



SOCIAL SECURITY

September 13, 2024

Hampton Dellinger
Special Counsel
U.S. Office of Special Counsel
1730 M. St. NW, Suite 218
Washington, D.C. 20036

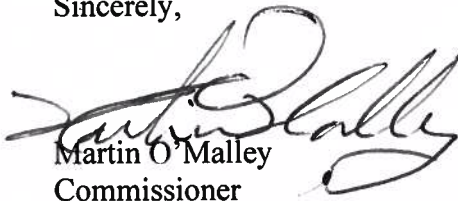
Dear Mr. Dellinger:

In December 2023, a Social Security employee filed a whistleblower disclosure with your office alleging that the agency does not inform claimants who receive certain types of government pensions of the potential detriment of electing to apply for spousal benefits before attaining full retirement age. The agency's internal rules require claims interviewers and adjudicators to explain to a claimant the advantages and disadvantages of filing an application so that the claimant can make an informed filing decision. *See* Program Operations Manual System (POMS) GN 00201.005 C.1, C3. If an individual makes a filing decision that may adversely affect receipt of current or future benefits, interviewers and adjudicators must document the filing decision and that the claimant has been advised of the potentially adverse effect of filing. *See id.* GN 00201.005 C. 4. Agency employees and new hires receive training on the importance of adhering to the POMS, including this provision. The agency also conducts regular quality reviews to ensure employees process applications in accordance with the Social Security Act, our implementing regulations, and our rules.

After receipt of your December 19, 2023, letter, my office asked the agency's Office of the Inspector General (OIG) to conduct an audit of the records of claimants whom the employee identified as recipients of a government pension who had applied for retirement and spousal benefits prior to attaining full retirement age. The OIG reviewed records of the 71 claimants whom the employee identified as having filed disadvantageous claims. On July 22, 2024, the OIG issued to your office a preliminary report noting that 58 of these claimants would have received additional benefits had they delayed filing until attaining full retirement age. Because employees may have explained the advantages and disadvantages of filing but not documented these discussions and the claimants' acknowledgment of them, the OIG could not determine whether agency employees had informed these claimants of the advantages and disadvantages of filing for spousal benefits. In light of the information received, the agency will proactively take steps to remind claims interviewers and adjudicators that they must explain the advantages and disadvantages of filing an application and document that discussion as required by the POMS.

Per your request, the OIG preliminary audit report and this cover letter serve as the agency's report in compliance with 5 U.S.C. § 1213(c).

Sincerely,



Martin O'Malley
Commissioner



Office of the Inspector General

SOCIAL SECURITY ADMINISTRATION

MEMORANDUM

Date: July 23, 2024

Refer To: 052407

To: Martin O'Malley
Commissioner

From: Michelle Anderson *Michelle L Anderson*
Assistant Inspector General for Audit
as Acting Inspector General

Re: Office of Special Counsel Referral: Spouses Subject to Age Reduction and Government Pension Offset (OSC File No. DI-24-000154)—Initial Analysis

On December 19, 2023, the Office of Special Counsel (OSC) referred to you a whistleblower disclosure in which a Social Security Administration (SSA) employee alleged that, "SSA Claims Examiners are not informing claimants about the potential detriment of electing to apply for spousal benefits prior to full retirement age." The Agency referred that allegation to the Office of the Inspector General (OIG) for review.

The attached letter, which we sent OSC on July 22, 2024, summarizes the results of the OIG's analysis of the cases the SSA employee provided us. At OSC's request, we are planning an audit to determine whether additional claimants—beyond those the SSA employee identified—were ineligible for spouse's benefits when they filed their claims because of GPO but would have been eligible for benefits had they delayed filing their claims until they attained FRA or later. We will issue a start notice to the Agency before we initiate the audit.

If you have any questions, please contact me or have your staff contact Jeffrey Brown, Deputy Assistant Inspector General for Audit.

Attachment



Office of the Inspector General

SOCIAL SECURITY ADMINISTRATION

July 22, 2024

Catherine McMullen, Chief
Disclosure Unit
Office of Special Counsel
1730 M Street, N.W., Suite 218
Washington, D.C., 20036-4505

Dear Ms. McMullen,

In response to your referral, the Office of the Inspector General (OIG) determined whether the 71 claimants identified by a Social Security Administration (SSA) employee were ineligible for spouse's benefits when they filed their claims because of Government Pension Offset (GPO), but would have been eligible for benefits at, or after, full retirement age (FRA) had they delayed filing their claims. This letter summarizes the results of our analysis.

