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United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

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August 5, 2021

The Honorable Janet Yellen
Secretary
Managing Trustee; Social Security and Medicare Trust Funds
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Secretary Yellen:

The Social Security Act requires that trustees' reports for the Social Security and Medicare trust funds be issued annually, and no later than April 1st of each calendar year.¹

According to a July 2019 report by the U.S. Government Accountability Office (GAO), 2008 was the last year in which the statutory deadline had been met.² The 2020 report was 21 days overdue, missing the deadline by fewer days than the past decade's average, yet still late. The 2021 report has not yet been issued, and is 126 days overdue.

The 2019 GAO report recommended that the Secretary of the Treasury, as Managing Trustee of the Boards of Trustees of the Social Security and Medicare trust funds, work to improve management of the report development schedule to provide Trustees reports to Congress by the statutory deadline; and "establish a policy to inform Congressional committees of jurisdiction when the trustees determine that the reports are expected to miss the issuance deadline."

The Senate Finance Committee recently learned, in late May, indirectly through questions posed to a nominee for a Treasury position, that: "A policy has already been established to inform Congressional committees of jurisdiction by electronic communication when it is determined that the reports are expected to miss the issuance deadline pursuant to the recommendation of the Government Accountability Office. For the 2021 reports, Treasury informed the committees of

¹ The relevant trust funds are the federal: old-age and survivors insurance (OASI) trust fund; disability insurance (DI) trust fund; hospital insurance (HI) trust fund; and supplementary medical insurance (SMI) trust fund.

² "Social Security and Medicare, Improved Schedule Management Needed for More Timely Trust Fund Reports," United States Government Accountability Office, Report to the Ranking Member, Subcommittee on Social Security, Committee on Ways and Means, House of Representatives, July 2019. <https://www.gao.gov/assets/710/700765.pdf>.

expected delays in the issuance of the reports on March 19, 2021.”³ The nominee also identified that: “Treasury does not have the authority to impose particular outcomes or to require that decisions be made within specified timeframes.” It is not clear that such an interpretation of the Social Security Act (specifically, Sec. 201(a)) is accurate in describing authority provided to the Secretary of Treasury as Managing Trustee of the Board of Trustees.

On March 19, some Congressional staff did in fact receive electronic mail (email) from an official in Treasury’s Office of Legislative Affairs (OLA) identifying that the 2021 reports would be delayed for some indefinite “at least eight weeks” period.

Later, on April 23, 2021, my Finance Committee staff requested a status update via email from Treasury’s OLA. Specifically, my staff asked whether the Managing Trustee (i.e., Treasury Secretary) expected the reports to be released by the end of May, or if the approximate eight week timeline would slip even further. That request went unacknowledged and unanswered.

On April 30, 2021, my staff again contacted Treasury officials via email. That email, too, went unacknowledged and unanswered. Finally, on May 13, 2021 my staff received a response from Treasury officials indicating that an internal inquiry would be made regarding the status of the reports’ issuance date, and that Treasury staff would follow up with the information soon.

Shortly after, on May 24, 2021, House Ways and Means Committee Ranking Member Kevin Brady and I sent you a bicameral letter requesting that a revised Medicare Hospital Insurance (HI) trust fund insolvency projection be provided to us as soon as possible. Once again, we have not received information.

It is now early August, and Treasury officials have not yet contacted my staff regarding the anticipated release date for the reports. This lack of transparency and accountability over important federal programs like Social Security and Medicare to inquiries from a Committee of jurisdiction is concerning. It appears that any policies Treasury has formulated for reporting on late trustees’ reports do not comply with the spirit and intent of GAO’s recommendations.

Transparency and accountability regarding management of, and accounting for, Social Security and Medicare trust funds has taken on increased importance with the recent unlawful dismissal by President Biden, in violation of Sec. 702(a)(3) of the Social Security Act, of Social Security Commissioner Andrew Saul on political grounds.

Transparency and accountability over the Social Security and Medicare trust funds is also especially important given that there have not been public trustees in place to participate in formulation of trustees’ reports since production of the 2016 report.

Assessing the true nature of the trust funds’ current financial status is time sensitive. Reasons could always be concocted to explain away missing the statutory deadline. There are no repercussions to the Managing Trustee for failing to meet the statutory deadline. And, it appears

³ Page 37 of Questions for the Record, Tuesday, May 25, 2021, available at <https://www.finance.senate.gov/imo/media/doc/05.25.2021%20Senate%20Finance%20Committee%20-%20Treasury%20Nominee%20QFR%20Responses.pdf>

that the reporting deadline has no operative meaning. I welcome any suggested legislative ideas from you to cure this problem.

Either through reconciliation or regular order, there is every expectation that Congress will consider additional legislation impacting mandatory programs during the remainder of this year. Before Congress debates any further legislation, it is imperative that policymakers have accurate information explaining the status of the two trust funds.

Please provide Congress and the American people with an expected delivery date of the overdue trustees' reports.

I also respectfully urge you, as Managing Trustee, to develop a better policy, more in line with GAO's recommendations, for keeping congressional committees of jurisdiction and the American people regularly informed of anticipated trustee-report delivery dates when trustees miss the statutory deadline of April 1 of each year.

Sincerely,

A handwritten signature in blue ink that reads "Mike Crapo". The signature is written in a cursive, flowing style.

Mike Crapo
Ranking Member