process.

Data were provided by SSA from the Case Processing Management System ("CPMS") and Appeals Council Review Processing System ("ARPS") databases, which the agency uses for case management and processing,[30] as well as eView and the Standard Data Repository ("SDR"), which relate to the electronic folder.[31] Staff both in OESSI/DMIA and detailed to the Appeals Council computed some of the variables that were not available directly from these tables. Where possible, we attempted to obtain data before the implementation of the Disability Service Improvement program (in 2006) to assess the intra-regional impact of the pilot program. However, due to changes in the way SSA has collected and processed data over the relevant time period, most data were not available for the full time period in which the pilot program has been operational (2006 – present). (Since our analysis of the Region I program commenced in 2013, data for fiscal year ("FY")/calendar year ("CY") 2013 were not yet available.) Consequently, while we conducted our empirical analyses using all available data, most evaluations cover only a subset of the time period covered by the pilot program —most commonly, the 2008 – 12 or 2010 – 12 time periods.

While SSA provided all requested data to the extent available, there nonetheless were distinct limitations with the CPMS, ARPS, eView, and SDR data sets. Most significantly, SSA does not maintain Region I-specific data, whether in CPMS, ARPS, or other agency databases. As a result, for example, there are no data tailored to the pilot program that capture information related to: the timing of evidence submissions by claimants (or their representatives) and the nature of such submissions; the frequency and basis of requests for good cause exceptions; the nature of ALJ dispositions of good cause-based requests; the rate at which the Appeals Council affirms or remands ALJ denials of good cause-based requests for admission of untimely evidence; and the extent to which the Appeals Council grants request for admission of new evidence under 20 C.F.R. § 405.401(c).

Due to these limitations, we could not directly evaluate the impact of the Region I pilot program through program-specific or program-generated data. Instead, we used general case management data captured by CPMS, ARPS, eView, and SDR across all regions relating to: record development and case processing (e.g., consultative examinations, post-hearing status); timeliness (e.g., pending cases, average processing time); remand rates on certain

[30] Adjudicators and other agency employees at both the ALJ hearing level and Appeals Council level use electronic case management systems to help manage their workflow and to provide case-related management information. The current system in use at the hearing level is CPMS, while the Appeals Council level uses ARPS. Not only do adjudicators and other staff use CPMS and ARPS in their day-to-day work, but the agency also uses data from these systems to identify and address trends and anomalies existing at the various levels of agency adjudication.

[31] The electronic folder is essentially "an electronic version of a . . . disability claim file [where, among other things,] all of the medical evidence, correspondence, [and] decisions . . . are stored." *See* E-mail from Maren Weight, Appeals Officer, Soc. Sec. Admin., to Amber Williams, Att'y Advisor, Admin. Conference of the U.S. (Dec. 18, 2013) (on file with authors). "eView is the mechanism through which all agency employees view the electronic folder[, while SDR] is the structured format of all the information contained in the electronic folder." *Id.*

evidentiary issues (i.e., Appeals Council remands); volume and timing of evidentiary submissions (e.g., number and percentage of documents submitted relative to the hearing date); and notice of hearings (e.g., average number of days between when a hearing notice was issued and the hearing held, percentage of hearings held 70 days or more after the hearing notice was issued).

Our empirical analyses of these variables generally proceeded along one (or more) of three axes. For each studied data element, as appropriate (and as data permitted), we evaluated the impact of the pilot program through: (1) intra-regional comparison that compared Region I data for the earliest FY available with FY 2012 data;[32] (2) inter-regional comparison of Region I data with data from two similar SSA regions (Regions VII and VIII); and/or (3) nationally by comparing Region I with national averages.

In sum, while the data provided by SSA were reliable, the results of—and conclusions drawn from—our empirical analysis must be tempered by the understanding that the data assessed were not tailored to the Region I pilot program. We also note, where appropriate, areas in which additional data would be needed to draw firmer conclusions and/or to exclude confounding variables.

1. Inter-Region Comparisons: Regions I, VII & VIII

One of the first steps in our empirical analysis was to select several other SSA regions that are sufficiently similar to Region I to permit useful comparative studies.[33] For the reasons detailed below, we elected to use Regions VII and VIII for statistical comparisons to Region I.

One of the important characteristics shared by Regions I, VII, and VIII are their regional structures. These three regions have a similar number of hearing offices (Region I: 8, Region VII: 9, Region VIII: 5 (and 4 satellite offices)); ALJs (Region I: 57; Region VII: 72; Region VIII: 37); and dispositions (for example, in FY 2012: Region I: 32,174; Region VII: 35,329; Region VIII: 20,885).[34] Moreover, each region has a prototype state (Region I: New Hampshire; Region VII: Missouri; Region VIII: Colorado).[35] As examined below, the three regions also have, in recent years, shared relatively similar disposition and representation rates that aid comparative analyses.

a. Total Dispositions, FYs 2008-12

Over the past five FYs, the number of dispositions at the ALJ hearing level has increased across the three regions (*see* Table A-1 and Figure A-1). Region I's total dispositions have consistently remained between the disposition figures for Regions VII and

[32] Where noted, data were provided by calendar—as opposed to fiscal—year.

[33] While no comparison is perfect across a nationwide program and a diverse population, we nonetheless view Regions I, VII, and VIII as sufficiently similar along several defining characteristics to make comparison beneficial. At least one organization, however, has expressed concern that SSA does not have "enough statistical information to compare the results among regions." *See* Letter from FALJC Pres., to Amber Williams, Att'y Advisor, Admin. Conf. of the U.S. (May 13, 2013) (on file with authors).

[34] *See* E-mail from Rainbow Forbes, Appeals Officer, Soc. Sec. Admin., to Amber Williams, Att'y Advisor, Admin. Conf. of the U.S. (June 7, 2013) (on file with authors).

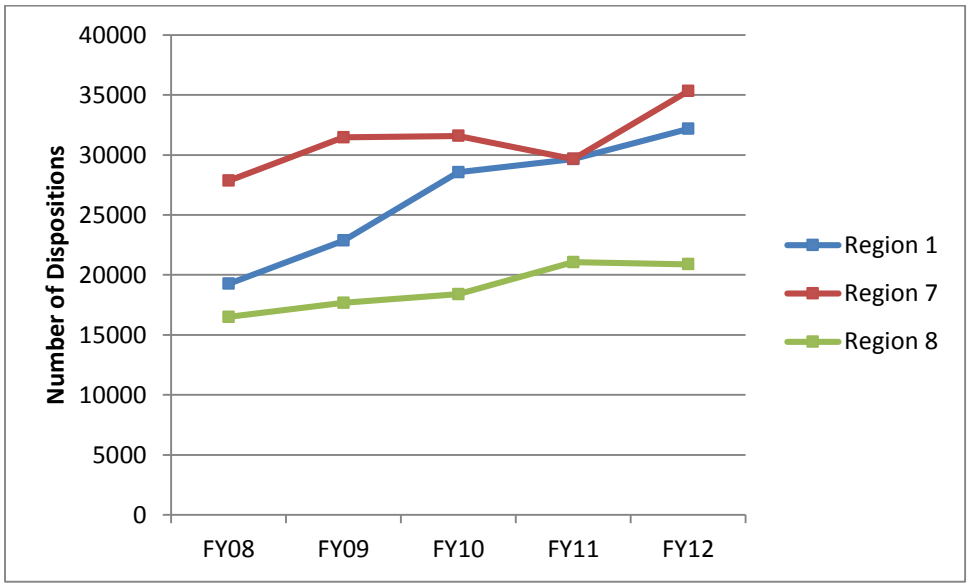
[35] For a discussion of prototype states, see ASSESSING REGION I PILOT PROGRAM, *supra* note 1, at Pt. III.A note 202 and accompanying text.

VIII. (For an overall perspective on the total number of dispositions annually, Table A-1 also provides national dispositions over the same time periods.)

Table A-1: Number of Dispositions, FYs 2008-12

	FY08	FY09	FY10	FY11	FY12
Region 1	19254	22866	28563	29657	32174
Region 7	27847	31463	31583	29664	35329
Region 8	16496	17674	18390	21065	20885
Nation	575378	660836	737616	793563	820484

Figure A-1: Number of Dispositions, FYs 2008-12



b. Representation Averages, FYs 2006-12

The average percentages of cases in which claimants are represented (or unrepresented) are also fairly close across Regions I, VII, and VIII, as well as nationally (*see* Table A-2 and Figure A-2).[36] The table below shows the percentage of cases with attorney representation, non-attorney representation, representation overall (i.e., attorneys and non-attorneys), as well as the percentage without representation. Region I has a slightly higher percentage of attorney-represented cases (and, conversely, a lower percentage of cases with either non-attorney representatives or unrepresented claimants) relative to the two other regions or national averages. Regions with a higher percentage of represented claimants may experience greater ease regarding compliance with evidentiary rules and may generally have more developed records than those regions with lower representation percentages. However, with less than a 5% differential in representation rates between Regions I and VIII (and less than that relative to Region VII and the national average), we do not believe this difference in representation to be sufficient to unduly skew our comparative analyses. In any event, the SSA-provided data is silent with respect to other factors bearing on representation and facility

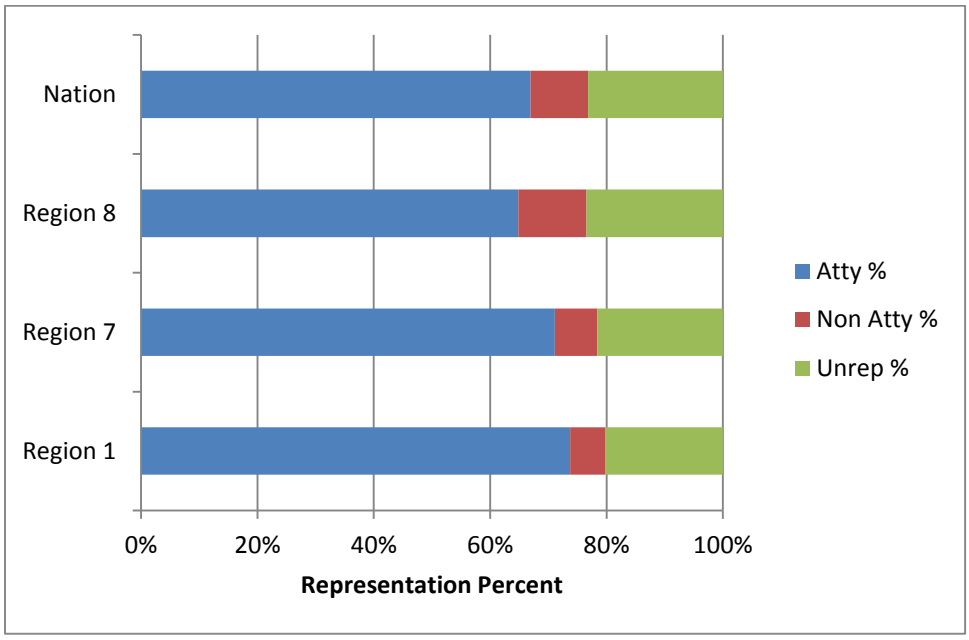
[36] SSA gathers information only regarding whether the claimant was represented at any point of the process; it does not gather information whether the claimant changed representatives, or how many representatives he or she had.

of record development, including: (1) the point in the case at which a claimant retains representation (e.g., relatively closer or farther from the scheduled hearing date);[37] (2) the comparative quality of representation across regions; and (3) preceding record development at the Disability Determination Services ("DDS"), or state, level.

Table A-2: Representation Averages, FYs 2006-12

	Region 1	Region 7	Region 8	Nation
Atty %	73.73%	71.12%	64.82%	66.95%
Non Atty %	6.02%	7.34%	11.74%	9.85%
Rep %	79.75%	78.45%	76.56%	76.81%
Unrep %	20.25%	21.55%	23.44%	23.19%

Figure A-2: Representation Averages, FYs 2006-12



2. Record Development

One of the five main areas for data analysis concerned whether the pilot program had an impact on the thoroughness of record development without the need for ALJs to order additional examinations or leave the record open for post-hearing evidentiary submissions. To conduct this analysis, we compared data from Region I with data from Regions VII and VIII, as well as national averages across all regions, concerning the percentage of cases in which consultative exams ("CEs") were ordered and the percentage of cases put into "post-hearing" status.

[37] If a claimant is represented only close to or after the hearing, the representative will have less of an impact on record development due to time and/or regulatory constraints.

a. Percentage of Cases with Consultative Exams, CYs 2010-12

ALJs order CEs when "the claimant does not provide adequate evidence about his or her impairment(s)."[38] The CE should only include those test(s) needed by the ALJ to make his or her decision.[39] One may assume that CEs are needed more often in cases where records have not been adequately developed. It is thus interesting to note that, from CY 2010 to CY 2012, Region I had the lowest percentage of cases for which a CE was ordered relative to either Regions VII or VIII, or the national average (*see* Table A-3 and Figure A-3). This result may suggest that the Region I pilot program does—as SSA hoped—promote record development. However, firm conclusions cannot be drawn absent data that are more sensitive to potentially confounding factors, such as variations across regions (and nationally) in diseases or impairments,[40] access to medical care, record development at the DDS level, and quality of representation.[41] Since data were not available for Region I CEs for years pre-dating implementation of the pilot program, it also cannot be determined whether the region's lower CE rates are necessarily due to this program. Nonetheless, the comparatively lower CE rate for Region I since CY 2010 suggests that the pilot program does not impede adequate record development.

Table A-3: Consultative Exam Percentages, CYs 2010-12

	CY10	CY11	CY12
Region 1	3.40%	3.61%	2.97%
Region 7	13.64%	13.93%	11.22%
Region 8	9.39%	8.74%	6.48%
National Avg.	7.35%	8.22%	8.34%

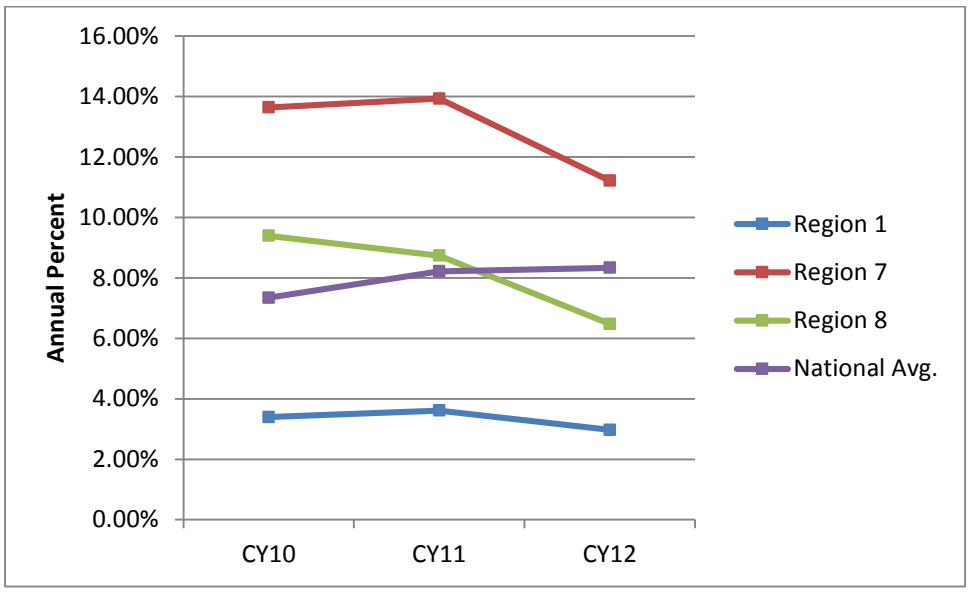
[38] Soc. Sec. Admin., HALLEX I-2-5-20, Consultative Examinations and Tests (Sept. 28, 2005), *available at* http:/www.ssa.gov/OP_Home/hallex/I-02/I-2-5-20.html (describing when and how to request a CE). A CE can be ordered either before or after a hearing.

[39] *See id.*

[40] Some diseases and impairments are more challenging to diagnose than others.

[41] Percentage of representation is relatively similar among the regions and nation. *See* tbl. A-2 and fig. A-2, at A-12.

Figure A-3: Consultative Exam Percentages, CYs 2010-2012



b. Percentage of Cases in Post-Hearing Status, FYs 2005-12

When an ALJ leaves the record open after a hearing (i.e., puts the case into post-hearing status), he or she typically does it in order to await receipt of additional evidence.[42] The ALJ may receive post-hearing evidence from the claimant, the claimant's representative, or another party.[43] The average percentage of cases among the regions and nation in post-hearing status for FYs 2005 – 12 are relatively similar for both represented and unrepresented claimants (*see* Table A-4 and Figure A-4). Region I is neither the highest nor the lowest in either category and is approximately only a tenth of a percent different from Region VIII.

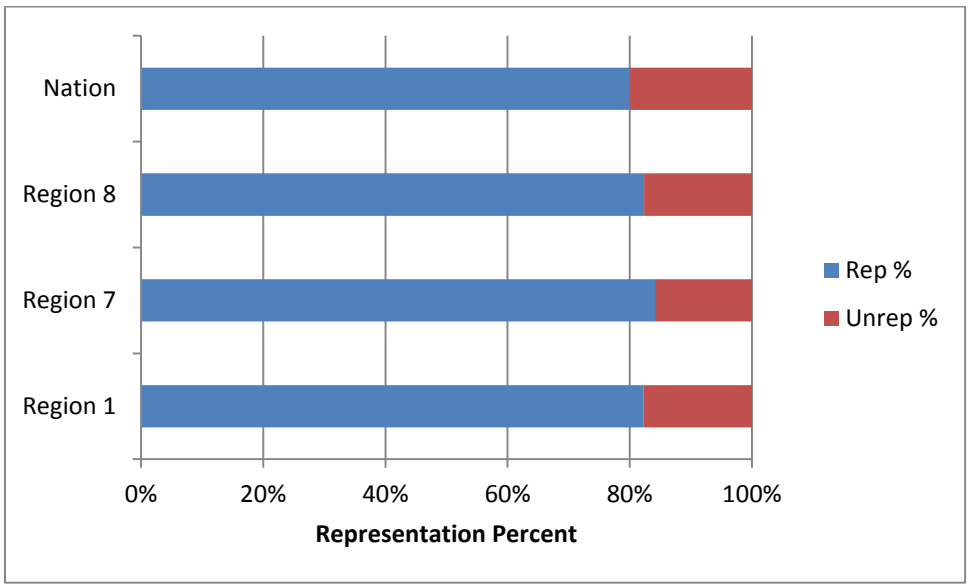
Table A-4: Percentage of Cases in Post by Representation Status, FYs 2005-12

	Region 1	Region 7	Region 8	Nation
Represented %	82.25%	84.14%	82.36%	79.95%
Unrepresented %	17.75%	15.86%	17.64%	20.05%

[42] *See* Soc. Sec. Admin., HALLEX I-2-7-1, Posthearing Actions—General (Sept. 2, 2005), *available at* http://www.ssa.gov/OP_Home/hallex/I-02/I-2-7-1.html (generally describing post-hearing actions).

[43] *See id.* If the ALJ receives evidence from another party and intends to admit it into the record, he or she must give the claimant and/or representative the opportunity to examine, comment on, object to, or refute the evidence. *See id.* The claimant and/or representative must also be given the opportunity to submit additional evidence and request a supplemental hearing. *See id.*

Figure A-4: Percentage of Cases in Post by Representation Status, FYs 2005-12

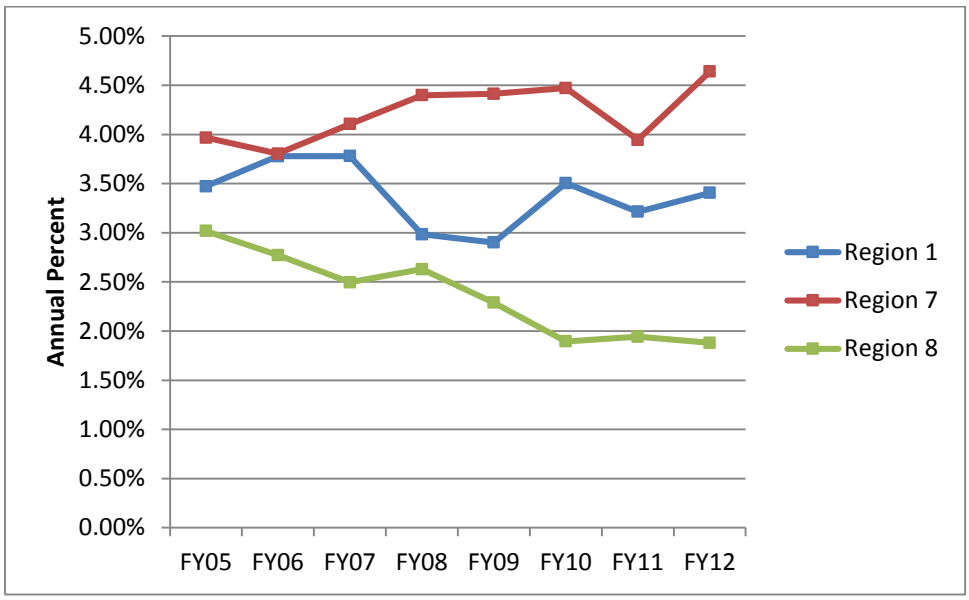


The table and figure below show the annual percentage of cases in post-hearing status in Regions I, VII, and VIII for FYs 2005 – 2012 (*see* Table A-5 and Figure A-5). For Regions I and VII, the annual percentage of cases in post-hearing status remained relatively constant during the eight-year period, while Region VIII's annual percentage dropped almost by half from FY 2005 to FY 2012. The data thus fail to demonstrate a correlation (either positive or negative) between the Region I pilot program and the percentage of cases that ALJs have put into post-hearing status. Given data constraints, it cannot be known at this time whether this result stems from a lack of data tailored to assessment of the pilot program or its current implementation in Region I, or both.

Table A-5: Percentage of Cases in Post, FYs 2005-12

	FY05	FY06	FY07	FY08	FY09	FY10	FY11	FY12
Region 1	3.47%	3.78%	3.78%	2.98%	2.90%	3.50%	3.21%	3.41%
Region 7	3.97%	3.80%	4.11%	4.40%	4.41%	4.47%	3.94%	4.64%
Region 8	3.02%	2.77%	2.50%	2.63%	2.29%	1.89%	1.94%	1.88%

Figure A-5: Percentage of Cases in Post, FYs 2005-12



3. Case Processing Efficiency

A second key area of data analysis centered on the question of whether the pilot program has had any effect on the efficiency of case processing in Region I relative to other regions. To that end, we analyzed comparative average processing times for cases at the ALJ hearing level (i.e., the time interval between the filing of a request for an ALJ hearing and issuance of an ALJ decision) on an inter-regional basis, as well as the number of cases pending at the end of recent FYs relative to the total number of dispositions in those same years.

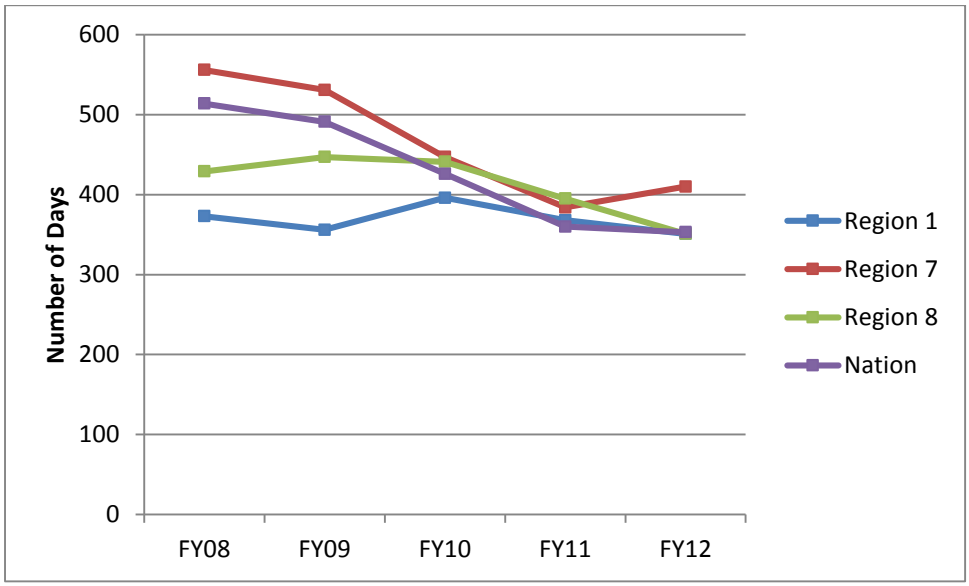
a. Average Case Processing Times, FYs 2008 -12

Average case processing times in hearing offices across the three studied regions, and indeed, nationwide, generally declined during the five-year period from FY 2008 to FY 2012 (*see* Table A-6 and Figure A-6). In FY 2008, Region I had lower average case processing times than Regions VII and VIII or the national average. In the subsequent four years, Region I's processing times remained lower than those for Regions VII and VIII (except in FY 2012 when Regions I and VIII had the same annual averages) or the national average (except in FY 2011 when it exceeded the national average by eight days). Nonetheless, it is difficult to draw conclusions about the impact of the pilot program on average processing times for several reasons. First, Region I's average case processing times, while generally lower than the national average or the respective averages in its sister regions, nonetheless did not exhibit the same comparatively steady decline in average processing time over the five-year period. Second, case processing times within hearing offices and regions are influenced many factors—including the number of ALJs and staff, caseloads, and relative case mix by types of disabilities. Such considerations could independently (or collectively) influence the time it takes to process cases in hearing offices within a particular region. Additional data bearing more precisely on the factors affecting case processing times would be needed to more authoritatively assess the impact of the pilot program on case processing efficiency.

Table A-6: Average Case Processing Times (in days), FYs 2008-12

	FY08	FY09	FY10	FY11	FY12
Region 1	373	356	396	368	351
Region 7	556	531	447	384	410
Region 8	429	447	441	395	351
Nation	514	491	426	360	353

Figure A-6: Average Case Processing Times (in days), FYs 2008-12



b. Number of Pending Cases, FYs 2008-12

To assess the impact of the Region I pilot program on case processing efficiency, we also explored whether implementation of the program correlated with a reduction in the number of cases pending at a given point in time—here, at the end of each FY—relative to annual caseloads. Listed below are the number of cases pending at the end of each FY from FY 2008 through FY 2012 in Regions I, VII, and VIII, as well as nationally (*see* Table A-7).

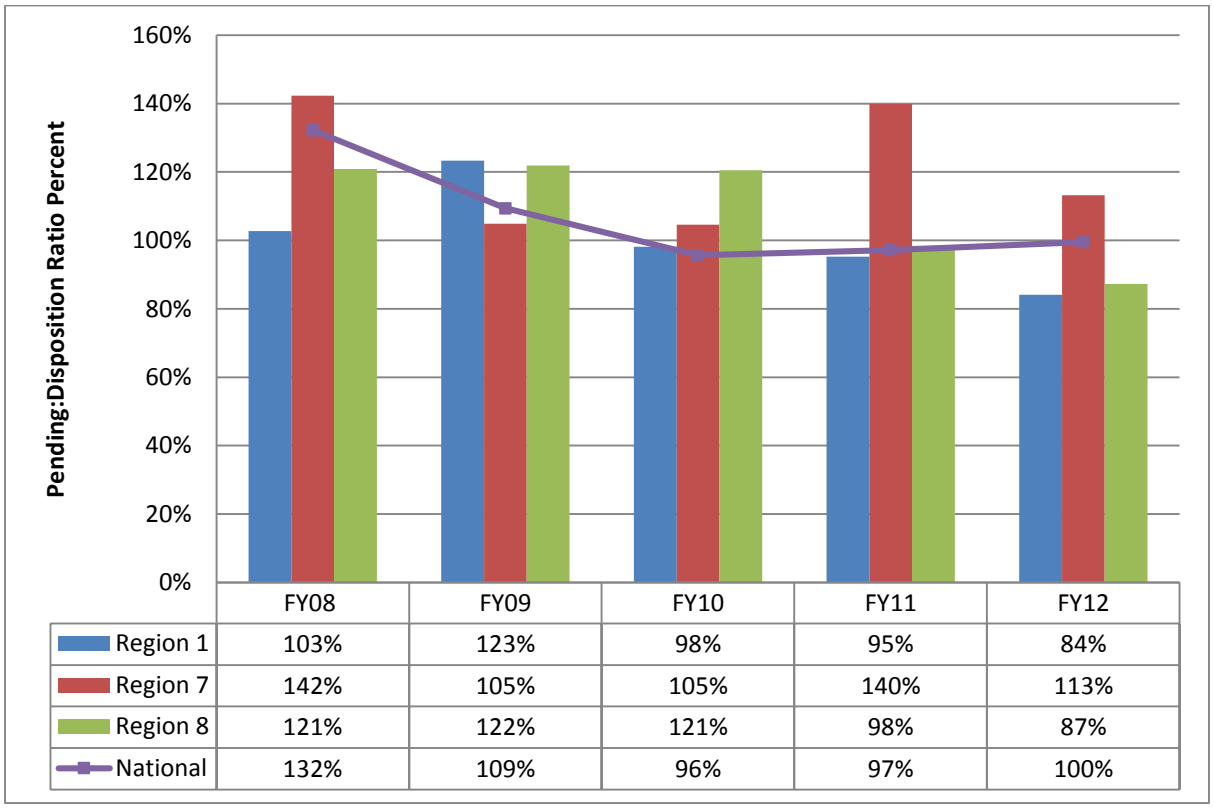
Table A-7: Number of Pending Cases, FYs 2008-12

	FY08	FY09	FY10	FY11	FY12
Region 1	19780	28199	28028	28247	27057
Region 7	39622	33001	33026	41488	40001
Region 8	19934	21544	22161	20725	18232
Nation	69165	65711	64124	70120	74234

On a comparative basis, the annual number of pending cases in Region I over this five-year period consistently fell between those of Regions VII and VIII. However, the number of pending cases—standing alone—says little about the impact of the pilot program given the differential in inter-region caseloads due to year-to-year fluctuations in case filings. For example, it is reasonable to assume that the number of pending cases often proves largely a function of caseload, with larger inventories of pending cases typically associated with higher caseloads.

Thus, to account for the impact of caseloads on case processing, we calculated, on an annual basis, the ratio of pending cases (as set forth in Table A-7 above) to total dispositions (as set forth in Table A-1 above) for each region and nationally. In other words, by evaluating the pending:disposition ratio, we aimed to minimize the influence of differentials in inter-regional (and national) caseloads in order to better isolate the impact of the pilot program on case processing. As demonstrated in Figure A-7 below, an interesting trend emerges in Region I when compared with the other regional and national ratios. With the exception of FY 2009, Region I's pending:disposition ratio exhibits a consistent downward trend that is unmatched by the other regions or nationally over the five-year time period. Indeed, in FYs 2011 and 2012, Region I exhibits the lowest pending:disposition ratio. The trend of lower annual pending:disposition ratios in Region I as compared to the other regions and nationally over this five year term suggests an empirical correlation between enhanced case processing efficiency and the pilot program. Additional data would be needed, however, to determine whether the pilot program was the causal factor in this observed finding on pending:disposition ratios.

Figure A-7: Pending to Disposition Ratio, FYs 2008-12



	FY08	FY09	FY10	FY11	FY12
Region 1	103%	123%	98%	95%	84%
Region 7	142%	105%	105%	140%	113%
Region 8	121%	122%	121%	98%	87%
National	132%	109%	96%	97%	100%

4. Remand Rates on Certain Evidentiary Issues

The third key area we studied from an empirical perspective involved whether the pilot program affects Appeals Council remand rates and reasons related to certain evidentiary issues.[44] For these remand-based analyses, we evaluated comparative remand rates generally by region (and nationally), as well as remands due to new evidence or inadequate record development.

a. Appeals Council Remands, FYs 2008-12

When the claimant files an appeal with the Appeals Council, he or she is requesting review of the ALJ's decision.[45] If the Appeals Council grants that request and discovers an error in the decision, it may remand the case back to the ALJ.[46] While a request for review is not necessarily indicative of legal error (or lack of policy compliance) in an ALJ decision, a remand most certainly is from the appellate perspective. SSA not only tracks the percentage of cases that are remanded, but also the frequency with which cases are remanded for specific reasons (e.g., new evidence has been submitted or the record has been inadequately developed and therefore does not support the decision made). Cases that are remanded from the Appeals Council are coded with up to three reasons per case.

The following table and figure show the percentage of cases that the Appeals Council remanded to Regions I, VII, and VIII—as well as the national average—based on the number of cases this appellate body reviewed at claimants' requests (*see* Table A-8 and Figure A-8). In FY 2008, the regional and national percentages were essentially the same, but they did not stay that way. The percentages in Regions VII and VIII, as well as the nation, have been trending downward. The Region I percentage, on the other hand, has been more volatile. It increased in FYs 2008 – 10, and dropped suddenly in FY 2011. It increased again in FY 2012, but not above the percentage in FY 2008.

[44] Similar to Appeals Council remand data, SSA also provided the Conference with information concerning the rates at which federal courts have remanded cases back to the agency based on (1) new evidence presented at either the administrative appeal or federal court levels, as well as (2) inadequate record development. However, the number of times federal courts remanded cases based on claims originating in Regions I, VII, and VIII respectively on these grounds were so small—that is, generally numbering in the single digits annually—that reliable analysis could not be conducted.

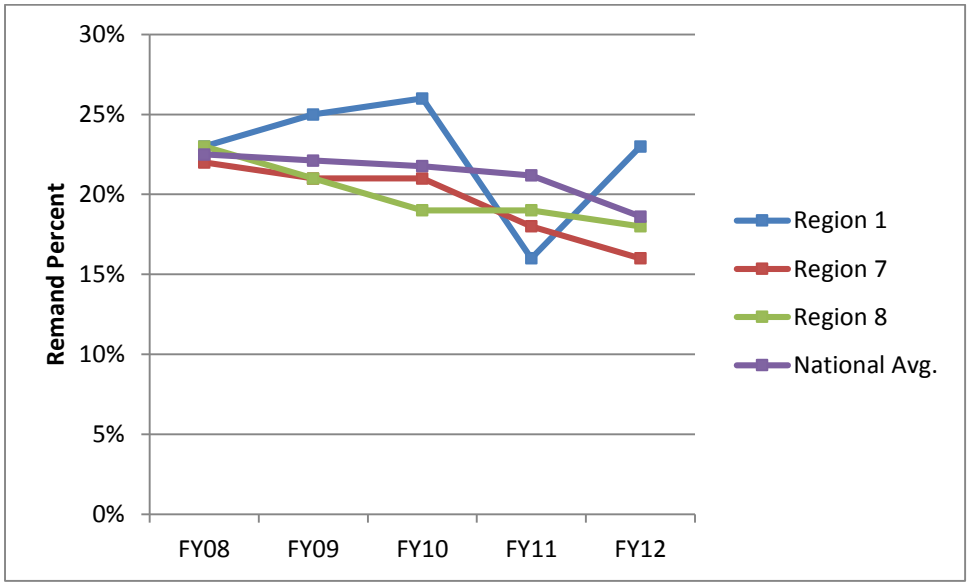
[45] We did not analyze unappealed requests for review—examination of fully favorable decisions—by either the "new evidence" or "inadequate record development" categories because the data are too limited. In the "new evidence" category, only two cases were remanded in FY 2011 and only one in FY 2012, none of which were in the regions we are comparing—I, VII, and VIII. In the "inadequate record development" category, the number of cases remanded is so small that even a slight change in the number will drastically alter the results. For example, 23 cases were remanded in Region I in FY 2011, 7 of which for "inadequate record development". In FY 2012, 73 cases were remanded in Region I, but only 1 of which was for "inadequate record development." A larger sample size is needed before conclusions may safely be drawn.

[46] The Appeals Council, among other actions, may correct the decision itself (i.e., not remand it to the ALJ).

Table A-8: Average Appeals Council Remand Rates, FYs 2008-12

	FY08	FY09	FY10	FY11	FY12
Region 1	23%	25%	26%	16%	23%
Region 7	22%	21%	21%	18%	16%
Region 8	23%	21%	19%	19%	18%
National Avg.	22%	22%	22%	21%	19%

Figure A-8: Average Appeals Council Remand Rate, FYs 2008-12



To be sure, Appeals Council remand rates for Region I—in and of themselves—say little about the pilot program. After all, the Appeals Council remands cases for a myriad of reasons, only some of which may relate to aspects of Region I's pilot program. Thus, the impact of the pilot program is better revealed by remands specifically related to record development—that is, remanded cases (as coded by SSA) based on "new evidence" introduced at the appeals level or "inadequate record development" at the ALJ hearing level. We explore data related to these two bases for Appeals Council remand below.

b. Appeals Council Remands Based on New Evidence, FYs 2008-12

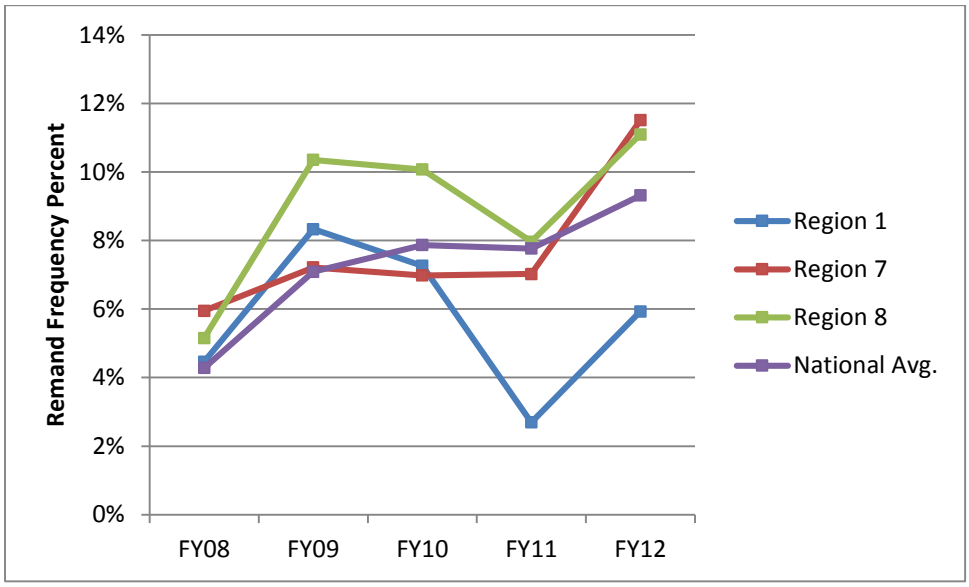
When the claimant appeals an ALJ's decision to the Appeals Council, the Appeals Council will, at times, remand a case based on new evidence submitted by the claimant on appeal. The table and figure below show the percentage frequency of cases that were remanded due to new evidence submissions from FY 2008 to FY 2012 (*see* Table A-9 and Figure A-9).[47]

[47] As previously stated, this not an absolute percentage, but rather a percentage frequency; the percentage shows the frequency with which a reason is coded as 1 of up to 3 reasons for remand.

Table A-9: Comparative Average Appeals Council Remand Frequency Rates for New Evidence, FYs 2008-12

	FY08	FY09	FY10	FY11	FY12
Region 1	4%	8%	7%	3%	6%
Region 7	6%	7%	7%	7%	12%
Region 8	5%	10%	10%	8%	11%
National Avg.	4%	7%	8%	8%	9%

Figure A-9: Comparative Average Appeals Council Remand Frequency Rates for New Evidence, FYs 2008-12



Generally speaking, as depicted in Figure A-9 above, remand rates for Region VII, Region VIII, and the nation (on average) show relatively similar up-and-down patterns over the five-year period for Appeals Council remand frequency percentages based on new evidence—namely, sharp increases in remand rates in FY 2009, followed by relative stability in FYs 2010 and 2011, and ending with modest increases in FY 2012.

Region I's remand rates for the same period, however, buck this trend in significant respects. While Region I did experience an uptick in its Appeals Council remand rate due to new evidence in FY 2009 (along with other regions), since that time, Region I's remand rate has declined both more sharply and consistently relative to the two other regions and the national average. Indeed, in both FY 2011 and FY 2012, Region I exhibited the lowest remand rate by several percentage points. Region I's comparatively lower Appeals Council remand rates based on new evidence over the course of this five-year period are suggestive of a correlation between adequate record development at the hearing level and the pilot program.

However, the foregoing finding warrants a cautionary note in that correlation does not necessarily connote causation. On the one hand, it could be that the pilot program is indeed

having one of its intended effects of fostering better development of hearing records by encouraging claimants (and their representatives) to submit evidence in advance of the hearing, which, in turn, leads to fewer appellate issues relating to new evidence. On the other hand, it could also be the case that the lower Appeals Council remand rates due to new evidence for cases originating from Region I instead merely reflects the higher bar to admission of new evidence at the Appeals Council stage set by the pilot program (relative to other regions), and speaks little to the program's effect on record development. Additional data would be needed to tease out these (or other) factors that have caused the relative decline in remand rates for new evidence in Region I over the past several FYs.

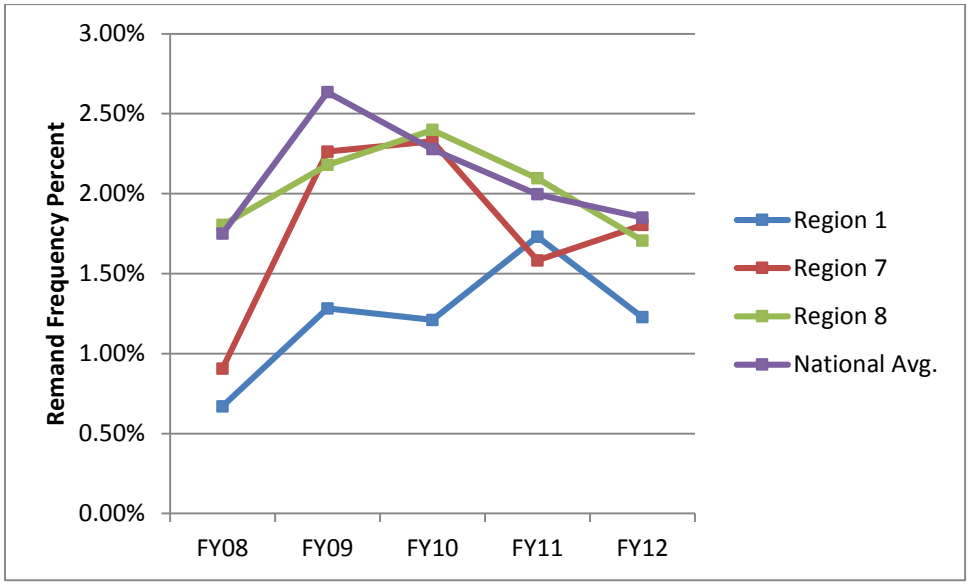
c. Appeals Council Remands Based on Inadequate Record Development, FYs 2008-12

The Appeals Council remands cases to ALJs for "inadequate record development" when the hearing record does not have enough information to support the decision he or she made. Oftentimes, "inadequate record development" means that not enough evidence was included, and the ALJ should have done more to develop the record. It may mean that medical evidence is missing (though that is not the only evidence that may be missing from the record). However, this category may have nothing to do with record development (e.g., it may mean that the hearing recording was not included in the record). Because of the various situations that are contemplated by "inadequate record development," it is difficult to determine what impact the pilot program has on this reason for remand. Still, if the pilot program was positively affecting record development, one would expect Region I's "inadequate record development" frequency percentage as a reason for remand to be lower than that of the other regions. Indeed, the data show that, other than one year—FY 2011—Region I's remand frequency percentage in this category has been less than her sister regions' and the national averages (*see* Table A-10 and Figure A-10). This trend suggests that the pilot program may have a positive effect on record development.

Table A-10: Comparative Average Appeals Council Remand Frequency Rates Due to Inadequate Record Development, FYs 2008-12

	FY08	FY09	FY10	FY11	FY12
Region 1	0.67%	1.28%	1.21%	1.73%	1.23%
Region 7	0.91%	2.26%	2.33%	1.58%	1.80%
Region 8	1.80%	2.18%	2.40%	2.10%	1.71%
National Avg.	1.75%	2.63%	2.28%	2.00%	1.85%

Figure A-10: Comparative Average Appeals Council Remand Frequency Rates Due to Inadequate Record Development, FYs 2008-12



5. Volume and Timing of Evidentiary Submissions Relative to Hearing Dates

The fourth key area of empirical inquiry concerned both the volume and timing of evidentiary submissions relative to hearing dates. Such an assessment would especially measure the impact of the five-day rule (though the 75-day notice requirement also plays a role in timely submissions). We assessed the trends in each region, as well as nationally for CYs 2010 – 12.

For this set of analyses, SSA compiled data for this study concerning the timing, as well as volume, of evidentiary submissions by claimants (or their representatives) relative to hearing dates that was not otherwise directly available from SSA's case management systems.[48] More specifically, for CYs 2010 – 12, these data provided the total annual number of documents submitted in each region (and nationally) for all cases in which hearings were conducted. These annual document totals by region were then broken down into fourteen separate time interval categories capturing document filing dates relative to their respective hearings, starting from 1,000 or more days before the hearing to the hearing date and afterward (with this latter time category referred to as "hearing+").[49] A summary of the results of our analyses of this compiled data set follows below.

[48] *See* discussion *supra* App. D, at A-9 (describing SSA's case management systems).

[49] For this data set compiled by SSA, a "document" connotes a unit of written information filed by claimants or representatives, regardless of the number of pages. Thus, a "document" could be a copy of a 100-page medial report or a one-page letter. Moreover, this SSA-provided data concerned only the *quantity* of documents filed in each region annually; it did not provide any *qualitative* information about the relevance or materiality of any submitted documents. With respect to time interval categories, the fourteen categories designated by SSA were (in days): hearing+; 0-5; 6-10; 11-20; 21-30; 31-50; 51-100; 101-200; 201-300; 301-400; 401-500; 501-700; 751-1000; 1000+.

a. Number of Documents Submitted Relative to Hearing Dates, CYs 2010-12

Our first approach to analyzing SSA's document-related data looked at trends in the volume and timing of documents submitted annually in each of the three studied regions and nationally. As discussed more fully below, the findings appear to suggest that the Region I pilot program may be literally "bending the curve" in that its respective document submission/timing profile shows markedly different submission rates in the 20 days (or so) leading up to hearings. While the SSA-provided data were not sufficiently robust to establish a clear causal link to the pilot program, these findings nonetheless suggest an empirical correlation between the pilot program and earlier submission of documents relative to hearings.

Regions VII and VIII and the nation as a whole exhibit remarkably similar trends over the three-year period in terms of their respective document submission/timing profiles (curves). Set forth below are figures for each region and the nation which graphically depict the total number of documents filed annually relative to each of the fourteen time interval categories (*see* Figures A-11, A-12, and A-13). Focusing on the time intervals most relevant to assessment of the pilot program (i.e., 100 days or less before the hearing to hearing+), each of these three graphs show similar patterns as follows (reading from left to right on the horizontal (time) axis): (1) a downward trend in document submissions from 51-100 days to a trough at 21-30 days; (2) followed by a slight upswing in document submissions between the 21-30 and 11-20 day intervals; (3) followed by a downturn in document submissions between the 11-20 and 6-10 day intervals; and (4) ending in a significant increase in document filings from 6-10 days out from the hearing to the hearing+ interval category. In order words, in Regions VII and VIII and nationally, the bulk of documents submitted in the 30-day period leading up to the hearing (or at or after the hearing), are submitted in the narrow window of time within five or less days for the hearing, at the hearing, or after the hearing.

