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Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

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STAFF DIRECTOR

March 11, 2013

Ms. Carolyn Colvin
Acting Commissioner
Social Security Administration
6401 Security Boulevard
Baltimore, MD 21235

Dear Ms. Colvin:

The Committee on Oversight and Government Reform is conducting oversight of the Social Security Administration's, Social Security Disability Insurance (SSDI) program, a program that pays cash benefits to nonelderly adults who are deemed unable to work. We are writing to request your cooperation with the Committee's efforts and to determine whether your agency is implementing recommendations of the Office of the Inspector General (OIG) at SSA.

Between 2003 and 2012, the number of disabled workers enrolled in SSDI grew by 3.24 million people, from 5.58 million people to 8.82 million people.¹ In the prior decade, the growth in the number of disabled workers enrolled in SSDI increased by only half as many people.² As a result of this growth, there are roughly 6.2 disabled workers on SSDI now for every 100 workers compared to 4.1 disabled workers on SSDI for every 100 workers ten years ago and 2.9 disabled workers on SSDI for every 100 workers 20 years ago.³

As the number of individuals enrolled in SSDI has increased substantially, so has program spending. A decade ago, SSDI payroll tax revenue exceeded program outlays by 17 percent, but this year, program spending will be 30 percent more than SSDI payroll tax revenue.⁴ The Social Security Board of Trustees⁵ and the Congressional Budget Office⁶ estimate that, without reform, the SSDI trust fund will be depleted within the next four years. Growth in SSDI

¹ Social Security Administration, Social Security Online Beneficiary Data, available at <http://www.socialsecurity.gov/cgi-bin/currentpay.cgi>.

² *Id.*

³ *Id.* and Bureau of Labor Statistics, *Labor Force Statistics from the Current Population Survey*, available at: <http://www.bls.gov/cps/cpsaat01.htm>.

⁴ Social Security Administration, Data on DI Receipts and Expenditures, available at <http://www.ssa.gov/oact/STATS/table4a3.html>.

⁵ Social Security Administration, "2012 Annual Report of the Board of Trustees of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds," available at: <http://www.ssa.gov/oact/TRSUM/index.html>.

⁶ The Congressional Budget Office, *2012 Long-Term Projections for Social Security: Additional Information*, October 2012.

enrollment also increases Medicare spending since individuals enrolled in SSDI for two years are automatically enrolled in Medicare.⁷

According to work by David Autor, an economist and disability programs expert at the Massachusetts Institute of Technology, the large growth in federal disability programs cannot be explained by either a rising rate of disability among working-age adults or by the aging of the population.⁸ In fact, there has been a substantial improvement over the past three decades in the average health of American adults between the ages of 50 and 64.⁹ Dr. Autor and several other experts conclude that most of SSDI's growth stems from eligibility and benefit changes that "have made work less attractive and less profitable" for an increased number of individuals.¹⁰ The academic research also indicates that SSDI's structure inhibits program beneficiaries from ever returning to the workforce.¹¹

In addition to SSDI's structural flaws, there are also significant management problems that lead to misspending within the program. Federal disability claims are often paid to individuals who are not legally entitled to receive them. For instance, in 2010 the nonpartisan Government Accountability Office (GAO) reported that some portion of \$1.7 million in monthly disability payments going to 1,500 federal workers from 2006 to 2008 was "improper" mostly because beneficiaries were receiving paychecks in excess of disability earnings thresholds.¹² In the same report, GAO found that 62,000 individuals receiving SSDI benefits in 12 states had commercial drivers licenses (CDL) that were issued after the disability determination.¹³ GAO "consider[s] the issuance of CDLs to be an indication that these individuals **may no longer have serious medical conditions and may have returned to work**" because acquiring a CDL involves passing a rigorous medical exam [emphasis in original].¹⁴ Additionally, the Office of the Inspector General for the Social Security Administration (SSA OIG) has found that individuals frequently misreport income to qualify for SSDI benefits.¹⁵

Available evidence suggests that there are also substantial problems in the eligibility determination process for SSDI benefits. According to a report issued by the Senate Permanent Subcommittee on Investigations, many decisions to award benefits "failed to properly address insufficient, contradictory or incomplete evidence."¹⁶ The bipartisan review was based on a

⁷ Social Security Administration, "Disability Planner: Medicare Coverage If You're Disabled." Available at: <http://www.socialsecurity.gov/dibplan/dapproval4.htm>.

⁸ David Autor, *The Unsustainable Rise of the Disability Rolls in the United States: Causes, Consequences, and Policy Options*, NBER Working Paper (Nov. 23, 2011).

