



**U.S. OFFICE OF SPECIAL COUNSEL**  
**1730 M Street, N.W., Suite 300**  
**Washington, D.C. 20036-4505**

**The Special Counsel**

December 19, 2023

The Honorable Martin O'Malley  
Commissioner  
Social Security Administration  
6401 Security Boulevard, Suite 300  
Baltimore, MD 21235

Re: OSC File No. DI-24-000154

Dear Mr. Commissioner:

I am referring to you for investigation a whistleblower disclosure that employees at the Social Security Administration (SSA) engaged in conduct that may constitute a violation of law, rule, or regulation and gross mismanagement. [REDACTED], who consented to the release of his name, is a Claims Authorizer with the Social Security Administration (SSA) at the Mid-Atlantic Social Security Center in Philadelphia, Pennsylvania. [REDACTED] disclosed that SSA Claims Examiners are not informing claimants about the potential detriment of electing to apply for spousal benefits prior to full retirement age.<sup>1</sup> A report of your investigation on this allegation and any related matters is due to the Office of Special Counsel (OSC) on February 19, 2023.

According to [REDACTED], beneficiaries who receive certain types of government pensions may not also receive a full spousal benefit. However, if the full spousal benefit would exceed two thirds of the pension annuity, the claimant is entitled to receive a partial spousal benefit in the amount that exceeds two thirds of the pension.<sup>2</sup> [REDACTED] explained that as some government pensions do not increase over time and spousal benefits do increase over time, a claimant who may not initially receive a spousal benefit may receive a spousal benefit had he or she applied for the benefit closer to full retirement age. [REDACTED] added that there is a small category of easily identifiable claimants for whom a delay in applying for the spousal benefit could result in the receipt of a spousal benefit. However, these claimants are forever precluded from entitlement to spousal benefits once their claims are processed because SSA claims Examiners do not currently advise this class of beneficiaries to postpone their applications notwithstanding their duty to advise them.<sup>3</sup>

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<sup>1</sup> Currently, full retirement age is 66 years and 2 months for people born in 1955. The full retirement age will gradually rise to 67 for those born in 1960 or later.

<sup>2</sup> This is known as the government pension offset, or the "GPO."

<sup>3</sup> SSA, POMS, GN 00201.005, C (March 26, 2019).

The Honorable Martin O'Malley  
December 19, 2023  
Page 2

██████████ reported this matter to management, but to date, no corrective action has been taken, and to ██████████' knowledge, the agency has not disseminated this information to the public. As a result, ██████████ believes multiple claimants have suffered significant financial loss.

Pursuant to my authority under 5 U.S.C. § 1213(c), I have concluded that there is a substantial likelihood that the information provided to OSC discloses gross mismanagement and a violation of law, rule, or regulation. Please note that specific allegations and references to specific violations of law, rule or regulation are not intended to be exclusive. If, in the course of your investigation, you discover additional violations, please include your findings on these additional matters in the report to OSC. As previously noted, your agency must conduct an investigation of these matters and produce a report, which must be reviewed and signed by you. Per statutory requirements, I will review the report for sufficiency and reasonableness before sending copies of the agency report along with the whistleblower's comments and any comments or recommendations I may have, to the President and congressional oversight committees and making these documents publicly available.

Additional important requirements and guidance on the agency report are included in the attached Appendix, which can also be accessed at <https://osc.gov/Pages/DOW.aspx>. If your investigators have questions regarding the statutory process or the report required under section 1213, please contact Catherine A. McMullen, Chief, Disclosure Unit, at (202) 804-7088 for assistance. I am also available for any questions you may have.

Sincerely,



Karen Gorman  
*Acting Special Counsel*

Enclosure

cc: Gale S. Ennis, Inspector General

## **APPENDIX**

### **AGENCY REPORTS UNDER 5 U.S.C. § 1213**

#### GUIDANCE ON 1213 REPORT

- OSC requires that your investigators interview the whistleblower at the beginning of the agency investigation when the whistleblower consents to the disclosure of his or her name.
- Should the agency head delegate the authority to review and sign the report, the delegation must be specifically stated and include the authority to take the actions necessary under 5 U.S.C. § 1213(d)(5).
- OSC will consider extension requests in 60-day increments when an agency evidences that it is conducting a good faith investigation that will require more time to complete.
- Identify agency employees by position title in the report and attach a key identifying the employees by both name and position. The key identifying employees will be used by OSC in its review and evaluation of the report. OSC will place the report without the employee identification key in its public file.
- Do not include in the report personally identifiable information, such as social security numbers, home addresses and telephone numbers, personal e-mails, dates and places of birth, and personal financial information.
- Include information about actual or projected financial savings as a result of the investigation as well as any policy changes related to the financial savings.
- Reports previously provided to OSC may be reviewed through OSC's public file, which is available here: <https://osc.gov/PublicFiles>. Please refer to our file number in any correspondence on this matter.

#### RETALIATION AGAINST WHISTLEBLOWERS

In some cases, whistleblowers who have made disclosures to OSC that are referred for investigation pursuant to 5 U.S.C. § 1213 also allege retaliation for whistleblowing once the agency is on notice of their allegations. The Special Counsel strongly recommends the agency take all appropriate measures to protect individuals from retaliation and other prohibited personnel practices.

#### EXCEPTIONS TO PUBLIC FILE REQUIREMENT

OSC will place a copy of the agency report in its public file unless it is classified or prohibited from release by law or by Executive Order requiring that information be kept secret in the interest of national defense or the conduct of foreign affairs. 5 U.S.C. § 1219(a).

#### EVIDENCE OF CRIMINAL CONDUCT

If the agency discovers evidence of a criminal violation during the course of its investigation and refers the evidence to the Attorney General, the agency must notify the Office of Personnel Management and the Office of Management and Budget. 5 U.S.C. § 1213(f). In such cases, the agency must still submit its report to OSC, but OSC must not share the report with the whistleblower or make it publicly available. See 5 U.S.C. §§ 1213(f), 1219(a)(1).