



# Office of the Inspector General

## SOCIAL SECURITY ADMINISTRATION

### *Audit Report*

## The Social Security Administration's Federal Rulemaking Process

032509 February 2026



# Office of the Inspector General

## SOCIAL SECURITY ADMINISTRATION

### MEMORANDUM

**Date:** February 10, 2026 **Refer to:** 032509

**To:** Frank Bisignano  
Commissioner

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

**Subject:** The Social Security Administration's Federal Rulemaking Process

The attached final report presents the results of the Office of Audit's review. The objective was to determine whether the Social Security Administration followed Federal rulemaking requirements, including the *Administrative Pay-As-You-Go Act of 2023*, with respect to four rules the Agency finalized in 2024.

If you wish to discuss the final report, please contact me or have your staff contact Jeffrey T. Brown, Deputy Assistant Inspector General for Audit.

Attachment

# The Social Security Administration's Federal Rulemaking Process

## 032509



February 2026

Office of Audit Report Summary

### Objective

To determine whether the Social Security Administration (SSA) followed Federal rulemaking requirements, including the *Administrative Pay-As-You-Go Act of 2023 (Administrative PAYGO)*, with respect to four rules the Agency finalized in 2024.

### Background

Congress grants rulemaking authority to Federal agencies to implement statutory programs. Federal executive and independent agencies use rulemaking to formulate, amend, or repeal a rule.

The Commissioner of Social Security has the authority to make rules, regulations, and procedures consistent with the provisions of the *Social Security Act*. SSA was required to follow procedures prescribed in law and executive order, including the *Administrative Procedure Act*, the *Congressional Review Act*, and *Administrative PAYGO*.

The four rules we reviewed included (1) *Expand the Definition of a Public Assistance Household*; (2) *Omitting Food from In-Kind Support and Maintenance Calculations*; (3) *Expansion of the Rental Subsidy Policy for Supplemental Security Income Applicants and Recipients*; and (4) *Intermediate Improvement to the Disability Adjudication Process, Including How We Consider Past Work*.

### Results

SSA followed Federal rulemaking requirements to implement the four rules.

In compliance with the *Administrative Procedure Act*, SSA published the four final rules in the *Federal Register*, including effective dates and a summary of public comments SSA received about each rule. In compliance with the *Congressional Review Act*, SSA also submitted reports to members of Congress and the Government Accountability Office before each rule became effective. Finally, SSA properly considered *Administrative PAYGO* requirements and determined three rules were exempt and one rule should be waived, which the Office of Management and Budget approved, from undertaking administrative actions to offset the increases in the Agency's direct spending.

### Conclusion

Because *Administrative PAYGO* expired on December 31, 2024, agencies are no longer required to follow its requirements.

### Agency Comments

SSA reviewed our draft report and did not have comments.

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## ABBREVIATIONS

Administrative	
PAYGO	<i>Administrative Pay-As-You-Go Act of 2023</i>
Fed. Reg.	Federal Register
FY	Fiscal Year
GAO	Government Accountability Office
NPRM	Notice of Proposed Rulemaking
OCACT	Office of the Chief Actuary
OMB	Office of Management and Budget
OIG	Office of the Inspector General
Pub. L. No	Public Law Number
SNAP	Supplemental Nutrition Assistance Program
SSA	Social Security Administration
SSI	Supplemental Security Income
U.S.C.	United States Code

## OBJECTIVE

Our objective was to determine whether the Social Security Administration (SSA) followed Federal rulemaking requirements, including the *Administrative Pay-As-You-Go Act of 2023* (*Administrative PAYGO*) with respect to four rules the Agency finalized in 2024 (see Appendix A for a summary of the four rules).<sup>1</sup>

## BACKGROUND

Congress granted Federal agencies rulemaking authority to implement statutory programs. Rulemaking is the policy-making process for executive and independent Federal agencies to formulate, amend, or repeal a rule. Federal agencies develop rules and request public comments before they issue final rules. See Figure 1 for the Federal rulemaking process.

The Commissioner of Social Security has the authority to make rules, regulations, and procedures consistent with *Social Security Act* provisions.<sup>2</sup> When issuing rules, SSA is required to follow a certain set of procedures prescribed in law. These procedures include the following.

- The *Administrative Procedure Act* requires that each Federal agency publish a notice of proposed rulemaking (NPRM) in the *Federal Register*. The notice should include such items as the legal authority, the issue involved, and a summary of the rule. In addition, the agency should give interested parties an opportunity to provide comments and incorporate a general statement on those comments in the final rule. The Office of Management and Budget's (OMB) guidance states the agency must discuss with OMB the agency's evaluation regarding the applicability of the *Administrative PAYGO*'s requirements.<sup>3</sup>
- The *Congressional Review Act* requires that, before the rules take effect, the Federal agency should submit to Congress and the Government Accountability Office (GAO) a report that contains a copy of the rule, whether it is a major rule, and the rule's proposed effective date. Also, the major rule can take effect at least 60 days after Congress receives it or it is published in the *Federal Register*.<sup>4</sup>

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<sup>1</sup> *Administrative PAYGO* is included under the *Fiscal Responsibility Act of 2023*. Pub. L. No. 118-5, §§ 261-270, 137 Stat. 31, pp. 31-33 (2023); 5 U.S.C. §§ 551 note, 552(a)(1)(D), (2), 553(b)–(e).

