

WHY MICHAEL J ASTRUE MUST GO

February 2010

SOCIAL SECURITY UNDER ASSAULT; AGENCY MOVING IN WRONG DIRECTION

OVERVIEW: The American Federation of Government Employees (AFGE), with the support of the AFL-CIO, is calling on President Obama to fire Michael J. Astrue, the Commissioner of the Social Security Administration (SSA). In accordance with Section 102 of the Social Security as an Independent Agency act of 1993 (P.L. 103-296), AFGE strongly believes that the actions of Commissioner Astrue constitute malfeasance and have compromised the integrity of the Social Security Administration, and erode the confidence of the American public.

Misuse of Authority and Malfeasance:

- SSA's OIG¹ reported that the Commissioner violated the OMB's August 2007 directive to verify all new hires through E-Verify. Additionally, SSA violated the provisions of the E-verify Memorandum of Understanding with the Department of Homeland Security and utilized the E-Verify process for unauthorized purposes. As one of the two Federal Agencies responsible for managing the E-Verify program, it is hypocritical for SSA to impose rules for the Federal sector that the Agency fails to follow. This abuse of authority is unacceptable, and sends the wrong message to private and public sector employers, and undermines the public's confidence in the program.
- In July 2009, SSA conducted a regional management-training forum in the San Francisco Region. This forum was held at the Arizona Biltmore Hotel in Phoenix, AZ. After scrutinizing media reports of the forum, Congress requested SSA's OIG to perform an audit of the event. In December 2009, the OIG reported² that they uncovered misuse of appropriated funds, violations of the Standards of Ethical Conduct (5 CFR 2635), and inadequate procurement documentation. The violations of law were many in number. OIG found that SSA failed to follow its own policy to have the Commissioner approve such conferences 2 years in advance. However, it is extremely difficult to deny the Commissioner's culpability, as he and several of his Deputy Commissioners attended and participated in the conference, including his then Chief Financial Officer, Deputy Commissioner Mary Glen-Croft.

Public Service:

- Former President George W. Bush appointed Astrue for a six-year term in 2007. In just two years, he has downgraded SSA, one of the nation's most responsive and best-run public agencies, into a troubled organization that no longer serves the best interests of retired and disabled Americans and their families.
- Since its founding in 1935 during the New Deal, Social Security has been widely known and respected for the personal services it provides to America's retirees, disabled workers and their dependents and survivors. ***But under Astrue, the agency has moved away from its historic legacy, and its beneficiaries are being denied money and services they otherwise should receive.***

¹ OIG Report of January 6, 2010, *The Social Security Administration's Implementation of the E-Verify Program for New Hires*

(A-03-09-29154)

² OIG Congressional Response Report of December 28, 2009, *San Francisco Regional Management Training Forum*

(A-05-09-29174)

- Astrue’s policies have included a directive for SSA employees to aggressively steer applicants – despite their age or disability – to use computers and the Internet to file their claims, and a gag rule³ that prevents SSA workers from guiding citizens as they apply for benefits. This radical change in agency policy prevents SSA staff from assisting the public they are sworn to serve.

Employee Morale and Labor Relations:

- SSA employee dissatisfaction is at an all-time high. In March 2009, a neutral arbitrator condemned Astrue’s attempt to circumvent the union representing SSA Administrative Law Judges and argued that Astrue’s temperament made him unstable as an administrator. In March 2009, the Government Accountability Office (GAO) reported⁴ that 65 percent of SSA employees interviewed at 21 offices experience “great” or “very great” stress in their jobs. The GAO concluded that Astrue’s SSA has no comprehensive strategy to deliver quality customers service.
- The Obama administration – and the American people – deserve better. The only way the situation can be reversed is through a change at the top: Astrue’s replacement by a public servant committed to the values and services for which Social Security has always stood for.
- During FY 2009, AFGE received an abundance of complaints from the bargaining unit concerning nepotism in the Agency’s hiring practices. AFGE conducted a survey and found that 11 percent of those who responded to the survey had personal knowledge of an instance of nepotism in their office. Reports of nepotism were reported from all regions and occurred at all levels of management, from supervisors to regional commissioners. Such practices are a violation of the Prohibited Personnel Practices (5 USC 2302) and Merit System Principles (5 USC 2301). As legally defined, malfeasance is doing something either legally or morally wrong which one had no right to do. It involves dishonesty, illegality, or knowingly exceeding authority for improper reasons. A primary example of malfeasance is a violation of an anti-nepotism statute. Violations of Prohibited Personnel Practices are in and of themselves justification for removal.

