

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES WASHINGTON, DC 20515

June 27, 2022

The Honorable Kilolo Kijakazi
Acting Commissioner
Social Security Administration
6401 Security Boulevard
Baltimore, MD 21235

Dear Acting Commissioner Kijakazi:

We write to urge you to ensure that any new use of commercial electronic payroll data by the Social Security Administration (SSA) to identify potential beneficiary earnings and terminate, suspend, or adjust benefits is guided by regulations. Such regulations should include strong protections and robust due process rights for seniors and people with disabilities who rely on SSA benefits.

In 2015 Congress Authorized SSA to Expand Use of Commercial Electronic Payroll Data to Help Beneficiaries and Improve Program Administration

For more than one-third of SSA beneficiaries, or approximately 25 million individuals, earnings have the potential to affect their benefits.¹ This includes seniors who have not yet reached their full Social Security retirement age, Social Security disability beneficiaries, and Supplemental Security Income (SSI) recipients. Unfortunately, delays are all too common in SSA's processing of beneficiaries' self-reported earnings and, if appropriate, adjusting of benefits to account for earned income. SSA may pay excess benefits for months or even years, and it can be alarming and financially harmful for seniors and people with disabilities to make repayment.

Preventing excess payments can help beneficiaries and improve program administration. In support of this goal, Section 824 of the *Bipartisan Budget Act of 2015* (P.L. 114-74) authorized SSA to obtain information on beneficiary earnings from commercial electronic payroll databases through automated exchange. The law stipulated that access can only happen with individuals'

¹ Based on SSA Office of the Chief Actuary, *Retired worker beneficiaries in current payment status at the end of December 2021*, distributed by age and sex, https://www.ssa.gov/oact/progdata/benefits/ra_age202112.html and *Spouses of retired worker and Young widow(er) with child in care, December 2021*, <https://www.ssa.gov/OACT/ProgData/icp.html>; *SSA Annual Statistical Supplement, 2021* Tables 5.A1.4 and 5.A1.6, <https://www.ssa.gov/policy/docs/statcomps/supplement/2021/5a.html>; and *SSA Monthly Statistical Snapshot, December 2021*, https://www.ssa.gov/policy/docs/quickfacts/stat_snapshot/2021-12.html.

consent, and those who agree are exempt from having to self-report their earnings to SSA. The law specified that purposes of the automated exchange include “preventing improper payments of such benefits without the need for verification by independent or collateral sources”.

If implemented, this would represent a major change in SSA policy. Currently, SSA does not receive commercial electronic payroll data on an automatic, ongoing basis; instead, if an individual going through a disability review is unable to provide pay stubs, then SSA may ask for permission to access their earnings information from a commercial payroll data provider. In addition, currently SSA does not adjust benefits automatically using commercial payroll data; instead, technicians first review the wage information before inputting it into the agency’s systems. Recognizing the significance of the policy change being authorized, the *Bipartisan Budget Act of 2015* required SSA to publish, within one year after enactment, regulations governing how the agency will access and use the commercial data, seek beneficiary authorization, and notify beneficiaries who have provided authorization.

New Concerns About Commercial Electronic Payroll Data Have Emerged

Unfortunately, since 2015 new and serious concerns have come to light about inaccuracies in commercial electronic payroll databases and the significant challenges workers often face when trying to correct errors with the credit reporting agencies who operate and sell these databases.

Notably, advocates representing beneficiaries and consumers have reported significant inaccuracies in credit reporting agencies’ databases, citing a comprehensive study by the Federal Trade Commission which found that 21 percent of consumers had verified errors in their credit reports.² Problems identified by advocates include files where the credit histories of two different consumers have been mixed together; identity theft accounts not being properly removed from victims’ files; individuals having been falsely being declared dead; and errors by the entities who supply information to the credit bureaus.³

Indeed, SSA’s own analysis found that commercial payroll data from Equifax (which SSA has contracted with) could have material errors in at least 10 percent of cases. For example, we recently learned of a retired Social Security beneficiary whose part-time job required extensive travel. Their reimbursement for out-of-pocket travel costs was wrongfully categorized as earnings in Equifax’s database. Based on this erroneous information, SSA told the beneficiary

² Justice in Aging and National Consumer Law Center (2021), comments on *Advance Notice Use of Electronic Payroll Data to Improve Program Administration*, 86 Fed. Reg. 5303 (January 19, 2021), Docket No. SSA-2016–0039, <https://www.regulations.gov/comment/SSA-2016-0039-0005>, citing Federal Trade Commission (Dec. 2012), *Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003*, <http://www.ftc.gov/sites/default/files/documents/reports/section-319-fair-and-accurate-credit-transactions-act-2003-fifth-interim-federal-trade-commission/130211factareport.pdf>.