<sup>2</sup> 42 U.S.C. §§ 405(a), 902(a)(5), 1383(d)(1).

<sup>3</sup> OMB, Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023, M-23-21, pp. 1, 2, and 4 (2023).

<sup>4</sup> 5 U.S.C. § 801(a).

**Figure 1: Federal Rulemaking Process**



*Administrative PAYGO* was signed into law on June 3, 2023 and expired on December 31, 2024. Until December 31, 2024, *Administrative PAYGO* required that Federal agencies provide the OMB Director spending information through a written notice before they finalized a rule that would affect direct spending. If the proposed rule increased direct spending, the written notice should have included a proposal to undertake one or more administrative actions that would reduce direct spending by more than, or equal to, the cost of the proposed rule.<sup>5</sup>

Federal agencies could receive a waiver from *Administrative PAYGO* requirements if the Director of OMB concluded a waiver was necessary to deliver essential services or necessary for effective program delivery. Federal agencies were exempt from *Administrative PAYGO* requirements if the cost of the proposed rule, beginning in the current fiscal year (FY), was less than \$1 billion over 10 years or less than \$100 million in any given year of such 10-year period.<sup>6</sup>

According to OMB guidance, “. . . the ‘current year’ means the remainder of the [FY] in which the rule is finalized [when the Office of the Federal Register notifies the public of the final rule]. Thus, for purposes of the exemptions, the 10-year period is the remainder of the [FY] in which the rule is finalized, plus the next nine [FYs]. For FY 2024, the 10-year period would be the

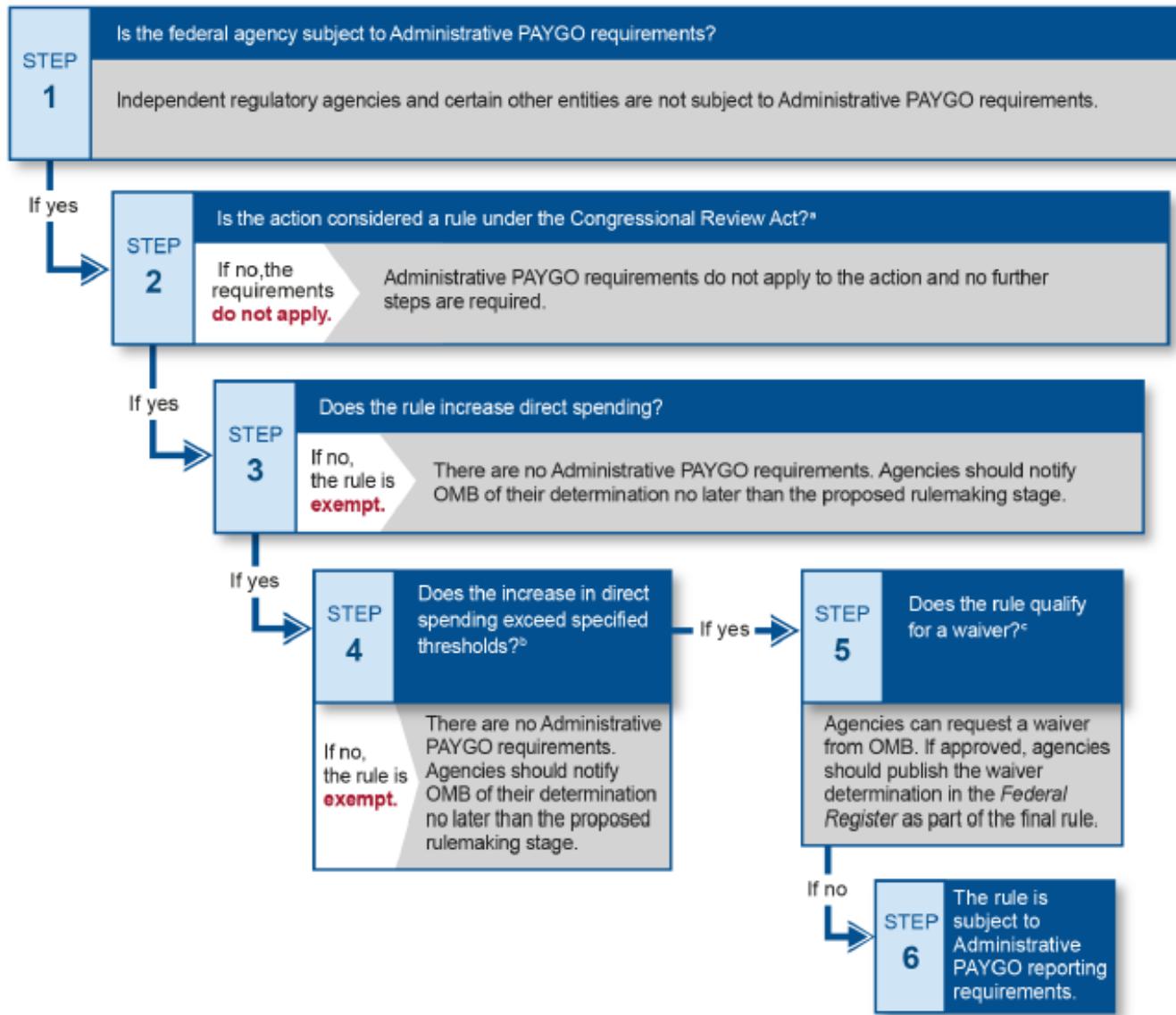
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<sup>5</sup> Pub. L No. 118-5, §§ 263, 268, 137 Stat. 31, pp. 32-33 (2023).