BACKGROUND: The Social Security Administration is an independent agency of the federal government headquartered in Woodlawn, Maryland, on the outskirts of Baltimore. It employs about 62,000 people at 10 regional offices, eight processing centers, approximately 1,300 field offices and 35 TeleService Centers. SSA’s Commissioner, Michael J. Astrue, was sworn in on February 12, 2007, for a six-year term that expires on January 19, 2013. Unlike most previous commissioners, Astrue came to Social Security straight from the business world, where he was a senior executive in Boston’s biotechnology industry. Previously, he served as an adviser to Presidents Ronald Reagan and George H.W. Bush and as General Counsel of the Department of Health and Human Services. In 2001, President George W. Bush was poised to appoint Astrue to head the Food and Drug Administration. But Senate Democrats blocked his nomination, arguing that it would be a conflict of interest for a pharmaceutical executive to head an agency that regulated the drug industry. His actions since rejoining the government in 2007 have proven that he is equally unfit to run the Social Security Administration.

³ Ready Retirement CR/CA IVT Training, November 6, 2008.

⁴ GAO report of March 24, 2009, *Social Security Administration – Further Actions Needed to Address Disability Claims and Service Delivery Challenges (GAO-09-511T)*

THE CASE AGAINST ASTRUE

Misuse of Authority and Malfeasance

ASTRUE’S DISREGARD AND MISUSE OF E-VERIFY

E-Verify is a Department of Homeland Security (DHS) program that allows participating employers to determine whether newly hired employees are authorized to work in the United States. SSA supports DHS in operating and administering the program.

Participating employers must sign an E-Verify Memorandum of Understanding (MOU) that sets forth the points of agreement between DHS, SSA and the employer regarding the employer’s participation in the E-Verify program. Under this agreement, the employer agrees:

- To initiate E-Verify procedures for new hires within 3 work days after each employee has been hired;
- Not to use E-Verify for pre-employment screening of applicants or for any other unauthorized use;
- Not to verify selectively, and not to verify employees hired before the effective date of the MOU.

In August 2007, the Office of Management and Budget (OMB) mandated that all Federal agencies and departments begin verifying their new hires through E-Verify starting no later than October 1, 2007. OMB stated that the Government needed to lead by example by using the E-Verify program.

To comply with OMB’s directive, SSA entered into an agreement to use E-Verify beginning September 2007.

In January 2010, SSA’s OIG reported that SSA did not always use the E-Verify program as intended. SSA hired 9,311 new employees in FY2008 and FY2009. OIG found that SSA:

- did not use E-Verify to confirm employment eligibility of 1,767 new hires (19 percent);
- misused E-Verify to verify the employment eligibility of 26 existing employees;
- used E-Verify untimely, between 8 and 522 days after hiring, for 1784 (24 percent) of new hires, in violation of the MOU;
- misused E-Verify prior to employment for 1874 (25 percent) of new hires;
- misused E-Verify to confirm employment status for non-employee volunteers; and
- misused E-Verify for pre-employment screening of job applicants.

AFGE strongly believes that the SSA’s misuse of E-Verify clearly constitutes an abuse of authority, an unwarranted violation of privacy rights, an undeniable breach of the integrity of E-Verify, and a threat to the public’s confidence in the Agency. Commissioner Astrue, who heads one of the two agencies responsible for E-Verify, has failed to “lead by example” as required by OMB.

OIG FINDS MISUSE OF APPROPRIATED FUNDS, AS WELL AS ETHICS AND CONDUCT VIOLATIONS.

