



U.S. House of Representatives

COMMITTEE ON WAYS AND MEANS
1139 LONGWORTH HOUSE OFFICE BUILDING
Washington, DC 20515

April 22, 2024

The Honorable Martin O'Malley
Commissioner
Social Security Administration
6401 Security Boulevard
Baltimore, MD 21235

Dear Commissioner O'Malley,

Thank you for issuing a proposed regulation governing how the Social Security Administration (SSA) will significantly expand its use of commercial electronic payroll data to administer Social Security and Supplemental Security Income (SSI) disability benefits.¹ We applaud SSA for taking the necessary steps to put a rule in place prior to any implementation. As you incorporate comments on the proposed regulation, we urge you to significantly strengthen beneficiary protections in the final rule.

Payroll Information Exchange Holds Promise, but Concerns Must Be Addressed

For more than 11 million Americans who rely on the Social Security and SSI disability programs, earnings have the potential to affect their benefits.² Unfortunately, SSA has been underfunded for many years, leaving the agency understaffed and unable to process all work timely. In particular, delays are all too common in processing beneficiaries' self-reported earnings and, if appropriate, adjusting 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 disabled beneficiaries to make repayment.

Preventing overpayments can help beneficiaries and improve program administration. In support of this goal, 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' 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

¹ SSA, *Use of Electronic Payroll Data To Improve Program Administration*, 89 Fed. Reg. 11773 *et seq.*

² SSA, *Monthly Statistical Snapshot, March 2024*, https://www.ssa.gov/policy/docs/quickfacts/stat_snapshot/.

such benefits without the need for verification by independent or collateral sources.” Recognizing the significance of this policy change, the law also required SSA to publish regulations governing how it will implement the payroll information exchange, or PIE.

Unfortunately, since 2015 new and serious concerns have emerged about errors in credit and consumer reports, including payroll data reports. In 2023, the Consumer Financial Protection Bureau (CFPB) received 1.3 million credit or consumer reporting complaints – up from 154,500 in 2019.³ Of particular concern, some workers have reported major challenges when trying to correct errors in their wage information with the credit reporting agencies who operate and sell payroll data reports.

For example, in 2022 we learned of a retired Social Security beneficiary whose part-time job required extensive travel. Their reimbursement for out-of-pocket travel costs was incorrectly categorized as earnings in Equifax’s database. Based on this erroneous information, SSA sent an overpayment demand letter, telling the beneficiary that the agency would cut off benefits entirely for five months, for repayment. The beneficiary’s attempt to correct the erroneous wage information resulted in weeks of being bounced between Equifax, their employer, and SSA.

In another case, an identity theft victim lost her monthly Supplemental Nutrition Assistance Program (SNAP) benefits due to incorrect commercial payroll data.⁴ As alleged in a class action lawsuit, in 2022 the state of Virginia notified her that it was ending her monthly food assistance, based on commercial payroll data. The Equifax data incorrectly showed her as working full-time at a food plant in Alabama – even though she lived in Virginia. In addition, her record incorrectly stated that she had also recently lived and worked at two different places in Florida. When she tried to correct the errors with Equifax, she faced significant hurdles including a “burdensome ‘proof of address’ submission” required to receive her record.

In light of these types of concerns, in 2022 we wrote to SSA urging the agency to halt any plans to expand its use of commercial electronic payroll data to reduce or cut off benefits without rulemaking and strong beneficiary protections.⁵ We welcomed SSA’s response, which affirmed the agency would proceed with rulemaking, as required by law.⁶

³ CFPB (2024), *Consumer Response Annual Report, January 1 – December 31, 2023*, https://files.consumerfinance.gov/f/documents/cfpb_cr-annual-report_2023-03.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.

⁴ Complaint, Vanessa Muniz Gerena v. Equifax, Case 3:24-cv-00098 (E.D. Va. Feb. 9, 2024).

⁵ Larson, Davis: *Social Security Should Not Expand Use of Commercial Payroll Data Without Rulemaking and Strong Beneficiary Protections*, Jun. 27, 2022, <https://larson.house.gov/media-center/press-releases/larson-davis-social-security-should-not-expand-use-commercial-payroll>.

⁶ Larson, Davis *Welcome Social Security’s Response to Concerns about Potential Use of Commercial Payroll Data*, Nov. 22, 2022, <https://larson.house.gov/media-center/press-releases/larson-davis-welcome-social-securitys-response-concerns-about-potential>.

SSA's Final Rule Should Protect Beneficiaries, Prevent Unintended Consequences, and Ensure Transparency

We commend you for taking the necessary steps to have a final rule in place before SSA implements new and expanded use of commercial payroll data under the PIE. We urge you to make needed revisions so that the final rule features stronger beneficiary protections, prevents unintended consequences, and emphasizes transparency.