Figure A-11: Number & Timing of Document Submissions in Region 7, CYs 2010-12

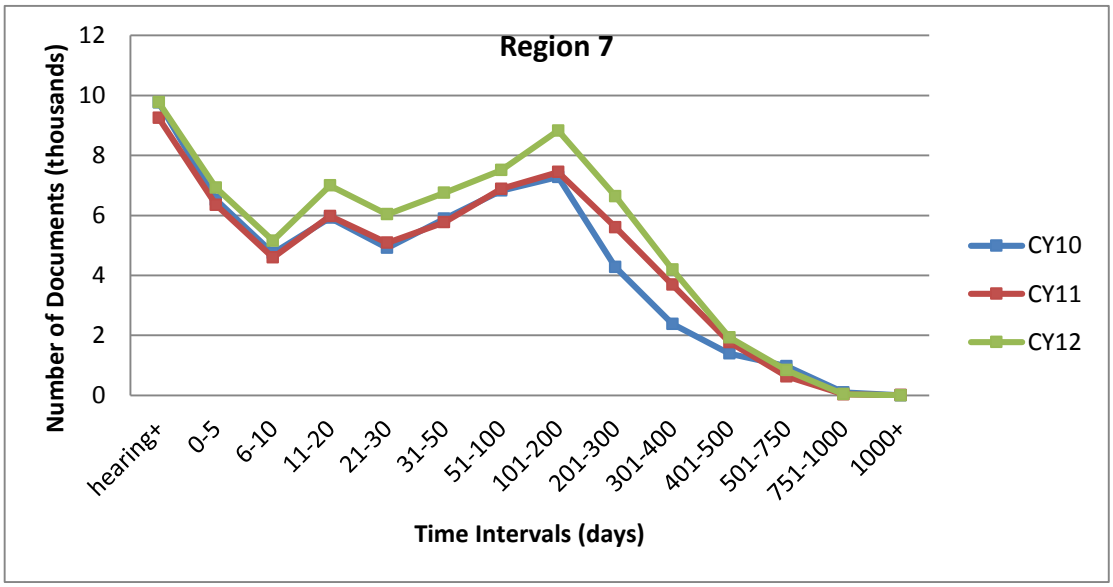


Figure A-12: Number & Timing of Document Submissions in Region 8, CYs 2010-12

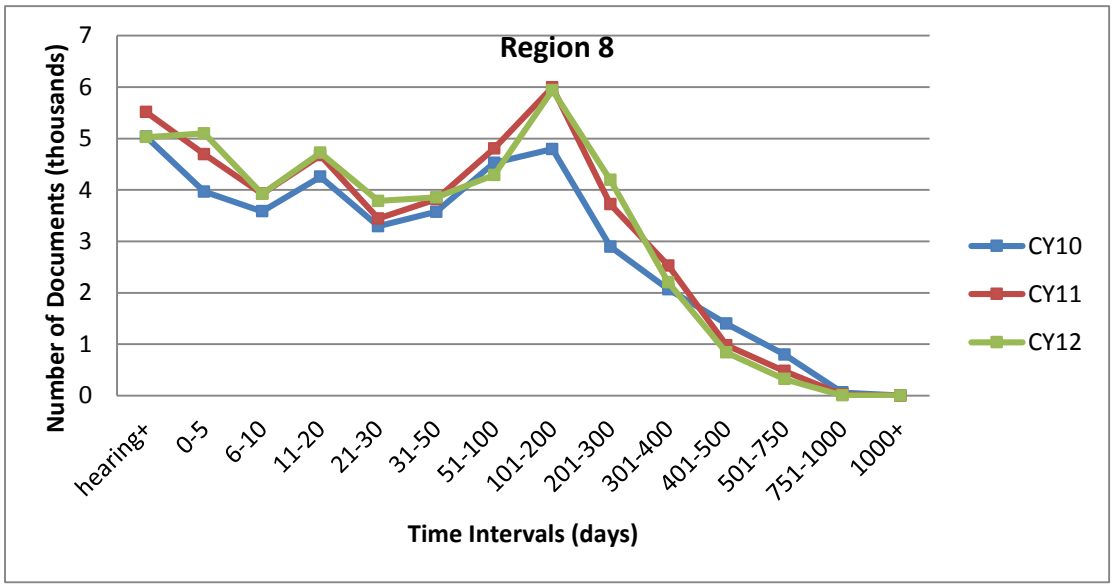
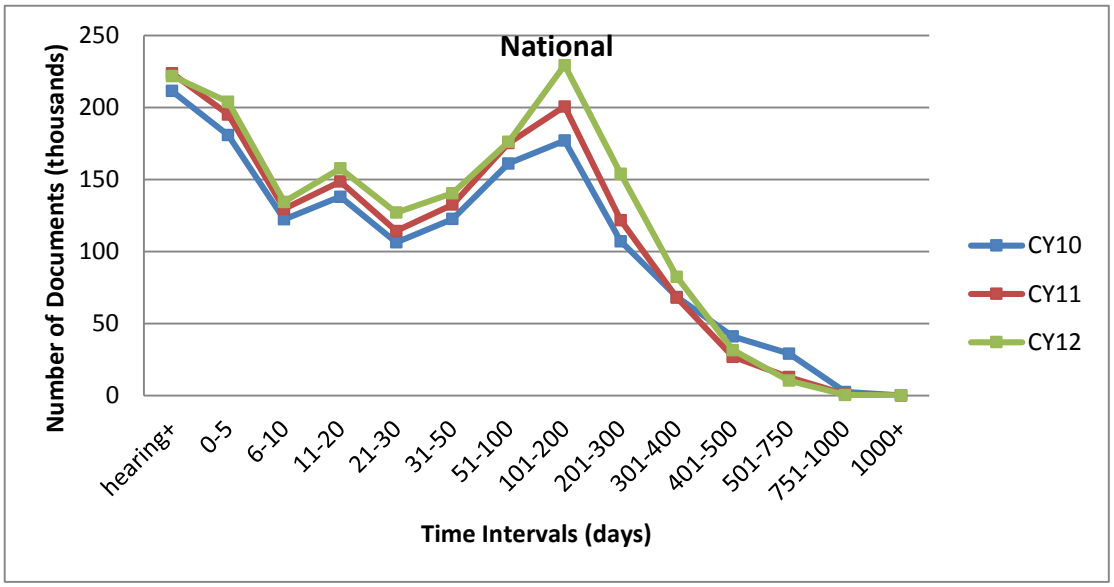
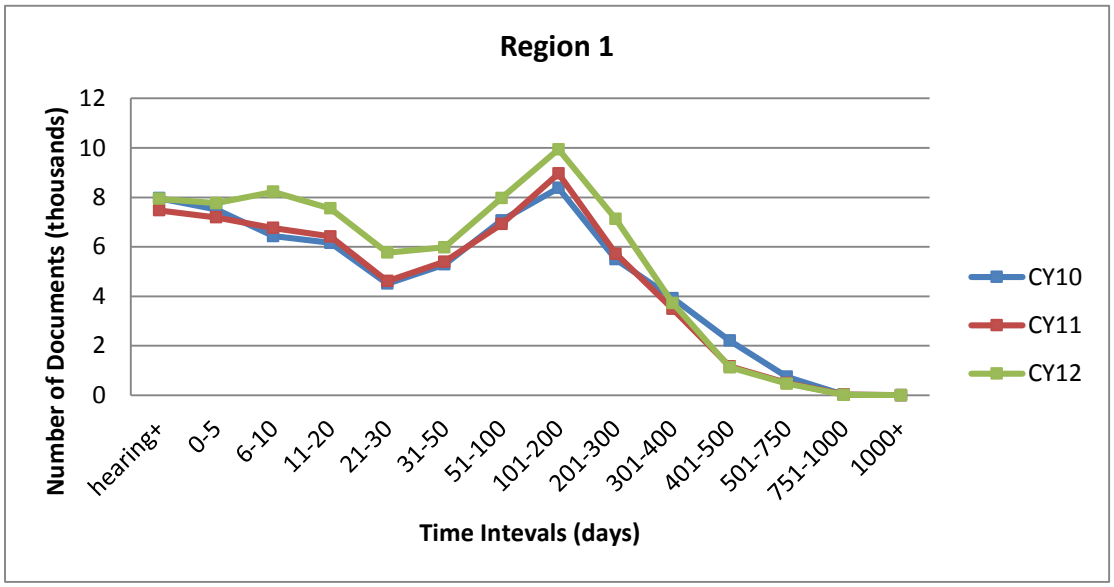


Figure A-13: Number & Timing of Document Submissions Nationally, CYs 2010-12



Turning to Region I, the results for CYs 2010 – 12 evidence both similarities to, and significant departures from, the document submission/timing profiles for its sister regions and the nation as a whole. Set forth below is a figure for Region I graphically depicting the total number of documents filed annually for this three-year time period relative to each of the fourteen time interval categories (*see* Figure A-14).

Figure A-14: Number & Timing of Document Submissions in Region 1, CYs 2010-12



There are two notable aspects of Region I's document submission/timing profile that merit special mention when focusing on the time period most applicable to the pilot program (i.e., the time span that includes both the five-day rule and the 75-day notice requirement). In the time period from 100 days to 30 days before hearings, the volume and timing of document submissions in Region I is quite similar to those of other regions and the nation. However, over the course of the remaining time periods (i.e., from 30 days to hearing+), Region I shows marked differences in its submission/timing profiles. First, Region I demonstrates an accelerated upturn in document submissions between the 21-30 and 11-20 day intervals relative to other regions. Then, unlike other regions (and the nation) which experienced a sharp decrease in document submissions between the 11-20 and 6-10 day interval, Region I exhibits an ***increase*** in document submissions over this timeframe. Lastly, Region I's document submission/timing profiles flatten—rather than sharply increase (as do other regions' curves)—over the 6-10, 0-5, and hearing+ intervals. While this pattern is reflected in Region I's document submission/timing profiles for all three years, it is particularly strong for CY 2012. In sum, the document submission/timing profiles for Region I demonstrate that documents were submitted with greater frequency in the 6-20 days before hearings (and, concomitantly, with less frequency in the 0-5 days before hearings or at hearings) relative to other regions and the nation.

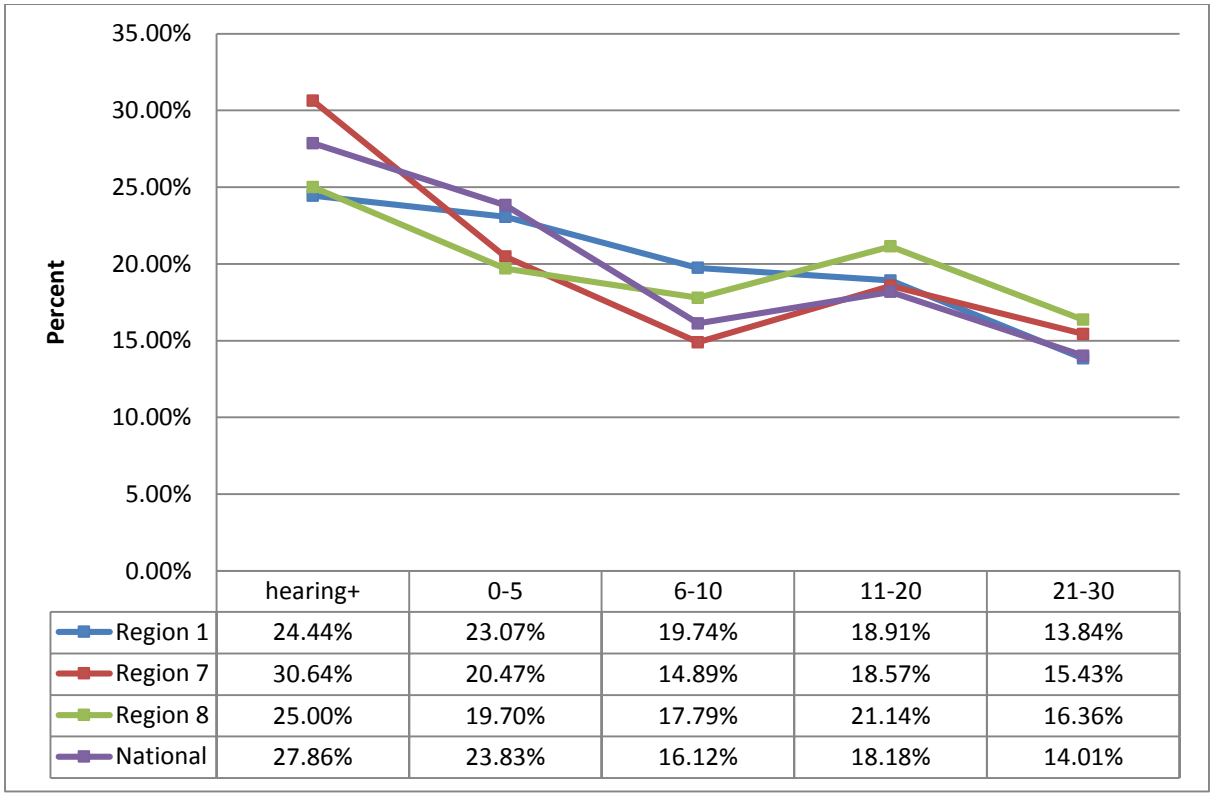
Moreover, in light of the pilot program's five-day rule, the marked outward "bend in the curve" for Region I over the course of the 20 days leading up to hearings (and thereafter)—particularly its increase in document submissions during the 6-10 day interval—is highly suggestive of a correlation between the pilot program and the region's distinct document submission/timing profiles in CYs 2010 – 12. Of course, absent changes to SSA's case processing or information management systems, there is no way to qualitatively assess whether the pilot program has led to timely, pre-hearing submission of material evidence (as opposed to, for example, submission of duplicative or irrelevant documents). Nonetheless, from a quantitative perspective, the pilot program appears to have an impact on the volume and timeliness of document submissions.

b. Percentage of Documents Submitted Relative to Hearing Dates, CYs 2010-12

To bring the impact of the Region I into more precise focus, we next limited our analyses to the narrower time interval starting from 30 days before the hearing to the hearing (and afterwards) for the same three-year period (CYs 2010 – 12). For this key 30-day timeframe, we compared the relative percentage of documents submitted in each region (and nationally) during each of the five time intervals encompassed by this period (i.e., hearing+, 0-5, 6-10, 11-20, 21-30, and 11-20 days).[50] By evaluating relative percentages—rather than absolute numbers of documents submitted—the results were scaled to each region's (or the nation's) particular caseload and document volumes.

Set forth below are separate figures for each CY that graphically depict the foregoing relative document submission percentages for each of the three regions and nation (*see* Figures A-15 (CY 2010), A-16 (CY 2011), and A-17 (CY 2012)).

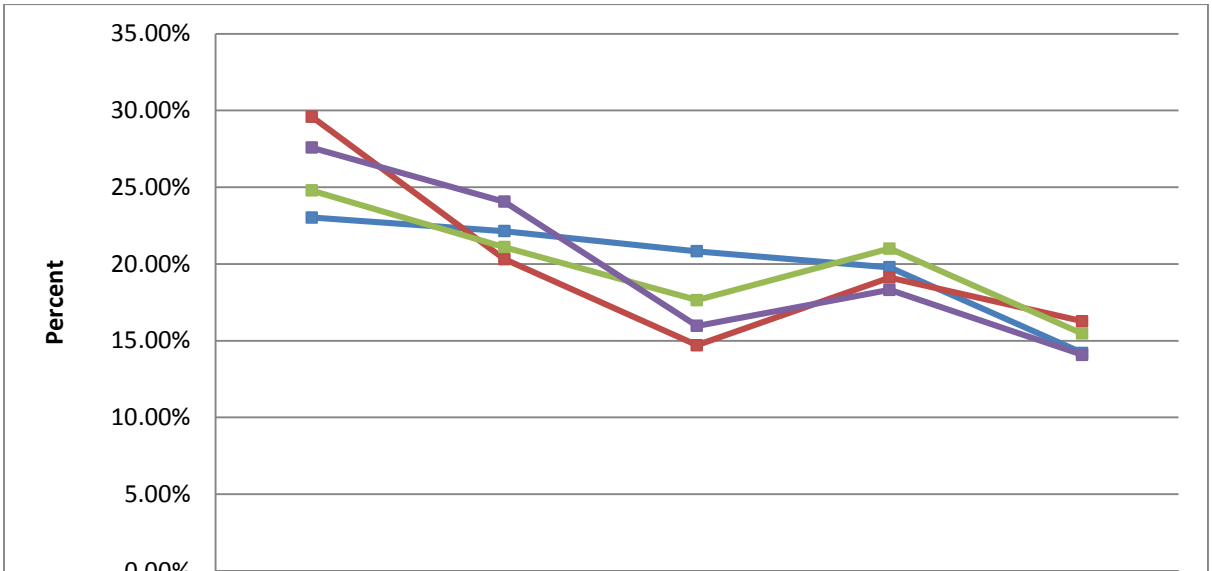
Figure A-15: Inter-Regional Comparison of Document Submission Percentages in Time Intervals Close to Hearing, CY 2010



	hearing+	0-5	6-10	11-20	21-30
Region 1	24.44%	23.07%	19.74%	18.91%	13.84%
Region 7	30.64%	20.47%	14.89%	18.57%	15.43%
Region 8	25.00%	19.70%	17.79%	21.14%	16.36%
National	27.86%	23.83%	16.12%	18.18%	14.01%

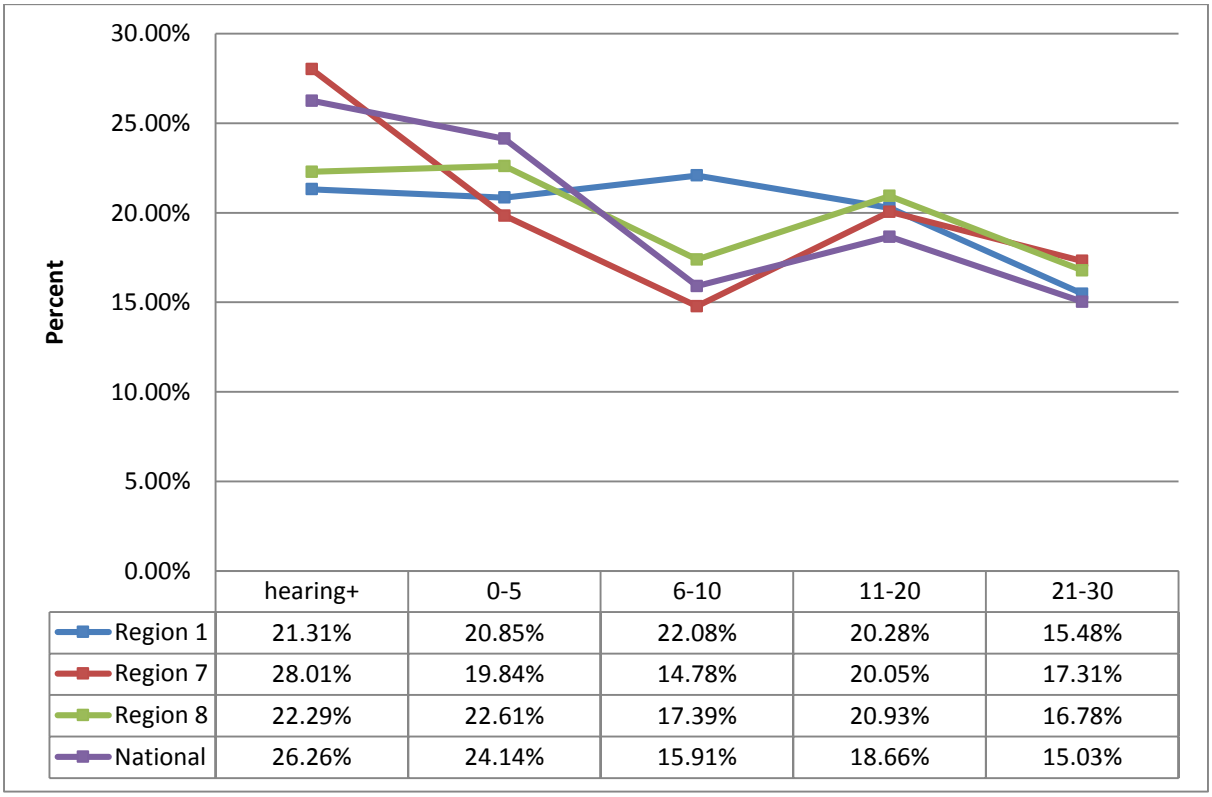
[50] For example, in CY 2010, there were 32,578 documents submitted in Region I during the period from 30 days before the hearing to the hearing itself (or afterwards). For each of the five time interval categories, the number of document submissions and resulting relative submission percentages were as follows: 21-30 days (4,509 documents/13.8%); 11-20 days (6,161 documents/18.9%); 6-10 days (6,430 documents/19.7%); 0-5 days (7,515 documents/23.1%); and hearing+ (7,963 documents/24.4%).

Figure A-16: Inter-Regional Comparison of Document Submission Percentages in Time Intervals Close to Hearing, CY 2011



	hearing+	0-5	6-10	11-20	21-30
Region 1	23.03%	22.15%	20.83%	19.78%	14.21%
Region 7	29.59%	20.31%	14.71%	19.12%	16.27%
Region 8	24.79%	21.09%	17.64%	21.01%	15.47%
National	27.58%	24.06%	15.97%	18.31%	14.08%

Figure A-17: Inter-Regional Comparison of Document Submissions Percentages in Time Intervals Close to Hearing, CY 2012



	hearing+	0-5	6-10	11-20	21-30
Region 1	21.31%	20.85%	22.08%	20.28%	15.48%
Region 7	28.01%	19.84%	14.78%	20.05%	17.31%
Region 8	22.29%	22.61%	17.39%	20.93%	16.78%
National	26.26%	24.14%	15.91%	18.66%	15.03%

As with the prior analyses, the above figures demonstrate Region I's unique document submission profile relative to other regions in the time intervals closest to the hearing. Region I consistently has a comparatively higher percentage of document submissions in the 6-10 day interval, followed by relatively flat (constant) submission percentages for the 0-5 and hearing+ intervals. By contrast, Regions VII and VIII and the nation experience significant—and near uniform—drops in document submission percentages in the 6-10 day interval, followed by escalating submission percentages in the 0-5 and hearing+ intervals. While we cannot conclude (based on currently available data) that there is a causal link between the pilot program—particularly the five-day rule—and the timing of document submissions in Region I, there does appear to be a correlation between the pilot program and a higher relative percentage of documents being submitted six days or more before hearings (and, concomitantly, a lower relative percentage of document submissions less than five days before hearings).

c. Percent Change in Document Submissions for Time Intervals Close to Hearings, CYs 2010-12

Lastly, to complete the trio of analyses focusing on inter-regional comparisons of the timing and volume of document submissions in the days leading up to hearings, we assessed the relative change in document submissions over the seven successive time intervals closest to hearings. To do so, we calculated the percent change in interval-to-interval document submissions starting with the 51-100 day interval and ending with the hearing+ interval. By evaluating document submissions in this manner, we aimed to paint a numeric picture of the "trajectory" of such submissions over the period of time most relevant to the implementation of the pilot program (i.e., both the 75-day notice requirement and the five-day rule fall with this time span).

The chart below sets forth, by region (and the nation) and CY (CYs 2010 – 12), the total number of documents submitted for each of the seven time intervals and the percent change in submissions over successive time intervals (*see* Table A-11).[51] On this chart, the seven columns providing document submission totals for each time interval are numbered starting with the 51-100 day interval on the left-hand side of the chart (column{7}) and successively proceeding to the hearing+ interval (column {1}) on the right-hand side. Interlineated between these seven time interval columns are seven columns providing the percent change in document submissions over successive time intervals relative to the hearing date. Thus, for example, in Region I in CY 2010, document submissions fell from 7,608 in the 51-100 day interval to 5,291 in the 31-50 day interval, resulting in an interval-over-interval percent change of -25.1% (see Table A-11, row 2, column 5). Given that the percent change in document submissions over time are calculated relative to the hearing (starting from 100 days before the hearing), the results presented in this chart are best understood when read from left to right.

[51] To calculate percent change in document submissions over time, we used the following formula: [(Number of documents submitted in Time Interval #2) - (Number of documents submitted in Time Interval #1)/(Number of documents submitted in Time Interval #1)] x 100.

Table A-11: Inter-Regional Comparison of Percent Change in Document Submissions Over Time Relative to Hearings, CYs 2010-12

	{7}		{6}		{5}		{4}		{3}		{2}		{1}	
Region 1	**51-100 Days**	**Percent Change**	**31-50 Days**	**Percent Change {7}-{6}**	**21-30 Days**	**Percent Change {6}-{5}**	**11-20 Days**	**Percent Change {5}-{4}**	**6-10 Days**	**Percent Change {4}-{3}**	**0-5 Days**	**Percent Change {3}-{2}**	**Hearing+**	**Percent Change {2}-{1}**
CY10	7068	n/a	5291	-25.1%	4509	-14.8%	6161	36.6%	6430	4.4%	7515	16.9%	7963	6.0%
CY11	6915	n/a	5397	-22.0%	4614	-14.5%	6423	39.2%	6763	5.3%	7190	6.3%	7476	4.0%
CY12	7970	n/a	5982	-24.9%	5765	-3.6%	7551	31.0%	8223	8.9%	7765	-5.6%	7937	2.2%

	{7}		{6}		{5}		{4}		{3}		{2}		{1}	
Region 7	**51-100 Days**	**Percent Change**	**31-50 Days**	**Percent Change {7}-{6}**	**21-30 Days**	**Percent Change {6}-{5}**	**11-20 Days**	**Percent Change {5}-{4}**	**6-10 Days**	**Percent Change {4}-{3}**	**0-5 Days**	**Percent Change {3}-{2}**	**hearing+**	**Percent Change {2}-{1}**
CY10	6825	n/a	5886	-13.8%	4916	-16.5%	5916	20.3%	4744	-19.8%	6521	37.5%	9760	49.7%
CY11	6881	n/a	5770	-16.1%	5084	-11.9%	5975	17.5%	4596	-23.1%	6349	38.1%	9249	45.7%
CY12	7509	n/a	6751	-10.1%	6037	-10.6%	6993	15.8%	5156	-26.3%	6921	34.2%	9771	41.2%

	{7}		{6}		{5}		{4}		{3}		{2}		{1}	
Region 8	**51-100 Days**	**Percent Change**	**31-50 Days**	**Percent Change {7}-{6}**	**21-30 Days**	**Percent Change {6}-{5}**	**11-20 Days**	**Percent Change {5}-{4}**	**6-10 Days**	**Percent Change {4}-{3}**	**0-5 Days**	**Percent Change {3}-{2}**	**hearing+**	**Percent Change {2}-{1}**
CY10	4526	n/a	3575	-21.0%	3294	-7.9%	4256	29.2%	3582	-15.8%	3966	10.7%	5033	26.9%
CY11	4807	n/a	3820	-20.5%	3442	-9.9%	4673	35.8%	3925	-16.0%	4693	19.6%	5514	17.5%
CY12	4289	n/a	3855	-10.1%	3784	-1.8%	4721	24.8%	3921	-16.9%	5099	30.0%	5027	-1.4%

	{7}		{6}		{5}		{4}		{3}		{2}		{1}	
National	**51-100 Days**	**Percent Change**	**31-50 Days**	**Percent Change {7}-{6}**	**21-30 Days**	**Percent Change {6}-{5}**	**11-20 Days**	**Percent Change {5}-{4}**	**6-10 Days**	**Percent Change {4}-{3}**	**0-5 Days**	**Percent Change {3}-{2}**	**hearing+**	**Percent Change {2}-{1}**
CY10	161089	n/a	122512	-23.9%	106364	-13.2%	137987	29.7%	122330	-11.3%	180828	47.8%	211473	16.9%
CY11	175193	n/a	132575	-24.3%	114261	-13.8%	148576	30.0%	129558	-12.8%	195174	50.6%	223773	14.7%
CY12	176075	n/a	140478	-20.2%	126953	-9.6%	157621	24.2%	134388	-14.7%	203898	51.7%	221787	8.8%

The results from this interval-over-interval percent change analysis underscore the unique pattern of document submissions in Region I that begins in the 11-20 day interval and carries through to the hearing+ interval. While each of the three studied regions experience an increase in the volume of document submissions in the 11-20 day interval, only Region I has percent changes (relative to the preceding 21-30 day interval) consistently in the 30% range. Moreover, only Region I exhibits an increase in document submissions in the 6-10 day interval, which results in modestly positive percent changes (relative to the preceding 11-20 day interval) in the 4% to 9% range. All other regions (and the nation), by comparison, show a negative percent change in document submissions over the same time intervals for all CYs, ranging from -11.3% (National/CY 2010) to -26.3% (Region VII/CY 2012). The same pattern of unique percent change results for Region I continues over the remaining two time intervals (i.e., 0-5 days and hearing+). While other regions experience a heavy volume of document submissions in the 0-5 day interval, resulting in double-digit increases in percent changes averaging about 40% (relative to the 6-10 day interval), Region I's percent change results reflect a deceleration in the relative volume of document submissions over the same timeframe. And, finally, while the other regions (and the nation) generally experience increases in document submissions during the hearing+ interval (resulting in many sharply positive percent changes relative to the preceding 0-5 day interval), Region I again shows a deceleration in relative volume of document submissions over the same time intervals. As a result, the Region I percent change results for the 0-5 day/hearing+ intervals are only slightly positive, ranging from a high of 6.0% (CY 2010) to a low of 2.2% (CY 2012).

As with the preceding two analyses assessing the volume and timing of evidentiary submissions, the foregoing results for CYs 2010 – 12 concerning interval-over-interval percentage changes in submission practices further strengthens the conclusion that there is a correlation between the pilot program and (1) a modest increase in submissions in the 6-20 days leading up to hearings, coupled with (2) a modest downturn in submissions thereafter (i.e., 5 days or less before the hearing, during the hearing, or post-hearing). To be sure, one would expect the pilot program to encourage such document submission practices by claimants and/or their representatives because the five-day rule calls for the filing of documentary evidence not less than five days in advance of the scheduled hearing date (subject to good cause exceptions). Nonetheless, the results from the percent change analysis—along with the other two analyses of document submission data)—provide an empirical basis for correlating the pilot program with this particular pattern of relative submission increases (6-20 days before hearings) and decreases (0-5 days before hearings or during/after hearings). As noted previously, however, establishing causality would require analysis of data that is not currently available—namely, richer data that are specifically tailored to capturing key aspects of the pilot program.

6. Issuance of Hearing Notices

Our fifth—and final—area of data analysis specifically relates to the Region I pilot program's 75-day notice requirement. We examined SSA-provided data to assess the impact of this requirement on the timing for issuance of hearing notices (relative to hearing dates). To this end, we compared Region I with its two sister regions (and the nation) on an annual basis (from CY 2005 to CY 2012) along two empirical fronts: (1) the average number of days by which issuance of hearing notices preceded hearings, and (2) the percentage of cases in which the interval between notice and hearing was 70 days or greater.

a. Average Time Interval between Notice and Hearing, CYs 2005-12

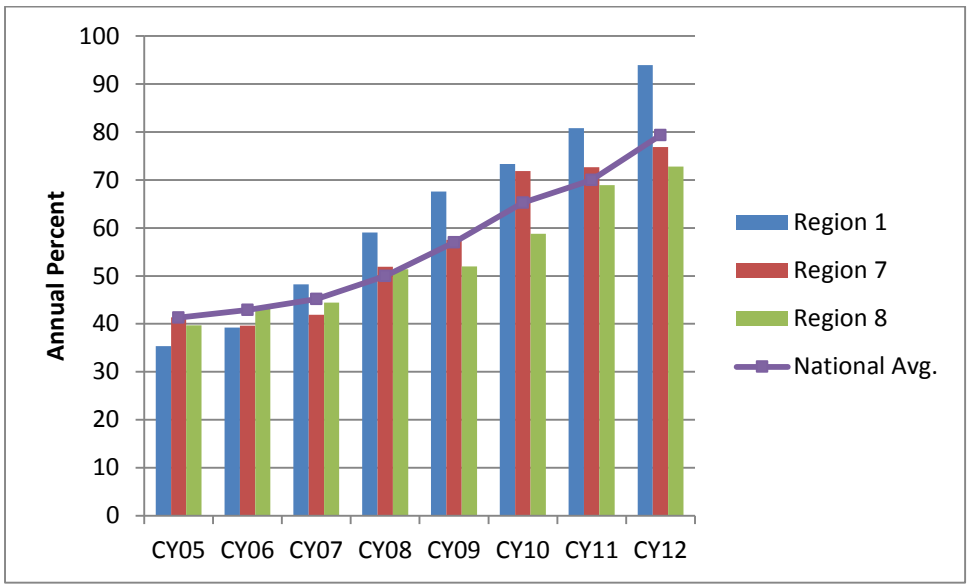
SSA data show that, while average time intervals between issuance of hearing notices and hearings has been rising steadily at both regional and national levels in recent years, such time interval increases have been especially pronounced in Region I. Set forth in tabular and graphical formats below are average time intervals (in days) from issuance of hearing notices to hearings in the three regions (Regions I, VII, and VIII) and nationally for CYs 2005 – 12 (*see* Table A-12 and Figure A-18).[52] Since CY 2007 (i.e., the first full CY of the pilot program), Region I's average time intervals have risen faster and higher than those for either its sister regions or the national average. Moreover, in both CY 2011 and CY 2012, Region I's annual average time intervals (of 80.8 and 93.9 days respectively) exceeded the 75-day notice requirement's default timeframe for issuance of hearing notices, and CY 2010 was not far off (73.3 days). Neither of the other two regions (or the nation) had two successive years during this eight-year period in which the average time interval between notice and hearing exceeded 75 days. This trend is not surprising given that only Region I—by virtue of the pilot program—must issue notices of hearing (absent party consent) no less than 75 days prior to hearings. Nonetheless, the data suggest a strong correlation between the Region I pilot program's 75-day notice requirement and the region's rising time intervals between issuance of hearing notices and hearings. However, given that average time intervals also rose substantially in Regions VII and VIII (and nationally) over the same eight-year time period (albeit at a slower pace), it is also likely that there are other causal factors at play beyond simply the 75-day requirement. More detailed data would be needed to conduct the types of analyses from which causal attributions could be potentially formulated.

Table A-12: Average Interval between Notice and Hearing (in days), CYs 2005-12

	CY05	CY06	CY07	CY08	CY09	CY10	CY11	CY12
Region 1	35.34	39.24	48.25	59.05	67.60	73.33	80.81	93.92
Region 7	41.38	39.63	41.89	51.90	57.55	71.89	72.63	76.84
Region 8	39.67	43.13	44.44	51.40	51.95	58.76	68.89	72.81
National Avg.	41.31	42.92	45.15	49.99	56.99	65.26	70.00	79.32

[52] For cases in which more than one hearing notice was issued, SSA data captured only the time interval between the last notice and the hearing.

Figure A-18: Average Interval between Notice and Hearing (in days), CYs 2005-12



b. Percentage of Cases in Which Notice Issued At Least 70 Days Before Hearing, CYs 2005-12

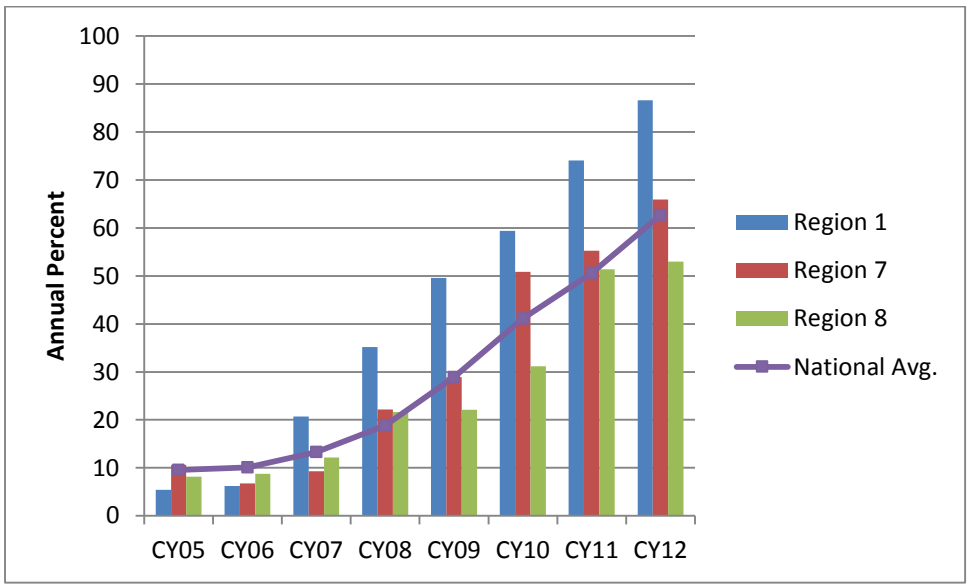
Another means of assessing the impact of the pilot program's 75-day notice requirement is to consider the percentage of hearings held within specified timeframes. For each region, SSA provided data indicating the annual percentage of cases in which hearings were held within successive 10-day time intervals relative to issuance of hearing notices, starting with 0-9 days before the hearing and working backward in time to 150-159 days before the hearing. Given the particular salience of the 75-day mark to the 75-day notice requirement, we used this data to calculate the annual percentage of cases in Regions I, VII, and VIII (and nationally) in which hearing notices were issued anywhere from 70 to 159 days in advance of the hearing. (Given that the SSA-provided data only provided average percentages based on 10-day time intervals, the data did not permit use of 75 days as analytic cutoff.)

As demonstrated in Table A-13 and Figure A-19 below, the average percentages of cases, on both regional and national bases, have trended upward annually, but none so dramatically as in Region I. For example, in CY 2005, the average percentage of hearings held in the 70 to 159-day time interval was a mere 5.4%. By contrast, in CY 2012, the region's annual percentage during this time interval jumped to 86.6%. Again, the 75-day rule has likely had a positive effect by increasing the percentage of cases in which hearing notices are issued at least 70 days prior to the hearing.

Table A-13: Percentage of Hearings Held Within 70-159 Days of Notice, CYs 2005-12

	CY05	CY06	CY07	CY08	CY09	CY10	CY11	CY12
Region 1	5.39%	6.23%	20.69%	35.16%	49.59%	59.39%	74.08%	86.63%
Region 7	10.65%	6.75%	9.30%	22.18%	28.91%	50.87%	55.28%	65.91%
Region 8	8.17%	8.72%	12.17%	21.62%	22.07%	31.18%	51.36%	52.96%
National Avg.	9.54%	10.07%	13.28%	18.80%	28.90%	41.09%	50.57%	62.65%

Figure A-19: Percentage of Hearings Scheduled to Held, 70-159 Days, CYs 2005-12



APPENDIX E: SURVEY QUESTIONS AND RESPONSES

The Office of the Chairman surveyed all 1424 ALJs and 165 HODs in the ten regions. The response rates for the four separately administered surveys are as follows: Region I ALJs: 47%; Region I HODs: 88%; Regions II-X ALJs: 51%; and Regions II-X HODs 78%. The surveys were anonymous, unless the respondent chose to self-identify. The questions, options for response, and responses (except any personally identifiable information) for each survey are included verbatim below.

1. Survey of ALJs in Region I

1. How long have you been an ALJ at SSA?		
Answer Options	Response Percent	Response Count
A) Less than 5 years	48.1%	13
B) 5-10 years	14.8%	4
C) 10-15 years	18.5%	5
D) More than 15 years	18.5%	5

2. How long have you been an ALJ in SSA's Region 1?		
Answer Options	Response Percent	Response Count
A) Less than 5 years	48.1%	13
B) 5-10 years	14.8%	4
C) 10-15 years	22.2%	6
D) More than 15 years	14.8%	4

3. In the past year, about how long before a hearing were notices of hearing typically sent by your office to claimants?		
Answer Options	Response Percent	Response Count
A) Less than 75 days before the hearing	7.4%	2
B) 75 days before the hearing	44.4%	12
C) 90 days before the hearing	25.9%	7
D) 120 days before the hearing	3.7%	1
E) More than 120 days before the hearing	3.7%	1
F) Don't know/Not sure	14.8%	4

4. In the past year, about how long before a hearing did you typically review the evidentiary file for a case?

Answer Options	Response Percent	Response Count
A) The day of the hearing	0.0%	0
B) 1-3 days before the hearing	66.7%	18
C) 4-6 days before the hearing	7.4%	2
D) 1 week before the hearing	14.8%	4
E) 2 weeks before the hearing	3.7%	1
F) More than 2 weeks before the hearing	7.4%	2

5. In the past year, about how often did you schedule a supplemental hearing because additional material written evidence was submitted during or after a hearing?

Answer Options	Almost Always	Frequently	Sometimes	Rarely	Almost Never	N/A	Rating Average	Response Count
Represented Claimants	0.0%	3.7%	29.6%	25.9%	37.0%	3.7%	2.00	27
Unrepresented Claimants	3.7%	14.8%	29.6%	14.8%	33.3%	3.7%	2.38	27

6. In the past year, about how often did you order a consultative examination in cases?

Answer Options	Almost Always	Frequently	Sometimes	Rarely	Almost Never	N/A	Rating Average	Response Count
Represented Claimants	0.0%	7.4%	40.7%	37.0%	14.8%	0.0%	2.41	27
Unrepresented Claimants	0.0%	14.8%	44.4%	18.5%	22.2%	0.0%	2.52	27

7. In your cases in the past year, about how often was all material written evidence timely submitted by claimants—that is, five (5) business days or more before hearings?

Answer Options	Almost Always	Frequently	Sometimes	Rarely	Almost Never	Rating Average	Response Count
Represented Claimants	18.5%	37.0%	18.5%	25.9%	0.0%	3.48	27
Unrepresented Claimants	11.1%	7.4%	29.6%	33.3%	18.5%	2.59	27

8. In your cases in the past year, about how often did claimants or their representatives seek—based on the good cause exception (in 20 C.F.R. § 405.331(b))—to submit written evidence less than five (5) business days before hearings or on the day of the hearing?

Answer Options	Almost Always	Frequently	Sometimes	Rarely	Almost Never	Rating Average	Response Count
Represented Claimants	3.7%	51.9%	37.0%	7.4%	0.0%	3.52	27
Unrepresented Claimants	22.2%	40.7%	11.1%	14.8%	11.1%	3.48	27

9. Listed below are some possible reasons why parties might seek to submit material written evidence less than five (5) business days before a hearing. For each statement listed below, please indicate how frequently it was used by CLAIMANTS' REPRESENTATIVES in the past year as a basis for seeking to submit material written evidence less than five (5) business days before a hearing:

Answer Options	Almost Always	Frequently	Sometimes	Rarely	Almost Never	N/A	Rating Average	Response Count
Did not know how to submit evidence	0.0%	0.0%	3.7%	7.4%	70.4%	18.5%	1.18	27
Recently received evidence from a medical provider or other source	18.5%	66.7%	14.8%	0.0%	0.0%	0.0%	4.04	27
Recently received evidence from claimant	3.7%	48.1%	29.6%	14.8%	3.7%	0.0%	3.33	27
Did not have enough time to submit evidence	0.0%	7.4%	25.9%	33.3%	29.6%	3.7%	2.12	27
An unusual or avoidable circumstance beyond his/her control	0.0%	7.4%	29.6%	33.3%	29.6%	0.0%	2.15	27
SSA's notice/actions were misleading	0.0%	0.0%	0.0%	0.0%	70.4%	29.6%	1.00	27
Claimant's physical, mental, educational or linguistic limitation prevented timely submission	0.0%	0.0%	22.2%	22.2%	44.4%	11.1%	1.75	27
No reason given	0.0%	18.5%	18.5%	7.4%	40.7%	14.8%	2.17	27

10. Were there other reasons frequently given by CLAIMANTS' REPRESENTATIVES as the basis for submitting material written evidence less than five (5) business days before a hearing that are not listed in Question #9?		
Answer Options	Response Percent	Response Count
A) Yes	14.8%	4
B) No	85.2%	23

11. In the box below, please provide other reasons frequently given by CLAIMANTS' REPRESENTATIVES as the basis for submitting material written evidence less than five (5) business days before a hearing that were not listed in Question #9.	
Answer Options	Response Count
	5

[*NOTE:* Open-ended (text) responses to Question #11 provided at end of numerical survey responses.]

12. Listed below are some possible reasons why parties might seek to submit material written evidence less than five (5) business days before a hearing. For each statement listed below, please indicate how frequently it was used by UNREPRESENTED CLAIMANTS in the past year as a basis for submitting material written evidence less than five (5) business days before a hearing:

Answer Options	Almost Always	Frequently	Sometimes	Rarely	Almost Never	N/A	Rating Average	Response Count
Did not know how to submit evidence	7.7%	23.1%	19.2%	11.5%	23.1%	15.4%	2.77	26
Recently received evidence from a medical provider or other source	3.8%	38.5%	23.1%	3.8%	15.4%	15.4%	3.14	26
Did not have enough time to submit evidence	3.8%	0.0%	26.9%	26.9%	30.8%	11.5%	2.09	26
A physical, mental, educational or linguistic limitation prevented him/her from timely submitting evidence	0.0%	11.5%	26.9%	19.2%	26.9%	15.4%	2.27	26
An unusual or avoidable circumstance beyond his/her control	0.0%	3.8%	38.5%	15.4%	26.9%	15.4%	2.23	26
SSA's notice/actions were misleading	0.0%	0.0%	19.2%	23.1%	38.5%	19.2%	1.76	26
Was not aware of submission deadline	7.7%	34.6%	11.5%	11.5%	23.1%	11.5%	2.91	26
No reason given	3.8%	19.2%	23.1%	7.7%	26.9%	19.2%	2.57	26

13. Were there other reasons frequently given by UNREPRESENTED CLAIMANTS as the basis for submitting material written evidence less than five (5) business days before a hearing that are not listed in Question # 12?

Answer Options	Response Percent	Response Count
A) Yes	15.4%	4
B) No	84.6%	22

14. In the box below, please provide other reasons frequently given by UNREPRESENTED CLAIMANTS as the basis for submitting material written evidence less than five (5) business days before a hearing that are not listed in Question # 12.

Answer Options	Response Count
	4

[*NOTE:* Open-ended (text) responses to Question #14 provided at end of numerical survey responses.]

15. In your cases in the past year, about how often did you grant requests from claimants or their representatives for a good cause exception and accept material written evidence less than five (5) business days before hearings or at hearings?

Answer Options	Almost Always	Frequently	Sometimes	Rarely	Almost Never	Rating Average	Response Count
Represented Claimants	38.5%	26.9%	26.9%	7.7%	0.0%	3.96	26
Unrepresented Claimants	80.8%	15.4%	3.8%	0.0%	0.0%	4.77	26

16. In your cases in the past year, about how often did claimants or their representatives seek to submit—based on the good cause/materiality exception in 20 C.F.R. § 405.331(c) (i.e., good cause and reasonable possibility of affecting the outcome)—written evidence after the conclusion of the hearing?

Answer Options	Almost Always	Frequently	Sometimes	Rarely	Almost Never	Rating Average	Response Count
Represented Claimants	3.8%	19.2%	53.8%	3.8%	19.2%	2.85	26
Unrepresented Claimants	3.8%	23.1%	19.2%	19.2%	34.6%	2.42	26

17. Listed below are some possible reasons why parties might seek to submit material written evidence after a hearing has concluded. For each statement listed below, please indicate how frequently it was used by CLAIMANTS' REPRESENTATIVES in the past year as a basis for seeking to submit material written evidence after a hearing had concluded:								
Answer Options	Almost Always	Frequently	Sometimes	Rarely	Almost Never	N/A	Rating Average	Response Count
Did not know how to submit evidence	0.0%	0.0%	0.0%	3.8%	69.2%	26.9%	1.05	26
Recently received evidence from a medical provider or other source	3.8%	50.0%	19.2%	11.5%	11.5%	3.8%	3.24	26
Recently received evidence from claimant	0.0%	26.9%	30.8%	7.7%	30.8%	3.8%	2.56	26
Did not have enough time to submit evidence	0.0%	3.8%	23.1%	19.2%	42.3%	11.5%	1.87	26
An unusual or avoidable circumstance beyond his/her control	0.0%	7.7%	38.5%	11.5%	38.5%	3.8%	2.16	26
SSA's notice/actions were misleading	0.0%	0.0%	0.0%	11.5%	61.5%	26.9%	1.16	26
Claimant's physical, mental, educational or linguistic limitation prevented timely submission	0.0%	3.8%	7.7%	23.1%	53.8%	11.5%	1.57	26
No reason given	11.5%	3.8%	7.7%	7.7%	42.3%	26.9%	2.11	26

18. Were there other reasons frequently given by CLAIMANTS' REPRESENTATIVES as the basis for submitting material written evidence after a hearing had concluded that are not listed in Question #17?		
Answer Options	Response Percent	Response Count
A) Yes	15.4%	4
B) No	84.6%	22

19. In the box below, please provide other reasons frequently given by CLAIMANTS' REPRESENTATIVES as the basis for submitting material written evidence after a hearing had concluded that are not listed in Question #17.	
Answer Options	Response Count
	4

[*NOTE:* Open-ended (text) responses to Question #19 provided at end of numerical survey responses.]

20. Listed below are some possible reasons why parties might seek to submit material written evidence after a hearing has concluded. For each statement listed below, please indicate how frequently it was used by UNREPRESENTED CLAIMANTS in the past year as a basis for submitting material written evidence after a hearing had concluded:

Answer Options	Almost Always	Frequently	Sometimes	Rarely	Almost Never	N/A	Rating Average	Response Count
Did not know how to submit evidence	3.8%	23.1%	15.4%	11.5%	26.9%	19.2%	2.57	26
Recently received evidence from a medical provider or other source	3.8%	34.6%	26.9%	7.7%	15.4%	11.5%	3.04	26
Did not have enough time to submit evidence	0.0%	3.8%	30.8%	19.2%	30.8%	15.4%	2.09	26
A physical, mental, educational or linguistic limitation prevented him/her from timely submitting evidence	0.0%	11.5%	26.9%	15.4%	30.8%	15.4%	2.23	26
An unusual or avoidable circumstance beyond his/her control	0.0%	0.0%	34.6%	15.4%	30.8%	19.2%	2.05	26
SSA's notice/actions were misleading	0.0%	3.8%	7.7%	19.2%	38.5%	30.8%	1.67	26
Was not aware of submission deadline	7.7%	30.8%	11.5%	11.5%	19.2%	19.2%	2.95	26
No reason given	7.7%	7.7%	15.4%	7.7%	42.3%	19.2%	2.14	26

21. Were there other reasons frequently given by UNREPRESENTED CLAIMANTS as the basis for submitting material written evidence after a hearing had concluded that are not listed in Question #20?

Answer Options	Response Percent	Response Count
A) Yes	7.7%	2
B) No	92.3%	24

22. In the box below, please provide other reasons frequently given by UNREPRESENTED CLAIMANTS as the basis for submitting material written evidence after a hearing had concluded that are not listed in Question #20.

Answer Options	Response Count
	2

[*NOTE:* Open-ended (text) responses to Question #22 provided at end of numerical survey responses.]

23. In your cases in the past year, did you grant any requests from claimants or their representatives to submit written evidence after the close of hearings under the good cause/materiality exception?

Answer Options	Response Percent	Response Count
A) Yes	84.6%	22
B) No	15.4%	4

24. About how often did you grant requests from claimants or their representatives to submit additional written evidence after the close of hearings under the good cause/materiality exception?

Answer Options	Almost Always	Frequently	Sometimes	Rarely	Almost Never	Rating Average	Response Count
Represented Claimants	22.7%	27.3%	27.3%	18.2%	4.5%	3.45	22
Unrepresented Claimants	45.5%	27.3%	18.2%	9.1%	0.0%	4.09	22

25. When you granted requests from claimants or their representatives to submit additional written evidence after the close of hearings under the good cause/materiality exception, about how much time did you typically give claimants or their representatives to submit additional written evidence?