<sup>6</sup> Pub. L. No. 118-5, §§ 265-266, 137 Stat. 31, p. 33 (2023).

remainder of FY 2024 following finalization, plus all of FY 2025 through FY 2033.”<sup>7</sup> See Figure 2 for the process of determining *Administrative PAYGO* requirements.

**Figure 2: Process for Determining Whether an Action is Subject to Administrative PAYGO Requirements<sup>8</sup>**



<sup>7</sup> OMB, *Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023*, M-23-21, pp. 4, 5, and 7 (2023).

<sup>8</sup> GAO, *Federal Rulemaking: Status of Actions to Offset Direct Spending from Administrative Rules*, GAO-24-106968, p.3 (2023). Figure Notes: (a) 5 U.S.C. § 804(3); (b) Pub. L. No. 118-5, §§ 262(7), 266, 137 Stat. pp. 31 and 33 (2023); (c) Pub. L No. 118-5, § 265, 137 Stat. p. 33 (2023)

In October 2024, Members of the Committees on Ways and Means and the Budget sent a letter to the Commissioner of Social Security stating, “. . . we have serious concerns about the way in which the SSA promulgated [four rules SSA implemented in FY 2024] and whether the agency complied with [Administrative PAYGO] requirements . . .” (see Appendix B). The concerns from the letter included the following four rules.

1. *Expand the Definition of a Public Assistance Household.*<sup>9</sup>
2. *Omitting Food from In-Kind Support and Maintenance Calculations.*<sup>10</sup>
3. *Expansion of the Rental Subsidy Policy for Supplemental Security Income Applicants and Recipients.*<sup>11</sup>
4. *Intermediate Improvement to the Disability Adjudication Process, Including How We Consider Past Work.*<sup>12</sup>

In November 2024, the Commissioner of Social Security, Martin O’Malley, informed Congress that the Agency complied with *Administrative PAYGO* (see Appendix C).<sup>13</sup> In February 2025, the Acting Commissioner of Social Security, Leland Dudek, asked us to review Congress’ concerns with SSA’s implementation of the four rules.<sup>14</sup>

## SCOPE AND METHODOLOGY

To accomplish our objective, we reviewed documentation to identify SSA’s process for implementing its four rules and estimating the 10-year costs in compliance with Federal rulemaking requirements. We also reviewed documentation SSA sent to OMB on the rules to determine whether SSA used reasonable method(s) for calculating its 10-year cost estimates. See Appendix D for more information on our scope and methodology.

## RESULTS OF REVIEW

SSA complied with Federal rulemaking requirements to implement the four rules.

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<sup>9</sup> 89 Fed. Reg. 28,608 (April 19, 2024).

<sup>10</sup> 89 Fed. Reg. 21,199 (March 27, 2024).

<sup>11</sup> 89 Fed. Reg. 25,507 (April 11, 2024).

<sup>12</sup> 89 Fed. Reg. 27,653 (April 18, 2024).

<sup>13</sup> Mr. O’Malley was Commissioner of Social Security from December 20, 2023 to November 29, 2024.

<sup>14</sup> Mr. Dudek was Acting Commissioner of Social Security from February 17, 2025 to May 7, 2025.

## Compliance with Rulemaking Requirements

SSA complied with the *Administrative Procedure Act* and the *Congressional Review Act* and properly considered *Administrative PAYGO* requirements for the four rules. See Table 1 for the dates the four rules went through the Federal rulemaking process.