The Social Security and SSI disability programs provide vital income for people who can no longer work at a substantial level because of a severe medical condition. Monthly benefits help disabled workers and their families to put food on the table, keep a roof over their heads, pay medical bills, and secure other basics. Social Security and SSI disability benefits are particularly important for people of color and women, who on average have fewer resources to fall back on in the event of a sudden career-ending impairment, and for children. It is impossible to overstate the importance of these SSA programs to the American people – or the dire consequences that can result from loss of benefits.

The potential for errors in the commercial data necessitates stronger beneficiary protections.

The commercial wage reports that SSA will receive through the PIE system are not flawless: by SSA's most recent estimate, errors occur in at least 3 percent of records.⁷ We are confident you will agree that SSA must safeguard beneficiaries from having their benefits reduced or cut off due to errors in the reports SSA receives from the commercial database broker.

First, SSA's final rule should provide SSI recipients with the same advance notice that Social Security beneficiaries receive, in cases where wage information from the PIE will lead to benefit reduction or cut-off. We appreciate that under the proposed rule, SSA will send Social Security disability beneficiaries two notices. The first, called an "advance notice," is important because it gives Social Security beneficiaries 35 days to rebut errors in their PIE wage record, without having to file a formal appeal and before loss of benefits. Only after that will SSA send a "final notice" that benefits are being suspended or cut off. In contrast, under the proposed rule it appears that SSI recipients will only receive one notice, sent *after* SSA has made the determination to reduce or cut off benefits for the next month. SSI recipients have extremely low incomes and savings, and it is vital they have due process protections such as timely and adequate notice before a proposed reduction or suspension of their benefits.⁸

Second, if a beneficiary alerts SSA to error(s) in their PIE wage record, the rule should require SSA to conduct an independent investigation of the alleged error and should stipulate that SSA will not reduce or cut off benefits while the investigation is pending. In addition, the burden should not fall on the beneficiary to disprove an error, as SSA has already established in an analogous policy situation. In 2018 SSA began using a commercial database to identify non-home real property owned by SSI recipients (which can disqualify them from receiving any

⁷ SSA, *Evaluation of Payroll Information Exchange (PIE) Wage Data Accuracy*, <https://www.regulations.gov/document/SSA-2016-0039-0008>.

⁸ *Goldberg v Kelly*, 397 U.S. 254, 264 (1970).

benefits). Advocates soon received alarming reports of SSI recipients who were being asked to “prove a negative” when the database erroneously matched their name to real property they did not own.⁹ Fortunately, SSA updated its guidance to clarify that when a recipient alerts SSA to an error, staff must establish additional, acceptable evidence before it can deny or reduce benefits.¹⁰ SSA should adopt similar policies in its final rule for the PIE.

Third, the final rule should require specific procedures for SSA to identify and address errors in PIE wage records, and to correct its benefit determinations when an error is discovered. For example, the proposed rule notes that in an unknown number of cases, employers will correct their payroll data after SSA has received the monthly batch data through the PIE.¹¹ SSA should ensure that the PIE system alerts the agency to these employer corrections so SSA can notify beneficiaries and take the corrections into account when determining benefit adjustments. In addition, SSA should ensure that any commercial payroll data provider contracted to furnish data under the PIE meets its obligations under the *Fair Credit Reporting Act* to follow “reasonable procedures to ensure maximum possible accuracy,”¹² and to ensure “reasonable internal controls to prevent the inclusion of facially false data, including logically inconsistent information.”¹³ Finally, SSA should institute its own internal quality review procedures to proactively look for and resolve potential errors in the PIE data, as it does currently with respect to other data-matching processes. For example, under existing policies SSA’s systems generate a flag if an SSI recipient’s self-reported wages are more than the wages reflected on their W-2; in these cases, an SSA employee will investigate and resolve the discrepancy.¹⁴ SSA should apply this and similar types of proactive quality review to wage reports received through the PIE.

SSA should conduct additional analysis to identify and mitigate unintended beneficiary impacts, prior to implementation.

In our 2022 letter, we expressed concern that SSA’s preliminary analysis suggested the PIE data from Equifax could have material errors in at least 10 percent of cases. We appreciate that SSA subsequently conducted a second study, which estimated a lower error rate, of 3 percent.¹⁵ However, we are concerned SSA’s second study has gaps and may have underestimated errors.

SSA’s most recent study examined only a subset of beneficiaries who will be subject to the PIE: SSI recipients who use the agency’s mobile wage reporting application to scan in their pay stubs.

⁹ National Consumer Law Center and Justice in Aging (2021), *Mismatched and Mistaken: How the Use of an Inaccurate Private Database Results in SSI Recipients Unjustly Losing Benefits*, <https://justiceinaging.org/wp-content/uploads/2021/04/SSADataReport.pdf>.