Answer Options	Less than 1 Week	1 Week	2 Weeks	3 Weeks	More than 3 Weeks	Rating Average	Response Count
Represented Claimants	4.5%	13.6%	68.2%	4.5%	9.1%	3.00	22
Unrepresented Claimants	0.0%	9.1%	36.4%	22.7%	31.8%	2.23	22

26. In your cases in the past year, when you granted requests to submit additional material written evidence after the close of hearings, did claimants or their representatives subsequently contact your office to ask for another extension of time to submit the evidence?

Answer Options	Response Percent	Response Count
A) Yes	77.3%	17
B) No	22.7%	5

27. When claimants or their representatives contacted your office to ask for another extension of time to submit additional material written evidence after the close of the hearing, about how often did you grant such requests?

Answer Options	Almost Always	Frequently	Sometimes	Rarely	Almost Never	Rating Average	Response Count
Represented Claimants	29.4%	23.5%	47.1%	0.0%	0.0%	3.82	17
Unrepresented Claimants	41.2%	41.2%	17.6%	0.0%	0.0%	4.24	17

28. Based on your experience as an ALJ in Region 1 over the past year, what is your overall view of the pilot program in Region 1 (i.e., both the 75-day hearing notice requirement and the closing of the record five days before the hearing (absent showing of good cause) requirement)?

Answer Options	Response Percent	Response Count
A) Strongly favor	46.2%	12
B) Somewhat favor	19.2%	5
C) Neutral/Undecided	15.4%	4
D) Somewhat oppose	15.4%	4
E) Strongly oppose	3.8%	1

29. Based on your experience as an ALJ in Region 1 over the past year, what is your overall view of the 75-day hearing notice requirement portion of the pilot program in Region 1?

Answer Options	Response Percent	Response Count
A) Strongly favor	50.0%	13
B) Somewhat favor	19.2%	5
C) Neutral/Undecided	7.7%	2
D) Somewhat oppose	15.4%	4
E) Strongly oppose	7.7%	2

30. What do you think of the current rule in Region 1 requiring at least 75 days' notice of a hearing date—that is, does it give the right amount of advance notice to claimants and/or their representatives?		
Answer Options	Response Percent	Response Count
A) Far too little time	0.0%	0
B) Too little time	3.8%	1
C) Just right	57.7%	15
D) Too much time	30.8%	8
E) Far too much time	7.7%	2

31. In your opinion, what would be the right amount of notice (in days) to give claimants and/or their representatives of their scheduled hearing date? Please provide your answer in the box below.	
Answer Options	Response Count
	11

[*NOTE:* Open-ended (text) responses to Question #31 provided at end of numerical survey responses.]

32. Based on your experience as an ALJ in Region 1 over the past year, what is your view of the closing of the record five days before the hearing (absent showing of good cause) requirement portion of Region 1's pilot program?		
Answer Options	Response Percent	Response Count
A) Strongly favor	57.7%	15
B) Somewhat favor	23.1%	6
C) Neutral/Undecided	3.8%	1
D) Somewhat oppose	7.7%	2
E) Strongly oppose	7.7%	2

33. What do you think of the current rule in Region 1 closing the evidentiary record five (5) days before the hearing (absent a showing of good cause)—that is, does it give ALJs the right amount of time to adequately review the evidentiary record before the hearing?		
Answer Options	Response Percent	Response Count
A) Far too little time	7.7%	2
B) Too little time	7.7%	2
C) Just right	76.9%	20

33. What do you think of the current rule in Region 1 closing the evidentiary record five (5) days before the hearing (absent a showing of good cause)—that is, does it give ALJs the right amount of time to adequately review the evidentiary record before the hearing?		
D) Too much time	3.8%	1
E) Far too much time	3.8%	1

34. In your opinion, how many days before the hearing should claimants and/or their representatives be required to submit evidence in order to give ALJs sufficient time to review the record? Please provide your response in the box below.	
Answer Options	Response Count
	6

[*NOTE:* Open-ended (text) responses to Question #34 provided at end of numerical survey responses.]

35. Listed below are some possible experiences you may—or may not—have had in the past year while adjudicating cases under Region 1's pilot program. For each item listed in the box below, please indicate your level of agreement—based on your own experience—with the following statement: "The pilot program in Region 1 ….."

Answer Options	Strongly Agree	Agree	Neither Agree or Disagree	Disagree	Strongly Disagree	Rating Average	Response Count
Allows me to review the evidentiary file earlier	23.1%	26.9%	23.1%	23.1%	3.8%	3.42	26
Encourages parties to timely submit evidence before hearings	50.0%	30.8%	11.5%	7.7%	0.0%	4.23	26
Reduces need for supplemental hearings	38.5%	23.1%	19.2%	15.4%	3.8%	3.77	26
Reduces need for consultative examinations	15.4%	23.1%	34.6%	23.1%	3.8%	3.23	26
Allows me to adjudicate cases more efficiently	46.2%	15.4%	26.9%	3.8%	7.7%	3.88	26
Allows me to adjudicate cases more fairly	38.5%	15.4%	30.8%	11.5%	3.8%	3.73	26
Improves the evidentiary record	42.3%	23.1%	19.2%	11.5%	3.8%	3.88	26
Has had no effect on how I adjudicate cases	11.5%	15.4%	15.4%	19.2%	38.5%	2.42	26

36. Has Region 1's pilot program had any other significant effects on how you adjudicate cases that are not listed in Question # 35?

Answer Options	Response Percent	Response Count
A) Yes	23.1%	6
B) No	76.9%	20

37. In the box below, please list any other significant effects Region 1's pilot program has had on how you adjudicate cases that are not listed in Question # 35.

Answer Options	Response Count
	6

[*NOTE:* Open-ended (text) responses to Question #37 provided at end of numerical survey responses.]

38. Listed below are some possible experiences that, in your view, claimants and/or their representatives may—or may not—have had in the past year while having claims adjudicated under Region 1's pilot program. For each item listed in the box below, please indicate your level of agreement—based on your own experience—with the statement that: "The pilot program in Region 1 ….."

Answer Options	Strongly Agree	Agree	Neither Agree or Disagree	Disagree	Strongly Disagree	Rating Average	Response Count
Is difficult for unrepresented claimants to understand	8.0%	28.0%	20.0%	28.0%	16.0%	2.84	25
Unduly formalizes the hearing process	4.0%	4.0%	4.0%	56.0%	32.0%	1.92	25
Interferes with a claimant's right to a full and fair hearing	8.0%	0.0%	0.0%	52.0%	40.0%	1.84	25
Prejudices claimants who secure representation close to the hearing date	4.0%	4.0%	12.0%	48.0%	32.0%	2.00	25
Leads to incomplete evidentiary records	4.0%	0.0%	12.0%	48.0%	36.0%	1.88	25
Is difficult to comply with because medical providers delay responding to requests for medical records	4.0%	16.0%	16.0%	40.0%	24.0%	2.36	25
Fails to account for a claimant's need to submit new (or updated) medical evidence due to changes in his/her medical condition	4.0%	8.0%	16.0%	48.0%	24.0%	2.20	25
Does not seem to have any effect on claimants and/or their representatives	4.0%	16.0%	40.0%	20.0%	20.0%	2.64	25

39. In your view, has Region 1's pilot program had any other significant effects on claimants and/or their representatives that are not listed in Question #38?		
Answer Options	Response Percent	Response Count
A) Yes	24.0%	6
B) No	76.0%	19

40. In the box below, please provide any other significant effects on claimants and/or their representatives that are not listed in Question #38.	
Answer Options	Response Count
	6

[*NOTE:* Open-ended (text) responses to Question #40 provided at end of numerical survey responses.]

41. In your opinion, should the current pilot program in Region 1 be expanded to other SSA Regions?		
Answer Options	Response Percent	Response Count
A) Strongly Agree	56.0%	14
B) Somewhat Agree	16.0%	4
C) Neutral/Undecided	8.0%	2
D) Somewhat Disagree	12.0%	3
E) Strongly Disagree	8.0%	2

42. If you have any additional thoughts or perspectives on Region 1's pilot program and/or the possibility of expanding that pilot program to other SSA Regions, please provide them in the box below.	
Answer Options	Response Count
	14

[*NOTE:* Open-ended (text) responses to Question #42 provided at end of numerical survey responses.]

* * * *

Responses to Survey Questions with Open-Ended Response Fields:

11. In the box below, please provide other reasons frequently given by CLAIMANTS' REPRESENTATIVES as the basis for submitting material written evidence less than five (5) business days before a hearing that were not listed in Question #9.	
Response #	Response Text
1	reps blamed the provider for failure to respond timely
2	Recent medical treatment within weeks to 5 months of the hearing that was more difficult to collect from the provider due to their systems. I accept recent medical as a reasonable explanation for an event outside the Rep's control and recognize the Rep's diligence is providing the recent treatment. NOTE: this survey so far has not considered WHEN the rep's start to develop the record in preparation for hearing. If they argue the provider did not send the ME, it is more important to know WHEN the Rep requested it. Medical Sources do not have producing ME as a primary responsibility and delay is ANTICIPATED. The Rep can address this (control it) buy requesting development TIMELY. We assist by giving ADVANCE NOTICE OF HEARING OF AT LEAST 75 DAY (More often 120 Days advance notice). The system works and more hearings proceed with less post, fewer delays and claimants who receive good public service. NOTE #2: For unrepresented claimants, we have prehearing conferences 5-6 months prior to formal hearing date at which we collect medical releases and DEVELOP THE RECORD, and assess whether a CE is necessary. Unrepresented claimants are more likely homeless and without access to health care, so more often require CEs to adequately develop the record for hearing. Our Unrepresented claimants in Hartford CT receive excellent public service. It should be noted that with the 5 day rule we still have evidence submitted within 5 days of hearing, but that would be evidence that would otherwise be submitted POST HEARING with a request for supplmental hearing (which per Hallex means a supplemental hearing is almost a given).
3	they only recently requested the evidence and had not yet recieved it.
4	crucial to the decision
5	pending medical reports, tests, MRIs etc. request to leave record open for submission of those reports.

14. In the box below, please provide other reasons frequently given by UNREPRESENTED CLAIMANTS as the basis for submitting material written evidence less than five (5) business days before a hearing that are not listed in Question # 12.	
Response #	Response Text
1	DID NOT KNOW THE RULES. BROUGHT ALL OF THEIR EVIDENCE TO THE HEARING WITH THEM TO GIVE TO THE JUDGE RIGHT THEN. SOME ARE PAPERWORK ADVERSE. SOME DID NOT HAVE THE $ TO PURCHASE THE MED RECORDS FORM THE MEDICAL SOURCE. SOME SIMPLY DID NOT KNOW WHAT TO DO.
2	my dog ate the evidence
3	Generally they simply never paid attention to the requirement. It's something they just depend on the agency to have done.
4	Many unrepresented claimant's expect that SSA has the complete record b/c they notified SSA of their treatment history during application process.

19. In the box below, please provide other reasons frequently given by CLAIMANTS' REPRESENTATIVES as the basis for submitting material written evidence after a hearing had concluded that are not listed in Question #17.	
Response #	Response Text
1	rep became aware of new evidence at hearing
2	I just want to add that the posthearing submissions are now discussed on the record at the hearing as a matter of course with clear deadlines and time the record will remain open. Sometimes a representative will request the record remain open for one piece of evidence and then submit other documents without explanation, but that is a practice by a certain few who are less capable and have persistent problems developing the record. for the most part, the ALJ will make a decision if the evidence is critical to the outcome of the case and consider the overriding "intent" of the regulations of fairness and due process. But these regulations provide the ALJ with solid tools to promote timely, fair and complete hearings. These tools result in better more effective hearings, becuase the evidence is available for MEs AT THE HEARING, and for the ALJ to review before the hearing (with much less last minute evidence) so that the ALJ can effectively review, determine any key issues and inquire into relevant matters for a fair and accurate determination. In cooperation with OGC Boston in Region One, the ALJs now cooperatively inquire of the Reps if the record is complete or if they is outstanding evidence they would argue is critical to the outcome of the case. That way, the claimant is ensured that the hearing is focused and if the Rep so argues, the ALJ can make a determination at the hearing whether the evidence is, indeed, critical to the outcome or not, and conduct the hearing accordingly.
3	exam/assessment/surgery scheduled shortly after hearing
4	request to leave record open for submission of pending medical tests, exams, reports etc. Example: MRI testng scheduled or performed but report not created yet.

22. In the box below, please provide other reasons frequently given by UNREPRESENTED CLAIMANTS as the basis for submitting material written evidence after a hearing had concluded that are not listed in Question #20.	
Response #	Response Text
1	Cl wanted to attempt to get a report from his her doctor for the judge to look at or get other reports from Cl's other doctors that were not in the record and prior to the hearing the Cl did not understand that the records might be important.
2	exam/surgery scheduled shortly after hearing

31. In your opinion, what would be the right amount of notice (in days) to give claimants and/or their representatives of their scheduled hearing date? Please provide your answer in the box below.	
[Note: Statistics complied below are calculated from numerical responses to Question # 31.]	
Average # of Days Suggested by Respondents (Avg) =	50
Most Frequently Suggested # of Days (Mode) =	45
Minimum Suggested Number of Days (Min) =	20
Maximum Suggested Number of Days (Max) =	100
Number of Responses Suggesting Less Than 75 Days =	8
Number of Responses Suggesting More Than 75 Days =	2
Percentage of Responses Suggesting Less Than 75 Days=	80%
Percentage of Responses Suggesting More Than 75 Days=	20%

34. In your opinion, how many days before the hearing should claimants and/or their representatives be required to submit evidence in order to give case managers sufficient time to properly prepare the evidentiary file before ALJs review of the record before a hearing? Please provide your response in the box below.	
[Note: Statistics complied below are calculated from numerical responses to Question # 34.]	
Average # of Days Suggested by Respondents (Avg) =	12.8
Most Frequently Suggested # of Days (Mode) =	10
Minimum Suggested Number of Days (Min) =	0
Maximum Suggested Number of Days (Max) =	30
Number of Responses Suggesting Less Than 5 Days =	2
Number of Responses Suggesting More Than 5 Days =	4
Percentage of Responses Suggesting Less Than 5 Days=	33.3%
Percentage of Responses Suggesting More Than 5 Days=	66.7%

37. In the box below, please list any other significant effects Region 1's pilot program has had on how you adjudicate cases that are not listed in Question # 35.	
Response #	Response Text
1	It appears that The reference to Q 35 is incorrect. The best part of the pilot was the FEDRO analysis.
2	See explanation above where I discuss the preliminary questions to Reps that ALJs now typically include in their hearings about whether the rep believes the record is complete, whether they have an argument that outstanding evidence is critical to the outcome of the case (material and pertinent), etc. ALJs typically are using these questions in the opening discussion of issues with Reps, and then following up at the end of the hearing with a decision about any potential posthearing development. That way the Rep also has an opportunity to make a record and arguments throughout the hearing about why the outstanding evidence may be critical to the case.
3	Cl's Reps now understand that if they attempt to submit a large volume of evidence just prior to the hearing, unless they show good cause, the evidence will not be admitted.Thus they try to get the evidence in earlier.(had a Rep try to submit 250 pages of older medical records at the hearing. Denied)
4	Provides greater administrative flexibility in assembling the administrative record, including submitting records to expert witnesses.
5	The 5 day rule has put me in conflict with the management team and other ALJs because I feel that using the DSI standard for region I is fundamentally unfair to claimant's and a violation of the APA, due process and equal protection. The ALJs do not use the 5 day rule against unrepreesented claimants and do use it against the big firms even when the actual atty to appear is apponted less than 30 days before the hearing. I believe that all material evidence should be considered on the merits and it is wrong to discriminate against claimants in region I just because they have an attorney who submits evidence late. It would be better to allow a certasin percentage fee reduction for attorney fee agreements and fee petitions for late submitted evidence. The 75 day makes it more difficult to relace postponed hearings which are routinely withdrawn shortly before the hearing. In my mind treating some claimants in the 2nd circuit and all claimants in the first circuit differently will be found to be unconstitutional the same as the Sallings case in 1986 which ended the government rep pilot after 3 years. DSI has gone on for almost 7 years and is also anti-claimant. The ALJ has an independent duty under the APA, case law, agency policies and our regulations to independently develop the record regardless of what an atty does or does not do.
6	It has little effect because AC still allows submission of post hearing evidence, so the record is literally NEVER closed.

40. In the box below, please provide any other significant effects on claimants and/or their representatives that are not listed in Question #38.	
Response #	Response Text
1	see comments above.
2	For unrepresentated Claimants no. ALJs bend over backwards to give them a full and fair hearing. For cls with a Rep, the rules force the Rep to be more active on the claim earlier, thus resulting in a more complete medical record(or in some cases a request for dismissal where the record shows that the cl has cured/returned to work, or is actively looking for work).
3	Representatives are more prepared for hearing.
4	has helped representative understand that they must request evidence from medical providers much sooner than they did in the past. Has greatly reduced the need to keep the record open for additional evidence. Has made the overall hearing process far more efficient
5	It has lead to problems on listing evidence as Exhibits. In my view the APA and our regs requires exhibiting of all proposed exhibits. There has been an effort by some ALJs and the management team to not exhibit and put on Atty/cl CDs late submitted evidence. This sometimes means that attorneys/claimants and our impartial experts are denied access to this evidence at the hearing, causing confusion and inefficiency. I had to battle to have everything exhibited in my cases.
6	My experience is that representatives in Region I make a much greater effort to submit evidence timely compared to other jurisdictions, which leads to obvious efficiencies. Unrepresented claimants are not adversely affected b/c I generally assist in developing the record for them, if it is necessary.

42. If you have any additional thoughts or perspectives on Region 1's pilot program and/or the possibility of expanding that pilot program to other SSA Regions, please provide them in the box below.	
Response #	Response Text
1	FEDRO should be expanded. The 5-day rule ought to be 10 days--the claimant was presumably able to demonstrate disability at the time of filing for benefits; it should not take a year more to develop the record.
2	I believe that the program should be expanded to other Regions and when that is done, we should provide some training on model language to manage this at hearings, and discussions about the benefits and effectiveness of the process. This also impacts scheduling and representatives need to provide advance availability/unavailability for smoother scheduling and we had outreach to work with out representative community. We did this through a bench/bar meeting, but if this is rolled out, OCALJ could provide information on the SSA INTERNET, power points, and speaking points to HOCALJs for bench/bar meetings. This pilot also worked extremely well with the automated scheduling allowing reps to provide availability/unavailability online. There should be separate hearing office mgmt/scheduler training for a smoother transition. This can be done by VOD and live training with follow up power points. I recommend inclusion of OGC with experienced Region I ALJ/ALJ(S) for the ALJ information training with suggestions to effectively use this tool, implement (practical advice) the 5 day rule in prehearing/ hearing / post hearing processes but temper it with overall awareness of procedural due process and fairness concerns. (IT would be even better if we have some effective regulations and consequences in 404.1740 about the REPs affirmative

42. If you have any additional thoughts or perspectives on Region 1's pilot program and/or the possibility of expanding that pilot program to other SSA Regions, please provide them in the box below.	
	duties, prohibited acts, etc.). But this is still a very good start.
3	The 5-Day rule should be absolutely expanded to other Regions.
4	I think the pilot has been a good thing and I would favor it being uniformly applied nationally. I also think maintaining the exceptions to the 5 day rule is critically important since ALJs need to do an individualized assessment of the reasons for late submission. I generally allow evidence in even after the 5 days because of the importance I attach to my obligation to develop the record.
5	75 Day Notice and 5 Day Submission of evidence rules are proactive in making all scheduled hearings productive and supports the demand for judicial economy in the SSA high volume hearing process.
6	If the Reps can get the evidence into us within 5 business days they can get the same evidence in to us within 14 business days(or 20 calendar days)(frequently Reps fax/ ERE the evidence in to us on the 6th day out or on day 5. That means we actually get it into our pre hearing paperwork processing system a day or two later The extra time(I recommend) allows the staff to properly exhibit the new records in time for the ALJ to efficiently review them in his/her pre hearing review of the file(which on average takes about 60-90 minutes for a reasonable 400-500 pager and most of the day for a complex 2,000-3,000+ pager Remand-a stack of paper about 10-12 inches high). Please remember we are dealing with human lives, not the production of automobile bumpers. All claimants truly believe they are disabled, but not all are disabled. Sorting out their complex lives and impairments, as reflected in the medical records and all the other records in the file, and applying our rules and regulations, takes time to do a good job. The earlier we can get the claimant's information, the better. I was a Plaintiff's Rep. for 15 years before I became a ALJ. Because of the approximately one year delay after filing for a hearing most Reps do not work the case hard until they either get the Notice of Hearing or, based on their experience with that ODAR, they estimate the hearing will be scheduled in the near future. It is economically efficient for the Reps to send for all update meds at that time. Remember many Reps have small offices with a single secretary. However if we give them a clear, reasonable, standard to meet, they will be able to do it. The extra time also allows the rep to work with the stubborn doctor who believes his duty is to cure his patients, not to do paperwork with his small support staff.
7	I would not be opposed to further contact to clarify my answers. I had a difficult time answering some of the questions, particularly with regard to the unrepresented claimants. I find they generally have no idea before the hearing that they are under a deadline to produce evidence, so I generally allow the record to remain open after the hearing in order to obtain the evidence. If I was prohibited from leaving the record open, then I would oppose the "five day rule." I also often allow the record to remain open for additional evidence after the hearing even in represented cases. If I did not have the discretion to do so, I would oppose the rule. Although I have been an ALJ for less than 5 years, I was a claimant's attorney for many years before becoming an ALJ. Accordingly, I have a perspective on the rule from a representative's point of view as well (I was claimant's representative in Region I both before and after the implication of the pilot). Please do not hesitate to contact me.
8	Really should be replaced by strict rules of practice and procedure for represented cases, and perhaps an appointed agency advocate for unrepresented cases. Actually the FedRO did accomplish much of this function for unrepresented. That part of the program was not given a

42. If you have any additional thoughts or perspectives on Region 1's pilot program and/or the possibility of expanding that pilot program to other SSA Regions, please provide them in the box below.	
	fair chance.
9	While i agree in principle with the evidentiary provisions of the pilot program, i have noticed many remands based upon evidence submitted post hearing. In fact, I have had remands based upon records submitted 6 month post hearing. Thus, it seems the rules regarding submission of records under the pilot program have little to no teeth.
10	The non-adversarial and inquisitorial nature of these proceedings are bolstered, not eroded, by the so-called 5-day rule, and promote fundamental fairness, not only to the claimant but all other claimants who are waiting to have their claims heard.
11	Expand this pilot! Train all members of the Appeals Council of this pilot so they don't remand cases b/c of evidence submitted after the record closes. It appears the AC has no idea about the region 1 pilot. The record should close 30 days before the hearing except for medical records dated after the 30 days, in that case it can be submitted up to the day of the Hearing. Maybe give reps 120 days notice. Give ALJs authority to sanction reps who chronically do not comply with the rule. This rule needs to be expanded to all regions and the deadline needs to be moved to 30 days before the hearing.
12	DSI should be scrapped and ALJs should just be allowed to reduce atty fee agreements and fee petitions in cases where evidence is submitted late. The 75 day has not resulted in fewer postponements.
13	It should be universal if it is used at all. Why should a claimant in Reg 1 be prejudiced just by living in Reg 1. As a practical matter it is useless when considering the duty to develop the record as being an ALJ duty rather than a rep duty.
14	Very glad to have the privilege to serve in the region that rolled out this pilot. Great improvement.

2. Survey of HODs in Region I

1. How long have you been a HOD at SSA?		
Answer Options	Response Percent	Response Count
A) Less than 5 years	57.1%	4
B) 5-10 years	28.6%	2
C) 10-15 years	14.3%	1
D) More than 15 years	0.0%	0

2. How long have you been a HOD in SSA's Region 1?		
Answer Options	Response Percent	Response Count
A) Less than 5 years	57.1%	4
B) 5-10 years	28.6%	2
C) 10-15 years	14.3%	1
D) More than 15 years	0.0%	0

3. In the past year, about how long before a hearing were notices of hearing typically sent by your office to claimants?		
Answer Options	Response Percent	Response Count
A) Less than 75 days before the hearing	14.3%	1
B) 75 days before the hearing	57.1%	4
C) 90 days before the hearing	28.6%	2
D) 120 days before the hearing	0.0%	0
E) More than 120 days before the hearing	0.0%	0
F) Don't know/Not Sure	0.0%	0

4. In your office's cases in the past year, about how often were supplemental hearings scheduled because additional evidence was submitted during or after a hearing? If you do not know, please select "N/A"

Answer Options	Almost Always	Frequently	Sometimes	Rarely	Almost Never	N/A	Rating Average	Response Count
Represented Claimants	0.0%	0.0%	42.9%	57.1%	0.0%	0.0%	2.43	7
Unrepresented Claimants	0.0%	14.3%	14.3%	71.4%	0.0%	0.0%	2.43	7

5. In your office's cases in the past year, about how often was all evidence timely submitted by claimants—that is, five (5) business days or more before hearings? If you do not know, please select "N/A"

Answer Options	Almost Always	Frequently	Sometimes	Rarely	Almost Never	N/A	Rating Average	Response Count
Represented Claimants	14.3%	28.6%	42.9%	14.3%	0.0%	0.0%	3.43	7
Unrepresented Claimants	0.0%	42.9%	28.6%	28.6%	0.0%	0.0%	3.14	7

6. In your office's cases in the past year, about how often did claimants or their representatives seek—based on the good cause exception (in 20 C.F.R. § 405.331(b))—to submit evidence less than five (5) business days before hearings or on the day of the hearing? If you do not know, please select "N/A"

Answer Options	Almost Always	Frequently	Sometimes	Rarely	Almost Never	N/A	Rating Average	Response Count
Represented Claimants	0.0%	28.6%	57.1%	14.3%	0.0%	0.0%	3.14	7
Unrepresented Claimants	0.0%	14.3%	42.9%	28.6%	14.3%	0.0%	2.57	7

7. Listed below are some possible reasons why parties might seek to submit evidence less than five (5) business days before a hearing. For each statement listed below, please indicate how frequently it was used by CLAIMANTS' REPRESENTATIVES in your office in the past year as a basis for seeking to submit evidence less than five (5) business days before a hearing. If you do not know, please select "N/A"

Answer Options	Almost Always	Frequently	Sometimes	Rarely	Almost Never	N/A	Rating Average	Response Count
Did not know how to submit evidence	0.0%	0.0%	14.3%	14.3%	57.1%	14.3%	1.50	7
Recently received evidence from a medical provider or other source	0.0%	100.0%	0.0%	0.0%	0.0%	0.0%	4.00	7
Recently received evidence from claimant	0.0%	28.6%	42.9%	28.6%	0.0%	0.0%	3.00	7
Did not have enough time to submit evidence	0.0%	14.3%	28.6%	28.6%	28.6%	0.0%	2.29	7
An unusual or avoidable circumstance beyond his/her control	0.0%	42.9%	28.6%	14.3%	14.3%	0.0%	3.00	7
SSA's notice/actions were	0.0%	0.0%	0.0%	14.3%	85.7%	0.0%	1.14	7

7. Listed below are some possible reasons why parties might seek to submit evidence less than five (5) business days before a hearing. For each statement listed below, please indicate how frequently it was used by CLAIMANTS' REPRESENTATIVES in your office in the past year as a basis for seeking to submit evidence less than five (5) business days before a hearing. If you do not know, please select "N/A"								
misleading								
Claimant's physical, mental, educational or linguistic limitation prevented timely submission	0.0%	14.3%	0.0%	42.9%	42.9%	0.0%	1.86	7
No reason given	14.3%	28.6%	28.6%	0.0%	14.3%	14.3%	3.33	7

8. Were there other reasons frequently given by CLAIMANTS' REPRESENTATIVES as the basis for submitting evidence less than five (5) business days before a hearing that are not listed in Question #7?		
Answer Options	Response Percent	Response Count
A) Yes	28.6%	2
B) No	42.9%	3
C) I do not know	28.6%	2

9. In the box below, please provide other reasons frequently given by CLAIMANTS' REPRESENTATIVES as the basis for submitting evidence less than five (5) business days before a hearing that were not listed in Question #7.	
Answer Options	Response Count
	2

[*NOTE:* Open-ended (text) responses to Question #9 provided at end of numerical survey responses.]

10. Listed below are some possible reasons why parties might seek to submit evidence less than five (5) business days before a hearing. For each statement listed below, please indicate how frequently it was used by UNREPRESENTED CLAIMANTS in your office in the past year as a basis for seeking to submit evidence less than five (5) business days before a hearing. If you do not know, please select "N/A"								
Answer Options	Almost Always	Frequently	Sometimes	Rarely	Almost Never	N/A	Rating Average	Response Count
Did not know how to submit evidence	0.0%	14.3%	57.1%	0.0%	14.3%	14.3%	2.83	7
Recently received evidence from a medical provider or other source	0.0%	14.3%	57.1%	0.0%	28.6%	0.0%	2.57	7

10. Listed below are some possible reasons why parties might seek to submit evidence less than five (5) business days before a hearing. For each statement listed below, please indicate how frequently it was used by UNREPRESENTED CLAIMANTS in your office in the past year as a basis for seeking to submit evidence less than five (5) business days before a hearing. If you do not know, please select "N/A"								
Did not have enough time to submit evidence	0.0%	0.0%	28.6%	14.3%	57.1%	0.0%	1.71	7
A physical, mental, educational or linguistic limitation prevented him/her from timely submitting evidence	0.0%	14.3%	57.1%	14.3%	14.3%	0.0%	2.71	7
An unusual or avoidable circumstance beyond his/her control	0.0%	28.6%	14.3%	14.3%	42.9%	0.0%	2.29	7
SSA's notice/actions were misleading	0.0%	0.0%	14.3%	14.3%	71.4%	0.0%	1.43	7
Was not aware of submission deadline	0.0%	28.6%	42.9%	0.0%	28.6%	0.0%	2.71	7
No reason given	0.0%	57.1%	14.3%	0.0%	28.6%	0.0%	3.00	7

11. Were there other reasons frequently given by UNREPRESENTED CLAIMANTS as the basis for submitting evidence less than five (5) business days before a hearing that are not listed in Question #10?		
Answer Options	Response Percent	Response Count
A) Yes	14.3%	1
B) No	57.1%	4
C) I do not know	28.6%	2

12. In the box below, please provide other reasons frequently given by UNREPRESENTED CLAIMANTS as the basis for submitting evidence less than five (5) business days before a hearing that were not listed in Question #10.	
Answer Options	Response Count
	1

[*NOTE:* Open-ended (text) response to Question #12 provided at end of numerical survey responses.]

13. In your office's cases in the past year, about how often were requests to submit evidence less than five business days before hearings or at hearings under the good cause exception granted? If you do not know, please select "N/A"

Answer Options	Almost Always	Frequently	Sometimes	Rarely	Almost Never	N/A	Rating Average	Response Count
Represented Claimants	14.3%	42.9%	28.6%	0.0%	14.3%	0.0%	3.43	7
Unrepresented Claimants	28.6%	42.9%	14.3%	14.3%	0.0%	0.0%	3.86	7

14. In your office's cases in the past year, about how often did claimants or their representatives notify your office in advance that they would submit written evidence after the conclusion of a hearing? If you do not know, please select "N/A"

Answer Options	Almost Always	Frequently	Sometimes	Rarely	Almost Never	N/A	Rating Average	Response Count
Represented Claimants	0.0%	14.3%	42.9%	42.9%	0.0%	0.0%	2.71	7
Unrepresented Claimants	0.0%	14.3%	57.1%	14.3%	0.0%	14.3%	3.00	7

15. In your office's cases in the past year, about how often did claimants or their representatives seek to submit—based on the good cause/materiality exception in 20 C.F.R. § 405.331(c) (i.e., good cause and reasonable possibility of affecting the outcome)—evidence after the conclusion of the hearing? If you do not know, please select "N/A"

Answer Options	Almost Always	Frequently	Sometimes	Rarely	Almost Never	N/A	Rating Average	Response Count
Represented Claimants	0.0%	14.3%	57.1%	14.3%	14.3%	0.0%	2.71	7
Unrepresented Claimants	0.0%	14.3%	42.9%	28.6%	0.0%	14.3%	2.83	7

16. Listed below are some possible reasons for submitting written evidence after a hearing has concluded. For each statement listed below, please indicate how frequently it was provided by CLAIMANTS' REPRESENTATIVES in your office in the past year as a basis for submitting evidence after a hearing had concluded: If you do not, please select "N/A"

Answer Options	Almost Always	Frequently	Sometimes	Rarely	Almost Never	N/A	Rating Average	Response Count
Did not know how to submit evidence	0.0%	0.0%	0.0%	16.7%	83.3%	0.0%	1.17	6
Recently received evidence from a medical provider or other source	0.0%	33.3%	50.0%	0.0%	16.7%	0.0%	3.00	6
Recently received evidence from claimant	0.0%	0.0%	33.3%	16.7%	50.0%	0.0%	1.83	6
Did not have enough time to submit evidence	0.0%	16.7%	16.7%	16.7%	50.0%	0.0%	2.00	6

16. Listed below are some possible reasons for submitting written evidence after a hearing has concluded. For each statement listed below, please indicate how frequently it was provided by CLAIMANTS' REPRESENTATIVES in your office in the past year as a basis for submitting evidence after a hearing had concluded: If you do not, please select "N/A"								
An unusual or avoidable circumstance beyond his/her control	0.0%	16.7%	33.3%	0.0%	50.0%	0.0%	2.17	6
SSA's notice/actions were misleading	0.0%	0.0%	0.0%	0.0%	100.0%	0.0%	1.00	6
Claimant's physical, mental, educational or linguistic limitation prevented timely submission	0.0%	16.7%	0.0%	33.3%	50.0%	0.0%	1.83	6
No reason given	0.0%	0.0%	33.3%	0.0%	66.7%	0.0%	1.67	6

17. Were there other reasons frequently given by CLAIMANTS' REPRESENTATIVES as the basis for submitting evidence after a hearing had concluded that are not listed in Question #16?		
Answer Options	Response Percent	Response Count
A) Yes	16.7%	1
B) No	50.0%	3
C) I do not know	33.3%	2

18. In the box below, please provide other reasons frequently given by CLAIMANTS' REPRESENTATIVES as the basis for submitting evidence after a hearing had concluded that were not listed in Question #16.	
Answer Options	Response Count
	1

[*NOTE:* Open-ended (text) response to Question #18 provided at end of numerical survey responses.]

19. Listed below are some possible reasons for submitting written evidence after a hearing has concluded. For each statement listed below, please indicate how frequently it was provided by UNREPRESENTED CLAIMANTS in your office in the past year as a basis for submitting evidence after a hearing had concluded: If you do not, please select "N/A"								
Answer Options	Almost Always	Frequently	Sometimes	Rarely	Almost Never	N/A	Rating Average	Response Count
Did not know how to submit evidence	0.0%	16.7%	66.7%	0.0%	16.7%	0.0%	2.83	6
Recently received evidence	0.0%	16.7%	66.7%	0.0%	16.7%	0.0%	2.83	6

19. Listed below are some possible reasons for submitting written evidence after a hearing has concluded. For each statement listed below, please indicate how frequently it was provided by UNREPRESENTED CLAIMANTS in your office in the past year as a basis for submitting evidence after a hearing had concluded: If you do not, please select "N/A"								
from a medical provider or other source								
Did not have enough time to submit evidence	0.0%	0.0%	16.7%	16.7%	66.7%	0.0%	1.50	6
A physical, mental, educational or linguistic limitation prevented him/her from timely submitting evidence	0.0%	16.7%	33.3%	33.3%	16.7%	0.0%	2.50	6
An unusual or avoidable circumstance beyond his/her control	0.0%	16.7%	33.3%	16.7%	33.3%	0.0%	2.33	6
SSA's notice/actions were misleading	0.0%	0.0%	0.0%	16.7%	83.3%	0.0%	1.17	6
Was not aware of submission deadline	0.0%	16.7%	16.7%	0.0%	66.7%	0.0%	1.83	6
No reason given	0.0%	0.0%	50.0%	0.0%	50.0%	0.0%	2.00	6

20. Were there other reasons frequently given by UNREPRESENTED CLAIMANTS as the basis for submitting evidence after a hearing had concluded that are not listed in Question #19?		
Answer Options	Response Percent	Response Count
A) Yes	16.7%	1
B) No	50.0%	3
C) I do not know	33.3%	2

21. In the box below, please provide other reasons frequently given by UNREPRESENTED CLAIMANTS as the basis for submitting evidence after a hearing had concluded that were not listed in Question #19.	
Answer Options	Response Count
	1

[*NOTE:* Open-ended (text) responses to Question #21 provided at end of numerical survey responses.]

22. In your office's cases in the past year, about how often were requests from claimants or their representatives to submit evidence after a hearing has concluded under the good cause/materiality exception granted? If you do not know, please select "N/A"

Answer Options	Almost Always	Frequently	Sometimes	Rarely	Almost Never	N/A	Rating Average	Response Count
Represented Claimants	0.0%	0.0%	0.0%	100.0%	0.0%	0.0%	2.00	1
Unrepresented Claimants	0.0%	100.0%	0.0%	0.0%	0.0%	0.0%	4.00	1

23. In your office's cases in the past year, when such requests were granted, about how much time were claimants or their representatives given to submit additional evidence? If you do not know, please select "N/A"

Answer Options	Less than 1 Week	1 Week	2 Weeks	3 Weeks	More than 3 Weeks	N/A	Rating Average	Response Count
Represented Claimants	0.0%	0.0%	100.0%	0.0%	0.0%	0.0%	3.00	1
Unrepresented Claimants	0.0%	0.0%	0.0%	100.0%	0.0%	0.0%	2.00	1

24. In your office's cases in the past year, about how often did claimants or their representatives contact the office after an initial extension of time to request additional extensions of time to submit evidence after the conclusion of the hearing? If you do not know, please select "N/A"

Answer Options	Almost Always	Frequently	Sometimes	Rarely	Almost Never	N/A	Rating Average	Response Count
Represented Claimants	0.0%	0.0%	0.0%	0.0%	100.0%	0.0%	1.00	1
Unrepresented Claimants	0.0%	0.0%	0.0%	100.0%	0.0%	0.0%	2.00	1

25. Based on your experience as a HOD in Region 1, what is your overall view of the pilot program in Region 1 (i.e., both the 75-day hearing notice requirement and the closing of the record five days before the hearing (absent showing of good cause) requirement)?

Answer Options	Response Percent	Response Count
A) Strongly favor	33.3%	2
B) Somewhat favor	50.0%	3
C) Neutral/Undecided	0.0%	0
D) Somewhat oppose	0.0%	0
E) Strongly oppose	16.7%	1

26. Based on your experience as a HOD in Region 1, what is your overall view of the 75-day hearing notice requirement portion of the pilot program in Region 1?

Answer Options	Response Percent	Response Count
A) Strongly favor	33.3%	2
B) Somewhat favor	33.3%	2
C) Neutral/Undecided	0.0%	0
D) Somewhat oppose	16.7%	1
E) Strongly oppose	16.7%	1

27. What do you think of the current rule in Region 1 requiring at least 75 days' notice of a hearing date—that is, does it give the right amount of advance notice to claimants and/or their representatives?

Answer Options	Response Percent	Response Count
A) Far too little time	0.0%	0
B) Too little time	0.0%	0
C) Just right	83.3%	5
D) Too much time	0.0%	0
E) Far too much time	16.7%	1

28. In your opinion, what would be the right amount of notice (in days) to give claimants and/or their representatives of their scheduled hearing date? Please provide your answer in the box below.

Answer Options	Response Count
	1

[*NOTE:* Open-ended (text) response to Question #28 provided at end of numerical survey responses.]

29. Based on your experience as a HOD at SSA, what is your view of the closing of the record five days before the hearing (absent showing of good cause) requirement portion of Region 1's pilot program?

Answer Options	Response Percent	Response Count
A) Strongly favor	83.3%	5

29. Based on your experience as a HOD at SSA, what is your view of the closing of the record five days before the hearing (absent showing of good cause) requirement portion of Region 1's pilot program?		
B) Somewhat favor	16.7%	1
C) Neutral/Undecided	0.0%	0
D) Somewhat oppose	0.0%	0
E) Strongly oppose	0.0%	0

30. What do you think of the current rule in Region 1 closing the evidentiary record five (5) days before the hearing (absent a showing of good cause)—that is, does it give case managers the right amount of time to properly prepare the evidentiary file before ALJs review of the record before a hearing?		
Answer Options	Response Percent	Response Count
A) Far too little time	0.0%	0
B) Too little time	16.7%	1
C) Just right	83.3%	5
D) Too much time	0.0%	0
E) Far too much time	0.0%	0

31. In your opinion, how many days before the hearing should claimants and/or their representatives be required to submit evidence in order to give case managers sufficient time to properly prepare the evidentiary file before ALJs review of the record before a hearing? Please provide your response in the box below.	
Answer Options	Response Count
	1

[*NOTE:* Open-ended (text) response to Question #31 provided at end of numerical survey responses.]

32. In your opinion, should the current pilot program in Region 1 be expanded to other SSA Regions?		
Answer Options	Response Percent	Response Count
A) Strongly Agree	33.3%	2
B) Somewhat Agree	50.0%	3
C) Neutral/Undecided	0.0%	0

32. In your opinion, should the current pilot program in Region 1 be expanded to other SSA Regions?		
D) Somewhat Disagree	0.0%	0
E) Strongly Disagree	16.7%	1

33. If you have any additional thoughts or perspectives on Region 1's pilot program and/or the possibility of expanding that pilot program to other SSA Regions, please provide them in the box below.	
Answer Options	Response Count
	4

[*NOTE:* Open-ended (text) responses to Question #33 provided at end of numerical survey responses.]

* * * *

Responses to Survey Questions with Open-Ended Response Fields:

9. In the box below, please provide other reasons frequently given by CLAIMANTS' REPRESENTATIVES as the basis for submitting evidence less than five (5) business days before a hearing that were not listed in Question #7.	
Response #	Response Text
1	Medical providers did not comply
2	Rep's office attempted to obtain evidence from provider, failed to diligently follow up or ask the HO for assistance, and then alleges the evidence was received with 5 day window.

12. In the box below, please provide other reasons frequently given by UNREPRESENTED CLAIMANTS as the basis for submitting evidence less than five (5) business days before a hearing that were not listed in Question #10.	
Response #	Response Text
1	Evidence was not available (medical appointment was held just prior to 5 day window).

18. In the box below, please provide other reasons frequently given by CLAIMANTS' REPRESENTATIVES as the basis for submitting evidence after a hearing had concluded that were not listed in Question #16.	
Response #	Response Text
1	Reps request to allow the record to remain open for additional evidence in response to hearing testimony.

21. In the box below, please provide other reasons frequently given by UNREPRESENTED CLAIMANTS as the basis for submitting evidence after a hearing had concluded that were not listed in Question #19.	
Response #	Response Text
1	Records from upcoming medical appointments

28. In your opinion, what would be the right amount of notice (in days) to give claimants and/or their representatives of their scheduled hearing date? Please provide your answer in the box below.	
Response #	Response Text
1	30 days

31. In your opinion, how many days before the hearing should claimants and/or their representatives be required to submit evidence in order to give case managers sufficient time to properly prepare the evidentiary file before ALJs review of the record before a hearing? Please provide your response in the box below.	
Response #	Response Text
1	20 days

33. If you have any additional thoughts or perspectives on Region 1's pilot program and/or the possibility of expanding that pilot program to other SSA Regions, please provide them in the box below.	
Response #	Response Text
1	The 75 day notice requirement is onerous and makes scheduling difficult
2	Before DSI, representatives had no incentive to submit evidence timely. In fact, they held off on submission as it added processing time and gave them more retroactive funds to ask for under the Fee Process
3	There should be built-in exceptions to the 75-day Notice requirement. Often we can backfill an Aged or Critical case 30 or 45 days out, but the rep refuses to "waive 75-day" notice; this does not best serve the public.
4	Responses regarding 5-day evidence submission are tempered by actual experience with partial adherence outside of the hearing office. We have received numerous remands from both courts and the Appeals Council either based on post-hearing or post-decision evidence, or seemingly finding a relatively innocuous reason for remand, thereby requiring consideration of the late evidence.

3. Survey of ALJs in Regions II – X

1. How long have you been an ALJ at SSA?		
Answer Options	Response Percent	Response Count
A) Less than 5 years	48.0%	343
B) 5-10 years	18.9%	135
C) 10-15 years	6.4%	46
D) More than 15 years	26.6%	190

2. Which SSA Region do you currently work in?		
Answer Options	Response Percent	Response Count
A) Region 2	8.5%	60
B) Region 3	11.4%	81
C) Region 4	25.8%	183
D) Region 5	20.0%	142
E) Region 6	10.7%	76
F) Region 7	5.8%	41
G) Region 8	2.4%	17
H) Region 9	10.0%	71
I) Region 10	5.5%	39

3. In the past year, about how long before a hearing were notices of hearing typically sent by your office to claimants?		
Answer Options	Response Percent	Response Count
A) Less than 30 days before the hearing	5.1%	36
B) 30 days before the hearing	14.9%	105
C) 45 days before the hearing	20.2%	143
D) 60 days before the hearing	26.2%	185
E) 90 days before the hearing	11.3%	80
F) 120 days before the hearing	1.0%	7
G) More than 120 days before the hearing	1.1%	8

3. In the past year, about how long before a hearing were notices of hearing typically sent by your office to claimants?		
H) Don't Know/Not Sure	20.2%	143

4. In the past year, about how long before a hearing did you typically review the evidentiary file for a case?		
Answer Options	Response Percent	Response Count
A) The day of the hearing	4.2%	30
B) 1-3 days before the hearing	53.8%	380
C) 4-6 days before the hearing	12.6%	89
D) 1 week before the hearing	14.9%	105
E) 2 weeks before the hearing	3.7%	26
F) More than 2 weeks before the hearing	10.8%	76

5. In the past year, about how often did you schedule a supplemental hearing because additional material written evidence was submitted during or after a hearing?								
Answer Options	Almost Always	Frequently	Sometimes	Rarely	Almost Never	N/A	Rating Average	Response Count
Represented Claimants	0.6%	9.1%	25.0%	27.0%	35.9%	2.4%	2.09	704
Unrepresented Claimants	3.7%	10.5%	20.6%	24.9%	36.8%	3.6%	2.16	704

6. In the past year, about how often did you order a consultative examination in cases?								
Answer Options	Almost Always	Frequently	Sometimes	Rarely	Almost Never	N/A	Rating Average	Response Count
Represented Claimants	2.3%	9.5%	49.6%	29.0%	9.2%	0.4%	2.66	704
Unrepresented Claimants	3.7%	18.5%	51.4%	19.6%	6.4%	0.4%	2.93	704

7. In your cases in the past year, about how often was all material written evidence submitted by claimants at least five (5) business days before the hearing?							
Answer Options	Almost Always	Frequently	Sometimes	Rarely	Almost Never	Rating Average	Response Count
Represented Claimants	3.7%	16.8%	34.7%	27.9%	16.9%	2.62	703
Unrepresented Claimants	2.6%	9.0%	18.6%	27.9%	42.0%	2.02	703

8. In your cases in the past year, about how often was all material written evidence submitted by claimants between one (1) and four (4) business days before the hearing?

Answer Options	Almost Always	Frequently	Sometimes	Rarely	Almost Never	Rating Average	Response Count
Represented Claimants	9.5%	43.8%	29.0%	11.4%	6.3%	3.39	703
Unrepresented Claimants	3.6%	13.2%	22.8%	28.4%	32.0%	2.28	703

9. In your cases in the past year, about how often was the majority of material written evidence submitted by claimants on the day of the hearing?

Answer Options	Almost Always	Frequently	Sometimes	Rarely	Almost Never	Rating Average	Response Count
Represented Claimants	3.1%	20.1%	37.0%	24.5%	15.2%	2.71	702
Unrepresented Claimants	5.8%	14.5%	30.1%	25.4%	24.2%	2.52	702

10. In your cases in the past year, about how often did claimants or their representatives notify you or your office in advance to let you know that they would submit material written evidence shortly before (i.e. less than 5 days before) or during a hearing?

