



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

The Special Counsel

December 13, 2024

The President
The White House
Washington, D.C. 20050

Re: OSC File No. DI-24-000154

Dear Mr. President:

I am forwarding to you a report transmitted to the U.S. Office of Special Counsel (OSC) by the Social Security Administration (SSA) in response to the Special Counsel's referral of a disclosure of wrongdoing at the SSA, Mid Atlantic Regional Office, Philadelphia, Pennsylvania. The SSA Office of Inspector General (OIG) conducted the investigation. I have reviewed the disclosure, the agency report, and whistleblower comments and, in accordance with 5 U.S.C. §1213(e), I have determined the report contains the information required by statute and the findings appear reasonable but only if the agency continues its review in order to provide a meaningful remedy to affected claimants. As summarized below, the agency partially substantiated the allegations.

██████████ a SSA Claims Specialist, who consented to release of his name, alleged that SSA Claims Examiners failed to inform claimants about the potential detriment of electing to apply for spousal benefits prior to the attainment of full retirement age (FRA).¹ Specifically, ██████████ explained that 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. This is called the government pension offset, or GPO. ██████████ explained that as some government pensions do not increase over time and spousal benefits do increase as the claimant approaches FRA, a claimant who may not initially receive a spousal benefit because of his or her government pension may receive a spousal benefit if he or she applied for the benefit closer to full retirement age. ██████████ asserted that although SSA internal rules require claims examiners to explain the advantages and disadvantages of waiting to file for spousal benefits

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.

until FRA and to document these discussions, claims examiners are not adhering to these rules, often to the financial detriment of claimants.

The agency partially substantiated the allegations. Effective March 2019, SSA requires claims examiners to “describe the impact” of filing decisions that may adversely affect the claimant’s current or future benefits, such as the decision to file for spousal benefits prior to attainment of FRA. Additionally, as of 2019, the SSA requires claims examiners to fill out specific information in the application for benefits “remarks” section indicating the claimant understands this election.² And the agency indicated that since September 2003, SSA has required employees to document that they informed claimants about the advantages and disadvantages of filing.³

Using a sample size of 71 beneficiary cases provided by [REDACTED], the SSA OIG concluded that of the 71 beneficiary samples reviewed, 58 of the beneficiary samples, or 82 percent, appeared to have filed, and SSA adjudicated, disadvantageous claims for spousal benefits.⁴ Conversely, the sampling reviewed that 11 of the 71 beneficiaries, or 15 percent, could not have received additional benefits had they delayed filing their claims, because their unreduced spousal benefits at FRA would not have exceeded the amount of the GPO. Finally, the sampling revealed that 2 of the 71 beneficiaries, or three percent, were not eligible to delay filing their claims for spousal benefits because they also claimed retirement benefits and were subject to deemed filing provisions.⁵

The OIG estimated that the 58 claimants for whom the SSA processed disadvantageous claims would have received an additional \$695,780 collectively had they delayed filing their claims until FRA. As of May 2024, these spouses would have been entitled to an additional benefit for an average of 101 months. The sample audit also revealed that 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. Finally, having reviewed SSA’s electronic records for the 58 claimants who filed disadvantageous claims, the OIG determined there was no evidence that SSA Claims Examiners explained the advantages and disadvantages of filing applications for benefits; informed the claimants that their filing decision may adversely affect their current or future benefits; or documented the claimants’ filing decision in the remarks section of the application, as required. The OIG, however, added the following caveat to the

² The following language must be included in the remarks section of the application: “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.” SSA, POMS, GN 00201.005 C4. (November 29, 2023).

³ SSA, Programs Operations Manual Statement (POMS), GN 00201.005 C3 (November 29, 2023).

⁴ These individuals claimed the spousal benefits from December 1994 to December 2022.

⁵ On November 2, 2015, pursuant to Section 831(a) of the *Bipartisan Budget Act of 2015*, if 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.

findings in the sample audit: “[w]ithout 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.” The OIG indicated that it intended to complete a full audit using the foregoing sample size to ascertain the universe of claimants adversely affected by the agency’s potential policy violations. Based on the findings, the agency indicated it would take proactive steps to ensure claims examiners explain the advantages and disadvantages of filing an application and document that discussion as required by SSA.

In his comments, ██████████ expressed dismay with the agency’s findings, particularly with the proposed corrective action of only proactively informing claims examiners of their obligations under SSA policy going forward. ██████████ noted that, as the initial OIG audit of the 71 sample cases showed that 82 percent of the claimants filed disadvantageous claims and found no evidence that claims examiners explained the advantages and disadvantages of filing for benefits before FRA, the agency should find that these claimants were misinformed. Additionally, after following through on a full audit identifying the universe of claimants who filed disadvantageous claims, ██████████ asserted that the proper remedy considering the findings is for SSA to concede the error, provide immediate compensation to each affected claimant by changing the month of entitlement to the month of FRA, and pay the correct benefit to each affected claimant going forward. I agree.

I strongly urge the agency to complete the full audit to identify the universe of potentially adversely affected claimants and determine if claims examiners are properly informing claimants and documenting these discussions as misinformation related to benefits filing can have a significant negative economic impact on their lives. I also agree with ██████████ that in cases where SSA cannot demonstrate that individual claimants received the information they were entitled to, claimants should be entitled to reconsider their decisions and placed in a “hold harmless” position should they chose differently. Moreover, in light of similar disclosures ██████████ has filed with OSC, SSA’s only reasonable remedy is to identify all adversely affected claimants through the full audit, allow each of them to re-file their claims retroactively to their month of entitlement, and reimburse them for all monies owed.⁶

⁶ In two past disclosures, both of which the agency substantiated, ██████████ raised similar issues concerning SSA’s misinforming beneficiaries, the agency never applied this remedy. In the first, DI-16-000626, SSA indicated commitment to identifying and reviewing adversely affected claimants in anticipation of providing a remedy, but ultimately declined to reopen cases, citing the agency’s “Rule of Administrative Finality,” which holds that when a determination or decision is rendered, it becomes final and binding, unless it is appealed or reopened. In the second, DI-19-000626, the agency conducted a full audit, identifying all adversely affected claimants, and committed to informing the claimants of their rights and allowing them, if desired, to withdraw and refile their claims. However, according to ██████████, the agency only provided only a six-month retroactive reimbursement when many claimants’ eligibility for additional benefits dated back years.

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As required by 5 U.S.C. § 1213(e)(3), I have sent a copy of this letter, the agency report, and whistleblower comments to the Chairs and Ranking Members of the Senate and House Committees on finance. I have also filed redacted copies of these documents and the redacted referral letter in our public file, which is available online at www.osc.gov. This matter is now closed.

Respectfully,

A handwritten signature in cursive script that reads "Hampton Dellinger".

Hampton Dellinger
Special Counsel

Enclosures