- From July 7-9, 2009, SSA’s San Francisco Region conducted a Regional Management Training Forum at the Arizona Biltmore Hotel in Phoenix, Arizona. FOX News and other media referred to the SSA event as the “Tango”. Approximately 670 SSA management officials from across the Region (Arizona, California, Guam,

Hawaii, and Nevada), and from Headquarters in Baltimore, attended. The agenda included presentations from SSA and non-SSA speakers.

The Tango resulted in embarrassing media coverage, which criticized the Agency's decision to spend hundreds of thousands of dollars at a well known luxury resort hotel in the midst of a recession, and questioned whether American Recovery and Reinvestment Act of 2009 (ARRA) funds were used to pay for the Tango. The Tango was viewed by the media as nothing more than a junket.

On July 16, 2009, Senator Charles Grassley requested SSA's OIG to audit the SF Regional training forum. SSA's OIG found that most of the costs of the Tango could be justified and were in compliance with Agency guidance and applicable law, rule and regulation. However, the OIG uncovered many violations of law, rule, regulation and/or SSA's own policy.

- ***Expenditure of \$13,400 for reception refreshments could not be justified.*** SSA's own policy requires such expenses to be incidental to the conference, necessary to ensure full participation in the event, and made available in the course of a business day. None of these criteria were met.
- ***SSA did not have the statutory authority to accept gifts and donations from outside non-governmental entities, a violation of ethical standards of conduct and other laws, rule and/or regulations.***

The Oakland Athletics Major League Baseball team, and Blue Cross/Blue Shield made several donations to the Tango. SSA did not place a value on the gifts, but OIG found that the high volume of gifts exceeded the legal allowed amount of \$20.00 for an event, or \$50.00 in a year. (5 USC 2635, 18 USC 209).

SSA also accepted a gift of services of a disc jockey, valued at \$1200, which violates the Antideficiency Act (31 U.S.C.1341).

It is AFGE's understanding that Blue Cross/Blue Shield was the only insurance provider given access to managers attending the Tango. This, perhaps, is the most understated impropriety related to the SF Tango. At that time in history, the President, Congress and the public had been engaged in debate regarding health care reform. Both SSA and Blue Cross/Blue Shield had strong interest in the outcome of any legislation. As an agency with responsibilities in administering the Medicare program, which will be significantly affected by health care reform legislation, SSA had been involved in high-level discussions with Congress about such reform. Blue Cross/Blue Shield, which also happens to be the leading provider of health insurance benefits to federal employees under the Federal Employees Health Benefit Program, could have much to lose or gain depending on the outcome of such legislation. Allowing special access to the most senior SSA executives and managers at such a time was clearly unethical, and constitutes malfeasance.

SSA's Commissioner and his subordinate managers have important responsibilities to engage in ethical conduct, and to avoid any appearance of impropriety. SSA knew, or should have known, that inviting just one insurance vendor to participate in the Tango would create the appearance of favoritism. The acceptance of gifts, donations, and free services were inexcusable, and all of those responsible must be held accountable.

- ***The training conference plan had not been submitted to SSA headquarters for approval.*** SSA policy requires all training conference expenses to be planned and approved by the Commissioner at least 2 years in advance. These procedures were not followed. However, Commissioner Astrue; Acting Principle Deputy Commissioner Jason Fitchner; and seven Deputy Commissioners (including the Deputy Commissioner for Budget and Financial Management, Mary Glenn-Croft) all attended and participated in this conference, which had not been properly approved by SSA Headquarters. Their participation included preparation of materials, writing of speeches, and making travel arrangements. Commissioner

Astrue had many opportunities prior to the Tango to address the approval of expenditures, the agenda and activities, but failed to fulfill his responsibilities.

Public Service

THE ICLAIMS DISASTER

Staffing levels at SSA fell below their lowest levels since 1972 on Astrue's watch, which has caused serious deterioration in the Agency's ability to serve the American public. Current problems include an unprecedented backlog of more than 1 million applications for disability benefits, and a 765,000 case backlog of disability requests for a hearing – more than double the number in 2000. The SSA now has a 20 percent busy rate for its “800” telephone number, while the average wait time for a disability hearing is nearly 500 days. Meanwhile, 45 percent of people calling an SSA field office either can't reach an SSA employee, or are told to call back due to the lack of available staff to handle their calls.