- In compliance with the *Administrative Procedure Act*, SSA (1) provided the NPRM to OMB for review before it was published in the *Federal Register*; (2) provided a public comment period of longer than 60 days; (3) published in the *Federal Register* the summarized public comments, preambles, and legal authority in the final rules; and (4) submitted the final rules to OMB for review before it published them.
- In compliance with the *Congressional Review Act*, SSA submitted the final rules to Congress and the GAO with copies of the rules along with coversheets that indicated the rules were major rules and included the respective effective dates. Also, SSA appropriately provided Congress the final rules more than 60 days before they took effect.
  - GAO provided Congress reports on its assessment of SSA's rulemaking procedures. GAO reported how SSA complied with rulemaking requirements. SSA determined the final rules were (1) not subject to *Administrative PAYGO* because SSA estimated they would not increase direct spending by at least \$100 million for FY 2024 or \$1 billion for the 10-year period or (2) subject to *Administrative PAYGO*, but OMB granted SSA a waiver.<sup>15</sup>
  - According to SSA employees, Congress did not provide comments on the rules after SSA submitted the final rules and before the rules took effect.

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<sup>15</sup> GAO, *Social Security Administration: Expand the Definition of a Public Assistance Household*, B-336255 (2024); GAO, *Social Security Administration: Omitting Food From In-Kind Support and Maintenance Calculations*, B-336180 (2024); GAO, *Social Security Administration: Expansion of the Rental Subsidy Policy for Supplemental Security Income Applicants and Recipients*, B-336229 (2024); and GAO, *Social Security Administration: Intermediate Improvement to the Disability Adjudication Process, Including How We Consider Past Work*, B-336249 (2024).

**Table 1: Federal Rulemaking Process for the Four Rules Implemented in FY 2024**

Rulemaking Process		Dates Rulemaking Process Completed			
		Rule 1	Rule 2	Rule 3	Rule 4
<b>Administrative Procedure Act Requirements</b>	OMB Received SSA's NPRM	07/25/23	02/08/22	06/23/23	08/28/23
	OMB Reviewed NPRM	09/25/23	02/03/23	08/09/23	09/22/23
	NPRM Published in <i>Federal Register</i>	09/29/23	02/15/23	08/24/23	09/29/23
	Public Comment Period Ended	11/28/23	04/17/23	10/23/23	11/28/23
	OMB Received Final Rule	03/22/24	11/13/23	02/20/24	03/12/24
	OMB Reviewed Final Rule	04/12/24	02/20/24	03/28/24	04/08/24
	Final Rule Published in <i>Federal Register</i>	04/19/24	03/27/24	04/11/24	04/18/24
<b>Congressional Review Act Requirements</b>	Congress Received Final Rule	04/22/24	03/28/24	04/12/24	04/19/24
	GAO Reported its Assessment on Final Rule	05/06/24	04/11/24	04/26/24	05/03/24
	Effective Date of Final Rule	09/30/24	09/30/24	09/30/24	06/22/24

Key:

Rule 1: *Expand the Definition of a Public Assistance Household*

Rule 2: *Omitting Food from In-Kind Support and Maintenance Calculations*

Rule 3: *Expansion of the Rental Subsidy Policy for SSI Applicants and Recipients*

Rule 4: *Intermediate Improvement to the Disability Adjudication Process, Including How We Consider Past Work*

Although each rule increased SSA's direct spending, the rules were exempt from *Administrative PAYGO* requirements or OMB waived the requirements.

1. SSA finalized the rule to *Expand the Definition of a Public Assistance Household* on April 19, 2024. With an effective date of September 30, 2024, SSA estimated it would not increase direct spending in FY 2024. The rule was exempt from *Administrative PAYGO* requirements because the exemption criterion—that the rule would not increase direct spending by more than \$100 million in any given year of the 10-year period—was met.
2. SSA finalized the rule on *Omitting Food from In-Kind Support and Maintenance Calculation* on March 27, 2024 with an effective date of September 30, 2024. SSA estimated the rule would increase direct spending by \$66 million for FY 2024 based on an effective date of April 1, 2024. The rule was exempt from *Administrative PAYGO* requirements because it met the exemption criterion—that the rule would not increase direct spending by more than \$100 million in any given year of the 10-year period.
3. SSA finalized the rule on *Expansion of the Rental Subsidy Policy for SSI Applicants and Recipients* on April 11, 2024 with an effective date of September 30, 2024. SSA estimated the rule would increase direct spending by \$837 million over the 10-year period. The rule was exempt from *Administrative PAYGO* requirements because both exemption criteria—the rule would not increase direct spending by more than (a) \$100 million in any given year of the 10-year period or (b) \$1 billion over the 10-year period—were met.

4. SSA finalized the rule on *Intermediate Improvement to the Disability Adjudication Process, Including How We Consider Past Work* on April 18, 2024 with an effective date of June 22, 2024. SSA estimated it would increase direct spending by about \$20 billion over the 10-year period. However, SSA requested, and OMB approved, a waiver based on necessity of effective program delivery.

See Table 2 for SSA's 10-year cost estimates of direct spending for the four rules.

