Dear Commissioner Colvin and Attorney General Lynch,

We are writing to inquire about the steps Social Security Administration (SSA) is taking to ensure that it can correctly account for marital status and administer benefits fairly to all individuals.

The Supreme Court’s decisions in United States v. Windsor and Obergefell v. Hodges were major victories for our country’s core values of fairness and equality. We understand that SSA continues to work to implement the Supreme Court’s 2013 decision in United States v. Windsor that held Section 3 of the Defense of Marriage Act unconstitutional – ending the federal government’s system of discrimination against legally married same-sex couples. We are pleased that SSA in coordination with the Department of Justice is now working to implement the Supreme Court’s 2015 decision in Obergefell v. Hodges that recognized equal rights of same-sex couples to marry. It is especially important that SSA has systems in place to ensure that it is treating all legal marriages equally.

We are concerned to hear that, for some time after the Supreme Court’s Windsor decision, SSA continued to issue benefits to Supplemental Security Income recipients in same-sex marriages as though these individuals were single, and that for some SSI recipients, SSA is still doing so. Because benefits for unmarried individuals are higher than those for married individuals, SSA’s failure to update its policies resulted in overpayments. We understand that SSA has sent overpayment notices to these individuals even though they were overpaid due to SSA’s delayed implementation of the law.

Gay & Lesbian Advocates & Defenders and Justice in Aging recently brought a lawsuit alleging that SSA discriminated against Supplemental Security Income recipients in same-sex marriages when SSA failed to recognize these marriages – even when the individuals had notified SSA that they were married. The court dismissed the case without addressing the merits, finding that the plaintiffs failed to exhaust administrative remedies.\

SSA should not penalize people who are poor, elderly or disabled because SSA continued issuing benefits to these married individuals as though they were single. According to SSA’s statute and regulations, SSA shall avoid penalizing an individual for overpayment if the individual is without fault and if recovery of the overpayment would be against equity and good conscience. 2 While we understand that generally, SSA makes an individualized determination in the case of an overpayment, we urge SSA to issue a blanket waiver for recovery of overpayment for all of these individuals automatically – especially since SSA’s inability to update its systems resulted in SSA’s continuing to apply Section 3 of the Defense of Marriage Act long after the Supreme Court struck it down as unconstitutional. Under these circumstances, any effort on the part of SSA to collect overpayments would exacerbate the unlawful discriminatory effect of the Defense of Marriage Act and would be against equity and good conscience.

We would appreciate a response to the questions below by November 18, 2015.

1) How many notices has SSA sent seeking to recoup overpayments from individuals married to someone of the same sex?
2) Is SSA currently recouping any money in these circumstances and, if so, from how many people?
3) How does SSA identify Supplemental Security Income recipients whose benefits should be reduced or suspended because their marriages are now recognized as a result of Windsor or Obergefell?
4) How long would it take for SSA to identify all of the individuals who have received incorrect payments from SSA due to SSA’s mistakes in accounting for same-sex marriages?
5) Why would it be necessary and a good use of agency resources to put these individuals through an administrative appeal process one at a time?
6) How long does SSA expect a typical appeal process on these facts to take?
7) What is SSA doing to update its systems and processes so that SSA can correctly take marital status into account and administer benefits fairly to all individuals?

We urge SSA to implement the Supreme Court’s decisions as soon as possible and to waive recovery of the overpayments that SSA made to the affected individuals. We appreciate your attention to this matter and look forward to your response.

Sincerely,

Elizabeth Warren
United States Senator

Mark Takano
Member of Congress

Ron Wyden
United States Senator

Mark R. Warner
United States Senator

Debbie Stabenow
United States Senator

Robert P. Casey, Jr.
United States Senator

Benjamin L. Cardin
United States Senator

Richard J. Durbin
United States Senator

Jack Reed
United States Senator

Barbara A. Mikulski
United States Senator

Christopher S. Murphy
United States Senator

Robert Menendez
United States Senator

Charles E. Schumer
United States Senator

Michael F. Bennet
United States Senator

Angus King
United States Senator
Jan Schakowsky
Member of Congress

Jose E. Serrano
Member of Congress

Louise Slaughter
Member of Congress

Eric Swalwell
Member of Congress

Dina Titus
Member of Congress

Niki Tsongas
Member of Congress

Juan Vargas
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Debbie Wasserman Schultz
Member of Congress

Adam Schiff
Member of Congress

Brad Sherman
Member of Congress

Jackie Speier
Member of Congress

Mike Thompson
Member of Congress

Paul Tonko
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Chris Van Hollen
Member of Congress

Marc Veasey
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Bonnie Watson Coleman
Member of Congress
David N. Cicilline  
Member of Congress

Sean Patrick Maloney  
Member of Congress

Mark Pocan  
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Jared Polis  
Member of Congress

Kyrsten Sinema  
Member of Congress

Pete Aguilar  
Member of Congress

Karen Bass  
Member of Congress

Ami Bera  
Member of Congress

Earl Blumenauer  
Member of Congress

Suzanne Bonamici  
Member of Congress

Julia Brownley  
Member of Congress

Lois Capps  
Member of Congress

Tony Cárdenas  
Member of Congress

John Carney  
Member of Congress

André Carson  
Member of Congress

Matt Cartwright  
Member of Congress
Doris Matsui
Member of Congress

Jim McDermott
Member of Congress

Grace Meng
Member of Congress

Jerrold Nadler
Member of Congress

Frank Pallone, Jr.
Member of Congress

Scott Peters
Member of Congress

Lucille Roybal-Allard
Member of Congress

Betty McCollum
Member of Congress

James P. McGovern
Member of Congress

Patrick Murphy
Member of Congress

Eleanor Holmes Norton
Member of Congress

Ed Perlmutter
Member of Congress

Chellie Pingree
Member of Congress

Raul Ruiz
Member of Congress

Loretta Sanchez
Member of Congress
Judy Chu  
Member of Congress

Steve Cohen  
Member of Congress

Joseph Crowley  
Member of Congress

Peter A. DeFazio  
Member of Congress

Mark DeSaulnier  
Member of Congress

Keith Ellison  
Member of Congress

Lois Frankel  
Member of Congress

John Garamendi  
Member of Congress

Katherine Clark  
Member of Congress

John Conyers, Jr.  
Member of Congress

Susan A. Davis  
Member of Congress

Suzan DelBene  
Member of Congress

Ted Deutch  
Member of Congress

Eliot Engel  
Member of Congress

Ruben Gallego  
Member of Congress

Alan Grayson  
Member of Congress
Frederica S. Wilson  
Member of Congress

Grace F. Napolitano  
Member of Congress

Peter Welch  
Member of Congress