Unfortunately, Astrue's response to the crisis has only made the situation worse. In 2008, SSA concluded that its Internet claims system had not been well received by the public or by the Agency's own staff. Its Internet claims system was so difficult to use that more than half the time applicants abandoned the electronic application. As a result, SSA decided to redesign the Internet claims system and make it “cleaner and simpler.” People applying for Social Security benefits, whether elderly or disabled, are now strongly encouraged to use Internet self-service as much as possible rather than file with the help of a trained SSA employee. But in the process of simplifying the system, many benefit application questions, including some that can directly affect entitlement determinations and payments, were omitted. The new – and ill-conceived – automated system is called iClaims.

Pressuring disabled and elderly Social Security applicants to use the Internet to apply for benefits is a radical departure from SSA's traditional policy, which allowed customers the absolute right to determine how they did their business with the government. In the past, the public had the free option of communicating with SSA by phone, by meeting face-to-face with an SSA employee, or by using computers and on-line services. The agency also assured the public that it would carry out its mission with a “human touch.” iClaims changed all that, by eliminating much of the advice and assistance that SSA employees have provided to the public, and by reducing SSA employee involvement in the claims process. For example:

- With iClaims, anyone with personal information about a potential claimant, such as an ex-spouse or an identity thief, can file for that claimant's benefits without their knowledge. There is no authentication of the applicant's identity.
- The iClaims system limits questions regarding previous marriages and divorces. In the past, such information provided SSA with leads for potential information needed to determine that subsequent marriages were valid, and that entitlement to benefits as a spouse or survivor could be properly established.
- With iClaims-related policy changes, SSA no longer verifies age or citizenship if applicants claim the same date and place of birth shown when they obtained a Social Security Number (SSN). Individuals, who claimed to be older than they really were when initially applying for an SSN, in order to get their first job, to join the military, or for another reason, will slip through the system and become inappropriately entitled to benefits if they allege the same date of birth when they file.
- Internal SSA polling illustrates why iClaims is a problem. In one survey of over 1,000 SSA employees who review Internet claims, 71% of the respondents said they had to recontact at least 90% of their claimants due to errors or omissions on their electronic applications. (See Appendix 1A for recent survey results.)

Astrue wanted the final phase of the new iClaims policy to be in place by February 2010, provided that SSA could actually authenticate the identity of the applicant by that time, something that is not done now when someone files over the Internet. Under his plan, applications would be processed without any SSA employee involvement at all, meaning that there would be no reviews done to make sure that errors are corrected. That would create opportunities for massive fraud and theft. The Union has recently learned that all such plans have been put on hold indefinitely because SSA is not

prepared to authenticate identity, and due to other problems with iClaims identified by AFGE, and by SSA specialists who review and adjudicate iClaims. In spite of his knowledge of the existing problems, Commissioner Astrue has established a goal that 50% of all retirement claims are to be filed on the Internet.

The most serious policy change related to iClaims is a gag order on SSA employees, which has not been lifted since AFGE first made this known to Congress early last year. Under Astrue's policies, an SSA employee trained in the complex Agency programs no longer explains applicant rights or reporting responsibilities to those who use Internet self-service, in spite of the fact that the Agency's own Office of General Counsel advised SSA and AFGE in 1996 that personal contact by SSA with each applicant for that purpose is a requirement of the Social Security Act. Failure to properly explain rights and responsibilities to applicants not only causes a loss of benefits to some applicants, but it compromises SSA's ability to recover overpayments from others who receive money not due them.

ASTRUE'S GAG ORDER

In 2008, as part of his iClaims initiative, Commissioner Astrue issued new instructions to SSA employees. From now on, he said, Social Security workers must stop assisting claimants as they had in the past. As of November 2008, employees have been directed to follow these SSA instructions:

- Do not suggest a month of election for the claimant.
- Do not advise the claimant about the best time to start receiving Social Security retirement benefits.
- Do not calculate or discuss breakeven points and the 8 and 20 year rules to determine if a claimant is making an advantageous or disadvantageous decision on his/her month of election.
- Do not attempt to persuade the claimant about benefit decisions.

