Congress of the United States
Washington, DC 20515

October 24, 2024

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

Dear Commissioner O'Malley:

Under your leadership, the Social Security Administration (SSA) has quietly finalized four rules (listed below) that continue the Biden-Harris Administration's parade of regulatory overreach that circumvents Congress and costs taxpayers billions just months before the 2024 election.

The Constitution vests the power to appropriate funds with Congress, not the Administration. However, collectively, the SSA's new rules would **increase federal mandatory spending by over $37 billion** within the Supplemental Security Income (SSI) and Social Security Disability Insurance (DI) programs.

SSA final rules:

- Expand the Definition of Public Assistance Household[1]
  Estimated 10 Year Cost: $15 billion
- Omitting Food from In-Kind Support and Maintenance Calculations[2]
  Estimated 10 Year Cost: $1.6 billion
- Expansion of the Rental Subsidy Policy for SSI Applicants and Recipients[3]
  Estimated 10 Year Cost: $837 million
- Intermediate Improvement to the Disability Adjudication Process: Including How We Consider Past Work[4]
  Estimated 10 Year Cost: $19.7 billion

All told, these rules will result in more than $37 billion in new, unpaid for, mandatory spending. In addition, the increased cost to the DI program will contribute to the exhaustion of the Social Security Trust Funds which are projected by the Congressional Budget Office on a combined basis to be unable to pay full benefits within the next decade.[5]

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[1] 89 FR 28608 [RIN 0960-AI81]
[2] 89 FR 21199 [RIN 0960-AI60]
[3] 89 FR 25507 [RIN 0960-AI82]
[4] 89 FR 27653 [RIN 0960-AI83]
[5] Congressional Budget Office, *CBO's 2024 Long-Term Projections for Social Security*, at 4 (Aug. 2024), https://www.cbo.gov/system/files/2024-08/60392-Social-Security.pdf.

In the "Expanding the Definition of a Public Assistance Household" final rule, the SSA is arbitrarily expanding the definition of 'public assistance household' to include the Supplemental Nutrition Assistance Program (SNAP) resulting in significant additional costs.[6] This rule marks the first time SNAP has been added to the SSA's public assistance household definition since its inception in 1980 and will cost taxpayers $15 billion.

In the "Omitting Food from In-Kind Support and Maintenance Calculations" final rule, the SSA has removed food from the calculation of In-Kind Support and Maintenance (ISM), meaning SSI applicants and recipients no longer need to provide information about outside assistance they might receive for food expenses, at a cost of $1.6 billion.[7]

Likewise, the "Expansion of the Rental Subsidy Policy for Supplemental Security Income (SSI) Applicants and Recipients" final rule applies a nationwide ISM rental subsidy exception that will increase SSI costs by $837 million.[8]

As a result of the "Intermediate Improvement to the Disability Adjudication Process: Including How We Consider Past Work," the SSA significantly reduced the years of prior employment that the SSA reviews when determining if a claimant can perform past work.[9] This is the most costly of the four rules, at almost $20 billion, and will allow some claimants to qualify for benefits, even if they can still perform work that they have held as recently as six years prior to their determination, or whose skills from past work could be transferred to new employment.

In addition, we have serious concerns about the way in which the SSA promulgated these regulations and whether the agency complied with Administrative PAYGO requirements included in the *Fiscal Responsibility Act* (FRA) (P.L. 118-5). The FRA renewed a fiscal requirement that if the cost of a proposed rule exceeds $1 billion over 10 years or over $100 million in every year of such 10-year period in mandatory spending, the agency must propose to undertake one or more administrative actions that would reduce direct spending by more than or equal to the cost of the original proposed rule.

In particular, two of these rules were finalized in mid-2024 thus avoiding the $100 million threshold for only one year out of the required 10,[10] one was granted a waiver,[11] and the fourth was estimated by the SSA to be just short of the $1 billion spending threshold.[12] In each case, the SSA avoided identifying any offset for the added cost that it imposed upon both taxpayers and other beneficiaries.

During your testimony at a Committee on Ways and Means hearing in March you claimed this rulemaking was done to reduce administrative burdens and simplify benefit calculations.[13] However, the SSA estimates these rules, taken together, would increase program costs by nearly $40 billion while resulting in less than $1 billion in administrative savings. In other words, the

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[6] 89 FR 28608 [RIN 0960-AI81]
[7] 89 FR 21199 [RIN 0960-AI60]
[8] 89 FR 25507 [RIN 0960-AI82]
[9] 89 FR 27653 [RIN 0960-AI83]
[10] 89 FR 21199 [RIN 0960-AI60] and 89 FR 28608 [RIN 0960-AI81]
[11] 89 FR 27653 [RIN 0960-AI83]
[12] 89 FR 25507 [RIN 0960-AI82]
[13] Hearing with Social Security Commissioner Martin O'Malley. Committee on Ways and Means, Subcommittee on Work and Welfare, and Social Security Subcommittee. March 21, 2024.

SSA has taken four executive actions that obligate a substantial amount of new mandatory spending and taxpayer dollars to alleviate administrative burdens at an approximately 40:1 ratio.

The Administrative PAYGO provision was put in place to ensure federal agencies take a fiscally responsible approach to consider additional offsets for any rulemaking that increases mandatory spending and inform the public about instances in which the Biden-Harris Administration waived federal agency compliance. The FRA also grants waiver authority of this requirement at the behest of the Director of the Office of Management and Budget (OMB).[14] In publication of these final rules, the SSA failed to acknowledge these requirements and did not propose any regulatory actions to ensure executive actions do not increase deficit spending, nor did it demonstrate that OMB granted a waiver.

Taken together, these four rules over-step Congress and evade congressional intent in the FRA to provide simple transparency in government spending – at the expense of American taxpayers.

In compliance with the intent behind the Administrative PAYGO requirement, we ask that the SSA provide proposed administrative actions the agency will undertake to provide a reduction in direct spending greater than or equal to the increase in direct spending attributable to each of the final four rules.

If the SSA is unable to identify such offsets, the SSA should immediately rescind these rules and work with Congress to ensure the funds that seniors and millions of Americans with disabilities depend on are protected.

Sincerely,

Jason Smith
Chairman
Committee on Ways and Means

Jodey Arrington
Chairman
Committee on the Budget

Darin LaHood
Chairman, Subcommittee on Work and Welfare
Committee on Ways and Means

Jack Bergman
Chairman, Oversight Task Force
Committee on the Budget

A. Drew Ferguson IV
Chairman, Social Security Subcommittee
Committee on Ways and Means

[14] *Fiscal Responsibility Act*, Pub. L. No. 118-5. (2023). https://www.congress.gov/118/plaws/publ5/PLAW-118publ5.pdf