**Table 2: Estimates of Increased Spending from Implementing Four Final Rules in FY 2024 (in millions)**

FY	Rule 1	Rule 2	Rule 3	Rule 4
2024	\$0	\$66	\$0	\$175
2025	\$1,044	\$143	\$80	\$897
2026	\$1,892	\$147	\$83	\$1,378
2027	\$1,540	\$153	\$86	\$1,805
2028	\$1,743	\$176	\$99	\$2,107
2029	\$1,509	\$147	\$82	\$2,329
2030	\$1,702	\$170	\$95	\$2,517
2031	\$1,751	\$175	\$98	\$2,686
2032	\$1,802	\$180	\$100	\$2,837
2033	\$2,017	\$205	\$114	\$2,963
<b>Total</b>	<b>\$15,000</b>	<b>\$1,562</b>	<b>\$837</b>	<b>\$19,694</b>

## Methodology for Estimating Direct Spending

Employees from SSA's Office of the Chief Actuary (OCACT) prepared cost estimates for proposed rules based on the effective dates Agency management chose. SSA's OCACT responsibilities included planning and directing actuarial estimates and analyses related to Old-Age, Survivors, and Disability Insurance and Supplemental Security Income (SSI) programs as well as proposed changes to those programs.<sup>16</sup> SSA's OCACT employees reported its office provides non-partisan, unbiased analyses, and expertise. OCACT's methodology for estimating SSA's direct spending for the proposed rules included

- working with employees in SSA's Office of Law and Policy to obtain a detailed understanding of the proposed changes to the Old-Age, Survivors, and Disability Insurance and SSI programs; and
- developing assumptions by considering SSA's data sources, including survey data and internal special studies, and recently issued *President's Budget* or *Mid-Session Review* to make cost projections on the effect of the proposals' implementations.

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<sup>16</sup> SSA, Organization of the Office of Chief Actuary, [ssa.gov](http://ssa.gov) (October 29, 2025).

We reviewed another rule SSA finalized before *Administrative PAYGO*'s requirements expired in December 2024 to determine whether OCACT's methodology for the four rules was consistent with another rule SSA finalized.<sup>17</sup> For the other rule, OCACT estimated 10-year costs to SSA's programs and determined there would be a net reduction in direct spending. SSA used a similar methodology to calculate the cost estimates as it did with the other four rules.

## Effective Dates for Finalized Rules

According to OMB's guidance on *Administrative PAYGO*, an agency's 10-year direct spending estimate should begin with the year in which the agency finalized the rule.<sup>18</sup> Of the three rules that were exempt from *Administrative PAYGO*, SSA finalized one in March 2024 and two in April 2024. Therefore, SSA's OCACT used FY 2024 as the first year of its 10-year cost estimates.

Because SSA management determined the three rules would be effective on September 30, 2024 (the last day of FY 2024) direct spending was lower for FY 2024 than for any given FY in the remaining 9 FYs.

1. For the rule *Expand the Definition of a Public Assistance Household*, SSA's OCACT employees estimated direct spending for FY 2024 would not have exceeded \$100 million had SSA made it effective "slightly earlier in FY [20]24 (perhaps July or August)" and therefore would still have been exempt from *Administrative PAYGO* requirements. However, this rule's estimated direct spending for FY 2024 may have exceeded \$100 million had SSA management made it effective on June 18, 2024—the earliest date SSA could have made it effective (60 days after its publication in the *Federal Register*).<sup>19</sup>
2. SSA's OCACT employees estimated direct spending for FYs 2025 through 2033 ranged between \$1 and \$2 billion per year (see Table 2, Rule 1). Therefore, if FY 2024 direct spending exceeded \$100 million, the rule would not have been exempt from *Administrative PAYGO* requirements. The Director of OMB could have waived requirements of *Administrative PAYGO* had they concluded the waiver was necessary for the delivery of essential services or effective program delivery.<sup>20</sup>
3. For the rule *Omitting Food from In-Kind Support and Maintenance Calculations*, SSA's OCACT employees estimated direct spending for FY 2024 would not have exceeded \$100 million even if SSA made it effective earlier in the FY. OCACT estimated direct spending for FY 2024 was \$66 million (see Table 2, Rule 2) based on an April 1, 2024 effective date. Therefore, the FY 2024 cost estimate would have been less than \$66 million had SSA management made the rule effective on May 26, 2024—the earliest date SSA could have made it effective (60 days after its publication in the *Federal Register*), and this rule would still have been exempt from *Administrative PAYGO* requirements.

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<sup>17</sup> Use of Electronic Payroll Data to Improve Program Administration (89 Fed. Reg. 107236).

<sup>18</sup> OMB, *Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023*, M-23-21, p. 7 (2023).

<sup>19</sup> 5 U.S.C. § 801(a)(3).

<sup>20</sup> Pub. L. No. 118-5, § 265, 137 Stat. 31, p. 33 (2023).