These instructions amount to a gag order on employees that prohibit them from providing useful assistance to the American public they are sworn to serve. As a result of this gag order, social security employees now fear that claimants are being denied essential information at the most critical stage in the benefit application process.

In addition, many disabled persons could decide not to file for benefits that they are legally entitled to as a result of the gag order, because the iClaims question about disability is worded in a way that suggests that benefits are only payable if an individual can do no work at all. And as the baby boomer generation begins to retire in large numbers, Commissioner Astrue's instructions to refrain from providing service and information undermine the very mission of the Social Security Administration at a critical time. Many beneficiaries will become frustrated, and many are making decisions in the application process that will cost them benefits to which they are legally entitled, or cause them to be overpaid. Clearly, Commissioner Astrue's policies are not in keeping with the mission of SSA.

IMPACT ON RETIREES

The iClaims system and the gag order are causing permanent harm to claimants who are unable to understand and navigate the Internet claims system. That problem is exacerbated by computer illiteracy: according to a recent Gallup Poll, only 14 percent of senior citizens (i.e., people 65 years old and above) have gone online to a government website in the last six months. Moreover, SSA customers often interact with the agency in moments of great stress – after the death of a loved one, for example, or in the midst of a serious disability – and need a human touch to assist them in conducting their business. Without the option of human contact with an SSA employee, they lose that precious right. In addition to undermining the mission of SSA, these policies are hurting morale among SSA employees committed to public service.

SSA began its initial rollout of iClaims in December 2008, with 12 field offices taking part. The initial "pilot" period lasted two weeks, and after that the system was implemented nationally. At that time, an AFGE survey of SSA employees assigned to reviewing iClaims revealed the following:

- Nearly half, or 44%, believed that SSA claimants have felt pressure to file their claims through the Internet rather than being interviewed directly or by telephone.
- Only 11% were confident that applicants could actually file a claim by themselves on the Internet.
- Only 22% were confident that benefits would not be lost due to the inability of claimants to complete the online applications.
- Only 17% were confident that the applicant had a full understanding of all the benefits for which he or she was eligible.
- Only 14% found that the applicant chose the most advantageous month of election on their own, without help from a Social Security employee.

The survey underscores the conclusions of the Government Accountability Office (GAO), the investigatory arm of Congress, which recently issued a scathing report on Astrue's Social Security Administration. It begins as follows: "Staffing constraints are having adverse effects on [SSA] field offices." The report describes an agency adrift and without clear leadership.

GAO: SSA IS AN AGENCY WITHOUT A PLAN

Commissioner Astrue's management of SSA was the subject of a GAO report issued in March 2009. The report notes that, in fiscal year 2008, SSA's approximately 1,300 field offices provided service to about 44 million customers. But over the last several years, GAO noted, "staffing reductions have challenged field offices' ability to manage work while continuing to deliver quality customer service." The GAO report makes the following points:

- **Problematic staff reductions.** Cuts to staff have made it difficult for the agency to provide proper services to American retirees and disabled workers. Between 2005 and 2008, GAO said, the staff in field offices dropped by 4.4 percent. During that time, there was a three percent drop in SSA's overall customer satisfaction rating, from 84 percent to 81 percent. Moreover, the staffing declines have "resulted in customers waiting longer to be served and difficulties for field offices in answering calls from customers."
- **Astrue has no strategy.** SSA, said the GAO, "does not currently have a detailed plan to address future service delivery needs." While noting that Astrue has discussed his "strategic plan" with the GAO, the agency commented: "While the plan includes the goal of significantly expanding the use of electronic services, it is not clear how this will mitigate SSA's increasing workload." As a result, GAO recommended that SSA "develop a service delivery plan that describes how it will deliver quality service in the future while managing growing work demands and constrained resources." That plan, it said, must establish standards for field office waiting times and phone service that don't exist now. In his response to the GAO, Astrue refused to accept this recommendation.
- **Drastically reduced services.** In 17 of the 21 field offices visited by GAO, managers and staff said that long waiting times were among the top customer complaints. One recent survey of field offices found that 51 percent of customers that called 48 randomly selected offices had one or more calls that had gone unanswered. But according to GAO, "because SSA based its results only on customers who were ultimately able to get through to the field offices, the actual percentage of customers that had unanswered calls was likely even higher."
- **More stress for SSA employees, to the detriment of clients.** As a result of the changes at SSA, staff at some offices visited by GAO said they have less time to spend with customers, "potentially leading to mistakes and also limiting the ability of staff to ensure that customers fully understand their options and benefits." That, in turn, has increased the stress on SSA employees. GAO asked 153 SSA employees at 21 offices to rate their stress levels they experienced trying to complete their work in a "timely manner," and 65 percent reported feeling stress to a

