

COMMITTEE ON WAYS AND MEANS
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

March 4, 2021

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

Dear Commissioner Saul,

We urge you to swiftly release to the public all Social Security Administration (SSA) instructions, in whole or in part with redactions where necessary, to employees on changes to policies and services due to the COVID-19 pandemic. The agency's actions during the pandemic have made it more difficult for the American public to access SSA services and benefits, and run contrary to the principle of openness and transparency in government.

Due to the COVID-19 crisis, SSA has made numerous changes to its policies and services and has instructed its staff on how to implement these changes using Emergency Messages (EMs), Chief Judge Bulletins, and other communications. These modifications have evolved frequently over the course of the pandemic. SSA has a long practice of releasing to the public the agency's EMs, Chief Judge Bulletins, and other documents regarding changes to policies and services.¹ However, with few exceptions, these pandemic-related changes to SSA policies and services have been marked "sensitive" and have not been shared with the public.²

We are concerned that SSA's failure to publicly share these policy updates made via employee instructions has made it harder for the public to access services and benefits during the pandemic. Case workers and attorneys who assist the public often use SSA's employee instructions to understand and navigate SSA service changes, including referencing specific instructions that apply to their client's situation in order to ensure that the correct policy is applied. This type of beneficial exchange can help to prevent errors and is more important than ever during the unprecedented challenges of operating during the COVID-19 pandemic; however, this type of interaction cannot occur when policy updates are not publicly available.

In addition, we are concerned that SSA's use of the "sensitive" designation for employee instructions during the COVID-19 crisis has been overbroad and contrary to the goal of an open and transparent government. SSA has not shared publicly its criteria for classifying documents as sensitive, nor has the agency explained why it cannot release

¹ See, for example: SSA Policy Program Instructions, "Emergency Messages", <https://secure.ssa.gov/apps10/reference.nsf/instructiontypecode!openview&restricttcategory=EM> and "Chief Judge Bulletins," <https://secure.ssa.gov/apps10/reference.nsf/instructiontypecode!openview&restricttcategory=CJB>.

² Ibid.

Letter to Commissioner Saul

March 4, 2021

Page 2

pandemic-related employee instructions in whole or in part, with sensitive sentences or paragraphs redacted. In fact, we have received reports that in response to requests under the Freedom of Information Act, SSA released some pandemic-related EMs.

We appreciate that on November 13, 2020 SSA modified its internal approval process for policy instructions, to require “a more stringent review and added justification for applying the designation” of “sensitive”.³ As a result, we expect that in the future SSA will release more employee instructions publicly and will mark fewer as sensitive. Indeed, we appreciate that since SSA modified its internal approval process, the agency has publicly released 15 sets of new employee instructions, including a redacted version of the agency’s instructions on pandemic-related special overpayment waivers and processing.⁴ Despite these welcome changes, SSA has not released any other EMs or Chief Judge Bulletins on COVID-19 service changes that were published prior to November 13th.

We urge SSA to immediately review all employee instructions on changes to policies and services due to the COVID-19 pandemic, and to release them in whole or in part, with redactions where necessary. We also urge SSA to publicly share the agency’s criteria for marking such documents “sensitive”. Finally, we urge SSA to continue to review its policies for marking these documents “sensitive”, to ensure that the agency upholds the fundamental American value of openness and the right of the public to understand the rules and procedures of the programs they rely on.

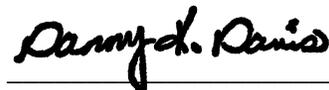
Sincerely,



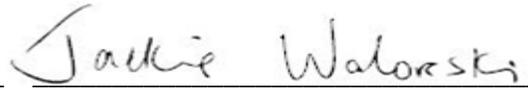
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Subcommittee on Social Security



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Support



Jackie Walorski
Ranking Member
Subcommittee on Worker and Family
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³ EM-20054, “Improving the Application of the Sensitive Policy Designation”,
<https://secure.ssa.gov/apps10/reference.nsf/links/11132020075235AM>.

⁴See “SSA Policy Program Instructions, “Emergency Messages”,
<https://secure.ssa.gov/apps10/reference.nsf/instructiontypecode!openview&restricttcategory=EM>.