4. For the rule *Expansion of the Rental Subsidy Policy for SSI Applicants and Recipient*, SSA's OCACT estimated that direct spending would increase by less than \$100 million in each year from FYs 2025 through 2031 and less than \$1 billion over 10 years (see Table 2, Rule 3). Therefore, this rule would have been exempt from *Administrative PAYGO* even if SSA management had made the rule effective earlier in FY 2024.

When asked why SSA management made the rules effective the last day in FY 2024, SSA subject-matter experts stated the following.

The choice of September 30, 2024, specifically—as opposed to October 1, 2024—was rooted in SSI policy. SSI rules regarding living arrangements and resources are applied based on the first moment of the month. By making the rules effective on September 30, the Agency ensures that the new policies are in place for the entire month of October, aligning with how SSI eligibility and benefit calculations are determined. This approach avoids any ambiguity that could arise if the rules were to take effect on October 1, but not necessarily the first moment, and it provides a clear transition for both. The September 30, 2024, effective date reflects a careful balance of implementation needs, policy requirements, and the importance of a seamless transition for all stakeholders.

## CONCLUSION

Because *Administrative PAYGO* expired on December 31, 2024, agencies are no longer required to follow its requirements.

## AGENCY COMMENTS

SSA reviewed our draft report and did not have comments. See Appendix E.

# APPENDICES

## **Appendix A – FOUR FINAL RULES IN FISCAL YEAR 2024**

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In Fiscal Year (FY) 2024, the Social Security Administration (SSA) implemented the following four rules that were the subject of our audit.

### ***Expand the Definition of a Public Assistance Household***

This rule applies to the Supplemental Security Income (SSI) program and includes the United States Department of Agriculture's Supplemental Nutrition Assistance Program (SNAP) as an additional means-tested public income maintenance program. SSA also revised the definition of a public assistance household as a household that has both an SSI applicant or recipient and at least one other household member who receives one or more of the listed public income maintenance payments.<sup>1</sup> Therefore, if SSA determines a recipient is living in a public assistance household, SSA employees would no longer need to develop in-kind support and maintenance. The final rule would decrease the number of SSI applicants and recipients charged with in-kind support and maintenance from others in their household. In addition, SSA expected this rule would decrease the amount of deemed income it provides SSI applicants and recipients because SSA would no longer deem income from ineligible spouses and parents who live in the same household and are receiving SNAP benefits. SSA reported these policy changes will reduce administrative burdens for SSA and low-income households that apply for, and/or receive, SSI payments.<sup>2</sup>

In July 2025, SSA issued a proposal to rescind the *Expand the Definition of a Public Assistance Household* rule by removing SNAP from the list of public-income maintenance payments. SSA also proposed adopting the former definition of a public assistance household, according to which every household member must receive a public income maintenance payment for the household to constitute a public assistance household. SSA reported it proposed to revert to the former policy to promote program integrity and because the benefits derived from the final rule do not outweigh the significant burdens and costs associated with its implementation.<sup>3</sup>

### ***Omitting Food from In-Kind Support and Maintenance Calculations***

SSA updated its regulations for the SSI program to remove food from the calculations of in-kind support and maintenance. In addition, SSA added conforming language to its definition of income. According to SSA, these changes made the rules less cumbersome to administer and easier for the public to understand and follow, as well as improved the equitable treatment of food assistance within the SSI program. SSA reported this final rule also includes minor revisions to the regulations related to income.<sup>4</sup>

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<sup>1</sup> The original definition is a household in which every member is receiving some kind of public income maintenance payment.

<sup>2</sup> 89 Fed. Reg. 28,608 (April 19, 2024).

<sup>3</sup> Office of Management and Budget, Office of Information and Regulatory Affairs, *Rescission of Changes to the Definition of a Public Assistance Household*, reginfo.gov (December 19, 2025).

<sup>4</sup> 89 Fed. Reg. 21,199 (March 27, 2024).

## ***Expansion of the Rental Subsidy Policy for Supplemental Security Income Applicants and Recipients***

This rule applied nationwide the in-kind support and maintenance rental subsidy exception previously available only for SSI applicants and recipients residing in seven states. SSA reported this final rule provides that a “business arrangement” exists, such that SSA would not consider the SSI applicant or recipient to be receiving in-kind support and maintenance in the form of room or rent when the amount of monthly required rent for the property equals or exceeds the presumed maximum value.<sup>5</sup>

## ***Intermediate Improvement to the Disability Adjudication Process, Including How We Consider Past Work***

SSA revised the time-period it considers when it determines whether an individual’s past work is relevant for making disability determinations and decisions. SSA reduced the relevant work period from 15 to 5 years. SSA also stated it will not consider past work that started and stopped in fewer than 30 calendar days to be past relevant work. According to SSA, these changes will reduce the burden on individuals who apply for disability by allowing them to focus on the most current and relevant information about their past work. SSA also reported the changes will better reflect the current evidence about worker skill decay and job responsibilities, reduce processing times, and improve customer service. Finally, SSA stated this final rule also includes other minor revisions to the regulations related to past relevant work.<sup>6</sup>

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<sup>5</sup> 89 Fed. Reg. 25,507 (April 11, 2024).