¹⁰ SSA, Program Operations Manual System, *SI 01140.100 Non-Home Real Property*, <https://secure.ssa.gov/apps10/poms.nsf/lnx/0501140100>.

¹¹ SSA, *Use of Electronic Payroll Data To Improve Program Administration*, 89 Fed. Reg. 11779 n. 57.

¹² 15 U.S.C. § 1681e(b).

¹³ Bureau of Consumer Financial Protection, Oct. 26, 2022, *Fair Credit Reporting, Facially False Data*, 87 Fed. Reg. 206 *et seq.*, <https://www.govinfo.gov/content/pkg/FR-2022-10-26/pdf/2022-23264.pdf>.

¹⁴ SSA, Program Operations Manual System, *SI 00820.143 Monthly Wage Reporting*, <https://secure.ssa.gov/poms.nsf/lnx/0500820143>.

¹⁵ SSA, *Evaluation of Payroll Information Exchange (PIE) Wage Data Accuracy*, <https://www.regulations.gov/document/SSA-2016-0039-0008>.

The study did not evaluate the accuracy of PIE data for SSI recipients who report wages in other ways, or for Social Security disability beneficiaries, or for working family members of SSI recipients (whose earnings may count against benefits). In addition, the study did not seek to examine mismatches, where a wage report is associated with the wrong worker – a vital concern for victims of identity theft, as highlighted in the Virginia case above. Furthermore, the study did not review the accuracy of specific payroll information that SSA needs to correctly adjust benefits, such as whether a paycheck includes sick pay or vacation pay (which unlike pay for hours worked, does not affect Social Security disability benefits).¹⁶

We therefore strongly urge SSA to conduct further review of the PIE data to better understand all potential errors – for all categories of SSA beneficiaries – and to take steps to mitigate such errors, prior to implementation.

In addition, we encourage SSA to examine the potential for an increase in calls to SSA's national 1-800 number and visits to SSA field offices due to the new rule, and to plan accordingly. Beneficiaries will undoubtedly reach out to SSA if they have questions about the many new notices that will be mailed out under the final rule, to dispute an error in their payroll data, or to appeal a benefit reduction. They may also reach out to SSA if they are confused about their wage reporting obligations, which under the proposed rule can change over time (for example, if they switch jobs from an employer that participates in the PIE to one that does not). If calls and visits to SSA increase significantly due to the final rule, it could become more difficult for all SSA customers – including disabled beneficiaries – to get help from the agency.

SSA should phase in implementation of the Payroll Information Exchange.

As described above, use of a data exchange for automated benefit reductions and cut-offs is a major change to SSA operational procedures; errors in the underlying data may be challenging for SSA and beneficiaries to sort out; and there is substantial potential for confusion among beneficiaries. Moreover, implementation of the PIE has the potential to significantly impact not only Social Security and SSI beneficiaries, but also the public at-large if it leads to new delays on the agency's national 1-800 number and at field offices. We therefore recommend that SSA phase in its implementation of the final rule, prior to going nationwide – a strategy SSA has appropriately deployed in other instances when it has made policy shifts with significant operational effects. A phased implementation will allow SSA to identify and resolve problems and develop best practices to maximize the benefits of the new PIE system and minimize any burdens on beneficiaries or disruptions to customer service.

SSA should ensure transparency in implementation of the final rule.

Finally, we appreciate that you have made transparency a hallmark of your leadership at SSA. We urge you to conduct rigorous evaluations of SSA's implementation of the final rule to ensure that the new authority is operating as intended by Congress, and to publish annual reports so that

¹⁶ SSA, Program Operations Manual System, *DI 10505.010 Determining Countable Earnings*, <https://secure.ssa.gov/poms.nsf/lnx/0410505010>.

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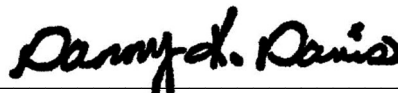
the public and Congress can understand the impact on beneficiaries and customer service. For example, SSA should publish information on the number of beneficiaries who have authorized SSA to access their commercial payroll data, the number whose benefits have been reduced or cut off due to PIE wage reports, the number who have reported errors in their PIE wage data and the outcomes of those reports, and the number who have appealed and the outcome of those appeals; SSA's actions to prevent, identify, and correct wage report errors; the impact of the PIE on overpayments; and the impact of the PIE on SSA's customer service.

In closing, we applaud SSA for taking the necessary steps to put a rule in place prior to implementation of Section 824 of the *Bipartisan Budget Act of 2015*, and we urge you to significantly strengthen beneficiary protections in the final rule.

Sincerely,



John B. Larson
Ranking Member
Subcommittee on Social Security



Danny K. Davis
Ranking Member
Subcommittee on Worker and Family Support