March 13, 2019

Mr. Mick Mulvaney
Director
Office of Management and Budget
725 17th St. N.W.
Washington, D.C., 20552

Ms. Nancy A. Berryhill
Acting Commissioner
Social Security Administration
6401 Security Boulevard
Baltimore, MD 21235

Dear Director Mulvaney and Acting Commissioner Berryhill:

We are deeply troubled by the recent New York Times Article: "On Disability and on Facebook? Uncle Sam Wants to Watch What You Post."

This article addresses how the "Trump administration has been quietly working on a proposal to use social media like Facebook and Twitter to help identify people who claim Social Security disability benefits without actually being disabled."

Rooting out fraud in all federal programs is an important goal which we have long supported. However, we are concerned that this proposal – which involves the federal government spying upon citizens – is riddled with problems related to due process; privacy; the prudent use of valuable, yet limited Social Security Administration (SSA) funds; and the assumption that people with eligible disabilities can be determined to be committing fraud through their social media posts.

Eligibility for SSDI benefits is determined through a rigorous medical review process. The process can take up to two years and includes review of extensive medical evidence. The assumption that the process can be negated by a social media post is patently ludicrous. The assumption also ignores that people with disabilities can and do have full lives that include social events, vacations, travel, and other activities. People with disabilities are vibrant, engaged, social individuals and should never be judged on the activities in which they participate. The unspoken assumption of this social media analysis is that people with disabilities are inactive, pitiful shells who have no social life and no interaction with others. It is an inherently disrespectful and demeaning set of assumptions that marginalizes and minimizes their contributions to society and their lives.

In an effort to better understand this proposal, we appreciate your attention and responsiveness to a number of questions regarding 1) fairness to citizens, 2) impact upon SSA workers, 3) use of artificial intelligence (AI), and 4) the scope of the Administration's social media surveillance plans.

Fairness to Citizens: Throughout the disability application process, the burden remains on the claimant to establish that they are unable to work. Social media posts are discrete snapshots that show an individual at a particular, specific moment. The fact that a person spent a few minutes dancing, or fishing, or holding a grandchild has little bearing on what work activities they could carry out on a sustained basis, which is what disability adjudicators are trying to determine. ALJ review of social media posts does not provide them with substantial evidence showing that a claimant is able to work. To that end please answer the following questions:

- Social media can be inaccurate—people can share photos that are old or altered, there are many people with the same names, and people can make fake profiles for other people. What foundation will be established to show that new-found social media evidence is in fact what the SSA purports it to be?
- What weight will be provided to social media evidence? What efforts will be undertaken to corroborate the evidence? By contrast, medical evidence, especially by a claimant's treating providers, is much better evidence.
- Will comments posted by individuals, other than claimants, be treated as inadmissible hearsay? Does the administration believe that any hearsay exceptions would apply to such statements? If so, which ones?
- How will social media information be added to a claimants file?
- What ability will a claimant have to rebut/explain social media information?
- How will social media evidence be preserved in the claim file?
- If someone is going to look at claimants' social media, it should be trained investigators; who will these be and how will they be trained?

Impact Upon SSA workers: SSA employees are increasingly stretched thin – being asked to do more with less. In fact, since 2010 the SSA has lost 12 percent of its staff and faced a 9 percent decline in its budget. During the same time period, SSDI beneficiaries increased to over 11 million and the number of retirement and survivors insurance beneficiaries has increased. The result is entirely predictable – SSA offices have closed, wait time for calls have increased, and the number of workers deciding whether applicant disabilities warrant disability insurance (DI) has decreased.

Disability examiners are already stretched thin. Directing SSA employees to follow the social media habits of over 10 million SSDI or SSI beneficiaries and then investigate what they find is a costly undertaking shifting resources away from other key priorities. Furthermore, directing Administrative Law Judges (ALJs) to perform such an analysis is an even bigger waste of time. The SSA spends about an eighth of its administrative funds on program integrity activities and has a large staff at the Office of the Inspector General who work to ensure program integrity. Meanwhile, there are over 800,000 people waiting for a disability decision, including tens of thousands who had their hearings and are waiting for decisions. The ALJs should focus on that

work, which only they can do, and let the investigators investigate credible evidence of fraud. Spending time looking for people on Facebook or Instagram is not a good use of ALJ time.

To that end please answer the following questions:

- How much additional administrative funding/staff time would be required for this new workload?
- Would disability determination service employees (DDS) and ALJs receive specialized training to deal with this new workload? How would they be supervised in their use of social media? How much time/money would that training cost? What would be the opportunity cost to spending staff time on social media analysis that is not spent on applications and appeals?
- Would SSA be given more money/staff to take this on role? If not, what priorities would be sacrificed?
- How would adding this workload at the ALJ level affect SSA's progress on the appeals backlogs? How many additional days would implementing this administrative action add to the appeals decision making backlog?
- Has the agency conducted a thorough cost/benefit analysis of the potential effects of the rule? If so, please share that information with us. If not, what plans are in place to conduct such an analysis?

Use of artificial intelligence: If SSA is not proposing to increase its staffing budget or planning to alter its administrative priorities, there is no practical way for SSA employees to efficiently monitor social media activity. This leads to a troubling option: the use of artificial intelligence (AI) to monitor citizens. Recent news reports have detailed how authoritarian regimes are using AI to mine personal data and track their citizenry. Such an approach is antithetical to our nation's understanding of privacy, separation of powers, and individual liberty. In fact, the benefit of whatever sums AI applications help recover from SSDI fraudsters is outweighed by the cost to system of ordered liberty. To that end please answer the following questions:

- What steps have been taken to utilize AI in tracking the social media accounts of SSDI beneficiaries?
- Have any federal funds been used to examine how AI could be best used to trace SSDI fraud? If so, what legal guidance was relied upon to determine the constitutionality of this undertaking? If so, how much money was utilized and where was the money directed?
- Share with us the protocols that have been developed to determine, through a beneficiary's social media presence, if someone is suspected of SSDI fraud.
- Share with us when development of this administration process for using social media as a way to identify possible SSDI fraud began and the timeline for implementation.

Scope of the Administration's Social Media Surveillance Plans: We have deep and broad concerns about the use of social media surveillance to ferret out federal program fraud. Moreover, we are deeply concerned that the administration might expand this surveillance-state tactic so that there is social media monitoring of: veterans claiming VA disability benefits;

farmers using USDA conservation programs, or entrepreneurs operating a pass-through corporation. To that end, please answer the following questions:

- Does the Administration believe it possesses the authority necessary to undertake this surveillance program(s)?
- What steps has the administration taken to expand this surveillance program beyond the SSA?
- Does the administration intend to deploy this program at the Department of Veterans Affairs?
- Does the administration intend to deploy this program at the U.S. Department of Agriculture?
- Does the administration intend to deploy this program at the Internal Revenue Service?
- Does the administration intend to deploy this program at the Department of Health and Human Services?
- Does the administration intend to deploy this program at the Department of Housing and Urban Development?
- Does the administration intend to deploy this program at the Department of Commerce?
- Our nation's tech sector has been a source of economic dynamism – creating jobs and enhancing shareholder value. Have our nation's tech companies been consulted about the Administration's efforts to use their products to snoop on taxpayers? If they have been consulted about the administration's proposal, have American tech companies expressed concerns about the effects this proposal will have upon their companies?

We appreciate your prompt attention to the matter and your detailed responses. Please provide our offices with a detailed, written response by March 29, 2019.

Sincerely,

Sherrod Brown
United States Senator

Robert P. Casey
United States Senator