BACKGROUND

SSA provides benefits to the spouse of a fully insured number holder when the number holder is entitled to benefits and the spouse is over the age of 62. Divorced spouses may be independently entitled to benefits even if the number holders have not claimed benefits themselves.

Individuals may claim retirement or spouse's benefits as early as age 62. When they claim benefits prior to attaining their FRA, their benefits are reduced based on their age.¹ If claimants file for benefits when they attain FRA or later, their benefits are not reduced based on their age.

Generally, beneficiaries' spouse's benefits are reduced when those beneficiaries receive pensions based on their own work for a Federal, State, or local government. The reduction—known as GPO—is equal to two-thirds of the government pension.²

¹ For purposes of retirement or spouse's benefits, FRA—for individuals born before January 2, 1938—is the month they attain age 65. SSA, *POMS*, RS 00615.003 (May 21, 2004). FRA increases gradually until it reaches age 67 for people born January 2, 1960 or later. (Note that FRA is different for purposes of determining entitlement to widow(er)'s benefits.)

² SSA, *POMS*, GN 02608.100 (June 23, 2022).

Example

Assume a claimant is eligible for a spouse's benefit. If they claim the spouse's benefit when they attain their FRA, they would be entitled to a monthly benefit \$1,200. If the individual claims the spouse's benefit at age 62, their monthly benefit would be reduced to \$1,000. If the claimant also receives a \$1,500 government pension, the GPO is equal to two-thirds of the amount of the pension: \$1,000.

- ✓ **If the individual claims the spouse's benefit when they attain FRA:** they would be entitled to a monthly benefit of \$200, which is the full benefit (\$1,200) less the GPO (\$1,000).
- ✓ **If the individual claims the spouse's benefit at age 62:** the monthly benefit would be reduced to \$0 since the benefit is reduced to \$1,000 based on the claimant's age and the amount of the GPO that must be applied is also \$1,000. The claimant could withdraw their application and reapply for spouse's benefits at FRA to receive a \$200 monthly benefit.

SSA Policy

Since September 2003, SSA has required its employees to document that they informed the claimant of the advantages and disadvantages of filing. According to SSA's policy:

- ✓ "There are situations where filing may adversely affect current or future benefits," including when ". . . the reduced benefit taken before FRA may be offset completely after [GPO], while an unreduced benefit may permit some payment after GPO."³
- ✓ "The interviewer/adjudicator is responsible for explaining the advantages and disadvantages of filing an application so that the individual can make an informed filing decision. The decision to file belongs solely to the claimant or their proper applicant. After an explanation of the advantages and disadvantages of filing and the filing considerations, if the individual decides to file, the claims interviewer should take an application."⁴
- ✓ Effective with claims filed in March 2019, "If an individual makes a filing decision that may adversely affect their current or future benefits, describe the impact to the individual. If the individual decides to file, document the filing decision in the Remarks section of the application with the following language: '*I understand all filing options explained to me. I understand the decision to file for benefits may have an adverse effect on my current or future benefits. However, I choose to file for benefits.*'"⁵

³ SSA, POMS, GN 00201.005 C3 (November 29, 2023).

⁴ SSA, POMS, GN 00201.005 C1 (November 29, 2023).

⁵ SSA, POMS, GN 00201.005 C4. (November 29, 2023).

Filing Requirements for Dually Entitled Beneficiaries

Some individuals are eligible for retirement benefits based on their own earnings and additional benefits based on their spouses' earnings. When individuals who were born before January 2, 1954 file claims for retirement benefits before their FRA and they are also eligible for a spouse's benefit in the same month, they are deemed to have also filed for spouse's benefits.

On November 2, 2015, Section 831(a) of the *Bipartisan Budget Act of 2015* changed the policy for deemed filing for dually entitled claimants born January 2, 1954 or later. When these individuals file claims for retirement benefits (whether before or after their FRA), they are deemed to have also filed for spouse's benefits whenever they become eligible for those benefits (whether in the same month of entitlement to retirement benefits or in a later month).

