

NLWJC - Kagan

DPC - Box 057 - Folder-010

Social Security - Prisoners

Social security -
prisoners ~~fund~~

Diana Fortuna

04/02/98 04:17:19

PM

Record Type: Record

To: Elena Kagan/OPD/EOP, Cynthia A. Rice/OPD/EOP, Jose Cerda III/OPD/EOP, Leanne A. Shimabukuro/OPD/EOP

cc: Andrea Kane/OPD/EOP

Subject: Food stamps and prisoners

Here's what I've learned so far: Under the law, prisoners are not to be included in households in determining food stamp allotments. Last year, after GAO reported that this happens too often, Congress passed a law requiring states to establish "systems to verify and ensure" that prisoners aren't counted in households. This can include data matching programs with prisons and/or SSA. The law requires all states to do this by 8/1/98, although USDA can grant 1-year extensions to states.

However, SSA won't be ready to share federal data with states by August, because it hasn't worked out all the bugs of such a system. States can still meet the requirement if SSA isn't ready, for example by matching data with prisons directly. But SSA has the best data and the law specifically says that states that use SSA data are automatically in compliance. USDA is having a big meeting in 2 weeks with a few states, SSA, and prison people to figure out what kind of system is required. There are also privacy issues.

(FYI, there is a similar push on the dead, although that may not be such good fodder for a radio address. GAO just did a report on food stamps going to the dead, and Lugar is doing a hearing on this April 23. SSA also has good data on the dead, so at the hearing USDA has to say whether SSA and USDA can share data on this.)

Social security -
prisoners ~~benefits~~

Diana Fortuna

04/09/98 11:26:49

AM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP

cc: Cynthia A. Rice/OPD/EOP, Jose Cerda III/OPD/EOP, Leanne A. Shimabukuro/OPD/EOP, Laura Emmett/WHO/EOP

Subject: Update on prisoners and benefits

We met yesterday with Rahm, Gene, Barbara Chow, and SSA on a possible radio address on stopping fraud in benefit payments to prisoners. We agreed that there is some potential in announcing that other agencies (USDA, maybe VA and others) will take advantage of SSA's big new database of prisoners to spot prisoners who are getting benefits. We will work with OMB to survey agencies for programs where this might work. SSA notes Shaw is doing an oversight hearing on SSI fraud this month and that there will be a lot of heat from Congress in coming weeks on fraud, so this would let us take the offensive a bit.

Social security - prisoner fraud



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

cc Bruce Reed
Elena Kagan
Cynthia Rice
Jose Cerda
Leanne Shimabukuro

April 15, 1998

MEMORANDUM TO: Rahm Emanuel
Gene Sperling

THROUGH: Franklin D. Raines

FROM: Barbara Chow B.C.
Chris Sauer

cc: Jack Lew
Diana Fortuna
Peter Orszag

Next step is to start
drafting the EO and
to meet with the
agencies to check
for glitches.

- Diana

RE: Use of SSA prisoner database for other Federal benefit programs

We have identified some Federal benefit programs which have statutory provisions to reduce or suspend benefits to those incarcerated on a conviction or otherwise institutionalized. This is not a comprehensive list. The entities administering these programs would likely benefit from access to SSA's prisoner database. The following agencies, in our survey of OMB examiners, administer programs with statutory requirements to suspend benefits:

- The Department of Agriculture: Food Stamps
- The Department of Education: Pell grants and student loans (Federal Family Education Loan, Federal Direct Loan, and Perkins Loan programs)
- The Department of Labor: Federal Employees' Compensation Act (FECA), Unemployment Insurance (UI), Trade Adjustment Assistance (TAA)
- The Department of Veterans Affairs: VA compensation, pensions and education programs

Some of these programs are State-administered, which could make coordination of timely data matches more difficult.