“great” or “very great” degree. Office managers, GAO said, felt the stress, most acutely, 74 percent described high levels of stress. Moreover, the workload pressures have “led to cutbacks in the amount of time allocated for training and mentoring new staff,” while SSA has reduced the number of continuing disability reviews and SSI redeterminations that are conducted to ensure that disability beneficiaries are paid the correct amounts.

ASTRUE’S OWN PRESCRIPTIONS ARE MORE BAD NEWS

If Astrue had his way, the situation would be even worse. According to SSA staff and congressional sources, the Commissioner Astrue has made several policy proposals that would make SSA even less responsive to the public. For example, he has asked for anti-privacy legislation that would eliminate requirements for the SSA to obtain an individual’s consent before obtaining access to their private medical records. He has tried to reduce the hours SSA field offices are open to the public and closed a record number of field offices in 2007. These actions raise serious questions about Astrue’s ability to carry out President Obama’s mandates to improve SSA’s ability to serve the public through significant new investments in the agency. AFGE has recently learned that at least one SSA Region is creating protocols to determine which offices should be closed (a.k.a. “consolidated”).

EMPLOYEE MORALE AND LABOR RELATIONS

ASTRUE REBUKED BY ARBITRATOR

In one of his most contentious actions, Astrue tried to increase control over SSA’s Administrative Law Judges in a manner that would have undermined their independence from the agency and weakened their ability to provide fair hearings to disability applicants. He did this by attempting to create National Hearing Centers to sidestep the administrative judges’ union. On March 29, 2009, in response to a grievance filed by the Association of Administration Law Judges (AALJ), Arbitrator Michael Murphy issued a stinging rebuke of Astrue’s conduct, saying that his proposal to create hearing centers outside of the AALJ-negotiated system marked “a sea change” in how the agency operates and was intended to ***“severely undermine the union’s authority and permanently deny numerous employees...their right of representation.”*** In his meetings with the judges, the arbitrator wrote, Astrue acted “in an abrupt, abusive and hostile manner.” One of the judges, a former Deputy General Counsel of the National Labor Relations Board, testified after his meeting with Astrue that he “had never been treated in such a discourteous manner” and “fully appreciated” from Astrue’s actions “how threatened a union member could feel.” Members of a Senate Subcommittee on Social Security were so concerned about the strained relations reported by the arbitrator that they contacted Astrue’s Chief of Staff to request additional meetings between the Commissioner and the AALJ, but no new meetings have been scheduled.

LABOR SAYS NO TO ASTRUE’S POLICIES

For all these reasons, including a failure by Astrue’s administration to address concerns with SSA workers in a productive manner, the employees of SSA represented by AFGE have taken the unprecedented step of voting “no confidence” in Michael Astrue as Commissioner of the Social Security Administration. In March 2009, the AFL-CIO added its voice to the fight with a call from the labor federation’s executive council for Astrue to step down. “Out of respect for the country’s decisive vote last fall against the Bush [administration’s] policies and for restoring government to its rightful focus on the people’s interests instead of the monies interests, Astrue should resign,” the AFL-CIO said. “If he continues to try to hold onto his job, the Obama administration should seek his ouster.” Many AFL-CIO central labor bodies and state federations have also passed resolutions.