

Congress of the United States

Washington, DC 20515

December 13, 2023

Dr. Kilolo Kijakazi
Acting Commissioner
Social Security Administration
6401 Security Boulevard
Baltimore, Maryland 21235

Dear Acting Commissioner Kijakazi:

Almost a million Americans are negatively impacted every year by improper payments made by the Social Security Administration (SSA). Many of those improper payments are in the form of an overpayment, some of which occur through no fault of the recipients. The process by which the SSA recovers these overpayments can often be burdensome and time-intensive, causing beneficiaries harm.

Overpayments can go undetected for months or even years, and the overpaid beneficiaries are often unaware until they are on the hook for the mistakes of the SSA. The recipient may have done everything correctly and followed all the rules, but the SSA errors resulted in an overpayment.

Recent news stories have highlighted the difficulty that beneficiaries have experienced trying to resolve overpayments. CBS's 60 Minutes recently shared the stories of Social Security recipients who struggled to pay back unexpected overpayments. This 60 Minutes segment highlighted your recent testimony before the Ways and Means Committee on this issue.

While we appreciate that on October 4, 2023, the SSA initiated a comprehensive review of its overpayment procedures and policies, we strongly believe that the SSA must do more to prevent overpayments from occurring in the first place.¹ Congress provided the agency with the necessary authority to enter into payroll information exchanges (PIE) with private sector payroll data providers to better administer the Social Security disability program and the Supplemental Security Income program and to prevent improper payments. It has been more than seven years since Congress authorized this authority, yet the SSA has not implemented a PIE. While we are encouraged by the SSA's recent steps to utilize this tool, the agency must act swiftly to finalize this regulation to ensure that clearly-delineated beneficiary due process protections are in place, and that new errors are not introduced.

Further, current law provides the SSA discretion to waive the recovery of an overpayment if it is "against equity and good conscience." The implementation of this law seems uneven and inconsistently applied across the country. A 2015 SSA Office of Inspector General (OIG) report found large disparities between field offices, with 60 field offices having a waiver approval rate of 91 percent or more, and 92 field offices having a waiver approval rate of 50 percent or less during 2012 and 2013.² It is deeply concerning to us that this overly-narrow,

¹ <https://www.ssa.gov/news/press/releases/2023/#10-2023-1>

² <https://oig-files.ssa.gov/audits/full/A-07-15-35031.pdf>

uneven implementation of this law has detrimentally impacted beneficiaries based solely on their place of residence.

We have concerns that each of the beneficiaries who were interviewed for the 60 Minutes segment had requested an overpayment waiver from the SSA and were either continuing to appeal or had been paying the debts. However, after the 60 Minutes segment aired, all the debts for each of the recipients were waived. The system for who does and does not receive a waiver should not be based on national media coverage of their claims.

Another concern we have is the lack of due process on the part of the SSA. A 2019 SSA OIG audit found that the SSA did not always apply due-process provisions, such as sending an overpayment notice that is accurate and contains all required content, before initiating recovery of overpayments.³ Current federal regulations require the SSA to provide overpaid individuals with due-process rights before initiating the recovery of an overpayment to ensure fair treatment.

On the 60 Minutes segment, one recipient claimed that the SSA did not have the data or paperwork to prove that he was no longer eligible multiple decades ago for benefits which led to an overpayment. However, the SSA still issued the overpayment notice. We have concerns that the SSA is using valuable resources to go back decades to retrieve money from those who were minors at the time the overpayment was made and are at no fault for the overpayments.

As our offices continue to investigate potential areas in need of Congressional intervention, please provide answers to the following questions no later than January 12, 2024.

1. What is the current guidance that the SSA provides to its employees to administer the “equity and good conscience” standard for providing waivers? How does SSA ensure that this policy is administered fairly across the country?
2. How many full-time employees has the SSA devoted to collecting and clawing back overpayments from beneficiaries in the last ten years?
3. What is the average wait time for an overpayment appeal process and for an overpayment waiver to be granted? How quickly does an average beneficiary wait until they hear back about their first appeal?
4. How does the SSA adjudicate clawback claims that do not have full documentation?
5. How far back can the SSA go to retrieve an overpayment? Can the SSA require family members to pay for overpayments made to another family member?
6. The 60 Minutes segment noted that the SSA was reviewing its overpayment policies and procedures. What is the timeline for completing this review?

Sincerely,



Mike Carey
Member of Congress



Emilia Strong Sykes
Member of Congress

³ <https://oig-files.ssa.gov/audits/full/A-07-18-50622.pdf>.



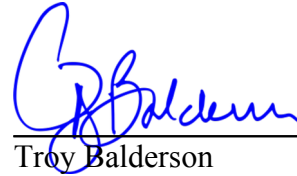
Robert E. Latta
Member of Congress



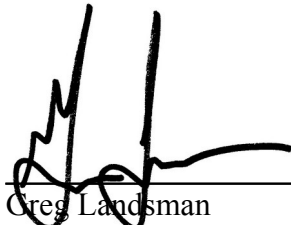
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