³ Wu, Chi Chi (2021), Testimony before the U.S. House of Representatives Committee on Financial Services, Subcommittee on Oversight and Investigations, regarding “Consumer Credit Reporting: Assessing Accuracy and Compliance”, <https://docs.house.gov/meetings/BA/BA09/20210526/112712/HHRG-117-BA09-Wstate-WuC-20210526.pdf>.

that excess benefits had been paid and the agency would cut off benefits entirely for five months, for repayment.

Furthermore, in recent years complaints to the Consumer Financial Protection Bureau (CFPB) about problems with credit or consumer reports have grown dramatically, and national credit reporting agencies are closing complaints with far fewer instances of relief. In 2021, the CFPB received approximately 710,300 credit or consumer reporting complaints – up from approximately 154,500 in 2019.⁴ In 2021, national credit reporting agencies provided relief in less than 2 percent of complaints referred to them by the CFPB, down from nearly 25 percent of complaints in 2019.⁵ Of particular concern, in 2020 CFPB received consumer complaints from counties with the most racially and ethnically diverse populations at more than four times the rate of counties with the highest white, non-Hispanic populations.⁶

The 2015 Law Directed SSA to Conduct Rulemaking and Issue a Regulation Governing the New Process Within One Year of Enactment

In the *Bipartisan Budget Act of 2015* Congress required SSA to issue rules within one year of enactment for procedures governing the agency's access to and use of commercial payroll data. We are therefore alarmed to learn that SSA may soon start automatically accessing and using commercial electronic payroll data from Equifax to adjust benefits – without rulemaking as Congress required in law. The significant concerns that have surfaced since 2015 underscore that any changes to SSA's access to and use of commercial payroll data must be subject to full notice and comment rulemaking. While SSA published a notice on a proposed information exchange between SSA and Equifax on January 19, 2021 (86 Fed. Reg. 5303), that is no substitute for an actual regulation and does not meet the requirement included in the law.

Rulemaking should not be bypassed. The rulemaking process requires agencies to receive and address public concerns, and final regulations are vital to transparency, beneficiary rights, and due process.

SSA Should Not Expand Use of Commercial Electronic Payroll Data Without Rulemaking that Includes Strong Beneficiary Protections

We fear that SSA may be considering a flawed process for using commercial payroll data to adjust benefits. Notably, we are concerned that SSA will presume that potentially erroneous commercial payroll information is accurate. We are also concerned that the burden to disprove errors will fall on beneficiaries to correct problems directly with commercial entities under *Fair*

⁴ CFPB (2022), *Consumer Response Annual Report, January 1 – December 31, 2021*, https://files.consumerfinance.gov/f/documents/cfpb_2021-consumer-response-annual-report_2022-03.pdf and CFPB (2020), *Consumer Response Annual Report, January 1 – December 31, 2019*, https://files.consumerfinance.gov/f/documents/cfpb_consumer-response-annual-report_2019.pdf.


⁵ CFPB (2022), *Annual Report of Credit and Consumer Reporting Complaints*, https://files.consumerfinance.gov/f/documents/cfpb_fcra-611-e_report_2022-01.pdf.

⁶ CFPB (2021), *Complaint Bulletin: County-level demographic overview of consumer complaints*, https://files.consumerfinance.gov/f/documents/cfpb_complaint-bulletin_county-level-demographic-overview-consumer-complaints_2021-04.pdf.

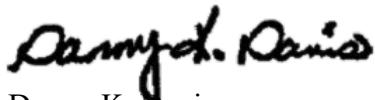
Credit Reporting Act procedures. This will pose an insurmountable hurdle for many seniors and people with disabilities. For example, in the case cited above, the senior's attempt to resolve the error in their wage information resulted in weeks of being bounced between Equifax, their employer, and SSA. Finally, we are concerned that SSA's process may not adequately inform beneficiaries of how SSA is using commercial data to adjust benefits and may provide only a brief window for individuals to identify and resolve errors before their benefits are reduced, suspended, or terminated.

SSA should halt any plans to automatically access and use electronic payroll data to adjust benefits before final regulations are in place. SSA should instead comply with the statutory requirement for rulemaking, prior to any implementation. We expect that SSA regulations will not presume that information provided by commercial payroll data providers is accurate, and will include review by SSA employees prior to benefit adjustment. We also expect that any regulations will not place the burden on beneficiaries to correct errors with Equifax or other commercial payroll data providers, and will instead ensure that beneficiaries have substantial advance notice of any potential benefit adjustment, with ample opportunity to alert SSA to any errors and to make corrections directly with SSA.

Sincerely,



John B. Larson
Chair
Subcommittee on Social Security



Danny K. Davis
Chair
Subcommittee on Worker and Family Support