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United States General Accounting Office
Washington, DC 20548

February 27, 2002

The Honorable Rick Santorum
United States Senate

Subject: Social Security Programs: The Scope of SSA's Authority to Deny Benefits to
Fugitive Felons and to Release Information About OASI and DI Beneficiaries
Who Are Fugitive Felons

Dear Senator Santorum:

Under the Social Security Act, fugitive felons¹ are ineligible for Supplemental Security Income (SSI) benefits.² Furthermore, the Social Security Act requires the Social Security Administration (SSA) to provide to law enforcement agencies, on request, the current address and Social Security number (SSN) of fugitive felons who are SSI recipients.³ This letter responds to your request that we determine if SSA also has the authority (1) to deny Old Age and Survivors Insurance (OASI) and Disability Insurance (DI) benefits to fugitive felons and (2) to give law enforcement agencies the current address and SSN of OASI and DI beneficiaries who are fugitive felons.

To make these determinations, we reviewed the Social Security Act and the Privacy Act, as well as SSA regulations and policies concerning the receipt of Social Security benefits by fugitive felons and concerning the disclosure by SSA of information about individuals; we also spoke with SSA officials about these regulations and policies. In brief, we have determined on the basis of this review that SSA currently lacks the authority to deny OASI and DI benefits to fugitive felons who otherwise are entitled to receive them. We also have determined that the Privacy Act authorizes, but does not require, SSA to provide information that it collects about individuals, including OASI and DI beneficiaries who are fugitive felons, to heads of law enforcement agencies. SSA's regulations, however, generally only allow disclosure of information that it collects about individuals, including OASI and DI

¹ A "felony" generally refers to a serious crime, either violent or nonviolent, that is usually punishable by imprisonment for more than 1 year. A fugitive felon is defined as someone who is fleeing to avoid prosecution for a felony, or to avoid custody or confinement after conviction for a felony or an attempt to commit a felony. Violators of probation or parole imposed under federal or state law are also ineligible for SSI benefits. For the purposes of this correspondence, we use the term "fugitive felon" to include probation and parole violators.

² The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) amended the Social Security Act by making fugitive felons ineligible for SSI benefits. PRWORA also made fugitive felons ineligible for other welfare benefits including food stamps, Temporary Assistance to Needy Families (TANF), and certain federal housing assistance benefits.

³ PRWORA added these provisions to the Social Security Act for recipients of TANF, and recipients of SSI benefits; PRWORA added similar provisions to the Food Stamp Act for recipients of food stamps and to the U.S. Housing Act for recipients of federal housing assistance. GAO is conducting a review to determine how the fugitive felon provisions have been implemented.

beneficiaries, in cases involving indictment or conviction for violent crimes.⁴ A more detailed explanation of these findings and of the specific procedural requirements that apply to these laws and regulations follows.

Background

SSA is responsible for administering the SSI program, which is a welfare program funded from general revenues that provides monthly cash assistance payments to individuals in financial need who are aged, blind, or disabled.⁵ The SSI eligibility requirements and benefit amounts are specified in the Social Security Act. SSA estimates that in fiscal year 2002, payments of about \$31.5 billion in SSI benefits will be made to about 6.4 million individuals.

SSA also administers the OASI and DI programs, which are entitlement programs funded from trust funds supported by taxes that workers pay on their wages. The OASI program provides monthly cash retirement to workers and their dependents or, when workers die, provides survivor benefits to the survivors. The DI program provides monthly cash benefits to workers and their dependents when workers are determined to be disabled. Criteria for entitlement to retirement and disability benefits, and the benefit amount received, also are set by the Social Security Act and are based, in part, on how long and how much workers have contributed to OASI and DI trust funds. In 2002, the OASI and DI programs are expected to pay about \$447 billion in benefits to about 46 million eligible workers, dependents, and survivors.

To administer the OASI, DI, and SSI programs, SSA retains information about each individual with a SSN. The information provided to SSA about an individual may begin shortly after that person's birth. Parents who apply for a SSN for their newborn, for example, must provide such information as the child's full name, sex, date of birth, citizenship, and mother's maiden name, which SSA keeps on file. When a person starts working, SSA receives information from employers to establish a lifetime history of the person's earnings. SSA collects more extensive information about persons who apply for or are receiving OASI, DI, or SSI benefits, to enable it to administer these benefit programs. For instance, to determine eligibility for SSI disability benefits, SSA collects information on a person's income, resources, living arrangements, and medical history. However, according to SSA, the agency has only the most recent addresses of individuals who receive or who have applied for OASI, DI, or SSI benefits.

Since its enactment in 1974, the Privacy Act has governed federal agencies', including SSA's, disclosure of the personal information they maintain about individuals. Generally, the Privacy Act prohibits federal agencies from disclosing to others,

⁴SSA also allows disclosure in cases of criminal activity involving Social Security programs or certain other federal programs.