⁹ *Id.*

¹⁰ See e.g., Richard V. Burkhauser and Mary C. Daly, *The Declining Work and Welfare of People With Disabilities: What Went Wrong and a Strategy for Change*, American Enterprise Institute (2011).

¹¹ *Supra* notes 7 and 9.

¹² Government Accountability Office, *SOCIAL SECURITY ADMINISTRATION: Cases of Federal Employees and Transportation Drivers and Owners who Fraudulently and/or Improperly Received SSA Disability Payments* (June 2010).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ See Office of the Inspector General for the Social Security Administration, *Individuals Hiding Self-Employment Income to Receive Disability Insurance Benefits*, Jan. 11, 2013.

¹⁶ Stephen Ohlemacher, *Social Security Awarding Disability Benefits without Adequately Reviewing Applications: Report*, HUFF. POST (Sept. 13, 2012), available at http://www.huffingtonpost.com/2012/09/13/social-security-disability-benefits_n_1879791.html.

sample of 300 randomly selected cases.¹⁷ The *Wall Street Journal* has reported that disability cases are typically decided without all the available and pertinent information and that many attorneys of disability applicants intentionally hide information from administrative law judges deciding cases.¹⁸

On January 31, 2013, Committee staff received a briefing from senior staff from SSA OIG. OIG staff discussed several problems with the management of the SSDI program, including four key OIG recommendations that would reduce waste, fraud, mismanagement and abuse in the SSDI program that SSA has yet to implement:

- OIG recommended that SSA conduct medical continuing disability reviews (CDRs) when they are due to ensure that only truly disabled individuals are receiving SSDI benefits and report to Congress the reasons and the associated impact from failing to conduct the CDRs that become due each year.¹⁹ SSA disagreed with the second part of the recommendation (reporting to Congress)²⁰ and it is unclear if and how SSA is implementing the first part of the recommendation, with which they agreed.²¹
- OIG recommended that SSA conduct additional work-related CDRs to ensure that only those who earn less than the Substantial Gainful Activity amount (which is \$1,040 per month for 2013)²² are receiving SSDI benefits.²³ SSA agreed with this recommendation,²⁴ but, according to SSA OIG, the recommendation has not yet been implemented.²⁵
- OIG recommended that SSA revise future benefit payment amounts when errors are discovered regardless of when the errors were discovered.²⁶ This would be a change in agency policy since SSA currently does not correct SSDI overpayments unnoticed for more than four years and Supplemental Security Income (SSI) overpayments unnoticed for more than two years.²⁷ SSA agreed to review this policy but, according to SSA OIG, steps have not been taken yet to implement this recommendation.²⁸

¹⁷ *Id.*

¹⁸ Damian Paletta and Dionne Searcey, *Two Lawyers Strike Gold in U.S. Disability System*, WALL ST. J. (Dec. 22, 2011), available at: <http://online.wsj.com/article/SB10001424052970203518404577096632862007046.html>.

¹⁹ Office of the Inspector General for the Social Security Administration, *Evaluation Report: Full Medical Continuing Disability Reviews* (Mar. 2010) A-07-09-29147, available at <http://oig.ssa/sites/default/audit/full/pdf/A-07-09-29147>.

²⁰ *Id.*

²¹ Briefing between SSA OIG staff and Committee staff, January 31, 2012.

²² Social Security, *What's New in 2013? Automatic Adjustments Effective January 1, 2013*, (last updated Jan. 17, 2013), available at <http://www.ssa.gov/redbook/eng/whatsnew.htm>.

²³ Office of the Inspector General for the Social Security Administration, *Audit Report: Follow-up on Disabled Title II Beneficiaries with Earnings Reported on the Master Earnings File* (Apr. 2009), A-01-08-28075, available at <http://oig.ssa.gov/sites/default/files/audit/full/pdf/A-01-08-28075.pdf>.

²⁴ *Id.*

²⁵ See *supra* note 21.

²⁶ Office of the Inspector General for the Social Security Administration, *Audit Report: Significance of Administrative Finality in the Social Security Administration's Programs* (Jul. 2012), A-08-11-21107, available at <http://oig.ssa.gov/sites/default/files/audit/full/pdf/A-08-11-21107.pdf>.

²⁷ *Id.*

²⁸ See *Supra* note 21.