Answer Options	Almost Always	Frequently	Sometimes	Rarely	Almost Never	Rating Average	Response Count
Represented Claimants	0.1%	0.9%	10.1%	27.4%	61.5%	1.51	701
Unrepresented Claimants	0.0%	0.0%	3.1%	11.8%	85.0%	1.18	701

11. Listed below are some possible reasons for submitting material written evidence less than five (5) business days before a hearing. For each statement listed below, please indicate how frequently it was used by CLAIMANTS' REPRESENTATIVES in the past year as a basis for submitting material written evidence less than five (5) business days before a hearing:

Answer Options	Almost Always	Frequently	Sometimes	Rarely	Almost Never	N/A	Rating Average	Response Count
Did not know how to submit evidence	0.4%	0.7%	1.3%	7.4%	68.5%	21.6%	1.18	699
Recently received evidence from a medical provider or other source	24.5%	55.1%	17.0%	2.0%	1.1%	0.3%	4.00	699
Recently received evidence from claimant	13.4%	43.9%	29.9%	7.9%	4.1%	0.7%	3.55	699
Did not have enough time to submit evidence	2.4%	8.3%	18.6%	24.3%	39.9%	6.4%	2.03	699
An unusual or avoidable circumstance beyond his/her control	2.1%	8.9%	19.5%	27.5%	37.2%	4.9%	2.07	699
SSA's notice/actions were misleading	0.1%	0.1%	0.7%	3.9%	67.2%	27.9%	1.09	699

11. Listed below are some possible reasons for submitting material written evidence less than five (5) business days before a hearing. For each statement listed below, please indicate how frequently it was used by CLAIMANTS' REPRESENTATIVES in the past year as a basis for submitting material written evidence less than five (5) business days before a hearing:								
Claimant's physical, mental, educational or linguistic limitation prevented timely submission	0.3%	0.7%	8.4%	18.9%	58.9%	12.7%	1.45	699
No reason given	13.4%	36.3%	22.2%	8.7%	13.0%	6.3%	3.30	699
Other/Not listed above	2.7%	5.7%	10.0%	5.0%	16.9%	59.7%	2.32	699

12. Listed below are some possible reasons for submitting material written evidence less than five (5) business days before a hearing. For each statement listed below, please indicate how frequently it was used by UNREPRESENTED CLAIMANTS in the past year as a basis for submitting material written evidence less than five (5) business days before a hearing:								
Answer Options	Almost Always	Frequently	Sometimes	Rarely	Almost Never	N/A	Rating Average	Response Count
Did not know how to submit evidence	10.4%	23.1%	29.3%	6.7%	20.5%	10.0%	2.96	689
Recently received evidence from a medical provider or other source	5.7%	29.0%	35.0%	11.3%	13.1%	6.0%	3.03	689
Did not have enough time to submit evidence	1.3%	8.3%	16.0%	20.2%	39.9%	14.4%	1.96	689
A physical, mental, educational or linguistic limitation prevented him/her from timely submitting evidence	1.0%	6.1%	21.6%	21.3%	37.4%	12.5%	1.99	689
An unusual or avoidable circumstance beyond his/her control	1.6%	6.1%	19.2%	21.2%	39.3%	12.6%	1.96	689
SSA's notice/actions were misleading	0.6%	2.8%	6.8%	14.5%	52.2%	23.1%	1.50	689
Was not aware of submission deadline	10.6%	15.8%	17.0%	9.3%	27.6%	19.7%	2.66	689
No reason given	24.2%	35.0%	18.3%	3.8%	10.9%	7.8%	3.63	689
Other/Not listed above	4.1%	6.0%	7.4%	5.4%	17.1%	60.1%	2.36	689

13. In your cases in the past year, about how often did claimants or their representatives submit material written evidence after the conclusion of the hearing?

Answer Options	Almost Always	Frequently	Sometimes	Rarely	Almost Never	Rating Average	Response Count
Represented Claimants	4.5%	57.2%	34.4%	3.0%	0.9%	3.61	689
Unrepresented Claimants	11.5%	28.2%	31.8%	20.5%	8.1%	3.14	689

14. In your cases in the past year, about how often did claimants or their representatives notify you or your office in advance that they would submit material written evidence after the conclusion of a hearing?

Answer Options	Almost Always	Frequently	Sometimes	Rarely	Almost Never	Rating Average	Response Count
Represented Claimants	4.8%	12.0%	30.6%	29.0%	23.5%	2.46	689
Unrepresented Claimants	2.3%	4.2%	14.1%	28.2%	51.2%	1.78	689

15. Listed below are some possible reasons for submitting material written evidence after a hearing has concluded. For each statement listed below, please indicate how frequently it was used by CLAIMANTS' REPRESENTATIVES in the past year as a basis for submitting material written evidence after a hearing has concluded:

Answer Options	Almost Always	Frequently	Sometimes	Rarely	Almost Never	N/A	Rating Average	Response Count
Did not know how to submit evidence	0.1%	0.1%	1.2%	4.7%	63.8%	30.1%	1.11	685
Recently received evidence from a medical provider or other source	16.5%	46.6%	27.7%	4.8%	3.2%	1.2%	3.69	685
Recently received evidence from claimant	7.2%	31.4%	35.9%	13.0%	9.8%	2.8%	3.14	685
Did not have enough time to submit evidence	2.5%	6.9%	16.8%	22.0%	41.2%	10.7%	1.96	685
An unusual or avoidable circumstance beyond his/her control	1.6%	6.7%	19.6%	22.9%	40.4%	8.8%	1.97	685
SSA's notice/actions were misleading	0.3%	0.1%	0.6%	3.4%	64.2%	31.4%	1.09	685
Claimant's physical, mental, educational or linguistic limitation prevented timely submission	0.1%	0.6%	9.2%	16.6%	56.9%	16.5%	1.45	685
No reason given	13.3%	25.7%	22.3%	7.0%	20.4%	11.2%	3.05	685
Other/Not listed	3.4%	6.7%	7.6%	5.3%	20.6%	56.5%	2.24	685

16. Listed below are some possible reasons for submitting material written evidence after a hearing has concluded. For each statement listed below, please indicate how frequently it was used by UNREPRESENTED CLAIMANTS in the past year as a basis for submitting material written evidence after a hearing has concluded:

Answer Options	Almost Always	Frequently	Sometimes	Rarely	Almost Never	N/A	Rating Average	Response Count
Did not know how to submit evidence	7.2%	16.1%	25.1%	10.6%	27.7%	13.3%	2.59	682
Recently received evidence from a medical provider or other source	6.5%	26.2%	36.7%	8.8%	15.0%	6.9%	3.00	682
Did not have enough time to submit evidence	2.5%	7.6%	16.3%	17.2%	40.3%	16.1%	1.98	682
A physical, mental, educational or linguistic limitation prevented him/her from timely submitting evidence	0.7%	4.4%	19.6%	16.9%	43.5%	14.8%	1.85	682
An unusual or avoidable circumstance beyond his/her control	1.8%	6.3%	18.3%	19.5%	39.0%	15.1%	1.97	682
SSA's notice/actions were misleading	0.4%	1.3%	5.6%	10.7%	56.6%	25.4%	1.37	682
Was not aware of submission deadline	7.2%	14.2%	19.8%	6.0%	31.2%	21.6%	2.49	682
No reason given	19.2%	24.9%	19.6%	5.7%	17.2%	13.3%	3.27	682
Other/Not listed	3.4%	5.4%	7.5%	3.1%	21.1%	59.5%	2.18	682

17. Based on your experience as an ALJ at SSA, what is your overall view of the pilot program in Region 1 (i.e., both the 75-day hearing notice requirement and the closing of the record five days before the hearing (absent showing of good cause) requirement)?

Answer Options	Response Percent	Response Count
A) Strongly favor	63.0%	430
B) Somewhat favor	17.7%	121
C) Neutral/Undecided	9.8%	67
D) Somewhat oppose	4.5%	31
E) Strongly oppose	4.8%	33

18. Based on your experience as an ALJ at SSA, what is your overall view of the 75-day hearing notice requirement portion of the pilot program in Region 1?		
Answer Options	Response Percent	Response Count
A) Strongly favor	40.0%	273
B) Somewhat favor	24.2%	165
C) Neutral/Undecided	19.4%	132
D) Somewhat oppose	9.5%	65
E) Strongly oppose	6.9%	47

19. What do you think of the current rule in Region 1 requiring at least 75 days' notice of a hearing date—that is, does it give the right amount of advance notice to claimants and/or their representatives?		
Answer Options	Response Percent	Response Count
A) Far too little time	0.3%	2
B) Too little time	2.8%	19
C) Just right	51.5%	351
D) Too much time	39.4%	269
E) Far too much time	6.0%	41

20. In your opinion, what would be the right amount of notice (in days) to give claimants and/or their representatives of their scheduled hearing date? Please provide your answer in the box below.	
Answer Options	Response Count
	333

[*NOTE:* Open-ended (text) responses to Question #20 provided at end of numerical survey responses.]

21. Based on your experience as an ALJ at SSA, what is your view of the closing of the record five days before the hearing (absent showing of good cause) requirement portion of Region 1's pilot program?		
Answer Options	Response Percent	Response Count
A) Strongly favor	76.2%	520
B) Somewhat favor	12.0%	82

21. Based on your experience as an ALJ at SSA, what is your view of the closing of the record five days before the hearing (absent showing of good cause) requirement portion of Region 1's pilot program?		
C) Neutral/Undecided	2.9%	20
D) Somewhat oppose	3.7%	25
E) Strongly oppose	5.1%	35

22. What do you think of the current rule in Region 1 closing the evidentiary record five (5) days before the hearing (absent a showing of good cause)—that is, does it give ALJs the right amount of time to adequately review the evidentiary record before the hearing?		
Answer Options	Response Percent	Response Count
A) Far too little time	2.9%	20
B) Too little time	20.9%	142
C) Just right	72.8%	496
D) Too much time	2.8%	19
E) Far too much time	0.6%	4

23. In your opinion, how many days before the hearing should claimants and/or their representatives be required to submit evidence in order to give ALJs sufficient time to review the record? Please provide your response in the box below.	
Answer Options	Response Count
	185

[*NOTE:* Open-ended (text) responses to Question #23 provided at end of numerical survey responses.]

24. In your opinion, should the current pilot program in Region 1 be expanded to other SSA Regions?		
Answer Options	Response Percent	Response Count
A) Strongly Agree	54.6%	101
B) Somewhat Agree	15.7%	29
C) Neutral/Undecided	13.5%	25
D) Somewhat Disagree	2.7%	5
E) Strongly Disagree	13.5%	25

25. Listed below are some possible effects expanding Region 1's pilot program to other SSA Regions may have in your cases. For each item listed in the box below, please indicate your level of agreement—based on your own opinion and experience as an ALJ—with the following statement: "I believe expanding the pilot program in Region 1 to other SSA Regions will ….."

Answer Options	Strongly Agree	Agree	Neither Agree or Disagree	Disagree	Strongly Disagree	Rating Average	Response Count
Allows me to review the evidentiary file earlier	31.7%	31.1%	26.7%	6.8%	3.8%	3.80	679
Encourage parties to timely submit evidence before hearings	65.8%	26.2%	3.1%	3.4%	1.5%	4.52	679
Reduce the need for supplemental hearings	45.4%	31.1%	14.1%	7.2%	2.2%	4.10	679
Reduce the need for consultative examinations	12.4%	19.3%	43.7%	19.6%	5.0%	3.14	679
Allow me to adjudicate cases more efficiently	53.0%	29.3%	11.0%	3.5%	3.1%	4.26	679
Allow me to adjudicate cases more fairly	36.8%	23.0%	26.7%	8.0%	5.6%	3.77	679
Improve the evidentiary record	54.6%	27.5%	11.8%	3.4%	2.7%	4.28	679
Have no effect on how I adjudicate cases	5.0%	7.5%	21.5%	30.9%	35.1%	2.16	679

26. Listed below are some possible effects that expanding Region 1's pilot program to other SSA Regions may have on claimants and/or their representatives. For each item listed in the box below, please indicate your level of agreement—based on your own opinion and experience as an ALJ—with the following statement: "I believe expanding the pilot program in Region 1 to other SSA Regions….."

Answer Options	Strongly Agree	Agree	Neither Agree or Disagree	Disagree	Strongly Disagree	Rating Average	Response Count
Would make it more difficult for unrepresented claimants to understand the process	6.5%	15.2%	22.5%	37.1%	18.6%	2.54	676
Would unduly formalize the hearing process	2.5%	4.1%	11.8%	42.8%	38.8%	1.89	676
Would interfere with a claimant's right to a full and fair hearing	3.7%	3.3%	10.1%	37.9%	45.1%	1.83	676
Would prejudice claimants who secure representation close to the hearing date	3.8%	12.1%	16.0%	42.8%	25.3%	2.26	676
Would lead to incomplete evidentiary records	3.7%	8.3%	14.2%	42.6%	31.2%	2.11	676
Would be difficult to comply with because medical providers delay in responding to requests for medical	6.7%	15.8%	18.0%	39.1%	20.4%	2.49	676

26. Listed below are some possible effects that expanding Region 1's pilot program to other SSA Regions may have on claimants and/or their representatives. For each item listed in the box below, please indicate your level of agreement—based on your own opinion and experience as an ALJ—with the following statement: "I believe expanding the pilot program in Region 1 to other SSA Regions….."							
records							
Fails to account for a claimant's need to submit new (or updated) medical evidence due to changes in his/her medical condition	6.8%	12.4%	17.8%	40.1%	22.9%	2.40	676
Would not appear to have any effect on claimants and/or their representatives	10.7%	17.6%	27.1%	30.0%	14.6%	2.80	676

27. If you have any additional thoughts or perspectives on Region 1's pilot program and/or the possibility of expanding that pilot program to other SSA Regions, please provide them in the box below.	
Answer Options	Response Count
	318

[*NOTE:* Open-ended (text) responses to Question #27 provided at end of numerical survey responses.]

* * * *

Responses to Survey Questions with Open-Ended Response Fields:

20. In your opinion, what would be the right amount of notice (in days) to give claimants and/or their representatives of their scheduled hearing date? Please provide your answer in the box below.	
[Note: Statistics complied below are calculated from numerical responses to Question #20.]	
Average # of Days Suggested by Respondents (Avg) =	49
Most Frequently Suggested # of Days (Mode) =	60
Minimum Suggested Number of Days (Min) =	10
Maximum Suggested Number of Days (Max) =	150
Number of Responses Suggesting Less Than 75 Days =	311
Number of Responses Suggesting More Than 75 Days =	16
Percentage of Responses Suggesting Less Than 75 Days=	95%
Percentage of Responses Suggesting More Than 75 Days=	5%

23. In your opinion, how many days before the hearing should claimants and/or their representatives be required to submit evidence in order to give ALJs sufficient time to review the record? Please provide your response in the box below.	
[Note: Statistics complied below are calculated from numerical responses to Question #23.]	
Average # of Days Suggested by Respondents (Avg) =	12
Most Frequently Suggested # of Days (Mode) =	10
Minimum Suggested Number of Days (Min) =	1
Maximum Suggested Number of Days (Max) =	75
Number of Responses Suggesting Less Than 5 Days =	15
Number of Responses Suggesting More Than 5 Days =	148
Percentage of Responses Suggesting Less Than 5 Days =	9.2%
Percentage of Responses Suggesting More Than 5 Days =	90.8%

27. If you have any additional thoughts or perspectives on Region 1's pilot program and/or the possibility of expanding that pilot program to other SSA Regions, please provide them in the box below.	
Response #	Response Text
1	I am concerned mostly about trying to schedule a hearing to far in advance, rather through the Electronic buisiness process attorneys should now know when their cases are in RTS. unrepped claimants would likly forget about their hearings if they are too far in advance and we would have more no shows and dismissals which would ultimately mean nore second and third applications
2	Notice of hearing should include suggestions on how to prepare for the hearing, i.e., make sure records are up to date, brief summarry of the most important evidence relied on with Exhibit numbers and page numbers. Representatives should be able to identifiy what listings are met and why. If no listing is identified what exertional level is claimant at and why, i.e., what are their limitations?
3	No prejudice. Any attorney practicing in state court has deadlines - you cannot submit evidence after the trial. No reason why we can't have similar rules here. It is unduly burdensome on judge to get stacks of evidence after hearing. The record should be closed 5 days prior. If a rep doesn't have record ready by then, he/she just isn't doing his/her job. On another note - let's also work to get rid of non-attorney reps. They are not licensed to practice law, and all they are doing in SSA hearings is attempting to practice law without a license. Usually the non-attorney reps are my biggest offenders re submitting evidence post hearing, not being prepared for hearing, etc. etc.
4	As a practical matter, the proposed rule change would have very little effect on the way I decide claims, but might allow for more timely decisions.
5	Close the record 3 days before the hearing. Notify of hearing date/time 35 to 40 days before hearing.
6	None at this time.
7	My experience is that I I am forced to hold the record open in most cases because the representative has not looked at the evidence of record and then spoken to his/her client to determine what tretament records are missing prior to the hearing. I think the expansion of the pilot would force representative to be more diligent.

27. If you have any additional thoughts or perspectives on Region 1's pilot program and/or the possibility of expanding that pilot program to other SSA Regions, please provide them in the box below.	
8	How lenient is the program in assessing good cause for late submission? The reps will jump on that bandwagon and we may get bogged down with adjudicating good cause issues. Also, the AC will just throw everything back at us.
9	I believe almost any attempt to improve the system is overdue and should be seriously considered.As it stands the proceedure is so cumbersome any tedious that I believe it will eventually grind to an untimely demise unless drastic measures are undertaken.
10	We usually request records for unrepresented claimant's. Most fail to submit the updated information of their treating providers when requested which prevents us from doing this prior to hearing. That should be a requirement if we are expected to obtain evidence for them prior to hearing.
11	I base my views on almost 5 years experience (as of this summer) and 2 offices. Many reps do not request records until shortly before or after the hearing date; some have no intention of obtaining particular records unless requested by the ALJ. Something must be done about this practice to ensure better development of the record by representatives before the hearing and avoid extended delays after hearings to wait for records or remands after records are obtained. Many unrep clmts do not secure their records and development is required by the Hearing Office. The pilot program would likely not have impact on this problem.
12	Many reps wait until the last moment before the hearing to do anything on their cases. Most likely more efficient for their practice and also generates higher fees than getting an on-the-record favorable determination by Senior Attorneys screening cases.
13	I served on the Decision Review Board (DRB), established under the DSI program as an appellate body similar to the Appelas Council for Regions II through X, albeit with different reviewing authority. From 2007 through 2011, I reviewed hundreds of decisions issued by ALJs in Region I. I found that the procedural enhancements of the DSI program were not cumbersome to either represented or unrepresented claimants. The Social Security bar quickly adapted to the new rules and submitted evidence within the regulatory time frames. Similalry, the ALJs allowed the submission of evidence outside the deadlines for good cause. I do not recall an instance when the evidence was excluded or there was an abuse of discretion in excluding evidence. I was very pleased to find out that, despite the concerns raised by some, this was not an issue that arose in our review of the cases. A quasi-judicial agency like SSA, handling an ever-growing and complex workload, requires procedural rules, such as those implemented in Region I, to ensure the efficient and effective adjudicaiton of cases. We appreciate greatly your consideration of this matter, and the opportunity to offer input in this survey.
14	Institute an effective means of enforcing the 5 day rule
15	SSA needs formal rules - The concept of "non-adversarial" and ALJs wearing three hats in our current cultre is an illusion. Claimant's are represented by licensed representatives (attorneys) in the majority of cases - these representatives are subject to no meaningful rules of conduct and procedure - the burden is still on an ALJ to do everything. The government needs to be represented by attorneys. Judges need to be empowered and given more control over processing cases - i.e., use of pre-hearing orders, stipulations, and imposing sanctions for non-compliance. The concept of Post hearing development opens the gate for ongoing problems - evidence is not submitted on the hearing dates and Reps/Claimants don't have to have the evidence in - Much more could be written about this problem and remedies - AALJ has been recommending changes in processes and standards for years but the Agency does not elect to make changes that would make the system more efficient

27. If you have any additional thoughts or perspectives on Region 1's pilot program and/or the possibility of expanding that pilot program to other SSA Regions, please provide them in the box below.	
16	SSA in this limited resource environment needs to change the way it has done business in the past. The combination of a Hearing Notice going out at the 20 day mark with the goal of reaching 30-45 day mark; no deadline for exhibit submission; short staffing in the case techinician departnent; and ALJ frequent review of post hearing evidence prior to editing a decision is a perfect formula for a backlog, inefficient ALJ time usage, less quality hearings and decisions, and staff "burnout." I have repeatedly asked the existing HOCALJ to send my hearing notice out 60-90 days before the hearing. This year in an ALJ meeting the HOCALJ stated that the 60-90 day hearing notice goal has never happened in my office and will never happen in my office. I told the HOCALJ that prior to the time she came to my office as the HOCALJ, my hearings were scheduled 60-90 days before the hearing at my request which was much more efficient and it was a tool that I utilized as an ALJ to address the largest firm in our area who regularly does not start to gather evidence until the Hearing Notice is received. The response from the HOCALJ was that the hearing notice had never been issued and would not be issued at the 60-90 mark under her "watch" but the office was trying to reach the 30-45 day mark. The change in business needs to either be that the HOCALJ functions as the administrative supervisor that she is so that SSA can receive the benefit of the training and experience of the professionals they have hired. Thus, scheduling can by managed by the individual ALJ depending on the conditions of the caseload that the ALJ works. Alternatively, a national scheduling policy can be implemented similar to Region 1. If a national policy is implemented, I recommend that the hearing notice be issued 75 days before the hearing and that there be a 14 calendar day filing deadline for all exhibits. The five day filing deadline is too short becuase it is reasonably foreseeable that I will not have available staff to exhibit the documents and send the documents to the expert witness before the hearing. More importantly, it will allow the ALJ to thoroughly and efficiently review the file rather than reviewing files in a "heated rush" all of the time. I believe that the SSA has a serious ALJ morale and looming "burn out" issue with the ALJ corp. More importantly however, the 75 day hearing notice coupled with a 14 day filing deadline with a good cause exception enables the ALJ to better serve the public with timely and legally sufficient decisions. There is simply no reason why the large number of representatives that are paid a substantial sum for their services can not manage their business to file evidence 14 calendar days before the hearing with a good cause exception. The existing rule of law of procedural leniencancy to an unrepresented claimant and the good cause exception is sufficient to enable the ALJ to manage the unrepresented claimant with 75/14 system. I strongly urge the SSA, that if it will not allow me to lead and manage my own docket, that it do the right thing by showing strong leadership and issue a national policy of 75 day hearing notice and 14 day exhibit list filing deadlines with a good cause exception for all cases.
17	An applicant can file a new application the day after receiving an unfavorable ALJ decision. There should be a substantial waiting period before a claimant can file a new application for disability after an unfavorable ALJ decision. Otherwise, the faster we process the cases, the more cases are filed over a given time frame, and the more proceedings for us to handle.
18	As with most of SSA's "pilot" programs, there is very little all regions have in common, and many regions make up their own rules anyway. For example, the prototype program is determined by state and not by region. Can there really be so few states in which the prototype works? Why doesn't it work in the majority of states? My point is that whether a new initiative works is dependent upon each region and each state within a region. Rules that are enforceable in some regions are not enforced in others. I'm all in favor of trying new initiatives, and appreciate the RARE occasion when ALJs are even asked their opinions. But if you think that a nation-wide program is going to be applied the same way in every region and every state, you don't know ODAR.
19	This may result in a better product from claimant's representatives but it could hurt unrepresented claimants. If hearing offices are doing proper prehearing development in unrepresented cases, it

27. If you have any additional thoughts or perspectives on Region 1's pilot program and/or the possibility of expanding that pilot program to other SSA Regions, please provide them in the box below.	
	shouldn't have an impact. From my experience, my office is not doing a lot of prehearing development. I am routinely ordering records for unrepresented claimants post hearing.
20	The Pilot allowing the record to be closed would go a long way to preventing a few of the large firm representatives from withholding evidence at the hearing level but presenting it at the AC level under the guise of "new and material evidence" to generate a remand and, in the case of an award, allow for a fee petition and larger fees to the rep
21	There should be a closed record and it should be kept closed. The systm now just keeps moving things in a circle.
22	Under the pilot, if a case gets cancelled (WDDI, claimant moved, claimant in jail), can another case be scheduled in that slot - even if there's less than 75 advance notice? I strongly endorse filling slots whenever possible, especially with unrepped claimants. The hearing slot then becomes useful for identifying missing evidence to be able to conduct a full hearing at a later date. Many unrepped cases need to go into POST-hearing development, and many of those require supplemental hearings.
23	The record also needs to close at the time of the hearing unles the ALJ agrees to keep it open. Most claimants are represented by attorneys, who are used to dealines in submitting evidence; I never appeared before one that let me keep dropping evidence into the record when I wanted to.
24	I think 60 days is enough notice, however, if it were 75, then i would definitely agree that closing the record at 5 days would encourage representatives to get the evidence in early. The good cause provision allows ALJs to make exceptions for uncooperative MDs and for unrepresented claimants who don't understand the process. However, I'd say 95% of the represented cases I deal with have medical evidence submitted late in the day on the day before the hearing and/or the morning OF the hearing. A few times, evidence popped into the recrod while the hearing was being held! On top of this, the record is still incomplete. I have had to schedule supplemental hearings after evidence came in post-hearing, that contradicted the testimony at hearing. The contradictions had to be dealt with at supplemental hearing. I understand NOSSCRs concerns, but I believe the good cause exception addresses those concerns. A reasonable ALJ should be able to grant an extension if there is good cause.
25	Judges should have an opportunity to review the cases before they are scheduled.
26	Unfortunately, in my office there is very little, if any, development done by the staff. The reps know that we have an obligation to develop the record. Therefore, in many cases the rep will wait for the hearing to ask that I order the records for them. As such, there is serious delay in the processing of the case load. There is either supplemental hearing or the matter sits in post. I am in favor of any action which will hold the representatives at least somewhat accountable for the record. The representatives must be required to make some effort to obtain the records necessary to establish their case. As long as the Judge has discretion of good cause to allow further development, I am in full favor of this program. I also strongly feel that the record should have a date certain to be closed. This would alleviate so much delay as well as appeals for new and material evidence. Again, with Judges discretion. Particularly with unrepresented claimants.
27	Would: • Improved the quality of representation; • Reduce the incidence of low merit cases; • Improve the quality of evidence & reduce the total volume of medical exhibits; • Significantly reduce processing time 2* post-hearing delays in record completion.

27. If you have any additional thoughts or perspectives on Region 1's pilot program and/or the possibility of expanding that pilot program to other SSA Regions, please provide them in the box below.	
28	The questions about unrepresented claimants' submission of evidence seem to miss the point that these claimants seldom submit any evidence. The burden falls on the judge to develop the record. Mangment fails to do any meaningful follow-up with the staff to develop the record before the hearing. Too many hand touch the file and it becomes no one's job to follow up.
29	Give judges authority to sanction noncompliance by continuing to a new hearing date with notice by personal recognizance and/or reducing attorney fees awarded.
30	Agree that there must be requirements for timely record submission but need to have less restrictive rules for unrepresented claimants.
31	failure to require records in advance of hearing is the major reaon for post-hearing work and delays, as well as added expense for doing the work twice, including expert fees to prepare for the hearing, then to review the new information separately--or for supplemental hearings. The pilot program procedure is FAR superior. Most of trhe late records are the result of carelessness or lazy reps who could have gotten them earlier if they started sooner--frequently they are records they only requested 15-20 days before the hearing or may be records created 2-3 YEARS before the hearing date and claearly available if they sought them sooner.
32	i believe a more formal proceeding, inclusive of Dept representatives at hearing, would more effectively and fully develop the record.
33	Closing the record would have no adverse impact on claimants. In the event of a remand by the Appeals Council or the District Court, the ALJ considers a closed, which would expedite a make a remand proceeding more efficient. Give the ALJ discretion to consider extraordinary circumstances or good cause to allow new and material evidence that shows a change of circumstances. Alternatively, if new and material events occur after the initial evidentiary hearing might, allow the claimant to file a new application as to those new events.
34	As long as claimants are subject to cdrs the record is never closed.
35	LIMIT APPS, CHARGE A FILING FEE, AND APPEAL FEE. MOVE CHILDRENS CASES TO SR. ATTY TO HANDLE. REQUIRE MORE THAN "I DISAGREE" TO APPEAL ABOLISH THE APPEALS COUNCIL.
36	Medical conditions are not static and the pilot program does not prevent submission of new evidence at the appeals level. It imposes rigid and artificial requirements at the hearing level which will result in more remands due to new evidence submitted at the appeals level. While it would be nice to have a finite amount of information to consider, the "good cause" exception for submission within 5 days is ambiguous and would be nearly impossible to enforce in light of the statutory duty of the ALJ to ensure completion of the record. When it comes down to it, unrepresented claimants have no idea of what they are doing when they request a hearing and will take no action to obtain and submit their medical records. After all, the agency did it for them at initial and recon, so what would make them think thay had to do anything for the ALJ hearing. As for represented claimants, representatives will not change their practices and will just request a good cause exception every time.
37	The thought of closing the record does not work if the concept of "good cause"s not very precisely defined and all of the parties to the hearing know of the definition. My experience is that the claimant's rarely tell the representative of all their medical treatment, and the representatives do not spend enough time with the cliamant's prior to the hearing in an attempt to fine out what medical documentaiton is not yet in the record. It is not unusual for the attorney, especially one working in one of the big social security practice firms, to meet the claimant for the first time at the hearing. That is

27. If you have any additional thoughts or perspectives on Region 1's pilot program and/or the possibility of expanding that pilot program to other SSA Regions, please provide them in the box below.	
	our reality, and the new system will only make for bad decision if the Judge knows there is evidence outstanding, but not in the record, and yet closes the record and issues a decision.
38	I would talk with claimant's representatives about the challenges they face with this type of rule. Most of the time it is the medical provider that is the hold up. Also, it can be very expensive for the claimant's to pay for copying medical records. Advanced notice helps in most cases. Also as more medical records are stored electronically, we may get them quicker and for less expense.
39	I would encourage an agency wide requirement that the record close within five business days of the hearing absent extradordinary circumstances beyond the claimant's control, especially in represented cases. Other jurisdictions are successful in this requirement but it must be enforced. I am concerned that it will create more appeals if strictly enforced. I would interested to know how the members of the bar responded to the Pilot Program.
40	Possible that there needs to be different rules for represented and unrepresented claimants, or there needs to be additional development done by staff of an unrepped claimant's case prior to hearing. Too often I have no records and no or dated CE's and nobody has even asked the unrepped claimant where they were treating or if so no additional work has been done to order updated records. As an ALJ doing 600 decisions per year, I don't have time to review unrepped claimant's files for missing medical records and believe that it is unfair to make a decision without fully developing the record for unrepped (or even under represented) claimants.
41	The AC should not allow "new" evidence that could/should have been submitted to form a basis for remand, nor should they allow impairments diagnosed after the decision to form a basis for remand (both of which I have experienced). The record needs to be closed to ensure some finality. No other organization that I am aware of allows a perpetual record that promotes continuous rehearing of the same allegations. It's ridiculous.
42	This will provide a better chance of having a completed record at the hearing and therefore allowing for a more expedited decision which is fair and actually more beneficial to the claimant as evidence recieved after the hearing allows for the hearing evidence to became stale and reduces the personal element. Also it reduces production because all the evidence has to be review and studied again allowing for a greater risk of backlog and denying other claimant this time for there cases to be heard in a more timely manner. It holds the claimant and representative more accountable as there is a trend for them to do what is necessary to address all matters at the 11th hour and only when absolutely necessary. Good Cause is available for any unforeseeable circumstance and allows judges to do what they were hired to do "make decision" on an individual's circumstances. This should also provide more respect by all for the process. Additionally, the claimant that is represented is paying a substantial fee for this services and are entitled have their representative earn the fee that they recieved. Accountablilty in this area is key to reducing the backlog and expediting the hearing process.
43	Most unrepresented claimants seem to have no idea they need to submit medical evidence at the hearing level. They assume someone is doing it for them. At least half of the files I see have no medical evidence for the past 2 years. With unrepresented claimants, the hearing has become the vehicle for the judge to develop the record, rather than staff contacting unrepresente calimants and developing the record prior to the hearing. Many attorneys make little effort to develop the record until after the hearing. Neither 75 days notice of closing the record 5 days before the hearing will fix this. The problems are too pervasive.
44	I agree the record needs to be closed at some point and am willing to try a new system. My worries

27. If you have any additional thoughts or perspectives on Region 1's pilot program and/or the possibility of expanding that pilot program to other SSA Regions, please provide them in the box below.	
	would be that the "good cause" rule would take over the rule and thus, the program would be ineffective, but even if it makes some attorneys try to get evidence in earlier, that would be improvement. It would be nice if implementation comes with formal training offered to representatives/attorneys that encourages them to set up formal meeting with client at notice of hearing, but realistically, I still see many clients and attorneys meeting for the first time in the waiting area. So, you have a big lift to get around that culture. I am not worried about unrepresented, because we generally treat them gently anyway, so doubtful this policy is going to change them, but unrepresented claimant's are fairly rare anyway.
45	Reps want to collect the evidence once to avoid unnecessary expeense and do not communicate well with their clients.. the region 1 rule may improve this thru punishment for non effective representation but is inconsistent with the statute which allows evidence to be presented at the time of the hearing.. Claimants who are unrepresented think that the government automatically knows where they treat. Maybe obamacare will resolve some of these problems.
46	As a former claimant's attorney with an average caseload of 200-300 disability cases, it is my opinion that, other than evidence that is dated in the 15-20 days prior to the hearing, there is absolutely no reason that representatives cannot have records submitted 5 days prior to hearing if they are given 2 1/2 months notice of the hearing date. It often takes 7-14 days for medical providers to respond to requests, even if they are pestered about it, so i think good cause would exist frequently for the late submission of records dated in the 15-20 days prior to hearing. Unrepresented claimants almost always do not know how to develop their record and that is a job that falls to the ALJ either pre-hearing or post hearing in most cases. Therefore, I do not believe that the 5-day rule should be applicable to unrepresented claimants.
47	Judges should have discretion to waive rule upon presentation of good cause.
48	Efficiecny is a valid factor in a mass adjudicaiton system. However, due process inherently brings inefficiency into the process. The level of inefficiency, of course, relates to the amount of due process afforded. The fundamenal, long standing objectives of the SSA are adjudicate cases in an efficient manner with consistency of resurts, The fundamental duty of the ALJ is to provide a full and fair hearing with no impingment of the claimant's due process rights. Yes, the ALJs take an oath to do public service. That certainly requires ALJs to be as efficent as possible. However, the general duty of good public service is subordinate to the specific responsibilitiees of the ALJ to afford due process. If the Region I pilot introduces more formality, that will adversely affect SSA processing goals and put grave pressure on the ALJs to meet those processing goals despite despite the greater formality of the process. This survey is good but seems narrowly focused. A survey inviting the ALJs to give a comprehensive/strategic overview of the system might be helpful to you.
49	The 30 day notice/10 day cutoff would be better. The claimant/Rep know they will get a hearing/OTR when they file. These cases sit for years, and they deliberately delay evidence submission and case preparation until they get a hearing notice. New evidence should be actually new instead of "I just heard about this evidence" that is years old. Also, they should be prohibited from multiple submissions of the same evidence (e.g., one year of treatment records separated into five or six overlapping periods, and then followed by a compiled submission of the full record). If they have that much time (75/5) why are they not required to organize it chronologically by source instead of fragmented and randomly compiled selections?.
50	Record needs to be closed after the hearing so that review of decision is based solely on the record

27. If you have any additional thoughts or perspectives on Region 1's pilot program and/or the possibility of expanding that pilot program to other SSA Regions, please provide them in the box below.	
	presented to the judge
51	Reps routine wait until receipt of Notice of Hearinng to begin collecting MER which circumvents ability to detrmiine OTRs months to year(s) earier.
52	This aspect of the Pilot should be tested in a larger number of cases. SSA failed to set up the Reviewing Officials and expert panels which doomed the Pilot. The advance notice of 75 days and closing the records should be tested in a large sample.
53	Closing the record would be a great benefit to the hearing process. Far too often, the record is incomplete. More frustrating are the situations in which you simply receive additional records post hearing without any warning. Both situations require me to re-examine the case and account for the new information. This requires a significant amount of my time on a regular basis. More often than not, these records pre-dated and should have been obtainable prior to the hearing. Closing the record would save a great deal of time and effort and would not prejudice claimants. In my experience all courts from other administrative level hearings, to small claims, to common please, and courts of appeal have firm deadlines regarding the submission of evidence. They recognize that a deadline for the submission of evidence is a critical component to ensuring judicial economy.
54	The CFR already has a provision that evidence must be turned in five days before, but the AC will not support it and will return any case that has evidence turned in and not considered at any point even after the hearing. 20 CFR 405.331 under the "Administrative Law Judge Hearing" and "Submitting evidence to an Administrative Law Judge: "any written evidence that you wish to be considered at the hearing must be submitted no later than five business days before the date of the scheduled hearing. If you do not comply with this requirement, the administrative law judge may decline to consider the evidence unless the circumstances described in paragraphs (b) or (c) of this section apply." The circumstances are 1) we (SSA) mislead you; 2) you have physical, mental, etc. limitation(s) which kept you from complying; or 3) some other "unusual, unexpected, or unavoidable circumstance" kept you from compiling. I hate rules that are not enforced. Here I don't feel I can enforce this because the A.C. will not support me. Further, if it were enforceable seems like someone in some of my training would have mentioned this before. I know of no ALJ that uses this section, it is never mentioned in training, and I find many ALJ's don't even know the section exists. Further, problem with this is that there is no enforcement if the rep violates it except to say I will not consider the evidence and see comment above about that.
55	Most post-hearing delays are for long established records that a representative or pro se claimant neglected to obtain. Oft times, claimants, including represented claimants, offer recently obtained evidence as evidence of remote AODs. Usually there is no relationship. Most dilatory actions by representative is the result of case preparation within minutes, hours or a few days before their client's hearings. Representatives with efficient paralegal staffs are generally much better with case development. Moreover, a definitive definition of "good cause" needs to be developed. Moreover, reversal of "good cause" by the A/C or its sucessor adjudicative body should be based solely on "an abuse of discretion" standard. Last point, the record established at the hearing level should be the final record for consideration. Moreover, any granting appeals should be based on cited error only.
56	The pilot program should be expanded. We need a finality to the hearing process.
57	The problem with "absent good cause" is that the Appeals Council has an extraordinarily broad concept of what "good cause" is and would likely limit the effectiveness of the the "closing the record" aspect of this rule. I may, in fact, cause more unecessary remands by the Appeals Council given their

27. If you have any additional thoughts or perspectives on Region 1's pilot program and/or the possibility of expanding that pilot program to other SSA Regions, please provide them in the box below.	
	penchant to believe whatever the claimant's or their representatives say over a finding by the sitting Judge.
58	As a matter of practice, Philadelphia Social Security attorneys alway order medical records only very shortly before the hearing. They do this to save money - if they order them several months prior to the hearing they would then have to re-order the records shortly before the hearing to get the updated records. Thus they would pay for two sets of records. The effect of this do-it-at-the-last minute practice is that the records are often submitted only AFTER the hearing. Thus I cannot read the entire evidence before the hearing and ask the claimant relevant questions specific to his/her situation. The problem is this - the medical records USUALLY raise issues that should be clarified by the claimant at the hearing. When the records arrive after the hearing I must then hold a supplemental hearing to get to the bottom the issues raised by the post-hearing medical records. PLEASE CLOSE THE EVIDENCE PRIOR TO THE DATE OF THE HEARING.
59	Whether we use the Region 1 Pilot Program or not, we NEED to have a policy for closing of the record at least 5 days prior to thew hearing.
60	Along with timely notice of a hearing, there needs to be an emphasis on notifying unrepresented claimant's of their right to representation even before a hearing is scheduled. For example: a scheduler calls the calimant to schedule their hearing, ask if they are seeking representation, schedule hearing 45 days out and advise claimant that this is their opportunity to obtain representation and that no other continuances would be provided. If they obtain representation and representative has a conflict with the scheduled hearing THEN the hearing can be timely rescheduled PRIOR to the Agency incurring the costs of VEs & HRs at a hearing. The Agency costs rise when unrepped claimants show up at a timely scheduled hearing at which a VE & HR are already present and then has to be continued for representation. This is an issue that goes hand in hand with the proper notice & with the issue of timely evidence submission.
61	ALJs need more control over hearing process, otherwise a lot of cases in post b/c otherwise reps just submit to AC as new evidence. Reps need to be held more accountable for doing their jobs.
62	I was not aware of the pilot program before this survey. I have been too busy trying to process my cases.
63	If I have to keep the record open for additional evidence, many times I do not remember the claimant when I make the decision later.
64	This program is long overdue and really timid. Much more remains to be done to create an orderly system which is now in chaos.
65	The record closes in medicare appeals, yet new evidence routinely came in and it seemed to me that many ALJs allowed it without making a good cause analysis. 75 day hearing notice will unduly delay scheduling and rescheduling of hearings.
66	The unrepresented claimants that I see have no ability, physically or mentally, to comply with the requirement. I certainly would not expect a homeless individual, with physical and mental difficulties to submit medical information timely
67	Closing the record earlier than is now permitted would reduce the abuses in which the representative communities engage. They routinely take advantage of the lack of sanction authority by making it difficult for the ALJ to conduct a full and fair hearing. Too often new and potentially material evidence

27. If you have any additional thoughts or perspectives on Region 1's pilot program and/or the possibility of expanding that pilot program to other SSA Regions, please provide them in the box below.	
	emerges from nowhere post-hearing, and often such evidence first appears at the Appeals Council when it could have easily been produced prior to the hearing itself. There has to be some balance in trying to adjudicate fully and fairly. Many representatives try to "game" the outcome by not making production before they see how the hearing tilts (in the claimant's favor or not). I have had numerous instances when the representative, who has been on the case well over a year, has not done any development whatsoever until I point out such deficiency at the hearing. I engage the claimant and representative to work together if needed. I openly place the burden on both and inform the claimant that it his or her hearing that can be held if the record cannot be sufficiently and timely developed. I've gotten some responses in getting representatives to act more efficiently, but there is still much work to be done in this regard. A closing date (on production) would further help.
68	Closing the record at any point in time is pointless if the AC will continue to remand cases when new evidence is submitted on appeal to the AC.
69	closing the record is essential. in my opinion attorneys are manipuoative with submissions especiallu when MEs are involved and particularly when MEs must testifiy by phone.
70	It's difficult to differentiate between represented and unrepresented claimants in questions 7 and 8, particularly, because ALJs are generous about keeping the record open for a fair hearing and much evidentiary development in our office occurs after the hearing, at the judge's request or requirement, whether or not a claimant is represented.
71	The Region I pilot program consists of only the first small steps necessary to fix the totally dysfunctional system now in place for deciding disability cases. I say "deciding" instead of "adjudicating" because the system, as presently designed and implemented, has turned ALJs from "judges" to "decision-makers" in the same way that referees and umpires at athletic competitions are "decision-makers", i.e. making the decision right is desirable but making the decision quickly is indispensable. Maybe the volume of disability claims is so great that having the cases decided by "adjudication" rather than "decision-making" is unavoidable. But that is something that should be decided after a long national conversation involving Congress, ALJs, claimant organizations and representatives, bar associations, and distinguished legal scholars. Right now, the law requires that at some important point in the process, the decisions have to be made by "judges", not by "decision-makers". That is not now being done, and the decision to proceed that way was made without adequate input from anyone, with predictable consequences. If someone opposed to giving disability benefits deliberately designed the decision-making system for granting/denying those benefits to fail by being dysfunctional (rather than just abolishing the granting of benefits outright), that someone could not do better than design the system that is in fact now in operation.
72	closing the record is a must. I can live with doing it on the hearing date for unrepresented claimants and for VERY RECENT i.e. for treatment occureing after the closing date for reps to submit evidence
73	It is absurd that the Agency does not allow closing of the record. I can think of no good reason why it shouldn't be standard policy. Every other administrative jurisdiction that I have practiced before has such a rule. The reps frequently do not give any reason for why they submit evidence last minute. I have received as many as 1800 pages of additional evidence, dating back 2 years, 1-2 days prior to a hearing with no good cause and I have no choice but to delay the proceedings. Reps will just tell us "the record never closes, so I don't need a reason, or to give you a reason." I could be MUCH more efficient if I had procedural rules that impose a date certain for closing the record that accommodates good cause; however, the "good cause" standard cannot be written in a way that subsumes the rule. I advocate that we implement a "good cause" rule that requires standards such as, "not discoverable

27. If you have any additional thoughts or perspectives on Region 1's pilot program and/or the possibility of expanding that pilot program to other SSA Regions, please provide them in the box below.	
	with the exercise of due diligence," or other such standards used by other federal administrative forums. The average size of the files that I read are around 600- 650 pages in the E&F section alone. It is not uncommon at all for the reps to dump 200-300 pages on me the morning of hearings or the day prior. Frankly, the reps exploit our lack of procedural rules in hopes that we won't read the evidence and just pay the case, or if I deny the claim, that hope that the opinion buried in this dump of evidence that I have to rush through to read before the hearing will be missed and create an appealable issue. And of course, there is the tactic of submitting evidence after the hearing and after the ALJ issues instructions are written, but before they actually sign the decision. On the other extreme, I frequently see a representative withdraw from representation the eve of hearing after having had more than a year to develop the case and failed to do so. In fairness to the claimant, I have no choice but to conduct a supplemental hearing after I inquire about and obtain the medical records for the claimant. Further, this last minute withdrawal tactic affirmatively undercuts the claimants ability to get replacement counsel in a timely fashion to retain their current hearing date. The Agency has to realize that ALJs need a comprehensive set of procedural rules to fairly and effectively move these cases. The issue really is not with pro se claimants but with reps that are gaming the system because they know that the ALJs have few, if any, tools to hold them accountable. Until the Agency establishes procedural rules similar to those of other federal administrative agencies that hold representatives accountable for what they do, or what they fail to do, the process will remain out of balance.
74	I am opposed to the 75 day advance notice of hearing. I think it is way too long. I would enourage the ALJ record be closed prior to the hearing. An ALJ should not be responsible for a remand from the AC for new and material evidence submitted.
75	I review my cases about 7-10 working days before the hearing and the day of the hearing. So, this would not affect me very much. I think it would negatively affect the claimants, however, inasmuch as it is OUR duty as judges/SSA to make sure the record is complete. I do not fault a claimant for an incompetent rep. I would rather contest the fee agreement if it were a frequent occurrence to submit (or not submit) evidence too late.
76	The "closing the record" provision will only work if the Appeals Council backs us up and precludes submission of new evidence (i.e., evidence not submitted prior to the hearing) at that level. Otherwise, the "closing the record" provision is worthless.
77	The record needs to be closed at the time of the hearing. The claimants should not be permitted to submit additional evidence on appeal.
78	While the goal is admirable, it will have no impact because it is not enforceable. Reps will continue to submit evidence on the day of hearing or after, and, if we don't consider it, the AC or USDC will just kick it back. The Reps know this, of course, and ALJs will not try to enforce the rule because we don't want to do the case twice if we can prevent it.
79	We are just asking for trouble if we do this. Medical providers are often not as cooperative as we would like and I do not think the effort to close the record will really work. A different set of rules needs to exist for unrepresented claimant's because they do not know how to develop their cases and we usually have to order their evidence for them.
80	I would be in favor of a 10 day closing of record, but would make exception and allow a 5-day closing of the record for medical records of treatment within 30 days of the hearing.
81	Having complete medical records at the time I review the file prior to the hearing would help

27. If you have any additional thoughts or perspectives on Region 1's pilot program and/or the possibility of expanding that pilot program to other SSA Regions, please provide them in the box below.	
	significantly in my decision making and avoid further delay as we wait for more records. I believe at least 50% of my cases have to be held open after the hearing for at least 14-30 days to wait for missing records. Reps should be required to sign a statement prior to the hearing that they have ordered and provided all records relevant to the issues in the case.
82	Such changes, particularly closing the record will improve the efficiency and smooth process of hearings and issuing a more accurate decision based on a complete record closed before the hearing.
83	As you can tell from my responses to the questions, I am in favor of the pilot program rules. This is primarily based on the inefficiency of holding a hearing but then waiting for more evidence to arrive. To a certain extent, this requires me to "know" the evidence (including tyhe testimony) at the time of the hearing but then set aside the case while I wait for the additional evidence. Of course, I have my notes to use to refresh my memory when that new evidence arrives. Still, it would simplify the process and shorten it if I never had to wait for new evidence. New Topic: Many of us love "bright lines" when it comes to procedural or evidentiary matters. It generaly makes things easier. But, in the case of unrepresented claimants, I foresee many situations where the "bright line" is not so bright. In order to be fair to them, we will (as now) be assitaing them to get new evidence since they will not have sought or received any recent evidence since the DDS review.
84	As to #24, the Judge always has the right to develope needed evidence subsequent to the hearing, especially in unrepresented cases, when the existence of the records are revealed during questioning of the claimant during the hearing.
85	I really don't know much about how the program has been working in Region 1
86	75 days is too much notice, as unreped claimants forget. The biggest problem is that Reps delay ordering evidence. Often records that are years old are submitted at or after the hearing with no real reason why it couldn't be submitted earlier. We already send out a notice saying the case is going to be scheduled soon, yet the reps still wait to develop their cases. Representatives often don't even know what is going on until a week before the hearing when they meet with their clients. Unless we enforce the timelines, a 5 day rule or some other timeline, will have no effect. I review my cases in ARPR, so a big lead time for new records is not as critical, however, we are all pressured to hear more and more hearings, so having 7 - 10 days prehearing to review all the new records is really necessary to avoid reviewing new records after the hearing. Clearly, if I am holding hearings, I can't review records for the next one. I have to have some lead time, 5 - 10 days would really help. I just don't think we can lock hearings in 75 days in advance and have it work well. Some of my responses are speculative, as I really don't know all the issues that might come up based on your scenarios. I don't know if the attorneys whose practice is last minute will respond to this or just go on with their current methods because they figure we will just waive the 5 days. Many firms now assign attorney's at the last minute who don't even meet the client until the day before or day of the hearing. And often the reps come in and tell me they were just assigned the case by so and so, they are contract lawers, and the "mother firm" was supposed to order and submit the records. We really need rules of practice and a way to sanction these reps and report them to their bar associations. Until then, these 2 rule changes will have limited effect, as they have no teeth.
87	Need to allow for specifically identified good cause exceptions, such as recent hospitalization records, etc.
88	A discovery cut off will work with a good cause exception to allow for late medical provider responses or recent treatment. I think I could hear even more cases if I knew I had 14 days clear to prepare.