Recommendation for Executive Memorandum

With respect to the four agencies, identified above, with statutory requirements to suspend benefits, an Executive Memorandum on the issue should require the agencies to conduct matches within a specified period of time with the SSA database to identify ineligible recipients on benefit rosters. Additionally, the Memorandum would require the Commissioner of the Social Security Administration to assist the agencies in whatever ways necessary to allow quick, efficient access to the SSA database. Agencies would be required to design a protocol for matches within a specified period of time, for example 90 days, and perform the first batch of

matches within a specified period of time, for example six months. Thereafter, the agencies would be required to match as frequently as practicable but no less frequently than annually.

A quick survey of the programs identified above indicates that up to 20,000 prisoners may be receiving benefits improperly. This estimate is highly uncertain and should be verified with the agencies. Savings estimates, sought from the agencies, ranged from negligible amounts from the Education programs to \$75 million from the VA programs. These estimates, again, are highly uncertainty, and better savings estimates should be discussed with the agencies.

All other agencies with benefit programs would be directed to explore the potential benefits of conducting such a match and, if they determine beneficial to follow the terms above.

Proposal of additional statutory requirements

In a note to accompany the Memorandum informally, all agencies that do not currently suspend benefits would be directed to review their program requirements concerning payments of benefits to prisoners using the laws related to the Social Security programs as a model.

The agencies should report their findings and recommendations concerning whether additional legislation is appropriate to the Attorney General. The Attorney General shall review recommendations and, if additional legislation is necessary, recommend the agency prepare and submit a legislative proposal to OMB for review.

Diana Fortuna 03/25/98 04:27:24
PM

Record Type: Record

To: Elena Kagan/OPD/EOP, Jose Cerda III/OPD/EOP, Cynthia A. Rice/OPD/EOP, Paul J. Weinstein Jr./OPD/EOP

cc: Laura Emmett/WHO/EOP

Subject: FYI on radio address on benefits to prisoners

SSA says Rahm asked Ken Apfel for material on SSA's efforts to stop paying benefits to prisoners, along with ideas for how to expand those efforts to other agencies. Ken sent a copy of his note to Elena and OMB on the theory that we would have to be involved in any effort to expand this to other agencies in a quick way. Other programs Ken listed that might benefit if SSA shared its prisoner data are food stamps, veterans benefits, and child support enforcement. I'm not sure if DPC should be following up and, if so, who.

Social security - prisoners

March 25, 1998

TO: Bruce Reed
Elena Kagan
Barbara Chow

FR: Judy Chesser

RE: Curtailing Prisoner Benefits - Saturday Radio Address

Attached is a note and attachments sent by Ken Apfel to Rahm Emmanuel today on the subject of suspension of prisoners' Social Security and SSI benefits. Rahm wants to use this issue for this Saturday's Radio Address.

Please note that the last page of the narrative includes a suggested Presidential Directive that crosses agency lines.

We are available to help in any way requested. Brian Coyne (358-6013) and I (358-6030) are the contact points here.

Thanks.

cc: Diana Fortuna



SOCIAL SECURITY

Office of the Commissioner

Rahm - Here is our draft.
Jim sending this to Bruce Reed
and Barbara Chow. This
will take to White House
to bring agencies together
ASAP to get consensus.

- Alan

SSA PRISONER SUSPENSION PROGRAM

Brief History on Prisoner Provisions

--Social Security Administration

Since the Supplemental Security Income (SSI) program's inception in 1974, SSI eligibility has been prohibited for individuals who are inmates of public institutions (including prisons) throughout a calendar month.]

In 1980, legislation was first enacted requiring SSA to suspend payment to individuals convicted of a felony entitled to Social Security disability insurance benefits. This was expanded in 1983 to cover persons entitled to any Social Security benefits. In February 1995, P.L. 103-387 (the independent agency bill) expanded the classes of affected beneficiaries by including individuals convicted of crimes punishable by more than 1 year imprisonment (regardless of actual sentence imposed) and those found not guilty by reason of insanity or incompetent to stand trial.