<sup>6</sup> 89 Fed. Reg. 27,653 (April 18, 2024).

## Appendix B – CONGRESSIONAL LETTER

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### 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<sup>1</sup>  
*Estimated 10 Year Cost: \$15 billion*
- Omitting Food from In-Kind Support and Maintenance Calculations<sup>2</sup>  
*Estimated 10 Year Cost: \$1.6 billion*
- Expansion of the Rental Subsidy Policy for SSI Applicants and Recipients<sup>3</sup>  
*Estimated 10 Year Cost: \$837 million*
- Intermediate Improvement to the Disability Adjudication Process: Including How We Consider Past Work<sup>4</sup>  
*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.<sup>5</sup>

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<sup>1</sup> 89 FR 28608 [RIN 0960-AI81]

<sup>2</sup> 89 FR 21199 [RIN 0960-AI60]

<sup>3</sup> 89 FR 25507 [RIN 0960-AI82]

<sup>4</sup> 89 FR 27653 [RIN 0960-AI83]

<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup>

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.<sup>8</sup>

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.<sup>9</sup> 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,<sup>10</sup> one was granted a waiver,<sup>11</sup> and the fourth was estimated by the SSA to be just short of the \$1 billion spending threshold.<sup>12</sup> 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.<sup>13</sup> 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

<sup>6</sup> 89 FR 28608 [RIN 0960-AI81]

<sup>7</sup> 89 FR 21199 [RIN 0960-AI60]

<sup>8</sup> 89 FR 25507 [RIN 0960-AI82]

<sup>9</sup> 89 FR 27653 [RIN 0960-AI83]

<sup>10</sup> 89 FR 21199 [RIN 0960-AI60] and 89 FR 28608 [RIN 0960-AI81]

<sup>11</sup> 89 FR 27653 [RIN 0960-AI83]

<sup>12</sup> 89 FR 25507 [RIN 0960-AI82]

<sup>13</sup> 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).<sup>14</sup> 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



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



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



Jodey Arrington  
Chairman  
Committee on the Budget



Jack Bergman  
Chairman, Oversight Task Force  
Committee on the Budget

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

## Appendix C – RESPONSE TO CONGRESS

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### SOCIAL SECURITY

The Commissioner

November 19, 2024

The Honorable Jason Smith  
Chair, Committee on Ways and Means  
U.S. House of Representatives  
Washington, DC 20510

Dear Mr. Chairman:

Thank you for your October 24, 2024 letter concerning four regulatory actions published by the Social Security Administration (SSA) in Fiscal Year (FY) 2024, with particular regard to SSA's compliance with the Administrative Pay-As-You-Go Act of 2023 (Act).<sup>1</sup>

The subsequent pages of this response summarize the applicable provisions of the Act.<sup>2</sup> They explain how we complied with the law for the four regulations you cited. I hope you find this information helpful. If you have further questions, please contact me or have your staff contact Tom Klouda, our Deputy Commissioner for Legislation and Congressional Affairs, at (202) 358-6030.

I am providing a similar response to Chairman Arrington, Chairman LaHood, Chairman Bergman, and Chairman Ferguson.

Sincerely,

A handwritten signature in blue ink, appearing to read "Martin O'Malley".

Martin O'Malley  
Commissioner

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<sup>1</sup> Pub. L. No. 118-5, div. B, title III.

<sup>2</sup> As required by the Act in Section 264.

**Administrative Pay-As-You-Go Act of 2023**

The Act requires federal agencies through December 31, 2024 to provide certain funding information to the Director of OMB before finalizing rules that would increase “direct spending”<sup>3</sup> above specified thresholds. In cases where the agency’s rule meets specified criteria (see immediately below), agencies were required to either identify another rule that would offset the costs of the new rule, or to seek a waiver from the Director of OMB for that requirement.

The law contains four criteria that must be met before the Administrative Pay-As-You-Go Act requires submitting a proposal to the Director of OMB regarding offsetting cuts or obtaining a waiver of the Act’s requirements:

1. The rule must increase direct spending—*i.e.*, mandatory net outlays, not discretionary spending—of \$1 billion or more; *and*
2. This \$1 billion increase must occur over a 10-year consecutive period; *and*
3. This 10-year period begins with the remainder of the current fiscal year in which the rule is finalized; *and*
4. There must be a minimum of \$100 million in direct spending per year in *each fiscal year* of that 10-year period.