27. If you have any additional thoughts or perspectives on Region 1's pilot program and/or the possibility of expanding that pilot program to other SSA Regions, please provide them in the box below.	
89	Yes, we should expand pilot program to other regions. Claimants and representatives are notorious for submitting incomplete medical records or will wait to close to hearing date to meet or obtain records which results in late submittance of records or incomplete records being admitted. There are some representatives known for filing records the day of hearing or will often request more time post hearing to submit records. There many times, during the hearing, I determine updated records are not in the file and have to keep the record open for the rep to provide the additional records. If there is a period where records are required to be submitted and the record is closed, then there will be more emphasis on claimants and reps to get all the documents in before the hearing, which will result in better adjudication of the cases.
90	None
91	Closing the record is fundamentally unfair in adjudication of disability, as it is a fluid and progressive process with no clear point to establish closure. Giving representatives more time to prepare will make little difference. They only want to pay for the records once and will wait until the last minute to request them no matter how much notice you give them. It is very likely that closing the record would be found to be violative of due process by the courts.
92	If the rules are implemented without a great deal of flexibility, I can see the possibility of an increase in remands. Additionally, I review my cases in ARPR specifically for consideration of a CE. Although new on the job, I have ordered two post-hearing CEs. Just my opinion, but I believe CEs should be used frequently before the hearing. There is certainly enough time to do so long before the hearing. I think doing so alleviates a lot of post-hearing actions.
93	Current practice that allows submission of evidence on the eve of or the day of hearing without a showing of cause forces the ALJ to either conduct the hearing without sufficient time to fully understand the evidence or to continue the case, which may be necessary for development of the record but which unduly delays the ALJ's effort to meet production goals. Expanding the pilot program would benefit claimants by assuring that all material evidence is considered and understood and would benefit SSA and the ALJs by eliminating unnecessary delays.
94	Unless SSA goes to a formal rule of evidence, I don't think any of this is a good idea. Sometimes claiman'ts give information to the DO and the evidence is not obtained. Sometimes they get an attorney a week before the hearing. I'd rather have the hearing and leave the record open than postpone. Sometimes the attorney's cannot get doctors to cooperate in getting evidence. I could go on and on and on. This is not USDC--this is an administrative hearing and if we don't allow the claimant to introduce late evidence then an AC remand is almost guaranteed.
95	Our office schedules 60-90 days in advance so the Reps have notice of the hearing date to obtain updated medical records; but hearing notices going out too early results in unrepresented claimants to forget their hearing dates -- Closing the record prior to the hearing date for unrepped claimants is meaningless, because we have to obtain their records, very rarely do they bring in any treatment records (with the exception of child's cases, the mothers/parents do bring in school records and some treatment records). Now, if the Agency actually started proceedings to remove a representative's right to represent claimants for not submitting records timely, then this pilot would see results -- as it is, some representatives sandbag/intentionally do not submit all the medical records timely as a basis for an AC remand. The only way I have been able to curtail that is to request a letter from the Reps that the record may be closed or if not submitted to schedule a supplemental hearing to have the Rep explain why the record cannot be closed.

27. If you have any additional thoughts or perspectives on Region 1's pilot program and/or the possibility of expanding that pilot program to other SSA Regions, please provide them in the box below.	
96	My office has gradually been increasing the advance notice of the hearing and that action has resulted in me being able to close the record earlier with conscientious representatives and improves my productivity. However, an unfortunately large number of representatives are not conscientious and consistently fail to analyze & develop the record for steps 1-4 then request letting the record open because they haven't done their job (some have not even met or spoken with their client before hearing day). I don't want to close the record without relevant records being procured first but get overwhelmed by the number of cases that need post-hearing development then come back for review as I need to re-acquaint myself with the case and determine whether I can make a decision or the medical records reflect a change in RFC and a supplemental hearing is necessary. I think we also need to look at not affording a continuance to obtain counsel when claimants are notified of that right upon receipt of the request for hearing and with the hearing notice. Rarely does a need for a CE delay resolution of a case.
97	I understand what this pilot is intended to do but it imposes an additional "burden" on us, which is to make the good cause determination. If "good cause" for late filings is any indication, the AC bends over backwards to find good cause, even when, in my opinion, given the facts of the case, it's just not there. I have started finding good cause in almost all circumstances involving late filings, regardless of the length of the delay, because I know that the AC will probably not agree with me. So the good cause determination for late filing has become almost pro forma in favor of finding good cause which makes "good cause" a meaningless term. Here, I fear the same thing will happen. The AC will want to make sure that all relevant evidence gets in, which is a laudable goal, but I fear that it will, again, bend over backwards to do this such that my good cause determination becomes, again, pro forma and, again, meaningless. So it will be just another hoop that will add nothing meaningful. We will have to both detemine good cause and deal with late evidence, rather than just deal with late evidence. Of course, the possibility is there that the reps will be sufficiently scared by the prospect that they will be barred from submitting evidence that they will get it in on time, so perhaps, on balance, it will help. I don't think that it will have any impact on CE ordering, however. It may have an impact on when to order the CE (5 days before the hearing instead of the day of the hearing), but I'm assuming the evidence would be the same, just submitted earlier, so I don't see that it would impact a decision as to whether the evidence indicates that a CE is necessary.
98	The 75 day notice would result in more "no shows" as claimant's will forget; claimants will still wait until right before the hearing to seek represenation or request it for the first time at the hearing; the 5 day requirement is a good idea and I strongly support it but unrepresented claimant's should be given leeway- there is no excuse for the rep to wait until the last minute, esp if they have had the case for many months to a year.
99	It is an efficient streamlining of the Hearing process. The present Hearings protocol is run over roughshod by many very, very poor practitioners, many of whom should not be authorized to represent claimants. In addition, making the Hearings process adversarial, i.e., assigning a government attorney to represent the government's interests at Hearing, will cull out a great number of frivolous claims and poor practitioners.
100	I suggest that another requirement of the program be instituted for UNREPRESENTED claimant only: That a pre-hearing conference be scheduled 2 months in advance of the hearing so updated medical records can be obtained. This conference could be presided over by senior attorneys.
101	I have too often reviewed a case for new evidence two hours before a hearing only to have medical evidence come in after that review. I then lose time at a hearing trying to read the new evidence so that I can provide the claimant with a fair hearing, avoid a supplemental hearing where the new

27. If you have any additional thoughts or perspectives on Region 1's pilot program and/or the possibility of expanding that pilot program to other SSA Regions, please provide them in the box below.	
	evidence would alter the hypothetical provided the vocational expert but could not ascertain this because of how late the evidence came in, or even forced a claimant to experience the anxiety of a hearing when the new evidence would have permitted an on the record be done, with the concurrent problem of costing the government money for the hearing reporter and the vocational expert. What is particularly problematic is receiving evidence that was in a representative's possession for five or six months and yet was not submitted until the day of the hearing.
102	60 days notice would be better; a notice of hearing reminder should be sent closer to the hearing. the record should close, except for good cause shown. good cause should be at the discretion of the ALJ and that decision not be readily disturbed on appeal.
103	I believe the adoption of a rule closing the record would enhance efficiency and save resources, especially in represented cases. Many claimant's representatives know they can get away with being lazy with file development. The rule would force claimant's representative's to work up and properly develop their cases. It would enhance efficiency and save government resources. It seems appropriate to transfer some of the costs of case organization to claimant's representatives. I strongly support the pilot.
104	If any results are available from the pilot program, I have not seen them. Thus, my responses to the questions are simply guesses, and not based on any actual understanding of the pilot program.
105	Attorneys should be required to meet claimant's face to face prior to day of hearing. Many times no attorney has spoken with the claimant until in the waiting room and then attorney finds out about medical treatment and doctor's visits that were unknown until that point. If attorneys were held to the ethics standard of their licensing state, then we could enforce better representation.
106	i endorse the expansion of the pilot project to other regions. it is a waste of time to prep cases early, since so much of the documentary evidence comes in during the few days prior to the hrg. this current system does not facilitate efficient practices. a bit longer lead time would be better. I think 5 days is too short. 7-10 would be much better. But I would happily settle for 5 business days (meaning 5 FULL business days before the hrg) so I could be better prepped out a bit further.
107	DO NOT EXPAND THE PILOT. THE RECORD IS NOT HARD TO REVIEW.
108	We need to formalize the ajudication process for the sake of better records, more efficient handling of claims and fairness to all parties including those who never get their hearing because others procedually backlogged the system making claimant's with very severe conditions suffer and wait including some that die while waiting. Due process dictates a system that is fair to all and not just placating those who seek to delay at the expense of all others. When we reach too far over to please everyone we necessarily deprive others of their due process. The pilot project is a start to address some of these concerns.
109	There is a need to close the record!
110	Expanding the program would make the representatives more accountable to their claimants and hopefully the representatives would take an active role in aquiring and updating medical records.
111	Late evidence is pretty much the rule around here. If it is really relevant it seems to come in the night before the hearing. I have given up even talking about it, I just review the files the afternoon before and then quickly the morning of the hearings and then make sure the record is complete at the

27. If you have any additional thoughts or perspectives on Region 1's pilot program and/or the possibility of expanding that pilot program to other SSA Regions, please provide them in the box below.	
	hearings.
112	Applying Region 1's policies would greatly help us handle cases promptly, reduce backlogs, and require attorneys to do their jobs properly and quit playing fast and loose with the system. Perhaps unrepresented claimants could be given 10 or 15 days to deal with the potential problems of unfairness to them, although their documents are usually submitted early. Also, the rule could be enforced only against reps and attorneys, and that would clean up a lot of the problem. It would also force reps and attorneys to meet with their clients early and more often, which would benefit claimants.
113	The effect will depend on implementation. If "good cause" is interpreted to mean any excuse, like it is in other ODAR contexts, the new rules will have no effect.
114	Problems with late submission of evidence is the number one factor preventing me from doing a better job adjudicating and moving cases in a timely manner.
115	As for some of my answers indicating that I don't believe unrepresented claimants would be prejudiced by closing the record five days before hearing, I did so on assumption that there is a good cause exception. I don't know about the pilot program in detail, so I am not sure about it. Also, your question assumes that the claimants themselves will obtain the evidence. However, as a matter of course, I will ask these claimants at hearing whether they have had medical care since that reflected in their files, and obtain written consent from them so that the support staff can obtain those records directly from the providers. Same goes for school records in child cases. SSA has been deficient in some ways regarding providing procedural due process for unrepresented claimants. I squawked for years about the HOCALJ's refusal to have support staff provide copies of files (almost entirely electronic on data discs for last three years) to unrepresented claimants, as it routinely did to claimant representatives. I was finally "humored"; however, the cover letter that accompanied the disc, and the letter sent before that, which contained instructions to decrypt the file, was not suited to claimants who were not computer literate or who did not own computers. Therefore, I drafted boilerplate letters that carefully explained what the discs were and where to access a computer (i.e., local library) in the event the claimant did not have one or have friends/relatives with one they could use. My HOCALJ refused to require support staff to use the letter, despite its being in boilerplate form that required no more than cut and paste onto the original boilerplate form. Furthermore, he ordered me to not send out the letter myself, pending review in the regional counsel's office. That was about nine months ago. In the meantime, I have seen plenty of unrepresented claimants who did not know how to access the files on discs sent them. Therefore, I have ended up going through the exhibits, explaining to these claimants what is in their file, just as if they did not receive their file. Whats more is that I am still finding that often, unrepresented claimants are still not getting a copy of their file. My overall impression is that SSA largely ignores concerns of unrepresented claimants, while it is far too "responsive" to the claimants' bar. As for my answer to the first question, I do not thoroughly review the file before hearing, but I definitely do so before issuing decision instructions. This is because cases postponed at the last minute (including unrepresented cases in which claimants opt to postpone in order to get representation), as well as no-shows that cannot be dismissed usually go back into the master docket of cases for assignment to any judge. Although we can now instruct staff to put cases back in our own caseload in RTS status, instead, this was not the case until quite recently. As result, any preparation I undertook would result in wasted time, as it was more likely that another judge would be assigned the case. Therefore, to be more "efficient", I usually quickly reviewed the cases just before hearing, and left thorough perusal for post-hearing review. Once that practice is started, it is difficult to switch back to thorough pre-hearing review, which I do consider preferable. Regardless, however, I strongly advocate closing of the record five days before hearing, since cases can languish in

27. If you have any additional thoughts or perspectives on Region 1's pilot program and/or the possibility of expanding that pilot program to other SSA Regions, please provide them in the box below.	
	post-hearing status awaiting submission of updates longer than it takes me to be ready to review the file thoroughly. Your question regarding review of files begs question of whether ALJs consider all the documentary evidence before rendering a decision, as required under the APA, as well as general due process considerations under the U.S. Constitution. However, the quota system that SSA has established makes it impossible for judges to do so, if they want to "stay under the radar" by keeping their disposition rates at or near the quotas. SSA has been very punitive toward judges who do not meet or approach the quota of at least 500 case dispositions per year. This is an outrageous requirement when considering existing law that requires decisions to be rendered based on the entire evidence of record. I am one of those people who have not stayed "under the radar", despite hard work and professional competency. Although my judicial discretion is "qualified", requiring me to adhere to agency policy, I cannot and will not follow such a policy as SSA's quota, because what it takes to meet or approach it is absolutely contrary to law. Recent commissioner Michael Astrue has misrepresented how the agency handles judges who are "outliers" on the Bell Curve of case disposition rates. The agency does not take disciplinary action against an ALJ who is a so-called "high producer" (to the right of the curve), unless and until such judge's abuses become an embarrassment through media attention. Mr. Astrue has insisted that there is nothing the agency can do, since to go after these judges for their high production would interfere with judicial discretion. That is a load of bull, since SSA's quotas encourage violation of the APA. In fact, these "high producers" get what I call "ataboy letters" that congratulate them for such production, despite statutory law prohibiting awards of any kind to ALJs. Changing SSA's quota policy (and cessation of such letters) would go a long way toward allowing all judges to know they will not suffer retaliation for taking the time to consider all the evidence of record. This would also require abandonment of SSA's recent practice of ordering judges to hear more cases than they can adequately handle. Unfortunately, SSA often seeks or threatens disciplinary action against these judges, who are at the left end of the curve. I acknowledge that some of these judges might be just plain lazy. Yet, many of these judges are so-called "low producers" because they take their statutory duties to heart, and truly consider all the evidence, documentary as well as testimonial, before rendering a decision. In a heated discussion about this, my HOCALJ, who puts out between 700 and 800 cases per year, told me that he doesn't read the documentary evidence in claimant files, and that he doesn't need to, because he can decide a case after hearing ten minutes of testimony of a claimant. Indeed, his hearings are extremely brief. At ten minutes into my hearings, I am still taking testimony of the claimant's past work record. What SSA management could do would be to abandon the quotas entirely, or fix a more reasonable "goal" of three hundred cases per year. Even this number can be daunting for judges who are not provided sufficient staff support, such as what is described as my experience, below. Furthermore, SSA's practice of harassing "low producing" judges results in significant time spent by these judges in responding to such harassment. This is because SSA has developed an MO of ordering such judges to move or decide a very large volume of cases within an unreasonably short period. These orders also direct the judge that for each case he/she doesn't move into the status the agency directs, he/or she must give a detailed explanation for each. I don't know of any judge who has the time to respond in such detailed manner as SSA requires. Thus, SSA counts on using such "failure" to be misconduct for failure to follow a direct order. SSA also justifies its actions by arguing that it is forced to take action when cases have remained in a certain status for too long. However, management refuses to acknowledge its role in creating the situation. Specifically, it is SSA's practice of requiring judges to hear more cases than they can handle that places more diligent judges further and further behind, which in turn, results in untimely dispositions. SSA uses this to its advantage when going against judges, arguing it is not because of low case disposition rates, but because of delays in issuing instructions and decisions. It is clear from my experience as a union representative for a judge the agency sought to fire, that SSA first targets the judge for removal, and then creates circumstances to ensure the judge will fail. I know this happens, because I read about it in over three thousand pages of e-mail messages among management officials regarding just one

27. If you have any additional thoughts or perspectives on Region 1's pilot program and/or the possibility of expanding that pilot program to other SSA Regions, please provide them in the box below.	
	judge. I recall in particular an e-mail message that the agency later claimed to be privileged, in which agency counsel advised her client to issue another order with which the targeted judge could not possibly timely comply, stating that this would be the "final nail in the coffin". I have also been the target of such action. However, I have the luxury of being able to afford to take an early retirement, wherease others do not. I am doing just that. What is so disheartening is that SSA upper management thinks they are getting rid of a poor judge, when in fact, it has pushed out one of its finest. For quite some time, SSA management has internally taken the position that disability hearings are not APA adjudicative hearings, despite U.S. Supreme precedent to the contrary. What is frightening to me, is that by culling out those judges who try to render decisions in conformance with the APA, SSA management again appears to be creating circumstances to fit its agenda. Once it has a corps of "judges" willing to meet its quotas at any cost, SSA will be in the position to argue under desuetude, that SSA hearings should not be de jure APA hearings, because they not de facto APA hearings. I find it quite ironic that those judges who are willing to compromise their standards in order to enjoy get a job as an ALJ and/or keep it, have unwittingly cheapened the office itself. This only serves to undermine the public's confidence the integrity of SSA programs.
116	I typically revew cases only a few days before the hearing because of the very common practice among represenTeatives of submitting evidence a day or two prior to the hearing. Thus, I lose the opportunity to request additional evidence or workup information (tax records, information regarding recent incarceration, etc.) prior to the hearing, which adds signifcantly to processing time, labor costs for taxpayers, and overall workload in the office. Post-hearing work can and does trigger the need for supplemental hearings (although most of us work hard to avoid them, using methods such as interrogatories instead, secondary to time constraints and pressures to move cases in accordance with goals), use of vocational interrogatories, or time spent in the proffer process. Moreover, I could manage more cases if I were not having to work so "close to the wire," so to speak. Further, all other judicial systems have deadlines, and physically and mentally challenged individuals (for example in tort injury cases) are required to strictly adhere to rules regarding submission of evidence, and this does not act as a bar to their claims. Every other judicial system imposes these deadlines for a series of valid reasons, some of which have been touched upon in the questions herein.
117	Under the current regulations, I believe that claimants can continue to submit evidence until I render a decision. So, I am very lenient with accepting evidence even after the hearing. My newer office (opened in Fall of 2010) can barely workup cases, send timely notices, order CEs and exhibit the all case documents before the hearing. I rarely have a case that does not go into a POST hearing status for more or updated evidence. I would welcome expansion of the pilot program; however, I think a specific provision must be included that does not penalize unrepresented claimants from full development of their case, especially because ALJs have a duty to fully develop the record before deciding the cases. Also, many unrepresented claimant's are dropped by attorneys within a few weeks of the hearing, which leaves the claimant unable to comply with the 5 day rule. Thank you for your help and consideration!
118	Please close the record before the hearing.
119	My only concern is that the "good cause" exception would be routinely abused
120	Do it! Do it now!
121	Please expand it to all Regions. Thank you.
122	This is a policy that needs to be quickly and fully implemented. It will increase the quality of

27. If you have any additional thoughts or perspectives on Region 1's pilot program and/or the possibility of expanding that pilot program to other SSA Regions, please provide them in the box below.	
	representation a claimant receives from attornenys and representatives. By far, the primary reason cases are continued or supplemental hearings are necessary is the singular failure by claimant attorneys or representatives to work far enough in advance of the hearing to obtain records from medical providers. This is either because of ineffective work habits or misguided tactical choices based on a perception that they will get "two bites at the apple." In reality, it prejudices the claimant by denying the ALJ the opportunity to have the most complete picture possible at the hearing. Right now, attorneys or representatives who fail to provide evidence in advance of the hearing are not accountable to their client for this defiency because there is no filing deadline requirements. They can easily justify the shortcoming by telling the claimant there is no evidentiary filing deadline. When a deadline exists, it forces attorneys and representative to be accountable to the claimant for fully developing the record - as much as possible - prior to the hearing. Also, with the good cause provision, the ALJ will have the needed discretion to handle cases where attorneys or representatives have clearly made good faith efforts to obtain missing evidence. Similarly, for the same reasons, this program does not prejudice an unrepresented claimant because the ALJ still has the obligation to fully develop the record. It is long past the time when this Agency needs to recognize that imposing procedural requirements is not some type of "punishment" to claimants. Rather it is a "protection" mechanism on which claimants can rely in order to require their attorneys and representatives to do the work for which they are hired. As an ALJ (and taxpayer) it is tremendously troubling to delay the decision for a claimant (who has already waited a significant period of time) because the person, firm or organization they hired did not provide due diligence in obtaining relevant evidence. Thank you for considering these comments and, more importantly, pursuing ideas to make the process more effective and responsive to claimants.
123	I have long been an advocate for closing the evidentiary record at the hearing level. Failure to do this unduly delays issuance of decisions. Waiting for evidence is actually prejudicial to the claimant because the ALJ has to review the claim a second time after the hearing testimony is cold, thus resulting in a decision on the objective record. Representatives in my area are notorious for not coming to the hearing prepared to prove their case, resulting in a large number of cases going into Post-development. This is not efficient and defeats the purpose of having representatives. I like that the pilot allows for abrogation of the rule of closure 5 days before the hearing when the ALJ deems it appropriate. This is the mechanism that protects the unrepresented claimant and allows them the opportunity to develop their file fully. If the agency could eliminate the 80% of represented cases from requiring Post-hearing development this would greatly improve our ability to process our caseload more efficiently. I've been working in this agency for 16 years as an attorney, a manager, and now an ALJ, and this is the biggest hurdle we have to efficient caseload management. Thank you for helping us along the road to a better hearing process.
124	Closing the record before the hearing is patently unfair to the claimant and is placing the efficiency of process over the claimant's right to have a fair hearing. Part of the duty of the ALJ is to fully and fairly develop the record. This process places an unfair burden on the claimant.
125	Would help stem the current slide into informality\lack of attentivenes to detail. The representatives, and to a lesser extent the claimants, will rise to the occasion.
126	consider a separate rule for unrep'd clmts, with good cause to submit post hearing records
127	Closing the record is a very important step to providing a fair due process hearing.
128	although closing the record 5 or 10 or more days prior to hearing would be extremely helpful, it wouldn't cut down on some CEs; in order to get a prehearing CE, I would need to look at the file at

27. If you have any additional thoughts or perspectives on Region 1's pilot program and/or the possibility of expanding that pilot program to other SSA Regions, please provide them in the box below.	
	least 60 days prior and most reps haven't even ordered any new or updated MER - most probably haven't even met or talked to the claimant in person by that point. Something that would be helpful would be to establish stricter representation requirements and make the reps do the job they were hired for. No other administrative court or Article III court would allow the reps, many of whom are attorneys, be so lax in their representation. If those attorneys practiced like that in other courts, they would be raked over the coals. Another good reason to close the record prior to the hearing is to allow us to make sure that expert witnesses have all the evidence prior to the hearing. If a rep brings in MER the day of the hearing, most times it's nearly impossible to get that information to an expert witness timely. Also, since the record doesn't close, it really doesn't matter to the reps if they get something in timely or not because they appeal and then the Appeals Council says "look, new evidence; REMAND". We can't send back evidence received during or after a hearing and say, "nope, sorry, this wasn't admitted timely and I won't accept it." Late evidence contributes to the delay in receiving a decision. The reps don't really have motivation to always submit things timely because it earns them more fees for it to take as long as possible. Granted, not all reps are that way, but there are many that are.
129	I think it would be a realistic and necessary change in the way the disability program is currently handled with a record that never closes. I also would suggest another change in the program,i.e.,having a representative for the Commissioner and changing the program to adversarial, which is the way it currently functions as most claimants are represented. In that way, the representative would be responsible for preparing a winnable case. Other social programs are adversarial and function well, such as unemployment insurance and workers' compensation. It is not efficient to have the ALJ bear the responsibility for developing the case as case law has evolved.
130	Closing the record 5 days prior to the hearing is a great idea. To be fairto the reps and claimants and to give them sufficient time, I think scheduling out 4-6 months (like we do) allows plenty of time for reps/claimants to get all the records in in a timely manner
131	To clarify, unrepresented claimants generally either bring written records to the hearing or more frequently bring no records at all. Almost all nonrepresented cases go into POST in order to obtain the medical records. Of the six hearings I held today, two representatives submitted a substantial amount of evidence (100+ pages) TODAY. One case went into post for additional records, and in two cases the representatives submitted evidence yesterday.
132	Closing the record before the hearing is the single most important factor for justice and efficiency.
133	I think that the pilot program s totally worthless. SSA does not have sufficient clerical staff to provide hearing notices 75 days prior to the hearing. Such time frames would increase the number of continuances and postponements and reduces the number of hearings held by each ALJ holds because it reduces the ability and flexibility in scheduling cases without first providing 75 dys of notice. The closing of the record five days before the hearing will result in a burdensome increase in the number of cases appeared to the Appeals Council by claimants and representatives becuase the ALj did not find good cause for the claimant/ representative not complying with the 5 day closing requirements and more AC remands to the ALjs to determine whether their initial finding of no good cause was proper due to new evidence submitted to the AC when the claimant/ represntative submitted a request to review the initial ALJ decision. There is no benefit in increasing the hearing notice time frames and attemtingto unsuccessfully closed the record five days before the hearings. The effect of the Pilot program changes would decrease the number of hearings that ALJs hold each year and increase the number of reqest for for reviews to the AC and Ac remands.

27. If you have any additional thoughts or perspectives on Region 1's pilot program and/or the possibility of expanding that pilot program to other SSA Regions, please provide them in the box below.	
134	Requiring the timely filing of medical records is nothing new to any attorney. It is my opinion that the relaxed standards we have at SSA only allow and encourage lazy lawyering. Afterall, when Judge A in State Court will hammer me if my evidence is late, but Judge B with SSA can do nothing, which case gets my priority?
135	Go for 90 day hearing notice and allow for rescheduling if claimant has medical appts/treatment/test that may be significant to a decision. Close the record after the hearing unless additional time is requested from the ALJ. Apply the usual rules for newly discovered evidence that was available prior to/at the time of the hearing, which was not submitted. Consider new evidence only for a new application to prevent "sandbagging" the ALJ in case of an unfavorable decision and a hope for AC remand.
136	I definitely support the idea of closing the record 5 days before the hearing. I think representatives and unrepresented claimants will work harder to get the medical evidence they need to prove their alleged disability.
137	The taxpayers who are paying for this program expect that the disability determinations that we do are as accurate as possible. The present last minute approach to evidence is totally inconsistent with an accurate adjudication. I am unable to review cases more than one day prior to a hearing because I know all of the really important material will be submitted at the last minute. Scheduling a subsequent hearing costs the public a lot of money and greatly contributes to the backlog. The evidence should dictate the course of the hearing e.g. the type of expert witness which might be needed, the time allocated to the hearing, the issues to be researched etc. Judges now have to just go in and deal with the unexpected. I don't think this is a good thing. The electronic business process has made a bad problem worse because it is now possible to submit 100 pages of electronic medical records at the click of a button. It is a rare hearing where I am not called upon to look in the case documents file to verify that last minute evidence has been submitted even though it has not yet been exhibited. Another issue here is the fact that a favorite remand issue is the "sandbag" technique. Representatives withhold evidence to submit after the hearing and get a remand because they argue, evidence may change the outcome. This results in frequent remands,more expense to the public, and encourages behavior on the part of Representative that is not in the best interest of their own clients. The reason this is done is that the representative "mills" are trying to minimize costs. They try to put in the least amount of work and provide only the "low hanging fruit" evidence in hopes of getting to a favorable decision at the lowest possible cost. If they lose at the hearing level they submit more evidence to get a "subsequent evidence" remand. The current system so forgives irresponsible behavior by claimants and their representatives that the interests of the taxpaying public in having a fair and just program are largely ignored. The claimants and their representatives need to contribute a greater share of the responsibility toward making the system efficient and fair. They apparently are not willing to take on this share without being forced to do it. This program has produced several scandals and is extremely expensive. In a world of limited resources it is already the focus of considerable scrutiny. It is likely that the program and its practices will have to be defended to a greater extent than in the past. In my view, a requirment that the record be closed is the only way to insure that the program is responsible to the taxpaying public and to insure that the program can survive to provide assistance to those with disabilities. I would certainly prefer to defend the program with such a requirement in place. I am amazed that the excesses of the program have not already resulted in congressional action to modify this program.
138	It would probably make the system more efficient for represented claimants, as it would require more due diligence by the rep. With regard to unrepresented claimants, the solution would be to hold a pre-hearing conference some months out from the hearing, and provide some guidance to the claimant,

27. If you have any additional thoughts or perspectives on Region 1's pilot program and/or the possibility of expanding that pilot program to other SSA Regions, please provide them in the box below.	
	either by a senior attorney or a group supervisor who knows the system well.
139	It's a big problem when reps come in on the day of the hearing and dump extensive new records. If there is an expert witness-- the hearing has to be postponed because the rep will claim his opinion is invalid if he has not seen the new records so we end up with a supplemental hearing and paying the expert twice.
140	Having been both a claimant's rep and an ALJ, I know that it is possible to update the record and submit evidence prior to the heairng date with adequate notice of the hearing and proper office procedures in place. However, since there are no consequences now for not updating the record prior to the hearing, the reps have no incentive to do so. Many of the reps that I see do very little to prepare the files and adequately represent the claimant-- the requirements of the Pilot program would place affirmative duties on the reps that would justify the fees they charge the claimants.
141	Question 8 was unclear. It is very difficult to hear a case with incomplete evidence and formulate a correct RFC. Further, it is difficult to remember all of the facts presented at the hearing when evaluating a case that has been left open for the submission of evidence. To be fair to the claimant and to the tax payers, much review of the hearing and of the writen record is needed in order to remember the facts presented at the hearing accurately. Therefore, I have calculated that it actually takes three times as long to decide a case when the record is left open after the hearing for supplemental evidence. Also, this amount of time is presuming that a supplemental hearing is not needed. When a supplemental hearing is needed, the time doubles. Moreover, a new hearing compounds evidentiary matters and confuses the record with duplicative of contradictory evidence or, worse, incorrect evidence and testimony based on the knowledge of previous testimony. In simple terms, it is like a "do over". Lastly, there is no need for the record to be left open in the majority of the cases if time limits were imposed and it would force the representatives to act as they do in alll other court cases, obtain the evidence in a timely fashion and be prepared for the hearing. I have 22 years of past litigation experience in federal and state courts, administrative agencies and arbitrations. There is no other adjudicative body that I have found that leaves records open such as is done at SSA or enables the representatives to wield so much power and manipulate the process to such a great extent. There are many valid reasons for closing the record and SSA should also have a closed record. For these reasons, I strongly believe that the record should close prior to the hearing.
142	Not closing the record prior to the hearing creates a chaotic process; it is almost impossible to be prepared for a hearing with evidence falling like snow into the file at any time with many times hundreds of pages of evidence arriving at the file the day of the hearing or shortly before. In my opinion the agency invites disrespect for the entire system by not requiring any reasonable rules regarding the submission of evidence. The current "free for all" system, in my opinion, is detrimental to the claimants as it deprives them of a "due process" hearing. The purpose of the "due process" hearing is primarily to allow the claimant to present their strongest case and to confront any negative evidence in the record - that is impossible to do if the record is not sufficiently developed prior to the hearing. Holding hearings without reasonable rules of evidence makes the term "due process hearing" meaningless.
143	first, some of the questions did not take into consideration the true nature of the submission of evidence and hence, the answer is not truly reflective of my opinion and experience. For example, one question asked about the "majority' of the evidence being submitted within 5 days of the hearing or the day of the hearing. The "majority" of the evidence skews the question. The real issue is "relevant" evidence and "time period" the evidence covers. I frequently have lawyers who have been working on the case for one to two years submit old evidence the day of the hearing. These lawyers had ample

27. If you have any additional thoughts or perspectives on Region 1's pilot program and/or the possibility of expanding that pilot program to other SSA Regions, please provide them in the box below.	
	time to get the evidence in before the hearing and yet, because there are no consequences for their dilatory practices, they act with impunity in providing late evidence that is relevant. Similarly, evidence that is pertinent is not provided hence, I will have to get the evidence after the hearing. Sometimes I will have a supplemental hearing and other times I will not. Regardless, there should be more responsibility and consequences on the lawyer to provide all pertinent material, both for and agaisnt his client's interest, well befroe the hearing. The pilot program should be expanded and these rules should be made a part of our program. All individuals are accustomed to living by rules, time lines, deadlines and consequences. The lawyers in particular--however, we have none in our agency and hence it impedes the appropriate, efficient and fair adjudication of the cases before us. I have had the unique opportunity to work for nearly three years in the Region I ODAR office of Springfield MA. I mvoved to Cleveland Ohio last year. Hence, i have had experience with this pilot program and believe there are good reasons to expand it.
144	The AC would need to affirm decisions based on these rules and not automatically remand for the ALJ's failure to consider the late evidence, as it does now
145	Do not allow any new evidence to be submitted to the AC after an opinion is submitted. The appeal must rely on the evidence the ALJ had at the hearing.
146	question 4: I review all cases 3 months before the hearing, then review recently submitted evidence 1-2 weeks before the hearing.
147	The key to the closing of the record is the good cause exception. All of the questions relating to a recent appointment of a representative and recent treatment would be an exception for good cause in my opinion. The majority of my cases are currently put into POST to allow for the submission of medical records (most of which are well over a month old).
148	Closing the record, at any point, would be the best change we could make to the current system. Too often materials are dumped within 24 hours of the scheduled hearing, making it difficulty to digest, and nearly impossible for experts (ME and VE) to credibly testify, especially by phone. PLEASE close the record!
149	This should not interfere with a Judge's discretion in selecting their hearing dates.
150	i have had numerous representatives tell me they do not request any medical evidence until after the case is set for hearing. This will encourage them to timely develop the record, and prevent them from holding back evidence to submit on appeal in order to get a remand.
151	Do it now!
152	As the statute provides for consideration of evidence adduced at the hearing, I do not beleive a regulation expanding the pilot program follows the mandate of the statute. A better solution, in my opinoin would be to close the record at the hearing and / or give the administration discrection to close the record at some date thereafter.
153	The main reason records are not submitted timely is that representatives fail to order the records timely. ALJ's have to do post hearing development much of the time anyway - at least if the record was closed it might motivate representatives (who are paid well if they win the case) to get records in on time. The ALJ should help the unrepresented claimant by developing the case and ordering records post hearing if the record needs to be updated. Most unrepresented claimant's in our area assume that their records are going to magically appear so they don't bother to submit anything - we just get

27. If you have any additional thoughts or perspectives on Region 1's pilot program and/or the possibility of expanding that pilot program to other SSA Regions, please provide them in the box below.	
	the information at the hearing and order it post hearing. A judge should be able to get a general idea of what impairments the claimant has and what limitations exist at the hearing - thus a hypothetical or two can be formulated to account for limitations and a supplemental hearing does not have to be held.
154	Require that ALL evidence be submitted, not just evidence "in support" of claim
155	Region I's pilot needs enforcement teeth available to the ALJ to work as intended
156	It is well known that representatives wait till the last minute because they can, and if the rule were to change, they would change the way they practice. I review my cases at least a week ahead of time and I cannot ask questions about relevant material that has been submitted just prior to the hearing. Then after the hearing, it is too late.
157	One-size-fits-all solutions on the minutae of SSA hearings, seemingly favored by ACUS, SSA and other organizations, tend to prevent the "reformers" from accounting for the different facts of each office and region. For example, nearly 50% of the claimants in my HO are unrepresented. That fact places a different burden on my staff in developing the record and timely obbtaining evidence. It alos places on different reposnsiblity on the judge assigned to hear the claim, both with running the hearing, ascertaining the facts and obtaining evidence. The current emphasis on uniformity expressed in the Electronic Business Practice does not reflect the different work processes needed to deal with such a large unrepresented population. To the extent this survey is designed to gauge ALJ attitudes to a closed record and to expanded minimum time requirements for NOHs, my other general comment/suggestion, based on the limited imformation, is to survey hearing offices directly, those with high and low percentages of representation. See what works and doesn't work, and why. Then, instead of a global one way only solution, promulgate global rules that provide for local variation, much like the individual U.S. District Courts. There is much more that goies into the issue, including ALJ expectations of the representatives, enfrocement of those expectations, ALJ hiring, SSA's current emphasis on hiring those with little to no courtroom experience, and etc. A vicious little circle. But, we are individuals and there are very real individual differences across the regions (practice philosophy, geography etc.) that need to be accounted for, and allowed to be accounted for, in designing rules. I would be more than happy to be contacted further.
158	Provide sanction authority to the ALJs. Claimant representatives blatantly state at the hearings that they have no obligation to provide any records by a certain time/deadline and that there is nothing the ALJs can do about it.
159	I believe using a pre-hearing conference could serve to assist the agency in gauging whether outstanding records still need to be submitted and impresses upon the representative and claimant that a hearing is moving forward.
160	The District Courts will still reverse unfavorable decisions if we do not consider new medical evidence submitted after the deadline, even if it is submitted at the Appeals Council level. Will representatives have to show good cause for submitting evidence late (this may already be in the pilot protocol)? Taking the time to read, consider and rule on such a request (along with the late evidence) will take longer than if we originally considered and admitted it.
161	anyhard and fast rule about clsoing the record 5 days before the hearing onlyleads to more remands and interferes with claiman'ts due process rights. flexibility should be a a part of our job and awareness of the claimant's and rep's problems with getting medical in timely is part of this process.

27. If you have any additional thoughts or perspectives on Region 1's pilot program and/or the possibility of expanding that pilot program to other SSA Regions, please provide them in the box below.	
	An ideal world is not possible in the confines of the nature of the disability process as claimant's conditions are always evolving. ALJs who use this as a reason for not being productive are just coming up with ecuses. Our job shouldbe to give climant's the most complete and fair hearing we can which necessarily involves getting all relevant treating recorfds and CEs as needed to make a decision.
162	Close the record, at least, on the date of the hearing unless good cause shown
163	Trying to enforce a pre-hearing deadline for submission of evidence is a noble goal but likely impractical in the inherently informal administrative adjudicative process in which we operate. The nature of the system, with high volume for claimants reps and lack of legal sophistication of unrepresented claimants, precludes regular compliance with such a rule. Also, because our decisions cover the period until the date of the decision, all evidence through that date, including post-hearing evidence, is relevant, and an earlier deadline makes less sense given this binding legal reality and arguably would impede due process.
164	The 5 day rule may be adequate for representatives for medical records older than 60 days, but should allow for submission of recent medical treatment or for those representatives who recently entered their appearance. The rule is unfair to unrepresented claimants because SSA is ultimately responsible for completing the record and continuances or supplemental hearings will be required because of the need to complete the record and submit a proper RFC to the VE.
165	I think it will be a wash. A rep or claimant can continue to submit evidence at any time of the process for "good cause." This will just be another basis to ask for Appeals Council review based on the ALJ not finding good cause to extend the deadline. Therefore, I don't think it will change anything unless you truly close the record when the five days before hearing have elapsed. But that, in turn, can pose due process questions. I think the five day deadline is probably useless, but maybe the pilot study will shed some light on the situation.
166	Valuable staff time is spent contacting representatives and scheduling hearings. This needs to stop. Just send notices of hearings well in advance of the hearing--75 days at least. It is essential the record be closed prior to the hearing. All evidence should be rerequired to be submitted 15 days prior to the hearing. These two things would save so much time and money.
167	close the record for God's sake. I'm tired of holding two hearings on almost each case. The reps use it as a tool to "ambush" judges with medical records and MSO's on the day of the hearing. It's hard to prepare for hearings with an open record as it stands now.
168	develop adequate consultative examinations
169	As background, I have been in the Agency and a part of or around high level mgmt for over 20 years. I believe that the good cause exception will be a floodgate and the norm. Finding no GC will be almost impossible to enforce and likely cause a separate cause of action at the DC level such that the AC will find GC in almost every instance. This is why I chose the neutral-neither disagree/agree option in may of the questions. I see this as another effort that will be as woefully unsucessful as the other top down ideas of the last 20 years. I wish them luck, but they just didn't think this thru.
170	Would much rather get relevant evidence late than not at all.
171	I would be in favor of expansion of the pilot program to all other regions because the records are incomplete in the majority of my cases (i.e., because the staff have not adequately developed the record prior to the hearing and because the representatives often do not have complete records prior

27. If you have any additional thoughts or perspectives on Region 1's pilot program and/or the possibility of expanding that pilot program to other SSA Regions, please provide them in the box below.	
	to the hearing). I schedule supplemental hearings in approximately 1/3 of my cases due to inadequate development, no consultative examinations in the record, or significant medical evidence added after the first hearing.
172	attorneys are people who live by the rules. Once they understand what a deadline ils, they will meet it if we give them enough notice of a hearing (and 75 days is enough notice). The have similar deadlines for all other procedings in which they appear.
173	I feel deadlines have to be set but depending on the circumstances, it may not be completely practical. If the hearing date could be used as a protective filing date for a new application, then the adverse results of not meeting deadlines could be somewhat ameliorated. Reps will go crazy tho and think of any excuse to justify good cause and many cases will be appealed based on that determination alone. Quite frankly, I feel that deadlines imposed will only be effective if they are hard and fast, with no exceptions. I do not know, however, how implementation has worked in Region 1 and whether it has had any effect on the hearing process. High volume reps will find it very difficult to meet deadlines and more confusion and litigation could result because of that. I feel a close of the record after the hearing on a date set by the Judge at the hearing may make more sense. There are too many remands for late submitted evidence that only goes to the AC.
174	A deadline for submitting evidence (subject to a very strong good cause exception) has been needed since I have been an ALJ
175	Closing the record 5 days before the hearing will force representatives to focus on their cases and obtain evidence they should have obtained weeks or months earlier.
176	I like the concept, but I do not believe the AC or the courts will allow strict enforcement. The good cause standard for late filings will become the norm. - Also, the idea of scheduling 75 days in advance affects my ability to plan events in my life on short notice.
177	close the record. do not reopen for late filing with the appeals council.
178	Even though claimants often walk into a hearing with additional MER, the biggest problem I have is with Rep's who walk in with additional MER because it often consists of hundreds of pages. And its usually because they didn't start worrying about getting MER in until a very few days before a hearing. The pilot program won't solve this until Rep's are barred from presenting this additional MER to the AC or Courts and using it to gain a remand.
179	As long as the Appeals Council remands based on new evidence, there is no incentive to file evidence timely. Also there needs to be an easier way to reduce rep's fees based on the untimely submission of evidence. Submitting evidence at last minute encourages ALJ not to review the evidence as carefully, which is in rep's favor if there is any negative info in evidence about their client.
180	It would be important to have clear guidelines as to when an ALJ is expected to allow late submission of evidence. Otherwise, some ALJs would almost never find good cause.
181	95% of cases clmts are represented by counsel. I know of no other adjudicating body int he world that does not close the record. If you don't you are simply trying to hit an elusive target that always changes. Any panel that reveiws a decision may not review it on the same record that was before the ALJ. This is simply ludicrous. Additionally, the current method encourages reps to "hold back" evidence and, if the decision is unfavorable, to then send it up to the AC or Court with the hope of securing a new hearing. Finally, it would allow the ALJ to prepare completely for the hearing and determine if

27. If you have any additional thoughts or perspectives on Region 1's pilot program and/or the possibility of expanding that pilot program to other SSA Regions, please provide them in the box below.	
	needed additional CE or an ME at the hearing which would cut down on supplemental hearings.
182	I absolutely believe that representatives rely on the "I just received this evidence" excuse to cover up the fact that they failed to timely request said evidence on far too many occasions. While medical providers may not always provide records as timely as any of us would like, a 60-75 day window should provide ample opportunity for representatives doing their job to do that - their job - in terms of requesting necessary information. I absolutely believe that ample hearing notice and closing the record without a STRONG showing of good cause are necessary to give SSA's ALJs a fighting chance to be as productive as SSA demands while also still preserving the due process rights of claimants.
183	I have been an ALJ for 33+ years and before that was a private practitioner (trial/jury work both civil & criminal)for 15 years. There is no single issue, in my view, that most directly effects the timely and fair administration of adjudication of these cases than this s0-called "new" evidence issue. I have lobbied hard over the years both as an ALJIC (HOCALJ for youngsters in the program)and before that as a private practitioner for changes in regards to when the record should be formally closed---once and for all. No one has been more outspoken than I in regards to this issue, and this "Pilot" program is the closest I have seen towards effectuatin a change. In this regard, I support this program 100%!!!!
184	Submission of all evidence (including adverse evidence) well in advance of hearing is crucial to a complete record. Representatives game the current system.
185	The sucess would all depend on the interpretation of the good cause provisions for failure to timely submit evidence. In order to have a complete and meaningful record, the interpretation would have to be fairly broad and include provider delay, newly generated evidence, changes in condition, claimant's difficulty in understanding or providing information, etc. This may water down the time limits to the extent that they end up being ineffective - a difficult balance of competing interests.
186	Excellent idea, would impress on reps/attys these cases should be taken seriously. The ethical experienced reps/attys should have no difficulty complying with this change. They should know the providers in their area(s) such that they know which will take longer to obtain. The reps/attys who routinely delay submitting aged records hopefully will change their habits. Best advantage will require reps/attys to keep in contact more often with their clients. Will lessen/end the need for delay after hearings for evidence. Must keep the good cause exception to allow ALJs to recognize what should be rare circumstances for recent treatment. The Appeals Council also should be held to these standatds such that they do not continue to "reward" reps/attys, who hold back evidence that could have been & should have been submitted at ALJ level, by granting appeal for ALJs to review the "new" evidence. App Council should enforce the requirement of timely submitted evidence & support ALJs who grant good cause exceptions and who deny the request when good cause has not been shown. A response of a rep/atty that they "just learned" of evidence (X years old) is not good cause. Reps/attys should be in contact with their clients so they do know of evidence. Newly learned evidence should be evidence within past 6 mos at most. ALJs also should not routinely deny or grant these requests. It should be ona case by case basis.
187	Please expand to all regions.
188	Start with the portion of the pilot involving closing the record. That seems to be the biggest problem with efficient adjudications.
189	This program violates due process rights and should be scrapped immediately.