- OIG recommended that SSA seek criminal and civil prosecutions or administrative sanctions regarding instances of false SSDI application filings uncovered by Cooperative Disability Investigative (CDI) Units.²⁹ According to SSA OIG, SSA has not yet taken necessary steps to implement this recommendation.³⁰

Since it is difficult and costly to recover money improperly spent, the best way to maximize SSDI program integrity is to prevent misspending in the first place by ensuring that only individuals meeting eligibility criteria are permitted into the program. Our current dire fiscal situation and the rapid depletion of the SSDI trust fund makes protecting taxpayer dollars paid through the SSDI program even more urgent. The truly disabled are the individuals who will be harmed most without program reform.

In order for the Committee to understand why SSA has decided not to act on many of SSA OIG's recommendations, please have appropriate SSA staff contact Brian Blase or Katelyn Christ of the Committee staff as soon as possible to arrange for a briefing. In order for us to assess your broader efforts to combat waste, fraud, and abuse in the SSDI program, we request that you produce the following information, in electronic format, as soon as possible, but not later than 5:00 p.m. on March 25, 2013:

1. Please provide the current number of medical CDRs that are past due as well as the number of medical CDRs that are due for review in 2013. Please provide the number of medical CDRs that SSA projects will be past due by the end of 2013.
2. Please provide information and data, by year, showing the number of medical CDRs conducted and the number of individuals who have been removed from SSDI as a result. For each of the years, please also provide the average monthly benefits paid for individuals removed from SSDI as a result of a medical CDR.
3. Please provide all documents and communications referring or relating to SSA's plan to reduce the medical CDR backlog from the time period of January 1, 2009, to the present.
4. Please provide the amount of SSDI benefit income currently being misreported to SSA's Master Earnings File as well as the total amount of work-related overpayments SSA projects will accrue by the end of 2013.
5. Please provide information and data, by year, showing the number of work-related CDRs conducted and the number of individuals who have been removed from SSDI as a result. For each of the years, please also provide average monthly benefits paid for individuals removed from SSDI as a result of a work-related CDR as well as the unit and total cost reported in the eWork system since 2004.

²⁹ Letter from Patrick P. O'Carroll, Jr., Inspector General, Social Security Administration to Rep. Charles Boustany, Jr., Chairman, Committee on Ways and Means (Aug. 12, 2011), available at <http://waysandmeans.house.gov/uploadedfiles/ssa.oig.response.qfrs.pdf>.

³⁰ See *Supra* note 21.

6. Please provide all documents and communications referring or relating to SSA's plan to improve overpayment recoveries by conducting work-related CDRs between January 1, 2009, and the present.
7. Please provide all documents and communications referring or relating to changes or adjustments to SSA's "administrative finality" rule between January 1, 2012, and the present.
8. Please provide a detailed list all actions, if any, taken by SSA in response to the GAO finding that 62,000 individuals in 12 states receiving SSDI benefits passed a rigorous medical examination to receive a commercial driving license.³¹

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X.

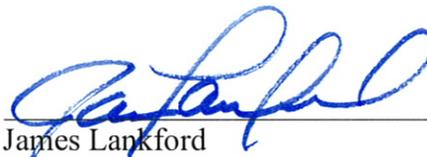
When producing documents to the Committee, please deliver production sets to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. The Committee prefers, if possible to receive all documents in electronic format.

If you have any questions about this request, please contact Brian Blase or Katelyn Christ of the Committee Staff at 202-225-5074. Thank you for your attention to this matter.

Sincerely,



Darrell Issa
Chairman



James Lankford
Chairman
Subcommittee on Energy Policy, Health Care
and Entitlements



Jim Jordan
Chairman
Subcommittee on Economic Growth, Job
Creation, and Regulatory Affairs

³¹ See *Supra* note 12.

Acting Commissioner Colvin

March 11, 2013

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Enclosure

cc: The Honorable Elijah Cummings, Ranking Minority Member

The Honorable Jackie Speier, Ranking Minority Member,
Subcommittee on Energy Policy, Health Care and Entitlements

The Honorable Matthew Cartwright, Ranking Minority Member,
Subcommittee on Economic Growth, Job Creation, and Regulatory Affairs

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Majority (202) 225-5074
Minority (202) 225-5051

Responding to Committee Document Requests

1. In complying with this request, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
 - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
 - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - (d) All electronic documents produced to the Committee should include the following fields of metadata specific to each document;

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH,
PAGECOUNT,CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE,
SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM,

CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD, INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION, BEGATTACH.

6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. Unless otherwise specified, the time period covered by this request is from January 1, 2009 to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been

located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.

17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.
19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Schedule Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.

3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term “referring or relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.
7. The term “employee” means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.