**SSA FY 2024 Final Regulations Compliance with the Administrative Pay-As-You-Go Act of 2023**

For the four regulations identified in your correspondence, we complied with the Administrative Pay-As-You-Go Act of 2023 as follows:

- Expand the Definition of a Public Assistance Household<sup>4</sup>  
The rule was not projected to increase direct spending by at least \$100 million for FY 2024, the first year in the 10-year period beginning when the rule was finalized, and thus did not increase spending by at least \$100 million for each year of the 10-year implementation period (criteria #4). We provided the Director of OMB with all required documentation to this effect prior to finalizing the rulemaking.
- Omitting Food from In-Kind Support and Maintenance Calculations<sup>5</sup>  
The rule was not projected to increase direct spending by at least \$100 million for FY 2024, the first year in the 10-year period beginning when the rule was finalized. Thus, it did not increase spending by at least \$100 million for each year of the 10-year implementation period (criteria #4). We provided the Director of OMB with all required documentation to this effect prior to finalizing the rulemaking.

<sup>3</sup> As defined by the Balanced Budget and Deficit Control Act of 1985 (BBEDCA), 2 U.S.C. 900(c).

<sup>4</sup> 89 FR 26608 [RIN 0960-AI81].

<sup>5</sup> 89 FR 21199 [RIN 0960-AI60].

- Expansion of the Rental Subsidy Policy for SSI Applicants and Recipients<sup>6</sup>  
The rule was not projected to increase direct spending by at least \$1 billion over the relevant 10-year period (criteria #2). We provided the Director of OMB with all required documentation to this effect prior to finalizing the rulemaking.
- Intermediate Improvement to the Disability Adjudication Process: Including How We Consider Past Work<sup>7</sup>  
Applying the four criteria cited above, we determined the Act would apply to this rulemaking. We requested a waiver under section 265 of the Act from the Director of OMB, who subsequently granted this waiver pursuant to her authority in section 265(a)(2) of the Act, as reflected in the published final rule.<sup>8</sup>

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<sup>6</sup> 89 FR 25507 [RIN 0960-AI82].

<sup>7</sup> 89 FR 27653 [RIN 0960-AI83].

<sup>8</sup> 89 FR 27664.

## Appendix D – SCOPE AND METHODOLOGY

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To accomplish our objective, we:

- Reviewed Federal rulemaking requirements, including the *Administrative Pay-As-You-Go Act of 2023 (Administrative PAYGO)* requirements.
- Interviewed subject-matter experts to obtain an understanding of the Social Security Administration's (SSA) process to comply with the Federal rulemaking process for four rules finalized in Fiscal Year (FY) 2024. The four rules include the following.
  1. *Expand the Definition of a Public Assistance Household*<sup>1</sup>
  2. *Omitting Food from In-Kind Support and Maintenance Calculations*<sup>2</sup>
  3. *Expansion of the Rental Subsidy Policy for Supplemental Security Income (SSI) Applicants and Recipients*<sup>3</sup>
  4. *Intermediate Improvement to the Disability Adjudication Process, Including How We Consider Past Work*<sup>4</sup>
- Reviewed documentation SSA used to implement the four rules to identify SSA's process and methods to estimate the 10-year costs and compliance with Federal rulemaking requirements.
- Reviewed Government Accountability Office reports on the four rules.
- Compared SSA's process for implementing the four rules with other final rules issued in FY 2024 and reviewed documentation SSA sent to Office of Management and Budget regarding the rules to determine whether SSA used a reasonable method(s) for calculating its 10-year cost estimates.<sup>5</sup>

We assessed the significance of internal controls necessary to satisfy the audit objective. This included an assessment of the five internal control components: control environment, risk assessment, control activities, information and communication, and monitoring. In addition, we reviewed the principles of internal controls associated with the audit objective.

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<sup>1</sup> 89 Fed. Reg. 28,608 (April 19, 2024).

<sup>2</sup> 89 Fed. Reg. 21,199 (March 27, 2024).

<sup>3</sup> 89 Fed. Reg. 25,507 (April 11, 2024).

<sup>4</sup> 89 Fed. Reg. 27,653 (April 18, 2024).

<sup>5</sup> We did not recalculate SSA's estimates for the four rules.

We identified the following components and principles as significant to the audit objective.

- Component 1: Control Environment
  - Principle: 2 Exercise Oversight Responsibility
- Component 4: Information and Communication
  - Principle 15: Communicate externally

We conducted our review between April and December 2025. The entity audited for this review was SSA's Office of Law and Policy. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

## **Appendix E – AGENCY COMMENTS**

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### **SOCIAL SECURITY**

Office of the Commissioner

#### MEMORANDUM

Date: January 30, 2026

Refer To: TQA-1

To: Michelle L. Anderson  
Acting Inspector General

A handwritten signature in black ink, appearing to read "Chad Poist".

From: Chad Poist  
Chief Risk Officer

Subject: Office of the Inspector General Draft Report, "The Social Security Administration's Federal Rulemaking Process" (032509) -- INFORMATION

Thank you for the opportunity to review the draft report. We have no comments.

Please let me know if I can be of further assistance. You may direct staff inquiries to Amy Gao, Director of the Audit Liaison Staff, at (410) 966-1711.

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