27. If you have any additional thoughts or perspectives on Region 1's pilot program and/or the possibility of expanding that pilot program to other SSA Regions, please provide them in the box below.	
190	Pilot program was absolute failure. The notice requirement was absurd and results in loss of hearings nearer to hearing. We are competing with local and federal courts and other hearing offices for representatives. 20 time frame allows for reasoable flexibility in scheduling and assurance you would have actual hearings on docket. The real issue is not the notice requirement, although there's was riduiculous and runs counter to all other court notices, the real problem is closing the record, our record is never closed, it has to close. We are burdened with remands based on evidence we never saw and there is no current incentive for representatives to submit all evidence at time of hearing, they can always do it at AC level and case goes back, of I get court remand that blasts me for failing to address something I have never seen. This is the main problem, we need the evidence to close and not allow new evidence on appeal. This would then provide for the incentive needed for reps and claimants to have evidence at time of hearing. As it is now it is a never ending open ended process. CLose hearing at hearing unless ALJ provides for POST and then after post close record is closed. THe rest of the program in Region 1 was a major failure, made this a cubersome unworkable and unmanageable process. There is no economic or legal reason that this program should go any where, it is a waste of time and valable resources and actually causes major delays in adjudicating the claimant's claim. Further, another part of our problem with reps it that there is no teeth in our law or reguations to make them perform there function, the regualtions, as they point out require us, not them to develop record, as such many are now refusing to develop anything at all. So if you want to develop a program, it will remain meaningless unless law and regulations are changes to shift requirement on the claimant and the rep to produce evidence to bear the burden that they have to prove their case. Don't waste any more govenrment resources on this pilot program, moveon and address real world law and reg changes that would allow us to do our job in a more effective and efficient way and assure that adjudication is able to take place.
191	the remedy for newly-hired representatives is a postponement or continuance of hearing
192	It is inefficient for me to review the file in any detail prior to hearing because it is almost never complete. My office has been scheduling cases 90 days out or greater for a couple of years and I have noticed absolutely no change in representatives completing the file prior to hearing-nearly every one of my cases must be held open after hearing with frequent requests for multiple extensions of time to submit evidence. In general these representatives were retained a year prior to hearing but do no work on the case until sometime after the notice of hearing is received. The only way to change this behavior is to be able to close the record- but will the Appeals Council then remand every case when the late evidence is submitted to them? Another approach is to allow the ALJ to reduce the representative's fee when the file is not completed prior to hearing; that might actually get their attention.
193	The agency needs RULES OF PROCEDURE desperately!
194	We need to find a way to avoid representatives submitting duplicative evidence at the last minute. A record replete with duplicative evidence does not help the adjudicative process.
195	By setting a date but providing that this is not a date certain upon showing of good cause, it just means one more thing that must be considered and ruled on. Already we are given only 2 and 1/2 to 3 hours at most per case.
196	I stongly support closing the record prior to the hearing. The current system of allowing the record to remain open indefinetely actually harms the claimant and the hearing process overall. I believe the best time for me to make a decision for any claimant is immediately after the hearing when the claimant's testimony and medical evidence is fresh in my mind. The longer from the time of the

27. If you have any additional thoughts or perspectives on Region 1's pilot program and/or the possibility of expanding that pilot program to other SSA Regions, please provide them in the box below.	
	hearing and the initial review of the file, the more stale the information is for me. This does not serve the claimant or the process. Moreover, leaving the record open post hearing creates inefficiencies in my process, since it requires me to "rereview" a file, instead of focusing on new cases.
197	We need a discovery cutoff date to help manage the efficiency and accuracy of the hearing process, especially with regard to represented cases. Since the Agency does not develop unrepresented cases, am forced to hold discovery docket days where I call in all unrepresented claimants, advise them of the right to representation and discuss with the them what records are missing, where they have been treating or going to school, if children, and consider a CE if record shall still contain few medical records or school records. Unrepresented cases are more likely to proceed to hearing on hearing day day if this effort on Discover Docket Day is undertaken. We should have senior attorneys conduct Discovery Docket Days on unrepresented so cases will be developed and claimants are properly advised of the right to representation and therefore given sn informed opportunity to gain representation prior to hearing day.
198	The earliest possible submission of evidence will make it possible to review the file in ARPR, order any needed CE's and otherwise have a complete record in order to make a decision at or shortly after the hearing. Post hearing development is extremely inefficient.
199	Reps should be held to a higher order of compliance with the Rule and unrepped claimants should not have to explain why their records have not been updated. We know the reasons. If we had more staff and DDS had more staff, unrepped claimants' records could be updated by DDS requesting them closer to the date of the hearing so that we have their records prior to the hearing. Unfortunately, this will not happen for obvious reasons.
200	Questions: 1 Is the Region 1 rule 5 business days or calendar days? 2 Does ALJ still have authority to order a supp. Hearing? If so, is 75 days required for the supp. Hearing?
201	I am not in Region 1 and I have very little information on how the pilot program is actually working and what "real life" experience has shown.
202	The five day rule is good, although I would like to insure that the "good cause" rule is not so broad as to make the five day rule meaningless.
203	Do not work in Region 1. All my answers are pure speculation.
204	I support the idea of closing the record at a date certain, at least 10 days before the hearing. I am against 75 days minimum notice. Far too much and will make scheduling difficult because I sometimes cannot commit to hearings dates over 90 days away. I believe 30 days notice is sufficient.
205	Closing the record in advance of the hearing is helpful only if there are very limited exceptions.
206	We are always lectured to about treating reps courteously and respectfully, but are often admonished when we demand the same. Reps look at us as impotent judges because of our own agency's written and unwritten ALJ policies -- consequently, the due respect of the ALJ position is negligible. Most problems with reps are due to last-minute evidence submissions, most not of immediate currency or with normally acceptable rationales, and unprepared reps at hearings. Reps have no fear of sanctions as one finds in the real courts for such lack of professionalism. Thus, their actions waste a great deal of time and money, are highly disruptive to hearing schedules, and are ultimately deterimental to the claimants. Region 1's program should be estalbished across the nation and to which adherence by reps in particular should be strictly enforced. As for unrepped claimants, they will naturally get more

27. If you have any additional thoughts or perspectives on Region 1's pilot program and/or the possibility of expanding that pilot program to other SSA Regions, please provide them in the box below.	
	leeway under Region 1's pilot program simply because they are unrepped. With clearly stated policies, however, even unrepped claimants will fall in line soon enough as they learn what their responsibilities are.
207	Due to thenature of our work, we have to remain flexible as judges and as an agency. It would be nice if evidence gathering worked smoothly and efficiently but it does not reflect our reality. It would be better to train judges how to deal with all of the evidentiary contingencies in a flexible and reasonably efficient manner. Many of our judges take a ridged approach to these matters and fail to demonstrate the capacity to understand the vagaries of the chain of medical information representativesimprove somewat if prodded but most evidentiary problems are claimant or provider driven. It must be recognized also that claimants continue to get medical care before and after the hearing without regard to deadliines.
208	There are too many varaibles for the survey to provide meaningful feedback.
209	As it is, these cases never end. CLOSE the Record! End the doggoned things! Otherwise, we continue to have a non system and then wonder why we cannot get systematic results. Well, duh...
210	The sooner this program is adopted in all Regions, the sooner ODAR will realize it numerous positive effects.
211	There are no sanctions for the AC to apply if records are not submitted timely. A remand equates to longer process and Rep makes fees accruing at 25%. No bank pays 25% of back due benefits. Make tight rules with NO exceptions to give deadlines meaning.
212	Consider barring the Appeals Counsel from considering evidence submitted late or post hearing absent good cause. We're 'churning' too many cases, recycling them over and over.
213	I would love to see the pilot program expanded. No other administrative agency permits a rolling period of time where evidence trickles into a file. By setting deadlines, and providing adequate notice in the hearing notice everyone is aware of their responsibilties to update records and this will save time and allow for timely decision making.
214	Scheduling cases 75 days in advance is a bit too far in advance (for the claimants, reps AND ALJs). Closing the record will only be effective if there are consequences especially for Reps who normally come and and say they only discovered a new medical source a week prior to the hearing when they interview their clients in preparation for the hearing.
215	A frustrating part of the hearing process is having to leave a record open after the hearing date to allow the cl to submit additional medical evidence that could have been obtained and submitted well before the hearing. It is more common than not that a representative will submit records after the hearing that are months or years old, but that have just not been requested promptly. The process of going back to review new evidence when it comes in and also reveiwing some previously submitted evidence to refresh my memory of the case is very time consuming in virtually every case.
216	The questions do not suggest the authors of the questions fully understand our process. Since I am required to review any evidence provided before the decision is signed, it is a waste of my time to listen to any excuses for lateness, so I don't even ask. The 75 day rule will make it impossible to schedule on a timely basis because I read the file, a practice apparantly not followed by many of my collegues.I will never reach this 75 day deadline. Pre-hearing rerview allows me to make notes, decide on my experts and even pay cases on the record. Since I cannot remember what is in the file, i review

27. If you have any additional thoughts or perspectives on Region 1's pilot program and/or the possibility of expanding that pilot program to other SSA Regions, please provide them in the box below.	
	my notes the day before the hearing, plus the new records submitted since I made the case ready to schedule, a process that usually consumes substatial additional time as hundereds of new pages are submitted-and then more come in post hearing.At least closing the record 5 days before would end this post hearing practice, unless, as i suspect, this organization will riddle the rule with exceptions that make it almost meaningless. The other impediments to prompt decison making-an Appeals Council that will remand on issues never mentioned, so an all inclusive decision is needed, a system that allows a Federl District Court Judge to reverse a decison even thought the argument was not made to the ALJ or even to the Appeals Council-this after the Supreme Court of the United States told us how to avoid this, incompetent/lazy writers who dont even followed written instructions from the ALJ are among the other areas that need attention. The sixe of this box to write comments is very annoying and user unfriendly. Also the problems of duplicates, tripicates and worse needs to be addressed. Rep will send in 80 new pages, all already in the record. Or rep will send in 300 pages,of which 110 are new and the other 190 duplicate those 110.
217	I have never found the submission of additional evidence after a hearing to slow down the process of adjudication except by a small amount. Nor does it impact the hearing. The claimant's problems are usually well documented in the record and the post-hearing evidence is just more of the same. Closing the record before a hearing is a tempest in a teapot and most Judges have no issue with leaving the record open for a week or 2 for anything else to come in.
218	Please expand it! Late-submitted evidence is a CONSTANT problem. I review about 2 weeks in advance, and sometimes because of the volume of new evidence, it is like a new case when I review the new evidence. It is very inefficient to have to keep picking up cases more than once--it would be much better to review them when everything is submitted, but reviewing the case the day before the hearing is way too stressful and does not allow enough time to secure additional development or medical experts if needed.
219	SSA needs to implement a rule/policy requiring reps to send in only appropriate medical evidence (i.e, not from 3, 4, or 5 years before the alleged onset of disability); punishing them for sending in out-of order and duplicate medical evidence; and setting forth what medical records must be submitted. For example, it a claimant goes to the hospital with chest pain and it admitted for a 2-day stay, we do not need the admissions/insurance or living will papers; we do not need the numerous immaterial papers from the admission like nurses noets and anesthesiolgy records. These 1500 -2000 page disability files take a long time to review, in large measure due to the fact that they contain unnecessary records that add nothing the adjucation of a disability file. The problem is exacerbated by the agency policy that legal assistants are not required to place medical records into date order, or to remove dupilicate entries. This shifts the burend of dealing with a messy file to the ALJs and decision writers who are supposed to carefuly consider all of the medical evidence in a file.
220	I've typed very long answers in here twice, and when I've gone to the navigation bar to the right and clicked on the arrow, the answers disappeared each time. I'm not wasting my time doing it again.
221	Should look at remand rates. There should be fewer. It would prevent supplemental hearings because the medical expert could not be forwarded the evidence in time for the hearing. Many MEs now testify by telephone and some do not have a fax machine. Would lead to more accurate decisions because both the judges and experts would have more time to study records. Should also lead to fewer withdrawals on the day of the hearing by representatives since they would have to submit evidence before the hearing thereby knowing whether the claimant has a good case or not five days before the hearing. Closing the record after the hearing would also make the appellate process more efficient and prevent remands based on new evidence. SSA has a very liberal reopening rule so the claimant could

27. If you have any additional thoughts or perspectives on Region 1's pilot program and/or the possibility of expanding that pilot program to other SSA Regions, please provide them in the box below.	
	file a new claim and request that the old claim be reopened. Should consider having separate rules for represented and unrepresented claimants. Almost all courts have separate pro se rules. If expanding the Pilot to other regions do not change existing rules with regard to unrepresented claimants.
222	I believe that the current system in which the record is never "closed" and where particular representatives wait until the day of hearing, or worse, submit records after the hearing without even notifyin the ALJ is extremely inefficient, hinders proper preparation of the case, and unfortunately results in incorrect decisions.
223	We absolutely need to close the record and have sanctions for late submissions.
224	This is sorely needed and I can think of no good reason why it shouldn't be standard policy. The reps frequently do not given any reasons whatsoever as to why they submitted evidence - hundreds of pages - even on the day of hearing. They will tell you on the record "the record never closes, so I don't need to tell you why". The ALJs need enforceable procedural rules. All concerns for reps and unrepresented claimant's in the process can be managed by having a "good cause" requirement that is clearly stated and NOT so broad as to swallow the rule and make it meaningless. Cases in my region are greater than 800 pages on average. I have kept track. It is not uncommon for cases to have as much as 1/4-1/3 or even 1/2 of this evidence come into evidence on the eve of hearing. I have kept track. The reps know that ALJs often respond to dumps and time constraints by trending toward paying cases, and they exploit the complete lack of any procedural rules to drive evidence size up on the eve of hearing. The overwhelming majority of this evidence is from many months prior to the hearing, so there really isn't any reason to delay the submission. Moreover, they often submit duplicates of evidence for the same reason. The agency has a policy where they do not allow the staff to remove duplicates within submissions - thus the ALJ must read this to make sure no new evidence is buried in the old. Strongly recommend the adoption of procedural rules, and Region 1's program is a good start. "Good cause" should not be the sloppy jargon of SSA but tied to real standards such as "new and material" and "not discoverable with exercise of due diligence" as these phrases are used in the federal practice. There is a troubling habit here among some reps to withdraw on the eve of hearing after being on the case for more than a year with little to no development of the medical record. This results in an automatic supplemental hearing. If a claimant is unrepped, have a provision for them to confirm at a date certain so that we can assist them in getting the records. Integral to this process is to address the continuance in order to seek representation policy - this guts the procedural rule 5 day rule as the unrep'd claimant need only claim to seek a rep and get another bite at hearing. These issues can be reconciled, but there needs to be a comprehensive set of procedural rules that account for indigent unrepresented claimants and due process. We did this in the criminal realm all the time, nothing is so magical in SSA adjudication that prevents this (and in the criminal sense, far more was at stake, including liberty). With properly crafted rules, claimant's due process will be assured, and the reps will be held to basic advocacy requirements, hearings will have more finality and our remand rates will decline. Right now, there are no rules and no sanctions, and thus, no accountability - but big pay outs. There is a schism between what reps think they must provide and SSR00-2p regarding material omissions. It's a mess. Let's fix this. Procedural rules are a no-brainer. Contact me if you want my help. I have nearly 3 years of metrics.
225	There should also be a requirement that the claimant be required to complete & return to SSA(w/in 10 days) the authorization form, medical providers form & work history forms which are sent to the claimant at the time the hearing notice is mailed. SSA can then obtain information so that a proper screening can be timely made for a favorable on the record decision.We could then eliminate approx. 5% of the hearings scheduled & then "backfill" the slot that opens using waivers of the 75 day notice.

27. If you have any additional thoughts or perspectives on Region 1's pilot program and/or the possibility of expanding that pilot program to other SSA Regions, please provide them in the box below.	
226	Unless the record closes at some time, attorneys have no incentive to prepare ahead of time. I often hear attorneys say they started to seek evidence when the hrg was scheduled. I don't understand why they should be encouraged to simply let the case lie dormant until then, and then complain that they do not have enough time to develop. Also needed to be addressed is representatives' submission of duplicative and disorganized and irrelevant evidence. I have had attorneys submit - with no explanation - more than 1000 pages post hearing, of which fewer than 100 pages were duplicative of evidence already in the record. In our office, there is a small minority of the attorneys who are responsible for the majority of problems in this area.
227	I don't care about the timing of the hearing notice. But the idea of forcing reps (absent good cause) to get off their butts and do their job in a timely way will help the ALJs to prepare cases efficiently and thoroughly, and benefit the claimants by ensuring (1) better prepared ALJs, (2) a timely-developed evidentiary record, and (3) better prepared reps. "Trial by ambush" was abolished in every jurisdiction other than ours decades ago, and for all the salutary reasons that should compel us to adopt it now. Better late than never! William A. Kurlander, ALJ
228	It's just common sense to close the record prior to the hearing. Otherwise, these cases are like the flying dutchman and they are never going to land.
229	The program is dependent on proper staffing. Our office is currently one of the most understaffed in Region IX, with little prospect of improvement. Additional staffing is tightly regulated, and the Region IX Regional Office exacerbates low office staffing by detailing employees from hearing offices to the RO. This helps the RO staffing levels, artificially, but masks the negative effect on affected offices. In the meantime, the agency has unilaterally imposed its quotas on hardworking offices and judges who are diligently trying to comply with constitutional due process requirements. See, e.g., what recently happened in Oakland where an ALJ was denied annual leave by the RO until that ALJ came up with a "plan" to decide at least 500 cases in the current FY. Also, while a recent VE training video from the agency characterizes the hearing as "the cornerstone of due process," the fact is the agency is constantly pushing the judges to cut due process corners in the interest of gettting more decisions out the door more quickly. I have attended a conference where judges were encouraged to get claimants to waive their right to representation by assuring the claimants the judges would be fair; this is nothing more than a subtle attempt to get claimants to waive this fundamental due process right. The idea is to get the claimant to waive representation so the claim can be decided more quickly. I saw a video last year promoting the same. I have also been told by hearing monitors and by attorneys in other offices and other Regions that the judges in their offices do not want witnesses to come testify at hearings; I assume this is b/c this would add to the hearing time. I have heard attorneys tell me that are discouraged by their local offices from even filing third-party statements. I keep thinking about due process. I have also been told by monitors and attorneys in other offices and other regions that the judges in their offices do not want and discourage reps/attorneys from filing briefs; the reason given is that the judges do not want another document in the file to have to read. Discouraging attorneys from writing briefs to summarize the facts and legal theories? Next, we routinely get cases with over 1,000 pages in the medical record alone; yet, we are required to process these cases within a matter of @ two hours from the time we first get the file until the point we sign the decision. I have done many cases from other offices around the country; the # of pages I see locally is usually much more than in other offices. Compare this with what the Senate Minority Committee report said about the time it takes to process a file with @ 1,000 pages, i.e., nearly one day if the case is fully and properly studied (a good survey question would have been to ask the number of pages in a typical file; another good question would have been an estimate of the amount of time each judge devotes/case to purely clerical matters, a significant and growing percentage). Yet, agency quotas are oblivious to observations such as this from the Senate, observations that that disagree with their views. There is

27. If you have any additional thoughts or perspectives on Region 1's pilot program and/or the possibility of expanding that pilot program to other SSA Regions, please provide them in the box below.	
	also commentary that the current agency Chief Judge informed elected officials in testimony that processing 500 cases per year was not only doable, but she herself had done so; however, the grapevine has it that the overwhelming majority of those 500 decisions she issued in that one year were Dismissals, not substantive decisions, and that her office staff had funneled dismissals to her in order to increase her numbers. I have no idea of the accuracy of these grapevine commentaries, but this is the grapevine. Another consideration is that the former Commissioner is on record as denigrading judges. While he has publicly commented that he successfully went after four judges, and used particularly offensive characterizations of judges, he has not acknowledged there are @ 1,400 judges. Thus, successfully going after four judges out of 1,400 is hardly an accomplishment. In addition, many judges take a jaundiced view of him, b/c continuing disability reviews essentially stopped under his administration. This meant that hundreds of millions of hard-earned taxpayers dollars/red ink continued to go out the door, needlessly under his administration, b/c so many disability recipients continued to receive disability benefits even though a review would have shown many were no longer disabled. He usually brushes off any responsibility for this, despite the fact Congress gave SSA money for just this purpose. Note as well that an arbitrator specifically found that he was anti-union in matters affecting union of judges. In addition, many judges continue to ask where was the former Commissioner, where was the Dep. Commissioner, where was the Chief Judge, where was the Regional Chief Judge, where was the OIG, in 2005, and thereafter, as the West Viginia scandal was unfolding. The Wall Street Journal has reported top management officials were notified as early as 2005 of significant problems in that office; yet management appeared to profess complete unawareness that anything was wrong until the Wall Street Journal articles. Thus, the obvious question: Where were all these officials, beginning in 2005, officials who were specifically charged with oversight of the program? So far, it seems top and middle management of SSA, as well as OIG, have received a free pass from everyone, e.g., federal prosecutors, congressional oversight, over their years-long abdication of responsibility with respect to West Virginia. Thus, to say that top management of this agency is, has been and continues to be disingenous is an understatement. With this in mind, imposition of the Region 1 pilot program across the board, while laudable, would be destined to monumental problems, in an agency that currently has overwhelming problems, given an agency that systematically understaffs offices, denigrades judges, encourages cutting due process corners, unilaterally imposes oppressive quotas on hardworking judges and gets free passes for its long-term mismanagement including the massive red ink it has brought to the disability program by failing to conduct continuing disability reviews. It is time for this agency to dedicate its resources to proper identification of current problems that need correction, before embarking on yet another large, nationwide initiative for which it is not administratively ready for which it is not properly staffed.
230	Other adjudicatory bodies, including administrative law adjudicators have had similar systems in place for a very long time. It can only make the process more efficient and reps more accountable for actually performing the work they are being paid very well to perform.
231	records should be closed. This would prevent last minute filing and remands from AC on new evidence
232	Procedural rules are needed.
233	Prior to joining Region II, I worked for 5 months in Region I and, thereby, got the advantage of the Pilot Progam and 5 day rule. It was immensely better at allowing me to close out my cases and issue a decision soon after the hearing. Now, in Region II nearly everything goes into POST for a period of 2-4 weeks and I am often unable to adequately prepare for a hearing and make appropriate use of the VE, which I tend to schedule in all adult cases (as recommended by the agency).

27. If you have any additional thoughts or perspectives on Region 1's pilot program and/or the possibility of expanding that pilot program to other SSA Regions, please provide them in the box below.	
234	make the requirement applicable to representatives retained at least 60 days prior to the hearing
235	Claimants file for current, not prospective disability. We should limit all consideration to the initial claim, not one which develops after being "lawyered up."
236	Though I do not agree with so much advance notice of hearing, I do think closing the record prior to the hearing would be most helpful. My experience is that the representatives do not prepare until shortly before the hearing so that much more advance notice may not help.
237	It is imperative that a change be made to permit the evidentiary record to close at some date certain. I assume these changes could not be made simply through a "pilot" program, as the Commissioner has already established timelines in binding regulations in 20 CFR 404.935 and 20 CFR 416.1435, and enforcing any such timelines by virtue of a pilot program would seem to violate the rights of claimants under these regulations. Certainly these regulations should be revised.
238	I don't know enough about how the pilot program worked to have a well formed opinion about it. The one part of it that is very appealing is closing the record at some time even shortly before the hearing. The endlessly open record turns the administrative process into something of a farce.
239	Strongly recommend that the hearing record close some time, maybe even as of the date of the hearing but we need to close the record to have some efficiency. I recently had to proffer new evidence twice which has lead to a 40 day delay in rendering a decision. I also strongly recommend that the same period apply for T2 and T 16 cases. 20 CFR Sec 405.331 requires that evidence be submitted 5 days before the date of the hearing but this same regulation does not exist in for T16 cases. Uniformity in the hearing process regarding this issue is extremely important as most cases in Region 2 are both T2 and T16 cases
240	The claimant and/or representative should be able to submit documentary evidence on or prior to the scheduled hearing date. . Once the hearing ends, the record should be closed. If there is a good cause window for submitting evidence subsequent to the hearing, it will result in nullification of the purpose of a closed record because appellate bodies will always find "good cause"for untimely submission of evidence. Most claimants are represented but those advocates rarely exercise diligence in pre-hearing preparation. The federal courts view the SSA disability prgram as "remedial" or "paternalistic." Consequently, in the case of the unrepresented claimant, application of the pilot rules will be met with resisitance from the federal courts. If the claimant is repesented, that individual should be held accountable for timely completion of the record. Quare whether the federal courts will distinguish between attorney and non-attorney representatives.
241	Currently, a number of representatives wait until after they see how a hearing unfolds and then try to pepper the record with medical source statements to bolster perceived weaknesses in their cases. It makes it more difficult to edit decisions where instructions have been made based on what was believed to be a complete record. This can result in AC Remands and takes expert witness cross examination of such evidence out of the picture absent a supplemental hearing and much additional time and expense to taxpayers.
242	Unrepresented claimants are not aware they are responsible to submit current medical records. They don't have to at DDS level. Although SSA may say it will obtain current medical records, it usually doesn't because of staffing shortages.
243	It failed six years ago. That's why Astrue threw it out. Why are you wasting your time on it now.

27. If you have any additional thoughts or perspectives on Region 1's pilot program and/or the possibility of expanding that pilot program to other SSA Regions, please provide them in the box below.	
244	I have been an ALJ in Region 5 for all of my career, but I did an eight-month detail to the DRB, immediately prior to its termination, as one of the ALJs reviewing cases with appeals court judges. I rarely saw a problem with application of the rule requiring submission of records 5 days before the hearing; it seemed to work well and served its intended purpose. I am strongly in favor of expanding the program because, in my experience, the failure of representatives to timely submit evidence is a huge problem and creates great inefficiency in adjudicating cases. I don't think it would make a great deal of difference with respect to unrepresented claimants, because I have to obtain virtually all of the outstanding evidence for them anyway.
245	Having been a former Georgia state ALJ presiding over more than 300 different types of contested cases, I was shocked at the informality in the non adversarial SSA hearings, and more particularly, in the inability of ALJs to manage the appearance of representatives and the never-ending open-ended record, both of which provide lead to a very inefficient, time-consuming and expensive process. At a minimum, SSA should provide a rule that all evidence must be submitted at least 5 days before the hearing and provide a rule that the record shall close at the close of the hearing unless the ALJ agrees to leave it open for a specific period of time post hearing. SSA should also adopt the following rule: "Prior to the entry of a written decision, the claimant may move the ALJ for an order allowing the introduction of additional evidence on the basis that such evidence is newly discovered and was not discoverable in the exercise of reasonable diligence at the time of the hearing. If the ALJ determines that the evidence is newly discovered, and that it may materially impact the case, the ALJ shall receive such evidence but shall not be required to schedule a supplemental hearing." In applying any expansive notice requirement, SSA should adopt an appearance and withdrawal rule for all representatives appearing in SSA hearings, to wit: "Within five days of learning of a scheduling conflict between SSA and any other federal or state court or administrative proceeding, the representative or a pro se party shall file a written notice with the ALJ. A representative who has appeared in a case may seek to withdraw on motion showing good cause. Withdrawal shall be effective only on the ALJ's order entered after service of the notice on the withdrawing representative's client at least 10 days prior to the hearing. A motion to withdraw must state the reasons for withdrawal unless the statement would violate the rules of professional conduct. Notice to the representative's client must include the warning that the client personally is responsible for complying with all ALJ's orders and time limitations established by any applicable rules."
246	I would like to see this program expanded. With only some limited exceptions, there is absolutely NO reason the evidence should not be available to judges 5 days before hearing by representatives and closing the record. It is difficult to do my job at hearing when reps submit hundreds of pages the day of the hearing, particularly when these records are a year old and there is no reason to delay except lack of preparation by the rep. The judges are penalized if we delay because it makes it more difficult to meet the 500-700 cases when we have to reschedule hearings. Late submission of records is an issue in at least 60% of my cases. However, with unrepped claimants, 90% of the time, the judge is the one ordering records after the hearing. My position is that absent intellectual or other mental limitations, it should be the claimants' to make sure the record is complete, not the judges'.
247	PRE-HEARING BRIEFS W/ THEOR IY OF THE CASE (GRID/LISTING/SSR, ETC.) AND WITH SPECIFIC CITATION TO EXHIBIT AND PAGE NUMBERS SHOULD BE FILED NLT 10 DAYS PRIOR TO THE HEARNG. ALL EVIDENCE THE JUDGE IS TO REVIEW SHOULD BE FLIED NLT 10 DAYS PRIOR TO HEARING. MOST LAWYERS DON'T DO THIS. I'VE FOND THT MOST UNREPRESENTED CLMT's DON'T BOTHER TO READ THE INSTRUCTIONS ON ANY NOTICE ODAR SEND TO THEM OR DID NOT 'UNDERSTNAD'. WHEN ASKED WHAT THEY DID ABOUT THAT- TELEPHONE THE OFFICE?) MOST SAY "NOTHING". IF THEY TALKED W/ SOMEONE, THEYNEVER KNOW WHO IT WAS. EXCEPT FOR VERY, VERY UNUSUAL CIRCUMSTANCES, THE RECORD SHOULD BE CLOSED AT THE END OF THE HEARING. LAWYERS, IN PARTICULAR, TAKE

27. If you have any additional thoughts or perspectives on Region 1's pilot program and/or the possibility of expanding that pilot program to other SSA Regions, please provide them in the box below.	
	ADVANTAGE OF SSA's LAX POLICIES N THS REGARD BY ASKING THAT "THE RECORD BE HELD OPEN" FOR X # OF DAYS FOR WHATEVER REASON. THAT MEANS JUDGES HAVE TO GO THROUGH THE PROCESS OF REVIEWING THE CASE AGAIN WHEN EVIDENCE IS RECEIVED AND, IN SOME CASES, HOLD A SUPPLEMENTAL HEARING. ALL OF THIS COULD BE EASILY CONTAINED IF SOME FORM OF THE FED RULES OF CIVIL PROCEDURE WAS USED BY SSA AND JUDGES WERE GIVEN THE AUTHORITY TO HANDLE CASES AS THEY SEE FIT W/O HAVING MANAGEMENT ALWAYS LOOKING OVER THEIR SHOULDERS.
248	ALJ's have always wanted a record they could count on at the time of the hearing. Many reps wait until receiving the notice of hearing before seeking updated medical. It is crucial to combine the 75 day notice requirement with the 5 day limit to allow them enough time to do so.
249	A 75 day hearing notice deadline is far too much time. Believe it or not, although we are expected to abandon or severely inconvience them to accept the job, ALJs actually have families, children, parents, spouses, etc. When was the last time your child's school, your parents, or your spouse's employer planned an activity 3 months in advance? When was the last time you had your entire schedule cemented in stone 4 months ahead of time and you were not expected to deviate from that schedule one iota once the schedule was set? How many important personal activities have you missed because of the unreasonble expectations of your employer? How many days have you gone to work sick or disregarded the needs of your family because you didn't want someone to have to wait another 6 months to get the service they deserve?
250	I conduct an initial review of the record about 4 weeks prior to the scheduled hearings. I conduct an update/review of the files the Friday before scheduled (Monday through Wednesday) hearings. I always ask if the record is complete and, if not, why not. I have many cases in POST as the representative's staffs are not getting their final updates completed in a timely manner. This is the most frustrating part of my job!
251	I think it sounds great! I waste so much time re-reviewing files the day before or day of the hearing because of all of the new evidence submitting. We could still have exceptions to the rule for exigent circumstances and for unrepresented claimants. Overall, I think it is an excellent idea and would force representatives to prepare in advance as they would for any other court proceeding.
252	I believe this program hinges on how the Appeals Council and Federal Courts interpret "good cause" for turning in evidence late. If they use the same "bend over backwards for the claimant" standard that they use in regard to dismissals, the program will simply make the hearing office's job harder (75 day notice) and not help the ALJs at all. Reps will simply continue to turn in evidence whenever they want and claim good cause because they just obtained the evidence. Who's going to punish the claimant for the rep's dilatory actions? One of our biggest problems is the constant stream of evidence coming in after the hearing and after the rep assures us that the record is complete. We're forced to reconsider the case and possibly change the outcome after the decision's been written. Worse, reps are allowed to submit evidence to the Appeals Council after the hearing and get the decision overturned by a piece of evidence that didn't even exist when the hearing was held (e.g., a new treating source statement or new office visit record). If the new policy simply contains "teeth" that bite the hearing office for not getting notices out 75 days in advance but no "teeth" that actually hold representatives to the 5-day record closure rule, please don't bother expanding the program to our region.
253	I have had to have supplemental hearings where there was an ME involved because the attorney turned in records that he should have had access to prior (they existed a year or more before the hearing) or after the hearing they turn in multiple documents that again were dated anywhere from

27. If you have any additional thoughts or perspectives on Region 1's pilot program and/or the possibility of expanding that pilot program to other SSA Regions, please provide them in the box below.	
	months to years before the hearing date. Most of the time the attorney hasn't even looked at the records they just turn them in not knowing what is or isn't in them. It waste so much time. A notice of 60 days or more should be more than enough time for them to request records either on their own or asking us to obtain them.
254	So long as 'good cause' exceptions are allowed relative to filing documents late, I believe that our turn around time from hearing to decision would be greatly reduced. I hope it is expanded to all regions.
255	Great idea. You have no idea how many representatives submit evidence the night before the hearing, including evidence that they clearly had in their possession for quite some time. Also, you asked when the notice of my hearings went out (I responded about 45 days before the hearing), but that's misleading. It's mid May now & my scheduler is currently booking my October calender. While those notices won't go out until much later, the representatives are aware of the hearing date now. Finally, you were concerned about claimants being disadvantaged if they obtain representation shortly before the hearing -- 20 CFR 404.936(f)(2) provides for a continuance in such a case, which would seem reasonable to me.
256	In most of my cases, the representatives submit additional records (many time in excess of 300 pages) the day of the hearing. If it is not submitted the day of the hearing, it is submitted after the hearing. I often then need to spend countless additional hours reviewing the evidence and oftentimes having to hold a supplemental hearing. In many cases, the representative submit additional evidence after the hearing and do not inform me that they are doing to do so. It is not until the case techs are closing the case that this additional evidence submitted after the hearing is discovered. At that point, the records need to be exhibited, reviewed by me and likely sent back to the writer to include additional opinions and discussion. In other words, Region 1's pilot program would save a lot of needless additional time and resources.
257	We should have done this years ago.
258	Requiring the evidence to be submitted 5 days before the hearing date is a reasonable requirement; there is always the good cause explanation in the event new evidence is identified. I have received 900+ pages on the day of the hearing and many hundreds of pages after the hearing, and I have had representatives stragegically (I believe) withhold one piece of evidence (such as a medical source statement) dated prior to the hearing and then submit it on appeal to secure a remand.
259	having a set time prior to the hearing to submit evidence would cause the reps to look at their cases sooner and get the evidence and to talk to their clients before 5 minutes before the hearing. We might even know who the rep was that was coming to the hearing because they would have to have their 1696's in 5 days ahead too.
260	I would affect the current claims and may limit the evidence available to the ALJ. However, nothing prevents them from filing a subsequent application based on the new evidence. This program would save millions of dollars in time value from employee work hours.
261	As long as "good cause" includes delays by providers, new and material evidence from new providers or recent appointments etc., closing the record is a good practice. I believe the final discretion should lie with the ALJ. That is, that I should be permitted to allow the submission of additional evidence after the record is "closed" if I believe it will aid me in the full and fair adjudication of the claimant's case.
262	I like the idea, but it seems like Representatives have a hard time getting the records from the

27. If you have any additional thoughts or perspectives on Region 1's pilot program and/or the possibility of expanding that pilot program to other SSA Regions, please provide them in the box below.	
	providers in a timely fashion.
263	I served on the DRB for a period of time, and it did not appear to me that there was any deleterious effect resulting from either closing the record or providing significant advance notice of the hearing. In those cases where evidence was submitted untimely, the judge had the option (almost always exercised) of accepting the evidence out of time.
264	Other reason for POST evdence: medical provider has not provided evidence timely requested by rep. Evidence gathering is beyond the ability of most unreresented claimants, so a process for prehearing development for these individuals would be needed for pro se claimants.
265	My only thought is more general in nature that I welcome that you are soliciting our input at all.
266	FRCP, especially with repped cases, have evolved to deal with human nature and to promote efficient hearings. Our process can be more formal without unduly burdening claimants or their reps.
267	It seems to be a common practice for representatives to not develop the record with the claimant and timely submit all MER prior to the hearing. Cases with outstanding development or evidence submitted on the day of hearing end up going to POST. I then must find time to revisit the case, review evidence that could have and should have been reviewed prior to hearing and then render a decision. Many times I must hold a supplemental hearing because the new evidence impacts the hypo posed to the VE. Every supplemental hearing I hold not only delays a decision in the current case but also takes away a hearing slot for someone awaiting a hearing. There are few, if any, good reasons why a representative cannot start requesting and updating medical evidence at the beginning of their representation. The bottom line is they have no incentitive to do so. The representatives also exploit the non-closing record by submitting evidence after the hearing (including post-hearing medical source statements based on hearing testimony/hypos) in hopes the ALJ will not see it or consider it and thus give an avenue on appeal if the case is unfavorable. I don't mind receiving 20 or so page of recent medical evidence documenting a recent vist with a treating source on the day of the hearing. Unfortunately, what I see is hundreds of pages of MER that is a year+ old that should have been timely requested and submitted. I waste a lot of time reviewing evidence submitted on or after the day of hearing. The time to review MER is before the hearing - not after. The time I spend after a hearing review evidence takes away from time that could be better spent adjudicating other cases. The reluctance of SSA to impliment even basic procedural rules is utterly baffling.
268	The "good cause" provision addresses many of the concerns listed on the last page of th survey. There should be flexibility and of course the ALJ has discretion to extend the deadline in appropriate cases.
269	Just an explanation of my answers to 22 and 23. The good cause standard if fairly applied would account for new changes in the cliamant's condition, records that good faith effort did not result in submission by the 5 day deadline, and new appointment of a representative. Fair application of the good cause standard would allow for better developed records at the time of the hearing, without unfair treatment of the claimant.
270	Let's do this
271	ALJs should be allowed in appropriate cases,on a case by case basis,to issue their own sceduling orders,as done prior to the introduction of HPI plan.
272	I think the Region 1 pilot program re closing the record is excellent. However, allowance should be made to unrepresented claimants as they will need help from the hearing office in securing up to date

27. If you have any additional thoughts or perspectives on Region 1's pilot program and/or the possibility of expanding that pilot program to other SSA Regions, please provide them in the box below.	
	medical records.
273	Good cause should not be subjective but needs to have specifically defined guidelines or nothing will change.
274	Representatives regularly hold back information; they often tell the ALJ that there are other materials that should be considered. So, even if they submit the materials before the ALJ's decision, the tactic creates grounds for appeal when a CE report or ME testimony is unfavorable to the claimant, by asserting that the CE or ME didn't have all the evidence, thus givng the rep a strong likelihood of getting a remand. If, instead, materials are submitted in time to be included in a CE's and an ME's review, then the hearing is truly dispositive, as all evidence is "complete" when the hearing is held. This "completeness" is so infrequent, that the FIT has a routine statement that " . . evidence received at the hearing level . . " in effect trumps the prior evaluations. The RI pilot is a good idea, but it needs to be taken all the way: Schedule 75 days out (or 90 days, for that matter) so that we have a 45-day cut-off for submission of materials, in order to ensure that CEs and MEs have time to see the fully completed file, thus avoiding rendering their evaluations outdated and, hence, of less than - or no - probative value.
275	Notice of hearing can be sent with 30 days in advance of hearing -- but hearings should be set based on certification that the repesenative and/or claimant are ready for the hearing, including having all required evidence ready for submission 10 working days prior to the hearing
276	Clsing the record 5 days before or at the hearing is the single SSA action that could lead to efficiency, accuracy of decisions, and declinig caseloads by eliminating the need to hold supplemental hearings. It would also cut down on AC remands for "new and material evicene" as representataives would be forced to actually seek and procure relevant evidence in a timely manner.
277	A bigger problem is leaving the record open indefinately after the hearing.
278	I think it would fundementally change the process for the better. Too often late filing of records is a strategy for appeal purposes.
279	Our office is already giving notice beyond that of the pilot. Closing the record at 5 days is a great idea with represented claimants. I think most reps will complain initially, but would learn to adjust their planning appropriately. With unrepped claimants, I often get a list of 5 - 10 providers who have records that need to be obtained. Hearing Offices would needs to do a much better job of developing the record early in the process if the new deadling is to work fairly.
280	The pilot program, especially the closing of the record, absent good cause, has some good aspects to it. We can schedule and send notices 75 days out and should give the rep plenty of time to request and obtain the records needed, except for those instances where they were recently hired, which I would suspect be a valid reason for not closing the record.
281	closing the records would be a HUGE improvement. It is a constant problem in my office, particularly with one firm who has the majority of the disability cases here.
282	I don't know whether the pilot program has been beneficial in Region 1 and whether it has led to unintended consequences in terms of court remands. The 75-day advance hearing notice seems artificial. I question to what extent the 5-day advance requirement is intimidating to unrepresented claimants and whether it generates more work for hearing office staff. Plus, the Appeals Council

27. If you have any additional thoughts or perspectives on Region 1's pilot program and/or the possibility of expanding that pilot program to other SSA Regions, please provide them in the box below.	
	remands anything that it can. If the AC remands based on evidence submitted later, what's the point?
283	I'm fine with closing the record and 5 days before the hearing is reasonable. My only issue is that reps will just come up with excuses to provide good cause. Will they be able to appeal my keeping out evidence that comes in after 5 days before the hearing? Unless good cause is very narrowly construed and I did not see any definition of what good cause would be in these instances, it is possible cases may be remanded for evaluation of the late supplied evidence. From a practical standpoint, I just don't see that this program would make much difference and possibly result in more remands if I did not consider late supplied evidence. Plus, I really do not see any ALJs not looking at all evidence, however late supplied up through the date the decisino is issued. I do believe, however, that what would be most helpful as an ALJ is that there would be rules of discovery such that reps must provide ALL the evidence that they have and not selectively submit evidence - leaving out evidence that may be unfavorable to the claimant. Relying on the reps to provide evidence often results in incomplete records of evidence. For example, I may note a doctor's name referenced in the record but no records from that source are provided or I may note mention of a test performed but the actual test is not in the record and sometimes not even the results summarized by a medical source. Sometimes I obtain this evidence myself but this is timeconsuming. I'm not so concerned about some evidence submitted late as I am with having a complete record. While I noted above that I have been an ALJ for less than 5 years, I was an attorney with ODAR for some 17 years before being an ALJ and the issue of having a complete record and not being able to rely on all representatives to provide this has been a major concern in terms of the integrity of the disabilty process.
284	Almost every unrepresented claimant has medical evidence that needs to be obtained after the hearing. I accept this as the norm and we (hearing office) obtain such evidence for my review before a decision is made. The local representatives are better at submitting evidence in a timely manner. Representatives from out of state groups (Binder & Binder, Myler, etc.) show little regard for most submission rules, and I firmly believe the main problem is related to the fact that the representative who appears at the hearing has only recently been given the case file, has never seen the claimant before the hearing date, and only had limited telephone contact with the claimant before the hearing. I practice in SC, and believe it must be extremely difficult to discuss complicated issues (or try to explain the importance of DLI in a Title II case), with claimants of limited educational backgrounds (most of our applicants). To place all this in perspective, these problems, and the pressure to meet the ALJ production requirements/"goals," are the main reasons for my upcoming (voluntary) early retirement. h
285	Attorneys are lazy. They do not start to prepare until they get the notice of hearing.
286	The process could vilate due process by unnecessarily causing claimants to believe that relevant evidence that might be obtained the day of the hearing is automatically excluded.
287	with the good cause exception for records subnmission, I believe unrepresented claimants are protected, and new and material evidence submissions are also protected, but would avoid last minute evidence dumps of years of records in the final days pre-heairng, and would force representatives to be better prepared for hearing earlier. It would save significantly in post hearing development, and accompanying delays.
288	I review my assigned cases three times before the hearing. first when initially assigned, second when scheduled and third the day before the hearing. At 75 day lead time coupled with the five day rule would lbe a great help. With regard to unrep claimants if evidence was late arriving then good cause could be easily established by an unrepresented claimant but not one with an attorney of records for

27. If you have any additional thoughts or perspectives on Region 1's pilot program and/or the possibility of expanding that pilot program to other SSA Regions, please provide them in the box below.	
	several months. Good solid rules make for fast and better adjudication of the claims.
289	I suggest 7-10 days, rather than 10 becaue that way a full week of hearing can be ready for review by Monday of the prior week. This provides additional days to contact representatives about missing pages or possible later onset issues, determine if fully favorable decisions are possible (or give time if there are some small clarifications needed from the claimant), etc.
290	A deadline for the submission of evidence is FAR OVERDUE! The number of cases put into "POST" (waiting for evidence after the hearing) is too high, which delays the case, complicates the process, etc. So it should be given STRONG consideration.
291	What should be done at the AC level is prevent, particularly in the case of represented claimants, submission of records that could and should have been presented prior to the hearing in the guise of "newly discovered" evidence. There is a substantial difference between evidence that could and should have been obtained prior to the hearing and evidence which either the parties didn't know about or could not have been timely obtained due to a true emergency situation.
292	The only concern I have about NOH 75 days out is scheduling by the ALJs. I think 60 days is much more reasonable, workable and pragmatic.
293	Region 1's pilot program should be expanded nationwide
294	The portion of the pilot, which requires submission of documents 5 days prior to the hearing will enhance the administrative process, diminish waste and curtail much of the bad behavior ALJs observe from some Representatives who use the present rules as a tactic to submit last minute or post hearing evidence which they count on the ALJ not having time to review. Requiring closing of the record in advance of the hearing (I belive it should be 20 days), does not prejudice unrepped claimants because ALJs can request their records well in advance of the hearing (I routinely do). Most records which come in on the day of the hearing are numerous (between 100-300 pages) and most are not probative evidence (they seldom change the outcome of the decision). This is true for post hearing submissions. However, the ALJ still has to review the evidence, place the file in POST, possibly supplement the additional evidence since it is often incomplete and overall significantly delay the issuance of the decision. A number of Reps use the current rules to obtain Remands: they hold on to evidence which could have been submitted at the hearing and do not reveal it until the case is at the Appeals Council on appeal. The Appeals Council makes no inquiry into this abusive tactic and, regardless of how inconsequential the new evidence submitted, the AC will Remand the case to the ALJ and order a new hearing. This is an incredible waste of government funds, time and is burdensome to the process. Claimant's are benefitted from the pilot rules because their decisions will be submitted more expeditiously and they are not taken through an unnecessary appeal process and delay only to have their cases denied again on Remand because the submission to the AC was not probative evidence.
295	We have no control over the providers who hold the records we need. I used to teach at the Medical School, including teaching the Records Custodian classes. Nevetheless, a claimant should not be penalized because of a recalcitrant records custodian.
296	The representatives wait too long to request the records, only ask once and ALJ's are obligated to do their work for them. The record needs to be closed 5 days before the hearing. They can always file a new claim if unfavorable decision.
297	There has to be something done to get represenatives to stop waiting until the last minute to submit eivdence. Requirng them to get evidence in 5 days before the hearing would make the hearing process

27. If you have any additional thoughts or perspectives on Region 1's pilot program and/or the possibility of expanding that pilot program to other SSA Regions, please provide them in the box below.	
	so much more efficient. I will happily work with the unrepresented to amke sure the record is complete post hearing, but too many representives either submit material late or ask to submit it post hearing, which is the worst thing in the world for an efficeint hearing process.
298	Most reps submit evidence on the eve of or after the hearing simply because they can--our system institutionalizes lack of diligence and encourages bad behavior by reps that no state or federal court tolerates. Reps often do not bother to send off for medical records until they receive the hearing notice; and also often withhold material evidence deliberately, either for use in case of an appeal or because it is unfavorable to the claimant. Leaving the record open ad infinitum prejudices the claimant's interest in receiving a timely decision: it places the case at the end of a line of cases to be decided instead of allowing the ALJ to decide the case at the close of the hearing when his recollection of the facts is fresh. It makes the ALJ's work harder by delaying the final decision to a time when the ALJ has forgotten the case and has to waste/duplicate time reviewing all or part of the file again. However, I would make the deadline for closing the record subject to a good cause exception for those unavoidable circumstances, and not applicable at all to unrep'd claimants who are usually unequipped to gather their own evidence.
299	Representatives often are negligent in failing to develop the record before the hearing. Expanding the pilot to other SSA regions will provide incentive for representatives to be more accountable and provide better quality representation. The HO is not doing a good job of developing the record for unrepresented claimant's before the hearing. The claimants generally will not provide their own records because they are not willing or able to pay for copies or endure the frustration of obtaining the records. Since the HO will have to get the records eventually, there should be a standardized procedure for contacting unrepresented claimants before the hearing and updating records before the hearing. The unrepresented claimants generally do not return the updated medical treatment forms, and since they often do not appear for the hearing anyway, my office waits until they do appear, then gets updated information about treatment, then orders records after the hearing. This process is very inefficient and needs to be improved.
300	The notice of hearing is long and confusing for claimants--BOLD text should state clearly that the claimant needs to request updated MER NOW, 4-6 weeks in advance of his/her hearing. REPS are a big part of the problem: They need to be told in BOLD writing that They have a ethical and fiduciary duty to develop the record far in advance of the hearing.
301	Before the survey, I knew very little of the Pilot Program. Closing the record, save for good cause, 5-7 days before the hearing would would promote a better process for our claimant's.
302	It will not work in the Bronx NY, where I am an ALJ. It may work better in other parts of the country. However, in order for thsi to truly work, you need a much longer time period so the proper experts can be scheduled based on a complete record. Five days will not do this.
303	I think that a closed record makes sense. A deadline is not an undue burden on people. Obviously, discretion would be used when dealing with an unrepresented claimant and the burden of developing a record for the unrepresented claimant should still rest with the Agency. I practiced law in many different Courts prior to being appointed and attorneys are used to and normally worked under the closed record principle.
304	Social Security has fostered and enabled a culture of irresponsibility and poor representation in the representative community by having such lax rules about the timely submission of evidence. I practiced law for 12 year in state and federal court and such irresponsible and lackadasical conduct by

27. If you have any additional thoughts or perspectives on Region 1's pilot program and/or the possibility of expanding that pilot program to other SSA Regions, please provide them in the box below.	
	representatives was not tolerated in those venues. Most representatives do not make any kind of meaningful effort to submit the evidence by the date of the hearing and rely on the fact that the ALJ must hold the record open after the hearing to justify their lazy and irresponsible conduct. Represetatives make a very substantial income from this system yet Social Security does not even require the effort on their part to timely submit the evidence. There is a tremendous saving in processing time if the evidence is submited in a timely manner. If I have all of the evidence prior to a hearing I can make a decision right after the hearing. If I do not have all of the evidence then I must set the file aside and pick it up again when the evidence finally is submitted by the representative. This increases the time it takes for me to decide cases. Requiring the timely submission of evidence would greatly help the claimants as it would speed up the process. The good cause exception would allow ALJ's to make exceptions when necessary. The better representatives almost always have the record complete before the hearing. Thus, I know that it is possible to do this if a representative makes a reasonable effort. It is imperative that Social Security expand the rule in Region I to all regions.
305	It is very difficult to fully prepare for a hearing when you do not have all of the necessary documents prior to the heairng. If the documents support the claimant's position, a quicker decision can be made. If the documents do not support the claimant's position then all of those documents can be discussed during the hearing.
306	Most federal courts are going to require ALJs to consider any evidence relating to the period the ALJ considered in the decision, so long as the evidence was submitted before the decision was issued. Otherwise, the procedure is just not fair. One way to address late filed evidence for represented claimants might be to impose a fine or reduce the attorney fee, unless good cause is shown why the evidence could not have been timely submitted.
307	ALJ's desperately need the tools to ensure that representatives live up to their obligations to their clients. They currently have no incentive to work diligently on their clients behalf, ignore requests from the court, are always unprepared for hearing and unduly burden the agency by their unwillingness to do their job in a timely fashion and professional manner. This engenders additional time, money and effort to be expended on virtually every represented case to ensure a fair hearing.
308	The record needs to be submitted in a timely manner 3-5 days before the hearing in order to effectively conduct a hearing. The record also needs to CLOSE to prevent parties from withholding materials until post hearing. The unrepresented claimants are protected (in my practice) by having a discovery docket and having the ODAR office develop the record. Forcing the reps to supply timely documentation would go a long way in increasing our efficiency and ability to provide timely decisions. It might also increase the professionalism of the representatives.
309	I am all for expanding the Region 1 pilot program, but would narrow the good cause exceptions. There is no substitute for agncy employees to work the front end of the case before it is assigned to the ALJ. This is very poorly done in cases with unrepresented claimants. I would rather see the national hearing center model which give the ALJ two attorneys to supervise and direct in pre and post hearing work expanded to all hearing offices. Video hearings should be mandated for all remote hearing cite cases, elimitating travel costs, and neither claimants nor representatives should have the option of declining a video hearing.
310	The determination of good cause should not be reviewable by the Appeals Council - far too many representatives do not do their jobs about getting the evidence timely and to allow the AC to second guess the judge's determination is going to lead to multiple remands - I am strongly in favor of making representatives get the file updated several days before the hearing (as opposed to the usual evidence