⁵In addition to federal SSI benefits, states may provide supplementary payments. These payments vary, reflecting differences in regional living costs as well as in living arrangements.

including other government agencies, any information they have on file about individuals. However, the act allows agencies to disclose information about individuals under certain circumstances, including

to another agency . . . for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency . . . has made a written request to the agency which maintains the record specifying the particular portion desired and the law enforcement activity for which the record is sought.⁶

SSA Does Not Have the Authority to Deny OASI or DI Benefits to Fugitive Felons

The Social Security Act does not give SSA the authority to determine that individuals are not entitled to OASI or DI benefits because they are fugitive felons. Title XVI of the Social Security Act contains eligibility criteria for SSI benefits, while Title II of the act specifies entitlement criteria for OASI and DI benefits. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) added a provision to Title XVI making fugitive felons ineligible for SSI benefits.⁷ There is no similar provision, however, that is applicable to Title II of the act.⁸ To enable SSA to deny OASI and DI benefits to fugitive felons, Title II would have to be amended to explicitly disqualify fugitive felons from receiving OASI and DI benefits.⁹

SSA Has the Authority to Disclose Beneficiary Information to Heads of Law Enforcement Agencies but Generally Limits Disclosure

Under the Privacy Act, when the head of a law enforcement agency¹⁰ asks SSA for information about an individual, such as his or her current address, SSN, date of birth, or medical records, for a civil or criminal law enforcement activity, SSA has the authority to disclose this information but is not required to do so. While the Privacy Act permits SSA to disclose such information about individuals, SSA's regulation implementing the Privacy Act provides that it will do so "only in limited situations."¹¹ SSA's regulation generally permits disclosure of information about an individual only when he or she has been indicted for or convicted of a crime,¹² and only when the

⁶5 U.S.C. 552a(b)(7).

⁷Section 1611(e)(4) of the Social Security Act states that "no person shall be considered an eligible individual or eligible spouse for purposes of this title with respect to any month if during such month the person is (A) fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which the person flees, for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the person flees, or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of such State; or (B) violating a condition of probation or parole imposed under Federal or State law."

⁸The Social Security Act specifically requires SSA to suspend OASI or DI benefits of individuals confined to a correctional facility.

⁹SSA's actuary estimates that if fugitive felons were ineligible to receive OASI and DI benefits, \$387 million in program savings could be realized over the 5-year period from 2003 through 2007.

¹⁰The Privacy Act requires that requests for information must be from the head of a law enforcement agency. In contrast, the disclosure requirements under PRWORA for SSI allow that requests can be from any law enforcement officer.

¹¹20 C.F.R. 401.155

¹²As noted earlier, SSA's regulation also allows disclosure in cases of criminal activity involving Social Security programs or certain other federal programs.

crime is violent, such as murder or kidnapping.¹³ SSA's regulation makes no allowance for disclosing information about individuals who are (1) fleeing prosecution for a crime or (2) wanted in connection with a felony that is not violent.

Agency officials said that SSA's regulation restricting disclosure of personal information balances, on the one hand, the need of law enforcement agencies for information that could enable them to apprehend criminals and, on the other hand, the expectations of the public that the information they provide to SSA about themselves for program administration purposes will be kept confidential. SSA's restriction on disclosure of information about individuals also reflects its concern about the possibility that its workload would increase if access to this information were not restricted.

To enable law enforcement officials to obtain the current address and SSN of OASI and DI beneficiaries who are fugitive felons, as they now can for SSI recipients who are fugitive felons,¹⁴ either SSA's regulation governing disclosure of information must be changed, or Title II of the Social Security Act must be amended with the addition of a provision explicitly requiring SSA to disclose this information about fugitive felons on the OASI and DI rolls to law enforcement officers. In regard to the first alternative, SSA officials noted that the agency would be limited under the Privacy Act to responding to requests only from heads of agencies. In contrast, the PRWORA amendment covering SSI recipients permits requests to be made by any law enforcement officer. Agency officials also noted that law enforcement officials might find it frustrating and confusing if rules for disclosing information on fugitive felons varied on the basis of whether the individual receives SSI rather than OASI or DI benefits.

SSA officials from the Office of General Counsel, Office of Disclosure Policy, Office of Legislation and Congressional Affairs, Office of Operations/Division Operations Support, and Office of Program Benefits reviewed a draft of this letter. They generally agreed with the facts presented in the draft and provided technical comments, which we incorporated as appropriate.

As arranged with your office, unless you publicly announce its contents earlier, we will make no further distribution of this letter until 7 days after the date of this letter. At that time, we will make copies available to others on request.

¹³ As defined by SSA, other examples of violent crimes include rape; armed robbery; burglary of a dwelling; arson; drug trafficking or possession with intent to manufacture, import, export, distribute, or dispense; hijacking; carjacking; and terrorism. For parole violations, SSA will release information if the violent crime provisions are met for the original conviction.

¹⁴ Section 1611(e)(5) of the Social Security Act now states that "the Commissioner shall furnish any Federal, State, or local law enforcement officer, upon the written request of the officer, with the current address, Social Security number, and photograph (if applicable) of any recipient of benefits under [Title XVI], if the officer furnishes the Commissioner with the name of the recipient, and other identifying information as reasonably required by the Commissioner to establish the unique identity of the recipient, and notifies the Commissioner that the recipient is [a fugitive felon]; and has information that is necessary for the officer to conduct the officer's official duties; and the location or apprehension of the recipient is within the officer's official duties."

If you have any questions about the information in this letter, please contact me at (202) 512-9889 or my assistant director, Clarita Mrena, at (202) 512-3022. Major contributors to this report also include William Hutchinson, Senior Analyst, and Jonathan Barker of GAO's Office of General Counsel.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Robert Robertson". The signature is fluid and cursive, with the first name "Robert" being more prominent than the last name "Robertson".

Robert E. Robertson
Director, Education, Workforce,
and Income Security Issues

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