In May of 1996, the President submitted legislation to the Congress that was designed to give SSA the authority to operate an incentive payment program, through which prison and jail facilities would be paid an incentive for providing information leading to the suspension of SSI benefits to inmates. Under the President's proposal, when a match of prisoner data against SSI data is made and the information leads to a subsequent suspension of SSI benefits, the facility would be eligible to receive a payment from SSA of \$400 or \$200 depending on the timeliness of the report. In August of 1996, Congress adopted the President's proposal as part of P.L. 104-193.]

--Other Federal Agencies

Some Federal agencies that administer Federal benefit programs operate under laws that require them to suspend benefit payments to individuals while they are in prison. For example, recently enacted Welfare Reform legislation requires the Department of Agriculture to review its food stamp rolls to ensure that incarcerated individuals are not included in monthly food stamp allotments. The Department of Veterans' Affairs, in certain instances, is required to suspend payments to beneficiaries who are in jail. On the other hand, the Railroad Retirement Board, for example, does not suspend benefits to eligible individuals who are incarcerated. Many agencies, including some of those mentioned above, and the Office of Child Support Enforcement, within the Department of Health and Human Services, also need to obtain prisoner information.

Focus On Problems

When the President took office, there was a lot of work that needed to be done to establish an efficient and effective prisoner suspension operation within the Social Security Administration. We found that many prison officials were not aware of the statutory provision requiring the suspension of Social Security and SSI payments to inmates. In addition, there was no formal process for obtaining this information from the

facilities. Many agreements were informal, ad hoc, which made them difficult to administer and control.

Because the facilities were not aware of the requirements, many reported only once or twice a year to SSA, often the information was incomplete and reported manually. The prison officials viewed the requirement as another unfunded mandate. Additionally, some correctional institutions are reluctant to enter into agreements with SSA because of the potential cost to them when incarcerated individuals lose their Medicare or Medicaid eligibility.

There were serious limitations in SSA's prisoner suspension program. The internal processes were fragmented and lacked adequate controls and most tasks were manual. This resulted in the inability to stop payments to prisoners in a timely manner. Even when agreements were in place, SSA lacked a method for monitoring the facilities' compliance.

Moreover across the Federal government, there has been no consistent effort for appropriately suspending payments to incarcerated individuals or data sharing of prisoner information among agencies. Because of the numerous Federal and State statutes that govern the redisclosure of prisoner information, Federal agencies are hindered from sharing prisoner information.

RESULTS TO DATE

Under this Administration, SSA initiated an aggressive course of action that has resulted in significant improvements in the prisoner suspension process. Over the past few years, SSA has completed a major initiative to contact and establish agreements with all correctional facilities across the United States. As a result of this, SSA has agreements with the Federal Bureau of Prisons, all State prisons and the 25 largest local jail systems to provide us prisoner data. In addition, the Agency has agreements with over 3,500 local jails. SSA has worked with Governors, heads of correctional institutions, correctional associations and similar stakeholders to obtain their help and support in providing prisoner data on a regular basis. The cooperation of State and local correctional administrators is critical to the suspension process. SSA has developed an excellent working relationship with these administrators and the associations that represent them.

As a result of these efforts, prisons and jails representing over 99 percent of the nation's inmate population are reporting the names and Social Security numbers of incarcerated individuals to SSA. Because of our aggressive efforts to obtain information on prisoners, who are not eligible for benefits, well over 100,000 prisoners had their benefits suspended during 1995 and 1996 alone. For the period 1995-2001, our actions will result in the suspension of payments of nearly \$3.5 billion. Programs such as Social Security and Supplemental Security Income need to be protected to ensure that only those who are eligible for benefits are receiving them, and we are proud of the significant savings we have achieved.