27. If you have any additional thoughts or perspectives on Region 1's pilot program and/or the possibility of expanding that pilot program to other SSA Regions, please provide them in the box below.	
	dump the day before) but I do have some concerns about unrepresented claimants, for whom I typically have to order records, which I hesitate to do after ARPR review becuse many claimant's do not hire representatives until shortly before the hearing, and if they are going to get a representative, I expect that person to get the development. Of course, with a change in perspective, ODAR could order updates as a matter of course for all unrepresented claimants but that will be expensive and time-consuming for staff, and will in essence be a waste for the "no shows"
311	Don't have any information about Region 1 Pilot. My answers are based on my perception of what could be done to improve the scheduling of hearings and production of evidence.
312	The ultimate issue comes down to our policy of allowing evidence to be submitted at any time. If the claimant's do not submit evidence within 5 days of the scheduled hearing, they will just submit them as attachments to the Appeals Council. The Appeals Council will then just remand the case based upon "new and material evidence." Therefore we will ultimately see all of the evidence at a later hearing. In our Region, this happens presently where there is no "hard" limit on when evidence can be submitted. In addition, I have a feeling that this is just going to lead to more cases being coded to POST following a hearing to await records which had previously been sent for.
313	Closing the record must be the highesst priority for ODAR. We have too many remands for after-the-fact submitted records, either from the AC or Court levels. These remands prevent the adjudication of pending initial cases. If the record isn't closed then a provision for sanctions of representatives for late submission of records must be created. Most of my time is spent re-reviewing files prior to hearing due to late submission of records.
314	Once representatives get acclimated to this process and begin submitting evidence in a more timely fashion, I could also see a reduction in remands; however, remands may increase as to unrepresented claimants if the 5 day rule is unreasonably enforced.
315	I think the program should be termed as "best practice" but should not be applied mechanically
316	Good overall idea. May need some adjustment re: number of days for notice and closing of record.
317	Close the record. Once it is closed do not allow anything else in without good cause especially on appeal to the Appeals council.
318	Please expand this project

4. Survey of HODs in Regions II – X

1. How long have you been a HOD at SSA?		
Answer Options	Response Percent	Response Count
A) Less than 5 years	61.1%	77
B) 5-10 years	20.6%	26
C) 10-15 years	15.9%	20
D) More than 15 years	2.4%	3

2. Which SSA Region do you currently work in?		
Answer Options	Response Percent	Response Count
A) Region 2	12.1%	15
B) Region 3	13.7%	17
C) Region 4	21.0%	26
D) Region 5	15.3%	19
E) Region 6	12.1%	15
F) Region 7	6.5%	8
G) Region 8	3.2%	4
H) Region 9	12.1%	15
I) Region 10	4.0%	5

3. In the past year, about how long before a hearing were notices of hearing typically sent by your office to claimants?		
Answer Options	Response Percent	Response Count
A) Less than 30 days before the hearing	1.6%	2
B) 30 days before the hearing	21.1%	26
C) 45 days before the hearing	23.6%	29
D) 60 days before the hearing	35.8%	44
E) 90 days before the hearing	15.4%	19
F) 120 days before the hearing	1.6%	2
G) More than 120 days before the hearing	0.8%	1
H) Don’t Know/Not Sure	0.0%	0

4. In your office's cases in the past year, about how often were supplemental hearings scheduled because additional evidence was submitted during or after a hearing? If you do not know, please select "N/A"

Answer Options	Almost Always	Frequently	Sometimes	Rarely	Almost Never	N/A	Rating Average	Response Count
Represented Claimants	1.6%	17.1%	46.3%	24.4%	8.9%	1.6%	2.78	123
Unrepresented Claimants	1.6%	10.6%	35.0%	30.9%	19.5%	2.4%	2.43	123

5. In your office's cases in the past year, about how often was most or all evidence submitted by claimants five (5) business days or more before the hearing? If you do not know, please select "N/A"

Answer Options	Almost Always	Frequently	Sometimes	Rarely	Almost Never	N/A	Rating Average	Response Count
Represented Claimants	8.1%	27.6%	36.6%	16.3%	8.1%	3.3%	3.12	123
Unrepresented Claimants	4.9%	16.3%	38.2%	22.8%	8.9%	8.9%	2.84	123

6. In your office's cases in the past year, about how often was most or all evidence submitted by claimants between two (2) and four (4) business days before the hearing? If you do not know, please select "N/A"

Answer Options	Almost Always	Frequently	Sometimes	Rarely	Almost Never	N/A	Rating Average	Response Count
Represented Claimants	4.9%	34.1%	42.3%	8.1%	6.5%	4.1%	3.24	123
Unrepresented Claimants	0.8%	10.6%	39.8%	29.3%	9.8%	9.8%	2.59	123

7. In your office's cases in the past year, about how often was the majority of evidence submitted by claimants on the day before the hearing? If you do not know, please select "N/A"

Answer Options	Almost Always	Frequently	Sometimes	Rarely	Almost Never	N/A	Rating Average	Response Count
Represented Claimants	4.9%	57.4%	16.4%	93.4%	62.3%	45.9%	3.15	122
Unrepresented Claimants	29.5%	19.7%	49.2%	91.8%	44.3%	95.1%	2.56	122

8. In your office's cases in the past year, about how often was the majority of evidence submitted by claimants on the day of the hearing? If you do not know, please select "N/A"

Answer Options	Almost Always	Frequently	Sometimes	Rarely	Almost Never	N/A	Rating Average	Response Count
Represented Claimants	38.0%	26.4%	36.4%	17.4%	11.6%	5.0%	2.92	121
Unrepresented Claimants	3.3%	8.3%	42.1%	20.7%	17.4%	8.3%	2.56	121

9. In your office's cases in the past year, about how often did claimants or their representatives notify your office in advance to let you know that they would submit material written evidence shortly before (i.e. less than 5 days before) or during a hearing? If you do not know, please select "N/A"

Answer Options	Almost Always	Frequently	Sometimes	Rarely	Almost Never	N/A	Rating Average	Response Count
Represented Claimants	0.8%	7.4%	23.1%	27.3%	34.7%	6.6%	2.06	121
Unrepresented Claimants	0.8%	2.5%	17.4%	21.5%	48.8%	9.1%	1.74	121

10. Listed below are some possible reasons for submitting written evidence less than five (5) business days before a hearing. For each statement listed below, please indicate how frequently it was used by CLAIMANTS' REPRESENTATIVES in your office in the past year as a basis for submitting evidence less than five (5) business days before a hearing. If you do not know, please select "N/A"

Answer Options	Almost Always	Frequently	Sometimes	Rarely	Almost Never	N/A	Rating Average	Response Count
Did not know how to submit evidence	0.8%	0.0%	5.9%	13.4%	63.9%	16.0%	1.34	119
Recently received evidence from a medical provider or other source	10.1%	40.3%	37.0%	3.4%	2.5%	6.7%	3.56	119
Recently received evidence from claimant	5.0%	27.7%	36.1%	15.1%	10.1%	5.9%	3.03	119
Did not have enough time to submit evidence	0.8%	25.2%	21.0%	21.8%	24.4%	6.7%	2.53	119
An unusual or avoidable circumstance beyond his/her control	0.8%	12.6%	25.2%	27.7%	23.5%	10.1%	2.33	119
SSA's notice/actions were misleading	0.0%	0.0%	4.2%	20.2%	60.5%	15.1%	1.34	119
Claimant's physical, mental, educational or linguistic limitation prevented timely submission	0.8%	2.5%	21.8%	28.6%	36.1%	10.1%	1.93	119
No reason given	14.3%	29.4%	31.1%	3.4%	11.8%	10.1%	3.35	119
Other/Not listed above	0.8%	4.2%	14.3%	3.4%	16.0%	61.3%	2.24	119

11. Listed below are some possible reasons for submitting written evidence less than five (5) business days before a hearing. For each statement listed below, please indicate how frequently it was used by UNREPRESENTED CLAIMANTS in your office in the past year as a basis for submitting evidence less than five (5) business days before a hearing. If you do not know, please select "N/A"

Answer Options	Almost Always	Frequently	Sometimes	Rarely	Almost Never	N/A	Rating Average	Response Count
Did not know how to submit evidence	0.0%	17.8%	36.4%	14.4%	21.2%	10.2%	2.57	118
Recently received evidence from a medical provider or other source	1.7%	28.0%	34.7%	14.4%	11.0%	10.2%	2.94	118
Did not have enough time to submit evidence	0.0%	10.2%	24.6%	28.8%	26.3%	10.2%	2.21	118

11. Listed below are some possible reasons for submitting written evidence less than five (5) business days before a hearing. For each statement listed below, please indicate how frequently it was used by UNREPRESENTED CLAIMANTS in your office in the past year as a basis for submitting evidence less than five (5) business days before a hearing. If you do not know, please select "N/A"								
A physical, mental, educational or linguistic limitation prevented him/her from timely submitting evidence	0.0%	12.7%	34.7%	20.3%	17.8%	14.4%	2.50	118
An unusual or avoidable circumstance beyond his/her control	1.7%	9.3%	30.5%	23.7%	17.8%	16.9%	2.44	118
SSA's notice/actions were misleading	0.0%	2.5%	16.9%	22.0%	42.4%	16.1%	1.76	118
Was not aware of submission deadline	2.5%	14.4%	28.0%	15.3%	21.2%	18.6%	2.53	118
No reason given	6.8%	28.8%	30.5%	3.4%	13.6%	16.9%	3.14	118
Other/Not listed above	0.0%	0.8%	11.0%	5.9%	12.7%	69.5%	2.00	118

12. In your office's cases in the past year, about how often did claimants or their representatives submit written evidence after the conclusion of the hearing? If you do not know, please select "N/A"								
Answer Options	Almost Always	Frequently	Sometimes	Rarely	Almost Never	N/A	Rating Average	Response Count
Represented Claimants	4.2%	34.7%	45.8%	7.6%	4.2%	3.4%	3.28	118
Unrepresented Claimants	0.8%	12.7%	45.8%	23.7%	11.9%	5.1%	2.65	118

13. In your office's cases in the past year, about how often did claimants or their representatives notify your office in advance that they would submit written evidence after the conclusion of a hearing? If you do not know, please select "N/A"								
Answer Options	Almost Always	Frequently	Sometimes	Rarely	Almost Never	N/A	Rating Average	Response Count
Represented Claimants	0.8%	14.4%	50.0%	17.8%	10.2%	6.8%	2.76	118
Unrepresented Claimants	1.7%	6.8%	22.9%	30.5%	26.3%	11.9%	2.17	118

14. Listed below are some possible reasons for submitting written evidence after a hearing has concluded. For each statement listed below, please indicate how frequently it was provided by CLAIMANTS' REPRESENTATIVES in your office in the past year as a basis for submitting evidence after a hearing had concluded: If you do not, please select "N/A"								
Answer Options	Almost Always	Frequently	Sometimes	Rarely	Almost Never	N/A	Rating Average	Response Count
Did not know how to submit evidence	0.0%	0.0%	3.4%	17.2%	63.8%	15.5%	1.29	116
Recently received evidence from a medical provider or other source	11.2%	30.2%	40.5%	6.9%	7.8%	3.4%	3.31	116
Recently received evidence from claimant	4.3%	15.5%	39.7%	19.8%	15.5%	5.2%	2.72	116

14. Listed below are some possible reasons for submitting written evidence after a hearing has concluded. For each statement listed below, please indicate how frequently it was provided by CLAIMANTS' REPRESENTATIVES in your office in the past year as a basis for submitting evidence after a hearing had concluded: If you do not, please select "N/A"								
Did not have enough time to submit evidence	2.6%	12.9%	25.0%	18.1%	32.8%	8.6%	2.28	116
An unusual or avoidable circumstance beyond his/her control	2.6%	5.2%	30.2%	24.1%	29.3%	8.6%	2.21	116
SSA's notice/actions were misleading	0.0%	0.0%	4.3%	15.5%	61.2%	19.0%	1.30	116
Claimant's physical, mental, educational or linguistic limitation prevented timely submission	0.0%	1.7%	25.0%	22.4%	38.8%	12.1%	1.88	116
No reason given	10.3%	16.4%	24.1%	9.5%	25.0%	14.7%	2.74	116
Other/Not listed	2.6%	2.6%	11.2%	7.8%	14.7%	61.2%	2.24	116

15. Listed below are some possible reasons for submitting written evidence after a hearing has concluded. For each statement listed below, please indicate how frequently it was provided by UNREPRESENTED CLAIMANTS in your office in the past year as a basis for submitting evidence after a hearing had concluded: If you do not, please select "N/A"								
Answer Options	Almost Always	Frequently	Sometimes	Rarely	Almost Never	N/A	Rating Average	Response Count
Did not know how to submit evidence	1.7%	11.3%	32.2%	17.4%	22.6%	14.8%	2.44	115
Recently received evidence from a medical provider or other source	6.1%	23.5%	37.4%	12.2%	8.7%	12.2%	3.07	115
Did not have enough time to submit evidence	1.7%	5.2%	31.3%	19.1%	27.0%	15.7%	2.24	115
A physical, mental, educational or linguistic limitation prevented him/her from timely submitting evidence	0.9%	11.3%	40.0%	12.2%	19.1%	16.5%	2.55	115
An unusual or avoidable circumstance beyond his/her control	0.9%	8.7%	35.7%	21.7%	18.3%	14.8%	2.44	115
SSA's notice/actions were misleading	0.0%	2.6%	14.8%	20.9%	39.1%	22.6%	1.75	115
Was not aware of submission deadline	2.6%	10.4%	34.8%	8.7%	25.2%	18.3%	2.47	115
No reason given	10.4%	13.9%	23.5%	10.4%	18.3%	23.5%	2.84	115
Other/Not listed	2.6%	1.7%	10.4%	7.0%	12.2%	66.1%	2.28	115

16. Based on your experience as a HOD at SSA, what is your overall view of the pilot program in Region 1 (i.e., both the 75-day hearing notice requirement and the closing of the record five days before the hearing (absent showing of good cause) requirement)?

Answer Options	Response Percent	Response Count
A) Strongly favor	57.4%	66
B) Somewhat favor	24.3%	28
C) Neutral/Undecided	12.2%	14
D) Somewhat oppose	3.5%	4
E) Strongly oppose	2.6%	3

17. Based on your experience as a HOD at SSA, what is your overall view of the 75-day hearing notice requirement portion of the pilot program in Region 1?

Answer Options	Response Percent	Response Count
A) Strongly favor	40.9%	47
B) Somewhat favor	29.6%	34
C) Neutral/Undecided	16.5%	19
D) Somewhat oppose	9.6%	11
E) Strongly oppose	3.5%	4

18. What do you think of the current rule in Region 1 requiring at least 75 days' notice of a hearing date—that is, does it give the right amount of advance notice to claimants and/or their representatives?

Answer Options	Response Percent	Response Count
A) Far too little time	0.9%	1
B) Too little time	0.9%	1
C) Just right	57.4%	66
D) Too much time	35.7%	41
E) Far too much time	5.2%	6

19. In your opinion, what would be the right amount of notice (in days) to give claimants and/or their representatives of their scheduled hearing date? Please provide your answer in the box below.

Answer Options	Response Count
	49

[*NOTE:* Open-ended (text) responses to Question #19 provided at end of numerical survey responses.]

20. Based on your experience as a HOD at SSA, what is your view of the closing of the record five days before the hearing (absent showing of good cause) requirement portion of Region 1's pilot program?

Answer Options	Response Percent	Response Count
A) Strongly favor	72.2%	83
B) Somewhat favor	15.7%	18
C) Neutral/Undecided	7.0%	8
D) Somewhat oppose	4.3%	5
E) Strongly oppose	0.9%	1

21. What do you think of the current rule in Region 1 closing the evidentiary record five (5) days before the hearing (absent a showing of good cause)—that is, does it give case managers the right amount of time to properly prepare the evidentiary file before ALJs review of the record before a hearing?

Answer Options	Response Percent	Response Count
A) Far too little time	0.0%	0
B) Too little time	12.2%	14
C) Just right	85.2%	98
D) Too much time	2.6%	3
E) Far too much time	0.0%	0

22. In your opinion, how many days before the hearing should claimants and/or their representatives be required to submit evidence in order to give case managers sufficient time to properly prepare the evidentiary file before ALJs review of the record before a hearing? Please provide your response in the box below.

Answer Options	Response Count
	17

[*NOTE:* Open-ended (text) responses to Question #22 provided at end of numerical survey responses.]

23. In your opinion, should the current pilot program in Region 1 be expanded to other SSA Regions?

Answer Options	Response Percent	Response Count
A) Strongly Agree	51.3%	59
B) Somewhat Agree	30.4%	35
C) Neutral/Undecided	13.0%	15

23. In your opinion, should the current pilot program in Region 1 be expanded to other SSA Regions?		
D) Somewhat Disagree	4.3%	5
E) Strongly Disagree	0.9%	1

24. If you have any additional thoughts or perspectives on Region 1's pilot program and/or the possibility of expanding that pilot program to other SSA Regions, please provide them in the box below.	
Answer Options	Response Count
	33

[*NOTE:* Open-ended (text) responses to Question #24 provided at end of numerical survey responses.]

* * * *

Responses to Survey Questions with Open-Ended Response Fields:

19. In your opinion, what would be the right amount of notice (in days) to give claimants and/or their representatives of their scheduled hearing date? Please provide your answer in the box below.	
[Note: Statistics complied below are calculated from numerical responses to Question # 19.]	
Average # of Days Suggested by Respondents (Avg) =	49
Most Frequently Suggested # of Days (Mode) =	45
Minimum Suggested Number of Days (Min) =	20
Maximum Suggested Number of Days (Max) =	90
Number of Responses Suggesting Less Than 75 Days =	46
Number of Responses Suggesting More Than 75 Days =	1
Percentage of Responses Suggesting Less Than 75 Days=	97.9%
Percentage of Responses Suggesting More Than 75 Days=	2.1%

22. In your opinion, how many days before the hearing should claimants and/or their representatives be required to submit evidence in order to give case managers sufficient time to properly prepare the evidentiary file before ALJs review of the record before a hearing? Please provide your response in the box below.	
[Note: Statistics complied below are calculated from numerical responses to Question # 22.]	
Average # of Days Suggested by Respondents (Avg) =	10
Most Frequently Suggested # of Days (Mode) =	10
Minimum Suggested Number of Days (Min) =	2
Maximum Suggested Number of Days (Max) =	20
Number of Responses Suggesting Less Than 5 Days =	3
Number of Responses Suggesting More Than 5 Days =	12
Percentage of Responses Suggesting Less Than 5 Days=	20.0%
Percentage of Responses Suggesting More Than 5 Days=	80.0%

24. If you have any additional thoughts or perspectives on Region 1's pilot program and/or the possibility of expanding that pilot program to other SSA Regions, please provide them in the box below.	
Response #	Response Text
1	instead of closing the record 5 days before the hearing, close it the day after the hearing unless case is moved to POST for additional evidence.
2	None
3	Personally I like the idea of closing the evidentiary record 5 days prior to the hearing. However, the good cause caveat has the potential of being used liberally by the judges. As well, the 75-day notice requirement does not consider the judges' personal schedules. We struggle to get calendars 3 months out from some judges. What requirements would the judges be under to ensure their calendars be provided far enough in advance to allow for successful implementation of a 75-day notice rule?
4	The attorneys that come before SSA need to be held to higher standards, they come unprepared and sometimes have never meet with their client until the day of hearing. the attorneys know they get paid for little work and if a judge forces a issue that it is a remand back on us.
5	i like the idea in theory- makes sure the case is developed fully prior to the hearing, so the judge is reviewing a complete file. And for claimants with representatives, I'm in favor. I worry that it might disadvantage unrepped claimants and compromise their due process-- as long as they were treated fairly, I'd be in favor.
6	the 75-day notice requirement may be an issue because of unanticipated changes to the ALJs' schedules. We schedule 90 days out, but mandatory training with very little advanced notice causes the hearing office to find replacement ALJs or postpone hearings. If the Notice of Hearing is required to be sent 30 or 45-days in advance, it would be less disruptive or less likely to disadvantage the claimant if he/she had not been notified when we have to reschedule the hearing.
7	none
8	We have many unrepresented, uneducated claimants, who would need Reminders of the date of the hearing, written and oral close to the date of the hearing.
9	An amended version of the pilot could be used 30 days advanced notice would suffice. With ALJ transfers within 45 days and hearings set 75 days out it just too far out for an office to recover from the changes. It's also so far out that clients will forget about the appointment without constant reminders. Which would need to be automated. Closing the record 5 days prior could be a huge advantage to all of the faxes we receive the day prior. By extending the 20 day notice time to 30 days. The extra 5 days should compensate.
10	We have found that reps have grown accustomed to procrastination because they know we can't close the record. Many do not develop the case until they get the notice of hearing. This change would inspire them to develop the case early in the process. We find the last minute documents they submit have been in their office for months.
11	I like the fact that R1 is looking at this issue, and I know that we have some problem reps who wait too long to update the record, and end up causing problems. This pilot would be especially helpful to deal with ALJs who postpone as soon as they find out that there is last minute MER.....
12	Strong rules are needed for the attorney's to be required to follow to help us provide the service our public deserves and desires.
13	My biggest problem with scheduling 75 days out would be the unwillingness of ALJs to provide their schedules. The pilot rules would greatly improve our scheduling if we could force ALJs to do their

24. If you have any additional thoughts or perspectives on Region 1's pilot program and/or the possibility of expanding that pilot program to other SSA Regions, please provide them in the box below.	
Response #	Response Text
	part. Also, I'm not sure I favor closing the record prior to the hearing for unrepresented claimants. In an urban area with significant mental and cultural barriers, I think that would be unfair to so many claimants that the rule would be routinely waived by ALJs and therefore meaningless.
14	Thank you.
15	I did not know that this was a pilot in region 1. I thought you were talking about the automated scheduling pilot. I did not realize this was actually being piloted.
16	We have many many attorneys who submit evidence in fewer than 5 days before the hearing. I'm afraid of getting into the good cause arena, as they will certainly all have a reason for not submitting evidence earlier.
17	Few exceptions to the 75-day rule, i.e. SSI 90-Day cases or critical cases should allow for shorter notice.
18	I only disagree because fo the 75 day notiece ruequirement and you should refer to my earlier comments here.
19	Each ALJ should deal with the issue of late submission of evidence since there are many reasons for this occurring.
20	The 75 day notice should be shorten in order to assist HOs with the ability to backfill and ability to scheduled critical and AGED cases at last minute. Also, the pilot should include the directive to use of interrogatories when additional MER is received after hearing. This should reduce the large number of supplemental hearings.
21	While closing the record 5 days prior to hearing is attractive because it gives us adequate time to prepare the file, to give the claimant full due process, I think the record should be closed at the hearing unless the rep/CL give a compelling argument why it should not.
22	Please expand it and lengthen the timeframes...everyone is short-handed and that makes last-minute adjustments difficult for ODAR, claimants and reps.
23	Unfortunately the attorney/representative community is solely driven by the dollar bill. The longer the case drags on the higher fee they will obtain. Setting reasonable guidelines like the 75 day notice rule and the five day close out rule is the direction we need to head in. We need to utilize the ARS program to educate the attorney/rep community that they will need to cooperate with us to move cases in a timely manner. Justice delayed is justice denied.
24	Other court preceedings have set timeframes for closing of records. SSA should do the same to prevent reps delays in submitting evidence.
25	How is it being enforced and what exceptions are being allowed?
26	The 75-day notice requirement would put a strain on an office like mine, which struggles to stay scheduled 60-90 days out, but I'd be willing to deal with that if the payoff would be closing the record 5 days before the hearing. That would save us many hours of faxing last minute evidence to experts, and save considerable staff time and postage spent sending CDs to experts.
27	While I strongly favor (or agree) with the 75-day hearing notice requirement and the closing of the record 5 days prior to hearing date, I cannot say that I "strongly support" the expansion to all regions of this pilot project. My hesitation is because I don't know what other changes are included

24. If you have any additional thoughts or perspectives on Region 1's pilot program and/or the possibility of expanding that pilot program to other SSA Regions, please provide them in the box below.	
Response #	Response Text
	in the pilot. If the only thing you are asking about is the 75-day notice and close the record 5 days before hearing - I strongly support both of those.
28	Currently, claimants and representatives have about a year to prepare for their hearing. They ignore their responsbility to be ready for the hearing. The notice of hearing 75 days out and a cut off of receipt of evidence 5 days before a scheduled hearing is more than fair and reasonable.
29	I feel it is an excellent pilot that needs to be initiated nationwide. It would assist with closing the record timely for the offices to process claims in a more timely manner. Prevent aged cases.
30	Adjusting the time frames will, in the end, lead to better public service in the form of speedier decisions to the appellants.
31	Can't wait for it to expand to region 4. This will avoid many postponements due to additional evidence and allow the ALJ to have a complete record to review before the hearing.
32	I think having the uniformity over all regions is a great idea. I think that having a standard that applies to every case is great.
33	N/A

APPENDIX F: RESPONSES FROM THE ASSOCIATION OF ADMINISTRATIVE LAW JUDGES

1. AALJ Response 1

Good morning Amber,

Set forth below are the AALJ responses * * *

1. What is the AALJ's view of the current pilot program in Region 1?

   Judges are generally pleased that they have a tool to address the problem created by last minute evidentiary submissions by representatives. However, and as noted below, we believe much more needs to be done to regulate pre-hearing development and submission of evidence.

2. What does the AALJ think are the benefits, if any, of the current pilot program in Region I for ALJs and/or the SSA disability benefits adjudication process?

   As above noted, it minimizes, though not eliminating the problems associated with late voluminous submissions of evidence. Judges and the American people would be better served if the Agency followed the practice in Federal Courts which requires that files be brought up to date immediately upon the acceptance of representation. The Federal Court rule also requires the representative to periodically certify that the evidentiary file is current every 30 days prior to the hearing date. Another related problem that judges face regarding evidentiary submissions relate to duplicate evidentiary submissions. Far too many representatives submit large amounts of documentary evidence which contain duplicates or are duplicates which are already in the file. Representatives must have the burden to review previously submitted evidence to insure that they do not delay the case by requesting and submitting evidence which is already in the file.

   Scheduling cases so far in advance does not really provide a significant benefit as representatives tend to submit evidence based on their particular circumstance and schedule. Thus, having additional time before hearing has don't produced the desired result of more timely submission of evidence. A far better approach would be to require representatives to submit evidence as soon as possible after being designated as the representative with continuing certifications, as above noted.

   The pre-hearing conference part of the pilot has not succeeded. Judges still were forced to adjourn scheduled hearings to accommodate attorneys who were appointed too close to the time of hearing to adequately prepare.

3. What does the AALJ think are the drawbacks, if any, of the current pilot program in Region I for ALJs and/or the SSA disability benefits adjudication process?

   The most significant drawback to the pilot was the absence of meaningful sanctions to enforce the procedural rules. Having rules without the ability to enforce them is a meaningless exercise.

4. What suggestion(s) does the AALJ have, if any, for improving the current regulations, policies, and/or practices regarding the current pilot program in Region I?
   It is critically important for the Agency to adopt meaningful Rules of Practice and Procedure. Among other things, the rules would regulate the submission of evidence, closed the record after an ALJ hearing and emphasize the responsibility of representatives as officers of the court to fully cooperate in all aspects of the hearing process.

5. Does the AALJ think the current pilot program in Region I should be continued, discontinued, or expanded to other regions? Why or why not? Please explain.

   The AALJ believes that the pilot should be continued, but with some changes as above noted. Particularly important would be the implementation of some rule or rules that would provide the judge with a greater ability to regulate the timely submission of evidence.

2. AALJ Response 2

My personal view is to get rid of it.

I have no desire for more formal rules of evidence which will just make me less efficient and create additional problems with unrepresented claimants. The beauty of our informal hearings is that each ALJ can independently determine how to best conduct a hearing and adduce evidence to rapidly focus in on the merits without wasting time. The 75 day rule is another hindrance where attorneys can refuse reschedules or not agree to hearing times. If we try to schedule a hearing with less than 75 days notice we are in no man's land. Several times a month when I try to fill in for a withdrawn or postponed hearings, attorneys will not agree even when there is more than 20 days notice. I have just as many postponement requests with the 75 day rule as I had with the 20 day rule. I like the 20 day rule for scheduling.

DSI is of absolutely no benefit to me. The 5 day rule in our decisions creates extra work in trying to justify non-consideration as a procedural matter when it is simpler just to consider the evidence. I have had serious battles over the need to admit all possible evidence as the APA requires the ALJ to consider only evidence which is part of the official record. I believe that the APA and our regulations require that all relevant be admitted at least as a proposed exhibit for identification so that it can become a part of the official record. Some ALJs do not even want to exhibit the 5 day evidence and want to split 5 day exhibits. It is a nightmare for the staff. At numerous ALJ meetings we have wasted time arguing over the 5 day rule. There is no specific agency approved procedure on how to handle 5 day evidence.

If evidence is submitted late, the ALJ should be able to apply a specific regulation specified deduction to the fee agreement or the fee petition of a certain percentage.

I have strong concerns that the 5 day rule and the adverse reopening and revision rules in Region I violate the APA and the equal protection clause.

It is definitely anti-claimant and there is something fundamentally unfair when ALJs use it only against claimant's who have an attorney and deny admission of evidence which is clearly relevant and material. How can SSA and Region I justify non-consideration of evidence when it would be admitted by ALJs in the other 9 regions? How can anyone justify different treatment of claimants in NY and Vt from the rest of Region II?

Since every ALJ has the independent duty to fully and fairly and impartially develop the record how can that ALJ exclude evidence just because the attorney did not get it in in time.

In our office the two major firms routinely do not appoint the actual trial attorney until less than 30 days before a hearing. Normally that would justify a postponement. Instead some ALJs are using the 5 day rule against those ALJs. The five ALJs who enforce the 5 day rule in Providence are the lowest reversers and I believe they do not enforce it against unrepresented claimants. I and one other ALJ do not exclude consideration of evidence. I expect that soon some class action will be brought by local attorneys.

In my mind Region I was a pilot in 2006 which did not work. It is anti-claimant. It has gone on for almost 7 years. It should be struck down as a denial of due process and equal protection the same as the government representative program was struck down in 1986. The government representative project was piloted in Columbia, S.C, Brentwood Missouri, Pasadena California, Kingsport Tennessee and Baltimore Md. It resulted in higher affirmation rates. The government rep only appeared when the claimant had a representative.

3. AALJ Response 3

Dear Ms. Williams:

The Portland ODAR ALJs support unanimously the so-called 5-day rule, and seek expansion of the rule to 30 days. * * * I disagree respectfully that the 5-day rule is somehow "anti-claimant" by excluding what otherwise might be material evidence. The admission of late-filed evidence has deleterious effect not only on the adjudication of the instant claim, but on every succeeding claim. * * *

Let me begin by noting the five-day rule is an example of a regulatory change that promotes the fair and orderly adjudication of claims, consistent with the requirements of due process. It does so at no added expense to the taxpayer, decreases the administrative burdens associated with the assembly of late-filed evidence, promotes standardization and teamwork among staff and judges, improves advocacy, and provides timely review and preparation of the record for the administrative law judge. If anything, the five-day rule should be expanded to 30 business days prior to the date of hearing, where, for the vast majority of claims, there is no intervening change in medical condition during this period, and the additional 25 days provides greater administrative flexibility in preparing the record, including submission of evidence to witnesses. * * *

1. Since the implementation of the regulation, representatives have responded as expected to any regulation setting forth clear requirement: representatives have received timely notice of hearing, generally 75-100 days in advance of hearing, and have assembled and submitted evidence of record consistent with the five-day requirement. ERE is an important aspect to this process. While there are exceptions to this practice, they are limited in number, particularly where the five-day rule has been applied consistently in the Portland , Maine ODAR. Beyond contradiction, the 75 day notice has reduced dramatically the late submission of evidence, both in quantity and in frequency.

2. I routinely apply the five-day rule, including applying exceptions, such as new evidence created within two weeks of the hearing date, illness of the representative, and recalcitrant medical providers who refuse to provide treatment notes.

3. Late filed evidence is simply not the overwhelming burden it had been prior to the issuance of the regulation.

4. My rulings have been appealed routinely regarding the five-day rule, and to my great satisfaction, and to the benefit of due process, have been upheld by the Appeals Council and by the District Court of Maine.

An example:
I wrote in one claim, "The claimant's argument is essentially that she timely- requested treatment notes from Southern Maine Medical Center Intensive Outpatient Program, was somehow misled on some uncertain dates by some unnamed source as to the existence of the treatment notes, and became aware of the existence of treatment notes within about a week of hearing. This argument is given little weight.

The purported lack of knowledge of treatment notes is inconsistent with the well-recognized requirement of medical providers to maintain timely and appropriate treatment notes. The absence of these treatment notes should have served as special warning that something out of the ordinary was at issue in this case, requiring timely investigation. None were made apparently. The claimant should have made more efforts, and particularly, in a more timely fashion, to secure these treatment notes, which the claimant asserts is a major aspect of her case. The failure to exercise due diligence in investigating and securing these treatment notes is not good cause within the meaning of the regulation to warrant the admission into evidence of late-filed evidence."

The District Court of Maine upheld my decision: "Nonetheless, as counsel for the commissioner contended at oral argument, the language of section 405.331 is clear. An administrative law judge has

no obligation to accept late- tendered evidence unless good cause is show. Neither that regulation, nor the authorities cited by the plaintiff, indicates that, in the absence of a showing of good cause, the commissioner's policies of full and fair record development trump the concern that led to the promulgation of section 405.331: that "the late submission of evidence to the administrative law judge significantly impede[d] [the commissioner's] ability to issue hearing decisions in a timely manner." 71 Fed. Reg. at 16434.

The administrative law judge did not abuse his discretion in declining to permit the late submission of [] evidence."

I believe the five-day rule has been an important change in the timely, fair and accurate adjudication of claims.

THE FEDERAL ADMINISTRATIVE LAW JUDGES CONFERENCE
P.O. Box 1772 • Washington, DC 20013 • www.faljc.org

Office of the President May 13, 2013

Subject: ACUS Questions for FALJC Regarding SSA's Region I Pilot Program

1. What is FALJC's view of the current pilot program in Region I?

SSA has not provided enough statistical information to compare the results among regions. Region I consists of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. Some of the Region I state agencies, especially Maine and Vermont, actually develop the evidence, rather than merely pass responsibility on to ODAR to develop the cases. Therefore, as the files are more fully developed, the cases that judges review from those state agencies are generally more complicated than those reviewed in other regions of the country, more expert witnesses are needed generally, and review has to be far more time intensive.[1]

Whether this is due to DSI is problematical as this project has been underfunded. Apparently, the prior administration was disinterested. We are informed that the DRB was unable to process the caseload on a timely basis (90 days) so that many cases are sent to the District Court after languishing.

Judges are told that DSI has been terminated except for the cases that were already entered into the system which will follow the protocol through the hearings level.

2. What does FALJC think are the benefits, if any, of the current pilot program in Region I for claimants and/or their representatives?

The payment rate at the initial level in Region 1 is far greater than in other regions. In New Hampshire, for example, the payment rate at the initial level is more than double in states like Mississippi, Texas, or Tennessee. New Hampshire is a "prototype" state,[2] so cases sent on for hearing are not as

[1] Anecdotally, judges in Region I are assigned files containing more than 2,500 pages. If the case goes to Step 5 of the sequential evaluation, it is difficult to hear more than one such case on the same day. Judges also advise that writing such cases may take more than a week.

[2] The Disability Redesign Prototype model test features include:
1. Single Decisionmaker (SDM) Model
2. Disability Examiners with SDM authority complete all disability determination forms and make

developed as in Vermont or Maine. That said, apparently more claimants have Title II claims in those states proportionally, than in the other states mentioned.

It is difficult to tell whether DSI is the reason for the phenomena.

It is reasonable that if claimants are represented at the state agency level, more claims would be paid. However, a small percentage of claimants are represented at this level. A few representatives apparently withhold information that may be probative at the initial level, to recover fees when it is produced at the ODAR hearing level.

A division of opinion exists whether having to submit calendars 75 days ahead of hearing (which can be waived for dire need, etc.) generates more timely evidence and case preparation.

3. What does FALJC think are the drawbacks, if any, of the current pilot program in Region I for claimants and/or their representatives?

Judges complain that the Decision Review Board (DRB) is underfunded and should include administrative law judge members from the region on a rotational basis. Because of underfunding, the current Board often does not have ninety (90) days to review the decision, which becomes final and appealable to the United States District Courts. Some also complain that like the Appeals Council, results and decisions are spotty.

Under DSI, when an ALJ dismisses a request for hearing prior to the effective date, the claimant has the right to ask the ALJ in writing to vacate the dismissal within 30 days of receipt of the dismissal (20 CFR 405.382). The claimant has 60 days from receipt of the ALJ's ruling on the request to vacate to ask the Decision Review Board (DRB) to vacate the dismissal (20 CFR 405.427). Elimination of the DRB would extend the time to 60 days after receiving notice of dismissal. (20 CFR 405.381 and 405.383).

---

initial disability determinations in many cases without medical or psychological consultant (MC or PC) signoff.

EXCEPTION: MC review and signoff is required for all Title XVI childhood disability claims and all Title II and Title XVI less than fully favorable determinations involving a mental impairment.

3. Reconsideration Elimination Model

There is no reconsideration step of the administrative review process for disability issues. The field office (FO) sends initial determination appeals on disability issues to the Office of Disability Adjudication and Review (ODAR) for a hearing, as the first step in the administrative appeals process.

4. What suggestion(s) does FALJC have, if any, for improving the current regulations, policies, and/or practices regarding the current pilot program in Region I?

Economists claim that for every dollar spent on CDRs, Continuing Disability Reviews, SSA gets ten dollars back.

FALJC suggests that the CDR funds could be spent for vocational rehabilitation (VR) at Step 2 of the sequential evaluation, in the pilot, to appropriate Title II claims. SSA would get hundreds, if not thousands back for each dollar spent.[3]

If this program is initiated, fewer claims will need adjudication. We argue that this reform, standing alone could save the SSDI Trust Fund solvency problem.

FALJC also suggests that at ODAR hearings, a representative project should be initiated for claims likely to go to step 5 of the sequential evaluation.[4]

Judges should be DRB members on a revolving basis, as set forth above.

5. Does FALJC think the current pilot program in Region I should be continued, discontinued, or expanded to other regions? Why or why not? Please explain.

We believe it should be expanded. We encourage establishment in at least one other region, especially in one with much lower rates of payment at the DDS level.

[3] Under 20 CFR 416.1710, DDS may evaluate whether claimants in payment status can (1) be placed in existing vacant jobs (2) retrained or (3) taught how to make a job for themselves. If performed at an earlier level, before making payments, DDS can also determine whether the residual functional capacity, "RFC," permits performance of jobs that exist in significant numbers in the national economy. There is no parallel DIB regulation. Therefore, DDS would be performing two invaluable tasks. In many states, only a cursory vocational evaluation, if any is performed.

Currently, SSA has a voluntary Ticket To Work Program that can help Social Security beneficiaries go to work, get a good job that may lead to a career, save more money, and become financially independent, all while they keep their health coverage. However, there are other programs, like the Workforce Investment Act, and the American Recovery and Reinvestment Act of 2009 that can be used to put workers back to work.

[4] At Step 5, the burden of proof shifts from a claimant to the agency to show that there are a significant number of jobs in the national or regional economy that may be performed given the RFC.

APPENDIX H: RESPONSE FROM THE NATIONAL ORGANIZATION OF SOCIAL SECURITY CLAIMANTS' REPRESENTATIVES

NATIONAL ORGANIZATION OF SOCIAL SECURITY CLAIMANTS' REPRESENTATIVES (NOSSCR)

560 Sylvan Avenue • Englewood Cliffs, NJ 07632
Telephone: (201) 567-4228 • Fax: (201) 567-1542 • email: nosscr@att.net

Executive Director
Nancy G. Shor

May 1, 2013

Amber Williams
ACUS Attorney Advisor
Administrative Conference of the United States
1120 20th St., NW Suite 706 South
Washington, DC 20036

Re: Comments on the ACUS study assessing the impact of the DSI pilot program in Region I

Dear Ms. Williams:

Thank you for the opportunity to submit comments on the ACUS study assessing the impact of the current Disability Service Improvement (DSI) program in SSA Region I states. While most aspects of DSI as implemented in 2006 have been eliminated, e.g., the Federal Reviewing Official and the Decision Review Board, two hearing level provisions remain: (1) rules that essentially close the record 5 days before the hearing; and (2) providing 75-day notice of the hearing date.

To provide background about our organization, NOSSCR was founded in 1979 and is a professional association of attorneys and other advocates who represent individuals seeking Social Security disability and Supplemental Security Income (SSI) disability benefits. NOSSCR members represent these individuals at all Social Security Administration (SSA) administrative levels and in federal court. We are a national organization with a current membership of more than 4,000 members from the private and public sectors and are committed to the highest quality legal representation for claimants.

When former Commissioner Barnhart initially proposed the DSI changes in July 2005,[1] NOSSCR submitted extensive comments, in addition to Congressional testimony at a House of Representatives hearing on the notice of proposed rulemaking (NPRM.) In October 2007,

[1] 70 Fed. Reg. 43590 (July 27, 2005).

former Commissioner Astrue proposed a broad range of procedural changes to the disability determination process, including nationwide implementation of the DSI provisions to close the record 5 days before the hearing.[2] NOSSCR also submitted extensive, detailed comments to the October 2007 NPRM. If you would like to review these comments, we would be happy to share them with you.

In preparation of these comments, we polled NOSSCR members in Region I states to assess their experiences with DSI. Their responses were generally consistent with the long-standing positions taken by NOSSCR: (1) The 75-day hearing notice provision has generally been well-received; and (2) The limits on submitting evidence prior to the hearing have had a detrimental impact on claimants.

Our comments are discussed in two parts. Part I provides a general overview of NOSSCR's positions on these two provisions. Part II (beginning on page 10) includes further statements of NOSSCR's positions and comments from NOSSCR members in Region I in response to the specific questions you posed in your request for comments.

I. NOSSCR POSITIONS

A. 75-day Hearing Notice

NOSSCR has consistently recommended that the time for providing advance notice of the hearing date be increased from the current 20 days[3] to 75 days. We believe that this increase will allow more time to obtain medical evidence before the hearing and make it far more likely that the record will be complete when the ALJ reviews the file before the hearing. The 75-day time period has been in effect in SSA's Region I states since August 2006[4] and, based on reports from our members (see below in response to Question 2), has worked well.

B. Restrictions on Submission of Evidence Violate the Social Security Act and Are Not Fair to Claimants

The DSI regulations create strict limits and procedures for submission of new and material evidence. For many claimants who meet the statutory definition of disability, the result could well be a denial based on an incomplete record, which is inconsistent with the goal of the disability determination process to ensure that adjudicators have a complete record when deciding a claim.

---

[2] 72 Fed. Reg. 61218 (Oct. 29, 2007).
[3] 20 C.F.R. §§ 404.938(a) and 416.1438(a).
[4] 20 C.F.R. § 405.315(a).

Under the DSI regulations, the record essentially closes five business days before the hearing. Evidence submitted after that date is considered "late" and is subject to the following rules:

- Within five business days of the hearing or at the hearing: The ALJ may accept the new evidence if the claimant shows that: (1) SSA's action misled the claimant; (2) the claimant has a physical, mental, educational, or linguistic limitation that prevented the claimant from submitting the evidence earlier; or (3) some other "unusual, unexpected, or unavoidable circumstance beyond the claimant's control" prevented earlier filing.

- After the hearing but before the hearing decision: The ALJ may accept and consider new evidence if (1) one of the three exceptions above is met and (2) there is a "reasonable possibility" that the evidence, when considered alone or with the other evidence of record, would "affect" the outcome of the claim.

- Before the Appeals Council (a carry-over after the elimination of the Decision Review Board): The proposed rule is even stricter for submitting evidence to the Appeals Council. The Appeals Council may accept the new evidence only if: (1) SSA's action misled the claimant; the claimant has a physical, mental, educational, or linguistic limitation; or some other "unusual, unexpected, or unavoidable circumstance beyond the claimant's control" prevented earlier filing; and (2) there is a "reasonable probability" that the evidence, when considered alone or with the other evidence of record, would "change" the outcome of the claim.

The DSI regulations fail to recognize that there are many legitimate reasons, often beyond the claimant's or representative's control, why evidence is not submitted earlier and thus why closing the record or creating unreasonable procedural hurdles is not beneficial to claimants. We have many concerns – both legal and practical – regarding the impact of the restrictions on claimants with disabilities.

1. Restrictions on the submission of evidence prior to the hearing Social Security Act

The Act provides the claimant with the right to a hearing with a decision based on "evidence adduced at the hearing."[5] 42 U.S.C. § 405(b)(1). Our position is that the DSI regulations conflict with the statute. Current regulations that apply to the rest of the country comply with the statute by providing that "at the hearing" the claimant "may submit new evidence." 20 C.F.R. §§ 404.929.

Concerns noted by the Congressional Research Service (CRS) support our position. Following publication of the July 27, 2005 NPRM on the Disability Service

[5] According to Merriam-Webster Online Dictionary, the definition of "adduce" is: "To offer as example, reason, or proof." *See* http://www.merriam-webster.com/dictionary/adduce.

Improvement (DSI) process,[6] the House Ways and Means Subcommittee on Social Security asked CRS for information regarding the changes proposed in the NPRM. In its September 21, 2005 memorandum, CRS discussed "a possible conflict between the new [sic] rules and the Social Security Act." *The Proposed Changes to the Social Security Disability Determination and Appeals Process* (CRS, Sept. 21, 2005), p. CRS-2. The CRS memorandum notes that proposed 20 C.F.R. § 405.311 "may be in conflict with Section 205(b)(1) of the Social Security Act." p. CRS-6. More specifically, the CRS memorandum states:

> The legal issue here is whether the requirement that evidence be submitted 20 days before the ALJ hearing [the time limit in the proposed version of 20 C.F.R. § 405.311] is consistent with the requirement that the Commissioner (or an ALJ delegated by the Commissioner) make a decision "on the basis of evidence adduced at the hearing."

p. CRS-6.

The DSI regulation also is inconsistent with Congressional intent regarding 42 U.S.C. § 405(b)(1). A bipartisan October 25, 2005 letter was sent in response to the July 2005 DSI NPRM, by the former Chairman and the former Ranking Member of the House Ways and Means Subcommittee on Social Security, Rep. Jim McCrery and Rep. Sander M. Levin, respectively. The letter discussed several issues that were raised at the Subcommittee's oversight hearing on September 27, 2005, "which we believe may negatively impact claimants' rights, may result in further processing delays, and could lead to unfair outcomes." One of these issues was the "new procedural requirements and deadlines for introducing evidence." In commenting on testimony presented at the hearing, Rep. McCrery and Rep. Levin noted that:

> [I]nstituting strict new limitations on introduction of evidence may, in some instances, conflict with statute [sic], and ignores the well-documented difficulty in obtaining evidence timely that both the SSA and claimant representatives experience.

In addition, Congressional concern was expressed previously in 1988 regarding restrictions on submission of evidence. A draft NPRM in 1988 included a number of procedural changes, including restrictions on submission of evidence similar to those in the DSI regulations. The House Ways and Means Committee leadership at the time, the former Committee Chairman Dan Rostenkowski and the former Social Security Subcommittee Chairman Andy Jacobs, Jr., sent a letter dated November 21, 1988, to the Secretary of Health and Human Services at the time, Otis R. Bowen, expressing their concerns regarding the 1988 draft NPRM. Referring to the provisions in 42 U.S.C. § 405(b)(1), they stated that the proposed regulations restricting submission of evidence "ignore these explicit provisions

[6] 70 Fed. Reg. 43590 (July 27, 2005).

of the law." The Committee then held a hearing on the draft NPRM on December 5, 1988. Following this Congressional criticism, the draft NPRM was not published.

SSA itself has previously recognized that setting a pre-hearing due date for submission of evidence was abandoned by SSA because it appeared to close the record in contravention of the statute. *See* 63 Fed. Reg. 41404, 41411-12 (Aug. 4, 1998) (final rule on Rules of conduct and standards of responsibility for representatives, codified at 20 C.F.R. §§ 404.1740 and 416.1540).

2. The proposed changes eliminate the ALJ's duty to fully and fairly develop the record.

The United States Supreme Court has recognized that ALJs have a "duty of inquiry" based on a claimant's constitutional and statutory rights to due process. *See generally Heckler v. Campbell*, 461 U.S. 458, 471 n.1; *Richardson v. Perales*, 402 U.S. 389, 400 (1971).

All circuit courts of appeals have well-established case law that ALJs have a duty to develop the record, which includes both obtaining sufficient medical evidence and conducting sufficiently detailed questioning at the hearing. The ALJ's failure to fully develop the record may result in a court remand to obtain the missing information or to consider information that was not considered previously. *See, e.g., Pratts v. Chater*, 94 F.3d 34 (2nd Cir. 1996); *Delorme v. Sullivan*, 924 F.2d 841 (9th Cir. 1991); *Baker v. Bowen*, 886 F.2d 289 (10th Cir. 1989). Because the Social Security appeals process is not adversarial, this duty exists whether a claimant is unrepresented, or is represented by either an attorney or a non-attorney representative. *See, e.g., Tonapetyan v. Halter*, 242 F.3d 1144 (9th Cir. 2001); *Shaw v. Chater*, 221 F.3d 126 (2nd Cir. 2000); *Henrie v. Dept of HHS*, 13 F.3d 359 (10th Cir. 1993); *Thompson v. Sullivan*, 987 F.2d 1432 (10th Cir. 1993); *Smith v. Bowen*, 792 F.2d 1547 (11th Cir. 1986); *Bishop v. Sullivan*, 900 F.2d 1259 (8th Cir. 1990).

This duty is vitiated by the time limit for submitting evidence before the hearing since it is not possible for the ALJ to meet this important responsibility if the requirement/presumption is that all (or virtually all) evidence must be submitted 5 days before the hearing.