This deemed filing provision applies even if the spouse's benefit is fully reduced because of GPO.⁶ Therefore, individuals who are subject to the deemed filing provision file retirement claims before their FRA, they cannot opt to restrict their applications to just retirement benefits and delay filing for the spouse's benefits until they attain their FRA.⁷

ALLEGATION

According to your letter dated December 19, 2023 (see Attachment), an SSA employee alleged that "SSA Claims Examiners are not informing claimants about the potential detriment of electing to apply for spousal benefits prior to full retirement age."

SCOPE AND METHODOLOGY

The employee provided the OIG with information on 71 claimants from whom—the employee believed—SSA accepted and adjudicated claims for spouse's benefits even though the claims were disadvantageous to the claimants. The employee alleged these beneficiaries were not eligible for spouse's benefits when they filed because of GPO, but may have been eligible for benefits at, or after, FRA had they delayed filing their claims.

To accomplish our objective, we obtained and reviewed the applicable sections of the *Social Security Act* and SSA's policies. We also reviewed information in SSA's Master Beneficiary Record, Modernized Claims System, and Evidence Portal for the 71 claimants.

⁶ SSA, POMS, GN 00204.035 (July 18, 2023).

⁷ SSA, POMS GN 00204.035 (July 18, 2023).

RESULTS OF REVIEW

Our analysis of the 71 claimants found:

- ✓ 58 (82 percent) appeared to have filed—and SSA adjudicated—disadvantageous claims for spouse’s benefits;
- ✓ 11 (15 percent) apparently would not have received additional benefits had they delayed filing their claims because their unreduced spouse’s benefits at FRA would not have exceeded the amount of GPO; and
- ✓ 2 (3 percent) were not eligible to delay filing their claims for spouse’s benefits because they also claimed retirement benefits and were subject to the deemed filing provision.

Claimants For Whom It Appeared SSA Adjudicated Disadvantageous Claims

We estimate the 58 claimants for whom SSA processed disadvantageous claims would have received an additional \$695,780 had they delayed filing their claims until their FRA.⁸ As of May 2024, these spouses would have been entitled to additional benefits for an average of 101 months.

As of May 2024, 42 of these claimants would still be eligible for additional monthly spouse’s benefits while the remaining 16 were entitled to widow’s benefits or were deceased.

We reviewed SSA’s electronic records for these 58 claimants and found no evidence that SSA employees:

- ✓ explained the advantages and disadvantages of filing an application;
- ✓ informed the claimants that their filing decision may adversely affect their current or future benefits; and
- ✓ documented the claimants’ filing decision in the Remarks section of the application, as required.⁹

Without evidence, we could not determine whether SSA employees followed SSA’s policy.

⁸ These individuals claimed the spouses’ benefits from December 1994 to December 2022.

⁹ For eight claimants, SSA employees documented that the claimants’ benefits would be reduced to \$0 because of GPO; however, the employees did not indicate whether they discussed with the claimants their filing options. Four of these claimants filed their claims before September 2003, when SSA instituted the policy requiring its employees to discuss with claimants their filing options.

CAVEATS

Our analysis was based on pension information SSA recorded in its systems at the time the claimants filed their claims for spouse's benefits. Some government pensions increase over time; for example, based on cost-of-living increases. Due to our time constraints, we did not verify whether the claimants' pension amounts, as reflected in SSA's systems, were accurate. To the extent that data may be inaccurate, our conclusions may be inaccurate as well.

Without evidence, we could not determine whether SSA employees advised the claimants that filing the applications may adversely affect their current or future benefits and the claimants chose to file their applications anyway. It is possible that employees did so but failed to document those discussions and the claimants' acknowledgments.

CONCLUSION

We plan to refer to SSA our analysis for the 58 claimants and ask that the Agency verify our conclusions and determine whether the claimants should be notified that they may withdraw their prior claims for spouse's benefits and file new claims.

At OSC's request, we are planning an audit to determine whether additional claimants—beyond those identified by the SSA employee—were ineligible for spouse's benefits when they filed their claims because of GPO but would have been eligible for benefits had they delayed filing their claims until they attained FRA or later.

Sincerely,



Michelle Anderson
Assistant Inspector General for Audit
as Acting Inspector General

Enclosure



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]

[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.¹ 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.² [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.³

¹ 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.

² This is known as the government pension offset, or the "GPO."

³ SSA, POMS, GN 00201.005, C (March 26, 2019).

The Honorable Martin O'Malley
December 19, 2023
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██████████ 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).