

**Congress of the United States**  
**Washington, DC 20515**

March 18, 2016

The Honorable Patti Saris  
Chair  
United States Sentencing Commission  
One Columbus Circle, N.E.  
Washington, D.C. 20002-8002

Dear Chief Judge Saris:

As Chairmen of the House Ways and Means and Judiciary Committees and the Senate Committee on Finance, we write regarding the Commission's proposal to amend the Federal sentencing guidelines in response to changes in the law on fraud involving Social Security, as published in the Federal Register on January 15, 2016. Specifically, we ask that you amend the guidelines in a manner which adequately responds to Congressional intent, namely, to amend the guidelines so that they reflect the new and stronger penalties for Social Security fraud.

Last year, Congress passed the Bipartisan Budget Act of 2015.<sup>1</sup> Among other things, that legislation amended three existing statutes that criminalize certain fraudulent Social Security claims.<sup>2</sup> As the Commission's proposed amendments note, for all three statutes, the Act "add[ed] increased penalties for certain persons who commit fraud offenses under the relevant social security programs." Specifically, the Act imposed a ten-year maximum penalty—double the maximum five-year penalty for other offenders—for certain offenders. The specific language added to all three statutes states:

“, *except that* in the case of a person who receives a fee or other income for services performed in connection with any determination with respect to benefits under this title (including a claimant representative, translator, or current or former employee of the Social Security Administration), or who is a physician or other health care provider who submits, or causes the submission of, medical or other evidence in connection with any such determination...”<sup>3</sup>

As a plain reading of the language reveals, the intent of Congress in enacting this provision was to make an exception for certain offenders who commit Social Security fraud by subjecting them to a higher penalty. One need look no further than the section heading, “New and Stronger

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<sup>1</sup> Pub L. No. 114-74 (Nov. 2, 2015).

<sup>2</sup> 42 U.S.C. §§ 408, 1011, 1383a.

<sup>3</sup> *Id.* (emphasis added).

Penalties,” to see this.<sup>4</sup> This addition to the law goes well beyond the Guidelines Manual’s current §3B1.3 “position of trust” adjustment, both in severity of penalty and in scope of activity. However, the Commission’s proposed amendment—by providing no change to the Guidelines Manual concerning these individuals—gives no effect to Congressional intent as expressed in the Bipartisan Budget Act of 2015.

The amendments in the Bipartisan Budget Act were the result of several years of bipartisan Congressional inquiry, and they represent the first time Congress has acted to alter penalties for Social Security fraud since 2004. Since that time, Congressional committees have held numerous hearings which included testimony or discussion of fraud schemes by individuals in a position of trust. Congress enacted these reforms to combat a persistent problem, and the magnitude of potential fraud losses to the Social Security trust funds warrants careful consideration.

The Commission’s amendment fails to conform to Congressional intent, and we ask that you amend the Guidelines Manual in a manner consistent with the penalty increase in the law, reflecting the new and stronger penalties for Social Security fraud. Thank you for your attention to this important matter.

Should you or your staff have any questions, please contact Amy Shuart, Staff Director of the Subcommittee on Social Security of the Committee on Ways and Means, at (202) 225-9263, Robert Parmiter, Senior Counsel of the Crime, Terrorism, Homeland Security, and Investigations Subcommittee of the Committee on the Judiciary, at (202) 225-5727, or Jeff Wrase, Chief Economist of the Senate Finance Committee, at (202) 224-4515.

Sincerely,



Rep. Bob Goodlatte  
Chairman  
House Judiciary Committee



Rep. Kevin Brady  
Chairman  
House Ways & Means Committee



Senator Orrin Hatch  
Chairman  
Senate Finance Committee

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<sup>4</sup> Pub L. No. 114-74, at § 813.