3. The DSI regulations give ALJs the discretion to violate claimants' rights under the Act.

Under the DSI regulations, the ALJ has the discretion to ignore any evidence submitted less than five business days before the hearing. The exceptions are within the discretion of the ALJ and if the ALJ finds that the exceptions are not met, claimants will have no recourse to have the evidence considered other than to file an appeal to the Appeals Council and to federal court from the agency's "final decision" or to abandon their claims. Such a result conflicts with the goal of ensuring that there is a complete record, especially since there is no claim in the DSI regulations that this evidence is somehow less valuable

or probative in determining disability.

The limits do not provide a mechanism to ensure that an ALJ who refuses to accept evidence within 5 business days of the hearing or later does not violate a claimant's right to a full and fair hearing. The requirements in the DSI regulations for "late" submission are discretionary and there are no criteria to guide ALJ decisions. For example, an ALJ could find that unsuccessful efforts to obtain evidence or other unforeseen circumstances, e.g., hospitalization, do not meet the exceptions to the five-day rule. Under the proposed changes, claimants will be at the mercy of ALJs. Some ALJs may rigidly enforce the 5-day deadline, refuse to consider any evidence after that date, and deny the claim based on an incomplete record. If the ALJ's discretion is abused, a claimant is forced to appeal first to the Appeals Council and possibly to federal court simply to have the evidence considered. Our members provided a number of examples, provided below, of exactly these types of occurrences.

The preface to the 2007 NPRM describes another exception that allows the ALJ to hold the record open, but this basis also is completely within the ALJ's discretion: (1) The claimant is "aware" of any additional evidence that could not be timely obtained and submitted before or at the hearing; or (2) the claimant is scheduled to undergo additional medical evaluation after the hearing for any impairment that forms the basis of the disability claim. The claimant "should inform the ALJ of the circumstances during the hearing." But as far as keeping the record open if a request is made for one of these circumstances, there is no requirement that the ALJ do so: "[T]he ALJ could exercise discretion and choose to keep the record open for a defined period of time …."[7] This exception has not been adopted and, at any rate, was not included in the DSI regulations.

Even in this situation, the ALJ's discretion could be exercised unfairly to claimants. For example, an ALJ could deny a claimant's request to keep the record open but then decide to keep the record for his or her own purposes in order to obtain a consultative examination. This exact situation was previously reported by a NOSSCR member in Region I under the DSI regulations.

4. The DSI regulations are inconsistent with the realities of claimants obtaining representation

Many claimants seek and obtain representation shortly before the hearing or after receiving the hearing notice, frequently fewer than 20 days before the hearing. In fact, a large number of claimants seek representation only after receiving an unfavorable ALJ decision. Based on the experience of our members, this is a not an uncommon occurrence since the ALJ hearing is the claimant's first in-person contact with an adjudicator. Under SSA's own policies, before a waiver of the right to counsel is considered valid, the ALJ must both send a letter to the claimant in advance explaining that right and confirm on the record at the hearing that the ALJ again told the claimant about the right to counsel and determined that the claimant was competent to understand. HALLEX I-2-6-52A. If the claimant wishes to obtain representation, the ALJ should postpone the hearing. *Id.*

[7] 72 Fed. Reg. 61220.

Many claimants do not understand the complexity of the rules or the importance of being represented until just before their hearing date. Many are overwhelmed by other demands and priorities in their lives and by their chronic illnesses. As a practical matter, when claimants obtain representation shortly before the hearing, the task of obtaining medical evidence is even more difficult. Even a 75-day hearing notice, a change that we strongly support, will not be sufficient if the claimant seeks representation shortly before the hearing. How do the evidence submission restrictions affect an individual who obtains representation within 5 business days of the hearing? Under the DSI regulations, the ALJ would have the discretion to exclude new and relevant evidence.

5. The proposed changes are inconsistent with the realities of obtaining medical evidence

We very strongly support early submission of evidence. However, our members frequently have great difficulty obtaining necessary medical records due to circumstances outside their control. There are many legitimate reasons why the evidence is not provided earlier.[8] The proposed 75-day hearing notice will be a great help in submitting evidence earlier, but there is no requirement that medical providers turn over records within that time period. In addition, cost or access restrictions, *e.g.*, HIPAA requirements, may prevent the ability to obtain evidence in a timely way.

While a five-day requirement is imposed on claimants in the DSI regulations, nothing requires medical providers to turn over records quickly. A claimant would be at the mercy of an ALJ to find that an exception to "late" submission of evidence has been met. Some ALJs do so. But, as discussed below, some ALJs rigidly enforce the five-day deadline and refuse to consider any medical evidence submitted within that time limit and even deny the claim based on an incomplete medical record. And, if the ALJ abuses his or her discretion – which happens – the claimant will have limited recourse within the agency, and in many cases will need to file suit in federal court where a district court judge will be asked to decide not whether the evidence proves disability, but whether the ALJ was wrong to refuse to consider the evidence. As a result, the five-day time limit results in decisions based on incomplete records, which lead to unnecessary litigation. These results are not only unfair to claimants but also are administratively inefficient and thus do not advance the Agency's goals.

---

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

Some of our members employ staff who work full-time doing nothing but sending out requests for records, following up by phone call and fax, and reviewing responses for completeness. Nevertheless, they face numerous obstacles and lengthy delays in a significant number of cases. And for claimants who seek representation *after* the ALJ decision, having tried to proceed without representation, the problems with developing a complete evidentiary record are even worse.

Problems with developing complete evidentiary files are many and varied, and include the following:

- Physicians who are understaffed, have copying and/or fax machines which are reportedly broken, and/or clearly do not see fulfilling record requests from attorneys as a high priority;
- Physicians who do not want to provide any records until a past-due bill for medical services is paid by the claimant;
- Physicians who will provide only their handwritten and marginally legible treatment notes, but will not take the time to write a letter or complete a form regarding their patients' impairments and functional limitations, regardless of whether a fee is offered for their services;
- Hospitals often give requests low priority. They have reduced their medical records staff, which delays responding to requests.
- Hospitals which have either closed or changed ownership, which often results in records being transferred to other sites with no notice to former patients;
- Hospitals which, for good reason, will not release records of inpatient hospitalizations until the attending physician signs the chart, which may take weeks or even months after discharge;
- Hospitals which cannot locate Emergency Room treatment records unless they are given a specific date of treatment, which claimants often cannot remember;
- Hospitals which insist on receiving their own form releases, even when a general HIPAA-compliant form has already been executed by the claimant. We have heard from representatives that medical providers have different interpretations of HIPAA requirements and as a result require use of their own forms for authorization to disclose information. This can lead to delays since repeated requests for medical information must be submitted, including delays caused by the need to obtain the claimant's signature on various versions of release forms. Frequently, if the medical records staff finds a problem with the request for information, e.g., it is not detailed enough or a different release form is required, the new request goes to the end of the queue when it is resubmitted.
- Mental health outpatient treatment centers which erroneously claim that HIPAA prohibits them from releasing psychotherapy notes;
- Claimants who, because of mental impairments, are unable to recall all of their treatment sources (e.g., a claimant with a hearing scheduled who, despite repeated questioning, cannot remember what hospital he was psychiatrically admitted to for a period of several weeks);

- Claimants who have used different names in the past, making location of their records difficult if not impossible.

In addition to this nonexhaustive list of problems, it should be noted that virtually all providers expect pre-payment for copies of records. While some states have statutes which limit the charges that can be imposed by providers, many do not. Moreover, while private attorneys have the resources to advance costs for their clients, many legal services organizations do not, and unrepresented claimants may withdraw their requests for records in the face of what are, for them, significant bills which they cannot afford to pay. Finally, although ALJs have the nominal power to issue subpoenas at 20 C.F.R. §§ 404.1450 and 416.950, they do not have the power to enforce subpoenas with which providers fail to voluntarily comply, and the United States Attorneys' offices which have such power do not have the resources to devote to such activities.

6. The proposed changes are inconsistent with the realities of claimants' medical conditions.

Claimants' medical conditions may worsen over time and/or diagnoses may change. Claimants undergo new treatment, are hospitalized, or are referred to different doctors. Some conditions, such as multiple sclerosis, autoimmune disorders or certain mental impairments, may take longer to diagnose definitively. The severity of an impairment and the limitations it causes may change due to a worsening of the medical condition, e.g., what is considered a minor cardiac problem may be understood to be far more serious after a heart attack is suffered. It also may take time to fully understand and document the combined effects of multiple impairments. Further, some claimants may be unable to accurately articulate their own impairments and limitations, either because they are in denial, lack judgment, simply do not understand their disability, or because their impairment(s), by definition, makes this a very difficult task. By their nature, these claims are not static and a finite set of medical evidence does not exist.

Also, as with some claimants who seek representation late in the process, their disabling impairments make it difficult to deal with the procedural aspects of their claims. Claimants may have difficulty submitting evidence in a timely manner because they are too ill, or are experiencing an exacerbation, or are simply overwhelmed by the demands of chronic illness, including the time and logistical demands of a caregiver or advocate to help submit evidence.

II. RESPONSES FROM NOSSCR MEMBERS IN REGION I

1. What is NOSSCR's view of the current pilot program in Region I?

The general view is that the 75-day notice rule should be implemented nationwide. However, the 5-day rule needs to be either eliminated or modified, as discussed below in response to Question 4.

- **From an attorney in Massachusetts:** "In practice, it's '14 judges, 14 interpretations' of these rules … I have to say that my view is that application of the program is not uniform, and for reasons that have to do with idiosyncrasies or practice patterns of individual judges. Another question is exactly what the DSI program applies to: individual initial disability appeals or everything else as well, such as overpayments, living arrangements, continuing disability reviews, Appeals Council remands. The practice seems to be to send out notice of the 5 day rule on every case scheduled for a hearing, and I'm not sure that DSI applies in all instances."

2. What does NOSSCR think are the benefits, if any, of the current pilot program in Region I for claimants and/or their representatives?

NOSSCR members in Region I generally support the 75-day notice in advance of the hearing.

- **From an attorney in Connecticut:** "I like the 75 day notice that gives a useful timeframe for acquiring missing records. Hospitals I deal with represent that they get documents out in 2 weeks, or even a month, but experience is commonly 6 weeks or more."

- **From an attorney in Connecticut:** "The 75 day notice is good as it provides a timeframe for case development and an early heads-up to the attorney and client."

- **From an attorney in Connecticut: "**I practice in Connecticut and am very pleased with the 75 day notice of hearings. It gives sufficient time to 'gear up' to get the latest opinions and medical records to the ALJs. However, in the Hartford ODAR, we are not called prior to scheduling hearings. At times this results in having hardly any hearings in one month and a lot of hearings in other months. This particular practice, of having no input as to when the hearing is scheduled or to spacing of hearings can be detrimental to the quality of representation (when too many hearings are scheduled closely) …."

- **From an attorney in Maine: "**Having 75 days' notice of a hearing enhances the ability to be adequately prepared, both with regard to medical/vocational evidence, and testimonial. It lessens the likelihood of having to ask for a continuance due to scheduling. It is orderly and civilized and of benefit to everyone.

- **From an attorney in Maine:** "The 75-day notice has been great. It makes it much more possible to update medical records, gather medical source statements and be well-prepared for the hearing."

- **From an attorney in Maine:** "The 75 day notice rule is a wonderful improvement for everyone. I doubt if the ODAR staff will have anything negative to say about it. If the goal is to get everything ready by the time of the hearing, the extra advance notice works well for this purpose. I expect it makes scheduling easier for them and it is better for my firm because we have five attorneys who are doing hearings. In short it has been a win-win."

- **From an attorney in Maine:** "The 75 day notice provision allows representatives to prepare for hearings in a reasonable, timely manner."

- **From an attorney in Massachusetts:** "The seventy five day rule has generally enabled diligent advocates to get most evidence in well before the five day deadline."

- **From an attorney in Massachusetts:** "The 75 day advance notice of hearing is something that should be extended nationally. If an advocate has at least 75 days advance notice, the experience is that it's much more likely that the record will be fully developed for hearing. It would be even better if SSA would allow advocates to say when the record is ready for hearing – perhaps within a reasonable time frame."

- **From an attorney in New Hampshire:** The year long delay (more or less, but lately the time is more) between the request for hearing and the date of the hearing, is the problem. Over that period of time, a lot happens, and the record needs to be updated. Generally, it is helpful to know that the claimant will have 75 days time to update the medical record, as sometimes it takes that long.

The ALJ is required to make a disability determination as of the date of the hearing, so updating the records is critical. We cannot update medical records piecemeal, as it costs a minimum of $15.00 per record request [in New Hampshire], even if it is a few pages. We have to have some way to know when to order medical records to minimize the cost to the claimant."

3. What does NOSSCR think are the drawbacks, if any, of the current pilot program in Region I for claimants and/or their representatives?

The general consensus was that the 5-day rule for submitting evidence before the hearing is detrimental to claimants. As demonstrated by the examples below, there is much variation in how the rule is applied by ALJs, with very inconsistent results. As one attorney in Massachusetts said (see response to Question 1 above): "14 judges, 14 interpretations of these rules … I have to say that my view is that application of the program is not uniform, and for reasons that have to do with idiosyncrasies or practice patterns of individual judges."

- **From an attorney in Connecticut:** "My position is that the five day rule is a disaster. The [medical] clinics don't do five day rule and we have just a couple of ALJs who use it as a club to beat up the lawyer and/or client, exposing us to clients who feel their lawyers have failed them. We filed a complaint against the worst of those ALJs."

- **From an attorney in Connecticut: "**As to the 5 day rule, I have had very little problem with it. In the majority of my cases, because of the 75 day notice, I have been able to gather and submit the evidence prior to the 5 day limit. At times where this has not been possible, I just include a cover letter asking for permission to submit it late. At times I notify the judge that I am anticipating not receiving specific evidence prior to the hearing

and ask for permission to submit it late if necessary. So far, no judge has refused my requests."

- **From an attorney in Connecticut:** "The 5-day rule essentially states that an ALJ's duty to develop the record stops as of the day of the hearing. It is impossible to square this with the claimant's right to a fully developed record. Closing of the record – which for practical purposes is the effect of the 5 day rule – in many cases denies the claimant a full and fair adjudication of his or her claim.

Perhaps worse, we deal with ODAR hearing offices that are overworked and understaffed. Actual application of the five day rule will increase the administrative burdens and further strain ODAR staff resources, to no discernible benefit. In the case of a particular ALJ known for rigid adherence to the five day rule, claimant's counsel requests medical records 40 days before the hearing. With no response on day 31 after the request, counsel requests that the ALJ issue subpoenas to compel the production of the records. Should ODAR staff drop what they are otherwise doing to issue the subpoenas?

The answer is not necessarily to ask for the records when the 75-days notice is received. There are ALJs who will berate counsel for failing to provide up to the minute medical records. If records are requested 75 days before the hearing and are provided quickly by the medical provider, the records will not cover the 60 days or so immediately before the hearing. This scenario has caused at least one ALJ in Connecticut to lace into counsel with barely restrained fury."

- **From an attorney in Maine:** "The 5 day rule is entirely different [from the 75- day hearing notice rule]. Some ALJ's will honor it inconsistently -- they will find exceptions to allow in adverse evidence, and ban positive evidence. I am told one ALJ has counted the 5 days to the minute to exclude evidence. Five business days is a week, any way it is sliced. It does not lead to efficient and fair adjudication. Relevant and probative evidence is excluded. This is not 'world class service' in a program that is by statute meant to be forgiving to claimants, who are mentally, physically, and financially impaired, in a process that easily takes more than a year to get to the hearing stage.

I have a recent example. I inherited a case in which a psychologist authored a report 2 months before the hearing, then left on vacation. She did not sign her report. Four days before the hearing, she electronically signed her report. Attempts by a colleague to submit the report were denied. The ALJ found conditions not to exist that the psychologist, with more testing than in any consultative examination, documented to exist. The ALJ denied the claim. We now represent the claimant on a re-application. How in the world this is good, for claimants, DDSs, and SSA escapes me. It increases the backlog, beyond being manifestly unfair.

Example 2: In this era of merger, some hospital groups own all the formerly individual practices. Medical records can no longer be obtained from the practice, but through 'central office,' at times out of state. We need the full 75 days to get records, because we

can count on it taking at least 60 days under the present circumstances of medical record consolidation.

It is one thing to exclude a large parcel of remote evidence that could have been acquired within 75 days, and not made available to the ALJ or a medical expert until the day of the hearing. It is another thing entirely to exclude evidence that is not lengthy, or where there is no medical expert, or which did not exist until shortly before the hearing.

- **From an attorney in Maine:** "The five-day rule is also reasonable, but I feel it is sometimes abused by certain ALJs and needs clarification. One ALJ calculates the five days to the hour. Some have excluded evidence that did not exist until a few days prior to the hearing. To this day, I do not have a real understanding if a brief is covered by the rule. It seems to me that the rule should address these matters and should also allow for the late submission of very small exhibits that would not be too burdensome to review. Dumping hundreds of pages on the ALJ at the last minute is unfair to the Administration, but the gamesmanship employed by some judges as the rule currently exists is equally unfair to my clients and does not serve the larger purpose and spirit of the Social Security Act."

- **From a representative in Maine:** "The five day rule is treacherous and not claimant friendly. Fair minded and reasonable judges apply it fairly and reasonably. Other judges apply it arbitrarily and capriciously. In Region I, I have heard horror stories about at least one judge who has counted 'hours' under the 5 day rule in order to keep evidence out.

In my own experience I had a judge interpret the five day rule as having to have the evidence in by the end of the 6th business day before the hearing. The work up person called me and told me she had been told to 'unexhibit' my evidence after first assuring me she had it and it was timely and had been exhibited. I filed a motion stating that I had been misled by ODAR ('our actions misled you' – one of the criteria for good cause) based upon the actions of the other ALJs who applied the rule otherwise (as had that very judge in the past). The ALJ wound up issuing an on-the-record decision without mentioning the timely submitted supportive evidence or attaching an exhibits list to the decision. So I could not tell whether the evidence was exhibited, so the issue is a 'hanging chad' I may face in the future with this judge.

I have had cases where mentally and physically impaired clients have unintentionally neglected to make me aware of crucial evidence that is often quite dated and could be determinative in cases (multiple childhood psychiatric hospitalizations in multiple hospitals during foster care, childhood surgeries, etc.). Representatives can often find mention of such evidence buried deep within a file during a final review. Of course we should all do our best to comprehensively develop a record but nothing is foolproof and the claimant suffers under the 5 day rule.

On another occasion, a cognitively impaired client told me days before her hearing she had been electrocuted in a work-related accident in the 1970s. I did a superlative job digging up the evidence by going through a one-foot thick, decades old workers compensation file and found the emergency room record, a neurologist's exam and a psychological evaluation – a

total of perhaps 7-8 pages that would have taken an extra 5-10 minutes for the very experienced and capable medical expert to review. That judge postponed my client's hearing for another 3 months rather than take the evidence late under the 5 day rule.

Then there are other factors over which we have no control, such as medical opinions rolling in at the last minute from busy doctors, despite the fact the request for opinion evidence went out weeks before the hearing. Some judges will accept an opinion if it is dated after the 5 days, which is reasonable to base it on the date the evidence was generated. How can you submit it before it exists? But other ALJs won't accept it. Representatives may deal with perpetually non-responsive doctors' offices that we have to keep after and drag medical evidence out of.

But the 5 day rule can keep evidence out that has been hard fought for, and make claimants wait 1 and 1/2 years for the Appeals Council to send the case back with instructions to review the evidence. This recently happened as the AC actually wrote an order stating it was remanding and giving the claimant the opportunity for a new hearing, so the opinion letter was not late anymore! This is a formidable burden placed upon the claimant caught between the representative and the judge. I would rather revert to the 20 days notice and no 5 day rule. Although the 75 day notice without the 5 day evidence deadline would be the most consistent, in my opinion, with this 'beneficent' program …."

- **From an attorney in Maine:** "The 5 day rule has been badly abused by some ALJs … Some ALJs exercise reasonable judgment when administering the rule, but clients have clearly been hurt by the arbitrary way some ALJs apply the rule.

Before DSI, the obligation of the adjudicators to develop the record was clear. With the adoption of the 5 day rule, ALJs have been permitted to ignore this obligation. 'Late' opinion evidence can be excluded very easily by the ALJ who wants to deny a claim."

- **From an attorney in Maine:** "The 5 day evidence submission requirement eliminates the ALJ's duty to develop the record, leads to adversarial hearings, and unfairly results in exclusion of relevant evidence.

As an example of problematic results, I have seen a case where the ALJ requested at the hearing that the representative submit records, received them shortly after the hearing, then declined to admit them under the 5 day rule (apparently because they were favorable to the claimant).

I have seen a case where an inexperienced representative submitted several hundred pages of mental health records less than 5 days before the hearing. These were rejected, resulting in the case being heard with no medical evidence of mental health treatment in the record from the preceding year.

I have seen a case where the claimant had undergone one day of neuropsychological testing prior to the hearing, and was scheduled again for more testing the second day after

the hearing. The representative was not involved in arranging or scheduling the testing. The ALJ refused to accept the testing even though it was directly relevant to the disability claim.

In addition, the standards for good cause, as well as the precise meaning of "5 business days before," are unclear and are interpreted inconsistently."

- **From an attorney in Massachusetts:** "The five day rule is ridiculous! We do our best to cultivate the evidence in a timely manner but we are at the mercy of the providers much of the time. There is no reason to penalize the claimant because their doctor is on vacation, etc."

- **From an attorney in Massachusetts:** "There are two types of evidence which we have trouble with. First, obviously, very recent evidence. Second, functional evaluations are getting harder to obtain and sometimes come in around or even, in rare cases, after the five day limit. In both instances, ALJs take the evidence.

Most of the ALJs in this area are fairly flexible with the five day rule, so long as they see representatives are complying with it generally. I have never had evidence excluded. However, there are a certain few ALJs who relish their role, and the potential it affords them for humiliation [of claimants]. I have heard from other advocates that they use the 5 day rule as a tool for their amusement.

But, by and large, the two rules together [the 75-day notice rule and the 5-day rule] have, in my experience, generally improved practice … One obvious due process objection is that the ALJ is adjudicating a claim through the date of his decision. An inflexible application of the five day rule would deny a claimant the ability to submit evidence regarding his condition during that same period of time. However, that has not appeared to have occurred in my experience.

The rules are generally good ones. However, they have the potential to be used to hurt claimants … in really bad ODAR offices, such as exist in places outside this region. On balance, the 75-day notice rule works very well and the 5 day rule generally acts as a good way to guide representatives …."

- **From an attorney in Massachusetts:** "I cannot say that closing the record 5 business days prior to hearing has been a huge problem in Massachusetts. I think that, combined with at least 75 days advance notice of hearing, many advocates have found that they can develop the record in time. However, I also think that misapplication of the rule is a risk factor for claimants. Here are my concerns and examples of ALJs misconstruing the rule in Region I.

  ○ I have heard of a few cases where ALJs refused to accept evidence prior to hearing but after 5 business days prior to hearing. In one case, it was allegedly the definitive IQ evidence that had not previously been supplied by the provider.

○ Some ALJs have considered a memorandum of facts and law to be covered by the rule and so have not accepted a pre- or post-hearing memorandum.

○ Some ALJs have applied the 5 day rule to nondisability cases like SSI financial eligibility appeals.

○ Some ALJs have considered the medication list to be covered by the 5 day rule.

○ At least one ALJ has said he has no discretion but to close the record 5 business days prior to the scheduled hearing.

○ A couple of ALJs have miscounted the 5 days.

Clearly, ALJs need better instruction or reminders or both on the 5 day rule to prevent overly restrictive application if it is going to be kept and/or expanded. The "good cause" rules for submitting new evidence after 5 business days prior to hearing are too restrictive (I refer to them as progressive discipline). Legal services advocates tend to take cases at the ALJ level of appeal and our clients often do not find their way to us in time to have at least 75 days advance notice of hearing. In addition, many medical providers, social service providers, and schools have reduced staff and time to respond to requests for documents, opinion and residual functional capacity information, especially those serving the poorest claimants and those least able to cope."

- **From an attorney in Massachusetts:** "We have judges who: (1) count Saturday and Sunday as part of the 5 days [i.e., not counting business days only] ; (2) end the 5 days on the day of the hearing, or end the five days the day before the hearing; (3) count holidays or don't count holidays as part of 5 days; (4) review the time evidence is filed, and if filed after the office has closed for the day, don't count that day; (5) include the representative's brief and claimant's medication sheets as subject to the five day rule (the latter can result in it being read at the hearing); (6) never apply an exception to five day rule (I had results of an MRI taken 3 days before the hearing, relevant to case, which the ALJ refused to accept); and (7) will always accept records within the 5 days, finding them relevant.

If access to the electronic folder is not working properly, and evidence does not show up when sent, that can create problems with the 5 day rule as well. In short, just about any permutation of this rule that can happen, will happen."

- **From an attorney in New Hampshire:** "This rule may be 'logical' to have, but it often creates great injustices for claimants who are the most disabled/impaired. When working with individuals with disabilities, the 5 day policy should be an aspirational goal, and not a limiting rule, as it is now.

If evidence is not submitted within the five day rule, critical evidence may be kept out of the administrative record, or the ALJ hearing may be postponed months into the future. Either way, the claimant is harmed. I have many examples of cases where the 5 day rule could not be met. Some examples:

○ Claimants sometimes choose medical service providers who are exceedingly slow to send out medical records; sometimes it takes them several months. Some never send them out and subpoenas are necessary, or at least threats of subpoenas are necessary. When time is running out, I will ask claimants to pick up and deliver records, but these claimants need to have the mental and physical capacity to do this, and the most cannot do this. We can't control when medical records actually become available.

○ Some medical providers do not create a 'record' for many days or even weeks. We cannot order the medical record if it has not been created yet.

○ When the medical record is ordered, it often does not contain the latest information because there is delay in the creation of the record, or there is a delay in the medical record becoming part of the medical records 'department.' In other words, some medical facilities have record 'departments' and all record requests have to be submitted there. Actual treatment notes, lab results, etc., are not promptly transferred to the 'records' department.

○ People with organic brain injury, borderline intellectual functioning, mental illness, or other impairments which affect memory frequently 'forget' to tell the appointed representative critical information, or they do not know that certain information is critical. Sometimes I will learn new information at the last minute.

○ Sometimes claimants have hospitalizations, medical emergencies, or other unexpected events that occur within a month or two of the hearing. They are busy taking care of their emergencies or are otherwise too sick to convey information to me and there is insufficient time to order records for arrival before the hearing date.

○ I am representing a person who lives about 1.5 hours from my office. Her main disability is based upon organic brain injury. Her ODAR hearing is scheduled for May 20, 2013. Per usual procedure, I requested updated medical records from Exeter Hospital, near where the claimant lives, on April 8, 2013. I sent a medical authorization for these records, which is accepted by most providers. On April 26, 2013, I received a letter from the Hospital stating that the medical authorization was not good enough, and that I had to use "their form." I now have to send the form to the client to sign, she has to send it back to me, and I have to resend the request for records to the hospital. This will cause a minimum of 6-7 days delay, if my client immediately signs the form and returns them to me. **But**, as my client is brain injured, she may not do it promptly, or she may not do it all.

○ This problem is an important one to share. When I order medical records on behalf of my client, I have to pay a minimum of $15.00 per request, which covers the first 30 pages, and then I can be charged 50 cents per page thereafter.
Consequently, when the record consists of just 5 pages, I still have to pay a minimum of $15.00. This is statutorily allowed by New Hampshire law. My clients are required to reimburse this cost to me. On the other hand, if the claimant requests a copy of his/her

records, the provider will often give them a copy for free, as a courtesy. When the medical record is extensive, the cost of medical records can be in the hundreds of dollars, and disability applicants do not have the money to pay. Some claimants will insist on trying to collect their medical records themselves to save these costs. More frequently than not, they fail to accomplish this. This is understandable because of their impairments. When I am allowed by the claimant to take back the responsibility of collecting records, sometimes there is not enough time before the hearing.

○ I have experienced some ALJs who use the 5 day rule in an abusive way. For example, sometimes I will obtain last minute evidence which is simply a few pages of updated information, such as treatment notes that do not materially change the overall analysis. It should not take the ALJ more than 5 minutes to review the new evidence, but the ALJ will insist on the claimant choosing between (1) postponing the case so the ALJ has time to review the new evidence; or (2) going forward with the hearing but leaving the evidence out."

- **From an attorney in Vermont:** "I, for one, hate the 5 day rule. I don't mind a request to submit evidence 5 days before the hearing (which is at least 7 days, since it is 5 business days); that much makes sense. But often our clients are still undergoing treatment up to the date of the hearing, and evidence may come in just before, or even after the hearing date. Some ALJs are rigid about the 5 day rule; others will allow additional evidence to be submitted if one explains why it was not available in time for the 5 day rule. We have often discussed the 5 day rule on our informal Vermont listserv, and I believe we are unanimous in the position that it should not be mandatory.

4. What suggestion(s) does NOSSCR have, if any, for improving the current regulations, policies, and/or practices regarding the current pilot program in Region I?

a. <u>NOSSCR recommendations</u>

We offer the following recommendations for the submission of new evidence:

- **No time limit to submit evidence before the hearing.** This is consistent with the claimant's statutory right that a decision be based on evidence "adduced at a hearing." The current rule in effect in non-Region I states allows evidence to be submitted until the hearing. It should be retained nationwide.
- **More notice of the hearing.** We support expanding the 75-day hearing notice nationwide. A 75-day notice requirement would significantly improve the ability to obtain and timely submit evidence.
- **Submission of post-hearing evidence.** If the record is closed after the hearing, there should be a good cause exception that allows a claimant to submit new and material evidence after the hearing. While it benefits claimants to submit evidence as soon as possible, there are many reasons, as discussed earlier, why they are unable to do so and

for which they are not at fault. It the record is closed, there should be a simple good cause exception that allows a claimant to submit new and material evidence after the ALJ decision is issued.

The construct used in the federal courts could be adapted. It is important that the regulations do not include an exhaustive list of reasons since each case turns on the facts presented. The "good cause" exception for district court "sentence six" remands for new and material evidence is well-developed. A review of published court decisions shows a wide variety of reasons why evidence was not submitted prior to the court level, including:

- Medical evidence was not available at the time of the hearing.
- The claimant was unrepresented at the hearing and the ALJ did not obtain the evidence.
- Medical evidence was requested but the medical provider delayed or refused to submit evidence earlier.
- The claimant underwent new treatment, hospitalization, or evaluation.
- The impairment was finally and definitively diagnosed.
- The claimant's medical condition deteriorated.
- Evidence was thought to be lost and then was found.
- The claimant's limited mental capacity prevented him from being able to determine which evidence was relevant to his claim.
- The existence of the evidence was discovered after the proceedings.
- The claimant was unrepresented at the hearing and lacked the funds to obtain the evidence.

There are many permutations, depending on the circumstances in each case.

b. <u>Additional recommendations from Region I NOSSCR members</u>

- **Recommendations from an attorney in Maine:**

The 5 day rule should be modified to include the following:

- 5 "calendar" days, not business days.
- The default position is always to admit the evidence. There needs to be generous admissibility, not a gauntlet. Certainly, it should not be applied to evidence that did not exist 5 days before the hearing.
- To exclude, there needs to be willful malfeasance on the part of the claimant's representative; I do not see how malfeasance should ever be imputed to a *pro se* claimant. That is, some showing that the proffered evidence could have been acquired before but was not. It should be a sufficient response that it was duly requested before or within a week of receipt of the Hearing Notice, but not received through no fault of the claimant or the representative. Extracting evidence,

especially opinion evidence, from medical providers, is a lengthy chore, and the delay by medical providers should not be held against claimants.

- Late evidence that is from an "acceptable medical source" that the record otherwise lacks should be admitted. By definition, it relates back to the time in question [dated before the hearing], and could go to the Appeals Council after an unfavorable ALJ decision. If ALJs are going to flout the intent of the medical source Social Security Ruling [SSR 06-03p – evidence from treating medical sources who are not "acceptable medical sources"] in order to deny claims, when the world is turning toward the increasing use of such sources and decreasing use of doctors and psychologists, then such evidence should always be considered if it exists. Having that black and white is easier than requiring that it be adjudicated that the case turns on whether there is sufficient evidence from an acceptable medical source on which the case turns.
- Finally, to exclude evidence, the ALJ needs to give reasons in the decision that are particularized rather than relying on the 5-day rule. Articulating a specific reason other than "the evidence is late ... no exceptions to exclusion are found" would seem to be a minimum requirement of due process. Indeed, requiring the ALJ to articulate the reason would establish most of the time that exclusion is arbitrary and capricious and manifestly unjust.

- **Recommendations from an attorney in Maine:**

If the idea of expanding the 5 day rule nationwide cannot be eliminated, then we need much clearer direction as to what is and what is not good cause for missing the deadline.

For example, if the document in question did not, in fact, exist before 5 days before the hearing, it should not be considered late. I once received a letter from a client's employer that was dated less than 5 days before the hearing. It contained relevant information concerning the details of the employment. It was excluded. We have had many situations where it was the providers who caused delays that caused the missed deadline and their opinion evidence was excluded even though they were acceptable medical sources and the ALJ would otherwise be required to give their opinions special consideration.

In its current form the 5 day rule is too easily abused and the claimants have no effective remedy when evidence is unreasonably excluded even when it is highly probative.

- **From a representative in Maine:**

ALJs already have the discretion to postpone hearings if representatives come in with huge piles of medical evidence at the last minute. In the final analysis, if the five day rule is retained and expanded, "five business days" needs to be defined more succinctly. For instance, if the hearing office closes at 3:30 or 4:00 or 4:30 p.m., (as office hour changes occur based upon budgetary concerns), but we file evidence by at least 5 p.m., what does that mean, especially if a judge is counting the hours? For example, if we file appeals of Social Security determinations with the federal district court, we have until midnight to meet deadlines. At the very least, if the five day rule is retained and expanded, the "fifth business day" deadline before the hearing means the fifth day before the hearing and ends at midnight.

- **From an attorney in Massachusetts:**

Clarify the counting of the 5 day rule; expand the list of reasons to waive it; and issue some instruction that the rule is to be applied to ensure that all relevant evidence comes in, to protect the claimant's right to a *de novo* hearing.

- **From an attorney in Maine:** Eliminate the 5 day evidence submission requirement and revert to provisions in effect in all other Regions.

5. Does NOSSCR think the current pilot program in Region I should be continued, discontinued, or expanded to other regions? Why or why not? Please explain.

NOSSCR's positions are discussed in response to Question 4 and in detail in Part I, *supra*. In general, NOSSCR supports (1) Nationwide expansion of the 75-day advance notice of hearing; and (2) Elimination of the rule requiring submission of evidence five days before the hearing. If the five day rule is retained, it must be clarified and more policy guidelines issued, prior to expansion beyond Region I, to prevent arbitrary and inconsistent application of the rule by some ALJs.

Thank you for considering our comments and recommendations. We look forwarding to discussing our comments in more detail and answering any questions you have.

Very truly yours,

Nancy G. Shor
Executive Director

Ethel Zelenske
Director of Government Affairs

APPENDIX I: RESPONSE FROM THE NATIONAL ASSOCIATION OF DISABILITY REPRESENTATIVES

Good afternoon Amber,

Thanks so much for reaching out to NADR concerning the Region I pilot program. * * *

Following are our written responses to your questions.

1. What is NADR's view of the current pilot program in Region I?

NADR members in Region 1 believe for the most part that the original pilot program for DSI had good intentions but did not work as hoped because the promise for medical coverage for uninsured claimants never came to fruition; the Decision Review Board was incapable of performing the reviews of ALJ denials in a timely and proper manner; and the Vocational/Medical Expert "bank" simply proved unworkable. The pre-hearing 5-day rule to submit evidence makes sense if flexibility is provided for mitigating circumstances, but when it is strictly enforced it may become an impediment that prevents the claimant from getting the correct decision in a timely manner.

2. What does NADR think are the benefits, if any, of the current pilot program in Region I for claimants and/or their representatives?

The 75-day scheduling rule provides a reasonable timeframe to gather updated evidence although limitations from the offices of medical providers often hinder timely submission of such evidence.

3. What does NADR think are the drawbacks, if any, of the current pilot program in Region I for claimants and/or their representatives?

The application of the 5-day rule is the greatest problem. This rule was initiated in order to assure timely, pre-hearing submission of voluminous medical documentation. That is a reasonable expectation. Unfortunately the reality is that medical offices and providers often lose requests for medical evidence, simply file medical source statements before completion, will not accept releases (even HIPPAA compliant ones) because they do not have the language that the provider requires, etc. NADR believes that every reasonable effort should be made to obtain and submit such evidence 5 days or more prior to the hearing. If the representative foresees a problem with a timely submission of the evidence due to circumstances beyond their control, a simple request for the 5-day rule to be vacated should automatically be granted. If evidence is submitted at the time of hearing, even if a request to vacate the rule was not submitted, then it should be automatically accepted if it is not an unreasonable number of pages (10 – 15 or less). If submission of "voluminous" medical records occurs within the 5-day period, and a request to vacate the 5-day rule was not submitted, then the representative should be sanctioned. It is imperative that the claimant's case is not jeopardized by poor or shoddy representation. However, there appears to be significant variation in how the rule is applied within the Region. Rigid adherence to the 5-day rule without regard to mitigating circumstance can create unnecessary delays in providing a claimant with a timely decision that is based on all the facts of the case. If judges are provided clear guidance concerning when the rule should be waived due to

mitigating circumstances, and that guidance is consistently followed, it would go a long way to addressing NADR's concerns about the 5-day rule.

4. What suggestion(s) does NADR have, if any, for improving the current regulations, policies, and/or practices regarding the current pilot program in Region I?

The discussion in question 3 above concerning the 5-day rule is the biggest issue from NADR's point of view. We believe that elimination of the Decision Review Board, and with it the requirement in § 405.430 that the hearing record be closed as of the date of the administrative law judge's decision, is a necessary and positive step. NADR believes that the language in § 404.976, which allows any new and material evidence submitted to the Appeals Council that relates to the period on or before the date of the administrative law judge hearing decision to be considered, is the correct approach. However, we would like to see more clarity concerning what information "relates" to the period on or before the date of the hearing. For example: If a claimant has shoulder surgery between the hearing and the decision – or even during the period from the hearing to the AC decision, for a problem that was potentially identified but not fully treated at the time of the hearing, does that surgery “relate” to the period on or before the date of the ALJ hearing decision? NADR believes that it should.

5. Does NADR think the current pilot program in Region I should be continued, discontinued, or expanded to other regions? Why or why not? Please explain.

NADR believes that the pilot program should be modified to reflect the concerns expressed above, and then continued and expanded to other regions.

Thank you for asking for our views on the pilot program. * * *

Thomas M. Susman
Director
Governmental Affairs Office

AMERICAN BAR ASSOCIATION
740 Fifteenth Street, NW
Washington, DC 20005-1022
(202) 662-1760
FAX: (202) 662-1762

May 15, 2013

The Honorable Paul R. Verkuil
Chairman
Administrative Conference of the United States
1120 20th Street, N.W., Suite 706 South
Washington, D.C. 20036

Re: ACUS Study to Assess Social Security Administration's Region I Pilot Program

Dear Chairman Verkuil:

On behalf of the American Bar Association and its nearly 400,000 members, and in response to your request, I am pleased to present the ABA's views and comments regarding the impact of the current Social Security Administration (SSA) pilot program in Region I.

The ABA has a long-standing interest in the SSA's disability benefits decision-making process, and we have worked actively for over two decades to promote increased efficiency and fairness in this system. As the national voice of the legal profession, the ABA has been able to draw upon the considerable expertise of our diverse membership, including many claimants' lawyers, administrative law judges (ALJs), academicians and agency staff who are active in the ABA.

We have for many years expressed our support for a prompt disability adjudication process for those who are obviously disabled. In past years, many eligible individuals have waited—and many continue to wait—far too long to receive their benefits, which in many cases may be their only source of income and access to medical care. The backlog of SSA cases awaiting an ALJ decision has continued to grow. Clearly, something needs to be done to improve the operation of the program, alleviate backlogs in the system and reduce the delays that are so detrimental—and sometimes deadly—to the disabled claimants who desperately need the financial benefits to which they are entitled under the law. Applicants who by definition are totally disabled and unable to do any kind of work often must wait years before they can get a hearing and begin to receive their benefits.

We support efforts to move cases quickly and reduce the backlog of SSA disability claims by encouraging a greater effort to issue a correct decision as early in the process as possible. If the quality of intake and the development of evidence is improved at the early stages, it follows that there will be fewer appeals and a reduction in the number of cases awaiting a decision. We also are concerned about the tremendous waste of agency resources involved in providing an appellate process for claims that should have been approved

initially, as well as the very real, negative impact on the lives of those who are waiting for their hearings and the approval of their benefits

We believe it is important that claimants be advised that their claims may be determined more rapidly if they ensure that all of their medical records and work histories are provided in as timely a manner as possible.

The ABA has long supported an informal and non-adversarial hearing before an ALJ that allows the ALJ to function as a true independent fact-finder who has a duty to develop the record as acknowledged by the United States Supreme Court. We believe this role should continue, rather than moving towards a more "truly appellate" and legalistic process.

Although the ABA does not have specific policy on the issue of closing the record in SSA hearings, the ABA House of Delegates did adopt policy in 2003 relating to the Medicare claims adjudication process that states in pertinent part: "The record should not be closed prior to the hearing. After the ALJ hearing, beneficiaries should be provided the opportunity to reopen the record for good cause." (See ABA Resolution 107 and the related background report at: http://www.americanbar.org/content/dam/aba/directories/policy/2003_am_107.authcheckdam.pdf)

While the SSA pilot program appears to address our general concern that claimants be afforded their opportunity to present relevant evidence into the record, we nonetheless urge you to proceed with extreme caution before recommending restricting claimants' ability to submit relevant evidence within five days prior to or at the hearing. If the SSA chooses to adopt a rule that limits the submission of evidence within five days of a hearing, we believe that ALJs should retain broad discretion to waive the restriction to ensure that the record is complete.

In a letter to then-SSA Commissioner Michael Astrue dated December 21, 2007, the ABA raised concerns regarding a proposal to limit the submission of new evidence to the ALJ to five business days before the hearing date. In particular, we expressed concerns that such a proposal seemed directly to conflict with 42 U.S.C. § 405 (b)(1), which provides that the Commissioner "shall, on the basis of evidence adduced at the hearing, affirm, modify or reverse" a decision.

The current SSA pilot program allows for a good cause exception to the closing of the record. Closing of the record occurs only after the ALJ issues a decision. Allowing the submission of newly discovered or newly obtained evidence that could not have been acquired previously is important for due process. This is why the earliest submission of records is key. The rights of the claimant are not served when attorneys or representatives delay in preparation or submission of records based on their belief that they routinely will be granted an exception. Similarly, claimants are not served when an ALJ routinely denies requests for exceptions because the ALJ believes that procedure should prevail over substance. Claimants are served best by an ALJ, as an independent decision maker, who is held to the highest ethical standards contained in the ABA Model Code of Judicial Conduct, and by lawyers and representatives who similarly are held to the highest ethical standards. This best bolsters due process.

To its credit, the SSA pilot program also attempts to achieve two highly important goals by developing the evidence before the hearing by personnel other than the judge and bringing finality by closing the record. In addition, it appears the pilot program will support and advance Congress' intent to ensure that worthy claimants are awarded benefits at the earliest possible time and in the most efficient manner, while maintaining the integrity of the Administrative Procedure Act's hearing process.

In sum, we believe the SSA pilot program should be continued and expanded to address the issues affecting the hearing of claimants' cases—including poorly or inconsistently developed cases—in order to ensure claimants are provided appropriate due process protections; i.e., de novo hearings presided over by independent ALJs who are held to the highest of ethical standards contained in the Model Code of Judicial Conduct.

Thank you for the opportunity to express our views on this subject. If you would like to discuss the ABA's views in greater detail, please feel free to contact me at (202) 662-1965 or Hon. Jodi B. Levine, Co-Chair of the Benefits Committee of the ABA Section of Administrative Law and Regulatory Practice, at (866) 701-8094.

Sincerely,

Thomas M. Susman

cc: Jodi B. Levine, Co-Chair, Benefits Committee, ABA Section of Administrative Law and Regulatory Practice
Thomas D. Sutton, Co-Chair, Benefits Committee, ABA Section of Administrative Law and Regulatory Practice
Thomas W. Snook, Co-Chair, Federal Administration Adjudication Committee, National Conference of the Administrative Law Judiciary
James W. Conrad, Jr., Chair, ABA Section of Administrative Law and Regulatory Practice

APPENDIX K: PRIOR WORK OF THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES RELATING TO CLOSING THE RECORD

This appendix presents the prior work of Administrative Conference of the United States related to closing of the record in the Social Security disability adjudication context. It includes relevant recommendations, a model adjudication rule, and excerpts of a Statement.

Recommendation 78-2: Procedures for Determining Social Security Disability Claims
(Adopted June 8-9, 1978)

. . .

B. *Evidentiary Development*

1. Although evidence must sometimes be collected after the administrative law judge hearing, prehearing development often may be necessary for an informed and pertinent exchange at the hearing. Administrative law judges should not therefore adopt an invariant policy of post-hearing development, but should develop the record during the prehearing stage whenever sound discretion suggests that such development is feasible and useful. . . .

C. *Monitoring, Management, and Control of the Hearing Process*

1. The Appeals Council should exercise review on the basis of the evidence established in the record before the administrative law judge. If a claimant wishes to offer new evidence after the hearing record has been closed, petition should be made to the administrative law judge to reopen the record. Where new evidence is offered when an appeal is pending in the Appeals Council, the Appeals council should make that evidence a part of the record for purposes of the appeal only if a refusal to do so would result in substantial injustice or unreasonable delay. . . .

Recommendation 86-7: Case Management as a Tool for Improving Agency Adjudication
(Adopted Dec. 5, 1986)

. . .

8. *Time extension practices.* Time extensions should be granted only upon strong, documented justification. While procedural fairness mandates that deadlines may be extended for good cause, presiding officers should be aware that casual, customary extensions have serious negative effects on an adjudicatory system, its participants, and those wishing access thereto. Stern warnings accompanying justified extensions have had good success in curtailing lawyers' requests for additional time. . . .

Recommendation 87-6: State-Level Determinations in Social Security Disability Cases
(Adopted Dec. 17, 1987)

. . .

9. The record in disability appeals should not be closed until completion of the ALJ stage—that point in the process at which claimants now are more likely to be represented by attorneys or other advocates. . . .

Recommendation 87-7: A New Role for the Social Security Appeals Council
(Adopted Dec. 18, 1987)

. . .

a. *Improved Review of Individual Cases. . . .*

(4) Avoid substitution of judgment on ALJ factual determinations;[2] . . .

[2] In conjunction with this reliance on the record below, the Appeals Council should not permit new evidence to be introduced without good cause, although motions to remand to the hearing stage should be permitted. See Recommendation 78-2 ¶(c)(1); 1 CFR 305.78-2(c)(1).

Recommendation 90-4: Social Security Disability Program Appeals Process: Supplementary Recommendation
(Adopted June 8, 1990)

. . .

4. *Closing of the Administrative Record*: The administrative hearing record should be closed at a set time after the evidentiary hearing. Prior to this, the ALJ should set forth for the claimant what information the claimant needs to produce to complete the record, issue any necessary subpoenas, and provide the claimant adequate time to acquire the information. Requests for extension should be granted for good cause, including difficulty in obtaining material evidence from third parties. The ALJ should retain the discretion to accept and consider pertinent information received after closure of the record and before the decision is issued.

5. *Introduction of New Evidence After the ALJ Decision*:

   a. Upon petition filed by a claimant within one year of the ALJ decision or while appeal is pending at the Appeals Council, the ALJ (preferably the one who originally heard the case if he or she is promptly available) should reopen the record and reconsider the decision on a showing of new and material evidence that relates to the period covered by the previous decision. An ALJ's denial of such a petition should be appealable to the Appeals Council.

   b. Appeals Council review of an ALJ's initial decision should be limited to the evidence of record compiled before the ALJ. Where the claimant seeks review of an ALJ's refusal to reopen the record for the submission of new and material evidence, the Appeals Council should remand the case of the ALJ (preferably the one who originally heard the case if he or she is promptly available), if it finds the ALJ improperly declined to reopen the record. The Appeals Council should not review the merits itself or issue a decision considering the new evidence, unless remand would result in substantial injustice or unreasonable delay.[2] . . .

[2] Congress may at some time in the future need to consider whether it may want to provide for judicial review of Appeals Council determination not to reopen the record. *Cf.* Califano v. Sanders, 430 U.S. 99 (1977).

Model Adjudication Rules (Michael P. Cox, *The Model Adjudication Rules (MARs)*, 11 T.M. Cooley L.Rev. 75, 121 (1994))
. . . MAR 330. Closing of Record At the conclusion of the hearing, the record shall be closed unless the Adjudicator directs otherwise. Once the record is closed, no additional evidence shall be accepted except upon a showing that the evidence is material and that there was good cause for failure to produce it in a timely fashion. The Adjudicator shall reflect in the record, however, any approved correction to the transcript. Comment 1: In particular categories of adjudications (e.g., social security cases), an agency may wish to accord broader discretion to the Adjudicator to delay closing the record or to admit additional evidence after the record has been closed. See ACUS Recommendation 90-4(4), 1 CFR § 305.90-4(4). . . .

Statement 17 (Adopted June 16, 1994)
4. Reopening the Record The Proposal implies that the record will be closed at the ALJ level. We support the idea that the record should close following the ALJ hearing, at a time set by the ALJ, and suggest that this be made explicit. The Proposal is silent on the availability of any opportunity to reopen the record following the ALJ hearing. While the Conference does not generally encourage such reopenings, SSA should consider offering a limited opportunity to reopen the record in appropriate cases, consistent with Recommendation 90-4(4)(5).