



SOCIAL SECURITY

The Commissioner

August 30, 2004

The Honorable David Dreier
House of Representatives
Washington, D.C. 20515

Dear Mr. Dreier:

Thank you for your letter of July 22, 2004, regarding the Social Security (Totalization) Agreement I signed with Mexico on June 29, 2004. I appreciate the opportunity to address your concerns about the agreement.

In your letter, you ask that benefits under the totalization agreement with Mexico be specifically limited to persons who hold a valid Social Security number in accordance with the provisions of the Social Security Protection Act (SSPA) of 2004 and for whom the Social Security Administration (SSA) has verifiable records of earnings on which benefits can be paid. I can assure you that this is the case under the proposed agreement with Mexico and, indeed, under all United States (U.S.) totalization agreements.

As stated in your letter, current law prohibits the payment of benefits to non-U.S. citizens in the U.S. who are not lawfully present. In addition, section 211 of SSPA amends sections 214 and 223 of the U.S. Social Security Act so that a person may not become eligible for U.S. Social Security benefits unless the worker on whose record benefits are based is a U.S. citizen or a non-U.S. citizen who was authorized to work in the U.S. when the worker was issued a Social Security number or any time thereafter. This work authorization requirement applies to Social Security numbers issued after 2003. Totalization agreements, including the proposed agreement with Mexico, do not have any effect on the prohibition against payment of benefits to undocumented aliens in the U.S., or on the prohibition against payment of benefits to aliens who have not been authorized to work in the U.S.

Prior to my signing the agreement with Mexico, our negotiators made it very clear to their Mexican counterparts that this agreement would not change the provisions of U.S. law that prohibit or limit Social Security benefit eligibility or payment in the case of foreign nationals who are in the U.S. unlawfully, or who have worked in the U.S. without authorization. On July 29, 2004, the U.S. Embassy in Mexico City delivered the enclosed diplomatic note to the Mexican Government to document this understanding.

Regarding your request that benefits under the agreement with Mexico also be limited to those workers for whom SSA has verifiable records of earnings, I can again assure you that

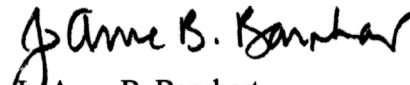
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this will be true under the agreement with Mexico, as it is under all U.S. totalization agreements. As I mentioned in my testimony before the Congress on September 11, 2003, SSA takes its stewardship responsibilities very seriously. We have established processes to ensure that wages are credited appropriately and are confident that SSA does not pay benefits to anyone for whom a verifiable record of earnings and coverage do not exist. This is true for the benefits we pay under national law as well as under any totalization agreement. It will also be true of any benefits we pay under the agreement with Mexico.

I hope this information is helpful. If I may be of further assistance, please do not hesitate to contact me or have your staff contact [REDACTED], Deputy Commissioner for Legislation and Congressional Affairs, at [REDACTED]

A similar letter has been sent to Congressmen Calvert, Doolittle, Herger, Issa, Lewis, McKeon, Ose, and Radanovich, and Congresswoman Bono.

Sincerely,


Anne B. Barnhart

Enclosure

No. 1539

The Embassy of the United States of America presents its compliments to the Secretariat of Foreign Relations of the United Mexican States and has the honor to refer to the agreement on social security between the United States of America and the United Mexican States signed on June 29, 2004.

During negotiations on the agreement, officials of the United States Social Security Administration (SSA) explained to representatives of the Government of Mexico that the proposed social security agreement could not override present or future provisions of United States law that prohibit or limit social security benefit eligibility or payment in the case of foreign nationals who are in the United States illegally or who have worked in the United States without authorization. Section 202(y) of the Social Security Act provides that in order to receive benefits under U.S. social security law, aliens in the United States must be lawfully present in the United States. The U.S.-Mexican social security agreement will not affect this requirement. As a result, Mexican nationals in the United States, who are not also United States nationals, will remain subject to the lawful presence requirements in section 202(y) after the agreement enters into force.

The Social Security Protection Act of 2004 (Public Law 103-203) was signed into law on March 2, 2004. Under sections 214 and 223 of the U.S. Social Security Act, as amended by Public Law 108-203, a person may not become eligible

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for U.S. Social Security benefits unless the worker on whose record benefits are based is a U.S. citizen or a non-U.S. citizen who was authorized to work in the United States when the worker was issued a social security number or any time thereafter. This new requirement does not apply to anyone who was issued a social security number before 2004. The U.S.-Mexican social security agreement will not affect this new requirement of U.S. law. As a result, eligibility for U.S. social security benefits will continue to be prohibited if based on the record of a person who is a Mexican national to whom SSA first issues a social security number after 2003, unless the person is also a United States national or was authorized to work in the United States at the time the number was issued or anytime thereafter.

The United States wishes to document the common understanding of the Government of the United States and the Government of Mexico that the social security agreement of June 29, 2004 will not affect the provisions of United States law referred to above, or future provisions, that might prohibit or limit social security benefit eligibility or payment to foreign nationals who are in the United States illegally or have worked in the United States without authorization. The United States further wishes to be in a position to provide documentation of this understanding to the United States Congress when the agreement is transmitted for congressional review, as required before the agreement can be brought into force for

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the United States. The Embassy therefore requests that the Secretariat reply to this note at its earliest convenience with an expression of concurrence in this understanding of the legal effect of the agreement.

The Embassy avails itself of this opportunity to renew to the Secretariat of Foreign Relations the assurances of its highest and most distinguished consideration.

Embassy of the United States of America,
Mexico City, Mexico, July 29, 2004.