As noted earlier, there is a need to address the sharing of prisoner information among Federal agencies. Officials from the Food Stamp Program have recently contacted SSA for prisoner information. There needs to be a coordinated effort within the Federal government regarding the sharing of information about incarcerated individuals. This will ensure that all provisions precluding benefits to incarcerated individuals are enforced. In addition, there needs to be a greater recognition of the medical costs associated with the prisoner population particularly those costs associated with aging and addiction.

NEXT STEPS NEEDED:

Although we have had successes, more remains to be done. The President is therefore directing that:

The Director of Office of Management and Budget analyze the consistency of Federal policy with regard to the eligibility for benefits of individuals in prison and make recommendations for any legislative changes that may be necessary or appropriate.

The Commissioner of Social Security develop a set of plans and proposals to share prisoner data that SSA obtains from prison administrators with other Federal agencies that need it in order to further ensure that prisoners are not receiving any Federal benefit for which they are not eligible. ✓

The Attorney General explore how to improve the sharing of data from the Federal prison system with other Federal agencies that need this information in order to further ensure that prisoners are not receiving any Federal benefit for which they are not eligible.

The Secretary of Health and Human Services examine the health care implications of providing benefits to incarcerated individuals. I am also asking Secretary Shalala to look into the Office of Child Support Enforcement's need to obtain prisoner information to locate missing parents.

SUSPENSION OF BENEFITS TO PRISONERS

The suspension of benefits to prisoners under the Social Security Old-Age and Survivors and Disability Insurance (OASDI) and Supplemental Security Income (SSI) programs has resulted in significant savings for the government. SSI benefits are suspended if a person is an inmate of a public institution for a full calendar month and OASDI benefits are not paid if a person is incarcerated as a result of a conviction of a crime punishable by a sentence of more than one year. In addition, new section 212(x)(1)(A)(ii) of the Social Security Act provides for the suspension of benefits for certain other confined individuals, for example, those found not guilty by reason of insanity (NGRI). Below are counts of suspensions in 1995 and 1996.

Number of new prisoner suspensions, excluding NGRI prisoners, calendar years 1995 and 1996, by program (In thousands)

	<u>OASDI</u>	<u>SSI 1/</u>	<u>TOTAL</u>
1995	18	22	40
1996	36	54	90
Total	54	76	130

1/ The SSI estimates for 1995 and for January and February of 1996 are based on samples.

The increase in prisoner suspensions in 1996 is primarily due to recent legislation and to SSA's greater efforts to secure reporting agreements with Federal, State, and local prisons.

The "net" numbers of prisoners in suspense at the end of any given year are equal to the numbers of prisoners who were in suspense at the end of the previous year plus the numbers of new prisoner suspensions (shown above) minus the numbers of prisoners leaving suspense status during the year. Estimates of the "net" number of prisoners in suspense at the end of the selected years and the corresponding savings in benefit payments are presented in the table below.

Number of prisoners in suspense, including NGRI prisoners, and benefit payments saved, calendar years 1995-2001 (estimate of May 29, 1997):

	<u>Estimated number of prisoners in suspense, end of year</u> (In thousands)			<u>Estimated amount of reduction in benefit payments during the year</u> (In millions)		
	<u>OASDI</u>	<u>SSI</u>	<u>TOTAL 2/</u>	<u>OASDI</u>	<u>SSI</u>	<u>TOTAL</u>
1995	28	20	45	\$167	\$90	\$257
1996	40	31	67	254	140	394
1997	43	32	71	310	170	480
1998	45	33	74	340	180	520
1999	47	35	77	370	190	560
2000	49	35	79	400	200	600
2001	52	36	83	440	210	650
Total	--	--	--	2,281	1,180	3,461

2/ Prisoners who receive both OASDI and SSI benefits and who are suspended are shown in both columns, but only appear once in the total column.

Note: NGRI prisoners account for less than 10 percent of the numbers of prisoners in suspense, and the associated reductions in benefit payments.

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prisoners

Diana Fortuna

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